

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JOSEPH MARPEL,

11 Plaintiff,

No. 2:11-cv-0387 KJN P

12 vs.

13 SAUKHLA, et al.,

14 Defendants.

ORDER

15 _____/
16 Pursuant to this court's screening of plaintiff's original complaint pursuant to 28
17 U.S.C. § 1915A(a), the court found that the complaint may state potentially cognizable claims
18 against defendants Bick and Saukhla, but does not state a claim against the California Medical
19 Facility. (Dkt. No. 4 at 2.) Plaintiff, who has preliminarily agreed to the jurisdiction of the
20 magistrate judge for all purposes (Dkt. No.7), see 28 U.S.C. § 636(c), Local Rule 305(a), has
21 filed a document in which he agrees to terminate the California Medical Facility from this action
22 (Dkt. No. 16 at 2).

23 In the same document, plaintiff has filed a "motion" to obtain additional service
24 documents in order to provide the court with information necessary to serve process on a
25 defendant who has not yet been identified. Plaintiff states: "I need to amend another defendant
26 in this case. I do not have his/her name at the moment, but, this person is in charge of screening


1 all of the complaints in the Medical Department here at CMF [California Medical Facility].”
2 (Dkt. No. 16 at 1.)

3 Plaintiff is advised that the use of “Doe defendants” is not favored in the Ninth
4 Circuit. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) (“As a general rule, the use
5 of ‘John Doe’ to identify a defendant is not favored.”). Where the identity of an alleged
6 defendant cannot be known prior to the filing of a complaint, the plaintiff should be given an
7 opportunity through discovery to identify such defendant. Id. Failure to afford the plaintiff such
8 an opportunity is error. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999)
9 (dismissing a complaint because plaintiff is unaware of Doe’s identity at the time the complaint
10 is filed is error). If plaintiff learns the identity of the subject Doe defendant, through discovery or
11 earlier, he may file a motion for leave to file an amended complaint in order to add the newly
12 identified individual as a named defendant. See Brass v. County of Los Angeles, 328 F.3d 1192,
13 1195-98 (9th Cir. 2003). If the amended complaint states a potentially cognizable claim against
14 the newly named defendant, the court will then provide the necessary service documents.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The California Medical Facility is dismissed from this action; and
17 2. Plaintiff’s motion (Dkt. No. 16) to obtain additional service documents is
18 denied without prejudice.

19 DATED: May 6, 2011

20
21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

24 marp0387.misc
25
26