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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 AARON RAISER,
12 Plaintiff,
13 v.
14 SAN DIEGO COUNTY, et al.,
15 Defendants.

Case No.: 19cv751-GPC(KSC)

**ORDER GRANTING EX PARTE
APPLICATIONS FOR EXPEDITED
DISCOVERY [Doc. Nos. 13, 15, 16.]**

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17 Plaintiff Aaron Raiser, proceeding *pro se* and *in forma pauperis*, filed this action
18 pursuant to Title 42, United States Code, Section 1983, alleging that San Diego deputy
19 sheriffs violated his Fourth Amendment right to be free from unreasonable searches,
20 because they detained him on several occasions while he was in his car or walking on the
21 side of a street with no reason to believe he was breaking any laws. [Doc. No. 9, at pp. 4-
22 8.] Plaintiff also alleges that he believes San Diego deputy sheriffs have a custom or
23 policy of unlawfully detaining citizens. [Doc. No. 9, at p. 4.]

24 On July 31, 2019, plaintiff filed an *Ex Parte* Application for Order (1) Allowing
25 Extension of Time to Serve Doe Defendants and (2) Expedited Discovery to Identify Doe
26 Defendants. [Doc. No. 13.] On September 5, 2019 and September 7, 2019, plaintiff filed
27 two more *Ex Parte* Applications that are almost identical to his first *Ex Parte*
28

1 Application. These newer *Ex Parte* Applications seek the same relief as the original Ex
2 Parte Application. [Doc. Nos. 15, 16.]

3 Background

4 In separate incidents at different locations on April 30, 2017, August 7, 2017, and
5 March 29, 2018, plaintiff alleges he was unlawfully detained by deputy sheriffs in
6 violation of the Fourth Amendment. All three incidents allegedly took place in San
7 Diego County. Plaintiff does not know the identities of the deputy sheriffs, so he named
8 the County of San Diego as a defendant, along with “DOES 1-20.” [Doc. No. 9, at pp. 1,
9 4-8.]

10 Discussion

11 I. Request for Expedited Discovery.

12 In his *Ex Parte* Applications, plaintiff seeks leave to serve discovery limited to
13 learning the identities of the DOE defendants on an expedited basis, so he can serve each
14 of them with a summons and the First Amended Complaint. [Doc. 16-1, at pp. 2-3; Doc.
15 Nos. 13, 15.] Generally, discovery is not permitted without a court order before the
16 parties have conferred pursuant to Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P.
17 26(d)(1). In the Ninth Circuit, exceptions to requests for early discovery have generally
18 been disfavored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980.) “However,
19 situations arise, such as the present, where the identity of alleged defendants will not be
20 known prior to the filing of a complaint. In such circumstances, the plaintiff should be
21 given an opportunity through discovery to identify the unknown defendants, unless it is
22 clear that discovery would not uncover the identities, or that the complaint would be
23 dismissed on other grounds.” *Id.* at p. 642. *See also Wakefield v. Thompson*, 177 F.3d
24 1160, 1163 (9th Cir. 1999).

25 Courts in the Ninth Circuit have also permitted expedited discovery prior to the
26 Rule 26(f) conference “upon a showing of good cause.” *American LegalNet, Inc. v.*
27 *Davis*, 673 F.Supp.2d (C.D. Cal. 2009). However, courts have indicated that “some
28 limiting principals should apply to the determination of whether discovery to uncover the

1 identity of a defendant is warranted.” *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D.
2 573, 578 (N.D. Cal. 1999). Early discovery should be limited to “ensure that this unusual
3 procedure will only be employed in cases where the plaintiff has in good faith exhausted
4 traditional avenues for identifying a civil defendant pre-service and will prevent use of
5 this method to harass or intimidate.” *Id.*

6 “First, the plaintiff should identify the missing party with sufficient specificity
7 such that the Court can determine that defendant is a real person or entity who could be
8 sued in federal court.” *Id.* In support of his Ex Parte Application, plaintiff submitted a
9 Declaration stating he is aware from prior litigation that the San Diego County Sheriff
10 keeps a record whenever a deputy sheriff runs a background check on an individual.
11 Because the First Amended Complaint identifies the times, dates, and locations for the
12 alleged unlawful stops, plaintiff believes the San Diego County Sheriff can readily
13 identify the deputy sheriffs involved in each incident. [Doc. No. 16-2, at pp. 2-3.] The
14 First Amended Complaint also alleges that all three incidents that serve as the basis for
15 this action took place in San Diego County. [Doc. No. 9, at pp. 5-8.] Accordingly, the
16 Court finds that plaintiff has sufficiently and specifically identified the DOE defendants.

17 “Second, the party should identify all previous steps taken to locate the elusive
18 defendant. This element is aimed at ensuring that plaintiffs make a good faith effort to
19 comply with the requirements of service of process and specifically identifying
20 defendants.” *Columbia*, 185 F.R.D. at 578. Prior to filing his Ex Parte Application,
21 plaintiff states in his Declaration that he contacted counsel for the County of San Diego
22 by phone and e-mail and attempted to arrange a stipulation for the parties to complete
23 initial disclosures prior to the usual deadlines so that he could discover the names of the
24 DOE defendants, but he was unsuccessful. [Doc. No. 16-2, at p. 2.] Plaintiff also
25 contacted a clerk in the Records Department for the San Diego County Sheriff and spoke
26 with a person familiar with the Sheriff’s policies on public records requests. He was
27 advised by the clerk that he would not be able to obtain any records relating to the
28 incidents alleged in this litigation through the Records Department. [Doc. No. 16-2, at

1 p. 2.] Therefore, plaintiff represents that he has “exhausted all known means to obtain
2 the identities” of the DOE defendants “short of discovery.” [Doc. No. 16-2, at p. 2.]

3 “Third, plaintiff should establish to the Court's satisfaction that plaintiff's suit
4 against defendant could withstand a motion to dismiss.” *Columbia*, 185 F.R.D. at 578.
5 “Thus, plaintiff must make some showing that an act giving rise to civil liability actually
6 occurred and that the discovery is aimed at revealing specific identifying features of the
7 person or entity who committed that act.” *Id.* at 580. Although liberally construed,
8 plaintiff's allegations against the DOE defendants have already survived initial screening
9 by the District Court. [Doc. No. 5, at p. 5.]

10 Based on the foregoing, the Court finds that plaintiff submitted enough information
11 to establish good cause for an order allowing him to proceed with expedited discovery
12 limited to learning the identities of the DOE defendants. Therefore, plaintiff's request for
13 an order permitting expedited discovery to learn the identities of the DOE defendants is
14 GRANTED. [Doc. Nos. 13, 15, 16.]

15 ***II. Request for Extension of Time to Serve the DOE Defendants.***

16 Federal Rule of Civil Procedure 4(m) provides that a complaint is subject to
17 dismissal if a defendant “is not served within 90 days” of filing. Fed.R.Civ.P. 4(m).
18 However, “if the plaintiff shows good cause for the failure [to serve the complaint], the
19 court ***must*** extend the time for service for an appropriate period.” Fed.R.Civ.P. 4(m)
20 (emphasis added). “District courts have broad discretion to extend time for service under
21 Rule 4(m).” *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007). “Good cause
22 generally means plaintiff attempted service but did not complete it; plaintiff was confused
23 about the requirements of service; or plaintiff was prevented from serving defendants by
24 factors beyond his control. It is examined by considering: (1) whether the delay resulted
25 from inadvertence or whether a reasonable effort to effect service has occurred;
26 (2) whether defendant has been prejudiced by the delay; or (3) whether plaintiff has
27 moved for an enlargement of time to effect service under FRCP 6(b).” *Television Signal*
28 *Corp. v. City & Cty. of San Francisco*, 193 F.R.D. 645, 646 (N.D. Cal. 2000).

1 Here, there is good cause to extend the time for service. Plaintiff has been diligent
2 and has attempted to discover the identities of the DOE defendants but has been unable to
3 do so because of policies imposed by the San Diego County Sheriff's office. He must
4 therefore serve defendant San Diego County with limited discovery requests on an
5 expedited basis to discover the identities of the DOE defendants. Thereafter, he will need
6 additional time to serve the DOE defendants once they are identified. It does not appear
7 this will cause any prejudice to the DOE defendants, because their employer is already a
8 defendant and has been served with a summons and the First Amended Complaint. As
9 noted above, the First Amended Complaint specifically identifies the DOE defendants by
10 date and by the locations where the alleged incidents took place. Accordingly, the Court
11 finds that plaintiff's request for an extension of time to effect service on the DOE
12 defendants must be GRANTED.

13 **Conclusion**

14 Based on the foregoing, IT IS HEREBY ORDERED that:

15 1. Plaintiff's request for limited expedited discovery to learn the identities of
16 the DOE defendants is GRANTED. [Doc. Nos. 13, 15, 16.] **No later ten (10) days after**
17 **receiving this Order**, plaintiff shall serve defendant with three (3) specific, narrowly
18 tailored interrogatories (*i.e.*, one interrogatory for each incident alleged in the First
19 Amended Complaint). The limited purpose of these interrogatories shall be to discover
20 the identities of the DOE defendants and where these DOE defendants can be served with
21 the summons and the First Amended Complaint.

22 2. **No later than ten (10) days after receipt** of the above-described
23 interrogatories, defendant shall, without objection, serve plaintiff with responses to his
24 interrogatories that identify each of the DOE defendants to the extent possible and where
25 these individuals can be served with the summons and the First Amended Complaint.

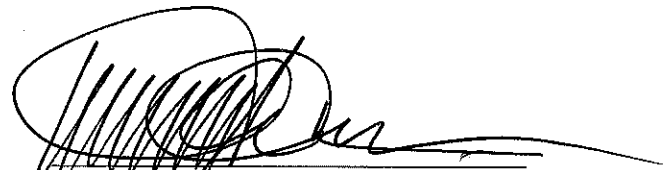
26 3. **No later than thirty (30) days** after he receives the identities and addresses
27 for service of process for the DOE defendants, plaintiff shall serve each of these DOE
28 defendants with a summon and the First Amended Complaint.

1 4. To serve the summons and the First Amended Complaint on the DOE
2 defendants after they are identified, plaintiff shall use the same procedure as that set forth
3 in the District Court's Order of May 24, 2019 [Doc. No. 5]. *The Clerk* is therefore
4 **DIRECTED** to issue a summons as to plaintiff's First Amended Complaint [Doc. No. 9]
5 along with six (6) copies of blank U.S. Marshall Form 285. Upon receipt of the identities
6 of the DOE defendants and this "IFP Package," plaintiff must complete the Form 285s as
7 completely and accurately as possible, *including an address where each named defendant*
8 *may be found and/or subject to service*, and return the completed forms to the United
9 States Marshal according to the instructions the Clerk provides in the letter
10 accompanying his IFP package.

11 5. The *U.S. Marshal* is ordered to serve a copy of the First Amended
12 Complaint and a summons upon each of the defendants as directed by plaintiff on the
13 USM Form 285s. All costs of that service will be advanced by the United States. *See* 28
14 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

15 IT IS SO ORDERED.

16 Dated: September 25, 2019



Hon. Karen S. Crawford
United States Magistrate Judge