

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Serpa v. John Doe #1

Serpa · No. 1:24-cv-01542-EPG (PC) · Decided August 18, 2025

SUMMARY

The United States Magistrate Judge recommends dismissing Jesse Serpa’s 42 U.S.C. § 1983 action without prejudice because he failed to identify and serve the John Doe defendant, comply with court orders, and prosecute the case. The action concerns alleged sexual assault under the Eighth Amendment and an unreasonable search under the Fourth Amendment. The document also orders assignment of a district judge and provides 30 days for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 18, 2025
DOCKET	1:24-cv-01542-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations recommending dismissal without prejudice of a pro se prisoner's 42 U.S.C. § 1983 action for failure to identify and serve an unknown defendant, failure to comply with court orders, and failure to prosecute.
STANDARD OF REVIEW	For dismissal for failure to prosecute or failure to comply with a court order, the court weighs the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the availability of less drastic alternatives, and the public policy favoring disposition on the merits. Under Federal Rule of Civil Procedure 4(m), an unserved defendant must be dismissed without prejudice or service must be extended unless the plaintiff shows good cause.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jesse A. Serpa v. John Doe #1

TOPICS

service of process

civil procedure

prisoners rights

section 1983

fourteenth amendment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 4(m) because Plaintiff failed to identify and serve John Doe #1.
2. Whether the action should be dismissed without prejudice for failure to prosecute and failure to comply with court orders.
3. Whether the court should assign a district judge to the case.

HOLDINGS

1. Where an in forma pauperis plaintiff fails to provide the United States Marshal with accurate and sufficient information to effect service, and fails to serve the defendant within the period required by Federal Rule of Civil Procedure 4(m), dismissal of the unserved defendant without prejudice is appropriate.
2. Dismissal without prejudice is appropriate when, after weighing the applicable factors, a plaintiff's failure to prosecute and failure to comply with court orders materially delay the case and no satisfactory lesser sanction is available.

KEY QUOTATIONS

“If a defendant is not served within 90 days after the complaint is filed, the court— on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (at 2)

“In determining whether to dismiss a[n] [action] for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” (at 3)

FACTUAL BACKGROUND

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, asserted sexual-assault and unreasonable-search claims against an unidentified correctional officer designated John Doe #1. The court attempted to identify the officer through CDCR and authorized subpoenas to obtain identifying information, but Plaintiff did not complete the required subpoena forms or otherwise identify the defendant. Because the defendant remained unidentified and unserved, and Plaintiff failed to comply with court orders and prosecute the action, the court recommended dismissal without prejudice.

PROCEDURAL HISTORY

The court screened the complaint and permitted Eighth Amendment sexual-assault and Fourth Amendment unreasonable-search claims to proceed against John Doe #1. The court authorized service through the CDCR e-service program, but CDCR and the United States Marshals Service were unable to identify or serve the defendant. The court then authorized subpoenas, provided instructions and extensions, and warned Plaintiff that failure to substitute and serve a named defendant could result in dismissal. Plaintiff did not complete the subpoena forms, identify John Doe #1, file a motion to substitute, or provide sufficient information for service. The magistrate judge recommended dismissal without prejudice and ordered assignment of a district judge.

DISPOSITION

other

CASES CITED

- Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994)
- Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)
- Sandin v. Connor, 515 U.S. 472 (1995)
- Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Yourish v. California Amplifier, 191 F.3d 983, 990-91 (9th Cir. 1999)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)