

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cuong Huy Dao v. M. Bravo, et al.

Dao v. Bravo · No. 1:25-cv-00970-HBK (PC) · Decided September 15, 2025

SUMMARY

This order in a prisoner civil-rights action grants Plaintiff Cuong Huy Dao 90 days to discover and identify two unidentified correctional officers allegedly involved in an Eighth Amendment excessive-force claim. The Court discusses limited discovery, subpoenas, and alternative methods for identifying the John Doe defendants, and directs Plaintiff to file a notice of substitution. Failure to identify and substitute the defendants within 90 days will result in a recommendation that they be dismissed without prejudice.

OPINION

Bravo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CUONG HUY DAO, Case No. 1:25-cv-00970-HBK (PC) 12 Plaintiffs, ORDER
DIRECTING PLAINTIFF

TO IDENTIFY JOHN DOES

13 v.

90-DAY DEADLINE

14 M. BRAVO, et al., 15 Defendants. 16 17 Plaintiff Cuong Huy Dao is proceeding pro se and in
forma pauperis in this civil rights 18 action pursuant to 42 U.S.C. § 1983. (Doc. No. 1,
“Complaint”).

19 I. RELEVANT BACKGROUND

20 On August 22, 2025, the Court screened the Complaint and found it stated cognizable 21
Eighth Amendment excessive use of force claims against Defendants M. Bravo, J. Rivera, J. 22
Perez, A. Heredia, Devila, Medina, A. Gutierrez, M. Lopez, Rodrigo, and two Unidentified 23
Correctional Officers, and cognizable Eighth Amendment medical deliberate indifference claims
24 against Defendants LVN Reyes, RN Callejo, and Dr. Kongara but no other claim. (Doc. No. 8
at 25 12). Specifically, the Court found the Complaint did not state cognizable conspiracy claims
or 26 equal protection claims against any of the named Defendants, and did not state an Eighth 27
Amendment condition of confinement against Defendant J. Medina or any other named 28

Defendant. (Doc. No. 8 at 8-11). On September 8, 2025, Plaintiff filed a notice electing to stand 1 on his Complaint as screened and proceed only on those claims the court deems cognizable, 2 effectively dismissing his conspiracy, equal protection, and conditions of confinement claims by 3 operation of law pursuant to Rule 41 and 15. (See Doc. Nos. 9-11). The Court directed service 4 on Defendants Bravo, J. Rivera, J. Perez, A. Heredia, Devila, Medina, A. Gutierrez, M. Lopez, 5 Rodrigo, LVN Reyes, RN Callejo, and Dr. Kongara. (Doc. No. 12). 6 The Court now addresses the issue of Plaintiff's need to identify the two Unidentified 7 Correctional Officers ("John Does") Plaintiff listed and identified in his Complaint. (See Doc. 8 No. 1 at 10-17).

9 II. DISCUSSION

10 The two John Does were employed as correctional officers at California Department of 11 Corrections and Rehabilitation ("CDCR") North Kern State Prison. Plaintiff alleges on or about 12 August 21 or 22, 2024 the two John Does, along with Defendants Bravo, J. Rivera, J. Perez, A. 13 Heredia, Devila, Medina, A. Gutierrez, M. Lopez, and Rodrigo used excessive force on him 14 during an escort to medical in violation of the Eighth Amendment. 15 Plaintiff is advised that the United States Marshal cannot serve Doe defendants. Plaintiff 16 will be required to identify the two John Does with enough information to locate these individuals 17 for service of process. 1 Plaintiff will be given the "opportunity through discovery to identify the 18 unknown (Doe) defendants." Crowley v. Bannister, 734 F.3d 967, 978 (9th Cir. 2013). 19 The Ninth Circuit has held that where identity is unknown prior to the filing of a 20 complaint, the plaintiff should be given an opportunity through discovery to identify the unknown 21 defendants unless it is clear that discovery would not uncover the identities, or that the complaint 22 would be dismissed on other grounds. Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 23 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)). Here, it is not clear that 24 25 1 Plaintiff is advised it is his obligation to identify any Doe defendant named in this action. See, e.g., Johnson v. Spearman, No. 2:19-cv-1093 JAM KJN P, 2020 WL 7405693, at *2, n.3 (E.D. Cal. Dec. 17, 26 2020) ("It is Plaintiff's obligation to timely identify individuals named as defendants in a civil rights complaint"); Reyes v. Flores, No. 1:16-cv-00586-DAD-JLT (PC), 2018 WL 3968245, at *10 (E.D. Cal.

27 Aug. 16, 2019) ("It is Plaintiff's obligation to provide the information necessary to identify and locate a given defendant"). 28 1 discovery would not uncover the identity of the two John Does, nor it is clear that Plaintiff's 2 Complaint would be dismissed on other grounds. Thus, Plaintiff should be afforded an 3 opportunity to discover the identities of the two John Does through limited discovery.

4 Rule 45 of the Federal Rules of Civil Procedure concerns subpoenas. Plaintiff is advised 5 the Court's authorization of a subpoena duces tecum requested by an in forma pauperis plaintiff is 6 subject to limitations. Because personal service of a subpoena duces tecum is required (Fed.

R. 7 Civ. P. 45(b)), “[d]irecting the Marshal’s Office to expend its resources personally serving a 8 subpoena is not taken lightly by the court.” *Austin v. Winett*, No. 1:04-cv-05104-DLB PC, 2008 9 WL 5213414, *1 (E.D. Cal. Dec. 12, 2008); 28 U.S.C § 1915(d). Limitations include the 10 relevance of the information sought, as well as the burden and expense to the non-party in 11 providing the requested information. Fed. R. Civ. P. 26, 45. 12 A motion for issuance of a subpoena duces tecum should be supported by clear 13 identification of the documents sought and a showing that the records are obtainable only through 14 the identified third party. See, e.g., *Davis v. Ramen*, No. 1:06-cv-01216-AWI-SKO (PC), 2010 15 WL 1948560, *1 (E.D. Cal. May 11, 2010); *Williams v. Adams*, No. 1:05-cv-00124-AWI-SMS 16 (PC), 2010 WL 148703, *1 (E.D. Cal. Jan. 14, 2010). The “Federal Rules of Civil Procedure 17 were not intended to burden a non-party with a duty to suffer excessive or unusual expenses in 18 order to comply with a subpoena duces tecum.” *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa. 19 1991). Non-parties are “entitled to have the benefit of the Court’s vigilance” in considering these 20 factors. Id. 21 Plaintiff may also elect to learn the identities of the two John Does by alternate means. For 22 example, Plaintiff might use a CDCR Form 22 to learn the identities of the two Unidentified 23 Correctional Officers who participated in Plaintiff’s escort to medical at about 11:30 a.m. on 24 August 21 or 22, 2024. Or Plaintiff might request copies of any grievances he submitted that may

25 contain the names or descriptions or actual names of the John Does. See, e.g., *Thompson v. 26 Allison*, No. 23-cv-05079-HSG, 2024 WL 4394759, at *3 (N.D. Cal. Oct. 3, 2024) (“Plaintiff may 27 be able to obtain the names of these [John Doe] individuals by accessing his classification records 28 or using the CDCR Form 22”). 1 Finally, the Court notes that if Plaintiff has learned the name or names of John Does since 2 | filing his Complaint, and/or does not require a subpoena to obtain these individuals’ identity, 3 | Plaintiff shall file a notice of substitution with the Court, asking to substitute that individual’s 4 | actual name for Unidentified Correctional Officers. 5 Accordingly, it is hereby ORDERED: 6 The Court GRANTS Plaintiff ninety (90) days in which to discover the actual names of 7 | two Unidentified Correctional Officers or John Does, through subpoena or otherwise, and to 8 | substitute these defendants’ actual names by filing a “notice of substitution.” See *Wakefield*, 177 9 | F.3d at 1163. If, within 90 days, Plaintiff fails to file a notice of substitution that provides the 10 | actual names of two Unidentified Correctional Officers or John Does, the Court will recommend 11 | dismissal, without prejudice, of such individuals. 12 'S | Dated: _ September 15, 2025 Mihaw. Wh. foareh Zaskth

14 HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE
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