

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Bealer v. Warden

No. 2:23-cv-0284-DC-JDP (P), order (E.D. Cal. May 5, 2025) · No. 2:23-cv-0284-DC-JDP (P) · Decided May 5, 2025

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice the plaintiff’s motions to proceed with discovery and for summary judgment because no defendants had been identified or served and no scheduling order had issued. The court directed the plaintiff to notify it within thirty days whether he would use the U.S. Marshal to serve subpoenas seeking the identities of unknown defendants, subject to applicable fees.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 5, 2025
DOCKET	2:23-cv-0284-DC-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to proceed with discovery and for summary judgment while the defendants remained unidentified and unserved and before a scheduling order had issued.
STANDARD OF REVIEW	The court applied a prematurity analysis to pending discovery and summary-judgment motions; no formal standard of review was stated.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district-court order
PARTIES	Antwoine Bealer v. Warden, et al.

TOPICS

- discovery dispute
- summary judgment
- service of process
- prisoners rights
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff's motion to proceed with discovery was premature because no defendant had been identified or served and no scheduling order had issued.
2. Whether plaintiff's motion for summary judgment was premature under the same circumstances.
3. Whether the United States Marshal was required to serve plaintiff's subpoenas without charge when plaintiff was not proceeding in forma pauperis.
4. What plaintiff was required to do to arrange service of the subpoenas and comply with the applicable service deadlines.

HOLDINGS

1. The court denied plaintiff's motion to proceed with discovery and motion for summary judgment without prejudice as premature because no defendant had been identified or served and no scheduling order had issued.
2. Because plaintiff was not proceeding in forma pauperis, the United States Marshal would not serve plaintiff's subpoenas for free; plaintiff had to arrange service himself or pay the Marshal's applicable service fees.
3. Plaintiff was required either to have each subpoena served by a qualified nonparty at least 18 years old or to bear the costs of service by the United States Marshal, including the fees specified in 28 C.F.R. § 0.114.

KEY QUOTATIONS

“However, because no defendant has been identified or served, and because no scheduling order has issued, both motions are denied without prejudice as premature.” (at 1)

“Accordingly, plaintiff must either cause each subpoena to be served himself or bear the costs of service by the U.S. Marshal.” (at 2)

FACTUAL BACKGROUND

Plaintiff had not identified or served any defendant, and the court had not issued a scheduling order. Plaintiff sought permission to proceed with discovery and moved for summary judgment. He also returned subpoenas intended to discover the identities of unknown defendants, but he was not proceeding in forma pauperis and therefore was responsible for service costs.

PROCEDURAL HISTORY

Plaintiff filed this prisoner civil-rights action against unidentified defendants and returned subpoenas seeking to discover their identities. He then moved to proceed with discovery and for summary judgment. The district court denied both motions without prejudice as premature and directed plaintiff regarding service of the subpoenas and related costs.

DISPOSITION

other

CASES CITED

- James v. Scribner, No. 1:04-cv-5878-LJO-DLB P, 2008 WL 3318879, at *1 (E.D. Cal. Aug. 11, 2008)

OPINION

(PC) Bealer v. Warden

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 ANTWOINE BEALER, Case No. 2:23-cv-0284-DC-JDP (P) 12 Plaintiff, 13 v. ORDER 14
WARDEN, et al., 15 Defendants. 16 Pending before the court are plaintiff's motion to proceed
with discovery and motion for 17 summary judgment. ECF Nos. 27 & 30. However, because no
defendant has been identified or 18 served, and because no scheduling order has issued, both
motions are denied without prejudice as 19 premature. Once plaintiff determines the identity of
defendants, he shall file a motion to 20 substitute the named individual defendants. After
defendants are served, the court will issue a 21 scheduling order, which will include deadlines for
discovery and dispositive motions. 22 Plaintiff has returned to the court subpoenas directed at
discovering the identities of the 23 unknown defendants. ECF No. 23. Since plaintiff is not
proceeding in forma pauperis, the U.S. 24 Marshal will not serve plaintiff's subpoenas for free.
See 28 U.S.C. § 1915(d); cf. James v. 25 Scribner, No. 1:04-cv-5878-LJO-DLB P, 2008 WL
3318879, at *1 (E.D. Cal. Aug. 11, 2008) 26 ("As plaintiff is proceeding pro se and in forma
pauperis, he is entitled to service of the subpoena 27 by the United States Marshal [pursuant to 28
U.S.C. § 1915(d)]."). 28 1 Accordingly, plaintiff must either cause each subpoena to be served
himself or bear the 2 | costs of service by the U.S. Marshal. See Fed. R. Civ. P. 45(b)(1) ("Any
person who is at least 18 3 || years old and not a party may serve a subpoena."). As for service by
the U.S. Marshal, plaintiff is 4 | directed to 28 C.F.R. § 0.114, which sets the fees for such services,
including "\$65 per person per 5 | hour for each item served, plus travel costs and any other out-of-
pocket expenses." Within thirty 6 | days, plaintiff shall notify the court that he either will or will
not use the U.S. Marshal to serve the 7 | subpoenas. Plaintiff should take note that, if a defendant is
not served within the ninety days after 8 | a complaint is filed, the court must, after notice to the
plaintiff, dismiss the action without 9 | prejudice. Fed. R. Civ. P. 4(m). 10 Accordingly, it is hereby
ORDERED that: 11 1. Plaintiffs motion to proceed with discovery and motion for summary
judgment, ECF 12 | Nos. 27 & 30, are denied as premature. 13 2. Plaintiff shall, within thirty days,
notify the court that he will or will not use the 14 | services the U.S. Marshal to serve the

subpoenas. If plaintiff chooses to have the U.S. Marshal 15 | serve the subpoenas, he will be obligated to pay the fees as outlined in 28 C.F.R. § 0.114. 16 7 IT IS SO ORDERED. 18 (1 Oy —
Dated: _ May 5, 2025 ow——

19 JEREMY D. PETERSON

UNITED STATES MAGISTRATE JUDGE

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