

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

David A. Thompson v. James S. Hill, et al.

Thompson · No. 24-cv-357-TWR-DDL · Decided January 20, 2026

SUMMARY

The court grants in part and denies as moot several pro se plaintiff motions concerning amendment of the complaint, identification and service of defendants, and early discovery in a 42 U.S.C. § 1983 action. The court construes one motion as a request for leave to file a third amended complaint, permits the addition of D. Van, and directs service efforts for G. Galvan and D. Van. The magistrate judge recommends that the defendants’ motion to dismiss the superseded second amended complaint be denied as moot.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DAVID A. THOMPSON, Case No.: 24-cv-357-TWR-DDL 12 Plaintiff,
ORDER ON PLAINTIFF’S 13 v. MOTIONS [Dkt. Nos. 22, 42, 43, 59, 61] 14 JAMES S. HILL,
et al., and 15 Defendants. REPORT AND RECOMMENDATION FOR ORDER 16 DENYING
MOTION TO DISMISS 17 AS MOOT [Dkt. No. 48] 18 19 20 Plaintiff is proceeding pro se in
this civil rights action pursuant to 42 U.S.C. § 1983.

21 Before the Court are several motions by Plaintiff: Motion for Early Discovery to Identify 22
Doe Defendant, Motion for Good Cause Under Federal Rule of Civil Procedure 16(b)(4), 23
Motion to Locate Defendant Under Seal, Motion to Request Update on Named Defendants, 24
and Motion to Substitute Party and Request U.S. Marshal Service. Dkt. Nos. 22, 42, 43, 25 59, 61.

26 The Court construes Plaintiff’s Motion for Good Cause (Dkt. No. 42) as a motion 27 for leave
to file a third amended complaint. Additionally, the Court construes Plaintiff’s 28 Motion to
Request Update on Named Defendants (Dkt. No. 59) as a request for U.S. 1 Marshal service upon
G. Galvan and D. Van.

For the reasons stated below, these two 2 motions are GRANTED. Plaintiff’s remaining motions
are DENIED AS MOOT. 3 Given the possibility of a superseding pleading, and as set forth more
fully below, 4 the undersigned further RECOMMENDS Defendants’ Motion to Dismiss [Dkt. No
48] 5 be DENIED AS MOOT. 6 I. 7 BACKGROUND 8 A. Plaintiff’s Allegations 9 Plaintiff is
currently incarcerated at the Substance Abuse Treatment Facility and 10 State Prison (SATF-SP)
in Corcoran.

Dkt. No. 44, Second Amended Complaint. Plaintiff's 11 claims arise from his treatment while incarcerated at R.J. Donovan Correctional Facility 12 (RJDCF). Id. at ¶ 2, 3. 13 Plaintiff was transferred to RJDCF on March 17, 2023, and he was placed in a shared 14 cell with inmate Lemm. Id. at ¶ 3. Plaintiff has a medical condition that causes chronic 15 fecal incontinence, and he frequently has to get up during the night to bathe himself and 16 clean his sleeping area.

Id. at ¶ 4-5. These nighttime disruptions caused repeated threats and 17 physical fights between Plaintiff and Lemm. Id. Plaintiff asked correctional officers to 18 move cells multiple times, and they refused his requests. Id. at ¶ 8. 19 On September 13, 2023, Plaintiff had spinal surgery at an outside hospital. Id. at 20 ¶ 10.

After surgery, Plaintiff returned to his cell with Lemm for one night, but on September 21 16, 2023, Plaintiff was relocated to a single cell on the lower tier because his surgery 22 prohibited him from going up stairs. Id. at ¶11-14. Plaintiff stayed in a single cell for the 23 remainder of his time at RJDCF. Id. at ¶ 85. 24 On September 19, 2023, Plaintiff filed two requests seeking single cell status based 25 on his incontinence: an ADA Reasonable Accommodation Request and a Healthcare 602 26 Grievance.

Id. at 18-19. Both requests were denied, concluding that no intervention was 27 needed. Dkt. No. 44-2 at 6; Dkt. No. 44-1 at 13. Plaintiff alleges that false statements were 28 1 made by the officials who evaluated his requests and argues that his incontinence should 2 have justified single cell status. Dkt. No. 44 at ¶ 26-59. 3 On December 12, 2024, Plaintiff was transferred to SATF-SP, where he is currently 4 incarcerated.

Id. at ¶ 86. At SATF-SP, Plaintiff had a single cell until March 13, 2025, 5 when he was required to take a cellmate. Id. Plaintiff's first cellmate at SATF-SP, inmate 6 Dalton, caused no conflict. Id. at ¶ 88. However, Plaintiff's current cellmate has threatened 7 Plaintiff's life. Id. at ¶ 91. 8 Plaintiff brings suit against the correctional officers who denied his informal 9 requests to move cells at RJDCF and the officials who evaluated and denied his requests 10 for single-cell status.

11 B. Procedural History 12 Plaintiff filed his initial complaint on February 22, 2024. Dkt. No. 1. On December 13 23, 2024, Plaintiff filed the First Amended Complaint. Dkt. No. 14. The First Amended 14 Complaint named the State of California, the California Department of Corrections and 15 Rehabilitation, and fourteen individual defendants, including "ADA Sergeant/John Doe 16 Named in RAP Response who came to Plaintiff's Door." Id. at 2.

17 On May 27, 2025, Judge Michael M. Anello, then the presiding District Judge, 18 screened the First Amended Complaint and directed the U.S. Marshal to serve the named 19 defendants, noting that Plaintiff must identify the John Doe ADA Sergeant, amend the 20 complaint, and request U.S. Marshal service for the claim against John Doe ADA Sergeant 21 to proceed.

Dkt. No. 18 at 9, fn. 4. Between July and September 2025, all named defendants 22 waived service. Dkt. Nos. 23-32, 35-37, 39, 45. 23 On July 14, 2025, Plaintiff filed the Motion for Early Discovery to Identify Doe 24 Defendant, seeking to identify the John Doe ADA Sergeant. Dkt. No. 22. Between July 14, 25 2025, and September 2, 2025, Defendants gave Plaintiff a copy of the Interim 26 Accommodation Procedure/Interview Worksheet, which was completed after Plaintiff 27 filed his ADA request.

Dkt. No. 42 at 1. This worksheet was signed by G. Galvan, Sergeant, 28 and Van, SSA. On September 8, 2025, Plaintiff filed the Motion for Good Cause Under 1 Federal Rule of Civil Procedure 16(b)(4), explaining that through the worksheet, he learned 2 that the John Doe ADA Sergeant was G. Galvan. Id. Additionally, the worksheet revealed 3 the identity of Van, SSA, a person who Plaintiff had not known was involved in the denial 4 of his request.

Id. Accordingly, Plaintiff sought to substitute G. Galvan for the John Doe 5 ADA Sergeant and add Van, SSA as a defendant. Id. at 2. 6 On September 22, 2025, Plaintiff filed the Second Amended Complaint. Dkt. No. 7 44.

The Second Amended Complaint names the same defendants as the First Amended 8 Complaint but substitutes G. Galvan in the place of the John Doe ADA Sergeant. Id. 9 On October 13, 2025, all defendants except for G. Galvan filed a motion to dismiss. 10 Dkt. No. 48.

The motion seeks to dismiss the Second Amended Complaint as to all 11 defendants except for the two correctional officer defendants, A. Gardner and M. Castro. 12 Id. at 9, fn. 2. The motion notes that G. Galvan has yet to be served. Id. at 11, fn. 3. 13 On November 17, 2025, Plaintiff filed the Motion to Request Update on Named 14 Defendants. Dkt. No. 59. Plaintiff states that in October 2025, he attempted to file a motion 15 to request U.S. Marshal service on G. Galvan but never received the paperwork.

Id. at 2. 16 Additionally, he explains that on October 31, 2025, Defendants gave him information 17 further identifying Van, SSA, as D. Van, ADA Analyst. Id. Thus, Plaintiff seeks to add D. 18 Van as a defendant and direct U.S. Marshal service on both D. Van and G. Galvan. Id. On 19 December 8, 2025, Plaintiff filed the Motion to Substitute Party and Request Marshal 20 Service.

Dkt. No. 61. Once again, Plaintiff requests that the U.S. Marshal serve both G. 21 Galvan and D. Van. Id. at 3. 22 II. 23 DISCUSSION 24 A. Motion for Early Discovery to Identify Doe Defendant [Dkt. No. 22] 25 Plaintiff filed this motion seeking early, limited discovery to identify the John Doe 26 ADA Sergeant named in the First Amended Complaint. Dkt. No. 22.

As discussed above, 27 the John Doe ADA Sergeant was identified as G. Galvan by the Interim Accommodation 28 1 Procedure/Interview Worksheet, which Defendants provided to Plaintiff. Because the 2 identity of John Doe is known, the motion is DENIED as moot. 3 B. Motion for

Good Cause Under F.R.C.P. 16(b)(4) [Dkt. No. 42] 4 Plaintiff filed this motion on September 8, 2025, seeking to add D. Van as a 5 defendant.

Dkt. No. 42. Plaintiff explains that he did not know that D. Van was involved 6 in evaluating his ADA accommodation request until he received the Interim 7 Accommodation Procedure/Interview worksheet. Id. at 1. Van completed step 1 of the 8 Interim Accommodation Assessment, finding that Plaintiff's request did not raise issues 9 that may cause him injury or other harm while the request was being processed.

Id. at 10. 10 Plaintiff believes that Van's statement was false, leading to the denial of interim 11 accommodations. Id. at 2-3. 12 Federal Rule of Civil Procedure 16(b)(4) concerns modification of a scheduling 13 order and does not apply here given that no scheduling order has issued yet.

However, the 14 Court has an obligation to "liberally construe" a pro se party's pleadings. *Erickson v. 15 Pardus*, 551 U.S. 89, 94 (2007)¹. Accordingly, the Court liberally construes Plaintiff's 16 Motion for Good Cause Under Rule 16(b)(4) as a motion for leave to amend the complaint 17 to add D. Van as a defendant. 18 1. Legal Standard 19 Federal Rule of Civil Rule 15(a)(2) directs that "[t]he court should freely give leave 20 [to amend a pleading] when justice so requires." Fed.

R. Civ. P. 15(a)(2). "In exercising its 21 discretion" whether to allow a party to amend, the Court "must be guided by the underlying 22 purpose of Rule 15 – to facilitate decision on the merits rather than on the pleadings or 23 technicalities." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

Thus, 24 while leave to amend is not guaranteed, it "should be granted with extreme liberality." 25 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009). The Court must be especially 26 27 1 Unless otherwise noted, all citations are omitted, and in direct quotes, all internal 28 1 generous permitting a pro se plaintiff to amend his or her pleadings.

See *Ramirez v. Galaza*, 2 334 F.3d 850, 861 (9th Cir. 2003). Considering the liberality espoused by the Federal 3 Rules, the Court should not deny a motion to amend "unless amendment would cause 4 prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." 5 *Yakama Indian Nation v. State of Wash. Dep't of Revenue*, 176 F.3d 1241, 1246 (9th Cir.

6 1999); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962). 7 2. Application 8 The Court begins with the "presumption under Rule 15(a) in favor of granting leave 9 to amend." *Eminence Cap. LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) 10 (emphasis in original). 11 The Court turns to the "countervailing considerations [of] undue delay, prejudice, 12 bad faith, [and] futility." *Ctr. for Biological Diversity v. United States Forest Serv.*, 80 13 F.4th 943, 956 (9th Cir.

2023). The Court finds nothing in the record to support a finding 14 of bad faith or undue delay. Although it is unclear exactly when Plaintiff obtained the 15 Interim Accommodation Procedure/Interview Worksheet, Plaintiff waited at most forty- 16 five days after learning of Van's involvement to request to add him as a defendant. 17 Considering Plaintiff's incarceration and pro se status, this does not constitute undue delay.

18 Likewise, the Court cannot find Defendants would be prejudiced by the amendment. The 19 case is in its early stages, and discovery has not yet commenced. 20 Further, Defendants have not shown that granting leave to amend would be 21 improper.

On October 24, 2025, the Court ordered Defendants to respond with their 22 position on Plaintiff's Motion for Good Cause. Dkt. No. 52. Defendants' response 23 improperly characterized the motion as a "Motion for Early Discovery" to determine the 24 identity of "Van SSA," despite Plaintiff's clear request to add Van as a defendant. Dkt. No. 25 56. Defendants argued that the motion should be denied as moot, as they had sent Plaintiff 26 a letter identifying Van more fully.

Id. 27 For these reasons, Plaintiff's request for leave to amend his complaint is 28 GRANTED. Plaintiff shall file his amended complaint by not later than March 2, 2026. 1 Plaintiff is advised that his amended complaint will supersede the current complaint, which 2 means that the amended complaint must be complete on its face without reference to the 3 prior pleading.

As such, the Third Amended Complaint must include all causes of action 4 against all named defendants. The Third Amended Complaint must also comply with 5 Federal Rule of Civil Procedure 8 in all respects, meaning "each claim and the involvement 6 of each defendant must be alleged;... [and] must include a short and plain statement of the 7 grounds for the court's jurisdiction, a short and plain statement of the claim showing that 8 the pleader is entitled to relief, and a demand for the relief sought." *Turley v. Lezano*, No. 9 3:22-CV-1719-GPC-DDL, 2023 WL 3727939, at *2 (S.D.

Cal. May 30, 2023) (citing Fed. 10 R. Civ. P. 8(a)(1)-(3)). 11 C. Motion to Locate Defendant Under Seal [Dkt. No. 43] 12 After the Court directed U.S. Marshal service of the named defendants in the First 13 Amended Complaint, Plaintiff received notice that they were unable to serve defendant L. 14 Schobelock, who was on leave and receiving workers' compensation.

Dkt. No. 43. On 15 September 8, 2025, Plaintiff filed this motion seeking to obtain the last known address of 16 L. Schobelock so that she could be served. Id. at 2. However, L. Schobelock had already 17 waived service on August 8, 2025. Dkt. No. 35. Additionally, L. Schobelock appeared in 18 Defendants' motion to dismiss. Dkt. No. 48.

Because service of L. Schobelock is not 19 needed, the motion is DENIED AS MOOT. 20 D. Motion to Request Update on Named Defendants [Dkt. No. 59] 21 Plaintiff filed this motion on

November 17, 2025. Dkt. No. 59. Plaintiff explains that 22 he attempted to request U.S. Marshal service upon G. Galvan but never received the 23 paperwork. Id. at 2. Additionally, Plaintiff explains that he now knows Van's identity in 24 greater detail as D. Van, ADA Analyst.

Id. Plaintiff asks to name D. Van as a defendant 25 and for the Court to order service upon both G. Galvan and D. Van. Id. at 3. 26 Because the Court grants Plaintiff's Motion for Good Cause, construed as a motion 27 for leave to amend, this motion is DENIED IN PART AS MOOT.

To the extent Plaintiff 28 requests that the Court order U.S. Marshal service upon G. Galvan, the motion is 1 GRANTED. To the extent Plaintiff requests service upon D. Van, the motion is 2 GRANTED, subject to D. Van being named as a defendant in the Third Amended 3 Complaint. 4 E. Motion to Substitute Party and Request Marshal Service [Dkt. No. 61] 5 Plaintiff filed this motion on December 8, 2025.

Plaintiff requests that the U.S. 6 Marshal serve both G. Galvan and D. Van. Id. at 3. Because these requests are raised in 7 Plaintiff's Motion to Request an Update on Named Defendants and addressed above, this 8 motion is DENIED as moot. 9 F. Recommendation Regarding Motion to Dismiss [Dkt. No. 48] 10 Rather than expend judicial resources resolving a Motion to Dismiss that pertains to 11 a superseded complaint, the Court finds the interests of judicial economy would be best 12 served by requiring Defendants to respond to Plaintiff's Third Amended Complaint.

See 13 *De Souza v. Dawson Tech., Inc.*, No. 21-CV-1103 JLS (MSB), 2022 WL 3006045, at *4 14 (S.D. Cal. July 28, 2022) (finding the "[p]arties' and the Court's resources" would not be 15 well spent "deciding a Motion to Dismiss that is potentially obviated by" a forthcoming 16 amendment to the complaint).

For these reasons, the undersigned RECOMMENDS 17 Defendants' motion to dismiss be DENIED AS MOOT. The undersigned further 18 RECOMMENDS that Defendants be ordered to respond to Plaintiff's Third Amended 19 Complaint, whether by responsive pleading or renewed motion, within 21 days of the entry 20 of the Third Amended Complaint on the docket. 21 /// 22 /
// 23 /// 24 /// 25 /// 26 /// 27 /// 28 /// 1 III.

2 CONCLUSION 3 For the reasons above, the Court: 4 1. DENIES AS MOOT Plaintiff's Motion for Early Discovery to Identify Doe 5 Defendant [Dkt. No. 22]. 6 2. GRANTS Plaintiff's Motion for Good Cause Under Federal Rule of Civil Procedure 7 Rule 16(b)(4) [Dkt. No 42], construed as a motion for leave to amend. Plaintiff must 8 file the amended complaint by March 2, 2026.

Plaintiff shall title the document 9 "Third Amended Complaint." 10 3. ORDERS Plaintiff to serve upon Defendants a copy of the Third Amended 11 Complaint. 12 4. GRANTS IN PART Plaintiff's Motion to Request Update on Named Defendants 13 [Dkt. No. 59] and DIRECTS the Clerk to issue a summons as to Plaintiff's Third 14 Amended Complaint, once it is filed, upon Defendants

G. Galvan and D. Van, and 15 forward it to Plaintiff along with two blank U.S. Marshal Form 285s.

Additionally, 16 the Clerk will provide Plaintiff with certified copies of the Third Amended 17 Complaint and the summons so that he may serve these defendants. Plaintiff must 18 complete the Form 285s as completely and accurately as possible, include an address 19 where each named Defendant may be found and/or subject to service, and return 20 them to the United States Marshal according to the instructions the Clerk provides.

21 5. DENIES AS MOOT Plaintiff's Motion to Locate Defendant Under Seal [Dkt. No. 22 43]. 23 6. DENIES AS MOOT Plaintiff's Motion to Substitute Party and Request Marshal 24 Service [Dkt. No. 61]. 25 7. Pursuant to 28 U.S.C. § 636(b)(1) and Civil Local Rule 72.3, the undersigned 26 Magistrate Judge respectfully RECOMMENDS that the District Judge DENY AS 27 MOOT Defendants' motion to dismiss [Dkt.

No. 48] and order Defendants to 28 1 respond to Plaintiff's Third Amended Complaint, if one is filed, within 21 days of its 2 entry on the docket. 3 Any objection to this Report and Recommendation must be filed with the Court and 4 served on all parties by February 5, 2026.

The document should be titled 5 "Objections to Report and Recommendation." A party who fails to timely object 6 may waive the right to raise those objections on appeal of the Court's order. See 7 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998). 8 IT IS SO ORDERED. 9 || Dated: January 20, 2026 _— 10 Tho! hohe 12 United States Magistrate Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28