

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ernest Thomas v. Jane Doe

Thomas v. Doe · No. 1:24-cv-01319-HBK (PC) · Decided May 20, 2025

OPINION

(PC)Thomas v. Doe

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 ERNEST THOMAS, Case No. 1:24-cv-01319-HBK (PC) 12 Plaintiff, ORDER DENYING
PLAINTIFF’S

MOTION TO COMPEL AS PREMATURE

13 v. (Doc. No. 16)

14 JANE DOE,

15 Defendant. 16

17 Pending before the Court is Plaintiff’s renewed Motion to Compel.¹ (Doc. No. 16). 18 Citing
CDCR regulations, Plaintiff requests the Court to order the unknown and unserved 19 Defendants
to provide him access to certain surveillance video and body camera footage from

20 October 27, 2023 through October 30, 2023. (Id. at 4). Plaintiff claims this video evidence is

21 necessary to refute statements made in response to his grievance and prove the veracity of
factual 22 allegations he made in is First amended Complaint. (Id.). 23 The Federal Rules of Civil
Procedure distinguish between parties and non-parties in 24 25 1 This is Plaintiff’s second motion
to compel Defendants to produce the same material: Building Two “A” Yard video footage from
October 27, 2023 through October 30, 2023. (Compare Doc. No. 10, with Doc.

26 No. 16). Relatedly, the Court previously took issue with Plaintiff’s contradictory timeline
regarding Jane

Doe in the Court’s first screening order. (See Doc. No. 5 at 6). However, the Court subsequently
noted in 27 its Second Screening Order that the date of the blood draw (and whether it occurred on
October 27 or October 30) was immaterial to its determination that the FAC failed to state a viable
claim. (Doc. No. 12 at 28 4 n.3, 6-7). 1 | establishing available discovery devices and remedies.
Jules Jordan Video, Inc. v. 144942 2 | Canada Inc., 617 F.3d 1146, 1158 (9th Cir. 2010). Although
Plaintiff relies on CDCR 3 | regulations, cases in federal courts are governed by the Federal Rules
of Civil Procedure. 4 | Generally, when a party fails to comply with a proper discovery request, the
non-offending party 5 || moves under Rule 37 to compel compliance. Fed. R. Civ. P. 37 (a)(1).

Alternatively, Rule 45 6 | subpoenas are used to obtain documents or testimony from non-parties. Fed. R. Civ. P. 45. 7 | Because Plaintiff seeks an order compelling disclosure of CDCR video footage, which would be 8 | in the possession or under the control of a party if this case were to proceed, the Court construes 9 | the pleading as a motion to compel discovery. 10 To the extent Plaintiff seeks to identify a “genuine issue[] of material fact” for “the jury,” 11 | he is several steps ahead of where the case currently stands procedurally. (Doc. No. 16 at 3). In 12 | the interest of judicial economy, the Court typically does not begin the discovery process until the 13 || operative complaint has been screened, any eligible defendants have been served, and those 14 | defendants have answered the complaint. See *Hernandez v. Williams*, 2019 WL 5960089 (S.D. 15 | Cal. April 27, 2022); see also *Somoza v. Dir. of California Dep't of Corr. & Rehab.*, 2022 WL 16 | 2359679, at *1 (E.D. Cal. June 30, 2022) (“Discovery will commence only after defendants have 17 | appeared in this action Plaintiff’s first amended complaint must be screened and found to 18 | state cognizable claims prior to service on any defendant.” (citing 28 U.S.C. § 1915A)). Because 19 | no party has yet been served, let alone been made subject to a discovery and scheduling order, 20 | Plaintiff’s renewed motion to compel discovery is premature. Accordingly, Plaintiff’s Motion to 21 | Compel is denied. To the extent Plaintiff wishes CDCR to preserve the video footage, he should 22 | make such a request directly to CDCR, as appropriate. 23 According, it is ORDERED: 24 Plaintiff’s renewed motion to compel (Doc. No. 16) is DENIED as premature. °° | Dated: _ May 19, 2025 Mihaw. Wh. foareh fackte

6 HELENA M. BARCH-KUCHTA

4 UNITED STATES MAGISTRATE JUDGE

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