

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

Hector Martin Prieto v. John Doe 1 and John Doe 2

No. 1:25-cv-00650-HBK (PC), United States District Court for the Eastern District of California (November 21,
2025)

OPINION

Hector Martin Prieto v. John Doe 1 and John Doe 2

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 HECTOR MARTIN PRIETO, Case No. 1:25-cv-00650-HBK (PC) 12 Plaintiff, ORDER
AMENDING THE COURT'S

NOVEMBER 19, 2025 ORDER

13 v.

PLAINTIFF HAS 90 DAYS WITHIN WHICH

14 JOHN DOE 1 and JOHN DOE 2, TO IDENTIFY JOHN DOE 1 AND JOHN
DOE 2

15 Defendants.

ORDER DIRECTING CLERK OF COURT TO

16 SEND PLAINTIFF A COPY OF SUBPOENA

FORM AO 88B AND FORM USM-285

17 18 19 Hector Martin Prieto ("Plaintiff") is a state prisoner proceeding pro se and in forma 20
pauperis in this action.

21 BACKGROUND

22 On August 21, 2025, Plaintiff filed a Second Amended Complaint. (Doc. No. 14, 23 "SAC").
Following screening and voluntary dismissal of non-cognizable claims, Plaintiff's SAC 24
proceeds on his Eighth Amendment excessive force claims against Defendants John Doe 1 and 25
John Doe 2 ("Doe Defendants") in their individual capacities. (See Doc. Nos. 16, 18, 20). 26
Plaintiff submitted a completed subpoena (AO 88B) and USM-285 on November 14, 27 2025.
The Court having reviewed the subpoena finds it improper. The Court will address the 28 issue of
Plaintiff's need to identify Doe Defendants against whom Plaintiff's Eighth Amendment 1 claims
will proceed.

2 DISCUSSION

3 Defendants John Doe 1, identified as a correctional sergeant, and John Doe 2, identified as 4 a
correctional officer, are both employed at California Correctional Institution ("CCI"). (Doc.

5 No. 14 at 4-5). Plaintiff alleges that on November 9, 2024, Doe Defendants entered his cell and 6 used force against him that was excessive given the medical emergency Plaintiff was suffering 7 from. (Doc. No. 14 at 7-11). 8 As previously noted, although Plaintiff states plausible claims against these unknown 9 individuals, the Court will not require service at this time. Plaintiff must identify Doe Defendants 10 with sufficient information for the United States Marshal to effectuate service of process. 1 The 11 Ninth Circuit has held that courts should permit plaintiffs to engage in limited discovery for the 12 purpose of identifying defendants whose identity is unknown at the time of filing, unless 13 discovery would fail to identify the defendants or that the complaint should otherwise be 14 dismissed. *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (citing *Gillespie v. 15 Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). The Court will afford Plaintiff the ““opportunity 16 through discovery to identify the unknown (Doe) defendants.”” *Crowley v. Bannister*, 734 F.3d 17 967, 978 (9th Cir. 2013). 18 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff is advised the 19 Court’s authorization of a subpoena duces tecum requested by an in forma pauperis plaintiff is 20 subject to limitations. Fed. R. Civ. P. 45(b). Because the Marshal’s Office is required to 21 personally serve a subpoena duces tecum, “serving a subpoena is not taken lightly by the court.” 22 *Austin v. Winett*, 2008 WL 5213414, *1 (E.D. Cal. Dec. 12, 2008); 28 U.S.C § 1915(d); Fed. R. 23 Civ. P. 26, 45. 24 Further, courts will not readily issue subpoenas to non-parties. *Badman v. Stark*, 139 25 1 Plaintiff is advised it is his obligation to identify any Doe defendant named in this action. See, e.g., 26 *Johnson v. Spearman*, 2020 WL 7405693, at *2, n.3 (E.D. Cal. Dec. 17, 2020) (“It is Plaintiff’s obligation to timely identify individuals named as defendants in a civil rights complaint”); *Reyes v. Flores*, 2018 WL 27 3968245, at *10 (E.D. Cal. Aug. 16, 2019) (“It is Plaintiff’s obligation to provide the information necessary to identify and locate a given defendant”). 28 1 F.R.D. 601, 605 (M.D. Pa. 1991) (“Federal Rules of Civil Procedure were not intended to burden 2 a non-party with a duty to suffer excessive or unusual expenses in order to comply with a 3 subpoena duces tecum.”). Subpoenas must be limited to relevant information, and a court will 4 consider the burden and expense on the non-party in providing the requested information before 5 issuing it. Fed. R. Civ. P. 26, 45. A motion requesting the issuance of a subpoena duces tecum 6 must be (1) limited in scope; (2) clearly identify the documents sought; and (3) supported by a 7 showing that the records are obtainable only through the identified non-party. See, e.g., *Davis v. 8 Ramen*, 2010 WL 1948560, at *1 (E.D. Cal. May 11, 2010); *Williams v. Adams*, 2010 WL 9 148703, at *1 (E.D. Cal. Jan. 14, 2010). 10 The subpoena duces tecum Plaintiff submitted to the Court was not limited in scope to 11 information relevant for the purpose of identifying the Doe Defendants. Instead, the subpoena 12 sought to obtain videos of the alleged incident and Plaintiff’s medical records.2 Because the 13 subpoena did not seek to obtain the identity of the John Doe 1 and John Doe 2, the Court will not 14 direct service of Plaintiff’s subpoena on a third party. If Plaintiff wishes for the Court to serve a 15 subpoena on California Department of Corrections and Rehabilitation to obtain document to 16 assist in identifying the Doe Defendants, Plaintiff he must resubmit

subpoena that seeks only the 17 identifies of the Doe Defendants. 18 Alternatively, Plaintiff may wish to seek the identities of Doe Defendants by alternate 19 means. For example, Plaintiff might use a CDCR Form 22 to learn the identities of Doe 20 Defendants who responded to his medical emergency on November 9, 2024. See, e.g., Thompson 21 v. Allison, No. 23-cv-05079-HSG, 2024 WL 4394759, at *3 (N.D. Cal. Oct. 3, 2024) (“Plaintiff 22 may be able to obtain the names of these [John Doe] individuals by accessing his classification 23 records or using the CDCR Form 22”). Otherwise, Plaintiff may return and request the Court 24 issue a subpoena to obtain the necessary information. 25 Finally, the Court notes that if Plaintiff has learned the name or names of either Doe 26 Defendant since filing his complaint, and/or does not require a subpoena to obtain these 27 2 Essentially Plaintiff is seeking discovery. The Court will issue a discovery order once the John Doe 28 Defendants have been identified and served with Plaintiff’s operative complaint. 1 individuals’ identities, Plaintiff shall file a notice of substitution with the Court, asking to 2 | substitute that individual’s actual name for “John Doe 1” or “John Doe 2.” 3 Accordingly, it is hereby ORDERED: 4 1. Plaintiff shall have 90 days from the date of service of this Order to provide information 5 identifying John Doe | and John Doe 2 to the Court for service of process; 6 2. If Plaintiff fails to provide this information within the 90 day period, this action may be 7 dismissed without prejudice; and 8 3. The Clerk of Court is directed to send Plaintiff a copy of form AO 88B and a copy of 9 form USM-285. 10 4. The Court’s November 19, 2025 Order (Doc. No. 20) is amended in accordance with 11 this Order to the extent the Court will not direct service of Plaintiff’s defective subpoena 12 submitted to the Court. 13 Dated: _ November 20, 2025 law ZA. foareh Zackte
15 HELENA M. BARCH-KUCHTA
6 UNITED STATES MAGISTRATE JUDGE
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