



(PC) Lamon v. Junious et al

2014 | Cited 0 times | E.D. California | January 29, 2014

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

Plaintiff Barry Louis Lamon is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Talisman, Barda, Cohen, and Osborne for retaliation in violation of the First Amendment. However,

the Marshal was not able to locate Defendant Barda as he has moved to Israel and service was returned un-executed on May 16, 2013. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). for service of the summons and complaint and [he] should not be penalized by having his action BARRY LOUIS LAMON, Plaintiff, v. MAURICE JUNIOUS, et al., Defendants.

Case No.: 1:09-cv-00484-SAB (PC) ORDER TO SHOW CAUSE WHY DEFENDANT BARDA SHOULD NOT BE DISMISSED PURSUANT TO RULE 4(M) [ECF No. 44] 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal quotations and citation omitted), abrogated on other grounds by Sandin v. Connor pr Walker, 14 F.3d at 1422 (internal quotations and

citation omitted). However, where a pro se plaintiff fails to provide the Marshal with accurate and dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

At this juncture, t Office has exhausted the avenues available to it in attempting to locate and serve Defendant Barda. 1



(PC) Lamon v. Junious et al

2014 | Cited 0 times | E.D. California | January 29, 2014

Walker, 14 F.3d at 1421-22. Plaintiff shall be provided with an opportunity to show cause why Defendant Barda should not be dismissed. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or responds but fails to show cause, Defendant Barda shall be dismissed from this action. Accordingly, based on the foregoing, it is HEREBY ORDERED that: 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause why Defendant Barda should not be dismissed from this action; and 2. The failure to respond to this order or the failure to show cause will result in the dismissal of Defendant Barda from this action.

IT IS SO ORDERED. Dated: January 28, 2014 UNITED STATES MAGISTRATE JUDGE

1 Office sought assistance from a special investigator at the California Department of Corrections
and Rehabilitation. (ECF No. 44.) 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27
28

