

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gonzalez v. Akhavan, et al.

Gonzalez · No. 1:23-cv-01506-JLT-BAM (PC) · Decided February 28, 2025

SUMMARY

The United States District Court for the Eastern District of California ordered Plaintiff Jaime Cesar Gonzalez to show cause why Defendant Martinez should not be dismissed without prejudice for failure to provide sufficient information to effect service. The court allowed thirty days for Plaintiff to provide additional locating information and warned that failure to respond or show cause would result in dismissal under Federal Rule of Civil Procedure 4(m).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 28, 2025
DOCKET	1:23-cv-01506-JLT-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brought a 42 U.S.C. § 1983 action. After the United States Marshal was unable to serve Defendant Martinez, the court issued an order to show cause why Martinez should not be dismissed without prejudice for failure to provide sufficient information to effect service.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 4(m), the court may dismiss an unserved defendant without prejudice or order service within a specified time after notice to the plaintiff; dismissal is appropriate where a pro se plaintiff fails to provide accurate and sufficient information to effect service.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is not specified in the opinion.

TOPICS

- service of process
- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

civil rights

civil procedure

prisoner litigation

QUESTIONS PRESENTED

1. Whether the court should require Plaintiff to show cause under Federal Rule of Civil Procedure 4(m) why Defendant Martinez should not be dismissed without prejudice after unsuccessful service.
2. Whether an incarcerated pro se plaintiff proceeding in forma pauperis provided sufficient information to permit the United States Marshal to locate and serve Defendant Martinez.

HOLDINGS

1. When an incarcerated pro se plaintiff proceeding in forma pauperis fails to provide accurate and sufficient information necessary for the United States Marshal to locate and serve a defendant, dismissal of that unserved defendant without prejudice under Federal Rule of Civil Procedure 4(m) is appropriate, subject to notice and an opportunity to provide additional information.

KEY QUOTATIONS

“However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the Court’s sua sponte dismissal of the unserved defendant is appropriate.” (at 2)

FACTUAL BACKGROUND

Plaintiff alleged that correctional officer Martinez participated in forcing him into van transport after back surgery, in violation of the Eighth Amendment. The court provided the Marshal with identifying information concerning Martinez, but Martinez had retired from CDCR and could not be contacted at his last known address or telephone number. Personal service at the last known address also failed because the current homeowner stated that they had lived there since 2016 and Martinez did not live there.

PROCEDURAL HISTORY

Plaintiff's first amended complaint proceeded against several correctional officials for alleged deliberate indifference to medical care. The court ordered service on Defendant Martinez through its E-Service pilot program, but the defendant could not be located using the information provided or CDCR's last known contact information. The Marshal filed an unexecuted return of service, and the court gave Plaintiff thirty days to provide additional locating information or show cause why Martinez should not be dismissed under Federal Rule of Civil Procedure 4(m).

DISPOSITION

other

CASES CITED

- Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)
- Walker v. Sumner, 14 F.3d 1415, 1421–22 (9th Cir. 1994)
- Sandin v. Connor, 515 U.S. 472, 115 (1995)

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