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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6 BARRY LOUIS LAMON,

7 Plaintiff,

8 v.

9 B. AMRHEIGN, et al.,

10 Defendants.

Case No.: 1:12-cv-00296-DAD-BAM-PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
DEFENDANT AMRHEIN, WITHOUT  
PREJUDICE, FOR THE FAILURE TO  
EFFECTUATE SERVICE

[ECF No. 99]

**FOURTEEN (14) DAY DEADLINE**

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14 Plaintiff Barry Louis Lamon is a state prisoner proceeding pro se and in forma pauperis  
15 in this civil rights action pursuant to 42 U.S.C. § 1983.

16 **I. Service of Process**

17 On October 27, 2016, the Court issued an order directing the United States Marshal to  
18 initiate service of process in this action upon Defendant Amrhein, among other defendants. (ECF  
19 No. 61.)<sup>1</sup>

20 On November 28, 2016, the United States Marshal filed a return of service unexecuted as  
21 to Defendant Amrhein. (ECF No. 31). The USM-285 form stated that CDCR reported that they  
22 did not have a current or former employee by the name, “Amreign.” (Id. at 1.) In a subsequent  
23 series of filings, Plaintiff provided additional information related to service, including that  
24 Defendant Amrhein was employed as a supervising registered nurse at Corcoran State Prison  
25 from 2008 through 2009, and that the correct spelling of her name is “Barbara Amrhein.” (ECF  
26 Nos. 64, 66, 67, 74, 83.)

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28 <sup>1</sup> As explained in this order, Defendant Amrhein was erroneously sued as “B. Amrheign.”

1 On September 12, 2017, the Court issued an order directing the United States Marshal to  
2 attempt re-service with the new information outlined above. (ECF No. 86.)

3 On October 2, 2017, the United States Marshal filed a return of service unexecuted as to  
4 Defendant Amrhein. (ECF No. 99). The USM-285 form states that Defendant Amrhein was  
5 identified, and it was confirmed that she left employment with the California Department of  
6 Corrections and Rehabilitation (“CDCR”) in 2009. CDCR does not have authority to accept  
7 service, but Human Resources provided the Marshal with a last known address. On September  
8 15, 2017, a waiver was mailed to the last known address, but it was returned, and the Marshal  
9 confirmed that Defendant Amrhein does not live at the last known address.

10 **A. Legal Standards**

11 Federal Rule of Civil Procedure 4(m) provides as follows:

12 If a defendant is not served within 90 days after the complaint is filed, the court—  
13 on motion or on its own after notice to the plaintiff—must dismiss the action  
14 without prejudice against that defendant or order that service be made within a  
15 specified time. But if the plaintiff shows good cause for the failure, the court  
must extend the time for service for an appropriate period.

16 Fed. R. Civ. P. 4(m). Where a pro se plaintiff fails to provide the Marshal with accurate and  
17 sufficient information to effect service of the summons and complaint, the Court’s sua sponte  
18 dismissal of the unserved defendant is appropriate. Walker v. Sumner, 14 F.3d 1415, 1421-22  
19 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995).

20 **B. Discussion**

21 In this case, Plaintiff has not provided accurate and sufficient information to locate  
22 Defendant Amrhein for service of process. Service was attempted through CDCR, Defendant  
23 Amrhein’s former employer, using the information provided by Plaintiff, but Defendant Amrhein  
24 was unable to be served at Corcoran State Prison. Further, the Marshal used the forwarding  
25 address information provided by CDCR’s Human Resources to attempt service, but was unable  
26 to serve Defendant Amrhein at the address provided. All information provided to attempt service  
27 of process on Defendant Amrhein has now been exhausted.

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1 In light of the foregoing, the undersigned recommends that Defendant Amrhein be  
2 dismissed, without prejudice, based on Plaintiff's failure to serve process on that defendant.

3 **II. Conclusion and Recommendations**

4 Accordingly, it is HEREBY RECOMMENDED that Defendant Amrhein be dismissed  
5 from this action, without prejudice, for failure to serve process under Rule 4(m).

6 These findings and recommendations will be submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
8 **fourteen (14) days** after being served with these findings and recommendations, the parties may  
9 file written objections with the Court. The document should be captioned "Objections to  
10 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file  
11 objections within the specified time may result in the waiver of the "right to challenge the  
12 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.  
13 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: November 6, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE