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

JUAN CARLOS MARTINEZ,  
Plaintiff,  
v.  
BEARD, et al.,  
Defendants.

**Case No. 1:14-cv-00405-DAD-JLT (PC)**  
**ORDER TO SHOW CAUSE RE FAILURE TO TIMELY SERVE “JESSE A. LVN”**  
**5-DAY DEADLINE**

Plaintiff filed this action on March 19, 2014. Though a number of defendants have appeared in this action, the defendant identified as “Jesse A. LVN” has not. To date, Plaintiff has not filed proof of service of the summons and Plaintiff’s operative pleading on Defendant “Jesse A., LVN” as required by Federal Rules of Civil Procedure 4(l) and (m). Federal Rule of Civil Procedure 4(m) provides in part:

If a defendant is not served within 90 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.

It is possible that Plaintiff does not intend to pursue his claim against “Jesse A., LVN” -- particularly since his only allegations against this individual (*see* Doc. 31, ¶¶ 56, 57) are based on a verbal altercation, which is not actionable. *See Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (mere verbal harassment or abuse, including the use of racial epithets, is not sufficient

1 to state a constitutional deprivation under section 1983); *see also* *Gaut v. Sunn*, 810 F.2d 923, 925  
2 (9th Cir. 1987) (threats do not rise to the level of a constitutional violation).

3 Accordingly, the Court **ORDERS**:

4 1. **Within five days** of service of this order issues Plaintiff SHALL show cause in  
5 writing why “Jesse A., LVN” and all claims against him/her should not be dismissed without  
6 prejudice

7 2. Alternatively, **within five days** Plaintiff may file proof of service on “Jesse A.  
8 LVN” and explain why he failed to timely file proof of service of the summons and complaint as  
9 required by Rule 4(l)

10 3. Alternatively, **within five days** Plaintiff may file a notice of voluntary dismissal of  
11 his claims “Jesse A. LVN.”

12 **Plaintiff is advised that if he fails to comply with this order, the Court will recommend**  
13 **dismissal of this action.**

14  
15 IT IS SO ORDERED.

16 Dated: **February 2, 2017**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE