



1 California to accommodate his Post Traumatic Stress Disorder, caused by “two consecutive tours  
2 of duty in Iraq as an Army soldier,” which prevents him from traveling long distances. [*Id.* at  
3 ¶¶11, 17, 19.]

4 A summons issued as to all Defendants on June 7, 2010. [Doc. No. 2.] Plaintiff did not  
5 serve any of the Defendants. Rather, on July 14, 2010, Defendants Timothy Hyden and Matthew  
6 Toth moved to dismiss the complaint for improper venue. [Doc. No. 3.] On July 15, 2010,  
7 Defendant York-Poquoson Sheriffs moved to dismiss the complaint for improper venue, lack of  
8 jurisdiction, and failure to state a claim upon which relief may be granted. [Doc. No. 4.] Plaintiff  
9 did not oppose either motion to dismiss. Accordingly, the Court granted both motions to dismiss,  
10 noting that on its face the complaint did not provide any basis for venue in the Southern District of  
11 California, nor any ground to justify exercising jurisdiction over Defendant York-Poquoson  
12 Sheriffs. [*See* Doc. Nos. 6, 8.]

13 To date, the remaining Defendant Lee M. Quick has not been served, nor has he appeared  
14 in the action. Plaintiff’s time to serve Mr. Quick in accordance with Federal Rule of Civil  
15 Procedure 4(m) expired on October 5, 2010. “A District Court may properly on its own motion  
16 dismiss an action as to defendants who have not moved to dismiss where such defendants are in a  
17 position similar to that of moving defendants or where claims against such defendants are  
18 integrally related.” *Silverton v. Dep’t of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981). “Such a  
19 dismissal may be made without notice where the [plaintiff] cannot possibly win relief.” *Omar v.*  
20 *Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). The Court’s authority in this regard  
21 includes *sua sponte* dismissal as to defendants who have not been served and defendants who have  
22 not yet answered or appeared. *Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery*, 44 F.3d  
23 800, 802 (9th Cir. 1995) (“We have upheld dismissal with prejudice in favor of a party which had  
24 not yet appeared, on the basis of facts presented by other defendants which had appeared.”); *see*  
25 *also Bach v. Mason*, 190 F.R.D. 567, 571 (D. Idaho 1999); *Ricotta v. California*, 4 F. Supp. 2d  
26 961, 978-79 (S.D. Cal. 1998).

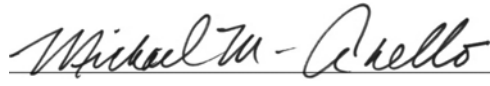
27 Here, Plaintiff alleges Defendant Quick is a citizen of Virginia, Plaintiff asserts the acts  
28 that allegedly caused him injury occurred in Virginia, and Plaintiff has not provided any viable

1 basis for this action to proceed in the Southern District of California. Accordingly, the Court finds  
2 that Defendant Quick, the sole remaining defendant in this action, should be dismissed based on  
3 Plaintiff's failure to effect proper service pursuant to Rule 4(m) and failure to prosecute this action  
4 as to Defendant Quick pursuant to Rule 41(b). Accordingly, the Court hereby **DISMISSES**  
5 Defendant Quick without prejudice. The Clerk of Court is instructed to terminate the case file.

6 **IT IS SO ORDERED.**

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DATED: November 2, 2010



Hon. Michael M. Anello  
United States District Judge