

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                         |   |                        |
|-------------------------|---|------------------------|
| ANGELINE WELLS, et al., | ) |                        |
|                         | ) |                        |
| Plaintiffs,             | ) |                        |
|                         | ) |                        |
| vs.                     | ) | Case No. CIV-09-0401-F |
|                         | ) |                        |
| PHIL LUJAN, et al.,     | ) |                        |
|                         | ) |                        |
| Defendant.              | ) |                        |

**ORDER**

1.

The court has reviewed the motion filed by plaintiffs on September 3, 2009. Doc. no. 34. Although this document does not comply with the rules because it is not double-spaced, the court does not strike the document. The court cautions plaintiffs, however, who appear *pro se* and whose pleadings are liberally construed, that they must comply with all rules of this court and with the Federal Rules of Civil Procedure and that failure to do so may result in the court striking future filings or dismissing their action.

The court interprets the motion as a request for the court to move this action forward immediately by setting a schedule and requiring defendant Rodney Wells to appear. No response to the motion has been filed or is yet due, but no response is necessary in order for the court to rule.

Although defendant Rodney Wells has answered the complaint, see doc. no. 6, of the defendants who have not been dismissed, no other defendant has moved or answered. The court typically does not set a schedule until all defendants have been served and have answered or moved and any motions to dismiss have been resolved. Although returns of service have been filed for defendants Salazar, Lujan, Otipoby,

Goodeagle and Dupoint, the returns are deficient on their face, as discussed below. Accordingly, it would be premature to set a schedule and the motion is **DENIED**.

2.

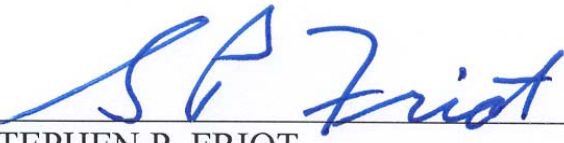
To date, the only defendants to appear in this action are Rodney Wells, Rod Smith and Shamrock Bank. The last two defendants have been dismissed. This leaves as the remaining defendants: Phil Lujan, Lisa Otipoby, Rodney Wells, Yvette Goodeagle, Sondra Dupoint and Ken Salazar, as confirmed by court order at doc. no. 32 and plaintiff's notice at doc. no. 33.

The court has reviewed the returns of service for these remaining defendants. Special service requirements apply to service on Secretary Salazar. *See*, Rule 4(i), Fed. R. Civ. P. (serving the United States and its agencies, corporations, officers or employees). The return of service which has been filed for Secretary Salazar does not satisfy these detailed requirements. The other returns of service indicate that service was made by plaintiff Deborah Hendrix. Rule 4(c)(2), Fed. R. Civ. P., provides that service may be made by any person who is at least 18 years old and who also is not a party. *See, Browne v. N.Y.S. Court System N.Y.S.*, 599 F. Supp. 36, 38 (E.D. N.Y. 1984) (among other reasons, complaint dismissed where pro se plaintiff appeared to have served by plaintiff himself in violation of Rule 4(c)(2)(A) resulting in a serious question as to whether court had in personam jurisdiction). Accordingly, service of these individuals is deficient on its face. There may also be other deficiencies as well.

Proof of service must be made within 120 days after the complaint is filed. Rule 4(m), Fed. R. Civ. P. If it is not, the court may dismiss the action against a defendant who has not been timely served, after providing plaintiff with notice and an opportunity to show good cause for the failure. This action was filed April 15, 2009, and the 120 days has expired. Accordingly, plaintiffs are **DIRECTED**, within twenty days of the date of this order, to either perfect service on each of the remaining

defendants, or to show good cause why each of these remaining defendants (Lujan, Otipoby, Goodeagle, Dupoint and Salazar) should not be dismissed without prejudice for failure to timely serve. If service is not perfected or if no showing is made within this time period, and if no further extension is granted for good cause shown, then defendants Lujan, Otipoby, Goodeagle, Dupoint and Salazar will be dismissed without prejudice, without further comment from the court.

Dated this 9<sup>th</sup> day of September, 2009.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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