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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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|-------------------------|---|----------------------------------|
| ERNIE GARCIA VASQUEZ, |) | Case No. CV 08-4360-SVW (MLG) |
| |) | |
| Plaintiff, |) | MEMORANDUM OPINION AND ORDER |
| |) | DISMISSING COMPLAINT FOR FAILURE |
| v. |) | TO PROSECUTE |
| |) | |
| OFFICER MAGANA, et al., |) | |
| |) | |
| Defendant. |) | |
| |) | |

This is a *pro se* civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is currently incarcerated at the California Rehabilitation Center in Norco, California. He filed the first amended *pro se* civil rights action on August 19, 2008. On August 21, 2008, Magistrate Judge Marc L. Goldman directed that the United States Marshal effect service upon Defendants Magana and Stuplinski, both of whom were allegedly employed by the Los Angeles County Sheriff's Department. Plaintiff forwarded the appropriate paperwork to the Marshal for service. However, on September 9, 2008, the Marshal was informed by the Sheriff's Department that they had no employee named

1 Stuplinski and that they had three employees named Magana, and could
2 not identify the Deputy Magana who was to be served. Additional
3 identification information was requested so that service could be
4 effected.

5 On December 11, 2008, Magistrate Judge Goldman issued an order
6 directing Plaintiff to provide additional information, on or before
7 January 5, 2009, by which the Defendants could be identified and
8 served, such as first names or identification numbers. Plaintiff was
9 informed that his failure to respond to the order would result in the
10 case being dismissed for failure to prosecute. Plaintiff did not
11 respond to the order in the time allowed.

12 This action shall be dismissed for failure to prosecute. The
13 Court has the inherent power to achieve the orderly and expeditious
14 disposition of cases by dismissing actions for failure to prosecute.
15 *Link v. Wabash R.R.*, 370 U.S. 626, 629-30 (1962); *Ferdik v. Bonzelet*,
16 963 F.2d 1258, 1260-61 (9th Cir. 1992). The Court is required to weigh
17 the following factors in determining whether to dismiss a case for
18 lack of prosecution: "(1) the public's interest in expeditious
19 resolution of litigation; (2) the court's need to manage its docket;
20 (3) the risk of prejudice to the defendants; (4) the public policy
21 favoring disposition of cases on their merits; and (5) the
22 availability of less drastic sanctions." *Ferdik*, 963 F.2d at 1260,
23 1261; *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (citing
24 *Henderson*, 779 F.2d at 1423); see also *In re PPA Products Liability*
25 *Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006); *Pagtalunan v. Galaza*,
26 291 F.3d 639, 642 (9th Cir. 2002).

27 Here, the public's interest in the expeditious resolution of
28 litigation and the court's interest in managing its docket weighs in

1 favor of dismissal. Given Plaintiff's failure to comply with the
2 court's order, dismissal would not undermine the public policy
3 favoring disposition of cases on the merits. In addition, there is
4 no identifiable risk of prejudice to Defendants. Finally, five months
5 have elapsed since the first amended complaint was filed without
6 Plaintiff identifying the Defendants with enough specificity so that
7 service can be effected.

8 Balancing all of these factors, dismissal of this action without
9 prejudice for failure to prosecute is warranted.

10 IT IS SO ORDERED.

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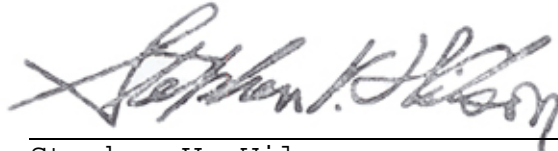
12 Dated: March 18, 2009

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Stephen V. Wilson
United States District Judge

17 Presented By:

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Marc L. Goldman
United States Magistrate Judge

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