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FILED
APR 28 2011
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY *[Signature]* DEPUTY

O

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EUGENE E. MOORE,)	Case No. CV 10-8451-SVW (MLG)
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	DISMISSING COMPLAINT FOR FAILURE
v.)	TO PROSECUTE
)	
DEPUTY GARCIA, 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 Folsom State Prison in Folsom, California. He filed this *pro se* civil rights action on November 16, 2010. On November 22, 2010, the Court directed that the United States Marshal effect service upon all named defendants. On November 19, 2010, copies of the complaints and summonses were sent to Plaintiff with instructions, in order for him to complete the necessary paperwork and forward the packets to the United States Marshal for service of process. Plaintiff never forwarded the documents to the United States Marshal for service.

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1 On February 25, 2011, the Court issued an order directing
2 Plaintiff to show cause in writing, on or before March 18, 2011, why
3 the action should not be dismissed for failure to take the necessary
4 steps to effect service. Plaintiff did not respond to the order to
5 show cause.

6 This action shall be dismissed for failure to prosecute. The
7 Court has the inherent power to dismiss an action based on a
8 plaintiff's failure to diligently prosecute or comply with a court
9 order. Fed.R.Civ.P. 41(b); Local Rule 12.1. See *Link v. Wabash R.R.*
10 *Co.*, 370 U.S. 626, 629-630 (1962). "Dismissal is a harsh penalty and
11 is to be imposed only in extreme circumstances." *Henderson v. Duncan*,
12 779 F.2d 1421, 1423 (9th Cir. 1986). The Court is required to weigh
13 the following factors in determining whether to dismiss a case for
14 lack of prosecution: "(1) the public's interest in expeditious
15 resolution of litigation; (2) the court's need to manage its docket;
16 (3) the risk of prejudice to the defendants; (4) the public policy
17 favoring disposition of cases on their merits; and (5) the
18 availability of less drastic sanctions." *Omstead v. Dell, Inc.*, 594
19 F.3d 1081, 1084 (9th Cir. 2010); *In re Eisen*, 31 F.3d 1447, 1451 (9th
20 Cir. 1994) (citing *Henderson*, 779 F.2d at 1423).

21 Here, the public's interest in the expeditious resolution of
22 litigation and the court's interest in managing its docket weighs in
23 favor of dismissal. Given Plaintiff's failure to comply with the
24 court's service order or respond to the order to show cause,
25 dismissal would not undermine the public policy favoring disposition
26 of cases on the merits. In addition, there is no identifiable risk
27 of prejudice to Defendants. Finally, four months have elapsed without
28 Plaintiff having forwarded the necessary papers for service of

1 process. He has failed to request an extension of time to forward
2 the documents or demonstrate good cause for failing to perform this
3 ministerial act.

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

6 IT IS SO ORDERED.

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8 Dated: 4/28/11

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Stephen V. Wilson
United States District Judge

Presented By:



Marc L. Goldman
United States Magistrate Judge