

1 August 1, 2012, to show good cause in writing, if any exists, why this case should
2 not be dismissed based on plaintiff's failure to provide accurate and sufficient
3 information to enable the United States Marshal's Service to effect service of the
4 summons and the operative First Amended Complaint, plaintiff's failure to
5 prosecute this action, and plaintiff's failure timely to comply with the June 19, 2012
6 Order. The OSC expressly cautioned plaintiff in bold-face print that the failure to
7 comply with the OSC and/or to show good cause, might result in the dismissal of
8 this action. Although the deadline to comply with the OSC expired more than two
9 weeks ago, plaintiff has not responded thereto. Nor has plaintiff submitted a
10 completed USM-285 Form and a Notice of Submission or otherwise communicated
11 with the Court in this action.

12 An incarcerated *pro se* plaintiff, proceeding *in forma pauperis*, is entitled to
13 rely on the United States Marshal's Service ("USMS") for service and should not be
14 penalized by having his action dismissed for failure to effect service where the
15 USMS has failed to perform its duties. Puett v. Blandford, 912 F.2d 270, 275 (9th
16 Cir. 1990). Nevertheless, a plaintiff relying upon the USMS for service must
17 provide the necessary information to effectuate service. Id. Where a *pro se*
18 plaintiff fails to provide the USMS with accurate and sufficient information to
19 effect service of the summons and complaint, a court may dismiss the unserved
20 defendant *sua sponte*. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994),
21 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). Here,
22 plaintiff has not done so.

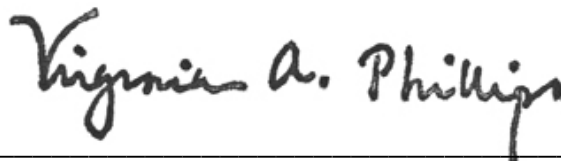
23 Moreover, it is well-established that a district court has authority to dismiss a
24 plaintiff's action because of his failure to prosecute or to comply with court orders.
25 See Fed. R. Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962);
26 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915
27 (1992). In determining whether to dismiss an action for failure to prosecute or
28 failure to comply with court orders, a district court must consider several factors:

1 (1) the public's interest in expeditious resolution of litigation; (2) the court's need
2 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
3 favoring disposition of cases on their merits; and (5) the availability of less drastic
4 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
5 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

6 This Court finds that the first two factors – the public's interest in
7 expeditiously resolving this litigation and the Court's interest in managing the
8 docket, weigh in favor of dismissal since plaintiff has not submitted the requisite
9 information to enable the operative First Amended Complaint to be served as
10 directed, has not filed a response to the Order to Show Cause, and has not otherwise
11 communicated with the Court regarding this matter. The Court cannot hold this
12 case in abeyance indefinitely awaiting plaintiff's response to the Court's directives.
13 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal
14 since a presumption of injury arises from the occurrence of unreasonable delay in
15 prosecuting an action. In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994).
16 Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor,
17 the public policy favoring disposition of cases on their merits, is greatly outweighed
18 by the factors in favor of dismissal discussed herein. Finally, as this Court has
19 already cautioned plaintiff of the consequences of failing to prosecute this action
20 and afforded, or attempted to afford him the opportunity to do so, and as plaintiff
21 has not responded, no sanction lesser than dismissal is feasible.

22 Accordingly, it is ORDERED that this action be dismissed for lack of
23 prosecution.

24 DATED: August 27, 2012

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27 HONORABLE VIRGINIA A. PHILLIPS
28 UNITED STATES DISTRICT JUDGE