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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY KEYHEA,	)	Case No. EDCV 13-518 BRO(JC)
Plaintiff,	)	MEMORANDUM OPINION AND
v.	)	ORDER DISMISSING ACTION
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security	)	
Defendant.	)	

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18           On March 29, 2013, plaintiff Timothy Keyhea who is proceeding *pro se*, filed  
19 a Complaint for Review of Social Security Decision (“Complaint”).

20           On April 2, 2013, the Court issued a Case Management Order (“April  
21 Order”) advising plaintiff that pursuant to Rule 4(m) of the Federal Rules of Civil  
22 Procedure, his time to effect service of the summons and complaint would expire  
23 within 120 days of the filing of the Complaint, *i.e.*, on July 29, 2013. The April  
24 Order directed plaintiff to file proofs of service within the 120-day period, and  
25 expressly afforded plaintiff notice that his failure to effectuate proper service by  
26 July 29, 2013, may result in dismissal of the action without prejudice by reason of  
27 plaintiff’s failure to prosecute, unless plaintiff could show good cause for extending  
28 the deadline. Plaintiff did not timely file any proofs of service.

1           Accordingly, on August 6, 2013, this Court issued an Order to Show Cause  
2 Re Dismissal for Failure to Prosecute (“OSC”) directing plaintiff, by no later than  
3 August 20, 2013, to show cause in writing, if there be any, why service was not  
4 made on defendant by July 29, 2013, and why this case should not be dismissed  
5 without prejudice for failure to effectuate service, lack of prosecution, and/or failure  
6 to comply with the April Order. The OSC expressly cautioned plaintiff that the  
7 failure timely to respond to the OSC or to show cause, may result in the dismissal of  
8 this action without prejudice for failure to effectuate service, lack of prosecution,  
9 and/or failure to comply with the April Order. To date, plaintiff has failed to  
10 effectuate service on the defendant, failed to file any proof of service, failed to  
11 respond to the OSC, and failed to show any good cause therefor.

12           Rule 4(m) of the Federal Rules of Civil Procedure provides in pertinent part:  
13           If a defendant is not served within 120 days after the complaint is filed,  
14           the court – on motion or on its own after notice to the plaintiff – must  
15           dismiss the action without prejudice against that defendant or order  
16           that service be effected within a specified time. But if the plaintiff  
17           shows good cause for the failure, the court must extend the time for  
18           service for an appropriate period. . . .

19 Fed. R. Civ. P. 4(m).

20           To show good cause for a delay in effecting service, a plaintiff generally  
21 must show “that service had been attempted but not completed, that plaintiff was  
22 confused about the requirements of service, or that plaintiff was prevented from  
23 serving defendants by factors beyond his control.” Vinegar v. United States  
24 Marshals Service, 1996 WL 227860, at \*4 (S.D. Cal. Mar. 27, 1996) (citation and  
25 internal quotations omitted). *Pro se* status does not excuse a litigant’s complete  
26 failure to effect service. See Systems Signs Supplies v. United States Dept. of  
27 Justice, 903 F.2d 1011, 1013 (5th Cir. 1990). Here, plaintiff has failed to effectuate  
28 service within 120 days of filing the Complaint, and has been afforded notice that

1 his failure timely to effectuate service or to show good cause for failing to do so  
2 may result in dismissal of this action. To date, plaintiff has not shown good cause  
3 for such failure.

4 Moreover, it is well-established that a district court has authority to dismiss a  
5 plaintiff's action because of his failure to prosecute or to comply with court orders.  
6 See Fed. R. Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962);  
7 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915  
8 (1992). In determining whether to dismiss an action for failure to prosecute or  
9 failure to comply with court orders, a district court must consider several factors:  
10 (1) the public's interest in expeditious resolution of litigation; (2) the court's need  
11 to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy  
12 favoring disposition of cases on their merits; and (5) the availability of less drastic  
13 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to  
14 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

15 This Court finds that the first two factors – the public's interest in  
16 expeditiously resolving this litigation and the Court's interest in managing the  
17 docket, weigh in favor of dismissal since plaintiff has not effected service of the  
18 Complaint, has not filed proofs of service, has not filed a response to the OSC, and  
19 has not otherwise communicated with the Court regarding this matter. The Court  
20 cannot hold this case in abeyance indefinitely awaiting plaintiff's response to the  
21 Court's directives. The third factor, risk of prejudice to defendant, also weighs in  
22 favor of dismissal since a presumption of injury arises from the occurrence of  
23 unreasonable delay in prosecuting an action. Anderson v. Air West, Inc., 542 F.2d  
24 522, 524 (9th Cir. 1976). The fourth factor, the public policy favoring disposition  
25 of cases on their merits, is greatly outweighed by the factors in favor of dismissal  
26 discussed herein. Finally, as this Court has already cautioned plaintiff of the  
27 consequences of failing to prosecute this action and afforded him the opportunity to

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1 do so, and as plaintiff has not responded, no sanction lesser than dismissal is  
2 feasible.

3 Accordingly, it is ORDERED that this action be dismissed for lack of  
4 prosecution.

5 DATED: August 30, 2013



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8 HONORABLE BEVERLY REID O'CONNELL  
9 UNITED STATES DISTRICT JUDGE

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