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FILED

AUG - 5 2010

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA

BY  DEPUTY

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

GLORIA GALINDO,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF LOS ANGELES, et al.,)
)
 Defendants.)

Case No. CV 10-1448-RGK (MLG)

MEMORANDUM OPINION AND ORDER
DISMISSING COMPLAINT FOR FAILURE
TO SERVE AND PROSECUTE

On March 17, 2010, Plaintiff Gloria Galindo filed this *pro se* complaint pursuant to 42 U.S.C. § 1983, along with a request to proceed without prepayment of filing fees. The complaint also named Elvis Galindo, Edward Galindo and Yolanda Galindo as Plaintiffs. Leave to proceed without prepayment of fees was granted as to Gloria. However, because Elvis, Edward, and Yolanda Galindo did not submit an application to proceed without prepayment of costs and fees, and did not submit a declaration in support of the request to proceed in forma pauperis, leave to proceed without prepayment of fees was denied as to them.

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1 On March 18, 2010, Magistrate Judge Marc L. Goldman issued an
2 order directing Gloria Galindo to serve the Defendants no later than
3 July 15, 2010. Plaintiff was explicitly informed that failure to do
4 so would result in dismissal of the action without prejudice. When
5 that was not done, on July 16, 2010, Magistrate Judge Goldman issued
6 an order directing Plaintiff to show cause why the action should not
7 be dismissed for failure to effect service. Plaintiff Gloria Galindo
8 did not file a response to the Order to Show Cause.¹ Because Gloria
9 Galindo, the only Plaintiff in this action, has failed to serve the
10 Defendants and has failed to respond to the order to show cause, this
11 action shall be dismissed without prejudice.

12 "If service of the summons and complaint is not made upon a
13 defendant within 120 days after the filing of the complaint, the
14 court, upon motion or on its own initiative after notice to the
15 plaintiff, shall dismiss the action without prejudice as to that
16 defendant or direct that service be effected within a specified
17 time." Fed.R.Civ.P. 4(m); see *Boudette v. Barnette*, 923 F.2d 754, 757
18 (9th Cir. 1991) (affirming dismissal of complaint for failure to
19 timely serve the summons and complaint); *Townsel v. County of Contra*
20 *Costa*, 820 F.2d 319, 320 (9th Cir. 1987) (same). The 120-day period
21 may be extended by the Court upon a showing of good cause. See
22 Fed.R.Civ.P. 4(m).

23 Here, Plaintiff has not effected service on any of the named
24 defendants. While the court is mindful that Plaintiff is proceeding
25

26 ¹ However on July 30, 2010, Elvis Galindo filed a response stating
27 that criminal charges arising out of the incident which forms the basis
28 of this lawsuit were still pending and he seeks a stay of proceedings
while the criminal case goes forward. Because Elvis is not a party to
this lawsuit, his request will not be considered.

1 *pro se*, she nonetheless has a responsibility to follow the Rules of
2 Civil Procedure and this Court's order regarding service. Plaintiff
3 has failed effect service despite being twice specifically informed
4 of this requirement and being given ample opportunity to do so. The
5 failure to effect service warrants dismissal of this action by reason
6 of Rule 4(m).

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

22 In weighing these factors, the court concludes that dismissal
23 is appropriate in this case. The case has been pending for four
24 months. Plaintiff has twice been warned that her failure to effect
25 service would result in dismissal of this action. The interest of the
26 public and the court in bringing cases to resolution weighs in favor
27 of dismissal. There are no other sanctions available when a party has
28 failed to prosecute or effect service.

