

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL**Case No. CV 21-5772 MWF (JDE)****Date: November 17, 2021**Title: **Joshua Cuevas v. Pirooz Amona, et al.**Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:

Rita Sanchez

Court Reporter:

Not Reported

Attorneys Present for Plaintiff:

None Present

Attorneys Present for Defendant:

None Present

**Proceedings (In Chambers): ORDER DISMISSING ACTION WITHOUT PREJUDICE**

On July 16, 2021, Plaintiff Joshua Cuevas commenced this action against Defendant Pirooz Amona. (Complaint (Docket No. 1)). Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff must have served the Complaint by October 14, 2021.

On September 28, 2021, the Court issued an Order directing Plaintiff to show cause (“OSC”), by no later than October 14, 2021, why the action should not be dismissed for lack of prosecution. (Docket No. 13).

On October 14, 2021, Plaintiff filed a Proof of Service in response to the OSC (the “POS”). (Docket No. 14). The POS is deficient in that it reflects substituted service on October 12, 2021, but it does not include the name of the person with whom the documents were left, nor does it include a declaration of diligence or the subsequent required mailing.

It is well-established that a district court has authority to dismiss a plaintiff’s action due to her failure to prosecute and/or to comply with court orders. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629–30 (1962) (noting that district court’s authority to dismiss for lack of prosecution is necessary to prevent undue delays in the disposition of pending cases and avoid congestion in district court calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (stating that district court may dismiss action for failure to comply with any order of the court).

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Before ordering dismissal, the Court must consider five factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to Defendant; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions. *See In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); *Ferdik*, 963 F.2d at 1260–61 (failure to comply with court orders).

Taking all of these factors into account, dismissal for lack of prosecution is warranted. Plaintiff has failed to show that proper service was made, or that, if made, Plaintiff has proceeded to prosecute this action.

Accordingly, the action is **DISMISSED *without prejudice***.

This Order shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. Pursuant to Local Rule 58-6, the Court **ORDERS** the Clerk to treat this Order, and its entry on the docket, as an entry of judgment.

IT IS SO ORDERED.