

O

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **EASTERN DIVISION**

11 RAY E. BENNETT,)
12) Case No. EDCV 08-00678-SGL (MLG)
13 Plaintiff,) MEMORANDUM OPINION AND ORDER
14 v.) DISMISSING COMPLAINT FOR FAILURE
15 RIVERSIDE SHERIFF'S) TO PROSECUTE
16 DEPARTMENT,)
17 Defendant.)

18 This is a *pro se* civil rights action brought pursuant to 42
19 U.S.C. § 1983. The action was filed on May 15, 2008. Plaintiff paid
20 the full filing fee and is not proceeding in forma pauperis. In
21 accordance with the Court's July 28, 2008 Order, Plaintiff was
22 directed to personally serve the Defendant with a summons and
23 complaint no later than September 12, 2008. Plaintiff was informed
24 that the failure to timely effect service would result in dismissal
25 of the action. Neither an answer nor a certificate of service were
26 filed as of September 12, 2008.

27 //
28 //

1 On September 12, 2008, Magistrate Judge Marc L. Goldman issued
2 an order directing Plaintiff to show cause, on or before September
3 26, 2008, why the action should not be dismissed for failure to
4 prosecute and failure to effect service. Plaintiff was specifically
5 informed that the failure to respond to the order to show cause would
6 result in dismissal of the action for failure to prosecute. Plaintiff
7 did not respond to the order to show cause in the time allowed.

8 Pursuant to Federal Rule of Civil Procedure 4(m), if service of
9 the summons and complaint is not made within 120 days of the filing
10 of the complaint, the court shall dismiss the matter without
11 prejudice unless good cause is shown to extend the time for service.
12 Plaintiff has not effected service in the time allowed and has not
13 requested additional time in which to do so. And, he has not shown
14 good cause for the failure to timely effect service.

15 Moreover, Plaintiff has failed to respond to the order to show
16 cause. The Court has the inherent power to achieve the orderly and
17 expeditious disposition of cases by dismissing actions for failure
18 to prosecute. *Link v. Wabash R.R.*, 370 U.S. 626, 629-30 (1962);
19 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992). The Court
20 is required to weigh the following factors in determining whether to
21 dismiss a case for lack of prosecution: "(1) the public's interest
22 in expeditious resolution of litigation; (2) the court's need to
23 manage its docket; (3) the risk of prejudice to the defendants; (4)
24 the public policy favoring disposition of cases on their merits; and
25 (5) the availability of less drastic sanctions." *Ferdik*, 963 F.2d
26 at 1260, 1261; *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994)
27 (citing *Henderson*, 779 F.2d at 1423); see also *Pagtalunan v. Galaza*,
28 291 F.3d 639, 642 (9th Cir. 2002).

1 Here, the public's interest in the expeditious resolution of
2 litigation and the court's interest in managing its docket weighs in
3 favor of dismissal. Given Plaintiff's failure to comply with the
4 court's order, dismissal would not undermine the public policy
5 favoring disposition of cases on the merits. In addition, there is
6 no identifiable risk of prejudice to Defendants. Finally, four months
7 have elapsed without Plaintiff having served the defendant. He has
8 failed to demonstrate good cause for failing to perform this
9 preliminary act.

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

12 IT IS SO ORDERED.

13
14 Dated: October 22, 2008

15
16 

17 _____
18 Stephen G. Larson
United States District Judge

19 Presented By:

20 

21 _____
22 Marc L. Goldman
United States Magistrate Judge