

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. DEVELDER,

Plaintiff,

No. 2-09-cv-1803 EFB P

vs.

J. HIRSHLER, et al.,

Defendants.

ORDER TO SHOW CAUSE

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

On September 10, 2010, the court directed the United States Marshal to serve plaintiff's complaint on defendants Hirshler and Housley. Dckt. No. 12. The Marshal was successful in serving defendant Hirshler, but unsuccessful in serving defendant Housley. Dckt. Nos. 14, 17. After plaintiff failed to provide new information about where defendant Housley could be located for service of process, the court dismissed Housley from this action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Dckt. No. 15, 16; *see also* Fed. R. Civ. P. 4(m) (absent good cause service of process must be effected within 120 days of the filing of the complaint).

1 On February 27, 2012, the court issued an order noting that Hirshler had not appeared or
2 otherwise responded to plaintiff's complaint and that plaintiff had not filed anything with the
3 court since his submission of documents for service of process on August 24, 2010. Dckt. No.
4 18. Therefore, the court ordered plaintiff to file an appropriate motion based on the Federal
5 Rules of Civil Procedure and indicate how, or if, he intends to proceed with this lawsuit. *Id.*
6 The court warned plaintiff that failure to comply with the order would result in dismissal for
7 failure to prosecute. *See* Fed. R. Civ. P. 41(b).

8 On March 9, 2012, plaintiff requested entry of default against Hirshler, which the Clerk
9 of the Court granted. Dckt. Nos. 19, 20.

10 On March 20, 2012, plaintiff requested default judgment against Hirshler. Dckt. No. 21.
11 On September 10, 2012, the court denied plaintiff's motion for a default judgment against
12 defendant Hirshler without prejudice. Dckt. No. 22. Over one month has passed and plaintiff
13 has not sought further relief or otherwise responded to the court's order. Accordingly, plaintiff
14 will be ordered to show cause why this action should not be dismissed for failure to prosecute.

15 A district court must "weigh five factors to determine whether to dismiss a case for lack
16 of prosecution: (1) the public's interest in expeditious resolution of litigation; (2) the court's
17 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
18 favoring the disposition of cases on their merits; and (5) the availability of less drastic
19 sanctions." *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994); *accord*, *Southwest Marine Inc. v.*
20 *Danzig*, 217 F.3d 1128, 1138 (9th Cir. 2000).

21 Furthermore, a party's failure to comply with any order or with the Local Rules "may be
22 grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
23 within the inherent power of the Court." E.D. Cal. Local Rule 110. The court may recommend
24 that an action be dismissed with or without prejudice, as appropriate, if a party disobeys an order
25 or the Local Rules. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court
26 did not abuse discretion in dismissing *pro se* plaintiff's complaint for failing to obey an order to

1 re-file an amended complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*,
2 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with
3 local rule regarding notice of change of address affirmed).

4 Accordingly, it is hereby ORDERED that, within 21 days of the date this order is served,
5 plaintiff shall show cause why this action should not be dismissed for failure to prosecute.

6 Dated: October 22, 2012.

7 

8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26