

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alertone Service, Inc. v. RQ Construction, LLC

Alertone Service · No. 1:25-cv-00493-CDB · Decided July 21, 2025

SUMMARY

The United States District Court for the Eastern District of California ordered Alertone Service, Inc. to show cause why sanctions, including dismissal, should not be imposed for failing to prosecute the action, serve the defendant, and file proof of service. The court continued the mandatory scheduling conference to September 11, 2025, and directed Plaintiff to serve the order on RQ Construction, LLC and file proof of service. Plaintiff was given five days to respond.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 21, 2025
DOCKET	1:25-cv-00493-CDB
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff filed a federal complaint but had not served the defendant or filed proof of service. The court sua sponte issued an order to show cause why sanctions, including dismissal, should not be imposed; continued the mandatory scheduling conference; and directed service of the order and filing of proof of service.
STANDARD OF REVIEW	The court exercised its inherent authority to control its docket and considered whether plaintiff's failure to prosecute and failure to comply with the court's service-related orders warranted sanctions.
PRECEDENTIAL VALUE	Nonprecedential interlocutory district-court order

TOPICS

- service of process
- sanctions
- civil procedure
- commercial litigation
- construction law

PRACTICE AREAS

- civil procedure
- construction law
- commercial litigation
- Miller Act

QUESTIONS PRESENTED

1. Whether plaintiff should be required to show cause why sanctions, including dismissal, should not be imposed for failure to prosecute and failure to comply with the court's orders.
2. Whether the mandatory scheduling conference should be continued because service had not been completed.
3. Whether plaintiff should be directed to serve the order to show cause on defendant and file proof of that service.

HOLDINGS

1. The court has inherent authority to control its docket and may impose sanctions, including dismissal, when appropriate for a party's failure to prosecute or comply with court orders.
2. If a defendant is not served within 90 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order service within a specified time; absent good cause, failure to comply requires dismissal of an unserved defendant.

KEY QUOTATIONS

“If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (at 2)

“Based on the foregoing, IT IS HEREBY ORDERED that within five (5) days of entry of this order, Plaintiff SHALL show cause in writing why sanctions should not be imposed — including dismissal of any unserved Defendant or this action in its entirety — for Plaintiff’s failure to prosecute, failure to serve the summons and complaint in a timely manner, and failure to promptly file proof of service.” (at 2)

FACTUAL BACKGROUND

Plaintiff initiated the action on April 28, 2025, and summons issued for service on defendant RQ Construction, LLC. The court's scheduling order required plaintiff to diligently pursue service of the summons and complaint and promptly file proofs of service. By July 21, 2025, plaintiff had not filed proof of service or explained the failure, and defendant had not appeared.

PROCEDURAL HISTORY

Alertone Service, Inc. filed the complaint on April 28, 2025. The Clerk issued summons the next day, and the court set a mandatory scheduling conference while directing plaintiff to diligently pursue service and promptly file proof of service. As of the July 21, 2025 order, plaintiff had filed neither proof of service nor an explanation for the failure, and no defendant had appeared.

DISPOSITION

other

CASES CITED

- Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000)

OPINION

Alertone Service, Inc. v. RQ Construction, LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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11 ALERTONE SERVICE, INC.,

Case No. 1:25-cv-00493-CDB 12 Plaintiff,

ORDER TO SHOW CAUSE WHY

SANCTIONS SHOULD NOT BE IMPOSED

13 v.

FOR PLAINTIFF’S FAILURE TO

PROSECUTE THIS ACTION AND TO

14 RQ CONSTRUCTION, LLC,

COMPLY WITH THE COURT’S ORDERS

15 Defendant.

ORDER CONTINUING THE

MANDATORY SCHEDULING

16

CONFERENCE

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ORDER DIRECTING PLAINTIFF TO

EFFECT SERVICE OF THIS ORDER AND

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TO FILE PROOF OF SERVICE

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FIVE-DAY DEADLINE

20 21 Plaintiff Alertone Service, Inc. (“Plaintiff”), initiated this action with the filing of a 22
complaint on April 28, 2025. (Doc. 1). The next day, the Clerk of the Court issued summons for 23
service upon Defendant RQ Construction, LLC, and the Court entered an order setting a 24
mandatory scheduling conference for July 28, 2025. (Docs. 2-3). The Court’s order directed 25
Plaintiff to “diligently pursue service of summons and complaint” and “promptly file proofs of 26
service.” (Doc. 3 at 1). The order further advised Plaintiff that failure to diligently prosecute 27
this action “may result in the imposition of sanctions, including the dismissal of unserved 28

defendants.” Id. To date, Plaintiff has not filed proofs of service nor any report setting forth an 1 || explanation for the failure, and no Defendant has appeared in the action. 2 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these 3 || Rules or with any order of the Court may be grounds for imposition by the Court of any and all 4 || sanctions...within the inherent power of the Court.” The Court has the inherent power to control 5 || its docket and may, in the exercise of that power, impose sanctions where appropriate, including 6 || dismissal of the action. *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000). 7 In addition, Rule 4(m) of the Federal Rules of Civil Procedure provides: “If a defendant 8 || is not served within 90 days after the complaint is filed, the court - on motion or on its own after 9 || notice to the plaintiff - must dismiss the action without prejudice against that defendant or order 10 || that service be made within a specified time.” Fed. R. Civ. P. 4(m). Absent a showing of good 11 || cause, failure to comply with Rule 4(m) requires dismissal of any unserved defendant. 12 || Conclusion and Order 13 Based on the foregoing, IT IS HEREBY ORDERED that within five (5) days of entry of 14 || this order, Plaintiff SHALL show cause in writing why sanctions should not be imposed — 15 || including dismissal of any unserved Defendant or this action in its entirety — for Plaintiff’s 16 || failure to prosecute, failure to serve the summons and complaint in a timely manner, and failure 17 || to promptly file proof of service. Filing summons returned executed following entry of this 18 || order WILL NOT relieve Plaintiff of its obligation to respond to this order in writing. 19 IT IS FURTHER ORDERED that the scheduling conference previously set for July 28, 20 || 2025, is CONTINUED to September 11, 2025, at 10:00 a.m. 21 And IT IS FURTHER ORDERED that Plaintiff shall serve a copy of this order on 22 || Defendant within five (5) days of entry of this order and promptly file proof of service thereof. 23 Any failure by Plaintiff to timely respond to this order to show cause will result in 24 || the imposition of sanctions, including a recommendation to dismiss this action. 25 || IT IS SO ORDERED. Dated: _ July 21, 2025 | br Pr 27 UNITED STATES MAGISTRATE JUDGE