

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.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 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 17 ORDER DIRECTING PLAINTIFF TO
EFFECT SERVICE OF THIS ORDER AND 18 TO FILE PROOF OF SERVICE 19 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 28