



1 Here, this Court ordered Plaintiff to serve Defendants by February 2, 2026. ECF No. 18.  
2 Because Plaintiff has neither served Defendants Zimmerman and Leavitt nor shown good cause  
3 for his failure to do so by the deadline, this Court recommends that the action be dismissed  
4 without prejudice against Defendants Zimmerman and Leavitt under Rule 4(m).

5 Additionally, in determining whether to dismiss an action, the court must consider: (1) the  
6 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;  
7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
8 their merits; and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod.*  
9 *Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d  
10 128, 130 (9th Cir. 1987)).

11 The first two factors, the public's interest in expeditiously resolving this litigation and the  
12 court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third  
13 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of  
14 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
15 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
16 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

17 The fifth factor requires the court to consider whether less drastic alternatives can be used  
18 to correct the party's failure that brought about the court's need to consider dismissal. Courts  
19 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
20 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th  
21 Cir. 1986). Because this action cannot proceed against an unserved defendant, the only alternative  
22 is to enter a second order directing Plaintiff to serve Defendants. The circumstances here do not  
23 indicate that Plaintiff needs additional time nor is there evidence that he did not receive this  
24 Court's order. Entering another order and expending more judicial resources is not a meaningful  
25 alternative given these circumstances. So, the fifth factor favors dismissal. On balance, the factors  
26 above favor a recommendation of dismissal. *See Hernandez v. City of El Monte*, 138 F.3d 393  
27 (9th Cir. 1998) (holding dismissal is proper where least four factors support dismissal or where at  
28 least three factors "strongly" support dismissal).

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**IT IS THEREFORE RECOMMENDED that THIS ACTION BE DISMISSED** as to Defendants Zimmerman and Leavitt for failure to serve them under Rule 4(m) and for failure to comply with a court order.

**NOTICE**

This report and recommendation is submitted to the United States district judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED this 26<sup>th</sup> day of February, 2026.

  
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE