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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROBERT THOMAS,
Plaintiff,
v.
J. RAZO, et al.,
Defendants.

**CASE: 1:10 -CV-2173 AWI DLB
(PC)**

**ORDER VACATING TELEPHONIC
TRIAL CONFIRMATION
HEARING AND TRIAL DATE
BASED ON PLAINTIFF'S FAILURE
TO FILE A PRETRIAL
STATEMENT AND/OR RESPOND
TO THE COURT'S ORDER TO
SHOW CAUSE**

Plaintiff Robert Thomas ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action has been set for trial to begin February 25, 2014, on Plaintiff's Eighth Amendment excessive force claims against Defendants Razo, Moreno, Brown, Vera, Vasquez and Holguin. The Telephonic Trial Confirmation Hearing is currently set for January 13, 2014. The Court previously ordered Plaintiff to file his pretrial statement and any motion for the attendance of incarcerated witnesses no later than December 16, 2013.

1 When Plaintiff did not file his pretrial statement or any other motion by
2 December 16, 2013, the Court ordered Plaintiff to show cause why this action
3 should not be dismissed for Plaintiff's failure to prosecute within ten days. Well
4 over ten days has passed, and Plaintiff has not responded to the Court's order to
5 show cause.
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7 This Court may dismiss an action, with prejudice, based on a party's failure to
8 prosecute an action or failure to obey a court order. Ferdik v. Bonzelet, 963 F.2d
9 1258, 1260-61 (9th Cir. 1992). In determining whether to dismiss an action for
10 failure to prosecute and comply with court orders, "the Court must weigh the
11 following factors: (1) the public's interest in expeditious resolution of litigation; (2)
12 the court's need to manage its docket; (3) the risk of prejudice to defendants; (4) the
13 availability of less drastic alternatives; and (5) the public policy favoring disposition
14 of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002);
15 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).
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19 In this action, Plaintiff has failed to file either a pretrial statement or a
20 response to the Court's order to show cause. At this time, the Court must use any
21 previously reserved dates to devote to those cases in which the Plaintiff is actually
22 proceeding.
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24 Accordingly, the Court ORDERS that:
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26 1. The Telephonic Trial Confirmation set for January 13, 2014 is
27 VACATED;
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1 2. The February 25, 2014 trial date is VACATED; and

2 3. This action is referred to the Magistrate Judge to review whether this
3 action should immediately be dismissed for Plaintiff's failure to prosecute.
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7 IT IS SO ORDERED.

8 Dated: January 13, 2014

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10 SENIOR DISTRICT JUDGE
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