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

GREGORIO C. FUNTANILLA, JR., No. 2:02-CV-1157-JAM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

MICHAEL JAFFE, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On February 22, 2016, the court directed plaintiff to file a pre-trial statement by May 2, 2016, and warned plaintiff that failure to comply could result in dismissal of the entire action. See Local Rule 110. To date, plaintiff has not filed a pre-trial statement.

The court must weigh five factors before imposing the harsh sanction of dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,

1 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
2 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
3 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
4 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
5 1423 (9th Cir. 1986).

6 Given the length of time this matter has been pending, plaintiff's failure to file a
7 pre-trial statement defeats the public's interest in expeditious resolution of the case. Plaintiff's
8 failure to comply also thwarts the court's interest in managing its docket by moving cases
9 forward to final resolution. Additionally, plaintiff's failure to prosecute does not allow for
10 resolution of the case on the merits. In light of these factors, and given the unavailability of a
11 less drastic sanction, the court finds that dismissal of this action is appropriate.

12 Based on the foregoing, the undersigned recommends that this action be dismissed
13 without prejudice for lack of prosecution and failure to comply with court orders.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal.

19 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 DATED: June 22, 2016

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23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE
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