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

JERRY JOE SIMPSON, JR.,

No. CIV S-07-2107-LKK-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

S. MOORE,¹

Respondent.

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Petitioner, a former state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 2, 2009, the court dismissed petitioner’s petition and directed petitioner to file an amended petition within 30 days. Petitioner was warned that failure to file an amended petition may result in dismissal of this action for lack of prosecution and failure to comply with court rules and orders. See Local Rule 11-110. To date, petitioner has not complied.

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¹ The Clerk of the Court will be directed to update the caption to reflect that the respondent named in the amended petition is S. Moore.

1 The court must weigh five factors before imposing the harsh sanction of
2 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
3 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
4 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
5 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
6 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
7 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
8 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
9 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
10 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
11 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
12 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
13 1260-61 (9th Cir. 1992).

14 Having considered these factors, and in light of petitioner's failure to file an
15 amended petition as directed, the court finds that dismissal of this action is appropriate.

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1 Based on the foregoing, the undersigned recommends that:

2 1. The Clerk of the Court is directed to update the docket to reflect that S.
3 Moore is the correct respondent and to terminate County of Stanislaus; and

4 2. This action be dismissed, without prejudice, for lack of prosecution and
5 failure to comply with court rules and orders.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." Failure to file objections within the specified time may waive
11 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 DATED: November 17, 2009

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15 **CRAIG M. KELLISON**
16 UNITED STATES MAGISTRATE JUDGE
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