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

ERNEST ALDRIDGE,
Plaintiff,

No. CIV S-10-1045-FCD-CMK

vs.

FINDINGS AND RECOMMENDATIONS

J. GARCIA,
Defendant.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action relating to notices posted on real property incident to a foreclosure order. By order issued on April 29, 2010, the matter was set for an initial scheduling conference to be heard on September 9, 2010, at 10:00 a.m. in Redding, California. Plaintiff was required to submit a scheduling conference statement at least seven days before the hearing. Plaintiff failed to submit a scheduling conference statement or appear at the hearing.

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, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an

1 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
2 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
3 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
4 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
5 follow local rules, see Ghazali, 46 F.3d at 53, and failure to appear at trial, see Al-Torki v.
6 Kaempfen, 78 F.3d 1381, 1385 (9th Cir. 1996).

7 In this case, the court finds that dismissal is appropriate. Plaintiff's failure to
8 follow the rules and procedures established for scheduling this case thwarts the public's interest
9 in speedy resolution of the case, interferes with the court's ability to manage its docket, creates a
10 risk of prejudice to defendants as time passes and evidence becomes stale, and renders it
11 impossible to address the merits of plaintiff's claims.

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 rules and 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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22 DATED: September 15, 2010

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