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

MEGAN VOGEL TRACY,

No. CIV S-10-1130-FCD-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

CITY OF REDDING, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On November 18, 2010, the court held a scheduling conference for which plaintiff failed to appear or file a scheduling conference statement. As a result, on December 2, 2010, the court directed plaintiff to show cause, in writing, within 30 days, why this case should not be dismissed. Plaintiff was warned that her failure to respond may result in dismissal of this action for lack of prosecution and failure to comply with court rules and orders. See Local Rule 110. To date, plaintiff has not complied.

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). Dismissal has also been held to be an appropriate sanction for failure to  
6 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
7 1260-61 (9th Cir. 1992).

8           Having considered these factors, and in light of plaintiff's failure to show cause or  
9 otherwise respond to the court's previous order as directed, the undersigned finds that dismissal  
10 of this action is appropriate.

11           Based on the foregoing, the undersigned recommends that this action be  
12 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and  
13 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: January 18, 2011

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