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

SHAWN KEVIN FROST, SR.,

No. CIV S-10-2903-FCD-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

TIM VERGA, et al.,

Defendants.

_____ /

Plaintiff is a state prisoner proceeding pro se. On November 10, 2010, the court issued separate orders requiring plaintiff to: (1) resolve the fee status for this case; and (2) file an initial pleading. Plaintiff was warned in both orders that failure to comply within 30 days of the date of the orders could result in dismissal of the action for lack of prosecution and failure to comply with court rules and orders. See Local Rule 110. To date, plaintiff has not complied with either order.

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)

1 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
2 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
3 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
4 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
5 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
6 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
7 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
8 follow local rules. See Ghazali, 46 F.3d at 53.

9 In light of plaintiff's failure to resolve the fee status for this case, and particularly
10 in light of plaintiff's failure to file an initial pleading outlining his claims, the court finds that
11 dismissal is warranted.

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 and
14 that all pending motions be denied as moot.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. Responses to objections shall be filed within 14 days after service of
19 objections. Failure to file objections within the specified time may waive the right to appeal.
20 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 DATED: December 21, 2010

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