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

DAVID LEE LASKIEWICZ,

No. 2:11-cv-2828-JAM-CMK

Plaintiff,

vs.

ORDER

RUSSELL SWARTZ, et al.,

Defendants.

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Plaintiff, proceeding in this action in propria persona, brings this civil action. The remaining defendants in this action are defendants Swartz and Kinney. Plaintiff requested a Clerk’s Entry of Default as to the defendants be entered based on the defendants’ failure to respond to the complaint. The Clerk’s Entry of Default was entered on September 5, 2012 (Doc. 42). Plaintiff thereafter moved for default judgment, and a hearing was held on December 3, 2014. Plaintiff, however, failed to produce any evidence to support his allegations relating to any damages. The hearing was continued to March 4, 2015, to provide plaintiff additional time to submit evidence in support of his damages claim. Prior to the hearing, plaintiff requested the court take the hearing off calendar, and requested additional time to obtain the necessary evidence. On February 20, 2015, the court granted plaintiff’s request, the hearing was taken off calendar, plaintiff was ordered to file a status report within 60 days, and was ordered to notify the

1 court when he was ready to proceed, no longer than 180 days thereafter.

2 Plaintiff submitted his first status report on March 9, 2015, explaining some of his  
3 efforts in obtaining possible damages evidence. He filed a second status report on April 15,  
4 2015, as well as a renewed motion for default judgment, again setting forth some of his efforts to  
5 obtain possible evidence to support his damages claim. He has not, however, provided the court  
6 with any further evidence to support his damages claim.

7 As set forth at the hearing on his motion for default judgment, and the Court  
8 orders following, plaintiff is required to support his damages claim. Conclusory statements in his  
9 motion for default judgment are insufficient to support any damages claim. Federal Rule of Civil  
10 Procedure 55(b)(2) governs applications to the court for entry of default judgment. Upon entry  
11 of default, the complaint's factual allegations regarding liability are taken as true, but allegations  
12 regarding the amount of damages must be proven. See Fed. R. Civ. P 55(b)(2); Geddes v. United  
13 Fin. Group, 559 F.2d 557 (9th Cir. 1977); Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d  
14 Cir.1990) (citations omitted) (“A consequence of the entry of a default judgment is that the  
15 factual allegations of the complaint, except those relating to the amount of damages, will be  
16 taken as true.”). When a plaintiff's damages are unliquidated (i.e. capable of ascertainment from  
17 definite figures contained in documentary evidence or in detailed affidavits) or punitive, they  
18 require “proving up” through an evidentiary hearing or some other means. See Dundee Cement  
19 Co. v. Howard Pipe & Concrete Prods., 722 F.2d 1319, 1323-24 (7th Cir.1983).

20 Following the hearing in December 2014, plaintiff was allowed time to provide  
21 proof to the court in support of his damages claim. He has failed to do so, despite having an  
22 extensive amount of time to do so. As the Court has received nothing from the plaintiff in over  
23 three years, it appears plaintiff is no longer interested in pursuing this matter.

24 The court must weigh five factors before imposing the harsh sanction of  
25 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
26 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's

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

11           Having considered these factors, and in light of plaintiff's failure to submit any  
12 further status reports or evidence in support of his damages claim, the undersigned finds plaintiff  
13 has failed to comply with court orders and rules, and finds dismissal of this action is appropriate.

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

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

23  
24 DATED: June 19, 2018

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26 **CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE