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

JOSEPH BECKER,

No. 2:12-cv-3040-KJM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION

K. FANG, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On February 6, 2015, the court directed plaintiff to file a status report within 30 days. Plaintiff was warned that failure to file a status report may result in the imposition of appropriate sanctions, including dismissal of the action. See Local Rule 110. Plaintiff failed to respond to the court’s order. On April 30, 2015, plaintiff was ordered to show cause in writing, within 30 days, why this action should not be dismissed for failure to submit the status report as ordered. He was again warned that failure to respond may result in dismissal of the action for the reasons outlined above, as well as for failure to prosecute and comply with court rules and orders. See id. Plaintiff again failed to comply with the court’s order.

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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 plaintiff's failure to file a status
15 report as directed, and failure to respond to the court's order to show cause, the undersigned finds
16 that dismissal of this action is appropriate.

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

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
22 after being served with these findings and recommendations, any party may file written

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1 objections with the court. Responses to objections shall be filed within 14 days after service of
2 objections. Failure to file objections within the specified time may waive the right to appeal.
3 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: June 10, 2015

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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