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

ANTHONY GOMEZ,

No. 2:13-CV-0289-JAM-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

DANIEL GOMEZ, et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. The matter was set for an initial scheduling conference before the undersigned on June 26, 2013. Plaintiff neither filed a scheduling conference statement prior to the hearing, nor appeared at the hearing, both as required under the court’s local rules as well as the court’s February 15, 2013, 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) 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 follow local rules. See Ghazali, 46 F.3d at 53.

7 Having considered these factors, and in light of plaintiff's failure to prosecute this
8 action by filing the required scheduling conference statement or appearing at the hearing, the
9 court finds that dismissal of this action is appropriate.

10 Based on the foregoing, the undersigned recommends that this action be
11 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and
12 orders and that plaintiff's motion for preliminary injunctive relief (Doc. 2) be denied as moot.

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

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20 DATED: July 29, 2013

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