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

GERROD LONZELL HERNDON, No. 2:16-CV-0241-CMK-P

Plaintiff,

vs.

ORDER

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action.

On June 14, 2016, the court directed plaintiff to resolve the fee status for this case within 30 days of the date of the order. Plaintiff was warned that failure to comply may result in dismissal of this action for lack of prosecution and failure to comply with court orders and rules. See Local Rule 110. As of October 13, 2016, plaintiff had not complied and the court directed plaintiff to show cause in writing within 30 days why this action should not be dismissed for failure to resolve fees. Plaintiff was once again warned that failure to respond may result in

1 dismissal of the action. See id. To date, plaintiff has not resolved the fee status of this action or  
2 responded to the court's order to show cause. Additionally, the docket reflects that mail directed  
3 to plaintiff was returned undeliverable on March 15, 2016, and again on November 7, 2016, and  
4 plaintiff has failed to file a notice of change of address.

5 The court must weigh five factors before imposing the harsh sanction of  
6 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
7 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
8 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
9 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on  
10 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,  
11 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
12 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
13 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
14 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
15 1423 (9th Cir. 1986).

16 Having considered these factors in light of plaintiff's failure to prosecute this  
17 action, the court finds that dismissal is warranted.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. This action is dismissed, without prejudice, for failure to comply with  
20 court rules and orders and for lack of prosecution; and  
21 2. The Clerk of the Court is directed to enter judgment and close this file.

22 DATED: December 9, 2016

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