



1 the expenses associated with plaintiff's non-appearance. See ECF No. 32. Plaintiff failed to file  
2 an opposition to defendants' motion, and, upon review, the Court issued an order granting the  
3 motion. See ECF No. 34. Pursuant to that order, the Court ordered plaintiff to appear for a re-  
4 noticed deposition and to reimburse defendants for the reasonable expenses associated with his  
5 failure to appear, totaling \$4,156.55. Id. In response, plaintiff submitted his "motion to oppose  
6 sanctions" and defendants submitted a reply to plaintiff's motion. See ECF No. 35 & 36.

## 7 8 **II. DISCUSSION**

### 9 **A. Plaintiff's Motion to Oppose Sanctions**

10 Plaintiff has submitted a motion before the Court titled "motion to oppose  
11 sanctions for not appearing at the January 09, 2019 deposition in this action." See ECF No. 35,  
12 pg. 1. Upon review, the Court notes that plaintiff's motion is simply a list of the reasons plaintiff  
13 claims he was unable to attend the January 9, 2020 deposition. According to plaintiff, he was  
14 unable to attend the deposition because: (1) plaintiff was physically unable to as a result of a  
15 recent knee surgery; (2) plaintiff is indigent and could not afford to travel to the deposition  
16 location; (3) plaintiff is homeless, and (4) plaintiff has only recently been approved for Section 8  
17 housing. See id. at 3. Because plaintiff's motion is primarily focused on providing justification for  
18 his non-appearance, the Court construes the motion as an opposition to plaintiff's motion to  
19 compel discovery. "Opposition, if any, to the granting of the motion shall be served and filed  
20 by the responding party not more than twenty-one (21) days after the date of service of the  
21 motion . . . [f]ailure of the responding party to file an opposition or to file a statement of no  
22 opposition may be deemed a waiver of any opposition to the granting of the motion and may  
23 result in the imposition of sanctions." Eastern District of California Local Rule 230(l). So  
24 construed, plaintiff's opposition, submitted four months after defendants' motion to compel  
25 discovery was filed, is deemed untimely.

26 ///

27 ///

28 ///

1           **B. Defendants' Reply to Plaintiff's Response**

2           In response to plaintiff's motion to oppose sanctions, defendants submitted a  
3 "[r]eply to plaintiff's untimely opposition to defendants' motion to compel discovery and request  
4 to dismiss the case." See ECF No. 36. According to defendants, "[t]he Court should dismiss this  
5 action because plaintiff failed to comply with the June 12, 2020 order." Id. at 2. Because the  
6 Court construes plaintiff's motion to oppose sanctions as an opposition to plaintiff's motion to  
7 compel discovery, the Court shall construe defendants' reply as a motion for involuntary  
8 dismissal.

9           The court must weigh five factors before imposing the harsh sanction of dismissal.  
10 See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000); *Malone v. U.S. Postal*  
11 *Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in  
12 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of  
13 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;  
14 and (5) the availability of less drastic sanctions. See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52,  
15 *53 (9th Cir. 1995) (per curiam)*. A warning that the action may be dismissed as an appropriate  
16 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See *Malone*,  
17 *833 F.2d at 132-33 & n.1*. The sanction of dismissal for lack of prosecution is appropriate where  
18 there has been unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
19 *1986)*. Dismissal has also been held to be an appropriate sanction for failure to follow local rules,  
20 see *Ghazali*, 46 F.3d at 53, failure to comply with an order to file an amended complaint, see  
21 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992), failure to inform the district court  
22 and parties of a change of address pursuant to local rules, see *Carey v. King*, 856 F.2d 1439,  
23 *1440-41 (9th Cir. 1988) (per curiam), failure to appear at trial, see *Al-Torki v. Kaempfen*, 78 F.3d*  
24 *1381, 1385 (9th Cir. 1996), and discovery abuses, see *Henry v. Gill Indus., Inc.*, 983 F.2d 943,*  
25 *948 (9th Cir. 1993)*.

26           Because the Court construes defendants' reply as a motion for involuntary  
27 dismissal, plaintiff shall be granted 30 days from the date of this order to file an opposition to  
28 defendants' motion in light of the factors outlined above.

1 **III. CONCLUSION**

2 Accordingly, it is HEREBY ORDERED that:

3 1. Plaintiff's motion to oppose sanctions (ECF No. 35) is construed as an untimely  
4 opposition to defendants' motion to compel discovery;

5 2. The Clerk of the Court is directed to update the docket to reflect that plaintiff's  
6 motion to oppose sanctions (ECF No. 35) is construed as an opposition to defendants' motion to  
7 compel discovery (ECF No. 33) and to terminate ECF No. 35 as a pending motion;

8 3. The Clerk of the Court is also directed to update the docket to reflect that  
9 defendants' reply to plaintiff's motion (ECF No. 36) is construed as a pending motion for  
10 involuntary dismissal of this action; and

11 4. Plaintiff may submit an opposition to defendants' motion for involuntary  
12 dismissal (ECF No. 36) within 30 days of the date of this order.

13  
14  
15 Dated: August 3, 2020



16 DENNIS M. COTA  
17 UNITED STATES MAGISTRATE JUDGE