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

ERION DEMONTA VARNADO,
Petitioner,
v.
KIMBERLY A. SEIBEL, et al.,
Respondents.

No. 2:17-CV-2413-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding with retained counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 15, 2019, the court granted petitioner’s motion to stay proceeding pending exhaustion of claims in state court. See ECF No. 29 (District Judge order). That order required petitioner to file periodic status reports every 90 days commencing 90 days from the date of the order. See id. Petitioner submitted status reports on June 13, 2019, and September 11, 2019. To date, petitioner has not submitted any further status reports.

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

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

9 Having considered these factors, and in light of petitioner's failure to file
10 status report directed, the court finds that dismissal of this action is appropriate.

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

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

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22 Dated: January 13, 2020



23 DENNIS M. COTA
24 UNITED STATES MAGISTRATE JUDGE
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