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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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ZURI A'GIZA,)
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Plaintiff,)
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v.)
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MICHAEL J. ASTRUE,)
Commissioner of Social)
Security,)
)
Defendant.)
_____)

Case No. CV 11-5250-CBM (MLG)
MEMORANDUM OPINION AND ORDER
DISMISSING COMPLAINT FOR FAILURE
TO SERVE AND PROSECUTE

This pro se complaint, construed as a request for judicial review of a decision by the Defendant Commissioner, was filed on July 6, 2011.¹ On July 8, 2011, the Court issued a scheduling order directing Plaintiff to promptly effect service on the United States Attorney, the Commissioner of Social Security, and the Attorney General of the United States. Plaintiff did not comply with this order.

On August 18, 2011, an order was issued directing Plaintiff to show cause, on or before September 2, 2011, why the action should not

¹ This is the latest of at least fourteen actions that Plaintiff has filed in the past 12 years relating to social security benefits.

1 be dismissed for failure to effect service and failure to prosecute.
2 Plaintiff was warned that failure to comply with the order would
3 result in dismissal of the action for failure to prosecute. Plaintiff
4 did not comply with this order either.

5 This action will be dismissed for failure to prosecute. Courts
6 possess the discretionary authority to dismiss an action based on a
7 plaintiff's failure to diligently prosecute or comply with a court
8 order. Fed.R.Civ.P. 41(b); Local Rule 12.1. See *Link v. Wabash R.R.*
9 *Co.*, 370 U.S. 626, 629-630 (1962). "Dismissal is a harsh penalty and
10 is to be imposed only in extreme circumstances." *Henderson v.*
11 *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). The Court is required
12 to weigh the following factors in determining whether to dismiss a
13 case for lack of prosecution: "(1) the public's interest in
14 expeditious resolution of litigation; (2) the court's need to manage
15 its docket; (3) the risk of prejudice to the defendants; (4) the
16 public policy favoring disposition of cases on their merits; and (5)
17 the availability of less drastic sanctions." *Omstead v. Dell, Inc.*,
18 594 F.3d 1081, 1084 (9th Cir. 2010); *In re Eisen*, 31 F.3d 1447, 1451
19 (9th Cir. 1994) (citing *Henderson*, 779 F.2d at 1423).

20 In weighing these factors, the Court concludes that dismissal
21 is appropriate in this case. Here, the public's interest in the
22 expeditious resolution of litigation and the court's interest in
23 managing its docket weighs in favor of dismissal. Dismissal without
24 prejudice would not undermine the public policy favoring disposition
25 of cases on the merits. In addition, there is no identifiable risk
26 of prejudice to Defendant. Finally, Plaintiff was advised of the
27 consequences of not responding to the order to show cause in the time
28 allowed. He apparently no longer wishes to continue with this

1 proceeding.

2 Accordingly, it is ORDERED that this action be dismissed without
3 prejudice for failure to effect service and failure to prosecute.

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5 Dated: 9/12, 2011

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Consuelo B. Marshall
9 United States District Judge

10 Presented By:

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Marc L. Goldman
14 United States Magistrate Judge