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

TONIANN MAYS,

No. 2:11-CV-2405-JAM-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

\_\_\_\_\_ /

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g).

On June 15, 2012, the court directed plaintiff to show cause in writing why this action should not be dismissed for failure to file a dispositive motion within the time prescribed in the court’s scheduling order. Plaintiff’s response was due 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 rules and orders. See Local Rule 110. To date, plaintiff has neither submitted a dispositive motion nor responded to the June 15, 2012, order to show cause.

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

10           Having considered these factors, and in light of plaintiff's failure to prosecute this  
11 action by filing a dispositive motion as well as plaintiff's failure to comply with the court's June  
12 15, 2012, order to show cause, the court finds that dismissal is appropriate.

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

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

22  
23 DATED: August 8, 2012

24   
25 **CRAIG M. KELLISON**  
26 UNITED STATES MAGISTRATE JUDGE