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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PRIMARIA SEDANO NICOLAS,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,  
Defendant.

No. 2:15-cv-2179 TLN CKD

FINDINGS AND RECOMMENDATIONS

Pending before the court is defendant’s motion to dismiss. Plaintiff has filed a statement of no opposition. Upon review of the documents in support, no opposition having been filed, and good cause appearing, THE COURT FINDS AS FOLLOWS:

Defendant moves to dismiss under Federal Rule of Civil Procedure 12(b)(6), contending the action is time barred. Defendant’s contention is correct.

Pursuant to 42 U.S.C. § 405(g), a civil action seeking review of a final decision of the Commissioner of Social Security must be commenced within sixty days after mailing to plaintiff of the final agency decision. The governing regulations provide that “mailing” means the date of receipt by plaintiff, which is presumed to be five days after the date of notice of the final decision. See 20 C.F.R. § 422.210(c). The sixty day limitation is not jurisdictional but is a statute of limitations. See Vernon v. Heckler, 811 F.2d 1274, 1277 (9th Cir. 1987).


1 In a decision dated March 13, 2014, the Administrative Law Judge (“ALJ”) determined  
2 plaintiff is not disabled. Thereafter, by letter dated July 30, 2015, plaintiff was notified that the  
3 Appeals Council had denied plaintiff’s request for review of the ALJ’s decision. The pending  
4 action was not filed until October 19, 2015, outside of the sixty day time limit. In filing no  
5 opposition, plaintiff has failed to demonstrate extraordinary circumstances, such as fraud,  
6 misinformation, or deliberate concealment, sufficient to equitably toll the statute of limitations.  
7 See Jackson v. Astrue, 506 F.3d 1349, 1355 (11th Cir. 2007); see also Bowen v. City of New  
8 York, 476 U.S. 467, 481 (1986) (tolling appropriate only in rare cases).

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Defendant’s motion to dismiss (ECF No. 14) be granted; and
- 11 2. This action be closed.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
14 after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
17 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
18 Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: February 1, 2016

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22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE

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