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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLEN V. WHITSETT,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

) Case No.: 1:10-cv-01070-SKO

) **ORDER TO SHOW CAUSE WHY THE**
) **ACTION SHOULD NOT BE DISMISSED**

On February 4, 2011, the Court approved the parties’ stipulation to remand this case pursuant to the sixth sentence of Section 205(g) of the Social Security Act to allow the Appeals Council to continue to search for the recording of Plaintiff’s hearing, which previously could not be located. (Doc. 17.) According to the stipulation and order, if the Appeals Council could not locate the recording within a reasonable time, the Appeals Council would remand this case to an Administrative Law Judge (“ALJ”) with instructions to hold a *de novo* hearing and issue a new decision.

On April 6, 2011, the Commissioner filed a status report informing the Court that the Appeals Council searched for the hearing tape but could not locate it. Thus, the Appeals Council remanded the case for assignment to an ALJ to hold a *de novo* hearing and issue a new decision.

1 In light of this development, the Court finds that it is appropriate to dismiss this action
2 without prejudice and administratively close the case. To the extent that either party has objections
3 to **dismissal without prejudice**, such a statement should be filed within ten (10) days from the date
4 of this order.

5 Accordingly, IT IS HEREBY ORDERED THAT within 10 days from the date of this order
6 either party *may* file a statement showing cause why this action should not be dismissed. If the
7 parties fail to file a statement showing cause, the action will be dismissed WITHOUT PREJUDICE.

8
9 IT IS SO ORDERED.

10 **Dated:** May 16, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE