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9
 10 IN THE UNITED STATES DISTRICT COURT FOR THE
 11 EASTERN DISTRICT OF CALIFORNIA

13	DIANA CUMMINGS,)	CIVIL NO. 2:03-CV-01773-GGH
14	Plaintiff,)	
15	v.)	DEFENDANT'S REQUEST FOR
16	MICHAEL J. ASTRUE, ^{1/})	ENTRY OF ORDER AND JUDGMENT
17	Commissioner,)	
18	Social Security,)	
19	Defendant,)	

20 Defendant hereby requests that this Court enter an order and judgment in favor of the
 21 Plaintiff affirming the September 24, 2004, post-remand, final decision of the Commissioner of
 22 Social Security pursuant to Rule 58 of the Federal Rules of Civil Procedure. A copy of
 23 Plaintiff's favorable decision on remand is attached hereto.

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25 _____
 26 ^{1/} On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security.
 27 Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should,
 28 therefore, be substituted for Commissioner Jo Anne B. Barnhart as the defendant in this suit. No
 further action need be taken to continue this suit by reason of the last sentence of section 205(g)
 of the Social Security Act, 42 U.S.C. § 405(g).

1 On March 22, 2004, this Court entered an order remanding this case pursuant to 42
2 U.S.C. § 405(g), sentence six in order to locate the claim file and hearing tape. See Clerk's
3 Record 15. In Melkonyan v. Sullivan, 501 U.S. 89 (1991), the Supreme Court held that a district
4 court may retain jurisdiction over Social Security cases remanded under 42 U.S.C. § 405(g),
5 sentence six, and that the Commissioner is to return to court following completion of the
6 administrative proceedings on remand and file the new decision with the court, which can then
7 enter an order and "final judgment," thus terminating the matter. See, also, Shalala v. Schaefer,
8 509 U.S. 292 (1993). Therefore, Defendant requests that and order and final judgment be
9 entered in this case.

10 Respectfully submitted,

11 Dated: August 18, 2009

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14
15 /s/ Mark A. Win
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17 Attorneys for Defendant
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2 IN THE UNITED STATES DISTRICT COURT FOR THE
3 EASTERN DISTRICT OF CALIFORNIA

4 DIANA CUMMINGS,) CIVIL NO. 2:03-CV-01773-GGH
5 Plaintiff,)
6 v.) ORDER
7 MICHAEL J. ASTRUE,)
8 Commissioner of Social)
9 Security,)
10 Defendant,)
_____)

11 Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) of the Social Security Act for
12 judicial review of a final decision of the Commissioner of Social Security, denying his
13 application for benefits. On March 22, 2004, this Court entered an order remanding this case
14 pursuant to 42 U.S.C. § 405(g), sentence six in order to locate the claim file and hearing tape.
15 On remand, in a decision dated September 24, 2004, the Commissioner issued a fully favorable
16 decision awarding Plaintiff benefits.

17 This is the second time within a month that the Commissioner has purported to
18 electronically file an exhibit for the court's review, but the exhibit is unreadable. The
19 Commissioner shall confirm that the exhibits electronically filed are filed such that they are
20 readable.

21 The Court orders as follows:

22 **IT IS ORDERED** that Judgment is hereby entered in favor of Plaintiff, affirming the
23 September 24, 2004 post-remand final decision of the Commissioner of Social Security.

24
25 Date: September 13, 2009

/s/ Gregory G. Hollows

26
27 THE HONORABLE GREGORY G. HOLLOWES
United States Magistrate Judge

28 cummings.judg