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

STEVEN RAY RITCHIE,
Plaintiff,

No. 2:15-cv-1998-MCE-CMK PS

vs.

FINDINGS AND RECOMMENDATION

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

_____ /

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

On May 16, 2017, the court granted plaintiff's motion for leave to proceed in forma pauperis. That order required plaintiff to submit to the United States Marshal, within 15 days of the date of service of the order, a completed summons and copies of the complaint, and file a statement with the court that said documents have been submitted. 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. More than 15 days have elapsed and plaintiff has not complied.

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1 In addition, on May 26, 2017, mail directed to plaintiff was returned by the United
2 States Postal Service as undeliverable. Pursuant to Eastern District of California Local Rule
3 183(b), any party appearing pro se must file and serve a notice of change of address within 63
4 days of mail being returned. To date, more than 63 days have elapsed since mail was returned
5 and plaintiff has not notified the court of a change of address.

6 Finally, on October 16, 2017, the court issued plaintiff an order to show cause
7 why this action should not be dismissed for failure to submit the service documents to the United
8 States Marshall and for plaintiff's failure to file a notice of change of address. No response to the
9 order to show cause was received within the 30 days provided. Plaintiff was warned that failure
10 to submit the required documents may result in dismissal of this action for lack of prosecution
11 and failure to comply with court rules and orders. See Local Rule 110.

12 The court must weigh five factors before imposing the harsh sanction of
13 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
14 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
15 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
16 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
17 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
18 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
19 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
20 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
21 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
22 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
23 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
24 1260-61 (9th Cir. 1992).

25 Having considered these factors, and in light of plaintiff's failure to submit
26 service documents as directed and failure to file a notice of change of address, the court finds that

1 dismissal of this action is appropriate.

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

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

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12 DATED: December 7, 2017

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14 **CRAIG M. KELLISON**
15 UNITED STATES MAGISTRATE JUDGE
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