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

CHRISTOPHER LEE McNAIR,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:17-CV-2120-TLN-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se,¹ 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, 2018, 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. As of August 10, 2018, more than 15 days had elapsed and the court directed plaintiff to show cause in writing within 30 days why the action should not be dismissed

¹ The court's October 24, 2018, order erroneously stated plaintiff is proceeding with retained counsel.

1 for lack of prosecution and failure to comply with court rules and orders. To date, plaintiff has
2 not responded to the court's order to show cause or submitted the required documents.

3 The court must weigh five factors before imposing the harsh sanction of dismissal.
4 See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000); *Malone v. U.S. Postal*
5 *Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
6 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
7 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
8 and (5) the availability of less drastic sanctions. See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52,
9 *53 (9th Cir. 1995) (per curiam)*. A warning that the action may be dismissed as an appropriate
10 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See *Malone*,
11 *833 F.2d at 132-33 & n.1*. The sanction of dismissal for lack of prosecution is appropriate where
12 there has been unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
13 *1986)*. Dismissal has also been held to be an appropriate sanction for failure to follow local rules,
14 see *Ghazali*, 46 F.3d at 53, failure to comply with an order to file an amended complaint, see
15 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992), failure to inform the district court
16 and parties of a change of address pursuant to local rules, see *Carey v. King*, 856 F.2d 1439,
17 *1440-41 (9th Cir. 1988) (per curiam), failure to appear at trial, see *Al-Torki v. Kaempfen*, 78 F.3d*
18 *1381, 1385 (9th Cir. 1996), and discovery abuses, see *Henry v. Gill Indus., Inc.*, 983 F.2d 943,*
19 *948 (9th Cir. 1993)*.

20 In this case, having considered the factors outlined above and in light of plaintiff's
21 non-compliance with court orders and failure to prosecute, the court finds dismissal is an
22 appropriate sanction.

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

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

Dated: November 1, 2018



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE