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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YONG XIANG LUO,

Plaintiff,

No. C 09-5081 PJH

v.

ORDER OF DISMISSAL

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

_____/

Plaintiff filed this appeal from a decision by the Commissioner of Social Security on October 23, 2009. Defendant answered on February 22, 2010. According to Civil L.R. 16-5, plaintiff was required to file a motion for summary judgment by March 22, 2010; however, on March 22, 2010, the court granted plaintiff an extension of time to file her motion until April 23, 2010. No motion was filed. Subsequently, on May 14, 2010, the court issued an order to show cause requiring a written response from plaintiff by May 28, 2010, explaining why this appeal should not be dismissed for failure to prosecute. Plaintiff failed to respond to the court's order.

The court having considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined that notwithstanding the public policy favoring the disposition of actions on their merits, the court's need to manage its docket and the public interest in the expeditious resolution of the litigation require dismissal of this action. In view of plaintiff's lack of response to this

1 court's prior order(s), the court finds there is no appropriate less drastic sanction.
2 Accordingly, this action is dismissed with prejudice pursuant to Fed. R. Civ. Proc. 41(b)
3 for plaintiff's failure to prosecute.

4 **IT IS SO ORDERED.**

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6 Dated: June 11, 2010



PHYLLIS J. HAMILTON
United States District Judge

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