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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARK ALEXANDER,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security Administration,

Defendant.

CASE NO. 08cv2233-L(NLS)

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING COMPLAINT
WITHOUT PREJUDICE**

Plaintiff Mark Alexander filed a Complaint for Judicial Review and Remedy on Administrative Decision Under the Social Security Act.. In accordance with 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(c)(1)(c), the case was referred to United States Magistrate Judge Nita L. Stormes for a report and recommendation. On October 23, 2009 Judge Stormes issued a report and recommendation recommending to dismiss the complaint without prejudice for failure to prosecute. Plaintiff has not filed objections. For the reasons which follow, the Report and Recommendation is **ADOPTED** and the complaint is **DISMISSED WITHOUT PREJUDICE**.

On April 3, 2009 the court issued a briefing schedule for Plaintiff to file a motion for summary judgment; however, Plaintiff did not file a motion. On June 24, 2009 the court issued an order to show cause why the case should not be dismissed for failure to prosecute. Upon a showing of good cause, Judge Stormes on July 14, 2009 issued a new briefing schedule, extending until September 14, 2009 the time for Plaintiff to file a

1 summary judgment motion. Nevertheless, Plaintiff has not filed a motion. Accordingly,
2 the report and recommendation recommends dismissing the complaint without prejudice for
3 failure to prosecute.

4 A district judge “may accept, reject, or modify the recommended disposition” on a
5 dispositive matter prepared by a magistrate judge proceeding without the consent of the
6 parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “The court shall
7 make a *de novo* determination of those portions of the [report and recommendation] to
8 which objection is made.” 28 U.S.C. § 636(b)(1). When no objections are filed, the *de*
9 *novo* review is waived. Section 636(b)(1) does not require review by the district court
10 under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The “statute makes
11 it clear that the district judge must review the magistrate judge’s findings and
12 recommendations *de novo if objection is made, but not otherwise.*” *United States v.*
13 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original); *see*
14 *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003).

15 In the absence of objections, the Report and Recommendation is **ADOPTED**. The
16 complaint is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

17 **IT IS SO ORDERED.**

18 DATED: November 17, 2009

19 
20 M. James Lorenz
United States District Court Judge

21 COPY TO:

22 HON. NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL
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