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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 JOHN B. PIROG,

7 Plaintiff,

8 vs.

9 MICHAEL ASTRUE,

10 Defendant.

Case No: C 08-2093 SBA  
C 08-2094 SBA

**ORDER**

Docket 17

11  
12 On April 22, 2008, pro se Plaintiff filed a complaint for judicial review of the  
13 decision of the Commissioner of Social Security as a result of the denial of benefits. Dkt.  
14 1. Also on April 22, 2008, the Court issued its Procedural Order for Social Security  
15 Review Actions, which requires Defendant to file an answer, as well as Plaintiff to file a  
16 motion for summary judgment or for remand, and establishes a briefing schedule in relation  
17 to those matters. Dkt. 2. On August 4, 2008, instead of filing an answer, Defendant filed a  
18 motion to dismiss for lack of jurisdiction, pursuant to Federal Rule of Civil Procedure  
19 12(b)(1). Dkt. 17. On November 7, 2008, the Court denied Defendant's motion to dismiss.  
20 Dkt. 21. On November 24, 2008, Defendant filed a motion for reconsideration under  
21 Federal Rule of Civil Procedure 60(b)(6). Dkt. 22. On July 16, 2009, the Court granted  
22 Defendant's motion for reconsideration, and, as a result, Defendant's motion to dismiss is  
23 still pending before this Court. Dkt. 32.

24 Since the Court issued its order on July 16, 2009 granting Defendant's motion for  
25 reconsideration there has been no action taken in the case by either party. Dkt. 32. Thus,  
26 the Court does not have the Plaintiff's opposition or Defendant's reply pertaining to  
27 Defendant's motion to dismiss. Moreover, Plaintiff has not prosecuted his case with due  
28 diligence given his lack of contact with the Court for over two years. Nevertheless,

1 because no specific briefing order on Defendant's motion to dismiss has been issued, pro se  
2 Plaintiff may not have been aware of his obligation to respond to the motion to dismiss or  
3 to diligently prosecute the instant action. Accordingly,

4 IT IS HEREBY ORDERED THAT

5 1. Defendant shall serve Plaintiff at both his California and Iowa addresses with  
6 a copy of its motion to dismiss papers by no later than **August 24, 2011**.

7 2. Plaintiff shall file his opposition of no more than ten (10) pages to  
8 Defendant's motion to dismiss by no later than **September 7, 2011**. If Plaintiff does not  
9 intend to prosecute this action, he should file a stipulation for dismissal under Federal Rule  
10 of Civil Procedure 41(b), a request for dismissal under Rule 41(a), or a statement of non-  
11 opposition by that deadline. Plaintiff is hereby warned that his failure to comply with this  
12 order will result in the granting of Defendant's motion to dismiss and dismissal of his  
13 action under Rule 41(b), especially given that Plaintiff has not prosecuted this action in any  
14 manner for over two years. "Pursuant to Federal Rule of Civil Procedure 41(b), the district  
15 court may dismiss an action for failure to comply with any order of the court." Ferdik v.  
16 Bonzelet 963 F.2d 1258, 1260 (9th Cir. 1992). As such, the failure to prosecute an action  
17 and failure to file an opposition to a motion to dismiss in the manner prescribed by the  
18 Court is grounds for dismissal. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per  
19 curiam). While the Court does not countenance Plaintiff's failure to prosecute, the Court  
20 grants Plaintiff an additional opportunity to respond to Defendant's motion in consideration  
21 of less drastic alternatives to dismissal. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th  
22 Cir. 2002). **Nonetheless, Plaintiff is warned that the failure to file a response by the**  
23 **deadline set herein will be deemed grounds for granting Defendant's motion and**  
24 **dismissing the action under Rule 41(b), without further notice. As Plaintiff has had**  
25 **ample time to respond to Defendant's motion to dismiss and has filed several prior**  
26 **requests for a continuance, the Court will not entertain any further requests for a**  
27 **continuance.**

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2. Defendants shall file a reply or other response of no more than ten (10) pages by no later than **September 14, 2011**.

IT IS SO ORDERED.

Dated: August 17, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PIROG et al,

Plaintiff,

v.

ASTRUE et al,

Defendant.

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Case Number: CV08-02093 SBA

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 17, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John B. Pirog  
336 Bon Air Center  
#233  
Greenbrae, CA 94904

Dated: August 17, 2011

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk