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\*E-Filed 08/12/2010\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ANTHONY J. FERRANTINO,

No. C 09-3590 RS

Plaintiff,

**ORDER FOR FURTHER BRIEFING  
RE MOTION TO DISMISS AND  
DENYING MOTION FOR SUMMARY  
JUDGMENT**

v.

MICHAEL J. ASTRUE,

Defendant

\_\_\_\_\_ /  
This is an action seeking judicial review of certain decisions of the Commissioner of the Social Security Administration. Defendant moves to dismiss, contending that plaintiff failed to exhaust his administrative remedies by seeking reconsideration of any of the decisions he is now purporting to challenge, and that this Court therefore lack jurisdiction to hear the matter. In opposition, plaintiff, appearing in *pro se*, asserts that he in fact attempted to seek reconsideration but that his efforts to do so were thwarted by the actions or inactions of Social Security Administration personnel. Plaintiff's opposition does not strictly comply with evidentiary rules, but construing it liberally in light of his *pro se*, status, it raises at least a possibility that dismissal may not be appropriate at this juncture.<sup>1</sup> Defendant has failed to file any response to plaintiff's opposition.

\_\_\_\_\_  
<sup>1</sup> Even if plaintiff's factual assertions are true, they may or may not serve as a basis to avoid dismissal for failure to exhaust administrative remedies. That is a question defendant may address on reply.

1 Accordingly, good cause appearing, defendant shall file a reply brief and any supporting  
2 declarations within 15 days of the date of this order. The matter shall then be taken under  
3 submission without oral argument.<sup>2</sup>

4 Plaintiff has also filed a document labeled as a motion for summary judgment that merely  
5 repeats the allegations of his complaint. Even construing the motion liberally in light of plaintiff's  
6 *pro se* status, it fails to establish a basis for summary judgment to be entered and is therefore denied.

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8 IT IS SO ORDERED.

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Dated: 08/12/2010

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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Plaintiff has requested that this action remain in the San Jose Division, in light of medical conditions that make it difficult for him to travel to San Francisco. The case in fact continues to be a San Jose Division matter, despite the relocation of the Court to chambers in the San Francisco Division. Because Social Security matters such as this are ordinarily decided without courtroom proceedings, there is no basis at this juncture to reassign the case to a judge sitting in the San Jose Division.

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**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

Anthony J. Ferrantino  
555 Bryant Street, #511  
Palo Alto, CA 94301

DATED: 08/12/2010

/s/ Chambers Staff

Chambers of District Judge Richard Seeborg