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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 PAUL HENRY STURGEON,

12 Petitioner,

13 v.

14 MICHAEL P. HUERTA,

15 Respondent.

Case No. 1:13-cv-01318-AWI-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT RESPONDENT'S  
MOTION TO DISMISS BE GRANTED

ECF NO. 7

OBJECTIONS DUE WITHIN FOURTEEN  
(14) DAYS

16  
17 On November 14, 2013, Respondent Michael P. Huerta ("Respondent") filed a motion to  
18 dismiss. (ECF No. 7.) The motion was referred to the undersigned magistrate judge for findings  
19 and recommendations pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure  
20 72. (ECF No. 9.)

21 For the reasons set forth below, the Court recommends that Respondent's motion to  
22 dismiss be granted.

23 **I.**

24 **BACKGROUND**

25 Petitioner Paul Henry Sturgeon ("Petitioner") filed a petition for review of the Federal  
26 Aviation Authority's ("FAA") suspension of Petitioner's private pilot's license. Petitioner's  
27 suspension arose from his failure to report a conviction for driving under the influence of alcohol  
28 to the FAA. Petitioner was arrested for the DUI on June 25, 2010. Petitioner's driver's license

1 was initially suspended by the California Department of Motor Vehicles, though the effective  
2 date of the suspension was later changed to August 21, 2010. On October 19, 2010, Petitioner  
3 notified the FAA Civil Security Division about the suspension. On November 4, 2010, the FAA  
4 Civil Security Division sent a letter to Petitioner acknowledging the receipt of the report and  
5 reminded Petitioner of his obligation to report any conviction.

6 On March 31, 2011, the FAA Civil Aerospace Medical Institute sent Petitioner a letter  
7 requesting court documents, treatment records, a statement from Petitioner and a DMV print-out.  
8 After Petitioner submitted the requested information, Petitioner received notice that he remained  
9 eligible for a third-class medical certificate despite the DUI offense.

10 Petitioner was convicted for the DUI on April 11, 2012. On May 23, 2012, Petitioner  
11 sent a letter to the FAA Civil Aerospace Medical Institute reporting the conviction.

12 On September 17, 2012, Sonja King from the FAA Security and Investigations Division  
13 sent a letter to Petitioner informing him that Petitioner was being investigated for failure to  
14 report alcohol-related motor vehicle actions within 60 days. On September 25, 2012, Petitioner  
15 sent a response to Ms. King informing her that Petitioner already reported the DUI to the FAA.  
16 However, Petitioner evidently failed to report the DUI conviction to the proper FAA division:  
17 Petitioner reported to the Civil Aerospace Medical Institute instead of the Civil Security  
18 Division.

19 On November 14, 2012, the FAA sent a Notice of Proposed Certificate Action informing  
20 Petitioner of the FAA's intention to suspend Petitioner's Private Pilot Certificate for 30 days.  
21 Petitioner, through counsel, argued that the proposed action should be dropped or reduced in  
22 light of Petitioner's attempt to report the DUI to the FAA. On January 10, 2013, the FAA  
23 imposed a 15 day suspension. Petitioner appealed the decision to an Administrative Law Judge  
24 ("ALJ"), who reduced the suspension to ten days.

25 On August 19, 2013, Petitioner initiated the present action by filing his petition for  
26 review. On November 14, 2013, Respondent filed his motion to dismiss. Respondent argues  
27 that this action must be dismissed because Petitioner failed to exhaust his administrative  
28 remedies prior to seeking judicial review.

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**A. Exhaustion Requirement**

As an initial matter, the Court must determine whether administrative exhaustion applies in this context. The doctrine of administrative exhaustion “provides ‘that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.’” McKart v. U.S., 395 U.S. 185, 193 (1969) (quoting Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938)).

Respondent argues that exhaustion is required under the recently enacted Pilot's Bill of Rights, Pub. L. No. 112-153, 126 Stat. 1159 (2012). The Pilot's Bill of Rights states:

(d) APPEAL FROM CERTIFICATE ACTIONS.--

(1) IN GENERAL.--Upon a decision by the National Transportation Safety Board ... imposing a punitive civil action or an emergency order of revocation under subsections (d) and (e) of section 44709 of such title, an individual substantially affected by an order of the Board may, at the individual's election, file an appeal in the United States district court in which the individual resides or in which the action in question occurred, or in the United States District Court for the District of Columbia.

Pilot's Bill of Rights, § 2(d)(1), Pub. L. No. 112-153, 126 Stat. 1159 (2012).

The Court is unable to find any authority within this circuit interpreting this recently enacted legislation. However, one out-of-circuit district court, the District Court for the Middle District of North Carolina, held that this language imposes a statutory exhaustion requirement that is only satisfied by a decision by the full board of the National Transportation Safety Board (“NTSB”), and not by a decision by an ALJ. Dexter v. Huerta, No. 1:12CV1147, 2013 WL 5355748, at \*2 (M.D.N.C. Sept. 24, 2013). The court noted that, prior to the enactment of the Pilot’s Bill of Rights, courts required petitioners to exhaust their administrative remedies by pursuing their appeal to the full NTSB. Dexter, 2013 WL 5355748 at \*2; see also Cornish v. Blakey, 336 F.3d 749, 753 (8th Cir. 2003).

Petitioner does not dispute that, generally, the doctrine of administrative exhaustion would require an appeal to the full NTSB. Further, Petitioner concedes that he did not appeal the ALJ's decision to the full NTSB. Petitioner's sole contentions are that his failure to pursue an

1 appeal to the NTSB is excused because of (1) the NTSB's predetermination and bias toward the  
2 issue of substantial compliance, and (2) the issues presented in this action are purely legal.

3 The Court finds that, generally, the doctrine of administrative exhaustion requires  
4 Petitioner to pursue his administrative appeal to the full NTSB. The Court further finds that  
5 Petitioner did not pursue his appeal to the full NTSB. Accordingly, the Court will address  
6 whether Petitioner's failure to exhaust his administrative remedies was excused.

7 **B. Predetermination and Bias**

8 Petitioner contends that his failure to exhaust is excused because an appeal to the full  
9 NTSB would be futile. Courts have recognized exceptions to the exhaustion requirement when  
10 further administrative remedies are inadequate or not efficacious or when pursuit of  
11 administrative remedies would be a futile gesture. See Laing v. Ashcroft, 370 F.3d 994, 1000  
12 (9th Cir. 2004). However, Petitioner must present "[o]bjective and undisputed evidence of  
13 administrative bias [that] would render pursuit of an administrative remedy futile." Joint Bd. of  
14 Control of Flathead, Mission and Jocko Irr. Districts v. U.S., 862 F.2d 195, 200 (9th Cir. 1988)  
15 (citing White Mountain Apache Tribe v. Hodel, 840 F.2d 675, 677 (9th Cir. 1988)).  
16 "Administrative review is not futile if the plaintiff's allegations of bias are purely speculative."  
17 Id. (citing United States v. Litton Industries, Inc., 462 F.2d 14, 18 (9th Cir. 1972)).

18 Petitioner contends that the NTSB's bias toward the substantial compliance doctrine is  
19 demonstrated by the decision in Hinson v. Smith.<sup>1</sup> The facts in Hinson are similar to the facts  
20 here. In Hinson, the petitioner's airman certificate was suspended for 20 days for failing to  
21 report a DUI conviction to the proper FAA division. Like Petitioner here, the petitioner in  
22 Hinson reported the conviction to the FAA's Aeromedical Certification Division, but did not  
23 report the conviction to the FAA's Security Division. The NTSB rejected the petitioner's  
24 argument regarding "substantial compliance":

25 Even if substantial compliance were a valid defense, in this case  
26 we would not find that respondent substantially complied with §  
27 61.16(e) because he did not submit any information, in any form,

28 <sup>1</sup> A copy of the NTSB's decision in Hinson v. Smith is attached to the original petition filed in this action. (ECF No. 1-11.)

1 to FAA's Security Division.  
2 (ECF No. 1-11, at pg. 7.)

3 The Court finds that the NTSB's decision in Hinson v. Smith does not constitute  
4 evidence of predetermination or bias that excuses Petitioner's failure to exhaust his  
5 administrative remedies. The Court notes that the NTSB did not reject the substantial  
6 compliance doctrine in Hinson v. Smith. Instead, the NTSB stated that substantial compliance  
7 would not apply based upon the facts specific to that case. Moreover, in Hinson v. Smith, the  
8 NTSB ultimately ruled in favor of the petitioner. Even though the substantial compliance  
9 argument was rejected, the NTSB concluded that the FAA provided the petitioner with  
10 misleading information regarding the reporting requirements and overturned the license  
11 suspension. Accordingly, Petitioner cannot rely on Hinson v. Smith for the proposition that the  
12 NTSB has predetermined the license suspension issue against Petitioner.

13 Based upon the foregoing, the Court finds that Petitioner has not demonstrated that  
14 predetermination or bias excused his failure to exhaust his administrative remedies.

### 15 **C. Purely Legal Issues**

16 Petitioner argues that this action presents the purely legal questions of whether the  
17 doctrine of substantial compliance or the doctrine of entrapment by estoppel<sup>2</sup> apply as an  
18 affirmative defense to the FAA's administrative action. Petitioner argues that exhaustion is not  
19 required because the issue can be resolved without the need to defer to agency expertise.

20 However, this proceeding is not limited to purely legal questions. If substantial  
21 compliance or entrapment by estoppel applied, the Court would have to go further to determine if  
22 the facts specific to this case triggered the operation of either doctrine. The Court would have to  
23 determine whether Petitioner's actions constitute substantial compliance or whether FAA  
24 officials misled Petitioner into thinking that he had satisfied the reporting requirements. Agency  
25 expertise would be helpful in developing the facts, because the agency would be in the best  
26 position to develop facts, such as whether reporting a DUI conviction to the Civil Aerospace

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28 <sup>2</sup> "Entrapment by estoppel is the unintentional entrapment by an official who mistakenly misleads a person into a violation of the law." U.S. v. Ramirez-Valencia, 202 F.3d 1106, 1109 (9th Cir. 2000).

1 Medical Institute can be deemed equivalent to reporting to the Civil Security Division, or  
2 determine what information was given by FAA officials to Petitioner.

3 Further, in the NTSB case provided by Petitioner, Hinson v. Smith, the NTSB appeared  
4 to accept the entrapment by estoppel defense in reversing the suspension of a pilot's certification  
5 because the information provided by FAA to the petitioner misled him regarding the reporting  
6 requirements. Since the FAA has already recognized this defense in a prior action, the issue  
7 raised in an appeal to the NTSB would not be purely legal, it would be factual, i.e., whether the  
8 facts of Petitioner's case warrant the application of the same defense.

9 Based upon the foregoing, Petitioner has not demonstrated that exhaustion should be  
10 excused because this action only presents a purely legal question.

### 11 **III.**

#### 12 **CONCLUSION AND RECOMMENDATION**

13 Based upon the foregoing, the Court finds that Petitioner failed to exhaust his  
14 administrative remedies prior to filing the present petition because Petitioner failed to appeal the  
15 ALJ's decision to the full NTSB. The Court further finds that Petitioner's failure to exhaust was  
16 not excused.

17 Accordingly, it is HEREBY RECOMMENDED that Respondent's motion to dismiss be  
18 GRANTED and Petitioner's petition for review be DISMISSED.

19 These Findings and Recommendations are submitted to the United States District Judge  
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
21 Local Rules of Practice for the United States District Court, Eastern District of California.

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1 Within fourteen (14) days after being served with a copy, any party may file written objections  
2 with the court and serve a copy on all parties. Such a document should be captioned "Objections  
3 to Magistrate Judge's Findings and Recommendation." The Court will then review the  
4 Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that  
5 failure to file objections within the specified time may waive the right to appeal the District  
6 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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9 IT IS SO ORDERED.

10 Dated: **December 16, 2013**

  
UNITED STATES MAGISTRATE JUDGE