

1 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

2 The meaning of the term “final decision” in Section 405(g) was left to the Commissioner of
3 Social Security “to flesh out by regulation.” *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975). Pursuant to
4 the Regulations, a claimant obtains the Commissioner’s “final decision” only after completing the
5 administrative review process, which includes: (1) an initial determination, (2) reconsideration, (3) a
6 hearing before an administrative law judge, and (4) review by the Appeals Council. 20 C.F.R. §§
7 404.900(a). As a result, the Supreme Court determined judicial review of the denial of benefits is only
8 available to a claimant who has exhausted available administrative remedies, explaining:

9 SSA regulations provide that, if the Appeals Council grants review of a claim, then the
10 decision that the Council issues is the Commissioner’s final decision. But if ... the
11 Council denies the request for review, the ALJ’s opinion becomes the final decision. See
12 20 CFR §§ 404.900(a)(4)-(5), 404.955, 404.981, 422.210(a) (1999). **If a claimant fails**
13 **to request review from the Council, there is no final decision and, as a result, no**
judicial review in most cases. See § 404.900(b); *Bowen v. City of New York*, 476 U.S.
467, 482-483, 90 L. Ed. 2d 462, 106 S. Ct. 2022 (1986). In administrative-law parlance,
such a claimant may not obtain judicial review because he has failed to exhaust
administrative remedies. See *Salfi*, 422 U.S. at 765-766.

14 *Sims v. Apfel*, 530 U.S. 103, 107 (2000) (emphasis added). In other words, “[a] final decision has two
15 elements: (1) presentment of the claim to the Commissioner, and (2) complete exhaustion of
16 administrative remedies.” *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003) (citing *Johnson v.*
17 *Shalala*, 2 F.3d 918, 921 (9th Cir. 1993)).

18 Here, there are no facts alleged supporting a finding that Plaintiff exhausted his administrative
19 remedies by requesting review by the Appeals Council. Further, there are not facts supporting a
20 determination that the exhaustion requirement has been waived by the Commissioner or should be
21 waived by the Court. See *Kildare*, 325 F.3d at 1082.

22 Accordingly, Plaintiff is **ORDERED** to show cause within twenty-one days of the date of
23 service why the action should not be dismissed for his failure to exhaust administrative remedies.

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25 IT IS SO ORDERED.

26 Dated: December 17, 2014

/s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE

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