## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 ROY LEE JONES. Case No.: 1:14-cv-01991 - JLT 11 12 Plaintiff, ORDER TO PLAINTIFF TO SHOW CAUSE WHY THE ACTION SHOULD NOT BE DISMISSED 13 v. FOR PLAINTIFF'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES COMMISSIONER OF SOCIAL SECURITY, 14 15 Defendant. 16 Plaintiff Roy Lee Jones is seeking judicial review of a determination of the Social Security 17 Administration. (Doc. 1.) Plaintiff alleged the ALJ issued a decision denying his claim for benefits on 18 19 September 22, 2014. (Id. at 2.) However, it is not clear that Plaintiff exhausted his administrative 20 remedies, as required pursuant to 42 U.S.C. § 405(g). The Court's jurisdiction to review the denial of Social Security benefits is granted pursuant to 21 22 42 U.S.C. § 405(g), which provides in relevant part: Any individual, after any final decision of the Commissioner made after a hearing to 23 which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him 24 of such decision or within such further time as the Commissioner may allow. Such action shall be brought in the district court of the United States for the judicial district 25 in which the plaintiff resides, or has his principal place of business . . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment 26 affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. 27 *Id.* (emphasis added). Except as provided by statute, "[n]o findings of fact or decision of the 28

Commissioner shall be reviewed by any person, tribunal, or governmental agency." 42 U.S.C. § 405(h). 1 The meaning of the term "final decision" in Section 405(g) was left to the Commissioner of 2 3 Social Security "to flesh out by regulation." Weinberger v. Salfi, 422 U.S. 749, 766 (1975). Pursuant to the Regulations, a claimant obtains the Commissioner's "final decision" only after completing the 4 5 administrative review process, which includes: (1) an initial determination, (2) reconsideration, (3) a hearing before an administrative law judge, and (4) review by the Appeals Council. 20 C.F.R. §§ 6 404.900(a). As a result, the Supreme Court determined judicial review of the denial of benefits is only 7 8 available to a claimant who has exhausted available administrative remedies, explaining: SSA regulations provide that, if the Appeals Council grants review of a claim, then the 9 decision that the Council issues is the Commissioner's final decision. But if ... the Council denies the request for review, the ALJ's opinion becomes the final decision. See 10 20 CFR §§ 404.900(a)(4)-(5), 404.955, 404.981, 422.210(a) (1999). If a claimant fails to request review from the Council, there is no final decision and, as a result, no 11 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, 12 such a claimant may not obtain judicial review because he has failed to exhaust administrative remedies. See Salfi, 422 U.S. at 765-766. 13 Sims v. Apfel, 530 U.S. 103, 107 (2000) (emphasis added). In other words, "[a] final decision has two 14 elements: (1) presentment of the claim to the Commissioner, and (2) complete exhaustion of 15 16 administrative remedies." Kildare v. Saenz, 325 F.3d 1078, 1082 (9th Cir. 2003) (citing Johnson v. Shalala, 2 F.3d 918, 921 (9th Cir. 1993)). 17 Here, there are no facts alleged supporting a finding that Plaintiff exhausted his administrative 18 remedies by requesting review by the Appeals Council. Further, there are not facts supporting a 19 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. Accordingly, Plaintiff is **ORDERED** to show cause within twenty-one days of the date of 22 23 service why the action should not be dismissed for his failure to exhaust administrative remedies. 24 25 IT IS SO ORDERED. 26 Dated: **December 17, 2014** /s/ Jennifer L. Thurston

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UNITED STATES MAGISTRATE JUDGE