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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THEODORE LEE,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. [17-cv-03976-SI](#)**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Re: Dkt. No. 18

United States District Court
Northern District of California

On July 14, 2017, plaintiff Theodore Lee filed this *pro se* action seeking judicial review of the Social Security Administration's decision. Dkt. No. 1. Because the complaint did not appear to state a claim, the Court ordered that plaintiff file a new complaint, which he did on July 25, 2017. Dkt. Nos. 5, 7.

Defendant then moved to dismiss this case for lack of jurisdiction because plaintiff has not yet exhausted his administrative remedies under the Social Security Act. Dkt. No. 18. In support of the motion, defendant has submitted the declaration of Nancy Chung. The declaration states that plaintiff applied for Supplemental Security Income (SSI) on March 31, 2016, that the claim was denied initially and on reconsideration, and that plaintiff then requested a hearing before an Administrative Law Judge, and that the request for a hearing is still pending. Chung Decl. ¶ 3.

Plaintiff missed his first deadline (October 2, 2017) to oppose defendant's motion, and the Court then issued an order extending plaintiff's deadline to November 6, 2017. Dkt. No. 20. Plaintiff has not filed an opposition to defendant's motion.

Under 42 U.S.C. § 405(g), the Court only has jurisdiction to review "final" decisions of the Social Security Administration. Here, because plaintiff is still awaiting a hearing before an Administrative Law Judge, there is not a final decision for this Court to review. *See* 42 U.S.C.

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§ 405(g) (providing for judicial review of “final decision” of Commissioner of Social Security);
Califano v. Sanders, 430 U.S. 99, 108 (1977) (explaining that judicial review of social security
benefits claims is limited to the Secretary’s final decision made after a hearing).

Accordingly, the Court GRANTS defendant’s motion and DISMISSES THIS ACTION
WITHOUT PREJUDICE. If plaintiff receives a final decision on his appeal that is unfavorable,
plaintiff may file a new action seeking review of that final decision.

IT IS SO ORDERED.

Dated: November 13, 2017



SUSAN ILLSTON
United States District Judge