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John Fratus,	)	No. CV-08-1500-ROS
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Sergeant Peterson, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff John Fratus claims he was assaulted by prison guards on January 10, 2007. Defendants filed a motion for summary judgment arguing Plaintiff did not exhaust his administrative remedies regarding that incident. In their reply, however, Defendants “concede that Plaintiff’s opposition raises a factual dispute concerning whether the administrative process was available to him.” (Doc. 175 at 2). Therefore, the motion for summary judgment will be denied and an evidentiary hearing scheduled. *See Albino v. Baca*, 747 F.3d 1162, 1170-71 (9th Cir. 2014) (“[D]isputed factual questions relevant to exhaustion should be decided by the judge, in the same manner a judge rather than a jury decides disputed factual questions relevant to jurisdiction and venue.”). At that hearing, the parties will be required to present testimony and any other evidence addressing whether the administrative process was available to Plaintiff.

Accordingly,


**IT IS ORDERED** the Motion for Summary Judgment (Doc. 171) is **DENIED**.

1           **IT IS FURTHER ORDERED** an evidentiary hearing is set for **January 30, 2015 at**  
2 **2:00 p.m.**, Arizona time, in Courtroom #3, Seventh Floor of the United States Courthouse,  
3 2500 Tulare Street, Fresno, California. The hearing will be conducted by video  
4 teleconference with Judge Silver sitting in Phoenix, Arizona. A writ securing attendance of  
5 Plaintiff shall issue separately.

6           **IT IS FURTHER ORDERED** no later than January 5, 2015 the parties shall  
7 confer regarding the witnesses to be called and evidence to be presented at the hearing.  
8 No later than January 16, 2015 defense counsel shall file a joint statement setting forth the  
9 witnesses to be called and documents to be presented at the hearing. Defense counsel  
10 shall provide a courtesy copy of all exhibits to be used at the hearing to Judge Silver's  
11 chambers no later than January 22, 2015.

12           DATED this 12<sup>th</sup> day of December, 2014.

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Honorable Roslyn O. Silver  
Senior United States District Judge