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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE MEREDITH,

CASE NO. 1:12-cv-455-LJO-MJS (PC)

Plaintiff,

ORDER TO DEFENDANTS BENEVIDEZ,
GAMBOA, AND OVERLEY TO PRODUCE
A DOCUMENT IN CONNECTION WITH
THEIR MOTION TO DISMISS

v.

D. OVERLEY, et al.

Defendants.

_____ /

Plaintiff Dwayne Meredith ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on March 26, 2012. (Compl., ECF No. 1.) The Court found that Plaintiff's First Amended Complaint (ECF No. 8) stated a cognizable claim against Defendants Overley, Benevidez, and Gamboa under the Eighth Amendment of the United States Constitution (ECF No. 9).

On January 7, 2013, Defendants filed a motion to dismiss the action on the ground that Plaintiff had failed to exhaust his administrative remedies prior to commencing the action. (Def.'s Mot., ECF No. 12.) Plaintiff filed an opposition (Pl.'s Opp'n, ECF No. 16) and Defendants a reply (Def.'s Reply, ECF No. 25).

The Court finds that additional information is necessary to enable it to address and resolve the issues presented in Defendants' motion.

In his opposition, Plaintiff included a partial copy of an appeal numbered "COR-10-

1 3293.” Defendants allege that this appeal was denied at the third level of review because
2 Plaintiff had bypassed lower levels of review and, thus, failed to exhaust his appeals.
3 Plaintiff alleges that it was the prison itself that bypassed lower levels of review and then
4 incorrectly attributed the failure to exhaust to Plaintiff. Neither party submitted a complete
5 copy of the appeal or the institution review log for it. Such information is necessary to
6 enable proper evaluation of the motion to dismiss. Defendants are in the better position
7 to secure and provide this information to the Court,

8 Accordingly, Defendants are ORDERED to provide a complete copy of appeal COR-
9 10-3293 and a copy of the institution’s log regarding this appeal to the Court within
10 **fourteen (14) days** of entry of this order.

11 IT IS SO ORDERED.

12 Dated: May 29, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE