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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TIMOTHY HOWARD,)	1:12cv00487 LJO DLB PC
)	
Plaintiff,)	ORDER SETTING
)	EVIDENTIARY HEARING
vs.)	
)	Date: April 15, 2015
G. GONZALES,)	Time: 10:00 a.m.
)	The Honorable Dennis L. Beck, Courtroom 6
Defendant.)	

Plaintiff Timothy Howard (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on March 30, 2012. He filed a First Amended Complaint on June 27, 2014.

Defendant filed a motion for summary judgment based on exhaustion on August 21, 2014. On January 23, 2015, the District Court adopted the Magistrate Judge’s Findings and Recommendations. Defendant’s motion for summary judgment was granted as to Plaintiff’s claims that Defendant (1) refused to file his grievances; and (2) denied medical care on December 22, 2009, and these claims were dismissed without prejudice.

Defendant’s motion was denied as to Plaintiff’s claim of retaliation, and the Court referred the matter back to the Magistrate Judge for further proceedings on the exhaustion issue.

1 In Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014), the Ninth Circuit held that where
2 a genuine dispute of material fact exists, the issue should be resolved by the judge “at the very
3 beginning of the litigation.”

4 Accordingly, the Court SETS an evidentiary hearing before the Honorable Dennis L.
5 Beck, United States Magistrate Judge, to decide the disputed issues of fact relating to the
6 exhaustion of Plaintiff’s retaliation claim. The hearing will be held on April 15, 2015, at 10:00
7 a.m., in Courtroom 6, Seventh Floor of the United States Courthouse in Fresno, California. The
8 hearing will commence and be completed that afternoon, and will be limited to the issue of
9 whether Plaintiff’s January 8, 2010, appeal exhausted his retaliation claim.
10

11 IT IS SO ORDERED.

12
13 Dated: January 27, 2015

/s/ Dennis L. Beck
14 UNITED STATES MAGISTRATE JUDGE