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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 LARRY WILLIAM CORTINAS,) Case No.: 1:13-cv-01229-AWI-SAB (PC)
12)
13 Plaintiff,)
14)
15 v.) ORDER SETTING EVIDENTIARY
16) HEARING
17)
18) Date: **May 19, 2015**
19) Time: **1:00 p.m.**
20) **Honorable Stanley A. Boone, Courtroom 9**
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17 Plaintiff Larry William Cortinas is appearing pro se and in forma pauperis in this civil rights
18 action pursuant to 42 U.S.C. § 1983.

19 On February 13, 2015, Judge Ishii denied Defendants' motion for summary judgment finding
20 that a disputed issue of facts exists, and the matter was referred back to the undersigned for a
21 determination on the issue of exhaustion. (ECF No. 54.)

22 In Albino v. Baca, 747 F.3d 1162, 1170-1171 (9th Cir. 2014), the Ninth Circuit held that "[i]f a
23 motion for summary judgment is denied, disputed factual questions relevant to exhaustion should be
24 decided by the judge, in the same manner a judge rather than a jury decides disputed factual questions
25 relevant to jurisdiction and venue." (citations omitted).

26 Accordingly, the Court SETS an evidentiary hearing to decide the disputed issues of facts
27 relating to exhaustion of the administrative remedies. The hearing will be held on **May 19, 2015 at**
28 **1:00 p.m.**, in Courtroom 9, Sixth Floor of the United States Courthouse in Fresno, California. The

1 hearing will commence and be completed that afternoon, and will be limited to the following issues
2 relating to exhaustion of the administrative remedies: (1) whether Plaintiff's inmate appeal number
3 CSPC-5-12-1100 was improperly rejected at the second level of review for Plaintiff's failure to
4 participate in the interview process; and (2) whether Plaintiff received the letter dated July 30, 2012,
5 informing him that his appeal was cancelled at the second level of review for failure to cooperate.

6
7 IT IS SO ORDERED.

8 Dated: March 3, 2015


UNITED STATES MAGISTRATE JUDGE