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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	JAMES CATO, JR.,	Case No.: 1:14-cv-00564-LJO-SAB (PC)
12	Plaintiff,) ORDER SETTING EVIDENTIARY HEARING ON ISSUE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES
13	v.)	
14	D. DUMONT,	Date: February 17, 2016, at 11:00 a.m., in
15	Defendant.	Courtroom 9 (SAB)
16)	
17	Plaintiff James Cato, Jr. is appearing pro se and in forma pauperis in this civil rights action	
18	pursuant to 42 U.S.C. § 1983.	
19	This action is proceeding against Defendant Dumont for retaliation in violation of the First	
20	Amendment.	
21	Defendant filed a motion for summary judgment based on Plaintiff's failure to exhaust the	
22	administrative remedies. (ECF No. 36.) On January 6, 2016, the assigned district judge adopted the findings and recommendations to deny the motion. (ECF No. 37.) The matter was referred back to	
23 24	the undersigned for further proceedings on the issue of exhaustion.	
24	Accordingly, the Court HEREBY SETS an evidentiary hearing before the undersigned to	
26	decide the disputed issues of fact relating to the exhaustion of Plaintiff's claim. The hearing will be	
27	held on Wednesday, February 17, 2016, at 11:00 a.m., in Courtroom 9, Sixth Floor of the United	
28	States District Court in Fresno, California. The hearing will commence and be completed that day,	

and will be limited to the issue of whether Plaintiff is excused from the Prison Litigation Reform Act's 2 exhaustion requirement because administrative remedies were "effectively unable." The limited issue to be determined at the hearing is whether Plaintiff submitted an inmate grievance on August 23, 2012, 3 but never received a response. 4

In preparation for the hearing, it is HEREBY ORDERED that, no later than February 1, 2016, the parties shall confer regarding the witnesses to be called and the evidence to be presented at the hearing. No later than February 8, 2016, defense counsel shall file a statement setting forth the witnesses to be called and the documents to be presented at the hearing. The parties shall be prepared to submit exhibits in proper form at the evidentiary hearing, with proper foundation. The original and three copies of all exhibits, along with exhibit lists, shall be submitted to Courtroom Deputy Mamie Hernandez no later than **February 8, 2016.**³ Plaintiff's exhibits shall be pre-marked using numbers beginning with 1 (e.g., 1, 2, etc.). Defendant's exhibits must be pre-marked using letters beginning with A (e.g., A, B, C...AA, BB, CC...AAA, BBB, CCC, etc.). A separate order and writ of habeas corpus ad testificandum with issue in due course.

IT IS SO ORDERED.

Dated: **January 7, 2016**

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MAB

UNITED STATES MAGISTRATE JUDGE

Original for the Courtroom Deputy, one copy for the undersigned, one copy for the witness stand, one copy for the opposing side.

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