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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FELIPE GARCIA,
Plaintiff,
v.
J. HOBMEIER, et al.,
Defendants.

Case No. 1:14-cv-00625-LJO-SAB (PC)
ORDER SETTING EVIDENTIARY
HEARING ON ISSUE OF EXHAUSTION
OF ADMINISTRATIVE REMEDIES
**Date: October 25, 2017, at 1:00 p.m., in
Courtroom 9 (SAB)**

Plaintiff Felipe Garcia is appearing pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding on Plaintiff's claim for excessive force against Defendant Emerson and claim for failure to protect against Defendants Gaona, Hobmeier, and Wildey.

On October 19, 2016, Defendants filed a motion for summary judgment for failure to exhaust administrative remedies. On September 5, 2017, the assigned district judge issued an order amending the order adopting findings and recommendations, denying Defendants' motion for summary judgment, and referring the matter to the undersigned for the purpose of setting and conducting an evidentiary hearing on the issue of exhaustion.

Accordingly, the Court HEREBY SETS an evidentiary hearing before the undersigned to decide the disputed issues of fact relating to the exhaustion of Plaintiff's claims. The hearing will be held on **Wednesday, October 25, 2017, at 1:00 p.m.**, in Courtroom 9, Sixth Floor of the

1 United States District Court in Fresno, California. The hearing will commence and be completed
2 that day, and will be limited to the issue of whether Plaintiff is excused from the Prison
3 Litigation Reform Act's exhaustion requirement because administrative remedies were
4 "effectively unavailable." To this end, the limited issues to be determined at the hearing are
5 whether Plaintiff was thwarted in his attempts to exhaust his administrative remedies in March
6 2013 and April 2013, including whether Defendant Emerson did not give Plaintiff a 602 form on
7 March 11, 2013, whether Plaintiff submitted a handwritten appeal on March 15, 2013, and
8 whether Plaintiff submitted a 602 form between April 5, 2013, and April 7, 2013. See Albino v.
9 Baca, 747 F.3d 1162, 1170-1171 (9th Cir. 2014).

10 In preparation for the hearing, it is HEREBY ORDERED that, no later than **October 11,**
11 **2017**, the parties shall confer regarding the witnesses to be called and the evidence to be
12 presented at the hearing. No later than **October 18, 2017**, defense counsel shall file a statement
13 setting forth the witnesses to be called and the documents to be presented at the hearing. The
14 parties shall be prepared to submit exhibits in proper form at the evidentiary hearing, with proper
15 foundation. The original and three copies of all exhibits, along with exhibit lists, shall be
16 submitted to Courtroom Deputy Mamie Hernandez no later than **October 18, 2017**.³ Plaintiff's
17 exhibits shall be pre-marked using numbers beginning with 1 (e.g., 1, 2, etc.). Defendants'
18 exhibits must be pre-marked using letters beginning with A (e.g., A, B, C ... AA, BB, CC ...
19 AAA, BBB, CCC, etc.). A separate order and writ of habeas corpus ad testificandum for
20 Plaintiff will be issued.

21 IT IS SO ORDERED.

22 Dated: September 6, 2017


UNITED STATES MAGISTRATE JUDGE

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27 _____
28 ³ Original for the Courtroom Deputy, one copy for the undersigned, one copy for the witness stand, one copy for the opposing side.