## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

JAMAR HEARNS.

Plaintiff,

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R. GONZALES, et al.,

Defendants.

CASE NO. 1:14-cv-01177-DAD-MJS (PC)

## ORDER SETTING EVIDENTIARY HEARING

Date: May 26, 2017

Time: 9:30 a.m., Courtroom 6 (MJS)

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Rosa Gonzales and Sergeant Olsen on Plaintiff's First Amendment retaliation, Fourteenth Amendment Equal Protection, and state tort conversion claims.

Defendants filed a motion for summary judgment based on Plaintiff's failure to exhaust administrative remedies. (ECF No. 38.) On March 10, 2017, the District Court adopted the Magistrate Judge's Findings and Recommendations to deny the motion. (ECF No. 67.) The matter was referred back to the Magistrate Judge for further proceedings on the issue of exhaustion.

Accordingly, the Court HEREBY SETS an evidentiary hearing before the Honorable Michael J. Seng, United States Magistrate Judge, to decide the disputed issues of fact relating to the exhaustion of Plaintiff's claims. The hearing will be held on May 26, 2017, at 9:30 a.m., in Courtroom 6, Seventh Floor of the United States District Court in Fresno, California. The hearing will commence and be completed that day, and

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will be limited to the issue of whether Plaintiff is excused from the Prison Litigation Reform Act's exhaustion requirement because administrative remedies were "effectively unavailable."

More specifically, the parties should be prepared to present evidence as to the following:

- Whether Plaintiff's Appeal No. VSP-D-13-02232 was timely and properly resubmitted on October 1, 2013 after it was cancelled on September 30, 2013;
- Whether Appeals Coordinators failed to respond to or otherwise process
   Plaintiff's resubmitted Appeal No. VSP-D-13-02232;
- Whether prison officials failed to respond to or otherwise process Plaintiff's October 27, 2013 and November 24, 2013 CDCR Forms 22 inquiring about the status of resubmitted Appeal No. VSP-D-13-02232; and
- Whether Plaintiff had a reasonable, good faith belief that the administrative appeals process was effectively unavailable to him.

In preparation for the hearing, it is HEREBY ORDERED that, no later than April 26, 2017, the parties shall confer regarding the witnesses to be called and evidence to be presented at the hearing. No later than May 10, 2017, defense counsel shall file a statement setting forth the witnesses to be called and documents to be presented. Defense counsel shall provide a courtesy copy of all exhibits to be used at the hearing to Plaintiff and to Judge Seng's chambers no later than May 10, 2017.

IT IS SO ORDERED.

Dated: March 13, 2017 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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