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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARQUES BUTLER,

 Plaintiff,

 v.

R. BOOZER, et al.,

 Defendants.

1:14-cv-01220-DAD-EPG (PC)

ORDER SETTING EVIDENTIARY
HEARING
(ECF NO. 17)

On April 19, 2017, the Court held a hearing on Defendants’ motion for summary judgment for failure to exhaust administrative remedies. Plaintiff Marques Butler telephonically appeared on his own behalf. Counsel Gabrielle DeSantis-Nield telephonically appeared on behalf of defendant S. Espino. Counsel Cassandra Shryock personally appeared on behalf of all defendants except defendant S. Espino. After hearing arguments, as well as reviewing the briefs and the evidence, the Court has determined that there is a dispute of fact and that an Albino evidentiary hearing is necessary. See Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014).

As discussed at the hearing, the parties should be prepared to present evidence regarding what occurred during Plaintiff’s interview that led to the cancelation of Plaintiff’s appeal (appeal log no. PVSP-12-02350). Additionally, the parties should be prepared to put on evidence regarding Plaintiff’s appeal of the cancellation of the appeal with appeal log no. PVSP-12-02350.

The parties do not need to present evidence regarding the following factual allegations, which the Court regards as undisputed: 1) That the California Department of Corrections and Rehabilitation (“CDCR”) has an administrative appeals system for prisoners’ complaints,

1 described in the California Code of Regulations, Title 15, Section 3084, et seq.; 2) That California
2 Code of Regulations, Title 15, section 3084.1(a) provides that any inmate may appeal any
3 departmental decision, action, condition, or policy which they can demonstrate as having an
4 adverse effect upon their welfare; 3) That there are three levels of review required for inmates to
5 complete in order to exhaust administrative remedies; 4) That grievances classified as “staff
6 complaints” bypass the first level of review and are initially reviewed at the second level; and 5)
7 That a final review and decision by the Chief of the Office of Appeals, also known as the “third
8 level” or Director’s level of appeal, exhausts the inmate’s administrative remedies.

9 In accordance with the above, IT IS HEREBY ORDERED that an Albino evidentiary
10 hearing is set before Magistrate Judge Erica P. Grosjean on June 16, 2017, at 12:30 p.m., at the
11 Robert E. Coyle Federal Courthouse, 2500 Tulare Street, Fresno, CA 93721, in Courtroom #10.

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13 IT IS SO ORDERED.

14 Dated: April 21, 2017

/s/ Erica P. Grosjean
UNITED STATES MAGISTRATE JUDGE

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