

1 *Ross v. Blake*, --- U.S. ---, 136 S. Ct. 1850, 1858 (June 6, 2016). (Doc. 44.) However, as
2 correctly stated in the F&R, when moving for summary judgment, Defendants must first prove
3 that there was an available administrative remedy which Plaintiff did not exhaust prior to filing
4 suit. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015) (citing *Albino v. Baca*, 747 F.3d
5 1162, 1172 (9th Cir. 2014) (en banc)). “Under § 1997e(a), the exhaustion requirement hinges on
6 the “availability” of administrative remedies: An inmate, that is, must exhaust available remedies,
7 but need not exhaust unavailable ones.” *Ross v. Blake*, --- U.S. ---, 136 S. Ct. 1850, 1858 (June 6,
8 2016). Defendants failed to show that Plaintiff had been informed of the requirements under Title
9 15 both to list of all offending prison staff (§ 3084.2(a)(3)) and for detailed factual specificity (§
10 3084.2(a)(4)). Yet their motion relied heavily on these requirements. An administrative process
11 that is not conveyed to the inmates effectively renders the remedy unavailable since “essentially
12 ‘unknowable’ -- so that no ordinary prisoner can make sense of what it demands” *Ross v.*
13 *Blake*, --- U.S. ---, 136 S. Ct. 1850, 1859-60 (2016), quoting *Goebert v. Lee County*, 510 F.3d
14 1312, 1323 (C.A.11 2007), and *Turner v. Burnside*, 541 F.3d 1077, 1084 (C.A.11 2008)
15 (“Remedies that rational inmates cannot be expected to use are not capable of accomplishing their
16 purposes and so are not available”). Inmate Appeals #13-1073 and #13-1320 exhausted Plaintiff’s
17 available administrative remedies on his claims under § 1983 in this action.

18 Plaintiff objected that his attempts to file suit in Kings County Superior Court in March
19 and May of 2013 on his claims under California law were timely and sufficed his obligation to
20 commence a timely civil action under California Government Code § 945.6, subd. (a)(1). (Doc.
21 45.) However, as noted in the F&R, neither of those filings “commenced” an action as both were
22 rejected by the Superior Court and Plaintiff’s filing in June of 2013 was not timely for purposes
23 of the California Tort Claims Act.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
25 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
26 Findings and Recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed July 27, 2016 (Doc. 43), is adopted in full;¹ and
2. This case is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: September 15, 2016 /s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE

¹There are no factual disputes which require an evidentiary hearing. *Albino*, 747 F.3d at 1170. Defendants’ request for a hearing is denied.