UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

THURMAN GAINES,) Case No.: 1:15-cv-00587-NONE-SAB (PC)
Plaintiff, v. CALIFORNIA DEPT. OF CORRECTIONS et al.,	ORDER SETTING EVIDENTIARY HEARING TO DETERMINE DISPUTED ISSUES OF FACT REGARDING EXHAUSTION OF THE ADMINISTRATIVE REMEDIES (ECF No. 94)
Defendants.))))

Plaintiff Thurman Gaines is proceeding *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is represented by Robert Flynn.

On January 15, 2020, Defendants' exhaustion related motion for summary judgment was denied, without prejudice. (ECF No. 94.) The Court found that material disputes of fact exist whether Plaintiff filed an administrative appeal grieving Defendant's denial of a lower tier and lower bunk chrono. (Id.)

In order to resolve the disputes of fact, the Court sets an <u>Albino</u> evidentiary hearing before the undersigned on **Friday**, **November 13**, **2020**, **at 10:00 a.m.** in Courtroom 9. In light of the coronavirus (COVID-19) outbreak and the evolving coronavirus protocols, the Court finds that the parties shall appear **remotely** via Zoom. The parties shall meet and confer to determine whether they can present their witnesses and evidence during the evidentiary hearing via the Zoom application.

Counsel for the parties shall contact Courtroom Deputy, Mamie Hernandez, at (559) 499-5672 or mhernandez@caed.uscourts.gov for the video and dial-in information for all parties. Counsel are also required to arrange for Plaintiff's participation by contacting the Litigation Coordinator at the institution where Plaintiff is housed and providing the necessary Zoom contact information.

Any unincarcerated witnesses may appear voluntarily without further order of the Court. To the extent that the parties seek to have incarcerated witnesses appear for the evidentiary hearing, all motions for the attendance of incarcerated witnesses must be filed on or before **September 30, 2020**. The witnesses must have relevant evidence regarding the issues described above. The motion should be entitled "Motion for Attendance of Witnesses." The motion must: (1) state the name, address, and prison identification number (if any) of each witness to be called; (2) explain what relevant information each witness has, and how that witness has personal knowledge of the relevant information; and (3) state whether each such witness is willing to voluntarily testify. Any opposition to a motion for the attendance of incarcerated witnesses must be filed on or before **October 7, 2020**.

No later than **October 20, 2020**, the parties shall confer regarding the witnesses to be called and the evidence to be presented at the hearing. No later than **November 3, 2020**, each party shall file and serve a witness list. The parties shall be prepared to submit any relevant documents available to share on screen (via the Screen Share feature on Zoom) with the Court and other parties during the settlement conference. 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 ... AAA, BBB, CCC, etc.).

A separate order and writ of habeas corpus ad testificandum for Plaintiff's attendance at the hearing will be issued in due course.

IT IS SO ORDERED.

Dated: **September 15, 2020**

UNITED STATES MAGISTRATE JUDGE

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