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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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7 MANUEL ANTONIO GONZALEZ,

8 Plaintiff,

9 v.

10 J. RAZO, et al.,

11 Defendants.

Case No. 1:15-cv-01098-DAD-EPG (PC)

ORDER ALLOWING ADDITIONAL
BRIEFING AND EVIDENCE, AND SETTING
DEADLINES

(ECF NOS. 58 & 83)

12 On July 27, 2017, the Court held a hearing on Defendants' motion for summary judgment.
13 (ECF No. 58). Counsel Stanley Goff appeared telephonically on behalf of Plaintiff. Counsel
14 David Carrasco appeared telephonically on behalf of Defendants.
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16 The hearing concerned certain disputes about the law as well as the factual record. One
17 legal issue concerned the effect of Reyes v. Smith, 810 F.3d 654 (9th Cir. 2016), and specifically
18 whether the Ninth Circuit's decision in that case concerned a grievance filed under CDCR's
19 current procedures regarding identification of personnel. The Court gave Plaintiff's counsel leave
20 to submit an additional short legal brief regarding that case, and will extend the same courtesy to
21 Defense counsel as ordered below.

22 Additionally, the Court discussed Plaintiff's submissions at ECF No. 64, and 66. Neither
23 Plaintiff's nor Defendants' counsel appeared familiar Plaintiff's submissions, which were made
24 by Plaintiff himself, rather than his counsel. At the hearing, the parties discussed certain
25 seemingly relevant documents and also noted that Plaintiff's papers referenced the location of
26 other potentially relevant information. Defense counsel objected to consideration of such
27 evidence because it was not submitted by Plaintiff's counsel. The Court expressed its extreme
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1 concern that documents included in those submission call into question representations made in
2 Defendant's motion for summary judgment. Accordingly, the Court will allow additional
3 submission of evidence and argument regarding these documents, as described below.

4 Additionally, defense counsel asked that the Court decline to consider a declaration by the
5 Plaintiff because it was not signed by hand. (ECF No. 77). Plaintiff's counsel stated that it could
6 obtain a signed declaration with additional time.

7 Accordingly, IT IS HEREBY ORDERED that, no later than August 17, 2017, the parties
8 have leave to submit the following, which the Court will consider in reference to Defendants'
9 Motion for Summary Judgment (ECF No. 58):

- 10 1. Plaintiff shall submit a signed copy of his declaration (ECF No. 77);
- 11 2. Defendants shall submit all documents associated with health care appeal log number
12 14036162, which was referenced in the Declaration of Robinson, (ECF No. 58-6, p. 3)
13 in a list of medical appeals followed by the statement "None of these appeals concern
14 an incident on March 18, 2014, in which custody staff allegedly used excessive force,
15 failed-to-protect, were deliberately indifferent to, or retaliated against inmate
16 Gonzalez."
- 17 3. The parties have leave to submit additional evidence regarding any appeal/grievance
18 that may have exhausted Plaintiff's available administrative remedies, after additional
19 consideration of any relevant health care appeals as well as information referenced in
20 Plaintiff's direct submissions to the Court;
- 21 4. Each party may also file a supplemental legal brief, if they so choose, to address these
22 issues. The brief shall be no longer than ten (10) pages. The brief may contain
23 information relating to whether the grievance at issue in Reyes v. Smith, 810 F.3d 654
24 (9th Cir. 2016) was filed after Cal. Code Regs. tit. 15, § 3084.2(a)(3) was enacted.

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The parties' briefs may also contain arguments related to whether any grievances/appeals not addressed in the parties prior briefs, including the health care appeal with log number 14036162, exhausted Plaintiff's administrative remedies as to any defendant.

IT IS SO ORDERED.

Dated: July 31, 2017

/s/ Eric P. Shoup
UNITED STATES MAGISTRATE JUDGE