

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7

8 MARIO MOLINA,

9 Plaintiff,

10 v.

11 K. HOLLAND, et al.,

12 Defendants.  
13

1:15-cv-01260-EPG (PC)

ORDER SETTING EVIDENTIARY  
HEARING AND RELATED DEADLINES  
(ECF NO. 37)

14 On April 27, 2017, Defendants filed a motion for summary judgment under Federal Rule  
15 of Civil Procedure 56, arguing that Plaintiff failed to exhaust his administrative remedies prior to  
16 filing this case. (ECF No. 37). On May 15, 2017, Plaintiff filed his opposition to the motion.  
17 (ECF No. 41). On May 22, 2017, Defendants filed their reply and objections to Plaintiff's  
18 evidence. (ECF Nos. 43 & 44).

19 After reviewing the evidence, the Court determined that there is a dispute of material fact  
20 and that an Albino evidentiary hearing is necessary. See Albino v. Baca, 747 F.3d 1162, 1170  
21 (9th Cir. 2014). Among other disputed facts, Plaintiff alleged threats Plaintiff faced when  
22 pursuing his administrative grievances. See Ross v. Blake, 136 S. Ct. 1850, 1860 (2016) (An  
23 administrative procedure is unavailable "when prison administrators thwart inmates from taking  
24 advantage of a grievance process through machination, misrepresentation, or intimidation.").  
25 Additionally, Plaintiff has alleged that his grievance was timely submitted, but never processed.  
26 See Andres v. Marshall, 854 F.3d 1103, 1105 (9th Cir. 2017) ("When prison officials fail to  
27 respond to a prisoner's grievance within a reasonable time, the prisoner is deemed to have  
28

1 exhausted available administrative remedies within the meaning of the [Prison Litigation Reform  
2 Act].”).

3 Accordingly, on May 31, 2017, the Court held a telephonic conference regarding the  
4 setting of an evidentiary hearing on the issue of exhaustion of administrative remedies. (ECF No.  
5 46). Plaintiff Mario Molina telephonically appeared on his own behalf. Counsel Cassandra  
6 Shryock telephonically appeared on behalf of Defendants.

7 The evidentiary hearing will take place on August 1, 2017, at 11:00 a.m.

8 Additionally, Plaintiff will be given until June 9, 2017, to file a motion for the attendance  
9 of witnesses. The motion should be entitled “Motion for Attendance of Witnesses.” The motion  
10 must: (1) state the name, address, and prison identification number (if any) of each witness; (2)  
11 explain what relevant information each witness has, and how that witness has personal knowledge  
12 of the relevant information; and (3) state whether each such witness is willing to voluntarily  
13 testify. Defendants will be given until June 20, 2017, to file their opposition, if any, to the  
14 motion. The Court notes that the evidentiary hearing is related only to the issue of exhaustion of  
15 administrative remedies. Accordingly, Plaintiff should only ask for the attendance of witnesses  
16 that have information relevant to the issue of exhaustion (which includes the issue of the  
17 availability of administrative remedies).

18 The parties do not need to present evidence regarding the following factual allegations,  
19 which the Court finds undisputed for the purposes of the evidentiary hearing:<sup>1</sup>

- 20 1. The California Department of Corrections and Rehabilitation (“CDCR”) has a  
21 comprehensive administrative appeals system for prisoners’ complaints,  
22 described in the California Code of Regulations (CCR), Title 15, § 3084, et  
23 seq.<sup>2</sup> CCR, Title 15, § 3084.1(a) provides that any inmate may appeal any

---

24  
25 <sup>1</sup> The Court has compiled the summary of undisputed facts from Defendants’ separate statement of  
26 undisputed facts (ECF No. 37-1) and Plaintiff’s response to Defendants’ statement of disputed facts. (ECF No. 41,  
pgs. 3-8)

27 <sup>2</sup> “Effective January 28, 2011, the regulations governing inmate appeals were amended by Title 15  
28 of the CCR, Section 3084, et seq. See CCR, tit. 15, §§ 3084-3084.8 (amended 2011). Because the inmate’s claims  
relate to incidents in 2011 and 2012, the amended regulations described herein apply, as they were in effect at the  
time the events alleged occurred.” (ECF No. 37-1, p.2, n. 1).

1 departmental decision, action, condition, or policy which they can demonstrate  
2 as having a material effect upon their welfare;<sup>3</sup>

- 3 2. Grievances that are classified as “staff complaints” bypass the first level of  
4 review and are initially reviewed at the second level. An appeal alleging staff  
5 misconduct must be presented to the hiring authority by the appeals  
6 coordinator within five days. The hiring authority then determines whether the  
7 appeal will be processed as a staff complaint. If the hiring authority  
8 determines that an appeal will be processed as a staff complaint, notice is sent  
9 to the inmate’s facility. The Appeals Office in the facility<sup>4</sup> then sends the  
10 inmate notice that the appeal will be processed as a staff complaint and the  
11 date that the appeal response is due to the inmate;
- 12 3. At the first and second levels of review, inmate appeals must be responded to  
13 within thirty (30) days;
- 14 4. To exhaust the administrative appeal process, the inmate must complete his  
15 appeal through the Third Level of Review;

16 In accordance with the above, IT IS HEREBY ORDERED that:

- 17 1. An Albino evidentiary hearing is set before Magistrate Judge Erica P. Grosjean  
18 on August 1, 2017, at 11:00 a.m., at the Robert E. Coyle Federal Courthouse,  
19 2500 Tulare Street, Fresno, CA 93721, in Courtroom #10; and

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \_\_\_\_\_  
26 <sup>3</sup> Plaintiff disputes this fact. However, Plaintiff appears to dispute this fact only on the grounds that  
27 administrative remedies were effectively unavailable to Plaintiff. In listing this fact as undisputed, the Court is not  
28 making a finding that the administrative remedies were available to Plaintiff.

<sup>4</sup> Plaintiff disputes this fact, stating that the Appeals Office is not on the facility, but is located at  
“the Institution.” (ECF No. 41, p. 5). However, this dispute does not appear to be relevant to the issue at hand.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Plaintiff has until June 9, 2017, to file a motion for the attendance of witnesses.  
Defendants have until June 20, 2017, to file their opposition, if any, to the  
motion.

IT IS SO ORDERED.

Dated: June 1, 2017

/s/ Eric P. Shoup  
UNITED STATES MAGISTRATE JUDGE