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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELAINE K. VILLAREAL,

Plaintiff,

v.

COUNTY OF FRESNO,

Defendant.

Case No. 1:15-cv-01410-EPG (PC)
ORDER VACATING ALBINO HEARING
AND WRITS OF HABEAS CORPUS AD
TESTIFICANDUM
(ECF NOS. 48, 56, 57, 58, & 59)
ORDER DIRECTING COUNTY OF
FRESNO TO FACILITATE PHONE CALL

On November 13, 2017, the Court held a telephonic status conference in this case. As stated on the record, IT IS ORDERED that:

1. The Albino hearing set for November 14, 2017, is VACATED;¹
 2. Plaintiff’s counsel may file a motion for fees and costs based on the withdrawal of the exhaustion defense on the literal eve of the hearing, after incursion of fees and costs.
- The Court will allow Defendant to respond to any such motion;

¹ As discussed on the record, the allegations by Plaintiff and other inmates who were set to testify at the hearing have raised serious concerns about the grievance process at Fresno County Jail. While Defendant’s decision to waive the exhaustion defense in this case has rendered this hearing moot, the Court encourages the County of Fresno to investigate these allegations internally and take steps to remedy any issues that appear well founded.

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- 3. Defendant has agreed to waive its affirmative defense of failure to exhaust administrative remedies as to the claims in Plaintiff’s current complaint (see ECF Nos. 1 & 7);
- 4. Defendant has until November 14, 2017, to file a formal notice of withdrawal of its affirmative defense of failure to exhaust administrative remedies;
- 5. Defendant has until November 14, 2017, to file a response to Plaintiff’s allegations regarding the inspection that took place on November 4, 2017 (see ECF No. 63). Plaintiff has until November 21, 2017, to file a reply. After reviewing the filings the Court may set an evidentiary hearing regarding the alleged incident;
- 6. Defendant shall facilitate a confidential telephone call between Elaine K. Villareal and her counsel, Jeff Price. The confidential telephone call shall be placed on Tuesday, November 14, 2017, between the hours of 8:00 a.m. and 10:00 a.m. The call shall continue, without interruption, for a maximum of thirty (30) minutes or until completed, whichever is earlier. Defendant shall initiate the telephone call by calling the number(s) Mr. Price provided to Defendant’s counsel. The telephone conversation shall be a confidential communication between Mr. Price and his client and conducted so as not to be overheard by correctional staff or others. Correctional staff, however, may keep inmate Villareal under visual surveillance during the telephone conversation for security purposes;
- 7. The Order & Writ of Habeas Corpus Ad Testificandum to Transport Elaine K. Villareal, Jail ID # 1439621 (ECF No. 56), is VACATED;
- 8. The Order & Writ of Habeas Corpus Ad Testificandum to Transport Kristy Flores, Jail ID # 0857321 (ECF No. 57), is VACATED;
- 9. The Order & Writ of Habeas Corpus Ad Testificandum to Transport Monica Macias, Jail ID # 7031920 (ECF No. 58), is VACATED; and

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10. The Order & Writ of Habeas Corpus Ad Testificandum to Transport Angie Padilla,
CDCR # X-36920 (ECF No. 59), is VACATED.

IT IS SO ORDERED.

Dated: November 13, 2017

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE