

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN E. SAYLOR.

Plaintiff,

Y.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:21-cv-01062-EPG (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR COURT TO PERMIT TELEPHONIC
APPEARANCE AND PLAINTIFF'S MOTION
FOR COURT TO RECEIVE
SUPPLEMENTAL PROOF OF
EXHAUSTION

(ECF Nos. 7, 8)

Plaintiff Brian Saylor (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On July 14, 2021, Plaintiff filed a motion requesting that he be permitted to appear telephonically for any future appearances in this case. (ECF No. 7.) The same day, Plaintiff filed a separate motion requesting that the Court “receive supplemental proof satisfying the exhaustion requirement.” (ECF No. 8.)

The Court will deny Plaintiff's motion requesting to appear telephonically for all future appearances. Plaintiff's complaint is currently before the Court for screening and there are no upcoming appearances. While the Court will permit telephonic appearance whenever practicable, appearances are handled on a case by case basis and on certain occasions Plaintiff may be required to appear in person or by video conference. An order permitting Plaintiff to appear

1 telephonically for all future appearances is not appropriate at this time.

2 The Court will also deny Plaintiff's motion regarding supplemental proof of exhaustion.
3 Exhaustion is an affirmative defense that is ordinarily resolved on summary judgment unless lack
4 of exhaustion is clear on the face of the complaint. Thus, it is not necessary for Plaintiff to submit
5 evidence at this time. If Plaintiff believes his complaint makes errors in its statements regarding
6 exhaustion, he may move to amend it.

7 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to permit telephonic
8 appearance (ECF No. 7) and motion to receive supplemental proof of exhaustion (ECF No. 8) are
9 DENIED.

10 IT IS SO ORDERED.

11 Dated: July 15, 2021

12 /s/ *Eric P. Groj*
13 UNITED STATES MAGISTRATE JUDGE

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