

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY M. CORDERO,
Plaintiff,
v.
NICK GUZMAN, et al.,
Defendants.

No. 2:13-cv-1551 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for an evidentiary hearing before the undersigned on September 14, 2015, regarding the issue of exhaustion of administrative remedies. On July 30, 2015, plaintiff filed a pleading identifying his witnesses. (ECF No. 75.) To the extent this pleading includes a request for court assistance in obtaining the appearance of these witnesses at the evidentiary hearing, for the following reasons, this request is denied.

The evidentiary hearing will address the issue of whether plaintiff exhausted his administrative hearings as to his claims against defendant Parra. Plaintiff’s claims against defendant Parra are set forth herein.

In the original complaint, plaintiff alleges that on March 5, 2015, plaintiff telephoned his attorney to discuss filing a civil suit against High Desert State Prison (“HDSP”) and defendant Parra. (ECF No. 1 at 6.) While on the telephone, plaintiff became aware that defendant Parra

1 was monitoring the call. (Id. at 6-7.) Plaintiff also heard a distinct “click,” which meant that the
2 call was being monitored by CDCR staff. (Id. at 7.)

3 On March 5, 2013, plaintiff was assaulted by inmates Valdivia and Trejo of the Two-Five
4 gang. (Id.) Inmates Valdivia and Trejo later told plaintiff that they had conspired with defendant
5 Parra to assault plaintiff. (Id.) They explained that defendant Parra told them that plaintiff was
6 “dropping kites” on the Two-Five gang. (Id.) “Dropping kites” is prison slang for providing
7 prison staff with information about the members of the gang. (Id.) Plaintiff alleges that
8 defendant Parra conspired with inmates Valdivia and Trejo to assault him in retaliation for filing a
9 staff complaint against defendant Guzman. (Id.)

10 The April 20, 2015 findings and recommendations addressing defendants’ summary
11 judgment motion discussed the issue of administrative exhaustion as set forth herein:

12 On March 10, 2013, plaintiff filed grievance 13-2073 raising his
13 claims against defendant Parra. (ECF No. 57 at 75.) This
14 grievance was processed as a staff complaint apparently based on
15 plaintiff’s allegations that defendant Parra facilitated the attack by
16 the other inmates on plaintiff. The first level response is unclear.
17 (Id. at 81.) However, it appears to have been granted in part. (Id.)
18 Plaintiff’s appeal was accepted at the second level of review and
19 also granted in part. (Id. at 82.) The second level response states
20 that on March 5, 2013, Sergeant Nadel conducted a videotaped
21 interview with plaintiff. (Id.) The response describes plaintiff’s
22 statements made during the interview. (Id.) The response further
23 states that the following witnesses were questioned regarding the
24 grievance: inmate Trejo, inmate Valdivia, Officer Uribe, Officer
25 Trevino. (Id. at 87.) The response states that the following
26 information was reviewed as a result of plaintiff’s allegations:
27 plaintiff’s 602 and 602A, plaintiff’s disability and effective
28 communication report, sign-in/out sheets for Facility 3B, and
Incident Package 837 Log # COR 03B-13-03-0129. (Id.)

Plaintiff’s third level appeal of grievance 13-2073 was rejected at
the third level of review because the appeal was missing the 837
Crime Report. (Id. at 85.)

In his opposition, plaintiff argues that he submitted requests to
prison staff for the CDCR 837 incident report but received no
response. (ECF No. 60 at 40.) Plaintiff also argues that he,
plaintiff, was not charged with a prison disciplinary for the
altercation involving inmates Valdivia and Trejo. (ECF No. 60. at
41.) Plaintiff argues that he would have received the CDCR 837
incident report had he, plaintiff, been charged with a rules violation
involving that incident. (Id.)

///
28

1 The undersigned is puzzled by the fact that grievance 13-2073 was
2 considered on the merits at the second level of review, which
3 included review of the 837 Crime Report, but rejected at the third
4 level of review based on plaintiff's failure to include the 837 Crime
5 Report. Plaintiff's statements in his opposition indicate that
6 plaintiff did not possess a copy of the 837 Crime Report, suggesting
7 that the second level reviewer independently obtained the 837
8 Crime Report in order to evaluate plaintiff's grievance. If the
9 second level reviewer was able to obtain this report, then it is
10 unclear why the third level reviewer could also not obtain this
11 report, which was apparently not readily available to plaintiff.
12 Without further explanation of these apparent discrepancies in
13 review procedures between the second and third level of review, the
14 undersigned cannot determine whether 13-2073 was properly
15 rejected at the third level of review on procedural grounds.

16 (ECF No. 65 at 13-14.)

17 On June 18, 2015, the Honorable John A. Mendez adopted the April 20, 2015 findings and
18 recommendations, and ordered an evidentiary hearing as to whether plaintiff exhausted his
19 administrative remedies with respect to his claims against defendant Parra. (ECF No. 71.)

20 In his July 30, 2015 pleading, plaintiff lists the following witnesses for the evidentiary
21 hearing: 1) inmate Gomez (cellmate); 2) inmate Valdivia; 3) inmate Trejo; 4) the two corrections
22 officers working with defendant Parra on March 5, 2013; and 5) attorney William Schmidt.

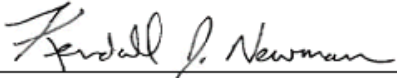
23 It is clear that plaintiff's proposed witnesses would testify regarding the merits of
24 plaintiff's claim against defendant Parra. That is not the subject of the evidentiary hearing. The
25 subject of the evidentiary hearing is only whether plaintiff administratively exhausted his claims
26 against defendant Parra. As discussed in the April 20, 2015 findings and recommendations, the
27 court cannot determine why plaintiff's grievance, raising his claims against defendant Parra, was
28 considered on the merits at the second level of review but rejected at the third level of review
based on plaintiff's failure to include the 837 Crime Report. This is the issue to be addressed at
the evidentiary hearing. It does not appear that plaintiff's proposed witnesses have any testimony
to offer relevant to that issue. Accordingly, plaintiff's request for the court's assistance in
obtaining the appearance of these witnesses is denied.

29 In his July 30, 2015 pleading, plaintiff also states that he intends to file an amended
30 complaint naming additional defendants. The undersigned will not address this issue because
31 plaintiff did not file a proposed amended complaint and a motion for leave to amend.

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

Accordingly, IT IS HEREBY ORDERED that plaintiff's request for court assistance in obtaining the appearance of witnesses for the evidentiary hearing (ECF No. 75) is denied.

Dated: August 5, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

Cor1551.ord(evi)