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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL GARCIA,
Plaintiff,
v.
F. FOLKS, et al.,
Defendants.

No. 2:14-cv-2378 JAM DB P

ORDER

Plaintiff is a state prisoner proceeding in forma pauperis with an action under 42 U.S.C. § 1983. Plaintiff alleges defendants violated his Eighth Amendment rights by subjecting him to inhumane conditions of confinement and retaliated against him for exercising his First Amendment rights. On March 30, 2018, the court denied defendants’ motion for summary judgment on the issue of exhaustion of administrative remedies and denied the motion without prejudice on the merits. (ECF Nos. 96, 104.) The court determined that an evidentiary hearing is necessary to resolve factual issues regarding exhaustion.

On May 31, the court appointed attorney Douglas Thorn to represent plaintiff for the limited purpose of resolving the exhaustion issue. (ECF No. 109.) On August 3, the court held a status conference to determine the parties’ readiness for the evidentiary hearing. Mr. Thorn appeared for plaintiff. Deputy Attorney General Aseil Mohmoud appeared for defendants. After hearing from the parties, the court sets out below the procedures for the evidentiary hearing.

1 **I. Witnesses**

2 On or before thirty days prior to the hearing, the parties shall file and serve witness lists.

3 Each party may call any witness designated by the other.

4 A. No other witness will be permitted to testify unless:

5 1. The party offering the witness demonstrates that the witness is for the purpose of
6 rebutting evidence which could not be reasonably anticipated prior to the evidentiary hearing;

7 or

8 2. The witness was not discovered until after the exchange of witness lists and the
9 proffering party makes the showing required in “B” below.

10 B. Within the thirty-day period prior to the evidentiary hearing, the parties shall promptly
11 inform the court and opposing parties of the existence of the unlisted witnesses so that the court
12 may consider at the evidentiary hearing whether the witnesses shall be permitted to testify. The
13 witnesses will not be permitted unless:

14 1. The witnesses could not reasonably have been discovered prior to the exchange of
15 witness lists;

16 2. The court and the opposing party were promptly notified upon discovery of the
17 witnesses; and

18 3. If time permitted, the party proffered the witnesses for deposition or, if time did not
19 permit, a reasonable summary of the witnesses’ testimony was provided to the opposing party.

20 **II. Exhibits, Schedules and Summaries**

21 Both parties shall file and serve copies of their exhibits thirty days prior to the evidentiary
22 hearing. Any objections to the exhibits may be raised at the hearing.

23 A. No other exhibits will be permitted to be introduced unless:

24 1. The party proffering the exhibit demonstrates that the exhibit is for the purpose of
25 rebutting evidence which could not have been reasonably anticipated; or

26 2. The exhibit was discovered after the exchange of exhibits and the proffering party
27 makes the showing required in Paragraph “B” below.


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1 B. Within the thirty-day period prior to the evidentiary hearing, the parties shall promptly
2 inform the court and opposing counsel of the existence of such exhibits so that the court may
3 consider their admissibility at the evidentiary hearing. The exhibits will not be received unless the
4 proffering party demonstrates:

- 5 1. The exhibits could not reasonably have been discovered earlier;
- 6 2. The court and the opposing party were promptly informed of their existence; and
- 7 3. The proffering party forwarded a copy of the exhibit(s) (if physically possible) to
8 the opposing party. If the exhibit(s) may not or cannot be copied, the proffering party must
9 show that he or she has made the exhibit(s) reasonably available for inspection by the
10 opposing party.

11 Accordingly, IT IS HEREBY ORDERED that an evidentiary hearing is set for October 22,
12 2018 at 9:00 a.m. in courtroom #27 before the undersigned; the parties shall prepare for the
13 hearing in accordance with the terms set forth in this order.

14 Dated: August 6, 2018

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17 DEBORAH BARNES
18 UNITED STATES MAGISTRATE JUDGE

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20 DB/prisoner-civil rights/garc2378.pre evi hrg or