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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE R ZAIZA,  
Plaintiff,  
v.  
C. GONZALEZ, *et al.*,  
Defendants.

Case No. 2:15-cv-00447-KJM-JDP (PC)  
ORDER SETTING EVIDENTIARY  
HEARING AND RELATED DEADLINES

On August 18, 2020, the court decided that an evidentiary hearing is needed in this case “on the issues of (1) whether plaintiff filed an administrative appeal of his excessive force claims at the third level of review, and (2) whether the grievance appeal process was effectively unavailable to plaintiff.” ECF No. 60 at 3. Accordingly, an evidentiary hearing on the issue of exhaustion of administrative remedies will be scheduled for February 1, 2021, at 9:00 a.m.

Plaintiff will be given until December 14, 2020, to file a motion for the attendance of witnesses. The motion should be entitled “Motion for Attendance of Witnesses.” The motion must: (1) state the name, address, and prison identification number (if any) of each witness plaintiff wants to call; (2) explain what relevant information each witness has, and how that

1 witness has personal knowledge of the relevant information; and (3) state whether each such  
2 witness is willing to voluntarily testify.<sup>1</sup>

3 Defendants will be given until December 28, 2020, to file their opposition(s), if any, to the  
4 motion for attendance of witnesses. In their opposition, or separately, if they have no opposition,  
5 defendants should state whether they prefer a video conference appearance for inmate witnesses,  
6 and if so, whether the inmate witnesses' institution of confinement can accommodate a video  
7 conference appearance. Unless the safety concerns and limitations surrounding the current  
8 pandemic are alleviated by that time, the court expects that this hearing will take place entirely  
9 over video conference.

10 The court notes that the evidentiary hearing is related only to the issue of exhaustion of  
11 administrative remedies. Accordingly, plaintiff should only ask for the attendance of witnesses  
12 that have information relevant to the issue of exhaustion (which includes the issue of the  
13 availability of administrative remedies).

14 Accordingly, it is hereby ordered that:

- 15 1. An *Albino* evidentiary hearing is set before Magistrate Judge Jeremy D. Peterson on  
16 January 25, 2021, at 9:00 a.m. in Courtroom 9.
- 17 2. Plaintiff has until December 14, 2020 to file a motion for attendance of witnesses.
- 18 3. Defendants have until December 28, 2020 to file their opposition, if any.

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21 <sup>1</sup> If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily,  
22 the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the party seeking the  
23 witness's presence must tender an appropriate sum of money for the witness. *Id.* In the case of  
24 an unincarcerated witness, the appropriate sum of money is the daily witness fee of \$40 plus the  
25 witness's travel expenses. 28 U.S.C. § 1821. If plaintiff wishes to obtain the attendance of one or  
26 more unincarcerated witnesses who refuse to testify voluntarily, plaintiff must first notify the  
27 court in writing of the name and location of each unincarcerated witness. The court will calculate  
28 the travel expense for each unincarcerated witness and notify plaintiff of the amount(s).  
Plaintiff must then, for each witness, submit a money order made payable to the witness for the  
full amount of the witness's travel expenses plus the daily witness fee of \$40.00. The subpoena  
will not be served upon the unincarcerated witness by the United States Marshal unless the money  
order is tendered to the court. Because no statute authorizes the use of public funds for these  
expenses in civil cases, the tendering of witness fees and travel expenses is required even if  
plaintiff was granted leave to proceed *in forma pauperis*.

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- 4. The parties have until December 28, 2020 to file and serve their respective witness lists (which should include the name and title of each witness they may call).
- 5. The parties have until December 28, 2020 to file and serve their respective exhibit lists. Exhibits that are already filed on the docket in relation to another motion should reference the ECF Number of the document.
- 6. The parties have until January 25, 2021 to provide the court with a copy of all exhibits that they plan to use at the hearing. If possible, the court requests that these exhibits be emailed to [jdorders@caed.uscourts.gov](mailto:jdorders@caed.uscourts.gov), but otherwise they may be physically mailed to the court. Exhibits that are already filed on the docket in relation to another motion do not need to be resubmitted.
- 7. When issuing its findings and recommendations after the evidentiary hearing on the relevant disputes of fact, the court will only consider evidence that was introduced at the evidentiary hearing.

IT IS SO ORDERED.

Dated: November 19, 2020

  
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JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE