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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	JOHN ROBERT GANOE,	No. 2:16-cv-0019 KJM CKD P
12	Plaintiff,	
13	V.	ORDER
14	T. ABREU, et al.,	
15	Defendants.	
16		
17	Plaintiff is a California prisoner proceeding pro se with an action for violation of civil	
18	rights under 42 U.S.C. § 1983. On August 8, 2017, defendants' motion for summary judgment	
19	was granted and this case was dismissed for plaintiff's failure to exhaust available administrative	
20	remedies prior to filing suit. The Ninth Circuit vacated judgment on February 23, 2018:	
21	The district court concluded that Ganoe failed to exhaust administrative remedies because his grievance was untimely, and he	
22	failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable. However, the	
23	record shows that on August 31, 2015, Ganoe submitted a grievance explaining why he did not timely grieve the three beatings that gave	
24	rise to this action. Specifically, Ganoe explained that he lacked the necessary forms, he was permanently blinded from one of the	
25	beatings and recovering in the infirmary for three months, and he suffered emotional trauma as a result of the three beatings. See Sapp	
26	v. Kimbrell, 623 F.3d 813, 823	3 (9th Cir. 2010) (explaining that the does not require exhaustion when
27	circumstances render adm	inistrative remedies "effectively nune, 568 F.3d 1024, 1027 (9th Cir.
28		es may be effectively unavailable

1 2	where circumstances render the prisoner unable to initiate the grievance process in a timely manner). Because the district court did not expressly consider Ganoe's evidence explaining his delay in	
3	filing the grievance, we vacate and remand for further proceedings.	
4	Good cause appearing, IT IS HEREBY ORDERED that:	
5	1. Within 21 days, defendants shall indicate whether they wish to proceed with their	
6	motion for summary judgment as it pertains to the exhaustion of administrative remedies. If they	
7	do wish to proceed, defendants should file a brief addressing how the August 31, 2015 grievance	
8	identified by the Ninth Circuit does not preclude summary judgment.	
9	2. Plaintiff may file a response to defendants' brief within 21 days of service thereof.	
10	Dated: September 5, 2018 Carop U. Delany	
11	CAROLYN K. DELANEY	
12	UNITED STATES MAGISTRATE JUDGE	
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