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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JAMES MICHAEL WILLIAMS,  
12 Plaintiff,  
13 v.  
14 WILLIAM D. GORE, Sheriff of San  
15 Diego County; M.D. ALFRED JOSHUA,  
16 Defendants.

Case No.: 15-CV-0654-AJB-PCL

**ORDER:**

(1) **ADOPTING THE REPORT AND RECOMMENDATION IN FULL, (Doc. No. 74);**

(2) **GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, (Doc. No. 52); AND**

(3) **DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

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24 On August 29, 2016, Defendants filed a motion for summary judgment based in part  
25 on Plaintiff's failure to exhaust administrative remedies. (Doc. No. 52.) An evidentiary  
26 hearing was held on June 15, 2017, on this issue. For the reasons set forth below, the Court  
27 **ADOPTS** the Report & Recommendation ("R&R") in full, **GRANTS** Defendants' motion  
28 for summary judgment, and **DECLINES** to issue a certificate of appealability.

1 **BACKGROUND**

2 This case’s factual background has been exhaustively summarized in the R&R and  
3 order adopting in part the R&R. (Doc. Nos. 74, 80.) The Court assumes familiarity with  
4 those orders and will accordingly recite here only those facts necessary to understand the  
5 case’s current procedural posture.

6 Plaintiff instituted this 42 U.S.C. § 1983 claim, alleging violations of his Eighth  
7 Amendment rights due to an alleged denial of medical care while incarcerated at George  
8 Bailey Detention Facility. On January 20, 2017, Magistrate Judge Lewis issued an R&R,  
9 recommending that this Court grant Defendants’ motion for summary judgment and deny  
10 Plaintiff’s cross motion, finding that Plaintiff offered no admissible evidence to establish  
11 exhaustion of administrative remedies. (Doc. No. 74.)

12 On March 13, 2017, Plaintiff timely filed an objection to the R&R, asserting, in  
13 relevant part, that he had submitted six written grievances on five separate occasions by  
14 placing them in the locked grievance box. (Doc. No. 78.) He supported his objection with  
15 his own declaration, detailing the circumstances surrounding each submission. (*Id.* at 14–  
16 22.) This Court declined to adopt the R&R in part on March 24, 2017, finding that disputed  
17 material facts existed as to whether Plaintiff exhausted administrative remedies. (Doc. No.  
18 80 at 11–16.) The Court ordered an evidentiary hearing on this issue. (*Id.* at 16.)

19 In preparation for that hearing, the Court permitted Plaintiff to file motions to compel  
20 the attendance of witnesses at the evidentiary hearing. (*Id.* at 16–18.) Plaintiff submitted  
21 three such motions to compel the attendance of four incarcerated witnesses and one  
22 correctional officer. (Doc. Nos. 84, 86, 91.) A status conference was held on Plaintiff’s  
23 motions on June 2, 2017, at which time the Court granted Plaintiff’s request as to the  
24 correctional officer and denied Plaintiff’s request as to one incarcerated witness. (Doc. No.  
25 92.) Following additional briefing on the three other incarcerated witnesses, the Court  
26 denied Plaintiff’s request as to those witnesses for the reasons stated on the record at the  
27 evidentiary hearing on June 15, 2017. (Doc. Nos. 93–95.) Following that hearing, the Court  
28 took the matter under submission, and this order follows.

1 LEGAL STANDARD

2 The Ninth Circuit set forth the procedure district courts must follow when  
3 determining whether a § 1983 plaintiff has exhausted administrative remedies in *Albino v.*  
4 *Baca*, 747 F.3d 1162 (9th Cir. 2014). The district court should decide exhaustion, if  
5 possible, before reaching the case’s merits. *Id.* at 1170. The district court may permit  
6 limited discovery, and the parties may move for summary judgment, on the issue of  
7 exhaustion. *Id.* In assessing whether summary judgment is appropriate, the district court  
8 must employ the usual rules governing this inquiry. *Id.* at 1173. Specifically, the “district  
9 court cannot resolve disputed questions of material fact; rather, that court must view all of  
10 the facts in the record in the light most favorable to the non-moving party and rule, as a  
11 matter of law, based on those facts.” *Id.*

12 If the district court denies summary judgment, at that point, the district court should  
13 decide “disputed factual questions . . . in the same manner a judge rather than a jury decides  
14 disputed factual questions relevant to jurisdiction and venue.” *Id.* 1170–71. In making its  
15 assessment, the district court may undertake a “preliminary proceeding,” such as an  
16 evidentiary hearing. *Id.* at 1168. One of the purposes of an evidentiary hearing is to  
17 “enable[] the finder of fact to see the witness’s physical reactions to questions, to assess  
18 the witness’s demeanor, and to hear the tone of the witness’s voice . . . .” *United States v.*  
19 *Mejia*, 69 F.3d 309, 315 (9th Cir. 1995). Indeed, it is only in “rare instances [that]  
20 credibility may be determined without an evidentiary hearing . . . .” *Earp v. Ornoski*, 431  
21 F.3d 1158, 1169–70 (9th Cir. 2005); *accord Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir.  
22 1987) (stating “[t]he district court has the discretion to take evidence at a preliminary  
23 hearing in order to resolve any questions of credibility or fact” when determining whether  
24 personal jurisdiction exists).

25 DISCUSSION

26 ***I. Credibility Determination and Exhaustion***

27 At the four-hour evidentiary hearing, a total of five witnesses, including Plaintiff,  
28 testified. Having considered the evidence proffered by both sides, the Court finds that the

1 weight of the evidence supports concluding that the six written grievances Plaintiff  
2 purports to have submitted via the grievance box were not filed. Plaintiff's protestations to  
3 the contrary, the testimony of Defendants' witnesses render Plaintiff's theory highly  
4 improbable. Lieutenant Jones undertook a detailed inquiry into whether Plaintiff submitted  
5 grievances, which revealed zero evidence that Plaintiff filed medical grievances on or  
6 around the days alleged. The medical personnel attested to the integrity of the medical  
7 grievance system, which involves numerous checks and balances to ensure that submitted  
8 grievances are logged and responded to, including the fact that the responsibility of  
9 collecting and logging grievances is assigned to different medical staff on different days.  
10 In light of Defendants' evidence, the Court does not find Plaintiff's testimony that he  
11 submitted the grievances to be credible.

12       Following a de novo review of the evidence proffered, the Court concludes it is  
13 simply improbable that all six of Plaintiff's grievances, purportedly placed in the grievance  
14 box on five separate occasions, were never received or were somehow and for some reason  
15 all destroyed by the different employees who retrieved them from the box. Accordingly,  
16 the Court **ADOPTS** the R&R in full and **GRANTS** Defendants' motion for summary  
17 judgment on the ground that Plaintiff failed to exhaust administrative remedies.

18       Defendants request that the Court sanction Plaintiff for what they characterize as an  
19 abusive waste of the judicial process. Despite Plaintiff's lack of candor and production of  
20 evidence that could not meet the basic standard of trustworthiness for admission, the Court  
21 exercises its discretion and denies Defendants' request.

## 22 ***II. Certificate of Appealability***


23       When a district court enters a final order adverse to the applicant in a habeas corpus  
24 proceeding, it must either issue or deny a certificate of appealability, which is required to  
25 appeal a final order in a habeas corpus proceeding. 28 U.S.C. § 2253(c)(1)(A). A certificate  
26 of appealability is appropriate only where the petitioner makes "a substantial showing of  
27 the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)  
28 (quoting 28 U.S.C. § 2253(c)(2)). Under this standard, the petitioner must demonstrate that

1 reasonable jurists could debate whether the petition should have been resolved in a different  
2 manner or that the issues presented were adequate to deserve encouragement to proceed  
3 further. *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Here, the Court finds that  
4 reasonable jurists could not debate the Court’s conclusion to grant summary judgment in  
5 Defendants’ favor and therefore **DECLINES** to issue a certificate of appealability.

6 The Clerk of Court is ordered to enter judgment consistent with the order and close  
7 the file.

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9 **IT IS SO ORDERED.**

10 Dated: June 16, 2017

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12 Hon. Anthony J. Battaglia  
13 United States District Judge  
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