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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 JAMES SIDOTI,

11 Plaintiff,

12 vs.

13 R. SOLIS; SHEPARD; DANIEL
14 PARAMO; DOES 1-10,

15 Defendants.

Case No.: 3:19-cv-01028-GPC-NLS

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND VACATING
HEARING DATE**

[ECF No. 27]

16
17 On March 30, 2020, Defendants Correctional Officers A. Shepherd and R. Solis
18 filed a Motion for Summary Judgment. ECF No. 27 (“Mot.”). The Defendants’ motion
19 claimed that Plaintiff James Sidoti (“Plaintiff” or “Sidoti”) failed to exhaust available
20 administrative remedies as to Counts One and Two of the Complaint. Further, Officer
21 Shepard attacked the sufficiency of the facts relating to Count Two which alleges
22 deliberate indifference to medical needs and raised qualified immunity as a defense to the
23 count. Plaintiff filed an opposition on July 17, 2020. ECF No. 38. On July 22, 2020, the
24 Court granted the parties’ joint motion to dismiss Officer A. Shepherd from the case
25 which renders MOOT his motion for summary judgment on Count Two. ECF No. 39.
26 Defendant Solis filed a reply on August 7, 2020. ECF No. 41. Based on review of the
27 factual record, the Court hereby **DENIES** Defendant Solis’ Motion for Summary
28 Judgment and **VACATES** the August 21, 2020 hearing date set for this matter.

BACKGROUND

1
2 Plaintiff, currently incarcerated at the Richard J. Donovan Correctional Facility
3 (“RJD”), California, and represented by counsel, has filed a civil rights complaint
4 pursuant to 42 U.S.C. § 1983, claiming various prison officials at Richard J. Donovan
5 Correctional Facility (“RJD”) violated his Eighth Amendment rights. ECF No. 1
6 (“Compl.”). The Complaint alleged claims for (1) violation of 42 U.S.C. § 1983 for
7 excessive force against Officer Solis; (2) violation of 42 U.S.C. § 1983 for deliberate
8 indifference to serious medical needs against Officers Solis and Shepard; and (3)
9 supervisory liability under 42 U.S.C. § 1983 against Warden Paramo.

10 The Complaint alleges that, on June 2, 2017, Sidoti attended a medical
11 appointment while incarcerated at RJD. Compl. ¶ 1. Sidoti attended the medical
12 appointment in order to address his broken right hand. *Id.* ¶ 8. Sidoti has a mobility
13 impairment and uses a wheelchair. *Id.* ¶ 9. Upon arriving at the medical appointment,
14 Sidoti sat in his wheelchair while Officer Solis spoke with the medical staff. *Id.* ¶ 10.
15 Solis then began pushing Sidoti’s wheelchair, informing Sidoti that he would be seen by
16 the medical staff on another day. *Id.* Sidoti applied the brakes on the wheelchair and
17 Solis kept pushing the wheelchair forward. *Id.* ¶ 12. Sidoti tilted forward out of the chair
18 and then rose to his feet. *Id.* ¶ 13. Plaintiff alleges that he attempted to speak with the
19 medical staff regarding his appointment, and that Solis subsequently “viciously slammed
20 [Plaintiff] to the ground and kned him in his head numerous times.” *Id.* ¶ 15.

21 Officers Solis and Shepard then escorted Plaintiff while holding his arms as he
22 walked for about 75 yards to an administrative segregation (“ad-seg”) cell, despite
23 Plaintiff’s request for a wheelchair. *Id.* ¶¶ 18, 20; ECF No. 38-5 (Plaintiff’s Response to
24 Defendant’s Separate Statement of Undisputed Facts, “SSUF”) ¶¶ 1, 3. Plaintiff can only
25 walk short distances. SSUF ¶ 2.

26 Plaintiff was placed in a holding cell where he was medically evaluated and under
27 constant supervision. *Id.* ¶¶ 4, 5. At the time, Plaintiff complained of pain in his head
28 and bruises on his back and legs. *Id.* ¶ 7.

1 Plaintiff alleges that Officer Solis wrote a false report about Plaintiff’s attempt to
2 assault him and as a result of this report, Plaintiff was placed in ad-seg for five days
3 without any opportunity to speak with a medical provider. Compl. ¶¶ 21, 24. During this
4 period, Plaintiff felt “brain fog and faintness.” *Id.* ¶ 23. After five days in ad-seg,
5 Plaintiff saw a doctor who sent Plaintiff to an outside hospital. *Id.* ¶ 25. Upon
6 examination at the outside hospital, Plaintiff’s hand was confirmed broken and his brain
7 was found to be bleeding due to Officer Solis’s knee strikes to Plaintiff’s head. *Id.* ¶ 26.
8 Plaintiff was placed in a two-week medically-induced coma. *Id.* ¶ 27. Afterwards,
9 Plaintiff was returned to prison and placed in ad-seg, and after a period of time, returned
10 to a non-segregation unit. *Id.* ¶¶ 28-29.

11 A. Appeals Process

12 Plaintiff is required to exhaust his administrative remedies before bringing suit.
13 SSUF ¶ 11. The California Code of Regulations, title 15 (“15 CCR”) § 3084.1(a)
14 provides: “Any inmate or parolee under the department’s jurisdiction may appeal any
15 departmental decision, action, condition, or policy, which they can demonstrate as having
16 an adverse effect upon their welfare.”¹

17 All inmate grievances are subject to a three-step administrative review process:
18 (1) the first level of review; (2) the second level appeal to the Warden of the prison or
19 their designee; and (3) the third level appeal to the Secretary of CDCR, which is
20 conducted by the Chief of Appeals of the Office of Appeals (“OOA”). 15 CCR §§
21 3084.1(b), 3084.7(a)-(d).

22 Unless the inmate grievance deals with allegations of sexual violence or staff
23 sexual misconduct, an inmate must submit the CDCR Form 602 and all supporting
24 documentation to each of the three levels of review within 30 calendar days of the
25 _____

26
27 ¹ Sections of California Code of Regulations, title 15, including 15 CCR § 3084.8, were repealed per
28 April 3, 2020 Emergency Regulations, effective June 1, 2020. 2020 CA REG TEXT 551506 (NS), 2020
CA REG TEXT 551506 (NS). All references to the California Code of Regulations in this order are
made to the version current through December 27, 2019 accessible via Register 2019.

1 occurrence of the event or decision being appealed, of the inmate first discovering the
2 action or decision being appealed, or of the inmate receiving an unsatisfactory
3 departmental response to a submitted administrative appeal. 15 CCR §§ 3084.2(b)-(e),
4 3084.3, 3084.6(a)(2), 3084.8(b). When an inmate submits an administrative appeal at
5 any of the three levels of review, the reviewer is required to reject the appeal, cancel the
6 appeal, or issue a decision on the merits of the appeal within the applicable time
7 limits. 15 CCR §§ 3084.6(a)-(c), 3084.8(c)-(e). If an inmate's administrative appeal is
8 rejected, the inmate is to be provided clear instructions about how to cure the appeal's
9 defects. 15 CCR §§ 3084.5(b)(3), 3084.6(a)(1). If an inmate's administrative appeal is
10 cancelled, the inmate can separately appeal the cancellation decision. 15 CCR §
11 3084.6(a)(3) & (e).

12 **1. First Level of Appeal for RJD-17-03297**

13 On June 29, 2017, Plaintiff filed a Request for Interview, Item, or Service
14 ("Inmate/Parolee Request" or "Form 22") regarding Officer Solis' excessive force.
15 Spaich Decl., Ex. 2 at 52.

16 On July 3, 2017, the Inmate Appeals Office at RJD received the Form 22 as an
17 attachment to an Inmate/Parolee Appeal Form ("CDCR 602"). Spaich Decl., Ex. 2 at 50.;
18 ECF No. 27-6 ("Frijas Decl.") ¶6(a), Ex. 3 at 10-12.² In the Form 22, Sidoti stated that
19 he "would [like] to make a complaint against staff for use of excessive force.
20 Specifically on 6/02/17, I was constantly kneed in the head by Officer Solis" at the clinic
21 and was "consequently hospitalized with severe brain trauma and was diagnosed as
22 having a cerebral hemorrhage. The use of force by Officer Solis was excessive and
23 brutal." Frijas Decl., Ex. 3 at 12. Plaintiff did not include a CRCR Form 1858 ("Rights
24 and Responsibility Statement" or "R&R") with this submission. SSUF ¶ 9. This
25 grievance was assigned log number RJD-17-03297. Frijas Decl. ¶ 6(a).

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28 ² Page references to exhibits refer to Bates page numbering. All other page references refer to the
CM/ECF pagination.

1 **2. Second Level of Appeal for RJD-17-03297**

2 Prison officials had 30 working days to respond to this appeal per 15 CCR §§
3 084.8(c) and (e). On September 4, 2017, an Appeal Inquiry was conducted. Frijas Decl.,
4 Ex. 3 at 9. On September 8, 2017, the hiring authority considered Sidoti’s allegations
5 that Officer Solis used excessive force and that Officer Solis kned Sidoti in the head and
6 found that the staff did not violate CDCR policy. Frijas Decl., Ex. 3 at 10.

7 Plaintiff received this second-level response sometime between September 4, 2017
8 and September 30, 2017. Sidoti Decl. ¶ 10; ECF No. 40-1 ¶¶ 3, 4. In this second-level
9 response, Sidoti was advised that in order to exhaust his administrative remedies, he must
10 submit his staff complaint through all levels of appeal up to and including the third level
11 of appeal. Frijas Decl. ¶6(a); Ex. 3 at 9.

12 **3. Third Level of Appeal for RJD-17-03297**

13 On September 30, 2017, Plaintiff submitted his appeal to the third level of review.
14 Sidoti Decl. ¶ 10; ECF No. 40-1 ¶¶ 3, 4. On October 6, 2017, the OOA received Sidoti’s
15 appeal to the third level. Spaich Decl. ¶9, Ex. 2 at 17.41.) On November 29, 2017, the
16 Office of Appeals (“OOA”) rejected, or “screened out,” Sidoti’s appeal because Sidoti
17 failed to submit a R&R. Spaich Decl. ¶ 9, Ex. 2 at 39. This rejection was mailed to
18 Plaintiff on December 4, 2017. Spaich Decl., Ex. 2 at 15. On or after December 4, 2017,
19 Sidoti received this screen-out decision from the third level stating that he was missing
20 this R&R Statement. Sidoti Decl. ¶ 12.

21 **4. Plaintiff’s Submission of the R&R Statement**

22 In late December or early January, Sidoti approached another inmate, Ernest
23 Holestine, about acquiring a R&R Statement. Sidoti Decl. ¶ 14. In September 2017,
24 Holestine had been assigned by RJD prison staff to work as an inmate assistant to help
25 inmates with disabilities to fill out and submit their inmate appeals forms. Holestine
26 Decl. ¶ 4. In January 2018, Holestine obtained a R&R Statement for Sidoti and Sidoti
27 sent a “corrected appeal” which included this R&R Statement “shortly after.” Sidoti
28 Decl. ¶ 15. The envelope with this corrected appeal is postmarked January 9, 2018.

1 Sidoti Decl. ¶ 16. Sidoti claims that he gave this envelope to officials “days before”
2 January 9, 2018. *Id.* The OOA received this envelope on January 12, 2018. Spaich
3 Decl., Ex. 2 at 15, 29.

4 **5. Appeal Cancellation**

5 On February 8, 2018, the Office of Appeals canceled Sidoti’s appeal on the basis
6 that it was untimely since it was not submitted within 30 calendar days of the date of its
7 rejection. Spaich Decl. ¶ 9. On April 22, 2018, Plaintiff submitted an appeal of the
8 cancellation of Appeal Log RJD-17-03297. Spaich Decl., Ex. 2 at 11. On May 2, 2018,
9 the OOA received Plaintiff’s submission.

10 On June 6, 2018, the OOA screened out Plaintiff’s attempt to appeal the
11 cancellation since Plaintiff failed to correct and return the rejected appeal within 30
12 calendar days of the rejection. Spaich Decl. ¶ 9, Ex. 2 at 10. The June 6, 2018 letter
13 from the OOA states that the “[t]ime constraints begin from the date on the screen out
14 form which cancelled your appeal.” *Id.*

15 As a result, Sidoti’s appeal of the cancellation was also cancelled as untimely.
16 (Spaich Decl. ¶9, Ex. 2 at 10.)

17 **6. Other Appeals**

18 On July 14, 2017, Sidoti submitted another appeal alleging misuse of force by
19 Officer Solis, and this was assigned log number RJD-D-17-03297. Frijas Decl. ¶ 7(a).
20 The appeal was screened as duplicative of Appeal Log No. RJD-17-03297. *Id.*

21 On June 25, 2018, the Office of Appeals received an undated appeal from Sidoti,
22 again claiming Solis used excessive force, and this was assigned log number RJD-C-18-
23 3906. Frijas Decl. ¶ 7(b); Ex. 5 at 22-24. The appeal was screened as duplicative of
24 Appeal Log No. RJD-17-03297. Frijas Decl. ¶ 7(b); Ex. 5 at 21.

25 Other than these three appeals, Sidoti has not filed any appeals related to the
26 allegations in his Complaint. Frijas Decl. ¶ 8.

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LEGAL STANDARD

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2 Federal Rule of Civil Procedure (“Rule”) 56 empowers the Court to enter summary
3 judgment on factually unsupported claims or defenses, and thereby “secure the just,
4 speedy and inexpensive determination of every action.” *Celotex Corp. v. Catrett*, 477
5 U.S. 317, 325, 327 (1986); Fed. R. Civ. P. 56. Summary judgment is appropriate “if the
6 movant shows that there is no genuine dispute as to any material fact and the movant is
7 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is material when it
8 affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
9 (1986). A dispute as to a material fact is “genuine” if there is sufficient evidence for a
10 reasonable jury to return a verdict for the nonmoving party. *Id.*

11 On a motion for summary judgment on the issue of exhaustion, the moving party
12 bears the initial burden to prove “that there was an available administrative remedy, and
13 that the prisoner did not exhaust that available remedy.” *Albino v. Baca*, 747 F.3d 1162,
14 1172 (9th Cir. 2014).

15 Once the defendant has met its burden, the prisoner has the burden of production
16 and “the burden shifts to the prisoner to come forward with evidence showing that there
17 is something in his particular case that made the existing and generally available
18 administrative remedies effectively unavailable to him.” *Id.* (citing *Hilao v. Estate of*
19 *Marcos*, 103 F.3d 767, 778 n. 5 (9th Cir. 1996) (the “burden shifts to the plaintiff to rebut
20 by showing that the local remedies were ineffective, unobtainable, unduly prolonged,
21 inadequate, or obviously futile.”)). Ultimately, the defendant bears the burden of proof.
22 *Id.* For purposes of summary judgment, a court must “view all of the facts in the record in
23 the light most favorable to the non-moving party and rule, as a matter of law, based on
24 those facts.” *Id.* at 1173 (citing *San Diego Police Officers’ Ass’n v. San Diego City*
25 *Employees’ Ret. Sys.*, 568 F.3d 725, 733 (9th Cir. 2009)).

26 A court will grant summary judgment under Rule 56 “if undisputed evidence
27 viewed in the light most favorable to the prisoner shows a failure to exhaust.” *Albino*,
28 747 F.3d at 1166. The court must deny summary judgment “if material facts are

1 disputed,” but the district judge, rather than a jury, will determine the facts pertaining to
2 exhaustion. *Id.*

3 **BACKGROUND**

4 **I. Administrative Exhaustion**

5 Defendants argue that Sidoti’s appeal against Officer Solis has not met the
6 administrative exhaustion requirement since he failed to submit the Rights and
7 Responsibility Statement (“R&R”) within the applicable time limit after his appeal was
8 screened out at the third-level of review. ECF No. 27 at 19-20; Spaich Decl. ¶ 9.

9 Plaintiff counters that the grievance process—including access to the R&R form—was
10 rendered unavailable and therefore, Plaintiff should be excused from meeting the
11 exhaustion requirement.

12 **A. Legal Standard**

13 Disputed factual questions relevant to exhaustion should be decided at the very
14 beginning of the litigation before reaching the merits of a prisoner's claim. *Albino*, 747
15 F.3d 1162, 1170-1171 (9th Cir. 2014). If the district judge holds that the prisoner has
16 exhausted available administrative remedies, that administrative remedies are not
17 available, or that a prisoner's failure to exhaust available remedies should be excused, the
18 case may proceed to the merits. *Id.*

19 The Prison Litigation Reform Act (“PLRA”) mandates that inmates exhaust all
20 available administrative remedies before filing “any suit challenging prison conditions,”
21 including, but not limited to, suits under § 1983. *Woodford v. Ngo*, 548 U.S. 81, 85
22 (2006); 42 U.S.C. § 1997e(a) (“No action shall be brought with respect to prison
23 conditions under section 1983 of this title, or any other Federal law, by
24 a prisoner confined in any jail, prison, or other correctional facility until such
25 administrative remedies as are available are exhausted.”). An inmate is required to
26 exhaust only *available* remedies. *Booth*, 532 U.S. at 736, 121 S.Ct. 1819; *Brown v.*
27 *Valoff*, 422 F.3d 926, 936–37 (9th Cir.2005). To be available, a remedy must be
28 available “as a practical matter”; it must be “capable of use; at hand.” *Id.* at

1 937 (quoting *Brown v. Croak*, 312 F.3d 109, 113 (3d Cir. 2002)). The Supreme Court
2 has recognized three contexts in which an administrative procedure is “unavailable”: (1)
3 “when it operates as a simple dead end—with officers unable or consistently unwilling to
4 provide any relief to aggrieved inmates”; (2) when “an administrative scheme might be
5 so opaque that it becomes, practically speaking, incapable of use—*i.e.*, some mechanism
6 exists to provide relief, but no ordinary prisoner can navigate it”; and (3) “a grievance
7 process is rendered unavailable when prison administrators thwart inmates from taking
8 advantage of it through machination, misrepresentation, or intimidation.” *Ross v. Blake*,
9 136 S. Ct. 1850, 1853–54 (2016).

10 The Ninth Circuit has held that a plaintiff’s failure to timely exhaust was excused
11 because the prisoner took reasonable and appropriate steps to exhaust and was prevented
12 from exhaustion by the Warden’s mistake, and not through his own fault. *Nunez v.*
13 *Duncan*, 591 F.3d 1217, 1224 (9th Cir. 2010) (excusing failure to exhaust because
14 Warden responded with an incorrect citation and inmate spent many unsuccessful
15 attempts to obtain the regulation). The Ninth Circuit has also noted that a prisoner may
16 be excused from exhausting administrative remedies if prison officials improperly screen
17 out inmate grievances. *Sapp v. Kimbrell*, 623 F.3d 813, 824, 826 (9th Cir. 2010)
18 (“[E]xhaustion might also be excused where repeated rejections of an inmate’s grievances
19 at the screening stage give rise to a reasonable good faith belief that administrative
20 remedies are effectively unavailable.”).

21 **B. Analysis**

22 **i. Submission of R&R in Corrected Appeal**

23 15 CCR § 3084.6(a)(2) provides that an appeal that is rejected may later be
24 accepted if the correction is made and the appeal is returned to the appeals coordinator
25 “within 30 calendar days of rejection.” 15 CCR § 3084.6(a)(5) provides, “Erroneous
26 acceptance of an appeal at a lower level does not preclude the next level of review from
27 taking appropriate action, including rejection or cancellation of the appeal.” The Ninth
28 Circuit has previously stated that an inmate’s lack of access to the necessary forms and

1 inability to complete them can qualify as an exception to the timely filing requirement.
2 *Marella v. Terhune*, 568 F.3d 1024, 1027 (9th Cir. 2009).

3 On December 4, 2017, the OOA mailed the screen-out to Plaintiff, rejecting
4 Plaintiff's appeal due to his failure to include the R&R. Spaich Decl., Ex. 2 at 24.
5 Sometime after December 4, 2017, Plaintiff received the screen-out and Plaintiff then
6 asked Holestine about how to acquire the R&R form in "late December or early January."
7 Sidoti Decl. ¶ 14. Holestine then helped Plaintiff acquire the R&R form. Sidoti Decl. ¶
8 12. Plaintiff then sent the corrected appeal, which included the R&R, and the envelope
9 containing the corrected appeal was post-marked on January 3, 2018. Spaich Decl., Ex. 2
10 at 37.

11 Defendants argue that the OOA properly screened out Sidoti's corrected appeal
12 submission because he failed to submit it within 30 calendar days of the rejection.
13 Plaintiff counters that the process of obtaining R&R Statement was effectively
14 "unavailable" due to the "machinations and difficulties instituted by the prison staff" and
15 Plaintiff should therefore be excused from meeting this requirement. ECF No. 38 at 19.

16 Plaintiff alleges that obtaining the R&R was more difficult than obtaining other
17 grievance forms since the form was not available in the RJD housing units. ECF No. 38
18 at 9; Holestine Decl. ¶ 6. The R&R form was only available in the Law Library and in
19 order for inmates to acquire access to the Law Library, inmates were required to undergo
20 a process that took several weeks: inmates were first required to sign up for Law Library
21 access through institutional mail, wait to be scheduled for an appointment, and then wait
22 to be escorted to the Law Library. ECF No. 38 at 9; Holestine Decl. ¶ 6. Only upon
23 entering the Law Library could inmates request the R&R form from the Law Library
24 staff. ECF No. 38 at 9; Holestine Decl. ¶ 6. Further, Plaintiff argues he faced an
25 additional challenge since RJD prison officials did not explain these steps to inmates, and
26 inmates were instead required to learn about this process through word of mouth from
27 other inmates. *Id.*

1 Defendants counter that throughout 2017 and 2018, it was not necessary to make
2 an appointment for time in order to obtain a R&R form from the Law Library, and that
3 inmates could stop by the Law Library to pick up the R&R form or alternatively, inmates
4 could request the R&R Form using the CDCR Form 22 process. ECF No. 41-2 (“Blahnik
5 Decl.”) ¶ 2. If an inmate used the CDCR Form 22 process, the prison staff were required
6 to reply within three business days. *Id.*

7 On a motion for summary judgment, the Court is required to view the evidence in
8 the light most favorable to the non-moving party. *Albino*, 747 F.3d at 1172. Viewing the
9 aforementioned evidence in the light most favorable to Sidoti, the Court finds that there is
10 a genuine issue of material fact as to the process that inmates were required to follow in
11 order to obtain a R&R Form and the degree to which the R&R form was made accessible
12 through the Law Library. Due to this issue of material fact, the Court finds that a jury is
13 better positioned to make factual determinations and accordingly **DENIES** Defendants’
14 motion for summary judgment on exhaustion.

15 **ii. Timeliness of Submission of Corrected Appeal**

16 An appeal must be corrected within 30 calendar days of the rejection, regardless of
17 when the inmate received it, *see* 15 CCR § 3084.6(c)(10), and cancelation of an appeal
18 may be imposed only if “the inmate or parolee had the opportunity to submit within the
19 prescribed time constraints.” 15 CCR § 3084.6(c)(4).

20 Plaintiff argues that he should be excused from this timeliness requirement.
21 Plaintiff alleges that although the screen-out decision was made on November 29, 2017,
22 it was not mailed out until December 4, 2017, and Plaintiff did not receive the decision
23 until several days after December 4, 2017, though the exact date of receipt is not known.
24 ECF No. 38 at 29. Further, although Plaintiff does not dispute that the envelope
25 containing his corrected appeal is postmarked for January 9, 2018, Plaintiff claims he
26 gave the corrected appeal to the jail staff “some time” before January 9, 2018, but the jail
27 staff failed to date the envelope indicating the date when they received it. Sidoti Decl. ¶
28 16. On this basis, Plaintiff argues that there exists a reasonable dispute of material fact

1 exists as to the dates when Plaintiff received the screen-out and when Plaintiff gave the
2 correction to officers for mailing.

3 Defendant counters that the Court should presume that Sidoti received the screen-
4 out decision three days after its mailing—*i.e.*, on December 7, 2017—based on the
5 rebuttable presumption that mail sent within the contiguous United States arrives at its
6 intended destination within three days, citing *Dandino, Inc. v. U.S. Dep't of Transp.*, 729
7 F.3d 917, 921 (9th Cir. 2013), and that Plaintiff does not offer any rebuttal to dispute this.
8 ECF No. 41 at 4. Therefore, since Plaintiff submitted his corrected appeal on January 9,
9 2018—more than 30 calendar days after his rejection—Defendant argues that his appeal
10 was therefore properly canceled.

11 First, the Court notes that *Dandino* applied to “first class mail” sent through the
12 United States Postal Service. Defendants have not shown that the screen-out decision
13 was delivered through United States Postal Service first class mail. Second, the Court
14 notes that *Dandino* involved mail delivery between a civil plaintiff and a federal agency
15 and did not involve the delivery of mail within the prison system. The Supreme Court
16 has previously noted that when analyzing the timeliness of submissions, distinct
17 approaches are appropriate for cases involving civil appeals and cases involving
18 prisoners’ appeals. *See, e.g., Houston v. Lack*, 487 U.S. 266, 274 (1988) (relying on the
19 date that *pro se* prisoner gave notice of appeal to prison authorities, rather than the date of
20 receipt since the latter method “raises such difficult to resolve questions as whether
21 delays by the United States Postal Service constituted excusable neglect and whether a
22 notice stamped ‘filed’ on one date was actually received earlier.”). Accordingly, the
23 Court finds that a genuine issue of material fact exists as to the date of receipt of the
24 screen-out decision and the date of delivery of the corrected appeal.³

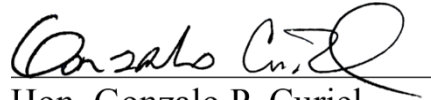
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26
27 ³ Plaintiff additionally argues that administrative remedies were rendered unavailable based on (1)
28 erroneous directions from the Law Library; (2) the prison staff’s failure to interview witnesses as part of
their investigation of the prisoner’s appeal; (3) intimidation based on regular beatings of inmates in
Plaintiff’s housing unit; (4) Plaintiff’s physical and mental disabilities. Since the Court has denied

1 **CONCLUSION**

2 For the foregoing reasons, Officer Solis' motion for summary judgment on the
3 Count One is DENIED and Officer Shepard's motion for summary judgment on Count
4 Two is DENIED as MOOT.

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6 **IT IS SO ORDERED.**

7 Dated: August 18, 2020

8 
9 Hon. Gonzalo P. Curiel
United States District Judge

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Defendants' motion for summary judgment on the issue of exhaustion for the reasons outlined above,
the Court declines to address these additional arguments.