

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 27 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSEPH PATRICK ROMAN SIMON,

Plaintiff-Appellant,

v.

JAMES E. HENNING, Facility Chaplain,
individual and official capacity; H.
GOMEZ, Facility Commander, individual
and official capacity,

Defendants-Appellees.

No. 15-56789

D.C. No. 5:13-cv-02281-RGK-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

California pretrial detainee Joseph Patrick Roman Simon appeals pro se
from the district court's summary judgment for failure to exhaust administrative

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

remedies in his § 1983 action relating to his alleged denial of kosher meals and Passover observance. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015). We vacate and remand.

The district court dismissed Simon’s action for failure to exhaust, finding that Simon failed to provide evidence that he was unaware of West Valley Detention Center’s grievance procedures in 2012 and 2013. However, Simon provided evidence that the resources available to him during this period failed to explain that he was required to file a second appeal with the facility manager, and that Simon was not otherwise made aware of a second level of appeal. This evidence was sufficient to raise a genuine issue of material fact as to whether administrative remedies were effectively unavailable to Simon. *See Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016) (“[W]hen a remedy is . . . essentially ‘unknowable’ – so that no ordinary prisoner can make sense of what it demands – then it is also unavailable.”). Accordingly, we vacate and remand for further proceedings.

Simon’s motion informing the court of retaliatory conduct of jail officials, filed on February 19, 2016, is denied.

VACATED and REMANDED.