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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT E. BARRETT,

Plaintiff,

vs.

MATTHEW CATE, et al.,

Defendants.

Case No. 1:09-cv-01741 LJO JLT (PC)

ORDER WITHDRAWING FINDINGS AND
RECOMMENDATIONS

(Doc. 47)

ORDER DIRECTING DEFENDANTS TO
FILE ADDITIONAL DOCUMENTS

_____ /

On May 10, 2011, Defendants filed their motion to dismiss related to their position that Plaintiff has failed to exhaust his administrative remedies.. (Doc. 32) On October 27, 2011, the Court issued its findings and recommendations recommending that the motion to dismiss be granted. (Doc. 47.) On November 16, 2011, Plaintiff filed objections to the findings and recommendations. (Doc. 51.) On November 18, 2011, Defendants filed their reply to Plaintiff’s objections. (Doc. 52.)

Having reviewed Plaintiff’s objections, the Court finds that Plaintiff may have raised a valid objection as to his assertion that he exhausted his claim of excessive force against Defendant Delanda through an earlier grievance and appeal. It appears that Plaintiff does not rely upon the Rules Violation report as a grievance but on the reference made in the report to an earlier grievance and appeal related to the actions at issue in the rules violation proceeding. (Doc. 36 at 21) Plaintiff’s argument that a rehearing took place as a result of a “Second Level Appeal decision” implies that he

1 may have exhausted this grievance but, without the grievance documents, the Court cannot make this
2 determination.

3 Therefore, the Court **ORDERS:**

- 4 1. The Findings and Recommendations issued on October 27, 2011 (Doc. 47) be
5 **WITHDRAWN;**
- 6 2. Within 14 days of the date of this order the Court **ORDERS** Defendants to file all
7 grievances, responses, and appeals related to Plaintiff's claim of excessive force
8 occurring on or about June 22, 2007, which is alleged to have occurred while Plaintiff
9 was housed in the SHU at California State Prison, Corcoran. (Doc. 17 at 5-6)

10 IT IS SO ORDERED.

11 Dated: December 6, 2011

12 /s/ Jennifer L. Thurston
13 UNITED STATES MAGISTRATE JUDGE

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