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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

Case No. 1: 11-cv-0068-AWI-MJS (PC)

ORDER

- (1) GRANTING DEFENDANT'S MOTION TO WITHDRAW AFFIRMATIVE DEFENSE;**
- (2) VACATING JUNE 16, 2016, EVIDENTIARY HEARING; AND**
- (3) VACATING WRIT OF HABEAS CORPUS**

(ECF Nos. 77, 133, 142, 146)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. This matter proceeds on Plaintiff's First Amended Complaint that was found to state an Eighth Amendment medical indifference claim against a number of Defendants, including Dr. Bondoc.

On August 6, 2015, Dr. Bondoc moved for summary judgment on exhaustion grounds. (ECF No. 77.) On November 9, 2015, the undersigned issued findings and recommendations to, inter alia, deny Dr. Bondoc's motion. (ECF No. 113.) Upon consideration of the parties' evidence, the Court recommended that the motion be denied because there existed a dispute of material fact as to whether Plaintiff submitted a timely grievance.

1 On January 28, 2016, the Honorable Anthony W. Ishii adopted the findings and
2 recommendations in full, and referred the matter back to the undersigned to conduct a
3 hearing regarding exhaustion, specifically to determine whether Plaintiff submitted a
4 grievance in conformity with the then-existing CDCR policies. (ECF No. 132.)

5 Following this referral, the undersigned set an evidentiary hearing for June 16,
6 2016. (ECF No. 133.) On May 23, 2016, a writ of habeas corpus ad testificandum
7 issued to transport Plaintiff to the evidentiary hearing. (ECF No. 142.)

8 Dr. Bondoc now moves to withdraw the affirmative defense of failure to exhaust
9 administrative remedies underlying her August 6, 2015, motion for summary judgment
10 and, accordingly, to vacate the June 16, 2016, evidentiary hearing. Dr. Bondoc so
11 moves based on Plaintiff's withdrawal of specific claims against Dr. Bondoc as
12 confirmed by the parties' May 27, 2016, stipulation (ECF No. 148.)

13 For the reasons stated in the motion, Defendant's request will be granted.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Defendant Dr. Bondoc's May 26, 2016, motion to withdraw (ECF No. 146) is
16 GRANTED;
- 17 2. Dr. Bondoc's affirmative defense of failure to exhaust is deemed
18 WITHDRAWN;
- 19 3. The May 23, 2016, writ of habeas corpus ad testificandum (ECF No. 142) is
20 VACATED;
- 21 4. The June 16, 2016, evidentiary hearing is VACATED; and
- 22 5. The Clerk of Court is directed to serve a copy of this Order on the Warden or
23 Sheriff of California Men's Colony, Highway 1, San Luis Obispo, CA 93409,
24 where Plaintiff is presently housed.

25 IT IS SO ORDERED.

26 Dated: June 2, 2016

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE