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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

DAVID SAFIDI CAUTHEN, JR.,

Plaintiff,

v.

RIVERA et al.,

Defendants.

Case No. 1:12 cv 01747 LJO DLB (PC)

**ORDER DENYING PLAINTIFF'S MOTION  
FOR RECONSIDERATION AS MOOT  
(Document 33)**

**ORDER PERMITTING PLAINTIFF TO FILE  
AMENDED OPPOSITION TO MOTION TO  
DISMISS**

**THIRTY DAY DEADLINE**

Plaintiff David Safidi Cauthen, Jr. ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 26, 2012. The action is proceeding on (1) excessive force in violation of the Eighth Amendment against Defendants Rivera, Negrete, Northcutt, Arreola, King and Waddle; (2) unreasonable search in violation of the Fourth and Eighth Amendments against Defendants Rivera, Negrete and Waddle; (3) deliberate indifference to a serious medical need in violation of the Eighth Amendment against Defendant Mackey; and (4) violation of the First Amendment and RLUIPA against Defendants Rivera, Negrete and Waddle.

On August 22, 2013, Defendants Arreola, Mackey, Negrete, Northcutt, Rivera and Waddle filed a motion to dismiss. The motion is currently pending.

1           On September 26, 2013, Plaintiff filed a request that this Court order Warden Biter to locate  
2 and ship his personal property to his new place of incarceration. Plaintiff had only recently been  
3 transferred, and filed the request prior to receiving responses to his informal and formal appeals.  
4 Plaintiff indicated that his legal property was necessary to allow him to file an opposition to  
5 Defendants' motion to dismiss.

6           On October 3, 2013, Plaintiff filed his opposition and did not indicate that his legal property  
7 had not been returned.

8           As Plaintiff was able to file his opposition on the merits, the Court denied his motion as moot  
9 on October 31, 2013.

10           On November 18, 2013, Plaintiff filed a motion for reconsideration of the October 31, 2013,  
11 denial. He stated that as of November 14, 2013, he had not received his property.

12           Based on Plaintiff's statements, the Court ordered Defendants to inquire as to the status of  
13 Plaintiff's legal property on November 21, 2013, and file a status report with the Court by December  
14 5, 2013.

15           Defendants filed their status report on December 5, 2013. The status report indicates that  
16 Plaintiff's legal property was shipped from California Medical Facility to Salinas Valley State Prison  
17 via Golden State Overnight on November 22, 2013. Plaintiff's property was delivered to Salinas  
18 Valley State Prison, where he is incarcerated, on November 25, 2013. Defendants also attach a  
19 Delivery Report as Exhibit B, which shows that Plaintiff's legal property was delivered to Soledad,  
20 California, on November 22, 2013, at 10:38 a.m. H. Picazo signed for the delivery.

21           Accordingly, as it appears that Plaintiff's property was delivered upon Defendants' inquiry,  
22 Plaintiff's motion for reconsideration is DENIED AS MOOT.

23           The Court will permit Plaintiff to file an amended opposition to the pending motion to  
24 dismiss within thirty (30) days of the date of service of this order. If Plaintiff does not do so, the  
25 Court will decide the motion using Plaintiff's October 3, 2013, opposition. If Plaintiff files an  
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amended opposition, Defendants may file an amended reply within fourteen (14) days of the date of service of the amended opposition.

IT IS SO ORDERED.

Dated: December 17, 2013

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE