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

ANTHONY CASTRO,
Petitioner,

No. CIV S-08-2390-CMK-P

vs.

ORDER

M. MARTEL,
Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to withdraw his motion to dismiss (Doc. 17).

In the motion to dismiss, respondent argues that federal review of petitioner’s claim is barred because he defaulted in state court by not exhausting administrative remedies. The undersigned issued findings and recommendations to deny the motion to dismiss as it appeared petitioner had exhausted his administrative remedies. Respondent, after reviewing the undersigned’s findings and the record again, had also found no procedural deficiency. He is therefore requesting the motion to dismiss be withdrawn. This request will be granted.

///

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Respondent's motion to withdraw his motion to dismiss (Doc. 17) is
3 granted;

4 2. The Clerk of the Court is directed to terminate the motion to dismiss (Doc.
5 9) and the undersigned's November 19, 2009, findings and recommendations thereon, as pending
6 motions; and

7 3. Respondent shall file an answer to the petition on or before January 4,
8 2010.

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10 DATED: December 14, 2009

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12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE
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