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

ROBERT "BOSTON" WOODARD,

Plaintiff,

No. 2:09-cv-2145 LKK JFM (PC)

vs.

JOHN W. HAVILAND, et al.,

Defendants.

ORDER

On March 18, 2011, a hearing was held before the undersigned on the parties' cross motions for summary judgment. At the hearing, counsel for plaintiff represented that the parties stipulated to dismissal of this action so that plaintiff may exhaust his administrative remedies. Also at the hearing, counsel for plaintiff moved the court to waive the filing fee for the refiling of this action once administrative remedies have been exhausted. Plaintiff filed a supplemental letter brief concerning this issue later that day with citation to relevant case law.

Upon review, the undersigned finds that a waiver of the filing fee is warranted in this case because of the unique circumstances surrounding the initiation of this action – that is, plaintiff filed this action in conjunction with a motion for a temporary restraining order so as to evoke the court's equitable powers to issue an injunction preventing plaintiff's transfer to another prison. See Tvelia v. Dep't of Corr., 2004 WL 298100 (D.N.H. 2004). In light of that procedural posture, plaintiff's motion to waive the filing fee is granted.

1 Based thereon, IT IS HEREBY ORDERED that:

- 2 1. All dates currently set in this matter are hereby vacated;
- 3 2. Dispositional documents shall be filed no later than thirty days from the
- 4 date of this order; and
- 5 3. Upon the exhaustion of administrative remedies and the refiling of this
- 6 matter, the filing fee is waived.

7 DATED: March 31, 2011.

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10 UNITED STATES MAGISTRATE JUDGE

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