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

JOSEPH DELGADO,

Plaintiff,

No. 2:10-cv-2379 MCE KJN P

vs.

CDCR MEDICAL HEALTH CARE
DEPARTMENT, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this civil rights filed pursuant to 42 U.S.C. § 1983. The court found, pursuant to 28 U.S.C. §1915A, that plaintiff’s complaint appears to state potentially cognizable Eighth Amendment claims against sole remaining defendant Dr. J. Wedell. (Dkt. No. 6.) Defendant has filed a motion to dismiss that portion of plaintiff’s complaint that alleges defendant failed to provide plaintiff with a special medical diet, based on the failure of plaintiff to exhaust his administrative remedies. (Dkt. No. 21.) In response, plaintiff has agreed to the dismissal of this claim. (Dkt. No. 22.)

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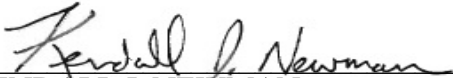
1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Defendant's motion to dismiss (Dkt. No. 21), to which plaintiff accedes, is
3 granted; plaintiff's claim that defendant Wedell denied plaintiff a special medical diet is
4 dismissed from this action;

5 2. This case shall proceed on plaintiff's remaining contentions in support of his
6 Eighth Amendment claims against defendant Wedell; and

7 3. Defendant shall file and serve an answer to the complaint on or before April 1,
8 2011.

9 DATED: March 22, 2011

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12 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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