

**UNITED STATES DISTRICT COURT**

**DISTRICT OF CONNECTICUT**

**BRANDEN HOLLOWAY**

**v.**

**Case No. 3:11VCV1290(VLB)**

**DEP'T OF CORRECTIONS, ET AL.**

**RULING ON PENDING MOTIONS**

Pending before the court is the plaintiff's motion to compel and the defendants' motion to withdraw affirmative defense. For the reasons set forth below, the plaintiff's motion is **DENIED** and the defendants' motion is **GRANTED**.

**I. Motion to Withdraw Affirmative Defense [Doc. No. 63]**

The defendants move to withdraw the affirmative defense of failure to exhaust administrative remedies from their Answer to the Amended Complaint. In addition, the defendants seek to withdraw the argument based on exhaustion of administrative remedies that is set forth in their Motion for Summary Judgment. The motion to withdraw is **GRANTED**.

**II. Motion to Compel [Doc. No. 58]**

The plaintiff seeks an order compelling the defendants to produce a copy of video footage taken on June 4, 2010 from 1:30 p.m. to 11:00 p.m. by a stationary camera located in East Block 1 at Cheshire Correctional Institution. He

claims this video evidence will prove that he filed a grievance regarding the strip search conducted by the defendants on June 2, 2010.

The plaintiff fails to allege when and if he served this request for production of documents on the defendants. As such, the motion to compel is premature.

The court notes that the plaintiff has attached Interrogatories to his motion. The Interrogatories are dated February 21, 2013 and seek information pertaining to the grievance that he filed addressing the strip search conducted by the defendants on June 2, 2010. To the extent that the motion to compel is addressed to the February 21, 2013 Interrogatories, it is premature.

In addition to the motion to compel as having been prematurely filed, it is moot. In view of the fact that the defendants have withdrawn their affirmative defense of exhaustion of administrative remedies and the argument based on plaintiff's failure to exhaust administrative remedies from their motion for summary judgment, information sought in the Interrogatories and Request for Production of Documents is no longer needed by the plaintiff. For all of the reasons set forth above, the motion to compel is DENIED.

### **Conclusion**

The Motion to Withdraw [Doc. No. 63] is GRANTED. The court deems the Third Affirmative Defense of failure to exhaust administrative remedies as set forth in the Answer [Doc. No. 16] to the Amended Complaint and the argument

based on exhaustion of administrative remedies set forth in the defendants' Motion for Summary Judgment [Doc. No. 44] to have been WITHDRAWN. The plaintiff's Motion to Compel [Doc. No. 58] is DENIED in all respects.

SO ORDERED this 28th day of June, 2013, at Hartford, Connecticut.

/s/  
VANESSA L. BRYANT  
UNITED STATES DISTRICT JUDGE