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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BINH TRAN,

12 Plaintiff,

13 v.

14 E. SMITH,

15 Defendant.
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1:14-cv-01320-DAD-EPG (PC)

ORDER VACATING ORDER DENYING
DEFENDANT'S RULE 12(b)(6) MOTION
TO DISMISS
(ECF NO. 31)

19 Binh Tran ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with
20 this civil rights action filed pursuant to 42 U.S.C. § 1983 and attendant state law claim for
21 common law negligence. This case now proceeds on Plaintiff's Second Amended Complaint,
22 filed on February 17, 2015, against defendant Sergeant E. Smith on Eighth Amendment and
23 negligence claims. (ECF No. 13).

24 On August 19, 2016, Defendant filed a Rule 12(b)(6) motion to dismiss for failure to
25 state a claim. (ECF No. 27). On September 26, 2016, Plaintiff filed an opposition to the
26 motion. (ECF No. 29). On October 4, 2016, Defendant filed a reply. (ECF No. 30). On
27 November 7, 2016, the Court issued an order denying Defendant's Rule 12(b)(6) motion to
28 dismiss for failure to state a claim ("the Order"). (ECF No. 31).

1 On November 22, 2016, Defendant filed a motion for reconsideration by the district
2 court of the magistrate judge's order denying Defendant's Rule 12(b)(6) motion to dismiss.
3 (ECF No. 32).

4 Because it appears that Defendant has not consented to magistrate judge jurisdiction,
5 this Court's Order was entered in error. Therefore, the Court will vacate the Order and will
6 instead issue findings and recommendations consistent with the Court's orders. Both parties
7 will have an opportunity to object to the findings and recommendations.

8 Accordingly, based on the foregoing, it is ORDERED that the order denying
9 Defendant's Rule 12(b)(6) motion to dismiss for failure to state a claim (ECF No. 31) is
10 VACATED.

11 IT IS SO ORDERED.

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13 Dated: November 23, 2016

/s/ Eric P. Gray
14 UNITED STATES MAGISTRATE JUDGE