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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JAMES BOWELL,

12 Plaintiff,

13 vs.

14 F. MONTOYA, et al.,

15 Defendants.
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1:17-cv-00605-LJO-GSA-PC

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 50.)**

**ORDER GRANTING DEFENDANTS'
MOTION TO SET ASIDE COURT'S
ORDER AND DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AS
MOOT
(ECF Nos. 48, 49.)**

20 James Bowell ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action
21 pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff's First Amended Complaint
22 filed on May 3, 2018, against defendants Montoya and Carter for violation of due process under
23 the Fourteenth Amendment, and against defendants Killmer and Lopez for conspiracy to place
24 Plaintiff at risk of serious harm and failure to protect Plaintiff under the Eighth Amendment.
25 (ECF No. 16.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C.
26 § 636(b)(1)(B) and Local Rule 302.

27 On September 12, 2019, [findings and recommendations](#) were entered, recommending that
28 Defendants' motion to set aside the court's order revoking Plaintiff's *in forma pauperis* status be

1 GRANTED; the court's order revoking Plaintiff's *in forma pauperis* status be VACATED;
2 Plaintiff's motion for reconsideration be DENIED as moot; the court's order granting Plaintiff
3 leave to proceed *in forma pauperis* be REINSTATED; Plaintiff be GRANTED leave to proceed
4 *in forma pauperis*; Defendants be GRANTED twenty-one days from the date of service of this
5 order in which to file a pleading responsive to the complaint; and Plaintiff be GRANTED one
6 hundred-twenty days from the date of service of this order before discovery is opened in this
7 case. (ECF No. 50.) The parties were granted fourteen days in which to file objections to the
8 findings and recommendations. (Id.) The time for filing objections has expired, and no party
9 has filed objections or otherwise responded to the findings and recommendations.

10 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
11 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
12 court finds the findings and recommendations to be supported by the record and proper analysis.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations (ECF No. 50), entered on September 12, 2019,
15 are ADOPTED IN FULL;
- 16 2. Defendants' motion to set aside the court's order revoking Plaintiff's *in forma*
17 *pauperis* status (ECF No. 48), filed on August 27, 2019, is GRANTED;
- 18 3. The court's order issued on May 1, 2019, revoking Plaintiff's *in forma pauperis*
19 status (ECF No. 42), is VACATED;
- 20 4. Plaintiff's motion for reconsideration, filed on September 3, 2019 (ECF No. 49),
21 is DENIED as moot;
- 22 5. The court's order issued on May 16, 2017, granting Plaintiff leave to proceed *in*
23 *forma pauperis* in this case (ECF No. 9), is REINSTATED;
- 24 6. Plaintiff is GRANTED leave to proceed *in forma pauperis* in this case;
- 25 7. Defendants are GRANTED twenty-one days from the date of service of this order
26 in which to file a pleading responsive to the complaint;
- 27 8. Plaintiff is GRANTED one hundred-twenty days from the date of service of this
28 order before discovery is opened in this case;

1 9. The Clerk of Court is directed to serve (1) a copy of this order, (2) a copy of the
2 court's order granting Plaintiff leave to proceed *in forma pauperis* (ECF No. 9),
3 and (3) a copy of Plaintiff's application to *proceed in forma pauperis* (ECF No.
4 6) on:

5 (1) the Financial Department, U.S. District Court, Eastern District of
6 California; and

7 (2) the Director of the California Department of Corrections and
8 Rehabilitation, via the court's electronic case filing system
9 (CM/ECF);

10 and

11 10. This case is REFERRED back to the Magistrate Judge for further proceedings.

12 IT IS SO ORDERED.

13 Dated: **October 18, 2019**

14 **/s/ Lawrence J. O'Neill**
15 UNITED STATES CHIEF DISTRICT JUDGE