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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES BOWELL,

Plaintiff,

vs.

F. MONTOYA, et al.,

Defendants.

1:17-cv-00605-LJO-GSA-PC

**ORDER OF CLARIFICATION
(ECF No. 57.)**

**ORDER VACATING DISCOVERY AND
SCHEDULING ORDER ISSUED ON
NOVEMBER 8, 2019
(ECF No. 55.)**

I. BACKGROUND

James Howell (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff’s First Amended Complaint, filed on May 3, 2018, against defendants Montoya and Carter for violation of due process under the Fourteenth Amendment, and against defendants Killmer and Lopez for conspiracy to place Plaintiff at risk of serious harm, and additionally for failure to protect Plaintiff under the Eighth Amendment. (ECF No. 16.)¹

On November 27, 2019, Defendants filed a request for clarification regarding the court’s Discovery and Scheduling Order issued on November 8, 2019. (ECF No. 57.)

¹ On October 25, 2018, the court issued an order dismissing all other claims and defendants from this case, for Plaintiff’s failure to state a claim. (ECF No. 20.)

1 **II. DEFENDANTS' REQUEST FOR CLARIFICATION**

2 Defendants request clarification as to whether the 120-day stay of discovery, ordered by
3 the court on October 18, 2019, remains in effect.

4 Defendants correctly state that on October 18, 2019, the court granted Plaintiff “one
5 hundred-twenty days from the date of service of this order before discovery is opened in this
6 case;” i.e., until February 15, 2020. (ECF No. 52 at 2.) However, on November 8, 2019, the
7 court issued a Discovery and Scheduling Order which sets out deadlines for the parties, including
8 a discovery deadline, but does not address the stay on discovery. (ECF No. 55.)

9 As clarification, the court acknowledges that the Discovery and Scheduling Order should
10 not have been issued in this case on November 8, 2019. The 120-day stay of discovery granted
11 to Plaintiff on October 18, 2019, remains in effect. The court shall vacate the Discovery and
12 Scheduling Order and issue a new scheduling order after the 120-day stay of discovery has ended.

13 **III. CONCLUSION**

14 Based on the foregoing, IT IS HEREBY ORDERED that:

- 15 1. Defendants’ request for clarification, filed on November 27, 2019, is granted by
16 this order;
- 17 2. The 120-day stay of discovery granted to Plaintiff on October 18, 2019, remains
18 in effect;
- 19 3. The court’s Discovery and Scheduling Order, issued on November 8, 2019, is
20 VACATED from the record; and
- 21 4. The court shall issue a new Discovery and Scheduling order after the 120-day stay
22 of discovery has ended.

23
24 IT IS SO ORDERED.

25 Dated: December 2, 2019

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE