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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 STEVE ROCKY NICKLAS,

12 Plaintiff,

13 v.

14 W. KOKOR and MS. MATA,

15 Defendants.
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Case No. 1:18-cv-00119-LJO-EPG (PC)

ORDER GRANTING PLAINTIFF'S
MOTIONS TO OPEN DISCOVERY
GENERALLY AND DENYING
PLAINTIFF'S REQUEST FOR
SANCTIONS AND REQUEST FOR
APPOINTMENT OF PRO BONO
COUNSEL

(ECF Nos. 57 & 60)

17 Steve Rocky Nicklas ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

19 On September 30, 2019, Plaintiff filed a motion for leave to file a surreply and for leave
20 to conduct discovery (ECF No. 57), which the Court construed as a motion to open discovery
21 generally. On October 7, 2019, Defendants filed their opposition to the motion. (ECF No. 59).
22 On that same day Plaintiff filed another motion to open discovery generally. (ECF No. 60).
23 Plaintiff's motions are now before the Court.¹

24 "On July 18, 2019, the Court held an initial scheduling conference. After the
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27 ¹ The Court previously noted that it would "defer ruling on Plaintiff's motions to open discovery (ECF
28 Nos. 57 and 60) until the Court resolves Defendants' motion for terminating sanctions." (ECF No. 62). As the
Court has issued findings and recommendations, recommending that Defendants' motion for terminating sanctions
be denied (ECF No. 66), the Court will now address Plaintiff's motions.

1 conference, the Court issued a scheduling order. (ECF No. 46). Given Plaintiff's allegations
2 that he could not read or write, and could not obtain any assistance to prepare discovery or
3 responses, and after substantial discussion with the parties about the best way to proceed, the
4 Court declined to open discovery generally. (ECF No. 46, p. 2). Instead, the Court issued
5 certain orders that relevant documents be produced without any further discovery requests,
6 allowed Defendants to depose Plaintiff, but otherwise left discovery closed. (Id.). Plaintiff did
7 not object to this limitation. Indeed, discovery was so limited based on Plaintiff's own
8 representations that he could not meaningfully participate in discovery." (ECF No. 56, p. 1).

9 In Plaintiff's motions, Plaintiff asserts that, with the assistance he is now getting from
10 an inmate, he is able to participate in discovery. (See, e.g., ECF No. 57, pgs. 4 & 6). Given
11 this assertion,² and given that the Court limited discovery based on Plaintiff's representations
12 that he could not meaningfully participate in discovery, the Court will open discovery
13 generally. The Court notes that Plaintiff did not delay in requesting discovery, and in fact
14 attempted to take discovery almost immediately after the scheduling conference.

15 As the Court is opening discovery generally, Defendants have forty-five days from the
16 date of service of this order to respond to the discovery requests that defense counsel received
17 on August 5, 2019. (ECF No. 56, p. 3).

18 As to the request for sanctions included in Plaintiff's second motion to open discovery
19 generally (ECF No. 60), it will be denied. Plaintiff has submitted no evidence that defense
20 counsel violated the order issued on July 19, 2019. Contrary to the assertion in Plaintiff's
21 motion, the Court did not order defense counsel to produce "all relevant documental evidence
22 whether incriminating or exonerating [sic] of their clients."

23 As to the request for appointment of pro bono counsel included in Plaintiff's second
24 motion to open discovery generally (id. at 7), it will be denied without prejudice for the reasons
25 described in the Court's prior order denying Plaintiff's request for appointment of pro bono
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28 ² Based on Plaintiff's recent filings, it appears that this assertion is true and that Plaintiff has the ability to fully participate in this case.

1 counsel (ECF No. 66, pgs. 8-9).

2 Based on the foregoing, IT IS ORDERED that:

- 3 1. Plaintiff's motions to open discovery generally are GRANTED. An amended
4 scheduling order that, among other things, opens discovery generally, will be
5 issued in due course.
- 6 2. Defendants have forty-five days from the date of service of this order to respond
7 to the discovery requests that defense counsel received on August 5, 2019.
- 8 3. Plaintiff's request for sanctions is DENIED.
- 9 4. Plaintiff's request for appointment of pro bono counsel is DENIED without
10 prejudice.

11 IT IS SO ORDERED.

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13 Dated: November 26, 2019

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