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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THEODORE SHOVE,
Plaintiff,
v.
MCDONALD, et al.,
Defendants.

Case No. [14-cv-02903-JD](#)

ORDER

Re: Dkt. No. 67

This is a civil rights case brought pro se by a state prisoner. The Court granted defendants' motion to revoke plaintiff's in forma pauperis status. The case was dismissed and closed after plaintiff failed to pay the filing fee. On March 3, 2017, the Ninth Circuit reversed and remanded in light of two recently decided cases that clarified what dismissals may constitute strikes. Docket No. 50. On March 15, 2017, plaintiff filed a petition for rehearing en banc. At that time, the Ninth Circuit had not ruled on plaintiff's motion for rehearing and no mandate has been issued. However, defendants filed a second motion to dismiss and revoke plaintiffs in forma pauperis status. Docket No. 53. Because the mandate had not been issued and had been stayed in light of the motion for rehearing, this Court did not have jurisdiction to hear defendants' motion and it dismissed it without prejudice.

The Ninth Circuit denied plaintiff's motion for a hearing and issued the mandate on May 30, 2017. Defendants filed a new motion to revoke plaintiff's in forma pauperis status on June 16, 2017. Plaintiff has filed a new opposition and defendants filed a reply. The Court will review the filings in due course.

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Plaintiff's motion to incorporate evidence (Docket No. 67) is **DENIED** as moot. The judgment in this case (Docket No. 42) is **VACATED** and this case is **REOPENED**.

IT IS SO ORDERED.

Dated: August 8, 2017



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 THEODORE SHOVE,
4 Plaintiff,

5 v.

6 MCDONALD, et al.,
7 Defendants.
8

Case No. [14-cv-02903-JD](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on August 8, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Theodore Shove ID: G11092
18 San Quentin State Prison
19 San Quentin, CA 94974

20 Dated: August 8, 2017

21
22 Susan Y. Soong
23 Clerk, United States District Court

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25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28