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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCELLAS HOFFMAN,

Plaintiff,

v.

D. COYLE, et al.,

Defendants.

Case No.: 1:16-cv-01617-AWI-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND
DISMISSING CERTAIN DEFENDANTS
(Doc. No. 26)

Plaintiff Marcellas Hoffman is a federal prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

On December 5, 2016, Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and Local Rule 302. (Doc. No. 4.) Later, on May 9, 2017, the assigned magistrate judge screened Plaintiff’s complaint and found that it stated a cognizable claim against Defendant Preston for retaliation in violation of the First Amendment and deliberate indifference in violation of the Eighth Amendment. (Doc. No. 8.) The magistrate judge further found that Plaintiff failed to state a cognizable claim against Defendants Matevoisain, Hayes, Fields, and Coyle. (*Id.*) Plaintiff was directed to notify the Court in writing that he was willing to proceed only against Defendant Preston, or to amend his complaint to attempt to cure the deficiencies identified in the Court’s order. (*Id.*)

1 On May 22, 2017, Plaintiff filed a notice that he was willing to proceed only against
2 Defendant Preston on the claims identified as cognizable. (Doc. No. 9.) On June 19, 2017, the
3 magistrate judge dismissed the claims against Defendants Matevoisain, Hayes, Fields, and Coyle
4 for the failure to state a claim upon which relief may be granted. (Doc. No. 12.) The case then
5 proceeded on Plaintiff's claim against Defendant Preston.

6 On August 18, 2017, Defendant Preston filed an *ex parte* application for leave to file a
7 pre-answer motion for summary judgment on the failure to exhaust administrative remedies,
8 (Doc. No. 14), which was granted on August 30, 2017, (Doc. No. 15.) On October 23, 2017,
9 Defendant Preston filed the motion for summary judgment, which remains pending. (Doc. No.
10 20.) Defendant Preston also declined to the jurisdiction of a United States Magistrate Judge
11 pursuant to 28 U.S.C. § 636(c) and Local Rule 302. (Doc. No. 19.)

12 On December 1, 2017, the magistrate judge reinstated Plaintiff's previously dismissed
13 claims, recognizing that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir.
14 2017), had held that a magistrate judge does not have jurisdiction to dismiss claims with
15 prejudice in screening prisoner complaints even if a plaintiff has consented to magistrate judge
16 jurisdiction, as Plaintiff had done here. (Doc. No. 26.) Concurrently, the magistrate judge issued
17 findings and recommendations recommending that the undersigned dismiss those reinstated
18 claims. (*Id.*) The parties were given fourteen days to file his objections to those findings and
19 recommendations. No objections were filed, and the time in which to do so has now passed.

20 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the
21 undersigned has conducted a *de novo* review of this case. The undersigned concludes the
22 findings and recommendations are supported by the record and by proper analysis.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The findings and recommendations issued on December 1, 2017 and filed on
25 December 4, 2017 (Doc. No. 26) are adopted in full;
- 26 2. Plaintiff's claims against Defendants Matevoisain, Hayes, Fields, and Coyle are
27 dismissed for the failure to state a claim upon which relief may be granted;

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- 3. This action shall proceed solely on Plaintiff's claim against Defendant Preston for retaliation in violation of the First Amendment and deliberate indifference in violation of the Eighth Amendment; and
- 4. This matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: January 10, 2018



SENIOR DISTRICT JUDGE