

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MARCELLAS HOFFMAN,  
  
Plaintiff,  
  
v.  
  
TIMOTHY PRESTON,  
  
Defendant.

Case No. 1:16-cv-01617-LJO-SAB (PC)  
  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
PLAINTIFF’S REQUEST FOR LEAVE TO  
FILE AN AMENDED COMPLAINT, AND  
DENYING AS MOOT DEFENDANT’S  
MOTION TO DISMISS  
  
(ECF Nos. 37, 38, 40)

Plaintiff Marcellas Hoffman is a federal prisoner proceeding *pro se* and *in forma pauperis* in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 8, 2018, Defendant Timothy Preston filed a motion to dismiss. (ECF No. 37.) On November 26, 2018, Plaintiff requested leave to file the proposed first amended complaint that he had included as Attachment 1 to his opposition to Defendant’s motion to dismiss. (ECF no. 38, at 1, 22, 24-32.)<sup>1</sup>

On March 15, 2019, the Magistrate Judge issued findings and recommendations recommending that Plaintiff’s request for leave to file an amended complaint be granted and that

<sup>1</sup> All references to pagination of specific documents pertain to those as indicated on the upper right corners via the CM/ECF electronic court docketing system.

1 Defendant's motion to dismiss be denied as moot. (ECF No. 40.) The findings and  
2 recommendations were served on the parties and contained notice that any objections thereto were  
3 to be filed within fourteen (14) days after service of the findings and recommendations. (Id. at 8.)  
4 More than fourteen days have passed since the findings and recommendations were served and no  
5 objections have been filed.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
7 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds that the  
8 Magistrate Judge's findings and recommendations are supported by the record and by proper  
9 analysis.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations issued on March 15, 2019, (ECF No. 40), are  
12 adopted in full;
- 13 2. Plaintiff's request for leave to file a first amended complaint, (ECF No. 38), is  
14 GRANTED;
- 15 3. Defendant's motion to dismiss, (ECF No. 37), is DENIED as MOOT;
- 16 4. The Clerk of the Court is directed to file Plaintiff's first amended complaint, which  
17 consists of pages 25 through 32 of Plaintiff's opposition to Defendant's motion to  
18 dismiss, (ECF No. 38);
- 19 5. The Court will screen Plaintiff's first amended complaint as quickly as possible  
20 given the Court's heavy caseload;
- 21 6. The Court will schedule an evidentiary hearing regarding exhaustion of  
22 administrative remedies if a hearing is necessary after Plaintiff's first amended  
23 complaint is screened; and

24 //

25 //

26 //

27 //

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7. This matter is referred to the assigned Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: April 9, 2019

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