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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MARCELLAS HOFFMAN,

12 Plaintiff,

13 v.

14 TIMOTHY PRESTON,

15 Defendant.  
16

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

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, AND DISMISSING  
RETALIATION CLAIM

(ECF Nos. 42, 43)

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

21 On April 11, 2019, Plaintiff filed a first amended complaint against Defendant Timothy  
22 Preston. (ECF No. 42.) On April 25, 2019, the Magistrate Judge issued Findings and  
23 Recommendations recommending that this action proceed against Defendant Preston for violations  
24 of the Eighth Amendment. (ECF No. 43.) The Magistrate Judge further recommended that  
25 Plaintiff's First Amendment retaliation claim be dismissed for failure to state a cognizable claim  
26 for relief under Bivens. (Id.) The Findings and Recommendations were served on the parties and  
27 contained notice that any objections thereto were to be filed within thirty (30) days after service.  
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1 (Id.) More than thirty days have passed since the Findings and Recommendations were served, and  
2 no objections have been filed.

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

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations issued on April 25, 2019, (ECF No. 43), are  
9 adopted in full;
- 10 2. This action shall proceed against Defendant Preston for violations of the Eighth  
11 Amendment;
- 12 3. Plaintiff's First Amendment retaliation claim is dismissed for failure to state a  
13 cognizable claim for relief under Bivens; and
- 14 4. This matter is referred to the assigned Magistrate Judge for further proceedings.

15  
16 IT IS SO ORDERED.

17 Dated: June 12, 2019

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