

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)
Appeal No. 20-15396
**ORDER REGARDING *IN FORMA PAUPERIS*
STATUS ON APPEAL**
(ECF No. 62)

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 June 13, 2019, the Court dismissed Plaintiff’s First Amendment retaliation claim for failure to state a cognizable claim under Bivens. (ECF No. 44.) On January 4, 2020, the Court granted Defendant Timothy Preston’s motion to dismiss without leave to amend and dismissed this action, with prejudice, for failure to state a claim upon which relief may be granted under Bivens. (ECF No. 57.) Plaintiff filed a notice of appeal, pursuant to the prison mailbox rule, on March 1, 2020. (ECF No. 59.)

On March 12, 2020, the Ninth Circuit Court of Appeals referred this matter back to this Court for the limited purpose of determining whether *in forma pauperis* status should continue for the appeal. 28 U.S.C. § 1915(a)(3). (ECF No. 62.) The Court finds that the appeal is not frivolous or taken in bad faith. Therefore, Plaintiff’s *in forma pauperis* status should not be

1 revoked and should continue for the appeal.

2

3 IT IS SO ORDERED.

4

5 Dated: March 16, 2020

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 MAGISTRATE JUDGE