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

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|------------------|---|-------------------------------------|
| JOSHUA HOLMBOE, |) | Case No. 1:17-cv-01575-LJO-SAB (PC) |
| |) | |
| Plaintiff, |) | |
| |) | ORDER VACATING FINDINGS AND |
| v. |) | RECOMMENDATIONS ISSUED JANUARY 11, |
| |) | 2018 |
| FALGOUT, et al., |) | |
| |) | [ECF No. 8] |
| Defendants. |) | |
| |) | |
| |) | |

Plaintiff Joshua Holmboe is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed the instant action on November 27, 2017. On January 11, 2018, the undersigned issued Findings and Recommendations recommending that the instant action be dismissed for failure to state a cognizable claim for relief. (ECF No. 8.) The Court specifically found that because the action was filed under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), based on the analysis set forth in *Ziglar v. Abbasi*, 137 S.Ct. 1843 (2017), Plaintiff's retaliation was not cognizable. (*Id.*)

On February 12, 2018, Plaintiff filed objections to the Findings and Recommendations. In his objections, Plaintiff submits that the complaint involved actions by state actors while he was in state custody. Upon further review of the complaint, Plaintiff is correct as the allegations pertain to actions which took place while he was incarcerated at Taft Modified Community Correctional Facility

1 (MCC), which is under contract with the California Department of Corrections and Rehabilitation.
2 The Court inadvertently found that Plaintiff's allegations involved federal actors while he was in
3 federal custody at the Taft Correctional Institution. Therefore, the Findings and Recommendations
4 will be vacated, and the Court and will re-screen Plaintiff's complaint pursuant to 42 U.S.C. § 1915A
5 in due course.

6 Based on the foregoing, it is HEREBY ORDERED that the Findings and Recommendations
7 issued January 11, 2018, are VACATED.

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9 IT IS SO ORDERED.

10 Dated: February 13, 2018


UNITED STATES MAGISTRATE JUDGE

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