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| 8 UNITED STATES DISTRICT COURT  |  |
| 9 FOR THE EASTERN DISTRICT OF CALIFORNIA  |  |
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| IVAN LEE MATTHEWS,  | No. 1:14-cv-1959 KJM DB P  |
| Plaintiff,  |  |
| v.  | <u>ORDER</u>   |
| KIM HOLLAND,  |  |
| Defendant.  |  |
|   |  |
| Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action under  |  |
| 42 U.S.C. § 1983. This case concerns the use of the Guard One security check system at the  |  |
| California Correctional Institution ("CCI"). The court related this case to five other cases  |  |
| 20 involving use of the Guard One system in California prisons: <u>Murillo v. Holland, et al.</u> , No. 1:15-   |  |
| cv-0266 KJM DB P; Wilson v. Beard, et al., No. 1:15-cv-1424 KJM DB P; Rico v. Beard, et al.,  |  |
| 22 No. 2:17-cv-1402 KJM DB P; <u>Suarez v. Beard, et al.</u> , No. 2:18-cv-0340 KJM DB P; and <u>Lipsey</u>   |  |
| 23 v. Norum, et al., No. 2:18-cv-0362 KJM DB P. In addition, these Guard One cases have been  |  |
| related to the class action <u>Coleman v. Newsom</u> , No. 2:90-cv-0520 KJM DB P. The Guard One   |  |
| 25 system was implemented in the prisons pursuant to an order issued in <u>Coleman</u> .  |  |
| 26 ////   |  |
| 27 Counsel recently filed a notice of a seventh related case: <u>Harris v. Sexton</u> , No. 1:18-cv-0080 DAD SAB P. The court has not yet related <u>Harris</u> to the other Guard One cases. |  |
|   | IVAN LEE MATTHEWS,  Plaintiff,  v.  KIM HOLLAND,  Defendant.  Plaintiff is a state prisoner proceeding 42 U.S.C. § 1983. This case concerns the use California Correctional Institution ("CCI"). T involving use of the Guard One system in Cal cv-0266 KJM DB P; Wilson v. Beard, et al., N No. 2:17-cv-1402 KJM DB P; Suarez v. Beard v. Norum, et al., No. 2:18-cv-0362 KJM DB F related to the class action Coleman v. Newson system was implemented in the prisons pursua  ////  1 Counsel recently filed a notice of a seventh re- |

In <u>Rico</u>, the district court considered defendants' motion to dismiss the action based on, among other things, qualified immunity. On March 5, 2019, the court held that qualified immunity protected the high level supervisory defendants from this suit but that the remaining defendants, those who reviewed plaintiff's appeals and those who conducted the security tests, were not so protected. (No. 2:17-cv-1402 KJM DB P, ECF No. 102.) The defendants remaining in the case then appealed. (<u>Id.</u>, ECF No. 103.) On appeal, they argue that the district court erred in denying them qualified immunity. <u>See</u> Appellants' Mediation Questionnaire, <u>Rico v. Ducart</u>, <u>et al.</u>, No. 19-15541 (9th Cir. Mar. 29, 2019). The <u>Rico</u> appeal remains pending in the Ninth Circuit.<sup>2</sup>

In the present case, plaintiff identifies one defendant - Kim Holland, CCI Warden. On January 18, 2019, defendant filed a motion for summary judgment. (ECF No. 68.) One of defendant's arguments is that she is entitled to qualified immunity.

This court finds that the Ninth Circuit's decision in <u>Rico</u> will very likely affect the analysis of the qualified immunity issue in this case. Therefore, a stay of these proceedings may be the best use of the parties' time and judicial resources. This court seeks the parties' positions on the imposition of a stay pending the Ninth Circuit's Rico decision.

Accordingly, IT IS HEREBY ORDERED that within twenty days of the date of this order, each party shall file either: (1) a statement that the party finds a stay pending the <u>Rico</u> decision appropriate, or (2) a short memorandum of points and authorities explaining why a stay is not appropriate.

Dated: June 12, 2019

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DLB:9/DB/prisoner-civil rights/matt1915.rico stay

UNITED STATES MAGISTRATE JUDGE

<sup>&</sup>lt;sup>2</sup> The appeal was released from mediation on May 6, 2019. Appellants' opening brief is due July 1, 2019.