

1 recommendations were served on the parties and contained notice to the parties that any
2 objections to the findings and recommendations were to be filed within fourteen days.
3 Defendants Holland and Gutierrez filed objections to the findings and recommendations. Obj.,
4 ECF No. 140.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
6 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds each
7 set of findings and recommendations to be supported by the record and by the proper analysis.

8 Regarding the findings and recommendations on their motion to dismiss, defendants argue
9 that even though the allegations in this action are not identical to the allegations underlying the
10 Ninth Circuit decision in *Rico v. Ducart*, they are sufficiently similar such that the court should
11 find qualified immunity applies here. 980 F.3d 1292, 1299 (9th Cir. 2020) (*Rico I*); *see generally*
12 Obj. Specifically, they argue plaintiff’s claims only allege the Guard One policy as a whole is
13 unconstitutional and plaintiff does not challenge the specific application of the policy at his
14 correctional facility, California Correctional Institution (CCI). Obj. at 8.

15 Although plaintiff’s complaint also discusses the Guard One policy in general terms, the
16 magistrate judge correctly construed plaintiff’s claims as addressing the implementation of Guard
17 One at CCI. *See, e.g.*, First Am. Compl. at 6, ECF No. 52 (“some officers would go out of [their]
18 way to bang extra hard on the persons cell door.”); *Silva v. Di Vittorio*, 658 F.3d 1090, 1101 (9th
19 Cir.2011) (“We construe pro se complaints liberally and may only dismiss a pro se complaint for
20 failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in
21 support of his claim which would entitle him to relief.”).

22 In *Rico I*, the Ninth Circuit held qualified immunity applied to officers implementing
23 Guard One only after examining the “particular facts” including “the noise levels of the facility
24 and the construction of the facility itself.” *See* 980 F.3d at 1299. The magistrate judge
25 appropriately found it must conduct a fact specific inquiry related to CCI’s physical structure and
26 unique noise levels before it makes any decision on qualified immunity.

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

Accordingly, IT IS HEREBY ORDERED:

1. The findings and recommendations filed March 8, 2019 (ECF No. 113), as modified by the magistrate judge's July 28, 2023 order, are adopted in full.
2. The July 20, 2018 motion for summary judgment (ECF No. 97) is granted as to defendant Ybarra.
3. The findings and recommendations filed July 28, 2023 (ECF No. 138) are adopted in full.
4. The motion to dismiss of defendants Holland and Gutierrez (ECF No. 129) is denied without prejudice to its renewal as a motion for summary judgment.
5. This matter is referred back to the assigned magistrate judge for all further pretrial proceedings.

DATED: September 29, 2023.



CHIEF UNITED STATES DISTRICT JUDGE