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

GILBERTO GARCIA,)	Case No.: 1:19-cv-00222-SAB (PC)
)	
Plaintiff,)	
)	ORDER DIRECTING CLERK OF COURT TO
v.)	RANDOMLY ASSIGN A DISTRICT JUDGE TO
)	THIS ACTION
K. HOLLAND, et.al.,)	
)	FINDINGS AND RECOMMENDATION
Defendants.)	RECOMMENDING DISMISSAL OF CERTAIN
)	DEFENDANTS
)	
)	[ECF Nos. 5, 7]
)	

Plaintiff Gilberto Garcia is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 1, 2019, the undersigned screened Plaintiff’s complaint and found that Plaintiff stated a cognizable claim against Defendants K. Holland. W.J. Sullivan, J. Gutierrez, K. Allen, D. Mason and R. Escarcega for the denial of outdoor exercise in violation of the Eighth Amendment. (ECF No. 5.) However, Plaintiff did not state a cognizable claim against Defendants R. Groves and J. Jones. (Id.) The Court granted Plaintiff leave to amend the complaint or notify the Court in writing of his intent to proceed only the retaliation claim. (Id.) On March 25, 2019, Plaintiff notified the Court of his intent to proceed only against K. Holland. W.J. Sullivan, J. Gutierrez, K. Allen, D. Mason and R. Escarcega. (ECF No. 7.) As a result, the Court will recommend that this action only proceed against Defendants K. Holland. W.J. Sullivan, J. Gutierrez, K. Allen, D. Mason and R. Escarcega for

1 the denial of outdoor exercise in violation of the Eighth Amendment, and Defendants R. Groves and J.
2 Jones be dismissed for the reasons stated in the Court’s March 1, 2019 screening order. Fed. R. Civ. P.
3 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
4 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

5 Accordingly, it is HEREBY RECOMMENDED that:

- 6 1. This action proceed against Defendants K. Holland. W.J. Sullivan, J. Gutierrez, K. Allen,
7 D. Mason and R. Escarcega for the denial of outdoor exercise in violation of the Eighth
8 Amendment;
- 9 2. Defendants R. Groves and J. Jones are dismissed for failure to state a cognizable claim;
10 and
- 11 3. The Clerk of Court is directed to randomly assign a District Judge to this action.

12 These findings and recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within **fourteen (14) days**
14 after being served with these Finding and Recommendations, Plaintiff may file written objections with
15 the Court. The document should be captioned “Objections to Findings and Recommendations.” Plaintiff
16 is advised that failure to file objections within the specified time may result in the waiver of rights on
17 appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
18 F.2d 1391, 1394 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21 Dated: March 27, 2019


22 UNITED STATES MAGISTRATE JUDGE

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