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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY GIRALDES, JR.,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:16-cv-2139 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff consented to magistrate judge jurisdiction. (ECF No. 4.) Presently before the court is plaintiff’s request for service of the first amended complaint. (ECF No. 11.)

On September 27, 2017, plaintiff’s first amended complaint (ECF No. 5) was screened and found to state a claim for retaliation in violation of the First Amendment against defendants Moreland, Sturgess, Maciel, Hernandez, and Robinson. (ECF No. 6.) The court also found plaintiff failed to state a claim for deliberate indifference in violation of the Eighth Amendment against defendants Sturgess, Kernan, and the California Department of Corrections and Rehabilitation (“CDCR”). (Id.) The court gave plaintiff an opportunity to amend his complaint.

Plaintiff moved for and was granted an extension of time in which to file an amended complaint. (ECF Nos. 9, 10.) However, plaintiff has now requested that the court order service

1 of the defendants named in his First Amendment claim. (ECF No. 11.) The court construes this
2 filing as a notice of plaintiff's willingness to proceed on the complaint as screened. Based on
3 plaintiff's willingness to proceed on the complaint as screened, the court will recommend¹
4 dismissal of plaintiff's Eighth Amendment claim and defendants Kernan and the CDCR for the
5 reasons stated in the court's September 27, 2017 screening order (ECF No. 6).

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The Clerk of Court is directed to randomly assign a district judge.

8 2. Plaintiff has stated a cognizable claim for retaliation in violation of the First
9 Amendment. Service is appropriate for the following defendants: Moreland, Sturgess, Maciel,
10 Hernandez, and Robinson.

11 3. The Clerk of the Court shall send plaintiff 5 USM-285 forms, one summons, an
12 instruction sheet, and a copy of the amended complaint filed October 3, 2016 (ECF No. 5).

13 4. Within thirty days from the date of this order, plaintiff shall complete the attached
14 Notice of Submission of Documents and submit the following documents to the court:

15 a. The completed Notice of Submission of Documents;

16 b. One completed summons;

17 c. One completed USM-285 form for each defendant listed in number 2 above;

18 and

19 d. Six copies of the endorsed amended complaint filed October 3, 2016.

20 5. Plaintiff need not attempt service on defendants and need not request waiver of service.

21 Upon receipt of the above-described documents, the court will direct the United States Marshal to
22 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
23 of costs.

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26 ¹ In light of Williams v. King, 875 F.3d 500 (9th Cir. 2017) (holding a Magistrate Judge does not
27 have jurisdiction to dismiss a case with prejudice during screening even if the plaintiff has
28 consented to Magistrate Judge jurisdiction), the court will direct the clerk to assign a district
judge.

1 IT IS HEREBY RECOMMENDED that plaintiff's Eighth Amendment claim and
2 defendants Kernan and the CDCR be dismissed for the reasons stated in the court's September
3 27, 2017 order (ECF No. 6).

4 These findings and recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, plaintiff may file written objections
7 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
8 and Recommendations." Plaintiff is advised that failure to file objections within the specified
9 time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951
10 F.2d 1153 (9th Cir. 1991).

11 Dated: February 9, 2018

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

15 DLB12
16 DLB1/Orders/Prisoner.Civil Rights/gira1264.req.serv

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