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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 ESS'NN A. AUBERT,

11 Plaintiff,

12 vs.

13 CORRECTIONAL OFFICERS KEVIN
ELIJAH AND MARIO GARCIA,

14 Defendants.
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1:07-cv-01629-LJO-GSA-PC

ORDER CONTINUING JURY TRIAL

Jury Trial Continued:

**From: October 29, 2013, at 8:30 a.m. in
Courtroom 4 (LJO)**

**To: November 5, 2013, at 8:30 a.m. in
Courtroom 4 (LJO)**

ORDER OFFERING DEFENDANTS
OPPORTUNITY TO CONSENT TO
MAGISTRATE JUDGE JURISDICTION
WITHIN SEVEN DAYS

ORDER FOR CLERK TO SEND
CONSENT/DECLINE FORM TO
DEFENDANTS

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24 This civil rights action, brought pursuant to 42 U.S.C. § 1983, proceeds on the original
25 Complaint filed by state prisoner Ess'nn A. Aubert ("Plaintiff") on November 8, 2007, against
26 defendants Correctional Officers (C/O) Kevin Elijah and Mario Garcia ("Defendants"), for use
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1 of excessive force against Plaintiff, in violation of the Eighth Amendment. (Doc. 1.)¹ This
2 case is presently set for jury trial on October 29, 2013 before District Judge Lawrence J.
3 O’Neill.

4 The parties are **HEREBY NOTIFIED** that due to Judge O’Neill’s impacted trial
5 calendar, it is necessary to continue the trial for this action to November 5, 2013 at 8:30 a.m.
6 before District Judge Lawrence J. O’Neill.

7 Defendants are offered another opportunity to consent to Magistrate Judge jurisdiction,
8 by Friday, October 25, 2013. Case management difficulties, including trial setting and
9 interruption, are avoided if the parties consent to conduct of further proceedings by a U.S.
10 Magistrate Judge. The civil and criminal dockets of the U.S. Magistrate Judges in Fresno are
11 much less crowded than those of the District Court Judges and consequently the Magistrate
12 Judges are able to give litigants firm trial dates. This Court recognizes that Defendants have
13 filed a decline to Magistrate Judge jurisdiction. However, given the gravity of Judge O’Neill’s
14 inability to commit to trials, Defendants are encouraged to reconsider Magistrate Judge
15 consent.²

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The jury trial for this action is continued:

18 From October 29, 2013, at 8:30 a.m. in Courtroom 4 (LJO)

19 To November 5, 2013, at 8:30 a.m. in Courtroom 4 (LJO);

20 2. The Clerk is directed to send Defendants the court’s form for consent to or
21 decline of Magistrate Judge jurisdiction; and

22 3. Defendants are offered another opportunity to consent to Magistrate Judge
23 jurisdiction, by returning the court’s consent form by this Friday, October 25,
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26 ¹On July 31, 2009, the court dismissed all other claims and defendants from this action, based on Plaintiff’s failure to
state a claim. (Doc. 17.)

27 ²Plaintiff filed consents to U.S. Magistrate Judge jurisdiction on May 13, 2013 and May 28,
28 2013 in response to the court’s second scheduling order, in which the parties were directed to either consent to or
decline U.S. Magistrate Judge jurisdiction. (Docs. 86, 89.)

1 2013.³ IF there is M.J. jurisdiction, and the parties both wish to keep the
2 original date, that is a possibility, but both sides need to advise the Court of that
3 desire when they consent.
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7 IT IS SO ORDERED.

8 Dated: October 21, 2013

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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27 ³ The court's form gives the parties thirty days in which to submit the form for consent to or
28 decline of Magistrate Judge jurisdiction. However, due to time constraints, Defendants are encouraged to sign and submit the form to the court immediately if interested.