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| 8        | UNITED STATES DISTRICT COURT   |   |
| 9        | EASTERN DISTRICT OF CALIFORNIA   |   |
| 10       |  |   |
| 11       | JAQUES FEARENCE,   | ) Case No.: 1:08-cv-00615-LJO-SAB (PC)  |
| 12       | Plaintiff,   | )<br>)<br>)<br>) ORDER REGARDING CONSENT TO                                   |
| 13       | v.   | ) MAGISTRATE JUDGE JURISDICTION   |
| 14       | S. HOPKINS, et. al.,   | ) ORDER DIRECTING CLERK OF COURT TO<br>) SEND CONSENT FORMS                   |
| 15       | Defendants.  |   |
| 16       |  |   |
| 17       | Plaintiff Jaques Fearence is appearing pro se and in forma pauperis in this civil rights action                            |   |
| 18       | pursuant to 42 U.S.C. § 1983.  |   |
| 19       | On September 30, 2015, Defendants' partial motion for summary judgment was granted, and                                    |   |
| 20       | this case is now ready to be set for jury trial on Plaintiff's claim of excessive force against Defendant                  |   |
| 21       | Hopkins and failure to protect against Defendants Beckett, Davis and Duffy.  |   |
| 22       | Plaintiff declined Magistrate Judge jurisdiction on May 30, 2008 (ECF No. 6), and Defendants                               |   |
| 23       | declined Magistrate Judge jurisdiction on July 15, 2013. (ECF No. 52.)   |   |
| 24       | Now that the case is ready to be set for trial, the parties are advised of the following important                         |   |
| 25       | information about scheduling and trailing cases before the undersigned: <sup>1</sup>                                       |   |
| 26       |  |   |
| 27<br>28 | <sup>1</sup> Withholding consent or declining jurisdiction of a Ma party's case or have any adverse substantive consequent | agistrate Judge for all purposes will have no effect on the merits of a nces. |

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District Court Judges of the Fresno Division of the Eastern District of California now have the heaviest caseload in the nation. As a result, each District Judge schedules multiple trials to begin on each available trial date. Civil cases will trail and begin as soon as a courtroom is cleared. The law requires that the Court give any criminal trial priority over civil trials or any other matter. A civil trial set to begin while a criminal trial is proceeding will trail the completion of the criminal trial.

The Court cannot give advance notice of which cases will trail or for how long because the Court does not know which cases actually will go to trial or precisely how long each will last. Once your trial date arrives, counsel, parties and witnesses must remain on 24-hour-stand-by until a court opens. Since continuance to a date certain will simply postpone, but not solve, the problem, continuances of any civil trial under these circumstances will no longer be entertained, absent a specific and stated finding of good cause. The Court will use its best efforts to mitigate the effect of the foregoing and to resolve all cases in a timely manner.

One alternative is for the parties to consent to a United States Magistrate Judge conducting all proceedings, including trial and entry of final judgment, pursuant to 28 U.S.C. § 28 U.S.C. 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District Magistrate Judges, all experienced former trial lawyers, use the same jury pool and same court facilities as United States District Court Judges. Since Magistrate Judges do not conduct felony trials, they have greater flexibility and schedule firm trial dates. Judgment entered by a United States Magistrate Judge is appealable directly to the United States Court of Appeal for the Ninth Circuit. (While there are scheduling benefits to consenting to Magistrate Judge jurisdiction, substantive rulings and decisions will not be affected by whether a party chooses to consent or not.)

As another response to its large caseload, the Fresno Division of the Eastern District of California is assigning cases, whenever possible, to Article III District Court Judges from around the nation as Visiting Judges. Pursuant to the Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern District of California.

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| 1  | Accordingly, it is HEREBY ORDERED that: |  |  |
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| 2  | 1.                                      | The Clerk's Office shall send to the parties consent/decline forms;                    |  |
| 3  | 2.                                      | Within twenty (20) days from the date of service of this order, the parties may return |  |
| 4  |   | the consent form to the Court; and   |  |
| 5  | 3.                                      | After the twenty (20) day deadline, if both parties have not consented to magistrate   |  |
| 6  |   | judge jurisdiction the matter will be set for jury trial before the undersigned.       |  |
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| 9  | IT IS SO ORDERED.                       |  |  |
| 10 | Dated:                                  | October 1, 2015 /s/ Lawrence J. O'Neill  |  |
| 11 |   | UNITED STATES DISTRICT JUDGE   |  |
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