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6	IN THE UNITED STATES DISTRICT COURT	
7	FOR THE EASTERN DISTRICT OF CALIFORNIA	
8	Liber Frankers	N CU 00 01500 DOG
9 10	John Fratus,	No. CV-08-01500-ROS
10 11	Plaintiff,	ORDER
11 12	V.	
12	Sergeant Peterson, et al.,	
13 14	Defendants.	
14	Defendants have moved to reschedule the trial to March 2016 or later based on	
15	defense counsel's schedule. Based on the age of this case, the request will be denied.	
17	The Court will, however, extend the deadline for the filing of the pretrial documents.	
18	The issues remaining for trial are Plaintiff's allegations that on January 10, 2007,	
19	Defendants "Beer and McRoberts used excessive force in retaliation for him filing prison	
20	grievances and that [Defendants] Lloren and Pightling failed to intervene in the use of	
21	excessive physical force." (Doc. 171-1 at 1). Thus, it appears the trial will consist of	
22	three claims: 1) Beer and McRoberts used excessive force; 2) Beer and McRoberts	
23	retaliated against Plaintiff for filing grievances; and 3) Lloren and Pightling failed to	
24	intervene to stop or prevent the excessive force. If this is not an accurate view of the	
25	claims remaining for trial, the Joint Proposed Pretrial Order should clarify.	
26	To prevent issues that came up prior to the previous trial, the Court notes that	
27	Plaintiff need not subpoena Defendants. Instead, Defendants are hereby ordered to attend	
28	the trial. If Plaintiff wishes to subpoena ar	ny other witnesses, he must identify those

witnesses in the parties' Joint Proposed Pretrial Order. Defendants should state whether they object to any of Plaintiff's witnesses. If they do not object, Defendants should indicate whether they will arrange for the witnesses to appear. If Defendants are unwilling to arrange for the witnesses to appear, Defendants should indicate whether they have current contact information for those witnesses. If they have contact information, Defendants should submit that information in a separate filing which may be made under seal if appropriate. Plaintiff is reminded that he will be required to tender the witness fees for any witness he wishes to call. Accordingly,

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IT IS ORDERED the Motion to Continue Trial (Doc. 214) is **DENIED**. The trial set for January 26, 2016 will proceed as scheduled. The Final Pretrial Conference will occur on January 26, 2016. The clerk shall issue a writ securing attendance of Plaintiff.

IT IS FURTHER ORDERED no later than **December 21, 2015** the parties shall file their motions in limine. Responses shall be filed no later than January 4, 2016. No replies are allowed.

IT IS FURTHER ORDERED no later than **December 21, 2015** the parties shall file their Joint Proposed Pretrial Order using the form available on this Court's website, a 16 stipulated proposed statement of the case to be read to the jurors at the start of the case, a set of joint proposed jury instructions, proposed voir dire questions, and a joint verdict form.

IT IS FURTHER ORDERED the joint proposed jury instructions shall consist of: a *joint* set of proposed jury instructions where the parties' instructions agree, a separate set of instructions (one for each party) where the parties do not agree, and legal authority supporting all proposed instructions whether the parties agree or not. The parties are reminded that, absent compelling circumstances, the Court's practice is to use the Ninth Circuit Model Jury Instructions.

Dated this 18th day of November, 2015.

Honorable Roslyn O. Silver Senior United States District Judge

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