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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,

Plaintiff,

vs.

DR. WANG, et al.,

Defendants.

1:08-cv-01896-LJO-GSA-PC

ORDER DENYING PLAINTIFF’S MOTION
FOR SETTLEMENT CONFERENCE AND
TRIAL SCHEDULE, WITHOUT
PREJUDICE
(Doc. 94.)

Jamisi Jermaine Calloway ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 10, 2008. (Doc. 1.) This action now proceeds on the Third Amended Complaint, filed by Plaintiff on October 5, 2009, against defendants Correctional Officers (C/O) Oaks and Hayward ("Defendants"), for use of excessive force.¹ (Doc. 20.) On August 11, 2011, defendants Oaks and Hayward filed a motion for summary judgment, which is pending. (Doc. 38.)

¹ On March 17, 2011, the court dismissed all of the defendants from this action except defendants Dr. Wang, C/O Oaks, and C/O Hayward, based on violation of Rule 18(a) and Plaintiff’s failure to state a claim. (Doc. 24.) On April 22, 2013, summary judgment was entered in favor of defendant Dr. Wang. (Doc. 85.)

1 On July 25, 2013, Plaintiff filed a motion requesting the court to schedule a settlement
2 conference and trial in this action. (Doc. 94.) On July 25, 2013, Defendants filed an
3 opposition. (Doc. 95.)

4 Plaintiff requests a settlement conference and trial schedule "as soon as possible,"
5 stating that "summary judgment has been ruled on in favor of Plaintiff on Defendants Oaks and
6 Hayward." (Motion, Doc. 94.) Defendants respond that Plaintiff's statement is inaccurate,
7 because the motion for summary judgment filed by defendants Oaks and Hayward on August
8 11, 2011 is still pending and there has been no finding in favor of Plaintiff. Defendants request
9 that Plaintiff's motion for a settlement conference and trial be denied due to their pending
10 motion for summary judgment.

11 Defendants are correct. The court's record reflects that the motion for summary
12 judgment filed by defendants Oaks and Hayward on August 11, 2011, is presently pending on
13 the court's calendar. (Doc. 38.) The court shall not schedule a settlement conference unless all
14 of the parties to the action have agreed that it will be beneficial. A trial schedule for this action,
15 if any, shall not be set until after the motion for summary judgment is resolved. Defendants
16 have indicated that they are not amenable to a settlement at this stage of the proceedings.
17 Therefore, Plaintiff's motion shall be denied, without prejudice to renewal of the motion at a
18 later stage of the proceedings.

19 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the court to
20 schedule a settlement conference and trial for this action, filed on July 25, 2013, is DENIED
21 without prejudice.

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25 IT IS SO ORDERED.

26 Dated: August 2, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE