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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 WILLIAM SUTHERLAND,

12 Plaintiff,

13 vs.

14 JAMES A. YATES, et al.,

15 Defendants.  
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1:09-cv-02152-LJO-GSA-PC

ORDER DENYING DEFENDANTS'  
REQUEST TO CONTINUE TRIAL  
CONFIRMATION HEARING

ORDER GRANTING REQUEST TO  
PERMIT ALTERNATE ATTORNEY TO  
APPEAR AT HEARING

(Doc. 99.)

19 William Sutherland ("Plaintiff") is a state prisoner proceeding pro se and in forma  
20 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds  
21 on the First Amended Complaint filed by Plaintiff on December 6, 2010, against defendants  
22 Correctional Officers (C/O) A. Fernando and M. Jericoff ("Defendants") for use of excessive  
23 force in violation of the Eighth Amendment, and related state claims.<sup>1</sup> (Doc. 15.) This case is  
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25 <sup>1</sup> On June 16, 2011, the Court dismissed defendant Lieutenant R. Lantz from this action based on  
26 Plaintiff's failure to state a claim against him under § 1983. (Doc. 20.) Plaintiff's claims for conspiracy, due  
27 process violations, and violations of the Penal Code were also dismissed from this action based on Plaintiff's  
28 failure to state a claim upon which relief may be granted under § 1983. (Id.) On February 20, 2014, the Court  
issued an order granting in part Defendants' motion for summary judgment of August 17, 2012, granting summary  
judgment in favor of Defendant Yates. (Doc. 94.) The Court declined to exercise supplemental jurisdiction over  
Plaintiff's state law claim of negligent hiring. (Id. at 2 ¶4.)

1 scheduled for a telephonic trial confirmation hearing on November 21, 2014, and jury trial on  
2 January 6, 2015.

3 On October 15, 2014, Defendants notified the court of a Notice of Conflict with the  
4 Trial Confirmation Hearing. (Doc. 113.) Counsel for Defendants, Diana Esquivel, asserts that  
5 she has a prior commitment to appear before the Ninth Circuit for oral argument in another case  
6 on November 21, 2014 at 9:00 a.m., which conflicts with the trial confirmation hearing  
7 scheduled in this case for November 21, 2014 at 8:15 a.m. Defendants request a continuance of  
8 the trial confirmation hearing, or in the alternative, permission for another attorney from the  
9 Office of the Attorney General for the State of California to appear at the hearing on behalf of  
10 Counsel for Defendants.

11 Defendants' request for a continuance of the trial confirmation hearing shall be denied.<sup>2</sup>  
12 However, the court shall grant permission for an alternate attorney to appear on behalf of  
13 Counsel for Defendants at the November 21, 2014 hearing.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Defendants' request for a continuance of the trial confirmation hearing  
16 scheduled for November 21, 2014 at 8:15 a.m. is DENIED; and
- 17 2. Defendants' request for permission for another attorney from the Office of the  
18 Attorney General for the State of California to appear at the November 21, 2014  
19 trial confirmation hearing on behalf of Counsel for Defendants, Diana Esquivel,  
20 is GRANTED.

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22 IT IS SO ORDERED.

23 Dated: October 22, 2014

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

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28 <sup>2</sup> The court shall not grant a continuance of the hearing. However, Defendants are not precluded from  
requesting the hearing to be re-scheduled for November 19, 2014 at 8:15 a.m.