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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JASON LATRELL THOMAS,  
  
Plaintiff,  
  
v.  
  
M. WILBER, et al.,  
  
Defendants.

Case No. 1:10-cv-00006-SKO (PC)  
  
ORDER AMENDING ORDER OF APRIL 29,  
2014, AND CLARIFYING SUMMARY OF  
CLAIMS PROCEEDING TO TRIAL  
  
(Doc. 96)

This action is set for jury trial on June 6, 2015, at 8:30 a.m. before the undersigned. During the telephonic trial setting hearing held on December 19, 2014, Defendants' counsel notified the Court of an inconsistency relating to the retaliation claim against Defendant Hernandez contained in (1) the findings and recommendations addressing Defendants' motion for summary judgment, filed on March 12, 2014, and (2) the order adopting the findings and recommendations in full by the then-assigned district judge, filed on April 29, 2014.<sup>1</sup> (Docs. 87, 96). The Court notified the parties it would review the record and issue an order of clarification if necessary.

Upon review, the Court has determined that there is an error in the sections of (1) the findings and recommendations and (2) the order adopting as to the action proceeding to trial against Defendant Hernandez for retaliation arising out of the use of force on August 25, 2007. With respect to the incident on August 25, 2007, the undersigned determined that (1) Defendants

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<sup>1</sup> This is now a consent case. 28 U.S.C. § 636(c). (Doc. 106.)

1 Vikjord and Hernandez *were not* entitled to summary judgment on Plaintiff’s Eighth Amendment  
2 excessive force claim; (2) Defendant Vikjord *was not* entitled to summary judgment on the  
3 Plaintiff’s First Amendment retaliation claim; and (3) Defendant Hernandez *was* entitled to  
4 summary judgment on Plaintiff’s First Amendment retaliation claim given the absence of any  
5 “evidence that he took adverse action against Plaintiff during the escort in retaliation for Plaintiff’s  
6 engagement in lawsuits and/or filing grievances.” (Doc. 87, F&R, 30:2-5, 30:14-19, & 42:8:-13).  
7 Given the Court’s determination, which was also articulated in the final recommendation and in  
8 the order adopting the findings and recommendations, the inclusion of Defendant Hernandez in the  
9 sentence summarizing the claims which are proceeding to trial is attributable to an inadvertent  
10 error. (Doc. 87, F&R, 46:10-12 & 46:17-21; Doc. 96, Order, 3:5-7 & 3:12-17.)

11         Accordingly, the order filed on April 29, 2014, is HEREBY AMENDED to reflect that this  
12 matter is proceeding to jury trial on Plaintiff’s (1) Eighth Amendment excessive force claim  
13 against Defendants Vikjord and Hernandez, (2) First Amendment retaliation claim against  
14 Defendant Vikjord arising out of the use of force on August 25, 2007, and (3) First Amendment  
15 retaliation claim against Defendants Frescura and Price arising out of the use of force on or around  
16 February 18, 2007.

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18 IT IS SO ORDERED.

19         Dated: December 19, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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