

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICOLAS MORAN,

 Plaintiff,

 v.

K. DUTRA, et al.,

 Defendants.

CASE NO. 1:11-cv-00914-LJO-MJS (PC)

**ORDER REQUIRING PARTIES TO
NOTIFY COURT WHETHER THEY
INTEND TO PURSUE FURTHER
DISCOVERY OR DISPOSITIVE MOTIONS**

THIRTY (30) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. (ECF Nos. 1 & 11.) The Court screened Plaintiff's first amended complaint and concluded that it stated cognizable Eighth Amendment inadequate medical care claims against Defendants Ryan (Hoggard) and Dedee (Onwubuya), and cognizable Eighth Amendment excessive force claims against Defendants Dutra and Auten (Brockmeyer).¹ (ECF No. 27.)

Defendants Hoggard, Dutra, and Brockmeyer promptly were served and appeared in the action. (ECF Nos. 24, 42, 47.) Because Plaintiff was unfamiliar with Defendant Onwubuya's true name and whereabouts, service on her was delayed. (See, e.g., ECF Nos. 21, 32, 48, 63, 68, 105, 118.) Meanwhile, the action proceeded through discovery and the filing of dispositive motions. (ECF No. 46.) Summary judgment was

¹ Defendants Ryan, Auten, and Dedee have changed their last names since the date of the allegations. The Court will use their new last names in this order.

1 granted in favor of Defendant Hoggard, but denied as to Defendants Dutra and
2 Brockmeyer. (ECF No. 104.) With respect to these Defendants, the action is ready to
3 proceed to trial.

4 However, Defendant Onwubuya did not waive service until July 1, 2015, and did
5 not answer the complaint until July 24, 2015. (ECF Nos. 121, 122.) Accordingly, at this
6 time, it is appropriate for the Court to set a schedule for further litigation of this case,
7 including further discovery and the filing of dispositive motions. See Federal Rule of Civil
8 Procedure 16(b).

9 The Court notes that Defendants Onwubuya is represented by the same counsel
10 as the other Defendants. The allegations against her relate to a single incident that also
11 involved Defendant Hoggard. The Court believes it is likely that substantial discovery
12 already has been conducted with regard to Plaintiff's claims against Defendant
13 Onwubuya, even in her absence. The Court is disinclined to enlarge the discovery and
14 motions period if no real need exists.

15 Accordingly, the parties are HEREBY ORDERED to advise the Court within thirty
16 (30) days whether they intend to engage in further discovery in relation to the claim
17 against Defendant Onwubuya, and whether they intend to file dispositive motions
18 relating to exhaustion of administrative remedies or the merits of the case. Upon receipt
19 of the parties' responses, the Court will issue a further scheduling order addressing
20 these issues.

21
22 IT IS SO ORDERED.

23 Dated: July 27, 2015

/s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE