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

HARVEY CURTIS BAKER,  
  
Plaintiff,  
  
v.  
  
S. MOORE,  
  
Defendant.

Case No. 1:12-cv-00126-LJO-SAB (PC)  
  
ORDER REGARDING CONSENT TO  
MAGISTRATE JUDGE JURISDICTION  
  
ORDER DIRECTING CLERK OF COURT  
TO SEND CONSENT FORM TO PARTIES

Plaintiff Harvey Curtis Baker (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

This action proceeds against Defendant S. Moore (“Defendant”) for failure to protect. On September 16, 2016, the Court filed an order adopting the Magistrate Judge’s findings and recommendations and Defendant’s motion for summary judgment was denied. (ECF No. 112.)

The parties have not consented or declined to Magistrate Judge jurisdiction. Now that the case is ready to be set for trial, the parties are advised of the following important information about scheduling and trailing cases before the undersigned:<sup>1</sup>

District Court Judges of the Fresno Division of the Eastern District of California now

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<sup>1</sup> Withholding consent or declining jurisdiction of a Magistrate Judge for all purposes will have no effect on the merits of a party’s case or have any adverse substantive consequences.

1 have the heaviest caseload in the nation. As a result, each District Judge schedules **multiple**  
2 trials to begin on every available trial date. The law requires that the court give any criminal  
3 trials priority over civil trials or any other matter. A civil trial set to begin while a criminal trial  
4 is proceeding will “trail”, i.e., await the completion of, the criminal trial.

5 The Court cannot give advance notice of which cases will trail or for how long because  
6 the Court does not know which cases actually will go to trial or precisely how long each will last.  
7 Once your trial date arrives, counsel, parties and witnesses must remain on 24-hour-stand-by  
8 until a court opens. Since continuance to a date certain would simply postpone, but not solve,  
9 the problem, continuances of a civil trial will no longer be entertained, absent a specific and  
10 stated finding of good cause. The Court will use its best efforts to mitigate the effect of the  
11 foregoing and to resolve all cases in a timely manner.

12 One alternative is for the parties to consent to a United States Magistrate Judge  
13 conducting all proceedings, including trial and entry of final judgment, pursuant to 28 U.S.C. §  
14 28 U.S.C. 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District  
15 Magistrate Judges, all experienced former trial lawyers, use the same jury pool and same court  
16 facilities as United States District Court Judges. Since Magistrate Judges do not conduct felony  
17 trials, they have greater flexibility and schedule firm trial dates. Judgment was entered by a  
18 United States Magistrate Judge is appealable directly to the United States Court of Appeal for the  
19 Ninth Circuit.

20 As another response to its large caseload, the Fresno division of the Eastern District of  
21 California is assigning cases, whenever possible, to Article III District Court Judges from around  
22 the nation as Visiting Judges. Pursuant to the Local Rules, Appendix A, such reassignments will  
23 be random, and the parties will receive no advance notice before their case is reassigned to an  
24 Article III District Court Judge from outside of the Eastern District of California.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. The Clerk’s Office shall send Plaintiff and Defendant the consent/decline form;
- 27 2. Within twenty (20) days from the date of service of this order, the parties may  
28 return the consent/decline forms to the Court; and

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3. After the twenty (20) day deadline, if both parties have not consented to Magistrate Judge jurisdiction, the matter will be set for jury trial before the undersigned.

IT IS SO ORDERED.

Dated: September 21, 2016                      /s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE