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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

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9 CAYETANO MELENDEZ, ) 1:13-cv-00279-AWI-BAM (PC)  
10 Plaintiff, )  
11 v. ) ORDER REGARDING CONSENT TO  
12 HUNT, et al., ) MAGISTRATE JUDGE JURISDICTION  
13 Defendants ) ORDER DIRECTING CLERK OF COURT  
14 ) TO SEND CONSENT FORM TO  
15 ) DEFENDANTS  
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16 Plaintiff Cayetano Melendez (“Plaintiff”) is a prisoner proceeding pro se and in forma  
17 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On September 20, 2016,  
18 Defendants’ motion for summary judgment was granted in part and denied in part. (ECF No. 51.)  
19 This case is now ready to be set for jury trial on Plaintiff’s claims against Defendant Hunt for  
20 excessive force and deliberate indifference to a serious medical need, and against Defendants  
21 Cruz and Arreola<sup>1</sup> for the failure to intercede.

22 Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno  
23 Division of the Eastern District of California now has one of the heaviest District Judge caseload  
24 in the entire nation. While the Court will use its best efforts to resolve this case and all other civil  
25 cases in a timely manner, the parties are admonished that not all of the parties’ needs and  
26 expectations may be met as expeditiously as desired. Multiple trials are being set on the Court’s

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28 <sup>1</sup> Erroneously sued as Defendant L. “Arriola.”

1 calendar to begin upon the same date. Parties whose trials are set to begin on the same day as  
2 other cases may find their own case trailing with little notice before their trial is set to begin. The  
3 law requires the Court give any criminal case priority over civil trials and other matters, and the  
4 Court must proceed with criminal trials even if a civil trial is older or was set earlier. If multiple  
5 trials are scheduled to begin on the same day, a civil trial will trail day to day or week to week  
6 until completion of any criminal case or older civil case.

7         The parties are reminded of the availability of a United States Magistrate Judge to  
8 conduct all proceedings in this action. A United States Magistrate Judge is available to conduct  
9 trials, including entry of final judgment, pursuant to 28 U.S.C. § 28 U.S.C. 636(c), Federal Rule  
10 of Civil Procedure 73, and Local Rule 305. Plaintiff consented to Magistrate Judge jurisdiction  
11 on December 5, 2014. (ECF No. 31), and Defendants declined Magistrate Judge jurisdiction on  
12 November 21, 2014. (ECF No. 30.) Now that this case is ready for a trial setting, the Court will  
13 direct the Clerk of the Court to provide Defendants with the Court's standard form to consent to  
14 or decline Magistrate Judge jurisdiction. Within **twenty (20) days** of this order's date of service,  
15 the Defendants shall either consent to or decline Magistrate Judge jurisdiction by filling out the  
16 requisite forms and returning them to the Court. The parties are advised that the same jury pool is  
17 used by both United States Magistrate Judges and United States Article III District Court Judges.  
18 Any appeal from a judgment entered by a United States Magistrate Judge is taken directly to the  
19 United States Court of Appeal for the Ninth Circuit.

20         Finally, for the parties' information, the Fresno Division whenever possible is utilizing  
21 United States Article III District Court Judges from throughout the country as Visiting Judges.  
22 Pursuant to the Local Rules, Appendix A, such reassignments will be random, and the parties  
23 will receive no advance notice before their case is reassigned to an Article III District Court  
24 Judge from outside of the Eastern District of California.

25         The parties are hereby informed that no substantive rulings or decisions will be affected  
26 by whether a party chooses to consent.

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Accordingly, IT IS HEREBY ORDERED that:

- 1. The Clerk of the Court is DIRECTED to provide the Defendants with the forms that will allow them to consent or decline Magistrate Judge Jurisdiction;
- 2. Within **twenty (20) days** from this order’s date of service, the Defendants shall notify the Court whether they consent to or decline Magistrate Judge jurisdiction by filling out the enclosed forms and returning them to the Court; and
- 3. Following receipt of the consent/decline form from Defendants, this case will be set for trial before either the Magistrate Judge or the undersigned.

IT IS SO ORDERED.

Dated: September 26, 2016

  
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SENIOR DISTRICT JUDGE