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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 DELBERT J. SMITH,  
11 Plaintiff,  
12 v.  
13 C. HERNANDEZ, et al.,  
14 Defendants.  
15

Case No.: 1:16-cv-01267-LJO-SAB (PC)  
ORDER REGARDING DEFENDANTS  
HERNANDEZ AND FLORES-  
ALVARENGA TO CONSENT TO,  
DECLINE TO, OR WITHHOLD  
CONSENT TO UNITED STATES  
MAGISTRATE JUDGE JURISDICTION  
WITHIN **FOURTEEN (14) DAYS**

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17 Plaintiff Delbert J. Smith is appearing pro se and in forma pauperis in this civil rights  
18 action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff's First Amended  
19 Complaint against Defendants Hernandez and Flores-Alvarenga for excessive force in violation  
20 of the Eighth Amendment and retaliation in violation of the First Amendment, and against  
21 Defendant Hernandez for deliberate indifference in violation of the Eighth Amendment.

22 Plaintiff previously consented to magistrate judge jurisdiction, on September 22, 2016.  
23 (ECF No. 5.) Defendant Hernandez has previously declined to magistrate judge jurisdiction.  
24 (ECF No. 23.) Defendant Flores-Alvarenga has neither consented to nor declined magistrate  
25 judge jurisdiction.

26 On January 25, 2019, the District Judge ruled on Defendants' motion for partial summary  
27 judgment. (ECF No. 95.) Based on the outcome of Defendants' motion, this case is now ready to  
28 be set for trial on Plaintiff's claims. Therefore, the Court gives the following information.

1 The Fresno Division of the Eastern District of California now has the heaviest District  
2 Judge caseload in the entire nation. While the Court will use its best efforts to resolve this case  
3 and all other civil cases in a timely manner, the parties are admonished that not all of the parties'  
4 needs and expectations may be met as expeditiously as desired.

5 District Judges are now setting multiple trials to begin upon the same date, and as a result  
6 parties may find their case trailing with little notice before the trial begins. The law requires the  
7 Court give any criminal case priority over civil trials and other matters, and the Court must  
8 proceed with criminal trials even if a civil trial is older or was set earlier. Continuances of civil  
9 trials under these circumstances will no longer be entertained, absent a specific and stated  
10 finding of good cause. If multiple trials are scheduled to begin on the same day, this civil trial  
11 will trail day to day or week to week until completion of any criminal case or older civil case.

12 The parties are advised of the availability of a United States Magistrate Judge to conduct  
13 all proceedings in this action. A United States Magistrate Judge is available to rule upon  
14 dispositive motions and conduct trials if need be, including entry of final judgment, pursuant to  
15 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305.

16 Based on the foregoing, the Court will direct the Clerk of the Court to provide  
17 Defendants Hernandez and Flores-Alvarenga with the Court's standard form to consent to or  
18 decline Magistrate Judge jurisdiction. Within **fourteen (14) days** of this order's date of service,  
19 Defendants shall either consent to or decline Magistrate Judge jurisdiction by filling out the  
20 requisite forms and returning them to the Court.

21 Notwithstanding the foregoing, Defendants are advised that they are free to decline or  
22 withhold consent without any adverse substantive consequences. The Court also does not take  
23 any position on the merits of any claim or defense in this case by issuing this order.

24 Based on the foregoing, it is HEREBY ORDERED that:

25 1. The Clerk of the Court is DIRECTED to send to Defendants Hernandez and  
26 Flores-Alvarenga a copy of the consent/decline form and the instructions for consenting to or  
27 declining Magistrate Judge jurisdiction; and

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2. Within **fourteen (14) days** from the date of service of this order, Defendants shall complete and return the Consent or Request for Reassignment form; OR

3. If the form is not received within **fourteen (14) days**, the Court will assume the Defendants have withheld consent, and will proceed accordingly.

IT IS SO ORDERED.

Dated: January 28, 2019

  
UNITED STATES MAGISTRATE JUDGE