

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
DISTRICT OF NEVADA**

* * *

DONALD E. MITCHELL, JR.,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 2:16-cv-00037-RFB-NJK

ORDER

I. INTRODUCTION

This case is before the Court on Defendants Timothy Filson (“Filson”) and Miguel Flores-Nava (“Flores-Nava”) (collectively, “Defendants”)’ Motion for Summary Judgment (ECF No. 65), and Plaintiff Donald E. Mitchell, Jr. (“Plaintiff”)’s Motion for Appointment of Counsel (ECF No. 67). For the reasons stated below, Defendants’ Motion for Summary Judgment is granted in part and denied in part. Plaintiff’s Motion for Appointment of counsel is denied.

II. PROCEDURAL BACKGROUND

On October 23, 2015, Plaintiff filed this action in state court alleging Fourteenth Amendment and First Amendment violations. (ECF No. 1-2). Defendants removed the case to this Court on January 8, 2016. (ECF No. 1). Magistrate Judge Nancy J. Koppe entered a Screening Order on June 22, 2016. (ECF No. 14). The Court dismissed the Fourteenth Amendment claim without prejudice and with leave to amend, and dismissed Defendants Neven and Foster without prejudice and with leave to amend. The Court also provided Plaintiff thirty days to file an Amended Complaint.

1 On July 12, 2016, Plaintiff filed his Amended Complaint, alleging the following two
2 counts: (1) First Amendment retaliation; and (2) violation of the First Amendment right to file
3 grievances. (ECF No. 15). The Court entered a Screening Order on October 5, 2016, dismissing
4 Count Two with prejudice. (ECF No. 21). The parties were also directed to participate in inmate
5 early mediation. An inmate early mediation conference was held on January 13, 2017; a settlement
6 was not reached and the case was returned to the normal litigation track. (ECF No. 30).

7 Defendants filed their Answer to the Amended Complaint on March 23, 2017. (ECF No.
8 34). Plaintiff filed a Response on April 12, 2017. (ECF No. 37). On September 25, 2017,
9 Defendants filed the instant Motion for Summary Judgment. (ECF No. 65). Plaintiff filed his
10 Response on October 11, 2017. (ECF No. 70). Defendants filed their Reply on November 6, 2017.
11 (ECF No. 73). Plaintiff filed a Motion for Appointment of Counsel on September 29, 2017. (ECF
12 No. 67). Defendants filed a Response on October 12, 2017. (ECF No. 69). Plaintiff filed a Reply
13 on November 6, 2017. (ECF No. 75). The Court held a hearing on the motions on July 3, 2018 and
14 took the matter under submission.

15 16 **III. UNDISPUTED FACTS**

17 The Court finds the following facts to be undisputed. On September 25, 2014, Plaintiff
18 and another inmate were housed in Unit 12 Cell C4. That day, Defendant Flores-Nava, a Senior
19 Correctional Officer, conducted a cell search of Plaintiff's cell. With Flores-Nava was another
20 Correctional Officer, Betterly. Plaintiff was removed from the location of the cell search. During
21 the search, Flores-Nava discovered contraband in the form of tattooing equipment.

22 Following the discovery of contraband in the cell, Flores-Nava conducted a non-physical,
23 partially clothed body search of Plaintiff and his cellmate. Flores-Nava conducted the body
24 search of Plaintiff and his cellmate in the activity room, an area with no cameras and out of the
25 view of others. After the body search was completed, Flores-Nava issued Plaintiff a Notice of
26 Charges for "Possession of contraband" and "Tattooing or Poss[essing] Tat[tooing] Device."

27 On September 28, 2014, Plaintiff filed a grievance regarding Flores-Nava's partially
28 unclothed body search. This grievance was properly exhausted through the grievance process.

1 On September 29, 2014, Plaintiff also filed a Prison Rape Elimination Act (“PREA”) complaint
2 against Flores-Nava. The PREA investigators interviewed Plaintiff’s cellmate on February 26,
3 2015, and also separately interviewed Plaintiff and Flores-Nava on February 27, 2015. and
4 concluded that “Operational Procedures were followed during the cell search and the unclothed
5 body search” and recommended closure of the case.

6 On October 6, 2014, Plaintiff was moved to the same housing unit where Flores-Nava was
7 assigned. Plaintiff filed an Emergency Grievance, in which he claimed that he feared retaliation
8 from Flores-Nava. The Emergency Grievance was denied the same day on the grounds that there
9 was no emergency, and Plaintiff was directed to file an informal grievance or speak with his
10 caseworker.

11 On October 18, 2014, a hearing was held regarding the Notice of Charges for tattooing
12 contraband. Plaintiff was found not guilty on both charges.

13 On November 14, 2014, Plaintiff filed an informal grievance alleging harassment by
14 Flores-Nava regarding an untucked shirt. In the grievance, Plaintiff claims that after he returned
15 from religious services that day, he was told by the control unit officer to “roll [his] property up”
16 as he would be moving from Unit 10 to Unit 12. Plaintiff wrote that this was retaliation by Flores-
17 Nava, as there were other inmates with untucked shirts and Flores-Nava did not say anything to
18 them about having shirts tucked in before leaving the unit. He stated in the grievance that he was
19 seeking monetary compensation. The same day, Plaintiff filed another informal grievance alleging
20 retaliation by Flores-Nava in the form of being moved to another unit because Flores-Nava “was
21 out to retaliate against [Plaintiff]” for filing grievances and a PREA complaint regarding the body
22 search on September 25, 2014.

23 On December 2, 2014, Defendant Filson sent a memorandum to Plaintiff with the subject
24 “Improper Grievance 2006-29-89392 IF Level Grievance.” According to the memorandum,
25 Plaintiff’s November 14, 2014 grievance regarding the untucked shirt was being returned to him
26 because Plaintiff did not submit a Form DOC-3096, Administrative Claim Release Agreement.
27 Plaintiff was directed to resubmit the grievance at the informal level with the DOC-3096 attached.

28

1 Plaintiff signed this memorandum, however, he did not resubmit his grievance with the DOC-
2 3096.

3 On January 20, 2015, Defendant Filson sent a memorandum to Plaintiff with the subject
4 “Improper Grievance 2006-29-89391 IF Level Grievance.” According to the memorandum,
5 Plaintiff’s November 14, 2014 grievance regarding the unit move was being returned to him
6 because it contained more than one incident or issue. Plaintiff was directed to resubmit an Informal
7 Grievance Form DOC 3091 for each issue to be grieved. Plaintiff signed this memorandum but
8 did not resubmit separate grievance forms.

9 Nevada Department of Corrections (“NDOC”) Operating Procedure (“OP”) 409,
10 “Institutional Search and Control of Contraband,” governs the procedures for cell searches and
11 body searches. OP 409.02 governs body searches. OP 409.02(1) provides: “Unclothed body
12 searches are based on a reasonable belief that the inmate is carrying contraband or other prohibited
13 material.” OP 409.02(4) provides: “All unclothed body searches of inmates shall be conducted ‘in
14 an area out of view of others’ if at all possible.” OP 409.03 governs cell searches, and OP 409.04
15 governs cell searches in lockup / lockdown units. OP 409.04 specifies a procedure for conducting
16 an unclothed body search during a cell search when units are on lockdown. NDOC Administrative
17 Regulation (“AR”) 422 provides additional standards for searches and seizures.

18 19 **IV. DISPUTED FACTS**

20 The parties dispute the timing of the sequence of events on September 25, 2014.
21 Specifically, the parties dispute whether the partially unclothed body search occurred before or
22 after Plaintiff requested an informal grievance form from Flores-Nava.

23 The parties further dispute whether Flores-Nava told Plaintiff to take off his underwear
24 during the body search, whether Flores-Nava flashed his flashlight back and forth from Plaintiff’s
25 penis to his cellmate’s penis in a provocative manner, and whether Flores-Nava told Plaintiff that
26 Plaintiff would receive a Notice of Charges for failing to take off his underwear during the body
27 search.

28

1 The parties also dispute whether the cell search was performed in accordance with NDOC
2 AR 422, which governs searches and seizures, and provides that “[w]henver practical and where
3 there is no undue risk to the officers or employees conducting the search, the person or inmate to
4 be searched will remain within view of the property being searched.” AR 422.01(6).

5 The parties dispute whether Flores-Nava told Plaintiff that Plaintiff would be moved to a
6 different unit after Plaintiff’s September 2014 grievances.

7
8 **V. LEGAL STANDARD**

9 Summary judgment is appropriate when the pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the affidavits, show “that there is no genuine
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
12 Civ. P. 56(a), accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering the
13 propriety of summary judgment, the court views all facts and draws all inferences in the light most
14 favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir. 2014).
15 If the movant has carried its burden, the non-moving party “must do more than simply show that
16 there is some metaphysical doubt as to the material facts Where the record taken as a whole
17 could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for
18 trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (citation and quotation
19 marks omitted). A genuine issue exists, precluding summary judgment, as long as “the evidence
20 is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty
21 Lobby, Inc., 477 U.S. 242, 248 (1986). It is improper for the Court to resolve genuine factual
22 disputes or make credibility determinations at the summary judgment stage. Zetwick v. Cnty. of
23 Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

24
25 **VI. DISCUSSION**

26 **A. Defendants’ Motion for Summary Judgment**

27 Prisoners have a First Amendment right to file prison grievances and to pursue civil
28 rights litigation in the courts. Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2004). “Without

1 those bedrock constitutional guarantees, inmates would be left with no viable mechanism to
2 remedy prison injustices. And because purely retaliatory actions taken against a prisoner for
3 having exercised those rights necessarily undermine those protections, such actions violate the
4 Constitution quite apart from any underlying misconduct they are designed to shield.” Id. To
5 state a viable First Amendment retaliation claim in the prison context, a plaintiff must allege:
6 “(1) [a]n assertion that a state actor took some adverse action against an inmate (2) because of
7 (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his
8 First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional
9 goal.” Id. at 567-68.

10 The Court may consider the timing of an allegedly retaliatory action as circumstantial
11 evidence of retaliatory intent, particularly where a punishment comes soon after an inmate
12 plaintiff airs a grievance. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003) (citing Pratt v.
13 Rowland, 65 F.3d 802, 808 (9th Cir. 1995)).

14 A defendant may prevail on a First Amendment retaliation claim on the defense of
15 qualified immunity. “Qualified immunity attaches when an official’s conduct does not violate
16 clearly established statutory or constitutional rights of which a reasonable person would have
17 known.” White v. Pauly, 137 S. Ct. 548, 551 (2017) (citation and quotation marks omitted). The
18 doctrine “ensures that ‘officers are on notice their conduct is unlawful’ before being subjected to
19 suit.” Tarabochia v. Adkins, 766 F.3d 1115, 1121 (9th Cir. 2014) (quoting Hope v. Pelzer, 536
20 U.S. 730, 739 (2002)).

21 The qualified immunity inquiry has two prongs: “(1) whether, taken in the light most
22 favorable to the party asserting the injury, the facts alleged show the official’s conduct violated a
23 constitutional right; and (2) if so, whether the right was clearly established in light of the specific
24 case.” Robinson v. York, 566 F.3d 817, 821 (9th Cir. 2009) (citing Saucier v. Katz, 533 U.S.
25 194, 201 (2001)). While the two prongs will often be decided in order, courts have discretion to
26 decide which of the prongs should be addressed first according to the circumstances of the
27 individual case. Pearson v. Callahan, 555 U.S. 223, 236 (2009). In order for a right to be clearly
28

1 established, “existing precedent must have placed the statutory or constitutional question beyond
2 debate.” White, 137 S. Ct. at 551 (citation and quotation marks omitted).

3 **1. Defendant Flores-Nava**

4 Flores-Nava argues that Plaintiff cannot establish a First Amendment retaliation claim with
5 regard to the cell and body searches that took place on September 25, 2014. First, he contends that
6 a non-physical, partially clothed body search is not an adverse action and would not chill a person
7 of ordinary firmness. These types of searches are part of routine prison life. Additionally, Flores-
8 Nava argues that Plaintiff cannot prove causation. The body search was not done because of
9 Plaintiff’s request for a grievance, but rather because there was reasonable belief of contraband (a
10 prison tattoo) pursuant to OP 409.02. Regardless of whether Plaintiff requested a grievance,
11 Flores-Nava would have taken the same actions. Flores-Nava additionally contends that the body
12 search served a legitimate correctional goal. He conducted a routine search of Plaintiff’s cell and
13 discovered contraband. A body search was therefore necessary to prevent the spread of infection
14 and disease inside the prison. Additionally, controlling contraband within a prison is a legitimate
15 penological interest. Flores-Nava relies upon the conclusion of the PREA investigators, which
16 upheld the cell and body searches.

17 Flores-Nava also argues that Plaintiff’s claim fails with regard to the incidents that were
18 the subject of Plaintiff’s grievances on November 14, 2014. Flores-Nava first contends that
19 Plaintiff failed to exhaust administrative remedies, as his grievances were returned to him for
20 failure to include certain documentation, and Plaintiff never resubmitted those grievances. As to
21 the substance of the claim, Flores-Nava argues that verbal harassment is not an adverse action, and
22 discussion between inmates and correctional officers is a normal part of prison life. In addition,
23 Plaintiff does not show that he engaged in any protected conduct. The filing of the grievance was
24 done after Flores-Nava spoke to Plaintiff about his untucked shirt. Flores-Nava also argues that
25 the conversation about the untucked shirt served a legitimate penological purpose – to ensure the
26 safety and security of the prison by distinguishing between inmates and employees and also
27 protecting inmates from the harsh desert elements. Also, prison rules require blue jeans and a blue
28 shirt for chapel and Plaintiff admitted he was not in compliance and was not wearing a blue shirt.

1 As to the events on September 25, 2014, Plaintiff counters that Flores-Nava retaliated
2 against him by taking him and his cellmate into the activity room where they would be out of view
3 of cameras and ordered the inmates to take their clothing off, only after Plaintiff asked for a
4 grievance due to the cell search violating prison regulations. Plaintiff contends that he requested
5 the grievance because he believed that Flores-Nava was not conducting the cell search in
6 accordance with NDOC Administrative Regulation 422, which requires an inmate to be within
7 view of the property being searched whenever practical. Plaintiff argues that he was told that he
8 would receive a Notice of Charges for failing to take his underwear off during the search, although
9 he ultimately did not receive a Notice of Charges in that regard. Plaintiff also argues that he was
10 further retaliated against when Flores-Nava issued him a false Notice of Charges regarding
11 tattooing contraband that was ultimately dismissed. Plaintiff relies on his informal grievance, his
12 Amended Complaint, and a disciplinary hearing form dated October 18, 2014 which showed that
13 Plaintiff was found not guilty of the possession of contraband and tattooing device charges.
14 Plaintiff additionally contends that the unit was on lockdown at the time of the September 25, 2014
15 searches, which required Flores-Nava to follow an alternative procedure for cell and body
16 searches. His informal grievance, dated September 28, 2014, supports his statement that the cell
17 was on lockdown at the time of the searches.

18 With regard to his November 14, 2014 grievances, Plaintiff argues that he was verbally
19 harassed by Flores-Nava about his untucked shirt and moved to a different cell at Flores-Nava's
20 direction because of his earlier filed grievances against Flores-Nava. Plaintiff also contends that
21 he was further retaliated against when Flores-Nava searched his cell twice on January 29, 2015. In
22 Plaintiff's view, an ordinary person would have been chilled from filing grievances due to this
23 series of retaliatory actions.

24 The Court finds that there is a genuine dispute of fact regarding the alleged retaliation as a
25 result of Plaintiff's request for a grievance on September 25, 2014. The parties dispute whether
26 Plaintiff requested a grievance before the partially unclothed body search, for Flores-Nava's
27 alleged failure to adhere to AR 422. This fact is material, as it may provide circumstantial evidence
28 of Flores-Nava's intent. Flores-Nava's intent in engaging in the search is relevant to establishing

1 whether the body search was performed because of the request for a grievance. The Court finds
2 that the undisputed facts show that there was no requirement for Defendant Flores-Nava to engage
3 in this type of body search based on the circumstances surrounding the cell search. The Court does
4 not read OP 409.02 to require an unclothed or partially unclothed body search in all circumstances
5 where there is reasonable belief of contraband. Rather, the language is discretionary – a reasonable
6 juror could find that Flores-Nava’s performance of the unclothed body search of Plaintiff was not
7 part of a regular pattern or practice and did not reasonably advance a legitimate penological
8 purpose. Further, Plaintiff argues that there was a lockdown on the day of the search, which
9 required a cell search, including an unclothed body search, to be performed pursuant to OP
10 409.03(10) and OP 409.04. Flores-Nava does not dispute this. This undisputed fact suggests that
11 there may have been an alternative procedure for performing the search that would have advanced
12 a legitimate penological goal without chilling Plaintiff’s exercise of his First Amendment rights.
13 Therefore, the question of whether Plaintiff requested a grievance before Flores-Nava conducted
14 the body search is properly left to the jury.

15 However, the Court finds that Flores-Nava is entitled to summary judgment with regard to
16 the grievances filed on November 14, 2014. Plaintiff does not dispute that he failed to resubmit his
17 grievances in accordance with the directions provided with his returned forms. Even if Plaintiff
18 had exhausted administrative procedures, the Court finds that Plaintiff does not provide evidence
19 which contradicts Flores-Nava’s argument that he is a correctional officer with no authority or
20 responsibility for inmate housing. The Court also finds that there is no dispute that the conversation
21 about an untucked shirt served a legitimate penological purpose, as the institution has rules in place
22 requiring inmates to tuck in their shirts. Given that legitimate penological purpose, the fact that
23 Plaintiff does not allege any harm directly flowing from the conversation, and the fact that the
24 conversation occurred nearly two months after the September 25, 2014 searches, the Court finds
25 that summary judgment in favor of Flores-Nava on these issues is warranted.

26 ***2. Defendant Filson***

27 Defendant Filson argues that, with regard to Plaintiff’s First Amendment retaliation claim,
28 the responses Filson provided to Plaintiff’s grievances, on December 2, 2014 and January 20,

1 2015, do not give rise to Section 1983 liability. As the remaining substantive claims against him
2 are dismissed, Filson contends he is entitled to summary judgment. Plaintiff argues in his Response
3 that he made continuous attempts to refile his grievances after receiving Filson's rejections, but
4 Filson continued to chill Plaintiff's First Amendment right and reject his grievances. Plaintiff does
5 not include evidence of these subsequent grievances or provide any details about subsequent
6 attempts to refile those grievances. Plaintiff also contends that Filson made threats which caused
7 Plaintiff to be in fear of pursuing his claim, and cites to Filson's responses to Requests for
8 Admissions. However, the requests for admission do not demonstrate that Filson used any
9 threatening language against Plaintiff.

10 The Court finds that Filson is entitled to summary judgment. Plaintiff does not provide any
11 evidence of a genuine dispute of fact as to Filson's involvement. The undisputed facts show that
12 Plaintiff's grievances were returned to him because he did not fill out certain forms or follow
13 proper procedures, and he was given the opportunity to resubmit those forms. Plaintiff does not
14 present any dispute supported by evidence regarding his attempt to resubmit his denied grievances.
15 Plaintiff also does not provide any evidence that Filson threatened him or otherwise took any
16 retaliatory action; the denial of grievances alone is not sufficient to establish a claim for retaliation.

17 ***3. Arguments as to Count Two of the Amended Complaint***

18 Plaintiff and Defendant Filson raise arguments related to Count Two in their briefs. The
19 Court disregards the arguments regarding Plaintiff and Filson's interaction on November 19, 2014,
20 as well as the arguments regarding Plaintiff's filing of an inmate request form on January 29, 2015,
21 as Count Two was dismissed with prejudice in the Court's Screening Order.

22 ***4. Qualified Immunity***

23 Both Defendants argue that they are entitled to qualified immunity. They argue that the
24 Court should not find any constitutional violation was committed. Defendants further contend that,
25 even if a constitutional violation occurred, it is not clearly established that conducting a body
26 search according to policy or speaking to an inmate about his sloppy appearance are constitutional
27 violations. In response, Plaintiff argues that Defendants are not entitled to qualified immunity
28

1 because the prohibition against retaliation is clearly established law, and there is at least a genuine
2 dispute about Defendants' motivation.

3 The Court finds Plaintiff's argument persuasive. It is well-established in the Ninth Circuit
4 that, for the purposes of analyzing a qualified immunity defense, retaliation against a prisoner for
5 exercising her First Amendment rights is clearly established law. Rhodes v. Robinson, 408 F.3d
6 559, 567 (9th Cir. 2005) (citing Pratt v. Rowland, 65 F.3d 802, 806 & n.4 (9th Cir. 1995)). Because
7 there is a genuine dispute as to Flores-Nava's motivation for performing Plaintiff's body search,
8 which cannot be resolved at this point, qualified immunity cannot be applied at this stage. A
9 reasonable juror could find that Flores-Nava conducted the body search in retaliation for Plaintiff
10 requesting a grievance; even if Flores-Nava conducted the search pursuant to NDOC policy –
11 which arguably appears not to be the case, given Plaintiff's undisputed contention that the unit was
12 on lockdown at the time of the unclothed body search – the timing of the search and the context in
13 which it was performed could potentially chill a person of ordinary firmness, even if that individual
14 is expected to endure somewhat harsher conditions than a person that is not incarcerated.

15 As Defendant Filson is entitled to summary judgment for the reasons discussed above, the
16 Court need not discuss his potential qualified immunity defense.

17 **B. Plaintiff's Motion for Appointment of Counsel**

18 Plaintiff argues that Defendants did not properly respond to Plaintiff's discovery requests
19 of April 27, 2017 and May 25, 2017. Plaintiff also argues that his case presents extraordinary
20 circumstances which merit the appointment of counsel. These extraordinary circumstances are
21 Defendants' denial of Plaintiff's access to discovery. He also discusses difficulty getting access to
22 the law library. Defendants attach to their Response law library logs which show that Plaintiff did
23 not appear to his law library appointments. Defendants also argue that Plaintiff's claims are not so
24 complex as to merit the appointment of counsel. Defendants contend that the discovery Plaintiff
25 seeks has little bearing on his opposition to their Motion for Summary Judgment. Defendants list
26 the discovery requests in Plaintiff's prior motions to compel, and state that responses have already
27 been provided to Plaintiff.

28

1 The Court has already denied Plaintiff's request for appointment of counsel in its first
2 screening order (ECF No. 14), and the Court does not find that any intervening extraordinary
3 circumstances have occurred such that appointment of counsel is warranted. While the Court
4 recognizes that Plaintiff has provided a reason for his inability to attend his law library
5 appointments, the Court finds that he has demonstrated a sufficient ability to prosecute his case.
6 Several missed law library appointments do not constitute the extreme circumstances necessary
7 for the appointment of counsel.

8 The Court also denies Plaintiff's request to reopen discovery, as the disputes of fact which
9 are going forward to trial do not require further discovery. The Court does not find that the record
10 shows Defendants have engaged in any inappropriate discovery conduct. However, the Court
11 orders Defendant Flores-Nava to produce *in camera* any grievances filed by inmates that involve
12 First Amendment retaliation as well as any disciplinary actions taken against Flores-Nava
13 regarding those types of grievances. Flores-Nava may also simultaneously submit a brief on the
14 issue of whether those documents are relevant for Plaintiff's surviving claim.

15
16 **VII. CONCLUSION**

17 For the reasons stated above,

18 **IT IS ORDERED** that Defendants' Motion for Summary Judgment (ECF No. 65) is
19 GRANTED IN PART and DENIED IN PART. Defendant Filson is dismissed from the case. The
20 claims against Flores-Nava related to any actions taken after September 25, 2014 are dismissed.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (ECF
22 No. 67) is DENIED.

23 **IT IS FURTHER ORDERED** that Defendant Flores-Nava submit for *in camera* review
24 any and all documents related to the filing of grievances against him based on claims of First
25 Amendment retaliation, as well as any briefing on the issue of whether those documents are
26 relevant for trial, **within thirty days** of the date of entry of this Order.

27 ///

28 ///

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

IT IS FURTHER ORDERED that the parties are referred to the Magistrate Judge for the purposes of setting a Settlement Conference.

DATED: July 10, 2018.



RICHARD F. BOULWARE, II
United States District Judge