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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD GLASS,)	1:04-cv-5466 OWW SMS
)	
Plaintiff,)	FINAL PRETRIAL ORDER
)	
v.)	Pretrial Conference: April
)	22, 2010, 12:15 p.m.,
BEER, et al.,)	Courtroom 3
)	
Defendants.)	Motion in Limine Date: May
)	11, 2010, 8:30 a.m.
)	Courtroom 3
)	
)	Trial Date: May 11, 2010

I. JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this federal civil rights action. 28 U.S.C. § 1331. Venue is proper because the conduct allegedly occurred in this judicial district.

II. JURY/NON-JURY

1. The parties request a trial by jury.

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1 III. FACTS

2 A. Undisputed Facts¹

- 3 1. Plaintiff Donald Glass (hereinafter "Plaintiff") is,
4 and was at all relevant times, a convicted felon in the
5 custody of the California Department of Corrections and
6 Rehabilitation (hereinafter "CDCR"). At all times
7 material to the matters at issue in this case, Glass
8 was incarcerated at California State Prison, Corcoran
9 (hereinafter "CSP-Cor");
- 10 2. Defendant Beer was employed by the CDCR, and worked as
11 a Correctional Sergeant at CSP-Cor at times material to
12 the matters at issue;
- 13 3. Defendant Keener was employed by the CDCR, and worked
14 as a Correctional Lieutenant at CSP-Cor at times
15 material to the matters at issue;
- 16 4. Defendant Sloss was employed by the CDCR, and worked as
17 a Correctional Officer at CSP-Cor at times material to
18 the matters at issue;
- 19 5. Defendant Morales was employed by the CDCR, and worked
20 as a Correctional Officer at CSP-Cor at times material
21 to the matters at issue;
- 22 6. Defendant Dill was employed by the CDCR, and worked as
23 a Facility Captain at CSP-Cor at times material to the
24

25 ¹ The facts listed as undisputed are only those facts that,
26 based on the separate pretrial statements submitted in this case,
27 do not appear to be in dispute by any party to this case. Any
28 facts that were only listed as undisputed by Plaintiff or
Defendants are delineated in the section entitled "B. Disputed
Facts."

- 1 matters at issue;
- 2 7. Defendant Butts was employed by the CDCR, and worked as
3 a Correctional Officer at CSP-Cor at times material to
4 the matters at issue;
- 5 8. Defendant Adkison was employed by the CDCR, and worked
6 as a Property Officer at CSP-Cor at times material to
7 the matters at issue;
- 8 9. Defendant Gonzales was employed by the CDCR, and worked
9 as a Correctional Officer at CSP-Cor at times material
10 to the matters at issue;
- 11 10. Defendant Castillo was employed by the CDCR, and worked
12 as an Correctional Counselor II at CSP-Cor at times
13 material to the matters at issue;
- 14 11. Defendant Streeter was employed by the CDCR, and worked
15 as an Correctional Counselor II at CSP-Cor at times
16 material to the matters at issue;
- 17 12. Defendant Marshall was employed by the CDCR, and was
18 the Warden at CSP-Cor at times material to the matters
19 at issue;
- 20 13. Defendant Lloren was employed by the CDCR, and worked
21 as an Office Assistant at CSP-Cor at times material to
22 the matters at issue;
- 23 14. On October 23, 2001, at California State
24 Prison-Corcoran, Plaintiff was told to prepare for a
25 cell move.
- 26 15. Physical force was used to remove Plaintiff from his
27 cell.
- 28 16. After Plaintiff was removed from his cell, he was taken

1 to the Acute Care Hospital.

2 17. Plaintiff remained in the Acute Care Hospital from
3 October 23, 2001 to November 2, 2001.

4 B. Disputed Facts

5 1. Plaintiff's²

6 a-1. From March 14, 2001, through September 22, 2002,
7 Plaintiff, a prisoner, and Defendants Adkison,
8 Beer, Buckley, Butts, Castillo, Dill, Gonzales,
9 Keener, Lloren, Marshall, Morales, Sloss and
10 Streeter were custodial officers and/or prison
11 administrators at CSP-Cor mainline and security
12 housing unit ("SHU") for which Glass filed
13 numerous inmate 602 appeals/complaints against
14 these defendants that was the motivating factor
15 behind Defendants custom or policy of retaliatory
16 acts to attack, beat, sexually assault and
17 sodomize, damage and/or steal Plaintiff's
18 television, hearing aids, annual package, and to
19 freeze Plaintiff's prison trust account, and that
20 Defendant Butts filed a disciplinary falsely
21 accusing Plaintiff of battery (but told other
22 staff that Plaintiff did not touch him) causing
23 Plaintiff to be assessed an 18 month SHU term in
24 retaliation for Plaintiff filing Appeal No. CSP-C-

26 ² Though Plaintiff listed numerous factual allegations in
27 his pretrial statement, the Court has only included those which
28 pertain to the claims found cognizable in the October 4, 2001
screening order.

1 5-01-2341.

2 b-1. That the incidents in question initially
3 originated on October 22, 2001, some twenty hours
4 prior to Defendants'³ unprovoked, unjustified
5 excessive force and failure to protect, to
6 gratuitously beat up Plaintiff by stomping,
7 kicking, and punching Plaintiff about the face,
8 head, back, neck, and shoulders, used the sharp
9 metal ridges of the hand cuffs and leg irons as a
10 weapon to (dig) cause deep (gashes) cuts into
11 Plaintiff's right wrist and left ankle who then
12 used a PR-24 side baton to (sodomize) sexually
13 assault Plaintiff in addition to maliciously and
14 sadistically damaging Plaintiff's television,
15 destroying his hearing aids and freezing
16 Plaintiff's inmate trust account to prevent
17 Plaintiff mailing (home) out his television and
18 annual package in order the steal them from
19 October 23, 2001 through September 22, 2002.

20 c-1. On October 23, 2001, at approximately 11:30 a.m.,
21 Defendants Beer, Morales, and Sloss arrived at
22 Plaintiff's cell without any type of movable or
23 hand carried shell to persuade Plaintiff to cuff
24 up and exit his cell solely to beat up Plaintiff
25

26 ³ Plaintiff's word "conspiracy" was deleted from this
27 statement of fact as there are no cognizable conspiracy claims in
28 this action. (Doc. 189, Plntf. Pretrial Stmt., p. 2, ¶ 3.)
(Doc. 18, Screen. F&R; Doc. 20, O. Adopt.)

1 in retaliation for filing a prison 602.

2 d-1. Defendant Beer is a known violent prison
3 supervisor and Defendants Morales and Sloss are
4 also known violent prison guards at CSP-Cor.

5 e-1. Because Plaintiff has personal knowledge in
6 addition to personally witnessing defendants Beer,
7 Morales, and Sloss violent attack and beat up
8 numerous (hand cuffed and shackled) defenseless
9 prisoners without provocation resulting in great
10 bodily injuries to these prisoners Plaintiff
11 refused to submit to being handcuffed and/or being
12 escorted by these violent prison officials to
13 another cell without the protection of a video
14 camera to film this cell move.

15 f-1. Defendant Beer reported back to his immediate
16 supervisors, Defendants Keener and Dill who gave
17 them knowingly false information that Plaintiff
18 has a cup of fecal matter in his cell and were
19 threatening to gas staff in order to persuade
20 Defendants Keener and Dill to authorize to have
21 Plaintiff cell extracted.

22 g-1. Defendants Keener and Dill as Defendants Beer,
23 Sloss, and Morales immediate supervisors were
24 absolutely aware that Defendants Beer, Morales,
25 and Sloss were violent prison officials from the
26 numerous CDC-837 incident reports submitted by
27 Defendants Beer, Morales, and Sloss that they
28 signed condoning these violent assault on

1 prisoners who had the authority to notify and
2 report these violent attacks to the Warden, CSP-
3 Cor Internal Affairs ("IA"), and CDCR
4 headquarters, but chose to turn a blind eye and a
5 deaf ear to Defendants Beer, Morales, and Sloss'
6 malfeasance and refused to discipline or recommend
7 that they be disciplined.

8 h-1. Defendant Marshall as chief deputy warden
9 (hereinafter "CDW"), Institution Classification
10 Committee (hereinafter "ICC") chairman who also
11 acts as the warden designee was aware that
12 Defendants Beer, Morales, and Sloss are violent
13 prison guards from all the cell extraction video
14 tapes he reviewed, verbal complaints from
15 prisoners during ICC hearing and second level 602
16 appeals Defendant Marshall must sign alleging
17 (inappropriate) excessive use of force involving
18 Defendants Beer, Morales, and Sloss who had the
19 authority to discipline and/or recommend that
20 Defendants Beer, Morales, and Sloss be disciplined
21 but chose to condone their egregious (misconduct)
22 behavior by doing absolutely nothing.

23 i-1. Defendants Buckley, Castillo, and Streeter as
24 appeals coordinators were aware from all the 602
25 appeals including second level disciplinary
26 appeals that they must respond to that Defendants
27 Beer, Morales, and Sloss are violent prison guards
28 that has viciously beaten and seriously injured

1 numerous prisoners for which each had the
2 authority to discipline or recommend discipline
3 against Defendants Beer, Morales, and Sloss but
4 chose to condone their egregious malfeasance by
5 doing absolutely nothing.

6 j-1. Defendants Keener and Dill authorized Defendant
7 Beer to assemble a cell extraction team who after
8 introducing themselves on video camera (falsified
9 official state documents as peace officers Cal.
10 Penal Code § 118.1) gave knowingly false
11 statements to justify having Plaintiff cell
12 extracted that Plaintiff had previously gassed
13 staff with fecal matter and urine the day before
14 as their reason for extracting and moving
15 Plaintiff to a cell with a modified or extended
16 food port (See cell extraction video tape #___)⁴.

17 k-1. Defendants arranged for Psyche Tech Hance to
18 conduct clinical intervention to persuade
19 Plaintiff to exit the cell voluntarily oppose to
20 having to cell extract Plaintiff.

21 l-1. Plaintiff informed Psyche Tech Hance that he had
22 absolutely no intention to cell extract or to be
23 cell extracted for which Plaintiff on his own
24 volition requested that a video camera be used to
25 facilitate and to protect Plaintiff from

26
27 ⁴ Cell extraction video tape number was blank in Plaintiff's
28 Separate Pretrial Statement. (Doc. 189, Plntf. Pretrial Stmt.,
p. 3, ¶ 11.)

1 Defendants Beer, Morales, and Sloss chicanery to
2 inflict pain and to injure Plaintiff if he exited
3 the cell without the video camera.

4 m-1. Psyche Tech Hance failed to convey Plaintiff's
5 intention to exit the cell voluntarily.

6 n-1. At approximately 12:50 p.m., Defendants Beer,
7 Keener, Dill, Morales, and Sloss approached
8 Plaintiff's cell wearing extraction gear.

9 o-1. After reading the admonishment, Defendant Keener
10 asked if Plaintiff was willing to cuff up and exit
11 the cell voluntarily for which Plaintiff said yes.

12 p-1. Plaintiff attempted to (place his hands and arms
13 through the cuff/food port slot) cuff up to exit
14 the cell voluntarily, but Defendant Keener refused
15 to allow Plaintiff to exit the cell voluntarily
16 because Defendants wanted to enter the cell in
17 order to inflict pain and to injure Plaintiff as
18 punishment in retaliation for Plaintiff filing
19 Appeal No. CSP-C-5-01-3399, CSP-C-5-01-1587, and
20 CSP-C-01-1629 against Defendants Beer, Dill, and
21 Keener.

22 q-1. CDCR prison officials (Defendants) cannot force a
23 prisoner into cell extracting when he had
24 absolutely no desire or intention to cell extract,
25 nor can prison officials humiliate a prisoner in
26 any manner.

27 r-1. Defendant Keener stated that Plaintiff's only
28 option was to strip out totally nude then lie down

1 on the ground but either way Plaintiff would be
2 cell extracted.

3 s-1. Plaintiff asked but received no answer from
4 Defendant Keener as to why Plaintiff had to get
5 totally naked and lay down on the ground oppose to
6 simply allowing to cuff up at the cuff port and
7 exit the cell voluntarily.

8 t-1. The video tape of the October 23, 2001, cell
9 extraction will prove that before Plaintiff could
10 comply with Defendant Keener's order he had
11 Plaintiff's cell door opened to allow Defendants
12 Beer, Morales, and Sloss to enter the cell to
13 stomp, kick, punch Plaintiff in the face, head,
14 ribs, back, and shoulders in addition to using the
15 sharp ridges of the hand cuffs and leg restraints
16 as a weapon to cause deep cuts in Plaintiff's left
17 ankle and wrist.

18 v-1. Plaintiff did not resist defendants Morales and
19 Sloss' efforts to place Plaintiff in hand cuffs
20 and in leg restraints or else why would Plaintiff
21 lay down on the ground.

22 w-1. The October 23, 2001 cell extraction video tape
23 will prove that Defendant Beer damaged Plaintiff's
24 television set when he without provocation
25 (hopped) jumped up and onto the bunk and onto
26 Plaintiff's television cord (damaging) breaking
27 the two metal prongs on the end of the cord in
28 retaliation for filing Appeal No. CSP-C-5-01-3399.

1 x-1. After Defendants had plaintiff beaten up, they
2 placed Plaintiff in full mechanical restraints and
3 then on a litter and carried Plaintiff to an
4 outside grassy area in front of IV-A2L building.

5 y-1. While outside in the grassy area, Defendants
6 Keener ordered Plaintiff's only protection the
7 video (tape) camera turned off and to stop filming
8 to allow Defendants Beer, Morales, and Sloss to
9 use unnecessary excessive force.

10 z-1. As soon as the video camera was turned off
11 Plaintiff was dragged all over the yard then
12 beaten and sexually (sodomized) assaulted by
13 Defendants Beer, Morales, and Sloss by ramming a
14 PR-24 side baton weapon into Plaintiff's anus.

15 a-2. Defendant Dill ignored Plaintiff's pleas to help
16 Plaintiff or stop Defendants Beer, Morales, and
17 Sloss's attack.

18 b-2. An (M.T.A.) Raymer bandaged Plaintiff's injured
19 ankle and wrist as Plaintiff was being dragged
20 about the grassy area being attacked and
21 sodomized.

22 c-2. Defendants had no intentions on moving Glass to
23 another cell that was more secured (only to
24 inflict pain and injuries) but placed Plaintiff in
25 a holding cage in a hallway between 4A2L and 4A2K
26 buildings.

27 d-2. After Plaintiff was placed in the hallway cage,
28 Defendant Beer entered and began bragging and

1 boasting how he stomped and kicked Plaintiff in
2 the face and intentionally jumped up on the bunk
3 and onto Plaintiff's television set cord to cause
4 it to be damaged and to knock the television off
5 the bunk and onto the floor who also threatened to
6 enter the holding cage and beat up Plaintiff
7 again.

8 e-2. Approximately ten minutes a Sergeant K. Davis and
9 a unknown middle-aged white male Sergeant entered
10 the holding cage area to conduct an excessive
11 force video and tape interview with Plaintiff due
12 to Plaintiff alleging that Defendants used
13 excessive force and sexually assaulting Plaintiff.

14 f-2. Plaintiff unwrapped the bandages to reveal on
15 video tape how serious the injuries were to his
16 ankle and wrist.

17 g-2. Plaintiff also pulled down his boxer shorts and
18 revealed on video tape blood coming rom
19 Plaintiff's anus and blood stains on the inside of
20 Plaintiff's boxer sorts.

21 h-2. At approximately 3:00 p.m., Plaintiff was escorted
22 to the Active Care Hospital (hereinafter "ACH")
23 with a spit hood on to (cover up) mask Plaintiff's
24 black eye and swollen facial injuries.

25 i-2. Defendants Beer and Keener ordered Dr. Meis, the
26 ACH emergency room doctor, not to examine
27 Plaintiff's eye or anal area or document that
28 Plaintiff had injuries to his face and anal areas.

1 j-2. On October 24, 2001, at about 9:30 p.m., Sergeant
2 SC⁵ and Sergeant K. Davis arrived at the ACH to
3 conduct a second excessive force video tape
4 interview regarding the October 23, 2001 excessive
5 use of force and sexual assault allegations.

6 k-2. Sergeants D. Scaife and K. Davis informed
7 Plaintiff that the first video tape depicting
8 Plaintiff's anal injuries (allegedly)
9 malfunctioned then destroyed by Defendants Beer,
10 Keener, and Dill.

11 l-2. While at the ACH, Plaintiff's left ankle became
12 infected from the deep cut caused by Defendants'
13 excessive use of force on October 23, 2001.

14 m-2. On November 2, 2001, Defendant Keener informed
15 Plaintiff that he was on strip cell status from
16 November 2, 2001 through November 12, 2001 as
17 punishment for Plaintiff's filing Appeal No, CSP-
18 C-5-01-1629 even though Plaintiff already
19 completed ten day strip cell status on November 2,
20 2001.

21 n-2. On November 9, 2001, Plaintiff was issued a CDC-
22 1083 property inventory sheet dated November 28,
23 2001 signed by Defendant Butts that was knowingly
24 false that Plaintiff refused to sign.

25
26 ⁵ It appears that Plaintiff may have intended to write
27 "Scaife," however, his pretrial statement only uses the letters
28 "SC" to name this sergeant. (Doc. 189, Plntf, Pretrial Stmt.,
p.5, ¶ 37.)

1 o-2. This CDC-1083 property inventory sheet signed and
2 dated by November 28, 2001 by Defendant Butts
3 indicating that the two metal prongs on the end of
4 Plaintiff's television cord were torn off.

5 p-2. Defendants Beer, Butts, Keener, and Dill were the
6 last to have possession, custody, and control of
7 Plaintiff's television set and hearing aids on
8 October 23, 2001 before Defendants contend that
9 Plaintiff's television set was damaged and his
10 hearing aids were (missing) destroyed.

11 q-2. Defendants Adkison and Gonzales first contend that
12 Plaintiff caused his own television set to be
13 damaged and hearing aids to be disposed of because
14 Plaintiff chose to cell extract.

15 r-2. Defendants Adkison and Gonzales then altered
16 (official state documents as peace officers) CDC-
17 1083 property sheet dated November 28, 2001 after
18 Plaintiff proved that Defendant Butts knowingly
19 falsified CDC-1083 property sheet who never
20 provided Plaintiff with any opportunity to sign
21 the property inventory sheet on October 28, 2001.

22 s-2. On November 4, 2001, Plaintiff filed Appeal No.
23 CSP-C-5-01-3530 asserting that Defendants Beer,
24 Keener, Dill, Morales, and Sloss used unnecessary
25 excessive force and sexually assaulted Plaintiff
26 with a PR-24 side baton weapon by ramming it up
27 Plaintiff's anus as punishment in retaliation for
28 Plaintiff filing Appeal No CSP-C-5-01-3399 against

1 Defendant Beer.

2 t-2. During ICC on November 12, 2001, Plaintiff
3 informed Defendant Marshall that Defendants Beer,
4 Keener, Dill, Sloss, and Morales used excessive
5 force and sodomized Plaintiff and that Defendants
6 Beer, Butts, and Keener stole Plaintiff's hearing
7 aids and intentionally damaged Plaintiff's
8 television set in retaliation for Plaintiff filing
9 602 appeals against them.

10 u-2. Defendant Marshall assured Plaintiff that his
11 television set would be repaired or Plaintiff
12 would be reimbursed because prisoners in CSP-Cor
13 SHU do not have access to their television cord
14 plug once the television cord is placed (into)
15 through the wall and locked into the television
16 cord plug lock in addition to ordering an
17 investigation into Defendants' excessive use of
18 force and sodomy on October 23, 2001.

19 v-2. Defendant Marshall also instructed Plaintiff to
20 file a 602 appeal and to hand it to CCII D. Means
21 to investigate if indeed Plaintiff's television
22 set was plugged into the television cord security
23 lock plate inside the pipe chase after Plaintiff
24 was cell extracted and admitted to the ACH on
25 October 23, 2001.

26 w-2. Defendants Adkison and Gonzales threatened to
27 destroy and/or donate Plaintiff's television and
28 that Plaintiff's only option was to mail it away

1 from the prison.

2 x-2. Plaintiff gave CCII D. Means a 602 Appeal
3 regarding Plaintiff's damages on November 12, 2001
4 as instructed by Defendant Marshall.

5 y-2. On November 9, 2001, Plaintiff sent a 602 appeal
6 to Appeals Coordinators Defendants Buckley,
7 Castillo, and Streeter alleging that Defendants
8 Beer and Butts intentionally damaged Plaintiff's
9 television set and stole Plaintiff's hearing aids
10 in retaliation for filing prison grievances
11 against them.

12 z-2. Defendants Buckley, Castillo, and Streeter refused
13 to log, process, or respond to appeal dated
14 November 9, 2001, but withheld⁶ this appeal for
15 several months and then contend that it was a
16 previous appeal that Plaintiff filed before this
17 appeal that had already been responded to.

18 a-3. On November 20, 2001, Plaintiff filed Appeal No.
19 04A-01-12-008 requesting that Defendant T. Lloren
20 remove old photo copying charges from Plaintiff's
21 trust account forthwith.

22 b-3. On December 24, 2001, Defendant Lloren granted
23 Plaintiff's request on Appeal No. 04A-01-12-008,
24

25
26 ⁶ Plaintiff's phrase "conspired with Defendants Adkison and
27 Gonzales to" was deleted from this statement of fact as there are
28 no cognizable conspiracy claims in this action. (Doc. 189,
Plntf. Pretrial Stmt., p. 7, ¶ 53; Doc. 18, Screen. F&R; Doc. 20,
O. Adopt.)

1 however in retaliation for filing this appeal,
2 Defendant Lloren put a total freeze on Plaintiff's
3 trust account unless Plaintiff paid \$5.85 twice,
4 and on the same day Plaintiff received funds on
5 his account from family to mail out and repair his
6 television.

7 c-3. Before filing Appeal No. 04A-01-12-008, and
8 Defendant Lloren freezing Plaintiff's trust
9 account in retaliation, Defendant Lloren processed
10 all CDC-182 canteen draw orders and CDC-193 trust
11 account withdrawal orders without Plaintiff's
12 trust account being frozen unless Plaintiff paid
13 the \$5.85 twice.

14 d-3. On December 5, 2001, Plaintiff sent Defendants
15 Adkison and Gonzales two separate property
16 appeals, one in which to have Plaintiff's damaged
17 television repaired and the other to hold
18 Plaintiff's television for 90 days pending the
19 resolution of any and all property appeals
20 regarding Plaintiff's damaged television.

21 e-3. Defendants Dill, Keener, and Beer as 4A facility
22 administrators and Defendants Adkison and Gonzales
23 as 4A property officers were unlawfully flagging
24 all of Plaintiff's incoming and outgoing personal
25 mail for the sole purpose to misappropriate
26 Plaintiff's annual package.

27 f-3. On or about January 10, 2002, an insured annual
28 package arrived at (CSP-Cor) for Plaintiff from

1 his (family) sisters, Mrs. Dorris L. Davis and
2 Mrs. Michelle Franklin with a package label
3 affixed to the outside of the box.

4 g-3. Defendants arranged for Sergeant Rangel the
5 receiving and release ("R&R") sergeant to open
6 Plaintiff's annual package (without Plaintiff's
7 knowledge that a package had arrived for him) then
8 returned it to Plaintiff's family in violation of
9 CDCR and CSP-Cor policy and procedure oppose to
10 issuing it to Plaintiff.

11 h-3. Sergeant Rangel gave Mrs. Davis knowingly false
12 and erroneous instructions to (mail) send the
13 package back to CSP-Cor without another package
14 address label affixed to the outside of the box,
15 or to reinsure it again, but to address it in care
16 of a (C/O) Smith a fictitious (R&R) staff to
17 harass and frustrate Mrs. Davis after she called
18 the institution to inquire why the package was
19 returned to her.

20 i-3. After Mrs. Davis followed (R&R) Sgt. Rangel's
21 instructions he delivered it to Defendants Adkison
22 and Gonzales and instructed them to deem it as
23 (contraband) unauthorized.

24 j-3. On February 1, 2002, Defendants Adkison and
25 Gonzales sent Plaintiff a CDC-128-B-chrono stating
26 that an unauthorized annual package arrived at
27 CSP-Cor for Plaintiff without a package address
28 label for affixed to the outside of the box and in

1 care of a (C/O) Smith.

2 k-3. As with Plaintiff's damaged television set,
3 Defendants Adkison and Gonzales stated that
4 Plaintiff's only option was to mail his annual
5 package (away from the prison) home.

6 l-3. Plaintiff submitted numerous CDC-193 trust account
7 withdrawal orders requesting Defendants Lloren,
8 Adkison, and Gonzales to remove appropriate funds
9 from Plaintiff's account to allow Plaintiff to
10 mail out his television set and annual package.

11 m-3. Defendant Lloren informed Plaintiff again that his
12 trust account was frozen until Plaintiff paid
13 \$5.85 twice for Plaintiff's allegedly damaging a
14 state sheet and T-shirt.

15 n-3. From December 24, 2001 through February 26, 2002,
16 Plaintiff received a total of \$120.00 to mail out
17 his television set and annual package.

18 o-3. Defendant Lloren knowingly mismanaged Plaintiff's
19 trust account by refusing to allow Plaintiff to
20 use his funds (for any reason) to mail out his
21 damaged television set and annual package.

22 p-3. Plaintiff has filed numerous 602 appeals as to all
23 the claims against Defendants in this federal
24 lawsuit.

25 q-3. Exhaustion of administrative remedies have been
26 waived by Defendants in this action.

27 r-3. What prompted Defendants to decide to cell extra
28 extract Plaintiff and to use unnecessary and

1 unprovoked excessive force and to sexually assault
2 Plaintiff on October 23, 2001 as punishment and in
3 retaliation for Plaintiff filing Appeal No. CSP-C-
4 5-01-3399 against Defendant Beer for an incident
5 that occurred on October 22, 2001, the morning
6 before when Defendant Beer threatened to beat up
7 Plaintiff in addition to him spreading rumors that
8 were knowingly false that Plaintiff is a snitch
9 and has HIV-AIDS. However Defendants make several
10 knowingly false statements on the October 23, 2001
11 cell extraction video tape that they contend were
12 the reasons for having Plaintiff cell extracted
13 that (1.) Plaintiff (threw feces) gassed (guards)
14 staff the other day, (2.) Plaintiff was in
15 possession of a cup of fecal matter and threatened
16 to gas staff again, and (3.) Plaintiff was refusing
17 to be moved to a modified cell with an extended
18 food port.

19 s-3. Defendants as prison officials are their own
20 police who "can and do say" anything they want in
21 their reports or on video tape for cell extracting
22 (a prisoner) Plaintiff, or as to their reasons for
23 using unprovoked and unjustified excessive force
24 to injure and sodomize Plaintiff in order to
25 justify the retaliatory and gratuitous beating on
26 October 23, 2001.

27 t-3. Defendants dispute that they were motivated by
28 retaliation for Plaintiff filing Appeal No. CSP-C-

1 5-01-3399, CSP-C-5-01-1587, and CSP-C-5-01-1638
2 against Defendants Beer, Keener, and Dill
3 respectively in order to beat up Plaintiff and
4 sodomize him when they assembled an extraction
5 team to have Plaintiff cell extracted on October
6 23, 2001.

7 u-3. Defendants failed to follow (CDCR) and (CSP-Cor)
8 cell extraction policies and procedures before
9 opening Plaintiff's cell door and endangering
10 Plaintiff's life and seriously injuring him.

11 v-3. Defendant Keener had absolutely no intention of
12 allowing Plaintiff (adequate time) to cuff up and
13 exit the cell voluntarily because defendants only
14 intentions were cell extract and seriously injure
15 Plaintiff.

16 w-3. Defendants Dill, Keener, Beer, Morales, and Sloss
17 as prison officials cannot force or compel
18 Plaintiff or any prisoner into cell extracting by
19 giving Plaintiff unlawful orders to disrobe and
20 then lay on the ground on his stomach oppose to
21 simply allowing Plaintiff to cuff up at the food
22 port and exit the cell voluntarily and (CDCR) and
23 CSP-Cor) policy.

24 x-3. There is a dispute whether the first excessive
25 force interview video tape film depicting
26 Plaintiff's anal injury on October 23, 2001
27 actually malfunctioned or
28 intentionally/deliberately destroyed by Defendants

1 Dill, Keener, and Beer or liable for destruction
2 of evidence in a federal lawsuit.

3 y-3. There is a dispute whether Defendants Dill,
4 Marshall, Keener, and Beer deliberately (caused
5 the destruction) destroyed evidence in a federal
6 lawsuit; the third excessive force interview video
7 tape filmed on December 28, 2001.

8 z-3. There is a dispute whether or not a prisoner on 4A
9 facility has access to the end of their television
10 set cord (any time they want) on their own after
11 the television cord and plug-is inserted through
12 the hole in the wall then locked into a security
13 plate.

14 a-4. A dispute exists as to whether Plaintiff's
15 (television set and hearing aids) property
16 remained in cell 4A2L-44 from October 23, 2001
17 through October 28, 2001, or did Defendants Beer,
18 Butts , Keener , and Dill remove Plaintiff's
19 property from the cell and leave it unsecured in
20 4A2L-Rotunda hallway for five days.

21 b-4. There is a dispute whether Defendant Butts gave
22 Plaintiff an opportunity to sign or refuse to sign
23 the CDC-1083 property inventory sheet dated
24 October 28, 2001, or did Defendant Butts knowingly
25 falsify official documents as a peace officer;
26 CDC-1083-property inventory sheet when he wrote on
27 the sheet that Plaintiff refused to sign this
28 sheet.

1 c-4. Defendant Keener disputes that he signed a
2 CDC-128-B-chrono dated November 2, 2001, placing
3 Plaintiff on strip cell status from November 2,
4 2001 through November 12, 2001 for ten days even
5 though Plaintiff already served ten days strip
6 cell.

7 d-4. Defendant T. Lloren disputes that she placed a
8 hold of \$5.85 twice on Plaintiff trust account
9 2001 for Plaintiff allegedly damaging a sheet and
10 a tee-shirt.

11 e-4. Defendant T. Lloren disputes that she froze
12 Plaintiff's trust account to prevent Plaintiff
13 from using his funds to mail out his television
14 set for repair.

15 f-4. Defendant Lloren disputes that she froze
16 Plaintiff's trust account to prevent Plaintiff
17 from using his funds for any reason but, process
18 trust withdrawal orders allowing CSP-Cor, CDCR,
19 and other officials to use Plaintiff's funds in
20 his account.

21 g-4. Defendant Lloren disputes that she mismanaged
22 Plaintiff's trust account and froze it in
23 retaliation for Plaintiff filing Appeal No. 04A-
24 01-12-008.

25 h-4. Defendants Adkison, Gonzales, and Lloren dispute
26 that they refused to process any and all of the
27 CDC-193 trust account withdrawal orders Plaintiff
28 submitted from December 29, 2001 through March 1,

1 2002 to pay the \$5.85 double charge hold and allow
2 Plaintiff to pay to mail out his television and
3 now annual package until it was too late to do so.

4 i-4. Plaintiff disputes that he had to pay \$5.85
5 (twice) or any amount of money first for a damaged
6 state property hold (extortion) before Defendant
7 Lloren would process CDC-193 trust account
8 withdrawal orders to allow Plaintiff to use his
9 funds to mail out his television for repair and
10 annual package home.

11 j-4. Defendants Dill, Keener, Beer, Adkison, and
12 Gonzales dispute that Plaintiff's annual package
13 arrived at CSP-Cor twice and that it was opened up
14 the first time by Sergeant Rangel in early January
15 2002 and mailed back to Plaintiff's family on its
16 own postage to harass Plaintiff's family and as
17 punishment in retaliation for Plaintiff filing
18 numerous prison grievances against Defendants.

19 k-4. Defendants dispute that they, or any other (CSP-
20 Cor) official gave Plaintiff's sister Mrs. Dorris
21 L. Davis knowingly false and erroneous instruction
22 how to go about returning Plaintiff's annual
23 package to (CSP-Cor) after it was properly mailed
24 to CSP-Cor in January 2002 then opened and
25 returned to Plaintiff's family.

26 l-4. Defendants dispute that they had a duty (under
27 federal law) to notify Plaintiff that federal mail
28 package had arrived for him at (CSP-Cor) before

1 opening it up and mailing it back to Plaintiff's
2 family.

3 m-4. Defendants Adkison and Gonzales dispute that they
4 were tampering with Plaintiff's out-going federal
5 mail and in possession of a letter Plaintiff
6 mailed to his sister Mrs. Dorris Linda Davis.

7 n-4. Defendants Adkison, Butts, and Gonzales dispute
8 that they could have early repaired Plaintiff's
9 television.

10 o-4. Defendants Dill, Marshall, Butts, Beer, and Keener
11 dispute that they had to replace Plaintiff's
12 hearing aids.

13 p-4. Defendants dispute that there exists a custom or
14 policy of retaliatory acts at CSP-Cor against
15 Plaintiff for filing 602 prisoner grievances and
16 federal lawsuits against (CDCR) CSP-Cor officials.

17 2. Defendants'

18 a. Whether it was necessary to remove Plaintiff from
19 his cell on October 23, 2001, because he had
20 accumulated feces in his cell and threatened to
21 throw it on staff.

22 b. Whether Plaintiff refused a direct order to remove
23 his clothing for the purpose of being searched.

24 c. Whether Plaintiff refused orders to submit to
25 handcuffs.

26 d. Whether it was appropriate for Defendants to order
27 Plaintiff to get down on the floor before they
28 entered the cell.

- 1 e. Whether Plaintiff was naked when he was ordered to
2 get down in the floor.
- 3 f. Whether any of the Defendants used excessive force
4 when Plaintiff was removed from his cell.
- 5 g. Whether any of the Defendants used excessive force
6 after Plaintiff was taken out to the prison yard.
- 7 h. Whether Plaintiff was sexually assaulted.
- 8 i. Whether Plaintiff incurred more than a de-minimus
9 injury.
- 10 j. Whether the cell extraction was done for the
11 purpose of retaliating against Plaintiff.
- 12 k. Whether any of Plaintiff's property was taken or
13 damaged for the purpose of retaliating against
14 him.
- 15 l. Whether Plaintiff was prescribed hearing aids, and
16 if so, were they his personal property, or the
17 property of the prison.
- 18 m. Whether a hold was placed on Plaintiff's trust
19 account for the purpose of retaliating against
20 him.
- 21 n. Whether an incoming package was rejected for the
22 purpose of retaliating against Plaintiff.
- 23 o. Whether Plaintiff was found guilty of a
24 disciplinary infraction and assessed a determinate
25 term of confinement in a Security Housing Unit for
26 the purpose of retaliating against him.
- 27 p. Whether Defendant Beer told other inmates that
28 Plaintiff was a child molester and had AIDS for

1 the purpose of retaliating against him.

2 q. Whether Plaintiff has a prior arrest for lewd and
3 lascivious conduct with a minor child, and a
4 conviction for sexual battery.

5 r. Whether Defendant Beer placed Plaintiff in a
6 holding cell for the purpose of retaliating
7 against him.

8 IV. DISPUTED EVIDENTIARY ISSUES

9 1. Plaintiff's

10 Pursuant to the Federal Rules of Evidence, Plaintiff
11 respectfully objects to the admissibility of any and/or all
12 references to the following:

13 a. Plaintiff's criminal (convictions) history prior
14 or past;

15 b. Plaintiff's prior CDC Rules Violation Reports
16 (RVR) or Rule Infractions allegedly committed
17 while in custody of the CDCR both before and after
18 October 223, 2001;

19 c. Plaintiff's incarcerated witnesses' criminal
20 convictions or history;

21 d. Plaintiff's incarcerated witnesses' disciplinary
22 record and/or any criminal convictions or
23 misconduct during their incarceration;

24 Plaintiff bases his dispute as to the above evidentiary
25 issues on the basis that the record is already established which
26 reflects Plaintiff is a prison litigant and that Plaintiff and
27 his witnesses are incarcerated under the jurisdiction of CDCR,
28 and any such reference would only serve to prejudice the jury

1 against Plaintiff and his witnesses at trial.⁷

2 Plaintiff further raises evidentiary issues as to:

- 3 e. the foundation as to the whereabouts of two (2)
4 excessive force interview video tapes
5 filmed/conducted by Sergeant K. Davis on October
6 23, 2001 at approximately 2:00 p.m.;
- 7 f. the foundation for Defendants to stipulate and/or
8 concede that they destroyed or caused to be
9 destroyed the October 23, 2001 excessive force
10 interview videotape because it depicted that
11 Plaintiff had blood coming from his anus, blood
12 inside his boxer shorts, deep cuts in Plaintiff's
13 left ankle and wrist, and was in sever pain;
- 14 g. the personal files of Defendants Beer and Morales
15 containing or pertaining to any and all Internal
16 Affairs ("I/A") reports only that Defendants Beer
17 and Morales are violent prison officials and that
18 Defendants Marshall, Dill, V. Castillo, Buckley,
19 Streeter, and Keener were aware that Defendants
20 Beer and Morales were beating up or had beaten up
21 an untold number of prisoners and that they were
22 violent prison officials;
- 23 h. the admissibility of testimony of Plaintiff's

24
25 ⁷ Plaintiff repeats some of his arguments raised in his
26 motions for attendance of incarcerated witnesses that were
27 addressed in the order issued thereon, and which are not
28 addressed herein as they are not appropriately repeated and/or
entertained in a final pretrial order. (Doc. 189, Plntf.
Pretrial Stmt., 11:6-19; Doc. 205, O on Incarc. Wit.)

1 purported experts - Plaintiff intends to call
2 Michael Mayda and Doctor Johnson to testify as
3 expert witnesses.

4 2. Defendants'

5 Defendants offer that the following evidentiary disputes can
6 be addressed in motions in limine, or can be raised at trial at
7 the time Plaintiff seeks to admit the evidence or exhibit:

- 8 a. Whether Plaintiff's criminal history is admissible
9 for any purpose.
- 10 b. Whether Plaintiff's extensive disciplinary history
11 is admissible for any purpose.
- 12 c. Whether the criminal history of incarnated
13 witnesses is admissible for any purpose.
- 14 d. Whether the disciplinary history of incarcerated
15 witness is admissible for any purpose.
- 16 e. Whether Defendants' personnel records are
17 admissible for any purpose.
- 18 f. Whether copies of regulations, manuals or
19 operational procedures of the Department of
20 Corrections and Rehabilitation and Corcoran State
21 prison are admissible exhibits.
- 22 g. Whether copies of appeals filed by Plaintiff's
23 inmate witnesses are admissible for any purpose.
- 24 h. Whether Defendants' discovery responses are
25 admissible for any purpose other than impeachment.
- 26 i. Whether any of Plaintiff's administrative appeals
27 are admissible for any purpose other than
28 impeachment.

- 1 j. Whether Plaintiff's proposed witnesses can offer
2 their opinion of the character of the Defendants.
3 k. Whether evidence of accusations of prior bad acts
4 by the Defendants is admissible for any purpose.
5 l. Whether the use of Plaintiff's deposition should
6 be limited to impeachment only.
7 m. Whether the operative complaint in this case is
8 hearsay and inadmissible.
9 n. Whether Plaintiff can offer testimony that
10 Defendants deliberately destroyed video tapes.
11 o. Whether the declarations of other inmates are
12 admissible for any purpose.

13 V. SPECIAL FACTUAL INFORMATION

14 Local Rule 281, based on Fed. R. Civ. P. 16, requires
15 parties to state special factual information in certain actions -
16 none of which are raised in this case.

17 VI. RELIEF SOUGHT

18 Plaintiff seeks declaratory and injunctive relief, monetary
19 damages (both compensatory and punitive), and costs of suit.
20 Defendants seek dismissal and costs of suit.

21 VII. DISPUTED ISSUES OF LAW

22 A. Plaintiff's

23 Plaintiff contends that his injuries are more than
24 sufficient to garner constitutional recognition. Plaintiff's
25 injuries consist of bleeding, bruising, as sever pain in
26 Plaintiff's rectal/rectum area after Defendants used a foreign
27 object: APR-24 to sexually assault and sodomize Plaintiff; a
28 black left eye, deep cuts to Plaintiff's left ankle (which became

1 infected) and right wrist, pain and swelling to Plaintiff's face,
2 head, back, neck, ribs and shoulders from being stomped and
3 kicked in violation of the cruel and unusual punishment clause of
4 the Eight Amendment.

5 In addition, Plaintiff's First and Fourteenth Amendment
6 rights were violated sufficiently to garner constitutional
7 recognition as to the Defendants beating up and sodomizing him
8 with a foreign object which amount to punishment without due
9 process. The intentional destruction of Plaintiff's television
10 and hearing aids, the freezing and intentional mismanagement of
11 Plaintiff's prison trust account to prevent Plaintiff from
12 mailing out his television and annual package resulting in
13 (other) Defendants misappropriating them, filing a disciplinary
14 report that was knowingly false resulting in Plaintiff being
15 assessed an eighteen month SHU term. The Defendants did these
16 acts as punishment and in retaliation for Plaintiff exercising
17 his First and Fourteenth Amendment rights to petition the court
18 and federal government through (the prison) grievances.

19 Wherefore, Plaintiff has sustained irreparable physical,
20 mental, and emotional injuries to his First, Eighth, and
21 Fourteenth Amendment rights for which such injuries are
22 "repugnant to the conscious of mankind." See *Hudson v.*
23 *McMillian*, 503 U.S. 1, 7-8, 10 (1992); see also *United States v.*
24 *Lanier*, 520 U.S. 259 (1997); *Mt. Healthy City School Dist. Bd. of*
25 *Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

26 1. Excessive Force

27 The use of excessive force by prison officials violates the
28 Eighth Amendment. *Hudson v. McMillian*, 503 U.S. 1 (1992). In

1 excessive force cases, "the core judicial inquiry" is "whether
2 force was applied in a good faith effort to maintain or restore
3 discipline, or maliciously and sadistically to cause harm."
4 *Hudson*, 503 U.S. at 6-7 (quoting *Whitley v. Albers*, 475 U.S. 274,
5 287 (1997)).

6 The law of excessive force in this country is that a
7 prisoner cannot be subjected to gratuitous or disproportionate
8 force that has no object but to inflict pain. *Whitley*, 475 U.S.
9 at 320-21.

10 To determine whether the use of force violates the Eight
11 Amendment, the court should consider the "extent of injury . . .
12 the need for application of force, the relationship between the
13 need and the amount of force used, the threat 'reasonably
14 perceived by the responsible officials and any efforts made to
15 temper the severity of a forceful response." *Hudson*, 503 U.S. at
16 1 (quoting *Whitley*, 475 U.S. at 321). See also *Lemaire v. Maass*,
17 12 F.3d at 1454, *Spain v. Procunier*, 600 F.2d 189, 195 (9th Cir.
18 1979).

19 2. Sexual Assault-Sodomy

20 A sexual assault on an inmate by a guard . . . regardless of
21 the gender of the guard or the prisoner . . . is deeply
22 "offensive to human dignity." *Schwenk v. Hartford*, 204 F.3d 1187
23 (9th Cir. 2000) (quoting *Hudson*, 503 U.S. at 9. Being violently
24 assaulted in prison is simply not "part of the penalty that
25 criminal offenders pay for their offenses against society."
26 *Farmer v. Brennan*, 511 U.S. 825, 834 (1991).

27 Where guards themselves are responsible for the rape and
28 sexual abuse/sodomy of inmates, qualified immunity offer no

1 shield. *Schwenk*, 204 F.3d at 1197 (quoting *Mathie v. Fries*, 935
2 F.Supp. 1284, 1301 (E.D. N.Y. 1996); see also *Women Prisoners of*
3 *the Dist of Columbia Dept of Corrections v. District of Columbia*,
4 877 F.Supp. 634, 665 (D.D.C. 1994) ("rape, coerced sodomy,
5 unsolicited touching of women prisoners' vaginas, breasts, and
6 buttocks by prison employees are 'simply not part of the penalty
7 that criminal offenders pay for their offenses against
8 society'") *Farmer*, *id.* As a result, in *Farmer* the Supreme Court
9 held that prison officials may be held liable under the Eight
10 Amendment for the rape of a transsexual inmate by another inmate
11 if the officials knew but disregarded that that inmate faced
12 substantial risk of serious harm. See *United States v. Lanier*,
13 520 U.S. 259, 270 (1997); see also *Boddie v. Schnieder*, 105 F.3d
14 857 (2nd Cir. 1997) which established that sexual assault of a
15 prison inmate by a prison employee serves no legitimate punitive
16 purpose. *Id.* at 861.

17 3. Failure to Protect

18 Prison officials have a duty to take reasonable steps to
19 protect inmates from harm. *Hoptowit v. Ray*, 682 F.2d 1237, 1250
20 (9th Cir. 1982). The failure to protect an inmate from attacks
21 may give rise to a constitutional violation if prison officials
22 deliberately or recklessly disregard an inmates' safety. *Berg v.*
23 *Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). It has clearly
24 been established that prisoners have a right to (be) protection
25 while incarcerated. See *Farmer v. Brennan*, 511 U.S. 825 (1994).
26 A prison official duty under the eighth amendment is to ensure
27 "reasonable safety." See also *Helling v. McKinney*, 509 U.S. 25
28 (1993).

1 To be liable for failing to protect an inmate, a prison
2 official must be aware of sufficient information about a
3 particular danger which, in turn gives rise to an affirmative
4 duty to protect the threatened inmate. *Berg*, 794 F.2d at 460. A
5 prisoner must also show a culpable state of mind on the part of
6 prison officials. *Farmer*, 511 U.S. at 838-39.

7 4. Federal Retaliation

8 To establish a claim of retaliation under 42 U.S.C. § 1983 a
9 plaintiff must first establish that he engaged in
10 constitutionally protected activity and that his conduct was a
11 substantial or motivating factor behind the supposedly
12 retaliatory acts. *Mt. Healthy City school Dist. Bd. Of Edu.*
13 *Doyle*, 429 U.S. 274, 287 (1977); see also *Soranno's Gas-Co Inc.*
14 *V. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989).

15 Within the prison context, a claim of first amendment
16 retaliation entails the following five basic elements: (1) an
17 assertion that a state actor took some adverse action against an
18 inmate (2) because of (3) that prisoner's protected conduct, and
19 that such action (4) chilled the inmate's exercise of the first
20 amendment rights, and (5) the action did not reasonably advance a
21 legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559,
22 568 (9th Cir. 2005).

23 "Of fundamental import to prisoners are their first
24 amendment right[s] to file prison grievances," *Bruce v. Ylst*, 351
25 F.3d 1283, 1288 (9th Cir. 2003), and to "pursue civil rights
26 litigation in court" *Schroeder v. McDonald*, 55 F.3d 454, 461 (9th
27 Cir. 1995). Without these bedrock constitutional guarantees,
28 inmates would be left with no viable mechanism to remedy prison

1 injustices, and because purely retaliatory actions taken against
2 a prisoner for having exercised those rights necessarily
3 undermine those protections, such actions violate the
4 constitution quite apart from any underlying misconduct they are
5 designed to shield. See e.g., *Pratt v. Rowland*, 65 F.3d 802,
6 806, n.4 (9th Cir. 1995) (“[T]he prohibition against retaliatory
7 punishment is ‘clearly established law’ in the Ninth Circuit, for
8 qualified immunity purposes.”)

9 B. Defendants

10 Defendants state that Plaintiff brings this action under 42
11 U.S.C. § 1983, alleging Defendants violated his Eighth Amendment
12 rights and retaliated against him. Federal law governs this
13 action.

14 1. Eighth Amendment Claims

15 The Eighth Amendment’s Cruel and Unusual Punishment Clause
16 prohibits the “unnecessary and wanton infliction of pain” on
17 prison inmates. See *Hudson v. McMillian*, 503 U.S. 1, 5 (1992);
18 *Estelle v. Gamble*, 429 U.S. at 102-03 (1976). In cases involving
19 allegations of excessive use of force, “the core judicial
20 inquiry” is “whether force was applied in a good-faith effort to
21 maintain or restore discipline, or maliciously and sadistically
22 to cause harm.” *Hudson*, 503 U.S. at 5. A use of force has both
23 subjective and objective components. A court must consider
24 whether the prison official acted with a “sufficiently culpable
25 state of mind” and if the alleged wrongdoing was objectively
26 “harmful enough” to establish a constitutional violation. *Id.*

27 In considering an excessive force claim, the court should
28 examine several factors, including: (1) the need for an

1 application of force; (2) the relationship between the need and
2 amount of force used; (3) the threat to the safety of staff and
3 other inmates; (4) any efforts made to temper the severity of a
4 forceful response; and (5) the extent of injury inflicted.
5 *Whitley v. Albers*, 475 U.S. 312, 321 (1986). With regard to the
6 last of these factors, while a plaintiff need not demonstrate a
7 significant injury to state a claim for excessive force under the
8 Eighth Amendment, "a claim ordinarily cannot be predicated on a
9 de minimus use of physical force." *Id.* at 320-21. "The Eighth
10 Amendment's prohibition of cruel and unusual punishment
11 necessarily excludes from constitutional recognition de minimus
12 uses of physical force, provided that the use of force is not of
13 a sort repugnant to the conscience of mankind." *Hudson*, 503 U.S.
14 at 9-10. Moreover, wide-ranging deference is given to prison
15 administrators in the adoption and execution of the policies and
16 practices that in their judgment are considered necessary in the
17 preservation of the institution's security, order and discipline.
18 *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). That deference
19 extends to prison security measures taken in response to an
20 actual confrontation, and to deterrent measures designed to
21 reduce incidents of prison disciplinary breaches. *Whitley*, 475
22 U.S. at 322. "It does not insulate from review actions taken in
23 bad faith and for no legitimate purpose, but it requires that
24 neither judge nor jury freely substitute their judgment for that
25 of officials who have made a considered choice." *Id.*

26 In addition, California Code of Regulations, title 15,
27 section 3268, sets forth CDCR's policy governing use of force.
28 Under that policy, reasonable force is defined as "the force that

1 an objective, trained and competent correctional employee, faced
2 with similar facts and circumstances, would consider necessary
3 and reasonable to subdue an attacker, overcome resistance, effect
4 custody, or gain compliance with a lawful order." Cal. Code
5 Regs. tit.15, § 3268(a)(1). Moreover, excessive force is defined
6 as "the use of more force than is objectively reasonable to
7 accomplish a lawful purpose." Cal. Code Regs. tit.15, §
8 3268(a)(3).

9 Defendants argue that Plaintiff cannot demonstrate that the
10 Defendants acted maliciously and sadistically when applying the
11 amount of force necessary to maintain safety, security, and order
12 in the face of the confrontation with Plaintiff.

13 2. Retaliation

14 Within the prison context, a viable First Amendment
15 retaliation claim requires that Plaintiff establish the following
16 five elements: (1) that a state actor took some adverse action
17 against him (2) because of (3) Plaintiff's protected conduct, and
18 that such action (4) chilled Plaintiff's exercise of his First
19 Amendment rights; and (5) the action did not reasonably advance a
20 legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559,
21 568 (9th Cir. 2005). Plaintiff bears the burden of setting forth
22 facts that satisfy each and every element necessary for a prima
23 facie case of retaliation. *Rhodes*, 408 F.3d at 568. The
24 "chilling" inquiry for First Amendment purposes here is whether
25 an official's acts would chill or silence a person of ordinary
26 firmness from future First Amendment activities. *Id.* at 568-69
27 (citing *Mendocino Environmental Center v. Mendocino County*, 192
28 F.3d 1283, 1300 (9th Cir. 1999)). Defendants argue that

1 Plaintiff cannot establish that Defendants took action against
2 him because of his protected conduct. Defendants further argue
3 that Plaintiff cannot demonstrate that Defendants' action did not
4 have a legitimate correctional goal.

5 3. Causation

6 Liability under 42 U.S.C. § 1983 can be established by
7 showing that a defendant either personally participated in a
8 deprivation of the plaintiff's rights, or caused such deprivation
9 to occur. *Arnold v. International Business Machines Corp.*, 637
10 F.2d 1350, 1355 (9th Cir. 1981). Under 42 U.S.C. §1983, there
11 must be an actual connection or link between the actions of a
12 defendant and the deprivation alleged to have been suffered by
13 the plaintiff. See *Monell v. Dep't of Social Services*, 436 U.S.
14 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). A person
15 "subjects" another to the deprivation of a constitutional right
16 within the meaning of the statute, if he does an affirmative act,
17 participates in another's affirmative acts, or fails to perform
18 an act which he is legally required to do that causes the claimed
19 deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988);
20 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). The
21 Plaintiff must demonstrate that a particular defendant was the
22 "actual and proximate cause" of his injuries. *Leer*, 844 F.2d at
23 633-34.

24 4. Qualified Immunity

25 The defense of qualified immunity protects "government
26 officials . . . from liability for civil damages insofar as their
27 conduct does not violate clearly established statutory or
28 constitutional rights of which a reasonable person would have

1 known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
2 Qualified immunity protects "all but the plainly incompetent or
3 those who knowingly violate the law." *Malley v. Briggs*, 475 U.S.
4 335, 341 (1986). Thus, the standard allows "ample room for
5 mistaken judgments by protecting all but the plainly incompetent
6 or those who knowingly violate the law," and applies even when
7 wrongful conduct occurs. *Richardson v. McKnight*, 521 U.S. 399,
8 403 (1997); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (internal
9 quotations omitted).

10 In *Saucier v. Katz*, 533 U.S. 194, 201 (2001), the Court set
11 forth the required two-part analysis in ruling on qualified
12 immunity. First, "[t]aken in the light most favorable to the
13 party asserting the injury, do the facts alleged show the
14 officer's conduct violated a constitutional right? . . . If no
15 constitutional right would have been violated were the
16 allegations established, there is no necessity for further
17 inquiries concerning qualified immunity." *Id.*

18 If, on the other hand, a constitutional violation could be
19 made out, the court must determine whether the right was clearly
20 established. *Id.* "This inquiry, it is vital to note, must be
21 undertaken in light of the specific context of the case, not as a
22 broad general proposition; and it too serves to advance
23 understanding of the law and to allow officers to avoid the
24 burden of trial if qualified immunity is applicable." *Id.* Thus,
25 in determining whether a right is clearly established, the court
26 must determine "whether it would be clear to a reasonable officer
27 that his conduct was unlawful in the situation he confronted."
28 *Id.* at 202 (quoting *Wilson v. Layne*, 526 U.S. 603, 615 (1999))

1 ("[T]he right allegedly violated must be defined at the
2 appropriate level of specificity before a court can determine if
3 it was clearly established").

4 The Supreme Court clarified the *Saucier* two-part analysis in
5 *Pearson v. Callahan*, 555 U.S. ____, 2009 U.S. LEXIS 591, *15
6 (U.S. Jan. 21, 2009), holding that the Court may exercise its
7 discretion in deciding which of the two prongs of the qualified
8 immunity analysis should be addressed first. Therefore,
9 "regardless of whether the constitutional violation occurred the
10 [official] should prevail if the right asserted by the plaintiff
11 was not "'clearly established' or the [official] could have
12 reasonably believed that his particular conduct was lawful."
13 *Romero v. Kitsap County*, 931 F.2d 624, 627 (9th Cir. 1991);
14 *Pearson*, 555 U.S. ____, 2009 U.S. LEXIS 591 at *15. Defendants
15 argue that they are entitled to qualified immunity. Defendants
16 will need to take the proper steps as required under the Federal
17 Rules of Civil Procedure to preserve any such entitlement.

18 5. Impeachment by Evidence of Prior Felony Convictions

19 Defendants also argue that the verdict in this case will be
20 decided by the jury after consideration of each witness's
21 credibility. Plaintiff, to meet his burden of proof at trial, is
22 expected to testify to his version of the events. He has also
23 identified other inmates as witnesses for trial.

24 Rule 609 of the Federal Rules of Evidence provides that
25 evidence of a witness's prior felony conviction may be used to
26 impeach that witness's testimony. Defendants contend that no one
27 who has a prior felony conviction is entitled to the false aura
28 of veracity, which would occur if impeachment of the Plaintiff

1 and his additional inmate witnesses were not allowed. *U.S. v.*
2 *Bernal-Obeso*, 989 F.2d 331, 336 (9th Cir. 1993) ("As any trial
3 lawyer knows, felony convictions trench heavily upon such a
4 person's credibility"). Accordingly, Defendants will seek to
5 impeach Plaintiff's trial testimony, with evidence of their prior
6 felony convictions.

7 6. Punitive Damages

8 Defendants also argue that Plaintiff is not entitled to
9 punitive damages. The Supreme Court has determined that punitive
10 damages are available in a section 1983 action only when the
11 defendant's conduct is shown to be motivated by evil motive or
12 intent or when it involves reckless or callous indifference to
13 the federally protected rights of others. *Smith v. Wade*, 461
14 U.S. 30, 51 (1983).

15 It is not enough that defendants may have acted in an
16 objectively unreasonable manner; their subjective state of mind
17 must be assessed. *Wulf v. City of Wichita*, 883 F.2d 842, 867
18 (10th Cir. 1989). Where there is no evidence that a § 1983
19 defendant has acted with evil intent, there is no legal right to
20 punitive damages. *Ward v. City of San Jose*, 967 F.2d 280, 286
21 (9th Cir. 1991).

22 VIII. ABANDONED ISSUES

23 A. Plaintiff

24 Although no issues have been intentionally abandoned by
25 either side, the issues initially framed by the pleadings have
26 been narrowed by the Court's December 14, 2004 findings and
27 recommendations recommending dismissal of Glass' Religious Land
28 Use and Institutionalized Persons Act ("RLUIPA") 42 U.S.C. §

1 2000cc-1, First Amendment religious claims, Eighth Amendment
2 medical claims, and Fourteenth Amendment equal protection, due
3 process, and privileges and immunity claims against Defendants
4 Meis, Anderson, Rousseau, Yamit, and Raymer.⁸ (Doc. 18, Screen
5 F&R.)

6 B. Defendants

7 Defendants represent that they have not abandoned any issues
8 or affirmative defenses which were raised in their answer.

9 IX. WITNESSES

10 A. Plaintiff

- 11 1. Incarcerated Witness Wittier Buchanan (K02554);
- 12 2. Incarcerated Witness Jason Ortiz (P72425);
- 13 3. Incarcerated Witness Robert S. Milton (J06653);
- 14 4. Incarcerated Witness Rodney Fleming (E09596);
- 15 5. Incarcerated Witness Eric Jackson (D47735);
- 16 6. Incarcerated Witness James Thompson (C89908);
- 17 7. Incarcerated Witness John Brown;
- 18 8. Incarcerated Witness Lamont Rencher (D73399);
- 19 9. Incarcerated Witness David W. Smith (K78326);
- 20 10. Registered Nurse L.T. Koeppe;
- 21 11. Correctional Sergeant D. B. Scaife;

23 ⁸ Plaintiff indicates that "in the event [he] is
24 unsuccessful at trial, [he intends] to re-allege his 'RLUIPA' and
25 First Amendment religious claims against Defendants Adkison and
26 Gonzales and Eight Amendment medical claims against Defendants
27 Meis and Raymer on appeal." (Doc. 189, Plnt. Pretrial Stmt., p.
28 17.) However, Plaintiff's religious claims under the RLUIPA and
the First Amendment have already been found uncognizable and
dismissed from this action. (Doc. 18, Screening F&R; Doc. 20,
Order Adopting.)

1 12. Correctional Sergeant V. Rangel; and

2 13. Doris Linda Davis.

3 Plaintiff requests the right to reserve introducing
4 additional unincarcerated witnesses as may be deemed necessary or
5 appropriate at the time of trial, specifically Dr. Johnson. (Doc.
6 189, Plntf. Pretrial Stmt., p. 18.) In his disputed evidentiary
7 issues Plaintiff states that he intends to call "Michael Mayda
8 and Doctor Johnson to testify as expert witnesses." (*Id.* at
9 12:1-3.)

10 Plaintiff was notified in the Second Scheduling Order, filed
11 September 15, 2009, that if he desired to have the Marshall serve
12 any unincarcerated witnesses who refuse to testify voluntarily,
13 he must have notified the Court in writing of such witnesses'
14 name and location for the Court to calculate and notify Plaintiff
15 of the requisite sums to submit for witness fees in the form of a
16 money order. This process must have been completed in time for
17 Plaintiff to submit money orders for witness fees to the Court on
18 or before January 12, 2010. Plaintiff complied with these
19 requirements as to R.N. Koeppel, Sgt. Scaife, and Sgt. Rangel, but
20 he did not comply with those requirements as to either Dr.
21 Johnson or Michael Mayda. Thus, Plaintiff may not call either
22 Dr. Johnson or Michael Mayda as a witness at the trial of this
23 matter unless Dr. Johnson and/or Michael Mayda has agreed to
24 testify voluntarily and will appear at trial without being
25 subpoenaed.

26 Plaintiff was also informed in the Second Scheduling Order,
27 filed September 15, 2009, of the procedures for calling
28 incarcerated witnesses. Specifically, Plaintiff was informed

1 that in order to call incarcerated person as trial witnesses,
2 Plaintiff must serve and file with his pretrial statement a
3 written "Motion for Attendance of Incarcerated Witnesses."
4 Plaintiff filed six such motions. In the order issued, March 3,
5 2010, Plaintiff's motion for attendance of incarcerated witness
6 Wittier Buchanan (K02554) was granted, and all others were
7 denied. (Doc. 205, O Incarc. Wit.)

8 Plaintiff filed a request for reconsideration of the ruling
9 as to his motion for attendance of incarcerated witnesses which
10 was argued, submitted, and denied at the pretrial conference.
11 Defendants are to submit an order for review and issuance denying
12 Plaintiff's motion for reconsideration.

13 B. Defendants

14 The following persons, whose address is California State
15 Prison - Corcoran, 4001 King Ave., Corcoran, CA 93212:

- 16 1. J.A. Keener, Correctional Lieutenant;
- 17 2. T. Banks, Correctional Officer;
- 18 3. T. Hieng, Correctional Officer;
- 19 4. M.K. Anderson, Correctional Officer;
- 20 5. D. Davis, M.D.;
- 21 6. K. Gooch, Correctional Officer;
- 22 7. S. Hance, Psychiatric Technician;
- 23 8. D. Key, Correctional Officer;
- 24 9. M. Lui, M.D.;
- 25 10. S. Meis, M.D.;
- 26 11. R. Rayner, Medical Technician Assistant;
- 27 12. R. Sloss, Correctional Officer;
- 28 13. F. Yamat, Correctional Officer;

- 1 14. R. Beer, Correctional Sergeant;
2 15. T. Lloren, Office Assistant;
3 16. J. Buckley, Correctional Counselor II;
4 17. D. Scaife, Sergeant;
5 18. K. Davis, Sergeant; and
6 19. Custodians of Plaintiff's central file and medical
7 records.

8 The following person whose address is: California Men's
9 Colony, Highway 1, San Luis Obispo, CA 93409:

10 20. J. Marshall, Warden.

11 The following persons whose address is through counsel:

- 12 21. N. Dill, Facility Captain, retired.
13 22. B. Streeter, Correctional Counselor II, retired;
14 23. D. Morales, Correctional Officer, retired;
15 24. V. Castillo, Correctional Counselor II, retired; and
16 25. W. Butts, Correctional Officer, retired.

17 Counsel are each ordered to submit a list of witnesses to
18 the court along with a copy for use by the Courtroom Deputy
19 Clerk, on the same date and at the same time as the list of
20 exhibits are to be submitted as ordered below.

21 CAUTION

22 Counsel are cautioned that expert witnesses, including
23 percipient experts, must be designated as such. No witness, not
24 identified as a witness in this order, including "rebuttal"
25 witnesses, will be sworn or permitted to testify at trial.

26 X. EXHIBITS, SCHEDULES AND SUMMARIES

27 The following is a list of documents or other exhibits that
28 the parties expect to offer at trial.

1 CAUTION

2 Only exhibits so listed will be permitted to be offered into
3 evidence at trial, except as may be otherwise provided in this
4 order. No exhibit not designated in this pretrial order shall be
5 marked for identification or admitted into evidence at trial.
6 Because of the logistic circumstances of a case such as this, any
7 party may raise objections and/or address disputes with an
8 opposing party's exhibits prior to the start of trial on May 11,
9 2010.

10 A. Plaintiff's Exhibits

- 11 1. Glass' Medical files, the portions from 2001 through
12 2004.
- 13 2. The October 23, 2001 cell extraction video tape film.
- 14 3. The first excessive force interview video tape
15 conducted approximately forty-five (45) minutes after
16 the cell extraction, video tape was filmed on October
17 23, 2001.
- 18 4. The second excessive force interview video tape
19 conducted by Sergeants Scaife and K. Davis on October
20 24, 2001 at the Acute Care Hospital.
- 21 5. The third and fourth video tapes over all excessive
22 force interview video tape, conducted by Sergeants J.
23 Baston and Scaife on December 28, 2001.
- 24 6. The portions of Glass' CDC-Appeals files from early
25 2001 through 2008.
- 26 7. All CDC-7219 medical injury reports from October 23,
27 2001 through November 2, 2001.
- 28 8. All CDC-837 incident reports Log No. CDR-04A-01-0545

1 signed and dated October 23, 2001 by Defendants Beer
2 and Keener respectively.

3 9. Rules violation report CDC-115 Log No. 4A2-01-10-49
4 written by Defendant Beer on November 23, 2001.

5 10. Glass' blood stained boxer shorts as depicted on the
6 first excessive force interview video tape that
7 Defendants Beer and Keener removed from Glass at the
8 ACH on October 23, 2001.

9 11. CDC-7219 medical injury report and body sheet on Glass
10 dated October 23, 2001.

11 12. CDC-7219 medical injury report and body sheet on Glass
12 dated July 22, 2001 signed by then M.T.A. Lt. Koeppe.

13 13. CDC-7219 medical injury report and body sheet on
14 Defendant Butts dated July 22, 2001.

15 14. Rules violation report, CDC-115 Log No. 4A2-01-07-28
16 written by Defendant Butts.

17 15. All CDC-837 incident reports Log No. COR-04A-01-07-
18 0380.

19 16. All CDC-1083 personal property inventory sheets signed
20 and dated by Defendant Butts on October 28, 2001, C/O
21 Edmon on November 9, 2001, and altered CDC-1083 by
22 Defendants Adkison and Gonzales on October 28, 2001.

23 17. CDCR cell extraction policies and procedures.

24 18. CSP-Cor cell extraction policies and procedures.

25 19. C.C.R. Title 15 § 3004 rights and respect of others.

26 20. C.C.R. Title 15 § 3084.160 right to appeal, no reprisal
27 shall be taken.

28 21. C.C.R. Title 15 § 3085 American's With Disabilities Act

1 ("ADA") on Glass' appeals pursuant to 42 U.S.C. § 12101
2 - 12132 and the Rehabilitation Act ("RA"), 29 U.S.C. §
3 794(a) & (b) regarding Glass' destroyed/stolen hearing
4 aids.

5 22. C.C.R. Title 15 § 3286 use of force.

6 23. C.C.R. Title 15 § 3268.1 reporting and investigating
7 the use of force.

8 24. C.C.R. Title 15 § 3268.2 use of restraints.

9 25. C.C.R. Title 15 § 3271 responsibility of employees.

10 26. C.C.R. Title 15 § 3278 control of inmates and parolees.

11 27. C.C.R. Title 15 § 3279 use of force.

12 28. C.C.R. Title 15 § 3281 corporal punishment.

13 29. C.C.R. Title 15 § 3391(b) & (d) employee conduct.

14 30. C.C.R. Title 15 § 3401.5 employee sexual misconduct.

15 31. Department Operation Manual ("D.O.M.") § 31140.1 -
16 31440.16 filing a false report while in the course of
17 their duty.

18 32. California Government Code § 6254.

19 33. California Government Code § 19572.

20 34. Glass' verified complaint filed March 22, 2004.

21 35. Declaration of Glass pertaining to claims against
22 Defendants in this lawsuit.

23 36. Declaration of inmate David Wayne Smith (K78326).

24 37. Copy of inmate David W. Smith's CSP-Cor trust account
25 statement.

26 38. Declaration of Lamonte Rencher (D97733).

27 39. Verified Appeal No. CSP-C-5-01-1638 and all supporting
28 documents.

- 1 40. Verified Appeal No. CSP-5-01-1499 and all supporting
2 documents.
- 3 41. Verified Appeal No. CSP-C-5-01-1587 and all supporting
4 documents.
- 5 42. Verified Appeal No. CSP-C-5-01-1629 and all supporting
6 documents.
- 7 43. Verified Appeal No. CSP-C-5-01-2341 and all supporting
8 documents.
- 9 44. Verified Appeal No. CSP-C-5-01-3399 and all supporting
10 documents.
- 11 45. Verified Appeal No. CSP-C-5-01-3178 and all supporting
12 documents.
- 13 46. Verified Appeal No. CSP-C-5-01-3530 and all supporting
14 documents.
- 15 47. Verified Appeal No. 04A-01-01-012 and all supporting
16 documents.
- 17 48. Verified Appeal No. 04A-01-12-008 and all supporting
18 documents.
- 19 49. Verified Appeal No. CSP-C-5-01-4128 and all supporting
20 documents.
- 21 50. Verified Appeal that Defendants Buckley, Castillo, and
22 Streeter screened out, and refused to process by
23 combining with Appeal No. CSP-C-5-01-4128.
- 24 51. Two verified appeals with "all supporting documents"
25 that were rejected by Defendants Buckley, Castillo, and
26 Streeter regarding Glass' damaged television that
27 Defendant Marshall instructed Glass to file on December
28 14, 2001.

- 1 52. A verified appeal dated January 6, 2002 against
2 Defendants Buckley, Castillo, and Streeter for
3 harassing Glass in appeal procedure, for screening out
4 appeals which was screened out.
- 5 53. Verified Appeal No. CSP-C-5-02-0272 and all supporting
6 documents.
- 7 54. A verified appeal with all supporting documents dated
8 February 14, 2002 which was stamped rejected on
9 February 28, 2002.
- 10 55. Verified Appeal No. CSP-C-5-01-0639 and all supporting
11 documents.
- 12 56. A verified appeal and all supporting documents which
13 Defendants Buckley, Castillo, and Streeter screened on
14 March 7, 2002.
- 15 57. A verified appeal dated March 18, 2002 and all
16 supporting documents which Defendants Buckley,
17 Castillo, and Streeter screened out.
- 18 58. Verified Appeal No. CSP-C-5-02-1188, dated March 12,
19 2002 and all supporting documents.
- 20 59. Verified Appeal No. CSP-C-5-02-2056, dated May 30, 2002
21 and all supporting documents.
- 22 60. Verified Appeal No. CSP-C-5-02-2079, dated June 11,
23 2002 and all supporting documents.
- 24 61. Verified Appeal No. CSP-C-5-02-2885, dated August 5,
25 2002 and all supporting documents.
- 26 62. A verified appeal dated August 20, 2001 and all
27 supporting documents which was screened out by
28 Defendants Streeter, Buckley, and Castillo.

- 1 63. Verified Appeal No. CSP-C-5-02-3541, dated October 15,
2 2001 and all supporting documents.
- 3 64. Verified Appeal No. CSP-C-5-02-2297, dated September 3,
4 2002 and all supporting documents.
- 5 65. Verified Appeal No. CSP-C-5-02-3803, dated November 5,
6 2002 and all supporting documents.
- 7 66. Verified Appeal No. CSP-C-5-04-1574, dated April 1,
8 2004 and all supporting documents.
- 9 67. Verified Appeal No. CSP-C-5-03-4329, filed by inmate
10 James L. Thompson (C-89908), dated November 22, 2003
11 and all supporting documents.
- 12 68. California State Prison, Corcoran ("CSP-Cor")
13 Operational Procedure ("O.P.") No. 222 Inmate personal
14 property from 2000 to 2008.
- 15 69. CSP-Cor. (O.P.) No. 806 mail/packages from 2000 to
16 2008.

17 B. Defendant's Exhibits

- 18 1. Plaintiff's abstracts of judgment, and relevant
19 portions of any related probation reports.
- 20 2. Abstracts of judgment for all inmate witnesses called
21 by Plaintiff at trial.
- 22 3. Rules Violation Reports (CDC 115), October 2, 1999 to
23 March 3, 2004, specifically including, but not limited
24 to, the CDC 115 dated October 23, 2001, and any
25 attachments.
- 26 4. Administrative Segregation Unit Placement notices (CDC
27 114), October 2, 1999 to March 3, 2004 and any
28 attachments.

- 1 5. Classification Chronos (CDCR form 128G), October 2,
2 1999 to March 3, 2004, specifically, but not limited to
3 the CDC 128G dated December 12, 2001, and any
4 attachments.
- 5 6. General Chronos (CDCR form 128B), October 2, 1999 to
6 March 3, 2004, and any attachments.
- 7 7. Custodial Counsel Chronos (CDCR form 128B), October 2,
8 1999 to March 3, 2004, and any attachments.
- 9 8. Medical Report of Injury or Unusual Occurrence (CDC
10 7219), dated October 23, 2003, and any attachments.
- 11 9. Any medical records or chronos approving Plaintiff's
12 possession of hearing aids.
- 13 10. Inpatient medical records from October 23, 2001 to
14 November 2, 2001.
- 15 11. Inmate Status Summary for Donald Glass, October 2, 1999
16 to March 3, 2004
- 17 12. Inmate Movement Sheet for Donald Glass, October 2, 1999
18 to March 3, 2004.
- 19 13. Video recording of Use of Force Interview, dated
20 October 24, 2001.
- 21 14. Video of Cell Extraction, dated October 23, 2001.
- 22 15. Trust Account Records for Donald Glass, October 2, 1999
23 to March 3, 2004.
- 24 16. Printout of all Administrative Appeals filed by Donald
25 Glass, October 2, 1999 to March 3, 2004.
- 26 17. Property Records for Donald Glass, including all
27 CDC-1083 Property Inventory Sheets, October 2, 1999 to
28 March 3, 2004.

1 18. Photographs of the interior of the housing unit 4-A at
2 Corcoran.

3 19. Photographs of cell 4-A2L-44, including the food port.

4 20. Photographs of an "extended food port."

5 Defendants indicate they will need to use video playback
6 equipment and an easel for some exhibits. Defendants are
7 directed to contact Renee Gaumnitz CRD at least one week prior to
8 trial to make arrangements for such equipment for use during the
9 trial.

10 XI. DISCOVERY DOCUMENTS

11 Only specifically designated discovery requests and
12 responses will be admitted into evidence. Any deposition
13 testimony shall be designated by page and line and such
14 designations filed with the Court on or before April 23, 2010.
15 The opposing party shall counter-designate by line and page from
16 the same deposition and shall file written objections to any
17 question and answer designated by the opposing party and filed
18 with the court on or before April 30, 2010.

19 Written discovery shall be identified by number of the
20 request. The proponent shall lodge the original discovery
21 request and verified response with the courtroom deputy one day
22 prior to trial. The discovery request and response may either be
23 read into evidence, or typed separately, marked as an exhibit, as
24 part of the exhibit marking process, and offered into evidence.

25 A. Plaintiff's List

26 1. Deposition of Donald Glass taken on December 2, 2005.

27 2. Defendant Beer's response to Glass' Interrogatories,
28 Set One.

- 1 3. Defendant Beer's response to Glass' Interrogatories,
2 Set Two.
- 3 4. Defendant Beer's supplemental response to Glass'
4 Requests for Admissions, Set One.
- 5 5. Defendant Beer's response to Glass' Requests for
6 Admissions, Interrogatories Set One.
- 7 6. Defendant Adkison's responses to Glass'
8 Interrogatories, Set One.
- 9 7. Defendant Adkison's responses to Glass' First Request
10 for Admissions.
- 11 8. Defendant Adkison's supplemental responses to Glass'
12 First Request for Admissions.
- 13 9. Defendant Buckley's responses to Glass'
14 Interrogatories, Set One.
- 15 10. Defendant Buckley's responses to Glass' First Request
16 for Admissions.
- 17 11. Defendant Butts' responses to Glass' First Request for
18 Admissions.
- 19 12. Defendant Castillo's responses to Glass'
20 Interrogatories, Set One, 5 - 25.
- 21 13. Defendant Castillo's responses to Glass's First Request
22 for Admissions.
- 23 14. Defendant dill's responses to Glass' Interrogatories,
24 Set One, 5 - 25.
- 25 15. Defendant Dill's responses to Glass' Request for
26 Admissions, Set One.
- 27 16. Defendant Gonzales' responses to Glass'
28 Interrogatories, Set One, 5 - 25.

- 1 17. Defendant Gonzales' responses to Glass' First Request
2 for Admissions.
- 3 18. Defendant Keener's responses to Glass' Interrogatories,
4 Set One, 5 - 25.
- 5 19. Defendant Keener's responses to Glass' First Request
6 for Admissions.
- 7 20. Defendant Keener's supplemental responses to Glass's
8 First Request for Admissions.
- 9 21. Defendant Lloren's responses to Glass' Interrogatories,
10 Set one, 9 - 17.
- 11 22. Defendant Lloren's responses to Glass' interrogatories,
12 Set Two, 1 - 15.
- 13 23. Defendant Lloren's responses to Glass' First Request
14 for Admissions.
- 15 24. Defendant Marshall's responses to Glass'
16 Interrogatories, Set One.
- 17 25. Defendant Marshall's response to Glass' First Request
18 for Admissions.
- 19 26. Defendant Morales' responses to Glass' Interrogatories,
20 Set One.
- 21 27. Defendant Morales' responses to Glass' First Request
22 for Admissions.
- 23 28. Defendant Morales' supplemental responses to Glass'
24 First Request for Admissions, number 10.
- 25 29. Defendant Sloss' responses to Glass' First Set of
26 Interrogatories, 8 - 22.
- 27 30. Defendant Streeter's responses to Glass' First Set of
28 Interrogatories, 5 - 25.

1 31. Defendant Streeter's responses to Glass' First Request
2 for Admissions.

3 32. Defendants Responses to Glass' Request for Production
4 of Documents, Sets One (1) through Five (5).

5 B. Defendant's List

6 Defendants do not intend to introduce discovery documents as
7 exhibits. Defendants intend to use Plaintiff's deposition for
8 impeachment.

9 XII. STIPULATIONS

10 Plaintiff indicates that he "will seek a stipulation from
11 Defendants Beer and Morales that they individually, or collection
12 beaten up and caused serious facial and bodily injuries to at
13 least twenty (20) prisoners at (CSP-Cor) from 2000 through 2004,
14 and that Defendants Dill, Keener, Buckley, Castillo, Streeter,
15 and Marshall were aware and condoned (as a form of prison
16 justice) Defendants Beer and Morales (sic) violent behavior.
17 That Defendants caused the intentional destruction and
18 despoilation (sic)of the October 23, 2001 and December 28, 2001
19 excessive force interview videotapes if Defendants cannot produce
20 these videotapes at trial." (Doc. 189, Plntf. Pretrial Stmt.,
21 pp. 25-26, ¶ 14.)

22 Defendants do not offer or request any stipulations.
23 Defendants do not stipulate to Plaintiff's statement that
24 Defendants have an extensive history of inmate abuse.

25 No party is required to enter into any stipulation(s).

26 XIII. AMENDMENTS - DISMISSALS

27 A. Plaintiff

28 Defendants Meis, Raymer, Anderson, Rousseau, and Yamit have

1 been dismissed from this action upon the Court's December 15,
2 2004 findings and recommendations based on Glass' failure to
3 state any claims upon which relief may be granted against them
4 and all other claims pursuant to section 1983, RLUIPA, the ADA
5 and the RA, were dismissed without prejudice for failure to state
6 any claims upon which relief may be granted.⁹

7 B. Defendants

8 Defendants indicate none.

9 XIV. FURTHER TRIAL PREPARATION

10 A. Trial Briefs.

11 The parties may file a trial brief in this matter. If they
12 choose to do so, any such trial brief should be submitted to the
13 court no later than May 2, 2010. No extended preliminary
14 statement of facts is required. The brief should address
15 disputed issues of substantive law, disputed evidentiary issues
16 of law that will not be resolved in limine, and any other areas
17 of dispute that will require resolution by reference to legal
18 authority.

19 B. Duty To Pre-Mark Exhibits.

20 1. Counsel for the parties are ordered to meet and conduct
21 a joint exhibit conference on or before May 4, 2010 for purposes
22 of pre-marking and examining each other's exhibits and preparing
23 an exhibit list. All of Plaintiff's exhibits will be pre-marked
24 with numbers 1 - 100; all of Defendants' exhibits will be pre-
25 marked with numbers 101-200; and all joint exhibits will be pre-

27 ⁹ Plaintiff indicates that he intends to reinstate these
28 Defendants and claims in the event he is unsuccessful at trial.

1 marked 301-400.

2 2. Each and every page of each and every exhibit shall be
3 individually Bates-stamped for identification purposes, and
4 paginated with decimals and arabic numerals in seriatim; i.e.,
5 1.1, 1.2, 1.3

6 3. Following such conference, each counsel shall have
7 possession of four (4) complete, legible sets of exhibits, for
8 use as follows:

9 a. Two (2) sets to be delivered to the Courtroom
10 Deputy Clerk, Renee Gaumnitz, no later than 4:00 p.m. on May 7,
11 2010, an original for the court and one for the witness.

12 b. One (1) set to be delivered to counsel for the
13 opposing party and one (1) set to be available for counsel's own
14 use.

15 4. Counsel are to confer to make the following
16 determination as to each of the exhibits proposed to be
17 introduced into evidence and prepare separate indexes, one
18 listing joint exhibits, one listing each party's exhibits:

19 a. Joint exhibits, i.e., any document which both
20 sides desire to introduce into evidence shall be listed as such
21 in the exhibit list in a column that notes they are admitted into
22 evidence without further foundation;

23 b. As to any exhibit, not a joint exhibit, to which
24 there is no objection to its introduction into evidence, the
25 exhibit will be marked as Plaintiff's Exhibit ____, or Defendant's
26 Exhibit ____ in evidence, and will be listed in the exhibit list
27 as the exhibit of the offering party;

28 c. The exhibit list shall include columns for noting

1 objections to exhibits. The first column will list any
2 objections as to foundation; i.e., Plaintiff's Foundation 2 -
3 "not authenticated."

4 d. The exhibit list shall include a second column for
5 noting substantive objections to exhibits based on any other
6 grounds; i.e., "hearsay, improper opinion, irrelevant."

7 e. The exhibit list shall include a description of
8 each exhibit on the left-hand side of the page, and the three
9 columns outlined above (as shown in the example below).

10 List of Exhibits

11 <u>Exhibit #</u>	12 <u>Description</u>	13 <u>Admitted</u>	14 <u>Objection</u>	15 <u>Other</u>
		16 <u>In Evidence</u>	17 <u>To Foundation</u>	18 <u>Objection</u>

13 f. The completed exhibit list shall be delivered to
14 Renee Gaumnitz CRD on or before Monday, May 10, 2010 at 4:00 p.m.

15 g. If originals of exhibits cannot be located, copies
16 may be used, however, the copies must be legible and accurate.
17 If any document is offered into evidence that is partially not
18 legible, the Court sua sponte will exclude it from evidence.

19 C. Discovery Documents.

20 1. Counsel shall file a list of discovery documents with
21 Renee Gaumnitz CRD at the same time and date as the witness and
22 exhibit lists are lodged with her, unless the discovery documents
23 are marked as exhibits, which counsel intend to use at trial by
24 designating by number, the specific interrogatory, request for
25 admission, or other discovery document. Counsel shall comply
26 with the directions of subsection XII (above) for introduction of
27 the discovery document into evidence.

28 D. Motions In Limine.

1 1. The motions in limine shall be filed by April 28, 2010
2 and any responses shall be filed by May 7, 2010. The Court will
3 conduct the hearing on motions in limine in this matter the
4 morning of the first day of trial on Tuesday, May 11, 2010, at
5 8:00 a.m. in Courtroom 3, Seventh Floor, before the Honorable
6 Oliver W. Wanger United States District Judge, at which time all
7 evidentiary objections, to the extent possible, will be ruled
8 upon, and all other matters pertaining to the conduct of the
9 trial will be settled.

10 E. Trial Documents.

11 1. Exhibits To Be Used With Witness. During the trial of
12 the case, it will be the obligation of counsel to provide
13 opposing counsel not less than forty-eight hours before the
14 witness is called to the witness stand, the name of the witness
15 who will be called to testify and to identify to the Court and
16 opposing counsel any exhibit which is to be introduced into
17 evidence through such witness that has not previously been
18 admitted by stipulation or court order or otherwise ruled upon,
19 and to identify all exhibits and other material that will be
20 referred to in questioning of each witness. If evidentiary
21 problems are anticipated, the parties must notify the court at
22 least twenty-four hours before the evidence will be presented.

23 F. Counsel's Duty To Aid Court In Jury Voir Dire.

24 1. Defense counsel shall submit proposed voir dire
25 questions, if any, to Renee Gaumnitz CRD at
26 rgaumnitz@caed.uscourts.gov, and Plaintiff shall lodge any
27 proposed voir dire questions on or before Friday, May 7, 2010, at
28 4:00 p.m. Counsel shall also prepare a joint "statement of the

1 case" which shall be a neutral statement, describing the claims
2 and defenses for prospective jurors, to be used in voir dire.

3 2. In order to aid the court in the proper voir dire
4 examination of the prospective jurors, counsel are directed to
5 lodge with the Court the day before trial a list of the
6 prospective witnesses they expect to call if different from the
7 list of witnesses contained in the Pre-Trial Order of the Court.
8 Such list shall not only contain the names of the witnesses, but
9 their business or home address to the extent known. This does
10 not excuse any failure to list all witnesses in the Pre-Trial
11 Order.

12 3. The parties shall jointly submit, to Renee Gaumnitz CRD
13 the Friday before trial, a neutral statement of the claims and
14 defenses of the parties for use by the court in voir dire.

15 G. Counsel's Duty To Prepare And Submit Jury Instructions.

16 1. All proposed jury instructions shall be filed and
17 served on or before Friday, May 7, 2010, by 4:00 p.m. Jury
18 instructions shall be submitted in the following format.

19 2. Defense counsel shall submit proposed jury
20 instructions, including verdict forms, via e-mail to
21 dpell@caed.uscourts.gov formatted in WordPerfect for Windows X3.
22 Counsel shall be informed on all legal issues involved in the
23 case.

24 3. The parties are required to jointly submit one set of
25 agreed upon jury instructions. To accomplish this, the parties
26 shall serve their proposed instructions upon the other fourteen
27 days prior to trial. The parties shall then meet, confer, and
28 submit to the Court the Friday before the trial is to commence,

1 one complete set of agreed-upon jury instructions.

2 4. Each party shall file with the jury instructions any
3 objection to non-agreed upon instructions proposed by any other
4 party. All objections shall be in writing and shall set forth
5 the proposed instruction objected to in its entirety. The
6 objection should specifically set forth the objectionable matter
7 in the proposed instruction and shall include a citation to legal
8 authority explaining the grounds for the objection and why the
9 instruction is improper. A concise statement of argument
10 concerning the instruction may be included. Where applicable,
11 the objecting party shall submit an alternative proposed
12 instruction covering the subject or issue of law.

13 5. Format. The parties shall submit one copy of each
14 instruction. The copy shall indicate the party submitting the
15 instruction, the number of the proposed instruction in sequence,
16 a brief title for the instruction describing the subject matter,
17 the test of the instruction, the legal authority supporting the
18 instruction, and a legend in the lower lefthand corner of the
19 instruction: "Given," "Given As Modified," "Withdrawn" and
20 "Refused" showing the Court's action with regard to each
21 instruction and an initial line for the judge's initial in the
22 lower right-hand corner of the instruction. Ninth Circuit Model
23 Jury Instructions should be used where the subject of the
24 instruction is covered by a model instruction.

25 6. All instruction should be short, concise,
26 understandable, and neutral statements of the law. Argumentative
27 or formula instructions will not be given, and should not be
28 submitted.

1 7. Parties shall, by italics or underlining, designate any
2 modifications of instructions from statutory authority, or any
3 pattern instruction such as the Model Circuit Jury Instructions
4 or any other source of pattern instructions, and must
5 specifically state the modification made to the original form
6 instruction and the legal authority supporting the modification.

7 8. Proposed verdict forms shall be jointly submitted or if
8 the verdict forms are unagreed upon, each party shall submit a
9 proposed verdict form. Verdict forms shall be submitted to the
10 Courtroom Deputy Clerk on the first day of the trial.

11 9. Failure to comply with these rules concerning the
12 preparation and submission of instructions and verdict forms may
13 subject the non-complying party and/or its attorneys to
14 sanctions.

15 XV. USE OF LAPTOP COMPUTERS/POWERPOINT FOR
16 PRESENTATION OF EVIDENCE

17 1. If counsel intends to use a laptop computer for
18 presentation of evidence, they shall contact Renee Gaumnitz CRD
19 at least one week prior to trial. The Courtroom Deputy Clerk
20 will arrange a time for any attorney to bring any laptop to be
21 presented to someone from the Court's Information Technology
22 Department, who will provide brief training on how the parties'
23 electronic equipment interacts with the court's audio/visual
24 equipment. If counsel intend to use PowerPoint, the resolution
25 should be set no higher than 1024 x 768 when preparing the
26 presentation.

27 2. ALL ISSUES CONCERNING AUDIO-VISUAL MATERIALS AND
28 COMPUTER INTERFACE WITH THE COURT'S INFORMATION TECHNOLOGY SHALL

1 BE REFERRED TO THE COURTROOM DEPUTY CLERK.

2 XVI. FURTHER DISCOVERY OR MOTIONS

3 A. Plaintiff

4 1. Plaintiff states that he respectfully requests the Court
5 set a briefing schedule for motions in limine and provide a
6 reasonable opportunity to allow Plaintiff and Defendants to
7 produce responses to Plaintiff's fifth set of production of
8 documents. Plaintiff argues that "the court erred when it ruled
9 that because Defendants misplaced or lost request for production
10 of documents set five, then (it had to be Glass' fault) Glass
11 must not have filed a set five. (See Court Document CD
12 #_____) ¹⁰." (Doc. 189, Plntf. Pretrial Stmt., p. 25, ¶ 14.)
13 However, discovery closed well over a year ago - after both
14 parties requested and received extensions on the discovery
15 deadline and multiple motions to compel were filed and ruled on -
16 as were a lesser number of motions for reconsideration.
17 Plaintiff may not seek rehearing or reconsideration on discovery
18 issues at the eleventh hour.

19 B. Defendants

20 1. Discovery: The time permitted to conduct discovery has
21 expired. Defendants contemplate no further discovery.

22 2. Motions: Defendants anticipate filing motions in
23 limine, a motion for separate trials of the Eighth
24 Amendment and First Amendment claims, and potentially a
25 motion under Federal Rule of Civil Procedure 50.

27 ¹⁰ The court document number was blank in Plaintiff's
28 Separate Pretrial Statement. (Doc. 189, p. 25, ¶ 13.)

1 claims. Defendants reasonably believe that these issues
2 could be handled by back-to-back trials.

3 2. Defendants also request separate trials of the issue of
4 punitive damages after any finding of liability.

5 Defendants' request for separate trials is DENIED. However,
6 it appears most efficient and is ordered that the case proceed
7 with Plaintiff's claims regarding excessive force to be presented
8 first, followed by his claims of retaliation, concluding with
9 damages.

10 XIX. IMPARTIAL EXPERTS, LIMITATIONS OF EXPERTS

11 A. Plaintiff

12 1. Plaintiff respectfully requests the Court appoint an
13 expert in the field of sexual abuse and/or sodomy
14 particularly while in prison or jail.

15 Plaintiff contends that the court can appoint an impartial
16 expert pursuant to Rule 706 of the Federal Rules of Evidence.
17 The Ninth Circuit has found that Rule 706 only allows the court
18 to appoint a neutral expert. *Students of California School for*
19 *the Blind v. Honig*, 736 F.2d 538, 549 (9th Cir. 1984), *reversed*
20 *on other grounds by* 471 U.S. 148 (1985). Such an expert witness
21 may be appropriate if the evidence consists of complex scientific
22 evidence. *McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir.
23 1991). Pursuant to Rule 702, "[i]f scientific, technical, or
24 other specialized knowledge will assist the trier of fact to
25 understand the evidence or to determine a fact in issue, a
26 witness qualified as an expert by knowledge, skill, experience,
27 training, or education, may testify thereto in the form of an
28 opinion or otherwise." Fed.R.Evid. 702.

1 Given the issues in the case are excessive force and
2 retaliation, an expert would not assist the court or jury on
3 scientific, technical, or other specialized knowledge will assist
4 the court or jury. Further, it appears, Plaintiff may be seeking
5 an expert because he is proceeding in forma pauperis and is,
6 presumably, unable to compensate an expert witness. The Supreme
7 Court has declared that "the expenditure of public funds [on
8 behalf of an indigent litigant] is proper only when authorized by
9 Congress." *United States v. MacCollom*, 426 U.S. 317, 321 (1976).
10 The Ninth Circuit has found that the in forma pauperis statute,
11 28 U.S.C. § 1915, does not provide for the payment of fees or
12 expenses for witnesses. See *Dixon v. Ylst*, 990 F.2d 478, 480
13 (9th Cir. 1993); *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir.
14 1989). While 28 U.S.C. § 1915 provides for service to an
15 indigent litigant witnesses, it does not waive payment of fees or
16 expenses for those witnesses. *Hadsell v. C.I.R.*, 107 F.3d 750,
17 752 (9th Cir. 1997). As with other witnesses, the in forma
18 pauperis statute does not authorize the expenditure of public
19 funds for the appointment of an expert witness. See 28 U.S.C. §
20 1915. See *Jimenez v. Sambrano*, 2009 WL 653877 (S.D.Cal. 2009);
21 *Trimble v. City of Phoenix Police Dept.*, 2006 WL 778697 (D.Ariz.
22 2006).

23 Thus, no expert witnesses will be appointed for Plaintiff in
24 this case.

25 B. Defendants

26 1. No expert testimony has been designated.

27 / / /

28 / / /

1 XX. ATTORNEYS' FEES

2 A. Plaintiff

3 Plaintiff contends that he is entitled to attorney's fees
4 pursuant to 42 U.S.C. § 1988, Local rule 54-293, See *Friend v.*
5 *KoIndzieczak*, 72 F.3d 1386, 1389-92 (9th Cir. 199); *Gates v.*
6 *Deukmejian*, 977 F.2d 1300 (9th Cir. 1992).

7 However, Plaintiff's contention that he is entitled to
8 attorney's fees if he prevails is without merit. Plaintiff is
9 representing himself in this action. Since Plaintiff is not
10 represented by an attorney, he is not entitled to recover
11 attorney's fees if he prevails. *Gonzales v. Kangas*, 814 F.2d
12 1411, 1412 (9th Cir. 1987). Thus, even if Plaintiff obtains a
13 verdict in his favor, he may not receive attorney's fees.

14 B. Defendants

15 Defendants requested attorney's fees and costs and maintain
16 that Plaintiff is not entitled to attorney fees.

17 A district court may award attorneys' fees pursuant
18 to 42 U.S.C. § 1988 to a prevailing civil rights defendant
19 only if the plaintiff's action was "unreasonable, frivolous,
20 meritless, or vexatious." *Galen v. County of Los Angeles*, 477
21 F.3d 652, 666 (9th Cir.2007). An action may be deemed frivolous
22 "when the result appears obvious or the arguments are wholly
23 without merit." *Id.* (citing *Christiansburg Garment Co. v. EEOC*,
24 434 U.S. 412, 422 (1978)). A defendant may recover if this
25 standard is violated "at any point during the litigation, not
26 just at its inception." *Id.* (citing *Christiansburg*, 434 U.S. at
27 422). In determining whether this standard has been met, a
28 district court must avoid "post hoc reasoning by concluding that,

1 because a plaintiff did not ultimately prevail, his action must
2 have been unreasonable or without foundation." *Tutor-Saliba*
3 *Corp. v. City of Hailey*, 452 F.3d 1055, 1060 (9th Cir.2006).
4 Defendants have not met their burden to establish that this
5 action is frivolous or vexatious. *Klotz v. United States*, 602
6 F.2d 920, 924 (9th Cir.1979).

7 XXI. ESTIMATE OF TRIAL TIME

8 Both parties estimate that the trial of this action will
9 require seven to ten (7-10) court days.

10 XXII. TRIAL DATE

11 This case is set for trial May 11, 2010, 9:00 a.m.,
12 Courtroom 3, Seventh Floor.

13 XXIII. NUMBER OF JURORS AND PEREMPTORY CHALLENGES

14 There will be eight jurors and each side will have four
15 peremptory challenges.

16 XXIV. AMENDMENT OF FINAL PRETRIAL ORDER

17 1. The Final Pretrial Order shall be reviewed by the
18 parties and any corrections, additions, and deletions shall be
19 drawn to the attention of the Court immediately. Otherwise, the
20 Final Pretrial Order may only be amended or modified to prevent
21 manifest injustice pursuant to the provisions of Fed. R. Civ. P.
22 16(e).

23 XXV. MISCELLANEOUS

24 1. Plaintiff requests that he appear before the jury
25 unshackled. Defendants object to this request as Plaintiff is a
26 Level IV, high security inmate. It is policy in this district
27 that inmates may not appear in court completely unshackled.
28 Thus, Plaintiff's request that he appear unshackled before the

1 jury is DENIED. However, Plaintiff's hands will be unshackled so
2 as to enable him to write and to sort through exhibits to present
3 his case. All parties are to remain seated at their respective
4 table when the jury and/or perspective jurors are present.

5 2. Defendants filed a request for a ninety (90) day
6 continuance of the trial in this case. Defendants did not show
7 good cause for such a continuance in a case that is almost six
8 years old. Denial of Defendants request for a ninety (90) day
9 continuance of the trial in this case will issue under separate
10 order.

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15 IT IS SO ORDERED.

16 Dated: April 23, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE