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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,  
Plaintiff,  
v.  
FLEMING, et al.,  
Defendants.

No. 2:02-cv-02524-MCE-JFM

**ORDER**

Through this action, Plaintiff Vernon Wayne McNeal (“Plaintiff”), a state prisoner proceeding pro se, seeks redress for violations of his civil rights pursuant to 42 U.S.C. § 1983. Plaintiff filed a Request to Change Jury Trial to Bench Trial on November 21, 2012. (ECF No. 231). Defendant opposes Plaintiff’s request. (ECF No. 232.)

Federal Rule of Civil Procedure 38<sup>1</sup> provides that “the right of the trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by federal statute—is preserved to the parties inviolate.” Rule 38(b) states that “[o]n any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days

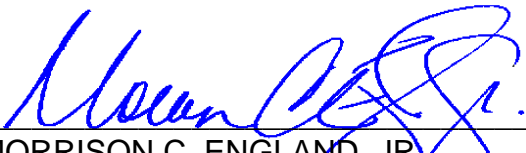
<sup>1</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless otherwise noted.

1 after the last pleading directed to the issue is served; and (2) filing the demand in  
2 accordance with Rule 5(d)." Fed. R. Civ. P. 38(b).

3 In this case, Defendants timely requested a jury trial in their Answer, filed  
4 February 2, 2004. (ECF Nos. 24.) Accordingly, Plaintiff's Request to Change Jury Trial  
5 to Bench Trial is DENIED.

6 IT IS SO ORDERED.

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8 Dated: November 30, 2012

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10 MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
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