

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 STEVE DALE PERCELLE,

5 Plaintiff,

6 v.

7 STEVEN PEARSON, et al.,

8 Defendants.

Case No. 12-cv-05343-TEH

**ORDER RE: JUNE 13, 2016  
PRETRIAL CONFERENCE**

9  
10 A pretrial conference is scheduled for this matter on June 13, 2015 at 3:00 PM.  
11 Counsel shall come prepared to answer the following questions at the hearing.

12  
13 **For Both Parties**

- 14 1. Please update the Court on the status of stipulations as to certain documents'  
15 authenticity, as discussed on page 5 of the parties' Joint Pretrial Conference  
16 Statement.
- 17 2. Please discuss whether disclosure of a non-retained expert witness's identity and  
18 proposed testimony in a declaration in support of a Motion for Summary Judgment  
19 is a sufficient disclosure for purposes of Federal Rule of Civil Procedure 26(a)(2).  
20 See Pl.'s Opp'n to Mot. in Limine #5. Cite to authority where possible.
- 21 3. Does the issue of whether Defendants had sufficient evidence to validate Plaintiff as  
22 a gang member relate to an element of a First Amendment Retaliation claim? If so,  
23 which element? Why or why not?

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25 **For Plaintiff**

- 26 4. Please address Defendants' contention that your Administrative Motion for Writs of  
27 Habeas Corpus Ad Testificandum is mischaracterized as administrative, and instead  
28 should have been filed as a noticed motion. See Defs.' Opp'n to Pl.'s Admin Mot.

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5. Please discuss whether you have provided an updated trial exhibit list to Defendants with correct Bates Numbers. If so, when? If not, why not?

**For Defendants**


6. Please address Plaintiff’s contention that *Canell v. Lightner*, 143 F.3d 1210 (9th Cir. 1998), stands for the proposition that the 42 U.S.C. § 1997e(e) bar against mental and emotional injury does not apply to First Amendment claims. See Pl.’s Opp’n to Mot. in Limine #7.

7. Please address Plaintiff’s contention that his three additional months of incarceration is a type of “personal indignity” caused by Defendants’ alleged retaliation. See Pl.’s Opp’n to Mot. in Limine #8. Put another way, even though the Court ruled that the three additional months of incarceration could not be the premise of a false imprisonment claim, why is it that the additional period of incarceration cannot be a basis for damages under the remaining First Amendment Retaliation claim? Cite to authority where possible.

The Court has recently granted a continuance in an eight-week criminal trial, which will now begin on June 14, 2016. As such, the Court must reschedule the trial in this matter. Counsel shall come to the pretrial conference prepared to set a new trial date.

**IT IS SO ORDERED.**

Dated: 06/09/16

  
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THELTON E. HENDERSON  
United States District Judge