

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:09-cv-22905-JAL**

Stringer v. Jackson et al
Assigned to: Judge Joan A. Lenard
Referred to: Magistrate Judge Patrick A. White
Case in other court: USCA, 09-16514-DD
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 09/28/2009
Jury Demand: None
Nature of Suit: 555 Habeas Corpus (Prison Condition)
Jurisdiction: Federal Question

Plaintiff**Thomas B. Stringer**

represented by **Thomas B. Stringer**
Reg. No. 60633-004
MCC - New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007
PRO SE

V.

Defendant**Gato B. Jackson**

represented by **Rodolfo A. Ruiz , II**
Stephen P. Clark Center
111 N.W. First Street
Suite 2810
Miami, FL 33128
Email: rudyr@miamidade.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Ms. L. Harris**

represented by **Rodolfo A. Ruiz , II**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Miami-Dade Corrections
& Rehabilitation Department**
TERMINATED: 12/21/2010

Date Filed	#	Docket Text
09/28/2009	<u>1</u>	COMPLAINT against all defendants.. IFP Filed, filed by Thomas B. Stringer.(lh) Modified MJSTAR event on 11/29/2010 (yc). (Entered: 09/28/2009)
09/28/2009	<u>2</u>	Clerks Notice Referring Case to Magistrate Judge Patrick A. White. (lh) (Entered: 09/28/2009)
09/28/2009	<u>3</u>	MOTION for Leave to Proceed in forma pauperis by Thomas B. Stringer. (lh) (Entered: 09/28/2009)
10/19/2009	<u>4</u>	NOTICE To Court Re: Delivery of Legal Mail and Change of Address, by Thomas B. Stringer (system updated) (cqs) (Entered: 10/19/2009)
10/23/2009	<u>5</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Thomas B. Stringer Recommending that the Complaint be dismissed pursuant to 28 U.S.C. §1915(e)(2)(b)(ii), for failure to state a claim upon which relief can be granted and the case be closed. Objections to RR due by 11/9/2009.

		Signed by Magistrate Judge Patrick A. White on 10/22/2009. (br) (Entered: 10/23/2009)
11/02/2009	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 11/2/2009. (br) (Entered: 11/02/2009)
11/02/2009	<u>7</u>	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of \$350.00; granting <u>3</u> Motion for Leave to Proceed in forma pauperis to the extent that the plaintiff need not prepay even a partial filing fee in this case, or to prepay costs such as for service of process. Signed by Magistrate Judge Patrick A. White on 11/2/2009. (br) (Entered: 11/02/2009)
11/02/2009	<u>8</u>	OBJECTION to <u>5</u> Report and Recommendations by Thomas B. Stringer. (rgs) (Entered: 11/03/2009)
11/05/2009	<u>9</u>	ORDER ADOPTING <u>5</u> Report and Recommendation of Magistrate Judge, DISMISSING Complaint pursuant to 28 U.S.C. sec. 1915(e)(2)(b)(ii), for failure to state a claim, and CLOSING case. Signed by Judge Joan A. Lenard on 11/5/2009. (mhz) (Entered: 11/05/2009)
11/19/2009	<u>10</u>	MOTION for Reconsideration by Thomas B. Stringer. (rgs) (Entered: 11/19/2009)
12/01/2009	<u>11</u>	ORDER denying <u>10</u> Motion for Reconsideration. Signed by Judge Joan A. Lenard on 12/1/2009. (mhz) (Entered: 12/01/2009)
12/14/2009	<u>12</u>	NOTICE OF APPEAL by Thomas B. Stringer re <u>11</u> Order on Motion for Reconsideration, <u>9</u> Order Dismissing Case. Filing fee \$(NOT PAID). Within ten days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (mc) (Entered: 12/21/2009)
12/21/2009		Transmission of Notice of Appeal. Report and Recommendations, Orders and Docket Sheet to US Court of Appeals re <u>12</u> Notice of Appeal (mc) (Entered: 12/21/2009)
12/29/2009	<u>13</u>	MOTION for Leave to Appeal in forma pauperis/Appellant's Reply/Compliance to Court by Thomas B. Stringer. (mc) (Entered: 12/30/2009)
12/29/2009	<u>14</u>	TRANSCRIPT INFORMATION FORM by Thomas B. Stringer re <u>12</u> Notice of Appeal. No Transcript Requested. (mc) (Entered: 12/30/2009)
01/04/2010	<u>15</u>	ORDER granting <u>13</u> Motion for Leave to Appeal in forma pauperis. On November 2, 2009, the Magistrate Judge issued an Order <u>7</u> granting Plaintiff's Motion to Proceed in Forma Pauperis and permitted Plaintiff to proceed in forma pauperis in this case. Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that, "[a] party who was permitted to proceed in forma pauperis in the district court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization," unless the district court certifies that the appeal is not taken in good faith or the party is otherwise not entitled to proceed in forma pauperis or a statute provides otherwise. As Plaintiff was allowed to proceed in forma pauperis in this action and none of the aforementioned exceptions apply, it is ORDERED AND ADJUDGED that Plaintiff's Motion for Leave to Proceed in Forma Pauperis on Appeal is GRANTED. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 1/4/2010. (mhz) (Entered: 01/04/2010)
01/08/2010	<u>16</u>	ACKNOWLEDGMENT OF RECEIPT FROM USCA re <u>12</u> Notice of Appeal, receipt of: NOA, date received by USCA 12/31/2009.USCA number 09-16514-D (mc) (Entered: 01/08/2010)
02/08/2010	<u>17</u>	Prisoner Consent Form by Thomas B. Stringer authorizing the institution to withdraw partial filing fee payments from inmate's prison account in the amount of \$455.00; re <u>12</u> Notice of Appeal. USCA# 09-16514-D (mc) (Entered: 02/08/2010)
03/03/2010	<u>18</u>	NOTICE of Change of Address by Thomas B. Stringer (tb) (Entered: 03/04/2010)

05/19/2010	<u>19</u>	(APPEAL REINSTATED by USCA, See DE# <u>22</u>) ORDER of DISMISSAL from USCA for want of prosecution because the appellant has failed to file an appellant's brief within the time fixed by the rules; re <u>12</u> Notice of Appeal, filed by Thomas B. Stringer. USCA# 09-16514-DD (mc) Text modified on 5/26/2010 (mc). (Entered: 05/19/2010)
05/21/2010	<u>20</u>	CERTIFICATE of Readiness transmitted to USCA re <u>12</u> Notice of Appeal, filed by Thomas B. Stringer. USCA# 09-16514-DD (mc) (Entered: 05/21/2010)
05/21/2010	21	Certified and Transmitted Record on Appeal to US Court of Appeals (Atlanta Office) consisting of (1)Volume of Pleadings; re <u>12</u> Notice of Appeal. USCA# 09-16514-DD (mc) (Entered: 05/21/2010)
05/25/2010	<u>22</u>	Appeal Reinstated, this dismissal was issued in error and this appeal has been clerically reinstated. USCA Case Number:09-16514-DD for <u>12</u> Notice of Appeal, filed by Thomas B. Stringer. (mc) (Entered: 05/26/2010)
06/02/2010	<u>23</u>	Acknowledgment of Receipt of COR/ROA from USCA re <u>12</u> Notice of Appeal, filed by Thomas B. Stringer. Date received by USCA: 5/26/2010. USCA Case Number: 09-16514-DD. (mc) (Entered: 06/02/2010)
07/12/2010	<u>24</u>	NOTICE of Change of Address by Thomas B. Stringer (address updated, docket sheet and requested documents sent) (ebs) (Entered: 07/13/2010)
07/14/2010	<u>25</u>	NOTICE of Change of Address and request for Court to resend orders by Thomas B. Stringer (tb) (Entered: 07/15/2010)
09/17/2010	<u>26</u>	MANDATE of USCA (certified copy) VACATING judgment/order of the district court and REMANDING to allow Stringer to amend his complaint with court's opinion; re <u>12</u> Notice of Appeal, filed by Thomas B. Stringer ; Date Issued: 9/14/2010 ; USCA Case Number: 09-16514-DD (mc) (Entered: 09/17/2010)
09/20/2010	27	ORDER REOPENING CASE and REFERRING CASE to Magistrate Judge Patrick A. White for all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. Pursuant to the Eleventh Circuit's Mandate <u>26</u> , filed September 17, 2010, Plaintiff shall be allowed to amend his complaint and assert any First Amendment retaliation claim in connection with the grievances he filed. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 9/20/2010. (mhz) (Entered: 09/20/2010)
09/21/2010	<u>28</u>	Appeal Record Returned consisting of (1)Volume of Pleadings; re <u>12</u> Notice of Appeal. USCA# 09-16514-DD (mc) (Entered: 09/21/2010)
10/01/2010	<u>29</u>	MOTION for Clarification/Instructions and Acknowledgment; re <u>26</u> USCA Mandate, by Thomas B. Stringer. Responses due by 10/18/2010 (mc) (Entered: 10/04/2010)
10/18/2010	30	ORDER granting <u>29</u> Plaintiff's Motion for Clarification. Pursuant to the Eleventh Circuit Court of Appeals Remand and Judge Lenard's Order, the plaintiff may file an amended complaint on or before November 19, 2010. The plaintiff may assert a claim of retaliation by officers for filing of grievances. The plaintiff must label his pleading "Amended Complaint". He must name specific defendants responsible for the retaliation, with specific facts to support his claim. The plaintiff shall refer to this case, No. 09-22905-Civ-Lenard.. Signed by Magistrate Judge Patrick A. White on 10/18/2010. (cz) (Entered: 10/18/2010)
11/22/2010	<u>31</u>	AMENDED COMPLAINT against L. Harris, Gato B. Jackson, Miami-Dade Corrections & Rehabilitation Department, filed by Thomas B. Stringer.(dj) (Entered: 11/22/2010)
11/24/2010	<u>32</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Thomas B. Stringer. Recommending: 1)The claims be dismissed against the Miami Dade Corrections and Rehabilitation Department (MDCR), as an improper defendant. 2) The case proceed against Jackson and Harris for retaliation. The amended complaint (DE#31) is the operative complaint. Service will be ordered by separate order. Objections to RRdue by 12/13/2010. Signed by Magistrate Judge Patrick A. White on 11/24/2010. (br) (Entered: 11/24/2010)

12/02/2010	<u>33</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL.The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Gato B. Jackson, Commander, Materials Management Bureau, Miami-Dade Corrections and Rehabilitation Dept., Headquarters, 2525 N.W. 62 Street, Miami, FL 33147 and Ms. L. Harris, Inmate Commissary Delivery Personnel, Miami-Dade Corrections and Rehabilitation Dept., Headquarters, 2525 N.W. 62 Street, Miami, FL 33147. Signed by Magistrate Judge Patrick A. White on 12/2/2010. (tw) (Entered: 12/02/2010)
12/07/2010	<u>34</u>	Summons Issued as to L. Harris. (br) (Entered: 12/10/2010)
12/07/2010	<u>35</u>	Summons Issued as to Gato B. Jackson. (br) (Entered: 12/10/2010)
12/15/2010	<u>36</u>	SUMMONS (Affidavit) Returned Executed L. Harris served on 12/10/2010, answer due 1/3/2011. (ots) (Entered: 12/15/2010)
12/15/2010	<u>37</u>	SUMMONS (Affidavit) Returned Executed Gato B. Jackson served on 12/10/2010, answer due 1/3/2011. (ots) (Entered: 12/15/2010)
12/16/2010	<u>38</u>	OBJECTIONS to <u>32</u> Report and Recommendations by Thomas B. Stringer. (ots) (Entered: 12/17/2010)
12/21/2010	<u>39</u>	ORDER adopting <u>32</u> Report and Recommendation of Magistrate Judge, dismissing claims against Defendant Miami-Dade Corrections and Rehabilitation Department, and permitting Plaintiff's remaining claims against Defendants Jackson and Harris to proceed. Signed by Judge Joan A. Lenard on 12/21/2010. (mhz) (Entered: 12/21/2010)
12/22/2010	<u>40</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>31</u> Amended Complaint by L. Harris, Gato B. Jackson. (Attachments: # <u>1</u> Exhibit A)(Ruiz, Rodolfo) (Entered: 12/22/2010)
12/23/2010	41	ORDER granting <u>40</u> Motion for Extension of Time to Answer L. Harris response due 1/28/2011; Gato B. Jackson response due 1/28/2011;. Signed by Magistrate Judge Patrick A. White on 12/23/2010. (cz) (Entered: 12/23/2010)
01/13/2011	<u>42</u>	MOTION to Amend Complaint by Thomas B. Stringer. Responses due by 1/31/2011 (ots) (Entered: 01/13/2011)
01/18/2011	43	ORDER denying <u>42</u> Motion to Amend/Correct; this issue has been denied by Judge Lenard in her Order adopting the Report and Recommendation of the Undersigned. DE#39.. Signed by Magistrate Judge Patrick A. White on 1/18/2011. (cz) (Entered: 01/18/2011)
01/20/2011	44	ORDER <i>sua sponte</i> directing Plaintiff to file a Second Amended Complaint encompassing all claims he wishes to prosecute by February 9, 2011. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 1/20/2011. (mhz) (Entered: 01/20/2011)
02/11/2011	<u>46</u>	MOTION/REQUEST for Extension of Time to File a second amended complaint by Thomas B. Stringer. (lk) (Entered: 02/14/2011)
02/12/2011	45	ORDER TO SHOW CAUSE. On January 20, 2011, the Court issued an Order (D.E. 44) "sua sponte directing Plaintiff to file a Second Amended Complaint encompassing all claims he wishes to prosecute by February 9, 2011." As of the date of this Order, Plaintiff has failed to comply. Accordingly, it is ORDERED AND ADJUDGED that Plaintiff has until February 22, 2011, to file a Second Amended Complaint encompassing all claims he wishes to prosecute or show cause why this case should not be dismissed for lack of prosecution and failure to comply with this Court's orders. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 2/12/2011. (mhz) (Entered: 02/12/2011)
02/15/2011	47	ORDER granting <u>46</u> Plaintiff's Motion for Extension of Time to File Second Amended Complaint. Plaintiff has until February 27, 2011, to file a Second Amended Complaint encompassing all claims he wishes to prosecute. Failure to comply may result in dismissal of this action. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 2/15/2011. (mhz) (Entered: 02/15/2011)

03/03/2011	<u>48</u>	2nd AMENDED COMPLAINT against L. Harris, Gato B. Jackson, Miami-Dade Corrections & Rehabilitation Department, filed by Thomas B. Stringer.(ots) (Entered: 03/04/2011)
03/07/2011	<u>49</u>	NOTICE Request for Plaintiff's copy to be returned DE <u>48</u> mailed by Thomas B. Stringer re <u>48</u> Amended Complaint (ots) (Entered: 03/08/2011)
03/22/2011	<u>50</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>48</u> Amended Complaint by L. Harris, Gato B. Jackson. (Attachments: # <u>1</u> Exhibit "A")(Ruiz, Rodolfo) (Entered: 03/22/2011)
03/23/2011	51	ORDER granting <u>50</u> Defendants' Motion for Extension of Time to Answer amended complaint to on or before 3//24/2011.. Signed by Magistrate Judge Patrick A. White on 3/23/2011. (cz) (Entered: 03/23/2011)
03/23/2011	52	*Endorsed Order. This Order corrects the time granted to defendants to file an Answer to on or before 4/4/11.. Signed by Magistrate Judge Patrick A. White on 3/23/2011. (cz) (Entered: 03/23/2011)
03/23/2011		Set/Reset Answer Due Deadline: L. Harris response due 3/24/2011; Gato B. Jackson response due 3/24/2011 as per 51 Order. (ra) (Entered: 03/23/2011)
04/04/2011	<u>53</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>48</u> Amended Complaint by L. Harris, Gato B. Jackson. (Attachments: # <u>1</u> Exhibit "A")(Ruiz, Rodolfo) (Entered: 04/04/2011)
04/05/2011	54	ORDER granting <u>53</u> Motion for Extension of Time to Answer L. Harris, et al. response due 4/22/2011.. Signed by Magistrate Judge Patrick A. White on 4/5/2011. (cz) (Entered: 04/05/2011)
04/15/2011	<u>55</u>	RESPONSE/OBJECTION to <u>53</u> MOTION for Extension of Time to File Answer RE: Complaints re <u>48</u> Amended Complaint by Thomas B. Stringer. (dj) Modified docket entry title per chambers on 4/22/2011 (wc). (Entered: 04/15/2011)
04/21/2011	<u>56</u>	MOTION to Dismiss <u>48</u> Amended Complaint by L. Harris, Gato B. Jackson. Responses due by 5/9/2011 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Ruiz, Rodolfo) (Entered: 04/21/2011)
05/13/2011	<u>57</u>	RESPONSE/Notice to File Objections to <u>56</u> MOTION to Dismiss <u>48</u> Amended Complaint filed by Thomas B. Stringer. (yha) (Entered: 05/13/2011)
06/02/2011	<u>58</u>	SCHEDULING ORDER: Amended Pleadings due by 10/14/2011. Discovery due by 9/30/2011. Joinder of Parties due by 10/14/2011. Motions due by 11/4/2011.. Signed by Magistrate Judge Patrick A. White on 6/1/2011. (tw) Modified text/deadline on 6/3/2011 (dgj). (Entered: 06/02/2011)
06/03/2011	<u>59</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>56</u> MOTION to Dismiss <u>48</u> Amended Complaint filed by L. Harris, Gato B. Jackson. Recommending granting in part and denying in part. Objections to RR due by 6/20/2011. Signed by Magistrate Judge Patrick A. White on 6/2/2011. (tw) (Entered: 06/03/2011)
06/06/2011	<u>60</u>	RESPONSE to Motion re <u>56</u> MOTION to Dismiss <u>48</u> Amended Complaint filed by Thomas B. Stringer. Replies due by 6/16/2011. (yha) (Entered: 06/06/2011)
06/17/2011	<u>61</u>	OBJECTIONS to <u>59</u> Report and Recommendations by Thomas B. Stringer. (yha) (Entered: 06/17/2011)
06/17/2011	<u>62</u>	OBJECTIONS to <u>59</u> Report and Recommendations by L. Harris, Gato B. Jackson. (Ruiz, Rodolfo) (Entered: 06/17/2011)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 09-CIV-22905-LENARD/WHITE

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

FILED by AME D.C.
SEP 28 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: TO BE ASSIGNED
09-22905

THOMAS B. STRINGER

(Enter the full name of the plaintiff in this action)

v.

GATO B. JACKSON, COMMANDER,

MS. L. HARRIS, CORRECTIONAL OFFICER,

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPT. (MDCR).

CIV - LENARD

MAGISTRATE JUDGE
WHITE

(Above, enter the full name of the defendant(s) in this action)

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

cat/div SSO/1983/MEA
Case # 09cv22905
Judge JAL Mag PAW
Motn lfp yes Fee pd \$ 0
Receipt # _____

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

There is a filing fee of \$350.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 301 North Miami Avenue, Miami, Florida 33128-7788.

I. Parties

In Item A below, place your name in the first blank and place your present address in the third blank.

A. Name of plaintiff: THOMAS B. STRINGER
Inmate #: 070101789
Address: T.G.K. 7000 NW 41st Street Miami, FL 33166

In Item B below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item C for the names, positions, and places of employment for any additional defendants.

B. Defendant: GATO B. JACKSON, COMMANDER
is employed as Commander of C&R Materials Mgmt. Bureau at MDCR
at Miami-Dade Corrections & Rehabilitation Dept. C&R Materials Mgmt. Bureau

C. Additional Defendants: Ms. L. Harris
employed as inmate commissary delivery personnel
at MDCR

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Miami-Dade Corrections & Rehabilitation Dept.
as county and/or state government agency.
All defendants at: T.G.K. 7000 NW 41st Street, Miami, FL 33166

II. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an additional blank page if necessary.

On or about 7-2-09, Miami-Dade Corrections & Rehabilitation Dept. (MDCR), Correctional Officer Ms. L. Harris (Harris) and Commander Gato B. Jackson (Jackson), defendant's, under the color of law, in their individual and/or official capacities, did willfully and illegally deprive plaintiff of his money, property, commissary, legal materials. EVIDENCE shows that the defendant's deliberately devised an illegal scheme that includes criminal acts of; forgery, extortion, theft-by-deception, organized fraud, abuse of power/position/authority over ~~oppressed~~ oppressed persons, to deprive the plaintiff of his rightful money, property, commissary, legal materials. Sworn to statements by participants, witnesses and the plaintiff prove beyond all doubt that the defendant's illegally took plaintiff's property and that the losses caused irreversible harms and suffering and damages to the plaintiff. Plaintiff received money into his inmate account for the purposes of ordering commissary; food, hygiene,

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

legal materials. Plaintiff ordered in the normal way via "Scantron bubble form" properly filled out the form with his name, location, date, signature, date again. The form was properly submitted on 6-25-09. One week later, in the normal way, Harris called for plaintiff to come from his cell to receive his order.

CONTINUE "STATEMENT OF CLAIM"
PP. 4.1 through 4.3

III. Relief

State briefly exactly what you want the court do to do for you. Make no legal arguments. Cite no cases or statutes.

Plaintiff requests leave to AMEND COMPLAINT for appropriate lawful RELIEF as case proceeds and as discovery yields further evidence and culpabilities. In the least, at this time, the plaintiff seeks: Declaratory Relief-Admissions from the defendants accounting for their actions. Injunctive Relief- The Court to Order defendants to maintain and provide transaction records, and to perform transactions for commissary/inmate trust account pursuant to rules, policy and law. Damages Relief (Compensatory and Punitive)- yet to be determined as actual damages increase with time and punitive damages are best determined upon culpability perhaps with Jury input. At a minimum, at this time Plaintiff seeks \$9,500.⁰⁰ (nine thousand five hundred dollars.)

IV. Jury Demand

Do you demand a jury trial? Yes No

Harris commanded the plaintiff to sign the receipt before he was given any opportunity to review the receipt or inspect the commissary order. The plaintiff signed the receipt as he was directed, by the Correctional officer. The plaintiff was then handed his receipt, by Harris, and the commissary order, by the trusty. The plaintiff had not moved from the area and immediately noticed that the commissary bag was full of items that he did not order. It should be noted that the items in the bag are generally known to be undesirable and the least popular food items. An issue that will become quite significant and explained in greater detail during discovery and/or jury trial.

Under normal circumstances, it is always the practice/procedure, ordered again by Harris, that inmates take the receipt from the officer and the bag of commissary from the trusty and immediately move to a specified table set-up nearby for a complete inspection of the receipt and the order. Normally, missing items (as occasionally occurs) are noted and substituted or brought at a later date, with notes on the receipt copies, made by the officer delivering commissary.

In this particular situation, the entire order of \$47.91 worth of commissary was completely in error. The plaintiff immediately handed back the order to the trusty and Harris and advised that his order was "completely wrong". Harris refused to accept back the order and stated "... my boss, Mr. Jackson, does not allow orders to be returned". Harris advised plaintiff to file a grievance. Harris admitted, in the presence of numerous witnesses, that there is an on-going big problem occurring with their policy that forces wrong orders on inmates. Harris directed the plaintiff to accept the erroneous order. The plaintiff was not given any choice in the matter.

The plaintiff did file a grievance, T&K#090730, and has exhausted administrative remedy. The plaintiff went further and contacted Director Timothy P. Ryan about the matter. The plaintiff made every good-faith effort to resolve the matter fairly, asking only that his original \$47.71 order be provided. The defendant's made no effort to resolve the matter. In fact, the defendant's have retaliated against the plaintiff for filing a grievance and have caused greater harms, suffering and damage to the plaintiff.

Commander Gato B. Jackson met with the plaintiff on or about 7-17-09. Jackson admitted his policy of requiring (forcing) inmates to sign receipts prior to any review, inspection or taking possession of commissary orders. Jackson also admitted that he does not take back erroneous commissary orders. Plaintiff requested copies of all records for the transaction that law and policy requires them to maintain, Jackson refused to provide.

Plaintiff was then and remains now, stunned, that this practice of forcing completely erroneous commissary orders onto to inmates and affording them absolutely no recourse to recover losses. This practice is contrary to policy and laws. The practice is deliberately engineered and enforced in such a manner by the defendant's, that there is no possible, effective way for any inmate to challenge and/or recover losses regardless of whether or not errors occur and regardless of fault.

Upon investigation into the matter, witnesses, records, practices, etc., reveal irrefutable evidence of a systematic practice by the defendant's, engaging in a willful, concerted and deliberate effort of a scheme that deprives the plaintiff and MANY OTHER INMATES OF their rightful property, money, commissary and legal materials.

Additional witnesses, affidavits, relevant evidences will be provided as appropriate throughout the discovery process and proceedings in preparation for July Trial.

It is discovered that many thousands of dollars of money, property,

commissary, etc., are illegally deprived from the plaintiff and other knowing and unknowing inmates who are all oppressed. The defendant's committing these atrocious illegal acts are accommodated and benefit personally as well as their department in ways that will outrage the taxpaying public and any committee, commission or judiciary tasked with oversight judgment.

The plaintiff has suffered actual losses of property, money, commissary, legal materials. The plaintiff has been delayed and obstructed from court access that has caused loss and damage to certain legal proceedings. The plaintiff was retaliated for filing the grievance in this matter and has suffered through losses and hardships from the defendant's as the result.

The actions described herein and the losses, harms and damages that result from systematic rights violations of many inmates, including the plaintiff's may well warrant "CLASS-ACTION" consideration by the court.

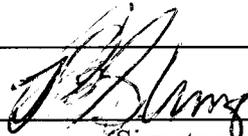
The plaintiff respectfully requests the court to GRANT BROAD DISCRETION and LESS STRINGENT REVIEW STANDARDS, an opportunity for him to AMEND COMPLAINT if necessary to meet court requirements. Especially if the court is inclined to recommend dismissal:

WHEREFORE the plaintiff respectfully submits this Complaint, in good faith, swears that all statements and claims made herein are true and correct. And prays that the Court recognizes how corrupt and depraved are the actions of the defendant's against the oppressed, that Judge and Jury must serve vindication and Justice.

Respectfully submitted this 15th day of September, 2009. By: 
Thomas E. Stringer, plaintiff

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

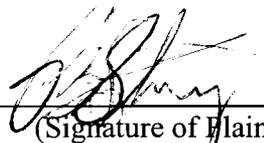
Signed this 15th day of September, 2009



(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct. *(optional)*

Executed on: 9-15-09



(Signature of Plaintiff)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22905-CIV-LENARD
MAGISTRATE JUDGE P.A. WHITE

THOMAS B. STRINGER,	:	
	:	
Plaintiff,	:	<u>REPORT OF</u>
	:	<u>MAGISTRATE JUDGE</u>
v.	:	
	:	
GATO B. JACKSON, ET AL.,	:	
	:	
Defendants.	:	
_____	:	

I. Introduction

The plaintiff Thomas B. Stringer has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. [DE# 1].

This Cause is presently before the Court for initial screening pursuant to 28 U.S.C. §1915, because the plaintiff is proceeding in forma pauperis.

II. Analysis

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e) (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid,

the court shall dismiss the case at any time
if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which
relief may be granted; or

(iii) seeks monetary relief from a
defendant who is immune from such
relief.

A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the

Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered

conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

The plaintiff alleges that corrections officials have deprived of \$47.71 from his inmate account because they deducted this amount for a commissary order and did not provide the items he ordered. He also states in passing that he was retaliated against after he grieved the matter but does not explain which defendants retaliated against him and how they did so.

The plaintiff has not raised any claims that may be litigated in a federal civil rights action. The claims regarding the loss of his money are not cognizable in a federal lawsuit pursuant to §1983 but may be raised in a tort action under state law. See Parratt v. Taylor, 451 U.S. 527, 544 (1981) (overruled in part not relevant here, by Daniels v. Williams, 474 U.S. 327, 330-31 (1986)); Baker v. McCollan, 443 U.S. 137 (1979); Paul v. Davis, 424 U.S. 693, 701 (1976); Cannon v. Taylor, 782 F.2d 947 (11 Cir. 1986). In Parratt v. Taylor, supra, the United States Supreme Court held that a deprivation of a constitutionally protected property interest caused by a state employee's random, unauthorized conduct does not give rise under 42 U.S.C. §1983 to a procedural due process claim, unless the State fails to provide an adequate postdeprivation remedy.

The State of Florida has provided a tort claims procedure which may be utilized to recover damages for property losses. Fla.Stat. §768.28 (1987). This procedure is available to inmates in the Florida Department of Corrections and in county jail facilities. West v. Wainwright, 380 So.2d 1338 (Fla. 1 Dist.

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

1980); White v. Palm Beach County, 404 So.2d 123 (1981). Thus, unless the deprivation of property has occurred as the result of an established unlawful state procedure, the existence of the state remedy precludes the availability of §1983 relief for negligent or intentional deprivation of personal property. Hudson v. Palmer, Parratt v. Taylor, and Lindsey v. Storey, supra.

Regardless of whether the plaintiff is a prisoner, he has a protected property interest in any funds deposited into his account and cannot be deprived of those funds without due process of law. See Gillihan v. Shillinger, 872 F.2d 935, 938 (10 Cir. 1989). The plaintiff's due process rights, however, are intact since he is able to challenge any charges assessed against his account by filing a grievance. See Solomos v. Jenne, 776 So.2d 953 (Fla. 4th DCA 2000), reh'g denied (Feb. 1, 2001). Moreover, the plaintiff has not alleged that Florida law has provided an inadequate post-deprivation remedy. "Before seeking a remedy for an alleged due process violation in federal court, a plaintiff is obliged to avail itself of state remedies or show that the state deprived it of redress." T & A Utilities v. City of Panama City, No. 5:96CV97/SMN, 1997 WL 151045, *4, 10 Fla. L. Weekly Fed. D. 484 (N.D.Fla. 1997) (citing Tinney v. Shores, 77 F.3d 378, 382 (11 Cir. 1996); McKinney v. Pate, 20 F.3d 1550, 1557 (11 Cir. 1994), cert. denied, 513 U.S. 1110 (1995) (footnote omitted)). Further, the plaintiff has not alleged any facts supporting a claim under any other constitutional amendments.

The allegations relating to the withdrawal of money from his account and failure to receive what he ordered from the commissary are thus subject to dismissal pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a constitutional claim upon

which relief may be granted. In addition, the plaintiff has raised no facts to state a claim of retaliation.

III. Conclusion

Based on the foregoing, it is recommended that the Complaint be dismissed pursuant to 28 U.S.C. §1915(e)(2)(b)(ii), for failure to state a claim upon which relief can be granted and the case be closed.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

It is so recommended at Miami, Florida, this 22nd day of October, 2009.



UNITED STATES MAGISTRATE JUDGE

cc: Thomas B. Stringer, Pro Se
No. 070101789
Dade Pretrial Detention Center
6950 N.W. 41st Street
Miami, FL 33166

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

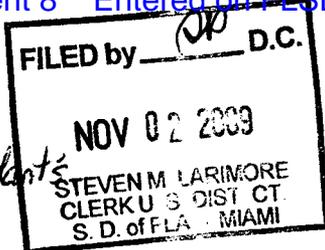
Case No. 09-22905 CV JAL/pw

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

THOMAS B. STRINGER, plaintiff

vs.

GATO B. JACKSON, ET AL., defendants



SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-22905-CIV-LENARD

MAGISTRATE JUDGE: P.A. WHITE

PLAINTIFF'S OBJECTION TO MAGISTRATE REPORT

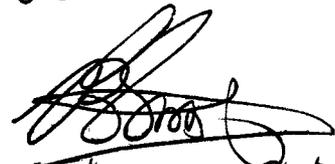
Plaintiff received Magistrate Judge Report [DE#5] on 10-28-09, and timely files this "OBJECTION" within ten (10) days. The plaintiff requests leave to AMEND COMPLAINT to further detail already described allegations that will fully satisfy court "thresholds and requisites", thus countering the recommendation for dismissal. As alleged already the deprivation of property occurs as the result of established and practiced "unlawful" jail procedures. Therefore relief under §1983 for negligent or intentional deprivation of personal property is proper. Somehow Magistrate Judge P.A. White overlooked certain of the claims as described in the complaint or perhaps more detail is required by the plaintiff. The plaintiff will AMEND COMPLAINT upon direction and/or approval from the U.S. District Judge in response to this Objection. The plaintiff's claims describe other "constitutional violations" that include; equal protection, due process, etc... The plaintiff is not an attorney and expects the court to identify what laws are broken and what manner of §1983 remedy may occur, pursuant to "in forma pauperis, broad discretion, less stringent review" standards of this pro se, indigent, in jail plaintiff. The defendant's retaliated against the plaintiff by improperly transferring him to another "much harsher condition" jail, without due process, without any incident or disciplinary reasons. The defendant's continue to deprive plaintiff of FOOD, LEGAL ACCESS AND MATERIALS also as retaliation for filing grievance and for attempting to remedy his losses through the remedy/grievance process. The jails claims to offer grievance/administrative remedy, yet in FACT Mock

refuses to lawfully process grievance as they manipulate procedures by ignoring grievance, not responding at all, etc... Grievance / administrative remedy procedures within MDCR serve only to aggravate the plaintiff's complaint making their intent more willful and more deliberate. The fact that the defendants "ORDER" the plaintiff to "sign first" for items unseen, uninspected, not ordered by forcing their authority over the plaintiff, an action that PREVENTS any recourse for plaintiff to prevail at remedy for his loss, add an additional layer of willful, deliberate intent for defendant's to deprive the plaintiff, and many others, of their property. As unlikely as the court would likely imagine these actions of the defendants, the FACT is that there is irrefutable evidence of these actions. And the court MUST allow this plaintiff and an oppressed inmate population the opportunity to prove the claims. The actions of the defendants are atrocious and described already in the complaint. The plaintiff believes the Magistrate Judge failed to construe the allegations as true in a light most favorable to the plaintiff, and abused his discretion by not recommending Amendment or relying upon other claims set forth that do in fact meet criteria to proceed under §1983.

WHEREFORE the plaintiff requests the U.S. District Judge GRANT due broad discretion, less stringent review in determining the merits and Amendability (if necessary) of the Complaint.

Respectfully submitted this 28th day of October, 2009.

By:


Thomas B. Stringer



United States District Court
Southern District of Florida
400 N. Miami Ave.
Miami, FL 33128

33128+1401



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-22905-CIV-LENARD/WHITE

THOMAS B. STRINGER,

Plaintiff,

vs.

GATO B. JACKSON, et al.,

Defendants.

_____/

**ORDER ADOPTING REPORT OF MAGISTRATE JUDGE (D.E. 5)
AND DISMISSING COMPLAINT (D.E. 1)**

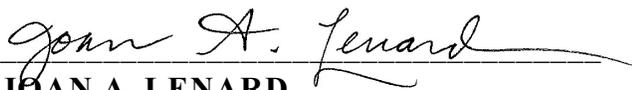
THIS CAUSE is before the Court on the Report and Recommendation of the Magistrate Judge (“Report,” D.E. 5), issued on October 23, 2009, recommending that Plaintiff’s Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii), for failure to state a claim upon which relief can be granted. On November 2, 2009, Plaintiff filed his Objections to the Magistrate Judge’s Report (“Objections,” D.E. 8). After an independent review of the Report, the Objections, the Complaint, and the record, the Court finds as follows.

Plaintiff’s Complaint (“Complaint,” D.E. 1), filed on September 28, 2009, alleges a violation of his civil rights pursuant to 42 U.S.C. § 1983. Specifically, Plaintiff alleges that correctional officials deprived him of \$47.71 from his inmate account by deducting the amount in response to a commissary order but not providing him with the items he ordered. As the Report notes, Plaintiff’s allegations arise under state law and “unless the deprivation of property has occurred as the result of an established unlawful state procedure, the

existence of the state remedy precludes the availability of § 1983 relief for negligent or intentional deprivation of personal property.” (Report at 4-5.) Plaintiff’s Objections urge the Court to allow Plaintiff to amend his Complaint but do not provide any detail as to how an amended complaint might allege a federal cause of action. Rather, Plaintiff now states that his due process rights have been violated as he has been transferred to another “‘much harsher condition’ jail,” in retaliation. (Objections at 2.) The Court finds that Plaintiff’s Objections are without merit and amendment would be futile. Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Report of the Magistrate Judge (D.E. 5), issued on October 23, 2009, is **ADOPTED**;
2. Plaintiff’s Complaint (D.E. 1), filed on September 28, 2009, is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii), for failure to state a claim upon which relief can be granted;
3. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 5th day of November, 2009.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 09cv 22905 JAL

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-22905-CIV-LENARD
MAGISTRATE JUDGE: P.A. WHITE

THOMAS B. STRINGER, plaintiff

vs.

GATO B. JACKSON, et al., defendants

FILED by SP D.C.
NOV 19 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

MOTION FOR RECONSIDERATION

On 11-5-09 JUDGE JOAN A. LENARD "DISMISSED" plaintiffs complaint. The plaintiff respectfully requests RECONSIDERATION BY THE COURT of the dismissal and offers the following in support:

1. The plaintiff DID allege in his complaint of the "retaliation" and then "detailed" the actions of retaliation. It is not that the plaintiff "now states" the facts of retaliatory transfer to much harsher jail conditions... it was always the case that the defendants retaliated against the plaintiff for filing the grievance to attempt recovery of his losses.
2. There is a "system" in place that the defendants absolutely manipulate to "intentionally deprive the plaintiff" and MANY others of their property (money), A LOT of money, A LOT of inmates. The plaintiff possesses much evidence that is irrefutable. The plaintiff possesses a list of names of numerous other inmates that the defendants also deprived of property (money) in much the same manner as the plaintiffs. The defendants commit forgery, abuse of position (power) over oppressed persons to accomplish depriving the plaintiff of his property, and their actions are conspiratorial, as alleged.
3. The plaintiff was not aware that his "Objection" requires him to detail a cause of action, to be allowed to amend. The plaintiff only wishes to amend because he believes the court misconstrued certain of his claims. The plaintiff believes that he is "ENTITLED" pursuant to pro se, inexperienced at law filers are given an

opportunity to cure especially where the complaint clearly alleges actions that are worthy of relief if only the court would grant the plaintiff his requested leave to amend and afford broad discretion and the benefit of the courts doubt as to the unlikelihood of the egregious charges being made.

The manner in which the defendants deliberately steal (deprive) the plaintiffs property, afford no recourse, retaliate and systematically continue to perpetrate these crimes contrary to their own policies and laws is the reason why the plaintiff MUST be allowed to amend his complaint to detail further so that the court fully understands how the actions warrant relief pursuant to §1983.

Wherefore the plaintiff respectfully requests leave to Amend his complaint and will "detail" further in the amended complaint. The plaintiff requests the court to RECONSIDER their decision to Dismiss. Alternatively the plaintiff wishes to Appeal and so Files
"NOTICE TO APPEAL".

Respectfully submitted this 16th day of November, 2009.

By: 
Thomas B Stinger
070101789 B2
6950 NW 41st St.
Miami, FL 33166

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 09CV22905-JAL

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

U.S. COURT OF APPEALS
CLERK
DEC 14 2009
ATLANTA, GA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED BY [Signature]
DEC 14 2009
STEVEN M. LARROQUE
CLERK U.S. DIST. CT.
SOUTHERN DIST. FLA.

THOMAS B. STRINGER, Appellant
vs. plaintiff
GATO B. JACKSON, ET AL., Appellee(s)
defendant(s)

U.S. DISTRICT COURT
SOUTHERN DIST. FLORIDA
CASE NO.: 09-22905-CIV-LENARD

NOTICE OF APPEAL

COMES NOW, THOMAS B. STRINGER, Appellant, plaintiff, pro se, in forma pauperis, does NOTIFY this court of his "APPEAL" of Judge JOAN A. LENARD's final order(s) DE#9 "ORDER ADOPTING REPORT OF MAGISTRATE JUDGE AND DISMISSING COMPLAINT" done and ordered November 5, 2009.

AND

DE# 11 "ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION" done and ordered December 1, 2009.

The Appellant Appeals the final orders because they are improper in that they DENY him his rights pursuant to U.S. law to proceed in his §1983 action. The court abused it's discretion by denying/dismissing the case and therefore the Appellant, plaintiff wishes to APPEAL pursuant to Fed. Rules of Civ. Proc.

Respectfully submitted this 5th day of December, 2009.

By: [Signature]
Thomas B. Stringer
070101789 B2
6950 NW 41st St.
Miami, FL 33166

CERTIFICATE OF SERVICE
Exact copy sent to U.S. Dist. Court
South. Dist. of Florida, 400 N. Miami
Ave. Miami, FL 33128 12-5-09

[Signature]
Thomas B. Stringer

United States Court of Appeals

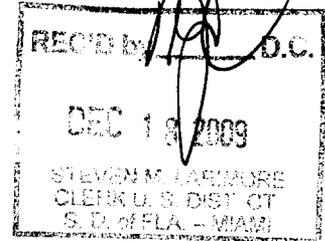
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

December 15, 2009

Steven M. Larimore
Clerk, U.S. District Court
400 N MIAMI AVE RM 8N09
Miami, FL 33128-1813



RE: Thomas B. Stringer v. Gato B. Jackson
DC DKT. NO.: 09-22905-CV-JAL

Enclosed is a notice of appeal erroneously sent to this court, and now forwarded to you for filing as of the date received by this court (December 14, 2009) in accordance with Fed.R.App.P. 4(d).

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,

THOMAS K. KAHN, CLERK

By: Wardell Lovelace
Assistant Supervisor
Case Initiation Section/(404)335-6125

United States Court of Appeals

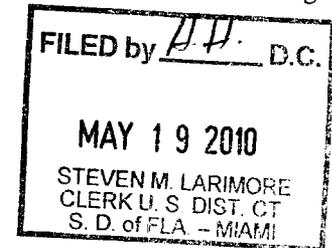
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of the Court

For rules and forms visit
www.call.uscourts.gov

May 12, 2010

Steven M. Larimore
Clerk, U.S. District Court
400 N MIAMI AVE RM 8N09
MIAMI FL 33128-1813



Appeal Number: 09-16514-DD
Case Style: Thomas B. Stringer v. Gato B. Jackson
District Court Number: 09-22905 CV-JAL

The enclosed certified copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4. Pursuant to 11th Cir. R. 42-2(c) and 42-3(c), when an appellant fails to timely file or correct a brief or record excerpts, the appeal shall be treated as dismissed on the first business day following the due date. This appeal was treated as dismissed on May 4, 2010.

Counsel and pro se parties are advised that pursuant to Fed.R.App.P. 25(a)(2)(A), a motion to set aside the dismissal and remedy the default "is not timely unless the clerk receives the papers within the time fixed for filing." See 11th Cir. R. 42-2(e), 42-3(e).

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

John Ley, Clerk of Court

Reply To: Elora Jackson (404) 335-6173

Encl.

FOR THE ELEVENTH CIRCUIT

No. 09-16514-DD

THOMAS B. STRINGER,

Plaintiff-Appellant,

versus

GATO B. JACKSON,
MS. L. HARRIS,
MIAMI-DADE CORRECTIONS &
REHABILITATION DEPARTMENT,

Defendants-Appellees.

On Appeal from the United States District Court for the
Southern District of Florida

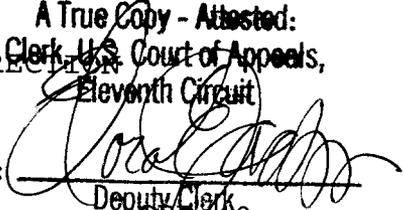
ENTRY OF DISMISSAL

Pursuant to 11th Cir.R. 42-2(c), this appeal is hereby dismissed for want of prosecution because the appellant has failed to file an appellant's brief within the time fixed by the rules, effective this 12th day of May, 2010.

John Ley
Clerk of the United States Court
of Appeals for the Eleventh Circuit

Elora Jackson
Deputy Clerk

FOR THE COURT - BY DIRECTOR

A True Copy - Attested:
Clerk, U.S. Court of Appeals,
Eleventh Circuit
By: 
Deputy Clerk
Atlanta, Georgia
MAY 12 2010

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

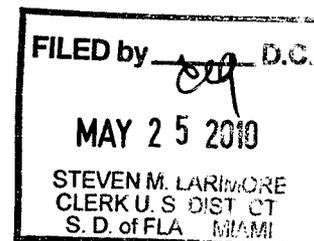
Thomas K. Kahn
Clerk

For rules and forms visit
www.ca11.uscourts.gov

May 19, 2010

Steven M. Larimore
Clerk, U.S. District Court
400 N MIAMI AVE RM 8N09
MIAMI FL 33128-1813

Appeal Number: 09-16514-DD
Case Style: Thomas B. Stringer v. Gato B. Jackson
District Court Number: 09-22905 CV-JAL



The referenced appeal was dismissed May 12, 2010.

This dismissal was issued in error and this appeal has been clerically reinstated.

Appellee's brief is due 30 days from this date.

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Elora Jackson (404) 335-6173

Encl.

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

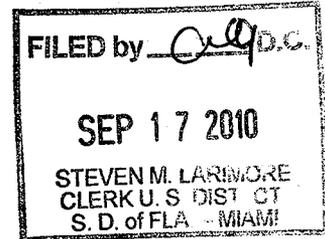
John Ley
Clerk of the Court

For rules and forms visit
www.ca11.uscourts.gov

September 14, 2010

Steven M. Larimore
Clerk, U.S. District Court
400 N MIAMI AVE RM 8N09
MIAMI FL 33128-1813

Appeal Number: 09-16514-DD
Case Style: Thomas B. Stringer v. Gato B. Jackson
District Court Number: 09-22905 CV-JAL



The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

Also enclosed are the following:

Original record on appeal or review, consisting of: one volume

The clerk of the court or agency shown above is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being mailed to counsel and pro se parties. A copy of the court's decision was previously mailed to counsel and pro se parties on the date it was issued.

Sincerely,

John Ley, Clerk of Court

Reply To: James O. Delaney (404) 335-6113

Encl.

United States Court of Appeals

For the Eleventh Circuit

No. 09-16514	FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT Aug 16, 2010 JOHN LEY CLERK
District Court Docket No. 09-22905-CV-JAL	

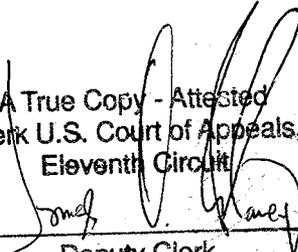
THOMAS B. STRINGER,

Plaintiff-Appellant,

versus

GATO B. JACKSON,
MS. L. HARRIS,
MIAMI-DADE CORRECTIONS &
REHABILITATION DEPARTMENT,

Defendants-Appellees.

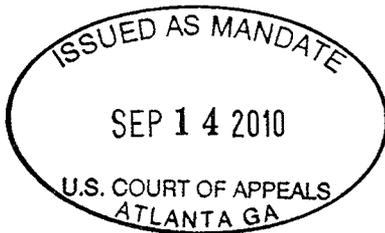
A True Copy - Attested
Clerk U.S. Court of Appeals,
Eleventh Circuit
By: 
Deputy Clerk
Atlanta, Georgia

Appeal from the United States District Court
for the Southern District of Florida

J U D G M E N T

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: August 16, 2010
For the Court: John Ley, Clerk
By: Clark, Djuanna



[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-16514
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 16, 2010 JOHN LEY CLERK
--

D. C. Docket No. 09-22905-CV-JAL

THOMAS B. STRINGER,

Plaintiff-Appellant,

versus

GATO B. JACKSON,
MS. L. HARRIS,
MIAMI-DADE CORRECTIONS &
REHABILITATION DEPARTMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(August 16, 2010)

Before BARKETT, HULL and MARCUS, Circuit Judges.

PER CURIAM:

Thomas B. Stringer, a pro se prisoner, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim for relief pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). On appeal, Stringer argues that the district court abused its discretion when it denied his request to amend his complaint to include retaliation facts because such an amendment would not have been futile. After careful review, we vacate and remand.

We review the denial of a motion to amend a complaint for abuse of discretion, but review the underlying legal conclusion of whether a particular amendment to the complaint would have been futile de novo. Corsello v. Lincare, Inc., 428 F.3d 1008, 1012 (11th Cir. 2005). We hold pro se pleadings to a less stringent standard than pleadings drafted by attorneys and, therefore, will liberally construe those pleadings. Miller v. Donald, 541 F.3d 1091, 1100 (11th Cir. 2008).

A district court may dismiss a complaint if the facts as pled do not state a claim for relief that is plausible on its face. Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252, 1260 (11th Cir. 2009) (citing Ashcroft v. Iqbal, 556 U.S. ___, 129 S.Ct. 1937, 1950 (2009)). Although a complaint need not contain detailed factual allegations, it must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Id. at 1261 (quoting Iqbal, 129 S.Ct. at 1949).

A party may amend its pleading as a matter of course within 21 days after serving it, or 21 days after service of a responsive pleading. Fed.R.Civ.P. 15(a)(1)(A)-(B). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed.R.Civ.P. 15(a)(2). If the underlying facts or circumstances relied on by plaintiff may be a proper subject of relief, leave to amend “should be freely given.” Hall v. United Ins. Co. of Am., 367 F.3d 1255, 1262 (11th Cir. 2004). However, a district court may properly deny leave to amend under Rule 15(a) if such amendment “would be futile.” Id. at 1262-63. Denial of leave to amend “is justified by futility when the complaint as amended is still subject to dismissal.” Id. at 1263. Additionally, the Prison Litigation Reform Act, 28 U.S.C. § 1915, does not preclude a district court from granting a motion to amend under Rule 15(a). Brown v. Johnson, 387 F.3d 1344, 1349 (11th Cir. 2004). In Brown, we held that Brown had the right to amend his complaint under Rule 15(a) because he had filed his motion to amend before the district court had dismissed his complaint and before any responsive pleadings had been filed. Id.

Section 1983 of Title 42 of the U.S. Code provides a cause of action against any person acting under the color of state law for deprivations of any right secured by the Constitution. 42 U.S.C. § 1983. We have held that “First Amendment

rights to free speech and to petition the government for a redress of grievances are violated when a prisoner is punished for filing a grievance concerning the conditions of his imprisonment.” Boxer X v. Harris, 437 F.3d 1107, 1112 (11th Cir. 2006). In Boxer X, the district court dismissed the appellant’s § 1983 complaint, in part, for failure to state a claim. Id. at 1109. We held that the appellant had expressly claimed that he had been punished for complaining through the established grievance system about his treatment by one of the prison guards. Id. at 1112. We noted that the appellant had first presented these facts in his objections to the magistrate’s R&R. Id. at 1112 n.4. We held that the district court should have allowed the appellant to incorporate his retaliation claim because the assertion was sufficient to state a claim under § 1983, based on a liberal construction. Id. at 1112.

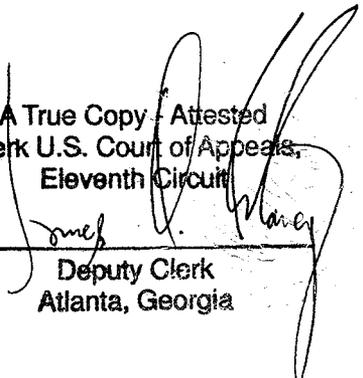
In this case, the district court had not yet dismissed his case and no responsive pleading had been filed. Thus, Stringer had the right to amend his complaint under Rule 15(a). See Brown, 387 F.3d at 1349.

Moreover, as the record shows, the magistrate judge recommended that the district court dismiss Stringer’s retaliation claim because Stringer had raised no facts to state a claim for retaliation; indeed, Stringer had merely noted “retaliation” in his complaint. However, after the magistrate judge found that Stringer failed to

raise facts for retaliation, Stringer raised those facts in his objections to the R&R. Specifically, Stringer asserted that, after filing a grievance with the prison concerning the loss of money from an incorrect commissary order, the defendants retaliated against him by “improperly transferring him to another ‘much harsher condition’ jail, without due process, without any incident or disciplinary reasons” and continued to deprive him of food, legal access, and materials. Based on a liberal construction of Stringer’s assertions, he did allege a claim of First Amendment retaliation in connection with the grievances he filed. See Boxer X, 437 F.3d at 1112.

Therefore, the district court should have allowed Stringer to amend his complaint as a matter of course and because such an amendment would not have been futile. See id.; see Hall, 367 F.3d at 1262-63; see Fed.R.Civ.P. 15(a); Brown, 387 F.3d at 1349. Accordingly, the district court abused its discretion by denying Stringer leave to amend his complaint.

VACATED and REMANDED.

A True Copy - Attested
Clerk U.S. Court of Appeals,
Eleventh Circuit
By: 
Deputy Clerk
Atlanta, Georgia

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS B. STRINGER, plaintiff

VS.

GATO B. JACKSON, ET AL., defendants

CASE NO.: 09-22905-CIV-LENARD

JUDGE: JOAN A. LENARD
FILED by REG D.C.

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STEVEN M. LARIMORE
CLERK U.S. DIST. CT
S. D. of FLA. - MIAMI

AMENDED COMPLAINT

COMES NOW, THOMAS B. STRINGER, plaintiff pro se, in forma pauperis, in-jail, does submit this Amended Complaint pursuant to The U.S. Court of Appeals for the Eleventh Circuit VACATE AND REMAND ORDER, dated 08-16-2010, Case No.: 09-16514-D and also pursuant to this Courts ORDER GRANTING Plaintiff's [Court construed] Motion for Clarification, dated 10-18-2010.

The plaintiff amends this complaint and fully expects this Amended Complaint to be supplemental to his original complaint [D.E. #1] in which he is ordered to clarify his already asserted claims of retaliation....as quoted from Complaint [D.E. #1].

page 4.2 of 5, lines 5-7

"...In fact, the defendant's have retaliated against the plaintiff for filing a grievance and have caused greater harms, suffering and damage to the plaintiff"

page 4.3 of 5, lines 8-10

"...The plaintiff was retaliated [against] for filing the grievance in this matter and has suffered through losses and hardships from the defendant's as the result."

The plaintiff submitted "Plaintiff's Objection to Magistrate Report", [D.E. #8] dated and sent 10-28-2009 and also submitted "Motion For Reconsideration" [D.E.#10] dated and sent 11-16-2009 in which he FURTHER described "RETALIATION".

Specific retaliation by the defendant's:

On or about 07-02-2009, ALL NAMED DEFENDANT'S; GATO B. JACKSON, MS. L. HARRIS, MIAMI-DADE CORRECTIONS & REHABILITATION DEPARTMENT (MDCR), **The Defendant's**, did all deliberately and unlawfully retaliate against the plaintiff because of his proclivity to file grievance(s) and also because of his already filed lawsuit against other of MDCR and certain staff, their colleagues, as the plaintiff importunately proceeded at bringing his case to trial, U.S. District Court Case No.: 08-21877-CV-COOKE.

The defendant's, as described in detail in plaintiff's original complaint, did take property from the plaintiff, and in doing so, caused harm and loss and suffering to the plaintiff. The defendant's further caused the plaintiff to be illegally transferred to much harsher and more dangerous jail conditions.

The plaintiff maintains evidences of his claims of retaliation. The plaintiff knows of approximately 29 witnesses, both MDCR staff and MDCR inmates, who corroborate the plaintiff's claims. The plaintiff maintains numerous sworn-to affidavits by witnesses, in which it is stated that the defendant's "ADMIT" to their retaliation of the defendant. The plaintiff will further show evidence of illegal transfers to other jails and cells in which "a hit" (an order for serious harm or murder) was put out on the plaintiff, at the direction of one or more of the defendant(s). An official report on the incident, along with witnesses is maintained and available as evidence.

The plaintiff will easily prove beyond all reasonable doubt, that the defendant's retaliated against him for using and attempting to use the jails grievance procedures and for his endeavors at proceeding on his already filed §1983 lawsuit.

The property losses; legal materials and supplies that the defendant's caused to occur on or about 07-02-2009 and several more times subsequently, prevented, delayed, obstructed court access, in which the plaintiff suffered harm and loss in the following cases; Broward County Case No.: 10-0510Acc05, U.S. Court of Appeals, Eleventh Circuit Case No.: 09-16514-D, and many examples in this very case. The defendant's deliberately putting the plaintiff in danger on or about 05-01-2010 and several times prior in which he was in fear for his life caused irreversible harm and suffering and loss to the plaintiff.

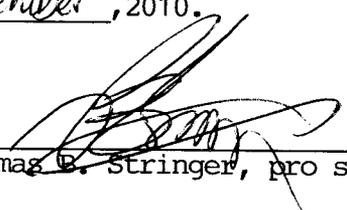
In addition to the exact dates and times provided in this and the original complaint, the plaintiff will endeavor to gather more evidence in the discovery and investigative portion of these proceedings in which he will utilize subpoena, public records and witness statements and testimonies, as a means to more precisely describe how and why the defendant's retaliated against the plaintiff other than the incidents described and claimed throughout his complaints, as the evidence warrants.

To be clear, the defendant's, Gato B. Jackson, Ms. L. Harris and MDCR did together, deliberately and unlawfully retaliate against the plaintiff, outside and beyond the scope of their duties, to directly cause harm and loss and suffering to him, by illegally taking his property and by placing him in danger in which he feared for his life.

In this and all preceding filings to the court under this case, the plaintiff, Thomas B. Stringer swears and affirms that all statements and claims made are true and correct pursuant to the laws and penalties of perjury.

If more information is needed, the plaintiff respectfully requests the Court to GRANT further accommodation pursuant to In Forma Pauperis, Pro Se, Less Stringent Review Standards, Broad Discretion...by advising of rule of law and court requisites.

Respectfully submitted this 16th day of November, 2010.

By: 
Thomas B. Stringer, pro se

LAW OFFICES OF
STANISLAO A. GERMÁN

BARCLAY BUILDING
299 BROADWAY, SUITE 200
NEW YORK, NY 10007



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United States District Court
Southern District of Florida
400 N. Miami Ave.
Miami, FL 33128



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22905-CIV-LENARD
MAGISTRATE JUDGE P.A. WHITE

THOMAS B. STRINGER, :
 :
 Plaintiff, : REPORT OF
 : MAGISTRATE JUDGE
 v. :
 :
 GATO B. JACKSON, ET AL., :
 :
 Defendants. :
 _____ :

I. Introduction

The plaintiff Thomas B. Stringer has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. [DE# 1]. The plaintiff is proceeding in forma pauperis.

The plaintiff alleged in his initial complaint that corrections officials deprived him of \$47.71 from his inmate account because they deducted this amount for a commissary order and did not provide the items he ordered. He also stated in passing that he was retaliated against after he grieved the matter, but did not explain which defendants retaliated against him and how they did so. Upon initial screening, it was recommended that that the complaint be dismissed for failure to state a claim. The Recommendation was adopted on November 5, 2009.

Stringer appealed the Judgement, and the case was remanded to the District Court on September 17, 2010, to allow the plaintiff to amend. The case was referred to the Undersigned Magistrate on September 20, 2010. An Order was entered by United States District Judge Joan Lenard permitting the plaintiff to file an amendment on

the sole issue of retaliation. On November 22,2010, the plaintiff filed an amended complaint. This Cause is before the Court upon the screening of the amended complaint. (DE#31)

II. Analysis

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

The plaintiff has amended his complaint to allege that Defendants Gato Jackson, MS Harris and Miami Dade Corrections and Rehabilitation Department retaliated against him for filing grievances, and other law suits, by transferring him to a facility with harsher and more dangerous jail conditions.

The Miami Dade Corrections Rehabilitation Department is not a proper defendant in this case. To file a suit against the County, the plaintiff must demonstrate that a constitutional deprivation

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

resulted from a custom, policy or practice of the County. Monell v Dept. Of Social Services, 436 US 691-694 (1978). The plaintiff has demonstrated no policy of custom used to deprive him of his constitutional rights. If the Miami Dade Corrections Rehabilitation Department is considered part of the larger state agency, it is protected by Eleventh Amendment Immunity, Gamble v Fla. Dept. Health and Rehabilitative Services, 779 F.2d 1509 (11 Cir. 1986). This defendant should therefore be dismissed.

Retaliation

To establish a claim for retaliation, the plaintiff must demonstrate that a specific constitutional right was violated, and that the defendant intended to retaliate against him for exercising that right. Brewer v Simental, 268 SW 3d 763 (2008); Farrow v West, 320 F.3d 1235, 1248 (11 Cir. 2003) (prisoner must demonstrate a causal connection between his protected conduct and prison officials action).

In this case, the plaintiff has amended his allegations to state specifically that Jackson and Harris retaliated against him for filing grievances and another civil lawsuit in the District Court. He has minimally stated a claim for retaliation.

III. Conclusion

Based on the foregoing, it is recommended as follows:

1. The claims be dismissed against the Miami Dade Corrections and Rehabilitation Department (MDCR), as an improper defendant.

2. The case proceed against Jackson and Harris for retaliation. The amended complaint (DE#31) is the operative complaint. Service will be ordered by separate order.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

It is so recommended at Miami, Florida, this 24th day of November, 2010.



UNITED STATES MAGISTRATE JUDGE

cc: Thomas B. Stringer, Pro Se
No. 60633-004
Metropolitan Correctional Center
New York, NY
Address of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-22905-CIV-LENARD/WHITE

THOMAS B. STRINGER,

Plaintiff,

vs.

GATO B. JACKSON, et al.,

Defendants.

_____ /

**ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION (D.E. 10)**

THIS CAUSE is before the Court on Plaintiff's Motion for Reconsideration ("Motion," D.E. 10) of the Court's November 5, 2009, Order (D.E. 9) adopting the Report and Recommendation of the Magistrate Judge and dismissing the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) for failure to state a claim. Although Plaintiff does not specify whether he seeks relief pursuant to Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, the Motion seeks leave to file an amended complaint and states, "[t]he manner in which the defendants deliberately steal (deprive) the plaintiffs property, afford no recourse, retaliate and systematically continue to perpetrate these crimes contrary to their own policies and laws is the reason why plaintiff must be allowed to amend his complaint to detail further so that the court fully understands how the actions warrant relief pursuant to § 1983." (Motion at 3 (emphasis in original).)

"Rule 59 applies to motions for reconsideration of matters encompassed in a decision on the merits of a dispute." Shaarbay v. Florida, 269 Fed. Appx. 866, 867 (11th Cir. 2008)

(quoting Wright v. Preferred Research, Inc., 891 F.2d 886, 889 (11th Cir. 1990)). “However, Rule 59(e) cannot be used ‘to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.’” Id. (quoting Michael Linet, Inc. v. Village of Wellington, Fla., 408 F.3d 757, 763 (11th Cir. 2005)). “By way of contrast, ‘the purpose of a Rule 60(b) motion is to permit the trial judge to reconsider matters so that he can correct obvious errors or injustices and so perhaps obviate the laborious process of appeal.’” Id. (quoting Carter v. United States, 780 F.2d 925, 928 (11th Cir. 1986)). Plaintiff’s Motion simply restates his prior arguments and does not present any other grounds for relief. Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff’s Motion for Reconsideration is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida this 1st day of December, 2009.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09cv22905 JAL.

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

THOMAS B. STRINGER, plaintiff

VS.

GATO B. JACKSON, ET AL., defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-22905-CV-JAL

JUDGE: JOAN A. LEWIS FILED by  D.C.

DEC 16 2010

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA - MIAMI

PLAINTIFF'S OBJECTION TO REPORT AND RECOMMENDATIONS

COMES NOW THOMAS B. STRINGER, the plaintiff, in forma pauperis, pro se, in-jail, does timely file "Plaintiff's Objection to Report and Recommendations" [D.E.#32] and in support thereof offers the following to the court:

1. Magistrate Judge P.A. White wrote in his "Conclusion" of his Report of Magistrate Judge [D.E.#32]

"...2...The amended complaint (DE#31) is the operative complaint..."

2. The plaintiff was clear in his Amended Complaint when he wrote...

"the plaintiff amends this complaint and fully expects this Amended Complaint to be supplemental to his original complaint..."

3. The plaintiff fully expects that both filed complaints; "Complaint" [D.E.#1] and "Amended Complaint" [D.E.#31] are operative.

4. The plaintiff does not want to suffer any unintended consequences or prejudices of the court's determination of "operative Complaint" versus the plaintiff's expectation and desire that both complaints together [D.E.'s 1 and 31] are served upon the defendants and used to further his claims in this §1983 lawsuit.

WHEREFORE the plaintiff respectfully requests the court to serve both complaints [D.E.'s 1,31] upon the defendants, so that they are properly and more thoroughly notified of the claims against them and so they may properly and more thoroughly reply to those claims.

Respectfully submitted this 10th day of December, 2010. By:  pro se
Thomas B. Stringer 60633004
MCC 150 Park Row
New York, NY 10007

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-22905-CIV-LENARD/WHITE

THOMAS B. STRINGER,

Plaintiff,

v.

GATO B. JACKSON, et al.,

Defendants.

_____/

**ORDER ADOPTING REPORT & RECOMMENDATION OF MAGISTRATE
JUDGE (D.E. 32)**

THIS CAUSE is before the Court on the Report and Recommendation of the Magistrate Judge (“Report,” D.E. 32), issued on November 24, 2010, recommending that Plaintiff’s claims against Defendant Miami-Dade Corrections and Rehabilitation Department be dismissed and Plaintiff’s remaining claims against Defendants Jackson and Harris be allowed to proceed. The Report makes these recommendations after conducting an initial screening of Plaintiff’s Amended Complaint (D.E. 31) pursuant to 28 U.S.C. § 1915. Therein, the Parties were provided fourteen (14) days to file objections to the Report. Failure to file timely objections shall bar the parties from attacking on appeal the factual findings contained in the report. See Resolution Trust Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). On December 16, 2010, Plaintiff filed his *pro se* untimely objections to the Report (“Objections,” D.E. 38). The Objections do not really take issue

with the Report's findings. Rather, Plaintiff takes issue with the Magistrate Judge's conclusion that Plaintiff's "amended complaint (DE#31) is the operative complaint." (See Report at 6.) Plaintiff appears to be seeking clarification that his amended complaint actually incorporates his prior complaint. Therefore, after an independent review of the Report and record, it is hereby **ORDERED AND ADJUDGED** that:

1. The Report of the Magistrate Judge (D.E. 32), issued on November 24, 2010, is **ADOPTED**;
2. Pursuant to initial screening of Plaintiff's Amended Complaint (D.E. 31), the Court **DISMISSES** Plaintiff's claims against Defendant Miami-Dade Corrections and Rehabilitation Department and Plaintiff's remaining claims against Defendants Jackson and Harris shall be allowed to proceed;
3. As Plaintiff's Amended Complaint (D.E. 31) is now the operative complaint in this matter, to the extent Plaintiff wishes to clarify or further amend his pleading he must seek leave from the Court.

DONE AND ORDERED in Chambers at Miami, Florida this 21st day of December, 2010.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

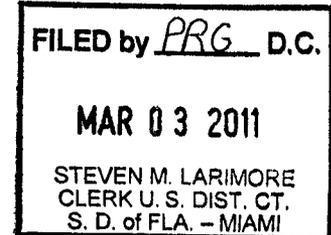
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS B. STRINGER, plaintiff

CASE NO.: 09-22905-CV-LENARD

vs.

GATO B. JACKSON, ET AL., defendants



SECOND AMENDED COMPLAINT

COMES NOW, THOMAS B. STRINGER, plaintiff, pro se, in forma pauperis, in-jail, does, upon direction of the Court, file this "Second Amended Complaint", pursuant to the Court's ORDER [DE #47], dated 02-15-11 in which it is stated..."Plaintiff has until February 27, 2011, to file a Second Amended Complaint encompassing all claims he wishes to prosecute." This plaintiff submits this Second Amended Complaint on February 24, 2011, at his soonest opportunity in compliance with the Order of the Court. In an abundance of caution the plaintiff will restate all claims contained within all prior submitted and filed complaints and amended complaints and motions for reconsideration.

Because of prior mischaracterizations, misinterpretations and plain omissions between the plaintiff and the Court, likely due to the fact that the plaintiff is not trained in law, not privy to adequate legal rules and laws resources, the plaintiff respectfully requests the Court GRANT lawful BROAD DISCRETION AND LESS STRINGENT REVIEW standards to this Second Amended Complaint and ALL subsequent filings, submissions and proceedings to the Court in the interest of justice, especially considering that this pro se plaintiff is incarcerated and severely hindered and often times obstructed in his efforts, by the very defendant's in this case, as he proceeds in good-faith to bring this case to trial. The plaintiff requests that the Court acknowledge his limitations and duress by responding accordingly.

This Complaint is submitted pursuant to The Civil Rights Act 42 U.S.C. § 1983, by Thomas B. Stringer, Reg. No. 60633-004, Metropolitan Correctional Center, 150 Park Row, New York, NY 10007.

The defendant's in this case are as follows:

1. Gato B. Jackson, Commander, Materials Management Bureau, Miami-Dade Corrections and Rehabilitation Department (MDCR), Headquarters, 2525 N.W. 62nd. Street, Miami, FL 33147 (hereinafter "Jackson").
2. Louvenia Harris, Inmate Commissary Delivery Personnel, Miami-Dade Corrections and Rehabilitation Department (MDCR), Headquarters, 2525 N.W. 62nd. Street, Miami, FL 33147 (hereinafter "Harris").
3. Miami-Dade Corrections and Rehabilitation Department, A County/State of Florida Agency, Headquarters, 2525 N.W. 62nd. Street, Miami, FL 33147 (hereinafter "MDCR").

Counsel for all three defendant's, already representing the defendant's on the record of the Court, having entered their appearance on behalf of all three defendant's is: Miami-Dade County Attorney; R.A. Cuevas, Jr., Assistant County Attorney's, Rodolfo A. Ruiz, Miami-Dade County Attorney's Office, 111 N.W. 1st. Street, Suite 2810, Miami, FL 33128.

SPECIAL NOTE: The Miami-Dade County Attorney's Office also represents defendant's of Miami-Dade Corrections and Rehabilitation Department (MDCR); Timothy P. Ryan, Cynthia Kendrick, Franklin P. Jones, in a separate 42 U.S.C. § 1983 lawsuit, Case No.: 08-21877-CV-COOKE, in which Thomas B. Stringer is the plaintiff.

MDCR staff; Ms. Killings, Ms. Johnson, and others have advised the plaintiff that they received DIRECT ORDERS from the Office of the County Attorney to deny and obstruct the plaintiff in his efforts at proceeding in this lawsuit. The County Attorney Office has an absolute interest in this plaintiff failing in this lawsuit and has exerted their power and authority to further harm this plaintiff. This Court MUST consider the manner in which defense counsel has a vested interest in the outcome of the lawsuit and maintains the safety and care of the plaintiff.

On or about 07-02-2009, MDCR, Jackson and Harris (the defendant's), under the color of law, in their individual and/or official capacities, did willfully and illegally deprive the plaintiff of his money, property, commissary, legal materials. Evidence shows that the defendant's deliberately devised an illegal scheme that includes criminal acts of; forgery, extortion, theft-by-deception, organized fraud, abuse of power/position/authority over oppressed persons, to deprive the plaintiff of his rightful money, property, commissary, legal materials. Sworn to statements by participants, witnesses and the plaintiff prove beyond all doubt that the defendant's illegally took plaintiff's property and that the losses caused irreversible harms and suffering and damages to the plaintiff. Plaintiff received money into his inmate account for the purposes of ordering commissary, food, hygiene, legal materials. Plaintiff ordered in the normal way via "scantron bubble form", properly filled out the form with his name, location, date, signature, date again. The form was properly submitted on 06-25-2009. One week later, in the normal way, Harris called for plaintiff to come from his cell to receive his order. Harris commanded the plaintiff to sign the receipt before he was given any opportunity to review the receipt or inspect the commissary order. The plaintiff signed the receipt as he was directed, by the Correctional Officer (Harris). The plaintiff was then handed his receipt, by Harris, and the commissary order, by the inmate trusty. The plaintiff had not moved from the area and immediately noticed that the commissary bag was full of items that he did not order. It should be noted that the items in the bag are generally known to be undesirable and the least popular sold food items. An issue that will become quite significant and explained in greater detail during discovery and/or trial.

Under normal circumstances, it is always the practice/procedure, ordered again by Harris, that inmates take the receipt from the Officer and the bag of commissary from the trusty and immediately move to a specified table set-up nearby for a complete inspection of the receipt and the order. There are many other inmates to serve and this practice keeps the process moving. Normally, missing items (as occasionally occurs) are noted and substituted or brought at a later date, with notes made directly on the receipt copies, by the Officer delivering the commissary.

In this particular situation, the entire order of \$47.71 worth of commissary was completely in error. The plaintiff immediately handed back the order to the trusty and Harris and advised that his order was "completely wrong". Harris refused to accept back the order and stated..."my boss, Mr. Jackson, does not allow orders to be returned." Harris advised the plaintiff to file a grievance. Harris admitted, in the presence of numerous witnesses, that there is an on-going big problem occurring with their policy that forces wrong orders on inmates. Harris directed the plaintiff to accept the erroneous order. The plaintiff was not given any choice in the matter.

The plaintiff did file a grievance, TKG# 090720, and has exhausted administrative remedy. The plaintiff went further and contacted Director Timothy P. Ryan about the matter. The plaintiff made every good-faith effort to resolve the matter fairly, asking only that his original \$47.71 order be provided. The defendant's made no effort to resolve the matter. In fact, the defendant's have retaliated against the plaintiff for filing a grievance and have caused greater harms, suffering and damage to the plaintiff. **[This retaliation claim is made in plaintiff's very first submitted/filed complaint (DE #1, page 4.2 of 5, para. 1) and described in further detail later in this Second Amended Complaint].**

Commander Jackson met with the plaintiff on or about 07-17-2009 and admitted his policy of requiring (forcing) inmates to sign receipts prior to any review, inspection or taking possession of commissary orders. Jackson also admitted that he does not take back erroneous commissary orders. Plaintiff requested copies of all records for the transaction, required by law and policy to be maintained by MDCR, Jackson refused to provide.

The plaintiff was then and remains now, stunned, that this practice of forcing completely erroneous commissary orders onto inmates and affording them absolutely no viable recourse to recover losses. This practice is contrary to policy and laws. The practice is deliberately engineered and enforced in such a manner by the defendant's, that there is no possible, effective way for any inmate to

challenge and/or recover losses regardless of whether or not errors occur and regardless of fault.

Upon investigation into the matter, witnesses, records, practices, etc, reveal irrefutable evidence of a systematic practice by the defendant's, engaging in a willful, concerted and deliberate effort of a scheme that deprives the plaintiff and many other inmates of their rightful property, money, commissary and legal materials. Additional witnesses, affidavits, relevant evidences will be provided as appropriate throughout the discovery process and proceedings in preparation for jury trial. It is discovered that many thousands of dollars of money, property, commissary, etc., are illegally deprived from the plaintiff and other knowing and unknowing inmates, all of which are oppressed. The defendant's committing these atrocious illegal acts are accommodated and benefit personally as well as their respective departments in ways that will outrage the taxpaying public, committee, commission, judiciary tasked with oversight and judgment.

The plaintiff has suffered actual losses of property, money, commissary, legal materials. The plaintiff has been delayed and obstructed from Court access that has caused loss and damage to certain legal proceedings. The plaintiff was retaliated for filing the grievances in this matter and has suffered through continuous losses and hardships from the defendant's as the result.

On or about 07-02-2009, ALL NAMED DEFENDANT'S; MDCR, JACKSON, HARRIS, did all deliberately and unlawfully retaliate against the plaintiff because of his proclivity to file grievances and also because of his already filed lawsuit against other of MDCR and certain staff, their colleagues, as the plaintiff importunately proceeds at bringing his case to trial, U.S. District Court, Southern District of Florida, Case No.: 08-21877-CV-COOKE.

The defendant's did take property from the plaintiff, and in doing so, caused harm, loss and suffering to the plaintiff. The defendant's further caused the plaintiff to be illegally transferred to much harsher and more dangerous jail conditions.

The plaintiff maintains evidences of his claims of retaliation. The plaintiff knows of approximately 29 witnesses, both MDCR staff and MDCR inmates, who corroborate the plaintiff's claims. The plaintiff maintains numerous sworn-to affidavits by witnesses, in which it is stated that the defendant's "admit" to their retaliation against the plaintiff.

The plaintiff will further show evidence of illegal transfers to other jails and cells in which "a hit" (an order for serious harm or murder) was put out on the plaintiff, at the express direction of one or more of the defendant's. An official report of the incident, along with witnesses is maintained and available as evidence. This incident "hit" occurred at the Miami-Dade County Main Jail on or about 05-01-2010.

The plaintiff will easily prove beyond all reasonable doubt, that the defendant's retaliated against him for using and attempting to use the jails grievance procedures and for his endeavors at proceeding on his already file § 1983 lawsuit. The property losses; legal materials and supplies, money that the defendant's caused to occur on or about 07-02-2009 and many occasions subsequently and preventing, delaying, obstructing Court access, in which the plaintiff suffered harm and loss in the following cases; 09-16514-D, U.S. Court of Appeals, Eleventh Cir., 10-0510Acc05, Broward County, F07-040575, Miami-Dade Criminal Court, and many examples in this instant lawsuit, combined with defendant's deliberately putting the plaintiff in danger, in fear for his life, cause irreversible harms, suffering and loss to the plaintiff.

In addition to the exact dates and times provided in this and the original complaint and all subsequent filings by the plaintiff in this case, the plaintiff will endeavor to gather more evidence in the discovery and investigation portion of these proceedings in which he will utilize subpoena, public records requests, witness statements and affidavits and testimonies, as a means to more precisely describe how and why the defendant's retaliated against the plaintiff in these and other incidents described and claimed throughout the complaint, as evidence becomes available and further warrants.

Although the Court has recommended dismissing MDCR as a defendant, the plaintiff wholeheartedly objects and disagrees as it is shown that MDCR, as a defendant denied/deprived the plaintiff of his due process rights by systematically denying him adequate and effective use of the grievance process, as their grievance has shown to be illegally operated as they punish the plaintiff for his attempts to use grievance procedures and by retaliating against the plaintiff in a systematic way at more than one of their jail facilities, putting the plaintiff in danger and in fear for his life as a matter of practice and custom. MDCR on more than one occasion used their "policy, customs and practice" to place the plaintiff in a dangerous environment and caused him to fear for his life. MDCR directly allowed their legal authority, The County Attorney Office, to direct them to put the plaintiff in danger and in fear for his life, doing so by claiming mandate of policy, law and custom. MDCR is allowed to hide behind their policies, customs and practices to refuse Constitutional Rights to the plaintiff as they deny him lawful access to the Courts, deprived him of his property, deprived him of legal materials and resources, deprived him of any effective manner of remedy as their grievance procedures are derelict, negligent and dangerous, even during times of normal use. State Agency, government immunity does not protect against policy, custom and practices that cause harm and loss to inmates, this plaintiff.

MDCR denies/refuses the grievance process to the plaintiff. MDCR denies/refuses lawful access to the Courts for the plaintiff. MDCR causes the plaintiff to be in fear for his life. MDCR causes loss/harm to the plaintiff through their regular practices, customs and policies, as relied upon by MDCR staff, admitted by staff in explanation of their actions.

All defendant's named herein must be made to account for their illegal actions that caused harm and loss and suffering to the plaintiff. The plaintiff requests leave from the Court to further amend this complaint if necessary.

Under penalty of perjury, the plaintiff, Thomas B. Stringer, swears that all statements and claims made herein are accurate and truthful to the best of his recollection and ability, and that this lawsuit is brought in good-faith.

The plaintiff DEMANDS a jury trial and requests the following relief:

Declaratory Relief - Admissions from the defendant's, each of them, accounting for their illegal actions, as described throughout this complaint.

Injunctive Relief - The Court to Order the defendant's to maintain and provide all commissary transaction records, pursuant to law and policy, to provide all inmate trust account transaction records, pursuant to law and policy, to provide grievance records and to perform grievance procedures pursuant to law and policy.

Damages Relief - (compensatory and punitive), Nine thousand five hundred dollars, \$9,500.00, paid to the plaintiff and/or a dollar amount in excess of \$9,500.00 as determined by the jury upon their finding of guilty determined by culpability of each of the defendant's. The plain-reserves the right to amend his demand for damages as actual, compensatory and punitive damages may require adjustment to account for further and continued loss, harms and suffering. The plaintiff reserves the right to include costs incurred from this point in time as warranted, such as; attorney fees, investigation fees, administrative and ministerial fees. The plaintiff wishes to make it clear to the Court and to the defendant's that where it is appropriate, he seeks relief for the pain, suffering, loss and harms resulting in the illegal actions of the defendant's.

Respectfully submitted this 24th day of February, 2011.

By: 

Thomas B. Stringer #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

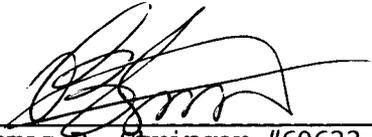
CERTIFICATE OF SERVICE

An exact copy of the foregoing "Second Amended Complaint" has been sent via the U.S. Postal Service by placement in Metropolitan Correctional Center (MCC) legal mailbox, to the following:

Original - Clerk of Court, United States District Court, Southern District of Florida, 400 N. Miami Ave., Miami, FL 33128.

Copy - Miami-Dade County Attorney's Office, Rodolfo A. Ruiz, 111 N.W. 1st. Street, Suite 2810, Miami, FL 33128 (Counsel for the defednant's)

sent this 24th day of February, 2011.

By: 

Thomas B. Stringer #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22905-CIV-LENARD/WHITE

THOMAS B. STRINGER,

Plaintiff,

v.

GATO B. JACKSON, et al.,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Defendants, GATO B. JACKSON ("Jackson") and LOUVENIA HARRIS ("Harris") (hereinafter collectively referred to as the "Defendants"), hereby move to dismiss Plaintiff's Second Amended Complaint (hereinafter the "Complaint") [D.E. No. 48] pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the following grounds: (A) Plaintiff's claims for compensatory and punitive damages are barred by the Prisoner Litigation Reform Act, 42 U.S.C. § 1997e(e); (B) Plaintiff fails to allege a violation of an established constitutional right thereby entitling both Jackson and Harris to qualified immunity; and (C) Plaintiff is not entitled to declaratory or injunctive relief. As such, Plaintiff's Complaint should be dismissed with prejudice.

I. BACKGROUND

Plaintiff purports to bring an action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief, as well as compensatory and punitive damages in the amount of \$9,500.00, to redress his claims of property loss, denial of access to the courts, and retaliation by prison officials. Plaintiff asserts that he was deprived of his "money, property, commissary, and legal materials" on July 2, 2009 when Harris "directed" him to accept an "order of \$47.71 worth of commissary [that] was completely in error." D.E. No. 48 at 3. In response to this purportedly erroneous commissary order, Plaintiff contends that he "file[d] a grievance, TGK # 090720, and has exhausted administrative remedy." *Id.* at 4. Plaintiff maintains that he "made every good-faith effort to resolve the matter fairly, asking only that his original \$47.71 order be provided," but in a meeting with Jackson to discuss the matter on July 17, 2009, Jackson allegedly

“admitted that he does not take back erroneous commissary orders” and refused to provide the Plaintiff with records of the commissary order in question. *Id.*

Plaintiff proceeds to allege that Jackson and Harris “retaliated against the plaintiff because of his proclivity to file grievances,” as well filing lawsuits against other staff members from the Miami-Dade County Corrections and Rehabilitation Department, including Case No. 08-21877-CV-Cooke. *Id.* at 5. Specifically, Plaintiff contends that Harris and Jackson retaliated by “caus[ing] the Plaintiff to be illegally transferred to much harsher and more dangerous jail conditions,” and claims he “will further show evidence of illegal transfers to other jails and cells in which ‘a hit’ (an order for serious harm or murder) was put out on the plaintiff, at the express direction of one of more of the defendant’s [*sic*].” Plaintiff claims that an “official report” of a “hit” attempted on his life exists, which “occurred at the Miami-Dade County Main Jail on or about May 1, 2010.” *Id.*¹

Plaintiff concludes by maintaining that retaliatory actions by both Jackson and Harris have led him to suffer “actual losses of property, money, commissary, [and] legal materials,” while also “preventing, delaying, [and] obstructing Court access [and] deliberately putting the [P]laintiff in danger, in fear for his life, caus[ing] irreversible harms, suffering and loss to the [P]laintiff.” *Id.* at 5-6.

II. STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must contain factual allegations which are “enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555 (citations omitted). Rather, the facts set forth in the complaint must be sufficient to “nudge the[] claims across the

¹ Plaintiff also sets forth a number of allegations pertaining to the Miami-Dade County Corrections and Rehabilitation Department (“MDCR”). *See* D.E. No. 48 at 7. However, the Court has already unequivocally dismissed MDCR as a defendant in this action. *See* D.E. No. 32 at 2 (holding that “the Court DISMISSES Plaintiff’s claims against Defendant Miami-Dade Corrections and Rehabilitation Department and Plaintiff’s remaining claims against Defendants Jackson and Harris shall be allowed to proceed.”) Accordingly, Defendants’ Motion to Dismiss need not address these allegations against MDCR.

line from conceivable to plausible.” *Id.* at 570; *see also Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1951-52 (2009) (determining on a motion to dismiss involving qualified immunity that a court could ignore implausible assertions or theories advanced by plaintiff and, instead, credit an “obvious alternative explanation for the arrests.”) Nor can a plaintiff deflect an attack on conclusory allegations with a promise to “flesh them out” after discovery. *Porter v. Ray*, 461 F.3d 1315, 1324 (11th Cir. 2006) (“[T]he discovery rules do not permit the appellants to go on a fishing expedition.”)

In addition, a claim can be dismissed where a plaintiff pleads facts or makes admissions that demonstrate a defense is applicable on the face of the pleadings. *Staco v. Miami-Dade County*, 536 F. Supp. 2d 1301, 1304 (S.D. Fla. 2008); *see also Marsh v. Butler County*, 268 F.3d 1014, 1022 (11th Cir. 2001) (“A complaint is also subject to dismissal under Rule 12(b) (6) when its allegations—on their face—show that an affirmative defense bars recovery on the claim.”). This principle is especially applicable here, because qualified immunity should be resolved at the earliest stage of litigation as it is “an entitlement not to stand trial or face the other burdens of litigation.” *Gonzalez v. Reno*, 325 F.3d 1228, 1233 (11th Cir. 2003) (granting motion to dismiss based on qualified immunity) (citations omitted).

III. ARGUMENT

A. Plaintiff’s Claim for Monetary Relief is Barred by 42 U.S.C. § 1997e(e).

Plaintiff claims that he is entitled to \$9,500.00 in compensatory and punitive damages from Jackson and Harris. D.E. No. 48 at 8. He does not allege, however, that he suffered *any physical injury* as a result of being “illegally transferred to much harsher and more dangerous jail conditions.” *Id.* at 5. Instead, Plaintiff avers, in a conclusory fashion, that Defendants “deliberately put[] the plaintiff in danger, in fear for his life, cause[d] irreversible harms, suffering and loss to the plaintiff.” Similar boilerplate language citing “suffering, harm, and loss” without any mention of physical injury is present throughout the Complaint. *Id.* at 4–5. Even upon describing the so-called “hit” that was “put out on the plaintiff,” Plaintiff does not allege that he suffered any actual physical harm once transferred to a purportedly “harsher” prison. *Id.* at 6.

Plaintiff’s failure to allege any physical injury whatsoever is fatal to his claim. The Prisoner Litigation Reform Act (“PLRA”) provides that an inmate may not bring an action for such injuries unless the inmate has suffered physical injuries as a result of the claimed violation:

No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody *without a prior showing of physical injury*.

42 U.S.C. § 1997e(e) (emphasis added).

Plaintiff's action falls squarely within this prohibition against prisoner suits for mental or emotional injury. Not a single physical repercussion has been stated as a reason or basis for the federal civil action brought forth by Plaintiff, who repeatedly states that he only experienced "fear for his life . . . irreversible harms, suffering and loss" upon being transferred to a different prison facility. D.E. No. 48 at 5–6. Moreover, Plaintiff does not mention any ailment or injury in any of the inmate requests and grievances he filed after July 2, 2009, when he was purportedly deprived of his "money, property, commissary, and legal materials" and "illegally transferred [to] harsher and more dangerous jail conditions." See Plaintiff's Inmate Grievance Forms filed after July 2, 2009, attached hereto Exhibit "A."² Nor does Plaintiff state that he suffered or sought medical treatment for any physical injury whatsoever after the alleged "hit" on his life "on or about May 1, 2010." *Id.* Where, as here, the plaintiff fails to allege any concrete physical injury resulting from the conduct about which he complains and he does not seek nominal damages, the provisions of § 1997e(e) foreclose his claim for emotional and mental suffering. See *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

Given that the Plaintiff alleges no physical harm arising out of his alleged constitutional deprivation, Plaintiff's claims for compensatory and punitive damages must be dismissed pursuant to § 1997e(e). See, e.g., *Williams v. Brown*, F. App'x 429, 436 (11th Cir. 2009)

² Eleventh Circuit and Southern District of Florida precedent permit the Court to consider Plaintiff's Inmate Grievance Forms, attached hereto as Exhibit "A," in deciding this motion to dismiss as the exhibits are both central to Plaintiff's claims and matters of public record. See *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002) (permitting courts to consider documents that are central to the claim and obviously authentic in ruling on a motion to dismiss); *Jackson v. BellSouth Telecomm.*, 181 F. Supp. 2d 1345, 1353-54 (S.D. Fla. 2001) (determining that a court can consider "matters of public record, items appearing in the record of the case," and documents "refer[ed] to . . . in the complaint and . . . central to the plaintiff's claim"); see also *Halmos v. Bomardier Aerospace Corp.*, 2010 WL 4941957 at *1 (11th Cir. Dec. 7, 2010) (holding that district court may take judicial notice of matters of public record without converting a Rule 12(b)(6) motion into a Rule 56 motion) (citing *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999)).

(upholding the dismissal of a section 1983 inmate-plaintiff's claims for compensatory and punitive damages flowing from his First Amendment retaliation claim, due to his failure to allege any physical injury); *Frazier v. McDonough*, 264 F. App'x 812, 815 (11th Cir. 2008) (holding prisoner's claims for compensatory and punitive damages barred where he alleged only mental and emotional injury, not physical injury, as the result of an alleged First Amendment violation); *Asad v. Crosby*, 158 F. App'x 166, 168 n.1 (11th Cir. 2005) (holding that, in the absence of physical injury, "district court did not err by dismissing [plaintiff's] claims for compensatory or punitive damages" pursuant to Fed. R. Civ. P. 12(b)(6)).

B. *Jackson and Harris are Entitled to Qualified Immunity.*

In the event the Court finds that the PLRA does not bar Plaintiff's claims for monetary relief, the Complaint should nevertheless be dismissed with prejudice as both Jackson and Harris are entitled to qualified immunity. Qualified immunity completely protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates the clearly established rights of others. *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1303 (11th Cir. 2006); *Dalrymple v. Reno*, 334 F.3d 991, 996 (11th Cir. 2003); *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003). The purpose of qualified immunity is to shield from suit "all but the plainly incompetent or those who knowingly violate the law" thereby allowing government officials to carry out their discretionary duties without fear of personal liability or harassing litigation. *Malley v. Briggs*, 475 U.S. 335, 341 (1986); *see also Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

To be entitled to qualified immunity, a defendant must first establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Durruthy v. Pastor*, 351 F.3d 1080, 1087 (11th Cir. 2003); *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002). An officer acts within the scope of his discretionary authority when his conduct is undertaken pursuant to the performance of his official duties. *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1282 (11th Cir. 1998). In this case, it is not disputed that Jackson and Harris were acting within the course and scope of their authority as corrections officers on behalf of the Miami-Dade County Corrections and Rehabilitation Department. *See* D.E. No. 48 at 3-4. Given that Jackson and Harris are alleged to have acted within their discretionary authority, "the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Durruthy*, 351 F.3d at 1087 (quoting *Lee*, 284 F.3d at 1194).

The Supreme Court has established a two-part test that plaintiffs must meet to pierce a government official's qualified immunity. Under this test the plaintiff must establish that (1) the defendant violated a federal right and (2) that such a right was clearly established. *Id.* The Supreme Court recently altered this test in *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009). As a consequence a federal court is now permitted to skip the first part of the test (determining whether a constitutional violation occurred), and move directly to determining whether the Plaintiff has alleged a violation of clearly established law. *Id.* Indeed, as stated by the Supreme Court, "judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Id.*

In this case, the Court need only address the first prong, because Plaintiff has failed to allege facts suggesting that Jackson or Harris violated his constitutional rights. Failure to satisfy this first element of the qualified immunity analysis is fatal to Plaintiff's claims against Jackson and Harris under 42 U.S.C. § 1983. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (holding that to prevail in a section 1983 action a plaintiff must demonstrate that he was deprived of a federally protected right). Therefore, Jackson and Harris are both entitled to qualified immunity.

1. Plaintiff Fails to State a Section 1983 Claim for Loss of Property.

Plaintiff attempts to assert a claim for violation of his due process rights in the alleged deprivation of his property. *See* D.E. No. 48 at 5. Specifically, Plaintiff alleges that Jackson and Harris deprived him of \$47.71 from his inmate account by deducting the amount in response to a commissary order but not providing him with the items he ordered. *Id.* It is well established, however, that negligent or intentional deprivations of property resulting from random, unauthorized acts of government officials do not become due process violations when there exist meaningful remedies under state law for Plaintiff to seek redress. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *see also Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991).

Given that Section 768.28 of the Florida Statutes provides a remedy for the alleged deprivation of Plaintiff's property, Plaintiff cannot maintain a section 1983 action based on the alleged deprivation of inmate account funds. *See, e.g., Weaver v. Geiger*, 294 F. App'x 529, 533 (11th Cir. 2008) ("Florida has expressly waived state sovereign immunity for tort suits involving, inter alia, loss of property caused by state employees or agents acting within the scope of their employment [in Fla. Stat. 768.28(1)]. The district court thus did not abuse its discretion in

determining that this relief qualifies as the type of ‘meaningful remedy’ required under *Hudson.*”); *Sanders v. Cohen*, No. 09-61451, 2009 WL 4421265, at *3 (S.D. Fla. Nov. 25, 2009) (“Florida has provided a tort claims procedure which may be utilized to recover damages for property losses [in section 768.28]. This procedure is available to inmates in . . . county jail facilities. Thus, unless the deprivation of property has occurred as the result of an established unlawful state procedure, the existence of the state remedy precludes the availability of § 1983 relief for negligent or intentional deprivation of personal property.”) (citations omitted). Thus, Plaintiff’s section 1983 claim for loss of property is subject to dismissal with prejudice, and Jackson and Harris are both entitled to qualified immunity.³

2. Plaintiff Fails to State a Section 1983 Claim for Denial of Access to the Courts.

Plaintiff also attempts to assert a claim for denial of access to the Courts by alleging that “he has been delayed and obstructed from Court access that has caused loss and damage to certain legal proceedings.” D.E. No. 48 at 5. Specifically, Plaintiff claims that “the defendant’s [*sic*] caused to occur on or about 07-02-2009 and many occasions subsequently and preventing delaying, obstructing Court access, in which the plaintiff suffered harm and loss in the following cases; 09-16514-D, U.S. Court of Appeals, Eleventh Cir., 10-0510Acc05, Broward County, F07-040575, Miami-Dade Criminal Court, and many examples in this instant lawsuit . . .” *Id.* at 6.

Plaintiff’s failure to specifically demonstrate how he was harmed and prejudiced with respect to any of the aforementioned litigation in which he was involved is fatal to his access-to-courts claim. *See Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (“It follows that the underlying cause of action, whether anticipated or lost, is an element that must be described in

³ It also bears to note that Plaintiff’s inmate grievance TGK #090720 and subsequent inmate grievance appeal #K09-720, which serve as the basis for his section 1983 property loss claim, indicate Plaintiff’s commissary allegations are frivolous in nature. *See* Inmate Grievance TGK #090720 and Inmate Grievance Appeal #K09-720, attached hereto as Exhibit “B.” The On-Site Supervisor comment section of form TGK #09072 explains that the Plaintiff “[s]tated that he left the commissary items on table and does not know what happened to them,” and therefore Plaintiff was “informed that it is his responsibility to secure items once he signed for the order.” *Id.* More importantly, Jackson, as Facility Supervisor, corroborated the frivolous nature of Plaintiff’s grievance by confirming that “there exists a receipt signed by Mr. Stringer indicating that he received a commissary delivery in the amount of \$47.71 on 07-02-09” and attaching said receipt to the grievance form. *Id.* In addition, Plaintiff’s Inmate Grievance Appeal was similarly denied given that Plaintiff’s commissary complaint was “not substantiated.” *Id.* Thus, Plaintiff’s property loss claim appears to lack any merit whatsoever.

the complaint, just as much as allegations must describe the official acts frustrating the litigation.”) (internal citations omitted); *Lewis v. Casey*, 518 U.S. 343, 348-50 (1996) (holding that the success of a plaintiff’s denial of access claim is dependent upon plaintiff’s ability to show “actual injury” regarding prospective or existing litigation, such as missing filing deadlines or being prevented from presenting claims); *see also Al-Amin v. Smith*, 511 F.3d 1317, 1332 (11th Cir. 2008) (holding that actual injury is a constitutional prerequisite to an inmate’s access-to-courts claim).

Applying the aforementioned case law to the instant action, Plaintiff wholly fails to identify any form of injury caused by Defendants’ alleged denial of “legal materials and supplies.” *See Christopher*, 536 U.S. at 415 (holding that in order to properly allege a constitutional deprivation regarding the right of access to courts, “the named plaintiff must identify a ‘nonfrivolous,’ ‘arguable’ underlying claim . . .”) (citing *Lewis*, 518 U.S. at 353); *Wilson v. Blankenship*, 163 F.3d 1284, 1290-91 (11th Cir. 1998) (holding that plaintiff must allege actual injury “such as a denial or dismissal” to show that presentation of his case was impeded because of defendant’s actions) (citing *Lewis*, 518 U.S. at 355-57). Plaintiff makes no mention of how Defendants’ alleged actions resulted in the loss of some particular relief, or prevented him from vindicating basic constitutional rights under 42 U.S.C. § 1983. Moreover, Plaintiff provides no evidence of denial or dismissal of a direct appeal. *See Bass v. Singletary*, 143 F.3d 1442, 1445-46 (11th Cir. 1998) (emphasizing that actual injury is an essential standing requirement in access-to-court claims, which means a plaintiff must provide evidence of denial or dismissal of a direct appeal, habeas petition, or civil rights case that results from actions of prison officials). Instead, Plaintiff merely alludes, in a conclusory fashion, to “loss and damage to certain legal proceedings.” D.E. 48 at 5. This glaring absence of any actual injury is precisely what the Supreme Court, as well as the Eleventh Circuit, has categorically prohibited. *See, e.g., Christopher*, 536 U.S. at 418 (“The District Court and the defendants were left to guess at the unstated cause of action supposed to have been lost, and at the remedy being sought . . .”).

In *Chandler v. Baird*, the Eleventh Circuit addressed a claim similar to the case at bar, finding no denial of access to the courts where plaintiff demonstrated “no relation between the alleged refusals of materials, depositions, telephone calls, mail, and even pen and paper for a proposed ‘letter to the courts’ and any legal proceeding which could have been affected by the refusals.” 926 F.2d 1057, 1062 (11th Cir. 1991). The Court in *Chandler* emphasized that the

purported refusals were “alleged deprivations . . . of a minor and short-lived nature [that] do not implicate general policies,” and held that “policy and the prevailing state of the law require an inmate to articulate facts indicating some prejudice such as being unable to do timely research on a legal problem or being procedurally or substantively disadvantaged in the prosecution of a cause of action.” *Id.* at 1063. The instant case is identical to *Chandler* in that the Plaintiff has similarly alleged a minor deprivation consisting of Defendants’ purported refusal to provide legal materials and supplies, but has failed to articulate or specifically demonstrate how he was harmed and prejudiced with respect to the different cases cited in his Complaint. Plaintiff’s failure to allege how Jackson or Harris impeded his “pursuit of a nonfrivolous, post-conviction claim or civil rights action” mandates dismissal of his access-to-courts claim, and Jackson and Harris are both entitled to qualified immunity. *Wilson*, 163 F.3d at 1291 (citing *Bass*, 143 F.3d at 1445).

3. Plaintiff Fails to State a Section 1983 Claim for Retaliation.

Insofar as Plaintiff is attempting to bring a retaliation claim under section 1983, that claim fails as well. With respect to prisoners’ claims of retaliation, “it has . . . been recognized that courts should approach prisoner claims of retaliation with skepticism and particular care due to the near inevitability that prisoners will take exception with the decisions of prison officials and because claims of retaliation are easily fabricated.” *Thomas v. Pichardo*, No. 08-22333, 2010 WL 3119623, at *12 (S.D. Fla. June 2, 2010) (internal quotations omitted). In order to state a claim for retaliation under section 1983, a plaintiff must allege three elements: (1) that his speech or act was constitutionally protected; (2) that the defendant’s retaliatory conduct adversely affected the protected speech or act; and (3) that there is a causal connection between the retaliatory actions and the adverse effect. *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005). Moreover, Plaintiff must plead facts indicating that he was subjected to some “adverse effect” which must be more than a “de minimis inconvenience” to the exercise of his First Amendment rights. *Id.* at 1252. The Eleventh Circuit has adopted an objective test as the standard for determining whether there has been an adverse effect. *Id.* at 1254. Under this analysis “a plaintiff suffers adverse action if the defendant’s allegedly retaliatory conduct would likely deter ‘a person of ordinary firmness’ from the exercise of First Amendment rights.” *Id.* This test is applicable to prisoners’ claims of retaliation. *Id.* at 1253, n.6.

Here, Plaintiff only avers that his proclivity to file grievances and lawsuits led “Jackson [and] Harris [to] deliberately and unlawfully retaliate against the plaintiff” on or about July 2, 2009, resulting in his transfer to “much harsher and more dangerous jail conditions.” D.E. 48 at 5. Therefore, although Plaintiff alleges that a constitutional violation occurred, the Complaint fails to allege facts that associate Harris or Jackson with that violation. *See White v. Thompson*, 2007 WL 2324613 (S.D. Ga. 2007) (in order to establish a causal link, conclusory allegations of retaliation without “some facts” that would indicate that the retaliatory act was in retaliation for filing grievances is not sufficient). Plaintiff simply makes general attacks regarding Defendants’ motivations, and fails to demonstrate how Defendants’ purported actions were an actual result of the many grievances filed by the Plaintiff. *See Crawford-El v. Britton*, 523 U.S. 574, 600 (1998) (holding that in order to state a valid retaliation claim, allegations must be more than “general attacks” upon a defendant’s motivations; plaintiff must produce “affirmative evidence” of retaliation from which a jury could find that plaintiff had carried his burden of proving the requisite motive); *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003) (prisoner may establish retaliation by “demonstrating that the prison official’s actions were ‘the result of his having filed a grievance concerning the conditions of his imprisonment.’”).

The Complaint also refers to a supposed “hit” that was put out on the Plaintiff upon his transfer to the “Miami-Dade County Main Jail” on or about May 1, 2010, and claims that an “official report of the incident...is maintained and available as evidence.” D.E. 48 at 6. However, Plaintiff once again fails to allege any relevant facts with sufficient specificity, offering no indication about what the “official report” contains while critically failing to state the effect of the “hit” itself, such as whether it resulted in any actual physical harm or prevented him from exercising his First Amendment rights in any way. Such vague and conclusory claims are precisely the type of allegations the Supreme Court and Eleventh Circuit have found wholly insufficient to withstand a motion to dismiss. *See Williams v. Brown*, 347 F. App’x, 2009 WL 2883496, at **4 (11th Cir. Ga. Sept. 10, 2009) (finding that inmate’s section 1983 claim for retaliation, which simply asserted that corrections officials “subjected [him] to a retaliatory negative transfer twice as far from [his] family,” did not raise Plaintiff’s right to relief against corrections officers above a speculative level and warranted dismissal) (citing *Twombly*, 550 U.S. at 555).

Plaintiff has also failed to offer any allegations demonstrating how Defendants' alleged acts were sufficiently "adverse" that they would have deterred a person of ordinary firmness from exercising his First Amendment rights. On the contrary, it is clear that Defendants' purported retaliation *did not* inhibit the Plaintiff from filing grievances after July 2, 2009, thereby indicating the absence of any "adverse" effect upon Plaintiff's ability to exercise his constitutionally protected rights. *See* Exhibit "A."

The absence of any "adverse effect" is further demonstrated by Plaintiff's filing of a grievance on October 6, 2009, in which he alleges that, he was "retaliatorily [*sic*] transferred from T.G.K. to Stockade [on September 25, 2009] . . . merely because I submitted grievances" and states that he went from a "single room with desk, toilet, sink, adequate space, privacy, storage for legal materials—to a top bunk in a severely overcrowded, more dangerous cell." *See* Inmate Grievance Form dated October 6, 2009, attached hereto as Exhibit "C."⁴ This grievance, which appears to partly form the basis for Plaintiff's section 1983 retaliation claim, clearly illustrates that Defendants' purported behavior did not apparently dissuade Plaintiff from taking the constitutionally protected actions he alleges were thwarted by threats of retaliation. In addition, Plaintiff filed a grievance on May 4, 2010, almost immediately after the supposed "hit" on his life transpired, complaining about the absence of witnesses at an unrelated hearing and making no mention of Jackson, Harris, or any form of retaliatory conduct as alleged in the Complaint. *See* Exhibit "A." Plaintiff also proceeded to file another grievance on July 15, 2010 alleging a denial of access to the courts unrelated to the case at bar, which once again makes no mention of Jackson, Harris, or any sort of retaliatory conduct. *Id.* These three aforementioned grievances indicate that Plaintiff was in no way deterred from exercising his First Amendment rights after Jackson and Harris allegedly orchestrated a "retaliatory transfer," as well as a purported "hit" on the Plaintiff.

⁴ Although Plaintiff's October 6, 2009 grievance makes no mention of Jackson or Harris, it does protest Plaintiff's transfer from Turner Guilford Knight Correctional Center ("T.G.K.") to the Training and Treatment Center ("T.T.C." or "Stockade") on September 25, 2009. Given that Jackson and Harris allegedly retaliated against the Plaintiff in July 2009 while he was incarcerated in T.G.K. and "caused [P]laintiff to be illegally transferred" to the Stockade because of his "proclivity to file grievances," it is evident that the transfer complained of in Plaintiff's October 6, 2009 grievance is the same "retaliatory transfer" cited in the Complaint.

Moreover, even if the Court finds that Plaintiff was somehow subjected to an “adverse effect,” the grievance filed by the Plaintiff on October 6, 2009 illustrates that this effect was not more than a “de minimis inconvenience” and therefore insufficient to state a claim for retaliation. Although Plaintiff’s Complaint nebulously states that Jackson and Harris “further caused the plaintiff to be illegally transferred to much harsher and more dangerous jail conditions,” Plaintiff’s grievance illuminates that these allegedly “harsher and more dangerous” conditions consisted of a denial of comfort, space, and privacy. *See* Exhibit “C.” This is precisely the type of “de minimis inconvenience” found insufficient to support a retaliation claim, as actions far more serious than simply being moved to a different prison have been held to be de minimis by courts in this Circuit. *See, e.g., Anderson v. McCalpin*, No. 5:04cv44, 2007 WL 2900445, at *4 (N.D. Fla. Sept. 29, 2007) (finding that inmate being held for twelve days in solitary confinement in a cell for disruptive prisoners was no more than a “de minimis inconvenience” and insufficient to state a claim for retaliation); *Thomas v. Latimer*, No. 4:07-CV-74, 2009 WL 536507 (N.D. Fla. Mar. 3, 2009) at *6 (holding a prisoner alleged only “de minimis inconvenience” where he complained of being held in solitary confinement for twenty days as a result of an inaccurate disciplinary report).

Ultimately, although the Eleventh Circuit uses an objective test for determining whether a defendant’s alleged actions were sufficiently “adverse” such that they would have deterred a person of ordinary firmness from exercising his First Amendment rights, “how plaintiff acted might be evidence of what a reasonable person would have done.” *Bennett*, 423 F.3d at 1252 (citing *Garcia v. City of Trenton*, 348 F.3d 726, 729 (8th Cir. 2003)). Here, in response to Defendants’ alleged retaliation and coordinated attempt on his life, Plaintiff made prompt and frequent use of the grievance process. Plaintiff was clearly not deterred in the slightest from exercising his First Amendment rights, and this is how anyone of ordinary firmness would respond. Accordingly, Plaintiff’s retaliation claim against Jackson and Harris is subject to dismissal with prejudice, and Jackson and Harris are entitled to qualified immunity.

C. Plaintiff’s Request for Declaratory and Injunctive Relief Must be Stricken.

Finally, Plaintiff also seeks declaratory relief in the form of “[a]dmissions from the defendant’s, [sic] each of them, accounting for their illegal actions” as well as injunctive relief requesting that the Court “[o]rder the defendant’s [sic], to maintain and provide all commissary

transaction records . . . provide all inmate trust account transaction records . . . provide grievance records and to perform grievance procedures pursuant to law and policy.” D.E. No. 48 at 8.

As an initial matter, it is clear that the Court has no power to award the relief Plaintiff seeks, such as imposing admissions from Jackson and Harris or ordering Jackson and Harris to maintain commissary transaction records, inmate trust account records, and perform grievance procedures “pursuant to law and policy.” Moreover, even if the Court *could* grant such relief, Plaintiff has not shown any basis for it. The Eleventh Circuit has held that “[p]ermanent injunctive relief requires three elements: (1) success on the merits; (2) continuing irreparable injury; and (3) no adequate remedy at law.” *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003) (citation omitted). For the reasons discussed above, Plaintiff cannot succeed on the merits of his claims. He never alleges that he has no adequate remedy at law, or that he is suffering a continuing irreparable injury—*nor could he*, as he is no longer housed in a Miami-Dade Corrections & Rehabilitation facility and thus no longer comes into contact with Jackson or Harris. *See Sears v. Thigpen*, 846 F.2d 1327, 1328 (11th Cir.), *cert. denied*, 488 U.S. 1046 (1989) (finding that “an inmate’s request for injunctive and declaratory relief in a section 1983 action fails to present a case or controversy once an inmate has been transferred.”); *Wahl v. McIver*, 773 F.2d 1169, 1173 (11th Cir. 1985) (same).

Because it is not within this Court’s power to grant the relief Plaintiff seeks, nor has he alleged any basis whatsoever for the issuance of such relief, that portion of the prayer for relief must be stricken.

IV. CONCLUSION

For the foregoing reasons, Defendants Gato B. Jackson and Louvenia Harris respectfully request that this Court dismiss Plaintiff’s Complaint with prejudice.

Stringer v. Jackson, et al.
Case No. 09-22905-Civ-Lenard/White

Respectfully submitted,

R. A. CUEVAS, JR.
MIAMI-DADE COUNTY ATTORNEY

By: s/Rodolfo A. Ruiz
Assistant County Attorney
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1.A.3 of the Local Rules of the Southern District of Florida, undersigned counsel certifies that he was unable to confer with Plaintiff regarding this motion because Plaintiff is currently incarcerated and is representing himself pro se.

s/Rodolfo A. Ruiz
Assistant County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the pro se party identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Rodolfo A. Ruiz
Assistant County Attorney

Stringer v. Jackson, et al.
Case No. 09-22905-Civ-Lenard/White

SERVICE LIST

Stringer v. Jackson, et al.
Case No. 09-22905-Civ-Lenard/White
United States District Court, Southern District of Florida

Thomas B. Stringer
No. 60633-004
Metropolitan Correctional Center
150 Park Row
New York, New York 10007

Pro Se

Served via U.S. Mail

Rodolfo A. Ruiz, Esq.
Assistant County Attorney
Email: rudyr@miamidade.gov

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*Counsel for Gato B. Jackson and
Louvenia Harris*

Served via CM/ECF Notice

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance

Control Number: <u>TGR 090815</u>	
Inmate Name: <u>Thomas Stinner</u>	Jail Number: <u>070101789</u> Date Prepared: <u>8-14-09</u>
Category: <u>FACILITY SUPERVISOR</u>	Housing Unit/Cell Number: <u>K 45</u>

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each compliant/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I – Provide Specific Details of Your Grievance:

On 8-13-09 at approx. 5:40 am., Corp. McGhee, upon inspection of my court bound legal file, removed 2 paper photo's, that I advised were of material witnesses in my case, that I am pro se, and that the photo's are a necessary and important part of my legal paperwork. Corp. McGhee politely advised me that she would not allow me to take the photo's to court and for me to place them into my personal property, which I did.

PART II – What Steps Have You Taken to Solve the Grievance?

Corp. McGhee I believe contacted her Sgt. on duty (by phone) to confirm her decision. She did not allow me to take the photo's as part of my legal paperwork.

PART III – What Remedy/Action(s) Are You Requesting?

Allow me to take my necessary legal paperwork to court and do not make improper determinations about what MDCR arbitrarily believes is or is not legal, other than what policy provides for ... contraband, security, etc.. I am PRO SE and need my entire legal file available.

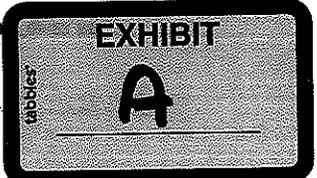
I Affirm that All Statements I Have Made are True and Correct.

[Signature] Inmate Signature 8-14-09 Date

Grievance Received By:

S. Johnson Correctional Counselor Name (Print) [Signature] Correctional Counselor Signature 8/14/2009 Date

Distribution: White Copy—RSB File Yellow Copy—Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy—Inmate



MIAMI-DADE COUNTY DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE GRIEVANCE

PART IV - On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected: INMATE STRINGER'S GRIEVANCE WAS REVIEWED AND WILL BE FORWARDED TO FACILITY SUPERVISOR

M. Kelly

On-Site RSB Supervisor Name

M. Kelly

On-Site RSB Supervisor Signature

8-14-09

Date

PART V - Grievance Recorded By:

L. E. Jones

Grievance Clerk Name

Lawrence Jones

Grievance Clerk Signature

08/14/09

Date

PART VI - Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

Inmate Thomas Stringer stated that he has an attorney at this time. Mr. Stringer was informed that he would need to provide documentation stating he is a pro se inmate. And once paperwork is received, that he would also submit a request with a list of items that he would need to take to court outside of just his legal papers; ie pictures, pens etc. to be approved by the facility supervisor.

This Grievance is Hereby:

Substantiated

Unsubstantiated

L. D. Daniels

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

L. D. Daniels

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

08-22-09

Date

PART VII - Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

[Signature]

Inmate Signature

8-22-09

Date

Distribution: White Copy - RSB File Yellow Copy - Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy - Inmate

MIAMI DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

Inmate Name: <u>Thomas Stringer</u>		Control Number: <u>762 090816</u>
Category: _____	Jail Number: <u>070 10789</u>	Date Prepared: <u>8-14-09</u>
Housing Unit/Cell Number: <u>1245</u>		

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I – Provide Specific Details of Your Grievance:

on 8-6-09 I hand delivered my commissary order to Ms. Harris for "indigent kit"
 On 8-13-09 Ms. Harris did not deliver an indigent kit to me. AS MDCR REFUSES to mail or postage my legal mail (as requested), the indigent stamped envelope is an important necessity for me.

PART II – What Steps Have You Taken to Solve the Grievance?

placed order for indigent kit, asked C.O. where is my indigent kit.

PART III – What Remedy/Action(s) Are You Requesting?

provide indigent kit ASAP as I have pending legal mail to send out.

I Affirm that All Statements I Have Made are True and Correct.

[Signature] 8-14-09
 Inmate Signature Date

Grievance Received By:
J. Johnson [Signature] 8/14/09
 Correctional Counselor Name (Print) Correctional Counselor Signature Date

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT Inmate Grievance

PART IV - On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected: YOUR GRIEVANCE FOR AN "INDIGENT SUPPLY PACK", COULD HAVE BEEN HANDLED WITH A SIMPLE REQUEST. YOUR STATEMENT OF MDCR REFUSING TO MAIL OR PROVIDE POSTAGE FOR YOUR LEGAL MAIL IS AN EXTREME EXAGGERATION AND A PURE CALCULATED MISREPRESENTATION OF THE FACTS. NEVERTHELESS, YOU WILL BE PROVIDED AN INDIGENT SUPPLY PACKAGE CONTAINING STAMP ENVELOPE.

M. Kelly
On-Site RSB Supervisor Name

M. Kelly
On-Site RSB Supervisor Signature

8-18-09
Date

PART V - Grievance Recorded By:

L.E. JONES
Grievance Clerk Name

Lawrence Jones
Grievance Clerk Signature

08/19/09
Date

PART VI - Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

This Grievance is Hereby:

Substantiated

Unsubstantiated

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

Date

PART VII - Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

Inmate Signature

Date

Distribution: White Copy - RSB File Yellow Copy - Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy - Inmate

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance

Inmate Name: <u>Thomas B. Stringer</u>	Jail Number: <u>D70101789</u>	Control Number: <u>T&K-090822</u> Date Prepared: <u>8-25-09</u>
Category: _____	Housing Unit/Cell Number: <u>K 45</u>	

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I – Provide Specific Details of Your Grievance:

single issue
 Counselors Kelly and Johnson are AGAIN denying/obstructing my access to the Courts, U.S. District Court, Volunteer Lawyers Project. In support: on 8-10-09 I properly submitted 2 separate medical release forms to cc Johnson to have NOTARIZED. Both those forms were sent to me by U.S. District Court Volunteer Lawyers Project, Ms. Yolanda Siders-Lewis with her instruction to have my signature Notarized then to send back the forms. CC Johnson immediately perused the forms

PART II – What Steps Have You Taken to Solve the Grievance?

submitted request for Notary with forms 8-10-09 to cc Johnson
 submitted 2nd request for Medical Form on 8-18-09 to cc Johnson
 Spoke with cc Johnson on 8-25-09 regarding issue.
 Submitted medical request form on 8-25-09
 Spoke with cc Kelly on 8-13-09 when he refused NOTARY and returned forms.

→ CONT PAGE

PART III – What Remedy/Action(s) Are You Requesting?

Immediately NOTARIZE my signature on the forms provided by U.S. District Court, Volunteer Lawyers Project. Provide instruction to cc's Kelly and Johnson not to interfere, delay, obstruct my legal, policy approved, requisites... they are not attorneys or legal advice advocates.

I Affirm that All Statements I Have Made are True and Correct.

[Signature] _____ 8-25-09
 Inmate Signature Date

Grievance Received By:

S. Johnson _____ *[Signature]* _____ 8/26/09
 Correctional Counselor Name (Print) Correctional Counselor Signature Date

8-25-09

(continuation of PART 1 of grievance)

and stated... "I don't recognize these forms"... "what is it you are trying to do"? She took the forms and advised she would check with her supervisor. On 8-13-09 Mr. Kelly returned both forms back to me claiming the forms were not in order, advising me to write another request for a different in-house medical form. On 8-18-09 I submitted that 2nd request to CC Johnson. On 8-25-09 CC Johnson now advises that she and Kelly told me to submit my request to medical directly. That is NOT TRUE and that is why I submitted the 2nd 8-18-09 request directly to CC Johnson, requesting the medical form or process. CC Johnson accepted the request and has NOT responded in the requisite 5 days to that request... except to say today 8-25-09 to submit a request to medical. This is not the first occasion of the Kelly/Johnson team mistaking their directions to me ultimately confounding the issues. On other occasions they are careful to provide written responses... have me sign for copies, etc... It is NOT the job of CC's Kelly and Johnson to REJECT OR REFUSE Court/Attorney provided documents that require and request NOTARY. Incidentally today I did submit a medical request form in an effort to comply with VLP's request. This deliberate denial/obstruction of NOTARY for court (VLP) documents violates my rights. I swear all statements are true and correct to the best of my knowledge and recollection.


Thomas B. Stringer
8-25-09

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

PART IV – On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected: REJECTED:
MANIPULATIVE - YOU ARE AGAIN MISREPRESENTING INFORMATION, AND ATTEMPTING TO MISLEAD BY FALSELY PURPORTING OCCURRENCE TO FIT YOUR ALLEGATIONS OF BEING DENIED ACCESS TO THE COURTS. ON AUG. 13, 2009, YOU WERE INFORMED BY ME THAT MEDICAL RECORDS UNIT HAS A FORM WHICH CAN BE USED TO ACCOMPLISH YOUR REQUEST TO RELEASE MEDICAL INFORMATION TO WHOM YOU DESIRE. THIS IS STANDARD FOR ALL INMATES, PER MEDICAL RECORD STAFF.

M. Kelly

On-Site RSB Supervisor Name

M. Kelly

On-Site RSB Supervisor Signature

8-27-09

Date

PART V – Grievance Recorded By:

Lit Jones

Grievance Clerk Name

[Signature]

Grievance Clerk Signature

08/27/09

Date

PART VI – Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

This Grievance is Hereby:

Substantiated

Unsubstantiated

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

Date

PART VII – Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

Inmate Signature

Date

Distribution: White Copy—RSB File Yellow Copy—Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy—Inmate

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

Inmate Name: <u>Thomas Stringer</u>		Control Number: <u>TK-09-0911</u>
Category: <u>FINANCE</u>	Jail Number: <u>070101789</u>	Date Prepared: <u>9-8-09</u>
Housing Unit/Cell Number: <u>K 45</u>		

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

negle
ssue
report

PART I – Provide Specific Details of Your Grievance:

MDCR deprives me of my property, money, commissary and violates D.S.O.P. 19-006. policy/procedure states -- "Up to 50% of new deposits to the inmate account will be used to pay the current negative balance. The remaining balance from the new deposits will be used to pay for commissary purchases and new fees." MDCR regularly and systematically applies amounts greater than 50% to balances and the remaining balance to commissary -- the complete OPPOSITE of policy. My account records and many others verify my claim.

PART II – What Steps Have You Taken to Solve the Grievance?

inquired of procedures related to spending from CC's Canelo and Johnson. Verbally received confusing and conflicting responses. requested and received D.S.O.P. 19-006 dated 6-23-03, provided to me via C.O. on duty 9-4-09.

PART III – What Remedy/Action(s) Are You Requesting?

① refund and make available for my commissary, all funds improperly taken from me as described in this grievance, since 11-19-07. ② refund ALL inmates funds taken in this manner that violates policy. ③ post informational posters describing MDCR's subsistence/commissary procedures in each housing unit/cell/Floor -- per policy. Thank you.

I Affirm that All Statements I Have Made are True and Correct.

[Signature] 9-9-09
Inmate Signature Date

Grievance Received By:

A. Johnson [Signature] 9/11/09
Correctional Counselor Name (Print) Correctional Counselor Signature Date

Distribution: White Copy—RSB File Yellow Copy—Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy—Inmate

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance

PART IV - On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected: INMATE THOMAS STRINGER HAS DEMONSTRATED THE TENDENCY TO CONVOLVE A GRIEVANCE WITH MORE THAN ONE ISSUE. NEVERTHELESS, BECAUSE HE IS ADDRESSING A SUBSISTENT FEE, I WILL FORWARD TO THE BUDGET & FINANCE BUREAU FOR RESOLUTION.

M. Kelly
On-Site RSB Supervisor Name

M. Kelly
On-Site RSB Supervisor Signature

9-11-09
Date

PART V - Grievance Recorded By:

L. E. JONES
Grievance Clerk Name

Lawrence Jones
Grievance Clerk Signature

09-11-09
Date

PART VI - Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

This Grievance is Hereby: Substantiated Unsubstantiated

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

Date

PART VII - Inmate Response: Accepted (Resolved) Rejected (Unresolved)

Inmate Signature

Date

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance Appeal

Control Number: 22905	
Inmate Name: [Redacted]	Inmate Number: [Redacted]
Category: Food Service	Housing Unit/Cell Number: [Redacted]
Appeal Date: 9-27-09	

PART I - Inmate Justification for Appeal

First, 2 1/2 months to receive and respond to a grievance is a dereliction of duty and policy. At least you've admitted to that. Second, "proper research" will reveal the FACT that Jello and broth only was served to me... WITNESSED BY MANY AND DOCUMENTED. You've designated my grievance as "unsubstantiated" but FAILED to explain why I was deprived of my prescribed meal. Deliberately delaying grievance does not account for dereliction of duty and policy. This documented and witnessed incident as reported in my grievance is therefore still unresolved and Mr. Thomas' convenient loss of memory or feigned non-recollection of the documented incident hardly constitutes "unsubstantiated".

Inmate Signature: [Signature] Date: 9-27-09

PART II - Division Chief or Director, Patient Care Services Response to Appeal

[Empty space for response]

Substantiated Unsubstantiated

_____ Division Chief or Director, Patient Care Services Name (Print)	_____ Division Chief or Director, Patient Care Services Signature	_____ Date
--	---	---------------

Note: The Division Chief or the Director, Patient Care Services Decision Concerning This Grievance is Final.

Inmate Signature

Date

MIAMI DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

stated 2nd reg.

Inmate Name: <u>Thomas Stringer</u>	Jail Number: <u>070101789</u>	Date Prepared: <u>6-27-09</u>
Category: <u>Food Service</u>	Housing Unit/Cell Number: <u>4-5</u>	Control Number: <u>TKW40618</u>

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I - Provide Specific Details of Your Grievance:

C.O. Johnson and those he stated he contacted denied me my medically prescribed diet meal at dinner on 6-26-09. C.O. Johnson directed me to eat a meal of jello and broth or that he would write that I refused to eat dinner. I politely insisted to speak with a Corp or Sgt. C.O. Johnson refused. I was deprived my meal as prescribed. This is an on-going and serious problem as it directly affects my health.

PART II - What Steps Have You Taken to Solve the Grievance?

at dinner and 2 subsequently times spoke w/ C.O. Johnson about problems) he advised he'd alert Corp. Jenkins and have her speak to me. No one ever spoke with me and the next shift advised that C.O. Johnson wrote that I refused my meal, in the log book, which is an inaccurate account of what occurred and intentionally misleading.

PART III - What Remedy/Action(s) Are You Requesting?

provide name and address for outside authority that regulates inmate diet (meals) sanction any staff that denied me my diet meal at dinner on 6-26-09 acknowledge problem and REASSURE that problems are being fixed.

NOTE* on 6-25-09 Mr. Thomas (Kitchen) advised that he'd oversee my diet being handled properly, the next day, ironically, the problem is worse than ever... why?

I Affirm that All Statements I Have Made are True and Correct.

[Signature] Inmate Signature 6-27-09 Date

Grievance Received By:

Correctional Counselor Name (Print)	Correctional Counselor Signature	Date
-------------------------------------	----------------------------------	------

**MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance**

PART IV – On-Site RSB Supervisor Comments:

An Explanation Must Be Provided If the Grievance is Being Rejected:

*Forwarded To
Food Services*

John D. E. Kelly
On-Site RSB Supervisor Name

[Signature]
On-Site RSB Supervisor Signature

06-29-09
Date

PART V – Grievance Recorded By:

L.E. Jones
Grievance Clerk Name

[Signature]
Grievance Clerk Signature

06/29/09
Date

PART VI – Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

This grievance was received by Food Services on September 16, 2009. I have researched it and do not know why you would receive only jello and broth. You are on a prescribed "no added salt" menu and that is what is prepared for you daily by kitchen staff. I spoke with Mr. Thomas and he was unaware of that particular problem and informed me that no one had advised him of a problem with your meal.

This Grievance is Hereby:

Substantiated

Unsubstantiated

P. Hallock Admin 3
Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

[Signature]
Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

9-17-09
Date

PART VII – Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

[Signature]
Inmate Signature

9-22-09
Date

Distribution: White Copy--RSB File Yellow Copy--Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy--Inmate

Inmate Grievance

REHAB SERVICES BUREAU PRE-TRIAL DETENTION CTY		Control Number: P10-05004
Inmate Name: 2010 MAY 25 PM 2:19 P. Hernandez	Jail Number: 070101789	Date Prepared: 5-4-10
Category: Disciplinary/Rehab Svc	Housing Unit/Cell Number: 6A4	

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I - Provide Specific Details of Your Grievance: RE: I/R #04587

On 5-4-10 @ 9:15am, cc Williams and cc Johnson conducted an illegal I/R hearing. They refused my witnesses; Silvio Hernandez, Freddy Baptista. I initialed and signed a form advising a my right to witnesses. I advised the Corp who issued the I/R, and detainer staff each say the other is responsible to acknowledge my witnesses and ALL staff involved REFUSE my right to have witnesses. The I/R illegally performed without DUE PROCESS

PART II - What Steps Have You Taken to Solve the Grievance?

advised numerous times that I wanted witnesses to my hearing; told ms. Williams, Mr. Johnson. The cc present witnessed my request also. Advised Corp who issued I/R that I wanted witnesses be advised that at the hearing my witnesses would be allowed.

PART III - What Remedy/Action(s) Are You Requesting?

- Remove the incident report from my records and All negative effects / consequences deriving there from.
- Train I/R Hearing staff to conduct legal, police cognizant hearings that are in accordance with law and due process.

I Affirm that All Statements I Have Made are True and Correct.

[Signature]
Inmate Signature

5-4-10
Date

Grievance Received By:

[Signature]
Correctional Counselor Name (Print)

[Signature]
Correctional Counselor Signature

5/5/10
Date

Inmate Grievance

PART IV - On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected:

2010 MAY 25 PM 2:19

On-Site RSB Supervisor Name

On-Site RSB Supervisor Signature

Date

PART V - Grievance Recorded By:

S. Darling, F.S.T.
Grievance Clerk Name

S. Darling, F.S.T.
Grievance Clerk Signature

5-25-10
Date

PART VI - Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

The charges listed on incident report P1045874 will be dismissed. However, once an incident report is generated, it can not be removed from the system.

This Grievance is Hereby:

Substantiated

Unsubstantiated

D. Killing, CC2
Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

[Signature]
Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

5/25/10
Date

PART VII - Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

[Signature]
Inmate Signature

5-26-10
Date

Distribution: White Copy - RSB File Yellow Copy - Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy - Inmate

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

Handed to cc Hernandez
07/25/10

KRU
6/18/10
6/18/10

Control Number: REJECTED		
Inmate Name: Thomas B. Stringer	Jail Number: 070101789	Date Prepared: 6-15-10
Category: Rehab. Svcs.	Housing Unit/Cell Number: 6A4 PTDC	

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms, (if applicable) used in an attempt to resolve your complaint.

SUBMITTING PER U.S. DIST. CT. INSTRUCTION

PART I - Provide Specific Details of Your Grievance: **KILLING AND DARLING OBSTRUCT**

DENY me lawful access to courts, legal pro se services, that harms me and prejudices my cases. Their (both) misconduct and dereliction of duty is deliberate and in violation of LAW AND POLICY as they DENY to process four (4) separate submitted, counseled on, grievances regarding: not providing razors, obstructing access to courts; pens, pro se phone use, also action remedy and inmate request forms are IGNORED... to cover-up for their unlawful actions against me.

PART II - What Steps Have You Taken to Solve the Grievance?

on 3-26-10 met w/Sgt. Clark & cc Killing re: razor and obstruction grievances.
on 4-7-10 met w/Lt. Smith & cc Killing re: pens, pro se phone, obstruction grievances.
submitted inmate requests to cc's NOTTAGE & HERNANDEZ re: grievances and their subjects --- no responses are provided, they've handed them in for processing.
NOTTAGE & HERNANDEZ BOTH ADVISE THAT KILLING IS HANDLING MY ISSUES and they Advise her.

PART III - What Remedy/Action(s) Are You Requesting?

immediately provide ALL grievance / action remedy / inmate request RESPONSES. SANCTION BOTH KILLING AND DARLING FOR OBSTRUCTING MY ACCESS TO COURTS AND INTERFERING WITH MY PRO SE TRIAL PREPARATION as they continue to deny me and restrict me due process, pro se access to courts... they violate LAW and are derelict in their duty.

I Affirm that All Statements I Have Made are True and Correct.

[Signature]

Inmate Signature

6/15/10

Date

Grievance Received By:

Correctional Counselor Name (Print)

Correctional Counselor Signature

Date

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT

Inmate Grievance

PART IV — On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected:

On-Site RSB Supervisor Name

On-Site RSB Supervisor Signature

Date

PART V — Grievance Recorded By:

Grievance Clerk Name

Grievance Clerk Signature

Date

PART VI — Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

Note: Lt. Smith went to discuss this issue with inmate Stringer on 6/21/10. He was taken on loan (U.S. Marshall) on 6/21/10, with an unknown return date. Copies of grievances were prepared and were going to be given to inmate Stringer at this time. Issues listed in the grievance have already been addressed.

This Grievance is Hereby:

Substantiated

Unsubstantiated

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

Lt. W. Smith / 6/21/10

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

6/21/10

Date

PART VII — Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

Inmate Signature

Date

NOTE: Inmate unable to sign transferred to US Marshall
[Signature]

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance

Inmate Name: <u>Thomas Stringer</u>		Control Number: <u>TK090720</u>
Jail Number: <u>07010178A</u>	Date Prepared: <u>7-7-09</u>	
Category: <u>COMMISSARY: COMM JACKSON</u>	Housing Unit/Cell Number: <u>4-5</u>	

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I -- Provide Specific Details of Your Grievance:

MDCR commits extortion, fraud and abuse of power (position as you FORCE me to accept a \$47.71 commissary order of items I DID NOT ORDER, under threat of losing my \$47.71 (money/property). Ms. Harris advised me, in the presence of witnesses (inmates and C.O. on duty at 8:45pm. on 7-2-09), during commissary delivery to the unit, that her boss, Mr. Jackson, does not allow her to accept back, erroneous orders.
* Continued on attached page →

PART II -- What Steps Have You Taken to Solve the Grievance?

on 6-25-09 spoke with Ms. Harris about missing chili item # 6172
on 7-2-09 spoke with Ms Harris about returning entire wrong order
Ms. Harris advised me to file a grievance, hence this grievance.

PART III -- What Remedy/Action(s) Are You Requesting?

provide commissary items per the ATTACHED commissary order, in full, back to me at the next commissary delivery to my unit, approx. \$47.00 of items to account for my loss, to satisfy this grievance.
investigate and fix this deliberate illicit problem.

I Affirm that All statements I Have Made are True and Correct.

[Signature]
Inmate Signature

7-7-09
Date

NOTE * 2 attachments
1 continuation page of Part I
1 commissary order form

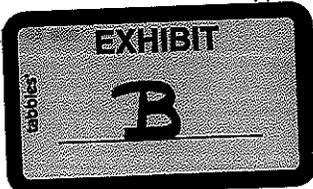
Grievance Received By:

Wanda CANELO
Correctional Counselor Name (Print)

[Signature]
Correctional Counselor Signature

7-8-9
Date

Distribution: White Copy—RSB File Yellow Copy—Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy—Inmate



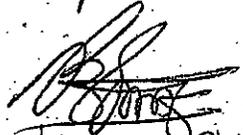
Thomas B. Stringer
070101789 7-6-09

continuation of Part I grievance

Ms. Harris seemed genuinely frustrated and apologetic, but REFUSED to take back my order, even as I advised her that it was entirely wrong. I had NO CHOICE but to accept the order under her authority. I am "pro se" on 2 of my open cases (as you know) and I MUST have stamped envelopes, stamps and writing materials to comply with court and legal requisites. I had ordered these items. This incident and practice is NOT ISOLATED as I and others suffer countless undue losses and damages as the result.

End of Part I.

I Affirm that ALL statements I have made in both parts of this grievance are true and correct.


Thomas B. Stringer
7-6-09

RESERVE COMMERCIAL NETWORK SALES
 P.O. BOX 17490
 ST. LOUIS, MO 63178-7490

NAME: STAINIER THOMAS SAFFRETT ORDER DATE: 6/25/09
 ORDER: 070101787 ORDER NUM: 77938
 BLOCK: TIER: DELLY R45 CTR NUM: 40350 1
 DATE: 06/25/09 CONTRACT: 201500 001 RES FOND BAL: 48.00
 PAGE: 1

QTY	ITEM#	ITEM#	ITEM DESCRIPTION	ITEM PRICE	TOTAL PRICE
1	8011	87004	KT DECAFDL RFX W/ZIP 12 OZ	3.15	3.15
1	8011	87005	6OZ GRAPE KOOL-AID CLEAR	2.90	4.05
1	8054	84980	RAGARONI 5 CHEESE 3 OZ	1.25	5.00
1	8055	84980	SPICY MAC 3 CHEESE 3 OZ	1.25	3.75
1	8080	85114	WHOLE SHAGANG 6OZ	1.75	8.75
1	8080	85125	WHT CHEDDAR POPCORN 5OZ	1.99	7.95
1	8119	8410	CA ROUND TORTILLA CHIPS	2.10	4.20
1	8167	81255	HOT SPICY PORK RINGS	.79	4.20
				SUB-TOTAL	44.59
				SALES TAX	3.12
				ORDER TOTAL	47.71
				FUND BALANCE	29

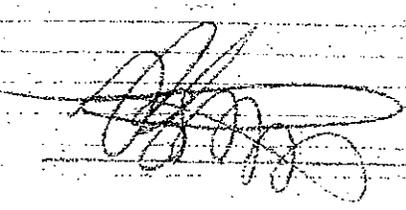
SHORTAGED ITEMS

QTY	ITEM DESCRIPTION	REASON
1	8119 CA ROUND TORTILLA CHIPS	INSUFFICIENT FUNDS
1	8167 HOT SPICY PORK RINGS	INSUFFICIENT FUNDS

ITEM SHORTAGES AND/OR DAMAGES HERE:

ITEM#	QUANTITY	CATEGORY/DESCRIPTION
-------	----------	----------------------

Ms. Harris advised her boss Mr. Johnson (97) will not take bags back... even though entire order was wrong in presence of C.O. on date 7-2-09 several inmates and advised that I should file a grievance... I have MANY problems

SIGNED: 

DATE: 7/2/09

MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance Appeal

Control Number: <u>10K090920</u>	
Inmate Name: <u>STRINGER, THOMAS</u>	Jail Number: <u>07-101789</u> Appeal Date: <u>07/22/09</u>
Category: <u>COMMISSARY</u>	Housing Unit/Cell Number: <u>F45</u>

PART I - Inmate Justification for Appeal:

Cmdr. G. Jackson fails to address the issue of my grievance as his response attempts to cover-up for his "Theft by Deception and/or Extortion Criminal Acts". Intentionally defrauding inmates of their money is NOT FRIVOLOUS. Mr. Jackson, Mr. Kelly, Ms. Harris all admit their practice of having inmates sign BEFORE an inspection is allowed. This crime benefits MDCR's commissary surplus and oversight and is witnessed by MANY. Mr. Jackson has refused to provide the order copy, a FORGERY, if it does exist, and violates Florida Statute where order records MUST be maintained. More criminal intent. Please provide REMEDY as described in my 7-20-09 sealed letter to Captain Fuller, given to Corp. Gilbert at 1:55 p.m. on 7-20-09, for delivery

Inmate Signature: [Signature] Date: 7-22-09

PART II - Division Chief or Director, Patient Care Services Response to Appeal

Substantiated Unsubstantiated

_____ Division Chief or Director, Patient Care Services Name (Print)	_____ Division Chief or Director, Patient Care Services Signature	_____ Date
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Note: The Division Chief or the Director, Patient Care Services Decision Concerning This Grievance is Final.

_____ Inmate Signature	_____ Date
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**MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT
Inmate Grievance**

Inmate Name: <u>Thomas B. Stringer</u>	Jail Number: <u>070101789</u>	Control Number: <u>Reject</u>
Category: _____	Date Prepared: <u>10-6-09</u>	Housing Unit/Cell Number: <u>B2 STOCKADE</u>

The inmate must complete and submit this form to a Correctional Counselor within 2 workdays of receipt. If an incident/situation affects more than one inmate, each inmate must personally submit a separate complaint/grievance. Also, if an inmate has more than one complaint/grievance, each complaint/grievance must be submitted on a separate Inmate Grievance form. You must state what or who is the subject of the grievance, related dates and places, and what affect the situation, problem, or person is causing. State the title of any policy or standard that may be the subject of your grievance, if applicable. Attach copies of all Inmate Action/Remedy Request forms (if applicable) used in an attempt to resolve your complaint.

PART I – Provide Specific Details of Your Grievance: On 9-25-09 I was retaliatorily transferred from T.G.K. to Stockade. I am being punished, suffering worse conditions, harsher conditions of confinement merely because I submitted grievances and addressed my legitimate complaints about violations of my rights and deplorable conditions of confinement and deprivation of food. Specifically the punishment and conditions I suffer are: single room with desk, toilet, sink, adequate space, privacy, storage for legal materials-to-a-top bunk in a severely overcrowded, more dangerous cell. Local legal mail delivered 3 weeks late after post mark due to transfer, etc... This improper retaliatory transfer without any due process, in which I suffer punishment and worse conditions is illegal. I've NEVER been disciplined in any manner for any wrongdoing.

PART II – What Steps Have You Taken to Solve the Grievance?
I contacted ACA, Internal Affairs, transfer staff (T.G.K./Stockade) Transfer staff indicated that I am being transferred, punished for being a "troublemaker", stating... "you must have pissed somebody off" both of which is entirely UNTRUE

PART III – What Remedy/Action(s) Are You Requesting?
Restore my conditions of confinement back to single room with desk, drawer for legal materials, more privacy --- return me to same conditions or better, prior to 9-25-09 transfer, as I did nothing to warrant this punishment.

I Affirm that All Statements I Have Made are True and Correct.

[Signature] _____ 10-6-09
Inmate Signature Date

Grievance Received By:
[Signature] _____ [Signature] _____ 10/9/09
Correctional Counselor Name (Print) Correctional Counselor Signature Date



MIAMI-DADE COUNTY DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE GRIEVANCE

07-101789

Stringer, Thomas

PART IV - On-Site RSB Supervisor Comments:

An Explanation Must Be Provided if the Grievance is Being Rejected: Grievance is being rejected because (1) inmate Stringer can not grieve being transferred to another facility and (2) inmate can not submit more than one complaint on a grievance form.

Gregory Rollins
On-Site RSB Supervisor Name

Gregory Rollins
On-Site RSB Supervisor Signature

10-9-09
Date

PART V - Grievance Recorded By:

Grievance Clerk Name

Grievance Clerk Signature

Date

PART VI - Facility Supervisor/Bureau Commander/CHS Nurse Manager of Designee Response:

This Grievance is Hereby:

Substantiated

Unsubstantiated

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Name

Facility Supervisor/Bureau Commander/CHS Nurse Manager or Designee Signature

Date

PART VII - Inmate Response:

Accepted (Resolved)

Rejected (Unresolved)

[Signature]
Inmate Signature

10-30-09
Date

COMPLAINT WAS ABOUT RETALIATION
an illegal action by staff and
absolutely Grievable.

Distribution: White Copy - RSB File Yellow Copy - Facility Supervisor/Bureau Commander/CHS Nurse or Designee Pink Copy - Inmate

DID NOT PROVIDE

Driver Control No.

FILED by PRG D.C.
MAY 13 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS B. STRINGER, plaintiff

CASE NO.: 09-CV-22905-JAL

VS.

REC'D by [Signature] D.C.
MAY 13 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

GATO B. JACKSON, ET AL., defendant's

PLAINTIFF'S NOTICE/INTENT TO FILE OBJECTIONS TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, THOMAS B. STRINGER, pro se, plaintiff, in forma pauperis, in-jail, does file this Plaintiff's Notice/Intent to File Objections to Defendant's Motion to Dismiss. In support:

On April 25, 2011 the plaintiff received "Defendant's Motion to Dismiss" dated docketed April 21, 2011 [DE #56].

The plaintiff is diligently preparing OBJECTIONS and respectfully requests the Court GRANT him until April 30, 2011 to submit his OBJECTIONS filing.

Metropolitan Correctional Center (MCC) is currently not providing timely; legal copies, postage, materials as certain staff the plaintiff MUST rely upon, such as, Ms. Flores, Law Library (inmate copier not available), copies not provided and Counselor Wingate who makes claims of restrictions, budget constraints and the like, directly affecting the plaintiff's abilities to timely submit his OBJECTIONS filing. More time is needed to accomplish preparing his filing.

***SPECIAL NOTE** MCC's legal department, Mr. Williamson and Counselor Wingate have stated that they DO NOT consider the plaintiff's legal mail as LEGAL MAIL, unless the envelope in which legal mail is sent, has the following written on it:

"LEGAL MAIL - OPEN IN PRESENCE OF INMATE ONLY"

And because the plaintiff has had MANY problems receiving his legal mail, the only way to assure proper and lawful handling, is for ALL PARTIES to address accordingly.

WHEREFORE the plaintiff respectfully requests the Court GRANT him until April 30th., 2011 to file OBJECTIONS, and ORDER ALL PARTIES to send ALL LEGAL MAIL pursuant to MCC (jail) requirements, as shown above.

Respectfully submitted this 9th day of May, 2011.

By: [Signature]
Thomas B. Stringer #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

CERT. OF SERVICE- Exact copy is sent to County Attorney Rodolfo Ruiz, Miami, FL 33128 also on May 9th., 2011. [Signature]

FILED by [Signature] U.S.C.
MAY 13 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Clerk of the Court
United States District Court, SDFL
400 N. Miami Ave.
Miami, FL 33128

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SPECIAL NOTICE TO CLERK OF COURT

Dear Clerk of Court,

I have THREE separate civil cases in various stages of litigation in this Court. I have had MANY problems of receiving my LEGAL MAIL. The Court has my correct address, but for some inexplicable reason legal mail has been; lost/returned/delayed, on numerous occasions as shown on the respective dockets. Metropolitan Correctional Center (MCC), the jail where I am housed, claims that unless my mails shows on the envelope:

"LEGAL MAIL - OPEN IN PRESENCE OF INMATE ONLY"

that any incoming mail without the required legal mail statement will be treated as regular mail and subject to; reading, copying, discarding, rejection, etc. And I have received legal mail directly from Judge Marcia G. Cooke, yet MCC claims it is not legal mail. MCC has directed me to advise all parties sending me legal mail to address my legal mail with the above bold statement.

For all of my cases before this Court, I respectfully request that all future correspondence, legal mail, be addressed accordingly, as shown above. The cases are:

08-CV-21877-MGC, 09-CV-22905-JAL, 10-CV-21487-DLG

I respectfully request that all future legal mail, correspondences are sent to me with the above required mailing statement, pursuant to lawful MCC rules, in the interest of timely receipt and proper handling of my legal mail.

Respectfully submitted this 9th day of May, 2011.

By: [Signature]
Thomas B. Stringer, #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22905-CIV-LENARD
MAGISTRATE JUDGE P. A. WHITE

THOMAS B. STRINGER, :
 :
 Plaintiff, :
 : ORDER SCHEDULING PRETRIAL
 v. : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 GATO B. JACKSON, et al., :
 :
 Defendants. :

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **September 30, 2011**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **October 14, 2011**.

3. All motions to dismiss and/or for summary judgment shall be filed by **November 4, 2011**.

4. On or before **November 18, 2011**, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before **December 2, 2011**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

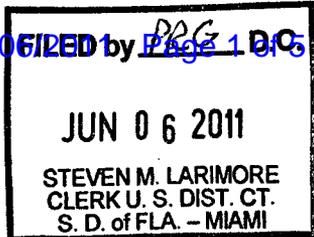
DONE AND ORDERED at Miami, Florida, this 1st day of June, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Thomas B. Stringer, Pro Se
Reg. No. 60633-004
MCC - New York
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

Rodolfo A. Ruiz, II, Esquire
Stephen P. Clark Center
111 N.W. First Street
Suite 2810
Miami, FL 33128

Hon. Joan A. Lenard, United States District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS B. STRINGER, plaintiff

CASE NO.: 09-22905-CV-JAL

vs.

GATO B. JACKSON, ET AL., defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, THOMAS B. STRINGER, plaintiff, pro se, in forma pauperis, in-jail, without legal experience and extremely limited legal resources making his good-faith efforts under varying ranges of duress and obstruction, AS REPORTED TO THE COURT, does file this Plaintiff's Response to Defendant's Motion to Dismiss, and in support offers the following to the Court:

1. The plaintiff received "Defendant's Motion to Dismiss" [DE# 56] on 04-25-11 and files this response at his earliest opportunity.
2. The defendant's, by and through their counsel contend and argue a myriad of both unsubstantiated and convoluted claims, citing cases that occasionally fall entirely flat as they attempt to re-state claims made by the plaintiff to suit the cited case. This is a bad habit to begin. The plaintiff admits he lacks legal experience and does not always explain the details necessary to reach thresholds or prongs. The plaintiff did do his best to describe what occurred.
3. The Court has determined already that this case may proceed against the defendant's for their retaliation; [DE #'s 32, 39]. And the plaintiff has only submitted an accumulation of his already filed claims, put into his Amended Complaint [DE #48]. Any subsequent claims are in support, as time goes on, to his original complaint. Magistrate Judge White and District Court Judge Lenard have decided that the case should proceed.
4. With specific regard to the "physical injury" argument raised by the defendant's, admittedly the plaintiff does not fully understand "the rules" and when he tries to read the cases cited by the defendant's, his understanding does not become any clearer. So, in the interest of fairness and good-faith, the plaintiff will re-state with more detail what "harm/loss/suffering and violations of his rights"

did occur as a result of the actions of the defendant's, if and when the Court will endeavor to conduct a hearing on the matter. The plaintiff must rely on expertise and integrity of the court for them to determine, under the particular circumstances of this "pro se, informa pauperis, in-jail, unduly oppressed litigant" whether or not his base, good-faith claims against the professional well practiced often bad-faith tactics of the defendant's, their counsel, meets basic criteria. In this case, it is clear and established that this lawsuit is a direct and peripheral consequence of continued illegal actions of MDCR and the defendant's named herein from REPORTED AND DOCUMENTED claims occurring during the litigation of U.S. District Court Case No. 08-21877-CV-MGC. In fact this Court advised this plaintiff to file a separate and new lawsuit for any violations of his constitutional rights on occasions of him reporting the difficulties he was having. If any question of meeting precedental thresholds or prongs exists, the plaintiff respectfully requests the court to conduct a hearing so that fairness to a plaintiff in his circumstances is given full and just consideration.

5. The plaintiff DOES NOT make any promises to "flesh out" evidence after discovery. The plaintiff maintains sworn affidavits from witnesses that support his claims. The plaintiff maintains records that support his claims. There is no cause for alarm that the plaintiff will go on a "fishing expedition". In fact the plaintiff intends only to utilize lawful subpoena to request relevant information to support his claims. To casually raise these type arguments is bad-faith and a waste of court's and plaintiff's time and resources as there is no evidence to warrant or support the argument. This is another example of the defendant's, their attorney's, making baseless claims only to steer the lawsuit in a direction that is less credible. The plaintiff would request that the court take a firm position against "professionals" using bad-faith tactics on a plaintiff that is not represented by counsel, who is untrained in law and indigent and in-jail. Justice has nothing to do with winning at any cost and the plaintiff has a sense that he is fighting both the defendant's (their professional team of attorney's) and the Court.
6. The plaintiff respectfully requests that the Court take into account that the defendant's attorney's, The County Attorney Office for Miami-Dade County has a clear and vested interest in the plaintiff losing this case, well beyond their

duties to Gato B. Jackson and Louvenia Harris (the defendant's), as they are directly beholden to their own agency, if you will. In fact, the plaintiff has reported many occasions of the Office of the County Attorney directing and/or ordering MDCR staff to obstruct/deny the plaintiff lawful legal materials and due processes and perhaps much worse. The plaintiff does not understand how such an obvious conflict of interest is allowed to persist under the circumstances of this case. The defendant's have complete and authoritative control over all aspects of the case. They control the plaintiff, the records, the defendant's, and given the fact that they have overstepped certain unlawful boundaries the Court must consider the manner in which this case proceeds.

7. The defendant's state that the plaintiff is no longer in custody under the care of MDCR, where there is no chance of contact with the defendant's. Again, the defendant's provide a partial, inaccurate claim. The fact is that MDCR sent the plaintiff "on-loan" out to federal custody, with full knowledge and expectation that he would return IMMEDIATELY upon resolving his federal case or upon order by the court for his trial. In any event, the plaintiff is expected to return back to MDCR and it is never more worrisome than at this very moment as to his safety and well-being.
8. The plaintiff has made it clear that any and all relief is best determined by the court and/or the jury, as law and verdict permit. The plaintiff believes that he is entitled to a bare minimum of financial relief as described in his complaint, but realizes that he is at the mercy of many rules and laws and of course the jury. The plaintiff is not an attorney and can only state what he thinks is fair and proper, and he should not be punished for technical glitches that would only serve to usurp justice. The plaintiff requested for leave to further amend his complaint if necessary. However the plaintiff does desire all relief sought in his complaint as permitted by law and jury verdict.
9. The plaintiff has clearly alleged "constitutional deprivations" and "causal connections", in fact the defendant's own admissions in the presence of witnesses are preserved by the plaintiff in "sworn to affidavits" supporting his claims. If some magical threshold is supposed to appear and be apparent, then I suppose we wouldn't need all the elaborate due processes law puts in place to get to the truth. Most if not all of the defendant's arguments only purport the plaintiff

not quite meeting certain standards, while suspiciously omitting any defenses for the documented claims he makes. There has never been any lawful explanation for the retaliatory transfers, yet the defendant's expect the plaintiff to enter into the realm of the impossible and describe how and why the defendant's did what they did. It is clear that a jury must determine whether or not the defendant's are guilty or innocent of the charges against them.

10. Both defendant's went beyond the call of duty to punish the plaintiff for only asserting his constitutional rights. Both defendant's are trained by MDCR not to retaliate against inmates for merely asserting their constitutional rights. The plaintiff maintains clear evidence to support both these truths. Statements made by the defendant's themselves and sworn to affidavits by numerous witnesses, documents and records further confirming their illegal actions and the harmful effects directly caused to the plaintiff. The defendant's are not in this case protected by qualified immunity.
11. The plaintiff is greatly concerned that providing every last detail of evidence is tantamount to simply telling the defendant's what they need to cover-up. The defendant's already enjoy a monumental advantage over the plaintiff as they are well practiced in deceit, cover-up, non-compliance with court orders, non-compliance with subpoena, non-compliance with U.S. Marshal service of process, as well as having the added benefit of a firms worth of professional attorney representation. The plaintiff does not make these accusations lightly. He maintains clear undisputed evidence on the record of the court to support these accusations. The Court has allowed these bad-faith tactics to pervade this and his other case against MDCR, certain of their staff, whom are represented by The County Attorney's Office. The only manner in which this case can justly prevail is via a full jury trial along with the Court granting due lawful broad discretion and less stringent review standards to the plaintiff.

WHEREFORE the plaintiff respectfully requests the Court deny the defendant's Motion to dismiss as this case must proceed to jury trial in the interest of Justice.

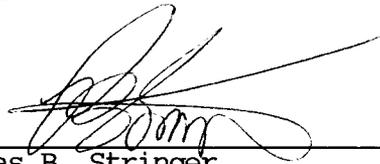
All statements and claims made herein are true and correct to the best of the Plaintiff's (Thomas B. Stringer) recollection and ability, pursuant to 28 USC §1746.

Respectfully submitted this 27th day of May, 2011.

By: 
Thomas B. Stringer #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

CERTIFICATE OF SERVICE

An exact copy of the foregoing is sent to Assistant County Attorney, Rodolfo A. Ruiz, Miami-Dade County Attorney's Office, 111 N.W. 1st. Street, Suite 2810, Miami, FL 33128, this 27th day of May, 2011.

By: 
Thomas B. Stringer

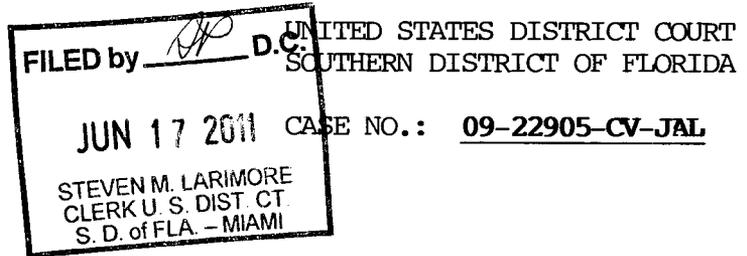
SPECIAL NOTICE

Metropolitan Correctional Center REQUIRES that all incoming inmate legal mail show the exact following statement on all outside envelopes:

"SPECIAL MAIL-OPEN ONLY IN PRESENCE OF INMATE"

so far ALL of the plaintiff's legal mail has been opened as general correspondence against and in violation of his constitutional rights. The plaintiff insists that all parties send all future legal mail in compliance with MCC/BOP policy, shown above.

(allegedly pursuant to CFR 540.18 and 540.19)



THOMAS B. STRINGER, plaintiff

vs.

GATO B. JACKSON, ET AL., defendants

PLAINTIFF'S OBJECTIONS TO REPORT OF MAGISTRATE JUDGE

COMES NOW, THOMAS B. STRINGER, plaintiff, pro se, in forma pauperis, in-jail, files this Plaintiff's Objections to Report of Magistrate Judge and in support offers the following to the Court:

1. The Court IGNORED the plaintiff's request for only two weeks of time to file his objections, as he explained many delay difficulties at his jail. The Court is willing to oblige the defendants request for extention of time, but not willing to oblige the plaintiff who is REPORTEDLY under difficult circumstances. The plaintiff is now required to generate excessive and redundant work. This type of bias is unfair to the plaintiff, as every stamp and every copy and every bit of legal work bears costs and burdens effectively hindering and occasionally obstructing his efforts at preparing this case for trial. The Court is reminded again and again to be more mindful of the DIFFICULT, OPPRESSIVE conditions that he is confined within and to afford him LAWFUL BROAD DISCRETION AND LESS STRINGENT review consideration.
2. The plaintiff respectfully requests the Court to consider his already filed "Plaintiff's Response to Defendant's Motion to Dismiss" and this "Plaintiff's Objections to Report of Magistrate Judge", both, accordingly and respectively.
3. The plaintiff does not recall that Miami-Dade Corrections and Rehabilitation Dept. (MDCR), named as a defendant in this case, being granted Eleventh Amendment Immunity as indicated by Magistrate Judge White in his report. In any event the plaintiff objects to MDCR being granted immunity. The plaintiff believes that he is able to prove that MDCR violated his rights resulting in actions from policy as clearly practiced by MDCR as a county agency.
4. Magistrate Judge White completely IGNORED the plaintiff's claims of conflict of interest and abuse of authority, dereliction of duty by the Office of the County Attorney and their representative attorney's as they directly ORDER certain of MDCR staff to obstruct the plaintiff in his efforts of access to the courts. It is also reported to the court that The Office of the County Attorney have quite possibly ORDERED MDCR staff to cause harm to the plaintiff. Certain MDCR staff have made statements to the plaintiff that "The County Attorney Office has advised me not to provide services to you", in the presence of numerous witnesses. It was also made known to the plaintiff that "other authorities are involved in seeing that you are shut down". The plaintiff cannot be more specific at this time. The plaintiff has reported these claims to the court without detail, each time an occasion of such event occurs. The plaintiff maintains proof of these claims.

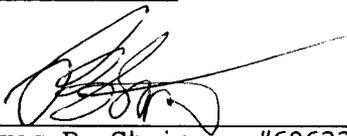
The plaintiff requests that the Court seriously consider the manner in which the Office of the County Attorney influences and prejudices this case.

5. The plaintiff MUST remind the Court that the defendant's mislead the Court when they claimed that the plaintiff would have no direct contact with the defendant's because he was no longer in their custody. The fact is that MDCR sent the plaintiff "OUT-ON-LOAN" to Federal Authority, and immediately upon resolution of his federal case, he will return back to MDCR's custody. It is therefore incorrect to deny the plaintiff's request for injunctive relief.
6. The plaintiff objects that he has not made sufficient claims for the issues of his denial of access to the courts. The plaintiff cited cases and prejudices directly impacted by the defendant's actions. The Court IGNORED those claims and summarily recommends dismissal. The plaintiff claims that both defendant's along with MDCR violated his rights of access to the courts and did so deliberately as they obstructed him from timely complying with court requirements, thus causing dismissals, re-filings, appeals and the like. ALREADY reported to this court in the filed complaints. Therefore the claim for violating the plaintiff's right of access to the court must remain part of this lawsuit.
7. The plaintiff has reminded the court time and again that his legal mail is being mishandled by MCC. It is being pre-opened, copied, forwarded, etc...and being treated as general correspondence, thus often delayed which has directly caused other problems of timely response to the court. MCC requires that inmate legal mail show the following on all envelopes, "**LEGAL MAIL-OPEN ONLY IN PRESENCE OF INMATE**". The plaintiff again reminds the court to put this statement on all of his legal mail.

The plaintiff, Thomas B. Stringer swears that all statements and claims made herein are true and correct under penalty of perjury pursuant to 28 USC §1746.

WHEREFORE the plaintiff respectfully requests the court considers both his filings of Objections and that all issues receive rulings by the court that are just and proper.

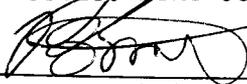
Respectfully submitted this 13th day of June, 2011.

By: 

Thomas B. Stringer #60633-004
Metropolitan Correctional Center
150 Park Row
New York, NY 10007

CERTIFICATE OF SERVICE

An exact copy of the foregoing is sent to: Rodolfo A. Ruiz, County Attorney Office, 111 N.W. 1st. Street, Suite 2810, Miami, FL 33128, sent 06-13-2011.

By: 

Thomas B. Stringer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22905-CIV-LENARD/WHITE

THOMAS B. STRINGER,

Plaintiff,

v.

GATO B. JACKSON, et al.,

Defendants.

**DEFENDANTS' OBJECTIONS
TO REPORT AND RECOMMENDATION**

Pursuant to Rule 72 of the Federal Rules of Civil Procedure and Rule 4(b) of the Magistrate Judge Rules, Defendants, GATO B. JACKSON ("Jackson") and LOUVENIA HARRIS ("Harris") (hereinafter collectively referred to as the "Defendants"), hereby file their objections to the Report and Recommendation of Magistrate Judge White (the "Report"), issued on June 2, 2011 [D.E. #59]. Specifically, Defendants object to the Report's recommendation that Defendants' Motion to Dismiss be denied in part because Plaintiff has purportedly stated a valid claim for retaliation against Jackson and Harris at this preliminary stage of the proceedings.

MEMORANDUM OF LAW

I. Defendants object to the Report's recommendation that Plaintiff has stated a valid Section 1983 claim for retaliation against Jackson and Harris.

As summarized in the Report, the Eleventh Circuit Court of Appeals found that Plaintiff should be permitted to amend his complaint in this case because "Stringer asserted that, after filing a grievance . . . defendants retaliated against him by 'improperly transferring him to another 'much harsher condition' jail, without due process, without any incident or disciplinary

reasons' . . . [and] [b]ased on a liberal construction of Stringer's assertions, he did allege a claim of First Amendment retaliation in connection with the grievances he filed." *Stringer v. Jackson*, 392 F. App'x, 759, 761 (11th Cir. 2010) (citing *Boxer X v. Harris*, 437 F.3d 1107, 1112 (11th Cir. 2006)) [D.E. #26]; *see also* Report at 4-5 [D.E. #59]. Although the Eleventh Circuit's aforementioned holding was limited only to Plaintiff's ability to amend his complaint after Magistrate Judge White's initial screening, the Report concludes that "defendants' argument that the plaintiff failed to state a claim for retaliation at this preliminary stage, *without further factual development* fails." Report at 5 [D.E. #59] (emphasis added). Magistrate Judge White's conclusion is misguided, however, given that Defendant's Motion to Dismiss does provide further factual development to counteract and overcome Plaintiff's alleged claim of retaliation in the form of Plaintiff's own Inmate Grievances. *See Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002) (permitting courts to consider documents that are central to the claim and obviously authentic in ruling on a motion to dismiss); *Jackson v. BellSouth Telecomm.*, 181 F. Supp. 2d 1345, 1353-54 (S.D. Fla. 2001) (determining that a court can consider "matters of public record, items appearing in the record of the case," and documents "refer[ed] to . . . in the complaint and . . . central to the plaintiff's claim").

In order to state a claim for retaliation under section 1983, a plaintiff must allege three elements: (1) that his speech or act was constitutionally protected; (2) that the defendant's retaliatory conduct adversely affected the protected speech or act; and (3) that there is a causal connection between the retaliatory actions and the adverse effect. *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005). The Eleventh Circuit has adopted an objective test as the standard for determining whether there has been an adverse effect: "[A] plaintiff suffers adverse action if the defendant's allegedly retaliatory conduct would likely deter 'a person of ordinary firmness'

from the exercise of First Amendment rights.” *Id.* Moreover, in determining whether a defendant’s alleged actions were sufficiently adverse, “how plaintiff acted might be evidence of what a reasonable person would have done.” *Id.* at 1252 (citing *Garcia v. City of Trenton*, 348 F.3d 726, 729 (8th Cir. 2003)). In this case, the many Inmate Grievances submitted by the Plaintiff *after* Jackson and Harris allegedly retaliated against him clearly indicate the absence of any “adverse effect” on Plaintiff’s ability to exercise his First Amendment rights. *See* Plaintiff’s Inmate Grievance Forms filed after July 2, 2009 [D.E. #56 at Exhibit “A”]. Here, Plaintiff was completely undeterred from exercising his First Amendment rights in response to Defendants’ alleged retaliation, and this is how anyone of ordinary firmness would respond. Given that Defendants’ Motion to Dismiss has established Plaintiff’s prompt and frequent use of the grievance process, Plaintiff’s section 1983 claim for retaliation against Jackson and Harris lacks any merit whatsoever and warrants dismissal.

In addition, a valid claim for retaliation under section 1983 requires that the “adverse effect” caused by defendant’s retaliatory conduct must be more than a “de minimis inconvenience” to the exercise of plaintiff’s First Amendment rights. *Bennett*, 423 F.3d at 1252. In his own Inmate Grievance Form dated October 6, 2009, which references the retaliatory transfer alleged in the Second Amended Complaint, Plaintiff states that he went from a “single room with desk, toilet, sink, adequate space, privacy, storage for legal materials—to a top bunk in a severely overcrowded, more dangerous cell.” *See* Plaintiff’s Inmate Grievance Form dated October 6, 2009 [D.E. #56 at Exhibit “C”]. Therefore the “harsher and more dangerous” conditions alleged in Plaintiff’s Second Amended Complaint simply consist of a denial of comfort, space, and privacy—precisely the type of “de minimis inconvenience” found insufficient to support a claim for retaliation. *See, e.g., Thomas v. Latimer*, No. 4:07-CV-74,

2009 WL 536507, at *6 (N.D. Fla. Mar. 3, 2009) (holding a prisoner alleged only “de minimis inconvenience” where he complained of being held in solitary confinement for twenty days as a result of an inaccurate disciplinary report); *Anderson v. McCalpin*, No. 5:04cv44, 2007 WL 2900445, at *4 (N.D. Fla. Sept. 29, 2007) (finding that inmate being held for twelve days in solitary confinement in a cell for disruptive prisoners was no more than a “de minimis inconvenience” and insufficient to state a claim for retaliation).

Ultimately, due to the incorporation by reference doctrine and the ability to take judicial notice of public records, the Court is in a position to dismiss the retaliation claim in Plaintiff’s Second Amended Complaint without converting Defendants’ Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment. *See Halmos v. Bomardier Aerospace Corp.*, 2010 WL 4941957 at *1 (11th Cir. Dec. 7, 2010) (holding that district court may take judicial notice of matters of public record without converting a Rule 12(b)(6) motion into a Rule 56 motion) (citing *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999)). The Eleventh Circuit’s prior ruling in this case was limited only to Plaintiff’s complaint at the initial screening stage, without the benefit of any factual development as provided in Defendants’ Motion to Dismiss. At this point in the proceedings, however, Plaintiff’s Inmate Grievance Forms, public records of undisputable authenticity central to Stringer’s claim, provide sufficient factual development to mandate dismissal of Plaintiff’s claim for retaliation.

II. Defendants object to Magistrate Judge White’s refusal to rule on qualified immunity at this stage of the proceedings.

Defendants also object to Magistrate Judge White’s erroneous conclusion that “[t]he facts are not sufficient at this time to enable the Court to make a determination of whether the defendants might be entitled to qualified immunity, and that issue may be decided at a later date when the facts are more developed.” Report at 6 [D.E. #59]. The Eleventh Circuit has expressly

held that qualified immunity can be raised through a Rule 12(b)(6) motion. *Ansley v. Heinrich*, 925 F.2d 1339, 1347 (11th Cir. 1991) (“We reiterate that qualified immunity is a question of law for the court to decide preferably on pretrial motions for . . . failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) . . .”). This is consistent with the principle that “[q]uestions of qualified immunity must be resolved at the earliest possible stage in litigation.” *Gonzalez v. Reno*, 325 F.3d 1228, 1233 (11th Cir. 2003). Further, the Eleventh Circuit has cautioned district courts that they cannot defer ruling on qualified immunity because it constitutes protection not merely from liability, but also from suit in general. *Collins v. Sch. Bd. of Dade County*, 981 F.2d 1203, 1204-05 (11th Cir. 1993) (determining that deferral of ruling on qualified immunity constitutes error and operates as a denial of immunity from suit). After all, the goal of qualified immunity is to eliminate a claim as soon as it becomes apparent that the claim is barred. *See Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (“One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.”). Therefore, Magistrate Judge White erred in his refusal to rule upon the qualified immunity issue at this stage of the proceedings.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that Magistrate Judge White erred in recommending that Defendants’ Motion to Dismiss [D.E. #56] be denied in part and Plaintiff’s retaliation claim be allowed to proceed. Defendants respectfully request that qualified immunity be recognized, and *all* of Plaintiff’s claims against Jackson and Harris be dismissed with prejudice.

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Telephone: 305.375.5151
Facsimile: 305.375.5611

By: s/Rodolfo A. Ruiz
Assistant County Attorney
Florida Bar Number: 21980
Email: rudyr@miamidade.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail on Friday, June 17, 2011 on all counsel or parties of record on the Service List below.

s/Rodolfo A. Ruiz
Assistant County Attorney

SERVICE LIST

Stringer v. Jackson, et al.
Case No. 09-22905-Civ-Lenard/White
United States District Court, Southern District of Florida

Thomas B. Stringer
No. 60633-004
Metropolitan Correctional Center
150 Park Row
New York, New York 10007

Pro Se

Served via U.S. Mail

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*Counsel for Gato B. Jackson and
Louvenia Harris*

Served via CM/ECF Notice