

EXHIBIT F

*Exhibit F*

**FLORIDA DEPARTMENT OF CORRECTIONS  
HEALTH SLIP/PASS**

(Exhibit F)

On 12-1-2010 at or about 8pm due to sudden swelling and pressure in the right Mandible Fracture Area, I claimed a Medical Emergency, was Escorted to Medical Where Nurse Meyer wrote this Pass for me to See Dr Poveda. I have not been able to Obtain a copy of my Department of Corrections Medical file showing this Medical Emergency on Wednesday night 12-1-2010 it is upon my information and belief part of a concerted effort to cover up denial of Plaintiff's Serious Medical Need. Plaintiff on this 12-1-2010 Wednesday night became Nauseous to the point of becoming sick on my stomach from the extreme pain and Swelling. RN Meyer gave Plaintiff an icepack for the large hematoma that developed on the rightside fracture area, I also asked RN Meyer about the Non-Narcotic pain releaver that had been prescribed at Key West Hospital, she stated that it should be filled any day now, and to keep looking for the call-out sheet. Plaintiff has since learned that you never put Ice on a hematoma only Hot compresses. Plaintiff reported to medical the following morning Thursday 12-2-2010 at 8am where officer Joseph was assigned to medical and I sat from approx 8am until 2:40pm never seeing defendant Poveda. There is no department of corrections record in my medical file which shows this Medical Emergency was ever claimed, that Plaintiff ever went to medical Wednesday night 12-1-2010.

The below-named inmate is authorized for:

- Bed rest lay-in From \_\_\_\_\_ To \_\_\_\_\_
- Low/bottom bunk From \_\_\_\_\_ To \_\_\_\_\_
- No shave From \_\_\_\_\_ To \_\_\_\_\_
- Restricted activity From \_\_\_\_\_ To \_\_\_\_\_
- Restrictions: \_\_\_\_\_

Other: From 12/2/10 To 12/2/10  
Visit to Medical at 8am  
See Dr Poveda

Inmate: Martin, Doris Authorized by: MEYER RN  
 DC# 74707 R/S adm by: [Signature]  
 Date of Birth 5-27-59 (Initial & Name Stamp)  
 Institution DCC Date: 12/1/10

**Health Slip/Pass**  
**DC4-701D (2/96)** White/Medical Yellow/Security Pink/Inmate

gave Plaintiff an icepack for the large hematoma that developed on the rightside fracture area, I also asked RN Meyer about the Non-Narcotic pain releaver that had been prescribed at Key West Hospital, she stated that it should be filled any day now, and to keep looking for the call-out sheet. Plaintiff has since learned that you never put Ice on a hematoma only Hot compresses. Plaintiff reported to medical the following morning Thursday 12-2-2010 at 8am where officer Joseph was assigned to medical and I sat from approx 8am until 2:40pm never seeing defendant Poveda. There is no department of corrections record in my medical file which shows this Medical Emergency was ever claimed, that Plaintiff ever went to medical Wednesday night 12-1-2010.

# EXHIBIT G

Exhibit G



# EXHIBIT H

*Exhibit H*

A

**DADE CORRECTIONAL INSTITUTION  
DAILY CALLOUTS-  
CALLOUT FOR THURSDAY,  
DECEMBER 23, 2010**

**TOTAL POPULATION: 1402**

<b>TOTAL:</b>	<b>1402</b>	<b>CLOSE:</b>	<b>908</b>
<b>WHITE:</b>	<b>558</b>	<b>MEDIUM:</b>	<b>322</b>
<b>BLACK:</b>	<b>780</b>	<b>MINIMUM:</b>	<b>157</b>
<b>OTHER:</b>	<b>64</b>	<b>COMMUNITY:</b>	<b>15</b>
		<b>OTHER:</b>	<b>0</b>

.....  
**\*\*ALL CALLOUTS ARE A WRITTEN ORDER; FAILURE TO COMPLY WILL RESULT  
IN A DISCIPLINARY ACTION!**

**\*\*ALL WORK SUPERVISORS ARE ENCOURAGED TO ATTEND PROGRESS  
REVIEWS**

**\*\*INMATES WHO CHOOSE NOT TO SHOW UP FOR PROGRESS REVIEWS WILL BE  
SUBJECT TO DISCIPLINARY ACTION**

**\*\*ALL INMATES TAKING CORRESPONDENCE COURSES OR INMATES THAT  
WOULD LIKE TO TAKE A CORRESPONDENCE COURSE, PLEASE CONTACT RELIGION**

.....  
**\*\*WOULD YOU LIKE A JOB IN FOOD SERVICE? SEND AN INMATE REQUEST TO  
CLASSIFICATION**

**\*\*INTERESTED IN BECOMING AN IMPAIRED INMATE ASSISTANT? SEND MS.  
KOEL IN CLASSIFICATION AN INMATE REQUEST**

.....  
**ALL INMATES: IT IS STRONGLY RECOMMENDED THAT YOU FAMILIARIZE  
YOURSELF WITH CHAPTER 33.601.731; REVOCATION OR SUSPENSION OF VISITATION**

.....  
**CLASSIFICATION TEAM OFFICERS:**

**MR. WILLIAMS, CLASSIFICATION SUPERVISOR  
MS. MCFADDEN, CORRECTIONAL SENTENCE SPECIALIST**

- |                 |                        |   |
|-----------------|------------------------|---|
| <b>TEAM #1:</b> | <b>MS. HARRIS</b>      | <b>(RELEASES) 6MTHS &amp; LESS</b>  |
| <b>TEAM #2:</b> | <b>MS. LEE</b>         | <b>DC#'S ENDING: 0, 1</b>   |
| <b>TEAM #3:</b> | <b>MR. MENDEZ</b>      | <b>DC#'S ENDING: 3, 7</b>   |
| <b>TEAM #4:</b> | <b>MS. BUTLER</b>      | <b>DC#'S ENDING: 4, 9</b>   |
| <b>TEAM#5:</b>  | <b>MS. THORNTON</b>    | <b>DC#'S ENDING: 2, 5</b>   |
| <b>TEAM#6:</b>  | <b>MR. H. WILLIAMS</b> | <b>DC#'S ENDING 6, 8</b>  |
| <b>TEAM#7:</b>  | <b>MS. PONCE</b>       | <b>OUTSIDE GROUNDS/DOT/BPK (NOT<br/>minimum custody inmates) Inmates are only assigned to Mrs. Ponce's team after they have been assigned to<br/>Outside Grounds/BPK/DOT. Not before.</b> |

**TEAM#8: MS. KOEL TCU**

.....  
**THE FOLLOWING IS A SCHEDULE FOR MONTHLY UPDATES FOR INMATE TELEPHONE LISTS.**

<b>DC ENDING WITH:</b>	<b>MONTHS FOR UPDATE ONLY:</b>
0 OR 5	JANUARY/JULY
1 OR 6	FEBRUARY/AUGUST
2 OR 7	MARCH/SEPTEMBER
3 OR 8	APRIL/OCTOBER
4 OR 9	MAY/NOVEMBER
NONE	JUNE/DECEMBER

**WHEN SUBMITTING YOUR PHONE LIST MAKE SURE TO INCLUDE YOUR PIN# AND DC# OR  
YOUR PHONE LIST WILL NOT BE PROCESSED. IF YOU ARE SUBMITTING A PHONE LIST AND IT  
IS NOT YOUR MONTH, YOUR PHONE LISTS WILL BE RETURNED TO YOU!**

**ANY MISSING INFORMATION WILL RESULT IN DELAY, IF UPDATES ARE RETURNED FOR  
INCOMPLETE OR CORRECTIONS; IT IS YOUR RESPONSIBILITY TO RETURN YOUR PHONE LIST  
TO CLASSIFICATION WITHIN THE ALLOTTED TIME PERIOD.**

**THERE WILL BE NO EXCEPTIONS!!!!**

**ADDRESS ANY REQUESTS CONCERNING YOUR PHONE LIST TO SECURUS, NOT  
CLASSIFICATION...**

.....

SANDO, FRANK	688055	A2130S	8:00 AM	Chapel M to F	Mathematic Instruction		
YAN, DANNY	M07511	A1125U	8:00 AM	Chapel M to F	Mathematic Instruction		
Martin, Carlos A.	144529	F3222L	9:00 AM	Classification	Legal Call		
BENNETH, CHRISTOPHER	891678	G2118U	1:15 PM	CLASSIFICATION	INTERVIEW		
MACHADO, LAZARO	487436	A1118L	1:30 PM	CLASSIFICATION	INTERVIEW		
RIVERA, EDUARDO	B00578	G1106U	1:45 PM	CLASSIFICATION	INTERVIEW		
FERRO, GENARO	090878	H3119L	2:00 PM	CLASSIFICATION	INTERVIEW		
SEIFERT, HARRY	139516	A2111L	2:15 PM	CLASSIFICATION	INTERVIEW		
BROWNLEE, LENNY	189918	H3222U	2:30 PM	CLASSIFICATION	INTERVIEW		
VAUGH, TIMOTHY	B06694	E1119L	9:00 AM	CLASSIFICATION	ICT		
LELAND, STEPHEN	K07336	D1108U	9:00 AM	CLASSIFICATION	ICT		
HABERSHAM, DAREN	86341	C2102U	9:00 AM	CLASSIFICATION	ICT		
BROWN, SAMUEL	424096	E1118U	9:00 AM	CLASSIFICATION	ICT		
RAMOS, ROGER	448080	D1102U	9:00 AM	CLASSIFICATION	ICT		
WASHINGTON, SHELLY	651626	C1125L	9:00 AM	CLASSIFICATION	ICT		
SCHEER, DANIEL	663023	D2140S	9:00 AM	CLASSIFICATION	ICT		
GRAPP, JAMES	723748	C2125L	9:00 AM	CLASSIFICATION	ICT		
JOHNSON, LETTRICE	M30220	G1103U	9:00 AM	CLASSIFICATION	ICT		
MACE, TIMOTHY	897468	A2102L	9:00 AM	CLASSIFICATION	ICT		
BACKES, RONALD	270201	A1112S	9:00 AM	CLASSIFICATION	ICT		
YAN, DANNY	M07511	A1125U	9:00 AM	CLASSIFICATION	ICT		
CAMACHO, IVAN	T12200	F1209L	9:00 AM	CLASSIFICATION	ICT		
WOODARD, JACKIE	59921	H1121S	9:00 AM	CLASSIFICATION	ICT		
RINKINS, MICHAEL	401841	F1107L	9:00 AM	CLASSIFICATION	ICT		
MUHAMMAD, KASHIF	598410	A2134S	9:00 AM	CLASSIFICATION	ICT		
HARRIS, TIMOTHY	E12300	F1107U	9:00 AM	CLASSIFICATION	ICT		
WILLIAMS, MONEE	M15691	H1216U	9:00 AM	CLASSIFICATION	ICT		
WILLIAMS, MARTRAY	M38391	H2211U	9:00 AM	CLASSIFICATION	ICT		
ANDRE, DANIEL	W25900	G2114L	9:00 AM	CLASSIFICATION	ICT		
BLAND, WILLIAMS	130341	D1105L	9:00 AM	CLASSIFICATION	ICT		
QUINITCHETT, LANCE	L68080	C1146S	9:00 AM	CLASSIFICATION	ICT		
GERHART, CHARLES	B09147	D1130S	9:00 AM	CLASSIFICATION	ICT		
PARRA, AANDRES	L70797	C2120U	9:00 AM	CLASSIFICATION	ICT		
CURRY, MICHAEL	416097	G3110U	9:00 AM	CLASSIFICATION	ICT		
COHEN, HOWARD	688097	I1109S	9:00 AM	CLASSIFICATION	ICT		
IVORY, ROBERT	B09023	E2148S	9:00 AM	CLASSIFICATION	ICT		
NEAL, ELLIOT	102077	F1103U	9:00 AM	CLASSIFICATION	ICT		
REID, MATTHEW	T35647	H3104U	9:00 AM	CLASSIFICATION	ICT		
RICHARDSON, LONNIE	D00017	A1102L	9:00 AM	CLASSIFICATION	ICT		
GONZALEZ, GERARDO	444414	A1120L	9:00 AM	CLASSIFICATION	ICT		
EDMONDSON, TERRENCE	M26004	D1120U	9:00 AM	CLASSIFICATION	ICT		
BLACK, CLAYTON	640364	C2101L	9:00 AM	CLASSIFICATION	ICT		
JACKSON, TRAVIS	669119	H3114U	9:00 AM	CLASSIFICATION	ICT		
FREDERICK, ISAAC	668639	C1118L	9:00 AM	CLASSIFICATION	ICT		
ACOSTA, ROBERT	M13529	D1106U	9:00 AM	CLASSIFICATION	ICT		
DOWNNS, KILBY E.	M38449	C2108U	9:00 AM	CLASSIFICATION	ICT		
RUFF, ALAN	644545	F1118L	9:00 AM	CLASSIFICATION	ICT		
OLAVARRIETA, PEDRO	M62615	F1211U	9:00 AM	CLASSIFICATION	ICT		
ABDELGHANI, FAICAL	L75095	D1114S	9:00 AM	CLASSIFICATION	ICT		
SEARCY, CURTIS	N16092	A2101U	9:00 AM	CLASSIFICATION	ICT		
CHIPMAN, BRIAN	R16382	E2116U	9:00 AM	CLASSIFICATION	ICT		
NASH, ERNEST	51575	E2133S	9:00 AM	CLASSIFICATION	ICT		
MONTANA, JOSE	129872	D2120U	9:00 AM	CLASSIFICATION	ICT		
GRINER, CHARLES	299576	F1106U	9:00 AM	CLASSIFICATION	ICT		
CABRERA, RAUL	191686	D1122U	9:00 AM	CLASSIFICATION	ICT		
MORALES, ARTURO	982338	C2144S	9:00 AM	CLASSIFICATION	ICT		
CHRISTIAN, TERRANCE	T19206	F1112U	9:00 AM	CLASSIFICATION	ICT		
POLING, WILLIAM	Y44998	G2104L	9:00 AM	CLASSIFICATION	ICT		
ZALEWSKI, PATRICK	L37926	F1203U	9:00 AM	CLASSIFICATION	ICT		
BITZ, CHRISTOPHER	L48706	F1118U	9:00 AM	CLASSIFICATION	ICT		
JONES, TASHAWN	B03818	H2202U	9:00 AM	CLASSIFICATION	ICT		
HOPKINS, JESSE	189248	H2112U	9:00 AM	CLASSIFICATION	ICT		
CRANE, JOHN	674346	E1108L	9:00 AM	CLASSIFICATION	ICT		
JAMES, WILLIE	633006	F2108L	9:00 AM	CLASSIFICATION	ICT		
PEARSON, JESSE	676248	H1214U	9:00 AM	CLASSIFICATION	ICT		
PIERRE, JONAS	770648	C1117U	9:00 AM	CLASSIFICATION	ICT		
FARRUGIA, RICKY	813808	A1134S	9:00 AM	CLASSIFICATION	ICT		
STAERKER, SHAWN	Y28752	E1130S	9:00 AM	CLASSIFICATION	ICT		
JOHNSON, IVAN	D26257	C1101U	9:00 AM	CLASSIFICATION	ICT		
CASON, HAROLD	504549	C1123L	9:00 AM	CLASSIFICATION	ICT		
VARNUM, DANIEL	L52958	D2107U	9:00 AM	CLASSIFICATION	ICT		
HOLIDAY, STEVEN	447297	H1202U	9:00 AM	CLASSIFICATION	ICT		
PETROZZO, MATTHEW	B09150	D1121U	9:00 AM	CLASSIFICATION	ICT		
BOLDEN, CHRISTOPHER	M64567	D1110U	9:00 AM	CLASSIFICATION	ICT		
DAUGHERTY, ARCHIE	D10154	D2121U	9:00 AM	CLASSIFICATION	ICT		
Miller, George	R24031	G1220L	9:00 AM	CLASSIFICATION	ICT		
Garcia, Gilberto	T0031	D1128S	9:00 AM	CLASSIFICATION	ICT		
RENDER, KEVIN	L15347	H3209L	9:00 AM	CLASSIFICATION	ICT		
MARTIN, PERRY	747017	A2148L	9:00 AM	CLASSIFICATION	ICT		
MURGITROYD, KEVIN	R33978	C1146S	8:00 AM	Education	Transition Class		
MUSTIPHER, HENRY	139684	A1148L	8:00 AM	Education	Transition Class		
O'CONNOR, SEAN	138044	G3216U	8:00 AM	Education	Transition Class		

*assigned Security orderly, I work 7 days a week*

*Exhibit H Assigned Security orderly Job*

EXHIBIT I

### CONSULTANT'S REPORT

NO PROCEDURE(S) MAY BE PERFORMED WITHOUT PRIOR APPROVAL BY THE REGIONAL MEDICAL EXECUTIVE DIRECTOR, DEPARTMENT OF CORRECTIONS

Additional History:

51 y/o m s/p BLUNT TRAUMA TO FACE ~ 7 WEEKS AGO SUSTAINING NON-DISPLACED R/L MANDIBLE FR.

Findings:

NO FACIAL EDEMA.  
↳ MOBILITY OF MANDIBLE.  
↳ OCCCLUSION PARADOXICAL.  
↳ VESTIBULAR SWELLING.  
↳ SSOE.

Recommendations:

- ① CONT. SOFT DIET.
- ② NO SURGERY NEEDED.
- ③ R/U PAX.

*[Handwritten signatures]*

# EXHIBIT J

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
DADE CORRECTIONAL INSTITUTION

OFFICE OF HEALTH SERVICES

December 1, 2010

MEMORANDUM

TO: All Medical Staff

FROM: Dr. Julio Poveda ~~Dr. Julio Poveda~~ **CHO**  
Chief Health Officer ~~Dr. Julio Poveda~~  
**Dr. C.I.**

RE: **Vacation**

Be advised that I will be on vacation starting December 3 – December 14, 2010. During my absence Curtis Dwares, ARNP will be acting CHO. If you have any questions or you require approval for medical treatment, please contact him.

Thank you.

cc: Ms. Dena Tate, S.H.S.A.

# EXHIBIT

42 U.S.C.A. § 1997e(A)

11-24-2010 log # 1011-463-140

12-1-2010 log # 1012-463-031

wrote Grievance administrator on 12-20-10 legal Mail log # 8079-8080, Wrote Grievance administrator citing time constraint Violation, legal Mail log # 8137, Received Receipt on 3-7-2011 log # 11-6-06375  
O9D (No Response Received (Grr Proc) dated 2-23-11

Paragraphs # 49, 50, 55

Exhaustion of Grievance Procedure

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

Received  
Assf. Warden's Office

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

1011-403-140

NOV 29 2010

TO:  Warden

Assistant Warden

Secretary, Florida Department of Corrections

From: Martin Perry

K

749019

7H

Last

First

Middle Initial

Number

Date Correctional Institution

Institution

Part A - Inmate Grievance

Sir,  
After being injured during my work assignment at Key West Housing Authority's property on Kennedy drive, I was transported to Key West Hospital Emergency room where an MRI was done revealing a double fracture in my foot. The Nurse overseeing my treatment on 11-16-2010 advised my work supervisor that I needed to be transported to Miami Hospital where an Oral Surgeon would treat and repair my injuries. My work supervisor, after advising Big Pine, was ordered to have me, as well as the CPRon, medical information discharged, and transport me back to Big Pine, I was then transported back to Dade where I stayed in the infirmary until 11-18-10 when I was transported to South Florida Reception Center to get a final X-Ray that confirmed the findings of the MRI from 11-16-2010. He was transported back to Dade infirmary, where I spent the night and I was subsequently released back into open population on 11-19-2010. Sir, I am glad to hear the fact that it is now 11-24-2010 as I write this, my foot has been in severe pain since 11-16-2010 and as it is now 11-24-2010, my foot is healing, albeit wrong. I respectfully request that you address medical staff shortcomings in my medical treatment, thank you for your time.

Respectfully submitted  
Martin Perry

11-24-2010  
DATE

Martin Perry 749019  
SIGNATURE OF GRIEVANT AND D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 1  
# Signature

INSTRUCTIONS

DEC 08 2010

PART B - RESPONSE

<u>MARTIN, PERRY</u> INMATE	<u>747017</u> NUMBER	<u>1011-463-140</u> GRIEVANCE LOG NUMBER	<u>DADE C.I.</u> CURRENT INMATE LOCATION	<u>A2148L</u> HOUSING LOCATION
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Your formal grievance has been received and reviewed. You are scheduled for surgery soon. You are prescribed a special diet and have been given a slow eating pass.

Also, your pain medication was renewed. If you run out of pain medication please access sick call.

Grievance denied.

You may appeal and obtain further administrative review of your complaint by acquiring Form DC11-303, completing and forwarding it with attachments to the Inmate Grievance Administrator, 2601 Blair Stone Road, Tallahassee, Florida, 32399-2500. If you do not appeal, take the form and attachments to the mailroom receipting.

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL RECORD/CARE INFORMATION INTENDED FOR THE ADDRESSEE ONLY. UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Dr. Julio Poveda, CFO  
SIGNATURE AND TYPE OR PRINTED NAME  
OF EMPLOYEE RESPONDING

*W. Churchill*  
SIGNATURE OF WARDEN, ASST. WARDEN, OR  
SECRETARY'S REPRESENTATIVE

12-6-10  
DATE

COPY DISTRIBUTION - INSTITUTION / FACILITY  
 (2 Copies) Inmate  
 (1 Copy) Inmate's File  
 (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE  
 (1 Copy) Inmate  
 (1 Copy) Inmate's File - Inst./Facility  
 (1 Copy) C.O. Inmate File  
 (1 Copy) Retained by Official Responding

**PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)**

RETURN TO:

MARTIN, PERRY                      747017                      1011-463-140                      DADE C.I.                      A2148L  
NAME                                      NUMBER                      GRIEVANCE LOG NUMBER                      CURRENT INMATE LOCATION                      HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

07H (INADEQUATE TREATMENT (MEDICAL))

11/29/10  
DATE

1011-463-140  
GRIEVANCE LOG NUMBER

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

Received  
Asst. Warden's Office

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

1012-403-031

DEC 02 2010

TO:  Warden  Assistant Warden  Secretary, Florida Department of Corrections  
From: Martin, Perry K 997017 Dade Correctional Institution  
Last First Middle Initial Number Institution

7A

Part A - Inmate Grievance

On 11-29-2010 I was called to medical for bloodwork as well as an EKG. I met Dr. Julio Poveda for the first time. Dr. Poveda wrote me Florida Department of Corrections Health Slip/Passes for Mechanical Diet, Slow Eating, as well as Limited Activity Passes. I explained I am developing an infection in the area of my Broken Jaw. While Mr. Poveda wrote the passes, where he applied his rubber stamp. He dated it 11-19-2010. It was 11-29-2010 when I consulted with Dr. Poveda. On the night of 11-30-2010 I received another pass in mail written by Dr. Poveda that was un-intelligible, and again dated 11-19-2010. Why is Dr. Poveda false dating these passes, I had no contact with him other than 11-29-2010.

12-1-2010  
DATE

Perry Martin 997017  
SIGNATURE OF GRIEVANT AND D.C.

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 1  
# Signature

INSTRUCTIONS

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-103, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).  
When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through routine institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on: \_\_\_\_\_ Institutional Mailing Log #: \_\_\_\_\_  
(Date) (Received By)

DISTRIBUTION: INSTITUTION/FACILITY INMATE (2 Copies)  
INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE  
CENTRAL OFFICE INMATE INMATE'S FILE - INSTITUTION/FACILITY  
CENTRAL OFFICE INMATE FILE CENTRAL OFFICE GRIEVANCE FILE

DEC 15 2010

PART B - RESPONSE

MARTIN, PERRY INMATE	747017 NUMBER	1012-463-031 GRIEVANCE LOG NUMBER	DADE C.I. CURRENT INMATE LOCATION	A2122U HOUSING LOCATION
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Your formal grievance has been received and reviewed. Dr. Poveda made a human error. There is no evidence that Dr. Poveda is falsifying passes.

Grievance denied.

You may appeal and obtain further administrative review of your complaint by acquiring Form DC11-303, completing and forwarding it with attachments to the Inmate Grievance Administrator, 2601 Blair Stone Road, Tallahassee, Florida, 32399-2500. If you do not appeal, take the form and attachments to the mailroom receipting.

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL RECORD/CARE INFORMATION INTENDED FOR THE ADDRESSEE ONLY. UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Poveda M.D. CHO  
DADE, FLA.

12-15-10

SIGNATURE AND TYPED OR PRINTED NAME  
OF EMPLOYEE RESPONDING

SIGNATURE OF WARDEN, ASST. WARDEN, OR  
SECRETARY'S REPRESENTATIVE

DATE

COPY DISTRIBUTION - INSTITUTION / FACILITY

- (2 Copies) Inmate
- (1 Copy) Inmate's File
- (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE

- (1 Copy) Inmate
- (1 Copy) Inmate's File - Inst./Facility
- (1 Copy) C.O. Inmate File
- (1 Copy) Retained by Official Responding

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

MARTIN, PERRY                      747017                      10-6-39669                      DADE C.I.                      A2122U  
NAME                                      NUMBER                      GRIEVANCE LOG NUMBER                      CURRENT INMATE LOCATION                      HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

07H (INADEQUATE TREATMENT (MEDICAL))

12/22/10  
DATE

10-6-39669  
GRIEVANCE LOG NUMBER

*Grievance to Secretarys Office  
No Response as of 3-1-2011  
(Exhaustion of Administrative Remedies)*

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

<u>MARTIN, PERRY</u> NAME	<u>747017</u> NUMBER	<u>10-6-39670</u> GRIEVANCE LOG NUMBER	<u>DADE C.I.</u> CURRENT INMATE LOCATION	<u>A2122U</u> HOUSING LOCATION
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I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

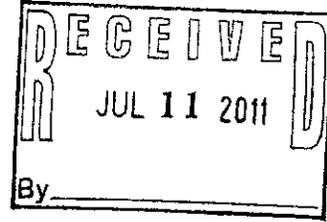
07A (GENERAL MEDICAL (MEDICAL))

12/22/10  
DATE

10-6-39670  
GRIEVANCE LOG NUMBER

*Grievance to Secretarys Office  
No Response as of 3-1-2011  
(Exhaustion of Administrative Remedies)*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI-DADE-DIVISION

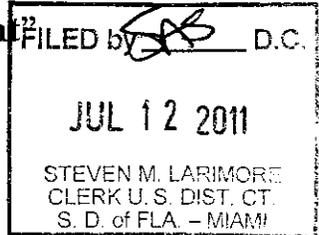


Perry Keith Martin,  
Plaintiff,

Case No.: 11:20965  
Magistrate Judge: P.A. White  
"Supplemental Complaint"

v.

Edwin G. Buss, et. al.  
Defendant(s). /



The Plaintiff(s): Both [Status Report] and [Amended Complaint] Pursuant to Both F.R. of Civil P. Rule (15)(A) and Pursuant to Article (1) Section (9) of the Florida Constitution.

COMES NOW, the Plaintiff, Perry Keith Martin, acting as [*pro se*] who does respectfully move this Honorable Court, pursuant to both Federal Rule(s) of Civil Procedures Rule #15(A) and Pursuant to Article (1) Section (9) of the Florida's Constitution under (**Due Process**) and (**Equal Protection Clause(s)**) and thereafter the Plaintiff states this instant (**Status Report**) is to inform this Court of the Plaintiff's current status and also, (This instant Amendment and/or Supplements) is to expend the record to show the additional (**Defendant(s)**) and (**Evidence**) and to (**Amended**) request the plaintiff does state the following "**complaint**" in support of such request:

**I. JURISDICTION & VENUE**

- 1) This is a civil action authorized by **42 U.S.C. Section 1983**, to redress the deprivation, under color of State Law, of Rights secured by the Constitution of the United States. The Court has jurisdiction under **28 U.S.C. Section 1331 and 1343(A)(3)**.

- 2) The United States District Court for the Southern District, Miami-Dade Division is an appropriate venue under **28 U.S.C. Section 1391(b)(2)** because it is where the event giving rise to this claim occurred.

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**II. PLAINTIFF**

- 3) Plaintiff, Perry Keith Martin, is and was at all times mentioned herein a prisoner in the care and custody of the Florida Department of Corrections. He is currently confined in Dade Correctional Institution, in Florida City, Florida.

**III DEFENDANT(S)**

- 4) Defendant, Walter McNeal, whom was the overseer of the Florida Department of Corrections during alleged civil rights violation, who was responsible for the professional care and protection of all prisoners incarcerated in the State of Florida Prisons at all material time has acted under color of State Law and is sued in his individual and official capacity.
- 5) Defendant, William Churchwell, who is an employee under the Policy and Procedure of the Florida Department of Corrections and is responsible for the professional care and custody of prisoners housed at Dade Correctional Institution, at all material times, has acted under color of State Law and is sued in his individual and official capacity.
- 6) Defendant, James Schweinsburg, (Schweinsburg) whom is an employee under the Policy and Procedure of the Florida Department of Corrections and is responsible for the professional care and custody of prisoners housed at Big Pine Key Road Prison #426. At all material times, has acted under color of State Law and is sued in his individual and official capacity.

- 7) Defendant, Kelly Birge (Birge) whom is an employee under the Policy and Procedure of the Florida Department of Corrections and is responsible for the professional care and custody of prisoners housed at Big Pine Key Road Prison # 426. At all material times, has acted under the color of State Law and is sued in his individual and official capacity.
- 8) Defendant, Kirk Sergeant, (Sergeant), whom is an employee under the Policy and Procedure of the Florida Department of Corrections and is responsible for the supervision, care, custody and control of prisoners house at Big Pine Key Road Prison #429. At all material times, has acted under color of State Law and is sued in his individual and official capacity.
- 9) Defendant, Curtis Dewares (Dewares), whom is an employee under the Policy and Procedure and under contract with the Florida department of corrections and is responsible for providing proper medical care and treatment of prisoners housed at Dade Correctional Institution. At all material times, has acted under color of State Law and is sued in his individual and official capacity.
- 10) Defendant, Julio Poveda, (Poveda), whom is an employee under the Policy and Procedure and under contract with the Florida Department of Corrections and is responsible for providing proper medical care and treatment of prisoners housed at Dade Correctional Institution. At all material times, has acted under color of State Law and is sued in his individual and official capacity.
- 11) Plaintiff, Perry Keith Martin, as an inmate residing in a State prison facility is under the lawful care, custody, and control of the Florida Department of Correction and its employees.
- 12) The Defendants have acted and continues to act out under color of State Law at all time relevant to this complaint.

13) Perry Keith Martin, (Martin), is and inmate incarcerated in the Florida Department of Corrections, presently housed at Dade Correctional Institution, (D.C.I.).

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**“FACTS”**

- 14) On February 9<sup>th</sup> 2011, Plaintiff was once again taken to NOVA Southeastern University Maxillofacial Facility, located in the 3<sup>rd</sup> floor of Broward General Hospital in Broward County by officers Shelby and Roberts.
- 15) The Plaintiff was examined and interviewed by several new M.D.M. oral surgeon specialist, not the same as the 2 other visits. Martin talked freely with an oral surgeon named M.D.M. Labode. Doctor Labode told Plaintiff that all NOVA clinic staff were under the impression that Plaintiff didn't want corrective surgery. When Martin asked where they (**NOVA Clinic**) got that information and impression from, no one responded.
- 16) Plaintiff, asked Doctor Labode how envasive this surgery would be, he stated **“it will be like shooting a knatt off the wall with a shotgun.”** It was during this 3<sup>rd</sup> and final consultation that upon Martin's information and belief, the **“unknown”** up until this point M.D.M. surgeon specialist name is Doctor Kaltman. As the written record procured by plaintiff of the February 9<sup>th</sup> 2011 visit state **“Patient has reapport with NOVA clinic Dr. Kaltman.”**
- 17) Plaintiff alleges, as the written record reflects of a January 26<sup>th</sup>, 2011. Dental visit, “severe occlusual discrepancies. Anterior open bite,” and the DC4-702 form under other pertinent information **“Re-EVALUATE FOR SURGICAL CORRECTION OPTION”** It is Martins allegation that Dade never intended to carry out the **“special instructions”** Plaintiff signed

at the emergency room on November 16<sup>th</sup> 2010. Plaintiff contends since his arrival to Dade infirmary. Big Pine Key and all named Defendants never intended to have Martin's prescribed special instructions carried out.

- 18) Plaintiff contends that the medical records reflect "severe occlusal discrepancy resulting in **limited chewing capacity,**" leaving Martin to suffer extream anxiety. Pain in the mandible break area, infection, misaligned teeth, extream weight loss, causing plaintiff to be in a weakened immune system state due to weight loss down to 126 pounds as medical records procured reflect. See: Exhibit (A).
- 19) Plaintiff contends, as the written records reflects two final grievances sent out legal mail Log# 8137 Wednesday February 23<sup>rd</sup> 2011 receipt received on March 7<sup>th</sup> 2011 Log# 11-606375 no response received (**GRV-Proc**) it was only through the receiving of these last 2 grievances to the secretaries office did plaintiff received any meaningful medical treatment, and action taken. See Exhibits (B).
- 20) Plaintiff contends, as the medical records reflect, as well as all submitted documents in the original section 1983 complaint state.
- 21) All named defendants from Big Pine Key as well as Dade Correctional Institution upper administration showed plaintiff total disregard to plaintiffs serious medical need, demonstrated in the working of plaintiff 7 days a week for approx. 59 hours a week. Total disregard to medical passes written restricting Martin, Pass written on February 25<sup>th</sup> 2011 for "**bed rest lay-in**" by nurse J. Dewares who witnessed plaintiff working as she returned from her lunch brake.
- 22) Plaintiff was ordered to work replacing exit signs for the health and safety sergeant Dixon in the visitation/administration building on February 28<sup>th</sup> 2011.

- 23) Plaintiff contends as a result of the new D.O.C. secretary's office, Edwin G. Buss did plaintiff receive the appropriate response, and on March 11<sup>th</sup> 2011 Martin was transported to reception/medical center where mandible union surgery was performed on March 17<sup>th</sup>, 2011. 121 days after the "**special instructions**" signed by plaintiff at key west hospital emergency room.
- 24) The surgery was performed by M.D.M. Andrew Skigen at Memorial Hospital Jacksonville. Oral Surgeon specialist Andrew Skigen repositioned the right side mandibular fracture site and implanted a "Reconstruction plate" which drastically stabilized the right side fracture area.
- 25) Doctor Skigen explained that the right side fracture area healed "exactly where it was" after receiving injury on November 16<sup>th</sup> 2010 exactly what plaintiff cited in original initial grievance Log# 1011-463-140 signed by both defendants Poveda as well as Churchwell, signed denied. See Exhibit (C).
- 26) As a result of the extremely envasive surgery plaintiff has nerve damage and permanent numbness in the lower lip right side break area. T.M. J. Pain that was not alievated from surgery and teeth alignment is still not restored.
- 27) As of July, Plaintiff has not been able to procure the medical file from the March 17<sup>th</sup> procedure at memorial hospital Jacksonville after several attempts to do so. It is not in Department of Corrections Medical or dental files.
- 28) Plaintiff contends as the medical records reflects that Plaintiff was placed on a full liquid diet at Lake Butler Reception/Medical Center as Martins mouth was wired shut for 4 weeks, during which time plaintiffs body weight went from 126 pounds March 14<sup>th</sup> 2011, as D.O.C. Medical Records reflects to 140 pounds upon arrival back at Dade Correctional on May 13<sup>th</sup> 2011. Clearly establish all elements in original complaint. See Exhibit (D).

- 29) Plaintiff alleges as the enclosed documents reflect all of Martins initial 303 emergency grievances were received at the secretaries office in Tallahassee in December of 2011, all grievances filed at the institutional level, denied, forwarded to the secretarys office, under Defendant Walter McNeal. See Exhibit (E).
- 
- 30) On or about April 15<sup>th</sup>, 2011 while at reception medical center Martin received all relevant grievances back “**appeal approved**” signed and dated by Pilar Tournay 11SC responding employee on March 18<sup>th</sup> 2011 one day after corrective surgery was prformed, grievance Log# 1011-463-140, Log# 10-6-39031, Log# 10-6-39669, Log# 10-6-39670 all “**appeal approved**” See Exhibit (E).

### LEGAL CLAIMS

- 31) Plaintiff realleges and incorporates by reference paragraphs 1-61 in initial complaint and paragraph 1-33 in this supplemenat complaint.
- 32) Defendants, **McNeal, Churchwell, Schweinsburg, Birge, Sergeant, Poveda, and Dewares**, violated plaintiffs eighth amendment rights for equal protection of the law in regards to being deliberately denied proper medical treatment by not promptly carrying out the prescribed medical treatment. And in being denied through deliberate indifference, those actions caused plaintiff to realize extream pain and suffering a second time, that delay in providing proper care has cause Martin to suffer further permanent damage in way of damage nerves in the placement of a reconstructive plate in the right side mandible area, which could have been avoided had all named defendants carried out the special instructions prescribed by the medical professional at lower keys medical center, on 11-16-2010.

33) The Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs describe herein. Plaintiff has been and will continue to be irreparably injured by the conduct of all named defendants unless this court grants the damages and injunctive relief which plaintiff seeks.

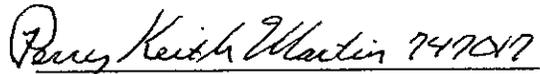
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### CONCLUSION

The plaintiff states that this instant pleading has been filed in both (**good faith**) and in the (**interest of justice**).

### UNNOTARIZED OATH

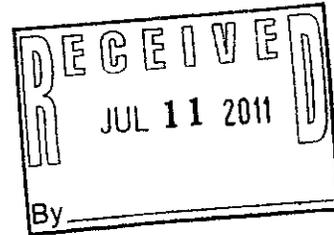
Under the authority of Section 92.525 of Florida Statutes and See as in *Shearar v. State*, 628 So.2d 1103 (Fla. 1993). The plaintiff sates that this (**oath**) and (**motion**) was submitted under the penialtes of perjury. The plaintiff states that he has read the foregoing and all the facts are true and correct. Under the penialtes of perjury.

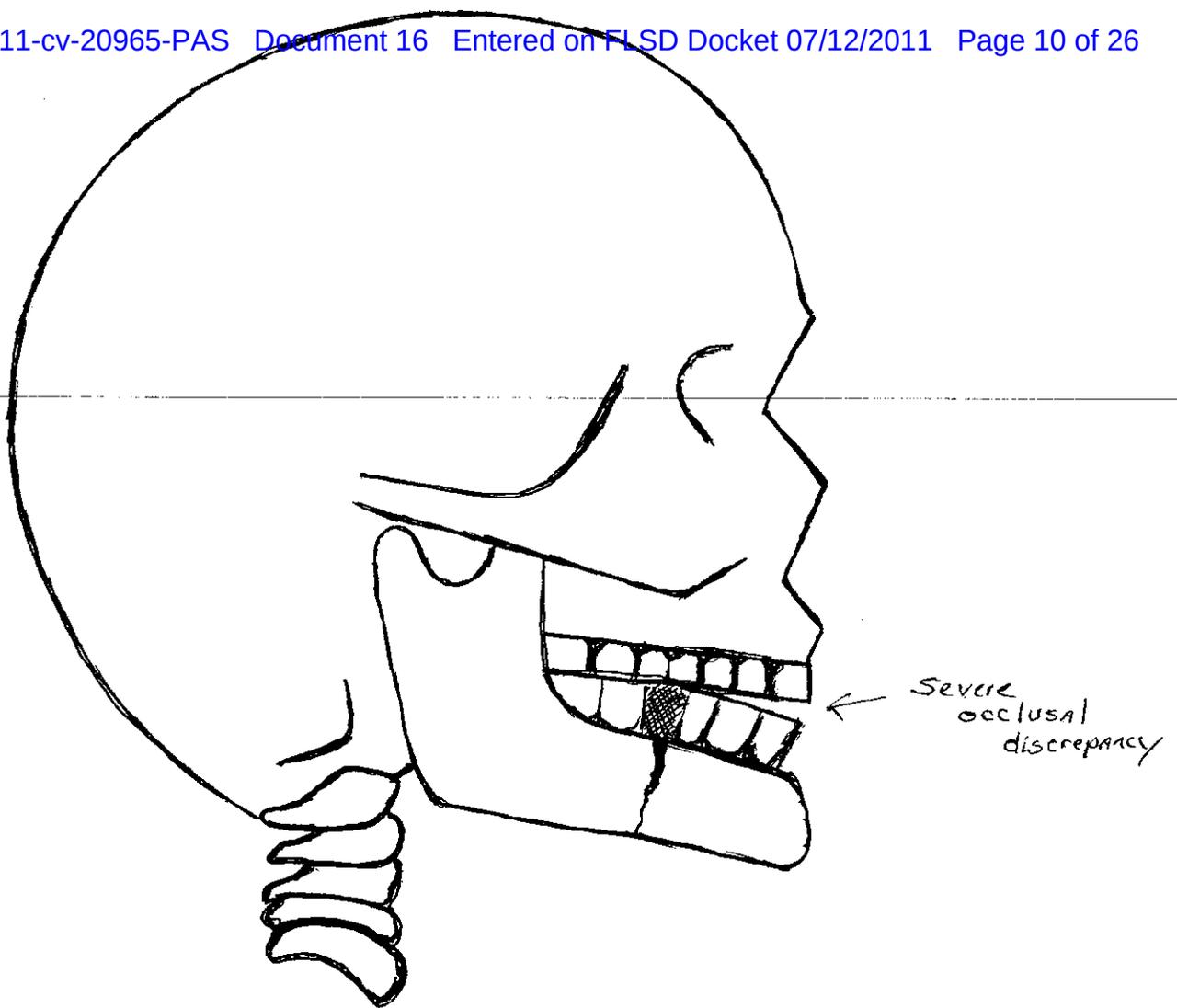
  
Perry Keith Martin, DC# 747017

**CERTIFICATE OF SERVICE**

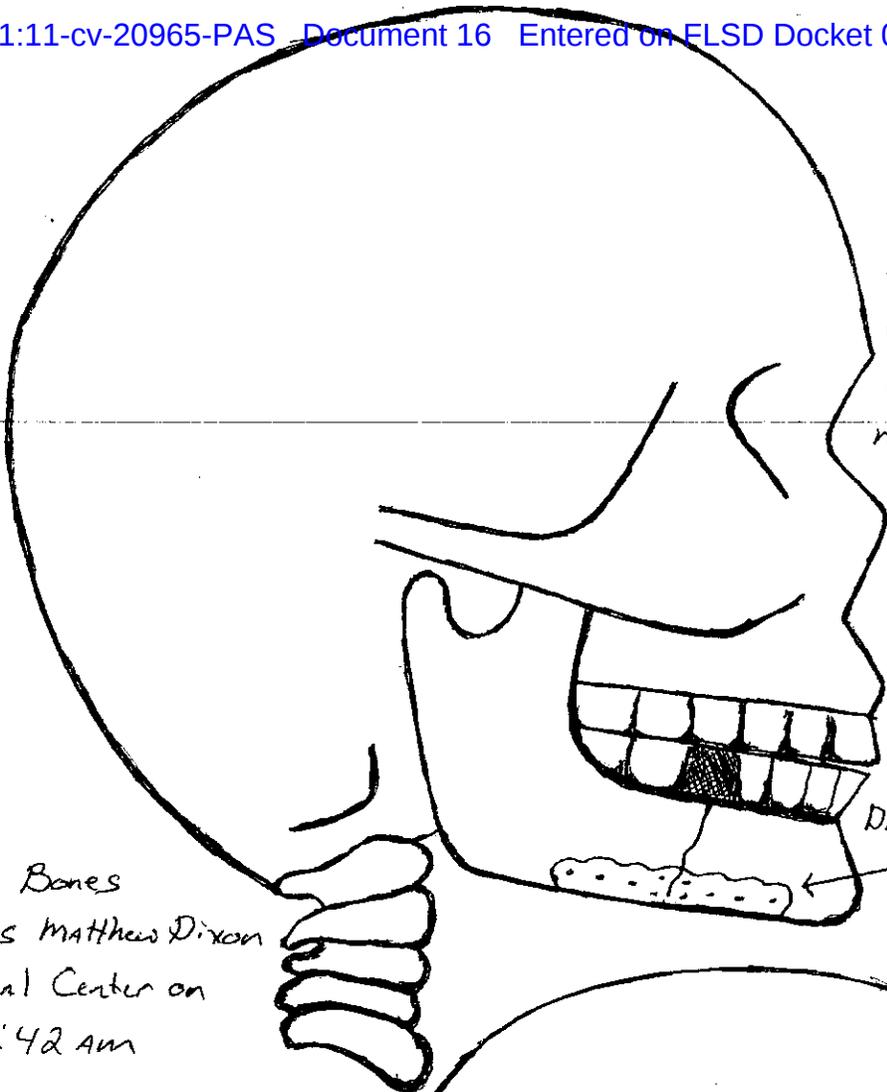
I hereby certify that a true and correct copy of the foregoing has been furnished by the U.S. mail to: Clerk of Court, United States District Court, Southern District of Florida, at 400 N. Miami Ave, Room #8 no9, Miami, Florida 33128-7716. This 11<sup>th</sup> day of July 2011.

*Perry Keith Martin # 747017*  
Perry Keith Martin, DC# 747017  
Dade Correctional Institution  
19000 S.W. 377<sup>th</sup> Street  
Florida City, FL 33034





On 11-16-2010 at Key West Hospitals Emergency Room being triaged Plaintiff plainly states "Jaw not aligning right". On 11-24-2010 Plaintiff submitted an emergency 303 Grievance log # 1011-463-140 to defendant William Churchwell telling him of my Jaw misalignment and explaining the severe Pain Plaintiff has been subjected to. Grievance was denied, and signed by both defendants Churchwell and Poveda. MDM Oral Surgeon Specialist Dr Andrew Skigen explained to Plaintiff that the rightside Mandible break Area essentially healed partially right where it was from the initial Injury, and that the severe Pain was from the flexing of this break area and Grinding of the two bones. Mandible Union Surgery was performed on 3-17-2011. Plaintiff contends had the special Instructions been carried out and Jaw Properly set in place on November 16th, 2010. There never could have been a need for Surgery at all.



A Separate fracture through the right mandibular Body, Just Anterior to the remaining right mandibular molars

metal Plate installed by D.M.D Andrew Skigen, at Jacksonvilles Memorial Hospital on March 17, 2010 121 days after injury

of facial Bones  
ology Results Matthew Dixon  
cc Keys Medical Center on  
-2010 at 10:42 AM

oste Mandibular fracture

fracture at the left mandibular  
mus that virtually extends  
cross the base of the left  
mandibular condyle. This does  
appear to extend to the Alveolar  
A.I.

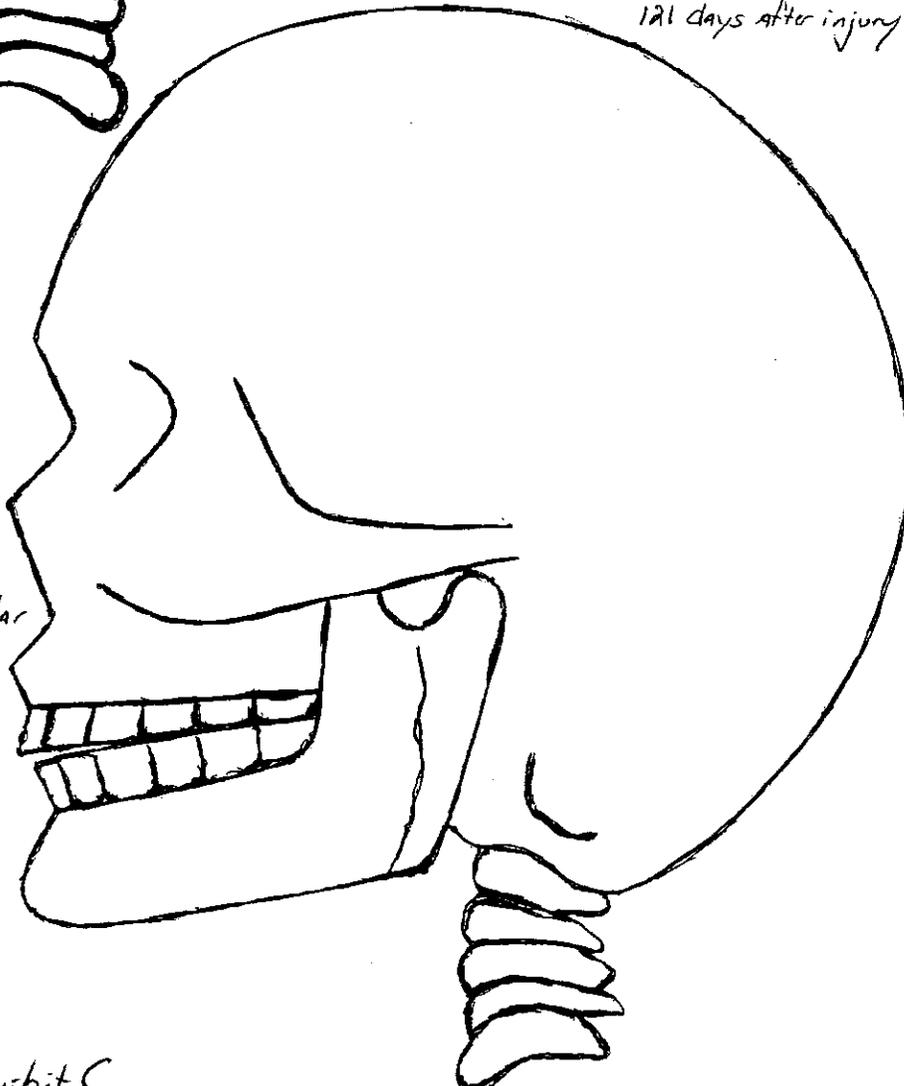


Exhibit C

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
CONSULTATION REQUEST/CONSULTANT'S REPORT

TO Institution: SFRC	FROM Institution: Dade CI	DATE OF REQUEST: 01/26/11
Reason(s) for consultation: Evaluate and recommend diagnostic plan _____ Evaluate and recommend treatment plan <input checked="" type="checkbox"/> Other (specify): _____	Type of consultation: Emergency _____ Urgent _____ Routine _____ Follow-up <input checked="" type="checkbox"/>	DATE APPOINTMENT MADE:  Staff Signature:  APPOINTMENT DATE:

Follow-up consults require justification  
Difficulty chewing, deviated occlusion.

Condition is (check one):  Acute Trauma  Acute Illness  Chronic

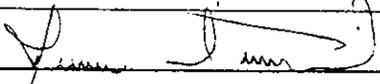
History of present illness (include onset, presentation, progress, therapy):  
patient suffered bilateral mandibular fracture as a result of trauma to lower jaw on 11/16/10

Physical findings:  
Severe occlusal discrepancies, anterior open bite, difficulty chewing.

Diagnostic findings (explain laboratory, x-ray, or other test findings):  
partially healed mandibular fracture, with mandibular deviation.

Other pertinent information:  
Re-evaluate for surgical correction option.

Provisional diagnosis:  
Severe occlusal discrepancy resulting in limited chewing capacity.

Health Care Provider Signature/Stamp:  Dr. R. Arosemena, Dentist  
Dade CI

CHO/Designee Approval Signature/Stamp:

**AUTHORIZATION FOR SPECIALITY EVALUATION**

I, the undersigned, have had explained to me and understand that I require \_\_\_\_\_ which cannot be accomplished at \_\_\_\_\_ also understand that should hospitalization and/or surgery be necessary, a separate consent form will be signed prior to such hospitalization and/or surgery. I therefore consent to be referred to a reception and medical center, or such other health care facility as may be appropriate for the reason(s) stated, and consent to undergo health care services as may be necessary to evaluate my health status.

Signature of Patient: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_

**IT IS ABSOLUTELY NECESSARY THAT INMATES ARE NOT MADE AWARE OF ANY SCHEDULING INFORMATION PENDING ANY APPOINTMENT OUTSIDE THE INSTITUTION**

Inmate Name Martin Perry  
C# 747017 Race/Sex w/m  
Date of Birth 05/27/59  
OS DATE: Dade CI 04/23/2013

(Showing known disability: Provisional diagnosis: Severe occlusal discrepancy resulting in limited chewing capacity)  
Paragraph #17#18 Exhibit A



FLORIDA DEPARTMENT OF CORRECTIONS  
HEALTH SLIP/PASS

The below-named inmate is authorized for:

Bed rest lay-in From 11/19/10 To 11/21/10  
 Low/bottom bunk From 11/19/10 To 02/19/11  
 No shave From \_\_\_\_\_ To \_\_\_\_\_  
 Restricted activity From \_\_\_\_\_ To \_\_\_\_\_  
 Restrictions: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Other: From 11/19/10 To 02/19/11  
Q ALL 8 hrs

Inmate Martin Perry Authorized by: CDMP  
 DC# 747017 R/S WM (Initial & Name Stamp)  
 Date of Birth 05/27/58 Date: 11/19/10  
 Institution DCI

Health Slip/Pass  
DC4-701D (2/96) White/Medical Yellow/Security Pink/Inmate

One of the Passes written by defendant Curtis Dewares on Nov. 19th when Plaintiff was released back into open population with acute Mandibular fracture

("Authorized by Curtis Dewares Nurse Practitioner") 11-19-10

J. Dewares  
ARNP/FNP  
Dade

FLORIDA DEPARTMENT OF CORRECTIONS  
HEALTH SLIP/PASS

The below-named inmate is authorized for:

Bed rest lay-in From 2/25/11 To 2/28/11  
 Low/bottom bunk From 2/25/11 To 3/25/11  
 No shave From \_\_\_\_\_ To \_\_\_\_\_  
 Restricted activity From 2/25/11 To 3/25/11  
 Restrictions: no lifting over 25 lbs.  
no pushing no pulling no  
prolonged standing over 10 min-

Other: From \_\_\_\_\_ To \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Inmate Martin Perry Authorized by: J. Dewares  
 DC# 747017 R/S WM (Initial & Name Stamp)  
 Date of Birth 5-27-59 Date: 2/25/11  
 Institution DCI

Health Slip/Pass  
DC4-701D (2/96) White/Medical Yellow/Security Pink/Inmate

Nurse J. Dewares wrote this pass on 2-25-11 Plaintiff advised work supervisor of Pass to no avail Plaintiff worked 7 days a week up to 59 hours a week On 2-28-11 was instructed to assist Health and Safety Sgt Dixon with the testing of Smoke detectors in Housing dormitories and to replace several Exit lights in and around Administrative Building/visitors park, Proof that Dade Correctional doesnt honor Medical Passes, Inmates are threatened with confinement for refusing to work or disobeying a Verbal Order

Paragraph # 21 Bed rest lay in  
Restricted activity

**DIET PRESCRIPTION ORDER**

DATE 3-23-11

PHYSICIANS ARE TO PLACE A CHECK MARK AND SIGN INITIALS BESIDE THE APPROPRIATE DIET:

- DIETS:
- Clear Liquid Diet
- Cold Liquid Diet
- Full Liquid Diet
- Puree Diet
- Mechanical/ Dental Diet
- Low Residue Diet
- Fat Intolerance Diet
- CSU (Suicide Precaution) Diet
- Predialysis Diet (60-65 gm PRO, 2.0-3.0 gm Na+ 3.0-3.2 gm K)
- \*1600 Calorie Regulated Diet
- \*2000 Calorie Regulated Diet
- \*2800 Calorie Regulated Diet
- 3600 Calorie Regulated Diet (w/3 meals and 3 snacks)
- 4000 Calorie Regulated Diet (w/3 meals and 3 snacks)
- Prerenal Diet
- Dialysis Diet (91-105 gm PRO, 2.0-3.0 gm Na+, 3.0-3.2 gm K)

\*These diets contain <100 mg of cholesterol and <2100 mg of sodium.

PATIENT TO STAY ON PRESCRIBED DIET FROM 3-23-11 TO 5-3-11

OBSERVATIONS \_\_\_\_\_

DOCTOR OR CLINICAL ASSOCIATE:

*M. Jones*  
(signature and stamp)

Inmate Name Martha, Pessy  
 DC# 1147014  
 Date of Birth 5-27-59  
 Institution KM

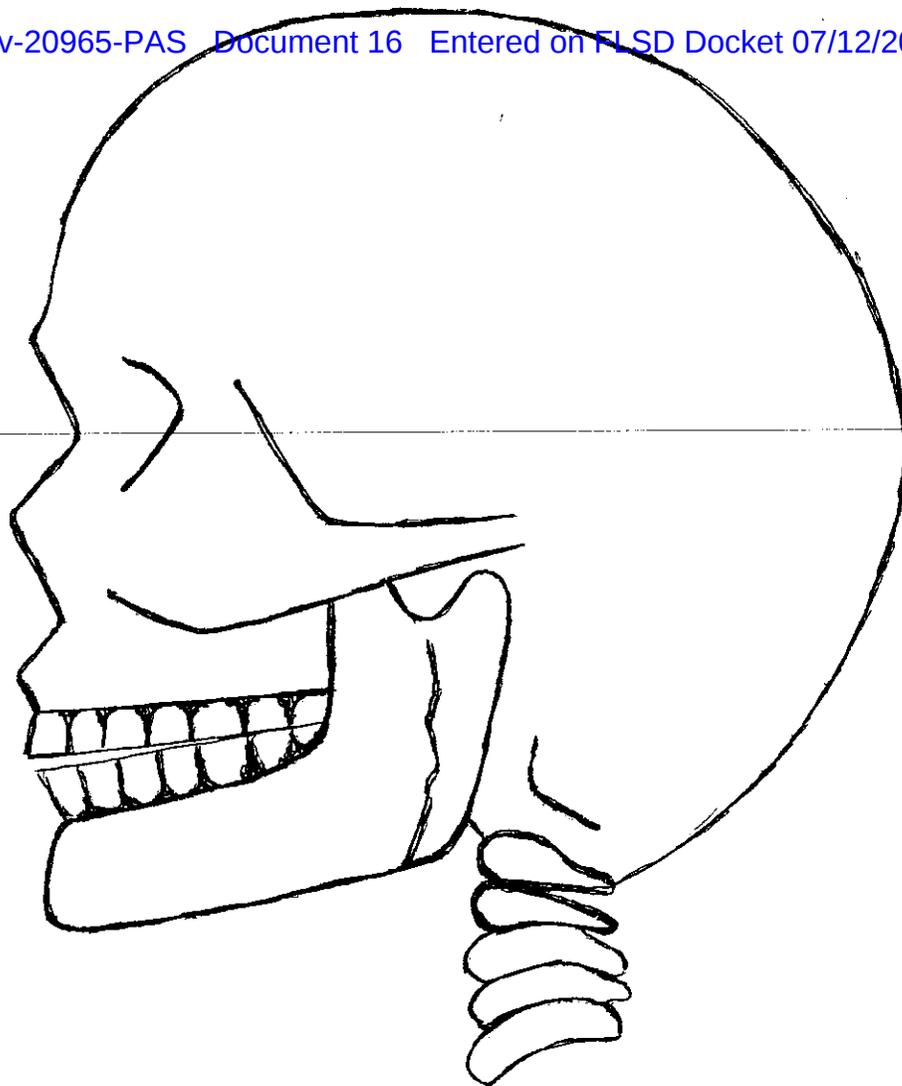
DIET PRESCRIPTION ORDER  
 DCI-728 (Revised 6/96)

Verification: White-Food Service Cause: Medical Record

Stamp: **RECEIVED**  
**SK**  
**11**  
**RECEIVED**  
**RECEIVED**  
**RECEIVED**

Exhibit D Pure liquid diet with Ensure 3 times daily

Paraph #28



"Amended Exhibit" A Paragraph #15 in initial complaint. Plaintiff was misinformed by Nova Clinic Dr Kaltman as to leftside Mandibular fracture. It is a vertical fracture from the Alveolar Canal that is traversing down the base of the left Mandibular condyle This is the area of the left side. TMJ Pain that Plaintiff is experiencing. Dr Andrew Skigen was very forthright in explaining and describing each break area. Plaintiff learned that the "Masticatory Muscles" if one were to bite into an ear of corn, the Masticatory muscles in the jaw compress your teeth to exert around Sixty-eight pounds of force per square inch. If one really clenches hard one can increase pressure to One-hundred Seventy pounds per square inch.

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

MARTIN, PERRY      747017      11-6-06375      DADE C.I.      E1143S  
NAME      NUMBER      GRIEVANCE LOG NUMBER      CURRENT INMATE LOCATION      HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

09D (NO RESPONSE RECEIVED(GRV PROC))

2/23/11      11-6-06375  
DATE      GRIEVANCE LOG NUMBER

*s of July 11th plaintiff  
s not recieved these two Grievances  
ct from Secretarys office.*

*Exhibit B Paragraph #19*

*last two Grievances sent  
received on (receipt) 3-7-2011*

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

Received  
Asst. Warden's Office

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

NOV 29 2010

1011-403-140

To:  Warden  Assistant Warden  Secretary, Florida Department of Corrections  
Date  
Correctional Institution  
From: Martin Perry K 747019 Dade Correctional Inst. #0101  
Last First Middle Initial Number Institution

Part A - Inmate Grievance

Sir,  
After being injured during my work assignment at Key West Housing Authority's property on Kennedy drive, I was transported to Key West Hospital Emergency room where an MRI was done revealing a double fracture in my foot. The Nurse overseeing my treatment on 11-16-2010 advised my work supervisor that I needed to be transported to Miami Hospital where an Oral Surgeon would treat and repair my injuries. My work supervisor, after advising Big Pine was ordered to have me as well as the CDRom, medical information discharged, and transport me back to Big Pine, I was then transported back to Dade where I stayed in the infirmary until 11-18-10 when I was transported to South Florida Reception Center to get a final X-Ray that confirmed the findings of the MRI from 11-16-2010. I was transported back to Dade infirmary where I spent the night and was subsequently released back into open population on 11-19-2010. Sir, I am giving the fact that it is now 11-24-2010 as I write this, my foot has been in constant pain since 11-16-2010 and as it is now, daily severe, my foot is healing, albeit slowly, I respectfully request that you address medical and shortcomings in my medical treatment, thank you for your time.

Respectfully submitted  
Perry Martin

11-24-2010  
DATE

Perry Martin - 747019  
SIGNATURE OF GRIEVANT AND D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: # \_\_\_\_\_ Signature

INSTRUCTIONS

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-105, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).  
When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-105 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through routine institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on: \_\_\_\_\_ Institutional Mailing Log #: \_\_\_\_\_  
(Date) (Received By)

DISTRIBUTION: INSTITUTION/FACILITY INMATE (2 Copies) INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE  
CENTRAL OFFICE INMATE INMATE'S FILE - INSTITUTION/FACILITY CENTRAL OFFICE INMATE FILE CENTRAL OFFICE GRIEVANCE FILE

Paragraph #25 Exhibit C. Telling both defendants of misaligned jaw

DEC 08 2010

PART B - RESPONSE

MARTIN, PERRY INMATE	747017 NUMBER	1011-463-140 GRIEVANCE LOG NUMBER	DADE C.I. CURRENT INMATE LOCATION	A2148L HOUSING LOCATION
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Your formal grievance has been received and reviewed. You are scheduled for surgery soon. You are prescribed a special diet and have been given a slow eating pass.

Also, your pain medication was renewed. If you run out of pain medication please access sick call.

Grievance denied.

You may appeal and obtain further administrative review of your complaint by acquiring Form DC11-303, completing and forwarding it with attachments to the Inmate Grievance Administrator, 2601 Blair Stone Road, Tallahassee, Florida, 32399-2500. If you do not appeal, take the form and attachments to the mailroom receipting.

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL RECORD/CARE INFORMATION INTENDED FOR THE ADDRESSEE ONLY. UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Dr. Julio Poveda, *Ch*  
*Page 61*  
 SIGNATURE AND TYPED OR PRINTED NAME  
 OF EMPLOYEE RESPONDING

*W. Churchill*  
 SIGNATURE OF WARDEN, ASST. WARDEN, OR  
 SECRETARY'S REPRESENTATIVE

*12-6-10*  
 DATE

COPY DISTRIBUTION - INSTITUTION / FACILITY  
 (2 Copies) Inmate  
 (1 Copy) Inmate's File  
 (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE  
 (1 Copy) Inmate  
 (1 Copy) Inmate's File - Inst./Facility  
 (1 Copy) C.O. Inmate File  
 (1 Copy) Retained by Official Responding

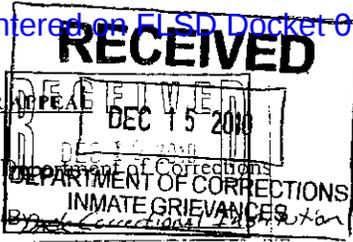
*Paragraph # 25*

*Exhibit C*

*Also noted in # 29 #30*

DEPARTMENT OF CORRECTIONS

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL



8069

TO:  Warden  Assistant Warden  Secretary, Florida

From: Martin Perry K. C-947017  
Last First Middle Initial Number

Institution 10-6-39031

Part A - Inmate Grievance

after being injured at work, and being taken to Key West Hospital emergency room at Key West. After the initial intake, the Professional Medical staff at Key West Hospital ER did an MRI which revealed a double fracture in my foot. The Doctors and Nurses at Key West ER, prescribed treatment for my injury, was to be transported to Miami Hospital to be treated by an Orth. Surgeon. Specialists, they also wrote a prescription for a Non-Narcotic pain reliever. After being transported to Dade CI infirmary, I received antibiotics and Huperfin for 9 days. I was sent to visit Dr Julio Poveda CHODCI until 11-29-10. At that time I received 600mg Huperfin at the medication, it has a date on it of 11-19-10 from Jovella Pharmacy, 18 days late. Furthermore on 12-1-10 I declared a medical emergency as the hematoma that has developed in the break area began to swell and I became nauseous to the point of vomiting as a large abscess began to develop inside my foot. Nurse Meyer RN provided me with an ice pack for my "hematoma" swollen foot. I was also offered Huperfin again, but she wrote me a pass to see Dr Julio Poveda on 12-2-10. On 12-2-10 I went to medical to see Poveda and sat in medical from 8 AM until 2:45 PM and never saw Dr Poveda as of just Joseph ran me out before 3:30 count. Six, Nurse Meyer offering me like to put on a Hematoma. Plus the fact that Dr Poveda broke a Dental Mechanical diet, after my lawyer could view my MRI as well as the D.O.C. X Ray can see the sheer impossibility of me chewing without a substantial risk of further injury. Dr. C. E. De Audio Poveda has interfered with the Hospital's prescribed treatment as they have full knowledge of my serious medical need and failed to respond reasonably. It is inadequate and intolerable to fundamental fairness.

12-8-2010  
DATE

Perry K Mackin 947017  
SIGNATURE OF GRIEVANT AND D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 0

INSTRUCTIONS 7h

1011# 463-140  
Signature 463

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-103, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through routine institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on (Date) Institutional Mailing Log # (Received By)

DISTRIBUTION: INSTITUTION/FACILITY INMATE (2 Copies) INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE CENTRAL OFFICE INMATE INMATE'S FILE - INSTITUTION/FACILITY CENTRAL OFFICE INMATE FILE CENTRAL OFFICE GRIEVANCE FILE

RMC

**WITH CASEY CLERK**  
**MAR 27 2011**  
**DEPARTMENT OF CORRECTIONS**  
**BUREAU OF INMATE GRIEVANCE APPEALS**

**PART B - RESPONSE**

MARTIN, PERRY      747017      10-6-39031      S.F.R.2.      J2103L  
INMATE      NUMBER      GRIEVANCE LOG NUMBER      CURRENT INMATE LOCATION      HOUSING LOCATION

Appeal Approved:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

In addition, the institution was contacted and they provided this office with information regarding the issues you presented.

It is determined that the response made to you by Dr. Poveda on 12/6/10 did not appropriately address the issues you presented.

Therefore your appeal is being approved to the extent that you will be re-evaluated by an Oral Surgeon. The Institution has 30 days to implement this action.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR ADDRESSEE(S) ONLY.  
UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Pilar Tournay IISC

*P. Tournay*  
SIGNATURE AND TYPED OR PRINTED NAME  
OF EMPLOYEE RESPONDING

*Jhe*  
SIGNATURE OF WARDEN, ASST. WARDEN, OR  
SECRETARY'S REPRESENTATIVE

*3/18/11*  
DATE

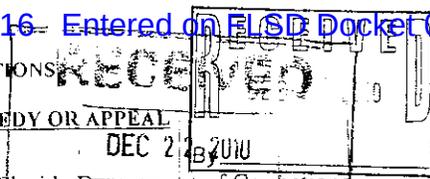
COPY DISTRIBUTION - INSTITUTION / FACILITY  
(2 Copies) Inmate  
(1 Copy) Inmate's File  
(1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE  
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(1 Copy) Retained by Official Responding

Paragraph #29 #30

Exhibit E

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS



REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

Warden  Assistant Warden  Secretary   
Name: Martin Perry K 747017  
Last First Middle Initial Number

Florida Department of Corrections  
DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCES  
Institution: 106-391669

Part A - Inmate Grievance

Sir,  
After being injured at work, and being taken to Key West Emergency Room at Key West Hospital, after initial intake, the Professional Medical staff at KWER performed an MRI on me which revealed a double fracture jaw. The doctor's Nursing staff at Key West Hospital prescribed treatment was to write me a prescription for a Non-Narcotic pain reliever, and to immediately transport me to Miami Hospital for treatment by an Oral Surgeon specialist. I was given an injection of a non-narcotic pain reliever at Key West Hospital to alleviate the excruciating pain I was in. After being transported to Dade and placed in the infirmary, I never received any pain medication except Huperphen for 36 hours. I never saw or met Dr Julio Poveda, CHO Dade CI until 11-29-10. At that time, I had a callout to pick up my car and I received a 1600mg Huperphen at the medicine window, label dated 11-19-10 from Lowell CT Pharmacy, that's 12 days of excruciating pain, furthermore on 12-1-10 I declared a medical Emergency as the large hematoma that had developed in the breast area began to swell causing an abrasion of tissue to develop in the area of the left side fracture. I became Narcotic to the point of Vomiting. Nurse Wenzel the intake nurse on 12-1-10 provided me with the reports for my hematoma. I was then given Huperphen and told by Wenzel that only pain med should be filled every day now. The nurse knew that you never use the on hematoma only hot compresses. Dade CI as well as Julio Poveda has nothing with the Hospital's Prescribed treatment, Dade Medical has delayed getting me the specialist treatment, and they had full knowledge of my serious medical needs. It has (Medical treatment) or is inadequate and intolerable to fundamental fairness. Please note, this is record copy sent never received notification of receipt from Secretary's office sent through notification on 12-9-2010  
12-18-2010  
DATE SIGNATURE OF GRIEVANT AND D.C. #

\* BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 1  
# Signature

INSTRUCTIONS 7h 1011-463-MO 463

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-103, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

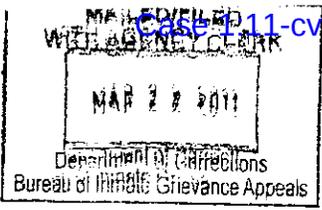
When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through routine institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on: \_\_\_\_\_ Institutional Mailing Log #: \_\_\_\_\_  
(Date) (Received By)

DISTRIBUTION: INSTITUTION/FACILITY INMATE (2 Copies) INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE CENTRAL OFFICE INMATE INMATE'S FILE - INSTITUTION/FACILITY CENTRAL OFFICE INMATE FILE CENTRAL OFFICE GRIEVANCE FILE  
Paragraphs #29 #30 Exhibit E

R M C



PART B - RESPONSE

MARTIN, PERRY INMATE 747017 NUMBER 10-6-39669 GRIEVANCE LOG NUMBER S.F.R.C. CURRENT INMATE LOCATION J2103L HOUSING LOCATION

Appeal Approved:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

In addition, the institution was contacted and they provided this office with information regarding the issues you presented.

It is determined that the response made to you by Dr. Poveda on 12/6/10 did not appropriately address the issues you presented.

Therefore your appeal is being approved to the extent that you will be re-evaluated by an Oral Surgeon. The Institution has 30 days to implement this action.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR ADDRESSEE(S) ONLY. UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Pilar Tournay IISC

[Signature] SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING

[Signature] SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE

3/18/11 DATE

- COPY DISTRIBUTION - INSTITUTION / FACILITY
(2 Copies) Inmate
(1 Copy) Inmate's File
(1 Copy) Retained by Official Responding

- COPY DISTRIBUTION - CENTRAL OFFICE
(1 Copy) Inmate
(1 Copy) Inmate's File - Inst./Facility
(1 Copy) C.O. Inmate File
(1 Copy) Retained by Official Responding

Paragraph #29 #30

Exhibit E

5080

DEPARTMENT OF CORRECTIONS

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

RECEIVED

DEC 22 2010

DEPARTMENT OF CORRECTIONS  
STATE GRIEVANCES

Institution

106-39670

TO:  Warden  Assistant Warden  Secretary, Florida Department of Corrections

From: Martin Perry K 249017  
Last First Middle Initial Number

Part A - Inmate Grievance

Sir,  
I am grieving, Dr. Michael and Dr. Julio Poveda and the Systemic failure to provide adequate medical care for my serious medical need. The denial of my complaints without further investigation (i.e. I do have proof of falsifying documents, i.e. pre dating passes, stamping documents when passes being presented is an excitation during duty time period. Indicating that someone not qualified is using Poveda's stamp i.e. Carlos Duques ARNP further more when I witness Poveda pre dating the passes I told him of his "Human error", and I stated to him that he had just falsified a document, and I further told him of the inspection that was conducted inside my jaw, and the need of anti biotics to not await I scheduled a dental Emergency. On Tuesday, December 14th, at which time the Dentist prescribed the anti biotics for my infected jaw. Dr. Michael and Dr. Julio Poveda's systemic failure to provide adequate treatment for my serious medical need is border line criminal and grossly inadequate and resulted in extreme pain, and a constitutional failure on their part.

Inmate Martin Perry  
749017

12-19-2010  
DATE

Martin Perry 749017  
SIGNATURE OF GRIEVANT AND I.D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS:

INSTRUCTIONS

70 # 1012-463-031 Signature 463

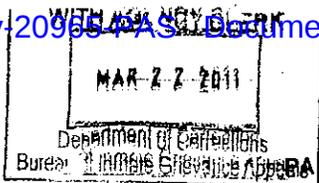
This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-163, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

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Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on \_\_\_\_\_ (Date) Institutional Mailing Log # \_\_\_\_\_ (Received By)

- DISTRIBUTION:
  - INSTITUTION/FACILITY
  - INMATE (2 Copies)
  - INMATE'S FILE
  - INSTITUTIONAL GRIEVANCE FILE
- CENTRAL OFFICE
  - INMATE
  - INMATE'S FILE - INSTITUTION/FACILITY
  - CENTRAL OFFICE INMATE FILE
  - CENTRAL OFFICE GRIEVANCE FILE



R M C

PART B - RESPONSE

MARTIN, PERRY  
INMATE

747017  
NUMBER

10-6-39670  
GRIEVANCE LOG NUMBER

S.F.R.C.  
CURRENT INMATE LOCATION

J2103L  
HOUSING LOCATION

Appeal Approved:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

In addition, the institution was contacted and they provided this office with information regarding the issues you presented.

Your appeal is being approved to the extent that you will be re-evaluated by an Oral Surgeon. The Institution has 30 days to implement this action.

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Pilar Tournay IISC

*P. Tournay*  
SIGNATURE AND TYPED OR PRINTED NAME  
OF EMPLOYEE RESPONDING

*[Signature]*  
SIGNATURE OF WARDEN, ASST. WARDEN, OR  
SECRETARY'S REPRESENTATIVE

3/18/11  
DATE

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Paragraph #29 #30

Exhibit E

5080

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

RECEIVED  
DEC 22 2010  
DEPARTMENT OF CORRECTIONS  
Institution  
106-39670

TO:  Warden  Assistant Warden  Secretary, Florida Department of Corrections

From: Martin Perry K 249017  
Last First Middle Initial Number

Part A - Inmate Grievance

Sir,  
I am grieving Dock Medical and Dr. Julio Poveda and the Systemic  
failure to provide adequate medical care for my serious medical need.  
The denial of my complaint without further investigation (i.e. I do have  
proof of falsifying documents, i.e. pre dating passes, stamping documents when  
person being stamped is on vacation during duty time period). Indicating  
that someone not qualified is using Poveda's stamp i.e. Carlos Duran ARNP  
frankly more when I witness Poveda pre dating the passes, I told him  
of this "Human error", and stated to him that he had just falsified  
a document, and I further told him of the infection that had developed  
inside my jaw, and the need of anti-biotics to no avail I obtained  
a dental Emergency on Tuesday, December 14th, at which time the  
Dentist prescribed the anti-biotics for my infected jaw. Dock's  
Systemic failure to provide adequate treatment for my serious  
medical need is border line criminal and grossly inadequate  
and resulted in extreme pain, and a constitutional failure on  
their part

Inmate Perry Martin  
249017

12-19-2010  
DATE

Perry Martin 249017  
SIGNATURE OF GRIEVANT AND D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 0

INSTRUCTIONS

7a # 1012-463-031 Signature 463

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20965-CIV-SEITZ  
MAGISTRATE JUDGE P.A. WHITE

PERRY MARTIN, :  
 :  
 Plaintiff, :  
 :  
 v. : REPORT OF  
 : MAGISTRATE JUDGE  
 WALTER MCNEIL, et al :  
 et al., :  
 :  
 Defendants. :  
 :  
 \_\_\_\_\_

#### I. Introduction

Perry Martin, now confined at Dade Correctional Institution (CI), has filed a pro se civil rights complaint, along with multiple exhibits, <sup>1</sup> (DE#1), and an amended complaint/status report (DE#s 15 &16). He seeks monetary relief. The plaintiff is proceeding in forma pauperis. Martin alleges denial of adequate medical treatment.

This Cause is presently before the Court for initial screening of the complaint (DE#1), pursuant to 28 U.S.C. §1915.

#### II. Analysis

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

---

<sup>1</sup>The Court may rely upon the plaintiff's Exhibits which are a matter of public record, without this complaint being construed as a motion for summary judgment. Bryant v Avado Brands, Inc., 187 F.3d 1271 (11 Cir. 1999).

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.<sup>2</sup>

A. Statement of Claims

The plaintiff names the following defendants: Secretary Walter McNeil, Dade CI Warden, William Churchwell, Correctional Officers at the Big Pine Key Road Prison Schweinsburg, Birge, and Kirk, along with Dade CI Nurse Practitioner Curtis Dewares, and Julio Poveda, Chief Health Officer at Dade CI. The plaintiff alleges that on November 16, 2010, he was injured at the Key West Housing Authority Property while part of a work crew. Kirk, the Work Crew Supervisor, took the plaintiff to the Key west Hospital Emergency room.

He was seen by various physicians and nurses and was given a cat scan. The results revealed an acute mandibular fracture, along with a secondary fracture. Plaintiff was discharged from the hospital and returned to Big Pine Key to gather his possessions for his transfer to Dade CI. Schweinsburg and Birge did not acknowledge his injury. At Dade CI, Nurse Dewares viewed his cat scan/MRI results and sent him to see a dentist. He signed a request for reduction and fixation of the fracture which could not be performed

---

<sup>2</sup> The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

at Dade CI. He was then sent to South Florida Reception Center's Dental Department to see a Senior Dentist who confirmed the findings, and ordered that he be sent to an oral surgeon. He was then returned to Dade CI.

On November 19, 2010, Dewares reviewed the notes of his visit and the staff determined that he be released back into open population pending surgery. He protested to Motley and Dewares that he was unable to eat a proper diet and defend himself from further injury. He was given a mechanical dental diet and low bunk pass by Dewares. He survived by eating soft food, and lost a great deal of weight.

He met Dr. Poveda on November 29, 2010. He explained his problems and he claims Poveda did not respond. On December 1, 2010 he declared a medical emergency because of extreme pain and swelling. He was escorted to a nurse who administered an ice pack to the swollen side and Ibuprofen. He contends that he sat at medical for hours and was not seen by Dr. Poveda. He then was seen by Nova South Eastern University's speciality unit. Seventeen days later he saw an oral surgeon who stated he should not have been given ice or put on a mechanical dental diet. He was sent back to Dade CI, and on December 14, 2010, he declared a dental emergency due to an infection. He was prescribed Amoxicillin. He states that on December 14, 2010, his jaw was misaligned and he had trouble eating, along with shooting pain. He was transported to Broward General and a specialist stated he would have to re-fracture the jaw and wire it shut. After further multiple consultations Warden Churchwell denied his special diet and slow eating pass. His pain medication was renewed.

He alleges that Poveda, Dewares, Churhwell, Schweinsburg, Birge, and Kirk Sergeant knew of his serious medical condition and ignored his fractured jaw condition.

In the amended complaint/status report (DE#15), the plaintiff states that in March of 2011 surgery was performed, 121 days after instructions were signed by the plaintiff at the Key West Hospital Emergency Room. His right side mandibular was repositioned and a reconstruction plate was inserted. He suffers nerve damage and permanent numbness to his lower lip.

Americans with Disability Act (ADA)

The plaintiff includes an ADA claim, which does not pertain to him. The ADA consists of three titles addressing discrimination against the disabled in various contexts. Titles I and III of the ADA are inapplicable to the facts of this case [Title I of the ADA prohibits employment discrimination, 42 U.S.C. §12112; and Title III of the ADA prohibits discrimination by public accommodations involved in interstate commerce such as hotels, restaurants, and privately operated transportation services, 42 U.S.C. §§12182, 12184]. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to any discrimination by any such entity." 42 U.S.C. §12132. A "qualified individual with a disability" is broadly defined as any person who "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. §12131(2). The term "public entity" is defined to be "any department, agency, special purpose district, or

other instrumentality of a State or States, or local government." 42 U.S.C. §12131(1). This Act does not apply to the plaintiff and this claim should be dismissed.

#### Denial of Medical treatment

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).<sup>3</sup>

---

<sup>3</sup>Because the plaintiff was a pretrial detainee at the time of the events alleged, his claims must be analyzed under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell, 441 U.S. at 535; Hamm, 774 F.2d at 1571-74. In the context of a pretrial detainee claim of denial of medical care, the standards are

A serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11 Cir. 1994) (quotation marks and citation omitted). The subjective component requires the plaintiff to demonstrate that the prison officials acted wantonly, with deliberate indifference to the plaintiff's serious needs. See Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Id. at 835-36. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. See Estelle, 429 U.S. at 106. The inadvertent or negligent failure to provide adequate medical care "cannot be said to constitute 'an unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 105-06; Wilson, 501 U.S. at 298.

Further to rise to a level of an Eighth Amendment violation the plaintiff must demonstrate inhumane conditions of confinement. Farmer v Brennan, 511 U.S., . 825 (1994), These conditions must show a deprivation of a normal civilized measure of life's necessities, see Toney v Fuqua, 09 WL 1451645 (11 Cir. 2009) (denial of tooth paste and tooth brush for a period of time did not rise to an Eighth Amendment violation).

Deliberate indifference can be established by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons. Farrow v West, 320 F.3d 1235, 1247

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the same. Id.

(11th Cir.2003) (finding jury question on issue of deliberate indifference because of unexplained fifteen-month delay in treatment). The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay. Harris v. Coweta County, 21 F.3d 388, 393-94 (11 Cir. 1994). A plaintiff may also establish deliberate indifference with evidence of treatment "so cursory as to amount to no treatment at all." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11 Cir. 1985). If prison officials delay or deny access to medical care or intentionally interfere with treatment once prescribed, they may violate the Eighth Amendment. Estelle, 429 U.S. at 104.

The plaintiff has demonstrated that he suffered from a serious medical condition, an acute mandibular fracture and an adjunct fracture. This is supported by the results of the MRI and other diagnostic tests, referred to by the plaintiff. As delineated in the facts above, he was denied pain medication by the doctor and nurses. Treatment for his condition was repeatedly delayed, until such time when his jaw had to be re-broken to be fixed. He appears to have been in severe pain for long periods of time, with little relief. While the facts indicate that the plaintiff was seen by doctors and nurses, and underwent tests, he was never actually treated for his condition until he required serious invasive surgery, leaving him with resulting health issues.

It is therefore recommended that the claim of denial and /or delay of medical treatment should proceed against defendants Warden Churchwell, Kirk Sergeant, Nurse Dewares and Juio Poveda.

There are no allegations of direct involvement by Walter McNeil. He were clearly named in his supervisory capacity. The Secretary of the Department of Corrections cannot be sued for liability merely for an improper or even unconstitutional act of his employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice.

Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) The plaintiff has failed to demonstrate a causal link between the alleged violations and the defendant, and it is recommended he be dismissed.

The plaintiff's claims against Schweinsburg and Birge, employed at the Big Pine Key Road Prison is that they knew of his condition, and that when the plaintiff was discharged from the hospital and returned to Pine Key to gather his belongings for his transfer back to Dade Correctional, neither defendant acknowledged his injury or inquired as to his well being. These allegations are insufficient to state a claim for denial of adequate medical treatment by these two defendants and they should be dismissed.

Lastly, the plaintiff attempts to name the defendants in both their individual and official capacity. A §1983 suit against the defendant in his official capacity is tantamount to a suit against the State, and thus the defendant would be immune from monetary damages based upon the Eleventh Amendment. Gamble v. Fla. Dept. of

Health and Rehabilitative Services, 779 F.2d 1509, 1512-13 (11 Cir. 1986). The allegations of the complaint, however, state a classic case of officials acting outside the scope of their duties and in an arbitrary manner. Scheuer v. Rhodes, 416 U.S. 232, 238 (1974). Under this construction of the complaint, this Court has jurisdiction over the defendants in their individual capacity. Moreover, a determination of whether the defendants might be entitled to qualified immunity cannot be determined at this juncture.

#### B. Recommendation

It is therefore recommended as follows:

1. The case shall proceed against defendants Churchwell, Kirk, Dewares and Poveda for delay and inadequate medical treatment in their individual capacity.
2. Claims against McNeil, Schweinsbug, and Birge shall be dismissed for failure to state a claim against them pursuant to 28 U.S.C. 1915(e)(2)(B)(ii).
3. Claims brought under the ADA (American Disability Act) should be dismissed for failure to state a claim.
4. The operative complaint is (DE#1), and its supplement (DE#15).
5. (DE# 16) should be stricken as duplicative.

Objections to this Report may be filed with the District Judge within fourteen days following receipt.

Dated at Miami, Florida, this 14<sup>th</sup> day of July, 2011.



---

UNITED STATES MAGISTRATE JUDGE

cc: Perry Martin, Pro Se  
#747017  
Dade Correctional Institution  
Address of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 11-20965-CIV-SEITZ/WHITE

PERRY MARTIN,

Plaintiff,

v.

WALTER McNEIL, et al.,

Defendants.

---

**DEFENDANTS' ANSWER TO COMPLAINT  
AND AFFIRMATIVE DEFENSES**

Defendants, JULIO POVEDA, M.D. ("POVEDA"), CURTIS DWARES ("DWARES"), and KIRK SARGENT ("KIRK"), by and through their undersigned counsel, and pursuant to Federal Rules of Civil Procedure 12(a)(1)(B), 8(b) and (c) and 38(b), file this their answer, affirmative defenses, and demand for jury trial in response to Plaintiff's Complaint (D.E. 1, and its supplement, D.E. 15<sup>1</sup>), as follows:

**DOCKET ENTRY #1 - COMPLAINT**

**JURISDICTION**

1. Admitted that the United States District Court for the Southern District of Florida has jurisdiction of the Section 1983 claim.

**PARTIES**

2. Admitted that Plaintiff MARTIN is currently an inmate housed at Dade Correctional Institution.

---

<sup>1</sup> Pursuant to The Report of the Magistrate Judge, D.E. 17, the operative Complaint is D.E. #1 and its supplement, DE#15.

3. Denied as written. Furthermore, this Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27).

All remaining allegations are denied.

4. Admitted that Churchwell is an employee of Florida Department of Corrections.

All remaining allegations are denied as written.

5. Admitted that Schweinsburg is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

6. Admitted that Birge is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

7. Admitted that KIRK is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

8. Admitted that DWARES is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

9. Admitted that POVEDA provides medical care and treatment to inmates at Dade Correctional Institution. The remaining allegations are denied as written.

10. Admitted.

11. Denied.

#### FACTS

12. Admitted.

13. Admitted that KIRK took plaintiff to emergency room. All remaining allegations are denied and strict proof thereof is demanded.

14. Denied and strict proof thereof is demanded.

15. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

16. Denied and strict proof thereof is demanded.

17. Denied and strict proof thereof is demanded.

18. Denied and strict proof thereof is demanded.

19. Denied and strict proof thereof is demanded.

20. Denied and strict proof thereof is demanded.

21. Denied and strict proof thereof is demanded.

22. Denied and strict proof thereof is demanded.

23. Denied and strict proof thereof is demanded.

24. Denied and strict proof thereof is demanded.

25. Denied and strict proof thereof is demanded.

26. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

27. Denied and strict proof thereof is demanded.

28. Denied and strict proof thereof is demanded.

29. Denied and strict proof thereof is demanded.

30. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

31. Denied and strict proof thereof is demanded.

32. Denied and strict proof thereof is demanded.

33. Denied and strict proof thereof is demanded.

34. Denied and strict proof thereof is demanded.

35. Denied and strict proof thereof is demanded.

36. Denied and strict proof thereof is demanded.

37. Denied and strict proof thereof is demanded.

38. Denied and strict proof thereof is demanded. Furthermore, the document speaks

for itself.

39. Denied and strict proof thereof is demanded.

40. Denied and strict proof thereof is demanded.

41. Denied and strict proof thereof is demanded.

42. Denied and strict proof thereof is demanded.

43. Denied and strict proof thereof is demanded.

44. Denied and strict proof thereof is demanded.

45. Denied and strict proof thereof is demanded.

46. Denied and strict proof thereof is demanded.

47. Denied and strict proof thereof is demanded. Furthermore, the document speaks

for itself.

48. Denied and strict proof thereof is demanded.

49. Denied and strict proof thereof is demanded.

50. Denied and strict proof thereof is demanded.

51. Denied and strict proof thereof is demanded.

52. Denied and strict proof thereof is demanded.

53. Denied and strict proof thereof is demanded.

54. Denied and strict proof thereof is demanded.

55. Denied and strict proof thereof is demanded.

56. Denied and strict proof thereof is demanded.

IV. STATEMENT OF CLAIMS FOR RELIEF  
FIRST CAUSE OF ACTION

57. Denied and strict proof thereof is demanded.

58. Denied and strict proof thereof is demanded.

EIGHTH AMENDMENT – DELIBERATE  
INDIFFERENCE SECOND CAUSE OF ACTION

59. Denied and strict proof thereof is demanded. Furthermore, pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27), Plaintiff does not have a discrimination claim.

60. Denied and strict proof thereof is demanded.

THIRD CAUSE OF ACTION  
VIOLATION OF TITLE II OF THE  
AMERICANS WITH DISABILITIES ACT OF 1990  
[42 U.S.C. §12132]

61. Defendants re-allege and reaffirm all answers provided in paragraphs 1-61. Furthermore, pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27), Plaintiff does not have an ADA claim.

A. Denied.

B. Denied.

C. Denied.

D. Denied.

E. Denied.

RELIEF SOUGHT

A. Denied that Plaintiff is entitled to any compensatory damages and Defendants demand strict proof thereof.

B. Denied that Plaintiff is entitled to any punitive damages and Defendants demand strict proof thereof.

C. Denied that Plaintiff is entitled to any Attorneys Fees or Costs, and Defendants demand strict proof thereof.

D. Denied that Plaintiff is entitled to any damages whatsoever, and Defendants demand strict proof thereof.

E. Defendants demand a trial by jury.

F. Denied that Plaintiff is entitled to any relief whatsoever, and Defendants demand strict proof thereof.

### **D.E. #15 – SUPPLEMENTAL COMPLAINT**

#### **I. JURISDICTION & VENUE**

1. Admitted.

2. Admitted that the United States District Court for the Southern District of Florida is an appropriate venue.

#### **II. PLAINTIFF**

3. Admitted.

#### **III. DEFENDANT(S)**

4. Denied as written. Furthermore, this Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

5. Admitted that Churchwell is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

6. Admitted that Schweinsburg is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

7. Admitted that Birge is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

8. Admitted that KIRK is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

9. Admitted that DWARES is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

10. Admitted that POVEDA provides medical care and treatment to inmates at Dade Correctional Institution. The remaining allegations are denied as written.

11. Admitted.

12. Denied and strict proof is demanded thereof.

13. Admitted.

“FACTS”

14. Denied and strict proof thereof is demanded.

15. Denied and strict proof thereof is demanded.

16. Denied and strict proof thereof is demanded.

17. Denied and strict proof thereof is demanded.

18. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

19. Denied and strict proof thereof is demanded.

20. Paragraph 20 is an incomplete sentence. Defendants therefore deny paragraph 20 as written.

21. Denied and strict proof thereof is demanded.

22. Denied and strict proof thereof is demanded.

23. Paragraph 23 is incoherent. Paragraph 23 is denied and strict proof thereof is demanded. Furthermore, the documents speak for themselves.

24. Denied and strict proof thereof is demanded.

25. Denied and strict proof thereof is demanded.

26. Denied and strict proof thereof is demanded.

27. Denied and strict proof thereof is demanded.

28. Denied and strict proof thereof is demanded.

29. Paragraph number 29 is incoherent and therefore, denied. Strict proof is demanded of all allegations in paragraph 29. Furthermore, the documents speak for themselves.

30. Paragraph number 20 is incoherent and therefore, denied. Strict proof is demanded of all allegations in paragraph 29. Furthermore, the documents speak for themselves.

#### LEGAL CLAIMS

31. Defendants re-allege and reaffirm all answers provided in paragraphs 1-61 and 1-30.

32. Denied and strict proof thereof is demanded.

33. Denied and strict proof thereof is demanded. Furthermore, Defendants deny that Plaintiff is entitled to any damages, or injunctive relief, whatsoever.

34. Defendants deny any and all allegations made in D.E. 1 and D.E. 15, not specifically admitted or otherwise acknowledged above.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Defendants acted reasonably within the discretion of their position and the course and scope of employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore are entitled to qualified immunity from suit.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. §1983; Furthermore, Plaintiff did not have a serious medical need. Plaintiff cannot establish the deliberate indifference requirement.

**THIRD AFFIRMATIVE DEFENSE**

Defendants did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a cause of action because there is no causal connection between plaintiff's claimed injuries and action or inaction by the defendants as required for liability under 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

Defendants assert that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter that the Defendants acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on failure to exhaust administrative remedies.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on lack of a physical injury as a result of the alleged actions by Defendant.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for punitive damages because he has not alleged the type of conduct that would meet the standards set forth by Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 L.ed.2d 632 (1983).

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages or injuries.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for medical negligence.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to provide pre-suit notice for a medical negligence action pursuant to F.S. §766.203 and Chapter 766, Florida Statutes.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. §1983.

Defendants reserve the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint (D.E. #1 and D.E. #15), the Defendants deny that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demand trial by jury of all issues so triable as of right by jury.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

s/Monica Stinson  
MONICA GALINDO STINSON  
Fla. Bar No. 145785  
Email: monica.stinson@myfloridalegal.com

OFFICE OF THE ATTORNEY GENERAL  
110 S.E. 6th Street, 10th Floor  
Fort Lauderdale, Florida 33301  
Telephone: 954-712-4600  
Facsimile: 954-527-3702  
Attorney for POVEDA, DWARES & KIRK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 9, 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 all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices or Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are authorized to receive electronically Notices of Electronic Filing.

s/Monica Stinson  
Monica Stinson  
Assistant Attorney General

**SERVICE LIST**

Martin v. McNeil, et al.  
Case No: 11-20965-CIV-SEITZ/WHITE  
United States District Court, Southern District of Florida

Perry Martin, DC#747017  
Dade Correctional Institution  
19000 S.W. 377 Street  
Florida City, Florida 33034

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 11-20965-CIV-SEITZ/WHITE

PERRY MARTIN,

Plaintiff,

v.

WALTER McNEIL, et al.,

Defendants.

---

**DEFENDANT CHURCHWELL'S ANSWER TO COMPLAINT  
AND AFFIRMATIVE DEFENSES**

Defendant, WILLIAM CHURCHWELL ("CHURCHWELL), by and through his undersigned counsel, and pursuant to Federal Rules of Civil Procedure 12(a)(1)(B), 8(b) and (c) and 38(b), files his answer, affirmative defenses, and demand for jury trial in response to Plaintiff's Complaint (D.E. 1, and its supplement, D.E. 15<sup>1</sup>), as follows:

**DOCKET ENTRY #1 - COMPLAINT**

**JURISDICTION**

1. Admitted that the United States District Court for the Southern District of Florida has jurisdiction of the Section 1983 claim.

**PARTIES**

2. Admitted that Plaintiff MARTIN is currently an inmate housed at Dade Correctional Institution.

---

<sup>1</sup> Pursuant to The Report of the Magistrate Judge, D.E. 17, the operative Complaint is D.E. #1 and its supplement, DE#15.

3. Denied as written. Furthermore, this Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27).

All remaining allegations are denied.

4. Admitted that Churchwell is an employee of Florida Department of Corrections.

All remaining allegations are denied as written.

5. Admitted that Schweinsburg is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

6. Admitted that Birge is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

7. Admitted that KIRK is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

8. Admitted that DWARES is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

9. Admitted that POVEDA provides medical care and treatment to inmates at Dade Correctional Institution. The remaining allegations are denied as written.

10. Admitted.

11. Denied.

#### FACTS

12. Admitted.

13. Admitted that KIRK took plaintiff to emergency room. All remaining allegations are denied and strict proof thereof is demanded.

14. Denied and strict proof thereof is demanded.

15. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

16. Denied and strict proof thereof is demanded.

17. Denied and strict proof thereof is demanded.

18. Denied and strict proof thereof is demanded.

19. Denied and strict proof thereof is demanded.

20. Denied and strict proof thereof is demanded.

21. Denied and strict proof thereof is demanded.

22. Denied and strict proof thereof is demanded.

23. Denied and strict proof thereof is demanded.

24. Denied and strict proof thereof is demanded.

25. Denied and strict proof thereof is demanded.

26. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

27. Denied and strict proof thereof is demanded.

28. Denied and strict proof thereof is demanded.

29. Denied and strict proof thereof is demanded.

30. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

31. Denied and strict proof thereof is demanded.

32. Denied and strict proof thereof is demanded.

33. Denied and strict proof thereof is demanded.

34. Denied and strict proof thereof is demanded.

35. Denied and strict proof thereof is demanded.

36. Denied and strict proof thereof is demanded.

37. Denied and strict proof thereof is demanded.

38. Denied and strict proof thereof is demanded. Furthermore, the document speaks

for itself.

39. Denied and strict proof thereof is demanded.

40. Denied and strict proof thereof is demanded.

41. Denied and strict proof thereof is demanded.

42. Denied and strict proof thereof is demanded.

43. Denied and strict proof thereof is demanded.

44. Denied and strict proof thereof is demanded.

45. Denied and strict proof thereof is demanded.

46. Denied and strict proof thereof is demanded.

47. Denied and strict proof thereof is demanded. Furthermore, the document speaks

for itself.

48. Denied and strict proof thereof is demanded.

49. Denied and strict proof thereof is demanded.

50. Denied and strict proof thereof is demanded.

51. Denied and strict proof thereof is demanded.

52. Denied and strict proof thereof is demanded.

53. Denied and strict proof thereof is demanded.

54. Denied and strict proof thereof is demanded.

55. Denied and strict proof thereof is demanded.

56. Denied and strict proof thereof is demanded.

IV. STATEMENT OF CLAIMS FOR RELIEF  
FIRST CAUSE OF ACTION

57. Denied and strict proof thereof is demanded.

58. Denied and strict proof thereof is demanded.

EIGHTH AMENDMENT – DELIBERATE  
INDIFFERENCE SECOND CAUSE OF ACTION

59. Denied and strict proof thereof is demanded. Furthermore, pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27), Plaintiff does not have a discrimination claim.

60. Denied and strict proof thereof is demanded.

THIRD CAUSE OF ACTION  
VIOLATION OF TITLE II OF THE  
AMERICANS WITH DISABILITIES ACT OF 1990  
[42 U.S.C. §12132]

61. Defendants re-allege and reaffirm all answers provided in paragraphs 1-61. Furthermore, pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27), Plaintiff does not have an ADA claim.

A. Denied.

B. Denied.

C. Denied.

D. Denied.

E. Denied.

RELIEF SOUGHT

A. Denied that Plaintiff is entitled to any compensatory damages and Defendants demand strict proof thereof.

B. Denied that Plaintiff is entitled to any punitive damages and Defendants demand strict proof thereof.

C. Denied that Plaintiff is entitled to any Attorneys Fees or Costs, and Defendants demand strict proof thereof.

D. Denied that Plaintiff is entitled to any damages whatsoever, and Defendants demand strict proof thereof.

E. Defendants demand a trial by jury.

F. Denied that Plaintiff is entitled to any relief whatsoever, and Defendants demand strict proof thereof.

### **D.E. #15 – SUPPLEMENTAL COMPLAINT**

#### **I. JURISDICTION & VENUE**

1. Admitted.

2. Admitted that the United States District Court for the Southern District of Florida is an appropriate venue.

#### **II. PLAINTIFF**

3. Admitted.

#### **III. DEFENDANT(S)**

4. Denied as written. Furthermore, this Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

5. Admitted that Churchwell is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

6. Admitted that Schweinsburg is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

7. Admitted that Birge is an employee of Florida Department of Corrections. This Defendant has been dismissed from the action pursuant to the Report of the Magistrate Judge (D.E. 17) and subsequent Order (D.E. 27). All remaining allegations are denied.

8. Admitted that KIRK is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

9. Admitted that DWARES is an employee of Florida Department of Corrections. All remaining allegations are denied as written.

10. Admitted that POVEDA provides medical care and treatment to inmates at Dade Correctional Institution. The remaining allegations are denied as written.

11. Admitted.

12. Denied and strict proof is demanded thereof.

13. Admitted.

“FACTS”

14. Denied and strict proof thereof is demanded.

15. Denied and strict proof thereof is demanded.

16. Denied and strict proof thereof is demanded.

17. Denied and strict proof thereof is demanded.

18. Denied and strict proof thereof is demanded. Furthermore, the document speaks for itself.

19. Denied and strict proof thereof is demanded.

20. Paragraph 20 is an incomplete sentence. Defendants therefore deny paragraph 20 as written.

21. Denied and strict proof thereof is demanded.

22. Denied and strict proof thereof is demanded.

23. Paragraph 23 is incoherent. Paragraph 23 is denied and strict proof thereof is demanded. Furthermore, the documents speak for themselves.

24. Denied and strict proof thereof is demanded.

25. Denied and strict proof thereof is demanded.

26. Denied and strict proof thereof is demanded.

27. Denied and strict proof thereof is demanded.

28. Denied and strict proof thereof is demanded.

29. Paragraph number 29 is incoherent and therefore, denied. Strict proof is demanded of all allegations in paragraph 29. Furthermore, the documents speak for themselves.

30. Paragraph number 20 is incoherent and therefore, denied. Strict proof is demanded of all allegations in paragraph 29. Furthermore, the documents speak for themselves.

#### LEGAL CLAIMS

31. Defendants re-allege and reaffirm all answers provided in paragraphs 1-61 and 1-30.

32. Denied and strict proof thereof is demanded.

33. Denied and strict proof thereof is demanded. Furthermore, Defendants deny that Plaintiff is entitled to any damages, or injunctive relief, whatsoever.

34. Defendants deny any and all allegations made in D.E. 1 and D.E. 15, not specifically admitted or otherwise acknowledged above.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Defendants acted reasonably within the discretion of their position and the course and scope of employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore are entitled to qualified immunity from suit.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. §1983; Furthermore, Plaintiff did not have a serious medical need. Plaintiff cannot establish the deliberate indifference requirement.

**THIRD AFFIRMATIVE DEFENSE**

Defendants did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a cause of action because there is no causal connection between plaintiff's claimed injuries and action or inaction by the defendants as required for liability under 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

Defendants assert that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter that the Defendants acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on failure to exhaust administrative remedies.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on lack of a physical injury as a result of the alleged actions by Defendant.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for punitive damages because he has not alleged the type of conduct that would meet the standards set forth by Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 Led.2d 632 (1983).

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages or injuries.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for medical negligence.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to provide pre-suit notice for a medical negligence action pursuant to F.S. §766.203 and Chapter 766, Florida Statutes.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. §1983.

Defendants reserve the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint (D.E. #1 and D.E. #15), the Defendants deny that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demand trial by jury of all issues so triable as of right by jury.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

s/Monica Stinson  
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Attorney for POVEDA, DWARES & KIRK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 29, 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 all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices or Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are authorized to receive electronically Notices of Electronic Filing.

s/Monica Stinson  
Monica Stinson  
Assistant Attorney General

**SERVICE LIST**

Martin v. McNeil, et al.  
Case No: 11-20965-CIV-SEITZ/WHITE  
United States District Court, Southern District of Florida

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