

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

Case No.: 11-CV-23821-RYSKAMP/WHITE

PERMON THOMAS,

Plaintiff,

v.

ASST. WARDEN SHONEY et al.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATIONS  
OF MAGISTRATE JUDGE**

**THIS CAUSE** comes before the Court on the report and recommendations of United States Magistrate Judge Patrick A. White [DE 9] entered on November 22, 2011. The Magistrate's report was issued after an initial screening of the complaint [DE 1] conducted pursuant to 28 U.S.C. § 1915. Plaintiff filed objections to the Magistrate's report [DE 15] on December 23, 2011. This matter is ripe for adjudication.

The Court has conducted a *de novo* review of the report, objections, and pertinent portions of the record. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that

- (1) The report of United States Magistrate Judge Patrick A. White [DE 9] be, and the same hereby is **RATIFIED, AFFIRMED and APPROVED** in its entirety;

- (2) Plaintiff's claims for denial of adequate medical treatment shall proceed against defendants Officer Tate, Javier Rivera, Captain Urbina, and Assistant Warden Shoney;
- (3) Plaintiff must provide a specific address for Assistant Warden Shoney or he shall be dismissed;
- (4) Plaintiff's claims against defendants Warden Churchwell, Evelyn Garst, and Marta Villacorta are **DISMISSED** for failure to state a claim;
- (5) Plaintiff may file an amended complaint naming specific John Does, their addresses, and each defendant's actions which violated Plaintiff's constitutional rights.

**DONE AND ORDERED** in Chambers at West Palm Beach, Florida this 14 day of February, 2012.

/s/ Kenneth L. Ryskamp  
KENNETH L. RYSKAMP  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO.: 11-23821-CIV-RYSKAMP  
MAGISTRATE WHITE

PERMON THOMAS,

Plaintiff,

v.

ASST. WARDEN SHONEY, et al.,

Defendants,

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**DEFENDANTS RIVERA AND TATE'S  
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, Defendants, JAVIER RIVERA ("RIVERA") and BLONDELL TATE ("TATE") by and through undersigned counsel, pursuant to Fed. R. Civ. P. 8(b) and (c) hereby files this their Answer and Affirmative Defenses to Plaintiff' Complaint (D.E. #1) and states:

**STATEMENT OF CLAIMS**

A. Defendant denies paragraph labeled "A" including all subparts and demands strict proof thereof.

**STATEMENT OF FACTS**

1. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph one and therefore deny.

2. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph two and therefore deny.

3. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph three and therefore deny.

4. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph four and therefore deny.

5. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph five and therefore deny.

6. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph six and therefore deny.

7. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph seven and therefore deny.

**TATE AND RIVERA**

8. Defendant admits that Plaintiff was assigned by the I.C.T. team to Inside Grounds in December 2008. All remaining allegations in paragraph eight are denied.

9. Defendants deny the allegation in paragraph nine as written.

10. The allegation in paragraph ten does not pertain to Defendants TATE and RIVERA and therefore no response is required.

11. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph eleven and therefore deny.

12. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph twelve and therefore deny.

13. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph thirteen and therefore deny.

14. Defendants admit that Plaintiff was assigned by the I.C.T. team to houseman ON

January 7, 2009. All remaining allegations in paragraph fourteen are denied.

15. Defendants admit paragraph fifteen.

16. Defendants deny paragraph sixteen as written.

17. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph seventeen and therefore deny.

18. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph eighteen and therefore deny.

19. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph nineteen and therefore deny.

20. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph twenty and therefore deny.

21. Defendants deny paragraph twenty-one as written.

22. Defendants deny paragraph twenty-two as written.

23. Defendants deny paragraph twenty-three as written.

24. Defendants deny paragraph twenty-four as written.

25. Defendants deny paragraph twenty-five as written.

26. Defendants deny paragraph twenty-six as written.

27. Defendants deny paragraph twenty-seven.

28. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph twenty-eight and therefore deny.

29. Defendants deny paragraph twenty-nine as written.

30. Defendants are without sufficient knowledge to admit or deny the allegations in paragraph thirty and therefore deny.

31. Defendants admit that Plaintiff was assigned as a houseman on March 25, 2009, all remaining allegations are denied as written.

32. Defendants deny paragraph twenty-three.

**WARDEN CHURCHWELL**

Paragraphs thirty-three through thirty-six does not pertain to Defendants and therefore no responsive is required.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Defendants deny Plaintiff's allegations of exhaustion and demand strict proof thereof.

**RELIEF**

Defendants deny that Plaintiff is entitled to compensatory or punitive damages and demand strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Further answering, and as the first affirmative defense, Defendants allege and aver that Defendants acted reasonably within the discretion of their position and the course and scope of their employment and did not violate any clearly established statutory or constitutional right of which a reasonable person would have known, and are therefore entitled to qualified immunity from suit.

**SECOND AFFIRMATIVE DEFENSE**

Further answering, and as the second affirmative defense, Defendants allege and aver that Plaintiff has failed to state a cause of action because Plaintiff cannot establish the deliberate indifference required at a minimum for liability under 42 U.S.C. § 1983.

**THIRD AFFIRMATIVE DEFENSE**

Further answering, and as the third affirmative defense, Defendants allege and aver that Plaintiff has failed to state a cause of action because negligence is not actionable under 42 U.S.C. § 1983.

**FOURTH AFFIRMATIVE DEFENSE**

Further answering and as the fourth affirmative defense, the Defendants would allege and aver that Plaintiff's complaint fails to state a claim upon which relief can be granted.

**FIFTH AFFIRMATIVE DEFENSE**

Further answering and as the fifth affirmative defense, both Defendants would allege and aver that Defendants did not act in any way that would violate any clearly established rights guaranteed to the Plaintiff under the Constitution

**SIXTH AFFIRMATIVE DEFENSE**

Further answering and as the sixth affirmative defense, Defendants would allege and aver that they are immune from suit pursuant to the Eleventh Amendment.

**SEVENTH AFFIRMATIVE DEFENSE**

Further answering and as the seventh affirmative defense, both Defendants would allege and aver that Defendants are entitled to the defense that the actions of the Plaintiff are the sole cause of his alleged damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Further answering and as the ninth affirmative defense, both Defendants would allege and aver that that Plaintiff's claims for damages is barred pursuant to the Prison Litigation Reform Act of 1995 in that the Plaintiff has failed to exhaust his remedies via the inmate grievance procedure.

**TENTH AFFIRMATIVE DEFENSE**

Further answering and as the ninth affirmative defense, both Defendants would allege and aver that any recovery by the Plaintiff must be reduced to the extent of benefits paid or payable to the Plaintiff from all collateral sources, as well as the existence of any judgments or debts owed to the State of Florida, including those judgments or debts resulting from any criminal convictions.

**ELEVENTH AFFIRMATIVE DEFENSE**

Further answering and as the eleventh affirmative defense, Plaintiff cannot establish as a subjective matter, that the Defendant acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. §1983.

**TWELFTH AFFIRMATIVE DEFENSE**

Further answering and as the twelfth 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).

**THIRTEENTH AFFIRMATIVE DEFENSE**

Further answering and as the thirteenth affirmative defense, these 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, the Defendants RIVERA and TATE 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 BONDI  
ATTORNEY GENERAL

S/ Kathleen M. Savor  
Kathleen M. Savor (Fla Bar. 0139114)  
Assistant Attorney General  
Kathleen.Savor@myfloridalegal.com

OFFICE OF THE ATTORNEY GENERAL  
110 S. E. 6th Street / 10th Floor  
Ft. Lauderdale, FL 33301  
Telephone: (954) 712-4600  
Facsimile: (954) 712-4708  
Attorney for Defendants Rivera  
and Tate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served by U.S. mail on 21st Day of March, 2012 on all counsel or parties of record on the attached service list.

S/ Kathleen M. Savor  
Kathleen M. Savor  
Assistant Attorney General

SERVICE LIST

CASE NO.: 11-23821-CIV-RYSKAMP  
MAGISTRATE JUDGE WHITE

Permon Thomas  
DC# 425550  
Pro Se  
Charlotte Correctional Institution  
33123 Oil Well Road  
Punta Gorda, FL 33955  
[Via U.S. Mail]