UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10 cv 21898 DLG

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UNITED STATES DISTRICT COURT
Southern District of Florida

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

John C. Spaulding, Pro Se,
Plaintiff,
v.

Case No.: 1:10-cv-21898-DLG
Magistrate Judge: [illegible] Donald Graham

Dr. Joseph Poitier; Nurse LeMarche, Nurse Etienne
Jackson Health Services/ Jackson Memorial Hospital/ Miami-Dade Corrections and Rehabilitation
Ofc. Demora Prudent; Ofc. Beverly Neal; Ofc. Janeen Agbonze; Ofc. Guery Jasmin;
Miami-Dade Corrections and Rehabilitation,
Defendants,
Individually and in their official capacities

SUWANNEE CORRECTIONAL INSTITUTION
Provided for Mailing
APR 07 2011
on This Date
DEPT. OF CORRECTIONS

Amended
Complaint

I. Jurisdiction and 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 right, secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. Section 1331 and 1343 (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2) The Southern District of Florida is an appropriate venue under 28 U.S.C. Section 1391(b)(2) because it is where the events giving rise to this claim occured.

II. Plaintiff

3) Plaintiff John C. Spaulding is and was at all times mentioned herein a inmate of the Miami Dade Corrections and Rehabilitation, Pretrial Detention Center in the custody of Miami-Dade County. He is currently confined in the Florida Department of Corrections, in Live Oak, Florida.

III. Defendants

4) Defendant Joseph Poitier, is a doctor of Jackson Health Services / Jackson Memorial Hospital contracted by Miami Dade Corrections and

Rehabilitation and is legally responsible for the overall operation of the Psychiatric Department at Miami Dade County Corrections and Rehabilitation/ Pretrial Detention Center.

5) Defendant Nurse Etienne , is a nurse at Miami Dade County Corrections and Rehabilitation contracted under Jackson Health Services/ Jackson Memorial Hospital, assigned to the Psychiatric Floor.

6) Defendant Nurse LeMarche , is a nurse at Miami Dade Corrections and Rehabilitation contracted under Jackson Health Services/ Jackson Memorial Hospital, assigned to the Psychiatric Floor.

All three are addressed as:

1321 N.W. 13st and 2525 N.W. 62st by contract of
Miami, Florida 33125 Miami, Florida Miami Dade Corrections

7) Defendant Demora Prudent is a corrections officer of Miami Dade Corrections and Rehabilitation who, at all times mentioned in this complaint held the rank of officer and was assigned to the Pretrial Detention Center/Psychiatric Floor.

8) Defendant Beverly Neal is a correctional officer of Miami Dade Corrections and Rehabilitation who, at all times mentioned in this complaint held the rank of officer and was assigned to the Pretrial Detention Center/Psychiatric Floor.

9) Defendant Janeen Agbenze is a correctional officer of Miami Dade Corrections and Rehabilitation who, at all times mentioned in this complaint held the rank of officer and was assigned to the Pretrial Detention Center/Psychiatric Floor.

10) Defendant Guerry Jasmin is a correctional officer of Miami Dade Corrections and Rehabilitation who, at all times mentioned in this complaint held the rank of officer and was assigned to the Pretrial Detention Center/ Psychiatric Floor.

All four (7 thru 13) are addressed as:

2525 N.W. 62st.
Miami, Florida 33147

11) Each defendant is sued individually and in his or her official capacity. At all times mentioned in this complaint each defendant acted under the color of law.

IV. Statement of Facts

12) On May 14, 2008 the plaintiff John C. Spaulding was harassed by Corporal Cushnie of the Pretrial Detention Center (Fifth Floor) to which this official searched his cell tearing up his religious material, took his magazines, and other personal items.

13) He then threatened the plaintiff by stating, "All of you Muslims are suicide bombers and murderers - if I could get away with it I'll kill you right now."

14) As an alternative to get out of that bad situation and guarantee access in reporting the incident to a superior officer, the plaintiff waited until they changed shift and declared himself suicidal, (3-11 shift).

15) At the time the Plaintiff was classified and housed as a Level 1A safety cell inmate - meaning he must be housed alone and there must be a supervisor present when he's moved or during an altercation.

*(1) Note also that the Plaintiff has never been diagnosed for having any mental disorder nor has he ever in his life taken any antipsychotic drugs nor consented in writing to take any which is a legal requirement before psychiatric or healthcare staff and officials can issue them to any pretrial inmate or patient...

*(2) Anti-Psychotic drugs causes a negative reaction if administered to Glaucoma patients which result in blurry vision, headaches, etc. Psychiatrists and their nurses are trained and educated to know all the side effects of the drugs they administer, especially their effects when combined with different diseases. This is a major responsibility in the practice of medicine.

*3) Note that the Plaintiff has been diagnosed with the disease Glaucoma since 2002 and has been going to regular check ups and treatment for it. Glaucoma is a disease which affects it's victims by taking away their peripheral vision causing them to have what is called

"tunnel vision" until finally they lose their vision totally. (This can be supported by the doctor at Bascom and Palmer in Miami who has been treating Mr. Spaulding's Glaucoma in testimony, also he didn't acquire blurry vision until the incident below mention).

16) On May 15, 2008 at approximately 1:00 a.m. the Plaintiff was housed alone on the video surveillance equipped psychiatric suicidal watch unit (9-C-1) in cell #9. All he was doing was talking to another inmate in another cell (not trying to hurt himself or any body else) - freedom of speech. That's when former defendant (deceased) Ofc. Rogers approached the plaintiffs cell and asked him to "cuff up." As a gesture of obedience and not being belligerent, the plaintiff humbly complied.

* Note that there is no supervisor present which is required by procedure (at that time) when dealing with a Level IA safety cell inmate, at that time...

17) The plaintiff was then handcuffed with metal restraints with his arms stuck out the tray flop. Ofc. Rogers then grabbed the cuffs and opened the door with the plaintiff still stuck in the door. The plaintiff asked what was going on and Ofc. Rogers replied that, "They want to give you a shot."

18) Frightened, the plaintiff asked, "For what? I haven't done anything wrong."

* Upon information and belief - the ninth floor had a reputation for injecting inmates with anti-psychotic drugs as punishment, instead of quelling violent behavior as it was designed for - by policy...

19) At that time defendants (Agbonze, Neal, Prudent, Jasmin) approached the plaintiff and started grabbing him to subdue him. Ofc. Prudent grabbed the plaintiff around his neck at first, then went around the door and grabbed the handcuffs with Ofc. Rogers. Ofc's Agbonze, Neal and Jasmin each grabbed him around his torso and waist. When defendant Nurse LeMarche approached the plaintiff to inject an unknown liquid in his left arm the plaintiff started bouncing up and down to keep them from putting the needle in him and protested by stating that, "I haven't done done anything wrong, I have rights and what you all are doing isn't right."

20) That's when defendants Prudent and Rogers planted their feet against the door and pulled on the handcuffs with all their might while the plaintiffs arms were still inside the tray flap. Then defendant Nurse Etienne came over and assisted them by first grabbing the plaintiff around his neck then eventually bending the plaintiffs right leg at the knee as far as it would painfully go until Nurse LeMarche hammer punched the syringe into the plaintiffs severly tightened quadricep muscle, without sanitizing the injected area first by procedure and policy.

21) They then released the plaintiff, closed the door and uncuffed him. All of this was caught on camera.

22) The plaintiff was badly bruised on his forearms and biceps and had no feeling in his hands period- he felt tortured... Then their was dizziness, then skep.

* Note that the plaintiff was never treated for his injuries. The plaintiffs medical records and the video survellience proves his case as evidence.

23) During the plaintiffs protest while force was being applied upon him unconstitutionally Nurse LeMarche stated that Dr. Poitier ordered that he be given a shot because he was out of control. Nurse LeMarche made a false accusation against the plaintiff just to subject him to cruel and unusual punishment knowing his actions would cripple the plaintiffs vision. This was direct deliberate indifference to the care and safety of the plaintiffs medical ailment of Glaucoma and his treatment to force a antipsychotic drug into him, and the defendant Nurse LeMarche knew this. At the time Nurse LeMarche told him the drug was Halidol.

24) Defendant Dr. Joseph Poitier also knew that injection would negatively affect the plaintiffs vision because it's a primary responsibility by policy for a doctor to thoroughly review a patients medical file before ordering or administering a new drug, never taken by the patient before, to them that is known to cause side affects. Dr. Poitier knew from the medical file that the plaintiff was suffering from Glaucoma.

25) To make false accusations against the plaintiff (which is supported

by video survellience) saying the plaintiff was out of control when he was not, and even after reviewing his medical file then carrying out a planned attack against him, shows that they, the defendants, possessed a culpable state of mind while subjecting him to unnecessary and wanton infliction of pain. An act that was deliberately indifferent to the care of his disease – to the untreatment of his injuries after the attack.

26) The officer defendants openly used force against the plaintiff and to hide the incident from their superiors, they did not prepare a Use of Force report, which is a mandatory requirement by policy. They knew they were wrong in carrying out what they had planned. Again, it's mandatory by their policy and training that a Use of Force report must be written by every individual involved once they forcibly put their hands on a inmate in a forceful manner. They acted outside their official duty when they didn't follow policy.

Their actions were unnecessary because the plaintiff never was violent or out of control, in fact, he voluntarily complied to be placed in metal restraints which were later used by the defendants to inflict wanton pain upon his person, causing his injuries, violating his civil rights. A Use of Force report would have required taking pictures of his injuries.

27) Later that same morning Dr. Poitier, at approximately 9:00 a.m. came and observed personally the results of his order and the plaintiffs tortured and unbalanced state of being, and instead of treating him for what he observed he intentionally released the plaintiff back to general population violating the policy that a patient has to be detained a minimum mandatory of specific hours on suicide observation. The plaintiff had not been under suicide observation for 24 hours. This is deliberate indifference added to what he forced the plaintiff to endure that night by being injected with an antipsychotic drug.

28) That same day upon waking up, the plaintiffs vision was affected in the manner of blurriness that it seemed a though he was walking through a white cloud. Being that the plaintiff does have Glaucoma, he

does know for a fact that he's living with and has experienced all the side affects and symptoms of being injected with the antipsychotic drug known as Halidol while having this disease.

29) A few days after being taken back to the same cell Cpl. Cushnie harrassed him in, the plaintiff tried desperately to receive medical attention for his injuries, after he came to his full senses and the drug wore off.

* To this very day the plaintiff is suffering from severe near sightedness, blurry vision and headaches because of the mixture of having Glaucoma and being injected with an antipsychotic drug. He's been prescribed three different eye glasses prescriptions from the eye doctor since May 2008, when before the incident his vision was very good and all his checkups recorded in his medical file substantiates this fact.

His peripheral vision is still strong and intact.

30) The plaintiff finally saw Dr. Migrino for his injuries two weeks later to which he still had lost feelings in his hands, so this doctor set up an appointment for him to see a "hand specialists" in the Sports Medicine clinic at Jackson Memorial Hospital. Nothing was done to better his condition beyond that.

31) He never made that appointment to this day because corrections would not provide transportation for the Plaintiff to go to the hospital

32) In a matter of months he was forced to recover fully from his hand injuries on his own without treatment.

V. Exhaustion of Legal Remedies

33) Plaintiff used the inmate grievance procedure available at Miami Dade Corrections and Rehabilitation/Pretrial Detention Center to try to solve the problem. On May 18, 2008 plaintiff John C. Spaulding filed a grievance presenting the facts relating to this case of the incident. On May 26, 2008 plaintiff was sent a response stating that the grievance was

"Substantiated" as having occured and that the plaintiff was drugged. On May 28, 2008 plaintiff also filed an appeal because he requested in his first grievance that the video surveillence of the incident to be preserved for future reference and they no mention of this being done in their first response. On June 5, 2008 the plaintiff received a response of his appeal as "unsubstantiated," but they responded saying that they would review the video; an admittance that it did exist.

34) The plaintiff on June 10, 2008 then filed a Sworn Formal Complaint to Internal Affairs / Miami Dade Corrections and Rehabilitation in care of Chief Puig and an investigation was conducted by this agency. In August 2008 the plaintiff was interviewed by one of their officials at the Pretrial Detention Center, then again in November 2008 at Metro West Detention Center where the plaintiff signed a medical release form for the investigator in order to aid them in the investigation. Within this complaint the plaintiff also requested that the video surveillence be preserved for future reference as evidence.

35) Thereafter the plaintiff was never informed of the outcome of this investigation by Internal Affairs (I/A).

VI. Legal Claims

Plaintiff reallege and incorporate by reference paragraphs 1-35.

It was cruel and unusual punishment of excessive and planned force with deliberate indifference when all the above mentioned defendants violated policy and procedure by:

1) Dr. Poitier ordered the injection knowing of the plaintiff's disease from his medical records and how it would negatively affect him, using his suicidal status as an excuse to do so, then knowingly violated policy by releasing the plaintiff from his care before the policy minimum mandatory time required that a suicidal patient must remain under observation. Violating his right to Due Process and the liberty to be free of harm - Eigth and Fourteenth Amendment Also not treating him for 8 of 10 his injuries as a result of the attack

2) Nurse LeMarche made a false accusation (evidenced by video) stating that the Plaintiff was acting out of control as an excuse to violate his First Amendment Right of freedom of speech to carry out this attack (planned by him) which resulted in unnecessary and wanton infliction of pain by the defendants Ofc. Prudent, Ofc. Neal, Ofc. Agbonze, Ofc. Jasmin, Nurse Etienne and former defendant (deceased) Ofc. Rogers, Willie, when they all aided in abusing him and didn't aid in the treatment of his injuries (by policy to do so) and forcefully aided in injecting him with an antipsychotic drug that would permanently disable his vision as a means of punishment violating his First, Fifth, Eigth and Fourteenth Amendment Rights of the United States Constitution, just for the sole reason of the plaintiff holding a conversation with another patient/inmate in another cell. They also violated policy by not preparing Use of Force reports to hide or cover up their intentional retaliation, and LeMarche not sanitizing injected area. They also violated his rights for not treating him for his injuries from the attack. This constituted deliberate indifference and direct cruel and unusual punishment with deprivation of freedom of speech and the right to refuse the psychotropic injection as a Due Process violation. As a pretrial detainee his right to not be punished without Due Process was also violated as well as, again, his liberty to remain free from harm.

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

VII. Relief Sought

Wherefore, plaintiff respectfully prays that this Honorable Court enter judgement granting plaintiff:

1) A declaration that the acts and omissions described herein violated plaintiffs rights under the Constitution and laws of the United States;

2) A preliminary and permanent injunction ordering defendants Dr. Joseph Poitier, Nurse LeMarche, Nurse Etienne, Ofc. Demora Prudent, Ofc. Janeen Agbonze, Ofc. Guery Jasmin and Ofc. Beverly Neal to establish a written criteria as policy of their employed agencies to be aware and concerned of the care of inmates/patients suffering with Glaucoma, ensure them proper and adequate medical care as to not contribute to the hindrance of this disease - and to not use anti psychotic drug injections of any form as a form of punishment towards inmate/patients;
3) Compensatory damages in the amount of $2,500,000 against each defendant; jointly and severally;
4) Punitive damages in the amount of $7,500,000 against each defendant;
5) A jury trial on all issues triable by jury;
6) Plaintiffs cost in this suit;
7) Any additional relief this court deems just, proper and equitable.

Date: April 7, 2011 By: John C. Spaulding

VIII. Verification

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct..

Executed at:
Live Oak, Florida
on April 7, 2011

Respectfully Submitted;
John C. Spaulding, Pro Se
John C. Spaulding, C-183425
Suwannee Correctional Institution
5964 U.S. Hwy 90
Live Oak, Florida 32060

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-21898-CIV-GRAHAM
MAGISTRATE JUDGE P.A. WHITE

JOHN C. SPAULDING,	:	
Plaintiff,	:	
v.	:	REPORT OF MAGISTRATE JUDGE
JOHN POITIER, et al.,	:	(DE#s 50 & 51)
Defendants.	:	

I. Introduction

John C. Spaulding has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983 (DE#1). The plaintiff has been granted leave to proceed in forma pauperis.

This Cause is before the Court upon Motions to Dismiss filed by Defendant Mera (DE#50), and Defendants Poitier, Etienne, Marsh, Prudent, Neal, Abonze and Jasmin (DE#51), as well as plaintiff's amended complaints (DE#s 12 and 57).

Prior History

In the plaintiff's initial complaint (DE#1), he named the following defendants: Jackson Health Services (Jackson Hospital), Dr. Poitier, Jackson Health Services, Director Timothy Ryan, Miami Dade Officers Mera, Rodgers (now deceased), Abonze, Prudent, Neal, and Jasmin, Nurse Marsh, Miami Dade Department Of Corrections, and Nurse Etienne of Jackson Memorial Hospital.

The plaintiff stated that on May 15, 2008, while confined at the Miami Dade County Pretrial Detention Center, he declared

himself suicidal to escape threats made by Corporal Cushnie, who tore up his religious material and told him he hated Muslims. He states that while on the Psychological Suicide Watch Floor, he was forcibly held by the named officers and given an injection of Haldol by Nurse Marsh. He stated that Dr. Poitier was not present, but ordered the injection on the phone. He claimed that as a result of this strong dose, his vision has been declining. He further claimed he suffered a pinched nerve, but regained feeling back in his hands. He added that he had been suffering from Glaucoma and was being treated for the disease since 2002. He alleged a violation of his religious rights and a violation resulting from an "illegal injection of Haldol". He seeks over ten and one half million dollars in monetary damages.

A Report was entered by the Undersigned recommending that the complaint be dismissed, finding that an injection of Haldol, administered to a plaintiff on the Suicide Watch Floor, and prescribed by a doctor, did not demonstrate a violation of a constitutional right, and that a difference of opinion between doctors and the plaintiff failed to state a claim. The Courts have long recognized that a difference of opinion between an inmate and the prison medical staff regarding medical matters, including the diagnosis or treatment which the inmate receives, cannot in itself rise to the level of a cause of action for cruel and unusual punishment, and have consistently held that the propriety of a certain course of medical treatment is not a proper subject for review in a civil rights action. Estelle v. Gamble at 107 ("matter[s] of medical judgment" do not give rise to a §1983 claim); see also Ledoux v. Davies, 961 F.2d 1536 (10 Cir. 1992) (inmate's claim he was denied medication was contradicted by his own statement, and inmate's belief that he needed additional medication other than that prescribed by treating physician was

insufficient to establish constitutional violation); Ramos v. Lamm, 639 F.2d 559, 575 (10 Cir. 1980) (difference of opinion between inmate and prison medical staff regarding treatment or diagnosis does not itself state a constitutional violation), cert. denied, 450 U.S. 1041 (1981). [1]

On July 28, 2010, the Report was adopted. Upon review of the plaintiff's untimely objections and a motion to amend (DE#11), with an amended complaint (DE#12), the Order adopting the Report and Recommendation was vacated by the District Judge on October 19, 2010. The Order read that in his Objections to the Report, the plaintiff asserted that Haldol causes a negative reaction in patients with Glaucoma and that the Court cannot make a factual determination as to whether the Haldol, used against the plaintiff's will, caused his visual problems, and denied him a liberty interest. (DE#18). The case was ordered to proceed upon the plaintiff's initial complaint (DE#1). The plaintiff's motion to file an amended complaint (DE#11) was denied as moot, and the case was to proceed on the initial complaint. (DE#1). The motion to amend (DE#11) was denied as moot. The case was re-referred for service of the named defendants.

A Supplemental Report was entered on January 3, 2011, and service was ordered upon all the named defendants, with the exception of Jackson Hospital, Timothy Ryan, and Miami Dade County Corrections and Rehabilitation Department, whom the Report recommended were not proper defendants.

Amended Complaints (DE#12 & 57)

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[1]The plaintiff further alleged that Officer Prudent, together with Officers Neal, Abonze, Jasmin and Rogers (now deceased) used force while administering the injection, resulting in a bruises, cuts and a period of numbness in his hands.

The plaintiff's motion to file the first amended complaint was denied as moot by United States District Judge Graham in his Order dated October 2010, and the case was to proceed on the initial complaint. Review of the amended complaint (DE#12) reveals that it names the same defendants and raises the same allegations as in the initial complaint.

The plaintiff filed a second amended complaint (DE#57), on April 13, 2011 (DE#57). Review of this amended complaint reveals that the plaintiff again names the same defendants as he did in his initial complaint, and raises the same allegations, that he was forcefully injected with Haldol and suffered adverse consequences. The plaintiff further states again that the named officers used excessive force when administering the injection. Although the amended complaint provides additional facts, it does not change the substance of the complaint. The operative complaint in this case therefore should be the initial complaint (DE#1), and the amended complaint (DE#57).[2]

This Cause is before the Court upon the Motions to Dismiss filed by Defendant Captain Mera (DE#50), and Defendants Dr. Poitier, Nurse Etienne and Marsh, and Officers Prudent, Neal, Abonze and Jasmin (DE#51). [3]

II. Analysis of Motions to Dismiss

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[2] The complaints include the allegation that his religious materials, along with other material, were ripped and a verbal religious slur was used. These facts are too conclusory to state a claim for denial of religious freedom. Twombly, supra.

[3] Although these motions were filed before the plaintiff's second amended complaint (DE#57) the allegations remain the same.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint because the plaintiff has failed to state a claim upon which relief may be granted. See Fed.R.Civ.P. 12(b)(6). The complaint may be dismissed if the plaintiff fails to plead facts that state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007)(retiring the oft-criticized "no set of facts" language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964).

A. Motion to Dismiss of Captain Mera (DE#50)

Captain Mera seeks to dismiss the complaint against him claiming the following; 1)that he was named purely in his supervisory capacity upon the theory of respondeat superior, 2)that he is entitled to qualified immunity, and 3)that the complaint fails to state a claim against this defendant.

Further review of the complaint (DE#1) indicates that the plaintiff alleges that on May 15, 2008, he declared himself suicidal and was sent to the Psychological Suicide Watch Floor. Based upon orders from Dr. Poitier, Nurse Marsh injected the plaintiff with Haldol, an anti-psychotic drug.

Mera contends that the only allegation against him was that he failed to train the guards and ensure that the prisoners were transported to the hospital when necessary. Review of the initial complaint reveals that Mera is named both in his supervisory capacity, and because he allegedly gave the direct order to use unnecessary force to restrain the plaintiff to submit to the injection. (DE#1 p7). There is no further reference to this defendant and he is not named as participating in the giving of the injection. Further, he is not named in the amended complaint (DE#57). However, if the defendant gave a direct order to use force to inject the plaintiff against his will, his liability is greater than that simply based upon a theory of respondeat superior. The plaintiff alleges a causal connection between the defendant and the alleged act. Therefore Mera would not be entitled to qualified immunity on this claim. At this stage, the facts are insufficient to determine whether Mera violated the plaintiff's constitutional rights in ordering the injection, and the case shall proceed against him solely on that claim.

The defendant further correctly argues he is entitled to qualified immunity as to his supervisory role in arranging transportation of prisoners, and supervising personnel. All claims related to the defendant's failure to perform general supervisory responsibilities should be dismissed. A defendant cannot be held

liable based upon the theory of respondeat superior. Monell v Department of Social Services, 436 U.S. 658 (1978).

Lastly, the defendant correctly asserts that the injunctive relief sought in the form of various training programs and other matters of internal procedure is not relief available in a civil rights complaint. It will be recommended that the defendant's motion to dismiss be granted and denied in part.

Defendants' Poitier, Etienne, Marsh, Prudent, Neal, Abonze and Jasmin's Motion to Dismiss (DE#51).

The defendants seek dismissal of the complaint based upon a theory of qualified immunity. The defendants refer to the amended complaint (DE#12) declared moot by Judge Graham, who stated that the case shall proceed on the initial complaint (DE#1).[4]

Dr. Poitier and Nurses Etienne and Marsh argue they are entitled to qualified immunity. They performed their official duties with a patient who was self-identified as suicidal, as well as uncooperative, and acted according to policy when providing him with an injection of Haldol. The nurses were performing their jobs in evaluating the patient, seeking medical guidance from a doctor, and then carrying out the doctor's orders for a one time injection for a suicidal inmate, to prevent the inmate from harming himself.

Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." Saucier v. Katz, 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526

[4]The operative complaints are now the initial complaint (DE#1) and the second amended complaint (DE#57) which does not change the claims or defendants.

(1985)). The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, Lee v. Ferraro, 284 F.3d 1188, 1194 (11 Cir. 2002) (citing Anderson v. Creighton, 483 U.S. 635, 638 (1987)), and it shields from suit "all but the plainly incompetent or one who is knowingly violating the federal law." Lee, supra, 284 F.3d at 1194 (quoting Willingham v. Loughnan, 261 F.3d 1178, 1187 (11 Cir. 2001)). Since qualified immunity is a defense not only from personal liability for government officials sued in their individual capacities, but also a defense from suit, it is important for the Court to determine the validity of a qualified immunity defense as early in the lawsuit as is possible. Lee v. Ferraro, supra, at 1194; GJR Invs., Inc. v. County of Escambia, 132 F.3d 1359, 1370 (11th Cir. 1998).

Generally, government officials performing discretionary functions are protected by qualified immunity if their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

In Saucier, supra, the Supreme Court set forth a two-part test for evaluating a claim of qualified immunity. As a "threshold question," a court must ask, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Lee, supra at 1194 (quoting Saucier, 533 U.S. 194, 201); and then, if a constitutional right would have been violated under the *plaintiff's* version of the facts, the court must then determine "whether the right was clearly established." Lee, supra, 284 F.3d at 1194 (quoting Saucier, supra). This second inquiry "must be undertaken in light of the specific context of the case, not as a broad

general proposition." Id.; see also Marsh v. Butler County, 268 F.3d 1014, 1031-33 (11 Cir. 2001) (en banc).

In this Case Judge Graham has determined that the Court could not make a factual medical predetermination regarding the injection given to the plaintiff. The Order states that the inmate has a liberty interest in the decision to refuse the administration of anti-psychotic drugs unless preconditions are met, citing to Washington v Harper, 494 US 201, (1990), such as when the inmate is dangerous to himself or others. The Court cannot determine at this time whether the Haldol caused the plaintiff's ensuing visual problems and whether there was a legitimate purpose for the injection against his will. Therefore, until further facts are developed, the argument for qualified immunity by Dr. Poitier and Nurses Etienne and Marsh should be denied.

The plaintiff further alleges that Officers Prudent, Neal, Abonze and Jasmin used unlawful force while injecting him.

Claims of excessive force by guards are cognizable under 42 U.S.C. §1983, as a violation of the Eighth Amendment. Booth v Chumer, et al, 206 F.3d 289 (3rd Cir. 2000), Perry v thompson, 786 F.2d 1093 (11 Cir. 1986). In order to be held liable under §1983, an officer need only be present at the scene and fail to take steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance"); Fundiller v City of Cooper City, 777 F.2d 1436 (11 Cir. 1985); Harris v Chanclor, 537 F.2d 203, 206 (5 Cir. 1976).

Defendant Officers Prudent, Neal, Abonze and Jasmin argue that they are entitled to qualified immunity, as the force used was that needed to subdue the plaintiff to inject him. The plaintiff

resisted by "bouncing up and down to keep them from putting the needle in him", and a certain amount of force was used to complete the injection. The plaintiff alleges bruises and a numbness in his arm for a period of about six months. Although the defendants argue that the amount of force used does not rise to an Eighth Amendment level, again at this early stage it cannot be determined whether the force used was justified. At a later date, further factual development may determine that less than unlawful force was used. Further, the Court has determined that in holding the plaintiff down while the injection was administered, his liberty interests may have been violated. These claims must continue against the named defendants.

It is therefore recommended that the Defendants' Motion to Dismiss (DE#51) be denied.

IV. Conclusion

It is therefore recommended as follows:

1. Defendant Mera's motion to dismiss (DE#50) be granted in part as to all supervisory claims, and injunctive relief, and denied as to the claim against him for his role in the forced injection.

2. Defendants Poitier, Etienne, Marsh, Prudent, Neal, Abonze and Jasmin's Motion to Dismiss (DE#51) be denied.

3. The operative complaints in this case are the initial complaint (DE#1) and the second amended complaint (DE#57).

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

Dated at Miami, Florida, this 13th day of May, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: John Christopher Spaulding, Pro se
DC #183425
Suwanee Correctional Institution
Address of record

Alexander Bokor, Esq.
Rachel Wilhelm, Esq.
Assistant County Attorneys of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-21898-CIV-GRAHAM/WHITE

JOHN C. SPAULDING

Plaintiff,

vs.

JOHN POITIER, et. al.,

Defendants.
_____/

ORDER

THIS CAUSE comes before the Court upon Defendant Mera's Motion to Dismiss [D.E. 50] and the Motion to Dismiss of Defendants Poitier, Etienne, Mash, Prudent, Neal, Abonze and Jasmin [D.E. 51].

The Magistrate Judge issued a Report recommending that Defendant Mera's motion to dismiss be granted in part as to all supervisory claims and injunctive relief and denied as to the claim against him for his role in the forced injection. The Magistrate Judge also recommended that the Motion to Dismiss of Defendants Poitier, Etienne, Mash, Prudent, Neal, Abonze and Jasmin be denied. Defendants have filed objections to the report.

THE COURT has conducted an independent review of the record and is otherwise fully advised in the premises.

The Court finds Defendants' objections are without merit. Based thereon, it is hereby

ORDERED AND ADJUDGED that the Magistrate Judge's Report and Recommendation [D.E. 62] is **AFFIRMED, ADOPTED AND RATIFIED** in its

entirety. It is further

ORDERED AND ADJUDGED that Defendant Mera's Motion to Dismiss [D.E. 50] is **GRANTED in PART and DENIED in PART.** All supervisory claims and claims for injunctive relief are **DISMISSED.** The claim against Defendant Mera for his role in the forced injection shall proceed. It is further

ORDERED AND ADJUDGED that the Motion to Dismiss of Defendants Poitier, Etienne, Mash, Prudent, Neal, Abonze and Jasmin [D.E. 52] is **DENIED.** It is further

ORDERED AND ADJUDGED that the operative complaints in this case are the initial complaint [D.E. 1] and the second amended complaint [D.E. 57].

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of June, 2011.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge White
Counsel of Record
John C. Spaulding, pro se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-21898-CIV-GRAHAM/WHITE

JOHN C. SPAULDING,

Plaintiff,

v.

JOHN POITIER, et al.,

Defendants.
_____/

ANSWER AND DEFENSES OF DEFENDANTS
CAPTAIN MERA, DR. POITIER, NURSES ETIENNE AND LAMARCHE AND
OFFICERS PRUDENT, NEAL, AGBONZE AND JASMIN

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants Captain Daniel Mera ("Captain Mera"), Dr. Joseph Poitier ("Dr. Poitier"), Nurses Etienne and Lamarche (collectively, "Nurses"), and Officers Prudent, Neal, Agbonze and Jasmin (collectively, "Officers") answer Plaintiff's Complaint and Second Amended Complaint ("SAC") and assert the following defenses:

ANSWER TO THE COMPLAINT

1. As to the Complaint, Statement of Facts, Paragraph 1, Defendants admit that Plaintiff was transported to the Psychological Floor-Suicide Watch at the Miami-Dade County Pretrial Detention Center; however Defendants deny that this occurred at 1 pm. Defendants further deny that the Plaintiff's life was threatened by an officer or that the officer conducted a cell search in which he destroyed religious material and insulted Plaintiff. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

2. As to the Complaint, Statement of Facts, Paragraph 2, Defendants admit that Plaintiff declared himself suicidal but are without knowledge as to any supposed ulterior motive

by Plaintiff in declaring himself suicidal. It is admitted that Plaintiff was asked to "cuff up," or present his hands through the food tray for handcuffing and restraint, in order to have a shot administered. Defendants deny that plaintiff complied and deny that the reason for ordering the shot was because he was conversing with another inmate. Rather, Defendant was loud, obstreperous, resisted commands, and in the opinion of staff was a danger to himself or others. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

3. As to the Complaint, Statement of Facts, Paragraph 3, Defendants are without knowledge of the specific statements made by Plaintiff and therefore deny any allegations related thereto. Additionally, Defendants deny that "no attention was paid to" Plaintiff.

4. As to the Complaint, Statement of Facts, Paragraph 4, Defendants Prudent, Neal, Abonze and Jasmin deny that Officer Prudent grabbed the handcuffs as described but admit that Officer Prudent attempted to secure Plaintiff. Officers Neal, Abonze, Jasmin and Nurse Etienne deny all holding Plaintiff and bending his knee as described and admit only that they were trying to secure Plaintiff as he pushed, pulled, and resisted. Defendants admit that Nurse Lamarche injected Plaintiff with a prescribed injection but deny that Plaintiff was injected with Haldol. Defendants are without knowledge to the allegation that this incident was "caught on camera" and therefore deny all allegations pertaining thereto. Defendants deny that Plaintiff sustained injuries as described and to the extent described in this paragraph. Defendants deny that Plaintiff "never was treated for his injuries" and admits that Plaintiff saw doctors, including Dr. Poitier later the same morning of the alleged incident and that Dr. Poitier examined and released Plaintiff. Defendants further admit that Plaintiff saw a doctor at Jackson Memorial Hospital Sports Medicine Clinic. Defendants admit that Plaintiff was classified as a "level 1A safety cell

inmate" but deny that there is any requirement that a "supervisor must always be present anytime staff interacts with [Plaintiff]..." Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

5. As to the Complaint, Statement of Facts, Paragraph 5, Defendants admit that Plaintiff has no permanent hand injury, admit that no use of force report was written, and deny the remainder of the allegations contained therein. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

6. As to the Complaint, Statement of Facts, Paragraph 6, Defendants admit that Plaintiff sought an administrative review and subsequently appealed. Defendants admit that Plaintiff's medical records were reviewed prior to administration and in any event Plaintiff was not given Haldol.

7. As to the section of the Complaint entitled "Defendant" and identifying "Dr. Poitier," Dr. Poitier admits that he was employed as a staff doctor by Jackson Health Services assigned to Miami-Dade Department of Corrections, but Dr. Poitier denies that he was the doctor on duty, and denies he was called, and denies that he gave medical staff an order to inject Haldol. who was called and gave the order to medical staff to inject Plaintiff with Haldol. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

8. As to the section of the Complaint entitled "Defendant" and identifying "Daniel Mera," Mera admits that at all material times he was acting in the capacity of captain of the facility but Mera denies that he gave "the direct order to use unnecessary force to restrain plaintiff and inject him with the psychotric [sic] drug Haldol." Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

9. As to the section of the Complaint entitled "Relief," to the extent that Plaintiff makes any allegations to which a response is required, Defendants deny the allegations contained in paragraphs 1, 2, 3, 4, 5 and 6.

10. Defendants deny all remaining allegations of the Complaint not specifically responded to and demand strict proof thereof.

ANSWER TO THE SECOND AMEDNDED COMPLAINT

As to the portions of the Second Amended Complaint [D.E. 57] ("SAC") to which Defendants are required to respond, pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants Captain Daniel Mera ("Captain Mera"), Dr. Joseph Poitier ("Dr. Poitier"), Nurses Etienne and Lamarche (collectively, "Nurses"), and Officers Prudent, Neal, Agbonze and Jasmin (collectively, "Officers") respond as follows:

1. As to Paragraph 1 of the SAC, Defendants deny that this civil action is "authorized" by the statutory framework cited therein, otherwise this paragraph cites to conclusions of law for which no response is required.

2. Defendants admit the allegations contained in Paragraph 2 of the SAC.

3. Defendants admit the allegations contained in Paragraph 3 of the SAC.

4. As to Paragraph 4 of the SAC, admit that Defendant Joseph Poitier is a doctor of Jackson health Services/Jackson Memorial Hospital contracted by Miami-Dade Corrections, but Defendants are without knowledge as to the remainder of the allegations contained therein and therefore deny same demand strict proof thereof.

5. Defendants admit Paragraph 5 of the SAC.

6. Defendants admit Paragraph 6 of the SAC.

7. Defendants admit Paragraph 7 of the SAC.

8. Defendants admit Paragraph 8 of the SAC.

9. Defendants admit Paragraph 9 of the SAC.

10. Defendants admit Paragraph 10 of the SAC.

11. Defendants admit that Plaintiff attempted to sue each defendant individually and in their official capacity as stated in Paragraph 11 of the SAC, and defendants admit that each Defendant acted under color of law. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

12. Defendants deny the allegations contained in paragraph 12 of the SAC.

13. Defendants deny the allegations contained in paragraph 13 of the SAC.

14. Defendants admit that Plaintiff declared himself suicidal at or after the end of the 3-11 pm shift, but are without knowledge as to Plaintiff's alleged purported motivation, if any, in declaring himself suicidal and therefore deny same. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

15. Defendants admit the allegation contained in Paragraph 15 that Plaintiff was classified as a "Level 1A safety cell inmate" but deny the remainder of the allegations contained in Paragraph 15.

16. Defendants admit the first sentence contained in paragraph 16 of the SAC. Defendants deny that Plaintiff was "not trying to hurt himself of anybody else." Defendants deny that "all [Plaintiff] was doing was talking to another inmate in another cell." Defendants admit Plaintiff was asked to "cuff up" and Defendants deny that Plaintiff "humbly complied," rather, Plaintiff resisted at all stages. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

17. Defendants admit that pursuant to Paragraph 17 of the SAC, Plaintiff was "handcuffed with metal restraints with his arms stuck out of the tray flap" but deny the remainder of the allegations contained in Paragraph 17.

18. As to Paragraph 18 of the SAC, Defendants are without knowledge of what, if anything, Plaintiff said at this time and therefore deny same and demand strict proof thereof. Defendants deny the remainder of the allegations contained in Paragraph 18.

19. As to Paragraph 19 of the SAC, Defendants admit that Plaintiff was resisting Defendants and admit that Plaintiff "started bouncing up and down to keep them from putting the needle in him..." Defendants deny the remaining allegations contained in paragraph 19. Specifically, upon observing Plaintiff's loud and obstreperous behavior and determining Plaintiff was a danger to himself or others, Nurse Lamarche called the doctor on duty received a telephonic order from the doctor on duty to administer an injection of a prescribed substance. Defendants braced Plaintiff in order for Nurse Lamarche to inject Plaintiff with the prescribed medication. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

20. As to Paragraph 20 of the SAC, Defendants admit restraining Plaintiff in order to keep him secure for his injection, and admit that Nurse Lamarche injected plaintiff, but deny the remainder of the allegations contained therein.

21. Defendants admit the allegation of Paragraph 21 of the SAC to the extent Defendants released Plaintiff, closed the door and removed his handcuffs. Defendants are without knowledge of what was recorded on camera and therefore deny same.

22. Defendants deny the allegations contained in paragraph 22 of the SAC.

23. Defendants deny the allegations contained in paragraph 23 of the SAC.

24. Defendants deny the allegations contained in paragraph 24 of the SAC.

25. Defendants deny the allegations contained in paragraph 25 of the SAC.

26. Defendants deny the allegations contained in paragraph 26 of the SAC.

27. Defendants admit that Dr. Poitier did do rounds and observed the Plaintiff at approximately 9 a.m. the morning of the alleged incident but Defendants deny the remainder of the allegations contained in paragraph 27 of the SAC.

28. Defendants deny the allegations contained in paragraph 28 of the SAC.

29. Defendants deny the allegations contained in paragraph 29 of the SAC.

30. Defendants admit that Plaintiff saw Dr. Migrino for alleged injuries but otherwise Defendants deny the allegations contained in paragraph 30 of the SAC.

31. Defendants deny the allegations contained in paragraph 31 of the SAC.

32. Defendants admit the allegations contained in paragraph 32 of the SAC to the extent it alleges that Plaintiff recovered from his injuries but Defendants deny that they withheld treatment. Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

33. Defendants admit the allegations contained in paragraph 33 of the SAC only to the extent that it alleges that Plaintiff used the inmate grievance procedure. Defendants deny Plaintiff's characterization of such inmate grievance procedure and the resulting investigation. Specifically, Defendants deny that Plaintiff's claims were "'substantiated as having occurred.'" Defendants note that after review this grievance was deemed "unsubstantiated" after review, therefore Defendants deny all remaining allegations not specifically responded to and demand strict proof thereof.

34. Defendants admit that Plaintiff filed a complaint with the Internal Affairs Division of the Miami-Dade County Department of Corrections and admit that Plaintiff was interviewed, however Defendants are without knowledge as to the remaining allegations contained in paragraph 34 of the SAC and therefore deny same demand strict proof thereof.

35. Defendants are without knowledge as to the remainder of the allegations contained in paragraph 35 of the SAC and therefore deny same demand strict proof thereof.

36. To the extent contained therein, Defendants deny the allegations contained in the section of Plaintiff's SAC entitled "Legal Claims." Defendants also deny that Plaintiff will be able to prove everything asserted in the SAC.

37. To the extent contained therein, Defendants deny the allegations contained in the section of Plaintiff's SAC entitled "Relief Sought." Defendants also deny that Plaintiff will be able to prove everything asserted in the SAC.

38. Any allegation not specifically admitted is denied.

DEFENSES

1. Plaintiff's claims fail to state a claim upon which relief can be granted under Rule 12(c) of the Federal Rules of Civil Procedure.

2. Defendants are entitled to qualified immunity.

3. Defendants could lawfully use force necessary and proper in securing Plaintiff, an inmate who was identified as suicidal. The claim is barred to the extent Defendants are being sued for such incidental force.

4. Plaintiff's claim is barred to the extent that Plaintiff is suing Defendants for any alleged force that Defendants used in defense of themselves and/or others.

5. Defendants were justified and reasonable in any alleged use of force as to Plaintiff.

6. Any alleged use of force was authorized by federal case law and Florida law, including but not limited to sections 776.05, 776.012, and 776.032 of the Florida Statutes, and Defendants could reasonably rely on such statutory authority.

7. Defendants reserve the right to assert additional defenses as appropriate.

WHEREFORE, Defendants respectfully request that this Court dismiss the claims against Defendants with prejudice and/or enter judgment in Defendants' favor; that the Court award Defendants attorney's fees, litigation expenses, and costs, in accordance with applicable law, including 42 U.S.C. §§ 1988 and 12205; and that the Court award Defendants such other relief as the Court deems proper, equitable, and just.

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney

By: s/Alexander S. Bokor
Alexander S. Bokor
Assistant County Attorney
Florida Bar Numbers 10288
E-mail: abokor@miamidade.gov
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: (305) 375-5151
Facsimile: (305) 375-5611
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail on July 5, 2011, on Plaintiff on the Service List below, and by CM/ECF on July 5, 2011, on all counsel on the Service List below.

s/ Alexander S. Bokor
Assistant County Attorney

SERVICE LIST

John C. Spaulding, *pro se* DC #183425 Suwanee Correctional Institution 5964 U.S. Highway 90 Live Oak, FL 32060 ***Service via U.S. Mail***	Alexander S. Bokor Assistant County Attorney Email:abokor@miamidade.gov Miami-Dade County Attorney's Office 111 N.W. 1st Street, Suite 2810 Miami, Florida 33128 Telephone: (305) 375-5151 Facsimile: (305) 375-5634 Counsel for Defendants ***Service via CM/ECF***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-21898-CIV-GRAHAM
MAGISTRATE JUDGE P.A. WHITE

JOHN CHRISTOPHER SPAULDING, :

Plaintiff, :

v. : REPORT THAT CASE IS READY FOR TRIAL

DR. POITIER, et al :

Defendants. :

This prisoner civil rights case was referred to the undersigned for preliminary proceedings pursuant to 28 U.S.C. §636(b)(1).

The dates entered in the Pre-Trial Scheduling Order (DE#64) have passed and no motions for extension of time have been filed, therefore the case is now at issue.

It is therefore respectfully recommended that this case be placed upon the trial calendar of the District Judge.

Dated at Miami, Florida, this 28th day of November, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: John C. Spaulding, Pro Se
183425
Florida State Prison
Address of record

Alexander Bokor, Asst County Attorney
Attorney of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. 10-21898-CIV-GRAHAM

John Christopher Spaulding,

Plaintiff,

vs.

Dr. Joseph Poitier, et. al.,

Defendants.
_____/

ORDER

THIS CAUSE comes before the Court upon Judge White's Report that Case is Ready for Trial [D.E. 89].

THE MATTER was referred to the Honorable United States Magistrate Judge Patrick A. White by Clerk's Order [D.E. 3]. The Magistrate Judge's Report recommended that the case be set for trial because the dates entered in the Pre-Trial Scheduling Order passed without any motions for extensions of time being filed. The Court scheduled a status conference for December 14, 2011 in order to set the matter for trial. Before the status conference, Defendants filed a Motion for Extension of Time to File Motion for Summary Judgement [D.E. 91]. Both parties also filed objections to the Report. During the status conference, it became clear to the Court that neither party was adequately prepared to proceed with trial.

The Court is granting a limited extension of time for the parties to complete discovery and to file dispositive motions. The

Parties are cautioned that this time should be used wisely, because no further extensions will be granted. Further, Plaintiff may also file a motion for sanctions to address Defendants' failure to produce documents and video evidence that was available but not provided to him.[1] Accordingly, it is

ORDERED AND ADJUDGED that the Court **DECLINES** to adopt the Report that Case is Ready for Trial [D.E. 89]. It is further

ORDERED AND ADJUDGED that the parties shall have 45 days from the date of this Order, up to and including **January 30, 2012**, to complete all discovery, and resolve any discovery disputes. During this time, any motions for sanctions for discovery violations must also be filed. It is further

ORDERED AND ADJUDGED that Defendants' Motion for Extension of

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[1]Plaintiff has filed multiple motions for appointment of counsel, and also sought the Court's assistance during the status conference. Plaintiff should be aware that, in a civil case, a Plaintiff is not afforded a constitutional right to counsel. Accordingly, the Court cannot grant Plaintiff's request. However, in light of the facts disclosed at the status conference, the Court encourages Plaintiff to contact the Volunteer Lawyers Project for possible assistance.

Volunteer Lawyers Project
3750 Bank of America Tower
100 S.E. Second St.
Miami, FL 33131

Phone (305)373-4334
Fax (305)358-0910

E-mail: bforbes@volunteerlawyersproject.org

Time to File Motion for Summary Judgement [D.E. 91] is **GRANTED**. All motions for summary judgement must be filed by **February 29, 2012**. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion for Appointment of Counsel [94] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of December, 2011.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Patrick A. White
David Griffin, Pro Se
Counsel of Record