

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

CASE NO. 10-22020-CIV-LENARD/WHITE

**JOHN LYNCH,**

Plaintiff,

v.

**BOB PERYAM, et al.,**

Defendants.

\_\_\_\_\_/

**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION (D.E. 182),  
GRANTING DEFENDANT FRANK BETZ'S MOTION FOR SUMMARY  
JUDGMENT (D.E. 95), GRANTING DEFENDANT KUNIKO KEOHANE'S  
MOTION FOR SUMMARY JUDGMENT (D.E. 96), GRANTING DEFENDANT  
MARCO DELAROSA'S MOTION FOR SUMMARY JUDGMENT (D.E. 149),  
GRANTING DEFENDANT SUSAN MAURER'S MOTION FOR SUMMARY  
JUDGMENT (D.E. 141), GRANTING IN PART AND DENYING IN PART  
DEFENDANT ELIZABETH MacGARD'S MOTION FOR SUMMARY  
JUDGMENT (D.E. 141), AND DENYING PLAINTIFF JOHN LYNCH'S  
MOTIONS FOR SUMMARY JUDGMENT (D.E. 111, 158)**

**THIS CAUSE** is before the Court on the Report and Recommendation of Magistrate Judge Patrick A. White ("Report," D.E. 182), issued on February 1, 2012. In his Report, Magistrate Judge White recommends that the Court grant the motions for summary judgment filed by Defendants Frank Betz (D.E. 95), Kuniko Keohane (D.E. 96), Marco Delarosa (D.E. 149), and Susan Maurer (D.E. 141), that the Court grant in part and deny in part Defendant Elizabeth MacGard's motion for summary judgment (D.E. 141), and that the Court deny Plaintiff John Lynch's motions for summary judgment (D.E. 111, 158). Magistrate Judge White also recommended that Defendant Lisa Fonas be dismissed without prejudice due to

lack of service. On February 15, 2012, Defendant Elizabeth MacGard filed her Objections to the Report (“MacGard’s Objections,” D.E. 189), to which Plaintiff filed his Response (“Plaintiff’s Response to MacGard’s Objections,” D.E. 204). On August 13, 2012, Plaintiff filed his Objections to the Report (“Plaintiff’s Objections,” D.E. 230). On August 20, 2012, Defendants Betz and Keohane filed their Responses Plaintiff’s Objections (D.E. 231, 232), on August 31, 2012, Defendant Delarosa filed his Response to Plaintiff’s Objections (D.E. 233), and on September 4, 2012, Defendants Maurer and MacGard filed their Response to Plaintiff’s Objections (D.E. 234). Upon an independent review of the Report, the Objections, the Responses to the Objections, and the record, the Court finds as follows.

## **I. Background**

Pro se Plaintiff Lynch filed the instant civil action against multiple defendants pursuant to 42 U.S.C. § 1983, seeking damages for deliberate indifference to a serious medical need and the use of excessive force at the Lower Keys Medical Center (“LKMC”) and the Monroe County Detention Center (“MCDC”). As Magistrate Judge White noted,

Several defendants and claims have been dismissed. . . . The remaining defendants are: City of Key West Officer **Frank Betz**, LKMC Nurse/City of Key West Officer **Kuniko Keohane** (“Kiki”), MCDC Physician’s Assistant **Susan Maurer**, MCDC Heath Services Administrator **Elizabeth MacGard**, MCDC Deputy **Marco Delarosa**, MCDC Captain **Timothy Age**, MCDC Deputy **Jason Kroening**, and MCDC Dentist **Lisa Fonas**, in their individual and official capacities. (See Third Amended Complaint, D.E. 33, at 25.)

(Report 1.) Magistrate Judge White provided a detailed factual background and description of the claims (see id. at 1-22), which the Court briefly summarizes.

Lynch’s claims stem from three separate incidents. First, on September 6, 2008,

Lynch was involved in a scooter accident and was transported by emergency medical personnel to LKMC, where he received treatment for his injuries by Nurse Keohane. Lynch claims that Nurse Keohane was deliberately indifferent to his serious medical needs when she released him from LKMC when he required additional medical care. Upon his release from LKMC, Lynch was arrested for driving under the influence, driving with a suspended licence, and other charges,<sup>1</sup> and was transported to by Officer Betz to MCDC where he was held as a pretrial detainee. Lynch claims that Officer Betz was deliberately indifferent to his serious medical needs by transporting him from LKMC to MCDC. Lynch alleges that once he arrived at MCDC, he received inadequate medical care for his injuries, and that MCDC Physician's Assistant Maurer and MCDC Health Services Administrator MacGard were indifferent to his serious medical needs by failing to provide him surgery for his injuries and for taking away his arm sling.

Second, on August 7, 2009, while he was incarcerated at MCDC, Lynch was escorted to the MCDC dental office by Deputy Delarosa. Lynch claims that Deputy Delarosa used excessive force by repeatedly throwing him on the dental chair and floor, punching him in the mouth, face, and head, and knocking out his two front teeth.<sup>2</sup> Lynch claims that he was not given timely and adequate dental care by Maurer, MacGard, and Dentist Lisa Fonas

---

<sup>1</sup> On May 13, 2009, a state trial court found Lynch guilty of driving with a suspended license. Lynch was incarcerated at MCDC until June 22, 2010, when he was transported to an institution in Tennessee, where he is presently incarcerated.

<sup>2</sup> Lynch was arrested for battery of a law enforcement officer for this incident. Lynch pled nolo contendere to the lesser included offense of battery.

because they refused to pull his infected teeth, which constituted deliberate indifference to a serious medical need.

Finally, Lynch asserts that on April 12, 2010, Captain Age and Deputy Kroening used excessive force when they threw him into a shower wall and onto a concrete floor, which injured his knee and shoulder. Defendants Age and Kroening did not file a motion for summary judgment.

## **II. Report and Objections**

Magistrate Judge White recommended that summary judgment be granted for Defendants Betz, Keohane, Delarosa, and Maurer and recommended that summary judgment be granted in part for Defendant MacGard for the following reasons: (1) Officer Betz is entitled to qualified immunity because he was acting within the scope of his discretionary authority when he interacted with Lynch and Betz did not violate Lynch's constitutional rights by transporting him from LKMC to MCDC; (2) Lynch cannot bring suit against Nurse Keohane under § 1983 because he cannot establish that she was a state actor; (3) even if Keohane was a state actor, Lynch failed to show that she violated his constitutional rights because Lynch has not claimed that the treatment she provided was faulty; (4) because his § 1983 claim necessarily implies the invalidity of his conviction for battering Delarosa, his excessive force claim against Delarosa is barred pursuant to Heck v. Humphrey, 512 U.S. 477 (1994); (5) Lynch's assertions that Maurer was deliberately indifferent to his serious medical needs when she provided treatment for his injuries at MCDC are too conclusory and speculative to support relief; (6) Lynch's claims against Maurer constitute, at most, claims

of negligence, which is insufficient to support liability under § 1983; (7) Lynch's conclusory and speculative claims of a conspiracy by MCDC medical staff to deny him treatment and falsify reports are insufficient to show that an agreement existed that resulted in an actual denial of Lynch's constitutional rights; (8) MacGard is entitled to summary judgment to the extent that Lynch attempts to premise her liability on her supervisory role over Maurer because Lynch has failed to demonstrate that Maurer violated his constitutional rights; and (9) Lynch's claim that MacGard failed to intervene during the alleged beating by Deputy Delarosa is not supported by the record and is barred by Heck v. Humphrey. (See Report 25-52.) In his Objections, Lynch appears to make the following arguments: (1) his "11 year prison sentence" proves that he was injured by Betz and Keohane (Plaintiff's Objections 8); (2) his collar bones were broken and poking out of skin when he was transported from LKMC to MCDC and video from MCDC will prove that Betz and Keohane lied about the extent of his injuries (id. at 8-9); (3) Keohane placed bandages over his "clearly visible broken collar bones," which shows that she was deliberately indifferent to his serious medical needs (id. at 10); (4) because Lynch was unconscious at LKMC, his transport from LKMC to MCDC by Betz shows that Betz was deliberately indifferent to his serious medical needs (id. at 10-11); (5) Betz had cameras on his patrol car and his failure to produce the footage from those cameras is evidence of a conspiracy (id. at 24-25); (6) Delarosa beat him and then lied about the events of August 7, 2009 (id. at 12, 22-23, 24); (7) the fact that Maurer did not make any records following her treatment of Lynch on August 7, 2009 is evidence of a conspiracy against him (id. at 17, 23); (8) Maurer lied about the events of

August 7, 2009 (id. at 17-18); (9) Maurer did not provide him a strap for his clavicle injury (id. at 9); (10) Dr. Perry recommended that Lynch have surgery for his shoulder, and Defendants conspired to deprive Lynch of that surgery (id. at 11-12, 15); (11) radiology reports show that Lynch had a “slap tear” requiring surgery, and Maurer denied him the surgery (id. at 20); (12) dental paperwork shows that on October 21, 2009, his tooth was still infected and he submitted multiple forms prior to that date to Maurer and MacGard asking for dental treatment (id. at 19-20, 22); (13) Maurer and MacGard are in charge of prisoners’ medical care at MCDC (id. at 20); (14) Maurer and MacGard lied by stating there are no cameras in the MCDC infirmary (id. at 21); and (15) Betz, Keohane, Maurer, MacGard, and MCDC staff lied and falsified evidence, including medical records, which is evidence of a conspiracy against Lynch (id. at 12, 13-14, 20-21, 25, 26, 28, 29, 31-32).<sup>3</sup>

---

<sup>3</sup> In his Objections, Lynch raises numerous issues unrelated to the Magistrate Judge’s findings on his claims against the defendants in this case. First, Lynch asks the Court to appoint an attorney to represent him. (See Plaintiff’s Objections 1-6.) Lynch “has ‘no absolute constitutional right to the appointment of counsel’ in his § 1983 action.” Wells v. Cramer, 399 F. App’x 467, 470 (11th Cir. 2010) (quoting Poole v. Lambert, 819 F.2d 1025, 1028 (11th Cir. 1987)). “Rather, the appointment of counsel is a ‘privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.’” Id. (quoting Poole, 819 F. 2d at 1028). As the Court has previously found (see Order, D.E. 221), the Court does not find that the appointment of counsel is necessary at the summary judgment stage of the proceedings. Second, he appears to raise claims on behalf of other inmates currently incarcerated at MCDC and/or claims on behalf of inmates who allegedly died at MCDC. (See Plaintiff’s Objections 2-3, 5.) However, the Eleventh Circuit has “interpreted 28 U.S.C. § 1654, the general provision permitting parties to proceed pro se, as providing ‘a personal right that does not extend to the representation of the interests of others.’” Bass v. Benton, 408 F. App’x 298, 298-99 (11th Cir. 2011) (quoting Timson v. Sampson, 518 F.3d 870, 873 (11th Cir. 2008)). Accordingly, because Lynch “may not seek relief on behalf of his fellow inmates,” the Court need not further address those claims. Id. at 299 (citing Massimo v. Henderson, 468 F.2d 1209, 1210 (5th Cir. 1972)). Third, Lynch appears to argue that it was “unfair” for the Court to “dump . . . the Sheriff, the Previous Sheriff, PHS and LKMC from this lawsuit” because he did not object to the Magistrate Judge’s Report

In addition, the Magistrate Judge recommended that summary judgment for MacGard be denied on the deliberate indifference claim because there are two genuine issues of material fact: (1) “whether Lynch’s broken-off teeth constituted a serious medical need and whether the delay in treatment was unreasonable”; and (2) “whether it was reasonable to delay delivery of an arm sling for four days after an expert recommended the treatment and jail personnel adopted it for treatment of a painful condition.” (Report 48-50.) In her Objections, MacGard argues that summary judgments should be granted in her favor for the following reasons: (1) with regard to the dental claims, the independent medical records

---

(D.E. 44), which recommended dismissal of various claims and defendants. (See Plaintiff’s Objections 4, 16, 30.) A review of the record shows that after the time period for filing objections to the Magistrate Judge’s Report had expired, the Court undertook “an independent review of the Report and the record” and adopted the Magistrate Judge’s Report. (See Order, D.E. 72.) Accordingly, the Court need not address Lynch’s arguments related to these dismissed defendants. Fourth, Lynch raises arguments related to his claims against Defendants Age and Kroening. (See Plaintiff’s Objections 7, 12, 23.) However, because Defendants Age and Kroening did not move for summary judgment and instead filed pretrial statements, Magistrate Judge White did not make any findings of fact or conclusions of law on Lynch’s claims against Defendants Age and Kroening. (See Report 7 n.5.) Accordingly, at this time, the Court need not address Lynch’s arguments related to Defendants Age and Kroening. Fifth, Lynch appears to argue that his lawyer “duped” him in his criminal case in state court. (See id. at 11.) He also appears to argue that his other lawyers refused to give him copies of his medical records and/or falsified documents, which is evidence of a conspiracy against him. (See id. at 15-17, 24.) Lynch’s lawyers are not defendants in this case, so the Court need not address these assertions. Sixth, Lynch asserts that he filed a motion with the “Key West courthouses” to receive his medical records, and the fact that the courthouses did not send him his medical records is evidence of a conspiracy against him. (See id. at 16.) Neither the Key West courthouses nor their staff are defendants in this case, so the Court need not address these assertions. Seventh, Lynch raises concerns about the conditions of the facility in Tennessee where he is currently incarcerated. (See id. at 19, 21, 22, 25-26.) Because these issues are unrelated to the claims and defendants in this case, the Court need not address them. Eighth, Lynch alleges that “Nurse Maureen Warren” and “Doctor Scott” falsified medical papers, and he also appears to assert claims against “Nurse Del Corio.” (See id. at 6, 8, 9, 15, 28, 29, 30.) Because Nurse Maureen Warren, Doctor Scott, and Nurse Del Corio are not defendants in this case, the Court need not address these claims.

shows that Lynch's complaints were addressed in a reasonably timely manner; and (2) with regard to the arm sling, Lynch was not denied use of the sling, and a four-day delay for fitting Lynch into a new arm sling was reasonable. (MacGard's Objections 2-11.)

Finally, Magistrate Judge White recommended that all claims against Lisa Fonas be dismissed for lack of service. (Report 2-4.) Lynch does not object to this finding and instead states that "Plaintiff Lynch does NOT wish to file suit on Lisa Fonas." (Plaintiff's Objections 13.) Failure to file timely objections bars the parties from attacking on appeal the factual findings contained in the Report. See Resolution Trust Corp. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993). After an independent review of the Report and the record, the Court adopts the Magistrate Judge's findings of fact and conclusions of law on these claims and finds that all claims against Fonas should be dismissed for lack of service.

### **III. Legal Standards**

Upon receipt of the Report and the Objections, the Court must now "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); see FED. R. CIV. P. 72(b)(3). The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). In making its determination, the district court is given discretion and "is generally free to employ the magistrate judge's findings to the extent that it sees fit." Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1245 (11th Cir. 2007).

#### **IV. Discussion**

##### **A. Plaintiff's Objections**

As set forth above, Plaintiff raised numerous objections to the Magistrate Judge's Report, and the Court addresses the objections as they relate to each defendant. First, with regard to Officer Betz, Magistrate Judge White found that Betz is entitled to the defense of qualified immunity because Betz was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred and because Betz did not violate Lynch's clearly established constitutional rights. (Report 25-28.) Plaintiff's objections to these findings are without merit. Plaintiff argues that his "11 year prison sentence" was as a result of Betz's alleged false testimony and proves that he was injured by Betz. (Plaintiff's Objections 8.) There is no evidence in the record to support Lynch's allegations that Betz lied, falsified any evidence, or withheld any evidence. Furthermore, to the extent that Lynch argues that Betz lied during his testimony at Lynch's state criminal trial, this claim is not cognizable in a Section 1983 case. See Briscoe v. LaHue, 460 U.S. 325, 334-36 (1983) (holding that 42 U.S.C. § 1983 does not authorize a convicted person to assert a claim for damages against a police officer for giving perjured testimony at his criminal trial). In addition, Plaintiff argues that because his collar bones were poking out of his skin and he was unconscious when he was discharged from LKMC, Betz was deliberately indifferent to his serious medical needs when Betz transported him to MCDC. (Plaintiff's Objections 8-11.) However, as Magistrate Judge White found, Lynch's allegations as to his medical condition

are unsupported by the medical records from LKMC and MCDC. Betz transported Lynch from LKMC to MCDC only after Dr. David Erlandson, an emergency room physician at LKMC, discharged Lynch from LKMC. Lynch's discharge clearance stated as follows:

MEDICAL EXAM CLEARANCE

You have been seen and evaluated by the emergency department physician. The doctor has not detected any medical findings that would impact your ability to safely perform activities of daily living.

(Appendix to Betz's Statement of Material Facts, Ex. 5, D.E. 98-5.) The clearance was signed by Dr. Erlandson, who "examined and evaluated" Lynch and who "affirmed that [Lynch] is medically stable and can safely perform activities of daily living." (See id.) In addition, none of the medical notes or records from LKMC mention a broken clavicle or collar bones poking through Lynch's skin. (See Appendix to Betz's Statement of Material Facts, Ex. 2, D.E. 98-2.) Based on this record, the Court agrees with the Magistrate Judge's findings that because the medical professionals caring for Lynch did not note bones sticking out of his skin and an emergency room doctor approved discharging Lynch from the hospital, Betz was not deliberately indifferent to Lynch's serious medical needs when he transported Lynch from LKMC to MCDC. Accordingly, the Court adopts the Magistrate Judge's findings of fact and conclusions of law for Defendant Betz, finds that Betz is entitled to qualified immunity, and grants summary judgment in Betz's favor.

With regard to Nurse Keohane, Magistrate Judge White found that Keohane was not a state actor, so Lynch could not obtain relief against Keohane in a Section 1983 case.

(Report 29-30.) Lynch does not object to the Magistrate Judge's findings that Keohane was not a state actor, and upon review of the Report and the record, the Court adopts these findings. See Resolution Trust Corp., 996 F.2d at 1149 (noting that failure to file objections bars parties from attacking on appeal the factual findings contained in the report). In addition, Magistrate Judge White found that even if Keohane was a state actor, she did not violate Lynch's constitutional rights because she only applied bandages to Lynch's abrasions at a doctor's direction, and this action does not constitute deliberate indifference to a serious medical need. (Report 30-31.) Lynch objects to these findings and raises similar arguments he raised in his objections against Betz, that is, that Keohane was deliberately indifferent to his serious medical needs by placing bandages over his collar bones that were poking out of his skin. (See Plaintiff's Objections 8-11.) However, as noted above, there is no indication in any of the medical records to support this claim. Finally, Lynch argues that Keohane lied at his state criminal trial by testifying that his "injuries were minor." (Id. at 10.) Even if true, this claim is not cognizable in a Section 1983 case. See Briscoe, 460 U.S. at 334-36 (1983). Therefore, the Court adopts the Magistrate Judge's findings of fact and conclusions of law on Lynch's claims against Keohane and finds that Keohane is entitled to summary judgment.

With regard to Deputy Delarosa, Magistrate Judge White found that all of Lynch's claims against Delarosa are all attacks against his underlying battery conviction and are thus barred by Heck v. Humphrey, 512 U.S. 477 (1994). (Report 31-32.) In his objections, Plaintiff asserts that Delarosa beat him and then lied about the events of August 7, 2009.

(Plaintiff's Objections 12, 22-23, 24.) However, as Magistrate Judge White found, these claims are essentially attacks on his underlying battery conviction, and are therefore not cognizable in a Section 1983 case pursuant to Heck v. Humphrey, 512 U.S. 477 (1994). Accordingly, the Court agrees with the Magistrate Judge's findings of fact and conclusions of law on Lynch's claims against Delarosa and concludes that Delarosa is entitled to summary judgment.

With regard to Physician's Assistant Maurer, Magistrate Judge White found that Lynch's claims against her were conclusory and speculative, and that even if his claims were true, they at most constituted negligence, which does not rise to the level of a constitutional violation. (Report 33-46.) In his Objections, Lynch first argues that Maurer is in charge of prisoners' medical care at MCDC. (Plaintiff's Objections 20.) However, as the Magistrate Judge noted, Maurer in her affidavit stated that she is a Physician's Assistant and has no duty or authority to supervise other employees' activities at MCDC. (Report 33.) Lynch's conclusory assertion that she and MacGard "run the show" at MCDC is insufficient to contradict Maurer's sworn description of her job duties. (See Plaintiff's Objections 20.)

Lynch makes several arguments regarding his medical care by Maurer; however, all of his claims are refuted by the record. Lynch argues that Maurer did not provide a strap for his clavicle injury, which constituted deliberate indifference to his serious medical needs. (Plaintiff's Objections 9.) However, medical records from MCDC show that Lynch was wearing a clavicle strap on September 8, 2008, which was the first time that Maurer saw

Lynch. (See Appendix to Motion for Summary Judgment, Ex. 3, D.E. 140-3, at 4 (noting “clavicle in strap”).) Other medical notes from MCDC show that Lynch still had the clavicle strap on September 16, 2008. (See *id.* at 2.) Furthermore, in her affidavit, Maurer stated that the first time she saw Lynch was on September 6, 2008, when she “assess[ed] . . . that he had a fractured clavicle” and “noted [that] he was in straps to stabilize the collarbone.” (Appendix to Motion for Summary Judgment, Ex. 5, D.E. 140-5, at 2.) Maurer also stated that when she saw Lynch on September 16, 2008, she “noted that his clavicle strap was in place.” (*Id.* at 3.) Accordingly, because Lynch’s claims related to the clavicle strap are refuted by the record, the Court agrees with and adopts the Magistrate Judge’s findings on this claim.

Lynch also argues that radiology reports show that he had a “slap tear” requiring surgery and that Dr. David Perry recommended that Lynch have surgery for his shoulder, but Maurer denied him that surgery. (Plaintiff’s Objections 11-12, 15, 20.) However, medical records show that Maurer did not deny Lynch surgery for his shoulder. On September 11, 2009, Dr. Perry issued a report, wherein he stated that the MRI indicated “possibly a SLAP lesion.” (Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 12.) On September 25, 2009, Lynch had a follow-up appointment with Dr. Perry. (Plaintiff’s Objections, Ex. 50, D.E. 230, at CM/ECF p. 44.) Dr. Perry’s report after this appointment noted that Lynch “likely [had a] SLAP lesion on his left shoulder.” (*Id.*) Dr. Perry noted his treatment recommendation as follows:

What I explained to him today, under ordinary conditions I would certainly recommend an arthroscopy of his shoulder and repair of the SLAP lesion. The only question I have is will that be covered because it is an elective procedure considering he is currently in a correctional facility. I did say that that would be my normal course of action but it is not an emergent procedure and it is always done on an elective basis for the kind of thing he is, and if it is covered, I am happy to do it for him; if it is not, then when he is outside the system, I will try to obtain some kind of coverage for him and proceed.

(Id.) Although Lynch bases his arguments that he needed surgery on this report from Dr. Perry, this report shows that Dr. Perry considered the surgery an “elective procedure” and is “not an emergent procedure.” (Id.) In addition, on October 9, 2009, Dr. Kennedy noted that he spoke with Dr. Perry about Lynch’s shoulder injury and both doctors agreed that the “surgical repair is elective and there is no urgency.” (Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 64.) There is no indication in Dr. Perry’s report or in the record that the shoulder surgery was necessary or that Maurer ignored orders to provide Lynch with shoulder surgery.<sup>4</sup> Lynch’s claims that he needed surgery for his shoulder amounts to a difference in medical opinion, which does not rise to the level of deliberate indifference. See Estelle v. Gamble, 429 U.S. 97, 107 (1976); see also Chatham v. Adcock, 334 F. App’x, 281, 288 (11th Cir. 2009) (per curiam) (“As long as the medical treatment provided is ‘minimally adequate,’ a prisoner’s preference for a different treatment does not give rise to a constitutional claim.” (quoting Harris v. Thigpen, 941 F.2d 1495, 1504-05 (11th Cir.

---

<sup>4</sup> Likewise, to the extent that Lynch claims that MacGard deprived him shoulder surgery, the Court finds that there is no indication in Dr. Perry’s report or the medical records that the shoulder surgery was necessary or that MacGard ignored orders to provide Lynch with shoulder surgery.

1991)). Furthermore, after Lynch saw Dr. Perry on September 25, 2009, he filed a grievance form at MCDC, in which he stated that Dr. Perry recommended he use a sling and requested an extra large sling. (Appendix to Motion for Summary Judgment, Ex. 4, D.E. 140-4, at 64.) That same day, Maurer ordered that Lynch be allowed to use a sling, and Lynch was fitted for a sling four days later. (Appendix to Motion for Summary Judgment, Ex. 5, D.E. 140-5, at 5.) Accordingly, Maurer appears to have followed the directives of Dr. Perry for Lynch's treatment, and the Court does not find that she was deliberately indifferent to Lynch's medical needs for his shoulder. See Bauer v. Kramer, 424 F. App'x 917, 919 (11th Cir. 2011) (stating that "[a] nurse is not deliberately indifferent when she reasonably follows a doctor's orders").

In addition, Lynch argues that Maurer was deliberately indifferent to his serious dental needs. In support of this argument, Lynch contends that his teeth were knocked out by Delarosa on August 7, 2009 and that dental paperwork shows that he did not receive treatment until October 21, 2009. Lynch further argues that he submitted multiple forms prior to that date to Maurer and MacGard asking for dental treatment, which were ignored by both Maurer and MacGard. (Plaintiff's Objections 19-20, 22.) The record indicates that Maurer had little involvement in Lynch's dental care, but that she provided treatment, medication, and/or referrals to doctors on the occasions when Lynch complained about tooth pain to her. (See Appendix to Motion for Summary Judgment, Ex. 5 (Maurer Affidavit), D.E. 140-5, at 8.) In addition, there is no indication in the record that Maurer has any control

over scheduling appointments for inmates at MCDC. (See id. (stating that she “had no duty or authority over administrative matters”).) Accordingly, the Court agrees with the Magistrate Judge that Maurer is entitled to summary judgment on this claim because Lynch has failed to show that Maurer had any control over the delay in his dental treatment.

Finally, Lynch argues that Maurer lied and falsified medical records. (Plaintiff’s Objections 17-18, 23.) There is no evidence in the record to support Lynch’s allegations that Maurer lied, falsified any evidence, or withheld any evidence.<sup>5</sup> Accordingly, the Court agrees with the Magistrate Judge’s findings of fact and conclusions of law on Lynch’s claims against Maurer and concludes that Maurer is entitled to summary judgment.

With regard to Administrator MacGard, Magistrate Judge White first found that MacGard should be granted summary judgment to the extent that Lynch attempts to premise her liability on her supervisory role over Maurer because Lynch failed to demonstrate a causal connection between the acts of a supervising official and an alleged constitutional deprivation. (Report 46-47.) Lynch appears to object to this finding, asserting that MacGard and Maurer “run the show” at MCDC. (Plaintiff’s Objections 20.) However, this conclusory assertion is insufficient to show the requisite causal connection between MacGard’s acts and any alleged deprivation of his constitutional rights. Accordingly, the Court agrees with the Magistrate Judge’s finding that MacGard is entitled to summary judgment on any claim based on supervisor liability.

---

<sup>5</sup> In her response to Plaintiff’s Objections, Maurer provides a detailed description as to how each of the allegedly forged records were created. (See Response, D.E. 234, at 11-15.)

In addition, Magistrate Judge White found that MacGard is entitled to summary judgment on Lynch's claims that she deprived him of shoulder surgery, that she lied to him about his condition, that she failed to provide him pain pills, that she withheld medical records from him, and that she failed to intervene when Delarosa allegedly beat Lynch. (Report 48-51.) The only objections Lynch appears to make to these findings are allegations that MacGard lied or withheld medical records from him. As the Magistrate Judge found, MacGard did not provide Lynch with a copy of his medical records when he was incarcerated at MCDC pursuant to MCDC policy, Lynch has failed to explain how that policy violated his constitutional rights, and Lynch has failed to demonstrate harm because the medical records are presently before the Court. (Report 50.) Accordingly, upon an independent review of the record, the Court adopts the Magistrate Judge's findings on these claims against MacGard, and finds that MacGard is entitled to summary judgment on Lynch's claims that she deprived him of shoulder surgery, that she lied to him about his condition, that she failed to provide him pain pills, that she withheld medical records from him, and that she failed to intervene when Delarosa allegedly beat Lynch.

**B. Defendant MacGard's Objections**

Magistrate Judge White also found that MacGard's motion for summary judgment should be denied as to the claims that she was deliberately indifferent for delaying Lynch's receipt of dental care and an arm sling. With regard to Lynch's dental care, Lynch claimed that MacGard made him wait for months for dental care. The Magistrate Judge found that

MacGard's conclusory assertions in her affidavit that Lynch was seen by a dentist within a reasonable time and that Lynch did not have an emergency medical need were insufficient to show that she was entitled to summary judgment on that claim. (Report 47-48.) Magistrate Judge White concluded, "Whether Lynch's broken-off teeth constituted a serious medical need, and whether the delay in treatment was unreasonable, are factual questions that preclude summary judgment." (Id. at 48.) MacGard objects to this finding, arguing that Lynch's claims about his medical treatment are refuted by the independent medical record and that the Magistrate Judge improperly recommends imposing supervisory liability on MacGard. (MacGard's Objections 2-3.) With regard to the arm sling, Lynch claimed that MacGard waited several days before giving him an arm sling pursuant to Dr. Perry's September 25, 2009 order because it was not a medical emergency. The Magistrate Judge examined MacGard's affidavit and the medical records, and found that Lynch was not fitted for a sling until four days after Dr. Perry ordered the sling, and during those four days, Lynch submitted twelve grievance forms requesting a sling, four of which were specifically addressed to MacGard and eight of which were marked "24 hour emergency." (Report 49.) Based on this record, the Magistrate Judge concluded that a "factual dispute is apparent with regards to whether it was reasonable to delay delivery of an arm sling for four days after an expert recommend the treatment and jail personnel adopted it for a treatment of a painful condition, which precludes summary judgment." (Id. at 49-50.) MacGard objects to this finding and argues that the four-day wait to be fitted for a new sling was reasonable given

that Maurer's order for the sling did not require that the sling be issued immediately or on an expedited basis and that Lynch had use of a sling during this four-day period. (MacGard's Objections 8-11.)

“In Estelle v. Gamble, the Supreme Court held that a prison official's ‘deliberate indifference to the serious medical needs of a prisoner constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.’” Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). “The Supreme Court clarified the ‘deliberate indifference’ standard in Farmer by holding that a prison official cannot be found deliberately indifferent under the Eighth Amendment ‘unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.’” Id. at 1245 (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)). “To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry.” Id. at 1243 (citing Taylor v. Adams, 221 F.3d 1254, 1257 (11th Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11th Cir. 1995)). “First, a plaintiff must set forth evidence of an objectively serious medical need.” Id. (citing 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.” Id. (quoting Farmer, 511 U.S. at 834) (citing McElligott v. Foley, 182 F.3d 1248, 1254 (11th Cir. 1999);

Campbell v. Sikes, 169 F.3d 1353, 1363 (11th Cir. 1999)).

“A delay in treatment can, depending on the circumstances and the length of the delay, constitute deliberate indifference.” Hinson v. Edmond, 192 F.3d 1342, 1348 (11th Cir. 1999) (citing Lancaster v. Monroe Cnty., 116 F.3d 1419, 1425 (11th Cir. 1997); Harris v. Coweta Cnty., 21 F.3d 388, 394 (11th Cir. 1994)). “The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay.” Harris, 21 F.3d at 393-94. “Delayed treatment for injuries that are of a lesser degree of immediacy than broken bones and bleeding cuts, but that are obvious serious medical needs, may also give rise to constitutional claims.” Id. at 394 (citing Carswell v. Bay Cnty., 854 F.2d 454 (11th Cir. 1988)). However, “[s]ome delay . . . may be tolerable depending on the nature of the medical need and the reason for the delay.” Adams, 61 F.3d at 1544. “‘Deliberate indifference’ can include ‘the delay of treatment for obviously serious conditions where it is apparent that delay would detrimentally exacerbate the medical problem, the delay does seriously exacerbate the medical problem, and the delay is medically unjustified.’” Harper v. Lawrence Cnty., Ala., 592 F.3d 1227, 1235 (11th Cir. 2000) (quoting Taylor, 221 F.3d at 1259-60). When a defendant moves for summary judgment in a case where the plaintiff raises claims of delayed medical treatment, the plaintiff “must show sufficient evidence to create a material issue of fact about whether [the defendant] knew of [the plaintiff’s] serious medical condition and, intentionally or with reckless disregard, delayed treatment.” Hinson, 192 F.3d at 1348 (citing Rogers v. Evans, 792 F.2d 1052, 1058

(11th Cir. 1986)).

With regard to the delay in dental treatment, the Court agrees with the Magistrate Judge that whether Lynch's broken-off teeth constituted a serious medical need and whether the delay in treatment following Lynch's altercation with Delarosa on August 7, 2009 was unreasonable are factual questions that preclude summary judgment for MacGard.<sup>6</sup> MacGard first argues that she cannot be held liable for claims related to Lynch's dental care because she was the Health Services Administrator who did not provide direct patient care. (MacGard's Objections 6.) However, an administrator can be held liable when that administrator "personally participates in the unconstitutional conduct." Harper, 592 F.3d at 1236. Here, Lynch's allegation is that MacGard herself acted with deliberate indifference when she delayed treatment for his dental problems. (See Third Amended Complaint, D.E. 33, at 7, 22.) The record reflects that MacGard knew of Lynch's dental problems on August

---

<sup>6</sup> The Report references the delay in treatment concerning the "teeth damaged in the scooter accident." (Report 47.) The record reflects that Lynch suffered injuries to his teeth from the scooter accident that occurred on September 6, 2008, and that Lynch suffered injuries to his teeth from his altercation with Delarosa on August 7, 2009. With regard to the injuries resulting from the scooter accident, the record reflects that Lynch first requested dental care at MCDC on March 28, 2009. (See Appendix to Motion for Summary Judgment, Ex. 3, D.E. 140-3, at 54.) From March 28, 2009 through August 7, 2009, the date of his altercation with Delarosa, Lynch submitted multiple request and grievance forms with MCDC relating to his teeth. (See id. at 37, 41, 43, 44, 45, 47, 48, 52, 55; Ex. 2, D.E. 140-2, at 40; Ex. 4, D.E. 140-4, at 22, 23, 24, 25.) However, none of these request or grievance forms were answered or signed by MacGard. There is no indication in the record that MacGard knew about his dental issues before August 7, 2009 or that MacGard caused any delay in treatment prior to August 7, 2009. Accordingly, to the extent that Lynch bases his claim against MacGard on the delay in dental treatment from September 6, 2008 through August 7, 2009, the Court finds that MacGard is entitled to summary judgment on that claim. Therefore, to the extent that the Magistrate Judge based his findings on any delay in treatment from September 6, 2008 through August 7, 2009, that part of the Report is overruled.

7, 2009. On August 7, 2009, Lynch submitted a request form to MCDC requesting that a dentist “pull some teeth as soon as possible.” (See Appendix to Motion for Summary Judgment, Ex. 4, D.E. 140-4, at 12.) MacGard responded to the request the same day by putting Lynch on a “dental call list.” (See id.) On August 14, 2009, Lynch submitted a grievance form addressed to MacGard, in which he stated that he put in a request form to have teeth pulled two weeks earlier, and that he was “in 10 times as much pain” since the altercation with Delarosa on August 7, 2009. (See id. at 1.) MacGard responded to Lynch on August 15, 2009 by referring him to “HSA” and telling him that he would be seen by a doctor that week. (Id.) Lynch was not seen by the dentist until September 3, 2009, when Dr. Fonas removed two of his teeth. (See Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 38.) Following this appointment and beginning on September 11, 2009, Lynch submitted multiple request forms to have the teeth extracted that he alleged were damaged by Delarosa. (See Appendix to Motion for Summary Judgment, Ex. 4, D.E. 140-4, at 41, 43, 70, 70, 76, 78.) MacGard alleges that none of these forms were addressed to her and that she did not sign any of these forms. (MacGard’s Objections 6.) However, on September 16, 2009, Lynch submitted a grievance form addressed to “medical,” in which he stated that his “teeth hurt” and that he had not been given medication for the pain for four days, and he asked for medication. (See Appendix to Motion for Summary Judgment, Ex. 4, D.E. 140-4, at 80.) MacGard referred the complaint to “HSA,” noted that the question had been “asked & answered,” and signed the form. (See id.) Lynch did not see a dentist until October 21,

2009, when Dr. Fonas extracted additional teeth. (See Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 36.) Accordingly, because the record reflects that MacGard knew of Lynch's dental problems as of August 7, 2009, and because MacGard did not present an argument in her objections relating to her power (or lack thereof) to control any delay in treatment,<sup>7</sup> MacGard is not entitled to summary judgment on this claim. Therefore, the Court agrees with the Magistrate Judge that whether Lynch's broken-off teeth constituted a serious medical need and whether the delay in treatment following Lynch's altercation with Delarosa on August 7, 2009 was unreasonable are factual questions that preclude summary judgment for MacGard.

With regard to the arm sling, the Court agrees with MacGard and finds that there is no material issue of fact about whether MacGard, either intentionally or with reckless disregard, delayed in providing Lynch a sling. On Friday, September 25, 2009, Lynch had an appointment with Dr. Perry about his shoulder problem. (Plaintiff's Objections, Ex. 50, D.E. 230, at CM/ECF p. 44.) The record shows that Maurer ordered a new sling for Lynch on September 25, 2009, the same day that Lynch met with Dr. Perry. (Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 45.) Maurer's order states "Arm sling PRN per Dr. Perry." (Id.) "PRN" means "as the occasion arises" or "when necessary." See STEDMAN'S MEDICAL DICTIONARY 332290 (27th ed. 2000). Accordingly, neither Maurer's

---

<sup>7</sup> MacGard simply argues that she did not provide direct care to inmates. However, she does not address whether, as an administrator, she has any control over when an inmate sees a doctor or receives medical care. (See generally Appendix to Motion for Summary Judgment, Ex. 6 (MacGard Affidavit), D.E. 140-6, at 1-5; MacGard's Objections 2-8.)

order nor Dr. Perry's report required that Lynch be immediately issued a sling, that the sling be ordered on an expedited basis, or that the sling was meant to address an emergent medical need. (See Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 45.) The record also shows that Lynch already had and was using a sling on September 25, 2009, and the new sling ordered by Maurer was simply a replacement in a larger size. For example, on September 28, 2009, Lynch filed a grievance form, in which he stated that he had a large sling, but that an extra large sling would be more comfortable. (See Appendix to Motion for Summary Judgment, Ex. 4, D.E. 140-4, at 62.) At 2:30 and again at 3:30 in the afternoon on that same day, medical staff attempted to fit Lynch for the sling, but Lynch was in the visitation area and unavailable for fitting. (See Appendix to Motion for Summary Judgment, Ex. 2, D.E. 140-2, at 65.) The chart entry at 3:30 p.m. notes that the staff would recheck Lynch's sling the next morning. (See id.) Lynch was fitted for a larger sling the at 7:00 in the morning on September 29, 2009, at which point he was given a new, larger sling and the old sling was taken from him. (See Appendix to Motion for Summary Judgment, Ex. 1 (Dr. Kennedy Affidavit), D.E. 140-1, ¶ 36; Ex. 2 (medical records), D.E. 140-2, at 65; Ex. 4 (grievance form), D.E. 140-4, at 62.) The Magistrate Judge noted that during the four-day span between Maurer's order for a new sling and Lynch's receipt of the new sling, Lynch filed multiple grievance forms, many of which he marked as "24 hour emergency." However, Lynch's desire for immediate action did not render the situation a medical emergency. As noted above, Dr. Perry had determined that Lynch's shoulder problems did

not constitute an emergency, and Lynch's contrary belief amounts to a difference in opinion, which does not rise to the level of a constitutional violation. See Harris v. Thigpen, 941 F.2d 1495, 1504 (11th Cir. 1991) (finding that a simple difference in medical opinion between the prisoner and the medical staff did not support a claim of cruel and unusual punishment). Finally, there is no evidence on the record that the four-day delay in providing Lynch a larger sling than the one he already had exacerbated his shoulder problem. See Harper, 592 F.3d at 1235. Accordingly, because Lynch had a sling during the four days he waited to be fitted with a new sling and because there is no indication in the record that the fitting for a new sling was an emergency, the Court finds that Lynch has failed to show that a material issue of fact exists as to whether MacGard unreasonably delayed in providing him a sling. Therefore, the Court declines to adopt the findings made by Magistrate Judge White on Lynch's claim against MacGard related to the sling, and concludes that MacGard is entitled to summary judgment on this claim.

## **V. Conclusion**

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. As consistent with this Order, the Report of the Magistrate Judge (D.E. 182), issued on February 1, 2012, is **ADOPTED IN PART**;
2. All claims against Defendant Lisa Fonas are **DISMISSED WITHOUT PREJUDICE**;
3. Defendant Frank Betz's Motion for Summary Judgment (D.E. 95), filed on

August 31, 2011, is **GRANTED**;

4. Defendant Kuniko Keohane's Motion for Summary Judgment (D.E. 96), filed on August 31, 2011, is **GRANTED**;
5. Defendant Marco Delarosa's Motion for Summary Judgment (D.E. 149), filed on November 15, 2011, is **GRANTED**;
6. Defendant Susan Maurer's Motion for Summary Judgment (D.E. 141), filed on November 4, 2011, is **GRANTED**;
7. As consistent with this Order, Defendant Elizabeth MacGard's Motion for Summary Judgment (D.E. 141), filed on November 4, 2011, is **GRANTED IN PART AND DENIED IN PART**; and
8. Plaintiff John Lynch's Motions for Summary Judgment against Defendants Betz, Keohane, Maurer, and MacGard (D.E. 111, 158), filed on September 20, 2011 and November 21, 2011, are **DENIED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 17th day of October, 2012.

  
**JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-22020-CIV-LENARD/WHITE

JOHN LYNCH,

Plaintiff,  
vs.

BOB PERYAN, et al.,

Defendants.

---

ORDER SETTING PRETRIAL CONFERENCE AND TRIAL,  
ESTABLISHING PRETRIAL DEADLINES, AND  
ESTABLISHING PRETRIAL AND TRIAL PROCEDURES

**THIS CAUSE** is before the Court upon Magistrate Judge White's Report that Case is Ready for Trial, [D.E. 207] . Having reviewed the Report and the record in light of the Court's civil trial schedule, it is **ORDERED AND ADJUDGED** that:

**Pretrial Conference and Trial**

**Trial** is set for the two-week calendar commencing **April 22, 2013 at 9 a.m.** Unless otherwise notified by the Court, the trial day begins at 9:00 a.m. and ends at 5:00 p.m. Tuesday through Friday.

Counsel for all parties shall appear at a **Calendar Call** on **April 17, 2013 at 4:00 p.m.** After Calendar Call, all cases will remain on the trial calendar until tried or until counsel receives further notice from the Court.

Pursuant to Federal Rule of Civil Procedure 16(a) and Local Rule 16.1(c), the **Pretrial Conference** is set for **April 1, 2013 at 4:00 p.m.** Unless instructed otherwise by subsequent order, the Pretrial Conference, the Trial, and all other proceedings shall be conducted at 400 North Miami Avenue, Courtroom 12-1, Miami, Florida 33128. Each Party shall be represented at the Pretrial

Case No. 10-22020-CIV-LENARD/WHITE

Conference and at the meeting required by Local Rule 16.1(d) by the attorney who will conduct the Trial, except for good cause shown.

**Pretrial Deadlines**

The Court hereby establishes the following pretrial deadlines, which, pursuant to Federal Rule of Civil Procedure 16(b), shall not be modified except upon a showing of good cause and by leave of Court:

By: February 19, 2013                      The Parties shall file their motions in limine.

By: March 4, 2013                         The Joint Pretrial Stipulation shall be filed.

**Rule 16.1(d) Meeting**

In accordance with Local Rule 16.1(d), lead counsel shall meet no later than fourteen (14) days before the date of the Pretrial Conference. At this meeting, counsel shall discuss settlement; prepare the Joint Pretrial Stipulation (see detailed instructions, infra), if not already due; finalize Joint Proposed Jury Instructions and Verdict Form (see detailed instructions, infra); prepare the Master Exhibit Notebook (see detailed instructions, infra); work to simplify the issues and stipulate to as many facts and issues as possible; review trial exhibits; and exchange any additional information as may expedite the presentation of evidence at trial.

**Joint Pretrial Stipulation**

The Joint Pretrial Stipulation shall be filed jointly. Should any Party refuse to cooperate in the preparation of the Joint Pretrial Stipulation, all other Parties shall file a certification describing

Case No. 10-22020-CIV-LENARD/WHITE

the conduct of the non-cooperating Party. Upon receipt of the certification, the Court shall issue an order requiring the non-cooperating Party to show cause why it and its counsel should not be held in contempt or why sanctions should not be imposed. Unilateral submissions, unaccompanied by the required certification, shall be stricken from the record.

In addition to and including the requirements of Local Rule 16.1(e), the Joint Pretrial Stipulation shall include the following information:

1. A concise statement of the case prepared by each Party in the action.
2. A statement of the basis for federal subject matter jurisdiction.
3. A list of all pleadings raising the issues.
4. A list of all pending motions.
5. A joint statement of stipulated facts which will require no proof at trial.
  - a. Counsel are informed that the preparation of this joint statement is **not** a pro forma requirement, as this statement will allow the Parties to eliminate unnecessary testimony on undisputed facts and thus ensure greater efficiency in the presentation of evidence.
  - b. Counsel are expected to review all admissions contained in the pleadings and in other discovery in order to identify all uncontested facts in the case.
  - c. The stipulated facts shall be introduced into evidence as an exhibit and shall be read to the jury.
6. A detailed statement of contested facts that remain to be litigated at trial.
7. A concise statement of issues of law on which there is agreement.
8. A concise statement of issues of law that remain for determination by the Court.
9. An estimate of the amount of time each Party will require to complete its case. Counsel are expected to provide their estimate after careful consideration of the amount of time necessary for direct, cross and re-direct examination of each witness, in light of the Court's weekly trial schedule, as set forth above.

Case No. 10-22020-CIV-LENARD/WHITE

10. Each Party's estimate of the maximum amount of attorneys' fees properly allowable, if any.

### **Joint Proposed Jury Instructions**

The Parties shall prepare Joint Proposed Jury Instructions which shall be provided to the Court at the Pretrial Conference. Unilateral submissions shall not be accepted. The document shall be provided in hard copy and e-mailed to [lenard@flsd.uscourts.gov](mailto:lenard@flsd.uscourts.gov) in WordPerfect format.

The Joint Proposed Jury Instructions shall be prepared as follows:

1. All proposed jury instructions and the proposed verdict form shall be contained in one document.
2. Each proposed jury instruction shall be identified as "disputed" or "undisputed."
3. The portions of any proposed instruction that are undisputed, that is, the portions as to which all Parties are in agreement, shall be printed in plain text.
4. The portions of each instruction proposed by Plaintiff/s, but objected to by Defendant/s, shall be printed in *italics*.
5. The portions of each jury instruction proposed by Defendant/s, but objected to by Plaintiff/s, shall be underlined.
6. Following each proposed instruction, whether undisputed or disputed, the Parties shall cite to supporting legal authority or identify the pattern instruction upon which the proposed instruction is based.
7. A Party disputing any part of the proposed instruction shall state the grounds for its objection and shall cite legal authority in support of its position. Such citations shall be exact, i.e., shall include pinpoint citations when appropriate.
8. Photocopies of all cited legal authority cited, that is, all cases, statutes, or secondary sources, shall be attached to the Joint Proposed Jury Instructions.
9. These documents need not be filed with the Court.

### **Verdict Forms**

Case No. 10-22020-CIV-LENARD/WHITE

The Parties shall prepare a Joint Verdict Form, or each Party may prepare a Verdict Form, which shall be provided to the Court at the Pre-Trial Conference. Documents shall be provided in hard copy and e-mailed to ***lenard@flsd.uscourts.gov*** in WordPerfect format. Photocopies of all cited legal authority cited, that is, all cases, statutes, or secondary sources, shall be attached to the Verdict Forms. These documents need not be filed with the Court.

---

**Items Due Five (5) Business Days Prior to Pre-trial Conference**

**1. Exhibit Notebooks**

At or before the Rule 16.1(d) Meeting, counsel for the Parties shall meet and create a Master Exhibit Notebook. This Notebook shall consist of a three-ring, loose-leaf binder, divided into three sections (Joint Exhibits, Plaintiff's/s' Exhibits, and Defendant's/s' Exhibits), and complete with a table of contents. Each of the three sections shall be tabbed and titled; each exhibit shall be clearly labeled. Only the exhibits that counsel intend to introduce at trial shall be included in the Notebook; no exhibit shall be included more than once. The omission of an exhibit from the Notebook shall not preclude introduction of that exhibit, provided that it was included in the Joint Pretrial Stipulation (see above).

Five (5) business days prior to the Pretrial Conference, the Parties shall provide the Court with a copy of the Master Exhibit Notebook and file a statement of what objections, if any, they wish to raise as to any of the exhibits contained therein. The Parties shall be prepared to argue and the Court may rule on the objections at the Pre-Trial Conference.

After the Court has ruled on objections, if any, relevant to the exhibits, counsel for the Parties shall again meet to revise the Master Exhibit Notebook.

Case No. 10-22020-CIV-LENARD/WHITE

At trial, the Parties shall provide one (1) copy of the (revised) Master Exhibit Notebook to the Court and shall also provide one (1) copy of the (revised) Master Exhibit Notebook to the Court Reporter. The Parties shall provide at trial hard copies or original documents of all Exhibits to be introduced into the record and, in addition, may utilize the Courtroom Computer Presentation System (described in further detail below).

If the Court reserves ruling on an objection until the underlying exhibit is presented at trial, counsel for the Party offering the exhibit shall prepare sufficient copies of the exhibit so that, if admitted, the exhibit may be added to the revised Master Exhibit Notebooks. These copies shall be three-hole punched.

## **2. Witness Lists**

Five (5) business days before the Pre-Trial Conference, the Parties shall file lists of their trial witnesses and their expert witnesses. Each list shall identify those witnesses whom counsel believes, in good faith, he or she will call in the case. Counsel shall indicate which witnesses will present live testimony and which will be presented through the reading of depositions or the presentation of deposition videos. As to the latter types, counsel shall estimate the amount of time required to read or present the deposition testimony. The Parties shall further provide, as attachments, the CV of each expert witness as well as a brief summary of his or her proposed testimony.

## **3. Trial Exhibit Lists**

Five (5) business days before the Pre-Trial Conference, the Parties shall file lists of trial exhibits, other than impeachment exhibits. Each list shall identify those exhibits which counsel believes, in good faith, he or she will introduce in the case. The list shall be presented in the form

Case No. 10-22020-CIV-LENARD/WHITE

of a chart, employing the following eight (8) columns: exhibit number; title or description of the exhibit; date; basis for an objection, if any; the name of the identifying witness; the name of any additional witness referring to the exhibit; “admit”; and “deny.” The basis for all objections shall be identified by utilizing the codes set forth in Local Rule 16.1(e)(9); the failure to object to an exhibit listed in the chart shall constitute a waiver of said objection.

**4. Joint Statement of the Case**

Five (5) business days prior to the Pre-Trial Conference, the Parties shall provide a joint statement of the nature of the case for purposes of the Court informing the jury during voir dire. Said statement shall be no more than 100 words.

**Computer Presentation System**

The Courtroom is equipped with a high-resolution video presenter (a Samsung SVP-6000N, also referred to as an “Elmo”) that may be used by the Parties to assist with the presentation of evidence at trial. The video presenter is connected to screens in the jury box, allowing counsel to display physical exhibits, such as paper documents or three-dimensional objects, while scrolling through or zooming in on specific parts of each exhibit. Also, the video presenter can be connected to counsel’s computer, allowing for the presentation of computer-generated images, charts, presentations, or video on the jurors’ screens.

At the Pretrial Conference, counsel shall indicate whether he or she wishes to use the video presenter during trial. If so, counsel are encouraged to practice with the presentation system prior to trial.

Case No. 10-22020-CIV-LENARD/WHITE

**Proposed Findings of Fact and Conclusions of Law**

In cases tried before the Court, each Party shall file, on or before the first day of trial, proposed findings of fact and conclusions of law. These documents shall be provided in hard copy and e-mailed to ***lenard@flsd.uscourts.gov*** in WordPerfect format.

**Settlement**

If a case is settled, counsel for Plaintiff/s shall inform the Court by calling Chambers and to submit an appropriate Order For Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1) within fourteen (14) days of the date of settlement. Failure to notify the Court of a settlement may result in the imposition of appropriate sanctions.

**Additional Matters**

1. The Parties and all counsel are reminded of their ongoing duties to comply with the Federal Rules of Civil Procedure and the Local Rules for the Southern District of Florida. Violations of these rules or of an order of the Court may result in the imposition of appropriate sanctions, against the responsible Party or attorney.
2. To the extent this Order conflicts with the Local Rules, this Order supercedes them.
3. Local Rule 7.1(a)(3) requires that, prior to filing a motion in a civil case, the Moving Party shall confer or make a reasonable effort to confer will all Parties or Non-Parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. The failure to include a certification of compliance pursuant to Local Rule 7.1(a)(3) may result in the denial of the motion or in the imposition of appropriate sanctions.
4. In accordance with Local Rule 7.1(a)(2) and the rules of this Court, all simple motions shall be accompanied by a proposed order. Failure to provide such an order may result in the denial of the motion.
5. Pursuant to Local Rule 11.1(d)(6), no agreement between the Parties or their counsel, e.g., for extension of time to file a responsive pleading, shall be considered

Case No. 10-22020-CIV-LENARD/WHITE

by the Court. Instead, the Party seeking relief shall file a motion with the Court; shall note that the motion is unopposed; and shall prepare a proposed order.

6. Unless an emergency situation arises, a motion for a continuance of trial will not be considered unless it is filed at least thirty (30) days prior to the scheduled trial date. Additionally, the filing of a motion for a continuance of trial shall have no effect on the requirements relevant to the Rule 16.1(d) Meeting.
7. Pursuant to Local Rules 5.1(d) and 7.7, counsel shall not deliver any document, including extra courtesy copies, to Chambers nor address the Court in the form of a letter. Any application requesting relief of any type, citing authorities, or presenting arguments shall be filed with the Court.
8. The body of all filings shall be double-spaced (with the exception of block quotations) and shall be printed in 12 point or larger type in a easily-readable font. All page limitations set forth by the Local Rules shall be observed. Non-compliant filings may be stricken from the record.

**DONE AND ORDERED** in Chambers at Miami, Florida this 13th day of November, 2012.

  
**JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**