

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:10-cv-22020-JAL**

Lynch v. Peryam et al  
Assigned to: Judge Joan A. Lenard  
Referred to: Magistrate Judge Patrick A. White  
Case in other court: 11-12899-G  
Cause: 42:1983 Civil Rights Act

Date Filed: 06/18/2010  
Jury Demand: Defendant  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff**

**John Lynch**  
Prisoner ID: 296113

represented by **John Lynch**  
296113  
West Tennessee State Prison  
P.O. BOX 1150  
Henning, TN 38041-1150  
PRO SE

V.

**Defendant**

**Bob Peryam**  
*Sheriff*

**Defendant**

**Ms. Peryam**  
*Internal Affairs*

**Defendant**

**Tommy Taylor**  
*Chief*

**Defendant**

**Timothy Age**  
*Captain*

represented by **Bruce Wallace Jolly**  
Purdy Jolly Giuffreda & Barranco PA  
2455 E Sunrise Boulevard  
Suite 1216  
Fort Lauderdale, FL 33304  
954-462-3200  
Fax: 462-3861  
Email: [bruce@purdylaw.com](mailto:bruce@purdylaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christy Michelle Runkles**  
Purdy, Jolly, Giuffreda & Barranco, P.A.  
2455 E. Sunrise Blvd  
Suite 1216  
Fort Lauderdale, FL 33304  
954-462-3200  
Fax: 954-462-3861  
Email: [christy@purdylaw.com](mailto:christy@purdylaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Lt. Jonathan Crane**

**Defendant**

**Michele Heaviland**

*Classification*

**Defendant**

**Keena Allen**

**Defendant**

**Ms. Williams**

*Law Library*

**Defendant**

**Marco Delarosa**

*TERMINATED: 10/17/2012*

represented by **Bruce Wallace Jolly**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christy Michelle Runkles**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Sgt. McCloud**

**Defendant**

**Sgt. Katz**

**Defendant**

**Sgt. Simonet**

**Defendant**

**Lisa Fonas**

*Dentist*

**Defendant**

**Susan Maurer**

*Nurse*

*TERMINATED: 10/17/2012*

represented by **Gregg Alan Toomey**  
Bunnell & Woulfe, P.A.  
1625 Hendry Street  
Suite 203  
203  
Fort Myers, FL 33901  
239-337-1630  
Fax: 239-337-0307  
Email: [gat@bunnellwoulfe.com](mailto:gat@bunnellwoulfe.com)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Deputy Jackson**

**Defendant**

**Elizabeth J. McGard**

represented by **Gregg Alan Toomey**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Sgt. Bandlow**

**Defendant**

**Ms. Joseph**  
*Deputy*

**Defendant**

**Sgt. Harper**

**Defendant**

**Deputy Kronig**

represented by **Bruce Wallace Jolly**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christy Michelle Runkles**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Sgt. Silvers**

**Defendant**

**Mike Hiller**  
*Captain*

**Defendant**

**Kim Sloan**

**Defendant**

**John Doe**

**Defendant**

**Jane Doe**

**Defendant**

**Betz**  
*Previous Sheriff, Officer*  
*TERMINATED: 10/17/2012*

represented by **Michael Thomas Burke**  
Johnson Anselmo Murdoch Burke Piper  
&Hochman PA  
2455 E Sunrise Boulevard  
Suite 1000  
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954-463-0100  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anastasia Protopapadakis**  
GrayRobinson, P.A.  
1221 Brickell Avenue, Suite 1600  
Miami, FL 33131  
305-913-6786  
Fax: 305-416-6887  
Email: [anastasia@jambg.com](mailto:anastasia@jambg.com)  
*ATTORNEY TO BE NOTICED*

**Defendant**

represented by

**Kiki**  
 Key West Police  
 TERMINATED: 10/17/2012

**Michael Thomas Burke**  
 (See above for address)  
 LEAD ATTORNEY  
 ATTORNEY TO BE NOTICED

**Anastasia Protopapadakis**  
 (See above for address)  
 ATTORNEY TO BE NOTICED

**Defendant**

**Lower Keys Medical Center**

**Defendant**

**Prison Health Services**

Date Filed	#	Docket Text
06/18/2010	<u>1</u>	CIVIL RIGHTS COMPLAINT 42 USC 1983 against Timothy Age, Keena Allen, Jonathan Crane, Marco Delarosa, Deputy Jackson, Deputy Kronig, Jane Doe, John Doe, Lisa Fonas, Michele Heaviland, Mike Hiller, Susan Maurer, Elizabeth J. McGard, Ms. Joseph, Ms. Peryam, Ms. Williams, Bob Peryam, Sgt. Bandlow, Sgt. Harper, Sgt. Katz, Sgt. McCloud, Sgt. Silvers, Sgt. Simonet, Kim Sloan, Tommy Taylor.. IFP Filed, filed by John Lynch.(rb) Modified MJSTAR event on 1/6/2011 (yc). (Entered: 06/18/2010)
06/18/2010	2	Judge Assignment RE: Electronic Complaint to Judge Joan A. Lenard (rb) (Entered: 06/18/2010)
06/18/2010	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (rb) (Entered: 06/18/2010)
06/18/2010	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by John Lynch. (rb) (Entered: 06/18/2010)
06/18/2010	<u>5</u>	MOTION to Appoint Counsel by John Lynch. Responses due by 7/6/2010 (rb) (Entered: 06/18/2010)
07/09/2010	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 7/9/2010. (br) (Entered: 07/09/2010)
07/09/2010	<u>7</u>	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of \$350.00; granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 7/9/2010. (br) (Entered: 07/09/2010)
07/13/2010	8	Clerk's Notice of Undeliverable Mail re 3 Clerks Notice of Magistrate Judge Assignment. <b>US Mail returned for: JOHN LYNCH</b> . <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (lbc) (Entered: 07/13/2010)
07/15/2010	9	NOTICE of Change of Address by John Lynch (system updated) (ail) (Entered: 07/16/2010)
07/22/2010	10	ORDER denying <u>5</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 7/22/2010. (cz) (Entered: 07/22/2010)
07/27/2010	<u>11</u>	ORDER 1. On or before August 26, 2010, the plaintiff shall file an amended complaint in this case. Signed by Magistrate Judge Patrick A. White on 7/27/2010. (Attachments: # <u>1</u> Supplement 1983 form) (tw) (Entered: 07/27/2010)
08/02/2010	<u>12</u>	SECOND ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00. Signed by Magistrate Judge Patrick A. White on 8/2/2010. (tw) (Entered: 08/02/2010)

		08/02/2010)
08/03/2010	<u>13</u>	MOTION/Letter for Appointment of Counsel by John Lynch. Responses due by 8/20/2010 (ail) (Entered: 08/04/2010)
08/05/2010	14	ORDER denying <u>13</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 8/4/2010. (cz) (Entered: 08/05/2010)
08/09/2010	<u>15</u>	MOTION to Appoint Counsel by John Lynch. Responses due by 8/26/2010 (ail) (Entered: 08/10/2010)
08/11/2010	16	ORDER denying <u>15</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 8/11/2010. (cz) (Entered: 08/11/2010)
08/20/2010	<u>17</u>	MOTION to add parties to case by John Lynch. (tb) (Entered: 08/24/2010)
08/20/2010	<u>18</u>	AMENDED COMPLAINT against Timothy Age, Keena Allen, Jonathan Crane, Marco Delarosa, Deputy Jackson, Deputy Kronig, Jane Doe, John Doe, Lisa Fonas, Michele Heaviland, Mike Hiller, Susan Maurer, Elizabeth J. McGard, Ms. Joseph, Ms. Peryam, Ms. Williams, Bob Peryam, Sgt. Bandlow, Sgt. Harper, Sgt. Katz, Sgt. McCloud, Sgt. Silvers, Sgt. Simonet, Kim Sloan, Tommy Taylor, filed by John Lynch.(tb) (Entered: 08/24/2010)
08/24/2010	<u>19</u>	NOTICE of filing Documents to the Court by John Lynch re <u>18</u> Amended Complaint, (ail) (Entered: 08/25/2010)
08/25/2010	<u>20</u>	NOTICE of filing Letter to the Court from Marshall County Sheriff's Office regarding John Lynch's Inmate Account (ail) (Entered: 08/26/2010)
08/26/2010	<u>21</u>	MOTION to Amend/Correct <u>18</u> Amended Complaint, by John Lynch. Responses due by 9/13/2010 (ail) (Entered: 08/27/2010)
08/27/2010	<u>22</u>	AMENDED COMPLAINT against Timothy Age, Keena Allen, Jonathan Crane, Marco Delarosa, Deputy Jackson, Deputy Kronig, Jane Doe, John Doe, Lisa Fonas, Michele Heaviland, Mike Hiller, Susan Maurer, Elizabeth J. McGard, Ms. Joseph, Ms. Peryam, Ms. Williams, Bob Peryam, Sgt. Bandlow, Sgt. Harper, Sgt. Katz, Sgt. McCloud, Sgt. Silvers, Sgt. Simonet, Kim Sloan, Tommy Taylor, filed by John Lynch.(ail) (Entered: 08/30/2010)
08/27/2010	23	NOTICE of filing Letter to the Court by John Lynch SEE DE <u>22</u> (ail) (Entered: 08/30/2010)
09/03/2010	<u>24</u>	NOTICE of filing Documents to the Court by John Lynch re <u>22</u> Amended Complaint, (ail) (Entered: 09/07/2010)
09/14/2010	<u>25</u>	Clerks Notice of Receipt of Filing Fee received on 9/14/2010 in the amount of \$ 350.00, receipt number FLS100006749 (ail) (Entered: 09/15/2010)
09/20/2010	<u>26</u>	SECOND ORDER denying <u>17</u> Motion to Amend and denying <u>21</u> Motion to Amend/Correct. The amended complaints DE#18 and DE#22 are stricken. On or before October 8, 2010, the plaintiff shall file and amended complaint in this case. Signed by Magistrate Judge Patrick A. White on 9/20/2010. (Attachments: # <u>1</u> Supplement 1983) (tw) (Entered: 09/20/2010)
10/29/2010	<u>27</u>	NOTICE to Court by John Lynch (ebs) (Entered: 11/01/2010)
01/03/2011	<u>28</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint, filed by John Lynch Recommending that this complaint be dismissed without prejudice for lack of prosecution. Objections to RRdue by 1/20/2011. Signed by Magistrate Judge Patrick A. White on 1/3/2011. (br) (Entered: 01/03/2011)
01/18/2011	<u>29</u>	NOTICE of Change of Address and Notice of Inquiry by John Lynch. Copy of docket sheet mailed to filer on 1/19/11 (asl) (system updated) (Entered: 01/19/2011)
02/07/2011	<u>30</u>	MOTION to Reopen Case by John Lynch. (asl) (Entered: 02/07/2011)
02/07/2011	31	ORDER Denying as moot <u>30</u> Plaintiff John Lynch's Motion to Reopen Case. The Magistrate Judge's Report and Recommendation <u>28</u> did not close this case. The Report recommends dismissal of the case and provides Plaintiff fourteen (14) days

		to file objections. Plaintiff's Motion to Reopen indicates that he has not been receiving the motions and orders in this case. Accordingly, it is hereby ORDERED AND ADJUDGED that Plaintiff's Motion to Reopen is DENIED as moot, Plaintiff shall file his objections to the Magistrate's Report and Recommendations on or before March 11, 2011. The Clerk of this Court is directed to mail to Plaintiff a copy of the Report <u>28</u> and the Magistrate's September 20, 2010 Order <u>26</u> . This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 2/7/2011. (dpv) (Entered: 02/07/2011)
02/08/2011	32	Remark: Copy of Orders at DE <u>26</u> and <u>28</u> mailed to Plaintiff John Lynch per Order at DE 31 . (bb) (Entered: 02/08/2011)
02/28/2011	<u>33</u>	AMENDED COMPLAINT against Timothy Age, Marco Delarosa, Deputy Kronig, Susan Maurer, Elizabeth J. McGard, Bob Peryam, Betz, Kiki, Lower Keys Medical Center, Prison Health Services, filed by John Lynch.(asl) (Entered: 03/01/2011)
03/03/2011	34	ORDER REFERRING CASE TO MAGISTRATE JUDGE FOR SUPPLEMENTAL REPORT: <u>28</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case. On January 3, 2011, Magistrate Judge Patrick A. White issued a Report and Recommendation <u>28</u> recommending that this case be dismissed for lack of prosecution. On March 1, 2011, Plaintiff John Lynch filed his Amended Complaint <u>33</u> . Accordingly, it is ORDERED AND ADJUDGED that this case is referred to Magistrate White for a Supplemental Report and Recommendation on the Amended Complaint pursuant to 28 U.S.C. 1915. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 3/3/2011. (dpv) (Entered: 03/03/2011)
03/14/2011	<u>35</u>	MOTION for a Lawyer by John Lynch. Responses due by 3/31/2011 (asl) (Entered: 03/15/2011)
03/14/2011	36	NOTICE of Change of Address by John Lynch. See <u>35</u> for image. (asl) (system updated) (Entered: 03/15/2011)
03/18/2011	<u>37</u>	MOTION for a Lawyer and Change of Address by John Lynch. Responses due by 4/4/2011 (asl) (system updated) (Main Document 37 replaced on 3/21/2011) (jc). (Entered: 03/21/2011)
03/21/2011	38	ORDER denying <u>35</u> Motion to Appoint Counsel ; denying <u>37</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 3/21/2011. (cz) (Entered: 03/21/2011)
03/28/2011	<u>39</u>	NOTICE/Motion for Address Change and Acknowledgement by John Lynch. Copy of docket sheet mailed to filer on 3/29/11 (asl) (system updated) (Entered: 03/29/2011)
04/07/2011	<u>40</u>	NOTICE/Motion for Change of Address and Acknowledgment by John Lynch. Copy of docket sheet mailed to filer on 4/8/11 (asl)(system updated) (Entered: 04/08/2011)
05/02/2011	<u>41</u>	MOTION to Compel Defendants to Answer Complaint by John Lynch. Responses due by 5/19/2011 (asl) (Entered: 05/02/2011)
05/05/2011	42	ORDER denying <u>41</u> Motion to Compel Answer from defendants, as premature. No service has yet been ordered.. Signed by Magistrate Judge Patrick A. White on 5/5/2011. (cz) (Entered: 05/05/2011)
05/12/2011	<u>43</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL.The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Captain Timothy Age, Monroe County Jail, 5525 College Road, Key West, FL 33040, Deputy Marco Delarosa, Monroe County Jail, 5525 College Road, Key West, FL 33040, Lisa Fonas, Dentist, Monroe County Jail, 5525 College Road, Key West, FL 33040, Susan Maurer, Head Nurse, Monroe County Jail, 5525 College Road, Key West, FL 33040, Elizabeth J. McGard, Medical Administrator, Monroe County Jail, 5525 College Road, Key West, FL 33040, Deputy Kronig, Monroe County Jail, 5525 College Road, Key West, FL 33040, Officer Betz, Key West Police Station, 1604 Roosevelt Boulevard, Key West, FL 33040 and Officer Kiki, Key West Police Station1, 604 Roosevelt Boulevard, Key West, FL 33040. Signed by Magistrate

		Judge Patrick A. White on 5/12/2011. (tw) (Entered: 05/12/2011)
05/13/2011	<u>44</u>	SUPPLEMENTAL REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint/Petition filed by John Lynch. Recommending 1. The case shall continue against Officers Betz and Kiki whofailed to provide him with adequate medical care by bringing him directly to the county jail, despite his allegedly severe injuries. 2. The case shall proceed against McGard, Maurer and Fonas for failure to provide adequate medical and dental treatment. 3. The case shall proceed against Officers Delarosa, Age and Kronig for use of unlawful force. 4. His claims for injunctive relief are dismissed. 5. The operative complaint is the third amended complaint(DE#33). All prior complaints and defendants named shall be terminated. Objections to RRdue by 5/31/2011. Signed by Magistrate Judge Patrick A. White on 5/13/2011. (tw) (Entered: 05/13/2011)
05/17/2011	<u>45</u>	Summons Issued as to Timothy Age. (br) (Entered: 05/19/2011)
05/17/2011	<u>46</u>	Summons Issued as to Betz. (br) (Entered: 05/19/2011)
05/17/2011	<u>47</u>	Summons Issued as to Marco Delarosa. (br) (Entered: 05/19/2011)
05/17/2011	<u>48</u>	Summons Issued as to Lisa Fonas. (br) (Entered: 05/19/2011)
05/17/2011	<u>49</u>	Summons Issued as to Kiki. (br) (Entered: 05/19/2011)
05/17/2011	<u>50</u>	Summons Issued as to Deputy Kronig. (br) (Entered: 05/19/2011)
05/17/2011	<u>51</u>	Summons Issued as to Susan Maurer. (br) (Entered: 05/19/2011)
05/17/2011	<u>52</u>	Summons Issued as to Elizabeth J. McGard. (br) (Entered: 05/19/2011)
05/31/2011	<u>53</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Timothy Age served on 5/24/2011, answer due 6/7/2011. (jua) (Entered: 06/01/2011)
05/31/2011	<u>54</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Marco Delarosa served on 5/24/2011, answer due 6/7/2011. (jua) (Entered: 06/01/2011)
05/31/2011	<u>55</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Elizabeth J. McGard served on 5/24/2011, answer due 6/7/2011. (jua) (Entered: 06/01/2011)
05/31/2011	<u>56</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Susan Maurer served on 5/24/2011, answer due 6/7/2011. (jua) (Entered: 06/01/2011)
05/31/2011	<u>57</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Betz served on 5/25/2011, answer due 6/8/2011. (jua) (Entered: 06/01/2011)
05/31/2011	<u>58</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Kiki served on 5/25/2011, answer due 6/8/2011. (jua) (Entered: 06/01/2011)
06/07/2011	<u>59</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Susan Maurer, Elizabeth J. McGard.(Toomey, Gregg) (Entered: 06/07/2011)
06/07/2011	<u>60</u>	ANSWER and Affirmative Defenses to Amended Complaint by Betz.(Burke, Michael) Modified on 6/7/2011 (ls). (Entered: 06/07/2011)
06/07/2011	<u>61</u>	ANSWER and Affirmative Defenses to Amended Complaint by Kiki.(Burke, Michael) Modified on 6/7/2011 (ls). (Entered: 06/07/2011)
06/09/2011	<u>62</u>	SECOND MOTION to Compel <i>Defendants to Answer this Complaint</i> ( Responses due by 6/27/2011), MOTION to Appoint Counsel ( Responses due by 6/27/2011), MOTION for Summary Judgment ( Responses due by 6/27/2011), MOTION to Disclose by John Lynch. (Docket sheet and de 33 sent to John Lynch) (jua) (Entered: 06/10/2011)
06/10/2011	<u>63</u>	SUMMONS (Affidavit) Returned Executed on <u>33</u> Amended Complaint Deputy Kronig served on 5/27/2011, answer due 6/10/2011. (jua) (Entered: 06/10/2011)
06/10/2011	<u>64</u>	NOTICE to the Court by John Lynch (jua) (Entered: 06/10/2011)
06/13/2011	<u>65</u>	SCHEDULING ORDER: Amended Pleadings due by 10/14/2011. Discovery due by 9/30/2011. Joinder of Parties due by 10/14/2011. Motions due by 11/4/2011.. Signed by Magistrate Judge Patrick A. White on 6/10/2011. (tw) (Entered: 06/13/2011)

		06/13/2011)
06/13/2011	<u>66</u>	ORDER denying <u>62</u> Motion to Compel, the initial motion was denied as premature. The plaintiff must send his discovery requests to the defendants, and then if not answered file with the Court what requests were sent and not responded to, denying <u>62</u> Motion to Appoint Counsel; denying <u>62</u> Motion for Summary Judgment, plaintiff seeks sanctions which are not warranted ; denying <u>62</u> Motion for Disclosure of exhibits, the plaintiff has failed to state where his exhibits have been filed. The plaintiff's amended complaint is not on the proper form and is stricken.. Signed by Magistrate Judge Patrick A. White on 6/13/2011. (cz) (Entered: 06/13/2011)
06/14/2011	<u>67</u>	NOTICE of Attorney Appearance by Bruce Wallace Jolly on behalf of Timothy Age (Jolly, Bruce) (Entered: 06/14/2011)
06/14/2011	<u>68</u>	NOTICE of Attorney Appearance by Bruce Wallace Jolly on behalf of Marco Delarosa (Jolly, Bruce) (Entered: 06/14/2011)
06/14/2011	<u>69</u>	NOTICE of Attorney Appearance by Bruce Wallace Jolly on behalf of Deputy Kronig (Jolly, Bruce) (Entered: 06/14/2011)
06/14/2011	<u>70</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>33</u> Amended Complaint by Timothy Age, Marco Delarosa, Deputy Kronig. (Attachments: # <u>1</u> Text of Proposed Order)(Jolly, Bruce) (Entered: 06/14/2011)
06/15/2011	<u>71</u>	ORDER granting <u>70</u> Motion for Extension of Time to Answer RE: Complaints Defendants answer due 6/21/2011.. Signed by Magistrate Judge Patrick A. White on 6/15/2011. (cz) (Entered: 06/15/2011)
06/17/2011	<u>72</u>	ORDER ADOPTING SUPPLEMENTAL REPORT OF MAGISTRATE JUDGE <u>44</u> AND DECLINING TO ADOPT REPORT AND RECOMMENDATION <u>28</u> AS MOOT. Signed by Judge Joan A. Lenard on 6/17/2011. (dpv) (Entered: 06/17/2011)
06/17/2011	<u>76</u>	NOTICE OF APPEAL filed by John Lynch re <u>72</u> Order Adopting Report and Recommendations by John Lynch. Filing Fee: (FEE NOT PAID). Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (amb) (Entered: 06/23/2011)
06/17/2011	<u>77</u>	MOTION to Appoint Counsel (SEE DE #76 for image) by John Lynch. Responses due by 7/5/2011 (amb) (Entered: 06/23/2011)
06/20/2011	<u>73</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Deputy Kronig.(Jolly, Bruce) Modified on 6/20/2011 (ls). (Entered: 06/20/2011)
06/20/2011	<u>74</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Timothy Age.(Jolly, Bruce) Modified on 6/20/2011 (ls). (Entered: 06/20/2011)
06/20/2011	<u>75</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Marco Delarosa.(Jolly, Bruce) Modified on 6/20/2011 (ls). (Entered: 06/20/2011)
06/23/2011	<u>78</u>	RESPONSE in Opposition re 77 MOTION to Appoint Counsel filed by Timothy Age, Marco Delarosa, Deputy Kronig. (Jolly, Bruce) (Entered: 06/23/2011)
06/24/2011	<u>79</u>	ORDER Denying Without Prejudice 77 Plaintiff's Motion to Appoint Counsel. The Plaintiff has not presented any evidence at this time to support his Motion to Appoint Counsel. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 6/24/2011. (dpv) (Entered: 06/24/2011)
07/06/2011	<u>80</u>	Acknowledgment of Receipt re <u>76</u> Notice of Appeal, filed by John Lynch. Date received by USCA: 6/27/11. USCA Case Number: 11-12899-G. (hh) (Entered: 07/06/2011)
07/06/2011	<u>81</u>	Summons (Affidavit) Returned Unexecuted as to Lisa Fonas. (jua) (Entered: 07/06/2011)

07/08/2011	<u>82</u>	AFFIDAVIT by John Lynch (System updated) (jua) (Entered: 07/11/2011)
07/11/2011	<u>83</u>	MOTION/REQUEST for Production of Documents and Motions by John Lynch. (jua) (Entered: 07/11/2011)
07/12/2011	84	ORDER denying <u>83</u> Motion to Produce, discovery requests should be made directly to the defendants.. Signed by Magistrate Judge Patrick A. White on 7/12/2011. (cz) (Entered: 07/12/2011)
07/14/2011	<u>85</u>	MOTION to Appoint Counsel by John Lynch. Responses due by 8/1/2011 (Updated docket sheet sent)(jua) (Entered: 07/14/2011)
07/14/2011	<u>86</u>	RESPONSE in Opposition re <u>85</u> MOTION to Appoint Counsel ( <i>Memorandum of Law</i> ) filed by Timothy Age, Marco Delarosa, Deputy Kronig. (Runkles, Christy) (Entered: 07/14/2011)
07/14/2011	<u>87</u>	TRANSCRIPT INFORMATION FORM by John Lynch re <u>76</u> Notice of Appeal,. No Transcript Requested. (amb) (Entered: 07/18/2011)
07/28/2011	88	ORDER denying <u>85</u> Motion to Appoint Counsel. Further, the summons sent to Lisa Fonas, Dentist was returned unexecuted. The Marshal noted she left Florida and may have moved to Philadelphia. The plaintiff must attempt to provide the Court with a current address for Fonas, or risk dismissal of this defendant.. Signed by Magistrate Judge Patrick A. White on 7/28/2011. (cz) (Entered: 07/28/2011)
08/04/2011	<u>89</u>	MOTION to Produce, MOTION to Remove the Exhibits From the Original Case that was Filed on 06/18/2010 and Return to the Plaintiff, MOTION to Amend ( Responses due by 8/22/2011), MOTION to Appoint Counsel ( Responses due by 8/22/2011) by John Lynch. (DE <u>65</u> Scheduling Order mailed) (jua) (Entered: 08/05/2011)
08/08/2011	<u>90</u>	Defendant's MOTION for Extension of Time to Complete Discovery ( <i>And Memorandum of Law</i> ) by Timothy Age, Marco Delarosa, Deputy Kronig. (Runkles, Christy) (Entered: 08/08/2011)
08/08/2011	<u>91</u>	MOTION for Leave to Appeal in forma pauperis by John Lynch. (amb) (Entered: 08/08/2011)
08/09/2011	92	ORDER denying <u>89</u> Motion to Produce, the plaintiff must obtain the address of the Defendant Fonas; denying <u>89</u> Motion to return all records sent to the Court, these records are part of the Court file; granting in part and denying in part <u>89</u> Motion to Amend/Correct, the plaintiff must file an amended complaint on the proper form specifically naming any new defendants and/or claims ; denying <u>89</u> Motion to Appoint Counsel.. Signed by Magistrate Judge Patrick A. White on 8/9/2011. (cz) (Entered: 08/09/2011)
08/09/2011	93	ORDER granting <u>90</u> Motion for Extension of Time to Complete Discovery to 8/24/11, date requested.. Signed by Magistrate Judge Patrick A. White on 8/9/2011. (cz) (Entered: 08/09/2011)
08/25/2011	<u>94</u>	ORDER of DISMISSAL from USCA, sua sponte, for lack of jurisdiction re <u>76</u> Notice of Appeal, filed by John Lynch. Nevertheless, because the district court declined to adopt that Rand Lynch's action remains pending in the district court, the magistrate's January 3 RR is neither final nor immediately appealable. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 27-2 and all other applicable rules. USCA #11-12899-G (amb) (Entered: 08/25/2011)
08/31/2011	<u>95</u>	Defendant's MOTION for Summary Judgment by Betz. Responses due by 9/19/2011 (Protopapadakis, Anastasia) (Entered: 08/31/2011)
08/31/2011	<u>96</u>	Defendant's MOTION for Summary Judgment by Kiki. Responses due by 9/19/2011 (Protopapadakis, Anastasia) (Entered: 08/31/2011)
08/31/2011	<u>97</u>	Statement of: Undisputed Material Facts <i>in Support of Motion for Summary Judgment</i> by Betz, Kiki re <u>96</u> Defendant's MOTION for Summary Judgment, <u>95</u> Defendant's MOTION for Summary Judgment (Protopapadakis, Anastasia) (Entered: 08/31/2011)

08/31/2011	<u>98</u>	APPENDIX to <u>97</u> Statement, <u>96</u> Defendant's MOTION for Summary Judgment, <u>95</u> Defendant's MOTION for Summary Judgment by Betz, Kiki (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Protopapadakis, Anastasia) (Entered: 08/31/2011)
08/31/2011	<u>99</u>	Defendant's MOTION for Extension of Time to Complete Discovery ( <i>And Memorandum of Law</i> ) by Marco Delarosa. (Runkles, Christy) (Entered: 08/31/2011)
08/31/2011	<u>100</u>	MOTION to Serve Subpoenas on Non-Parties by John Lynch. (jua) (Entered: 08/31/2011)
09/01/2011	101	ORDER granting <u>99</u> Motion for Extension of Time to Complete Discovery to on or before 9/20/11; denying <u>100</u> Motion for Court to serve subpoenas. The plaintiff must arrange for payment and service of the subpoenas.. Signed by Magistrate Judge Patrick A. White on 9/1/2011. (cz) (Entered: 09/01/2011)
09/01/2011	<u>102</u>	MOTION to Appoint Counsel ( Responses due by 9/19/2011), MOTION to Be Transported to Miami, FL, MOTION to Produce, MOTION for Extension of Time to Complete Discovery ( Responses due by 9/19/2011), MOTION to Add Bob Peryam to this Suit ( Responses due by 9/19/2011) by John Lynch. (jua) (Entered: 09/01/2011)
09/02/2011	103	ORDER denying <u>102</u> Motion to Appoint Counsel ; denying <u>102</u> Motion ; denying <u>102</u> Motion to Produce; denying <u>102</u> Motion for Extension of Time; denying <u>102</u> Motion to Amend/Correct. Plaintiff's response to the motion for summary judgment is due 9/26/11.. Signed by Magistrate Judge Patrick A. White on 9/2/2011. (cz) (Entered: 09/02/2011)
09/02/2011		Set/Reset Deadlines as to <u>96</u> Defendant's MOTION for Summary Judgment, <u>95</u> Defendant's MOTION for Summary Judgment. Responses due by 9/26/2011. (See DE# 103.) (wc) (Entered: 09/06/2011)
09/06/2011	<u>104</u>	ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE TO <u>96</u> Defendant's MOTION for Summary Judgment, <u>95</u> Defendant's MOTION for Summary Judgment.( Responses due by 9/26/2011). Signed by Magistrate Judge Patrick A. White on 9/2/2011. (tw) (Entered: 09/06/2011)
09/12/2011	<u>105</u>	MOTION to Compel <i>Defendants to Deliver Discovery Without \$234.55 Pre-Payment</i> ( Responses due by 9/29/2011), MOTION for X-Rays and a Specialist to Read Them, MOTION to Appoint Counsel ( Responses due by 9/29/2011), MOTION for Extension of Time to Complete Discovery ( Responses due by 9/29/2011) by John Lynch. (jua) (Entered: 09/12/2011)
09/13/2011	106	ORDER granting <u>105</u> Motion to Compel discovery without prepayment, the defendants shall make the discovery available for viewing, if the plaintiff wishes copies he must pay for them, costs will be assessed at the end of the lawsuit; denying <u>105</u> Motion for x-rays and specialist ; denying <u>105</u> Motion to Appoint Counsel ; granting <u>105</u> Motion for Extension of Time for discovery. The time for the plaintiff to respond to the motion for summary judgement shall be on or before 10/28/11, when discovery should be completed.. Signed by Magistrate Judge Patrick A. White on 9/13/2011. (cz) (Entered: 09/13/2011)
09/13/2011	<u>107</u>	Defendant's MOTION for Extension of Time to Complete Discovery ( <i>And Memorandum of Law</i> ) by Marco Delarosa. (Runkles, Christy) (Entered: 09/13/2011)
09/14/2011	108	ORDER granting <u>107</u> Motion for Extension of Time to Complete Discovery to on or before 9/25/11, date defendant requested.. Signed by Magistrate Judge Patrick A. White on 9/14/2011. (cz) (Entered: 09/14/2011)
09/15/2011	<u>109</u>	NOTICE of Compliance by Timothy Age, Marco Delarosa, Deputy Kronig re 106 Order on Motion to Compel, Order on Motion for Miscellaneous Relief, Order on Motion to Appoint Counsel, Order on Motion for Extension of Time,,,,,, (Runkles, Christy) (Entered: 09/15/2011)
09/20/2011	<u>110</u>	RESPONSE to Motion re <u>96</u> Defendant's MOTION for Summary Judgment, <u>95</u> Defendant's MOTION for Summary Judgment filed by John Lynch. Replies due by

		9/30/2011. (jua) (Entered: 09/20/2011)
09/20/2011	111	SECOND MOTION for Summary Judgment Against Defendants Frank Betz and Kuniko Keohane by John Lynch. Responses due by 10/7/2011 (See DE <u>110</u> for image)(jua) (Entered: 09/20/2011)
09/21/2011	<u>112</u>	RESPONSE/REPLY to 111 MOTION for Summary Judgment, <u>110</u> Response to Motion by Betz. (Protopapadakis, Anastasia) (Entered: 09/21/2011)
09/21/2011	<u>113</u>	RESPONSE/REPLY to 111 MOTION for Summary Judgment, <u>110</u> Response to Motion by Kiki. (Protopapadakis, Anastasia) (Entered: 09/21/2011)
09/21/2011	<u>114</u>	APPENDIX to 111 MOTION for Summary Judgment, <u>110</u> Response to Motion ( <i>Amended Appendix</i> ) by Betz, Kiki (Attachments: # <u>1</u> Exhibit 7)(Protopapadakis, Anastasia) (Entered: 09/21/2011)
09/26/2011	<u>115</u>	Defendant's MOTION for Extension of Time to Complete Discovery ( <i>Plaintiff's First Set of Interrogatories (And Memorandum of Law)</i> ) by Timothy Age. (Runkles, Christy) (Entered: 09/26/2011)
09/27/2011	116	ORDER granting <u>115</u> Motion for Extension of Time to Complete Discovery to date requested in motion.. Signed by Magistrate Judge Patrick A. White on 9/26/2011. (cz) (Entered: 09/27/2011)
09/30/2011	<u>117</u>	Defendant's MOTION to Compel <i>Plaintiff to Answer Interrogatories &amp; Respond to Request for Production</i> by Timothy Age, Marco Delarosa, Deputy Kronig. Responses due by 10/17/2011 (Attachments: # <u>1</u> Exhibit A – Defendants' First Request for Production, # <u>2</u> Exhibit B – Defendants; First Set of Interrogatories, # <u>3</u> Exhibit C – Letter to Plaintiff)(Runkles, Christy) (Entered: 09/30/2011)
10/03/2011	118	ORDER granting <u>117</u> Defendants' Motion to Compel responses to discovery. IF the plaintiff refuses to respond to discovery requests sanctions will be imposed.. Signed by Magistrate Judge Patrick A. White on 10/3/2011. (cz) (Entered: 10/03/2011)
10/11/2011	<u>119</u>	RESPONSE to <u>112</u> RESPONSE/REPLY to 111 MOTION for Summary Judgment <u>113</u> RESPONSE/REPLY to 111 MOTION for Summary Judgment by John Lynch. (jua) (Entered: 10/11/2011)
10/11/2011	120	MOTION to Compel <i>Defendants to Produce Discovery</i> ( Responses due by 10/28/2011), MOTION for Extension of Time to Complete Discovery, MOTION to Sanction Defendants and Defendants Lawyers, THIRD MOTION for Summary Judgment ( Responses due by 10/28/2011) by John Lynch. (See DE <u>119</u> for image)(jua) (Entered: 10/11/2011)
10/11/2011	<u>121</u>	RESPONSE to <u>117</u> Defendant's MOTION to Compel <i>Plaintiff to Answer Interrogatories &amp; Respond to Request for Production</i> filed by John Lynch. Replies due by 10/21/2011. (jua) (Entered: 10/11/2011)
10/11/2011	122	MOTION for Appointment of Counsel Just for Discovery ( Responses due by 10/28/2011), MOTION for Extension of Time to Complete Discovery by John Lynch. (See DE <u>121</u> for image) (jua) (Entered: 10/11/2011)
10/12/2011	<u>123</u>	RESPONSE in Opposition re 122 MOTION to Appoint Counsel MOTION for Extension of Time to Complete Discovery filed by Timothy Age, Marco Delarosa, Deputy Kronig. (Runkles, Christy) (Entered: 10/12/2011)
10/14/2011	<u>124</u>	MOTION to Present First Set of Pre–Trial Exhibits to Honorable Court by John Lynch. (jua) (Entered: 10/14/2011)
10/17/2011	<u>125</u>	RESPONSE/REPLY to <u>119</u> Response/Reply (Other) by Betz, Kiki. (Protopapadakis, Anastasia) (Entered: 10/17/2011)
10/17/2011	<u>126</u>	RESPONSE to Motion re 120 MOTION to Compel <i>Defendants to Produce Discovery</i> MOTION for Extension of Time to Complete Discovery MOTION for Sanctions MOTION for Summary Judgment, 122 MOTION to Appoint Counsel MOTION for Extension of Time to Complete Discovery filed by Betz, Kiki. Replies due by 10/27/2011. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Protopapadakis, Anastasia) (Entered: 10/17/2011)

10/18/2011	<u>127</u>	MOTION to Compel <i>Public Defenders to Provide Discovery Requests That Were Humbly Asked for on 8/24/2011</i> ( Responses due by 11/4/2011), MOTION for Sanctions Placed on Non-Party to Cover Expenses, MOTION for Extension of Time to Complete Discovery by John Lynch. (jua) (Entered: 10/18/2011)
10/18/2011	<u>128</u>	MOTION to Compel <i>MCDC to Provide Discovery Requests That Were Humbly Asked for on 7/8/2011 and Again on 8/24/2011 and Repeatedly Since 9/6/2008</i> ( Responses due by 11/4/2011), MOTION for Monetary Sanctions Placed on Non-Parties, MOTION for Extension of Time to Complete Discovery by John Lynch. (jua) (Entered: 10/18/2011)
10/19/2011	129	ORDER denying 120 Motion to Compel; denying 120 Motion for Extension of Time; denying 120 Motion for Sanctions; deferring ruling on 120 Motion for Summary Judgment; denying 122 Motion to Appoint Counsel ; denying 122 Motion for Extension of Time; denying <u>124</u> motion to file trial exhibits as premature, no trial has been set ; denying <u>127</u> Motion to Compel; denying <u>127</u> seeking discovery from Public Defender Motion for Sanctions; denying <u>127</u> Motion for Extension of Time to Complete Discovery; denying <u>128</u> Motion to Compel; denying <u>128</u> seeking discovery from MCDC Motion for Sanctions; denying <u>128</u> Motion for Extension of Time to Complete Discovery. Signed by Magistrate Judge Patrick A. White on 10/19/2011. (cz) (Entered: 10/19/2011)
10/24/2011	<u>130</u>	NOTICE of Service of Defendants First Set of Interrogatories to Plaintiff by John Lynch (jua) Modified on 10/25/2011 to correct filer (jua). (Entered: 10/25/2011)
10/24/2011	<u>131</u>	NOTICE of Service of Plaintiff's First Set of Interrogatories to Defendant Frank Betz by John Lynch (jua) (Entered: 10/25/2011)
10/24/2011	<u>132</u>	NOTICE of Service of Defendants First Request for Production to Plaintiff, John Lynch by John Lynch (jua) (Entered: 10/25/2011)
10/25/2011	<u>133</u>	Defendant's MOTION for Extension of Time File Motion for Summary Judgment ( <i>And Memorandum of Law</i> ) re <u>65</u> Scheduling Order by Timothy Age, Marco Delarosa, Deputy Kronig. Responses due by 11/14/2011 (Jolly, Bruce) (Entered: 10/25/2011)
10/26/2011	134	ORDER granting <u>133</u> Defendants' Motion for Extension of Time to file summary judgment to on or before 11/18/11.. Signed by Magistrate Judge Patrick A. White on 10/26/2011. (cz) (Entered: 10/26/2011)
10/27/2011	<u>135</u>	MOTION to Order Janice A. Lynch to Produce Best Color Injury Photo's at Court, MOTION to Obtain Audio/Video/Court Transcripts from Courts, MOTION to Compel <i>Lower Keys Medical Center, Key West Orthopedics and Monroe County Detention Center to Produce Sanctions Placed on Non-Parties</i> ( Responses due by 11/14/2011), MOTION to Appoint Counsel ( Responses due by 11/14/2011), and MOTION for Extension of Time to Complete Discovery by John Lynch. (ar2) (Entered: 10/27/2011)
10/27/2011	<u>136</u>	MOTION to Compel <i>Key West Police Department to Provide Discovery Requests that were humbly asked for on 8-24-2011, Sanctions Placed on Non-Party to Cover Expenses</i> ( Responses due by 11/14/2011), MOTION to Appoint Counsel ( Responses due by 11/14/2011), MOTION for Extension of Time to Complete Discovery by John Lynch. (ar2) (Entered: 10/27/2011)
10/31/2011	137	ORDER denying <u>135</u> Motion ; denying <u>135</u> Motion to Compel; denying <u>135</u> Motion to Appoint Counsel ; denying <u>135</u> Motion for Extension of Time to Complete Discovery; denying <u>136</u> Motion to Compel; denying <u>136</u> Motion to Appoint Counsel ; denying <u>136</u> Motion for Extension of Time to Complete Discovery, the time for discovery has passed and the time to file a summary judgment has been extended.. Signed by Magistrate Judge Patrick A. White on 10/31/2011. (cz) (Entered: 10/31/2011)
11/03/2011	<u>138</u>	NOTICE/Letter to the Clerk of Court Requesting Help by John Lynch (Docket Sheet sent) (ar2) (Entered: 11/03/2011)
11/03/2011	<u>139</u>	NOTICE/Second Letter to Clerk of Court on 10/28/2011 Re. Amended Complaint by John Lynch (Document sent) (ar2) (Entered: 11/03/2011)

11/04/2011	<u>140</u>	NOTICE by Susan Maurer, Elizabeth J. McGard of <i>Filing Exhibits to Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit Kennedy Affidavit Exhibit A, # <u>2</u> Exhibit Medical Records, # <u>3</u> Exhibit Medical Records, # <u>4</u> Exhibit Medical Records, # <u>5</u> Exhibit Maurer Affidavit Exhibit B, # <u>6</u> Exhibit MacGard Affidavit Exhibit C)(Toomey, Gregg) (Entered: 11/04/2011)
11/04/2011	<u>141</u>	Defendant's MOTION for Summary Judgment by Susan Maurer, Elizabeth J. McGard. Responses due by 11/21/2011 (Toomey, Gregg) (Entered: 11/04/2011)
11/04/2011	142	ORDER directing the Clerk to send Plaintiff a copy of the docket sheet. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 11/4/11. (cew) (Entered: 11/04/2011)
11/07/2011	<u>143</u>	ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE to <u>141</u> Defendant's MOTION for Summary Judgment .( Responses due by 11/30/2011). Signed by Magistrate Judge Patrick A. White on 11/7/2011. (tw) (Entered: 11/07/2011)
11/07/2011	<u>144</u>	MOTION TO APPEAL Previous Motions Denied by Honorable Judge Patrick A. White Re. 129 ORDER denying 120 Motion to Compel; denying 120 Motion for Extension of Time; denying 120 Motion for Sanctions; deferring ruling on 120 Motion for Summary Judgment; denying 122 Motion to Appoint Counsel ; denying 122 Motion for Extension of Time; denying 124 motion to file trial exhibits as premature, no trial has been set ; denying 127 Motion to Compel; denying 127 seeking discovery from Public Defender Motion for Sanctions; denying 127 Motion for Extension of Time to Complete Discovery; denying 128 Motion to Compel; denying 128 seeking discovery from MCDC Motion for Sanctions; denying 128 Motion for Extension of Time to Complete Discovery to District Court (ar2) (Entered: 11/08/2011)
11/07/2011	145	MOTION for a Lawyer ( Responses due by 11/25/2011) and MOTION for Extension of Time to Complete Discovery by John Lynch. (ar2) Modified text on 11/8/2011 (ar2). (See Image at Docket Entry <u>144</u> ) (Entered: 11/08/2011)
11/10/2011	<u>146</u>	MOTION to Present Pre-Trial Statement to Honorable Court by John Lynch. (ar2) (Entered: 11/10/2011)
11/14/2011	147	ORDER denying 145 Motion to Appoint Counsel ; denying 145 Motion for Extension of Time to Complete Discovery; granting (DE#146) motion to present pretrial statement. Signed by Magistrate Judge Patrick A. White on 11/14/2011. (cz) (Entered: 11/14/2011)
11/14/2011	<u>148</u>	Defendant's MOTION to Stay <i>Further Pretrial Proceedings Pending Disposition of Defendants' Motion for Summary Judgment or in the Alternative Motion to Modify Scheduling Order</i> by Susan Maurer, Elizabeth J. McGard. Responses due by 12/1/2011 (Toomey, Gregg) (Entered: 11/14/2011)
11/14/2011	<u>151</u>	NOTICE/Letter to the Court Re. Injuries and Settlement by John Lynch (ar2) (Entered: 11/16/2011)
11/15/2011	<u>149</u>	Defendant's MOTION for Summary Judgment ( <i>And Memorandum of Law</i> ) by Marco Delarosa. Responses due by 12/2/2011 (Attachments: # <u>1</u> Exhibit A – Arrest Report, # <u>2</u> Exhibit B – Information, # <u>3</u> Exhibit C – Plea, # <u>4</u> Exhibit D – Judgment, # <u>5</u> Exhibit E – Court Minutes, # <u>6</u> Exhibit F – Sentence, # <u>7</u> Exhibit G – Special Provisions)(Runkles, Christy) (Entered: 11/15/2011)
11/15/2011	150	ORDER granting <u>148</u> Motion to Stay proceedings until determination of motion for summary judgment. The pre-trial statement shall be due 10 days following entry of a ruling by the District Judge.. Signed by Magistrate Judge Patrick A. White on 11/15/2011. (cz) (Entered: 11/15/2011)
11/18/2011	<u>152</u>	MOTION to Present Part 2 of Pre-Trial Statement to Honorable Court by John Lynch. (jua) (Entered: 11/18/2011)
11/21/2011	<u>153</u>	ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE to <u>141</u> Defendant's MOTION for Summary Judgment and <u>149</u> Defendant's MOTION for Summary Judgment ( <i>And Memorandum of Law</i> ). ( Responses due by 12/19/2011). Signed by Magistrate Judge Patrick A. White on 11/21/2011. (tw)

		(Entered: 11/21/2011)
11/21/2011	154	ORDER granting <u>152</u> Motion to present part 2 of pre-trial statement.. Signed by Magistrate Judge Patrick A. White on 11/21/2011. (cz) (Entered: 11/21/2011)
11/21/2011	<u>155</u>	RESPONSE to <u>141</u> Defendant's MOTION for Summary Judgment filed by John Lynch. Replies due by 12/1/2011. (ar2) (Entered: 11/21/2011)
11/21/2011	156	ORDER denying 120 Motion to compel.. Signed by Magistrate Judge Patrick A. White on 11/21/2011. (cz) (Entered: 11/21/2011)
11/21/2011	157	ORDER respectfully deferring ruling on <u>144</u> Appeal/Objection of Magistrate Judge Order to United States District Court Judge. Signed by Magistrate Judge Patrick A. White on 11/21/2011. (cz) (Entered: 11/21/2011)
11/21/2011	158	MOTION for Summary Judgment against Defendants Susan Maurer and Elizabeth MacGard by John Lynch. Responses due by 12/8/2011 (See Image at Docket Entry <u>155</u> ) (ar2) (Entered: 11/21/2011)
11/22/2011	<u>159</u>	Defendant's MOTION to Stay <i>Further Pretrial Proceedings Pending Summary Judgment Determination (And Memorandum of Law)</i> by Marco Delarosa. Responses due by 12/9/2011 (Runkles, Christy) (Entered: 11/22/2011)
11/22/2011	<u>160</u>	Defendant's MOTION to Stay <i>STAY FURTHER PRETRIAL PROCEEDINGS PENDING SUMMARY JUDGMENT DETERMINATION</i> by Betz, Kiki. Responses due by 12/9/2011 (Burke, Michael) (Entered: 11/22/2011)
11/23/2011	161	ORDER granting <u>159</u> Motion to Stay; granting <u>160</u> Motion to Stay the filing of pre-trial statements final ruling on pending motion for summary judgment. Plaintiff's pre-trial statement is due 14 days following ruling on motion for summary judgement. Defendants pre-trial statement is due one week following.. Signed by Magistrate Judge Patrick A. White on 12/23/2011. (cz) (Entered: 11/23/2011)
11/28/2011	<u>162</u>	RESPONSE to <u>148</u> Defendant's MOTION to Stay <i>Further Pretrial Proceedings Pending Disposition of Defendants' Motion for Summary Judgment or in the Alternative Motion to Modify Scheduling Order</i> filed by John Lynch. Replies due by 12/8/2011. (ar2) (Entered: 11/29/2011)
11/30/2011	<u>163</u>	Statement of: Pretrial by Timothy Age, Deputy Kronig re <u>65</u> Scheduling Order (Runkles, Christy) (Entered: 11/30/2011)
12/01/2011	<u>164</u>	REPLY to Response to Motion re <u>141</u> Defendant's MOTION for Summary Judgment filed by Susan Maurer, Elizabeth J. McGard. (Toomey, Gregg) (Entered: 12/01/2011)
12/08/2011	<u>165</u>	RESPONSE to Motion re 158 MOTION for Summary Judgment filed by Susan Maurer, Elizabeth J. McGard. Replies due by 12/19/2011. (Toomey, Gregg) (Entered: 12/08/2011)
12/08/2011	<u>166</u>	RESPONSE to <u>160</u> Defendant's MOTION to Stay <i>STAY FURTHER PRETRIAL PROCEEDINGS PENDING SUMMARY JUDGMENT DETERMINATION</i> filed by John Lynch. Replies due by 12/19/2011. (ar2) (Entered: 12/09/2011)
12/08/2011	<u>167</u>	RESPONSE to <u>149</u> Defendant's MOTION for Summary Judgment ( <i>And Memorandum of Law</i> ), and <u>159</u> Defendant's MOTION to Stay <i>Further Pretrial Proceedings Pending Summary Judgment Determination (And Memorandum of Law)</i> filed by John Lynch. Replies due by 12/19/2011. (ar2) (Entered: 12/09/2011)
12/08/2011	<u>168</u>	NOTICE to the Court Re: Pretrial Statement by John Lynch (Docket Sheet sent) (ar2) (Entered: 12/09/2011)
12/12/2011	<u>169</u>	Defendant's MOTION to Compel <i>PLAINTIFF TO PROVIDE BETTER ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUEST FOR PRODUCTION (AND MEMORANDUM OF LAW)</i> by Timothy Age, Marco Delarosa, Deputy Kronig. Responses due by 12/30/2011 (Attachments: # <u>1</u> Exhibit A-Defendants' Request for Production, # <u>2</u> Exhibit B-Defendants' First Set of Interrogatories, # <u>3</u> Exhibit C-Letter to Plf, # <u>4</u> Exhibit C-Plaintiff's Response to Defendants' Request for Production, # <u>5</u> Exhibit E-Plaintiff's Response to Defendants' First Set of

		Interrogatories, # <u>6</u> Exhibit F–Letter to Plaintiff, # <u>7</u> Exhibit G– letter from Plaintiff, # <u>8</u> Exhibit H – Letter to Plaintiff)(Runkles, Christy) (Entered: 12/12/2011)
12/12/2011	<u>170</u>	ORDER granting <u>169</u> Defendants' Motion to Compel better discovery responses. The plaintiff is to provide more specific answers to the discovery requests or risk sanctions. This case is at the summary judgment stage.. Signed by Magistrate Judge Patrick A. White on 12/12/2011. (cz) (Entered: 12/12/2011)
12/15/2011	<u>171</u>	RESPONSE in Support re <u>149</u> Defendant's MOTION for Summary Judgment ( <i>And Memorandum of Law</i> ) filed by Marco Delarosa. (Runkles, Christy) (Entered: 12/15/2011)
12/30/2011	<u>172</u>	MOTION to Present Part 3 of the Pre–Trial Statement by John Lynch. (gp) (Entered: 01/03/2012)
01/03/2012	<u>173</u>	MOTION to Present Part 4 of the Pre–Trial Statement and Other Motions by John Lynch. (ar2) (Entered: 01/03/2012)
01/05/2012	<u>174</u>	ORDER denying <u>172</u> Motion ; denying <u>173</u> Motion. The plaintiff is attempting to present parts 2 and 3 of a pre–trial statement. He must file ONE COMPLETE STATEMENT.. Signed by Magistrate Judge Patrick A. White on 1/5/2012. (cz) (Entered: 01/05/2012)
01/17/2012	<u>175</u>	MOTION to Present Part 5 of the Pre–Trial Statement and Other Motions by John Lynch. (ar2) (Entered: 01/18/2012)
01/19/2012	<u>176</u>	ORDER granting <u>175</u> Motion. Signed by Magistrate Judge Patrick A. White on 1/19/2012. (cz) (Entered: 01/19/2012)
01/23/2012	<u>177</u>	MOTION to Present Part–6 of the Pre–Trial Statement and Other Motions by John Lynch. (ar2) (Entered: 01/24/2012)
01/24/2012	<u>178</u>	Defendant's MOTION for clarification 176 Order on Motion for Miscellaneous Relief ( <i>And Memorandum of Law</i> ) by Timothy Age, Marco Delarosa, Deputy Kronig. Responses due by 2/10/2012 (Runkles, Christy) (Entered: 01/24/2012)
01/25/2012	<u>179</u>	ORDER denying <u>177</u> Motion motion to present part 6 of the pre–trial statement, the plaintiff is abusive in his constant additions to the pretrial and will no longer be permitted to amend; granting <u>178</u> Motion for Clarification to the extent that the Court is not granting the requests sought in the amendments to pre–trial, only that he may file this request.. Signed by Magistrate Judge Patrick A. White on 1/25/2012. (cz) (Entered: 01/25/2012)
01/26/2012	<u>180</u>	Defendant's MOTION for Sanctions <i>for Failure to Comply with Court Order (And Memorandum of Law)</i> by Timothy Age, Marco Delarosa, Deputy Kronig. (Runkles, Christy) (Entered: 01/26/2012)
01/30/2012	<u>181</u>	MOTION to Present Part–7 of the Pre–Trial Statement and Other Motions by John Lynch. (ar2) (Entered: 01/31/2012)
02/01/2012	<u>182</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case. Denying <u>111</u> MOTION for Summary Judgment filed by John Lynch; Granting <u>96</u> Defendant's MOTION for Summary Judgment filed by Kuniko Keohane; Dismissing without prejudice <u>33</u> Amended Complaint filed by John Lynch, as to Lisa Fonas due to lack of service; Granting <u>95</u> Defendant's MOTION for Summary Judgment filed by Frank Betz; Granting <u>149</u> Defendant's MOTION for Summary Judgment ( <i>And Memorandum of Law</i> ) filed by Marco Delarosa; Granting in part Denying in part <u>141</u> Defendant's MOTION for Summary Judgment filed by Susan Maurer, Elizabeth J. McGard; and Denying <u>158</u> MOTION for Summary Judgment filed by John Lynch. Objections to RRdue by 2/21/2012. Signed by Magistrate Judge Patrick A. White on 2/1/2012. (tw) (Entered: 02/01/2012)
02/02/2012	<u>183</u>	ORDER REGARDING PLAINTIFF'S PRETRIAL STATEMENT. Signed by Magistrate Judge Patrick A. White on 2/2/2012. (tw) (Entered: 02/02/2012)
02/02/2012	<u>184</u>	ORDER denying <u>180</u> Motion for Sanctions and requiring discovery response on or before March 02, 2012. Signed by Magistrate Judge Patrick A. White on 2/2/2012. (tw) (Entered: 02/02/2012)

02/03/2012	<u>185</u>	MOTION to Present Part-8 of the Pre-Trial Statement, MOTION for Extension of Time to Complete the Pre-Trial Statement ( Responses due by 2/21/2012) by John Lynch. (jua) (Entered: 02/06/2012)
02/09/2012	<u>186</u>	MOTION to clarify Re: <u>183</u> ORDER REGARDING PLAINTIFF'S PRETRIAL STATEMENT( Responses due by 2/27/2012), MOTION to Consolidate, and MOTION for Time Extension ( Responses due by 2/27/2012), by John Lynch. (ar2) (Entered: 02/09/2012)
02/13/2012	187	ORDER denying <u>185</u> Motion to Present Part 8 of Plaintiff's Pre-trial Statement; and denying <u>185</u> Motion for Extension of Time to file the Pre-trial statement. A single concise pre-trial statement is due to be filed no later February 29, 2012 pursuant to (DE# 183). However, the records attached to the Plaintiff's motion will be considered part of the record to the extent they are not already before the Court. See (DE# 185 at 17, 18, 52-55). Signed by Magistrate Judge Patrick A. White on 2/13/2012. (eky) (Entered: 02/13/2012)
02/13/2012	188	ORDER denying <u>186</u> Motion for Clarification; denying <u>186</u> Motion to Consolidate Cases; denying <u>186</u> Motion for Extension of Time. A single concise pre-trial statement is due to be filed no later than February 29, 2012. See (DE# 183). A copy of the docket sheet has been mailed to the Plaintiff. Signed by Magistrate Judge Patrick A. White (eky) (Entered: 02/13/2012)
02/15/2012	<u>189</u>	OBJECTIONS to <u>182</u> Report and Recommendations <i>regarding Summary Judgment</i> by Elizabeth J. McGard. (Toomey, Gregg) (Entered: 02/15/2012)
02/15/2012	<u>190</u>	MOTION To Submit Discovery Compelled By Attorney Runkles with exhibits attached by John Lynch. (Attachments: # <u>1</u> Exhibit Cont'd)(cqs) (Entered: 02/16/2012)
02/21/2012	<u>191</u>	NOTICE of Filing Exhibits by John Lynch re <u>190</u> MOTION To Submit Discovery Compelled By Attorney Runkles (cqs) (Entered: 02/21/2012)
02/21/2012	<u>192</u>	NOTICE of Filing Additional Exhibits by John Lynch re <u>191</u> Notice (Other) (cqs) (Entered: 02/21/2012)
02/22/2012	193	ORDER granting <u>190</u> Motion motion to submit discovery, defendants may file objections if necessary.. Signed by Magistrate Judge Patrick A. White on 2/22/2012. (cz) (Entered: 02/22/2012)
02/23/2012	<u>194</u>	NOTICE/ Motion of Filing Better Answers To Interrogatories With Discovery Exhibits by John Lynch (cqs) (Additional attachment(s) added on 2/23/2012: # <u>1</u> Exhibit) (cqs). (Entered: 02/23/2012)
03/02/2012	<u>195</u>	NOTICE by Timothy Age, Marco Delarosa, Deputy Kronig of <i>Plaintiff's Failure to File A Pretrial Statement</i> (Runkles, Christy) (Entered: 03/02/2012)
03/02/2012	<u>197</u>	MOTION for clarification by John Lynch. Responses due by 3/19/2012 (amb) (Entered: 03/07/2012)
03/05/2012	<u>196</u>	APPEAL of Magistrate Judge to District Court (amb) (Entered: 03/07/2012)
03/08/2012	198	ORDER. This Cause is before the Court on <u>pro se</u> Plaintiff John Lynch's "Motion to NOT Appeal to 11th Circuit in Atlanta But to Honorable Judge Lenard" (D.E. <u>196</u> ), filed on March 5, 2012, and "Motion to Appeal, Motion to Clarify and Other Motions" (D.E. <u>197</u> ), filed on March 2, 2012. After reviewing the Motions <u>196</u> , <u>197</u> , the Court construes these Motions as objections to Magistrate Judge White's Report and Recommendation (D.E. <u>182</u> ), filed on February 1, 2012. The Court will consider the arguments made by Plaintiff Lynch in these Motions when the Court rules on the Magistrate Judge's Report and Recommendation. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 3/8/2012. (cew) (Entered: 03/08/2012)
03/09/2012	<u>199</u>	NOTICE by Susan Maurer, Elizabeth J. McGard re <u>195</u> Notice (Other) of <i>Joinder</i> (Toomey, Gregg) (Entered: 03/09/2012)
03/12/2012	<u>200</u>	MOTION to Receive a Copy of Docket Filing Text #182 Re: <u>182</u> REPORT AND RECOMMENDATIONS by John Lynch. (ar2) (Entered: 03/13/2012)

03/12/2012	<u>201</u>	MOTION to Submit Depositions, Exhibits and a Plea by John Lynch. (Attachments: # <u>1</u> Exhibit)(ar2) (Entered: 03/13/2012)
03/12/2012	<u>202</u>	MOTION to Submit hand copied Depositions, Exhibits and Motions by John Lynch. (Attachments: # <u>1</u> Exhibit)(ar2) (Entered: 03/13/2012)
03/15/2012	<u>203</u>	RESPONSE to Motion re <u>182</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 111 MOTION for Summary Judgment filed by John Lynch, <u>96</u> Defendant's MOTION for Summary Judgment filed by Kiki, <u>33</u> Amended Complaint filed by John Lynch, <u>95</u> Defendant's MOTION, <u>200</u> MOTION to Receive a Copy of Docket Filing Text #182 Report and Recommendations re <u>182</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 111 MOTION for Summary Judgment filed by John Lynch, <u>96</u> Defendant's MOTION for Summary Judgment filed by Deputy Kronig. Replies due by 3/26/2012. (Runkles, Christy) (Entered: 03/15/2012)
03/15/2012	<u>204</u>	RESPONSE to <u>189</u> Objections to Report and Recommendations by John Lynch. (cqs) (Entered: 03/15/2012)
03/16/2012	<u>205</u>	MOTION to Submit Depositions, Objections, Exhibits, Discovery and Motions by John Lynch. (jua) (Entered: 03/16/2012)
03/19/2012	<u>206</u>	MOTION To Submit Colored Injury Pictures re <u>1</u> Complaint/Petition by John Lynch. (cqs) (Entered: 03/20/2012)
03/20/2012	<u>207</u>	ORDER/REPORT THAT CASE IS READY FOR TRIAL. Signed by Magistrate Judge Patrick A. White on 3/20/2012. (tw) Modified text on 3/21/2012 (wc). (Entered: 03/20/2012)
03/22/2012	<u>208</u>	Defendant's MOTION to Strike <u>202</u> MOTION to Submit hand copied Depositions, Exhibits and Motions, <u>205</u> MOTION to Submit Depositions, Objections, Exhibits, Discovery and Motions, <u>201</u> MOTION to Submit Depositions, Exhibits and a Plea , <i>specifically Criminal Deposition Transcripts the Plaintiff is Seeking to Submit as Trial Exhibits</i> by Timothy Age, Marco Delarosa, Deputy Kronig. Responses due by 4/9/2012 (Runkles, Christy) (Entered: 03/22/2012)
03/23/2012	<u>209</u>	REPLY to Response to Motion re <u>205</u> MOTION to Submit Depositions, Objections, Exhibits, Discovery and Motions, <u>182</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 111 MOTION for Summary Judgment filed by John Lynch, <u>96</u> Defendant's MOTION for Summary Judgment filed by Kiki, <u>33</u> Amended Complaint filed by John Lynch, <u>95</u> Defendant's MOTION filed by Elizabeth J. McGard. (Toomey, Gregg) (Entered: 03/23/2012)
03/26/2012	<u>210</u>	Motion To Object To Notice of Joinder and Failure to File Pre-Trial Statement Re: <u>199</u> Notice, MOTION to Appoint Counsel by John Lynch. Responses due by 4/12/2012 (cqs) (Entered: 03/27/2012)
04/02/2012	<u>211</u>	RESPONSE to <u>209</u> Reply to Response to Motion, by John Lynch. (cqs) (Entered: 04/02/2012)
04/02/2012	<u>212</u>	MOTION to Receive Color Copy Of Best Injury Exhibit that Appealant Court Possesses by John Lynch. (cqs) (Entered: 04/02/2012)
04/02/2012	<u>213</u>	MOTION to Submit Christy Hoskins Deposition and Other Motions by John Lynch. (ar2) (Entered: 04/03/2012)
04/03/2012	<u>214</u>	RESPONSE to <u>208</u> Defendant's Motion to Strike <u>202</u> MOTION to Submit hand copied Depositions, Exhibits and Motions, <u>205</u> MOTION to Submit Depositions, Objections, Exhibits, Discovery and Motions, and <u>201</u> MOTION to Submit Depositions, Exhibits and a Plea, filed by John Lynch. Replies due by 4/13/2012. (ar2) (Entered: 04/03/2012)
04/05/2012	<u>215</u>	MOTION to Receive Copies Of Depositions From A. Paula Cottis, by John Lynch. (cqs) (Entered: 04/05/2012)
04/05/2012	<u>216</u>	MOTION for Clarification as to Why Federal Court Filed Suit on Lisa Fonas by John Lynch. Responses due by 4/23/2012 (cqs) (Entered: 04/05/2012)

04/12/2012	<u>217</u>	MOTION to Submit Objection to <u>149</u> Defendant's MOTION for Summary Judgment by John Lynch. (ar2) (Entered: 04/12/2012)
04/26/2012	<u>218</u>	REPLY to Response to Motion re <u>149</u> Defendant's MOTION for Summary Judgment filed by Marco Delarosa. (Runkles, Christy) Modified Link on 4/27/2012 (ls). (Entered: 04/26/2012)
04/27/2012	219	Clerks Notice to Filer re <u>218</u> Reply to Response to Motion. <b>Incorrect Document Link</b> ; ERROR – The filed document was not correctly linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (ls) (Entered: 04/27/2012)
05/03/2012	<u>220</u>	NOTICE/Motion to Receive Court Docket Filing Sheet by John Lynch. (Docket Sheet sent). (ar2) (Entered: 05/03/2012)
05/08/2012	<u>221</u>	ORDER denying <u>144</u> Plaintiff's Motion to Appeal Previous Motions Denied by Honorable Judge White; denying <u>200</u> <u>210</u> Plaintiff's Motions to Appoint Counsel; affirming the Magistrate Judge's Orders denying Plaintiff's Motions to appoint counsel (D.E. 10, 14, 16, 38, 66, 79, 88, 92, 103, 106, 129, 137, 147); affirming the Magistrate Judge's Orders denying Plaintiff's discovery Motions (D.E. 129, 137). Signed by Judge Joan A. Lenard on 5/8/2012. (cew) (Entered: 05/08/2012)
05/08/2012	<u>222</u>	ORDER granting Plaintiff's <u>200</u> Motion to Receive a Copy of the Magistrate Judge's Report (D.E. <u>182</u> ); granting Plaintiff's <u>220</u> Motion to Receive a Copy of the Court's Docket Sheet; directing the Clerk of Court to mail a copy of this Order, a copy of the docket sheet, and a copy of the Magistrate Judge's Report (D.E. 182) to Plaintiff; providing Plaintiff until <b>June 8, 2012</b> to file any objections to the Magistrate Judge's Report and directing Plaintiff to file any objections to the Magistrate Judge's Report <b>as one document</b> that is titled <b>Objections to the Magistrate Judge's Report</b> ; providing Defendants until June 25, 2012 to file any response to Plaintiff's objections; and advising Plaintiff that the Court <b>will not consider</b> any reply that he files to Defendants' response to his objections. Signed by Judge Joan A. Lenard on 5/8/2012. (cew) (Entered: 05/08/2012)
06/18/2012	<u>223</u>	NOTICE/Motion to Submit Change of Address and to Receive Last Two (2) Pages of Federal Court Dockets Filing Text Sheet by John Lynch (Address updated and Docket Sheet sent). (ar2) (Entered: 06/18/2012)
06/29/2012	<u>224</u>	MOTION to Receive a Copy of <u>182</u> Report and Recommendation, that Plaintiff has been humbly waiting to Receive for the Past 48 Days, by John Lynch. (ar2) (Entered: 06/29/2012)
07/03/2012	225	ORDER granting <u>224</u> Motion to Receive a Copy of the Magistrate Judge's Report and Recommendation and directing the Clerk of Court to send Plaintiff a copy of the Magistrate Judge's Report and Recommendation (D.E. <u>182</u> ). In his <u>224</u> Motion, Plaintiff has stated that he has not received a copy of the Magistrate Judge's Report and Recommendation <u>182</u> , issued on February 1, 2012. Accordingly, it is ORDERED AND ADJUDGED that: (1) the Clerk of Court SHALL MAIL a copy of the Magistrate Judge's Report and Recommendation (D.E. 182) and a copy of the docket sheet to Plaintiff; (2) Plaintiff John Lynch is provided until <u>August 3, 2012</u> to file any objections to the Magistrate Judge's Report and Recommendation. Plaintiff is directed to file any objections to the Magistrate Judge's Report <b>as one document</b> and is further directed to title this document <b>Objections to the Magistrate Judge's Report</b> ; (3) Defendants are provided until August 24, 2012 to file any response to Plaintiff's objections to the Magistrate Judge's Report; and (4) because neither the Local Rules of this Court nor the Federal Rules of Civil Procedure provide for the filing of a reply to a response to objections, Plaintiff is advised that the Court <b>will not consider</b> any reply that he files to Defendants' response to his objections. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 7/3/2012. (cew) (Entered: 07/03/2012)
07/03/2012		Set/Reset Deadlines as to <u>182</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 111 MOTION for Summary Judgment filed by John Lynch, <u>96</u> Defendant's MOTION for Summary Judgment filed by Kiki, <u>33</u> Amended Complaint filed by John Lynch, <u>95</u> Defendant's MOTION. Replies due by

		8/24/2012. Objections to RRdue by 8/3/2012 (tp) (Entered: 07/06/2012)
07/05/2012	226	Remark. Per Docket Entry 225, a copy of the docket sheet and the Report and Recommendation of Magistrate Judge White is being mailed directly from Judge White's Chambers to the plaintiff at his address of record. (lr) (Entered: 07/05/2012)
07/30/2012	<u>227</u>	MOTION for a Ten Day Continuance to Complete Objection re <u>182</u> REPORT AND RECOMMENDATIONS by John Lynch. Responses due by 8/16/2012 (ail) (Entered: 07/31/2012)
08/01/2012	228	ORDER granting Plaintiff's <u>227</u> Motion for an Extension of Time to file objections to the Report and Recommendation of Magistrate Judge White. Upon review of Plaintiff's Motion, it is ORDERED AND ADJUDGED that: (1) Plaintiff John Lynch is provided until August 13, 2012 to file any objections to the Magistrate Judge's Report and Recommendation. Plaintiff is directed to file any objections to the Magistrate Judge's Report as one document and is further directed to title this document Objections to the Magistrate Judge's Report; (2) Defendants are provided until September 4, 2012 to file any response to Plaintiff's objections to the Magistrate Judge's Report; and (3) because neither the Local Rules of this Court nor the Federal Rules of Civil Procedure provide for the filing of a reply to a response to objections, Plaintiff is advised that the Court will not consider any reply that he files to Defendants' response to his objections. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 8/1/2012. (cew) (Entered: 08/01/2012)
08/01/2012		DE 228 Reset Deadlines as to <u>182</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 111 MOTION for Summary Judgment filed by John Lynch, <u>96</u> Defendant's MOTION for Summary Judgment filed by Kiki, <u>33</u> Amended Complaint filed by John Lynch, <u>95</u> Defendant's MOTION. Objections to RRdue by 8/13/2012 (tp) (Entered: 08/03/2012)
08/13/2012	<u>229</u>	NOTICE of Filing Signature on Certificate of Service by John Lynch (yha) (Entered: 08/13/2012)
08/13/2012	<u>230</u>	OBJECTIONS to <u>182</u> Report and Recommendations by John Lynch. (Attachments: # <u>1</u> Exhibit)(yha) (Entered: 08/13/2012)
08/20/2012	<u>231</u>	RESPONSE TO OBJECTION to <u>182</u> Report and Recommendations by Betz. (Burke, Michael) (Entered: 08/20/2012)
08/20/2012	<u>232</u>	RESPONSE TO OBJECTION to <u>182</u> Report and Recommendations by Kiki. (Burke, Michael) (Entered: 08/20/2012)
08/31/2012	<u>233</u>	RESPONSE TO OBJECTION to <u>182</u> Report and Recommendations by Marco Delarosa. (Runkles, Christy) (Entered: 08/31/2012)
09/04/2012	<u>234</u>	RESPONSE TO OBJECTION to <u>182</u> Report and Recommendations by Susan Maurer, Elizabeth J. McGard. (Toomey, Gregg) (Entered: 09/04/2012)
09/11/2012	<u>235</u>	MOTION to Compel <i>Defendants to Answer Re: <u>230</u> Objections to Report and Recommendations</i> by John Lynch. Responses due by 9/28/2012. (ar2) (Entered: 09/11/2012)
09/13/2012	<u>236</u>	NOTICE by Susan Maurer, Elizabeth J. McGard re <u>235</u> MOTION to Compel <i>Defendants to Answer to <u>230</u> (Re-service of Response to Objections)</i> (Toomey, Gregg) (Entered: 09/13/2012)
10/17/2012	<u>237</u>	ORDER ADOPTING IN PART REPORT AND RECOMMENDATION (D.E. <u>182</u> ), GRANTING DEFENDANT FRANK BETZ'S MOTION FOR SUMMARY JUDGMENT (D.E. <u>95</u> ), GRANTING DEFENDANT KUNIKO KEOHANE'S MOTION FOR SUMMARY JUDGMENT (D.E. <u>96</u> ), GRANTING DEFENDANT MARCO DELAROSA'S MOTION FOR SUMMARY JUDGMENT (D.E. <u>149</u> ), GRANTING DEFENDANT SUSAN MAURER'S MOTION FOR SUMMARY JUDGMENT (D.E. <u>141</u> ), GRANTING IN PART AND DENYING IN PART DEFENDANT ELIZABETH MacGARD'S MOTION FOR SUMMARY JUDGMENT (D.E. <u>141</u> ), AND DENYING PLAINTIFF JOHN LYNCH'S MOTIONS FOR SUMMARY JUDGMENT (D.E. 111 , 158 ). Signed

		by Judge Joan A. Lenard on 10/17/2012. (cew) (Entered: 10/17/2012)
10/23/2012	<u>238</u>	NOTICE TO PARTIES. Upon receipt of Magistrate Judge Patrick A. White's <u>207</u> Report That Case is Ready for Trial and upon this Court's Order on the motions for summary judgment <u>237</u> , the Court hereby provides notice that it will set a trial date forthwith by separate Order. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 10/23/2012. (cew) (Entered: 10/23/2012)
11/13/2012	<u>239</u>	Order setting Pretrial Conference and Trial, Establishing Pretrial Deadlines, and Establishing Pretrial and Trial Procedures: Pretrial Conference set for 4/1/2013 04:00 PM in Miami Division before Judge Joan A. Lenard. Jury Trial set for 4/22/2013 09:00 PM in Miami Division before Judge Joan A. Lenard. Calendar Call set for 4/17/2022 04:00 PM in Miami Division before Judge Joan A. Lenard. In Limine Motions due by 2/19/2013. Pretrial Stipulation due by 3/4/2013. Signed by Judge Joan A. Lenard on 11/13/2012. (dp) (Entered: 11/13/2012)
11/26/2012	<u>240</u>	MOTIONS to Honorable Judge Joan A. Lenard for Permission by John Lynch. (tp) (Entered: 11/26/2012)
12/03/2012	<u>241</u>	MOTION to Submit One Video Disc and One Discovery Disc to Honorable Judge Joan A. Lenard by John Lynch. (tp) (Entered: 12/03/2012)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.10-22020-CIV-LENARD  
MAGISTRATE JUDGE P.A.WHITE

JOHN LYNCH, :  
 :  
 Plaintiff, :  
 :  
 v. : SUPPLEMENTAL REPORT OF  
 : MAGISTRATE JUDGE  
 BOB PERYAM, ET AL., :  
 :  
 Defendants. :

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I. Introduction

The plaintiff filed a pro-se civil rights complaint on June 18, 2010, while confined in the Monroe County Jail. <sup>1</sup>

The plaintiff's complaint was a hand-written, sixty-six page pleading, which was both difficult to read and to discern the claims. The plaintiff included instances of abuse to inmates at the Monroe County Jail, with a long list of signatures at the end of the complaint. The plaintiff was instructed to amend his complaint to state the issues of alleged violations directly related to him.

The plaintiff then attempted to file a class action suit, and filed two additional amendments. The initial amendment was filed on August 20, 2010, with a motion to add parties (DE#17), in which the plaintiff added about 75 plaintiffs. The plaintiff's second motion to amend (DE#21), with an amended complaint (DE#22), sought certification as a class action.

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<sup>1</sup>A clerk's notice of undeliverable mail was docketed by the Court on July 13, 2010. On July 15, 2010, the plaintiff filed a notice of change of address to the Marshall County Jail in Lewisburg, Tennessee. The plaintiff is now confined in Tiptonville, Tenn.

After being afforded multiple opportunities to amend his complaint, a Report was entered on January 3, 2011, recommending that the case be dismissed without prejudice for lack of prosecution, as demonstrated by the plaintiff's failure to properly file an amended complaint.

On February 28, 2011, the plaintiff filed yet another amended complaint. On March 3, 2011, the third amended complaint was referred to the Undersigned Magistrate Judge for review.

This Cause is before the Court upon review of the plaintiff's third amended complaint pursuant to 28 U.S.C. §1915.(DE#33) The plaintiff is proceeding in forma pauperis. The plaintiff seeks monetary and injunctive relief.<sup>2</sup>

## II. Analysis

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

Sec. 1915 Proceedings in Forma Pauperis

\* \* \*

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

\* \* \*

(B) the action or appeal --

\* \* \*

(i) is frivolous or malicious;

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<sup>2</sup> The injunctive relief sought is on behalf of future inmates and this prospective relief would require a Mandamus against state actors. This relief cannot be granted. Pankey v Webster, 816 F. Supp 553 , 558 (WD Mo 1993).

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

This is a civil rights action Pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon

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

A. Sufficiency of the complaint

In the third amended complaint the plaintiff names Sheriff Peryam, the previous sheriff (unknown), Officer Betz and Kiki of the Key West Police, the Lower Keys Medical Center, Prison Health Services, Elizabeth McGard, Administrator of Public Health Services, and Susan Maurer, Head Nurse, the Monroe County Jail, along with Deputy Marco Delarosa, Captain Age and Deputy Kronig of the Monroe County Sheriff's Department.

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<sup>3</sup> The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

The plaintiff alleges that on September 6, 2008, he was involved in a serious scooter wreck in which he badly damaged his shoulder, when he hit his head and shoulder on the pavement. (DE#33 p12). He was subsequently arrested on "trumped up DUI charges"<sup>4</sup>(DE#33 p6). He contends that he should have had surgery to repair his severely damaged shoulder, before being taken to jail, as he suffered a broken collarbone which was "clearly sticking out of his shoulder".

He claims that he woke up in the Monroe County Jail infirmary. He suffered for six days before he was issued treatment. Allegedly, the Public Health Service (PHS) doctors, McGard and Maruer lied about the condition of his shoulder and told him to exercise. He had an MRI on August 5, 2009, and a shoulder tear was found. He states he was informed by a doctor on September 25, 2009, that he needed surgery. He claims that this is a \$25,000 operation, and because of the expense, he never received the needed surgery. He stated that as of February 21, 2011, he was still taking pain medication. He has since filed multiple changes of address, indicating he had been sent to a prison health facility, and then to Tipton, Tennessee, where he is currently confined. He seeks compensatory damages and injunctive relief.

He further alleges that on August 7, 2009 he was assaulted by Deputy Delarosa, who knocked out two of his teeth while he was in the dentist chair. He alleges the defendants are hiding evidence of the incident, and that at his appearance in Court the Judge refused to file charges against Delarosa for police brutality. He claims that Monroe County Jail and Prison Health Services waited months to remove his infected, broken teeth. McGard, Maurer and Dentist Fonas

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<sup>4</sup>He states he was found not guilty of the DUI.

were in control of his medical and dental issues.

On April 12, 2010, he claims Deputies Age and Kronig beat him, and refused to give him a copy of the video.

He claims the prior and present sheriffs violated his rights by allowing Betz and Kiki to place him in jail with his visible injuries, and were negligent in training their officers. Officers Betz and Kiki violated his rights when they placed him in jail with his injuries. He alleges the defendants were deliberately indifferent to his medical needs. He claims the county jail and PHS refused him pain pills for the first 2 days, but he was then given a "Perco Jeezic" (DE#33 p12).

#### Sufficiency of the complaint

The plaintiff names the Key West Police,<sup>5</sup> the Lower Keys Medical Center, and Prison Health Services as defendants. To sufficiently state a claim pursuant to 42 U.S.C. §1983, the plaintiff must name a person or persons acting under color of state law who violated his civil rights. Polk County, supra. The above named defendants are not persons within the definition. The Eleventh Circuit requires that a plaintiff must show policy or custom in suits against private corporations performing traditional public functions. See Buckner v. Toro, 116 F.3d 450 (11 Cir.) (extending the application of Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978) to private corporations such as prison medical service companies performing traditional public functions), cert. denied, 522 U.S. 1018 (1997). In this case, the plaintiff

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<sup>5</sup>To state a claim against the Key West Police Department, an arm of the County the plaintiff must also state a Monell claim demonstrating a custom or policy in violation of his civil rights.

has failed to support any claim for relief that any of the above defendants as an entity acted in accordance with a custom or policy with regard to the possible violation of any of his constitutional rights. Without such, the plaintiff's claim is insufficient to sustain a §1983 claim. Therefore these defendants should be dismissed.

Defendants Sheriff Bob Peryam and Prior Sheriff (unknown) are clearly named in their supervisory capacity. The plaintiff makes no allegations against the sheriffs other than they failed to train their employees and should not permit an injured inmate to be incarcerated. The Sheriffs cannot be sued for liability merely for an improper or even unconstitutional act of their employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) The plaintiff has failed to state a claim against these defendants and they should be dismissed.

#### Denial of Medical Treatment

The plaintiff alleges that the defendants violated his Eighth Amendment rights by being deliberately indifferent to his serious medical needs when they failed to provide him with surgery for his

shoulder before his incarceration.<sup>6</sup>

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

A serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity

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<sup>6</sup> Because the plaintiff was apparently a pretrial detainee, his claims arise under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell v. Wolfish, 441 U.S. 520, 535 (1979); Hamm v. DeKalb County, 774 F.2d 1567, 1571-74 (11 Cir.), cert. denied, 475 U.S. 1096 (1986). In any event, the standards are the same. Id.

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

The Eleventh Circuit has provided guidance concerning the distinction between "deliberate indifference" and "mere negligence." For instance, "an official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate." Lancaster v. Monroe County, 116 F.3d 1419, 1425 (11 Cir. 1997). The "deliberate indifference" standard may be met in instances where a prisoner is subjected to repeated examples of delayed, denied, or grossly incompetent or inadequate medical care; prison personnel fail to respond to a known medical problem; or prison doctors take the easier and less efficacious route in treating an inmate. See, e.g., Waldrop v. Evans, 871 F.2d 1030, 1033 (11 Cir. 1989).

Allegations that raise only claims of mere negligence, neglect, or medical malpractice are insufficient to recover on a

§1983 claim. Estelle v. Gamble, supra. In fact, once an inmate has received medical care, courts are hesitant to find that an Eighth Amendment violation has occurred. Hamm, supra. Treatment violates the Eighth Amendment only if it involves "something more than a medical judgment call, an accident, or an inadvertent failure," Murrell v. Bennett, 615 F.2d 306, 310 n. 4 (5 Cir. 1980). It must be "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." Rogers v. Evans, supra at 1058.

Moreover, 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, supra, at 107 ("matter[s] of medical judgment" do not give rise to a §1983 claim). See 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); Smart v. Villar, 547 F.2d 112, 114 (10 Cir. 1976) (same); Burns v. Head Jailor of LaSalle County Jail, 576 F.Supp. 618, 620 (N.D. Ill., E.D. 1984) (exercise of prison doctor's professional judgment to discontinue prescription for certain drugs not actionable under §1983).

At this preliminary stage it is difficult to determine the extent of the plaintiff's injuries upon arrest, and whether he should have been taken directly to the Detention Center. He contends that Defendants Betz and Kiki brought him to jail despite the fact that his injuries were clearly visible, and his collar bone was sticking out of his shoulder. It is further difficult at this stage to determine whether the plaintiff's medical condition was treated appropriately by the named defendants, or whether he was merely given palliative treatment, in deliberate indifference to his medical needs. He claims that McGard, the Health Administrator and Head Nurse Maruer lied to him about his condition and told him to exercise, despite the fact that an MRI indicated a tear which required surgery. He further alleges that Dentist Foras delayed his dental treatment. It is recommended that these defendants be served.

He further alleges that Delarosa, as well as deputies Age and Kronig assaulted him. Claims of excessive force by guards are cognizable under 42 U.S.C. §1983, as a violation of the Eighth Amendment<sup>7</sup>. Booth v Chumer, et al, 206 F.3d 289 (3rd Cir. 2000), Perry v thompson, 786 F.2d 1093 (11 Cir. 1986). The plaintiff has minimally stated a claim for use of excessive force by Delarosa, Age and Kronig.

### III. Conclusion

It is therefore recommended as follows:

1. The case shall continue against Officers Betz and Kiki who failed to provide him with adequate medical care by bringing

him directly to the county jail, despite his allegedly severe injuries.

2. The case shall proceed against McGard, Maurer and Fonas for failure to provide adequate medical and dental treatment.

3. The case shall proceed against Officers Delarosa, Age and Kronig for use of unlawful force.

4. His claims for injunctive relief are dismissed.

5. The operative complaint is the third amended complaint (DE#33). All prior complaints and defendants named shall be terminated.

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

Dated at Miami, Florida, this 13<sup>th</sup> day of May, 2011.



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UNITED STATES MAGISTRATE JUDGE

cc: John Lynch, Pro-Se  
#296113  
Tiptonville, Tn  
Address of record

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

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

**JOHN LYNCH,**

Plaintiff,

vs.

**BOB PERYAM, et al.,**

Defendants.

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**ORDER ADOPTING SUPPLEMENTAL REPORT OF MAGISTRATE JUDGE  
(D.E. 44)**

**THIS CAUSE** is before the Court on the Supplemental Report of U.S. Magistrate Judge Patrick A. White (“Supplemental Report,” D.E. 44), issued on May 13, 2011. In his Supplemental Report, Magistrate Judge White recommends that Plaintiff John Lynch’s Third Amended Complaint (D.E. 33), filed on February 28, 2011, should be the operative complaint, Plaintiff’s civil rights claims should proceed against Defendant Officers Betz, Kiki, McGard, Maurer, Fonas, Delarosa, Age and Kronig, Plaintiff’s claims for injunctive relief should be dismissed and all prior complaints and defendants named shall be terminated. (Supplemental Report at 11-12.) The Report also provides that any objections may be filed within fourteen days of its receipt by the parties. To date, no objections to the Report have been filed. Failure to timely file objections shall bar 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).

Therefore, after an independent review of the Report and record, it is hereby

**ORDERED AND ADJUDGED** that:

1. The Supplemental Report of the Magistrate Judge (D.E. 44), issued on May 13, 2011, is **ADOPTED**.
2. Plaintiff John Lynch's Third Amended Complaint (D.E. 33), filed on February 28, 2011, is the operative pleading.
3. Plaintiff's claims for injunctive relief are **DISMISSED**..
4. The Report and Recommendation of the Magistrate Judge (D.E. 28), issued on January 3, 2011, is **NOT ADOPTED** as moot..

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

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

JOHN LYNCH,

Plaintiff,

vs.

BOB PERYAM, et al.,

Defendants.

\_\_\_\_\_ /

**DEFENDANTS AGE AND KROENING'S PRETRIAL STATEMENT**

Defendants, TIMOTHY AGE and JASON KROENING, through their undersigned counsel, pursuant to this Court's Order Scheduling Pretrial Proceedings When Plaintiff is Proceeding Pro Se [DE 65], hereby file this their Pretrial Statement, and state as follows:

**(A) Brief general statement of what the case is about**

On February 23, 2011, Plaintiff John Lynch, a pro-se incarcerated individual, filed his Third Amended Complaint [DE 33], pursuant to 42 U.S.C. § 1983, naming eleven (11) Defendants. Plaintiff alleges that his federal constitutional rights were violated when Defendants Age and Kroening used excessive force upon him during his incarceration at the Monroe County Detention Center. Specifically, Plaintiff Lynch alleges that Defendants Age and Kroening beat him, threw him into a shower wall, handcuffed him, and threw him on the concrete floor.

Defendants deny all allegations of wrongdoing which Plaintiff has asserted and affirmatively state that any force used was reasonable and was applied in good faith to restore or maintain discipline and/or security and was not applied maliciously or sadistically with the intent of causing

harm.

**(B) Statement of the facts that will be offered by oral or documentary evidence at trial**

At trial, the Defendants Age and Kroening will prove that any force that was used by them upon Plaintiff Lynch was done to maintain order and security in the facility, and for the safety of the Plaintiff in the Monroe County Detention Facility, and not to intentionally inflict unnecessary and wanton pain upon him or for the very purpose of causing the Plaintiff Lynch harm.

**(C) List of exhibits to be offered into evidence at the trial of the case**

- . All incident reports/offense reports authored by the Defendants;
- . Video of April 12, 2010 incident involving the Plaintiff Lynch and Defendants Age and Kroening;
- . Subject Resistance Report regarding 4/12/2010 incident;
- . Use of Force Report regarding 4/12/2010 incident;
- . Disciplinary Report regarding April 12, 2010 incident;
- . Plaintiff's Jail file, including grievances and inmate request forms filed by Plaintiff;
- . Plaintiff's medical file from Monroe County Detention Facility;
- . Plaintiff's answers to Defendants' Interrogatories and Request for Production;
- . Plaintiff's Arrest Affidavit;
- . Impeachment exhibits; and
- . All exhibits listed by the Plaintiff, without waiving objections.

(D) **List of the full names and addresses of places of employment for all non-inmate witnesses**

Deputy Jason Kroening  
Monroe County Detention Center  
3981 Overseas Highway  
Marathon, Florida 33050

Captain Timothy Age  
Monroe County Detention Center  
3981 Overseas Highway  
Marathon, Florida 33050

All witnesses listed by the Plaintiff.

(E) **List of the full names, inmate numbers, and places of incarceration of all inmate witnesses**

None.

(F) **Summary of the expected testimony of each of the defendant's witnesses**

Defendants Age and Kroening will testify consistently with the matters set forth in their incident reports and use of force reports regarding the incident with Plaintiff Lynch on April 12, 2010.

**I HEREBY CERTIFY** that a copy of the foregoing was sent via the Clerk's CM/ECF electronic filing system this 30<sup>th</sup> day of November, 2011, to: GREGG A. TOOMEY, Esquire, Bunnell & Woulfe, P.A., attorneys for Defendants MacGard and Maurer, 1625 Hendry Street, Suite 203, Fort Myers, Florida 33901, Florida 33021; and MICHAEL T. BURKE, Esquire, Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., attorneys for Defendants Betz and Keohane, 2455 East Sunrise Boulevard, Suite 1000, Fort Lauderdale, Florida 33304; and by mail to: JOHN

LYNCH, Plaintiff, #296113, Northwest Correctional Complex, 960 State Route 212, Tiptonville,  
Tennessee 38079.

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BY: *s/Christy M. Runkles*  
CHRISTY M. RUNKLES  
Fla. Bar No. 0084631

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-Cv-22020-LENARD  
MAGISTRATE P. A. WHITE

JOHN LYNCH, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 SHERIFF BOB PERYAM, ET AL. :  
 :  
 Defendants. :

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REPORT OF  
MAGISTRATE JUDGE

### I. Introduction

John Lynch has filed a *pro se* civil rights complaint pursuant to Title 42, Section 1983. He seeks damages for deliberate indifference to a serious medical need and the use of excessive force at the Lower Keys Medical Center ("LKMC") and Monroe County Detention Center ("MCDC").

Several defendants and claims have been dismissed. (DE# 44, 72).<sup>1</sup> The Third Amended Complaint (DE# 33) has been deemed the operative pleading and it has survived initial screening. See (DE# 44, 72). 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 Health 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. (DE# 33 at 25).

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<sup>1</sup> On screening, the Court dismissed defendants Key West Police, LKMC, Prison Health Services ("PHS"), Sheriff Boy Peryam and Prior Sheriff. The Court also found Lynch's claims for injunctive relief were unavailable. See (DE# 44, 72).

Presently before the Court are Defendants Betz, Keohane, Maurer, MacGard and Delarosa's motions for summary judgment against Lynch. (DE# 95-96, 141, 149). Lynch seeks summary judgment against Defendants Betz (DE# 111), Keohane (DE# 111), Maurer (DE# 158), and MacGard (DE# 158). No motions for summary judgment have been filed with regards to the claims involving Defendants Age and Kronig, who have submitted a pretrial statement. (DE# 163).

## II. Unserved Defendant: Lisa Fonas

At the outset of this action, the undersigned entered an Order of Instructions which informed Lynch of his duty to provide a current address for each named defendant. (DE# 6). The Order cautioned Lynch that, if service could be accomplished upon a defendant for lack of information, the case would be subject to dismissal as to that defendant. (DE# 6 at 1-2).

Service of process by the United States Marshal was ordered as to Lisa Fonas. (DE# 48). However, Fonas could not be served with a summons and copy of the complaint because she was no longer employed at MCDC, which was the address provided by the plaintiff. (DE# 81). The Deputy Marshal's notation on the unexecuted return reveals that Fonas has likely moved out of state. *Id.* The undersigned informed Lynch why Fonas could not be served and instructed him to provide a current address or risk her dismissal. (DE# 88, 92). As of the filing of this Report, the plaintiff has failed to comply with this order.

Pursuant to Federal Rules of Civil Procedure, a district court may dismiss an action against a defendant *sua sponte* if service is not effectuated within 120 days after the filing of the complaint. Fed. R. Civ. P. 4(m). If a plaintiff fails to properly serve a defendant within 120 days, "the court -- on motion or on its own

after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or direct that service be effected within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). Good cause exists "when some outside factor, such as reliance on faulty advice, rather than inadvertence or negligence, prevented service." Lepone-Dempsey v. Carroll County Com'rs, 476 F.3d 1277, 1281 (11th Cir. 2007)(citation and alteration omitted).

Even if a district court finds that a plaintiff fails to show good cause, "the district court must still consider whether any other circumstances warrant an extension of time based on the facts of the case." Id. at 1282; see also Henderson v. United States, 517 U.S. 654, 663 (1996)(recognizing that in the 1993 amendments to the rules, courts have been accorded the discretion to enlarge the 120-day period even in the absence of showing good cause); Rance v. Rocksolid Granite USA, Inc., 583 F.3d 1284 (11th Cir. 2009). Circumstances that may warrant granting an extension of time include whether the applicable statute of limitations would bar a future action or whether a defendant is evading service of process. Lepone-Demsey, 476 F.3d at 1282. The court is not required to extend service despite the existence of such circumstances. Id. Instead, the court must only consider whether any such factors exist before it exercises its discretion and either dismisses the case or directs that service be effected within a specified time. Id.

As no service has been made on defendant Fonas and consequently no personal jurisdiction has been obtained over her, the claims against Fonas should be dismissed. See Fed. R. Civ. P. 4(m), 12(b)(2)-(5). Moreover, a review of the court's docket shows

that no good cause exists to warrant granting an extension to perfect service on this defendant. Lynch has made no attempt to rectify the apparent problems with service, nor to provide this court with addresses for service of process on this defendant. Consequently, it is recommended that defendant Fonas be dismissed from this action.

### III. Background

Lynch was involved in a scooter accident in the late night/early morning hours of September 6, 2008. He was transported to LKMC for treatment. Upon his release from LKMC, he was arrested for driving under the influence, refusing to submit to a blood alcohol test, driving with a suspended license with knowledge and refusal to sign a citation, charged in case number MMK082283.<sup>2</sup> (DE# 98-1 at 2). He was transported to MCDC where he was held as a pretrial detainee. A jury acquitted him of the remaining charges on May 12, 2009, but the trial court found him guilty of driving with a suspended license the following day. Lynch was transferred to Tennessee on June 22, 2010, and is presently incarcerated there. (DE# 140-2 at 1-2).

On August 7, 2009, there was an altercation between Lynch and Corrections Officer Delarosa in the MCDC dental office which resulted in charges against Lynch for battery on a law enforcement officer and criminal mischief for destruction of the dental chair, case number CFK09713.<sup>3</sup> Lynch entered a *nolo contendere* plea to the

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<sup>2</sup> The records maintained by the Monroe County Clerk of Court pertaining to Lynch's DUI case are located at [https://gov.propertyinfo.com/fl-monroe/detailTrafficCriminalCases.asp?case\\_key=10971006](https://gov.propertyinfo.com/fl-monroe/detailTrafficCriminalCases.asp?case_key=10971006). See Fed. R. Ev. 201.

<sup>3</sup> The records maintained by the Monroe County Clerk of Court pertaining to Lynch's battery case are located at [https://gov.propertyinfo.com/fl-monroe/detailTrafficCriminalCases.asp?case\\_key=11147186](https://gov.propertyinfo.com/fl-monroe/detailTrafficCriminalCases.asp?case_key=11147186).

lesser included offense of battery and was sentenced to time served.

#### IV. Plaintiff's Claims<sup>4</sup>

##### (1) Deliberate Indifference: Scooter Crash

In his sworn complaint, Lynch alleges the care he received at LKMC and MCDC for the injuries he sustained in the scooter accident was deliberately indifferent and negligent immediately after the incident and for the duration of his stay at MCDC. (DE# 33).

Lynch claims he severely injured his head and shoulder in the scooter crash and that **Keohane**, a nurse at LKMC who provided emergency room care, should not have released him from LKMC with his serious injuries. Specifically, he claimed he had a broken collarbone that was sticking out of his shoulder and required surgery, along with bruises, broken ribs, scrapes and a gash over his eye. Lynch also claims that Officer **Betz** should not have transported him from LKMC to MCDC while he was seriously injured. He claims Betz and Keohane were both deliberately indifferent to his serious medical needs. He also claims that Betz and Keohane - who works as a corrections officer at MCDC in addition to being a nurse at LKMC - "trumped up" the DUI charges for financial gain.

Lynch claims he received deliberately indifferent care from defendants **MacGard** and **Maurer** once he arrived at MCDC. He claims he should have been given immediate surgery for his broken collarbone, but instead, he was told to exercise the shoulder and that nothing was wrong. Lynch began wearing an arm sling which relieved the pain, however, the sling was repeatedly taken away from him by

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<sup>4</sup> Only the claims against named defendants that survived screening are included in this discussion; extraneous claims against dismissed or unnamed individuals have been omitted.

corrections officers at the direction of medical employees. **MacGard** refused to give him back the sling when ordered by an outside doctor, Dr. Perry, because it was not a medical emergency. Lynch also claims MCDC medical staff denied him appropriate medication and treatment for his injuries from the scooter accident, dental concerns, and depression. He claims the eleven-month delay between the scooter crash and receiving an MRI and consultation with an outside doctor (Perry) was too lengthy and proves he needs shoulder surgery and that the care he received at MCDC was inadequate.

(2) Excessive Force: Dental Office Incident

Lynch alleges **Delarosa** exercised excessive force while escorting him to a visit at the MCDC dental office. Lynch claims he was not being unruly or unreasonable when Delarosa repeatedly threw him down into the dental chair and onto the floor, and punched him in the mouth, face and head. Lynch claims the beating was a pretext to break the old dental chair and obtain a new one through insurance proceeds. Delarosa allegedly knocked out Lynch's two front teeth, gave him black eyes and a swollen face and lips, and cuts all over his body. He claims MacGard was yelling and cheering while Delarosa beat him, and also argues MacGard could not see the incident but only heard a commotion and falsified a police report about the incident.

(3) Deliberate Indifference: Dental Care

Lynch claims MCDC medical personnel failed to provide timely dental care. He had nubs of teeth left that were broken off in the scooter accident and during the altercation with Delarosa. He claims **MacGard**, **Maurer**, and MDCD dentist **Fonas** refused to pull infected teeth in a timely manner. He claims it was cruel and unusual punishment to make him wait eighty-five days for the extractions following the scooter crash, then seventy-five days to

extract the teeth broken by Delarosa. Lynch also claims **Maurer** laughed when he told her that Delarosa knocked his teeth out and pushed a bag of ice into his mouth to stop the bleeding.

(4) Excessive Force: Shower Incident

Finally, Lynch claims Captain **Age** and Deputy **Kronig** beat him on April 12, 2010, which hurt his shoulder and resulted in a knee cut and bruise that became swollen. He claims Age and Kronig woke him up, said they were tired of his threats about a lawsuit. They threw him into a stainless steel shower wall, handcuffed him and twisted his arms, and threw him onto a concrete floor, injuring his knee and shoulder, then took him to the "hole."<sup>5</sup>

(5) Relief

Lynch seeks nominal damages, punitive damages, and compensatory damages.<sup>6</sup>

V. Motions for Summary Judgment

(1) Defendant Betz<sup>7</sup>

(A) Betz's Affidavit

Defendant Frank Betz was employed as a City of Key West Law Enforcement Officer on September 6, 2008, when he responded to a motor scooter accident. (DE# 98-6). He observed the scooter's driver, Lynch, lying on the side of the roadway, bleeding from the

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<sup>5</sup> Because defendants Age and Kronig have filed a pretrial statement and no motion for summary judgment is pending with regards to this claim, it will not be discussed further in this Report. (DE# 163).

<sup>6</sup> Lynch also sought injunctive relief on behalf of future inmates which was dismissed. See (DE# 44 at 2 n.2, 12); (DE# 72).

<sup>7</sup> The relevant documents are Betz's motion for summary judgment (DE# 95) appendix of documents (DE# 98) and statement of undisputed facts (DE# 97), Lynch's response with attached records that is also docketed as a motion for summary judgment against Betz (DE# 110-111), Betz's reply and supporting appendix (DE# 112, 114), and Lynch's reply (DE# 119).

head and face with his scooter ten feet away. Betz stayed with Lynch until medical rescue transported him to the emergency room at LKMC.

A witness to the crash, Andrew Ferguson, told Betz he was following behind Lynch before the crash, saw Lynch swerve all over the roadway, hit a curb, lose control of the scooter, then flip from the scooter and lie motionless on the ground. (DE# 98-6 at 2).

Betz continued his investigation by going to LKMC to speak to Lynch. Lynch was not forthcoming with information and would only confirm information that Betz received from other sources. He had a strong smell of alcohol on his breath, glassy eyes and slurred speech. Betz heard Lynch yell to emergency room staff "I went to happy hour and had a few drinks. Tell the cop to just take me to jail." (DE# 98-6 at 3).

Betz informed Lynch he was conducting a criminal DUI investigation and asked him to submit a blood draw for a blood alcohol test. Lynch refused after Betz explained implied consent. (DE# 98-6 at 3). Betz then read Lynch his Miranda rights and Lynch stated he understood and would speak to him. Lynch admitted his Tennessee driver's license was suspended for DUI. A computer check showed Lynch was revoked out of Tennessee and a criminal history check showed he had a suspended Florida license for failure to submit a breath test. (DE# 98-6 at 3).

Emergency Room Doctor David Erlandson discharged Lynch from LKMC at approximately 1:30 AM and provided Betz with a medical clearance form stating Lynch was medically stable. (DE# 98-6 at 4). Betz transported Lynch to the Monroe County Jail ("MCJ") and issued him citations for careless driving, driving while license revoked,

and DUI refusal. (DE# 98-6 at 4). Lynch refused to sign the citations, so Betz explained he could face another criminal charge for refusal to sign but Lynch persisted in his refusal. (DE# 98-6 at 4).

Betz provided Monroe County Sheriff deputies with the medical examination clearance form upon arrival at MCJ and left Lynch in the custody of Monroe County Corrections deputies. (DE# 98-6 at 4-5).

(B) Defendant Betz's Motion for Summary Judgment

(i) Qualified Immunity

Betz argues he is protected from suit by qualified immunity. He claims he was acting within scope of employment during his interactions with Lynch, and Lynch cannot establish a reasonable public official in Betz's position as a Key West law enforcement officer would know that transporting a prisoner to jail who was medically cleared would violate his constitutional rights.

(ii) Deliberate Indifference

Further, Betz argues Lynch cannot establish the essential elements of his claim because Betz was not deliberately indifferent to Lynch's serious medical needs, and no condition of arrest, transportation or confinement inflicted pain and suffering on him. Betz called for help upon arriving on scene and did not arrest and transport Lynch to jail until after medically cleared, and no materially similar case has held Betz's action was unlawful. He argues Lynch failed to present evidence creating material dispute as to whether: (1) Betz's conduct violated a constitutional right; and (2) the right was clearly established which a reasonable person would know.

(C) Plaintiff Lynch's Response/ Motion for Summary Judgment

In his unsworn response, Lynch claims Betz was untruthful and treated him with unreasonable care because he wanted to get a quick DUI arrest and because he thought Lynch was homeless. (DE# 110 at 5). He alleges Betz's police report, testimony at Lynch's May 12, 2009, trial, and affidavit in the present case are false. Specifically, Lynch contends he was not drunk; was seriously hurt in the scooter accident and did not suffer minor injuries as Betz asserted; did not refuse medical attention but rather was unconscious at LKMC and woke up in the MCDC infirmary the following morning; did not refuse blood alcohol testing but rather the defendants chose not to take a blood or breath alcohol test; and Betz failed to accurately convey witness Andrew Ferguson's observations and coached his statement. Lynch also claims he could not have made any statement to emergency room staff because he had broken teeth and could not talk. Lynch claims photographs and medical records reveal that his injuries were serious.

(D) Defendant Betz's Reply

As a preliminary matter, Betz notes that Lynch did not file a statement of undisputed fact, so Betz's statement is deemed admitted. (DE# 112, 114).

Betz argues nothing in Lynch's response negates his entitlement to qualified immunity. Further, Lynch failed to allege any facts or provide any evidence showing he was denied medical care prior to incarceration; he was medically treated on the scene and at LKMC before being transported to MCJ. To the extent Lynch suggests Betz unlawfully arrested him, the screening Report (DE# 44) did not find such a claim existed and did not recommend it proceed. Even if such a claim existed, an unreasonable seizure claim would fail because Betz had probable cause to arrest Lynch as

a matter of law.

(E) Lynch's Reply

In his unsworn reply, Lynch reiterates that his injuries were not minor and asserts he still has physical and mental problems from the accident. (DE# 119 at 9). He claims his wife and two witness will testify he was sober the entire time they were with him on September 5, 2008, that he had two beers but was not at happy hour, that he did not say he wanted to go to jail, that he would have pled guilty if he was drunk as he had done ten times in the past, the record shows he was calm cooperative and friendly a few hours after being dropped off at jail and was not loud, agitated and inappropriate as Betz reported, and that the record supports the claim he was unconscious.

(2) Defendant Keohane<sup>8</sup>

(A) Keohane's Affidavit

Keohane had two jobs in September 2008: as a Registered Nurse in the LKMC emergency room and as a Law Enforcement Officer for the City of Key West. (DE# 98-3 at 1). On the night of Lynch's scooter crash, she was acting in her capacity as a nurse at LKMC and not as a police officer. (DE# 98-3 at 1). She had contact with Lynch for the first time in the LKMC emergency room where she applied dressings to his abrasions as directed by emergency room physician David Erlandson. (DE# 98-3 at 1-2). Keohane has provided medical records that indicate she treated Lynch's minor abrasions and Dr. Erlandson sutured his head wound. Dr. Erlandson recommended further treatment but Lynch refused so Erlandson medically cleared and

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<sup>8</sup> The relevant documents are Keohane's motion for summary judgment (DE# 96) supporting appendix (DE# 98) and statement of undisputed facts (DE# 97), Lynch's response with attached records that was also docketed as a motion for summary judgment against Keohane (DE# 110-111), Keohane's reply with appendix (DE# 113-114), and Lynch's reply (DE# 119).

discharged him. See (DE# 97). Keohane did not medically clear Lynch from LKMC, arrest him, or transport him from LKMC to MCJ. (DE# 98-3 at 2).

(B) Defendant Keohane's Motion for Summary Judgment

(i) Deliberate Indifference

Keohane argues Lynch's claim of deliberate indifference fails because she provided medical care at the direction of a physician up to the extent of Lynch's consent.

(ii) State Actor

Keohane further argues that, even if a constitutional violation occurred, she is not liable in her individual capacity because she was not a state actor at the time she interacted with Lynch. She was working as an emergency room nurse and not as a law enforcement officer at the relevant time.

(C) Plaintiff Lynch's Response/ Motion for Summary Judgment

Lynch claims Keohane was untruthful and treated him with unreasonable care because she wanted help Betz get a quick DUI arrest, and misrepresented the serious nature of his injuries. See Section V(1)(C), *supra* (combined response to Betz's and Keohane's motions for summary judgment).

(D) Defendant Keohane's Reply

Keohane notes that Lynch did not file a statement of undisputed fact, so Keohane's statement is deemed admitted. (DE# 113).

Keohane argues Lynch failed to allege any facts or provide any evidence to demonstrate Lynch was denied medical care prior to his incarceration. Even if Keohane was deliberately indifferent, Lynch

admits Keohane was not a state actor at the relevant time. As such, a civil rights complaint cannot be sustained against Keohane as a non-state actor.

(E) Lynch's Reply

In his reply, Lynch insists his injuries were not minor and disputes his drunkenness, consciousness, and behavior surrounding the scooter accident. See (DE# 119); Section V(1)(E), *supra* (combined reply to Betz's and Keohane's summary judgment responses).

(3) Defendant Delarosa<sup>9</sup>

(A) Arrest Report

In his motion for summary judgment, Delarosa summarizes the incident with Lynch based on his sworn arrest report. (DE# 149-1). Delarosa escorted Lynch to MCDC's medical facility for a dental appointment. Lynch resisted Delarosa's attempt to secure his hand to the dental chair and said he wanted to leave the appointment. Delarosa unsecured Lynch's right hand to escort him out of the office, however, once Lynch's hands were free, he hit Delarosa in the face with a closed fist, got out of the dental chair and grabbed Delarosa. Delarosa took Lynch to the ground but Lynch continued struggling and was able to get up. Delarosa took him to the ground a second time. When assistance arrived, Lynch was removed from the area and Delarosa was taken to an urgent care facility in Key West for treatment of his injuries.

Lynch was arrested and charged with battery on a law enforcement officer and criminal mischief for damaging the dental

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<sup>9</sup> The relevant documents are Delarosa's motion for summary judgment and supporting appendix (DE# 149), Lynch's response (DE# 167), and Delarosa's reply (DE# 171).

chair. (DE# 149-1, 149-2). On June 10, 2010, Lynch pled *nolo contendere* to the lesser offense of battery. (DE# 149-3). He was adjudicated guilty and sentenced to 308 days' credit time served. (DE# 149-4 - 149-7).

(B) Delarosa's Motion for Summary Judgment

(i) Heck v. Humphrey

Delarosa argues that, by pleading *nolo contendere* to battery, Lynch admitted he actually and intentionally touched or struck Delarosa against his will during the incident at the dentist office. Lynch's present civil rights claim is premised on the assertions that Lynch never hit, touched, or harmed Delarosa and that the arrest report is a lie. Delarosa argues Lynch's present position explicitly and directly contradicts his criminal conviction in the same incident, would negate facts supporting that conviction, and the civil rights suit against Delarosa is therefore barred by Heck v. Humphrey, 512 U.S. 477 (1994).

(C) Plaintiff Lynch's Response

In his unsworn response, Lynch asserts he never struck Delarosa and that video, photographs, and unidentified inmate witnesses would support his position but that such evidence is being withheld. (DE# 167 at 14). He claims his *nolo contendere* plea is "bogus" because he was given the choice of entering the plea or going to the "Circle of Care" mental hospital. He further argues Delarosa is not credible because he pled guilty to falsifying official documents.

(D) Defendant Delarosa's Reply

As a preliminary matter, Delarosa notes Lynch failed to file a statement opposing his statement of material fact so Delarosa's is deemed admitted. To the extent Lynch's response is considered a

statement of material fact, it fails to create a genuine dispute because the allegations are not supported by specific references to the pleadings, depositions, answers to interrogatories admissions, and affidavits on file. Instead, he has simply made unsupported allegations and conclusory statements.

(4)-(5) Medical Defendants: Maurer and MacGard<sup>10</sup>

(A) Maurer's Affidavit

Defendant Susan Maurer is a physician's assistant at MCDC who was employed by Corizon Health, formerly PHS. (DE# 140-5). She was not a director of nursing, had no administrative authority, no duty or training authority, and no duty or authority to direct the actions of other health care providers except to the extent of assisting to carry out orders. She had several interactions with Lynch which are summarized in Section (VI), *infra*.

Maurer charted all conditions about which Lynch complained or that she observed. At no time did she ignore or attempt to cover up his injuries, and Defendant MacGard did not suggest or direct that she do so. (DE# 140-5 at 8). She did not observe bone sticking out of Lynch's shoulder, and notes this allegation is unsubstantiated. (DE# 140-5 at 8). Nor did Lynch report any issues to her that would indicate internal bleeding. With regards to the Delarosa incident, Maurer recalled seeing Lynch after the altercation but did not write a progress note about the incident. She denied laughing but states she did give Lynch an ice pack which was appropriate to the circumstances. (DE# 140-5 at 8). Maurer did not have any involvement with Lynch's psychiatric or dental care.

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<sup>10</sup> The relevant documents are the medical defendants' motion for summary judgment (DE# 141) and supporting exhibits (DE# 140), Lynch's response that was also docketed as a motion for summary judgment against Maurer and MacGard (DE# 155, 158), the medical defendants' reply (DE# 164), and the medical defendants' response to Lynch's motion for summary judgment (DE# 165).

(B) MacGard's Affidavit

Defendant Elizabeth MacGard is a registered nurse who was the Health Services Administrator at MCDC. (DE# 140-6 at 1). She did not participate in Lynch's direct care or make any decisions about his care and treatment. (DE# 140-6 at 1-2). She did not deny him any treatment that had been ordered. She notes that outside doctors can make recommendations that MCDC may adopt, but that outside doctors are not authorized to give orders to be followed in jail. (DE# 140-6 at 2). She did not suggest or direct that any of Lynch's conditions be covered up. (DE# 140-6 at 2). Cameras are not in the control of the medical department or its staff, and there are no cameras in the medical unit or dental office. (DE# 140-6 at 2). She did not provide Lynch a copy of his medical records while incarcerated at MCDC pursuant to MCDC correctional policy, that is, a copy can be made for a charge and placed with the inmate's property to be given to him after discharge. (DE# 140-6 at 2).

MacGard partially witnessed Lynch's altercation with Officer Delarosa. She made notes in the chart about her observations and never retracted them. Lynch is mistaken that MacGard could not have witnessed the incident - she was in the medical records area a few feet from the dental office when she heard a call for backup. She dismisses Lynch's allegation that she encouraged Delarosa to harm him as absurd. Very soon after MacGard arrived, other officers responded. MacGard did not physically intervene. During the part of the struggle MacGard witnessed, she did not see any of the officers strike Lynch, but just try to restrain him. (DE# 140-6 at 2-3).

With regards to Lynch's dental care, he received timely treatment. A dentist is not at the facility every day. Inmates are seen on the basis of when they submit their request unless there is an emergency. Lynch did not present an emergency. Lynch was seen

within a reasonable amount of time for his non-emergency dental conditions. (DE# 140-6 at 3). MacGard denies that PHS and its medical staff were involved in getting new dental equipment that was damaged in Lynch's altercation with Delarosa. The equipment, including the dental chair, was property of MCDC, and jail officials handled its replacement. (DE# 140-6 at 5).

MacGard denies that PHS had anything written on its computer that it is easier to call the morgue than an ambulance, or anything similar. (DE# 140-6 at 5).

MacGard also denies that PHS profited from having the inmate population increase. (DE# 140-6 at 5).

(C) Kennedy's Affidavit

Scott Kennedy, who is not a defendant in this matter, is a licensed medical doctor certified in internal medicine employed by Corizon Health, Inc., formerly PHS. (DE# 140-1 at 1). He supervised and, at times, provided direct care to Lynch.

Kennedy reviewed Lynch's medical records and concluded that all the care and treatment he received at MCDC was appropriate. (DE# 140-1 at 17). Specifically, as to Lynch's complaint that bone was sticking out of his shoulder, Kennedy noted that some bony abnormality is normal with a healed clavicle fracture. (DE# 140-1 at 17). No surgery was required at the time of the scooter accident.

As to Lynch's allegation that there was an unreasonable delay in treatment and inappropriate treatment for his Left shoulder, Kennedy concluded that Lynch's delay in complaints regarding the Left shoulder and his unauthorized use of sling made it reasonable

to believe his pain and reduced range of motion resulted from non-use. (DE# 140-1 at 18). The recognized treatment for frozen shoulder is exercise. (DE# 140-1 at 18). When Lynch reported he attempted exercises without improvement, he was referred for MRI and consultation with an outside orthopedic specialist, Dr. Perry. (DE# 140-1 at 18). Exercises would not have harmed Lynch's condition. (DE# 140-1 at 18). Further, the standard is to attempt conservative treatment before resorting to diagnostic procedures like MRI and surgery. If Lynch did have a SLAP tear, surgery was not required; surgery is always considered elective for this condition and a SLAP tear does not interfere with activities of daily living. Kennedy spoke to Dr. Perry, who confirmed no surgery was required, and none of the conditions on the MRI are conditions for which surgery would be performed. (DE# 140-1 at 18).

As to Lynch's allegation he was passing blood, Lynch was told at the infirmary to bring the issue to the attention of the of nursing staff if the problem continued. Lynch told Dr. Ripkey on July 15 that it had stopped. There was no evidence of any symptoms that would be expected if Lynch had substantial or prolonged internal bleeding. For instance, his blood pressure checks were normal. (DE# 140-1 at 19).

Kennedy concluded that Lynch received appropriate evaluations and treatment and suffered no damage or injury from care and treatment he received at MCDC. (DE# 140-1 at 19).

(D) Medical Defendants' Motion for Summary Judgment

(i) Respondeat Superior

Both medical defendants argue they cannot be held liable based on *respondeat superior*. Defendant **Maurer** argues she provided direct care but did not train or direct care provided by others. Defendant

**MacGard** argues she acted in a supervisory capacity but she did not make individual decisions or provide direct care.

(ii) Deliberate Indifference

Both medical defendants argue no claim for deliberate indifference is supported by the record because all medical decisions supported by sound medical practice. With regards to Lynch's collarbone, they assert no bone was sticking out of shoulder, the fracture was treated and healed, and that some bony abnormality is expected with this type of injury. They claim Lynch's allegation that there was a six-day delay in treatment for the broken collarbone is refuted by record. As to Lynch's left shoulder pain, they assert Lynch did not complain of left shoulder pain until more than six months after the scooter accident and the recommendation that Lynch exercise the shoulder was a reasonable medical decision. Further, the outside specialist, Dr. Perry, did not say surgery is required, rather, it is elective. As to Lynch's allegation he had internal bleeding, the defendants deny this claim. As to Lynch's allegation there was a delay in dental treatment, the defendants argue he was timely seen for dental concerns. With regards to Lynch's allegations he was denied psychiatric medication, the defendants counter that Lynch was seen by a psychiatrist who said he did not need psychiatric attention. The medical defendants further argue that Lynch's claim of a coverup is ridiculous, is not supported by any evidence, and Lynch cannot point to any harm.

(E) Plaintiff Lynch's Response/ Motion for Summary Judgment

In an unsworn response, Lynch denies everything the medical defendants, their attorneys, and Dr. Kennedy asserted. (DE# 155). He contends the medical defendants and Dr. Kennedy are motivated by money, and are not credible because they work for PHS. He states he

"would not be surprised" if the attorneys, court personnel, and judges own stock in the corrections business.<sup>11</sup> He accuses them of killing two inmates during the same period they were telling him nothing was wrong with his shoulder. He claims the medical defendants cheated him out of shoulder surgery for three years, that any suggestion the Left shoulder injury happened during an inmate fight is ridiculous because Lynch is large, weighs 280 pounds, and the other inmate was a 100-pound "crackhead," who Lynch held in a choke hold for a few seconds until help arrived. He contends the medical defendants lied to Lynch when they said nothing wrong with his shoulder, as confirmed by the MRI which shows a SLAP tear happened on September 6, 2008, during the scooter accident, for which Dr. Perry said he needs surgery. Lynch claims the medical defendants falsified numerous medical documents.

(F) Medical Defendants' Reply

The medical defendants argue Lynch provides no factual support for the existence of any disputed material fact. (DE# 164). The allegations that the nurses and attorneys want to extend the case for financial reasons and that they abused Lynch's rights because they work for a for-profit organization are unsupported and conclusory. Allegations that the medical defendants and Dr. Kennedy falsified medical records are unsupported vague and general assertions with no documentation as required by rule 56(c). By contrast, the medical defendants support their position with medical records and Dr. Kennedy's affidavit. They reiterate that Lynch received repeated and appropriate care and argue his unhappiness is a lay opinion that is unsupported by any credible evidence that he received constitutionally defective care or that the medical defendants acted with subjective intent.

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<sup>11</sup> Lynch has not supported this vague and speculative allegation with any evidence or specific facts and has not moved for recusal.

(G) Medical Defendants' Response to Lynch's Motion

The medical defendants argue there is no admissible evidence of undisputed facts showing they disregarded a serious medical need with the required intent to harm. (DE# 165). Rather, the undisputed evidence shows Lynch received appropriate treatment. Further, Defendant **MacGard** did not provide medical care to Lynch. Defendant **Maurer** provided care to Lynch several times, beginning on August 8, 2008, when she reviewed his chart, and provided responsive treatment on each occasion. Further, Dr. Kennedy had reviewed the files and believes Lynch's care was appropriate and within the standard of care. Lynch's disputed allegations are unsupported by any evidence and simply rely on Lynch's lay opinion about the nature of his injuries, hearsay quotes from other doctors, and speculation about appropriate care which is not admissible. The medical defendants deny they lied to Lynch. They argue summary judgment for Lynch is inappropriate because there is no evidence he received unconstitutional care, and mere negligence is not a constitutional violation, and even if Lynch received inappropriate care, there is no evidence of intent to harm by **Maurer**, who treated him appropriately, or **MacGard**, who did not treat him at all.

VI. Time Line<sup>12</sup>

9/6/08	Scooter crash, 12:01 AM (DE# 98-1 at 1) Lynch discharged from LKMC, 1:02 AM (DE# 140-2 at 5) MCDC intake, 1:30 AM (DE# 140-3 at 3)
9/8/08	Maurer completes Lynch's infirmary history and physical (DE# 140-3 at 4)
9/12/08	Maurer orders Lynch's discharge to general population (DE# 140-1 at 6)
5/28/09	Lynch reports to Maurer his left shoulder pain (DE#

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<sup>12</sup> This section summarizes the key events derived from the parties' exhibits and affidavits.

140-1 at 7)

6/22/09 Lynch asks Maurer for left shoulder MRI (DE# 140-1 at 8)

7/8/09 Lynch complains to Maurer of shoulder and dental pain (DE# 140-1 at 8-9)

8/5/09 MRI (DE# 140-2 at 29, 33)

8/7/09 Dental office altercation with Delarosa; Maurer provides ice (DE# 140-2 at 70)

8/10/09 Maurer prescribes antibiotics per phone order from dentist (DE# 140-1 at 11)

8/17/09 Lynch asks Maurer for dental visit (DE# 140-1 at 11)

9/3/09 Dental extraction (DE# 140-2 at 38-40)

9/11/09 Examination by outside orthopedist, Dr. Perry (DE# 140-1 at 13); (140-2 at 12)

9/25/09 Maurer ordered sling per Dr. Perry as needed (DE# 140-1 at 14)

9/29/09 New sling issued, old sling retrieved (DE# 140-1 at 14)

10/21/09 Dental extraction (DE# 140-2 at 34-36)

6/15/10 Lynch tells Maurer his medications are out of stock (DE# 140-1 at 17)

6/23/10 Lynch transferred to Tennessee (DE# 140-1 at 17)

#### VI. Summary Judgment Standard

Summary judgment is proper "if the pleading, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The inquiry is whether the evidence viewed in the light most favorable to the party opposing the motion "presents a sufficient

disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986); Skrtich v. Thornton, 280 F.3d 1295, 1299 (11th Cir. 2002).

The party moving for summary judgment bears the initial responsibility of informing the court of the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party must go beyond the pleadings with evidentiary materials such as his own affidavits, depositions, answers to interrogatories and admissions on file, and designate specific facts showing there is a genuine issue for trial. Celotex, 477 U.S. at 324; Fed. R. Civ. P. 56. That is, if a plaintiff pleads merely conclusory allegations, he cannot defeat summary judgment or dismissal by merely filing an affidavit restating the conclusory allegations asserted in the complaint. Perry v. Thompson, 786 F.2d 1093, 1095 (11th Cir. 1986). However, if a plaintiff alleges specific facts in a sworn complaint, these facts are required to be considered in their sworn form in opposition to a motion for summary judgment and need not be supported by an affidavit. Perry, 786 F.2d at 1095.

Summary judgment is granted against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial" because the complete failure of proof of an essential element necessarily renders all other facts immaterial. Celotex, 477 U.S. at 323. If the nonmoving party presents evidence that is merely colorable or not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249. Moreover, "when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern." Griffin Indus. v. Irvin, 496 F.3d 1189, 1206 (11th Cir. 2007).

Summary judgment is not a procedure for resolving a swearing contest. Chandler v. Baird, 926 F.2d 1057 (11th Cir. 1991). "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge...." Anderson, 477 U.S. at 255.

#### VII. Deliberate Indifference Standard

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11th Cir. 1999). Deliberate indifference to a prisoner's medical needs violates the Eighth Amendment, and deliberate indifference to a pretrial detainee's medical needs violates the Fourteenth Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 (1979); Hamm v. Dekalb, 774 F.2d 1567, 1571-74 (11th Cir. 1986); Estelle, 429 U.S. at 104; Youmans v. Gagnon, 626 F.3d 557, 563 n.6 (11th Cir. 2010). Both are governed by the same standard, therefore, this analysis refers only to the Eighth Amendment. Youmans, 626 F.3d at 563 n. 6.

To prevail on a claim of deliberate indifference to a serious medical need, a plaintiff must show: "(1) a serious medical need; (2) the defendant['s] deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." Youmans, 626 F.3d at 563. A "serious medical need" is one that "has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Mann v. Taser Int'l, 588 F.3d 1291, 1307 (11th Cir. 2009). As a general matter, a serious medical need is one requiring immediate medical attention. Youmans, 626 F.3d at 563. To prove "deliberate indifference," a plaintiff must

show: "(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than [gross] negligence." Townsend v. Jefferson County, 601 F.3d 1152, 1158 (11th Cir. 2010). Deliberate indifference can occur where the prison official knows of the prisoner's medical need, but delays care unnecessarily or does not provide care at all. Farrow v. West, 320 F.3d 1235, 1246 (11th Cir. 2003). Deliberate indifference can also occur when the care given is so cursory as to amount to no treatment at all. Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11th Cir. 1985).

#### VIII. Discussion

(1) **Defendant Betz**

The officer who investigated the scooter crash, arrested Lynch, and transported him to jail, Defendant Frank Betz, is entitled to summary judgment.

The defense of qualified immunity offers complete protection for government officials sued in their individual capacities as long as "their conduct violates no clearly established statutory or constitutional rights of which reasonable persons would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The purpose of qualified immunity is to allow government officials to carry out their discretionary duties without fear of personal liability or harassing litigation. Anderson v. Creighton, 483 U.S. 635, 638 (1987). All are protected except "the plainly incompetent or those who knowingly violate the law." Coffin v. Brandau, 642 F.3d 999 (11th Cir. 2011) (quoting Hunter v. Bryant, 502 U.S. 224, 229 (1991)).

The antecedent question is whether the officer was acting within the scope of his discretionary authority when the allegedly

wrongful acts occurred. Fils v. City of Aventura, 647 F.3d 1272, 1287 n.20 (11th Cir. 2011); see Crosby v. Monroe County, 394 F.3d 1328, 1332 (11th Cir. 2004) (to determine whether an official was engaged in a discretionary function, courts consider whether the acts are of a type that fell within the employee's job responsibilities). Once officer has shown he was acting within his discretionary authority, the burden then shifts to the plaintiff to show qualified immunity is not appropriate. Vinyard v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002). In this two-part inquiry, the court must determine whether: (1) the plaintiff's allegations and the evidence viewed in the plaintiff's favor establish a constitutional violation; and (2) the constitutional right is clearly established such that a reasonable officer should have known his conduct violated the plaintiff's constitutional rights. Fils, 647 F.3d at 1287; McCullough v. Antolini, 559 F.3d 1201, 1205 (11th Cir. 2009). The courts have discretion to decide which prong of this inquiry to address first. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

It appears to be undisputed that Betz was working within the scope of his discretionary authority as a police officer when he interacted with Lynch. This conclusion is supported by the record that indicates he responded to the scene of a scooter accident, waited for medical help to arrive, interviewed a witness, went to the hospital to follow up with the scooter's driver (Lynch), charged Lynch with violating several driving statutes and, transported Lynch to jail after he was discharged from the hospital.

The question then becomes whether Betz violated Lynch's constitutional rights and whether those rights were clearly established at the time Betz violated them. When the allegations

are viewed in the light most favorable to Lynch, no constitutional violation has been established. The crux of Lynch's claim is that Betz should not have transported him from LKMC to MCDC due to his serious injuries, and that by doing so he was deliberately indifferent to a serious medical need.<sup>13</sup> The record supports Lynch's allegations that he had an undiagnosed broken clavicle, abrasions, bruises, and a stitched head wound at the time Betz transported him to jail. Broken bones and traumatic injuries can constitute a serious medical need. However, it is undisputed that Lynch was promptly transported to LKMC following the scooter crash, was treated, and was medically cleared by the emergency room physician before Betz transported him to jail. Betz has supplied evidence including affidavits and medical records indicating that Lynch allowed his head wound to be stitched and his abrasions bandaged at LKMC, but refused further testing. Lynch asserts bones were "sticking out" of his shoulder when he regained consciousness at the jail infirmary the following morning, however, there is no mention in the LKMC notes diagnosing a broken clavicle before he was released to Betz for transportation. The medical professionals who cared for Lynch at LKMC did not note bones sticking out of his shoulder or diagnose a broken clavicle - a reasonable police officer in Betz's situation could hardly have been expected to do so. See Webb v. Langly, 267 Fed. Appx. 910 (11th Cir. 2008) (no deliberate indifference where plaintiff failed to establish any defendant had actual knowledge of a risk of serious harm during the period before he was diagnosed with a nasal fracture). Lynch has failed to demonstrate that Betz had subjective knowledge of a risk

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<sup>13</sup> The Court is not required to credit Lynch's unsupported and conclusory allegations, including that he was unconscious until the following morning, was not drunk, and made no statements, did not refuse a blood draw, and did not refuse treatment at LKMC, and does not recall anything until he awoke in the MCDC infirmary, because they are internally inconsistent and refuted by the exhibits. See Griffin Indus. v. Irvin, 496 F.3d 1189, 1206 (11th Cir. 2007) ("when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.").

of serious harm from transporting Lynch, a medically cleared arrestee, and disregarded that risk by conduct that is more than gross negligence. Id.

Further, there was no reason for a reasonable officer in Betz's situation to know his conduct - transporting an arrestee who had been medically cleared from the hospital to jail - was violating any constitutional right. Andujar v. Rodriguez, 486 F.3d 1199 (11th Cir. 2007) (even if paramedics who treated dog bite were deliberately indifferent, they were entitled to qualified immunity because it was not clearly established that releasing a stable detainee to police officers for booking, rather than transporting him for non-urgent medical care, violated a constitutional right). Lynch has failed to demonstrate a constitutional violation occurred and qualified immunity therefore relieves Betz of liability.

Lynch's extraneous claims - that Betz improperly arrested him on a "trumped up" DUI charge for financial gain and lied about the night's events - are conclusory and speculative. Betz explains in his affidavit that he arrested Lynch after conducting a thorough investigation at the accident scene, in the hospital, and after reviewing relevant computer records. Lynch has not attempted to refute Betz's characterization of the arrest as legal and justified with any evidence or affidavit. Pace v. Capobianco, 283 F.3d 1275, 1278 (11th Cir. 2002) (sworn statements must be made on personal knowledge, and statements based in part on information and belief cannot raise a genuine issue of fact). Lynch's vague, conclusory and speculative claims cannot support Section 1983 liability.

For the foregoing reasons, Defendant Frank Betz's motion for summary judgment should be granted.

(2) **Defendant Keohane**

Kuniko Keohane, the nurse who dressed Lynch's knee abrasions at the emergency room at LKMC prior to his incarceration, is entitled to summary judgment.

First, Lynch cannot establish Keohane was a state actor, so Section 1983 relief is unavailable. To hold that private parties are state actors, one of the following conditions must be met: (1) the state coerced or at least significantly encouraged the action alleged to violate the Constitution (state compulsion test); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the state (public function test); or (3) the state had so far insinuated itself into a position of interdependence with the private parties that it was a joint participant in the enterprise (nexus/joint action test). See Rayburn ex rel. Rayburn v. Hogue, 241 F.3d 1341, 1347 (11th Cir. 2001). A private person generally acts "under the color of state law" only when engaged in a conspiracy with state officials. Tower v. Glover, 467 U.S. 914 (1984); Harvey v. Harvey, 949 F.2d 1127 (11th Cir. 1992).

Keohane explained in her affidavit that she is employed both as a Key West Police officer and a registered nurse at LKMC. During the entire period she interacted with Lynch following his scooter accident, she was working as a nurse at LKMC and not as a police officer. Lynch makes vague and conclusory allegations that Keohane wanted to help the arresting officer, Betz, get a DUI conviction and claims Betz and Keohane lied at his DUI trial. However, these speculative and conclusory allegations are insufficient to establish the existence of a conspiracy. See, e.g., Johnson v. Law Offices of Marshall C. Watson, PA, 348 Fed. Appx. 447 (11th Cir. 2009) (conclusory allegations that defendants conspired with a

Florida judge were insufficient to transform defendants into state actors); Lloyd v. Card, 283 Fed. Appx. 696 (11th Cir. 2008) (conclusory allegations that plaintiff's former defense lawyer collaborated with the state to elicit his *nolo contendere* plea failed to establish counsel was a state actor); Moore v. Bargstedt, 203 Fed. Appx. 321 (11th Cir. 2006) (1983 claim against victim's mother based on the fact she made repeated complaints about him to the police, was properly dismissed because she was not a state actor and he did not allege conspiracy existed). Lynch has not come forward with any evidence demonstrating Keohane was acting under the color of state law when she treated him. Accordingly, his Section 1983 claim against her should be dismissed. See Hammer v. Haire, 369 Fed. Appx. 989 (11th Cir. 2010) (dismissal of Section 1983 complaint proper where plaintiff improperly alleged due process violation by private individual who was not alleged to be acting under color of state law); Haynes v. Sacred Heart Hospital, 149 Fed. Appx. 854 (11th Cir. 2005) (Section 1983 complaint against a private hospital dismissed for lack of subject-matter jurisdiction because plaintiff failed to allege a constitutional violation by a state actor).

Further, even if Keohane had been acting under the color of state law, Lynch has failed to demonstrate a constitutional violation occurred. Keohane was a nurse who provided care to Lynch in the LKMC emergency room at a doctor's direction. Specifically, she applied dressings to his abrasions as directed by emergency room physician David Erlandson. (DE# 98-3 at 1-2);(DE# 97). Lynch has not complained that the bandaging Keohane provided was deficient, that she delayed treatment, or that any other aspect of the care she provided was faulty. The bandaging was the extent of Keohane's contribution to Lynch's care; she did not medically clear Lynch from LKMC, arrest him, or transport him from LKMC to MCJ.

(DE# 98-3 at 2). No deliberate indifference is apparent under these circumstances.

Defendant Kuniko Keohane's motion for summary judgment should be granted.

(3) **Defendant Delarosa**

The corrections officer who allegedly beat Lynch in the dental office, Marco Delarosa, is entitled to summary judgment.

A claim for damages challenging the legality of a prisoner's confinement is not cognizable in a Section 1983 action "unless and until the ... sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus" and complaints containing such claims must therefore be dismissed. Heck v. Humphrey, 512 U.S. 477 (1994). A prisoner's claim for both declaratory relief and money damages that necessarily implies the invalidity of the action taken against the prisoner is not cognizable under Section 1983 unless such action has previously been overturned. Edwards v. Balisok, 520 U.S. 641, 649 (1997). Heck applies to pretrial detainees. Alvarez-Machain v. United States, 107 F.3d 696, 700-01 (9th Cir. 1996); Hamilton v. Lyons, 74 F.3d 99, 102-03 (5th Cir. 1996).

Lynch was arrested for battery of a law enforcement officer and criminal mischief for \$1,000 or more in property damage to dental equipment. (DE# 149-1 at 1). The information charged him with battery on law enforcement officer Marco Delarosa as follows:

John Lynch on or about August 7, 2009, ... did actually and intentionally touch or strike Marco DeLaRosa, a law enforcement officer, against the will of Marco DeLaRosa while Marco DeLaRosa was engaged in the lawful performance of a duty while John Lynch knew that Marco

DeLaRosa was a law enforcement officer, contrary to Florida Statute 784.07(2)(b).

(DE# 149-2 at 1).

Lynch pled *nolo contendere* to the lesser included offense of battery in exchange for the prosecutor's agreement to an adjudication of guilty, credit time served, and costs. (DE# 149-3 at 1-2). The offense of misdemeanor battery in Florida occurs when a person "[a]ctually and intentionally touches or strikes another person against the will of the other...." 784.03(1), Fla. Stat.

By pleading *nolo contendere* to battering Delarosa, Lynch admitted he actually and intentionally touched or struck Delarosa against his will during the incident at the dentist office. His present Section 1983 claim, that Delarosa attacked him without provocation, and that "at no time did Plaintiff Lynch hit, punch or harm Deputy Marco Delarosa in any way, shape or fashion ... [and] the arrest report is a lie," necessarily implies the invalidity of his conviction for battering Delarosa. (DE# 33 at 26). Lynch's arguments that favorable evidence is being withheld, that his *nolo contendere* plea was coerced, and that Delarosa is not credible because he pled guilty to falsifying documents, are all attacks on the underlying battery conviction and cannot overcome Heck. Lynch must attack the validity of his battery conviction in the battery case and cannot do so in the present civil rights action. Lynch's civil rights claim based on the dentist office incident against Delarosa is barred at present by Heck.

Accordingly, Defendant Marco Delarosa's motion for summary judgment should be granted.

(4) Defendant Maurer

The physician's assistant, Susan Maurer, who allegedly provided Lynch deliberately indifferent care at MCDC, should be granted summary judgment.

(A) Scooter Crash Injuries

Lynch contends Maurer provided deliberately indifferent care for his scooter crash injuries upon his arrival at MCDC insofar as: he received no pain pills first two days at MCDC; he was given Percogesic rather than the narcotic pain pills prescribed by LKMC; he waited six days for arm sling, broken collarbone apparatus, ace bandages, bottom bunk, lower mattress, and lower tier pass; and Maurer failed to properly assess his surgical needs and provide proper evaluation and treatment.

Lynch's claims are premised on the conclusory and speculative allegation that Susan Maurer is a "head nurse" who controls medical and dental at MCDC along with MacGard and Fonas. According to Maurer's affidavit, she is a Physician Assistant who is not a director, has no administrative or training authority, and has no duty or authority to direct other employees' actions except insofar as when working directly with others. Maurer further states that her first involvement with Lynch was on September 8, 2008, two days after the scooter crash. Maurer has supported this assertion with medical records which confirm she conducted an infirmity history and physical on September 8, 2008. (DE# 140-3 at 4). Lynch has failed to come forward with any evidence or affidavits attempting to refute Maurer's claim that she had no involvement with Lynch's care prior to September 8, 2008. Lynch's vague and conclusory allegations contained in the complaint have failed to create a genuine issue of material fact with regards to this incident. See generally Perry, 786 F.2d at 1095 (noting conclusory allegations in a sworn complaint cannot defeat summary judgment); Sealey v. Pastrana, 399 Fed. Appx. 548 (11th Cir. 2010) (plaintiff failed to create genuine issue of material fact where the defendant denied general allegations of retaliation in an affidavit which plaintiff failed to refute with additional evidence or affidavit) .

Lynch's suggestion that Maurer deprived him of the narcotic pain killers that LKMC prescribed likewise fails. Assuming LKMC prescribed Lynch narcotics in the emergency room, MCDC was not bound to honor that prescription. See (DE# 140-6 at 2) (MacGard affidavit stating outside doctors cannot make medical orders in the jail). Assuming Lynch's pain following the accident was a serious medical need, he has failed to demonstrate Maurer was deliberately indifferent. He does not dispute that he was provided 600 mg of ibuprofen for five days with Dr. Kennedy's approval following Maurer's examination. (DE# 140-1 at 4). He does not allege Maurer knew he was supposed to receive a narcotic medication, that she knew the ibuprofen would be insufficient, or that she purposefully deprived him of a more appropriate medication. Compare McElligott v. Foley, 182 F.3d 1248 (11th Cir. 1999) (jury could infer deliberate indifference where defendants provided only tylenol and pepto-bismol for severe pain even though they knew the medication was largely ineffective and failed to respond to the deterioration of his condition). At most, Lynch has demonstrated Maurer exercised possibly negligent medical judgment, which is insufficient to support a deliberate indifference claim. See, e.g., Chatham v. Adcock, 334 Fed. Appx. 281 (11th Cir. 2009) (claim that prison nurse substituted Motrin for Vicodin was speculative and amounted to a disagreement about a course of treatment recommended by different medical doctors; summary judgment granted).

Lynch contends he waited six days for arm sling, broken collarbone apparatus, ace bandages, bottom bunk, lower mattress, and lower tier pass. Maurer states in her affidavit that Lynch was wearing a collarbone strap when she examined him for the first time on September 8, 2008, and that he remained in MCDC's infirmary until September 12, 2008 - six days after his scooter crash. (DE# 140-5 at 2). The infirmary's progress notes confirm Lynch was provided a clavicle strap and arm sling on the day he was admitted, September 6, and that he was wearing the strap during Maurer's first contact with him on September 8. (DE# 140-3 at 4, 7). Lynch fails to explain why he needed ace bandages, a bottom bunk, lower mattress and lower tier pass during his six-day stay in the

infirmity. Nor does he refute Maurer's assertion that she ordered him to be discharged to the general population with a bottom bunk, double mattress, lower tier, and antibiotics. See (DE# 140-1 at 6). He fails to explain why an ace bandage also should have been included in Maurer's order and why its absence constituted deliberate indifference to a serious medical need. Further, to the extent he means to argue Maurer's discharge orders were not followed by corrections, he fails to allege Maurer knew of this deprivation and failed to address it. He has failed to create a genuine factual dispute on this point. See Perry, 786 F.2d at 1095.

Next, Lynch contends Maurer failed to properly assess his surgical needs and provide proper evaluation and treatment. This allegation is too vague and conclusory to support relief. As previously explained, Maurer had no involvement in Lynch's initial intake assessment on September 6, and first had contact with him two days later. Therefore, she cannot have been deliberately indifferent with regards to any treatment he received at that point. By the time Maurer first saw Lynch, a clavicle strap was in place to treat his broken collarbone. Lynch appears to argue Maurer should have known he needed surgery to repair the clavicle bones that were allegedly sticking out of his shoulder. Maurer and Kennedy state in their affidavits that surgery is only required for certain complex clavicle fractures and that no surgery was required for Lynch. Lynch was given the standard treatment of a broken collarbone apparatus that permitted the bone to heal. They support this conclusion with medical record that reveal Lynch's collarbone fracture healed without complication. (DE# 140-1, 140-5). Lynch has failed to refute these claims with an affidavit or any evidence indicating surgery was clearly required and that Maurer knowingly failed to provide adequate treatment. Insofar as Lynch intends to argue Maurer should have treated internal bleeding, she states in her affidavit that Lynch did not report any issue to her that would indicate internal bleeding. (140-5 at 8). This assertion is supported by the medical records and Dr. Kennedy's affidavit, which indicate Lynch reported bleeding to a nurse other than Maurer, was told to bring any further bleeding to a nurse or doctor's attention

and that he apparently failed to do. See (DE# 140-3 at 7); (DE# 140-1 at 4). Lynch's conclusory and speculative claims fail to create a factual dispute to defeat summary judgment. See Perry, 786 F.2d at 1095.

(B) Left Shoulder

Lynch claims Maurer told him nothing was wrong with his left shoulder, recommended he exercise it, deprived him of an arm sling that alleviated his pain, and deprived him of medication. He also claims the eleven-month delay between the scooter crash and an MRI and consultation with an outside doctor, Dr. Perry, was too lengthy and that his injury requires surgery. Further, he claims Maurer continued to deprive him an arm sling and encourage him to exercise after Dr. Perry ordered a sling and immobilization on September 25, 2009.

Maurer states in her affidavit that she became aware of any issue regarding Lynch's left side on May 28, 2009, when he stated his arms were not working as well since the accident and that his shoulder was "dislocated." (DE# 140-5 at 3). She assessed Lynch as having chronic pain and issued orders for Percogesic. Id. She saw Lynch again on June 22, 2009, at which time he was wearing his left arm in a sling pursuant to his lawyer's instruction and complained of left shoulder pain. (DE# 140-5 at 3-4). He stated the shoulder began hurting two months earlier without injury and that he had decreased range of motion in the arm. (DE# 140-5 at 3). An examination revealed no obvious damage to the shoulder and no signs of bruising or trauma. Id. Maurer thought Lynch's use of the sling was causing immobility and the proper course of action was to discontinue the sling and increase mobility through exercise. (DE# 140-5 at 3, 7). She ordered that he discontinue the sling and replaced his Motrin with Salsalate and Percogesic. Id. Maurer saw Lynch again on July 8, 2009, at which time he was still wearing the sling pursuant to his attorney's advice despite the discontinuation order. He complained of pain and requested his medication be renewed. (DE# 140-5 at 3). Maurer renewed the Salsalate and Percogesic. Id. Maurer apparently did not see Lynch again until

after he received an MRI on August 5, 2009. She noted on August 12, 2009, that the report had been received. Id. On August 17, 2009, Maurer ordered a follow-up by Dr. Ripkey and review of medical records with Dr. Perry, an outside orthopedic specialist. (DE# 140-5 at 5); (DE# 140-1 at 11).

Lynch saw Dr. Perry less than a month later on September 11, 2009. Dr. Perry's report, dated September 11, 2009, states:

History of Present Illness: This is a 46-year-old gentleman who happens to be incarcerated at the moment, but he tells me since his scooter accident about a year ago, he has had some pain in his left shoulder that has been chronic. He also has some symptom in his left hand since he had a broken finger and he can still tell where that is. In any case, he came today for the shoulder problem.

On today's visit, he does have the advantage of already having an MRI.

Examination: I have examined him as best I can and the MRI does seem to be consistent with his symptoms. He has pain around the AC joint. He also has pain consistent with impingement. He has pain anterior in his shoulder but the MRI shows that he has both biceps tendinitis and glenohumeral arthritis and **possibly a SLAP lesion**.

Comments/ recommendations: On today's visit, what I have tried is because I know he has subacromial bursitis on the MRI and given his symptom of subacromial bursitis, I gave him a steroid shot in the subacromial space. I also gave him a steroid shot in the AC joint because I know that is part of his symptom. Depending on how he does with these will determine how I proceed with additional shots maybe for the biceps tendinitis or his glenohumeral joint. I recommend that he follow up with me in two weeks. I did write these diagnostic things on his prison evaluation sheet. I also did warn him that he may need pain medication after getting two steroid shots....

(DE# 140-2 at 12) (emphasis added).

Maurer signed Dr. Perry's report on September 14, 2009. Id.

Lynch apparently had a follow-up appointment with Dr. Perry on the morning of September 25, 2009. See (DE# 140-4 at 64) (grievance

to "Doctor Sue" dated September 25, 2009, explaining Lynch had seen Dr. Perry that morning, that Perry had ordered a sling for him, and asked that one be provided). That same day, Maurer ordered that Lynch be allowed to use an arm sling as needed pursuant to Dr. Perry's instructions. (DE# 140-5 at 5); (DE# 140-1 at 14). Lynch was fitted for a new sling four days later on September 29, 2009; and a new sling was issued and the old sling was retrieved. Id.

Maurer saw Lynch on June 15, 2010, at which time he said he needed pain medication and that the muscle relaxer and Percogesic were out of stock. (DE# 140-5 at 6). Maurer recommended, and Lynch agreed to, a two-week trial of Mobic. Id.

Assuming Lynch's shoulder condition is a serious medical need, Lynch has failed to demonstrate Maurer was deliberately indifferent. The record reveals that Maurer first became aware there may be an issue with his left arm on May 28, 2009. Any suggestion by Lynch that the left shoulder injury dated back to the scooter crash and that Maurer failed to treat it for that entire period is refuted by the medical affidavits and records before the Court, and need not be credited. See (DE# 140-5 at 3); Lloyd v. Card, 283 Fed. Appx. 696 (11th Cir. 2008) (conclusory statements that were not based on personal knowledge and contradicted plaintiff's earlier written statement failed to create a factual dispute); Campos v. INS, 32 F.Supp.2d 1337, 1343 (S.D. Fla. 1998) (noting courts need not accept factual claims that are internally inconsistent, facts which run counter to facts of which the court can take judicial notice, conclusory allegations, unwarranted deductions, or mere legal conclusions asserted by a party).

Lynch's conclusory and speculative suggestion that Maurer improperly treated his left shoulder is also fails to survive Maurer's motion for summary judgment. On each occasion Maurer saw Lynch for the left shoulder, she provided him instructions and

medication that were appropriate with her assessment of his condition. The medical affidavits assert the course of treatment, which included discontinuation of the sling, the recommendation to exercise, and provision of pain medications, was medically reasonable. Lynch has failed to come forward with evidence or affidavits demonstrating Maurer knew he had a serious medical need and deliberately disregarded it. Lynch has demonstrated, at most, negligent diagnosis which cannot support Section 1983 liability. See Estelle, 429 U.S. at 105-06 (allegations of medical malpractice or negligent diagnosis and treatment insufficient; decision not to order an X-ray for back injury did not constitute cruel and unusual punishment); Smith v. Fla. Dep't of Corr., 375 Fed. Appx. 905 (11th Cir. 2010) (nurse's decision to discharge prisoner with broken pelvis from infirmary after fourteen days, and not to take additional x-rays, was not deliberate indifference; dismissal for failure to state a claim affirmed).

Lynch's suggestion that Maurer unduly delayed appropriate treatment for his left shoulder also fails. Maurer provided care on every occasion she saw Lynch for a left shoulder complaint. Lynch received an MRI just over two months after Maurer learned of a left shoulder problem. She ordered a follow-up with Dr. Ripkey and consultation with Dr. Perry just five days after she signed the MRI report that suggested he had a SLAP tear and other conditions. She also ordered a sling for Lynch on September 25, 2009, the same day Dr. Perry recommended a sling during the follow-up appointment. Even if the four-day delay in Lynch actually receiving the sling was excessive, Maurer is not liable because Lynch has failed to demonstrate Maurer knew of the delay and did nothing to address it. Further, Lynch has failed to establish he suffered any detrimental effect from the delay in his medical treatment. He contends he suffered a SLAP tear in the scooter wreck, it requires surgery, and

the eleven-month delay in seeing an orthopedic specialist exacerbated his condition. The medical affidavits and record indicate that Lynch's left shoulder pain originated around April, 2009, and not at the time of the scooter accident; that he has a *possible* SLAP tear; that surgery on the shoulder is elective can be delayed for a year with no consequences; and that Lynch agreed to wait for surgical intervention. (DE# 140-1 at 14).

Lynch has failed to identify a single instance when Maurer knew he had serious medical need with regards to his left shoulder which she did not promptly and appropriately address within her professional judgment.

Lynch has also failed to create a genuine factual dispute with regards to his suggestion that Maurer knowingly deprived him of pain medication. She ordered pain medication on the first occasion he mentioned left arm pain to her and on each subsequent contact when he complained of left shoulder pain. On the one occasion when Lynch complained to Maurer that the pharmacy had run out of his muscle relaxer and pain killer, she ordered a different medication with Lynch's agreement. Lynch has not identified a single occasion when Maurer knew he was in pain and ignored his request for medication. There is no showing of deliberate indifference under these circumstances. Lepper v. Nguyen, 368 Fed. Appx. 35 (11th Cir. 2010) (prisoner failed to establish deliberate indifference with regards to pain medication shortage where he did not show medication shortage was the result of anything other than negligence, and prison officials did take some actions to remedy the problem by re-faxing his prescription).

(C) Dental

Lynch claims Maurer made him wait eighty-five days, between

June 11, 2009, and September 3, 2009, to extract infected teeth that were broken off in the scooter crash.

In certain circumstances, the need for dental care combined with the effects of not receiving it may give rise to a sufficiently serious medical need to show objectively a substantial risk of serious harm. Farrow, 320 F.3d at 1243-44. There is no requirement that a prisoner show objective evidence of pain or establish the denial or delay of treatment of a painful dental condition resulted in permanent injury or required emergency attention. Id.

Maurer states in her affidavit that she had no involvement in Lynch's dental care. (DE# 140-5 at 8). However, Maurer admits she saw Lynch on July 8, 2009, at which time he complained of left shoulder pain and also said he could not survive on the prison diet due to dental pain. (DE# 140-5 at 4). Maurer noted Lynch had gained forty pounds despite his reported dental concerns and prescribed him Salsalate and Percogesic. Id. Lynch does not dispute the fact that Maurer provided him pain medication on July 8, 2009. Nor does he allege he asked Maurer for a dental appointment, that she knew he had been waiting an unreasonable length of time to see a dentist, or that she knew he did not see a dentist within a reasonable time after their contact. Lynch's vague and speculative allegations are insufficient to create a genuine factual dispute with regards to the allegation that Maurer knew of a serious dental need and knowingly ignored it. See Perry, 786 F.2d at 1095.

Lynch also claims Maurer was deliberately indifferent to his dental needs with regards to the injuries he sustained in the altercation with Delarosa. He alleges Maurer laughed when he told her Delarosa knocked his front teeth out, wiped blood off his face

and pushed a bag of ice into his mouth to stop the bleeding. He also complains that she made him wait for seventy-five days, between August 7, 2009, and October 21, 2009, to have teeth broken in the incident extracted.

Maurer denies she laughed at Lynch and states that providing ice would have been proper treatment for the injuries Lynch received in the altercation with Delarosa on August 7, 2009. (DE# 140-5 at 8). Maurer also admits that Lynch was seen by another nurse on August 10, 2009, for a claim his gums were infected, and Maurer received orders for Lynch to receive antibiotics from the dentist. Id. Maurer admits she saw Lynch on August 17, 2009, and he asked when he would be able to see the dentist for his teeth that got knocked out. (DE# 140-1 at 11). Maurer ordered a follow-up with Dr. Ripkey. Id. Contrary to Lynch's assertion that he did not receive any dental treatment until October 21, 2009, the medical affidavits and records indicate he saw the dentist for an extraction seventeen days later on September 3, 2009, then again on October 21, 2009.<sup>14</sup> (DE# 140-2 at 38-40). Lynch has failed to refute with evidence or affidavits Maurer's assertion that giving him ice for his broken teeth was medically reasonable. He has also failed to explain how she was deliberately indifferent for obtaining an order for antibiotics for a claimed infection, and referring him to Dr. Ripkey the single time he asked her for a dental visit for the Delarosa injuries. Lynch's speculative and conclusory contention Maurer made him wait seventy-five days for a dental appointment cannot survive summary judgment in light of the medical affidavits and records before the Court indicating Maurer neither knew of any undue delay nor had the power to control one if it existed. To the

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<sup>14</sup> Defendant MacGard explains in her affidavit that the September 3 appointment did not address the teeth broken in the Delarosa incident. (DE# 140-6 at 4). Lynch does not allege that Maurer knew the request he made to her for dental care remained unaddressed until October 21.

extent Lynch attempts to hold Maurer responsible for the seventeen-day delay between his request to for an appointment on August 17, 2009, and his appointment on September 3, 2009, Lynch has presented at most a claim for negligence which is insufficient to support Section 1983 liability. *See, e.g., Moore v. Cheeseman*, 2008 WL 5427779 (M.D. Fla. Dec. 30, 2008) (plaintiff who attempted to hold prison dentist responsible for thirty-day delay between dentist's referral to an oral surgeon and the date the oral surgeon saw him failed to state a constitutional violation; delay was at most caused by negligence, and plaintiff was examined and prescribed ibuprofen for pain while he waited to see the oral surgeon). Maurer provided some type of treatment, medication, or referral on the three occasions she addressed Lynch's dental concerns in the ten days between the Delarosa incident and his next dental appointment. Lynch has failed to create a genuine factual dispute under these circumstances. *Cf. Farrow*, 320 F.3d at 1243-44 (need for dentures lasting fifteen months that caused pain, continual bleeding, swollen gums, and significant weight loss was serious medical need).

(D) Psychiatric

Lynch makes a general and non-specific claim that he was denied appropriate medication for his mental health needs. He claimed he had taken psychiatric drugs on and off for the previous thirty years and was denied access to those drugs at MCDL.

Maurer states in her affidavit that she had no involvement with Lynch's psychiatric care. (DE# 140-5 at 8). Lynch fails to refute this assertion with an affidavit or any evidence indicating Maurer knew of any mental health need or was involved in his mental health care in any way. Accordingly, Lynch has failed to carry his burden with regards to this claim and summary judgment should be

granted for Maurer. See Perry, 786 F.2d at 1095.

(E) Conspiracy

Lynch suggests Maurer engaged in a cover-up to hide his true condition from him and deprive him proper care, which included lying to him and falsifying reports.

Conspiring to violate another person's constitutional rights violates section 1983. See Dennis v. Sparks, 449 U.S. 24, 27 (1980). To establish a *prima facie* case of conspiracy under Section 1983, a plaintiff must show a conspiracy existed that resulted in the actual denial of some underlying constitutional right. Grider v. City of Auburn, 618 F.3d 1240, 1260 (11th Cir. 2010). The plaintiff must show the parties reached an understanding to deny the plaintiff of his rights. Grider, 618 F.3d at 1260. The plaintiff need not produce a "smoking gun," but he must provide "some evidence of agreement between the defendants." Rowe v. City of Ft. Lauderdale, 279 F.3d 1271, 1283-84 (11th Cir. 2002). Conspiratorial agreement can be inferred from the actions of individuals who are parties to the conspiracy. Burrell v. Bd. of Trustees, 970 F.2d 785 (11th Cir. 1992). The conspiratorial acts must impinge upon the federal right; the plaintiff must prove an actionable wrong to support the conspiracy. Bendiburg v. Dempsey, 909 F.2d 463, 468 (11th Cir. 1990). For a conspiracy claim to survive summary judgment, "[a] mere 'scintilla' of evidence ... will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990).

Lynch contends MCDC's medical staff conspired to violate his rights by misrepresenting the seriousness of his various health concerns and by falsifying reports about him. These vague,

speculative and conclusory claims are insufficient to demonstrate an agreement existed that resulted in the actual denial of one of Lynch's underlying constitutional rights. See, e.g., Signature Pharmacy, Inc. v. Wright, 438 Fed. Appx. 741 (11th Cir. 2011) (because search of pharmacy did not violate the Fourth Amendment, there was no actionable wrong to support a conspiracy claim); Lloyd v. Card, 283 Fed. Appx. 696 (11th Cir. 2008) (plaintiff's conclusory statements that deputies planted money and fabricated evidence were not based on personal knowledge, inadmissible on summary judgment, and contradicted his earlier written statement; summary judgment granted for deputies); see also Sealey, 399 Fed. Appx. at 548 (defendant's motion for summary judgment affirmed where motion made general allegations of retaliation which the defendant denied in an affidavit which plaintiff failed to refute with additional evidence or affidavit; plaintiff failed to create genuine issue of material fact).

(F) Negligence

Lynch makes a vague and conclusory suggestion that Maurer was poorly trained and provided him negligent care.

The medical affidavits explain Lynch received adequate care during the duration of his stay at MDCDC. Lynch's general allegations fail to create a genuine factual dispute on the issue. See Perry, 786 F.2d at 1095. Further, a claim of mere negligence is an insufficient basis upon which to premise Section 1983 liability. See Johnson v. McNeil, 278 Fed. Appx. 866 (11th Cir. 2008) (summary judgment for defendants affirmed where prisoner died of intracerebral hemorrhage after being treated twice for headaches/nausea by prison staff then received surgery off-site; negligence in misdiagnosing or failing to perceive prisoner's injury cannot be sustained under the Eighth Amendment because

negligence in providing medical care is not a constitutional violation).

Based on the foregoing, Maurer's motion for summary judgment should be granted.

(5) **Defendant MacGard**

(A) Supervisory Liability

Lynch argues MacGard is liable for all the perceived medical mistreatment he received while at MDCDC. MacGard should be granted summary judgment to the extent Lynch attempts to premise MacGard's liability on her supervisory role.

Public officials in supervisory positions cannot simply be held vicariously liable for the acts of their subordinates. Robertson v. Sichel, 127 U.S. 507 (1888); Byrd v. Clark, 783 F.2d 1002, 1008 (11th Cir. 1986), abrogation on other grounds recognized by Nolin v. Isbell, 207 F.3d 1253 (11th Cir. 2000). Nor can liability be predicated solely upon the doctrine of *respondeat superior* in a Section 1983 action. Monell v. Dep't Social Servs., 436 U.S. 658 (1978); Vineyard v. Murray, 990 F.2d 1207 (11th Cir. 1993). A causal connection between the acts of a supervising official and the alleged constitutional deprivation can render the official liable on a Section 1983 claim. See Douglas v. Yates, 535 F.3d 1316, 1322 (11th Cir. 2008).

Lynch has failed to demonstrate that any constitutional violation occurred with regards to the medical care he received from Maurer. See Claim (4), *supra*. Supervisory liability cannot exist absent a constitutional violation, so MacGard has no liability with regards to Maurer's actions. Gish v. Thomas, 516 F.3d 952 (11th Cir. 2008).

Lynch makes general claims that MacGard runs the medical department at MCDC and that the policies and procedures result in inadequate care. (DE# 33 at 20). However, he fails to allege any causal connection between MacGard's acts and the alleged constitutional deprivations he allegedly endured. Lynch's vague and conclusory allegations are simply insufficient to hold MacGard liable in her supervisory position.

(B) Deliberate Indifference

Lynch claims MacGard was deliberately indifferent insofar as she: made him wait for months before the teeth damaged in the scooter accident were pulled; should have given him shoulder surgery upon arrival at MCDC; lied to him about his condition, told him to exercise, and that nothing wrong with shoulder; provided him no pain pills first two days at MCDC, refused to give him narcotics prescribed by LKMC, and instead gave him Percogesic; waited days before giving him arm sling on September 25, 2009, pursuant to Dr. Perry's orders because it was not a medical emergency; refused to give Lynch his medical records to prove his case; and was negligent for failing to give adequate medical care. Each of these allegations will be addressed in turn.

First, Lynch claims MacGard made him wait for months, and made him file twenty-seven medical requests for extractions before the teeth damaged in the scooter accident were pulled. (DE# 33 at 7, 22). MacGard responds in her affidavit that Lynch was seen by a dentist within a reasonable time, that the dentist not there every day so dental complaints are taken first-come, first-served unless there was an emergency need, and that Lynch did not have an emergency dental need. (DE# 140-6 at 4).

MacGard's conclusory contentions that Lynch did not have an

emergency dental need and that he was seen by a dentist within a reasonable time fail to demonstrate she is entitled to judgment as a matter of law. **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.** See, e.g., Farrow, 320 F.3d at 1243-44 (genuine factual issue whether dental appointment policy contributed to inmate's injuries by forcing him to wait an extended period before seeing a dentist; inmate who waited fifteen months for dentures, during which time he experienced continuous pain, bleeding gums, and weight loss, sufficiently alleged a serious medical need).

Next, Lynch argues that MacGard should have given him shoulder surgery upon his arrival at MCDC. (DE# 33 at 9). MacGard explains in her affidavit that she is MCDC's Health Services Administrator and, as such, did not participate in Lynch's direct patient care. (DE# 140-6 at 1). Instead, this was done by nurses, physician's assistants, and doctors. MacGard made no decisions regarding Lynch's care and treatment. (DE# 140-6 at 2). Lynch fails to specifically allege what involvement MacGard had in his treatment that made her personally aware that he needed shoulder surgery when he arrived at MCDC. Moreover, as explained in Claim (4)(A), *supra*, Lynch's broken clavicle did not require surgery and healed well, so MacGard cannot be deliberately indifferent for failing to provide unnecessary surgery.

Lynch claims MacGard lied to him about his condition, told him to exercise and that nothing wrong with shoulder. (DE# 33 at 9). To the extent MacGard failed to appreciate the nature of Lynch's left shoulder condition or gave him incorrect advice, this was at most negligence that cannot support Section 1983 liability. See Claim (4)(F), *supra*.

Lynch makes conclusory claims that MacGard provided him no pain pills first two days at MCDC, refused to give him narcotics prescribed by LKMC, and instead gave him Percogesic. (DE# 33 at 12). MacGard explains in her affidavit that she did not participate in direct patient care and made no decisions re Lynch's care and treatment (DE# 140-6 at 2). Lynch fails to rebut MacGard's affidavit with any specific factual allegations about the nature and extent of her involvement in his care that made her aware of, and deliberately indifferent toward, any medication deficiency. Moreover, Lynch's general and conclusory claim that he received no pain medication during that time period is refuted by the medical records and affidavits and fail to create a genuine dispute of material fact. See Claim (4)(A), *supra*.

Lynch claims MacGard waited several days before giving him arm sling pursuant to Dr. Perry's September 25, 2009, order because it was not a "medical emergency." (DE# 33 at 19). MacGard claims in her affidavit that she did not deny Lynch a sling or any other treatment that was ordered and, in any event, outside physicians like Dr. Perry are not authorized to give orders in jail. (DE# 140-6 at 2). The records indicate Maurer ordered a sling pursuant to Dr. Perry's instructions the same day he ordered it, September 25, 2009, and that he was not fitted for a new sling until four days later, September 29, 2009. (DE# 140-1 at 14). The grievance records before the Court indicate Lynch submitted no fewer than twelve grievances during that four-day period requesting a sling, four of which were specifically addressed to McGard, and eight of which were marked "24 hour emergency." (DE# 140-1 at 54, 61-62, 64-72).

**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 recommended the treatment and jail personnel adopted it for treatment of a painful condition, which precludes summary judgment.**

Lynch also claims MacGard refused to give him his medical records to prove his case. (DE# 33 at 20). MacGard agrees that she did not provide Lynch a copy of his medical records while he was incarcerated at MCDC pursuant to MCDC correctional policy. (DE# 140-6 at 2). Lynch has failed to explain how this policy violated a constitutional right that would be cognizable under Section 1983. Further, he cannot demonstrate any harm because the medical records are presently before the Court.

Lynch's claim that MacGard was negligent for failing to provide him adequate medical care cannot support relief for the reasons set forth in Claim (4)(F), *supra*. (DE# 33 at 21).

(B) Failure to Intervene

Lynch appears to suggest MacGard is liable for failing to intervene when Delarosa allegedly beat him in the dental office in that she allegedly witnessed the beating and cheered Delarosa.

An officer can be liable for failing to intervene when another officer uses excessive force. Priester v. City of Riviera Beach, Florida, 208 F.3d 919, 924 (11th Cir.2000); see also Ensley v. Soper, 142 F.3d 1402, 1407-08 (11th Cir. 1998) ("[I]f a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable[.]"). This liability arises when the officer observes the violation is in a position to intervene and fails to do so. Priester, 208 F.3d at 924.

As a preliminary matter, this claim cannot support relief because it is internally inconsistent. Lynch claims in his complaint *both* that MacGard could not possibly have witnessed the beating due to her location behind a desk at the time, *and* that she witnessed the event and cheered on Delarosa. (DE# 33 at 19). The Court is not required to accept these internally inconsistent factual claims. See McMahon v. City of Riviera Beach, 2008 WL 4108051 at \*3 (S.D. Fla. Aug. 28, 2008).

MacGard explains in her affidavit that she witnessed the Delarosa incident and did not physically intervene because, as a medical worker, it was not part of her job and had been instructed by corrections officers not to do so. (DE# 140-6 at 3).

Further, even if Lynch could assert such a claim against MacGard, is unavailable at this time because the underlying claim against Delarosa is barred by Heck. See Claim (3), *supra*.

(C) Conspiracy

To the extent Lynch accuses MacGard of covering up his true medical condition and falsifying reports, this claim fails for the same reasons set forth in Claim (4), *supra*; see also (DE# 140-6 at 2) (MacGard's affidavit).

IX. Conclusion

It is therefore recommended that:

(1) Defendant Lisa Fonas be dismissed without prejudice due to lack of service;

(2) Defendant Frank Betz's motion for summary judgment (DE# 95) be granted;

(3) Defendant Kuniko Keohane's motion for summary judgment

(DE# 96) be granted;

(4) Defendant Marco Delarosa's motion for summary judgment (DE# 149-1) be granted;

(5) Defendant Susan Maurer's motion for summary judgment (DE# 141) be granted;

(6) Defendant Elizabeth MacGard's motion for summary judgment (DE# 141) be denied in part, as to the claims that she was deliberately indifferent for delaying Lynch's receipt of dental care and an arm sling, and granted in part as to the remaining claims against her; and

(7) Lynch's motions for summary judgment against Betz (DE# 111), Keohane (DE# 111), Maurer (DE# 158), and MacGard (DE# 158) be denied.

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

SIGNED this 1<sup>st</sup> day of February, 2012.



UNITED STATES MAGISTRATE JUDGE

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