UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-24638-CIV-LENARD
MAGISTRATE JUDGE P. A. WHITE

LEMANE DEON WILLIAMS, :

Plaintiff, :

v. : ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT

ANTHONY FERIA, :

Defendant. :

In this prisoner civil rights action the defendant Anthony Feria has filed a motion for summary judgment pursuant to Fed.R.Civ.P. 56, or a motion to dismiss with supporting documentation/video, which the court will treat as a motion for summary judgment pursuant to Fed.R.Civ.P. 12(b)(6) **(DE #24)**.

The plaintiff is hereby notified that this Court will consider this motion without oral hearing, and that he may file a response in opposition thereto for consideration by the Court. Somerville v. Hall, 2 F.3d 1563 (11 Cir. 1993); Griffith v. Wainwright, 772 F.2d 822, 825 (11 Cir. 1985); Moore v. Florida, 703 F.2d 516 (11 Cir. 1983); Barker v. Norman, 651 F.2d 1107 (5 Cir. 1981); Kibort v. Hampton, 538 F.2d 90 (5 Cir. 1976).

The attention of the plaintiff is particularly drawn to all provisions of Fed.R.Civ.P. 56, and specifically to that portion of Rule 56(e), which provides:

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials–including the facts considered undisputed–show that the movant is entitled to it; or

(4) issue any other appropriate order

The plaintiff is specifically cautioned as follows:

1. Any issue determined by summary judgment will not be tried. If a summary judgment is granted as to all issues, there will be no trial and a final judgment will be entered without further proceedings.

2. The evidence presented by the defendant in support of the motion for summary judgment may be accepted by the Court as true if it is not contradicted by affidavits or other sworn evidence such as depositions, submitted by the plaintiff.

3. The plaintiff cannot rely solely on his complaint and other initial pleadings, but must respond with affidavits, depositions, or otherwise, to show that there are material issues of fact which require a trial.

Coleman v. Smith, 828 F.2d 714 (11 Cir. 1987); Brown v. Shinbaum, 828 F.2d 707 (11 Cir. 1987). Thereupon, it is

ORDERED that if plaintiff files a response to the pending motion for summary judgment, such response shall be filed on or before **October 12, 2012**.

DONE AND ORDERED at Miami, Florida, this 17th day of September, 2012.

s/Patrick A. White
PATRICK A. WHITE
U.S. MAGISTRATE JUDGE

cc: Lemane Deon Williams, Pro Se
DC #M05282
Gulf Correctional Institution - Annex
699 Ike Steele Road
Wewahitchka, FL 32465-0010

Erica Sunny Shultz Zaron, Esq.
Miami-Dade County Attorney's Office
111 NW First Street
Suite 2810
Miami, FL 33128

FILED by ___ D.C.
SEP 20 2012
STEVEN M. LARIMORE
CLERK U. S. DIST CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-24638-CIV-LENARD/White

LEMANE DEON WILLIAMS,

Plaintiff,

v.

DETECTIVE FERIA,

Defendant.
_____/

NOTICE OF FILING BOND HEARING VIDEO

Defendant, Detective Anthony Feria, hereby files the Bond Hearing Video that is identified as Exhibit C to his Motion to Dismiss Complaint as Frivolous Pursuant 28 U.S.C. § 1915(d)(2)(B)(i) **[DE 24-3]** in compliance with this Court's Order Granting Defendant's Motion for Order Authorizing Clerk of Court to Accept Video **[DE 27]**. A copy of the Court's Order is attached.

Dated: September 20, 2012

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: _____
Erica S. Zaron
Assistant County Attorney
Florida Bar No. 0514489
Telephone: (305) 375-5151
Facsimile: (305) 375-5611
E-mail: zaron@miamidade.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF, or by U.S. Mail where indicated, on September 20, 2012, on all counsel or parties of record on the Service List below.

Erica Zaron
Assistant County Attorney

SERVICE LIST

Lemane Deon Williams
M05282
Gulf Correctional Institution-Annex
Inmate Mail/Parcels
699 Ike Steele Road
Wewahitchka, FL 32465
Pro Se
Service via U.S. Mail

Erica S. Zaron
Assistant County Attorney
E-Mail: zaron@miamidade.gov
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW 1st Street, Suite 2810
Miami, FL 33128
Tel: 305- 375-5151
Fax: 305-375-5611
Attorney for Defendant Detective Feria

From: cmecfautosender@flsd.uscourts.gov
Sent: Monday, September 17, 2012 11:20 AM
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 1:11-cv-24638-JAL Williams v. Feria Order on Motion for Miscellaneous Relief

This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing
The following transaction was entered on 9/17/2012 11:20 AM EDT and filed on 9/17/2012

Case Name: Williams v. Feria
Case Number: 1:11-cv-24638-JAL https://ecf.flsd.uscourts.gov/cgi-bin/DktRpt.pl?392406

Filer:

Document Number: 27

(No document attached)
Docket Text:
ORDER granting [26] Motion for Order authorizing clerk of courts to accept filing of video Signed by Magistrate Judge Patrick A. White on 9/17/2012. (cz)

1:11-cv-24638-JAL Notice has been electronically mailed to:

Erica Sunny Shultz Zaron
zaron@miamidade.gov, klw@miamidade.gov

1:11-cv-24638-JAL Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:
Lemane Deon Williams
M05282
Gulf Correctional Institution-Annex
Inmate Mail/Parcels
699 Ike Steele Road
Wewahitchka, FL 32465

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SEP 20 2012
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. of FLA. - MIAMI

United States District Court
Southern District of Florida

Case Number: 11-CV- 24638

SUPPLEMENTAL ATTACHMENT(S)

Please refer to the supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

- [x] **NOT SCANNED**
  - [ ] Due to Poor Quality
  - [ ] Bound Extradition Papers
  - [ ] Photographs
  - [ ] Surety Bond (Original or Letter of Understanding)
  - [x] CD or DVD (Court Order or Trial Purposes only) DE 27
  - [ ] Other: _____
- [ ] **SCANNED**
  - [ ] But Poor Quality
  - [ ] Habeas Cases (State Court Record/Transcript)

Date: 9.20.2012

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OCT 09 2012
STEVEN M. LARIMORE
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S.D. OF FLA. FT. LAUD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LEMANE DEON WILLIAMS,
Plaintiff,

Case No: 11-24638-CIV-LENARD
Magistrate Judge P.A. WHITE

v.

DETECTIVE FERIA,
Defendant,
_____/

MOTION TO STAY SUMMARY JUDGMENT

Plaintiff request stay concerning summary of judgment received on September 26, 2012 by this court. It is necessary to compel discovery on the defendant to establish that the facts in which the defendant relies on are untrue as presented in plaintiffs motion to compel discovery. This court draws the plaintiffs attention to Fed. R. Cir. P. 56, and specifically 56(e). It is the plaintiffs contention that he can properly support his assertions of fact by compelling discovery on the defendant. This court is imposing for too much on the plaintiff with such limited access to the Law Library (deferring to the District Courts judgment that the non – moving parties statement of Material Facts satisfied the local rule); cf. Reese, 527 F. 3d at 1270. ("The court essentially overlooked [the plaintiffs] noncompliance with [an identical local rule]_ _ _ which it had broad discretion to do…" (emphasis added).

STATEMENT OF UNDISPUTED FACTS

"Summary judgment is appropriate only if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law" **Moton v. Cowart**, 63 / F.3d 1337, 1341 (11th Cir. 2011) "quoting Fed. R. Civ. P. 56(a). Local rules such as these are "designed to help the court identify and organize the issues in the case. See; **Mann v. Taser Int'l, Inc**. 588 F. 3(d) 1291, 1303 (11th Cir. 2009). As such, "we give great deference to a Districts Courts interpretation of it's local rules." **Reese v. Herbert**, 527 F. 3(d) 1253, 1267 n. 22 (11th Cir. 2008). Quoting: **Quick v. Peoples Bank Of Cullman County**, 993 F. 2(d) 793, 798 (11th Cir. 1993). Although the plaintiffs submission did not comply with the letter of the local rule it's submissions was sufficient for the District Court, which is good enough for this court. **Atwater v. Nat'l Football Leage Players** Ass'n, 626 F. 3d 1170, 1175 n.5 (11th Cir. 2010). It is the plaintiffs contention that the proper remedy is the deny summary judgment, while plaintiff establishes his claims through discovery.

Respectfully Submitted
Williams Lemane /
Lemane Deon Williams
699 Ike Steele Rd.
Wewahitchka, Fl 32465

CERTIFICATE OF SERVICE

I hereby certify, that a true and correct copy has been furnished by U.S. mail to the Office Of Erica Sunny Shultz Zaron, Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Fl 33128 this 5 day of OCTOBER 2012.

MEMORANDUM OF LAW

Alabama v. N.C. 130 S. Ct. 2295 (2010)

Summary judgement is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgdment as a matter of law. Fed. Rule. Civil. Proc 56 (c) citing **Celotex Corp v. Catrett**, 106 S. Ct. 2548 (1986).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED BY _____ D.C.
NOV 13 2012
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

PLAINTIFF'S STATEMENT OF DISPUTED FACTUAL ISSUES

The defendant has moved for summary judgment on the plaintiff's claim concerning use of force. Pursuant to Local Rule 56 (e)(2) of this court, the plaintiff submits the following list of genuine issues of material fact that require the denial of the defendant's motion.

1) On approximately January 2010 Officer Anthony Feria (Badge 2637), Miami – Dade Police arrested me for various charges.

2) After he placed me in handcuffs he transported me to the police station.

3) He kept asking me for the "gun", then he commenced to start beating me up.

4) He pushed me while I was in handcuff restraints behind my back.

5) When I fell the officer began punching me in my face and body.

6) I suffered a broken hand / index finger, chipped teeth, several abrasions and bruises.

7) I was then taken to the county jail, but the jail refused to receive me due to my visible injuries (please see include copy of booking photo).

8) I was then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for my injuries which included surgery to my hand where a steel plate was inserted in my right index finger.

9) I have lost complete range of motion on my right index finger (unable to bend).

10) This is a permanent injury.

Respectfully Submitted
/s/ Lenore Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the Office of Erica Sunny Shultz Zaron Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 7 day of November, 2012.

Respectfully Submitted
/s/ Lemane Williams

Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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NOV 13 2012
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CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Lemane Deon Williams declares under penalty of perjury:

1) I am the plaintiff in the above entitled case. I make this declaration in opposition to defendant's motion for summary judgment on my claim concerning use of force against me by defendant Officer Anthony Feria.

2) The defendant claims, in summary, that the plaintiffs claims are frivolous and untimely.

3) The defendant is not entitled to summary judgment because there are genuine issues of material fact to be resolved. These issues are identified in the accompanying statement of disputed factual issues filed by the plaintiff pursuant to

rule 56(e)(2) of the local rules of this District Court. The facts are set out in this declaration.

4) On January 2010, Officer Anthony Feria (Badge 2637) Miami – Dade Police arrested me for various charges. After he placed me in handcuffs he transported me to the police station. He kept asking me for the "gun", then he commenced to start beating me up. He pushed me while I was in handcuff restraints behind my back. When I fell the officer began punching me in my face and body. I suffered a broken hand / index finger, chipped teeth, several abrasions and bruises. I was then taken to the County Jail, but the jail refused to receive me due to my visible injuries (please see included copy of booking photo). I was then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for my injuries which included surgery to my hand where a steel plate was inserted in my right index finger. I have lost complete range of motion on my right index finger (unable to bend). This is a permanent injury.

The foregoing factual allegations create a genuine issue of material fact and will, if proved at trial, entitle me to judgment, as explained in the brief submitted with this declaration.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted
/s/ Lemone Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the Office of Erica Sunny Shultz Zaron Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 7 day of November, 2012.

Respectfully Submitted
/s/ Lemane Williams

Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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NOV 13 2012
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

LEMANE DEON WILLIAMS,
Plaintiff,

v.

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

OFFICER ANTHONY FERIA,
Defendant,

_____/

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiff Lemane Deon Williams pursuant to Rules 15 (a) and 19 (a), Fed. R. Civ. P. , requests leave to file an amended complaint correcting the location that the plaintiff was taken to for medical treatment.

1) The plaintiff in his original complaint names Jackson Memorial Hospital Ward "D" as the location that he was admitted to for medical treatment.

2) Since the filing of the complaint and the defendant's motion for summary judgment claiming that the plaintiff's claim that he was taken to Jackson Memorial Hospital Ward "D" for medical treatment, the plaintiff has determined that his original complaint misstated the proper location, and an amendment id necessary

to reflect the correct location plaintiff was treated for injuries in use of force by defendant.

This court should grant leave freely to amend a complaint. **Forman v. Davis**, 371 U.S. 178, 182, 83 S. Ct. 227 (1962); **Interroyal Corp v. Sponseller**, 889 F. 2d 108, 112 (6th Cir.), cert. denied, 494 U.S. 1091 (1990).

Respectfully Submitted,
/s/ Lemane Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the office of Erica Sunny Shults Zaron Esquire Miami Dade County Attorneys office 111 N.W. 1st Street Suite 2810 Miami, Fl 33128 this 7 day of November, 2012.

Respectfully Submitted,
/s/ Lemane Williams
Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LEMANE DEON WILLIAMS,
Plaintiff

v.

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

OFFICER ANTHONY FERIA,
Defendant

_____/

BRIEF IN OPPOSITION TO DEFENDANT'S SUMMARY JUDGMENT MOTION

STATEMENT OF THE CASE

This is a § 1983 action filed by a prisoner at Gulf Correctional Institution – Annex seeking damages, based on the use of excessive force, and the charging of Officer Anthony Feria with battery. The defendant has filed a motion for summary judgment as to plaintiffs use of force claim against defendant, Officer Anthony Feria arguing that plaintiffs claim is frivolous and / or untimely.

STATEMENT OF FACTS

The plaintiffs declaration submitted in response to the defendant motion states that this case should be dismissed.

The defendants affidavit tells a different story. The defendant claims that the plaintiffs § 1983 is frivolous based on the plaintiffs claim of where he was taken for medical treatment. The plaintiff mistakenly named Dade County Jail when in fact he was taken to Metro West Detention Center and the defendant knew this because whosever took him from there left a record.

ARGUMENT I.

THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT PRECLUDE SUMMARY JUDGMENT FOR THE DEFENDANT ON THE PLAINTIFFS USE OF FORCE CLAIM.

Summary judgment is to be granted only if the record before the court shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), Fed. R. Civ. P. A of a "material" fact is one that "might affect the outcome of the suite under the governing law." See; **Anderson v. Liberty Lobby Inc**, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 (Ed. 2d 202 (1986). Also see; **Celotex Corp v. Catrett**, 477 U.S. 317, 322, 324, 106 S. Ct. 2548 (1986).

The affidavits of the plaintiff and the defendant are squarely contradictory as to what happened, where the plaintiff was taken for medical treatment, and why the claims are contradictory. The allegations in the plaintiffs affidavit portray a completely different story, and needless use of force against an inmate who was

refusing to the admitting of guilt to a crime. There is clearly a genuine issue of fact.

The factual dispute is also material. Under the governing law, whether the use of force by Officer Anthony Feria, violates the Eighth Amendment depends on whether it was "applied in a good – faith effort to maintain or restore discipline of maliciously and sadistically to cause harm. "**Hudson v. McMillian**, 503 U.S. 1, 112 S. Ct. 995, 998-999 (1992); **Whitley v. Albers**, 475 U.S. 312, 320-321, 106 S. Ct. 1078 (1986). The facts alleged by the plaintiff are evidence that the defendant was acting "maliciously and sadistically to cause harm"; they would support a jury verdict in the plaintiffs favor. See; **Miller v. Leathers**, 913 F. 2d 1085, 1088 (4th Cir. 1990) (en banc) (retaliatory intent could be inferred from officers action) cert. denied, 111 S. Ct. 1018 (1991) also; **Oliver v. Collins**, 914 F. 2d 56, 59 (5th Cir. 1990) (testimony that a beating was completely gratuitous and that no force at all was necessary would support a finding of malice); **Lewis v. Downs**, 774 F. 2d 711, 714 (6th Cir. 1985) (evidence that an officer kicked a handcuffed person who was lying on the ground showed malicious motivation).

CONCLUSION

For the foregoing reason, the defendant's motion for summary judgment should be denied.

Respectfully Submitted
/s/ Lamar Williams

CERTIFICATE OF SERVICE

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Respectfully Submitted
/s/ Lemane Williams

Lemane Deon Williams
Gulf C.I. – Annex
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Wewahitchka, Fl 32465

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

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CONCLUSION

For the foregoing reason, the defendant's motion for summary judgment should be denied.

Respectfully Submitted
/s/ Lenore Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the Office of Erica Sunny Shultz Zaron Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 7 day of november, 2012.

Respectfully Submitted
/s/ Lemane Williams
Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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NOV 13 2012
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Lemane Deon Williams declares under penalty of perjury:

1) I am the plaintiff in the above entitled case. I make this declaration in opposition to defendant's motion for summary judgment on my claim concerning use of force against me by defendant Officer Anthony Feria.

2) The defendant claims, in summary, that the plaintiffs claims are frivolous and untimely.

3) The defendant is not entitled to summary judgment because there are genuine issues of material fact to be resolved. These issues are identified in the accompanying statement of disputed factual issues filed by the plaintiff pursuant to

rule 56(e)(2) of the local rules of this District Court. The facts are set out in this declaration.

4) On January 2010, Officer Anthony Feria (Badge 2637) Miami – Dade Police arrested me for various charges. After he placed me in handcuffs he transported me to the police station. He kept asking me for the "gun", then he commenced to start beating me up. He pushed me while I was in handcuff restraints behind my back. When I fell the officer began punching me in my face and body. I suffered a broken hand / index finger, chipped teeth, several abrasions and bruises. I was then taken to the County Jail, but the jail refused to receive me due to my visible injuries (please see included copy of booking photo). I was then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for my injuries which included surgery to my hand where a steel plate was inserted in my right index finger. I have lost complete range of motion on my right index finger (unable to bend). This is a permanent injury.

The foregoing factual allegations create a genuine issue of material fact and will, if proved at trial, entitle me to judgment, as explained in the brief submitted with this declaration.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted
/s/ Lemone Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the Office of Erica Sunny Shultz Zaron Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 7 day of November, 2012.

Respectfully Submitted
/s/ Lemane Williams

Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED by D.C.
NOV 1 3 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

PLAINTIFF'S STATEMENT OF DISPUTED FACTUAL ISSUES

The defendant has moved for summary judgment on the plaintiff's claim concerning use of force. Pursuant to Local Rule 56 (e)(2) of this court, the plaintiff submits the following list of genuine issues of material fact that require the denial of the defendant's motion.

1) On approximately January 2010 Officer Anthony Feria (Badge 2637), Miami – Dade Police arrested me for various charges.

2) After he placed me in handcuffs he transported me to the police station.

3) He kept asking me for the "gun", then he commenced to start beating me up.

4) He pushed me while I was in handcuff restraints behind my back.

5) When I fell the officer began punching me in my face and body.

6) I suffered a broken hand / index finger, chipped teeth, several abrasions and bruises.

7) I was then taken to the county jail, but the jail refused to receive me due to my visible injuries (please see include copy of booking photo).

8) I was then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for my injuries which included surgery to my hand where a steel plate was inserted in my right index finger.

9) I have lost complete range of motion on my right index finger (unable to bend).

10) This is a permanent injury.

Respectfully Submitted
/s/ Lemme Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the Office of Erica Sunny Shultz Zaron Esquire Miami – Dade County Attorneys Office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 7 day of November, 2012.

Respectfully Submitted
/s/ Lemane Williams

Lemane Deon Williams
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED by ___ D.C.
NOV 13 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

LEMANE DEON WILLIAMS,
Plaintiff,

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant,

_____/

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiff Lemane Deon Williams pursuant to Rules 15 (a) and 19 (a), Fed. R. Civ. P. , requests leave to file an amended complaint correcting the location that the plaintiff was taken to for medical treatment.

1) The plaintiff in his original complaint names Jackson Memorial Hospital Ward "D" as the location that he was admitted to for medical treatment.

2) Since the filing of the complaint and the defendant's motion for summary judgment claiming that the plaintiff's claim that he was taken to Jackson Memorial Hospital Ward "D" for medical treatment, the plaintiff has determined that his original complaint misstated the proper location, and an amendment id necessary

to reflect the correct location plaintiff was treated for injuries in use of force by defendant.

This court should grant leave freely to amend a complaint. **Forman v. Davis**, 371 U.S. 178, 182, 83 S. Ct. 227 (1962); **Interroyal Corp v. Sponseller**, 889 F. 2d 108, 112 (6th Cir.), cert. denied, 494 U.S. 1091 (1990).

Respectfully Submitted,
/s/ Lemane Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the office of Erica Sunny Shults Zaron Esquire Miami Dade County Attorneys office 111 N.W. 1st Street Suite 2810 Miami, Fl 33128 this 7 day of November, 2012.

Respectfully Submitted,
/s/ Lemane Williams
Lemane Deon Williams
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-24638-CIV-LENARD/White

LEMANE DEON WILLIAMS,

Plaintiff,

v.

DETECTIVE FERIA,

Defendant.
_____/

REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Detective Anthony Feria of the Miami-Dade Police Department ("Detective Feria"), pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and Local Rule 7.1(c), replies in support of his Motion to Dismiss Complaint as Frivolous Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) ("Motion") **[D.E. 24]**, which the Court treats as a motion for summary judgment pursuant to Federal Rules of Civil Procedure 12(d) and 56. Defendant's Motion should be granted because Plaintiff wholly fails to rebut the evidence before the Court. In support of the reply, Detective Feria states the following.

BACKGROUND

On December 28, 2011 Plaintiff Lemane Williams filed a complaint alleging the use of excessive force during a post-arrest interrogation. Following Defendant's Motion, Plaintiff moved to amend the complaint on November 13, 2012 on the grounds that he listed the wrong location for his medical treatment on the day of his jail admission. **[D.E. 45]**. However, concurrent with his Motion to Amend, Plaintiff submitted two declarations stating that he had been treated at Jackson Memorial Hospital, Ward "D." **[D.E. 43; D.E. 44]**. Furthermore, rather than clarifying the location of his treatment, Plaintiff states in his Response to Defendant's

Motion that he mistakenly referred to his pretrial confinement as the County Jail when it should have been Metro West Detention Center. The Court granted leave to amend solely as to the hospital where Plaintiff was taken for medical treatment. **[D.E. 51]**. The amended complaint has not been filed.

MEMORANDUM OF LAW

Plaintiff presents three contradictory filings in opposition to the clear and irrefutable evidence before the Court. None change the crucial point of Defendant's Motion: Plaintiff's claims are frivolous and must be dismissed.

"A claim is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir.2001). *See also Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1315 (11th Cir. 2002) (discussing standard for dismissal of frivolous claims under § 1915(e)(2)(B)(i)). Frivolous claims include "fanciful factual allegation[s]." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). District courts evaluating claims under § 1915(e)(2)(B)(i) possess the "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). Indeed, the requirement to dismiss frivolous or malicious *in forma pauperis* actions is mandatory. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *Thibeaux v. U.S. Atty. Gen.*, 275 F. App'x 889, 892 (11th Cir. 2008). Moreover, " a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

In addition to the requirements for a dismissal on the grounds of frivolousness, summary judgment is appropriate where there is no genuine issue as to any material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Indeed, summary judgment exists to "isolate and

dispose of factually unsupported claims or defenses." *Celotex Corp. v.* Catrett, 477 U.S. 317, 323-324. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quotations omitted). Of course, the court must "view the facts and draw reasonable inferences in the light most favorable to the party opposing the summary judgment motion." *Scott v. Harris*, 550 U.S. 372, 378 (2007) (quotations omitted). But as the Supreme Court explained squarely in *Scott v. Harris* "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Id.* at 380 (holding that where evidence recorded on a videotape utterly discredited one party's version of events, a court could not rely on the party's "visible fiction").

The Court should dismiss the present case where Plaintiff's factual contentions are clearly baseless. Plaintiff has now alleged multiple times that he "suffered a broken hand/index finger, chipped teeth, several abrasions and bruises" as a result of a violent and unprovoked attack by a police detective. **[D.E. 1 at 4; D.E. 43 at 6; D.E. 44 at 4]**. The video submitted to the Court removes all doubt as to the truth of these allegations. *See* Exhibit "C" to Defendant's Motion. Taken at his bond hearing the day after his arrest, the video shows no visible bruises or abrasions to Plaintiff's face, chipped teeth or a broken hand. All that can be seen is a small bandage on Plaintiff's index finger. Plaintiff further alleges that he sustained punches to the face and body. **[D.E. 43 at 5; D.E. 44 at 4]**. However, Plaintiff appears free of the visible signs one would expect to see following such conduct. Moreover, again as seen on the video, Plaintiff gestures freely with both hands, including the right hand where, if Plaintiff's allegations were

credited, he had surgery just hours prior to appearing at the hearing. While Plaintiff claims that "visible injuries" kept him from being admitted to jail following his arrest, he would also have this Court believe that such injuries were no longer visible less than 18 hours later. These visible fictions warrant dismissal.

Plaintiff also repeats the unsupported claim that he was "taken to the County jail, but the jail refused to receive [him] due to [his] visible injuries" and that instead he was "then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for [his] injuries which included surgery to [his] hand…" **[D.E. 1 at 4; D.E. 43 at 7; D.E. 44 at 4].** These verbatim claims appear in Plaintiff's complaint, declaration in support of his response, and statement of factual disputes. But the Court already has before it Plaintiff's Jail Booking Record. Exhibit "D" to Defendant's Motion. The booking record indicates both a TOR ("Time of Arrest") and TIJ ("Time in Jail") and that Plaintiff was arrested at 7:49 p.m. on February 8, 2010 and booked into the jail at 4:37 a.m. on February 9, 2010. For Plaintiff's allegations to be true, Plaintiff would have had to have suffered a beating and interrogation, been refused admission to jail, been transported to a medical facility, been operated upon, and finally transported back to jail—all within nine hours. Such a sequence of events is fanciful; Plaintiff's action must be dismissed as frivolous.

Plaintiff now asserts that he either mistakenly referred to the jail where he was taken or to the hospital where he received medical treatment. These new assertions are immaterial and do not change the overall point that Plaintiff's story is a complete fabrication. An amendment to change the location of treatment or detainment cannot refute the lack of evidence of hand surgery in Plaintiff's bond hearing video. Nor would an amendment change the discussion recorded in the video between the judge and Plaintiff in which he complains of issues related to his arrest but

never raises an alleged beating or a late night surgery. Plaintiff fails to confront the real issues of how his claims are completely belied by video and documents.

In his Response and accompanying declarations, Plaintiff attempts to create disputed material facts. However, his rote copying of conclusory allegations from the complaint fails to rebut the glaring record evidence. Based on his motion to amend the complaint, Plaintiff obviously could have come forward with more or different facts with supporting evidence had such facts existed. They do not. Plaintiff's claims are without arguable merit in either law or fact. Detective Feria respectfully requests this Court grant his Motion.

Dated: November 23, 2012

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: ____/s/ *Lauren E. Morse*_____
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Assistant County Attorney
Florida Bar No. 0097083
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF, or by U.S. Mail where indicated, on November 23, 2012, on all counsel or parties of record on the Service List below.

/s/ *Lauren E. Morse*
Assistant County Attorney

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Tel: 305- 375-5151
Fax: 305-375-5611
Attorneys for Defendant Detective Feria

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED by AP D.C.
NOV 30 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

LEMANE DEON WILLIAMS,
Plaintiff

Civil Action No: 11-24638-CIV-LENARD
Magistrate Judge: P.A. WHITE

v.

OFFICER ANTHONY FERIA,
Defendant

_____/

PRETRIAL STATEMENT / GENERAL STATEMENT

This case is about police brutality with the use of excessive force. On January 2010, Officer Anthony Feria (Badge 2637) Miami – Dade Police arrested me for various charges. After he placed me in handcuffs he transported me to the police station. He kept asking me for the "gun", then he commenced to start beating me up. He pushed me while I was in handcuff restraints behind my back. When I fell the officer began punching me in my face and body. I suffered a broken hand / index finger, chipped teeth, several abrasions and bruises. I was then taken to the County Jail, but the jail refused to receive me due to my visible injuries (please see included copy of booking photo). I was then transported to Jackson Memorial Hospital, Ward "D" to undergo treatment for my injuries which

included surgery to my hand where a steel plate was inserted in my right index finger. I have lost complete range of motion on my right index finger (unable to bend). This is a permanent injury.

(A) I'll be using my medical and dental records and statements from witnesses who observed plaintiff apprehension and those whom observed plaintiffs condition after the apprehension.

(B) Medical and dental records. Statements from observers of the arrested metro west medical condition, county jail dentition center records as to the condition of plaintiff when brought in on arrest

(C) NON-INMATE witnesses plaintiff intends to call:

Tamika Shavette Williams
15620 S.W. 103 Ct.
Miami, Fl 33157

William Osby
15620 S.W. 103 Ct.
Miami, Fl 33157

William L. Morgan
3545 N.W. 205th Street
Miami, Fl 33056

(D) INMATE WITNESS plaintiff intends to call

Desmond Rizby
South Florida Reception Center
1400 N.W. 41st Street
Doral, Fl 33178

Charles E. Dunmore DC# 939650
Gulf Correctional Institution – Annex
699 Ike Steele Road
Wewahitchka, Fl 32465

William Morgan
3545 N.W. 205th Street
Miami Gardens, Fl 33056

TESTIMONY

My wife Tamika Shavette William and stepson William Osby. Is going to say is when I was arrested and I was not injured at the time of my arrest. And when she came to the jail to see me I was in a cast because my hand was broken. And rod in my index finger. When I got to metro west detention center Mr. William and Mr. Desmond can testify as to my condition and why I was unable to use my hand. Mr. Dunmore can testify as to months later the condition of my hand an not being able to write or properly hold eating utensils. For Mr. Dumore at the time of his incarceration at metro west. Did all my writing to various departments such as medical request L.R.A. request which is legal request research letters to public defender lawyer. Etc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the office of Lauren E. Morse Miami – Dade County Attorneys Office 111 N.W. 1st street suite 2810 Miami, Florida 33128 this 21 day of November 2012.

Respectfully Submitted
/s/ Lemane Williams
Lemane Deon Williams DC# M05282
Gulf C.I. – Annex
699 Ike Steele Rd.
Wewahitchka, Fl 32465

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FOR MAILING_____
INMATE'S INITIALS_____

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by AG D.C.
DEC 07 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

LEMANE DEON WILLIAMS,
Plaintiff,

Case No.: 11-24638-CIV-LENARD

v.

DETECTIVE FERIA,
Defendant,
_____/

PARTIAL REPLY TO DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS

PLAINTIFF, Lemane Deon Williams , can not adequately reply to defendants detective Anthony Feria, reply in support of his motion to dismiss without the motion to compel discovery pending in this court, No. 35 of the court docket. As previously stated to this court, the plaintiff is a pro se litigant with limited access to the law library, and no access to Jackson Memorial Hospital ward "D". In defendants recent reply counsel for him makes numerous claims as to why the plaintiff claims in the instant case should be dismissed.

Counsel then supports these claims with a memorandum of law, all pointing toward "frivolous claims" including "fanciful factual allegations." First plaintiffs

amended complaint has in fact been filed, dated *october 9,2012* counsel for the defendant attempts confusion with the numerous claims get fourth in the reply in support of motion to dismiss, but plaintiff has met the minimum standard in establishing undisputed facts that requires the court to deny summary judgment.

MEMORANDUM OF LAW

Although plaintiff has been tardy in has filings, there are significant fact disputes existing that preclude resolving this case under 56. **Fils v. City of Aventara**, 647 F. 3d 1272 (C.A. 11 (Fla. 2011).

Defense counsels claim of contradictory filings is nothing but a smoke scream to divert the truth from coming out and by denying summary judgment and compelling discovery requested by the plaintiff, the facts in this matter will be revealed. Specifically the surgery records from Jackson Memorial Hospital ward "D" where plaintiffs injuries were dealt with.

The plaintiff can establish that a surgery on his hand and also a surgery scar on his index finger did in fact happen by the court allowing this claim to proceed and ordering the defendant to respond to the motion to compel discovery filed on *October 11,2012* counsel for the defendant claims that the plaintiff fails to confront the real issues of how plaintiffs claims are completely belied by video and documents and only attempts to create disputed material facts, by the video is deceiving because of the view, and the Jackson Memorial Hospital records ward "D" will tell

this court all it needs to know as to whether the plaintiff had fabricated a story or not.

Plaintiff now asserts that his claim contain arguable merit the defendants request to grant his motion to dismiss should be denied.

Dated: 12/4/12

Respectfully Submitted
/s/ Lemar Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this request for production documents has been furnished by U.S. Mail to the office of Lauren E. Morse Miami – Dade County Attorneys office 111 N.W. 1st Street Suite 2810 Miami, Florida 33128 this 4 day of December 2012.

Respectfully Submitted
/s/ Lemane Williams
Lemane Deon Williams DC# M05282
Gulf C.I. – Annex
699 Ike Steele Road
Wewahitchka, Fl 32465

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-24638-CIV-LENARD/White

LEMANE DEON WILLIAMS,

Plaintiff,

v.

DETECTIVE FERIA,

Defendant.
_____/

NOTICE REGARDING PRE-TRIAL STATEMENT

Detective Anthony Feria of the Miami-Dade Police Department ("Detective Feria") files this Notice regarding the pre-trial statement pursuant to the Court's June 27, 2012 Scheduling Order. **[D.E. 21]**.

1. Detective Feria moved to dismiss this case as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(I) and subsequently moved to stay the case on September 14, 2012. **[D.E. 24, 25]**.

2. On October 10, 2012, this Court granted Detective Feria's Motion to Stay Case Pending Ruling on Motion to Dismiss. **[D.E. 33]**. The Court has yet to rule on Detective Feria's motion, nor has it issued an order lifting the stay.

3. Notwithstanding that all deadlines listed in the Court's Scheduling Order are presently stayed, Plaintiff filed a pre-trial statement on November 30, 2012 **[D.E 53]**.

4. Detective Feria files this Notice merely to clarify for the Court that it is not filing a pre-trial statement at this time because the deadline for such statement, like all pre-trial deadlines, is currently stayed.

Dated: December 14, 2012

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: /s/ *Lauren E. Morse*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF, or by U.S. Mail where indicated, on December 14, 2012, on all counsel or parties of record on the Service List below.

/s/ *Lauren E. Morse*
Assistant County Attorney

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