

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:11-cv-62066-JIC

Telamy v. Armor Correctional Health Service et al
Assigned to: Judge James I. Cohn
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 09/19/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Paulius Telamy
Prisoner ID: L58906

represented by **Paulius Telamy**
L58906
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972
PRO SE

V.

Defendant**Armor Correctional Health Service****Defendant**

Veronica Edwards
LPN/NBB

represented by **Daniel Lee Losey**
Kelley, Kronenberg, Gilmartin, Fichtel,
Wander, et al., P.A.
8201 Peters Road
Suite 4000
Ft. Lauderdale, FL 33324
954-370-9970
Fax: 954-333-3763
Email: dlosey@kelleykronenberg.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Ora J. Watson
LPN/NBB

represented by **Daniel Lee Losey**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mark O. Martindale
DDS

represented by **Daniel Lee Losey**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/19/2011	<u>1</u>	COMPLAINT under the Civil Rights Act, 42 U.S.C. § 1983 against Armor Correctional Health Service, Veronica Edwards, Mark O. Martindale, Ora J. Watson. Filing fee \$ 350.00. IFP Filed, filed by Paulius Telamy.(ar2) (Entered: 09/20/2011)
09/19/2011	2	Judge Assignment to Judge James I. Cohn (ar2) (Entered: 09/20/2011)
09/19/2011	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. (ar2) (Entered: 09/20/2011)
09/19/2011	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Paulius Telamy. (ar2) (Entered: 09/20/2011)
10/12/2011	<u>5</u>	ORDER denying <u>4</u> Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit. Signed by Magistrate Judge Patrick A. White on 10/11/2011. (Attachments: # <u>1</u> Affidavit IFP) (tw) (Entered: 10/12/2011)
10/12/2011	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 10/11/2011. (tw) (Entered: 10/12/2011)
10/28/2011	<u>7</u>	MOTION for Extension of Time to Provide Documens re <u>5</u> Order denying <u>4</u> Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit by Paulius Telamy. Responses due by 11/17/2011 (jua) (Entered: 10/31/2011)
11/03/2011	<u>8</u>	ORDER granting <u>7</u> Motion for Extension of Time to comply with Court's Order for inmate six month prison account to on or before 11/30/11.. Signed by Magistrate Judge Patrick A. White on 11/3/2011. (cz) (Entered: 11/03/2011)
11/03/2011	<u>9</u>	MOTION for Leave to Proceed in forma pauperis by Paulius Telamy. (jua) (Entered: 11/03/2011)
11/03/2011	<u>10</u>	NOTICE of Compliance by Paulius Telamy re <u>5</u> ORDER denying <u>4</u> Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit (jua) (Entered: 11/03/2011)
11/07/2011	<u>11</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>9</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 11/7/2011. (tw) (Entered: 11/07/2011)
11/09/2011	<u>12</u>	Summons Issued as to Armor Correctional Health Service, Veronica Edwards, Mark O. Martindale, Ora J. Watson. (jc) (Entered: 11/09/2011)
12/09/2011	<u>13</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Paulius Telamy. Recommending 1. The case shall proceed against Nurses Edwards and Watson. 2. Dr Martindale and Armor Correctional Health Services should be dismissed pursuant to 28 U.S.C. 1915(e)(2)(B)(ii), for failure to state a claim. 3. The plaintiff may be permitted to file an amended complaint solely to support a claim against Dr. Martindale for inadequate dental treatment. Objections to RRdue by 12/27/2011. Signed by Magistrate Judge Patrick A. White on 12/9/2011. (tw) (Entered: 12/09/2011)
12/09/2011	<u>14</u>	ORDER that the United States Marshal shallserve a copy of the complaint and appropriate summons upon:Veronica Edwards, LPN/NBB, North Broward Bureau1550 N.W. 30 Avenue, Pompano Beach, FL 33069 and Ora J. Watson, LPN/NBBNorth Broward Bureau, 1550 N.W. 30 Avenue, Pompano Beach, FL 33069. Signed by Magistrate Judge Patrick A. White on 12/9/2011. (tw) (Entered: 12/09/2011)
12/13/2011	<u>15</u>	Summons Issued as to Veronica Edwards. (br) (Entered: 12/13/2011)
12/13/2011	<u>16</u>	Summons Issued as to Ora J. Watson. (br) (Entered: 12/13/2011)
12/21/2011	<u>17</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint Veronica Edwards served on 12/20/2011, answer due 1/10/2012. (jua) (Entered: 12/22/2011)
12/21/2011	<u>18</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint Ora J. Watson served on 12/21/2011, answer due 1/11/2012. (jua) (Entered: 12/22/2011)
12/29/2011	<u>19</u>	MOTION for Extension of Time to File Objections as to <u>13</u> REPORT AND RECOMMENDATIONS by Paulius Telamy. (jua) (Entered: 12/29/2011)
12/30/2011	<u>20</u>	Order Granting In Part and Denying In Part Motion for Extension of Time. Signed by Judge James I. Cohn on 12/30/2011. (jcy) (Entered: 12/30/2011)

01/10/2012	<u>21</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Veronica Edwards, Ora J. Watson.(Losey, Daniel) (Entered: 01/10/2012)
01/12/2012	<u>22</u>	SCHEDULING ORDER: Amended Pleadings due by 5/16/2012. Discovery due by 5/2/2012. Joinder of Parties due by 5/16/2012. Motions due by 6/6/2012.. Signed by Magistrate Judge Patrick A. White on 1/11/2012. (tw) (Entered: 01/12/2012)
01/12/2012	<u>23</u>	MOTION to Withdraw <u>19</u> Motion for Extension of Time by Paulius Telamy. Responses due by 1/30/2012 (jua) (Entered: 01/12/2012)
01/13/2012	<u>24</u>	ORDER adopting <u>13</u> Report and Recommendations; terminating <u>23</u> Motion to Withdraw and construing <u>23</u> Motion to Withdraw as a Notice of Non-Objection; dismissing with prejudice Defendant Armor Correctional Health Service; dismissing without prejudice Defendant Dr. Mark Martindale, D.D.S. Plaintiff may file an Amended Complaint only to provide facts which would support an Eighth Amendment violation against Defendant Dr. Martindale by no later than 1/31/2012. Should Plaintiff fail to file an Amended Complaint by 1/31/2012, this case will proceed solely against Defendants Nurse Veronica Edwards and Nurse Ora Watson. Signed by Judge James I. Cohn on 1/13/2012. (awe) (Entered: 01/13/2012)
02/01/2012	<u>25</u>	NOTICE of Change of Address by Paulius Telamy (System updated) (jua) (Entered: 02/02/2012)
02/01/2012	<u>26</u>	FIRST AMENDED COMPLAINT against Veronica Edwards, Mark O. Martindale, Ora J. Watson filed in response to <u>24</u> ORDER adopting <u>13</u> Report and Recommendations, filed by Paulius Telamy.(jua) (Main Document 26 replaced on 5/23/2012) (ail). (Entered: 02/02/2012)
02/01/2012	<u>27</u>	Summons Issued as to Mark O. Martindale. (jua) (Entered: 02/02/2012)
02/01/2012	<u>28</u>	MOTION for Appointment of Counsel by Paulius Telamy. Responses due by 2/21/2012 (jua) (Entered: 02/02/2012)
02/01/2012	<u>29</u>	MEMORANDUM of Law in Support re <u>28</u> MOTION to Appoint Counsel by Paulius Telamy. (jua) (Entered: 02/02/2012)
02/01/2012	<u>30</u>	DECLARATION in Support re <u>28</u> MOTION to Appoint Counsel filed by Paulius Telamy. (jua) (Entered: 02/02/2012)
02/07/2012	<u>31</u>	ORDER denying <u>28</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 2/7/2012. (cz) (Entered: 02/07/2012)
02/09/2012	<u>32</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Veronica Edwards, Ora J. Watson.(Losey, Daniel) (Entered: 02/09/2012)
02/13/2012	<u>33</u>	NOTICE of Change of Address by Paulius Telamy (System updated) (ar2) (Entered: 02/13/2012)
02/23/2012	<u>34</u>	NOTICE of Change of Address by Paulius Telamy (No update needed) (ar2) (Entered: 02/23/2012)
02/23/2012	<u>35</u>	MOTION to Court to Compel <i>the Defendant's to Address the Issue of the Dr. M.O Martindale DDS</i> Re: <u>26</u> FIRST AMENDED COMPLAINT by Paulius Telamy. Responses due by 3/12/2012 (ar2) (Entered: 02/23/2012)
02/23/2012	<u>36</u>	NOTICE of Filing Discovery: Plaintiff First Request for Production of Documents by Paulius Telamy (ar2) (Entered: 02/23/2012)
02/28/2012	<u>37</u>	MOTION to Take Deposition from Plaintiff <i>by Videotape</i> by Veronica Edwards, Ora J. Watson. (Losey, Daniel) (Entered: 02/28/2012)
03/05/2012	<u>38</u>	NOTICE of Filing: Plaintiff's First Set Of Interrogatories To Defendant, Veronica Edwards, Armor Corrections health Services Inc. by Paulius Telamy (cqs)Text Modified on 3/5/2012 (cqs). (Entered: 03/05/2012)
03/05/2012	<u>39</u>	NOTICE of Filing: Plaintiff's First Set Of Interrogatories to Defendat Nurse Ora J. Watson, Armor Correctionsl Health Services, Inc by Paulius Telamy (cqs) (Entered: 03/05/2012)

03/05/2012	<u>40</u>	MOTION to Strike RE:questions in videotape deposition by Paulius Telamy. Responses due by 3/22/2012 (cqs) (Entered: 03/05/2012)
03/08/2012	<u>41</u>	RESPONSE in Opposition re <u>37</u> MOTION to Take Deposition from Plaintiff by Videotape, <u>40</u> MOTION to Strike filed by Veronica Edwards, Ora J. Watson. (Losey, Daniel) (Entered: 03/08/2012)
03/09/2012	<u>42</u>	MOTION to Strike <u>37</u> MOTION to Take Deposition from Plaintiff by Videotape by Paulius Telamy. Responses due by 3/26/2012 (cbr) (Entered: 03/09/2012)
03/12/2012	<u>43</u>	NOTICE of Filing Discovery: First Set of the Interrogatories Question to Defendant, Dr. M.O. Martin Dale, DDS Armor Correctional Health, Inc. by Paulius Telamy.(yha) (Entered: 03/12/2012)
03/20/2012	44	ORDER denying <u>42</u> Motion to Strike ; deferring ruling on compelling defendants to respond to the claims against Dr. Martindale, <u>35</u> Motion to Compel; granting <u>37</u> Motion to Take Deposition from Paulius Telamy ; denying <u>40</u> Motion to Strike, the plaintiff may file objections to questions at the deposition.. Signed by Magistrate Judge Patrick A. White on 3/20/2012. (cz) (Entered: 03/20/2012)
03/26/2012	<u>45</u>	MOTION for Protective Order <i>HIPAA Qualified and Order to Disclose Protected Health Information</i> by Veronica Edwards, Ora J. Watson. (Losey, Daniel) Modified Text on 3/27/2012 (ls). (Entered: 03/26/2012)
03/27/2012	46	ORDER granting <u>45</u> Defendnats' Motion for HIPPA Qualified Protective Order and Order to Disclose PRotected Health Inforamtion.. Signed by Magistrate Judge Patrick A. White on 3/27/2012. (cz) (Entered: 03/27/2012)
03/28/2012	<u>47</u>	MOTION to Compel <i>Discovery</i> (Responses due by 4/16/2012), MOTION for Sanctions by Paulius Telamy. (cbr) (Entered: 03/29/2012)
04/03/2012	48	ORDER deferring ruling on <u>47</u> Motion to Compel; denying <u>47</u> Motion for Sanctions; deferring ruling on <u>35</u> Motion to Compel, Defendants shall respond to the motions forthwith.. Signed by Magistrate Judge Patrick A. White on 4/3/2012. (cz) (Entered: 04/03/2012)
04/05/2012	<u>49</u>	RESPONSE in Opposition re <u>47</u> MOTION to Compel <i>Discovery</i> MOTION for Sanctions filed by Veronica Edwards, Ora J. Watson. (Losey, Daniel) (Entered: 04/05/2012)
04/12/2012	50	ORDER denying <u>47</u> Motion to Compel defendants to respond to claims against Dr. Martindale, Dr. Martindale has not yet been served; denying <u>35</u> Motion to Compel for the reasons stated in defendants response. The plaintiff must attempt to obtain discovery through discovery requests to the defendants.. Signed by Magistrate Judge Patrick A. White on 4/12/2012. (cz) (Entered: 04/12/2012)
04/12/2012	<u>51</u>	ORDER Re Service of Process Requiring Personal Service upon Dr. Mark O. Martindale,DDS. Signed by Magistrate Judge Patrick A. White on 4/12/2012. (br) (Entered: 04/12/2012)
04/12/2012	<u>52</u>	Summons Issued as to Mark O. Martindale. (br) (Entered: 04/12/2012)
04/17/2012	<u>53</u>	SUPPLEMENTAL REPORT AND RECOMMENDATIONS re <u>1</u> Complaint filed by Paulius Telamy. Recommending 1. The operative complaints in this case are the initial complaint and the amended complaint (DE#26). 2. The case will be permitted to proceed against Dr. Martindale for lack of adequate dental treatment. Objections to RRdue by 5/4/2012. Signed by Magistrate Judge Patrick A. White on 4/16/2012. (tw) (Entered: 04/17/2012)
04/19/2012	<u>54</u>	SUMMONS (Affidavit) Returned Executed on <u>26</u> Amended Complaint Mark O. Martindale served on 4/17/2012, answer due 5/8/2012. (cbr) (Entered: 04/19/2012)
04/20/2012	<u>55</u>	NOTICE of Inquiry by Paulius Telamy. (Docket Sheet sent). (ar2) (Entered: 04/23/2012)
04/20/2012	<u>56</u>	NOTICE of Filing Discovery: Plaintiff's Objection to Defendants Attempt at a Second Deposition by Paulius Telamy. (ar2) (Entered: 04/23/2012)

05/04/2012	<u>58</u>	Plaintiff's Second Set of Interrogatories by Paulius Telamy (cbr) (Entered: 05/07/2012)
05/04/2012	<u>59</u>	MOTION to Produce by Paulius Telamy. (cbr) (Entered: 05/07/2012)
05/07/2012	<u>57</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Mark O. Martindale.(Losey, Daniel) (Entered: 05/07/2012)
05/07/2012	<u>60</u>	MOTION for Extension of Time to Comply by Paulius Telamy. Responses due by 5/24/2012 (cbr) (Entered: 05/07/2012)
05/08/2012	<u>61</u>	ORDER denying <u>59</u> Motion to Produce, this is a discovery request; denying <u>60</u> Motion for Extension of Time, plaintiff states the defendants stated they have provided the information in the medical records.. Signed by Magistrate Judge Patrick A. White on 5/8/2012. (cz) (Entered: 05/08/2012)
05/17/2012	<u>62</u>	MOTION for Appointment of Counsel by Paulius Telamy. Responses due by 6/4/2012 (cbr) (Entered: 05/17/2012)
05/17/2012	<u>63</u>	Declaration in Support of Motion for the Appointment of Counsel re <u>62</u> MOTION to Appoint Counsel filed by Paulius Telamy. (cbr) (Entered: 05/17/2012)
05/17/2012	<u>64</u>	MEMORANDUM of Law in Support of Motion for Appointment of Counsel re <u>62</u> MOTION to Appoint Counsel by Paulius Telamy. (cbr) (Entered: 05/17/2012)
05/17/2012	<u>65</u>	ORDER adopting <u>53</u> Supplemental Report and Recommendations. This case shall proceed against Dr. Martindale for lack of adequate dental treatment. The operative complaints are the initial <u>1</u> Complaint and the <u>26</u> Amended Complaint. Signed by Judge James I. Cohn on 5/17/2012. (awe) (Entered: 05/17/2012)
05/22/2012	<u>66</u>	ORDER denying <u>62</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 5/22/2012. (cz) (Entered: 05/22/2012)
06/05/2012	<u>67</u>	MEMORANDUM of Law In Support of Civil Action 42 USC Section 1983 re <u>26</u> Amended Complaint by Paulius Telamy. (gp) (Entered: 06/06/2012)
06/06/2012	<u>68</u>	MOTION for Summary Judgment by Veronica Edwards, Mark O. Martindale, Ora J. Watson. Responses due by 6/25/2012 (Losey, Daniel) (Entered: 06/06/2012)
06/06/2012	<u>69</u>	Statement of: Material Facts by Veronica Edwards, Mark O. Martindale, Ora J. Watson re <u>68</u> MOTION for Summary Judgment (Losey, Daniel) Modified Text on 6/7/2012 (ls). (Entered: 06/06/2012)
06/06/2012	<u>70</u>	NOTICE of Filing Documents by Veronica Edwards, Mark O. Martindale, Ora J. Watson re <u>69</u> Statement, <u>68</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Exhibit, # <u>21</u> Exhibit, # <u>22</u> Exhibit, # <u>23</u> Exhibit, # <u>24</u> Exhibit, # <u>25</u> Exhibit, # <u>26</u> Exhibit, # <u>27</u> Exhibit, # <u>28</u> Exhibit, # <u>29</u> Exhibit, # <u>30</u> Exhibit)(Losey, Daniel) Modified Text on 6/7/2012 (ls). (Entered: 06/06/2012)
06/11/2012	<u>71</u>	MOTION for Extension of Time of Pretrial Scheduling Order re <u>22</u> Scheduling Order by Paulius Telamy. Responses due by 6/28/2012 (cbr) (Entered: 06/11/2012)
06/11/2012	<u>72</u>	MOTION to Extend <u>22</u> Pretrial Scheduling Order by Paulius Telamy. Responses due by 6/28/2012 (ar2) (Entered: 06/12/2012)
06/12/2012	<u>73</u>	ORDER denying <u>71</u> Motion for Extension of Time; denying <u>72</u> Motion for Extension of Time of dates entered in pre-trial scheduling order. the case is now at the summary judgement stage.. Signed by Magistrate Judge Patrick A. White on 6/12/2012. (cz) (Entered: 06/12/2012)
06/19/2012	<u>74</u>	ORDER INSTRUCTING PRO SE PLAINTIFF as to <u>68</u> MOTION for Summary Judgment .(Responses due by 7/13/2012). Signed by Magistrate Judge Patrick A. White on 6/18/2012. (tw) (Entered: 06/19/2012)
06/21/2012	<u>75</u>	MOTION for Extension of Time to File Response as to <u>68</u> MOTION for Summary Judgment by Paulius Telamy. (cbr) (Entered: 06/21/2012)

06/25/2012	<u>76</u>	ORDER granting <u>75</u> Motion for Extension of Time to File Response/Reply re <u>75</u> MOTION for Extension of Time to File Response/Reply as to <u>68</u> MOTION for Summary Judgment Responses due by 7/27/2012. No further extensions will be granted. Signed by Magistrate Judge Patrick A. White on 6/25/2012. (cz) (Entered: 06/25/2012)
06/25/2012	<u>77</u>	Pretrial Statement by Paulius Telamy (ar2) (Entered: 06/26/2012)
06/26/2012	<u>78</u>	RESPONSE in Opposition Re: <u>68</u> MOTION for Summary Judgment filed by Paulius Telamy. (ar2) (Entered: 06/26/2012)
06/26/2012	<u>79</u>	DECLARATION in Opposition Re: <u>68</u> MOTION for Summary Judgment filed by Paulius Telamy. (ar2) (Entered: 06/26/2012)
06/26/2012	<u>80</u>	Statement of Disputed Factual Issues in Opposition and Incorporated Memorandum of Law Re: <u>68</u> MOTION for Summary Judgment by Paulius Telamy (ar2) (Entered: 06/26/2012)
06/26/2012	<u>81</u>	BRIEF in Opposition and Incorporated Memorandum of Law Re: <u>68</u> Motion for Summary Judgment by Paulius Telamy. (ar2) (Entered: 06/26/2012)
06/26/2012	<u>82</u>	Statement of Material Facts and Incorporated memorandum of Law in Support of <u>78</u> Response in Opposition Re: <u>68</u> MOTION for Summary Judgment by Paulius Telamy (ar2) (Entered: 06/26/2012)
07/03/2012	<u>83</u>	Stipulation/MOTION for Substitution of Counsel by Veronica Edwards, Mark O. Martindale, Ora J. Watson. Responses due by 7/20/2012 (Losey, Daniel) Modified Text on 7/6/2012 (ls). (Entered: 07/03/2012)
07/03/2012	<u>84</u>	NOTICE of Change of Address by Daniel Lee Losey (Losey, Daniel) (Entered: 07/03/2012)
07/03/2012	<u>85</u>	NOTICE by Veronica Edwards, Mark O. Martindale, Ora J. Watson <i>Pretrial Statement</i> (Losey, Daniel) (Entered: 07/03/2012)
07/03/2012	<u>87</u>	PRETRIAL STATEMENT by Veronica Edwards, Mark O. Martindale, Ora J. Watson (ls)(See Image at DE # <u>85</u>) (Entered: 07/06/2012)
07/06/2012	<u>86</u>	RESPONSE/REPLY to <u>79</u> Affidavit in Opposition to Motion, <u>81</u> Trial Brief, <u>80</u> Statement by Veronica Edwards, Mark O. Martindale, Ora J. Watson. (Losey, Daniel) (Entered: 07/06/2012)
07/06/2012	<u>88</u>	Clerks Notice to Filer re <u>85</u> Notice (Other). Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re–docketed by the Clerk, see [de#87]. It is not necessary to refile this document. (ls) (Entered: 07/06/2012)
07/06/2012	<u>89</u>	REPLY to Response to Motion re <u>68</u> MOTION for Summary Judgment filed by Veronica Edwards, Mark O. Martindale, Ora J. Watson. (ls)(See Image at DE # <u>86</u>) (Entered: 07/09/2012)
07/09/2012	<u>90</u>	Clerks Notice to Filer re <u>86</u> Response/Reply (Other). Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re–docketed by the Clerk, see [de#89]. It is not necessary to refile this document. (ls) (Entered: 07/09/2012)
07/11/2012	<u>91</u>	Statement Of Disputed Factual Issues In Opposition To <u>68</u> MOTION for Summary Judgment and Incorporated Memorandum of Law. filed by Paulius Telamy. (cqs) (Entered: 07/11/2012)
07/11/2012	<u>92</u>	Brief In Support of <u>91</u> Response in Opposition to Motion For Summary Judgment. by Paulius Telamy. (cqs) (Entered: 07/11/2012)
07/11/2012	<u>93</u>	Statement Of Material Facts In Support of Paulius Telamy's <u>92</u> Memorandum (cqs) (Entered: 07/11/2012)
07/11/2012	<u>94</u>	NOTICE of Filing Documents in Support of <u>91</u> Response in Opposition to Motion by Paulius Telamy. (cqs) (Entered: 07/11/2012)
07/11/2012	<u>95</u>	MOTION to Strike any and all motions, pleadings and exhibits that are not relevant to this case. by Paulius Telamy. Responses due by 7/30/2012 (cqs) (Entered: 07/11/2012)

		07/11/2012)
07/16/2012	<u>96</u>	ORDER respectfully deferring ruling on <u>83</u> Unstipulated Motion for Substitution of Counsel to the United States District Judge Cohn, denying <u>95</u> plaintiff's Motion to Strike all irrelevant pleadings. Signed by Magistrate Judge Patrick A. White on 7/16/2012. (cz) (Entered: 07/16/2012)
07/16/2012	<u>97</u>	OBJECTION to Defendants Filed Reply to Telamy Response in Opposition to Motion re <u>68</u> MOTION for Summary Judgment filed by Paulius Telamy. (tp) (Entered: 07/17/2012)
07/30/2012	<u>98</u>	Motion/Notice of right to be present at any deposition by Paulius Telamy (mg) (Entered: 07/31/2012)
07/30/2012	<u>99</u>	Letter from Paulius Telamy with regard to response to motion for summary judgment (mg) (Entered: 07/31/2012)
08/02/2012	100	*Endorsed Order The plaintiff's motion to notify the Court is granted to the extent that should the plaintiff obtain counsel he would be entitled to be present at his deposition. Signed by Magistrate Judge Patrick A. White on 8/2/2012. (cz) (Entered: 08/02/2012)
12/07/2012	<u>101</u>	ORDER granting <u>83</u> Stipulation for Substitution of Counsel. Signed by Judge James I. Cohn on 12/7/2012. (ams) (Entered: 12/07/2012)
01/11/2013	<u>102</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>68</u> MOTION for Summary Judgment filed by Mark O. Martindale, Veronica Edwards, Ora J. Watson Recommending that: 1) the defendants joint Motion for Summary Judgment (DE#68) be DENIED, IN PART, but solely on the claim that on March 18 and 19, 2010, defendant Edwards refused plaintiff Telamy prescribed medications for infection and pain; and that the Defendants joint Motion (DE#68) otherwise be GRANTED as to all other claims against defendants Martindale, Edwards and Watson; and 2) this case remain pending solely against defendant Nurse Edwards on the claim that for two days, immediately after extraction of a tooth with extensive decay and abscessed gingiva, she denied the plaintiff Telamy prescribed medication.. Objections to RRdue by 1/28/2013 Signed by Magistrate Judge Patrick A. White on 1/11/2013. (br) (Entered: 01/11/2013)
01/11/2013	<u>103</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Paulius Telamy Recommending that this case be placed on the trial calendar of the District Judge. Objections to RRdue by 1/28/2013. Signed by Magistrate Judge Patrick A. White on 1/11/2013. (br) (Entered: 01/11/2013)
01/28/2013	<u>104</u>	MOTION For Appointment of Counsel by Paulius Telamy. Responses due by 2/14/2013 (yar) (Entered: 01/28/2013)
01/28/2013	<u>105</u>	Restricted Image (yar) Modified text on 1/28/2013 per 106 Clerks Notice(yha). (Entered: 01/28/2013)
01/28/2013	106	Clerks Notice of Docket Correction DE <u>105</u> . Document Filed in Wrong Case; Document restricted and docket text modified. Document refiled in correct case # 12-CV-22616. (yar) (Entered: 01/28/2013)
02/04/2013	<u>107</u>	SUPPLEMENT of Record Pretrial <u>77</u> Statement by Paulius Telamy (yar) (Entered: 02/05/2013)
02/05/2013	<u>108</u>	ORDER granting in part and denying in part <u>68</u> Motion for Summary Judgment; adopting <u>102</u> Report and Recommendations. Certificate of Appealability: No Ruling; adopting <u>103</u> Report and Recommendations. Certificate of Appealability: No Ruling. Signed by Judge James I. Cohn on 2/5/2013. (ams) (Entered: 02/05/2013)
02/05/2013	<u>109</u>	SCHEDULING ORDER: Jury Trial set for 5/13/2013 09:00 AM in Fort Lauderdale Division before Judge James I. Cohn. Calendar Call set for 5/9/2013 09:00 AM in Fort Lauderdale Division before Judge James I. Cohn. In Limine Motions due by 4/16/2013. Pretrial Stipulation due by 5/3/2013. Signed by Judge James I. Cohn on 2/5/2013. (ls) (Entered: 02/06/2013)

02/15/2013	<u>110</u>	Petition for a Writ of Habeas Corpus Ad Testificandum by Paulius Telamy. (yar) (Additional attachment(s) added on 2/19/2013: # <u>1</u> Text of Proposed Order Order Granting Writ of Habeas Corpus Ad Testificandum) (yar). (Entered: 02/19/2013)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62066-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

PAULIUS TELAMY, :
 :
 Plaintiff, :
 :
 v. :
 :
 ARMOR CORRECTIONAL HEALTH :
 SERVICES, et al., :
 :
 Defendants. :

REPORT OF
MAGISTRATE JUDGE

I INTRODUCTION

On 12/9/11, Plaintiff Paulius Telamy, a state prisoner at Okeechobee C.I., filed an initial *pro se* civil rights complaint for damages and other relief pursuant to 42 U.S.C. §1983 with supporting documents (DE#1), alleging indifference to his medical/dental needs in 2010 while he was previously confined as a pretrial detainee at the Broward County Jail/North Broward Bureau ("NBB"). In the initial pleading, Telamy designated 4 defendants: Armor Correctional Health Services, Inc. ("Armor"); Veronica Edwards, LPN; Ora J. Watson, LPN; and Dr. Mark O. Martindale, DDS. As discussed below in Section "I.A." of this Report, the Complaint, as later Amended (DE#26), remains pending against defendants Edwards, Watson, and Martindale, based on the allegations in DE#s 1 and 26.

This Cause is presently before the Court upon a Motion for Summary Judgment (DE#68) filed jointly by defendants Edwards, Watson, and Martindale, as to which the plaintiff Telamy, as a *pro se* litigant, was advised of his right to respond (Order, DE#74).¹

¹ Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is proper

[i]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

In Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Court held that summary judgment should be entered only against

With their Motion (DE#68) the defendants submitted a Statement of Material Facts (DE#69), and a "Notice of Filing Documents In Sup-

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. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. (citations omitted)

Thus, in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Court held that summary judgment should be entered only 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. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. (citations omitted). Thus, pursuant to Celotex and its progeny, a movant for summary judgment bears the initial responsibility of informing the court of the basis for his motion by identifying those parts of the record that demonstrate the nonexistence of a genuine issue of material fact. This demonstration need not be accompanied by affidavits. Hoffman v. Allied Corp., 912 F.2d 1379, 1382 (11 Cir.1990). If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party, to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. Avirgan v. Hull, 932 F.2d 1572, 1577 (11 Cir.), cert. denied, 112 S.Ct. 913 (1992). It is the nonmoving party's burden to come forward with evidence on each essential element of his claim sufficient to sustain a jury verdict. Earley v. Champion International Corp., 907 F.2d 1077, 1080 (11 Cir.1990). The non-moving party cannot rely solely on his complaint and other initial pleadings to contest a motion for summary judgment supported by evidentiary material, but must respond with affidavits, depositions, or otherwise to show that there are material issues of fact which require a trial Fed.R.Civ.P. 56(e); Coleman v. Smith, 828 F.2d 714, 717 (11 Cir.1987). If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986); Baldwin County, Alabama v. Purcell Corp., 971 F.2d 1558 (11 Cir.1992). "A mere 'scintilla' of evidence supporting the opposing party's position 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 (11 Cir. 1990) (citing Anderson v. Liberty Lobby, Inc., supra).

Pursuant to Brown v. Shinbaum, 828 F.2d 707 (11 Cir. 1987), the Order of Instructions to Pro Se Plaintiff Concerning Response to Motion for Summary Judgment (DE#74) was entered to inform the pro se plaintiff of his right to respond to the defendants' joint motion for summary judgment, and instruct him regarding requirements under Fed.R.Civ.P. 56 for a proper response to such a motion.

port of Their Motion for Summary Judgment" (DE#70) listing 28 documents. The supporting documents/exhibits filed by the defendants, however, consist of 30 documents (DE#s 70-1 to 70-30), which were not scanned into the Court's CM/EFC docket in the order listed on the Notice of Filing.

It is noted that defendants' exhibits consist in pertinent part of 21 medical documents from plaintiff Telamy's medical chart (DE#s 70-1 to 70-2; and 70-10 to 70-28), which are relevant to the plaintiff's claims and defendants' asserted defenses. Defendants' exhibits also include 6 non-medical documents, which are pertinent to the parties' claims and defenses. Those 6 exhibits are:

- (DE#70-3) 5/14/12 Affidavit by Jeffrey Meral, DDS, (medical expert).
- (DE#70-4) 5/13/12 Affidavit by Ora J. Watson, LPN, (defendant).
- (DE#70-5) 5/13/12 Affidavit by Veronica Edwards, LPN, (defendant).
- (DE#70-6) 5/13/12 Affidavit by Mark O. Martindale, DDS, (defendant).
- (DE#70-9) Excerpt from 4/25/12 Deposition of Plaintiff Telamay.
- (DE#70-30) Summary (showing Telamy's 5/26/10 transfer from the NBB).

Finally, defendants' exhibits include 3 other non-medical documents: a Probable Cause Affidavit (DE#70-7), a Broward Sheriff's Office ("BSO") Booking Report (DE#70-8), and a Florida DOC record pertaining to Telamy (DE#70-29).

Plaintiff Telamy, after notice of his right to respond [i.e., Order of Instructions, DE#74], filed his Response captioned "Declaration in Opposition to Defendant's Motion for Summary Judgment" sworn under penalty of perjury pursuant to 28 U.S.C. §1746 (DE#79, pp. 1-8) with supporting Exhibits labeled #1 to #33 (at DE#79, pp. 9-46). Plaintiff's Exhibits consist of Medical Records (Exhibits #s 1-15, and 20-34, scanned at DE#79 pp.12-27 and pp.32-46), and four

pages of documents from Attorney Christopher Cloney (Exhibits #s 16-19, scanned at DE#79 pp.28-31). Plaintiff also submitted a Statement of Disputed Facts (DE#80); a Brief (DE#81) opposing defendants' motion; and a Statement of Material Facts (DE#82).

Defendants filed a Reply (DE#86) opposing Plaintiff's Declaration [DE#79]. Thereafter, Plaintiff submitted more filings: a Brief (DE#92); a Statement of Material Facts (DE#93); a Notice of filing with no attachments (DE#94); and a "Motion to Strike" (DE#95) directed to "any and all motion, pleading, all documents, and exhibit from the defendants...that are not relevant to this case."

A. Portions of the Record being Disregarded

Although a paperless Order (DE#96) in pertinent part denied plaintiff's Motion to Strike DE#95, it is noted here that, for reasons stated below, three of the defendants' above-mentioned exhibits pertaining to Telamy [the Probable Cause Affidavit (DE#70-7), the BSO Booking Report (DE#70-8), and Florida DOC record (DE#70-29), are being disregarded in this proceeding. So too, is Paragraph 1 of the defendants' "Statement of Material Facts" (DE#69, p.1, ¶1) -- which references the Probable Cause Affidavit and the Booking Report -- being totally disregarded.

For purposes of this Report, and consideration of the Plaintiff's claims, and the defendants' defenses and pending Motion for Summary Judgment, the content of those three Exhibits (at DE#s 70-7, 70-8, and 70-29) and of Paragraph 1 of the Statement of Material Facts (DE#69, p.1, ¶1) is irrelevant to Telamy's dental/medical concerns, and irrelevant to the question of whether or not the Defendants were deliberately indifferent to his serious medical needs as Telamy claims. The fact of Telamy's confinement in a state prison, and of his prior confinement in a Broward County jail facility (both disclosed by him upon filing his complaint) is relevant and considered solely insofar as it dictates what body of law pertains to the claims and allegations of his complaint (i.e.

Estelle v. Gamble, 429 U.S. 97 (1976), and its progeny, which relate to medical claims brought by persons who are jailed or imprisoned). That decisional law is further discussed in Section II of this Report, below. It is undisputed that Plaintiff Telamy had already been detained in the Broward County jail system for a period of time when the alleged events involving the named defendants occurred in 2010. As reflected in medical records filed by both plaintiff Telamy and the defendants, in 2009 Telamy had been detained at "PRF" [the Paul Rein Detention Facility, in Pompano Beach] (see e.g. Defendants' Exhibits at DE#s 70-15, 70-16, 70-21 and 70-26; and see Plaintiff's Exhibits #s 20, 21, and 31-33 scanned at DE#79 pp.32-33, and pp.43-45). By January 2010 Telamy was detained at the NBB [North Broward Bureau] where all of the events alleged in his complaints (DE#s 1 and 26) occurred (see Defendants' Exhibits at DE#s 70-10 to 70-28; and plaintiff's Exhibits #s 1-15, and 20-34). The fact that Telamy was transferred from NBB in May 2010 [on 5/26/10], not to return to the Broward County Jail system, is reflected in the Transfer Summary (DE#70-30) and in Plaintiff's Deposition Testimony (DE#70-9 p.3).

B. Background

A brief discussion of the procedural background of this case will serve to frame the plaintiff's claims which were allowed to go forward, after preliminary reviews of his pleadings.

Upon initial screening of the original complaint DE#1, a preliminary Report was entered recommending that the case be allowed to proceed against the Nurses Edwards and Watson; that the defendant Armor be dismissed with prejudice; and that Dr. Martindale be dismissed without prejudice, with leave to amend. (Report, DE#13)².

² The Preliminary Report summarized Telamy's allegations, as follows:

On March 2, 2010, the plaintiff submitted a sick call request because of pain in his upper jaw area. He was seen by Dr. Martindale who determined that he required oral surgery to remove the tooth. He was prescribed medication for seven days by Dr. Martindale prior to

That preliminary Report was adopted (Order, DE#24). Plaintiff then filed an Amended Complaint again naming the two nurses and Dr. Martindale (DE#26), and a Supplemental Report was entered (DE#53) recommending that the operative complaint in the case consist of the initial complaint (DE#1) together with the Amended Complaint (DE#26), and further recommending that the case be permitted to proceed against Dr. Martindale on plaintiff's claim for lack of adequate dental treatment. The Supplemental Report reiterated the summary of allegations from the Preliminary Report (DE#53 pp.4-5). It then, in pertinent part, explained the initial recommendation that Dr. Martindale be dismissed, without prejudice; summarized Plaintiff Telamy's amended allegations; and stated the basis for the supplemental recommendation that the case proceed against Dr. Martindale.³ The Supplemental Report was adopted, allowing the case

surgery, which took place on March 18, 2010. He claims that following the surgery, both Nurse Edward and Nurse Watson refused him medication prescribed by Dr. Martindale for pain and to prevent infection. He remained in pain and on March 31, 2010, his fiancé called an attorney who called the medical and dental department. He was seen by Dr. Martindale, and it was determined his gum area where the tooth was extracted was infected. A second surgery was performed as a result of the lack of treatment and failure to provide prescribed medication, resulting in pain and nerve damage to the left side of his face. He states that Martindale failed to respond to his medical needs causing him to suffer pain. He claims that these defendants work for Armor Health Care, who contract with the County to provide medical and dental treatment. He seeks monetary damages.

(Report, DE#13, p.4).

³ The Supplemental Report reiterated the summary of allegations from the Preliminary Report (DE#53 pp.4-5). It then, in pertinent part, explained the initial recommendation that Dr. Martindale be dismissed, without prejudice; summarized Plaintiff Telamy's amended allegations; and stated the basis for the supplemental recommendation that the case proceed against Dr. Martindale, as follows:

* * *

The [preliminary] Report concluded that the plaintiff has demonstrated that he suffered as a result of inadequate dental treatment. Both Nurse Edwards and Watson allegedly denied him medication which should have prevented the serious pain and infection requiring a second surgery. Service was ordered upon these defendants. However, the plaintiff's allegations against Dr. Martindale did not rise to a level of Eighth Amendment violation. The doctor treated

to proceed against Dr. Martindale (Order DE#65), with the Operative Complaint consisting of both pleadings (DE#s 1 and 26).

Accordingly, the case remains pending against the two Licensed Practical Nurses (Edwards and Watson), and against the dentist (Dr. Martindale), upon whose joint motion for summary judgment the matter is now pending before the Court.

II DISCUSSION

A. Law Pertaining to Claims of Denied/Delayed Medical Care; Deliberate Indifference, and Causal Connection

The Eighth Amendment governs conditions under which convicted prisoners are confined and the treatment they receive while in

him for his pain by performing two oral surgeries and apparently prescribed medication, which may not have been administered. His claim that Martindale could have prevented the situation by responding to his dental needs in a timely fashion was too conclusory to state a claim. Twombly, supra. It was therefore recommended that Martindale be dismissed without prejudice, and the plaintiff be permitted to amend his complaint to add facts to support an Eighth Amendment claim. The Report was adopted on January 13, 2012.

C. The Amended Complaint

In the amended complaint the plaintiff states he went without medication for pain for his dental abscess for thirteen days. His need for urgent dental attention was not responded to by Martindale until March 18, 2010, approximately 16 days later, during which time he experienced pain and eventual extraction of the tooth. He contends he sought prescribed medication on March 19, 2010, to no avail. He states that throughout the month of March of 2010, although he was prescribed some medication, he continually complained of pain. When Dr. Martindale re-examined and x-rayed and re-diagnosed plaintiff's extract[ion site], he stated there was a problem with clotting, which the plaintiff claims was a result of no follow up from the staff. Dr. Martindale prescribed more medication.

The plaintiff has added sufficient facts to minimally state a claim of denial of dental treatment by Dr. Martindale. It appears that Martindale did provide him with some care, and it is difficult to determine at this early stage if he allowed the plaintiff to suffer pain for an unnecessary period of time resulting in a further infection.

(Supplemental Report, DE#53, pp.8-9).

prison. Farmer v. Brennan, 511 U.S. 825, 832 (1994)(quoting Helling v. McKinney, 509 U.S. 25, 31 (1993)); Campbell v. Sikes, 169 F.3d 1353, 1362 (11 Cir.1999); see also Whitley v. Albers, 475 U.S. 312, 327 (1986)(holding that "the Due Process Clause affords...no greater protection"). It requires that convicted prisoners be provided "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Although the Constitution does not require comfortable prisons, it does not permit inhumane ones. Farmer, 511 U.S. at 832 (quoting Rhodes, at 349). Prison authorities may be sued for deliberate indifference to the serious medical needs of prisoners because such indifference constitutes the unnecessary and wanton infliction of pain. Estelle, supra, at 104.

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." Farrow v. West, 320 F.3d 1235, 1243 (11 Cir.2003) (quotations omitted). Courts have held that pain itself, including dental pain, if experienced over sufficient time, apart from an inmate's injury or underlying disease process, may qualify as a serious medical need. See McElligott v. Foley, 182 F.3d 1248, 1257 (11 Cir.1999)(finding that an inmate's complaints of abdominal pain over a course of 5½ months should have signaled a serious medical need); see Farrow, supra, 320 F.3d at 1247 (inmate complained about dental pain for about 15 months); Brown v. Hughes, supra, 894 F.2d at 1538 (painful broken foot can be serious medical need, and an official's deliberate delay on the order of hours in providing care for a serious and painful broken foot is sufficient to state a constitutional claim); Aldridge v. Montgomery, 753 F.2d 970, 972-73 (11 Cir.1985)(2½ hour delay in treatment for a bleeding cut under the eye held actionable); Hughes v. Noble, 295 F.2d 495 (5 Cir. 1961)(13 hour delay for broken and dislocated cervical vertebrae). See Stack v. McCotter, No. 02-4157, 79 Fed.Appx. 383, 389, 2003 WL 22422416, at *5 (10 Cir., Oct. 24, 2003)(failure to show permanent injury is not fatal to §1983 claim that dental staff delayed in-

mate's severe periodontitis, where pain itself can be considered substantial harm resulting from delay, giving rise to a cause of action for deliberate indifference). See also Danley v. Allen, 540 F.3d 1298, 1310 (11 Cir.2008) (citing Harrison v. Barkley, 219 F.3d 132, 137 (2 Cir. 2000) for proposition that even a tooth cavity can become a serious medical need because it will degenerate with increasingly serious medical complications if neglected over sufficient time).⁴

The Eighth Amendment, however, does not authorize judicial reconsideration of "every governmental action affecting the interests or well-being of a prisoner," Whitley, 475 U.S. at 319. Instead, "[a]fter incarceration, only the "'unnecessary and wanton infliction of pain'"...constitutes cruel and unusual punishment forbidden by the Eighth Amendment.'" Whitley, at 319 (quoting Ingraham v. Wright, 430 U.S. 651, 670 (1977) (quoting Estelle, 429 U.S. at 103) (citations omitted)). Crucial to establishing an "unnecessary and wanton infliction of pain" is some proof that officials acted with specific intent. The exact nature of the specific intent required depends on the type of claim at issue. Campbell, 169 F.3d at 1363.

⁴ In Harrison v. Barkley, the Court stated, as follows:

Ordinarily, a tooth cavity is not a serious medical condition, but that is at least in part because a cavity is so easily treatable. Absent intense pain or other exigency, the treatment of a cavity (in or out of prison) can safely be delayed by the dentist's schedule or the patient's dread or neglect, can be subject to triage or the management of care, can be mitigated or repaired temporarily, and can be coordinated with other related conditions that need to be treated together. Nevertheless, a tooth cavity is a degenerative condition, and if it is left untreated indefinitely, it is likely to produce agony and to require more invasive and painful treatments, such as root canal therapy or extraction. See 1993 Public Health Reports 1993, U.S. Department of Health and Human Services, Pub. No. 108: 657-672, *Toward Improving the Oral Health of Americans: an Overview of Oral Health Status and Care Delivery 3* ("Dental caries is a progressive disease process. Unless restorative treatment is provided, the carious lesion will continue to destroy the tooth, eventually resulting in pain, acute infection, and costly treatment to restore the tooth or have it removed.")

This specific-intent requirement for an Eighth Amendment violation applies to claims of medical indifference. Id. at 1363-64.

When a plaintiff was a pretrial detainee at the time of the events alleged in his complaint, and not a convicted prisoner, his claims which would lie under the Eighth Amendment prohibition against cruel and unusual punishment if he had been a convicted prisoner, arise instead from the Due Process Clause of the Fourteenth Amendment. See: Bell v. Wolfish, 441 U.S. 520, 535 (1979); Hamm v. DeKalb County, 774 F.2d 1567, 1574 (11 Cir.1985); Redman v. County of San Diego, 896 F.2d 362, 364-66 (9 Cir.1990). Because the minimum standard for providing medical care to a pretrial detainee under the Fourteenth Amendment is the same as the minimum standard required by the Eighth Amendment for a convicted prisoner, the Court may analyze Plaintiff Telamy's claims under the decisional law of both amendments. See Youmans v. Gagnon, 626 F.3d 557, 563 n. 6 (11 Cir.2010); Cottrell v. Caldwell, 85 F.3d 1480, 1490 (11 Cir.1996); Hamm, supra, 774 F.2d at 1574.

Whether an inmate/detainee's medical need requires attention as a matter of constitutional right depends upon its severity. Jail/detention facility officials violate a detainee's Constitutional rights under the Fourteenth Amendment if they withhold appropriate medical care with deliberate indifference to the inmate's serious medical needs. Estelle, supra, 429 U.S. at 104. To prevail on such a claim, the detainee must establish: 1) an "objectively serious deprivation," i.e. a serious medical need accompanied by a substantial risk of serious harm if unattended; 2) a response by public officials beyond negligence, i.e., one that is so inadequate as to constitute and "unnecessary and wanton infliction of pain;" and 3) an attitude of deliberate indifference, which shows that the defendants were aware of the facts from which a substantial risk of serious harm could be inferred, and that they actually did draw that inference. Taylor v. Adams, 221 F.3d 1254, 1258 (11 Cir.2002). The standard may be met where there is a showing that jail officials denied or delayed an inmate from receiving necessary

medical treatment for non-medical reasons, see Ancata v. Prison Health Services, Inc., 769 F.2d 700, 704 (11 Cir.1985). In addition, officials' inordinate delay in providing necessary treatment, without medical explanation, may evidence deliberate indifference, Farrow, supra, 320 F.3d at 1247, and the standard may be met where there is intentional, unexplained delay in providing access treatment for serious painful injuries, of which the defendant is aware, is made aware, or the existence of which should be readily apparent to the defendant. Brown v. Hughes, 894 F.2d 1533 (11 Cir.1990), and cases cited therein. Negligence is not enough, see Estelle, supra, at 104-06,⁵ and a mere difference of opinion between an inmate/detainee and jail/prison/institutional medical staff concerning his diagnosis and course of treatment does not rise to the level of a constitutional deprivation; nor does a difference of opinion among medical personnel over questions of treatment give rise to a constitutional claim.⁶

⁵ For medical claims the standard is met only where egregious conduct is present, as in instances where the 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) (summary judgment precluded where cessation of anti-psychotic medication resulted in repeated suicide attempts and self-mutilation); Rogers v. Evans, 792 F.2d 1052, 1058-59 (11 Cir. 1986) (suicide following misdiagnosis and mistreatment of psychosis). On the other hand, it is well settled that a showing of mere negligence, neglect, or medical malpractice is insufficient to recover on a §1983 claim. A showing of conscious or callous indifference is required. Estelle v. Gamble, supra, 429 U.S. at 104-06; Daniels v. Williams, 474 U.S. 327 (1986); Brown v. Hughes, 894 F.2d 1533, 1537-38 (11 Cir. 1990); Washington v. Dugger, 860 F.2d 1018, 1021 (11 Cir. 1988).

⁶ The Courts have long recognized that a difference of opinion between an inmate/detainee and jail/prison/institutional medical staff regarding medical matters, including the diagnosis or treatment which the inmate/detainee 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 (holding that "matter[s] of medical judgment" do not give rise to a §1983 claim; and upon reinstating a district Court's dismissal of a complaint which alleged that "more should have been done" to diagnose and treat a back injury, the Court stated that "A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At

The Eleventh Circuit in Campbell v. Sikes observed that the Supreme Court in Wilson v. Seiter, and later Farmer v. Brennan, "refined the inquiry" regarding satisfaction of the subjective element required for an Eighth Amendment deprivation. Campbell, 169 F.3d at 1363. The Court explained in Wilson, that the Eighth Amendment applies only to punishments, and that prison conditions are only punishment if a mental element of punitive intent is shown, Wilson, 501 U.S. at 300 ("If the pain inflicted is not formally

most it is medical malpractice"); Harris v. Thiqpen, 941 F.2d 1495, 1505 (11 Cir.1991) (noting that a mere difference of opinion as to a prisoner's diagnosis or course of treatment does not support a claim under the Eighth Amendment). 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); Westlake v. Lucas, 537 F.2d 587, 860 n.5 (6 Cir. 1976) ("Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law"); Alexander v. Federal Bureau of Prisons, 227 F.Supp.2d 657, 666-667 (E.D.Ky. 2002) (dismissing complaint, which amounted to difference of opinion between prisoner and health care providers concerning surgery for knee injury); Moraga v. Kaiser, 28 F.3d 107 (Table Case), No. 93-16911, 1994 WL 247093 at *2 (9 Cir. June 8, 1994) (affirming summary judgment for prison doctors, even though reconstructive surgery had been twice recommended, and was still being delayed after 16 months); Taylor v. Dutton, 85 F.3d 632 (Table Case), No. 95-3964, 1996 WL 253856 at *2 (7 Cir. May 7, 1996) (were one physician recommended surgery, but two others subsequently did not share that recommendation, the mere differences of opinion between medical personnel did not give rise to an 8th Amendment violation; and to the extent that Taylor's claim was based on his own disagreement with medical staff about his medical treatment, the complaint did not amount to deliberate indifference); White v. Napoleon, 897 F.2d 103, 110 (3 Cir. 1990) (If a plaintiff's disagreement with a doctor's professional judgment does not state a violation of the Eighth Amendment, then certainly no claim is stated when a doctor disagrees with the professional judgment of another doctor); Fulmore v. Mamis, No. 00 Civ. 2831(AJP), 2001 WL 417119, at *9 (S.D.N.Y. Apr. 23, 2001) (noting that the courts have repeatedly dismissed claims based on the refusal of prison doctors to order certain testing procedures, such as a CAT scan or an MRI, because such claims do not state a violation of the Eighth Amendment) (collecting cases).

meted out as punishment by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify"). In Farmer, the Court provided further explanation of the mental state that is required for deliberate indifference, Farmer, supra, 511 U.S. at 837-38 (holding that a prison official cannot be found liable under the 8th Amendment for denying an inmate humane conditions unless he knows of and disregards an excessive risk to inmate health or safety; and he must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and the defendant must also draw the inference).

As the Eleventh Circuit has noted post-Farmer, proof that a defendant should have perceived a risk, but did not, is insufficient. Campbell at 1364 (citing Farmer at 838); Cottrell, supra, 85 F.3d at 1491 (the official must have a subjectively "'sufficiently culpable state of mind,'" and "[t]here is no liability for 'an official's failure to alleviate a significant risk that he should have perceived but did not...'")(quoting Farmer, 511 U.S. at 834, 838). Liability may be imposed for deliberate indifference only if the plaintiff proves the defendant actually knew of "an excessive risk to inmate health or safety" and disregarded that risk." Campbell, at 1364 (citing Farmer, at 837).

In addition, a plaintiff must establish a causal connection between a named defendant's acts or omissions and an alleged deprivation of his constitutional rights in order to state a claim under 42 U.S.C. §1983. Goebert v. Lee County, 510 F.3d 1312, 1326 (11 Cir.2007) (plaintiff required to show: (1) that she had objectively serious medical need; (2) that Defendants acted with deliberate indifference to that need; and (3) that her injury was caused by Defendants' wrongful conduct); Thomas v. Bryant, 614 F.3d 1288, 1317 n. 29 (11 Cir.2010)(noting a plaintiff must "show a causal connection between the constitutional violation and his injuries" to prevail on any §1983 claim); Zatler v. Wainwright, 802 F.2d 397,

401 (11 Cir. 1986)(finding that a plaintiff must establish a causal connection between a defendant's actions, orders, customs, or policies and a deprivation of the plaintiff's constitutional rights in order to state a claim upon which relief may be granted in a §1983 action); LaMarca v. Turner, 995 F.2d 1526, 1538 (11 Cir.1993) (a deliberate indifference claim, causation, demands "an affirmative causal connection between the actions taken by a particular person 'under color of state law' and the constitutional deprivation.") (quoting Williams v. Bennett, 689 F.2d 1370, 1380 (11 Cir.1982)). An official's acts or omissions must be "the cause [,] not merely a contributing factor" of the constitutional violation. LaMarca, supra, 995 F.2d at 1538. Cf Ancata, supra, 769 F.2d at 706 (a causal connection may be established by proving that the official was personally involved in acts that resulted in a constitutional deprivation).

B. Analysis of Claims

The gravamen of Plaintiff Telamy's complaint, as amended, is that he had a dental condition which required pain medication, antibiotics, and surgical intervention by Dr. Martindale. He states he was prescribed pain and antibiotic medication, but claims it was for an inadequate period and that he then was without medication for a period before the procedure was performed on 3/18/10. He claims that, then, post-operatively he suffered in pain for 2 days when Nurses refused him medication that had been prescribed after surgery on the morning of 3/18/10. In addition to experiencing pain during that period without medication, Telamy believes/claims that that 2-day lack of medication led to further complications, and a second procedure by Dr. Martindale due to those complications, which according to Telamy included infection and continued pain at the site of the initial procedure. Frustrated that requests for relief were unheeded, Plaintiff Telamy enlisted his fiancé's and attorney's assistance in obtaining followup care and pain medication. There was further examination and treatment on 3/31/10.

Thereafter, in April 2010 Telamy suffered more problems which required further treatment by Dr. Martindale involving a tooth adjacent to the one which had been extracted, but not before Telamy had allegedly continued to suffer in pain for more than 2 weeks.

In sum, Telamy's pleadings allege, inter alia, claims of delay in providing treatment, and/or inadequacy of treatment; of failure to provide medication for significant periods of time -- leaving him in pain and allegedly failing to stem infection; and instances of refusal to provide medication that had been prescribed.

The claims against the defendant dentist, Mark O. Martindale, DDS, are analyzed in Section "II.B.1." of this Report, below; and the claims against the defendant Nurses, Veronica Edwards, LPN, and Ora J. Watson, LPN, are analyzed in Section "II.B.2."

Evidence of Record

The record, as demonstrated by Defendants' and Plaintiff's exhibits, shows that Plaintiff Telamy had a history of dental problems prior to the events of 2010 complained of in this case. [The defendants in their Motion for Summary Judgment state that "[s]ince the year 2000, Plaintiff had not received any dental treatment other than the treatment he received while incarcerated." (DE#68, p.8; Statement of Material Facts DE#69 ¶2, citing 4/25/12 Telamy Deposition Excerpt DE#70-9 T/42-43 in which Telamy testified that during the 12 years he had been in the U.S., he had never seen a dentist, other than when he was in jail)].

Evidence of Telamy's dental disease, at least as early as January 2009, is reflected in his Broward County Jail System/Armor medical records and therefore was known to medical staff reviewing his chart and responding to subsequent dental/medical needs. A 1/28/09 chart entry bearing the signature of Dr. Phillip Martin, DDS, indicates Telamy was seen for severe pain in Teeth #s 15, 16, and that they were unstable and needed extraction. [That examin-

ation indicated that there was also a "Deep MO" defect in tooth #13 [which later would become a subject of this lawsuit]. (DE70-11; and Ex.20 at DE#79 p.23). On 1/28/09 Telamy was prescribed 10 days of antibiotic and 7 days of pain medication (Id.); and according to a 2/4/09 chart entry by Dr. Glen Pearson, Telamy was seen on 2/4/09 [7 days after the 1/28 examination] for extraction of Teeth #s 15 and 16 (DE70-11; and Ex.20 at DE#79 p.23), for which Telamy gave written consent that day (Ex.32, DE#79 p.44). Two months later, on 4/6/09, Telamy was prescribed medication by Dr. Probst for a dental gum lesion (Ex.33, DE#79 p.45); and 2 days after that he was seen on 4/8/09 by Dr. Martin for a draining abscess/"gum boil" in the root area of tooth #12, the extraction of which would be required. On 4/8/09 Dr. Martin prescribed 10 days of antibiotics and 5 days of Tylenol (DE#70-11; Ex.20 DE#79 p.33). When Telamy returned on 4/15/09 and was seen by Dr. Pearson, he had had slight left side facial swelling; there was no extraction that day; the antibiotic prescribed on 4/8 was discontinued, and on 4/15/09 Dr. Pearson prescribed 7 more days of Tylenol, and 10 days of a new antibiotic for Telamy through the time of his next appointment scheduled for 4/22/09. (Ex.33, DE#79 p.45). On 4/22/09, Tooth #12 was extracted by Dr. Martin (DE#70-11; Ex.20 DE#79 p.33; Ex. 31 DE#79 p.43), and post-extraction Dr. Martin prescribed 3 additional days of pain medication (DE#70-11; Ex.33 at DE#79 p.45).

The parties' exhibits demonstrate that Telamy's dental problems continued. In a 1/30/10 Sick Call Request, as identification of his "Problem," Telamy sought "help with my tooth problem," complaining "I get abscess all ways my tooths, and pain. Please Help!" (Request, Ex.1 DE#79 p.13). The same day (1/30/10, at 17:45) Nurse Edwards acknowledged receipt of the Request, and as the "Triage Decision by Nursing Staff" she processed a "Referral to Dental." Nurse Edwards' corresponding 1/30/10 "Internal Clinical Referral Form" reflected the referral to Dental, as a routine problem, with her notations about Telamy's complaint, and her observation upon brief examination: "C/o [complains of] dental pain

and recurrent dental abscesses," and "Abscess was not seen at this time." (Ex.2, DE#79 p.14; and see Edwards Affidavit DE#70-5 ¶5).

Telamy was seen at the dental clinic 12 days later on 2/11/10 by Dr. Martindale. For that visit/examination, Dr. Martindale's 2/11/10 notations on inmate Telamy's chronological medical record (DE#70-11; Ex.20 DE#79 at p.32), which were written in the traditional "S.O.A.P." format,⁷ reflect the following: "S: Patient presents to dental stating 'I have a bump on my gums.'" "O: RMH, NKA [Reviewed Medical History/No Known Allergies] Clinical exam done; Tooth #13 has extensive decay, Abscesses in gingiva. PA [periapical] X-ray shows PA abscess [periapical abscess]." "A: PA Abscess tooth #13." "P: Adv[ised] pt [patient] tooth #13 requires extraction. Prescribe meds. R/S [Reschedule] in 1 wk [one week] for ext [extraction] of tooth #13. Patient dismissed in good condition. N.V. ext. #13 [next visit extract #13]. (Signed Mark O. Martindale DDS)." (Id.). On 2/11/10 Dr. Martindale prescribed 7 days of antibiotics and 7 days of Tylenol for pain, until 2/18/10 (Order Sheet: at DE#70-12, and Ex.21 DE79 p.33). The February 2010 medication chart for Telamy shows that starting with the p.m. shift of 2/11, through and including 2/18/10, his medications were administered (DE#70-13). The Affidavits of Nurses Edwards and Watson (DE#s 70-5 and 70-4, respectively) reflect that on the p.m. shifts for 2/12 to 2/14, and for 2/16 and 2/17/10, Edwards administered the prescribed medications; and that on the a.m. shifts of 2/13 to 2/15/10 Watson gave Telamy his prescribed medications.

On 3/2/10, Telamy [who by then had been without medication for 12 days] made another Sick Call Request, complaining of continued

⁷ "S.O.A.P." is a conventional format for charting observations, diagnosis, and course of treatment, upon examination of patients. "S" stands for subjective data obtained from the patient or others. "O" is for objective data obtained by observation, physical examination, diagnostic studies, etc. "A" is the treating medical personnel's assessment of the patient's status upon analysis of his/her problem(s). "P" stands for the plan for patient care, based on the other factors considered.

pain. (Sick Call Request, at DE#70-14, and Ex.3 DE#79 p.15). His stated Problem was "I request for my tooth's Pain, every day, I am in pain, so I want they do something for me; to help me. and also the abscess don't go no where." (Id.). That 3/2/10 Request was received/processed by Nurse Edwards that day, and it was "Referred to Dentist." Edwards' corresponding "Internal Clinical Referral Form," dated 3/2/10, reflected the referral to Dental as a Routine problem, with her notation about Telamy's complaint: "C/o [complains of] dental pain and states abscess is forming." (Ex.4 at DE#79; and see Edwards Affidavit, DE#70-5 ¶8).

The exhibits of record reveal that despite Nurse Edwards' referral "to dentist" on 3/2/10, there was no examination or treatment of Telamy or prescription of medication for 16 more days. Then he was seen by Dr. Martindale on 3/18/10 and tooth #13 was extracted by him [37 days, after Dr. Martindale's 2/11 chart entry had stated that Telamy was to be rescheduled for extraction of the tooth in 1 week]. Dr. Martindale's 11:37 a.m. 3/18/10 chart entry (at DE#70-11, and Ex.20 at DE#79 p.32) contains the following "S.O.A.P." notations: "S: Patient presents to dental clinic stating 'my tooth is still hurting';" "O: RMH [Reviewed Medical History], NKA "Clinical Exam done" PA [periapical] x-ray #13 already taken;" "A: Extraction #13;" "P: 3 carpules lidocaine w/ 1:100,000 Epi[nephrine] admin[istered]; tooth #13 extracted w/ elevator & forceps. OHI [oral hygiene instructions] Patient dismissed in good condition." (Id.). In conjunction with his 11:37 a.m. chart entry showing the tooth extraction, Dr. Martindale's 3/18/10 Prescription for 7 days of pain medication and antibiotic was entered on the a corresponding "ORDER SHEET" at 11:54 a.m., and next to the Dentist's signature Nurse Veronica Edwards placed her signature and the date/time of "3-18-10 1530," under the heading "Orders Noted." (ORDER SHEET: DE#70-12; DE#79 Ex.21).

Nurse Edwards states forthrightly in her Affidavit that it was she who prepared the March 2010 medication distribution chart

("MAR"/Medication Administration Record) for the 7 days of antibiotic (Amoxicillin) and pain medication (Tylenol Extra Strength) prescribed by Dr. Martindale on 3/18/10. [The MAR is a chart in calendar form, with blocks for each day of the month, which is relied upon by Nurses when distributing prescriptions to inmates during medication rounds]. Edwards states that in the horizontal columns of the MAR, labeled "A" [for a.m. medication rounds] and labeled "P" [for p.m. medication rounds], she made mistakes when placing the arrows on the chart which point to the date when each prescribed medication was to begin. (Edwards Affidavit at DE#70-5 ¶9). Nurse Edwards states that her placement of the arrows on the MAR indicated [mistakenly] that the Antibiotic and Tylenol ordered on the morning of 3/18 by Dr. Martindale were not to be given on the A.M. shifts of 3/18/10 and 3/19/10, and were not to be given on the P.M. shift of 3/18/10. (Edwards Affidavit, ¶9). According to her, the arrows therefore mistakenly indicated, for the A.M. medication rounds, that the Antibiotic and Tylenol were not to begin until the morning of 3/20/10. (Id., ¶9). Examination of the March 2010 chart/MAR (DE#70-18), however, shows that, as written, the arrows indicated that the antibiotic and pain medications were to be given on the evening shift of 3/19/10, yet no Nurse's initials appear in the squares for that date and shift for either of the two drugs, to indicate that they were administered. (Id.).

Despite the erroneous placement of the arrows discussed in Edwards' Affidavit, on the face of the March 2010 medication chart (the MAR) itself there were written other entries detailing the prescriptions to be followed: that each of the two medications was to be given "Bid x 7d" [i.e., "*bies in die*," meaning twice a day; and for 7 days, starting 3/18 and stopping 3/26/10]. (DE#70-18). In his Amendment, sworn under penalty of perjury pursuant to 28 U.S.C. §1746, the Plaintiff Telamy states in his "Statement of Facts" that on 3/18/10 when Nurse Edwards was distributing medications, he informed her his tooth #13 had been extracted, that Dr. Martindale had prescribed the Amoxicillin and Tylenol to begin

that day, and that she "indignantly refused" his request for the medications. (Amendment, DE#26, p.4, ¶8). Telamy states that again on 3/19/10, when she was making medication rounds, Nurse Edwards again refused to administer the antibiotic and pain medication when he sought the medications from her. (Amendment, DE#26, p.4, ¶9). Telamy further states, under penalty of perjury, that during the morning of 3/19/10 Nurse Watson was dispensing medications, and "denied Plaintiff his prescription," (Id.), but unlike his allegation against Nurse Edwards, Telamy does not state that he told Nurse Watson that he had just had a tooth extracted, that medication had been prescribed by Dr. Martindale for administration for 7 days starting 3/18 for 7 days, and that she then ignored him (Id.). In his sworn Declaration opposing the defendants' summary judgment motion (Declaration, DE#79), Telamy also states that on 3/18/10 he told Nurse Edwards that his tooth had been extracted, that the antibiotic and pain medication had been prescribed, and that despite her prior knowledge of the Order she refused him treatment [the medications] (DE#79 at p.3 ¶10). In the Declaration he also states that Nurse Watson on 3/19/10 did not provide him with prescribed medication, but again he does not state that he told her his tooth had been extracted, that the antibiotic and pain medication were to have started on 3/18, that he was in pain, and that she then refused him the medication. (DE#79 p.3 ¶11). Nurse Watson, in her Affidavit, states that she was assigned to morning medication rounds on 3/19/10, noticed that the MAR had been prepared for Telamy to receive Amoxicillin and Tylenol, but that an arrow was drawn through the 18th and through the a.m. shift of the 19th for both medications, indicating that they were to begin on the morning rounds of the 20th, and accordingly, she did not provide Telamy the medications during the morning shift of 3/19/10. (Watson Affidavit, DE#70-4 ¶6; and see MAR, DE#70-18).

On 3/21/10 Telamy submitted a Sick Call request asking that he be seen again by the dentist, and stating that his pain was much greater than before the 3/18 surgery/extraction, and that he could

not sleep. (DE#26 p.30; Ex.5 at DE#79 p.17). In Response, a Nurse [Vilma Dieppa, who is not designated as a defendant in this case] made a "Referral to Dental," and noted as follows at the foot of the Request: "Instructed to Patient, Procedure was Recently done & needs to give the ABT [antibiotic] & time to heal area, If worsens Report to Staff." (DE#26, p.30; Ex.5 at DE#79 p.17). A corresponding "Progress Note" in Telamy's medical chart (DE#26, p.44; Ex.28 at DE#79 p.40) contains the Nurse's "S.O.A.P" entries indicating: ("S") that Telamy complained of pain and asked to see the dentist again; ("O") that "Ø [no] swelling nor drainage [was] noted;" ("A") "Altered Comfort -- pain meds given as ordered;" ("P") "Antibiotic also continuing;" and that the patient was instructed to give the ABT's [antibiotics] time to work, and that "if no effectiveness" he should report to staff. (Id.).

Nurse Watson states (Affidavit, DE#70-4 at ¶¶7, 8) that she was assigned to morning medication rounds on 3/23 and 3/24/10, and administered the Amoxicillin and Tylenol as indicated on the MAR.

Nurse Edwards states (Affidavit, DE#70-5 at ¶10) that she was assigned to p.m. medication rounds on 3/22 and 3/24/10, and administered the Amoxicillin and Tylenol as indicated on the MAR.

Telamy states that on 3/25/10 he showed an unknown nurse his gums, and told her of his "significant pain." He states that two officers [Deputy Harris and an unknown Lieutenant, who are not designated as defendants in this case] were present. According to Telamy, Deputy Harris told the Lieutenant to take Telamy's grievance for processing. The record shows that Telamy's 3/25/10 Inmate Grievance was processed (DE#26, p.27). In it Telamy complained that starting after his 3/18/10 surgery/tooth extraction, he was supposed to get medications, that on 3/18 and again on 3/19 he was denied medication by nurses; that he then put in a sick call request, to which he received no answer; that he was "sore and swell with infection," and that he was "in pain" and that his tooth

was "still bleeding." Further examination/treatment was provided on to Telamy before his 3/25/10 grievance was answered. [A response to the 3/25/10 Grievance was written 14 days later on 4/8/10, stating, in pertinent part, that: "You were seen 3/31/10 for your concerns. Dry socket paste was applied," that "your medication was given as ordered for both cycles for both medications except for the am dose 3/25/10." (DE#26, p.27)].

The record contains a 3/28/10 "Internal Clinic Referral Form" with a Referral to "Dental" as a Routine matter, stating: "Meds finished Tylenol and Amoxicillin tooth was pulled C/O [complains of] pain and discomfort."

Telamy states in his sworn pleading (DE#26, p.5 ¶15) and in his sworn "Declaration" (DE#79, p.4 ¶16) that no longer being able to "tolerate the pain," he contacted his fiancé by phone; and also contacted Attorney Christopher Cloney for help. Telamy has submitted copies of a 12/21/11 letter from Mr. Cloney, with print outs from Cloney's records concerning events between 3/29/10 and 5/11/10, reflecting receipt of calls to Mr. Cloney's office from Telamy, and reflecting contacts made by counsel to the NBB (see DE#26, pp.21-24; and Exhs.16-19 at DE#79 pp.28-31). Cloney's records for 3/29/10 reflect Telamy's call of that date complaining that after his 3/18/10 tooth extraction nurses failed to administer medications until days later, that he had continued pain, swelling and bleeding, and a problem with the left eye, and that he still had not been seen by a doctor despite filing 3 Requests, and 1 grievance with no response. (Ex.17, at DE#79 p.29). Cloney's record indicates that he sent an "Email to Medical" on 3/29/10.

A "Progress Note" in Telamy's chart shows that at 3:50 a.m. on 3/31/10 a Nurse [not a defendant in this case] responded to a complaint by Telamy. The Nurse's notes indicate that Telamy's Subjective complaint was: "I have terrible pain where tooth was taken out and I see bright red blood when I eat." The Nurse's

Objective observations indicated the following: "B/M AAOx3" [Black Male; Awake, Alert, and Oriented as to person, place and time]; "C/O toothache 8 on scale of 0-10 [with] 10 being [the worst] possible pain. Sharp and Throbbing. No swelling or redness observed." Her assessment was: "Alt[eration] of Comfort" and "Risk for Infection." Her Plan was "Initiated nursing protocol," "good oral hygiene," and that the patient was to "Notify medical" if his symptoms were unrelieved. (Progress Notes, at DE#70-23 and DE#26 p.43). The nurse's corresponding chart entry, dated 3/31/10 at 0355, reads: "Inc[idental] note: Dental referral completed."

Attorney Cloney's records for 3/31/10 show the following. Telamy called counsel on 3/31 stating that he still had not been seen in the Clinic for his problems at the site where his tooth was pulled on 3/18 ("swollen, painful, keeps bleeding and smells"); that during the night deputies had called the nurse to say that he was feeling ill, and the nurse had given him 2 Tylenol; that he had a problem with vision in his left eye; and that he had not yet received a response from Medical. (Ex.17 at DE#79 p.29). Counsel's action was to "Resend" [his previous Email]. (Id.). A further entry in Cloney's records for 3/31/10 indicates that he had received an Email response from the NBB. Mr. Cloney's 3/31/10 record notation reads: "FW: Telamy, Paulis Email from Medical re: I discussed the plan of care with the Dentist regarding Mr. Telamy. Meds have been reordered and I will ensure that he gets them immediately. Thank you." (Ex.18, DE#79 at p.30).

Thus, by the time Mr. Cloney received the 3/31/10 Email response, Telamy had already been treated that day by the Dentist and had received a new prescription. It is not clear whether the 3/31/10 dental consultation was precipitated by Telamy's 3/25 grievance, the 3/28 Internal Clinic Referral Form, Attorney Cloney's 3/29 and 3/31 Emails, or a combination of the same.

The record shows that Telamy was seen by Dr. Martindale at

11:45 a.m. on 3/31/10. Martindale's Dental Progress Note on Telamy's chart reflects his Subjective observation that Telamy presented to the clinic with a complaint that he was "still bleeding" from the area where his tooth had been pulled. Dr. Martindale's objective observations, as charted, were: "O: RMH [review medical history] NKA [no known allergies]. Clinical exam done Tissue around tooth #13 (post extraction) still inflamed. PA [periapical] X-ray taken shows PA Abscess is draining." His Assessment was: "A: Dry socket tooth #13." The Plan of Care was to administer 1 carpule of lidocaine, to "curette" the socket, place dry socket paste in the area, and use a chromic gut suture for closure; and have the situation monitored, have Telamy rescheduled for another dental visit, "Adv OHI" [advise Oral Hygiene Instructions], and prescribe medications. (3/31/10 Dental Progress Note, at DE#70-1; Martindale Affidavit at DE#70-6). Dr. Martindale prescribed Tylenol ES and the antibiotic Clindamycin to be given twice a day for 7 days (Affidavit at DE#70-6; Order Sheet at DE70-12); and the record shows that they were administered, as ordered, starting with the P.M. shift of 3/31/10, through and including the AM shift of 4/7/10 (see MAR/medication charts at DE#70-17 and DE#70-22). [During that 7-day period, the record shows that it was Nurse Edwards who on 4/1, 4/2, and 4/5/10 during the p.m. rounds administered the medications to Telamy, as ordered (Affidavit at DE#70-5 ¶¶12-13; MAR at DE#70-22), and that it was Nurse Watson who on 4/2, 4/5, and 4/7/10 during the a.m. rounds administered the medications, as ordered (Affidavit at DE#70-4 ¶¶10-11; MAR at DE#70-22)].

The record reflects that on 4/2/10 Telamy again called Attorney Cloney, complaining that in the morning he had told a nurse about eye swelling, and that according to Telamy nothing had been done. (See Notation from Attorney Cloney's file, Ex.17 at DE#79 p.29). The entry in Counsel's records, reflecting the conversation with Telamy, and action taken by counsel, reads as follows: "Phone call from Paulius Telamy 560801448, NBB. URGENT! His eye is swollen shut and his face is swollen too. He showed the nurse this morning

but nothing has been done. He has not been able to eat and has not been given any liquid supplement (since March 24). Email to Medical." (Id., Ex.17). A second entry in Attorney Cloney's record for 4/2/10 reflects the nature of a 4/2 Email response to Cloney's Email inquiry. (Ex.18 at DE#79 p.30). That notation in Mr. Cloney's file reads, as follows, *verbatim*: RE: Telamy, Paulius Email form Medical re: Mr. Telamy was seen by Dental yesterday. His swelling is related to the procedure that was done and the doctor feels it's within normal parameters. The doctor will re-evaluate his need for additional pain meds. I have arranged for Mr. Telamy to get a dietary supplement (Ensure) for 48 hours to assist him during this period he is having difficulty with solid food." (Id., Ex.18).

On 4/2/10 at about 3:00 p.m., during medication rounds, Nurse Watson met with inmate Telamy, and entered her observations in a Progress Note. (See Watson Affidavit, DE#70-4 ¶10). In her Affidavit Watson states that at about 3:00 p.m. she met Telamy [during what apparently was still the "morning" medication round], and noted that his "left cheek was slightly swollen, but there was no evidence of swollen shut eyes or redness." In her Affidavit Watson states that she spoke extensively with Telamy about proper care for his dental condition [including avoidance of overly hot/cold liquids]. Watson states that in response to Telamy's complaints she called the jail physician and obtained Orders for 3 days of additional pain medication [Motrin 400 mg] twice a day, and for 3 days of Ensure, twice a day; and also states in her Affidavit that she examined the site where the tooth had been extracted and noted that the sutures were intact and there was no bleeding. (Watson Affidavit, ¶10; see 4/2/10 3pm Order Sheet at DE70-26; and MAR/medication chart DE70-22). The record also contains a 4/2/10 chart entry (a "Progress Note") by Nurse Watson corresponding to her 3:00 p.m. interaction with Telamy on 4/2/10. [As reflected in the medical documents of record in this case, Nurse Watson's Progress Note began on one page of the chart (See DE#70-23 and DE#26 p.43) and continued/ended on the next page (DE#70-27). Nurse Watson's chart

entry makes clear that her 3:00 p.m. notation was made after the Email inquiry to NBB from Attorney Cloney. The 3pm Progress Note begins, stating: "INC[IDENTAL] NOTE! Inmate called Kloony [sic] indicating he wasn't getting medical attention." Continuing, Nurse Watson's Progress Note indicated, consistent with her Affidavit, that when she saw Telamy on 4/2 medication rounds there was slight cheek swelling, but no redness and his eye was not swollen shut; that examination of the extraction site revealed no bleeding, and sutures were intact; and that she spoke to Telamy about taking Ensure between meals if he is unable to eat. The Progress Note also stated: "Medication given as Ordered Antibiotic and pain med;" and stated: "Spoke [with] Dr. in Dental aware [of] Pts [patient's] issues No new orders @ this time." (DE#s 70-23 and 70-27).

Based on her contact with Telamy during the late evening medication rounds on 4/2/10, at about 2200 hours (10:00 p.m.) Nurse Edwards wrote a Progress Note indicating that Telamy had not complained of pain during the shift and had been given Tylenol for pain during the night, and one can of Ensure. (Edwards Affidavit, DE70-5 ¶13; and Progress Note, at DE#70-27, stating: "Inc[idental] note: Pt has not c/o pain this shift. Given Tylenol x5 ...taken PO [by mouth] for pain prevention during the night and ensure 1 can.")

On 4/4/10 Telamy filed a Sick Call Request (Ex.12, DE#79 p.24) complaining of oozing and swelling of his gums, and of an "open" stitch, ear pain, and fear that infection was moving to his sinus. It was received by an unknown nurse (not a designated defendant), and the Request was Referred to Dental. (Id.).

Attorney Cloney's files (Exs.17 and 18, DE#79 pp.29-30) reflect that Telamy called him on 4/5/10, stating that at the tooth extraction site that was sutured on 3/31, he was still bleeding, that he had sinus problems and eye swelling, and that he was on the last day of a 3-day of liquid diet and wanted it continued. Cloney's action was "Email to Medical." (Id., Ex.18). A subsequent

entry in Mr. Cloney's file reflecting a 4/6/2010 Email Response, reads as follows: "RE:RE: Telamy, Paulis Email from Medical: I went to interview Mr. Telamy myself. Mr. Telamy not have a swollen eye or face. His discomfort is appropriate for the procedure that he had done. His bleeding is also appropriate. I informed Mr. that I will revisit him on Friday." (Id., Ex.18).

Telamy submitted an undated Sick Call Request, which was received by an unidentified nurse at 11 a.m. on 4/17/10, complaining "I would like to see by the doctor or by nurse for my pain I still feel in my tooth that was make a surgery in my tooth 2-months ago. The pain still there don't go no where. Thank you." (Request at DE#26 p.38; Ex.15 DE#79 p.27). The matter was referred "to Dental" upon receipt. (Id.).

The record shows that on 4/21/10 Telamy was seen at the Dental Clinic by Dr. Martindale for his complaint that he was still experiencing pain in the area where tooth #13 had been extracted. [That visit; the findings upon examination, and action taken including prescription of medication by Dr. Martindale; and referral of Telamy by Martindale to another doctor (Dr. Weathers, a Maxillofacial surgeon) are reflected in Dr. Martindale's Affidavit (DE#70-6), and are also reflected in medical documents of record. (See Dental Progress Note: at DE#70-1, and Ex.25 at DE#79 p.37; and see Order Sheet: at DE#70-2, and Ex.27 at DE#79 p.39)]. Faced with Telamy's subjective complaint of bleeding, and continued pain in the area where Tooth #13 had been extracted, Dr. Martindale's objective observations, after RMH [Review of Medical History] and clinical examination of Telamy, were that the socket was closed and the extraction site was fully healed, that the mesial of Tooth #14 bled when it was probed, and that the bleeding was not associated with the extraction of Tooth #13 but rather a result of plaque buildup on the adjacent Tooth #14. This was explained to the patient Telamy. (4/21/10 Progress Note). Dr. Martindale's Affidavit, and his 4/21/10 Dental Progress Note

together indicate that the 4/21/10 visit and examination was to be his last contact with inmate/plaintiff Telamy. Dr. Martindale states in his Affidavit that he told Telamy he would be referred to Dr. Weathers for follow up; and explains: "I made the referral to Dr. Weathers because Mr. Telamy was an argumentative patient and I thought that his hearing about his dental health from another doctor might clarify his understanding of the situation even better." (Affidavit, ¶8). In this regard, in the Progress Note, Dr. Martindale wrote, in pertinent part: "P: Adv[ise] pt [patient] will refer to OMFS [Oral Maxillofacial Surgeon] (Dr. Weathers) for f/u. Adv[ise] OHI [oral hygiene instructions] Prescribe meds. Adv[ise] pt [patient] no more dental visits (with general dentist) for this situation because situation has been rectified. Pt [patient] dismissed in good condition." (See Dental Progress Note: at DE#70-1, and Ex.25 at DE#79 p.37). In conjunction with his 4/21/10 examination of Telamy, Dr. Martindale at 1:15 p.m. on 4/21 prescribed that two 600 mg Motrin and two 500 mg Amoxicillin tablets were to be given twice a day, for 7 days. (Martindale Affidavit DE#70-6 at ¶8; Order Sheet, at DE#70-2 and Ex.27 DE#79 p.39).

The record shows that on 4/21/10, after being seen by Dr. Martindale, Telamy again called attorney Cloney with complaints, despite Dr. Martindale's earlier explanation that the extraction site of Tooth #13 was healed and that his continued discomfort and bleeding were due to another problem associated with Tooth #14. The 4/21/10 notation in Counsel's record regarding the phone conversation reads, as follows: "Phone call from Paulius Telamy 560801448, NBB. Still having problems from tooth removal on 3/18/10, with subsequent infection surgery on 3/31/10. He was seen by dentist today because he is still bleeding from site and the dentist could not determine why his problem continues. He is still having difficulty eating food. Ensure was given for only 2 days. Lastly he was hesitant to call as the nurse had yelled at him for calling this office for assistance with dental problems." Mr. Cloney's record entry does not indicate that he contacted the NBB in relation to

Telamy's 4/21 phone call. (Exs. 18 and 19 at DE#79 pp.30-31; DE#26 pp.23-24).

During the 7 days following Dr. Martindale's 4/21/10 examination of Telamy, the defendant Nurses' [Edwards' and Watson's] involvement with Telamy was that, during medication rounds to which they were assigned, they administered the pain medication (Motrin) and antibiotic (Amoxicillin) that Dr. Martindale had prescribed. Nurse Edwards did so on the evening shifts of 4/21, 4/23 to 4/25, and 4/27/10; and Nurse Watson did so on the morning shifts of 4/22, 4/24 to 4/26, and 4/28. (Edwards Affidavit, DE#70-5 ¶¶15-16; Watson Affidavit, DE#70-4 at ¶12; MAR/medication chart at DE#70-24).

From the records, it appears that Nurse Watson's last contact with inmate Telamy was to administer his medications on 4/28.

Telamy's medical records reflect on 5/3/10 he was seen by a Physician's Assistant for complaints of throat discomfort and dental pain. Physical examination of his mouth and throat revealed no apparent problems (no erythem [redness] or exudate [oozing]; no perforation, drainage, holes). Cultures were taken from the mouth/throat and sent to the lab; and the notations indicated "No Meds till Report comes back." (Ex.29 DE#79 p.41). A corresponding Order Sheet dated 5/3/10 reflects the taking of x-rays, cultures being taken/sent, and "FU [follow up] 1 wk in PM clinic [with] results." (Ex.27 DE#79 p.39; DE#70-25). A 5/10/10 8:30 a.m. Progress Note (Ex.30 DE#79 p.42) and an Order Sheet for 5/10/10 (Ex.27 DE79 p.39; DE#70-25) reflect that Telamy was again examined on 5/10/10; that the site of Tooth #13 was intact, with no drainage or redness; that his 5/3 cultures were negative for Streptococcus; that additional Lab tests were ordered; that Tylenol 650 mg was ordered for twice a day for 14 days; that Telamy was to "RTC [return to clinic] in 1 week after labs for OMFS clearance (Dr. Weathers) for Gum pain." Telamy's medication chart/MAR for May 2010 (DE#70-28) reveals that except for the a.m. shift on 5/12 and

the a.m. shifts from 5/17 to 5/20, the Tylenol was administered on both the a.m. and p.m. shifts from 5/11 through 5/24/10. (Id.). The May 2010 medication chart/MAR (DE#70-28) and Nurse Edwards' Affidavit (DE#70-5 ¶¶17-18) reveal that on the p.m. shift for every day between 5/11 and 5/24, including the shifts to which Edwards was assigned [5/12 to 5/14 and 5/17/10], the Tylenol was administered. Nurse Edwards' p.m. medication rounds of May 17, 2010 was the last time she was assigned to provide care or treatment to inmate Telamy. (Edwards Affidavit, DE#70-5 p.3 ¶18).

It is undisputed that shortly thereafter, on or about 5/26/10, Telamy was transferred from the NBB, not to return.

Defendant Martindale has offered in support of his Motion for Summary Judgment the Affidavit of Dr. Jeffrey Meral, D.D.S., as a qualified medical expert. (See Meral Affidavit, DE#70-3, ¶¶1-5). Meral states that he has "carefully reviewed the pertinent medical records with reference to the involvement of Dr. Mark Martindale with respect to the subject claim" (DE#70-3 ¶3), stating that his review included the "Complaint," "Records of Armor Correctional Health Services, Inc.," and "Deposition of Paulius Telamy." (Id., ¶3). With regard to defendant Martindale, Dr. Meral in his Affidavit discusses and focuses on the examinations, diagnoses and treatments of inmate/plaintiff Telamy as provided by Dr. Martindale on 2/11/10, 3/18/10, 3/31/10 and 4/21/10. (DE#70-3, ¶6). The Affiant, Dr. Meral, does not discuss any details regarding the involvement of the defendant Nurses, Edwards and Watson. (Affidavit DE#70-3, ¶¶1-6). As the conclusion stated in his Affidavit, Dr. Meral opines that none of the defendants were deliberately indifferent to plaintiff Telamy's serious medical needs, stating as follows:

Based upon my review of the above records, as well as my education, training, and experience, it is my opinion within a reasonable degree of medical probability that Dr. Mark Martindale and the staff at Armor Correctional Health Services, Inc. including but not limited to Veronica Edwards,

LPN and Ora J. Watson were not deliberately indifferent to Paulius Telamy's dental condition. Dr. Martindale treated all of Mr. Telamy's complaints and at times even did above and beyond what is the acceptable standard in the community. Ordering antibiotics and Tylenol after treating a dry socket is not medically necessary and as previously stated, there would have been no adverse effect on Mr. Telamy had these not been prescribed or administered.

(Meral Affidavit, DE#70-3, ¶7).

1. The Defendant Dentist, Mark O. Martindale, D.D.S.

The plaintiff Telamy's dental conditions, and Dr. Martindale's involvement in his treatment of the same, as reflected in the parties' filings, have been discussed, at length, above.

Via his Summary Judgment motion (DE#68) the defendant/Movant Martindale [relying on exhibits, including medical documents, and his own and Dr. Meral's Affidavits] focuses solely on his contacts with plaintiff Telamy on 2/11, 3/18, 3/31 and 4/21/10 (see Martindale Affidavit DE#70-6 ¶¶1-8), and argues that he was not deliberately indifferent to Telamy's medical needs. In the concluding paragraph of his Affidavit, Defendant Martindale states:

At all times when I was providing care and treatment for Mr. Telamy I utilized my dental training, experience and judgment in deciding the appropriate care and treatment necessary for Mr. Telamy. At no time did I intentionally deprive Mr. Telamy of necessary medical care or dental care.

(Martindale Affidavit, DE#70-6, ¶9). In the fifth paragraph of his Affidavit, seeking to compartmentalize and limit his responsibility to his actions on the 4 days on which he had contact with inmate Telamy, defendant Martindale states, in pertinent part, as follows:

As a dentist I can request that a defendant get scheduled for the Dental Clinic but I have not [sic] involvement in the actual scheduling process. My function is to use my dental

training and judgment to appropriately treat the inmates when they are brought to the Dental Clinic.

(Martindale Affidavit, DE#70-6, ¶5).

**Dr. Martindale's Actions and Medical Judgments When
Examining Inmate Telamy on 2/11, 3/18, 3/31 and 4/21/10**

Based on the evidence submitted for the record by the Defendant Dentist and by the inmate Plaintiff, if the Court focuses on defendant Martindale's evaluation, diagnosis, and course of treatment chosen/prescribed upon each of his 4 examinations of inmate/plaintiff Telamy on the 4 dates when Telamy was brought to him, it is apparent that the complaint, as amended, is one in which there is difference of opinion between an inmate plaintiff [Telamy] and the defendant/medical staff member [Dentist Martindale], regarding what was the proper diagnosis and chosen course of treatment. The record, discussed above in detail, reflects that on each of their meetings the dentist Martindale examined Telamy, made a reasoned medical determination (or determinations) based on Telamy's complaints, his symptoms and history, and Martindale's findings upon clinical examination and use of diagnostic tools including x-rays; and the record demonstrates that when each of the 4 examinations was conducted, defendant Martindale prescribed medications for inmate Telamy (for infection and pain). In each instance the prescription was for 7 days.

Through his exhibits offered in support of his Motion of Summary Judgment [including medical records, and his own Affidavit and that of Dr. Meral], the defendant Martindale, in regard to his consultations with inmate/plaintiff Telamy on four separate dates between 2/11/10 and 4/21/10, has met his initial burden of demonstrating the nonexistence of a genuine issue of material fact. Celotex, supra; Hoffman, supra, 912 F.2d at 1382. Defendant Movant Martindale has shown that when Telamy was brought to him for care, he did not ignore Telamy's conditions/symptoms, and Martindale has

shown that Telamy was provided diagnosis, and care including prescription of pain medication for 7 days upon each visit.⁸

Upon the defendant Movant Martindale's initial showing that, with regard to the examination, diagnosis, and treatment on the 4 dates when he had contact with inmate plaintiff Telamy, there is no issue as to material fact. The burden then shifted to the non-movant [plaintiff Telamy] to demonstrate the existence of a triable issue of material fact. See Earley, supra, 907 F.2d at 1080; Coleman, supra, 828 F.2d 717; Fed.R.Civ.P. 56(e).

By way of his Sworn Compliant, as amended (DE#26), and his sworn Declaration (DE#79) and exhibits, Plaintiff Telamy when arguing that Dr. Martindale's summary judgment motion should be denied, has failed to demonstrate that the evaluations, and chosen courses of treatment [including the prescription of antibiotics and pain medications for a 7-day period, upon each of his 4 consultations

⁸ On 2/11/10 Dr. Martindale diagnosed Telamy as having decay and an abscess associated with Tooth #13, which required its extraction. Martindale directed that the extraction should be scheduled to return for the procedure in 1 week, and prescribed medications (Tylenol) to cover Telamy's pain for that 7-day period, and the Antibiotic Clindamycin for infection. The next time Telamy was brought to him was on 3/18/10, on which date Telamy complained of continued pain, and Dr. Martindale extracted the tooth [#13], and prescribed what he [Martindale] deemed to be an appropriate 7-day course of antibiotic and pain medication. On 3/31/10 when Telamy was next seen by Dr. Martindale, complaining of continued pain and bleeding, Martindale diagnosed Telamy as having developed a "dry socket" [a condition that -- according to the Meral and Martindale Affidavits -- occurs in about 2 to 5% of tooth extractions, when the blood clot which forms at the bottom of the extraction site becomes dislodged]. Dr. Martindale acted to treat/remedy the condition and symptoms by cleaning the socket, applying dry socket paste to the area, closing the socket with sutures, and prescribing 7 days of an antibiotic and pain medication. Finally, when Telamy was last brought to Dr. Martindale on 4/21/10, complaining of continued pain and bleeding which Telamy believed/contends was related to the extraction of Tooth #13, the medical records [supported by the Meral and Martindale Affidavits] show that Dr. Martindale through physical examination diagnosed that the area relating to Tooth #13 was completely healed, and that Telamy's symptoms [pain/bleeding] were due to periodontal disease/plaque build up at the site of an adjacent tooth [#14]. Dr. Martindale treated Telamy's pain and its cause by prescribing 7 days of pain medication and antibiotic, and referred Telamy to Dr. Weathers for a second opinion and further treatment.

with Dr. Martindale], constituted deliberate indifference to his serious medical needs. Plaintiff Telamy admits he has no dental or medical training (Excerpt of 4/25/12 Deposition at T/43, DE#70-9 p.3); and differences of opinion between him [an inmate plaintiff] and jail medical staff [Dr. Martindale] do not rise to the level of a constitutional violation. Estelle, supra, 429 U.S. at 107; Harris v. Thigpen, supra, 941 F.2d at 1505).

Regarding defendant Martindale's actions and medical decisions on 2/11, 3/18, 3/31 and 4/21/10, when they are viewed in isolation, it is apparent that plaintiff Telamy has not come forward with sufficient evidence to demonstrate the existence of a material issue of fact, and show that a jury could reasonably make a finding in Telamy's favor if the matter were to go to trial. See Anderson, supra, 477 U.S. at 249-50; Walker, supra, 911 F.2d at 1577; Celotex, supra. As to Dr. Martindale's actions and medical judgments on the four dates when plaintiff Telamy was before him at the Dental Clinic for evaluation and treatment, the defendant Martindale should therefore be granted summary judgment.

Claims of Delayed Treatment, and Lack of Pain Medication

With regard to Dr. Martindale and the inquiry on summary judgment, however, the analysis does not stop there. This is because at the core of plaintiff Telamy's complaint, as amended, is the claim that despite his meetings with Dr. Martindale, there was significant delay of treatment that had been ordered by the defendant dentist; and moreover, there were periods when he was in significant pain from his conditions and the defendant Martindale's prescriptions for medication [limited to 7 days] had expired, leaving him without relief from the pain he was experiencing.

The evidence of record, as discussed supra, shows that on 2/11/10 Telamy was first brought to Dr. Martindale, who diagnosed him with an extensively decayed Tooth #13 and an abscess, and prescribed 7 days of antibiotic and 7 days of pain medication, in

conjunction with his instruction that Telamy be rescheduled for extraction of the tooth in 1 week. The medications were administered, as ordered, for 7 days, through the a.m. of 2/18/10; but Telamy was not brought to the Dental Clinic on 2/18/10 for the extraction, and on that date his prescriptions for antibiotic and pain medications expired, while his conditions persisted. Telamy went 12 days without pain medication, and then on 3/2/10 filed a Sick Call Request stating that he was in daily pain, and requesting help. The Request was promptly referred by nursing staff [LPN Edwards] "to Dentist." The record shows that it was not until 3/18/10 [16 days after that 3/2 referral] that Telamy was brought to Dr. Martindale for treatment; and during the entire period from 2/19/10 until 3/18/10 [a total of 27 days] Telamy was without pain medication. It appears that after 2/18/10 the first pain relief for him came when Dr. Martindale on 3/18/10 administered lidocaine before extracting Telamy's Tooth #13. The record shows that on 3/18/10, at the time of the extraction, Dr. Martindale prescribed another course of antibiotic and pain medication, which was to be administered for 7 days, but which did not commence until 3/20/10, the third day after the tooth extraction, and then was administered until the morning of 3/26/10.

It is troublesome to the Court that the plaintiff Telamy's condition [an extensively decayed Tooth #13 and abscess, severe enough to require extraction and pre-extraction administration of antibiotics and pain medication for 7 days], went untreated for 27 days beyond the anticipated 2/18/10 extraction date, and without pain medication for 30 days from the morning of 2/18/10 to 3/20/10.

However, in order for the defendant Dentist Martindale to be liable on a claim of delayed treatment, or on a claim that the inmate/patient Telamy went for a period of weeks without pain medication, it must be shown in a §1983 suit such as this that there is a causal connection between the defendant's acts/omissions and the alleged deprivation, and it must be shown that the

defendant was deliberately indifferent.

Dr. Martindale's Affidavit and exhibits do not indicate which dental/medical staff member or members at the NBB is/are responsible for Clinic scheduling; nor do the plaintiff's Declaration and exhibits do so. The defendant dentist Martindale's Affidavit, however, does state that while he can request that a patient be scheduled to come to the Dental Clinic for treatment, he has no involvement in the scheduling process. The plaintiff Telamy has offered nothing to rebut that showing.

The record reflects that on 3/2/10 Telamy filed a Sick Call Request about tooth pain, pursuant to which nursing staff prepared and submitted an Internal Clinical Referral Form, but there is nothing of record to demonstrate that the dentist Dr. Martindale saw or was made aware of the Medical Request and Referral.

It appears from the record that failure of Dr. Martindale to remember and follow up [after inmate Telamy was not scheduled for return to the Clinic on 2/18/10] was at most negligence or neglect of the sort which does not suffice for recovery on a §1983 claim. Even if it could be argued that such neglect might rise to the level of medical malpractice, it still would not be enough to impose liability in a §1983 suit for damages, as a showing of conscious or callous indifference is required. Estelle, supra, 429 U.S. at 104-06; Daniels, supra, 474 U.S. 327 (1986); Brown, supra, 894 F.2d at 1537-38; Washington, supra, 860 F.2d at 1021.

Here, with regard to the delay beyond 2/18/10 in scheduling inmate Telamy him for return to the Dental Clinic for extraction of Tooth #13, and expiration of the 7-day prescription written on 2/11/10, the record simply does not suggest on the part of the defendant dentist Martindale wanton disregard of the sort which is required to establish a claim of deliberate indifference. See Whitley v. Albers, supra, 475 U.S. at 319 (stating that "[i]t is

obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, *supplying medical needs*, or restoring official control over a tumultuous cellblock.") [Emphasis added]. See also Cottrell, *supra*, 85 F.3d at 1491 (the official must have a subjectively "'sufficiently culpable state of mind,'" and "[t]here is no liability for 'an official's failure to alleviate a significant risk that he should have perceived but did not...'" (quoting Farmer, 511 U.S. at 834, 838)).

Nor can it be said that Dr. Martindale could be held liable for the failure of nursing staff to administer antibiotic and pain medication to Telamy on 3/18 and 3/19/10 after Martindale extracted Tooth #13 on 3/18/10. Telamy submitted a Sick Call Request on 3/21/10 which resulted a nursing referral to Dental, and Telamy filed a grievance on 3/25/10 about the failure to administer his medications on 3/18 to 3/19/10. [On 3/21 and 3/25/10 medications prescribed by Dr. Martindale on 3/18 were still being administered by nursing staff]. A Clinic Referral Form was completed on 3/28/10 reflecting Telamy's complaint that he was still in pain and discomfort. The record does not demonstrate, nor does Telamy allege, that Dr. Martindale saw those complaints and referrals contemporaneously with their preparation and submission.⁹

As discussed, *supra*, from 3/31/10 until his transfer from NBB, plaintiff Telamy's complaints/needs were not ignored by the defendant dentist, Dr. Martindale. He diagnosed Telamy on 3/31/10 as having a dry socket, which [as indicated by the medical records

⁹ Dr. Martindale's next chart entry (Dental Progress Note) on 3/31/10 reflects that prior to commencement of his examination of Telamy on that date he reviewed Telamy's medical history, and it is apparent that that chart review at about 11:45 a.m. on 3/31/10 would only then have revealed to Dr. Martindale the nurses' failure to administer ordered medications on two days (3/18 and 3/19/10), and the 3/21/10 Sick Call Request, the 3/25/10 Grievance, and the 3/28/10 Clinic Referral.

and the Affidavits of Drs. Meral and Martindale] was appropriately treated. Then, when Telamy, via a 4/17/10 Sick Call Request, voiced a further complaint of continued discomfort which Telamy believed was related to his tooth "surgery," he was referred to Dr. Martindale on 4/21/10, who upon examination of Telamy determined that the area where Tooth #13 had been extracted and the dry socket had formed, was completely healed, and Telamy's symptoms were due to a separate, unrelated condition associated with an adjacent tooth (#14). Dr. Martindale explained the diagnosis to Telamy, prescribed him 7 days of antibiotic and pain medication, and referred him to a specialist, Dr. Weathers, for further examination and treatment.

For the above-stated reasons, it is apparent that the defendant dentist, Dr. Martindale, is entitled to summary disposition in his favor, of all claims raised against him in the complaint, as amended.

2. The Defendant Nurses (Edwards, and Watson)

The gravamen of the complaint against the defendant nurses, as amended, is Plaintiff Telamy's claim that when Amoxicillin and Tylenol for infection and pain were prescribed by Dr. Martindale upon the 3/18/10 extraction of Tooth #13, the nurses failed to administer the medications on 3/18 and 3/19/10. This, Telamy alleges caused him to suffer in pain.

a. Veronica Edwards, LPN

Nurse Edwards acknowledges her failure to administer the antibiotic and pain medication on 3/18. She explains that her failure to give Telamy the medications on 3/18 and her colleague's (Nurse Watson's) failure to give the medications on 3/19/10, was the result of a mistake which he [Edwards] made when she prepared the medication chart (the MAR, filed at DE#70-18) on which she and other nurses would rely when giving medications to inmates during a.m. and p.m. medication rounds. As discussed in detail, above,

Edwards drew arrows on the chart (MAR) to indicate when the medications were to commence, but she extended the arrows too far to the right, thereby making an indication on the chart that the medications were not to be given on 3/18 and 3/19/10.

In her Affidavit, the defendant Edwards states that the error was simply a mistake, and states: "I am certain that I did not intentionally cause Mr. Telamy to be deprived of these medications on the 18th or 19th of March and have never intentionally deprived any inmate of any medications that they were ordered to receive." (Affidavit, DE#70-5). Certainly, such negligence in charting, without more, even if it resulted in failure of the inmate to receive prescribed medication, would not suffice to impose liability for failure to treat even a serious painful medical condition. Mere negligence, neglect, or even medical malpractice is not a basis for §1983 liability. Estelle v. Gamble, *supra*, 429 U.S. at 104-06; Daniels v. Williams, 474 U.S. 327 (1986); Brown v. Hughes, 894 F.2d 1533, 1537-38 (11 Cir. 1990); Washington v. Dugger, 860 F.2d 1018, 1021 (11 Cir. 1988). See Faheem v. Armor Correctional Health, Inc., No. 12-12915, 2012 WL 6720420, at *1 (11 Cir. Dec. 28, 2012) (affirming district court's grant of summary judgment, where plaintiff alleged he was denied Interferon therapy for Hepatitis C, but the record contained doctor's Affidavit that the therapy was contraindicated for inmates like Faheem who would not be detained long enough at the pretrial detention facility to complete the treatment; and in deciding that the trial court did not err in granting summary judgment, the appellate court noted that "[e]ven if we were to conclude that [Nurse] Gaminara was negligent in treating Faheem, negligence is not sufficient to establish deliberate indifference. See Farrow v. West, 320 F.3d 1235, 1245 (11th Cir.2003)").

Here, however, things are not so straight forward. As noted above during discussion of the evidence of record, the plaintiff Telamy in his sworn pleading (DE#26 p.4 ¶8), and his sworn

Declaration in opposition to Edwards' summary judgment motion (DE#79 at p.3 ¶10), indicates that on 3/18/10 he specifically told Edwards that his Tooth #13 had been extracted that day, and told her that Dr. Martindale had prescribed Amoxicillin and pain medication (Tylenol) for post-extraction relief, yet Edwards nonetheless ignored him, and refused the medication, leaving him in pain [and without treatment for infection]. The fact that Telamy's tooth had been extracted would appear to have been readily apparent to a nurse or even a lay person. Moreover, Telamy's medical file, on the basis of which Nurse Edwards prepared the error-containing medication chart (MAR), contained the dentist Martindale's 3/18/10 11:37 a.m. entry reflecting the tooth extraction (DE#70-11), and contained the Order Sheet with Dr. Martindale's 3/18/10 11:54 a.m. prescription for Tylenol and Amoxicillin to be given BID (twice a day) for 7 days. That same Order Sheet contains Nurse Edwards' own entry, dated 3/18/10 at 1530, noting/acknowledging the dentist's prescription. (DE#70-12). Edwards states that she, being the nurse who "noted" the dentist's prescription, was the person who prepared the medication chart (MAR). While Edwards states in her affidavit that it was not her intention for Telamy be denied medication on 3/18 and 3/19, and argues that the misplacement of the arrows on the medication chart [erroneously indicating that Telamy's meds were not to begin until 3/20/10] was a mistake, amounting to nothing more than negligence, that argument is undermined by the fact that on the left side of the medication chart (the MAR, DE#70-18) there appear the "Start Date" of 3-18-10 and "Stop Date" of 3-26-10, written in Edwards' own handwriting. This being so, and where it is Telamy's sworn statement that Edwards was aware of his need for the pain medication because he informed her of the extraction and informed her that his meds were to start that day (3/18/10), it does not appear that the claim against Edwards can be summarily dismissed as amounting to nothing more than simple negligence. This conclusion is underscored by Telamy's sworn statements in his Amendment (DE#26, p.4 ¶9) and his Declaration (DE#79 p.3 ¶11) that he again confronted Nurse Edwards on 3/19/10

during medication rounds, and requested that he be given the prescribed medications, and that she again refused.

As previously discussed, the record shows that the condition for which Telamy was being treated by Dr. Martindale, upon his return to the Dental Clinic on 3/18/10, was a tooth with "extensive decay" and "abscess." It is clear that under the circumstances, where the tooth had been extracted just hours before Nurse Edwards' refusal to provide Telamy with medication, the condition for which Telamy was denied care was one which qualified as a serious medical condition, in light of its underlying nature, and associated pain.

As to the claim that she was deliberately indifferent to Telamy's serious medical needs on 3/18 and 3/19/10 by denying him pain medication, as well as antibiotics, Nurse Edwards' summary judgment motion should be denied.

As discussed, supra, with regard to Edwards' other contacts and involvement with Telamy between 1/30/10 and 5/17/10, the record indicates that she was responsive to his needs, responding to Sick Call Requests by making timely and appropriate referrals, and by administering medications to him as prescribed. In regard to those matters involving Edwards there is no suggestion of deliberate indifference on her part, and as to them summary disposition of the complaint, as amended, is appropriate.

b. Ora J. Watson, LPN

As for defendant Watson, the gravamen of Telamy's complaint against her, as amended, is that she failed to give him antibiotic and pain medication during morning medication rounds of 3/19/10, which Dr. Martindale had prescribed on 3/18/10. Nurse Watson, in her Affidavit (DE#70-4) states that she did not administer the Amoxicillin and Tylenol to Telamy on 3/19 because the arrows on the medication chart (MAR) indicated that administration of the medication was not to commence until the morning of 3/20/10.

Unlike his sworn statements concerning his interaction with Nurse Edwards, the plaintiff Telamy, with regard to his claim(s) against Nurse Watson, does not state in his sworn Amended Complaint (DE#26, p.4 ¶9) or his Declaration (DE#79 p.3 ¶11) that he told Watson his tooth had been extracted on 3/18 and that he was in pain. Nor does Telamy state that he told Watson that Dr. Martindale had prescribed medications which were to be administered commencing on 3/18/10. Under the circumstances, it appears that Nurse Watson's failure to give Telamy Amoxicillin and Tylenol on 3/19/10 was, at most, negligence, and not deliberate indifference on her part.

Examination of the record reveals that, during her other contacts with Telamy between February and April 2010, defendant Nurse Watson was responsive, and did not ignore his medical needs.¹⁰

In the absence of evidence showing existence of any a genuine issue of material fact, and in light of the absence of documentation suggesting any deliberate indifference on her part with regard to the care and treatment of the inmate/plaintiff Telamy, the defendant nurse Watson's motion for summary judgment should be granted.

¹⁰ As previously discussed, in February 2010 she administered medications that Dr. Martindale had prescribed after his first examination of Telamy on 2/11/10. In March 2010 (on 3/23 and 3/24), in accordance with the MAR, when she was on medication rounds, Watson gave Telamy drugs which the dentist Martindale had prescribed. When Telamy complained to her on 3/28/10 that he was in pain and discomfort, he noted that his prescription for medication had expired, and she made a Referral for him to be scheduled for the Dental Clinic. Then, on 4/2/10, when he complained of discomfort during morning medication rounds, he examined him, noted slight swelling of his left cheek, gave him instructions for care for his condition. She administered antibiotic and pain medication that had been prescribed on 3/31/10; called a physician and obtained for Telamy an additional 3-day prescription for Motrin 400 mg to be given twice a day; obtained from a Physician's Assistant a prescription for Ensure; and examined the area of Telamy's 3/31/10 procedure and found that there was no bleeding, and that the sutures to be intact. on 4/5 and 4/7/10 Watson administered medications that were prescribed on 3/31; and finally, in April 2010, during medication rounds on 5 days, she administered Motrin and Amoxicillin that had been prescribed at the time of Dr. Martindale's 4/21/10 consultation with Telamy.

III CONCLUSION

It is therefore recommended that: 1) the defendants' joint Motion for Summary Judgment (DE#68) be DENIED, IN PART, but solely on the claim that on March 18 and 19, 2010, defendant Edwards refused plaintiff Telamy prescribed medications for infection and pain; and that the Defendants' joint Motion (DE#68) otherwise be GRANTED as to all other claims against defendants Martindale, Edwards and Watson; and 2) this case remain pending solely against defendant Nurse Edwards on the claim that for two days, immediately after extraction of a tooth with extensive decay and abscessed gingiva, she denied the plaintiff Telamy prescribed medication.

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

Dated: January 11th, 2013.



UNITED STATES MAGISTRATE JUDGE

cc: Paulius Telamy, Pro Se
DC# L58906
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

Daniel Lee Losey, Esquire
Kelley, Kronenberg, Gilmartin, Fichtel, Wander, et al., P.A.
8201 Peters Road
Suite 4000
Ft. Lauderdale, FL 33324

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62066-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

PAULIUS TELAMY, :
 :
 Plaintiff, :
 :
 v. :
 :
 ARMOR CORRECTIONAL HEALTH :
 SEVICES, et al., :
 :
 Defendants. :

REPORT THAT CASE IS
READY FOR TRIAL

In this *pro se* civil rights action pursuant to 42 U.S.C. §1983, the complaint, as amended, is pending on claims of medical indifference against three defendants: Veronica Edwards, LPN; Ora J. Watson, LPN; and Dr. Mark O. Martindale, DDS. A separate Report has been entered this date recommending, in pertinent part, that defendant's joint Motion for Summary Judgment (DE#68) be DENIED, IN PART, solely as to Nurse Edwards on a claim of refusing the plaintiff medication on 3/18 and 3/19/2010, and further recommending that as to all other claims against Edwards, Watson, and Martindale the joint Motion for Summary Judgment (DE#68) be GRANTED, and the case remain pending only against the defendant Edwards..

The plaintiff and defendants have filed their pretrial statements (docketed/scanned, respectively at DE#s 77 and 85). The case is otherwise now at issue; and parties have not consented to trial before a Magistrate Judge pursuant to 28 U.S.C. §636(c). The undersigned therefore respectfully recommends that this case be placed on the trial calendar of the District Judge.

Dated: January 11th, 2013.


UNITED STATES MAGISTRATE JUDGE

cc: The Honorable James I. Cohn,
United States District Judge

Paulius Telamy, Pro Se
DC# L58906
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-62066-CIV-COHN/WHITE

PAULIUS TELAMY,

Plaintiff,

v.

MARK O. MARTINDALE,
VERONICA EDWARDS, and
ORA J. WATSON,

Defendants,

ORDER ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE is before the Court upon the Report of Magistrate Judge Patrick A. White [DE 102] (“Report”), regarding the Motion for Summary Judgment [DE 68] (“Motion”), filed jointly by Defendants Mark O. Martindale, Veronica Edwards, and Ora J. Watson. The Court notes that no objections have been filed, and the time for doing so has passed. Nonetheless, pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the record herein, including the Report, the Motion, Plaintiff’s Response [DE 81], Defendants Reply [DE 86], the record in this case, and is otherwise advised in the premises.

On September 19, 2011, Plaintiff Paulius Telamy brought this action pursuant to 42 U.S.C. § 1983 against Defendants Armor Correctional Health Service (“Armor”), Mark O. Martindale, Veronica Edwards, and Ora J. Watson, alleging inadequate dental treatment. The same day, Plaintiff moved to proceed *in forma pauperis*. Upon granting Plaintiff permission to proceed *in forma pauperis*, Judge White conducted an initial

screening of the Complaint pursuant to 28 U.S.C. § 1915. In his initial Report of Magistrate Judge [DE 13], Judge White recommended that the Court dismiss the claim against Armor with prejudice, dismiss the claim against Martindale without prejudice, and permit the case to proceed against Edwards and Watson. On January 13, 2012, the Court adopted the Report and the recommendations therein. See DE 24. On January 22, 2012, Plaintiff filed his Amended Complaint [DE 26], naming Martindale, Edwards, and Watson as defendants. Judge White then issued a Supplemental Report of Magistrate Judge [DE 53], recommending the operative complaint consist of the initial Complaint together with the Amended Complaint, and that the case be permitted to proceed against Martindale, Edwards, and Watson. The Court adopted the Supplemental Report on May 17, 2012. See DE 65. On June 6, 2012, Defendants filed the instant Motion for Summary Judgment on all claims.

See DE 68.

In the instant Report, Judge White describes Plaintiff's claims as follows:

The gravamen of Plaintiff Telamy's complaint, as amended, is that he had a dental condition which required pain medication, antibiotics, and surgical intervention by Dr. Martindale. He states he was prescribed pain and antibiotic medication, but claims it was for an inadequate period and that he then was without medication for a period before the procedure was performed on 3/18/10. He claims that, then, post-operatively he suffered in pain for 2 days when Nurses refused him medication that had been prescribed after surgery on the morning of 3/18/10. In addition to experiencing pain during that period without medication, Telamy believes/claims that that 2-day lack of medication led to further complications, and a second procedure by Dr. Martindale due to those complications, which according to Telamy included infection and continued pain at the site of the initial procedure. Frustrated that requests for relief were unheeded, Plaintiff Telamy enlisted his fiancé's and attorney's assistance in obtaining followup care and pain medication. There was further examination and treatment on 3/31/10.

Thereafter, in April 2010, Telamy suffered more problems which required further treatment by Dr. Martindale involving a tooth adjacent to the one which had been extracted, but not before Telamy had allegedly continued to suffer in pain for more than 2 weeks.

In sum, Telamy's pleadings allege, inter alia, claims of delay in providing treatment, and/or inadequacy of treatment; of failure to provide medication for significant periods of time – leaving him in pain and allegedly failing to stem infection; and instances of refusal to provide medication that had been prescribed.

Report at 14.

Judge White's Report addresses the allegations and evidence in light of the applicable law and concludes that summary judgment should be granted in favor of Martindale and Watson, and accordingly, that all claims against them should be dismissed with prejudice. Judge White further recommends that summary judgment should be granted for Edwards, except with regard to "the claim that on March 18 and 19, 2010, defendant Edwards refused plaintiff Telamy prescribed medications for infection and pain." Report at 43. He therefore recommends that the case proceed only on the limited claim against Edwards. Finally, Judge White recommends that this case be placed on the trial calendar of the District Court. See DE 103. The undersigned agrees with Judge White's analysis and conclusions. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report of Magistrate Judge [DE 102] is **ADOPTED**;
2. Defendants' Motion for Summary Judgment [DE 68] is **GRANTED in part and DENIED in part** as follows:
 - a. The motion is **DENIED** as it relates to the claim against Defendant

Veronica Edwards that on March 18 and 19, 2010, Edwards refused Plaintiff prescribed medications for infection and pain;

b. In all other respects, the motion is **GRANTED**, and all other claims against Defendants are **DISMISSED with prejudice**;

3. The Court will file a separate Scheduling Order consistent with this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 5th day of February, 2013.



JAMES I. COHN
United States District Judge

Copies provided to:

Magistrate Judge Patrick A. White

Counsel of record via CM/ECF

Paulius Telamy, *pro se*, via CM/ECF regular mail
L58906
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-62066-CIV-COHN/WHITE

PAULIUS TELAMY,

Plaintiff,

v.

VERONICA EDWARDS,

Defendant.

_____ /

ORDER SETTING CALENDAR CALL, TRIAL DATE, AND PRETRIAL DEADLINES

THIS CAUSE is before the Court upon the Order Adopting Report of Magistrate Judge [DE 108]. The Court has carefully considered the record and is otherwise fully advised in the premises. Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The above-entitled cause is hereby set for trial before the Honorable James I. Cohn, United States District Judge, at the United States Courthouse, 299 East Broward Boulevard, Courtroom 203E, Fort Lauderdale, Florida, during the **two-week trial period** commencing **May 13, 2013**, at 9:00 a.m., or as soon thereafter as the case may be called;
2. The Calendar Call will be held on **May 9, 2013**, at 9:00 a.m.;
3. The following pretrial deadlines shall now apply in this case:

Motions in Limine April 16, 2013

Responses to Motions in Limine,
Joint Pretrial Stipulation and
Deposition Designations for Trial for May 3, 2013

Unavailable Witnesses

Submission of Voir Dire Questions,
Proposed Jury Instructions, and
Objections to Deposition Designations

Calendar Call
(May 9, 2013)

4. Proposed jury instructions with substantive charges and defenses, as well as verdict forms, shall be in typed form and emailed to the Court. To the extent these instructions are based upon the Eleventh Circuit Pattern Jury Instructions, counsel shall indicate the appropriate Eleventh Circuit Pattern Jury Instruction upon which the instruction is modeled. All other instructions shall include citations to relevant supporting case law;
5. Prior to trial, the parties shall submit to the Court a typed list of proposed witnesses and/or exhibits. All exhibits shall be pre-labeled in accordance with the proposed exhibit list. Exhibit labels must include the case number.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, on this 5th day of February, 2013.


JAMES I. COHN
United States District Judge

Copies provided to:

Magistrate Judge Patrick A. White

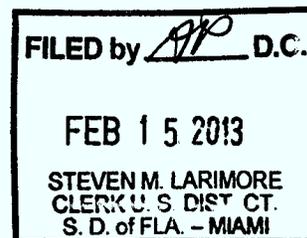
Counsel of record via CM/ECF

Paulius Telamy, *pro se*, via CM/ECF regular mail
L58906
Okeechobee Correctional Institution
3420 NE 168th Street
Okeechobee, FL 34972

IN THE UNITED STATES DISTRICT COURT

PROVIDED TO SOUTHERN DISTRICT OF FLORIDA
OKEECHOBEE CORRECTIONAL MIAMI DIVISION
INSTITUTION

ON 2/13/13 Case # 11-62066-CIV-COHN
FOR MAILING



PAULIUS TELAMY,
Plaintiff,

v.

ARMOR CORRECTIONAL HEALTH SERVICES,
NURSE VERONICA EDWARDS L.P.N.
Defendant.

PETITION FOR A WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Pursuant to 28 U.S.C. § 2241(C)(5) the Plaintiff Telamy Paulius requests that this Court issue a Writ of Habeas Corpus Ad Testificandum requiring Warden Powell Skipper to bring the Plaintiff before the Court for a trial scheduled to commence on May, 13, 2013 and state in support.

1. The Plaintiff's case depends in large part on his own testimony. Since the credibility of witnesses will be an issue in this matter, the jury should be allowed to hear the Plaintiff testify personally and observe his demeanor.
2. The Plaintiff is preceding pro se in this matter and should therefore be produced to manage the presentation of his case, to cross-examine the Defendants who testify and their witnesses, and to hear the Defendant's case and present appropriate rebuttal.

Plaintiff requests that the Defendants bear the costs of the implementation of the terms of this writ.

Date: 2/13/13

Sign: Paulius Telamy
Telamy Paulius DC# L58906
Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee, Florida 34972

PROOF OF SERVICE

Plaintiff "Telamy" hereby certifies pursuant to Rule (5)(b)(2011) Fed.R.Civ.P. and *Housing v. Lack*, 487 U.S. 266 (1988) having placing this document into hands of authorized state prison staff for First Class mailing to the Clerk of U.S. District Court, Southern District of Florida, Room 8N09 @ 400 North Miami Avenue, Miami, Florida 33128 and F/W Attorney Defendant's ~~lawyer~~ **Nurse** Veronica, LPN ~~at~~ **8201 Peters Road, Suite 4000,** Fort Lauderdale, Florida 33320 on this 13 day of FEBRUARY 2013.

Respectfully Submitted,

Paulius Telamy,

Telamy, Paulius DC#L-58906
Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee, Florida 34972
Plaintiff

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case # 11-62066-CIV-COHN

PAULIUS TELAMY,
Plaintiff,

v.

ARMOR CORRECTIONAL HEALTH SERVICES,
NURSE VERONICA EDWARDS L.P.N.
Defendant.

_____/

ORDER GRANTING WRIT OF HABEAS CORPUS AD TESTIFICANDUM

At a session of said Court held in the City of Okeechobee Correctional Institution
this 13 day of MAY, 2013.

Present: Honorable James I. Cohn,
United States District Judge

It is ordered that a Writ of Habeas Corpus be issued for Telamy Paulius, Prison
No.: L-58906 to be brought before this Court on the following day and at the
following time.

Sign: _____
United States District Judge

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

WHEREAS, it has been made to appear to this Court that Telamy Paulius DC# L-58906 is now confined at the Okeechobee Correctional Institution and that his presence will be necessary in this Court, in civilian clothes, no later than 9.00.a.m or _____ pm on May, 13, _____ 2013, and to be returned to this Court each day thereafter until discharged from said writ.

NOW THEREFORE, in the Name of the United States of America, we command POWELL SKIPPER, Warden of Institution, to have the body of said prisoner Telamy Paulius, DC# L-58906 in the U.S. District Court for the Southern District

of Florida. Address: United states District Courthouse 299, EAST
Broward BLVD. courtroom 203, E, Fort Lauderdale, Florida

on the return date indicated above.

Witness, the Honorable James I. Cohn, U.S. District Judge, and the Seal of the U.S. District Court, on ____ day of _____ 2013.

CLERK

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case # 11-62066-CIV-COHN

PAULIUS TELAMY,
Plaintiff,

v.

ARMOR CORRECTIONAL HEALTH SERVICES,
NURSE VERONICA EDWARDS L.P.N.
Defendant.

_____/

ORDER GRANTING WRIT OF HABEAS CORPUS AD TESTIFICANDUM

At a session of said Court held in the City of Okeechobee Correctional Institution
this 13 day of MAY, 2013.

Present: Honorable James I. Cohn,
United States District Judge

It is ordered that a Writ of Habeas Corpus be issued for Telamy Paulius, Prison
No.: L-58906 to be brought before this Court on the following day and at the
following time.

Sign: _____
United States District Judge

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

WHEREAS, it has been made to appear to this Court that Telamy Paulius DC# L-58906 is now confined at the Okeechobee Correctional Institution and that his presence will be necessary in this Court, in civilian clothes, no later than 9.00.a.m or _____ pm on May, 13, _____ 2013, and to be returned to this Court each day thereafter until discharged from said writ.

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of Florida. Address: United states District courthouse 299, EAST
Broward BLVD. courtroom 203, E, Fort Lauderdale, Florida

on the return date indicated above.

Witness, the Honorable James I. Cohn, U.S. District Judge, and the Seal of the U.S. District Court, on ____ day of _____ 2013.

CLERK

BY: DEPUTY CLERK