

**U.S. District Court  
Southern District of Florida (Ft Pierce)  
CIVIL DOCKET FOR CASE #: 2:12-cv-14184-JEM**

Biggoms v. Mascara et al  
Assigned to: Judge Jose E. Martinez  
Referred to: Magistrate Judge Patrick A. White  
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 05/21/2012  
Jury Demand: Defendant  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff****Tommy Biggoms**

represented by **Tommy Biggoms**  
4545 43rd Court  
Vero Beach, FL 32967  
PRO SE

V.

**Defendant****Ken Mascara***TERMINATED: 10/31/2012***Defendant****Andrew Bolonka**

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

**Defendant****Scott Wells**

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

**Defendant****LaSolomon Archie**

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

Date Filed	#	Docket Text
05/21/2012	<u>1</u>	CIVIL RIGHTS COMPLAINT against All Defendants. Filing fee \$ 350.00. IFP Filed, filed by Tommy Biggoms.(lh) (Entered: 05/22/2012)
05/21/2012	2	Judge Assignment to Judge Jose E. Martinez (lh) (Entered: 05/22/2012)
05/21/2012	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. (lh) (Entered: 05/22/2012)
05/21/2012	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Tommy Biggoms. (lh) (Entered: 05/22/2012)

05/24/2012	<u>5</u>	Order Requiring Joint Scheduling Report. Signed by Judge Jose E. Martinez on 5/24/2012. (dq) (Entered: 05/24/2012)
05/29/2012	<u>6</u>	ORDER denying without prejudice <u>4</u> Motion for Leave to Proceed in forma pauperis.. Signed by Magistrate Judge Patrick A. White on 5/25/2012. (Attachments: # <u>1</u> Affidavit ifp) (tw) (Entered: 05/29/2012)
05/29/2012	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 5/25/2012. (tw) (Entered: 05/29/2012)
05/30/2012	<u>8</u>	Order to Vacate re <u>5</u> Order Requiring Joint Scheduling Report. Signed by Judge Jose E. Martinez on 5/30/2012. (ls) (Entered: 05/31/2012)
06/25/2012	<u>9</u>	MOTION/Application for Leave to Proceed in forma pauperis by Tommy Biggoms. (gp) (Entered: 06/26/2012)
06/27/2012	<u>10</u>	ORDER granting <u>9</u> Motion for Leave to Proceed in forma pauperis and requiring payment of filing fee by installment. On or before July 13, 2012, the plaintiff shall pay the sum of \$5.05 to the Clerk. Signed by Magistrate Judge Patrick A. White on 6/27/2012. (tw) (Entered: 06/27/2012)
07/16/2012	<u>11</u>	MOTION for Extension of Time to Make Intitial Payment by Tommy Biggoms. Responses due by 8/2/2012 (cbr) (Entered: 07/16/2012)
07/17/2012	<u>12</u>	ORDER granting <u>11</u> Motion for Extension of Time to pay installment fee to on or before 8/13/12. Signed by Magistrate Judge Patrick A. White on 7/17/2012. (cz) (Entered: 07/17/2012)
09/05/2012	<u>13</u>	Clerks Notice of Receipt of Partial Filing Fee received on 8/29/2012 in the amount of \$ 15.05, receipt number FLS00044572 (cbr) (Entered: 09/05/2012)
09/26/2012	<u>14</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Tommy Biggoms. Recommending 1. The complaint should proceed against Officers Bolonka, Wells and Archie for use of excessive force and failure to provide medical treatment. 2. The claims against Ken Mascara should be dismissed for failure to state claim pursuant to 28 U.S.C.1915(e)(2)(B)(ii). Objections to RRdue by 10/15/2012 Signed by Magistrate Judge Patrick A. White on 9/26/2012. (tw) (Entered: 09/26/2012)
09/26/2012	<u>15</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Deputy Scott Wells, St. Lucie County Sheriffs Off., 4700 West Midway Road, Fort Pierce, FL 34981; Deputy Andrew Bolonka, St. Lucie County Sheriffs Off., 4700 West Midway Road, Fort Pierce, FL 34981 and Deputy Lasolomon Archie, St. Lucie County Sheriffs Off., 4700 West Midway Road, Fort Pierce, FL 34981. Signed by Magistrate Judge Patrick A. White on 9/26/2012. (tw) (Entered: 09/26/2012)
09/27/2012	<u>16</u>	Summons Issued as to LaSolomon Archie, Andrew Bolonka, Scott Wells. (cbr) (Entered: 09/27/2012)
10/22/2012	<u>17</u>	NOTICE of Change of Address by Tommy Biggoms (cbr) (Entered: 10/23/2012)
10/31/2012	<u>18</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS ; Ken Mascara terminated. ; adopting Report and Recommendations re <u>14</u> Report and Recommendations. Certificate of Appealability: No Ruling Signed by Judge Jose E. Martinez on 10/30/2012. (cbr) (Entered: 10/31/2012)
11/29/2012	<u>19</u>	Clerks Notice of Receipt of Partial Filing Fee received on 11/26/2012 in the amount of \$ 23.00, receipt number FLS10049011 (cbr) (Entered: 11/29/2012)
01/08/2013	<u>20</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline LaSolomon Archie served on 1/7/2013, answer due 1/28/2013. (cbr) (Entered: 01/09/2013)
01/22/2013	<u>21</u>	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of LaSolomon Archie (Runkles, Christy) (Entered: 01/22/2013)

01/22/2013	<u>22</u>	<i>Defendant Archie's</i> ANSWER and Affirmative Defenses to Complaint with Jury Demand by LaSolomon Archie.(Runkles, Christy) (Entered: 01/22/2013)
02/05/2013	<u>23</u>	SCHEDULING ORDER: Amended Pleadings due by 6/20/2013. Discovery due by 6/7/2013. Joinder of Parties due by 6/20/2013. Motions due by 7/10/2013. Signed by Magistrate Judge Patrick A. White on 2/5/2013. (tw) (Entered: 02/05/2013)
03/20/2013	<u>24</u>	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of Andrew Bolonka (Runkles, Christy) (Entered: 03/20/2013)
03/20/2013	<u>25</u>	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of Scott Wells (Runkles, Christy) (Entered: 03/20/2013)
03/20/2013	<u>26</u>	<i>Defendant Bolonka's</i> ANSWER and Affirmative Defenses to Complaint with Jury Demand by Andrew Bolonka.(Runkles, Christy) (Entered: 03/20/2013)
03/20/2013	<u>27</u>	<i>Defendant Well's</i> ANSWER and Affirmative Defenses to Complaint with Jury Demand by Scott Wells.(Runkles, Christy) (Entered: 03/20/2013)
03/22/2013	<u>28</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Andrew Bolonka served on 3/18/2013, answer due 4/8/2013. (cbr) (Entered: 03/22/2013)
03/22/2013	<u>29</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Scott Wells served on 3/12/2013, answer due 4/2/2013. (cbr) (Entered: 03/22/2013)

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT PIERCE DIVISION

TOMMY BIGGOMS,

Plaintiff,

V.

Case No.: **12-CV-14184-Martinez/White**

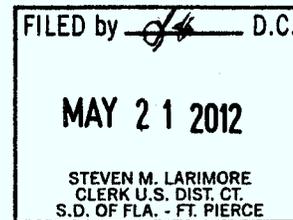
KEN MASCRARA

ANDREW BOLONKA,

SCOTT WELLS,

LASOLOMON ARCHIE,

Defendants.



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CIVIL RIGHTS COMPLAINT  
BY PRISONER UNDER CIVIL RIGHTS ACT  
42 U.S.C. § 1983

- I. PLACE OF PRESENT CONFINEMENT: Taylor Correctional Institution Annex, 8629 Hampton Springs Road, Perry, Florida 32348.

II. DOES YOUR COMPLAINT CONCERN EVENTS IN A STATE PRISON FACILITY WITH THE FLORIDA DEPARTMENT OF CORRECTIONS? Yes ( ) No (X)

[If your answer is YES, after reviewing the exhaustion requirements, answer the following questions]

Questions:

A. Emergency Grievance, Grievance of Reprisal, or Grievance of a Sensitive Nature, Grievance Alleging Violation of the American with Disabilities Act, Medical Grievance, Grievance Involving Admissible Reading Material, Grievance Involving Gaintime Governed by Rule 33-601. Incentive Gain Time, or Grievance Involving Disciplinary Action Governed by Chapter 33-601.301 (Request for Administrative Remedy or Appeal, bypassing the informal grievance step).

1. Did you submit an above-mentioned grievance to the Superintendent and/or to the office of the Secretary (Form DC1-303)? Yes ( ) No (X)
2. If so, you must attach a copy of the grievance and response to this complaint form.
3. Were you denied emergency status? Yes ( ) No ( )N/A

- a. If so, did you go through the informal grievance, formal grievance and appeal process? Yes ( ) No ( )
  
- b. If so, you must attach copies of the grievance/appeals and response to this Complaint form.

B. Informal Grievance (Request for Interview)

1. Did you submit an informal grievance (Form DC#-005)? Yes ( ) No (X)
  
2. If so, you must attach a copy of the grievance and response to this Complaint form.

C. Formal Grievance (Request for Administrative Remedy or Appeal)

1. Did you have a disciplinary hearing concerning this matter? Yes ( ) No (X)

2. If, so you must attach a copy of the disciplinary report and disciplinary committee's findings and decision to this Complaint form.
3. Did you submit a formal grievance (Form DC1-303)? Yes ( ) No (X)
4. If so, you must attach a copy of the grievance and response to this Complaint Form.

D. Appeal to the Office of the Secretary (Request for Administrative Remedy or Appeal)

1. Did you submit an appeal to the Office of the Secretary (Form DC1-303)?  
Yes ( ) No ( )
2. If so, you must attach a copy of the appeal and response to this Complaint form.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING ANSWERS TO THE QUESTIONS IN THIS SECTION ARE TRUE AND CORRECT.

Signed this 9<sup>th</sup> day of May, 20 12.



Signature of Plaintiff

III. DOES YOUR COMPLAINT CONCERN EVENTS IN A COUNTY JAIL OR LOCAL FACILITY? Yes ( ) No (X) AT THE TIME OF ARREST

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING ANSWERS TO THE QUESTIONS IN THIS SECTION ARE TRUE AND CORRECT.

Signed this 9<sup>th</sup> day of May, 20 12.



Signature of Plaintiff

IV. PREVIOUS LAWSUITS:

- A. Have you initiated other lawsuits in State Court dealing with the same or similar facts involved in this action or otherwise relating to your imprisonment or conditions thereof? Yes ( ) No (X)
  
- B. Have you initiated other lawsuits in federal court dealing with the same or similar facts involved in this action or otherwise relating to your complaint or conditions thereof? Yes ( ) No (X)
  
- C. If your answer to either A or B is YES, describe each lawsuit in the space provided below. If there is more than one lawsuit, describe all additional lawsuits on a separate piece of paper, using the same format as below.

V. PARTIES: In part A of this section, indicate your full name in the first blank and your full mailing address in the second blank. Do the same for each additional Plaintiff named in the Complaint (if any) in part B of this section.

A. Name of Plaintiff: TOMMY MORRIS BIGGOMS DC# K71300  
Mailing address: Taylor Correctional Institution, 8629 Hampton Springs Road, Perry, Florida 32348.

B. Additional Plaintiff's: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In part C of this section, indicate the full name of the first Defendant. Also, fill in his or her mailing address, position, and where he or she is employed. For any additional Defendants, use parts D through G of this section for the names, addresses, positions and place of employment:

- C. Defendant: DEPUTY SCOTT WELLS
- Mailing address: 4700 W. MIDWAY ROAD, FT. PIERCE, FL.  
34981
- Position: DEPUTY
- Employed at: ST. LUCIE COUNTY SHERIFF'S OFFICE
- D. Defendant: DEPUTY ANDREW BOLONKA
- Mailing address: 4700 W. MIDWAY ROAD, FT. PIERCE, FL.  
34981
- Position: DEPUTY
- Employed at: ST. LUCIE COUNTY SHERIFF'S OFFICE
- E. Defendant: DEPUTY LASOLOMON ARCHIE
- Mailing address: 4700 W. MIDWAY ROAD, FT. PIERCE, FL.  
34981
- Position: DEPUTY
- Employed at: ST LUCIE COUNTY SHERIFF'S OFFICE
- F. Defendant: SHERIFF KEN J. MASCARA

Mailing address: 4700 W. MIDWAY ROAD, FT. PIERCE, FL.  
34981

Position: SHERIFF

Employed at: ST LUCIE COUNTY SHERIFF'S OFFICE

- VI. STATEMENT OF CLAIM: State what right under the Constitution, law, or treaties of the Unites States have been violated, and be specific. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. Any claim that is not related to the same basic incident or issue must be addressed in a separate Civil Rights Form.

Plaintiff 's rights under the Fourth Amendment was violated when he was subjected to use of excessive force by the Defendants during his arrest.

Plaintiff's right under the Eight Amendment was violated, when the Defendant's were deliberate indifferent to the Plaintiff's medical needs during the arrest.

Plaintiff's rights under the Fourteenth Amendment was violated when he was subjected to excessive force by the Defendant's during his arrest.

- VII. STATEMENT OF FACTS: State as briefly as possible the FACTS of your case. Described how each defendant was involved. Do not make any legal arguments or cite any cases or statutes. State with as much specificity as possible the fact in the following manner:

1. Name and position of person(s)
2. Date(s)
3. Place(s)
4. Fact(s) or event(s) giving rise to you claim, including involvement of each defendant.
5. Nature and extent of injury (i.e., physical injury or how you were harmed by the acts of the defendant(s)).

- (1) On May 21, 2008, the Plaintiff was sleeping at his girlfriend's residence. Someone knocked on the bedroom door. Upon waking, the Plaintiff discovered that it was law enforcement officers at the door. The Plaintiff advised the officers that he was putting on a pair of pants and that he was opening the door. The Plaintiff opened the bedroom door and put his hands out first, exposing that he did not have anything in his hands.
- (2) Upon the Plaintiff opening the door, he was ordered to get down on the ground, and as he was doing so, Defendant Wells kicked him in the chest area, causing the Plaintiff to flip over. The Plaintiff was stunned, and as he attempted to gain his composure, Defendant Wells kicked him in the face area, causing him to remain on the ground. While the Plaintiff was on the ground, Defendant Wells hit him again in the head area with the butt of his gun. Defendant Wells continued to beat the Plaintiff with his closed fist in the face, as the Plaintiff was on the ground, not resisting in any manner.
- (3) While the Plaintiff was on the ground, not resisting, Defendant Bolonka began kicking him with great force in the leg and buttocks area.

(4) While the Plaintiff was on the ground, not resisting, Defendant Archie began jumping up and down on the Plaintiff legs with great force. He also bent the Plaintiff's arms and legs backwards.

(5) The Plaintiff complied with all the lawful commands.

(6) While the Plaintiff was being beaten, Defendant Bolomka stated "we got your ass now, you want to shoot at police, huh?"

(7) The Plaintiff's requests for medical attention were refused by Defendants Wells, Bolomka and Archie, even after seeing the injuries.

(8) The Plaintiff was addressed as "Nigger" by the Defendants.

(9) The Plaintiff had open wounds from his attacks and he was bleeding, during the attack.

(10) Defendant Ken J. Mascara, is the Sheriff and employer of the other Defendants. He knew or should have known that the other Defendants have a history of assaulting other arrestees, detainees, etc., and should have set a policy that would have caused the Defendants to perform in an appropriate manner.

(11) As the result of all the Defendants' actions, the Plaintiff now suffers intentional emotional stress, Duress, and mental anguish. Further, as the result of the Defendants' actions, the Plaintiff received injuries to his mouth including broken teeth. There were also open wounds caused to the Plaintiff's foot and mouth. The Plaintiff was assaulted and battered by the law

enforcement officials. The Defendants knew or should have known that they were violating the Plaintiff's right. Further, they knew or should have known that they were denying the Plaintiff medical treatment.

VIII RELIEF REQUESTED: State briefly what you want the Court to do for you. Again, do not make any legal arguments or cite any cases or statutes.

Plaintiff demands a jury trial pursuant to Federal Rule of Civil Procedure

Plaintiff request compensatory damages in the amount of \$350,000.00 against all Defendants

**I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Signed this 9<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
(Signature of all Plaintiffs)  
Tommy Biggoms, K71300

Taylor Correctional Institution Annex  
8629 Hampton Springs Road  
Perry, Florida 32348

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.12-14184-CIV-MARTINEZ  
MAGISTRATE JUDGE P.A. WHITE

TOMMY BIGGOMS, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 KEN MASCARA, et al., :  
 :  
 Defendants. :

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REPORT OF  
MAGISTRATE JUDGE

I. Introduction

The plaintiff, Tommy Biggoms, currently incarcerated at Taylor Correctional Annex, filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983 for damages. (DE# 1). The plaintiff has been granted leave to proceed in forma pauperis.

This civil action is before the Court for an initial screening pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

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

Sec. 1915 Proceedings in Forma Pauperis

\* \* \*

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

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\* \* \*

(B) the action or appeal -

\* \* \*

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief from a defendant who is immune from such relief.

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

Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.<sup>1</sup>

#### B. Statement of the Claims

The plaintiff names the Sheriff of St. Lucie County, Ken Mascara, along with officers Andrew Bolonka, Scott Wells and Lasolomon Archie as defendants. In his complaint, he alleges that on May 21,

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<sup>1</sup> The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

2008,<sup>2</sup> law enforcement officers arrived at the door of his girlfriend's house. He states he advised them he was putting on a pair of pants and opening the door. When he opened the door he exposed his hands to demonstrate a lack of a weapon.<sup>3</sup> He was ordered to get down on the ground. Wells kicked him in the chest causing him to flip over, and then kicked him in the face. Wells hit him again in the head area with the butt of his gun. Wells continued to beat him with his closed fist in his face while the plaintiff was on the ground, and Bolonka began kicking him with great force in the leg and buttocks area while he remained on the floor. Archie began jumping on his legs and bent his arms and legs backwards. The three officers refused his requests for medical attention, although he states he suffered open wounds from the attacks and was bleeding.

He names Mascara as the Supervisor of the other officers, and thereby responsible for their behavior. He seeks monetary relief.

### C. Sufficiency of the complaint

#### Excessive Force

Biggoms alleges that the three officers used excessive force during his arrest.

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<sup>2</sup> Although the complaint was actually filed on May 21, 2012, the plaintiff signed the complaint on May 9, 2012, and it is deemed filed on this earlier date, presumably the date the plaintiff handed the document to prison officials for mailing to the Court. Unlike "free world" litigants, the date an incarcerated individual "files" a complaint is the date it is delivered to prison authorities for mailing. Garvey v. Vaughn, 993 F.2d 776 (11 Cir. 1993). The Garvey Court held that the so-called "mailbox rule" announced in Houston v. Lack, 487 U.S. 266 (1988) applies not only to notices of appeal, but to complaints in 42 U.S.C. §1983 actions, in Federal Tort Claims Act cases, and in Bivens actions. Id. The plaintiff filed this civil action on the last few days of the limitations period.

<sup>3</sup> Research at the Florida Department of Corrections website indicates the plaintiff was arrested on May 21, 2008, and convicted of homicide/manslaughter. He is due to be released in November of 2012.

Claims of excessive force by police officers are cognizable under 42 U.S.C. §1983, as are claims that officers who were present failed to intervene. Fundiller v. City of Cooper City, 777 F.2d 1436 (11 Cir. 1985). A claim that a law enforcement officer used excessive force in the course of an arrest, an investigatory stop, or any other seizure of a free citizen is to be analyzed under the Fourth Amendment and its "reasonableness" standard. Graham v. Connor, 490 U.S. 386 (1989)("all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard"); Ortega v. Schram, 922 F.2d 684, 694 (11 Cir. 1991).

The facts presented by the plaintiff support a claim for use of unlawful force against the officers. He alleges the officers continued to assault him while he was on the ground and not resisting. He further claims they refused to provide him with medical treatment for his injuries, including bleeding and broken teeth. <sup>4</sup>

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<sup>4</sup>The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

The allegations against Ken Mascara fail to state a claim. The plaintiff makes no direct allegations against the Sheriff. He cannot be sued for liability merely for an improper or even unconstitutional act of his employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) The plaintiff has not established a Monell claim.

### III. Recommendation

1. The complaint should proceed against Officers Bolonka, Wells and Archie for use of excessive force and failure to provide medical treatment.
2. The claims against Ken Mascara should be dismissed for failure to state claim pursuant to 28 U.S.C. 1915(e)(2)(B)(ii).

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

Dated at Miami, Florida, this 26<sup>th</sup> day of September, 2012.



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UNITED STATES MAGISTRATE JUDGE

cc: Tommy Biggoms, Pro Se  
Taylor Correctional Institution  
Address of record

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Fort Pierce Division

**Case Number: 12-14184-CIV-MARTINEZ-WHITE**

TOMMY BIGGOMS,

Plaintiff,

vs.

KEN MASCRARA; ANDREW BOLONKA;  
SCOTT WELLS; LASOLOMON ARCHIE,

Defendants.

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**ORDER ADOPTING MAGISTRATE JUDGE WHITE'S REPORT AND  
RECOMMENDATION**

THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation on Plaintiff's *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. (D.E. No. 1). Magistrate Judge White filed a Report and Recommendation (D.E. No. 14), recommending that the complaint proceed against Officers Bolonka, Wells and Archie for use of excessive force and failure to provide medical treatment and that the claims against Ken Mascara should be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The Court has reviewed the entire file and record. No objections to the Magistrate Judge's Report and Recommendation have been filed. After careful consideration, the Court affirms and adopts the Report and Recommendation. Accordingly, it is hereby:

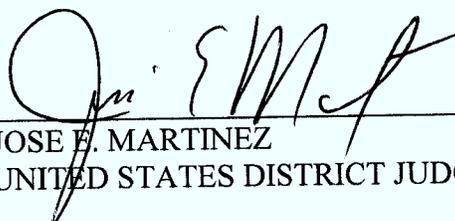
**ADJUDGED** that United States Magistrate Judge Report and Recommendation (D.E. No. 14) is **AFFIRMED** and **ADOPTED**. Accordingly, it is:

**ADJUDGED** that

1. The complaint shall proceed against Officers Bolonka, Wells and Archie for use of excessive force and failure to provide medical treatment

2. The claims against Ken Mascara are DISMISSED for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). As such, Ken Mascara is dismissed from this action.

DONE AND ORDERED in Chambers at Miami, Florida, this 30 day of October, 2012.

  
\_\_\_\_\_  
JOSE F. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Magistrate Judge White  
All Counsel of Record  
Tommy Biggoms

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. PIERCE DIVISION

Case No. 12-cv-14184-Martinez/White

TOMMY BIGGOMS,

Plaintiff,

v.

KEN MASCARA,  
ANDREW BOLONKA,  
SCOTT WELLS,  
LASOLOMON ARCHIE,

Defendants.

---

**DEFENDANT ARCHIE'S ANSWER/DEFENSES TO COMPLAINT**

Defendant, LASOLOMON ARCHIE, through his undersigned attorney, files this his Answer/ Defenses to the Plaintiff's Complaint, and in support thereof, would state as follows:

**I. PLACE OF PRESENT CONFINEMENT**

Admitted that the Plaintiff listed his place of confinement as Taylor Correctional Institution Annex, 8629 Hampton Springs Road, Perry, Florida 32348.

**II.** A - D - Not Applicable.

**III.** Admitted.

**IV. PREVIOUS LAWSUITS**

Without knowledge and therefore denied.

**V. PARTIES**

A. Admitted that the Plaintiff listed his name as Tommy Morris Biggoms, his inmate

number as DC # K71300, and his mailing address as Taylor Correctional Institution, 8629 Hampton Springs Road, Perry, Florida, 32348.

B. Not applicable.

C. Admitted that the Plaintiff listed Deputy Scott Wells as a Defendant with a mailing address of 4700 W. Midway Road, Ft. Pierce, Florida 34981. Admitted that the Plaintiff listed Scott Wells' employment as the St. Lucie County Sheriff's Office.

D. Admitted that the Plaintiff listed Deputy Andrew Bolonka as a Defendant with a mailing address of 4700 W. Midway Road, Ft. Pierce, Florida 34981. Admitted that the Plaintiff listed Andrew Bolonka's employment as the St. Lucie County Sheriff's Office.

E. Admitted that the Plaintiff listed Lasoloman Archie as a Defendant with a mailing address of 4700 W. Midway Road, Ft. Pierce, Florida 34981. Admitted that the Plaintiff listed Lasolomon Archie's employment as the St. Lucie County Sheriff's Office.

F. Admitted that the Plaintiff listed Sheriff Ken Mascara as a Defendant with a mailing address of 4700 W. Midway Road, Ft. Pierce, Florida, 34981.<sup>1</sup>

## **VI. STATEMENT OF CLAIM**

As the Plaintiff's allegations are in the narrative, they are all denied and strict proof thereof is demanded.

## **VII. STATEMENT OF FACTS**

- 1) Denied and strict proof thereof is demanded.
- 2) Denied and strict proof thereof is demanded.

---

<sup>1</sup> The Court dismissed the Plaintiff's claim against Sheriff Mascara for failure to state a claim pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). [DE 18].

- 3) Denied and strict proof thereof is demanded.
- 4) Denied and strict proof thereof is demanded.
- 5) Denied and strict proof thereof is demanded.
- 6) Denied and strict proof thereof is demanded.
- 7) Denied and strict proof thereof is demanded.
- 8) Denied and strict proof thereof is demanded.
- 9) Denied and strict proof thereof is demanded.
- 10) Denied and strict proof thereof is demanded.
- 11) Denied and strict proof thereof is demanded.

**VIII. RELIEF REQUESTED**

Admitted that the Plaintiff demanded a jury trial. All other relief requested is denied and strict proof thereof is demanded.

**GENERAL DENIAL**

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

**DEFENSES/AFFIRMATIVE DEFENSES**

1. As a first and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and at all times otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions, and otherwise acted reasonably.

2. As a further and separate defense, the Defendant would assert that any and all injuries suffered by Plaintiff were caused in whole or in part by reason of Plaintiff's negligent and/or wrongful acts and conduct, as a consequence of which the Plaintiff is not entitled to recovery or any recovery should be reduced in direct proportion thereto.

3. As a further and separate Affirmative Defense, the Defendant would assert that any and all actions were taken:

- a. Without malice;
- b. With Probable Cause;
- c. In pursuit of lawful and legal duties; and
- d. With such force as was reasonable and necessary under the circumstances.

4. As a further and separate Defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

5. As a further and separate Defense, the Defendant specifically asserts that the claim against him relating to the use of excessive force is barred by the application of the Heck v. Humphrey, 512 U.S. 477 (1994). According to Heck v. Humphrey, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

6. As a further and separate Defense, the Defendant would assert that there is no custom, policy, practice or procedure which provided the moving force or cause of any alleged violation of Plaintiff's constitutional rights.

**DEMAND FOR TRIAL BY JURY**

The Defendant, LASOLOMON ARCHIE, hereby demands trial by jury on all issues so triable.

**I HEREBY CERTIFY** that a copy of the foregoing was mailed to: **TOMMY BIGGOMS**, 4545 43<sup>rd</sup> Ct., Vero Beach, FL 32967, this 22<sup>nd</sup> day of January, 2013.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.  
Attorneys for Defendants  
2455 E. Sunrise Blvd, Suite 1216  
Fort Lauderdale, Florida 33304  
Telephone (954) 462-3200  
Telecopier (954) 462-3861  
Email: [christy@purdylaw.com](mailto:christy@purdylaw.com)

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-14184-CIV-MARTINEZ  
MAGISTRATE JUDGE P. A. WHITE

TOMMY BIGGOMS, :  
 :  
 Plaintiff, :  
 : ORDER SCHEDULING PRETRIAL  
 v. : PROCEEDINGS WHEN PLAINTIFF  
 : IS PROCEEDING PRO SE  
 KEN MASCARA, et al., :  
 :  
 Defendants. :

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The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **June 7, 2013**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **June 20, 2013**.

3. All motions to dismiss and/or for summary judgment shall be filed by **July 10, 2013**.

4. On or before **July 24, 2013**, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before **August 7, 2013**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 5th day of February, 2013.

s/Patrick A. White  
UNITED STATES MAGISTRATE JUDGE

cc: Tommy Biggoms, Pro Se  
4545 43<sup>rd</sup> Court  
Vero Beach, FL 32967

Christy M. Runkles, Esq.  
Purdy, Jolly, et al.  
2455 East Sunrise Boulevard  
Suite 1216  
Fort Lauderdale, FL 33304

Hon. Jose E. Martinez, United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. PIERCE DIVISION

Case No. 12-cv-14184-Martinez/White

TOMMY BIGGOMS,

Plaintiff,

v.

KEN MASCARA,  
ANDREW BOLONKA,  
SCOTT WELLS,  
LASOLOMON ARCHIE,

Defendants.

\_\_\_\_\_/

**DEFENDANT BOLONKA'S ANSWER/DEFENSES TO COMPLAINT**

Defendant, ANDREW BOLONKA, through his undersigned attorney, files this his Answer/  
Defenses to the Plaintiff's Complaint, and in support thereof, would state as follows:

**I. PLACE OF PRESENT CONFINEMENT**

Admitted that the Plaintiff listed his place of confinement as Taylor Correctional Institution  
Annex, 8629 Hampton Springs Road, Perry, Florida 32348.

**II.** A - D - Not Applicable.

**III.** Admitted.

**IV. PREVIOUS LAWSUITS**

Without knowledge and therefore denied.

**V. PARTIES**

A. Admitted that the Plaintiff listed his name as Tommy Morris Biggoms, his inmate

number as DC # K71300, and his mailing address as Taylor Correctional Institution, 8629 Hampton Springs Road, Perry, Florida, 32348.

B. Not applicable.

C. As this allegation does not pertain to Andrew Bolonka, no response is necessary, otherwise denied.

D. Admitted that Andrew Bolonka is named as a Defendant in this action.

E. As this allegation does not pertain to Andrew Bolonka, no response is necessary, otherwise denied.

F. As this allegation does not pertain to Andrew Bolonka, no response is necessary, otherwise denied.

**VI. STATEMENT OF CLAIM**

As the Plaintiff's allegations are in the narrative, they are all denied and strict proof thereof is demanded.

**VII STATEMENT OF FACTS**

- 1) Denied and strict proof thereof is demanded.
- 2) Denied and strict proof thereof is demanded.
- 3) Denied and strict proof thereof is demanded.
- 4) Denied and strict proof thereof is demanded.
- 5) Denied and strict proof thereof is demanded.
- 6) Denied and strict proof thereof is demanded.
- 7) Denied and strict proof thereof is demanded.
- 8) Denied and strict proof thereof is demanded.

9) Denied and strict proof thereof is demanded.

10) Denied and strict proof thereof is demanded.

11) Denied and strict proof thereof is demanded.

### **VIII. RELIEF REQUESTED**

Admitted that the Plaintiff demanded a jury trial. All other relief requested is denied and strict proof thereof is demanded.

### **GENERAL DENIAL**

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

### **DEFENSES/AFFIRMATIVE DEFENSES**

1. As a first and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and at all times otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions, and otherwise acted reasonably.

2. As a further and separate defense, the Defendant would assert that any and all injuries suffered by Plaintiff, if any, were caused in whole or in part by reason of Plaintiff's negligent and/or wrongful acts and conduct, as a consequence of which the Plaintiff is not entitled to recovery or any recovery should be reduced in direct proportion thereto.

3. As a further and separate Affirmative Defense, the Defendant would assert that any and all actions were taken:

- a. Without malice;
- b. With Probable Cause;
- c. In pursuit of lawful and legal duties; and
- d. With such force as was reasonable and necessary under the circumstances.

4. As a further and separate Defense, the Defendant specifically asserts that the claim against him relating to the use of excessive force is barred by the application of the Heck v. Humphrey, 512 U.S. 477 (1994). According to Heck v. Humphrey, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

#### **DEMAND FOR TRIAL BY JURY**

The Defendant, ANDREW BOLONKA, hereby demands trial by jury on all issues so triable.

**I HEREBY CERTIFY** that a copy of the foregoing was mailed to: **TOMMY BIGGOMS**,  
4545 43<sup>rd</sup> Ct., Vero Beach, FL 32967, this 20<sup>th</sup> day of March, 2013.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.  
Attorneys for Defendants ARCHIE and BOLONKA  
2455 E. Sunrise Blvd, Suite 1216  
Fort Lauderdale, Florida 33304  
Telephone (954) 462-3200  
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Email: [christy@purdylaw.com](mailto:christy@purdylaw.com)

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. PIERCE DIVISION

Case No. 12-cv-14184-Martinez/White

TOMMY BIGGOMS,

Plaintiff,

v.

KEN MASCARA,  
ANDREW BOLONKA,  
SCOTT WELLS,  
LASOLOMON ARCHIE,

Defendants.

---

**DEFENDANT WELLS' ANSWER/DEFENSES TO COMPLAINT**

Defendant, SCOTT WELLS, through his undersigned attorney, files this his Answer/  
Defenses to the Plaintiff's Complaint, and in support thereof, would state as follows:

**I. PLACE OF PRESENT CONFINEMENT**

Admitted that the Plaintiff listed his place of confinement as Taylor Correctional Institution  
Annex, 8629 Hampton Springs Road, Perry, Florida 32348.

**II.** A - D - Not Applicable.

**III.** Admitted.

**IV. PREVIOUS LAWSUITS**

Without knowledge and therefore denied.

**V. PARTIES**

A. Admitted that the Plaintiff listed his name as Tommy Morris Biggoms, his inmate

number as DC # K71300, and his mailing address as Taylor Correctional Institution, 8629 Hampton Springs Road, Perry, Florida, 32348.

- B. Not applicable.
- C. Admitted that Scott Wells is named as a Defendant in this action.
- D. As this allegation does not pertain to Scott Wells, no response is necessary, otherwise denied.
- E. As this allegation does not pertain to Scott Wells, no response is necessary, otherwise denied.
- F. As this allegation does not pertain to Scott Wells, no response is necessary, otherwise denied.

**VI. STATEMENT OF CLAIM**

As the Plaintiff's allegations are in the narrative, they are all denied and strict proof thereof is demanded.

**VII STATEMENT OF FACTS**

- 1) Denied and strict proof thereof is demanded.
- 2) Denied and strict proof thereof is demanded.
- 3) Denied and strict proof thereof is demanded.
- 4) Denied and strict proof thereof is demanded.
- 5) Denied and strict proof thereof is demanded.
- 6) Denied and strict proof thereof is demanded.
- 7) Denied and strict proof thereof is demanded.
- 8) Denied and strict proof thereof is demanded.

9) Denied and strict proof thereof is demanded.

10) Denied and strict proof thereof is demanded.

11) Denied and strict proof thereof is demanded.

#### **VIII. RELIEF REQUESTED**

Admitted that the Plaintiff demanded a jury trial. All other relief requested is denied and strict proof thereof is demanded.

#### **GENERAL DENIAL**

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

#### **DEFENSES/AFFIRMATIVE DEFENSES**

1. As a first and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and at all times otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions, and otherwise acted reasonably.

2. As a further and separate defense, the Defendant would assert that any and all injuries suffered by Plaintiff, if any, were caused in whole or in part by reason of Plaintiff's negligent and/or wrongful acts and conduct, as a consequence of which the Plaintiff is not entitled to recovery or any recovery should be reduced in direct proportion thereto.

3. As a further and separate Affirmative Defense, the Defendant would assert that any and all actions were taken:

- a. Without malice;
- b. With Probable Cause;
- c. In pursuit of lawful and legal duties; and
- d. With such force as was reasonable and necessary under the circumstances.

4. As a further and separate Defense, the Defendant specifically asserts that the claim against him relating to the use of excessive force is barred by the application of the Heck v. Humphrey, 512 U.S. 477 (1994). According to Heck v. Humphrey, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

#### **DEMAND FOR TRIAL BY JURY**

The Defendant, SCOTT WELLS, hereby demands trial by jury on all issues so triable.

**I HEREBY CERTIFY** that a copy of the foregoing was mailed to: **TOMMY BIGGOMS**,  
4545 43<sup>rd</sup> Ct., Vero Beach, FL 32967, this 20<sup>th</sup> day of March, 2013.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.  
Attorneys for Defendants ARCHIE and BOLONKA  
2455 E. Sunrise Blvd, Suite 1216  
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BY s/ Christy M. Runkles  
CHRISTY M. RUNKLES  
Fla. Bar No. 0084631

