CASREF,PAW

U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:12−cv−80648−KAM

Evans v. Steed et al
Assigned to: Judge Kenneth A. Marra
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 06/15/2012
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Anthony George Evans
Prisoner ID: 187491

represented by **Anthony George Evans**
187491
Lawtey Correctional Institution
Inmate Mail/Parcels
7819 NW 228th Street
Raiford, FL 32026
PRO SE

V.

Defendant

David Steed

represented by **Catherine Marie Kozol**
Delray Beach Police Dept.
300 West Atlantic Avenue
Delray Beach, FL 33344
561−243−7823
Fax: 243−7815
Email: kozol@ci.delray−beach.fl.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michael Moschette

represented by **Catherine Marie Kozol**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/15/2012	1	COMPLAINT Under the Civil Rights Act, 42 U.S.C. § 1983 against All Defendants. Filing fee $ 350.00. IFP Filed, filed by Anthony George Evans.(cbr) (Entered: 06/18/2012)
06/15/2012	2	Judge Assignment to Judge Kenneth A. Marra (cbr) (Entered: 06/18/2012)
06/15/2012	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. (cbr) (Entered: 06/18/2012)
06/15/2012	4	MOTION for Leave to Proceed in forma pauperis by Anthony George Evans. (cbr) (Entered: 06/18/2012)
06/15/2012	5	MOTION for Appointment of Counsel by Anthony George Evans. Responses due by 7/2/2012 (cbr) (Entered: 06/18/2012)
06/21/2012	6	ORDER denying 5 Motion to Appoint Counsel Signed by Magistrate Judge Patrick A. White on 6/21/2012. (cz) (Entered: 06/21/2012)
06/21/2012	7	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILIING FEE BUT ESTABLISHING DEBT TO CLERK OF $350.00 and

		Granting 4 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/21/2012. (tw) (Entered: 06/21/2012)
06/21/2012	8	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 6/21/2012. (tw) (Entered: 06/21/2012)
06/27/2012	9	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Anthony George Evans. Recommending 1. The claim against Steed and Moschette for use of excessive force upon arrest shall continue. 2. The claim against Steed for retaliation should proceed 3. The claim of unlawful search and seizure should be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, unless the plaintiff can amend his complaint to substantiate his claim of an alleged warrant and/or lack of probable cause. Objections to RRdue by 7/16/2012 Signed by Magistrate Judge Patrick A. White on 6/27/2012. (tw) (Entered: 06/27/2012)
07/12/2012	10	NOTICE of Change of Address by Anthony George Evans(system updated) (cqs) (Entered: 07/12/2012)
07/13/2012	11	NOTICE of Change of Address by Anthony George Evans (System updated) (tp) (Entered: 07/16/2012)
07/24/2012	12	ORDER ADOPTING 9 REPORT AND RECOMMENDATIONS. Amended complaint due within 20 days from the date of entry of this order. Signed by Judge Kenneth A. Marra on 7/24/2012. (ir) (Entered: 07/24/2012)
08/03/2012	13	NOTICE of Change of Address by Anthony George Evans (system updated) (cqs) (Entered: 08/03/2012)
08/23/2012	14	NOTICE of Change of Address by Anthony George Evans (system already updated) (cqs)text Modified on 8/23/2012 (cqs). (Entered: 08/23/2012)
08/31/2012	15	Remark One copy of the Report and Recommendation mailed to Anthony Georgee Evans, 0111396, Century Correctional Institution, Inmate Mail/Prcels, 400 Tedder Road, Century, Florida 32535 on August 31, 2012. (tw) (Entered: 08/31/2012)
09/07/2012	16	ORDER Re Sevice of Process Requiring Personal Service upon Officer David Steed and Lt. Michael Moschette. Signed by Magistrate Judge Patrick A. White on 9/7/2012. (br) (Entered: 09/07/2012)
09/10/2012	17	Summons Issued as to Michael Moschette. (br) (Entered: 09/10/2012)
09/10/2012	18	Summons Issued as to David Steed. (br) (Entered: 09/10/2012)
09/27/2012	19	SUMMONS (Affidavit) Returned Executed on 1 Complaint Michael Moschette served on 9/21/2012, answer due 10/12/2012. (lh) (Entered: 09/28/2012)
09/27/2012	20	SUMMONS (Affidavit) Returned Executed on 1 Complaint David Steed served on 9/21/2012, answer due 10/12/2012. (lh) (Entered: 09/28/2012)
10/11/2012	21	*Defendants'* ANSWER and Affirmative Defenses to Complaint by Michael Moschette, David Steed.(Kozol, Catherine) (Entered: 10/11/2012)
10/15/2012	22	MOTION to Compel *Release of 5 Color Photographs Taken During Booking Process* by Anthony George Evans. Responses due by 11/1/2012 (cqs) (Entered: 10/15/2012)
10/16/2012	23	ORDER denying 22 Motion to Compel, DISCOVERY MUST BE SOUGHT DIRECTLY FROM PARTIES. ANY DISCOVERY TO NON PARTIES MUST BE BY SUBPOENA ARRANGED BY THE PLAINTIFF. Signed by Magistrate Judge Patrick A. White on 10/16/2012. (cz) (Entered: 10/16/2012)
11/15/2012	24	RESPONSE to 21 Answer to Complaint and Affirmative Defense. by Anthony George Evans. (cqs) (Entered: 11/15/2012)
12/03/2012	25	SCHEDULING ORDER: Amended Pleadings due by 4/7/2013. Discovery due by 4/3/2013. Joinder of Parties due by 4/7/2013. Motions due by 5/8/2013. Signed by Magistrate Judge Patrick A. White on 12/3/2012. (tw) (Entered: 12/03/2012)

02/25/2013	26	MOTION for Production of Discovery Documents by Anthony George Evans. (yar) Modified date filed on 2/26/2013 (yar). (Entered: 02/26/2013)
02/25/2013	27	Pretrial Statement of: Anthony George Evans by Anthony George Evans (yar) (Entered: 02/26/2013)
02/25/2013	28	A Written Statement of: the Facts That Will Be Represented by Oral or Documentary Evidence at Trial. This Means That I The Plantiff Must Explain What He Intends to Prove at Trial and How He Intends to Prove it by Anthony George Evans (yar) (Entered: 02/26/2013)
02/27/2013	29	NOTICE by Michael Moschette *Notice of taking deposition of plaintiff* (Kozol, Catherine)Text Modified on 2/27/2013 (cqs). (Entered: 02/27/2013)
03/01/2013	30	MOTION to Take Deposition from Anthony George Evans by Michael Moschette. (Kozol, Catherine) (Entered: 03/01/2013)
03/11/2013	31	ORDER deferring ruling on 26 Motion to Produce, defendants shall reply to the request ; granting 30 Defendants' Motion to Take Plaintiff's Deposition, this is an unpresented plaintiff and the defendants shall govern themselves accordingly. Signed by Magistrate Judge Patrick A. White on 3/11/2013. (cz) (Entered: 03/11/2013)
04/11/2013	32	NOTICE of Change of Address by Anthony George Evans (Address Updated) (yar) (Entered: 04/11/2013)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-CV-80648 MARRA/WHITE

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

UNITED STATES DISTRICT COURT
Southern District of Florida

FILED by _____ D.C.
JUN 15 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. MIAMI

Case Number: _____

ANTHONY GEORGE EVANS
(Enter the full name of the plaintiff in this action)

v.

DAVID STEED
MICHAEL MOSCHETTE

(Above, enter the full name of the defendant(s) in this action)

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

cat / div 1983 / 550 / WPB
Case # _____
Judge _____ Mag PAW
Motn Ifp Yes Fee pd $ 0
Receipt # _____

There is a filing fee of $350.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 400 North Miami Avenue, Room 8N09, Miami, Florida 33128-7788.

I. Parties

In Item A below, place your name in the first blank and place your present address in the third blank.

A. Name of plaintiff: ANTHONY GEORGE EVANS

Inmate #: _____

Address: _____

_____

In Item B below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item C for the names, positions, and places of employment for any additional defendants.

B. Defendant: DAVID STEED INDIVIDUAL CAPACITY

is employed as POLICE OFFICER

at DELRAY BEACH FLORIDA

C. Additional Defendants: MICHAEL MOSCHETTE

INDIVIDUAL CAPACITY

_____

II. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an additional blank page if necessary.

FACTUAL BACKGROUND, DELRAY BEACH POLICE OFFICERS DAVID STEED, AND HIS SUPERVISOR LT. MICHAEL MOSCHETTE MUST BE HELD HIGHLY ACCOUNTABLE FOR VIOLATING EVANS FEDERALLY PROTECTED RIGHTS UNDER THE 4TH AMENDMENT ON THE CHARGES OF AGGRAVATED BATTERY, VIOLENT USE OF EXCESSIVE FORCE TO MAME OR KILL, FILING FALES POLICE REPORTS WITH FALSE CHARGES TO STATE ATTORNEY OFFICE, PERSONAL INJURY, WITH INTENTIONAL WANTON DELIBERATE INDIFFENCE TO EVANS SERIOUS MEDICAL NEEDS. ON JANUARY 26, 2012 AS EVANS EXITED HIS YARD TO GO GET SOMETHING TO EAT.

GASSTATION. I THOUGHT NOTHING UNUSAL AND CONTINUED TO WALK DOWN SIDEWALK. THE NEXT THING I KNEW I WAS BEING CUT OFF BY STEED PATROL CAR. STEED IMMEDIATELY JUMPED

III. Relief

State briefly exactly what you want the court do to do for you. Make no legal arguments. Cite no cases or statutes.

REQUESTING, THAT BOTH OF THESE CORRUPTED COPS BE HELD HIGHLY ACCOUNTABLE, FOR THEIR UNPROFESSIONAL ACTIONS AGAINST EVANS IN THEIR OWN INDIVIDUAL CAPACITY.
REQUESTING TO BE AWARDED COMPENSATORY DAMAGES OF $200,000 AND PUNITIVE DAMAGES OF $200,000 FOR PHYSICAL AND EMOTIONAL PAIN AND SUFFERING AT THE HANDS OF DAVID STEED AND LT. MICHAEL MOSCHETTE THE MOVING FORCE BEHIND EVANS SEVERE INJURIES

IV. Jury Demand

Do you demand a jury trial? [X] Yes [ ] No

Signed this 11TH day of JUNE, 20 12

Anthony George Evans
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct. *(optional)*

Executed on: _____

Anthony George Evans
(Signature of Plaintiff)

OUT OF HIS PATROL CAR, AND GRABBED EVANS RIGHT ARM, AND VIOLENTLY SLAMMED EVANS ON HIS RIGHT SHOULDER AND KICKED EVANS IN HIS RIGHT RIBB CAGE. BY STEED HAVING A PENDING SUIT AGAINST HE SHOULD HAVE NEVER BEEN THE 1-26-12 ARRESTING OFFICER, HE SHOULD HAVE NEVER BEEN TO THE SCENE AT ALL. ONCE ON THE GROUND STEED STRADDLED EVANS BACK WITH 300LBS, AND BEGAIN TO APPLY A BARRARGE SERIES OF PUNCHES TO EVANS HEAD, AND FACE. WHILE HIS SUPERVISOR LT. MOSCHETTE INFLUENCED STEED, AND DID NOTHING TO STOP HIM. OFFICER STEED TOOK EVANS HEAD AND BANGED IT ON THE GROUND CAUSEDEVANS A CONCUSION. EVANS CONTINUE TO ASK THESE CORRUTED COPS WHAT DID HE DO WRONG? STILL NO RESPONSE. STEED TRIED TO FORCE HIS METAL BATON INTO EVANS MOUTH, AND AT THE SAME TIME LT. MOSCHETTE EMPTIED A FULL CAN OF OC CHEMICAL PEPPER SPRAY INTO EVANS EYES, SO THAT EVANS COULD NOT IDENTIFY ANY POTENTIAL WITNESSES OTHER THAN CHARLIE REEVS. #EVANS REQUESTED MEDICAL HELP AT THE SCENE OF ARREST BUT WAS DENIED BY STEED, WITH THE STATEMENT. SHUT THE FUCK UP BEFOR I CLOSE YOUR OTHER EYE. #EVANS WAS LATER TAKEN TO THE STATION AFTER STEED AND GRIFFITH PLANTED DRUGS ON EVANS. AN HOUR LATER MEDICAL PERSONNEL CAME AND TOOK EVANS TO HOSPITAL FOR CONCUSION, LOWER BACK, NECK, RIBB PAIN AND SWOLLEN RIGHT EYE AND SEVER MIGRAINE HEADACHES. THEYE INJURY CREATED A SCRACTCH CORNIA, AND CATARACT FOR WHICH SURGERY IS REQUIRED. EVANS WAS GIVEN A PAIR OF PRESCRIPTION GLASSES. AFTER THE HOSPITOL VISIT EVANS WAS TAKEN TO THE PALM BEACH COUNTY JAIL.

THIS CLAIM IS BEING SUBMITTED UPON THE CITY OF DELRAY BEACH, FL POLICE OFFICERS LT. MOSCHETTE IN HIS INDIVIDUAL CAPACITY AND HIS SUBOARDINATE DAVID STEED IN HIS OWN INDIVIDUAL CAPACITY. FAILURE TO MAINTAIN PROTOCOL POLICY AND PROCEDURES, WITH WANTON DELIBERATE INDDIFFERENCE TO EVANS CIVIL RIGHTS UNDER THE 4TH AMENDMENT. BOTH STEED AND MOSCHETTE VIOLATED EVANS CIVIL RIGHTS TO BE FREE OF THE USE OF VIOLENT EXCESSIVE FORCE IN EFFECTING HIS 1-26-12 ARREST. CORRUPTED DELRAY BEACH POLICE MOSCHETTE AND STEED ARE THE MOVING FORCE BEHIND THE WANTON DEPRIVATION OF EVANS CIVIL RIGHTS. ACCORDING TO THE DELRAY BEACH POLICE AGENCY. IT IS THE RESPONSIBILITY OF EACH AND EVERY OFFICER TO HAVE KNOWLEGE OF ALL DIRECTIVES, PROTOCOL, POLICY, AND PROCEDURES-RULES-REGULATIONS CONTAINED IN MANUAL. # A COPY OF THE 3-15-2011 AND 1-26-2012 USE OF FORCE REPORT WAS NEVER SUBMITTED TO THE PALM BEACH COUNTY STATE ATTORNEY OFFICE. WHY? THERE WAS INADEQUATE PROCEDURES COMMITTED FOR RECORDING AND FOLLOW UP COMPLAINTS AGAINST STEED FROM 2010 TO 2012. THE CHIEF OF POLICE FAILURE TO INVESTIGATE USE OF EXCESSIVE FORCE TO THE CIVIL RIGHTS OF IT'S INHABITANTS. # THERE ARE NO DISCIPLINARY INVESTIGATION OR REPORTS ON STEED RECORDED BY MOSCHETTE OR ANOTHER SUPERVISOR. DURRING THE UNLAWFUL ARREST OF EVANS, DAVID STEED ACTED WANTONLY, WITH WILLFUL RECKLESS DISREGARD FOR EVANS RIGHTS AS A HUMAN BEING. EVANS NEVER RISISTED THESE COPS. MORE FORCE THAN NECESSARY WAS USED OUT OF RETALITORY HATE, AND THAT CRIMINAL BATTERY IN FACT HAD ACCURRED.

OFFICER DAVID STEED HAS MADE THE FOLLOWING STATEMENTS TO EVANS NUMEROUS OF TIMES OVER THE PAST TWO YEARS. YOU CAN FILE WHAT EVER YOU WANT MOTHER --- MY JOB IS SECURRED, BUT YOUR LIFE IS NOT. MY MAIN GOAL IS TO SEND YOU TO PRISON OR KILL YOU. WHICH EVER ON COMES FIRST I WILL BE CONTENT. THE 1-26-12 OFFENSE REPORT SHOULD HAVE BEEN SUBMITTED BY STEED TO MOSCHETTE AS SOON AS POSSIBLE AFTER THE VIOLENT BEATING OF EVANS BY STEED, AND LT. MOSCHETTE SHOULD HAVE SUBMITTED ONE TO HIS RANKING OFFICER. THESE PROCEDURES WERE NEVER FOLLOWED BY MOSCHETTE AND STEED.

#ANOTHER VIOLATION, EACH OF THESE DELRAY BEACH CORRUPTED COPS AT THE SCENE, THAT ASSISTED IN EVANS UNLAWFUL ARREST REQUIREING USE OF FORCE SHOULD HAVE SUBMITTED A SUPPLEMENTAL WRITTEN REPORT DESRIBEING THE INCIDENT THIS NEVER HAPPENED. WHY?

#UPON NOTIFICATION OF THE USE OF VIOLENT PHYSICAL FORCE BY STEED. THE SUPERVISOR SHOULD HAVE INITIATE AN FULL SCALE INVESTIGATION INTO THE INCIDENT. THIS NEVER HAPPENED.

#PHOTOGRAPHS OF EVANS AND STEED MUST BE TAKEN WITH OR WITHOUT INJURY PRESENT. THE CAPTIN MUST REVIEW THE 1-26-12 INCIDENT REPORT DESCRIBEING THE USE OF FORCE. LT. MOSCHETTE NEVER INVESTIGATED THE 1-26-12 INCIDENT BEYOND HIS APPEARANCE AT THE SCENE OF THE USE OF FORCE. DUE TO CONFLICT OF INTREST STEED SHOULD HAVE NEVER BEEN THE ARRESTING OFFICER, STEED SHOULD HAVE NEVER BEEN AT THE SCENE OF EVANS ARREST.

#DELRAY BEACH POLICE OFFICER DAVID STEED AND LT. MOSCHETTE TAINT THE UNIFORM THEY SO PROUDLY WEAR EACH DAY. STEED IS SO CORRUPT, THAT HE CAN NOT RECITE THE REQUIREMENTS OF THE PROTOCOL MANUAL WITH RESPECT TO USE OF FORCE.

THESE ARE UNPROFESSIONAL TACTICS BY THE CORRUTED CITY OF DELRAY BEACH POLICE AGENCY. EVERY TIME ONE OF ITS' OFFICERS USES EXCESSIVE FORCE OR FORCE UPON A SUSPECT REGARDLESS OF WHETHER THAT FORCE IS APPROPRIATE OR NOT, THE FORCE IS AUTOMATICALLY JUSTIFIED BY ALLEGATION OF RESISTANCE A LIE ON BEHALF OF THE POLICE. THIS POLICY ON ITS FACE IS DELIBERATE INDIFERANCE TO THE FACT THAT OFFICER STEED USE OF VIOLENT FORCE ON OCCASION IS NOT THE RESAULT OF EVANS RESISTANCE. THIS CREATS A SYSTEM IN WHICH DAVID STEED USE OF VIOLENT FORCE UPON CIVILIANS WILL ALWAYS AUTOMATICALLY BE APPROPRIATE WHICH IS WRONG PRACTICE BY POLICE AGENCIES. EVANS INJURIES COULD HAVE BEEN AVOIDED IF STEED WOULD HAVE BEEN FAMILIAR WITH A SYSTEM IN WHICH INVESTIGATIONS INTO RACIAL PROFILING, THE ABUSE OF POLICE DISCRETION, THE USE OF FORCE WERE PURSUED, AND CHARGING A RECIPIENT OF THE FORCE WITH RESISTING ARREST WITH VIOLENCE WAS NOT A MATTER OF COURSE. BOTTOM LINE DAVID STEED AND LT. MOSCHETTE ARE BOTH LIABLE IN THEIR OWN INDIVIDUAL CAPACITY. THE CHIEF WAS NOT PERSONALLY INVOLVED IN THE 1-26-12 VIOLENT BEATING OF EVANS, BUT IS RESPONSIBLE FOR FORMULATING PROTOCOLS TO PROTECT THE CITIZENS OF DELRAY BEACH FROM CORRUTED ROGUE COPS SUCH STEED AND MOSCHETTE. EVANS HAS REQUEST FOR PRODUCTION OF DOCUMENTS ON STEED AND MOSCHETTE MENTAL EVALUATION TEST BUT WAS DENIED ACCESS. WHY? WHAT ARE THEY HIDEING?

EVANS CHARGES MOSCHETTE, WITH NEGLIGENT SUPERVISION OF STEED THAT LEAD TO EVANS PERSONAL INJURIES. STEED AND MOSCHETTE BOTH ARESTED EVANS ON AN ALLEGED PROBABLE CAUSE AFFIDAVIT THAT NEVER EXISTED. STEED OR MOSCHETTE NEVER ANOUNCED VERBALLY OR PRODUCED A PROBALE CAUSE AFFIDAVIT IN WRITING TO EVANS. EVANS CHARGE STEED AND MOSCHETTE WITH DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS, IN VIOLATION OF 42 USC 1983 AND FELONY BATTERY, PLANTING DRUGS, FALSE ARREST, FALSE CHARGES, FILEING FALSE REPORT TO PROSECUTOR, VIOLENT USE OF EXCESSIVE FORCE CAUSING PERSONAL INJURY WITH WILLFUL WANTON DELIBERATE INDIFFERANCE AND EMOTIONAL DISTRESS. THE DELRAY BEACH POLICE DEPARTMENT VIOLATED THESE PROCEDURES OVER THE PAST TWO YEARS. THE FAILURE TO HAVE A WRITTEN POLICY REQUIRING THAT PAST COMPLAINTS ABOUT DAVID STEED BE BROUGHT TO THE ATTENTION OF INVESTIGATORS AND DISCIPLINARY OFFICIALS EVALUATING FRESH COMPLAINTS AGAINST STEED. # THE FAILURE TO HAVE A WRITTEN POLICY REQUIRING THAT OFFICERS BE GIVEN POLYGRAPH ABOUT CITIZENS COMPLAINTS. # THE FAILURE TO HAVE A WRITTEN POLICY REQUIREING THAT CITIZENS BE GIVEN A ROLE IN REVIEWING COMPLAINTS AND DISCIPLINING POLICE OFFICERS. THE HOSTILITY TOWARDS EVANS COMPLAINTS OF THE PAST WRONGDOING BY STEED AGAINST EVANS IS ESPECIALLY INTENSE WHEN STRONG FACTUAL SUPPORT IS OBVIOUS. THE CITY OF DELRAY BEACH MAINTAINED A PUBLIC NUISANCE BY ALLOWING STEED TO REMAIN A POLICE OFFICER DESPITE HIS PROPENSITY TOWARDS VIOLENCE. EVANS IS NOT THE ONLY CITIZEN WHO HAS FILED COMPLAINTS AND CIVIL ACTION AGAINST THE CORRUPTED DAVID STEED FOR POLICE BRUTALITY AND USE OF VIOLENT EXCESSIVE FORCE

I ANTHONY EVANS IS REQUESTING THAT HONORABLE COURT TO BEGIN THE ANALYSIS OF ANY EXCESSIVE FORCE CLAIM AGAINST THE DELRAY BEACH POLICE AGENCY BY IDENTIFYING THE SPECIFIC CONSTITUTIONAL RIGHT ALLEGEDLY INFRINGED BY THE CHALLENGED APPLICATION OF FORCE. # THE FOURTH AMENDMENT, IN ADDITION TO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS A SOURCE OF CONSTITUTIONAL PROTECTION OF EVANS RIGHT TO BE FREE FROM THE USE OF VIOLENT EXCESSIVE FORCE BY STEED. THE DEPRIVATION OF EVANS CONSTITUTIONAL RIGHTS WHEN STEED AND MOSCHETTE VIOLATED PROTOCOL POLICY AND PROCEDURES MADE THEM THE SOLE MOVING FORCE OF THE VIOLATION. EVANS HAS ADDRESSED PROOF OF CITY POLICIES ON INADEQUATE TRAINING, SUPERVISION, AND DICIPLINE, RESPONSE NOTHING. THE EVIDENCE WILL DEMONSTRATES THAT THE CITY OF DELRAY BEACH HAS INADEQUATE PROCEDURES FOR RECORDING AND FOLLOWING UP ON COMPLAINTS AGAINST INDIVIDUAL OFFICERS ESPECIALLY STEED AND MOSCHETTE. TH DBPD DOES NOT LOG COMPLAINTS, A POLICY OF LOGING COMPLAINTS IS VERY IMPORTANT FOR THE WARNING SUCH COMPLAINTS RECORDED. RECORDED COMPLAINTS GIVES CHIEF OF POLICE NOTICE THAT A PARTICULAR OFFICER SUCH AS DAVID STEED HAS A PROBLEM THAT NEED TO BE CORRECTED THROUGH REASSINGNMENT, DISCIPLINE, TRAINING OR TERMINATION. THE MANNER IN WHICH LT. FLYN AND LT. MOSCHETTE INVESTIGATED COMPLAINTS AND THIS CASE EVIDENCES A POLICY OF DELIBERATE INDIFFERENCE TO THE RIGHTS OF CITY CITIZENS. SUCH A PROCEDURE VIOLATES EVERY BASIC TENET OF PROPER COMPLAINT INVESTIGATION. # EVANS WAS SERIOUSLY INJURED BY STEED THROUGH ECESSIVE FORCE AGAINST WHICH HE WAS UNABLE TO DEFEND HIMSELF FROM UNLAWFUL POLICE BRUTALITY.

THE FAILURE TO INTERVENE BY LT. MOSCHETTE IN THE USE OF EXCESSIVE FORCE BEATING OF EVANS BY STEED MAKES HIM LIABLE. THE BEATING OF EVANS TOOK ABOUT 20 MINUTES, MOSCHETTE HAD THE OPPORTUNITY TO OBSERVE THAT A HANDCUFFED, EVANS A NON-VIOLENT SUSPECT WAS BEING BEATEN BUT FAILED TO INTERVENE, THIS SHOWED DELIBERATE INDIFFERENCE TO EVANS SERIOUS MEDICAL NEEDS. EVANS NEVER POSSED AN IMMEDIATE THREAT TO THE SAFETY OF STEED OR OTHERS. THE HISTORY OF WIDESPREAD ABUSE PUTS THE RESPONSIBLE SUPERVISOR MOSCHETTE ON NOTICE OF THE NEED TO CORRECT THE DEPRIVATION, AND HE FAILS TO DO SO. EVIDENCE WILL SUPORT CONCLUSIONS THAT DELRAY BEACH POLICE AGENCY HAS INADEQUATE POLICIES OF SUPERVISION, DISCIPLIN AND TRAINING OF OFFICERS WITHIN AGENCY, AND THAT THOSE POLICIES DEMONSTRATED DELIBERATE INDIFFERENCE OF CITY TO RIGHTS OF EVANS TO BE FREE FROM USE OF EXCESSIVE FORCE BY CITY OFFICERS. THE CITY OF DELRAY BEACH POLICE AGENCY DID NOT LOG COMPLAINTS AGAINST STEED, ALSO THE FAILURE TO FOLLOW UP ON THOSE COMPLAINTS NO ONE IN THE AGENCY COMPLETED POLICE REPORT DESCRIBING CIRCUMSTANCES OF EVANS ARREST. THE DELRAY BEACH POLICE AGENCY IS ONE OF THE MOST DANGEROUS GANGS IN AMERICA.

THIS COMPLAINT IS RESPECTFULLY BEING SUBMITTED AGAINST OFFICER DAVID STEED IN HIS OWN INDIVIDUAL CAPACITY AND LT. MICHAEL MOSCHETTE IN HIS OWN INDIVIDUAL CAPACITY

YOU WILL SEE THE MOVING FORCE OF THE VIOLATION OF EVANS 4TH AMENDMENT RIGHTS IS THE DISREGARD OF THE MUNICIPAL PROTOCOL POLICY AND PROCEDURE OR CUSTOM MANUAL POLICY BY OFFICER DAVID STEED AND HIS SUPERVISOR LT. MICHAEL MOSCHETTE. ALL OF THE VIOLATIONS WERE COMMITTED AGAINST EVANS WITH RECKLESS DISREGARD OF EVANS AS A HUMAN BEING.

THE ARREST OF EVANS ON JANUARY 26, 2012 BY STEED WAS WITHOUT PROBABLE CAUSE, AND WAS EFFECTUATED BY THE USE OF VIOLENT EXCESSIVE FORCE. EVANS SEEKS DAMAGES FROM STEED BASED UPON THE VIOLATIONS OF THE FOURTH AND FOURTEENTH AMENDMENTS ARISING OUT OF THE ARREST. EVAS ALSO SEEKS DAMAGES FROM LT. MOSCHETTE FOR HIS FAILURE TO INTERVENE IN THE BEATING AT THE HANDS OF OFFICER STEED. THIS BEATING WOULD NOT HAVE OCCURRED BUT FOR LT. MOSCHETTE'S FAILURE TO PROPERLY TRAIN AND SUPERVISE HIS SUBORDINATE OFFICERS AND THAT MOSCHETTE FAILURE TO TRAIN AND SUPERVISE THE OFFICERS IS A CUSTOM POLICY UNDER WHICH MOSCHETTE CAN BE HELD LIABLE UNDER. THE INJURIES INFLICTED UPON EVANS BY STEED ROSE TO THE LEVEL OF A CONSTITUTIONAL TORT, IT WAS SO EGREGIOUS AS TO EXCEED THE BOUNDARIES OF WRONGFUL INJURIES REDRESSABLE UNDER TORT LAW AND WHICH DEPRIVED EVANS OF HIS FOURTEENTH AMENDMENT LIBERTY INTEREST WITHOUT DUE PROCESS OF LAW. WHEN STEED FIRST ATTACKED EVANS HE WAS HANDCUFFED AND IMMEDIATELY BEATTEN BY STEED VIOLENT PUCHES, AND BANGGING OF HEAD ON PAVEMENT AND BLACKEDOUT DUE TO CONCUSSION. EVANS WAS KICKED IN RIGHT RIBB CAGE, AND METAL BATON STUCK IN MOUTH, SPRAYED WITH FULL CAN OF OC CHEMICAL PEPPER SPRAY. DAVID STEED MALICIOUSLY AND SADISTICALLY DEPRIVED EVANS OF HIS RIGHTS WITH THE **VIOLENT** BEATTING FOR THE VERY PURPOSE OF CAUSING HARM DUE TO RETALIATION MOTIVES STEEMING FROM A 2011 CIVIL ACTION AGAINST HIM. I WILL SEND YOU THE EXIBITS ONCE I RECIEVE THEM.

EXHIBIT-1

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: 502011DR002319XXXXSB
Division: FZ

2011 FEB 28 A:11:49
CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY, FL

ANTHONY EVANS,
Petitioner,

and

DAVID STEED,
Respondent.

PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE

I, *{full legal name}* ANTHONY GEORGE EVANS, being sworn, certify that the following statements are true:

SECTION I. PETITIONER (This section is about you. It must be completed.)

1. Petitioner currently lives at: *{address, city, state, zip code}* 196 N.W. 8TH AVE DELRAY BEACH, FL 33444.
[√ if applies]
___ **Petitioner seeks an injunction for protection on behalf of a minor child.** Petitioner is the parent or legal guardian of *{full legal name}*_____, a minor child who is living at home.

2. Petitioner's attorney's name, address, and telephone number is: _____
(If you do not have an attorney, write "none.")

SECTION II. RESPONDENT (This section is about the person you want to be protected from. It must be completed.)

1. Respondent currently lives at: *{address, city, state, and zip code}* DELRAY BEACH POLICE DEPARTMENT
Respondent's Driver's License number is: *{if known}* E152000680940FL

2. Petitioner has known Respondent since: *{date}* FEBUARY 2010.

3. Respondent's last known place of employment: DELRAY BEACH
Employment address: POLICE DEPARTMENT
Working hours: _____

4. Physical description of Respondent:
Race: B Sex: Male ✓ Female ____ Date of Birth: 3-14-68
Height: 6.3 Weight: 200 Eye Color: BROWN Hair Color: BLACK
Distinguishing marks and/or scars: NONE
Vehicle: (make/model) NONE Color: NONE Tag Number: NONE

5. Other names Respondent goes by (aliases or nicknames): NONE

6. Respondent's attorney's name, address, and telephone number is: N/A

(If you do not know whether Respondent has an attorney, write "unknown." If Respondent does not have an attorney, write "none.")

SECTION III. CASE HISTORY AND REASON FOR SEEKING PETITION (This section must be completed.)

1. Has Petitioner ever received or tried to get an injunction for protection against domestic violence, repeat violence, dating violence, or sexual violence against Respondent in this or any other court?
✓ Yes ____ No If yes, what happened in that case? *{include case number, if known}*
INTERNAL AFFAIRS HEARING, OFFICER WAS CLEARED

2. Has Respondent ever received or tried to get an injunction for protection against domestic violence, repeat violence, dating violence, or sexual violence against Petitioner in this or any other court?
____ Yes ✓ No If yes, what happened in that case? *{include case number, if known}*

3. Describe **any other** court case that is either going on now or that happened in the past **between Petitioner and Respondent** *{include case number, if known}*:
3-10-11

4. Respondent has directed at least two incidents of "violence," meaning assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, or false imprisonment, or any criminal offense resulting in physical injury or death against Petitioner or a member of Petitioner's immediate family. One of these two incidents of "violence" has occurred within 6 months of the date of filing of this petition. The most recent incident (including date and location) is described below.
On *{date}* 2-6-11 2-17-11, at *{location}* ATLANTIC AVE AND Respondent S. W 1ST on 9-2010

☐ Check here if you are attaching additional pages to continue these facts.

5. Other prior incidents (including dates and location) are described below:
On {date} September 2010, at {location} Atlantic AVE,
Respondent February 17, 2011

EVANS WAS TAZZERED BY STEED USE OF EXCESSIVE FORCE REFUSED TO CALL PARAMEDICS. ON 2-17-11 MADE STATEMENTS WHEN EVER I SEE YOU, I WILL FOLLOW YOU, HARRASS YOU AND ARREST YOU. MY JOB IS SECURRED THERE IS NOTHING THE CITY OR CHIEF CAN DO TO ME. F ON 9-2010 MADE STATEMENT DO I HAVE TO KILL YOU TO KEEP YOU OFF THIS PROPERTY?

☐ Check here if you are attaching additional pages to continue these facts.

6. Petitioner genuinely fears repeat violence by Respondent. Explain: I'M GOING SERIOUS RECONSTRUCTION FOOT SURGURY, WITH TITANIUM SCREWS IN LEFT FOOT. I WANT THIS OFFICER TO STAY AWAY FROM ME. BECAUSE STEED IS CONSTANTLY TRYING TO PROVOKE ME TO REACT TO HIS STUPIDITY SO THAT HE CAN SERIOUSLY HARM ME, AND HAVE THE CITY TO BACK HIM UP.

7. **Additional Information**
[√ **all** that apply]

____ a. Respondent owns, has, and/or is known to have guns or other weapons.
Describe weapon(s): _____

___ b. This or prior acts of repeat violence have been previously reported to: *{person or agency}*
_____.

SECTION IV. INJUNCTION (This section must be completed.)

1. Petitioner asks the Court to enter an injunction prohibiting Respondent from committing any acts of violence against Petitioner and:
   a. prohibiting Respondent from going to or within 500 feet of any place Petitioner lives;
   b. prohibiting Respondent from going to or within 500 feet of Petitioner's place(s) of employment or the school that Petitioner attends; the address of Petitioner's place(s) of employment and/or school is:_____
   _____;
   c. prohibiting Respondent from contacting Petitioner by telephone, mail, by e-mail, in writing, through another person, or in any other manner;
   d. ordering Respondent not to use or possess any guns or firearms;

[√ all that apply]

____ e. prohibiting Respondent from going to or within 500 feet of the following place(s) Petitioner or Petitioner's immediate family must go to often: _____
_____

____ f. prohibiting Respondent from knowingly and intentionally going to or within 100 feet of Petitioner's motor vehicle; and any other terms the Court deems necessary for the safety of Petitioner and Petitioner's immediate family.

I UNDERSTAND THAT BY FILING THIS PETITION, I AM ASKING THE COURT TO HOLD A HEARING ON THIS PETITION, THAT BOTH THE RESPONDENT AND I WILL BE NOTIFIED OF THE HEARING, AND THAT I MUST APPEAR AT THE HEARING.

I UNDERSTAND THAT I AM SWEARING OR AFFIRMING UNDER OATH TO THE TRUTHFULNESS OF THE CLAIMS MADE IN THIS PETITION AND THAT THE PUNISHMENT FOR KNOWINGLY MAKING A FALSE STATEMENT INCLUDES FINES AND/OR IMPRISONMENT.

Dated: 2-28-11

Anthony G Evans
Signature of Petitioner
Printed Name: ANTHONY EVANS
Address: 196 NW 8TH AVE
City, State, Zip: DELRAY BEACH, FL 33444
Telephone Number: 561-573-4290
Fax Number: _____

STATE OF FLORIDA
COUNTY OF Palm Beach

Sworn to or affirmed and signed before me on 2/28/11 by Anthony Evans

NOTARY PUBLIC or DEPUTY CLERK

Yvonne Chisolm

[Print, type, or stamp commissioned name of notary or clerk.]

✓ Personally known
Produced identification
Type of identification produced FL DL

EXHIBIT 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No.: **502011DR002319XXXXSB**
Division: **FZ**

ANTHONY EVANS,
Petitioner,

And

DAVID STEED,
Respondent.
_____/

2011 FEB 28 PM 2:21
CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY
SOUTH CITY

ORDER DENYING PETITION FOR INJUNCTION FOR PROTECTION AGAINST ( ) DOMESTIC VIOLENCE (X) REPEAT VIOLENCE ( ) DATING VIOLENCE ( ) SEXUAL VIOLENCE

The Court has reviewed the Petition for Injunction for Protection Against Domestic, Repeat, Dating, or Sexual Violence filed in this cause and finds that Petitioner has failed to comply with one or more statutory requirements applicable to that petition including the following:

_____ 1. Petitioner has failed to allege in a petition for domestic violence that Respondent is a family or household member as that term is defined by Chapter 741, Florida Statutes.

_____ 2. Petitioner has used a petition form other than that which is approved by the Court and the form used lacks the statutorily required components.

_____ 3. Petitioner has failed to complete a mandatory portion of the petition.

_____ 4. Petitioner has failed to sign the petition.

JLM 5. Petitioner has failed to allege facts sufficient to support the entry of an injunction for protection against domestic, repeat, dating, or sexual violence because: The incident described does comport with the requirements of the repeat violence injunction criteria.

__ 6. Other:__.

It is therefore, ORDERED AND ADJUDGED that the Petition is denied without prejudice to amend or supplement the petition to cure the above stated defects.

ORDERED on February 28, 2011

15th Judicial Circuit
CIRCUIT JUDGE

COPIES TO:
Petitioner: ✓ by hand ~~delivery in open Court~~
____ by U.S. mail

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of **Sharon R. Bock, Clerk & Comptroller, Palm Beach County, Florida**, and that I have furnished copies of this order as indicated above.

Sharon R. Bock
Clerk & Comptroller

By: Yvonne Chisolm
, Deputy Clerk

EXIBIT-3

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: 2011DR003202XXXXSB
Division: F-2

ANTHONY EVANS,
Petitioner,

and

DAVID STEED,
Respondent.

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH FILE

2011 MAR 17 PM 1:32

PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE

I, *{full legal name}* ANTHONY GEORGE EVANS, being sworn, certify that the following statements are true:

SECTION I. PETITIONER (This section is about you. It must be completed.)

1. Petitioner currently lives at: *{address, city, state, zip code}* 196 N.W. 8TH AVE DELRAY BEACH FL 33444

[√ if applies]

___ **Petitioner seeks an injunction for protection on behalf of a minor child.** Petitioner is the parent or legal guardian of *{full legal name}* ANTHONY EVANS a minor child who is living at home.

2. Petitioner's attorney's name, address, and telephone number is: NONE

(If you do not have an attorney, write "none.")

SECTION II. RESPONDENT (This section is about the person you want to be protected from. It must be completed.)

1. Respondent currently lives at: *{address, city, state, and zip code}* Delray Beach Police Department 300 West Atlantic Ave
Respondent's Driver's License number is: *{if known}* Delray Beach, fl

2. Petitioner has known Respondent since: *{date}* _____

3. Respondent's last known place of employment: Delray Beach Police
Employment address: Department
Working hours: _____

ON 3-14-11 I WAS Standing on the Corner of N.W 10 TH AVE And Atlantic AVE. Waiting on A RIDE FROM A BIRTH DAY PARTY. NEXT THING I KNEW STEED PULLS UP JUMPS OUT CAR GRABBS ME STATEING A TRESSPASS INVESTIGATION. I SAID PLEASE REMOVE YOUR HANDS OFF ME AND STOP PUSHING ME. I HAVE SCREWS IN MY FOOT. STEED STATED I DO NOT GIVE A SHIT AND SHUT THE FUCK UP BEFORE I

☑ Check here if you are attaching additional pages to continue these facts.

5. Other prior incidents (including dates and location) are described below:
On {date} 9-10-2010 9-13-10, at {location} Atlantic AVE,
Respondent David Steed Delray Beach police officer use excessive force when he TRESPASS me And put his foot on my face And keep pulling the trigger. on 4-28-10 Steed Arrested me for no reason Slap me in the police car hit me to get out. Due to fact I just had surgery I did not get out fast enough Steed snatch me out the car And charge me with Resisting

☐ Check here if you are attaching additional pages to continue these facts.

6. Petitioner genuinely fears repeat violence by Respondent. Explain:

7. **Additional Information**
[√ all that apply]

√ a. Respondent owns, has, and/or is known to have guns or other weapons.
Describe weapon(s): GUNS

___ b. This or prior acts of repeat violence have been previously reported to: {person or agency}

SECTION IV. INJUNCTION (This section must be completed.)

THROW YOU TO THE GROUND
ASS HOLE. OFFICER STEED GRABBED
ME SPUNN ME AROUND AS SLAMED ME
AGAINST HIS CAR. I WENT TO MY
FOOT DOCTOR TODAY 3-17-11 TO HAVE
X-RAYS TAKEN AND X-RAY RAY REVELED
DUE TO OFFICER DAVID STEED
ABUSE OF AUTHORITY, WITH THE USE
OF EXCESSIVE FORCE ONE OF THE SCREWS
DISLODGE FROM THE BONE IN ME FOOT
AND HAD TO HAVE SURGURY AGAIN
OFFICER STEED HAS BEEN HARSSING EVANS
SINCE FEBUARY 2010. STEED STATED
TO EVANS I WILL FOLLOW YOU HARRASS
YOU, AND PROVOKE YOU TO DO SOMETHING
STUPID TO GIVE ME A REASON TO
HURT YOU. MY JOB IS SECURED THERE
IS NOTHING THE CHIEF OR CITY
CAN DO TO ME OR PROTECT YOU FROM
ME YOU ASS HOLE. I WANT THIS
COURT SYSTEM TO KEEP THIS
CORRUPTED ROGUE COP AWAY FROM
AS I HEAL FROM SURGURY

4. Physical description of Respondent:
Race: B Sex: Male X Female ____ Date of Birth: 3-14-68
Height: 6.3 Weight: 175 Eye Color: BROWN Hair Color: BLACK
Distinguishing marks and/or scars: N/A
Vehicle: (make/model) N/A Color: N/A Tag Number: N/A

5. Other names Respondent goes by (aliases or nicknames): NONE

6. Respondent's attorney's name, address, and telephone number is: UNKNOWN

(If you do not know whether Respondent has an attorney, write "unknown." If Respondent does not have an attorney, write "none.")

SECTION III. CASE HISTORY AND REASON FOR SEEKING PETITION (This section must be completed.)

1. Has Petitioner ever received or tried to get an injunction for protection against domestic violence, repeat violence, dating violence, or sexual violence against Respondent in this or any other court?
✓ Yes ____ No If yes, what happened in that case? *{include case number, if known}*

DENIED 502011DR002319 XXXXSB

2. Has Respondent ever received or tried to get an injunction for protection against domestic violence, repeat violence, dating violence, or sexual violence against Petitioner in this or any other court?
____ Yes ____ No If yes, what happened in that case? *{include case number, if known}*

UNKNOWN

3. Describe **any other** court case that is either going on now or that happened in the past **between Petitioner and Respondent** *{include case number, if known}*:
FILED RESTRAINING ORDER AGAINST HIM IN FEBUARY

4. Respondent has directed at least two incidents of "violence," meaning assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, or false imprisonment, or any criminal offense resulting in physical injury or death against Petitioner or a member of Petitioner's immediate family. One of these two incidents of "violence" has occurred within 6 months of the date of filing of this petition. The most recent incident (including date and location) is described below.
On *{date}* 3-14-11, at *{location}* ATLANTIC AVE,
Respondent DAVID STEEL

1. Petitioner asks the Court to enter an injunction prohibiting Respondent from committing any acts of violence against Petitioner and:

a. prohibiting Respondent from going to or within 500 feet of any place Petitioner lives;

b. prohibiting Respondent from going to or within 500 feet of Petitioner's place(s) of employment or the school that Petitioner attends; the address of Petitioner's place(s) of employment and/or school is: ANY PLACE THAT HE SEES THE PETITIONER;

c. prohibiting Respondent from contacting Petitioner by telephone, mail, by e-mail, in writing, through another person, or in any other manner;

d. ordering Respondent not to use or possess any guns or firearms;

[√ all that apply]

✓ e. prohibiting Respondent from going to or within 500 feet of the following place(s) Petitioner or Petitioner's immediate family must go to often: _____

✓ f. prohibiting Respondent from knowingly and intentionally going to or within 100 feet of Petitioner's motor vehicle; and any other terms the Court deems necessary for the safety of Petitioner and Petitioner's immediate family.

I UNDERSTAND THAT BY FILING THIS PETITION, I AM ASKING THE COURT TO HOLD A HEARING ON THIS PETITION, THAT BOTH THE RESPONDENT AND I WILL BE NOTIFIED OF THE HEARING, AND THAT I MUST APPEAR AT THE HEARING.

I UNDERSTAND THAT I AM SWEARING OR AFFIRMING UNDER OATH TO THE TRUTHFULNESS OF THE CLAIMS MADE IN THIS PETITION AND THAT THE PUNISHMENT FOR KNOWINGLY MAKING A FALSE STATEMENT INCLUDES FINES AND/OR IMPRISONMENT.

Dated: 3-17-11

Anthony Evans

Anthony Evans

Signature of Petitioner

Printed Name: ANTHONY EVANS

Address: 196 N.W. 8 AVE

City, State, Zip: DELRAY BEACH, FL 33444

Telephone Number:

Fax Number:

15th JUDICIAL CIRCUIT COURT · CLERK & COMPTROLLER · PALM BEACH COUNTY, FLORIDA · STATE OF FLORIDA

STATE OF FLORIDA
COUNTY OF Palm Beach

Sworn to or affirmed and signed before me on 3-17-11 by Anthony Evans

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk.]

___ Personally known
✓ Produced identification
Type of identification produced FL FD

West's Florida Statutes Annotated
West's Florida Local Rules and Administrative Orders
Fifteenth Judicial Circuit (Palm Beach County)
Administrative Orders
Civil Orders

Fifteenth Judicial Circuit 3.606-12/08

3.606-12/08. **CIVIL COVER SHEET**

Currentness

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3.606 12/08

IN RE: **CIVIL COVER SHEET**

In an effort to promote more informed judicial decision making, the Fifteenth Judicial Circuit has identified the need to revise the **Civil Cover Sheet** to include information as to prior filings involving the same claim against the same adverse party in county court matters.

NOW, THEREFORE, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is **ORDERED** as follows:

1. All parties filing a County Civil Case Type are hereby required to utilize the attached **Civil Cover Sheet**.

2. At the time of filing, the Clerk and Comptroller shall direct any party who does not provide this form to the Self Service Center for assistance and/or provide the form at the appropriate cost.

DONE AND SIGNED in Chambers, at West Palm Beach, Palm Beach County, Florida this 22 day of December, 2008.

.....

Kathleen J. KrollChief Judge

ATTACHMENT

IN THE ☐COUNTY/☐CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NUMBER: .....
DIVISION: .....

IN RE: THE MATTER OF:
ANTHONY EVANS,
PLANTIFF

-VS-
DAVID STEED,
DEFENDANT
MICHAEL MOSCHETTE

Adrian Richardson
Notary Public State of Florida
Adrian K Richardson
My Commission EE122013
Expires 10/24/2015
06/11/12

CIVIL COVER SHEET

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I. TYPE OF CASE(Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

DOMESTIC RELATIONS

- ☐ *Simplified dissolution*
- ☐ *Dissolution*
- ☐ *Support IV-D*
- ☐ *Support Non* IV-D
- ☐ *UIFSA IV-D*
- ☐ *UIFSA Non IV-D*
- ☐ *Domestic violence*
- ☐ *Other domestic relations*

TORTS

- ☐ *Professional* malpractice
- ☐ *Products* liability
- ☐ *Auto negligence*
- ☒ *Other* negligence

OTHER CIVIL

- ☐ *Contracts*
- ☐ *Condominium*
- ☐ *Real property/ Mortgage* foreclosure
- ☐ *Eminent domain*
- ☐ *Challenge to proposed constitutional amendment*
- ☐ *Other*
- ☐ *Eviction*
- ☐ *Small Claims*

II. IS JURY TRIAL DEMANDED IN COMPLAINT?

☒ Yes

☐ No

III. ** FOR COUNTY COURT CASES ONLY:

Has there been a previous case filed in Palm Beach County/ 15th Judicial Circuit which involved the same claim against the same adverse party and which was voluntarily or involuntarily dismissed?

☐ Yes. Please provide the appropriate case number(s) .....

☒ No

Date: _____

Signature of Attorney or Party initiating action: .....

Revised 12/08

Current with amendments received through 2/15/2012

End of Document

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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

ANTHONY GEORGE EVANS *Plaintiff*	)	
v.	)	Civil Action No.
DAVID STEED, MICHAEL MOSCHETTE *Defendant*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Anthony L Evans 0111396
West Detention Center E2
P.O. Box 24714
West Palm Beach, FL 33414

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.12-80648-CIV MARA
MAGISTRATE JUDGE P. A. WHITE

ANTHONY GEORGE EVANS, :

Plaintiff, :

v. :

DAVID STEED, et al., :

Defendants. :

REPORT OF MAGISTRATE JUDGE

I. Introduction

The plaintiff Anthony George Evans, housed at the West Palm Beach Detention Center, has filed a pro se complaint pursuant to 42 U.S.C. §1983 for damages. [DE# 1]. The plaintiff has been granted leave to proceed in forma pauperis.

This cause is presently before the Court for initial screening pursuant to 28 U.S.C. §1915, because the plaintiff is proceeding in forma pauperis.

II. Analysis

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

Sec. 1915 Proceedings in Forma Pauperis

* * *

> (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that –
>
> * * *
>
> (B) the action or appeal –
>
> * * *
>
> (i) is frivolous or malicious;
>
> (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.

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).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."' Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997). The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007)(retiring the oft-criticized “no set of facts” language previously used to describe the motion to dismiss standard and determining that because plaintiffs had “not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed” for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . .” The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of

what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964).

Facts of the complaint

The plaintiff contends that Delray Beach Police Officers David Steed, in retaliation for his filing a grievance against him, and Michael Moschette used excessive force upon his arrest, using an alleged affidavit. He contends that on January 26, 2012, he was exiting his yard and he was cut off by Steed's Patrol car. Steed proceeded to slam his right shoulder and kick him in his right rib cage. Once on the ground Steed straddled him and began to punch his head and face, and tried to force a metal baton into his mouth. He banged his head on the ground causing a concussion. Supervisor Moschette did not intervene, but on the contrary took part in the assault by emptying a can of pepper spray into his eyes. He was denied medical aid by Steed. He claims Steed and Griffith planted drugs on him and took him to the station.

He was later taken to the hospital for a concussion, lower back, neck, and rib pain, and a swollen right eye with severe headaches. He suffered a scratched cornea and cataract, for which he requires surgery. He was given prescription glasses and taken to the Palm Beach County Jail.

Sufficiency of the complaint

Evans is alleging that Officers David Steed and Michael Moschette used excessive force during a seizure in violation of his Fourth Amendment rights.

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).

At this preliminary stage the facts presented by the plaintiff support a claim of use of unlawful force. This claim should be permitted to proceed against the defendants.

Unlawful Search and Seizure

The plaintiff further argues that the officers violated his Fourth Amendment rights by stopping him with an "alleged warrant". As stated by the Eleventh Circuit in U.S. v. Alexander, 835 F.2d 1406, 1408 (11 Cir. 1988), the basic premise of the **search** doctrine is that "searches undertaken without a warrant issued upon probable cause are 'per se unreasonable under the Fourth Amendment–subject only to a few specifically established and well-delineated exceptions.'" (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). In this case, the plaintiff states the officers possessed a warrant and unless the plaintiff can substantiate his claim that it was "alleged", this claim should be dismissed.

Retaliation

Under certain circumstances, retaliation may violate the inmate's First Amendment rights. Wright v. Newsome, 795 F.2d 964, 968 (11 Cir. 1986). In the "free world" context, an act taken in retaliation for exercise of a constitutionally protected right is actionable under §1983 even if the act, when taken for different reasons, would have been proper. Mount Healthy City School Dist. Bd. of Education v. Doyle, 429 U.S. 274, 283 (1977)).

The analysis applied in this Circuit to a prisoner retaliation claim requires a "mutual accommodation" between the penal institution's legitimate needs and goals and the prisoner's retained constitutional rights, under the "reasonableness" test set forth in Turner v. Safley, 482 U.S. 78 (1987).

The plaintiff claims Officer Steed used excessive force against him due to a prior filing of a grievance against him. The plaintiff has stated a claim for retaliation against Steed at this preliminary stage.

III. Recommendation

Based on the foregoing, it is recommended as follows:

1. The claim against Steed and Moschette for use of excessive force upon arrest shall continue.

2. The claim against Steed for retaliation should proceed.

3. The claim of unlawful search and seizure should be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, unless the plaintiff can amend his complaint to substantiate his claim of an "alleged warrant" and/or lack of probable cause.

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

It is so recommended at Miami, Florida, this 27th day of June, 2012.

UNITED STATES MAGISTRATE JUDGE

cc: Anthony G. Evans, Pro Se
#0111396
Palm Beach County Jail
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-80648-CIV-MARRA

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED, et al.,

Defendants.
_____/

ORDER

_____For the reasons stated in the Report of the Magistrate Judge and upon independent de novo review of the file and over no objections filed, it is **ORDERED AND ADJUDGED** as follows:

1) The Report and Recommendation of the Magistrate Judge is adopted and approved in all respects.

2) The claim against Steed and Moschette for use of excessive force upon arrest shall proceed. The claim against Steed for retaliation shall proceed. The claim of unlawful search and seizure should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, unless the plaintiff can amend his complaint to substantiate his claim of an

"alleged warrant" and/or lack of probable cause. Plaintiff shall have twenty (20) days from the date of entry of this order to file an amended complaint.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 24th day of July, 2012.

KENNETH A. MARRA
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL MOSCHETTE,

Defendants.
_____/

ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANTS DAVID STEED AND MICHAEL MOSCHETTE

COME NOW, the Defendants, DAVID STEED and MICHAEL MOSCHETTE, by and through the undersigned counsel, and hereby file this Answer to and Affirmative Defenses to Plaintiff's Complaint. Since there was no objection to Judge White's Report and Recommendation pursuant to 28 U.S.C. §1915 dated June 27, 2012 nor was an Amended Complaint filed per Judge Marra's order dated July 24, 2012, the Defendants are responding to Plaintiff's Complaint of excessive force on Officers Steed and Moschette, individually, and on one count of retaliation against Officer Steed as stated in Judge Marra's Order dated July 24, 2012.

Since Plaintiff's Complaint is in narrative form with no numbers or paragraph breaks, Defendants will address the Plaintiff's Complaint by page as follows:

1. The Defendants will admit that Plaintiff was located at the BP Gas Station at 725 West Atlantic Avenue on January 26, 2012 at approximately 12:45am. The Defendants will admit that Lt. Moschette and Officer David Steed were present at the BP Gas station on January

26, 2012 at approximately 12:45am. The defendants will admit that Lt. Moschette sprayed Plaintiff with Department issued pepper mace. The Defendants admit that the Plaintiff was transported to the hospital by the Delray Beach Fire Department. The Defendants deny the remainder of the allegations on page one of Plaintiff's complaint and demand strict proof thereof.

2. The Defendants will admit that it is the responsibility of the Delray Beach Police Officers to have knowledge of the policies in the General Orders manual. The defendants will admit that the State Attorney' Office did not receive a response to resistance form on the 3/15/2011 incident with Plaintiff as there was no response to resistance form prepared for this incident. It is unknown whether the State Attorney's office in Palm Beach County received a copy of the response to resistance report on the 1/26/2012 incident however, the information captured on the report is depicted on the probable cause affidavit and related supplements and therefore the Defendants will deny the allegation. The Defendants deny the remainder of the allegations on page two of Plaintiff's Complaint and demand strict proof thereof.

3. The Defendants deny the allegations in page 3 of Plaintiff's Complaint and demand strict proof thereof.

4. The Defendants will admit that the Chief of Police at the Delray Beach Police Department is responsible for instituting policy and procedure for the Delray Beach Police Department. The Defendants will also admit that Plaintiff made a Public records request for the mental health records of Officer Steed and Lieutenant Moschette and was denied access under a Florida public records exemption. The Defendants deny the remainder of the allegations in page 4 of Plaintiff's Complaint.

5. The Defendants will admit that the Delray Beach Police Department does not have a written policy requiring officers be given a polygraph about Citizens Complaints. The Defendants deny the remainder of the allegations in page 5 of Plaintiff's Complaint.

6. The Defendants deny the allegations in page 6 of Plaintiff's Complaint and demand strict proof thereof.

7. The Defendants deny the allegations in page 7 of Plaintiff's Complaint and demand strict proof thereof.

8. The Defendants deny the allegations in page 8 of Plaintiff's Complaint and demand strict proof thereof.

9. The Defendants deny any alleged fact that has not been addressed in the Defendants' Answer with regard to Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

10. As a First Affirmative Defense, at all the times material hereto, the Defendant Officer David Steed is entitled to qualified immunity for his actions.

Second Affirmative Defense

11. As a Second Affirmative Defense, at all times material hereto, the Defendant Lt. Michael Moschette is entitled to qualified immunity for his actions.

Third Affirmative Defense

12. As a Third Affirmative Defense, at all times material hereto, the actions of the Defendants were reasonable under the circumstances.

Fourth Affirmative Defense

13. As a Fourth Affirmative Defense, at all times material hereto, the actions of the Defendants were done in the course of their discretionary authority and/or in the legal execution of their duty or was justified.

Fifth Affirmative Defense

14. As a Fifth Affirmative Defense, at times material hereto, the touching, if any, of the Plaintiff by the Defendants was done in the lawful execution of their duty or in self-defense or was justified.

Sixth Affirmative Defense

15. As a Sixth Affirmative Defense, at all times material hereto, the Plaintiff was not caused to be subjected to the deprivation of any right, privilege and/or immunity secured under the Constitution of the United States, the Laws of the United States and the State of Florida.

Seventh Affirmative Defense

16. As a Seventh Affirmative Defense, at all times material hereto, there was probable cause for the arrest and/or detention of the Plaintiff, in fact, Plaintiff pled and was sentenced to criminal charges resulting from the incident in question.

Eighth Affirmative Defense

17. As a Eighth Affirmative Defense, at all times material hereto, there was no retaliatory action to the Plaintiff as Plaintiff resisted a lawful detention and/or arrest with violence.

Ninth Affirmative Defense

18. As a Ninth Affirmative Defense, at all material times hereto, the injuries, if any, alleged by the Plaintiff were not caused by any unlawful conduct by the Defendants.

Tenth Affirmative Defense

19. As an Tenth Affirmative Defense, at all times material hereto, the Defendant's conduct did not adversely affect the Plaintiff's filing of a Complaint with the Delray Beach Police Department against Officer Steed.

Eleventh Affirmative Defense

20. As a Eleventh Affirmative Defense, at all times material hereto, there was no causal connection between the Defendants' actions and an alleged adverse effect on Plaintiff's filing of a Complaint with the Delray Beach Police Department against Officer Steed.

Twelfth Affirmative Defense

21. As a Twelfth Affirmative Defense, at all times material hereto, the Defendants acted in good faith.

Thirteenth Affirmative Defense

22. As a Thirteenth Affirmative Defense, at all times material hereto, the Defendants are entitled to all the benefits and protections granted to them by Section 768.28, Florida Statutes.

Dated this 11th day of October, 2012.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol
Catherine M. Kozol, Esq. (831433)
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Terrill C. Pyburn, Esq. (524646)
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Assistant City Attorney
200 N. W. 1st Avenue
Delray Beach, FL 33444
Telephone: 561-243-7090
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: George Anthony Evans, Century Correctional Institution, 400 Tedder Road, Century, FL 32535 on this 11th day of October, 2012.

/s/ Catherine M. Kozol
Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-80648-CIV-MARRA
MAGISTRATE JUDGE P. A. WHITE

ANTHONY GEORGE EVANS, :

Plaintiff, :

v. : ORDER SCHEDULING PRETRIAL PROCEEDINGS WHEN PLAINTIFF IS PROCEEDING PRO SE

DAVID STEED, et al., :

Defendants. :

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 **April 3, 2013**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **April 7, 2013**.

3. All motions to dismiss and/or for summary judgment shall be filed by **May 8, 2013**.

4. On or before **May 22, 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 <u>each</u> of his witnesses to give.

5. On or before **June 5, 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 3rd day of December, 2012.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Anthony George Evans, Pro Se
DC #187491
Century Correctional Institution
400 Tedder Road
Century, FL 32535-3655

Catherine M. Kozol, Esquire
Delray Beach Police Department
300 West Atlantic Avenue
Delray Beach,FL 33344

Hon. Kenneth A. Marra, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL MOSCHETTE,

Defendants.
_____/

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that on the 14th day of March, 2013, the Defendants will take the following deposition:

of: **The Plaintiff, Anthony George Evans,**

at: **Century Correctional Institution,**
400 Tedder Road,
Pensacola, FL 32535

on: **Thursday, March 14, 2013 at 10:00 a.m.**

upon oral examination before Anchor Court Reporting Service, a Notary Public, or any other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the applicable Statues or Rules of the Court.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Dated this 27th day of February, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol

Catherine M. Kozol, Esq. (831433)
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Terrill C. Pyburn, Esq. (524646)
Attorney email: pyburn@mydelraybeach.com
Assistant City Attorney
200 N. W. 1st Avenue
Delray Beach, FL 33444
Telephone: 561-243-7090
Facsimile: 561-278-4755

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by United States first class mail to: George Anthony Evans, Century Correctional Institution, 400 Tedder Road, Century, FL 32535 on this 27th day of February, 2013.

/s/ Catherine M. Kozol
Catherine M. Kozol, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:12-cv-80648-KAM

ANTHONY GEORGE EVANS,

Plaintiff,

vs.

DAVID STEED and MICHAEL MOSCHETTE,

Defendants.
_____/

DEFENDANTS' MOTION FOR ORDER TO TAKE DEPOSITION OF INCARCERATED PLAINTIFF

COMES NOW, the Defendants, David Steed and Michael Moschette, pursuant to F.R.C.P. 30(a)(ii) makes this motion for an Order of the Court to take the deposition of the plaintiff, Anthony George Evans, who is currently incarcerated at Century Correctional Facility, Century, FL.

Plaintiff is an inmate housed with the Florida Department of Corrections at the Century Correctional State Facility located in Century, FL.

The Defendants require the deposition of the Plaintiff to further clarify issues involved in the litigation that are within the Plaintiff's knowledge.

The undersigned counsel representing the defendants, has contacted and spoken with the Classification Officer at the Century Correctional Facility and made arrangements for the admission of counsel and a Court reporter to record the deposition of the Plaintiff. The Classification Officer has approved counsel and the Court Reporter for March 14th, 2013 at 10:00 a.m. and this office has sent a Notice of Deposition to the Plaintiff.

WHEREFORE, the undersigned respectfully requests an Order of this Court granting the defendants to take the oral deposition of the plaintiff at the prison on March 14th, 2013.

Further, and in support of this Motion, these Defendants would refer this Honorable Court to the Memorandum of Law attached hereto and by reference made a part hereof.

MEMORANDUM OF LAW

Rule 30(a)(2) of the Federal Rules of Civil Procedure provides in pertinent part, as follows:

> "A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2)…(B) if the deponent is confined in prison."

Plaintiff is currently within the custody of the Florida Department of Corrections and is housed at the Century Correctional Facility in Century, FL. As such, he is a person confined in prison. As the Rule provides, a deposition of the Plaintiff may be taken only with leave of Court.

As the motion recites, these defendants wish to depose Plaintiff as his testimony is pertinent to the issues raised in this cause of action. The deposition, if permitted, has been coordinated through the Administration Office for the prison. The date and time for the deposition has been selected so as to allow advance notice to the Institution to minimize security disruption, etc.

The motion to take the deposition of a person confined in prison should be granted.

DATED this 1st day of March, 2013.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DELRAY BEACH, FLORIDA

By: /s/ Catherine M. Kozol
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_/s/ Catherine M. Kozol
Catherine M. Kozol, Esq.