

**U.S. District Court  
Southern District of Florida (Key West)  
CIVIL DOCKET FOR CASE #: 4:12-cv-10057-KMM**

Escalera v. Monroe County Detention Center et al  
Assigned to: Judge K. Michael Moore  
Referred to: Magistrate Judge Patrick A. White  
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 06/13/2012  
Jury Demand: Defendant  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff**

**Eli Baldemar Escalera**

represented by **Eli Baldemar Escalera**  
12000802  
Monroe County Detention Center  
Inmate Mail/Parcels  
5501 College Street  
Key West, FL 33040  
PRO SE

V.

**Defendant**

**Monroe County Detention Center**

**Defendant**

**Chief Tommy Taylor**

**Defendant**

**Sgt. Haviland**

**Defendant**

**Officer Mancuso**

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**

**Officer Hodges**

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

**Defendant**

**Medical Director Maureen Cerillo**

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

## ATTORNEY TO BE NOTICED

**Defendant****Nurse Pat Ericson**

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

Date Filed	#	Docket Text
06/13/2012	<u>1</u>	COMPLAINT Under the Civil Rights Act, 42 U.S.C. § 1983 against All Defendants. Filing fee \$ 350.00. IFP Filed, filed by Eli Baldemar Escalera.(cbr) (Entered: 06/13/2012)
06/13/2012	2	Judge Assignment to Judge K. Michael Moore (cbr) (Entered: 06/13/2012)
06/13/2012	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: 06/13/2012)
06/13/2012	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Eli Baldemar Escalera. (cbr) (Entered: 06/13/2012)
06/20/2012	<u>5</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/19/2012. (tw) (Entered: 06/20/2012)
06/20/2012	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 6/19/2012. (tw) (Entered: 06/20/2012)
07/13/2012	<u>7</u>	MOTION to Amend <u>1</u> Complaint by Eli Baldemar Escalera. Responses due by 7/30/2012 (cqs) (Entered: 07/13/2012)
07/19/2012	8	ORDER denying <u>7</u> Motion to Amend/Correct, A Report and Recommendation will be entered shortly providing the reasons the amendment is insufficient. Signed by Magistrate Judge Patrick A. White on 7/19/2012. (cz) (Entered: 07/19/2012)
07/27/2012	<u>9</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Eli Baldemar Escalera. Recommending 1. The case shall proceed to allow the plaintiff to amend his complaint as stated above. 2. The claims against Officer Shine should be dismissed for failure to state a claim pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). Objections to RR due by 8/13/2012 Signed by Magistrate Judge Patrick A. White on 7/27/2012. (tw) (Entered: 07/27/2012)
08/08/2012	<u>10</u>	Motion For filing OBJECTION to Dismissal of Complaint re: <u>9</u> Report and Recommendations by Eli Baldemar Escalera. (cqs) (Entered: 08/08/2012)
08/27/2012	11	PAPERLESS ORDER ADOPTING IN PART <u>9</u> REPORT AND RECOMMENDATION. THIS CAUSE came before the Court upon Petitioner Eli Baldemar Escalera's Petition Under 42 U.S.C. § 1983 <u>1</u> . THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, who issued a Report <u>9</u> recommending that (1) Defendant Shine be dismissed from this action because the complaint fails to state a claim against Defendant Shine, and (2) Plaintiff be granted leave to amend his Complaint consistent with the Magistrate's Report and Recommendation. Petitioner filed a Response <u>10</u> . A review of the Record reveals that Magistrate Judge White denied Petitioner's Motion to Amend Complaint wherein Petitioner attempted to add Defendant Shine as a Defendant to this case. Therefore, Defendant Shine has never been named as a Defendant in this case and there is not a party to this case. Accordingly, upon consideration of the Petition, Report, and Objection, and after a de novo review of the record, it is hereby ORDERED AND ADJUDGED that Magistrate Judge White's Report and Recommendation <u>9</u> is ADOPTED IN PART. Petitioner is granted leave to file an Amended Complaint within thirty (30) days of the date of this Order. This Court declines to adopt Magistrate Judge White's Report and Recommendation to the

		extent it recommends dismissing an individual not a party to this case. Signed by Judge K. Michael Moore on 8/27/2012. (dwe) (Entered: 08/27/2012)
09/24/2012	<u>12</u>	MOTION to Amend <u>1</u> Complaint by Eli Baldemar Escalera. Responses due by 10/12/2012 (cqs) (Entered: 09/25/2012)
09/24/2012	<u>13</u>	MOTION to Amend Initial <u>1</u> Complaint by Eli Baldemar Escalera. Responses due by 10/12/2012 (cqs) (Entered: 09/25/2012)
09/26/2012	<u>14</u>	NOTICE To the Court Re: Defendants being sued in their individual and official capacities by Eli Baldemar Escalera re <u>1</u> Complaint (cqs) (Entered: 09/26/2012)
09/27/2012	15	ORDER granting <u>12</u> Motion to Amend/Correct.granting <u>13</u> Motion to Amend/Correct, to the extent that the amendment will be screened in turn. Signed by Magistrate Judge Patrick A. White on 9/27/2012. (cz) (Entered: 09/27/2012)
10/15/2012	<u>16</u>	SUPPLEMENTAL REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>12</u> MOTION to Amend/Correct <u>1</u> Complaint filed by Eli Baldemar Escalera, <u>1</u> Complaint filed by Eli Baldemar Escalera, and <u>13</u> MOTION to Amend/Correct <u>1</u> Complaint filed by Eli Baldemar Escalera. Recommending 1. The claim of denial of medical treatment shall proceeda gainst Nurse Practitioner Erickson and Cerillo. 2. The plaintiff may file an amendment solely as to the issue of endangerment by officers Hodges and Mancuso. 3. The claims against the defendants in their official capacity should be dismissed. 4. Claims against Taylor and Haviland should be dismissed for failure to state a claim. 5. The plaintiff has failed to include his prayer for relief in his amendment and must file an amendment seeking relief. Objections to RRdue by 11/1/2012 Signed by Magistrate Judge Patrick A. White on 10/15/2012. (tw) (Entered: 10/15/2012)
10/31/2012	<u>17</u>	MOTION to Dismiss claim of Chief Tommy Taylor and Sergeant Haviland and to dismiss official capacity without prejudice <u>1</u> Complaint by Eli Baldemar Escalera. Responses due by 11/19/2012 (lk) (Entered: 10/31/2012)
11/01/2012	18	ORDER respectfully deferring ruling on <u>17</u> plaintiff's Motion to Dismiss to the United States District Judge, THIS PLEADING IS PARTIALLY OBJECTIONS TO THE REPORT AND RECOMMENDATION, AND PARTIALLY AGREEING. Signed by Magistrate Judge Patrick A. White on 11/1/2012. (cz) (Entered: 11/01/2012)
11/07/2012	<u>19</u>	MOTION for Leave to File Amended Complaint by Eli Baldemar Escalera. (lh) (Entered: 11/07/2012)
11/08/2012	20	ORDER granting <u>19</u> Motion for Leave to File amendment to the extent that the proposed amendment will be reviewed. Signed by Magistrate Judge Patrick A. White on 11/8/2012. (cz) (Entered: 11/08/2012)
11/13/2012	21	PAPERLESS ORDER ADOPTING <u>16</u> REPORT AND RECOMMENDATION. THIS CAUSE came before the Court upon Petitioner Eli Baldemar Escalera's Petition Under 42 U.S.C. § 1983 <u>1</u> . THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, who issued a Supplemental Report <u>16</u> recommending as follows: (1) The claim of denial of medical treatment shall proceed against Defendants Erickson and Cerillo; (2) The plaintiff may file an amendment solely as to the issue of endangerment by Defendants Hodges and Mancuso; (3) The claims against the defendants in their official capacity should be dismissed; (4) Claims against Defendants Taylor and Haviland should be dismissed for failure to state a claim; and (5) Plaintiff has failed to include his prayer for relief in his amendment and must file an amendment seeking relief. Plaintiff failed to file a timely Objection. Defendants Taylor and Haviland filed a Motion to Dismiss <u>17</u> , which Magistrate Judge White found was partially objecting to the Report and and partially agreeing to the Report. This Court shall treat the Motion to Dismiss as an Objection. UPON CONSIDERATION of the Petition, Report, and Objection, and after a de novo review of the record, it is hereby ORDERED AND ADJUDGED as follows: (1) The claims against the defendants in their official capacities and the claims against Defendants Taylor and Haviland are DISMISSED; (2) Plaintiff's claims of denial of medical treatment shall proceed against Defendants Erickson and Cerillo; (3) Plaintiff may file an amendment solely as to the issue of endangerment by Defendants Hodges and Mancuso; and

		(4) Plaintiff must file an amendment seeking relief. It is further ORDERED AND ADJUDGED that Magistrate Judge White's Supplemental Report and Recommendation <u>16</u> is ADOPTED. Signed by Judge K. Michael Moore on 11/13/2012. (sk00) (Entered: 11/13/2012)
11/14/2012	<u>22</u>	MOTION for Leave to File Amended Complaint, by Eli Baldemar Escalera. (lh) (Entered: 11/14/2012)
11/15/2012	23	ORDER granting <u>22</u> Motion for Leave to File AMENDMENT TO STATE PRAYER FOR RELIEF. Signed by Magistrate Judge Patrick A. White on 11/15/2012. (cz) (Entered: 11/15/2012)
11/20/2012	<u>24</u>	MOTION for Leave to File Amended Complaint Concerning Officer Hodges and Officer Mancuso's Endangerment Matter Regarding Plaintiff, by Eli Baldemar Escalera. (cqs) (Entered: 11/20/2012)
01/07/2013	<u>25</u>	SECOND SUPPLEMENTAL REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>14</u> Notice (Other) filed by Eli Baldemar Escalera, <u>13</u> MOTION to Amend/Correct <u>1</u> Complaint filed by Eli Baldemar Escalera Recommending that: 1) The claim of denial of medical treatment shall proceed against Nurse Practitioner Erickson and Cerillo; 2) The claim of endangerment continue against officers Hodges and Mancuso; 3) The operative complaints are DE#13 and 24. Objections to RRdue by 1/25/2013. Signed by Magistrate Judge Patrick A. White on 1/7/2013. (br) Modified text on 1/8/2013 (dgj). (Entered: 01/07/2013)
01/23/2013	26	ORDER granting <u>24</u> Motion for Leave to File, the amended complaint is reviewed in the supplemental report. Signed by Magistrate Judge Patrick A. White on 1/24/2012. (cz) (Entered: 01/23/2013)
01/31/2013	27	PAPERLESS ORDER ADOPTING <u>25</u> REPORT AND RECOMMENDATION. THIS CAUSE came before the Court upon Petitioner Eli Baldemar Escalera's Second Amended Complaint <u>24</u> . THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, who issued a Report <u>25</u> recommending that: 1) The claim of denial of medical treatment proceed against Defendants Erickson and Cerillo; 2) The claim of endangerment continue against Defendants Hodges and Mancuso; 3) Docket entry #13 and docket entry #24 be the operative complaints. No objection was timely filed. This Court concludes that Magistrate Judge Whites Report is a thorough and accurate reflection of both the record and the law at issue and contains well-reasoned recommendations. Accordingly, UPON CONSIDERATION of Petitioner's complaints, Magistrate Judge White's Report, and after a de novo review of the record, it is hereby ORDERED AND ADJUDGED that the claim of denial of medical treatment shall proceed against Defendants Erickson and Cerillo and that the claim of endangerment continue against Defendants Hodges and Mancuso. The operative complaints are <u>13</u> and <u>24</u> . It is further ORDERED AND ADJUDGED that Magistrate Judge White's Second Supplemental Report and Recommendation <u>25</u> is ADOPTED. Signed by Judge K. Michael Moore on 1/31/2013. (sk00) (Entered: 01/31/2013)
02/11/2013	<u>28</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Pat Erickson, Nurse Monroe County Detention Center, 5501 College Road, Key West, FL 33040; Maureen Cerillo, Medical Director, Monroe County Detention Center, 5501 College Road, Key West, FL 33040; Officer Mancuso, Monroe County Detention Center, 5501 College Road, Key West, FL 33040 AND Officer Hodges, Monroe County Detention Center, 5501 College Road, Key West, FL 33040. Signed by Magistrate Judge Patrick A. White on 2/11/2013. (tw) (Entered: 02/11/2013)
02/13/2013	<u>29</u>	Summons Issued as to Maureen Cerillo. (br) (Entered: 02/13/2013)
02/13/2013	<u>30</u>	Summons Issued as to Pat Ericson. (br) (Entered: 02/13/2013)
02/13/2013	<u>31</u>	Summons Issued as to Hodges. (br) (Entered: 02/13/2013)
02/13/2013	<u>32</u>	Summons Issued as to Mancuso. (br) (Entered: 02/13/2013)

04/04/2013	<u>33</u>	Letter from Eli B. Escalera (lh) (Entered: 04/04/2013)
04/08/2013	<u>34</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Hodges served on 3/21/2013, answer due 4/11/2013. (lh) (Entered: 04/08/2013)
04/08/2013	<u>35</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Maureen Cerillo served on 3/21/2013, answer due 4/11/2013. (lh) (Entered: 04/08/2013)
04/08/2013	<u>36</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Mancuso served on 3/21/2013, answer due 4/11/2013. (lh) (Entered: 04/08/2013)
04/08/2013	<u>37</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline Pat Ericson served on 3/21/2013, answer due 4/11/2013. (lh) (Entered: 04/08/2013)
04/10/2013	<u>38</u>	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of Hodges, Mancuso (Runkles, Christy) (Entered: 04/10/2013)
04/10/2013	<u>39</u>	NOTICE by Mancuso of Filing (Attachments: # <u>1</u> Defendant Mancuso's Answer/Affirmative Defenses to Amended Complaints [DE 13 & DE 24])(Runkles, Christy) (Entered: 04/10/2013)
04/10/2013	<u>40</u>	NOTICE by Hodges of Filing (Attachments: # <u>1</u> Defendant Hodge's Answer/Affirmative Defenses to Amended Complaints [DE 13 and DE 24])(Runkles, Christy) (Entered: 04/10/2013)
04/10/2013	<u>41</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand <i>Amended Complaint [DE #13 &amp; DE#14]</i> by Maureen Cerillo, Pat Ericson.(Losey, Daniel) (Entered: 04/10/2013)
04/11/2013	<u>42</u>	SCHEDULING ORDER: Amended Pleadings due by 8/23/2013. Discovery due by 8/9/2013. Joinder of Parties due by 8/23/2013. Motions due by 9/13/2013. Signed by Magistrate Judge Patrick A. White on 4/11/2013. (tw) (Entered: 04/11/2013)
04/24/2013	<u>43</u>	NOTICE of Filing Discovery: Request for Production of Documents from Medical Director, by Eli Baldemar Escalera.(lh) (Entered: 04/25/2013)
04/24/2013	<u>44</u>	NOTICE of Filing Discovery: Request for Production of Documents from Officer Justin Mancuso by Eli Baldemar Escalera.(lh) (Entered: 04/25/2013)
04/24/2013	<u>45</u>	NOTICE of Filing Discovery: Request for Production of Documents from Officer Titus Hodges. by Eli Baldemar Escalera.(lh) (Entered: 04/25/2013)
04/25/2013	<u>46</u>	Defendant's MOTION to Take Deposition from Eli Baldemar Escalera ( <i>And Memorandum of Law</i> ) by Hodges, Mancuso. (Runkles, Christy) (Entered: 04/25/2013)
04/26/2013	<u>47</u>	NOTICE of Filing Discovery: Motion for Production of Documents by Eli Baldemar Escalera.(lh) (Entered: 04/26/2013)
04/29/2013	48	ORDER granting <u>46</u> Motion to Take Deposition from plaintiff Escalera. This is an unrepresented plaintiff and the defendants shall conduct themselves accordingly. Signed by Magistrate Judge Patrick A. White on 4/29/2013. (cz) (Entered: 04/29/2013)
05/08/2013	<u>49</u>	MOTION to Take Deposition from Plaintiff, Eli Escalera <i>via videotape</i> by Maureen Cerillo, Pat Ericson. (Losey, Daniel) (Entered: 05/08/2013)
05/09/2013	50	ORDER granting <u>49</u> Motion to Take Deposition from Eli Escalera by videotape, this is an unrepresented plaintiff and defendants shall govern themselves accordingly. Signed by Magistrate Judge Patrick A. White on 5/9/2013. (cz) (Entered: 05/09/2013)
05/14/2013	<u>51</u>	NOTICE OF OBJECTION by Eli Baldemar Escalera (lh) (Entered: 05/14/2013)
05/21/2013	<u>52</u>	MOTION for Protective Order <i>HIPAA QUALIFIED PROTECTIVE ORDER AND ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION</i> by Maureen

		Cerillo, Pat Ericson. (Losey, Daniel) (Entered: 05/21/2013)
05/21/2013	<u>53</u>	MOTION to Retain Plaintiff at Current Detention Facility by Eli Baldemar Escalera. (lh) (Entered: 05/21/2013)
05/22/2013	54	ORDER granting <u>52</u> Motion for Protective Order, motion HIPAA Qualified Protective order, this Order incorporates the prepared Order by the defendants, denying DE#53, to retain the plaintiff at the Monroe County Detention Center, the plaintiff is no longer a pre-trial detainee and the Court will not interfere with the DOC's decision as to his placement. Signed by Magistrate Judge Patrick A. White on 5/23/2013. (cz) (Entered: 05/22/2013)

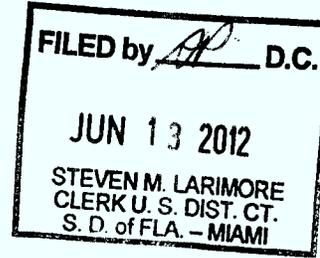
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**Case No.** 12-CV-10057 MOORE/WHITE

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

cat/div 1983/553/KW  
Case # \_\_\_\_\_  
Judge \_\_\_\_\_ Mag PAW UNITED STATES DISTRICT COURT  
Motn lfp yes Fee pd \$ \_\_\_\_\_ SOUTHERN DISTRICT OF FLORIDA  
Receipt # \_\_\_\_\_

Civil Case Number: \_\_\_\_\_



ELI BALDEMAR ESCALERA  
(Write the full name of the plaintiff)

vs.  
MONROE County Detention Center, et., al.  
Tommy Taylor, Chief, Sgt. Haviland, OFFICER MAURUSO,  
OFFICER HODGES, MEDICAL DIRECTOR MAUREN CERILLO  
NURSE PAT ERIKSON  
(Write the full name of the defendant/s in this case)

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

**I. Party Information**

A. Plaintiff: ELI BALDEMAR ESCALERA  
Address: 5501 College RD, Key West, FL 33040  
Inmate/Prison No.: 12000802  
Year of Birth: 11-02-68 (Do not include day or month, pursuant to Fed. R. Civ. P 5.2)  
1968  
(Write your name, address and prison/inmate number, if applicable)

vs.  
B. Defendant: Tommy Taylor Defendant: HAVILAND  
Official Position: Chief Official Position: SERGEANT  
MONROE County MONROE County  
Place of Employment: Detention Center Place of Employment: DETENTION CENTER

(Write the full name of each defendant, official position and place of employment. Attach a separate page if you need additional space for additional defendants. )

\* Please see Attachment for additional defendants.

ComPLAINT UNDER THE CIVIL  
RIGHTS ACT, 42 U.S.C. § 1984

I. PARTY INFORMATION

B. Defendant: MANCUSO

Official Position: OFFICER

Place of Employment: Monroe County Detention Center

Defendant: Hodges

Official Position: OFFICER

Place of Employment: Monroe County Detention Center

Defendant: MAUREEN CERILLO

Official Position: Medical Director

Place of Employment: Monroe County Detention Center

Defendant: PAT ERICSON

Official Position: NURSE

Place of Employment: Monroe County Detention Center

## II. Statement of Claim

Briefly describe the facts of your case. Describe how each defendant is involved, names of other persons involved, and dates and places. Each claim should be stated in a separately numbered paragraph. Please use short and plain statements, with separately numbered paragraphs indicating why the relief requested should be granted. Do not include legal arguments or cite cases or statutes. Attach additional pages, if necessary.

(Claim #1) SINCE Approximately 2001, I have been taking medication due to head injuries that occurred in my past, while incarcerated here at the Monroe County Detention Center, I was removed from my original dorm, on a First Floor bottom bunk placement, and relocated to an upper tier due to a rule infraction. Officials of the Correction facility as well as the medical staff were well aware of my medical conditions as well as medication needs and possibilities of  
(SEE ATTACHED)

## III. Relief Requested

Briefly state what you are requesting from the Court (what do you want the Court to do). Do not include legal arguments or cite cases or statutes. Attach additional pages, if necessary.

Find both Monroe County Detention Center and its Official Capacity, including but not limited to, employees responsibilities as well as the medical staff, found responsible to my possible permanent disabilities due to their deliberate Indifferences to my serious medical needs. Also All pain and sufferings I have already incurred as well as on going physical, mental and emotional conditions due to these injuries. (See Attached)

## II. Statement of Claim

(CLAIM #1  
Cont.) Adverse effects if not being given such medication.

On April 6, 2012 At approximately 22:00 hrs, on my way to the shower, which is at a downstairs location, seizure activity occurred and I fell down the stairs. Although I do not remember all of the details of the fall itself, I could not have protected myself from the fall due to the fact I had been placed in hand-cuffs while still up stairs. We do however have video surveillance, which does show it all.

At this point, I am introducing Defendants; OFFICER MANCUSO, OFFICER HODGES and Sgt. HAVILAND. This claim is violations due to responsibilities of the Monroe County Detention Center employees and in their capacities.

(Example) Upper tier location placement, hand-cuffed and left without escort to descend the stairs.

Deliberately and knowingly aware of the fact that I have a seizure disorder. This is a violation of my 8<sup>th</sup> Amendment Rights (Cruel & Unusual), as well as Deliberate Indifference issues by and through the 14<sup>th</sup> Amendment, etc.

(CLAIM #2)

Since approximately 2001, the medication I have been taking for my head injuries, "Neurotin" is the one we are discussing with this complaint in particular. I had been irresponsibly taken off of said medication by medical staff officials without any regards to my serious

II. Statement of Claim

(Claim #2  
Cont.)

Medical needs, which is a deliberate indifference situation and nearly cost me my life and has left me with possible permanent injuries of neck, back and right arm. Not to mention the pain incapacitation. This removal of medication is the probable catalyst of the seizure fall and so forth.

At this point I introduce Defendants, Medical Director Maureen Cerillo, Nurse PAT ERIKSON.

III. Relief Requested

(Cont.)

\$1,000,000<sup>00</sup> in monetary compensation and/or whatever this honorable court may deem sufficient in this situation.

All medical bills all ready incurred including / but not limited to ambulatory services, hospitalization, X-ray/MRI'S and medications prescribed as well as all future medical services that will be incurred in future due to this claim

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**IV. Jury Demand**

Are you demanding a jury trial?     Yes     No

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*[Handwritten Signature]*  
Signature of Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: \_\_\_\_\_

\_\_\_\_\_  
*[Handwritten Signature]*  
Signature of Plaintiff

To the Clerk of the Court.

June 11, 2012

This is to inform you that I was unable to make copies for the Defendants. The indigent packages we receive here at this Facility only allow us (3) sheets of paper a week. And they won't make copies for me here unless I have money in my account or I am a Pro Se litigant. I don't know what to do? I told this Facility I was filing for Pro Se but they told me that until the Judge or the court advises them, they will not give me the legal materials or the copies.

I apologize to the court and the clerk if I am wasting your time but I don't know what to do? Can you please advise me, if you got time, or can you advise this Facility that I am filing for Pro Se, any help is appreciated.

Thank you. Respectfully,



ELI ESCALERA # 12000802  
Monroe County Detention Center  
5501 College Rd.  
Key West, FL 33040



(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).

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>

A. Statement of Claims

The plaintiff names Chief Tommy Taylor and Officers Haviland, Mancuso, and Hodges, of the Monroe County Detention Center, along with Maureen Cerillo, Medical Director and Nurse Pat Ericson.

The plaintiff states he has been taking Neurotin since 2001 for head injuries. He claims that since incarceration at the Monroe County Detention Center he was removed from the bottom bunk and placed on a top tier. He claims his medication was stopped, claiming Cerillo and Ericson were responsible.

He further claims that in April 2012, he was handcuffed and on his way to the shower, unescorted. He suffered a seizure and fell down the stairs. He claims the termination of his medicine may have led to his seizure and fall, resulting in injuries. He claims Officers were aware of his medical problems and that Mancuso, Hodges and Haviland were responsible for his fall.

In the amended complaint (DE#7) he adds Officer D. Shine, whom he claims refused to relieve the plaintiff from his handcuffs in June of 2012, despite the fact that the handcuffs were painful.

An allegation of an unjustified, brutal use of force against an inmate by a guard states a claim under §1983. It is unlawful to

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

inflict a beating upon a prisoner in custody when he has been incapacitated and no longer poses a threat to the guards. Skrutch v Thornton, 280 F.3d 1295 (CA 11 Fla 2002); Perry v Thompson, 786 F.2d 1093 (11 Cir. 1986). This claim does not rise to a level of an unconstitutional violation of unlawful force and Officer Shine should be dismissed.

B. Denial of Medical treatment

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.'" McEligott 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; McEligott, 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).

Because the plaintiff was a pretrial detainee at the time of the events alleged, his claims must be analyzed under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell, 441 U.S. at 535; Hamm, 774 F.2d at 1571-74. In the context of a pretrial detainee claim of denial of medical care, the standards are the same. Id.

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

Further to rise to a level of an Eighth Amendment violation the plaintiff must demonstrate inhumane conditions of confinement. Farmer v Brennan, 511 U.S. 825 (1994), These conditions must show a deprivation of a normal civilized measure of life's necessities, see Toney v Fuqua, 09 WL 1451645 (11 Cir. 2009) (denial of tooth

paste and tooth brush for a period of time did not rise to an Eighth Amendment violation).

Deliberate indifference can be established by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons. Farrow v West, 320 F.3d 1235, 1247 (11th Cir.2003) (finding jury question on issue of deliberate indifference because of unexplained fifteen-month delay in treatment). The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay. Harris v. Coweta County, 21 F.3d 388, 393-94 (11 Cir. 1994). A plaintiff may also establish deliberate indifference with evidence of treatment "so cursory as to amount to no treatment at all." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11 Cir. 1985). If prison officials delay or deny access to medical care or intentionally interfere with treatment once prescribed, they may violate the Eighth Amendment. Estelle, 429 U.S. at 104.

C. Sufficiency of complaint

In this case, the plaintiff is unclear as to his claims. He provides little information as to the role of Maureen Cerillo and Nurse Patterson in stopping his medication. He provides little information as to who was responsible for his being handcuffed and sent down the stairs unescorted. The roles of the three deputies in this situation are unclear. This claim will need to be further developed, and the plaintiff should be permitted to amend his complaint to state specifically the facts related to the roles played by Medical Director Cerillo and Nurse Paterson in refusing his medication. He must further provide specific facts as to the

actions of the three named deputies leading to his fall and subsequent injuries.

III. Recommendation

It is therefore recommended as follows:

1. The case shall proceed to allow the plaintiff to amend his complaint as stated above.
2. The claims against Officer Shine should be dismissed for failure to state a 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 following receipt.

Dated at Miami, Florida, this 27<sup>th</sup> day of July, 2012.



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UNITED STATES MAGISTRATE JUDGE

cc: Eli Baldemar Escalera, Pro Se  
Monroe County Jail  
Address of record

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

**Case No.** 12 CV 10057 KMM

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

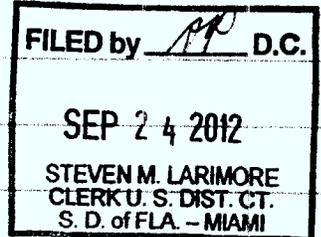
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-10057-CIV-USDJ-MOORE / USMJ-WHITE

ELI BALDEMAR ESCALERA,  
Plaintiff

Vs.

MONROE COUNTY DETENTION CENTER, et al.,  
Defendant



MOTION FOR AMENDED COMPLAINT

COMES NOW, Plaintiff, ELI BALDEMAR ESCALERA, PRO SE and in Forma Pauperis, IN RE: Case No. 12-10057-CIV-USDJ-MOORE / USMJ-WHITE, For the filing of an Amended Complaint requesting an addition to Defendants List, for the following reasons there of;

Plaintiff asks this Honorable Court to consider my request, for the addition of "Two Unknown Officers", who worked the Alpha Unit of the MONROE COUNTY DETENTION CENTER (M.C.D.C.) on 3-27-12, at approx. 1430-1500 hrs. [REDACTED] Plaintiff was unable to acquire officers names due to lack of officers cooperation and absence of name tags. Therefore, plaintiff asks this Honorable Court to add them as "Officer A" and "Officer B", to "Defendant's List" in Case No 12-10057-CIV-USDJ-MOORE / USMJ-WHITE of this litigation.

## Statement of Claim

These two "Unknown Officers", (Officer A and Officer B), having requisite knowledge, failed to protect and to prevent, an obvious and substantial risk of serious harm, and being conscious and aware of this excessive risk to Plaintiff, ELI B. ESCALERA'S, Health and Safety, did act with "Deliberate Indifference", and violated plaintiff's 8<sup>th</sup> Amendment right of Cruel and Unusual Punishment by failing to protect and prevent, while in their control and custody, an obvious and substantial risk of harm to pre-trial detainee, which is by and through the 14<sup>th</sup> Amendments due process clause.

## Statement of facts

- 1) The Alpha Unit of the Monroe County Detention Center (M.C.D.C.), is a secured housing unit, which is used for housing; Administrative, Disciplinary, High Profile and Protective Custody, as well as suicidal inmates.
- 2) Plaintiff is uncertain to the names of the two (2) Monroe County Detention Center officers who were assigned to work the Alpha Unit on 3-27-12, which is when he was placed in the Alpha Unit on Administrative Confinement, pending Disciplinary investigation at approx. 1430-1500 hrs.
- 3) Upon entering Alpha Unit, plaintiff was placed in a holding room for approx. 15-20 minutes pending cell housing. At that time, plaintiff overheard "Officer A" tell "Officer B", to house plaintiff in cell 23, which is on the top tier.

- 4). Plaintiff, then spoke up in his own defense and quickly protested to "Officer A", that plaintiff could not be housed on the top tier, nor in a top bunk, due to plaintiff's past medical history, which is noted within plaintiff's medical file and can be evidenced within his M.C.D.C. inmate profile located in the computer.
- 5). "Officer B", did then check into the jail computer and did verify plaintiff's complaint and acknowledged that plaintiff is first floor and bottom bunk classified.
- 6). On 3-27-12, it is a fact that "Officer A" and "Officer B", both having requisite knowledge, even after the fact that plaintiff made a valid protest as to his housing stipulations and/or restrictions, resumed consciously and obdurately to inappropriately house plaintiff, with complete disregard and "Deliberate Indifference" to plaintiff's health and Safety and serious medical needs.
- 7). "Officer A" and "Officer B", failed to follow medical instructions and/or orders, and recommenced to house him on the top tier in cell 23, in the Alpha Unit. The fact that "Officer A" and "Officer B" gave plaintiff a bottom bunk in cell 23, clearly states, "Officer A" and "Officer B's" awareness of plaintiff's medical stipulations.
- 8). It should be noted, that at various times, plaintiff complained to officers and sergeants concerning his medical and housing issues, plaintiff would also write grievances in hope of attaining some help. But as is the nature at this facility, there is no correct way to ask for help or assistance, any attempts at writing requests or grievances are either diverted to nearest trash can or fall on deaf ears.
- 9). Plaintiff was unsuccessful at grabbing their attention on their names from within the cells, due to windows being completely blocked and preventing

any visual identification. These diversions and obstacles practiced by the employees at this facility should be another issue of active unconstitutional practice of eluding a procedure put in place to help an inmate, but since I can't prove it, plaintiff will leave this matter alone.

Dated: 9/20/12

Wherefore, Plaintiff, ELI BALDEMAR ESCALERA, requests this Honorable Court to place "Officer A" and "Officer B", collectively within Defendants List, in Case No. 12-10057-CIV-USDJ-MOORE; USMJ-WHITE, as further substantiation and matter of material facts within the scope of this litigation.

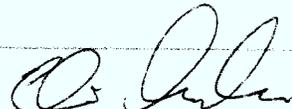
Respectfully Submitted,



ELI BALDEMAR ESCALERA, Pro se  
MOORE COUNTY DETENTION CENTER  
5501 College rd  
Key West, FL 33040

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by United States Postal Service on 9/20/12

  
ELI BALDEOMAR ESCALERA, Prose

SERVICE LIST

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

**Case No. 12CV10057 KMM**

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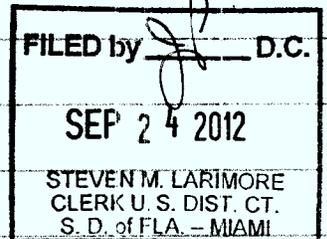
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-10057 CIV - USDJ-MOORE / USMJ-WHITE

ELI BALDEMAR ESCALERA,  
Plaintiff

VS.

MONROE COUNTY DETENTION CENTER, et al.,  
Defendant.



MOTION TO AMEND INITIAL COMPLAINT: (DE 1)

COMES NOW, Plaintiff, ELI BALDEMAR ESCALERA, Pro-se and in Forma Pauperis, ~~IN~~ RE: Case No. 12-10057 - CIV - USDJ-MOORE / USMJ-WHITE, For the filing of Amended Complaint, of the initial filing (DE 1), as requested by the Honorable Court, for the following reasons there of;

The following "Claims", and "Statements of fact" are presented in the order listed below, of the defendants in this litigation:

- NURSE PRACTITIONER, PAT ERICKSON
- MEDICAL Director, Maureen Cerillo
- OFFICERS: OFFICER Hodges and OFFICER MANCUSO
- Chief Tommy Taylor
- Sergeant Heaveland

## Claim and Statement of Facts, concerning Nurse Practitioner Pat Erickson

This statement by Plaintiff, ELI B. ESCALERA, of the specific facts, concerning the role played by Nurse Practitioner, Pat Erickson, is further developed as requested by this Honorable Court, so the facts may show, the "Deliberate Indifference", to plaintiff's serious medical needs, by the "Abrupt and Precipitate" stopping of Plaintiff's seizure medication "NEURONTIN", which had been prescribed by a doctor, for serious head injuries obtained in plaintiff's past. The plaintiff told Nurse Practitioner Erickson and made clear the danger and obvious substantial risks of "Abrupt Discontinued Use" associated with withdrawal symptoms. Nurse Practitioner Erickson, being made aware of, obvious and excessive risk to plaintiff's health and/or safety, and serious medical needs, did violate plaintiff's 8<sup>th</sup> Amendment right of Cruel and Unusual Punishment by failing to prevent harm of "Abrupt Discontinued Use", to pre-trial detainee, by and through the 14<sup>th</sup> Amendments due process clause.

## Statement of facts

- 1) Pat Erickson is employed at the Monroe County Detention Center (Medical Department) as a Nurse Practitioner, and is usually here, (5) days a week.
- 2) NURSEPRACTITIONER, Erickson, has authorization to prescribe and/or discontinue medications to inmates at the M.C.D.C., as well as requesting, ~~reading~~ reading, and entering information into inmate medical files.

- 3) Nurse Practitioner, Erickson, conducts "sick call" to address medical complaints from inmates and prescribe medical treatment due to medical conditions and/or ailments.
- 4) On 2-3-12, plaintiff, ELI B. ESCALERA, was incarcerated at the Monroe County Detention Center. Plaintiff told medical staff that he was taking prescribed "Neurontin", and needed his medication or he would go through withdrawals, which could cause him to have Seizures.
- 5) Plaintiff made known to medical staff that, he had a prescribed bottle in his name, in his property, if they needed verification, but he also explained that his medication had run out, therefore, there were no pills in the bottle.
- 6) The nurse (plaintiff does not recall her name), stated to plaintiff that, he would see the Nurse Practitioner after the weekend, but in the meantime, he would be given "Valium" to ease the symptoms of withdrawal.
- 7) On 2-6-12, plaintiff spoke to Nurse Practitioner Pat Erickson, at which time they discussed plaintiff's prescribed medication "Neurontin". Nurse Practitioner, Erickson said, she would need further information about his medical history if she were to continue him on the prescribed "Neurontin".
- 8) Plaintiff told Nurse Practitioner, Erickson that she could request his medical files from the Estelle Unit in Huntsville, Tx., where he had recently been released, she agreed, and plaintiff signed a release and/or request for medical files from the Estelle Unit in Huntsville, Tx.
- 9) Nurse Practitioner, Erickson did continue to prescribe "Neurontin" with the condition that, if Plaintiff's medical files did not collaborate or concur with what he had stated about his medical history, she would wean him off and discontinue his medication of "Neurontin".
- 10) At this time, he was also bottom bunk, [REDACTED] First Floor stipulated

due to his past seizure history.

- 11) Approx 7-10 days after 2-6-12, the medical dept. informed plaintiff that his medical files from the Estelle Unit had been received and his claims had been verified, therefore his medication "Neurontin" would continue to be prescribed to him.
- 12) Thereafter, medical staff (nurses), would at times overlook bringing plaintiff his medication. And when plaintiff brought this to medical staff's attention, they would show no immediate concern, and oftentimes never attempted to come back around to deliver his prescribed medication.
- 13) Plaintiff got annoyed at having to rely on medical staff's lack of responsibility and disregard to their own obligations, and began saving a half a dose in the morning and half a dose in the evening to complete one dose and save it for the times when his medicine was irresponsibly forgotten.  
(Please note: he was never told not to do this.)
- 14) On 3-27-12, the housing officer was doing her daily searches, and found plaintiff's "Neurontin" by his bed in the open. Plaintiff told officer he did not know it was against regulations for plaintiff to save one dose of his medicine. Plaintiff inevitably accepted responsibility for this rules infraction, which is nowhere mentioned or written in the M.C.D.C. handbook (when production of documents is allowed, I will send the handbook as evidence) nor is it posted in any of the dorms or units in the facility, and was reclassified and sent to the Alpha Unit, which is a disciplinary confinement unit.
- 15) On 3-30-12, plaintiff was called to the medical dept. to be addressed by Nurse Practitioner Erickson, concerning his rules infraction incident. He explained why he had saved his medication due to medical staff's (nurses) disregard to their responsibilities and obligations.

of dispensing medications at appropriate times. Nurse Practitioner, Erickson refused to follow up on plaintiff's pleas, and took it upon herself to completely cut off his medication, with total disregard to any, or all side effects (associated with withdrawal symptoms), that could incur by doing so.

- 16) Plaintiff persisted strongly to explain to Nurse Practitioner, Erickson that, "abrupt discontinued use", had a very high substantial risk of serious consequences, and harm to plaintiff's health and safety, due to the serious side effects and withdrawal symptoms associated with "Neurontin", such as; seizures, blackouts, stroke, etc. Neurontin is a medication that is supposed to be weaned and/or lowered in stages, until completely off.
- 17) For a professional in her position to completely ignore plaintiff's serious medical needs to such a degree, it could even fall into categories such as, Severe physical injury as it did, and/or even fallen into a possibility of death. Nurse Practitioner, Erickson, Deliberately and with Precipitancy, took it upon herself to assess the situation, diagnose the situation and treat plaintiff's situation, with an obdurate and unconcerned state of mind, and refused to take into account and verify, the underlying facts associated with the side effects and/or withdrawal symptoms of "Neurontin", with the "abrupt discontinuation" or sudden discontinued use", of said medication "Neurontin".
- 18) Plaintiff took his last dose of "Neurontin" on 3-30-12, prior to his seizure and fall, down the stairs, handcuffed behind his back, on 4-6-12. Plaintiff had been encountering withdrawal symptoms, towards the evening of 3-31-12. Plaintiff complained to nurses and officers that he was feeling dizzy and disoriented, sweating profusely, and only sleeping 2-3 hrs. a day

up to the fall. Nurses responses were always non-productive or negative, in one instance a nurse said "its just a little bump in the road, you'll get over it," then, when asking this nurse her name, she responded, "my name is nurse". I complained on a continual basis that I was not supposed to be housed on the upper tier, nurses would say there was nothing they could do about it, it **was the** officers job, all they could do is remind him.

- 19) Demeanors of this nature are common at this facility, there is no correct way to ask for help or assistance, any attempts at writing requests or grievances are either diverted to the nearest trash can or fall on deaf ears. This in itself is another violation of my constitutional rights, but it is hard to prove so I won't claim it.
- 20) It is plaintiff's belief that Nurse Practitioner Erickson's, "Deliberate Indifference", or "Abrupt Discontinuation", of prescribed medicine "Neurontin", was the catalyst to plaintiff's seizure and fall, which incurred physical injuries that are still being treated to this day, and could have also cost him his life.
- 21) Approx. 10 days after plaintiff had his seizure and fell down a flight of stairs handcuffed behind his back, plaintiff was re-prescribed said medication Neurontin.
- 22) Plaintiff feels that upon production of documents, medical records may show the error of medical staff's wanton disregard in treating and administering plaintiff's medications at prescribed times, but plaintiff is uncertain as to medical dept's efficiency to proper and professional record keeping.

## Claim and Statement of facts, concerning Medical Director Maureen Cerillo

This claim is further developed as requested by this Honorable Court so that the facts can show, the role played by Medical Director Maureen Cerillo, in her "Deliberate Indifference" to plaintiff's serious medical needs, and also liable, having requisite knowledge of obvious risk, failed to protect and prevent, a substantial risk of serious harm, when being made conscious and aware of excessive risk to plaintiff's health and safety, and serious medical needs. Did violate plaintiff's 8<sup>th</sup> Amendment right of Cruel and Unusual Punishment, by failing to protect and prevent harm to pre-trial detainee which is by and through the 14<sup>th</sup> Amendments due process clause.

## Statement of facts

- 1) Maureen Cerillo is the Medical Director for the Monroe County Detention Center, here at 5501 College<sup>rd</sup>, Key West, FL 33040
- 2) Maureen Cerillo is the overseer of medical staff here at the Monroe County Detention Center (M.C.D.C.) and can authorize any prescriptions or discontinuations of medications issued through the medical dept. of M.C.D.C.
- 3) Maureen Cerillo as Director to be familiar with many types of medications, and their adverse effects if "abruptly discontinued" and/or removed of them.
- 4) On 3-31-12, plaintiff wrote a grievance to Medical Director Cerillo concerning the "Abrupt Discontinuation" of his long time prescribed medication "Neurontin". He explained in the grievance, that his medication had been taken from him for a rules infraction.
- 5) Maureen Cerillo did on 4-2-12 answer grievance written to her by plaintiff, regarding his medication "Neurontin", being "Abruptly Dis-

continued, and the substantial risk of harm associated with the side effects and withdrawal symptoms of "Abrupt Discontinued use".

- 6) Director Cerillo, answered the grievance as follows: "it is against the rules to divert medication and cause for discontinuation, you will be prescribed medication for headaches, Neurontin is not medically indicated for migrains"
- 7) Director Cerillo, consciously disregarded the risk to plaintiff's health and safety, and acted unconcerned to his well-being by avoiding and eluding his factual statements made in his grievance and only focused on part of it. Maureen Cerillo's role as Medical Director would be to investigate into plaintiff's grievance and validity of his complaint, regarding taking him off of prescribed medication, which was prescribed by a doctor for severe head injuries obtained in the past. This is why plaintiff's doctors seen it appropriate to prescribe him this medication and obtain the necessary approval associated with prescribing a non-formulary drug.
- 8) Maureen Cerillo interrupted the already set treatment of a real doctor for the substitution of a nurse practitioner who prescribes him Tylenol. This in itself is a dire situation for the plaintiff, when the person in charge and requisite knowledge, "deliberately disregards" plaintiff's serious medical needs.
- 9) If Maureen Cerillo was not familiar with the side effects or withdrawal symptoms of the "Abrupt Discontinuation" of plaintiff's "Neurontin", Then, as Medical Director, she should have used her medical resources to see if plaintiff was correct in his assertions in his grievance and applied the proper Medical remedy as to prevent the possibility of plaintiff having a seizure.

- 10) Instead, Maureen Cerillo acted "obdurately", and "Deliberately Indifferent" in preventing a substantial risk of serious harm which could be inferred by the related facts given by the plaintiff. This action of eluding the facts could have been the catalyst of the cause of him enduring a seizure and falling down a flight of stairs (approx. 15 steps) while handcuffed behind his back.
- 11) Plaintiff has copy of grievance as his proof to these statements made withing this claim and complaint. Plaintiff also feels that upon "Production of Documents", futher evidences may be revealed as to the validity of his facts. Plaintiff also has a mass of documentation ready to present to this Honorable Court upon moving forward in this litigation.

## Claim and Statement of Facts

### Concerning Officer Hodges and Officer Mancuso

As requested from this Honorable Court to further amend this complaint, plaintiff, ELI BALDEMAR ESCALERA, has developed, specific facts to the best of his recollection, concerning both Officers; Officer Hodges and Officer Mancuso, for acting with "Deliberate Indifference" to pre-trial detainee's health and safety, both having requisite knowledge of obvious risk, failed to protect and prevent a substantial risk of serious harm, and being conscious and aware of excessive and obvious risk to plaintiff's well-being, while in their care, did violate plaintiff's 8<sup>th</sup> Amendment right of Cruel and Unusual Punishment, by failing to protect and prevent harm to pretrial detainee, which is by and through the 14<sup>th</sup> Amendment's due process clause.

## Statement of facts

- 1) Both Officers; Officer Hodges and Officer Mancuso are employed by the Monroe County Detention Center (M.C.D.C.)
- 2) On 4-6-12, both Officers, Officer Hodges and Officer Mancuso, were assigned to work the Alpha Unit (A-Unit) of the M.C.D.C., on the 6pm to 6am shift.
- 3) The Alpha Unit houses; Administrative, Disciplinary, High Profile, Protective Custody and suicidal inmates.
- 4) Officer Hodges and Officer Mancuso, have the responsibility and duties of care, custody and control of inmates, while on duty at the Alpha Unit of the M.C.D.C., both officers are required to have certain knowledge and specialized training to work this unit, due to different levels of detention classifications and special needs as mentioned.
- 5) Plaintiff was housed on top floor in cell number 2313.

- 6) Approx. 2130 to 2200 hrs., on 4-6-12, Officer Hodges and Officer Mancuso did come to the top floor cells, and prepare the inmates with hand-cuffs through the food slots on the cell doors (applying the cuffs behind our backs) in preparation for showers and/or recreation.
- 7) Both Officers, Officer Hodges and Officer Mancuso, consciously and wantonly disregarded a substantial risk to plaintiff's health and safety, by failing in their duty to protect and prevent harm by obvious risk of safety, by not properly and safely escorting plaintiff to shower area and/or recreation, and not holding onto him and guiding him safely down a flight of stairs, (approx. 15 steps) while hand-cuffed behind his back.
- 8) Officer Hodges and Officer Mancuso, recklessly disregarded procedural measures to properly care for plaintiff's individual safety along with all other inmates who were ordered to descend down a flight of stairs, while hand-cuffed behind our backs.
- 9) Officer Hodges did give the verbal order to plaintiff and other inmates (a verbal authoritative action) to proceed down the stairs, handcuffed behind our backs and unescorted, consciously and unconcerned to plaintiff's or other inmates safety and well-being.
- 10) While following other inmates who were ordered down the stairs and, while handcuffed behind his back, plaintiff did experience a seizure and fell violently down a flight of stairs, unable to protect himself. This fall resulted in temporary hospitalization, and severe injuries to my shoulder, wrist, neck, and back. These injuries are still being treated to this day.
- 11) Although plaintiff is uncertain as to which officer handcuffed him, due to cell windows being blocked, so that inmates cannot look out. Plaintiff can say with confidence that, both officers working in unison to speed up

the process of showers and/or recreation operations, did consciously by pass procedural elements that are required for the safety and well-being of inmates.

- 12) Both officers; Officer Hodges and Officer Mancuso acted reckless and wanton, being aware that there was an obvious and substantial risk to plaintiff's health and safety if he should fall going down the flight of stairs while handcuffed behind his back.
- 13) Officer Hodges and Officer Mancuso did deliberately choose not to control my risky descent down the flight of stairs. Plaintiff's fall would have been prevented if plaintiff would have been properly escorted as procedure requires by a hands on procedure, while going down the stairs handcuffed behind his back.
- 14) Plaintiff would like to make clear that the actions of both, Officer Hodges and Officer Mancuso, as explained within these statement of facts were reckless and showed "Deliberate Indifference" to Plaintiff's safety and health while in their custody, care and control on 4-6-12
- 15) Some of these statement of facts can be witnessed through a surveillance video recorded in Alpha unit of the seizure and fall, other statement of facts can be collaborated through medical files and/or documentation, when allowed to request "production of Documents".

Claim and Statement of facts  
Concerning Chief Taylor and Sergeant Heavaland

As requested by this Honorable Court, to further amend this complaint, Plaintiff, ELI BALDEMAR ESCALERA, has developed the specific facts concerning Chief Tommy Taylor and Sergeant Heavaland, both Officials should be held liable for "Deliberate Indifference" in failing to protect and prevent, obvious substantial risk of harm to pre-trial detainees. And by unspoken encouragement of both supervisors, Chief Taylor and Sergeant Heavaland, by failing to rectify officers actions or inactions, for "Deliberately Disregarding" procedural policy which was exercised in their presence by Alpha Unit Officers. Both supervisors, Chief Taylor's and Sergeant Heavaland's knowledge of and, acquiescence of unconstitutional conduct by ~~their~~ subordinates, breached a duty to plaintiff, which was the proximate cause of plaintiff's injury by their actions and/or inactions. This is a violation of plaintiff's constitutional 8<sup>th</sup> Amendment rights of "Deliberate Indifference", by and through the 14<sup>th</sup> Amendments due process clause.

Statement of facts

- 1) Chief Taylor and Sergeant Heavaland both observed officers allowing inmates to ascend or descend Alpha Unit stairs unattended and/or unescorted
- 2) On two separate occasions, between 3-28-12 through 4-6-12, Chief Taylor entered the Alpha Unit, while I was showering and watched him take notice of inmates walking up and down the stairs, handcuffed and unattended.
- 3) On other occasions it was Sergeant Heavaland who observed these actions of disregard to procedural policies and failed to rectify it.

- 4) By Chief Taylor and Sergeant Heavaland not bringing this to officers attention nor attempting to address this issue of safety, shows both supervisors did not care about procedures being followed and/or is not aware of their own policies.
- 5) On the contrary, both seemed to facilitate officers actions by not bringing this to their (officers) attention, to the extent of implying that both supervisors (Chief Taylor and Sergeant Heavaland) approved and condoned said action, by turning a blind eye on policy and procedure.
- 6) They did not act, but, failed to correct these reckless behaviors, until after plaintiff had his seizure and fell down the stairs violently causing himself injury, this was active unconstitutional behavior.
- 7) Chief Taylor and Sergeant Heavaland are relied upon to operate this facility according to policy and procedure, but that is "Jeopardized", when to a certain degree and/or extent, they participate in the deficiency's of their subordinates.
- 8) They have failed to train, failed to supervise and conceivably, other supervisory shortcomings, what is the case is that, both supervisors, Chief Taylor and Sergeant Heavaland were aware, everytime they walked into the Alpha Unit and observed inmates ascending and descending stairs unattended while handcuffed behind their backs.
- 9) They were conscious of an obvious and substantial risk of injury, that a supervisory practice would have averted injury. Both supervisors were indifferent to that risk and injury resulted from that failure to employ the supervisory practice.
- 10) It is therefore that, both Chief Taylor and Sergeant Heavaland be held liable for the actions of their inactions. The Chief, to whose custody a prisoner

is committed, is required to take charge of and, keep the Detention center and the prisoners in it, and is answerable for the prisoners safe keeping.

- 11) Some of these statement of facts can be collaborated through surveillance video of the Alpha Unit on said mentioned occurrences.

Dated: 9/19/12

WHEREFORE, plaintiff, ELI BALDENAR ESCALERA, asks this Honorable Court to take into account these statement of facts presented by the plaintiff to the best of his reason and recollection as requested by this Honorable Court, in case no. 12-10057-CIV-MOORE/WHITE of this litigation.

Respectfully Submitted,



ELI BALDENAR ESCALERA

Monroe County Detention Center

5501 College rd

Key West, Fl. 33040

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by United States Postal Service on 9/19/12 on all counsel or parties of record on the Service List below



ELI BALDENAR ESCALERA

### SERVICE LIST

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
OFFICE OF THE CLERK ROOM 8N09  
400 NORTH MIAMI AVE  
MIAMI, FLORIDA 33128-7716



(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).

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>

A. Statement of Claims

In the initial complaint the plaintiff named Chief Tommy Taylor and Officers Haviland, Mancuso, and Hodges, of the Monroe County Detention Center, along with Maureen Cerillo, Medical Director and Nurse Pat Ericson.

The plaintiff stated he has been taking Neurotin since 2001 for head injuries. He claimed that since incarceration at the Monroe County Detention Center he was removed from the bottom bunk and placed on a top tier. He claims his medication was stopped, claiming Cerillo and Ericson were responsible.

He further claimed that in April 2012, he was handcuffed and on his way to the shower, unescorted. He suffered a seizure and fell down the stairs. He claims the termination of his medicine may have led to his seizure and fall, resulting in injuries. He claims Officers were aware of his medical problems and that Mancuso, Hodges and Haviland were responsible for his fall.

B. Sufficiency of complaint

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

The Report recommended that the plaintiff provided little information as to the role of Maureen Cerillo and Nurse Ericson in stopping his medication. He further provided little information as to who was responsible for his being handcuffed and sent down the stairs unescorted. The roles of the three deputies in this situation are unclear, and the claim needed to be further developed. It was recommended the plaintiff should be permitted to amend his complaint to state specifically the facts related to the roles played by Medical Director Cerillo and Nurse Ericson in refusing his medication. He was to further provide specific facts as to the actions of the three named deputies leading to his fall and subsequent injuries.

C. Amended Complaint (DE#12)

In this pleading, the plaintiff seeks to add two unknown officers who worked in the Alpha Unit of the Monroe County Detention Center as Officers A and B. He claims they failed to protect him from risk of harm, by ordering him to use the top tier bunk in his cell. The Court cannot effect service upon unknown Officers A and B. It is recommended that the plaintiff be given the opportunity to discover the identity of these officers, or risk their dismissal.

Amended Complaint (DE#13)

In this amended complaint, the plaintiff adds Nurse Practitioner Pat Erickson<sup>2</sup>, and again names Medical director Cerillo, Officers Hodges and Mancuso, Chief Tommy Taylor and Sgt. Haviland.

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<sup>2</sup> He has spelled the Nurse Practitioner's name as Ericson and Erickson.

In the amended complaint he states that Nurse Practitioner Erickson has authorization to prescribe and/or discontinue medication. He claims that his seizure medication Neurontin, previously prescribed by a doctor for serious head injuries he had suffered in the past, was abruptly discontinued by Erickson. He states that he saw Erickson on February 6, 2012, at which time she stated she would require further information about his medical history to continue him on Neurontin. He advised her his records could be obtained from Texas. She conditionally continued his medication, depending on verification from his medical files. His medical files arrived and verified he was to continue on Neurontin. He claims medical staff (nurses) would at times overlook his medication. As a result, he saved part of his medication to take later in the day. He was brought before Erickson for this infraction, and he claims she completely cut off his medication. He contends his last dose was on March 30, 2012, prior to his seizure and fall down the stairs.

He states that Medical Director Maureen Cerillo knew of the risk to his health by cutting off his medication and failed to act. She responded to his grievance by stating he would be prescribed medication for his headaches, but that Neurontin was not medically indicated for migraines. She did not take into account that the abrupt discontinuation of Neurontin has side affects.

He contends Officers Hodges and Mancuso handcuffed him, but failed to prevent him from harm by holding on to him and guiding him safely down the stairs. The plaintiff had a seizure and fell down the stairs, unable to protect himself.

Chief Taylor and Haviland observed inmates ascend or descend stairs unattended and handcuffed. He states they are responsible for a failure to train their officers.

D. Analysis

The plaintiff has provided supporting facts to state a claim against Nurse Erikson and Cerillo, as stated above. It appears at this preliminary stage that Erikson cut off the plaintiff's medication without reason, resulting in his seizure and fall. It further appears that Cerillo was aware of the discontinuation of his medication, and failed to act. It is therefore recommended that the claim of denial of adequate medical treatment shall proceed against these defendants.

The plaintiff's allegations against Officers Hodges and Mancuso remain vague. The fact that they handcuffed the plaintiff and did not guide him down the stairs fails to state a claim unless they were aware he was subject to seizures, and purposely subjected him to danger. The plaintiff should be permitted to amend solely on the issue of the officers' involvement in his fall, and to demonstrate that the officers actions were beyond mere negligence.

The plaintiff's allegations against Chief Taylor and Haviland fail to state a claim. Their liability cannot result merely from an improper or even unconstitutional act of their employees under a theory of respondeat superior. If a plaintiff sues a supervisor there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). Ashcroft v Iqbal, supra.

Under appropriate circumstances the failure to adequately train or supervise may give rise to a claim cognizable under §1983, see City of Canton, Ohio v. Harris, 489 U.S. 378 (1989). Mere conclusory allegations of failure to train, however, are not enough; and the courts have generally held that there is no affirmative constitutional duty on the part of a supervising public official to train, supervise, or discipline subordinates so as to prevent constitutional torts, except where the supervisor has contemporaneous knowledge of an offending incident or knowledge of a prior pattern of similar incidents, and circumstances under which the supervisor's inaction could be found to have communicated a message of approval to the offending subordinate. See Chinchello v. Fenton, 805 F.2d 126, 133-34 (3 Cir. 1986). The Eleventh Circuit has held that nothing less than a showing of gross negligence is required to establish liability for inadequate training. Cannon v. Taylor, 782 F.2d 947, 951 (11 Cir. 1986). The fact that the defendants viewed inmates walking up and down the stairs handcuffed, without knowing the inmates medical history does not demonstrate gross negligence. It is recommended that defendants Taylor and Haviland be dismissed.

The plaintiff filed a motion for notice to the Court that the defendants are being sued in their individual and official capacities. A §1983 suit against the defendants in their official capacity is tantamount to a suit against the State, and thus the defendants would be immune from monetary damages based upon the Eleventh Amendment. Gamble v. Fla. Dept. of Health and Rehabilitative Services, 779 F.2d 1509, 1512-13 (11 Cir. 1986). The allegations of the complaint, however, state a classic case of officials acting outside the scope of their duties and in an arbitrary manner. Scheuer v. Rhodes, 416 U.S. 232, 238 (1974). Under this construction of the complaint, this Court has

jurisdiction over the defendants in their individual capacity. Therefore this motion should be denied.

III. Recommendation

It is therefore recommended as follows:

1. The claim of denial of medical treatment shall proceed against Nurse Practitioner Erickson and Cerillo.
2. The plaintiff may file an amendment solely as to the issue of endangerment by officers Hodges and Mancuso.
3. The claims against the defendants in their official capacity should be dismissed.
4. Claims against Taylor and Haviland should be dismissed for failure to state a claim.
5. The plaintiff has failed to include his prayer for relief in his amendment and must file an amendment seeking relief.

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

Dated at Miami, Florida, this 15<sup>th</sup> day of October, 2012.



---

UNITED STATES MAGISTRATE JUDGE

cc: Eli Baldemar Escalera, Pro Se  
Monroe County Jail  
Address of record



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.

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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).

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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>2</sup>

A. Statement of Claims

In the initial complaint the plaintiff named Chief Tommy Taylor and Officers Haviland, Mancuso, and Hodges, of the Monroe County Detention Center, along with Maureen Cerillo, Medical Director and Nurse Pat Ericson.

The plaintiff stated he has been taking Neurotin since 2001 for head injuries. He claimed that since incarceration at the Monroe County Detention Center he was removed from the bottom bunk and placed on a top tier. He claims his medication was stopped by Cerillo and Ericson.

He further claimed that in April 2012, he was handcuffed and on his way to the shower, unescorted. He suffered a seizure and fell down the stairs. He claims the termination of his medicine may have led to his seizure and fall, resulting in injuries. He claims Officers were aware of his medical problems and that Mancuso, Hodges and Haviland were responsible for his fall.

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<sup>2</sup> The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.C. 1937 (2009).

B. Sufficiency of complaint

The Report recommended that the plaintiff provided little information as to the role of Maureen Cerillo and Nurse Ericson in stopping his medication. He further provided little information as to who was responsible for his being handcuffed and sent down the stairs unescorted. The roles of the three deputies in this situation are unclear, and the claim needed to be further developed. It was recommended the plaintiff should be permitted to amend his complaint to state specifically the facts related to the roles played by Medical Director Cerillo and Nurse Ericson in refusing his medication. He was to further provide specific facts as to the actions of the three named deputies leading to his fall and subsequent injuries.

C. Amended Complaint (DE#12)

In the amended complaint, the plaintiff seeks to add two unknown officers who worked in the Alpha Unit of the Monroe County Detention Center as Officers A and B. He claims they failed to protect him from risk of harm, by ordering him to use the top tier bunk in his cell. The Court cannot effect service upon unknown Officers A and B. It was recommended that the plaintiff be given the opportunity to discover the identity of these officers, or risk their dismissal.

Amended Complaint (DE#13)

In this amended complaint, the plaintiff adds Nurse Practitioner Pat Erickson<sup>3</sup>, and again names Medical director

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<sup>3</sup> He has spelled the Nurse Practitioner's name as Ericson and Erickson.

Cerillo, Officers Hodges and Mancuso, Chief Tommy Taylor and Sgt. Haviland.

In the second amended complaint he states that Nurse Practitioner Erickson has authorization to prescribe and/or discontinue medication. He claims that his seizure medication Neurontin, previously prescribed by a doctor for serious head injuries he had suffered in the past, was abruptly discontinued by Erickson. He states that he saw Erickson on February 6, 2012, at which time she stated she would require further information about his medical history to continue him on Neurontin. He advised her his records could be obtained from Texas. She conditionally continued his medication, depending on verification from his medical files. His medical files arrived and verified he was to continue on Neurontin. He claims medical staff (nurses) would at times overlook his medication. As a result, he saved part of his medication to take later in the day. He was brought before Erickson for this infraction, and he claims she completely cut off his medication. He contends his last dose was on March 30, 2012, prior to his seizure and fall down the stairs.

He states that Medical Director Maureen Cerillo knew of the risk to his health by cutting off his medication and failed to act. She responded to his grievance by stating he would be prescribed medication for his headaches, but that Neurontin was not medically indicated for migraines. She did not take into account that the abrupt discontinuation of Neurontin has side affects.

He contends Officers Hodges and Mancuso handcuffed him, but failed to prevent him from harm by holding on to him and guiding him safely down the stairs. The plaintiff had a seizure and fell down the stairs, unable to protect himself.

Chief Taylor and Haviland observed inmates ascend or descend stairs unattended and handcuffed. He states they are responsible for a failure to train their officers.

D. Analysis

The plaintiff has provided supporting facts to state a claim against Nurse Erikson and Cerillo, as stated above. It appears at this preliminary stage that Erikson cut off the plaintiff's medication without reason, resulting in his seizure and fall. It further appears that Cerillo was aware of the discontinuation of his medication, and failed to act. It is therefore recommended that the claim of denial of adequate medical treatment shall proceed against these defendants.

The plaintiff's allegations against Officers Hodges and Mancuso remained vague. The fact that they handcuffed the plaintiff and did not guide him down the stairs failed to state a claim unless they were aware he was subject to seizures, and purposely subjected him to danger. It was recommended the plaintiff be permitted to amend solely on the issue of the officers' involvement in his fall, and to demonstrate that the officers actions were beyond mere negligence. The plaintiff's allegations against Chief Taylor and Haviland failed to state a claim and it was recommended they be dismissed. The Report was adopted.

Amended Complaint (DE#24)

In this complaint the plaintiff attempts to support his claim that both Officer Hodges and Officer Mancuso knew of his medical issues which included seizures and medications, based upon his constant pleading with them to move him to a bottom bunk. He

therefore alleges that the officers recklessly and intentionally handcuffed him behind his back and ordered him to descend the stairs, purposely disregarding his medical condition. They endangered him by forcing him down the stairs, resulting in his seizure and fall down the stairs. At this preliminary stage it is recommended that the claim of endangerment proceed against Officers Hodges and Mancuso.

III. Recommendation

It is therefore recommended as follows:

1. The claim of denial of medical treatment shall proceed against Nurse Practitioner Erickson and Cerillo.
2. The claim of endangerment continue against officers Hodges and Mancuso.
3. The operative complaints are DE#13 and 24.

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

Dated at Miami, Florida, this 7<sup>th</sup> day of January, 2013.



---

UNITED STATES MAGISTRATE JUDGE

cc: Eli Baldemar Escalera, Pro Se  
Monroe County Jail  
Address of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-10057-CIV-MOORE  
MAGISTRATE JUDGE P. A. WHITE

ELI BALDEMAR ESCALERA, :  
 :  
 Plaintiff, :  
 : ORDER SCHEDULING PRETRIAL  
 v. : PROCEEDINGS WHEN PLAINTIFF  
 : IS PROCEEDING PRO SE  
 MONROE COUNTY DETENTION :  
 CENTER, 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 **August 9, 2013**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **August 23, 2013**.

3. All motions to dismiss and/or for summary judgment shall be filed by **September 13, 2013**.

4. On or before **September 27, 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 **October 11, 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 discoverable 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 11th day of April, 2013.

**s/Patrick A. White**  
UNITED STATES MAGISTRATE JUDGE

cc: Eli Baldemar Escalera, Pro Se  
Inmate No. F12000802  
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Hon. K. Michael Moore, United States District Judge