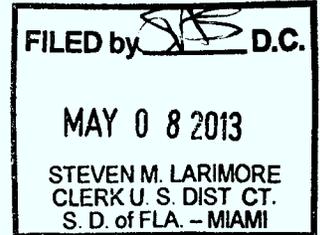


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10 24338 CV COOKE/TURNOFF



ANDREW DAVID MARSHALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
PURSUANT TO 28 UNITED STATES CODE § 191.(e)(2)(A)
(FOR UNTRUE ALLEGATIONS OF POVERTY)

PLAINTIFF MARSHALL, pro se, hereby responds in opposition to Defendant's Motion to Dismiss Pursuant to 28 United States Code, §191.(e)(2)(A) (For Untrue Allegations of Poverty)(ECF # 98). Defendant's allegations are not valid factually or legally, as explained below.

BACKGROUND

This is a Federal Tort Claim Action arising over spinal damage I incurred while a pretrial detainee at FDC Miami. Due to a variety of factors that make it infeasible for me to prosecute this action pro se while incarcerated, I filed Plaintiff's 2nd Motion for Appointment of Counsel (ECF # 44). Appointment of counsel was requested pursuant to 28 U.S.C. § 1915 on the basis of indigency. Subsequently I submitted a six month history of my prison account and an Affidavit (in Support of my Motion to Proceed in Forma Pauperis) to Plaintiff's Reply to Defendant's Response to Plaintiff's 2nd Motion for Appointment of Counsel (ECF # 54, at Exhibit "A"). For the Court's convenience these documents are also attached here as Exhibit "A".

The 2nd Motion for Appointment of Counsel was denied by Magistrate Turnoff (Order, ECF # 89) without appropriate due process or valid justification, whereby I appealed the denial to Judge Cooke (ECF # 93). As far as I know the appeal has not been ruled upon. It is under these circumstances that the defense now moves to dismiss this action based on what it falsely claims are my "untrue allegations of poverty."

PLAINTIFF'S ALLEGATION OF INDIGENCE IS NOT UNTRUE

The Defendant claims that my allegation of indigency is untrue on the basis that I have "a substantial cash balance in my prison commissary account" and because I am the "beneficiary of a trust valued between \$400,000.00 and \$500,000.00." Motion, at page 5. The defense concludes that "[t]his evidence demonstrates that Plaintiff's allegations of poverty are untrue." Id. In support of its position the defense cites Miller v. Brown, 2013 WL 1346826 (S.D.Ga.)(considering the application of dismissal pursuant to Rule 11 and 28 U.S.C. § 1915 on the basis of an untrue allegation of poverty supporting a motion to proceed in forma pauperis).

However, the defense's factual assertions here selectively omit critical facts and is not an accurate portrayal of my financial situation. With regards to my having money in my prison account, it was accurately represented by the inmate account history I submitted to the Court that I had \$2822.84 in the account. What the defense omits is that my motion set forth that the money in the account was being used (or would be used in the near future) to support myself, to pay for upkeep and/or storage on my vessel/home, to pay for research related to litigation (in this and other cases), to pay for a medical expert in this case, and for other legal expenses. As explained in my Reply to Defendant's Response to Plaintiff's 2nd Motion for Appointment of Counsel, the money in my prison account was not sufficient for these purposes, and not enough to pay attorney fees to represent me in this action. I paid the filing fee in this case, and have only requested appointment of counsel on the basis of indigency, as payment for counsel is beyond my financial means.

My representations regarding having money in my prison account, as well as my expenses and liabilities, were neither untrue nor improper. I am not required to be destitute to be indigent for purposes of 28 U.S.C. § 1915. See Martinez v. Kristi Cleaners, Inc., 34 F.3d 130 (11th Cir. 2004) (An affidavit addressing the statutory language should be accepted by court, absent a serious misrepresentation, and need not show that litigant is "absolutely destitute" to qualify for indigent status under 28 U.S.C. §1915. Such an affidavit will be held sufficient if it represents that litigant, because of litigant's poverty, is unable to pay for court fees and costs, and to support and provide necessities for himself and his dependents; in other words, the statute is not

to be construed such that potential litigants are forced to become public charges or abandon their claims because of the filing fee requirements)(internal citations omitted). The Court held that Martinez was indigent despite a monthly income of \$880 and \$300 in the bank. See also Tammera v. Grossman, 2010 U.S. Dist. Lexis 32641 (DC NJ)(Founder of business was allowed to proceed in forma pauperis where his affidavit of poverty established that 87 year old founder had income of \$2,632.92 per month while founder's expenses were #13,465, and he had obtained high interest reverse mortgage simply to cover his monthly property tax expenses).

With regards to my being a beneficiary of a trust valued at hundreds of thousands of dollars, my mother did establish a trust to provide me with food, medical care, housing, and other necessities. But the principal in the trust does not belong to me. The attorney who formulated the trust indicated that the money is not legally mine as I have no control over it. See Affidavit at Attachment, ¶ 5. I have no control over how the principal is allocated or invested. I don't even know how much money is in the trust, or which financial institution it is presently deposited in and/or is in control of its investment. My mother's will directs my brother and sister to administer the trust, and provides that they are to inherit the principal when I die. My mother also expressly directed them not to disperse money to me for lawyers. So the principal in trust for me is not personal assets that I've concealed from the Court, as fictitiously and malevolently portrayed by AUSA Charles White.

Rather, as indicated in the Affidavit (at § 1) and verified by my account history, I receive \$400 a month from the trust. As much as \$300 or more of this \$400 is spent on the prison commissary for food and legal supplies, and my estimated expenditures total \$465 a month. Id at ¶ 8. The money in my prison account reflects \$1,800 that I inherited from my father upon his death, and

1. As memory serves this attorney's name is Bing. Prison authorities have obstructed my access to numerous legal and personal records, which include my mothers will, the attorney's name, and records regarding his representation that the trust is not my money. Consequently these records cannot be attached here. Also, I recall reporting to AUSA Charles White at my deposition that the trust attorney indicated that it was not my money on the basis that I have no control over it. This was either edited out of the transcript of my deposition, or not included in the pages of the deposition attached to Defendant's Motion.

that I have saved money out of the \$400 a month I receive from the trust. These savings occurred primarily at times when the prison restricted me from buying commissary as a disciplinary sanction (typically for petty or fictitious offenses), or because food items and legal items were out of stock.

Other money simply has not been paid out yet. For example, I have a backlog of research that needs to be done. I recently found a researcher, but prison staff deducted money from my account, but did not send it to the researcher for payment of services, and obstructed records the researcher mailed to me, so until these problems are resolved the money accumulates in my account. Additionally, in order to save money for a medical expert and legal research, I had to hold off on maintenance on my vessel even though this will require larger outlays of money for maintenance in the future. Some of the savings are also needed to pay outstanding fines in my criminal case. Reply at page 6; Affidavit attachment at page 2.

The estimate of my monthly expenditures at \$465 also does not include a number of different expenses I am saving for, such as the fee for a medical expert in this case (which is going to be absolutely necessary to counter Defendant's medical experts). I estimate that a medical expert will cost substantially more than what I currently have. See Affidavit attachment at page 2; Reply at page 5. I can't be specific regarding the cost of an expert at this time, as this is one of the matters that needs to be researched (when prison staff stop obstructing my research efforts). I am also in the process of having my sailboat/home put into a boat storage yard in order to safeguard it for when I'm released from prison, which will entail additional expenses. See Reply at page 6; unexecuted storage contract for vessel, attached here as Exhibit "B".

The defense also claims that my ownership of a sailboat and motorcycle indicates that I am not indigent. Motion, page 2. But as I have stated repeatedly, the boat is my home, and the motorcycle my only means of transportation. The sailboat was my sole residence for over a decade, and if I am physically able to do so upon my release from prison, it will be my home again. It is shelter for me, and as such is a necessity. With rents what they are, living on a boat at anchor is more economical than living in an apartment. This sailboat is not a luxury yacht, but a small boat worth approximately \$4000 in its current state of disrepair. Similarly, the motorcycle, which is worth

approximately \$1000, is a necessity for me to get around with as I am physically disabled and cannot walk well enough to use public transportation. It is my only means of getting around to shop locally for food and other necessities. Due to disability a motorcycle is far from ideal for me, but my family refused to provide me a cheap used automobile out of the trust, and consequently it is an absolute necessity for me.

Ownership of a home and basic transportation does not demonstrate that a person is not indigent under § 1915. For example, the Court in Martinez found the Plaintiff to be indigent despite her possession of a car, and the Court in Tammera allowed in forma pauperis status to a property owner with monthly expenses of more than \$13,000. A person simply does not have to be "'absolutely destitute' to qualify for pauper status under section 1915." Bloch v. Regions Bank, 2012 U.S. Dist. Lexis 94374 (M.D. FL)(citing Martinez, 34 F.3d at 1307)(citing Adkins v. E.I. DuPont de Nemours & Co., 33 U.S. 331, 339 (1948). In Adkins the Court explained: "To say that no persons are entitled to the statute's benefits until they have sworn to contribute to payment of costs, the last dollar they have or can get, and thus make their dependents wholly destitute, would be to construe the statute in a way that would throw its beneficiaries into the category of public charges... We think a construction of the statute achieving such consequences is an inadmissible one."

The defense relies upon Miller v. Brown, supra, a recent case which I don't have access to on the prison law library computer. If it is unpublished, I ask the defense to provide me a copy. In any case, in its Motion the defense includes a page long single spaced quote from Miller, and clearly what this case and the cases cited therein concern is individuals who flagrantly misrepresented their assets, whereas I have not made untrue statements about my assets, and it does not appear that the defense is accusing me of lying about my assets.

Rather, the defense seems to be arguing that because my assets show that I am not indigent, my affidavit is untrue and therefore should be dismissed pursuant to 1915(e)(2)(A). In this regard Miller cites Martin v. United States, 317 F.App'x 869 (11th Cir. 2008)(per curiam). However, in Martin the Court dismissed a prisoner's complaint without prejudice on the basis that his indigency affidavit was submitted in another action, and in that other action

the Court determined that "plaintiff had sufficient funds to prosecute this action but chose to spend those funds on matters other than this litigation." Id. at 870. In the case where plaintiff resubmitted the affidavit, the Court explained: "Martin is not unfamiliar with the rules applicable to in forma pauperis applications. And Martin was on notice from his earlier submission of these documents that they failed to support his allegations of poverty. Fully advised of the inadequacy of his affidavit and prison trust statement to establish indigency, Martin relied on these documents without adding explanation or otherwise seeking to refute the district court's earlier rejection of these materials in Martin v. Zenk." Id. at 871.

The facts in Martin do not apply here. The affidavit in this case was previously submitted with regards to my criminal appeal, but it resulted in me being granted a waiver of filing fee and transcript costs. See United States v. Marshall, 07-20569-CR-JAL, Order DE # 673. Moreover, other than necessities such as commissary food and preserving my home, my money is spent (or is being saved to be spent) almost exclusively on legal actions I'm a party in. It needs to be stressed here as well that my commissary food purchases are an absolute necessity, as almost all of the food the BOP serves is not compliant with my religion (Ch'an Buddhism), and the BOP refuses to accommodate my religious dietary practices, whereby I am forced to buy food on commissary to survive.

Nor do the other cases cited in Martin have any factual or legal bearing to this case. In Attwood v. Singletary, 105 F.3d 610 (11th Cir. 1997), Attwood filed an affidavit indicating he had "no access to, control over, or income from any bank account since 1991, and that he owned no real estate or other valuable property." Id. at 611. The Court determined that "Attwood intentionally misstated his income to obtain indigent status and filed this claim in bad faith." Id. The Court further observed that "Attwood has filed at least sixty one claims in the District Court for the Southern District of Florida," and that "he has been equally litigious in the Northern District of Florida," regularly bringing suits on the same factual grounds, changing only the venue and the names of the defendants." Id.

Similarly, in Neloms v. St. Lawrence, CV 410-022, 2010 WL 1688554, (S.D.Ga. Mar. 29, 2010), adopted sub nom by Neloms v. Al St. Lawrence Chatham Cnty Det. Ctrs., CV 410-022, 2010 WL 1688548 (S.D.Ga. Apr. 23, 2010), plaintiff

Chatham represented that "he had no money in his prison trust account and had made no deposits in the past six months," whereas the Court determined that in actuality "he had over \$800 deposited in this trust account since April 29, 2009, and \$395 of that amount was deposited in his account during the six months prior to his filing suit."

In summary, the defense seems to have two main arguments. First, they argue that I misrepresented having a trust worth hundreds of thousands of dollars, but as discussed above the money in the trust is not under my control or legally mine. The defense has offered no argument or evidence in this regard that indicates otherwise. Second, the defense suggests that because I have money in my prison account, a sailboat, and a motorcycle, that I am not indigent and therefore that my claim of poverty is untrue and warrants dismissal. This view is not correct, not only because it does not account for my expenses and liabilities, but because it would result in every case being dismissed in which in forma pauperis relief was denied, even cases where indigence was a close call or an honest mistake was made. This is not what Martin and the cases cited therein stand for. The unifying principle in these cases is that flagrant misrepresentations of poverty in a § 1915 context warrant dismissal. There were no flagrant misrepresentations here.

Quite the reverse is the case. AUSA White has chosen to disregard what I stated in the record and to him verbally about my not having control or ownership over the money in the trust. Affidavit, attachment at ¶ 5; Deposition, ECF 98-1, at page 114:4-12. AUSA White also disregards information in the record as to money in my prison account being saved for upcoming legal expenses and living necessities for myself. See Affidavit; Reply, pages 5-6. In short, he ignored and twisted the facts for illegitimate purposes.

Finally, the defense further claims that I admitted to concealing assets, which is one of the most egregious factual distortions made by AUSA White. This allegation relates to my stating in the affidavit that I gave away property to friends [a year or two prior to my arrest] due to rogue City of Miami officials threatening to murder me [in retaliation for my filing lawsuits against the City of Miami, as well as for being a whistleblower and activist]. Taking these threats seriously, I gave away my sailboat, motorcycle, and other belongings to friends, with the understanding that it was theirs if I was murdered (or

otherwise died). As stated in my affidavit, "The property was to be held for me in the event I survived, with the transfer of ownership upon my demise." However, in 2012 one of the friends I was leaving property to claimed ownership of the sailboat. Not knowing whether the sailboat was still mine, I declared the sailboat in the Affidavit as a possible asset and declared its estimated value; I explained the situation in order to ensure full disclosure. Affidavit, attachment at ¶ 5. I also declared the motorcycle as my vehicle. Affidavit at ¶ 5.

AUSA White claims these circumstances represent wrongdoing on my part, as follows: "Astonishingly, Marshall also acknowledges his efforts to conceal his assets from lawful authorities as well as to reclaim them 'in the event I survived.'" Motion at page 2. This is an absolute distortion of the factual record. Obviously, if I intended to conceal assets I would not have openly disclosed those assets in my Affidavit.

2. Additionally, after I was incarcerated, a handful of guards threatened me and got physical with me without a valid reason for doing so, and caused me pain and physical injury (one such instance being at issue in this lawsuit). Moreover, for several weeks I went without food due to injuries rendering me physically unable to get to the food line. At the time prison personnel refused to provide me medical care or a wheelchair. Several guards were aware of this and let it continue, telling me they did not care if I died. It seemed to me at the time that there was a good likelihood I was going to die in prison, and sent several thousand dollars to a friend to hold for me and to use for emergencies (e.g., to prevent the sailboat from sinking), while also instructing him that I wanted him to have the money should I die in prison. This money was stolen from him by a third party. In order to replace the money, he sold a parcel of land to a friend who was looking after my boat, but the guy looking after the sailboat took the land without paying for it, claiming that I owed him money for maintenance on the boat (which was untrue). I have not been able to recoup the money.

3. Relatedly, the defense points out that my picture of boat expenses changed slightly from the Affidavit to my Reply, which is true. In the former I estimated monthly maintenance costs for the boat, and in the latter discussed maintenance and storage costs. The difference is due to changing circumstances, namely my having a falling out with the guy who was looking after the boat. He claimed the vessel was his and at the same time was trying to charge me exorbitant maintenance costs for the sailboat. He also refused to tell me where the sailboat was being moored (/anchored). This period of time is covered in the Affidavit attachment at ¶ .. Consequently I began looking for someone to care for the boat and to find a place to store it. Shortly thereafter he dropped the sailboat off with a friend of mine who is elderly and not in the

CONCLUSION

I requested appointment of counsel because I am unable to afford an attorney and because I have not been able to find an attorney to represent me pro bono or on a contingency basis. I did not request waiver of the filing fee in this case, and paid the fee as I could afford to do so without undue hardship. I have a limited amount of money saved for a medical expert in this case, for research in this and two other cases, as well as for necessities; but my savings are not likely sufficient to cover the cost of a medical expert, let alone a medical expert and the cost of an attorney. I receive \$400 a month, and my necessary expenditures (had I the money to pay them all and save for legal expenses) exceeds that amount. My assets, which consist primarily of a motorcycle and a sailboat (/home) are necessities for me due to disability, my inability to earn a living, and my upcoming release from prison and need for a home and transportation. Due to lack of maintenance and upkeep the market value of the motorcycle and sailboat is also probably less than the declared value, and probably not sufficient to cover the combined cost of an expert and an attorney. While a trust has been established to assist me with my basic needs (thus far excluding transportation), neither the principal or interest in the trust is mine or under my control.

The defense has distorted the factual record in these regards, and failed to set forth an authentic factual or legal basis for dismissal under either Rule 11 or Rule 28 U.S.C. § 191.(e)(2)(A). Rather, AUSA White has ignored and twisted the facts to create additional work, and thereby caused me to waste three full days researching and preparing this response.

WHEREFORE, for the foregoing reasons, the Court is urged to deny Defendant's Motion to Dismiss.

best health. More specifically, the boat was anchored in a waterway in the same town where my elderly friend lives, and I did not think that he was physically capable of looking after a boat at anchor. So the need for boat storage has evolved due to changing circumstances which occurred shortly before my Reply. This said, I have not indicated that I am paying storage at this juncture. It is taking time to research boat storage options from prison, and I just received my first copy of a storage contract last week. But in any case my point was that necessary monthly expenditures are greater than money I am receiving monthly, and that the money I've saved is not enough to cover both my legal expenses and monthly expenditures for basic necessities.



Andrew Marshall, pro se
Reg. No.: 78814 004
FDC Miami
P.O. Box 019120
Miami, FL 33101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May 2013, a copy of the foregoing was mailed to AUSA Charles White, at the U.S. Attorney's Office, 99 Northeast 4th Street, Miami, FL 33132.



Andrew Marshall, pro se
Reg. No.: 78814 004
FDC Miami
P.O. Box 019120
Miami, FL 33101

EXHIBIT "A"

All Transactions



Inmate Reg #:	78814004	Current Institution:	Edgefield FC1
Inmate Name:	MARSHALL ANDREW	Housing Unit:	EDG-D-B
Report Date:	10/17/2012	Living Quarters:	D05-201L
Report Time:	2:32:20 PM		

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>	<u>Balance</u>
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10/16/2012 5:15:38 AM	Lockbox - CD	\$3.95	70119201		\$2,583.79
10/15/2012 8:31:36 PM	BP 199 Request	(\$9.98)	227		
10/13/2012 8:01:16 PM	BP 199 Request	(\$50.40)	209		
10/11/2012 8:00:43 AM	Books	(\$21.35)	49	79	\$2,579.84
10/11/2012 8:00:43 AM	BP 199 Request - Released	\$21.35	49		
10/9/2012 4:09:20 PM	TRUL Withdrawal	(\$15.00)	TL1009		\$2,601.19
10/9/2012 11:49:52 AM	<u>Sales - Fingerprint</u>	(\$112.10)	90		\$2,616.19
10/8/2012 2:04:36 PM	TRUL Withdrawal	(\$5.00)	TL1008		\$2,728.29
10/5/2012 8:24:41 AM	BP 199 Request	(\$21.35)	49		
10/2/2012 2:08:25 PM	Western Union	\$400.00	33312276		\$2,733.29
10/2/2012 1:47:16 PM	Release Funds	(\$33.90)	4886	34	\$2,333.29
10/2/2012 1:47:16 PM	BP 199 Request - Released	\$33.90	4886		
10/2/2012 1:29:32 PM	Books	(\$36.25)	4873	31	\$2,367.19
10/2/2012 1:29:32 PM	BP 199 Request - Released	\$36.25	4873		
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10/2/2012 1:29:16 PM	BP 199 Request - Released	\$31.30	4872		
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9/25/2012 3:55:08 PM	BP 199 Request	(\$33.90)	4886		
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9/25/2012 3:54:04 PM	BP 199 Request	(\$33.90)	4885		
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9/25/2012 10:17:03 AM	BP 199 Request	(\$31.30)	4872		
9/24/2012 2:28:04 PM	Books	(\$34.30)	4775	2961	\$2,559.84
9/24/2012 2:28:04 PM	BP 199 Request - Released	\$34.30	4775		
9/24/2012 9:49:15 AM	<u>Sales - Fingerprint</u>	(\$49.75)	41		\$2,594.14
9/23/2012 4:09:05 PM	TRUL Withdrawal	(\$10.00)	TL0923		\$2,643.89
9/22/2012 12:13:13 PM	BP 199 Request	(\$26.85)	4845		
9/18/2012 9:16:29 AM	TRUL Withdrawal	(\$10.00)	TL0918		\$2,653.89
9/17/2012 9:37:25 AM	TRUL Withdrawal	(\$10.00)	TL0917		\$2,663.89
9/15/2012 10:31:59 AM	TRUL Withdrawal	(\$10.00)	TL0915		\$2,673.89
9/14/2012 8:51:16 AM	<u>Sales - Fingerprint</u>	(\$17.70)	16		\$2,683.89
9/13/2012 5:20:37 PM	BP 199 Request	(\$34.30)	4775		
9/12/2012 8:38:43 AM	TRUL Withdrawal	(\$30.00)	TL0912		\$2,701.59
9/10/2012 2:52:49 PM	TRUL Withdrawal	(\$30.00)	TL0910		\$2,731.59
9/10/2012 1:09:30 PM	FRP Quarterly Pymt	(\$100.00)	LFRP0912		\$2,761.59
9/10/2012 10:40:52 AM	Books	(\$23.35)	4566	2797	\$2,861.59
9/10/2012 10:40:52 AM	BP 199 Request - Released	\$23.35	4566		
9/10/2012 9:34:32 AM	<u>Sales - Fingerprint</u>	(\$7.50)	24		\$2,884.94
9/10/2012 9:31:12 AM	<u>Sales - Fingerprint</u>	(\$225.65)	23		\$2,892.44
9/10/2012 3:00:02 AM	BP 199 Request - Released	\$33.90	4315		
9/9/2012 8:32:45 PM	TRUL Withdrawal	(\$5.00)	TL0909		\$3,118.09
9/9/2012 1:25:56 PM	TRUL Withdrawal	(\$5.00)	TL0909		\$3,123.09
9/5/2012 8:11:09 PM	TRUL Withdrawal	(\$2.00)	TL0905		\$3,128.09
9/5/2012 9:49:40 AM	TRUL Withdrawal	(\$5.00)	TL0905		\$3,130.09
9/4/2012 8:55:04 AM	<u>Sales - Fingerprint</u>	(\$13.00)	1		\$3,135.09

All Transactions



Inmate Reg #:	78814004	Current Institution:	Edgefield FCI
Inmate Name:	MARSHALL, ANDREW	Housing Unit:	EDG-D-B
Report Date:	10/17/2012	Living Quarters:	D05-201L
Report Time:	2:32:28 PM		

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Pavment#</u>	<u>Balance</u>
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8/31/2012 8:28:51 AM	BP 199 Request	(\$23.35)	4566		
8/29/2012 7:01:49 PM	Phone Withdrawal	(\$3.00)	TFN0829		\$3,158.09
8/28/2012 2:06:31 PM	Western Union	\$400.00	33312241		\$3,161.09
8/27/2012 12:32:07 PM	TRUL Withdrawal	(\$2.00)	TL0827		\$2,761.09
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8/24/2012 6:14:17 AM	TRUL Withdrawal	(\$2.00)	TL0824		\$2,805.39
8/23/2012 3:16:13 PM	TRUL Withdrawal	(\$2.00)	TL0823		\$2,807.39
8/22/2012 1:17:04 PM	TRUL Withdrawal	(\$2.00)	TL0822		\$2,809.39
8/22/2012 11:46:04 AM	Sales - Fingerprint	\$0.00	93		\$2,811.39
8/22/2012 10:54:02 AM	Sales - Fingerprint	\$0.00	63		\$2,811.39
8/21/2012 9:44:43 PM	TRUL Withdrawal	(\$2.00)	TL0821		\$2,811.39
8/21/2012 1:03:15 PM	Inmate Co-pay	(\$2.00)	LICP0812		\$2,813.39
8/20/2012 12:26:41 PM	TRUL Withdrawal	(\$2.00)	TL0820		\$2,815.39
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8/16/2012 10:41:25 AM	BP 199 Request - Released	\$34.75	4118		
8/15/2012 5:12:07 AM	Lockbox - CD	\$6.95	70115001		\$2,898.69
8/14/2012 11:44:02 AM	TRUL Withdrawal	(\$2.00)	TL0814		\$2,891.74
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8/10/2012 4:47:41 PM	BP 199 Request	(\$33.90)	4315		
8/10/2012 4:47:03 PM	BP 199 Request	(\$17.76)	4314		
8/4/2012 10:49:42 AM	TRUL Withdrawal	(\$5.00)	TL0804		\$2,905.54
8/3/2012 6:50:16 PM	TRUL Withdrawal	(\$2.00)	TL0803		\$2,910.54
7/31/2012 9:11:58 AM	Sales - Fingerprint	(\$67.90)	73		\$2,912.54
7/31/2012 6:45:16 AM	BP 199 Request	(\$34.75)	4118		
7/30/2012 3:07:19 PM	Western Union	\$400.00	33312212		\$2,980.44
7/29/2012 7:38:13 PM	TRUL Withdrawal	(\$2.00)	TL0729		\$2,580.44
7/25/2012 1:39:06 PM	TRUL Withdrawal	(\$5.00)	TL0725		\$2,582.44
7/24/2012 10:22:18 AM	TRUL Withdrawal	(\$5.00)	TL0724		\$2,587.44
7/23/2012 2:16:48 PM	TRUL Withdrawal	(\$2.00)	TL0723		\$2,592.44
7/23/2012 11:07:04 AM	Sales - Fingerprint	(\$86.90)	86		\$2,594.44
7/21/2012 5:13:33 AM	Lockbox - CD	\$282.75	70113301		\$2,681.34
7/16/2012 3:00:05 PM	TRUL Withdrawal	(\$2.00)	TL0716		\$2,398.59
7/16/2012 11:49:19 AM	Sales - Fingerprint	(\$88.35)	99		\$2,400.59
7/14/2012 6:34:20 PM	TRUL Withdrawal	(\$2.00)	TL0714		\$2,488.94
7/12/2012 6:33:29 PM	TRUL Withdrawal	(\$2.00)	TL0712		\$2,490.94
7/11/2012 9:55:54 PM	TRUL Withdrawal	(\$2.00)	TL0711		\$2,492.94
7/11/2012 10:59:11 AM	Books	(\$41.25)	3766	2332	\$2,494.94
7/11/2012 10:59:11 AM	BP 199 Request - Released	\$41.25	3766		
7/11/2012 10:23:51 AM	TRUL Withdrawal	(\$2.00)	TL0711		\$2,536.19
7/10/2012 9:26:54 AM	TRUL Withdrawal	(\$2.00)	TL0710		\$2,538.19
7/9/2012 9:22:00 AM	Sales - Fingerprint	(\$94.30)	32		\$2,540.19
7/7/2012 8:27:17 AM	TRUL Withdrawal	(\$2.00)	TL0707		\$2,634.49
7/6/2012 10:41:10 AM	BP 199 Request	(\$41.25)	3766		
7/5/2012 8:42:19 AM	Release Funds	(\$20.00)	3656	2294	\$2,636.49

All Transactions



Inmate Reg #: 78814004 Current Institution: Edgefield FCI
 Inmate Name: MARSHALL, ANDREW Housing Unit: EDG-D-B
 Report Date: 10/17/2012 Living Quarters: D05-201L
 Report Time: 2:32:43 PM

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>	<u>Balance</u>
7/5/2012 8:42:19 AM	BP 199 Request - Released	\$20.00	3656		
7/5/2012 8:22:55 AM	Books	(\$26.25)	3698	2286	\$2,656.49
7/5/2012 8:22:55 AM	BP 199 Request - Released	\$26.25	3698		
7/4/2012 2:14:22 PM	Phone Withdrawal	(\$10.00)	TFN0704		\$2,682.74
7/3/2012 7:27:41 AM	TRUL Withdrawal	(\$2.00)	TL0703		\$2,692.74
7/2/2012 9:42:59 AM	<u>Sales - Fingerprint</u>	(\$101.65)	38		\$2,694.74
7/1/2012 8:23:42 AM	TRUL Withdrawal	(\$2.00)	TL0701		\$2,796.39
6/30/2012 4:26:05 PM	BP 199 Request	(\$26.25)	3698		
6/29/2012 2:53:32 PM	TRUL Withdrawal	(\$2.00)	TL0629		\$2,798.39
6/29/2012 12:07:16 PM	Western Union	\$400.00	33312181		\$2,800.39
6/28/2012 8:34:08 AM	Books	(\$34.25)	3624	2236	\$2,400.39
6/28/2012 8:34:08 AM	BP 199 Request - Released	\$34.25	3624		
6/28/2012 8:16:21 AM	Release Funds	(\$16.97)	3468	2228	\$2,434.64
6/28/2012 8:16:21 AM	BP 199 Request - Released	\$16.97	3468		
6/27/2012 9:05:21 AM	TRUL Withdrawal	(\$2.00)	TL0627		\$2,451.61
6/26/2012 5:03:30 PM	TRUL Withdrawal	(\$2.00)	TL0626		\$2,453.61
6/26/2012 2:10:34 PM	BP 199 Request	(\$20.00)	3656		
6/25/2012 12:50:08 PM	<u>Sales - Fingerprint</u>	(\$136.95)	37		\$2,455.61
6/24/2012 9:00:32 PM	TRUL Withdrawal	(\$2.00)	TL0624		\$2,592.56
6/22/2012 5:53:42 PM	TRUL Withdrawal	(\$2.00)	TL0622		\$2,594.56
6/22/2012 7:14:46 AM	BP 199 Request	(\$34.25)	3624		
6/20/2012 1:22:41 PM	<u>Sales - No FP (Non-FP Session)</u>	(\$11.95)	69		\$2,596.56
6/12/2012 1:23:25 PM	TRUL Withdrawal	(\$2.00)	TL0612		\$2,608.51
6/11/2012 9:41:42 AM	<u>Sales - Fingerprint</u>	(\$54.40)	58		\$2,610.51
6/9/2012 3:45:18 PM	TRUL Withdrawal	(\$2.00)	TL0609		\$2,664.91
6/8/2012 2:56:24 PM	BP 199 Request	(\$16.97)	3468		
6/8/2012 10:33:44 AM	Payroll - IPP	\$5.25	LIPP0512		\$2,666.91
6/7/2012 12:46:58 PM	TRUL Withdrawal	(\$2.00)	TL0607		\$2,661.66
6/6/2012 10:16:16 AM	Release Funds	(\$25.00)	3322	2052	\$2,663.66
6/6/2012 10:16:16 AM	BP 199 Request - Released	\$25.00	3322		
6/2/2012 9:48:10 PM	TRUL Withdrawal	(\$2.00)	TL0602		\$2,688.66
6/2/2012 3:40:03 PM	TRUL Withdrawal	(\$2.00)	TL0602		\$2,690.66
6/1/2012 8:49:36 AM	Release Funds	(\$30.00)	3236	2021	\$2,692.66
6/1/2012 8:49:36 AM	BP 199 Request - Released	\$30.00	3236		
5/31/2012 1:06:59 PM	Western Union	\$400.00	33312152		\$2,722.66
5/31/2012 11:08:06 AM	TRUL Withdrawal	(\$5.00)	TL0531		\$2,322.66
5/30/2012 9:42:04 AM	BP 199 Request	(\$25.00)	3322		
5/30/2012 7:09:21 AM	TRUL Withdrawal	(\$2.00)	TL0530		\$2,327.66
5/29/2012 9:36:00 AM	<u>Sales - Fingerprint</u>	(\$149.15)	47		\$2,329.66
5/27/2012 11:46:33 AM	TRUL Withdrawal	(\$5.00)	TL0527		\$2,478.81
5/25/2012 8:51:59 AM	TRUL Withdrawal	(\$2.00)	TL0525		\$2,483.81
5/24/2012 7:12:18 PM	TRUL Withdrawal	(\$2.00)	TL0524		\$2,485.81
5/23/2012 10:41:55 AM	<u>Sales - Fingerprint</u>	(\$37.25)	52		\$2,487.81
5/22/2012 5:13:04 AM	Lockbox - CD	\$27.35	70109101		\$2,525.06
5/21/2012 6:11:48 PM	TRUL Withdrawal	(\$2.00)	TL0521		\$2,497.71
5/17/2012 5:07:21 PM	BP 199 Request	(\$30.00)	3236		
5/15/2012 10:29:23 AM	TRUL Withdrawal	(\$2.00)	TL0515		\$2,499.71
5/14/2012 10:43:00 AM	<u>Sales - Fingerprint</u>	(\$42.40)	28		\$2,501.71
5/10/2012 11:42:41 AM	<u>Sales - Fingerprint</u>	(\$138.95)	49		\$2,544.11
5/10/2012 10:09:50 AM	Transfer - In from TRUFACS	\$2,683.06	TX051012		\$2,683.06

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Self-employment	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Income from real property (such as rental income)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Interest and dividends	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Gifts	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Alimony	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Child support	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Disability (such as social security, insurance payments)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Unemployment payments	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Public-assistance (such as welfare)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Other (specify): Trust	\$ 400.00	\$ N/A	\$ 400.00	\$ N/A
Total monthly income:	\$ 400.00	\$ N/A	\$ 400.00	\$ N/A

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ 583.60

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
N/A	N/A	\$ N/A	\$ N/A
N/A	N/A	\$ N/A	\$ N/A
N/A	N/A	\$ N/A	\$ N/A

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$ N/A	(Value) \$ N/A	(Value) \$ 1,000.00
N/A	N/A	Make and year: <u>Honda/</u>
		Model: <u>250cc Motorcycle</u>
		Registration #: <u>Unknown</u>

Motor vehicle #2	Other assets	Other assets
(Value) \$ N/A	(Value) \$	(Value) \$
Make and year: N/A		
Model: N/A		
Registration #: N/A		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$ N/A
	\$	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	\$ N/A	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ N/A	\$ N/A
Home maintenance (repairs and upkeep)	\$ 80.00	\$ N/A
Food	\$ 250.00	\$ N/A
Clothing	\$ 5.00	\$ N/A
Laundry and dry-cleaning	\$ N/A	\$ N/A
Medical and dental expenses	\$	\$ N/A
Transportation (not including motor vehicle payments)	\$ N/A	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 30.00	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ N/A	\$ N/A
Life:	\$ N/A	\$ N/A
Health:	\$ N/A	\$ N/A
Motor vehicle:	\$ N/A	\$ N/A
Other:	\$ N/A	\$ N/A
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ N/A	\$ N/A
Installment payments		
Motor Vehicle:	\$ N/A	\$ N/A
Credit card (name):	\$ N/A	\$ N/A
Department store (name):	\$ N/A	\$ N/A
Other:	\$ N/A	\$ N/A
Alimony, maintenance, and support paid to others	\$ N/A	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ N/A	\$ N/A
Other (specify): Legal Expenses	\$ 100.00	\$ N/A
Total monthly expenses:	\$ 465.00	\$ N/A

Attachment

5. I am not sure whether certain items are assets of mine, or their value. Due to concern that local or federal governments or their agents might kill me, I gave away my possessions prior to being incarcerated, as well as money and property after incarceration, in the event that I was killed. The property was to be held for me in the event I survived, with the transfer of ownership upon my demise

This property includes a sailboat that served as my home for over ten years. I estimate that prior to my arrest it was worth between \$3,000.00 and \$5,000.00. I've been incarcerated over 5 years, and believe the vessel has likely deteriorated considerably since then. I have not seen it in years, and have no way of estimating its current value. The individual overseeing the vessel claims ownership of it on the one hand, and says it is mine on the other. However, he does not answer my questions about the vessel, and I do not presently know where it is located. However, the title remains in my name.

The situation is similar with regards to other property I own or owned. I owned a motorcycle that was worth approximately \$1,000.00, but have no idea whether it still runs and was recently informed that parts were stolen off of it. I owned carpentry tools, including a hand drill, router, jigsaw, sander, and so forth, but they were stored in the bilge of the boat for five years and are probably inoperable and valueless now. Also, the government seized some of my belongings, but this property has not been returned to me thus far. It includes a used computer, miscellaneous gun parts, and various other low dollar items.

Finally, when my mother passed away she established a trust for me. The lawyer of the trust said that the money was not legally mine as I have no control over it. I don't have the means to research such matters while incarcerated. Nor do I know how much money is in the trust presently. I requested financial records from the trust administrator, but the records were not provided to me.

6. I am not sure who to include as people owing me money, and am concerned that excluding someone might act to waive an encumbrance. Nor do I have access to my personal records, and having been incarcerated for over five years, can't remember details as to who owes me money and how much. This said, I do not believe that those who owe me money will ever repay me. I believe that local and federal governments owe me money for various torts and injuries, but such matters have not been adjudicated in my favor at this time. I also believe that Derek Lewis owes me a refund of money paid to him as attorney fees in this case, but he refused to compensate me.

8. The "Medical and dental expenses" section was left blank because the amount is not known at this time. I have extensive spinal damage, and a lawsuit related to these injuries, and anticipate a medical evaluation and treatment recommendations in the near future. In all likelihood surgery will be needed, as well as an electric wheel chair. Surgery is tens of thousands of dollars, and an electric wheelchair is estimated to cost approximately \$1000.00.

The space for "Other" is specified as "Legal Expenses" at \$100.00 a month. On average I spend at least \$100.00 a month on legal expenses, but there are times that my legal expenses far exceed that sum. Presently one of my civil actions is close to going to trial, and money will needed to be allocated to expert fees and other expenses related to trial preparations and trial. Medical experts alone will probably cost several thousand dollars. Such expenses are not figured in to my monthly outlays. Also not included as a monthly expense is the \$500.00 fees assessed against me at sentencing.

11. No, but I have been making payments for services related to other cases I'm a party to. At times such services related to other cases I am a party to. Such expenditures have amounted to approximately \$500.00 for a particular month.



Andrew Marshall, pro se
Reg. No.: 78814-004
Edgefield Camp
P.O. Box 725
Edgefield, SC 29824

EXHIBIT "B"

Gibson Dry Dock, Inc.

Opposite Beacon No. 12 South of Palatka
114 Cedar Street San Mateo FL 32187
Tel: 386.325.5502 www.gibsondrydock.com Email: info@gibsondrydock.com

AGREEMENT BETWEEN BOATYARD AND BOAT OWNER

This Agreement is between Gibson Dry Docks, Inc. (Yard) and the boat owner identified below (Owner).

Owner and Boat Information: Owner provides the following personal information

Boat owner: _____ Boat name: _____

Mailing Address: _____

Boat Description: _____ Registration: _____

Telephone: Home _____ Work _____

Mobile _____ Email _____

Owner agrees to pay:

\$ 150.00 for haul and launch

\$ 107.00 for cradle set up

\$ _____ per day for layover beginning
24 hours after haul.

In the event Boat is to be stored, Owner also agrees to pay:

\$ 330.00 per quarter in advance for

(Circle one) Dry storage Docksides Banksides

GENERAL RULES AND LIABILITY

Legal Notice: Owner has supplied the above mailing address and hereby promises to provide written notice to Yard of any address change so that Yard will always be able to provide legal notice to Owner. Owner agrees that a mailing to the above (or updated address) constitutes legal notice to Owner.

Sling and Cradle Placement: Owner assumes exclusive responsibility for location of lift slings and cradle supports on boat hull and represents that Boat will sustain loads imposed by the slings and cradle supports. Owner or Owner's agent must be present in order to give direction for placement of lift slings and cradle supports.

Cradle Adjustments: Owner may not adjust or tamper with the boat cradle.

Repairs: Yard provides a location for passive storage and does not repair boats. Yard allows only minor repairs to Boat by Owner. No work by third party can be performed without special permission of the Yard. Owner assumes sole risk for self-repairs to his or her boat, as well as sole responsibility for third party work requested by Owner, notwithstanding that Yard may have granted permission for such work.

Pets: Well-behaved pets are allowed on premises, but become the responsibility of Owner who has brought or allowed the pet to be on premises. The pet must be under Owner's control at all times.

Security: The Yard does not furnish security. Owner will secure all valuables and assumes responsibility for the care and protection against loss or damage of any kind to boat (including gear, fixtures, equipment and contents).

Overnights: No one is allowed to live aboard a Boat.

Default: If Owner is six months or more in arrears in payment to the Yard, Owner hereby acknowledges that (without further notice to Owner) he or she will have abandoned the stored Boat (in either wet or dry dock), which will then become a derelict vessel on the property of the Yard. In that event, Owner's signature below will serve to authorize the appropriate authorities to transfer the title to the Boat and its contents to Yard as salvor. Yard shall then have the right to either destroy or dispose of the Boat, or sell and pass good title to the Boat to a third party purchaser with the proceeds of the sale going towards payment of the deficiency to Yard.

Deficiency: Owner's abandonment of the Boat and the transfer of title to the Yard as salvor shall not extinguish Owner's liability for payment of the amounts agreed to above. The Yard may obtain a judgment against Owner for the amounts owed, plus the amount of reasonable expenses incurred to destroy or dispose of the Boat. In the event the Yard sells the Boat, the reasonable expenses incurred to make the Boat saleable and the reasonable expenses incurred for the sale shall be added to the deficiency. The deficiency will then be offset by the proceeds of the sale for determining the amount of the deficiency judgment to be entered in the appropriate public records against Owner. In the event the sale proceeds exceed Owner's deficiency (including reasonable expenses), the excess shall be paid by Yard to Owner.

Indemnity: Owner agrees to indemnify and hold the Yard harmless from all claims, damages and liabilities arising from the possession, use or non-use of the boat or boat slip. The indemnity includes, but is not limited to, the negligence or improper conduct of Owner or his or her agents, employees, invitees or suppliers. Owner will reimburse Yard for all attorney fees and costs incurred for the enforcement of any part of this agreement.

I have read and agree to all terms stated herein.

Signature, Owner



Signature, Representative, Yard

THIS LOOKS TO BE THE
BEST PLACE TO PUT YOUR
BOAT ON HAND IF YOU WANT
TO DO SO. IT IS LOCKED
CLOSE RT ~~17~~ & RT 100, THERE
IS NO FENCE ON YARD, BUT LOOK
SAFE. THE BOAT YARD SEZALS
MILES NORTH OF THE BOAT THIS
EZEY TO TAKE THE BOAT THERE.

GARY

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

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____ /

DEFENDANT'S UNILATERAL PRE-TRIAL STIPULATION

COMES NOW the Defendant, via Local Rule 16.1(e) and (f), and the Court's Amended Scheduling Order, Docket Entry ("DE") #58, to file this Unilateral Pre-Trial Stipulation as follows:

1. Statement of the Case

This personal injury action (brought against the United States of America ("USA") under the Federal Tort Claims Act, Title 28, United States Code, Section 1346(b), 2671, *et seq.*, based upon alleged negligence (See Amended Complaint, Docket Entry ("DE") #31). In essence, Plaintiff alleges that, on February 25, 2008, that he was injured by correction officers during an encounter within the Federal Detention Center in Miami, Florida ("FDC-Miami"). (See Docket Entry ("DE") #1). Specifically, Plaintiff alleged that the Defendant (through the actions of employees of the Federal Bureau of Prisons) dropped him while carrying him on a Gurney, resulting in severe injuries. The Defendant has denied these allegations. (DE #14).

Plaintiff's Position¹

¹ By letter dated July 8, 2013, the Defendant reminded Plaintiff of the Court's Order, dated January 7, 2013, and the need to work together to craft and file a Joint Pretrial Stipulation on or before July 22, 2013 (See attached, Exhibit A). A copy of this letter was hand delivered to Plaintiff on July 8, 2013 (See attached, Exhibit B).

With this letter Plaintiff was provided with a draft Pretrial Stipulation, together with the Defendant's proposed Trial Witness and Exhibit Lists. Plaintiff was then invited to review the same and provide his written comments, including suggested additions, deletions, etc., so that they could be used to revise the draft. Plaintiff has failed to respond to this invitation.

According to William "Skip" Anderson, BOP Counselor for Plaintiff:

I have asked Mr. Marshall several times about the deadline and what he plans to do. he told me that "*If is physically able to get it done then he will but he is not doing well physically and maybe not be able to do it*". I pressed further but he said "*I am not doing to well, they are not treating me here*". wanted to pass this on as I have been extremely concerned about the deadline. I just can't force him to do it but he is well aware of the deadline and my reasoning for asking him.

Defendant's Position

Plaintiff entered into the custody of the Bureau of Prisons following his 2007 arrest with *pre-existing* injuries incurred in a 2002 Utility Cart accident. The essence of his current allegation centers upon whether Plaintiff was further injured as the result of being dropped while carried in a Gurney by BOP employees in February 2008. Indeed, at issue is whether Plaintiff was injured at all as the result of allegedly being dropped. And if so, the nature, extent, and cause of Plaintiff's injuries are at issue in this case. To be more precise, as otherwise detailed in the Defendant's Answer, the Defendant has denied Plaintiff's allegations which give rise to this case (that is, the Defendant denies that Plaintiff was dropped while being carried; and the Defendant denies that Plaintiff incurred any injuries resulting therefrom).

2. The Basis of Federal Jurisdiction

This case was filed under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Section 2672.

3. Pleadings raising the issues.

The pleadings raising the issues are the Amended Complaint and the Answer thereto.

4. List of all undisposed of motions or other matters requiring action by Court

On April 12, 2013, the Defendant filed his Motion to Dismiss (pursuant to 28 U.S.C. §1915(e)(2)(A), based upon Plaintiff's untrue allegations of poverty). (DE #98)

On May 8, 2013, the Plaintiff filed his Response to Defendant's Motion to Dismiss. (DE #99)

These matters are pending before this Court. There are no other un-disposed of motions or other matters requiring action by the Court.

5. Concise Statement of Uncontested Facts

Plaintiff entered into the custody of the Bureau of Prisons following his 2007 arrest with *pre-existing* injuries incurred in a 2002 Utility Cart accident.

6. Issues of fact which remain to be litigated at trial

a. Whether the Defendant, through its employees at the Federal Detention Center, Miami, Florida (FDC-Miami), breached any legal duty (that is, whether FDC-Miami employees were negligent in any way while transporting Marshall).

b. Whether the Plaintiff suffered injury as a proximate result of any such breach any legal duty owed by the Defendant to the Plaintiff.

c. What amount, if any, will compensate Plaintiff, for past, present, and future pain and suffering, injury, mental anguish, lost capacity for enjoyment of life, disability, disfigurement,

medical expenses, lost wages, loss of earning capacity, and/or property damage which is the proximate result of any such negligence of the Defendant.

7. Concise Statement of Issues of Law Upon Which There is Agreement

- a. This case is properly before the Court under the FTCA (28 U.S.C. §1346(b), and 28 U.S.C. §2672, et seq.).
- b. The Federal Tort Claims Act was "designed to provide redress for ordinary torts recognized by state law." *Ochran v. United States*, 273 F.3d 1315, 1317 (11th Cir.2001) (internal quotation and citation omitted). As the alleged tort here occurred in Florida, Florida tort law applies.
- c. Actionable Negligence: "Under Florida law, the elements of actionable negligence are: 1) a legal duty owed by defendant to plaintiff; 2) breach of the duty by defendant; and 3) injury sustained as a proximate result of the breach." *Hensley v. United States*, 728 F.Supp. 716, 721 (S.D. Fla. 1989)(citations omitted). The standard of care applicable to negligence actions is one of reasonable care; "that which a reasonably careful, prudent, and cautious person would use under the circumstances." *Id. Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973).

8. Concise statement of issues of law remaining to be determined by the Court

There are no issues of law remaining to be determined by the Court.

9. List of trial exhibits

See the attached lists (Plaintiff's and Defendants').

10. List of Witnesses

See the attached lists (Plaintiff's and Defendants').

11. Estimated time of trial

The parties estimate that it will take approximately 2-3 days to try this case.

12. Attorney's fees

Plaintiff is proceeding, *pro se*.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

s/ Charles S. White
Charles S. White
Assistant United States Attorney
99 N.E. 4th Street, Suit 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
charles.white@usdoj.gov
Attorney for Defendant

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

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____ /

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 2013 I electronically filed the forgoing document with the Clerk of the Court using CM/ECF. I also certify that the forgoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
E-mail: charles.white@usdoj.gov

SERVICE LIST
MARSHALL v. UNITED STATES OF AMERICA
Case No. 10-24338-CIV-COOKE/Turnoff
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

Andrew D. Marshall, *Pro Se*
Reg. #78814-004
Edgefield Camp
P.O. Box 725
Edgefield, SC 29824
Plaintiff *pro se*

Charles S. White
Assistant United States Attorney
99 N.E. 4th Street, Suit 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S TRIAL WITNESS LIST

COMES NOW, the Defendant, by and through the undersigned counsel, pursuant to Local Rule 16.1(E)(10), to provide this Trial Witness List, as follows:

1. Andrew Marshall
Prisoner Reg. No. 78814-004
Federal Detention Center-Miami
P.O. Box 019120
Miami, Florida 33101-9120

Plaintiff

2. Lieutenant Alex Harrison
USP Hazelton
P.O. Box 450
Bruceton Mills, WV 26525

Supervision of Plaintiff at FDC-Miami on February 23, 2008.

3. Brian Best
FDC Miami
P.O. Box 019118
Miami, FL 33101

Supervision of Plaintiff at FDC-Miami on February 23, 2008.

4. Justin Casey
FDC Miami
P.O. Box 019118
Miami, FL 33101

Supervision of Plaintiff at FDC-Miami on February 23, 2008.

5. Dr. Edwin Lopez
Retired Clinical Director
FDC Miami
P.O. Box 019118
Miami, FL 33101

Supervised medical care provided to Plaintiff at FDC-Miami

6. Dr. Luis Ginart, MD
FDC Miami
P.O. Box 019118
Miami, FL 33101

Medical care provider to Plaintiff at FDC-Miami

7. Rosa Alminaque
FDC Miami
P.O. Box 019118
Miami, FL 33101

Medical care provider to Plaintiff at FDC-Miami

8. Dr. Ponce De Leon
9746 S.W. 24th street
Miami, FL 33165

Medical care provider to Plaintiff at FDC-Miami

9. R. Gage
FDC Miami
P.O. Box 019118
Miami, FL 33101

Supervision of Plaintiff at FDC-Miami on February 23, 2008.

10. Dr. Jonathan A. Hyde, M.D.
4308 Alton Road, Suite 830
Miami Beach, Florida 33140

Dr. Hyde has reviewed the pertinent medical records related to Plaintiff Marshall and his alleged injuries (including those which predated his incarceration with a history of an alleged back injury from a motor vehicle accident that occurred in 2002).

According to Dr. Hyde, numerous records relate that Marshall tends to utilize a wheelchair as much as he wishes to. Apparently, there was a court order allowing this to occur. Considering that the condition seen on the MRI imaging was so minor, it is surprising that

such a need for that type of assistive device was required of someone of this patient's age. It was noted that Marshall was witnessed not just walking, but climbing stairs. It has also been witnesses that he has performed acrobatic maneuvers with the wheelchair.

Dr. Hyde also noted that the records also demonstrate a pattern of the patient demanding narcotic medications for his subjective pains. This pattern includes that of threatening litigation to the health care providers involved.

Dr. Hyde also noted that the Plaintiff Marshall's complaint against the Government, for which he indicates that he was dropped onto a floor in the elevator which significantly worsened his condition, calls into question whether or not there was a true injury sustained from the alleged accident. Dr. Hyde has reviewed the affidavit from the officer allegedly involved in the incident, and has also reviewed the additional medical notations subsequent to this incident. Dr. Hy also reviewed the MRI images before and after the alleged incident.

Based thereon, Dr. Hyde will opine that 1) the subjective pain related by Marshall does not appear to correlate to the MRI scan findings. The subjective pain related by the patient after the alleged incident (giving rise to this lawsuit) is the same subjective pain he had prior to it; 2) Plaintiff Marshall demonstrated self limiting behavior in the usage of a wheelchair, for which there appears to be no medical necessity for its usage. This lack of medical necessity is illustrated by the patient's ability to ambulate, the patient's ability to climb stairs, and also consistent lack of atrophy of the psoas muscles on the serial MRI studies reviewed. This self-limiting behavior was present before and after the lack of the alleged incident (giving rise to this lawsuit); 3) There appears to have been no appreciable post traumatic findings on the MRI studies reviewed, including the film from 2008 predating the alleged injury in question. There does not appear to be significant progression of any pathological process, particularly of the L4-L5, on the MRI studies that have occurred after the incident. There does not even appear to be age or time related change when the newer studies are reviewed as compared to 2008; 4) within a reasonable degree of medical certainty, Plaintiff Marshall does not have criteria on the MRI scans to consider surgical intervention for the subjective pain illustrated in the records.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Respectfully submitted,

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
E-mail: charles.white@usdoj.gov

United States District Court

SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: 10-24338 CV MGC

ANDREW MARSHALL, Plaintiff

v.

DEFENDANT'S TRIAL EXHIBIT LIST

UNITED STATES OF AMERICA, Defendant

PRESIDING JUDGE MARCIA G. COOKE UNITED STATES DISTRICT JUDGE	PLAINTIFF'S ATTORNEY PRO SE	DEFENDANTS' ATTORNEY CHARLES S. WHITE, AUSA (305) 961-9286
TRIAL CALENDAR AUGUST 26, 2013	COURT REPORTER Diane Miller (305) 523-5152	COURTROOM DEPUTY Ivan Marchena (305) 523-5155

PLF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBIT
D #1 (a-d)				Plaintiff's entire prison Medical File
D #2				Plaintiff's Medical records generated by outside treating physicians
D #3				Expert Report, Dr. Jonathan A. Hyde, MD
D #4				CV, Dr. Jonathan A. Hyde, MD
D #5				
D #6				
D #7				
D #8				
D #9				
D #10				
D #11				
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D #33				
D #34				
D #35				
D #36				

Exhibit A



U.S. Department of Justice

*United States Attorney
Southern District of Florida*

Charles S. White
Assistant U.S. Attorney
Civil Division
99 N.E. 4th Street, Suite 322
Miami, FL 33131
(305) 961-9286
(305) 530-7139 FAX
July 8, 2013

Andrew D. Marshall, Plaintiff *Pro Se*
Reg. #78814-004
FCI Edgefield, SC

Re: Defendant's submission of draft Joint Pretrial Stipulation to Plaintiff *pro se* for review and comment in the Civil Proceedings styled *Marshall v. USA*, 10-24338 CV COOKE

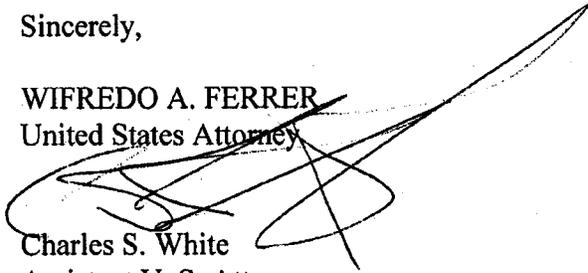
Dear Mr. Marshall,

In accordance with the Court's Order, dated January 7, 2013, we need to work together to craft and file a Joint Pretrial Stipulation on or before July 22, 2013.

Accordingly, with this letter you are provided with a draft Pretrial Stipulation, together with the Defendant's proposed Trial Witness and Exhibit Lists. At your earliest convenience, please review the same and provide me with your written comments, including suggested additions, deletions, etc., so that I may use them to revise the draft. Working together, I am sure that we can craft and file a final Joint Pretrial Stipulation on or before July 22, 2013.

Sincerely,

WIFREDO A. FERRER
United States Attorney


Charles S. White
Assistant U. S. Attorney

Enclosures

Exhibit B



U.S. Department of Justice

Federal Bureau of Prisons

South Carolina Consolidated Legal Center

501 Gary Hill Road
P.O. Box 723
Edgefield, SC 29824

July 8, 2013

I have received from Ms. Vining, correspondence July 8, 2013, from the AUSA's Office in Miami, FL, Wifredo A. Ferrer, regarding a draft Pretrial Stipulation.

A handwritten signature in cursive script that reads "A. Marshall".

Andrew Marshall, #78814-004

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

Case No. 10-24338-CIV-WILLIAMS/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S NOTICE OF FILING

(Plaintiff's Response to Defendant's Invitation to draft Joint Pre-Trial Stipulation)

COMES NOW the Defendant, United States of America, through the undersigned Assistant United States Attorney, to report that, on July 23, 2013, the Defendant received from Plaintiff the attached Response to Defendant's Invitation to draft Joint Pre-Trial Stipulation.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
E-mail: charles.white@usdoj.gov

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

Case No. 10-24338-CIV-WILLIAMS/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 23, 2013 I electronically filed the forgoing document with the Clerk of the Court using CM/ECF. I also certify that the forgoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White

CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
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SERVICE LIST
MARSHALL v. UNITED STATES OF AMERICA
Case No. 10-24338-CIV-WILLIAMS/Turnoff
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

Andrew D. Marshall, *Pro Se*
Reg. #78814-004
Edgefield Camp
P.O. Box 725
Edgefield, SC 29824
Plaintiff *pro se*

Charles S. White
Assistant United States Attorney
99 N.E. 4th Street, Suit 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
charles.white@usdoj.gov
Attorney for Defendant

AUSA Charles White
U.S. Attorney's Office
99 Northeast 4th Street
Miami, FL 33132

Andrew Marshall
Reg. No.: 78814-004
Edgefield Camp
P.O. Box 725
Edgefield, SC 29824

July 22, 2013

Re: Defendant's Pretrial Stipulation to Plaintiff
for review and comment in the civil proceeding
styled Marshall v. USA, 10-24338-CV-Cooke

Mr. White,

I do not agree to your stipulations. Part of the reason for this is because you have not been honest with me in the past regarding several issues. I have also experienced chicanery and pettifogging by other AUSA's regarding stipulations (and all other matters). Finally I have specific objections to matters you ask me to stipulate to, as follows:

1. Statement of the Case. You indicate that this case is based on "alleged negligence." Insofar as this is true it does not rule out that correctional officers were deliberately intending to inflict pain on me and went too far.
4. List of all undisposed motions. As far as I know my appeal to Judge Cooke regarding Magistrate Turnoff's denial of my Motion for Appointment of Counsel is still pending.
5. Concise Statement of Uncontested Facts. You state in this section that I entered BOP custody with preexisting injuries incurred in a 2002 utility cart accident. I do not stipulate to this.
6. Issues of fact which remain to be litigated at trial. I do not agree to the "breach" of "legal duty" wording.
7. Concise Statement of Issues of Law Upon Which There is Agreement. I agree that this a FTCA, but do not have the ability to research state law or the state law you cite, and therefore do not stipulate to what you say about "actionable negligence" or that this is the applicable standard or only applicable standard.
8. Issues of law remaining to be determined by Court. I do not stipulate to this. Due to poor health and adverse conditions of confinement I have not had the opportunity to research the variety of laws that may remain to be determined by the Court.

9. List of trial exhibits. I do not stipulate to this. Due largely to poor health, conditions of confinement, and lack of legal counsel, I have not been able to conduct discovery or put together trial exhibits.

10. List of Witnesses. I do not stipulate to this. Due largely to poor health, conditions of confinement, and lack of legal counsel, I have not been able to conduct discovery or otherwise assemble a witness list.

A handwritten signature in cursive script, appearing to read "A. Marshall". The signature is written in black ink on a white background.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-24338-CIV-COOKE

ANDREW D. MARSHALL,
Reg.#78814-004
Plaintiff,
Vs.

UNITED STATES OF AMERICA,
Defendant.

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

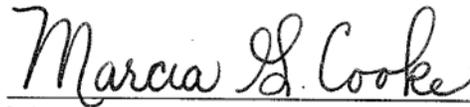
TO: THE UNITED STATES MARSHAL,
SOUTHERN DISTRICT OF FLORIDA, and
WARDEN, FCI Edgefield, South Carolina

It appearing from the record that ANDREW D. MARSHALL, (Reg No. 78814-004), is confined in the Federal Correctional Institution, Edgefield, South Carolina, and that this case is set for a Calendar Call and Jury Trial in Miami, Florida beginning on August 21, 2013 at 3:00 p.m., and that it is necessary for said witness to be before this Court;

NOW, THEREFORE, this is to command you, the United States Marshal for the Southern District of Florida, that you have the body of the said ANDREW D. MARSHALL, (Reg No. 78814-004) now in custody as aforesaid, under safe and secure conduct, before this Court at Courtroom 11-2, 400 North Miami Avenue, Miami, Florida, by or before 3:00 p.m., on August 21, 2013 and upon completion of testimony that you return subject with all convenient speed, under safe and secure conduct to the custody of the Warden of the aforesaid penal institution.

And this is to command you, the Warden of FCI Edgefield, SC, to deliver into the custody of any United States Marshal, upon production to you of a certified copy of this writ, the body of the said ANDREW D. MARSHALL, (Reg No. 78814-004) for safe and secure conduct to this District for the purpose of aforesaid.

DONE AND ORDERED at the United States District Courthouse, in Miami, Florida this
26th day of July 2013.

A handwritten signature in cursive script that reads "Marcia G. Cooke". The signature is written in black ink and is positioned above a horizontal line.

MARCIA G. COOKE
United States District Judge

cc:

All counsel of record

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

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S SUPPLEMENT TO UNILATERAL PRE-TRIAL STIPULATION

COMES NOW the Defendant, via Local Rule 16.1(e) and (f), and the Court's Amended Scheduling Order, Docket Entry ("DE") #58, to file this Supplement to its Unilateral Pre-Trial Stipulation (DE #101) as follows:

Pursuant to Federal Tort Claims Act, Title 28, United States Code, Section 1346(b), 2671, *et seq.*, based upon alleged negligence, the trial shall be tried by the Court without a jury. Title 28, United States Code, Section 2402.¹

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

s/ Charles S. White
Charles S. White
Assistant United States Attorney
99 N.E. 4th Street, Suit 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
charles.white@usdoj.gov
Attorney for Defendant

¹It the Writ of Habeas Corpus Ad Testificandum (DE #103), the Court indicated that the case is set for a Jury Trial.

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

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 29, 2013 I electronically filed the forgoing document with the Clerk of the Court using CM/ECF. I also certify that the forgoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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WIFREDO A. FERRER
UNITED STATES ATTORNEY

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Assistant United States Attorney
99 N.E. 4th Street, Suite 300
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Tel. (305) 961-9286
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