

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:12-cv-81140-WPD**

Rocker III v. Bradshaw
Assigned to: Judge William P. Dimitrouleas
Referred to: Magistrate Judge Patrick A. White
Case in other court: U.S District Court for the Southern District
of FL, 11-CV-80730
13-13801-B

Date Filed: 10/16/2012
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Cause: 28:1983 Civil Rights

Plaintiff

Julius Franklin Rocker III

represented by **Julius Franklin Rocker III**
0108523
Palm Beach County Jail
P.O. Box 24716
West Palm beach, FL 33416
PRO SE

V.

Defendant

Sheriff Ric Bradshaw
for Palm Beach County

Defendant

**Armor Correctional Health Services,
Inc.**

Defendant

Dr. M. Mendez
D.D.S.

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

Date Filed	#	Docket Text
10/15/2012	<u>1</u>	COMPLAINT against Ric Bradshaw. Filing fee \$ 350.00. IFP Filed, filed by Julius Franklin Rocker III.(ots) (Entered: 10/16/2012)
10/15/2012	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Julius Franklin Rocker III. (ots) (Entered: 10/16/2012)
10/16/2012	<u>2</u>	Judge Assignment to Judge William P. Dimitrouleas (ots) (Entered: 10/16/2012)
10/16/2012	<u>3</u>	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. (ots) (Entered: 10/16/2012)

10/23/2012	<u>5</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 10/23/2012. (tw) (Entered: 10/23/2012)
10/23/2012	<u>6</u>	ORDER denying <u>4</u> Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit. Signed by Magistrate Judge Patrick A. White on 10/23/2012. (Attachments: # <u>1</u> Affidavit IFP) (tw) (Entered: 10/23/2012)
11/05/2012	<u>7</u>	MOTION for Leave to Proceed in forma pauperis by Julius Franklin Rocker III. (tp) (Entered: 11/06/2012)
11/08/2012	<u>8</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLEK OF \$350.00 and Granting <u>7</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 11/8/2012. (tw) (Entered: 11/08/2012)
11/16/2012	<u>9</u>	NOTICE of Change of Address by Julius Franklin Rocker III (address updated) (tp) (Entered: 11/16/2012)
11/16/2012	<u>10</u>	MOTION for Order Declaring Plaintiff Indigent for all Due Process Costs Associated With the Instant Case by Julius Franklin Rocker III. (tp) (Entered: 11/16/2012)
11/19/2012	<u>11</u>	ORDER denying as moot <u>10</u> Motion for Leave to Proceed in forma pauperis, th eplaintiff has been granted IFP status. That does not allow payment for all costs associated with case. Signed by Magistrate Judge Patrick A. White on 11/19/2012. (cz) (Entered: 11/19/2012)
12/11/2012	<u>12</u>	REQUEST for Copy of Complaint and U.S. Marshall's Service of Summons by Julius Franklin Rocker III. Responses due by 12/31/2012 (tp) (Entered: 12/12/2012)
12/13/2012	<u>13</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Julius Franklin Rocker III. Recommending 1. The claim of denial of dental floss is dismissed pursuant to 28 U.S.C. §1915(e)(2)(b)(ii), and the plaintiff should be permitted to amend his complaint solely to name the defendant(s) who denied him adequate dental treatment. Objections to RRdue by 12/31/2012 Signed by Magistrate Judge Patrick A. White on 12/13/2012. (tw) (Entered: 12/13/2012)
12/18/2012	<u>14</u>	ORDER denying <u>12</u> Motion to Appoint Special Process Server. Signed by Magistrate Judge Patrick A. White on 12/18/2012. (cz) (Entered: 12/18/2012)
01/02/2013	<u>15</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS ; adopting Report and Recommendations re <u>13</u> . Failure to file an amended complaint by 1/21/13 shall result in dismissal of this action without prejudice Signed by Judge William P. Dimitrouleas on 1/2/13. (tp) (Entered: 01/02/2013)
01/04/2013	<u>16</u>	AMENDED ORDER re <u>15</u> Order Adopting Report and Recommendations. Amended complaint due by 1/25/13 Signed by Judge William P. Dimitrouleas on 1/4/13. (tp) (Entered: 01/04/2013)
01/22/2013	<u>17</u>	AMENDED COMPLAINT under the Civil Rights Act, 42 U.S.C. 1983 against Ric Bradshaw, Armor Correctional Health Services, Inc., Dr. M. Mendez, filed by Julius Franklin Rocker III.(tpl) (Entered: 01/22/2013)
02/07/2013	<u>18</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Julius Franklin Rocker III. Recommending 1. The claim of denial of dental care continue against Dr.Mendez. 2. Service will be ordered by separate order. 3. The Operative complaint is the amended complaint (DE#17). Objections to RRdue by 2/25/2013 Signed by Magistrate Judge Patrick A. White on 2/7/2013. (tw) (Entered: 02/07/2013)
02/08/2013	<u>19</u>	ORDER Re Service of Process Requiring Personal Service upon Dr. M. Mendez. Signed by Magistrate Judge Patrick A. White on 2/8/2013. (br) (Entered: 02/08/2013)
02/13/2013	<u>20</u>	Summons Issued as to Dr. M. Mendez. (br) (Entered: 02/13/2013)
03/12/2013	<u>21</u>	ORDER ADOPTING REPORT OF MAGISTRATE JUDGE <u>18</u> Signed by Judge William P. Dimitrouleas on 3/12/2013. (tp) (Entered: 03/12/2013)

03/21/2013	<u>22</u>	SUMMONS (Affidavit) Returned Executed on <u>17</u> Amended Complaint with a 21 day response/answer filing deadline Dr. M. Mendez served on 3/11/2013, answer due 4/1/2013. (tpl) (Entered: 03/21/2013)
04/01/2013	<u>23</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Dr. M. Mendez.(Losey, Daniel) (Entered: 04/01/2013)
04/11/2013	<u>24</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)
04/26/2013	<u>25</u>	MOTION to Appoint Counsel by Julius Franklin Rocker III. Responses due by 5/13/2013 (cqs) (Entered: 04/26/2013)
04/29/2013	26	ORDER denying <u>25</u> Motion to Appoint Counsel Signed by Magistrate Judge Patrick A. White on 4/29/2013. (cz) (Entered: 04/29/2013)
05/07/2013	<u>27</u>	MOTION for Protective Order <i>Motion for HIPAA Qualified Protective Order and Order to Diclose Protected Health Information</i> by Dr. M. Mendez. (Losey, Daniel) (Entered: 05/07/2013)
05/07/2013	<u>28</u>	MOTION to Take Deposition from Plaintiff, Julius Franklin Rocker, III <i>via Videotape</i> by Dr. M. Mendez. (Losey, Daniel) (Entered: 05/07/2013)
05/08/2013	29	ORDER granting <u>27</u> Motion for Protective Order, the proposed order shall be incorporated with this Order; granting <u>28</u> Motion to Take Deposition from Julius Rocker, this is an unrepresented plaintiff and the defendnats shall govern themselves accordingly. Signed by Magistrate Judge Patrick A. White on 5/8/2013. (cz) (Entered: 05/08/2013)
07/11/2013	<u>30</u>	NOTICE of Taking Videotape Deposition of Julius Franklin Rocker, III by Dr. M. Mendez.(tpl) (Entered: 07/11/2013)
07/11/2013	<u>31</u>	Clerk's Notice of Filing Deficiency Re: <u>30</u> Notice of Taking Videotaped Deposition filed by Dr. M. Mendez. Document(s) were filed conventionally that should have been filed electronically (CM/ECF Administrative Procedures). (tpl) (Entered: 07/11/2013)
07/11/2013	<u>32</u>	Second MOTION for the Appointment of Counsel by Julius Franklin Rocker III. Responses due by 7/29/2013 (tpl) (Entered: 07/11/2013)
07/11/2013	33	ORDER denying <u>32</u> Second Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 7/11/2013. (cz) (Entered: 07/11/2013)
08/02/2013	<u>34</u>	OBJECTION to 33 Order Denying Second Motion to Appoint Counsel by Julius Franklin Rocker III. (tpl) (Entered: 08/02/2013)
08/02/2013	<u>35</u>	ORDER Affirming Magistrate Judge Patrick A. White's Order Denying <u>32</u> Second MOTION for the Appointment of Counsel. Signed by Judge William P. Dimitrouleas on 8/2/2013. (jua) (Entered: 08/05/2013)
08/16/2013	<u>36</u>	MOTION to Dismiss <u>17</u> Amended Complaint by Dr. M. Mendez. Responses due by 9/3/2013 (Losey, Daniel) (Entered: 08/16/2013)
08/22/2013	<u>37</u>	Notice of Appeal filed by Julius Franklin Rocker, III re <u>35</u> Order by Julius Franklin Rocker III. Filing Fee: (FEE NOT PAID). Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (amb) (Entered: 08/22/2013)
08/22/2013	<u>38</u>	NOTICE of Filing REQUEST FOR PRODUCTION OF THE RECORD ON APPEAL by Julius Franklin Rocker III (Copy of docket sheet forwarded to Plaintiff) (amb) (Entered: 08/22/2013)
08/22/2013		Transmission of Notice of Appeal, Order Under Appeal and Docket Sheet to US Court of Appeals re <u>37</u> Notice of Appeal, Notice has been electronically mailed. (amb) (Entered: 08/22/2013)

08/23/2013	<u>39</u>	Acknowledgment of Receipt of NOA from USCA re <u>37</u> Notice of Appeal, filed by Julius Franklin Rocker III. Date received by USCA: 8/22/13. USCA Case Number: 13-13801-B. (hh) (Entered: 08/23/2013)
09/03/2013	<u>40</u>	MOTION for Extension of Time to File Motion for Summary Judgment re <u>24</u> Scheduling Order by Dr. M. Mendez. Responses due by 9/20/2013 (Losey, Daniel) (Entered: 09/03/2013)
09/16/2013	41	ORDER granting <u>40</u> Motion for Extension of Time to file summary judgment for 90 days from the date of this Order. Further, the plaintiff is ordered to attend deposition or his failure to comply with Court's Orders or the Court may consider this in ruling on defendants forthcoming motion for summary judgement. Signed by Magistrate Judge Patrick A. White on 9/16/2013. (cz) (Entered: 09/16/2013)
09/27/2013	<u>42</u>	MOTION for Relief from Obligation to Pay in Advance \$455.00 Filing Fees to the Eleventh Circuit Court of Appeals by Julius Franklin Rocker III. (tpl) (Entered: 09/27/2013)
09/27/2013	<u>43</u>	ORDER of DISMISSAL from USCA. This appeal is DISMISSED, sua sponte, for lack of jurisdiction. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules re <u>37</u> Notice of Appeal, filed by Julius Franklin Rocker III. USCA #13-13801-B (amb) (Entered: 09/30/2013)
09/30/2013	44	ORDER denying as moot <u>42</u> Motion to waive fees to file appeal. Signed by Magistrate Judge Patrick A. White on 9/30/2013. (cz) (Entered: 09/30/2013)
10/11/2013	<u>45</u>	NOTICE by Dr. M. Mendez re <u>24</u> Scheduling Order of Plaintiff's Failure to Comply (Losey, Daniel) (Entered: 10/11/2013)
10/23/2013	<u>46</u>	REPORT AND RECOMMENDATIONS re <u>36</u> MOTION to Dismiss <u>17</u> Amended Complaint filed by Dr. M. Mendez. Recommending denying without prejudice. Objections to RRdue by 11/12/2013 Signed by Magistrate Judge Patrick A. White on 10/23/2013. (tw) (Entered: 10/23/2013)
11/08/2013	<u>47</u>	Third MOTION for Appointment of Counsel by Julius Franklin Rocker III. Responses due by 11/25/2013 (tpl) (Entered: 11/08/2013)
11/12/2013	48	ORDER denying <u>47</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 11/12/2013. (cz) (Entered: 11/12/2013)
11/13/2013	<u>49</u>	ORDER adopting <u>46</u> Report and Recommendation; denying <u>36</u> Motion to Dismiss. Signed by Judge William P. Dimitrouleas on 11/13/2013. (ar2) (Entered: 11/13/2013)

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

Case No. 12-81140 CN WPD

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

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 12-81140-CIV-DIMITROULEAS

JULIUS FRANKLIN ROCKER, III

(Enter the full name of the plaintiff in this action)

AMENDED
COMPLAINT

v.

RICK BRADSHAW, Sheriff; ARMOR
CORRECTIONAL HEALTH SERVICES, INC.
; DR. M. MENDEZ, DDS; et al.

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

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

Instructions for Filing:

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

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

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

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

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

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

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

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

I. Parties

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

A. Name of plaintiff: Julius Franklin Rocker, III
Inmate #: 0108523
Address: UNIT: SOUTH 6A, Palm Beach County Jail, P.O. Box 24716, West Palm Beach, Florida. 33416

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

B. Defendant: Rick Bradshaw
is employed as Sheriff
at Palm Beach County (Sheriff's Office)

C. Additional Defendants: Armor Correctional Health Services, Inc.
6101 Blue Lagoon Drive, Suite 451, Miami, Florida
33126 (Health Care Contractor/Provider Svc)

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

Dr. M. Mendez, DDS. Dental Hygienist, Contracting
through Armor Correctional..., work site: Palm Beach
County Jail, 3228 Sun Club Rd, W.P.B., FL. 33406, et. al.

II. Statement of Claim

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

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

I have been in the continuous custody of the Palm
Beach County Sheriff, Ric Bradshaw, since August 28,
2009 and have been continuously denied adequate
dental health care and treatment. This continuous
denial includes, but is not limited to, Sheriff Ric Bradshaw's
failure and refusal to issue me and/or make available
for me to purchase through the inmate canteen (which has
been evaluated and approved by said Sheriff), quality Am-
erican Dental Association (ADA) approved dental hygienic/
health care products (i.e. Tartar Control; Plaque; and Gum
disease preventive toothpaste; mouthwash/rinses; standard
size toothbrushes); and dental floss strips, bands, and picks).
The aforementioned in conjunction with Sheriff Ric

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

Bradshaw's; Armor Correctional Health Services, Inc's; and Dental Hygienist, Dr. M. Mendez's refusal to provide me with routine dental cleanings and preventive dental health care & treatment, has caused me to develop a serious form of gum disease resulting in sore bleeding gums (abscesses)

III. Relief

(Continuation page attached)

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

I want to immediately be examined, evaluated, and provided preventive (corrective) dental health care and treatment by an independent dental hygienist/oral health care specialist of my choosing, so that I can establish additional facts and evidence to support my claim & relief. I want the preventive dental health care and treatment plan prescribed by said hygienist /Specialist to be strictly adhered to. All costs associated with the aforementioned shall be paid for by the defendants. I also want monetary compensation for developing poor dental health; tooth loss; pain & suffering; and any needed future corrective/preventive dental health care treatment costs.

IV. Jury Demand

Do you demand a jury trial? Yes No

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

Signed this 11TH day of JANUARY, 2013

Julius Franklin Rocker, III
(Signature of Plaintiff)

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

Executed on: January 11, 2013

Julius Franklin Rocker, III
(Signature of Plaintiff)

, tooth decay, tooth lost, bad breath, and possibly "endocarditis" and other unknown health issues that can develop inside of me as a direct result of my poor dental health.

LET THE RECORD REFLECT that there does indeed exist a "MONELL CLAIM" in the instant case, due to the fact(s) that the very Jail/Correction health care policies prohibiting said cleanings and preventive dental health care, were created, approved, then implemented into operations by Sheriff Ric Bradshaw and Armor Correctional Health Services, Inc., thereby making above-mentioned defendants liable in this matter because the deprivation complained of in the instant case arose out of official policy.

Armor Correctional Health, Inc

SICK CALL REQUEST

FROM: (PLEASE PRINT)

Julius F. Rocker, III 0108523

(Inmate Name)
(Nombre) (Non)

08/14/68

(Date of Birth)
(Fecha de Nacimiento)
(Dat Nesans Prizonye a)

S10C

(Localidad)
(Lojman)
(Housing Unit/Cell#)

06/16/11

(ID #)
(Fecha)
(Dat)
(Date / Time)

Sick
6/20/11

PROBLEM: (BE SPECIFIC)

PROBLEMA:
PWOBLE'M:

I Need to have My teeth Cleaned. I have been in this Jail for 22 months and have not had my teeth cleaned properly. As a direct result of this jails negligence, I have lost a wisdom tooth. The commissary also does not offer Dental Floss and Mouth Wash Products

DATE/TIME RECEIVED: 6/16/11 11:25 NURSE SIGNATURE: [Signature]

TRIAGE DECISION BY NURSING STAFF (Only check ONE box below)

Urgent: _____

Refer to Behavioral Health: _____

Referral to HCP: _____

Refer to Nurse Sick Call: Dental 6/20

Refer to Dental: _____

Call Provider w/ Assessment: Temp _____ Pulse _____ Resp _____ BP _____ Wt _____

Other

Pt aware dentist doesn't clean teeth

TRIAGE DATE/TIME: 6/16/11 11:25 NURSE SIGNATURE: [Signature]

MARCH 15, 2012

MR. JULIUS F. ROCKER, III
0108523 UNIT: 38D
PALM BEACH COUNTY JAIL
P.O. BOX 24716
WEST PALM BEACH, FL. 33416

ARMOR CORRECTIONAL HEALTH SERVICES, INC.
6101 BLUE LAGOON DRIVE, SUITE 451
MIAMI, FLORIDA. 33126

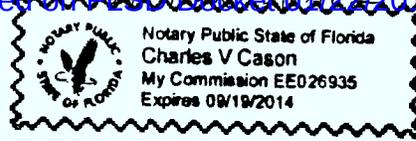
* PUBLIC RECORDS REQUEST *

To whom it may concern,

I am a pro'se Defendant who is indigent for cost by the court.

Pursuant to the Public Records Act, section 119.07 of the Florida Statutes, at this time I request that you please provide me with a complete copy of this company's Policies and Procedures (Guidelines, etc) that are currently active to ensure that all pretrial inmates are provided with adequate "American Dental Association (ADA) approved Dental Health Care and Treatment while housed in a jail facility with which this company has a contract with to treat said inmates.

If this company declines to allow me to inspect and copy any of the requested documents, I request that you provide



me with a written statement, as required by section 119.07(2)(a), of the basis for Armor Correctional Health Services, Inc.'s contention that any withheld policies and procedures information is exempt from public inspection, including the citation to an exemption created or afforded by statute. In addition, I request that your written statement explain with particularity the reason for the conclusion that the cited exemption is applicable to the information you have withheld. If any exemption that Armor Correctional Health Services, Inc., asserts applies to only a portion of the records, I request that you redact the portion this company claims is exempt and allow me to inspect and copy the remainder of the document or documents, as required by section 119.07(2)(a).

* Please be advised that this request needs to be expedited. I am pro se and indigent for cost by the court; therefore, no charges should apply.

I look forward to hearing from you. Should you have any questions or require additional information, please do not hesitate to contact my Private Investigator at (561) 200-4203, Mr. PARIS LONDON.

Due to the ever changing jail policies at this jail facility, incoming mail of this nature must state "LEGAL MAIL" or "Confidential" on the outside mailing envelope. Or you can mail the information directly to my investigator at: THE DETECTIVE AGENCY, % MR. PARIS LONDON, P.O. BOX 740824, BOYNTON BEACH, FLORIDA. 33474.

Respectfully Submitted
 Julius F. Rocker III
 JULIUS F. ROCKER, III

Armor Correctional Health Services, Inc.

CONSENT FOR TOOTH REMOVAL

When you give permission to have upper and lower teeth or residual roots removed, you should understand that the most common risks and hazards of the operation are:

1. Bleeding heavy enough to stop the operation.
2. Injury to adjacent teeth and fillings.
3. Postoperative infection and/or bleeding requiring additional treatment.
4. Possibility of a small piece of root being left in the jaw when its removal would require extensive surgery.
5. Breakage of the jaw.
6. Postoperative discomfort and swelling which may necessitate several days of recuperation.
7. Stretching of the corners of the mouth with resulting cracking and bruising.
8. Injury to the nerve underlying the teeth resulting in numbness of the lip and/or tongue on the operated side. (This does not apply to upper teeth).
9. Opening of the sinus (a normal cavity situated above the teeth) requiring additional surgery. (This does not apply to lower teeth).

The frequency of occurrence of the above complications are different for each item, but infrequent for any of them. Please sign and date this form where indicated. Prior to signing, feel free to consult with attending dentist.

I, the undersigned, a patient in the health care facility have had explained to me and understand the nature of my condition. I hereby authorize DR. M. MENDEZ DDS (and whomever he/she may designate as his/hers assistants) to administer such treatment as is necessary, and to perform the following care service: ext #18 which is a surgical with the understanding that a replacement tooth/teeth is not guaranteed and will be done at the permanent institutional dentist's discretion. ext - no OS msite

SIGNATURES

Signature/Stamp of Dentist DR. M. MENDEZ DDS Date: _____
 Signature of Patient Julius Rucker Date: 05/07/11
 Signature/Stamp of Witness MISLENE CERRY, D.A. Date: 3/7/11

PATIENT NAME:	No:	D.O.B.	SEX:	FACILITY:
<u>Rucker, Julius</u>	<u>0108523</u>	<u>8/14/68</u>	<u>M</u>	<u>MOD</u>

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.¹

A. Statement of Claims

In the initial complaint the plaintiff named Ric Bradshaw as the sole defendant, alleging that the denial of dental floss resulted in gum disease and loss of a tooth. A Report was entered, following the screening of the complaint, recommending that the denial of dental floss, in and of itself, is not a constitutional violation. Courts have found that prisons were within their rights to deny inmates the floss for security reasons as they were made into weapons. Burke v Webb, 2007 WL 419565 (WD Va); Bronson v White 2007 WL 3033865 (MD Pa).

However, liberally construed, the plaintiff's claim that he was denied dental treatment for sore bleeding gums states a claim for denial of adequate dental treatment. It was recommended that the Sheriff be dismissed under the theory of respondeat superior and that the plaintiff had failed to state a Monell claim². The plaintiff failed to name the defendants directly responsible for the denial of treatment and it was recommended that the plaintiff be permitted to amend his claim solely to name a defendant directly responsible for the denial of dental treatment. The Report was adopted and the plaintiff was permitted until January 25, 2013, to file the amended complaint.

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

² Monell v Department of Social Services, 436 U.S. 658 (1978) (plaintiff must have demonstrated a county custom or policy denying him his constitutional rights).

Amended complaint (DE#17)

The plaintiff filed an amended complaint on January 22, 2013. The plaintiff names Ric Bradshaw, Armor Correctional Health Services, and Dr. M. Mendez. He alleges that Bradshaw refuses to make available for him to purchase at the canteen mouthwash, standard size toothbrushes, dental floss strips, and picks.

He claims that Dr. Mendez refuses to provide him with routine dental cleanings and preventive treatment, resulting in gum infections, a tooth lost and possibly endocarditis. He includes a sick call request for a tooth cleaning and the reply stated that the dentist does not clean teeth.

He further contends that his allegations state a Monell claim against Armor Correctional Health Services and Bradshaw, as it was their policy to deny routine cleanings, resulting in his dental problems. He seeks injunctive and monetary relief.

Analysis

Eleventh Circuit case law reveals that denial of prophylactic care, as opposed to restorative dental care, is not a per se violation, without additional facts. Jones v Taylor 2010 WL 5638567 (MD Ga 2010), citing to Farrow v West, 320 F.3d 1235 (11 Cir. 2003) (a need for dental care may result in a risk of harm, however refusal to provide purely preventive dental care does not violate the Eighth Amendment). In Jones the Court further held that supervisors cannot be held responsible, unless the plaintiff can demonstrate that they are directly involved, or have shown a deliberate indifference in a failure to provide adequate care. However, the denial of prophylactic care resulting in more, in this

case gum disease and tooth loss, states a claim for denial of dental treatment.

Armor Correctional Health Service is not a proper defendant in this case. The Eleventh Circuit requires that a plaintiff must show policy or custom in suits against private corporations performing traditional public functions. See Buckner v. Toro, 116 F.3d 450 (11 Cir.) (extending the application of Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978) to private corporations such as prison medical service companies performing traditional public functions), cert. denied, 522 U.S. 1018 (1997). In this case, the plaintiff has failed to support any claim for relief that Armor as an entity acted in accordance with a custom or policy with regard to the possible violation of any of his constitutional rights, and were aware that the denial of prophylactic care resulted in the plaintiff's health issues. Without such, the plaintiff's claim is insufficient to sustain a §1983 claim.

Nor has the plaintiff demonstrated in the amended complaint that Bradshaw was aware that his policy of not providing prophylactic dental treatment, resulted in the plaintiff's medical and dental issues. It has been recommended that this defendant be dismissed, and the amended complaint has failed to change this recommendation.

However, the plaintiff has stated a claim against Dr. Mendez who refused to provide him with any treatment, and allegedly was aware of his dental issues of gum infection and loss of tooth.

III. Recommendation

It is therefore recommended as follows:

1. The claim of denial of dental care continue against Dr. Mendez.
2. Service will be ordered by separate order.
3. The Operative complaint is the amended complaint (DE#17).

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

Dated at Miami, Florida, this 7th day of February, 2013.



UNITED STATES MAGISTRATE JUDGE

cc: Julius Franklin Rocker, III, Pro Se
Palm Beach County Jail
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS ROCKER III,

Plaintiff,

vs.

RICK BRADSHAW,

Defendants.

ORDER ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE is before the Court upon Petitioner's pro se amended civil rights complaint [DE 17] and the Report and Recommendation of Magistrate Judge Patrick A. White [DE 18] dated February 7, 2013. The Court notes that no objections to the Report have been filed, and the time for filing such objections has passed. As no timely objections were filed, the Magistrate Judge's factual findings in the Report are hereby adopted and deemed incorporated into this opinion. LoConte v. Dugger, 847 F.2d 745, 749-50 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

Although no timely objections were filed, the Court has conducted a de novo review of the Report and record and is otherwise fully advised in the premises. The Court agrees with the Magistrate's conclusions that Plaintiff's claim of denial of dental care against Dr. Mendez may proceed, and that the operative complaint in this action is Plaintiff's Amended Complaint [DE 17].

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Magistrate Judge's Report and Recommendation [DE 18] is hereby

ADOPTED and APPROVED;

2. Plaintiff's claim of denial of dental care against Dr. Mendez may proceed;
3. The operative complaint in this action is Plaintiff's Amended Complaint [DE 17].

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this
12th day of March, 2013.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of record

Julius Franklin Rocker III, pro se
0108523
Palm Beach County Jail
P.O. Box 24716
West Palm beach, FL 33416

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS FRANKLIN ROCKER, III,

Plaintiff,

vs.

RICK BRADSHAW, SHERIFF, et al.,

Defendants.

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW the Defendant, DR. M. MENDEZ, D.D.S., by and through her undersigned attorneys, and hereby files this, her Answer and Affirmative Defenses to Plaintiff's Amended Complaint, and states as follows:

1. Defendant denies that she was deliberately indifferent to the Plaintiff's alleged serious dental need or that she denied the Plaintiff adequate dental treatment.
2. Defendant denies any additional allegations, deemed directed to her, unless specifically admitted herein and further demands proof of all denied allegations.

AFFIRMATIVE DEFENSES

3. Further answering and as an affirmative defense, this Defendant allege that Plaintiff's Amended Complaint fails to state or set forth claims against this Defendant upon which relief can be granted.
4. Further answering and as an affirmative defense, this Defendant alleges that Plaintiff's Amended Complaint fails to state or set forth a claim against this Defendant under 42 U.S.C. § 1983.

5. Further answering and as an affirmative defense, the claims and allegations set forth in Plaintiff 's Amended Complaint, even if taken as true, do not state a claim for relief under 42 U.S.C. § 1983, as any deprivation alleged therein does not rise to the level of a constitutional tort. As such, this Defendant respectfully submits that this Court lacks subject matter jurisdiction over Plaintiff's Amended Complaint.

6. Further answering and as an affirmative defense, this Defendant would show that Plaintiff was not deprived of any constitutionally protected life, liberty or property interests without due process of law, nor were Plaintiff's rights under any amendments to or provisions of the United States Constitution or federal laws violated by this Defendant.

7. Further answering and as an affirmative defense, any and all of Plaintiff's claims against this Defendant are barred in whole or in part by the doctrine of qualified immunity, official immunity, sovereign immunity and discretionary act immunity and federal law.

8. Further answering and as an affirmative defense, to the extent as may be shown by the evidence through discovery, this Defendant asserts that the matters in question and Plaintiff's damages, if any, were caused by acts and/or failures to act of persons other than this Defendant.

9. Further answering and as an affirmative defense, this Defendant asserts that Plaintiff's negligence was the cause of any alleged injuries that he alleges to have suffered.

10. Further answering and as an affirmative defense, this Defendant asserts that Plaintiff's claims are barred by his failure to exhaust administrative remedies prior to filing suit.

DEMAND FOR TRIAL BY JURY

Defendant, DR. M. MENDEZ, D.D.S, hereby demands a trial by jury on all issues triable as a right by jury.

Dated on April 1, 2013

Respectfully submitted,

Kelley, Kronenberg, Gilmartin, Fichtel, Wander,
Bamdas, Eskalyo & Dunbrack, P.A.
Attorneys for Def/MENDEZ
8201 Peters, Road, Suite 4000
Fort Lauderdale, Florida 33324
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Florida Bar No. 064092
E-Mail: dlosey@kelleykronenberg.com

By: /s/ Daniel L. Losey
Daniel L. Losey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing 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 Notice of Electronic Filing.

Julius Franklin Rocker, III
Inmate# 0108523
Unit: South 6A
Palm Beach County Jail
P.O. Box 24716
West Palm Beach, FL 33416
Plaintiff, Pro Se
VIA CERTIFIED MAIL

/s/ Daniel L. Losey
Daniel L. Losey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS
MAGISTRATE JUDGE P. A. WHITE

JULIUS FRANKLIN ROCKER, III, :
 :
 Plaintiff, :
 :
 v. : ORDER SCHEDULING PRETRIAL
 : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 RIC BRADSHAW, 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 discover-

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

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

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

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

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

that impeachment documents need not be revealed;

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

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

DONE AND ORDERED at Miami, Florida, this 11th day of April, 2013.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Julius Franklin Rucker, III, Pro Se
Jail #0108523
Palm Beach County Jail
P. O. Box 24716
West Palm Beach, FL 33416

Daniel L. Losey, Esq.
Kelley, Kronenberg, et al.
8201 Peters Road
Suite 4000
Fort Lauderdale, FL 33324

Hon. William P. Dimitrouleas, United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS FRANKLIN ROCKER, III,

Plaintiff,

vs.

RICK BRADSHAW, SHERIFF, et al.,

Defendants.

DEFENDANT'S MOTION TO DISMISS

COMES NOW the Defendant, DR. M. MENDEZ, D.D.S., by and through her undersigned attorneys, and hereby files this, her Motion to Dismiss and would state as follows:

1. On April 11, 2013 the Court entered an Order Scheduling Pretrial Proceedings When Plaintiff is Proceeding Pro Se requiring that all discovery be completed by August 9, 2013. [DE 24].
2. On April 26, 2013 Plaintiff filed his Motion for Appointment of Independent Private Counsel. [DE 25].
3. On April 29, 2013 the Court issued an Order denying Plaintiff's request for counsel. [DE 26].
4. On May 7, 2013 Defendant filed her Motion for Leave of Court to Take the Testimony by Videotape Deposition upon Oral Examination of the Plaintiff. [DE 28].
5. On May 8, 2013 the Court issued an Order granting Defendant's Motion for Leave of Court to Take the Testimony by Videotape Deposition upon Oral Examination of the Plaintiff. [DE 29].

6. On June 14, 2013 Defendant filed her Notice of Taking Videotape Deposition of Plaintiff.

7. On July 11, 2013 Plaintiff filed his Second Motion for Appointment of Counsel. [DE 32].

8. On July 11, 2013 the Court issued an Order denying Plaintiff's Second Motion for Appointment of Counsel. [DE 33].

9. On July 12, 2013 undersigned attorney for the Defendant traveled to the Palm Beach County Jail to take the videotape deposition of the Plaintiff. Defendant also had a videographer and a court reporter come to the jail in anticipation of the Plaintiff's videotape deposition being taken. Plaintiff refused to give his deposition [Transcript of Plaintiff's statement on July 12, 2013].

10. On July 17, 2013 Defendant filed her Second Notice of Taking Videotape Deposition of Plaintiff.

11. On July 22, 2013 Plaintiff mailed a letter to the undersigned attorney advising him that the Plaintiff was appealing the Court's aforementioned Order and he would not participate in giving his deposition until he has appointed counsel. [Letter from Plaintiff dated July 22, 2013].

12. On July 29, 2013 Defendant's attorney again traveled to the Palm Beach County Jail to take Plaintiff's videotape deposition. Again a videographer and court reporter were hired for the taking of Plaintiff's videotape deposition. A BSO sergeant advised the undersigned attorney that Plaintiff was refusing to leave his cell to give his deposition advising the BSO sergeant that he wanted the Court to appoint an attorney for him. The BSO sergeant advised Plaintiff that the undersigned attorney

presented the BSO sergeant with the Court's Order denying Plaintiff's request for an attorney but Plaintiff continued to refuse to give his deposition.

13. The Plaintiff repeatedly refusing to provide his deposition, even after receiving two Court orders allowing the deposition, demonstrates a clear pattern of delay and willful contempt on the part of the Plaintiff. Fed.R.Civ.P. 37(b)(2),(d) allows court imposed sanctions for such malicious conduct to include dismissal of the Plaintiff's lawsuit. Anderson v. Walgreens Company, 2011 WL2600436 (M.D.Ala. 2011); Taylor v. Thompson, 2008 WL686234 (M.D.Ga. 2008). Some construction leniency is provided to pro se litigants but they are still required to conform to procedure rules. Loren v. Sasser, 309 F.3d 1296, 1304 (11th Cir. 2002).

WHEREFORE, Defendant, DR. M. MENDEZ, D.D.S., respectfully requests that this Honorable Court enter an Order granting this Motion, dismissing Plaintiff's Complaint, and providing any such further relief the Court deems just and appropriate.

Dated on August 16, 2013

Respectfully submitted,

Kelley Kronenberg
Attorneys for Def/MENDEZ
8201 Peters, Road, Suite 4000
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Tel: 954-370-9970; Fax: 954-381-1988
Florida Bar No. 064092
E-Mail: dlosey@kelleykronenberg.com

By: /s/ Daniel L. Losey
Daniel L. Losey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing 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 Notice of Electronic Filing.

Julius Franklin Rocker, III
Inmate# 0108523
Unit: South 6A
Palm Beach County Jail
P.O. Box 24716
West Palm Beach, FL 33416
Plaintiff, Pro Se

VIA CERTIFIED MAIL

/s/ Daniel L. Losey

Daniel L. Losey

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS FRANKLIN ROCKER, III,

Plaintiff,

vs.

RICK BRADSHAW, SHERIFF, et al.,

Defendants.

DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE
MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, DR. M. MENDEZ, D.D.S., by and through her undersigned attorneys, and hereby files this, her Motion For Extension of Time to File Motion for Summary Judgment, and would state as follows:

1. On April 11, 2013 the Court entered an Order Scheduling Pretrial Proceedings When Plaintiff is Proceeding Pro Se requiring that all discovery be completed by August 9, 2013 and the deadline for all motions to dismiss and/or for summary judgment is September 13, 2013 . [DE 24].
2. On April 26, 2013 Plaintiff filed his Motion for Appointment of Independent Private Counsel. [DE 25].
3. On April 29, 2013 the Court issued an Order denying Plaintiff's request for counsel. [DE 26].

4. On May 7, 2013 Defendant filed her Motion for Leave of Court to Take the Testimony by Videotape Deposition upon Oral Examination of the Plaintiff. [DE 28].

5. On May 8, 2013 the Court issued an Order granting Defendant's Motion for Leave of Court to Take the Testimony by Videotape Deposition upon Oral Examination of the Plaintiff. [DE 29].

6. On June 14, 2013 Defendant filed her Notice of Taking Videotape Deposition of Plaintiff.

7. On July 11, 2013 Plaintiff filed his Second Motion for Appointment of Counsel. [DE 32].

8. On July 11, 2013 the Court issued an Order denying Plaintiff's Second Motion for Appointment of Counsel. [DE 33].

9. On July 12, 2013 undersigned attorney for the Defendant traveled to the Palm Beach County Jail to take the videotape deposition of the Plaintiff. Defendant also had a videographer and a court reporter come to the jail in anticipation of the Plaintiff's videotape deposition being taken. Plaintiff refused to give his deposition [Transcript of Plaintiff's statement on July 12, 2013].

10. On July 17, 2013 Defendant filed her Second Notice of Taking Videotape Deposition of Plaintiff.

11. On July 22, 2013 Plaintiff mailed a letter to the undersigned attorney advising him that the Plaintiff was appealing the Court's aforementioned Order and he would not participate in giving his deposition until he has appointed counsel. [Letter from Plaintiff dated July 22, 2013].

12. On July 29, 2013 Defendant's attorney again traveled to the Palm Beach County Jail to take Plaintiff's videotape deposition. Again a videographer and court reporter were hired for the taking of Plaintiff's videotape deposition. A PBSO sergeant advised the undersigned attorney that Plaintiff was refusing to leave his cell to give his deposition advising the PBSO sergeant that he wanted the Court to appoint an attorney for him. The PBSO sergeant advised Plaintiff that the undersigned attorney presented the PBSO sergeant with the Court's Order denying Plaintiff's request for an attorney but Plaintiff continued to refuse to give his deposition.

WHEREFORE, Defendant, DR. M. MENDEZ, D.D.S., respectfully requests that this Honorable Court enter an Order granting this Motion to Extend the Deadline for filing Motion for Summary Judgment for an additional ninety (90) days, together with such additional relief as this Court deems just and proper.

Dated on September 3, 2013

Respectfully submitted,

Kelley Kronenberg
Attorneys for Def/MENDEZ
8201 Peters, Road, Suite 4000
Fort Lauderdale, Florida 33324
Tel: 954-370-9970; Fax: 954-381-1988
Florida Bar No. 064092
E-Mail: dlosey@kelleykronenberg.com

By: /s/ Daniel L. Losey
Daniel L. Losey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing 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 Notice of Electronic Filing.

Julius Franklin Rocker, III
Inmate# 0108523
Unit: South 6A
Palm Beach County Jail
P.O. Box 24716
West Palm Beach, FL 33416
Plaintiff, Pro Se
VIA CERTIFIED MAIL

/s/ Daniel L. Losey
Daniel L. Losey

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS FRANKLIN ROCKER, III,

Plaintiff,

vs.

RICK BRADSHAW, SHERIFF, et al.,

Defendants.

DEFENDANTS' NOTICE OF PLAINTIFF'S FAILURE TO COMPLY

COMES NOW, Defendant, DR. M. MENDEZ, D.D.S., by and through her undersigned counsel, and in compliance with paragraph 7 of this Honorable Court's Order Scheduling Pretrial Proceedings when Plaintiff is Proceeding Pro Se (D.E. 24), dated April 11, 2013, hereby notifies the Court that the Plaintiff has failed to file a Pretrial Statement, as required by paragraph 4.

Dated on October 11, 2013

Respectfully submitted,

Kelley Kronenberg
Attorneys for Def/MENDEZ
8201 Peters, Road, Suite 4000
Fort Lauderdale, Florida 33324
Tel: 954-370-9970; Fax: 954-381-1988
Florida Bar No. 064092
E-Mail: dlosey@kelleykronenberg.com

By: /s/ Daniel L. Losey
Daniel L. Losey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing 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 Notice of Electronic Filing.

Julius Franklin Rucker, III
Inmate# 0108523
Unit: South 6A
Palm Beach County Jail
P.O. Box 24716
West Palm Beach, FL 33416
Plaintiff, Pro Se

VIA CERTIFIED MAIL

/s/ Daniel L. Losey

Daniel L. Losey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV DIMITROULEAS
MAGISTRATE JUDGE P.A. WHITE

JULIUS FRANKLIN ROCKER, III, :

Plaintiff, :

v. :

RICK BRADSHAW, et al., :

Defendants. :

REPORT OF
MAGISTRATE JUDGE
(DE#36)

This Cause is before the motion of Defendant Mendez to dismiss the amended complaint based upon plaintiff's failure to appear for videotape deposition (DE#36). The Defendant attempted to take the plaintiff's deposition on July 12, 2013, and the plaintiff refused. On July 22, 2013, plaintiff advised defendant he was appealing the Court's Order denying him counsel, and that he would not participate in deposition until he was appointed counsel. On July 29, 2013, the plaintiff against refused to participate in a deposition. The defendant sought to dismiss the amended complaint pursuant to Fed.R.Civ.P. 37(b)(2)(d) permitting sanctions for malicious conduct.

The plaintiff's appeal was dismissed on September 27, 2013, and it should be clear to the plaintiff at this time that he must conduct this lawsuit pro-se. It is unclear whether the defendant was successful in deposing the plaintiff. The defendant was granted an extension of time to file a summary judgement, and instructed that the plaintiff's behavior would be considered at that time. If

the plaintiff refuses to participate in deposition, a motion for summary judgement will be granted for the defendant. ¹

It is therefore recommended that the motion to dismiss the amended complaint (DE#36) be denied without prejudice.

Objections to this Report and Recommendation may be filed with the United States District Judge within fourteen days following receipt of a copy of the Report.

Dated at Miami, Florida, this 23rd day of October, 2013.



UNITED STATES MAGISTRATE JUDGE

cc: Julius Franklin Rocker, III Pro Se
Palm Beach County Jail
Address of record

Daniel Losey, Esq.
Attorney of record

¹ The defendant has notified the Court the plaintiff has failed to file a pre-trial statement.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81140-CIV-DIMITROULEAS

JULIUS ROCKER III,

Plaintiff,

vs.

RICK BRADSHAW,

Defendants.

ORDER ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE is before the Court upon Plaintiff's pro se civil rights complaint [DE 1] and the Report and Recommendation of Magistrate Judge Patrick A. White [DE 46] dated October 23, 2012. The Court notes that no objections to the Report have been filed, and the time for filing such objections has passed. As no timely objections were filed, the Magistrate Judge's factual findings in the Report are hereby adopted and deemed incorporated into this opinion.

LoConte v. Dugger, 847 F.2d 745, 749-50 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

Although no timely objections were filed, the Court has conducted a de novo review of the Report and record and is otherwise fully advised in the premises. The Court agrees with the Magistrate's conclusion that Dr. Mendez's Motion to Dismiss [DE 36] should be denied without prejudice.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Magistrate Judge's Report and Recommendation [DE 46] is hereby

ADOPTED and **APPROVED**;

2. Dr. Mendez's Motion to Dismiss [DE 36] is hereby **DENIED WITHOUT PREJUDICE**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this
13th day of November 2013.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of record

Julius Franklin Rocker III, pro se
0108523
Palm Beach County Jail
P.O. Box 24716
West Palm beach, FL 33416