

**U.S. District Court
Southern District of Florida (Ft Pierce)
CIVIL DOCKET FOR CASE #: 2:13-cv-14236-JEM**

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

Date Filed: 06/05/2013
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Ervin Henderson

represented by **Ervin Henderson**
13850 NW 41 Street
Miami, FL 33178
PRO SE

V.

Defendant

Michael D. Crews
TERMINATED: 10/08/2013

Defendant

Michelle Bateman
TERMINATED: 10/08/2013

Defendant

C. Lawrence
TERMINATED: 10/08/2013

Defendant

Ebony O. Harvey
TERMINATED: 10/08/2013

Defendant

Dr. Mercedes

Defendant

Dr. Perfilio

Defendant

Dr. S. Lobel
Psy D

represented by **Mary Katherine Hunter**
Chimpoulis Hunter &Lynn
7901 SW 36th Street
Suite 206
Davie, FL 33328
954-463-0033
Fax: 463-9562
Email: khunter@chl-law.com
ATTORNEY TO BE NOTICED

Defendant

Ms. Dean

Defendant

Ms. Primis
Nurse

Defendant**Sgt. M. Coccaro**

TERMINATED: 10/08/2013

Date Filed	#	Docket Text
06/05/2013	<u>1</u>	Complaint pursuant to 42 USC 1983 against All Defendants. Filing fee \$ 350.00. IFP Filed, filed by Ervin Henderson.(ar2) (Entered: 06/05/2013)
06/05/2013	<u>2</u>	Judge Assignment to Judge Jose E. Martinez (ar2) (Entered: 06/05/2013)
06/05/2013	<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. (ar2) (Entered: 06/05/2013)
06/05/2013	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Ervin Henderson. (ar2) (Entered: 06/05/2013)
06/27/2013	<u>5</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/27/2013. (tw) (Entered: 06/27/2013)
06/27/2013	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Magistrate Judge Patrick A. White on 6/27/2013. (tw) (Entered: 06/27/2013)
07/15/2013	<u>7</u>	NOTICE of Change of Address by Ervin Henderson (Address updated) (tpl) (Entered: 07/15/2013)
08/09/2013	<u>8</u>	NOTICE of Change of Address by Ervin Henderson (address updated) (tpl) (Entered: 08/09/2013)
08/13/2013	<u>9</u>	MOTION for Marshals to Serve Defendants by Ervin Henderson. Responses due by 8/30/2013 (tpl) (Entered: 08/13/2013)
08/13/2013	<u>10</u>	Summons Issued as to All Defendants. (tpl) (Entered: 08/13/2013)
08/14/2013	<u>11</u>	ORDER granting <u>9</u> Motion to Appoint Special Process Server to the extent that if the Report and Recommendation to be entered shortly is adopted, the Court will Order Service. Signed by Magistrate Judge Patrick A. White on 8/14/2013. (cz) (Entered: 08/14/2013)
08/15/2013	<u>12</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint 42 USC 1983 or Bivens filed by Ervin Henderson; Recommending as follows: 1) Defendants Crews, Bateman, Lawrence, Harvey and Coccaro should be dismissed without prejudice for failure to state a claim as required by 28 U.S.C. §1915 (e)(2)(B)(ii). 2)The claims of denial of adequate medical treatment should continue against Drs. Mercés, Perfilio and Lobel, as well as Counselor Dean and Nurse Primis. Objections to RRdue by 9/3/2013. Signed by Magistrate Judge Patrick A. White on 8/15/2013. (br) (Entered: 08/15/2013)
10/09/2013	<u>13</u>	ORDER ADOPTING MAGISTRATE JUDGE WHITE'S REPORT. Plaintiff's claims against Defendants Crews, Bateman, Lawrence, Harvey, and Coccaro are DISMISSED without prejudice for failure to state a claim. Signed by Judge Jose E. Martinez on 10/8/2013. (tpl) (Entered: 10/09/2013)
10/10/2013	<u>14</u>	ORDER that the United States Marshal shall serve a copy of the complaint and appropriate summons upon:Dr. Mercés, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Dr. Perfilio, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Dr. S. Lobel, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Ms. Dean, Psychiatric Counselor, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34946 and Nurse Primis, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956. Signed by Magistrate Judge Patrick A. White on 10/10/2013. (tw) (Entered: 10/10/2013)

10/10/2013	<u>15</u>	ORDER that the United States Marshal shall serve a copy of the complaint and appropriate summons upon: Dr. Mercedes, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Dr. Perfilio, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Dr. S. Lobel, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956; Ms. Dean, Psychiatric Counselor, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34946 and Nurse Primis, Martin Correctional Inst., 1150 S.W. Allapattah Road, Indiantown, FL 34956. Signed by Magistrate Judge Patrick A. White on 10/10/2013. (tw) (Entered: 10/10/2013)
10/15/2013	<u>16</u>	Summons Issued as to Dr. Mercedes. (tpl) (Entered: 10/16/2013)
10/15/2013	<u>17</u>	Summons Issued as to Nurse Primis. (tpl) (Entered: 10/16/2013)
10/15/2013	<u>18</u>	Summons Issued as to Ms. Dean. (tpl) (Entered: 10/16/2013)
10/15/2013	<u>19</u>	Summons Issued as to S. Lobel. (tpl) (Entered: 10/16/2013)
10/15/2013	<u>20</u>	Summons Issued as to Dr. Perfilio. (tpl) (Entered: 10/16/2013)
11/05/2013	<u>21</u>	Summons (Affidavit) Returned Unexecuted as to Ms. Dean. (tpl) (Entered: 11/05/2013)
11/05/2013	<u>22</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint 42 USC 1983 or Bivens with a 21 day response/answer filing deadline S. Lobel served on 11/1/2013, answer due 11/22/2013. (tpl) (Entered: 11/05/2013)
11/05/2013	<u>23</u>	Summons (Affidavit) Returned Unexecuted as to Dr. Perfilio. (tpl) (Entered: 11/05/2013)
11/05/2013	<u>24</u>	Summons (Affidavit) Returned Unexecuted as to Nurse Primis. (tpl) (Entered: 11/05/2013)
11/05/2013	<u>25</u>	Summons (Affidavit) Returned Unexecuted as to Dr. Mercedes. (tpl) (Entered: 11/05/2013)
11/21/2013	<u>26</u>	NOTICE of Attorney Appearance by Mary Katherine Hunter on behalf of S. Lobel. Attorney Mary Katherine Hunter added to party S. Lobel(pty:dft). (Hunter, Mary) (Entered: 11/21/2013)
11/22/2013	<u>27</u>	MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM by S. Lobel. Responses due by 12/9/2013 (Attachments: # <u>1</u> Text of Proposed Order Proposed Order of Def Lobel's Motion to Dismiss)(Hunter, Mary) (Entered: 11/22/2013)
12/11/2013	<u>28</u>	NOTICE of Change of Address by Ervin Henderson (address updated. copy docket sheet mailed) (tpl) (Entered: 12/11/2013)
12/23/2013	<u>29</u>	RESPONSE to <u>27</u> MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM filed by Ervin Henderson. Replies due by 1/2/2014. (tpl) (Entered: 12/26/2013)
12/26/2013	<u>30</u>	MOTION to Serve Subpoena for Medical Psych Records by Ervin Henderson. (tpl) (Entered: 12/26/2013)
12/30/2013	31	ORDER denying <u>30</u> Motion to serve subpoena plaintiff must arrange for this and for payment. Signed by Magistrate Judge Patrick A. White on 12/30/2013. (cz) (Entered: 12/30/2013)
12/30/2013	<u>32</u>	REPLY to Response to Motion re <u>27</u> MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM filed by S. Lobel. (Hunter, Mary) (Entered: 12/30/2013)
01/08/2014	<u>33</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>27</u> MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM filed by S. Lobel. Recommending 1. The Motion to Dismiss filed by Dr. Lobel should be denied.(DE#27). 2. The claims of denial of adequate medical treatment should continue against Drs. Mercedes, Perfilio and Lobel, as well as Counselor Dean and Nurse Primis. Objections to RR due by 1/27/2014 Signed by Magistrate Judge Patrick A. White on 1/8/2014. (tw) (Entered: 01/08/2014)

01/09/2014	<u>34</u>	MOTION to Claim Denial of Adequate Medical Treatment by Ervin Henderson. (tpl) (Entered: 01/09/2014)
01/09/2014	35	RESPONSE to Motion re <u>27</u> MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM filed by Ervin Henderson. (see DE <u>34</u> for image) Replies due by 1/21/2014. (tpl) (Entered: 01/09/2014)
01/09/2014	<u>36</u>	MOTION to Speak to Judge About Subpoena by Ervin Henderson. (tpl) (Entered: 01/09/2014)
01/14/2014	37	ORDER denying <u>34</u> Motion motion claim of denial adequate medical treatment, this pleading is construed as objections to the Report and Recommendation, denying <u>36</u> motion to speak to Judge about subpoenas. The serving of subpoenas and payment is the plaintiff's responsibility. Signed by Magistrate Judge Patrick A. White on 1/14/2014. (cz) (Entered: 01/14/2014)
01/22/2014	<u>38</u>	NOTICE of Filing Request for Records re: Free Informatrion Act Request by Ervin Henderson (tpl) (Entered: 01/23/2014)
01/27/2014	<u>39</u>	RESPONSE and Objections to <u>33</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>27</u> MOTION TO DISMISS <u>1</u> Complaint 42 USC 1983 or Bivens FOR FAILURE TO STATE A CLAIM filed by S. Lobel Recommending 1. The Motion to Dismiss filed by Dr. Lobel should be denied.(DE# filed by S. Lobel. (Hunter, Mary) Modified text on 1/28/2014 (tpl). (Entered: 01/27/2014)
01/28/2014	40	*Endorsed Order summonses have been returned unexecuted for Dr. Perfilio, Nurse Primus and Dr. Mercedes. The Marshal noted they no longer work at the facility. The plaintiff must attempt to obtain an updated address for these defendants. Signed by Magistrate Judge Patrick A. White on 1/28/2014. (cz) (Entered: 01/28/2014)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-cv-14236-Martinez/White

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

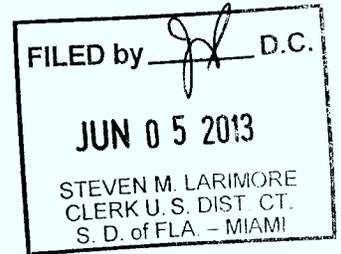
UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: _____

Ervin Henderson,
Plaintiff,

v.

Michael D. Crews, Michelle Bateman,
C. Lawrence, Ebony O. Harvey,
Dr. Ms. Mercedes, Dr. Perfilio,
Dr. S. Lobel Psy D, Ms. Dean,
Ms. Nurse Primis, Sgt. M. Coccaro,
_____ Defendant(s). /



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.

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 include in this packet. Both should be completed and filed with your complaint.

You will note that you 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, 301 North Miami Avenue, Miami, FL 33128-7788.

cat/div 1983/550/FTP
Case # _____
Judge _____ Mag PAW
Motn lfp yes Fee pd \$ 0
Receipt # _____

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: **Ervin Henderson**
Inmate Number: **B-425149**
Prison or Jail: **Martin Correctional Institution**
Mailing address: **1150 SW Allapattah Road**
Indiantown, Florida 34956

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: **Michael D. Crews**
Official position: **The Secretary**
Employed at: **F.D.O.C./ State of Florida**
Mailing address: **The Capitol, Suite PL-01**
Tallahassee, FL 32399-1050

C. Additional Defendant: **Michelle Bateman**
Official position: **Warden**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **C. Lawrence**
Official position: **Programs Warden**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Ebony O. Harvey**
Official position: **Secretary's Representative**
Employed at: **F.D.O.C./ State of Florida**
Mailing address: **The Capitol, Suite PL-01**
Tallahassee, FL 32399-1050

Additional Defendant: **Dr. Ms. Mercedes**
Official position: **Doctor**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Dr. Perfilio**
Official position: **Doctor**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Dr. S. Lobel, Psy D**
Official position: **Doctor**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Ms. Dean**
Official position: **Psychiatric Counselor**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Ms. Nurse Primis**
Official position: **Nurse**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

Additional Defendant: **Sgt. M. Coccaro**
Official position: **Sergeant/Correctional Officer**
Employed at: **Martin Correctional Institution**
Mailing address: **1150 S.W. Allapattah Road**
Indiantown, Florida 34956

II. EXHAUSTION OF REMEDIES

Plaintiff has exhausted all required administrative remedies prior to filing this 42 U.S.C. §1983 Civil Rights Lawsuit. See, Grievance Exhaustion Attachments.

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

Mail Number: 03-13-38
Team Number:
Institution:

INMATE REQUEST

APR 03 2013

TO: (Check One) Warden Asst. Warden Classification Security Medical Health Dental Other

FROM:	Inmate Name	DC Number	Quarters	Job Assignment	Date
	Ervin Henderson	425149	64210L	Homeman	3-27-13

REQUEST

Check here if this is an informal grievance

I have not received my medication in 3 weeks and I am hearing voices. I need to see the psychiatrist ASAP.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

DO NOT WRITE BELOW THIS LINE

RESPONSE

4/1 Recd. 4-1-13

DATE RECEIVED: APR 09 2013

You were seen by the psychiatrist on 4/1/13, and it was determined that medication is not indicated at this time.

[The following pertains to informal grievances only:

Based on the above information, your grievance is denied. (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Signature):

S. Lobel, PsyD
Sr. Behavioral Analyst
Martin Correctional Institution

Date: 4/2/13

Original: Inmate (plus one copy)

CC: Retained by official responding or if the response is to an informal grievance then forward to be placed in inmate's file

This form is also used to file informal grievances in accordance with Rule 33-103.005, Florida Administrative Code.

Informal Grievances and Inmate Requests will be responded to within 10 days, following receipt by the appropriate person. You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form as required by Rule 33-103.006, F.A.C., attaching a copy of your informal grievance and response, and forwarding your complaint to the warden or assistant warden no later than 15 days after the grievance is responded to. If the 15th day falls on a weekend or holiday, the due date shall be the next regular work day.

(2)

DEPARTMENT OF CORRECTIONS

APR 02 2013

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

To: Warden Assistant Warden Secretary, Florida Department of Corrections

from: HENDERSON, ERVIN T. 425149 MARTIN (I, 430)
Last First Middle Initial Number Institution

Part A - Inmate Grievance

1804-430-0300

MEDICAL COMPLAINT

RE: <DISCONTINUED PSYCH MEDICATION>

[1] Monday, April 1st, 2013, Approx. 2:15 PM I seen the psych doctor (Older white male) to inquire about why I have not been getting my psych medications?

[2] He said that the reason my medication was stopped was due to the fact I went to the SOS Cell, Approx. March 12th, 2013

[3] He further said that he need to get back with the Nurses to talk with them first to see when or if I am getting back on my psych medication.

[4] I told him that I am hearing voices and that I need my medications and that I been taking medication for approx. 15 years and that I need my medications now.

[5] The psych doctor said that he will get back with me in a couple of days and he refuse to give me his name.

<Relief> I want to be put back on my psych medication.

4/1/13

DATE

x Ervin Henderson

SIGNATURE OF GRIEVANT AND D.C. #

Martin (I, 430)
See 4/1/13

BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 01 x Ervin Henderson # Signature

INSTRUCTIONS

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33.101, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through route institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeal Being Forwarded to Central Office

o/c

Submitted by the inmate on: (Date) Institutional Mailing Log # (Received By)

DISTRIBUTION INMATE FACILITY INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE

CENTRAL OFFICE INMATE INMATE'S FILE INSTITUTIONAL GRIEVANCE FILE CENTRAL OFFICE INMATE FILE CENTRAL OFFICE GRIEVANCE FILE

APR 03 2013

PART B - RESPONSE

HENDERSON, ERVIN	425149	1304-430-030	MARTIN C.I.	G4210L
INMATE	NUMBER	GRIEVANCE LOG NUMBER	CURRENT INMATE LOCATION	HOUSING LOCATION

Your grievance has been received, reviewed and the following determined:

According to Florida Administrative Code 33-404.102 Provision of Mental Health Services: "All inmates entering the department shall have access to necessary mental health services as established by this chapter and as specified in the policies and procedures developed and implemented under the authority of the assistant secretary for health services.

(1) Inmates shall have access to mental health services commensurate with their needs as determined by health care staff."

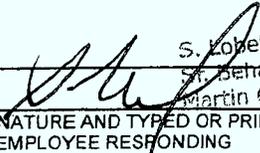
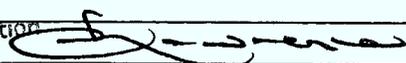
A review of your record indicates that you have been seen regularly by Mental Health staff according to policy, including special assessments, at which times your mental status has been evaluated and well documented. According to the symptoms you have reported, medication remains to be not indicated. Mental Health will continue to assess your status on an ongoing basis.

Formal grievance is Denied.

You may obtain further administrative review of your complaint by obtaining form DC1-303, request for administrative remedy of appeal, completing the form, providing attachments and forwarding your complaint to the Florida Department of Corrections, Bureau of Inmate Grievances, 501 South Calhoun St. Tallahassee, FL 32399.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR THE ADDRESSEE ONLY. UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAWS.

Dr. S. Lobel, PsyD C. Lawrence

 S. Lobel, PsyD Sr. Behavioral Analyst Martin Correctional Institution		4/3/13 DATE
SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING	SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE	

COPY DISTRIBUTION - INSTITUTION / FACILITY

- (2 Copies) Inmate
- (1 Copy) Inmate's File
- (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE

- (1 Copy) Inmate
- (1 Copy) Inmate's File - Inst./Facility
- (1 Copy) C.O. Inmate File
- (1 Copy) Retained by Official Responding

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

RECEIVED

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

TO: Warden Assistant Warden Mr. Michael J. Secretary, Florida Department of Corrections DEPARTMENT OF CORRECTIONS
GRIEVANCES

From: HENDERSON, ERVIN 425149 MARTIN CI,
Last First Middle Initial Number Institution
13-6-11424

Part A - Inmate Grievance

MEDICAL COMPLAINT

RE: < DISCONTINUED PSYCH MEDICATION >

1] The Institutional Response (Exhibit 'B') is false and falsified with regard to my filed Grievance (Exhibit 'A').

2] I fully readopt all FACTS-And-AUTHORITIES within my Formal Grievance (Exhibit "A") in support of this Appeal.

3] The reported "Symptoms" referenced within the Formal Grievances (Exhibit "A") are, but not limited to:

- (a) "I AM hearing voices" (See Informal Grievance, Exh. C)
- (b) I hung myself (approx March 13)
- (c) I WAS placed in the SOC cell for 6-DAYS (MARCH 13 to 18)
- (d) IN the SOC cell I WAS Threatened by A Psych Counselor assigned to me and the Female Assistant assigned to assist the Head Psych Doctor (White Female) See A. D. A.
- (e) When released from SOC cell (MARCH 18) AND I declared a Psych Emergency because I WAS still hearing voices (Note: I do not hear voices when I AM taking my Psych Med's) I

4/10/13
DATE

[Signature]
SIGNATURE OF GRIEVANT AND D.C. #

*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 0 1/5/Ervin Henderson
(1-of-6) # Signature

INSTRUCTIONS

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-103, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the sensitive nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through rout ne institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative feels that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level.

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on: 4/10/13
(Date)

Institutional Mailing Log #: 13-124-45

1304430-030
[Signature]
(Received By)

DISTRIBUTION: INSTITUTION/FACILITY
INMATE (2 Copies)
INMATE'S FILE
INSTITUTIONAL GRIEVANCE FILE

CENTRAL OFFICE
INMATE
INMATE'S FILE - INSTITUTION/FACILITY
CENTRAL OFFICE INMATE FILE
CENTRAL OFFICE GRIEVANCE FILE

(5)

GRIEVANCE CONTINUATION SHEET

NAME: HENDERSON, ERVIN DC# 425149 Date 4/10/13

INFORMAL FORMAL CENTRAL OFFICE APPEAL

was AGAIN 'Threatened' by Security Sgt. M. COCCARO who said

"Nobody goes Psych on my shift"

and 'Denied' me a Psych Emergency but later changed his mind and put handcuffs on me and took me to medical to lock me up and to put me into confinement. Sgt. COCCARO asked who my psych counselor was? I seen my psych counselor and told her I am hearing voices and that I have not had my meds in several weeks and am "hearing voices". She told me that:

- I. That I am imaging things!
- II: I AM NOT HEARING VOICES!
- III: Its all in my head!
- IV: You do not need no medication!
- V. you can leave now.

(f) Sgt. COCCARO then told me to leave and do NOT come and to stop harassing these people!

[14] I have NOT been getting any sleep! The voices have been so bad they keep me up all night!

[15] The voices keep telling me to **KILL MY SELF!**

1S1 Ervin Henderson
Signature of Grievant

GRIEVANCE CONTINUATION SHEET

NAME: Henderson, Ervin DC# 425149 Date 4/1/13

INFORMAL FORMAL CENTRAL OFFICE APPEAL

16 I don't want to HURT myself or someone else

17 I NEED my medication.

18 I AM BARRED from Accessing Mental Health by the 'Threat' from Security (See PAR 30) AND I HAVE NO ONE to talk to About my problem.

19 My psych counselor won't put me on a Callout to talk to her.

20 I AM SCARED to go up to MENTAL HEALTH for fear that:

- | |
|--|
| I. Mental Health will write me a D/R. |
| II. Security might me a D/R. |
| III. I might get MACE'd, set up, blamed for something I did not do |
| IV. I AM SCARED for my life. |
| V. I just want my Med's! |
| VI. I go home in 70 days. |

<RELIEF>

I. Approve Appeal!

II. Re-Issue me my Psych Med's "CELEXA"

III. Schedule me to see Psych to re-issue psych medication.

18/ Ervin Henderson
Signature of Grievant

MAILED/FILED
WITH AGENCY CLERK

Department of Corrections
Bureau of Inmate Grievance Appeal

PART B - RESPONSE

HENDERSON, ERVIN	425149	13-6-11424	MARTIN C.I.	G4210L
INMATE	NUMBER	GRIEVANCE LOG NUMBER	CURRENT INMATE LOCATION	HOUSING LOCATION

Appeal Denied:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

It is determined that the response made to you by Dr. Lobel on 4/3/13 appropriately addresses the issues you presented.

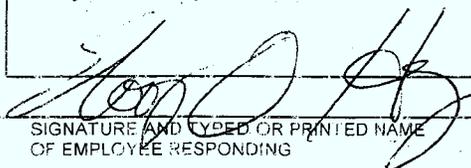
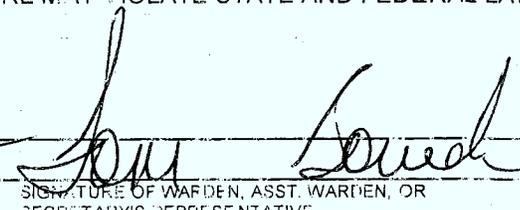
It is the responsibility of the mental health treatment team to determine the appropriate treatment regimen for the condition you are experiencing including medication prescriptions.

Records reviewed indicate that you were seen by the Psychiatrist on 4/1/13 and 4/25/13 and it was determined that medication was not clinically indicated at this time. You are encouraged to cooperate with your mental health care staff by following the treatment regimen prescribed.

Should you experience problems, sick call is available so that you may present your concerns to your mental health care staff.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR ADDRESSEE(S) ONLY.
UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Ebony O. Harvey IISC

		5/2/13
SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING	SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE	DATE

COPY DISTRIBUTION - INSTITUTION / FACILITY

- (2 Copies) Inmate
- (1 Copy) Inmate's File
- (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE

- (1 Copy) Inmate
- (1 Copy) Inmate's File - Inst./Facility
- (1 Copy) C.O. Inmate File
- (1 Copy) Retained by Official Responding

III. STATEMENT OF CLAIM

Prisoners have a federal and state right to be free of deliberate indifference to mental health needs.

Defendants acted unlawfully, and were deliberately indifferent to Plaintiff's mental health needs when they arbitrarily discontinued Plaintiff's antipsychotic medication and persisted in a course of non-treatment that they knew was ineffective and inappropriate, for reasons and belief that he was faking it.

Based on Plaintiff's prior diagnosis and long-time treatment of antipsychotic medication, a reasonable doctor (non-D.O.C.), in the same circumstances and possessing the same knowledge as Defendants would have concluded that their actions were unlawful and deliberately indifferent.

And was violative of the United States and the Florida Constitution, and State law.

1. On March 12, 2013, I was in AC confinement for protective management due to threats from an inmate to kill me or seriously hurt me. At this time, I was taking a psychotropic medication called "Celexia" prescribed because I had been previously diagnosed with paranoid schizophrenia.

2. The stress of being held in isolation seemed intolerable, I began hearing voices in my head. I told security that these voices were plaguing me, and also told the nurses on duty and the psychiatric counselors. But none of the staff seemed to care or take me seriously, even as my distress increased to the point where these 'demon' voices began telling me I needed to hurt myself, and even urged me to bang my head on the walls and cell door which I then began to do. The demon voice began to urge me to actually kill myself.

3. The day I actually hung myself in my cell – I was discovered and taken to a suicide watch cell (SOS) in the clinic.

4. On March 13, 2013, while in SOS, Ms. Mercer, the mental health doctor, and Ms. Dean, my psychiatric counselor came to interview me. I told them that I was still hearing voices urging me to kill myself and that I still wished to kill myself. That same day, Dr. S. Lobel, asked me what I was going through. I replied that I wanted to kill myself because there was a demon-voice telling me to.

5. On March 14, 2013, without consulting me, I discovered I was no longer getting my Celexia medication and that I would not as long as I remained in SOS. I need my medication and without it my paranoid schizophrenia would only get worse. This same day, Ms. Dean and Ms. Mercer came to see me and I told them that I was still hearing voices and was suicidal and needed my medication for it. They denied that I needed it.

6. On March 15, 2013, Ms. Dean came by herself to my SOS cell and I told her again about the demon telling me to kill myself. She refused to believe, and said I was faking it, and that I was not hearing any demons. When I asked about my psychiatric medication, she replied that I could not get any meds while in the SOS cell and she turned and left me there.

7. On March 16, 2013, and through March 17, 2013, the security staff began a campaign to systematically break me down by mentally abusive harassment and various verbal taunts and threats to gas me, all trying to get me to just go back to my regular confinement cell. These were very demeaning – ugly comments – whose only purpose was to break me and make me return to confinement.

8. On March 18, 2013, Ms. Dean came to the SOS cell and after so many days of this kind of abusive treatment – being afraid and constantly abused verbally by the guards – I finally did break and pled to Ms. Dean to just get myself away from the SOS cell and the abuse, telling her that I wasn't hearing any demon voices anymore and begging to please just let me go back to

protective management in my confinement cell. At which point she triumphantly smiled and replied that she would just go get Nurse Primis and she left. She returned with Nurse Primis and I did what they wanted, I lied against my will about not hearing voices and she said she'd come back with Dr. Perfilio.

9. Dr. Perfilio interviewed me that same day, asking if I was still hearing voices in my head. I knew what I had to do to get some peace of mind and again lied against my will because I had about enough of their mistreatment of me. I no longer even cared if I went back to my confinement cell and killed myself – I just wanted some peace.

10. During this interview, Dr. Perfilio took little interest in what I was saying and didn't seem to care if my demons were gone, his only goal was to listen to what Nurse Primis told him and to get me out of SOS. During the interview, Nurse Primis continually coached Dr. Perfilio as to what questions he needed to ask me and also fed him answers to those questions.

11. Dr. Perfilio was more concerned about what Nurse Primis was telling him than what I was saying and not actually concerned if my answers were false because I no longer care about my own well-being. The whole idea was to just get me away from SOS and I believe it was a concerted effort by the entire staff to force me to return to protective management.

12. I was released back to my confinement cell that same day, but from that day (March 18, 2013), to the following week (until March 25, 2013), I was left unattended with no follow-up even after all those days of me telling I'd been hearing demons telling me to kill myself by hanging. And even after my return from SOS I still wasn't given my psychiatric medication Celexia for my paranoid schizophrenia or any follow-up interviews either. No psychiatric staff came to see me even though Ms. Dean had promised to check on me promptly after my release from SOS.

13. During this week of March 18th to the 25th, I continued to fight my demons while the psychiatric staff did nothing to make sure I was really all right in my head or that I was eating and sleeping properly, which I was not and could only get a couple hours sleep and that was sporadic and only after I was totally exhausted. Mental exhaustion was my only peace of mind. I'd wake agitated and irritable because the voices in my head would not leave me alone. I was and am still not getting any relief at all.

14. All this caused me to again act out by banging on my cell door in anger at my predicament; or again hitting my head on the walls and other such destructive acts. This made the security guards angry and they again began a campaign to taunt me abusively and teasing me with (mock?) threats to mace me with pepper spray in my isolation cell – or just beat me. This was instead of calling psychiatric personal to actively treat my condition as they are supposedly trained to do.

15. On March 25, 2013, I was released back to general population, but as soon as I was released, I felt overwhelmed by my voices and immediately declared a mental health emergency. A female officer handcuffed me to secure me, as is required, but then Sgt. Coccaro noticed her handcuffing and simply yelled at me that no inmate was going 'Psyche' on 'his' shift. He began berating me. Changed handcuffs to 'his' and all the time harassing me that there was nothing wrong with me because I'd just gotten out of confinement. He threatened me that if he took me to 'psyche' and there was nothing wrong with me, that he was going to lock me up in disciplinary confinement this time and mace me with pepper spray.

16. Instead of receiving attention from a psychiatric doctor – as required, in a mental health emergency, Sgt. Coccaro took me to see a psychiatric counselor, Ms. Dean. She declared, without interviewing me, that there was nothing wrong with me, even though I was complaining

about hearing voices in my head. I cried. I pleaded with her to help me, but she told Sgt. Coccoaro to just take me out of here because there was nothing wrong with me.

17. At this time Sgt. Coccoaro threatened me with confinement if I continued to 'bother' the psychiatric staff. I didn't want to go back to isolation, so I pretended to be 'okay.'

18. I then began the grievance process that following day. I still struggled with my voices and still do and I fear that too much pressure will cause me to hurt myself again.

19. Approximately two weeks later, after Dr. Perfilio interviewed me, he informed me that I would no longer receive my Celexia because it had been discontinued when I was in SOS, and that a review team would meet to approve it again.

20. Until this present date, I have yet to be informed on the status on my psychiatric medication. The medical staff will no longer tolerate my inquiries and now threatened me with disciplinary action to deter further inquiry. I still require my Celexia.

IV. RELIEF

Grant compensatory damages in the following amount:

1) \$25,000.00 against each of the Respondents.

Grant such other relief as it may appear Claimant is entitled.

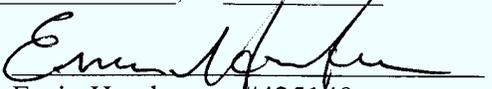
Accordingly, I make the foregoing Claim pursuant to the applicable statute and require that it be processed according to law.

I declare under the penalty of perjury that the foregoing facts are true.

V. JURY DEMAND

Do you demand a jury trial? Yes No.

Signed this _____ day of _____, 20_____


Ervin Henderson, #425149

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

Executed on: _____

Ervin Henderson, #425149
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

NOTARIZED OATH

STATE OF FLORIDA)
COUNTY OF MARTIN)

Before me, the undersigned authority this day personally appeared **Ervin Henderson**, who first being duly sworn, says that he is the Defendant in the above styled cause, that he has read the foregoing petition, and has personal knowledge of the facts and matters therein set forth and alleged; and that each and all of these facts and matters are true and correct under the penalty of perjury.


Ervin Henderson #425149

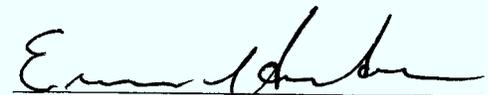
The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by **Ervin Henderson** who is personally known to me or has produced a Department of Corrections Identification No. 425149 as identification and who did take an oath.

 **RICHARD H. BARKER**
MY COMMISSION # DD 999553
EXPIRES: June 8, 2014
Bonded Thru Budget Notary Services
My Commission Expires


Notary Public

CERTIFICATE OF SERVICE

I, **Mr. Ervin Henderson**, **HEREBY CERTIFY** that a true and correct copy of the foregoing instrument has been furnished to the following: all parties as mentioned herein by way of U.S. mail on this 04 day of June, 2013.


Ervin Henderson, #425149
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-14236-CIV-MARTINEZ
MAGISTRATE JUDGE P. A. WHITE

ERVIN HENDERSON, :
 :
 Plaintiff, :
 :
 v. :
 :
 MICHAEL D. CREWS, et al., :
 :
 Defendants. :

REPORT OF
MAGISTRATE JUDGE

I. Introduction

The plaintiff Ervin Henderson filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983, alleging denial of adequate medical treatment while confined at Martin Correctional Institution. [DE #1] The plaintiff has been granted leave to proceed in forma pauperis.

This Cause is before the Court upon the initial screening of the complaint pursuant to 28 U.S.C. §1915.

II. Analysis

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

Sec. 1915 Proceedings in Forma Pauperis

* * *

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

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted;...

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. Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009)(citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Id. 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." Id. The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." Id. The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." Id. 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. Facts of the case

The plaintiff, since filing this complaint, has been released from Martin Correctional and has filed a street address with the Court. He names as defendants Michael Crews, Secretary of the Department of Corrections, Ebonyu Harvey, Secretary Representative in Tallahassee, along with the Warden of Martin Correctional Institution, Michelle Bateman, Programs Warden C. Lawrence, Drs. Mercedes, Perfilio, and S. Lobel, Psychiatric Counselor, Dean, Nurse

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

Primis and Correctional Officer Sgt. Coccaro, all employed at Martin CI.

The plaintiff contends he has not been provided with adequate medical treatment while at Martin CI. On March 12, 2013, plaintiff was taking a psychotropic medication, Celexia, for treatment of paranoid schizophrenia. He claims that while in protective management, to protect him from threats from other inmates, he began hearing voices. He informed the duty nurses and psychiatric counselors, but the staff did not take him seriously. He began hearing demon voices to kill himself. He hung himself in his cell, and was taken to a suicide watch cell (SOS) in the clinic. Merces and Dean interviewed him, as well as Lobel on March 13, 2013. On March 14, 2013, he was taken off Celexia as long as he remained in SOS. He informed Dean and Merces that day he was still hearing voices, was suicidal and needed his medication. They denied he needed it. The next day Dean told him she thought he was faking, and that he could not get his medication until he was released from SOS cell. He then says the staff from March 16 to 17 of 2013 was abusive in their attempt to coerce him to return to his regular confinement cell.

On March 18, 2013, he claims he could not handle the harassment, and he told Dean he was no longer hearing voices and could back to his cell. Dr. Perfilio interviewed him, but was not interested in what he had to say. He was released back to his confinement cell and still did not receive Celexia or follow up interviews. Dean promised to check on him, but did not. He continued to act destructively by banging his head on the cell walls. He was placed back in general population on March 25, 2013, but was overwhelmed by his voices and declared a mental health emergency. Officer Coccaro yelled and threatened him. He was seen

by Dean, the psychiatric counselor, who declared there was nothing wrong with him, despite his stating he heard voices. Two weeks later Dr. Perfilio informed him the Celexia had been discontinued when he was in SOS and it required the approval of a review team to begin again. At the time of filing the action in June of 2013, he had not received his medication. In July of 2013, he was released to the street. He seeks monetary damages.

B. Analysis

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

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

The Eleventh Circuit has provided guidance concerning the distinction between "deliberate indifference" and "mere negligence." For instance, "an official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate." Lancaster v. Monroe County, 116 F.3d 1419, 1425 (11 Cir. 1997). The "deliberate indifference" standard may be met in instances where a prisoner is subjected to repeated examples of delayed, denied, or grossly incompetent or inadequate medical care; prison personnel fail to respond to a known medical problem; or prison doctors take the easier and less efficacious route in

treating an inmate. See, e.g., Waldrop v. Evans, 871 F.2d 1030, 1033 (11 Cir. 1989).

Allegations that raise only claims of mere negligence, neglect, or medical malpractice are insufficient to recover on a §1983 claim. Estelle v. Gamble, supra. In fact, once an inmate has received medical care, courts are hesitant to find that an Eighth Amendment violation has occurred. Hamm, supra. Treatment violates the Eighth Amendment only if it involves "something more than a medical judgment call, an accident, or an inadvertent failure," Murrell v. Bennett, 615 F.2d 306, 310 n. 4 (5 Cir. 1980). It must be "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." Rogers v. Evans, supra at 1058.

Moreover, the Courts have long recognized that a difference of opinion between an inmate and the prison medical staff regarding medical matters, including the diagnosis or treatment which the inmate receives, cannot in itself rise to the level of a cause of action for cruel and unusual punishment, and have consistently held that the propriety of a certain course of medical treatment is not a proper subject for review in a civil rights action. Estelle v. Gamble, supra, at 107 ("matter[s] of medical judgment" do not give rise to a §1983 claim). See Ledoux v. Davies, 961 F.2d 1536 (10 Cir. 1992) (inmate's claim he was denied medication was contradicted by his own statement, and inmate's belief that he needed additional medication other than that prescribed by treating physician was insufficient to establish constitutional violation); Ramos v. Lamm, 639 F.2d 559, 575 (10 Cir. 1980) (difference of opinion between inmate and prison medical staff regarding treatment or diagnosis does not itself state a constitutional violation), cert. denied, 450 U.S. 1041 (1981); Smart v. Villar, 547 F.2d 112,

114 (10 Cir. 1976) (same); Burns v. Head Jailor of LaSalle County Jail, 576 F.Supp. 618, 620 (N.D. Ill., E.D. 1984) (exercise of prison doctor's professional judgment to discontinue prescription for certain drugs not actionable under §1983).

Serious Medical Need

The plaintiff alleges that he is schizophrenic, and requires psycho-tropic medication to stabilize him. He names Michael Crews, Warden Bateman, C. Lawrence, and Ebony Harvey in their supervisory capacity. There are no direct allegations against these defendants. Their liability is predicated solely on their positions as supervisor. Such liability, however, may not be predicated on the theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) The plaintiff has failed to demonstrate a Monell claim against these defendants and they should be dismissed.

The plaintiff alleges that despite informing Dr. Merces, Dr. Perfilio, Dr. Lobel, Counselor Dean, and Nurse Primis of his severe symptoms and his need to have his medication, he was ignored or told he was not believed. AT this early stage, it is recommended that the plaintiff has stated a claim of denial of medical treatment and the claim should continue against these defendants.

The plaintiff's claims against Coccaro as stated do not state a claim. Coccaro may have verbally abused him, however this is insufficient to state a claim. Verbal harassment does not state a claim for relief under §1983. See: Hoptowit v. Ray, 682 F.2d 1237, 1252 (9 Cir. 1982)(federal court cannot order guards to refrain from using racial slurs to harass prisoners under certain conditions, without evidence of Eighth Amendment violation.); Burton v. Livingston, 791 F.2d 97, 101 n. 1 (8 Cir. 1986)(use of racial slurs in prison does not offend Constitution); McFadden v. Lucas, 713 F.2d 143, 146 (5 Cir.), cert. denied, 464 U.S. 998 (1983) (threatening language and gestures). There are, however, recognized exceptions to the general rule, under which the conduct may rise to the level of a constitutional deprivation: for example, when verbal threats are accompanied by physical force or the present ability to effectuate the threat, Harris v. Lord, 957 F.Supp. 471, 475 (S.D.N.Y. 1997); Jermosen v. Coughlin, 878 F.Supp. 444, 449 (N.D.N.Y. 1995), or the person to whom the verbal abuse is directed is terrorized by threats accompanied by racial slurs, Hopson v. Frederickson, 961 F.2d 1374, 1378-79 (8 Cir. 1992); Burton v. Livingston, 791 F.2d 97 (8 Cir. 1986); Crawley v Peryam, 2010 WL 2367379 (SD Fla), citing to Reed v Barnes, 2005 WL 1278868 (ND Fla 2008)(threats without further conduct fails to state a claim). In this case, the plaintiff's allegations of solely verbal threats fail to state a claim.

III. Recommendation

It is therefore recommended as follows:

1. Defendants Crews, Bateman, Lawrence, Harvey and Coccaro should be dismissed without prejudice for failure to state a claim as required by 28 U.S.C. §1915 (e)(2)(B)(ii).

2. The claims of denial of adequate medical treatment should continue against Drs. Merces, Perfilio and Lobel, as well as Counselor Dean and Nurse Primis.

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

It is so recommended at Miami, Florida, this 15th day of August, 2013.



UNITED STATES MAGISTRATE JUDGE

cc: Ervin Henderson
Street Address of record

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Ft. Pierce Division

Case Number: 13-14236-CIV-MARTINEZ-WHITE

ERVIN HENDERSON,

Plaintiff,

vs.

MICHAEL D. CREWS, et al.,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE WHITE'S REPORT

THE MATTER was before the Honorable Patrick A. White, United States Magistrate Judge, upon the initial screening of Ervin Henderson's ("Plaintiff[s]") Complaint (D.E. No. 1), pursuant to 28 U.S.C. § 1915. Magistrate Judge White filed a Report (the "Report") (D.E. No. 12), recommending that (1) Plaintiff's claims against Defendants Michael Crews ("Crews"), Secretary of the Department of Corrections, Michelle Bateman ("Bateman"), Warden of Martin Correctional Institution ("C.I."), C. Lawrence ("Lawrence"), Programs Warden at Martin C.I., Ebony O. Harvey ("Harvey"), Secretary Representative in Tallahassee, and Sgt. M. Coccaro ("Coccaro"), a Correctional Officer employed at Martin C.I., should be dismissed without prejudice for failure to state a claim as required by 28 U.S.C. § 1915(e)(2)(B)(ii), and (2) the claims of denial of adequate medical treatment should continue against Drs. Mercedes, Perfilio and S. Lobel, as well as Counselor Dean and Nurse Primis. The Court has reviewed the entire file and record and notes that no objections have been filed.

After careful consideration, the Court affirms and adopts the Report. Accordingly, it is

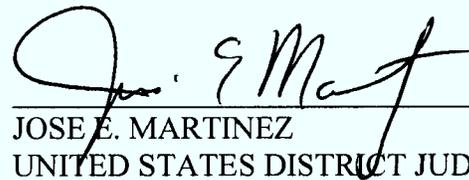
hereby:

ORDERED AND ADJUDGED that

1. Plaintiff's claims against Defendants Crews, Bateman, Lawrence, Harvey and Coccaro are **DISMISSED without prejudice** for failure to state a claim as required by 28 U.S.C. § 1915(e)(2)(B)(ii).

2. Plaintiff may proceed with his claims of denial of adequate medical treatment against Drs. Merces, Perfilio and Lobel, as well as Counselor Dean and Nurse Primis.

DONE AND ORDERED in Chambers at Miami, Florida, this 8 day of October, 2013.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge White
Ervin Henderson, *pro se*

U.S. Department of Justice
 United States Marshals Service

PROCESS RECEIPT AND RETURN
 See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF ERVIN HENDERSON	COURT CASE NUMBER 13-14236-CIV-MARTINEZ
DEFENDANT MICHAEL D. CREWS, et al.,	TYPE OF PROCESS SUMMONS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
 MS. DEAN, PSYCHIATRIC COUNSELOR, MARTIN COUNTY CORRECTIONAL INSTITUTION D.C.
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 1150 S.W. ALLAPATTAH RD, INDIANTOWN, FL 34956

NOV - 5 2013
 STEVEN M. LARIMORE
 CLERK U.S. DIST. CT.
 S.D. OF FLA. - FT. PIERCE

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW ERVIN HENDERSON 6311 NW THIRD AVE MIAMI, FL 33150	Number of process to be served with this Form 285 1	Number of parties to be served in this case 5	Check for service on U.S.A.
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SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold Fold

Signature of Attorney other Originator requesting service on behalf of: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin No. D04	District to Serve No. D04	Signature of Authorized USMS Deputy or Clerk stracy@usms.doj.gov <small>Digitally signed by stracy@usms.doj.gov DN: cn=stracy@usms.doj.gov Date: 2013.10.23 13:49:51 -04'00'</small>	Date 10/23/2013
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I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (complete only different than shown above)	Date 11/1/13 Time 14:56 <input type="checkbox"/> am <input checked="" type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy STACY 2466 Tracy

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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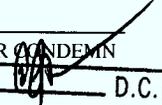
REMARKS:
 no longer works at facility

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN
See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF ERVIN HENDERSON	COURT CASE NUMBER 13-14236-CIV-MARTINEZ
DEFENDANT MICHAEL D. CREWS, et al.,	TYPE OF PROCESS SUMMONS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR ADEMN
 DR. PERFILIO, MARTIN COUNTY CORRECTIONAL INSTITUTION
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 1150 S.W. ALLAPATTAH RD, INDIANTOWN, FL 34956

FILED by  D.C.
NOV - 5 2013
 STEVEN M. LARIMORE
 CLERK U.S. DIST. CT.
 S.D. OF FLA. - FT. PIERCE

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form 285	ERVIN HENDERSON 6311 NW THIRD AVE MIAMI, FL 33150	
	Number of parties to be served in this case		5
	Check for service on U.S.A.		

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (*Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service*):

Fold Fold

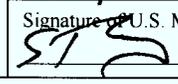
Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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I acknowledge receipt for the total number of process indicated. <i>(Sign only for USM 285 if more than one USM 285 is submitted)</i>	Total Process 1	District of Origin No. D04	District to Serve No. D04	Signature of Authorized USMS Deputy or Clerk stracy@usms.doj.gov <small>Digitally signed by stracy@usms.doj.gov DN: cn=stracy@usms.doj.gov Date: 2013.10.23 13:49:51 -04'00'</small>	Date 10/23/2013
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I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (*See remarks below*)

Name and title of individual served (<i>if not shown above</i>)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (<i>complete only different than shown above</i>)	Date 11/1/13 Time 14:50 <input type="checkbox"/> am <input checked="" type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy  3466 Tracy

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
					\$0.00

REMARKS: *No longer works at facility*

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF ERVIN HENDERSON		COURT CASE NUMBER 13-14236-CIV-MARTINEZ	
DEFENDANT MICHAEL D. CREWS, et al.,		TYPE OF PROCESS SUMMONS	
SERVE AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN		FILED by <u>[Signature]</u> D.C. NOV - 5 2013
	NURSE PRIMIS, MARTIN COUNTY CORRECTIONAL INSTITUTION ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 1150 S.W. ALLAPATTAH RD, INDIANTOWN, FL 34956		
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW		Number of process to be served with this Form 285	STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - FT. PIERCE
ERVIN HENDERSON 6311 NW THIRD AVE MIAMI, FL 33150		Number of parties to be served in this case	5
		Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode	
Address (complete only different than shown above)	Date 11/1/13	Time 14:55 <input type="checkbox"/> am <input checked="" type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy <u>[Signature]</u> 3466 Tracy	

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
					\$0.00

REMARKS: No longer works at facility

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN
See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF ERVIN HENDERSON	COURT CASE NUMBER 13-14236-CIV-MARTINEZ
DEFENDANT MICHAEL D. CREWS, et al.,	TYPE OF PROCESS SUMMONS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
DR. MERCES, MARTIN COUNTY CORRECTIONAL INSTITUTION
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
1150 S.W. ALLAPATTAH RD, INDIANTOWN, FL 34956

FILED by [Signature] D.C.

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW ERVIN HENDERSON 6311 NW THIRD AVE MIAMI, FL 33150	Number of process to be served with this Form 285	NOV - 5 2013
	Number of parties to be served in this case	STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - FT. PIERCE
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (*See remarks below*)

Name and title of individual served (<i>if not shown above</i>)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (<i>complete only different than shown above</i>)	Date <u>11/1/13</u> Time <u>14:52</u> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy <u>[Signature]</u> <u>3466 Tracy</u>

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS: No longer works at facility

PRINT 5 COPIES:

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2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

ERVIN HENDERSON,

Plaintiff,

vs.

Civil Action No.: 13-14236-CIV-MARTINEZ
MAGISTRATE JUDGE PATRICK A. WHITE

MICHAEL D. CREWS,
MICHELLE BATEMAN,
C. LAWRENCE,
EBONY O. HARVEY,
DR. MERCES, DR. PERFILIO,
DR. S. LOBEL, PSYD, MS. DEAN,
NURSE PRIMUS, SGT. M. COCCARO,

Defendants.

**DEFENDANT SUZANNE LOBEL, PSYD'S MOTION TO DISMISS
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

COMES NOW, the Defendant, SUZANNE LOBEL, PSYD ("DR. LOBEL") by and through her undersigned counsel, and files this Motion To Dismiss Plaintiff's cause of action, pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this Motion, DR. LOBEL states as follows:

1. On June 5, 2013, Plaintiff, Ervin Henderson, filed a pro se civil rights Complaint, under 42 U.S.C. §1983, alleging denial of adequate medical treatment while a prisoner at Martin Correctional Institution by DR. LOBEL and several other Defendants.
2. The Plaintiff alleges that he was not given Celexa, which he needed due to a previous diagnosis of paranoid schizophrenia. The Complaint does not state who diagnosed him with this problem and prescribed Celexa for that diagnosis, while he was in Martin

Correctional Institution. The Plaintiff alleges that Defendants, MS. DEAN, NURSE PRIMUS and DR. PERFILIO, denied him the drug on different occasions, but the only factual statement regarding DR. LOBEL is:

On March 13, 2013, while in SOS, Ms. Mercer, the mental health doctor, and Ms. Dean, my psychiatric counselor, came to interview me. I told them that I was still hearing voices urging me to kill myself and that I still wished to kill myself. That same day, Dr. Lobel asked me what I was going through. I replied that I wanted to kill myself because there was a demon-voice telling me to.
(Doc. 1-1, Page 6 at paragraph 4)

3. Based upon the above factual allegation, the Complaint on its face fails to state a cause of action upon which relief can be given for the following reason. The allegations against DR. LOBEL set forth in paragraph 4 of the Complaint do not support a claim, under 42 U.S.C. §1983.

STANDARD FOR MOTION TO DISMISS

4. Defendant, DR. LOBEL, filed her Motion to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(6). A Motion to Dismiss examines the legal sufficiency of the Complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). “[A] short and plain statement of the claim showing that the pleader is entitled to relief” is required under Fed. R. Civ. P. 8(a)(2). Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 550 (S. Ct. 1955). A Complaint must offer more than labels and conclusions, and a formulaic recitation of the elements of a cause of action. Corbitt v. Home Depot U.S.A., Inc., 589 F. 3d 1136, 1170 (11th Cir. 2009).

5. Notice pleading requires that a Complaint contain inferential allegations from which we can identify each of the material elements necessary to sustain a recovery under a legal theory.” Wilchombe v. TeeVee Toons, Inc., 555 F. 3d 949, 960 (11th Cir. 2009). A

cause of action should be dismissed if the facts pled do not support a claim for relief that is plausible on its face. Sinaltrainal v. Coca-Cola Co., 578 F. 3d 1252, 1260 (11th Cir. 2009).

ARGUMENT

PLAINTIFF FAILS TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED BECAUSE IT CONTAINS NO FACTS SUPPORTING A CLAIM AGAINST DR. LOBEL FOR A VIOLATION OF HIS RIGHTS UNDER 42 U.S.C. §1983.

6. In an action under 42 U.S.C. §1983, for an alleged denial of medical care, the initial inquiry should be whether the facts of the Complaint support a claim against a provider by establishing (1) a serious deprivation of medical care by showing that there was an objectively serious medical need that if left unattended posed a substantial risk of serious harm; and (2) that the prison official's response to that need was so poor as to constitute deliberate indifference. Taylor v. Adams, 221 F. 3d 1254, 1258 (11th Cir.2000). It is not sufficient to set forth facts that show an accidental inadequacy, negligence in diagnosis or treatment, or even medical malpractice. Id., See also, Bingham v. Thomas, 654 F. 3d 1171 (11th Cir. 2011). A prisoner must set forth factual allegations that show an official's subjective intent to punish. Taylor, 221 F. 3d. at 1258. The legal conclusion of deliberate indifference must rely on facts clearly evidencing "wanton" actions on the part of a defendant. Gangloff v. Poccia, 888 F. Supp 1549 (M.D. Fla. 1995). The inadvertent or negligent failure to provide adequate medical care "cannot be said to constitute 'an unnecessary and wanton infliction of pain.'" Estelle v. Gamble, 429 U.S. 97, 105-106 (1976).

7. In this case, the factual allegation against DR. LOBEL sets forth no action that could rise to the level of wanton infliction of pain. The mere recital that Dr. LOBEL asked a question inquiring into the prisoner's thought process actually supports a contrary conclusion, if any is warranted. The Plaintiff is required to plead facts that show more than a "mere possibility of misconduct." Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). The allegations that the Plaintiff did not receive his medication for schizophrenia because his complaints were ignored or not believed do not relate to DR. LOBEL. In fact, her name is not mentioned as having anything to do with those decisions. Thus, the Complaint fails to state a cause of action supporting the deliberate indifference of DR. LOBEL, and should be dismissed. Moreover, a civil rights case requires an affirmative causal connection between the Defendant and an alleged deprivation of constitutional rights for a 42 U.S.C. §1983 claim. In the Complaint, the Plaintiff fails to allege any causal connection between DR. LOBEL'S inquiry into his thinking and the alleged denial of his constitutional rights. As such, the Complaint does not state a cause of action and should be dismissed.

WHEREFORE, for the above and foregoing reasons, Defendant, DR. LOBEL, respectfully requests this Court dismiss Plaintiff's Complaint with prejudice, and for such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIF that a true and correct copy of the foregoing was e-filed with the Clerk of Court through the CM/ECF system on November 22, 2013, and is to be e-served by the Court Clerk to: **ERVIN HENDERSON – Inmate #B-425149**, Plaintiff Pro Se, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956.

CHIMPOULIS, HUNTER & LYNN, P.A.
Attorneys for Def/SUZANNE LOBEL, PSYD
7901 S.W. 36th Street - Suite 206
Davie, FL 33328
Phone: (954) 463-0033



BY: _____

M. KATHERINE HUNTER, ESQUIRE
Florida Bar No.: 981877

Email = khunter@chl-law.com

NATALIE M. HUTCHINSON, ESQUIRE

Florida Bar No.: 103327

Email = nhutchinson@chl-law.com

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

ERVIN HENDERSON,

Plaintiff,

vs.

Civil Action No.: 13-14236-CIV-MARTINEZ
MAGISTRATE JUDGE PATRICK A. WHITE

MICHAEL D. CREWS,
MICHELLE BATEMAN,
C. LAWRENCE,
EBONY O. HARVEY,
DR. MERCES, DR. PERFILIO,
DR. S. LOBEL, PSYD, MS. DEAN,
NURSE PRIMUS, SGT. M. COCCARO,

Defendants.

ORDER ON DEFENDANT SUZANNE LOBEL, PSYD'S MOTION TO DISMISS

THIS MATTER having come on to be heard upon Defendant SUZANNE LOBEL, PSYD'S Motion to Dismiss, dated November 22, 2013, and the Court having reviewed the Motion and being otherwise fully advised in the premises, it is hereby ORDERED and ADJUDGED that:

1. The Complaint fails to state a cause of action supporting the deliberate indifference of DR. LOBEL.

2. The Complaint fails to allege any causal connection between DR. LOBEL and the alleged denial of Plaintiff's constitutional rights as required by 42 U.S.C. §1983. Accordingly, the Complaint is hereby DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers this _____ day of _____, 2013.

UNITED STATES DISTRICT COURT JUDGE