

United States District Court
For the
Southern District of Florida

Ervin Henderson
Plaintiff

vs.

Civil Action No.: 13-14236 -Civ-Martine
Magistrate Judge Patrick A. White

Dr. Mercedes
Dr. Perfilio
Dr. S. Lobel
psyd, MS, Dean
Nurse Primus

Defendants

2013 DEC 23 PM 2:36
MJB

Plaintiff answer to Defendants
motion to dismiss
for failure to state a claim

Ervin Henderson

1) The reason for not replying sooner is that I did not receive any mail, you had sent it to my old address, so I decided to write you and, give you my new address and, then I got this letter.

2) The letter stated in Docket Text 27 motion to dismiss For Failure to state a claim by S. Lobel. Responses due by 12/19/2013 (Attachments: # 1 Text of proposed order proposed order of defendant Lobel's Motion to dismiss) (Hunter, Mary) (Entered: 11/22/2013)

3) I got a letter from the court's of change of address by Ervin Henderson (address updated, copy docket sheet mailed) (TPI) (entered: 12/11/2013)

4) I Ervin Henderson cometh now prose to answer why I have a cla. against Defendents, Dr. S. Lobel, Dr. Mercedes, Dr. Perfilio, Psyd. Ms. De Nurse Primus. Required by 28 U.S.C. § 1915 (e)(2)(B)(ii)2) the Claims of denial of adequate medical treatment should continue against Drs. Mercedes, Perfilio, and Lobel, as well as counsler Dean, and, Nurse Prim Objections to R+R due by 9/3/2013. Signed by Magistrate Judge Patrick A. White on 8/15/2013. (br) (entered: 08/15/2013)

5) If you read the complaint you will see that Dr. Lobel signed off on the grievance that I wrote and, she denied each and every one of them.

6) For four and a half months I was denied my medication, I ended up in a suicide cell trying to kill myself stayed in there 6 days while Dr. Lobel, and the rest of the defendents Dr. Mercedes, Dr. Perfilio, Psyd. Ms. Dean, Nurse Primus threaten me, and tell me I don't need my medication.

7) So now they put me back in open population. I was taken other people's medication so I wouldn't hurt anyone. To calm me down, I didn't put that in my complaint that I was taken other peoples medication because the Correctional officers read everyth and they would of locked me up - or hurt me. So I did that for 4 1/2 months cause I was filing a grievance. To Mrs. Lobel, and Tallahassee and I was denied each and every one of them.

8) I sent Tallahassee a notice of Claim that I'm going to sue. I sent it out May/28/2013.

9) I filed a law suit 6/4/2013 against the defendents Dr. S. Lobel, Dr. Mercedes, Dr. Perfilio, psyd. Ms. Dean, nurse Primus.

10) After I sent out the complaint to the District Court Southern District of Florida office of Clerk 299 East Broward Boulevard, Rm 108, Ft. Lauderdale, Florida 33301 Case# 2:13-CU-14236 - jem Internal use only

11) On 6/5/2013 the prison psych Doctor called me to his office Put me back on celexia, made me sign some paper's. I left office got copies of the paper to show that all this time to show I took celexia from the beginning. And that shows The Defendant Dr. S. Lobel, Dr. Mercedes, Dr. Perfilio, psyd. MS. De Nurse Primus played with me all those months. And if you goto the Prison psych records you will see that they put me back on celexia after I filed for a lawsuit.

12) After I filed my lawsuit that's when they put me back on psych medication.

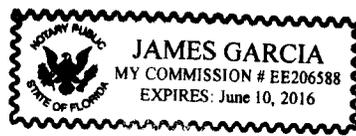
13) Also I get a monthly disability check from social Security.

Certificate of Service

We hereby Certify that a true and correct copy of the
forgoing was sent to Chimpoulis, Hunter & LYNN P.A.
Attorneys for Def/Suzanne Lobel, PSYD
7901 S.W. 36th Street Suite 206
Davie, FL 33328

United States District Court
Southern District of Florida
Office of the Clerk of Court
299 East Broward Boulevard Rm 108
Ft Lauderdale, Florida 33301.

on this day December of 19th 2013



NOTARY Public
James Garcia
12-19-2013

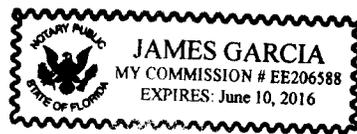
X *Emmanuel...*
12-19-2013

Certificate of Service

We hereby Certify that a true and correct copy of the forgoing was sent to
United States District Court
Southern District of Florida
Office of the Clerk of Court
299 East Broward Boulevard, Rm 108
Ft. Lauderdale, Florida 33301

CHIMPOULIS HUNTER LYNN P.A
Attorneys for Def / SUZANNE LOBEL PSYD
7901 S.W. 36th Street - Suite 206
Davie FL 33328

on this day December of 19th 2013



NOTARY public
James Garcia
12-19-2013

x *Erin Hunter*
12-19-2013

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, REPLY TO PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT LOBEL'S MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT THEREOF**

The Defendant, SUZANNE LOBEL, PSYD, by and through her undersigned counsel, hereby files this Reply to Plaintiff, ERVIN HENDERSON'S, Response to Defendant, LOBEL'S Motion Dismiss for Failure to State a Claim, and states as follows:

1. Plaintiff's Complaint was filed on June 5, 2013 under a theory of a violation of his rights under 42 U.S.C. §1983 by various health-care providers at Martin Correctional Institution, including Defendant, DR. LOBEL.

2. Defendant, DR. LOBEL, filed her Motion to Dismiss based upon the Plaintiff's failure to state a cause of action upon which relief can be granted based upon the fact that the Complaint's single paragraph regarding DR. LOBEL, is devoid of facts that support a cause of action.

3. The Plaintiff's Response was due by December 9, 2013. His Response was not filed until December 19, 2013. As such, the Response is untimely and should not be considered. Additionally, the Response fails to raise any legal opposition sufficient to challenge the deficiencies in the Complaint. Therefore, the Motion to Dismiss should be granted.

ARGUMENT

4. The Plaintiff asserts that the Response was late because he did not receive it due to the fact that his address changed. However, the Plaintiff has the responsibility to notify the Court and the parties of any change in address to avoid delays in the service of properly filed documents pursuant to Local Rule 11.1 (g). The failure to comply with this rule **shall** not constitute grounds for relief from deadlines imposed by Rule or by the Court under Local Rule 11.1 (g). As such, the Plaintiff's Response was late due to his own failure and should not be considered.

5. Additionally, the Plaintiff's Response does not address the deficiencies in the claim asserted against DR. LOBEL. He has not set forth any additional legal basis why the Complaint does not fail. As such, DR. LOBEL'S Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted is unchallenged and should be Granted. Even under the statements of fact set forth in the Response, the Plaintiff's claim fails to state a cause of action as set forth in the original Motion to Dismiss.

Wherefore, DR. LOBEL respectfully submits that the Plaintiff's Complaint should be dismissed with prejudice.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed with the Clerk of Court through the CM/ECF system on December 30, 2013, and mailed to **ERVIN HENDERSON – Inmate #B-425149**, *Plaintiff Pro Se*, Metro West Detention Center, 13850 N.W. 41st Street, Miami, Florida 33178.

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: /s/ M. Katherine Hunter
M. KATHERINE HUNTER, ESQUIRE
Florida Bar No.: 981877
khunter@chl-law.com
NATALIE M. HUTCHINSON, ESQUIRE
Florida Bar No.: 103327
nhutchinson@chl-law.com

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. A Report was entered recommending the claims of denial of adequate medical treatment continue against several defendants. The Report was adopted on October 9, 2013.

This Cause is before the Court upon a Motion to Dismiss filed by Defendant Lobel.

II. Analysis

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint because the plaintiff has failed to state a claim upon which relief may be granted. See Fed.R.Civ.P. 12(b)(6). The complaint may be dismissed if the plaintiff does not plead facts that state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1555 (2007)(retiring the oft-criticized "no set of facts"

language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics" The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964).

For reasons discussed in the Preliminary Report, the complaint in this case is sufficient to state a claim against the defendant.

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.

The plaintiff contends he has not been provided with adequate medical treatment while at Martin CI. On March 12, 2013, plaintiff was taking a psycho-tropic 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. Mercedes and Dean interviewed him, as well as Dr. 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 Mercedes 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 go 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 Report found the plaintiff stated a serious medical need. He alleges that he is schizophrenic, and requires psycho-tropic medication to stabilize him. The plaintiff alleged 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 was recommended that the plaintiff has stated a claim of denial of medical treatment and the claim should continue against these defendants. The Report was adopted by United States District Judge Martinez on October 9, 2013.

C. Lobel's Motion to Dismiss

The defendant contends she should be dismissed for failure to state a claim. The specific claim against Dr. Lobel was that she was told, along with other doctors, that he wanted to kill himself because there was a demon-voice telling him to do so. The defendant states this is insufficient to state a claim against her, citing to Twombly, supra.

The Undersigned disagrees with this contention. The claim, as stated simply by the plaintiff, is that his doctors were told he was going to kill himself, that they were aware of his medical condition and they failed to provide him with the medication required to stabilize him, resulting in increased bizarre behavior. Lobel is one of the doctors who was in the group informed by him of his medical condition. At this preliminary stage it appears that all the doctors informed of his condition may have failed to provide adequate medical treatment, and the claim needs further factual development.

III. Recommendation

It is therefore recommended as follows:

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. 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 8th day of January, 2014.



UNITED STATES MAGISTRATE JUDGE

cc: Ervin Henderson
Street Address of record

K. Hunter, Esq.
Attorney of record

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

Case No. 13 cv 14236 JEM/PAW

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

①

United State District Court
For The Southern District of Florida

FILED by PG D.C.
JAN 09 2014
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA - MIAMI

Ervin Henderson,
Plaintiff

v.

Civil Action No. 13-14236-CIV-Martinez
Magistrate Judge Patrick A. White

Dr. Herces
Dr. Perfilo
Dr. S. Label
Psych. Ms. Dean
Nurse: Primpus

Defendant

Plaintiff Motion Claim Of Denial Of Adequate Medical Treatment
Response To Defendant Motion To Dismiss
Failure To State A Claim and address change

① I, Ervin Henderson, competly now prose to answer why I have a claim against
defendants, Dr. Herces, Dr. Perfilo, Dr. S. Label, Psych. Ms. Dean & Nurse Primpus
The claim of denial of adequate medical treatment should could continue against
Dr. Herces, Dr. Perfilo, Dr. S. Label, Psych. Ms. Dean & Nurse Primpus.
Objections to Rth due by 9/15/2013. Signed by Magistrate Judge Patrick A.
White on 8/15/2013.

- ② If you read the complaint, you will see that "Dr. Label," signed off on the grievance that I wrote; she denied each and every one of them.
- ③ For four and a half months I was denied my medication. I ended up in ~ suicide cell. trying to kill myself stayed in there 6 days while "Dr. Label, Nurse Pirmus threaten me and telling me I don't need my medication.
- ④ Now! they put me back in open population; I was taken other people medication to prevent from hurting other people and the medication from others was carrying me down. I couldn't put that information on the complaint, because if the "Correctional officers find out; they would lock me down and beat me down. I did that for 4 months; filing a grievance to "Mrs. Label and Tallahassee denied each one of them.
- ⑤ I sent Tallahassee notices of claim that I'm going to sue, so I sent it out on May 28, 2013.
- ⑥ I filed a law suit on the 6/4/2013; against the defendants; Dr. Label, Dr. Mercers, Dr. Perillo, psych. Ms. Dean, Nurse Pirmus.
- ⑦ When I sent out the complaint to the US. District Court, Southern District of Florida Office of Clerk 999 East Broward Boulevard, Rm 100, Fort. Lauderdale, FL 33301 Case # 2:13-cv-14236-JEM Internal use only

- ⑥ On 6/5/2013; the prison psych "Doctor", called me to his office; he put me back on celerxia and made me sign some papers. I left the office and got copies of the papers to show that all this time I took celerxia from the beginning; that shows the defendant "Dr. S. Label, Dr. Mercedes, Dr. Perfito, psych. Ms. Dean & Nurse. Pringus played with me all those months. If you get to go to the prison records, you will see they put me back on celerxia; after I filed for a law-suit.
- ⑦ After I filed my law-suit, that's when the "Doctors put me back on celerxia psych medication.

Argument On Plaintiff Address Change

After I got out of prison on, July-11-2013; I went and made a notice of changes to the courts and I am sending copies of the exhibit "A, B, C"; to show that I did make and address change.

Now! if they have did their research, they would of seen that I made a change of address. and they would of found out that they send the mail to the wrong location. ^{see exhibit ②} Each time I write I send the court my change of address. I didn't been inform of the parties at of my release. I recently was inform the "Defendant"; has an attorney on; "Dec-12-13".

CM/BCF - Live Database - flsd

Exhibit A

Page 1 of 3

CASREF,PAW

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

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

Exhibit B

Defendant**Sgt. M. Coccaro****TERMINATED: 10/08/2013**

Date Filed	#	Docket Text
06/05/2013	1	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	2	Judge Assignment to Judge Jose E. Martinez (ar2) (Entered: 06/05/2013)
06/05/2013	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (ar2) (Entered: 06/05/2013)
06/05/2013	4	MOTION for Leave to Proceed in forma pauperis by Ervin Henderson. (ar2) (Entered: 06/05/2013)
06/27/2013	5	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting 4 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/27/2013. (tw) (Entered: 06/27/2013)
06/27/2013	6	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	7	NOTICE of Change of Address by Ervin Henderson (Address updated) (tpl) (Entered: 07/15/2013)
08/09/2013	8	NOTICE of Change of Address by Ervin Henderson (address updated) (tpl) (Entered: 08/09/2013)
08/13/2013	9	MOTION for Marshals to Serve Defendants by Ervin Henderson. Responses due by 8/30/2013 (tpl) (Entered: 08/13/2013)
08/13/2013	10	Summons Issued as to All Defendants. (tpl) (Entered: 08/13/2013)
08/14/2013	11	ORDER granting 9 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	12	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 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. Mercedes, Perfilio and Lobel, as well as Counselor Dean and Nurse Primis. Objections to R&R due by 9/3/2013. Signed by Magistrate Judge Patrick A. White on 8/15/2013. (br) (Entered: 08/15/2013)
10/09/2013	13	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	14	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)
10/10/2013	15	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

Exhibit C

		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:df). (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)

LAW OFFICES
CHIMPOULIS, HUNTER & LYNN, P.A.
7901 SW 36TH STREET, SUITE 206
DAVIE, FLORIDA 33328

Exhibit D

Unclaimed	Reason checked	Returned to sender
Address Unknown	Refused	
No DC #	Insufficient Address	
DC # and Name do not match		

49-3877
Ervin Henderson - Inmate #B425149
Martin Correctional Institution
1150 S.W. Allapattah Road
Indianatown, FL 33476

UNITED STATES POSTAGE
FIRST CLASS
\$ 00.46⁰
02 1M
0004275524 NOV 21 2013
MAILED FROM ZIP CODE 33328

MIXTE 333 DE 1 0812/11/13
RETURN TO SENDER
REFUSED
UNABLE TO FORWARD
1988\$4310 ROSH #C: 202275524
3332801914

Certificate of Service

We hereby Certify that a true and correct copy of the forgoing was sent to the
United States District Court
Southern District of Florida
Office of The Clerk of Court
299 East Broward Boulevard Rm 108
Ft. Lauderdale Florida 33301

Chimpoctis Hunter Lynn P.A.
Attorneys for Det / Suzanne Label Psyd
7901 S.W 36th Street - Suit # 206
Davie Fl, 33328

On this day January of 6 2013

Certificate of Service

We here-by Certify that a true and correct
Copy of the foregoing was sent to

Chimpoulis Hunter Lynn P.A

Attorney's for Det/Suzanne Label Psyd

7901 S.W 36th Street-Suite #206

Davie Fl, 33328

United States District Courts

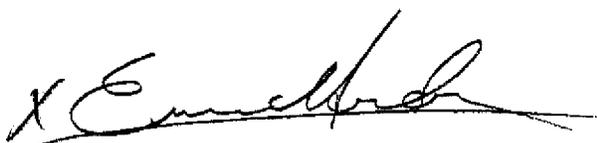
Southern District of Florida

Office of the Clerk of Court

999 East Broward Boulevard Rm#108

Ft Lauderdale Florida 33301

On this day January of 6 2013

X 

ERVIN Henderson #130065492
Metro West
13850 N.W. 41st Street
MIAMI FL 33178

Legal mail



USMS
INSPECTED

United States District Court
Southern District of Florida
Office of the Clerk-Room 8N09
400 North Miami Avenue

331288771E MIAMI Florida 33128

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, RESPONSE AND OBECTIONS TO
THE RECOMMENDATIONS AND REPORT OF THE MAGISTRATE JUDGE**

The Defendant, SUZANNE LOBEL, PSYD, ("DR. LOBEL") by and through her undersigned counsel, hereby files this Response and Objection to the Recommendations and Report of the Magistrate Judge, and states as follows:

1. Plaintiff's Complaint was filed on June 5, 2013 under a theory of a violation of his rights under 42 U.S.C. §1983 by various health-care providers at Martin Correctional Institution, including Defendant, DR. LOBEL.

2. Defendant, DR. LOBEL, filed her Motion to Dismiss based upon the Plaintiff's failure to state a cause of action upon which relief can be granted, based upon the fact that the Complaint's single paragraph regarding DR. LOBEL, is void of facts and an allegation that support a § 1983 cause of action for deliberate indifference.

3. The Report of Honorable Magistrate Judge P.A. White was entered on January 8, 2014 recommending the denial of Defendant, DR. LOBEL's Motion to Dismiss, and to continue Plaintiff's allegations of denial of adequate medical treatment.

4. Notwithstanding the report and recommendations of the Magistrate Judge, Defendant, DR. LOBEL's Motion to Dismiss Plaintiff's Complaint with prejudice should be granted. Plaintiff's complaint is defective on its face for failure to state a cause of action upon which relief can be granted. There are no allegations that provide sufficient basis to determine what DR. LOBEL personally did to deprive the Plaintiff of his rights under 42 U.S.C. §1983.

ARGUMENT

5. Plaintiff's complaint is void of facts that sustain a viable cause of action against Defendant, DR. LOBEL. In the report and recommendation, the magistrate judge notes that the claim as simply stated by the Plaintiff under Twombly is sufficient to afford the Plaintiff the opportunity to factually develop his claim. Although Twombly states that a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a complaint **still has to contain sufficient factual matter**, accepted as true, to "state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Ashcroft v. Iqbal, 566 U.S. 662, 678 (2009).

6. Pursuant to Federal Civil Procedure, a pleading is required to contain a short and plain statement of a claim showing that the pleader is entitled to relief, and does not require detailed factual allegations, *but [it] demands more than* unadorned “ the defendant unlawfully harmed me” accusation. Ashcroft v. Iqbal, 556 U.S. 662 (2009).

7. Plaintiff’s complaint contains facts that are conclusive in nature and requires the court to look at the individual allegations collectively to draw an inference that DR. LOBEL acted with deliberate indifference. The facts pled relevant to DR. LOBEL are:

On March 12, 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.

(Complaint, ¶ 4, page 19).

That is the only paragraph in the entire Complaint that mentions DR. LOBEL, or references her having any kind of interaction with the Plaintiff.

8. Assuming or inferring that DR. LOBEL was one of the “doctors” that made the decision as to the Celexia is not supported by the above paragraphs or any of the subsequent paragraphs that do not mention DR. LOBEL specifically.

9. Even if this Court was to accept that the allegations against DR. LOBEL state that she personally was involved with the decision to withhold medication, the Complaint fails to substantiate a that a *causal connection between the defendant’s indifference and the Plaintiff’s injury exists because of DR. LOBEL*. Mann v. Taser International, Inc., 588 F.3d

1291, 1306-07 (11th Cir. 2009). Plaintiff alleges that he was in AC confinement for protective management due to threats from an inmate who was trying to kill him. At that time he was taking a psychotropic medication called "Celexia". Due to the stress of being held in isolation, he began hearing voices in his head. Plaintiff informed security and the nurses on duty. He began banging his head on the walls and cell door, and then the demon voice urged him to kill himself. Plaintiff states that he was taken to suicide watch the day he "hung" himself in his cell; and alleges that he spoke to Dr. Mercer, the mental health doctor, and Mrs. Dean, the psychiatric counselor for an interview, and later on that day told DR. LOBEL about his ailment. The alleged attempted hanging occurred *before* DR. LOBEL interacted with the Plaintiff. From the facts pled, it is unclear how DR. LOBEL's March 12, 2013 interaction with the Plaintiff had anything to do with the Plaintiff's attempt to kill himself and bizarre behavior.

10. The suggestion that DR. LOBEL was apart of the group who made the decision to stop the Celexia is not stated in the pleading. A careful reading of the Complaint reveals that there are no allegations directed to DR. LOBEL, that support the idea that she withheld medication from the Plaintiff. Plaintiff only pled in paragraph 4 that he told DR.LOBEL what he was experiencing. The basic elements of a §1983 cause of action are absent from the allegations against DR. LOBEL. Furthermore, Plaintiff is procedurally required to plead a cause of action against each defendant separately. That is not done here.

11. Based upon the above-stated arguments and facts, it is clear that the Complaint fails to allege a viable claim that crosses the line from conceivable to plausible. Iqbal at 683. See also *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955.

WHEREFORE, Defendant, DR. LOBEL respectfully request that her Motion to Dismiss Plaintiff's Complaint with Prejudice be granted.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed with the Clerk of Court through the CM/ECF system on January 27, 2014, and mailed to **ERVIN HENDERSON – Inmate #B-425149**, Plaintiff Pro Se, Metro West Detention Center, 13850 N.W. 41st Street, Miami, Florida 33178.

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
khunter@chl-law.com
NATALIE M. HUTCHINSON, ESQUIRE
Florida Bar No.: 103327
nhutchinson@chl-law.com