

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:13-cv-80958-KLR**

Vaughn v. Simmons et al
Assigned to: Senior Judge Kenneth L. Ryskamp
Referred to: Magistrate Judge James M. Hopkins
Case in other court: Circuit Court of the 15th Judicial Circuit in
Palm, 502012CA009243XXXXMB

Date Filed: 09/20/2013
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Cause: 28:1442 Notice of Removal

Plaintiff

Debbie Vaughn

represented by **Debbie Vaughn**
11581 Tangerine Boulevard
Royal Palm Beach, FL 33412
PRO SE

V.

Defendant

Dalmino Simmons

*Deputy Sheriff, individually and in his
official capacity as a police officer with
the Palm Beach County Sheriff's Office*

represented by **Summer Marie Barranco**
Purdy Jolly Giuffreda & Barranco PA
2455 E Sunrise Boulevard
Suite 1216
Fort Lauderdale, FL 33304
954-462-3200
Fax: 462-3861
Email: summer@purdylaw.com
ATTORNEY TO BE NOTICED

Defendant

Ric L. Bradshaw

the Sherriff of Palm Beach County

represented by **Summer Marie Barranco**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/20/2013	<u>1</u>	NOTICE OF REMOVAL (STATE COURT COMPLAINT) Filing fees \$ 400.00 receipt number 113C-6085818, filed by Ric L. Bradshaw, Dalmino Simmons. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit)(Barranco, Summer) (Entered: 09/20/2013)
09/20/2013	2	Judge Assignment to Senior Judge Kenneth L. Ryskamp and Magistrate Judge James M. Hopkins (vjk) (Entered: 09/20/2013)
09/26/2013	<u>3</u>	ORDER Of Pretrial Procedures Signed by Senior Judge Kenneth L. Ryskamp on 9/25/2013. (cqs) (Entered: 09/26/2013)
10/02/2013	<u>4</u>	ORDER REFERRING CASE to Magistrate Judge Pre-Trial Matters/Report and Recommendation Signed by Senior Judge Kenneth L. Ryskamp on 10/2/2013. (cqs) (Entered: 10/02/2013)
10/15/2013	<u>5</u>	MOTION TO DISMISS <u>1</u> Notice of Removal (State Court Complaint) FOR FAILURE TO STATE A CLAIM by Ric L. Bradshaw. Responses due by 11/1/2013 (Barranco, Summer) (Entered: 10/15/2013)
10/31/2013	<u>6</u>	Plaintiff's MOTION to Amend Complaint and For Permission For 30 Days to File Said Amended Complaint <u>1</u> Notice of Removal (State Court Complaint) (Responses due by 11/18/2013) by Debbie Vaughn. (yar) (Entered: 11/01/2013)

11/01/2013	<u>7</u>	JOINT SCHEDULING REPORT – Rule 26(f) by Ric L. Bradshaw, Dalmino Simmons (Attachments: # <u>1</u> Text of Proposed Order)(Barranco, Summer)Text Modified on 11/1/2013 (cqs). (Entered: 11/01/2013)
11/15/2013	<u>8</u>	RESPONSE to Motion re <u>6</u> MOTION to Amend/Correct <u>1</u> Notice of Removal (State Court Complaint) MOTION for Extension of Time to Amend Complaint filed by Ric L. Bradshaw. Replies due by 11/25/2013. (Barranco, Summer) (Entered: 11/15/2013)
11/18/2013	<u>9</u>	ORDER granting <u>6</u> Plaintiff's Unopposed Motion to Amend the Complaint. Clerks Notice: Filer must separately re-file the amended pleading pursuant to Local Rule 15.1. ORDER granting <u>6</u> Plaintiff's Unopposed Motion for Extension of Time. Plaintiff's Amended Complaint must be filed by December 18, 2013. Signed by Magistrate Judge James M. Hopkins on 11/18/2013. (hky) (Entered: 11/18/2013)
11/19/2013	<u>10</u>	SCHEDULING ORDER: Amended Pleadings due by 1/21/2014. Discovery due by 7/18/2014. Joinder of Parties due by 1/21/2014. Motions due by 8/15/2014. Pretrial Stipulation due by 12/17/2014. Signed by Senior Judge Kenneth L. Ryskamp on 11/19/2013. (cqs) (Entered: 11/19/2013)
12/02/2013	<u>11</u>	ORDER REFERRING CASE to Mediation. Signed by Senior Judge Kenneth L. Ryskamp on 12/2/2013. (lh) (Entered: 12/02/2013)
12/02/2013	<u>12</u>	NOTICE OF TRIAL: Calendar Call set for 12/23/2013 01:15 PM in West Palm Beach Division before Senior Judge Kenneth L. Ryskamp. Jury Trial set for 12/29/2013 in West Palm Beach Division before Senior Judge Kenneth L. Ryskamp. (lh) (Entered: 12/02/2013)
12/03/2013		Calendar Call set for 12/23/2014 01:15 PM in West Palm Beach Division before Senior Judge Kenneth L. Ryskamp. Jury Trial set for 12/29/2014 in West Palm Beach Division before Senior Judge Kenneth L. Ryskamp pe order <u>12</u> (mr1) (Entered: 12/03/2013)
12/17/2013	<u>13</u>	MOTION for Extension of Time Amended Complaint re <u>1</u> Notice of Removal (State Court Complaint) by Debbie Vaughn. Responses due by 1/3/2014 (cqs) (Entered: 12/17/2013)
12/18/2013	<u>14</u>	ORDER granting <u>13</u> Pro Se Plaintiff's Unopposed Motion for Extension of Time to file an Amended Complaint. Plaintiff's Amended Complaint is due by 1/21/14. Signed by Magistrate Judge James M. Hopkins on 12/18/2013. (hky) (Entered: 12/18/2013)
01/21/2014	<u>15</u>	AMENDED COMPLAINT against Ric L. Bradshaw, Dalmino Simmons filed in response to Order Granting Motion for Leave, filed by Debbie Vaughn.(ls) (Entered: 01/21/2014)
01/23/2014	<u>16</u>	NOTICE by Ric L. Bradshaw, Dalmino Simmons of <i>Selection of Mediator</i> (Barranco, Summer) (Entered: 01/23/2014)
01/23/2014	<u>17</u>	NOTICE of Mediator Selection: Stephen Fisher selected.(for image see De#16)(cqs) (Entered: 01/24/2014)
01/24/2014	<u>18</u>	Clerks Notice to Filer re <u>16</u> Notice (Other). Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#17]. It is not necessary to refile this document. (cqs) (Entered: 01/24/2014)
01/30/2014	<u>19</u>	ANSWER and Affirmative Defenses to Amended Complaint by Ric L. Bradshaw. (Barranco, Summer) (Entered: 01/30/2014)
01/30/2014	<u>20</u>	ANSWER and Affirmative Defenses to Amended Complaint by Dalmino Simmons. (Barranco, Summer) (Entered: 01/30/2014)
02/10/2014	<u>21</u>	ORDER denying as moot <u>5</u> Defendant's Motion to Dismiss the Complaint for Failure to State a Claim. Plaintiff has since filed an Amended Complaint, and Defendant has filed an Answer and asserted affirmative defenses. Signed by Magistrate Judge James M. Hopkins on 2/10/2014. (hky) (Entered: 02/10/2014)

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

CASE NO. 13 -80958-CIV-RYSKAMP/HOPKINS

DEBBIE VAUGHN,

Plaintiff,

vs.

DEPUTY SHERIFF DALMINO SIMMONS,
individually and in his official capacity as a
police officer with the Palm Beach County
the Sheriff of Palm Beach County,

Defendants.

SCHEDULING ORDER

Pursuant to Local Rule 16.1(b)(3), it is **ORDERED AND ADJUDGED** as follows:

1. No pretrial conference shall be held in this action, unless the parties so request or the Court determines, sua sponte, that a pretrial conference is necessary. Should a pretrial conference be set, the compliance deadlines as set forth in the remainder of this Order shall remain unaltered.

2. Counsel shall meet at least ONE MONTH prior to the beginning of the trial calendar to confer on the preparation of a pretrial stipulation.

3. The joint pretrial stipulation shall be filed on or before the date set forth in the Notice of Trial and shall conform to Local Rule 16.1(e). The Court will not allow unilateral pretrial stipulations.

4. This case will be tried before the Court. See 28 U.S.C. § 2402. Each party shall file proposed findings of fact and conclusions of law at least ONE WEEK prior to the beginning of

the trial calendar. Proposed conclusions of law shall be supported by citations of authority.

5. All exhibits must be pre-marked. The plaintiff and defendant shall both mark their exhibits numerically. A typewritten exhibit list setting forth the number, and description of each exhibit shall be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available from the Clerk's office. All electronically filed exhibits should be listed as one attachment unless over 5mb (100 pages).

6. A motion for continuance shall not stay the requirement for the filing of a pretrial stipulation and, unless an emergency situation arises, a motion for continuance will not be considered unless it is filed at least twenty (20) days prior to the date on which the trial calendar is scheduled to commence.

7. Non-compliance with any provision of this order may subject the offending party to sanctions or dismissal. It is the duty of all counsel to enforce the timetable set forth herein in order to insure an expeditious resolution of this cause.

8. The following timetable shall govern the pretrial procedure in this case. This schedule shall not be modified absent compelling circumstances.

<u>January 21, 2014</u>	Joinder of additional parties and amended pleadings.
<u>March 14, 2014</u>	Plaintiff shall furnish opposing counsel with a written list containing the names and addresses of all <u>expert</u> witnesses intended to be called at trial and only those <u>expert</u> witnesses listed shall be permitted to testify. Within the 14 day period following the disclosure, the plaintiff shall make its experts available for deposition by the defendant. The experts' deposition may be conducted without further order from the Court.
<u>April 18, 2014</u>	Defendant shall furnish opposing counsel with a written list containing the names and addresses of all <u>expert</u> witnesses

intended to be called at trial and only those expert witnesses listed shall be permitted to testify. Within the 14 day period following this disclosure, the defendant shall make its experts available for deposition by the plaintiff. The experts' depositions may be conducted without further order from the Court.

June 6, 2014

Parties shall furnish opposing counsel with a written list containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.

July 18, 2014

All discovery must be completed.

August 15, 2014

All pretrial motions and memoranda of law must be filed.

December 17, 2014

Pretrial Stipulation required by Local Rule 16.1(e) shall be filed.

This case is assigned to the STANDARD track. This matter is set for jury trial.

9. Trial date and calendar call will be set by separate notice.

10. If this case is settled, counsel are directed to inform the Court promptly by calling chambers and submitting an appropriate order for dismissal, within ten (10) days of notification of settlement to the Court, pursuant to Fed.R.Civ.P. 41(a)(1).

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 19th day of November, 2013.

S/Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 13-80958-CIV-RYSKAMP\HOPKINS

Debbie Vaughn

Plaintiff,

vs.

Deputy Sheriff Dalmino Simmons, etc.,

Defendant

ORDER OF REFERRAL TO MEDIATION

Trial having been set in this matter for the two week trial period beginning December 29, 2014, pursuant to Fed. R. Civ. P. 16 and S.D. Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days before the scheduled trial date.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of this Court, but may select any other mediator. The parties shall agree upon a mediator within fifteen (15) days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk in writing and the Clerk shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.
3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.
4. The appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjustor with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All discussions, representations and statements made at the mediation conference shall be confidential and privileged.

6. At least ten (10) days prior to the mediation date, all parties shall present to the mediator a brief written summary of the case identifying issues to be resolved. Copies of these summaries shall be served on all other parties.

7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein or who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within thirty (30) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least two (2) full business days in advance. Failure to do so will result in imposition of a fee for one hour.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F., by the filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether or not all required parties were present. The report shall also indicate whether or not the case settled (in full or in part), was continued with the consent of the parties, or whether the mediator declared an impasse.

11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 2nd day of December, 2013.

/S/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 13-80958-CIV-RYSKAMP\HOPKINS

Debbie Vaughn

Plaintiff,

vs.

Deputy Sheriff Dalmino Simmons, etc.,

Defendant

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____
on _____, 2013, at _____ (AM/PM) at West Palm Beach, Florida.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this _____ day
of _____, 2013.

KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

c:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 13-80958-CIV-RYSKAMP\HOPKINS

Debbie Vaughn

Plaintiff,

vs.

Deputy Sheriff Dalmino Simmons, etc.,

Defendant

NOTICE OF TRIAL

This case is set for **jury TRIAL** commencing the two-week trial period of **December 29, 2014**, in West Palm Beach, Florida. All matters relating to the scheduled trial date may be brought to the attention of the court at **CALENDAR CALL** on **December 23, 2014** in the Federal Courthouse, Courtroom No. 1, 701 Clematis Street, 4th floor, West Palm Beach, Florida at 1:15 P.M.

Plaintiff's counsel shall notify any attorneys not listed below of this notice of trial. Any motion for a continuance **MUST** be in writing in order to be considered.

DATED this 2nd day of December, 2013.

/s/ Sharon J. Hibbs
**SHARON J. HIBBS, Judicial Administrator to
JUDGE RYSKAMP**

c: All Counsel of Record

FILED by 2 D.C.
JAN 21 2014
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DEBBIE VAUGHN,

CASE NO.: 9:13-cv-80958-RYSKAMP/HOPKINS

Plaintiff,

vs.

DEPUTY SHERIFF DALMINO SIMMONS,
individually and RIC L. BRADSHAW,
the Sheriff of Palm Beach County,

Defendants.

_____ /

AMENDED COMPLAINT

Plaintiff DEBBIE VAUGHN, pro se, hereby files this Amended Complaint, and states as follows:

1. This is an action for money damages brought pursuant to 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution and the laws of Florida.
2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this district under 28 U.S.C. § 1391 as all events surrounding this cause of action occurred within Palm Beach County.
4. All conditions precedent to filing this action have been met.

PARTIES

5. Plaintiff, Debbie Vaughn (“Vaughn”), is a resident of Palm Beach County and is filing this action pro se. At the time of the events which form the basis of this suit, she resided in Palm Beach County.

6. Defendant, Deputy Sheriff Dalmino Simmons (“Simmons”), is a resident of Palm Beach County.

7. Defendant, Ric L. Bradshaw, the Sheriff of Palm Beach County (“Sheriff”), was at all relevant times the employer of Simmons and is in charge of the Sheriffs Office of Palm Beach County.

FACTS OF INCIDENT AND DAMAGES

8. On May 15, 2008, in the evening after sunset, Vaughn was allegedly involved in a dispute with her next door neighbors, Mr. and Mrs. Joseph Pennica. As a result of that dispute, Vaughn called 911 and she believes the neighbor did as well.

9. Simmons was dispatched to the scene. When he arrived Vaughn was inside her home. Simmons came to Vaughn’s door to arrest her for simple battery - based on the claim that Vaughn had soaked her neighbor with a water hose.

10. Vaughn opened the door with a puppy in her arms. Simmons was verbally abusive and ordered Vaughn to come out of the house, then hand cuffed her left arm and forced her to throw the puppy down so he could hand cuff her right arm.

11. Then Simmons uncuffed Vaughn’s right arm and she scooped the puppy up and bent down and pushed the puppy in the door. At that point, Vaughn lost her balance and Simmons started slamming the door on her head; face, body and arm. She was dazed and then Simmons stood her up.

12. Vaughn heard two pops and her right arm floated to the right and she screamed “you are breaking my arm - you broke my arm.” Vaughn was 56 years old at the time, of diminutive stature and much smaller and weaker in strength than Simmons.

13. Simmons’ actions caused a fracture and dislocation of Vaughn’s right arm. Vaughn’s right arm became useless after it was fractured. Simmons stayed behind Vaughn mostly during the episode and was completely in control of Vaughn the entire time because Vaughn’s left arm stayed hand cuffed during the entire episode.

14. As Simmons tried to cuff the broken arm again, Vaughn cried out in pain. But Simmons

did not stop. He continued inflicting physical and mental abuse on Vaughn, by launching Vaughn into the yard, and kneeling on top of her. Vaughn felt in fear of her life at this point.

15. Vaughn awoke from a daze, still foggy, but felt something extremely heavy on her head. She was face down in her yard, with Simmons on top of her and then Vaughn heard Simmons speak to someone, saying “get out of here, you are not to be here.”

16. Then Simmons got off of Vaughn and took his hand and grabbed her scalp and gripped her hair and by the hair he stood Vaughn up and then squatted her back down and made her crawl at least 100 feet to the fence between Vaughn’s home and the neighbor’s home, where the neighbors, Mr. and Mrs. Pennica, were standing with a huge spotlight shining in Vaughn’s eyes.

17. Simmons picked up Vaughn’s head to position it to show the neighbors as if she were a trophy animal, then squatted Vaughn down and made her crawl approximately 125 feet to his car. Then Simmons asked if Vaughn would get into the car and Vaughn said softly, “you need to do the right thing. My arm is broken and you need to call an ambulance.” He did.

18. During the entire course of this episode, Simmons appeared angry, full of rage and out of control.

19. During the course of this episode, Simmons caused severe bodily injury to Vaughn. He fractured her arm and elbow which required surgery, dislocated her shoulder (which needs surgery), caused a concussion and other injuries as well as severe mental anguish. Following the incident, Vaughn had significant bruising on her face and body.

20. Vaughn was arrested and charged with the following offenses:

- a. Disorderly conduct
- b. Simple battery
- c. Resisting arrest without violence, and
- d. Resisting arrest with violence.

21. The State of Florida dropped the charges of disorderly conduct and resisting arrest with violence.

22. Vaughn went to trial on the charges of simple battery and resisting arrest without violence. She was found not guilty of the battery charge (which charge pertained to a claim that Vaughn had turned a water hose on her neighbor) and was found guilty of resisting arrest without violence. Adjudication of guilt was withheld.

23. As a result of Simmons' actions, Vaughn has sustained permanent injuries drastically reducing her ability to work, she has sustained mental anguish, emotional distress and humiliation, loss of the capacity for the enjoyment of life, past and future medical expenses and past and future lost income.

24. It should be noted that Vaughn was found guilty of resisting arrest **without violence** only. The lack of any violence on Vaughn's part during the arrest proves without a doubt that Simmons' actions which resulted in Vaughn's severe injuries were excessive.

25. At all times pertinent to this matter, Simmons was an agent and/or employee of the Sheriff, was acting within the course and scope of his employment, and was subject to the control and direction of the Sheriff.

COUNT I - EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983 AND FOURTH AND FOURTEENTH AMENDMENTS TO U.S. CONSTITUTION - SIMMONS

26. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 24 as if fully set forth herein.

27. On May 15, 2008, in the course of Simmons' arrest of Vaughn on the charge of simple battery, Simmons, acting under color of state law, used excessive force in violation of Vaughn's clearly established rights secured by the Fourth Amendment to the U.S. Constitution.

28. Excessive, unreasonable force was used on Vaughn, including: repeatedly slamming

Vaughn's front door into her head; face, body and arm, overpowering her and breaking Vaughn's arm while Vaughn was completely or partially handcuffed and when Vaughn was not resisting arrest with any violence, and in dragging Vaughn into her yard, pulling her up by the hair and making her crawl through the yard.

29. No reasonable officer would believe that this level of force was necessary in the situation at hand.

30. The crime Vaughn was being arrested for was simple battery and was minor in nature (allegedly soaking a neighbor with a water hose).

31. Vaughn posed no immediate threat to Simmons or anyone else. Simmons was much larger and stronger than Vaughn, who at the time was 56 years old and diminutive in stature.

32. At the time, Vaughn was not resisting arrest with violence or attempting to evade arrest by flight.

33. At the time of this incident the law was clearly established that the amount and character of force applied to Vaughn was excessive. *See Galvez v. Bruce*, 552 F.3d 1238 (11th Cir. 2008), and cases cited therein.

34. During the entire course of the incident, Simmons was in total control of Vaughn and acted with anger and rage, putting Vaughn in fear of her life.

35. As a result of Simmons' use of excessive force as described above, Vaughn has suffered permanent injuries.

WHEREFORE, Vaughn seeks judgment against Simmons for compensatory damages and such other relief as this Court deems just and proper.

COUNT II - FALSE IMPRISONMENT IN VIOLATION OF 42 U.S.C. § 1983 AND FOURTH AND FOURTEENTH AMENDMENTS TO U.S. CONSTITUTION - SIMMONS

36. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 24 as

if fully set forth herein.

37. On May 15, 2008, Simmons lacked probable cause to arrest Vaughn for simple battery on Vaughn's neighbor, Mr. Pennica since Simmons did not see the alleged incident and it should have been obvious to Simmons that Mr. and Mrs. Pennica were merely inciting an incident to harm Vaughn.

38. On May 15, 2008 Simmons, acting under color of state law, unlawfully detained Vaughn, depriving her of her liberty against her will, by his conduct when he first handcuffed Vaughn at her door and continuing when he caused Vaughn to lay on the ground and be forcibly moved to the neighbor's fence and to the police car.

39. Simmons' actions were unreasonable and not warranted by the circumstances.

40. Simmons' intended to detain Vaughn.

41. Simmons' unlawful actions were incident to his arrest of Vaughn for simple battery, as to which she was found "not guilty" in her criminal trial.

42. Simmons' unlawful actions violated Vaughn's clearly established rights secured by the Fourth Amendment to the U.S. Constitution.

43. No reasonable officer would believe that Vaughn should be detained and/or arrested under the circumstances.

44. The crime Vaughn was being arrested for was simple battery and was minor in nature (allegedly soaking a neighbor with a water hose).

45. As a result of Simmons' unlawful imprisonment of Vaughn, Vaughn suffered injury.

WHEREFORE, Vaughn seeks judgment against Simmons for compensatory damages and such other relief as this Court deems just and proper.

**COUNT III - MUNICIPAL LIABILITY FOR EXCESSIVE FORCE IN VIOLATION OF
42 U.S.C. § 1983 AND FOURTH AND FOURTEENTH AMENDMENTS TO U.S.
CONSTITUTION - SHERIFF**

46. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 25 and paragraphs 27 through 35 as if fully set forth herein.

47. Prior to Simmons' employment with the Sheriff, Simmons was arrested and charged with domestic violence on a woman - the mother of his children. He was accused of striking her with a hairbrush, punching her and kicking her.

48. Also prior to Simmons' employment with the Sheriff, Simmons was arrested for fondling a child.

49. The Sheriff has a custom or policy or practice or procedure of hiring officers with a violent past towards women and/or officers of immoral character.

50. Said policy led to the rage and violence and excessive force committed by Simmons towards Vaughn.

51. The Sheriff also inadequately trained Simmons in handling neighbor disputes, amounting to a deliberate indifference towards the rights of citizens such as Vaughn with whom Simmons would be expected to come into contact.

52. Said inadequate training led to the excessive force committed by Simmons towards Vaughn.

WHEREFORE, Vaughn seeks judgment against Sheriff for compensatory damages and such other relief as this Court deems just and proper.

**COUNT IV - MUNICIPAL LIABILITY FOR FALSE IMPRISONMENT IN VIOLATION OF
42 U.S.C. § 1983 AND FOURTH AND FOURTEENTH AMENDMENTS TO U.S.
CONSTITUTION - SHERIFF**

53. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 25 and paragraphs 37 through 46 as if fully set forth herein.

54. Prior to Simmons' employment with the Sheriff, Simmons was arrested and charged with domestic violence on a woman - the mother of his children. He was accused of striking her with a hairbrush, punching her and kicking her.

55. Also prior to Simmons' employment with the Sheriff, Simmons was arrested for fondling a child.

56. The Sheriff has a custom or policy or practice or procedure of hiring officers with a violent past towards women and/or officers of immoral character.

57. Said policy led to Simmons' false imprisonment of Vaughn.

58. The Sheriff also inadequately trained Simmons in handling neighbor disputes, amounting to a deliberate indifference towards the rights of citizens such as Vaughn with whom Simmons would be expected to come into contact.

59. Said inadequate training led to Simmons' false imprisonment of Vaughn.

WHEREFORE, Vaughn seeks judgment against Sheriff for compensatory damages and such other relief as this Court deems just and proper.

COUNT V - BATTERY - SHERIFF

60. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 25 as if fully set forth herein.

61. Simmons' contact with Vaughn on May 15, 2008 consisted of harmful or offensive contact with the intent to cause that contact.

62. Vaughn was injured as a result of Simmons' intentional and harmful or offensive contact with Vaughn.

63. Simmons' conduct on May 15, 2008 was in the course and scope of his employment with the Sheriff and the Sheriff is therefore responsible for Simmons' conduct and the damages caused thereby.

WHEREFORE, Vaughn seeks judgment against the Sheriff for compensatory damages and such other relief as this Court deems just and proper.

COUNT VI - FALSE ARREST (FALSE IMPRISONMENT) - SHERIFF

64. Vaughn hereby re-alleges and incorporates the allegations of paragraphs 8 through 25 as if fully set forth herein.

65. On May 15, 2008, Simmons lacked probable cause to arrest Vaughn for simple battery on Vaughn's neighbor, Mr. Pennica.

66. On May 15, 2008 Simmons unlawfully detained Vaughn, depriving her of her liberty against her will, by his conduct when he first hand cuffed Vaughn at her door and continuing when he caused Vaughn to lay on the ground and be forcibly moved to the neighbor's fence and to the police car.

67. Simmons' actions were unreasonable and not warranted by the circumstances.

68. Simmons' intended to detain Vaughn.

69. Simmons' unlawful actions were incident to his arrest of Vaughn for simple battery, as to which she was found "not guilty" in her criminal trial.

70. Simmons' conduct on May 15, 2008 was in the course and scope of his employment with the Sheriff and the Sheriff is therefore responsible for Simmons' conduct and the damages caused thereby.

WHEREFORE, Vaughn seeks judgment against the Sheriff for compensatory damages and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of January, 2014, I sent a copy of this motion via email to

Summer Barranco, Esq., Purdy, Jolly, Giuffreda & Barranco, 2455 East Sunrise Blvd., Suite 1216,
Fort Lauderdale, Florida 33304, summer@purdylaw.com.

DEBBIE VAUGHN

Pro Se Plaintiff

11581 Tangerine Blvd.

Royal Palm Beach, FL 33412

Telephone: (561) 339-2227

Email: deeannadog@aol.com

By: 
DEBBIE VAUGHN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DEBBIE VAUGHN,

CASE NO.: 9:13-CV-80958-RYSKAMP/HOPKINS

Plaintiff,

vs.

DEPUTY SHERIFF DALMINO SIMMONS,
individually and in his official capacity as a
police officer with the Palm Beach County
Sheriff's Office and RIC L. BRADSHAW,
the Sheriff of Palm Beach County,

Defendants.

NOTICE OF SELECTION OF MEDIATOR

The Defendants, SHERIFF RIC BRADSHAW and DALMINO SIMMONS, by and through undersigned counsel, pursuant to this Court's Order of Referral to Mediation [DE 11] hereby files this their Notice of Selection of Mediator and would state as follows:

Undersigned counsel has conferred with Plaintiff, Debbie Vaughn, and the parties are in agreement to mediate this matter before Stephen Fischer of Matrix Mediation. The mediation will be conducted at a mutually convenient date and time for all parties prior to the October 30, 2014 deadline established by the Court's Order of Referral to Mediation. [DE 11].

I HEREBY CERTIFY that a copy of the foregoing was sent via email and U.S. mail to: **Debbie Vaughn**, 11581 Tangerine Blvd., Royal Palm Beach, FL 33412, deeannadog@aol.com this 23rd day of January, 2014.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants
2455 East Sunrise Blvd, Suite 1216
Fort Lauderdale, Florida 33304
Telephone (954) 462-3200
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BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DEBBIE VAUGHN,

CASE NO.: 9:13-CV-80958-RYSKAMP/HOPKINS

Plaintiff,

vs.

DEPUTY SHERIFF DALMINO SIMMONS,
individually and in his official capacity as a
police officer with the Palm Beach County
Sheriff's Office and RIC L. BRADSHAW,
the Sheriff of Palm Beach County,

Defendants.

DEFENDANT RIC BRADSHAW'S ANSWER/DEFENSES TO AMENDED COMPLAINT

The Defendant, RIC L. BRADSHAW, the Sheriff of Palm Beach County, through his undersigned attorneys, files this his Answer/Defenses to the Amended Complaint as follows:

1. Admitted for jurisdictional purposes only.
2. Admitted for jurisdictional purposes only.
3. Admitted for jurisdictional purposes only.
4. Denied and strict proof thereof is demanded.

PARTIES

5. Admitted.
6. Admitted.
7. Denied as phrased.
8. Denied as phrased.
9. Denied as phrased.
10. Denied.

11. Denied.
12. Denied as phrased.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Admitted.
21. Denied as phrased.
22. Admitted.
23. Denied.
24. Denied as phrased.
25. Denied as phrased.

COUNT I - EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SIMMONS

26 - 35. As this Count is not brought against the Defendant Sheriff, no responses are being provided to paragraphs 26 - 35.

COUNT II - FALSE IMPRISONMENT IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SIMMONS

36 - 45. As this Count is not brought against the Defendant Sheriff, no responses are being provided to paragraphs 36 - 45.

**COUNT III - MUNICIPAL LIABILITY FOR EXCESSIVE FORCE IN VIOLATION OF
42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S.
CONSTITUTION - SHERIFF**

- 46. See responses to paragraphs 8 - 25 above. Paragraphs 27 - 35 are denied.
- 47. Denied as phrased.
- 48. Denied as phrased.
- 49. Denied.
- 50. Denied.
- 51. Denied.
- 52. Denied.

**COUNT IV - MUNICIPAL LIABILITY FOR FALSE IMPRISONMENT IN VIOLATION
OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S.
CONSTITUTION - SHERIFF**

- 53. See responses to paragraphs 8 - 25 and 46 above. Paragraphs 37 - 45 are denied.
- 54. Denied as phrased.
- 55. Denied as phrased.
- 56. Denied.
- 57. Denied.
- 58. Denied.
- 59. Denied.

COUNT V - BATTERY - SHERIFF

- 60. See responses to paragraphs 8 - 25 above.
- 61. Denied.
- 62. Denied.
- 63. Denied as phrased.

COUNT VI - FALSE ARREST (FALSE IMPRISONMENT) - SHERIFF

- 64. See responses to paragraphs 8 - 25 above.
- 65. Denied.
- 66. Denied.
- 67. Denied.
- 68. Admitted.
- 69. Denied.
- 70. Denied as phrased.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

DEFENSES

71. As a first Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure would assert that Plaintiff has failed to make sufficient allegations of ultimate fact from which it can be determined that a claim for relief has been stated.

72. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff were caused by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

73. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by reason of the wrongful acts of others over which this Defendant had no control or responsibility to control.

74. As a further and separate Defense, the Defendant would assert that any and all actions taken by his deputies were lawful and taken:

- a. Without malice;
- b. With probable cause and/or reasonable suspicion;
- c. In pursuit of lawful and legal duties;
- d. With such force as was reasonably necessary under the circumstances.

75. As a further and separate Defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

76. As a further and separate Defense, the Defendant would state that to the extent the Plaintiff has failed to mitigate her damages, including but not limited to, by not availing herself of medical treatment where such medical treatment is or was reasonably expected to diminish Plaintiff's alleged disability, discomfort, and damages, and/or by failing to mitigate her damages by failing to resume gainful employment at a time when Plaintiff was physically able to do so but did not, Defendant is entitled to a reduction of any jury award.

77. As a further and separate Defense, the Defendant would assert that he is immune from liability, or liability is limited for any and all alleged injuries or damages about which Plaintiff complains of by virtue and by operation of §768.28, Florida Statutes.

78. As a further and separate Defense, the Defendant would assert that he is immune from liability or liability is limited for any and all alleged injuries or damages about which Plaintiff complains by virtue and by operation of the concept of sovereign immunity.

79. As a further and separate Defense, the Defendant would assert that the Plaintiff has failed to properly give notice to the Department of Financial Services pursuant to Florida Statute §768.28(6) which is a condition precedent to the subject action.

80. As a further and separate Defense, the Defendant would assert that the conditions subsequent as set forth in Florida Statute §768.28(7) have not been complied with by the Plaintiff.

81. As a further and separate Defense, the Defendant Sheriff would assert that he has no custom, policy, practice or procedure that provided the moving force or cause of any alleged violation of Plaintiff's constitutional rights.

82. As a further and separate Defense, the Defendant would state Plaintiff is collaterally estopped from bringing claims for false arrest and false imprisonment as set forth in the Amended Complaint.

83. As a further and separate Defense, the Defendant would state that due to Plaintiff's criminal conviction for Resisting Without Violence, Plaintiff is barred from bringing the claims for section 1983 false arrest and false imprisonment as set forth in the Amended Complaint based upon the dictates of Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994).

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF and a copy of same was sent via U.S. mail and email to: **DEBBIE VAUGHN**, 11581 Tangerine Blvd., Royal Palm Beach, FL 33412, deeannadog@aol.com this **30th** day of January, 2014.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants
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BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DEBBIE VAUGHN,

CASE NO.: 9:13-CV-80958-RYSKAMP/HOPKINS

Plaintiff,

vs.

DEPUTY SHERIFF DALMINO SIMMONS,
individually and in his official capacity as a
police officer with the Palm Beach County
Sheriff's Office and RIC L. BRADSHAW,
the Sheriff of Palm Beach County,

Defendants.

DEFENDANT DALMINO SIMMONS'
ANSWER/DEFENSES TO AMENDED COMPLAINT

The Defendant, DEPUTY SHERIFF DALMINO SIMMONS, individually, files this his
Answer/Defenses to the Amended Complaint as follows:

1. Admitted for jurisdictional purposes only.
2. Admitted for jurisdictional purposes only.
3. Admitted for jurisdictional purposes only.
4. Denied and strict proof thereof is demanded.

PARTIES

5. Admitted.
6. Admitted.
7. Denied as phrased.
8. Denied as phrased.
9. Denied as phrased.
10. Denied.

11. Denied.
12. Denied as phrased.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Admitted.
21. Denied as phrased.
22. Admitted.
23. Denied.
24. Denied as phrased.
25. Denied as phrased.

COUNT I - EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SIMMONS

26. See responses to paragraphs 8 - 24 above.
27. Denied.
28. Denied.
29. Denied.
30. Denied as phrased.
31. Denied as phrased.
32. Denied.

33. Denied.

34. Denied.

35. Denied.

COUNT II - FALSE IMPRISONMENT IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SIMMONS

36. See responses to paragraphs 8 - 24 above.

37. Denied.

38. Denied.

39. Denied.

40. Admitted.

41. Denied.

42. Denied.

43. Denied.

44. Denied as phrased.

45. Denied.

COUNT III - MUNICIPAL LIABILITY FOR EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SHERIFF

46 - 52. As this Count is not brought against the Defendant Simmons, no responses are being provided to paragraphs 46 - 52.

COUNT IV - MUNICIPAL LIABILITY FOR FALSE IMPRISONMENT IN VIOLATION OF 42 U.S.C. § 1983 FOURTH AND FOURTEENTH AMENDMENT TO U.S. CONSTITUTION - SHERIFF

53 - 59. As this Count is not brought against the Defendant Simmons, no responses are being provided to paragraphs 53 - 59.

COUNT V - BATTERY - SHERIFF

60 - 63. As this Count is not brought against the Defendant Simmons, no responses are being provided to paragraphs 60 - 63.

COUNT VI - FALSE ARREST (FALSE IMPRISONMENT) - SHERIFF

64 - 70. As this Count is not brought against the Defendant Simmons, no responses are being provided to paragraphs 64 - 70.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

DEFENSES

71. As a first Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure would assert that Plaintiff has failed to make sufficient allegations of ultimate fact from which it can be determined that a claim for relief has been stated.

72. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff were caused by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

73. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by reason of the wrongful acts of others over which this Defendant had no control or responsibility to control.

74. As a further and separate Defense, the Defendant would assert that any and all actions taken by him were lawful and taken:

- a. Without malice;
- b. With probable cause and/or reasonable suspicion;
- c. In pursuit of lawful and legal duties;

d. With such force as was reasonably necessary under the circumstances.

75. As a further and separate Defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

76. As a further and separate Defense, the Defendant would state that to the extent the Plaintiff has failed to mitigate her damages, including but not limited to, by not availing herself of medical treatment where such medical treatment is or was reasonably expected to diminish Plaintiff's alleged disability, discomfort, and damages, and/or by failing to mitigate her damages by failing to resume gainful employment at a time when Plaintiff was physically able to do so but did not, Defendant is entitled to a reduction of any jury award.

77. As a further and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable officer would have had knowledge and, at all times, otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions.

78. As a further and separate Defense, the Defendant would state Plaintiff is collaterally estopped from bringing claims for false arrest and false imprisonment as set forth in the Amended Complaint.

79. As a further and separate Defense, the Defendant would state that due to Plaintiff's criminal conviction for Resisting Without Violence, Plaintiff is barred from bringing the claims for section 1983 false arrest and false imprisonment as set forth in the Amended Complaint based upon the dictates of Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994).

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF and a copy of same was sent via U.S. mail and email to: **DEBBIE VAUGHN**, 11581 Tangerine Blvd., Royal Palm Beach, FL 33412, deeannadog@aol.com this 30th day of January, 2014.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
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