

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

RESSIE NICOLE LEE, )  
Plaintiff, )  
v. )  
HOUSTON COUNTY, ALABAMA, )  
*et al.*, )  
Defendants. )  
CASE NO: 1:12-cv-1018-MEF  
(WO – Do Not Publish)

## ORDER

Now pending before the Court is Defendants Sheriff Andy Hughes, Commander Keith Reed, and Corrections Deputies Tammy Sapp, Michael Champion, and Tracey Hunter’s (hereinafter referred to collectively as “Defendants”) Motion for Leave to File Additional Affidavit Out of Time (Doc. #32) and Plaintiff’s Response (Doc. #33). Defendants seek leave to supplement the evidentiary materials submitted with their timely-filed Reply to Plaintiff’s Response to Defendants’ Motion to Dismiss for Failure to Exhaust Administrative Remedies (“Reply”). (Doc. #29.) Within their Reply, Defendants advised the Court that they would be seeking leave to file the affidavit of Nurse Evelyn McGhee (“Nurse McGhee”), stating as grounds for their motion that Nurse McGhee’s work schedule prevented them from preparing and timely filing her affidavit by the Reply deadline.

Plaintiff opposes Defendants' motion, arguing that Defendants are seeking to submit another "fact-riddled affidavit" that touches on the merits of Plaintiff's claims. (Doc. #33.) The Court is unconvinced by Plaintiff's arguments in opposition to Defendants' motion.

The assertions in Nurse McGhee's affidavit may be pertinent to the resolution of Defendants' pending motion to dismiss. *See Bryant v. Rich*, 530 F.3d 1368, 1376 (11th Cir. 2008) ("Where exhaustion—like jurisdiction, venue, and service of process—is treated as a matter in abatement and not an adjudication on the merits, it is proper for a judge to consider facts outside of the pleadings and to resolve factual disputes so long as the factual disputes do not decide the merits . . ."). The Court further finds that Plaintiff will not be prejudiced if Defendants' motion is granted.

Accordingly, for good cause, it is hereby ORDERED that

- (1) Defendants' Motion for Leave to File Additional Affidavit Out of Time (Doc. #32) is GRANTED; and
- (2) Defendants' previously filed Motion for Extension of Time (Doc. #28) is DENIED AS MOOT.

DONE this the 26<sup>th</sup> day of April, 2013.

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/s/ Mark E. Fuller

UNITED STATES DISTRICT JUDGE