

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 07-21139-CIV-COOKE/WHITE**

ERIK SANCHEZ

*Plaintiff,*

v.

HIALEAH POLICE DEPARTMENT, *et al.*,

*Defendants.*

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**ORDER ADOPTING JUDGE WHITE'S REPORT AND RECOMMENDATION**

This matter is before me on Judge White's Report and Recommendation [D.E. 86] and Defendants R. Del Nodal's and L. Garrido's Objections to Report [D.E. 90]. I have conducted a *de novo* review of the record, which included Plaintiff Erik Sanchez's Third Amended Complaint and Motion for Detailed Damage Claims, Defendants' Motion for Summary Judgment, Judge White's Report, and Defendants' Objections to Report.

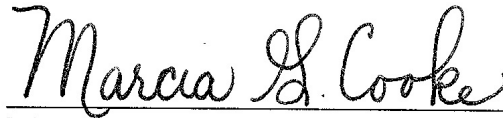
Defendants allege that there are no disputed questions of material facts and that the Report fails to allege that, pursuant to Fla. Stat. § 776.085, Plaintiff cannot recover damages due to his conviction for a forcible felony.

Having reviewed the Third Amended Complaint and the Motion for Detailed Damage Claims, I find that there are genuine issues as to material facts, as outlined in Judge White's Report. [D.E. 34, 41]. Defendants' argument regarding Fla. Stat. § 776.085, however, needs to be more fully briefed.

Therefore, I find that Judge White's Report should be affirmed and adopted to the extent that the Motion for Summary Judgment is denied without prejudice to the Defendants to revisit

the issue of the viability of Plaintiff's cause of action considering Fla. Stat. § 776.085 and considering that Plaintiff's conviction was based on a plea bargain as opposed to a jury verdict.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 7th day of March 2009.

A handwritten signature in cursive script that reads "Marcia G. Cooke". The signature is written in black ink and is positioned above a horizontal line.

MARCIA G. COOKE  
United States District Judge

cc:

All counsel of record

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