

Magistrate Judge in his Report and Recommendation. Defendants are correct, however, that the Recommendation does not specifically address Defendants' allegations that res judicata bars Plaintiff's claims. Contrary to Defendants' assertions, the Court finds that res judicata does not bar Plaintiff's claims. The Eleventh Circuit in Brown v. Head, 190 Fed. Appx. 808 (11th Cir. 2006), found that Plaintiff's deliberate indifference claims against that defendant at best showed mere negligence and therefore was insufficient to establish deliberate indifference. In contrast, Plaintiff's claims here may show deliberate indifference, depending on the jury's determination of facts at trial. Thus, this Court agrees with the Recommendation to deny Defendants' Motion for Summary Judgment.

Also before the Court are Plaintiff's Motion to Reopen and Compel Discovery [Doc. 56] and Plaintiff's Request for Extension of Time to File Response to Defendants' Objection to the Magistrate Judge's Order and Recommendation [Doc. 57]. Both Motions are hereby **DENIED as moot** as Plaintiff's claims will proceed to trial.

SO ORDERED, this 31st day of March 2009.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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