

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E.D.N.Y

★ APR 18 2013 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NELSON HERRERA,

Plaintiff,

ORDER
13-cv-1637 (SJF)(WDW)

-against-

NASSAU COUNTY SHERIFFS
DEPARTMENT CORRECTIONAL CENTER,

Defendant.

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FEUERSTEIN, District Judge:

This Court has received a purported "sample" of the conditions allegedly existing at the Nassau County Correctional Center ("NCCC") from plaintiff. The Court does not have the ability to store and preserve this purported evidence; nor is the Court obligated to test or examine it in any way. Moreover, parties are not entitled to submit any discovery materials to the Court at this stage of the litigation. See Rule 5.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Civil Rule 5.1") and the Committee Note to Local Civil Rule 5.1 ("The Committee believes that Local Civil Rule 5.1 continues to serve a very useful purpose by making clear that *only* those discovery materials that are *necessary to the decisional process* should be filed *in connection with a motion or application* [pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure].") (emphasis added). Accordingly, plaintiff is hereby,

ORDERED to refrain from submitting any discovery materials, including any additional samples or specimen of any kind to the Court, unless filed in connection with a motion made pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure and necessary to the decisional process. Any violation of this order may result in sanctions being imposed pursuant to

Rule 16(f)(1)(C) of the Federal Rules of Civil Procedure, including, *inter alia*, dismissing plaintiff's action in its entirety with prejudice; and it is further,

ORDERED that pursuant to Rule 77(d)(1) of the Federal Rules of Civil Procedure, the Clerk of the Court shall serve notice of entry of this order upon all parties in accordance with Rule 5(b) of the Federal Rules of Civil Procedure, including mailing a copy of this order to plaintiff's address of record pursuant to Rule 5(b)(2)(C).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed.2d 21 (1962).

SO ORDERED.

/s/ Sandra J. Feuerstein

~~SANDRA J. FEUERSTEIN~~
United States District Judge

Dated: April 18, 2013
Central Islip, New York