

WITHOUT PREJUDICE to plaintiffs' right to file an Amended Complaint within twenty days if warranted by the facts;

c. The part of defendant's motion which seeks a dismissal of plaintiffs' state law claim is **MARKED WITHDRAWN** by agreement of the parties; and

d. The part of defendant's motion which seeks a dismissal of the excessive force claim in Count Three is **DENIED WITHOUT PREJUDICE** to defendant's right to assert the defense of qualified immunity, and any other appropriate defense, after relevant discovery by summary judgment motion and/or at trial.

IT IS FURTHER ORDERED that a scheduling conference shall be conducted in due course;

IT IS FURTHER ORDERED that the caption of this case shall be amended to delete reference to plaintiffs William Christy and Denasia Christy.

BY THE COURT:

/s/ Hon. Jan E. DuBois
JAN E. DUBOIS, J.