

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ERVIN B. ROGERS,
Plaintiff,

ORDER

- against -

CV 2012-3042 (CBA)(MDG)

POLICE OFFICER JOSE VILLAFANE,
Defendant.

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Defendant moves to dismiss the complaint for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.¹ On December 24, 2012, defendant moved to compel plaintiff to execute and return releases for plaintiff's arrest record and medical records so that defendant could obtain information necessary to respond to plaintiff's complaint. See ct. doc. 10. On December 26, 2012, this Court granted defendant's request and directed plaintiff to execute and promptly return to counsel for defendant by January 14, 2013 the authorizations for release of sealed arrest and criminal prosecution records and medical records which counsel for the defendant had sent. See electronic order dated 12/26/12. However, there is no indication on the docket sheet that the Court mailed plaintiff a copy of the December 26, 2012 order.

¹ Since defendant moves to dismiss as a sanction for failure to comply with my order concerning pretrial discovery, I will address it in the first instance. However, were dismissal an appropriate sanction, I would address the motion as a report and recommendation. See Thomas E. Hoar, Inc. v. Sara Lee Corp., 900 F.2d 522, 525 (2d Cir. 1990).

Since plaintiff may not have received a copy of the order, it is premature to entertain a motion to dismiss.

Accordingly, plaintiff must execute and return to counsel for defendant by February 14, 2013 the authorizations for release of sealed arrest and criminal prosecution records and medical records previously sent to plaintiff. Failure to comply with this order may result in sanctions being imposed against plaintiff, including dismissal of this action.

SO ORDERED.

Dated: Brooklyn, New York
February 1, 2013

_____/s/_____
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE