

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARREN DIONE AQUINO,

Plaintiff,

-against-

MEMORANDUM & ORDER
16-CV-6297 (JS) (GRB)

LEGAL AID SOCIETY OF NASSAU COUNTY,
NASSAU COUNTY DISTRICT COURT IN
THE STATE OF NEW YORK, JENNIFER
MCNULTY, MICHELLE DOWST, GEORGE
TORRES, BRIANA RIZZO, and JANE DOE
AND JOHN DOE, IN THEIR OFFICIAL
CAPACITY AS COUNSEL,

Defendants.

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APPEARANCES:

For Plaintiff: Darren Dione Aquino, pro se
574 Junard Boulevard
West Hempstead, NY 11552

For Defendants:
Nassau County District Court
Ralph Pernick, Esq.
New York State Attorney General
200 Old Country Road, Suite 240
Mineola, NY 11501

All other Defendants No appearance.

SEYBERT, District Judge:

On November 7, 2016, pro se plaintiff Darren Dione Aquino ("Plaintiff") filed a Complaint against the Legal Aid Society of Nassau County, NY ("Legal Aid"), the Nassau County District Court in the State of New York (the "District Court"), Jennifer McNulty ("McNulty"), Michelle Dowst ("Dowst"), George Torres ("Torres"), Briana Rizzo ("Rizzo"), and John Doe, and Jane Doe (collectively, "Defendants") alleging a deprivation of his constitutional rights

as well as violation of the Americans with Disabilities Act ("ADA") and the Health Insurance Portability and Accountability Act ("HIPPA"). Plaintiff did not pay the Court's filing fee at the time he filed the Complaint, nor did he file an application to proceed in forma pauperis. Accordingly, by Notice of Deficiency dated November 10, 2016 ("Notice"), Plaintiff was advised that, in order to proceed with his Complaint, he must either remit the filing fee or complete and return the enclosed application to proceed in forma pauperis within fourteen (14) days from the date of the Notice. On November 28, 2016, Plaintiff timely filed an application to proceed in forma pauperis.

Upon review of the declaration in support of Plaintiff's application, the Court finds that Plaintiff's submission is incomplete. Although Plaintiff has checked the box on the form to indicate that he receives monthly Social Security Disability payments, he does not state the amount he receives. In addition, although Plaintiff avers that he has monthly expenses for cable television and cell phone service, the amount of each of these monthly services is illegible. Further, Plaintiff has left question number seven blank. Given these deficiencies, the Court is unable to assess Plaintiff's financial position in the context of the application and thus his request to proceed in forma pauperis is DENIED WITHOUT PREJUDICE to a renewal thereof upon completion of the AO 239 in forma pauperis application form annexed

to this Order.¹ Plaintiff is directed to either remit the \$400.00 filing fee or complete and return the enclosed in forma pauperis application within fourteen (14) days from the date of this Order. Plaintiff is cautioned that a failure to timely comply with this Order will lead to the dismissal of the Complaint without prejudice.

In addition, on December 15, 2016, the attorney for the Nassau County District Court filed a letter motion (see Ltr. Mot., Docket Entry 11) requesting that the Court either schedule a pre-motion conference in anticipation of moving to dismiss the Complaint, or, in the alternative, dispensing with such conference and permitting the District Court's motion to dismiss, filed on December 14, 2016, (see Mot., Docket Entry 10) to stand. The District Court's letter motion is DENIED WITHOUT PREJUDICE to a renewal thereof upon resolution of the Plaintiff's application to proceed in forma pauperis, as set forth above.

CONCLUSION

For the reasons set forth above, Plaintiff's application to proceed in forma pauperis is DENIED WITHOUT PREJUDICE to a

¹ Plaintiff is no stranger to this Court. The Court has reviewed the applications to proceed in forma pauperis submitted by Plaintiff in his more recent actions, 14-CV-5446 Aquino v. State of New York, and 16-CV-00146 Aquino v. SAG AFTRA, and, because there are inconsistencies in Plaintiff's responses on the short form in forma pauperis application (AO 240), Plaintiff can best set forth his current financial position on the Long Form (AO 239).

renewal thereof upon completion of the enclosed application to proceed in forma pauperis. Plaintiff is directed to either remit the \$400.00 filing fee or complete and return the enclosed in forma pauperis application within fourteen (14) days from the date of this Order. Plaintiff is cautioned that a failure to timely comply with this Order will lead to the dismissal of the Complaint without prejudice.

The letter motion by the District requesting that the Court either schedule a pre-motion conference in anticipation of moving to dismiss the Complaint, or, in the alternative, dispensing with such conference and permitting the Nassau County District Court's motion to dismiss, filed on December 14, 2016, to stand is DENIED WITHOUT PREJUDICE to a renewal thereof upon resolution of the Plaintiff's application to proceed in forma pauperis, as set forth above. (See Ltr. Mot.)

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/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: January 31, 2017
Central Islip, New York