

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSEPH GUARNERI,

Plaintiff,

v.

**1:21-CV-0991
(TJM/ML)**

**SCHOHARIE COUNTY DEPARTMENT
OF SOCIAL SERVICE; COMMISSIONER
DONNA BECKER; ACTING COMMISSIONER
JULLIE SAMMON; WORKER MELISSA
GOODEARU; WORKER KAYLTHIN RUSSEL;
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE; CASE WORKER LEANN BRADT,
of Rehabilitation Support; and GOVERNOR CUOMO,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION and ORDER

I. INTRODUCTION

The Clerk of the Court sent the *pro se* Complaint (Dkt. No. 1) together with an application to proceed *in forma pauperis* (Dkt. No. 3) filed by Joseph Guarneri ("Plaintiff") to the Hon. Miroslav Lovric, United States Magistrate Judge, for review. Judge Lovric granted Plaintiff's *in forma pauperis* application, and recommended:

-that the Court DISMISS WITH LEAVE TO REPLEAD Plaintiff's claims pursuant to (1) 42 U.S.C. § 1983 against Defendants Schoharie County, Becker, Sammon, Goodearu, Russel, and Brandt, (2) 42 U.S.C. § 1983 against Defendant Cuomo in his individual capacity, (3) the ADA, and (4) New York state common law negligence, for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B);

and,

-that the Court DISMISS WITHOUT LEAVE TO REPLEAD Plaintiff's claims pursuant to 42 U.S.C. § 1983 against Defendants Office of Temporary and Disability Assistance and Cuomo in his official capacity, because those claims seek monetary relief against Defendants who are immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B).

Order and Rep-Rec., Dkt. No. 4, at 23-24.

Plaintiff did not object to the Order and Report-Recommendation, and the time to do so has passed.¹

II. DISCUSSION

After examining the record, this Court has determined that the Order and Report-Recommendation is not subject to attack for plain error or manifest injustice. The Court will accept and adopt Judge Lovric's recommendations for the reasons stated within the Order and Report-Recommendation.

III. CONCLUSION

Accordingly, Judge Lovric's Order and Report-Recommendation, Dkt. No. 4, is **ACCEPTED and ADOPTED**. Thus, it is hereby

ORDERED that Plaintiff's claims pursuant to (1) 42 U.S.C. § 1983 against Defendants Schoharie County, Becker, Sammon, Goodearu, Russel, and Brandt, (2) 42 U.S.C. § 1983 against Defendant Cuomo in his individual capacity, (3) the ADA, and (4) New York state common law negligence, are **DISMISSED WITH LEAVE TO REPLEAD**

¹Judge Lovric's Order and Report-Recommendation was initially served on Plaintiff by mailing to what turned out to be an improper address, resulting in it being returned as undeliverable. Dkt. No. 5. Then, on January 3, 2022, the Clerk of the Court reserved the Order and Report-Recommendation on Plaintiff by mailing it to Plaintiff's address listed in the Complaint. *Id.* No objections have been filed to date.

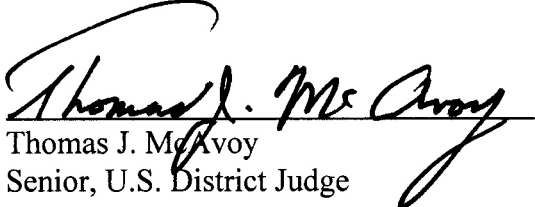
pursuant to 28 U.S.C. § 1915(e)(2)(B); and, it is further

ORDERED that Plaintiff's claims pursuant to 42 U.S.C. § 1983 against Defendants Office of Temporary and Disability Assistance and Cuomo in his official capacity are **DISMISSED WITHOUT LEAVE TO REPLEAD** pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further

ORDERED that **Plaintiff is granted leave of thirty (30) days from the date of this Decision and Order in which to file an amended complaint.** If Plaintiff files an amended complaint within thirty (30) days of the date of this Decision and Order, the Clerk of the Court is directed to send it to Judge Lovric for initial review. **If Plaintiff does not file an amended complaint within thirty (30) days of the date of this Decision and Order, the Clerk of the Court is directed to close the file in this case.**

IT IS SO ORDERED.

Dated: May 10, 2022


Thomas J. McAvoy
Senior, U.S. District Judge