

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

A.M.GOODALE SR.R.A 3

Plaintiff,

**5:13-CV-1494
(GLS/ATB)**

v.

CHARMAINE.A.BILL et al.,

Defendants.

SUMMARY ORDER

Plaintiff *pro se* A.M.Goodale commenced this action against multiple defendants, including The State Of New York, The New York State Office of Mental Health, and several individual defendants, pursuant to 42 U.S.C. § 1983, alleging a violation of his Eighth Amendment right to be free from cruel and unusual punishment. (*See generally* Compl., Dkt. No. 1.)

Pending are defendants' motion to dismiss, (Dkt. No. 27), and Goodale's unopposed cross motion seeking leave to amend his complaint, and to discontinue this action against all but one defendant, Qasim M. Piracha, (Dkt. No. 33).

First, because "[t]he court should freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a)(2), and given that defendants do not oppose Goodale's motion, (Dkt. No. 34 ¶ 5), Goodale's cross motion to

amend is granted. Accordingly, defendants Charmaine.A.Bill, Terri.Beth.Maxymillian, Darian.L.Frazier, Gerardo.R.Retamar,Jr., Thomas Nicolette, Felipe.M.Tirado, Linda Gagnon, Paul Palumbo, Dean.L.Stark, Eric Fical, Anthony Fabbio, The State of New York, The New York State Office of Mental Health, Anthony Gonzalez LMSW, Jeff Nowicki, Hernandez, Bumbolo, and Wanphler are dismissed from this action, leaving only Piracha remaining. The Clerk is directed to file Goodale's proposed amended complaint, (Dkt. No. 33, Attach. 1), and amend the caption accordingly.

Second, while the court recognizes that defendants' argument in support of dismissal of Goodale's complaint as against Piracha, (Dkt. No. 27, Attach. 1 at 6-9), is still potentially viable, in light of Goodale's amended complaint, defendants' motion to dismiss the complaint is nevertheless denied as moot. Of course, once the amended complaint is filed, Piracha may file an appropriate responsive pleading, including, if he so chooses, a renewed motion to dismiss.

ACCORDINGLY, it is hereby

ORDERED that Goodale's cross motion to amend his complaint (Dkt. No. 33) is **GRANTED**; and it is further

ORDERED that defendants Charmaine.A.Bill, Terri.Beth.Maxymillian, Darian.L.Frazier, Gerardo.R.Retamar,Jr., Thomas Nicolette, Felipe.M.Tirado, Linda Gagnon, Paul Palumbo, Dean.L.Stark, Eric Fical, Anthony Fabbio, The State of New York, The New York State Office of Mental Health, Anthony Gonzalez LMSW, Jeff Nowicki, Hernandez, Bumbolo, and Wanphler are **DISMISSED** from this action; and it is further

ORDERED that the Clerk file Goodale's proposed amended complaint (Dkt. No. 33, Attach. 1); and it is further

ORDERED that the Clerk amend the caption so as to reflect that Qasim M. Piracha is the only remaining defendant in this action; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 27) is **DENIED** as moot; and it is further

ORDERED that the Clerk provide a copy of this Summary Order to the parties.

IT IS SO ORDERED.

September 19, 2014
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court