

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JOSE L. HERNANDEZ,

Plaintiff,

v.

Civil Action No.
5:16-CV-1030 (GLS/DEP)

L. LLUKACI, Syracuse Police
Department ID #0582, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

Jose L. Hernandez, *Pro se*
04002460
Onondaga County Correctional Facility
P.O. Box 143
Jamesville, NY 13078

FOR DEFENDANTS:

HON. JOSEPH E. FAHEY
Corporation Counsel
of the City of Syracuse
300 City Hall
233 East Washington Street
Syracuse, NY 13202

TODD M. LONG, ESQ.

ORDER

Currently pending before the court in connection with this civil rights action brought by *pro se* plaintiff Jose L. Hernandez, pursuant to 42 U.S.C. § 1983, is a motion brought by the defendant seeking dismissal of plaintiff's complaint for failure to prosecute and/or failure to comply with a court discovery-related order. Dkt. No. 26. That motion was the subject of a recorded telephone conference conducted on August 15, 2017. During that conference I advised defendants' counsel that I would not recommend to District Judge David N. Hurd that this action be dismissed at this juncture, but that, in deference to his *pro se* status, plaintiff should be given one final opportunity to provide requested discovery. I also indicated specifically which portions of defendants' discovery demands must be answered, and directed that proper responses be provided within thirty-three days after new courtesy copies of the discovery demands were mailed by defendants' counsel to the plaintiff at his current location.

Based upon the written and oral presentations of the parties and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED as follows:

(1) Defendants' counsel is directed to mail courtesy copies of defendants' request for the production of documents (Dkt. No. 26-2 at 1-6) and interrogatories (Dkt. No. 26-2 at 7-30) to the plaintiff at the address set forth in the court's records.

(2) Within thirty-three days after the date of the mailing of those documents, plaintiff shall provide complete responses to the following discovery demands and, in the event that there are no responsive documents within his possession, custody, or control falling within the scope of any request, he shall so indicate by stating "None":

Defendants' demand for documents: RFP Nos. 1, 4, 6, 7, 10, 11, 12, and 14.

Interrogatories of defendants Llukaci and Braun: Nos. 2, 3, 4, 5, 6, 8, 11, 12, 14, 15, 17, 18, 19, and 20.

(3) Plaintiff's responses to the interrogatories of Llukaci and Braun, as set forth above, shall be made under oath. Defendants' attorney is hereby directed to prepare and mail to plaintiff an oath form for his use in that regard.

(4) The court reiterates the warning given to plaintiff during the recorded telephone conference, to the effect that his failure to completely answer the discovery demands listed above will result in my

recommendation to District Judge David N. Hurd that his complaint in this action be dismissed.

(5) Except with respect to the foregoing, a protective order is hereby issued, pursuant to Rule 26(c) of Federal Rules of Civil Procedure, excusing plaintiff from the requirement of responding to defendants' request for the production of documents and the interrogatories of defendants Llukaci and Braun, other than those set forth above.

(6) To the extent defendants' motion (Dkt. No. 26) seeks dismissal of plaintiff's complaint, that motion is being addressed in a separately issued report and recommendation.

(7) No costs or attorney's fees are awarded to defendants in connection with their pending motion.



David E. Peebles
U.S. Magistrate Judge

Dated: August 23, 2017
Syracuse, NY