

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CARLOS ABREU,

Plaintiff,

-against-

9:16-CV-776 (LEK/ML)

KIMBERLY LIPKA, *et al.*,

Defendants.

ORDER

Pro se plaintiff Carlos Abreu commenced this action on June 29, 2016 by filing a civil-rights complaint pursuant to 42 U.S.C. § 1983. Dkt. No. 1 (“Complaint”). In a Decision and Order filed September 9, 2016, the Court granted Plaintiff’s motion to proceed in forma pauperis and, following review of the Complaint in accordance with 28 U.S.C. §§ 1915(e) and 1915A, dismissed the complaint for failing to state a claim upon which relief could be granted. Dkt. No. 5 (“September 9, 2016 Decision & Order”). On October 7, 2016, Plaintiff moved for reconsideration of the September 9, 2016 Decision & Order. Dkt. No. 7 (“Motion for Reconsideration”). On November 8, 2016, the Court denied the motion, but granted Plaintiff an extension of 60 days to file an amended complaint. Dkt. No. 7 (“November 8, 2016 Decision & Order”). On January 13, 2017, the Court granted Plaintiff an extension until February 10, 2017 to file his amended complaint. Dkt. No. 9 (“January 24, 2017 Text Order”). On February 16, 2017, the Court dismissed Plaintiff’s action pursuant to § 1915(e)(2)(b) for failure to state a claim upon which relief may be granted and for failure to file an amended complaint in accordance with the Court’s September 9, 2016 Decision & Order, November 8, 2016 Decision & Order, and January 24, 2017 Text Order. Dkt. No. 10 (“February 16, 2017 Judgment”). On March 22, 2017, Plaintiff

filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the February 16, 2017 Judgment, Dkt. No. 13 (“Motion to Vacate”), which the Court denied on May 19, 2017, Dkt. No. 15 (“May 19, 2017 Decision & Order”). On July 5, 2017, Plaintiff appealed the May 19, 2017 Decision & Order to the Second Circuit. Dkt. No. 16 (“Notice of Appeal”).

The Second Circuit reviewed the Court’s decision to dismiss Plaintiff’s Complaint pursuant to §§ 1915(e) and 1915A and issued a Mandate in which that court: (1) affirmed the dismissal of Plaintiff’s Eighth Amendment claims for inadequate nutrition and conditions of confinement and his First Amendment free exercise claims; and (2) vacated the dismissal of Plaintiff’s Eighth Amendment claims for inadequate medical care against Paolano, Karandy, Koenigsmann, and Lipka¹ and his First Amendment retaliation claims against Ives, Boscue, Lyons, Paolano, Pal, and Lipka.² See Dkt. No. 22 (“Second Circuit Mandate”). The Second Circuit then remanded the case to this Court for further proceedings consistent with its order. Id.

Accordingly, it is hereby:

ORDERED, that this action is **REOPENED**; and it is further

ORDERED, that Paolano, Karandy, Koenigsmann, and Lipka must respond to Plaintiff’s Eighth Amendment claims for inadequate medical care; and it is further

¹ The Second Circuit did not disturb the Court’s dismissal of Plaintiff’s Eighth Amendment claims for inadequate nutrition and conditions of confinement against Rogue, Van Order, Havens, La Fresch, Boice, Watkins, Harris, Brunelle, Ives, McCarthy, Winney, and Pal. See September 9, 2016 Decision & Order at 15–18.

² The Second Circuit did not disturb the Court’s dismissal of Plaintiff’s First Amendment retaliation claims against Karandy, Koenigsmann, Miller, Thomas, and Peacock. See September 9, 2016 Decision & Order at 29–30.

ORDERED, that Ives, Boscue, Lyons, Paolano, Pal, and Lipka must respond to Plaintiff's First Amendment retaliation claims; and it is further

ORDERED, that Plaintiff shall provide the Court with eight copies of the Complaint and eight completed and signed USM-285 forms within **sixty days** of the date of this Order; and it is further

ORDERED, that, upon the Court's receipt of the copies of the Complaint and USM-285 forms, the Clerk shall issue summonses and forward them with copies of the Complaint to the U.S. Marshal for service of process upon Defendants. The Clerk shall also mail the summonses, the copies of the Complaint, and a copy of this Order to the Office of the New York Attorney General; and it is further

ORDERED, that all pleadings, motions, and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court. **Plaintiff is also required to promptly notify, in writing, the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; his failure to do so may result in the dismissal of this action;** and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: October 04, 2019
 Albany, New York



Lawrence E. Kahn
U.S. District Judge