

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUAN ALMESTICA,

Plaintiff,

- against -

ROBERT ERCOLE, JOHN DOE # 1,

Defendants.

Docket Number  
08 Civ. 8966 (AKH)

**NOTICE OF MOTION TO  
DISMISS**

Pro Se



**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Law, and all other prior pleadings and proceedings herein, the undersigned, on behalf of defendant Robert Ercole will move this Court, before the Honorable Alvin K. Hellerstein, United States District Judge, at the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York, for an order pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure granting defendants' motion to dismiss on the grounds that: (1) defendant was not personally involved in the alleged constitutional deprivation, (2) defendant is immune from suit in his official capacity under the Eleventh Amendment, and (3) in the alternative, defendant is protected by the doctrine of qualified immunity, and for such other and further relief as the Court deems just and proper.

FILED  
2009 MAR 13 11:51  
S. DISTRICT OF N.Y.


FILED  
MAR 13 2009  
S. DISTRICT OF N.Y.

*motion granted on the merits  
and on pl's default. By order of  
3/23/09 required pl to file app'n  
by 5/25/09. No app'n was  
so ordered  
8/14/09  
Alvin K. Hellerstein*

**PLEASE TAKE FURTHER NOTICE** that any papers in response to this motion shall be served and filed in accordance with Local Rule 6.1.

Dated: New York, New York  
March 4, 2009

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