

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

B. Braxton/Obed-Edom,

Plaintiff,

-against-

The City of New York et al.,

Defendants.

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1:17-cv-00199 (GBD) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Following a telephone conference with the parties, it is hereby Ordered as follows:

1. Plaintiff's motion to compel (*see* ECF No. 181 at 1-2) is DENIED. As further set forth on the record, the documents Plaintiff seeks are from 2009 and 2010 and, thus, pre-date the signing of the general release that is at issue in this action by at least eight years. Accordingly, the Court finds that these records are not relevant and proportional to the needs of the case. However, as Plaintiff is a *pro se* litigant and proceeding *in forma pauperis* (*see* ECF No. 5), the Court will direct the Clerk of Court to issue subpoenas to the Central New York Psychiatric Center ("CNYPC") and Clinton Correctional Facility, through which Plaintiff received treatment in 2019 (*see* Mem. Decision & Order, ECF No. 146, at 7-8), and which may have records germane to Plaintiff's mental capacity at the time he signed the release in August 2018.¹ *See Verhow v. Hess*, No. 13-CV-00012 (JJM), 2014 WL 297342, at *1 (W.D.N.Y. Jan. 27,

¹ In his objections to the Court's September 1, 2019 Report & Recommendation, Plaintiff attached a treatment plan from CNYPC from January 2019. (Pl.'s Objs., ECF No. 144, at 12.) It appears that the treatment was provided by CNYPC through a unit located at Clinton Correctional Facility. To ensure that Plaintiff receives the complete set of his treatment records, the Court will issue subpoenas to both entities.

2014) (directing service of Rule 45 subpoena by U.S. Marshals Service); *see also* 28 U.S.C. § 1915(d). The Court also will direct the United States Marshals Service to serve the subpoenas by certified mail. *See, e.g. Smith v. Benson*, No. 08-cv-00485, 2011 WL 839736, at *1 (W.D.N.Y. Mar. 7, 2011) (citations omitted).

2. Defendants' cross-motion to compel (*see* ECF No. 181 at 2-3) is DENIED as moot. Defendants indicated during today's call that they are not seeking any additional discovery from Plaintiff.
3. No later than March 16, 2021, Plaintiff shall file a letter indicating what, if any, documents he has received in response to the subpoenas.
4. Defendants shall file their anticipated motion for summary judgment no later than April 5, 2021. Plaintiff shall file his response no later than June 8, 2021 and Defendants shall file their reply, if any, no later than June 22, 2021.

The Clerk of Court is respectfully requested to complete a subpoena form (AO 88B (Rev. 12/13)) to the Central New York Psychiatric Center and to Clinton Correctional Facility, commanding each to produce the following documents: "All medical records for Benjamin Braxton/Obed-Edom." The place of production shall be Plaintiff's address: Benjamin Braxton/Obed-Edom, DIN No. 16-A-2314, Auburn Correctional Facility, P.O. Box 618, 135 State Street, Auburn, NY 13024, and the date and time of production shall be twenty-one (21) days from the date of service at 5:00 p.m.

The Clerk of Court is further requested to complete a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each subpoena. The address for the Central New York Psychiatric is: 9005 Old River Road, Marcy, NY 13403, P.O. Box 300. The address for

Clinton Correctional Facility is: 1156 Rt. 374, P.O. Box 2000, Dannemora, NY 12929-2000. The Clerk of Court shall deliver all necessary paperwork, including a copy of each subpoena and this Order, to the Marshals Service to effect service by certified mail.

The Clerk of Court is further requested to mail a copy of this Order to the *pro se* Plaintiff.

SO ORDERED.

DATED: New York, New York
February 2, 2021



STEWART D. AARON
United States Magistrate Judge