

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL NIEVES,

Plaintiff,

-against-

THE NEW YORK STATE OFFICE OF MENTAL
HEALTH; ANN MAIET, COMMISSIONER;
SULLIVAN, MD; NEW YORK CITY HEALTH
AND HOSPITALS CORP.; LEONARDO V.
LOPEZ, MD; SWATI SHIVALE, MD; TARAH
SCANLON; CATHERINE MIER; ASHLEY L.
VALENCIA, MD; ROBERT NADRICH, MD;
DENNIS POPEO, MD; STATE OF NEW YORK;
UNITED STATES FEDERAL GOVERNMENT,

Defendants.

20-CV-9502 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff is currently confined in Bellevue Hospital's prison ward. He brings this suit under 42 U.S.C. § 1983 against eight Bellevue Hospital doctors (Defendants Sullivan, Lopez, Shivale, Scanlon, Mier, Valencia, Nadrich, and Popeo), the New York City Health and Hospitals Corporation, the State of New York, the United States, and the New York State Office of Mental Health and its Commissioner, Ann Mariet.

After Plaintiff filed the complaint, he submitted multiple letters seeking either to dismiss certain defendants or change the relief he is seeking. Plaintiff's first letter asks the Court "to allow an Amended Complaint in the matter of the removal of the mistaken defendant, Dennis Popeo, M.D." (ECF No. 7.) His next letter indicates that he "wishes to have Dr. Popeo Denise [sic] exempted from [his] lawsuit against the New York State Office of Mental Health, et al." (ECF No. 8.) Finally, Plaintiff's letter dated January 5, 2021, states that he "would like the Court to remove defendants Tarah Scanlon, MD: Catherine Mier, and Ann Marie T. Sullivan, MD from my complaint for damages, specifically." (ECF No. 9.) The same letter indicates that Plaintiff

“would also like to withdraw [his] suit for the specified amount of damages from each of the other defendants listed in the Complaint” It is not entirely clear from Plaintiff’s January 5, 2021 letter if he wishes to dismiss certain defendants or simply alter the amount of his damages request.

Under Rule 15 of the Federal Rules of Civil Procedure, a plaintiff has the right to amend his or her complaint once without permission from the Court at any time before a responsive pleading is served (or within 21 days after service of the complaint). *See Fed. R. Civ. P. 15(a)*. Plaintiff’s complaint has not yet been served on Defendants, and he therefore does not need permission of the Court at this time to amend his complaint.

Because it appears from Plaintiff’s letters that he wishes to amend his complaint, the Court will allow 30 days before screening the complaint to permit Plaintiff an opportunity to file an amended complaint clarifying who he wishes to name as a defendant in this action and the claim(s) that he brings against such defendants. An amended complaint completely replaces, rather than supplements, an original complaint, and thus only the parties and claims that are included in an amended complaint can be considered. For Plaintiff’s convenience, an amended complaint form is attached to this order.¹ If Plaintiff does not amend his complaint within 30 days, the Court will screen the original complaint, under 28 U.S.C. § 1915(e)(2)(B), against the defendants named therein.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Because Plaintiff indicates that he wishes to amend his complaint, the Court will

¹ The Court also cautions Plaintiff that some of the defendants named in the original complaint appear to be immune from suit and, if so, should not be included in an amended complaint. *See, e.g., United States v. Mitchell*, 463 U.S. 206, 212 (1983) (United States cannot be sued without its consent); *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009) (“[S]tate governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states’ Eleventh Amendment immunity”).

allow 30 days before screening the complaint to permit Plaintiff an opportunity to file an amended complaint. For Plaintiff's convenience, an amended complaint form is attached to this order. If Plaintiff does not amend his complaint within 30 days, the Court will screen the original complaint under 28 U.S.C. § 1915(e)(2)(B).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: January 7, 2021
New York, New York



COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV
(Include case number if one has been assigned)

-against-

AMENDED
COMPLAINT
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a *"Bivens"* action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____