

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEJANDRO VIVAR                               :
                                                :
                Plaintiff,                       :      22 Civ. 347 (VM)
                                                :
    - against -                               :      ORDER
                                                :
APPLE INC.                                     :
                                                :
                Defendant.                       :
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VICTOR MARRERO, United States District Judge.

On April 13, 2022, consistent with the Court’s Individual Practices, counsel for Apple Inc. (“Apple”) sent counsel for Alejandro Vivar (“Vivar”) a pre-motion letter identifying alleged deficiencies in the Complaint that Vivar filed in this action, and that allegedly would provide a basis supporting a motion to dismiss. (See Dkt. No. 11-1.) On April 20, 2022 also consistent with the Court’s Individual Practices, counsel for Vivar sent a three-page letter in response, opposing the grounds that Apple stated in favor of the proposed motion. (See Dkt. No. 11-2.) On April 29, 2022, the Court received a letter from Apple requesting a pre-motion conference and asserting that the letter exchange did not resolve the dispute, thus failing to avoid motion practice at this stage of the proceedings. (See Dkt. No. 11.) On June 24, 2022, the Court directed Apple to file a motion to dismiss limited to five pages in length, (see Dkt. No. 12 (“June 24 Order”)), which Apple did on August 4, 2022. (See Dkt. No. 15.)

In light of recent Second Circuit opinions, the parties are directed to advise the Court whether they consent for the Court to

deem the briefing as set forth in the June 24 Order as a fully briefed motion and rule on the basis of the limited briefs, or whether the parties request supplemental or full briefing on Apple's motion. If the parties request supplemental or full briefing, they shall submit a proposed briefing schedule within one week of the date of this order.

SO ORDERED.

Dated: August 8, 2022
New York, New York



Victor Marrero
U.S.D.J.