

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELVIN SUAREZ,

Plaintiff,

v.

ANTHONY J. ANNUCCI, Acting
Commissioner, New York State Department of
Corrections and Community Supervision, in his
individual capacity; ANN MARIE T.

SULLIVAN, Commissioner, New York State
Office of Mental Health, in her individual
capacity; ROBERT MORTON, Superintendent,

Downstate Correctional Facility, in his
individual capacity; RYAN LAHEY, Office of
Mental Health Unit Chief, Downstate

Correctional Facility, in his individual capacity;
ABADUL QAYYUM, Psychiatrist, Downstate
Correctional Facility, in his individual capacity;

PETER M. HORAN, Supervising Offender
Rehabilitation Coordinator, Downstate
Correctional Facility, in his individual capacity;

SAMANTHA L. KULICK, Psychology
Assistant 3/Supervisor, New York State Office
of Mental Health, in her individual capacity;

MAURA L. DINARDO, Clinician, New York
State Office of Mental Health, in her individual
capacity; BRANDON N. REYNOLDS,

Psychiatrist, New York State Office of Mental
Health, in his individual capacity; CHESNEY J.
BAKER, Licensed Master Social Worker

2/Supervisor, New York State Office of Mental
Health, in his individual capacity; NEW YORK
STATE DEPARTMENT OF CORRECTIONS

AND COMMUNITY SUPERVISION; and
NEW YORK STATE OFFICE OF MENTAL
HEALTH,

Defendants.
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ORDER

20 CV 7133 (VB)

On January 11, 2021, all defendants other than defendant Annucci moved to dismiss the complaint. (Doc. #53). On February 16, 2021, defendant Annucci moved to dismiss the complaint. (Doc. #64).

Accordingly, it is hereby ORDERED that, by no later than February 26, 2021, plaintiff must notify the Court by letter whether plaintiff (i) intends to file an amended complaint in

response to the motions to dismiss, or (ii) will rely on the complaint that is the subject of the motions to dismiss.

If plaintiff elects not to file an amended complaint, the motions will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendants' motions. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving “unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility”); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Court's February 11, 2021, Order.

If plaintiff elects to file an amended complaint, plaintiff must file the amended complaint by no later than 14 days after notifying the Court of his intent to do so. Within 21 days of such amendment, defendants may either: (i) file an answer to the amended complaint; or (ii) file a motion to dismiss the amended complaint; or (iii) notify the Court by letter that defendants are relying on the initially filed motions to dismiss.

Dated: February 17, 2021
White Plains, NY

SO ORDERED:


Vincent L. Briccetti
United States District Judge