

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TERRELL K. BROCK,
Plaintiff,

v.

CVS CORPORATION; LEONARDO
CORONADO; ASHLEY CAMACHO; CITY OF
WHITE PLAINS; JOSE LUIS FORMOSO; and
P.O. C. BROWNING,
Defendants.
-----X

ORDER

22 CV 4014 (VB)

Copies Mailed/Faxed 11/21/22
Chambers of Vincent L. Briccetti *JB*

Plaintiff, who is proceeding pro se and in forma pauperis, commenced this action by filing a complaint. (Doc. #2). In his second amended complaint, he asserts claims against six defendants. (Doc. #17).

By Order dated November 2, 2022 (Doc. #34), the Court set out the procedural history of this case, and ordered: (i) the White Plains Law Department to comply with the Court's Order dated May 20, 2022, by identifying the officers who arrested plaintiff on April 3, 2020, and April 13, 2020, pursuant to Valentin v. Dinkens, 121 F.3d 72, 76 (2d Cir. 1997), by November 16, 2022; (ii) an extension of plaintiff's deadline to serve Officer Formoso, pursuant to Fed. R. Civ. P. 4(m), to January 17, 2023; and (iii) the time for all defendants to answer, move or otherwise respond to the second amended complaint is STAYED pending further Court Order.

On November 17, 2022, the Court received a letter dated November 16, 2022, from the White Plains Law Department (Doc. #36), and two attached police records regarding the arrests of plaintiff on April 3, 2020, and April 13, 2020. The letter states "this office attaches the police records from both incidents." (Id.) However, to date, the White Plains Law Department has not electronically filed the two police record attachments referenced, which were included in its mailing to the Court. The White Plains Law Department also did not file an affidavit of service or indicate whether it provided these materials to plaintiff, as required by the Court's November 2, 2022, Order.

In the letter, the White Plains Law Department identified police officers Beall, Browning, and Schneider as being involved in plaintiff's April 3, 2020, arrest. The White Plains Law Department also identified Officer Vanderwalker as being involved in plaintiff's April 13, 2020, arrest.

Further, the White Plains Law Department stated, "the records from these arrests do not reveal any involvement of Police Officer Formoso." However, the White Plains Law Department does not offer any other information regarding whether Officer Formoso was involved in the events described in the second amended complaint. The White Plains Law Department also does not indicate whether Officer Formoso is currently employed by the White Plains Police Department.

On November 18, 2022, defendants CVS Albany, LLC (sued as CVS Corporation), Leonardo Coronado, and Ashley Camacho (together, the “CVS defendants”) filed an answer to the second amended complaint and a cross-claim against the City of White Plains, White Plains Police Officer Formoso, and John Doe White Plains Officer. (Doc. #35). The CVS defendants did not comply with the Court’s November 2, 2022, Order, which directed that the time for all defendants to answer, move, or otherwise respond to the second amended complaint was STAYED pending further Court Order.

Further, the CVS defendants improperly filed numerous discovery documents—including a demand for interrogatories, notice of discovery and inspection, demand for expert witness information, demand for medical information, demand for insurance information, demand for collateral source information, notice declining service via facsimile, notice to take deposition upon oral examination, demand for proof of service, demand for ad damnum, demand for attorney identification, and demand for Medicare/Medicaid information—on the docket. (Doc. #35). The parties shall not file discovery documents unless in connection with a motion or application. See Federal Rules of Civil Procedure 5(d)(1); Local Civil Rule 5.1. The Court also notes that several of these documents invoke the New York Civil Practice Law and Rules, which do not apply in this federal action. This case is governed by the Federal Rules of Civil Procedure.

Accordingly, it is HEREBY ORDERED:

1. The White Plains Law Department shall comply with the Federal Rules of Civil Procedure, the SDNY Local Rules, and Judge Briccetti’s Individual Practices for all further filings.
2. By **December 5, 2022**, the White Plains Law Department shall: (i) file a formal notice of appearance on the docket; (ii) provide plaintiff and the Court, in writing, with an address at which Officers Beall, Formoso, Schneider, and Vanderwalker can be served—or alternatively, indicate whether it will accept service on their behalf; (iii) refile the letter dated November 16, 2022, as well as the attachments thereto, on the ECF docket; and (iv) serve a copy of the letter and attachments on plaintiff at the address listed on the docket, and file proof of service.
3. By **December 21, 2022**, plaintiff shall file a third amended complaint listing the full names of all defendants, including White Plains Police Officers Beall, Schneider, and Vanderwalker, who were newly identified by the White Plains Law Department. Plaintiff shall utilize the third amended complaint form attached to this Order. **The third amended complaint will completely replace, not merely supplement, the existing second amended complaint. Therefore, plaintiff must include in the third amended complaint all information necessary for his claims.**
4. Once plaintiff has filed the third amended complaint, the Court will screen the third amended complaint and issue an appropriate order directing the Clerk of Court to issue summonses for the newly identified defendants.
5. Plaintiff’s deadline pursuant to Fed. R. Civ. P. 4(m) to service Officer Formoso is STAYED pending further Court Order.

6. The time for all parties to answer, move, or otherwise respond to the second amended complaint and any cross-claims is STAYED pending further Court Order. To be clear, the parties shall not answer, move, or otherwise respond to plaintiff's second amended complaint or to the CVS defendants' cross-claims, pending further Court Order.

7. The parties shall not file discovery documents unless in connection with a motion or application. See Federal Rules of Civil Procedure 5(d)(1); Local Civil Rule 5.1.

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 in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address listed on the docket, and to the City of White Plains Law Department at 255 Main Street, White Plains, New York 10601.

Dated: November 21, 2022
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

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.

No. _____
(To be filled out by Clerk's Office)

**THIRD AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?
☐ Yes ☐ No

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

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: _____