

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSEPH J. O'HARA,

Plaintiff,

1:12-cv-252 (GLS/RFT)

v.

**KEITH A. RANIERE also known as
Vanguard, et al.**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

JOSEPH J. O'HARA
Plaintiff, Pro Se
99 Vly Road
Colonie, New York 12205

**FOR PROSKAUER ROSE
DEFENDANTS:**

Proskauer, Rose Law Firm
Eleven Times Square
New York, New York 10036-8299

CHARLES S. SIMS, ESQ.
JAMISON DAVIES, ESQ.

**FOR ALBANY COUNTY
DEFENDANTS:**

Albany County Attorney's Office
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KARA M. FRANK, ESQ.
THOMAS MARCELLE, ESQ.

FOR BARTOLOMEI DEFENDANTS:

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JOHN P. BARTOLOMEI, ESQ.

FOR BRONFMAN DEFENDANTS:

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WILLIAM F. SAVINO, ESQ.

**FOR DAMON MOREY
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WILLIAM F. SAVINO, ESQ.

**FOR DEFENDANTS KEEFFE
AND RAINERE:**

Breedlove, Noll Law Firm
10 Maxwell Drive, Suite 105
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BRIAN BREEDLOVE, ESQ.
CARRIE MCLOUGHLIN NOLL,
ESQ.

**FOR O'CONNELL AND
ARONOWITZ DEFENDANTS:**

O'Connell, Aronowitz Law Firm
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JEFFREY J. SHERRIN, ESQ.

FOR NXIVM DEFENDANTS:

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JEFFREY J. SHERRIN, ESQ.

Gary L. Sharpe
Chief Judge

ORDER

Pending before the court are defendants motions to dismiss pursuant to Fed. R. Civ. P. 12(b) (6). See *Dkt. Nos. 44-46, 49-51 and 56-57*. In addition, the Damon Morey and Bartolomei defendants filed Rule 11 motions. See *Dkt. Nos. 61 and 70*. Despite the passage of the due date, the plaintiff has not filed a response to these motions. The Second Circuit has held, “[a] court’s task in ruling on a Rule 12(b)(6) motion is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.” *AmBase Corp. v. City Investing Co. Liquidating Trust*, 326 F.3d 63, 72 (2d Cir. 2003). Therefore, while the court may review the complaint alone to decide the motions to dismiss, it would be more beneficial to the plaintiff if he offered his position on defendants’ arguments. If the court considers the motions without

plaintiff's response, it is left unaware of arguments that may further support the complaint. Therefore, in the interest of justice the court will allow the plaintiff **until December 5, 2012** to file a response to defendants' motions. Moreover, if the plaintiff does not intend to oppose the motions, he must notify the court and opposing counsel immediately. See *id.*

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED, that the plaintiff either notify the court and opposing counsel of his intention not to respond to defendants' motions or file his response on or before **December 5, 2012**; and it is further

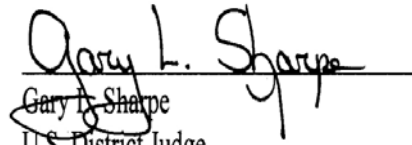
ORDERED, that if the plaintiff elects to file a response, the defendants shall file a reply on or before December 19, 2012, and it is further

ORDERED, that the motion hearing scheduled for January 3, 2013 at 9:00 a.m. has been rescheduled for January 17, 2013 at 9:00 a.m. on SUBMIT only. No personal appearances are needed; and it is further

ORDERED, that no further extensions will be permitted absent extraordinary circumstances; and it is further

ORDERED, that the Clerk of the Court provide a copy of this Order to the parties by regular mail.

Dated: November 21, 2012
Albany, New York


Gary L. Sharpe
U.S. District Judge