



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

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SCOTT SOLOMON, :

Plaintiff, :

-against- :

AMERICAN FEDERATION OF STATE, :  
COUNTY AND MUNICIPAL EMPLOYEES, :  
DISTRICT COUNCIL 37, AFL-CIO, :

Defendant. :  
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ORDER

19 Civ. 6823 (GBD)

GEORGE B. DANIELS, United States District Judge:

On May 26, 2020, Defendant moved to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim. (Notice of Mot. to Dismiss, ECF No. 23.) In his response to Defendant's motion, Plaintiff concedes that the recent decision by the United States Court of Appeals for the Second Circuit in *Wholean v. CSEA SEIU Local 2001*, 955 F.3d 332 (2d Cir. 2020), forecloses the relief sought by Plaintiff in the above-captioned action. (See Resp. to Mot. to Dismiss, ECF No. 25, at 2.) Accordingly, Plaintiff acknowledges that *Wholean* requires this Court to grant Defendant's motion to dismiss. (*Id.* at 3.) Defendant's motion to dismiss, (ECF No. 23), is GRANTED.

The Clerk of Court is directed to close this motion accordingly.

The conference scheduled for October 21, 2020 at 9:45 am is canceled.

Dated: New York, New York  
October 13, 2020

SO ORDERED.

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GEORGE B. DANIELS  
United States District Judge