

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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| DANIEL L. CHASE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 1:20-cv-00287-JAW |
| |) | |
| CITY OF BANGOR, et al., |) | |
| |) | |
| Defendants. |) | |

**ORDER AFFIRMING THE RECOMMENDED DECISION OF THE
MAGISTRATE JUDGE**

On August 6, 2020, Daniel Chase filed a pro se complaint against the City of Bangor and eight Bangor police officers (Defendants) in connection with an incident in which he was allegedly “repeatedly assaulted by Bangor officers.” *Compl.* at 4 (ECF No. 1). He alleges that on April 16, 2018, he was assaulted by Bangor police officers during a traffic stop, resulting in injuries to his “fused spine.” *Id.* He claims the alleged assault violated his rights under the United States Constitution, as well as various federal statutes. *Id.* at 3. Mr. Chase attached to the Complaint transcripts of the encounter provided by a private forensic services company, police reports of the incident, and the transcript from a July 2018 trial in Maine state court for the traffic violation. *Id.*, *Attachs.* 1-2. On October 26, 2020, Mr. Chase filed an amended complaint, recounting the April 16, 2018 incident in more detail. *Am. Compl.* (ECF No. 7). The Amended Complaint removed the City of Bangor and three of the police officers as defendants, and added a new police officer as a defendant, although that

new police officer defendant has not appeared in this case and the record lacks any evidence that he has been served. *Id.* at 1-2.

On January 21, 2021, the Defendants filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(4), 12(b)(5), and 12(b)(6). *Defs., City of Bangor, Mark Hathaway, Jeffrey Kinney, Daniel Place, David Farrar, Mich[ae]l Pina, Jermaine Walker, Jason Stewart and Dylan Hall's Mot. to Dismiss and/or J. on the Pleadings Pursuan[t] to F.R.Civ.P. Rule 12(b)(4), (5), and (6)* (ECF No. 12) (*Mot. to Dismiss*). On February 1, 2021, Mr. Chase responded to the Defendants' motion to dismiss, *Resp. to Mot. to Dismiss* (ECF No. 13), and moved to amend his complaint, *Mot. to Amend Compl.* (ECF No. 14). On February 10, 2021, the Defendants replied to Mr. Chase's response, *Defs., City of Bangor, Mark Hathaway, Jeffrey Kinney, Daniel Place, David Farrar, Mich[ae]l Pina, Jermaine Walker, Jason Stewart and Dylan Hall's Reply to Pl., Daniel Chase's, "Mem. of Opp'n" to Bangor Defs. Mot. to Dismiss and/or J. on the Pleadings* (ECF No. 15), and responded in opposition to Mr. Chase's motion to amend, *Defs., City of Bangor, Mark Hathaway, Jeffrey Kinney, Daniel Place, David Farrar, Mich[ae]l Pina, Jermaine Walker, Jason Stewart, and Dylan Hall's Objs. to Pl., Daniel Chase's "Mot. to Amend" and "Mot. to Appoint Counsel"* (ECF No. 16).

On April 13, 2021, the Magistrate Judge issued a recommended decision, denying Mr. Chase's motion to appoint counsel, granting Mr. Chase leave to amend the Complaint "for the limited purpose of reinstating his claim against the City of Bangor," and recommending the Court grant in part the Defendants' motion to

dismiss. *Order on Mot. for Leave to Amend Compl. and Mot. to Appoint Counsel/Recommended Decision on Defs.’ Mot. to Dismiss* at 1 (ECF No. 18) (*Recommended Decision*). The Magistrate Judge recommended the Court grant the Defendants’ motion to dismiss all claims against every police officer except Officer Jeffrey Kinney. *Id.* at 18. The Magistrate Judge concluded that a 42 U.S.C. § 1983 claim, based on excessive force in violation of the Fourth Amendment, could proceed against Officer Kinney because “[w]hether Defendant Kinney’s alleged physical contact with [Mr. Chase] was objectively reasonable cannot be resolved without the development of a factual record.” *Id.* at 10. The Magistrate Judge also recommended the Court grant the motion to dismiss all claims against the City of Bangor except for a claim under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, et seq. *Id.* at 18. The Magistrate Judge reasoned that Mr. Chase allegedly informed Officer Kinney that his fused spine interfered with his ability to put his hands behind his back, but Officer Kinney nevertheless handcuffed him behind his back. *Id.* at 15. Although Defendants argued Officer Kinney’s use of two handcuffs was reasonable, the Magistrate Judge concluded that “the issue of reasonableness requires the development of a factual record.” *Id.* at 15-16.

On April 15, 2021, the Defendants filed an answer and affirmative defenses to the Amended Complaint. *Defs., City of Bangor, Jeffrey Kinney, Daniel Place, David Farrar, Michael Pina, and Dylan Hall’s Affirmative Defenses and Answer to Pl., Daniel Chase’s Am. Compl.* (ECF No. 23).

Neither Mr. Chase nor the Defendants filed objections to the Recommended Decision.

The Court reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision. The Court concurs with the recommendations of the Magistrate Judge for the reasons set forth in his Recommended Decision.

1. The Court AFFIRMS the Recommended Decision of the Magistrate Judge (ECF No. 18).
2. The Court GRANTS in part and DENIES in part the Defendants' Motion to Dismiss (ECF No. 12). The Court GRANTS the Defendants' Motion to Dismiss all claims against Defendants David Farrar, Michael Pina, Dylan Hall, and Daniel Place. The Court DENIES the Defendants' Motion to Dismiss insofar as it requests dismissal of Mr. Chase's claim against Defendant City of Bangor under the Americans with Disabilities Act (ADA), but GRANTS the Motion to Dismiss all other claims against the City of Bangor. The Court DENIES the Defendants' Motion to Dismiss insofar as it requests dismissal of Mr. Chase's claim against Defendant Jeffrey Kinney under 42 U.S.C. § 1983 for excessive force, but GRANTS the Motion to Dismiss all other claims against Jeffrey Kinney.¹
3. The Court DISMISSES without prejudice Daniel Chase's Complaint (ECF No. 1) and Amended Complaint (ECF No. 7), except to the extent he has asserted an ADA claim against the City of Bangor and a 42 U.S.C. § 1983 claim against Jeffrey Kinney.

¹ The Court agrees with the Magistrate Judge's conclusion that although Officers Mark Hathaway, Jermaine Walker, and Jason Stewart were named in the original Complaint and moved for dismissal, Mr. Chase did not include them in the Amended Complaint. *See Recommended Decision* at 1 n.2. Therefore, the Court construes Mr. Chase as having dropped his claims against them on October 26, 2020 when he filed the Amended Complaint, and accordingly, the Defendants' Motion to Dismiss is moot as to Officers Mark Hathaway, Jermaine Walker, and Jason Stewart.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 30th day of July, 2021