

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YASER OTHMAN,

Plaintiff,

**ORDER**

-against-

**13-CV-4771 (NGG) (RLM)**

CITY OF NEW YORK, SGT. BENJAMIN BENSON,  
DET. SHAHEED RAHEEM, DET. MICHAEL  
WALLEN, DET. SANDRA DAILEY, and  
ASSISTANT DISTRICT ATTORNEY DANIEL  
O'LEARY,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

On August 26, 2013, Plaintiff commenced this action against the City of New York (the "City"), four individual City police officers, and Assistant District Attorney ("ADA") Daniel O'Leary (collectively, "Defendants"). (Compl. (Dkt. 1).) Plaintiff asserts state and federal claims of false arrest, malicious abuse of process and prosecution, excessive force, unlawful search, and municipal liability. (See generally id.) On January 22, 2014, the court granted Defendants' request for leave to file a partial motion to dismiss. (Jan. 22, 2014, Order (Dkt. 11).) On April 7, 2014, Defendants filed the fully briefed motion to dismiss, seeking to dismiss all claims against ADA O'Leary, and as against all other Defendants, all claims except the excessive force claim. (See Defs.' Mem. of Law in Supp. of Partial Mot. to Dismiss (Dkt. 16).) Plaintiff opposed the motion. (Pl.'s Mem. of Law in Opp'n to Defs.' Partial Mot. to Dismiss (Dkt. 17).) By Order dated October 10, 2014, the court referred the motion to Magistrate Judge Roanne L. Mann for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Oct. 10, 2014, Order (Dkt. 19).)

On April 2, 2015, Judge Mann issued an R&R recommending that the court dismiss all of Plaintiff's claims against ADA O'Leary on the basis of absolute immunity, and stay all other claims against the remaining Defendants pending the resolution of Plaintiff's ongoing appeal of his criminal conviction in state court. (R&R (Dkt. 25).) No party has objected to Judge Mann's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 13 ("Any objections to the recommendations contained herein must be filed with Judge Garaufis on or before April 20, 2015.").) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at \*1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS IN FULL the R&R, and GRANTS IN PART Defendants' partial motion to dismiss. See Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007) (summary order).

Accordingly, all of Plaintiff's claims against ADA O'Leary are DISMISSED, and all claims against the remaining Defendants are STAYED pending the resolution of Plaintiff's state court appeal. Plaintiff is DIRECTED to file a letter with the court every three months from the date of entry of this order indicating the status of his appeal, and to immediately inform the court by letter upon the resolution of the appeal by the Appellate Term of the Supreme Court of the State of New York, Second Department. At that point, the court will, upon the application of the parties, determine whether it is appropriate to lift the stay and to reach the merits of Defendants' remaining arguments for partial dismissal. Discovery related to all claims, including the excessive force claim that Defendants have not moved to dismiss with respect to the remaining Defendants, shall remain stayed. (See Feb. 10, 2014, Order (Dkt. 13); see also R&R at 12

(reiterating stay of discovery with respect to excessive force claims during the pendency of the criminal appeal).)

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York  
April 27, 2015

  
NICHOLAS G. GARAUFIS  
United States District Judge