

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRANDON MCFADDEN,

Plaintiff,

vs.

9:09-CV-1415

SCOTT HERMAN, et al.,

Defendants.

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Baxter's Report-Recommendation [dkt. # 54] have been filed, and the time to do so has expired. Furthermore, after examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

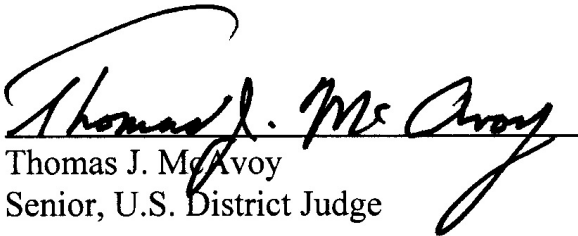
II. CONCLUSION

Accordingly, the Court **ADOPTS** the Report-Recommendation [dkt. # 54] for the reasons stated therein. Therefore, Defendants' motion to dismiss [Dkt. # 53] is **GRANTED IN PART** and **DENIED IN PART**. All claims brought against Defendants Herman and

Finton in their official capacities are **DISMISSED**. Any claim alleging the failure to intervene brought against Defendant Herman in his personal capacity is **DISMISSED WITHOUT PREJUDICE**. The motion is **DENIED** as to Plaintiff's claim of excessive force brought against Defendant Finton in his personal capacity.

IT IS SO ORDERED.

Dated: February 15, 2013


Thomas J. McAvoy
Senior, U.S. District Judge