UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

TOWAUN COLEMAN,

Plaintiff,

-VS-

9:15-CV-40 (TJM/ATB)

STEVEN RACETTE, Superintendent, Clinton Correctional Facility, and L. NOLAN, Prison Guard

Defendants.

Thomas J. McAvoy, United States District Judge

DECISION and ORDER

This matter 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 Rule 72.3(d) of the Local Rules of the Northern District of New York. No objections to the December 7, 2015 Report-Recommendation have been raised. Plaintiff has instead provided the Court with a copy of his discovery requests. <u>See dkt. # 35</u>. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation and Order for the reasons stated therein.

Accordingly, the Report and Recommendation of Magistrate Judge Baxter is hereby ADOPTED, and:

1. The Defendants' Motion to Dismiss, dkt. # 28, is hereby GRANTED;

2. The Complaint against Defendant Racette is dismissed in its entirety;

- 3. Plaintiff's retaliation claims are dismissed against Defendant Nolan; and
- 4. It is hereby ORDERED that the case proceed to discovery as against

Defendant Nolan for Plaintiff's excessive force claim only.

IT IS SO ORDERED.

Dated: January 4, 2016

<u>Thomas J. Mr Avoy</u> Senior, U.S. District Judge