

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

ANDREA LAPIETRA, and DEASHON TARVER,

Plaintiffs,

vs.

**9:19-CV-1527
(TJM/TWD)**

OFFICER JAN MIKA, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiffs allege that the Defendants, law enforcement personnel and officers at different correctional facilities, violated their constitutional rights in a variety of ways, including through illegal searches, excessive force, and deliberate indifference to serious medical needs. Plaintiffs filed an Amended Complaint, which Judge Dancks examined for sufficiency of the claims.

Magistrate Judge Dancks's Report-Recommendation, dkt. # 36, issued on March 4, 2021, recommends that the Court require the Defendants to respond to some of the claims made in the Amended Complaint and dismiss others of those claims without prejudice. Judge Dancks finds that certain of the Defendants should be required to

respond to: (1) Plaintiff Andrea LaPietra's Fourth Amendment illegal search and seizure claim; (2) certain Defendants should be required to respond to Plaintiff Deashon Tarver's Fourth Amendment false arrest and imprisonment claims, as well as related state causes of action; (3) certain Defendants should be required to respond to Plaintiff Tarver's Fourteenth Amendment excessive force and state law negligent infliction of emotional distress claims; and (4) certain Defendants should be required to respond to Plaintiff Tarver's excessive force and failure to protect claims.

No party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 36 is hereby

ACCEPTED and **ADOPTED**, as follows:

1. Defendants Johnson, John Doe # 2, John Doe # 3, John Doe #4, John Doe #5, Jane Doe #1, Jane Doe #2, Sergeant Doe #8, and Officer Mika shall respond as required by the Federal Rules of Civil Procedure to Plaintiff LaPietra's Fourth Amendment claims for illegal search and seizure after they are served with the Amended Complaint;
2. Defendants Officers Johnson, John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, Jane Doe #1, Jane Doe #2, Sergeant Doe #8, and Officer Mika shall respond as required by the Federal Rules of Civil Procedure to Plaintiff Tarver's Fourth Amendment claims for false arrest and false imprisonment and related state-law claims after they are served with

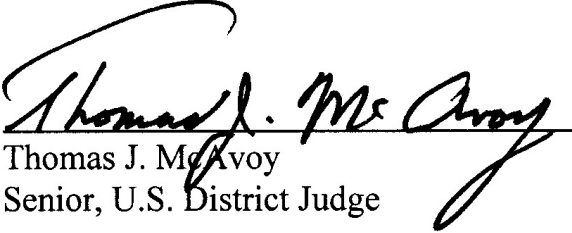
the Amended Complaint;

3. Defendants Officers Iannacito, John Doe #10, and John Doe #11 shall respond as required by the Federal Rules of Civil Procedure to Plaintiff Tarver's Fourteenth Amendment claims for excessive force and state-law claims for negligent infliction of emotional distress after they are served with the Amended Complaint;
4. Defendants Burns, Remillard, Durocher, and Haley shall respond as required by the Federal Rules of Civil Procedure to Plaintiff Tarver's Fourteenth Amendment excessive force and failure-to-protect claims after they are served with the Amended Complaint;
5. Plaintiffs' remaining claims are DISMISSED WITHOUT PREJUDICE;
6. The Clerk of Court shall terminate the following Defendants from the docket report: Peterson, John Doe #6, John Doe #7, John Doe #9, C.O. 505, Criscione, Dr. Masaba, Dr. Voss, Nurse Paulino, Nurse Jane Doe #3, and Albany County;
7. Upon receipt from Plaintiffs of the documents for service, the Clerk shall issue summonses and forward them, along with copies of the Amended Complaint, to the United States Marshal for service upon the remaining identified defendants. The Clerk shall also forward a copy of the summonses and the Amended Complaint to the Office of the Albany County Attorney, together with a copy of Magistrate Judge Dancks' Report-Recommendation, dkt. # 36, and this Order; and
8. Plaintiffs are hereby ORDERED to take reasonable steps through discovery

to ascertain the identity of the Doe defendants.

IT IS SO ORDERED.

Dated: May 14, 2021


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