

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BISHME AYERS,

Plaintiff,

14-cv-8979 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

CITY OF NEW YORK ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The Court will change "the police" on p. 21, final paragraph, of the Charge to "officers." The Court will refer to "correction officers" in the three places on p. 22 indicated at the Charge conference.

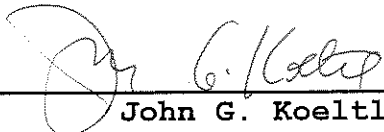
The Charge on nominal damages should begin on page 39 of the Charge.

In response to the defense objection, the Court will add a phrase to the final paragraph of nominal damages, so that the paragraph reads as follows: "If, however, you find that Officer Robinson used excessive force against the plaintiff, and that this caused a physical injury to the plaintiff that was greater than de minimis, then you may not award nominal damages. You must award compensatory damages in an amount that is fair compensation for the plaintiff's damages, as I have instructed you previously." The charge thus recognizes that a claim of excessive force does not entitle a plaintiff to compensatory damages, but that a plaintiff is entitled to an award of nominal damages if the plaintiff proves excessive force but no actual injury. See, e.g., Atkins v. New

York City, 143 F.3d 100, 103 (2d Cir. 1998). It also recognizes that if the actual damages are only de minimis and lack monetary value, an award of nominal damages is appropriate. See, e.g., Girbes-Pierce v. City of New York, 803 F. App'x 509, 511 (2d Cir. 2020). This is also consistent with the first paragraph of the charge and with Judge Sand's instruction on Nominal Damages which recognize that nominal damages are only available if the plaintiff fails to prove actual damages. See Sand, Instruction 87-88.

SO ORDERED.

**Dated: New York, New York
September 20, 2021**



John G. Koeltl
United States District Judge