

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RAPHAEL ROBERT CALDWELL,	:	Case No. 1:21-cv-657
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	Magistrate Judge Karen L. Litkovitz
	:	
WEST CHESTER POLICE	:	
DEPARTMENT, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY ADOPTING
THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 5)**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on November 8, 2021, submitted a Report and Recommendation, recommending that the complaint be dismissed except for Plaintiff’s Fourth Amendment claims against Defendants Flick, Veeneman, and Popplewell (collectively, the “Individual Defendants”) in their individual capacities. (Doc. 5). The Individual Defendants filed objections. (Doc. 9). Plaintiff did not file objections, but moved to strike the Individual Defendants’ objections. (Doc. 10).

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report is adopted in its entirety.

The Court first addresses Plaintiff's motion to strike the objections as untimely. (Doc. 10). The Report was issued on November 8, 2021. (Doc. 5). The Individual Defendants filed their objections on December 23, 2021. (Doc. 9). The docket reflects that the Individual Defendants were served with copies of the complaint, summons, and the Report on December 9, 2021. (Doc. 13). Pursuant to Fed. R. Civ. P. 72(b), the Individual Defendants had 14 days after service to file their objections, making their objections timely. Accordingly, Plaintiff's motion to strike is **DENIED**.

Turning to the objections, the Individual Defendants argue that the Magistrate Judge should have dismissed the complaint in its entirety under the doctrine of collateral estoppel and as *Heck*-barred. (Doc. 9). *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994).¹ The Magistrate Judge, when conducting an initial, *sua sponte* review, concluded that, at such an initial stage, without the benefit of briefing, and construing the complaint liberally, Plaintiff's Fourth Amendment claims against the Individual Defendants in their individual capacities may proceed. The Magistrate Judge did not consider the Individual Defendants' legal arguments, which arguments were presented for the first time in their objections and unclear from the face of the complaint. Given the foregoing, the objections are **OVERRULED**.²

¹ The Individual Defendants also argued that the claims were barred by the statute of limitations but withdrew this argument when responding to the motion to strike. (Doc. 12 at 2, n.1).

² On its face, the Individual Defendants' arguments appear to have merit and may be presented at another juncture, such as on a motion to dismiss. The Court, however, declines to consider the arguments at this stage. Plaintiff should be afforded the opportunity to respond to the merits of these arguments, which he has not done since he believed the objections were untimely.

Accordingly, for the reasons stated above:

- 1) The Report and Recommendation (Doc. 5) is **ADOPTED** in its entirety;
- 2) Plaintiff's motion to strike Defendants' untimely objections (Doc. 10) is **DENIED**;
- 3) The Individual Defendants' objections (Doc. 9) are **OVERRULED**. The Individual Defendants shall answer or otherwise respond to the complaint **within fourteen (14) days** of this Order; and,
- 4) The complaint is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B), **with the exception of** plaintiff's Fourth Amendment claims against defendants Flick, Veeneman, and Popplewell in their individual capacities.

IT IS SO ORDERED.

Date: 9/7/2022

s/Timothy S. Black
Timothy S. Black
United States District Judge