SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART**

Justice

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JEFFREY BUTLER,

Plaintiff,

- v -

THE CITY OF NEW YORK, CYRUS VANCE, STEVEN OHAGAN, JOHN DOE 1, JOHN DOE 2

Defendant.

----------X

INDEX NO. 150829/2016

MOTION DATE N/A, N/A

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

In this action for false arrest, false imprisonment and malicious prosecution, defendants the City Of New York (the City), New York County District Attorney Cyrus Vance (DA Vance)[1], and NYPD Officers Steven O'Hagan (Shield 4511), Steven Omisore and John Doe (together, defendants) move for leave to amend their answer and to dismiss the complaint, and plaintiff Jeffrey Butler (Butler) cross-moves for partial summary judgment on the complaint (together, motion sequence number 005). For the following reasons, the motion and the cross motion are both granted in part and denied in part.[2]

BACKGROUND

[1] The action was discontinued with prejudice as against DA Vance via stipulation, NYSCEF document number 13.
[2] The Court would like to thank Francis Lane, Esq., for his assistance in this matter.

On March 31, 2011, plaintiff was arrested near the intersection of Second Avenue and East 128th Street in New York County by defendant NYPD officers Steven O'Hagan, Steven Omisore and another unknown officer ("John Doe"). *See* notice of motion, DePugh affirmation, ¶ 4; exhibit N. On October 1, 2012, plaintiff pled guilty to criminal possession of a controlled substance in the third degree and was later sentenced to two years of incarceration and two years of post-release supervision. *Id.*, Pugh affirmation, ¶ 12; exhibit O. Plaintiff was released from prison on October 23, 2014, and thereafter reported to probation authorities. *See* verified complaint, ¶ 16; notice of motion, Pugh affirmation, exhibit I at 67-69.

On April 28, 2015, the Appellate Division, First Department, reversed plaintiff's conviction and dismissed the indictment against him. *People v Butler*, 127 AD3d 623 [1st Dept 2015]. The First Department found that the arresting officers had discovered the controlled substance through an improper search. *Id.*

Plaintiff subsequently decided to seek redress, and filed a notice of claim against the City on July 23, 2015 which proposed (a) New York State law claims for false arrest, false imprisonment, malicious prosecution and the negligent hiring, retention, training, instruction and/or performance of the arresting officers, and (b) federal law claims for violations of 42 USC §§ 1983, 1985, 1986, and 1988. *See* notice of motion, DePugh affirmation, ¶ 5; exhibit B. However, that notice of claim was untimely, and on July 22, 2015 Butler served an order to show cause seeking leave to file a late notice of claim. *See* verified complaint, ¶¶ 5-6. The motion was ultimately resolved via a stipulation, dated September 11, 2015, which provided that:

> "Plaintiff's order to show cause to file a late Notice of Claim is resolved [on consent of all parties] as follows:
>
> 1. Plaintiff's application seeking leave to file [a] late NOC with respect to [a] false arrest claim is denied.
> 2. Plaintiff's application seeking leave to file [a] late NOC with respect to claims of false imprisonment and malicious prosecution is granted.

> 3. This stipulation is applicable only to claims against the City of New York and NOT any individually named defendants upon whom service has not been effectuated."

See notice of motion. DePugh affirmation, ¶ 5; exhibit A (emphasis in original). On September 23, 2015, plaintiff nevertheless simply re-served the original notice of claim containing all of his proposed causes of action. *Id.*, ¶ 5; exhibit B.

Plaintiff commenced this action on February 1, 2016 by filing a complaint that asserted causes of action for: 1) false imprisonment; 2) assault; 3) malicious prosecution; 4) false arrest; 5) negligent training; 6) negligent hiring; 7) negligent supervision; 8) violation of 42 USC § 1985; and 9) violation of 42 USC § 1986. *See* verified complaint; notice of motion, exhibit C. Defendants filed an answer with affirmative defenses on April 29, 2016. *See* verified answer; notice of motion, exhibit D.

Defendants' current motion seeks leave to file an amended answer that includes an affirmative defense for violation of the statute of limitations, and requests dismissal of most of plaintiff's causes of action. *See* notice of motion, Pugh affirmation, ¶ 1. Plaintiff's cross motion seeks partial summary judgment on the complaint. *See* notice of cross motion, Howard affirmation, ¶ 1. Both motions are now fully submitted (motion sequence number 005).

DISCUSSION

Defendant's Motion

The first portion of defendants' motion seeks permission to file an amended answer that includes the affirmative defense of statute of limitations. *See* notice of motion, DePugh affirmation, ¶ 1. Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading, . . ., at any time by leave of court . . . [and] [l]eave shall be freely given upon such terms as may be just including the granting of costs and continuances." The Court of Appeals recognizes that "[a]s a general rule, 'leave to amend a pleading should be freely granted in the absence of prejudice to

the nonmoving party where the amendment is not patently lacking in merit ..., and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.'" *Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] (internal citation omitted).

Defendants argue that the court should exercise its discretion to permit them to amend their answer because "all [of Butler's] claims other than malicious prosecution should be dismissed as they are time-barred." *See* notice of motion, DePugh affirmation, ¶¶ 20-26. Defendants aver that the respective statutes of limitations on most of plaintiff's state law claims expired on either June 30, 2012 or July 2, 2012, and that the statute of limitations on his federal law claims expired on March 31, 2014. *Id.*, ¶ 24. They also argue that plaintiff cannot demonstrate that he would be prejudiced by the proposed affirmative defense because he "was, or should have been, well aware when he sought leave to file a late notice of claim that the statute of limitations period had expired" on his proposed claims. *Id.*, ¶ 25.

Plaintiff responds that defendants have waived the statute of limitations defense by failing to plead it in their answer or any responsive pleading. *See* plaintiff's mem of law at 8-10. Defendants reply that the case law cited by plaintiff to support his argument is all inapposite, and also note that his memorandum fails to argue that (or how) he would be prejudiced by their proposed affirmative defense. *See* DePugh reply affirmation, ¶¶ 4-8. After careful review, the court finds for defendants.

In *Coleman v Worster* (140 AD3d 1002 [2d Dept 2016]), which involved the same scenario as the one at bar, the Second Department articulated the state of the law as follows:

> "As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit. Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine. The burden of establishing prejudice is on the party opposing the amendment. Accordingly, where, as here, a plaintiff opposes a motion for leave to amend an answer

> so as to add a defense, the plaintiff has the burden to establish prejudice accruing to him [or her] as a consequence of defendant's failure to timely assert the defense, and to include a showing that the prejudice could have been avoided if the defense had been timely asserted.
>
> Here, since the proposed amendment did not result in any prejudice or surprise to the plaintiff and was not palpably insufficient or patently devoid of merit, the Supreme Court providently exercised its discretion in granting that branch of the defendant's motion which was pursuant to CPLR 3025 (b) for leave to amend her answer to assert the statute of limitations as a defense."

140 AD3d at 1003-1004 (internal citations and quotation marks omitted). Here, too, it is clear that the majority of plaintiff's claims have long exceeded their respective limitations periods, and it is notable that plaintiff did not argue that he will be prejudiced by defendants' proposed amendment. The court will examine each of his causes of action in turn.

Plaintiff was arrested on March 31, 2011. *See* notice of motion DePugh affirmation, exhibit N. Causes of action for assault accrue on the day of the assault, and causes of action for false arrest accrue on the day of the arrest, and when such claims are asserted against the City and/or arresting NYPD officers, they are subject to the one-year-and-90-day limitations period set forth in section 50-e of the General Municipal Law (which is reflected in CPLR 217-a). *See Tharps v City of New York*, 59 NY2d 1023 [1983]; *Grullon v City of New York*, 222 AD2d 257 [1st Dept 1995], *citing McElveen v Police Dept. of City of N.Y.*, 70 AD2d 858 [1st Dept 1979]. The statute of limitations on plaintiff's second and fourth causes of action thus expired on June 30, 2012. However, plaintiff commenced this action on February 1, 2016. *See* verified complaint. It is therefore clear that Butler's assault and false arrest claims are untimely.

Causes of action for negligent training, hiring and/or supervision asserted against the City and/or NYPD officers accrue on the date of their alleged negligence, and such claims are subject to a three-year statute of limitations unless the plaintiff alleges that the employer intentionally

directed the employees' injurious actions, in which case a one-year statute of limitations applies.[3] *See e.g.*, *Kerzhner v G4S Govt. Solutions, Inc.*, 138 AD3d 564, 565 [1st Dept 2016], *citing Green v Emmanuel African M.E. Church,* 278 AD2d 132, 132-133 [1st Dept 2000]; *see also McCarthy v Mario Enters., Inc.,* 163 AD3d 1135 [3d Dept 2018]. The complaint does not allege that the City intentionally directed the arresting officers' actions. *See* verified complaint, ¶¶ 38-46. As a result, plaintiff's claims are governed by the three-year limitations period that expired on March 31, 2014 (three years after his arrest). Thus, those claims are untimely because he commenced this action on February 1, 2016. *Id.*

Claims pursuant to 42 USC §§ 1985 & 1986 are "subject to three- and one-year statutes of limitations, respectively," which "accrue[] when [a plaintiff] knew or had reason to know of his injury." *Fonvil v County of Rockland*, 2018 WL 357309, * 5 (SD NY Jan. 9, 2018, 17 CV 2957 [VB]) (internal citations omitted). In this case, plaintiff's "injury" accrued when he was arrested on March 31, 2011, and the statutes of limitations on his federal claims expired on March 31, 2012 (42 USC § 1985) and March 31, 2014 (42 USC § 1986), respectively. They are, plainly, untimely.

Causes of action for "false imprisonment, . . .asserted against municipal defendants must be commenced within the one-year-and-90-day statute of limitations contained in General Municipal Law § 50-i [now reflected in CPLR 217-a]," and they "accrue[] upon [a] plaintiff's release from confinement." *Williams v City of New York*, 153 AD3d 1301, 1305 [2d Dept 2017] (internal citations omitted). Butler was released from incarceration on October 23, 2014. *See* verified complaint, ¶ 16. Therefore, the statute of limitations on his false imprisonment claim

[3] Or, when the defendants are NYPD officers, the one-year-and-90-day limitations period specified in General Municipal Law § 50-e and CPLR 217-a. *McElveen v Police Dept. of City of N.Y.*, 70 AD2d at 858.

would have expired on January 21, 2016 (a week before he commenced this action on February 1, 2016). As will be discussed later in this decision, that limitations period was tolled for an extra 52 days as a result of plaintiff filing his order to show cause for leave to serve a late notice of claim. Thus, the false imprisonment claim was timely when this action was commenced.

Causes of action for malicious prosecution against municipal defendants are also subject to the one-year-and-90-day limitations period specified in General Municipal Law § 50-i (and CPLR 217-a), but that "statute of limitations . . . [does] not begin to run until the favorable termination of the underlying criminal proceeding." *Williams v City of New York*, 153 AD3d at 1305; *Beauvoir v City of New York*, 176 AD3d 437, 437 [1st Dept 2019]. However, the Court of Appeals has long held that the reversal of a conviction on appeal is not a "favorable termination of the underlying criminal proceeding," with the result that a claim for malicious prosecution asserted after such a reversal will not lie. *See Martinez v City of Schenectady*, 97 NY2d 78, 84-86 [2001]. Thus, the malicious prosecution claim never accrued for statute of limitations purposes.

At this point, it is clear that all of Butler's causes of action other than that for false imprisonment were time-barred when he commenced this action on February 1, 2016. The court is also mindful that Butler's cross motion did not argue that he would be prejudiced by defendants' request to interpose the statute of limitations defense to those claims. This combination of factors is sufficient to warrant a court's discretionary grant of leave to a defendant to amend its answer to include that defense pursuant to CPLR 3025 (b). *Coleman v Worster,* 140 AD3d at 1003-1004. Here, however, there is a further consideration that militates in favor of such a grant.

The September 11, 2015 stipulation permitted Butler to assert his claims for false imprisonment and malicious prosecution against the City despite the fact that he had filed a late notice of claim. *See* notice of motion, DePugh affirmation, exhibit A. However, that stipulation specifically limited Butler's permission to assert only those two claims, and to assert them only against the City. *Id.* The third paragraph of the stipulation recites that it "is applicable only to claims against the City of New York and not any individually named defendants upon whom service has not been effectuated." *Id.* (emphasis in the original). This language clearly demonstrates plaintiff's awareness of the timeliness issue which the City had agreed to resolve partially in his favor. Plaintiff cannot reasonably claim that he was unaware of the City's position that all of his claims except for false imprisonment and malicious prosecution were untimely, and that none of his claims - including those two - were timely with regards to the three arresting officers. It is precisely this awareness that undercuts plaintiff's opposing argument that defendants had waived their right to assert a statute of limitations defense. By signing the September 11, 2015 stipulation, Butler in effect acceded to defendants' employment of the statute of limitations defense and waived his own right to object to their doing so.

In light of the foregoing, the court finds that it is a proper and provident exercise of discretion under CPLR 3025 (b) to allow defendants to amend their answer to include the affirmative defense of statute of limitations. The court observes that defendants enclosed a copy of a proposed amended answer containing this defense to their moving papers, which satisfies the statute's final prerequisite to the grant of this relief. *See* notice of motion, DePugh affirmation, exhibit F. Therefore, the court grants so much of defendants motion as seeks to amend their answer to include the affirmative defense of statute of limitations.

The balance of defendants' motion seeks to dismiss Butler's complaint pursuant to CPLR 3211 (a) (7) and/or 3212. *See* notice of motion, DePugh affirmation, ¶¶ 1-2. The court notes that defendants' current motion cannot be considered a pre-answer motion to dismiss since defendants filed an answer on April 29, 2016. *See* verified answer; notice of motion, exhibit D. Instead, because the parties "have laid bare their proof and deliberately charted a summary judgment course," and because plaintiff's cross motion specifically seeks summary judgment, the court finds that the instant motions should be resolved pursuant to the standard that governs requests for summary judgment. *Reiss v Financial Performance Corp.*, 279 AD2d 13 [1st Dept 2001], affd as mod 97 NY2d 195 [2001], *see also Mic Prop. & Cas. Ins. Corp. v Custom Craftsman of Brooklyn*, 269 AD2d 333 [1st Dept 2001].

Under that standard, the moving party bears the burden of proving, by competent, admissible evidence, that no material and triable issues of fact exist. *See e.g. Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 [1st Dept 2002]. Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *See e.g. Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]. The Court of Appeals holds that "'averments merely stating conclusions, of fact or of law, are insufficient' to 'defeat summary judgment.'" *Banco Popular North America v Victory Taxi Management, Inc.*, 1 NY3d 381, 383 [2004] (internal citations omitted).

Here, as has been discussed, defendants argue that most of plaintiff's causes of action are barred by the applicable statutes of limitations. *See* notice of motion, DePugh affirmation, ¶¶ 13-

19, 37-38; DePugh reply affirmation, ¶ 20. The court has already determined from its review of plaintiff's arrest and incarceration records, from his notices of claim and the September 11, 2015 stipulation, that the statutes of limitations on his second, fourth, fifth, sixth, seventh, eighth and ninth causes of action had indeed expired long before he filed his complaint on February 1, 2016. The court has also already rejected Butler's waiver argument, which was the only argument that he directed against defendants' 3025 (b) request in his cross motion. *See* plaintiff's mem of law at 8-10. Therefore, in view of the documentary evidence, and plaintiff's failure to raise any countervailing arguments, the court grants so much of defendants' motion as seeks summary judgment dismissing Butler's second, fourth, fifth, sixth, seventh, eighth and ninth causes of action as against all of the defendants.

The remaining defendant, the City, argues that plaintiff's third cause of action (malicious prosecution) should be dismissed, as a matter of law, because there was no "favorable termination of the underlying criminal proceeding" against him. *See* notice of motion, DePugh affirmation, ¶¶ 27-33. Plaintiff responds by citing an unpublished decision by the US District Court for the Northern District of New York that purportedly interpreted the term "favorable termination" to mean a termination "that is not inconsistent with innocence." *Penree v City of Utica, New York*, [MAD/ATB]), affd' as mod 694 Fed Appx 30 (2d Cir 2017); *but see Lanning v City of Glens Falls*, 908 F3d 19 (2d Cir 2018). Defendants reply that that case is legally non-binding and factually inapposite, given that the defendant therein did not plead guilty to charges. *See* DePugh reply affirmation, ¶¶ 9-19. The court agrees.

"To obtain recovery for malicious prosecution, a plaintiff must establish that a criminal proceeding was commenced, that it was terminated in favor of the accused, that it lacked probable cause, and that the proceeding was brought out of actual malice." *Martinez v City of*

Schenectady, 97 NY2d at 84, *citing Broughton v State of New York*, 37 NY2d 451, 457 [1975]. The Court of Appeals unequivocally holds that the reversal of a conviction on appeal "because the evidence that formed the basis for her conviction was obtained pursuant to a faulty search warrant," does not constitute a "favorable termination" for the purposes of evaluating a malicious prosecution claim. *Martinez v City of Schenectady*, 97 NY2d at 84-85. As a result, the malicious prosecution claim fails, as a matter of law. To the extent that the Northern District's *Penree* decision suggested a different test for evaluating "favorable terminations" in malicious prosecution claims, the U S Court of Appeals for the Second Circuit recently clarified that that analysis does not apply to claims under New York State law, but only to claims pursuant to 42 USC § 1983. *See Lanning v City of Glens Falls*, 908 F3d 19 (2d Cir 2018). Therefore, the court rejects plaintiff's opposing argument, and grants so much of defendants' motion as seeks summary judgment dismissing the third cause of action as against the defendant City.

The City also argues that the first cause of action for false imprisonment should be dismissed as untimely. *See* notice of motion, DePugh affirmation, ¶ 1; DePugh reply affirmation, ¶ 20. It was previously observed that such claims "accrue[] upon [a] plaintiff's release from confinement," are when they are "asserted against municipal defendants [they] must be commenced within the one-year-and-90-day statute of limitations contained in General Municipal Law § 50-i [and CPLR 217-a]." *Williams v City of New York*, 153 AD3d at 1305. Plaintiff was released from incarceration on October 23, 2014, and he commenced this action on February 1, 2016. *See* verified complaint, ¶ 16. The statute of limitations on his false imprisonment claim would normally have expired on January 21, 2016, a week before he filed his summons and complaint. However, Court of Appeals precedent holds that the one-year-and-90-day limitations period set forth in General Municipal Law § 50-i which applies to tort claims

against municipal defendants such as the City, is tolled during the pendency of a plaintiff's motion for leave to file a late notice of claim. *See e.g. Campbell v City of New York*, 4 NY3d 200, 203-204 [2005]; *Bayne v City of New York*, 137 AD3d 428, 428-429 [1st Dept 2016], *citing Giblin v Nassau County Med. Ctr.*, 61 NY2d 67, 72-74 [1984]. Here, plaintiff filed his order to show cause for leave to file a late notice of claim on July 22, 2015 and executed the stipulation with the City that resolved that request 52 days later, on September 11, 2015. *See* verified complaint, ¶¶ 5-6; notice of motion, DePugh affirmation, exhibit A. As a result, the statute of limitations on his false imprisonment claim was tolled for a total of 52 additional days; and, consequently, that claim was timely when he raised it in his February 1, 2016 complaint. Therefore, the court rejects defendants' argument, and denies so much of their motion as seeks summary judgment to dismiss the first cause of action against the City on statute of limitations grounds.

Plaintiff's Cross Motion

Plaintiff's cross motion requests a grant of partial summary judgment on the issue of defendants' liability for his remaining cause of action for false imprisonment. *See* plaintiff's mem of law at 10-12. As previously noted, defendants argued that that claim should be dismissed as untimely. *See* notice of motion, DePugh affirmation, ¶ 1; DePugh reply affirmation, ¶ 20. However, the court rejected that argument because the 52-day toll created by the pendency of the petition to file a late notice of claim rendered his false imprisonment claim timely. Plaintiff's cross motion asserts that he "has made a prima facie showing to entitlement of summary judgment on liability for his cause of action for false imprisonment." *See* plaintiff's mem of law at 10. He correctly notes that "[t]o establish this cause of action the plaintiff must show that: (1) the defendant intended to confine him, (2) the plaintiff was conscious of the

confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged." *Roberts v City of New York*, 171 AD3d 139, 146 [1st Dept 2019], *citing Broughton v State of New York*, 37 NY2d 451, 457 [1975]. He further asserts that "there is no factual dispute that the first three elements of the claim for false imprisonment are established," and that the operative question therefore concerns "the fourth element - namely, whether [his] arrest was privileged." *See* plaintiff's mem of law at 10-11. On that issue, the Court of Appeals holds that:

> "For purposes of the privilege element of a false arrest and imprisonment claim, an act of confinement is privileged if it stems from a lawful arrest supported by probable cause. Probable cause consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe plaintiff guilty. Probable cause does not require proof sufficient to warrant a conviction beyond a reasonable doubt but merely information sufficient to support a reasonable belief that an offense has been or is being committed by the suspected individual, and probable cause must be judged under the totality of the circumstances."

De Lourdes Torres v Jones, 26 NY3d 742, 760 [2016] (internal citations and quotation marks omitted). Here, plaintiff asserts that the First Department's decision reversing his conviction specifically found that there was no "probable cause" for his arrest, and that such a finding is "conclusive proof" of the final element of his false imprisonment claim. *See* plaintiff's mem of law at 10-12. The First Department's decision found that "[t]he officer's observations, up until the time he arrived at the passenger window, gave rise to founded suspicion that criminality was afoot, and so justified his question regarding what defendant had put in his pocket, which constituted a common-law inquiry," but that "[t]he circumstances did not give rise to the reasonable suspicion required to authorize a frisk." *People v Butler*, 127 AD3d at 623-624. The finding of a lack of reasonable suspicion clearly establishes a lack of probable cause, as the latter is a higher burden.

Well settled Appellate Division precedent holds that whenever there has been an arrest and imprisonment without a warrant, there is also presumption is that such arrest and imprisonment are unlawful, and the defendant has the burden of proving legal justification as an affirmative defense. *See e.g.*, *Matter of Nunez v Village of Rockville Ctr.*, 176 AD3d 1211, 1218 [2d Dept 2019] *citing Broughton v State of New York*, 37 NY2d 451, 458 [1975]; *Veras v Truth Verification Corp.*, 87 AD2d 381, 384 [1st Dept 1982], *citing Broughton v State of New York*, 37 NY2d at 458.

Here, defendants failed to raise any argument on the issue of "probable cause" in their moving or reply papers. As a result, they have failed to rebut the presumption that there was no "probable cause" for plaintiff's warrantless arrest. Therefore, the court finds that plaintiff has established all of the elements of his first cause of action for false arrest, and it accordingly grants so much of plaintiff's cross motion as seeks partial summary judgment on that claim on the issue of liability only. The court notes in closing that, although plaintiff's cross motion requested summary judgment against the co-defendants Steven O'Hagan, Steven Omisore and unknown officer "John Doe," the terms of the September 11, 2015 stipulation precluded him from asserting any state law claims against those officers, and bound him to seek relief only against the City and DA Vance, in his official capacity. Accordingly, for the foregoing reasons it is hereby

ORDERED that the motion, pursuant to CPLR 3212, of the defendants NYPD Officers Steven O'Hagan, Steven Omisore and "John Doe" (motion sequence number 005) is granted, and the complaint is dismissed in its entirety as against defendants Steven O'Hagan, Steven Omisore and "John Doe,"; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the motion, pursuant to CPLR 3212, of the defendants City of New York, (motion sequence number 005) is also granted to the extent that the second, third, fourth, fifth, sixth, seventh and eighth causes of action in the complaint are dismissed as against the defendant City of New York, but it is denied with respect to plaintiff's first cause of action; and it is further

ORDERED that the cross motion, pursuant to CPLR 3212, of the plaintiff Jeffrey Butler (motion sequence number 005) is granted as to liability on his first cause of action for false imprisonment as against the defendant City of New York.

10/14/2020
DATE

LYLE E. FRANK, J.S.C.
HON. LYLE E. FRANK
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

HON. LYLE E. FRANK
J.S.C.