SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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RAMON TONY GARRIDO,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE, NEW YORK CITY POLICE, NYPD

Defendant.

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INDEX NO. 153614/2023

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff Ramon Tony Garrido ("Plaintiff") moves pursuant to CPLR § 3025(b) for leave to amend his complaint to add "Undercover Officer #419" ("UO419") as an additional defendant. The proposed amendment seeks to assert federal constitutional claims under 42 U.S.C. § 1983 and state law claims including negligence, false imprisonment, malicious prosecution, negligent infliction of emotional distress, and related causes of action. Defendants City of New York, Detective Remo, and Sergeant Morales oppose the motion in part, contending that all state law claims against UO419 are time-barred and do not satisfy the relation back doctrine, while not opposing amendment as to federal claims.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from Plaintiff's arrest on November 21, 2022, inside his residence at 15 East 21st Street, New York County. Plaintiff alleges he was handcuffed at gunpoint, searched, and falsely arrested by New York City Police Department ("NYPD") officers, detained for several hours, and later charged with criminal possession of a controlled substance in the seventh degree. The charges were dismissed and sealed on January 30, 2023.

Plaintiff filed a notice of claim on November 23, 2022, testified at a 50-h hearing on March 7, 2023, and commenced this action on April 20, 2023, naming the City, Detective Remo, Sergeant Morales, and John Doe officers. After issue was joined, discovery was delayed; only upon the City's belated response to the Case Scheduling Order in May 2025 did Plaintiff learn of the identity

of UO419 as a participant in the underlying investigation. Plaintiff then promptly moved to amend his complaint.

ARGUMENTS

Plaintiff argues that leave to amend under CPLR § 3025(b) should be freely given. He asserts that UO419 was directly involved in the investigation and conduct leading to his unlawful arrest and prosecution, and that omission of this officer's identity was due to lack of knowledge, not strategy. Plaintiff maintains that the proposed federal § 1983 claims are timely within New York's three-year statute of limitations for personal injury claims (*see Kane v. Mount Pleasant Cent. Sch. Dist.*, 80 F.4th 101 [2d Cir. 2023]). As to the state law claims, Plaintiff invokes the relation back doctrine, arguing that the claims arise from the same occurrence, that UO419 and the existing defendants are united in interest, and that UO419 knew or should have known he would have been named but for Plaintiff's lack of knowledge. Plaintiff emphasizes that his diligence was thwarted by the City's delays in discovery.

Defendants do not oppose amendment as to federal claims, but oppose the addition of state law claims. They argue that state law claims are barred by General Municipal Law § 50-i's one-year and ninety-day limitations period, which expired in February 2024. Defendants contend that relation back does not apply because the City and UO419 do not share a unity of interest given distinct defenses (qualified immunity for officers, *Monell* liability for the City). They also argue Plaintiff failed to exercise due diligence in identifying UO419 prior to expiration of the limitations period, citing *Bumpus v. New York City Tr. Auth.*, 66 AD3d 26 (2d Dept 2009), and that mere involvement in an investigation does not establish that UO419 knew he would be sued.

Plaintiff replies that Defendants misstate accrual dates, as the claims arose from his arrest on November 21, 2022 and dismissal of charges on January 30, 2023. He invokes *Matter of Nemeth v. K-Tooling*, 40 NY3d 405 (2023), which held that the third prong of relation back requires only a "mistaken omission" rather than an "excusable" mistake. Plaintiff contends that he exercised diligence but was hampered by the City's failure to comply with discovery orders, and that fairness compels applying relation back where Defendants' noncompliance delayed disclosure of UO419's identity.

DISCUSSION

I. Standard Under CPLR § 3025(b)

CPLR § 3025(b) states that leave to amend pleadings "shall be freely given upon such terms as may be just." This provision embodies New York's liberal policy favoring resolution of disputes on the merits rather than by technical pleading deficiencies. The Court of Appeals has long emphasized that motions to amend should generally be granted unless the amendment would result in prejudice or surprise to the opposing party, or where the proposed amendment is palpably insufficient or patently devoid of merit (*Murray v. City of New York*, 43 NY2d 400, 404–05 [1977]; *Buran v. Coupal*, 87 NY2d 173, 178 [1995]).

The Appellate Division, First Department, has consistently echoed this approach, holding that leave should be denied only where there is a clear showing that the amendment lacks merit as a matter of law or where the opposing party demonstrates prejudice arising from the delay (*MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; *McGhee v. Odell*, 96 AD3d 449, 450 [1st Dept 2012]). Prejudice in this context does not mean exposure to greater liability but rather an impairment of the ability to prepare a defense, such as through the loss of evidence, unavailability of witnesses, or other circumstances rendering a fair trial impossible (*Kimso Apts., LLC v. Gandhi*, 24 NY3d 403, 411 [2014]).

Thus, the court's inquiry is guided by three touchstones: timeliness, legal sufficiency, and prejudice. Where the amendment satisfies these elements, leave must be freely granted.

II. Plaintiff's Federal Claims

Defendants concede that Plaintiff's proposed federal claims under 42 U.S.C. § 1983 are timely.[1] Section 1983 does not contain its own statute of limitations, and federal courts apply the state's general personal injury statute of limitations. In New York, that period is three years (CPLR § 214[5]; *Owens v. Okure*, 488 US 235, 251 [1989]).

Here, the events giving rise to Plaintiff's federal claims include his arrest on November 21, 2022, and his prosecution, which terminated in his favor when charges were dismissed on January 30, 2023. The motion to amend was filed in May 2025, well within the three-year limitations period. As such, the proposed amendment is timely.

The court also notes that § 1983 claims require only two elements: (1) conduct committed under color of state law, and (2) deprivation of a right secured by the Constitution or laws of the United States (*West v. Atkins*, 487 U.S. 42, 48 [1988]). Plaintiff's allegations that UO419, as a police officer employed by the NYPD, participated in the investigation that culminated in his allegedly unlawful arrest, if proven, suffice to state a plausible claim under federal law. At this stage, the court is not tasked with weighing evidence but with determining whether the amendment is palpably insufficient. The threshold for sufficiency is met.

Accordingly, Plaintiff's motion to amend is granted as to the federal claims against UO419.

III. Plaintiff's State Law Claims

The closer question is whether Plaintiff may add state law causes of action against UO419 despite the expiration of GML § 50-i(1)'s one-year and ninety-day limitations period. Plaintiff invokes the relation back doctrine under CPLR § 203(f), which permits an otherwise untimely claim to be deemed timely if certain requirements are satisfied.

The doctrine, as articulated in *Buran*, 87 NY2d 173, *supra*, and reaffirmed in *Matter of Nemeth*, 40 NY3d 405, *supra*, rests on three elements: (1) the claims against the new party must arise out of the same conduct, transaction, or occurrence alleged in the original pleading; (2) the new party must be "united in interest" with the original defendants, such that the new party can be

[1] This concession was reiterated on the record at oral argument before the court on September 16, 2025.

charged with notice of the action; and (3) the new party knew or should have known that, but for a mistake as to identity, they would have been named originally.

The court will address each element in turn.

A. Same Transaction or Occurrence

This prong is construed broadly (*O'Halloran v. Metropolitan Transp. Auth.*, 154 AD3d 83, 89 [1st Dept 2017]). Here, the allegations against UO419 stem from the investigation that immediately preceded Plaintiff's arrest and prosecution, the same nucleus of operative fact underpinning the original complaint. Although Defendants suggest that UO419's alleged role in the pre-arrest investigation constitutes a distinct "occurrence," the court concludes that both the investigation and the subsequent arrest are part of a single continuum of events for purposes of CPLR § 203(f). The first prong is therefore satisfied.

B. Unity of Interest

The second prong requires a showing that the proposed defendant is "united in interest" with an existing defendant, meaning that their interests in defending the action are such that a judgment against one will similarly bind the other (*Connell v. Hayden*, 83 AD2d 30, 41 [2d Dept 1981]). While Plaintiff contends that UO419 and the City are united in interest because the City is vicariously liable for the acts of its employees under respondeat superior (*Lepore v. Town of Greenburgh*, 120 AD3d 1202 [2d Dept 2014]), this argument overlooks important limitations.

Indeed. the Court of Appeals has recognized that municipalities and individual officers may not always be "united in interest," particularly where distinct defenses are available to each. For example, officers may assert qualified immunity or deny personal involvement, defenses unavailable to the City (*Mercer v. 203 East 72nd Street Corp.*, 300 AD2d 105, 107 [1st Dept 2002]; *Zehnick v. Meadowbrook II Assoc.*, 20 AD3d 793 [3d Dept 2005]). Moreover, under GML § 50-k(3), the City may decline to indemnify an officer where the officer acted outside the scope of employment or engaged in intentional wrongdoing. In such cases, the City's liability does not necessarily rise and fall with that of the officer.

Thus, although employment provides a practical connection, it is not the kind of "inextricable legal unity" contemplated by the doctrine. Because UO419 may assert defenses unavailable to the City, and because the City may disclaim indemnification, the unity of interest requirement is not met.

C. Knowledge of Mistaken Omission

The third prong asks whether the new party knew or should have known that, but for a mistake in identity, they would have been named originally. Importantly, in *Matter of Nemeth*, 40 NY3d 405, *supra*, the Court of Appeals clarified that a "mistake" under CPLR § 203(f) need not be excusable, but it must be a mistake as to identity—not simply a lack of knowledge.

Here, Plaintiff contends that he was unaware of UO419's identity until May 2025, when the City belatedly produced documents identifying that officer's involvement. While the court recognizes Plaintiff's frustration with Defendants' discovery delays, courts have consistently required plaintiffs to exercise due diligence in identifying unknown officers prior to expiration of the limitations period (*Bumpus*, 66 AD3d at 35–36, *supra*; *Diaz v. City of New York*, 160 AD3d 457, 458 [1st Dept 2018]).

The record reflects that Plaintiff did not move to compel disclosure, did not pursue FOIL requests, and did not otherwise seek to unmask UO419 before the statutory period lapsed. The absence of such diligence undermines the argument that UO419 "knew or should have known" that but for a mistake in identity, they would have been sued. Instead, the omission appears to be one of lack of knowledge rather than mistaken identity, which falls outside the scope of relation back.

Because Plaintiff cannot establish either the unity of interest prong or the mistaken identity prong, the relation back doctrine does not salvage the otherwise untimely state law claims. They are therefore barred by GML § 50-i(1).

IV. Prejudice

The final inquiry concerns prejudice. Defendants contend they would be prejudiced by the addition of UO419. However, prejudice in this context requires more than the prospect of additional liability; it requires some impairment to the ability to mount a defense. The City has had notice of Plaintiff's claims since service of the notice of claim in November 2022 and was further apprised during the 50-h examination. Moreover, UO419's role was documented in NYPD records. The fact that Defendants delayed in producing such documents undermines their claim of surprise.

Here, the court concludes that amendment to assert federal claims against UO419 will not result in cognizable prejudice. Indeed, Plaintiff's proposed federal claims under 42 U.S.C. § 1983 against UO419 are timely and sufficiently pleaded. However, the state law claims are barred by GML § 50-i's statute of limitations, and Plaintiff has failed to establish the elements of relation back.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to amend is granted to the extent that Plaintiff may amend the complaint to add Undercover Officer #419 as a defendant solely with respect to his federal claims under 42 U.S.C. § 1983; and it is further

ORDERED that Plaintiff's motion to amend the complaint to assert state law claims against Undercover Officer #419 is denied; and it is further

ORDERED that Plaintiff shall file and serve a supplemental summons and amended complaint consistent with this decision and order within twenty (20) days of entry; and it is further

ORDERED that the caption shall be amended to read:

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RAMON TONY GARRIDO,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE DETECTIVE RONALD REMO, SHIELD NO. 1871, NEW YORK CITY POLICE SERGEANT RAFAEL MORALES, TAX ID NO. 936053, UNDERCOVER OFFICER #419, AND NYPD POLICE OFFICERS JOHN DOES NOS. ONE THROUGH TEN, DEFENDANTS.

Defendants.

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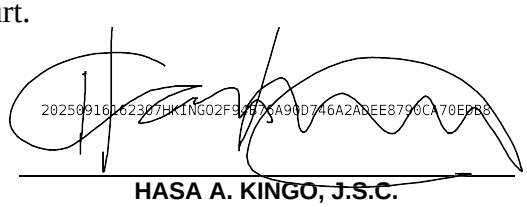
; and it is further

ORDERED that the Clerk of the Court shall amend the caption to reflect this change.

This constitutes the decision and order of the court.



9/16/2025
DATE

HASA A. KINGO, 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**