UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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LARRY JACKSON,

     Plaintiff,

   - against -

JESUS TELLADO, STANLEY MACNEAR,
JOHN CZULADA, JAMES T. GHERARDI,
RYANN DUNN, ROBERT J. DEFERRARI,
KENNETH BRAUMANN, BEN KURIAN,
PETER BONETA, THOMAS E. REO,
MICHAEL FAILLA, AND BRIAN E.
HEEREY,

     Defendants.
--x

MEMORANDUM & ORDER
11-CV-3028 (PKC) (SMG)

PAMELA K. CHEN, United States District Judge:

On February 3, 2016, after a seven-day trial, the jury returned a verdict in favor of Plaintiff

Larry Jackson, a New York City Police Department ("NYPD") officer, on his claims under 42

U.S.C. § 1983 against fellow NYPD Officers Jesus Tellado, Stanley MacNear, John Czulada,

James Gherardi, Ryann Dunn, Robert Deferrari, Kenneth Braumann, Ben Kurian, Peter Boneta,

Thomas Reo, Michael Failla, and Brian Heerey (collectively, "Defendants"). The jury determined

that Plaintiff had been falsely arrested and subjected to excessive force, and awarded Plaintiff

$12,500,000 in compensatory damages and a total of $2,675,000 in punitive damages, comprised

of varying amounts against each of the Defendants. At the request of defense counsel, the parties

were permitted to brief Defendants' post-trial motions in two phases, first for qualified immunity

and then for judgment as a matter of law or a new trial. On February 15, 2017, the Court issued

its decision on Defendants' qualified immunity motion, which resulted in the granting of qualified

immunity as to certain Defendants on the false arrest verdicts. (*See* Dkt. 111.)

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Pending before the Court is Defendants' motion seeking judgment as a matter of law under Federal Rule of Civil Procedure 50 ("Rule 50") as to ten of the twelve Defendants and a new trial as to the two other Defendants under Federal Rule of Civil Procedure Rule 59 ("Rule 59") ("Rule 50/59 motion"). For the reasons set forth below, the Court grants in part and denies in part Defendants' motions. The Court also directs the parties to submit briefing, pursuant to the schedule set forth *infra*, on whether the Court should grant remittitur with respect to the jury's compensatory and punitive damages awards.

BACKGROUND

I.   PROCEDURAL HISTORY

On June 24, 2011, Plaintiff filed his complaint against the City of New York and twenty John Doe defendants. (Dkt. 1.) After initial discovery, Plaintiff filed an Amended Complaint on March 1, 2013, naming the Defendants, and adding Officer Patrick D'Onofrio and Detective Robert Russo. (Dkt. 30.) Defendants moved for summary judgment on August 20, 2013 (Dkt. 55), and the Court granted that motion in part on March 17, 2014, dismissing Officer D'Onofrio and the City of New York, (Dkt 67). The parties proceeded to trial on January 25, 2016, but during trial, stipulated to the dismissal of Detective Russo (Dkt. 92), which the Court so ordered the next day.

After seven days of trial, the jury returned a verdict finding that three Defendants—Deferrari, Reo, and Heerey—were personally involved in falsely arresting Jackson, that four Defendants—Tellado, MacNear, Boneta, and Failla—failed to intervene to prevent Plaintiff Jackson's false arrest, and that one Defendant—MacNear—was liable as a supervisory officer for Plaintiff's false arrest. (Verdict Sheet, Dkt. 95, at 1-2.)

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With respect to the excessive force claim, the jury found that four Defendants—Czulada, Kurian, Reo, and Failla—were personally involved in subjecting Plaintiff to excessive force, that eight Defendants—Tellado, MacNear, Gherardi, Dunn, Deferrari, Braumann, Boneta, and Heerey—had failed to intervene to prevent Jackson from being subjected to excessive force, and that one Defendant—MacNear—was liable as a supervisory officer based on Plaintiff having been subjected to excessive force. (*Id.* at 3-4.) Every Defendant who went to trial was found liable on at least one claim. The jury awarded compensatory damages in a lump-sum amount of $12,500,000, as to which all Defendants are jointly and severally liable, and found Defendants liable for a total of $2,675,000 in punitive damages, with specific amounts of punitive damages being assessed against each liable Defendant.[1]

On February 15, 2017, the Court issued a Memorandum & Opinion ("February 15 Decision") holding that Defendants Deferrari, Reo, Heerey, MacNear, and Boneta were entitled to qualified immunity regarding the false arrest verdicts against them. (Dkt. 111.) The Court also found that Defendants Failla and Tellado were not entitled to qualified immunity for the false arrest verdicts against them[2], and that none of the Defendants who were found liable for excessive force were entitled to qualified immunity for the excessive force verdicts against them. (*Id.*)

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[1] The jury awarded $300,000 in punitive damages against Tellado; $300,000 against MacNear; $275,000 against Czulada; $150,000 against Gherardi; $150,000 against Dunn; $250,000 against Deferrari; $50,000 against Braumann; $400,000 against Kurian; $125,000 against Boneta; $275,000 against Reo; $350,000 against Failla; and $50,000 against Heerey, for a total of $2,675,000 in punitive damages. (Verdict Sheet, Dkt. 95.)

[2] However, the Court suggested that the false arrest verdicts against Failla and Tellado nonetheless might not withstand a Rule 50 motion. (*See* Dkt. 111, at 33, n.22.) ("As with Failla, this ruling does not resolve the question of whether the evidence was sufficient to support the jury's failure to intervene verdict as to Tellado. Indeed, the Court notes that the evidence supporting Tellado's liability is thin . . .").)

On March 31, 2017, Defendants filed their Rule 50/59 motion. (Defs.' Rule 50/59 Mot. ("Defs.' Mot."), Dkt. 113.) Plaintiff filed his opposition on May 13, 2017 (Pl. Opp'n., Dkt. 117), and Defendants replied on May 24, 2017, (Defs.' Reply, Dkt. 118).

II.   RELEVANT FACTS

The Court assumes the parties' familiarity with the trial record and also incorporates herein the Relevant Facts section from its February 15 Decision on qualified immunity. (*See* Dkt. 111, at 2–15.)

DISCUSSION

I.   JUDGMENT AS A MATTER OF LAW UNDER RULE 50

A. Legal Standard

Rule 50 "generally imposes a heavy burden on a movant, who will be awarded judgment as a matter of law only when 'a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.'" *Cash v. Cnty. of Erie*, 654 F.3d 324, 333 (2d Cir. 2011) (quoting Fed. R. Civ. P. 50(a)). In making this determination, the court should review the record as a whole but "must draw all reasonable inferences in favor of the nonmoving party" and "disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000).

In addition, where, as here, "the jury has deliberated in the case and actually returned its verdict in favor of the non-movant," the moving party's burden is especially heavy. *Cash*, 654 F.3d at 333 (internal citations and quotations omitted). The court must, in these circumstances, "give deference to all credibility determinations and reasonable inferences of the jury" and may set aside a verdict only if there is "such a complete absence of evidence supporting the verdict that

the jury's findings could only have been the result of sheer surmise or conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded [persons] could not arrive at a verdict against [it]." *Brady v. Wal–Mart Stores, Inc.*, 531 F.3d 127, 133 (2d Cir. 2008) (internal quotation marks and citation omitted); *see also Claudio v. Mattituck–Cutchogue Union Free Sch. Dist.*, 955 F. Supp. 2d 118, 132 (E.D.N.Y. 2013) ("Generally, a court reviewing such a motion must defer to all credibility determinations and reasonable inferences that the jury may have drawn at trial."). Put another way, a court may grant a Rule 50 motion only if, after "viewing the evidence in the light most favorable to the non-movant, [it] concludes that a reasonable juror would have been compelled to accept the view of the moving party." *Cash*, 654 F.3d at 333 (quotation marks and citation omitted).

B. Defendants Failla and Tellado Are Entitled to Judgment as a Matter of Law With Respect to Their Verdicts for Failure to Intervene in Plaintiff's False Arrest

Defendants argue that Failla and Tellado are entitled to judgment as a matter of law with respect to the jury's verdicts finding them liable for failing to intervene in Plaintiff's arrest. Defendants maintain, *inter alia*, that because both officers arrived at the scene late, they had no knowledge or reason to believe that probable cause to arrest Plaintiff was lacking, and that therefore, these officers could not have been found liable for failing to intervene. (Defs.' Mot., Dkt. 115, at 11-12.) The Court agrees.

A claim for false arrest "rest[s] on the Fourth Amendment right of an individual to be free from unreasonable seizures, including arrest without probable cause." *Morris v. Silvestre*, 604 Fed. App'x 22, 24 (2d Cir. 2015) (summary order) (quoting *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996)). Probable cause to arrest exists where the arresting officers have "knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is

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