

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

IVAN RAMOS,

Plaintiff,

v.

**6:16-CV-1312
(FJS/TWD)**

**GREGORY J. CULICK, Chief of Amsterdam Police
Department, and SERGEANT CARL J. RUST,
Amsterdam Police Department,**

Defendants.

APPEARANCES

OF COUNSEL

IVAN RAMOS

12-B-2475

Green Haven Correctional Facility
P. O. Box 4000
Stormville, New York 12582
Plaintiff *pro se*

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Dancks' February 9, 2017 Order and Report-Recommendation, in which she recommended that this Court dismiss Plaintiff's Amended Complaint with prejudice as against Defendant Rust for failure to state a claim. *See* Dkt. No. 13 at 12. She also recommended that this Court dismiss the Amended Complaint against Defendant Culick without prejudice, but without leave to amend, as to his Fourteenth Amendment due process claim and without prejudice and with leave to amend as to his First Amendment access-to-courts claim. *See Id.* The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge’s report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, “the Court may ‘accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.’” *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Dancks' February 9, 2017 Order and Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Dancks’ February 9, 2017 Order and Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff’s Amended Complaint, *see* Dkt. No. 11, is **DISMISSED with prejudice** as against Defendant Rust; and the Court further

ORDERS that Plaintiff’s Amended Complaint against Defendant Culick is **DISMISSED without prejudice, but without leave to amend** as to his Fourteenth Amendment due process claim; and the Court further

ORDERS that Plaintiff’s Amended Complaint against Defendant Culick is **DISMISSED without prejudice and with leave to amend** as to his First Amendment access-to-courts claim; and the Court further

ORDERS that, if Plaintiff wishes to proceed with his First Amendment access-to-courts claim, he must file a signed amended complaint that cures the pleading defects that Magistrate Judge Dancks identified in her February 9, 2017 Order and Report-Recommendation; and the Court further

ORDERS that, upon Plaintiff's full compliance with this Order, the Clerk of the Court shall return the file to this Court for further review; and the Court further

ORDERS that, if Plaintiff fails to comply fully with the terms of this Order **within thirty (30) days** from its filing date, the Clerk of the Court shall enter Judgment indicating that this action is **DISMISSED with prejudice**, without further order of this Court, pursuant to 28 U.S.C. §1915A(b), for failure to state a claim upon which relief may be granted; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 2, 2017
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge