

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREGORY DAUGHTREY,

Plaintiff,

-v-

CITY OF NEW YORK,

Defendant.
-----X

11 Civ. 9693 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the June 29, 2012, Report and Recommendation of Magistrate Judge James C. Francis IV that the Court dismiss plaintiff’s Complaint for failure to exhaust administrative remedies (the “Report”). For the reasons that follow, the Court adopts the Report in full, and plaintiff’s Complaint is dismissed.

I. Background

Daughtrey, a plaintiff *pro se*, filed his Complaint on December 29, 2011, pursuant to 42 U.S.C. § 1983. Dkt. 2. Daughtrey alleges that the City of New York (“the City”) failed to provide him with an adequately sized bed and that he suffered injuries as a result. *See* Compl. at 5.

On April 23, 2012, the City moved to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 10–12. Daughtrey did not oppose the motion to dismiss. On June 29, 2012, Judge Francis issued the Report, recommending that the City’s request to dismiss the case be granted because of Daughtrey’s failure to exhaust all available administrative remedies, as required by the Prison Litigation Reform Act (“PLRA”), 42 U.S.C.

§ 1997e(a). Dkt. 19. The deadline for Daughtrey to file objections to the Report was July 13, 2012. He has filed no objections.

II. Discussion

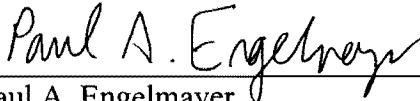
In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept those portions of the report to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Carlson v. Dep’t of Justice*, No. 10 Civ. 5149 (PAE) (KNF), 2012 WL 928124, at *1 (S.D.N.Y. Mar. 19, 2012) (citation omitted); *see also Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Daughtrey has proffered no objections to the Report, so a review for clear error is appropriate. Careful review of the Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 8, Daughtrey’s failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

CONCLUSION

For the reasons stated herein, the Court adopts the Report (Dkt. 19) in full. Plaintiff’s Complaint is hereby DISMISSED. The Clerk of Court is directed to terminate the case.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: October 11, 2012
New York, New York