

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TRENT PATTERSON,		:	
	Plaintiff,	:	16 Civ. 3156 (PAE) (JCF)
-v-		:	<u>OPINION &amp; ORDER</u>
JOSEPH PONTE et al.,		:	
	Defendants.	:	
-----X		:	

PAUL A. ENGELMAYER, District Judge:

*Pro se* plaintiff Trent Patterson brings this action under 42 U.S.C. § 1983 alleging various claims arising from his conditions of confinement at the Anna M. Kross Center (“AMKC”), as well as violations of his right to access to the courts, right to free exercise of religion, right to freedom of association, and right to liberty from bodily restraint. Before the Court is the March 30, 2017 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court dismiss this action without prejudice to Patterson’s ability to amend his Complaint. Dkt. 43 (“Report”). For the following reasons, the Court adopts this recommendation.

**I. Background**

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 2–3.

On April 28, 2016, Patterson filed a Complaint. Dkt. 2. On July 7, 2016, the Court referred this case to Judge Francis for general pretrial supervision and for a report and recommendation. Dkt. 7. On September 15, 2016, Patterson amended his Complaint to add additional officer defendants. Dkt. 16. On November 28, 2016, defendants filed a motion to

dismiss the Complaint, along with a supporting memorandum of law. Dkts. 28–29. On December 28 and 29, 2016, Patterson filed two letters in opposition to defendants’ motion to dismiss, and requesting the appointment of *pro bono* counsel. Dkts. 32–33. On December 30, 2016, Judge Francis denied Patterson’s request for the appointment of *pro bono* counsel. Dkt. 34. On January 17, 2017, defendants filed a reply memorandum of law in support of their motion to dismiss. Dkt. 35.

On March 30, 2017, Judge Francis issued the Report, recommending that the Court dismiss the Complaint without prejudice. Objections were due by April 13, 2017. *See* Dkt. 43. To date, the Court has received 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.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at \*2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 24, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 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) (per curiam)).

Careful review of Judge Francis's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because Patterson has not yet had the opportunity to amend his Complaint, the Court agrees with Judge Francis that this dismissal shall be without prejudice to Patterson's ability to do so, consistent with the findings of the Report.

### CONCLUSION

For the foregoing reasons, the Court dismisses Patterson's Complaint without prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



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Paul A. Engelmayer  
United States District Judge

Dated: April 17, 2017  
New York, New York