

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>RODERICK CLEARE,</b>	:	
	:	<b>Case No. 15-CV-2295</b>
<b>Plaintiff,</b>	:	
	:	<b>JUDGE ALGENON L. MARBLEY</b>
v.	:	
	:	<b>Magistrate Judge Jolson</b>
<b>WARDEN CHAROLETTE JENKINS, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**ORDER**

Before the Court is Defendants' October 26, 2015 Motion to Dismiss for Failure to State a Claim in the above-styled matter (Doc. 19), and the Magistrate Judge's June 24, 2016 Report and Recommendation that the aforementioned motion be granted in part and denied in part. (Doc. 32).

The Report and Recommendation specifically advised parties that any objections thereto must be filed within 14 days after issuance of the Report and Recommendation, and “that [a] failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment to the District Court.” (*Id.* at 17.)

The Court hereby **ADOPTS** the Report and Recommendation based on the independent consideration of the analysis therein. Accordingly, the Court **DENIES** Plaintiff's motion to convert Defendant's Motion to Dismiss into a motion for summary judgment, the Court **GRANTS** Defendants' Motion to Dismiss with respect to Plaintiff's: Count I Excessive Force against Defendants Irvin and Free; Count II(b) Retaliation against all Defendants; and Count III Conspiracy against all Defendants.

The Court *sua sponte* **GRANTS** Plaintiff leave to file a Second Amended Complaint consistent with the foregoing within **TWENTY-ONE (21) DAYS** from issuance of this Order. Specifically, Plaintiff may file the Second Amended Complaint as to: Count I against Defendants Higgenbotham, Lieutenant Brown, and Captain Brown; and Count II(a) against Defendants Higgenbotham, Irvin, and Lieutenant Brown. If Plaintiff does not file a Second Amended Complaint within 21 days, all of the aforementioned claims will be dismissed with prejudice as to those Defendants.

Plaintiff is allowed to proceed with his Count II(a) Retaliation claim against Defendant Free.

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**UNITED STATES DISTRICT COURT**

**Dated: August 25, 2016**