

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____ X

LILY ENG,

Plaintiff,

-against-

RICK CASH, CHRISTINA BIRNER and
MARGARET MILIDANTRI,

Defendants.

_____ X

FEUERSTEIN, J.

ORDER **FILED**
CV-10-3117(S.J.F)(W.D.W) CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y

★ SEP 28 2011 ★

LONG ISLAND OFFICE

Pending before the Court is the Report and Recommendation (“the Report”) of Magistrate Judge William D. Wall, dated July 5, 2011, recommending that defendants’ motion to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure be granted, that the complaint be dismissed in its entirety without prejudice and that plaintiff be granted leave to file an amended complaint. No objections have been filed to the Report. For the reasons stated herein, the Court accepts Magistrate Judge Wall’s Report in its entirety.

I

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge on a dispositive matter, to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See, Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff’d, 305 Fed. Appx. 815 (2d Cir.

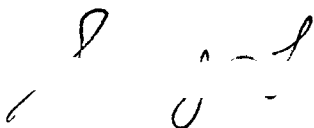
Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Wall's Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Wall's Report in its entirety. Defendants' motion to dismiss the complaint pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure is granted, the complaint is dismissed in its entirety without prejudice and plaintiff is granted leave to file an amended complaint in accordance with the Report and this Order **within thirty (30) days from the date this Order is served with notice of entry upon her**. The Clerk of the Court shall serve notice of entry of this Order in accordance with Rule 77(d)(1) of the Federal Rules of Civil Procedure, including mailing a copy of the Order to the *pro se* plaintiff at her last known address, see Fed. R. Civ. P. 5(b)(2)(C).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed.2d 21 (1962).

SO ORDERED.



SANDRA J. FEUERSTEIN
United States District Judge

Dated: September 28, 2011
Central Islip, New York