

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GRACE ANN NETTI,

Plaintiff,

5:17-CV-0976
(GTS/ATB)

v.

CHRISTOPHER AYERS; JOHN IACONA;
TIM FURLONG; CHRISTINA LONGO;
STATE OF NEW YORK; STATE FARM
MUTUAL AUTOMOTIVE INSURANCE
COMPANY; ROGER BELL; TOM FERLENDIA;
3RPM, INC. d/b/a Harry's Tire; CHRISTOPHER
RIESTER; MIKE AUGUSTIN; JOHN DOES 1-5;
CAYUGA COUNTY; CITY OF AUBURN,
NEW YORK; and MAMI,

Defendants.

APPEARANCES:

GRACE ANN NETTI

Plaintiff, *Pro Se*

P.O. Box 724

Skaneateles, New York 13152

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Grace Ann Netti (“Plaintiff”) against the above-captioned individual, municipal, state and corporate defendants (“Defendants”), is United States Magistrate Judge Andrew T. Baxter’s Report-Recommendation recommending that Plaintiff’s Complaint be *sua sponte* dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii) for failure to state a claim upon which relief can be granted, except for Plaintiff’s claims against Defendant State of New York under the Americans with Disabilities Act, which Plaintiff should be permitted amend before dismissal. (Dkt. No. 6.)

Plaintiff has filed an Objection to the Report-Recommendation. (Dkt. Nos. 11, 12.) However, even when construed with the utmost of special solicitude, Plaintiff's Objection fails to assert a specific challenge to the Report-Recommendation. (*Id.*) As a result, the Court need review the Report-Recommendation for only clear error.¹

Based upon a careful review of this matter, the Court can find no clear error in the Report-Recommendation: Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein. (Dkt. No. 6.)

ACCORDINGLY, it is

ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 6) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

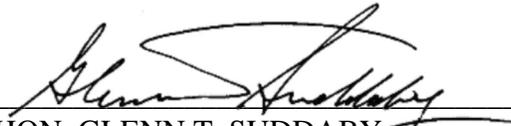
ORDERED that Plaintiff's Complaint (Dkt. No. 1) is *sua sponte* **DISMISSED** with **prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii) for failure to state a claim upon which relief can be granted, **EXCEPT** for Plaintiff's claims against Defendant State of New York under the Americans with Disabilities Act ("ADA"), which **shall be DISMISSED** with **prejudice** without further notice of the Court **UNLESS**, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an Amended Complaint correcting the pleading defects in those ADA claims in accordance with the instructions in the Report-Recommendation; and it is further

¹ When, as here, no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*: see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1. (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks and citations omitted).

ORDERED that Plaintiff's Amended Complaint may not assert any of the
aforementioned claims that are hereby being dismissed with prejudice (i.e., any claims other than
her claims against Defendant State of New York under the ADA); and it is further

ORDERED that, should Plaintiff file an Amended Complaint within the referenced
thirty (30) day time period, it shall be referred to Magistrate Judge Baxter for review.

Dated: February 9, 2018
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge