UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOTO, INC.,

Plaintiff,

-v-

SONY MUSIC ENTERTAINMENT,

Defendant.

No. 12 Civ. 1434 (RJS)
ORDER ADOPTING REPORT AND RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

Plaintiff filed its Complaint on February 27, 2012, seeking damages for Defendant's alleged breach of contract and related claims. At that time, the matter was assigned to the docket of Judge Lewis Kaplan. On June 11, 2012, Plaintiff filed its Amended Complaint, and on July 3, 2012, Defendant moved to dismiss that Complaint. Defendant's motion was fully briefed on August 13, 2012. By Order dated September 19, 2012, Judge Kaplan referred this matter to Magistrate Judge Andrew Peck, who issued his Report and Recommendation (the "Report") regarding Defendant's motion on December 11, 2012. This matter was then reassigned to my docket, with four related cases, on December 20, 2012.

In his Report, Judge Peck advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1993). When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on

the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After reviewing the record, the Court finds that Judge Peck's well-reasoned Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety and, for the reasons set forth therein, GRANTS Defendant's motion to dismiss as to the portion of Plaintiff's first cause of action seeking damages for royalties periods ending on June 30, 2008 and earlier, but DENIES Defendant's motion to dismiss for the portion of Plaintiff's first cause of action seeking recovery for digital download royalties for the periods ending December 31, 2008 and later. Further, the Court GRANTS Defendant's motion to dismiss as to Plaintiff's second cause of action for breach of the implied covenant of good faith and fair dealing.

SO ORDERED.

Dated: January 15, 2013
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE