

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-81137-CIV-DIMITROULEAS

LINDA HAMILTON,

Plaintiffs,

v.

NATASHA SHEPARD and CITIBANK,

Defendants.

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ORDER APPROVING REPORT OF MAGISTRATE JUDGE

THIS CAUSE is before the Court on Defendant's Motion to Dismiss [DE 50], Defendant's Motion to Vacate Entry of Default Judgment [DE 51], Plaintiff's Motion to Change Venue [DE 52], Plaintiff's Motion to Object Order to Vacate and order to grant Summary Judgement [DE 57] and the Report and Recommendation of Magistrate Judge William Matthewman (the "Report") [DE 59]. The Court has conducted a *de novo* review of the Report [DE 59] and Plaintiff's Notice of Appeal [DE 60]. The Court is otherwise fully advised in the premises.

A party seeking to challenge the findings in a report and recommendation of a United States Magistrate Judge must file "written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection." *Macort v. Prem, Inc.*, 208 F. App'x 781, 783 (11th Cir. 2006) (quoting *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). "It is critical that the objection be sufficiently specific and not a general objection to the report." *Macort*, 208 F. App'x at 784 (citing *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984)). If a party makes a timely and specific

objection to a finding in the report and recommendation, the district court must conduct a *de novo* review of the portions of the report to which objection is made. *Macort*, 208 F. App'x at 783-84; see also 28 U.S.C. § 636(b)(1). The district court may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. *Macort*, 208 F. App'x at 784; 28 U.S.C. § 636(b)(1).

In response to the Report entered by Judge Matthewman, Plaintiff filed a “Notice of Appeal” on July 19, 2021. [DE 60]. This Notice of Appeal merely gives this Court notice that Plaintiff is appealing Judge Matthewman’s Order and asks the Court to “accept and review all findings in this matter according to Fed. R. App. P 4(c)(1).” [DE 60]. Judge Matthewman informed Plaintiff in his Report that “[t]he parties shall have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with United States District Judge William P. Dimitrouleas. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and Recommendation and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report and Recommendation....”

While Plaintiff failed to object to specific factual and legal conclusions as required in filing an objection to a Magistrate Judge’s report and recommendation, the Court has conducted a de novo review of the Report. The Court agrees with the analysis and conclusions set forth in Magistrate Judge Matthewman’s well-reasoned Report.

It appears clear to the Court that Defendants’ were never properly served in compliance with Federal Rule of Civil Procedure 4, and, accordingly, the final default judgment must be

vacated. Further, the Court agrees with Magistrate Judge Matthewman that the complaint fails to state a claim against “Citibank” or Defendant Shepard.

For the foregoing reasons, the Court will adopt the Report, dismiss Plaintiff’s claims, and grant Plaintiff leave to file an amended complaint on or before **August 2, 2021**. The Court will also set a deadline for Plaintiff to timely serve the defendants with any amended complaint on or before **September 2, 2021**.


Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Report and Recommendation [DE 59] is hereby **ADOPTED** and **APPROVED**;
2. The Notice of Appeal, construed as an Objection [DE 60] is **OVERRULED**;
3. Defendants’ Motion to Vacate Entry of Default Judgment [DE 51] is **GRANTED**; the Amended Final Default Judgment [DE 45] is **VACATED** and **SET ASIDE**; the entry of the Clerk’s default [DE 36] is **VACATED** and **SET ASIDE**;
4. Defendants’ Motion to Dismiss [DE 50] is **GRANTED**; Plaintiff’s Complaint [DE 1] is **DISMISSED** without prejudice; Plaintiff is granted leave to file an amended complaint on or before **August 2, 2021**. Plaintiff must properly serve any defendant with any amended complaint on or before **September 3, 2021**.
5. Plaintiff’s Motion to Change Venue [DE 52] is **DENIED as moot**; Plaintiff can renew any argument raised, if necessary, after filing a valid complaint and performing proper service over any defendant.
6. To the extent Plaintiff’s “Motion to Object Order to Vacate and order to grant Summary Judgement” [DE 57] seeks relief, it is **DENIED** without prejudice;

Plaintiff can renew any argument raised, if necessary, after filing a valid complaint and performing proper service over any defendant;

7. Plaintiff's failure to timely file an amended complaint or to timely and properly serve any defendant with process may result in the Court closing this case without further notice.
8. The Clerk is **DIRECTED** to mail a copy of this Order to the parties at the address listed below.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 19th day of July, 2021.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
All Counsel of Record

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