

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 08-cv-02708-REB-KLM

VONNE I. TORREZ,

Plaintiff,

v.

CLIFFORD E. ELEY,

Defendant.

**ORDER ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) **Defendant's Amended Motion To Dismiss** [#11]¹ filed April 28, 2009; and (2) the **Recommendation of United States Magistrate Judge** [#14] filed April 28, 2009. The plaintiff filed her **Objection To Recommendation of United States Magistrate Judge** [#15] on May 8, 2009. I approve and adopt the recommendation [#14], overrule the plaintiff's objections [#15], and grant the motion to dismiss [#11].

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and I have considered carefully the recommendation, objections, and applicable law. In addition, because the plaintiff is proceeding *pro se*, I have construed her pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***,

¹ “[#11]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

551 U.S. 89, ___, 127 S. Ct. 2197, 2200 (2007); **Andrews v. Heaton**, 483 F.3d 1070, 1076 (10th Cir. 2007); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). The recommendation is detailed and well-reasoned. Finding no error in the magistrate judge's reasoning and recommended disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted. I find also that the objections stated by the plaintiff in her **Objection To Recommendation of United States Magistrate Judge** [#15] on May 8, 2009, are without merit.

In his motion to dismiss, the defendant moves to dismiss the plaintiff's complaint because the plaintiff's claims are barred by the applicable statute of limitations. When the dates alleged in a plaintiff's complaint make it clear that the claim asserted has been extinguished under the applicable period of limitations, and this assertion is raised in a motion to dismiss, the plaintiff has the burden of establishing a factual basis for tolling the statute of limitations. **Aldrich v. McCulloch Properties, Inc.**, 627 F.2d 1036, 1041 n. 4 (1980). In this case, the plaintiff alleges in her complaint that the defendant took certain actions in 1996 and 1997. Those alleged actions form the factual basis for the plaintiff's claims. The defendant argues in his motion to dismiss that the plaintiff's claims are time barred and the factual allegations in the complaint support the defendant's contention. In her response [#7] to the motion to dismiss, the plaintiff has not established a factual basis for tolling the statute of limitations.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#14] filed April 28, 2009, is **APPROVED AND ADOPTED** as an order of this court;
2. That the objections stated in the plaintiff's **Objection To Recommendation of**

United States Magistrate Judge [#15] on May 8, 2009, are **OVERRULED**;

3. That the **Defendant's Amended Motion To Dismiss** [#11] filed April 28, 2009, is **GRANTED**;


4. That under FED. R. CIV. P. 12(b)(6), the plaintiff's complaint [#1] filed December 12, 2008, is **DISMISSED**;

5. That **JUDGMENT SHALL ENTER** in favor of the defendant, Clifford E. Eley, and against the plaintiff, Vonne I. Torrez; and

6. That the defendants are **AWARDED** their costs to be taxed by the Clerk of the Court pursuant to FED. R. CIV. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated September 24, 2009, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge