

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRANDON B. DREWRY,)
)
 Plaintiff)
)
 v.) 1:14-cv-00392-GZS
)
 CORRECT CARE SOLUTIONS, et al.,)
)
 Defendants)

RECOMMENDED DECISION ON MOTION TO DISMISS

Defendants Dana Webster and Robin Cross-Snell move the Court to dismiss Plaintiff’s claims against them based on Plaintiff’s failure to serve them with Plaintiff’s amended complaint in accordance with Federal Rule of Civil Procedure 4. (ECF No. 205.)

Rule 4(m) provides in relevant part: “If a defendant is not served within 90 days after the complaint is filed, the court – on motion or its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specific time.” Fed. R. Civ. P. 4(m). At the time Defendants filed the motion, although Plaintiff had been granted leave to join Defendants Webster and Cross-Snell more than a year earlier (Recommended Decision, ECF No. 90, Order Affirming, ECF No. 95), Plaintiff had not served Defendants.

Subsequent to the filing of the motion to dismiss, however, in response to the Court’s order granting Plaintiff leave to proceed against Defendants Webster and Cross-Snell without filing a comprehensive amended complaint (Order, ECF No. 216), counsel notified the Court that counsel would accept service on behalf of Defendants Webster and Cross-

Snell. (ECF No. 218.) Defendants Webster and Cross-Snell then filed an answer to the amended complaint. (ECF No. 236.) The Court later permitted Defendants Webster and Cross-Snell to join in Defendants' pending motion for summary judgment. (ECF No. 241.) Defendants Webster and Cross-Snell are now parties to the case.

Because Defendants Webster and Cross-Snell have been joined as parties to this action, the basis for the motion to dismiss is moot. Accordingly, I recommend the Court dismiss the motion to dismiss as moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 22nd day of February, 2017.