UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

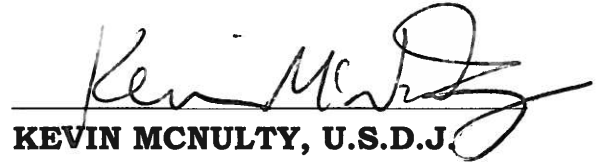|	
GABE S. BARRENTINE,	Civ. No. 12-3936 (KM)
Plaintiff,	
v.	MEMORANDUM OPINION & ORDER
NEW JERSEY TRANSIT and AMALGAMATED TRANSIT UNION LOCAL 822, *et al.*,	
Defendants.	

THIS MATTER having come before the Court by way of a motion to dismiss for ineffective service of process ("Motion to Dismiss") filed by defendant New Jersey Transit ("Defendant") [ECF No. 25]; and Plaintiff Gabe Barrentine having filed a cross motion to extend the time to serve Defendant ("Cross Motion") and in opposition to the Motion to Dismiss [ECF No. 28]; and, on July 25, 2013, Magistrate Judge Hammer having submitted a Report and Recommendation (the "R&R") [ECF No. 34]; and the parties having made no objection; and the Court, pursuant to Federal Rule of Procedure 78, having considered all of the foregoing and other documents in the record; and for good cause appearing; the Court decides as follows:

(1) On June 27, 2012, Plaintiff filed an application to proceed *in forma pauperis* ("IFP") and an application for the appointment of pro bono counsel. [ECF No. 1-2.] On July 2, 2012, the Court denied Plaintiff's pro bono counsel application but granted Plaintiff's IFP application. [ECF No. 5.] On July 12, 2012, a summons was issued as to Defendant. [ECF No. 7.]

(2) Plaintiff proceeded *pro se* until January 9, 2013. He maintains that at the time he filed the original complaint *pro se*, he did not understand the law regarding service of process.

(3) Magistrate Judge Hammer's R&R recommends denying Defendant's Motion to Dismiss Plaintiff's Complaint [ECF No. 25] and granting Plaintiff's Cross Motion to extend the time to serve Defendant [ECF No. 28] by thirty (30) days.

(4) Neither party has filed an objection to the R&R within fourteen days of July 25, 2013, when it was filed and served. *See* Local Civil Rule 72.1(c) (14-day deadline for objections).

(5) This Court reviews the Magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b)(3). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also U.S. v. Raddatz*, 447 U.S. 667, 680 (1980) (stating that the district court judge has broad discretion in accepting or rejecting the magistrate's recommendation).

(6) If there are no objections, the district court has discretion to choose an appropriate standard of review. *See Thomas v. Arn*, 474 U.S. 140, 154 (1985) (the federal statute neither prohibits nor requires a particular standard if no objections are filed); *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984). At a minimum, "[w]hat is not objected to, the district court reviews under the plain error or manifest injustice standard." *Megaparts v. Highcom Security*, No. 09-4052, 2010 U.S. Dist. LEXIS 63497, at *4 (D.N.J. June 25, 2010); *see, e.g., Banks v. Gallagher*, 686 F. Supp. 2d 499, 505 (M.D. Pa. 2009); *Cruz v. Chater*, 990 F. Supp. 375, 376–78 (M.D. Pa. 1998) (citing Advisory Committee notes on Federal Rule of Civil Procedure 72(b), implementing 28 U.S.C. § 636(b)(1)(C)).

(7) The standard of review, however, is not critical. I agree with Magistrate Judge Hammer that the Motion to Dismiss for ineffective service of process should be denied. Based on Plaintiff's certification, I agree with Judge Hammer that Plaintiff made a good faith, diligent effort to effect service of process on Defendant. Moreover, granting the Motion to Dismiss after the expiration of the statute of limitations would be contrary to the Third Circuit's stated preference to decide cases on the merits. Therefore, I will exercise my discretion and grant Plaintiff an extension of time to effect service.

IT IS THEREFORE this 28th day of August, 2013,

ORDERED that Magistrate Judge Hammer's R&R is adopted in full. Defendant's Motion to Dismiss is **DENIED** and Plaintiff's Cross Motion to extend the time to serve Defendant by thirty (30) days is **GRANTED**.

KEVIN MCNULTY, U.S.D.J.