IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ESTATE OF RAYMOND J. GUZIEWICZ and STEVEN J. GUZIEWICZ, Individually and as the Administrator of the Estate of Raymond J. Guziewicz,

Plaintiffs,

v.

RENEE P. MAGNOTTA,

Defendant.

CIVIL ACTION NO. 3:14-cv-01742

(JUDGE CAPUTO)

(MAGISTRATE JUDGE SAPORITO)

MEMORANDUM

Presently before the Court is an appeal of Magistrate Judge Saporito's January 25, 2017 Order granting in part Plaintiffs' Motion for Leave to file an Amended Complaint. (Doc. 53.) For the reasons that follow, the Order of the Magistrate Judge will be set aside to the extent it found that the proposed amendment adding Agent Jerome Smith as a Defendant related back to the original Complaint under the "identity of interest" method of imputed notice.

I. Relevant Background

According to the Complaint, on January 27, 2012, arrest warrants were issued for Raymond J. Guziewicz ("Raymond") and Steven J. Guziewicz ("Steven") at the request of Magnotta, an agent of the Office of the Attorney General of Pennsylvania assigned to the Bureau of Narcotics Investigation. On January 31, 2012, Raymond was arrested by the Scranton City Police Department on the authority of the arrest warrant. He was charged with fifty-two felonies and twenty-six misdemeanors under the Pennsylvania Crimes Code and Drug, Device, and Cosmetic Act. Raymond was incarcerated for four days until he posted bail on February 3, 2012. On September 6, 2012, all of the charges against Raymond were dismissed by the Commonwealth of Pennsylvania because his arrest lacked probable

cause. Steven spent eighteen months in prison and was sentenced to time served on December 18, 2013, after pleading guilty to one felony count of acquiring a controlled substance. Steven alleged that he was forced to plead guilty after three potential alibi witnesses died before Steven's trial date of September 23, 2013. In addition, it is alleged that Magnotta had a pattern of arresting Raymond and Steven since 2005 in order to extract guilty pleas from Steven notwithstanding a lack of probable cause to support the charges against Raymond.

Steven is the administrator of Raymond's estate and brings this action in both his individual capacity and in his role as administrator of the estate. Plaintiffs filed a Motion for Leave to amend the Complaint to add Agent Jerome Smith ("Smith") as a Defendant on January 21, 2016. (Doc. 30.) Plaintiffs's proposed Amended Complaint alleges that Smith was Magnotta's immediate supervisor at or near the time of the events giving rise to the action and knew or should have known of Magnotta' s propensity for filing criminal charges which were not supported by probable cause. (Doc. 30-1 ¶ 22.)

Magnotta's last day of employment with the Office of Attorney General was November 8, 2013. (Kreiser Decl. ¶ 2, Doc. 34-3.) Plaintiffs filed their original Complaint on September 8, 2014, naming only Magnotta as a Defendant in her individual capacity. (Doc. 1.) On January 25, 2017, the Magistrate Judge entered a Memorandum (Doc. 50) and accompanying Order (Doc. 51) granting in part Plaintiffs' Motion for Leave to file an Amended Complaint. The Magistrate Judge granted Plaintiffs leave to add Smith as a Defendant in this action and concluded that the amendment related back to the original Complaint. (Doc. 50, at 15-16.)

II. Legal Standard

A. Appeal of a Magistrate Judge's Order Determining a Nondispositive Pretrial Motion

Local Rule 72.2 permits a party to appeal a magistrate judge's order determining a nondispositive pretrial motion or matter in any case in which the magistrate judge is not the presiding judge within fourteen (14) days after the order is issued. A district judge shall set aside any portion of the magistrate judge's order that is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b); L.R. 72.2. "A magistrate judge's order is clearly erroneous only 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Wachtel v. Guardian Life Ins. Co.*, 239 F.R.D. 376, 384 (D.N.J. 2006) (quoting *Dome Petroleum Ltd. v. Emp'rs Mut. Liab. Ins. Co. of Wis.*, 131 F.R.D. 63, 65 (D.N.J. 1990) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948))). "To be contrary to law, a magistrate judge's order must have 'misinterpreted or misapplied applicable law.'" *Id.* at 385 (quoting *Gunter v. Ridgewood Energy Corp.*, 32 F. Supp. 2d 162, 164 (D.N.J. 1998)).

B. Federal Rule of Civil Procedure 15

Federal Rule of Civil Procedure 15(a)(2) provides that after a responsive pleading has been filed, "a party may amend its pleading only with the opposing party's written consent or the court's leave." The Rule states that "[t]he court should freely give leave when justice so requires." The Third Circuit "has adopted a liberal approach to the amendment of pleadings in order to ensure that 'a particular claim will be decided on the merits rather than on technicalities.'" *Payne v. Duncan*, No. 3:15-cv-1010, 2016 WL 2859612, at *1 (M.D. Pa. May 16, 2016) (quoting *Dole v. Arco Chem. Co.*, 921 F.2d 484, 486-87 (3d Cir. 1990)). However, a district court may exercise its discretion to deny a Rule 15 motion when: "(1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party." *U.S. ex rel. Schumann v. Astrazeneca Pharm. L.P.*, 769 F.3d 837, 849 (3d Cir. 2014).

Federal Rule of Civil Procedure 15(c)[1] governs the relation back of amendments. In order for an amended complaint which adds a new defendant to relate back to the original complaint, three conditions must be met: (1) the claim against the newly named defendant must have arisen out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; (2) within the 120-day period for service of the summons and complaint under Rule 4(m), the newly named party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits; and (3) within that same period of time, the newly named party knew, or should have known, that but for a mistake, she would have been named as a defendant in the first place. *Robinson v. Adams*, No. 09-3587, 2010 WL 3069647, at *2 (E.D. Pa. Aug. 4, 2010) (citing *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 194 (3d Cir. 2001)). "If the amendment relates back to the date of the filing of the original complaint, the amended complaint is treated, for statute of limitations purposes, as if it had been filed at that time." *Garvin v. City of Phila.*, 354 F.3d 215, 220 (3d Cir. 2003).

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[1] Rule 15(c) states, in pertinent part:

> (c)(1) An amendment to a pleading relates back to the date of the original pleading when . . .
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> (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out–or attempted to be set out–in the original pleading; or
>
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
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> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
>
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

III. Discussion

On January 25, 2017, Magistrate Judge Saporito issued the instant Order granting in part Plaintiffs' Motion for Leave to file an Amended Complaint. (Doc. 51.) The Magistrate Judge granted Plaintiffs leave to add Smith as a Defendant in this case, and concluded that Plaintiffs' amendment related back to the original Complaint pursuant to Rule 15(c)(1)(c) under the "identity of interest" method of imputed notice. (Doc. 50, at 15-16.) On February 7, 2017, Defendants filed the instant appeal. (Doc. 53.) Defendants argue that the Magistrate Judge erred in finding that Smith had imputed notice under the "identity of interest" theory such that Plaintiffs' amendment relates back to the original Complaint. (Doc. 54, at 4-5.) Specifically, Defendants contend that because Magnotta was no longer employed by the Office of Attorney General at the time Plaintiffs filed their original Complaint naming only Magnotta as a Defendant in her individual capacity, notice could not be imputed to Smith under this theory within the requisite 120-day window. (*Id.*) Plaintiffs filed a Brief in Opposition on February 15, 2017. (Doc. 55.) The appeal is ripe for disposition.

This appeal concerns the Magistrate Judge's conclusion only with respect to the second condition of the relation back doctrine, referred to as the "notice condition." Under Rule 15(c), notice can be actual or constructive. "[N]otice may be deemed to have occurred when a party who has some reason to expect his potential involvement as a defendant hears of the commencement of litigation through some informal means. At the same time, the notice received must be more than notice of the event that gave rise to the cause of action; it must be notice that the plaintiff has instituted the action." *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 195 (3d Cir. 2001) (citing *Bechtel v. Robinson*, 886 F.2d 644, 652 n.12 (3d Cir. 1989)) (internal citations omitted). Presently at issue is the "identity of interest" method of imputed notice. "Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other." *Id.* at 197 (quoting 6A Charles A. Wright et al., Federal Practice

and Procedure § 1499, at 146 (2d ed. 1990)). "The identity of interest method requires the plaintiff to demonstrate that the circumstances surrounding the filing of the lawsuit permit the inference the notice was actually received by the parties sought to be added as defendants during the relevant time period." *Miller v. Hassinger*, 173 Fed. Appx. 948, 956 (3d Cir. 2006).

In *Singletary*, the Third Circuit concluded that notice was not imputed under the "identity of interest" method. In that case, the plaintiff sought to add a staff-level prison employee as a new defendant to his amended complaint when the originally named defendants were the prison and the prison superintendent. *See* 266 F.3d at 191. The court concluded that the proposed defendant, as a "a non-management employee, . . . does not share a sufficient nexus of interests with his or her employer so that notice given to the employer can be imputed to the employee for Rule 15(c)(3) purposes." *Id.* at 200. The *Singletary* court considered the fact that the proposed defendant had "no administrative or supervisory duties at the prison," and, consequently, "was clearly not highly enough placed in the prison hierarchy for [the court] to conclude that his interests as an employee are identical to the prison's interests." *Id.* at 199.

Subsequent to *Singletary*, district courts in this Circuit have found that the converse situation may give rise to imputed notice. For example, in *Ward v. Taylor*, 250 F.R.D. 165, 169 (D. Del. 2008), the district court found that the proposed defendant had sufficient notice under the "identity of interest" theory because he held a supervisory position along with, or superior to, the originally named defendants and thus had sufficiently similar interests. In *Robinson v. Adams*, No. 09-3587, 2010 WL 3069647, at *3 (E.D. Pa. Aug. 4, 2010), the district court also found the circumstances permitted a finding of imputed notice because "the working relationship between the new [supervisory] defendant and the ones previously named is close enough that notice may reasonably be implied." Furthermore, in *Culbreth v. Corll*, No. 09-04277, 2010 WL 4178489, at *3 (E.D. Pa. Oct. 22, 2010), the court concluded that the "identity of interest" method applied when the proposed new defendant was the partner of the original

defendant "at the time of the incident giving rise to this lawsuit[,] and [they] remained partners through September of 2009 when plaintiff filed his original complaint." Based on this close working relationship both at the time of the events giving rise to the lawsuit and at the time the complaint was filed, the district court found it "inconceivable that upon being served with plaintiff's complaint [the original defendant] did not mention the lawsuit to [the proposed new defendant]." *Id.*

Relying on the above cases, the Magistrate Judge concluded that, because Plaintiffs allege that Smith was Magnotta's direct supervisor at the time of the events giving rise to the underlying lawsuit and knew or should have known about Magnotta's misconduct, Smith and Magnotta shared a sufficient identity of interest so that the institution of litigation against Magnotta served to provide notice of the litigation to Smith. (*See* Doc. 50, at 8-9, 14-15.) However, at the time the original Complaint was filed, Magnotta was no longer employed by the Office of the Attorney General. (Kreiser Decl. ¶ 2, Doc. 34-3.) Magnotta's last day as Smith's subordinate was on November 8, 2013, approximately ten months before Plaintiffs filed their lawsuit against Magnotta. (*Id.*)

Based on this distinguishing fact, the Court finds that the Magistrate Judge misapplied the law. In order for Smith to have received sufficient notice of the instant lawsuit under Rule 15(c), the notice he received "must be more than notice of the event that gave rise to the cause of action; *it must be notice that the plaintiff has instituted the action*." *Singletary*, 266 F.3d at 195 (citing *Bechtel v. Robinson*, 886 F.2d 644, 652 n.12 (3d Cir. 1989)) (internal citations omitted) (emphasis added). In order to avail themselves of the "identity of interest" method of imputed notice, Plaintiffs were required "to demonstrate that the circumstances *surrounding the filing of the lawsuit* permit the inference the notice was actually received by the parties sought to be added as defendants during the relevant time period." *Miller*, 173 Fed. Appx. at 956 (emphasis added). This burden has not been met. Unlike the district court cases cited above, Plaintiffs have failed to show that at the time the lawsuit was filed, Smith and Magnotta were "so closely related in their business operations or other activities that the institution

of an action against [Magnotta] serve[d] to provide notice of the litigation to [Smith]." *Singletary*, 266 F.3d at 197 (citation omitted).

Indeed, because it is undisputed that Magnotta and Smith had no working relationship at the time Plaintiffs filed their Complaint naming only Magnotta in her individual capacity as a Defendant, and considering that no such relationship existed for approximately ten months preceding the filing of this lawsuit, there is no basis for imputing notice of this action to Smith under the "identity of interest" method. *See Smith v. City of Phila.*, 363 F. Supp. 2d 795, 802 (E.D. Pa. 2005) (finding that a proposed new defendant who was the police commissioner at the time of the events giving rise to the cause of action, but not at the time the lawsuit was filed, did not share an "identity of interest" with the originally named defendants). Plaintiffs cannot demonstrate imputed notice under this method solely by virtue of Smith's status as Magnotta's supervisor at the time of the events giving rise to the instant litigation. *Singletary*, 266 F.3d at 195; *see Smith*, 363 F. Supp. 2d at 802. This fact alone does not "permit the inference" that notice of this action "was actually received by [Smith] during the relevant time period." *Miller*, 173 Fed. Appx. at 956; *see Culbreth*, 2010 WL 4178489, at *3; *Smith* 363 F. Supp. 2d at 802.

Accordingly, because Plaintiffs' amendment adding Smith as a Defendant does not relate back pursuant to Rule 15(c) under the "identity of interest" theory relied upon by the Magistrate Judge, Plaintiffs' proposed § 1983 claim against Smith appears to be barred by the applicable statute of limitations, making the amendment futile.[2] *See Giles*

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[2] Plaintffs have not contested Defendant's assertion that the statute of limitations bars the proposed § 1983 claim against Smith if the amendment does not relate back to the original Complaint. "A Section 1983 claim accrues 'when the plaintiff knew or should have known of the injury upon which [his] action is based.'" *Giles v. City of Phila.*, 542 Fed. Appx. 121, 122-23 (3d Cir. 2013) (quoting *Sameric Corp. of Del., Inc. v. City of Phila.*, 142 F.3d 582, 599 (3d Cir. 1998)). "[A] federal cause of action accrues upon awareness of injury, not upon awareness of a potential legal theory or cause of action." *Id.* at 123. The Complaint alleges that the charges against Raymond were dismissed on September 6, 2012 due to a lack

v. City of Phila., 542 Fed. Appx. 121, 122 (3d Cir. 2013) (two-year statute of limitations). Therefore, Plaintiffs' Motion for Leave to file an Amended Complaint (Doc. 30) will be denied. However, considering that Plaintiffs are proceeding *pro se*, the Court will grant Plaintiffs leave to file a second amended complaint which alleges facts that demonstrate Smith received either actual notice or another method of constructive notice that satisfies the requirements of Rule 15(c), if they can do so.

IV. Conclusion

For the above stated reasons, the January 25, 2017 Order of the Magistrate Judge (Doc. 51) will be set aside to the extent it granted Plaintiffs' Motion for Leave based on a finding that the proposed amendment adding Smith as a Defendant related back to the original Complaint under the "identity of interest" method of imputed notice. Because the proposed amendment does not relate back to the original Complaint under the "identity of interest" method relied upon by the Magistrate Judge, the amendment is barred by the applicable statute of limitations and, therefore, Plaintiffs' Motion for Leave (Doc. 30) will be denied as futile. Plaintiffs will be granted leave to file a second amended complaint which alleges facts that demonstrate Smith received either actual notice or another method of constructive notice that satisfies the requirements of Rule 15(c), if they can do so.

An appropriate order follows.

April 5, 2017
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

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of probable cause for the arrest. (Doc. 1 ¶ 18.) Raymond subsequently passed away on March 18, 2013, allegedly without knowing that the charges against him had been dismissed. (*Id.* ¶ 19.) Steven learned that the charges against Raymond had been dismissed on July 23, 2013. (*Id.* ¶ 22.) Plaintiffs filed their Motion for Leave on January 21, 2016. (Doc. 30.) Under any of the three dates above, Plaintiffs' proposed § 1983 claim against Smith would be barred by the two-year statute of limitations.