

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

KAREEM GARRETT,)	
)	Civil Action No. 3: 14-cv-00031
Plaintiff,)	
)	United States District Judge
v.)	Kim R. Gibson
)	
DR. MUHAMMAD NAJI, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Pending before the Court are the Motions to Dismiss the Fifth Amended Complaint filed by the Corrections Defendants (ECF No. 289) and Defendants Barnes and Cutshall (ECF No. 293). On August 31, 2020, Chief Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 307) recommending that both motions be denied in their entirety. Defendant Barnes filed objections to the Report and Recommendation (ECF No. 308), as did Corrections Defendants Woomer, Hunt, and DeFelice (ECF No. 309).¹

Distilled to their essence, the objections are reiterations of the arguments made in the motions to dismiss. Defendant Barnes argues that the claims against her should be dismissed under Federal Rule of Civil Procedure 12(b)(5) because she was not served within the 90-day period set forth in Rule 4(m); Defendants Woomer, Hunt, and DeFelice argue that the claims against them are time-barred by the statute of limitations based on the date of service. Each of

¹ Although Defendants Barnes and Cutshall filed a joint Motion to Dismiss Plaintiff's Fifth Amended Complaint, Defendant Cutshall does not object to the Report and Recommendation. (ECF No. 308, n.1). Similarly, while Defendants Younkin, Pearson, Barber and James were part of the Motion to Dismiss Plaintiff's Fifth Amended Complaint filed by the Commonwealth Defendants, these Defendants do not object to the Report and Recommendation. (ECF No. 309, n.1).

these arguments was fully analyzed and rejected by the Magistrate Judge. As explained in the Report and Recommendation, a plaintiff's *in forma pauperis* status "shift[s] the responsibility for serving the complaint from [the Plaintiff] to the court." *Wright v. Lewis*, 76 F.3d 57, 59 (2d Cir. 1996).

The Court has reviewed the matter and concludes that the Report and Recommendation correctly analyzes the issues and makes a sound recommendation. Upon consideration of the motions to dismiss and response thereto, together with the Report and Recommendation and objections filed, and after undertaking a *de novo* review of the record,

IT IS HEREBY ORDERED that the Objections filed by Defendant Barnes (ECF No. 308) and the Objections filed by Corrections Defendants Woomer, Hunt, and DeFelice (ECF No. 309) are **OVERRULED** as they are without merit;


IT IS FURTHER ORDERED that the Report and Recommendation of the Chief Magistrate Judge, dated August 31, 2020, (ECF No. 307) is **ADOPTED** as the Opinion of the Court;

AND IT IS ORDERED that Defendants shall file a responsive pleading within 14 days after notice of the Order pursuant to Federal Rule of Civil Procedure 12(a)(4)(A).

This matter is remanded back to the magistrate judge for all further pre-trial proceedings.

SO ORDERED this 23rd day of September, 2020.

BY THE COURT:



Kim R. Gibson
United States District Judge

cc: All counsel of record via ECF notification