IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ZARA YAFFA BEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 21-cv-2192-JTF-tmp**
	)	
J. WHITE, T. QUINN, RICHARD HALL, CITY OF GERMANTOWN, TENN., CITY OF GERMANTOWN POLICE DEPARTMENT, MATT PRICE, DERECK STEWART, BARON W. COOPER, JOSEPH HUDGINS, AMY WEIRICH, CITY OF SOUTHAVEN, MISS., CITY OF SOUTHAVEN POLICE DEPARTMENT, STEVE PIRTLE, ZACHARY DURDEN, MICHAEL PATE, BILL RASCO, and DESOTO COUNTY SHERIFF'S DEPARTMENT,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

On March 29, 2021, plaintiff Zara Yaffa Bey filed an amended complaint against defendants Germantown Police Officer J. White, Germantown Police Officer T. Quinn, Germantown Chief of Police Richard Hall, City of Germantown, City of Germantown Police Department, Germantown City Prosecutor Matt Price, Tennessee Highway Patrol Colonel Dereck Stewart, Patrolman Baron W. Cooper, Tennessee Highway Patrol Investigator Joseph Hudgins, Shelby County District Attorney Amy Weirich, City of Southaven, Southaven Police Department, Southaven Chief of Police Steve Pirtle,

Southaven Police Officer Michael Pate, Southaven Police Officer Zachary T. Durden, City Prosecuting Attorney Robert Hayes, DeSoto County Sheriff Bill Rasco, and DeSoto County Sheriff's Department, accompanied by an application to proceed *in forma pauperis*.[1] (ECF Nos. 1-2.) On April 2, 2021, this court granted Bey's motion to proceed *in forma pauperis*. (ECF Nos. 2, 6.) As Bey is proceeding *in forma pauperis*, the amended complaint falls within the screening requirement of 28 U.S.C. § 1915. For the reasons below, it is recommended that Bey's amended complaint be dismissed *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. PROPOSED FINDINGS OF FACT

This is a civil rights action predicated on violations of the First, Fourth, Eighth, and Fourteenth Amendments spanning several years and multiple states. *Pro se* plaintiff Zara Yaffa Bey's complaint alleges that on December 4, 2016, City of Southaven Police Officer Zachary Durden pulled over a vehicle driven by Bey in Southaven, Mississippi. (ECF No. 1 at 32.) There were two other passengers in the vehicle. (ECF No. 1 at 34.) Bey alleges that she was driving in a safe manner, and that Officer Durden did not have any reason to pull her over. (ECF No. 1 at 32.) According to Bey, Officer Durden pulled her over because he believed that she did

[1]Pursuant to Administrative Order No.2013-05, this case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination or report and recommendation.

not have her headlights on, even though Bey could see by glancing at her vehicle's dashboard that "all indicators were on and [she] could actually see the headlights were indeed on." (ECF No. 1 at 33.) She presented Officer Durden with a driver's license and an "international" driver's permit. (ECF No. 1 at 33.) Officer Durden ran her information and then asked for an additional form of identification. (ECF No. 1 at 33.) Bey handed him her passport. (ECF No. 1 at 33.) According to Bey, Officer Durden rejected each form of identification that she handed to him before calling for backup. (ECF No. 1 at 33.) Defendant Officer Michael Pate and Officer Crum, who is not a named defendant in this case, arrived on the scene shortly thereafter to assist in searching the vehicle. (ECF No. 1 at 33.) The officers removed all of the luggage from the car and placed the bags on the ground. (ECF No. 1 at 52.)

Bey was ultimately arrested for driving without a driver's license, driving without headlights/taillights, and driving without proof of insurance. (ECF No. 1 at 33-34.) She was then transported to the DeSoto County Correctional Facility. (ECF No. 1 at 33-34, 49.) The officers left the two other passengers stranded on the side of the road. (ECF No. 1 at 34.) The vehicle was impounded and, according to Bey, defendant former Southaven Chief of Police Steve Pirtle refused to allow Bey to recover it when she attempted to do so two days later. (ECF No. 1 at 45-46.) As a result, the rental car company was unable to pick it up for

seven days. (ECF No. 1 at 34.) According to Bey, defendant Southaven City Prosecutor Robert Hayes was aware that her vehicle had been searched and impounded without a warrant and still prosecuted her, later leading to the imposition of a $250 bond. (ECF No. 1 at 39.) The day after Bey was arrested, on December 5, 2016, she alleges that defendant DeSoto County Sheriff Bill Rasco "permitted his officers . . . to detain, strip search, fingerprint[,] and book" her in the DeSoto County Correctional Facility. (ECF No. 1 at 54.)

Next, on July 17, 2017, Bey alleges that a vehicle in which she was a passenger was stopped without probable cause by defendant Tennessee Highway Patrolman Baron W. Cooper. (ECF No. 1 at 20.) According to Bey, the vehicle was targeted because it had "Mennefer tags." (ECF No. 1 at 21.) There were five passengers in the vehicle, with Bey seated in the front passenger seat. (ECF No. 1 at 21.) According to Bey, Patrolman Cooper focused all of his attention on her after he learned that she was in the vehicle. (ECF No. 1 at 21.) Bey provided Patrolman Cooper with her passport, which he immediately "denounced as fake." (ECF No. 1 at 21.) Patrolman Cooper also confiscated two tribal identification cards and the "Mennefer"-tagged license plate. (ECF No. 1 at 21, 23.) According to Bey, Patrolman Cooper said that he ran the passport and found that it was registered to a foreign national in Great

Britain, which Bey denied.[2] (ECF No. 1 at 22.) Only the passport was returned to Bey. (ECF No. 1 at 23.)

A little over a year later, on September 25, 2018, at least six Germantown Police Officers, including Officers J. White and T. Quinn, pulled over a "Not For Hire" vehicle driven by Bey and searched it. (ECF Nos. 1 at 9, 11-13.) After the search, the officers took Bey into custody and seized all of her private tags and items from the vehicle.[3] (ECF Nos. 1 at 9, 11.) According to Bey, there was a passenger in the vehicle at the time (a fact that Officer White allegedly omitted from his testimony of the incident to the grand jury) and the passenger "was forced to exit the vehicle and was left on the streets of Germantown, Tennessee." (ECF No. 1 at 9.) Bey was then arrested pursuant to a warrant that had been issued in 2015.[4] (ECF No. 1 at 23.)

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[2]According to the complaint, Bey filed a complaint with the Inspectional Service Bureau, which found that Cooper had "done nothing wrong." (ECF No. 1 at 23.)

[3]According to Bey, the vehicle's tag was issued by the "Mennefer Tansai Native American Tribe" and was not registered in any jurisdiction within the United States. (ECF No. 1 at 14.)

[4]According to the complaint, defendant Tennessee Highway Patrol Investigator Joseph Hudgins acquired an arrest warrant for Bey on September 15, 2015, alleging identity theft and criminal simulation. (ECF No. 1 at 23.) Bey contends that the warrant was based on a "false narrative," was "completely fabricated," and that she had no knowledge of the 2015 charges until the 2018 arrest. (ECF No. 1 at 23, 31-32.)

A Shelby County grand jury would later return five indictments against Bey. (ECF No. 1 at 16.) According to Bey, Officer White stated in his testimony to the grand jury that Bey had a Tennessee driver's license, which he allegedly knew was not true, and that all vehicle identification numbers had been removed from the vehicle.[5] (ECF No. 1 at 10.) Bey's complaint states that Officer White testified to the grand jury that all of Bey's violations were criminal violations when, according to her, they were merely traffic infractions. (ECF No. 1 at 10.) According to the complaint, Bey was ultimately issued a $25,000 bond for what allegedly amounted to a $250 traffic violation. (ECF No. 1 at 13-14.) Defendant Germantown City Prosecutor Matt Price allegedly was aware of the search and neglected to intervene on her behalf. (ECF No. 1 at 18.) According to Bey, defendant District Attorney Amy Weirich insisted that she plead guilty to the charges, despite withholding evidence that would have shown she was innocent.[6] (ECF No. 1 at 28.)

When Bey later attempted to retrieve the vehicle, Germantown Chief of Police Richard Hall told her that the vehicle was being held for investigation. (ECF No. 1 at 12.) The vehicle was later

[5]According to Bey, the tow truck operator recorded the vehicle's identification number when it was towed. (ECF No. 1 at 10.)

[6]Bey also states that her court-appointed public defender pressured her to plead guilty. (ECF No. 1 at 27.)

sold "after not being 'claimed' for over 30 (thirty) days." (ECF No. 1 at 12.) Prior to it being sold, Bey alleges that she requested that it be returned on at least eight occasions. (ECF No. 1 at 13.) On October 3, 2018, Bey asserts that the City of Germantown issued a second warrant for her arrest, after which she was taken into custody at the Shelby County Jail-East facility. (ECF No. 1 at 14.) Bey's charge for driving without a driver's license was dropped on January 9, 2019. (ECF No. 1 at 16.) A week later, on January 16, 2019, District Attorney Weirich dropped Bey's identity theft and criminal simulation charges. (ECF No. 1 at 31.) The remaining charges were *nolle prosequi* on September 5, 2019. (ECF No. 1 at 32.)

Bey filed her first lawsuit stemming from these events on April 30, 2019. See Complaint, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Apr. 30, 2019). She filed a motion to proceed *in forma pauperis* on that same day. *Pro se* Motion for Leave to Proceed *in Forma Pauperis*, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Apr. 30, 2019). She was granted *in forma pauperis* status on May 6, 2019. Order Granting Motion for Leave to Proceed *in Forma Pauperis*, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. May 6, 2019). At the *in forma pauperis* screening stage, on May 30, 2019, the assigned referral magistrate judge issued a Report and Recommendation, recommending that Bey's complaint be dismissed in full. Report and Recommendation, Bey v. White, No. 19-cv-2279-JTF-

jay (W.D. Tenn. May 30, 2019). While the Report and Recommendation was pending before the presiding district judge, Bey filed a motion for voluntary dismissal without prejudice, which the district judge granted on June 6, 2019. Motion for Voluntary Dismissal, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 4, 2019); Order Granting Motion to Dismiss Case Without Prejudice, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 6, 2019). Because her complaint did not advance past the § 1915 screening stage before being dismissed without prejudice, the court did not issue process on Bey's complaint and service was never effected on any of the defendants.

Nearly a year later, on June 3, 2020, Bey filed a motion to reopen her case. Notice of Filing, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 2, 2020), ECF No. 14; *Pro se* Motion to Reopen Case, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 3, 2020). The presiding district judge denied Bey's motion on March 4, 2021, reasoning that the proper procedure for Bey to renew her claims was to file a new complaint.[7] Order Denying Motion and

[7]Following the denial of Bey's motion to reopen the case, she filed a motion to amend her complaint on March 10, 2021, which was denied for the same reasons. Motion for Leave to Proceed *in Forma Pauperis*, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Mar. 9, 2019); Amended Complaint, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Mar. 10, 2021); Order Denying Motion for Leave to Proceed *in Forma Pauperis*, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Mar. 12, 2021).

Corrected Motion to Reopen Case, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Mar. 4, 2021). Pursuant to the district judge's order, Bey filed a new case with the amended complaint that is currently before the court on March 29, 2021. (ECF No. 1.) Bey's complaint raises four claims: (1) a 42 U.S.C. § 1983 claim predicated on the First Amendment against all named defendants; (2) a § 1983 claim predicated on the Fourth Amendment against Officer White, Officer Quinn, Chief Hall, City of Germantown, Germantown Police Department, City Prosecutor Price, District Attorney Weirich, City of Southaven, Southaven Police Department, former Chief Pirtle, Officer Durden, Officer Pate, Sheriff Rasco, DeSoto County, and the DeSoto County Sheriff's Office; (3) a state tort civil conspiracy claim against Officer White, Officer Quinn, Chief Hall, City of Germantown, Germantown Police Department, City Prosecutor Price, District Attorney Weirich, City of Southaven, Southaven Police Department, former Chief Pirtle, Officer Durden, Officer Pate, Sheriff Rasco, DeSoto County, and DeSoto County Sheriff's Office; and (4) a § 1983 claim against all defendants for "reckless interference to plaintiff's clearly established constitutional rights."[8] (ECF No. 1 at 57-63.)

[8]The undersigned notes that only Officer White, Officer Quinn, Chief Hall, the City of Germantown, the City of Germantown Police Department, City Prosecutor Price, Colonel Stewart, Patrolman Cooper, Investigator Hudgins, District Attorney Weirich, the City of Southaven, and the Southaven Police Department are listed as defendants on the docket for this case. However, Officer Pate,

II. PROPOSED CONCLUSIONS OF LAW

A. Standard of Review

The undersigned is required to screen *in forma pauperis* complaints and must dismiss any complaint, or any portion thereof, if the action: (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i-iii). In assessing whether the complaint states a claim on which relief may be granted, the court applies the standards under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Richman v. United States Gov't, No. 2:17-cv-2342-SHM-tmp, 2018 WL 1792172, at *1 (W.D. Tenn. Apr. 16, 2018).

To avoid dismissal under Rule 12(b)(6), "'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Hill v. Lappin, 630 F.3d 468, 470-71 (6th Cir. 2010) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). "A claim is plausible on its face if the 'plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Ctr. for Bio-Ethical Reform, Inc. v.

City Prosecutor Hayes, former Chief Pirtle, Sheriff Rasco, DeSoto County, and the DeSoto County Sheriff's Department are all named as defendants in the body of Bey's complaint. For purposes of this Report and Recommendation, the undersigned construes all defendants as being properly before the court.

Napolitano, 648 F.3d 365, 369 (6th Cir. 2011) (quoting Iqbal, 556 U.S. at 678). Without factual allegations in support, mere legal conclusions are not entitled to the assumption of truth. Iqbal, 556 U.S. at 679.

Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers and are thus liberally construed. Williams v. Curtin, 631 F.3d 380, 383 (6th Cir. 2011) (quoting Martin v. Overton, 391 F.3d 710, 712 (6th Cir. 2004)). Even so, *pro se* litigants must adhere to the Federal Rules of Civil Procedure, see Wells v. Brown, 891 F.2d 591, 594 (6th Cir. 1989), and the court cannot create a claim that has not been spelled out in a pleading. See Brown v. Matauszak, 415 F. App'x 608, 613 (6th Cir. 2011); Payne v. Sec'y of Treas., 73 F. App'x 836, 837 (6th Cir. 2003); cf. Pliler v. Ford, 542 U.S. 225, 231 (2004) ("District judges have no obligation to act as counsel or paralegal to *pro se* litigants."); Young Bok Song v. Gipson, 423 F. App'x 506, 510 (6th Cir. 2011) ("[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.").

B. Statute of Limitations

Bey's complaint raises § 1983 and civil conspiracy claims based on incidents occurring as early as 2016. "The statute of limitations applicable to a § 1983 action is the state statute of limitations applicable to personal injury actions under the law of the state in which the § 1983 claim arises." Howell v. Farris, 655 F. App'x 349, 351 (6th Cir. 2016) (internal citations and quotations omitted). In Tennessee, the applicable statute of limitations for personal injuries runs for one year. Tenn. Code Ann. § 28-3-104(a). "This includes personal injuries resulting from the tort of civil conspiracy." Braswell v. Carothers, 863 S.W.2d 722, 725 (Tenn. Ct. App. 1993); see also Harper v. Shelby Cty. Gov't, No. 2:15-cv-2502-STA-cgc, 2016 WL 11478138, at *5 (W.D. Tenn. Jan. 29, 2016), report and recommendation adopted as modified by, 2016 WL 737947 (W.D. Tenn. Feb. 23, 2016) ("Plaintiff's claims of civil conspiracy are precluded by the one year statute of limitations."). "Although the applicable time period is borrowed from state law, the date on which the statute of limitations begins to run . . . is a question of federal law." Howell, 655 F. App'x at 351. "Ordinarily, the limitation period starts to run when the plaintiff knows or has reason to know of the injury which is the basis of his action." Id. Bey filed the instant complaint on March 29, 2021. (ECF No. 1.) Therefore, since the events in Bey's

complaint occurred in 2016, 2017, and 2018, all of Bey's claims are barred by the applicable statute of limitations.

There may be circumstances, however, in which the statute of limitations can be tolled, such as through application of the Tennessee saving statute.[9] See Tenn. Code Ann. 28-1-105(a). "Even after the statute of limitations period expires, the Tennessee saving statute allows plaintiff to refile an action within one year after the action was dismissed on grounds other than the merits." Cisneros v. Randall, No. 3:06-0190, 2006 WL 2037561, at *3 (M.D. Tenn. July 17, 2006) (citing Tenn. Code Ann. § 28-1-105(a) and Advey v. Celotex Corp., 962 F.2d 1177 (6th Cir. 1992)). The Sixth Circuit has opined that "the availability of the saving statute is a function of notice to the defendant and diligence by the plaintiff." Advey, 962 F.2d at 1182 (citing Lee v. Crenshaw, 562 F.2d 380, 382 (6th Cir. 1977)). Consequently, applying the Tennessee saving statute requires considering "whether the plaintiff timely file[d] a complaint to put the defendant on notice of Plaintiff's claim." Cisneros, 2006 WL 2037561, at *3 (citing

[9]Known as the saving statute, Tenn. Code Ann. 28-1-105(a) provides that "[i]f the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representatives and privies, as the case may be, may, from time to time, commence a new action within one (1) year after the reversal or arrest."

Cronin v. Howe, 906 S.W.2d 910, 912-13 (Tenn. 1995) and Foster v. St. Joseph Hosp., 158 S.W.3d 418, 422 (Tenn. Ct. App. 2004)).

Three elements must be met in order for Tennessee's saving statute to apply:

> (1) the plaintiff must have commenced the action in accordance with Tennessee Rule of Civil Procedure 3 within the original statute-of-limitations period, Fed. Deposit Ins. Corp. v. Cureton, 842 F.2d 887 (6th Cir. 1988); (2) the new action must have been brought within a year of the dismissal of the original action, Tenn. Code. Ann. § 28-1-105(a); and (3) the "original complaint and the new complaint must allege substantially the same cause of action, which includes identity of the parties." Foster v. St. Joseph Hosp., 158 S.W.3d 418, 422 (Tenn. Ct. App. 2004).

Sims v. Meridian Sr. Living, LLC, No. 2:12-cv-02898-JPM, 2012 WL 6115593, at *3 (W.D. Tenn. Dec. 10, 2012). Regarding the first element, Tennessee Rule of Civil Procedure 3 explains that a civil action is commenced

> by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 90 days or is not served within 90 days from issuance, *regardless of the reason*, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

(emphasis added).

Further, "[t]he Tennessee Supreme Court . . . has expressly recognized that the Savings Statute works in concert with Rule

41.01 of the Tennessee Rules of Civil Procedure." Chase v. White, No. 3:16-cv-01576, 2016 WL 7210155, at *6 (M.D. Tenn. Dec. 13, 2016) (citing Frye v. Blue Ridge Neuroscience Ctr., P.C., 70 S.W.3d 710, 716 (Tenn. 2002)). Tennessee Rule of Civil Procedure 41.01 allows a plaintiff to voluntarily dismiss a case without prejudice, provided that "the plaintiff[] serv[es] a copy of the notice of nonsuit upon all parties and, if a party has not already been served with a summons and complaint, also serv[es] a copy of the complaint on that party." Id. (citing Tenn. R. Civ. P. 41.01(1)). Therefore, in order for a plaintiff to save his or her lawsuit, plaintiff "must have 'serve[d] a copy of the Notice of Voluntary Dismissal and the complaint on the [defendants] as required by Rule 41.01.'" Markowitz v. Harper, 197 F. App'x 387, 390 (6th Cir. 2006) (quoting Frye, 70 S.W.3d at 711); see also Smith v. Nw. Airlines, Inc., No. 05-2520, 2007 WL 9710126, at *2 (W.D. Tenn. July 25, 2007) ("[I]f the plaintiff did not effect service of the summons and complaint on the defendants in the first lawsuit, the plaintiff may only trigger the 'savings statute' if he or she has complied with the procedural requirements of Rule 41.01 of the Tennessee Rules of Civil Procedure.").

Bey filed her initial complaint on these same facts on April 30, 2019, and the case was voluntarily dismissed without prejudice on June 6, 2019. Complaint, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. Apr. 30, 2019); Motion for Voluntary Dismissal, Bey

v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 4, 2019); Order Granting Motion to Dismiss Case Without Prejudice, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. June 6, 2019). As a threshold matter, the undersigned submits that the saving statute does not apply to Bey's claims from 2016 and 2017 because they occurred more than one year before she filed the initial complaint on April 30, 2019. See Byrge v. Parkwest Med. Ctr., 442 S.W.3d 245, 252 (Tenn. Ct. App. 2014) ("As Plaintiff's First Complaint was not timely filed, Plaintiff may not rely upon Tenn. Code Ann. § 28-1-105 to save his cause of action."). Therefore, these claims were barred by the statute of limitations when the initial complaint was filed and that remains true regarding Bey's instant amended complaint. See Report and Recommendation at 7, Bey v. White, No. 19-cv-2279-JTF-jay (W.D. Tenn. May 30, 2019) ("Plaintiff filed her Complaint on April 30, 2019, therefore, any § 1983 claim Plaintiff intends to make would accrue by the latest date of April 30, 2018. Consequently, the Tennessee claims for July 2017 would be time barred along with any other claim in regard to the Tennessee defendants discovered by Plaintiff prior to April 30, 2018."). It is thus recommended that *sua sponte* dismissal of all of Bey's claims arising before April 30, 2018, is appropriate. See Alston v. Tenn. Dep't of Corr., 28 F. App'x 475, 476 (6th Cir. 2002) ("Because the statute of limitations defect was obvious from the face of the complaint, *sua sponte* dismissal of the complaint was

appropriate."); Bell v. Rowe, 178 F.3d 1293 (Table), 1999 WL 196531, at *1 (6th Cir. 1999) ("Where a particular claim is barred by the applicable statute of limitations, it does not present an arguable or rational basis in law and therefore may be dismissed as frivolous under § 1915(e)."); Pirtle v. City of Jackson Police Dep't, No.: 1:19-cv-01132-JDT-jay, 2019 WL 9042927, at *2 (W.D. Tenn. Sept. 20, 2019), report and recommendation adopted by, 2020 WL 1275616 (W.D. Tenn. Mar. 17, 2020) ("Dismissal for failure to state a claim is appropriate where the allegations, if taken as true, show that relief is barred by the applicable statute of limitations.").

However, because the September 25, 2018 incident occurred within a year of Bey filing the first complaint, the undersigned must consider whether § 28-1-105(a) saves those claims. As the Tennessee Supreme Court opined in Frye,

> Rule 3 permits a plaintiff who has not issued process within thirty days or has not served process within thirty days of issuance to rely upon the original commencement date to satisfy a statute of limitations only if the plaintiff continues the action within one year of first issuance, or if no issuance has occurred, within one year of filing the complaint, by issuing new process on the *original* complaint. Furthermore, in the event a plaintiff who has not served process on a defendant requests a voluntary nonsuit within the time period provided by Rule 3, the Tennessee saving statute may only "save" a plaintiff's action when the plaintiff has complied with Rule 41.01 by serving the defendant with copies of the Notice of Voluntary Dismissal and the complaint at the time of the nonsuit.

70 S.W.3d at 717 (emphasis in original). With regard to Rule 3, no process was ever issued on the 2019 complaint and Bey did not obtain issuance of new process within one year of the filing of the 2019 complaint.[10] See Farivar v. Lawson, No. 3:14-CV-76-TAV-HBG, 2017 WL 149970, at *5 (E.D. Tenn. Jan. 13, 2017) ("Under Tennessee Rule of Civil Procedure 3, however, 'timely service of process is essential to the commencement of an action such that the statute of limitations is satisfied.'") (quoting Dolan v. United States, 514 F.3d 587, 595 (6th Cir. 2008)). With regard to Rule 41.01, Bey did not serve the defendants with copies of the Notice of Voluntary Dismissal and the original complaint upon the lawsuit being dismissed without prejudice. See Frye, 70 S.W.3d. at 717. Therefore, the Tennessee saving statute cannot be used to extend the statute of limitations for Bey's 2018 claims and it is recommended that the entirety of her complaint be dismissed as time-barred.

C. Section 1983 Claims

[10]While the undersigned acknowledges that the reason process was never issued on the 2019 complaint was because Bey was proceeding *in forma pauperis* and issuance of process was withheld pending the court's § 1915 screening, Tennessee Rule of Civil Procedure 3 is clear that its requirements apply "*regardless of the reason*" process is not issued. Tenn. R. Civ. P. 3 (emphasis added); see Slone v. Mitchell, 205 S.W.3d 469, 473 (Tenn. Ct. App. 2005) ("[T]he phrase[] 'regardless of the reason[]' is clear in its meaning. The language 'leaves no doubt that the reason for process not being issued is not a consideration.'") (quoting Stempa v. Walgreen Co., 70 S.W.3d 39, 43 (Tenn. Ct. App. 2001)).

In addition to being barred by the statute of limitations, the undersigned also submits that Bey's complaint fails as a matter of law to state a plausible claim against a number of the defendants. While the statute of limitations supports *sua sponte* dismissal of Bey's complaint in its entirety, for the sake of completeness, the undersigned will proceed to address the complaint's additional deficiencies below.

1. First Amendment Retaliation Claim

Bey's complaint raises several § 1983 claims against all defendants. Section 1983 does not create substantive rights. Flint ex rel. Flint v. Ky. Dep't of Corr., 270 F.3d 340, 351 (6th Cir. 2001) (citing City of Okla. City v. Tuttle, 471 U.S. 808 (1985)). Rather, it "is a vehicle available to redress injury suffered by individuals whose constitutional or legal rights have been violated by officials acting under color of law." Lomaz v. Hennosy, 151 F.3d 493, 500 (6th Cir. 1998). "To successfully plead a Section 1983 claim, a plaintiff must allege (1) the deprivation of a right secured by the Constitution or laws of the United States and (2) the deprivation was caused by a person acting under color of state law." Conexx Staffing Servs. v. PrideStaff, No. 2:17-cv-02350, 2017 WL 9477760, at *2 (W.D. Tenn. Nov. 3, 2017) (citing Tahfs v. Proctor, 316 F.3d 584, 590 (6th Cir. 2003)).

Bey alleges that the defendants deprived her of her First Amendment rights by confiscating her travel documents and tribal

vehicle tags and by prosecuting her for not being listed in a state database. To plead a First Amendment retaliation claim, a plaintiff must allege facts that plausibly establish (1) plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two — that is, the adverse action was motivated by the plaintiff's protected conduct. Buddenberg v. Weisdack, 939 F.3d 732, 739 (6th Cir. 2019); see also Napolitano, 648 F.3d at 372 ("Although much of our First Amendment retaliation jurisprudence addresses claims by public employees and prisoners, the same legal framework applies where, as here, private parties challenge governmental action.").

Bey's complaint does not plausibly allege a First Amendment retaliation claim because it does not allege that she engaged in any protected activity. It is well-established that determining whether an activity is protected by the First Amendment is a context-specific analysis and "will vary with the setting." Gaspers v. Ohio Dep't of Youth Servs., 648 F.3d 400, 412 (6th Cir. 2011) (quoting Thaddeus-X v. Blatter, 175 F.3d 378, 388 (6th Cir. 1999) (en banc)). Bey's complaint alleges that several of her actions were protected by the First Amendment, namely, deciding to not have her vehicle or license registered with a state database, maintaining a tribal tag on her vehicle, and possessing a passport

and tribal identification cards. (ECF No. 1 at 13-14, 21-22, 27-29, 34-35, 38-39, 42-43, 47-48, 52-53.) It is not clear how any of these allegations constitute protected activity under the First Amendment, and Bey does not elaborate beyond making conclusory statements that her First Amendment rights were violated in each instance. See Chapman v. City of Detroit, 808 F.2d 459, 465 (6th Cir. 1986) ("It is not enough for a complaint under § 1983 to contain mere conclusory allegations of unconstitutional conduct by persons acting under color of state law. Some factual basis for such claims must be set forth in the pleadings."). As the United States Supreme Court has stated, although "[i]t is possible to find some kernel of expression in almost every activity a person undertakes — for example, walking down the street or meeting one's friends at a shopping mall . . . such a kernel is not sufficient to bring the activity within the protection of the First Amendment." City of Dallas v. Stanglin, 490 U.S. 19, 25 (1989). Because her complaint does not plausibly set forth any facts that implicate her First Amendment rights, the undersigned submits that Bey's claim for retaliation under the First Amendment must be dismissed.

2. Individual Defendants in Their Official Capacities

Bey's complaint names every individual defendant in both their individual and official capacities. Defendants Officer White, Officer Quinn, Officer Durden, Officer Pate, former Chief Pirtle,

Sheriff Rasco, City Prosecutor Price, City Prosecutor Hayes, and Chief Hall are all either police officers or prosecutors employed by the City of Germantown, DeSoto County, or the City of Southaven. Official-capacity suits "'generally represent only another way of pleading an action against an entity of which an officer is an agent.' As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 1654 (1985) (quoting Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 690, n.55 (1978)). Because Bey also names the City of Germantown, DeSoto County, and the City of Southaven as defendants, these claims are duplicative and must be dismissed on that basis. See Petty v. Cty. of Franklin, 478 F.3d 341, 349 (6th Cir. 2007) ("To the extent that [the plaintiff's § 1983] suit is against [the sheriff] in his official capacity, it is nothing more than a suit against Franklin County itself.") (emphasis in original); Leach v. Shelby Cty. Sheriff, 891 F.2d 1241, 1245-46 (6th Cir. 1989) (construing suit against mayor and county sheriff in their official capacity as a suit against the county itself); Morris v. Christian Cty. Sheriff's Dep't, No. 5:12CV-P156-R, 2013 WL 787971, at *4 (W.D. Ky. Mar. 1, 2013) (stating that claims against three sheriff's deputies in their official capacity were claims against the county).

Additionally, District Attorney Weirich is a state employee, Tenn. Code Ann. § 8-42-101(3)(A), such that any claim against her in her official capacity is in essence a claim against the state. Edelman v. Jordan, 415 U.S. 651, 663 (1974); see also Russell v. Lundergan-Grimes, 784 F.3d 1037, 1046 (6th Cir. 2015) ("A suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office."); Lee v. Craft, No. 20-2424-JDT-cgc, 2021 WL 918767, at *4-5 (W.D. Tenn. Mar. 10, 2021) (dismissing on § 1915 screening a plaintiff's § 1983 claims against District Attorney Weirich in her official capacity on sovereign immunity grounds). Similarly, Tennessee Highway Patrol Colonel Dereck Stewart, Investigator Hudgins, and Patrolman Cooper are all employed by the Tennessee Highway Patrol and thus the State of Tennessee. See Motto v. Mullins, 2:19-CV-00081-DCLC-CRW, 2020 WL 2478275, at *3 (E.D. Tenn. May 13, 2020) (holding that several Tennessee highway patrolmen – including Colonel Stewart – were state officials protected by sovereign immunity). Suing a state officer in his or her official capacity for damages is equivalent to suing the state itself, which is prohibited by the Eleventh Amendment, Wells, 891 F.2d at 592, unless the state has waived its immunity, Welch v. Tex. Dep't of Highways & Pub. Transp., 483 U.S. 468, 473 (1987) (plurality opinion), or "unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override

that immunity."[11] Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989). In that regard, the Supreme Court has expressly held that the state is not a "person" subject to suit under § 1983, and that § 1983 does not abrogate Eleventh Amendment immunity. Id. at 64-65; see also Boler, 865 F.3d at 410 ("Section 1983 does not abrogate Eleventh Amendment immunity."). "Nor has Tennessee consented to suit under Section 1983, either 'expressly or by implication.'" Petty v. Tenn. Dep't of Children's Servs., 3:19-cv-01085, 2021 WL 396689, at *2 (M.D. Tenn. Feb. 3, 2021), report and recommendation adopted, 2021 WL 679423 (M.D. Tenn. Feb. 22, 2021) (quoting Berndt v. Tennessee, 796 F.2d 879, 881 (6th Cir. 1986); citing Tenn. Code. Ann. § 20-13-102(a)); see also Jones v. Tennessee, No. 1:09-cv-171, 2010 WL 1417876, at *5 (E.D. Tenn. Apr. 6, 2010) ("Tennessee has not consented to suit, and it has also not waived sovereign immunity in cases involving Section 1983 and Section 1985.") (citations omitted). Accordingly, to the extent Bey brings claims against District Attorney Weirich,

[11]Some courts consider the Ex Parte Young doctrine as a third exception to Eleventh Amendment sovereign immunity. See Boler v. Earley, 865 F.3d 391, 410 (6th Cir. 2017). "In order to fall within the Ex parte Young exception, a claim must seek prospective relief to end a continuing violation of federal law." Diaz v. Mich. Dep't of Corr., 703 F.3d 956, 964 (6th Cir. 2013) (citing MacDonald v. Vill. of Northport, 164 F.3d 964, 970-72 (6th Cir. 1999)). Because Bey has not pled any facts alleging a continuing violation of federal law, the Ex Parte Young doctrine does not apply.

Colonel Stewart, Investigator Hudgins, and Patrolman Cooper in their official capacities, such claims must be dismissed.

3. Prosecutors

Bey names District Attorney Weirich, City Prosecutor Price, and City Prosecutor Hayes as defendants in their individual capacities. However, District Attorney Weirich, City Prosecutor Price, and City Prosecutor Hayes are all shielded from Bey's claims under common-law principles of absolute prosecutorial immunity because the acts they are accused of committing fall within the scope of their prosecutorial duties. See Imbler v. Pachtman, 424 U.S. 409, 427 (1976) (holding that prosecutorial immunity encompasses immunity from § 1983 claims). Such immunity applies even where the plaintiff alleges that the prosecutor has acted with malice or dishonesty, id. at 427, or that the prosecutor knowingly presented false testimony at trial, id. at 431 n.34. Prosecutors also have absolute immunity for appearances at probable cause and grand jury proceedings, evaluation of evidence and presentation of that evidence at pre-trial and trial proceedings, and preparation of witnesses for trial. Spurlock v. Thompson, 330 F.3d 791, 797 (6th Cir. 2003). It is recommended that all claims against District Attorney Weirich, City Prosecutor Price, and City Prosecutor Hayes in their individual capacities be dismissed.

4. Colonel Stewart

Bey alleges that Colonel Stewart was "responsible for training, hiring, monitoring[,] and for [] disciplin[ing] his subordinates," specifically Patrolman Cooper and Investigator Hudgins. (ECF No. 1 at 19-20.) The Sixth Circuit has found that an attempt to hold an officer liable in his individual capacity for his "alleged failure to adequately train employees . . . 'improperly conflates a § 1983 claim of individual supervisory liability with one of municipal liability.'" Harvey v. Campbell Cty., 453 F. App'x 557, 563 (6th Cir. 2011) (quoting Phillips v. Roane Cty., 534 F.3d 531, 543-44 (6th Cir. 2008)); see also Hananiah v. Shelby Cty. Gov't, No. 12-3074-JDT/tmp, 2014 WL 6901186, at *5 (W.D. Tenn. Nov. 14, 2014) ("A failure of a supervisor to train an offending individual 'is not actionable absent a showing that the official either encouraged or in some way directly participated in [the wrongful conduct]. At a minimum a plaintiff must show that the official at least implicitly authorized, approved or knowingly acquiesced' in the alleged misconduct.") (quoting Leach, 891 F.2d at 1246). Bey's complaint is devoid of any allegation that Colonel Stewart directly participated or implicitly authorized, approved, or acquiesced in the alleged wrongful behavior. Accordingly, the claim against Colonel Stewart in his individual capacity must be dismissed.

5. Municipal Defendants

Similarly, Bey's complaint does not adequately raise any § 1983 claims against the municipal defendants. "[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory — or, in other words, because it employs a tortfeasor." Red Zone 12 LLC v. City of Columbus, 758 F. App'x 508, 515 (6th Cir. 2019) (citing Monell, 436 U.S. at 691). Rather, a local government may be sued under § 1983 only "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." Monell, 436 U.S. at 694. "The 'touchstone,' then, is an 'official policy' that causes the alleged constitutional violation." Red Zone 12 LLC, 758 F. App'x at 515 (citing Monell, 436 U.S. at 691). A plaintiff can establish such a "policy or custom" by demonstrating "(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence of federal rights violations." Osberry v. Slusher, 750 F. App'x 385, 397 (6th Cir. 2018) (quoting Burgess v. Fischer, 735 F.3d 462, 478 (6th Cir. 2013)). "In the context of [§] 1983 municipal liability, district courts in the Sixth Circuit have interpreted Iqbal's standards strictly." Epperson v. City of Humboldt, 140 F. Supp. 3d 676, 685 (W.D. Tenn. 2015) (quoting Hutchison v. Metro. Gov't of

Nashville & Davidson Cty., 685 F. Supp. 2d 747, 751 (M.D. Tenn. 2010)); see also Horn v. City of Covington, No. 14-73-DLB-CJS, 2015 WL 4042154, at *4 (E.D. Ky. July 1, 2015); Sweat v. Butler, 90 F. Supp. 3d 773, 778 n.1 (W.D. Tenn. 2015). A mere "'formulaic recitation of the elements of a cause of action'" is insufficient to state a claim upon which relief can be granted. Birgs v. City of Memphis, 686 F. Supp. 2d 776, 780 (W.D. Tenn. 2010) (quoting Twombly, 550 U.S. at 555); see also Jones v. Couvreur, No. 17-CV-11185, 2017 WL 1543703, at *4 (E.D. Mich. Apr. 28, 2017) (dismissing a complaint that relied on "mere boilerplate language" to suggest that a municipality was liable under a failure to train theory). The Sixth Circuit has "never found notice of a pattern of misconduct (or the pattern itself) solely from the mistreatment of the plaintiff." Nouri v. Cty. of Oakland, 615 F. App'x 291, 296 (6th Cir. 2015). Relying solely upon a plaintiff's own experience is thus insufficient to state a § 1983 claim against a municipality. Id.; see also Epperson, 140 F. Supp. 3d at 685 ("When the plaintiff has none but his own experience upon which to rely, a sufficient claim against the municipality has not been made.").

Bey's complaint alleges that the City of Germantown, the City of Germantown Police Department, the City of Southaven, Southaven Police Department, and the DeSoto County Sheriff's Department each are responsible for the acts of their employees, that they operate a "policing for profit" scheme, and they "neglected to properly

train and discipline [their] employees . . . and [are] thereby liable for all actions of [their] employees."[12] (ECF Nos. 1 at 15, 16, 35-36, 41, 56.) To the extent Bey claims that the municipal defendants are liable because of actions by the individual defendants, those claims must be dismissed because "local governing bodies are 'liable under § 1983 only if the challenged conduct occurs pursuant to a municipality's 'official policy,' such that the municipality's promulgation or adoption of the policy can be said to have 'caused' one of its employees to violate the plaintiff's constitutional rights.'" Arsan v. Keller, 784 F. App'x 900, 916 (6th Cir. 2019) (quoting D'Ambrosio, 747 F.3d at 386); see also Red Zone 12 LLC, 758 F. App'x at 515. The complaint's only references to any municipal policies or customs are bare assertions that the municipalities failed to adequately train their officers and that the municipalities engaged in a "policing

[12]It is worth noting that "[p]olice departments are not independent government entities" that are "capable of being sued." Davis v. Bexley Police Dep't, No. 2:08-cv-750, 2009 WL 414269, at *2 (S.D. Ohio Feb. 17, 2009); see also Matthews v. Jones, 35 F.3d 1046, 1049 (6th Cir. 1994) ("Since the Police Department is not an entity which may be sued, Jefferson County is the proper party to address the allegations of Matthews's complaint."); Grace v. City of Ripley, No. 2:16-cv-02395-JPM-dkv, 2017 WL 835206, at *5 & n.2 (W.D. Tenn. Mar. 2, 2017) ("Since the Sixth Circuit's decision in Matthews, district courts in Tennessee have frequently and uniformly held that police departments and sheriff's departments are not proper parties to a § 1983 suit."). Therefore, the undersigned construes Bey's claims against the City of Germantown Police Department, the Southaven Police Department, and the DeSoto County Sheriff's Department as claims against the City of Germantown, the City of Southaven, and DeSoto County.

for profit" scheme. See Broyles v. Corr. Med. Servs., Inc., No. 08-1638, 2009 WL 3154241, at *2 (6th Cir. Jan. 23, 2009) ("[B]are allegations of a custom or policy, unsupported by any evidence, are insufficient to establish entitlement to relief."); Wilson v. Trumbull Cty. Dep't of Job and Family Servs., No. 4:12 CV 02163, 2013 WL 5820276, at *9. (N.D. Ohio Oct. 29, 2013) ("While Plaintiffs do recite the phrase 'custom and practice' in the Complaint, such bare legal conclusions are not enough to survive a motion to dismiss under Rule 12(b)(6)."); Rowland v. City of Memphis, No. 2:13-cv-02040-JPM-tmp, 2013 WL 2147457, at *5 (W.D. Tenn. May 15, 2013) ("[T]he three allegations in the Amended Complaint that refer to 'policies and procedures' are conclusory."). This is insufficient to survive a motion to dismiss and thus the undersigned submits that Bey's claims against the municipal defendants must be dismissed. See Munson v. Bryan, No. 3:15-cv-0078, 2015 WL 4112429, at *4 (M.D. Tenn. July 8, 2015) (granting a motion to dismiss where the plaintiff did not "plead any specific facts to suggest that [municipal defendant] either has a history of prior constitutional violations or fails to adequately prepare for recurring situations where a constitutional violation is likely to occur" and the complaint offered no "factual allegations regarding a [municipal defendant] policy or custom of this type of misconduct").

D. State Tort Conspiracy Claims

Bey's complaint also alleges a claim for "state tort . . . civil conspiracy" against defendants Officer White, Officer Quinn, Chief Hall, City of Germantown, Germantown Police Department, City Prosecutor Price, District Attorney Weirich, City of Southaven, Southaven Police Department, former Chief Pirtle, Officer Durden, Officer Pate, Sheriff Rasco, DeSoto County, and the DeSoto County Sheriff's Department. Under Tennessee law, a civil conspiracy is "a 'combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means.'" Brown v. Birman Managed Care, Inc., 42 S.W.3d 62, 67 (Tenn. 2001) (quoting Chenault v. Walker, 36 S.W.3d 45, 52 (Tenn. 2001)). The elements of a civil conspiracy are "(1) a common design between two or more persons, (2) to accomplish by concerted action an unlawful purpose, or a lawful purpose by unlawful means, (3) an overt act in furtherance of the conspiracy, and (4) resulting injury." Kincaid v. SouthTrust Bank, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006) (citing Morgan v. Brush Wellman, Inc., 165 F. Supp. 2d 704, 720 (E.D. Tenn. 2001)). While Bey lists numerous defendants who allegedly violated her constitutional rights, she does not plead any facts to plausibly allege that a conspiracy existed beyond stating that the defendants "conspired with one another" and "colluded" together.[13] Mere

[13]From the complaint, it actually appears as if Bey is alleging two separate conspiracies (one by the defendants from Tennessee and

conclusory allegations without any factual backing cannot survive a motion to dismiss. See Iqbal, 556 U.S. at 679; Eidson v. Tenn. Dep't of Children's Servs., 510 F.3d 631, 634 (6th Cir. 2007); Doe v. Univ. of the South, 687 F. Supp. 2d 744, 751 (E.D. Tenn. 2009). Therefore, the undersigned submits that Bey's claim for a civil conspiracy must be dismissed for failure to state a claim.[14]

III. RECOMMENDATION

For the reasons above, it is recommended that Bey's amended complaint be dismissed *sua sponte* pursuant to § 1915(e)(2)(B).

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
Chief United States Magistrate Judge

June 16, 2021
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE

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one by the defendants from Mississippi). (ECF No. 1 at 60-61.) Regardless, she does not plead sufficient factual support for either conspiracy allegation.

[14]Attached to Bey's amended complaint is a Motion for Leave to File Amended Complaint to Correct and Update Case Number in Order to Place Case on Court Docket. (ECF No. 1-1.) The motion seeks to construe her amended complaint as having been filed on the date that she filed her first motion to reopen the 2019 lawsuit (June 3, 2020), rather than on March 29, 2021. (ECF No. 1-1 at 2.) Even if the court were to use the June 3, 2020 date as the operative filing date of her amended complaint, her amended complaint would nevertheless be untimely because the 2018 claims would still be outside of the one-year statute of limitations. Therefore, the undersigned recommends that this motion be denied as moot.

SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.