

CHRISTIANA BIGGS (13040)
KYLE J. KAISER (13924)
Assistant Utah Attorney General
SEAN D. REYES (7969)
Utah Attorney General
160 East 300 South, 6th Floor
PO Box 140856
Salt Lake City, UT 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
E-mail: cbiggs@agutah.gov
kkaiser@agutah.gov

Attorneys for Duchesne County

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TARA JEANNE AMBOH, as Uinta Band
Utah Indian,

Plaintiff,

v.

DUCHESNE COUNTY, a political
subdivision of the State of Utah and
Duchesne County, STEPHEN FOOTE,
Duchesne County Attorney, and
EIGHTH DISTRICT COURT,
DUCHESNE COUNTY

Defendants.

**DEFENDANT EIGHTH DISTRICT
COURT'S RESPONSE TO
PLAINTIFF'S OBJECTION TO
REPORT AND RECOMMENDATION**

Case No. 2:21-cv-00564

Judge Cecilia M. Romero

INTRODUCTION

Defendant Eighth District Court and Samuel Chiara, by counsel, pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, respectfully submits this Response to Plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge that Defendants' motion to dismiss be granted in its entirety.

STANDARD OF REVIEW

Upon a magistrate judge's issuance of a recommendation on a dispositive matter, Federal Rules of Civil Procedure 72(b)(3) requires that the district judge "determine *de novo* any part of the magistrate judge's [recommendation] that has been properly objected to." In the absence of a specific and timely objection, "the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991)(citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985)); *see also* Fed. R. Civ. P. 72 Advisory Committee's Note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record."). An objection to a recommendation is properly made if it is both timely and specific. *United States v. One Parcel of Real Property Known as 2121 East 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996); *see also* *Byrd v. Internal Revenue Serv.*, No. 1:21-

cv-00042, 2021 WL 4860198, at *2 (D. Utah Oct. 19, 2021), *Kamper v. The Hartford*, No. 2:17-cv-00101, 2018 WL 1406602, at *1 (D. Utah Mar. 20, 2018), *Jenkins v. Haaland*, No. 2:21-cv-00385, 2023 WL 196159, at *2 (D. Utah Jan. 17, 2023), *Johnson v. Progressive Leasing*, No. 2:22-cv-00052, 2023 WL 4044514, at *2 (D. Utah June 16, 2023). An objection is sufficiently specific if it “enables the district judge to focus attention on those issues-factual and legal-that are at the heart of the parties’ dispute.” *Id.* (quoting *Thomas*, 474 U.S. at 47). In conducting its review, “[t]he district court judge may accept, reject, or modify the recommendation; receive further evidence; or return the matter to the magistrate judge with instructions.” *Id.*

ANALYSIS

Plaintiff must assert both timely and specific objections to the magistrate judge’s report and recommendation. Here, Plaintiff failed to explain with specificity why the Magistrate Judge’s decision was wrong. Instead, Plaintiff’s objections to the recommendation were overly-generalized, conclusive arguments that do not state which facts Judge Romero misconstrues or how she misreads the law.

First, Plaintiff’s “argument” section discusses only the Magistrate Judge’s alternative holding that the case should be dismissed because of Plaintiff’s failure

to properly serve the defendants. This argument was not raised by the Court Defendants is therefore not relevant to the Court Defendants' Motion to Dismiss.¹

Second, Plaintiff presents a new assertion regarding the Quiet Title Act, which is also not relevant. Further, she misinterprets cited caselaw including *Ute Indian Tribe v. Myton*, No. 15-4080, 2016 WL 4502057 (10th Cir. August 29, 2016) and various Ute Tribe cases.

Third, Plaintiff merely rehashes her prior jurisdictional arguments which were conclusively addressed in the recommendation. Continuing to disagree with the finding does not constitute "sufficiently specific objections".

Because of the lack of a specific objection, Plaintiff has waived de novo review of the Magistrate Judge's ruling. Therefore, the Court should apply the clear error standard.

Judge Romero did not commit any clear error. She relied upon and properly considered documents and judicially-noticeable facts that Plaintiff submitted Judge Romero properly read the relevant *Ute Tribe* line of cases to

¹ The Court Defendants nonetheless agree that dismissal for failure to serve is proper when service was not timely effected, where no good cause exists for the delay, and where the interests of justice are not furthered by granting the plaintiff a discretionary extension, as is the case here. *See Ysais v. New Mexico Jud. Standard Comm'n*, 616 F. Supp. 2d 1176, 1194 (D.N.M. 2009), *aff'd sub nom. Ysais v. New Mexico*, 373 F. App'x 863 (10th Cir. 2010).

determine that the prosecutor's office had jurisdiction over crimes committed in Roosevelt City. Judge Romero's conclusion that Plaintiff's claim is not plausible is correct. Judge Romero directly and thoroughly addresses Plaintiff's claim of lack of jurisdiction explaining:

Ultimately the Tenth Circuit held that Roosevelt City, Utah was 'within the original boundaries of the Uintah Valley Reservation,' *Ute Indian Tribe of the Uintah and Ouray Reservation v. State of Utah et al*, 114 F.3d 1513 (10th Cir. 1997), but that Roosevelt City had fee lands removed from the Reservation under the 1902-1905 allotment legislation and thus the city could exercise civil and criminal jurisdiction over the land. *Id.* at 1530.

Roosevelt City falls outside the boundaries of the Indian Country Jurisdiction, therefore Plaintiff's prosecution as a tribal member in district court whose incident occurred in Roosevelt City was proper.

Even if Judge Romero's analysis of the county's prosecution of Plaintiff was incorrect, the Court should still dismiss the Court Defendants. Plaintiff's claims remain fatally flawed because:

- Plaintiff is foreclosed from suing the Eighth District Court or Judge Chiara in his official capacity because they are not "persons" subject to suit under Section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989).
- Any claims by Plaintiff against Judge Chiara are barred under the doctrine of judicial immunity. *Mireles v. Waco*, 502 U.S. 9, 9-10

(1991); *Forrester v. White*, 484 U.S. 219, 225-26 (1988); *Stein v. Disciplinary Bd. of Supreme Court of NM*, 520 F.3d 1183, 1189-90 (10th Cir. 2008).

- Any recovery under state law is barred by the Governmental Immunity Act. Utah Code § 63G-6-201(1).
- The Federal Courts Improvement Act, and the Anti-Injunction Act, or the Younger abstention doctrine, prevent any claims for injunctive relief. 42 U.S.C. § 1983; 28 U.S.C. § 2283; *Younger v. Harris*, 401 U.S. 37, 41 (1971).

Because Plaintiff fails to provide any objections with specificity, and because she fails to offer any persuasive reason why the recommendation should not be adopted, this Court should overrule Plaintiff's objection, adopt the report and recommendation, and dismiss the claims against the Court Defendants.

RESPECTFULLY SUBMITTED THIS 10th day of August, 2023.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Christiana Biggs
CHRISTIANA BIGGS
KYLE KAISER
Assistant Utah Attorney General
Attorney for Eighth District Court

CERTIFICATE OF MAILING

Pursuant to Utah R. Civ. P. 5(b)(1)(A)(i), I certify that on this 10th day of August, 2023, I served the foregoing **DEFENDANT EIGHTH DISTRICT COURT'S RESPONSE TO PLAINTIFF'S OBJECTION TO REPORT AND RECOMMENDATION** on the following by using the Court's electronic filing system. I also certify that a true and correct copy of the foregoing was placed in outgoing, United States mail, postage prepaid, to the following:

Tara J. Amboh
PO Box 155
Neola, UT 84053

/s/ Sheri D. Bintz