

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Renee Kay Martin, Parent, individually and)
on behalf of TRL–Minor child of Brandon)
Richard Laducer; and BRW–Minor child of)
Brandon Richard Laducer,)
Plaintiffs,)

Civil No. 3:22-cv-00136

**COUNTY AND CITY DEFENDANTS’
REPLY TO PLAINTIFF’S
OBJECTION TO REPORT AND
RECOMMENDATION OF DISMISSAL**

v.)

Kelan Gourneau, in his individual and)
official capacity; Michael Slater, in his)
individual and official capacity; Evan)
Parisien, in his individual and official)
capacity; Joseph Kaufman, in his individual)
and official capacity; Earl Charbonneau, in)
his individual and official capacity; Nathan)
Gustafson, in his individual and official)
capacity; Reed Mesman, in his individual)
and official capacity; Trenton Gunville, in)
his individual and official capacity; Jayde)
Slater, in her individual and official)
capacity; Mitchell Slater, in his individual)
and official capacity; Andrew Saari, Jr., in)
his individual and official capacity; William)
Poitra, in his individual and official)
capacity; Heather Baker, in her individual)
and official capacity; Annette Laducer, in)
her individual and official capacity; and)
United States of America,)

Defendants.)

[¶1] COME NOW, defendants, Joseph Kaufman, Nathan Gustafson, Trenton Gunville, William Poitra, Jayde Slater, Mitchell Slater, and Andrew Saari, Jr., individually and in their official capacities (hereinafter “County and City defendants”), and submit this reply to plaintiff’s objection to the Report and Recommendation (Doc. 90). The plaintiff’s response and objection to the Report and Recommendation should be overruled and the court should enter an order adopting the Report

and Recommendation, granting the motions to dismiss and dismissing Martin's complaint against the County and City defendants with prejudice.

[¶2] Plaintiff's objection fails to raise any new issues of law or fact. As it relates to the County and City defendants, plaintiff simply reiterates her conclusory allegations. Plaintiff did not provide any specificity regarding any claimed actions by particular County and City defendants as required in a § 1983 action. See Reynolds v. Dormire, 636 F.3d 976, 979 (8th Cir. 2011).

[¶3] Plaintiff's second argument relates to an alleged Freedom of Information Act (FOIA) request. However, the plaintiff, in her objection, clearly indicates that claim is only addressed to the United States of America and the State defendants, not the County and City defendants.

[¶4] Plaintiff also suggests the motions to dismiss are premature. The plaintiff is precluded from raising the argument that the County and City defendants motion is premature. "A party cannot, in his objection to a Report and Recommendation, raise arguments that were not clearly presented to the magistrate judge." Hammann v. 1-800 ideas.com, Inc., 455 F. Supp 2d 942, 947-48 (D. Minn. 2006).

CONCLUSION

[¶5] As the plaintiff's claim that the motions to dismiss are premature was not initially raised with the Magistrate Judge, the court should reject that argument. Plaintiff's argument regarding the FOIA request is not directed at the City and County defendants and, therefore, the County and City defendants' motion to dismiss should be granted in accordance with the Report and Recommendation.

[¶6] Lastly, the plaintiff does not provide any specificity as to what any County or City defendant did to support a § 1983 action.

Dated this 24th day of March, 2024.

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