

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

William Jude Hart,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATIONS
vs.)	
)	Case No. 1:14-cv-013
Lean, K. Bertsch, Robyn Schmalenberger,)	
Rick Gardner, and Bruce Korte,)	
)	
Defendants.)	

The Plaintiff, William Jude Hart, is an inmate at the North Dakota State Penitentiary. He initiated this civil rights action against the Defendants on February 6, 2014. See Docket No. 2. The Plaintiff alleges the Defendants discriminated against him based on his race when they denied him re-employment at Rough Rider Industries. An amended complaint, which supplements the original complaint, was filed on March 12, 2014. See Docket No. 9. The Defendants filed a motion for summary judgment on June 19, 2015. See Docket No. 31. The Defendants filed a motion to dismiss on September 8, 2015. See Docket No. 42. The Plaintiff filed a motion for appointment of counsel on September 23, 2015. See Docket No. 44. The motions were referred to Magistrate Judge Charles S. Miller, Jr. for a Report and Recommendation.

On May 9, 2016, Judge Miller issued his Report and Recommendation wherein he recommended granting in part and denying part the motion for summary judgment, denying the motion to dismiss, and granting the motion for appointment of counsel. The parties were given fourteen (14) days to file any objections to the Report and Recommendation. No objections were filed. However, the Plaintiff filed a motion to amend his complaint to seek punitive damages on May 16, 2016. See Docket No. 52. The Defendants are opposed to the motion to amend. See

Docket No. 54.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Defendant has submitted sufficient evidence of racial discrimination to survive the Defendants' motions. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 51) in its entirety. The Defendants' motion for summary judgment (Docket No. 31) is **GRANTED in part and DENIED in part** as explained in the Report and Recommendation. The Defendants' motion to dismiss (Docket No. 42) is **DENIED**. The Plaintiff's motion for appointment of counsel is **GRANTED**. Having appointed counsel for the Plaintiff, the pro se motion to amend (Docket No. 52) is **DENIED** without prejudice.

IT IS SO ORDERED.

Dated this 31st day of May, 2016.

/s/ Daniel L. Hovland _____
Daniel L. Hovland, District Judge
United States District Court