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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

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PARKER MALMSTROM and CRYSTAL  
MALMSTROM,

Plaintiffs,

v.

STATE OF UTAH DEPARTMENT OF  
CHILDREN AND FAMILIES, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER ADOPTING [104] REPORT  
AND RECOMMENDATION**

Case No. 1:17-cv-80-DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

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The Report and Recommendation<sup>1</sup> issued by United States Magistrate Judge Evelyn J. Furse on January 12, 2018 recommends<sup>2</sup> that Plaintiff Parker Malmstrom's perjury, witness tampering, First, Sixth, Ninth, and Fourteenth Amendment claims<sup>3</sup> against Defendant Jill Coil be dismissed without prejudice for failure to state a claim. Magistrate Judge Furse also recommends<sup>4</sup> that Plaintiff Parker Malmstrom's defamation, unjust enrichment, and breach of fiduciary duty claims<sup>5</sup> against Ms. Coil be dismissed without prejudice for lack of subject matter

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<sup>1</sup> Report and Recommendation: Jill Coil's Motion to Dismiss (ECF No. 42), [docket no. 104](#), filed January 12, 2017.

<sup>2</sup> *Id.* at 11–12.

<sup>3</sup> Pro se Plaintiff Parker Malmstrom filed his Complaint on May 16, 2017. *See* Complaint, [docket no. 1](#), filed May 17, 2017. He then filed an Amended Complaint on May 16, 2017. *See* Amended Complaint, [docket no. 3](#), filed May 23, 2017. The Amended Complaint joined his mother, Crystal Malmstrom, as a Plaintiff. *See Id.* At Oral Argument, Crystal Malmstrom clarified that she is only bringing claims against Defendant Jacob Smith. *See* Minute Order, Proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing, docket no. 88, filed September 12, 2017. Because of this clarification, the Report and Recommendation only address Parker Malmstrom's claims against Jill Coil.

<sup>4</sup> *Id.* at 12.

<sup>5</sup> *See supra* note 4.

jurisdiction. The Report and Recommendation declined to award the attorney fees that Defendant Coil requested in her motion to dismiss.<sup>6</sup>

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of its service pursuant to [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#).<sup>7</sup> As Plaintiffs were mailed a copy of the Report and Recommendation, they were provided an additional three days to file their objection under [Fed. R. Civ. P. 6\(d\)](#). The last day of the 17 day period to file an objection was Monday, January 29, 2018.

On Tuesday, January 30, 2018, Plaintiffs filed a document entitled “Objection to Magistrate’s Decision and Order Or Motion to Set Aside Magistrate’s [sic].”<sup>8</sup> The document does not specify—and it is not possible to find any clue—if this Report and Recommendation is the subject of the objection. In addition to the lack of specificity, the filing<sup>9</sup> is untimely as to this Report and Recommendation. Because no party filed a timely written objection to the Report and Recommendation as provided by court rules,<sup>10</sup> and because the analysis and conclusion of the Magistrate Judge are sound, the Report and Recommendation<sup>11</sup> is adopted in its entirety.

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<sup>6</sup> See Rule 12(B)(6) Motion to Dismiss at 3, [docket no. 22](#), filed June 8, 2017.

<sup>7</sup> See Report and Recommendation at 12.

<sup>8</sup> [Docket no. 107](#), filed January 30, 2018.

<sup>9</sup> *Id.*

<sup>10</sup> See [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#)

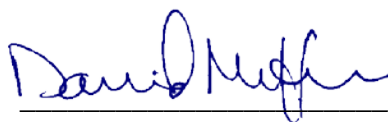
<sup>11</sup> Report and Recommendation: Jill Coil’s Motion to Dismiss (ECF No. 42), [docket no. 104](#), filed January 12, 2017.

**ORDER**

IT IS HEREBY ORDERED that the Report and Recommendation<sup>12</sup> is ADOPTED and the Motion to Dismiss<sup>13</sup> Defendant Jill Coil is GRANTED IN PART as to the dismissal of all claims against Ms. Coil without prejudice and DENIED IN PART as to the request for an award of attorney fees.

Signed February 7, 2018.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>12</sup> Report and Recommendation: Jill Coil's Motion to Dismiss (ECF No. 42), [docket no. 104](#), filed January 12, 2017.

<sup>13</sup> Rule 12(B)(6) Motion to Dismiss, [docket no. 22](#), filed June 8, 2017.