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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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DARLENE SCHMIDT,

Plaintiff,

v.

ETHICS AND DISCIPLINE COMMITTEE  
OF THE UTAH SUPREME COURT,  
PENNIANN SCHUMANN, RHETT  
DUTSON, BRADY WHITEHEAD,  
HONORABLE KEITH KELLY, PEHP  
HEALTH & BENEFITS, and KIMBERLY J.  
SAUL,

Defendants.

**MEMORANDUM DECISION AND  
ORDER ADOPTING [38] REPORT AND  
RECOMMENDATION**

Case No. 2:21-cv-376-DBB-DBP

District Judge David Barlow

Magistrate Judge Dustin B. Pead

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The Report and Recommendation<sup>1</sup> issued by United States Magistrate Judge Dustin B. Pead on October 24, 2022 recommends that this matter be dismissed pursuant to 28 U.S.C. § 1915 because it fails to state a claim,<sup>2</sup> and in the alternative, for the reasons set forth in Defendants' unopposed motions to dismiss.<sup>3</sup> The parties were notified of their right to file

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<sup>1</sup> Report and Recommendation, ECF No. 38, filed October 24, 2022.

<sup>2</sup> *Id.* at 5. Under 28 U.S.C. § 1915, the court will dismiss claims in a complaint filed *in forma pauperis* that are frivolous, malicious, or fail to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B) (2019). Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts alleged and it would be futile to provide an opportunity to amend. *Perkins v. Kan. Dept of Corrs.*, 165 F.3d 803, 806 (10th Cir. 1999).

<sup>3</sup> ECF No. 38 at 5. Defendants moved to dismiss Plaintiff's complaint under several theories, pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure, all of which result in dismissal of this action. *See* Def.'s Mot. to Dismiss, ECF No. 24, filed July 18, 2022; Def.'s Mot. to Dismiss, ECF 25, filed July 18, 2022; Defs.' Mot. to Dismiss, ECF No. 26, filed July 20, 2022; Defs.' Mot to Dismiss, ECF No. 28, filed August 1, 2022. Plaintiff failed to respond to the motions to dismiss filed by Defendants. *See* ECF No. 38 at 1.

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>4</sup> No party filed an objection.

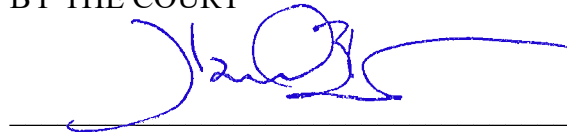
Because no party filed a written objection to the Report and Recommendation by the specified deadline, and because the analysis and conclusions of the Magistrate Judge are sound, the Report and Recommendation of Magistrate Judge Pead is adopted.

**ORDER**

IT IS HEREBY ORDERED that the Report and Recommendation<sup>5</sup> is ADOPTED. Defendants' motions to dismiss are GRANTED and Plaintiff's complaint is DISMISSED in its entirety.

DATED this 16<sup>th</sup> day of November, 2022.

BY THE COURT



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David Barlow  
United States District Judge

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<sup>4</sup> ECF No. 38 at 5.

<sup>5</sup> *Id.*