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, 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.	Civil No. 3:22-cv-00136 **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

INTRODUCTION

[1] Plaintiff, Renee Kay Martin, has sued Joseph Kaufman, Nathan Gustafson, Trenton Gunville, William Poitra, Jayde Slater, Mitchell Slater, and Andrew Saari, Jr., individually and in

their official capacities (hereinafter "Defendant's") alleging they violated her son's constitutional rights. *See* Complaint, ECF No. 1. The Defendant's moved to dismiss. See MTD and Mem, ECF No. 68-69. The Defendant's argued dismissal is appropriate because (1) The Complaint fails to state a claim for relief against each Defendant in their individual capacities; (2) The Complaint also fails to state a claim against each Defendant in their official capacities; and (3) The Defendants are entitled to qualified immunity.

[2] In opposition to this motion, Plaintiff fails to address a number of legal arguments supporting dismissal.

I. Plaintiff's Complaint Fails to State a Claim for Relief Against Each Defendant in Their Individual Capacities and She Failed to Provide Any Argument to the Contrary in her Opposition Brief.

[3] In Defendant's moving papers, they argued that Plaintiff's shotgun Complaint wholly failed to give the Defendants adequate notice of the claims against them and the grounds upon which each claim rests. Specifically, Martin grouped Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra with all the other named officers in the FBI, BIA, Rolette County Sherriff's Department, and Rolla Police Department and alleges they collectively violated 42 U.S.C. § 1983, for deprivation of civil rights. ECF 1, at p. 3.

[4] Martin failed to differentiate the allegations and inform each Defendant separately of the allegations surrounding his or her alleged participation. A § 1983 claim requires showing that Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra separately 1) acted under color of state law and 2) deprived the plaintiff of rights secured by the Constitution. Brown v. Linder, 56 F.4th 1140, 1143 (8th Cir. 2023). While courts construe pro se complaints liberally, this complaint fails to allege sufficient facts to support a § 1983 claim against each Defendant. Stringer v. St. James R-1 School Dist., 446 F.3d 799, 802 (8th Cir.2006).

[5] In her Opposition, Plaintiff failed to address this argument completely. In fact, the only place in the document where Joseph Kaufman, Nathan Gustafson, Trenton Gunville, William Poitra, Jayde Slater, Mitchell Slater, and Andrew Saari, Jr. were mentioned was in the case caption. Because the Complaint and Opposition do not contain specific claims or actions taken by each Defendant separately, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Dismissal of these individuals on failure to allege personal participation is warranted.

II. The Complaint also Fails to State a Claim Against each Defendant in Their Official Capacities and She Failed to Provide Any Argument to the Contrary in her Opposition Brief.

[6] Martin seeks $20 million for Laducer's children. ECF 1, at 12. It is well settled that the Eleventh Amendment bars actions, in Federal Court, which seek monetary damages from individual State Officers, in their official capacities, as well as State Agencies, because such lawsuits are essentially "for the recovery of money from the state." Ford Motor Co. v. Department of the Treasury, 323 U.S. 459, 464 (1945); see also Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983" when sued for damages.).

[7] Again, Plaintiff failed to provide any argument to the contrary. Dismissal of the official capacity claims is warranted.

III. The Defendants are entitled to qualified immunity.

[8] Plaintiff asserts that the "disregard of following prescribed policies" disqualifies the Defendants from the protections of qualified immunity. In support of this assertion, she attaches and references broad excerpts of BIA policies. However, even assuming each Defendants engaged in some action personally that violated internal policy – an allegation neither pled nor explained in any detail – violating an internal policy does not equate to a Constitutional violation and does

not waive the defense of qualified immunity. See Muick v. Reno, 83 F. App'x 851, 853 (8th Cir. 2003) (citing Arcoren v. Peters, 829 F. 2d 671, 676-77 (8th Cir. 1987) (violation of regulation does not suffice under Bivens), cert. denied, 485 U.S. 987 (1988)); see also Kramer v. Jenkins, 806 F.2d 140, 142 (7th Cir.1986) ("violation of an administrative rule is not the same thing as the violation of the Constitution"); Ramos v. Gilkey, No. 96 C 7528, 1997 U.S. Dist. LEXIS 5244 at 5 (N.D. Ill. April 17, 1997) (finding federal employees can "violate a federal regulation without violating the Constitution"); Gibson v. Federal Bureau of Prisons, 121 Fed. Appx. 549, 551 (5th Cir. 2004) ("violation of a prison regulation without more does not state a constitutional violation"). Blair v. Anderson, No. 8:07CV295, 2011 U.S. Dist. LEXIS 22165 at *7 (D. Neb. Mar. 4, 2011) (finding violations of internal policies are irrelevant to whether a constitutional violation occurred).

[9] In fact, the United States Supreme Court has stated that it is not "fair, or sound policy, to demand official compliance with statute and regulation on pain of money damages." Davis v. Scherer, 468 U.S. 183, 196 (1984). As the United States Supreme Court explained, "[t]hese officials are subject to a plethora of rules, often so voluminous, ambiguous, and contradictory, and in such flux that officials can only comply with or enforce them selectively." Id. But at its core, the violation of such policy is not tantamount to a constitutional violation. Id. at 194 (noting that "officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision."); see also Muick v. Reno, 83 F. App'x at 853.

[10] Furthermore, Plaintiff's Complaint acknowledges that prior to the decedent's death, there was an incident in Bottineau County. Per the NDBCI report that Plaintiff relies on, the decedent used a gun. Thus, it was not unreasonable for the officers pursuing him to believe he was still armed. Kohorst v. Smith, 968 F.3d 871, 877 (8th Cir. 2020). Based on the serious offense, it was

not objectively unreasonable for the Defendant's to treat the decedent as a potential suspect who posed a threat to officer safety. Furthermore, the NDBCI report also indicated that the decedent had a weapon and fired it that night on the porch, leaving shell casings. See Sinclair v. City of Des Moines, 268 F.3d 594, 596 (8th Cir. 2001) ("[N]o constitutional or statutory right exists that would prohibit a police officer from using deadly force when faced with an apparently loaded weapon."); Shannon v. Koehler, 616 F.3d 855, 863 (8th Cir. 2010) ("[T]here can be no doubt that officers are permitted to use force when their safety is threated.").

[11] None of Plaintiff's arguments overcome her failure to establish a constitutional violation as required to defeat dismissal under the first prong of qualified immunity.

[12] Finally, Plaintiff notes she is aware that "[q]ualified [i]mmunity shields executive officials and or/officers from civil liability when 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." See Answer Brief for Motion to Dismiss, ECF No. 76 at 3. However, despite this fact, Plaintiff fails, in the face of the aforementioned details and controlling caselaw, to explain what such a clearly established right might be. Instead, she merely concludes there was a "disproportionate relationship between the need for the use of the force and the amount of force used." Here, the Defendants are unaware of any case law that would have put every reasonable officer on notice that the Fourth Amendment required anything different than what five officers on the scene did in this case: shot at an individual they *reasonably believed* to be armed (and who as it turned out was armed and discharged his own weapon repeatedly on the porch that night). E.g., Kohorst, 968 F.3d at 877.

[13] Dismissal with prejudice is thus warranted.

CONCLUSION

[14] For the reasons stated above, Kaufman, Gustafson, J. Slater, Gunville, M. Slater, Saari, and Poitra respectfully request that the Court grant this Motion and dismiss them from the case with prejudice.

Dated this 20th day of July 2023.

KING LAW PC
101 Slate Drive, Suite 4
Bismarck, ND 58503
701-712-2676
lking@KingLawND.com

By: /s/ Lawrence E. King
Lawrence E. King (ID# 04997)

Attorneys for Defendants Joseph Kaufman, Nathan Gustafson, Trenton Gunville, Jayde Slater, Mitchell Slater, Andrew Saari, Jr., and William Poitra