

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02261-PAB-KLM

DEREK A. THIESS,

Plaintiff,

v.

CITY OF WHEAT RIDGE, COLORADO, a body politic, by and through its City Council, the Governing Body for the City of Wheat Ridge,
MONICA DURAN, Wheat Ridge City Council Member, in her official capacity,
JANICE HOPPE, Wheat Ridge City Council Member, in her official capacity,
KRISTI DAVIS, Wheat Ridge City Council Member, in her official capacity,
ZACKARY URBAN, Wheat Ridge City Council Member, in his individual and official capacities,
TIM FITZGERALD, Wheat Ridge City Council Member, in his official capacity,
GEORGE POND, III, Wheat Ridge City Council Member, in his official capacity,
LARRY MATHEWS, Wheat Ridge City Council Member, in his official capacity,
GENEVIEVE WOODEN, Wheat Ridge City Council Member, in her official capacity,
KENNETH JOHNSTONE, Community Development Director, in his individual and official capacities,
PATRICK GOFF, in his official capacity,
JOHN SCHUMACHER, former Chief Building Officer, in his individual and official capacities,
DONNA SCHNEIDER, Assistant Prosecuting City Attorney, in her individual and official capacities, and
JOYCE JAY, Mayor, in her official capacity,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Leave to File Amended Complaint and Jury Demand** [#49] (the "Motion"). Defendants filed a Joint Response to Plaintiff's Motion for Leave to File First Amended Complaint [#51], which indicates that

Defendants do not object to the Motion [#49]. Pursuant to 28 U.S.C. § 636(b)(1)(A) and D.C.COLO.LCivR 72.1C.3., the Motion [#49] has been referred to this Court for disposition [#50]. For the reasons set forth below, the Court **RECOMMENDS** that the Motion [#49] be **GRANTED**.

A scheduling order has not yet entered in this matter. Thus, the Motion [#49] is timely. The unopposed amendment seeks to dismiss several parties and all designations of parties in their official capacities. Additionally, Plaintiff seeks to dismiss various claims. See *Motion* [#49] at 3-5. A magistrate judge may issue orders on nondispositive motions only. *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1461, 1462-63 (10th Cir. 1988). Whether motions to amend are dispositive is an unsettled issue. *Chavez v. Hatterman*, No. 06-02525-WYD-MEH, 2009 WL 82496, at *1 (D. Colo. Jan. 13, 2009) (collecting cases). When an order on a motion to amend removes or precludes a defense or claim from the case, it may be dispositive. *Cuenca v. Univ. of Kan.*, 205 F. Supp. 2d 1226, 1228 (D. Kan. 2002). Thus, although the Motion [#49] is unopposed, the Court assumes that the issue is dispositive and requires a recommendation. Accordingly,


IT IS HEREBY **RECOMMENDED** that the Motion [#49] be **GRANTED** and that the Amended Complaint [#49-1] be accepted for filing.

IT IS FURTHER **ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of this Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. A party's failure to serve and file specific, written objections waives de novo review of the Recommendation by the District Judge, Fed. R. Civ. P. 72(b); *Thomas v. Arn*,

474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996). A party's objections to this Recommendation must be both timely and specific to preserve an issue for de novo review by the District Court or for appellate review. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated: May 22, 2018

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix". The signature is written in a cursive, flowing style.

Kristen L. Mix
United States Magistrate Judge