

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

GARY KENDALL,

Plaintiff,

vs.

CITY OF BOISE, *et al.*,

Defendants.

Case No.: CV 09-306-S-EJL-REB

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

On August 13, 2010, United States Magistrate Judge Ronald E. Bush issued a Report and Recommendation (Docket No. 10) in this matter. Pursuant to 28 U.S.C. § 636(b)(1), the parties had fourteen days in which to file written objections to the Report and Recommendation. No objections were filed by the parties.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge.” Moreover, this Court “shall make a de novo determination of those portions of the report which objection is made.” *Id.* In United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003), the court interpreted the requirements of 28 U.S.C. 636(b)(1)(C):

The statute [28 U.S.C. § 636(b)(1)(C)] makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise. As the Peretz Court instructed, “to the extent de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties.” Peretz, 501 U.S. at 939, 111 S.Ct. 2661 (internal citation omitted). Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct. See

Ciapponi, 77 F.3d at 1251 (“Absent an objection or request for review by the defendant, the district court was not required to engage in any more formal review of the plea proceeding.”); see also Peretz, 501 U.S. at 937-39, 111 S.Ct. 2661 (clarifying that de novo review not required for Article III purposes unless requested by the parties)

See also Wang v. Masaitis, 416 F.3d 993, 1000 & n.13 (9th Cir. 2005). In this case, no objections were filed so the Court need not conduct a de novo determination of the Report and Recommendation.

THEREFORE, IT IS HEREBY ORDERED that the Report and Recommendation (Docket No. 10) shall be **INCORPORATED** by reference and **ADOPTED** in its entirety.

IT IS THEREFORE ORDERED:

1. The claims based on violations of 24 C.F.R. §§ 401.200, 401.311, 901.1, and 901.200, are dismissed without prejudice;
2. All claims based on criminal statutes are dismissed with prejudice;
3. Plaintiff’s equal protection claim is dismissed without prejudice;
4. The following Defendants, in their official and individual capacities, are dismissed from this lawsuit: Cary B. Colaianni, City Attorney; Jim A. Birdsall, Boise City Housing and Development Manager; Jeff Street, Boise City Housing Manager; Tami Dodel, Boise City Housing Property Manager; David H. Beiter, Mayor; David Eberle, Councilperson; Elaine Clegg, Councilperson; Vern Bisterfeldt, Councilperson; Maryanne Jordan, Councilperson; Alan Shealy, Councilperson; and Jim Tibbs, Councilperson; and

5. Plaintiff is granted leave to file an amended complaint that incorporates the rulings of this Order and the Report and Recommendation on or before September 30, 2010. No new claims for relief will be entertained by the Court. If Plaintiff fails to file an amended complaint, this matter may be dismissed without further notice.



DATED: **September 3, 2010**

A handwritten signature in black ink, reading "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge