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IN THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF UTAH

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CHARLES SCHULTZ,

Plaintiff,

v.

MICHAEL AVERETT, HEATHER  
BATEMAN, KASEY BATEMAN, JAY  
BINKERD, JONATHAN BLOTTER,  
ERIC BUNKER, LYNN CRISLER,  
LAMBERT DEEGAN, MICHAEL  
DUGGIN, JOHN GLODOWSKI, DIANE  
GROSE, DANIEL HARVATH, KIM  
NORRIS, ED PRESSGROVE, LANCE  
TURNER, PAM SKINNER, LYNNE  
SCHINDURLING, FRANCIS SMITH,  
GARY WALTON, GARY WEIGHT, THE  
TOWN OF DANIEL, and JOHN DOES 1  
through 10,

Defendants.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Case No. 2:15-cv-00720-JNP-EJF

Judge Jill N. Parrish

Plaintiff Charles Schultz sued the Town of Daniel and a number of individuals, alleging that they violated his rights by preventing him from rebuilding a home that was destroyed in a fire. Defendant Eric Bunker moved to dismiss the claims against him. The Town of Daniel and Bunker also requested an award of attorney fees.<sup>1</sup> Magistrate Judge Furse issued a Report and Recommendation suggesting that the motion to dismiss Bunker from this suit be granted and that the motion for attorney fees be denied. [Docket 106]. Judge Furse notified the parties that a failure

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<sup>1</sup> These defendants originally moved to dismiss Schultz's Eighth Cause of Action, which asserted a takings claim. But they later withdrew this portion of the motion.

to file a timely objection to her recommendation could waive any objections to it. No party filed an objection within the allotted time.


Because no party objected to the Report and Recommendation, any argument that it was in error has been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if “the interests of justice so dictate.” *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). The court has reviewed the Report and Recommendation and concludes it is not clearly erroneous. Thus, the court finds that the interests of justice do not warrant deviation from the waiver rule and ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation [Docket 106] is ADOPTED IN FULL.
2. The motion to dismiss filed by the Town of Daniel and Bunker [Docket 57] is GRANTED IN PART AND DENIED IN PART. All claims against Bunker are dismissed with prejudice. The court denies the motion to the extent that it seeks dismissal of the Eighth Cause of Action and to the extent that the defendants seek an award of attorney fees.

**SO ORDERED** July 29, 2019.

BY THE COURT:



JILL N. PARRISH  
United States District Judge