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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,  
CENTRAL DIVISION

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ZACKARY R. E. RUSK,

Plaintiff,

v.

COWBOY PROPERTIES,

Defendant.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Case No. 2:16-cv-00204-RJS-DBP

Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

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This case was referred to Magistrate Judge Dustin Pead pursuant to 28 U.S.C. § 626(b)(1)(B). In his Complaint, Plaintiff Zackary Rusk alleges that the Defendant unlawfully refused to rent an apartment to him.<sup>1</sup> Defendant’s Motion to Dismiss for Failure to State a Claim is now before the court.<sup>2</sup>

Judge Pead issued a Report and Recommendation on June 15, 2016, recommending that the court grant Defendant’s Motion to Dismiss and dismiss Plaintiff’s complaint without prejudice.<sup>3</sup> Neither party submitted an objection to the Report and Recommendation within the time allotted.<sup>4</sup> In the absence of an objection, the court may apply a “clearly erroneous” standard of review when evaluating a Report and Recommendation. Under this standard, the court “will

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<sup>1</sup> Dkt. 3.

<sup>2</sup> Dkt. 7.

<sup>3</sup> Dkt. 23.

<sup>4</sup> See FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)–(c) (allowing parties fourteen days to file an objection to a report and recommendation from a magistrate judge).

affirm the Magistrate Judge’s ruling unless [the court] . . . is left with the definite and firm conviction that a mistake has been committed.”<sup>5</sup>

After reviewing the briefing, record, and relevant legal authorities, the court concludes that Judge Pead did not clearly err in his analysis. The court therefore ADOPTS the Report and Recommendation and GRANTS Defendant’s Motion to Dismiss. (Dkt. 7.) The court dismisses Plaintiff’s complaint without prejudice to allow him to refile in accord with the pleading standards detailed in Judge Pead’s Report and Recommendation. As stated in the Report and Recommendation, Mr. Rusk may file an Amended Complaint no later than fourteen (14) days after being served with a copy of this Order.

Further, Mr. Rusk filed a document styled “Amended Complaint” on June 22, 2016.<sup>6</sup> Defendant moved to strike this pleading as premature and inconsistent with the Federal Rules of Civil Procedure.<sup>7</sup> Defendant also requests attorney fees and costs associated with its motion. The court GRANTS Defendant’s Motion to Strike (Dkt. 24) and strikes Mr. Rusk’s “Amended Complaint” (Dkt. 24) to allow him to refile his Amended Complaint in accord with this Order. The court declines to award attorney fees and costs associated with Defendant’s motion.

SO ORDERED this 14th day of July, 2016.

BY THE COURT:

  
ROBERT V. SHELBY  
United States District Judge

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<sup>5</sup> *Thompson v. Astrue*, 2010 WL 1944779, at \*1 (D. Utah May 11, 2010) (internal quotation marks and citations omitted).

<sup>6</sup> Dkt. 24.

<sup>7</sup> Dkt. 25.