

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Case No. 07-cv-02471-PAB-KMT

THOMAS SILVERSTEIN,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

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**MINUTE ORDER**

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**Entered by Judge Philip A. Brimmer**

On March 28, 2008, defendants, in their official capacities, filed a partial motion to dismiss [Docket No. 48] plaintiff's amended complaint. On July 28, 2008, defendants Lappin, Conley, Nalley and Wiley, in their individual capacities, filed their motion to dismiss [Docket No. 98] plaintiff's amended complaint. On April 14, 2009, plaintiff filed a motion for leave to file a second amended complaint [Docket No. 140], which motion was granted on May 14, 2009 [Docket No. 157]. The second amended complaint was filed on May 14, 2009 [Docket No. 158].

Thus, as of May 14, 2009, the operative pleading was the Second Amended Complaint. Defendants' motions to dismiss are therefore directed at an inoperative, superseded pleading. See, e.g., *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990) ("[A] pleading that has been amended under Rule 15(a) supersedes the pleading it modifies . . .") (internal quotation marks omitted). As such, the motions to dismiss are moot. Therefore, it is

**ORDERED** that defendants' motions to dismiss without prejudice [Docket Nos. 48, 98] are DENIED as moot.

DATED May 18, 2009.