

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02117-REB-KLM

EMMANUEL SANAAH,

Plaintiff,

v.

NURSE DEBB HOWELL,
WARDEN ARELLANO,
MAJOR SCOTT GROVER, Life Safety Coordinator and Maintenance Supervisor,
MAINTENANCE WORKER LT. BOSLEY, and
ARISTEDES ZAVARAS, all in their official and individual capacities,

Defendants.

**RECOMMENDATION TO DENY MOTION TO DISMISS AS MOOT AND
ORDER SETTING RESPONSE DEADLINE**

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on **Defendants' Motion to Dismiss** [Docket No. 32; Filed April 8, 2009] ("Motion to Dismiss"). After the Motion to Dismiss was filed, Plaintiff was given leave to file an Amended Complaint [Docket Nos. 45 & 46]. The filing of an amended complaint serves to moot any pending motions to dismiss directed at the superceded complaint. See *Gotfredson v. Larsen LP*, 432 F. Supp. 2d 1163, 1172 (D. Colo. 2006). Further, I note that Defendants have now filed a second motion to dismiss Plaintiff's Amended Complaint [Docket No. 51]. Pursuant to 28 U.S.C. § 636(b)(1) and D.C. Colo. L. Civ. R. 72.1(C)(3), the first Motion to Dismiss has been referred to this Court for recommendation.

IT IS HEREBY **RECOMMENDED** that the Motion to Dismiss [#32] be **DENIED as moot**.

IT IS FURTHER **ORDERED** that Plaintiff shall respond to Defendants' Motion to Dismiss Second Amended Complaint [#51] on or before **July 20, 2009**.

IT IS FURTHER **ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have ten (10) days after service of the 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. Dept. 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: June 29, 2009

BY THE COURT:
s/ Kristen L. Mix
U.S. Magistrate Judge
Kristen L. Mix