

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Case No. 09-cv-00004-PAB-MJW

THOMAS R. LEWIS,

Plaintiff,

v.

DENVER FIRE DEPARTMENT, et al.,

Defendants.

ORDER

This matter is before the Court on defendant Denver Fire Department's Motion to Dismiss [Docket No. 5] filed on February 23, 2009. On March 15, 2009, plaintiff sought leave of the Court to file an Amended Complaint. Finding that plaintiff was entitled to amend his complaint as a matter of course under Fed. R. Civ. P. 15(a)(1), Magistrate Judge Michael J. Watanabe granted plaintiff's motion for leave to file his Amended Complaint and accepted that pleading for filing on April 14, 2009 [Docket No. 16].

Thus, on April, 14, 2009, plaintiff's Amended Complaint [Docket No. 17] became the operative pleading in this action. Defendant Denver Fire Department's motion to dismiss is therefore directed to an inoperative, superseded pleading.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 motion to dismiss is moot.

Therefore, it is

ORDERED that the motion to dismiss [Docket No. 5] is denied as moot.

DATED April 15, 2009.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge