

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

THOMAS R. LEWIS,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,  
DENVER FIRE DEPARTMENT, a department of the City and County of Denver,  
NICK NUANES, in his official capacity as Fire Chief, and in his individual capacity,  
KEITH MEHRENS, in his official capacity as Assistant Fire Chief, and in his individual  
capacity,

Defendants.

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**MINUTE ORDER**

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**Entered by Judge Philip A. Brimmer**

This matter is before the Court on the defendants' Motion to Dismiss Based on Qualified Immunity [Docket No. 24] and defendants' Partial Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1) & (6) [Docket No. 26]. On July 6, 2009, plaintiff filed the Second Amended Complaint [Docket No. 57] pursuant to the Minute Order [Docket No. 56] granting his Motion for Leave to File Second Amended Complaint [Docket No. 46]. Thus, the Second Amended Complaint became the operative pleading in this action, and the Motions to Dismiss [Docket Nos. 24 and 26] are directed to an inoperative, superseded pleading.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 motions to dismiss are moot. It is

ORDERED that defendants' Motion to Dismiss Based on Qualified Immunity [Docket No. 24] and defendants' Partial Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1) & (6) [Docket No. 26] are DENIED as moot.

DATED July 30, 2009.