

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

Civil Action No. 09-cv-00526-PAB-KMT

JOAO HENRIQUES,
on behalf of himself and others similarly situated,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION, d/b/a FEDEX EXPRESS,

Defendant.

ORDER

This matter is before the Court on FedEx Corporation's motion to dismiss [Docket No. 7] filed on March 30, 2009. On April 22, 2009, plaintiff filed an Amended Complaint as a matter of course under Fed. R. Civ. P. 15(a)(1) [Docket No. 8]. Thus, on April 22, 2009, plaintiff's Amended Complaint became the operative pleading in this action. FedEx Corporation's motion to dismiss is therefore directed to an inoperative, superseded pleading.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.

In his response to FedEx Corporation's motion to dismiss [Docket No. 9], plaintiff states that he inadvertently named as defendant the parent corporation of his employer instead of the appropriate subsidiary corporation. Plaintiff therefore requests that the caption of this action be amended so that Federal Express Corporation, doing business

as FedEx Express, is substituted as defendant. The Court finds this request proper under Fed. R. Civ. P. 15.

Therefore, it is

ORDERED that the motion to dismiss [Docket No. 7] is denied as moot. It is further

ORDERED that the caption in this action shall be amended as set forth in this order and all future papers filed in this action shall utilize the caption set forth herein.

DATED April 23, 2009.

BY THE COURT:

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