

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

Civil Action No. 09-cv-00697-PAB-CBS

U.S. ADVISOR, LLC,  
USA ENCLAVE AT BELLEVIEW STATION, DST,  
USA ENCLAVE AT BELLEVIEW STATION, LLC,  
USA ENCLAVE AT BELLEVIEW STATION SPE, LLC, and  
USA ENCLAVE AT BELLEVIEW STATION LEASECO, LLC,

Plaintiffs,

v.

BERKSHIRE PROPERTY ADVISORS, LLC,

Defendant.

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**ORDER**

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This matter is before the Court on plaintiffs' Motion to Dismiss [Docket No. 22] defendant's Counterclaim. On May 19, 2009, 2009, defendant filed the First Amended Counterclaim [Docket No. 28] as a matter of course under Fed. R. Civ. P. 15(a)(1). On May 26, 2009, defendant filed a motion for leave to file a second amended counterclaim [Docket No. 37], which was granted on June 1, 2009 [Docket No. 49]. Thus, the Second Amended Counterclaim [55] became the operative counterclaim, and plaintiffs' Motion to Dismiss [Docket No. 22] is directed to an inoperative, superseded pleading.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. It is

ORDERED that plaintiffs' Motion to Dismiss [Docket No. 22] is DENIED as moot.

DATED June 21, 2009.

BY THE COURT:

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