

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 09-cv-01797-REB-KMT

RUSSELL COSTEN,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,
DENVER POLICE DEPARTMENT,
SONDRA COWANS, in her official and individual capacities,
JEREMY OLIVE, in his official and individual capacities, and
BRIAN NIVEN, in his official and individual capacities,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE AS MOOT
DEFENDANTS' PARTIAL MOTION TO DISMISS**

Blackburn, J.

The matters before me are (1) **Defendants' Partial Motion To Dismiss** [#11], filed August 25, 2009; and (2) **Defendants' Partial Motion To Dismiss** [#12] filed August 25, 2009.¹ Plaintiff filed a response to the motion, but the time for filing of a reply has not yet elapsed. Nevertheless, on September 12, 2009, plaintiff sought leave to amend his complaint, and defendants did not object to that request. (**See Motion To Amend Complaint and Jury Demand** [#19], filed September 12, 2009.) Accordingly, the magistrate judge granted the motion to amend, and the second amended complaint has been accepted for filing. (**See Minute Order** [#22], filed September 12, 2009.) The filing of an amended complaint moots a motion to dismiss directed at the superceded complaint. **See *Griggs v. Jornayvaz***, 2009 WL 1464408 at *1 (D. Colo. May 22, 2009);

¹ It is unclear why defendants filed two motions, as they appear to be in all respects identical to one another.

United States ex rel. Babb v. Northrop Grumman Corp., 2007 WL 1793795 at *1 (D. Colo. June 19, 2007).


THEREFORE, IT IS ORDERED as follows:

1. That **Defendants' Partial Motion To Dismiss** [#11] filed August 25, 2009, is **DENIED WITHOUT PREJUDICE** as moot; and

2. That **Defendants' Partial Motion To Dismiss** [#12] filed August 25, 2009, is **DENIED WITHOUT PREJUDICE** as moot.

Dated September 14, 2009, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge