

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02931-CMA-KLM

DEREK THIESS, and  
ALBERT THIESS,

Plaintiffs,

v.

RANDAL MERCER, and  
KARIN MERCER,

Defendants.

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**MINUTE ORDER**

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on Plaintiffs' **Unopposed Motion for Leave to File Amended Verified Complaint** [Docket No. 22; Filed February 23, 2010] (the "Motion"). Attached to the Motion, Plaintiffs include a copy of their proposed Amended Verified Complaint and Jury Demand [Docket No. 22-2]. It is not signed by counsel, nor are the attached affidavits signed by Plaintiffs. Plaintiffs intend to file a signed Amended Complaint upon entry of this Order.

The Motion also includes a request that the Court grant Defendants an extension of time of ten days after the entry of this Order in which to file their Reply in Support of their Motions to Dismiss [Docket Nos. 12 & 14], which currently is due on or before February 25, 2010. "Generally, when an amended complaint is filed, the previous complaint is wiped out and the operative complaint is the most recently filed version." *Robinson v. Dean Foods Co.*, No. 08-cv-01186-REB-CBS, 2009 WL 723329, \*4 (D. Colo. Mar. 18, 2009) (internal

quotations omitted) (citation omitted); see *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007) (citations omitted) (noting that filing of amended complaint supersedes original complaint and renders it without legal effect). Defendants' previously filed Motions to Dismiss therefore are mooted by Plaintiff's Amended Complaint, and thus no Reply is necessary. See, e.g., *Strich v. United States*, No. 09-cv-01913-REB-KLM, 2010 WL 14826, at \*1 (D. Colo. Jan. 11, 2010) (citations omitted) ("The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded."); *AJB Props., Ltd. v. Zarda Bar-B-Q of Lenexa, LLC*, No. 09-2021-JWL, 2009 WL 1140185, at \*1 (D. Kan. April 28, 2009) (finding that amended complaint superseded original complaint and "accordingly, defendant's motion to dismiss the original complaint is denied as moot"); *Gotfredson v. Larsen LP*, 432 F.Supp.2d 1163, 1172 (D. Colo. 2006) (noting that defendants' motions to dismiss "technically moot because they are directed at a pleading that is no longer operative" but considering arguments presented because "the magistrate judge's order granting [p]laintiffs' motion to file a second amended complaint held that 'the current pending motions to dismiss will equally apply to the [s]econd [a]mended [c]omplaint.'"). Accordingly,

IT IS HEREBY **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER **ORDERED** that Plaintiffs shall file their Amended Verified Complaint and Jury Demand on or before **March 3, 2010**.

IT IS FURTHER **ORDERED** that Defendants shall answer or otherwise respond to the Amended Complaint within 21 days of the date on which it is filed.

IT IS FURTHER **ORDERED** that the Motions to Dismiss [Docket No. 12; Filed

January 21, 2010 and Docket No. 14; Filed January 22, 2010] are **DENIED AS MOOT.**

Dated: February 24, 2010