

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

Civil Action No. 10-cv-02273-WJM-KLM

ONESOURCE COMMERCIAL PROPERTY SERVICES, INC., a Colorado corporation,  
and  
AFFORDABLE SWEEPING, INC., a Colorado corporation,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, a municipal corporation,  
APRIL HENDERSON,  
CALVIN BLACK,  
KEN GREENE, and  
XAVIER DURAN,

Defendants.

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**ORDER DENYING AS MOOT DEFENDANTS' MOTIONS TO DISMISS**

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Plaintiffs OneSource Commercial Property Services, Inc. ("OneSource") and Affordable Sweeping, Inc. ("Affordable Sweeping") bring this action against Defendants City and County of Denver ("City"), April Henderson, Calvin Black, Ken Greene, and Xavier Duran (collectively "Defendants") alleging violations of 42 U.S.C. §§ 1981 and 1983, as well as Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Am. Compl. (ECF No. 42).)

The operative complaint in this case is Plaintiffs' Amended Complaint, filed November 22, 2010. (ECF No. 42.) On December 14, 2010, Defendants City, Greene, and Duran filed a Motion to Dismiss arguing that Plaintiffs' claims were barred by statutes of limitation and that Plaintiffs' Amended Complaint failed to state a claim upon

which relief can be granted. (ECF No. 49.) The same day, Defendant April Henderson filed a Motion to Dismiss also arguing that Plaintiffs' claims against her were barred by the applicable statute of limitations. (ECF No. 52.)

The Court has not yet addressed these Motions to Dismiss and this case has proceeded through discovery. All of the parties that moved to dismiss Plaintiffs' claims have now also filed motions for summary judgment. The Motion for Summary Judgment filed by the City, Duran, and Greene states that they "incorporate by reference their Motion to Dismiss." (ECF No. 117 at 1 n.1.) Henderson's Motion for Summary Judgment provides that "[t]he arguments previously made in Document No. 52 [the Motion to Dismiss] and the additional briefing is incorporated herein". (ECF No. 119 at 2.)

Because the parties have now filed Motions for Summary Judgment that incorporate the same arguments raised by the Motions to Dismiss, the Court deems the Motions to Dismiss moot. See *Drake v. City and Cty. of Denver*, 953 F.Supp. 1150, 1152 n.1 (D. Colo. 1997) (holding that motions to dismiss were "subsumed by the Motions for Summary Judgment and are denied as moot."); *Neff v. Coleco Indus., Inc.*, 760 F.Supp. 864, 865 n.1 (D. Kan. 1991) (same).

Plaintiffs have filed a Motion for Leave to Supplement Responses to Defendants' Motions to Dismiss. (ECF No. 91.) For good cause shown, the Court grants this Motion and will consider the additional authority cited by Plaintiffs when ruling on the statute of limitations issue in conjunction with the Motions for Summary Judgment.

Accordingly, the Court ORDERS as follows:

1. Defendant City, Duran, and Greene's Motion to Dismiss (ECF No. 49) is DENIED

WITHOUT PREJUDICE AS MOOT;

2. Defendant Henderson's Motion to Dismiss (ECF No. 52) is DENIED WITHOUT PREJUDICE AS MOOT;
3. Plaintiffs' Motion for Leave to Supplement Responses to Defendants' Motions to Dismiss (ECF No. 91) is GRANTED; and
4. The Court will resolve the issues raised in the Motions to Dismiss and the supplemental authority cited by Plaintiffs when it rules on the parties' respective Motions for Summary Judgment.

Dated this 28<sup>th</sup> day of February, 2012.

BY THE COURT:



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William J. Martínez  
United States District Judge