

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02973-WYD-KLM

RONALD J. NAGIM,

Plaintiff,

v.

RAY WALKER, and
UNIVERSAL PERSONNEL,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion to Amend** [Docket No. 17; Filed January 18, 2011] (the "Motion"). The Court recently set a deadline for Plaintiff to file a Response to the Motion to Dismiss [Docket No. 16]. Rather than file a Response, Plaintiff apparently has opted to file an Amended Complaint, which has been docketed under the title "Motion to Amend." Pursuant to Fed. R. Civ. P. 15(a) "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b) [or] (e)" As Plaintiff has not previously amended his Complaint and as the Amended Complaint was filed within twenty-one days of service of Defendants' Motion to Dismiss, Plaintiff may file an Amended Complaint as a matter of course. To the extent that Plaintiff's Amended Complaint has been titled and docketed as a Motion,

IT IS HEREBY **ORDERED** that the Motion is **GRANTED**, and Plaintiff's Amended

Complaint is accepted for filing.¹

IT IS FURTHER **ORDERED** that the Clerk shall change the title of the Motion to “Amended Complaint.”

IT IS FURTHER **ORDERED** that due to the filing of an Amended Complaint, Defendants’ Motion to Dismiss [Docket No. 8] is **DENIED as moot**. 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(“The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded.”); *AJB Props., Ltd.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 April 28, 2009) (finding that amended complaint superseded original complaint and “accordingly, defendant’s motion to dismiss the original complaint is denied as moot”); *Gotfredson v. Larsen LP*, 432 F.Supp.2d 1163,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 are “technically moot because they are directed at a pleading that is no longer operative”).

IT IS FURTHER **ORDERED** that Defendants shall answer or otherwise respond to the Amended Complaint [Docket No. 17] on or before **February 7, 2011**.

IT IS FURTHER **ORDERED** that other than responding to any motion filed by Defendants, Plaintiff shall not file any pleadings until given leave to do so by the Court.

Dated: January 19, 2011

BY THE COURT:

s/ Kristen L. Mix
Kristen L. Mix
United States Magistrate Judge

¹ Plaintiff is reminded of his obligation to comply with D.C.COLO.LCivR 7.1A. and provide a certification that he conferred with opposing counsel prior to filing any motion.