

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01108-RBJ-KLM

ROBERT DALE SHEPARD,

Plaintiff,

v.

PATRICIA RANGEL, ADX General Population Unit Manager, individually,
DAVID FOSTER, ADX Counselor, individually,
FNU GEORGE, ADX Correctional Officer, individually,
FNU SHEPHERD, ADX Correctional Officer, individually,
FNU ROY, ADX Correctional Officer, individually,
JOHN DOE #1G, whose true name is unknown, ADX Correctional Officer, individually, and
JOHN DOE # 2G, whose true name is unknown, ADX Correctional Officer, individually,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Notice of First Amended Complaint** [Docket No. 44; Filed November 8, 2012]; on Defendant Patricia Rangel's **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)** [Docket No. 20; Filed September 28, 2012]; on Defendant Darren¹ Foster's **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)** [Docket No. 39; Filed October 25, 2012]; on Defendant Daniel Shepherd's **Motion to Dismiss Plaintiff's Complaint** [Docket No. 40; Filed October 25, 2012]; and on Defendant Joshua George's **Motion to Dismiss** [Docket No. 42; Filed October 29, 2012]. On October 23, 2012, the Court granted Plaintiff's request for an extension of time through November 12, 2012 in which to file Responses to Defendant Rangel's Motion [#20]. *Minute Order* [#38]. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff may amend his pleading once as a matter of course "within . . . 21 days after service of a motion under Rule 12(b)" Plaintiff has submitted his First Amended Complaint within this period. Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff's First Amended Complaint [#44-1] and attached Exhibits 1-18 [#44-2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -12, -13, -14, -15, -16, -17,

¹ Defendant Darren Foster states that he is incorrectly identified in Plaintiff's Complaint as "David Foster."

-18, -19] are accepted for filing as of November 8, 2012.

IT IS FURTHER **ORDERED** that those Defendants who have already been served and entered their appearances in this case shall answer or otherwise respond to Plaintiffs' Amended Complaint [#44-1] on or before **November 29, 2012**.

IT IS FURTHER **ORDERED** that Defendants' Motions to Dismiss [#20, #39, #40, #42] are **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. Apr. 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").

Dated: November 9, 2012