

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

Civil Action No. 14-cv-0728-WJM-NYW

CLAY HAMADY RAMPONE,

Plaintiff,

v.

CITY AND COUNTY OF DENVER, a Colorado municipal corporation,
IAN CULVERHOUSE, in his individual and official capacity,
JESSE REMBERT, in his individual and official capacity,
DAVE COLAIZZI, in his individual and official capacity,
MIKE CODY, in his individual and official capacity, and
JOHN BURBACH, in his individual and official capacity

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS AS SUPERSEDED BY
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Clay Hamady Rampone brings this action against Defendants City and County of Denver, Ian Culverhouse, Jesse Rembert, Dave Colaizzi, Mike Cody, and John Burbach ("Defendants") alleging violations of 42 U.S.C. §§ 1983 and 1985, as well as various state law claims. (Compl. (ECF No. 3).)

This action was removed from Denver District Court on March 11, 2014. (ECF No. 1.) On April 28, 2014, Defendants filed a Motion to Dismiss seeking dismissal of claims 2-6 (all but the excessive force claim) on the grounds that certain claims were barred by *Heck v. Humphrey*, that Plaintiff was collaterally estopped from bringing certain claims, and that Plaintiff's Complaint failed to state a claim upon which relief could be granted. (ECF No. 18.)

The Court has not yet addressed this Motion to Dismiss, and the case has proceeded through discovery. (See ECF Nos. 28 (setting discovery deadline at October 10, 2014) & 37 (extending discovery deadline to November 9, 2014). On December 24, 2014, Defendants filed a Motion for Partial Summary Judgment. (ECF No. 45.) The Motion for Partial Summary Judgment raises all of the same arguments made in the Motion to Dismiss, but tailors these arguments to the current phase of the litigation by including references to the record developed during discovery, rather than simply relying on the allegations in the Complaint. (*Compare* ECF Nos. 18 & 45.)

Because Defendants have now filed a summary judgment motion that incorporates the same arguments raised in the Motion to Dismiss, the Court finds that the Motion to Dismiss is superseded, and should be denied as moot. *See Drake v. City & Cnty. 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).

Accordingly, the Court ORDERS as follows:

1. Defendants’ Motion to Dismiss (ECF No. 18) is DENIED WITHOUT PREJUDICE AS MOOT due to the fact that it has been superseded by Defendants’ Motion for Partial Summary Judgment; and
2. The Court will resolve the substantive issues raised in the Motion to Dismiss when it rules on Defendants’ Motion for Partial Summary Judgment.

Dated this 23rd day of February, 2015.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martínez", is written over a horizontal line.

William J. Martínez
United States District Judge