

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01296-KLM

KENNETH A. MORRIS,

Plaintiff,

v.

D. BERKEBILE, Florence ADX Warden,
CORDOVA, Assistant Medical Adminstrator,
HALL, Associate Warden, and
ALLRED, Clinical Director Doctor,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion to Reconsider** [#22]; on Defendants' **Motion to Dismiss** [#28]; on Plaintiff's **Motion for an Order from This Court Instructing Defendants to Answer the Complaint and to Produce Plaintiff's Complete Medical File and a Copy of B.O.P. Manual for the "Prevention and Treatment of Hepatitis C and Cirrhosis"** [#29] (the "Motion for Order"); on Defendant Cordova's **Motion to Dismiss** [#31]; and on Plaintiff's **Response to Defendant's Motion to Dismiss and Plaintiff's Motion for Leave to File Second Amended Complaint** [#33] (the "Motion to Amend").

Regarding Plaintiff's Motion to Amend [#33], the Court first notes that Plaintiff violates Local Rule 7.1(d), which states that "[a] motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate document." However, the Court does not strike Plaintiff's Motion to Amend in this instance because the substance of the filing is not actually responsive to Defendants' Motions to Dismiss [#28, #31] and instead seeks leave to file an amended complaint. However, Plaintiff is warned that **future filings that do not comply with the Local Rules may be stricken without further warning.**

Under Fed. R. Civ. P. 15(a)(1)(B), a party may amend his complaint once as a matter of course within "21 days after service of a motion under Rule 12(b)," and Plaintiff has here requested leave to file an amended complaint within a timely manner.

Accordingly,

IT IS HEREBY ORDERED that the Motion to Amend [#33] is GRANTED. The Clerk of Court shall accept Plaintiff's Third Amended Complaint [#33-1] for filing as of the date of this Minute Order.¹

IT IS FURTHER ORDERED that the Motions to Dismiss [#28, #31] 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("The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded."); *AJB Props., Ltd.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. 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 the Motion for Order [#29] is DENIED in part and DENIED as moot in part. The Motion is denied to the extent Plaintiff seeks an order requiring Defendants to provide him with certain discovery. Plaintiff's request is premature because a Scheduling Conference has not yet been held in this matter and the discovery period has not yet begun. The Motion for Order is denied as moot to the extent Plaintiff seeks an order requiring Defendants to file an answer to the now superseded complaint in this matter.

Finally, regarding the Motion to Reconsider [#22], Plaintiff asks the Court to reconsider dismissal of certain claims and Defendants by allowing him to file an amended complaint addressing these issues. [#22] at 2 (stating that Plaintiff's "request is that this Court allow for a small period of time that Complaints #1 and #2 be Amended"). To the extent that Plaintiff has now been permitted to file an amended complaint, his request appears to be moot. Accordingly,

IT IS FURTHER ORDERED that the Motion to Reconsider [#22] is DENIED as moot.

Dated: October 9, 2014

¹ Plaintiff has previously amended his complaint as part of the Court's pro se review process, but he has not previously amended his complaint in respond to a motion to dismiss.