

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01631-PAB-KLM

CELLPORT SYSTEMS, INC.,

Plaintiff,

v.

BMW OF NORTH AMERICA, L.L.C. and  
BAYERISCHE MOTOREN WERKE AG, a foreign corporation,

Defendants.

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**MINUTE ORDER**

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**Entered by Judge Philip A. Brimmer**

This matter is before the Court on the Motion to Dismiss Defendant BMW of North America, LLC's Affirmative Defenses and Counterclaims [Docket No. 31] filed by plaintiff Cellport Systems, Inc. Plaintiff's motion is directed at the Answer, Defenses & Counterclaims to the Complaint [Docket No. 15] filed by defendant BMW of North America, LLC ("BMW"). On October 21, 2014, BMW filed its Amended Answer, Defenses & Counterclaims [Docket No. 35] as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1). Thus, the Amended Answer, Defenses & Counterclaims became the operative pleading in this action, and plaintiff's motion to dismiss [Docket No. 31] is directed to an inoperative, superseded pleading. *See, e.g., Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990) ("a pleading that has been amended under Rule 15(a) supersedes the pleading it modifies") (internal quotation marks omitted). As such, the motion to dismiss is moot. It is

**ORDERED** that plaintiff's Motion to Dismiss Defendant BMW of North America, LLC's Affirmative Defenses and Counterclaims [Docket No. 31] is **DENIED** as moot.

DATED October 27, 2014.