

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01860-MSK-KLM

SUMMER R. COLBY, and
JAMES R. COLBY,

Plaintiffs,

v.

COUNTY AND DISTRICT COURT OF FREMONT COUNTY,
MICHAEL HERRICK, Brand Inspector,
NORMAN COOLING, The Honorable,
BRAND INSPECTION DIVISION, and
CHRIS WHITNEY, Branding Commissioner,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendants' **Motion to Dismiss Plaintiffs' Second Amended Complaint** [#45] (the "Motion to Dismiss") and on Plaintiffs' **Third Motion for Leave of Court to Amend Complaint Pursuant to F.R.C.P. 15(a)** [#51] (the "Motion to Amend"). Defendants did not file a Response in opposition to Plaintiff's Motion to Amend. Given Defendants' non-opposition and the fact that this litigation is still in its earliest stages,

IT IS HEREBY **ORDERED** that the Motion to Amend [#51] is **GRANTED**. The Clerk of Court shall accept Plaintiffs' Third Amended Complaint [#51-2] for filing as of the date of this Minute Order. However, Plaintiffs have now had multiple opportunities to present their claims against Defendants, and they are warned that, absent exceptional cause, the Court will be unlikely to grant further attempts to amend the complaint and delay this litigation.

IT IS FURTHER **ORDERED** that the Motion to Dismiss [#45] 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("The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded."); *AJB Props., Ltd.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 April 28, 2009) (finding that amended complaint superseded original complaint and “accordingly, defendant’s motion to dismiss the original complaint is denied as moot”); *Gotfredson v. Larsen LP*, 432 F.Supp.2d 1163,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”).

Dated: February 25, 2015