

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Case No. 14-cv-01953-REB-BNB

ELOY GARZA,

Plaintiff,

v.

WESTERN STONE OF LYONS, LLC; and
PAUL W. FRYSIG,

Defendants.

ORDER

This matter arises on the following:

- (1) Defendants' **Motion to Dismiss** [Doc. # 40, filed 11/21/2014]; and
- (2) Plaintiff's **First Amended Complaint** [Doc. # 42, filed 12/12/2014].

The defendants moved to dismiss the plaintiff's initial complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. The Motion to Dismiss was filed on November 21, 2014. Rule 15(a)(1)(B), Fed. R. Civ. P., allows a party to amend his pleading once as a matter of course within 21 days after service of a motion to dismiss under Rule 12(b). Here, the plaintiff filed his First Amended Complaint on December 12, 2014, within the 21 day period. The First Amended Complaint supersedes the plaintiff's initial complaint, rendering moot the Motion to Dismiss which is directed at the initial complaint.

IT IS ORDERED that the Motion to Dismiss [Doc. # 40] is DENIED as moot.

Dated December 15, 2014.

BY THE COURT:

s/ Boyd N. Boland

United States Magistrate Judge