

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03084-RM-KLM

TIM GONZALES,

Plaintiff,

v.

PHYSICIAN HEALTH PARTNERS,
UNKNOWN LICENSED MEDICAL DOCTOR, of Physician Health Partners,
ANTHONY A. DECESARO, and
RENAE JORDAN,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion: Declaration in Support of Preliminary Injunction** [#18] (the "Motion for Preliminary Injunction"), on Defendant Physician Health Partners' **Motion to Dismiss Plaintiff's Prisoner Complaint (ECF No. 32)** [#40], on Defendants Anthony A. Decesaro and Renae Jordan's **Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1) and 12(b)(6)** [#47] (collectively, the "Motions to Dismiss"), and on Plaintiff's **Motion for Leave to File an Amended Complaint** [#54] (the "Motion to Amend").

The Court previously denied Plaintiff's request to file an amended complaint because he did not provide a document which could be construed as a complete proposed amended complaint. *Minute Order* [#52]. In the Motion to Amend [#54], Plaintiff has corrected this omission. Given that it is still early in this lawsuit and Plaintiff has only once corrected his complaint, the Court finds that leave to amend should be permitted pursuant to Fed. R. Civ. P. 15(a)(2). Accordingly,

IT IS HEREBY **ORDERED** that the Motion to Amend [#54] is **GRANTED**. Plaintiff's Second Amended Complaint [#54] is accepted for filing as of the date of this Minute Order.

IT IS FURTHER **ORDERED** that the Motions to Dismiss [#40, #47] 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a motion to dismiss directed at the complaint that is supplanted and superseded.”); *AJB Props., Ltd.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 April 28, 2009) (finding that amended complaint superseded original complaint and “accordingly, defendant’s motion to dismiss the original complaint is denied as moot”); *Gotfredson v. Larsen LP*, 432 F. Supp. 2d 1163,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”).

Finally, Plaintiff’s Motion for Preliminary Injunction [#18] was filed prior to service on any Defendant, and the time to file a Response passed prior to any Defendant’s entry of appearance. Accordingly,

IT IS HEREBY **ORDERED** that, if they so choose, Defendants may file a Response to the Motion for Preliminary Injunction [#18] **on or before November 10, 2015**.

Dated: October 20, 2015