IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

HARRILL GLEN SCOTT	§	
V.	§	CIVIL ACTION NO. 6:11cv276
PFIZER PHARMACEUTICAL, ET AL.	§	

<u>REPORT AND RECOMMENDATION</u> OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Harrill Scott, proceeding *pro se*, filed this lawsuit complaining that he had received a drug called Bextra without warning him of the potential side effects. The case was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Scott named Pfizer Pharmaceutical Corp., the manufacturer of Bextra, and Dr. Duane Tisdale of the Smith County Public Health Clinic. On August 5, 2011, the Court issued a Report recommending that the lawsuit be dismissed for want of subject matter jurisdiction, in that he and Dr. Tisdale are residents of Texas and so diversity jurisdiction does not exist.

In response to this Report, Scott has filed a motion for leave to amend his complaint. The amended complaint deletes any reference to Dr. Tisdale. Because an amended complaint supersedes the original, *see* <u>Clark v. Tarrant County, Texas</u>, 798 F.2d 736, 740 (5th Cir. 1986), Scott is in effect seeking the dismissal of Dr. Tisdale. This request should be granted.

RECOMMENDATION

It is accordingly recommended that the Plaintiff's motion for leave to amend his complaint (docket no. 11) be granted and that the Defendant Dr. Duane Tisdale be dismissed as a party to this lawsuit.

A party's failure to file objections to the findings, conclusions, and recommendations contained in this Report within 14 days after service with a copy thereof shall bar that party from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services</u> Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So **ORDERED** and **SIGNED** this **6** day of **October**, **2011**.

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JUDITH K. GUTHRIE UNITED STATES MAGISTRATE JUDGE