

04/12/2021	150	<p>ORDER. This case is before the Court <i>sua sponte</i>. Defendants Randall Klamser and City of Fort Collins (jointly, "Defendants") have filed Defendants' Motion to Dismiss Plaintiff's First Amended Complaint [ECF 107] Pursuant to Fed. R. Civ. P. 12(b)6), seeking dismissal of all claims in the First Amended Complaint 108 . Klamser also seeks application of qualified immunity. (ECF No. 108 at 4.) In addition, Defendants filed a Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56, seeking summary judgment in their favor on all claims set forth in the First Amended Complaint 118 . The Court acknowledges that in the Motion for Summary Judgment, Defendants state that "Given the timing of the applicable Case Management Order [sic], Defendants filed this Motion for Summary Judgment even though the 2020 Motion to Dismiss is still pending before the Court. This Motion for Summary Judgment, however, is not intended to supersede any request for relief set forth in the 2020 Motion to Dismiss. The arguments set forth in the 2020 Motion to Dismiss are, therefore, incorporated herein." (ECF No. 118 at 3.) However, the Motion for Summary Judgment raises the same arguments made in the Motion to Dismiss but tailors these arguments to the current phase of the litigation by including references to the record developed during discovery, rather than simply relying on the allegations in the First Amended Complaint. Because the Motion for Summary Judgment incorporates the same arguments raised in the Motion to Dismiss, the Court finds that the Motion to Dismiss is indeed superseded and is therefore DENIED WITHOUT PREJUDICE AS MOOT. <i>See Drake v. City and Cnty. of Denver</i>, 953 F. Supp. 1150, 1152 n.1 (D. Colo. 1997) (holding that motions to dismiss were "subsumed by the Motions for Summary Judgment and are denied as moot.") The Court will resolve the substantive issues raised in the Motion to Dismiss when it rules on Defendants' Motion for Summary Judgment. SO ORDERED by Judge William J. Martinez on 4/12/2021. Text Only Entry(wjmlc1,) (Entered: 04/12/2021)</p>
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