

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 1:18-cv-01211-MSK

JON C. CALDARA;  
BOULDER RIFLE CLUB, INC., a Colorado nonprofit corporation;  
GENERAL COMMERCE, LLC, d/b/a Bison Tactical, a Wyoming limited liability company;  
TYLER FAYE; and  
MARK RINGER,

Plaintiffs,

v.

CITY OF BOULDER, a Colorado home rule municipality;  
JANE S. BRAUTIGAM, City Manager of the City of Boulder, in her official capacity;  
GREGORY TESTA, Chief of Police of the City of Boulder, in his official capacity;  
SUZANNE JONES, Mayor of the City of Boulder, in her official capacity;  
AARON BROCKETT, Mayor Pro Tem of the City of Boulder, in his official capacity;  
CYNTHIA A. CARLISLE, Boulder City Council Member, in her official capacity;  
LISA MORZEL, Boulder City Council Member, in her official capacity;  
MIRABAI KUK NAGLE, Boulder City Council Member, in her official capacity;  
SAMUEL P. WEAVER, Boulder City Council Member, in his official capacity;  
ROBERT YATES, Boulder City Council Member, in his official capacity;  
MARY D. YOUNG, Boulder City Council Member, in her official capacity;  
JILL ADLER GRANO, Boulder City Council Member, in her official capacity; and  
J. DOES 1–10,

Defendants.

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**RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

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**COME NOW** Plaintiffs, Jon C. Caldara; Boulder Rifle Club, Inc.; General Commerce, LLC, d/b/a Bison Tactical; Tyler Faye; and Mark Ringer, by and through their counsel, Mountain

States Legal Foundation, by Cody J. Wisniewski and Sean P. Smith, and for their Response to Defendants' Motion to Dismiss, ECF No. 35,<sup>1</sup> state and allege as follows:

### **BACKGROUND**

1. Plaintiffs filed their initial Complaint herein on May 16, 2018. ECF No. 1.
2. Defendants filed their Motion to Dismiss on July 16, 2018, seeking to dismiss all claims in Plaintiffs' initial Complaint. ECF No. 35.
3. On August 6, 2018, Plaintiffs filed their First Amended Complaint, as a matter of course, pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). ECF No. 41.

### **RESPONSE**

4. Defendants' Motion to Dismiss seeks to dismiss the claims in Plaintiffs' initial Complaint, which has now been amended as a matter of course. *See* ECF No. 35.
5. Defendants' Motion to Dismiss does not address, nor is it responsive to, Plaintiffs' First Amended Complaint. *See id.*
6. "The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded." *Strich v. U.S.*, Case No. 09-cv-01913-REB-KLM, 2014 WL 148269 at \*1 (D. Colo. Jan. 11, 2010) (*citing Griggs v. Jornayvaz*, Case No. 09-cv-00629-PAB-KMT, 2009 WL 1464408 at \*1 (D. Colo. May 22, 2009) and *United States ex rel. Babb v. Northrop Grumman Corp.*, Case No. 06-cv-00581-EWN-MJW, 2007 WL 1793795 at \*1 (D. Colo. June 19, 2007)); *see also U.S. v. St. Germain*, 363 F.Supp.2d 1293, 1294 (D. Colo. Apr. 4, 2005) (amended motion to dismiss original complaint denied as moot once amended complaint

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<sup>1</sup> Each citation to the Court's electronic record in this Response refers to the electronic record for Case No. 18-cv-1121-MSK, unless otherwise specified.

was filed); *D.R. Horton, Inc.-Denver v. Travelers Indem. Co. of America*, 281 F.R.D. 627, 629 (D. Colo. Apr. 9, 2012) (motions to dismiss denied as moot when first amended complaint was filed).

7. Defendants' Motion to Dismiss Plaintiffs' initial Complaint, ECF No. 35, is now moot.

**WHEREFORE**, Plaintiffs respectfully request that this Court:

- A. Deny Defendants' Motion to Dismiss as moot; and
- B. Grant such other and further relief as this Court deems equitable and proper.

DATED this the 6th day of August 2018.

Respectfully Submitted,

/s/ Cody J. Wisniewski

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*Attorneys for Plaintiffs Jon Caldara; Boulder Rifle Club, Inc.; General Commerce, LLC, d/b/a Bison Tactical; Tyler Faye; and Mark Ringer*

**CERTIFICATE OF SERVICE**

I hereby certify that, on August 6, 2018, I electronically filed the foregoing with the Clerk of Court using this Court's CM/ECF system, which will send notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D.C.COLO.LCivR 5.1(d).

*/s/ Cody J. Wisniewski* \_\_\_\_\_  
Cody J. Wisniewski  
MOUNTAIN STATES LEGAL FOUNDATION