

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

TODD CARLTON SMITH,

Plaintiff,

vs.

CIVIL ACTION  
No. 03-3451-SAC

CUONG PHAM, et al.,

Defendants.

ORDER

This matter is before the court on the Report and Recommendation of Magistrate Judge Sebelius (Doc. 104), the motion of defendant Cuong Pham, M.D., for dismissal from this action (Doc. 94), and on the plaintiff's motion to voluntarily dismiss defendant Pham (Doc. 96).

The plaintiff has filed no objection to the Report and Recommendation, and the court adopts it in its entirety. The plaintiff's motion for default judgment against defendant Sharp (Doc. 80) will be denied.

Defendant Pham seeks his dismissal from this action because he is not named as a defendant in the amended complaint. Defendant Pham correctly asserts that the amended complaint supersedes the original complaint. *See Davis v. TXO Production*

*Corp.*, 929 F.2d 1515, 1517 (10<sup>th</sup> Cir. 1991)("[i]t is well established that an amended complaint ordinarily supersedes the original and renders it of no legal effect")(internal quotations marks and citations omitted). The plaintiff agrees defendant Pham should be dismissed. Accordingly, these motions will be granted and defendant Pham dismissed from this action.

IT IS, THEREFORE, BY THE COURT ORDERED the Report and Recommendation of Magistrate Judge Sebelius (Doc. 104) is adopted in full by the court.

IT IS FURTHER ORDERED plaintiff's motion for default judgment against defendant Sharp (Doc. 80) is denied.

IT IS FURTHER ORDERED the motion of defendant Pham for his dismissal (Doc. 94) and the motion of plaintiff to dismiss defendant Pham (Doc. 96) are granted. The alternative motion of defendant Pham for a more definite statement (Doc. 94) is denied as moot.

Copies of this order shall be mailed to the parties.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 10<sup>th</sup> day of July, 2008.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge