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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

DORIAN DAVIS aka WALI AL-TAQI,  
CDCR #K-78041,  
  
Plaintiff,  
  
v.  
  
E.G. FLORES; J. CASTRO; T. BILLINGS; A.  
HEDGPETH; R. MARTA,  
  
Defendants.

Civil No. 08-cv-1197 JTM (JMA)

**ORDER:  
1) GRANTING PLAINTIFF'S  
REQUEST TO AMEND COMPLAINT;  
and  
2) DENYING DEFENDANTS' MOTION  
TO DISMISS AS MOOT**

**Doc. Nos. 23 and 27**


On August 15, 2008, Plaintiff, an inmate currently incarcerated at Kern Valley State Prison in Delano, California and proceeding *pro se* and *in forma pauperis*, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) Defendants moved to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 23.) Along with his opposition, Plaintiff included a request for leave to file a First Amended Complaint to include additional factual allegations. (Doc. No. 27.)

Under Federal Rule of Civil Procedure 15(a), “[a] party may amend its pleading once as a matter of course...before being served with a responsive pleading....” As Defendants have not yet filed a responsive pleading, Plaintiff may file a First Amended Complaint without leave of court. Thus, his request is **GRANTED**. If Plaintiff wishes to file a First Amended Complaint, he must do so **no later**

1 than September 8, 2009.

2 Because a First Amended Complaint would supercede the target of Defendants' pending  
3 motion, Defendants' motion to dismiss is **DENIED** without prejudice as moot. If Plaintiff does not  
4 file a First Amended Complaint by the date specified above, Defendants are free to re-file their  
5 motion.

6 DATED: August 4, 2009

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8 Hon. Jeffrey T. Miller  
United States District Judge

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