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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01971-BNB

THOMAS L. DAVIS, #20021-039,

Plaintiff,

v.

OFFICER SCOTT DOVE, and  
OFFICER K. ESTRADA,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

SEP 03 2009

GREGORY C. LANGHAM  
CLERK

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ORDER

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This matter is before the Court on Plaintiff's "Motion to Amend the Civil Action Complaint" (Doc. # 5), "Motion to Dismiss for Lack of Jurisdiction to [sic] Governing Case" (Doc. # 6), and letter to the Court (Doc. # 7).

Plaintiff, Thomas L. Davis, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary in Florence, Colorado. Mr. Davis initiated this action by filing a *pro se* Prisoner Complaint and a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 on August 11, 2009. By order dated August 18, 2009, the Court directed the Clerk of the Court to commence a civil action and directed Mr. Davis to cure certain enumerated deficiencies in the Prisoner Complaint.

On August 28, 2009, Mr. Davis filed a pleading titled, "Motion to Dismiss for Lack of Jurisdiction to [sic] Governing Case." In the pleading, Mr. Davis states that he seeks a voluntary dismissal because he has not exhausted his administrative remedies, and

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he will re-file in this Court once he has fully exhausted his administrative remedies.

Fed. R. Civ. P. 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” No answer or motion for summary judgment has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See* J. Moore, *Moore's Federal Practice* ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). Plaintiff's Motion to Dismiss, therefore, would close the file as of August 28, 2009. *See Hyde Constr. Co.*, 388 F.2d at 507.

However, on September 1, 2009, the Court received for filing a letter from Mr. Davis. In the letter, Mr. Davis states that he does not wish to dismiss his case and that an unidentified person forced him to write the motion to voluntarily dismiss. He further states that he wishes to proceed with his case and that he has received threats from prison officials regarding the case. The Court must construe the letter liberally because Mr. Davis is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Therefore, although the Motion to Dismiss technically closes this case as of August 28, 2009, and Mr. Davis could be directed to re-file this case, for purposes of judicial efficiency and considering his *pro se* status, the Motion to Dismiss will be denied as moot.

Finally, on August 27, 2009, Mr. Davis filed a Motion to Amend his Complaint. However, in the Court's Order of August 18, 2009, directing Mr. Davis to cure deficiencies, he was directed to file an Amended Complaint on the court-approved form.

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Therefore, it is not necessary for Mr. Davis to file a motion in order to amend his Complaint. Instead, he must file an Amended Complaint on the court-approved form within the time frame allowed by the Court. Accordingly, the Motion to Amend will be denied as unnecessary.

Accordingly, it is

ORDERED that the "Motion to Amend the Civil Action Complaint," (Doc. # 5) is DENIED as unnecessary. It is

FURTHER ORDERED Motion to Dismiss for Lack of Jurisdiction to [sic] Governing Case," (Doc. # 6) is DENIED as moot.

DATED September 3, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01971-BNB

Thomas L. Davis  
Reg No. 20021-039  
US Penitentiary Florence  
P.O. Box 7000  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 9/3/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk