

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02969-BNB

HAROLD THOMAS MADDOX,

Plaintiff,

v.

PAULA FRANTZ, Chief Medical Officer,
ARISTEDES ZAVARAS, Ex. Dir.,
JOANIE SHOEMAKER, Clinical Ser. Dir.,
CHERYL SMITH, Chief Clinical Services,
LOUIS COIBLING, M.D., C.C.C.F.,
DICK SMELSER, Warden, C.C.C.F.,
CATHIE HOLST, AIC, ADA, and
HENDERSON, Coordinator, C.C.C.F.,
(All individually and in their official capacities),

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 16 2010

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Plaintiff, Harold Thomas Maddox, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the Kit Carson Correctional Facility. Mr. Maddox 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 December 14, 2009. By order dated December 21, 2009, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and directed Mr. Maddox to cure certain enumerated deficiencies in the Prisoner Complaint. After filing a certified trust fund account statement, Mr. Maddox was granted leave to proceed *in forma pauperis* on January 21, 2010.

On February 16, 2010, Magistrate Judge Boland determined that the Prisoner Complaint was deficient because it failed to allege the personal participation of all named Defendants. Therefore, Magistrate Judge Boland ordered Mr. Maddox to file an Amended Prisoner Complaint

On March 12, 2010, Mr. Maddox filed a pleading titled, "Motion to Dismiss Without Prejudice & Motion to Suspend Time Limits." In the Motion, Mr. Maddox states that he seeks a voluntary dismissal because he does not currently have access to a law library, making it impossible for him to file an Amended Complaint. He states that he will re-file his Complaint in six to seven months, after he is released from the custody of the DOC. Mr. Maddox also requests that the Court "suspend time limit statutes."

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). The Motion, therefore, closes the file as of March 12, 2010. **See Hyde Constr. Co.**, 388 F.2d at 507. However, Plaintiff's request that the Court "suspend" the statute of limitations for purposes of filing an action pursuant to 42 U.S.C. § 1983 will be denied. The Court has no power to "suspend" any relevant statute of limitations. Accordingly, it is

ORDERED that "Motion to Dismiss Without Prejudice & Motion to Suspend Time Limits," filed on March 12, 2010, is GRANTED IN PART AND DENIED IN PART. It is

FURTHER ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of March 12, 2010, the date Plaintiff filed the Motion in this action. It is

FURTHER ORDERED that Plaintiff's request that the Court suspend any relevant statute of limitations is DENIED.

DATED at Denver, Colorado, this 16th day of March, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02969-BNB

Harold Thomas Maddox
Prisoner No. 96046
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 3/10/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk