

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00250-PAB-KLM

MICHAEL MILLIGAN,

Plaintiff,

v.

LOU ARCHULETA,
CHARLES SANCHEZ,
LANCE MIKLICH, and
KEVIN FURTON,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendants' **Motion to Dismiss** [Docket No. 35; Filed March 19, 2012] and on Plaintiff's **Response to Defendants' Motion to Dismiss** [Docket No. 41; Filed May 2, 2012] (the "Motion to Amend"). In response to Defendants' Motion to Dismiss [#35], Plaintiff seeks to file a Second Amended Complaint [#41-1], purportedly correcting the alleged defects raised in the Motion to Dismiss. Pursuant to Fed. R. Civ. P. 15(a)(B), a party may amend his pleading once as a matter of course 21 days after service of a motion under Fed. R. Civ. P. 12(b). Here, Plaintiff, who proceeds in this matter as an incarcerated *pro se* individual, was granted an extension of time through May 1, 2012, to file a response to the Motion to Dismiss. See *Minute Order* [#40]. The Motion to Amend was received by the Office of the Clerk on May 2, 2012, which means that it was clearly timely mailed by Plaintiff. See *Price v. Philpot*, 420 F.3d 1158, 1166 (10th Cir. 2005) (stating that a prisoner's motion is deemed filed when he gives the document to prison officials for mailing). Thus, Plaintiff may file an amendment to his Amended Complaint as a matter of course pursuant to Fed. R. Civ. P. 15(a)(B). Accordingly,

IT IS HEREBY **ORDERED** that the Motion to Amend [#41] is **GRANTED**.

IT IS FURTHER **ORDERED** that the Clerk of Court shall **ACCEPT** Plaintiff's Second Amended Complaint [#41-1] for filing as of the date of this Minute Order.

IT IS FURTHER **ORDERED** that, in consideration of the filing of the Second

Amended Complaint, Defendants' Motion to Dismiss [#35] is **DENIED WITHOUT PREJUDICE**. Defendants may file an answer or other response to Plaintiff's Second Amended Complaint **on or before May 22, 2012**.

Dated: May 8, 2012