

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02716-BNB

MATTHEW JOSEPH SUND,

Plaintiff,

v.

SALT LAKE COUNTY SHERIFF JAMES M. WINDER,
OFFICER STONE,
OFFICER SHARP,
OFFICER MOON,
OFFICER LAWRENCE (K.S.)?,
MURRAY CITY PD OFC. CAMERON JARVIS, and
SALT LAKE LDA MICHAEL D. MISNER,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 08 2009

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Plaintiff Matthew J. Sund is an inmate at the Salt Lake County Correctional Facility in Salt Lake City, Utah. Mr. Sund initiated this action by filing *pro se* a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. In an order filed on December 15, 2008, Magistrate Judge Boyd N. Boland directed Mr. Sund to cure certain deficiencies if he wished to pursue his claims in this action. On December 30, 2008, Mr. Sund filed a letter to the Court asking the Court to dismiss all of his pending cases.

The Court must construe the letter filed on December 30 liberally because Mr. Sund is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court will construe

the letter filed on December 30 as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, "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 response has been filed by Defendants in this action. A voluntary dismissal pursuant to 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 notice closes the file. **See Hyde Constr. Co.**, 388 F.2d at 507.

Accordingly, it is

ORDERED that the letter to the Court filed on December 30, 2008, is construed as a notice of voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

It is

FURTHER ORDERED that the voluntary dismissal is effective as of December 30, 2008, the date the letter to the Court requesting dismissal was filed in this action.

DATED at Denver, Colorado, this 8 day of Jan., 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02716-BNB

Matthew Joseph Sund
Prisoner No. 237595
Salt Lake County Correctional Facility
3415 S. 900 West
South Salt Lake City, UT 84119-4103

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 1/8/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk