

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02381-PAB-KLM

SALVADOR MAGLUTA,

Plaintiff,

v.

UNITED STATES FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

ORDER

This matter comes before the Court on plaintiff's Notice of Voluntary Dismissal [Docket No. 54], in which he states that he "files his Notice of Voluntary Dismissal as to the Defendant Patrick Whalen" "pursuant to Rule 41(a)(1)(a) of the Federal Rules of Civil Procedure."

Despite Rule 41(a)(1)'s reference to the dismissal of an "action," the weight of authority permits a dismissal of all claims pursuant to Rule 41(a)(1)(A) against fewer than all defendants. *See Montoya v. FedEx Ground Package System, Inc.*, 614 F.3d 145, 148 (5th Cir. 2010); *Blaize-Sampeur v. McDowell*, 2007 WL 1958909, at *2 (E.D.N.Y. June 29, 2007) (noting that, although the Second Circuit had previously stated otherwise, it had "since adopted the approach of the majority of courts in other circuits – that is, that Rule 41(a) does not require dismissal of the action in its entirety" and permits dismissal of all claims as to a single defendant). Upon the filing of plaintiff's notice [Docket No. 54], this action was dismissed without prejudice as to defendant Patrick Whalen.

DATED June 25, 2012.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge