

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-02919-PAB-MEH

AMERICAN PRODUCE, LLC, a limited liability company,

Plaintiff,

v.

FELIX RIVERA VARGAS, an individual, a/k/a Felix Rivera, and
RICARDO FELIX RIVERA, an individual, a/k/a Ricardo Felix,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Request for Dismissal of Defendant Felix Rivera Vargas [Docket No. 41].

In its motion, American Produce, LLC requests that the Court dismiss defendant Felix Rivera Vargas without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). Docket No. 41 at 8, ¶ 21. In support, plaintiff states that, despite numerous attempts to serve Mr. Vargas with the summons and complaint in this case, *see, e.g., id.* at 4-7, ¶¶ 10-18, it has been unable to locate him. *Id.* at 8, ¶ 21. Plaintiff also asks that the Court enter final judgment against John M. Luna in accordance with the Court's Order of May 18, 2012 [Docket No. 35]. *Id.* at 2.

On April 22, 2013, the Court issued an Order to Show Cause [Docket No. 42], why plaintiff's claims against defendant Ricardo Felix Rivera should not be dismissed without prejudice. On April 25, 2013, plaintiff filed a Response to the Order to Show Cause [Docket No. 43]. In its response, plaintiff states that it is currently involved in

proceedings against Mr. Rivera in the United States Bankruptcy Court for the District of Colorado and does not oppose the dismissal without prejudice of its claims against Mr. Rivera. Docket No. 43 at 2.

In light of the foregoing, it is

ORDERED that Plaintiff's Request for Dismissal of Defendant Felix Rivera Vargas a/k/a Felix Rivera Without Prejudice and for Entry of Final Judgment against Defendant John M. Luna [Docket No. 41] is **GRANTED**. It is further

ORDERED that plaintiff's claims against defendants Felix Rivera Vargas and Ricardo Felix Rivera are dismissed without prejudice. It is further

ORDERED that judgment shall enter in favor of plaintiff American Produce, LLC and against defendant John M. Luna as indicated in the Court's Order Accepting Magistrate Judge's Recommendation [Docket No. 35]. It is further

ORDERED that this case is closed in its entirety.

DATED April 26, 2013.

BY THE COURT:

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