

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00801-BNB

RAUL LEON,

Plaintiff,

v.

TODD ROBINSON,
KATIE HARDING,
ALLEN VALKLOSKY,
ERIC HOLDER, and
DAVE BERKEBILE,

Defendants.

ORDER DISMISSING CASE

Plaintiff, Raul Leon, is a prisoner in the custody of the Federal Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. Mr. Leon has submitted *pro se* a Prisoner Complaint (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5). On May 9, 2013, Magistrate Judge Boyd N. Boland denied Mr. Leon leave to proceed pursuant to 28 U.S.C. § 1915, and ordered him to pay the \$350.00 filing fee if he wished to pursue his claims in this Court in this action. On June 3, 2013, Mr. Leon filed a letter (ECF No. 9) notifying the Court that he wished to withdraw the instant lawsuit.

The Court must construe the June 3 letter liberally because Mr. Leon 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). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Leon “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 any Defendant in this action. Therefore, the Court will construe Mr. Leon’s June 3 letter as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A). A voluntary dismissal pursuant to Rule 41(a)(1)(A) 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 (ECF No. 9) Plaintiff, Raul Leon, filed on June 3, 2013, is construed as a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure. It is

FURTHER ORDERED that the instant action is dismissed without prejudice pursuant to Plaintiff’s notice of voluntary dismissal. It is

FURTHER ORDERED that the voluntary dismissal is effective as of June 3, 2013, the date the notice of voluntary dismissal was filed in this action. It is

FURTHER ORDERED that the Prisoner Complaint (ECF No. 1) is denied as moot. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 6th day of June, 2013.

BY THE COURT:

s/ Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court