

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01916-BNB

JOHN RAINEY,

Plaintiff,

v.

[NO DEFENDANTS NAMED],

Defendants.

---

ORDER DISMISSING CASE

---

Plaintiff, John Rainey, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Rainey initiated this action by filing *pro se* a letter to the Court (ECF No. 1) complaining about the conditions of his confinement and apparently seeking judicial relief. On July 19, 2013, Magistrate Judge Boyd N. Boland ordered Mr. Rainey to cure certain deficiencies if he wishes to pursue any claims in this Court in this action. Mr. Rainey has not cured the deficiencies in this action despite being granted an extension of time to do so. On September 16, 2013, Mr. Rainey filed a Motion to Dismiss Without Prejudice to Cure All Deficiencies (ECF No. 10) asking the Court to dismiss the instant action without prejudice.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Rainey “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. Rainey's September 16 motion as a notice of voluntary dismissal. 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 (10<sup>th</sup> Cir. 1968). The notice closes the file. See *Hyde Constr. Co.*, 388 F.2d at 507. Accordingly, it is

ORDERED that Plaintiff's Motion to Dismiss Without Prejudice to Cure All Deficiencies (ECF No. 10) filed on September 16, 2013, is construed as a notice of voluntary dismissal. 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 September 16, 2013, the date the notice of voluntary dismissal was filed in this action.

DATED at Denver, Colorado, this 18<sup>th</sup> day of September, 2013.

BY THE COURT:

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