

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03120-GPG

MARCUS J. AUSBORNE,

Plaintiff,

v.

THE DAYS INN COMPANY,  
MRS. PARTISA, Wife,  
MR. MARTINEZ PARTISA, Husband,  
DEPUTY OFFICER LOWRY,  
DISTRICT ATTORNEY OFFICER PAUL SANFORD,  
JUDGE GILBERT, and  
SHERIFF DEPARTMENT

Defendants.

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ORDER DISMISSING CASE

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Plaintiff, Marcus J. Ausborne, initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1). On November 25, 2014, Magistrate Judge Gordon P. Gallagher reviewed the Complaint, found that it was deficient, and entered an order directing Plaintiff to file an amended complaint if he wished to pursue his claims in this action.

On December 16, 2014, Plaintiff submitted a Letter (ECF No. 7) to the Court asking that the Court dismiss his case without prejudice. The Court will construe the Letter as follows.

The Court must construe the Letter liberally because Plaintiff is a *pro se* litigant. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Rule 41(a)(1)(A) provides that “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 answer on the merits or motion for summary judgment has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1)(A)(i) 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 Court, therefore, construes the Letter as a Notice of Voluntary Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of December 16, 2014, the date the Notice was filed with the Court. See *Hyde Constr. Co.*, 388 F.2d at 507.

Accordingly, it is

ORDERED that the Letter, ECF No. 7, is construed as a Notice of Voluntary Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and is effective as of December 16, 2014, the date Plaintiff filed the Notice in this action. It is

FURTHER ORDERED that the action is dismissed without prejudice.

DATED at Denver, Colorado, this 19<sup>th</sup> day of December, 2014.

BY THE COURT:

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