

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03320-GPG

DANIEL KESSLER,

Plaintiff,

v.

MARY HOAK, #21884,  
ASHLEY SHELTON, #44841, and  
DOUG WINTERS,

Defendants.

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ORDER DISMISSING CASE

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Plaintiff, Daniel Kessler, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Kessler initiated this action by filing *pro se* a Complaint (ECF No. 1) and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2). On December 8, 2014, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Kessler to cure certain deficiencies if he wished to pursue his claims in this action. Mr. Kessler subsequently cured one of the deficiencies and was granted an extension of time to cure the remaining deficiencies.

Mr. Kessler has not cured the remaining deficiencies in this action. Instead, on February 17, 2015, he filed a Motion to Withdraw Complaint (ECF No. 11) stating he has not exhausted state remedies and intends to seek legal assistance. The Court construes the Motion to Withdraw Complaint as a notice of voluntary dismissal.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Kessler

“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 opposing party in this action. 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 the Motion to Withdraw Complaint (ECF No. 11) is granted and the instant action is dismissed. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 18<sup>th</sup> day of February, 2015.

BY THE COURT:

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