

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JOHNNY R. COLON,
Plaintiff,

vs.

Case No.: 3:08cv453/LAC/EMT

DAVID ELLIS, et al.,
Defendants.

REPORT AND RECOMMENDATION

This matter is before the court on Plaintiff's "Motion to Withdraw" the instant civil rights case, filed pursuant to 42 U.S.C. § 1983, without prejudice (Doc. 9). The court construes the motion as a notice of voluntary dismissal.

Rule 41(a)(1)(A)(i) provides that an action may be dismissed without an order of the court by filing a notice of dismissal at any time before the adverse party serves an answer or files a motion for summary judgment. Because Defendants have not yet been served in the instant case, it is clear that Plaintiff is automatically entitled to a voluntary dismissal at this time.

Accordingly, it is respectfully **RECOMMENDED**:

That Plaintiff's notice of voluntary dismissal (Doc. 9) be **GRANTED** and this case be **DISMISSED without prejudice**.

At Pensacola, Florida, this 12th day of December 2008.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations may be filed within ten (10) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11th Cir. 1988).