

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-02611-PAB-MEH

DELORES MARTIN,

Plaintiff,

v.

AUSTIN KRAAL,
THE ESTATE OF AUSTIN KRAAL, and
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign corporation
authorized to do business in the State of Colorado,

Defendants.

ORDER

This matter is before the Court on the Notice of Dismissal of Defendant Austin Kraal [Docket No. 17], in which plaintiff requests dismissal of defendant Austin Kraal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Despite Rule 41(a)(1)'s reference to the dismissal of an "action," the weight of authority permits a dismissal of all claims pursuant to Rule 41(a)(1)(A) against fewer than all defendants. See *Montoya v. FedEx Ground Package System, Inc.*, 614 F.3d 145, 148 (5th Cir. 2010); *Blaize-Sampeur v. McDowell*, 2007 WL 1958909, at *2 (E.D.N.Y. June 29, 2007) (noting that, although the Second Circuit had previously stated otherwise, it had "since adopted the approach of the majority of courts in other circuits – that is, that Rule 41(a) does not require dismissal of the action in its entirety" and permits dismissal of all claims as to a single defendant). Upon the filing of the Notice of Dismissal [Docket No. 17], this action was dismissed without prejudice as to defendant Austin Kraal.

DATED April 13, 2012.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge