

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02418-PAB-KMT

XPAYS, INC.,

Plaintiff,

v.

DOES 1-17,

Defendants.

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**MINUTE ORDER**

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**Entered by Judge Philip A. Brimmer**

This matter is before the Court on plaintiff's "Voluntary Motion to Dismiss Specific Doe Defendant" [Docket No. 15], which the Court construes as a notice of dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) ("plaintiff may dismiss an action *without a court order* by filing: . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.") (emphasis added). 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). Plaintiff requests the entry of an order dismissing the case as to Doe No. 17 without prejudice. Therefore, the case was dismissed without prejudice as to Doe No. 17 only as of the entry of the Voluntary Motion to Dismiss Specific Doe Defendant [Docket No. 15]. No order of dismissal is necessary.

DATED March 20, 2013.