

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01955-PAB-CBS

ABE SHIRAZI,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA,

Defendant.

MINUTE ORDER

Entered by Judge Philip A. Brimmer

This matter is before the Court on the parties' Stipulation for Dismissal of Certain Claims for Relief [Docket No. 19]. The stipulation seeks to dismiss plaintiff's first, third, and fourth claims for relief with prejudice.

Although the stipulation seeks dismissal of the subject claims pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Rule 41 does not apply to the dismissal of less than all claims in an action. *Gobbo Farms & Orchards v. Poole Chemical Co., Inc.*, 81 F.3d 122, 123 (10th Cir. 1996). Rather, the proper procedure for voluntarily dismissing less than all claims against a defendant is for plaintiff to amend the complaint pursuant to Fed. R. Civ. P. 15. See *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988) ("a plaintiff may not use Rule 41(a)(1) to dismiss, unilaterally, a single claim from a multi-claim complaint . . . [instead, we agree with two of our sister circuits] that Federal Rule of Civil Procedure 15(a) is the appropriate mechanism"); see also 9 Charles Alan Wright et al., *Federal Practice and Procedure* § 2362 (3d ed. 2014). Thus, the Court will construe the stipulation as a joint motion to amend the complaint to delete plaintiff's first, third, and fourth claims for relief. See *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, No. 09-cv-00970-PAB-KMT, 2010 WL 3630118, at *3 (D. Colo. Sep. 9, 2010) (collecting cases).

Under Rule 15, the Court must freely give leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). The Court is otherwise satisfied that no reason exists to deny leave to amend to delete the subject claims. See *Foman v. Davis*, 371 U.S. 178, 182 (1962). Because the stipulation states that the parties have agreed to dismissal of the subject claims with prejudice, the Court will dismiss the subject claims with prejudice as a condition of the amendment contemplated by the stipulation. See

Mountain View Pharmacy v. Abbott Labs., 630 F.2d 1383, 1386 (10th Cir. 1980) (discussing court's discretion to "impose reasonable conditions on a grant of leave to amend" (quotation omitted)); 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1486 (3d ed. 2014) (recognizing court's power under Rule 15 to exercise discretion in imposing conditions on the allowance of a proposed amendment). It is therefore

ORDERED that the parties' Stipulation for Dismissal of Certain Claims for Relief [Docket No. 19] is converted to a Rule 15 motion to amend and is **GRANTED**. It is further

ORDERED that plaintiff's Complaint [Docket No. 3 at 4-11] is hereby amended to delete plaintiff's first, third, and fourth claims for relief. It is further

ORDERED that plaintiff's first, third, and fourth claims for relief are **DISMISSED** with prejudice. It is further

ORDERED that, on or before November 6, 2014, plaintiff shall file an amended complaint reflecting the above amendments.

DATED October 31, 2014.