

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 15-cv-02761-RM-KMT

VELOCITEL, INC. d/b/a
FDH VELOCITEL,

Plaintiff,

v.

KATHY HOFFMAN GILLIS and
VERTEX INNOVATIONS, INC.,

Defendants.

**ORDER
GRANTING STIPULATED MOTION TO DISMISS VERTEX INNOVATIONS,
INC. WITH PREJUDICE**

This matter is before the Court on the Stipulated Motion to Dismiss Defendant Vertex Innovations, Inc. with Prejudice (the “Stipulated Motion”) (ECF No. 22), filed jointly by Plaintiff Velocitel, Inc. d/b/a FDH Velocitel (“Plaintiff”) and Defendant Vertex Innovations, Inc. (collectively, the “Settling Parties”), to which Defendant Kathy Hoffman Gillis does not object.¹ Upon consideration of the Stipulated Motion, and being otherwise fully advised, it is

¹ The Settling Defendants cite to no rule on which the Stipulated Motion is based, and there is uncertainty in the Tenth Circuit whether Fed. R. Civ. P. 21 or 41 applies to the dismissal of a party from an action involving more than one defendant. *See Van Leeuwen v. Bank of Am., N.A.*, 304 F.R.D. 691, 692–97 (D. Utah 2015); *see also Gobbo Farms & Orchards v. Pool Chem. Co.*, 81 F.3d 122, 123 (10th Cir. 1996) (Rule 41 “speaks of dismissal of an action, not just a claim within an action. [Plaintiff] offers no authority, and we have found none, to support its contention that Rule 41(a) applies to dismissal of less than all claims in an action.”). Regardless, the Court agrees that, in most instances (such as the Stipulated Motion at issue), it is immaterial whether it acts under Rule 21 or 41. 9 Charles Alan Wright et al., *Federal Practice and Procedure* § 2362 (3d ed. 2008).

ORDERED that the Stipulated Motion to Dismiss Defendant Vertex Innovations, Inc. with Prejudice (ECF No. 22) is **GRANTED** and Defendant Vertex Innovations, Inc. is dismissed with prejudice from this action, each party to bear its own costs and fees; and

FURTHER ORDERED that Defendant Vertex Innovations, Inc.'s name shall be removed from the caption in all future filings with the Court.

DATED this 18th day of February, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE
United States District Judge