

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PATRICIA KENNEDY, individually

Plaintiff,

v.

Case No: 2:16-cv-191-FtM-38MRM

MUSCA PROPERTIES, LLC,
ARTEGEL FCM, LLC, MARYBO
LLC, STUDIO 41 SALON INC.,
GENERAL NUTRITION
CORPORATION and LULU B'S
RESTAURANT GROUP, INC.,

Defendants.

OPINION AND ORDER¹

This matter comes before the Court on review of the following filings dated April 11, 2017:

- Stipulation for Approval and Entry of Consent Decree and Dismissal of the Case With Prejudice filed by Plaintiff Patricia Kennedy and Defendant General Nutrition Corporation ("GNC") ([Doc. 58](#));
- Stipulation for Approval and Entry of Consent Decree and Dismissal of the Case With Prejudice filed by Kennedy and Defendant Musca Properties, LLC ([Doc. 59](#));
- Stipulation for Approval and Entry of Consent Decree and Dismissal of the Case With Prejudice filed by Kennedy and Defendant Marybo LLC ([Doc. 60](#));

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- Stipulation for Approval and Entry of Consent Decree and Dismissal of the Case With Prejudice filed by Kennedy and Defendant Studio 41 Salon Inc. (“Studio 41”) ([Doc. 61](#));
- Kennedy’s Notice of Dismissal as to Defendant Lulu B’s Restaurant Group, Inc. ([Doc. 62](#)); and
- Kennedy’s Notice of Settlement as to Defendant Artegel FCM, LLC (“Artegel”) ([Doc. 64](#)).

The Court will address the above filings in turn, starting with the four consent decrees.

A. Consent Decrees (Docs. 58-61)

Kennedy and Defendants GNC, Musca, Marybo, and Studio 41 have reached individual agreements to resolve Kennedy’s claims by way of consent decrees. ([Doc. 58](#); [Doc. 59](#); [Doc. 60](#); [Doc. 61](#)). They request, therefore, that the Court approve and enter judgment on the Consent Decrees and retain jurisdiction to enforce them. After reviewing the Consent Decrees, the Court approves them. But the Court shortens the period for which it retains jurisdiction to enforce them.

Three of the Consent Decrees provide final property re-inspections by Kennedy to occur “on or after January 30, 2017” ([Doc. 58-1](#); [Doc. 60-1](#); [Doc. 61-1](#)), and the fourth Consent Decree provides the re-inspection to occur “on or after August 1, 2016” ([Doc. 59-1](#)). Those dates have long expired, and there is nothing before the Court to indicate that Kennedy has performed her final property inspections. And because of the phrase “on or after,” the re-inspection could still occur. Because the re-inspection deadline is broad, the Court will only retain jurisdiction to enforce the Consent Decrees for thirty days.

Accordingly, the Court will approve the Consent Decrees and dismiss this case as against Defendants GNC, Musca, Marybo, and Studio 41 with prejudice, and it will retain jurisdiction to enforce the Consent Decrees until May 15, 2017.

B. Notice of Dismissal as to Defendant Lulu B's Restaurant Group (Doc. 62)

Next, Kennedy filed a Notice of Dismissal of her claims against Defendant Lulu B's Restaurant. (Doc. 62). Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows a plaintiff to dismiss an action voluntarily before the opposing party serves either an answer or a motion for summary judgment. This voluntary dismissal is effective upon filing and requires no further action by the Court. See *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1278 (11th Cir. 2012). Accordingly, in compliance with Rule 41(a), Kennedy's case as against LuLu B's Restaurant is dismissed.

C. Notice of Settlement as to Defendant Artegel FCM, LLC (Doc. 64)

Finally, Kennedy has filed a Notice of Settlement as to her claims against Defendant Artegel. (Doc. 64). As these parties have settled this matter as between them, the Court will administratively close the file and dismiss the case without prejudice. See M.D. Fla. R. 3.08(b). This dismissal is subject to the right of any party, within thirty (30) days from the date of this Order, to submit a stipulated form of final judgment or request an extension of time to do so, or for any party to move to reopen the case upon a showing of good cause. *Id.* Once the thirty-day period expires, this dismissal shall be deemed with prejudice without further order.

Accordingly, it is now

ORDERED:

- (1) Plaintiff Patricia Kennedy and Defendant General Nutrition Corporation's Stipulation for Approval and Entry of Consent Decree and Dismissal of Case with Prejudice (Doc. 58) is **GRANTED**.

- a. The Consent Decree is **APPROVED**, and the Court will retain jurisdiction over its enforcement **through and including May 15, 2017**.
- b. The Clerk shall **ENTER** judgment dismissing this case against Defendant General Nutrition Corporation with prejudice and subject to the terms of the Consent Decree, which shall be attached to the judgment.

(2) Plaintiff and Defendant Musca's Stipulation for Approval and Entry of Consent Decree and Dismissal of Case with Prejudice ([Doc. 59](#)) is **GRANTED**.

- a. The Consent Decree is **APPROVED**, and the Court will retain jurisdiction over its enforcement through and including **May 15, 2017**.
- b. The Clerk shall **ENTER** judgment dismissing this case against Defendant Musca with prejudice and subject to the terms of the Consent Decree, which shall be attached to the judgment.


(3) Plaintiff and Defendant Marybo's Stipulation for Approval and Entry of Consent Decree and Dismissal of Case with Prejudice ([Doc. 60](#)) is **GRANTED**.

- a. The Consent Decree is **APPROVED**, and the Court will retain jurisdiction over its enforcement through and including **May 15, 2017**.
- b. The Clerk shall **ENTER** judgment dismissing this case against Defendant Marybo with prejudice and subject to the terms of the Consent Decree, which shall be attached to the judgment.

(4) Plaintiff and Defendant Studio 41's Stipulation for Approval and Entry of Consent Decree and Dismissal of Case with Prejudice ([Doc. 61](#)) is **GRANTED**.

- a. The Consent Decree is **APPROVED**, and the Court will retain jurisdiction over its enforcement through and including **May 15, 2017**.
 - b. The Clerk shall **ENTER** judgment dismissing this case against Defendant Studio 41 with prejudice and subject to the terms of the Consent Decree, which shall be attached to the judgment.
- (5) Kennedy's Notice of Dismissal as to Defendant Lulu B's Restaurant Group, Inc. ([Doc. 62](#)) is **GRANTED**.
- a. This action is **DISMISSED** as to Defendant Lulu B's Restaurant.
 - b. The Clerk is **DIRECTED** to enter judgment accordingly, and terminate all pending motions, and deadlines pertaining to Lulu B's.
- (6) Kennedy's Notice of Settlement as to Defendant Artegel FCM, LLC ([Doc. 64](#)) is **GRANTED**.
- a. This case as against Defendant Artegel is **DISMISSED without prejudice** subject to the right of either party, within thirty (30) days from the date of this Order, **May 15, 2017**, to submit a stipulated form of final judgment or request an extension of time to do so, or for any party to move to reopen the case upon a showing of good cause. See M.D. Fla. R. 3.08(b). Once the thirty-day period expires, this dismissal shall be deemed with prejudice without further order.
 - b. The Clerk is **DIRECTED** to terminate any pending motions and scheduled deadlines, and administratively close this case as against Defendant Artegel.

DONE and ORDERED in Fort Myers, Florida this 13th day of April 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record