

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL C. SPEARS, JR.,

Plaintiff,

v.

Case No: 2:18-cv-286-FtM-38MRM

SHK CONSULTING AND
DEVELOPMENT, INC. and DAVID B.
NIRENBERG,

Defendants.

ORDER¹

Before the Court is the parties' Stipulation of Dismissal. ([Doc. 50](#)). The parties seek to dismiss Plaintiff's Infringement by Equivalents claim under [Federal Rule of Civil Procedure 41](#). ([Doc. 50](#)). For the following reasons, the parties' stipulation is ineffective.

[Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)](#) allows a plaintiff to 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" or "a stipulation of dismissal signed by all parties who have appeared." Rule 41 allows a party to dismiss an action, but it does not allow a plaintiff to dismiss a portion of its lawsuit against a party. [Perry v. Schumacher Group of Louisiana](#), 891 F.3d 954, 958 (11th Cir. 2018). It is thus the wrong

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procedural mechanism to dismiss a particular claim against a party. Instead, a plaintiff may eliminate particular claims by amending the complaint. See [Campbell v. Altec Industries, Inc.](#), 605 F.3d 839, 841 n.1 (11th Cir. 2010) (noting that a plaintiff may eliminate particular claims and issues under Federal Rule of Civil Procedure 15(a)).

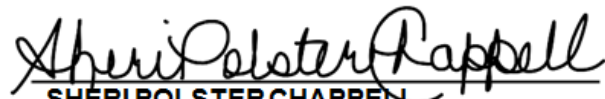
Here, the parties seek to dismiss one claim amongst many. ([Docs. 31; 50](#)). Such a stipulation under Rule 41 is ineffective. If the Plaintiff wishes to eliminate an individual claim, he may seek leave to do so under [Federal Rule of Civil Procedure 15\(a\)](#).

Accordingly, it is now

ORDERED:

The parties' Stipulation of Dismissal ([Doc. 50](#)) is **DENIED without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida this 9th day of October 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record