

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**ESTATE OF MIGUEL ROBLES, by)
Maria Montiel as next of kin and)
surviving spouse of Miguel Robles, and)
MARIA MONTIEL, Individually,)
)
Plaintiffs,)
)
v.)
)
VANDERBILT UNIVERSITY, et al.,)
)
Defendants.)**

No. 3:11-cv-00399

**Judge Nixon
Magistrate Judge Griffin**

JURY DEMAND

ORDER

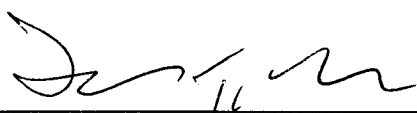
Pending before this Court is the parties' Joint Motion to Allow Plaintiffs to Dismiss Their Claims Against the Individual Defendants Only Without Prejudice. (Doc. No. 85.) The parties stipulate to the dismissal without prejudice of Plaintiffs' claims against Defendants Tejal Brahmhatt, M.D., Lauren Hubbard Adcock, R.N., and Michael Fischer, R.R.T. ("Individual Defendants") pursuant to Federal Rules of Civil Procedure 21 and 41. (*Id.* at 1.) The parties agree that, in the event that Plaintiffs file an amended complaint reasserting their claims against the individual defendants, all Defendants waive and will not assert any affirmative defenses that arise out of this voluntary dismissal and subsequent reassertion of claims against the Individual Defendants. (*Id.* at 2.)

While Rule 41 allows for the voluntary dismissal of actions, the Sixth Circuit has recognized that Rule 21 is a more appropriate vehicle for a Court to dismiss a party from an ongoing action. *See Letherer v. Alger Group, LLC*, 328 F.3d 262, 265–66 (6th Cir. 2003), *overruled on other grounds by Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 231 (2007); *see also AmSouth Bank v. Dale*, 386 F.3d 763, 778 (6th Cir. 2004). Accordingly,

pursuant to Rule 21, Plaintiffs' claims against the Individual Defendants are **DISMISSED** **without prejudice**. Plaintiffs may file an amended complaint reasserting their claims against the Individual Defendants on or before January 26, 2015, unless such deadline is amended by subsequent order of the Court.

It is so ORDERED. ^h

Entered this the 8 day of August, 2014.



JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT