

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LOCAL ACCESS, LLC,

Plaintiff,

v.

Case No: 6:17-cv-236-JSS-EJK

PEERLESS NETWORK, INC.,

Defendant.

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ORDER

Plaintiff and Defendant have filed a stipulation of dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) contemplating that each party will bear its own costs and fees. (Dkt. 1383.) This rule allows a plaintiff to “dismiss an action without a court order” by submitting “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). The Eleventh Circuit has explained that in this context, “all means all.” *City of Jacksonville v. Jacksonville Hosp. Holdings, L.P.*, 82 F.4th 1031, 1038 (11th Cir. 2023).

The stipulation submitted by Plaintiff has been signed by Plaintiff and Defendant through their counsel. (Dkt. 1383 at 2.) If Plaintiff and Defendant are the only “parties who have appeared” in this action under the rule, then the stipulation is effective. Fed. R. Civ. P. 41(a)(1)(A)(ii). However, other persons have appeared in this action who may be “parties” under the rule. *See id.* For example, in June 2017, Blitz Telecom Consulting, LLC was allowed to intervene in this action for the limited

purpose of moving to quash a subpoena. (*See* Dkts. 36, 37, & 38.) Blitz’s intervention may have made it a party under the rule. *See* Fed. R. Civ. P. 24 (discussing “[i]ntervention” under the topic of “[p]arties”). If Blitz is an intervening “part[y] who ha[s] appeared” in this action, then the stipulation is not effective because it is not signed by Blitz. (*See* Dkt. 1383.)¹ *See* Fed. R. Civ. P. 41(a)(1)(A)(ii); *City of Jacksonville*, 82 F.4th at 1038.

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at [a] plaintiff’s request . . . by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Out of an abundance of caution, the court construes the joint stipulation of dismissal (Dkt. 1383) as a motion for dismissal under Rule 41(a)(2) and grants the motion. Accordingly, this action is **DISMISSED with prejudice**, and Plaintiff and Defendant shall each bear their own costs and fees.

ORDERED in Orlando, Florida, on October 15, 2024.



JULIE S. SNEED
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record

¹ Although Blitz appeared in this action through the same counsel as Plaintiff, that counsel signed the stipulation on behalf of Plaintiff, not Blitz. (Dkt. 1383 at 2.) Indeed, the stipulation does not mention Blitz or any other possible party besides Plaintiff and Defendant. (*See id. passim.*)