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.
_____/

ORDER[1]

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