

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

HEATHER SANTIAGO,

Plaintiff,

v.

Case No. 3:21-cv-886-MMH-MCR

OFFICER SHAWN SWAIN, et al.,

Defendants.

ORDER

THIS CAUSE is before the Court on the Joint Stipulation of Dismissal for Claims Against Only Defendants Shawn Swain and Jim Godwin (Dkt. No. 80; Stipulation) filed on March 12, 2024. In the Stipulation, the parties request dismissal of the claims raised by Plaintiff against Defendants Shawn Swain and Jim Godwin only. See Stipulation at 1. The Court notes that the Stipulation is not signed by “all parties who have appeared” in this lawsuit and is therefore ineffective under Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure (Rule(s)). See City of Jacksonville v. Jacksonville Hosp. Holdings, L.P., 82 F.4th 1031, 1034 (11th Cir. 2023); see also Sanchez v. Disc. Rock & Sand, Inc., 84 F.4th 1283, 1291-92 (11th Cir. 2023). As such, the Court construes the stipulation as a request by Plaintiff for dismissal pursuant to Rule 41(a)(2) which Defendants Shawn Swain and Jim Godwin join in presenting.

See Sanchez, 84 F.4th at 1292; see also Plains Growers, Inc. ex rel. Florists' Mut. Ins. Co. v. Ickes-Braun Glasshouses, Inc., 474 F.2d 250, 253 (5th Cir. 1973) (“Where notice of dismissal under Rule 41(a)(1) fails, the notice may be considered a motion under Rule 41(a)(2) and the court may order the dismissal.”).¹ Prior to resolving this request, the Court will allow any other party who has appeared in this action the opportunity to object.

In addition, the Court notes that the parties who signed the Stipulation do not specify whether they seek dismissal with or without prejudice. Significantly, Rule 41 dictates that “[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice.” See Rule 41(a)(1)(B) (emphasis added). As such, the Court will give the parties the opportunity to file an amended request for dismissal specifying whether they seek dismissal with prejudice. Absent an amended request for dismissal, the Court will construe the Stipulation as a request for dismissal without prejudice. Accordingly, it is

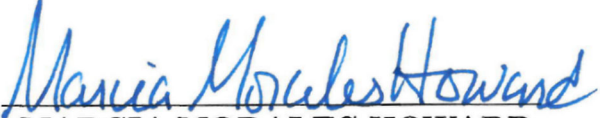
ORDERED:

1. On or before **April 1, 2024**, Plaintiff and Defendants Shawn Swain and Jim Godwin may file an amended request for dismissal specifying whether they seek dismissal with prejudice.

¹ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

2. Any party who has appeared in this case shall have up to and including **April 8, 2024**, to file an objection to the Joint Stipulation of Dismissal for Claims Against Only Defendants Shawn Swain and Jim Godwin (Dkt. No. 80) or any amended request for dismissal filed pursuant to this Order.

DONE AND ORDERED in Jacksonville, Florida this 19th day of March, 2024.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:
Counsel of Record