

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

JAX IMPLANTS AND
DENTURES, PLLC,

Plaintiff,

v.

Case No. 3:23-cv-102-MMH-MCR

DAVID & ASSOCIATES
SPECIALISTS, LLC, and BRIAN
LEE WARE, as Personal
Representative of the Estate of Joel
A. David, Deceased,

Defendants.

DAVID & ASSOCIATES
SPECIALISTS, LLC,

Counterclaim-Plaintiff /
Third-Party Plaintiff,

v.

JAX IMPLANTS AND
DENTURES, PLLC,

Counterclaim-Defendant,

and

ALEX M. MCREE, DMD and
WILLIAM S. RUSSELL, DMD,

Third-Party Defendants.

ORDER

THIS CAUSE is before the Court on the Stipulation of Dismissal With Prejudice of Punitive Damages Request from the Estate of Joel David (Dkt. No. 78; Stipulation) filed on March 15, 2024. In the Stipulation, Plaintiff and Defendant Brian Lee Ware, as the Personal Representative of the Estate of Joel A. David (the Estate) invoke Rule 41, Federal Rules of Civil Procedure (Rule(s)), and request dismissal, with prejudice, of Plaintiff’s “punitive damages claim” against the Estate. See Stipulation at 1. However, “Rule 41(a)(1), according to its plain text, permits voluntary dismissals only of entire ‘actions,’ not claims.” See Perry v. Schumacher Grp. of La., 891 F.3d 954, 956 (11th Cir. 2018). Indeed, “[t]here is no mention in the Rule of the option to stipulate dismissal of a portion of a plaintiff’s lawsuit—e.g., a particular claim—while leaving a different part of the lawsuit pending before the trial court.” Id. at 958. Moreover, “punitive damages are not a stand-alone claim subject to dismissal, rather it is a form of relief that plaintiffs may be entitled if they prevail on their claims.” See Roberts v. Carnival Corp., No. 1:19-cv-25281-KMM, 2020 WL 10898036, at *1 n.1 (S.D. Fla. Oct. 19, 2020); see also Flying Fish Bikes, Inc. v. Giant Bicycle, Inc., No. 8:13-cv-2890-T-23AEP, 2015 WL 3452517, at *3 (M.D. Fla. May 29, 2015).

In light of the foregoing, the Court will construe the Stipulation as a joint motion by Plaintiff and the Estate, to strike Plaintiff’s request for punitive

damages against the Estate from Plaintiff's Third Amended Complaint (Doc. 48). Based on the representations in the Stipulation, the Court is satisfied that the motion is due to be granted. Accordingly, it is

ORDERED:

Plaintiff's request for an award of punitive damages against Defendant Brian Lee Ware, as the Personal Representative of the Estate of Joel A. David (the Estate) is **STRICKEN** from the Third Amended Complaint. To the extent Plaintiff has made a demand for punitive damages against any other Defendant, the request remains pending in this case.

DONE AND ORDERED in Jacksonville, Florida this 18th day of March, 2024.


MARCIA MORALES HOWARD
United States District Judge

ja/lc11
Copies to:

Counsel of Record