

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**MENINA L. DAVIS,**

**Plaintiff,**

v.

**HOSTESS BRANDS, LLC,**

**Defendant.**

**Case No. 22-2131-DDC-ADM**

**MEMORANDUM AND ORDER**

Plaintiff Menina Davis filed this employment discrimination against defendant Hostess Brands, LLC. Count V of plaintiff’s Complaint alleges a race discrimination claim under 42 U.S.C. § 1981. Doc. 1 at 12–13 (Compl. ¶¶ 62–68). On May 19, 2022, defendant filed a Partial Motion to Dismiss (Doc. 4), asking the court to dismiss Count V under Fed. R. Civ. P. 12(b)(6) for failing to state a claim for relief. On the due date for plaintiff’s response to the Motion to Dismiss, the parties filed a Stipulation of Dismissal (Doc. 10). It recites that the parties have stipulated under Fed. R. Civ. P. 41(a)(1)(A)(ii) to dismiss Count V only. *Id.* at 1. And, it asks the court to enter “an Order of dismissal without prejudice of Count V of Plaintiff’s Complaint.” *Id.*

Our Circuit has explained that Fed. R. Civ. P. 41 “speaks to dismissal of an action, not just a claim within an action.” *Gobbo Farms & Orchards v. Poole Chem. Co., Inc.*, 81 F.3d 122, 123 (10th Cir. 1996); *see also Kristina Consulting Grp., LLC v. Debt Pay Gateway, Inc.*, No. 21-5022, 2022 WL 881575, at \*2 n.4 (10th Cir. Mar. 25, 2022) (explaining that *Gobbo Farms* “rejected use of Rule 41(a) to dismiss fewer than all claims in the action” when “all of the claims were asserted against only one defendant”). Thus, the parties cannot invoke Fed. R. Civ. P. 41 to

dismiss Count V. Instead, the court construes the Stipulation as a Joint Motion to Dismiss Count V without prejudice. And, consistent with the parties' request, the court grants that motion and dismisses Count V without prejudice.

**IT IS THEREFORE ORDERED THAT** the court construes the parties' Stipulation of Dismissal (Doc. 10) as a Joint Motion to Dismiss Count V of the Complaint.

**IT IS FURTHER ORDERED THAT** the parties' Joint Motion to Dismiss Count V of the Complaint (Doc. 10) is granted and Count V of the Complaint is dismissed without prejudice.

**IT IS FURTHER ORDERED THAT** defendant's Partial Motion to Dismiss (Doc. 4) is denied as moot.

**IT IS SO ORDERED.**

**Dated this 10th day of June, 2022, at Kansas City, Kansas.**

**s/ Daniel D. Crabtree**  
**Daniel D. Crabtree**  
**United States District Judge**