

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**CARLOS E. GONZALEZ,**

**Plaintiff,**

**v.**

**1:13-cv-1533-WSD**

**AMERICOLD LOGISTICS LLC,**

**Defendant.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Gerrilyn G. Brill’s Final Report and Recommendation (“R&R”) [27] recommending that Plaintiff Carlos E. Gonzalez’s Motion to Dismiss Without Prejudice [17] be granted.

**I. BACKGROUND**

On May 7, 2013, Plaintiff Carlos E. Gonzalez (“Plaintiff”), proceeding *pro se*, filed his complaint alleging federal claims of race and national origin harassment, discrimination, and retaliation in violation of Title VII and Section 1981, as well as a number of state law claims, against his former employer Americold Logistics LLC. On July 19, 2013, Americold filed its answer and, on July 31, 2013, filed its amended answer, its preliminary report, and its discovery

plan. Plaintiff filed his preliminary report and discovery plan on July 30, 2013.

On August 2, 2013, the Magistrate Judge issued her scheduling order and instructions regarding summary judgment motions.

On August 7, 2013, Plaintiff filed the instant motion to dismiss without prejudice [17], and the next day, filed a motion to stay these proceedings pending the Court's ruling on his motion to dismiss [18]. In his motion to dismiss, Plaintiff explained that he is moving to San Juan, Puerto Rico, and wishes to dismiss the case to re-file in Puerto Rico. On August 14, Americold filed its response in opposition arguing that venue in Puerto Rico would be improper because Americold has no operations in Puerto Rico, they are located in Atlanta, Georgia, the unlawful employment practices alleged occurred in Atlanta, Georgia, and transfer would be unfairly prejudicial.

On September 19, 2013, Magistrate Judge Brill issued an order acknowledging that Plaintiff has shown no facts that would support venue in Puerto Rico, and requiring Plaintiff to clarify whether he still wants to withdraw his motion to dismiss and his motion to stay, or whether he wishes to proceed with his request to dismiss the case. On September 23, 2013, Plaintiff filed his written clarification stating that he wishes to proceed with his request to dismiss this action without prejudice. On September 25, 2013, Americold filed a response indicating

that they no longer oppose Plaintiff's motion to dismiss.

On October 23, 2013, Magistrate Judge Brill issued her R&R recommending that Plaintiff's motion to dismiss be granted and that Plaintiff's motion to stay be denied as moot.

## **II. DISCUSSION**

### **A. Legal Standard**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1) (Supp. V 2011); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). If no party has objected to the report and recommendation, a court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

### **B. Analysis**

Neither party has objected to the R&R's findings that this action should be dismissed without prejudice and that Plaintiff's Motion to Stay Proceedings be denied as moot. The Court finds no plain error in this conclusion. See Fed. R.

Civ. P. 41(a)(2); see also McCants v. Ford Motor Co., Inc., 781 F.2d 855, 856-57 (11th Cir. 1986) (“[I]n most cases, a [voluntary] dismissal should be granted unless the defendant will suffer clear legal prejudice, *other than the mere prospect of a subsequent lawsuit*, as a result.”) (italics in original).


### III. CONCLUSION

Accordingly, for the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge Gerrilyn G. Brill’s Final Report and Recommendation [27] is **ADOPTED**, Plaintiff’s Motion to Dismiss Without Prejudice [17] is **GRANTED**, and this action is **DISMISSED WITHOUT PREJUDICE**, with each side bearing its own costs, fees, and expenses.

**IT IS FURTHER ORDERED** that Plaintiff’s motion to stay these proceedings is **DENIED AS MOOT**.

**SO ORDERED** this 3rd day of January 2014.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE