




where . . . the failure is by a pro se litigant.” *Id.* (citing *Minnette v. Time Warner*, 997 F.2d 1023, 1027 (2d Cir.1993)).

Accordingly, the Second Circuit has established factors to be considered in determining whether a *pro se* litigant’s case should be dismissed for lack of prosecution under Rule 41(b), including: “(1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.” *Id.* (citing *Jackson v. City of New York*, 22 F.3d 71, 74-76 (2d Cir.1994) and *Alvarez*, 839 F.2d at 932).

The Franceschis filed their Complaint on August 16, 2011. The Government was served on October 18, 2011, and filed its Answer on October 21, 2011. On June 20, 2012, Michael Kaplan was allowed to withdraw as counsel for the Franceschis. Docket No. 12. To date, new counsel has not been retained. By letter dated September 19, 2012, the Franceschis informed counsel for the Government that they were “dropping the suit” and will “not be taking any further legal action.” Docket No. 15. Thereafter, the Court ordered the Franceschis to show good cause why the action should not be dismissed. *Id.* The Court has not received any response. In light of the Franceschis’ representations to opposing counsel and failure to show cause, the case is **DISMISSED** without prejudice.

**SO ORDERED this 4th day of February 2013**  
**New York, New York**

  
**The Honorable Ronald L. Ellis**  
**United States Magistrate Judge**