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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

RAFAEL F. ROBERT-URRUTIA, ET  
AL.,

Plaintiffs,

v.

INTERNATIONAL BUSINESS  
MACHINES CORP. (IBM),

Defendant.

**Civil No. 12-1912 (SEC)**

**OPINION AND ORDER**

The Court has reviewed plaintiffs’ motion for voluntary dismissal without prejudice under Fed. R. Civ. P. 41(a)(2) (Docket # 24) and, after reviewing the filings and the applicable law, plaintiffs’ motion is **GRANTED**.

**Factual and Procedural Background**

On November 2, 2012, Rafael F. Robert-Urrutia, his wife, and their conjugal partnership (collectively, Plaintiffs) filed a complaint against International Business Machines Corp. (Defendant), alleging discrimination and retaliation because of national origin under Title VII of the Civil Rights Act and the Constitution of the United States, as well as under the laws and the Constitution of the Commonwealth of Puerto Rico. On January 25, 2013, Defendant filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), and immediately after filed an answer to the complaint. Dockets # 18 and 19. Defendant requested the dismissal of all claims under the Constitutions of the United States and the Commonwealth of Puerto Rico, Puerto Rico Law 115, P.R. Laws Ann. tit. 29, § 194(a), and Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5141. In response to Defendant’s motion to dismiss, Plaintiffs filed a

1 **Civil No. 12-1912 (SEC)**

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3 motion for voluntary dismissal of these causes of action. Docket # 24. Defendant did not oppose  
4 to Plaintiffs' request.

5 **Standard of Review**

6 Fed. R. Civ. P. 41(a)(2) provides that, after the defendant has answered the complaint  
7 or filed a motion for summary judgment, "an action may be dismissed at the plaintiff's request  
8 only by court order, on terms that the court considers proper." Id. By requiring such approval,  
9 the First Circuit has explained, courts ensure that "no other party will be prejudiced." Doe v.  
10 Urohealth Sys., Inc., 216 F.3d 157, 160 (1st Cir. 2000) (quoting P.R. Mar. Shipping Auth. v.  
11 Leith, 668 F.2d 46, 50 (1st Cir. 1981)). The court is responsible under the rule for exercising  
12 its discretion to ensure that such prejudice will not occur." Id.; see also Mateo v. Empire Gas  
13 Company, Inc., 287 F.R.D. 124 (D.P.R. 2012); Sánchez-Velázquez v. Municipality of Carolina,  
14 No. 11-1586, 2012 WL 541127 (D.P.R. Nov. 9, 2012). Finally, a voluntary dismissal under  
15 Rule 41(a)(2) is without prejudice unless the order states otherwise. FED. R. CIV. P. 41(a)(2).

16 In making a determination under a Rule 41(a)(2) motion, courts have to evaluate the  
17 following factors: (1) the effort and expense incurred by the defendant in preparation for trial;  
18 (2) excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action;  
19 (3) insufficient explanation for the need to take a dismissal; and (4) the fact that a motion for  
20 summary judgment has been filed by the defendant. Doe, 216 F.3d at 160; see also Mateo, 287  
21 F.R.D. at 124. Courts, however, "need not analyze each factor or limit their consideration to  
22 these factors." Id. ("The enumeration of the[se] factors . . . is not equivalent to a mandate that  
23 each and every such factor be resolved in favor of the moving party before dismissal is  
24 appropriate. It is rather simply a guide for the trial judge, in whom the discretion ultimately  
25 rests." Id. (quoting Tyco Labs., Inc. v. Koppers Co., 627 F.2d 54, 56 (7th Cir. 1980)). A district  
26 court abuses its discretion in granting a Rule 41(a)(2) motion only where the defendant would

1 **Civil No. 12-1912 (SEC)**

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3 suffer “[p]lain legal prejudice’ as a result of a dismissal without prejudice”. Grover v. Eli  
4 Lilly & Co., 33 F.3d 716, 718 (6th Cir. 1994) (quoting Cone v. West Virginia Pulp & Paper  
5 Co., 330 U.S. 212, 217 (1947)). “Neither the prospect of a second suit nor a technical advantage  
6 to the plaintiff should bar the dismissal.” Leith, 668 F.2d at 50.

7 **Applicable Law and Analysis**

8 The first factor that the Court must evaluate is the effort and expenses incurred by the  
9 defendants in preparation for trial. Up to the date when Plaintiffs filed the motion for voluntary  
10 dismissal, Defendant had filed only an answer to the complaint and a motion to dismiss. Also,  
11 at that stage, the Case Management Order was issued just several days before Plaintiffs’ motion  
12 and thus the discovery proceedings were just commencing. Therefore, an analysis of this factor  
13 favors dismissal.

14 The second and fourth factors, which require an analysis of Plaintiff’s diligence in  
15 prosecuting this action and of whether a motion for summary judgment had been filed, also  
16 favor the dismissal requested. A perusal of the docket reveals that Plaintiffs have been diligent  
17 in prosecuting this action, and that no motion for summary judgment has been filed.

18 Finally, with regard to the third factor -explanation for the need to take a dismissal-  
19 Plaintiffs allege that in light of the motion to dismiss filed, they analyzed and evaluated  
20 Defendant’s arguments, and they agree that the dismissal of the three causes of action is  
21 appropriate in order to avoid unnecessary litigation procedures and expenses. This explanation  
22 seems adequate to this court. Moreover, Defendant did not oppose Plaintiffs’ request for  
23 dismissal, and this course of action will avoid the wasteful use of this court’s resources.

24 Therefore, a brief analysis of the four factors stated above leads this court to exercise its  
25 discretion to grant the motion. Plaintiffs’ motion for voluntary dismissal is hereby **GRANTED**,  
26 and all claims against Defendant under the Constitution of the United States and the

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**Civil No. 12-1912 (SEC)**

Commonwealth of Puerto Rico, Puerto Rico Law 115, and Article 1802 of the Puerto Rico Civil Code are hereby **DISMISSED without prejudice.**

**IT IS SO ORDERED.**

San Juan, Puerto Rico, this 7th day of June, 2013.

*S/ Salvador E. Casellas*  
**SALVADOR E. CASELLAS**  
U.S. Senior District Judge