

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|                              |   |                            |
|------------------------------|---|----------------------------|
| ALLISON MARIE BABIN,         | § |                            |
|                              | § |                            |
| Plaintiff,                   | § |                            |
|                              | § |                            |
| v.                           | § | CIVIL ACTION NO. H-14-3524 |
|                              | § |                            |
| STATE FARM MUTUAL AUTOMOBILE | § |                            |
| INSURANCE COMPANY,           | § |                            |
|                              | § |                            |
| Defendant.                   | § |                            |

**MEMORANDUM OPINION AND ORDER**

Pending before the court is Plaintiff Allison Marie Babin's Motion to Dismiss Under Rule 41 (Docket Entry No. 8), to which State Farm Mutual Automobile Insurance Company has filed Defendant's Opposition to Plaintiff's Motion to Dismiss Under Rule 41 (Docket Entry No. 9) and Defendant's Supplemental Opposition to Plaintiff's Motion to Dismiss Under Rule 41 (Docket Entry No. 10).

Under Fed. R. Civ. P. 41(a)(2), a plaintiff has the right to dismiss an action conditioned only on the sound discretion of the court upon a showing that the defendant will not suffer legal harm. Holiday Queen Land Corp. v. Baker, 489 F.2d 1031, 1032 (5th Cir. 1974); Durham v. Florida East Coast Railway Co., 385 F.2d 366 (5th Cir. 1967). 'Legal harm' to a defendant that will preclude a plaintiff's voluntary dismissal must be "some plain legal prejudice other than the mere prospect of a second law suit. It is no bar to

dismissal that plaintiff may obtain some tactical advantage thereby." Durham, 385 F.2d at 368 (citation omitted). The only legal harm alleged by defendant is the possibility that plaintiff may "refile the case and get back into state court." (Docket Entry No. 9, pp. 2 and 3) Since that is not the type of legal harm that will preclude a plaintiff's voluntary dismissal, and since plaintiff has filed her motion before the court has conducted the initial pretrial and scheduling conference and before the parties have commenced discovery, the court concludes that plaintiff's motion should be granted. Accordingly, Plaintiff's Motion to Dismiss Under Rule 41 (Docket Entry No. 8) is **GRANTED**, and this action will be dismissed without prejudice.

**SIGNED** at Houston, Texas, on this the 7th day of April, 2015.

  
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SIM LAKE  
UNITED STATES DISTRICT JUDGE