

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2023A00070
FRESCO PRODUCE, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Ariel Chino, Esq., for Complainant
Robert H. Crane, Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023, alleging that Respondent, Fresco Produce, Inc., violated the employer sanctions provisions of 8 U.S.C. § 1324a. Specifically, Complainant alleged that Respondent failed to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Employment Eligibility Verification Forms (Forms I-9) for eighty employees, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 6. Complainant represented that it served Respondent with a Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) on June 29, 2021, through which it sought a civil money penalty of \$153,605. *Id.* ¶ 3.

By letter dated July 13, 2021, Respondent, through counsel, requested a hearing before this Court. Compl. Ex. A. On July 28, 2023, Respondent filed an answer to the complaint.

On January 25, 2024, the Court issued an Order Requiring Filing of Notice of Intent to Fine and Prehearing Statements and Scheduling Initial Prehearing Conference. Through this Order, the Court ordered the parties to make their initial disclosures and to file prehearing statements of position with the Court by February 15, 2024, and scheduled an initial prehearing conference for February 21, 2024. Order Requiring Filing Notice Intent Fine & Prehr's Statements & Scheduling Initial Prehr's Conf. 2, 7–9. The Court also ordered Complainant to file a copy of the NIF with the Court, authorized the parties to begin discovery, and advised them of the availability of the OCAHO Settlement Officer Program,¹ a voluntary program through which a Settlement Officer mediates settlement negotiations between the parties as a means of non-binding, alternative dispute resolution. *Id.* at 2, 4, 6, 9. Neither party filed its prehearing statement of position.

On February 13, 2024, Complainant complied with the Court's Order by filing its Notice of Filing of the Notice of Intent to Fine. On February 20, 2024, the parties filed a Joint Motion for and Consent to Referral to Settlement Officer Program. The Court then held a telephonic prehearing conference on February 21, 2024, during which both parties confirmed their interest in participating in the OCAHO Settlement Officer Program and consented to its rules. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530, 3–4 (2024).² During the conference, the Court granted the parties' Joint Motion for and Consent to Referral to Settlement Officer Program, referring the parties to the Program for sixty days. *Id.* at 5.

On March 7, 2024, the Court issued an Order Referring Case to OCAHO Settlement Officer Program and Designating Settlement Officer. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530a (2024). The Court appointed a Settlement Officer and referred this matter to him for mediation for an initial referral

¹ EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. *See also* Chapter 4.7 of the OCAHO Practice Manual available at <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1 and is accordingly omitted from the citation. Published decisions may be accessed through the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

period of sixty days beginning on March 18, 2024, and continuing through May 17, 2024. *Id.* at 4.

On March 8, 2024, the Court issued an Order on Electronic Filing through which it enrolled this case in OCAHO's Electronic Filing Pilot Program.³

Respondent then filed a Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in SEC VS JARKESY (Motion to Stay Proceedings). On March 18, 2024, the Court issued an Order Staying Complainant's Response Deadline for Respondent's Motion to Stay Proceedings. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530b (2024). Through the Order, the Court stayed the regulatory response deadline during the pendency of the case's referral to the OCAHO Settlement Officer Program and explained that it would set a briefing schedule on Complainant's Motion to Stay Proceedings when the referral concluded. *Id.* at 6.

On May 12, 2024, Respondent filed a Motion to Dismiss Complaint. Complainant filed its Opposition to Motion to Dismiss on May 14, 2024.

On May 16, 2024, the assigned Settlement Officer requested a thirty-day extension of this case's referral to the Settlement Officer Program. The Settlement Officer explained that the parties requested the extension and that they continued to work diligently toward a settlement. Consequently, the Court found the thirty-day extension to be reasonable, thereafter issuing an Order Extending Referral to the OCAHO Settlement Officer Program on May 20, 2024. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530c (2024). In the Order, the Court explained that at the conclusion of the referral period, it would request status reports from the parties and set new case deadlines. *Id.* at 5. Through the Order, the Court also held in abeyance Respondent's Motion to Dismiss Complaint pending the end of the settlement referral and noted that it would order further briefing if needed. *Id.* at 4.

On June 18, 2024, the Settlement Officer informed the Court that the parties had reached an agreement in principle during mediation and were in the process of finalizing their agreement. However, after not receiving a submission from the parties, the Court issued an Order for Joint Status Report on August 29, 2024. *See United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530d (2024). The Court ordered that the parties file a joint status report regarding their settlement negotiations by September 14, 2024. *Id.* at 4.

³ OCAHO's Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014). Chapter 3.7 of OCAHO's Practice Manual also describes the program. *See* <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

On September 12, 2024, the parties filed a Joint Status Report in which they notified the Court that they were finalizing a settlement agreement and that a joint motion to dismiss was forthcoming.

On October 24, 2024, the parties filed a Joint Motion to Dismiss Complaint, along with a copy of their settlement agreement.

II. LEGAL STANDARDS AND ANALYSIS

Pending before the Court is the parties' Joint Motion to Dismiss Complaint. For the reasons set forth herein, the Court grants the parties' joint motion and approves dismissal of this case.

Under OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024),⁴ there are two avenues for leaving the forum when the parties have entered into a settlement agreement. *See* 28 C.F.R. § 68.14. The parties either may submit consent findings or a filing seeking dismissal. *Id.* § 68.14(a). Here, the parties have filed a Joint Motion to Dismiss Complaint pursuant to 28 C.F.R. § 68.14(a)(2). That regulation requires the parties to notify the Administrative Law Judge (ALJ) that they "have reached a full settlement and have agreed to dismissal of the action." *Id.* § 68.14(a)(2). The presiding ALJ may require the parties to file their settlement agreement and must approve dismissal of the action. *Id.*

The Court has reviewed the parties' Joint Motion to Dismiss Complaint and finds that the parties have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their joint motion, which was signed by counsel for both parties, the parties explain that they "have come to a full agreement and now ask the court to dismiss the instant matter" pursuant to 28 C.F.R. § 68.14(a)(2). Joint Mot. Dismiss Compl. 1. Moreover, the parties attached to their filing a copy of their settlement agreement. Their settlement agreement, which bears the signatures of both parties' counsel and Respondent, reflects a final resolution of the violation of 8 U.S.C. § 1324a(a)(1)(B) alleged in the complaint in this matter. *Id.* Ex. A. In relevant part, the settlement agreement states that the NIF "and the allegations contained therein are incorporated in the Agreement as though fully set forth" in the settlement agreement. *Id.* ¶ 2. The settlement agreement reflects that Respondent has admitted "to failing to comply with the employment eligibility verification requirements in violation of § 274A(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(1)(B), as

⁴ OCAHO's Rules are available on OCAHO's homepage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

set forth in Count I of the Complaint.” *Id.* ¶ 6. Respondent also has agreed to pay a specific civil money penalty for the admitted violations. *Id.* ¶ 4. The agreement further provides for the withdrawal of Respondent’s request for hearing before this Court and the waiver of its right to a hearing before an ALJ. *Id.* ¶ 5.

The parties jointly seek a dismissal with prejudice. Joint Mot. Dismiss Compl. 1. The Court finds that dismissal with prejudice is appropriate here where the parties jointly seek it after entering into a full settlement agreement that resolves the allegations raised in the complaint. *See, e.g., United States v. Eco Brite Linens, LLC*, 18 OCAHO no. 1485c, 1–2 (2024) (dismissing case with prejudice where the parties jointly requested dismissal with prejudice and represented through counsel that they had signed a settlement agreement). Further, the Court’s review of the parties’ signed settlement agreement confirms the appropriateness of a dismissal with prejudice. *See, e.g., United States v. Chinese Back Rub*, 17 OCAHO no. 1452, 2 (2022) (finding dismissal with prejudice appropriate where parties’ settlement agreement reflected a desire for a final resolution). Lastly, dismissal with prejudice will bring finality to this litigation and the allegations the government has raised against Respondent. This finality is fitting given the stage of these proceedings. The Court notes that this case has been pending for over sixteen months and discovery has been available for over nine months. *See, e.g., United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486c, 4 (2024) (dismissing with prejudice a case that had “been pending for sixteen months with over three months of discovery available to the parties.”) (citation omitted); *Huesca v. Rojas Bakery*, 4 OCAHO no. 654, 550, 557 (1994) (basing a finding of dismissal with prejudice in part on the fifteen-month pendency of the case and the advanced stage of discovery).

Given the Court’s findings that the parties have sought dismissal in conformity with 28 C.F.R. § 68.14(a)(2) and that dismissal with prejudice is appropriate, the Court now grants the parties’ Joint Motion to Dismiss Complaint. Given this dismissal, the Court denies as moot Complainant’s Motion to Stay Proceedings and Complainant’s Motion to Dismiss Complaint. The Court now dismisses this case with prejudice.

III. ORDERS

IT IS SO ORDERED that the Joint Motion to Dismiss Complaint filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Fresco Produce, Inc., is GRANTED;

IT IS FURTHER ORDERED that Complainant’s Motion to Stay Proceedings Before OCAHO Pending Supreme Court Decision in SEC VS JARKESY and Complainant’s Motion to Dismiss Complaint are DENIED AS MOOT; and

IT IS FURTHER ORDERED that, pursuant to 28 C.F.R. § 68.14(a)(2), this case, namely, OCAHO Case No. 2023A00070, is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on October 29, 2024.

Honorable Carol A. Bell
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.