

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

CRISTINA SARAID VARELA CABALLERO, )	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2024B00033
MACY'S,	)	
	)	
Respondent.	)	
	)	

Appearances: Cristina Saraïd Varela Caballero, pro se Complainant  
Amy L. Peck, Esq., Sarah J. Millsap, Esq., and David A. Calles Smith,  
Esq., for Respondent

### FINAL ORDER OF DISMISSAL

#### I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant, Cristina Saraïd Varela Caballero, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 10, 2024, against Macy's. Complainant alleges that Respondent, Macy's, violated Section 274B of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Compl. §§ 6–10.

On January 11, 2024, the Chief Administrative Hearing Officer mailed Respondent the complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA). The United States Postal Service (USPS) certified mail tracking tool indicated that the complaint and NOCA were delivered to Respondent's front desk, reception area, or mail room on January 24, 2024, in Houston, Texas. Under OCAHO's Rules of Practice and

Procedure for Administrative Hearings,<sup>1</sup> which generally govern these proceedings, Respondent's answer was due within thirty days, by February 24, 2024. *See* 28 C.F.R. § 68.9(a).

On February 6, 2024, Complainant filed a document notifying the Court of a change to her mailing address.

On February 27, 2024, Respondent filed its Answer and Affirmative Defenses, Respondent's Partial Motion to Dismiss, and Respondent's Brief in Support of Motion to Dismiss. In its answer, Respondent's counsel represented that Complainant had "incorrectly identified" the Respondent as "simply 'Macy's,'" and that "Complainant was employed by Macy's Retail Holdings, LLC." Answer 1 n.1. On February 27, 2024, and February 29, 2024, counsel for Respondent filed their Appearances of Counsel.

On February 29, 2024, OCAHO invited the parties by letter to register for its Electronic Filing Pilot Program through which they can file electronically all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party.<sup>2</sup> OCAHO provided the parties with the Attorney/Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program, along with instructions for accessing any encrypted messages OCAHO may use to send decisions or orders that contain personally identifiable information, such as names, email addresses, home addresses, and telephone numbers.<sup>3</sup> Respondent's counsel submitted their completed electronic filing registration forms and certifications to OCAHO.

On March 14, 2024, OCAHO staff spoke with Complainant by telephone. During the telephone call, Complainant represented that she had called the law firm whose counsel is representing Respondent and provided them with her new mailing address. Complainant indicated that the USPS was forwarding mail to her new address and that she had received some forwarded filings from Respondent. During the telephone call, Complainant did not inform OCAHO staff when she received

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<sup>1</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), are available on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>2</sup> OCAHO's Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014).

<sup>3</sup> Information and links to materials associated with OCAHO's Electronic Filing Pilot Program may be found on OCAHO's filing page on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/ocaho-filing>.

service of those filings. On March 15, 2024, Complainant submitted her completed electronic filing registration form and certification to OCAHO.

On August 28, 2024, Complainant filed a document notifying the Court of an additional change to her address.<sup>4</sup>

On November 21, 2024, the Court issued an Order on Complainant's Filings, Response Deadline to Respondent's Partial Motion to Dismiss, and Electronic Filing. *Caballero v. Macy's*, 21 OCAHO no. 1619 (2024).<sup>5</sup> Through the Order, the Court: (a) gave the parties leave to file a motion to amend the case caption; (b) accepted and disclosed Complainant's change-of-address filings and updated her address of record; (c) provided Complainant with copies of Respondent's filings, including its Answer, Partial Motion to Dismiss and Brief in Support, and counsel's appearances; (d) set a ten-day response deadline to Respondent's Partial Motion to Dismiss; and (e) enrolled the case in OCAHO's Electronic Filing Pilot Program. *Id.* at 3–6.

On November 22, 2024, Respondent filed its Motion to Consolidate and Motion to Refer Cases to Settlement Officer Program, through which Respondent moved the Court to consolidate this case with OCAHO case number 2024B00127 and then refer the consolidated case to the OCAHO Settlement Officer Program.

On November 27, 2024, the Court issued an Order Setting Response Deadline to Respondent's Motions, through which the Court clarified for Complainant that she had until December 2, 2024, to file a response to Respondent's Motion to Consolidate and Respondent's Motion to Refer Cases to Settlement Officer Program. *Caballero v. Macy's*, 21 OCAHO no. 1619a, 4 (2024).

On December 4, 2024, Complainant filed: (a) Complainant Response to Partial Motion to Dismiss, (b) Complainant Response to Motion to Consolidate and Refer

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<sup>4</sup> Also, on August 28, 2024, Complainant filed a complaint against Macy's, Inc., in this forum. That case was assigned OCAHO case number 2024B00127.

<sup>5</sup> 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>.

Cases to Settlement Officer Program, (c) Complainant's Change of Address, and (d) a filing entitled "Explaining a Mistake."<sup>6</sup> On December 28, 2024, Respondent filed an Unopposed Motion to Stay.

On March 12, 2025, the parties filed a Joint Motion to Dismiss with Prejudice.<sup>7</sup> In the motion, the parties represented that they "have reached a full settlement of all claims and have agreed to dismissal of all actions." Joint Mot. Dismiss 1. The parties further stated that they "have come to a mutually agreement settlement" and move the Court to dismiss this case and OCAHO case number 2024B00127 with prejudice. *Id.*

## II. DISCUSSION AND ANALYSIS

Pending before the Court is the parties' Joint Motion to Dismiss with Prejudice. 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, 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 chosen to proceed pursuant to 28 C.F.R. § 68.14(a)(2) by filing a Joint Motion to Dismiss with Prejudice. OCAHO's 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 with Prejudice and finds that the parties have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their joint motion, the parties state that they "have reached a full settlement of all claims and have agreed to dismissal of all claims." Joint Mot. Dismiss 1. They describe the settlement as being "mutually agreeable" and represent that "[n]either party will be prejudiced by a dismissal[.]" *Id.* The parties ask the Court to enter an ordering dismissing this case "with prejudice pursuant to 28 C.F.R. § 68.14." *Id.* Complainant and counsel for Respondent signed the motion. *Id.*

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<sup>6</sup> OCAHO has updated Complainant's mailing address of record in this matter to the address she listed in Complainant's Change of Address.

<sup>7</sup> The caption of the Joint Motion to Dismiss with Prejudice indicates that the parties intended to file their motion in both the present action and another OCAHO case involving the same parties, namely, OCAHO case number 2024B00127. While the Court has accepted the parties' motion as a filing in both cases, this Order concerns only the above-captioned case.

The parties did not attach their settlement agreement to their Joint Motion to Dismiss with Prejudice or otherwise file it with the Court. As explained above, the Court may exercise its discretion pursuant to 28 C.F.R. § 68.14(a)(2) and require the parties to file their settlement agreement before it rules on their Joint Motion to Dismiss with Prejudice. *See, e.g., United States v. Torres Mexican Food, Inc.*, 4 OCAHO no. 596, 88, 89 (1994) (explaining that 28 C.F.R. § 68.14(a)(2) neither requires ALJs to review parties' settlement agreements nor precludes them from doing so).

In this case, the Court will not require the filing of the parties' settlement agreement given the nature of these proceedings and the record before the Court. In reaching this decision, the Court has considered that, although Complainant has been proceeding pro se, her filings reflect that she understands her rights and responsibilities in this forum, and she has been able to articulate her position on the issues in this matter. Complainant has actively participated in these proceedings, including through her filings and communications with OCAHO, and as reflected in Respondent's filings, her discussions with opposing counsel. OCAHO ALJs have declined to require the filing of settlement agreements in similar cases arising under 8 U.S.C. § 1324b in which the complainants proceeded pro se. *See, e.g., Konitzer v. Mirantis, Inc.*, 20 OCAHO no. 1608, 5 (2024) (declining to require the filing of a settlement agreement where the parties, including a pro se complainant, "understood their rights and responsibilities in this forum and had actively participated in these proceedings"); *see also Graham v. Ameriflight*, 18 OCAHO no. 1482, 1 n.1 (2023) (dismissing case brought by pro se complainant without requiring the filing of the parties' settlement agreement); *Violante v. The Giant Food Co. LLC*, 17 OCAHO no. 1458, 1 (2022) (accord); *Parra Guerrero v. Hiremadskills, Inc.*, 18 OCAHO no. 1481a, 1 (2023) (accord); *Jackai v. Frito-Lay, Inc.*, 1 OCAHO no. 188, 1232, 1233 (1990) (accord). There also are no facts or circumstances before the Court (or deadlines imposed in this case) that would suggest that Complainant's entry into a settlement agreement with Respondent—after more than two months of negotiations—was anything other than "knowing and voluntary, notwithstanding [her] pro se status." *Aityahia v. Sabena Airline Training Ctr., Inc.*, 9 OCAHO no. 1122, 7 (2006) (finding that an oral settlement agreement was binding and dismissing case where the pro se complainant was fluent in English, the complaint's narrative and e-mails were "intelligent and well-written[.]" and there was "no hint of any element of fraud, duress, coercion, mutual mistake, [or] unconscionability").

The parties jointly seek a dismissal with prejudice. Joint Mot. Dismiss 1. The Court finds that dismissal with prejudice is appropriate here where the parties jointly seek it after entering into a full settlement agreement to resolve the allegations raised in the complaint. *See, e.g., Ewoma Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471e, 2 (2023) (dismissing case with prejudice where the parties jointly requested dismissal with prejudice and represented that they had executed a

settlement agreement which resolved the case); *Konitzer*, 20 OCAHO no. 1608, at 5–6 (accord). Dismissal with prejudice will bring finality to this litigation and the allegations that Complainant has raised against Respondent. This finality is fitting given that these proceedings have been pending for over fourteen months during which the parties have actively engaged in settlement negotiations. OCAHO precedent has found dismissal with prejudice appropriate in cases in a similar posture. *See, e.g., United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486c, 6 (2024) (dismissing with prejudice a case that had been pending for sixteen months during which the parties reached a settlement through mediation); *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).

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 with Prejudice. The Court denies as moot Respondent’s Partial Motion to Dismiss, Respondent’s Motion to Consolidate, Respondent’s Motion to Refer Cases to Settlement Officer Program, and Respondent’s Unopposed Motion to Stay. The Court now dismisses this case with prejudice.

### III. ORDERS

Upon consideration of the Joint Motion to Dismiss with Prejudice filed by Complainant, Cristina Saraid Varela Caballero, and Respondent, Macy’s,

IT IS SO ORDERED that the parties’ Joint Motion to Dismiss with Prejudice is GRANTED;

IT IS FURTHER ORDERED that Respondent’s Partial Motion to Dismiss, Respondent’s Motion to Consolidate, Respondent’s Motion to Refer Cases to Settlement Officer Program, and Respondent’s Unopposed Motion to Stay 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. 2024B00033, is DISMISSED with prejudice.

SO ORDERED.

Dated and entered on April 4, 2025.

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Honorable Carol A. Bell  
Administrative Law Judge

### Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Attorney General. Provisions governing the Attorney General's review of this order are set forth at 28 C.F.R. pt. 68. Within sixty days of the entry of an Administrative Law Judge's final 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.

Any person aggrieved by the final order has sixty days from the date of entry of the final order to petition for review in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. *See* 8 U.S.C. § 1324b(i)(1); 28 C.F.R. § 68.57. A petition for review must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.