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

October 2, 2019

MARK SCHELLER HOOPER Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 19B00028
	)	
NOKIA CORPORATION Respondent.	)	

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

On May 23, 2019, Complainant, Mark Scheller Hooper, filed a complaint against Respondent, Nokia Corporation, alleging that Respondent refused to hire him based on his national origin and citizenship status, in violation of 8 U.S.C. § 1324b. Respondent filed an answer on July 15, 2019. On September 9, 2019, Complainant filed a Motion to Dismiss Without Prejudice seeking to dismiss his complaint. Respondent did not file a response to the motion.

The OCAHO rules "explicitly provide for dismissal of complaints under three circumstances: (1) '[w]here the parties or their authorized representatives or their counsel have entered into a settlement agreement' (28 C.F.R. § 68.14); (2) when a complaint or a request for hearing is abandoned by the party or parties who filed it (28 C.F.R. § 68.37(b)); (3) by default (28 C.F.R. § 68.37(c))." *LeEdwards v. Kumagai Int'l USA Corp.*, 4 OCAHO no. 609, 197, 200 (1994). The OCAHO rules do not specifically cover a voluntary dismissal by the complainant, but the Federal Rules of Civil Procedure may be used as a general guideline for any situation not covered by the OCAHO rules, the Administrative Procedure Act, any other applicable statute, executive order, or regulation. 28 C.F.R. § 68.1.

Under Federal Rule of Civil Procedure 41(a)(2), the Court may, in certain circumstances, order dismissal of an action at the plaintiff's request. "Such an order is proper only if a plaintiff has made a motion for dismissal." *LeEdwards*, 4 OCAHO no. 609 at 200. The Court "should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a [respondent] can show that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice is "prejudice to some legal interest, some legal claim, [or] some legal argument." *Id.* (internal quotation marks and citation omitted). "Uncertainty because a dispute remains unresolved" or "the threat of future litigation which causes uncertainty" does not constitute plain legal prejudice. *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th

Cir. 1996); *see United States v. Johnny & Leona Entertainment, LLC*, 13 OCAHO no. 1325, 1–2 (2019).

Respondent did not file a response to the motion, so Respondent does not assert that it will suffer prejudice if the Court grants the dismissal without prejudice. This case is still in the initial pleadings stage, Respondent has only filed an answer, the parties have not yet submitted prehearing statements, and the undersigned has not held a prehearing conference. Complainant indicates that he does not wish to pursue this matter any further. As such, the Court finds that Respondent will not suffer legal prejudice if the Court grants the motion.

The Court finds that Complainant's Motion to Dismiss Without Prejudice is GRANTED. The Complaint is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on October 2, 2019.

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Jean C. King
Chief Administrative Law Judge