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

February 20, 2020

WENDY ORELLANA MANZANO, Complainant,)
V.)
WALMART, INC., Respondent.)))

8 U.S.C. § 1324b Proceeding OCAHO Case No. 19B00017

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

On March 25, 2019, Complainant Wendy Orellana Manzano filed a complaint against Respondent Walmart, Inc. The complaint alleges that Respondent discriminated against her based on her national origin and citizenship status and Complainant alleges Respondent engaged in document abuse in violation of 8 U.S.C. § 1324b. Respondent filed an answer on April 26, 2016. Both parties filed prehearing statements, and this Court held a prehearing conference. Discovery closes on February 24, 2020.

On February 11, 2020, Complainant filed a motion to dismiss her complaint without prejudice. Complainant states that she intends to pursue independent state claims. Complainant states that Respondent will not suffer harm from the dismissal as it will be relieved of having to defend claims in two separate cases arising from similar facts but dependent upon factual and legal determinations. As Respondent will not suffer legal prejudice, Complainant requests the motion to dismiss without prejudice. Respondent filed a response, indicating that it does not object.

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, 12 (2019). The Respondent does not object, and did not raise any concerns about prejudice. While the parties have filed prehearing statements, no dispositive motions have been filed.

Accordingly, 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 February 20, 2020.

Jean C. King Chief Administrative Law Judge