

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

July 7, 2022

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00021
)	
CL CORPORATION,)	
Respondent.)	
_____)	

ORDER GRANTING COMPLAINANT’S MOTION TO DISMISS

I. PROCEDURAL HISTORY

On January 25, 2022, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging Respondent, CL Corporation discriminated against him based on his citizenship status and national origin in violation of 8 U.S.C. § 1324b. On March 21, 2022, Respondent’s corporate secretary filed a letter entitled “Response to Complaint,” which the Court construes to be its answer.

On May 31, 2022, Complainant filed “Laymans’ Motion to Dismiss Rule 41” (Motion to Dismiss) in which he states that after conferring with Respondent, he now requests dismissal of his complaint. Mot. Dismiss 1. However, Complainant prefaces the request with the condition that “if there comes a time that the [Complainant] finds out that the Respondent has made given [sic] false inform[a]tion to either the Complai[n]ant or the Court regarding Case # 2022B00021, the Court shall grant the Complainant leave to reopen the matter.” *Id.*

Per the Court’s Order Setting Case Schedule issued on April 25, 2022, responses to dispositive motions are due thirty days after service of the dispositive motions. Thus, Respondent’s response to the Motion to Dismiss was due July 5, 2022. *See* 28 C.F.R. § 68.8(c)(2). To date, the Court has not received a response; therefore, the Motion to Dismiss is ripe for adjudication.

II. LEGAL STANDARDS

Although OCAHO’s rules “do not specifically cover a voluntary dismissal by the complainant, . . . the Federal Rules of Civil Procedure (FRCP) 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.” *Zajradhara v. Changxing Corp.*, 14 OCAHO no. 1356, 2 (2020) (citing 28 C.F.R. § 68.1); e.g., *United States v. Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, 1 (2019); see *United States v. La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, 2 (2021).¹

FRCP 41 provides two avenues for voluntary dismissal of a case. Applicable here is Rule 41(a)(2) which states “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

Generally, a motion for voluntary dismissal under Rule 41(a)(2) should be granted, unless the respondent “can show that it will suffer some plain legal prejudice as a result.” *Changxing Corp.*, 14 OCAHO no. 1356, at 2 (quoting *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001)).

FRCP 41(a)(2) posits that absent contrary language in the dismissal order, voluntary dismissal by the plaintiff shall be without prejudice. “A dismissal with prejudice bars a subsequent action between the same parties or their privies on the same claim, but a dismissal without prejudice, although it constitutes a final termination of the first action, does not bar a second suit.” *Nat’l Licensing Ass’n, Ltd. Liab. Co. v. Inland Joseph Fruit Co.*, 361 F. Supp. 2d 1244, 1258 (E.D. Wash. 2004); accord *United States v. Sahara Wireless Int’l, Inc.*, 11 OCAHO no. 1262, 2 (2015).

III. ANALYSIS

Complainant referenced “Rule 41” in the title of his motion, and the Court presumes he is referencing FRCP 41(a)(2), the applicable provision based on the contents of his motion.

¹ 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 subsequent to Volume 8, where the decision has not yet 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 in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

While Complainant does not expressly request “without prejudice,” his desire to have an option to “seek leave to reopen the matter,” Mot. Dismiss 1, is the functional equivalent of a request to dismiss without prejudice because such a dismissal would permit Complainant “to reinstitute the matter at any time by filing a new complaint.” *Sahara Wireless Int’l, Inc.*, 11 OCAHO no. 1262, at 2 (citation omitted).

Insofar as Complainant is requesting dismissal without prejudice, the undersigned has the discretion to determine whether dismissal without prejudice is appropriate. *See Changxing Corp.*, 14 OCAHO no. 1356, at 2 (citing *Mangir*, 4 OCAHO no. 672, at 725) (“If the complainant moves for a dismissal without prejudice or does not specify that it be with or without prejudice, the matter is left to the sound discretion of the court.”); *see also La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citations omitted) (“The Court has broad discretionary power over whether to grant a motion for voluntary dismissal, with or without prejudice, pursuant to Rule 41(a)(2).”).

Dismissal without prejudice in this case is consistent with FRCP 41(a)(2) because the case is at an early stage – Complainant’s Motion to Dismiss is the second motion filed in this litigation. Further, the Court notes that Respondent here did not provide a response to the motion, forgoing an opportunity to identify any prejudice. Moreover, the undersigned finds no indication that Respondent will suffer plain legal prejudice from dismissal without prejudice.

Therefore, Complainant’s Motion to Dismiss is GRANTED. The Complaint is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on July 7, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge