

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. 2023A00049
RGV BEST BURGER, INC.,)	
D/B/A JOHNNY ROCKETS RESTAURANT,)	
)	
Respondent.)	
_____)	

Appearances: Ariel Chino, Esq., for Complainant
Anthony Matulewicz, Esq., for Respondent

ORDER FOR SUPPLEMENTAL FILING AND
SETTLEMENT AGREEMENT

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On March 7, 2023, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, RGV Best Burger, Inc., doing business as Johnny Rockets Restaurant. Complainant attached to the complaint its Notice of Intent to Fine which it served on Respondent on April 19, 2021. Compl., Ex. A. Respondent, through counsel, timely requested a hearing before this Court.¹ *Id.*, Ex. B.

¹ The Court considers this signed request for a hearing to be a notice of appearance by counsel on behalf of Respondent. *See* 28 C.F.R. § 68.33(f).

Rather than filing an answer to the complaint, Respondent filed a Notice of Settlement on May 25, 2023. Respondent represented that Complainant was joining it in notifying the Court that “both parties have settled all issues presented” in this case. Notice of Settlement 1. Respondent stated that the parties would submit “an agreement containing findings together with a proposed decision and order within the next 30 days.” *Id.*

The parties then filed a Joint Motion to Dismiss Complaint pursuant to 28 C.F.R. § 68.14(a)(2) on July 6, 2023. They represented in their concise, two-sentence motion that they had come to “a full agreement and now ask the court to dismiss the instant matter.” J. Mot. Dismiss Compl. 1.

II. LEGAL STANDARDS & DISCUSSION

This case is in the initial pleadings stage and no answer has been filed. Although Complainant could have filed a notice of settlement or a stipulation of dismissal signed by the parties who have appeared pursuant to Rule 41(a)(1)(A)(i)-(ii) of the Federal Rules of Civil Procedure,² the parties chose to proceed by announcing their settlement and seeking an order of dismissal from the Court.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained at 28 C.F.R. part 68 (2023),³ provide two avenues for parties who have entered into a settlement agreement and seek to conclude or dismiss a pending case. The parties either may submit to the Court an agreement containing consent findings, along with a proposed decision and order, or notify the Court that they have reached a full settlement and agree to dismissal of the action. *See* 28 C.F.R. § 68.14(a)(1)-(2). Although Respondent’s Notice of Settlement appeared to suggest that the parties would be proceeding pursuant to 28 C.F.R.

² The Court may use the Federal Rules of Civil Procedure as a “general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1.

³ OCAHO’s Rules of Practice and Procedure for Administrative Hearings 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>.

§ 68.14(a)(1) by filing an agreement containing findings along with a proposed decision and order, the parties ultimately decided to move for dismissal pursuant to 28 C.F.R. § 68.14(a)(2). *See* J. Mot. Dismiss Compl. 1.

Section 68.14(a)(2) provides that, where the parties have entered into a settlement agreement, they shall “[n]otify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action.” 28 C.F.R. § 68.14(a)(2). Dismissal of the case is subject to the Court’s approval and the Administrative Law Judge has discretion to require the parties to file the settlement agreement. *Id.*

Should the Court find dismissal to be appropriate, 28 C.F.R. § 68.14(a)(2) is silent as to whether the dismissal should be with or without prejudice. *Cf.* Fed. R. Civ. P. 41(a)(2) (“Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.”). Rather, it is left to the Court’s discretion to determine whether it should dismiss a case with or without prejudice. *See United States v. Chinese Back Rub*, 17 OCAHO no. 1452, 2 (2022) (collecting cases).⁴ The distinction is an important one as a dismissal without prejudice would allow a complainant to refile a complaint as if it had never been filed. *See* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2367 (4th ed. 2023) (an order dismissing without prejudice “permits the initiation of a second action[.]”); *see also United States v. Sahara Wireless Int’l, Inc.*, 11 OCAHO no. 1262, 2 (2015) (noting that dismissal without prejudice “leaves the parties as if no action had been brought at all”) (citation omitted). In contrast, a dismissal with prejudice has “both res judicata and collateral estoppel consequences.” *Id.* (citation omitted). It would bar another prosecution based on identical facts. *See United States v. G.L.C. Rest., Inc.*, 3 OCAHO no. 439, 459, 466 (1992).

⁴ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the U.S. Department of Justice’s website: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

In determining whether to grant a dismissal brought pursuant to 28 C.F.R. § 68.14(a)(2) with or without prejudice, this Court has considered factors such as the stage of the proceedings, the parties' intent and conduct during the litigation, and the impact of dismissal with prejudice on the respondent. *See, e.g., Tingling v. City of Richmond, Va.*, 13 OCAHO no. 1324e, 2 (2021); *Garcia v. Can-Am Electric, LLC*, 15 OCAHO no. 1401, 2 (2021).

Here, the parties have complied with 28 C.F.R. § 14(a)(2) by notifying the Court that they have reached "a full agreement" and agree to dismiss the case. J. Mot. Dismiss Compl. 1. The parties have not informed the Court whether they move to dismiss this case with or without prejudice, and their extremely concise joint motion and notice of settlement shed no light on the issue. There is likewise little in the record that might speak to the parties' intentions as this case has not advanced beyond the filing of the complaint. The Court therefore now affords the parties an opportunity to supplement their Joint Motion to Dismiss Complaint by stating their position as to dismissal with or without prejudice and presenting any factors in support thereof.

The Court also exercises its discretion under 28 C.F.R. § 68.14(a)(2) and requests that the parties file a copy of their settlement agreement with their supplemental filing. After receiving the parties' filing and settlement agreement, the Court will decide whether dismissal of this matter with or without prejudice is appropriate.

III. ORDERS

IT IS SO ORDERED that, on or before than August 16, 2023, the parties shall file jointly a supplemental filing to their Joint Motion to Dismiss Complaint in which they shall advise the Court whether they jointly move to dismiss this matter with or without prejudice.

IT IS FURTHER ORDERED that, on or before August 16, 2023, the parties shall file with the Court a copy of their final, executed settlement agreement bearing the signatures of all parties and counsel.

SO ORDERED.

Dated and entered on August 1, 2023.

Honorable Carol A. Bell
Administrative Law Judge