

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

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), 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. Count I of the Complaint alleged that Respondent failed to prepare and/or present the employment eligibility verification form (Form I-9) for eighty-two individuals, while Count II alleged that Respondent failed to ensure that the employee properly completed Section 1 and/or Respondent failed to properly complete Section 2 or 3 of the Forms I-9 for one individual, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. 2-6. Complainant attached to the complaint its Notice of Intent to Fine which it served on Respondent on April 19, 2021. *Id.*, Ex. A. Respondent, through counsel, timely requested a hearing before this Court. *Id.*, Ex. B.

Respondent filed a Notice of Settlement on May 25, 2023. Respondent explained that “both parties have settled all issues presented.” Notice of Settlement 1. Respondent asserted that the parties would submit an agreement containing findings with a proposed decision and order within the next 30 days. *Id.*

On July 6, 2023, the parties filed a Joint Motion to Dismiss Complaint. Rather than filing an agreement containing findings along with a proposed decision and order, the parties moved the Court to dismiss the complaint pursuant to 28 C.F.R. § 68.14(a)(2)¹ because the parties had come to a “full agreement.” Joint Mot. Dismiss Compl. 1. The parties did not indicate whether they were seeking dismissal with or without prejudice and did not attach a copy of the settlement agreement to their motion. *Id.*

On August 1, 2023, the Court issued an Order for Supplemental Filing and Settlement Agreement. *See United States v. RGV Best Burger, Inc.*, 18 OCAHO no. 1492 (2023).² The Court ordered the parties to advise the Court whether they were jointly moving to dismiss this matter with or without prejudice. *Id.* at 4. The Court also exercised its discretion under 28 C.F.R. § 68.14(a)(2) and ordered the parties to file their settlement agreement. *Id.* The parties have now filed a Joint Motion to Dismiss Complaint with Prejudice. They attached their settlement agreement to the joint motion.

II. LEGAL STANDARDS & DISCUSSION

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings are the provisions contained at 28 C.F.R. part 68 (2023). These rules are available online, including through 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>.

² Citations to OCAHO precedents reflect the volume number and case number of the particular decision. 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,” or on the United States Department of Justice’s website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Pursuant to 28 C.F.R. § 68.14(a)(2), 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. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.” The Court finds that the parties’ Joint Motion to Dismiss Complaint with Prejudice substantially conforms to the requirements of 28 C.F.R. § 68.14(a)(2). Specifically, the parties’ joint motion represents that the parties “have come to a full agreement and now ask the court to dismiss the instant matter with prejudice.” Joint Mot. Dismiss Compl. With Prejudice 1.

To determine whether dismissal with prejudice is warranted, this Court has reviewed the parties’ settlement agreement. *See 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 nor precludes Administrative Law Judges from reviewing parties’ settlement agreements). The agreement reflects a full settlement and conforms with 8 U.S.C. § 1324a(e)(5) by imposing a civil money penalty for the paperwork violations in this case. *See Settlement Ag.* ¶ 9.

The Court now grants the parties’ Joint Motion to Dismiss Complaint with Prejudice³ and finds that dismissal with prejudice is appropriate given the parties’ expressed intent and because the parties have reached a full settlement of the issues in this case. *See, e.g., United States v. Chinese Back Rub*, 17 OCAHO no. 1452, 2 (2022) (finding dismissal with prejudice appropriate where parties’ settlement agreement reflected a desire for a final resolution); *Garcia v. Can-Am Elec., LLC*, 15 OCAHO no. 1401, 2-3 (2021) (considering the parties’ intent and conduct before the forum in determining whether to dismiss with prejudice under 28 C.F.R. § 68.14(a)(2)).

³ The Court denies as moot the parties’ Joint Motion to Dismiss Complaint filed on July 6, 2023.

III. ORDERS

Accordingly, upon consideration of the parties' Joint Motion to Dismiss Complaint with Prejudice, and pursuant to 28 C.F.R. § 68.14(a)(2),

IT IS SO ORDERED that the parties' Joint Motion to Dismiss Complaint with Prejudice is GRANTED and this case is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on December 5, 2023.

Honorable Carol A. Bell
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1) (2012).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such 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.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.