

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. 2021A00028
SAL'S LOUNGE,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Martin Celis, Esq., for Complainant  
Fernando Chacon, Esq., for Respondent

ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On April 12, 2021, 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, Sal's Lounge. Complainant alleges that Sal's Lounge failed to prepare and/or present Forms I-9 for seven individuals in violation of 8 U.S.C. § 1324a(a)(1)(B). On May 12, 2021, Respondent filed its answer to the complaint.

On May 27, 2021, the Court issued an Order for Prehearing Statements and Initial Disclosures. On June 7, 2021, the Court issued an Order on Electronic Filing which required the parties to file electronically all pleadings in this case. On June 23, 2021, Complainant filed its prehearing statement.

Complainant then sought leave of Court to amend the complaint. *United States v. Sal's Lounge*, 15 OCAHO no. 1394a, 2 (2021).<sup>1</sup> On October 15, 2021, the

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<sup>1</sup> Citations to OCAHO precedents reflect the volume number and case number of the particular decision. Pinpoint citations to OCAHO precedents after Volume 8, where

Court issued an Order Granting Motion to Amend Complaint and Directing Respondent to File Answer and Prehearing Statement. *Id.* at 4. The Court ordered Respondent to file an answer to the amended complaint and a prehearing statement within thirty days of the issuance of the order. *Id.* Respondent did not do so.

Having received neither Respondent's answer to the amended complaint nor its prehearing statement, the Court issued an Amended Notice and Order to Show Cause Regarding Answer to Amended Complaint and Prehearing Statement on January 11, 2022. *United States v. Sal's Lounge*, 15 OCAHO no. 1394b, 4 (2022). Respondent filed its response to the Order to Show Cause on January 12, 2022. On February 24, 2022, the Court issued an Amended Order Discharging Order to Show Cause and Scheduling Initial Prehearing Conference. *See United States v. Sal's Lounge*, 15 OCAHO no. 1394c, 8 (2022).

On February 24, 2022, the Court conducted an initial telephonic prehearing conference in this matter and set a schedule for the case. *See* Order Memorializing Initial Prehearing Conference and Setting Case Schedule. In accordance with the Court's schedule, Complainant filed a Motion for Summary Decision on March 28, 2022, and Respondent filed a response on April 22, 2022.

While Complainant's motion was pending before the Court, Respondent's counsel notified the Court and Complainant by electronic mail on June 15, 2022, that his client, Cynthia Alferez, the sole proprietor of Sal's Lounge in El Paso, Texas, was murdered on June 10, 2022. Respondent's counsel provided a hyperlink to a news article reporting the murder of a woman named Cynthia Alferez at Cynthia's Cantina in Socorro, Texas. After receiving the notification, the Court ordered the parties to confer regarding how Ms. Alferez's recent death might affect the posture of the case and to file a joint status report in thirty days. *See* Order Striking Hr'g Date and for Joint Status Report. The Court also struck the hearing date of June 28, 2022. *Id.* at 3.

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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>.

Rather than submitting a joint status report, the parties filed a Joint Motion to Dismiss Without Prejudice on August 24, 2022.<sup>2</sup> The motion consisted of one sentence, stating that “Respondent’s attorney had previously submitted notice to [the] Court and Complainant’s counsel that Respondent<sup>3</sup> had been a victim of a Murder on June 10, 2022.” Joint Mot. Dismiss.

## II. LEGAL STANDARDS & DISCUSSION

Currently pending before the Court are Complainant’s Motion for Summary Decision and the parties’ Joint Motion to Dismiss Without Prejudice. The Court turns first to the parties’ Joint Motion to Dismiss Without Prejudice.

### a. Joint Motion to Dismiss Without Prejudice

The parties jointly seek to dismiss this action given the death of Ms. Alferez, the sole proprietor of Sal’s Lounge. They cite no legal authority in support of their request and OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained at 28 C.F.R. part 68 (2023),<sup>4</sup> are silent as to voluntary dismissals outside the settlement context.<sup>5</sup> OCAHO’s rules do provide, however, that

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<sup>2</sup> Although the motion was filed on August 24, 2022, it was dated June 27, 2022.

<sup>3</sup> The parties conflate Ms. Alferez with Sal’s Lounge, the Respondent in this matter. Although Ms. Alferez was the sole proprietor of Sal’s Lounge, it is the business entity that is the respondent in this matter.

<sup>4</sup> 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>.

<sup>5</sup> OCAHO’s rules provide for dismissal under various circumstances, including (1) where “the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted” (28 C.F.R. § 68.10(b)); (2) where the parties have reached a settlement agreement and agree to dismissal of the action (28 C.F.R. § 68.14(a)(2)); (3) where a party abandons a complaint or a request for hearing it filed (28 C.F.R. § 68.37(b)); and (4) through a final order post-hearing after “the Administrative Law Judge determines that a person or entity named in the

the Court can 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.

The Court is guided in this matter by Federal Rule of Civil Procedure 41(a) which discusses voluntary dismissals. To dismiss an action without a court order, the rule provides that (1) a plaintiff may file a notice of dismissal before the opposing party serves either an answer or a summary judgment motion, or (2) all of the parties who have appeared in an action can stipulate to a dismissal. Fed. R. Civ. P. 41(a)(1)(A)(i)-(ii). Courts likewise may dismiss an action at the plaintiff’s request “on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

Here, the parties jointly seek an order of dismissal without prejudice from this Court. Because they styled their filing as a joint motion to dismiss, not as an agreed stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Court construes the motion to be a request for dismissal pursuant to Rule 41(a)(2). *See, e.g., United States v. La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, 2-3 (2021) (evaluating the complainant’s motion for voluntary dismissal in the context of Rule 41(a)(2) because it sought leave of the court); *cf. Y.Y. v. Zuora, Inc.*, 15 OCAHO no. 1402c, 5 (2022) (dismissing action given the parties’ joint stipulation of dismissal filed pursuant to Rule 41(a)(1)(A)(ii)).

Although this case is not in its early stages in that a motion for summary decision is pending, the Court gives great weight to the fact that this is a joint motion and recognizes the exigency that brought about this request, namely, the death of Respondent’s sole proprietor. Although the parties’ request for dismissal without prejudice may mean that the Respondent business could face another lawsuit, Respondent does not assert that it will suffer any plain legal prejudice should the Court grant this request for a dismissal. The Court likewise finds none and shall grant the parties’ joint request. *See, e.g., Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002) (Voluntary motions “should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.”);<sup>6</sup> *see also La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at

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complaint has not engaged in and is not engaging in an unfair immigration-related employment practice” (28 C.F.R. § 68.52(d)(5)).

<sup>6</sup> The Court consults case law from the United States Court of Appeals for the Fifth Circuit as it is the “appropriate circuit for review.” 28 C.F.R. § 68.56.

3 (noting that OCAHO case law recognizes “the threat of future litigation does not constitute plain legal prejudice” and granting the dismissal without prejudice) (citations omitted).

Federal Rule of Civil Procedure 41(a)(2) gives the Court discretion to dismiss actions “on terms that [it] considers proper.” Such conditions may concern the payment of costs and attorneys’ fees or terms designed to reduce the inconvenience to the opposing party, such as requiring the production of documents or witnesses. *See, e.g., LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976). The parties do not seek, and the Court shall not impose, any additional terms in connection with this dismissal. Respondent requested no discovery beyond Complainant’s exhibits which were to have been produced by February 25, 2022, and it has not made any additional discovery requests, sought any payment of costs or fees, or claimed that production of documents or witnesses is needed in connection with the motion to dismiss. *See* Order Memorializing Initial Prehr’s Conference and Setting Case Schedule. Indeed, Respondent joins Complainant in finding that dismissal is appropriate. The Court agrees and this matter is dismissed without prejudice.

b. Complainant’s Motion for Summary Decision

Having granted the parties’ Joint Motion to Dismiss Without Prejudice and given the dismissal of this action, the Court denies as moot Complainant’s Motion for Summary Decision.

### III. ORDERS

IT IS SO ORDERED that the parties’ Joint Motion to Dismiss Without Prejudice is GRANTED.

IT IS FURTHER ORDERED that Complainant’s Motion for Summary Decision is DENIED as MOOT.

IT IS FURTHER ORDERED that this action is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on July 6, 2023.

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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.