

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. 2023A00064
MENDOZA MAINTENANCE	)	
GROUP, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances:      Ricardo A. Cuellar, Esq., for Complainant  
                         Javier Mendoza, pro se, for Respondent

ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On June 6, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, Mendoza Maintenance Group, Inc., failed to prepare and/or present Forms I-9 for nine individuals, and failed to ensure proper completion of Forms I-9 for seventeen individuals, all in violation of 8 U.S.C. § 1324a. The complaint reflects that Complainant served Respondent with a Notice of Intent to Fine (NIF) on July 24, 2019, Compl. ¶ 3, Ex. A, and Respondent, through its President Javier Mendoza,<sup>1</sup> made a timely request for a hearing on July 29, 2019. *Id.* ¶ 4, Ex. B.

On June 12, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) served Respondent via United States certified mail with the complaint, a Notice of

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<sup>1</sup> Should Respondent retain counsel in this matter, its counsel shall file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent's request for a hearing (collectively the Complaint package).<sup>2</sup> The CAHO informed Respondent that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings located at 28 C.F.R. part 68 (2023)<sup>3</sup> and applicable case law. NOCA ¶ 1. Links to OCAHO's rules and its Practice Manual<sup>4</sup> were provided to Respondent, along with contact information for OCAHO. *Id.* at ¶ 2. The CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). *Id.* at ¶ 4. The CAHO cautioned Respondent that its failure to file an answer could lead the Court to enter a judgment by default and any and all appropriate relief pursuant to 28 C.F.R. § 68.9(b). *Id.*

As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a United States Postal Service certified mail domestic return receipt (PS Form 3811). The U.S. Postal Service's certified mail tracking service indicates that the Complaint package was delivered on June 17, 2023. As service was perfected on June 17, 2023, Respondent's answer was due no later than July 17, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). To date, Respondent has not filed an answer.

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<sup>2</sup> OCAHO's rules require Complainant to identify "the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3." 28 C.F.R. § 68.7(b)(5). After receiving this information, OCAHO will serve the complaint via delivery, personal service, or mail. *Id.* § 68.3(a)(1)-(3). Whichever method is chosen, "[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee." *Id.* § 68.3(b). Here, Complainant asked OCAHO to serve the complaint on Respondent at an address in Laredo, Texas. Compl. 1; 28 C.F.R. § 68.7.

<sup>3</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>4</sup> The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the U.S. Department of Justice's website. *See* <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

On July 11, 2023, Respondent filed a Motion to Dismiss on Grounds of Violations of Procedures. Respondent argues that Complainant did not provide it with ten days to correct technical or procedural violations, that Complainant failed to “prove bad faith,” and failed to provide a hearing in a timely manner, as the alleged violations occurred in 2019. R’s Mot. Dismiss 1-3. Therefore, Respondent requests that the Court dismiss the Complaint with prejudice. *Id.*

## II. DISCUSSION AND ANALYSIS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings permit a respondent thirty days to file an answer after being served with a complaint. *See* 28 C.F.R. § 68.9(a). Service of a complaint may be effectuated by “mailing [the complaint] to the last known address of such individual, partner, officer, or attorney or representative of record.” *Id.* § 68.3(a)(3). Here, the Court began the thirty-day clock on June 17, 2023, being the date when OCAHO perfected service of the complaint on Respondent. *See id.* § 68.3(b) (“Service of complaint . . . is complete upon receipt by addressee.”). As such, Respondent’s answer was due no later than July 17, 2023. *See id.* § 68.9(a).

Respondent’s Motion to Dismiss is not a substitute for an answer which must meet the requirements of 28 C.F.R. § 68.9(c). OCAHO’s rules are clear that, “[t]he filing of a motion to dismiss does not affect the time period for filing an answer.” *Id.* § 68.10(a). In this way, OCAHO’s rules differ from the Federal Rules of Civil Procedure which “may be used as a general guideline in any situation not provided for or controlled by these rules.” *Id.* § 68.1. “Under the Federal Rules of Civil Procedure, a motion to dismiss filed under Rule 12 tolls the responsive pleading deadline until the motion is decided.” *Ackermann v. Mindlance*, 17 OCAHO no. 1462a, 2 (2023) (citing Fed. R. Civ. P. 12(a)(4) (serving a motion under Rule 12 may alter the time to serve a responsive pleading), and then citing 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1346 (3d ed. 2022) (“Service of a motion permitted by Rule 12 also may enlarge the applicable period of time for serving an answer or other responsive pleading . . . ”)). Thus, OCAHO Administrative Law Judges may issue an order to show cause when a respondent files a motion to dismiss, but not a timely answer to a complaint. *See, e.g., Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 2 (2022) (citing *Ndzerre v. Wash. Metro. Area Transit Auth.*, 13 OCAHO no. 1306, 4-5 (2017) (requiring respondent to show good cause for failure to file answer despite filing motion to dismiss)).

Here, despite the CAHO informing Respondent of the thirty-day deadline to file an answer to the complaint, no answer has been filed. *See* NOCA, ¶ 4. The CAHO warned Respondent that if it failed to file a timely answer, the Court might deem it to have waived its right to appear and contest the allegations of the complaint, and that a judgment by default and other appropriate relief might follow. *Id.* (citing 28 C.F.R. § 68.9(b)). “If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing.” *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).<sup>5</sup> Respondent’s filing of a motion to dismiss did not excuse or toll the deadline for filing its answer. *See* 28 C.F.R. § 68.10.

It has long been OCAHO’s practice to issue an order to show cause before entering a default. *See United States v. Shine Auto Service*, 1 OCAHO no. 70, 444 (Vacation by the Chief Admin. Hr’g Officer of the A.L.J.’s Order Den. Default J.) (7/14/89). In *Shine Auto Service*, the Acting CAHO explained:

Respondent must justify [in response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent’s reply, the Administrative Law Judge shall determine whether the respondent has met the threshold for good cause. If the Administrative Law Judge determines that the Respondent possessed the requisite good cause for failing to file a timely answer, then the Administrative Law Judge may allow the Respondent to file a late answer.

*Id.* at 445-46. This Court will follow that practice here and now issues this Order to Show Cause.

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<sup>5</sup> 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 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,” and on the United States Department of Justice’s website: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

The Court orders Respondent to file a response to this Order in which it must provide facts sufficient to show good cause for its failure to file a timely answer to the complaint. The Court further orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Failure to file an answer may constitute a waiver of Respondent's right to appear and contest the allegations of the complaint. *Id.* § 68.9(b). Default may follow. *Id.*

Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file a timely answer to the complaint and will decide whether to allow its untimely answer.

The Court puts Respondent on notice that, if it fails to respond to the Court's orders, the Court may find that it has abandoned its request for a hearing and dismiss its request. 28 C.F.R. § 68.37(b)(1); *see, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for a hearing when it failed to respond to the court's orders). "A final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Final Dec. and Order of Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013)).

The Court will hold Respondent's Motion to Dismiss in abeyance pending the filing of its answer and showing of good cause for its untimely filing.

### III. ORDERS

IT IS SO ORDERED that, within twenty days of the date of this Order, Respondent, Mendoza Maintenance Group, Inc., shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case.

IT IS FURTHER ORDERED that, within twenty days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9.

If Respondent fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint and response to this Order to Show Cause, the Court may conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b). Respondent's failure to file an answer "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint" and the Court may enter a default judgment against Respondent as to both liability and penalties. *Id.* § 68.9(b).

SO ORDERED.

Dated and entered on January 11, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge