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

August 1, 2024

VARUN MANGEWALA, Complainant,	)	
v.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 2024B00051
SAIL INTERNET INC., Respondent.	)	

Appearances: Varun Mangewala, Pro se Complainant
Collin D. Cook, Esq., Ralph Hua, Esq., and David M. Shannon, Esq., for Respondent
Angela Hollowell-Fuentes, Esq., for the United States

ORDER GRANTING MOTION TO RECONSIDER & REVISING CASE SCHEDULE

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, § 1324b.

On December 9, 2023, Varun Mangewala, Complainant, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Sail Internet, Inc. Complainant alleges Respondent discriminated against him (citizenship status), in violation of § 1324b(a)(1), and retaliated against him, in violation of § 1324b(a)(5).

On April 1, 2024, Respondent filed its Answer and a Motion to Dismiss.[1]

[1] Respondent's Motion to Dismiss is not paginated. The Court assigned page numbers.

Respondent alleged the IER notice of receipt letter, 28 C.F.R. § 44.301(a), and the IER 90-day letter, 28 C.F.R. § 44.303(b)-(c) were both issued outside the required regulatory time periods.

On April 17, 2024, Complainant filed a Response.

On April 23, 2024, IER filed a Motion for Leave to File,[2] with a Statement of Interest (SOI) attached.[3] In its filing, IER takes a divergent (from Respondent) view[4] of the matter at issue.

On April 24, 2024, the Court granted IER's motion, and accepted the filing. The Court invited Respondent to provide a reply filing; however, the Court never received such a filing by the deadline (even though, as explained below, one was apparently timely sent).

On May 10, 2024, Respondent sent via FedEx its reply. The FedEx tracking information for the reply indicates that it arrived at OCAHO on May 13, 2024, Mot. Reconsider, Ex. B; however, for reasons that remain unclear, there is no OCAHO record of its receipt, and thus it was never presented to or reviewed by the undersigned. Separately, Respondent served IER and Complainant with its reply filing.

Without having reviewed or considered Respondent's timely reply, the Court issued its Order Denying Respondent's Motion to Dismiss on July 18, 2024.

Mot. Dismiss at 3-4. Respondent's conclusion (that these letters were untimely issued) is predicated upon an assertion that an IER charge is "complete" upon submission (versus "complete" at a later date), and it is this date that starts the clock for IER's subsequent notice deadlines. *Id.* at 2-3. According to Respondent, the consequence of the untimely-issued letters is the Complaint's preclusion from this forum, as "the Complainant does not have any IER letter that would permit him to proceed with this private action under 28 CFR 44.303(c)." *Id.* at 4.

[2] On April 24, 2024, the Court issued an Order Granting IER Motion to File Amicus Brief & Notice of Appearance, agreeing that IER's submission "would assist the Court in fully developing the record on this issue." Order Granting IER Mot. File Amicus Br. 3. The Order also permitted Respondent to file a reply. *Id.*

[3] IER attached a variety of exhibits to this filing, including, *inter alia*, declarations from IER attorneys and dates the parties received IER's correspondence. SOI Exs. B-C; *Id.* at Ex. C, Attach. A.; *Id.* at Exs. F, I-J.

[4] When IER receives an incomplete submission, it does not believe the regulation requires it to start the clock (to issue the required letters). SOI 8. Instead, the date IER determines an inadequate submission is "complete" is the start date to calculate its subsequent letter deadlines. *Id.* In IER's assessment, "receipt of a charge" implies receipt of a submission compliant (or deemed compliant) with 28 C.F.R. § 44.101(a) (elements of a charge). *Id*. at 11.

On July 23, 2024, the Court held a prehearing conference in which it explained discovery and set a case schedule.

On July 25, 2024, the Court received Respondent's Motion to Reconsider (the Order Denying Motion to Dismiss). Respondent highlights the Court did not consider its timely filing and characterizes its content as "material to this Court's decision in the motion to dismiss." Mot. Reconsider 1. The Respondent explains its reply provided novel arguments related to the facts and assertions raised by IER. *Id.* at 2. Specifically, Respondent argues the charge was complete when filed/submitted, and now frames the issue as a determination as to "whether the charge was complete when it was submitted on April 27, 2023." *Id*. at 2.

II. MOTION TO RECONSIDER – LAW & ANALYSIS

"OCAHO's Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders[,]" the Court may turn to the Federal Rules of Civil Procedure as permissive guidance. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, 2 (2021) (citations omitted); *see* 28 C.F.R. § 68.1.[5]

The "power to modify an interlocutory order is authorized by . . . Federal Rule 54(b)." *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285a, 1 n.1 (2018) (citations omitted); *see also Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10–12 (2021); *Ogunrinu v. Law Res.*, 13 OCAHO no. 1332b, 4 (2019); *United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1071, 7–8 (2001); *United States v. Four Star Knitting, Inc.*, 5 OCAHO no. 815, 711, 716 (1995). The decision to grant or deny a motion for reconsideration pursuant to Federal Rule 54(b) is discretionary. *Zajradhara v. LBC Mabuhay (Saipan) Inc*., 16 OCAHO no. 1423d, 4 (2023); *see also Sharma v. NVIDIA Corp*., 17 OCAHO no. 1450g, 3 (2023).

The Ninth Circuit Court of Appeals[6] noted "[a]s long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 245 F.3d 882, 885 (9th Cir. 2001) (quoting *Melancon v. Texaco, Inc*., 659 F.2d 551, 553 (5th Cir. 1981). Courts may "have local rules governing motions to reconsider an

[5] Pursuant to 28 C.F.R. § 68.1, "[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by [the OCAHO] rules, by the Administrative Procedure Act, or by any applicable statute, executive order, or regulation."

[6] Parties are in California and the discrimination occurred in California. The Court shall reply on the Ninth Circuit. *See* 28 C.F.R. § 68.57 (parties may appeal to the Circuit Court of Appeal for the circuit in which the violation allegedly occurred or where the employer resides or does business).

interlocutory order," or they may apply the standard for a motion to alter or amend a judgment under Federal Rule 59(e). *Sessa v. Ancestry.com Operations, Inc*., 2024 WL 195995 at *1 (D. Nev. Jan. 17, 2024). Generally, "[f]ederal [c]ourts consider the following as grounds for reconsideration" under Rule 54(b), "1) intervening change in controlling law; 2) new evidence previously unavailable; and 3) need to correct clear error or prevent manifest injustice." *Brown v. Pilgrim's Pride Corp*., 14 OCAHO no. 1379c, 4 (compiling cases from federal Courts of Appeal).

The Court now GRANTS Respondent's motion to reconsider. This case presents a clear example of the third scenario. Mindful that IER's submission contained new evidence and novel argument, the Court permitted Respondent an opportunity to be heard. Respondent desired the Court's consideration of its additional argument; however, despite its diligent efforts to timely file its reply, the Court did not consider the Reply filing in advance of issuing a decision. Respondent's Supplemental Brief (Reply) for Motion to Dismiss is now accepted and part of the record.

III. STAY OF DEADLINES & DISCOVERY

On July 23, 2024, the Court issued a case schedule setting deadlines within which parties were to complete discovery and dates by which parties could file summary decision or other dispositive motions. These deadlines were provided with the understanding the Respondent's Motion to Dismiss had been resolved. Because the Court will now re-consider the matter, it now finds it prudent to stay all deadlines and provide additional guidance related to discovery.

To the extent a party has yet to propound discovery, that party shall not propound any discovery until instructed to do so by the Court. Further, to the extent a party has already propounded discovery, the receiving party need not respond at this time. Depending on the resolution of the Motion to Dismiss, parties can anticipate a discussion on how best to initiate or re-initiate discovery at the next prehearing conference.

IV. CLARIFICATION AS TO WHAT IS BEFORE THE COURT

To assist the parties in understanding what the Court will consider in adjudicating the Motion to Dismiss, the Court now informs the parties of the filings it will consider:

1. Respondent's Motion to Dismiss
2. Complainant Response to Motion to Dismiss by Respondent
3. IER Statement of Interest
4. Court's Order Denying Respondent's Motion to Dismiss
5. Respondent's Supplement Brief for Motion to Dismiss, as attached to Respondent's Motion to Reconsider

V. GUIDANCE TO PARTIES – BRIEFING SCHEDULE AND PROPOSED CONTENT

The Court sets a briefing schedule as follows:

Respondent filing:	August 22, 2024
Any Response filing (IER or Complainant):	September 12, 2024
Reply filing:	September 26, 2024

The Court now provides proposed topics for consideration and discussion by the parties. Written briefs may contain any other argument (and evidence) parties deem relevant and persuasive.

1. Review of Section II of the July 18, 2024 Order Denying Respondent's Motion to Dismiss, which covers the pre-complaint procedural history. Parties should opine on whether:
    a. There are inaccuracies contained in this section. If yes, parties should provide evidence and argument on this point (or cite previous filing by name and page).
    b. There are omissions contained in this section. If yes, parties should provide evidence and argument on this point (or cite previous filing by name and page).
2. Review of Section III of the July 18, 2024 Order, which provides law and analysis. Parties should opine on:
    a. The propriety of characterizing Respondent's contention as jurisdictional or non-jurisdictional (which would bear on whether equitable consideration are available).
    b. The analysis pertaining to the term "complete" as implicit in "receipt of charge."[7]
3. Based on the attachment to the Motion for Reconsideration, it appears Respondent may be framing this issue (at least in part) as whether the charge in this case (filed/submitted on April 27, 2023) was "complete" the instant it was filed.
    a. Respondent should provide any clarification on this point it deems appropriate and bear in mind its obligations as the moving party.
    b. If this is the proposed dispositive issue, parties should consider providing evidence and argument on this point, and other points arising from such a conclusion (to the extent it is supported by evidence and regulation).
    c. Parties should also consider whether equitable considerations are available should the Court reach a conclusion which requires their analysis.

[7] Understanding Respondent may not frame the issue in a way that renders this the dispositive query, parties should still consider opining on this point as it is still foundational to the analysis.

SO ORDERED.

Dated and entered on August 1, 2024.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge