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

December 5, 2024

ARTIT WANGPERAWONG, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2024B00007
META PLATFROMS, INC., Respondent.	)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for Respondent

ORDER GRANTING RESPONDENT LEAVE TO FILE REPLY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, Artit Wangperawong, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc., alleging Respondent discriminated against him (citizenship status) and retaliated against him, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(5). On August 19, 2024, Complainant filed a new complaint against Respondent, alleging new claims of citizenship status discrimination and retaliation. On October 30, 2024, the Court consolidated the two cases.

On November 18, 2024, Respondent filed its Motion to Dismiss the Complaint, Motion to Strike, and Motion for a Protective Order to Stay Discovery Pending Disposition of this Motion (Motion to Dismiss, Strike, and Stay). This Motion addresses the newer allegations.

On November 21, 2024, Complainant filed his Opposition.

On December 4, 2024, Respondent filed a Motion for Leave to File a Reply Brief in Further Support of Its Motion to Dismiss, Strike, and Stay (Motion for Leave to File Reply).

The Court has discretion to accept reply and sur-reply filings (or not). 28 C.F.R. § 68.11(b); *A.S. v. Amazon Web Servs. Inc.*, 14 OCAHO no. 1381e, 2 n.3 (2021) (citing 28 C.F.R. § 68.11(b)) Motions for leave serve an important function – as they allow the Court to control the creation of the administrative record and conserve judicial resources. *See Zakarneh v. Intel Corp.*,

16 OCAHO no. 1414b, 2–3 (2022) (discussing leave to file amicus briefs). Parties seeking leave to file a reply must show good cause to warrant accepting the reply. *See Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450d, 2 (2023) (citing, inter alia, *Brown v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379b, 1 (2022)). The Court is inclined to grant motions that favor further record development and provide an opportunity for parties to be heard on novel issues or argument. *See Heath v. Ameritech Global*, 16 OCAHO no. 1435, 3 (2022) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313–14 (1950)).

Respondent's initial motion makes several requests of the Court, and each (motion to strike, motion to stay discovery, and motion to dismiss) shall ultimately be evaluated against its appropriate analytical framework. Respondent informs the Court it seeks to address new arguments raised in the opposition filing, and argues such a reply would assist the Court in properly evaluating each motion. This is sufficient good cause, and the leave to file a reply is GRANTED.

In its motion seeking leave, Respondent correctly notes "[w]hen 'matters outside the pleadings are considered, a motion to dismiss may be converted to one of summary decision.'" Mot. Leave File Reply 4 (internal citations omitted). Consistent with other cases where extrinsic evidence is submitted alongside filings at the motion to dismiss-phase,[1] the Court is (once more) not inclined to convert the motion and consider such extrinsic evidence (that which has been attached already to the Opposition filing, or that which Respondent would be tempted to submit in a Reply filing).

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[1] The Court relies on the similar analysis outlined in *Zarco Hotels.* (In that case, it was Respondent who provided the additional evidence; however the issue/analysis is essentially the same).

> Generally, when "considering a motion to dismiss, the [C]ourt must limit its analysis to the four corners of the complaint." *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113–14 (1997) (citations omitted). "When matters outside the pleadings are considered, a motion to dismiss may be converted to one for summary decision." *Barone v. Superior Wash & Gasket Corp.*, 10 OCAHO no. 1176, 2 (2013); *see also Khoja v. Oregigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) ("When 'matters outside the pleading are presented to and not excluded by the court,' [a] 12(b)(6) motion converts into a motion for summary judgment under Rule 56.") (citing Fed. R. Civ. P. 12(d)).
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> Here, the Court declines to convert Respondent's Motion to Dismiss to one for summary decision. In reaching this decision, the Court considered this Respondent is pro se, and neither party has engaged in meaningful discovery. *See Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373b, 4 n.2 (2022) (declining to convert motion to dismiss based on failure to state a claim where discovery had not yet occurred, and the parties had not been directed to provide information on this question). A declination to convert the motion does not preclude either side from filing a more complete submission for summary decision after having access to discovery.
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> Because the Court will not convert the Motion to Dismiss, the extrinsic evidence attached to it will not be considered by the Court.

United States v. Zarco Hotels, 18 OCAHO no. 1518b, 4–5 (2024).

Because the Court declines to convert this motion and opposition to an analysis of summary decision, any additional filings should draw on only the factual allegations within the Complaint (bearing in mind these factual allegations will be accepted as true with all reasonable inferences drawn in Complainant's favor.) *See generally Wangperawong v. Meta*, 18 OCAHO no. 1510c (2024); *see also Udala v. N.Y. State Dep't of Educ.*, 4 OCAHO no. 633, 390, 394 (1994); Fed. R. Civ. P. 10(c).

Respondent may submit a Reply filing on or before December 16, 2024. Any Reply submitted after that date may not be considered as it would be untimely.

As to discovery, the Court previously stayed the deadlines pertaining to all discovery. *See* November 15, 2024 Order Clarifying Preh'g Conf. Summ. To ensure clarity on this issue, the Court now confirms for parties this stay will remain in effect until at least the next prehearing conference (see below).

Finally, the Court cancels the December 18, 2024, prehearing conference, as it is prudent to first resolve the issues raised in the motion practice prior to engaging in case management discussions with the parties. Parties can anticipate a prehearing conference the week of February 3, 2025, which will have a firm date and time set in a separate order.

SO ORDERED.

Dated and entered on December 5, 2024.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge