

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

CRISTINA SARAID VARELA CABALLERO,))	
Complainant,))	
v.))	8 U.S.C. § 1324b Proceeding
MACYS,))	OCAHO Case No. 2024B00033
Respondent.))	
))	

Appearances: Cristina Saraïd Varela Caballero, pro se Complainant
Amy L. Peck, Esq., Sarah J. Millsap, Esq., and David A. Calles Smith,
Esq., for Respondent

ORDER ON COMPLAINANT’S FILINGS, RESPONSE DEADLINE TO
RESPONDENT’S PARTIAL MOTION TO DISMISS, AND ELECTRONIC FILING

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant, Cristina Saraïd Varela Caballero, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on January 10, 2024, against Macy’s. Complainant alleges that Respondent, Macy’s, violated Section 274B of the Immigration and Nationality Act. Compl. §§ 6–10.

On January 11, 2024, the Chief Administrative Hearing Officer (CAHO) mailed Respondent the complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA). The United States Postal Service (USPS) website indicated that the complaint and NOCA were delivered to Respondent’s front desk, reception area, or mail room on January 24, 2024, in Houston, Texas. Under OCAHO’s Rules of Practice and Procedure for

Administrative Hearings,¹ which generally govern these proceedings, Respondent's answer was due within thirty days, by February 24, 2024. *See* 28 C.F.R. § 68.9(a).

On February 6, 2024, Complainant filed a document notifying the Court of a change to her mailing address.

On February 27, 2024, Respondent filed Respondent's Answer and Affirmative Defenses, Respondent's Partial Motion to Dismiss, and Respondent's Brief in Support of Motion to Dismiss. On February 27, 2024, and February 29, 2024, counsel for Respondent filed their Appearances of Counsel for Respondent.

On February 29, 2024, OCAHO invited the parties by letter to register for its Electronic Filing Pilot Program through which they can file electronically all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party.² OCAHO provided the parties with the Attorney/Participant Registration Form and Certification for OCAHO's Electronic Filing Pilot Program, along with instructions for accessing any encrypted messages OCAHO may use to send decisions or orders that contain personally identifiable information, such as names, email addresses, home addresses, and telephone numbers.³

On March 14, 2024, OCAHO staff spoke with Complainant by telephone. During the telephone call, Complainant represented that she had called the law firm whose counsel is representing Respondent and provided them with her new mailing address. Complainant indicated that the USPS was forwarding mail to her new address and that she had received some forwarded filings from Respondent. During the telephone call, Complainant did not inform OCAHO staff when she received service of those filings.

On August 28, 2024, Complainant filed a document notifying the Court of an additional change to her address.

¹ OCAHO Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68, *available at* <https://www.govinfo.gov/content/pkg/CFR-2021-title28-vol2/pdf/CFR-2021-title28-vol2-part68.pdf>.

² OCAHO's Electronic Filing Pilot Program is described in detail in the Federal Register. *See* 79 Fed. Reg. 31143 (May 30, 2014).

³ Information and links to materials associated with OCAHO's Electronic Filing Pilot Program may be found on OCAHO's filing page on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/ocaho-filing>.

II. DISCUSSION

A. Identity of Respondent

In its Answer, Respondent's counsel represents that Complainant has "incorrectly identified" the Respondent as "simply 'Macy's,'" and that "Complainant was employed by Macy's Retail Holdings, LLC." Ans. 1 n1. The Court grants the parties leave to file a motion to amend the case caption to identify Respondent correctly. Before filing such a motion, the filing party must ask opposing counsel or the opposing party whether there is an objection to the motion, and the motion must state that the conferral occurred, or if not, why not. Joint, uncontested, and agreed motions must be so identified in both the title and the body of the motion. If there is an objection, the movant must note that fact on the first page of the motion. Under OCAHO's Rules of Practice and Procedure for Administrative Hearings, a party may file a response in support of, or in opposition to, the motion within ten days after the motion is served. *See* 28 C.F.R. § 68.11(b).

B. Complainant's Changes of Address

The Court next addresses Complainant's two filings notifying the Court of changes to her address. Neither filing contained a certificate of service indicating service on the opposing party as required by OCAHO's Rules of Practice and Procedure for Administrative Hearings. *See* 28 C.F.R. § 68.6(a) (providing that all pleadings shall be "accompanied by a certification indicating service to all parties of record"); *see also* OCAHO's Practice Manual Ch. 3.2(c).⁴

Although Complainant did not attach a certificate of service to her filings, the Court exercises its discretion and accepts the filings in this matter. *See, e.g., United States v. Bhattacharya*, 14 OCAHO no. 1380b, 3 n.3 (2021)⁵ (noting that "OCAHO

⁴ OCAHO's Practice Manual is available online at <https://www.justice.gov/eoir/reference-materials/ocaho>.

⁵ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. 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

adjudicators do have some discretion to accept non-conforming pleadings in appropriate circumstances”) (citation omitted). In making this determination, the Court has considered Complainant’s pro se status and the nature of the filings, namely, to inform the Court about changes to Complainant’s mailing address. OCAHO will maintain the address provided to the Court on August 28, 2024, as Complainant’s address of record.

The Court notes that the CAHO previously informed the parties in the NOCA that a notice of change of address or contact information must be served on OCAHO as well as on the opposing counsel, and the Court repeats that reminder here. *See* Notice Case Assignment 2 (“All representatives and parties are also required to maintain a current address with OCAHO and to timely file a notice of a change of address with the presiding Administrative Law Judge . . . and must also serve such notice on the opposing party.”); *see also United States v. Cordin Co.*, 10 OCAHO no. 1162, 4 (2012)) (“It is the Respondent’s responsibility (indeed, the responsibility of all parties before OCAHO) to file a notice of change of address or other contact information directly with the [Administrative Law Judge], as well as serving that notice on the opposing party.”).

Given that Complainant filed both change-of-address submissions without certificates of service, it is unclear whether she served her filings on Respondent. At most, the Court has Complainant’s representation to OCAHO staff during the telephone call on March 14, 2024, that she provided her updated address to someone at the law firm where Respondent’s counsel work. The Court therefore has attached to this Order copies of Complainant’s filings dated February 6, 2024, and August 28, 2024, to ensure their receipt by Respondent’s counsel.

Likewise, the Court has attached to this Order copies of Respondent’s filings—Respondent’s Answer and Affirmative Defenses, Respondent’s Partial Motion to Dismiss, Respondent’s Brief in Support of Motion to Dismiss, and Appearances of Counsel for Respondent—to ensure their receipt by Complainant. It is the Court’s understanding that Complainant was no longer living at the address to which these filings were mailed, although she represented to OCAHO staff that the USPS had forwarded filings by Respondent to her new address. It remains unclear which specific filings she received and when she received them.

C. Response Deadline for Respondent’s Partial Motion to Dismiss

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 at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

One of the filings at issue is Respondent's Partial Motion to Dismiss. Complainant has not filed a response to Respondent's motion, and Respondent's motion did not indicate Complainant's position on the motion. OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that parties may file a response in opposition to a motion "[w]ithin ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix" 28 C.F.R. § 68.11(b). Although OCAHO's Rules "do not provide specific standards for granting extensions, . . . the standard routinely applied is good cause." *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499, 5 (2023) (citing, inter alia, Fed. R. Civ. P. 6(b)(1) ("When an act may be or must be done within a specified time, the court may, for good cause, extend the time")).

Here, it is unclear if, or when, Respondent's motion was served on Complainant given her move to a new residential address. Although it was Complainant's responsibility to serve opposing counsel with her change-of-address filings, the Court acknowledges Complainant's pro se status and her representation that she contacted the law firm representing Respondent by telephone to communicate her first change of address. This communication appears to have occurred after Respondent filed its motion. As such, the Court will consider the date of this Order as the date of service of Respondent's Partial Motion to Dismiss and Respondent's Brief in Support of Motion to Dismiss. To the extent that Complainant received Respondent's filings before the date of this Order, the Court finds an extension of the regulatory deadline justified for the above-stated reasons.

Complainant shall file any response to Respondent's Partial Motion to Dismiss within ten days from the date of issuance of this Order. 28 C.F.R. § 68.11(b); see *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462b, 3 n.4 (2023) (discussing an extension of the regulatory deadline for the complainant to file an opposition to a motion to dismiss considering confusion regarding service of the motion).

D. Electronic Filing

OCAHO has now received signed and completed Attorney/Participant Registration Forms and Certifications for OCAHO's Electronic Filing Pilot Program from Complainant and all three of Respondent's counsel. Both parties in this case having registered for the program, the Court now orders them to file electronically all filings in this case in accordance with the instructions for OCAHO's Electronic Filing Pilot Program unless otherwise permitted by the Court or its designee. The parties shall copy all electronic filers on their filings to the Court. All filings must be accompanied by a certificate of service indicating the date and manner of service. The filing party shall sign and date the certificate of service.

Should the parties wish to designate additional attorneys of record as electronic filers, they may submit supplemental registration and certification forms for OCAHO's Electronic Filing Pilot Program. Parties must copy all electronic filers on these submissions.

E. Duty to Notify and OCAHO's Rules

The enrollment of this case in OCAHO's Electronic Filing Pilot Program does not change the parties' duty to maintain up-to-date contact information with the Court. Should any of the parties' contact information change, including their best email address, telephone number, or mailing address, it is their responsibility to timely notify OCAHO and the opposing party of those changes by filing a notice with the Court and serving it on the opposing party. *See United States v. Ortiz*, 6 OCAHO no. 904, 919, 925 (1996) ("It is the party's responsibility to inform the Court and opposing party of any change of address."); *see also United States v. Panamerican Supply Co.*, 5 OCAHO no. 804, 654, 655 (1995) ("[I]t is the Respondent's duty to keep both the Court and the opposing party informed as to its current mailing address and telephone number.").

Finally, the Court notes that all parties appearing before OCAHO, including parties appearing pro se, have a duty to familiarize themselves with OCAHO's Rules of Practice and Procedure for Administrative Hearings, including the requirements for submitting proper filings. *See Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471c, 4 (2023). As a courtesy, the Court has attached a copy of OCAHO's Rules to this Order. The parties are encouraged to review the additional resources on OCAHO's website, including the OCAHO Practice Manual and OCAHO's published decisions which are listed both chronologically and by topic.⁶

III. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. § 68.11(b), Complainant, Cristina Saraid Varela Caballero, shall file any response to Respondent's Partial Motion to Dismiss within ten days from the date of issuance of this Order.

IT IS FURTHER ORDERED that the parties shall electronically file all filings in this case in accordance with the instructions for OCAHO's Electronic Filing Pilot

⁶ *See supra* notes 4 and 5; *see also* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Program unless otherwise permitted by the Court or its designee. The parties shall copy all electronic filers on their filings to the Court. All filings must be accompanied by a certificate of service indicating the date and manner of service. The filing party shall sign and date the certificate of service.

Should the parties wish to designate additional attorneys of record as electronic filers, they may submit supplemental registration and certification forms for OCAHO's Electronic Filing Pilot Program. They must copy all electronic filers on these submissions.

SO ORDERED.

Dated and entered on November 21, 2024.

Honorable Carol A. Bell
Administrative Law Judge