

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

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

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

ORDER SETTING RESPONSE DEADLINE TO RESPONDENT'S MOTIONS

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 Saraid 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 mailed Respondent the complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA). The United States Postal Service 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,<sup>1</sup> 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 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 November 21, 2024, the Court issued an Order on Complainant's Filings, Response Deadline to Respondent's Partial Motion to Dismiss, and Electronic Filing. Through the Order, the Court: (1) gave the parties leave to file a motion to amend the case caption; (2) accepted and disclosed Complainant's change-of-address filings and updated her address of record; (4) provided Complainant with copies of Respondent's filings, including its Answer, Partial Motion to Dismiss and Brief in Support, and counsels' appearances; (5) set a ten-day response deadline to Respondent's Partial Motion to Dismiss; and (6) enrolled the case in OCAHO's Electronic Filing Pilot Program.

On November 22, 2024, Respondent filed Respondent's Motion to Consolidate and Motion to Refer Cases to Settlement Officer Program.<sup>2</sup>

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<sup>1</sup> OCAHO's 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>.

<sup>2</sup> Respondent sent the Court its motions by facsimile on November 20, 2024. OCAHO's rules allow parties to file pleadings and briefs by facsimile where a time limit is imposed by statute, regulation, or order, but they may do so "only to toll the running of a time limit." 28 C.F.R. § 68.6(c). However, to toll the running of a time limit, the filer must forward the original, signed pleading concurrently with the transmission of the facsimile. *Id.* OCAHO's rules further require that the party filing by facsimile certify in its certificate of service that the original pleading was served on the opposing party by facsimile or same-day hand delivery, or, if those methods are not feasible, by overnight delivery service. *Id.* Here, Respondent complied with OCAHO's regulation because it served Complainant by overnight delivery service with its motions. However, because no time limit was imposed by statute, regulation, or order, Respondent's motions are considered filed as of the date they were received by mail, not the date that they were transmitted by facsimile.

## II. DISCUSSION

Pending before the Court are Respondent's Motion to Consolidate and Respondent's Motion to Refer Cases to Settlement Officer Program. Through its Motion to Consolidate, Respondent seeks to consolidate this matter with another OCAHO case involving the same parties, namely, OCAHO case 2024B00127. Respondent also moves the Court to refer both cases to the OCAHO Settlement Officer Program for mediation.<sup>3</sup>

Neither of Respondent's motions indicate whether Respondent conferred with Complainant before filing them, nor do they indicate Complainant's position on any of the issues raised. OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that "[w]hether a motion is made orally or in writing, all parties shall be given reasonable opportunity to respond or to object to the motion or request." 28 C.F.R. § 68.11(a). When a written motion is made, a party has ten days (or whatever amount of time the Court may fix) within which to file a response either supporting or opposing the motion. *Id.* § 68.11(b). As such, Complainant is entitled to an opportunity to respond to these motions. The certificates of service for both motions indicate service was made on November 20, 2024, by overnight courier service. Because the end of the ten-day response period falls on a weekend, Complainant has through Monday, December 2, 2024, to file any response to Respondent's motions. *See id.* § 68.8(a).

During this response period, or until the Court learns of Complainant's position on Respondent's motions, the Court will not rule on the pending motions. All filing deadlines—including Complainant's deadline to file any response to Respondent's Partial Motion to Dismiss—remain in place.

Going forward, before filing 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. If there is an objection, the movant must note that fact on the first page of the motion and of any

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<sup>3</sup> EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program. It is a voluntary mediation program through which the parties may use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution. More information about the Settlement Officer Program can be found in OCAHO's Practice Manual: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>. Both parties must agree to a referral of the case to a Settlement Officer. Should the parties be interested in mediating this case, they must review the OCAHO Settlement Officer Program's rules and file a joint motion with the Court, stating that they have been fully informed about the program's procedures and consent to their use.

separate brief in support. Joint, uncontested, and agreed motions must be so identified in both the title and the body of the motion.

### III. ORDERS

IT IS SO ORDERED that Complainant, Cristina Varela Caballero, has through December 2, 2024, to file any responses to Respondent's Motion to Consolidate and Respondent's Motion to Refer Cases to Settlement Officer Program.

SO ORDERED.

Dated and entered on November 27, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge