

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. 2024A00030
RITALKA, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Kenneth Knapp, Esq., for Complainant  
Kayla Ruikkie, Esq., for Respondent

ORDER ON COMPLAINANT'S OPPOSITION TO THE RESPONDENT'S  
REQUEST TO DISMISS

I. PROCEDURAL HISTORY

On January 3, 2024, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Ritalka, Inc., violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Specifically, Complainant alleges that Respondent (a) failed to prepare and/or present or failed to prepare in a timely manner the Employment Eligibility Verification Form (Form I-9) for ten individuals and (b) failed to ensure that the employee properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Form I-9 for fifty-seven individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶¶ 4–12. Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on November 29, 2023, seeking a fine of \$88,642 for the alleged violations, and Respondent's request for a hearing dated November 29, 2023. *Id.* Exs. A–B.

On January 16, 2024, OCAHO's Chief Administrative Hearing Officer served Respondent via United States Postal Service certified mail with the complaint, the

NIF, Respondent's request for a hearing, and a Notice of Case Assignment for Complaint Alleging Unlawful Employment.

Respondent filed Respondent's Answer to Complainant's Complaint on February 15, 2024. *See* 28 C.F.R. § 68.9(a) ("Within thirty (30) days after the service of a complaint, each respondent shall file an answer.").<sup>1</sup> In its answer, Respondent addressed the allegations against it and asserted several affirmative defenses. Answer 1–6, 12–15. Respondent also included sections entitled "Legal Arguments" and "Evidence" in which it challenged Complainant's proof of the allegations in the complaint and attached as an exhibit a spreadsheet regarding those allegations.<sup>2</sup> *Id.* at 6–12, Ex. A. Respondent then made a "request for dismissal or alternative resolution," *id.* at 15, arguing that it should be issued a warning notice, have various allegations dismissed from the complaint, or have the fine per alleged violation reduced. *Id.* at 15–16.

On February 21, 2024, Complainant filed Complainant's Opposition to the Respondent's Request to Dismiss. Complainant asserted that its complaint complied with OCAHO's pleading standard in 28 C.F.R. § 68.7(b) and explained that it was "provid[ing] this response in the event the ALJ views the Answer as a Motion to Dismiss." Complainant's Opp'n to Mot. to Dismiss 3.

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<sup>1</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. pt. 68 (2024), generally govern these proceedings and are available on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>2</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings specify that an answer shall include "[a] statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation . . . and a statement of the facts support each affirmative defense." 28 C.F.R. §§ 68.9(c)(1)–(2). Respondent has complied with OCAHO's Rules in that its answer includes a section denying or admitting the allegations in the complaint. Answer 1–6. The "Legal Arguments" and "Evidence" sections of Respondent's answer, including the attached annotated spreadsheet, that follow those denials and admissions are more indicative of a filing on summary decision with their assertions that there are no genuine issues as to any material facts. *Id.* at 6–12, Ex. A. As such, they are premature and will not be considered. At the prehearing conference, the Court will set dates for the completion of discovery and the filing of dispositive motions, including motions on summary decision to which the parties may attach any supporting evidence they wish the Court to consider.

On March 7, 2024, the Court issued an Order on Electronic Filing through which it enrolled this case in OCAHO's Electronic Filing Pilot Program.

On November 6, 2024, DHS Assistant Chief Counsel (ACC) Nicole Wells filed Complainant's Motion to Withdraw as Counsel for DHS. On that same date, DHS ACC Kenneth Knapp filed Complainant's Motion to Substitute as Counsel. ACC Knapp attached to his motion a completed and signed Attorney Registration Form and Certification for OCAHO's Electronic Filing Pilot Program. On November 12, 2024, DHS ACC Knapp filed a Notice of Appearance in this matter.

On January 16, 2025, the Court issued an Order on Complainant's Motion to Withdraw, Motion for Substitution, Notice of Appearance, and Electronic Filing. *United States v. Ritalka, Inc.*, 21 OCAHO no. 1638 (2025).<sup>3</sup> The Court granted Complainant's Motion to Withdraw as Counsel for DHS and Motion to Substitute as Counsel. *Id.* at 3–4. The Court substituted DHS ACC Knapp for ACC Wells as counsel for Complainant and extended electronic filing privileges to ACC Knapp. *Id.*

On March 7, 2025, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference.

## II. LEGAL STANDARDS AND DISCUSSION

Before the Court is Complainant's Opposition to the Respondent's Request to Dismiss. In that filing, Complainant argues that its complaint satisfies OCAHO's pleading standard in 28 C.F.R. § 68.7(b)(3), and it asks the Court to deny Respondent's request to dismiss "in the event the ALJ views the Answer as a Motion to Dismiss." Complainant's Opp'n to Mot. to Dismiss 3, 11.

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<sup>3</sup> 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 citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or on OCAHO's homepage on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

The Court need not consider Complainant's Opposition to the Respondent's Request to Dismiss because there is no pending motion to dismiss for failure to state a claim upon which relief can be granted. Respondent has not filed a motion to dismiss stating with specificity the legal and factual basis for dismissal in accordance with 28 C.F.R. § 68.10(a). Although Respondent mentions dismissal in its answer, it does so in its conclusory section entitled "Request for Dismissal or Alternative Resolution." Answer 15. Respondent then proposes various outcomes for this case, namely, dismissal of one or more allegations in the complaint, issuance of "a Warning Notice[.]" or imposition of a reduced fine, presumably after a finding of liability. *Id.* at 15–16. References in an answer to the dismissal of charges, in whole or in part, as desired outcomes of a case do not equate to a motion to dismiss the complaint pursuant to 28 C.F.R. § 68.10. Just as a "[m]otion to [d]ismiss is not a substitute for an answer which must meet the requirements for 28 C.F.R. § 68.9(c)[.]" an answer is not a substitute for a motion to dismiss. *United States v. Mendoza Maint. Grp., Inc.*, 18 OCAHO no. 1516, 3 (2024).

At the upcoming prehearing conference, Respondent may advise the Court if it wishes to file a stand-alone motion to dismiss for failure to state a claim upon which relief can be granted that comports with 28 C.F.R. § 68.10. Before filing any such motion, Respondent shall familiarize itself with OCAHO's Rules of Practice and Procedure for Administrative Hearings and case precedent regarding pleading standards for complaints.

SO ORDERED.

Dated and entered on March 7, 2025.

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Honorable Carol A. Bell  
Administrative Law Judge