

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. 2023A00060
JLG BUSINESS VENTURES, INC.,	)	
D/B/A RECIO AUTO SALES,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ricardo A. Cuellar, Esq., for Complainant  
Jose Luis Gonzalez for Respondent

ORDER ACCEPTING UNTIMELY ANSWER AND RESPONSE, DISCHARGING  
ORDER TO SHOW CAUSE, AND DENYING COMPLAINANT'S MOTION FOR  
DEFAULT JUDGMENT

I. PROCEDURAL HISTORY

On May 15, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, JLG Business Ventures, Inc., doing business as Recio Auto Sales, 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 failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for four individuals and failed to ensure that the employee properly completed section 1 and/or failed to properly complete section 2 or 3 of the Forms I-9 for eighteen individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 6.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it personally served on Respondent on July 30, 2019, seeking a fine of \$41,822 for the alleged violations, and Respondent's request, by

letter dated July 30, 2019, for a hearing before OCAHO (“request for hearing”). Compl. Exs. A–B. Complainant also attached a request that OCAHO serve the complaint on Respondent’s president, Jose Luis Gonzalez, at an address in Texas. *Id.*, Attach. (citing 28 C.F.R. § 68.7.).

On May 22, 2023, using the United States Postal Service’s certified mail, the Chief Administrative Hearing Officer (CAHO) mailed Respondent the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent’s request for hearing (together, the “Complaint package”). Through the NOCA, the CAHO explained that these proceedings would be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings and applicable case law.<sup>1</sup> Notice of Case Assignment ¶ 1. The CAHO provided links to OCAHO’s Rules and its Practice Manual,<sup>2</sup> as well as contact information for OCAHO. *Id.* at ¶ 2. The CAHO directed Respondent to answer the complaint within thirty days of receipt in accordance with 28 C.F.R. § 68.9(a), and cautioned that failure to file an answer could lead the Court to enter a judgment by default and all appropriate relief pursuant to 28 C.F.R. § 68.9(b). *Id.* at ¶ 4.

Because OCAHO perfected service of the Complaint package on Respondent on May 27, 2023, Respondent’s answer was due no later than June 26, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). Respondent did not file an answer by that date.

On July 18, 2023, Complainant filed a Motion for Default Judgment. Complainant moved the Court to enter a default judgment against Respondent due to Complainant’s failure to file an answer or “plead or otherwise defend within thirty days of the receipt of [the] Complaint as required by 28 C.F.R. § 68.9(a).” Mot. Default J. 2.<sup>3</sup> Complainant asked the Court to issue an order directing Respondent to “cease and desist from the violations” and “pay the civil money penalties totaling \$41,822.00 as specified in the Complaint[.]” *Id.* Respondent did not file a response to Complainant’s motion. *See* 28 C.F.R. § 68.11(b) (affording a party ten days to file a written response in support of, or in opposition to, another party’s motion).

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<sup>1</sup> OCAHO’s Rules of Practice and Procedure for Administrative Hearings are the provisions contained in 28 C.F.R. part 68 (2024). OCAHO’s Rules are available on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>2</sup> The OCAHO Practice Manual describes the rules and procedures applicable to these proceedings and is available on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/reference-materials/ocaho>.

<sup>3</sup> Pinpoint citations to Complainant’s Motion for Default Judgment are to the page numbers of the PDF version of the motion on file with the Court.

On January 11, 2024, the Court issued an Order to Show Cause. *See United States v. JLG Bus. Ventures, Inc.*, 18 OCAHO no. 1515 (2024).<sup>4</sup> The Court ordered Respondent to file by January 31, 2024, an answer to the complaint comporting with 28 C.F.R. § 68.9 and a response providing sufficient facts to show good cause for its failure to timely file an answer. *Id.* at 5. The Court cautioned Respondent that, if it did not respond to the Order to Show Cause, this might “constitute a waiver of Respondent’s right to appear and contest the allegations of the complaint,” and that default may follow, or the Court might find that Respondent abandoned its request for hearing and dismiss it. *Id.* at 4–5. Given OCAHO’s practice of issuing an order to show cause before entering a default, the Court held Complainant’s Motion for Default Judgment in abeyance. *Id.* at 4.

On January 31, 2024, OCAHO received three submissions from Respondent, which appeared to be its answer, response to the Court’s Order to Show Cause, and a notice of appearance by Respondent’s president. By letter dated February 1, 2024, OCAHO staff rejected Respondent’s filings. In its letter, OCAHO staff explained that, for Respondent’s submissions to be accepted by the Court, the filings must conform with OCAHO’s Rules of Practice and Procedure for Administrative Hearings. Rejection Letter 1. OCAHO staff attached to the letter a copy of OCAHO’s Rules, for Respondent’s review. *Id.* OCAHO staff further explained that each filing must include a title and a case caption, *id.* (citing 28 C.F.R. § 68.7(a)); each filing must have its own certificate of service indicating service of the filing on all parties of record, *id.* at 2 (citing 28 C.F.R. § 68.6); and that an answer must conform with the requirements of 28 C.F.R. § 68.9(c), *id.* OCAHO staff explained that, for the Court to consider Respondent’s submissions, it must re-file them with those filing deficiencies remedied. *Id.*

On February 9, 2024, Jose Luis Gonzalez filed a Notice of Appearance in which he identified himself as Respondent’s president and a corporate officer.<sup>5</sup> Notice of

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<sup>4</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 the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>5</sup> OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that “[a]n individual may represent . . . any corporation . . . of which that individual is a partner or general officer in proceedings before the Administrative Law Judge [ALJ]”

Appearance 1. Also, on February 9, 2024—nine days after the Court’s deadline—Respondent filed an Answer and a Response to the Order to Show Cause. Both filings complied with OCAHO’s Rules.

## II. LEGAL AND REGULATORY STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings state that “[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint” and, as a result, the Administrative Law Judge (ALJ) “may enter a judgment by default.” 28 C.F.R. § 68.9(b).<sup>6</sup> “Nevertheless, OCAHO courts, like federal courts, generally disfavor default judgments.” *United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486a (2024) (citing *United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 47–48 (1995)). OCAHO precedent instructs that “[g]enerally, default judgments only should be used when the inaction or unresponsiveness of a particular party is unexcusable and the inaction has prejudiced the opposing party.” *D’Amico, Jr. v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997) (citations omitted).

Since the parties to this matter are in Texas, and the violations are alleged to have occurred there, the Court looks to the legal precedent of the relevant United States Court of Appeals, here the Fifth Circuit Court of Appeals. See 28 C.F.R. § 68.57 (designating for appeal purposes “the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.”). The Fifth Circuit has held that “[d]efault judgments are a drastic remedy, not favored by the Federal Rules and resorted to by the courts only in extreme situations.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989).

Here, after Respondent failed to timely answer the complaint, the Court, in keeping with OCAHO’s practice, issued an Order to Show Cause as to why a default judgment should not issue and asked Respondent to justify its failure to timely file

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by filing a notice of appearance that comports with OCAHO’s Rules. 28 C.F.R. § 68.33(c)(3)(iv). The Notice of Appearance filed by Mr. Gonzalez, who has identified himself as an officer of the Respondent corporation, comports with OCAHO’s Rules as it is signed and identifies “the name of the case or controversy, the case number . . . and the party on whose behalf the appearance is made.” *Id.* § 68.33(f). It also is accompanied by “a certification indicating that such notice was served on all parties of record.” *Id.* Respondent’s Notice of Appearance therefore fulfills the requirements of 28 C.F.R. § 68.33(f) and is accepted. Mr. Gonzalez’s appearance is entered in this case.

<sup>6</sup> OCAHO’s Rules also provide that “[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it.” *Id.* § 68.37(b).

its answer. *See JLG Bus. Ventures, Inc.*, 18 OCAHO no. 1515, at 4 (citing *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444 (1989)) (the CAHO explained that “It has long been OCAHO’s practice to issue an order to show cause before entering a default.”). In deciding whether to accept a late-filed answer, the Court reviews the respondent’s response to its order and determines whether “the [r]espondent possessed the requisite good cause for failing to file a timely answer[.]” *See Shine Auto Serv.*, 1 OCAHO no. 70, at 446.

To determine whether Respondent has shown good cause for its failure to file a timely answer to the complaint in this case, the Court considers the following non-exhaustive factors: “(1) whether the failure to act was willful; (2) whether setting the [order to show cause] aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003); *see also Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors). The Court also may consider whether the public interest was implicated, there was a significant financial loss to the party not in default, and if the party acted expeditiously to correct the default. *In re Dierschke*, 975 F.2d 181, 184 (5th Cir. 1992). Nevertheless, “[c]ourts need not consider all of these factors, and may identify and consider other factors.” *United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 5 (2022) (citing *Dierschke v. O’Cheskey*, 975 F.2d 181, 184 (5th Cir. 1992)). “The ultimate inquiry is whether the circumstances in a particular case warrant a finding of good cause to discharge an order to show cause or set aside a default.” *Id.* (citing *Dierschke v. O’Cheskey*, 975 F.2d at 184). OCAHO courts have applied similar factors in the context of defaults, including considering whether the complainant will be prejudiced, whether the respondent has a meritorious defense, and whether culpable conduct led to the default. *See United States v. Zoeb Enter., Inc.*, 2 OCAHO no. 356, 419, 421 (1991).

### III. DISCUSSION AND ANALYSIS

#### A. Timeliness of Respondent’s Filings

Before the Court are Respondent’s Answer and Response to Order to Show Cause. First, given that Respondent successfully filed its Answer and Response to the Order to Show Cause nine days after the deadline to do so, the Court must determine whether to accept these untimely filings.

OCAHO ALJs may exercise discretion to accept untimely filings. *See Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.11(b)) (“[T]he [OCAHO] ALJ maintains discretion to accept pleadings within a time period he may fix.”); *see also United States v. Ricky Catalano*, 7 OCAHO no. 974, 860, 863–64 (1997) (explaining that “it was within the discretion of the [ALJ] to consider a late response.”). The Court will exercise discretion in this case to accept

Respondent's late filings. In exercising this discretion, the Court has considered the fact that Respondent attempted to file its Answer and Response to the Order to Show Cause within the time fixed by the Court to do so, but that the filing was ultimately rejected due to filing deficiencies. Upon rejection, the Respondent remedied the deficiencies identified by OCAHO and re-filed the corrected submissions. Moreover, the Court considers both the fact that Respondent is not represented by counsel and the short length of the filing delay of nine days. *See United States v. De Jesus Corrales-Hernandez*, 17 OCAHO no. 1454, 4 (2022) (exercising discretion favorably to accept an answer and response to order to show cause filed seven days after the deadline, considering, inter alia, the short time elapsed and the respondent's pro se status).

#### B. Order to Show Cause and Complainant's Motion for Default Judgment

The Court now exercises its discretion and considers whether good cause exists to discharge the Order to Show Cause against Respondent or, alternatively, whether it should grant Complainant's Motion for Default Judgment which is based on Respondent's failure to file a timely answer to the complaint. Mot. Default J. 2.

Construing good cause generously, the Court finds that the above-listed factors weigh in favor of discharging the Order to Show Cause and denying Complainant's Motion for Default Judgment so that this case can be decided on the merits. First, Respondent's untimely filing of its Answer does not appear to have been willful. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. In the Response to the Order to Show Cause, Respondent's president states that there was a "miscommunication and misunderstanding between [Respondent and an] attorney" with whom Respondent had consulted regarding this case. Resp. Order Show Cause 1. Respondent's president represents that he thought that "since a response [to the NIF] was filed back in July 2019 requesting a hearing[,] all we had to do was wait for the notice to appear in person for the hearing." *Id.* Respondent—who decided to proceed without counsel in this case—also notes that its request for hearing included "an explanation of the findings of the audit to support our objection to Notice of Intent to Fine." *Id.*

Although the CAHO was clear about the need to file an answer within thirty days after receipt of the complaint, *see* Notice of Case Assignment ¶ 4, the Court weighs heavily Respondent's pro se status and is persuaded by Respondent's representations in its Response to the Order to Show Cause. A review of Respondent's request for hearing also confirms that Respondent included in its request what it termed "a written answer responding to each allegation . . . ." Compl. Ex. B. As such, Respondent's filing delay appears to reflect its lack of understanding of OCAHO's Rules of Practice and Procedure for Administrative Hearings and legal proceedings in general, rather than an intentional failure to defend itself in this litigation. Indeed, Respondent specifically asks the Court to allow it "to provide more information regarding [the] case . . . and eventually reach a decision on this case."

Resp. Order Show Cause 1. Moreover, once the Court issued the Order to Show Cause, Respondent promptly acted by filing an answer and a response seeking to show good cause by the Court's deadline. Although those filings were both rejected, Respondent successfully remedied the filing deficiencies and refiled its Answer and the Response to Order to Show Cause shortly after the Court's deadline.

Turning to Complainant's motion, the Court finds no additional arguments in support of an entry of a default judgment against Respondent. Rather, Complainant bases its Motion for Default Judgment solely on Respondent's failure to file an answer by the regulatory deadline in this case. Mot. Default J. 2. OCAHO caselaw explains, however, that default judgments "should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement." *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 2 (2004).

The record before the Court also does not reflect that Complainant would be disadvantaged if the Court were to accept Respondent's Answer and discharge the Order to Show Cause. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. While there has been a significant delay of over seven months between the original regulatory answer deadline in this matter and the filing of Respondent's Answer, "OCAHO courts have made it clear that [m]ere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion." *MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, at 8 (citing *Nickman*, 9 OCAHO no. 1106, at 3, and then citing 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2699 (4th ed. 2021) (discussing types of prejudice and costs to the non-defaulting party)). Here, the delay will not affect the time available to the parties for discovery, dispositive motions, or hearing preparation. Moreover, while Complainant has moved for default judgment, it has not identified any prejudice it would suffer were the Court to accept Respondent's late-filed Answer and not enter a default judgment. *See* Mot. Default J.

Lastly, Respondent's Answer provides sufficient defenses to the complaint, *see Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563, such that there is "some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, at 9 (quotations omitted). Among other things, Respondent asserts that several individuals at issue in the complaint were not its employees and that the company's payroll is administered by a third party. Answer 1–2. Respondent also seeks leniency from the Court and represents that it has not previously been audited and has updated its employee files and I-9 practices since the audit. *Id.* at 2. These arguments pertain both to Respondent's liability for certain alleged violations and the appropriate penalty calculation, and further support letting this case proceed to a determination on the merits, rather than entry of a default judgment.

Weighing these factors and considering OCAHO's strong preference for resolving cases on the merits, and having accepted Respondent's Answer and Response to Order to Show Cause as filings in this case, the Court finds that good cause exists for Respondent's failure to timely file an answer. The Court now discharges the Order to Show Cause against Respondent and denies Complainant's Motion for Default Judgment.

### III. ORDERS

IT IS SO ORDERED that the untimely Answer and Response to the Order to Show Cause filed by Respondent, JLG Business Ventures, Inc., doing business as Recio Auto Sales, are ACCEPTED as filings in this case;

IT IS FURTHER ORDERED that, having found that good cause exists, the Order to Show Cause dated January 11, 2024, against Respondent is DISCHARGED; and

IT IS FURTHER ORDERED that the Motion for Default Judgment filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is DENIED.

SO ORDERED.

Dated and entered on June 24, 2025.

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Honorable Carol A. Bell  
Administrative Law Judge