

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

May 12, 2023

ANDREW EWOMA EHERE,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00057
)	
HAWAIIUSA FEDERAL CREDIT UNION,)	
Respondent.)	
_____)	

Appearances: Andrew Ewoma Ehere, pro se Complainant
Kendra Kawai, Esq. and D. Elliot Gonzalez, Esq., for Respondent

ORDER DENYING RESPONDENT’S SECOND MOTION TO DISMISS COMPLAINT FOR
ABANDONMENT

I. PROCEDURAL HISTORY

This case arises under the employment discrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Andrew Ewoma Ehere, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 20, 2022. On October 27, 2022, Respondent filed an answer.

On November 2, 2022, the Court issued an Order for Prehearing Statements. The Court directed the parties to file prehearing statements by December 2, 2022 (Complainant) and January 1, 2023 (Respondent). Order for Prehearing Statements 3–4. The Court further ordered that each party “simultaneously with its prehearing statement, make its initial disclosure of documentary evidence to the other party without waiting for a formal discovery request to be made.” *Id.* at 3. Complainant did not file his prehearing statement by December 2, 2022.

On December 16, 2022, Respondent filed a Motion for Dismiss the Complaint for Abandonment, arguing that Complainant’s failure to comply with the Court’s Order for Prehearing Statements constituted abandonment of his Complaint under 28 C.F.R. § 68.37(b)(1). C’s Mem. Mot. Dismiss 2–5. Alternatively, Respondent requested that the Court issue an Order to Show Cause regarding Complainant’s failure to timely file his prehearing statement, and that the Court grant

an extension of Respondent's deadline to file a prehearing statement until after Complainant filed his prehearing statement. *Id.* at 5–6.

On December 30, 2022, Complainant filed his Prehearing Statement and “Response to Respondent HawaiiUSA Federal Credit Union’s Motion to Dismiss Complaint for Abandonment.” Complainant explained that his failure to meet the prehearing statement deadline was “unintentional” and due to confusion regarding the Court’s Electronic Filing Pilot Program procedures. C’s Resp. 2–3.

On January 18, 2023, the Court issued an Order on Respondent’s Motion to Dismiss for Abandonment. *Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471 (2023).¹ The Court accepted Complainant’s late-filed prehearing statement and denied Respondent’s request for an Order to Show Cause as moot. *Id.* at 3. The Court warned Complainant that “further failure to respond to court orders . . . may result in a finding of abandonment.” *Id.* at 3–4 (citing 28 C.F.R. § 68.37(b)(1), and then citing Fed. R. Civ. P. 55). The Court extended Respondent’s deadline to file its prehearing statement until February 17, 2023. *Id.* at 4. Respondent filed its prehearing statement, as well as its initial disclosures, on that date.

On March 6, 2023, Complainant e-filed his initial disclosures with the Court and served opposing counsel.²

¹ 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 subsequent to Volume 8, where the decision has not yet 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² This filing was rejected by the Court on March 28, 2023 due to non-compliance with the Court’s Order for Prehearing Statements, which directed that copies of the exhibits listed in the parties’ preliminary exhibit lists were to “be disclosed to the other party, not to this Court.” *See Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471a, 1 (2023) (quoting Order for Prehearing Statements 3). Complainant re-filed his initial disclosures on March 30, 2023, which were accepted by the Court. *See Ehere v. HawaiiUSA Fed. Credit Union*, 17 OCAHO no. 1471b (2023).

On March 8, 2023, the Court held a prehearing conference pursuant to 28 C.F.R. § 68.13, at which both parties appeared. *See* Order Summarizing Prehr’g Conf. 1. During this conference, Respondent raised concerns about the timeliness and sufficiency of Complainant’s prehearing statement and initial disclosures. *Id.* at 2. The Court encouraged the parties to confer on this issue, and noted that Respondent could file a motion seeking appropriate relief if the matter remained unresolved. *Id.*

On March 21, 2023, Respondent filed a Second Motion to Dismiss Complaint for Abandonment. Respondent moves for the Court to dismiss the Complaint because Complainant did not timely provide his initial disclosures, and did not otherwise comply with the Court’s Order for Prehearing Statements. Second Mot. Dismiss 2, 4, 7. Respondent asserts Complainant “failed to offer good cause for this second failure to comply with the ALJ’s Order, which prejudiced Respondent’s ability to efficiently conduct discovery and proceed with this litigation.” *Id.* at 4, 7. Respondent argues Complainant’s “repeated” failure to comply with Court orders constitutes abandonment of his Complaint per 28 C.F.R. § 68.37(b)(1). *Id.* Alternatively, Respondent requests the Court issue an Order to Show Cause ordering Complainant to explain why “[he] failed to comply with the Court’s Order and did not timely serve his initial disclosures,” and why the Complaint should not be dismissed for abandonment. *Id.* at 2, 9.

Complainant filed his response to Respondent’s motion on March 23, 2023. Complainant admits he did not timely produce his initial disclosures, but asserts the delay was unintentional. C’s Second Resp. 1. Complainant thought he “completed what [he] needed to do after filing [his] Prehearing Statement,” and he was unaware his submission was not compliant until he received Respondent’s initial disclosures on March 6, 2023.³ *Id.* at 2–3. In requesting leniency for his noncompliance, Complainant highlights his pro se status and notes he is “not from this country” and is “trying to fully understand the laws and how the court system works.” *Id.* at 3. Complainant further notes his participation in the recent Prehearing Conference and interest in the Settlement Officer Program, arguing these data points augur against a proposition he has abandoned his case. *Id.* He “humbly plead[s]” with the Court not to dismiss his Complaint. *Id.*

II. LAW & ANALYSIS

Respondent moves the Court to deem the Complaint abandoned, or in the alternative, issue an Order to Show Cause as to the Complainant’s failure to provide initial disclosures. For the reasons outlined below, the Court declines to do either.

³ Respondent emailed its initial disclosures to Complainant on February 17, 2023, so Complainant’s assertion that he was out of state from February 18 through March 5, 2023, and therefore did not retrieve Respondent’s submission from the Post Office until March 6, 2023, *see* Second Mot. Dismiss 15, does not explain why he did not see the earlier email from Respondent.

A. Order to Show Cause

Respondent specifically moves for an Order to Show Cause regarding: (1) why Complainant “failed to comply with the Court’s order” by timely serving his initial disclosures, and (2) why the Complaint should not be dismissed for abandonment. Second Mot. Dismiss 1, 9.

At this juncture, the Court declines to issue an order to show cause. Complainant already explained why he failed to timely respond to the Court’s Order for Prehearing Statements in his response to Respondent’s Second Motion to Dismiss. *See generally* C’s Second Resp. Issuing a show cause order would likely yield a response with similar information, which would not result in expeditious litigation. Nor would issuing an unnecessary order be effective docket management. *See generally United States of America v. AMA Repiping, LLC*, 15 OCAHO no. 1391, 3 (2021); *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432a, (2022) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

While Respondent’s request for an Order to Show Cause is DENIED, Complainant must understand that a lack of familiarity is not a carte blanche for noncompliance with Court orders. Indeed, he has a duty, to the best of his abilities, to familiarize himself with the requirements of the forum.⁴ Complainant should diligently respond to Court orders, including regularly checking his mail and email for communications from the Court and opposing counsel.

B. Motion to Dismiss Complaint as Abandoned

Next the Court considers the Respondent’s request that the Court deem the Complaint abandoned.

The OCAHO Rules of Practice and Procedure for Administrative Hearings allow for dismissal due to abandonment. 28 C.F.R. § 68.37(b). “A party shall be deemed to have abandoned a complaint . . . if [a] party or his or her representative fails to respond to orders issued by the Administrative Law Judge.” § 68.37(b)(1). OCAHO precedent instructs that “non-responsiveness” may indicate “abandonment of [a] complaint that warrants dismissal.” *Caltzoncin v. GSM Insurors*, 12 OCAHO no. 1287a, 3 (2016). ALJs have dismissed § 1324b complaints due to abandonment for failure to abide by court orders, even when the complainant

⁴ Given Complainant’s pro se status, as a courtesy, the Court notes that Complainant may review the following resources to become familiar with OCAHO rules and procedures: (1) the Notice of Complaint Alleging Unlawful Employment which the Court sent him on September 26, 2022; (2) the Court’s prior published decisions and topical index of published decisions, both available at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>; and (3) the OCAHO Rules of Practice and Procedure, found at 28 C.F.R. pt. 68 (2022), and available at <https://www.govinfo.gov/content/pkg/CFR-2021-title28-vol2/pdf/CFR-2021-title28-vol2-part68.pdf>.

appeared pro se. *See Wong-Opasi v. Sundquist*, 8 OCAHO no. 1054, 839–41 (2000) (citations omitted) (collecting OCAHO cases).

Here, the Court does not find Complainant abandoned his Complaint. As Complainant admits, he produced his initial disclosures to Respondent over two months after he filed his Prehearing Statement, and not simultaneously, as directed in the Court’s Order for Prehearing Statements. However, Complainant has been participating in this matter, including the March 8, 2023 prehearing conference, and has expressed his intention to continue doing so. *Cf., e.g., Ravines de Schur v. Easter Seals-Goodwill Northern Rocky Mountain, Inc.*, 15 OCAHO no. 1388g, 2 (2022) (finding complaint abandoned where the complainant had “simply stopped participating in her case”); *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (dismissing request for hearing as abandoned when the respondent failed to respond to three consecutive court orders). Complainant’s failure to produce his initial disclosures was inadvertent, and he did ultimately produce initial disclosures. *See* Second Mot. Dismiss 20–21; C’s Second Resp. 1–2. The Court, thus, declines to find a pro se complaint abandoned in this circumstance, where he is actively in contact with the Court and attempting to comply with orders. *See Olivares Aguirre v. KDI Am. Prods., Inc.*, 6 OCAHO no. 882, 632, 641 (1996) (“When a party is unrepresented, a Court should make some allowances for the failure literally to abide by the strict terms of an order.”); *Zajradhara*, 16 OCAHO no. 1432a, at 3 (finding good cause where, inter alia, the party demonstrated an intent to participating in this forum); *United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 7–9 (2022) (finding good cause where the party showed that its failure to act was not due to willful disregard for the legal process).

For the reasons stated above, Respondent’s Second Motion to Dismiss is DENIED. Again, the Court again cautions Complainant continued non-compliance with orders may result in future sanctions, including and up to dismissal of the case. *See* 28 C.F.R. § 68.37(b)(1).

SO ORDERED.

Dated and entered on May 12, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge