

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

CRISTINA VARELA CABALLERO,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2024B00127
MACY'S, INC.,)	
)	
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 ON RESPONDENT'S FILINGS

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 Varela Caballero, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 28, 2024, against Respondent, Macy's, Inc., alleging that it violated Section 274B of the Immigration and Nationality Act. Compl. §§ 6–10.

On October 22, 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 counsel's front desk, reception area, or mail room on October 28, 2024, in Omaha, Nebraska. Under OCAHO's Rules of Practice and Procedure for

Administrative Hearings, which generally govern these proceedings,¹ Respondent's answer is due within thirty days, by November 27, 2024. *See* 28 C.F.R. § 68.9(a).

On November 22, 2024, Respondent filed three motions with the Court: Respondent's Motion to Stay Proceedings, Respondent's Motion to Consolidate, and Respondent's Motion to Refer Cases to Settlement Officer Program.²

II. DISCUSSION

Three motions are pending before the Court. Through Respondent's Motion to Stay Proceedings, Respondent seeks to stay all proceedings in this case, including the deadline for the filing of its answer to the complaint. Through its Motion to Consolidate, Respondent seeks to consolidate this matter with another OCAHO case involving the same parties, namely, OCAHO case 2024B00033. Lastly, Respondent moves the Court to refer both cases to the OCAHO Settlement Officer Program for mediation.

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that each respondent shall file an answer “[w]ithin thirty (30) days after the service of a complaint.” 28 C.F.R. § 68.9(a). Pursuant to 28 C.F.R. § 68.8(c)(1), “[s]ervice of all pleadings other than complaints is deemed effective at the time of mailing.” In contrast, service of a complaint is deemed effective upon receipt. *Id.* A respondent's failure to file a timely answer “may be deemed to constitute a waiver

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 Respondent provided the Court with copies of its motions via 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 by this Court, not the date that they were transmitted by facsimile.

of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” *Id.* § 68.9.

OCAHO’s regulations 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).

In this case, none of Respondent’s three motions—Respondent’s Motion to Stay Proceedings, Respondent’s Motion to Refer Cases to Settlement Officer Program, and Respondent’s Motion to Consolidate—indicate whether Respondent conferred with Complainant before filing them, nor do they indicate Complainant’s position on any of the issues raised. As such, Complainant is entitled to an opportunity to respond to these motions. The certificate of service for each motion indicates 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* 28 C.F.R. § 68.8(a).

The Court reminds Complainant that her responses will not be deemed filed until they are received by OCAHO. 28 C.F.R. § 68.8(b); *see also Kanti v. Patel*, 8 OCAHO no. 1007, 167 (1998) (“File’ means that the document must be received in my office by the given date, not that it merely must be postmarked by then.”) (citing 28 C.F.R. § 68.8(b)). The Court further reminds the parties that this case is not enrolled in OCAHO’s Electronic Filing Pilot Program. As such, electronic filing is not available to the parties.

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, and all filing deadlines remain in place.³

³ As for Respondent’s Motion to Refer Cases to Settlement Officer Program, the Court notes that a case cannot be referred to the OCAHO Settlement Officer Program—a voluntary mediation program through which the parties may use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution—if either party objects to the referral. 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. EOIR Policy Memorandum 20-16 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/> download. 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>.

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 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 Stay Proceedings, Respondent's Motion to Refer Cases to Settlement Officer Program, and Respondent's Motion to Consolidate.

SO ORDERED.

Dated and entered on November 25, 2024.

Honorable Carol A. Bell
Administrative Law Judge