

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

July 9, 2024

US TECH WORKERS ET. AL.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00105
)	
ULTA INC.,)	
Respondent.)	
_____)	

Appearances: John M. Miano, JD, for Complainant
Jennifer Roeper, Esq., and Stephanie C. Generotti, Esq., for Respondent

GENERAL LITIGATION ORDER

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on April 23, 2024. Complainant alleges that Respondent, Ulta Inc., discriminated on the basis of citizenship, in violation of 8 U.S.C. § 1324b.

On May 6, 2024, the Chief Administrative Hearing Officer (CAHO) sent a copy of the Complaint and a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) to the Respondent by United States Postal Service (USPS) certified mail.

On May 30, 2024, Respondent filed a Consent Motion for Extension of Time to Respond to Complainant’s Motion to Consolidate and for Leave to File Amended Complaint, and filed the

Response on July 3, 2024.¹ On June 18, 2024, Respondent filed an Answer and Affirmative Defenses to Complainant's Complaint.²

II. CHANGE OF CASE CAPTION

In its Answer, Respondent notes that Respondent's proper name is Ulta, Inc. Answer 1 n.1. The Court will change the case caption in the following order to *US Tech Workers et al. v. Ulta, Inc.*, unless either party objects. Any oppositions to the change in the case caption must be filed within twenty-one days of the date of this order.

III. INITIAL PREHEARING CONFERENCE

The Court will hold an initial telephonic prehearing conference on August 14, 2024, at 3:00 p.m. Eastern Daylight Time to address questions and develop the scheduling order including dates for the completion of discovery, the filing of motions, and a hearing in this matter. The parties shall attend the conference by calling #-###-###-#####, using the conference room number ###-###-##. In the event of a scheduling conflict, the parties shall confer and provide the Court with a joint written notice of a minimum of three proposed agreed dates and times, by emailing #####. The

¹ Although Complainant has filed a Motion to Consolidate and for Leave to File Amended Complaint in other cases, the Court has no record of such a filing in this case, and the motion for extension of time is accordingly moot. Should Complainant file such a motion, the Court will consider the Respondent's filing in opposition.

² The USPS tracking website indicates that the NOCA and Complaint sent to Respondent were delivered on May 14, 2024. Therefore, Respondent's answer to the Complaint was due no later than June 13, 2024, and thus the Answer was late filed. *See* 28 C.F.R. § 68.9(a). However, in its Consent Motion for Extension of Time, Respondent states that it received the NOCA and Complaint by mail on May 20, 2024, and that as a result, the Answer would be due by June 19, 2024. Mot. Extension 2. Although the reason for the discrepancy between the mail tracking information and Respondent's understanding of when it received the Complaint and NOCA is unclear, Respondent did file its Answer timely by its own calculations. The Court finds that Respondent, has demonstrated good cause for its failure to file a timely answer. *See Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2-3 (2004) (citing *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998)). This Court has previously accepted answers and discharged default where Respondents inadvertently miscalculated answer deadlines and late-filed by days. *United States v. Tx Pollo Feliz, LLC*, 18 OCAHO no. 1503, 3-4 (2023) (citing *United States v. Corrales-Hernandez*, 17 OCAHO no. 1454, 3 (2022); *United States v. Red Apple Enter., Inc.*, 17 OCAHO no. 1477, 2 (2023); *United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 5 (2022)). Respondent demonstrated that it is intending to pursue the case and did not willfully avoid complying with its answer deadline. Additionally, the late-filed Answer "did not result in a delay or otherwise adversely impact the proceedings." *Id.* at 4. Accordingly, the default is excused and the Court accepts the answer.

Court will confirm the date and time for the rescheduled conference either telephonically or in writing as soon as practicable.

If there are any further questions, please contact chambers at (###) ###-####.

III. INITIAL PREHEARING STATEMENT

The parties shall file initial prehearing statements with the Court within twenty-one days of the issuance of this Order. The initial prehearing statements shall include the following:

- A. The party's brief statement that it has met and conferred concerning the possibility of settlement, and the party's position concerning whether the matter should be referred to a settlement Administrative Law Judge or for some other form of alternative dispute resolution;
- B. A statement concerning whether there are any pending motions, and if so, briefly describing the nature of the motions and the date that the motions were filed;
- C. The party's assessment of the amount of discovery necessary in these proceedings, including a statement concerning the amount of time necessary for discovery, and the amounts of written and oral discovery sought by the party;
- D. Whether the party anticipates any amendment of claims or counterclaims, or potential joinder of parties;
- E. A statement concerning the amount of time the party reasonably anticipates for a hearing on the merits of the claims presented;
- F. The parties must each indicate at least one email address which the Court can reach for information regarding access to any scheduled teleconference; and
- G. A statement concerning any other matters that require the attention of the Court.

IV. RULES GOVERNING PROCEEDINGS AND OCAHO PRACTICE MANUAL

Proceedings in this case will be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, explained in OCAHO's Practice Manual, which is found within the Executive Office for Immigration Review (EOIR) Policy Manual on the United States Department of Justice Website.³ The parties must familiarize themselves with these rules, including the standards of conduct. The Court directs the parties' attention to the below:

³ <https://www.justice.gov/eoir/reference-materials/ocaho>.

- A. Ex Parte Communications, which are communications between a party and the court when the opposing party is not present or has not been served a copy of the communication, are disfavored, except when made solely for scheduling purposes or requesting an extension of time and notice is provided to all parties. The Court may impose sanctions for prohibited ex parte communications. *See* 28 C.F.R. § 68.36.
- B. Motions Practice
1. All filings in this matter should be accompanied by a certification indicating service to all parties of record, and identifying the date and manner of service. *See* 28 C.F.R. § 68.6(a).
 2. Any request for the Court to issue an order or any other request from the Court shall be made by motion which shall be made in writing. 28 C.F.R. § 68.11(a). All motions shall be paginated, including accompanying exhibits.
 3. All motions, except for dispositive motions discussed in Part D, shall be limited to twenty-five pages. The page limit does not include the table of contents, table of authorities, and exhibits. Parties must file for leave of the Court and demonstrate good cause to deviate from this limitation.
 4. Exclusive of dispositive motions, a movant shall make a good faith effort to confer with the opposing party in an effort to obtain an agreement before filing a motion with the Court.
 5. In filing a motion to request that an otherwise untimely filed motion should be treated as timely filed, the moving party shall submit, at the same time: 1) the motion seeking leave to untimely file, and 2) the substantive motion.
- C. Motions for continuances disfavored. Any requests for extension of time related to a motion or hearing date must be in writing, and in general, are disfavored. The parties are referred to *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2-4 (2021) and Federal Rules of Civil Procedure 6(b) and 16(b)(4) concerning the relevant good cause standard to amend deadlines.
- D. Discovery⁴
1. Given the circumstances of this case, the Court will defer the commencement of discovery until after the prehearing conference. Once discovery begins, the parties may obtain discovery through depositions upon oral examination or written

⁴ Discovery is generally defined as prehearing “procedures for the exchange of information between the parties involved in the proceedings.” *Discovery*, Encyc. Britannica, <https://www.britannica.com/topic/discovery-law> (last visited Dec. 6, 2022). OCAHO’s rules permit the ALJ to limit the frequency and scope of discovery methods. 28 C.F.R. § 68.18(a).

questions; written interrogatories; requests for production of documents or things, and requests for admission. 28 C.F.R. § 68.18(a).

2. The parties must cooperate with each other in honoring discovery requests. Before bringing any discovery dispute to the Court's attention, the parties must meet and confer in good faith to attempt to resolve the matter without the Court's intervention. 28 C.F.R. § 68.23(b).
 3. Pursuant to 28 C.F.R. § 68.6(b), except when the discovery is used as an exhibit for a motion or as evidence during the hearing, copies of Interrogatories, Requests for Production of Documents, Requests for Admissions, Deposition Notices and transcripts, and responses to such should not be sent to the Court.
 4. The parties are expected to make a good faith effort to coordinate deposition dates with the opposing party before noting a deposition. Twenty-one days shall be deemed reasonable notice for noting a deposition.
 5. All discovery requests must be issued at a sufficiently early time to assure that they are answered before the expiration of the discovery deadline set by the Court. Unless otherwise ordered by the Court, no discovery deadline will be extended because written discovery requests remain unanswered at its expiration.
 6. Discovery motions, including motions to compel, must be filed within twenty-one calendar days after receipt of a deficient response or after the response to the discovery is due, whichever occurs first. Discovery motions must be accompanied by the discovery requests and responses, along with a declaration stating that the movant has made a good faith effort to resolve the discovery dispute. 28 C.F.R. § 68.23(b).
- E. Dispositive Motions
1. All dispositive motions, such as motions to dismiss and motions for summary decision, shall be limited to a maximum of fifty pages. This limit is exclusive of the cover page, index, table of cases relied upon, and exhibits. All responses to dispositive motions shall be limited to fifty pages.
 2. A party may file a motion for summary decision if the party believes that some or all material facts are not in genuine dispute, there is no genuine issue of credibility, and the party is entitled to summary decision. 28 C.F.R. § 68.38(a).
 3. Motions for summary decision must include a statement of the undisputed material facts and contain specific citations to referenced evidence (e.g., cite the specific pages of the exhibit in support of the argument).

4. The Court may also dismiss a complaint pursuant to 28 C.F.R. § 68.10. The Court may dismiss complaints on its own initiative, or upon a respondent's motion to dismiss a complaint.

F. OCAHO's Settlement Officer Program⁵

1. Chapter 4.7 of the Practice Manual describes OCAHO's Settlement Officer Program, a voluntary program through which the parties use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution.
2. The administrative law judge (ALJ) may refer a case to a settlement officer upon receipt of written confirmation of consent to referral from each party and a determination by the ALJ that the case is appropriate for referral.
3. The parties may request that the Court refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the date scheduled for a hearing.

G. OCAHO's Electronic Filing Pilot Program⁶

1. Chapter 3.7 of the Practice Manual describes OCAHO's Electronic Filing Pilot Program through which the parties can electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. The Court invites the parties to register for this program by completing the enclosed participant registration and certification forms, and returning them to OCAHO.⁷
2. Both parties must elect to become e-filers or the parties will continue to file case documents by the means set forth in 28 C.F.R. part 68 for the duration of the case.

V. ORDERS

IT IS SO ORDERED that Complainant and Respondent shall file their prehearing statements with the Court within twenty-one days of the date of issuance of this Order.

⁵ <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

⁶ <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-3/7>.

⁷ The form is also available at: <https://www.justice.gov/eoir/filing-email-office-chief-administrative-hearing-officer>.

IT IS FURTHER ORDERED that an initial telephonic prehearing conference in this matter will be held on August 14, 2024, at 3:00 Eastern Daylight Time.

SO ORDERED.

Dated and entered on July 9, 2024.

Honorable Jean C. King
Chief Administrative Law Judge