

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

US TECH WORKERS ET AL.,	)	
Complainant,	)	
	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2024B00047
	)	
RHEAPLY, INC.,	)	
Respondent.	)	
	)	

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Appearances: John M. Miano, JD, for Complainant  
Virat Gupta, Esq., and Ryan H. Vann, Esq., for Respondent

ORDER ON FIRST MOTION TO DISMISS, MOTION FOR LEAVE  
TO FILE REPLY AND MOTION TO STAY FURTHER PROCEEDINGS

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant US Tech Workers et al. filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent Rheaply, Inc. on February 9, 2024. Complainant alleges that Respondent discriminated in hiring on the basis of citizenship status in violation of 8 U.S.C. § 1324b(a)(1).

On February 21, 2024, the Court office sent an incorrectly addressed Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and the Complaint (the “Complaint package”) to Respondent by United States Postal Service (USPS) certified mail. Instead of sending the Complaint associated with the above-captioned case, the Court office sent Respondent the complaint for a different matter. On April 1, 2024, Respondent filed an answer to the incorrectly sent complaint, noting the error and generally denying the allegations. Answer 1.

On the same day, Respondent moved for dismissal of this action due to its receipt of the incorrect complaint. Mot. Dismiss 1.

Complainant responded to the Motion to Dismiss on April 8, 2024, asking that the motion be denied because the incorrect complaint was sent to Respondent. Resp. Mot. Dismiss 2.

On April 25, 2024, the Court sent the correct Notice of Case Assignment and Complaint to Respondent and counsel by certified mail. Complainant received the package on May 1, 2024.

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complainant. Respondent did not file a response.

On May 29, 2024, Respondent timely filed an Answer and Affirmative Defenses. The Answer responded to the Complainant in this case. On the same day, Respondent also filed a Motion to Dismiss, again addressing the complaint in this case.

Complainant filed its Response to Respondent's Second Motion to Dismiss as Motion for Partial Summary Judgment on June 12, 2024. Respondent then filed a Motion for Leave to File a Reply and Motion to Stay Further Proceedings on June 14, 2024. Complainant filed its Response to Motion for Leave to File Reply on June 26, 2024.

## II. APRIL 1, 2024 FIRST MOTION TO DISMISS DENIED AS MOOT

Concerning Respondent's first Motion to Dismiss, it is DENIED AS MOOT. The motion is premised on Respondent not being the named litigant in complaint which was erroneously sent to it.<sup>1</sup> Respondent's May 29, 2024 Answer acknowledged the administrative error that led to Respondent receiving a different case's complaint. Second Answer 1. Respondent responded to the allegations contained in the Complaint in this case and raised relevant affirmative defenses. *See generally* Second Answer.

Respondent's May 29, 2024 Motion to Dismiss ("Second Motion to Dismiss") likewise acknowledges that after initially receiving an incorrect complaint, it then received the Complaint in this case. Second Mot. Dismiss 2. The Second Motion to Dismiss proceeds to raise substantive arguments for dismissal, also engaging with the contents of the Complaint in this case. *See generally* Second Mot. Dismiss.

## III. MOTION FOR LEAVE TO FILE REPLY GRANTED

The Court next addresses Respondent's Motion for Leave to File Reply. Under OCAHO's Rules of Practice and Procedure, parties may not file a "reply to a response, counter-

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<sup>1</sup> Respondent was erroneously sent the complaint for US Tech Workers et al v. Illinois Tool Works, Inc., OCAHO Case No. 2024B00026.

response to a reply, or any further responsive document” without the permission of the presiding Administrative Law Judge. 28 C.F.R. § 68.11(b).<sup>2</sup> Parties “must seek leave of leave of Court” to file a reply not already authorized and “the decision whether to allow a reply or sur-reply is ‘is solely within the judge’s discretion.’” United States v. Space Exploration Techs., Corp., 18 OCAHO no. 1499a, 4 (2023) (quoting Diaz v. Pac. Mar. Assoc., 9 OCAHO no. 1108, 3 (2004) (additional citations omitted). In the past, the Court has weighed whether a requested reply would “further record development and provide an opportunity for parties to be heard on novel issues or argument.” Sharma v. NVIDIA Corp., 17 OCAHO 1450j, 3 (2023) (citing Heath v. Ameritech Global, 16 OCAHO 1435, 3 (2022)); *see also* United States v. Walmart Inc. (Bethlehem), 17 OCAHO no. 1475d, 7 (2023).

In its Motion for Leave to File Reply, Respondent argues that Complainant’s Response to Respondent’s Motion to Dismiss as Motion for Partial Summary Judgement “puts forth a collection of new information and evidence,” thereby “creat[ing] the need for additional record development by the Respondent.” Mot. Leave File Reply 1-2. Specifically, it points to the inclusion of exhibits from online sources, some of which it says are no longer easily accessible. Id. at 7-8. Respondent further argues that its reply will assist the Court in determining what the Court should consider in resolving the Motion to Dismiss. Id. at 8 (citing Walmart, Inc. (Bethlehem), 17 OCAHO 1475d at 11).

In its Response to Motion for Leave to File Reply, Complainant argues that “the complaint did cite to authorities documenting Respondent’s discrimination” and that “[a]ll the authorities that were not cited in the complaint are still available on the Internet.” Resp. Mot. Leave File Reply 4-5.

The Court GRANTS Respondent’s Motion for Leave to File Reply. As Respondent noted, Complainant introduced new evidence not previously submitted in its Response. *See* Response Mot. Dismiss Exs. C-D. The introduction of new evidence has caused a need for “further record development.” Sharma, 17 OCAHO 1450j, at 3. Allowing a reply would also allow Respondent to address its argument that it “cannot quickly or easily verify” Complainant’s evidence. Mot. Leave File Reply 8.

Respondent’s Reply is due 14 days from the issuance of this order.

#### IV. MOTION TO STAY

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<sup>2</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

The Court finds that it would serve judicial economy and efficiency to issue a stay of proceeding pending adjudication of the Motion to Consolidation, as the motion poses a bar to the Court's ability to set an appropriate case schedule in this matter at a prehearing conference.

Moreover, Respondent's pending Motion to Dismiss is potentially case dispositive. This Court has previously found good cause to stay pending adjudication of a case dispositive motion. *See, e.g., Talebinejad v. Mass. Inst. Tech.*, 17 OCAHO no. 1464c, 3 (2023) (“[T]he pendency of the Motion to Dismiss constitutes good cause to stay proceedings, including discovery, until the Court issues a ruling on the pending Motion to Dismiss.”); *US Tech Workers v. Fifth Third Bank*, 19 OCAHO no. 1550, 3 (2024) (finding stay of proceedings would be in interest of judicial economy given pendency of motion to dismiss).

Under OCAHO's Rules of Practice and Procedure, the presiding Administrative Law just is “vest[ed] . . . with all appropriate powers necessary to regulate the proceedings.” *Heath v. Amazee Glob. Ventures, Inc.*, 16 OCAHO no. 1433, 2 (2022) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003))<sup>3</sup>; 28 C.F.R. § 68.28(a). This includes the power to issue stays of proceedings. *United States v. Black Belt Sec. & Investigations*, 17 OCAHO no. 1456b, 2 (2023) (citing *Hsieh*, 9 OCAHO no. 1091, at 5). The issuance of a stay “calls for the exercise of judgment, which must weigh competing interests and maintains an even balance,” and “should not be granted absent a clear bar to moving ahead.” *See Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 2 (2022) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), and then quoting *Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 91 (1998)).

Therefore, proceedings are STAYED pending adjudication of Complainant's Consolidation Motion and Respondent's Motion to Dismiss. However, Respondent may still file its Reply to Complainant's Response to Respondent's Motion to Dismiss by the deadline previously indicated.

## V. CASE CONVERTED TO ELECTRONIC FILING

The Court invited the parties to register for its Electronic Filing Pilot Program through which they would electronically file all filings in this case and accept electronic service of case-

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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 subsequent to 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

related documents from OCAHO and the opposing party. Both parties have now registered for the Court's voluntary electronic filing program.

Therefore, IT IS SO ORDERED that the parties shall electronically file all filings in this case in accordance with the program instructions previously provided to them, unless otherwise permitted by the Court or its designee.

The parties may wish to consult OCAHO's Practice Manual for further guidance on electronic filing.

SO ORDERED.

Dated and entered on July 18, 2024.

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John A. Henderson  
Administrative Law Judge