

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. 2023A00071
OIL PATCH PETROLEUM, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ricardo Cuellar, Esq., for Complainant  
Carla Snowden, pro se, for Respondent

ORDER DIRECTING COMPLAINANT TO SERVE COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and National Act, as amended, 8 U.S.C. § 1324a. On June 20, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Oil Patch Petroleum, Inc., failed to prepare or present Forms I-9 for twelve individuals named in the complaint, in violation of 8 U.S.C. § 1324a(a)(1)(B).

The complaint reflects that DHS served Respondent with a Notice of Intent to Fine (NIF) on May 16, 2019, Compl., Ex. A, and that on May 21, 2019, Respondent requested a hearing before this Court. *Id.*, Ex. B. Complainant asked OCAHO to serve the complaint on Respondent through an individual it named and identified as Respondent’s “CEO/Registered Agent” at an address in Corpus Christi, Texas (Address A). *Id.* at 6 (citing 28 C.F.R. § 68.7).

On June 26, 2023, OCAHO’s Chief Administrative Hearing Officer (CAHO) attempted to serve Respondent at Address A via United States Postal Service

certified mail with (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent’s request for a hearing before this Court (collectively, the Complaint package). OCAHO addressed the Complaint package to the individual DHS identified in the complaint pursuant to 28 C.F.R. § 68.7. *See* Compl. at 6. As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a U.S. Postal Service certified mail domestic return receipt. On July 12, 2023, OCAHO received a signed return receipt reflecting delivery of the Complaint package to Address A. The signature on the receipt, however, did not match the name of the addressee.

The CAHO also attempted on June 26, 2023, to serve Respondent with the Complaint package at the Laredo, Texas address listed as Respondent’s principal place of business in the complaint, Compl. at 2, and identified as Respondent’s address in the NIF (Address B). *Id.*, Ex. A. Service at Address B was unsuccessful. On July 19, 2023, the U.S. Postal Service returned to OCAHO the Complaint package sent to Address B, with an unexecuted return receipt. A label affixed to the envelope and dated July 11, 2023, read, “Return to Sender, Insufficient Address, Unable to Forward.”

## II. REGULATORY AND LEGAL STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2023),<sup>1</sup> explain that the filing of a complaint commences an adjudicatory proceeding before OCAHO. 28 C.F.R. § 68.2. However, “the formal stage of a case actually does not begin (the time deadlines do not start) until the OCAHO serves the original complaint on the respondent employer.” *United States v. Arnold*, 1 OCAHO no. 119, 781, 785 (1989) (internal citations omitted).<sup>2</sup>

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<sup>1</sup> OCAHO’s rules are available on OCAHO’s homepage 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> 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 reprinted in a

OCAHO's rules require Complainant to identify "the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3." 28 C.F.R. § 68.7(b)(5). Complainant must include this information in a statement accompanying the complaint. *Id.* After receiving this information, OCAHO will serve the complaint through one of the following methods:

- (1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;
- (2) By leaving a copy at the principal office, place of business, or residence of a party; or
- (3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

*Id.* § 68.3(a)(1)-(3). Whichever method is chosen, "[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee." *Id.* § 68.3(b).

### III. DISCUSSION

Here, Complainant provided OCAHO with two addresses: one in Corpus Christi, Texas (Address A), and one in Laredo, Texas (Address B). Address A is the address at which Complainant requested OCAHO serve Respondent's "CEO/Registered Agent" with the Complaint package, pursuant to 28 C.F.R. § 68.57. Compl. at 6. Address B is the address listed for Respondent in the NIF. As discussed above, OCAHO attempted to serve Respondent with the Complaint package at both addresses. The U.S. Postal Service delivered the Complaint package to Address A, however, the signature on the certified mail domestic return receipt was not that of the addressee. As such, the Court finds that service of the Complaint package was not perfected at Address A because a person other than the addressee signed for the Complaint package. *See* 28 C.F.R. § 68.3(b) ("Service of complaint and notice of

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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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

hearing is complete upon receipt by addressee.”). Likewise, the Complaint package sent to Respondent at Address B was returned to OCAHO on July 19, 2023, with a label reading, “Return to Sender, Insufficient Address, Unable to Forward.” The Court therefore finds that service of the complaint on Respondent has not been effectuated as required by OCAHO’s rules. *See* 28 C.F.R. § 68.3(b).

When OCAHO “encounters difficulty with perfecting service,” the Court “may direct that a party execute service of process.” *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022) (quoting 28 C.F.R. § 68.3, and then citing *United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991)). Here, OCAHO has been unable to perfect service on Respondent at either address provided by Complainant. The Court therefore orders Complainant to execute service of process by personally serving the Complaint, the NOCA, the NIF, and the request for a hearing on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1). *See Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant to make personal service of the complaint and notice of hearing).

Should it perfect service on Respondent, Complainant shall file with the Court proof of personal service of the Complaint package. In its filing, Complainant or its agent shall attest to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(b). Complainant also shall provide to the Court the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual’s relationship to Respondent, and the date upon which personal service was effectuated. *See United States v. Sea Dart Trading Co.*, 2 OCAHO no. 336, 304, 305 (1991) (requiring the complainant to effectuate service of the complaint and notice of hearing and file “an explanatory pleading” advising the Court of the manner in which it served the respondent); *see also Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant to include in its filing the name of the party serving the pleadings, the date served, and the method used). Complainant’s attestation of service may include an affidavit or declaration from its agent(s) and supporting documentation relevant to service. *See, e.g., United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 2-3 (2022) (describing the complainant’s perfection of service and subsequent filing of an affidavit and state business record identifying the individual who was served as the registered agent and director of the respondent business). The Court also directs Complainant to provide OCAHO with a functional U.S. mailing address for Respondent. *See id.* at 3.

OCAHO’s rules “do not permit Complainant or this Judge to waive service of the complaint.” *United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 510, 513 (1996). If Complainant is unable to perfect service, Complainant shall provide the Court with

a filing describing its efforts to serve the complaint on Respondent and, if desired, it may move to dismiss the complaint without prejudice. *See Vector Xpress, Inc.*, 16 OCAHO no. 1431, at 4-5.

Should service not be accomplished, the Court may consider dismissal sua sponte. *See United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1 (2020) (dismissing case sua sponte where the complainant was unable to perfect service of the complaint); *see also Sea Dart Trading Co.*, 2 OCAHO no. 336, at 305 (noting that if service is not effectuated, dismissal may be considered sua sponte). When service cannot be effectuated, OCAHO courts have dismissed the complaint without prejudice such that the complainant may “refile the complaint if it can locate the Respondent so that service may be effectuated in accordance with the Rules of Practice and Procedure.” *Iniguez-Casillas*, 6 OCAHO no. 870, at 514.

#### IV. ORDERS

IT IS SO ORDERED that, within thirty days of the date of this Order, Complainant shall personally serve Respondent with the complaint, Notice of Case Assignment for Complaint Alleging Unlawful Employment, the Notice of Intent to Fine, and Respondent’s request for a hearing, all in a manner that complies with 28 C.F.R. § 68.3(a)(1).

IT IS FURTHER ORDERED that, within five days of effectuating service, Complainant shall file with the Court proof of personal service on Respondent of the complaint, Notice of Case Assignment for Complaint Alleging Unlawful Employment, the Notice of Intent to Fine, and Respondent’s request for a hearing. In its filing, Complainant shall attest to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(b). Complainant also shall provide to the Court the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual’s relationship to Respondent, and the date upon which personal service was effectuated.

IT IS FURTHER ORDERED that Complainant shall provide a functional United States mailing address for Respondent to which the Court may direct orders in this matter.

IT IS FURTHER ORDERED that, should Complainant be unable to effectuate personal service on Respondent, it shall notify the Court in writing of its efforts to

serve Respondent no later than thirty-five days from the date of this Order and may move to dismiss the complaint without prejudice.

SO ORDERED.

Dated and entered on November 1, 2023.

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Honorable Carol A. Bell  
Administrative Law Judge