STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JOSE A. TORRES,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2008CN0836
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 08-0333
	)	
MCDONALD'S USA, LLC,	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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JOSE A. TORRES,	)	
Complainant,	)	**Charge Nos: 2008CN0836**
and	)	**EEOC No: N/A**
	)	**ALS No: 08-0333**
MCDONALD'S USA, LLC.,	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to compel, filed August 5, 2009, and Respondent's supplement to its motion to compel and motion for sanctions, filed August 7, 2009. The record shows that the motions have been served on all parties and the Illinois Department of Human Rights.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondent argues that this matter should be dismissed due to Complainant's failure to serve answers to discovery. Complainant filed no response, although allowed time to do so.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on October 4, 2007, amended on May 13, 2008. The Department, on behalf of Complainant, filed a Complaint based on the underlying Charge with the Illinois Human Rights Commission (Commission) on July 29, 2008, alleging that Respondent engaged in conduct in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
2. Respondent filed a verified answer to the Complaint on October 14, 2008.
3. A discovery scheduling order was issued on December 9, 2008, ordering the parties to propound initial discovery no later than January 16, 2009 and setting a discovery status for

February 25, 2009. Respondent was subsequently granted an extension of time to serve its discovery requests and served the discovery requests on February 4, 2009.

4. On April 22, 2009, Respondent filed a motion to strike Complainant's responses and to deem admitted Respondent's first requests for admission of facts.
5. Complainant filed a response to the motion on May, 14, 2009. The parties appeared for oral argument on the motion on June 9, 2009, and I took the matter under advisement.
6. While a ruling was still pending, Respondent filed a motion to compel on August 5, 2009. On August 7, 2009, Respondent filed a supplement to its motion to compel and a motion for sanctions, requesting dismissal of this case. On August 11, 2009, an order was entered ordering Complainant to file a written response to the motion to compel and to the motion to dismiss no later than August 28, 2009. Hearing on the motion was set for September 8, 2009. Complainant did not file a response to the motions.
7. On August 10, 2009, Complainant's counsel filed a motion to withdraw. Complainant's counsel filed proof of attempted certified mail service of the motion on Complainant, personally.
8. On September 8, 2009, both parties appeared through respective counsel for hearing on the motion to compel, the motion to dismiss and the motion to withdraw. Complainant did not personally appear. Complainant's counsel advised that he could not prepare a response to the motions to compel and dismiss because he had been unable to contact his client and because his client had failed to contact him. The motion to withdraw was granted.

CONCLUSION OF LAW

Complainant's conduct in failing to respond to the motions has resulted in unreasonable delay of this matter.

DETERMINATION

Dismissal of this Complaint is warranted due to Complainant's conduct, which has unreasonably delayed these proceedings. All other pending discovery matters are rendered moot.

DISCUSSION

Pursuant to its motion to compel and motion to dismiss, Respondent contends this matter should be dismissed because Complainant's responses to its discovery were untimely, incomplete and the responses were not under oath. Complainant's counsel, Robert Deters, of Katz Law Offices, Ltd, indicates in his May 14, 2009 motion to withdraw that he could not file a response to the motions because he had not spoken with his client since April 14, 2009, despite several attempts to contact his client.

Section 5/8A-102(I)(6) of the Act authorizes a recommended order of dismissal, with prejudice, as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Commission rules provides for a recommendation of dismissal with prejudice if a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any order entered or otherwise engages in conduct which unreasonably delays or protracts these proceedings.

Complainant's conduct in failing to respond to the motions, although allowed sufficient opportunity to do so, has resulted in unreasonable delay of this matter.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

ENTERED: September 10, 2009

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section