

**U.S. Department of Labor**

Administrative Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



**IN THE MATTER OF:**

**JOHN BAUCHE,**

**ARB CASE NO. 2025-0002**

**COMPLAINANT,**

**ALJ CASE NO. 2023-SOX-00024**

**ALJ CHRISTOPHER LARSEN**

**v.**

**DATE: December 6, 2024**

**MASIMO CORPORATION,**

**RESPONDENT.**

**Before WARREN, Acting Chief Administrative Appeals Judge, and ROLFE,  
Administrative Appeals Judge**

**NOTICE OF INTENT TO DISMISS PETITION FOR REVIEW**

**PER CURIAM:**

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (“SOX”), as amended, and is before the Administrative Review Board (ARB or Board) for the third time. Complainant John Bauche alleges that Respondent Masimo Corporation took adverse action against him in violation of SOX as part of a scheme to commit insurance fraud. Masimo counters that Bauche embezzled \$1 million from the company -- which he later admitted in signing a Pretrial Diversion Agreement with the United States Department of Justice -- and that his now-admitted criminal misconduct was the sole cause of any of its alleged acts of retaliation.

In our most recent consolidated decision addressing aspects of both of Bauche’s previous appeals, the Board affirmed that each of Bauche’s numerous claims were either time-barred, or, alternatively, could not survive summary judgment. While these appeals were pending, however, Bauche filed a third case

with the Office of Administrative Law Judges. An ALJ subsequently held that Bauche's "new" claims, arising out of the same facts as his previous appeals, were barred by those appeals.

Bauche appealed the ALJ's decision in this third case to the Board on October 5, 2024. On October 10, 2024, the Board accepted Bauche's appeal and ordered him to file an Opening Brief on or before November 7, 2024. On November 6, 2024 -- just a day before his Opening Brief was due -- Bauche filed a motion requesting an extension of time, up to and including December 5, 2024, to file his Opening Brief. He requested a 28-day extension, citing legal arguments "currently being worked on" in his "Reply Brief in the related state court appeal." At the same time, he indicated that he could not file his Opening Brief in this case without "resolution in the related appeal."

On November 18, 2024, we denied Bauche's request for an extension. Among other things, we noted the age of the case, the requests for extensions that Bauche had requested in his previous appeals, the eleventh-hour nature of his request, and his inadequate explanation for the extension. Although we denied Bauche's request for a 28-day extension, we nevertheless permitted Bauche until November 25, 2024, to file his Opening Brief. But, we also cautioned that "[t]he failure to timely file will result in the dismissal of this action."

Bauche did not file an Opening Brief by November 25, 2024. Instead, on November 23, 2024, Bauche filed a "Notice of Intent to Remove to Federal District Court." Citing 18 U.S.C. § 1514A(b)(1)(B) and 29 C.F.R. § 1980.114, Bauche stated that he "hereby notifies the [ARB] and all parties of his intent to file an action de novo in the United States District Court concerning his whistleblower retaliation complaint."

SOX permits a complainant to file a de novo complaint in federal district court if the Secretary of Labor has not issued a final decision on the complainant's SOX claims within 180 days of the filing of the administrative complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA).<sup>1</sup> To invoke this right, a complainant must file the de novo complaint in the appropriate

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<sup>1</sup> 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a).

federal district court and then file a file-stamped copy of the complaint with the Board within seven days.<sup>2</sup>

Although more than a week has passed since Bauche gave notice that he intended to file a de novo complaint, the Board has not received a copy of a file-stamped complaint or any other indication that Bauche has yet filed a complaint in any federal district court.

Until Bauche files a complaint in federal court pursuant to the provisions of SOX or the case is otherwise disposed of, this case remains pending before the Board and Bauche is required to comply with the Board's orders, including the order to file an Opening Brief by November 25, 2024. Indeed, if the Board dismisses this appeal before Bauch files a de novo complaint in federal district court, Bauche may, in fact, lose the ability to seek de novo review.<sup>3</sup>

In recognition of Bauche's pro se status, his expressed desire to exercise his right to proceed with a de novo action in federal district court, and the potential consequences of dismissing this action before Bauche actually files a complaint, however, we will not immediately dismiss Bauche's appeal. Instead, we hereby give **notice that we intend to dismiss this appeal seven (7) calendar days after the issuance of this Notice.**<sup>4</sup> If Bauche files a complaint in federal district court before the Board dismisses this appeal, he must file a copy of the file-stamped complaint with the Board within seven days of filing.<sup>5</sup>

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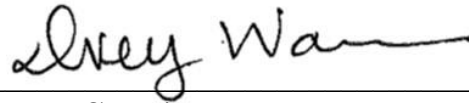
<sup>2</sup> 29 C.F.R. § 1980.114(a), (c).

<sup>3</sup> See *Schooler v. Ford Motor Co.*, ARB No. 2024-0014, ALJ No. 2023-SOX-00015, slip op. at 3-4 (ARB Apr. 5, 2024) (Notice of Order Granting Complainant's Request to Dismiss Petition for Review); *Ramos v. Globant S.A.*, ARB No. 2022-0042, ALJ No. 2022-SOX-00004, slip op. at 4-5 (ARB Sept. 9, 2022) (Notice of Order Granting Complainant's Request to Withdraw Petition for Review).

<sup>4</sup> See *Schooler*, ARB No. 2024-0014, slip op. at 4.

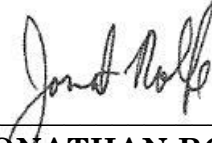
<sup>5</sup> 29 C.F.R. § 1980.114(c). Additionally, Bauche must serve a copy of the complaint "on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor." *Id.*

**SO ORDERED.**



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**IVEY S. WARREN**  
**Acting Chief Administrative Appeals Judge**



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**JONATHAN ROLFE**  
**Administrative Appeals Judge**