

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

January 18, 2024

RAVI SHARMA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 19B00048
	)	
LATTICE SEMICONDUCTOR,	)	
Respondent.	)	
_____	)	

Appearances: Ravi Sharma, pro se Complainant  
Ulrico S. Rosales and Aleksandr Katsnelson, Esq., for Respondent

ORDER ON MOTIONS

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant Ravi Sharma filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 12, 2019, alleging that Respondent Lattice Semiconductor refused to hire him based on his citizenship status in violation of 8 U.S.C. § 1324b(a)(1). Respondent filed an answer on September 19, 2019.

I. PROCEDURAL HISTORY

This case has a lengthy procedural history. On July 29, 2020, Respondent filed a Motion for Summary Decision, to which Complainant filed a response on August 18, 2020. On December 28, 2022, the Court issued an Order for Supplemental Briefing, directing the parties to address whether the Court should construe the Complaint as amended to include a claim for citizenship discrimination based on failure to hire Complainant for a second position, which was not raised in the Complaint but was addressed by both parties in their briefing on summary decision. On January 17, 2023, Complainant filed a Motion for Leave of Court to Amend his Complaint to include a claim of discrimination based on the second position.

On June 15, 2023, the Court granted Complainant's motion to amend his complaint to include a discrimination claim based on the second position, and issued a stay of proceedings as to Complainant's other discrimination claim. *See Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362d (2023).<sup>1</sup> On July 10, 2023, Complainant filed a First Amended Complaint (FAC). Complainant included allegations related to discrimination in hiring on the basis of citizenship status regarding the second position. By order dated August 23, 2023, this Court struck the additional allegation included by Complainant regarding retaliation. *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362e (2023).

The Court subsequently held a status conference on September 20, 2023, in which the parties discussed discovery, and the Court permitted each of the 17 discovery requests submitted by Complainant, and allowed Respondent's discovery request of five interrogatories and five requests for production relating to damages. The Court set a case schedule, which was extended by order on October 30, 2023, and again on December 20, 2023, to include the following deadlines: December 7, 2023 for discovery motions; February 7, 2024 for dispositive motions; March 8, 2024 for responses to dispositive motions; and June 2024 for a tentative hearing date. *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362f, 2 (2023).

On December 6, 2023, Complainant filed a Discovery Motion for Supplemental Discovery Requests and a Motion for Sanctions. On December 12, 2023, Respondent filed a Motion to Compel and for Reasonable Attorney's Fees and Costs. On December 14, 2023, Complainant filed a response to Respondent's Motion to Compel, and on December 19, 2023, Respondent filed a response to Complainant's Motions for Supplemental Discovery and for Sanctions.

On December 29, 2023, Complainant filed four more motions: a Motion to Deny Respondent's Motion to Compel, Motion for Leave to Reply, an opposition to Respondent's Motion to Compel and a Motion to Reprimand. On January 11, 2024, Respondent filed a letter regarding Respondent's "recent conduct."

## II. STANDARDS FOR A MOTION TO COMPEL

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<sup>1</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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

A party may move the Administrative Law Judge (ALJ) for an order compelling a response if the party upon whom a discovery request is made fails to respond adequately, including evasive or incomplete responses, or otherwise objects to any part of the request. 28 C.F.R. § 68.23(a), (d).

Per 28 C.F.R. § 68.23(b), a party's motion to compel must include:

- (1) the nature of the questions or request;
- (2) the response or objections of the party upon whom the request was served;
- (3) arguments in support of the motion; and
- (4) a certification that the movant has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the ALJ.

“All relevant material and reliable evidence are admissible but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.” 28 C.F.R. § 68.40(b). Accordingly, a motion to compel must generally present arguments explaining why the requested material is reliable and relevant to deciding the legal issues presented in the case. *Ravines De Schur v. Easter Seals-Goodwill Northern Rocky Mountain, Inc.*, 15 OCAHO no. 1388b, 3 (2021); *Cf. United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (denying the motion to compel production of documents deemed “not relevant to the proceedings at this time”).<sup>2</sup> An objecting party may ultimately defeat the motion by demonstrating that the requested material is irrelevant, or, alternatively, that “its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.” 28 C.F.R. § 68.40(b).

The ALJ may order the withholding party to serve an answer unless the withholding party sustains its “burden of showing that the objection is justified.” 28 C.F.R. § 68.23(a). *Cf. Sharma iv. Lattice Semiconductor*, 14 OCAHO no. 1362, 1 (2020) (noting that the “ALJ has the authority to ‘compel the production of documents’ and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28”) (internal quotation marks and citation omitted).

### III. COMPLAINANT’S MOTION FOR SUPPLEMENTAL DISCOVERY

Complainant asserts that Respondent did not respond in full to his discovery requests, and the Court should therefore “infer and conclude that the testimony would have been adverse to Respondent” and should be treated as a failure to respond. Mot. for Supp. Disc. 2. For some of the responses, Complainant argues that the responses to his requests included in the declaration

from Respondent's General Counsel are false and the Court should take action against the declarant for lying under oath. Mot. for Supp. Disc. 7–11.

Respondent first asserts that it attempted to resolve concerns Complainant had expressed with its discovery responses, but Complainant refused to allow a reasonable time for its response, and therefore did not meet and confer in good faith. R's Opp. 2. Respondent asserts that instead, Complainant berated counsel with unprofessional accusations and communications and is abusing the discovery process. *Id.* at 3. Respondent submitted supplemental responses to the requests, and argues that the motion is baseless and moot.

Complainant filed a motion for leave to reply to the opposition on December 29, 2023, and provided the proposed reply. As noted by Complainant, ALJs may allow replies in the exercise of discretion where the requesting party has properly sought leave to file a reply and established good cause. *Brown v. Pilgrim's Pride Corp.*, 14 OCAHO no. 1379b, 1–2 (2022). In this case, Respondent provided supplemental discovery responses with its opposition. Given the additional materials, the Court will allow and consider Complainant's reply.

As an initial matter, it is not clear that Complainant is seeking to compel a response; rather Complainant is putting the cart before the horse and is seeking sanctions, which only apply if a party fails to comply with an order to compel. 28 C.F.R. § 68.23(c). In any event, the Court with construe the motion as a motion to compel.

As to the requirement that the parties meet and confer in good faith, Respondent attached a declaration from Aleksandr Katsnelson with attached emails that demonstrate that Complainant demanded that Respondent provide supplemental responses within two days at the Thanksgiving holiday, and when Respondent indicated that the response time was not possible and said he would provide the response the following week, Complainant indicated that he would not wait to file the motion. Katsnelson Dec. ¶ 2–5, Exs. A–C. Complaint responds that he in fact did wait, received Respondent's response, and then filed the motion the next day. C's Reply 4. Accordingly, the Court finds that the parties did communicate about the perceived deficiencies in the filings such that the requirement to meet and confer has been satisfied.

#### A. Request No. 1

Complainant sought a declaration under oath from M.T. explaining why he recommended A.K. over him “who didn't have 15+ years of experience and was hard to judge by a short meeting but recommended against me even though he gave identical scores of 3.84 to both.” Mot. for Supp. Disc. 3. Respondent's discovery response repeated M.T.'s declaration provided in support of the motion for summary decision, and then in the supplement, Respondent provided a sworn declaration with the same information. R's Opp'n. 5–8, Decl. M.T. The declaration addresses concerns M.T. had about Respondent's application and why he recommended against hiring Respondent, and states that as to A.K., he only recommended that he not be eliminated from consideration, and that he did not participate in the decision to hire A.K. over Respondent. The

Court finds that the sworn declaration is responsive to the form of the discovery, is responsive to Complainant's request about why he did not recommend Respondent, and is responsive to Complainant's request in that he explains he had no role in recommending that Respondent should hire A.K. Complainant's question and motion contains arguments regarding whether M.T.'s reasons are persuasive; these are appropriate in a summary decision motion or hearing but are not the proper subject of a discovery request. Complainant's motion to compel is denied.

#### B. Request 2

Complainant sought a declaration under oath from M.C. explaining why he recommended A.K. over him "even though he gave identical scores of 4 to both in communication skills." Mot. for Supp. Disc. 4. Respondent's discovery response explains that M.C.'s declaration was provided in support of the motion for summary decision, and then in the supplement, Respondent provided a sworn declaration with the same information. R's Opp'n 8-11, Decl. M.C. The declaration addresses two primary reasons M.C. had for not recommending hiring Respondent, and states that as to A.K., he did not have such concerns and his overall scores were significantly higher, and that he did not participate in the decision to hire A.K. over Respondent. The Court finds that the sworn declaration is responsive to the form of the discovery, is responsive to Complainant's request about why he did not recommend Respondent, and is responsive to Complainant's request regarding A.K. Complainant's question and motion contains arguments regarding whether M.C.'s reasons are persuasive; these are appropriate in a summary decision motion or hearing but are not the proper subject of a discovery request. Complainant's motion to compel is denied.

#### C. Request 3

Complainant sought a declaration under oath from V.H. to explain what he considers the duration of "this 'long run,'" referring to V.H.'s comment that he was unsure if Complainant could "manage external communication for long run." Mot. for Supp. Disc. 5. Respondent's discovery response repeated V.H.'s declaration provided in support of the motion for summary decision, and then in the supplement, Respondent provided a sworn declaration with the same information. R's Opp'n 11-14, Decl. V.H. The response addresses concerns V.H. had with Complainant's job history and the short length of time he held positions, among other things. *Id.* The Court finds that the sworn declaration is responsive to the form of the discovery, but is not responsive to the specific question asked by Complainant. While V.H. indicates his concerns with the number and duration of Complainant's past employment, he does not state the duration of "this long run." Complainant's motion to compel is granted.

#### D. Request 4

Complainant sought a declaration under oath from V.H. to explain "all the facts with evidence as to why he stated NO in moving forward with me even though he was unsure." Mot. For Supp.

Disc. 6. Respondent's discovery response repeated V.H.'s declaration provided in support of the motion for summary decision, and then in the supplement, Respondent provided a sworn declaration with the same information. R's Opp'n 14–16, Decl. V.H. The response addresses concerns V.H. had about Respondent's application and why he recommended against hiring Respondent. The Court finds that the sworn declaration is responsive to the form of the discovery, is responsive to Complainant's request about why he did not recommend Respondent, and is responsive to Complainant's request. Complainant's question and motion contain arguments regarding whether V.H.'s reasons are persuasive; these are appropriate in a summary decision motion or hearing but are not the proper subject of a discovery request. Complainant's motion to compel is denied.

#### E. Requests 6–14

Requests 6-14 seek the percentage of a base pay provided by Respondent for a number of benefits, including bonuses, Restricted Stock Units, health benefits, life insurance, etc. Mot. For Supp. Disc. 7-11. Complainant objected first that the base pay is for a position advertised in 2023, five years after the posting at issue here, that the request is duplicative of other requests, and in any event, the benefits are not awarded as a percentage of or part of a base pay, but are awarded separately. Many of the benefits asked about are purely discretionary and some are based on the performance of the individual and the company. R's Opp'n 16–36. Complainant argues that this is false, accuses the General Counsel of knowingly lying in her declaration, and seeks action. *Id.* It is unclear why Complainant believes the response is false; Respondent is merely indicating that the benefits are not calculated as a percentage of base pay. Complainant has not supported the claim that the General Counsel lied and as previously noted, to the extent Complainant disagrees with the response, such arguments are appropriately made elsewhere. Further, Respondent provided supplemental data to requests 8–14, to which Complainant has not specifically objected. Complainant's motion to compel is denied.

#### F. Request 15–16

Requests 15-16 seeks information about Respondent's leave policies. Complainant does not specifically object to Respondent's response to Request 15, and only indicates which leave days Complainant has used in calculating damages. Mot. for Supp. Disc. 11. It does not appear that Complainant is seeking to compel any further discovery for this request. For Request 16, Complainant asserts that Respondent's response is incorrect and again points out how many days he used in his damages calculations. *Id.* at 12. Respondent states that Complainant is using outdated policies. R's Opp'n 40. Complainant has not sought to compel further discovery and the motion is moot.

#### G. Request 17

In his Reply, Complainant does not appear to dispute the supplemental information provided by Respondent in its opposition, and the motion is therefore moot. C's Reply 5.

Accordingly, the Complainant's motion to compel is denied for all requests except Request 3. Respondent is compelled to respond to this discovery request.

#### IV. RESPONDENT'S MOTION TO COMPEL<sup>2</sup>

##### A. Parties' Submissions

Respondent moves the Court to compel discovery responses to its permitted five interrogatories and five requests for production of documents. Resp't's Mem. Points & Auths. in Support of Mot. Compel 2. Respondent asserts that Complainant's responses to many of these requests were inadequate, and that an attempt to meet and confer with Complainant regarding these inadequacies by email and phone was not successful. *Id.*

In response Complainant submitted the following filings to the Court: 1) on December 14, 2023, Complainant filed a letter attaching his "Meet and Confer Discovery Response," as Respondent's attorney "did not include" it with the Motion to Compel; 2) on December 29, 2023, Complainant filed an opposition to Respondent's Motion to Compel and for Reasonable Attorney's Fees and Costs, as well as a Motion to Reprimand Respondent's Attorneys Ulrico S. Rosales and Aleksandr Katsnelson; and 3) also on December 29, 2023, Complainant filed a Motion to Deny Respondent's Motion to Compel.

As a threshold matter, parties may generally only submit one response to a motion, *see* 28 C.F.R. § 68.11(b), which is due ten days after the motion is served. Here, Complainant filed three responses to Respondent's motion, two of which were not timely responses to Respondent's December 11, 2023, Motion to Compel. Given the Complainant's pro se status, as well as mail delays around the holidays, the Court will exercise discretion to accept and consider Complainant's December 29, 2023, opposition brief in resolving the present motion. However,

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<sup>2</sup> Respondent's Motion to Compel was received by the Court on December 11, 2023, several days after the extended December 7, 2023 deadline for discovery motions. The Court will exercise discretion to accept the late filing, given that the certificate of service reflects that it was sent to the Court by overnight mail on December 6, 2023. Both parties are reminded to allow adequate time for mail delays and processing when submitting filings to the Court by mail, and to refer to 28 C.F.R. § 68.6(c) or contact the Court for guidance on filing by facsimile if necessary to meet deadlines.

Respondent also did not paginate its Memorandum of Points and Authorities brief. Respondent is directed to paginate future filings for ease of reference for the Court and for the parties.

the Court will not consider Complainant’s response styled as a Motion to Deny Respondent’s Motion to Compel, given that it constitutes an impermissible third “bite at the apple” to oppose Respondent’s Motion. The Court also will not consider Complainant’s December 14, 2023, letter to the Court, as it contains no motion or request for the Court. Similarly, Respondent’s January 11, 2024, letter filing contains no motion or request for the Court and will not be considered.

### B. Standard for Damages

As this Court permitted Respondent to seek discovery solely in relation to damages, the Court finds it useful to discuss the standards for damages in this forum. “[T]he types of monetary awards an ALJ may award is limited to back pay, front pay, [and] attorney’s fees[.]” *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332h, 17 (2020); see 8 U.S.C. § 1324b(g)(2)(B). “[B]ack pay awards compensate for the value of a job to the employee[.]” *Ogunrinu v. Office of the Chief Admin. Hearing Officer*, No. 21-1151, 2023 WL 2618686, at \*6 2023 U.S. App. LEXIS 7189, at \*15 (D.C. Cir. Mar. 24, 2023) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975)). In calculating back pay, the ALJ weighs “the appropriate time period, the items to be included in the gross award, and the amounts by which an award may be reduced.” *Iron Workers Local 455*, 7 OCAHO no. at 696. Back pay is reduced by any “interim earnings or amounts earnable with reasonable diligence by the [Complainant].” 8 U.S.C. § 1324b(g)(2)(C); see *Ogunrinu*, 2023 WL 2618686, at \*5, 2023 U.S. App. LEXIS 7189, at \*14 (“[T]he statute requires [OCAHO] to reduce back pay by any ‘[i]nterim earnings.’” (citation omitted)).

### C. Requests for Production of Documents

#### 1. Request 1

Supplemental Document Request No. 1 requests all documents and communications relating to damages allegedly suffered by Complainant, including lost wages, benefits, and other earnings, and how these amounts were calculated. Resp’t’s Mem. of Points & Auths. in Support of Mot. to Compel 3. Complainant responded by objecting to the request as untimely, as Complainant asserts he received the request on October 2, 2023, which was three days after the Court’s September 28, 2023, deadline for Respondent to propound discovery requests, and objecting that Respondent has not responded to his discovery requests related to damages. *Id.* at 3–5. He then responded by referring to attached documents and exhibits relating to damages, and explaining how he calculated numbers based off the information in these documents. *Id.*

Respondent argues 1) that it timely served this document request on Complainant on September 28, 2023, and 2) that Complainant has not made clear that the referenced documents are the only responsive documents in his possession. *Id.* at 5–6. Respondent asks that the Court compel Complainant to remove his objections and state that he does not possess any other documents responsive to this request. *Id.* In his Opposition, Complainant confirms that he has “in good



faith produced all documents” responsive to this request and is not withholding any responsive documents. Complainant’s Opp’n to Mot. to Compel 3.

First, as to timeliness, Respondent attaches to its Motion a copy of the requests for supplemental interrogatories and supplemental requests for production with attached certificates of service indicating that copies were mailed to Respondent on September 28, 2023. Decl. of Aleksandr Katsnelson Exs. A, C. Pursuant to OCAHO regulations, service of pleadings (which include motions) other than complaints is complete at the time of mailing, not when the other party receives the document. 28 C.F.R. §§ 68.2, 68.8(c)(1). As such, Complainant’s objection on this ground is overruled. Complainant made this objection to each request, and accordingly, this objection is overruled as to each request. Moreover, Complainant’s objection that Respondent has not responded to his own discovery requests is properly raised in a motion to compel, not in response to a discovery request, and is likewise overruled as to each request. Complainant may not reassert these objections in responding to this Order.

As to Respondent’s final argument, Complainant stated in the Opposition that he has not withheld any responsive materials based on his objections. Complainant’s Opp’n to Mot. to Compel 3; *see* Fed. R. Civ. P. 34(b)(2)(C) (“An objection must state whether any responsive materials are being withheld on the basis of that objection.”). Therefore, Respondent’s motion to compel as to Supplemental Document Request No. 1 is denied.

## 2. Requests 2 and 3

Supplemental Document Request No. 2 requests all documents and communications relating to Complainant’s service relationship with each company for which he has performed services as an employee or independent contractor since July 8, 2020. Resp’t’s Mem. of Points & Auths. in Support of Mot. to Compel 6. Supplemental Document Request No. 3 requests all documents and communications relating to each employment or independent contractor position for which Complainant applied since July 8, 2020. *Id.* at 9.

Complainant objected that the requests sought production of irrelevant documents, were overbroad, vague, and ambiguous, and sought disclosure of protected documents and information. *Id.* at 6–10. For Request No. 2, Complainant provided an explanation of his contract employment since his rejection from Respondent-company, without producing any documents. *Id.* For Request No. 3, Complainant produced some documents without clarifying that these were the only responsive documents in his possession. *Id.* For these Requests, Respondent asks that the Court compel Complainant to remove his objections, and either state he does not possess any documents responsive to the request or produce each responsive document in his possession. *Id.* Complainant confirms in his Opposition that he does not possess documents responsive to Request 2 “because the compensation received from these short term assignments cannot be considered in mitigating the damage.” Complainant’s Opp’n to Mot. to Compel 3.

An award of back pay in this forum is reduced by “interim earnings or amounts earnable with reasonable diligence by the [discriminatee],” 8 U.S.C. § 1324b(g)(2)(C). As such, Complainant’s earnings as well as his efforts to obtain employment since the alleged act of discrimination are relevant to damages. Complainant argues that the “short term contract assignments” he has held since he was not hired to work for Respondent “should not be considered as mitigating damages” because he is under “no legal obligation to mitigate lost earnings by accepting a job that is inferior” to the position with Respondent. Resp’t’s Mem. Points & Auths. in Support of Mot. Compel 7–8, 26–27. However, questions regarding whether the positions Complainant held or sought were “inferior,” whether income should be included in the mitigation calculation, and whether Complainant was “obliged to accept” any positions are legal questions for the Court to determine, and are appropriate to raise at the summary decision stage or at a hearing, not as an objection to a discovery request. These objections are overruled and Complainant may not reassert them when supplementing his discovery responses in responding to this Order.

Because it appears that Complainant has withheld the production of documents due to these overruled objections, Complainant is ordered to amend his responses to Supplemental Document Requests Nos. 2 and 3, to produce all documents responsive to these requests, and to affirm that he has produced all documents responsive to these requests in his possession.

### 3. Request 4

Supplemental Document Request No. 4 requests all documents and communications relating to all civil lawsuits and “other legal disputes” to which Complainant has been a party since July 8, 2020, including documents reflecting the name of the parties involved, claims asserted by each involved party, and all damages recovered. Resp’t’s Mem. of Points & Auths. in Support of Mot. to Compel 10. Complainant objected to the request because the request does not relate to damages, because Requests 1–3 include sub-requests, and therefore, this request exceeds the allowed amount, and as irrelevant, overbroad, vague, ambiguous, and as seeking information protected by privacy rights. *Id.* at 11–12. Respondent argues that Complainant has not produced a single document in response to this request. *Id.* at 11–12. In his Opposition, Complainant reiterates his objections, and accuses Respondent of bringing the Request in bad faith. Complainant’s Opp’n to Mot. to Compel 4.

Complainant’s objection as to relevance is overruled; Supplemental Document Request No. 4 is relevant, in that it may reasonably lead to matters bearing on damages. *See Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440, 5 (2022) (citations omitted).

As to Complainant’s argument about Requests 1–3 containing sub-parts, this Court has previously explained that “[i]n the context of requests for production of documents, a [] way of framing the question is to ask whether the greater includes the lesser—whether any of the listing

of items sought reflect a category of information which might reasonably said to include all the other items or categories of information sought.” *Austin v. Specialized Staffing Solutions, Inc.*, 18 OCAHO no. 1513, 7 (2023) (explaining that a demand for “all lions, tigers, bears, and/or other animals” is simply a request for all animals, while a request for “lions, tigers, bears, unicorns, and/or other animals” is a request for two categories of information). Here, Requests 1–3 request a certain type of document, “including” certain sub-types, but do not request separate categories of information. As such, Complainant’s objection regarding the number of requests is overruled.

However, the Court agrees with Complainant that the request is overbroad, vague, and ambiguous as written, and may capture information irrelevant to damages. Accordingly, the Court will narrow the request. Complainant must produce all documents and communications relating to damages from all civil lawsuits and other legal disputes to which he has been a party since July 8, 2020. In responding to this Request as amended, Complainant’s objections are overruled and he may not therefore reassert them. Complainant may re-raise his objection as to privileged information, but must indicate what privilege he is asserting as to each document withheld, and describe the nature of the documents so withheld in a manner that will enable the Respondent and the Court, if necessary, to assess the claim of privilege. Fed. R. Civ. P. 26(b)(5)(A).

#### 4. Request 5

Supplemental Document Request No. 5 requests all documents related to Complainant’s contention that prior to interviewing for the job opening at issue in this action: “[I] have been job searching but haven’t found [a] matching job.” Resp’t’s Mem. of Points & Auths. in Support of Mot. to Compel 14. Complainant objects to the request as unrelated to damages, as exceeding the limit for the number of requests, as overbroad, unduly burdensome and oppressive, and as duplicative of Document Request No. 23 from March 20, 2020. *Id.* at 14–15. Respondent argues that while Complainant produced some documents in response to this request, he has not made clear that these are the only responsive documents in his possession, and requests that the Court compel Complainant to remove his objections and either state he does not possess any further documents that are responsive to the request or produce each responsive document. *Id.* at 15–16. In his Opposition, Complainant asserts that although this Request is outside the scope of damages, he has submitted responsive documents, and is not withholding any documents. Complainant’s Opp’n to Mot. to Compel 4.

This request relates to Complainant’s efforts to obtain employment *prior* to Complainant’s interview with Respondent, and Respondent has not explained how this could reasonably lead to information relating to damages and, more specifically, to Complainant’s efforts to mitigate damages following his non-selection. *See Heath v. Consultadd*, 15 OCAHO no. 1395a, 2 (2022) (“The party seeking discovery bears the burden of proof on relevancy.”). As such, because Respondent has not demonstrated how this request is relevant to damages, and Complainant, in

any event, states he is not withholding any documents, Respondent's motion to compel documents responsive to this request is denied, and Complainant need not respond further.

#### D. Requests for Interrogatory Responses

##### 1. Request 1

Supplemental Interrogatory No. 1 requests Complainant to identify with particularity the damages that he allegedly suffered as a result of Respondent's conduct, including amounts of lost wages, benefits, and earning, and how Complainant calculated such amounts." Resp't's Mem. of Points & Auths. in Support of Mot. to Compel 16. Complainant responds with information regarding estimated damages and how he calculated them. *Id.* at 16–24. Respondent requests the Court to compel Complainant to supplement his response to remove his objections and either state he is not aware of any further responsive information or to identify all responsive information. *Id.* at 24–25. In his Opposition, Complainant argues that to respond to the Interrogatory, he would need to reveal information protected by attorney-client privilege. Complainant's Opp'n to Mot. to Compel 4–5.

Respondent has not specified, nor is it apparent, how Complainant's response to the interrogatory is otherwise deficient. However, as it is not clear whether Complainant withheld information pursuant to his objections, Complainant is ordered to amend his response to clarify whether he has withheld any responsive information pursuant to attorney-client privilege, and if so, provide a description of the nature of the information withheld.

##### 2. Request 2

Supplemental Interrogatory No. 2 requests Complainant to identify each company for which he has provided services as an employee or independent contractor since July 8, 2020, including the name of the company, his title and a description of his duties, the time period during which he performed services and the total gross compensation received, and the nature of and reasons for termination of the relationship. Resp't's Mem. of Points & Auths. in Support of Mot. to Compel 25. Complainant argues that the interrogatory is unrelated to damages, and while he responds by listing contracting positions he has held since, he argues they should not be considered in mitigating damages. *Id.* at 25–27. Respondent argues that Complainant did not fully respond to the interrogatory, and asks that the Court compel him to remove his objections and either state that he is not aware of any information responsive to the interrogatory or to identify all responsive information. *Id.* at 27–28. In his Opposition, Complainant writes that he has "provided the information in [his] response." Complainant's Opp'n to Mot. to Compel 5.

Although Complainant listed two companies he has worked for as a contractor, he did not list the title and a description of his duties, the time period during which he performed services, the total gross compensation received, or the nature and reasons for termination of the relationship. The

Court finds that this request is relevant to damages and is not overbroad or burdensome. As such, Complainant is ordered to amend his response to fully respond to each request in Supplemental Interrogatory No. 2. As it is not clear whether Complainant withheld information pursuant to his overruled objections, Complainant shall confirm that he has not withheld additional information responsive to this interrogatory.

### 3. Requests 3 and 4

Supplemental Interrogatory No. 3 requests Complainant to identify each company for which he has applied for employment or a contractor position since July 8, 2020, including the name of the company, the position for which he applied and the approximate date on which he applied. Resp't's Mem. of Points & Auths. in Support of Mot. to Compel 28. Supplemental Interrogatory No. 4 requests that, for each position identified in Supplemental Interrogatory No. 3, Complainant identify whether he was interviewed for and whether he was offered the position. *Id.* at 30.

Complainant argues that these requests are unrelated to damages, and that they exceed the permissible number of interrogatories. For Supplemental Interrogatory No. 3, Complainant then lists companies he has applied to (indicating "including, but not limited to") and the positions he applied for, and states that he does not have the dates he applied because he applied online and does not have the records. *Id.* at 29. Respondent argues that Complainant's brief, non-exhaustive list does not adequately respond to the interrogatory, and requests that Complainant remove his objections and state that he is not aware of any further information responsive to this interrogatory, or to provide this information. *Id.* For Supplemental Interrogatory No. 4, Complainant states that he "was interviewed for few of these positions and was offered two positions during the stated period," without specifying which positions he is referring to. *Id.* at 30. In his Opposition, Complainant writes that his responses were clear. Complainant's Opp'n to Mot. to Compel 5.

Complainant's objections to the number of requests are overruled for the reasons above. The Court finds that both requests are directly relevant to mitigation of damages.

Complainant is ordered to amend his response to fully respond to Supplemental Interrogatory No. 3 by providing a complete list of companies he applied for as an employee or contractor position since July 8, 2020. Complainant is ordered to amend his response to fully respond to Supplemental Interrogatory No. 4 by identifying which positions he was interviewed for and for which he was offered the position. As it is not clear whether Complainant withheld information pursuant to his overruled objections, for both Interrogatories, Complainant is ordered to confirm that he has produced all responsive information known to him.

### 4. Request 5

Supplemental Interrogatory No. 5 requests that Complainant list all civil lawsuits and other legal disputes to which he has been a party since July 8, 2020, including the names of all parties involved, all claims asserted by each involved party, and all damages recovered. Resp't's Mem. of Points & Auths. in Support of Mot. to Compel 31. Complainant responded that the request exceeded the subject of damages, and exceeded the number of permissible interrogatories. *Id.* at 31–32. Complainant then provides a list of civil lawsuits, without specifying the names of each involved party, the claims involved, or damages recovered. *Id.* Respondent requests that the Court compel Complainant to supplement his response to remove his objections and identify all responsive information. *Id.* at 32–33. In his Opposition, Complainant writes that his claims in other matters are irrelevant, and already known to Respondent. Complainant's Opp'n to Mot. to Compel 6.

Complainant's objections related to exceeding the scope of damages and exceeding the number of permissible interrogatories are overruled for the reasons above. This request may also reasonably lead to discoverable information related to damages. As such, Complainant is ordered to fully respond to this interrogatory by including the names of all parties involved in these civil lawsuits and legal disputes, the claims asserted by each party, and all damages recovered. As it is not clear whether Complainant withheld information pursuant to his overruled objections Complainant is ordered to confirm that he has produced all responsive information known to him.

#### V. RESPONDENT'S MOTION FOR ATTORNEY'S FEES

In its Notice of Motion and Motion to Compel and for Reasonable Attorneys' Fees and Costs, Respondent asks the Court to "issue an Order that Complainant pay Respondent's reasonable expenses and attorneys' fees in bringing this motion." In response, Complainant filed a Motion to Reprimand Respondent's Attorneys. Complainant writes that Respondent's attorneys knew that Respondent's Motion for Attorney's Fees is "not warranted" under 28 C.F.R. § 68.23(c), and the only purpose of the motion is to "harass and bully" him and is in "bad faith." Mot. to Reprimand 1.

"8 U.S.C. § 1324b(h) permits an award of attorney's fees only to the prevailing party and 'if the losing party's argument is without reasonable foundation in law and fact.'" *Ravines de Schur v. Easter Seals-Goodwill Northern Rocky Mountain, Inc.*, 15 OCAHO no. 1388b, 4 (2021). OCAHO has found that requests for attorney's fees for the preparation of a motion to compel, when neither party is yet a "prevailing party," are therefore premature. *Id.* (citing *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10 (2021)). Respondent does not identify any other legal basis for its request, but the Court notes that OCAHO has found that it is not empowered to award monetary sanctions pursuant to Federal Rule of Civil Procedure 11. *See, e.g., Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1104, 3 (2004).

For these reasons, Respondent's request for attorneys' fees is denied as premature.

Complainant's Motion to Reprimand Respondent's Attorneys is likewise denied. OCAHO ALJ's "may publicly reprimand counsel for unethical, unprofessional, or otherwise objectionable conduct[.]" *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416e, 7 (2023) (CAHO order) (citing *Hsieh v. PMC-Sierra Inc.*, 9 OCAHO no. 1100, 41 (2003); and then citing *United States v. La. Crane Co.*, 11 OCAHO no. 1246, 3, 14–15 (2015)). While the Court denied Respondent's request for attorneys' fees and costs, there is no basis in the record for Complainant's accusation that the request was solely made for improper purposes. *See also Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438a, 4 (2022) ("Sanctions for violating standards of conduct are reserved for particularly egregious litigation misconduct.").

Respondent's filings also contain additional communications between Complainant and Respondent in which Complainant attacks Respondent's counsel, calling counsel a "liar", and a "crook," and accusing counsel of deceit. Resp't's Mem. of Points & Auths. in Support of Mot. to Compel, Katsnelson Decl., Ex. A. In his Opposition, Complainant refers to alleged inflammatory incidents involving other attorneys at Respondent's firm. Complainant's Opp'n to Mot. to Compel 4–5. The Court is cognizant that the Complainant is pro se, has strong emotions and opinions about the case, and the case has a lengthy history. Regardless of his views, however, unsubstantiated accusations and inflammatory language have *no place* in this forum. *Zajradhara v. Algeric Gen. Servs., LLC.*, 16 OCAHO no. 1432b, 3 (2022) (citing *M.S. v. Dave S.V. Hoon-John Wayne Cancer Inst.*, 12 OCAHO no. 1305, 7–8 (2017) (personal vilification and ad hominem attacks and "any other behavior that falls below OCAHO's expected standards of conduct by either party or any individual appearing in these proceedings will not be tolerated.")). Reasonable minds can and do differ about matters of perspective and opinion, such as whether a person was rude. Further, factual disputes at the heart of the case are matters that will be resolved in the course of the litigation. Name calling and in particular irrelevant and irresponsible statements about other attorneys not connected with the case are wholly out of the bounds of appropriate conduct. The Court cautions the Complainant to comport himself with dignity, and refrain from using inflammatory language and making personal attacks against Respondent's counsel.

VI. CONCLUSION

The parties are hereby ORDERED to exchange discovery responses as directed above by February 2, 2024.

SO ORDERED.

Dated and entered, January 18, 2024.

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Honorable Jean C. King  
Chief Administrative Law Judge