

8 U.S.C. § 1324b Proceeding
OCAHO Case No. 2024B00021

ORDER DENYING COMPLAINANT'S
MOTION TO COMPEL, MOTION TO STRIKE,
AND MOTION FOR SANCTIONS

¹ Respondent's Answer is not paginated. As a result, the page numbers referenced here are based on the Court's own page count.

days after a discovery response's due date or receipt of a deficient response, whichever occurs first. Id. at 4.

On March 8, 2024, Complainant filed his Layman's Pre-hearing Statement and Motion for Discovery. In this filing, Complainant stated that he had repeatedly attempted to contact Respondent via telephone but was unsuccessful in reaching anyone at the number he called. Preh'ring State. & Mot. Disc. 1.² Complainant does not describe the purpose of the intended communication with Respondent. Complainant concludes Respondent has not engaged cooperatively in this litigation. Id.

Later in the filing, Complainant sets forth at least 19 requests for production of documents and five requests for answers to interrogatories.³ Id. at 13-16. It is unclear from the filing whether Complainant is making the request of the Respondent to produce the information, of the Court to compel production, requesting that the Court permit Complainant to request the identified pieces of discovery from Respondent, or seeking the issuance of a subpoena to Respondent or third parties concerning the sought after discovery. Id. at 1-2, 13-16.

Complainant's filing also includes a copy of what appears to be copies of job vacancies and emails to Respondent concerning job vacancies. Complainant identifies these documents as Exhibits 2-5. Id. at 2-11. Complainant asks the Court to "request of the individuals cc'd on the original emails to provide the Court with their screenshots or meta data for the email in question." Id. at 1-2.

Finally, Complainant moves to strike Respondent's Answer due to "fairness and impartiality[.]" Id. at 2.

In its initial prehearing statement, filed March 20, 2024, Respondent generally denies that it has any records reflecting Complainant's attempt to contact it. Resp't Preh'ring State. 2. Respondent further contends there has been "no exchange of evidence, information, or documents between Kang Corporation and Mr. Zajradhara." Id. at 3.

On May 2, 2024, the Court issued an Order Setting Case Schedule. Among other key dates, the Order set the close of discovery for July 31, 2024, and reiterated the limits on permissible types and quantities of discovery. Order Set. Case Sched. 2.

² In contravention of the Court's General Litigation Order, Section VIII, Paragraph 6, Complainant's motion is not paginated. Accordingly, the page numbers referenced here are based on the Court's own page count.

³ Given the formatting of Complainant's various requests, it is difficult to conclude with certainty the number of requests, or their classification as requests for production of documents versus requests for answers to interrogatories.

On May 24, 2024, Complainant filed a Layman’s Motion for Intervention and Sanctions Upon the Respondent for Non-Response to Discovery. In this filing, Complainant contends that he has repeatedly sought answers to discovery issued to Respondent, to no avail. Mot. Sanctions 1. Complainant requests that the Court impose unspecified sanctions and, if Respondent’s noncompliance continues, summary judgment. *Id.* In support of the motion, Complainant attaches an email to Respondent dated April 2, 2024, in which he states that he sent his discovery requests by mail two to three weeks prior. *Id.* at Ex. 1.

The Court will address Complainant’s discovery-related motions and motion to strike in turn.

II. COMPLAINANT’S MARCH 8, 2024 MOTION FOR DISCOVERY (MOTION TO COMPEL)

Insofar as Complainant’s March 8 motion was intended as a discovery request to Respondent, it should not have been sent to the Court. *See* Preh’ring State. & Mot. Disc. 13 (requesting that the Court “grant [Complainant] the following discovery”). OCAHO’s Rules of Practice and Procedure state “[t]he parties shall not file requests for discovery, answers, or responses thereto with the Administrative Law Judge.” 28 C.F.R. § 68.6(b). The Court opened discovery through the General Litigation Order and explained that, barring instances where the discovery is filed with the Court as an exhibit to a motion, or as evidence during a hearing, discovery requests “should not be sent to the Court.” Gen. Lit. Order 3.

Insofar as Complainant’s filing was a motion to exceed the discovery limitations imposed by the General Litigation Order, which asserts that the parties may propound “no more than 10 Requests for Production of Documents, 10 Interrogatories, 10 Requests for Admission, and 3 Depositions,” Gen. Lit. Order 3, Complainant fails to describe why the additional discovery is “necessary, relevant, and not duplicative,” *Id.* at 4, and Complainant fails to include a statement that the moving party has conferred in good faith with the opposing party. *Id.* Complainant’s representations that he attempted to call Respondent on several occasions are unavailing—he does not describe the purpose of the intended communication, and the Court will not infer Complainant’s intent without additional information.

To the extent Complainant seeks to have the Court issue a subpoena for metadata or “screenshots” for the third parties referenced in Exhibits 2-5, this request is also denied. First, the primary recipient of the communications Complainant attaches is Respondent; accordingly, Complainant may seek to obtain the information it has identified through the normal discovery process identified in OCAHO regulations and the Court’s prior General Litigation Order. The other recipients, identified in the cc line of Complainant’s communications, appear to be IER personnel and three other persons whom Complainant does not identify. Complainant offers no argument or evidence as to what metadata he seeks to obtain from these persons, why they have

relevant data which would not otherwise be in Complainant or Respondent's possession, or more generally why any of the sought after information is relevant to the claims and defenses in this matter.⁴ Accordingly, the motion is denied.

The Court turns to yet another possible intention behind the March 8th Motion—that Complainant intended to ask permission of the Court to issue discovery. If this was the goal, it was an unnecessary filing—as the parties are aware, the General Litigation Order permitted the parties to engage in discovery “upon receipt of [the] Order; the parties are not required to delay discovery until the initial prehearing conference.” Gen. Lit. Order 3. Accordingly, if this was the intention, the motion is denied as moot.

Complainant's subsequent filings suggest that the discovery in the March 8th motion was intended as a motion to compel. If this was the goal, Complainant was obliged to first: 1) propound the discovery on the other party, 2) either wait until the deadline to respond had elapsed or until Complainant received an objection or deficient response, whichever occurs first, then 3) attempt a good faith discussion with Respondent concerning the nature of the discovery dispute, and then if there was no resolution through a good faith discussion, 4) file the motion with the Court. 28 C.F.R. § 68.23(a); Gen. Lit. Order 4. OCAHO Rules detail the specific information which must be included in a motion to compel, 28 C.F.R. § 68.23(b), but this is immaterial for the purpose of the motion under consideration—it is not at all clear to the Court that the discovery was sent to the Respondent in a way which would have impressed on the Respondent in no uncertain terms that Complainant was requesting discovery to which it expected an answer by the Court-imposed deadlines.⁵ As noted above, Complainant's March 8th motion was subject to multiple interpretations about to whom the discovery was intended. Accordingly, Complainant's motion to compel discovery is also denied.⁶

III. COMPLAINANT'S MARCH 8, 2024 MOTION TO STRIKE RESPONDENT'S ANSWER

⁴ Complainant references metadata on page 1 of his discovery motion, citing exhibit #1 to his motion as the information for which he believes metadata is necessary. However, Complainant's motion begins with exhibit #2; it does not include an exhibit #1. Preh'ring State. & Mot. Disc. 1.

⁵ Without belaboring the point, part of the goal behind 28 C.F.R. § 68.6(b)'s requirement that parties not file discovery or discovery requests with the Court is that by serving the discovery on the producing party alone, one gives notice that they are the party from whom one expects a response. *See* 28 C.F.R. § 68.20(a) (“Any party may *serve* on any other party a request to: (1) Produce . . . any designated documents . . . in the possession, custody, or control of the party upon whom the request is served[.]” (emphasis added)).

⁶ Because of the procedural defects identified above, and the fact that the discovery exceeds the Court's numerical limitation, the Court need not address the substance of Complainant's requests for production of documents and interrogatories. However, the Court notes briefly that the discovery requests are very broad, both temporally and in their subject matter. Complainant would be well advised to consider the requirement that discovery be proportional to the allegations at issue in fashioning his future discovery requests. *See, e.g. Heath v. Asta CRS, Inc.*, 14 OCAHO no. 1385b, 3 (2021).

Complainant also embeds a motion to strike Respondent's Answer in his March 8 motion. Preh'ring State. & Mot. Disc. 2. To warrant an order striking an answer, a moving party must show that the answer contains "redundant, immaterial, impertinent, or scandalous material, or that the answer raises insufficient affirmative defenses." Zajradhara v. E-Supply Enters., 16 OCAHO no. 1438a, 2, 5 (2022); *see also* Zajradhara v. E-Supply Enters., 16 OCAHO no. 1438b, 6, 7 (2022) (both citing Touissant v. Tekwood Assocs., Inc., 6 OCAHO no. 892, 784, 787-88 (1996)).

Here, Complainant does not demonstrate why an order striking Respondent's Answer is warranted. Complainant generally avers that the Court should strike Respondent's Answer "for all fairness and impartiality" in light of Complainant's allegations of discrimination and fraud. Preh'ring State. & Mot. Disc. 2. These broad allegations do not demonstrate redundancy, immateriality, impertinence, or scandalousness. Rather, they are factual allegations related to the merits of Complainant's claims. As such, Complainant's motion to strike Respondent's Answer is denied.

IV. COMPLAINANT'S MAY 24, 2024 MOTION FOR INTERVENTION AND SANCTIONS

It is reasonably clear from the May 24, 2024, motion that Complainant: 1) believes he propounded discovery on Respondent at some point between February and March 2024; 2) did not receive a response which he found satisfactory, or, alternately, did not receive a response at all; and 3) would like the Court to impose sanctions as a result. Mot. Sanctions 1.

Missing from this filing is a copy of the actual discovery Complainant contends he sent. If the discovery is the same as discussed above, in the March 8th filing, the motion is denied for the reasons previously discussed. To the extent Complainant separately served discovery on Respondent, as the motion suggests (Complainant referenced the discovery being sent "by standard post," Mot. Sanctions Ex. 1), his failure to include the discovery and a copy of the certificate of service in this filing prevents the Court from viewing it and determining whether it was properly served on Respondent and whether Respondent was obliged to provide a response.⁷ Complainant's bald representations are not enough for the Court to rule in his favor, either with regard to a motion to compel discovery or with regard to the imposition of any sanction related to the purported absence of the discovery. To be clear: if the Court cannot determine if the

⁷ There are several requirements for a motion to compel which Complainant's May 24, 2024 motion does not include. *See*, 28 C.F.R. § 68.23(b); Zajradhara v. E-Supply Enters., 16 OCAHO no. 1438d, 2 (2023); Zajradhara v. E-Supply Enters., 16 OCAHO no. 1438b, 5-6 (2022). The Court's highlighting of one of those requirements, that the motion include a copy of the discovery at issue, is not intended to relieve litigants of their responsibilities with regard to the remaining requirements, which the Court, for the sake of brevity, does not include in this Order.

discovery should have been produced, it cannot impose a sanction related to the Respondent's failure to produce.

The Court also notes that the imposition of a sanction does not, in the main, automatically follow from a discovery violation. Sanctions typically proceed from a Court order compelling production which the responsible party fails to honor. In this matter there is no order compelling discovery; accordingly, sanction discussions are premature. *See E-Supply Enters.*, 16 OCAHO no. 1438a, at 3; *see also Zajradhara v. CL Corp.*, 16 OCAHO no. 1429, 3 (2022).

Finally, while Complainant's motion is unclear on this point, it is arguable that Complainant seeks to have the Court impose sanctions related to Respondent's conduct surrounding the discovery process, but not directly related to the production or failure to produce any particular piece of discovery. This might be, for instance, related to Complainant's argument that Respondent has failed to meet and confer with him, Mot. Sanctions 1, or for some other reason. *See* 28 C.F.R. § 68.35. The Court notes this possibility but declines to take any action. The motion is unclear about the conduct which it claims is sanctionable and lacks evidence on any of the possible conduct which might be grounds for sanctions. *See, e.g. CL Corp.*, 16 OCAHO no. 1429, at 3; *see also Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426a, 4 (2022) (noting that allegations of misrepresentation must be supported by "strong evidence" (quoting *Kamal-Griffin v. Cahill Gordon & Reindel*, 3 OCAHO no. 460, 647, 648 n.4 (1992))). Accordingly, Complainant's motion for sanctions is denied.

Complainant is free to re-file this motion, paying close attention to the need, pursuant to 28 C.F.R. § 68.23(b), to include the relevant discovery requests, proof of service of the discovery requests on Respondent, any objection or response from Respondent to the discovery requests, arguments in support of the motion, and evidence of a good faith attempt to confer with Respondent about receiving the discovery. This motion, and any attending evidence, may be filed via email, per the Court's May 1, 2024, Notice of Conversion to Electronic Filing.

SO ORDERED

Dated and entered on July 31, 2024.

John A. Henderson
Administrative Law Judge