

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

February 21, 2023

RAVI SHARMA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00023
)	
NVIDIA CORP.,)	
Respondent.)	
_____)	

Appearances: Ravi Sharma, pro se Complainant
Patrick Shen, Esq., K. Edward Raleigh, Esq., and Samantha Caesar, Esq.,
for Respondent

ORDER DENYING COMPLAINANT’S MOTION TO STRIKE
RESPONDENT’S DISCOVERY RESPONSES

I. BACKGROUND

On January 18, 2023, the Court issued an Order Denying Motions to Compel. *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450d, 1 (2023).¹ At that time, the administrative law judge (ALJ) concluded that “Respondent [had] met its discovery obligations for both its interrogatory and request for production responses.” *See id.* at 8–10. The ALJ then reminded the parties that

¹ 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 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 “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

discovery remained open through February 6, 2023, “to confer on discovery issues or utilize remaining discovery tools.” *Id.* at 11.²

On February 6, 2023, Complainant filed his “Motion to Strike Respondent NVIDIA Corporation’s Discovery Responses to Complainant’s Discovery Requests” (Motion to Strike Respondent’s Discovery Responses). Respondent filed an opposition the same day.

II. MOTION TO STRIKE RESPONDENT’S DISCOVERY RESPONSES

Complainant’s February 6, 2023 motion raises a new alleged deficiency with Respondent’s discovery production. *See generally* Mot. Strike. Specifically, Complainant contends that Respondent failed to “verify” its October 31, 2022 interrogatory responses and November 2, 2022 request for production responses. *See id.* at 1–2 (asserting that the responses “should have been signed under oath and penalty perjury by [the person] who made the hiring decision,” and not by counsel for Respondent). Complainant argues Respondent’s discovery responses should be “stricken” pursuant to 28 C.F.R. § 68.23(d), and “treated as a failure to respond.” *Id.* In support of his motion, Complainant attached email correspondence exchanged by the parties on January 26–28, 2023, along with the referenced discovery responses.

Respondent’s February 6, 2023 opposition argues that Complainant’s latest motion “should be denied as moot, without merit, and unnecessary.” Opp’n 1. According to Respondent, it is unclear why Complainant moves to strike its discovery responses. *Id.* As to the interrogatories, Respondent notified Complainant “that any verification required by 28 C.F.R. § 68.19” would be sent before the close of discovery. *Id.* at 2. Respondent then provided Complainant with a verification statement from its “authorized officer or agent” on February 3, 2023, in order to meet its discovery obligation for interrogatories. *See id.* (citing 28 C.F.R. § 68.19(b)). As to the requests for production, Respondent argues OCAHO regulations “do not require any such verification.” *Id.* (citing 28 C.F.R. § 68.20). In support of its motion, Respondent attached: an email to Complainant dated February 3, 2023 referencing and attaching discovery documents (Ex. 1); supplemental discovery production dated February 3, 2023 (Ex. 2); verification statement signed under penalty of perjury on February 2, 2023 (Ex. 3); a United States Postal Service (USPS) receipt showing expected delivery to a Santa Clara, CA address on February 4, 2023 (Ex. 4).

III. LEGAL STANDARDS

“OCAHO’s rules outline a party’s obligations when responding to discovery, including provisions for specific discovery tools,” such as interrogatories and requests for production. *NVIDIA Corp.*, 17 OCAHO no. 1450d, at 7 (citing 28 C.F.R. §§ 68.18, 68.19, 68.20).³

² Additionally, on February 7, 2023, the Court issued an Order Rejecting Complainant’s January 24, 2023 Filing. *See Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450e, 1–2 (2023) (concluding the filing was an unsolicited evidentiary submission that ran afoul of ensuring a clear record).

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

28 C.F.R. § 68.19 describes a party's obligations when responding to interrogatories. "[W]ritten interrogatories [are] to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or government agency, by any authorized officer or agent, who shall furnish such information as is available to the party." § 68.19(a) (emphasis added). "Each interrogatory shall be answered separately and fully in writing under oath or affirmation . . . [t]he answers and objections shall be signed by the person making them." § 68.19(b).

28 C.F.R. § 68.20 describes a party's obligations when responding to requests for production. "The party upon whom the request [for production] is served" shall provide a written response that states, for each item or category "(1) [t]hat inspection and related activities will be permitted as requested, or (2) [t]hat objection is made in whole or in part, in which case the reasons for the objection shall be stated." §§ 68.20(d)–(e).

A party may move the ALJ for an order compelling discovery "if the party upon whom a discovery request is made fails to respond adequately, including evasive or incomplete responses[.]" *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388d, 2 (2021) (citing 28 C.F.R. §§ 68.23(a), (d)); e.g., *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362a, 8–9 (2020). "[A]n evasive or incomplete response to discovery may be treated as a failure to respond." *United States v. Emp'r Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 3 (2014) (citing § 68.23(d)).

IV. DISCUSSION

As an initial matter, the nature of Complainant's request is not entirely clear. Complainant moves to strike Respondent's discovery responses. A motion to strike is generally understood as a request that a court either "delete insufficient defenses or immaterial, redundant, impertinent, or scandalous statements from an opponent's pleading" or "inadmissible evidence be deleted from the record." *Motion to Strike*, BLACK'S LAW DICTIONARY (11th ed. 2019); see, e.g., *United States v. Desert Palace, Inc.*, 9 OCAHO no. 1067, 1 (2001) (denying a party's motion to strike affirmative defenses raised in the answer); *Ogunrinu v. Law Res.*, 13 OCAHO no. 1332j, 1 (2021) (denying a request to strike exhibits from a party's summary decision motion). Here, the contested discovery responses are not part of the evidentiary record. The Court is therefore unclear on what Complainant would like to strike. For this reason alone, it is appropriate for the Court to DENY Complainant's motion.

In light of Complainant's pro se status, the Court separately provides the following analysis related to Complainant's assertions about discovery obligations—i.e., that Respondent failed to meet its discovery obligations (related to "verification") in its interrogatory and request for production responses, and "the discovery responses should be treated as a failure to respond." Mot. Strike 1–2 (citing 28 C.F.R. § 68.23(d)).

A. Interrogatories

As to the identified interrogatories, the Court finds that Respondent met its discovery obligations on interrogatories, pursuant to 28 C.F.R. §§ 68.19(a)–(b). OCAHO’s regulations require that “any authorized officer or agent” furnish written interrogatory responses, and those responses “be signed by the person making them.” §§ 68.19(a)–(b).⁴ Respondent provided Complainant with a “Verification of Factual Statements in Interrogatory Responses by Respondent NVIDIA Corporation.” This document was signed under penalty of perjury, on February 2, 2023, by the Head of Global Recruiting Operations for Respondent. Opp’n 2, Ex. 3. Respondent represents that this person, in her official capacity, is an “authorized officer or agent” with knowledge of the factual information in the interrogatory responses. *Id.* Absent evidence to the contrary, the Court can conclude that the Head of Global Recruiting Operations is an “authorized officer or agent” for purposes of § 68.19(b).⁵ Further, the certificate of service accompanying the verification statement indicates service on Complainant, via USPS priority mail, on February 3, 2023. *Id.*; *see also id.* at Ex. 4 (showing expected delivery on February 4, 2023). Respondent also provided Complainant a copy of the verification statement via email on February 3, 2023. *Id.* at Ex. 1.

On this record, the Respondent has met its obligations under 28 C.F.R. §§ 68.19(a)–(b) before discovery closed on February 6, 2023, and has not engaged in “incomplete or evasive” discovery practices contemplated by OCAHO precedent or 28 C.F.R. § 28.23(d).

B. Requests for Production

As to the identified requests for production, the Court finds Respondent met its discovery obligations on requests for production, pursuant to 28 C.F.R. §§ 68.20(d)–(e). Respondent correctly identifies that OCAHO’s regulations do not require a particular verification for requests for production (the alleged deficiency raised in this motion). 28 C.F.R. § 68.20; *see* Opp’n 2.

On this record, Respondent met its obligations under 28 C.F.R. §§ 68.20(d)–(e), and has not engaged in “incomplete or evasive” discovery practices contemplated by OCAHO precedent or 28 C.F.R. § 28.23(d).

⁴ Comparatively, Federal Rule of Civil Procedure 33(b)(5), on interrogatories, states: “The person who makes the answers must sign them, and the attorney who objects must sign any objections.”

⁵ OCAHO’s regulations do not require a signature by a specific individual; rather, the focus is on whether that person has authority, either as an officer or agent, to provide answers on behalf of the party. *See* § 68.19(b).

V. CONCLUSION

Complainant's February 6, 2023 Motion to Strike Respondent's Discovery Responses is DENIED.

The discovery window **closed** on February 6, 2023.

Dispositive motions are due on March 8, 2023.

Responses to dispositive motions due on April 7, 2023.

Parties must seek leave of the Court in advance of filing a reply to a response. *See* 28 C.F.R. § 68.11(b).

SO ORDERED.

Dated and entered on February 21, 2023.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge