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

May 7, 2024

ARTIT WANGPERAWONG, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2024B00007
	)	
META PLATFORMS, INC., Respondent.	)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for Respondent

ORDER GRANTING RESPONDENT MOTION FOR PROTECTIVE ORDER (ATTACHED), DENYING ALL MOTIONS TO COMPEL, & REVISING DISCOVERY SCHEDULE

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. On October 3, 2023, Complainant, Artit Wangperawong, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc., alleging discrimination and retaliation, in violation of 8 U.S.C. §§ 1324b(a)(1) and (a)(5). Compl. 8.

On December 15, 2023, Respondent filed an Answer.

On January 9, 2024, the Court held an initial prehearing conference. *See* 28 C.F.R. § 68.13.[1]

On January 11, 2024, the Court issued an Order Summarizing Prehearing Conference. The Order stated the parties could commence discovery, and "any regulatory response deadlines for discovery requests filed before the issuance of this order will be adjusted to be calculated from the date of

[1] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

this Order." *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510b, 2 & n.4 (2024).[2] Further, the parties "must respond to a request for discovery within 30 calendar days from receipt of the request." *Id.* at 3. Discovery motions, including motions to compel, "must be filed within 21 calendar days after receipt of a deficient response or after the response to the discovery is due, whichever occurs first," and motions to compel "must be accompanied by the discovery requests and responses and a declaration that the moving party has made a good faith effort to resolve the discovery dispute." *Id.* The Court set deadlines for the close of discovery (July 7, 2024), among other deadlines. *Id.* at 4.

On February 1, 2024, the Court issued an Order Granting in Part and Denying in Part Respondent's Motion Pertaining to Arbitration[3] and to Dismiss. *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510c (2024). After a subsequent order[4] and an unsuccessful motion to amend,[5] the scope of the case involves one allegation of discrimination based on citizenship status (Complainant was terminated from his position with Respondent).

On February 21, 2024, Complainant filed a Motion to Compel Discovery. Respondent filed an Opposition. For the reasons outlined below, this Motion and subsequent motions to compel (listed at footnote 7) shall be DENIED as MOOT.

On April 26, 2024, Respondent filed a Motion to Compel Discovery. Complainant filed an opposition on May 2, 2024. For the reasons outlined below, this Motion to Compel shall also be DENIED as MOOT.

Because of the frequency of filings and the nature of the discovery disputes, the Court deems it prudent to provide guidance via an Order. This Order will also set new deadlines to better assist the parties in navigating discovery. Parties are not precluded from filing additional motions to compel at the conclusion of the process outlined below. Finally, on April 26, 2024, Respondent filed a Motion for a Protective Order. Complainant filed an opposition on May 2, 2024. As is addressed in more detail in a section below, Respondent has demonstrated good cause for issuance of a protective order, and this Motion shall be GRANTED.

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[2] Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

[3] The Court declined to dismiss or stay the action in favor of arbitration. *Id.* at 3–5.

[4] *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510d (2024).

[5] *See* Order Denying Motion to Amend Complaint (issued April 30, 2024).

II. MOTIONS TO COMPEL DENIED AS MOOT

Parties have filed several motions and oppositions related to discovery as outlined above. Based on these filings, it generally appears Complainant seeks discovery he believes is relevant to his allegation, and Respondent believes Complainant must stipulate to a protective order first,[6] and that some of the Complainant's requests are objectionable. On the other side of the ledger, Respondent seeks to compel discovery because it believes Complainant provided only a curated selection of responsive documents and some of Complainant's objections are improper.

A careful review of the four pending motions to compel[7] causes the Court to conclude both parties would benefit from additional guidance[8] and deadlines. This Order will now provide guidance and deadlines with the expectation that parties will now be better equipped to work through previous points of impasse. If not, they may file anew a future motion to compel. With that in mind, the Court will first provide limited guidance pertaining to motions to compel.

Parties may move the Court 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. *See* 28 C.F.R. §§ 68.23(a), (d).

28 C.F.R. § 68.23(b) provides that a motion to compel discovery 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.

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[6] Respondent asserted this argument prior to filing the Motion for a Protective Order granted through this Order. It is reasonable to presume this issue will be overcome by this Order.

[7] Complainant's Motion to Compel Discovery filed February 21, 2024; Complainant's Motion to Compel Discovery filed April 9, 2024; Complainant's Motion to Compel Responses to Discovery filed April 24, 2024; and Respondent's Motion to Compel Production of Documents and Information filed April 26, 2024. Respondent filed oppositions to each of Complainant's motions to compel, and Complainant filed an opposition to Respondent's motion to compel.

Complainant also filed a request to file a Reply to Respondent's April 19, 2024 Opposition to Motion to Compel Responses to Discovery on April 23, 2024. Given that the Court denies the underlying motion to compel as moot, the Court need not reach this request.

[8] For example, a quick review of Complainant's requests reveal that some to which Respondent objected don't appear objectionable. To the extent Respondent objects on the basis that a request is "vague," the Court expects Respondent to actively engage in meeting and conferring with Complainant to better understand what he seeks. Further, to the extent the Complainant is providing some, but not all responsive documents, such a practice is also not permissible.

In several of his recent motions to compel, Complainant provided some, but not all, of the information required. Specifically, Complainant did not provide a copy of his requests for discovery to the Court with his motions, or fully described the nature of these requests in the motion.[9] Similarly, Complainant made general assertions about Respondent's responses, but he did not provide Respondent's actual responses or objections with his motion so the Court could properly evaluate those responses against the specific request or query.[10] If Complainant were to file such a motion again, he would need to overcome these deficiencies. To ensure fairness, the Court notes Respondent's motion to compel was reviewed for the same regulatory compliance, and it did not have any deficiencies.

III. RESPONDENT'S MOTION FOR A PROTECTIVE ORDER IS GRANTED[11]

"A protective order helps 'avoid the dissemination of potentially injurious information which might, even unintentionally, jeopardize a litigant's legitimate interests in non-disclosure' and 'encourage[es] the cooperation of litigants in providing sensitive information by ensuring some protection to those interests.'" *United States v. Facebook, Inc.*, 14 OCAHO no. 1386d, 2 (2021) (quoting *McCaffrey v. LSI Logic Corp.*, 6 OCAHO no. 883, 663, 665 (1996)).

Pursuant to 28 C.F.R. § 68.18(c), "[u]pon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, harassment, embarrassment,

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[9] *See Zajradhara v. Aljeric Gen. Servs., LLC*, 16 OCAHO no. 1432c, 4 (2023) (denying motion to compel where the complainant listed categories of requested information, but had not actually provided his requests); *see also United States v. MSNF Foods 4 LLC*, 17 OCHO no. 1459a, 2 (2023) ("Including a detailed description of the nature of the discovery or the discovery requests, or the discovery requests themselves, is critical for the Court to understand what it is compelling.").

[10] *See Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438d, 2 (2023) (finding motion to compel did not meet regulatory requirements when the complainant alluded to responses as deficient, but did not "provide those responses (either as documents or within the text of his motion)"); *cf. Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388b, 3 (2021) (finding a motion to compel complied with the first two regulatory requirements where the motion was "accompanied by a copy of the discovery request and Complainant's exact answers").

[11] "[T]he time for requesting a protective order is before, not after, the date production is required to be made . . . ." *Breda v. Kindred Braintree Hosp., LLC*, 10 OCAHO no. 1202, 4 (2013).

Respondent's delay in filing its motion undoubtedly contributed to the friction between the parties.

On Complainant's end, it is worth noting that is normal to negotiate a protective order with the opposing party, and then jointly move the Court to issue the protective order (as Respondent appears to have requested).

oppression, or undue burden or expense." Protective orders are appropriate when they are "consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonable prejudice a party, witness, or third party . . . ." 28 C.F.R. § 68.42(a).

"The moving party must 'show some plainly adequate reason for the issuance of a protective order, and courts have required a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.'" *Facebook, Inc.*, 14 OCAHO no. 1386d, at 2 (quoting *United States v. Agripac, Inc.*, 8 OCAHO no. 1017, 268, 271 (1998)). "The procedure of determining good cause seeks to accommodate competing interests and requires balancing the harm to the party seeking protection with the importance of open proceedings." *Id.* (quoting *McCaffrey*, 6 OCAHO no. 883, at 665) (internal quotations omitted). "'At the discovery stage, there is minimal public interest to be accommodated.'" *Id.* (quoting *McCaffrey*, 6 OCAHO no. 883, at 666).

As good cause for a protective order, Respondent argues the information Complainant seeks may contain: (1) "confidential and proprietary business information and sensitive personally identifiable information [(PII)] relating to current and former Meta employees (none of whom are involved in this litigation)," which could result in a "loss of privacy and potential embarrassment or other misuse or mistreatment," Mot. Protective Order 2–3, 8–9; and (2) "highly confidential and proprietary information about Meta's technology and products given the nature of Complainant's role at Meta," *id.* at 2–3, 10. Respondent argues the potential harm to Respondent and its current and former employees outweighs the public interest in disclosure at this juncture. *Id.* at 8 (citing *McCaffrey*, 6 OCAHO no. 883, at 666).

In his Opposition, Complainant writes that he "does not fully understand and therefore cannot agree to the terms of Respondent's proposed protective order." Opp'n Mot. Protective Order 1. Complainant instead proposes a protective order for "Classified or Sensitive Matters" which will "direct the producing party to prepare an unclassified or non-sensitive summary or extract of the original, to be admitted as evidence in the record" or to provide "information that is in the form of aggregated or non-sensitive summary or extract of the original." *Id.* (citing OCAHO Practice Manual, Chapter 5.9 (March 13, 2023)).[12]

Consistent with precedent, the Court finds the reasons articulated by Respondent serve as good cause to warrant a protective order. The potential disclosure of PII—particularly involving non-parties—as well as the potential disclosure of proprietary or sensitive business information constitute good cause warranting the issuance of a protective order.[13] *See generally* 28 C.F.R. §§ 68.18(c), 68.42(a).

[12] While the parties are in the best position to know whether this portion of the Practice Manual would be implicated by their litigation, it seems unlikely this case will involve classified information; further the procedures contemplated by this provision may prove more burdensome and less well-tailored to the instant matter. If the need arises, this issue may be revisited.

[13] *See, e.g.*, *United States v. Guardsmark*, 4 OCAHO no. 614, 249, 255 (1994) (noting that while OCAHO's regulations do not address protective orders in the case of commercial information or trade secrets, FRCP 26(c)(7) does, and observing that "[a] protective order limiting the use of

The contents of the proposed order are consistent with the rationale by which the Court may enter protective orders. It explains what kinds of materials may be considered "confidential." Protective Order 2, 4–5. The proposed protective order then provides for how parties designate material as confidential, *id.* at 5–9, and how parties may challenge a designation, *id.* at 9–10. It provides for access and limited use of confidential material. *Id.* at 10–12. Finally, the proposed protective order addresses the unauthorized disclosure of confidential material, *id.* at 14, and the treatment of confidential materials after litigation, *id.* at 19–20. These terms are consistent with prior decisions and regulations referenced above.

Respondent's Motion for a Protective Order is GRANTED. The Court will execute an unedited version of the proposed order attached to the Motion.

IV. SCHEDULE AND ORDERS

Again, to assist the parties in framing what is discoverable, the Court reminds them that at present, the claim pertains to Complainant's termination from the Applied Research Scientist position on January 13, 2023 due to his citizenship status. Also, within thirty days of receipt of a discovery request, the responding party must provide its response. The parties may not refer back to prior responses to discovery, but must submit fresh/updated responses to each request for discovery.

A. Revised Schedule

The Court now sets the following deadlines (submission due on or before listed date) and schedule:

May 21, 2024	Parties shall submit Joint Discovery Plan (instructions below)
May 28, 2024	Deadline to submit any motions proposing constraints on discovery
June 5, 2024	Initial Disclosures (instructions below)
June 19, 2024	Discovery Initiated (on or before this date)
July 11, 2024	Tentative Discovery Conference with presiding ALJ
August 23, 2024	Motions to Compel Deadline (must be filed on or before this date)
October 31, 2024	Summary Decision (or any other case dispositive motion) Deadline
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documents to the litigation in which the motion for a protective order was filed is commonly used in protective orders involving trade secrets," and "protect[ive] orders that limit access to certain documents to counsel and experts only are commonly entered in litigation involving trade secrets and other confidential research, development, or commercial information") (citations omitted); *Talebinejad v. MIT*, 17 OCAHO no. 1464b, 3 (2023) ("The Court finds that the potential harm caused by disclosure of sensitive educational, financial, and medical information, as well as the need to facilitate the exchange of such information in discovery, constitutes good cause for the proposed protective order."); *Agripac, Inc.*, 8 OCAHO no. 1017, at 272 ("Protective orders may be designed to protect any one of a variety of interests, such as trade secrets or other proprietary information, personal privacy, national security, internal financial information, state secrets, or other classified or sensitive matter . . . ").

B. Additional Requirement For Motions To Compel

In addition to the regulatory requirements at 28 C.F.R. § 68.23(b) as explained above, parties must file any new motion to compel within 14 days of receipt of the deficient response.

C. Joint Discovery Plan (submitted to Court by parties) Requirements

The Joint Discovery Plan shall include at a minimum, the following: the date upon which the parties conferred and discussed the contents of the plan and who was present; a summary of current state of settlement discussions (if any); a list of subjects for discovery; an explanation of issues related to electronically store information (ESI) including but not limited to how it will be produced, appropriate search date ranges and terms, and issues related to preservation; and any other discovery-related issues of which the Court should be aware.

D. Initial Disclosure (submitted only to opposing party) Instructions

Initial Disclosures to the opposing party must include the information:

1. The full name and a contact method for any person who has discoverable information upon which the disclosing party may rely to support its claims or defenses;
2. Documents, ESI, and tangible items upon which the disclosing party may rely to support its claims or defenses; and
3. A computation of damages and any documents or things upon which the calculations are based.

SO ORDERED.

Dated and entered on May 7, 2024.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge