

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

ORDER DENYING COMPLAINANT'S  
MOTION FOR SUMMARY DECISION, AND  
GRANTING IN PART RESPONDENT'S MOTION TO COMPEL

On July 30, 2024, Complainant filed his Layman's Response to Motion to Compel and Exhibits. In his filing, Complainant opposes Respondent's Motion to Compel, citing overboard

discovery requests and delayed responses from Respondent to Complainant's discovery requests. Resp. Mot. Compel 1-2. Complainant also objects to Respondent's counsel's conduct. Id. at 2-3.

Because the Court had not received Respondent's Motion to Compel at the time that Complainant filed his Response, the Court issued an Order of Inquiry on August 21, 2024, ordering Respondent to submit a filing explaining whether it attempted to submit a Motion to Compel, attaching a copy of the Motion. Order of Inquiry 1-2.

On August 22, 2024, Respondent filed its Response to Order of Inquiry, Response to Motion for Sanctions, Motion for Summary Decision with attachment, Motion to Compel, and Notice Pursuant to OCAHO Practice Manual Chapter 3.7. In its Response to the Order of Inquiry, the Respondent explained that Respondent's counsel's office attempted to file the motions "though the email address of [the Immigrant and Employee Right Section's former Acting Special Counsel] . . . mistakenly believ[ing] that this was the correct email address for filing." Resp. Order Inquiry 1-2.

## II. COMPLAINANT'S SUMMARY DECISION, MOTION COMPELLING DISCOVERY, AND SANCTIONS MOTION IS DENIED

On March 12, 2024, Complainant filed a motion titled "Layman's Motion for Summary Judgment Rule 56 Fraud Upon the Court Rule 6(b)(3) Request for (ESI) Discovery Rule 34 and Rule 26(f)." The motion generally denies the allegations in the Answer, seeks sanctions against Respondent for its factual assertions in the same, and asks the Court to conduct discovery to bear out Complainant's claims.

It is not entirely clear to this Court whether Complainant seeks summary decision through its motion. The title suggests that he does, however the motion itself contains none of the information generally provided in a motion for summary decision. Complainant provides no affidavits to support his motion; however, this is not a bar to its consideration. 28 C.F.R. § 68.38(a) outlines the contours of a summary decision proceeding in this forum — it provides that a party may "move with or without supporting affidavits for summary decision on all or any part of the complaint."<sup>1</sup>

Complainant's problem is a more wholesale one — he fails to present evidence or argument addressing most of the allegations in his complaint, regardless of the form that the evidence might take. Further, the motion does not meet its basic obligation to show in the light most favorable to the non-moving party, i.e. the Respondent in this case, there is no material

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<sup>1</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). The rules are also available through OCAHO's webpage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

question of fact and that Complainant is entitled to judgment as a matter of law. In layman's terms, Complainant would have had to present evidence to the Court, giving Kang Corp. the benefit of the doubt on each piece of evidence, showing that Respondent discriminated against Complainant because of his citizenship status and national origin.

Complainant's filing does not meet this standard. Complainant's submission only supports the contention that he applied for a job, not that he was qualified for the job he applied for, or that the job was vacant at the time that he applied for it, or that he was ultimately not selected for the position, or that the non-selection had anything to do with his national origin or citizenship status. Indeed, it is not entirely clear from the submission that Complainant applied for a job with Respondent Kang Corp.

Under OCAHO's Rules of Practice and Procedure, an "Administrative Law Judge shall enter summary decision for either if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.38(c). "An issue of material fact is genuine only if it has a real basis in the record' and '[a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit.'" Sharma v. Lattice Semiconductor, 14 OCAHO no. 1362d, 8 (2023) (quoting Sepahpour v. Unisys, Inc., 3 OCAHO no. 500, 1012, 104 (1993)).<sup>2</sup> The moving party has the "initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law . . . ." Brown v. Pilgrim's Pride Corp., 14 OCAHO no. 1379a, 11 (2022) (quoting United States v. Four Seasons Earthworks, Inc., 10 OCAHO no. 1150, 3 (2012)).

Insofar as Complainant has moved for summary decision, his filing fails to establish that there is no material question of fact on his claims of citizenship and national origin discrimination. Further, he does not address Complainant's legitimate non-discriminatory reason for the challenged action, either through an offer of pretext or through some other means. In short, the motion fails to carry its burden and will be DENIED.

Addressing Complainant's request for the Court to engage in discovery on Complainant's behalf, the Court declines to do so. The Court's order of January 25, 2024 permitted the parties to issue their own discovery in this matter. Complainant offers no legal or equitable reason for the Court to intercede on Complainant's behalf in these proceedings.

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<sup>2</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 <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Turning to the motions to compel, Complainant has failed to fulfill the regulatory requirements underlying such motions, including providing: (1) “[t]he nature of the questions or request; (2) [t]he response or objections of the party upon whom the request was served; (3) [a]rguments in support of the motion; and (4) [a] certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery . . . without action by the Administrative Law Judge.” 28 C.F.R. § 68.23(b). Complainant does not specify what kinds of electronic discovery he is requesting, does not explain whether he received a response from the Respondent, and he does not certify that he conferred or attempted to confer with Respondent. Accordingly, the motion to compel is DENIED.

Finally, addressing the sanctions component of the motion, Complainant offers no facts supporting a hearing on sanctions pursuant to 28 C.F.R. § 68.23(c). Complainant’s arguments for sanctions appear to be at their core a factual disagreement with Respondent about whether Complainant applied to the position at issue in this case. *See* Complainant’s Mot. Summ. Dec. at 3; Answer 1. None of the conduct alleged rises to the level of a sanctionable offense. Accordingly, the Court DENIES Complainant’s motion insofar as it is a motion for sanctions.

### III. RESPONDENT’S MOTION TO COMPEL<sup>3</sup>

Respondent moves to compel responses on three requests for production of documents and three interrogatories. Respondent served the discovery on June 29, 2024. Resp’t’s Mot. Compel 1-2. Complainant replied on the same day via email, refusing to respond to discovery. Resp’t’s Mot. Compel 2; *id.*, Ex. C. On July 8, 2024, the parties held a meet and confer meeting pursuant to Respondent’s request; during the meeting, Complainant was noncommittal on whether he would respond to the discovery. *Id.* at 3.

#### A. Legal Standards

Under OCAHO’s Rules of Practice and Procedure, a party “may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request” when “a party upon whom a discovery request is made . . . fails to response adequately or objects to the requests or to any part thereof.” 28 C.F.R. § 68.23(a). A motion to compel must include:

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<sup>3</sup> As a preliminary matter, the Court ACCEPTS Respondent’s Motion to Compel, as well as the other filings Respondent provided on August 22, 2024. Although the Court did not receive the Motion to Compel on July 30, 2024, the date it was served on Complainant and IER, Respondent’s counsel explained his Response to Order of Inquiry that he mistakenly understood IER’s email address to be the email address for the Court. Because Respondent’s Motion to Compel, Motion for Summary Decision, and Response to Request for Sanctions all contain certificates of service that indicate service upon Complainant, the Court is satisfied that Complainant was timely served with Respondent’s filings. As a result, the Court finds that Complainant is unlikely to be prejudiced by the Court accepting Respondent’s filings and that accepting the filings would facilitate the progress of this matter.

- (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 in good faith 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 Administrative Law Judge.

28 C.F.R. § 68.23(b).

Additionally, “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.” Sharma v. Lattice Semiconductor, 14 OCAHO no. 1362g, 3 (2024). Generally, “[r]elevance in discovery ‘has been construed broadly to encompass any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.’” Austin v. Specialized Staffing, 18 OCAHO no. 1513, 3 (2023) (quoting United States v. Autobuses Ejecutivos, LLC, 11 OCAHO no. 1220, 3 (2014)). It is the moving party’s burden to demonstrate relevancy. Id. (citing Heath v. Consultadd, 15 OCAHO no. 1395a, 2 (2022)).

“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 issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.’” Sharma, 14 OCAHO no. 1362g at 3 (quoting 28 C.F.R. § 68.40(b)). “However, ‘[s]eparate from a party’s burden to lodge a timely objection, the Court has independent authority to decline to compel a party’s response to discovery requests.’” Ackermann v. Mindlance, Inc., 17 OCAHO no. 1462d, 6 (2024) (quoting Contreras v. Cavco Indus., Inc., 16 OCAHO no. 1440, 3 (2022)).

## B. Analysis

Respondent’s Motion to Compel complies with 28 C.F.R. § 68.23(b), in that the motion delineates the nature of the requests, includes Complainant’s response, raises arguments in support of the motion, and attaches an affidavit and certification of a good faith attempt to meet and confer. Resp’t’s Mot. Compel, Affidavit of Counsel 1-2, Exs. A-D. The Court will address each request for production and interrogatory in turn.

Because Complainant made a general objection to all the requests for production and interrogatories, describing them as “excessive and unrelated to our case,” the Court only notes Complainant’s arguments more specifically where Complainant raises a specific objection to each request. Resp’t’s Mot. Compel, Ex. C. Generic or boilerplate discovery objections are not

proper and constitute a waiver. *See, e.g. U.S. ex rel. O’Connell v. Chapman Univ.*, 245 F.R.D. 646, 649 (C.D. Cal. 2007) (“The foregoing objections are general or boilerplate objections, which are not proper objections”) (citations omitted); *Bryant v. Armstrong*, 285 F.R.D. 596, 602 (S.D. Cal. 2012) (“[G]enerally, when a party fails to provide any response or objection to interrogatories or document production requests, courts deem all objections waived and grant a motion to compel.”). A party who objects on the basis of overbreadth or undue burden is obliged to describe the burden it faces in detail, often through argument or evidence supportive of its claim. *A. Farber and Partners, Inc., v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) (“As an initial matter, general or boilerplate objections such as ‘overly burdensome and harassing’ are improper—especially when a party fails to submit any evidentiary declarations supporting such objections.”) (citations omitted); *U.S. v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000) (“Generalized or conclusory assertions of irrelevance, overbreadth, or undue burden are not sufficient to constitute objections.”).

Notwithstanding Complainant’s failure to raise a proper objection, the Court will conduct its own review of the discovery requests to determine if they are sufficiently clear and related to the scope of this action to warrant an order directing production.

#### Requests for Production:

##### Request 1:

Respondent’s first Request for Production was for “[a]ny and all documents or materials . . . relied [upon] in preparing and submitting” Complainant’s IER charge, “as well as any and all documents or materials submitted to [IER] in relation” to the charge. Resp’t’s Mot. Compel, Ex. A at 3.

The Court finds this request is directly relevant to the facts of the case, as they relate to the charge filed by Complainant. The Court therefore GRANTS Respondent’s motion as to Request for Production 1.

##### Request 2:

Respondent’s second Request for Production requests “[a]ny and all documents or materials [Complainant] submitted to [Respondent] as a part of, in relation to, or arising out of [Complainant’s] alleged application for the position” including Complainant’s resume, supporting documentation, and correspondence with Respondent. Resp’t’s Mot. Compel, Ex. A at 3.

The Court finds that this request is directly relevant to the facts of the case, and may assist the parties in determining whether there are any genuine issues of material fact

surrounding Complainant's application for the position. The Court therefore GRANTS Respondent's motion as to Request for Production 2.

Request 3:

Respondent's third Request for Production requests "[a]ny and all documents, materials, or exhibits which [Complainant] intend[s] to present at the Administrative Hearing" in this case. Resp't's Mot. Compel, Ex. A at 4.

The Court finds that this request is directly relevant to the facts of the case. The Court therefore GRANTS Respondent's motion as to Request for Production 3.

Interrogatories:

Interrogatory 1:

In its first Interrogatory, Respondent requests the "name, address, telephone, and any and all other contact information for any and all persons who have personal knowledge that you met the minimum qualifications for the position" with Respondent. Resp't's Mot. Compel, Ex. A. at 4.

The Court finds this interrogatory directly relevant to the facts of the case, specifically Complainant's basic qualifications for the position he claims he did not receive due to his citizenship status or national origin. The Court will, however, limit the scope of the request for "any and all other contact information" for these persons to email addresses (if known). The Court further clarifies that telephone numbers responsive to this request may include Voice Over Internet Protocol (VOIP) telephone numbers, including services operated by popular VOIP service providers such as Signal or WhatsApp.

Interrogatory 2:

In its second Interrogatory, Respondent requests that Complainant

identify . . . every case, charge, or claim [Complainant has] filed between January 2012 and the date of [Complainant's] response with the CNMI Department of Labor, the U.S. District Court for the Northern Mariana Islands, the CNMI Superior Court, the U.S. Equal Employment Opportunity Commission ("EEOC"), the U.S. Department of Justice Immigrant and Employee Rights Section ("IER") . . . and [OCAHO].

Resp't's Mot. Compel, Ex. A at 4-5. Complainant's objection did not specifically reference Interrogatory 2, but in his Response to Motion to Compel, Complainant argues that "Respondent's request for 'all cases, charges, claims, etc.' is an absurdly overbroad and irrelevant fishing expedition" that "has no material bearing on the merits" of the current case. Complainant's Resp. Mot. Compel 2. Complainant further argues that "Respondent is seeking information from [Complainant] regarding unrelated cases" because Respondent's counsel represents the opposing party in other cases that Complainant has initiated. Id.

This Court has previously noted that "a party's history of civil litigation may be relevant to party's claim or defense." Ackermann v. Mindlance, Inc., 17 OCAHO no. 1462d, 7 (2024). However, the Court agrees with Complainant that Respondent's request is overbroad and may result in the production of irrelevant information. *See id.*, Zajradhara v. Pure Water Corp., 20 OCAHO no. 1548c, 7-8 (2024). Additionally, the cost and inconvenience of compiling such a list would likely be significant, and potentially disproportionate to its probative value.

However, because the evidence may be relevant to Complainant's credibility at hearing, the Court will narrow this interrogatory rather than deny Respondent's motion. Instead of every case, charge, or claim filed with the listed fora between January 2012 and the date of Complainant's response, Interrogatory 2 will be narrowed to apply only to cases, charges, or claims filed by Complainant before the listed fora since November 2020 that raise discriminatory failure to hire claims. The Court leaves the remainder of Interrogatory 3 unchanged.

The Court therefore GRANTS IN PART Respondent's motion as to Interrogatory 3.

#### Interrogatory 3:

In its third Interrogatory, Respondent requests that Complainant "identify any and all witnesses [Complainant] may intend to call at the Administrative Hearing in this matter." Resp't's Mot. Compel, Ex. A at 5.

The Court finds this interrogatory relevant to the facts of this case and therefore GRANTS Respondent's motion as to Interrogatory 3.

#### C. Complainant's Request for Sanctions Related to Respondent's Discovery Requests

Complainant's response to Respondent's motion to compel contains arguments seeking sanctions against Respondent. Complainant has not filed a motion for sanctions related to the alleged discovery deficiencies, nor does he include a certification of an attempt at a good faith conferral, as the rules require. *See* 28 C.F.R. § 68.1 ("The Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules"); Fed. R. Civ. P. 37(d)(1)(A) (requirement of a motion seeking sanctions); 37(d)(1)(B) (requirement of a meet and confer in a sanctions motion); US Tech Workers v. CohesionIB,



Inc., 20 OCAHO no. 1594b, 1 n.1 (2024) (citing A.S. v. Amazon Web Servs., 14 OCAHO no. 1381f, 5 (2021)). Further, Complainant includes in his submission correspondence about a case which is not before this Court. Resp. Mot. Compel at 120-23.

These deficiencies would normally prohibit consideration of the motion without further discussion, however the Court is in receipt of the Respondent's Response to Complainant's Motion for Sanctions, filed with the Court on August 22, 2024. Respondent's submission suggests that Complainant filed the document with Respondent, however it is unclear whether Complainant also filed the document with the Court.

Insofar as the Court is not in receipt of a motion for sanctions from Complainant related to the discovery, it DENIES the same. Complainant may, pursuant to Section VIII.5 of the General Litigation Order, move for reconsideration of the order denying the motion for discovery sanctions, offering proof of service of the motion on the Court. This proffer must also include the date and the means by which service was effected.

#### IV. UPDATED CASE DEADLINES AND ORDERS

Complainant shall respond to Respondent's discovery requests, as modified by this order, by 30 days from the issuance of this Order. Complainant is cautioned that failure to respond to Respondent's discovery requests as ordered may result in discovery sanctions. 28 C.F.R. § 68.23(c).

Given the partial grant of the motion to compel, the Court will give Respondent the opportunity to amend its Motion for Summary Decision, following the transmission of discovery responses. Respondent will have until 60 days from the issuance of this Order to file an amended Motion for Summary Decision.

Complainant will have 30 days from the date of service of Respondent's Amended Motion for Summary Decision to file any opposition. Respondent shall have 15 days from the receipt of the opposition to file any amended reply.

SO ORDERED.

Dated and entered on April 9, 2025.

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Honorable John A. Henderson  
Administrative Law Judge