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

April 24, 2025

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 COMPLAINANT'S MOTION TO AMEND & DENYING RESPONDENT'S MOTION TO DISMISS AMENDED COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 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 Respondent discriminated against him (citizenship status) and retaliated against him, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(5). The initial claim proceeded to discovery, and was in the discovery phase when Complainant filed a new complaint against Respondent.

On August 19, 2024, Complainant filed a second complaint against Respondent, alleging new claims of citizenship status discrimination and retaliation.

On October 30, 2024, the Court consolidated the two cases.

On November 18, 2024, Respondent filed its Motion to Dismiss the Complaint, Motion to Strike, and Motion for a Protective Order to Stay Discovery Pending Disposition of this Motion (Motion to Dismiss, Strike, and Stay), pertaining to the newer allegations.

On January 30, 2025, the Court issued an Order Granting in Part & Denying in Part Respondent's Motion to Stay, Motion to Strike, Motion to Dismiss. *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510k (2025).[1] The Court found Complainant sufficiently pled his citizenship status discrimination claim, struck a portion of the complaint containing information from settlement discussions (related to his retaliation allegation), and allowed him a chance to amend the complaint to sufficiently plead his remaining retaliation allegation. At issuance of the January 30, 2025 Order, the Complainant's consolidated allegations then pending before the Court were:

1. A claim of citizenship-status discrimination arising from Respondent's termination of Complainant from his position as Applied Research Scientist on January 13, 2023, *see Wangperawong*, 18 OCAHO no. 1510k, at 4; and

2. A claim of citizenship-status discrimination arising from Respondent's failure to hire Complainant for the position of Solutions Engineer on January 22, 2024. *See id.* at 5.

On February 21, 2025, Complainant filed his Motion to Amend Complaint & Proposed Amendment, which contained seven exhibits. Specifically, Complainant seeks to cure the deficiencies outlined by the Court in its January 30, 2025 Order. In that Order, the Court noted Complainant's insufficient allegation alleged:

> [He] 'applied to over 20 positions [with Respondent] but ha[s] not been considered seriously for any of them;' [that] another individual, who was 'laid off at the same time [he] was, who did not complain about discrimination, has been rehired;'[and that] Respondent has not selected him for these positions in retaliation for his first OCAHO Complaint. *Wangperawong*, 18 OCAHO no. 1510k, at 5 (quoting Second Compl. 9).

In assessing that allegation, the Court found that "[w]hile all these components certainly create the initial underpinnings of a viable [retaliation] claim, Complainant has not provided enough specificity to place Respondent on notice . . . . To be sufficiently pled, Complainant must plead more facts about the 20 positions to which he applied (specific positions, dates applied etc.) and

[1] 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.

more information about the proposed comparator individual/employee." *Wangperawong*, 18 OCAHO no. 1510k, at 9.

On March 14, 2025, Respondent filed its Opposition to Complainant's Motion to Amended Complaint and Motion to Dismiss Amended Complaint.

II. POSITIONS OF THE PARTIES

a. Complainant's Motion to Amend

Through his motion, Complainant "moves the Court to amend the complaint as attached." The attachments, according to Complainant, demonstrate more specificity about the proposed adverse action:

> Complainant applied to at least 24 positions since being terminated (Ex. 1). Meanwhile, Respondent has rehired or considered to rehire employees who did not complain (Exs. 2-4). Respondent has retroactively claimed years later that Complainant is not eligible for rehire (Ex. 5) even though they initially confirmed Complainant's eligibility for rehire (Ex. 6) and applying to new roles (Ex. 7).

Mot. Amend 2.

In addition to the attachments, Complainant also resubmitted a copy of his original Complaint form and underlying IER charge form.

Taken together, Complainant, who is pro se, appears to allege that he engaged in a protected activity - his October 3, 2023 OCAHO complaint. Further, he alleges that, because of his protected activity, Respondent did not hire him for 24 separate positions to which he applied (application dates range from December 2022 to June 2024). To support causation between his protected activity and non-selection, Complainant notes Respondent originally considered him as eligible for re-hire following a reduction in force, but later his re-hire status changed "retroactively."

b. Respondent's Opposition and Motion to Dismiss

Respondent contends the amendment is futile because "Complainant has not properly exhausted the retaliation claims he makes," Opp'n 11, and "the Proposed Amended Complaint fails to state a claim for retaliation upon which relief may be granted, either in whole or in part." Opp'n 14.

1. Exhaustion

Respondent notes that the IER charge underlying the August 2024 Complaint (later consolidated with the older case) "specifically pertained to citizenship discrimination and did not mention retaliation," and that "Complainant has not presented any evidence to show that claims related to retaliation were ever presented to IER or exhausted." Opp'n 12.

Respondent argues that "[w]hile Complainant broadly references applications to over twenty positions in the retaliation section of the Complaint, the IER Charge only alleges that Meta failed to hire Complainant for the position of Solution Engineer and does not reference retaliation, which is necessary for the allegation to grow out of the charge." Opp'n 12. Consequently, Respondent believes OCAHO caselaw interpreting 28 C.F.R. §§ 68.4(c) and 68.7(c)[2] mandates the retaliation allegations be dismissed for failure to exhaust administrative remedies. Opp'n 11–14.

2. Pleading Standard

Respondent maintains that "[t]he Complaint fails to allege key components of a retaliation claim." Opp'n 15. Specifically, "the Proposed Amended Complaint still suggests [Complainant] was not considered for 20 positions but provides no specific facts or details about those positions or his alleged rejections and cannot make out a prima facie case." Opp'n 16. As to the attachments, the complaint "still does not contain sufficient information[3] to put Respondent on notice of the claims Complainant asserts." Opp'n 16.

Respondent also argues that some of the referenced jobs predate when the IER charge was filed in February 22, 2024, and "therefore no claim of retaliatory failure to hire could stand." Opp'n 17.

Respondent continues "nothing in the article included as Exhibit 2 specifically relates to the Complainant nor does the article explicitly state that the re-hired individuals were terminated in the November 2022 reduction in force." Opp'n 17. Moreover, "Exhibits 3 and 4 do not provide adequate 'information about the proposed comparator individual/employee' as requested by the Court in the Jan. 30 Order at 9." Opp'n 17. As to Exhibits 5 through 7, Complainant "provides no additional context to understand how the incorporation of these exhibits might cure his defective pleading with respect to his claims of Meta's retaliation against him." Opp'n 18.

III. LAW & ANALYSIS

The Court first finds that Complainant's filing is sufficient to constitute a motion to amend the complaint. "[I]n evaluating [a pro se plaintiff's] compliance with the technical rules of civil procedure, we treat him with great leniency." *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). The motion "moves the Court to amend the complaint," and provides more specificity as to the positions for which Complainant was not hired, and why he believes Respondent's declination to hire him was retaliatory under the statute.

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[2] OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

[3] According to Respondent, "sufficient information" includes "context . . . for the job applications [to wit:] evidence that they are in fact Complainant's applications, or that they all reflect separate applications . . . dates associated with the positions stating when the position was updated, [and] the requisition numbers, dates of disposition, or communications about the positions." Opp'n 16.

a. Amending Complaints

Due to the procedural posture of this case, the Court has previously adjudicated a motion to amend. It now provides, once more, the applicable legal standards:

> OCAHO's Rules of Practice and Procedure for Administrative Hearings permit amendment of a complaint, providing that "[i]f a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints . . . " 28 C.F.R. § 68.9(e).
>
> "The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment." *Shater v. Shell Oil Co.*, 18 OCAHO no. 1504b, 2 (2023) (citing *United States v. Sal's Lounge*, 15 OCAHO no. 1394, 1–2 (2020)). "The principal factors to be considered are whether the determination on the merits will be facilitated by the proposed amendments, whether the proposed amendments would be futile, and whether prejudice to the public interest or parties will result . . . [the Court may also consider] [b]ad faith, undue delay and dilatory motive . . ." *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1097, 5 (2003). These factors largely align with those outlined by the Ninth Circuit, which include: (1) undue delay, (2) bad faith, (3) futility of amendment, and (4) prejudice to the opposing party. *See AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). . . .
>
> "The usual test for futility of a proposed amendment is whether or not the amendment would survive a motion to dismiss." *Santiglia*, 9 OCAHO no. 1097, at 7 (citing *Jones v. Cmty. Redevelopment Agency of L.A.*, 733 F.2d 646, 650 (9th Cir. 1984)). If administrative remedies are not exhausted, then a matter can be dismissed. *See id.* at 7.

To fully consider the viability of the amendment, the Court will engage in a sequential analysis. The Court will first consider whether the Complainant has pled, with sufficient specificity, an allegation of retaliation (i.e., could the allegation survive a notice pleading standard). The Court starts here, at least in part, because this is the deficiency it highlighted in its January 30, 2025, order wherein it permitted an amendment. Separately, common sense dictates that an allegation that does not meet notice pleading standards is all but impossible to analyze under other futility arguments because a claim that is not sufficiently pled cannot be exhausted in the first place (i.e., if the factual underpinnings of the allegation are unclear, how can the Court engage in a meaningful analysis of whether those factual underpinnings are like, related to, or flow from an IER charge).

b. Pleading Standards Law & Analysis (Motion to Amend Futility Test)

"To state a claim for retaliation under [8 U.S.C.] § 1324b, a complainant 'must show that the respondent took an adverse action to discourage a complainant from activity related to the filing of an IER charge or an OCAHO proceedings, or to interfere with her rights or privileges secured specifically under § 1324b.'" *Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546, at 3 (quoting *Patel v. USCIS Boston*, 14 OCAHO no. 1353, 2 (2020)).

While a complainant need not plead a prima facie case of retaliation to survive a motion to dismiss, "the elements are instructive: . . . 1) an individual engaged in conduct protected by § 1324b; 2) the employer was aware of the individual's protected conduct; 3) the individual suffered an adverse employment action; and 4) there was a causal connection between the protected activity and the adverse action." *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462b, 11 (2023).

When accepting all facts alleged in the amended complaint as true and construing them in the light most favorable to Complainant, *Osorno v. Geraldo*, 1 OCAHO no. 275, 1782, 1786 (1990), the amended complaint is sufficiently pled.

First, Complainant alleges he engaged in protected activity when he filed "a complaint of discrimination [on October 3, 2023]." Am. Compl. 12.

Second, Respondent's knowledge of this protected activity can be inferred, as it received a copy of the complaint on October 23, 2023. *Wangperawong*, 18 OCAHO no. 1510, at 1.

Third, Complainant alleges an adverse action (or possibly two): when he was "not considered" for thirteen specific positions with Respondent; and/or when he was designated as ineligible for rehire.[4] Am. Compl. 2, 12; Ex. 1; Ex. 5.

Fourth, as alleged, a causal connection exists between the adverse action(s) and Complainant's protected activity. The Court reads the amended complaint liberally as advancing several theories of causation, some of which could survive the pleading standard issue.

1. Comparator Theory Is Insufficiently Pled

The Court in its order allowing for the amendment instructed Complainant to provide more information about alleged comparator individuals to sufficiently plead causation under this theory. *Wangperawong*, 18 OCAHO no. 1510k, at 9. In response, Complainant submitted Exhibits 2–4, however the Court finds that the facts alleged in these documents are still insufficient to put Respondent on notice.

[4] While Complainant alleges he was not considered for twenty-four positions, the additional facts pled regarding the applications reveal Respondent took action on only thirteen applications that post-date his OCAHO complaint (coded as "Not moving forward"). Am. Compl. Ex. 1. The rest of the applications, however, were coded as "Submitted," which seems to indicate Respondent has yet to act on these applications. *Id.* Because Complainant does not allege, for these submissions, his applications were rejected, these applications do not constitute adverse actions.

A careful review of these exhibits incorporated into the Amended Complaint show they consist of: general statements by a journalist about the prospect of rehiring individuals who were subject to a reduction in force ("Many people laid off by Meta over the past several months are getting offers to rejoin the company."); and screenshots from internet message boards where two anonymous users claim they were laid off then rehired by Respondent.

As Respondent correctly notes, these exhibits "do not provide adequate 'information about the proposed comparator individual/employee' as requested by the Court," as "[t]here is no identifying information about the individual who posted other than a non-specific user name in Exhibit 3." Opp'n 17.

2. Re-Hire Eligibility Theory is Sufficiently Pled

Complainant's proposed amendment advances a retaliation theory wherein Respondent changed his official designation for re-hire eligibility in response to his protected activity (Respondent "initially confirmed Complainant's eligibility for rehire . . . and applying to new roles," but now "has retroactively claimed years later that Complainant is not eligible for rehire."). Mot. Amend 2.

Complainant provides specificity about his initial eligibility for rehire by way of an email from a former supervisor/colleague, which he contrasts with[5] a document from an EEOC matter wherein Respondent revealed Complainant was designated as "RIF/Redundancy > Redundancy – Performance," meaning "his departure was marked as 'Non-Regrettable' and, pursuant to Meta policy, he is ineligible for re-hire for a period of three years from his date of separation (i.e., through January 13, 2026)." *See* Am. Compl. Exs. 5–6.

The Amended Complaint sufficiently pleads the causation element and states a claim of retaliation.

Additionally, the adverse action and protected activity occurred close in time, which supports an inference of causation.[6] Complainant filed his first OCAHO complaint on October 3, 2023, and as early as February 2, 2024, he was allegedly not selected for a position with Respondent. Mot.

[5] A change in rehire eligibility would constitute an adverse action for retaliation. *See Erwin v. OBI Seafoods, LLC*, 2024 WL 1138905, *7 (W.D. Wash. Mar. 15, 2024); *EEOC v. Evergreen Alliance Golf Ltd., LP*, 2013 WL 4478870, *11 (D. Ariz. Aug. 21, 2013) ("[D]esignating [plaintiff] ineligible for rehire was inherently an adverse employment action.").

[6] "The paradigmatic circumstantial evidence giving rise to an inference of retaliation is temporal proximity between the protected conduct and the adverse action; where the adverse action follows closely on the heels of the protected conduct, an inference of causation ordinarily arises." *Sodhi v. Maricopa Cnty. Special Health Care District*, 10 OCAHO no. 1127, 8 (2008) (citing *Bell v. Clackamas Cnty.*, 341 F.3d 858, 865 (9th Cir. 2003)). "There is no bright line rule that a particular time is either per se too long or per se sufficiently short to establish the connection." *Id.* (citing *Coszalter v. City of Salem*, 320 F.3d 968, 977–78 (9th Cir. 20003)); *see also Miller v. Fairchild Indus., Inc.*, 885 F.2d 498, 505 (9th Cir. 1989) (holding that "discharges 42 and 59 days after EEOC hearings were sufficient to establish prima facie case of causation).

Amend Ex. 1. The Court finds this temporal proximity between Complainant's protected activity and his alleged non-selection is sufficient to create an inference of causation, and so the Amended Complaint states a claim of retaliation under this theory as well.

Under any theory of causation, the Complainant must still plead events in a particular order, which is to say that the protected activity which causes the adverse action must necessarily come first.

Complainant's proposed protected activity (his OCAHO Complaint) occurred on October 3, 2023, and Respondent became aware of it on October 23, 2023, when it was served with the Complaint. Applications preceding these October 2023 dates are excluded from consideration as they cannot state a claim upon which relief can be granted. Thus, the retaliation allegation is narrowed to only those positions to which Complainant applied on or after October 2023.

Therefore, the Court finds that the Amended Complaint states a claim that Respondent retaliated against Complainant when it designated him ineligible for rehire and failed to select him for positions 1 and 13–24 of Exhibit 1 after it became aware of his protected activity.

c. Motion to Dismiss – Exhaustion Law & Analysis

Now that the Court has established the Amended Complaint states a claim of retaliation, it must determine whether that claim was properly exhausted administratively.

"Even though administrative exhaustion is no longer a jurisdictional requirement post-*Fort Bend*, because the Supreme Court stated it is a 'mandatory' 'processing rule,' a plaintiff must still allege compliance with the requirement in order to state a claim on which relief can be granted." *Lawrence v. Driscoll*, 2025 WL 894956, *5 (E.D. Cal. Mar. 24, 2025) (citing *Fort Bend Cnty. v. Davis*, 587 U.S. 541, 551 (2019).

As the *Lawrence* court noted, "when a [respondent] moves to dismiss on the basis of a [complainant's] failure to exhaust, the motion cannot be granted unless it is obvious or clear that the claims were not exhausted." *Id.* (internal citations and quotes omitted).

As was noted in a previous order:

> A complainant has exhausted the administrative process when he receives his "right to sue" letter from IER. 28 C.F.R. §§ 68.4(b)(2), (c). This document permits a complainant to file a Complaint with OCAHO; however, "[t]he scope of a discrimination case pursuant to 8 U.S.C. § 1324b is ordinarily limited to matters within, or like and related to, the administrative charge and the scope of the administrative investigation upon which the action is based." *Wangperawong*, 18 OCAHO no. 1510c, at 5 (quoting *Santiglia*, 9 OCAHO no. 1097, at 7) (internal quotations omitted). This is particularly true when the alleged discrimination is citizenship or national origin based (vice retaliation).

> "[T]he scope of the [IER] charge itself must be considered in order to determine whether the matters raised could reasonably be expected to grow out of the investigation of that charge." *Santiglia*, 9 OCAHO no. 1097, at 7.

Wangperawong v. Meta Platforms, Inc., 18 OCAHO no. 1510e, 3–5 (2024) (footnote omitted).

Because exhaustion requires a fact-intensive analysis comparing the IER charge and circumstances surrounding the IER charge to the contents and theories within the Complaint, it is prudent to begin this analysis with those facts pertaining to the IER charge and investigation.

1. Factual Timeline (IER Charge & Alleged Adverse Actions by Respondent)

On April 23, 2023, Complainant filed his first charge with IER. The charge alleged both citizenship status discrimination and retaliation, although the factual detail provided only described his being laid off as an Applied Research Scientist, a position for which only U.S. citizens were allegedly terminated. First Compl. 12, 14.

On August 16, 2023, Complainant received a letter from IER which relayed that, while IER would continue its investigation, Complainant could file a complaint with OCAHO. First Compl. 15–16.

On October 3, 2023, Complainant filed his first OCAHO Complaint. The Complaint was served on Respondent on October 23, 2023.

On February 2, 2024, the status of Complainant's application for a Solutions Engineer position with Respondent was updated to "Not moving forward." The same status change was made on February 8, 2024, to Complainant's application for a Technical Program Manager, AI position.

On February 22, 2024, Complainant filed his second IER charge. This charged alleged citizenship status discrimination. Specifically, Complainant stated that "[o]n January 11, 2024, Complainant applied for a Solutions Engineer position"[7] with Respondent and was "immediately rejected" despite a recruiter having previously verified his qualifications. Mot. Amend 19.

Between March 5 and June 25, 2024, the status of Complainant's application for the following eleven positions was updated to "Not moving forward:"

1. Software Engineer, Machine Learning (March 5, 2024)
2. Software Engineer, Machine Learning (March 7, 2024)
3. Software Engineer, Machine Learning (April 1, 2024)
4. Software Engineer, Machine Learning (April 26, 2024)
5. Product Technical Program Manager (May 15, 2024)

[7] According to Complainant, the job disappeared from Respondent's jobs site "about a week later," causing him to believe that if the position was indeed filled, it must have been a "non-U.S. citizen internal candidate." Mot. Amend 19.

6. Software Engineer, Machine Learning (June 5, 2024)
7. Machine Learning Scientist (June 5, 2024)
8. Business Engineer (June 14, 2024)
9. Software Engineer, Machine Learning (June 14, 2024)
10. Partner Engineer, Gen AI (June 18, 2024)
11. Technical Program Manager (June 25, 2024)

On August 9, 2024, Complainant received a letter from IER which relayed that, while IER would continue its investigation, Complainant could file a complaint with OCAHO. Mot. Amend 15–16.

On August 19, 2024, Complainant filed his second OCAHO complaint.

2. Law & Analysis – Reasonably Expected to Grow Out of Investigation

"In assessing the relatedness of claims, district courts construe… charges 'with utmost liberality.'"[8] *Lindsey v. United Airlines, Inc.*, 2017 WL 2404911, *5 (N.D. Cal. June 2, 2017) (citing *Yamaguchi v. U.S. Dep't of the Air Force*, 109 F.3d 1475, 1480 (9th Cir. 1997)). Even a "sparing" charge can pass exhaustion muster when construed "with utmost liberality." *Id.*

In determining whether a claim and charge are "reasonably related, "courts consider 'such factors as the alleged basis of the discrimination, dates of discriminatory acts specified within the charge, perpetrators of discrimination named in the charge, and any locations at which discrimination is alleged to have occurred.'" *Id.* (quoting *Vasquez v. Cnty. of L.A.*, 349 F.3d 634, 644 (9th Cir. 2003)).

Temporal proximity (between charge and retaliatory action) also makes the retaliatory action reasonably related. *Id.* ("It would have been reasonable for the EEOC to investigate retaliation by [the employer] against [the plaintiff] occurring shortly after [approximately four months] the charge was made.").

"[The Ninth Circuit] has made clear that an employee does not need to file new charges concerning 'reasonably related… acts occurring during the pendency of the charge before the EEOC' in order to exhaust claims related to those acts. *Oubichon v. N. Am. Rockwell Corp.*, 482 F.2d 569, 571 (9th Cir. 1973).

[8] Such a liberal view advances the position of higher courts as "[t]he Supreme Court and Ninth Circuit have directed district courts to construe administrative charges liberally, . . . even with the utmost liberality, . . . so as to protect the employee's rights and statutory remedies." *Lawrence*, 2025 WL 894956 at *5 (internal citations and quotes omitted); *see also Lindsey v. United Airlines, Inc.*, 2017 WL 2404911, *2 (N.D. Cal. June 2, 2017) (citing *Yamaguchi v. U.S. Dep't of the Air Force*, 109 F.3d 1475, 1480 (9th Cir. 1997)).

Cataloguing each related incident that occurred while an EEOC charge was pending would impose an unnecessary burden on the complainant." *Lindsey*, 2017 WL 2404911, at *3.[9]

Turning to the analysis here, when viewing this fact pattern and timeline through a lens of "utmost liberality," the Court concludes the retaliation allegation could have grown out of the IER charge and investigation. Consequently, the retaliation allegation survives the motion to dismiss.

First, it is reasonable to infer IER was aware of Complainant's prior IER charge and his OCAHO Complaint (as it issued a "right to sue letter" and IER appears of the Certificates of Service for filings and orders generally). Indeed, the "right to sue" letter indicates that IER would continue investigating his first charge whether he filed an OCAHO complaint or not, meaning that first charge and ensuing investigation might very well have overlapped with the first alleged adverse action. Even if no overlap occurred, the close temporal proximity of the OCAHO complaint and first non-selection is analogous to *Lindsey*. Like the complainant in *Lindsey,* this Complainant was non-selected for (multiple) positions after filing an IER charge, and he also (like in *Lindsey*) filed multiple IER charges.

While it is true that Complainant did not "check the box" for retaliation on his second IER charge, the Ninth Circuit has held this such an action is not necessary for exhaustion, so long as "an . . . investigator looking at the information provided could reasonably see that the factual allegations underlying [the Complainant's charged claim] were rooted in his [allegation made in the complaint]." *Head v. Wilkie*, 784 Fed. Appx. 503, 505 (9th Cir. 2019).

The procedural facts here demonstrate exhaustion, and under the *Fort Bend* mandatory processing rule construct, the Complaint cannot be dismissed for failure to state a claim upon which relief can be granted. 587 U.S. 541, 551 (2019).

d. Re-inclusion of Previously Stricken Material

Complainant's Motion to Amend contains a resubmitted copy of the August 19, 2024 Complaint, from which the Court struck information pertaining to settlement discussions. *Wangperawong*, 18 OCAHO no. 1510k, at 4. The act of striking language or documents from the record involves its physical removal (or "electronic" deletion) from the Court's case file. Resubmission of previously stricken information requires the Court to once again remove it from the record. The Court is mindful of Complainant's pro se status, and will excuse this error; however, future inclusion of previously stricken information may result in a sanction. *See generally* 28 C.F.R. § 68.23(c)(5).

Accordingly, the same language previously identified in the Court's January 30, 2025 Order will be stricken from pages 12 and 21 of the Amended Complaint.

[9] In *Lindsey*, a complainant was non-selected for a desired position after he filed a charge with the EEOC, "so that [non-selection] was necessarily not included in his [prior] charge." 2017 WL 2404911 at *3. Additionally, that complainant filed multiple EEOC charges against the same respondent. *Id.* at *4. On those facts, the district court judge concluded an EEOC investigation could have encompassed retaliation. *Id.*

IV. CONCLUSION & ORDERS

Complainant's Motion to Amend is GRANTED.

The proposed Amended Complaint is ACCEPTED.

Respondent's Motion to Dismiss Amended Complaint is DENIED.

The allegations before the Court are as follows:

1. A claim of citizenship-status discrimination arising from Respondent's termination of Complainant from his position as Applied Research Scientist on January 13, 2023. *See Wangperawong*, 18 OCAHO no. 1510k, at 4.

2. A claim of citizenship-status discrimination arising from Respondent's failure to hire Complainant for the position of Solutions Engineer on January 22, 2024. *See id.* at 5.

3. A claim of retaliation arising from Respondent's non-selection for 13 positions because of his protected activity (to wit: October 2023 OCAHO Complaint).

The parties can anticipate a prehearing conference to discuss a proposed case schedule.

SO ORDERED.

Dated and entered on April 24, 2025.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge