

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2024B00063
	)	
PURE WATER CORP.,	)	
Respondent.	)	
	)	

ORDER ON DISCOVERY MOTIONS, GRANTING RESPONDENT’S MOTION FOR SUMMARY DECISION, AND ORDER TO SHOW CAUSE – RETALIATION CLAIM

The Court grants the Respondent's motion for summary decision on Complainant's national origin and citizenship status discrimination claims, and issues an Order to Show Cause for Failure to State a Claim on Complainant's remaining retaliation claim.

How did we get here? On March 7, 2024, Complainant, Zaji Obatala Zajradhara, filed a complaint against Respondent, Pure Water Corp. Complainant alleges that he applied for a position as a manager with Respondent, Pure Water, Inc., but was not hired because Respondent engaged in citizenship status discrimination, national origin discrimination, and retaliation in violation of the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C.

§§ 1324b(a)(1) and (a)(5). Compl. 8, IER Charge 3. On August 20, 2024, the Court accepted the late-filed Answer and Affirmative Defenses. *Zajradhara v. Pure Water Corp.*, 20 OCAHO no. 1584a (2024).<sup>1</sup>

Proceeding normally, the Court issued a Case Scheduling and General Litigation Order on September 4, 2024, setting December 3, 2024, as the deadline for all responses to discovery to be served and for any motions to compel or other discovery motions to be filed, and January 2, 2025, as the deadline for any dispositive motions. Gen. Lit. Order 2.

On October 29, 2024, Respondent filed a Motion for Summary Decision, asserting that the business has never employed more than two workers. Mot. Summ. Dec. 4, Aff. Yan Hua ¶¶ 2, 5. On October 31, 2024, Complainant filed his response to the motion.

The discovery disputes began after Respondent filed its Motion for Summary Decision. Respondent filed a Motion to Compel discovery responses on November 7, 2024.<sup>2</sup> Complainant responded on November 9, 2024, filing his response to the motion to compel and four days later submitting an Audio Transcript in support of his response.

On December 18, 2024, the Court issued an order titled Order Granting in Part Respondent's Motion to Compel, Setting Updated Case Schedule and Converting Case to Electronic Filing. *Zajradhara v. Pure Water Corp.*, 20 OCAHO no. 1584c (2024). In that Order, the Court partially granted Respondent's Motion to Compel, *id.* at 5-9, denied Complainant's request for a protective order, *id.* at 6-7, denied Complainant's request for a subpoena because it was "unclear from Complainant's request what documents he seeks to subpoena and Complainant did not provide the subpoena(s) with his response," *id.* at 10, and denied Complainant's request to compel discovery because he failed to "attach the discovery requests in question, or certify that he attempted in good faith to confer with Respondent regarding the requested discovery," *id.* at 10. The Court ordered Complainant to respond to the modified discovery requests by January 6, 2025. *Id.* The Court also admonished the parties to treat one another with professional courtesy while litigating before this Court, and warned that the Court could impose sanctions. *Id.* at 11.

Rather than comply with the Court's order, on December 29, 2024, Complainant filed his Revised Response to the Court's Order to Compel. This motion challenged the Court's decision, arguing that Respondent's discovery requests are tainted by Respondent's prior unethical conduct,

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<sup>1</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>.

<sup>2</sup> On the same day, Respondent also filed a Notice of Errata correcting a typographical mistake in its Motion to Compel.

referencing a prior case involving the CNMI Department of Labor where Respondent's attorney was an owner and board member of the employer involved in the action. Resp. Order Compel 2. Complainant also argued that he was being forced to incriminate himself, Respondent had not responded to his discovery requests, Complainant suffered from economic hardship, and the Court is biased. *Id.* at 2-3. In addition, Complainant submitted a Motion to Quash Discovery, a Motion to Compel Discovery from Pure Water Corporation and again sought a subpoena. Resp. Order Compel 5-10.

Naturally, on January 21, 2025, Respondent followed this with a Motion for Sanctions and Request for Ruling on Motion for Summary Judgment Decision, stating that Complainant had failed to deliver the ordered discovery by the deadline set in the Court's December 18, 2024, Order. Mot. Sanctions 1-2. In the motion, Respondent acknowledged Complainant's December 29, 2024, filing but did not address Complainant's Motion to Quash Discovery nor his Motion to Compel, which were included within the filing. *Id.* at 2.

The next day, Complainant responded, again asserting that Respondent "failed to provide any substantive response" to his "repeated[] request[s]" for discovery. Complainant's Resp. Mot. Sanctions 1. As he did in his December 29, 2024, motion, Complainant included a list of information he is seeking from Respondent, but this list is different from the list he provided in his prior motion. *Compare* Complainant's Resp. Mot. Sanctions 2 *with* Resp. Order Compel 8-9.

On February 3, 2025, the Court issued an Amended Order for Discovery Status Reports, noting that although Respondent had fulfilled the regulatory requirements for sanctions, before the Court could determine what sanctions were appropriate, the Court also needed to resolve Complainant's Motion to Compel. *Zajradhara v. Pure Water Corp.*, 20 OCAHO no. 1584d (2025). The Court asked the parties to file status reports clarifying the status of the parties' exchange of discovery. *Id.* at 3. The Court instructed the parties to keep their filing solely to this issue. *Id.*

Both parties filed their status reports on February 13, 2025. Respondent indicated that it had served its discovery requests in October 2024, that they were the subject of the Motion to Compel and the requests were attached to that motion. Resp't's Status Report 1. Respondent stated that Complainant had filed a Notice of Motion for Discovery with the Court also in October seeking discovery, but the caption identified a different company. *Id.* at 2.<sup>3</sup> Complainant did not correct the caption or otherwise seek discovery, and Respondent did not respond. *Id.*

Complainant also responded to the Amended Order for Discovery Status Reports, but only barely responded to the specific information requested by the Court. Complainant stated that he served a request for discovery, but did not include the discovery request as ordered, conceded that the request was mis-captioned, and then stated, "[t]hough a valid excuse; this is a deliberate and unprofessional...tactic to delay the proceedings and conceal wrongdoing." Complainant's Status Report at 1. The filing continues in this vein, makes a string of accusations about the company and counsel, includes email excerpts from conversations with Respondent's attorney, including a series from Complainant including expletives, brings in another attorney citing evidence of conspiracy, and seeks sanctions against Respondent's attorney, among many other statements. *Id.* at 3-8.

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<sup>3</sup> The Court rejected this filing, noting the error.

Not to be outdone, on March 4, 2025, Respondent filed a Notice of Petitioner's Improper and Criminal Conduct, in which Respondent's attorney "gives notice of improper and criminal conduct" on the part of Complainant related to this case and others, citing to a pattern of email harassment, arguing that the emails contain threats, extortionate demands for settlement, and further arguing that these communications are a federal crime. Notice Conduct, Affidavit of Counsel 2-4 (citing 18 U.S.C. 875(d)).

Complainant responded the same day, again stating the Respondent's attorney has a conflict of interest though this time because he represents many "Conflicting Entities" and repeats many of the same accusations from his prior motion. Resp. Notice 1-4. He also included filings in a different case with a different attorney. Resp. Notice 5-29.

## II. DISCOVERY

### A. Complainant's Motion to Compel

Complainant is not new to this forum, and is not new to discovery, having been instructed over and over how to file discovery and how to file a Motion to Compel.<sup>4</sup> Chief among those requirements is that a litigant must actually serve requests for discovery on opposing counsel, *see* 28 C.F.R. §§ 68.19(a) (interrogatories), 68.20(a) (production of documents), 68.21(a) (requests for admission), 68.22(a) (depositions), and a litigant must NOT serve them on the Court, 28 C.F.R. § 68.6(b).<sup>5</sup> The only exception is when filing a Motion to Compel.<sup>6</sup> In this case, Complainant never served his request for discovery on Respondent, instead apparently attempting to serve it on the Court. Even then it was not clear for which case Complainant was seeking discovery. Resp. Status Report 2. The string of invective sent Respondent's way for not responding to discovery is particularly inappropriate given that he simply never served discovery on Respondent. This Court gave him ample opportunity to demonstrate that he actually served the discovery, but he did not provide this Court with a copy of the discovery and documentation of the method by which he served it.

In light of this, a Motion to Compel is clearly inappropriate. Nevertheless, the Court points out that Complainant has not satisfied the regulatory requirements for a Motion to Compel. 28 C.F.R. § 68.23(b). Rather than include the discovery he sought from Respondent, Complainant instead

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<sup>4</sup> *See, e.g., Zajradhara v. Gig Partners*, 14 OCAHO no. 1363, 2-4 (2020) (discussing motions to compel and subpoenas); *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438d (2023) (discussing discovery related motions); *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432a, 3-4 (2022) (discussing motions to compel and discovery requests); *Zajradhara v. Kang Corp.*, 19 OCAHO no. 155a, 3-4 (2024) (discussing discovery and motions to compel).

<sup>5</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>.

<sup>6</sup> *See* 28 C.F.R. § 68.23(b) (requiring the party moving to compel discovery to include the nature of questions or request and opposing party's response to the request).

provided the Court with several different versions of discovery he would have wanted. Complainant's Resp. Mot. Sanctions 2; Resp. Order Compel 8-9. Accordingly, Complainant's motion to compel and motion for sanctions is DENIED.

## B. Complainant's Motions for Sanctions

Complainant argued in his December 29, 2024 Revised Response to the Court's Order to Compel, his February 13, 2025 Response to Court's Order Re: Discovery, and in his March 4, 2025 Response to Respondent's Notice that Respondent's counsel should be sanctioned. In the latter two filings, Complainant also requested that Respondent's counsel be disqualified. Here, the Court addresses all three motions, which raise very similar arguments.

### 1. Legal Standards of Discovery-Related Sanctions and Behavioral Sanctions

OCAHO's Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), allow for discovery-related sanctions. If a party served with a discovery request fails to respond adequately, the requesting party may "move the [ALJ] for an order compelling a response[.]" 28 C.F.R. § 68.23(a). If the ALJ issues an order to compel discovery and the party compelled to produce discovery fails to comply, then the Administrative Law Judge may impose a variety of discovery-related sanctions, found at 28 C.F.R. § 68.23(c)(1)-(7).

OCAHO's Rules of Practice and Procedure also make clear that "[a]ll persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity and in an ethical manner." 28 C.F.R. § 68.35(a). To enforce this,

[t]he Administrative Law Judge may exclude from proceedings parties . . . and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications.

28 C.F.R. § 68.35(b). The exclusion of counsel as sanctions "is not lightly undertaken . . . and occurs only in the most egregious of circumstances." *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1104, 3 (2004). Additionally, "an agency's right to exclude an attorney in administrative proceedings must be exercised in the context of the right to counsel provided under the Administrative Procedure Act, 5 U.S.C. § 555(b), which has been construed to mean the right to counsel of one's choice." *Id.* at 4 (citing *Sec. & Exch. Comm'n v. Higashi*, 359 F.2d 550, 553 (9th Cir. 1966)).

"A party seeking sanctions under a violation of standards of conduct theory must identify the alleged misconduct with specificity." *Zajradhara v. Ranni's Corp.*, 16 OCAHO no. 1426a, 4 (2022) (citing *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438a, 4 (2022)).

### 2. Discovery-Related Sanctions Denied

In his December filing responding to the Court's Order to Compel, Complainant argues that Respondent's counsel should be sanctioned because Respondent did not respond to Complainant's discovery requests, demonstrating bad faith. Resp. Order Compel 2, 4. This argument was repeated in the February filing. Resp. Order Discovery 1. Finally, in his March 4 response to respondent's notice, Complainant argues that the Court "should take judicial notice of [an] ongoing pattern" of refusal to provide discovery by Respondent's counsel, Resp. Notice 2, and requests sanctions against Respondent for "obstruction of the discovery process," *id.* at 4.

As discussed above, in this case, Complainant never successfully served Respondent with his discovery requests. There is thus no basis to sanction Respondent for not responding to discovery. Further, sanctions for failure to comply with discovery are only imposed after the other party fails to respond to a court's order compelling discovery. 28 C.F.R. § 68.23(c). Here, Complainant has not accomplished the very first step in this process, which is to properly seek discovery.

Complainant's request for discovery-related sanctions against Respondent is DENIED.

### 3. Conflict of Interest Related Sanctions Denied

In his February 13, 2025 response to this Court's discovery order, Complainant alleges that there is a "conflict of interest arising from [Respondent's counsel's] simultaneous representation of . . . other entities . . . while also representing the Respondent." Resp. Order Discovery 6. In his March 4, 2025, filing, Complainant further argues that Respondent's counsel's "representation of multiple entities, including Pure Water Corporation, Kang Corporation, and others . . . demonstrates a profound disregard for the rules of this Court and the rights of opposing parties." Resp. Notice 1. Specifically, Complainant argues that these multiple representations "create[] an inherent conflict of interest that compromises [Respondent's counsel's] ability to zealously advocate for each client's individual interests." *Id.*

This argument was recently addressed in a published decision, *Zajradhara v. Jin Joo Corporation*, 19 OCHAO no. 1554f (2025), in which the Administrative Law Judge found it meritless. In that case, the Court applied the ethics rules for the bar of the Commonwealth of the Northern Marianas Islands (CNMI), where Respondent's counsel in the present case also appears to be licensed and located.<sup>7</sup> *Id.* at 2-3. Those rules explain that lawyers "shall not represent a client if the representation involves a concurrent conflict of interest." NMI R. Att'y Disc. & P. R. 3(1), referring to Model R. Pro. Conduct 1.7(a). The Rule defines a concurrent conflict of interest as either representation of a client that is "directly adverse to another client," or representation where there "is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . ." Model R. Pro. Conduct. 1.7(a)(1)-(2).<sup>8</sup>

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<sup>7</sup> See Notice of Entry of Appearance 1; see also Member Directory, Northern Marianas Bar Association (April 2, 2025), <https://www.cnmibar.com/member-directory-1>.

<sup>8</sup> The Rule also states that even if such a conflict of interest exists, the lawyer may represent the client if they are capable of "provid[ing] competent and diligent representation to each affected client," the representation is lawful, the clients' claims are not against one another, and the clients give informed, written consent. Model R. Pro. Conduct 1.7(b).

Complainant correctly recognizes that Model Rule 1.7 is the relevant reference for conflicts of interest, but his arguments for why Respondent’s counsel’s representation of multiple respondent businesses before this forum creates a conflict of interest are very unclear. Resp. Notice 2. Merely referring to Respondent’s counsel’s clients as “Conflicting Entities,” does not make them so.

Based on the record before this Court, Respondent’s counsel is not representing any parties with claims against each other, so there is no violation of the “directly adverse” representation clause of Rule 1.7. Indeed, Complainant’s assertion that Respondent’s counsel’s clients face “similar allegations of labor and immigration violations” suggests that those clients’ interests are at least broadly aligned. *Id.* at 1. There is also no indication that representing multiple respondents in separate cases would “materially limit” Respondent’s counsel’s representation of Pure Water Corporation in this case.<sup>9</sup> Similarly, Complainant’s assertion that the various respondents are in some way connected to one other does not suggest that they have differing interests – if anything, it suggests their interests may align. The Court finds no conflict of interest and declines to sanction Respondent’s counsel on that ground.

Complainant’s request for sanctions and exclusion of Respondent’s counsel based on an alleged conflict of interest is DENIED.

#### 4. “Conspiracy” with Another Attorney – Sanctions Denied

In his response to the court’s order on discovery, Complainant alleges that Respondent’s counsel is involved in a “coordinated conspiracy” with another attorney representing respondents in other cases Complainant has before this Court. Resp. Order Discovery 5. Complainant includes copy-and-pasted correspondence from Respondent’s counsel and the other counsel, in which the other counsel encourages Respondent’s counsel to inform this Court of Complainant’s pattern of communication. *Id.*<sup>10</sup>

This is repeated in his response to Respondent’s Notice in which Complainant also alleges that Respondent’s counsel “is employing the same tactics” as this other attorney representing respondents before this Court. Complainant again argues that this “suggests a coordinated effort to undermine” Complainant Resp. Notice 2. Complainant attaches correspondence from the other attorney to a federal law enforcement agency, which was not signed by Respondent’s attorney, and which does not mention Respondent’s counsel or this case. *Id.* at 11-15, 27-29. In Respondent’s counsel’s affidavit, he does state that he is “aware from speaking to another practitioner that [Complainant] has engaged in similar abusive . . . conduct against other respondents before OCAHO.” Notice Conduct, Affidavit of Counsel 3. However, he does not otherwise discuss other attorneys or cases.

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<sup>9</sup> A situation in which an attorney’s representation of one client would “materially limit” her representation of another client would include, for example, an attorney representing two clients, where one provided law enforcement with information that led to the indictment of the other to reduce his own criminal exposure. *United States v. Penitani*, 779 Fed. Appx. 463, 465 (9th Cir. 2019).

<sup>10</sup> Best practice would be to include the original emails as PDF attachments, to allow the Court to verify the communications, and see the full conversation.

Complainant does not explain how the alleged coordination between Respondent's counsel, and the other attorney or "employing the same tactics" falls under the type of behavior for which the Court may exclude parties and counsel from proceedings. *See* 28 C.F.R. § 68.35(b). The Court takes Complainant to be claiming that Respondent's counsel either failed to adhere to ethical conduct or failed to act in good faith. *Id.* However, discussing with another attorney that Complainant has brought a variety of cases in multiple fora and frequently contacts Respondent's counsel in an aggressive manner, and how to handle this, does not violate ethical rules nor constitute bad faith. The Court will not sanction Respondent's counsel on this ground.

Complainant's request for sanctions against Respondent's counsel based on his interactions with another counsel is DENIED.

### 5. Behavioral Sanctions

In his February 13, 2025, response to this Court's discovery order, Complainant states that Respondent's counsel engaged in "unprofessional" communications with him and appears to include the content of emails from Respondent's counsel. Resp. Order Discovery 3. Complainant interposes portions of various emails, without providing the full context. The bulk of the communications are Respondent's attorney asking Complainant to stop sending harassing emails, and two emails from Complainant (in one instance by his own admission) containing insults, threats and expletives. Resp. Order Discovery 3-4.

Respondent's attorney's emails on the whole show exasperation but are generally professional, with one exception in which Respondent's counsel states, "Again. You're delusional. You really need to consider treatment for your unaddressed mental health issues. This is not a joke." Resp. Order Discovery 3.

This communication falls beneath the expectations of professionalism and courtesy in this forum. Respondent's counsel is an attorney, and the Court expects professional behavior from him. One party's bad behavior does not excuse the other's similar conduct.

Both Complainant and Respondent's counsel have failed to behave with the professionalism and courtesy this Court expects. Because the Court grants Respondent's Motion for Summary Decision as to the national origin and citizenship status claims below and all that remains is a seemingly dismissible retaliation claim, it will not exclude either party.

The Court does, however, strongly admonish *both* Complainant and Respondent's counsel. The Court previously made clear that both parties were to behave appropriately, and both have failed to do so. Again, it is unacceptable to use personal insults in filings or correspondence related to OCAHO cases. It is also unacceptable to use expletives in communications directed towards the opposing party or the Court. Litigation before OCAHO is not a venue for airing personal dislike of the opposing party, no matter whether you are an attorney or a pro se litigant.

Complainant's request for sanctions is DENIED.

### C. Complainant's December 29, 2024 Motion to Quash Discovery



Included in Complainant's December 29, 2024 Revised Response to the Court's Order to Compel was a Motion to Quash Discovery. Resp. Order Compel 5-7. In the Motion to Quash, Complainant reiterates arguments about how Respondent's discovery requests are "a fishing expedition . . . are designed to harass and intimidate . . . and are being made in bad faith . . . ." Resp. Order Compel 5.

In OCAHO's case law, motions to quash have typically (though not exclusively) been used to oppose subpoenas. *See, e.g., In re Investigation of Conoco, Inc.*, 8 OCAHO no. 1048 (2000) (denying respondent's motion to quash subpoena). Complainant's motion might be better understood as a motion to reconsider the Order Granting in Part Respondent's Motion to Compel. *Pure Water Corp.*, 20 OCAHO no. 1584c.

"OCAHO's Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders," but the Court may apply the Federal Rules of Civil Procedure. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381l, 5 (2021) (quoting *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381b, 2 (2021)); *see* 28 C.F.R. § 68.1. "The 'power to modify an interlocutory order is authorized by . . . Federal Rule 54(b).'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450g, 3 (2023). The decision is discretionary. *Id.* There may be grounds for reconsideration due to, for example, new material facts, a change in law, or if the moving party shows that the Court failed to consider material facts presented. *Id.* at 4.

Here, the Complainant has not met his burden for reconsideration. The Court already ordered Complainant to respond to discovery in its December 18, 2024 Order Granting in Part Respondent's Motion to Compel. *Pure Water Corp.*, 20 OCAHO no. 1584c. In that Order, the Court considered the arguments Complainant raised regarding the relevance and expansiveness of Respondent's requests and his arguments for a protective order. *Id.* at 2, 4. The Court modified and narrowed two of Respondent's interrogatories in response. *Id.* at 7, 8. As the Complainant has raised no new facts or arguments regarding relevancy and broadness, the Court will not reconsider those.

The Court also finds no bad faith on the part of Respondent's counsel because, as discussed above, Respondent's counsel did not respond to Complainant's discovery requests because he was never properly served with those requests. Complainant's argument about "self-incrimination" appears to be a similar argument, that the Court compelled discovery from Complainant without compelling discovery from Respondent. Resp. Order Compel 6. The Court cannot compel discovery that was never served on the opposing party.

Complainant's Motion to Quash, construed as a motion to reconsider, is DENIED.

#### D. Complainant's December 29, 2024 Request for Subpoenas

Included in Complainant's December 29, 2024 Revised Response to the Court's Order to Compel was a Request for Subpoenas. Resp. Order Compel 11-12. Complainant identifies two members of the CNMI Department of Labor, requesting to question them about "the hiring process and the accuracy of Pure Water's claims in that regard" and "regarding documentation and forms that Pure

Water was required to submit to the CNMI Dept. of Labor . . . .” Resp. Order Compel 12. The motion also requested that the two produce documents. *Id.*

This Court previously explained OCAHO’s rules on subpoena requests. *Pure Water Corp.*, 20 OCAHO no. 1584c, at 9-10. Of particular relevance, the subpoena must “identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable.” 28 C.F.R. 68.25(b); *see also Pure Water Corp.*, 20 OCAHO no. 1584c, at 10. Although Complainant identifies the individuals he wishes to subpoena, he does not include information about when and where the subpoena is returnable, and he does not include the subpoena form.

Further, in light of the disposition of Motion for Summary Judgment, the subpoena request is moot. Complainant’s request for subpoenas is therefore DENIED.

#### E. Respondent’s Motion for Sanctions

As previously noted, Respondent filed a Motion to Compel on November 9, 2024, which the Court granted in part in its December 18, 2024 Order Granting in Part Respondent’s Motion to Compel. *See Pure Water Corp.*, 20 OCAHO no. 1584c (2024).

On January 21, 2025, Respondent filed a Motion for Sanctions and Request for Ruling on Motion for Summary Judgment, which led to further motions practice, discussed above. Respondent requests that the Court “sanction Complainant . . . for failure to comply” with the Order Granting in Part Respondent’s Motion to Compel and argues that “any one of [the discovery-related] sanctions” available to OCAHO courts “can and should result in judgment on the merits in favor of Pure Water.” Resp’t’s Mot. Sanctions 1, 3. The motion was supported by an affidavit from Respondent’s counsel stating that Complainant “has not provided anything in response to discovery.” Affidavit of Counsel 1.

Complainant’s response reiterates his arguments about Respondent’s failure to respond to discovery and claims that he should not be subject to sanctions as a pro se litigant. Complainant’s Resp. Mot. Sanctions 1-2. At no point does Complainant suggest his failure to respond to discovery was unintentional or the result of some kind of intervening circumstances.

An OCAHO Administrative Law Judge (ALJ) may impose discovery-related sanctions if a party “fails to comply with . . . an order for . . . the production of documents, the answer of interrogatories, a response to a request for admissions . . . .” 28 C.F.R. § 68.23(c). A possible sanction is to “[r]ule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party.” 28 C.F.R. § 68.23(c)(2). “The Court’s goal in imposing discovery sanctions is ‘to put the parties in the same relative positions they would have been in but for the noncomplying party’s failure.’” *Ackermann v. Mindlance*, 17 OCAHO no. 1462e, 4 (2024). Under Ninth Circuit case law,<sup>11</sup> “[w]hen choosing

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<sup>11</sup> Because the allegations at issue in this case occurred in the Commonwealth of the Northern Marianas Islands, the Court may look to the case law of the relevant United States Court of Appeals, here the Ninth Circuit. *See* 28 C.F.R. § 68.57.

among possible [discovery] sanctions [under Federal Rule of Civil Procedure 37], the district court may consider the deterrent value of an order of dismissal on future litigants as well as on the parties.” *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983). The use of discovery sanctions “must be tempered by due process . . . .” *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 783 n.8 (9th Cir. 1983).

Respondent did not request any particular discovery sanction. Here, the discovery requests appeared to relate to any evidence Complainant may produce based on claims Complainant has made in his filings and IER charge, as well as his job application materials and professional credentials. Given the disposition below, however, it is unlikely this case will go to a hearing. Accordingly, the Court finds that establishing the subject of the summary decision motion, the number of employees, as adverse to Complainant, is the most appropriate sanction.<sup>12</sup> This addresses the Complainant’s choice to ignore this Court’s Order and his refusal to participate in the discovery process.

Respondent’s Motion for Sanctions is GRANTED.

Finally, Respondent’s “Notice of Petitioner’s Improper and Criminal Conduct” filed March 4, 2025, is improper as Respondent’s attorney does not include any kind of motion or request for action from the Court. *See generally* 28 C.F.R. § 68.11(a). It almost goes without saying that this Court does not have jurisdiction over criminal matters.

### III. MOTION FOR SUMMARY JUDGMENT

#### A. Legal Standards

OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024), explains that an Administrative Law Judge may grant summary decision for either party if the pleadings, affidavits, and other materials show that there is “no genuine issue of 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 suite.’” *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362d, 8 (2023) (quoting *Sepahpour v. Unisys, Inc.*, 2 OCAHO no. 500, 1012, 1014 (1993)). If the moving party meets its burden to show a lack of a genuine issue of material fact, the non-moving party may offer evidence to avoid summary decision. *Id.* (quoting *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012)). The party opposing summary decision may not rest upon “mere allegations or denials” but must “set for specific facts showing that there is a genuine issue of fact for hearing.” 28 C.F.R. § 68.38(b).

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<sup>12</sup> OCAHO has prohibited Complainants from introducing evidence in cases with willfully non-complying pro se litigants. *See Iron Workers Local 455 et al. v. Lake Const. & Dev. Corp.*, 7 OCAHO no. 964, 632, 674 (1997); *Austin v. Specialized Staffing Solutions, Inc.*, 18 OCAHO no. 1513b, 6-10 (2024). However, it is unclear if evidence will be required in this case.

OCAHO is a forum of limited jurisdiction and only hears cases specifically described by Congress in its statute. *Zajradhara v. E-Supply Servs.*, 16 OCAHO no. 1438f, 5 (2023) (citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5-8 (2021)). 8 U.S.C. § 1324b's prohibition on both national origin and citizenship status based discrimination excepts employers that employ three or fewer employees. 8 U.S.C. § 1324b(a)(2)(A). As a result, OCAHO does not have jurisdiction, nor can a Complainant state a claim where the "[c]omplainant [does] not establish that the employer employed more than three individuals on the date jurisdiction attached." *Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417d, 3 (2023).

"The date jurisdiction attaches depends on whether a § 1324b(a) claim is based on national origin or citizenship status." *E-Supply Servs.*, 16 OCAHO no. 1438f, at 5. For national origin, the relevant period is "each working day in each of twenty or more calendar weeks preceding the year the alleged discriminatory act occurred." *Zajradhara v. E-Supply Servs.*, 16 OCAHO no. 1438b, 5 n.5 (2022). For citizenship status, "the count of employees . . . 'is to be made as of the date the alleged discrimination occurred and . . . all who are employed on that date . . . are to be counted.'" *E-Supply Servs.*, 16 OCAHO no. 1438f, at 5-6 (citing *Sanchez v. Ocanas*, 9 OCAHO no. 1115, 2-3, 7-11 (2005)).

#### B. Parties' Filings

In its Motion for Summary Decision, Respondent states that "between 2020 and the date of this filing, Pure Water Corporation has never employed more than two workers." Mot. Summ. Dec. 2; *see also* Answer 2 (stating at the time Complainant applied, Respondent had one employee). Moreover, Respondent states that at the time Complainant applied to Respondent company, "the company was looking to hire only one worker." *Id.* at 4. As supporting evidence, Respondent attaches an affidavit from the Respondent's only employee, stating that Respondent "does not have between four and fourteen employees . . . as alleged," and reiterating that between 2020 and the date of the affidavit, Respondent has never employed more than two people. Affidavit of Yan Hua 1.

In his response, Complainant makes arguments as to statutes and regulations that he alleges Respondent violated, asserts that Respondent failed to respond to discovery requests (an argument this Court has already addressed), states that Respondent "requested labor through its job vacancy announcements," and suggests that Respondent is misleading the Court. Resp. Mot. Summ. Dec. 1-3. Complainant does not, however, offer any evidence regarding the number of employees employed by Respondent at the time of the alleged discrimination or during the broader relevant period for national origin discrimination.

#### C. Analysis

Respondent argues that this Court has no jurisdiction over the Respondent company because it employs too few employees, and supports this argument with a sworn affidavit by Respondent's only employee. Respondent specifically argues that "between 2020 and the date of [the Motion for Summary Decision]" it "has never employed more than two workers." Mot. Summ. Dec. 2.

Complainant applied for employment with Respondent on September 9, 2023. Compl. 8. The relevant period for a claim based on national origin, then, is calendar years 2022 and 2023. It is unclear precisely when the alleged discriminatory non-selection occurred, but logically it could not have taken place any earlier than September 9, 2023. Complainant presents no evidence to rebut Respondent's affidavit, and even if he did, as a sanction this Court has determined that this issue is established as adverse to Complainant. In any event, simply arguing that Respondent posted job vacancy announcements, *see* Resp. Mot. Summ. Dec. 2, does not meet Complainant's burden to present contravening evidence.

8 U.S.C. § 1324b is clear: there is a coverage exception for any "person or . . . entity that employs three or fewer employees." 8 U.S.C. § 1324b(a)(2)(A). Respondent falls under this exception, as it has employed fewer than three employees since 2020, which encompasses the relevant time periods for both national origin and citizenship status claims. There is no genuine issue of material fact and Respondent is entitled to summary decision.

Respondent's Motion for Summary Decision is GRANTED as to Complainant's national origin and citizenship status claims.

#### IV. ORDER TO SHOW CAUSE FOR FAILURE TO STATE A CLAIM - RETALIATION

Respondent's Motion for Summary Decision addressed Complainant's national origin and citizenship status discrimination claims but did not address the retaliation claim that Complainant arguably raised.

However, this Court "may dismiss the complaint . . . without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted." 28 C.F.R. § 68.10(b). "To state a claim for retaliation under § 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 proceeding, or to interfere with her rights or privileges secured specifically under § 1324.'" *Zajradhara v. Manbin Corp.*, 19 OCAHO no. 1553, 3 (2024).

The bar for pleadings in this forum is low, but a complaint must nevertheless give adequate notice to the respondents of the basis for the charges made against them. *Zajradhara v. American Sinopan, LLC*, 20 OCAHO no. 1581, 6 (2024) (quoting *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022)).

In the Complaint, Complainant put a question mark next to the question "Were you intimidated, threatened, coerced or retaliated against for exercising your rights under 8 U.S.C. § 1324b?" Compl. 8. Later, he checked "yes" to the question "Were you intimidated, threatened, coerced or retaliated against because you otherwise asserted your legal rights against unfair immigration-related employment practices?" *Id.* at 11. The Complaint, however, is devoid of any further information about retaliation. Complainant does not allege what "legal rights" he asserted, whether those legal rights arise under 8 U.S.C. § 1324b, whether Respondent was aware of

Complainant's assertion of legal rights, or what retaliatory action Respondent took. Complainant's numerous subsequent filings also have not added any information regarding this claim.

Complainant has failed to state a claim for retaliation. This extremely minimal allegation does not give adequate notice to the respondent of the basis for a retaliation claim. *American Sinopan*, 20 OCAHO no. 1581, at 6. However, this Court will provide Complainant with the opportunity to submit a filing explaining why his retaliation claim under § 1324b(a)(5) should not be dismissed for failure to state a claim upon which relief may be granted. *See, e.g., Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546, 3 (2024). That submission must be filed within 10 days of the date of this Order. Respondent will have 10 days from service of Complainant's filing to submit a response.

The Court puts Complainant on notice that if he fails to submit a filing within the allotted 10 days, the Court may nevertheless proceed to rule on whether the Complaint states a claim for retaliation under 8 U.S.C. § 1324b(a)(5).

SO ORDERED.

Dated and entered on April 28, 2025.

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Honorable Jean C. King  
Chief Administrative Law Judge