

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

June 19, 2020

R.S.,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 19B00048
	)	
LATTICE SEMICONDUCTOR,	)	
Respondent.	)	
_____	)	

ORDER DENYING COMPLAINANT’S MOTION TO COMPEL

I. BACKGROUND

Complainant, R.S., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Lattice Semiconductor, on August 12, 2019, alleging that Respondent refused to hire him based on his citizenship status. Respondent filed a timely answer. The Administrative Law Judge (ALJ) held a prehearing conference on December 19, 2020, and set the deadlines in this matter. Discovery closed on April 27, 2020 and, on that day, Complainant filed a Motion to Quash Notice of Deposition. Respondent filed a timely response and the undersigned held a telephonic discovery conference on May 13, 2020. In the conference, the undersigned denied the motion to quash, set the date and time for the deposition, and reset the remaining deadlines in the case. The parties both indicated an intent to file discovery motions, so the undersigned also set motions and response deadlines.

On June 1, 2020, Complainant filed a motion to compel, seeking to compel responses to interrogatories and request for production of documents. Respondent filed a response on June 10, 2020. Respondent also filed a motion to compel on June 2, 2020, and Complainant filed a response on June 11, 2020. This order addresses Complainant’s Motion to Compel.

II. STANDARDS

An OCAHO ALJ has the authority to “compel the production of documents” and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28. *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016). The OCAHO rules permit parties to file motions to compel responses to discovery if the responding party fails to adequately respond or

objects to the request. 28 C.F.R. § 68.23(a). However, the OCAHO rules require motions to compel to set forth and include:

- (1) The nature of the questions or request;
  - (2) The response or objections of the party upon whom the request was served;
  - (3) Arguments in support of the motion; and
  - (4) A certification that the movant has 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.
- § 68.23(b).

### III. DISCUSSION

Complainant asks the Court to compel Respondent to respond to nine requests for production of documents and fifty-five interrogatories. He also asks the Court to require Respondent to provide the documents or corresponding Bates-labels for the documents that Respondent listed as preliminary exhibits in its prehearing statement. Finally, Complainant asks the Court to compel Respondent to produce fourteen additional documents.

Complainant did not attach to his motion his actual discovery requests or Respondent's responses, but Complainant previously filed his December 2019 requests with OCAHO containing fifteen requests for documents and, in March 2020, Complainant filed his first and second sets of interrogatories, which included 258 interrogatories. Complainant argues that Respondent did not provide full and complete responses to his interrogatories and that Respondent did not provide the requested documents. Mot. Comp. at 2, 4.

Regarding the requests for production of documents, Complainant did not provide any of Respondent's responses. Instead, Complainant identifies some documents that Respondent produced and argues that the documents produced were not responsive to his requests, or that the documents did not provide specific information he seeks. The OCAHO rules require the moving party to include in a motion to compel the response or objections of the party upon whom the request was served. § 68.23(b). Since Complainant did not provide Respondent's responses or objections to any of his document requests, his motion to compel responses to his requests for production of documents does not meet the requirements of § 68.23(b). As such, Complainant's motion as it relates to Respondent's responses to his document requests is DENIED.

Regarding the interrogatories, Complainant seeks an order compelling Respondent to provide full and complete responses to fifty-five interrogatories.<sup>1</sup> Complainant's Mot. Compel at 19.

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<sup>1</sup> Complainant seeks Respondent's responses to interrogatory numbers 23, 43, 53, 141, 142, 143, 144, 145, 158, 199, 200, 202, 209, 210, 211, 213, 214, 215, 216, 218, 219, 220, 221, 223, 224, 225, 226, 228, 229, 230, 231, 233, 234, 235, 236, 238, 239, 240, 241, 243, 244, 245, 246, 247, 248, 250, 251, 252, 253, 254, 255, 256, 257, 258. Although not included in his list, he also seeks to compel the response to interrogatory number 42.

However, in his motion, Complainant only addressed seventeen interrogatories.<sup>2</sup> Complainant did not state the nature of Respondent's responses or objections and did not include arguments in support of his motion for interrogatory numbers 142, 143, 144, 145, 199, 200, 202, 210, 211, 213, 214, 215, 216, 218, 219, 221, 223, 224, 226, 228, 229, 230, 231, 233, 234, 235, 236, 238, 239, 240, 243, 244, 245, 246, 247, and 248. As such, Complainant's motion to compel as it relates to the thirty-six interrogatories listed above does not meet the requirements in § 68.23(b).

For the remaining seventeen interrogatories, in his motion, Complainant purported to provide Respondent's responses and his arguments in support of the motion. However, for interrogatory numbers 23 and 53, Complainant did not provide any portion of Respondent's response. Regarding the remaining interrogatories, Complainant either quoted a portion of or paraphrased Respondent's objections, and did not provide the entirety of Respondent's responses.<sup>3</sup> Complainant's characterization of Respondent's responses and his arguments in favor of his motion indicate that Respondent objected to all of the discovery requests at issue and did not provide a response to the specific interrogatories.

However, in its response to the Motion, Respondent provided the actual text of its responses to the interrogatories at issue, and Respondent contends that Complainant mischaracterized its responses. While Respondent entered general objections to each of the interrogatories, it then provided alternate responses, responses that are lengthy and detailed. *See* Respondent's Resp. Mot. Compel. In most instances after stating its objections, it appears that Respondent responded thoroughly to the specific interrogatory. *Id.* The responses include citations to responsive documents that Respondent had already produced and, where applicable, it stated that it produced all responsive documents in its possession. *Id.*

While courts generally liberally construe a pro se party's pleadings, pro se parties are still required to follow the rules of the forum. *See United States v. \$15,333.00 in United States Currency*, 988 F.Supp.2d 1229, 1234 (D. Ore. Dec. 18, 2013). By citing only to Respondent's general objections, or, at most a small portion of the response that followed, Complainant provided an incomplete and in most cases a misleading characterization of Respondent's responses. *Compare* Complainant's Mot. Compel, *and* Resp't Resp. to Mot. Compel. Complainant's characterizations of Respondent's responses do not meet the OCAHO requirement for providing the nature of the responding party's response or objections, and make it all but impossible to accurately adjudicate the motion.

Additionally, in his motion, Complainant asks the Court to compel Respondent to produce fourteen additional documents and produce or provide the Bates-labeled pages for thirty-four documents that Respondent listed as preliminary exhibits in its prehearing statement. Mot. Compel at 19. Complainant failed to provide the nature of any discovery requests, responses or objections, or any argument supporting his motion to compel as it relates to the above-mentioned

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<sup>2</sup> In his motion, Complainant only addresses interrogatories numbers 23, 42, 43, 53, 141, 158, 209, 13, 250, 251, 252, 253, 254, 255, 256, 257, and 258.

<sup>3</sup> While Complainant provide a quoted portion of Respondent's responses, Complainant failed to provide any argument in support of its motion to compel Interrogatories Numbers 141 and 209.

documents. Based on his motion, Respondent's response, and the Declaration of Aleksandr Katsnelson, it appears that Complainant never served requests for these documents; instead, Complainant demanded in a letter that Respondent produce the additional documents and information. *See* Decl. of Katsnelson Ex. A, at 3–4; Ex. B; Ex. C, at 3–5; *see also* Mot. Compel; Resp. to Mot. Compel at 7–10. In a motion to compel, a party may only move the ALJ for an order compelling a response to a specific discovery request; a party may not propound new requests. *See* § 68.23(a) (if a party fails to respond adequately or objects to the request or any part thereof, the discovering party may move the ALJ for an order compelling a response in accordance with the request). Complainant may not now seek documents that he did not properly request. *See id.* Finally, Respondent states that despite the new requests, it has already produced the documents that Complainant seeks related to Mr. Kumar's phone screen, interview and evaluation; and the documents regarding Interviewer Romeo's phone screen notes and evaluation forms for Mr. Krishnanurthy and Kumar. Resp. Mot. Compel at 9.

Complainant also did not provide any evidence that he propounded requests for the documents or the corresponding Bates-labels for each document listed as a preliminary exhibit in Respondent's prehearing statement. As such, Complainant's Motion to Compel as it relates to the list of exhibits in Respondent's prehearing statement and the additional list of documents he seeks to request is DENIED. The Court notes, however, that Respondent has indicated that it has produced all responsive documents in this case, which, presumably, includes the exhibits listed in the prehearing statement. To the extent that any of these documents, which Respondent has apparently determined are responsive and that it intends to use as exhibits, have not been produced, Respondent should provide these documents.

#### IV. CONCLUSION

Complainant's Motion to Compel did not meet the requirements set forth in 28 C.F.R. § 68.23(b). As such, Complainant's Motion to Compel is DENIED. Discovery closed on June 15, 2020 and the parties may not propound any additional requests.

SO ORDERED.

Dated and entered on June 19, 2020.

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Jean C. King  
Chief Administrative Law Judge