

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

November 22, 2021

A.S.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00073
)	
AMAZON WEB SERVICES, INC.,)	
Respondent.)	
_____)	

Appearances: A.S., pro se, for Complainant
Leon Rodriguez, Esq. and Dawn Lurie, Esq., for Respondent

ORDER ON COMPLAINANT’S MOTION TO COMPEL

I. BACKGROUND

On April 7, 2021, the Court issued an Order Reframing Scope of Complaint and Partially Granting Motion to Dismiss (Order Reframing Complaint) in which it imposed a 25-page limit on non-dispositive motions, exclusive of exhibits. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, 18 (2021); *see generally Shortt v. Dick Clark’s AB Theatre, LLC*, 10 OCAHO no. 1130, 4 (2009) (imposing page limit on filings).¹ The Court further instructed that the “[p]arties must file for leave of the Court and demonstrate good cause to deviate from such limits.” *Id.* at 19.

¹ 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 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 “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

On August 27, 2021, Complainant filed a 76-page Motion to Compel Respondent's Response to Complainant's Discovery Request and Interrogatory (Motion to Compel).

On September 2, 2021, the Court issued an Order Granting Respondent's Motion for Extension to File Response to Complainant's Motion to Compel (Order Granting Extension) such that Respondent's response to Complainant's Motion to Compel was due by September 27, 2021. Order Granting Extension 2.

On September 28, 2021, Respondent filed its Opposition to Complainant's Motion to Compel Response to Discovery (Opposition). A few hours later, Complainant filed a Motion to Reject Respondent's Opposition to Motion to Compel (Motion to Reject) for Respondent's untimely opposition. That same day, Respondent filed a Response to Complainant's Motion to Reject Respondent's Opposition to Complainant's Motion to Compel Response to Discovery (Response to Motion to Reject).

II. PROCEDURAL CONSIDERATIONS

A. Complainant's Submission Exceeds Page Limit

As an initial matter, the Court notes that Complainant disregarded the Court's prior order on page limits when he filed a 76-page motion. Rather than pre-emptively and proactively seek the Court's leave and provide good cause for such a lengthy filing, Complainant argues, untimely, in his opposition to Respondent's Motion for Extension that his Motion to Compel is "more efficient" than Respondent's motion. Response to Respondent's Motion for Extension 3–4.

Imposing page limits are not arbitrary. "[P]age limits steward[] judicial resources [and] protect[] the parties' private interests. *Cf. Gulf Petro Trading Co. v. Nigerian Nat'l Petroleum*, 233 F.R.D. 492, 493 (E.D. Tex. 2005) (reasoning that permitting motion to exceed page limit would 'invite a paper war, with briefs, responses, replies, and sur-replies of geometrically increasing length')." *Espinoza v. San Benito Consol. Indep. Sch. Dist.*, No. 1:14-CV-115, 2016 WL 10744704, at *2 (S.D. Tex. Sept. 13, 2016) (citation omitted).

Not only did Complainant fail to seek leave of the Court to deviate from the order on page limits, he also failed to demonstrate good cause for exceeding the page limit. Consequently, the Court will only consider the first 25 pages of Complainant's Motion to Compel. *See Nat'l Architectural Prod. Co. v. Atlas-Telecom Servs.--USA, Inc.*, No. 306CV0751-G, 2007 WL 2051125, at *3 (N.D. Tex. July 13, 2007) (declining to consider pages submitted in excess of page limit); *see also United States v. Ferrand*, 284 Fed.Appx. 177, 179 (5th Cir. 2008) (per curiam, unpublished) (striking entire filing for exceeding page limit because party filed no motion for leave to exceed limit); *Clarke v. Dir., TDCJ-CID*, No. 4:09CV404, 2012 WL 4120430, at *1 (E.D. Tex. Sept. 19, 2012) (citation omitted) (recognizing propriety of denying motion for leave to file reply in excess of page limit and striking reply based on trial court's

inherent “specific and inherent power to control its docket.”); *accord* 28 C.F.R. § 68.23(c) (authorizing sanctions for failure to comply with court order).

B. Respondent’s Opposition to Complainant’s Motion to Compel Response to Discovery is Untimely

i. Parties’ Positions on Consideration of Opposition

Respondent’s filing was due on September 27, 2021. Order Granting Extension 2. It was received on September 28, 2021 at 5:30 a.m. EST.

Complainant asks the Court “to reject Respondent’s opposition as it was not filed timely[.]” Mot. Reject 2.

In his filing, Respondent’s counsel explains that he attempted to e-file Respondent’s Opposition at 10:15 p.m. EST; however, Respondent’s counsel’s laptop was disconnected from his virtual private network (VPN) connection. Resp. Mot. Reject 1–2. Thus, the email with the filing was not sent at 10:15 pm EST. *Id.* “Respondent’s counsel fully intended to submit the Opposition on September 27 at 10:15 PM EST and the failure of the Opposition to transmit was unintentional.” *Id.* at 2. Moreover, Respondent’s counsel argues “that a five and a half hour delay occurring in the very early morning hours results in no prejudice to Complainant.” *Id.* at 3.

ii. Legal Standards and Analysis

A timely opposition to Complainant’s Motion to Compel was due by September 27, 2021, 11:59 p.m. EST. *See* Order Granting Extension 2, U.S. Dep’t of Just., OCAHO Practice Manual, Ch. 3.7(d)(7) (2021) (“A case-related document will be considered timely filed if the document containing the case-related document is received by OCAHO before midnight Eastern Time on the day the case-related document must be filed.”). Respondent filed its Opposition on September 28, 2021 at 5:30 a.m. EST.

OCAHO administrative law judges (ALJs) have the discretion to accept late-filed submissions. *See Zajradhara v. Donghui Kengxindun Corp.*, 14 OCAHO no. 1382, 3 (2020); *see also Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (holding OCAHO ALJ did not abuse discretion in considering filing submitted three days late). Additionally, the standard for granting extensions of time is good cause. *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021).

The undersigned exercises her discretion and accepts Respondent’s Opposition to Complainant’s Motion to Compel in light of the extenuating circumstances. The Court notes that this untimely submission is an aberration from Respondent’s normal submission of timely filings. There is

sufficient good cause for an extension of time for less than six hours, and a filing in this instance, provided mere hours after the expiration of the deadline, does not prejudice Complainant, and allows for a more fully developed record on this issue.

As such, Complainant's Motion to Reject is DENIED and the Court will consider Respondent's Opposition to Complainant's Motion to Compel Response to Discovery. Respondent is cautioned to ensure filings are timely submitted in the future.

III. PARTIES' POSITIONS

A. Complainant's Motion to Compel

With the issuance of the Order Reframing Complaint, Complainant sent revised discovery requests from April 18, 2021 – June 23, 2021. Mot. Compel 1. Complainant attaches to his motion the 117 discovery requests he propounded on Respondent and Respondent's responses to the discovery. See Mot. Compel, Ex. A. While Complainant concedes that Respondent produced responses to his discovery requests on July 17, 2021, he maintains that the "responses don't qualify to be complete answers by any standards." *Id.* at 4, 6. Moreover, Complainant asserts that Respondent's discovery responses "were generic boilerplate responses, tantamount to no response at all[.]" *Id.* at 3–4.

Although Complainant provides some general arguments in support of his motion, he does not specify the discovery responses to which those arguments relate. For example, he argues that his discovery requests seeking information on similarly situated employees should be compelled because "[i]n a case of disparate treatment, the discharged employee may establish the retaliation by a showing that the employer treated others similarly situated employees but outside the complainant's protected class more favorably." *Id.* at 16 (citing *Okoye v. Univ. of Tex. Houston Health Sci. Ctr.*, 245 F.3d 507, 512 (5th Cir. 2001)). While Complainant's assertion that such information is relevant in a "disparate treatment case," he fails to identify, with specificity, which of his 117 requests contain that specific query. Necessarily then, he also does not provide Respondent's specific objection and/or response to that specific query.

Complainant also provides conclusory theories pertaining to his case and posits seemingly rhetorical questions, Mot. Compel 12–25; none of which the Court can construe as a "motion". See *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 13811, 4, 6 (2021).²

Complainant identifies several discovery conferences the parties have had and asserts he has made good faith attempts to confer about his discovery requests. Mot. Compel 3, 9.

² As the Court has previously stated, per 28 C.F.R. § 68.2 set the limits of motions by defining them as requests for some action by the Court. *Amazon Web Servs., Inc.*, 14 OCAHO no. 13811, at 4,6. Therefore, the Court will not address Complainant's musings in his Motion to Compel. See *id.*

Finally, Complainant requests the Court sanction Respondent pursuant to 28 C.F.R. § 68.23(c) for Respondent's alleged "non-compliance" and "non-cooperation." *Id.* at 11. Complainant also alleges that Respondent is concealing and fabricating facts "to obstruct justice" and questions Respondent's counsel's integrity. Mot. Compel 4, 10.

B. Respondent's Opposition to Complainant's Motion to Compel

At the outset, Respondent notes that Complainant disregarded the Court's Order Reframing Complaint in submitting a "76-page motion with 595 pages of exhibits." Opp'n 1. Respondent alleges that because of Complainant's "abusive scope of discovery requests[,] Complainant's case should be outright dismissed. *Id.*

Respondent argues Complainant's assertions related to production of discovery are inaccurate, as, according to Respondent, Complainant contradicts himself by acknowledging within his motion that Respondent has provided multiple productions of discovery. Opp'n 2.

Respondent argues that Complainant's Motion to Compel is deficient as it fails to comply with OCAHO's regulations. Opp'n 4. First, Respondent notes "Complainant fails in most instances to identify which discovery request his motion is addressing." Opp'n 2. Second, Complainant "does not point to any specific responses as deficient." Opp'n 4. Third, Complainant's general claims of relevance are "unsubstantiated." *Id.* Specifically, Respondent claims that Complainant "failed to provide any specific arguments as to why Respondent's responses to his document requests are actually deficient." Opp'n 8 (citations omitted). Finally, Respondent asserts that while the parties held numerous discovery conferences, Respondent questioned whether Complainant met and conferred in good faith because "at no point expressed a willingness to meaningfully narrow his requests." Opp'n 4-5.

Regarding the substance of Complainant's motion, Respondent asserts that "[t]he vast majority of Complainant's 117 discovery requests are irrelevant to this case" in light of the Order Reframing Complaint. Opp'n 5.

IV. LEGAL STANDARDS

"The parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding" 28 C.F.R. § 68.18(b).

A. Procedural Requirements of Motion to Compel

The Court "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). Parties may 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). Pursuant to 28 C.F.R. § 68.23(b), a motion to compel must set forth:

- (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.

B. Relevance and Objections

The scope of discovery extends to “any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” 28 C.F.R. § 68.18(b). Relevance “broadly encompass[es] 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.” *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014) (quoting *United States v. Select Temps., Inc.*, 9 OCAHO no. 1078, 2 (2002)).

“Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served.” 28 C.F.R. § 68.23(a). The party refusing to respond “must articulate its objections in specific terms and has the burden to demonstrate that its objections are justified.” *United States v. Employer Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 3 (2014) (citing *United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000)). A party who fails to timely object or adequately state the reason for the objection waives said objection. *Id.* (first citing *United States v. Westheimer Wash Corp.*, 7 OCAHO no. 989, 1042, 1045 (1998); then citing *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989); and then citing Fed. R. Civ. P. 33(b)(4)). “Generalized or conclusory assertions of irrelevance, overbreadth, or undue burden are not sufficient to constitute objections.” *Allen Holdings, Inc.*, 9 OCAHO no. 1059, at 5 (citing *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990)).

V. ANALYSIS

A. Procedural Requirements of Motion to Compel

Before the Court is able to analyze the merits of Complainant’s Motion to Compel, it must first determine whether Complainant satisfied the procedural requirements of 28 C.F.R. § 68.23(b).

See *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381, 2 (2021); *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381j, 5 (2021).

First, Complainant complied with 28 C.F.R. § 68.23(b)(1)–(2) as he provided the text of his discovery requests and Respondent’s responses. Mot. Compel. Ex. A. Next, Complainant has provided general arguments for compelling responses to (presumably) all 117 of his discovery requests;³ thus, complying with 28 C.F.R. § 68.23(b)(3).

Complaint asserts that he “made good faith attempts to confer” with Respondent regarding his discovery requests, and the parties met and conferred several times regarding his discovery. Mot. Compel 9–10. Respondent counters that while Complainant did “agree to meet to explain the relevance of his requests,” Complainant did not do so in good faith because “he at no point expressed a willingness to meaningfully narrow his requests so that the volume of discovery would be limited to relevant information and not be abusive.” Opp’n 4–5.

As to the regulatory requirement to meet and confer, 28 C.F.R. § 68.23(b)(4) requires “[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.” Good faith in resolving discovery disputes “mandates a genuine attempt to resolve the discovery dispute through non-judicial means” and requires “honesty in one’s purpose to meaningfully discuss the discovery dispute and faithfulness to one’s obligation to secure information without court action.” *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 397 (S.D. Tex. 2012) (quoting *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D.Nev.1996)).

Respondent concedes that Complainant engaged in numerous discussions regarding his discovery requests. Although Respondent argues that Complainant did not meet and confer in good faith because he did make any concessions, Respondent does not provide case law supporting such. On the contrary, case law indicates that having numerous discussions, like those the parties have held here, about the disputed discovery signals good faith. See *id.* at 399–400 (first quoting *Antonis v. Elecs. for Imaging, Inc.*, No. 07-cv-163-JL, 2008 U.S. Dist. LEXIS 6887, 2008 WL 169955, at * 1 (D.N.H. Jan. 16, 2008); and then quoting *Care Env’t. Corp. v. M2 Techs. Inc.*, No. CV–05–1600 (CPS), 2006 WL 1517742, at *1, *3 (E.D.N.Y. May 30, 2006)). As such, Respondent has not sufficiently demonstrated that Complainant did not meet and confer in good faith; and thus, Complainant has satisfied 28 C.F.R. § 68.23(b)(4).

Therefore, Complainant has met the procedural requirements of 28 C.F.R. § 68.23(b).

B. Specificity

³ Although Complainant’s Motion to Compel contains general arguments, the motion fails for lack of specificity for reasons explained further below.

At the outset, the Court notes it is not entirely clear for which discovery requests Complainant seeks to compel responses. In its Opposition, Respondent assumes that Complainant is seeking responses for all 117 discovery requests. *See* Opp'n 4. Even assuming arguendo that Complainant seeks to compel responses to all 117 of his discovery requests, his motion still fails for lack of specificity. *See generally Amazon Web Servs., Inc.*, 14 OCAHO no. 1381, at 2–3 (denying one of Complainant's prior motions to compel discovery responses for lack of specificity).

Motions to compel discovery responses:

must specifically and individually identify each discovery request in dispute and specifically, as to each request, identify the nature and basis of the dispute, including, for example, explaining how a response or answer is deficient or incomplete, and ask the Court for specific relief as to each request; and must include a concise discussion of the facts and authority that support the motion as to each discovery request in dispute.

Samsung Elecs. Am. Inc. v. Yang Kun "Michael" Chung, 325 F.R.D. 578, 594–95 (N.D. Tex. 2017) (quoting *Harrison v. Wells Fargo Bank, N.A.*, No. 3:13-cv-4682-D, 2016 WL 1392332, at *7 (N.D. Tex. Apr. 8, 2016)); *see also Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 3 (2021) (requiring motions to compel discovery to contain argument specifying why the provided discovery responses are insufficient).

These requirements are not an arbitrary, procedural hindrance. They provide the Court guidance as to what information is sought, why the information is sought, and why the provided discovery responses (if any) are deficient.

Here, Complainant does not provide individual and specific argument in support of compelling each discovery response. Rather, he provides general summaries with no reference to the specific discovery request. For example, Complainant argues that discovery requests pertaining to similarly situated employees should be compelled; yet, it is unclear which of the 117 discovery requests pertain to similarly situated employees. The Court will not presume which of the 117 discovery requests seek information of similarly situated employees; it is Complainant's burden as the moving party to do so. The parties are in the best position to know the specifics of their case and it is inappropriate for the Court to make assumptions on behalf of the parties.

Further, Complainant has not identified the specific deficiency of each discovery response that Respondent provided. Overall, Complainant's Motion to Compel lacks sufficient specificity such that the undersigned cannot rule on the underlying discovery requests. As such, Complainant's Motion to Compel is DENIED.

C. Allegations of Misconduct

Next, the Court addresses Complainant’s request to sanction Respondent pursuant to 28 C.F.R. § 68.23(c). The Court may impose sanctions upon “a party, an officer or an agent of a party, or a witness, *fails to comply with an order*[.]” 28 C.F.R. § 68.23(c) (emphasis added). Complainant has not identified such an order. Nor is the Court aware of any instance in which Respondent has violated an order. As such, no sanction is appropriate.

Similarly, Complainant’s allegations of misconduct on the part of Respondent and Respondent’s counsel are unsupported. The Court takes seriously allegations of misconduct; however, Complainant has made baseless allegations without providing any evidence. *See A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 1 n.3 (2021) (CAHO order) (“Complainant’s allegations of misconduct by Respondent’s counsel have also not been substantiated . . .”).

The regulations at 28 C.F.R. § 68.35(b) authorize the Court to take action against 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.” In certain instances, the Court may exercise its discretion in disciplining parties for unethical conduct, but only when such misconduct has a clear basis supported factually in the record. *See United States v. La. Crane Co., LLC*, 11 OCAHO no. 1246, 13–14 (2015); *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 9 (2021); *Amazon Web Servs.*, 14 OCAHO no. 1371d, at 8–9. Presently, there is no basis for Complainant’s allegations of misconduct by either Respondent or Respondent’s counsel.

VII. CONCLUSION

Based on Complainant’s failure to seek leave and demonstrate good cause to file his Motion to Compel, the Court only considers the first twenty-five pages of Complainant’s Motion to Compel.

Complainant’s Motion to Reject and Motion to Compel are DENIED.

SO ORDERED.

Dated and entered on November 22, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge