

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2021A00024
JR CONTRACTORS, INC.,)	
Respondent.)	
)	

Appearances: Laticia S. Bobongi, Esq., for Complainant
R. Barry Rowell, Esq., for Respondent

ORDER GRANTING MOTION TO COMPEL AND AMENDING SCHEDULING ORDER

I. BACKGROUND

On March 15, 2021, the United States Department of Homeland Security, Immigration and Customs Enforcement (“DHS” or “the Department”) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, JR Contractors, Inc., alleging 24 violations of 8 U.S.C. § 1324a(b)(2). Respondent timely filed an answer to the complaint on April 19, 2021.

II. MOTION TO COMPEL

On September 7, the Department filed its Motion to Compel Response to Discovery Requests. The Department moves for the Court to compel Respondent to answer Complainant’s First Request for Production of Documents and First Set of Interrogatories, in accordance with 28 C.F.R. §§ 68.19-68.20. The Department states that, on July 8, 2021, it mailed to Respondent its First Request for Admission, First Set of Interrogatories, and First Request for Production of Documents. The Department attaches a copy of each of its discovery requests. The Department states that it received confirmation that the discovery was delivered to Respondent on July 9, 2021.

The Department asserts that, as of September 3, 2021, Respondent failed to answer Complainant’s First Set of Interrogatories and First Request for Production of Documents.

Litigants in this forum “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). 28 C.F.R. § 68.23(a) provides that, “[i]f . . . a party upon whom a discovery request is made . . . fails to respond adequately . . . the discovering party may move the Administrative Law Judge for an order compelling a response . . . in accordance with the request.” *See also* 28 C.F.R. § 68.28(a)(3) (“[T]he Administrative Law Judge shall have all appropriate powers necessary to conduct fair and impartial hearings, including . . . [to] [c]ompel the production of documents . . . in control of the parties.”). The motion to compel “shall set forth and include: (1) [t]he nature of the questions or request; (2) [t]he response or objections of the party upon whom the request was served; (3) [a]rguments in support of the motion; and (4) [a] certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.” 28 C.F.R. § 68.23(b).

The Court GRANTS the Department’s motion in its entirety. The Department’s motion appears to generally comply with § 68.23(b), with one significant omission.

Complainant’s filing did not include a certification that it conferred or attempted to confer with Respondent “in an effort to secure information or material without action by the Administrative Law Judge.” *See* 28 C.F.R. § 68.23(b)(4). OCAHO’s jurisprudence has often held that the omission of a “conferment certification” is an independent ground for denial of a motion to compel. *See, e.g., Heath v. Ikon Systems*, 14 OCAHO no. 1377, 2 (2020) (“[F]or a motion to compel in OCAHO proceedings to be prima facie valid, it must include a certification indicating movant’s good faith attempt to confer.”). The Court departs from this practice due to Respondent’s wholesale failure to engage with its discovery obligations — it has not objected to the motion, notwithstanding the significant period of time granted it to do so, nor has it responded to the underlying discovery requests. The function of the conferral requirement is to provide the parties with an opportunity to resolve their disputes without the court’s intervention, and to concomitantly promote judicial efficiency by only bringing to the Court’s attention the truly intractable matters which require its assistance. Respondent’s disinclination to engage with the discovery process, either by providing the discovery or by registering any opposition to the motion to compel, suggests that conferral would be futile.

Accordingly, Respondent is ORDERED to respond to the Department’s First Set of Interrogatories and First Request of Production of Documents by no later than 14 days from the issuance of this Order. Respondent’s failure to comply with this Order may result in a sanction pursuant to 28 C.F.R. § 68.23(c).

If either party seeks to file any future motion to compel in these proceedings, it must be accompanied by a certification in accordance with 28 C.F.R. § 68.23(b)(4).

III. MODIFIED CASE SCHEDULE

In concert with the Order granting Complainant’s motion to compel, the Court *sua sponte* AMENDS its August 6, 2021 Scheduling and Discovery Order to provide for additional time to engage in discovery in advance of dispositive motions practice. The scheduling and discovery Order is amended as follows:

- February 4, 2022: Close of discovery
- March 9, 2022: Deadline for dispositive motions¹
- April 11, 2022: Deadline for any opposition to dispositive motions
- April 26, 2022: Deadline for replies in support of dispositive motions
- May 25, 2022: Final prehearing statements due
- June 1, 2022, at 1:00 pm (telephonic): Final Prehearing Conference²
- June 15, 2022, beginning at 9:30 am (via Cisco Webex): Hearing.

SO ORDERED.

ENTERED:

Honorable John A. Henderson
Administrative Law Judge

DATE: December 16, 2021

¹ The parties are reminded that, pursuant to Section IX of the General Litigation Order previously entered in this matter, either party may file a dispositive motion in advance of the dispositive motions deadline. In the event that either party chooses to do so, the deadline for any opposition shall be 30 days from the date of the motion, and any reply shall be submitted 14 days thereafter.

² The Court staff will contact the parties separately with the call-in number for the prehearing conference.