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

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| ROBERT HEATH,<br>Complainant,<br><br>v.<br><br>CONSULTADD AND AN ANONYMOUS EMPLOYER,<br>Respondent. | ) | 8 U.S.C. § 1324b Proceeding<br><br>OCAHO Case No. 2020B00089 |

Appearances: Robert Heath, *pro se*, Complainant
Michael Leonard, Esq., for Respondent

ORDER

## I. PROCEDURAL HISTORY

This Order addresses Complainant's discovery-related motions currently pending before the Court. On June 30, 2021, Complainant filed motions to approve subpoenas to five entities[1] that he claims are clients of Respondent ConsultAdd. Complainant filed a motion to approve an additional non-party subpoena on July 1, 2021.[2] In each subpoena request, Heath enclosed requests for admissions, interrogatories, and requests for production to the named entities.

On August 6, 2021, the Court issued an Order to Show Cause Regarding Subpoenas (OTSC or Order to Show Cause). The Order to Show Cause directed Complainant to "show cause as to why the requested subpoenas are relevant and not overbroad,"[3] OTSC at 3, and how subpoenaing

[1] The five named entities are Capital One, Comcast, Equifax, Fannie Mae, and Lululemon. These companies are not parties to this case.

[2] Complainant's July 1, 2021 subpoena request is for Pfizer. Pfizer is not a party to this case. Heath requested withdrawal of the Pfizer subpoena request on August 24, 2021. OTSC Resp. 4. The Court GRANTS Complainant's request to withdraw the subpoena request for Pfizer.

[3] The Order to Show Cause Regarding Subpoenas identified Complainant's failure to link the one job vacancy cited in the Complaint with Respondent's labor condition applications (LCAs) for the companies named in the subpoena requests. OTSC 2 – 3. The OTSC also expressed concern with the apparent facial overbreadth of Complainant's demands for information well beyond the scope of the Complaint. Id.

these entities would support his claims of discrimination, id. at 2–3. Complainant filed a Response to the Order to Show Cause (OTSC Response) on August 24, 2021.[4]

During the pendency of the subpoena requests, Complainant filed two additional discovery motions. On August 8, 2021, Heath filed a Motion to Extend Discovery.[5]

On August 17, 2021, Heath filed a Motion to Compel Respondent to Fulfill Discovery (Motion to Compel). In his Motion to Compel, Complainant sought answers to eight Requests for Admission, three Interrogatories, and five Requests for Production of Documents. Mot. Compel 48–49. Respondent did not file oppositions to either the Motion to Extend Discovery or to the Motion to Compel.

## II. LEGAL STANDARDS

### A. Discovery Scope in OCAHO Proceedings

"OCAHO has broad authority to control discovery." United States v. Chancery Staffing Sols., LLC, 13 OCAHO no. 1326a, 3 (2019) (citing 28 C.F.R. pt. 68).[6] "Parties generally may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the proceeding." United States v. Durable, Inc., 11 OCAHO no. 1221, 3 (2014) (citing 28 C.F.R. § 68.18(b)). Relevance in discovery "'has been construed broadly to encompass 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) (internal citations omitted). The party seeking discovery bears the burden of proof on relevancy. Heath v. ASTA CRS, Inc., 14 OCAHO no. 1385c, 2 (2021) (citing United States v. Volvo Trucks N. Am., 7 OCAHO no. 994, 1088, 1092 (1998)). The Federal Rules of Civil Procedure "may be used as a general guideline" for situations, including those in discovery, otherwise not provided for in the OCAHO rules. Autobuses Ejecutivos, LLC, 11 OCAHO no. 1220, at 3; Alvin J. Griffin, III v. All Desert Appliances, 14 OCAHO no. 1370b, 11 n. 13 (2021) (citing 28 C.F.R. § 68.1).

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[4] Complainant filed a Motion for Extension for Order to Show Cause on August 18, 2021. However, the Court accepted Complainant's Response to the Order to Show Cause as timely. Complainant's Motion for Extension for Order to Show Cause is accordingly denied as MOOT.

[5] On September 17, 2021, the Court issued an Order permitting Complainant's Supplement to its Motion to Extend Discovery to be entered into the record despite improper service, and despite OCAHO rules generally prohibiting replies without leave of the Court. *See* 8 C.F.R. § 68.11(b).

[6] 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 "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the OCAHO website .at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm# PubDecOrders.

OCAHO regulations permit the Court to rule on the extent or frequency of discovery. *See* 8 C.F.R. § 68.18. When deciding to limit discovery, the court may assess "the burden or expense of the proposed discovery outweigh[ing] its likely benefit" and "the importance of the discovery in resolving the issues." Durable, Inc., 11 OCAHO no. 1221, at 3 (referencing Fed. R. Civ. P. 26(b)(1)). Under the principle of proportionality, the court must find the balance of when "marginal returns on discovery do not outweigh the concomitant burden, expense, and bother." Heath v. ASTA CRS, Inc., 14 OCAHO no. 1385b, 4 (2021) (internal citations omitted). The court's determination of discovery scope may also include a decision on a motion to extend the discovery timeframe. *See* Heath v. ASTA CRS, Inc., 14 OCAHO no. 1385, 4 (2021) (granting complainant's request to extend discovery for a limited period to promote "a full understanding of the facts"); *cf.* Fed. R. Civ. P. 16(b) (allowing judges discretion in modifying case management schedules); *see also* Mirachi v. Seneca Specialty Ins. Co., 564 F. App'x 652, 655 (3d Cir. 2014) (denying motion to extend discovery when movant could not prove documents existed or were in possession of third parties, or were already produced).

B. Motion to Compel Discovery

In OCAHO proceedings, 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 Farm, Inc., 12 OCAHO no. 1285, 2 (2016). A party may file a motion to compel discovery responses "if the responding party fails to adequately respond or objects to the request." A.S. v. Amazon Web Servs., 14 OCAHO no. 1381j, 4 (2021) (citing 28 C.F.R. § 68.23(a)).

Pursuant to 28 C.F.R. § 68.23(b), a motion to compel must include and 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.

The OCAHO regulations "require a conscientious effort to resolve [a] discovery dispute without court intervention." Jenlih John Hseih v. PMC-Sierra, Inc., 9 OCAHO no. 1084, 4 (2002) (internal citations omitted). As part of this 'conscientious effort,' a party responding to discovery "must articulate its objections in specific terms," and "demonstrate that its objections are justified." United States v. Emp'r Sols. Staffing Grp. II, LLC, 11 OCAHO no. 1234, 3 (2014) (citing United States v. Allen Holdings, Inc., 9 OCAHO no. 1059, 5 (2000)). "Generalized or conclusory assertions of irrelevance, overbreadth, or undue burden are not sufficient to constitute objections." Amazon Web Servs., 14 OCAHO no. 1381j, at 5 (citing Allen Holdings, Inc., 9 OCAHO no. 1059, at 5) (internal citation omitted)).

"Unless the objecting party sustains his or her burden of showing the objection is justified, the [ALJ] may order that an answer be served." 28 C.F.R. § 68.23(a).

## III. ANALYSIS

### A. Motions to Approve Five Non-Party Subpoenas

Heath has alleged that ConsultAdd did not hire him for a job posted on SmartRecruiters.com[7] due to his national origin and citizenship status. Compl. 8. As described above, he sought subpoenas for five entities. The purpose of any subpoena is to obtain information relevant to the claims and defenses presently before the court. The federal discovery rules, a model for OCAHO caselaw and jurisprudence, require that discovery requests (inclusive of subpoenas) should reasonably lead to information which bears on the claims or defenses in the case — information to make the disputed facts more or less likely. *See* Autobuses Ejecutivos, LLC, 11 OCAHO no. 1220, at 4.

From the outset, it was unclear how the subpoenaed information related to Complainant's case. The Court noted this problem of apparent facial overbreadth and relevance in the Order to Show Cause. In permitting a response to the Order, the Court asked Respondent to explain how the information listed in the subpoenas connected to the allegations set forth in the Complaint.

Complainant has not met his burden of proof on relevance for the five subpoena requests. He has not demonstrated why obtaining LCAs from the non-parties would be relevant to his claims. *See* OTSC 2–3 (identifying lack of clarity on how LCAs relate to Heath's national origin and citizenship status discrimination allegations). Heath asserts that the non-parties are "deemed to be clients of Respondent by the USDOL LCA database," and that the subpoenas would yield documents showing "Respondent could have legally placed documents required by 20 C.F.R. § 655.70(a)(1-10) at their clients' work locations." OTSC Resp. 3 – 4; *e.g.*, Compl. Mot. to Approve Subpoena to Capital One, Client of ConsultAdd, 1 – 2 (requesting LCAs Complainant claims are connected to ConsultAdd). Presuming for the sake of discussion that all of that is correct, it still does not explain how the LCAs would help prove that Respondent discriminated against Complainant because of his national origin or citizenship status. *See* OTSC 2 – 3 (seeking showing as to whether requested LCAs were for the position at issue or for substantially similar positions).

Moreover, Complainant has not presented evidence that Respondent ever contracted with the five named non-parties who were the targets of the subpoenas, either in general or for the one job vacancy at issue. *See* OTSC 3, n. 3 (cautioning Complainant that citing to the voluminous U.S. Department of Labor's LCA database is insufficient evidence of this causal link); *see also* ASTA CRS, Inc., 14 OCAHO no. 1385c, at 3 (denying subpoena requests for LCAs on similar grounds of relevance and overbreadth).

[7] Complainant's Complainant includes a job announcement from "Smartrecruiters.com." Compl. 21-22. Complainant's discovery requests and motion to compel reference a job announcement on "Dice.com." Mot. Compel 9, 20. In Complainant's motion to compel, he attaches a job posting from "SmartRecruiters.com." Mot. Compel 36-46.

Complainant has not met his burden of demonstrating that the information sought is relevant to the claims and defenses in the matter. Accordingly, Complainant's five motions to approve subpoenas are DENIED.

B. Motion to Compel Discovery

Heath moves to compel responses and relevant documents for Request for Admissions Nos. 1 – 3 and 5 – 9; Interrogatory Nos. 2, 5, 9; and Request for Production of Documents Nos. 2 – 6. Mot. Compel 48 – 49. Each will be discussed in turn.

1. Request for Admission No. 1

Heath's first Request for Admission asks Respondent to admit that: "Respondent was responsible for an employment advertisement that appeared on Dice.com on December 3, 2019 entitled 'Hiring H1B, CPT and OPT for Python and Ruby on Rails Developer Position.'" Mot. Compel 20.

ConsultAdd responds: "Respondent denies this Request because 'responsible' is vague and undefined. Furthermore, Complainant has failed to attach the particular advertisement to which he refers in this Request, and therefore Respondent denies this Request on that additional basis. However, without waiving the foregoing, Respondent states that such a type of ad appeared." Id.

Complainant argues that Respondent's answer is evasive. Id. at 48.

ConsultAdd's objection that it cannot respond because the term "responsible" is vague is an answer which does not comport with the ordinary meaning of the term. *See, e.g.*, *Responsible*, Merriam-Webster Online Dictionary (2021) (defining 'responsible' as "liable to be called to account as the primary cause, motivate, or agent," such as in a "committee *responsible* for the job"). OCAHO regulations oblige Respondent to admit, deny, or assert that after conducting a reasonable inquiry it can neither admit nor deny the assertion. 8 C.F.R. § 68.21(c); *cf.* Fed. R. Civ. P. 36. This particular request asks ConsultAdd to admit that it, either directly or indirectly, caused the job vacancy at issue to be advertised on Dice.com.

Respondent cannot avoid a direct answer to the question by asserting that Heath has failed to provide a copy of the advertisement. First, the rules do not oblige a party filing a request for admission to attach a copy of a cited document, unless the purpose of the request is to authenticate the document. *See* 28 C.F.R. § 68.21(a); Fed. R. Civ. P. 36(a)(2). It is the responding party who must engage in a reasonably diligent search before responding. 28 C.F.R. § 68.21(c); Fed. R. Civ. P. 36(a)(4). The responding party cannot unilaterally, and with no showing of hardship, foist this responsibility on the requesting party. Id. Second, and perhaps most relevant for the immediate question, Complainant attached a copy of a job posting with the very same language as identified in the request for admission to his Complaint. Compl. 21. Insofar as Respondent was uncertain as to whether Complainant was referencing the job advertisement attached to the Complaint, Respondent could have made this point in its response. However, a wholesale denial of the request for admission due to confusion over what the term "responsible" means is an exercise in sophistry that the Court cannot countenance.

ConsultAdd's answer that "such a type of ad appeared" is also insufficient. The question was whether Respondent either directly or indirectly caused the ad to appear. ConsultAdd's response does not squarely address this inquiry. Accordingly, Complainant's Motion to Compel is GRANTED with regard to Request for Admission No. 1.

2. Request for Admission Nos. 2 – 3

Requests for Admission Nos. 2 and 3 seek for ConsultAdd to confirm language which appeared in the same advertisement referenced in Request for Admission No. 1, presumably the job posting referenced in the Complaint. Mot. Compel 20 – 21. ConsultAdd objects that it has not been supplied with a copy of the job advertisement, and that the contents of the ad speak for themselves. Id.

ConsultAdd's answers are insufficient for the same reasons as discussed in relation to Request for Admission No. 1. The responding party is required to conduct a reasonable search of information in its control, custody, and possession before denying the inquiry, per 8 C.F.R. § 68.21(c) and Fed. R. Civ. P. 36(a)(4). Here, the same information requested appears in an advertisement attached to the Complaint.

Addressing the "document speaks for itself" objection, this argument is confusing when ConsultAdd has not admitted that it is familiar with the document referenced in the request. Respondent must state that the claim is true, false, or that after conducting a reasonable inquiry it does not possess sufficient information to answer. 8 C.F.R. § 68.21(b)-(c); Fed. R. Civ. P. 36(a)(4).

Accordingly, Complainant's Motion to Compel is GRANTED with regard to Requests for Admission Nos. 2 and 3.

3. Request for Admission No. 5

Heath moves for an order compelling Respondent to "answer the question" posed in Request for Admission No. 5. Mot. Compel 48.

The Court determines that Respondent has sufficiently answered Request for Admission No. 5. This Request for Admission asks ConsultAdd to admit that, shortly after Heath's application, ConsultAdd filed several LCAs without considering Heath for employment. Id. at 21. Request for Admission No. 5 is argumentative and with several compound questions. As with any compound question, if any part of the statement is untrue, the statement must be denied. *See generally* Gross v. Guzman, No. 11-23028-CIV, 2013 WL 12091159, at *10 (S.D. Fla. Jan. 25, 2013) (noting that requests for admissions should not contain compound statements, and collecting federal district court cases supporting the same proposition). Respondent denied the admission and described its process for filing LCAs. The motion fails to describe why Complainant believes Respondent's answer is incomplete or evasive. It also fails to cite any legal authority compelling the Court to grant the motion.

The Motion to Compel is therefore DENIED with regard to Request for Admission No. 5.

4. Request for Admission No. 6

Request for Admission No. 6 is a variation of Request for Admission No. 5 — it asserts that from 2019 to 2021, "Respondent has filed for over 400 Labor Condition Agreements . . . and Respondent never has even considered Robert Heath for even one of over 400 jobs for which Respondent filed LCAs during that time period." Mot. Compel 21. ConsultAdd states that it "is without sufficient knowledge to respond to this Request, and therefore denies it." Id. Heath moves for a fuller answer to the question. Id. at 48.

The Court finds that based on Complainant's proffer, December 1, 2019 to November 30, 2020 would be the only possibly relevant time period for Request for Admission No. 6. The advertisement attached to the Complaint, which Heath cites for his claim of discrimination, is dated December 3, 2019. Compl. 21. Heath does not identify the date of his application for this position, but asserts in his submission to IER that he seeks backpay from December 3, 2019. Compl. 13. Complainant offers no proffer as to what specific date he applied for the position. *See* Mot. Compel 36 – 46 (showing application screenshot dated December 3, 2019, but offering no proof of the date the application was submitted). He also provides no evidence that ConsultAdd retains or considers applications for more than six months — let alone for the two and a half-year period he cites in his discovery request. Moreover, Heath offers no explanation for why company records which preceded his application would be relevant to his claim of employment discrimination. Accordingly, the Court winnows Complainant's claim to the one-year period of December 1, 2019 to November 30, 2020.

While the Court narrows the scope of Request for Admission No. 6, ConsultAdd has not fully met its discovery obligations. As stated previously, a party may state that they are without sufficient knowledge to respond "only if the party states that it has made reasonable inquiry and that the information it knows or can reasonably obtain is insufficient to enable it to admit or deny." 8 C.F.R. § 68.21(c); Fed. R. Civ. P. 36(a)(4); *see also* Iron Workers Local 355 v. Lake Constr. & Dev. Corp., 7 OCAHO no. 964, 668–69 (1997) (internal citations omitted) (noting OCAHO's "reasonable inquiry" requirement for interrogatories). Respondent's submission fails to assert that it has conducted a reasonable inquiry before responding to the question.

Complainant's motion is GRANTED IN PART and DENIED IN PART. Respondent will conduct a reasonable inquiry for the time period December 1, 2019 to November 30, 2020, and respond to Complainant's Request for Admission No. 6.

5. Request for Admission No. 7

Complainant's motion with regard to this request is DENIED. Request for Admission No. 7 simply states: "Respondent is a H-1B dependent employer." Mot. Compel 22. Notwithstanding its objection to the form of the request, ConsultAdd admits the question. Id. Heath offers only generic objections concerning the sufficiency of the answer, *see* Mot. Compel 48 — he fails to describe how Respondent's admission is inaccurate or insufficient. 8 C.F.R. § 68.21; *c.f.* Fed. R. Civ. P. 36(a)(4),(6).

6. Request for Admission No. 8

Request for Admission No. 8 asks Respondent to admit that "[w]ithin the vast majority, if not all, of the abovementioned LCAs in Admission #5, Respondent has self-identified as an H-1B dependent employer." Mot. Compel 22. ConsultAdd objects that the term "the vast majority" is undefined, but notwithstanding this objection, it admits the question. Id. Complainant now demands that Respondent "answer the question." Id. at 48.

Complainant's argument is not legally cognizable, and moreover, Respondent in fact already answered the question posed. Complainant moves the Court to have ConsultAdd provide responses it has already given. The Court cannot compel Respondent to "answer the question" when it has already answered.

Accordingly, the motion is DENIED with regard to Request for Admission No. 8.

7. Request for Admission No. 9

Request for Admission No. 9 calls for Respondent to admit that it "never considered Robert Heath for even one of the hundreds of jobs for Respondent clients." Mot. Compel 22. Respondent denies the question because it asserts "Respondent did not receive an application for Mr. Heath." Id. In the same manner as Request for Admission No. 8, Complainant demands ConsultAdd "answer the question." Mot. Compel 48. Again, Complainant's motion fails to explain how the answer for this request for admission is insufficient.

The motion with regard to Request for Admission No. 9 is DENIED.

Interrogatories

8. Interrogatory No. 2

Interrogatory No. 2 seeks the names of Respondent's "CEO, CTO, President, Vice Presidents, and CFO." Mot. Compel. 24, 49. Respondent replies that it will produce the organizational chart in response to this interrogatory. Id. at 24.

Complainant contends he has not received the organizational chart referenced in Respondent's answer. Id. at 49. As noted previously, Respondent has not filed a response to the Motion to Compel. 28 C.F.R. § 68.19(d) provides that a party may produce business records in lieu of written response to the interrogatories. *See also* Fed. R. Civ. P. 33(d) ("Option to produce business records"). However, the producing party must in fact produce the responsive documents. The record before this Court indicates that Respondent has failed to do so.

Accordingly, Complainant's motion is GRANTED with regard to Interrogatory No. 2.

9. Interrogatory No. 5

Interrogatory No. 5 directs Respondent to "identify each and every individual, organization, and/or client with knowledge of the facts related to Complainant's complaint . . . [.]" Mot. Compel 25. Respondent replies that its "HR, CEO, and Legal Dept. possess certain knowledge of this matter." Id. The response also states that ConsultAdd's recruitment team attended a seminar conducted by persons from the U.S. Department of Justice on job postings, and that it would produce an Excel sheet with the names of those attendees. Id.

Complainant moves to compel only the production of the spreadsheet cited in the response, *see* Mot. Compel 25, 49, however it is unclear how this information would be relevant to the claims and defenses in this matter. Interrogatory No. 5 calls for the names of people who have knowledge of Heath's Complaint. This has no obvious connection to the names of people who attended a seminar on hiring practices. The moving party has the burden of showing the relevance of the discovery request in his motion. Volvo Trucks N. Am., 7 OCAHO no. 994, at 1088, 1092. Yet, Complainant has offered no insight into how this information would be relevant to his claims, or how it relates to the question posed in the interrogatory.

Complainant's motion is DENIED with regard to Interrogatory No. 5.

10. Interrogatory No. 9

In Interrogatory No. 9, Complainant states:

> Identify all clients that were provided or requested consultants for years 2019, 2020, and 2021 with one or more of the following skills: Java, JavaScript, Note.js, MongoDB, C, C++, Embedded Systems, Assembly Language, Typescript, Angular, React, Struts, PHP, HTML, CSS, SQL, or any database technology, and provide any documentation regarding Robert Heath that was provided to the client.

Mot. Compel 25. Respondent objects that the interrogatory is "overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of information admissible at the hearing." Id. Notwithstanding these objections, Respondent provides a list of some companies. Id.

The first, and perhaps most significant, difficulty with this interrogatory is that it is unclear what information Complainant seeks. Heath phrases this interrogatory in the passive voice — the Court cannot determine who the subject of the sentence is. Id. One might reasonably assume that Heath is the subject, and therefore Heath is seeking a list of Respondent's clients, but that is not the only reasonable inference to be made from this question. Complainant has engaged in significant discovery regarding third parties, and he has named "unknown employers" as respondents in this action. It is just as possible from the unadorned language of the request that Heath seeks information about the clients of the "unknown employers," or the clients of the third parties themselves.

Respondent has not raised the objection that Interrogatory No. 9 is vague or confusing, and the Court hesitates before interposing an objection not made in the record by the nonmoving party. However, the Court cannot order a party to perform an action without being satisfied that the request itself is clear, and Complainant's interrogatory does not meet that standard. The Court

cannot "fix" a discovery request to reflect the question it believes a party is requesting, or a request that the party "should" (in the Court's judgment) have asked. A discovery requests rises or falls on its own merit.

Setting aside the linguistic difficulties with this question, it is also unclear to the Court how many of the programming languages referenced in this interrogatory relate to the claims and defenses in this action. Most of them are not present in the job posting. Compl. 22. Heath's Motion to Compel offers no independent explanation for their relevance. Mot. Compel 49.

These problems render the motion impossible to grant. Accordingly, Complainant's motion is DENIED with regard to Interrogatory No. 9.

Requests for Production of Documents

11. Request for Production of Documents No. 2

In Request for Production of Documents No. 2, Complainant sought the identity of "all certified LCAs for years 2019, 2020, and 2021 filed by ConsultAdd for starting dates after December 3, 2019 not identified in 1." Id. at 31. Respondent objects to this request on the grounds of relevance, overbreadth, and undue burden, as it references documents already produced. Id. at 31 (describing difficulties Respondent faces in providing 2019 LCAs). Heath argues that ConsultAdd has these documents in their possession and can provide them. Id. at 31, 49.

Request for Production of Documents No. 2 does not request categories of information to be searched or inspected, per 8 C.F.R. § 68.20. OCAHO regulations require the party propounding a request for production of documents to "set forth the items to be inspected by individual item or by category," § 68.20(c)(1), and to "describe each item or category with reasonable particularity," § 68.20(c)(2). *Cf.* Fed. R. Civ. P. 34(a) (requiring a party "to produce and permit the requesting party or its representative to inspect . . . any designated documents or electronically stored information . . . [or] any designated tangible things").

Complainant's Request for Production No. 2 does not demand the review of categories of information. Rather, it directs Respondent to create a list of LCAs not identified in Request for Production of Documents No. 1. *See* Mot. Compel 30–31. Setting aside the significant overbreadth of this request, as the LCAs have no obvious connection to the case, the demand that ConsultAdd create this list does not cohere with the strictures of requests for production of documents. *See* 8 C.F.R. § 68.20 (emphasizing need for reasonable particularity in requests for production of documents).

The Court DENIES Complainant's Motion to Compel as to Request for Production of Documents No. 2.

12. Request for Production of Documents No. 3 – 4

In Request for Production of Documents No. 3, Complainant directs Respondent to "list job descriptions for [Request for Production of Documents Nos.] 1 and 2." Mot. Compel 31.

Request for Production of Documents No. 4 demands a list of "clients and worksite address information for 1 and 2."[8] Id. ConsultAdd objects that Requests for Production of Documents No. 3 and 4 are not requests for production of documents. Id.

Requests for Production of Documents No. 3 and 4 have the same defect identified in Request for Production of Documents No. 2: they are not actually requests for production of documents. They do not call for ConsultAdd to produce a category of information for inspection or production. Instead, they demand the creation of a list. Id. The same problems of facial overbreadth and irrelevance predominate in these requests as well — a list of all job descriptions for all LCAs, and a list of all client and worksite addresses, have no obvious connection to Complainant's case.

The Court DENIES Complainant's Motion to Compel as to Request for Production of Documents Nos. 3 – 4.

13. Request for Production of Documents Nos. 5 – 6

Request for Production of Documents No. 5 demands that Respondent produce all LCAs Respondent filed with the Department of Labor. Id. at 31–32, 49. This request has neither geographic nor temporal limits, and it does not identify a connection to the claims in this matter, or to its defenses. The demand is facially overbroad.

The Court GRANTS IN PART and DENIES IN PART Request for Production of Documents No. 5, limiting the scope of the demand to only the LCA used, created, or relied upon in connection with the job vacancy identified in Complainant's complaint.

Similarly, Request for Production of Documents No. 6, in its demand for all recruitment documents for all LCAs identified in Request for Production of Documents Nos. 1 and 2, is facially overbroad. *See* id. at 32, 49.

The Court similarly GRANTS IN PART and DENIES IN PART Request for Production of Documents No. 6, again limiting this request to all nonprivileged documents reflecting Respondent's recruitment efforts for the job vacancy identified in Complainant's Complaint.

C. Motion to Extend Discovery

Complainant moves the Court to extend the time period for discovery. In support of the motion, Heath argues that ConsultAdd's production has been deficient, and that his good faith discussions to address these deficiencies have not resulted in the sought-after information. Mot. Ext. Disc. 1–2.[9] Complainant's first motion sought an unspecified period of time to engage in

[8] In his Motion to Compel, Complainant rewords the request to: "documents cited in #1 and #2 that contains that information." Mot. Compel 49. A party may not rephrase its discovery request after it has been issued and then seek an order compelling the production of the amended discovery.

[9] The electronically filed Motion to Extend Discovery does not contain page numbers. The Court will consider page 1 as the first page of the PDF, and page 2 to as the second page of the PDF.

further discovery; Complainant later supplemented his motion with a request for 30 days of discovery to depose two non-parties.[10] Id.; Supp. Mot. Ext. Disc. 1.

Complainant's motion does not offer any evidence of a connection between Complainant's case and the sought-after deponents. The motion also generally fails to articulate with specificity what would be gained through additional time for discovery. For instance, Heath's motion does not describe specific information he requires but has been unable to obtain, or discovery foreclosed by the ending of the discovery window. The Court is therefore unclear on how extending discovery would allow Complainant to obtain relevant information to aid him in the development of his case. *See* Matthew J. Shortt v. Dick Clark's AB Theatre, LLC, 10 OCAHO no. 1330, 14 (2009) (denying complainant's motion to extend discovery when unclear how information sought would alter or affect establishing his citizenship discrimination claim).

Complainant's arguments fail to demonstrate the good cause sufficient for an amendment of the scheduling and discovery order; consequently the Court DENIES, WITHOUT PREJUDICE, Complainant's Motion to Extend Discovery.

## IV. CONCLUSION

Complainant's five Motions to Approve Subpoenas are DENIED, as Complainant has not shown cause to subpoena the listed non-parties. Complainant's Motion to Extend Discovery is DENIED, WITHOUT PREJUDICE.

Complainant's Motion to Compel Respondent to Fulfill Discovery is GRANTED IN PART and DENIED IN PART. The Motion to Compel is GRANTED as to Request for Admission Nos. 1, 2, 3, and Interrogatory No. 2. The motion is GRANTED IN PART and DENIED IN PART as to Request for Admission No. 6, and Request for Production of Documents Nos. 5 and 6. The motion is DENIED as to Request for Admission Nos. 7, 8, and 9; Interrogatory Nos. 5 and 9, and Request for Production of Documents Nos. 2, 3, and 4.

SO ORDERED.

DATE: February 3, 2022

Honorable John A. Henderson
Administrative Law Judge

[10] The two named non-party companies are MasterCard and AIG. Similar to the subpoena requests, Complainant maintains MasterCard and AIG are Respondent's clients. Supp. Mot. Ext. Disc. 1.