

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

May 27, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2021A00053
)	
TUESDAY LINE, INC. D/B/A)	
CAPTAIN JACK’S,)	
)	
Respondent.)	
_____)	

Appearances: Steve J. Kim, Esq., for Complainant
Robert A. Hufnagel, Esq., for Respondent

ORDER ON MOTIONS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (the “Government”), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 23, 2021, alleging that Respondent, Tuesday Line, Inc. d/b/a Captain Jack’s (“Tuesday Line”), failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for twenty-five individuals, in violation of § 1324a. On September 29, 2021, Respondent filed a Notice of Appearance and an Answer to Complaint.

On November 12, 2022, the Court held a prehearing conference and, after consultation with the parties, set a case schedule. That case schedule was modified based on a joint motion on May 5, 2022. Discovery was to close, along with motions, on May 13, 2022, with dispositive motions due June 9, 2022. On May 13, 2022, Respondent filed a Motion to Compel Response to Discovery and Sanctions (“Mot.”) and Motion to Continue Discovery and Discovery Motions for 30 days (“Mot. for Continuance”). Complainant has not responded to the motion.

II. LEGAL STANDARDS AND DISCUSSION

An OCAHO Administrative Law Judge 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). Pursuant to OCAHO Rule § 68.23(b), a motion to compel must 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.

In the motion, Respondent states that Complainant provided its responses to the interrogatories and request for admission via email. Mot. Ex. H at 1; Mot. Ex. I; Mot. Ex. J ¶ 2-3; Mot. Ex. K ¶ 2-3. Complainant stated in the email that its document production was sent by physical mail. Mot. Ex. H at 1; Mot. Ex. J ¶ 4; Mot. Ex. K ¶ 3. However, Respondent claims that it never received the mailed document production. Mot. Ex. J ¶ 2-3; Mot. Ex. K ¶ 4-6. Respondent also stated that at the meet and confer held to resolve the discovery disputes, Respondent highlighted inconsistencies and errors in the written discovery responses, but Complainant refused to supplement the responses. Mot. Ex. J ¶ 7-11. Lastly, Complainant did not provide dates to depose Complainant’s Person Most Knowledgeable despite Respondent’s attempts to conduct a deposition. *Id.*

The Court finds that Respondent has met the procedural requirements for a motion to compel in that it has provided the discovery requests, response of the Complainant to the discovery requests, and filed an affidavit describing the meet and confer.

A. Deposition

Respondent provided a series of email correspondence indicating a back and forth about when to schedule a deposition. Mot. Ex. D. It appears that Respondent made good faith attempts to schedule the deposition, and while Complainant did not object to Respondent taking the deposition, it simply never made the deponent available. Mot. Exs. D, J. Accordingly, the Court GRANTS the motion to compel and orders Complainant to make its deponent available at a time and place mutually convenient for both parties.

B. Request for Production

While an email indicates that the document production was mailed, Respondent provided an affidavit from an attorney and administrative assistants for the office stating that they have not received the document production. Mot. Exs. H, J-L. According to Respondent's attorney, Complainant is unable to confirm that the production was mailed because the legal assistant who mailed the document production is out of the office. Mot. Ex. J ¶ 12. The Court GRANTS the motion to compel and orders Complainant to send or resend the document production to Respondent.

C. Interrogatories and Requests for Admissions.

Respondent states that there were errors and omissions in Complainant's responses to the request for interrogatories (RFI) and requests for admissions (RFA), and Complainant refused to supplement its responses. Mot. at 1. Respondent noted that, in one example, Complainant indicated that it had considered a factor in its penalty calculation, but nowhere else in Complainant's discovery responses did it consider this as a mitigating factor. *Id.* at 4. Further, it detailed a number of discrepancies between the RFI and RFAs. *Id.* at 4-5.

The Court finds that most of the asserted inconsistencies are not clearly inconsistencies given the way the questions were asked. Taking the first example, the question asked was whether the Complainant took into account the Respondent's attempts to "dutifully comply" with the laws and regulations in computing the penalty. Mot. Ex. A, RFI 43. The interrogatory, however, does not ask *how* the Complainant took this factor into consideration and does not ask whether it was considered as a mitigating factor. To the extent that discrepancies and omissions exist, the Respondent may seek clarification through additional discovery. The Court will allow the Respondent to propound 10 new RFIs and 5 new RFAs.

D. Continuance

Respondent seeks a 30-day continuance to allow Complainant to produce its deponent and provide its production, as well as supplement its discovery responses. Mot. for Continuance. Respondent also correctly notes that the Court did not rule on its previous extension request until a week before the new proposed discovery deadline. The Respondent notes that Complainant did not agree to the continuance. *Id.* at 2.

Respondent's motion is construed as a motion to modify the case schedule, as a modification of the discovery deadlines will push back the entire case schedule. *United States v. Tuesday Line, Inc.*, 16 OCAHO no. 1425 (2022). Such a modification is at the Judge's discretion. *Id.* at 2-3. In light of this Court's delay in ruling on the extension motion, as well as Complainant's failure to produce a deponent and the issues with production, the Court GRANTS the motion.

E. Sanctions

Respondent requests sanctions against Complainant in order to prevent Complainant from continuing to ignore its discovery obligations under the Constitution and the federal regulations. After the Court issues an order compelling discovery and a party fails to comply with the order, 28 C.F.R. § 68.23(c) provides a list of sanctions the Court may impose “for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay[.]” The Court is issuing an order to compel with this decision, but there is presently no finding that Complainant has not obeyed or resisted this Order. *See Zajradhara v. CL Corp.*, 16 OCAHO no. 1429, 3 (2022). Accordingly, sanctions per § 68.28 are inappropriate at this time, and the request is denied.

III. ORDERS

Complainant is compelled to produce its Person Most Knowledgeable for a deposition.

Complainant is compelled to produce its responses to the Request for Production.

The schedule is modified as follows:

Additional RFIs or RFAs must be served on the opposing party seven days after service of this order.

Responses to those RFIs or RFAs must be served on Respondent or a motion for a protective order must be served on this court within fourteen days after service of the discovery requests.

Any further motions to compel based upon the additional discovery must be served on this Court within twenty-eight days of this Order.

Discovery closes thirty days from this Order.

Dispositive motions due: July 26, 2022¹;

Responses to dispositive motions due: August 9, 2022;

¹ 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.

Tentative hearing date: October 2022;

Hearing location: Los Angeles, CA.

SO ORDERED.

Dated and entered on May 27, 2022.

Honorable Jean C. King
Chief Administrative Law Judge