

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

August 23, 2023

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

Appearances: Ravi Sharma, pro se Complainant  
Ulrico S. Rosales and Aleksandr Katsnelson, Esq., for Respondent

ORDER ON RESPONDENT’S MOTION TO STRIKE OR, IN THE ALTERNATIVE,  
DISMISS RETALIATION CLAIM AND SETTING STATUS CONFERENCE

I. BACKGROUND

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. Complainant Ravi Sharma filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on August 12, 2019, alleging that Respondent Lattice Semiconductor refused to hire him based on his citizenship status in violation of 8 U.S.C. § 1324b(a)(1). Respondent filed an answer on September 19, 2019.

On July 29, 2020, Respondent filed a Motion for Summary Decision, to which Complainant filed a response on August 18, 2020. On December 28, 2022, the Court issued an Order for Supplemental briefing, directing the parties to address whether the Court should construe the Complaint as amended to include a claim for citizenship discrimination based on failure to hire Complainant for a second position, which was not raised in the Complaint but was addressed by both parties in their briefing on summary decision. On January 17, 2023, Complainant filed a Motion for Leave of Court to Amend his Complaint to include a claim of discrimination based on the second position.

On June 15, 2023, the Court granted Complainant’s motion to amend his complaint to include a discrimination claim based on the second position, and issued a stay of proceedings as to Complainant’s other discrimination claim. *See Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362d (2023). The Court ordered Complainant to file an amended complaint by July 6, 2023, and ordered that the “amendment is limited to allegations regarding the second position.” *Id.* at 24.

On July 10, 2023, Complainant filed a First Amended Complaint (FAC). Complainant included allegations related to discrimination in hiring on the basis of citizenship status regarding the second position, but also added “a distinct claim of retaliation based on the fact that the decision makers of Lattice Semiconductor asked [him] questions about [his] citizenship during the interview,” and then “retaliated against [him] by not hiring [him] for the [second opening].” First Am. Compl. 2–3.

Presently before the Court is Respondent’s July 28, 2023 Motion to Strike, or in the Alternative, Dismiss Complainant’s Retaliation Claim. For the reasons below, Respondent’s motion is granted.

## II. MOTION TO STRIKE

### A. Positions of the Parties

#### 1. Respondent

Respondent moves to strike Complainant’s retaliation claim as “inappropriate, unjustified, untimely, unfairly prejudicial to Respondent, and contrary to this Court’s June 15, 2023 Order . . . permitting an amendment, and its clear instructions therein.” R’s Mot. to Strike 2. Alternatively, Respondent asks that the Court dismiss the claim. *Id.*

First, Respondent asserts that Complainant has not asserted a retaliation claim previously, and has not moved to amend his Complaint to include a retaliation claim. *Id.* Nor has Complainant alleged facts that could give rise to a retaliation claim, despite knowing of the events “purportedly giving rise to this claim since at least April 2020.” *Id.* Complainant has not offered a justification for this delay of more than three years, nor addressed the prejudicial impact on Respondent. *Id.* at 2–3. Thus, Complainant has “failed to show good cause warranting the addition of this claim.” *Id.* at 4.

Second, Respondent argues that Complainant’s addition of a retaliation claim is contrary to the Court’s instructions in its June 15, 2023 order, which permitted Complainant to amend his Complaint to include a claim for citizenship discrimination based on the second opening. *Id.* at 5.

Finally, Respondent argues that Complainant has failed to set forth facts sufficient to state a claim for retaliation. *Id.* Specifically, Complainant has not alleged that Respondent retaliated against him for engaging in a protected activity, and therefore, cannot establish a prima facie case of retaliation. *Id.* at 5–6.

## 2. Complainant

Complainant responds that he did not include a retaliation claim in his original Complaint because he does “not accuse anybody without any evidence” and, at the time, he “did not have sufficient information about what constitutes retaliation.” C’s Resp. 1. Complainant did not realize he could file a retaliation claim against a company he was not working for, but after he received the Court’s June 15, 2023 order, he “reviewed the online complaint form carefully and studied some OCAHO cases related to retaliation.” *Id.* at 2. He then realized he had a potential retaliation claim, and included it in his FAC. *Id.*

Complainant asserts that he engaged in protected conduct when, at his onsite interview, he was asked about his citizenship, and he told his interviewers that he was a U.S. citizen, and not on an H-1B visa. *Id.* There was a causal connection between Respondent’s “knowledge of [his] protected status” and the adverse employment action by rejecting him for the position of Application Engineer. *Id.*

Complainant asserts that he has not included a retaliation claim in his FAC in bad faith or with dilatory motive; that this amendment is not futile; that his claim is closely tied to the citizenship discrimination claims; and that amendment will not require additional discovery because it does not advance a different legal theory. *Id.*

## B. Law and Analysis

OCAHO’s Rules of Practice and Procedure<sup>1</sup> do not contain provisions governing motions to strike. *See United States v. LFW Dairy Corp.*, 10 OCAHO no. 1129, 2 (2009).<sup>2</sup> Therefore, it is

---

<sup>1</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

<sup>2</sup> 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

appropriate for the Court to consider Federal Rule of Civil Procedure 12(f), as well as Ninth Circuit case law. *See* 28 C.F.R. §§ 68.1, 68.57.

Rule 12(f) provides that courts “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter” either on its own or upon motion by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.<sup>3</sup>

“Exceeding the scope of a court’s leave to amend is not necessarily sufficient grounds for striking a pleading or portions thereof.” *Allen v. Cnty. of L.A.*, No. 07-cv-102, 2009 WL 666449, at \*2, 2009 U.S. Dist. LEXIS 133613, at \*5 (C.D. Cal. March 12, 2009) (collecting cases) (internal quotations omitted). “However, claims in an amended complaint may be stricken if they are ‘wholly specious’ or cause prejudice to the defendants.” *Id.* (citations omitted). “[W]here a prior court order granted limited leave to amend, [courts in the Ninth Circuit] generally strike new claims or parties contained in an amended complaint when the plaintiff did not seek leave to amend.” *Jameson Beach Prop. Owners Ass’n*, No. 13-cv-01025, 2014 WL 4925253, at \*3, 2014 U.S. Dist. LEXIS 139734, at \*10 (E.D. Cal. Sept. 29, 2014) (citations omitted); *see also United States v. Sal’s Lounge*, 15 OCAHO no. 1394 (2021) (striking amended complaint filed without leave of the court from the record).

Here, Complainant’s addition of a retaliation claim to his FAC exceeded the scope of the Court’s leave to amend the Complaint, which was limited to Complainant’s citizenship discrimination claim related to the second position. *See Sharma*, 14 OCAHO no. 1362d, at 24. The addition of a retaliation claim to the FAC adds a new cause of action at a late stage in the proceedings, which may cause prejudice to Respondent by requiring additional discovery and briefing on a cause of action with different legal standards. *See, e.g., Ross v. Wilmington Sav. Fund Soc’y, FSB*, No. 22-cv-07922, 2023 WL 4290406, at \*1, 2023 U.S. Dist. LEXIS 27613, at \*3 (C.D. Cal. Feb. 16, 2023) (striking first amended complaint that exceeded the scope of leave to amend by adding new causes of action, and collecting cases); *cf. Beavers v. New Penn Fin. LLC*, No. 17-cv-00747, 2018 WL 385421, at \*3, 2018 U.S. Dist. LEXIS 5426, at \*7 (E.D. Cal. Jan. 11, 2018) (declining to strike portions of the complaint which exceeded the scope of leave to amend when the case was in its early stages and defendants would not be prejudiced). Complainant’s explanation, that he came up with this new theory after reviewing his Complaint, does not excuse these infirmities.

---

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

<sup>3</sup> Respondent’s Motion to Strike appears to have been timely filed on July 28, 2023, given that Complainant’s FAC was filed on July 10, 2023.

As such, Respondent's motion to strike Complainant's retaliation claim from the FAC is GRANTED.

To the extent that Complainant's First Amended Complaint may also be construed as a motion to amend to include a retaliation claim, that motion is also DENIED. *See Sharma*, 14 OCAHO no. 1362d, at 8 (discussing the factors considered in the Ninth Circuit on a motion to amend pursuant to Rule 15(a)(2)) (citing *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)).

In addition to the delay and prejudice discussed in the June 15, 2023 order, here, Complainant's addition of a retaliation claim contrary to the Court's explicit instructions in its July 15, 2023 order, and without seeking leave to amend, suggest a lack of good faith. *Cf. id.* at 15 (finding that the record did not reflect bad faith given that Complainant moved to amend in response to the Court's Order for Supplemental Briefing, and it was his first motion to amend).

And unlike Complainant's discrimination claim based on the second position, Complainant's newly alleged retaliation claim would not survive a motion to dismiss and would be futile. *Cf. Sharma*, 15 OCAHO no. 1362d, at 15 (finding Complainant's proposed discrimination claim based on the second position met OCAHO's pleading standards) (citing, inter alia, *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332, 3 (2019)). As Respondent notes, § 1324b(a)(5) provides that it is an unfair immigration-related employment practice to retaliate against someone for the "purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section." In other words, the statute specifically prohibits retaliatory practices intended to impede a complainant's right to, for instance, file a charge or complaint under 8 U.S.C. § 1324b(a)(5). *Ndzerre v. Wash. Area Metro Transit Auth.*, 13 OCAHO no. 1306A, 8 (2018). Simply informing an employer of one's citizenship status does not constitute a protected activity; complainant needed to allege to have taken an action to protect his right to be free from citizenship discrimination under 8 U.S.C. § 1324b, and Respondent retaliated against him because of those actions. *See Diarrassouba v. Medallion Fin. Corp.*, 9 OCAHO no. 1076, 9 (2001) ("Congress enacted § 1324b(a)(5) to prevent employers from retaliating against workers who exercise their right to be free from discrimination on the basis of citizenship and national origin."); *see also Kamara v. Adams & Assocs., Inc.*, No. 16-cv-02300, 2018 WL 4904821, at \*3, 2018 U.S. Dist. LEXIS 173741, at \*8 (E.D. Cal. Oct. 9, 2018) ("Being a member of a protected class is not a 'protected activity' for the purpose of a retaliation claim under Title VII or the ADA . . . Plaintiff's allegations she suffered adverse employment actions . . . because of her membership in a protected class, assert claims for discrimination." ).<sup>4</sup>

---

<sup>4</sup> "In interpreting § 1324b, OCAHO jurisprudence looks for general guidance to cases arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and other federal

Thus, as Complainant has not alleged a protected activity, his retaliation claim would not survive a motion to dismiss under OCAHO's pleading standards. *See Cavazos v. Wanxiang Am. Corp.*, 10 OCAHO no. 1138, 1–2 (2011) (dismissing retaliation claim for failure to state a claim where the complainant did not allege protected conduct).

### III. PREHEARING CONFERENCE

The Court will schedule a status conference in this matter to discuss the parties' status reports and Complainant's requests for additional discovery. The parties are to provide the court with their availability for a status conference between 1:00 and 5:00 p.m. Eastern Daylight Time, September 13 or 14, 2023, within fourteen (14) days of the issuance of this order.

SO ORDERED.

Dated and entered August 23, 2023.

---

Honorable Jean C. King  
Chief Administrative Law Judge

---

remedial statutes prohibiting employment discrimination.” *Chellouf v. Inter Am. Univ. of P.R.*, 12 OCAHO no. 1269, 5 (2016).