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

August 17, 2020

TEMITOPE OGUNRINU, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 19B00032
LAW RESOURCES & ARNOLD & PORTER KAYE SCHOLER LLP, Respondent.	)	

AMENDED ORDER ON JULY 2020 MOTIONS, SHOW CAUSE, AND SETTING DEADLINES

An Order on July 2020 Motions, Show Cause, and Setting Deadlines was initially issued in the above-captioned case on August 4, 2020. Pursuant to 28 C.F.R. § 68.52(f), this Amended Order on Motion for Summary Decision amends the order issued on August 4, 2020, and corrects solely for clerical and typographical errors.

I. BACKGROUND

Complainant, Temitope Ogunrinu, asserts claims of citizenship status discrimination, document abuse, and retaliation in violation of 8 U.S.C. § 1324b, when she was offered a position on a two-week discovery project through a legal staffing service, Law Resources, Inc., with the law firm of Arnold & Porter Kay Scholer, LLP (Arnold & Porter). The offer was conditional: she had to reconfirm that she is a U.S. citizen and does not have dual citizenship with any other country because of a mistaken belief that the legal requirements of the litigation required it. Am. Compl. at 5. Complainant asserts that when she did not respond to the question, she was not hired for the job. Complainant further asserts she was retaliated against because she has not been contacted for future opportunities. Am. Compl. at 7.

On February 14, 2020, the undersigned stayed discovery for sixty days at the Respondents' request so that the parties could engage in conciliation discussions along with the Immigrant and Employee Rights Section of the Civil Division of the Department of Justice. On April 13, 2020, the parties filed a Joint Status Report requesting to extend the stay so the parties could continue

settlement discussions, which was granted until June 15, 2020. On April 30, 2020, Complainant filed a motion seeking to lift the stay as she did not believe continuing settlement discussions would be fruitful. On May 14, 2020, the undersigned held a telephonic conference and, on May 15, 2020, the undersigned issued an order referring the case to the Chief Administrative Hearing Officer (CAHO) to act as a settlement judge and staying the case until July 13, 2020. On July 13, 2020, Complainant and Arnold & Porter filed separate status updates informing the Court that the parties did not reach a settlement.

Thus, after two failed mediation attempts, this case is back before this Court with no less than ten filings. Both Respondents have filed motions to bifurcate proceedings as to the charges regarding discrimination between liability and damages, indicating an intent to admit liability in the motions. Law Resources indicates that the retaliation charge will have to be litigated; Arnold & Porter was silent as to the retaliation charge. None of the parties address the document abuse charge. Respondent Arnold & Porter also sought permission to file an offer of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure (FRCP).

Complainant opposes bifurcation, and seeks a battery of orders regarding discovery: vacate the protective order, compel discovery, sanctions, and judicial notice of admissions, as well as an enlargement of the time for discovery.

II. OFFER OF JUDGMENT

Arnold & Porter asks the court to permit Arnold & Porter to make an Offer of Judgment to Complainant in accordance with Rule 68 of the FRCP. Arnold & Porter's Mediation Status Report and Motion for Upholding Offer of Judgment and Bifurcating Discovery (Arnold & Porter's Motion). Under Rule 68, a defendant may offer an amount of money to the plaintiff to allow judgment against the defendant.

The Office of the Chief Administrative Hearing Officer (OCAHO) Rules of Practice and Procedure provide that the FRCP may be used "as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." *See* 28 C.F.R. § 68.1; *United States v. Davila*, 7 OCAHO no. 936, 16 n.19 (1997); *see also Ugochi v. North Dakota Dep't of Human Servs*, 12 OCAHO no. 1304, 4 (2017). OCAHO regulations are specific as to the remedy and damages an Administrative Law Judge (ALJ) may award. *See* 8 U.S.C. § 1324b(g). There is no provision for the kind of procedural mechanism envisioned by Rule 68. *See* 28 C.F.R. pt. 68. Regardless of whether Rule 68 is permissible, Rule 68 provides, "An unaccepted offer is considered withdrawn . . . [and] [e]vidence of an unaccepted offer is not admissible except in a proceeding to determine costs." FED. R. CIV. P. 68(b). Complainant filed a response rejecting the Offer of Judgment, and therefore, under the terms of the Rule, the offer is withdrawn and the

motion is MOOT. *See* Complainant's Resp. to Arnold & Porter's "Offer of Judgment" and Request for Sanctions at 1.

III. MOTIONS TO BIFURCATE, RESETTING DEADLINES, AND ORDER TO SHOW CAUSE

A. Motions to Bifurcate

In the alternative, Arnold & Porter filed a motion to bifurcate the case as between liability and damages should this Court not permit the Rule 68 Offer of Judgment. Arnold & Porter states that it "does not intend to dispute liability as to the 28 U.S.C. 1324(b)(a)(1) discrimination claim arising out of the Project." Arnold & Porter's Mot. Bifurcate at 4. Arnold & Porter states that it does not dispute that it implemented a citizenship restriction on the hiring of document reviewers for the project on the mistaken belief that the restriction was legally required under the International Traffic in Arms Regulations, and that Complainant was not staffed to the project as a result. *Id.* Arnold & Porter indicates that the only remaining issue in the case is damages, and that limiting discovery to this issue will save the parties and the Court considerable time and expense. *Id.*

Law Resources also filed a motion to bifurcate, stating that "it is prepared to stipulate that it engaged in unlawful discrimination based upon citizenship and national origin in connection with the one document review project at issue that it staffed for Arnold & Porter. While Law Resources acted in good faith based upon the instructions and requirements of its client, Arnold & Porter, Law Resources is prepared to waive that defense." Law Resources' Mot. to Bifurcate at 1-2 (Law Resources' Mot.).

As to the retaliation claim, Law Resources states that it is concerned that discovery relating to damages could be extremely broad, and appears to seek a resolution regarding liability before proceeding to discovery regarding damages. *Id.* at 2. Law Resources indicates that it believes liability as to this claim could be resolved based on the motions, but is prepared to appear at a hearing if necessary.

Complainant filed an opposition to bifurcation. Complainant states that she would be severely prejudiced by any sort of bifurcation which would essentially result in two separate trials, and that the parties' interests are intertwined. Complainant also states that she is seeking injunctive relief, and such would not be appropriate for bifurcation.

As noted above, the OCAHO rules provide that the FRCP may be used "as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or

by any other applicable statute, executive order, or regulation." § 68.1. FRCP 42 provides that, "For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims." FED. R. CIV. P. 42. "In determining whether to separate claims, courts 'weigh the potential for confusion, delay, prejudice or additional expense resulting from the grant or denial of the motion." *Hernandez, et al., v. Farley Candy Co.*, 5 OCAHO no. 781, 464, 465 (1995) (quoting *Proctor & Gamble Co., v. Nabisco Brands, Inc.*, 604 F. Supp. 1485, 1491 (D. Del. 1985)).

Given that both Respondents have indicated their intention to admit liability as to the discrimination claim, the Court sees no reason to subject the parties to the time and expense of continued litigation. The issue as to how to apportion damages, if any, as between the Respondents may touch on liability, but the Court believes this issue can be resolved in the damages portion of the case. This order does not, as the Complainant seems to believe, result in severance of the Respondents; nor is it this Court's intention to hold two separate hearings.

As liability for the retaliation and document abuse claims is still at issue, those claims are bifurcated from the discrimination liability claims. Accordingly, the Court grants the motions to bifurcate the discrimination claims under § 1324b(a)(1)(B). The Court will decide liability for the discrimination claims separately from the retaliation and document abuse claims and the damages portion of the proceedings.

B. Order to Show Cause

Further, the Court seeks to resolve Complainant's discrimination claims under § 1324b(a)(1)(B) so that the litigation can proceed in a more efficient manner. Therefore, the Court orders the parties to show cause why the Court should not enter an order of liability as to Complainant's discrimination claims under § 1324b(a)(1)(B), based upon the admissions in the Respondents' respective briefs. *See. e.g. United States v. Davila*, 7 OCAHO no. 936, 8 (1997); *United States v. Tri Component*, 5 OCAHO no. 821, 765, 768 (1995) ("Summary decision issued pursuant to 28 C.F.R. Section 68.38 may be based on matters deemed admitted.")); *see also* FED. R. CIV. P. 56(c).

In addition, none of the parties have addressed the document abuse claim under 8 U.S.C. § 1324(a)(6). As the document abuse claim appears to arise from the same set of facts as the discrimination claim, the Court also seeks briefing from the parties as to whether, based upon the facts as admitted by Respondents, Complainant has set forth a separate claim for improper documentary practices under § 1324b(a)(6), and whether the claim, if cognizable, can be resolved at this point in the litigation.

Lastly, as to retaliation, the Complaint sets forth retaliation claims generally as to both Respondents, and provides details naming Law Resources. Am. Compl. at 7. It has not been established that the retaliation claims are limited to Law Resources. Complainant is entitled to

discovery from Arnold & Porter, if she so chooses, regarding retaliation. The Court is mindful that if there is no basis for liability against either Respondent for retaliation, then discovery as to damages for the retaliation claim is a waste of time and resources. However, the Court has a duty to resolve the case expeditiously, and does not believe that two separate periods of discovery as to liability first, and then damages, if either or both parties are liable, would be an expeditious way to resolve the case. Accordingly, the motion to bifurcate as to the retaliation claim is denied.

As such, by **August 24, 2020**, the parties must show cause why the Court should not enter an order of liability as to Complainant's discrimination claims under § 1324b(a)(1)(B), based upon the admissions in the Respondents' respective briefs. In their briefing, the parties should also separately address Complainant's document abuse claim and particularly, based on the facts as admitted by the Respondents, whether Complainant has set forth a separate claim for improper documentary practices under § 1324b(a)(6). Finally, the Court will reset the deadlines in this matter. *See infra* Part IX.

IV. MOTION REQUESTING JUDICIAL NOTICE OF JUDICIAL ADMISSION

Complainant filed a Motion Requesting Judicial Notice of Judicial Admission by Arnold & Porter. Complainant asks the Court to take judicial notice of statements by Arnold & Porter's counsel regarding liability for discrimination, as well as an admission regarding eight or nine other attorneys that were not considered due to its citizenship restrictions. Arnold & Porter has reasserted the statement regarding liability for discrimination in its motion seeking bifurcation. In its response to the motion at issue, Arnold & Porter asserts that the alleged statement regarding eight or nine other attorneys is not a judicial admission because it is based only on Complainant's own recollection and the statement only related to the fact that Arnold & Porter was engaged in settlement discussions and certain facts underlying the document review project at issue. Arnold & Porter also objects to Complainant's inclusion of a draft settlement agreement as an exhibit. The Court will address this issue *infra* Part VII. Finally, Arnold & Porter suggests that Complainant could or should have sought a stipulation or otherwise sought an admission in discovery, rather than filing this motion.

As these statements are the subject of the Order to Show Cause, the Court will defer ruling on this motion until the parties respond to the Order to Show Cause. *See supra* Part III.B.

V. MOTION TO AMEND PROTECTIVE ORDER

Complainant asks that the current protective order in place be dissolved. Complainant represents that the protective order was put in place as a sanction against Complainant for allegedly violating the Court's meet-and-confer order. Complainant disputes that she refused to meet and

confer, that there is no justification for the protective order, and that it limits Complainant's right to pursue any legal claims outside this forum.

The order entered in this case on December 12, 2019, was not entered as a sanction; nor was it entered pursuant to section 68.18(c). The title "protective order" is something of a misnomer, and this Court in its December 9, 2019 order was careful not to call it a protective order. Rather, the Court called it an "order protecting the confidentiality of the information produced." This order was not entered in relation to particular discovery requests. The order entered in these proceedings is a standard instrument intended to protect information produced in litigation that contains personally identifiable information or commercially sensitive documents. It provides for a means to designate particular documents as "confidential." Complainant was provided an opportunity to review and recommend changes to the order. The order is not in any way intended to prevent Complainant from pursing other legal claims. To be sure Complainant would have to re-request the documents provided during discovery in this litigation, or seek permission to use the documents in any other forum, but it is not a basis to stop Complainant from pursuing any legal action. With these clarifications in mind, the Court finds no basis to dissolve the protective order. Complainant has not identified any specific changes that she seeks to the protective order, and accordingly, the motion is DENIED.

VI. MOTION FOR SANCTIONS AGAINST LAW RESOURCES AND MOTION TO COMPEL

First, Complainant seeks an order compelling Law Resources to produce a privilege log for documents it did not produce in discovery based on privilege for Requests for Productions (RFP) numbers 6, 7, 8b, 16, and 22; and produce all documents and a log of the documents Law Resources withheld because the documents were commercially sensitive in RFPs numbers 3, 11, 12, 14, and 21. Law Resources contends that it did not produce a privilege log because it did not withhold any documents as privileged. Law Resources also contends it did not produce a log of commercially sensitive documents because it did not withhold any documents because they were commercially sensitive, Law Resources is not aware of a rule requiring a log for such documents, and the Court's Protective Order set forth procedures regarding confidentiality so that Law Resources could produce commercially sensitive documents.

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). However, 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.

On December 9, 2019, the undersigned found that Complainant's Second Set of Requests for Production of Documents replaced her First Set of Requests for Production of Documents; therefore, Law Resources was required to respond to Complainant Second Set of Requests for Production of Documents only. Order on Mot. Requesting Protective Order at 3. Complainant's second set of requests are in the record. In a telephonic conference on December 12, 2019, the undersigned went through the second set of discovery requests and later issued an order regarding the responses to those requests. Law Resources' responses to the discovery requests after the discovery conference are not in the record and Complainant did not provide the responses to the requests at issue. Without the responses or objections, the Court cannot determine whether Respondent should be compelled to produce responsive documents or a privilege log. As such, Complainant's motion to compel relating to RFPs 3, 6, 7, 8b, 11, 12, 14, 16, and 21 does not comply with the OCAHO requirements in § 68.23(b).

Further, even if Complainant's motion to compel complied with the OCAHO requirements, Law Resources explained that it did not withhold documents based on privilege or commercial sensitivity. Law Resources does not need to produce a privilege log if it did not withhold any documents as privileged, and Law Resources is not required to produce a log of commercially sensitive documents, especially when the Protective Order specifically covers the handling of commercially sensitive documents. As such, Complainant's motion to compel related to privilege and commercially sensitive documents is DENIED.

Complainant also alleges that Law Resources failed to produce a document responsive to RFPs 26 and 27. RFP 26 requests a list of contract attorneys terminated at the direction of Law Resources due to their citizenship status. RFP 27 asks for a list of contract attorneys terminated at the direction of Arnold & Porter based on their citizenship status. Complainant learned of a document titled the "Do Not Use" list during settlement discussions and claims that it is responsive to both requests and Law Resources did not produce it. Thus, Complainant asks the Court to deem that Law Resources has admitted that she was placed on the "Do Not Use" list as a sanction for not producing the list in response to the aforementioned requests.

Law Resources explains that the "Do Not Use" list is an internal spreadsheet of the attorney and paralegal candidates it does not wish to staff on projects for various reasons, including candidates who were no-shows or produced unsatisfactory work. Law Resources contends, and the Court agrees, that the "Do Not Use" list was not responsive to Complainant's narrow requests for lists of candidates who were not hired based on citizenship status. Thus, the Court finds that Complainant has not shown that the "Do Not Use" list was responsive to RFPs 26 and 27. Nonetheless, Law Resources offered in its response to voluntarily produce a redacted version of the list to Complainant without a further discovery request. Thus, Complainant's

Motion to Compel the Do Not Use list is DENIED. Law Resources will produce a redacted version of the Do Not Use list to Complainant.

Finally, Complainant seeks sanctions against Law Resources for its counsel's conduct after failing to comply with the discovery order and for its counsel's conduct regarding producing responses to her First and Second Set of RFPs. Complainant asks that the Court sanction Law Resources by finding that "the allegation of retaliation be deemed admitted and that any evidence presented by Law Resources be excluded." Mot. Sanctions and Compel at 8. Law Resources contends that it is not clear what evidence Complainant seeks to exclude and there is no basis for Complainant's request.

As the Court noted above, in December 2019, the Court found that the Second Set of RFPs replaced the First Set and Respondent only had to respond to the second set; thus, any issue relating to the First Set of RFPs is moot. Order on Mot. Requesting Protective Order at 3. Further, since the Court has denied Complainant's motion to compel, and Law Resources asserts that it provided all responsive documents, and will voluntarily provide a redacted version of the "Do Not Use" list, there is no basis for Complainant's request for sanctions. As such, Complainant's request for sanctions against Law Resources is DENIED.

VII. MOTIONS TO STRIKE

Law Resources asks the Court to strike Exhibit 5 attached to Complainant's Motion for Sanctions and Motion to Compel. Exhibit 5 is a redacted draft of a settlement agreement. Complainant seems to ask the Court to admit Exhibit 5 as direct evidence of retaliation. Complainant cites Federal Rules of Evidence 408 and 801. Additionally, Arnold & Porter asks the Court to strike Exhibit 1 of Complainant's Motion for Judicial Notice, which consists of a draft settlement agreement containing Arnold & Porter's revisions expressly rejecting the statement Complainant seeks to admit as a judicial admission.

Rule 408 provides:

> (a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
>
> (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
>
> (2) conduct or a statement made during compromise negotiations about the claim— except when offered in a criminal case and when the

> negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
>
> (b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Regarding Exhibit 5, Law Resources argues that Complainant cannot offer a statement made in a draft settlement agreement as direct evidence of retaliation. Complainant argues that under Rule 408, the statement in a draft settlement agreement is admissible because it is offered as direct evidence of retaliation and to show that Law Resources failed to produce documents responsive to discovery requests.

The purpose of Rule 408 "is to foster settlement negotiations, [and] the sole means used to effectuate that end is a limitation of evidence produced during settlement negotiations for the purpose of proving liability at trial." *NAACP v. United States Dept. of Justice*, 612 F.Supp.1143, 1146 (D. D.C. 1985). As Law Resources argues, Complainant seeks to admit a portion of a draft settlement agreement as evidence of Law Resources' liability for retaliation, which is exactly what Rule 408 was designed to prevent. *See* FED. R. EVID. 408. Complainant argues that the portion of the settlement agreement can be admitted for another purpose under Rule 408, namely, that Law Resources withheld a document responsive to a discovery request. As the Court found above, the "Do Not Use" list is not responsive to RFPs 26 and 27 and Complainant has not shown that an exception in Rule 408(b) applies to permit the admission of a draft settlement agreement referencing a document that was neither requested nor produced in discovery. Thus, Exhibit 5 is not admissible under Rule 408(b). As such, the Court grants Law Resources' request to strike Exhibit 5 of the Motion for Sanctions and to Compel. Exhibit 5 to Complainant's Motion for Sanctions and to Compel is STRICKEN.

Regarding Exhibit 1 in the Motion for Judicial Notice, Arnold & Porter also argues that Rule 408 prohibits the admission of a portion of a draft settlement agreement to prove that it is liable. Complainant argues that the portion of the draft settlement agreement is admissible under Federal Rule of Evidence 106. Similar to Exhibit 5 above, Complainant seeks to admit a portion of a draft settlement agreement to prove that Arnold & Porter discriminated against a number of individuals based on citizenship status. Thus, Complainant is attempting to use the draft settlement agreement to prove that Arnold & Porter is liable which is not permissible under Rule 408. Further, the exhibit contains Arnold & Porter's edits to the draft, which include deletion of the entire section on which Complainant relies. Finally, Rule 106 codifies "the rule of completeness," and provides that "when a party has introduced part of a writing, an adverse party may require the introduction of any other part which ought in fairness to be considered contemporaneously." *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 154–55 (1988). Complainant did not provide any argument showing how Rule 106 applies and did not mention

or make any argument regarding why Exhibit 1 is admissible under Rule 408. As such, Complainant's Exhibit 1 to her Motion for Judicial Notice is STRICKEN.

VIII. MOTION FOR SANCTIONS AS TO ARNOLD & PORTER

Lastly, Complainant filed a motion for sanctions, arguing that Arnold & Porter did not mediate in good faith and made the offer of judgment for the purpose of gamesmanship. The Complainant specifically refers to an incident regarding production of billing documents and appears to be requesting sanctions pursuant to 28 C.F.R. § 68.23.

Arnold & Porter contends that Complainant's Motion improperly discloses confidential mediation communications in violation of 5 U.S.C. § 574. Arnold & Porter also asserts that Complainant's motion includes false allegations and misrepresentations of the mediation and denies that it mediated in bad faith, engaged in "gamesmanship," or failed to comply with any order during mediation. Finally, Arnold & Porter argues that Complainant's request for sanctions under § 68.23, should be denied because § 68.23 relates to discovery sanctions, which are not applicable to mediation.

OCAHO's mediation program is a voluntary program whereby a neutral third party attempts to facilitate a settlement. This is not a proceeding where "orders" can be enforced. It is most certainly not discovery as the sanctions set forth in § 68.23 address. Further, as the Complainant is well aware, reports of unaccepted settlement offers are generally not admissible. FED. R. CIV. P. 68(b); FED. R. EVID. 408; *United States v. 3679 Commerce Place*, 12 OCAHO no. 1296, 7 n. 7 (2017). There is an expectation of confidentiality in settlement discussions which allow for the free exchange of information and ideas.

Further, Arnold & Porter argues that the parties signed a mediation agreement with the Chief Administrative Hearing Officer (CAHO) which referenced 5 U.S.C. § 574 (the Administrative Dispute Resolution Act), and Complainant's disclosure of those communications is a violation of § 574. Under § 574(b), generally, "a party to a dispute resolution shall not voluntarily disclose any dispute resolution communication" absent limited exceptions. If a party discloses a dispute resolution communication in violation of § 574(b), the communication "shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made." § 574(c). The purpose of § 574 is to provide parties in alternative dispute resolution with an administrative agency the expectation that the communications will remain confidential. *See* § 574. Complainant's response to the Offer of Judgment includes several communications that occurred during the settlement negotiations with the Chief Administrative Hearing Officer. Complainant did not address § 574 in her filing and did not present any arguments in support of the application of a limited exception in § 574(b). As such, those communications are confidential dispute resolution communications under § 574 and therefore, the communications are inadmissible.

In summation, Complainant's vague accusations provide no basis for sanctions. A settlement offer that does not meet the expectations of a party is certainly not a basis for sanctions, and there is no proceeding upon which to make a finding regarding what documents should have or were not produced in the course of the mediation. Under § 574(b), Complainant is prohibited from sharing communications that occurred during the settlement discussions facilitated by the CAHO absent limited exceptions and Complainant did not address any of the exceptions. As such, Complainant's request for sanctions against Arnold & Porter regarding mediation with the CAHO is DENIED.

IX. CONCLUSION

Arnold & Porter's Motion for Leave to File Offer of Judgment is MOOT because Complainant rejected the offer in her response. Law Resources' Motion to Bifurcate is GRANTED and Arnold & Porter's Motion to Bifurcate is GRANTED IN PART. Liability for Complainant's discrimination claims will be decided separately from damages and her retaliation and document abuse claims.

Complainant's Motion to Compel and for Sanctions against Law Resources is DENIED. Complainant's Motion to Compel regarding several requests did not meet the requirements of § 68.23(b) and she did not identify any requests to which the "Do Not Use" list was responsive. Law Resources will voluntarily produce a redacted copy of the "Do Not Use" list. Complainant did not provide a basis for imposing discovery sanctions on Law Resources.

Further, Complainant's Motion to Amend the Protective Order is DENIED. Complainant did not provide any basis for dissolving or amending the Protective Order.

The Court will defer ruling on the Complainant's Motion for Judicial Notice as the issues are subject to the Order to Show Cause. By **August 24, 2020,** the Court orders the parties to show cause why the Court should not enter an order of liability as to Complainant's discrimination claims under § 1324b(a)(1)(B), based upon the admissions in the Respondents' respective briefs. In their briefing, the parties should also separately address Complainant's document abuse claim and, particularly, based on the facts as admitted by the Respondents, whether Complainant has set forth a separate claim for improper documentary practices under § 1324b(a)(6).

Complainant's request for sanctions against Arnold & Porter is DENIED. Complainant did not identify any law permitting the Court to sanction a party for its actions during mediation and Complainant's request relied on confidential settlement communications which are inadmissible under § 574.

The Court also finds that Exhibit 5 of the Motion to Compel and Exhibit 1 of the Motion for Judicial Notice are STRICKEN. Both exhibits involved settlement discussions between the parties and are not admissible under the Federal Rules of Evidence.

The deadlines in this matter are reset as follows:

Discovery as to the retaliation claim and damages for all claims only will close September 22, 2020. All discovery must have been served, allowing for 30 days response time, and all motions to compel must have been filed by that date.

Dispositive Motions are due on November 23, 2020.
Responses to dispositive motions are due on December 18, 2020.
If a hearing is necessary, the undersigned will set a hearing date after dispositive motions are filed.

SO ORDERED.

Dated and entered on August 17, 2020.

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Jean C. King
Chief Administrative Law Judge