

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

December 9, 2019

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|-------------------|---|-----------------------------|
| TEMITOPE OGUNRINU | ) |                             |
| Complainant,      | ) |                             |
|                   | ) |                             |
| v.                | ) | 8 U.S.C. § 1324b Proceeding |
|                   | ) | OCAHO Case No. 19B00032     |
|                   | ) |                             |
| LAW RESOURCES,    | ) |                             |
| Respondent.       | ) |                             |
|                   | ) |                             |

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ORDER ON MOTION REQUESTING PROTECTIVE ORDER

This matter is before the Court on Respondent's Motion Requesting Protective Order to Limit Discovery. Respondent's Motion Requesting Protective Order to Limit Discovery is Granted in Part and Denied in Part.

I. RELEVANT BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b(a)(1)(B) (2017). Complainant filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 5, 2019, alleging that Respondent engaged in citizenship status discrimination, document abuse, and retaliation in violation of 8 U.S.C. § 1324b.

On November 19, 2019, Respondent filed a Motion Requesting Protective Order to Limit Discovery. Complainant filed a response on December 3, 2019. In the motion, Respondent asserts that it is a small company with modest resources, the facts are not complicated and few will be in dispute, and that the quantum of Complainant's discovery requests are unwarranted and pose an undue hardship on Respondent. Respondent requests 1) an order to limit discovery to ten interrogatories, ten requests for admissions, and ten document requests; 2) excuse Respondent from responding to Complainant's Second Set of Requests for Production of Document; and 3) provide a proscribed method for resolving discovery disputes going forward. Lastly, Respondent asks for a Protective Order to protect confidential and commercially sensitive information.

II. STANDARDS

OCAHO has broad authority to control discovery. 28 C.F.R. pt. 68 (2018). Rule 68.18(a) provides that the frequency or extent of the methods of discovery may be limited by the Administrative Law Judge (ALJ) upon motion or her own initiative. 28 C.F.R. § 68.18(a). Under the OCAHO rules, upon a party's

request and if the party has shown good cause, the ALJ may enter a protective order to protect a party from “annoyance, harassment, embarrassment, oppression, or undue burden or expense[.]” § 68.18(c). “The party seeking the protective order has the burden of showing that good cause actually exists.” *United States v. Employer Staffing Group II, LLC*, 11 OCAHO no. 1234, 4 (2014). To show good cause, the moving party must present particular and specific facts as to why it needs a protective order, and “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.” *Webb v. Green Tree Servicing, LLC*, 283 F.R.D. 276, 278 (D. Md. 2012); *Campbell v. U.S. Dep’t of Justice*, 231 F.Supp.2d 1, 14 (D. D.C. 2002). “[T]he standard for issuance of a protective order is high.” *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 125 (D. Md. 2009).

### III. DISCUSSION

#### A. Protective Order

Complainant’s first set of requests for production (RFPs) consisted of forty-three separate requests, some with multiple discrete subparts. Mot. at 5. On October 9, 2019, Respondent timely filed objections and responses to the first set of RFPs. Complainant responded, asserting her need for the documents in general terms, and provided a second set of RFPs consisting of twenty-eight requests. Respondent asserts that it produced documents and also attempted to communicate with the Complainant about her discovery requests, but Complainant refused to accept the documents and refused to speak with counsel. Mot. at 7-8.

The scope of discovery in OCAHO proceedings is broad, “the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” § 68.18. “[T]he purpose of discovery under both the OCAHO rules and the Federal Rules of Civil Procedure is to require the disclosure of all relevant information so that the resolution of disputed issues may be based on a full and accurate understanding of the facts.” *Ironworkers Local 455 v. Lake Constr. and Dev. Corp.*, 6 OCAHO no. 911, 1039, 1046 (1997). Lawyers in the discovery process are expected to act in good faith, to follow the rules, and to perform their obligations as members of the court. *Malautea v. Suzuki Motor Co., Ltd.*, 148 F.R.D. 362, 371–74 (S.D. Ga. 1991) *aff’d*, 987 F.2d 1536 (11th Cir. 1993).

Given the purpose of discovery, and the broad nature of OCAHO’s discovery standard, the Respondent’s request to limit Respondent to ten requests in each category is denied. The number ten is an arbitrary number that could potentially limit Complainant’s ability to prove her case, and for the Court to resolve the dispute based upon all the facts. The Court reminds Complainant, however, that the discovery sought must be relevant to the claim of discrimination, and cannot be a fishing expedition for any other potential wrongdoing. *United States v. Kellogg Brown & Root Servs., Inc.*, 284 F.R.D. 22, 34–35 (D.D.C. 2012).

As to Respondent’s request to be excused from responding to the second set of RFP’s, Respondent argues that they are cumulative and, at the same time seek additional information, are burdensome in that Respondent spent a great deal of time addressing Complainant’s first set of RFPs, and are confusing as to whether Respondent must respond to the first or the second set of RFPs.

Complainant indicated that the second set of RFPs were meant to address Respondent's concern with the first set of RFPs. While Complainant's second set of RFPs did not respond to all the objections noted by Respondent, the second set of RFPs are generally more focused and less numerous. While the Court is cognizant of the additional time Respondent will require to respond to the second set of RFPs, Complainant made a good faith effort to limit and focus her RFPs. Respondent only asserts a general objection to these requests and the objection does not meet the standard for a protective order. The Court will consider that the second set of RFPs were intended to and do replace the first set of RFPs. Therefore, Respondent must respond to the second set of RFPs, and does not need to respond to the first. The Court will consider and resolve any specific objections to the second set of RFPs at the discovery conference set for December 12, 2019.

As to a method for resolving discovery disputes going forward, the Court orders the following: a party objecting to a discovery request must do so in writing by email. Within 10 days of the email, or by agreement of the parties, the parties must meet and confer. If the parties are unable to resolve the dispute, both parties must submit their respective positions to this Court in writing within five days of the meet and confer.

Lastly, Respondent's request for an order protecting the confidentiality of the information produced is granted. Respondent provided a proposed order. The parties are ordered to meet and confer on the proposed order and provide a final order to the Court within 10 days of this order. If the parties cannot reach a resolution, the parties must submit their respective positions to this Court within five days of their conference on the proposed order.

SO ORDERED.

Dated and entered on December 9, 2019.

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Jean C. King  
Chief Administrative Law Judge