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

January 30, 2025

ARTIT WANGPERAWONG, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 2024B00007
	)	
META PLATFROMS, INC., Respondent.	)	

Appearances: Artit Wangperawong, pro se Complainant
Eliza A. Kaiser, Esq., Matthew S. Dunn, Esq., and Amelia B. Munger, Esq., for Respondent

ORDER ON RESPONDENT'S MOTIONS

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, Artit Wangperawong, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Meta Platforms, Inc., alleging Respondent discriminated against him (citizenship status) and retaliated against him, in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(5). On August 19, 2024, Complainant filed a new complaint against Respondent, alleging new claims of citizenship status discrimination and retaliation. On October 30, 2024, the Court consolidated the two cases.

On November 18, 2024, Respondent filed its Motion to Dismiss the Complaint, Motion to Strike, and Motion for a Protective Order to Stay Discovery Pending Disposition of this Motion (Motion to Dismiss, Strike, and Stay). This Motion addresses the newer allegations.

On November 28, 2024, Complainant filed his Opposition.

On December 5, 2024, Respondent filed a Motion for Leave to File a Reply Brief in Further Support of Its Motion to Dismiss, Strike, and Stay, which the Court granted on December 5, 2024. *Wangperawong v. Meta Platforms, Inc.*, 18 OCAHO no. 1510j (2024).[1]

II. MOTION TO STAY

The Court first addresses Respondent's motion that the Court "stay[] discovery pending a ruling on the Motion [to Dismiss]." Mot. Dismiss, Strike, & Stay 18.

In its most recent order, the Court stated the following:

> As to discovery, the Court previously stayed the deadlines pertaining to all discovery. *See* November 15, 2024 Order Clarifying Preh'g Conf. Summ. To ensure clarity on this issue, the Court now confirms for the parties this stay will remain in effect until at least the next prehearing conference. . . . Parties can anticipate a prehearing conference the week of February 3, 2025.

Wangperawong, 18 OCAHO no. 1510j, at 3.

A stay of discovery is already in place; Respondent's Motion to Stay is DENIED AS MOOT.

III. MOTION TO STRIKE

Respondent also moves the Court to strike portions of the Complaint which are "based solely upon confidential settlement conversations between Respondent's counsel and Complainant." Mot. Dismiss, Strike, & Stay 16.

a. Positions of the Parties

Here, Respondent argues the Complaint "contain[s] specific statements about the terms of an offer of settlement in the context of settlement conversations." Mot. Dismiss, Strike, & Stay 16.

In his Opposition, Complainant states "[He] was not aware or notified that Respondents intended to engage in a settlement discussion at the time of the call." Opp'n 1. In support of this assertion,

[1] Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, 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 through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions.

he attached a copy of an email from Respondent's counsel scheduling a call between the parties on March 5, 2024 "to meet and confer regarding discovery." Opp'n Ex. A.

In its Reply, Respondent quotes portions of the Complaint to demonstrate Complainant "knew that the conversation was about settlement and that he engaged in a back-and-forth with Respondent's counsel about settlement." *Id.*

b. Legal Standards

As Respondent correctly noted, "OCAHO regulations make clear that the Federal Rules of Civil Procedure may be used as a general guideline in OCAHO proceedings and further specifies that 'the Federal Rules of Evidence will be a general guide to all [OCAHO] proceedings.'" Mot. Dismiss, Strike, & Stay 16 (citing 28 C.F.R. § 68.1 and quoting 28 C.F.R. § 68.40).[2]

Federal Rule of Evidence 408(a)(2) provides that "conduct or a statement made during compromise negotiations about the claim" is not admissible "either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction." However, such statements are admissible if offered "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." Fed. R. Evid. 408(b).

"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. of Civ. P. 12(f).

In the application of Rule 408 and Rule 12(f) in this forum, the Court will look to both its own precedent and the decisions of federal district courts. This Court has previously applied Rule 408 to strike mention of settlement negotiations where no exception from subsection (b) applied. *See Ogunrinu v. Law Rescs. & Arnold & Porter Kaye Scholer LLP*, 13 OCAHO no. 1332d, 8–10 (2020) (granting motions to strike exhibits from complainant's motion to compel and motion for judicial notice which contained a draft settlement agreement).

OCAHO precedent is aligned with federal courts on this issue. *See Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc.*, 227 Fed. Appx. 239 (4th Cir. 2007) (granting motion to strike two paragraphs from complaint detailing statements made during settlement discussions because no exception to Rule 408 applied); *Philadelphia's Church of Our Savior v. Concord Township*, 2004 WL 1824356, at *2 (E.D. Pa. July 27, 2004) ("[R]epeated decisions from this Court have held that allegations in a complaint may be stricken, under Rule 12(f), as violative of the[] policies [underlying Rule 408]."); *Scott v. PacifiCorp*, 2022 WL 2452281 (D. Ore. July 6, 2022) (granting motion to strike exhibit from amended complaint on grounds that exhibit constituted a settlement communication); *My Mavens, LLC v. Grubhub, Inc.*, 2023 WL 5237519 (S.D. N.Y. Aug. 14, 2023) (noting that while "the Second Circuit has not addressed the issue of how Rules 408 and 12(f) intersect . . . [d]istrict courts in this Circuit have . . . consistently granted motions to strike portions

[2] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024).

of complaints that refer to settlement offers or statements made in the course of settlement negotiations, particularly where the statements are described as such.").

c. Discussion

While Complainant is correct that the March 5 discussion was scheduled to discuss discovery issues, it is clear from the pleadings[3] that the discussion turned settlement-related matters. Rule 408 serves to exclude any inclusion of statements made during any "compromise negotiations." Consistent application of Rule 408 causes the Court to conclude such settlement-related statements should be deemed inadmissible, as Complainant is offering these statements to prove the validity of his retaliation claim. Accordingly, pursuant to Rule 12(f), Respondent's Motion to Strike is GRANTED, and the two sentences beginning with "On March 5, 2024," and ending with "rehiring me," on page 9, and the first paragraph of page 18 of the Complaint are STRICKEN.[4]

IV. MOTION TO DISMISS

Finally, Respondent moves the Court to "dismiss the failure to hire discrimination claim for failure to state a claim and the retaliation claims for failure to administratively exhaust and failure to state a claim." Mot. Dismiss, Strike, & Stay 3.

a. Contents of the Complaint

The Complaint here is comprised of the initial allegations (which survived a prior motion to dismiss), and the additional allegations (post-consolidation of the case). It is these additional allegations which give rise to the analysis here (although all allegations will be summarized below as they comprise the "four corners of the Complaint." *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997) (citations omitted)).

i. Initial Allegation

On May 26, 2020, Complainant was hired by Respondent to work as an Applied Research Scientist in the Applied Research Group in Enterprise Engineering. First Compl. 14.

On November 9, 2022, Complainant learned he may be subject to a "lay off." First Compl. 14.

Complainant alleges "the majority of the individuals in [his] position and organization are non-US citizens, and only US Citizens (like him) were to be laid off." First Compl. 14.

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[3] "To my surprise at the end of the [March 5] call, [counsel for Respondent] wanted to discuss a potential settlement." Second Compl. 18.

[4] Because the Complaint includes other documents that are not consistently paginated, any citation to the Complaint refers to the pagination of the PDF document. Separately, and as is further explained below, the Court will analyze the retaliation allegation for sufficiency with those sentences stricken from the Complaint.

On January 13, 2023, Respondent did terminate Complainant. First Compl. 7.

On April 23, 2023, Complainant filed a charge of discrimination with IER. First Compl. 11–14.

ii. Additional Allegations

1. Failure to Hire Allegation

On January 11, 2024, Complainant applied to work for Respondent as a Solutions Engineer. Second Compl. 6.

On January 19, 2024, a screening specialist for Respondent "contacted Complainant to ask about qualifications meeting the requirements for the position. Upon verifying Complainant's qualifications, [the screener] informed Complainant that she would forward Complainant's application to a Meta recruiter for further consideration." Second Compl. 16.

On January 22, 2024, "[the recruiter] emailed Complainant: 'we have decided not to move forward.'" Second Compl. 16. According to Complainant, Respondent hired someone else for the position (a non-U.S. citizen internal candidate).[5] Second Compl. 16.

On February 22, 2024, Complainant filed an IER charge addressing this allegation. Second Compl. 14–17.

2. Retaliation Allegation[6]

Complainant "applied to over 20 positions [with Respondent] but ha[s] not been considered seriously for any of them." Second Compl. 9. He also alleges another individual, who was "laid

[5] According to Complainant:

> This position was a PERM position, meaning that Meta wanted to hire a non-U.S. citizen for the role but advertised it solely to comply with applicable U.S. laws. However, the position was no longer active on Meta's jobs website about a week after I applied. It is highly unlikely for the position to have been filled within a week, unless the non-U.S. citizen internal candidate filled it.

Second Compl. 7.

[6] Complainant attaches a Word Document at the end of his Complaint which alleges additional facts surrounding a statement allegedly made by either Meta or counsel; however, it does not appear that he intends to allege retaliation or intimidation in this unmarked Word Document as he states that the "false statements [were made] to retroactively justify [his] termination and bar [him] from re-employment." Second Compl. 18. Further, he does not label these paragraphs as allegations, and provides no "see attached" language in his Complaint Form to tie these paragraphs to his retaliation allegation outlined in the Complaint Form.

off at the same time [he] was, who did not complain about discrimination, has been rehired." Second Compl. 9. He further alleges Respondent has not selected him for these positions in retaliation for his first OCAHO Complaint. Second Compl. 9.

It is unknown when he applied to these twenty jobs.[7]

b. Legal Standards – Motion to Dismiss

"When reviewing a motion to dismiss, OCAHO 'accepts the facts alleged in the complaint as true and construes the facts in the light most favorable to the complainant.'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 5 (2022) (quoting *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381d, 10 (2021)). Additionally, when "considering a motion to dismiss, the [C]ourt must limit its analysis to the four corners of the complaint." *Jarvis v. AK Steel*, 7 OCAHO no. 930, 111, 113 (1997) (citations omitted). "The [C]ourt may, however, consider documents incorporated into the complaint by reference[.]" *Id.* at 113–14 (citation omitted).

c. Failure to State a Claim – Citizenship Status Discrimination

i. Positions of the Parties (Citizenship Status Discrimination)

Respondent argues "Complainant does not provide enough facts to plead a claim of discriminatory failure to hire on the basis of his status as a United States citizen, which he predicates on Meta's alleged failure to hire him for the Solutions Engineer position." Mot. Dismiss, Strike, and Stay 9.

According to Respondent, "Complainant offers no more than pure speculation about whether the position remained open, whether Respondent 'continue[d] taking applications from other people' after the Complainant was not hired, or whether someone else was hired for these positions." *Id.* (quoting Compl. 7). Respondent also argues Complainant's assertion that a "non-U.S. citizen internal candidate" was hired for the role because "the position was 'no longer active on Meta's jobs website about a week after [he] applied," is likewise based on speculation alone. *Id.* (quoting Compl. 7).

In his Opposition, Complainant "elaborates further" on his discrimination claim, providing additional information and proposed facts to support his allegation. Opp'n 3–4. Because the Court's analysis is limited to the four corners of the Complaint, however, these additional facts will not be considered when evaluating the sufficiency of the Complaint. *See Udala v. N.Y. State Dep't of Educ.*, 4 OCAHO no. 633, 390, 394 (1994).

ii. Discussion (Citizenship Status Discrimination)

[7] Complainant lists March 5, 2024, in his Complaint Form; however, that date corresponds to the conversation he had with Respondent counsel, the contents of which were stricken from the record.

As the Court previously noted:

> OCAHO's Rules of Practice and Procedure provide that complaints shall contain (1) "A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated"; (2) "The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred"; and (3) "A short statement containing the remedies and/or sanctions sought to be imposed against the respondent." 28 C.F.R. § 68.7(a)–(b). "Statements made in the complaint only need to be 'facially sufficient to permit the case to proceed further,' . . . as '[t]he bar for pleadings in this forum is low.'" *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 3 (2022) (citing *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 10 (2012), and then citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5 (2021)). "OCAHO's pleading standard does not require a complainant [to] proffer evidence at the pleadings stage . . . Rather, pleadings are sufficient if 'the allegations give adequate notice to the respondents of the charges made against them.'" *Id.* (quoting *Santiglia*, 9 OCAHO no. 1097, at 10); see also *Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, at 9 ("Unlike complaints filed in the district courts, every complaint filed in this forum, whether pursuant to § 1324a, § 1324b, or § 1324c, has already been the subject of an underlying administrative process as a condition precedent to the filing of the complaint . . . An OCAHO complaint thus will ordinarily come as no surprise to a respondent that has already participated in the underlying process.").
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> "A § 1324b complaint must contain sufficient minimal allegations to satisfy § 68.7(b)(3) and give rise to an inference of discrimination." See *Jablonski v. Robert Half Legal*, 12 OCAHO no. 1272, 6 (2016). To give rise to an inference of discrimination, complaints must include information that links the complainant's protected class and the employment action in question. *See id.*; *Sharma*, 17 OCAHO no. 1450, at 5.

Wangperawong, 18 OCAHO no. 1510c, at 7.

As it relates to his citizenship status discrimination allegation, the Complainant has pled sufficient facts to give rise to an inference of discrimination. Complainant identifies the position to which he applied (Solutions Engineer), and alleges he was qualified for the position (a reasonable proposition as the other allegations in the now consolidated Complaint allege Complainant previously worked for Respondent in a technical role). Compl. 6. Further, Complainant alleges Respondent refused to hire him for the position (for which he was qualified), and instead hired a non-U.S. citizen. Compl. 6.

As the Court noted previously:

> [I]n *Sharma v. NVIDIA Corp.*, 17 OCAHO no. 1450, 7 (2022), the Court found that the complainant met OCAHO's pleading standard "because he [] identified a theory by which [the] Respondent allegedly violated 8 U.S.C. § 1324b" when he alleged that the Respondent sought applicants for a particular position, he applied to this position, he was qualified for this position, he was not selected for the position" and the Respondent "may have alternatively hired a non-citizen into the specific position because of that candidate's citizenship status." The Court found these allegations "succinctly yet clearly" informed the respondent why the complainant brought the suit. *Id.*

Wangperawong, 18 OCAHO no. 1510c, at 7–8.

When applying the standard outlined in *Sharma*, it is clear this citizenship status discrimination allegation should survive a motion to dismiss, as the allegation virtually mirrors the sufficient allegation in *Sharma*. Consequently, the Court finds that the Complaint states a claim for citizenship status discrimination. Respondent's Motion to Dismiss is accordingly DENIED with respect to that claim.

d. Failure to State a Claim – Retaliation

i. Positions of the Parties

Respondent argues Complainant does not meet the pleading standard as he "provides no specific facts or details about [the 20] positions or his alleged rejection." Mot. Dismiss, Strike, & Stay 14.

In his Opposition, Complainant does not squarely address Respondent's arguments regarding notice pleading issues; instead, he focuses on the facts pled by way of an attached document at the end of the Complaint. Opp'n 2. Complainant discusses these facts in relation to "[his] termination and rehire ineligibility." Opp'n 2.

In its Reply, Respondent argued Complainant's Opposition "seem[s] designed to turn [his retaliation claim] into a claim for defamation," for which § 1324b creates no cause of action. Reply 5.

ii. Discussion

Section 1324b(a)(5) makes it unlawful "to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under [8 U.S.C. § 1324b] or because the individual . . . has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section."

As noted above, in this forum, "pleadings are sufficient if 'the allegations give adequate notice to the respondents of the charges made against them.'" *Sharma*, 17 OCAHO no. 1450, at 3 (quoting

Santiglia, 9 OCAHO no. 1097, at 10). And while a Complainant need not plead a prima facie case of retaliation at the motion to dismiss stage, the elements are nevertheless instructive: "(1) complainant engaged in activity protected under § 1324b; (2) respondent was aware of the protected activity; (3) complainant suffered an adverse employment decision, or in the case of § 1324b(a)(5), he was intimidated threatened, coerced, or otherwise retaliated against by the entity at issue; and (4) there was a causal link between the protected activity and the retaliatory conduct by the entity at issue." *Zajradhara v. GIG Partners*, 14 OCAHO no. 1363c, 7 (2021).

The Complainant functionally identifies a protected activity, namely, his original OCAHO Complaint filed on October 3, 2023. As Respondent has been participating in this litigation, it is also reasonable to infer potential awareness of the protected activity. Complainant also alleges the existence of a comparator individual, who, but for his lack of protected activity, received favorable treatment in that he or she was hired again following their termination. Second Compl. 9. While all of these components certainly create the initial underpinnings of a viable claim, Complainant has not provided enough specificity to place Respondent on notice. This lack of specificity is, at present, fatal to Complainant's retaliation allegation. A sufficiently pled allegation of this nature should contain more specificity about the 20 positions to which he applied (specific positions, dates applied etc.). A sufficiently pled allegation would also provide more information about the proposed comparator individual/employee.

While Respondent's assertion that Complainant's retaliation is not viable at present has merit, the Court remains mindful of "Complainant's pro se status, [and] the possibility that the deficiencies identified with his retaliation claim may be cured by amendment." *Wangperawong*, 18 OCAHO no. 1510c, at 9 (citing *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (holding that a pro se litigant must be given leave to amend his complaint unless it is "absolutely clear" that an amendment could not cure the deficiencies)).

As a result, Complainant may file a motion seeking leave to amend the Complaint with respect to this retaliation allegation by **February 21, 2025**. If he chooses to file such a motion, Complainant's motion must identify how his amendments will cure the above-mentioned deficiencies in his Complaint, and he must attach the proposed amended complaint.

After this date, if Complainant is not successful in his amendment or he elects not to seek leave to amend, the case will proceed forward with Complainant's termination allegation and his failure-to-hire allegation.

Finally, the Court notes Respondent made a separate exhaustion argument[8] in its motion to dismiss regarding Complainant's retaliation allegation. In an Order previously issued in this case, the

[8] Regarding Complainant's retaliation claim, Respondent argues that Complainant did not include any information surrounding his retaliation allegation in his IER charge, and his failure to do so means he did not comply with 28 C.F.R. §§ 68.4(a) and 68.7(c)'s requirements that he file an IER charge regarding the allegation before bringing an OCAHO complaint. Mot. Dismiss, Strike, & Stay 11–13.

Court addressed exhaustion generally.[9] Because the Complainant did not plead sufficient facts in his retaliation allegation, the Court is unable to fully consider Respondent's exhaustion argument. Respondent may raise exhaustion anew following any accepted amendment.

V. CONCLUSION

Respondent's Motion to Stay is DENIED AS MOOT.

Respondent's Motion to Strike is GRANTED, and the two sentences beginning with "On March 5, 2024," and ending with "rehiring me," on page 9, and the first paragraph of page 18 of the Complaint are STRICKEN.

Respondent's Motion to Dismiss is DENIED IN PART (with respect to Complainant's citizenship status discrimination claim). The Court defers granting Respondent's Motion to Dismiss Complainant's retaliation allegation for the time period outlined in this Order.

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[9] The Court previously explained:

> The purpose of exhausting administrative remedies is to put the respondent on notice and afford an opportunity to resolve the matter at the administrative stage." *Santiglia v. Sun Microsystems, Inc.,* 9 OCAHO no. 1097, 7 (2003) (citing *Sosa v. Hiraoka*, 920 F.2d 1451, 1458–59 (9th Cir. 1990)). "For this reason, the scope of the charge itself must be considered in order to determine whether the matters raised could reasonably be expected to grow out of the investigation of that charge. *Id.*
>
> The Ninth Circuit has cautioned that the investigation that can reasonably be expected to result from a charge filed by an individual is not necessarily strictly limited by the literal terms of the charge." *Id.* at 8 (citing *Paige v. California*, 102 F.3d 1035, 1042 (9th Cir. 1996)). "In determining whether a plaintiff has exhausted allegations that she did not specify in her administrative charge, it is appropriate to consider such factors as the alleged basis of the discrimination, dates of discriminatory acts specified within the charge, perpetrators of discrimination named in the charge, and any locations at which discrimination is alleged to have occurred. In addition, the court should consider plaintiff's civil claims to be reasonably related to allegations in the charge to the extent that those claims are consistent with the plaintiff's original theory of the case. *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1100 (9th Cir. 2002).

Wangperawong, 18 OCAHO no. 1510c, at 5–6.

To assist the parties, the Court provides the following deadlines:

February 21, 2025	Complainant Motion to Amend & Proposed Amendment Due
March 14, 2025	Respondent Motion to Dismiss/ Opposition to Amendment Due
April 3, 2025	Prehearing Conference

SO ORDERED.

Dated and entered on January 30, 2025.

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Honorable Andrea R. Carroll-Tipton
Administrative Law Judge