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

June 5, 2014

UNITED STATES OF AMERICA, Complainant, v. DURABLE, INC. Respondent.	))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 13A00093

ORDER DENYING COMPLAINANT'S MOTION TO COMPEL DISCOVERY, AND GRANTING IN PART AND DENYING IN PART RESPONDENT'S MOTION FOR A PROTECTIVE ORDER

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a four-count complaint alleging that Durable, Inc. (Durable or the company) engaged in 300 violations of 8 U.S.C. § 1324a(a)(1)(B). Count I alleges that Durable failed to ensure that eight employees properly completed section 1 of Form I-9; Count II alleges that Durable failed to properly complete section 2 of the form for six employees; Count III alleges that Durable failed to ensure that 170 employees properly completed section 1; and Count IV alleges that Durable, Inc. failed to properly complete section 2 of the form for 116 employees.

The total penalty sought is $329,895, which includes an enhancement for all counts based on Durable's status as an alleged serial offender. The complaint asserts that Durable was previously cited for unlawful employment violations on November 23, 1988, and the attachments include a Notice of Intent to Fine (NIF) issued to Durable, Inc. a.k.a. Industrial Precision Products on November 23, 1988, as well as a settlement agreement entered into by legacy Immigration and Naturalization Service (INS) and Durable, Inc. a.k.a. Industrial Precision Products on March 3, 1989. The 1988 NIF had charged two counts; first that Durable hired or continued to employ seventeen individuals knowing them to be unauthorized for employment, and second that the company failed to properly verify the eligibility of 131 employees. The settlement agreement

reflects that Durable admitted to seventeen violations in Count I and to sixty-five violations in Count II, and that the agreement resolved all the government's allegations.

Durable, Inc. filed an answer to the instant complaint, after which the company filed a motion to dismiss, which was denied. Prehearing procedures are ongoing. Shortly before the close of discovery, Durable filed a motion for a protective order addressed to certain of the interrogatories and requests for production that ICE had propounded to the company. The government filed a timely response, captioned as both a response to the motion for protective order and a motion to compel discovery. Durable did not respond to the government's motion to compel, and the time for doing so has elapsed.[1] Both motions are presently pending and ripe for resolution.

II. BACKGROUND INFORMATION

ICE served a Notice of Inspection (NOI) on Durable Packaging International, Inc. on June 15, 2011. Darren Anders, Chief Operating Officer (COO) of Durable Packaging International, informed ICE that there were actually two separately incorporated entities operating out of the company's location at 750 Northgate Parkway, Wheeling, Illinois, one being Durable Packaging International, Inc. (EIN 32-0188279) and the other Durable, Inc. (EIN 36-2057283).[2] ICE then served a separate Notice of Inspection on Durable, Inc. on June 24, 2011 under a different case number, and the two companies were thereafter treated separately. The government obtained both companies' information, including I-9 forms and attachments, a list of company officers, a list of employees with dates of hire, payroll reports, Illinois Corporate Annual Reports for both companies, an Amendment to the Articles of Incorporation for Durable, Inc., and the Articles of Incorporation for Durable Packaging International. ICE served separate Notices of Intent to Fine on both companies on November 20, 2012. Durable Packaging International did not contest the NIF and evidently agreed to pay the civil money penalty the government assessed. Durable, Inc., on the other hand, did contest the NIF, and filed a timely request for hearing. ICE filed its complaint on July 29, 2013.

During the course of the litigation the parties filed their respective prehearing statements. Durable's statement admitted the eight violations in Count I, and challenged the government's characterization of the six violations in Count II as substantive rather than technical or procedural. Durable also admitted 169 of the 170 violations in Count III, and six of the 116

[1] *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2013). A party has ten days in which to respond to a motion. 28 C.F.R. § 68.11(b). Where service has been made by ordinary mail, five days are added to the period. 28 C.F.R. § 68.8(c)(2). The motion was served on April 15, 2014 so Durable's response was due by April 30, 2014.

[2] Darren Anders is the Chief Operating Officer for Durable, Inc. as well.

violations in Count IV, but challenged the government's characterization of the remainder. Durable also said the fines were excessive compared to the nature of the violations, and that it was unreasonable for ICE to treat the company as a serial offender and aggravate the penalties based on the history of previous violations because the old violations occurred twenty-four years ago under different owners, because the current owners had not even been aware of the violations, and because the older violations were of a different character than those in the instant complaint.

III. STANDARDS APPLIED

A. Protective Orders

Discovery in OCAHO cases is broad, but not unlimited. Parties may obtain discovery by various methods, including written interrogatories and production of documents, but the frequency or extent of these methods may be limited by the administrative law judge. 28 C.F.R. § 68.18(a). Parties generally may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the proceeding. 28 C.F.R. § 68.18(b). OCAHO rules were modeled on the Federal Rules of Civil Procedure (FRCP), and federal case law provides general guidance in situations otherwise not provided for. 28 C.F.R. § 68.1.

OCAHO rules provide further that upon motion by a party from whom discovery is sought and a showing of good cause, an administrative law judge may issue a protective order. 28 C.F.R. § 68.18(c). The rules permit the administrative law judge to limit the frequency or extent of discovery methods either upon his or her own initiative or pursuant to a motion under subsection (c) of § 68.18. Like the analogous federal rule, our rule permits this office to limit the frequency or extent of discovery if it determines that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(iii).

Proportionality is key. As explained in *Goodman v. Burlington Coat Factory Warehouse Corp.*, 292 F.R.D. 230, 233 (D.N.J. 2013), under the rule of proportionality, "[t]here comes a point where the marginal returns on discovery do not outweigh the concomitant burden, expense, and bother," and the court must find the right balance.

B. Motions to Compel

A discovering party may move the administrative law judge for an order compelling a response to a discovery request. 28 C.F.R. § 68.23(a). The motion 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 judicial action. 28 C.F.R. § 68.23(b)(1)-(4); *see United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 4 (2000).[3]

IV. THE DISPUTES BETWEEN THE PARTIES

ICE's motion to compel, made in passing as part of the government's response to Durable's motion for a protective order, need not long detain us because the motion is perfunctory at best and, among other deficiencies, fails to include the required certification of good faith conferment. 28 C.F.R. § 68.23(b)(4); *Allen Holdings*, 9 OCAHO no. 1059 at 5 (explaining that a motion to compel filed under OCAHO procedures is prima facie valid only if it is accompanied by a certification of good faith conferment). ICE asks this office to issue an order compelling Durable to respond "fully and adequately" to the government's first request for production of documents and its first set of interrogatories. The government's motion to compel is facially insufficient and will be denied.

Durable's motion for a protective order says that ICE made twenty-three requests for production with ten additional subparts, and seventy-five interrogatories with sixty additional subparts, and that the requests are generally excessive, overbroad, unduly burdensome and not reasonably related to the matters at issue in this litigation. The company says it is responding in full or in part to Requests for Production (RFP) 1, and 9-12, and Interrogatories 1-9, 13, 19, 70-72, and 74-75, but that the requests are overbroad not only based on their sheer numerosity, but also because the majority ask for information and documents that are wholly irrelevant to this matter.

The company says further that it has already agreed to stipulate to most of the relevant facts and that the issues remaining to be decided are narrow. The discovery requests as a whole are thus both unduly burdensome and unreasonable where the only remaining issues in this case are whether certain of the errors in the company's I-9s constitute technical or procedural violations, and what the appropriate penalty should be. Durable accordingly requests a protective order excusing it from responding to the government's discovery requests, or in the alternative, an

[3] 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 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 in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage. htm# PubDecOrders.

order 1) limiting the requests to twenty-five interrogatories and ten requests for production, and 2) limiting the requests to documents, information, and time periods relevant to this matter. In the event the protective order is not granted, Durable requests fifteen days to respond to the discovery requests starting from the date the company receives notice of the decision. ICE argues in opposition to the motion that its discovery requests are neither unduly burdensome nor unreasonable, that Durable has failed to respond adequately to its requests, and that the company has not satisfied its burden to show that its objections are justified.

A. Requests Relating to Entities Other than Durable

Durable says that the interrogatories numbered 17-33 relate to Durable Packaging International, a different entity, or to other entities that are not even parties to this matter. The company says further that RFPs 2-7, 11, 12, 14, 16, 18, and 21 request documents relating to businesses other than Durable, Inc. even though it is unclear how documents from other legal entities would be relevant.

ICE contends that these requests are relevant because Durable has itself made the corporate veil an issue in this case by arguing that the previous violations occurred under different ownership, and that this argument, coupled with "the existence . . . of owners as family members, commingling, potential loans, guaranties of loans and distributions to and from corporations and owners, potential creation of successor corporations or other entities to avoid liability, have also made the corporate veil an issue as well." The government says that information related to the other entities is also relevant to the issue of good faith "to determine whether Respondent intentionally misled the government" when it stated that it had not had any correspondence with ICE or INS since its incorporation in 2006, when the company was actually incorporated decades earlier.

ICE says that Durable Inc. and Durable Packaging International, Inc. have been "operating interchangeably," and points out that almost all of Durable's I-9s identify "Durable Packaging" as the employer in section 2 of the I-9s. ICE characterizes the relationship between Durable and the other entities as "intriguing," and its inquiries as reasonable and relevant. The government contends that the relationships "between the entities and their owners, the commingling of financial or other assets, the distribution of profits, the pension and other benefits for their owners/officers/shareholders are all germane to determine Respondent's overall assets and whether the fine is reasonable."

But ICE's assertion that Durable itself is responsible for putting the corporate veil in issue is unwarranted. Durable has never claimed that it is not the same legal entity that was responsible for the earlier violations; it says only that those violations occurred twenty-four years ago under different ownership and officers, that the current owners and officers had previously been unaware of them, and that the violations were of a different character than the instant violations. Durable asks that these circumstances be considered, but does not suggest either that the earlier

violations did not occur, or that some other entity was responsible for them. Neither does Durable suggest that it lacks the resources to pay the penalty, or otherwise make any argument that would implicate the corporate veil.

Piercing the corporate veil, moreover, is a tool used only in extreme circumstances. *United States v. Kurzon*, 3 OCAHO no. 583, 1829, 1865 (1993). In determining whether to pierce the corporate veil, a court must consider not only whether there was a unity of interest and whether the shareholders lacked respect for the separate identity of the corporation, but also whether adherence to the corporate fiction would sanction a fraud, promote injustice, or lead to an evasion of legal obligations. *Id.* at 1865. Before a court will pierce the corporate veil, there must accordingly be some showing of "unfairness, injustice, fraud, evasion of existing obligations, use of the corporation to circumvent a statute, or some other inequitable conduct arising from the misuse of the corporate form." *Id.* at 1866. There has been no such showing. Whether or not the line between Durable, Inc. and Durable Packaging International, Inc. is blurred, there is no evidence suggesting that Durable, Inc. is using its corporate form either to avoid complying with IRCA or to avoid paying the penalty in this case. *Id.* at 1870; *cf. NLRB v. Bolivar-Tees, Inc.*, 551 F.3d 722, 731-32 (8th Cir. 2008) (finding that where defendant corporation purposely transferred assets to a second corporation to cause defendant to lack resources to satisfy an award, "adherence to the corporate fiction would sanction a fraud and lead to the evasion of a legal obligation").

In the absence of a demonstrated misuse of the corporate form, there is simply no justification for piercing the corporate veil. *See NLRB v. Greater Kan. City Roofing*, 2 F.3d 1047, 1055 (10th Cir. 1993). Our case law has emphasized, moreover, that caution must be exercised in imposing the burdens of discovery on nonparties. *See United States v. Ronning Landscaping, Inc.*, 10 OCAHO no. 1149, 5 n.6 (2012). ICE already conducted an inspection of Durable Packaging International, and could have obtained whatever information it needed during that inspection. Having obtained a civil money penalty for any claims it had against Durable Packaging, the government has not articulated sufficient grounds for seeking discovery from it now.

The issues remaining in this case are whether certain errors on Durable's I-9 forms constitute technical or procedural violations, and what the appropriate penalty is. Resolution of these issues does not call for discovery related to entities other than Durable, Inc., and the company's motion for a protective order will be granted for RFPs 2-7, 14, 16, 18, and 21, and the interrogatories numbered 17-18, and 20-33. Interrogatories 17-18 ask respectively whether Durable has ever been a party to any civil or criminal action or proceeding, or subject to penalties imposed by the Occupational Safety and Health Administration . The protective order will be granted because the information is irrelevant. The motion for protective order will also be granted for RFPs 11 and 12, and interrogatory 19, but only to the extent that the requests seek information regarding entities other than Durable, Inc. Durable evidently has responded in part to interrogatory no. 19 to the extent the request asks about whether Durable itself has been a party to other proceedings involving INS or ICE.

B. Broad Requests for Financial Data

Durable says ICE makes twenty-one requests for financial documentation directed not only to Durable itself, but also to its owners in their personal capacities as well as to their other businesses. These requests include RFPs 3-8 and 13-19, and interrogatories 10, 17, 20, 21, 24, 31, 34, and 35,[4] which request, inter alia, financial information from Durable and/or personal financial information from Durable's owners about their dividends, liens, ownership of other companies, bank accounts, credit, real property, and income from other sources. RFP 15, for example, requests Durable to produce "[a] copy of any and all deeds for any real estate property owned by Durable Inc.'s owners, including but not limited to Darren Anders, Gary Anders, Scott Anders, Corey Anders, and Brian Anders." The company says that not only are these documents irrelevant, they would also be extremely burdensome to produce. Interrogatory 35 similarly asks Durable to identify the personal assets of each of Durable's owners, shareholders and officers, including, but not limited to, bank accounts, bank credit available, real property, gross income, including but not limited to salaries, wages, benefits, and share of profits for each of the years 1988 to date.

ICE says these discovery requests are reasonable and relevant because they are necessary to determine "in relation to Respondent's overall financial assets" whether the penalty is reasonable, or disproportionate to the gravity of the offense. ICE contends that "[t]he relationships between the entities and their owners, the commingling of financial or other assets, the distribution of profits, the pension and other benefits for their owners/officers/shareholders are all germane to determine Respondent's overall assets and whether the fine is reasonable."

What nexus might exist between the gravity of the offenses at issue in this proceeding and the personal resources of the owners or the resources of other separately incorporated entities is not immediately apparent, and the government's bald assertion that their financial information is needed to determine whether the penalty is "reasonable" sheds little light on the question. *Cf. United States v. 817 N.E. 29th Drive, Wilton Manors*, 175 F.3d 1304, 1311 (11th Cir. 1999) (excessiveness of a penalty is determined in relation to the characteristics of the offense itself, not those of the offender). The government's response also points to *United States v. Symmetric Solutions, Inc.*, 10 OCAHO no. 1209, 11 (2014), where the respondent concealed the existence of employees and violated multiple laws governing employer conduct, and says that, "had evidence showed that Durable Inc. been accumulating huge profits from underpaying its work force (sic) through non-compliance of the I-9 requirements, any distribution or transfer of its assets to hide its undue gain are relevant to determine whether the fine is reasonable." But

[4] Because a protective order will be granted for reasons previously stated with respect to RFPs 2-7, 11, 12, 14, 16, 18, and 21, and interrogatories 17-33, the remaining discovery requests at issue here are RFPs 8, 13, 15, 17, and 19, and interrogatories 10, 34, and 35.

evidence does not show anything of the kind, and there is no reason to believe that Durable or any related entities engaged in similar conduct.

Our case law does sometimes consider the employer's own financial circumstances in evaluating whether a penalty is excessive. *See United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993) (declining to reduce the penalty based on the respondent's putative inability to pay, but finding that the penalty proposed was nevertheless "disproportionate to Minaco's revenues"). ICE cites to no case, however, suggesting that financial resources of nonparties should be an appropriate consideration in assessing a reasonable penalty. Except insofar as the Durable's resources may relate to the size of the business,[5] moreover, inquiry into all the details of the company's financial status, even of an employer company, is of limited utility, and inquiry into the financial status of individual shareholders would be justified only upon the showing mandated by *Kurzon*.

The statute governing civil money penalties provides that there are five specific factors that must be given due consideration in determining the amount of a penalty. These are the size of the employer's business, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and any history of previous violations. 8 U.S.C. § 1324a(e)(5).

When Congress wants to mandate consideration of a company's economic status in setting a civil money penalty, it is perfectly capable of saying so. *See, e.g., Merritt v. United States*, 960 F.2d 15, 17 (2d Cir. 1992) (where language of § 13(c) of the Shipping Act of 1984, 46 U.S.C. §1712(c), expressly requires consideration of ability to pay, Federal Maritime Commission may not impose fines without taking ability to pay into account); *see also Hutto Stockyard, Inc., v. USDA*, 903 F. 2d 299, 305-06 (4th Cir. 1990) (vacating and remanding for reconsideration of penalty where Packers and Stockyards Act, 7 U.S.C. § 213(b), requires consideration be given to the gravity of the offense, the size of the business, and the effect of the penalty on the person's ability to continue in business, and the agency considered only the first factor). Where, as here, Congress has elected not to make the offender's resources a required consideration, and the company has raised no defense implicating its ability to pay the penalty, the scope of discovery the government seeks is unjustified.

Durable's motion for a protective order will accordingly be granted regarding RFPs 13, 15, 17, and 19, and interrogatories 10, 34, and 35 to the extent they request personal financial

[5] The Chief Administrative Officer observed in *United States v. Felipe, Inc.*, 1 OCAHO no. 108, 726, 730-31 (1989), that it was not an abuse of discretion for the Administrative Law Judge to consider the company's ability to pay as a subfactor in assessing the employer's size. *But see United States v. Carter*, 7 OCAHO no. 931, 121, 160 (1997) (cautioning against confusing size with ability to pay); *accord United States v. Gasper*, 2 OCAHO no. 394, 757, 759 (1990) (ability to pay is not necessarily a factor to be considered as part of size).

information from individuals, or broad categories of financial information from Durable or other entities. The motion is denied with respect to RFP 8. Durable will be required to provide payroll tax returns filed with the Illinois Department of Revenue between 2007 and 2011 because Durable's recent financial status is arguably relevant. Its status twenty years ago is not.

C. Contention Interrogatories and Durable's Revised Prehearing Statement

Interrogatories 39-61, as well as 64, ask Durable to "state, specifically and in detail, the factual and legal bases upon which [it] rel[ies] to support" specific assertions in its revised prehearing statement. Other than referring to a different paragraph of Durable's revised prehearing statement, these interrogatories ask repetitively and in succession for the factual and legal bases of virtually every sentence in Durable's revised prehearing statement.[6] Durable objects to these requests as excessive, and also says they seek information protected by the attorney-client privilege and/or the attorney work-product doctrine, and that they seek to "invade and encroach upon the mental impressions, conclusions and opinions of Respondent's attorney, requiring Respondent to disclose its legal strategy." ICE points out that asking for the factual and legal bases of Durable's arguments does not require disclosing a legal strategy.

An interrogatory "is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact . . . ." 28 C.F.R. § 68.19(c). The OCAHO rule is similar to FRCP 33(a)(2), pursuant to which courts have generally held that an interrogatory seeking the underlying facts or legal basis of the responding parties' claim or assertion, known as a "contention interrogatory," is a permissible tool of discovery. *See, e.g.*, *Starcher v. Corr. Med. Sys., Inc.*, 144 F.3d 418, 421 n.2 (6th Cir. 1998). While contention interrogatories are generally permissible, those that ask for each and every fact, document, action, and application of law to fact, may be overbroad and unduly burdensome. *See Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007).

A party claiming a privilege bears the burden of establishing the privilege, and conclusory boilerplate objections do not suffice to do that. *See AAB Joint Venture v. United States*, 75, Fed. Cl. 448, 455 (2007). Here the company merely provides a blanket objection that fails to state what specific information is subject to privilege, and fails to include a privilege log. *See Ironworkers Local 455 v. Lake Constr. & Dev. Corp.*, 6 OCAHO no. 911, 1039, 1047-48 (1997) (finding privilege not established where only boilerplate objections are made). Unless privilege is adequately raised, there is no basis upon which a court can make an informed assessment of whether a privilege applies. Durable has accordingly not shown that any of the information the government seeks is protected by attorney-client privilege and/or the work product doctrine.

[6] Durable did not object to interrogatories 66-69 which ask the company to identify the factual bases for the statements made in Darren Anders' declaration.

Durable is correct, however, in asserting that the volume of these requests is excessive, as well as disproportionate to the needs of the case. Some contention interrogatories will be permitted, albeit fewer than ICE seeks. The government will have ten days in which to pose up to five contention interrogatories addressed to the assertions made in Durable's revised prehearing statement. Durable will respond to the interrogatories within ten days of receiving them. If Durable believes any responsive information is privileged, it will provide a privilege log explaining its objections with sufficient specificity to allow an informed assessment of whether a privilege actually applies.

D. Temporal Scope of Requests

The company also says that, despite the five-year statute of limitations in 28 U.S.C. § 2462, twenty-five interrogatories, including 1, 3, 5, 7, 9-14, 16-19, 24-28, 30-33, and 37-38, either have no temporal limitation whatsoever, or request information going back to the time of Durable's incorporation or the incorporation of some other entity. Durable says, moreover, that RFPs 1 and 20-23 also contain insufficient or nonexistent temporal limitations, and are overbroad and unduly burdensome.

The government contends that no statute of limitations applies here, and that, because Durable's previous violations in 1988-89 constitute one of the "critical elements of the case," the relevant period of inquiry reaches back twenty-five years. ICE also says that neither the declarations of Durable's officers stating that they were not aware of the company's operations before they became officers, nor Gary Anders' declaration that he has not been involved as an owner or officer since 2005, suffices to foreclose the government's inquiries.[7]

OCAHO case law permits limitations on the temporal scope of discovery where the requests are overly broad and unduly burdensome. *See, e.g., Allen Holdings, Inc.*, 9 OCAHO no. 1059 at 14 (disallowing production of meeting minutes from fourteen years before, and narrowing temporal scope to previous four years); *Sefic v. Marconi Wireless*, 9 OCAHO no. 1123, 18 (2007) (limiting temporal scope of discovery to a three-year period). Such restrictions are consistent with the principle of proportionality, which directs that the burden of the discovery should not outweigh its likely benefit in light of, inter alia, the needs of the case and the issues at stake in the action.

There is no genuine issue of material fact as to whether the previous violations occurred, and those violations are themselves not in issue. The parties instead just disagree as to what effect the previous violations should have in assessing the penalties in the instant case. Broad

[7] The government also says that its requests do have temporal or contextual limits, for example, RFPs 20-21 ask for electronic correspondence, and such correspondence only came into existence and common usage around 1996.

discovery requests reaching back twenty-five years are unduly burdensome and unlikely to lead to evidence bearing on the issues that are actually disputed in this case. Durable's motion for a protective order will be granted as to interrogatories 20-22. The motion will be denied with respect to RFPs 1 and 23, but the temporal scope will be narrowed to a five-year period.

The subject matter of RFP 23 will be narrowed to refer to employee handbooks, policies, procedures, or practices. Durable's motion for a protective order will also be granted with respect to interrogatories 37-38. The temporal scope of interrogatories 1, 3, 5, 7, 9, and 11-16 will also be narrowed to a five-year period. The subject matter of interrogatories 11 and 12[8] will be narrowed, respectively, to refer to any of Durable Inc.'s corporate by-laws, and/or amendments thereto, and "minutes of meetings of the shareholders, board of directors, and officers of Respondent and other documentary evidence of such meetings" related to *compliance with the employment verification requirements.*

E. Interrogatory No. 4

Interrogatory no. 4 asks Durable to identify "the location and the persons with access, custody and control of documents, including but not limited to the I-9 forms . . . ." "Document" is defined as "every writing of any description whatsoever, however generated and however stored, including computer generated or digitally stored, or any copy thereof in any form whatsoever, whether different from the original, wherever located, and whether or not in the possession, custody, or control of Respondent." Durable says that the only documents truly at issue are the I-9 forms themselves, and that the request is not only irrelevant, but also overly broad and unduly burdensome because this definition arguably covers every document in the world. The government agreed to modify Interrogatory no. 4 to read, "Identify, as above defined, the location and the persons with access, custody and control of I-9 forms and their accompanying documents for your answer to Interrogatory #3." Durable will respond to the interrogatory as modified and subject to the temporal limitations set forth *supra*.

F. Interrogatory no. 36

Interrogatory no. 36 asks Durable to identify in detail "every communication, written and/or oral, concerning the subject matter of this action . . ." between the company and ICE. Durable argues that the interrogatory is unduly burdensome, and that the government is in possession of this information and just as capable of compiling it. The government states in response only that Durable also requested information that the company was just as capable of compiling, but that ICE expended time and resources to comply. Durable's request for a protective order will be granted regarding Interrogatory no. 36. The information is equally available to both parties.

[8] Durable also argues that its by-laws and meeting minutes are irrelevant, but they could potentially be relevant to whether the company made good faith efforts to comply with the employment verification requirements.

G. Interrogatory no. 73

The government elected to withdraw Interrogatory no. 73, and no response is required.

H. Instructions for Interrogatories

Durable says that the instructions and definitions for answering the interrogatories only serve to increase the company's burden. For any individual identified, the government instructs Durable to provide a variety of information including the person's Social Security number and job description. For every document identified, Durable is instructed to list a) the name and job title of its author; b) its subject matter, title, date, and total number of pages; c) the page numbers that apply to a specific interrogatory; d) its type (e.g. letter, memorandum, report, diary, or chart); e) its present custodian and location; and f) a specific and detailed summary of the contents of the document. Durable says that, because the issues are narrow, the burden on the company to produce the requested information "far outweighs the minimal likelihood that any admissible evidence would be discovered." In response, the government says that "[l]itigations are always burdensome to litigants."

In identifying individuals, their social security numbers and job descriptions may be omitted, but their job titles are required. A common sense approach may be taken to document identification. The identification of a document in response to an interrogatory should be sufficiently specific to describe the nature of the document, the author and subject matter, the custodian and location, and the date. Specific and detailed summaries of the contents of each document are not required.

ORDER

ICE's motion to compel discovery is denied. Durable's motion for a protective order is granted in part and denied in part as more fully set forth herein. Unless otherwise provided herein, Durable will make whatever additional responses are required by this order within fifteen days.

The scheduling order for this matter was previously modified on May 13, 2014 in response to a joint motion by the parties. Dispositive motions are accordingly now due twenty-eight days from the date of this order and responses are due within thirty days after the filing of dispositive motions.

SO ORDERED.

Dated and entered this 5th day of June, 2014.

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Ellen K. Thomas
Administrative Law Judge

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

June 13, 2014

UNITED STATES OF AMERICA, Complainant, v. DURABLE, INC. Respondent.	))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 13A00093

ERRATUM

In the Order Denying Complaint's Motion to Compel Discovery, and Granting in Part and Denying in Part Respondent's Motion for a Protective Order issued on June 5, 2014:

In paragraph 4 on page 10, the text reading, "Durable's motion for a protective order will be granted as to interrogatories 20-22" is hereby corrected to read "Durable's motion for a protective order will be granted as to requests for production 20-22."

SO ORDERED.

Dated and entered this 13th day of June, 2013.

Ellen K. Thomas
Administrative Law Judge

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

June 18, 2014

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 13A00093
DURABLE, INC. Respondent.	)	

ERRATA

In the Order Denying Complaint's Motion to Compel Discovery, and Granting in Part and Denying in Part Respondent's Motion for a Protective Order issued on June 5, 2014:

1. In footnote 5 on page 8, the text in line 1 reading, "Chief Administrative Officer," is hereby corrected to read, "Chief Administrative Hearing Officer."

2. In paragraph 3 on page 9, the citation in line 2 reading "*ABB Joint Venture v. United States*, 75, Fed. Cl. 448, 455 (2007)," is hereby corrected to read "*ABB Joint Venture v. United States*, 75 Fed. Cl. 448, 455 (2007)."

SO ORDERED.

Dated and entered this 18th day of June, 2013.

Ellen K. Thomas
Administrative Law Judge