

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

United States of America, Complainant v. Manca Imports, Respondent; 8
U.S.C. § 1324a Proceeding; Case No. 90100203.

ORDER GRANTING COMPLAINANT'S MOTION FOR SANCTIONS

On September 10, 1990, Complainant filed a Motion to Compel Discovery. The Motion is based upon Complainant's ``Request for Production of Documents,' ' which was served upon Respondent on July 31, 1990. The specific requests set out in Complainant's ``Request for Production of Documents' ' relate to all counts of the Complaint.¹

¹There are fourteen (14) separate requests for production, which are as follows: (1) Request #1 asks Respondent for ``any and all Employment Eligibility Verification Forms (Forms I-9) prepared on behalf of the Respondent which relate to' ' the 253 named individuals in Count I; (2) Request #2 asks Respondent for ``any and all contracts, agreements, or retainers which relate to' ' the fourteen individuals listed in Count I; (3) Request #3 asks for ``any and all applications for employment which relate to' ' the fourteen individuals listed in Count I; (4) Request #4 asks Respondent for ``any and all IRS Forms W-4 relating to any' ' of the fourteen individuals listed in Count I; (5) Request #5 asks Respondent for ``any and all wage and working hours records, payroll records and tax statements relating to any' ' of the fourteen individuals listed in Count I; (6) Request #6 asks Respondent for ``any and all Employer's Quarterly Reports of Employees Wages for Manca Imports, Inc., for 1989 and 1990' '; (7) Request #7 asks Respondent for ``any and all documents received from the Immigration and Naturalization Service' '; (8) Request #8 asks Respondent for ``any and all tax returns regarding or including Manca Imports, Inc., for 1987, 1988, and 1989' '; (9) Request #9 asks Respondent for ``any and all cancelled checks to any of the' ' individuals listed in Count I; (10) Request #10 asks Respondent for ``any and all documents that show the amount of payroll for Manca Imports, Inc., for 1987, 1988, 1989 and 1990' '; (11) Request #11 asks Respondent for ``any and all documents that show the number of employees for Manca Imports, Inc., for 1987, 1988, and 1990' '; (12) Request #12 asks Respondent for ``any and all Articles of Incorporation for Manca Imports, Inc.' '; (13) Request #13 asks Respondent for ``any and all documents that show the length of time Manca Imports, Inc. has been in business' '; and (14) Request 14 asks Respondent for ``any and all Corporate License Renewal/Annual Report for Manca Imports, Inc.' '

On September 28, 1990, I discussed Complainant's Motion with both parties during a pre-hearing telephonic conference. At that time, I advised Respondent that there was good cause for granting Complainant's motion and directed Respondent to answer Complainant's discovery requests on or before October 12, 1990.

On October 1, 1990, I issued a written Order confirming my directive to Respondent to answer Complainant's discovery requests by October 12, 1990.

On October 31, 1990, Complainant filed a Motion for Sanctions, pursuant to 28 CFR § 68.21, stating that, as of October 29, 1990, it had not received a response from Respondent to its ``Request for Production.''

In its Motion for Sanctions, Complainant requests:

- A. That the Court hold the Respondent in contempt of this Court for its blatant disregard of the Court's order;
- B. That the Court conclude that the Employment Eligibility Verification Forms (Forms I-9) do not exist for the persons identified in Request no. 1, Request for Production of Documents; 28 C.F.R. § 68.21(C)(1);
- C. That the Court rule that, for purposes of this proceeding, the Respondent may not introduce into evidence or otherwise rely upon the documents requested in Complainant's Request for Production of Documents in opposition to any claim in the Complaint; 28 C.F.R. § 68.21(c)(3);
- D. That the Court require the Respondent and Respondent's attorney pay reasonable expenses, including attorney's fees, caused by Respondent's willful disobedience of this Court's order; FRCP 37(b)(2);
- E. That the Court order the Respondent to fulfill its legal obligation to produce the documents at issue. Furthermore, that the Court penalize Respondent by assessing a monetary penalty for each day Respondent fails to comply with the discovery order;
- F. That the Court take such action that is just in this instance.

On November 7, 1990, Respondent filed a response to Complainant's Motion for Sanctions stating, inter alia, that (1) ``the motion is moot in that Respondent, by separate filing, has acknowledged that the Complainant is entitled to partial summary judgment on the allegations of paperwork violations''; (2) ``complainant has been aware that the great bulk of what it has been requesting, i.e. I-9 forms for the great majority of the employees during the period set forth in the Complaint, simply are not capable of being produced as they do not exist''; (3) ``the respondent has been attempting to comply with the court's prior order compelling discovery. However, its ability to comply has been limited by the fact that it has no full time office personnel and only one full time employee, that being Mr. Manca''; (4) ``the respondent has advised Mr. Salazar that it can produce whatever documents are available in Mr. Salazar's office by the close of business on Wednesday, November 5,

1990. The documents produced could then be delivered to Mr. Paulson's office by the close of business on November 6, 1990''; (5) ``respondent should not be held in contempt, particularly where the respondent has conceded that the Complainant should be entitled to summary judgment on the paperwork violations''; (6) ``that no attorney fees should be paid by the respondent for the filing of the two page motion where counsel for respondent has previously conceded (sic) at the telephone conference that the motion for partial summary judgment would not be contested as the documents requested do not exist and are known by all parties not to exist''; and (6) ``there is no basis for assessing attorney's fees against respondent's counsel as it is not counsel's fault that his client has been unable to produce the documents requested.''

Respondent has had over three months to answer Complainant's Request for Production of Documents. During that period of time, there was no motion filed by Respondent to limit the number or scope of the requests for documents for any reason. Moreover, there was no request by Respondent for additional time to gather the necessary documents for production.

Respondent's argument that it has not had the manpower to complete the task of production does not prevent its counsel from filing an appropriate motion to obtain additional time. Respondent's argument that the government knew that the ``documents'' did not exist may or may not be true for some of the requests but certainly not for all. More importantly, if the documents did not exist, that would not prevent a party from so indicating in its response to the Requests for Production.

Respondent's decision to supply some of the documents to the government at a time and place decided by Respondent shows a total misunderstanding of administrative procedure in this court. If a party requests a change in how and when it shall respond to court orders, it should file an appropriate motion and request with the ALJ. Respondent in this case has decided, sua sponte, how it intends to respond to orders and discovery requests. I cannot tolerate such disrespect for the rules and regulations of these proceedings.

I therefore find, from the record before me, that Respondent has failed to respond to (1) Complainant's ``Request for Production of Documents;'' and (2) my Order of October 1, 1990, directing Respondent to respond to Complainant's discovery on or before October 12, 1990. I further find that sanctions against Respondent are appropriate in this case.

Although I find sanctions are appropriate in this case, I do not find it necessary to grant all of the Complainant's requested sanctions because some of them are moot and others highly punitive.

Accordingly, pursuant to 28 C.F.R. § 68.21(c), I hereby grant Complainant's Motion for Sanctions to the extent that, for purpose of this proceeding, Respondent may not introduce into evidence or otherwise rely upon the documents requested in Complainant's ``Request for Production of Documents'' in opposition to any claim in the Complaint; and, Respondent shall on or before November 30, 1990, produce, where available, any and all documents requested by Complainant's ``Request for Production.''

SO ORDERED: This 19th day of November, 1990, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge