

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

June 19, 2020

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00010
)	
GIG PARTNERS,)	
Respondent.)	
_____)	

ORDER ON DISCOVERY MOTIONS AND RESETTING DEADLINES

I. 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, 8 U.S.C. § 1324b(a)(1)(B). On October 31, 2019, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, GIG Partners, Inc. Complainant alleges that Respondent discriminated against him based on his citizenship status and national origin and retaliated against him. Respondent filed an answer on January 13, 2020. On February 12, 2020, the undersigned issued an Order for Prehearing Statements requiring the parties to file prehearing statements and included in the Order a proposed case schedule. Complainant did not file his prehearing statement by the due date, so the undersigned issued an Order to Show Cause on March 27, 2020. Complainant filed his prehearing statement and a statement of good cause on April 13, 2020. Respondent filed its prehearing statement on April 15, 2020. On April 24, 2020, the undersigned issued an order discharging the Order to Show Cause and set the case schedule.

On June 4, 2020, Complainant filed a Motion for Extension to File Discovery Materials, a Motion for Extension to Submit Interrogatories, a Motion to Compel Discovery and Request Sanctions, a Motion for Issuance of Subpoena Duces Tecum for Commonwealth of the Northern Mariana Islands Department of Labor Employees, and a Motion for Issuance of Subpoena Duces Tecum for NiiZeki Interational Saipan Co, Ltd. (d/b/a) Gig Partners, Inc. and Bassano Bar. Respondent did not file a response to the various motions.

II. DISCUSSION

Complainant is appearing pro se. Based on the documents he filed, it appears that Complainant seeks an order compelling Respondent to respond to his discovery requests, an extension of time for discovery, and subpoenas for several individuals.

A. Motion to Compel

Complainant's Motion for Extension to Compel Discovery and Request Sanctions appears to be a motion to compel, thus, the Court will construe it as a motion to compel. Complainant seeks an order compelling Respondent to respond to his requests for documents and other tangible things. Complainant contends that Respondent has not responded to his discovery requests. Complainant attached several emails he sent to Respondent's counsel seeking information and documents from Respondent. Mot. Compel, Ex. 1–4. Exhibits 1, 2, and 4 consist of emails Complainant sent to Respondent's counsel in 2018 and in January 2019, well before he filed his OCAHO complaint. *Id.* Exhibit 3 contains two emails sent on April 14, 2020, with lists of specific requests for information, documents, and other tangible things. Mot. Compel, Ex. 3. The requests in Exhibit 3 are the only requests he sent to Respondent during the course of the OCAHO proceedings. Thus, the Court finds the Motion to Compel is limited to the requests in the two April 14, 2020, emails in Complainant's Exhibit 3.

An OCAHO Administrative Law Judge (ALJ) has the authority to “compel the production of documents” and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28. *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016). 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, the OCAHO rules require motions to compel to 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.
- § 68.23(b).

Complainant's two April 14, 2020, emails contain fourteen specific requests for documents, information, and other tangible things. Mot. Compel, Ex. 3. The emails indicate that Complainant previously sent discovery requests and spoke to Respondent's counsel about his requests. Mot. Compel Ex. 3. He states that Respondent did not respond to his requests at all. Complainant asserts that he has tried to meet and confer with Respondent's counsel regarding the issue of discovery and possible settlement. Thus, Complainant's motion to compel meets the requirements in § 68.23(b). Respondent did not respond to the Motion to Compel.

The Court finds that Complainant served discovery requests on Respondent on April 14, 2020, at the latest, and Respondent has not responded to the requests. As such, Respondent is compelled to respond to Complainant's discovery requests listed in Complainant's April 14, 2020, emails to

Respondent's counsel. See Exhibit 3 of the Motion to Compel. Respondent must respond to Complainant's discovery requests on or before **July 10, 2020**.

B. Discovery Sanctions

Complainant also asks the Court to grant discovery sanctions in the amount of \$500 per day for each day that Respondent fails to respond to his discovery requests. OCAHO ALJs may impose sanctions for failure to comply with discovery orders pursuant to 28 C.F.R. § 68.23(c). The list of sanctions in § 68.23(c) does not include monetary sanctions. *Id.* The weight of OCAHO authority states that the OCAHO rules "do not permit the imposition of monetary sanctions for failure to comply with discovery orders." *Palma v. Alufase USA, LLC*, 10 OCAHO no. 1213 (citing *United States v. Nu Look Cleaners*, 1 OCAHO no. 274, 1771, 1780 (1990) (action by CAHO vacating ALJ's decision and order); *De Leon v. Longoria Farms*, 13 OCAHO no. 1320a, 5 (2019)). Thus, Complainant's request for monetary sanctions is DENIED.

C. Subpoenas

Complainant asks the Court for an order permitting him to issue a number of subpoenas duces tecum. The OCAHO rules permit an ALJ to issue subpoenas upon a party's request, including subpoenas for production of documents or other tangible things in their possession or under their control. 28 C.F.R. § 68.25(a). "A subpoena may be served by overnight courier service or overnight mail, certified mail, or by any person who is not less than 18 years of age." *Id.*

Further, the OCAHO rules require that the "subpoena identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable." § 68.25(b). When a nonparty is subpoenaed, "the requestor of the subpoena must give notice to all parties." *Id.* The receipt of the subpoena or a copy of the subpoena constitutes "notice." *Id.* The party serving a subpoena must ensure that the date to respond to the subpoena is at least ten days after the date the subpoenaed party receives the subpoena. § 68.25(c).

1. CNMI Department of Labor Employees

Complainant requests subpoenas for the "Commonwealth of the Northern Mariana Islands [(CNMI)] Department of Labor Employees: Mr. James Ulloa and Bonifacio Castro." Mot. Subpoena Duces Tecum for CNMI. In the body of his motion, Complainant provides a list of items he seeks and states that the subpoena duces tecum "would be issued to: Secretary of the Commonwealth of the Northern Mariana Islands Department of Labor: Vicky I. Benvente[.]" *Id.* at 2. In the same motion, Complainant also names Bonifacio Castro and James Ulloa and provides separate specific items he requests from each individual. *Id.* at 3. Complainant did not provide the subpoenas with his motion. While the ALJ has the authority to issue subpoenas on her own initiative pursuant to § 68.25, it is not clear who Complainant seeks to subpoena or what documents he seeks to subpoena from whom. Thus, the ALJ declines to issue a subpoena on her own initiative based on Complainant's motion.

If Complainant seeks to subpoena documents and other tangible items, OCAHO provides a subpoena form on the OCAHO website.¹ Complainant may follow the instructions on the subpoena form and complete the required items on the form. Complainant may then submit the subpoena forms to the ALJ and the ALJ may issue the subpoenas.

As such, Complainant's Motion for Issuance of Subpoenas Duces Tecum for CNMI Department of Labor Employees is DENIED. If Complainant still seeks subpoenas for these individuals, **on or before July 3, 2020**, Complainant may submit his completed subpoena forms to OCAHO pursuant to the instructions above and the instructions on the forms.

2. Subpoena Respondent's Counsel

Complainant also seeks to subpoena documents from Respondent's counsel, Colin Thompson. Complainant's motion in support lists documents he seeks and states that he wants the Court to "instruct the respondent to produce all requested discovery items" listed. Mot. Subpoena Duces Tecum Thompson. The items listed include documents and metadata, and numerous other documents related to Respondent's business. *Id.* It appears that Complainant is actually seeking to subpoena documents from Respondent rather than through requests for production of documents under § 68.20.

A subpoena is not the appropriate method for obtaining discovery responses from the opposing party. *See* 28 C.F.R. §§ 68.23, 68.25. Discovery of documents from an opposing party is not accomplished through a subpoena, instead, a party may request documents from the opposing party pursuant to OCAHO rules § 68.20. *See Contardo v. Merrill Lynch*, 119 F.R.D. 622, 624 (D. Mass. 1988). Further, when the opposing party fails to respond or responds inadequately to discovery requests, the appropriate procedural mechanism for obtaining responses is a motion to compel. *See* 28 C.F.R. § 68.23(a).

Thus, a request for production of documents is the proper procedural mechanism to obtain documents from the opposing party. Complainant's Motion to Issue a Subpoena to Respondent's Counsel is DENIED.

III. EXTENSION AND RESET DEADLINES

In Complainant's Motion to Compel, he seeks a 30–60 day extension of the deadlines in this matter, so he can complete discovery. Complainant also filed an identical motion titled Motion for Extension for Discovery Materials and a Motion for Extension to Submit Interrogatories. Complainant claims that he cannot compose and serve interrogatories on Respondent until Respondent provides the documents he requested. Discovery closed on June 3, 2020 and dispositive motions are currently due on July 6, 2020. Since the Court is granting Complainant's Motion to Compel, the parties will need additional time to complete discovery. Thus,

¹ OCAHO's subpoena form can be found at <https://www.justice.gov/eoir/form-eoir-30-instructions>.

Complainant's request for extension of the discovery deadline is GRANTED. The deadlines in this case are reset as follows:

Discovery closes: August 3, 2020

Dispositive motions due: September 4, 2020

Responses to dispositive motion due: September 25, 2020

Tentative hearing date: November 17, 2020

IV. CONCLUSION

Complainant's Motion to Compel is GRANTED. Respondent must respond to Complainant's discovery requests on or before July 10, 2020. Complainant's request for monetary sanctions is DENIED. Complainant's motions for issuance of subpoenas duces tecum are DENIED. Complainant's subpoena duces tecum to Respondent's counsel is not the appropriate mechanism for seeking discovery from the opposing party. Complainant may seek subpoenas for CNMI Department of Labor employees and he must file his subpoena forms with OCAHO by July 3, 2020. Complainant's request for extension of the discovery deadline is GRANTED. The deadlines in this case have been reset.

SO ORDERED.

Dated and entered on June 19, 2020.

Jean C. King
Chief Administrative Law Judge