

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

August 21, 2020

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

ORDER ON MOTION TO COMPEL AND SUBPOENAS

I. BACKGROUND

On June 4, 2020, Complainant filed a number of discovery motions, including a Motion for Issuance of Subpoena Duces Tecum for Commonwealth of the Northern Mariana Islands (CNMI) Department of Labor Employees (DOL), and a Motion for Issuance of Subpoena Duces Tecum for NiiZeki International Saipan Co, Ltd. (d/b/a) Gig Partners, Inc. and Bassano Bar. Respondent did not file a response to the motions. On June 19, 2020, this Court denied, in relevant part, the Motion for Issuance of Subpoena Duces Tecum to Respondent’s counsel as an inappropriate form of discovery, and denied the motion as to DOL because Complainant did not provide completed subpoena forms and did not clearly identify who he was seeking a subpoena from or clearly identify the items he seeks. This Court invited Complainant to refile the subpoenas as to the DOL employees pursuant to the instructions provided in the order and on the Office of the Chief Administrative Hearing Officer (OCAHO) website. On June 30, 2020, Complainant refiled his request for an order permitting him to issue subpoenas duces tecum to three DOL employees. Complainant provided three subpoena forms (FORM EOIR-30), and a motion. On July 8, 2020, the undersigned issued an order denying Complainant’s requests for the issuance of subpoenas to the three DOL employees because the subpoena forms submitted did not contain an appropriate time, date, and location to submit the documents in response to the subpoenas.

On July 9, 2020, Complainant filed a Motion to Cure seeking additional time to cure the deficiencies in the subpoenas for the DOL employees. On July 10, 2020, Complainant filed a document titled Motion to Compel Discovery and Request Sanctions in which he sought an additional 60–90 days for discovery and monetary discovery sanctions. On July 15, 2020, Respondent filed a status report regarding discovery which shows that Respondent attempted to

send Complainant its discovery responses in May 2020 via certified mail. The package was returned to Respondent on June 26, 2020, as unclaimed. Respondent states that the package containing the discovery responses was available for Complainant to pick up at Respondent's counsel's office. On July 21, 2020, the undersigned issued an order denying Complainant's second motion to compel and explained that Complainant could pick up Respondent's discovery responses at Respondent's counsel's office. The undersigned also found the motion to cure Complainant's subpoenas was moot as the discovery deadline had not yet passed, so Complainant still had time to resubmit the subpoenas he sought, and the undersigned declined to further reset the discovery deadline of August 3, 2020.

On August 2, 2020, Complainant filed a third motion to compel and request for sanctions. Complainant also submitted four subpoenas duces tecum to be issued by the undersigned. Respondent did not file a response to the motion to compel.

## II. DISCUSSION

### A. Motion to Compel

In Complainant's third Motion to Compel and Request for Sanctions, Complainant again 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 argues that, pursuant to the July 21, 2020, Order denying the motion to compel, he picked up the package containing Respondent's responses from Respondent's counsel's office. Complainant contends that the package is "not the discovery which the court has granted to [him] . . . the attorney is attempting to control and create the narrative of this hearing by denying [him] the discovery in which was granted." August 2, 2020 Mot. Compel at 2. Complainant attached several emails he sent to Respondent's counsel seeking information and documents from Respondent. Mot. Compel, Ex. 1–2. Exhibits 1 and 2 consist of the same two emails Complainant sent to Respondent's counsel on April 14, 2020, which the Court previously construed as Complainant's discovery requests to which Respondent was required to respond. *Id.* Exhibit 3 consists of Respondent's Status of Discovery Responses dated July 9, 2020, which includes a letter from Respondent's counsel to Complainant with a list of general objections and a list of the discovery responses contained on the compact disc it produced.

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. *Zajradhara v. Gig Partners*, 14 OCAHO no. 1363, 2 (2020); *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 motion does not point to any specific discovery requests to which Respondent did not respond. Instead, Complainant states that Respondent's discovery responses "are not the discovery which the court has granted to [him], that is why [he] sent his [Motion to Compel, dated July 10, 2020.]" August 2020 Mot. Compel at 2. He also states that he filed charges against Respondent with the Equal Employment Opportunity Commission and IER each year from 2014–2019, so it is "disingenuous of either the company or the attorney to state that the 'statute of limitations regarding employee record keeping has lapsed.'" *Id.* Complainant does not further explain or support his broad statements regarding the discovery responses.

Further, beyond Respondent's general objections and the list of responses or documents contained on the compact disc, Complainant did not provide Respondent's responses to the discovery requests. Complainant did not provide any specific argument in favor of his motion other than the broad above-quoted arguments, and Complainant did not provide a certification that he conferred in good faith with Respondent's counsel prior to filing the motion to compel at issue. As such, Complainant's third Motion to Compel does not meet the requirements for a motion to compel pursuant to § 68.23(b). These requirements serve a purpose: they provide the basis upon which to rule, and they encourage parties to work together to solve discovery disputes. *Mbitaze v. Greenbelt Police Dept.*, 14 OCAHO no. 1360a, 2 (2020). Therefore, Complainant's Motion to Compel is DENIED.

#### B. Discovery Sanctions

For a third time, Complainant 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. The Court has already twice explained that the OCAHO rules "do not permit the imposition of monetary sanctions for failure to comply with discovery orders." *Zajradhara*, 14 OCAHO no. 1363 at 3; *see De Leon v. Longoria Farms*, 13 OCAHO no. 1320a, 5 (2019).

Complainant should be mindful of the Court's prior rulings in this case, particularly on this specific request, and shall not continue to request monetary discovery sanctions. Thus, Complainant's request for discovery sanctions is DENIED.

#### C. Subpoenas

Complainant also submitted four subpoenas duces tecum on OCAHO's Subpoena Form and asks the undersigned to issue the subpoenas. Specifically, Complainant seeks subpoenas for Bonifacio Castro; James Ulloa; Edward E. Manibusan, the Attorney General of the CNMI; and Vicky Benavente of the CNMI DOL. On August 13, 2020, the undersigned issued subpoenas for James Ulloa and Bonifacio Castro. Thus, the only subpoenas at issue are those for Benavente and Manibusan.

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).

On the subpoena form for Vicky Benavente, in the section which requires a description of the documents or evidence sought by the subpoena, it states, "Please, see attached subpoena information page, Exhibit 2b #." Complainant provided a document electronically labeled as Exhibit 2b# with the subpoenas, but the actual document is titled "Exhibit 1a#" and lists only the information sought from Bonifacio Castro and James Ulloa. Similarly, on the subpoena form for Edward E. Manibusan, the description of the documents or evidence sought states, "Please, see attached subpoena information page, Exhibit 3c #." Complainant provided a document electronically labeled as Exhibit 3c, but the actual document suffers from the exact deficiencies as Exhibit 2b. Thus, it is not clear what documents or information Complainant seeks to subpoena from Edward E. Manibusan and Vicky Benavente. Therefore, the ALJ declines to issue these two subpoenas.

### III. CONCLUSION

Complainant's Motion to Compel did not meet the requirements of 28 C.F.R. § 68.23(b). Thus, Complainant's Motion to Compel is DENIED. OCAHO does not have the authority to grant monetary discovery sanctions. As such, Complainant's request for monetary discovery sanctions is DENIED. Complainant's subpoenas for Vicky Benavente and Edward E. Manibusan did not contain the information or documents sought. Therefore, the undersigned declines to issue subpoenas for Benavente and Manibusan.

SO ORDERED.

Dated and entered on August 21, 2020.

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Jean C. King  
Chief Administrative Law Judge