

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

February 2, 2023

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2021B00020
	)	
LBC MABUHAY (SAIPAN) INC.	)	
Respondent.	)	
_____	)	

Appearances: Zaji Obatala Zajradhara, pro se, for Complainant  
Colin Thompson, Esq., for Respondent

ORDER DENYING COMPLAINANT’S MOTION

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. On February 19, 2021, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, LBC Mabuhay (Saipan) Inc. Complainant alleges that Respondent discriminated against him because of his citizenship status and national origin. Compl. 6.<sup>1</sup>

On September 24, 2021, the Court issued an Order to Show Cause Regarding Jurisdiction, requiring Complainant to show cause “demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent alleged in the Complaint.” OTSC Jurisdiction 2.<sup>2</sup>

<sup>1</sup> Pinpoint citations to the complaint are to the internal pagination of the PDF file rather than to the page numbers printed at the bottom of the pages.

<sup>2</sup> “[T]he Court lacks subject matter jurisdiction over a national origin discrimination claim if the employer employs less than four or more than fourteen employees.” OTSC Jurisdiction 2 (citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7 (2021)). Similarly, the Court lacks jurisdiction over citizenship discrimination claims if the employer employs less than four employees. *Id.*; see also U.S.C. §§ 1324b(a)(1)(A), 1324b(a)(2)(A).

On April 25, 2022, the Court discharged the Order to Show Cause Regarding Jurisdiction. *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423, 1 (2022).<sup>3</sup> The Court noted Complainant provided a submission indicating Respondent had the jurisdictional number of employees. *Id.* at 3; *see* 8 U.S.C. § 1324b(a). The Court then stated that the operative complaint was deficient since it did not specify the number of employees Respondent had. *Id.* at 4; *see* Compl. 4. Accordingly, the Court, *sua sponte*, granted Complainant leave to amend his complaint to include jurisdictional facts. *Id.* Critically, the Court warned that “[i]f Complainant fails to amend his complaint within the allotted time [of June 13, 2022], his complaint may be dismissed for failure to plead jurisdiction as required by [28 C.F.R.] § 68.7(b)(1).” *Id.* Complainant did not file an amended complaint by the June 13, 2022 deadline. Complainant did not file an amended complaint.

Bearing in mind Complainant’s *pro se* status, the Court issued an Order to Show Cause to Complainant Regarding Amended Complaint on August 10, 2022. *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423a, 1 (2022). The Court ordered Complainant to “show cause explaining why he failed to timely amend his complaint,” and to “file his amended complaint.” *Id.* at 2. Both filings were due by August 25, 2022. *Id.*

On September 27, 2022, the Court issued an Order Granting Complainant’s Request to Extend Deadline to Respond to Show Cause Regarding Amended Complaint. *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423b, 1 (2022). The Court extended the Order to Show Cause deadlines by 60 days; making the new filing deadline November 28, 2022. *Id.* at 3.

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The Court repeatedly identified to Complainant that the original complaint did not provide the number of employees Respondent employs, and that Complainant has the burden to establish jurisdiction. Compl. 4; *see Zajradhara v. LBC Mabuhay (Saipan), Inc.*, 16 OCAHO no. 1423, 1, 4 (2022) (April 2022 order); *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423a, 1, (2022) (August 2022 order); *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423b, 1 (2022) (September 2022 order).

<sup>3</sup> 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 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/ocahosisbpage.htm#PubDecOrders>.

On October 4, 2022, Complainant filed a “Motion in Response to Order to Show Cause Regarding Amended Complaint” (Show Cause Response). Complainant’s Show Cause Response included emails sent by Complainant to Respondent’s law firm. *See* Show Cause Resp. 4–9. Through the emails, Complainant alleges, inter alia, that they (presumably Respondent) had between four and fifteen employees around 2019–20. *Id.* While Complainant responded to the show cause order, he did not file an amended complaint.

In the April 25, 2022 Order Discharging Order to Show Cause and Granting Complainant Leave to Amend Complaint, Complainant was put on clear notice that failure to plead jurisdiction as required by 28 C.F.R. § 68.7(b)(1) could lead to dismissal of the Complaint, and that a response to an order to show cause is not a *de facto* amendment to a complaint. The Court repeated this warning in its August 22, 2022 Order to Show Cause to Complainant Regarding Amended Complaint, and its September 27, 2022 Order Granting Complainant’s Request to Extend Deadline to Respond to Show Cause Regarding Amended Complaint.

Complainant declined to amend his jurisdictionally deficient complaint, despite being provided multiple opportunities to do so (over the course of a year).

On January 3, 2023, the Court advised Complainant that the “appropriate disposition of a jurisdictionally deficient complaint is dismissal of the case.” *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, 16 OCAHO no. 1423c, 3 (2022) (citing *Boyd v. Sherling*, 6 OCAHO no. 916, 1113, 1120 (1997)). The Court then noted it was “unable to execute a final case disposition,” and elected to stay the proceedings. *Id.* (citations omitted); *see A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381h, 2 n.4 (2021). The Court further explained:

During the stay of proceedings for *Zajradhara v. LBC Mabuhay (Saipan) Inc.*, the Court will not consider or adjudicate submissions filed by the parties. The parties are not precluded from contacting the Court and requesting a status update; however, parties should bear in mind that the Court will timely inform the parties in writing when the stay is lifted.

*Id.* On January 4, 2023, Complainant filed his “Motion in Response to Order to Show Cause Regarding Amended Complaint and Removal of Stay” (Motion). In his filing, Complainant describes personal hardship, which caused him to focus on issues other than the instant case. *See* Mot. 2. He also cites to his pro se status as a factor in his inability to meet deadlines or comply with orders. *See id.* at 2–3. Complainant then asks the Court “not to dismiss my case.” *Id.* at 3. Respondent did not file an opposition.

It appears that Complainant is seeking relief from this Court’s January 3, 2023 Order; thus, the Court will construe the filing as a motion for reconsideration of an interlocutory order.<sup>4</sup>

## II. LEGAL STANDARDS

“Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Adidas Am., Inc. v. Payless Shoesource, Inc.*, 540 F. Supp. 2d 1176, 1179 (D. Or. 2008) (quoting *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).<sup>5</sup>

Because “OCAHO’s Rules of Practice and Procedure do not contemplate motions for reconsideration of interlocutory orders[,]” the Court turns to the Federal Rules of Civil Procedure as permissive guidance. *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381b, 2 (2021) (citations omitted); *see* 28 C.F.R. § 68.1.<sup>6</sup>

The “power to modify an interlocutory order is authorized by . . . Federal Rule 54(b).” *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285a, 1 n.1 (2018) (citations omitted); *see also Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10–12 (2021); *Ogunrinu v. Law Res.*, 13 OCAHO no. 1332b, 4 (2019); *United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1071, 7–8 (2001); *United States v. Four Star Knitting, Inc.*, 5 OCAHO no. 815, 711, 716 (1995).

The decision to grant or deny a motion for reconsideration pursuant to Federal Rule 54(b) is a discretionary one. *Baldwin v. United States*, 823 F. Supp. 2d 1087, 1099 (D. N. Mar. I. 2011); *see Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 585–586 (D. Ariz. 2003) (citations omitted) (surveying district court approaches for reconsideration of interlocutory orders). “Motions for reconsideration are disfavored [and] are not the place for parties make new arguments not raised in their original briefs.” *Motorola, Inc.*, 215 F.R.D. at 582 (citation

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<sup>4</sup> OCAHO’s rules “defin[e] an order as interlocutory when it ‘decides some point or matter, but is not a final order or a final decision of the whole controversy; it decides some point or matter, but is not a final order or a final decision[.]’” *A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381(l), 5 n.2 (2021) (quoting 28 C.F.R. § 68.2).

<sup>5</sup> As this case arises in the CNMI, the Court consults caselaw from the United States Court of Appeals for the Ninth Circuit. *See* 28 C.F.R. § 68.57.

<sup>6</sup> Pursuant to 28 C.F.R. § 68.1, “[t]he Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by [the OCAHO] rules, by the Administrative Procedure Act, or by any applicable statute, executive order, or regulation.”

omitted).<sup>7</sup> Further, a successful motion for reconsideration does not repeat argument contained in the original motion or opposition. *Id.* at 586.<sup>8</sup>

Grounds for reconsideration may include:

- (1) material differences in fact or law from that presented to the Court and, at the time of the Court’s decision, the party moving for reconsideration could not have known of the factual or legal differences through reasonable diligence;
- (2) new material facts that happened after the Court’s decision;
- (3) a change in the law that was decided or enacted after the Court’s decision; or
- (4) The movant makes a convincing showing that the Court failed to consider material facts that were presented to the Court before the Court’s decision.

*Id.*

### III. DISCUSSION

The Court’s January 3, 2023 Order addressed the sufficiency of the operative complaint, and Complainant’s inability to amend the complaint despite multiple opportunities to do so. Accordingly, the Court issued a stay of proceedings.

Complainant has failed to meet his burden on reconsideration. Complainant did not present new material facts or law (or a failure to consider material facts) related to his failure to file an amended complaint showing Respondent employs between 4 and 14 employees.<sup>9</sup> While the Court appreciates Complainant’s pro se status, motions for reconsideration cannot be used to relitigate old matters. *See Motorola, Inc.*, 215 F.R.D. at 582; *Unigestion Holding, S.A.*, 2022 WL 2714007, at \*2; *Brown*, 2015 WL 2807688, at \*2.

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<sup>7</sup> Indeed, “Rule 54(b) is not a mechanism to get a ‘do over’ to try different arguments or present additional evidence when the first attempt failed.” *Unigestion Holding, S.A. v. UPM Tech., Inc.*, No. 3:15-CV-185-SI, 2022 WL 2714007, at \*2 (D. Or. July 13, 2022) (citing Stephen S. Gensler & Lumen N. Mulligan, 2 FED. R. CIV. P., RULES AND COMMENTARY, Rule 54 (2022)).

<sup>8</sup> “[I]t is not appropriate for a party to request reconsideration merely to force the court to think about an issue again in the hope that it will come out the other way the second time.” *Brown v. S. Nevada Adult Mental Health Servs.*, 2015 WL 2807688, at \*2 (D. Nev. June 20, 2014).

<sup>9</sup> As stated above, the Court repeatedly informed Complainant that a response to an order to show cause order was not a *de facto* amendment to a complaint.

Therefore, Complainant's motion is DENIED. The stay remains in place.

SO ORDERED.

Dated and entered on February 2, 2023.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge