

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

April 25, 2022

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

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

ORDER DISCHARGING ORDER TO SHOW CAUSE AND
GRANTING COMPLAINANT LEAVE TO AMEND COMPLAINT

I. BACKGROUND

On April 12, 2021, the Court issued an Order Setting Case Schedule (Scheduling Order) setting deadlines in the case. Discovery closed on June 21, 2021 and dispositive motions were due July 21, 2021. Scheduling Order 2. To date, neither party has filed a dispositive motion.

On September 24, 2021, the Court issued an Order to Show Cause Regarding Jurisdiction (OTSC) requiring Complainant to “demonstrate[e] the Court has jurisdiction over the allegations in the Complaint.” OTSC 3. The Court noted that it only had “subject matter jurisdiction over unfair immigration-related employment practices only if the employer employs more than three employees.” *Id.* at 2 (citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7 (2021)).¹

¹ 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

Thus, Complainant's failure to list the number of employees leaves unresolved whether the Court has jurisdiction over the instant case. *Id.*

Respondent was invited, but not required, to file a response to the OTSC. *Id.* Responses to the OTSC were due within 45 days of issuance of the order. *Id.* Thus, responses were due by November 15, 2021. *See id.*, 28 C.F.R. § 68.8(a), (c)(2).

On November 10, 2021, Complainant timely filed his "Laymans" Declaration in Support of the Order to Show Cause – Jurisdiction" (Declaration Response to OTSC).

On March 9, 2022, Complainant filed his "Laymans" Motion in Response to Order to Show Cause Regarding Jurisdiction" (Motion in Response to OTSC).

II. PARTIES' POSITIONS

A. Declaration Response to OTSC

In his declaration, Complainant attests that when he arrived for his interview at Respondent's office, he observed six employees, including the interviewing manager and two women working at the counter. Decl. Resp. OTSC 1–2. Complainant also provided in the body of his declaration what appears to be an email dated October 27, 2021 from Respondent stating Respondent has four employees. *Id.* at 2.

B. Motion in Response to OTSC

In his motion, Complainant provides a summary of several interactions in the instant case. Mot. Resp. OTSC 1–2. He also attaches several exhibits of snippets of email chains between Complainant and Respondent's law firm. *Id.* at 2–5. Additionally, Complainant states he may need to subpoena a third party. *Id.* at 2. Notably, Complainant does not request the undersigned take that action in the instant case.

III. DISCUSSION

A. Evidence Provided

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

The proponent of documentary evidence must “authenticate a document by evidence sufficient to demonstrate that the document is what it purports to be[.]” *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted).

Affidavits are reliable if “they are sworn and signed by the affiants, . . . contain facts that would be admissible in evidence, . . . rely on personal knowledge. . . [and] show that the affiants are competent to testify to the matters stated therein.” *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1113, 14 (2004).

The screenshot of the email that appears to have been “cut and pasted” onto a continuous page raises concerns of reliability as it is not a complete record of correspondence. *See Zajradhara v. Gig Partners*, 14 OCAHO no. 1363c, 10 (2021). Moreover, Complainant does not provide the context of the email screenshot. *See Carpio-Lingan*, 6 OCAHO no. 914, at 5. Therefore, the Court concludes the emails, presented in this way, are not reliable evidence. In contrast, Complainant’s declaration is sufficiently reliable as it is “based on [Complainant’s personal knowledge and observation and made under penalty of perjury.” Decl. Resp. OTSC 1.

B. Discharge of Order to Show Cause

An OCAHO complaint must contain “[a] clear and concise statement of facts, upon which an assertion of jurisdiction is predicated.” 28 C.F.R. § 68.7(b)(1) This forum maintains “minimal standards of notice pleading[.]” *Jablonski v. Yorkson Legal*, 12 OCAHO no. 1273, 3 (2016).

Here, Complainant’s filings alleges facts that demonstrate Respondent has a jurisdictional number of employees. *See Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 (9th Cir. 1996) (finding that the complainants complied with OCAHO’s pleading standard in providing “a clear and concise statement of facts for each violation alleged to have occurred”); *cf. Gege v. Bridgeport Jai-Alai*, 3 OCAHO no. 537, 1361, 1369 (1993) (finding that the complaints failed to satisfy § 68.7(b)(1), (b)(3) when they “fail[ed] to recite facts to support either an assertion of jurisdiction or violation of law”). Specifically, Complainant’s submission indicates Respondent had six employees, which is “[a] clear and concise statement of facts upon which an assertion of jurisdiction is predicated” as required by 28 C.F.R. § 68.7(b)(1).

Therefore, the undersigned DISCHARGES the Order to Show Cause.

C. Complainant’s Motion in Response to OTSC

OCAHO defines a motion as “an oral or written *request*, made by a person or a party, for some action by an Administrative Law Judge[.]” 28 C.F.R. § 68.2 (emphasis added). In

Complainant's Motion in Response to OTSC, he does not request a specific action.² Therefore, the Court DENIES his Motion in Response to OTSC.

D. Leave to Amend Complaint

With the question of jurisdiction resolved, the Court now turns to the Complaint in this case. The Complaint, in its current form, is deficient because it pleads no facts regarding the jurisdictional number of employees. This omission is fatal, and could be grounds for dismissal. This issue must be resolved if this litigation is to continue. A response to an order to show cause is not a *de facto* amendment to a complaint.

OCAHO's rules provide the following guidance on amended complaints:

If a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint.

28 C.F.R. § 68.9(e).

Providing Complainant leave to amend his complaint would facilitate a determination on the merits. Complainant's amended complaint must allege jurisdictional facts - specifically that Respondent employs a minimum of three employees, and possibly between three and fourteen employees.

The Court GRANTS Complainant leave to amend his complaint to include jurisdictional facts related to the number of employees pursuant to § 68.9(e). *Cf. Johnson v. Mammoth Recreations*, 975 F.2d 604, 607 (9th Cir. 1992) ("Under [Federal] Rule [of Civil Procedure] 15(a), leave to amend should be granted as a matter of course, at least until the defendant files a responsive pleading.").

Complainant has until June 13, 2022 to file his amended complaint with the Court and serve it on Respondent. Respondent shall have until July 21, 2022 to file an answer.³

If Complainant fails to amend his complaint within the allotted time, his complaint may be dismissed for failure to plead jurisdiction as required by § 68.7(b)(1).

² Complainant did not explicitly request a subpoena. 28 C.F.R. § 68.25 provides further guidance on subpoenas.

³ The Court elects to provide the parties a more generous deadline because this is not an e-filing case and the parties are located in the Northern Mariana Islands.

SO ORDERED.

Dated and entered on April 25, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge