

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

April 19, 2022

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2021B00019
	)	
MISAMIS CONSTRUCTION (SAIPAN) LTD.,	)	
Respondent.	)	
_____	)	

ORDER DISCHARGING OTSC AND GRANTING COMPLAINANT  
LEAVE TO AMEND COMPLAINT

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On February 8, 2021, Complainant Zaji Obatala Zajradhara filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent Misamis Construction (Saipan) Ltd., alleging that Respondent discriminated against him because of his national origin and citizenship status, and then retaliated against him for exercising his rights under § 1324b. Compl. 8, 11.<sup>1</sup>

Respondent did not file an answer.

On June 16, 2021, Complainant filed a “Layman’s Motion for Summary Judgment” (Motion for Default Judgment) requesting that Respondent “be found in DEFAULT AND THAT [Complainant] BE GRANTED SUMMARY JUDGMENT,” and requesting back pay. Motion for Default Judgment, 1–2.

On September 1, 2021, the Court issued an Order to Show Cause – Jurisdiction requiring Complainant “to show cause demonstrating the Court has jurisdiction over the actions allegedly taken by Respondent outlined in the Complaint.” *Zajradhara v. Misamis Constr. (Saipan) Ltd.*,

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<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.

15 OCAHO no. 1396, 4 (2021).<sup>2</sup> The Court has “subject matter jurisdiction over unfair immigration-related employment practices only if the employer employs more than three employees.” *Id.* at 3 (citing *United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7 (2021)). Further, “the Court lacks subject matter jurisdiction over a national origin discrimination claim if the employer employs less than four or more than fourteen employees.” *Id.* (citing *Facebook, Inc.*, 14 OCAHO no. 1386b, 6–7).

Complainant, who has the burden to establish jurisdiction, did not provide any information in his complaint regarding the number of employees Respondent employs. *Id.* The Court has an independent obligation to determine if it has subject matter jurisdiction. *Id.* (citing *Sinha v. Infosys*, 14 OCAHO no. 1373, 2 (2020)). Because jurisdiction remained unresolved, the Court deferred analysis of the Complainant’s Motion for Default Judgment. *Id.* at 4.

Complainant’s response to the Order to Show Cause was due by October 6, 2021. *See id.* at 4; 28 C.F.R. § 68.8(c)(2). On October 15, 2021, Complainant filed his “Laymans’ Reply in Support of Complainant’s Order to Show Cause - Supplemental Evidence” (Response to OTSC).

On November 8, 2021, Complainant filed his “Laymans’ Reply In Support of Complainants’ Order to Show Cause Request for Subpoena Upon the CNMI Dept of Labor” (Subpoena Request) in which he requests the undersigned issue a subpoena to the Northern Mariana Islands’ Department of Labor to ascertain the number of employees Respondent has.

## II. COMPLAINANT’S SUBMISSION

Although Complainant’s Response to OTSC was untimely, the Court will consider the submission because Complainant is pro se and he is filing via mail from the Northern Mariana Islands. *See A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381n, 2 (2021) (citations omitted); *see also Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.1) (“The [OCAHO] ALJ maintains discretion to accept pleadings within a time period [s]he may fix.”). Complainant, however, is on notice that future untimely filings may not

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<sup>2</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/ocahosibpage.htm#PubDecOrders>.

be treated with such leniency and may be rejected outright as untimely. *See Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 2–3 (2021).

Complainant states that Respondent has more than three employees and attaches ten exhibits in support. Resp. OTSC 1. Complainant provides “Bills No. 1–10” which are on Respondent’s letterhead. These documents appear to be invoices for services Respondent provided from around October 2018 through February 2019 and list employees’ names. While the number of employees changed weekly, the range (including the operations manager) was three to fourteen employees from October 2018 through February 2019.

### III. LEGAL STANDARDS AND DISCUSSION

#### A. Pleading Standard for Jurisdiction and 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 Response to OTSC alleges facts that indicate Respondent has the 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 that Respondent had between four and fourteen 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.

#### B. Complainant’s Subpoena Request

Because the Order to Show Cause is discharged, his request for a subpoena to the Department of Labor to determine Respondent’s number of employees is unnecessary. Therefore, the Court DENIES Complainant’s Subpoena Request as MOOT.

#### C. 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 May 23, 2022 to file his amended complaint with the Court and serve it on Respondent. Respondent shall have until July 7, 2022 to file an answer.<sup>3</sup>

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).

Because the current complaint is deficient, Complainant's Motion for Default Judgment (based on a deficient complaint) is DENIED as MOOT.

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<sup>3</sup> 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 19, 2022.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge