COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS

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COMMONWEALTH REGISTER

VOLUME 41
NUMBER 10
OCTOBER 28, 2019

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COMMONWEALTH REGISTER

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Department of Commerce

COMMONWEALTH OF THE NORTHERN MARIAN ISLANDS
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Ralph DLG. Torres, Governor ∞ Arnold I. Palacios, Lt. Governor ∞ Mark O. Rabauliman, Secretary of Commerce

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Department of Commerce Enforcement and Compliance Division

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 41, Number 08, pp 042773 - 042783, of August 28, 2019

Proposed Tour Company Vehicle Permit Registration Rules and Regulations of the Department of Commerce, Enforcement and Compliance Division: No Changes

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Secretary of the Department of Commerce, HEREBY ADOPTS AS PERMANENT regulations the Proposed Tour Company Vehicle Permit Registration Rules and Regulations of the Department of Commerce, Enforcement and Compliance Division, which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The Secretary of the Department of Commerce announced that it intended to adopt them as permanent, and now does so. A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted without modification or amendment [except as stated as follows]:

1. Part 200 Section 201, the signage height should read Height Minimum instead of Height Maximum.

Category	Passenger Capacity	Height ~~Maximum~~ Minimum
Category A	1 to 8 Passengers	2.5 inches
Category B	9 to 18 Passengers	3.5 inches
Category C	19-Up Passengers	6.0 inches
Category D	Temporary Vehicle Permit (All Capacity)	-

The visibility of the signage is contingent on the size of the vehicle for any passenger capacity. By setting the height threshold to the minimum, larger vehicle require larger signage letters for visibility from distance.

PRIOR PUBLICATION: The prior publication was as stated above. The Secretary of the Department of Commerce hereby adopts the regulations as final.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None. The Secretary of the Department of Commerce further request and direct that this adoption be published in the Commonwealth Register.

AUTHORITY: The Secretary of Commerce ("Secretary") has authority to adopt rules and regulations regarding matters that fall within the jurisdiction of the Department of Commerce, in accordance with 1 CMC § 2454 (Department of Commerce general authority to adopt rules and regulations); 4 CMC § 51420(b) (authority to adopt rules and regulations for Tour Company Vehicle Permit Registration); 1 CMC

§§ 9101–9115 (procedures for adoption of regulations under the Commonwealth Administrative Procedure Act).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has placed through its website, for public comments, the Proposed Tour Company Vehicle Permit Registration Rules and Regulations of the Department of Commerce, Enforcement and Compliance Division, which were published in the Commonwealth Register at the above-referenced pages, for full consideration of all written and oral submissions respecting the proposed regulations.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

After fulfillment of the 30 days publication, the Department of Commerce did not receive any written or oral submission from the general public, prior to this adoption or within 30 days thereafter. Therefore, the agency did not issue any concise statement of the principal reasons for and against its adoption.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 18th day of October, 2019, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Mark. RLL — 10.3.19

MARK O. RABAULIMAN
Secretary of Commerce

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 4 day of October, 2019.

EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:

Esnesbitt — 10.09.2019

ESTHER SN. NESBITT
Commonwealth Register

Date

COMMONWEALTH CASINO COMMISSION
Commonwealth of the Northern Mariana Islands
P.O. Box 500237 Saipan, MP 96950
Telephone: +1 (670) 233-1857/58
Facsimile: +1 (670) 233-1856
E-mail: info@cnmicasinocommission.com

COMMISSION ORDER NO: 2019-004

Order Confirming Stipulated Resolution in Complaint 19-001

(Executive Director v. Imperial Pacific International (CNMI), LLC)

For good cause determined at the September 26, 2019 public meeting of the Commonwealth Casino Commission, which was duly publicly noticed, and based on the authority granted by the laws of the Commonwealth (including but not limited to Public Laws 18-56 and 19-24) and the Regulations of the Commonwealth Casino Commission ("Commission"), NMIAC Chapter 175-10.1, the Commission hereby finds and **ORDERS AS FOLLOWS**:

1. WHEREAS, Public Law 4 CMC §2314(b)(2) authorizes the Commission to promulgate regulations as may be necessary to properly supervise, monitor and investigate to ensure the suitability and compliance with the legal, statutory and contractual obligations of owners, operators, and employees of casinos; and

2. WHEREAS, based in part on the foregoing authority, the Commission enacted §175-10.1-610 of the CNMI Casino Regulations dealing with the annual license fee which the casino licensee must remit to the CNMI Government. Pursuant to §175-10.1-610(b), the annual license fee is due every year on August 12th for the entire term of the casino license agreement; and

3. WHEREAS, information came to the attention of employees of the Commission's Audit, Compliance, and Enforcement & Investigations Divisions that the casino licensee, Imperial Pacific International (CNMI), LLC ("IPI") was not in compliance with the timely payment of the annual license fee as required by CNMI law and the regulations promulgated by the Commission; and

4. WHEREAS, Investigators of the Commission's Division of Enforcement & Investigations, in conjunction with employees of the Commission's Division of Audit, investigated and compiled evidence sufficient to lead them to believe that violations of the Commission's regulations, more specifically §175-10.1-610(b), did in fact occur; and

5. WHEREAS, as part of the investigation, enforcement, and resolution process, the Executive Director utilized and filed Complaint 19-001 and thereafter utilized the stipulation authority granted him by §175-10.1-2535(c) to reach the Stipulated Agreement which was presented to the Commission in August 28, 2019 and again in the Commission's September 26, 2019 regular meeting, and specifically conditioned on acceptance by the Commission;

6. WHEREAS, The Executive Director found, and the Commission recognizes, the massive effects of Super Typhoon Yutu as mitigation for the alleged offenses; and

7. WHEREAS, the Commission has considered the Stipulated Agreement, the positions of the parties, and the best interests of the people of the CNMI, and has determined, for reasons discussed at the public meeting held on September 26, 2019, that the interests of justice will best be served if the Stipulated Agreement is confirmed in its entirety; **NOW, THEREFORE**,

8. IT IS HEREBY ORDERED that the Stipulated Agreement presented to the Commission in the public meeting held on September 26, 2019, including all consideration of all kinds, including but not limited to all dismissals, settlements, payments, duties, releases, waivers, and forbearances, is confirmed in its entirety; and

9. IT IS HEREBY FURTHER ORDERED that the casino licensee, shall, tender the full settlement amount of Three Hundred Seventy-Five Thousand Dollars ($375,000.00) and shall strictly adhere to the payment schedule ordered by the Executive Director as referenced on Attachment A, time being of the essence; and

10. IT IS HEREBY FURTHER ORDERED that the casino licensee, shall ensure that all required fee payments are timely made as required by applicable Commonwealth laws, regulations, or otherwise; and

11. IT IS HEREBY FURTHER ORDERED that the Chairman or the Executive Director shall take steps necessary to ensure that this Order is published in the Commonwealth Register without reasonable delay; and

12. IT IS HEREBY FURTHER ORDERED that this Order is to take effect immediately or at the earliest time allowed by law, and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission.

SO ORDERED this 26th day of September, 2019.

Signature: _____

JUAN M. SABLAN
CHAIRMAN

COMMONWEALTH CASINO COMMISSION
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PAYMENT SCHEDULE
"Attachment A"

Per Stipulated Resolution
(DEI#19-0006-I; Complaint 19-001)

In Re: Imperial Pacific International (CNMI), LLC

Please make check payable to: **CNMI Treasurer** Account **#1000 - 42341**

	MONTH/DAY/YEAR	AMOUNT	CHECK NUMBER	DOF RECEIPT #
1.	November 01, 2019	$50,000	_____	_____
2.	December 02, 2019	$50,000	_____	_____
3.	January 02, 2020	$50,000	_____	_____
4.	February 03, 2020	$50,000	_____	_____
5.	March 02, 2020	$50,000	_____	_____
6.	April 01, 2020	$50,000	_____	_____
7.	May 01, 2020	$50,000	_____	_____
8.	June 01, 2020	$25,000	_____	_____

TOTAL PAYMENT $375,000

Payment Schedule Approved by: _____ Date: 9/26/19
Edward C. DeLeon Guerrero
Executive Director

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 19-007**
Zaji O. Zajradhara,	)	
Complainant,	)	**ADMINISTRATIVE ORDER RE: OSC**
v.	)	
Donghui Kengxindun Corporation dba DH Kengxindun Apartment,	)	
Respondent.	)	

I. INTRODUCTION

This matter was scheduled for an Order to Show Cause on October 23, 2019 at 10:00 at the CNMI Department of Labor, Administrative Hearing Office. Complainant Zaji O. Zajradhara ("Complianant") failed to show. Respondent Donghui Kengxindun Corporation dba DH Kengxindun Apartment ("Respondent") was present and represented by Corporate Secretary Rong Kun Xiao and Attorney Tiberius Mocanu. The Department's Enforcement, Monitoring and Compliance Section ("Enforcement") was also present and represented by Investigators Bonifacio Castro, Jerrick Cruz, and Arlene Rafanan.

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II. DISCUSSION

Upon a review of the record and oral arguments, the undersigned finds that Respondent failed to show cause as to why they failed to report to Enforcement and appear at the Prehearing Conference.

On June 3, 2019, the undersigned issued a Referral and Scheduling Order that set several deadlines and gave notice of the Prehearing Conference and Administrative Hearing. Among other things, the Referral and Scheduling Order set a deadline to report to Enforcement for an investigative interview, set a Prehearing Conference for September 26, 2019,[1] and set an Administrative Hearing Date for October 9, 2019.[2] Despite sufficient notice, the parties failed to report to enforcement and failed to appear to the Prehearing Conference. On September 26, 2019, the undersigned issued an Order to Show Cause to both parties for their failure to report to Enforcement and failure to appear at the Prehearing Conference.[3] On October 9, 2019, the matter was then continued to October 23, 2019 pursuant to Respondent's Motion to Continue Hearing due to counsel's representation of an off-island scheduling conflict.[4]

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[1] As stated by the Referral and Scheduling Orders, any and all pending motions would be heard during the above-scheduled Prehearing Conference. On June 3, 2019, Respondent filed a Motion to Dismiss Complaint. Therein, Respondent argued there was "just cause" to support the decision not to hire Complainant. On June 11, 2019, Complaint filed a Response to Motion to Dismiss Complaint. A decision on the motion was pending arguments at the Prehearing Conference.

[2] The records show that the Referral and Scheduling Order was personally served to Respondent's authorized representative on June 3, 2019 and Complainant on June 11, 2019. Clearly, Respondent's counsel received this Order as he filed a subsequent notice of unavailability.

[3] The Order to Show Cause Hearing was scheduled to be conducted immediately before the noticed Administrative Hearing on October 9, 2019. The records show that the Order to Show Cause was electronically served to the parties on September 26, 2019.

[4] Both parties were electronically served pursuant to NMIAC § 80-20.1-475(d)(4) on October 9, 2019. Parties were served using the electronic mail contact provided by each party. Based on above, both parties had sufficient service and adequate notice of the above-stated hearings.

Complainant failed to appear for the Order to Show Cause Hearing.[5] Further, Respondent's counsel of record failed to appear.[6] Attorney Mocanu represented that the counsel of record did not have notice to appear and did not know he was required to appear considering the written determination issued by the Department's Enforcement Section.

The reasoning provided by Respondent is underwhelming. First, the Referral and Scheduling Order clearly set the deadlines and notices to appear. If the Referral and Scheduling Order was dutifully read, the parties would know a determination would be issued prior to the scheduled hearings. Second, the Referral and Scheduling Order was personally served to Respondent's authorized representative. Specifically, the authorized representative appeared at the Administrative Hearing Office and signed for the document. Third, Enforcement's determination is simply a written product of their investigation and recommendation to the Administrative Hearing Officer. *See Zajradhara v. Woo Jung* Corporation, LC-18-059 (Administrative Order issued May 16, 2019) (page 6, ¶ 17). Clearly, Enforcement has no authority to issue an Administrative Order, decision, or ruling on a labor case referred to Enforcement for investigation. *See* NMIAC § 80-20.1-470(a) ("Investigators may make such written report of the investigation as may be useful, but no written determination is required."). Further, a careful read of the determination clearly states a simple **"RECOMMENDATION"** to clear Respondent of allegations. Determination at 3. Lastly, the fact that Respondent did not even participate in an investigative interview yet believed that Enforcement's investigators made a legally binding decision in favor of Respondent is illogical and unsupported by the applicable precedential and regulations. That lack of due diligence simply cannot be rewarded in this Office.

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[5] It is unclear whether Complainant is still interested in pursuing his claim against Respondent. Despite efforts to reach Complainant the Administrative Hearing Office has been unable to reach him at the contact information provided to the Department.

[6] Attorney Mocanu is an associate of the counsel of record, Stephen J. Nutting. While there is no notice of appearance filed by Mr. Mocanu in this Office, Mr. Mocanu verbally represented he was counsel to Respondent. As an aside, the undersigned notes that it particularly concerning that the counsel of record did not personally appear for the Order to Show Cause or file a motion for a continuance for good cause shown.

III. CONCLUSION

Based on above, the undersigned finds that Respondent failed to show good cause for failure to report to Enforcement and appear at the Prehearing Conference. Considering that oral arguments for pending motions were scheduled to be heard during the Prehearing Conference, as stated in the Referral and Schedule Order, the undersigned finds denial of Respondent's pending motion appropriate. Accordingly, for failure to report Enforcement and appear at the scheduled Prehearing Conference, Respondent's Motion to Dismiss Complaint is hereby **DENIED**.

So ordered this **23rd** day of October, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

ORIGINAL

In the Matter of:	)	**Labor Case No. 19-007**
Zaji O. Zajradhara,	)	
Complainant,	)	**ADMINISTRATIVE ORDER GRANTING DEFAULT JUDGMENT**
v.	)	
Donghui Kengxindun Corporation dba DH Kengxindun Apartment,	)	
Respondent.	)	

I. INTRODUCTION

This matter was scheduled for an Administrative Hearing on October 23, 2019 at 10:30 a.m. at the CNMI Department of Labor, Administrative Hearing Office. Complainant Zaji O. Zajradhara ("Complianant") failed to show. Respondent Donghui Kengxindun Corporation dba DH Kengxindun Apartment ("Respondent") was present and represented by Corporate Secretary Rong Kun Xiao and Attorney Tiberius Mocanu. The Department's Enforcement, Monitoring and Compliance Section ("Enforcement") was also present and represented by Investigators Bonifacio Castro, Jerrick Cruz, and Arlene Rafanan.

II. LEGAL STANDARD

Pursuant to the Northern Mariana Island Administrative Code, "[e]xcept for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing

such findings and conclusions as may be appropriate." NMIAC § 80-20.1-480(l). "When an application for an entry of default or a default judgment occurs such application is a representation that due service has been made of all pleadings or papers required by [the regulations] to be made as a condition to the relief sought." NMIAC 80-20.2-135(a). "A party who has been prejudiced by failure to receive due notice may apply to the agency for appropriate relief." NMIAC 80-20.2-135(b).

III. DISCUSSION

Upon Complainant's failure to show to the present Administrative Hearing, Respondent orally moved for default judgment. Upon a review of the record, the undersigned declares the following findings of fact and conclusions of law:

1. On October 9, 2019, the undersigned issued a Notice of Hearing scheduling the present Administrative Hearing for October 23, 2019 at 10:30 a.m. at the Administrative Hearing Office;
2. Both parties were electronically served pursuant to NMIAC § 80-20.1-475(d)(4) on October 9, 2019;
3. The parties were served using contact information provided to the Department.
4. Based on above, both parties had sufficient service and adequate notice of the above-stated hearings;
5. On October 23, 2019, Complainant failed to show to the noticed hearings; and
6. Complainant did not provide any prior notice or excuse regarding his absence.

In consideration of the above findings and conclusions, the undersigned hearing officer deems default judgement is appropriate. Complainant's failure to appear shall be deemed a waiver of any right to pursue or contest the allegations in the complaint.

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IV. JUDGMENT

Accordingly, pursuant to NMIAC §80-20.1-480(l), default judgment is hereby entered in favor of Respondent.

So ordered this **23rd** day of October, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Zaji O. Zajradhara, Complainant, v. Nippon General Trading Corporation (SAIPAN) dba Country House Restaurant, Respondent.	**Labor Case No. 19-025** **ORDER DENYING COMPLAINANT'S MOTION TO RECUSE**

I. INTRODUCTION

This matter came before this Office pursuant to Complainant's Laymans' Motion for Continuances to Write Various Orders and Responses Due to Overt Bias and Prejudice of Sitting Hearing Officer [1] ("Complainant's Motion for Recusal" or "Complainant's Motion").[2] The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion for Recusal is hereby **DENIED**.

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[1] While Complainant asks for a continuance, the basis and allegations in the motion is actually requesting a recusal. Accordingly, Complainant's Motion will be construed as a motion for recusal.

[2] Complainant submitted this motion in connection with Labor Case No. 19-025, Labor Case No. 19-026, Labor Case No. 16-024, and Labor Case No. 17-020. It is unclear whether Complainant has served his motion to the applicable opposing party or opposing counsel.

II. LEGAL STANDARD

Pursuant to Northern Mariana Islands Administrative Code,

> [a] hearing officer shall be impartial. A hearing officer ***may*** voluntarily enter a recusal ***if the hearing officer's impartiality might be called into question***. A party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit based on facts as to which the affiant would be qualified to testify under evidentiary rules with respect to hearsay. The hearing officer shall decide the request based only on the written affidavit. If the hearing officer refuses the recusal, the hearing officer shall state the reasons for the refusal. A party may contest the refusal by written petition to the Secretary.

NMIAC § 80-20.1-460(d) (emphasis added).[3]

III. DISCUSSION

Pursuant to NMIAC § 80-20.1-460(d), the undersigned refuses to recuse herself for the following reasons:

1. Complainant's Motion is untimely.

On June 3, 2019, the undersigned issued a Referral and Scheduling Order setting various deadlines and hearings. As stated in the Order, the parties' motions were due on or before July 31, 2019. Further, the Order stated that motion hearings, if any, may be heard during the Prehearing Conference. The Prehearing Conference was scheduled and held on August

[3] In comparison, when a litigant moves for recusal under 1 CMC § 3308, a trial judge is required to recuse himself or herself when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might be questioned. 1 CMC § 3308; *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 5. The standard for determining that a justice has personal bias or prejudice pursuant to 1 CMC § 3308 is an objective standard. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30. A justice should be disqualified if alleged bias or prejudice against a party is derived from an extra-judicial source. *Id.* The mere fact that a relationship exists between a judge and an interest party, without more, does not per se require disqualification. *Id.* at ¶ 33. However, when a recusal motion is based on allegations of friendship, the court must examine the nature and extent of the relationship, and make a judgment call concerning how close and how extensive and how recent these associations are or have been. *Id.*

27, 2019 at 1:30 p.m. at the Administrative Hearing Office. Now, Complainant's Motion comes at the eve of a final decision in the matter. Based, on the Referral and Scheduling Order, Complainant's Motion is untimely.

2. There is no alleged conflict of interest.

Here, Complainant makes a blanket statement or bald assertion of bias by the undersigned. Clearly, Complainant's Motion strongly opines a disdain for the current administration, the CNMI Department of Labor, and specifically, the undersigned Administrative Hearing Officer. In doing so, Complainant makes a flurry of scandalous and unverified statements. Notably, Complainant cannot point to a specific action or relationship to support his allegations of bias. Further, the allegations fall short of evidentiary rules and standards of hearsay.

In this matter, the undersigned has not engaged in confidential mediations with the parties. Also, the undersigned has no personal or financial stake in the matter. The undersigned has no familial, personal, or business relationship with either party, its' representatives, or its affiliated partners. Further, the undersigned does not stand to benefit or lose from any decision rendered in this case. The undersigned only seeks to apply and uphold the applicable law.

3. The undersigned's previous decisions were supported by law and reasoning.

A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [ ] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39.

Upon review, it appears that Complainant's Motion for Recusal really stems from the undersigned's prior decisions and rulings. Specifically, Complainant's Motion states: "1#, the 'hearing officer' is directly and overtly biased against the complainant, mr [*sic*] zajradhara [*sic*], this is made clear by reviewing ***every action*** against the complainant, every pre-hearing, every brief, even the scheduling, ..." Compl.'s Mot. at 1 (emphasis added).[4] Complainant further alleges:

> "THE NEWLY HIRED CNMI DEPT [*sic*] OF LABOR HEARING OFFICER, HAS MADE IT THEIR POINT, EXCERSIZE [*sic*] AND GOAL TO IN SOME WAY MAKE IT APPEAR THAT MY FILINGS ARE IN SOMEWAY 'ILLEGAL', AGGRESSIVE OR ANYOTHER [*sic*] FORM OF NEGATIVE OUT COMES [*sic*] OR OPINIONS."

Compl.'s Mot. at 1-2.

The undersigned holds impartiality, integrity, and respect for the law in the utmost regard. The above-stated allegations regarding previous decisions do not warrant recusal for a number of reasons. First, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. Second, the proper course of action for reprieve of a final order is appeal, not recusal in other cases. There has been no appeal of any of the undersigned's final decisions. Third, contrary to the applicable legal standard for recusals at the Administrative Hearing Office, the above-stated allegations as to the undersigned's goals are opinion, not fact. The only agenda this office has is application of the law. And fourth, despite Complainant's attempts to continuously undermine the authority and rulings of this office, a review of the orders, rulings, procedure, and cited legal authority shows the decisions were supported by the applicable law and reason.

[4] Notably, Complainant's Motion falls short of reviewing every action and only vaguely references previous rulings and cases.

In this matter, Complainant filed a complaint with two simple sentences—falling short of the necessary allegations for the multiple claims.[5] Considering the bare bones complaint failed to give an adequate notice of the violations and failed to state a claim, Complainant was ordered to file additional information.[6] Upon filing his additional information and allegations, an order was promptly issued referring the matter to the Department's Enforcement, Compliance, and Monitoring Section ("Enforcement"). Upon review of Respondent's Motion to Dismiss the claim for retaliation, Complainant's Response, and Enforcement's written determination of their investigation, the undersigned issued another order dismissing the claim for retaliation. Again, that dismissal was based on the applicable law.[7] Lastly, another order was issued after the Prehearing Conferencing. In part, this Order sanctioned Complainant for storming out of the Prehearing Conference during oral arguments. Sanctions were imposed pursuant to regulatory authority and precedent established by the former hearing officer.[8] As shown above, the undersigned has not acted improperly and has only held parties accountable to the applicable law. Accordingly, said allegations do not warrant recusal.

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[5] Simply, the Complaint alleged, "I applied for the job of waitstaff, I have experience [*sic*] I am being retaliated against for filing both local & federal claims against this Company. As I was not interviewed-nor hired- As a U.S. Citizen." Complaint at 1.

[6] The Order requesting additional information was supported by the Administrative Hearing Officer's authority, pursuant to NMIAC § 80-20.1-485(c)(14).

[7] The Order explained the Complainant failed to state a claim for retaliation under NMIAC § 80-20.1-455(l) as he was not an employee of Respondent. The Order further stated that this office has no jurisdiction to enforce federal statutes regarding retaliation. Despite the written explanation, Complainant mistakenly continued to argue that his claim for retaliation was valid at the Prehearing Conference instead of conceding the point.

[8] As stated in the Order, standards of conduct at the Administrative Hearing Office are regulated pursuant to NMIAC § 80-20.1-480(c). When Complainant was not allowed to interrupt the middle of oral arguments and simply asked to wait his turn, Complainant began to yell and stormed out. In another case, the former administrative hearing officer imposed sanctions for similar conduct. *See Zajradhara v. Yen's Corporation*, LC-17-040 (Interlocutory Order Re: Closing of Evidentiary Record; Respondent's Closing Argument; Sanction of Complainant issued January 22, 2018 at 1) (Complainant was sanction pursuant to NMIAC § 80-20.1-480(c) when he "erupted in an unprovoked outburst, then stormed out of the hearing office."). As a result of that hostile altercation before the former administrative hearing officer, the Department cautiously installed an emergency exit in the hearing room. Clearly, Complainant has demonstrated a pattern of abuse towards this office—regardless of the presiding hearing officer.

4. Complainant's allegations mischaracterize the proceedings and rulings.

Complainant's Motion continues to make other unverified allegations to state that the undersigned "is in no way neutral." Compl.'s Mot. at 3. As discussed below, Complainant's allegations mischaracterize the proceedings and rulings, and are not grounds for recusal in this matter. At all times, the undersigned is prepared to proceed with impartiality.[9]

First, Complainant argues that the undersigned has denied him various evidences to prove his case. This statement is false. Pursuant to NMIAC § 80-20.1-470(i), a hearing officer may, but is not required to allow discovery. Generally, the production of documents is allowed when relevant, probative, and within the limitations stated under NMIAC § 80-20.2-165. However, Complainant did not request for discovery in the matter. Further, if Complainant did not storm out of the Prehearing Conference, he would have received a copy of Respondent's exhibits.

Second, Complainant argues that the undersigned is "SIDING WITH THE PRIMARILY CHINESE BUSINESSES, THEN GOES ON SAY THAT MY CASES HAVE NO MERIT, OR THAT I AM FILING A FRIVILOIUS [*sic*] CASE. OR OTHER." Compl.'s Mot. at 2.[10] This statement is also an untrue mischaracterization of the facts. As stated above, the undersigned renders rulings based on the applicable law. While it is true that Complainant's claims before the undersigned have been unmeritorious, it is either because he fails to meet his burden in proving his claim or he withdraws his complaint.[11]

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[9] Proceeding with impartiality does not mean a disregard of applicable law.

[10] The undersigned finds the racial identification unnecessary.

[11] For instance, in *Zajradhara v. Woo Jung Corporation*, judgment was entered in favor of respondent because (1) Complainant did not even apply for the relevant JVA and therefore, the respondent did not technically "reject" his application; and (2) a foreign worker was not hired. *Zajaradhara v. Woo Jung Corporation*, LC-18-059 (Administrative Order issued May 16, 2019 at 6-7). Also, in other cases, Complainant dismissed the complaint when he failed to meet all the elements of the claim, such as, hiring a foreign national worker. *See Zajradhara v. S.W. Corporation*, LC-19-002 (Order of Dismissal at 2).

Notably, the Order in *Zajradhara v. Woo Jung Corporation* relies on precedent created by the former Hearing Officer. *See Zajradhara v. SPN China News Corporation*, LC-17-021 (Administrative Order issued July 12, 2018 at 4) ("There

Furthermore, contrary to Complainant's Motion, the undersigned has yet to issue any monetary sanction deeming his complaint frivolous. Instead, it is opposing counsels and opposing parties filing motions for sanction for filing frivolous claims, pursuant to NMIAC § 80-20.2-130(c)(5). In this matter, Respondent argues that the claim is frivolous because Complainant cannot establish all the elements of the employment preference statute, had notice that no foreign worker was hired, yet continued to pursue the claim.

Third, Complainant argues that the undersigned is:

> ALLOWING THE SO-CALLED CNMI DEPT [*sic*] OF LABOR PRETEND INVESTIGATORS TO DO ABSOLUTELY NO INBVESTIGATION [*sic*] AND OR TO INSTRUCT BUSINESS TO CANCEL THEIR JVAS, SO AS TO ESCAPE THE CASES, AND OR ALLOWS [*sic*] TO THE COMPANIES TO STATE THAT THE [*sic*] CANCELLED THE JVA THAT I APPLIED FOR, JUST TO AGAIN POST THE JVA AGAINS [*sic*] A MONTH LATER, AND THE HEARING OFFICER FINDS NO 'BAD FAITH' IN SUCH CONDUCT.,.. [*sic*]

Compl.'s Mot. at 2.[12]

Again, this is an extreme mischaracterization. The Administrative Hearing Office and Enforcement are separate divisions of the Department of Labor—with separate authorities and different powers. To protect impartiality, the undersigned simply refers labor

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are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone to fill the advertised position."); *see also Zajradhara v. Haitan Construction Group*, LC-17-052 (Administrative Order issued May 25, 2018 at 4) ("Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions with Foreign National Workers; Therefore, Complainant Cannot Prevail under 3 CMC § 4528(a)"); *see also Zajradhara v. Karis Company, Ltd.*, LC-17-019 (Administrative Order issued December 28, 2017 at 6 ("Because Employer never received a job application or resume from Complainant, Complainant cannot prove that his application was unjustly rejected by Employer [and] the alleged charge must fail."); *see also Zajradhara v. Li Feng*, LC 17-043 (Administrative Order issued July 11, 2018 at 6) ("Complainant failed to establish that Employer rejected Complainant's job application without just cause because Complainant declined Employer's offer to interview him for the job.").

[12] It appears that some of Complainant's allegations are in reference to another case.

complaints to Enforcement for investigation. The undersigned is not involved in the investigation and only learns about the outcome of the investigation in the written determination, which is filed and served to all the parties involved prior to the Administrative Hearing. Further, issues with the investigation and determination, if any, is clarified and corrected during a prehearing conference or subsequent hearing. Complainant's grievances with Enforcement, whether they have merit or not, does not warrant recusal of the hearing officer. Furthermore, it is important to note, that in consideration of due process, the undersigned cannot sanction employers for perceived violations if there is no compliance agency case initiated that gives the employers notice and opportunity to respond to the allegations.[13] Lastly, considering that the regulations specifically allow parties to cancel a JVA and hire no one, such action, without more, is not "bad faith."[14]

Fourth, Complainant alleges that the undersigned "WANTS TO LIE AND STATE THAT EVERYTHING I DO IN/DURING THE HEARING CALLS FOR SACNTIONS [*sic*]…OR THAT I AGGRESSIVE [*sic*], SIMPLY BECAUSE,. [*sic*] I DON'T WANT TO BE A PART OF A 'KANGROO [*sic*] COURT'…" Compl.'s Mot. at 2. As evidenced by Complainant's own words, it is true that Complainant takes every opportunity to undermine and disrespect the Administrative Hearing Office.[15] Further, Complainant rarely extends civility and continuously seeks to react, rather than listen. Complainant's conduct regularly

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[13] The decision to refrain from issuing sanctions in matters not alleged in complaint or initiated by a compliance agency case is also supported by precedent from the former hearing officer. *See Zajradhara v. Yen's Corporation*, LC-17-040 (Administrative Order issued July 11, 2018 at 9) ("The [ ] issue was not specifically raised in the Determination and the Department of labor did not file Agency charges against the employer for violating 3 CMC § 4963(d). Although the matter was addressed at the Hearing with the implied consent of the parties [ ], Enforcement never moved at Hearing to add charges related to this conduct. Accordingly, the above-noted finding ***shall not be used as a basis for sanctions against this Employer***.") (Emphasis added).

[14] "Employers may reevaluate their employment needs and hire no one for the proposed position." NMIAC § 80-20.1-235(c)(4).

[15] The level of disrespect is apparent on the face of Complainant's Motion. For instance, Complainant's Motion unjustifiably refers to the undersigned as the "SO-CALLED HEARING OFFICER," "THIS !$#@^%$&," "THIS PAWN OF THE CHINESE BUSINESS COMMUNITY/FILIPINO WORKER COMMUNITY," and "A SET-UP ARTIST." Compl. Mot. at 2-3.

includes: showing up late, failing to attend, interrupting others who are speaking, becoming hostile or disrespectful to the staff and the Administrative Hearing Officer, and storming out of hearings unexcused.[16] Complainant was given numerous verbal warnings and written instructions to allow him to adhere to the applicable rules and standards of conduct. As constantly stated in the undersigned's orders, party's appearing before the Administrative Hearing Officer will be held to the standard of conduct established under NMIAC § 80-20.1-480(c), and if necessary, impose sanctions pursuant to NMIAC § 80-20.1-485(c)(13). Any conduct falling below the applicable standard simply cannot be condoned or tolerated. Furthermore, Complainant cannot simply file a complaint,[17] refuse to participate accordingly, then complain when he doesn't get his way—especially when the burden of proof rests with Complainant.

Fifth, Complainant argues that "THIS SO CALLED HEARING OFFICER HAS DENT]IED [*sic*] ME MEDIATIONS IN EVERY CASE, SO SHE CAN DIRECTLY GO INTO SANCTIONABLE ACTIONS . . . ." Compl.'s Mot. at 2. Again, this is false and a mischaracterization of the circumstances. The regulations do not require cases to be mediated. Further, because there is only one hearing officer and mediations involving the hearing officer create a conflict of interest,[18] the undersigned has no choice but to suspend mediations until funding for a mediator or a second hearing officer has been appropriated. This is not a scheme solely directed at Complainant, but an office-wide policy to prevent

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[16] Complainant's Motion also states that "THIS SO-VCLLED [*sic*] HEARING OFFICER HAS NOT YET SACNTIONED [*sic*] A CHINESE COMPANY, BUT AT EVERY HEARING SHE TALKS SANCTIONS FOR ONLY ME . . ." Compl's. Mot. at 2. In response, the undersigned notes that Orders to Show Cause for failure to appear or failure to pay have been issued to non-compliant businesses. Further, before the imposition of sanctions, the undersigned offers warnings and opportunities to correct to all. Lastly, sanctions for misconduct have not been justified where businesses do not engage in similar habitual, egregious, or unjustifiable misconduct.

[17] The Complaint form, signed by Complainant, includes a declaration that states the following: "I understand that the above-stated information will serve as the basis for initiating administrative procedures regarding the subject of the complaint. I understand that I may be contacted by the Department of Labor for the purpose of providing further information or documents to substantiate the above-stated allegations, and I may be called to participate in a mediation, investigation, administrative hearing, or other legal proceeding." Complaint at 2.

[18] *See Zajradhara v. Jin Joo Corporation*, LC-18-060 (Order of Recusal issued May 16, 2019).

creating potential conflicts of interest in all cases. While the undersigned recognizes the benefits of a swift and amicable resolution through mediation, it would be irresponsible to continue to create potential conflicts of interest. Further, parties have the opportunity to engage is settlement discussions outside the office and are asked whether settlement is an option during the Prehearing Conference.

Sixth, Complainant argues, "SHE AND THE CNMI DEPT [*sic*] OF LABOR IS MAKING SURE THAT THEY DO NOT PROVIDE ME WITH THE EVIDENCE, NOR OPPORTUNITIES TO MAKE A CASE AGAINST THESE COMPANIES THAT ARE COMMITTING VIA FRAUD, AND WORKER IMMIGRATION FRAUD." As previously advised to Complainant, this Office has no jurisdiction to entertain claims or violations in regards immigration. Further, it is not this Office's responsibility to assist in proving his alleged immigration claims—such action would call into question the impartiality of this Office. Complainant must shoulder his own burden of proof. In the event that Complainant is filing frivolous claims in this office to assist or support his federal claims, Complainant opens himself up to a showing of bad faith. Further, copies of public records have been made available upon payment of the applicable fee.

As shown above, Complainant's Motion simply mischaracterizes the proceedings and rulings of the Administrative Hearing Office. The above-stated allegations are a reflection of Complainant, and simply do not warrant recusal of the undersigned.

IV. CONCLUSION

For the reasons stated above, Complainant's Motion for Recusal is hereby **DENIED**.

So ordered this **24th** day of September, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 19-025**
Zaji O. Zajradhara,	)	
Complainant,	)	**ORDER GRANTING MOTION FOR SANCTIONS**
v.	)	
Nippon General Trading Corporation *dba* Country House Restaurant,	)	
Respondent.	)	

I. INTRODUCTION

This matter came on for a Prehearing Conference August 27, 2019 at 1:30 p.m. at the Administrative Hearing Office. Complainant Zaji O. Zajradhara ("Complainant") was present and unrepresented by counsel. Respondent Nippon General Trading Corporation *dba* Country House Restaurant ("Respondent") was present and represented by Attorney Mark Scoggins and General Manager Katsuko Kato. The Department's Enforcement Section was also present and represented by Investigators Bonifacio J. Castro and Jerrick Cruz.

II. BACKGROUND

This matter concerns an alleged violation of the CNMI labor laws. On January 18, 2019, Respondent posted a job vacancy announcement ("JVA") for a Waitress/Waiter ("JVA 19-

01-65024"). On April 29, 2019, Complainant filed a complaint in connection to the JVA 19-01-65024 for a violation of the CNMI employment preference statute and retaliation. Generally, Complainant alleges that he is entitled to damages because he was not hired and being retaliated against for filing both local and federal claims against Respondent. Complainant filed additional information on May 29, 2019, stating, among other things: (1) he was qualified for the position; (2) he was never interviewed; and (3) on information and belief, Respondent hired a foreign worker for the position.

On June 12, 2019, Respondent filed an Answer and Affirmative Defenses, claiming, in part: (1) Complainant did not apply for employment in good faith; (2) Complainant does not legitimately seek employment; (3) Complainant files only to harass, coerce, and extort monetary settlement; (4) Complainant's claims are fraudulent; (5) Complainant failed to mitigate damages; and (6) Complainant fails to state a claim because a foreign worker was not hired as a result of JVA 19-01-65024 and Respondent meets or exceed the job preference requirements.

On June 14, 2019, Respondent filed a Motion to Dismiss as to the claim for retaliation. Therein, Respondent argued that this office lacks jurisdiction to adjudicate the retaliation claim because Complainant was not an employee.[1] Additionally, on June 18, 2019, Respondent filed a Motion for Sanctions as to the claim for violation of the CNMI employment preference statute. On July 21, 2019, Complainant filed an Opposition to Respondent's Motion to Dismiss.[2] The arguments were unclear, muddled issues, and overall nonresponsive to the legal arguments. On June 26, 2019, Enforcement filed a

[1] The pleadings never specified the claim for retaliation. This motion was construed as a Motion to Dismiss for failure to state a claim because retaliation pursuant to NMIAC § 80-20.1-455(l) falls within this Office's jurisdiction.

[2] Complainant was electronically served on June 18, 2019. This Opposition was untimely. The Referral and Scheduling Order states, in part, "[t]he timelines for any oppositions or replies shall be governed by NMIAC § 80-20.1-470(e)." The regulations provide, "[w]ithin ten days after a written motion is served . . . any party to the proceeding may file and serve a response in opposition to the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition." NMIAC § 80-20.1-470(e).

written determination of their investigation in this matter. Therein, Enforcement found that Respondent complied with the local labor laws and recommended judgment in favor of Respondent.

Ultimately, upon review of the filings and applicable law, Respondent's Motion to Dismiss the claim for retaliation was granted by a written order, issued on August 1, 2019. Therein, the undersigned cited that Retaliation under the local regulations does not extend for prospective employees.[3] Further, Complainant failed to establish: (1) that he was employee of Respondent at the time of filing the complaint; (2) that Respondent took adverse action against Complainant; or (3) that the filing was a substantial factor in termination or such adverse action. Lastly, the undersigned noted that, in the event that the claim for retaliation is made pursuant to federal law, this Office lacks jurisdiction to hear, enforce, or adjudicate said claim.

Oral arguments for Respondent's Motion for Sanctions were heard during the noticed Prehearing Conference. Complainant was unprepared, overly disruptive, and stormed out during Respondent's oral argument. *See* Order issued August 29, 2019.[4] Respondent was permitted to conclude his oral arguments, as outlined in the written motion. Simply, Respondent argued: (1) Complainant is aware of the standards of an employment preference claim, given the multiple of cases Complainant has filed against various employers; (2) Complainant is aware of the numerous deficiencies preventing him from proving his claim, yet he insists in pursuing it; and (3) Complainant has a history of harassing Respondent with unmeritorious claims in various venues. Respondent seeks sanctions in the form of attorney's fees. Also, in light of the above-mentioned deficiencies,

[3] Generally, a claim for retaliation under this office occurs when an employers takes any adverse action against an employee for filing a complaint. NMIAC § 80-20.1-455(l) ("An ***employer*** shall not retaliate against an ***employee*** for filing a complaint. Such retaliation is a separate cause of action against the employer.") (Emphasis added).

[4] Before storming out of the Hearing, Complainant stated that he was contesting the imposition of sanctions due to his personal debts, expenses, and dependents. As discussed below, the inquiry in whether to impose a sanction is based on whether the claim or defense is frivolous, without merit, or in bad faith. As such, Complainant's debts, expenses, and dependents have no bearing on the issue of whether sanctions are warranted.

Respondent orally moved to have the case dismissed. The undersigned took the matter under advisement and vacated the scheduled administrative hearing.

III. LEGAL STANDARD

The Administrative Hearing Office has original jurisdiction to resolve all employment preference claims. 3 CMC § 4525(b).

"A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a)[5]; *see also* NMIAC § 80-20.1-455(f); *see also* NMIAC § 80-20.1-220(a). Generally, in order to prevail on a claim for damages, a complainant has the burden to prove the following elements: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause;[6] (3) the respondent/employer then hired a foreign national worker for that

[5] Section 4525 states, "[i]n the full-time workforce or any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives in the available private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer." 3 CMC § 4525. "The current percentage specified by the Department . . . is 30%." NMIAC § 80-20.1-210(c)(3). This provision, however, "shall not apply to employers of fewer than five employees, provided however, the Secretary may, by regulation, require each business to have a least one employee who is a citizen or CNMI permanent resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period. "No waivers are available with respect to the workforce participation objective." NMIAC § 80-20.1-210(f); *contra* NMIAC § 80-20.1-215.

[6] The Department's regulations provide further guidance. Thereunder, "[t]he term 'just' cause' for rejecting an application for employment includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons with criminal records for positions of trust, rejecting persons who present fraudulent or inaccurate documentation in support of the application; rejecting persons without an education degree necessary for the position, rejecting persons with unfavorable recommendations from prior employment, rejecting persons with an employment history indicating an ability to perform the job successfully, rejecting persons with an educational background making it unlikely that the necessary education or training to hold the position could be accomplished successfully within a reasonable time; and similar just causes." NMIAC § 80-20.1-455(f)(1). Notably, the aforementioned list of "just causes" is not exhaustive. "Any criteria in making hiring decisions advanced in support

positions and;[7] (4) the respondent/employer failed to meet the 30% workforce objective requirement. *Zajradhara v. Woo Jung Corporation*, LC-18-059 (Administrative Order issued May 16, 2019 at 6). An employer must make a good faith effort to hire a citizen, CNMI permanent resident or U.S. permanent reside for a job vacancy. NMIAC § 80-20.1-235(d).

A complainant who files a frivolous claim at the Administrative Hearing Office is subject to sanctions.[8] "A motion to recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith shall be permitted pursuant to [NMIAC § 80-80.2-140]." NMIAC § 80-20.1-130(c)(5). "Any complainant or respondent may by motion, file and recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is ***frivolous, without merit, or in bad faith***." NMIAC § 80-20.2-140 (emphasis added). The underlying principle of this rule is to make whole a party who has incurred needless costs defending against said claims. While the regulations do not define the terms "frivolous," "without merit," or "in bad faith," said terms are not novel concepts.[9] Here, the undersigned finds it is appropriate to look to established Commonwealth law for guidance. The Commonwealth Supreme Court has found a claim to be frivolous if "no justiciable question has been presented and [it] is readily recognizable ***as devoid of merit in that there is little prospect that it can ever***

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of just cause must be consistent with the published job vacancy announcement for the job and must be a part of the employer's established hiring procedures." NMIAC § 80-20.1-455(f)(2).

[7] An employer may reject persons who are referred using the employer's normal hiring criteria or may reevaluate their employment needs and hire no one for the proposed position. NMIAC § 80-20.1-235(c).

[8] An administrative hearing officer has authority to impose sanctions. *See* NMIAC § 80-20.1-485(c)(13). Specifically, the administrative hearing officer is authorized to: "[i]mpose such other sanction, order or relief as may reasonably give effect to requirements of Commonwealth law." *Id.*

[9] The Commonwealth Superior Court, the Commonwealth Supreme Court, and the District Court of the Northern Mariana Islands have similar standards with regards to sanctioning frivolous filings. *See* NMI R.Civ.P 11; *see also* Com.R.App.P. 38(a); *see also* Fed.R.Civ.P.11. Rule 38(a) of the Commonwealth Rules of Appellate Procedure, concerning the imposition of sanctions for filing frivolous appeals, is patterned after Rule 11 of the Federal Rules of Civil Procedure, which applies to trial practice. *Tenorio v. Superior Ct.*, 1 NMI 112 (1990). Ultimately, these rules impose a duty on the parties' to "stop and think before filing documents with court." *Id.*

succeed." *Commonwealth v. Sablan*, 2016 MP 12 ¶ 17 (*citing Commonwealth v. Kawai*, 1 NMI 66, 72 n.4 (1990)) (emphasis added); *see also Pacific Amusement, Inc. v. Villanueva III*, 2006 MP 8 ¶ 20. Moreover, "a legal argument is frivolous if no reasonable person could conclude that the argument is likely to succeed on the merits." *Pangelinan v. Itaman*, 1996 MP 16 ¶ 1; *see also Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 NMI 79 (1992). Further, bad faith can be demonstrated by a showing of some malicious intent of the filings, such as, delay or harassment.

IV. DISCUSSION

Based on the filings, Respondent seeks sanctions on the basis that the Complaint is frivolous, devoid of merit, and in bad faith. Upon review of the record and applicable law, the undersigned issues the following findings of fact and conclusions of law:

1. This Complaint is frivolous and devoid of merit because Complainant cannot establish a claim for a violation of the Employment Preference Statute.

On April 29, 2019, Complainant filed a complaint alleging the following:

> I applied for the job of waitstaff, I have experience [*sic*] I am being Retaliated [*sic*] against for filing both local & federal claims against this Company. As I was not interviewed-nor hired- As a U.S. Citizen [*sic*].

Complaint at 1. The above-stated allegations fail to address all the elements of the claims. Complainant was advised of the severe deficiencies of his claim and ordered to file additional information to support his claim. On May 29, 2019, Complainant filed an Additional Affidavit and Amended Complaint, which alleged, among other things:

> 1. On about 01/2019 I saw an advertisement on the CNMI department of Labor website for the position of Sales Rep renewal-2 jva –19-01-65027 and renewal-5 jva – 1901-65024 (the "Position") available with Nippon General Trading Corporation (the "Company").

2. I believed I was qualified for the Position because I have previous wait staff experience . . . . I am also a United States citizen.
3. On about 01/28/?2019 [*sic*] – I applied for the Position with the Company.
4. I applied for the Position by email referral via Mr [*sic*] James Ulloa of the CNMI dept of labor [*sic*].
5. I did not followed [*sic*]up to see when the Company would interview me due to pending legal issues with said company.
6. I was never called for an interview.
7. On information and belief [*sic*] I allege that the Company hired a foreign worker for the position, or submitted an application to hire a foreign worker due to the jva stating "renewal", [*sic*] despite the fact that I am a United States citizen and qualified for the Position.

Additional Affidavit and Amended Complaint at 1-2.[10]

Here, Respondent argues that Complainant cannot prevail on a claim for damages pursuant to the CNMI employment preference statute, as provided in 3 CMC § 4528(a). First, Respondent argues that Complainant's application was rejected with just cause. Second, Respondent argues that Complainant knows he cannot show that Respondent hired a foreign worker in connection to the relevant JVA. Third, Respondent argues that Complainant cannot show Respondent violated the 30% workforce objective requirement.

With respect to the just cause element, Respondent states that Complainant submitted a resume with inaccuracies and misrepresentations, which gives rise to legitimate concerns for Complainant's honesty and integrity. *See* NMIAC § 80-20.1-455(f)(1). Specifically, the addresses listed under business establishments for a bar and a school that Complainant claimed to work was an apartment building. This issue was litigated in a previous case

[10] Given the drastic changes in formatting and language, it is reasonable to assume Complainant sought legal assistance in preparing this templated document. Further, Complainant has stated, on numerous occasions, he needs to refer to legal counsel and his ghost-writer. A notice of appearance was never filed on behalf of Complainant. While it is clear that Complainant is a pro se litigant, he undercuts his arguments for additional accommodations as an unknowledgeable pro se litigant.

between the parties. In Labor Case No. 17-018, Complainant's claim was dismissed, in part, due to the inaccuracies in Complainant's resume. *See Zajradhara v. Nippon General Trading Corporation dba Country House Restaurant*, Labor Case 17-018 (Administrative Order issued March 19, 2019 at 2) ("A discovery of falsification of references or misstatement of employment justified a lack of confidence in the applicant to the point of rejection."). On appeal, the Secretary of Labor found that the dismissal was appropriate and just cause for rejection existed. *Zajradhara v. Nippon General Trading Corp.*, SA-2019-001 (Final Order issued June 13, 2019 at 7) ("Given the inability to perform and the viewed misrepresentations by Appellant, the undersigned finds that Appellee had just cause to reject Appellant's application."). Given that the same resume, with the same misstatements and inaccuracies, was submitted for this position, precedent dictates that Respondent had just cause to reject Complainant's application for this position.

With respect to the foreign worker element, Respondent states that, given the new requirements under federal regulations, he could not re-advertise the position until certain federal requirements were met.[11] As a result, Respondent claims the company did not hire a foreign worker with respect to this JVA. Specifically, Respondent argues that the company hired two U.S. Citizens in connection with this JVA, but then stopped recruitment activities in order to understand and follow new federal regulations. A review of the Respondent's Total Workforce Listing, submitted August 9, 2019, shows the following hires for a waiter/waitress in 2019:

1. Oh, J. (US Citizen) hired February 25, 2019 as a part-time[12] waiter;
2. Rooselvelt, R. (Chuuk) hired February 26, 2019 as a full-time waitress;

[11] Respondent argues that, as a matter of law, the company could not hire a foreign worker until satisfying the new federal regulations. The undersigned does not completely agree with this argument. The new federal regulations were published in April of 2019, after this JVA was announced. Further, the regulations applied to CW hires with an employment start date in fiscal year 2020. Accordingly, there was a possibility in hiring a CW with a start date in fiscal year 2019.

[12] Pursuant to the applicable law, the part-time positions do not need to be advertised. *See* NMIAC § 80-20.1-225(a).

3. Dizon Ljean, G. (US Citizen) hired March 5, 2019 as a full-time waitress;
4. Yamaoka, R. (CW1) hired June 30, 2019 as a full-time waitress; and
5. Fabella, J. (US Citizen) hired September 20, 2019 as a part-time waiter.

It is unclear whether Ms. Yamaoka was hired pursuant to JVA 19-01-65024. It is also unclear how many CWs, if any, were renewed in connection to JVA 19-01-65024. However, as Respondent argues, it is Complainant's burden to prove his case. Here, Complainant offered no proof to support the allegations that a CW was hired in connection to JVA 19-01-65024.

With respect to the thirty percent (30%) workforce objective requirement, Respondent states that their company has always met or exceeded the thirty percent (30%) workforce objective requirement.[13] Here, Respondent's Total Workforce Listing submitted for the Second Quarter of 2019[14] shows the following information:

1. There are 40 total employees listed;
2. Of the 40 total employees, there are 36 full-time[15] employees listed;
3. Of the 36 full-time employees, 5 have resigned so there are only 31 currently employed full-time employees listed; and
4. Of the 31 current full-time employees, there are 15 status qualified employees.

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[13] Any employer, unless exempt, who employs workers on a full-time basis must certify that 30% or more of its full-time employees are U.S. citizens, U.S. permanent residents, and/or CNMI permanent residents. 3 CMC § 4525 and NMIAC § 80-20.1-210(c)(3).

[14] This Second Quarter Total Workforce Listing was submitted August 9, 2019 and is the most current submission on record. The Total Workforce Listing for the third quarter is not due until October 31, 2019. As of this writing, there is no knowledge of any significant changes from the Second Quarter Total Workforce Listing.

[15] The Total Workforce Listing includes a mistake; one employee was listed as both part-time and full-time. Despite the error, the calculations show that Respondent would meet the thirty percent (30%) workforce objective requirement either way.

As shown by Respondent's Total Workforce Listing, the company has exceeded the thirty percent (30%) requirement.

Based on the above-stated information, Complainant cannot establish three of the four elements to support a claim for damages under the employment preference statute. First, Complainant cannot show that his application or resume was rejected without just cause. Second, Complainant has not set forth any evidence to rebut Respondent's claim that no foreign workers were hired in connection to JVA 19-01-65024. Third, Complainant cannot show that Respondent has not met the thirty percent (30%) work force objective. Accordingly, pursuant to the applicable law, there is no prospect that the claim could succeed.

2. There is not enough showing of bad faith.

Here, Respondent's Answer alleges that Complainant does not legitimately seek employment, instead, systematically files labor complaints to harass and extort monetary settlements from businesses. Further, Respondent's Motion argues that Complainant files complaints, knowing he cannot meet or prove his claim. Lastly, during the Prehearing Conference, Respondent offered into evidence a number of exhibits to show the history of unmeritorious filings by Complainant against Respondent.

Upon review of the oral and written record, the undersigned hesitates to find bad faith. It is an uncontroverted fact that Complainant has a history of filing many labor complaints. It has also been demonstrated that Complainant has initiated a series of unmeritorious claims in various venues against Respondent. However, that being said, there is no testimony or evidence to determine the motive of those filings, more importantly, this present complaint. Without more evidence to show harassment or extortion, Respondent has simply proven that Complainant is litigious. Without more, being litigious is not the equivalent of bad faith.

V. CONCLUSION

Based on the foregoing, the complaint in this matter is deemed to be frivolous and devoid of merit. Accordingly, Respondent's Motion for Sanctions is hereby **GRANTED** and Respondent is **AWARDED** reasonable attorney's fees, in an amount to be determined.

Respondent shall file an itemized billing of the accrued fees in this matter, a memorandum to justify the accrued fees as reasonable, and an affidavit to attest to its veracity. Pending review of said filings, the undersigned will issue a separate judgment.

So ordered this **30th** day of September, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Zaji O. Zajradhara, Complainant, v. American Met Car Rental, Respondent.	**Labor Case No. 19-026** **ORDER DENYING COMPLAINANT'S MOTION TO RECUSE**

I. INTRODUCTION

This matter came before this Office pursuant to Complainant's Laymans' Motion for Continuances to Write Various Orders and Responses Due to Overt Bias and Prejudice of Sitting Hearing Officer [1] ("Complainant's Motion for Recusal" or "Complainant's Motion").[2] The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion for Recusal is hereby **DENIED**.

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[1] While Complainant asks for a continuance, the basis and allegations in the motion is actually requesting a recusal. Accordingly, Complainant's Motion will be construed as a motion for recusal.

[2] Complainant submitted this motion in connection with Labor Case No. 19-025, Labor Case No. 19-026, Labor Case No. 16-024, and Labor Case No. 17-020. It is unclear whether Complainant has served his motion to the applicable opposing party or opposing counsel.

II. LEGAL STANDARD

Pursuant to Northern Mariana Islands Administrative Code,

> [a] hearing officer shall be impartial. A hearing officer ***may*** voluntarily enter a recusal ***if the hearing officer's impartiality might be called into question***. A party may request the recusal of a hearing officer. The request must be in writing supported by a sworn affidavit based on facts as to which the affiant would be qualified to testify under evidentiary rules with respect to hearsay. The hearing officer shall decide the request based only on the written affidavit. If the hearing officer refuses the recusal, the hearing officer shall state the reasons for the refusal. A party may contest the refusal by written petition to the Secretary.

NMIAC § 80-20.1-460(d) (emphasis added).[3]

III. DISCUSSION

Pursuant to NMIAC § 80-20.1-460(d), the undersigned refuses to recuse herself for the following reasons:

1. Complainant's Motion is untimely.

On June 3, 2019, the undersigned issued a Referral and Scheduling Order setting various deadlines and hearings. As stated in the Order, the parties' motions were due on or before August 6, 2019. Further, the Order stated that motion hearings, if any, may be heard during the Prehearing Conference. Both parties failed to appear the Prehearing Conference and an

[3] In comparison, when a litigant moves for recusal under 1 CMC § 3308, a trial judge is required to recuse himself or herself when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might be questioned. 1 CMC § 3308; *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 5. The standard for determining that a justice has personal bias or prejudice pursuant to 1 CMC § 3308 is an objective standard. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 30. A justice should be disqualified if alleged bias or prejudice against a party is derived from an extra-judicial source. *Id.* The mere fact that a relationship exists between a judge and an interest party, without more, does not per se require disqualification. *Id.* at ¶ 33. However, when a recusal motion is based on allegations of friendship, the court must examine the nature and extent of the relationship, and make a judgment call concerning how close and how extensive and how recent these associations are or have been. *Id.*

Order to Show Cause was issued the same day. The Order to Show Cause gave notice that the Hearing was scheduled for September 25, 2019 at 9:00 a.m. at the Administrative Hearing Office. Now, Complainant's Motion comes at the eve of the hearing. Based, on the Referral and Scheduling Order, Complainant's Motion is untimely.

2. There is no alleged conflict of interest.

Here, Complainant makes a blanket statement or bald assertion of bias by the undersigned. Clearly, Complainant's Motion strongly opines a disdain for the current administration, the CNMI Department of Labor, and specifically, the undersigned Administrative Hearing Officer. In doing so, Complainant makes a flurry of scandalous and unverified statements. Notably, Complainant cannot point to a specific action or relationship to support his allegations of bias. Further, the allegations fall short of evidentiary rules and standards of hearsay.

In this matter, the undersigned has not engaged in confidential mediations with the parties. Also, the undersigned has no personal or financial stake in the matter. The undersigned has no familial, personal, or business relationship with either party, its' representatives, or its affiliated partners. Further, the undersigned does not stand to benefit or lose from any decision rendered in this case. The undersigned only seeks to apply and uphold the applicable law.

3. The undersigned's previous decisions were supported by law and reasoning.

A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [ ] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone,

do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39.

Upon review, it appears that Complainant's Motion for Recusal really stems from the undersigned's prior decisions and rulings. Specifically, Complainant's Motion states: "1#, the 'hearing officer' is directly and overtly biased against the complainant, mr [*sic*] zajradhara [*sic*], this is made clear by reviewing ***every action*** against the complainant, every pre-hearing, every brief, even the scheduling, ..." Compl.'s Mot. at 1 (emphasis added).[4] Complainant further alleges:

> "THE NEWLY HIRED CNMI DEPT [*sic*] OF LABOR HEARING OFFICER, HAS MADE IT THEIR POINT, EXCERSIZE [*sic*] AND GOAL TO IN SOME WAY MAKE IT APPEAR THAT MY FILINGS ARE IN SOMEWAY 'ILLEGAL', AGGRESSIVE OR ANYOTHER [*sic*] FORM OF NEGATIVE OUT COMES [*sic*] OR OPINIONS."

Compl.'s Mot. at 1-2.

The undersigned holds impartiality, integrity, and respect for the law in the utmost regard. The above-stated allegations regarding previous decisions do not warrant recusal for a number of reasons. First, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. Second, the proper course of action for reprieve of a final order is appeal, not recusal in other cases. There has been no appeal of any of the undersigned's final decisions. Third, contrary to the applicable legal standard for recusals at the Administrative Hearing Office, the above-stated allegations as to the undersigned's goals are opinion, not fact. The only agenda this office has is application of the law. And fourth, despite Complainant's attempts to continuously undermine the authority and rulings of this office,

[4] Notably, Complainant's Motion falls short of reviewing every action and only vaguely references previous rulings and cases.

a review of the orders, rulings, procedure, and cited legal authority shows the decisions were supported by the applicable law and reason.

In this matter, Complainant filed a complaint with two simple sentences—falling short of the necessary allegations for the multiple claims.[5] Considering the bare bones complaint failed to give an adequate notice of the violations and failed to state a claim, Complainant was ordered to file additional information.[6] Upon filing his additional information and allegations, an order was promptly issued referring the matter to the Department's Enforcement, Compliance, and Monitoring Section ("Enforcement"). Lastly, on September 3, 2019, an Order to Show Cause was issued to both parties for their failure to appear to the scheduled prehearing conference. As shown above, the undersigned has not acted improperly and has only held parties accountable to the orders and applicable law. Accordingly, said allegations do not warrant recusal.

4. Complainant's allegations mischaracterize the proceedings and rulings.

Complainant's Motion continues to make other unverified allegations to state that the undersigned "is in no way neutral." Compl.'s Mot. at 3. As discussed below, Complainant's allegations mischaracterize the proceedings and rulings, and are not grounds for recusal in this matter. At all times, the undersigned is prepared to proceed with impartiality.[7]

First, Complainant argues that the undersigned has denied him various evidences to prove his case. This statement is false. Pursuant to NMIAC § 80-20.1-470(i), a hearing officer may, but is not required to allow discovery. Generally, the production of documents is allowed when relevant, probative, and within the limitations stated under NMIAC § 80-

[5] Simply, the Complaint alleged, "I requested [*sic*] James Ulloa of the CNMI dept [*sic*] of labor; which he did 2/4/19- for the JVA 19-01-66460-Transfer of CW-1, I was never contracted nor interviewed." Complaint at 1.

[6] The Order requesting additional information was supported by the Administrative Hearing Officer's authority, pursuant to NMIAC § 80-20.1-485(c)(14).

[7] Proceeding with impartiality does not mean a disregard of applicable law.

20.2-165. In this case, Complainant requested an exorbitant amount of discovery. The issue of discovery was to be discussed at the Prehearing Conference, yet Complainant failed to show.

Second, Complainant argues that the undersigned is "SIDING WITH THE PRIMARILY CHINESE BUSINESSES, THEN GOES ON SAY THAT MY CASES HAVE NO MERIT, OR THAT I AM FILING A FRIVILOIUS [*sic*] CASE. OR OTHER." Compl.'s Mot. at 2.[8] This statement is also an untrue mischaracterization of the facts. As stated above, the undersigned renders rulings based on the applicable law. While it is true that Complainant's claims before the undersigned have been unmeritorious, it is either because he fails to meet his burden in proving his claim or he withdraws his complaint.[9] Furthermore, contrary to Complainant's Motion, the undersigned has yet to issue any monetary sanction deeming his complaint frivolous. Instead, it is opposing counsels and opposing parties filing motions for sanction for filing frivolous claims, pursuant to NMIAC § 80-20.2-130(c)(5). *See Zajradhara v. Nippon General Trading*, LC-17-025 (Respondent's Motion for Sanctions filed July 18, 2019); *see also Zajradhara v. Lin SHR*

[8] The undersigned finds the racial identification unnecessary.

[9] For instance, in *Zajradhara v. Woo Jung Corporation*, judgment was entered in favor of respondent because (1) Complainant did not even apply for the relevant JVA and therefore, the respondent did not technically "reject" his application; and (2) a foreign worker was not hired. *Zajaradhara v. Woo Jung Corporation*, LC-18-059 (Administrative Order issued May 16, 2019 at 6-7). Also, in other cases, Complainant dismissed the complaint when he failed to meet all the elements of the claim, such as, hiring a foreign national worker. *See Zajradhara v. S.W. Corporation*, LC-19-002 (Order of Dismissal at 2).

Notably, the Order in *Zajradhara v. Woo Jung Corporation* relies on precedent created by the former Hearing Officer. *See Zajradhara v. SPN China News Corporation*, LC-17-021 (Administrative Order issued July 12, 2018 at 4) ("There are several problems with Complainant meeting the elements of this claim, based on the facts of this case. Most important is the fact that Employer never hired a foreign national worker, or anyone to fill the advertised position."); *see also Zajradhara v. Haitan Construction Group*, LC-17-052 (Administrative Order issued May 25, 2018 at 4) ("Complainant Failed To Prove that Employer Had Filled the Vacant or Renewed Positions with Foreign National Workers; Therefore, Complainant Cannot Prevail under 3 CMC § 4528(a)"); *see also Zajradhara v. Karis Company, Ltd.*, LC-17-019 (Administrative Order issued December 28, 2017 at 6 ("Because Employer never received a job application or resume from Complainant, Complainant cannot prove that his application was unjustly rejected by Employer [and] the alleged charge must fail."); *see also Zajradhara v. Li Feng*, LC 17-043 (Administrative Order issued July 11, 2018 at 6) ("Complainant failed to establish that Employer rejected Complainant's job application without just cause because Complainant declined Employer's offer to interview him for the job.").

SAIPAN), LC-18-058 (Respondent's Motion to Dismiss Complaint and for Attorney's Fees filed March 22, 2019).

Third, Complainant argues that the undersigned is:

> ALLOWING THE SO-CALLED CNMI DEPT [*sic*] OF LABOR PRETEND INVESTIGATORS TO DO ABSOLUTELY NO INBVESTIGATION [*sic*] AND OR TO INSTRUCT BUSINESS TO CANCEL THEIR JVAS, SO AS TO ESCAPE THE CASES, AND OR ALLOWS [*sic*] TO THE COMPANIES TO STATE THAT THE [*sic*] CANCELLED THE JVA THAT I APPLIED FOR, JUST TO AGAIN POST THE JVA AGAINS [*sic*] A MONTH LATER, AND THE HEARING OFFICER FINDS NO 'BAD FAITH' IN SUCH CONDUCT.,.. [*sic*]

Compl.'s Mot. at 2.[10]

Again, this is an extreme mischaracterization. The Administrative Hearing Office and Enforcement are separate divisions of the Department of Labor—with separate authorities and different powers. To protect impartiality, the undersigned simply refers labor complaints to Enforcement for investigation. The undersigned is not involved in the investigation and only learns about the outcome of the investigation in the written determination, which is filed and served to all the parties involved prior to the Administrative Hearing. Further, issues with the investigation and determination, if any, is clarified and corrected during a prehearing conference or subsequent hearing. Complainant's grievances with Enforcement, whether they have merit or not, does not warrant recusal of the hearing officer. Furthermore, it is important to note, that in consideration of due process, the undersigned cannot sanction employers for perceived violations if there is no compliance agency case initiated that gives the employers notice

[10] It appears that some of Complainant's allegations are in reference to another case.

and opportunity to respond to the allegations.[11] Lastly, considering that the regulations specifically allow parties to cancel a JVA and hire no one, such action, without more, is not "bad faith."[12]

Fourth, Complainant alleges that the undersigned "WANTS TO LIE AND STATE THAT EVERYTHING I DO IN/DURING THE HEARING CALLS FOR SACNTIONS [*sic*]…OR THAT I AGGRESSIVE [*sic*], SIMPLY BECAUSE,. [*sic*] I DON'T WANT TO BE A PART OF A 'KANGROO [*sic*] COURT'…" Compl.'s Mot. at 2. As evidenced by Complainant's own words, it is true that Complainant takes every opportunity to undermine and disrespect the Administrative Hearing Office.[13] Further, Complainant rarely extends civility and continuously seeks to react, rather than listen. Complainant's conduct regularly includes: showing up late, failing to attend, interrupting others who are speaking, becoming hostile or disrespectful to the staff and the Administrative Hearing Officer, and storming out of hearings unexcused.[14] Complainant was given numerous verbal warnings and written instructions to allow him to adhere to the applicable rules and standards of conduct. As constantly stated in the undersigned's orders, party's appearing before the

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[11] The decision to refrain from issuing sanctions in matters not alleged in complaint or initiated by a compliance agency case is also supported by precedent from the former hearing officer. *See Zajradhara v. Yen's Corporation*, LC-17-040 (Administrative Order issued July 11, 2018 at 9) ("The [ ] issue was not specifically raised in the Determination and the Department of labor did not file Agency charges against the employer for violating 3 CMC § 4963(d). Although the matter was addressed at the Hearing with the implied consent of the parties [ ], Enforcement never moved at Hearing to add charges related to this conduct. Accordingly, the above-noted finding ***shall not be used as a basis for sanctions against this Employer***.") (Emphasis added).

[12] "Employers may reevaluate their employment needs and hire no one for the proposed position." NMIAC § 80-20.1-235(c)(4).

[13] The level of disrespect is apparent on the face of Complainant's Motion. For instance, Complainant's Motion unjustifiably refers to the undersigned as the "SO-CALLED HEARING OFFICER," "THIS !$#@^%$&," "THIS PAWN OF THE CHINESE BUSINESS COMMUNITY/FILIPINO WORKER COMMUNITY," and "A SET-UP ARTIST." Compl. Mot. at 2-3.

[14] Complainant's Motion also states that "THIS SO-VCLLED [*sic*] HEARING OFFICER HAS NOT YET SACNTIONED [*sic*] A CHINESE COMPANY, BUT AT EVERY HEARING SHE TALKS SANCTIONS FOR ONLY ME . . ." Compl's. Mot. at 2. In response, the undersigned notes that Orders to Show Cause for failure to appear or failure to pay have been issued to non-compliant businesses. Further, before the imposition of sanctions, the undersigned offers warnings and opportunities to correct to all. Lastly, sanctions for misconduct have not been justified where businesses do not engage in similar habitual, egregious, or unjustifiable misconduct.

Administrative Hearing Officer will be held to the standard of conduct established under NMIAC § 80-20.1-480(c), and if necessary, impose sanctions pursuant to NMIAC § 80-20.1-485(c)(13). Any conduct falling below the applicable standard simply cannot be condoned or tolerated. Furthermore, Complainant cannot simply file a complaint,[15] refuse to participate accordingly, then complain when he doesn't get his way—especially when the burden of proof rests with Complainant.

Fifth, Complainant argues that "THIS SO CALLED HEARING OFFICER HAS DENT]IED [*sic*] ME MEDIATIONS IN EVERY CASE, SO SHE CAN DIRECTLY GO INTO SANCTIONABLE ACTIONS . . . ." Compl.'s Mot. at 2. Again, this is false and a mischaracterization of the circumstances. The regulations do not require cases to be mediated. Further, because there is only one hearing officer and mediations involving the hearing officer create a conflict of interest,[16] the undersigned has no choice but to suspend mediations until funding for a mediator or a second hearing officer has been appropriated. This is not a scheme solely directed at Complainant, but an office-wide policy to prevent creating potential conflicts of interest in all cases. While the undersigned recognizes the benefits of a swift and amicable resolution through mediation, it would be irresponsible to continue to create potential conflicts of interest. Further, parties have the opportunity to engage is settlement discussions outside the office and are asked whether settlement is an option during the Prehearing Conference.

Sixth, Complainant argues, "SHE AND THE CNMI DEPT [*sic*] OF LABOR IS MAKING SURE THAT THEY DO NOT PROVIDE ME WITH THE EVIDENCE, NOR OPPORTUNITIES TO MAKE A CASE AGAINST THESE COMPANIES THAT ARE

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[15] The Complaint form, signed by Complainant, includes a declaration that states the following: "I understand that the above-stated information will serve as the basis for initiating administrative procedures regarding the subject of the complaint. I understand that I may be contacted by the Department of Labor for the purpose of providing further information or documents to substantiate the above-stated allegations, and I may be called to participate in a mediation, investigation, administrative hearing, or other legal proceeding." Complaint at 2.

[16] *See Zajradhara v. Jin Joo Corporation*, LC-18-060 (Order of Recusal issued May 16, 2019).

COMMITTING VIA FRAUD, AND WORKER IMMIGRATION FRAUD." As previously advised to Complainant, this Office has no jurisdiction to entertain claims or violations in regards immigration. Further, it is not this Office's responsibility to assist in proving his alleged immigration claims—such action would call into question the impartiality of this Office. Complainant must shoulder his own burden of proof. In the event that Complainant is filing frivolous claims in this office to assist or support his federal claims, Complainant opens himself up to a showing of bad faith. Further, copies of public records have been made available upon payment of the applicable fee.

As shown above, Complainant's Motion simply mischaracterizes the proceedings and rulings of the Administrative Hearing Office. The above-stated allegations are a reflection of Complainant, and simply do not warrant recusal of the undersigned.

IV. CONCLUSION

For the reasons stated above, Complainant's Motion for Recusal is hereby **DENIED**. As previously noticed, an Order to Show Cause Hearing and Administrative Hearing is scheduled for September 25, 2019 at 9:00 at the Administrative Hearing Office. All parties are hereby **ORDERED** to appear. Failure to attend may result in dismissal, initiation of investigation, and/or additional penalties or sanctions.

So ordered this **24th** day of September, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Zaji O. Zajradhara, Complainant, v. American Met Car Rental, Respondent.	**Labor Case No. 19-026** **ADMINISTRATIVE ORDER**

I. INTRODUCTION

This matter came on for an Order to Show Cause and Administrative Hearing on September 25, 2019 at 9:00 a.m. at the Administrative Hearing Office. Complainant Zaji O. Zajradhara ("Complainant") failed to appear. Respondent American Met Car Rental ("Respondent") was present and represented by Shareholder Jian Xian Chen and Translator Monique Kramer. The Department's Enforcement Section ("Enforcement") was also present and represented by Investigators Bonifacio J. Castro, Jerrick Cruz, and Eugene Ogo.

II. BACKGROUND

On April 29, 2019, Complainant filed a complaint for an alleged violation of the CNMI employment preference statute. Therein, Complainant alleged, "I requested James Ulloa of the CNMI dept [*sic*] of labor; which he did 2/4/19 - for the JVA 19-01-66460 – Transfer of CW-1, I was never contacted nor interviewed." Complaint at 1. Pursuant to an Order

requesting more information, Complainant filed an Additional Affidavit and Amended Complaint on May 29, 2019. Therein, among other things, Complainant alleged that:

1. He was qualified for the position posted under the relevant Job Vacancy Announcement ("JVA");
2. He applied for the position;
3. He followed up to see when the Company would interview him;
4. He was never called for an interview;
5. He believes the Company hired a foreign worker for the position; and
6. He believes the Company did not in good faith attempt to hire a U.S. citizen.

On June 3, 2019, the matter was subsequently referred to Enforcement for investigation.[1] On July 26, 2019, Enforcement filed a written determination of their investigation. Therein, Enforcement found that the relevant JVA was cancelled and no foreign worker was hired in connection to said JVA.

As noticed, a Prehearing Conference was held on September 3, 2019 at 9:00 a.m. at the Administrative Hearing Office. Both Complainant and Respondent failed to show. Accordingly, an Order to Show Cause was issued. Therein, the parties were ordered to show cause why they should not be sanctioned for failure to appear at the Prehearing Conference. Additionally, Complainant was ordered to show cause why the Complaint should not be dismissed for failure to state a claim. The Order to Show Cause Hearing was set for September 25, 2019, the same day of the Administrative Hearing. The proof of service shows that both parties were served by electronic mail pursuant to NMIAC§ 80-20.1-475(d)(4) using the contact information provided by the parties.

[1] The Referral and Scheduling Order stated: "The parties shall call or report to the Labor Enforcement Section before close of business on or before June 10, 2019 to schedule an investigative interview in this case." Upon review of the determination, it is unclear whether Complainant adhered to the above-stated deadline or participated in the investigative process. The Referral and Scheduling Order also gave notice of the scheduled Prehearing Conference and Administrative Hearing.

III. LEGAL STANDARD

The Administrative Hearing Office has original jurisdiction to resolve all employment preference claims. 3 CMC § 4525(b).

"A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525,[2] the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a).[3]

IV. DISCUSSION

The undersigned issues the following findings of fact and conclusions of law:

1. **The undersigned declines to impose any monetary sanctions for failure to appear at the Prehearing Conference.**

Both parties were ordered to show cause why they should not be sanctioned for their failure to appear to the Prehearing Conference.

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[2] Section 4525 states, "[i]n the full-time workforce or any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives in the available private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer." 3 CMC § 4525. "The current percentage specified by the Department . . . is 30%." NMIAC § 80-20.1-210(c)(3). This provision, however, "shall not apply to employers of fewer than five employees, provided however, the Secretary may, by regulation, require each business to have a least one employee who is a citizen or CNMI permanent resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period. "No waivers are available with respect to the workforce participation objective." NMIAC 80-20.1-210(f); *contra* NMIAC §80-20.1-215.

[3] *See also* NMIAC § 80-20.1-455(f) ("Any citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as described in a job vacancy announcement, may file a complaint making a claim for damages if an employer rejects an application for the job without just cause and the employer employs a person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job."); *see also* NMIAC §80-20.1-220(a) ("No employer may hire a foreign national worker, transitional worker, or other nonimmigrant alien if a qualified citizen, CNMI permanent resident, or U.S. permanent resident applied for the job in a timely fashion.").

During the Order to Show Cause, Respondent explained that he received the notice but does not read English, therefore could not understand the written notice served to him. The undersigned admonished Respondent for their irresponsible and dismissive behavior. The undersigned explained that instead of completely ignoring the written notice, he should have asked his English speaking employee or translator to review it. Given that it was Respondent's first time appearing before the undersigned, Respondent was advised of the importance of the Department's written notices and given a verbal warning.

Subsequent to the Order to Show Cause, on the evening of September 22, 2019, Complainant electronically filed a Layman's Motion for Continuances to Write Various Orders and Responses Due to Overt Bias and Prejudice of Sitting Hearing Officer.[4] Based on the thrust of the arguments made therein, the aforesaid motion was construed as a Motion for Recusal instead of a request for a continuance. Among other things, the motions stated, "I DON'T WANT TO BE A PART OF A 'KANGROO [*sic*] COURT'..." and "I CANNOT ATTEND DUE TO SCHEDULING ISSUES AT MY JOB, THAT IS WHY I CANCELLED A FEW HEARINGS . . . THE ONLY MEANS THAT I HAVE TO SUSTAIN MY KIDS, AND FAMILY MEMBERS, SORRY." Compl.'s Mot. at 2-3. On September 24, 2019, the undersigned issued an Order Denying Complainant's Motion to Recuse. Also, as stated therein, the parties were reminded that the Order to Show Cause Hearing and Administrative Hearing were to be held as previously noticed. Nonetheless, Complainant failed to appear.

Considering the statements made in the above-mentioned motion and Complainant's failure to appear[5] to the Order to Show Cause Hearing and Administrative Hearing, it is reasonable to find that Complainant is no longer interested in pursuing this claim at the

[4] Since the email was sent at 10:09 p.m., said motion was not processed until the following business day.

[5] "Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a ***waiver of any right to pursue or contest the allegations in the complaint.*** If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate." NMIAC § 80-20.1-480(l) (emphasis added).

Administrative Hearing Office. Further, considering that Complainant claims he can't attend the hearing without risking his only source of income, the undersigned declines to impose monetary sanctions.[6] Instead, Complainant is reminded that filing complaints at the Administrative Hearing Office initiates various legal proceedings. If Complainant cannot responsibly pursue and prove his claims, he may file a request to withdraw the claims.

2. Complainant's failure to appear entitled Respondent to Default Judgement

"Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate." NMIAC § 80-20.1-480(l).

On June 3, 2019, the undersigned issued a Referral and Scheduling Order. Among other things, the Referral and Scheduling Order gave notice setting the Administrative Hearing to September 25, 2019 at 9:00 a.m. at the Administrative Hearing Office. The records show that Complainant was electronically served with the notice on June 11, 2019. The records also show that Complainant picked up hard copies of the notice on the same day. Respondent was served by postal mail service on June 14, 2019. Accordingly, the undersigned finds that adequate notice was served to the parties.

3. The Hearing may proceed ex parte when service and notice are executed

Pursuant to NMIAC § 80-20.2-120, "the administrative hearing office may conduct the hearing at the scheduled date and time with or without the parties or may proceed ex parte in the case of the non-attendance of either or both of the parties in a labor or agency case. . . if notice was given . . . to the parties at least ten day prior . . . ." NMIAC § 80-20.2-

[6] It is important to note. However, that conflicts with work are not always granted continuances. *See Zajradhara v. Woo Jung Corporation*, LC-18-059 (Order Denying Request to Postpone Hearing Date).

120(b)(1)(iv). As stated above, adequate notice was properly served to the parties. Further, Respondent requested to proceed with the hearing, as noticed, in order to fully defend against the claims.

4. The record shows no violation of the alleged claim.

A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. *See* 3 CMC § 4528(a). However, pursuant to NMIAC § 80-20.1-235(c)(4), employers may reevaluate their business needs and hire no one for the advertised positions.

Upon investigation, Enforcement found that Respondent cancelled the relevant JVA and hired no one for the position. During the Administrative Hearing, testimony and written documents shows that the JVA was cancelled due to slow business. Thus, there is no showing that a foreign national worker was actually hired for the advertised position and no violation of the employment preference statute.

V. CONCLUSION

Based on the foregoing, judgement is hereby entered in favor of Respondent.

So ordered this **26th** day of September, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

ORIGINAL

In the Matter of: Zaji O. Zajradhara, Complainant, v. Woong Jin Corporation, Respondent.	**Labor Case No. 19-031** **ADMINISTRATIVE ORDER GRANTING DEFAULT JUDGMENT**

I. INTRODUCTION

This matter was scheduled for an Order to Show Cause and Administrative Hearing on October 23, 2019 at 9:00 a.m. at the CNMI Department of Labor, Administrative Hearing Office. Complainant Zaji O. Zajradhara ("Complianant") failed to show. Respondent Woong Jin Corporation was present and represented by General Manager Bong Kim and Agent for Service of Process Jin Koo Cho. The Department's Enforcement, Monitoring and Compliance Section ("Enforcement") was also present and represented by Investigators Jerrick Cruz and Arlene Rafanan.

II. LEGAL STANDARD

Pursuant to the Northern Mariana Island Administrative Code, "[e]xcept for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate." NMIAC § 80-20.1-480(l). "When an application for an entry of default or a default judgment occurs such application is a

representation that due service has been made of all pleadings or papers required by [the regulations] to be made as a condition to the relief sought." NMIAC 80-20.2-135(a). "A party who has been prejudiced by failure to receive due notice may apply to the agency for appropriate relief." NMIAC 80-20.2-135(b).

III. DISCUSSION

Upon Complainant's failure to show to the present Administrative Hearing, Respondent orally moved for default judgment. Based on a review of the record and procedural history, the undersigned declares the following findings of fact and conclusions of law:

1. On June 3, 2019, the undersigned issued a Referral and Scheduling Order that set several deadlines and gave notice of the Prehearing Conference and Administrative Hearing. The Prehearing Conference was scheduled for October 1, 2019 at 9:00 a.m. at the Administrative Hearing Office. The Hearing Date was scheduled for October 23, 2019 at 9:00 a.m. at the Administrative Hearing Office.
2. The Referral and Scheduling Order was electronically served to Complainant on June 11, 2019. The Referral and Scheduling Order was personally served to Respondent on June 14, 2019. Based on above, both parties had sufficient service and adequate notice of the above-stated hearings.
3. On October 1, 2019, Complainant failed to appear to the scheduled Prehearing Conference. Additionally, Enforcement reported that both parties failed to report to Enforcement and participate in the investigative interview. An Order to Show Cause was issued and scheduled to occur immediately before the previously notice Administrative Hearing.[1]
4. On October 23, 2019, Complainant failed to show to the noticed Order to Show Cause Hearing and Administrative Hearing. The Administrative Hearing Office was not provided prior notice or reason for Complainant's failure to show.

[1] Said Order was electronically served to the parties, pursuant to NMIAC § 80-20.1-475(d)(4) on October 1, 2019. The Administrative Hearing Office used the contact information provided by the parties.

5. On October 23, 2019, Respondent orally moved for default judgment. Here, Complainant had notice of the scheduled hearing, failed to appear, and failed to provide any excuse or notice that he would not appear. Accordingly, the undersigned finds Complainant's failure to appear as a waiver of any right to pursue or contest the allegations in the complaint.

In consideration of the above findings and conclusions, the undersigned hearing officer deems default judgement is appropriate. Complainant's failure to appear shall be deemed a waiver of any right to pursue or contest the allegations in the complaint.

IV. JUDGMENT

Accordingly, pursuant to NMIAC §80-20.1-480(l), default judgment is hereby entered in favor of Respondent.

So ordered this **23rd** day of October, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	**Labor Case No. 19-050**
Brian A. Aguon, Complainant, v. Addison Global Interiors, Inc., Respondent.	**ORDER OF DISMISSAL**

On August 12, 2019, Complainant Brian A. Aguon ("Complainant") filed a complaint for wrongful termination against Respondent Addison Global Interiors, Inc. ("Respondent"). Upon review of the pleadings, the matter was referred to the Department's Enforcement, Compliance, and Monitoring Section ("Enforcement"). On September 22, 2019 Complainant filed a written request to dismiss the above-captioned case. Therein, Complainant stated, "I would like to drop my complaint and forgive, since I haven't lost any time and money." Respondent has no objection to the dismissal. While the cited reason is not grounds for dismissal, Complainant may withdraw a case he no longer wants to pursue.

Based on the foregoing, the Hearing Officer finds that good cause exists to dismiss all claims under Labor Case No. 19-050. Accordingly, this matter is hereby **DISMISSED**. Furthermore, all deadlines and hearings set by the Referral and Scheduling Order are hereby **VACATED**.

So ordered this **24th** day of September, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer

ORIGINAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:	)	**Labor Case No. 16-025**
Patrick C. Togawa,	)	
Complainant,	)	**ORDER DENYING COMPLAINANT'S MOTION TO DISMISS COMPLAINT AND TO SET ASIDE JUDGMENT**
v.	)	
Imperial Pacific International (CNMI) LLC dba Best Sunshine International Ltd.,	)	
Respondent.	)	

I. INTRODUCTION

On September 25, 2019, Complainant filed a Motion to Dismiss Complaint And To Set Aside Judgment ("Complainant's Motion"). For the reasons discussed below, Complainant's Motion is hereby **DENIED**.

II. BACKGROUND

This matter concerns a claim for wrongful termination by Complainant Patrick C. Togawa (hereinafter, "Complainant") against Respondent Imperial Pacific International (CNMI) LLC *dba* Best Sunshine International Ltd. (hereinafter, "Respondent"). On December 28, 2018, judgment was entered in favor of Complainant based on a finding that Respondent breached the implied covenant of good faith and fair dealing in connection with its constructive discharge of Complainant on August 23, 2016. Damages were

awarded to Complainant in the amount of $7,800. Further, Respondent was ordered to pay the full amount of damages to Complainant no later than thirty (30) days after the date of the Administrative Order. The time to appeal the judgment had passed. After Respondent's Motion to Extend Time for Appeal and subsequent Motion for Reconsideration were denied by the Secretary of Labor, Respondent filed an administrative appeal with the CNMI Superior Court. The case was never remanded to the Administrative Hearing Office. However, on September 25, 2019, Complainant filed the present motion to dismiss the complaint and set aside the judgment against Respondent pursuant to a settlement agreement in the CNMI Superior Court.

III. LEGAL STANDARD

Generally, motions and requests are governed by NMIAC § 80-20.1-470 (e). Thereunder,

> [a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e).[1] While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1).

[1] When exercising jurisdiction over appeals, the Secretary shall have all the powers and responsibilities of a hearing officer. 3 CMC § 4528(g); *see also* NMIAC § 80-20.1-490(d).

IV. DISCUSSION

Complainant's Motion is hereby denied for the following reasons:

1. The Judgment was rendered final after the time to appeal passed.

The deadline to appeal is established by statute and mirrored in the Department's regulations. *Compare* 3 CMC § 4948 and NMIAC § 80-20.1-620(b). The statute provides,

> ***[w]ithin fifteen days of issuance***, any person or party affected by findings decisions, or orders made pursuant to 3 CMC § 4947 of this chapter may appeal to the Secretary by filing a written notice of appeal, in a form prescribed by regulations, stating the ground for the appeal. ***If no appeal is made to the Secretary within fifteen days, the findings, decisions, or orders shall be unreviewable administratively or judicially.***

3 CMC § 4948(a) (emphasis added).[2]

While Respondent filed a Motion to Extend Time for Appeal and a subsequent Motion for Reconsideration with the Department of Labor's Office of the Secretary, Respondent did not file a notice to appeal, appeal brief, or filing fee for an appeal with the Department of Labor. The deadline to appeal has long passed. Accordingly, the judgment was rendered final and "unreviewable administratively or judicially." 3 CMC § 4948. If the matter is unreviewable, it is procedurally illogical to, after the fact, dismiss the complaint and set aside judgment pursuant to a settlement agreement.[3]

///

[2] The time limit for filing an intra-agency appeal is mandatory and jurisdictional. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court lacks jurisdiction to review administrative decisions not timely appealed during the administrative process. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14.

[3] Furthermore, given the judgment was final and unreviewable, Complainant was already entitled to $7,800. Accordingly, any settlement agreement for less poses questions as to whether sufficient consideration supports a subsequent settlement agreement.

2. **It is unclear whether the undersigned has authority and jurisdiction to grant the requested relief.**

Respondent filed an Administrative Appeal to the CNMI Superior Court. *See Togawa v. Imperial Pacific International (CNMI),* LLC, Civ. No. 19-0104 (Administrative Appeal). Notice of the appeal was filed with the Department of Labor on April 24, 2019. The case was never remanded to the Administrative Hearing Office and there is no showing that the CNMI Superior Court reversed any of the findings, conclusions, or judgments in the Administrative Order. Instead, Complainant's Motion states that the parties pursued a global settlement agreement in the CNMI Superior Court.[4] Considering that the matter is pending an administrative appeal in the CNMI Superior Court, it is unclear whether the undersigned Hearing Officer has authority or jurisdiction to dismiss the complaint and set aside a final judgment. [5]

V. CONCLUSION

For the reasons set forth above, Complainant's Motion to Dismiss Complaint and to Set Aside Judgment is **DENIED**. Accordingly, the judgment in the above-captioned case stands.

So ordered this **16th** day of October, 2019.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

[4] A copy of the settlement agreement was not included with the present motion. The undersigned can make no finding that the settlement was fair, just, and supported by additional consideration.

[5] Complainant's Motion cites no legal authority or persuasive argument. Further, the regulations are silent on the matter. *See Alvarez v. Coastal Resources Management*, Civ. No. 04-0190 (NMI Super. Ct. July 21, 2004) (Order: Granting Defendant's Motion to Dismiss at 4) ("By its very nature, every administrative agency is a tribunal of limited jurisdiction and its jurisdiction is dependent entirely upon the statute vesting it with power."); *see also Torres v. E-Land World, Ltd.*, Civ. No. 15-0161 (NMI Super. Ct., Sept. 27, 2019) (Order Stating That The CNMI Superior Court's Jurisdiction Over This Civil Action Was Divested When The 'Notice Of Appeal' Was Filed With The CNMI Supreme Court").