

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

June 12, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00079
)	
DUNCAN FAMILY FARMS, INC.,)	
Respondent.)	
_____)	

Appearances: James Harmony, Esq., for Complainant
Julie A. Pace, Esq., Heidi Nunn-Gilman, Esq., for Respondent

ORDER GRANTING EXTENSION AND SETTING PREHEARING CONFERENCE

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Duncan Family Farms, Inc., violated § 1324a(a)(1)(B). On September 11, 2023, Respondent filed an Answer to Complaint Regarding Unlawful Employment.

On October 24, 2023, the Court held an initial prehearing conference pursuant to 28 C.F.R. § 68.13. During the conference, the Court set a case schedule, and Respondent informed the Court that it may seek to join another party to this case. *See* Order Summarizing Prehr’g Conf. 2. The Court subsequently granted two requests to extend the case schedule, including the deadlines for the close of discovery and the deadlines for dispositive motions. *See United States v. Duncan Family Farms, Inc.*, 18 OCAHO no. 1519 (2024); *United States v. Duncan Family Farms, Inc.*, 18 OCAHO no. 1519a (2024).¹ Presently, discovery closes on June 21, 2024, and the deadline for all dispositive motions is August 19, 2024.

¹ Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where

On May 28, 2024, Respondent filed two requests for subpoenas, both on OCAHO's standard subpoena request form (Form EOIR-30). First, Respondent requests that the Court issue a subpoena for a third-party, ADP, to "appear and give testimony at" a "Rule 30(b)(6) deposition" on June 20, 2024. Respondent attaches a document as Exhibit A that lists the matters for examination by the person designated by ADP for the deposition, which largely involve ADP's creation of the electronic I-9 system and the marketing and guarantees of compliance for said system. Second, Respondent requests that the Court issue a subpoena for ADP to mail documents by June 14, 2024. Respondent attached a document as Exhibit A that lists the documents requested, which include agreements relating to an electronic I-9 system between ADP and the Respondent, marketing and advertising materials, and documents and communications between Respondent and ADP relating to the electronic I-9 system.

Also on May 28, 2024, Respondent filed Respondent's Motion to Assert Third-Party Complaint, requesting that it be permitted to bring a Third-Party Complaint against ADP "because ADP is responsible for the penalties imposed for Counts V and VI, if any, both by contract and because they are an agent and acting directly or indirectly in the interests of [Respondent] for purposes of the electronic Forms I-9."

On June 6, 2024, Complainant filed an Unopposed Motion to Extend Time to Respond to Respondent's Motion to Assert Third-Party Counterclaim (Extension Motion).

II. COMPLAINANT'S MOTION FOR EXTENSION

In its Extension Motion, Complainant requests that the Court extend the regulatory deadline to respond to Respondent's Motion to Assert Third-Party Complaint until June 21, 2024. Complainant cites the need for more time to research and respond to Respondent's motion, given its complexity, and attaches an email from Respondent consenting to the extension of time.

Pursuant to 28 C.F.R. § 68.11(b),² "[w]ithin ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file

the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1 and is accordingly omitted from the citation. Published decisions may be accessed through the Westlaw database "FIM OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

a response in support of, or in opposition to, the motion” “OCAHO’s Rule of Practice and Procedure for Administrative Hearings do not provide specific standards for granting extensions, but the standard routinely applied is good cause.” *US Tech Workers et al. v. Walgreens*, 19 OCAHO no. 1541, 2 (2024) (quoting *United States v. Space Expl. Techs.*, 18 OCAHO no. 1499, 5 (2023)) (internal quotations omitted). “Good cause requires ‘a demonstration of good faith on the part of the party seeking an enlargement of time and some reasonable basis for noncompliance within the time specified in the rules.’” *Lowden v. Ann Arbor Elec. JATC Training Ctr.*, 18 OCAHO no. 1490, 2 (2023) (quoting *Tingling v. City of Richmond*, 13 OCAHO no. 1324c, 2 (2021)).

The Court finds that Complainant has shown good cause for an extension of the regulatory ten-day response deadline. The short 14-day extension requested is unlikely to greatly impact these proceedings, and the Complainant has proffered good cause – that additional time would allow the issue raised by Respondent to be more thoroughly briefed. Moreover, Complainant has consented to the request. *See, e.g., US Tech Workers, et al. v. Mesirov*, 19 OCAHO no. 1575a, 2 (2024) (citing *Space Expl. Techs. Corp.*, 18 OCAHO no. 1499, at 7).

Complainant’s Extension Motion is GRANTED, and Complainant’s response to Respondent’s Motion to Assert Third-Party Complaint is due no later than June 21, 2024.

III. PREHEARING CONFERENCE

Given the nature of the pending subpoena requests and motion, the Court will reset the case schedule to permit additional time for discovery and will provide the updated schedule after consultation with the parties at the prehearing conference referenced below.

The Court will hold a telephonic prehearing conference with the parties on **June 25, 2024, at 9:00am PST/12:00pm EST** to discuss the subpoena requests and an appropriate case schedule. The parties shall call #-####-###-#####, and use conference room ###-###-###, and security code #####.

SO ORDERED.

Dated and entered on June 12, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge