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

January 14, 2026

UNITED STATES OF AMERICA, Complainant, v. KLEIN'S KOSHER PICKLE COMPANY, D/B/A MRS. KLEIN'S KOSHER PICKLE COMPANY, Respondent.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 2023A00066

Appearances: Lisa Dubowski, Esq., for Complainant
Gregory Wald, Esq., for Respondent

ORDER GRANTING SUMMARY DECISION – FINAL ORDER[1]

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a.

On June 6, 2023, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Officer of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges across two separate counts that Respondent "failed to… properly complete" various sections of the Forms I-9 in 97 total instances, in violation of § 1324a(b) Compl. 3-6. The Complaint included the Notice of Intent to Fine Form (I-763) and Respondent's written request for a hearing. Compl 10-17.

On July 28, 2023, Respondent filed an answer. In its Answer, Respondent admits liability for nine individuals, but denies liability for the remaining individuals. Answer 2.

On February 9, 2024, Complainant filed a Motion for Summary Decision.

On March 11, 2024, Respondent filed its Opposition.

[1] *See* 28 C.F.R. § 68.52(c)(5).

I. COMPLAINANT'S POSITION

Complainant argues no genuine issues of material fact exist and it is entitled to summary decision. C's Mot. Summ. Dec. 2. Specifically, "[t]he Forms I-9 [Respondent] provided… demonstrate that [Respondent] failed to properly verify that ninety-six (96)[2] of its employees were eligible to work in the United States in violation of Section 274(a)(1)(B) of the [INA]." *Id*.

According to Complainant, "[b]ased on a review of the 165 Forms I-9 provided, the Complainant determined that [Respondent] failed to properly verify the employment authorization of 97[3] employees." C's Mot. Summ. Dec. 3. The Complainant further explained that Count I is comprised of 91 allegedly insufficient Forms I-9, and Count II is comprised of five allegedly insufficient Forms I-9 wherein the employees were also "determined to be unauthorized workers." C's Mot. Summ. Dec 5-6. Complainant attaches evidence to its motion (further outlined below).[4]

Complainant proposed a penalty based on "the amended penalty structure set forth in the Code of Federal Regulations, 8 C.F.R. 274a.10… and the statutory penalty factors contained in Title 8 of the United States Code, section 1324a(e)(5)." Mot. Summ. Dec. 5-6. As to Count I, "Complainant mitigated the base penalty by 5% because [Respondent] is a small business. The fines were then aggravated by 5% due to the seriousness of the violations and the error rate. This resulted in a total fine for Count I in the amount of $196,052.00." *Id*. at 6. As to Count II, "Complainant utilized the same method of calculation, but aggravated the base penalty by an additional 5%, due to the employment of unauthorized workers." *Id*. at 7.

Complainant proposes an assessed penalty of $2131.00 per Count I violation, with a total Count I proposed penalty of $193,921.00. *Id*. at 4.

Complainant proposes an assessed penalty of $2,237.55 per Count II violation, with a total Count II proposed penalty of $11,187.75. *Id.*

The grand total (of Count I and Count II) proposed penalty is $205,108.75. *Id*.

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[2] This is one employee less than what was alleged in the Complaint.

[3] In the Motion for Summary Decision, Complainant later explained that, "[o]n January 25, 2024, Complainant agreed to remove [one] employee… from the calculation, [resulting] in a total of 96 violations." C's Mot. Summ. Dec. 4.

[4] The Motion and attached evidence total 1044 pages. It has page numbers, but the attached evidence is not paginated (either in total or individually). For ease of reference, the Court will cite the page within the filing as a whole (i.e. a citations to the first page of Exhibit 1 would reference page 10 if it is on the tenth page of the combined file).

II. RESPONDENT'S POSITION

Respondent opposes summary decision because "there are genuine issues of material fact." Opposition 2.[5] As to Count I, Respondent argues it should be found not liable in several instances. As to employees S.L.[6] and J.P.,[7] Respondent argues the Forms I-9 were properly completed, and Respondent cites Complainant's exhibits (specifically the Forms I-9 and the E-Verify Case

[5] The Opposition Brief and attached evidence total 140 pages. For ease of reference, the Court will cite the page within the filing as a whole (i.e. a citations to the first page of Exhibit 1 would reference page 10 if it is on the tenth page of the combined file).

[6] According to Respondent,

> [T]he Company filed the Form I-9 for [this employee] *See* [Complainant Exhibit]. Section 1 shows that [this employee] signed the Form I-9 on April 26, 2021 and the E-Verify report shows that the report was prepared on April 27, 202[1], which was also the first day of employment. *Id*. at [page numbers omitted].
>
> Section 2 shows that the Company signed and dated the Form I-9 on April 27, 2022. *Id*. at [page numbers omitted]. The Company prepared the Form I-9 within three days of hire but failed to sign and date Section 2 within this timeframe. *Id.* at [page numbers omitted]. Based on the Virtue Memorandum, this delay is considered a technical or procedural violation rather than a substantive violation. [Complainant Exhibit] For this reason, summary decision should be denied as to the Form I-9 of [this employee].

Opp'n at 4-5.

[7] According to Respondent,

> Complainant failed to establish [this employee's] Form I-9 presented substantive errors. *See* [Complainant Exhibit]. There is a five-year statute of limitations for an action brought for the enforcement of a penalty. 28 U.S.C. § 2462; *U.S. v. WSC Pluming Inc.,* 9 OCAHO 1061 (2000). The five-year period runs from the moment when the action accrued. *Id*. The action begins to accrue depending on which section of the Form I-9 was not completed in a timely manner. *Id*. at 11-12.
>
> Failure to complete Section 1 of the Form I-9 in a timely manner occurs on the day after the employee is hired and failure to complete Section 2 in a timely manner occurs on the day after the third business day after hire. *Id*. (*citing United States v. Curran Eng.'g Co., Inc.,* 7 OCAHO No. 975 at 897 (1997)).
>
> Here, the statute of limitations constitutes a bar to the Company's liability with respect the untimely completion of [this employee's] Form I-9. [His] first day of employment was January 8, 2007, and statute of limitations began to run the day after the third business day after hire. [Complainant Exhibit]. Complainant's opportunity to bring an action based on [this] Form I-9 expired in January of 2012. For this reason, Complainant is barred from recovering a penalty for the untimeliness of the completion of [this employee's] Form I-9.

Opp'n at 5.

Reports) as evidence of such. Opp'n 2. Respondent also notes that one employee named in the Complaint was never hired, and thus "[the] Company was not required to maintain a [Form] I-9 for [him]." *Id.* Respondent contests a total of two employees named in this Count.[8]

As to Count II, Respondent argues that "at the time of hire, the Company obtained E-Verify results that show [two named employees] were authorized for employment [citing Complainant exhibits]." *Id*. Further, Respondent notes that it terminated one named employee "once the E-Verify tentative and final non-confirmation procedures were completed." *Id.* Respondent contests a total of 3 employees named in this Count.

On penalty, Respondent takes issue with a penalty aggravated due to unauthorized workers. Opp'n 6. Further, Respondent notes the method by which Complainant calculated the penalty (percentage of violations based on employee count) creates, in Respondent's estimation, an unfairly high penalty assessment. *Id*. at 7. Respondent argues the statutory factors as applied should be weighted as either neutral or mitigating. *Id*.

As to non-statutory factor consideration, Respondent notes the Court can and should "take into consideration the Company's ability to pay." Opp'n 9. Respondent further explained:

> Paying the assessed fine will impact the financial status of [this] small business… The Company is in a process of financial recovery after the pandemic. In 2020, the Company's ordinary income was negative ($80,478) and in 2022 Company also suffered negative ordinary income of ($2,374,101) and although 2023 looks to be an improvement, the Company is still recovering from these two years of significant losses. *See attached* [Affidavit], including Company's 2022 1120-S U.S. Income Tax Return.
>
> [I]f the Company were to incur the penalty assessed by Complainant of $207,000, it would be forced to make drastic cost cuts such as the reduction of its workforce. Respectfully, the Company asks this Court to reduce the penalty in light of these mitigating factors.

Id. at 9.

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[8] Respondent acknowledged that Complainant "'agreed to remove [the potential employee] from the calculation, which [would] result in a total of 96 violations.'" Opp'n 2; *citing* C's Mot. Summ. Dec. 6. Respondent takes the position that Complainant must then amend the Complaint. Respondent's assertion is not unreasonable, given the Court's prior decisions (*see e.g. United States v. Pasquel Hermanos, Inc.*, 18 OCAHO 1506b (2024)); however, from a practical standpoint, amendment seems unnecessary where a Complainant seeks to reduce liability, and would only serve to further delay adjudication of the case on the merits.

Stated a different way, the Court does not find a "determination of a controversy on the merits will be facilitated" by amending the Complaint. 28 C.F.R. § 68.9(e). To be sure, a scenario where a Complainant seeks to add individuals, and/or propose new or alternate theories of liability could result in the Court coming to a different conclusion.

Finally, Respondent requests the Court make a specific factual finding as to the location of the Forms I-9 at issue in this case. "Based on the record… DHS should have possession of the original Forms I-9. [citing the HSI Auditor Receipt for Property, dated April 21, 2022]." Opp'n 9. Respondent further explained that, during discovery, Complainant "was unable to admit or deny" a request for admission that "to date, [Complainant] hold[s] the original version of the I-9 Forms inspected." *Id* at 10.

Respondent attaches evidence to its Opposition (further outlined below).

III. EVIDENCE CONSIDERED

At the outset, the Court will analyze the evidence offered by both parties. To conduct its evidentiary analysis, "[t]he Court must ensure that evidence is sufficiently reliable, and then it must consider what weight, if any, to assign the evidence based on its probative value."[9] *United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 24 (2022). The evidence considered by the Court will serve as the basis for factual findings made in a later section.

A. Complainant's Evidence

With its Motion for Summary Decision, Complainant provided exhibits for the Court's consideration, including: a "Memorandum to Case File," which is an internal memorandum (unsigned and undated) providing rationale for the penalty assessment; a Notice of Inspection dated April 1, 2022, signed by the Assistant Special Agent in Charge (including a Certificate of Service showing receipt on April 7, 2022); a DHS Receipt for Property (signed and dated April 21, 2022) showing receipt of 107 Forms I-9 for "active employees," and 54 Forms I-9 for "termed employees;" a copy of Forms I-9[10] and some identification documents and E-Verify Reports; Arizona Department of Economic Security's Unemployment Tax and Wage Report Documents for 2018-2022 (including a Certificate of Authentication from the Records Custodian); a Notice of Suspect Documents dated May 20, 2022, signed by the Assistant Special Agent in Charge (including a Certificate of Service showing receipt on May 27, 2022); a Notice of Technical and/or Procedural Failures dated May 20, 2022, signed by the Assistant Special Agent in Charge (including a Certificate of Service showing receipt on May 27, 2022); a Report of Investigation (including interim Reports); email correspondence between the Respondent business and

[9] For documentary evidence to be reliable, its proponent must "authenticate [the] document by evidence sufficient to demonstrate that the document is what it purports to be[.]" *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1, 5 (1997) (citations omitted).

Generally, documentary evidence that is complete, signed, sworn under penalty of perjury, dated, authenticated, laid down with foundation contain sufficient indicia of reliability. *See United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 5–7 (2021).

"Probative value is determined by how likely the evidence is to prove some fact[.]" *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428d, 9 n.15 (2023) (citation omitted).

[10] With some Forms I-9 having highlighted markings or red circles placed on certain sections or spaces.

Complainant; email correspondence between a contractor (with workers onsite at Respondent business) and Complainant; a Memorandum providing "Interim Guidelines" for "Section 274A(b)(6)" signed by Paul W. Virtue, Acting Executive Commissioner, Programs (often referred to as "the Virtue Memorandum); and the Notice of Intent to Fine (served on October 14, 2022 via personal service).

The Court finds almost all[11] of Complainant's documentary evidence to be reliable (to the extent the documents are signed, printed on the issuer's letterhead, or published by a government agency). In each case, it is clear "that the document is what it purports to be[.]" *United States v. Carpo-Lingan*, 6 OCAHO no. 914, 5 (1997). Moreover, each reliable document is highly probative, as each is likely to assist the Court in making a factual determination relative to whether Complainant can meet its burden on liability and penalty.

B. Respondent's Evidence

With its Opposition, Respondent provided exhibits for the Court's consideration, including: a signed, sworn affidavit from the Respondent's Vice President of Operations, and various tax and financial documents from 2022. The Opposition also includes Respondent's discovery requests, and Complainant's responses.

The Court finds Respondent's documentary evidence to be reliable. The documents are sworn and signed, and financial documents appear complete, and some are forms published by a government agency. In each case, it is clear "that the document is what it purports to be[.]" *United States v. Carpo-Lingan*, 6 OCAHO no. 914, 5 (1997). Moreover, each is highly probative, as each is likely to assist the Court in making factual determinations, including those relative to the location of the Forms I-9, and penalty.

IV. FINDINGS OF FACT

Based on the reliable evidence presented by the parties, the Court makes the following findings of fact.

1. Respondent is an Arizona business engaged in food manufacturing. Mot. Summ. Dec. 536.

2. Respondent business was incorporated in 1984. Opp'n 17.

3. Respondent is a "small business," with less than 100 employees. Mot. Summ. Dec. 21.

4. In some instances, Respondent uses E-Verify, and has done so since 2007. Opp'n 15.

A. Inspection & Audit Resulting in Issuance of Notice of Intent to Fine

[11] Excluded from this conclusion is the "Memorandum to Case File," which is an internal memorandum (unsigned and undated).

5. On April 7, 2022, a Homeland Security Investigations (HSI) Special Agent personally served a Notice of Inspection on Klein's Kosher Pickle Company (Respondent) on Respondent's Vice President of Operations. Mot. Summ. Dec. 24-6.

6. At the time of service of the Notice of Inspection, the HSI auditor informed the Respondent it would be required to produce Forms I-9 for "all current employees, and any employee terminated on or after March 31, 2021." Mot. Summ. Dec. 539.

7. On April 21, 2022, an HSI Auditor received "107 Forms I-9 Active Employees," and "54 Forms I-9 Termed Employees;" memorialized on a "Receipt of Property – DHS Form 6051R."[12] Mot. Summ. Dec. 28.

8. On May 27, 2022, an HSI Auditor personally served a "Notice of Suspect Documents"[13] letter on Respondent (which identified seven individuals). Mot. Summ. Dec. 525-8.

9. On May 27, 2022, an HSI Auditor personally served a "Notice of Technical and/or Procedural Failures Violations"[14] letter on Respondent Mot. Summ. Dec. 529-32.

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[12] Germane to the whereabouts of these original Forms I-9 referenced in the receipt, Complainant submitted, as part of its Motion, email correspondence related to the location of the forms. Specifically, the Auditor implicitly confirmed that Complainant retained "the original hardcopy Forms I-9," and explained they would not be returned until the matter was resolved. Mot. Summ. Dec. 602. Absent any additional evidence or communication, the Court finds (as Respondent requested) that Complainant possessed the Forms I-9 for its inspection, and has not shown (as a part of this record) the Forms were ever returned to Respondent.

[13] The Notice informs Respondent: "The identity and/or employment documents presented for such employee(s) were found to relate to other individuals or have no record of issuance, or, if the documents relate to the employees in question, such employees do not appear to have valid and/or current U.S. work authorization." Mot. Summ. Dec. 525.

When presenting this Notice, the Auditor informed Respondent that "in each case, the employee had presented a fraudulent document to complete the Form I-9." Mot. Summ. Dec. 545. The Respondent business informed the Auditor (on June 7, 2022) that the individuals were previously terminated (six prior to May 27, 2022 and one on June 2, 2022). Mot. Summ. Dec. 548.

[14] The Notice informs Respondent:

> This Notice and accompanying documents are to notify [Respondent] of the technical and/or procedural failures violations identified and to provide a period of not less than 10 business days within which to correct these failures. Enclosed are copies of 37 Forms I-9 that contain technical and/or procedural failure violations. The technical and/or procedural violations have been highlighted or circled in ink. They include one or more of the following technical and/or procedural violations: [use of outdated or Spanish version of the Form], [missing identification information or dates in Section 1], [no document or identification title in Section 2], [missing identification information in Section 2], and [missing identification information in Section 3].

10. On June 7, 2022, the Respondent provided a responsive submission to the Notice of Technical or Procedural Violations which the Auditor concluded "adequately resolved" the issues raised in the Notice. Mot. Summ. Dec. 552.

11. In conducting the audit, the HSI Auditor referenced and reviewed the following: State of Arizona Corporation Commission website, "[databases]," Unemployment Insurance Tax wage submissions filed with the Arizona Department of Economic Security, company payroll records" against the provided Forms I-9. Mot. Summ. Dec. 550-2.

12. Following the review and cross-reference, the Auditor determined Respondent should have produced 165 Forms I-9. Mot. Summ. Dec. 552.

13. Ultimately, the Auditor concluded that, in his estimation, 97 Forms I-9 contained substantive paperwork violations, "including the failure of the employee to sign Section 1, the failure of the employer to sign Section 2, the failure to record document information in Section 2…, the failure of the employer to perform reverification of temporary employment authorization required by Section 3…, [and] the failure to prepare the Form I-9 within the statutory time requirement." Mot. Summ. Dec. 552.

14. After conducting his review, the Auditor noted "the inspection did not result in any information proving that the company knowingly hired, or knowingly employed unauthorized workers." Mot. Summ. Dec. 552.

15. On October 14, 2022, an HSI Special Agent personally served the Notice of Intent to Fine (Form I-763) on the Human Resources Representative. Mot. Summ. Dec. 1038-43.

16. The Notice of Intent to Fine identifies two Counts, both Counts allege Respondent failed to ensure that the employee properly completed Section 1 and/or 2 or 3 of the Form I-9 for 97 employees. Mot. Summ. Dec. 1041-43.

B. OCAHO Proceedings Commence

17. On November 8, 2022, Respondent requested a hearing. Compl. 17.

18. On June 6, 2023, Complainant filed its Complaint. Compl. 1.

19. The Complaint adopts the charging language of the Notice of Intent to Fine, which is to say that for Count I, Complainant alleges that either Section 1 or Section 2 or Section 3 of the Form I-9 was not "properly completed." Compl. 3.

20. On July 28, 2023, Complainant filed its Answer. Answer 1.

> [Respondent] has until June 13, 2022 to correct, or ensure the correction of, the highlighted or circled failures on the accompanying Forms I-9. After this date, HIS will review these forms to ensure the noted failures have been corrected. Any uncorrected technical and/or procedural failures violations may result in the issuance of a Notice of Intent to Fine.

C. Findings of Fact Pertaining to Employment and Violations[15]

21. The Court finds Respondent did employ 91 of the 92[16] individuals listed in Count I, and each was hired after 1986. Answer 2-3.

22. The Court finds Respondent did employ all five individuals listed in Count II, and each was hired after 1986. Answer 3.

23. Following is a table, accounting for each employee identified by number in the Complaint with a corresponding violation (if any) as supported by the record evidence.

COUNT I TABLE

EMPLOYEE No.	VIOLATION	RECORD CITATION
1	Section 1 missing address	Mot. Summ. Dec. 47-49
2	Section 1 missing signature	Mot. Summ. Dec. 53-56
3	Section 3 not completed[17]	Mot. Summ. Dec. 72-75
4	Section 2 untimely	Mot. Summ. Dec. 83-86
5	Section 2 missing signature	Mot. Summ. Dec. 101-105
6	Section 2 missing signature	Mot. Summ. Dec. 106-110
7	Section 1 missing signature	Mot. Summ. Dec. 111-114
8	Section 2 untimely	Mot. Summ. Dec. 115-118
9	Section 2 missing signature	Mot. Summ. Dec. 138-143
10	Section 2 incorrect signature	Mot. Summ. Dec. 144-146

[15] As to Count I, Complainant provides boilerplate summations of why failures to properly complete Section 1 and/or Section 2 violate the INA, and may be considered "serious" violations. *Id.* at 10. While the recitation of the law is accurate, it does little to assist the finder of fact, who must identify ***the*** violation at issue, and then assess an appropriate penalty for that violation. As to Count II, Complainant's charging language indicates the discrepancy could be anywhere on the Form I-9; however, the argument seems to only address Section 2. *See generally* Mot. Summ. Dec. 11-12.

Along with its motion, Complainant provides the Court with an index-free pile of Forms I-9 (the order of which does not match the order of employees in the Complaint.). Presenting Forms I-9 out of order wastes time and limited judicial resources. Complainant must consider itself on notice that future motions of this caliber may fair differently.

[16] As to one of the employees listed (Employee #72), Respondent, in its Answer, states that individual was never employed by Respondent. Answer 2. According to Complainant, "[o]n January 25, 2024, Complainant agreed to remove [employee #72] from the calculation, which will result in a total of 96 violations." Mot. Summ. Dec. 4. Frustratingly, the Complainant still included this Form I-9 for the Court's review as an attachment to its Motion for Summary Decision. Mot. Summ. Dec. 245-248.

[17] This employee presented an Arizona driver's license, a social security card noting "valid for work only with DHS authorization," and an employment authorization card, which expired on November 20, 2021. Mot. Summ. Dec. 74-5.

11	Section 2 missing signature	Mot. Summ. Dec. 161-166
12	Section 2 missing signature	Mot. Summ. Dec.167-170
13	Section 2 not complete	Mot. Summ. Dec. 171-172
14	Section 2 missing signature	Mot. Summ. Dec. 177-179
15	Section 2 missing signature	Mot. Summ. Dec. 189-192
16	Section 2 untimely	Mot. Summ. Dec. 193-196
17	Section 1 missing signature	Mot. Summ. Dec. 205-209
18	Section 2 untimely[18]	Mot. Summ. Dec. 210-214
19	Section 2 missing signature	Mot. Summ. Dec. 215-218
20	Section 1 missing information[19]	Mot. Summ. Dec. 222-226
21	Section 1 missing information[20]	Mot. Summ. Dec. 240
22	Section 2 missing signature	Mot. Summ. Dec. 241-244
23	Section 2 missing signature	Mot. Summ. Dec. 252-257
24	Section 2 missing signature	Mot. Summ. Dec. 257-260
25	NO VIOLATION[21]	Mot. Summ. Dec. 266-268
26	Section 1 missing information[22]	Mot. Summ. Dec. 273-279
27	Section 1 missing signature	Mot. Summ. Dec. 287-290
28	Section 2 missing signature[23]	Mot. Summ. Dec. 294-280

[18] Respondent specifically referenced this employee in its Opposition filing, noting that it initiated the form timely, and conducted an E-verify check of authorization statutes within a day of hire. Opp'n 4-5. While a review of the Form I-9 and its supporting documents indicates these facts are accurate, there still remains a deficiency with the Form I-9 – namely that Section 2 was signed and dated just over a year later. Mot. Summ. Dec. 211.

[19] The employee did not complete the address box; however the employee did complete all other portions of Section 1, including signing and dating the Form I-9. Mot. Summ. Dec. 219.

[20] The employee completed all of Section 1 (including signature), but failed to check the box associated with her status; however, in Section 2, she provides a "List A" document that reveals she is a "resident alien." (The Form I-9 was completed in 1998 as an INS Form I-9). Mot. Summ. Dec. 240.

[21] This employee completed Section 1 in its entirety (including signature), indicating she is a U.S. Citizen. Section 2 is completed and signed on the same date of hire provided in Section 1. Complainant placed a highlight over her "Citizenship/Immigration Status;" however, it matches the status she provided in Section 1. The documents she provided to her employer were photocopied (front and back), and were included along with the Form I-9 for audit.

[22] The employee did not provide her date of birth; however, this information is visible on the photocopied identification included with the Form I-9. Mot. Summ. Dec. 273, 275.

[23] This is the second employee Form I-9 with which Respondent takes issue in its Opposition. Opp'n 2. Respondent notes Complainant, during the inspection, requested Respondent complete a new Form I-9 for this employee based on a name discrepancy between the Form I-9 and payroll documents (matching social security number). Mot. Summ. Dec. 577.

Respondent complied, and provided a complete Form I-9 for this individual, including a photocopy of the identification page of his U.S. Passport. Mot. Summ. Dec. 295-297. While this revised Form I-9

29	Section 2 missing signature	Mot. Summ. Dec. 301-306
30	Section 1 missing signature	Mot. Summ. Dec. 307-310
31	Section 2 missing signature	Mot. Summ. Dec. 315-318
32	Section 2 missing signature	Mot. Summ. Dec. 319-321
33	Section 2 missing signature	Mot. Summ. Dec. 322-327
34	Section 2 missing signature	Mot. Summ. Dec. 343-346
35	Section 2 missing signature	Mot. Summ. Dec. 347-349
36	Section 2 missing signature	Mot. Summ. Dec. 350-355
37	Section 1 missing signature	Mot. Summ. Dec. 356-359
38	Section 2 missing signature	Mot. Summ. Dec. 360-365
39	Section 2 signature untimely	Mot. Summ. Dec. 377-381
40	Section 2 missing signature	Mot. Summ. Dec. 386-388
41	Section 1 missing signature	Mot. Summ. Dec. 389-392
42	Section 2 missing signature	Mot. Summ. Dec. 402-404
43	Section 1 missing signature	Mot. Summ. Dec. 415-419
44	Section 1 signature untimely	Mot. Summ. Dec. 435-437
45	Section 2 missing signature	Mot. Summ. Dec. 30-34
46	Section 2 missing signature	Mot. Summ. Dec. 39-42
47	Section 2 missing signature	Mot. Summ. Dec. 43-46
48	Section 2 missing signature	Mot. Summ. Dec. 50-52
49	Section 2 missing signature	Mot. Summ. Dec. 57-59
50	Section 2 incorrect signature	Mot. Summ. Dec. 60-63
51	Section 2 missing signature	Mot. Summ. Dec. 64-68
52	Section 2 not completed	Mot. Summ. Dec. 69-71
53	Section 2 missing signature	Mot. Summ. Dec. 77-82
54	Section 2 missing signature	Mot. Summ. Dec. 87-88
55	Section 2 missing signature	Mot. Summ. Dec. 89-90
56	Section 2 not completed	Mot. Summ. Dec. 119-120
57	Section 2 not completed	Mot. Summ. Dec. 121-123
58	Section 2 missing signature	Mot. Summ. Dec. 124-127
59	Section 2 missing signature	Mot. Summ. Dec. 128-130
60	Section 2 missing signature	Mot. Summ. Dec. 134-137
61	Section 2 missing signature	Mot. Summ. Dec. 147-157
62	Section 2 missing signature	Mot. Summ. Dec. 152-157
63	Section 2 missing signature	Mot. Summ. Dec. 158-160
64	Section 2 missing signature	Mot. Summ. Dec. 173-175
65	Section 2 missing signature	Mot. Summ. Dec. 180-183
66	Section 2 missing signature	Mot. Summ. Dec. 184-188
67	Section 2 missing signature	Mot. Summ. Dec. 197-199
68	Section 2 missing signature	Mot. Summ. Dec. 200-203

demonstrates the individual was authorized to work in the United States at the time of Form I-9 completion, it does not absolve Respondent of liability for the missing signature in Section 2 of the original Form I-9. *Id.* at 294.

69	Section 2 missing signature	Mot. Summ. Dec. 227-230
70	Section 2 missing signature	Mot. Summ. Dec. 231-235
71	Section 2 missing signature	Mot. Summ. Dec. 236-239
72	Section 2 missing signature	Mot. Summ. Dec. 249-251
73	Section 2 missing signature	Mot. Summ. Dec. 261-265
74	Section 2 missing signature	Mot. Summ. Dec. 269-272
75	Section 2 missing signature	Mot. Summ. Dec. 280-283
76	Section 2 not completed	Mot. Summ. Dec. 284-286
77	Section 2 not completed	Mot. Summ. Dec. 291-293
78	Section 2 missing signature	Mot. Summ. Dec. 298-300
79	Section 1 missing signature	Mot. Summ. Dec. 311-314
80	Section 1 signature incorrect box[24]	Mot. Summ. Dec. 328-331
81	Section 2 missing signature[25]	Mot. Summ. Dec. 332-336
82	Section 2 missing signature	Mot. Summ. Dec. 337-339
83	Section 2 missing signature	Mot. Summ. Dec. 340-342
84	Section 1 missing signature	Mot. Summ. Dec. 366-369
85	Section 2 missing signature	Mot. Summ. Dec. 370-373
86	Section 2 missing signature	Mot. Summ. Dec. 374-376
87	Section 2 missing signature[26]	Mot. Summ. Dec. 382-385
88	Section 2 missing signature	Mot. Summ. Dec. 420-423
89	Section 2 missing signature	Mot. Summ. Dec. 424-427
90	Section 2 not completed	Mot. Summ. Dec. 428-429
91	Section 2 missing signature	Mot. Summ. Dec. 430-434

[24] The employee signed and dated in the "Preparer or Translator" box, and not in the "Signature of Employee Box." Mot. Summ. Dec. 328.

[25] The employee signed as both employee in Section 1 and employer in Section 2; thus, the Court concluded this Form I-9 is "missing" the employer signature in Section 2. Mot. Summ. Dec. 332-336.

[26] The employee signed as both employee in Section 1 and employer in Section 2; thus, the Court concluded this Form I-9 is "missing" the employer signature in Section 2. Mot. Summ. Dec. 382-383.

COUNT II TABLE

EMPLOYEE No.	VIOLATION	RECORD CITATION
1	Section 2 missing signature[27]	Mot. Summ. Dec. 131-133
2	Section 2 documents insufficient[28]	Mot. Summ. Dec. 393-401
3	Section 2 missing signature[29]	Mot. Summ. Dec. 35-38
4	Section 2 missing signature[30]	Mot. Summ. Dec. 219-222
5	Section 2 missing signature[31]	Mot. Summ. Dec. 405-414

D. Findings of Fact Pertaining to Respondent's Ability to Pay

24. Respondent filed tax returns each year, and provided its then most recent tax returns (2022) for the Court's consideration. Opp'n. 14, 17-113.[32]

25. Respondent business has two shareholders, and has no pension or profit sharing (as listed in its tax return). Opp'n. 17.

26. The shareholders took a distribution totaling $662,953. Opp'n 19.

27. Even after this distribution, the Schedule L Analysis of Total Retained Earnings Per Books had an end of year balance of "$2,669,937. Opp'n 47.

[27] This employee provided a California driver's license and a social security card. The California driver's license has a facially implausible address ("1234 Any Street in City, CA 45267"). Mot. Summ. Dec. 133.

[28] This employee provided his Cuban Passport as his List A document, and provided a driver's license as a List B document, and a DHS Form I-797C, Notice of Action, which provided notice of USCIS' next action on his pending I-765 Application for Employment Authorization (of note, the form expressly states: "This notice does not grant any immigration status or benefit.") Mot. Summ. Dec. 395.

[29] This employee provided an Arizona driver's license and a social security card. The Respondent also maintained documentation from E-Verify for this employee which noted a "current case result" of "employment authorized." Mot. Summ. Dec. 37-8.

[30] This employee presented a Texas driver's license and a social security card. The Respondent also maintained documentation from E-Verify for this employee which noted a "current case result" of "employment authorized." Mot. Summ. Dec. 222-3.

[31] This employee presented a lawful permanent resident card and a social security card. Mot. Summ. Dec. 407. The Respondent also provided documentation from E-Verify – specifically, a "Further Action Notice" for a "Tentative Nonconfirmation" as this employee's social security number did not match DHS records." *Id.* at. 408. The tentative non-confirmation was dated September 22, 2021. *Id.* The Respondent also maintained and provided to Complainant a follow-on E-Verify document which shows that, on October 14, 2021, the Respondent "terminated [employee] for receiving a Final Nonconfirmation result." *Id.* at 411.

[32] Unless otherwise stated, all findings of fact which follow are derived from the 2022 tax return, including supplementing documentation.

28. The Respondent had "loans to shareholders" in tax year 2022 (beginning of tax year $62,572 and end of tax year growing to $122,843). There were no corresponding loans from shareholders reported for the tax year. Opp'n 20.

29. For tax year 2022, Respondent had total assets of $6,007,658. Opp'n 17.

30. For tax year 2022, Respondent had gross profit of $7,532,063; and total income of $7,646,817. Opp'n 17.

31. Compensation of officers and salaries and wages were $5,248,322. Opp'n 17.

32. As to repairs and maintenance, rents, and taxes and licenses, the Respondent's deductions totaled $994,840. Opp'n 17.

33. Respondent deducted $2,129,481 in depreciation,[33] and took a deduction of $1,618,409 in "other deductions."[34] Opp'n 17.

34. As a result of the income and deductions, the Respondent reported an ordinary business "income (loss)" of negative $2,374,101.

V. CONCLUSIONS OF LAW

A. Propriety of Summary Decision – Law & Analysis

OCAHO regulations allow for resolution of cases via summary decision when "the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact[35] and that [the moving] party is entitled to summary decision." 28 C.F.R. § 68.38(c).

"Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution." *United States v.*

[33] According to the IRS Depreciation and Amortization Form (Form 4562), Respondent claimed "other depreciation" for equipment and vehicles including several non-commercial vehicles (i.e. a "2000 Lexus… auto-Jeep, 2011 Ford F-150, 2013 Ford F-250, 2015 Dodge, 2016 Dodge Ram [pick up], 2017 Dodge truck, 2017 Dodge Ram 1500, 2019 Toyota Highlander, 2019 [Dodge] Ram 1500, 2019 Dodge Durango, 2019 Dodge Ram 2500 [pick up], 2020 Dodge Ram, Toyota 4Runner, 2019 Cadillac Escalade, GMC Yukon Denali, 2020 Chevy Silverado, [and a] 2021 Ram 2500). Opp'n 32-41.

[34] The "other deductions" include a line item for "legal and professional" expenses of $135,153. Opp'n 45.

[35] "An issue of material fact is genuine only if it has a real basis in the record, [and]… [a] genuine issue of material fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (first citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986), then citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 284 (1986)).

Four Seasons Earthworks, Inc., 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The Court views all facts and inferences "in the light most favorable to the non-moving party." *United States v. Primera Enters.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

While Respondent initially argues in its motion there is a genuine issue of material fact, the substance of the motion and the exhibits which accompany it belie such a position. The Respondent lodges several arguments pertaining to liability; however, they do not turn on the sufficiency of the record, rather they rely on Complainant's misinterpretation of its own submitted exhibits. Further, Respondent's exhibits add to the evidentiary record (vice contradicting evidentiary submissions of the Complainant.) There are no genuine issues of material fact.

B. Liability – Law & Analysis

In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. ABCO Solar, Inc*., 17 OCAHO no. 1465a, 2 (2023) (citing *United States v. Metro Enters., Inc*., 12 OCAHO no. 1297, 7 (2017)).

As is set forth in the applicable regulation, employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the I-9 Forms for inspection by the government upon three days' notice. 8 C.F.R. § 274a.2(b)(2)(ii).

Forms must be retained for current employees. *United States v H&H Saguaro Specialists*, 10 OCAHO no. 1144, 6 (2012) (internal citations omitted). With respect to former employees, forms must be kept "only for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later." *Id.*

Employers must ensure new employees complete Section 1 of the Form I-9 and attest to citizenship or immigration status in the United States by signing and dating the Form I-9. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury), (b)(1)(i)(A).

Employers must sign Section 2 of the Form I-9 within three days of the employee's first day of employment to attest under penalty of perjury that it reviewed the appropriate documents to verify the individual's identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii); *United States v. Psychosomatic Fitness LLC*, 14 OCAHO no. 1387a, 8 (2021).

Here, the record reveals no instances of a complete failure to prepare and/or present a Form I-9 for any current or former employee, rather the Respondent prepared Forms I-9, but did not complete all sections, or did not complete them accurately in all but one instance.[36] The Respondent's Forms I-9 had deficiencies in either Section 1 or Section 2, and those deficiencies can be characterized as either leaving the section blank in its entirety, failing to complete or fill out portions of the Section,

[36] This is Charged Employee #25 in Count I. *See* Mot. Summ. Dec. 266-268.

or failing to sign the Section. In many instances, Respondent retained and provided with each Form I-9 a photocopy of identification documents and/or E-Verify documentation.

C. Penalty Law & Analysis

"The government has the burden of proof with respect to the penalty . . . , and must prove the existence of any aggravating factor by a preponderance of the evidence . . .)." *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015) (citations omitted).

The penalty range depends on the date of the violations and the date of assessment. *See* 28 C.F.R. § 68.52(c)(8); 28 C.F.R. § 85.5.[37]

As the Court has previously noted:

> [T]here is . . . no single method mandated for calculating civil money penalties for violations of 8 U.S.C. § 1324a(a)(1)(B). *See United States v. Senox Corp.*, 11 OCAHO no. 1219, 4 (2014); *see also United States v. The Red Coach Rest., Inc.*, 10 OCAHO no. 1200, 3 (2013) (affirmance by the CAHO noting decisions using varied approaches to calculating penalties); *cf. United States v. Int'l Packaging, Inc.*, 12 OCAHO no. 1275a, 6 (2016) (noting that nothing in 8 U.S.C. § 1324a(e)(5) requires the five statutory factors to be considered exclusively on a binary scale); *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1232, 5 (2014) (affirmance by the CAHO) (noting a failure to establish a statutory factor as aggravating does not require that the factor necessarily be treated as mitigating).

United States v. HDB Network, 18 OCAHO no. 1483a, 10 (2024) (citing *R&SL Inc.*, 13 OCAHO no. 1333b, 36 (2022)).

"The civil penalties for violations of § 1324a are intended 'to set a meaningful fine to promote future compliance…'" *United States v. 1523 Ave. J Foods Inc.*, 14 OCAHO no. 1361, 3 (2020) (quoting *United States v. 3679 Com. Place, Inc.*, 12 OCAHO no. 1296, 7 (2017)).

As the Court noted in *United States v. HDB Network*, there are five statutory factors the Court

[37] 28 C.F.R. § 68.52(c)(8) provides: "For civil penalties assessed after August 1, 2016, whose associated violations ... occurred after November 2, 2015, the applicable civil penalty amounts are set forth in 28 C.F.R. 85.5." When a penalty for a "paperwork violation" is assessed after July 3, 2025, the minimum penalty is $288.00 per individual, and the maximum is $2,861.00 per individual.

The Chief Administrative Hearing Officer observed "for purposes of 28 C.F.R. § 85.5(d), OCAHO does assess civil money penalties, those penalties are assessed through the issuance of a final order, and the date of assessment is the date of the OCAHO final order." *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470e, 26 (2023). The Court issues this Order after July 3, 2025, making the appropriate penalty range between $288.00 and $2,861.00 per individual.

must consider when assessing a penalty: 1) the size of the employer's business; 2) the employer's good faith;[38] 3) the seriousness of the violations;[39] 4) whether or not the individual was an unauthorized alien; and 5) the employer's history of previous violations. 18 OCAHO no. 1483a, at 11; *see also* 8 U.S.C. § 1324a(e)(5).

While Complainant proposes a fine amount in its Complaint, its proposed penalty is "not binding in OCAHO proceedings, and the ALJ may examine the penalties de novo if appropriate." *United States v. Alpine Staffing, Inc.*, 12 OCAHO no. 1303, 10 (2017) (citing *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

> Although 8 U.S.C. § 1324a(e)(5) "requires due consideration[40] of the enumerated factors, it does not mandate any particular outcome of such consideration, and nothing in the statute or the regulations

[38] A good faith analysis can encompass "the steps the employer took *before* the investigation to reasonably ascertain what the law requires and the steps it took to follow the law." *United States v. Exec. Cleaning Servs. of Long Island Ltd.*, 13 OCAHO no. 1314, 3 (2018) (emphasis in original); *see also United States v. Frio Cnty. Partners, Inc.*, 12 OCAHO no. 1276, 16 (2016).

A poor compliance rate alone may be insufficient to find bad faith. *See United States v. Maverick Constr.*, 15 OCAHO no. 1405a, 7 (2022); *United States v. Azteca Dunkirk, Inc.*, 10 OCAHO no. 1172, 4 (2013). A low compliance rate and additional culpable conduct may permit Court to make a finding of bad faith. *See United States v. Integrity Concrete, Inc.*, 13 OCAHO no. 1307, 13–14 (2017) (additional culpable conduct of backdating); *United States v. Karnival Fashions, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (explaining that bad faith involves an additional finding of knowing disregard for verification requirements). "[T]he absence of bad faith does not show good faith." *United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 8 (2020) (citing *United States v. Guewell*, 3 OCAHO no. 478, 814, 820 (1992)).

[39] As the Court has concluded previously:

> Failure to ensure that an employee checks the box attesting to his or her status in section 1 is serious because if the employee fails to provide information sufficient to disclose his or her immigration status on the face of the form, the employee's signature attests to nothing at all (internal citation omitted). Failure to ensure that the employee signs section 1 is also serious because the employee has not attested to being authorized to work in the United States. (internal citation omitted). An employer's failure to complete the attestation in section 2 is also very serious because section 2 is considered "the very heart" of the verification process. (internal citation omitted). The failure to properly verify a document under List A or Lists B and C in section 2 is also serious. (internal citation omitted).

United States v. Alpine Staffing, Inc., 12 OCAHO no. 1303, 18 (2017).

"[N]ot all violations are equally serious[,]" and "the seriousness of violations may be evaluated on a continuum[.]" *United States v. Senox Corp.*, 11 OCAHO no. 1219, 9 (2014) (citations omitted). For example, a failure to prepare or present any Form I-9 is more serious than a failure to timely present a Form I-9. *See Alpine Staffing, Inc.*, 12 OCAHO no. 1303, 18 (2017).

[40] The statute does not require mathematical offsetting, rather each statutory factor must receive "due consideration." 8 U.S.C. § 1324a(e)(5).

> requires in OCAHO proceedings either that the same weight be given to each of the factors in every case, or that the weight given to any one factor is limited to any particular percentage of the total."

Id. (quoting *Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, at 6–7). Indeed, the weight placed on each factor varies depending on the facts of case. *Id.* (citing *United States v. Raygoza*, 5 OCAHO no. 729, 48, 51 (1995)).

1. Statutory Factors Analysis

a. Small Business Statutory Factor

A penalty may be mitigated when a respondent is a small business. *See, e.g., United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355a, 5 (2020) (citing *United States v. Carter*, 7 OCAHO no. 931, 121, 162 (1997)). "OCAHO has generally considered companies with fewer than 100 employees[41] to be small businesses." *1523 Ave. J Foods, Inc.*, 14 OCAHO no. 1361, at 6 (citation omitted). Respondent is a small business. This status will serve to mitigate the penalty.

b. Good Faith/Bad Faith Statutory Factor

This record presents no evidence of bad faith, indeed the Respondent attempted to complete Forms I-9 for all its employees. However, the absence of bad faith does not result in de facto conclusion that a respondent has acted in good faith – to assess this statutory factor the Court must consider the unique facts presented in this case. *See United States v. Pasquel Hermanos, Inc.*, 18 OCAHO no. 1506f, 14 (2025).

The good faith analysis' "primary" focus is centered on pre-inspection conduct; however, nothing in statute requires pre-inspection conduct to be the only consideration. *Alpine Staffing,* 12 OCAHO no. 1303, at 15 (internal citations omitted).[42] The Court can "consider the overall circumstances of a respondent's action in complying with an NOI in assessing a penalty." *Alpine Staffing*, 12 OCAHO no. 1303, at 15.

The Court finds Respondent's pre-inspection conduct demonstrated good faith. Respondent attempted to complete Forms I-9 for each employee. Respondent retained copies of identification documents presented in many instances. Respondent also utilized E-Verify,[43] and retained in its

[41] The Court considers many factors when determining the size of a business (number of employees, revenue or income, payroll, nature of ownership, or length of time in business). *See United States v. Fowler Equip. Co., Inc.*, 10 OCAHO no. 1169, 6–7 (2013). While business size is mitigating here, it does not necessarily outweigh the other statutory factors.

[42] In *Alpine Staffing*, the CAHO noted "post-investigation behavior warrant[ed] some consideration in assessing an appropriate penalty." 12 OCAHO no. 1303, at 20. While the CAHO did not place his discussion of that consideration within the "rubric of 'good faith,'" he seems to signal it would or could be evaluated in the same way. *Id*.

[43] For context, the USCIS E-Verify User Manual (M-775) explains:

records proof of E-Verify usage in many instances. While none of these steps, individually or collectively, absolve them from liability, they do provide circumstantial evidence of good faith on the part of the Respondent. The record does not indicate instances of backdating. *See United States v. R&SL Inc., d/b/a Total Employment And Management (TEAM)*, 13 OCAHO no. 1333b (2022); *see also United States v. HDB Network*, 18 OCAHO no. 1483a (2024). Additionally, during the inspection and in the time preceding the receipt of the Notice of Intent to Fine this employer engaged with Complainant, and was responsive during the investigation to Complainant requests.[44]

Overall, the reasons outlined here serve to significantly[45] mitigate the penalty where appropriate.

c. Seriousness of the Violations Factor

The violations here are serious violations. Respondent's errors and omissions include leaving a section blank in its entirety, failing to complete or fill out portions of the section, or failing to sign

> In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service (INS), to conduct an employment verification pilot program. Under the U.S. Department of Homeland Security (DHS), USCIS operates the E-Verify program, previously referred to as the Basic Pilot program. E-Verify is a free internet-based system that implements the requirements of IIRIRA by allowing any U.S. employer to electronically confirm the employment eligibility of its newly hired employees.
>
> Employers are required to timely and properly complete and retain Form I-9 for each employee they hire. The first day of employment means the first day an employee works in exchange for wages or other remuneration. These Form I-9 requirements also apply to E-Verify employers. With the goal of ensuring a legal workforce, employers enrolled in E-Verify have chosen to take the additional step of electronically confirming that information their employees provide match government records.

Manual at pages 2-3, 16.

E-Verify is not a substitute for the Form I-9, rather it is a tool employers may use to verify employment eligibility. *See United States v. Golden Employment Group, Inc.*, 12 OCAHO no. 1274, 8 (2016). While not expressly made here, it is foreseeable that one could make the argument on this record that aggregating E-Verify documentation alongside photocopies of identification documents could constructively demonstrate compliance, precedential case law forecloses such an argument. "As pointed out in *Ketchikan Drywall Services., Inc. v. Immigration & Customs Enforcement*, 725 F.3d 1103, 1111 (9th Cir. 2013), "'[f]ully' means 'fully,' and not . . . 'partially.'" The court noted that section 2 provides evidence that the employee's documents were examined, and "aggregation of all of the relevant information onto one form allows for easier review of that information by ICE." *United States v. Golden Employment Group, Inc.*, 12 OCAHO no. 1274, 11 (2016).

[44] For example, Complainant requested Respondent complete a Form I-9 for employee #28 post-inspection, and Respondent business did so.

[45] Specifically, proof of documents presented coupled with substantial use of E-Verify is highly mitigating.

the section. While it is certainly the case that these are not the most serious of all violations (i.e. this Respondent did prepare and present some Forms I-9, albeit deficient ones), in accordance with OCAHO precedent, they are still considered to be serious.

The penalty will be aggravated in light of the seriousness of the violations here; however, the degree to which the penalty will be aggravated will be consistent with OCAHO precedent which considers seriousness on a continuum. To that end, Forms I-9 which have missing or untimely provided information or missing or incorrect signatures are less serious than Forms I-9 where entire sections were not completed. As it relates to the seriousness of the violations, the penalty assessed shall reflect this reality.

d. Presence of Unauthorized Aliens

As to unauthorized aliens, Complainant argued the five employees listed in Count II were "determined to be unauthorized workers." Mot. Sum. Dec. 6. Complainant concedes it "did not charge [Respondent] with any knowingly hire violations," but asserts the five employees in Count II were unauthorized to work in the United States.[46] In support of this proposition, they argue "all five employees were found to have been utilizing false driver's licenses, social security numbers that did not belong to them, or failed to produce evidence of valid authorization to work. An example of this was [Employee 1 of Count II] who submitted a driver's license which contained [a patently fraudulent address.]" Mot. Summ. Dec. 12.

While it is true the statute requires a respondent verify that "an individual is not an unauthorized alien," such verification occurs through an "examination" of documents. (b)(1)(A). With no additional evidence (beyond the photocopied documents) from the Complainant on how it came to its conclusion, the Court is left to consider only those photocopied documents attached to the Forms I-9 at issue.

On the record provided by Complainant, the Court cannot find Complainant has met its burden as to Count II employees 3, 4, and 5 – all of whom presented facially valid documents. At best, Complainant may be seeking to rest of the laurels of a something akin to a social security mismatch, but social security mismatch alone is insufficient. *See United States v. SKZ Harvesting, Inc.,* 11 OCAHO no. 1266, 16 (2016).[47]

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[46] Complainant provides a series of arguments pertaining to constructive knowledge, but these aren't particularly useful as they did not charge an offense which requires "knowledge" of an unauthorized alien – constructive or otherwise. Mot. Summ. Dec. 14-16.

A close reading of the language of the statute requires only that the Court give "due consideration [to] whether or not the individual was an unauthorized alien." 8 U.S.C. § 1324a(e)(5). Functionally, whether Respondent "knew" or not is immaterial. The focus of the analysis is, instead, whether the Complainant has met its burden (i.e. Complainant must show, by preponderant evidence, that the individual in question is an unauthorized alien). *See generally United States v. Durable, Inc.*, 11 OCAHO 1229 (2014).

[47] In *SKZ Harvesting Inc.*, the Court explained:

> As explained in *Aramark*, social security mismatches arise for a variety of reasons, including typographical errors, name changes, compound last names, and inaccurate or

For similar reasons, the Court can conclude that Employee 2 of Count II is an unauthorized alien based on the photocopied documents. He presents a foreign passport, and thus presumptively, he cannot work in the United States. Alongside that foreign passport, he presents evidence he is seeking work authorization, which allows a finder of fact to circumstantially conclude he did not have work authorization at the time the Form I-9 was completed (Generally, an individual does not seek something already in his possession.).

Employee 1 of Count II presents a different query. He presents a driver's license with a suspect address (1234 Any Street in City, CA) and a social security card. Understandably, this driver's license should give any human resources professional pause; however, the social security card appears valid on its face. Again, returning to the statute, it is the social security card in this instance which "evidence[es] employment authorization." (b)(1)(C)(i). While this Form I-9 and its corresponding photocopied documents demonstrate Respondent's failure to follow the law, Complainant here (in doing nothing other than providing the Form I-9 and the photocopy) has failed to meet its burden to aggravate the penalty for this Form I-9 for this reason.[48]

The penalty will only be aggravated as to employee 2 of Count II.

e. History of Violations Factors

The record does not indicate a history of violations. "This factor neither mitigates nor aggravates the penalty." *United States v. Kodiak Oilfield Servs., LLC*, 16 OCAHO 1436b, 5 (2023); *see also United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6 (2010) ("[N]ever having violated the law before does not necessarily warrant additional leniency[.]").

> incomplete employer records. *Aramark Facility Servs. v SEIU, Local 1877*, 530 F.3d 817, 826 (9th Cir. 2008). By its own estimate, SSA's database contains millions of errors. Id. A social security mismatch accordingly does not serve to establish that a particular individual is unauthorized for employment. A NSD is not sufficient in itself to establish a worker's unauthorized status either. United States v. Romans Racing Stables, Inc., 11 OCAHO no. 1230, 8 (2014).

11 OCAHO no. 1266, 16 (2016).

[48] *Compare with United States v. Visiontron Corp.*, 13 OCAHO no. 1348, 9 (2020) ("Complainant aggravated the penalties for the violations in Count IIIA based on the presence of unauthorized workers. Complainant provided the declaration of its auditor… who states that he ran Respondent's employees' names and alien numbers through several databases and the database results showed that for the individuals in Count IIIA, the alien number provided either belonged to another individual or was never issued at all… Complainant also provided a copy of the database results which confirm [the auditor's] findings... As such, Complainant has met its burden to prove the presence of six unauthorized workers listed in Count IIIA, and the penalties are aggravated as to these workers.")

2. Non-Statutory Factors Analysis[49]

Respondent asks the Court to consider its ability to pay a civil penalty and provides financial documents from tax year 2022 in support of its position.

"The party seeking consideration of non-statutory factors 'bears the burden of showing that the factor should be considered as a matter of equity and that the facts support a favorable exercise of discretion.'" *United States v. R&SL Teams Inc., D/B/A Total Employment And Management (TEAM)*, 13 OCAHO no. 1333b, 40 (2022). (internal quotation omitted).

As the Court previously explained:

> OCAHO routinely considers "inability to pay" as a non-statutory factor. See Psychosomatic Fitness LLC, 14 OCAHO no. 1387a, at 10 (citations omitted). "To establish inability to pay, the employer should provide 'detailed financial statements so that the Court can consider the "complete picture of [the business's] financial health."'" Id. (citations omitted).
>
> If a respondent provides a sufficient quantum of evidence on a non-statutory factor, then "as a matter of equity, the ALJ may weigh the facts to determine whether discretion warrants adjustment of the fine." (citations omitted). "[P]enalties are not meant to force employers out of business or result in the loss of employment for workers." (citations omitted).
>
> "[I]t is well established in our case law that a corporation's ability to demonstrate tax losses does not necessarily establish either a company's poor financial condition or its inability to pay." *United States v. Mott Thoroughbred Stables, Inc.*, 11 OCAHO no. 1233, 5 (2014) (citations omitted).

Id. at 40-41.

First the Court must consider the evidence presented. The evidence presented here is sufficient. It is "detailed," and permits the Court to consider "a complete picture of the business' financial health." *United States v. Eriksmoen Cottages, Ltd.*, 14 OCAHO no. 1355a, 7 (2020).

Ultimately, mitigating a penalty based on the financial health of a business and its ability to pay a fine is a matter of discretion, viewed through a lens of equity. *See United States v. Psychosomatic Fitness LLC,* 14 OCAHO no. 1387a, 13 (2021).

[49] As the Court has previously concluded: "8 U.S.C. § 1324a(e)(5) does not rule out consideration of additional factors as may be appropriate in a specific case." *Alpine Staffing*, 12 OCAHO No. 1303, 10 (20##) *citing United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

On this record, the Court declines to mitigate the penalty for the reason requested by Respondent. In concluding the Respondent did not meet its burden of persuasion (i.e. Respondent did not show it would be unable to pay a civil penalty), the Court considered the following:

1. The shareholder distribution and loans to shareholders (over $784,000 combined), noting;
2. The value (over $6,000,000) and potential discretionary aspects of Respondent assets (i.e. some of the fleet of non-commercial vehicles);
3. The Respondent's gross profit and total income;
4. The Respondent's total retained earnings, and
5. The likelihood Respondent's legal fees are non-recurring[50] as they likely encompassed the instant litigation.

VI. PENALTY ASSESSMENT AND ORDER

Respondent is liable for 90 violations alleged in Count I and five violations in Count II. The Court will assess a total civil penalty of $74,800.

The Court has given each statutory factor due consideration in assessing a penalty. The Court considered the non-statutory factor of "ability to pay," but does not find the Respondent has met its burden to mitigate the penalty based on the evidence presented.

As to Count I, the Court concluded that, in ten instances,[51] the Forms I-9 had missing information, or were untimely completed. These Forms I-9 will be assessed a civil penalty of $700 per Form.

As to Counts I and II, the Court concluded that, in 76 instances,[52] the Forms I-9 had a missing or incorrect signature. Of these violations 74 of the Forms will be assessed a civil penalty of $700 per Form. Employee 80 of Count I's Form I-9 will be assessed a civil penalty of $300, because the signature was present, but placed in an adjacent signature box. Employee 1 of Count II's Form I-9 will be assessed a civil penalty of $1,500 because this employee provided a facially suspect document.

As to Count I, the Court concluded that, in eight instances,[53] the Forms had blank or missing sections. These Forms I-9 will be assessed a civil penalty of $1,500 per Form I-9.

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[50] *See RSL Teams* at 42.

[51] These are employees: 1, 4, 8, 16, 18, 20, 21, 26, 39, 44.

[52] These are Count I employees: 2, 5, 6, 7, 9, 10, 11, 12, 14, 15, 17, 19, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80,* 81, 82, 83, 84, 85, 86, 87, 88, 89, 91.

These are Count II, 1, 3, 4, 5

[53] These are employees: 3, 13, 52, 56, 57, 76, 77, 90.

As to Count II, the Court concluded that Employee 2 was patently unauthorized to work in the United States at the time the Form I-9 was completed based on the documents submitted. As noted above, the penalty will be aggravated as to that employee. The civil penalty assessed for that Form I-9 is $2,200.

The Court **ORDERS** Respondent to pay $74,800.

SO ORDERED.

Dated and entered on January 14, 2026.

_____
Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.