

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

March 29, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2023A00015
)	
WALMART INC. (BETHLEHEM),)	
Respondent.)	
_____)	

Appearances: Sirin Ozen Hallberg, Esq., for Complainant
Dan Brown, Esq. and K. Edward Raleigh, Esq., for Respondent

ORDER

I. PROCEDURAL HISTORY

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, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on December 13, 2022, alleging that Respondent, Walmart Inc. (Bethlehem), violated 8 U.S.C. § 1324a(a)(1)(B).

On February 17, 2023, Respondent filed an Answer and a Motion to Dismiss. On February 23, 2023, the Court granted Complainant an extension of time to file an opposition to the Motion to Dismiss. On March 24, 2023, Complainant filed a Motion for Leave to Amend Complaint, and a Response to the Respondent's Motion to Dismiss. On March 27, 2023, Respondent filed a Response to Complainant's Motion to Amend Complaint.

II. DISCUSSION

Complainant seeks leave to amend the Complaint pursuant to 28 C.F.R. § 68.9(e)¹ and Federal Rule of Civil Procedure 15(a). Mot. Amend 1–2; *see id.* at Tab A (materials Complainant seeks

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

to incorporate into Complaint). The sought amendment provides “additional information included in the list of Form I-9 violations for Counts I and II . . . and their associated audited trails.” *See* Mot. Amend 4. According to Complainant, the motion is unopposed, is based on good cause, is not dilatory in nature or done in bad faith, and will not unduly prejudice Respondent. *Id.* In its Response, Respondent does not oppose the proposed amendment, agreeing that “justice requires the complaints to be amended.” R’s Resp. Mot. Amend 3–4. Respondent requests that if Complainant is permitted to amend, that the Court treat the Motion to Dismiss as moot and set a date for an amended answer. *Id.* at 4–6.

28 C.F.R. § 68.9(e) permits a complainant to amend a complaint “[if] a determination of a controversy on the merits will be facilitated thereby” and “upon such conditions as are necessary to avoid prejudicing the public interests and the rights of the parties[.]” “The Court is therefore charged with balancing those interests in determining whether to allow the proposed amendment.” *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446, 2 (2023).²

The Court finds that those conditions are met, and particularly so given that Respondent does not oppose the motion; the Court thus **GRANTS** Complainant’s Motion to Amend the Complaint.

To ensure a clear record, Complainant is **ORDERED** to file an Amended Complaint within twenty-one (21) days of the date of this Order, incorporating Tab A into the Complaint.

Respondent is **ORDERED** to file an Amended Answer to the Amended Complaint within thirty days of service of the Amended Complaint.

As the Motion to Dismiss was based on the original Complaint, Respondent’s February 17, 2023 Motion to Dismiss is hereby dismissed as **MOOT**.

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

SO ORDERED.

Dated and entered on March 29, 2023.

Honorable Jean C. King
Chief Administrative Law Judge