

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2021A00021
LA PARISIENNE BAKERY, LLC,)	
Respondent.)	
)	

ORDER

I. PROCEDURAL HISTORY

On February 24, 2021, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, La Parisienne Bakery, LLC. ICE alleges that Respondent failed to properly complete section 2 of the Forms I-9 for 2 individuals and failed to prepare and/or present Forms I-9 for 26 individuals, in violation of 8 U.S.C. § 1324a(b)(2).

On March 31, 2021, Complainant filed a Motion to Correct Exhibit “A” of the complaint. Complainant explained that it inadvertently failed to provide a complete copy of “Exhibit A”, which consists of the ICE Form I-763, Notice of Intent to Fine, that was previously served on the Respondent. Complainant included a photocopy of the Notice of Intent to Fine with the motion.

On April 30, 2021, Complainant filed a Notice of Tentative Settlement and Dismissal informing the Court that it has reached a tentative agreement to settle and dismiss the complaint in this case. Complainant states that a “Motion to Dismiss the Complaint will be filed with the Court within thirty (30) days.” Complainant requests the Court to accept the Notice of Settlement and allow 30 days to file a Motion to Dismiss.

II. MOTION TO CORRECT EXHIBIT “A”

The Court grants Complainant’s Motion to Correct Exhibit “A”. OCAHO’s Rules of Practice and Procedure permit 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 interest and the rights of the parties[.]” Griffin v. All Desert Appliances, 14 OCAHO no. 1370, 2 (2020) (citing 28 C.F.R. § 68.9(e)). “This rule is analogous to and is modeled after the Federal Rules of Civil Procedure 15(a), and accordingly, it is

appropriate to look for guidance in federal case law to determine whether to permit requested amendments under Rule 15(a).” Id. (citing 28 C.F.R. § 68.1). *See also United States v. Valenzuela*, 8 OCAHO no. 1004, 3 (1998); *United States v. Mr. Z Enters.*, 1 OCAHO no. 162, 1128, 1129 (1990). Rule 15(a) provides that a party may amend its complaint once “as a matter of course” before a responsive pleading is served. Fed. R. Civ. P. 15(a).

Since Respondent has not filed an answer, or otherwise responded to the complaint, Complainant is free to amend its complaint to correct Exhibit A “as a matter of course.” Id.

Therefore, IT IS SO ORDERED that Complainant’s Motion to Correct Exhibit “A” is GRANTED.

III. ORDER REGARDING NOTICE OF TENTATIVE SETTLEMENT AND DISMISSAL

The Court takes notice of the parties’ tentative agreement to settle and dismiss the complaint in this case. The parties may file a motion to dismiss the complaint by thirty days from the issuance of this order. The Court requires that the parties submit a copy of their settlement agreement alongside the motion to dismiss. *See* 28 C.F.R. § 68.14 (“Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.”). Moreover, the Court will stay all proceedings in this matter pending receipt of the motion to dismiss.

Therefore, IT IS SO ORDERED that all proceedings in this matter are STAYED for 30 days from the issuance of this order.

IT IS FURTHER ORDERED that the parties may file a motion to dismiss the case pursuant to a settlement agreement by 30 days from the issuance of this order. The parties shall include a copy of their settlement agreement in their submission.

ENTERED:

John A. Henderson
Administrative Law Judge

DATE: May 14, 2021