

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. 2022A00022
KLJ LEASING, LLC,)	
Respondent.)	
)	

Appearances: José Solis, Esq., for Complainant
Julie Pace, Esq., and Heidi Nunn-Gilman, Esq., for Respondent

ORDER GRANTING MOTION FOR LEAVE TO AMEND COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 28 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), on February 2, 2022. Complainant alleges that Respondent, KLJ Leasing, LLC, failed to ensure proper completion of or failed to prepare/present Forms I-9, failed to present audit trails for Forms I-9, and knowingly hired or knowingly continued to employ unauthorized workers. On March 1, 2022, Respondent filed its answer.

On July 6, 2022, Complainant filed its Motion for Leave to Amend Complaint. In its motion, Complainant states that it seeks to abandon certain allegations on statute of limitations grounds and to remove penalty aggravation adjustments in Counts VII–X. Mot. Amend Compl. ¶ 1. Complainant also seeks to amend the proposed total penalty in this case to \$6.42 million. *Id.* Complainant attached a copy of the First Amended Complaint to its motion.

Respondent did not file an opposition. Having been fully briefed, this matter is ripe for adjudication.

II. LEGAL STANDARDS

OCAHO Rule 68.9(e)¹ permits a complainant to amend a complaint “[i]f 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. Sal’s Lounge, 15 OCAHO no. 1394, 1–2 (2020) (citing United States v. Mr. Z Enters., 1 OCAHO no. 162, 1128, 1128 (1990) (internal citations omitted)).² OCAHO precedent requires that the complainant seek leave of court to amend the complaint if the respondent has already filed an answer. United States v. FRC Balance, LLC, 14 OCAHO no. 1366, 2 (2020).

OCAHO Rule 68.9(e) is “analogous to and is modeled upon Rule 15 of the Federal Rules of Civil Procedure,” a permissible guidance in OCAHO proceedings, *see* 28 C.F.R. § 68.1. United States v. Valenzuela, 8 OCAHO no. 1004, 3 (1998). Federal Rule of Civil Procedure Rule 15(a)(1) states that:

“A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.”

Federal Rule of Civil Procedure 15(a)(2) provides that: “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

As this case arises in Arizona, the Court may also look to case law from the Ninth Circuit Court of Appeals. The Ninth Circuit directs that leave to amend should be granted with “extreme liberality.” Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d, 708, 712 (9th Cir. 2001). The Ninth Circuit instructs courts to consider factors enumerated in Foman v. Davis, 371 U.S. 178 (1962), including undue delay, bad faith or dilatory motive, futility, and undue prejudice to the opposing party. Brown v. Stored Value Cards, Inc., 953 F.3d 567, 574 (9th Cir. 2020). “Absent prejudice, or a strong showing of any of the remaining Foman factors, there exists a *presumption*

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

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>.

under Rule 15(a) in favor of granting leave to amend.” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (emphasis in original).

III. DISCUSSION

As Respondent filed an answer, the complaint may only be amended by leave of the Court. FRC Balance, LLC, 14 OCAHO no. 1366, at 2; *cf.* Fed. R. Civ. P. 15(a)(2). Complainant sought the Court’s leave in its motion.

The Court must therefore balance the relevant factors in deciding whether to allow the First Amended Complaint. Complainant maintains that an amended complaint “will facilitate the determination of this controversy . . . [as it] omits allegations Complainant seeks to abandon and clarifies Complainant’s legal basis for recovery with respect to the remaining allegations.” Mot. Amend. Compl. ¶ 1–2. The Court agrees. Complainant’s amendments appear to winnow, rather than expand, the scope of the alleged claims. The record does not present evidence of bad faith, dilatory motive, or futility. Respondent has not opposed the motion, and the Court does not find undue prejudice to Respondent at this juncture. Accordingly, the Court will grant Complainant’s motion.

IV. CONCLUSION

The Court GRANTS Complainant’s Motion for Leave to Amend Complaint. Respondent may file its answer to the amended complaint within 20 days of the issuance of this Order.

SO ORDERED.

Dated and entered on July 28, 2022.

Honorable John A. Henderson
Administrative Law Judge