

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

August 24, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324A Proceeding
)	OCAHO Case No. 2022A00033
)	
COMMANDER PRODUCE, LLC,)	
Respondent.)	
_____)	

ORDER GRANTING MOTION TO CORRECT THE RECORD
AND RESETTING ORDER TO SHOW CAUSE DEADLINES

I. PROCEDURAL HISTORY

This case arises under 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) on March 9, 2022. Complainant alleges that Respondent, Commander Produce, LLC, violated §§ 1324a(a)(2), (a)(1)(B).

On May 5, 2022, the Court issued an Order Directing Complainant Execute Service of Process. *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428, 1–2 (2022).¹ On June 21, 2022, the Court issued an Order for Status Update on Service of Process.

¹ 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>.

On July 12, 2022, Complainant filed a Status Update. Through its filing, Complainant represented that it perfected service of the Notice of Case Assignment (NOCA), the Notice of Intent to Fine (NIF), Request for Hearing, and a copy of the Complaint on Kimberly Kennedy, the owner and statutory agent for Respondent. *See* C’s Status Update 1, Ex. A–B.

On July 20, 2022, the Court issued an Order to Show Cause – Answer. *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428a, 1–3. The Court noted that “[t]he [NOCA] directed Respondent to file an answer within thirty (30) days of receipt, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.”² *Id.* at 2 (citing 28 C.F.R. § 68.9(a)). Accordingly, the Court ordered Respondent to file an answer comporting with § 68.9, and to submit a filing showing good cause for its failure to timely file an answer, by August 10, 2022.³ *Id.*

On August 3, 2022, Complainant filed a Motion to Correct the Record. Complainant states that its Status Update “contained an error by stating service took place on June 6, 2022. Service actually occurred on July 6, 2022[.]” C’s Mot. Correct Record. Complainant then moved the Court to “correct the record to reflect that service of the Complaint, [NOCA], [NIF], and Request for Hearing did not occur until July 6, 2022.” *Id.*

II. DISCUSSION

The Court appreciates Complainant’s candor and diligence with respect to an accurate record in this case. Upon review of Complainant’s July 12 and August 22, 2022, filings, the Court concurs that Complainant executed personal service on July 6, 2022.

The Court GRANTS Complainant’s Motion to Correct the Record. The record shall reflect that Complainant personally served Respondent with the NOCA, NIF, Request for Hearing, and a copy of the Complaint on July 6, 2022.

In order to afford Respondent sufficient procedural due process protections, the Court now turns to the impact of the updated service date on the previously issued Order to Show Cause – Answer wherein the Court set deadlines for Respondent to file an answer and to show good cause for its

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ To date, Respondent has not filed an answer or otherwise appeared before OCAHO.

failure to timely file an answer. The Court now exercises its discretion to modify the deadlines in the July 20, 2022 Order to Show Cause.⁴

Respondent must submit a filing demonstrating good cause for its failure to timely file an answer, and file an answer that comports with 28 C.F.R. § 68.9, **no later than September 9, 2022**. All other warnings and directives contained in the Order to Show Cause – Answer remain applicable. In particular, the Court reminds Respondent that failure to file an answer and to show good cause may enter a default judgment against Respondent.⁵ *See Commander Produce, LLC*, 16 OCAHO no. 1428a, at 2–3, § 68.9(b).

SO ORDERED.

Dated and entered on August 24, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

⁴ The undersigned observes that the original August 10, 2022 deadline allowed Respondent more than thirty dates after service to file an answer. *See generally* § 68.9(a). That is true irrespective of whether the Court made calculations based on the June 6, 2022 or July 6, 2022 date.

⁵ Failure to file “an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” § 68.9(b). “[F]ailure to respond to an Order may trigger a judgment by default.” *United States v. Hotel Valet Inc.*, 6 OCAHO no. 849, 252, 254 (1996). “If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing.” *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).