

1 Mark Selwyn (SBN 244180)
 mark.selwyn@wilmerhale.com
 2 WILMER CUTLER PICKERING
 3 HALE AND DORR LLP
 2600 El Camino Real, Suite 400
 4 Palo Alto, California 94306
 Telephone: (650) 858-6031
 5 Facsimile: (650) 858-6100

6 *Attorney for Plaintiffs*

7 BRIAN D. NETTER
 Deputy Assistant Attorney General
 8 BRAD P. ROSENBERG
 Assistant Branch Director
 9 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
 Trial Attorney
 10 United States Department of Justice
 Civil Division, Federal Programs Branch
 11 1100 L St. NW
 Washington, DC 20005
 12 Tel: (202) 514-2356
 Fax: (202) 616-8470
 13 Email: Michael.J.Gaffney@usdoj.gov

14 *Attorneys for Defendants*

15 IN THE UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF CALIFORNIA
 17 FRESNO DIVISION

18
19 UNITED FARM WORKERS, *et al.*,

20 Plaintiffs,

21 v.

22 THE UNITED STATES DEPARTMENT OF
23 LABOR, *et al.*,

24 Defendants.
25

Case No. 1:20-cv-01690-DAD-JLT

**STIPULATION AND PROPOSED ORDER TO
EXTEND DEADLINES**

Deadline to Respond

Current Date: September 7, 2021

Proposed Date: November 8, 2021

Scheduling Conference

Current Date: September 14, 2021

Proposed Date: November 15, 2021

1 IT IS HEREBY STIPULATED, by and between the parties and subject to the Court's approval,
2 that the deadline for Defendants to respond to Plaintiffs' Complaint, ECF 1, shall be extended by a
3 further sixty (60) days from September 7, 2021 to November 8, 2021. IT IS HEREBY FURTHER
4 STIPULATED, by and between the parties and subject to the Court's approval, that the scheduling
5 conference currently scheduled for September 14, 2021 be continued to November 15, 2021. The
6 reasons for this Stipulation are as follows:

7 1. On November 30, 2020, Plaintiffs filed their Complaint. ECF 1.

8 2. Plaintiffs timely served the United States Attorney's Office in the Eastern District of
9 California in Fresno, California with, *inter alia*, the Complaint and civil summons via registered mail on
10 December 1, 2020. ECF 35 at 1, 35-2 at 6.

11 3. Pursuant to Federal Rule of Civil Procedure 12(a)(2) and in the absence of an extension,
12 Defendants "must serve an answer to a complaint . . . within 60 days after service on the United States
13 attorney." The initial deadline for responding to Plaintiffs' Complaint was therefore February 5, 2021.

14 4. The parties have stipulated to four previous extensions of Defendants' deadline to respond;
15 the current deadline to respond is September 7, 2021. *See* ECF 84; *see also* ECF 41, 43, 53.

16 5. On December 23, 2020, the Court granted Plaintiffs' motion for a preliminary injunction.
17 *United Farm Workers v. Dep't of Labor*, No. 20-cv-1690 (E.D. Cal. Dec. 23, 2020). On January 12, 2021,
18 the Court issued a supplemental order regarding preliminary injunctive relief. *See United Farm Workers*
19 *v. Dep't of Labor*, No. 20-cv-1690 (E.D. Cal. Jan. 12, 2021).

20 6. On February 23, 2021, DOL's Employment and Training Administration issued a notice
21 in the Federal Register announcing the 2021 AEWRs applicable to H-2A workers performing agricultural
22 labor or services other than the herding or production of livestock on the range. 86 Fed. Reg. 10,966 (Feb.
23 23, 2021). The AEWRs set forth in that notice were effective immediately.

24 7. DOL is pursuing new rulemaking that would revisit the methodology for setting AEWRs
25 for non-range occupations. *See Adverse Effect Wage Rate Methodology for the Temporary Employment*
26 *of H-2A Nonimmigrants in Non-Range Occupations in the United States*, Unified Agenda (Spring 2021),
27 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1205-AC05>.

1 8. Accordingly, on August 24, 2021, DOL transmitted to the Office of Management and
2 Budget's Office of Information and Regulatory Affairs ("OIRA") a draft Notice of Proposed Rulemaking.
3 *See Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in*
4 *Non-Range Occupations in the United States*, Pending EO 12866 Regulatory Review (Aug. 24, 2021),
5 <https://www.reginfo.gov/public/do/eoDetails?rrid=191913>.

6 9. The parties have been actively engaged in discussions to resolve this litigation
7 expeditiously. To facilitate those continued discussions, Defendants request a further 60-day extension
8 of the deadline to respond to Plaintiffs' complaint. Plaintiffs consent to Defendants' requested extension.

9 10. In light of the requested extension, the parties also agree that the scheduling conference be
10 continued 60 days.

11 11. This proceeding is exempt from the requirement that parties make initial disclosures under
12 Federal Rule of Civil Procedure 26, because it is "an action for review on an administrative record." Fed.
13 R. Civ. Pro. 26(a)(1)(B)(i).

14 The Parties therefore stipulate, subject to the Court's approval, that the deadline for Defendants
15 to respond to Plaintiffs' Complaint, ECF 1, shall be extended by a further sixty (60) days from
16 September 7, 2021 to November 8, 2021. The Parties further stipulate, subject to the Court's approval,
17 that the scheduling conference shall be continued from September 14, 2021 to November 15, 2021.

18 Dated: September 3, 2021

BRIAN D. NETTER
Deputy Assistant Attorney General

BRAD P. ROSENBERG
Assistant Branch Director

22 By: /s/ Michael J. Gaffney
23 MICHAEL J. GAFFNEY (D.C. Bar No. 1048531)
24 Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch

Attorneys for Defendants

26 Dated: September 3, 2021

27 By: /s/ Mark Selwyn (authorized 09/03/21)
MARK SELWYN (SBN 244180)
Wilmer Cutler Pickering Hale and Dorr LLP

Attorney for Plaintiffs

[PROPOSED] ORDER

IT IS HEREBY ORDERED that the deadline to respond to Plaintiffs’ Complaint shall be extended from September 7, 2021 to November 8, 2021, and that the Scheduling Conference currently scheduled for September 14, 2021 shall be continued to November 15, 2021. All associated deadlines, including for submission of the Joint Scheduling Report, are correspondingly extended.

IT IS SO ORDERED.

Dated: September 7, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28