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

18 UNITED FARM WORKERS, *et al.*,

19 Plaintiffs,

20 v.

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

23 Defendants.
 24

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

**STIPULATION AND ORDER TO EXTEND
 DEADLINES**

(Doc. 89)

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 January 7, 2022 to March 8, 2022. 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 January 14, 2022 be continued to March 15, 2022. The reasons for
6 this Stipulation are as follows:

7 1. On November 5, 2020, DOL published a Final Rule in the Federal Register setting forth a
8 revised methodology for establishing AEWRs under the H-2A program. 85 Fed. Reg. 70,455, 70,448
9 (Nov. 5, 2020) (“2020 Final Rule”).

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

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

14 4. Pursuant to Federal Rule of Civil Procedure 12(a)(2) and in the absence of an extension,
15 Defendants “must serve an answer to a complaint . . . within 60 days after service on the United States
16 attorney.” The initial deadline for responding to Plaintiffs’ Complaint was therefore February 5, 2021.

17 5. The parties have stipulated to five previous extensions of Defendants’ deadline to respond;
18 the current deadline to respond is January 7, 2022. *See* ECF 88; *see also* ECF 41, 43, 53, 84, 86.

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

23 7. On February 23, 2021, DOL’s Employment and Training Administration issued a notice
24 in the Federal Register announcing the 2021 AEWRs applicable to H-2A workers performing agricultural
25 labor or services other than the herding or production of livestock on the range. 86 Fed. Reg. 10,966 (Feb.
26 23, 2021). The AEWRs set forth in that notice were effective immediately.

27 8. On December 1, 2021, DOL published in the Federal Register a Notice of Proposed
28 Rulemaking to revisit the methodology for setting AEWRs for non-range occupations. *See Adverse Effect*

1 *Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range*
2 *Occupations in the United States*, 86 Fed. Reg. 68,174 (proposed Dec. 1, 2021) (to be codified at 20 C.F.R.
3 pt. 655). Public comments on the proposed rule are due on or before January 31, 2022. *Id.* at 68,175.

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

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

9 11. Plaintiffs anticipate filing with the Court this week a motion for summary judgment seeking
10 vacatur of the 2020 Final Rule for the reasons previously set forth in Plaintiffs' motion for a preliminary
11 injunction. *See* ECF 5. Defendants reserve their right to respond to any such filing.

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

15 The Parties therefore stipulate, subject to the Court's approval, that the deadline for Defendants
16 to respond to Plaintiffs' Complaint, ECF 1, shall be extended by a further sixty (60) days from January
17 7, 2022 to March 8, 2022. The Parties further stipulate, subject to the Court's approval, that the
18 scheduling conference shall be continued from January 14, 2022 to March 15, 2022.

19 Dated: January 5, 2022

BRIAN D. NETTER
Deputy Assistant Attorney General

BRAD P. ROSENBERG
Assistant Branch Director

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

26 Dated: January 5, 2022

27 By: /s/ Mark Selwyn (authorized 01/05/22)
28 MARK SELWYN (SBN 244180)
Wilmer Cutler Pickering Hale and Dorr LLP
Attorney for Plaintiffs

1 **ORDER**

2 IT IS HEREBY ORDERED that the deadline to respond to Plaintiffs' Complaint shall be
3 extended from January 7, 2022 to March 8, 2022, and that the Scheduling Conference currently
4 scheduled for January 14, 2022 shall be continued to March 15, 2022 at 10:00 a.m. before Magistrate
5 Judge Erica P. Grosjean. The Scheduling Conference will be held telephonically, with all parties
6 directed to the use the following dial-in number and passcode: 1-888-251-2909; passcode 1024453. All
7 associated deadlines, including for submission of the Joint Scheduling Report, are correspondingly
8 extended.
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10 IT IS SO ORDERED.

11 Dated: January 7, 2022

12 /s/ Erica P. Grosjean
13 UNITED STATES MAGISTRATE JUDGE
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