

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants.

Case No. 1:21-cv-16625-JHR-MJS

JOINT MOTION TO SET BRIEFING SCHEDULE AND WAIVE RULE 56.1

On September 8, 2021, Plaintiff Sun Valley Orchards, LLC filed a five-count complaint alleging that the Department of Labor's imposition of back wages and civil monetary penalties on Sun Valley violates the Constitution and the Administrative Procedure Act (APA). *See* Compl., ECF No. 1. Sun Valley effected service on September 15, 2021 and, under Federal Rule of Civil Procedure 12(a)(2), Defendants' response to the complaint is currently due on November 15, 2021.

The parties have conferred and agree that Sun Valley's complaint presents important legal issues that are best resolved on cross motions to dismiss and for summary judgment based on the law and an administrative record to be produced by the agency. While Sun Valley takes the position that the factual findings of the agency in these circumstances must be reviewed *de novo* based upon presentation of evidence by the parties (*see, e.g.*, Compl. ¶¶ 138–42), Sun Valley agrees that the proper standard of review under the APA should first be resolved via threshold legal motions. The parties therefore respectfully request that the Court extend Defendants' time to respond to the complaint and set the following agreed-upon briefing schedule with the noted page limits:

Action	Proposed Date	Proposed Page Limit ¹
Defendants' production of the administrative record	December 15, 2021	-
Plaintiff's motion for partial summary judgment	February 2, 2022	40 pages
Defendants' combined opposition to Plaintiff's motion for summary judgment and motion to dismiss/cross-motion for summary judgment	March 16, 2022	40 pages
Plaintiff's combined reply in support of their motion for partial summary judgment and opposition to Defendants' motion to dismiss/cross-motion for summary judgment	April 20, 2022	30 pages
Defendants' reply in support of their motion to dismiss/cross-motion for summary judgment	May 18, 2022	20 pages

At this threshold stage of the litigation, the parties further request that the Court waive the applicability of Local Rule 56.1, which requires a statement and responsive statement of “material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to [] affidavits and other documents.” L. Civ. R. 56.1(a). While Sun Valley takes the position that the law requires *de novo* review of the agency’s factfinding in the circumstances of this case (*see, e.g.*, Comp. ¶¶ 138–42), this proposed round of threshold briefing would address purely legal issues that can be decided on the administrative record.

“In these circumstances—an appeal based on an administrative record—[Rule 56.1] submissions are not necessary.” *Just Bagels Mfg., Inc. v. Mayorkas*, 900 F. Supp. 2d 363, 372 n.7 (S.D.N.Y. 2012); *Am. Steamship Owners Mut. Prot. & Indem. Ass’n, Inc. v. United States*, 489 F. Supp. 3d 106, 128 n.14 (E.D.N.Y. 2020) (no Rule 56.1 statement required when reviewing an agency decision); *Nat. Res. Def. Council v. U.S. Dep’t of Energy*, 362 F. Supp. 3d 126, 132 (S.D.N.Y. 2019) (same); *Hauschild v. United States Marshals Serv.*, 2018 WL 3014095, at *1 (S.D.N.Y. June 15, 2018) (same). Indeed, the U.S. District Court for the District Columbia handles a significant portion of the country’s APA litigation and specifically exempts “cases

¹ Using 12-point proportional font.

in which judicial review is based . . . on the administrative record" from the requirement of providing a "statement of material facts." D.D.C. L. Civ. R. 7(h)(2). The parties therefore respectfully request that the Court waive the requirements of Local Rule 56.1 with respect to this round of legal briefing.

DATED: November 9, 2021

Respectfully submitted,

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