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IN THE DISTRICT COURT OF GUAM

SETH D. HARRIS, Acting Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
)
vs.)
)
ACME UNIVERSAL, INC., a corporation, and)
XIN BO ‘PAUL’ YU, an individual,)
)
Defendants.)

CIVIL CASE NO. 12-00008

ORDER

On March 13, 2013, the Plaintiff filed a Motion for Protective Order and Injunctive Relief (“Motion for Protective Order”). *See* ECF No. 27. Therein, the Plaintiff essentially requested the court (1) prohibit the Defendants from inquiring into matters the Plaintiff believed was protected by the government informant privilege and (2) grant appropriate injunctive relief requiring the Defendants to apprise third-party witnesses of their rights to participate freely in this litigation, prohibiting the Defendants from threatening and harassing its former employees,¹ and preventing the Defendants’ use of what the Plaintiff believed were false witness statements gained through coercion and threatening tactics. *Id.*

In addition to the Motion for Protective Order, the Plaintiff filed an *Ex Parte* Motion to Shorten Time. *See* ECF No. 28. In the Motion to Shorten Time, the Plaintiff stated the Defendants had scheduled depositions of certain H-2B Employees for March 21 and 22, 2013.

¹ These former employees are individuals names in Exhibit A to the Complaint. *See* Compl., ECF No. 1. They shall hereinafter be referred to as the “H-2B Employees.”

1 Thus, the Plaintiff asked the court to shorten and “act with all deliberate speed” in hearing and
2 ruling upon the Motion for Protective Order, or, in the alternative, to stay the scheduled
3 depositions while the Motion for Protective Order was heard. *Id.*

4 On March 13, 2013, the Defendants filed an Opposition to the Motion to Shorten Time.
5 *See* ECF No. 29. Therein, the Defendants argued that the Motion for Protective Order raised
6 substantial issues that should be fully briefed under the court’s regular schedule. Counsel for the
7 Defendants stated that his other commitments did not afford him the time to properly brief and
8 argue the Motion for Protective Order on a shortened time frame. *See* M. Dotts Aff., ECF No.
9 29-1, at ¶10. Accordingly, in the interim, the Defendants would agree to the entry of a *temporary*
10 injunction encompassing the conditions set forth in the Plaintiff’s Motion for Protective Order
11 until such time as the court finally decided the Motion for Protective Order.

12 On March 14, 2013, the Plaintiff filed a Reply to the Defendants’ Opposition. *See* ECF
13 No. 30. The Plaintiff stated that it did not believe the Defendants’ concession to the entry of a
14 temporary restraining order was sufficient, and again urged the court to hear its motion on a
15 shortened time line or stay the scheduled depositions.

16 The court has reviewed the above filings, as well as the supporting declarations and
17 exhibits filed therewith. In light of the Defendants’ agreement to the entry of a temporary
18 injunction, the court hereby DENIES the Motion to Shorten Time. The court believes that it will
19 benefit from a complete and thorough briefing of the issues raised in the Motion for Protective
20 Order. To that end, the court orders the Defendants to file a response to the Motion for
21 Protective Order by March 27, 2013. The Plaintiff shall file a reply thereto no later than April 3,
22 2013. The court will hear argument from the parties on Thursday, April 11, 2013, at 9:00 a.m.
23 Off-island counsel may participate telephonically at said hearing and shall file a notice of intent
24 to so participate no later than 48 hours prior to the hearing.²

25 The court further DENIES the alternative request to stay the scheduled depositions,
26 however, until such time as the court rules on the Motion for Protective Order, the court

27
28 ² The Clerk’s Office shall thereafter provide counsel with call-in instructions.

1 ORDERS the following:

2 1. In connection with discovery proceedings in this action, the Plaintiff will not
3 provide and the Defendants will not seek information privileged under the government informant
4 privilege. Specifically:

5 a. The Secretary will not answer the Defendants' Second Set of Requests for
6 Production of Documents to the Plaintiff or produce any documents the Plaintiff may
7 have that are responsive to those requests.

8 b. The Defendants are prohibited from asking any current or former employee,
9 either directly or indirectly, whether they spoke to an agent of the U.S. Department of
10 Labor or whether they gave a statement to an agent of the Department of Labor prior to
11 the deposition. Should the Defendants inquire whether the deposition witness
12 communicated the subject matter of this case with anyone, the Defendants must begin the
13 inquiry by stating "With the exception of any agent of the U.S. Department of Labor."

14 c. The Defendants may not inquire into the content of any speech or statement
15 given to an agent of the Department of Labor prior to the deposition.

16 d. The Defendants shall not inquire of any current or former employee whether
17 that employee complained to the Department of Labor regarding minimum wage or
18 overtime claims, nor shall the Defendants inquire into the content of any such complaint.
19 Nothing in this Order prohibits the Defendants from deposing any current or former
20 employee about their conditions of employment at Acme Universal, Inc., including hours worked
21 and rate of pay.

22 2. The Defendants, or persons acting on their behalf, will read the Court's Notice of
23 Rights on the record at the commencement of each deposition of any individual listed on Exhibit
24 A to the Plaintiff's Complaint the following:

25 *You are protected by the Fair Labor Standards Act and have the right to*
26 *participate freely in the lawsuit that the U.S. Government has brought against the*
27 *Defendants Mr. Yu and Acme Universal, Inc. The U.S. District Court, via the*
28 *Honorable Joaquin V.E. Manibusan, Jr., has ordered Mr. Yu, Acme Universal,*

1 *the managers of Acme Universal and anyone acting on Mr. Yu's or Acme's behalf*
2 *to cease coercing, retaliating against, intimidating or attempting to influence or*
3 *in any way threatening the employees or former employees of Acme Universal in*
4 *any way for providing information to the Department of Labor or giving*
5 *testimony, including at this deposition. The Court has barred Mr. Yu, the*
6 *managers of Acme Universal, or anyone acting on their behalf from contacting or*
7 *communicating with any current or former employees regarding this lawsuit or*
8 *any testimony any employee may give regarding Mr. Yu's and Acme Universal's*
9 *failure to pay the full wages promised timely as required by federal law.*

10 *The lawsuit brought by the U.S. Department of Labor also seeks relief*
11 *from retaliation by Mr. Yu, the managers of Acme Universal and Acme Universal,*
12 *including reports from employees of unlawful threats of deportation, or threats*
13 *made to employees' families or current employers.*

14 *If Acme Universal, Mr. Yu or anyone acting on their behalf, approached*
15 *you, your family members, or current employer in China or Guam to secure a*
16 *statement from you regarding this litigation, you have a right to be free of any*
17 *coercion from Mr. Yu and Acme Universal. Any statement you signed as a result*
18 *of such coercion, intimidation or threatening contacts will be disregarded by the*
19 *Court and will not be considered as evidence in these proceedings. The Court*
20 *reminds you that you have a right to testify truthfully free of coercion and you*
21 *should not be concerned, intimidated or restrained by any statement Mr. Yu or*
22 *Acme secured from you previously under coercive circumstances.*

23 3. The Defendants, and anyone acting on their behalf, are prohibited from any
24 contact with the individuals listed on Exhibit A to Plaintiff's Complaint, except through the
25 Defendants' attorneys and only for the purpose of arranging or taking depositions of the listed
26 individuals. The Defendants, and anyone acting on their behalf, are prohibited from contacting
27 the current employers or the family members of individuals listed on Exhibit A to the Plaintiff's
28 Complaint. Any communication between the Defendants' counsel and the individuals listed on

1 Exhibit A to the Plaintiff's Complaint shall include a copy of this Court's Notice of Rights as set
2 forth in Paragraph 2 above. Further, the Defendants, and anyone acting on their behalf, will not
3 communicate in any way with former employees of the Defendants not listed on Exhibit A about
4 the individuals on Exhibit A to the Plaintiff's Complaint, the Defendants' business and
5 employment practices as it relates to those individuals, or any aspects of this suit brought by
6 the United States Department of Labor.

7 4. The Defendants will not use in the process of discovery, in any motion the
8 Defendants may file, and in the trial in this case any statements it has secured prior to the
9 entrance of this Order from any of its former employees, including any of the individuals listed
10 on Exhibit A to the Plaintiff's Complaint, in any manner.

11 IT IS SO ORDERED.



12
13 /s/ **Joaquin V.E. Manibusan, Jr.**
14 **U.S. Magistrate Judge**
15 **Dated: Mar 14, 2013**
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