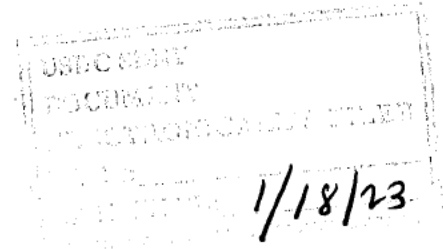


UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK



MARTIN J. WALSH, Secretary of Labor, United States :
Department of Labor, :

Plaintiff, :

v. :

Case No. 23-CV-275-VB

BERKSHIRE NURSERY & SUPPLY CORP. and :
JESUS FLORES, :

Defendants. :

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Civil Rule 6.1(d), and upon considering the declarations of [REDACTED] and Amy Tai, and the Secretary of Labor’s Memorandum of Law in Support of a Temporary Restraining Order and Order to Show Cause, the Court finds that there is good and sufficient reason to issue a Temporary Restraining Order (“TRO”), and that the Plaintiff has met his burden for this TRO to issue without notice to Defendants Berkshire Nursery & Supply Corp. and Jesus Flores (the “Defendants”).

At this preliminary stage, Plaintiff has met his burden as movant to establish the following facts. Despite having received written and oral notice of the Fair Labor Standards Act’s anti-retaliation provision from federal government agents, Defendants have continued to obstruct the Department of Labor’s investigation, instruct workers to lie to government agents, and threaten employees to dissuade them from speaking truthfully with investigators. As a result, the Secretary of Labor will suffer irreparable injury absent an injunction because he cannot complete a full and complete investigation to determine whether Defendants are in compliance with federal labor laws.

Further, Defendants' employees will suffer irreparable injury because there may be no violations found or back wages found due if Defendants cause false information to be provided to the Department of Labor about employees' hours worked and job duties, as Defendants have threatened and directed employees to do. Defendants' employees will also suffer irreparable harm if Defendants act on any of the threats, including physical harm to employees or their families, reporting employees to immigration authorities, and refusing to hire them for future employment. Based on the Plaintiff's clear showing, this Court is issuing a TRO without notice to prevent further retaliation and obstruction by Defendants between the time Defendants would have received such notice and the time the Court would have issued the TRO, which may jeopardize the ability for the Secretary to obtain information from informants or cause irreparable injury to Defendants' employees as set forth above. Good and sufficient cause being shown, it is:

ORDERED, that the above named Defendants show cause before a motion term of this Court, at Room 620, Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York on **January 31, 2023, at 11:00 A.M.**, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants, their officers, employees, agents, successors, and all persons acting or claiming to act in their behalf and interest during the pendency of this action from:

1. Violating the provisions of section 15(a)(3) of the Fair Labor Standards Act ("FLSA");
2. Harming and threatening harm, terminating or threatening to terminate employment, blacklisting or threatening future employment, contacting immigration authorities or other law enforcement or threatening to contact law enforcement, withholding wages or threatening to withhold wages, reducing hours or threatening to reduce hours, intimidating, coercing, threatening, or retaliating or discriminating against their employees in any other way, to prevent or otherwise dissuade an employee from speaking with or participating in the Department's investigation or engaged in any other protected activity under the Act;

3. Harming and threatening harm, terminating or threatening to terminate employment, blacklisting or threatening future employment, contacting immigration authorities or other law enforcement or threatening to contact law enforcement, withholding wages or threatening to withhold wages, reducing hours or threatening to reduce hours, intimidating, coercing, threatening, or retaliating or discriminating against their employees in any other way, based on Defendants' belief that such employee has participated in the Department's investigation or engaged in any other protected activity under the Act;
4. Obstructing and interfering with the Secretary's investigation of Defendants in any way;
5. Telling any workers not to cooperate with the Secretary's representatives; instructing any workers to provide incomplete or false information to the Secretary's representatives; or questioning workers about their cooperation or communications with the Secretary's representatives;
6. Communicating with any employee regarding the Secretary's investigation without first informing the employee, in writing and in the employee's primary language, that employees may communicate with the Secretary and his representatives voluntarily and free from coercion, and that employees cannot be discriminated against or retaliated against for communicating with the Secretary's representatives;
7. Terminating any employee without providing at least seven days notice to the Wage and Hour Division of the U.S. Department of Labor prior to any termination; **and**

IT IS FURTHER ORDERED that, sufficient reason having been shown therefor, pending the hearing of Plaintiff's application for a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, that Defendants, their officers, employees, agents, successors, and all persons acting or claiming to act in their behalf and interest shall be enjoined from:

1. Violating the provisions of section 15(a)(3) of the FLSA;
2. Harming and threatening harm, terminating or threatening to terminate employment, blacklisting or threatening future employment, contacting immigration authorities or other law enforcement or threatening to contact law enforcement, withholding wages or threatening to withhold wages, reducing hours or threatening to reduce hours, intimidating, coercing, threatening, or retaliating or discriminating against their employees in any other way, to prevent or otherwise dissuade an employee from speaking with or participating in the Department's investigation or engaged in any other protected activity under the Act;

3. Harming and threatening harm, terminating or threatening to terminate employment, blacklisting or threatening future employment, contacting immigration authorities or other law enforcement or threatening to contact law enforcement, withholding wages or threatening to withhold wages, reducing hours or threatening to reduce hours, intimidating, coercing, threatening, or retaliating or discriminating against their employees in any other way, based on Defendants' belief that such employee has participated in the Department's investigation or engaged in any other protected activity under the Act;
4. Obstructing and interfering with the Secretary's investigation of Defendants in any way;
5. Telling any workers not to cooperate with the Secretary's representatives; instructing any workers to provide incomplete or false information to the Secretary's representatives; or questioning workers about their cooperation or communications with the Secretary's representatives;
6. Communicating with any employee regarding the Secretary's investigation without first informing the employee, in writing and in the employee's primary language, that employees may communicate with the Secretary and his representatives voluntarily and free from coercion, and that employees cannot be discriminated against or retaliated against for communicating with the Secretary's representatives;
7. Terminating any employee without providing at least seven days notice to the Wage and Hour Division of the U.S. Department of Labor prior to any termination; **and**

IT IS FURTHER ORDERED that, sufficient reason having been shown therefor, pending the hearing of Plaintiff's application for a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, that Defendants, their officers, employees, agents, successors, and all persons acting or claiming to act in their behalf and interest shall be required to:

1. Within seven days of this Order, Defendants shall allow representatives of the Secretary to read aloud in English, Spanish, and any other language as necessary to be understood by Defendants' employees, during employees' paid working hours, the following statement to all employees employed by Defendants, and in the presence of Defendant Flores:

You are protected by the Fair Labor Standards Act and have the right to participate freely in the U.S. Department of Labor's investigation into your employer's workplace practices and employment conditions. You have the right to speak freely with investigators, attorneys, or other officials from the Department of Labor. Your employer and any person acting on behalf of your employer are prohibited from

retaliating against you in any way, including by threatening harm to you or your families, terminating you, reporting you to immigration, or threatening to do any of these things because you spoke with the Department of Labor.


The U.S. District Court for the Southern District of New York has ordered Berkshire Nursery and Jesus Flores and anyone acting on their behalf to cease coercing, retaliating against, threatening to retaliate against, intimidating, or attempting to influence or in any way threatening employees for providing information to the Department of Labor.

- of this order,*
2. Within seven days, Defendants shall mail a hard copy of the above statement, attached hereto as Exhibit A, in English, Spanish, and other language as necessary to be understood by Defendants' employees, to all current and former employees (employed at any time between January 12, 2020 and the present) at their last known addresses, along with contact information for representatives of the Secretary (to be provided by the Secretary's representatives); and

IT IS FURTHER ORDERED that personal service of a copy of this order, the annexed declarations and memorandum of law upon the Defendants, and e-mail service upon Defendants' counsel on or before 5:00 o'clock in the p.m. January 20, 2023, shall be deemed good and sufficient service thereof. *Papers in ~~op~~ opposition, if any, shall be filed by Jan. 27, 2023.*

DATED: January 18, 2023
White Plains, New York

*Issued at 1:00 p.m.
on Jan. 18, 2023.*


HONORABLE VINCENT L. BRICCETTI
UNITED STATES DISTRICT JUDGE