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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

NBG LOGISTICS ALLIANCE, INC, a
California corporation,

Defendant.

Case No.: 24cv1081-CAB-MMP

**ORDER GRANTING PLAINTIFF’S
MOTION FOR PRELIMINARY
INJUNCTION [Doc. No. 3]**

On June 24, 2024, Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Plaintiff”) filed a Motion for Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 restraining Defendant NBG Logistics Alliance, Inc. (“NBG”). [Doc. No. 3]. On July 15, 2024, Defendant NBG filed an opposition. [Doc. No. 7.] On July 22, 2024, Plaintiff filed a reply. [Doc. No. 12.] A hearing regarding Plaintiff’s Motion for Preliminary Injunction was held on July 31, 2024. Jennifer Staana, Esq. and Boris Orlov, Esq. appeared on behalf of Plaintiff. Guillermo Escobedo, Esq. and Oswaldo Calvachi, Esq. appeared on behalf of Defendant NBG. For the reasons stated at the hearing and as set forth below, Plaintiff’s motion for preliminary injunction is **GRANTED**.

1 BACKGROUND

2 On June 21, 2024, Plaintiff filed suit against Defendant NBG for (1) interference
3 with the Acting Secretary’s investigation of violations of the Fair Labor Standards Act of
4 1938 (“FLSA”), (2) acts of retaliation against Defendant’s employees who were paid in
5 pesos on Mexican payroll and who cross the border daily to work at Defendant NBG’s
6 California warehouses, and (3) record-keeping violations of the FLSA. The Complaint
7 seeks injunctive relief pursuant to FLSA sections 11(a) and (c), 15(a)(3) and (5), and 17,
8 29 U.S.C. §§ 211(a) and (c), 215(a)(3) and (5), and 217.

9 DISCUSSION

10 A. Legal Standard

11 A preliminary injunction is “an extraordinary and drastic remedy, one that should
12 not be granted unless the movant, by a clear showing, carries the burden of persuasion.”
13 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). A plaintiff seeking a preliminary
14 injunction must show that (1) it is likely to succeed on the merits; (2) it is likely to suffer
15 irreparable harm without an injunction; (3) the balance of equities tips in its favor; and
16 (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
17 7, 20 (2008). “A preliminary injunction may also be appropriate if a movant raises
18 ‘serious questions going to the merits’ and the ‘balance of hardships ... tips sharply
19 towards’ it, as long as the second and third *Winter* factors are satisfied.” *Disney Enter.,*
20 *Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

21 B. Analysis

22 a. Likelihood of Success on the Merits

23 The Court finds that Plaintiff is likely to prevail on the merits of her claim that
24 Defendant NBG and Agencia Aduanal Guillermo Nogueira y Asociados, S.C. (the
25 “Nogueira Company”) are related and/or alter ego entities, are joint employers of certain
26 peso-paid employees, and have committed numerous FLSA violations. The Acting
27 Secretary presented evidence in the form of declarations that:
28

- 1 1. Defendant NBG and the Nogueira Company are owned and operated by
2 essentially the same individuals and operate a border broker business with
3 locations in California and Mexico.
- 4 2. Defendant NBG, through its managers and agents, removed employees who
5 were paid in pesos from their Calexico, California worksites when the WHD
6 investigators showed up at Defendant's Calexico warehouse and office for a site
7 inspection on April 30, 2024, and hid these employees at a restaurant for hours
8 until the WHD investigators left.
- 9 3. Defendant NBG, through its managers and agents, then instructed these workers
10 not to work at their usual California worksites and instead report to work at the
11 Nogueira Company's Mexicali worksite. There, the Nogueira Company
12 managers confiscated these workers' work cell phones, and informed them they
13 could no longer work at their previous worksites in California because of the
14 labor investigation.
- 15 4. In the days following WHD's site inspection, Defendant NBG and the Nogueira
16 Company, through their managers and agents, then deleted or caused to be
17 deleted computer data containing the work that these workers performed for
18 Defendant NBG in California.
- 19 5. Defendant NBG and the Nogueira Company, through their managers and
20 agents, then terminated several of these employees.
- 21 6. In late May 2024, Defendant NBG and the Nogueira Company, through their
22 managers and agents, asked workers about whether they spoke with the WHD
23 investigators.
- 24 7. Defendant NBG did not require its employees paid in pesos to complete time
25 cards or similar records.

26 Defendant NBG does not dispute many of the factual allegations but does dispute
27 (via declarations) that it is related to the Nogueira Company and that it is a joint employer
28

1 of the peso-paid employees. Nevertheless, Plaintiff has provided sufficient evidence to
2 show, at this stage of the litigation, a likelihood of success on the merits.

3 b. Likelihood of Irreparable Harm

4 “[I]n a case involving statutory enforcement, where the applicable statute
5 authorizes injunctive relief, the traditional irreparable injury showing is not required.”
6 *F.T.C. v. Consumer Def., LLC*, 926 F.3d 1208, 1214 (9th Cir. 2019); *See also United*
7 *States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987).

8 Accordingly, the Court presumes the existence of irreparable injury.

9 c. Balance of Equities and Public Interest

10 The balance of equities and public interest favor Plaintiff. Without a preliminary
11 injunction, it will be difficult for Plaintiff to properly discern whether Defendant is a joint
12 employer of the peso-paid employees and complying with the FLSA. Additionally, a
13 preliminary injunction is in the public interest because enforcing compliance with the
14 FLSA helps eliminate “labor conditions detrimental to the maintenance of the minimum
15 standard of living” of workers. 29 U.S.C. § 202(a).

16 On the other hand, Defendant does not have a legitimate interest in violating the
17 FLSA. Accordingly, these factors weigh in favor of Plaintiff.

18 CONCLUSION

19 For the reasons set forth above, Plaintiff’s motion for preliminary injunction is
20 **GRANTED**. Accordingly,

21 The Court **HEREBY ENJOINS** Defendant NBG Logistics Alliance, Inc., and its
22 owners, agents, attorneys, managers, employees, and all those in active concert or
23 participation with Defendant as follows:

- 24
- 25 1. From, in violation of 29 U.S.C. § 215(a)(3), terminating or threatening to terminate
26 any employee, or retaliating or discriminating against any employee in any other way,
27 including, but not limited to, immigration-related threats, termination, company
28 closure, preventing workers from obtaining future employment, or taking or

1 threatening legal action, based on their belief that such employee spoke with or may
2 speak with a U.S. Department of Labor, Wage and Hour Division investigator;

3
4 2. From, in violation of 29 U.S.C. § 211(a), interfering or obstructing any investigation
5 of the Acting Secretary by directing employees not to speak to the Acting Secretary
6 and/or otherwise deterring them from cooperating in any investigation of the Acting
7 Secretary through threats and intimidation, including by telling anyone who works or
8 worked for them or any affiliate or agent or any other potential witnesses not to speak
9 to representatives of the Acting Secretary or to provide false information to
10 representatives of the Acting Secretary regarding the terms and conditions of their
11 employment, or asking anyone who works for them to give information about any
12 contacts they have had with representatives of the Acting Secretary;

13
14 3. From contacting or threatening to contact family and friends to dissuade employees
15 from speaking with representatives of the Acting Secretary;

16
17 4. From, in violation of 29 U.S.C. § 211(a), obstructing the Acting Secretary's
18 investigation in any way, including, but not limited to, destroying evidence relating to
19 the Acting Secretary's investigation. To facilitate compliance with this paragraph,
20 Defendant must take steps to preserve all electronic evidence, cell phones and
21 electronic devices used by NBG or any of its agents or affiliates in any
22 communications with its employees or about its employees or any individuals
23 performing work at its facilities. Within 10 days of this order Defendant shall provide
24 to the Acting Secretary an inventory of all cell phones and other electronic devices
25 and steps they have taken to preserve all communications contained therein.

26
27 5. To restore all data, messages, programs it deleted from computers and cell phones that
28 contain evidence relating to the Acting Secretary's investigation;

1 6. Within one week of this Order, to allow a representative of the Acting Secretary, in
2 the presence of one of the officers or managers of Defendant NBG, to read aloud in
3 both English and Spanish during employees' regular paid working hours the following
4 statement to all employees employed at Defendant NBG's worksites in San Diego and
5 Calexico, California, including its leased worksites in California, informing them of
6 their right to speak with representatives of the Acting Secretary free from retaliation
7 or threats of retaliation or intimidation by Defendant and/or its agents:

8
9 You are protected by the Fair Labor Standards Act and have the right to
10 participate freely in the U.S. Department of Labor's investigation into your
11 employer's pay practices. You have the right to speak freely with
12 investigators or other officials from the Department of Labor. Your
13 employer is prohibited from retaliating against you in any way because you
14 spoke with the Department of Labor.

15
16 The U.S. District Court for the Southern District of California has ordered
17 NBG Logistics Alliance, Inc. and anyone acting on its behalf, to cease
18 coercing, retaliating against, threatening to retaliate against, intimidating, or
19 attempting to influence or in any way threatening employees for providing
20 information to the Department of Labor.

21
22 *Usted está protegido por la Ley de Normas Justas de Trabajo y tiene el*
23 *derecho de participar libremente en la investigación del Departamento de*
24 *Trabajo. Usted tiene el derecho de hablar libremente con investigadores o*
25 *otras personas del Departamento de Trabajo. Su empleador está prohibido*
26 *de hacer represalias contra de usted de cualquier manera incluyendo la*
27 *terminación de usted, porque usted hablo con el Departamento de Trabajo.*
28

1 *El Tribunal Federal de Distrito del Sur de California ha ordenado que NBG*
2 *Logistics Alliance, Inc., y cualquier persona que actúe en el nombre de él,*
3 *cesen coerción o vindicación o amenazas o intimidación o intentar influir o*
4 *amenazar de cualquier manera los empleados por dar información al*
5 *Departamento de Trabajo. El Tribunal ha prohibido que NBG Logistics*
6 *Alliance, Inc. contacte o comunique con empleados acerca de cualquier*
7 *comunicación entre ellos y el Departamento de Trabajo.*
8

- 9 7. To post at each NBG worksite, including its leased worksites, located in San Diego
10 and Calexico a hard copy of the statement included in paragraph 4 above, in both
11 English and Spanish, and permitting a representative of the Acting Secretary to
12 provide each employee with a copy of the written statement, in English and in
13 Spanish, as well as contact information for representatives of the Acting Secretary;
14
- 15 8. To provide a copy of this Order to all persons acting in concert or participating with
16 Defendant in their business operations. Defendant NBG shall provide all necessary
17 information about this Order to such parties. Defendant NBG shall keep a log with the
18 names and addresses of all persons who have been provided with a copy of this Order;
19
- 20 9. From terminating any workers, including, but not limited to, any employees
21 associated with the Nogueira Company currently working or having worked within
22 the last three years at NBG locations, without first giving the employee and the Acting
23 Secretary of Labor ten days' notice as to who is being fired and why;
- 24 10. To comply with the FLSA's recordkeeping provisions under Sections 11(c) and
25 15(a)(5) for all employees performing work in California, including any employees it
26 jointly employs with the Nogueira Company, as required under the FLSA, including
27 having the date, month, day and year, as well as the hours, stamped on each time card;
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1 11. To provide a list of persons Defendant has employed since April 30, 2021, including
2 former employees, with their address, phone number, cell phone number, e-mail,
3 hourly rate or salary, job title, hire date, and termination date if applicable; this
4 provision includes, but is not limited to, all employees working at NBG locations
5 associated with the Nogueira Company;¹
6

7 12. Defendant NBG must submit proof of completion (in the form of a verified response)
8 of each of the provisions listed above to the Acting Secretary's representative within
9 seven days of completion.
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11 **IT IS SO ORDERED.**

12 Dated: July 31, 2024



14 Hon. Cathy Ann Bencivengo
15 United States District Judge
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28 ¹ As set forth during the hearing, Defendant may seek a stipulated or court-ordered protective order with the Magistrate Judge to address any confidentiality concerns.