

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, et al.,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT
OF LABOR, et al.,

Defendants.

No. 1:20-cv-01690-DAD-JLT

ORDER GRANTING PLAINTIFFS' MOTION
SEEKING AN EXTENSION OF THE
COURT'S PREVIOUSLY GRANTED
PRELIMINARY INJUNCTIVE RELIEF IN
THE FORM OF EQUITABLE RESTITUTION

(Doc. No. 44)

This matter came before the court on April 6, 2012 for hearing on the motion to enforce compliance with the court's preliminary injunction brought on behalf of plaintiffs United Farm Workers and UFW Foundation (collectively, "plaintiffs").¹ (Doc. No. 44.) Attorneys Bruce Goldstein, Rachel Jacobson, Mark Selwyn, Nicholas Werle, and Trent Taylor appeared by video for plaintiffs, and United States Department of Justice Trial Attorney Michael Gaffney appeared by video for defendants the United States Department of Labor ("DOL") and the Secretary of Labor (collectively, "defendants"). The court will construe plaintiffs' filing as a motion seeking

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¹ On May 11, 2021, the court held a second hearing on this motion with all counsel appearing telephonically.

1 an extension of the previously granted preliminary injunctive relief in the form of equitable
2 restitution. For the reasons explained below, the court will grant plaintiffs' pending motion.

3 BACKGROUND

4 The factual background of this case was set forth in the court's order granting plaintiffs'
5 motion for a preliminary injunction. (*See* Doc. No. 37.) That background will not be repeated
6 here in its entirety. Only those facts relevant to the disposition of this motion will be discussed
7 below.

8 On December 23, 2020, the court granted plaintiffs' motion for a preliminary injunction.
9 (Doc. No. 37.) Therein, the court prohibited defendants from implementing the final rule
10 published on November 5, 2020. (*Id.* at 39); *see also Adverse Effect Wage Rate Methodology for*
11 *the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United*
12 *States*, 85 Fed. Reg. 70,445 (Nov. 5, 2020) ("the AEW final rule"). Defendants were ordered to
13 operate under the last uncontested status of the Adverse Effect Wage Rates ("AEWR")
14 calculation methodology. (Doc. No. 37 at 39); *see also Temporary Agricultural Employment of*
15 *H-2A Aliens in the United States*, 75 Fed. Reg. 6,884 (Feb. 12, 2010) ("the 2010 rule"). The
16 parties were further directed to meet and confer to submit a proposed order that included
17 deadlines by which defendants would set the 2021 AEWs in accordance with the court's order
18 and with all other legal requirements. (Doc. No. 37 at 39.)

19 On January 6, 2021, the parties submitted a joint status report stating that they had met
20 and conferred in accordance with the court's December 23, 2020 order. (Doc. No. 38 at ¶ 6–7.)
21 After exchanging proposals and counterproposals, however, the parties failed to reach an
22 agreement as to the language that the court should employ in granting plaintiffs' requested relief.
23 (*Id.* at ¶ 7.) Ultimately, the parties agreed to submit separate proposals for the court's
24 consideration. (*Id.*)

25 On January 12, 2021, after reviewing those proposals, the court issued a supplemental
26 order regarding the preliminary injunctive relief granted in this action. (Doc. No. 39.) Therein,
27 the court "reserve[d] the issue of whether any award of backpay is warranted based upon the
28 difference between the 2020 AEWs and the final 2021 AEWs, if any, until a final ruling on the

merits of plaintiffs' claims." (*Id.* at 2–3.) The court also directed defendants to (1) publish final 2021 AEWRs in the Federal Register on or before February 25, 2021 using the methodology set forth in the 2010 rule; (2) make effective the 2021 AEWRs upon their publication in the Federal Register; (3) notify state workforce agencies, employers, and the public by January 18, 2021 that the 2020 AEWRs would remain in effect during the interim period between December 24, 2020 and publication of the final 2021 AEWRs; and (4) provide notice to all H-2A employers who submitted job orders and applications for H-2A labor certification between December 21, 2020 and the publication of the final 2021 AEWRs, informing them that the potential backpay claims of affected H-2A workers were the subject of ongoing litigation in this action. (*Id.* at 3–4.)

On February 12, 2021, the United States Department of Agriculture published the Farm Labor Report ("FLR") in accordance with this court's preliminary injunction in *United Farm Workers v. Perdue*, No. 1:20-cv-01452-DAD-JLT, 2020 WL 6318432 (E.D. Cal. Oct. 28, 2020). (*See* Doc. No. 44 at 7 n.1.) The FLR, which synthesized the findings of the Farm Labor Survey ("FLS") revealed that the gross wage rate for field and livestock workers during the October 2020 reference week had increased six percent from the previous year. (*Id.* at 7.) Additionally, the annual average gross wage for field and livestock workers—the figure that determines the 2021 AEWRs under the DOL's existing regulations—rose approximately five percent to \$14.62. (*Id.*) Accordingly, on February 23, 2021, the DOL published the 2021 AEWRs in compliance with the court's January 12, 2021 supplemental order granting preliminary injunctive relief in this case. (*Id.*); *see also Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations*, 86 Fed. Reg. 10,996 (Feb. 23, 2021). The 2020 AEWRs therefore continued to govern from January 1, 2021 to February 23, 2021 ("the Interim Period") only because the 2021 AEWRs were not published until February 23, 2021 in compliance with this court's order.

On March 11, 2021, plaintiffs filed the pending motion, styled as a motion to enforce compliance with the court's preliminary injunction. (Doc. No. 44.) Specifically, plaintiffs seek an order from this court directing defendants "to comply with the preliminary injunction by immediately directing H-2A employers to remit wage adjustments to qualifying farmworkers."

(Doc. No. 44 at 9.) On March 23, 2021, defendants filed an opposition to the motion, and plaintiffs replied thereto on March 26, 2021. (Doc. Nos. 47, 48.)

ANALYSIS

As an initial matter, the court observes that the pending motion is not a true motion to enforce compliance with this court's preliminary injunction. Indicative of this is the absence of a request to hold defendants in civil contempt for violating any of the preliminary injunction's directives.² Rather, as effectively conceded at the hearings on the motion, plaintiffs are actually requesting an extension of the relief granted in the court's December 23, 2020 and January 12, 2021 preliminary injunction orders. Accordingly, the court will construe plaintiffs' filing as a motion for further injunctive relief and specifically for an order requiring equitable restitution.

When the court inquired as to the relevant legal standard governing their pending motion, plaintiffs pointed to the framework established in *Frederick County Fruit Growers Association v. McLaughlin*, 703 F. Supp. 1021, 1024 (D.D.C. 1989) ("*Frederick County I*"), *aff'd sub nom. Frederick Cnty. Fruit Growers Ass'n, Inc. v. Martin*, 968 F.2d 1265 (D.C. Cir. 1992) ("*Frederick County II*"). That case too involved an Administrative Procedure Act ("APA") challenge of a DOL rule affecting wage rates for migrant farmworkers. After growers underpaid the farmworkers for a period of time pursuant to the DOL's invalid rule, the court in *Frederick*

² "[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt." *Spallone v. United States*, 493 U.S. 265, 276 (1990) (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)). "A party may be held in civil contempt where it 'fail [ed] to take all reasonable steps within the party's power to comply [with a specific and definite court order].'" *Fed. Trade Comm'n v. Productive Mktg., Inc.*, 136 F. Supp. 2d 1096, 1107 (C.D. Cal. 2001) (quoting *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir.1993)). "The party alleging civil contempt must demonstrate that the alleged contemnor violated the court's order by 'clear and convincing evidence,' not merely a preponderance of the evidence." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). Here, however, defendants have complied with each of the specific directives set forth in this court's January 12, 2021 supplemental order, and it appears that there are no additional directives for which the court could enforce compliance. (*See* Doc. No. 44 at 11–12) (explaining that the DOL put employers on notice, as required by the court's January 12, 2021 supplemental order); 86 Fed. Reg. 10,996 (publishing and giving effect to the 2021 AEWRs); *W. Knight Foster P'ship v. Saratoga Data Sys., Inc.*, No. 16-cv-02406-PJH, 2018 WL 1000373, at *2 (N.D. Cal. Feb. 21, 2018) ("The court does not find "that any remedy is warranted under the preliminary injunction," because defendants did comply with the preliminary injunction and "plaintiff[s] cannot [seek this relief] through the present motion to enforce the preliminary injunction.").

1 *County I* found that equitable restitution required the growers to pay farmworker’s backpay. *Id.*
2 at 1028–29. In making this determination, the court in *Frederick County I* relied on

3 [t]he legal principle . . . that when funds have been either paid or
4 withheld pursuant to **an invalid administrative edict**, the proper
5 remedy is equitable restitution. However, because the restitutionary
6 remedy is a matter of equity, reimbursement of funds will be required
7 only to the extent that justice between the parties requires. Equity
will require such a result only when the money was obtained in such
circumstances that the possessor will give offense to equity and good
conscience if permitted to retain it.

8 *Id.* at 1029 (emphasis added) (internal citations and quotation marks omitted).

9 The court finds this framework to be persuasive here, particularly in light of the shared H-
10 2A context. “The district court has broad latitude in fashioning equitable relief when necessary to
11 remedy an established wrong.” *Alaska Ctr. for Env’t v. Browner*, 20 F.3d 981, 986 (9th Cir.
12 1994); *see also Frederick Cnty. II*, 968 F.2d at 1272. That principle applies when an agency fails
13 to act pursuant to its governing statute’s provisions. *See id.* (“To limit relief . . . would unduly
14 interfere with the statutory scheme established by Congress.”); *Democratic Cent. Comm. of D.C.*
15 *v. Washington Metro. Area Transit Comm’n*, 485 F.2d 786, 824–25 (D.C. Cir. 1973) (When “a
16 party against whom an erroneous judgment or decree has been carried into effect is entitled, in the
17 event of a reversal, to be restored by his adversary to that which he has lost thereby. This
18 principle . . . is no less applicable to erroneous orders of an administrative agency than to those of
19 a court.”) (internal quotation marks omitted).

20 In applying this framework, the court must first determine whether “funds have been
21 either paid or withheld pursuant to an invalid administrative edict.” *Frederick County I*, 703 F.
22 Supp. at 1029. The question is therefore whether the Interim Period constitutes an “invalid
23 administrative edict.” In their motion, plaintiffs argue that the DOL’s February 23, 2021
24 publication of the 2021 AEWRs was nearly two months late under DOL’s own regulations, and
25 the court’s injunction did not eliminate DOL’s obligation to publish new AEWRs during calendar
26 year 2020 but rather sought to enforce that obligation. (Doc. No. 44 at 10–11.) They argue that
27 the 2020 AEWRs became invalid, even if provisionally kept in force and effect by the court, as of
28 January 1, 2021. (*Id.* at 11.) Plaintiffs acknowledge that the court’s January 12, 2021

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