

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

ROSILES-PEREZ, et al.,)
)
Plaintiffs,)
)
v.)
)
SUPERIOR FORESTRY SERVICE, INC.,)
et al.,)
)
Defendants.)

NO. 1:06-0006
JUDGE HAYNES

MEMORANDUM

their supervisory and other employees immediately on the provisions of that Order to the detriment of class members. (Docket Entry Nos. 167 and 168).

In this second motion, Plaintiffs submitted evidence that earlier this year, Pedro Flores, a SFSI crew leader and the brother of another crew leader whose conduct led to the issuance of the May 23rd protective order, made statements to two putative class members discouraging them from joining this action. (Docket Entry Nos. 320 and 321).

Plaintiffs also contend that Defendants again violated the Court's directive at the October

22, 2007 hearing (Docket Entry No. 318) that the Defendants immediately instruct their supervisors on the provisions of the May 23rd Order.

In response, Defendants argue the Pedro Flores was permitted to talk to the two

On May 9, 2006, Plaintiffs filed an emergency motion for a protective order to prohibit communications by Defendants with Plaintiffs and potential class members about this action and to prohibit retaliation and coercion against the 32 named plaintiffs and potential plaintiffs. Plaintiffs' submitted two affidavits of out-in-Plaintiffs that Jesus

Defendant shall immediately instruct their supervisory employees and all
~~other employees and agents who might have contact with plaintiffs and~~

and to those former crew leaders who had received the June 2006 memorandum with the

“[REDACTED]” (Docket Entry No. 170) (T.L. D.C. 10-1-06) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

were taken in meetings between defense counsel and unrepresented putative class members. (Docket Entry No. 250-1).

At the October 22, 2007 hearing on Plaintiff's sanction motion, Defendants contended these ex parte meetings were appropriate, but these workers were not told that

“about the lawsuit,” May 23, 2008 Transcript at p. 24, but responded to the following question: Q: Did you tell Oscar Hernandez-Espina to call the office if he had questions about the lawsuit? A: That’s right.” Id. at pp. 24, 30. Flores admitted that he told Oscar Hernandez-Espina and unspecified crew members to “go talk to the bosses” about this

Plaintiffs' Exhibit 4, Plaintiffs Exhibit 5 (emphasis added). The message to crew leaders was to include specific reference to the FLSA and the May 23rd Order. (Docket Entry No. 167 at p. 9).

In March 2007, after the Court's second order requiring distribution of the protective order and contempt order in Spanish as well as directing workers who believed that they had suffered retaliation to contact Plaintiffs' attorneys, Defendants sent out the required documents, together with a virtually identical "transmittal memorandum," that was written only in English. (Plaintiffs' Exhibit 4 at ¶ 9 and Exhibit 3 attached

The Court's directive at the October 22nd hearing Order, required Defendants again to inform immediately their supervisors not to communicate with class members about this action. According to Tester, this memorandum was distributed in November, December, and January, when crew leaders returned from Mexico for the next tree

Defendants clearly knew that their obligations included sending notices to Mexico, but

~~the Defendants failed to do so.~~

reasonable steps within their power to comply with the court's order.” Gover, 934 F.2d at 708 (quoting Peppers, 873 F.2d at 969) (emphasis added).

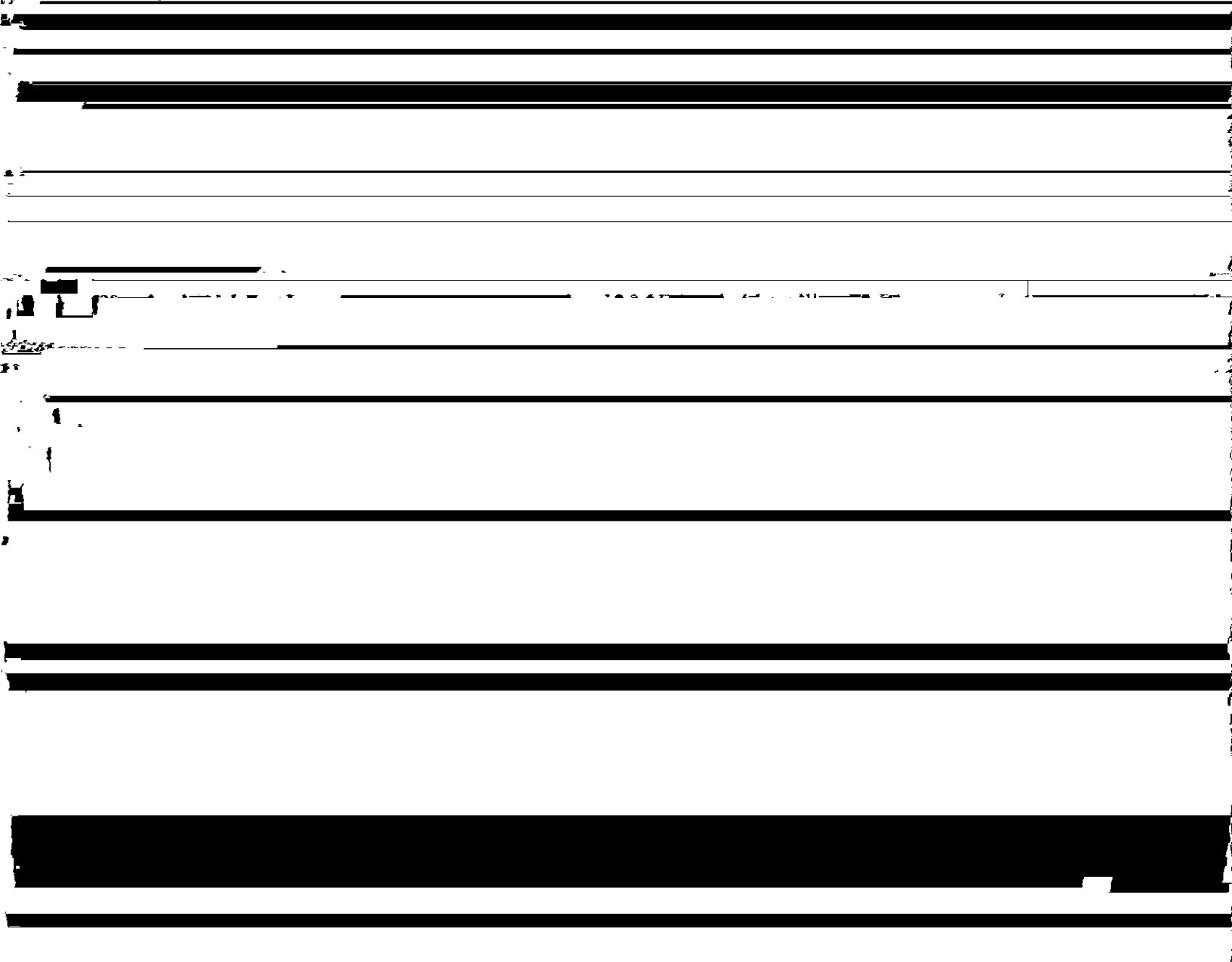
As a matter of fact and law, the May 23rd Order clearly “extended not only to the

also prohibits communications with all “plaintiffs and putative class members: about the lawsuit.”² Id. at p. 2

As to the appropriate remedy, contempt sanctions should be fashioned "to compel

equitable tolling doctrine “permits courts to extend the statute of limitations on a case-by-case basis to prevent inequity.” Baden-Winterwood, 484 F.Supp.2d at 826 (citing Truitt v. Country of Wayne, 148 F.3d 644, 648 (6th Cir. 1998)).

The Sixth Circuit lists five factors to consider on equitable tolling: (1) whether the plaintiffs lack actual notice of their rights and obligations; (2) whether they lacked constructive notice; (3) the diligence with which they pursued their rights; (4) whether the defendant would be prejudiced if the statute were tolled; and (5) the reasonableness of the plaintiffs remaining ignorant of their rights. Kentucky State Police, 80 F.3d at



mere existence of a law suffices to impact constructive notice, an inquiry into the notice factors would be meaningless.”)

As to the other factors, the Court finds the absence of prejudice to Defendants. “[T]he purpose of the statute of limitations is to prevent surprises ‘through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’” American Pipe & Construction v. Utah, 414 U.S. 538, 561 (1974) (Blackmun, J., concurring) (quoting Order of Railroad Telegraphers

Mallinckrodt Medical, Inc., 1995 U.S. App. LEXIS 35488 (6th Cir. Nov. 89, 1995) (the principle “that no man may take advantage of his own wrong” has “frequently been

properly during the workday. See Hernandez v. Kovacevich "5" Farms, Civ. F-04-5515
OW DLB (E.D. Calif., Docket Entry No. 324-2. The costs of notice are imposed upon
the Defendants as the parties at fault. See e.g., Veliz v. Cintas Corp, 2004 U.S. Dist.
LEXIS 24871 at *3 (N.D. Cal. Nov. 12, 2004); Belt v. Emcare, 299 F.Supp.2d 664, 669-
70 (E.D. Cal. 2002). D. California, District Court, U.S. District Court, San Francisco