IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MIGUEL ANGEL FUENTES CORDOVA, et al., etc.,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION 14-0462-WS-M**
R & A OYSTERS, INC., et al.,	)	
Defendants.	)	

ORDER

This matter is before the Court on the plaintiffs' motion for a protective order. (Doc. 69). The parties have filed briefs and evidentiary materials in support of their respective positions, (Docs. 69, 72, 75), and the motion is ripe for resolution.

BACKGROUND

This FLSA action has been conditionally certified as a collective action, with the conditionally certified class consisting of all non-supervisory hourly workers admitted under the H-2B temporary foreign worker visa program and employed by the defendant at any point since October 2011. (Doc. 44 at 3, 5). The potential plaintiffs work or have worked as oyster shuckers at the defendant's oyster processing facility in Mobile County and are Mexican citizens who permanently reside in rural areas of Mexico. The defendants are Rodney and Ann Fox and their company, R&A Oysters, Inc.

The plaintiffs believe the defendants have engaged in coercive communications with several opt-in plaintiffs, two of whom have filed notices of the withdrawal of their consent to join the collective action. (Doc. 66). A third has submitted a withdrawal letter to plaintiffs' counsel. (Doc. 69-2 at 3).

The plaintiffs seek the following relief: (1) discover[illegible] circumstances surrounding the requests to withdraw; (2) w[illegible]en notic[illegible] existing and potential plaintiffs advising that the defenda[illegible]s cannot cond[illegible] future employment on non-participation in this laws[illegible]d (3) an instruct[illegible] certain present and past employees and agents of the defendants regarding the FLSA's anti-retaliation provisions and this order. (Doc. 69 at 1-2).

DISCUSSION

As this Court has noted, in appropriate circumstances it has authority to limit communication between a defendant employer and existing and potential plaintiffs in an FLSA collective action. . - ., 595 F. Supp. 2d 1218, 1226-27 (S.D. Ala. 2008). The standards are the same as those applicable in the class action context, ., since "[t]he same justifications [for judicial oversight over communications] apply in the context of" a collective action as a class action. - , . . , 493 U.S. 165, 171 (1989).

Before relief may be ordered, there must first be made a "specific record showing by the moving party of the particular abuses by which it is threatened." . , 452 U.S.89, 102 (1981) (internal quotes omitted). To satisfy , "[t]wo kinds of proof are required." . , ., 214 F.R.D. 696, 697 (S.D. Ala. 2003). "First, the movant must show that a particular form of communication has occurred or is threatened to occur. Second, the movant must show that the particular form of communication at issue is abusive in that it threatens the proper functioning of the litigation." . at 697-98. "Abusive practices that have been considered sufficient to warrant a protective order include communications that coerce prospective class members into excluding themselves from the litigation …." . at 698.

The parties have submitted affidavits, declarations and other evidence in support of their respective positions. Neither side requests an evidentiary hearing; on the contrary, the defendants insist the Court should resolve the instant motion

on the existing record. (Doc. 72 at 9). Therefore, and because the proper

his position to Angel.[1] And although Rodney denies that Angel had any authority, actual or apparent, to speak for the defendants, he does not deny that Angel often relates information from the office to the H-2B workers. Nor does Rodney deny that Angel accurately related his (Rodney's) position to the H-2B workers. For these and other reasons,[2] the Court finds on this record that Angel spoke with at least the tacit approval of the defendants.[3]

As of June 24, 2015, there were only four plaintiffs present at the

, 600 F. Supp. 2d at 1379 (statements that H-2A class members "would not be rehired if they participated in litigation … could … be characterized as abusive and threatening to the litigation").[4]

"Abusive practices that have been considered sufficient to warrant a protective order include … communications that undermine cooperation with or confidence in class counsel." , 214 F.R.D. at 697. In their reply brief, the plaintiffs argue that the role of Rodney in advising how to withdraw from the lawsuit, and Nanette's conduct in drafting the withdrawal letters, addressing them and having them notarized, is independently objectionable as undermining confidence in class counsel. (Doc. 75 at 4). No such argument appears in the plaintiffs' principal brief, even though it was fully available to them. "District courts, including this one, ordinarily do not consider arguments raised for the first time on reply." - . , 874 F. Supp. 2d 1319, 1330 n.8 (S.D. Ala. 2012) (citing cases and explaining the underlying rationale). The plaintiffs identify no reason to depart from this well-established rule, and the Court declines to do so.

Upon finding the occurrence of abusive communications, the Court "should [prepare] a carefully drawn order that limits speech as little as possible, consistent with the rights of the parties under the circumstances. fully available to1 ( ) 2 (c) 1 ye CouC.84 cm

impression resulting from the defendants' improper conduct. However, the Court agrees with the defendants that only those plaintiffs and potential plaintiffs exposed to the defendants' conduct need receive such notice, since only they could have thereby formed a misimpression of the defendants' authority to condition