

WHEREFORE, Defendant having agreed to the entry of the Preliminary Injunction, the Parties respectfully request that this Court enter the proposed Preliminary Injunction submitted concurrent with this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: rcoffey@fisherphillips.com; apointer@fisherphillips.com

/s/ Charles W. Gordon

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

R. ALEXANDER ACOSTA,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT)
OF LABOR,)
)
Plaintiff,)
)
v.)
)
MARIN J. CORPORATION)
)
Defendant.)

**ORDER GRANTING
PRELIMINARY INJUNCTION**

CIVIL ACTION No. 1:18-CV-184-SNL

ORDER GRANTING PRELIMINARY INJUNCTION

The Court has reviewed the Agreed Motion for Entry of Preliminary Injunction, and for good cause shown, **IT IS ORDERED** that the parties' Agreed Motion for Entry of Preliminary Injunction is **GRANTED**.

Plaintiff R. Alexander Acosta, Secretary of Labor, United States Department of Labor (the “Secretary”) has applied, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction. The Secretary and Defendant Marin J. Corporation (“Defendant”) (collectively “the Parties”) have stipulated and agreed to entry of a Preliminary Injunction on the terms set forth below. Accordingly, it is hereby:

ORDERED that a Preliminary Injunction be granted; and it is **ORDERED** effective immediately that Defendant, its officers, agents, servants, and employees, and those persons in active concert or participation with them who received actual notice of this Order are hereby enjoined and restrained from violating the provisions of the H-2A program regulations at 20 C.F.R. Part 655, Subpart B (the “H-2A Regulations”) promulgated under the Immigration Reform and Control Act of 1986 with respect to employees employed by Defendant under either Job Order 12484859 (27 Workers) or Job Order 12490128 (80 Workers) (“covered employees” or “covered workers”) in the following respects:

- (1) No later than Monday, August 6, 2018, at 8 p.m. CDT, Defendant shall house H-2A visa holding workers, and any U.S. workers in corresponding employment for whom housing must be provided, in housing that materially complies with the requirements set forth in 20 C.F.R. § 655.122(d)(1)(i) for employer-provided housing or § 655.122(d)(ii) for rental and/or public accommodations, whichever is applicable to the housing Defendant is providing.
- (2) Subject to the periods stated in Paragraph 1 above, Defendant shall not, for the duration of the 2018 season, house H-2A workers in the former Dunklin County jail located at 200 Slicer Street, Kennett, Missouri 63857 (the “Jail”).
- (3) Subject to the periods stated in Paragraph 1 above, Defendant shall move H-2A workers currently housed in the Jail to the 84 West Motel located at 1433 St. Francis St., Kennett, Missouri 63857 (“84 West”), and shall make said housing available for inspection by representatives of the Wage and Hour Division of the Department of Labor at their reasonable request.

- (4) Defendant shall provide each H-2A worker housed at 84 West an individual bed, so that no such worker is required to sleep on the floor or share a bed with any other individual.
- (5) Defendant shall provide each H-2A worker residing at 84 West with reasonable weekly access to laundry facilities, and shall work out a reasonable means of providing such access.
- (6) Defendant represents, by the date and time set forth in Paragraph 1 above, no covered worker shall be housed at 9346 State Highway C, Kennett, Missouri (the “Brick House”), unless before such occupancy Defendant has arranged to:
 - a) Provide a clean, functional garbage dumpster, with lid, that is emptied upon full, or at least twice a week;
 - b) Ensure the kitchen is functional with operable appliances, at the proper ratios identified in the H-2A Regulations;
 - c) Ensure all windows are intact and fitted with a screen that is tightly-fitted to the specific measurements of each window;
 - d) Take measures to avoid insect infestation and animal habitation, including maintaining grounds and open areas in clean and sanitary conditions, patching and/or eliminating exterior holes in the house, and eliminating existing insect and/or animal habitations; and
 - e) Provide bathroom facilities free of leaks and in good repair, which are not leaking or creating standing water and are capable of proper drainage.

(7) Defendant shall house no more than thirteen (13) H-2A workers in the Brick House, in the following arrangements, unless the Parties have in advance of such occupancy concluded that the discrepancies between the per room square footages and applicable OSHA provisions would not material affect health or safety of covered workers and that more covered workers can be housed in such housing:

Room No.	1	2	3	4	
Square Footage	324.61	141	186.12	130	
Permissible Number of H-2A Workers	6	2	3	2	
Total H-2A Workers					13

(8) Defendant represents, by the date and time set forth in Paragraph 1 above, no covered worker shall be housed at 9348 State Highway C, Kennett, Missouri (the “Wood Frame House”), unless before such occupancy Defendant has arranged to:

- a) Provide a clean, functional garbage dumpster, with lid, that is emptied upon full, or at least twice a week;
- b) Ensure the kitchen is functional with operable appliances, at the proper ratios identified in the H-2A Regulations, including a refrigerator capable of sanitary storage of cold and frozen perishable items;
- c) Ensure all windows are intact and fitted with a screen that is tightly-fitted to the specific measurements of each window;
- d) Provide bathroom facilities free of leaks and in good repair, which are not leaking or creating standing water and are capable of proper drainage;
- e) Repair the flooring damaged by the leaking toilet, and remediate any associated mold or fungal growth; and

f) Take measures to avoid insect infestation and animal habitation, including maintaining grounds and open areas in clean and sanitary conditions, patching and/or eliminating exterior holes in the house (including the hole in the roof overhang), and eliminating existing insect and/or animal habitations.

(9) Defendant shall house no more than ten (10) H-2A worker in the Wood Frame House, in the following arrangements, unless the Parties have in advance of such occupancy concluded that the discrepancies between the per room square footages and applicable OSHA provisions would not material affect health or safety of covered workers and that more covered workers can be housed in such housing:

Room No.	1	2	3	
Square Footage	262.8	213.6	61	
Permissible Number of H-2A Workers	5	4	1	
Total H-2A Workers				10

(10) For the purposes of this Order, if Defendant has elected to move all of its H-2A workers from the Brick House and the Wood Frame House into the 84 West Motel, or other DOL-approved accommodation, Paragraphs 6-9 of this Order will no longer apply, unless and until any of Defendant’s H-2A workers return to either the Brick House or the Wood Frame House.

- (11) In accordance with the applicable Form 790 for Job Order 12490128, Defendant has provided that “[t]he employer will provide three (3) meals per day: breakfast, lunch and dinner. The employer will charge each workers [sic] \$12.26 per day for three (3) meals,” and in such Job Order Defendant also provided that it would make deductions from covered workers’ individual pay if such workers agreed in writing that such deductions may be made. For the period the H-2A workers covered by Job Order 12490128 are in residence at 84 West Defendant may deduct 7 days of meals at \$12.26 per day, inclusive of breakfast, lunch, and dinner, from their weekly pay. Defendant shall pay the person or entity providing the three (3) meals directly, including any amounts over \$12.26. The H-2A workers shall not be required to pay any monies to any person or entity providing the three (3) meals, and shall only be subject to the \$12.26 deduction.
- (12) Subsequent to the entry of this Order, Defendant intends to provide additional factual information concerning the ability of H-2A workers covered by Job Order 12490128 to have access to facilities sufficient to prepare their own meals. Upon receipt, the Secretary will reevaluate whether he will allow Defendant to amend the associated Job Order to allow H-2A workers a choice between preparing their own meals, or having \$12.26 per day deducted from their paychecks for the provision of three (3) meals a day, inclusive of breakfast, lunch, and dinner.
- (13) In accordance with the applicable Form 790 for Job Order 12484859, Defendant has provided that “[t]he employer will provide free and convenient cooking and kitchen facilities to [such] workers living in employer provided housing, which will enable workers to prepare their own meals. Employer will provide transportation

(at no cost to employees) to grocery and/or department store, once per week for workers to obtain food and other necessities.” If 84 West can provide sufficient rooms with free, sufficient, and convenient cooking and kitchen facilities so that the twenty-seven (27) covered workers employed under such Job Order can prepare their own meals, Defendant expects them to do so. If, however, Defendant amends the applicable Form 790 for Job Order 12484859, covering twenty-seven (27) H-2A workers, to disclose a deduction for \$12.26 per day for three (3) meals, until the conclusion of such Job Order, for the period the H-2A workers covered by Job Order 12484859 are in residence at 84 West, Defendant may deduct 7 days of meals at \$12.26 per day, inclusive of breakfast, lunch, and dinner, from their weekly pay. Defendant shall pay the person or entity providing the three (3) meals directly, including any amounts over \$12.26. In this case, the H-2A workers shall not be required to pay any monies to any person or entity providing the three (3) meals, and shall only be subject to the \$12.26 deduction.

- (14) While disputing any contention that Defendant is not currently in material compliance with such regulations, on or before Friday, August 10, Defendant shall comply with the field sanitation standards as set forth in 29 C.F.R § 1928.110 in each field where its H-2A workers covered by this Order are working, including providing suitably cool potable drinking water that meets the needs of all such workers present, as well as individual drinking cups and toilet and handwashing facilities in the regulatory-defined ratios, properly located, stocked with toilet paper, and cleaned and serviced.

- (15) While disputing any contention that Defendant is not currently in material compliance with such regulations, Defendant shall maintain accurate time and payroll records of all hours worked by the H-2A workers, and keep all such records as are required under the H-2A Regulations, and no later than for the workweek beginning August 13, 2018, provide to each H-2A worker a record and/or pay statement, which includes their hours worked and associated rate of pay, as well as other information required by the H-2A Regulations, on a weekly basis, for their review, such pay receipts to be provided to covered workers to comply with the material provisions of 20 C.F.R. § 655.122(k) **including the following information:**
- a. The worker's total earnings for the pay period;
 - b. The worker's hourly rate and/or piece rate of pay;
 - c. The hours of employment offered to the worker;
 - d. The hours actually worked by the worker;
 - e. An itemization of all deductions made from the worker's wages;
 - f. If piece rates are used, the units produced daily;
 - g. Beginning and ending dates of the pay period; and
 - h. The employer's name, address, and FEIN.
- (16) Defendant shall pay all covered H-2A workers all wages owed on a weekly basis as provided in the respective applicable Form 9142A Temporary Employment Certifications issued pursuant to the respective applicable ETA 790 Job Order, the Parties recognize that the existence of good faith disputes between the Parties as to

whether time spent in particular activities is or is not compensable time will not be considered a violation of this Order.

- (17) Defendant, having represented it is not in present possession of all wage and time related documents prepared by its supervisors and managers concerning the covered workers, shall use its best efforts through its payroll service provider Harbor America to obtain and provide a record of all wage payments, as well as the associated per hour wage rate, made from June 25, 2018, until and through Monday, August 6, 2018, to any covered H-2A worker under the respective Job Orders and Form 9142A Temporary Employment Certifications to the Wage and Hour Division of the Department of Labor through WHI Lindsey Corona at email: Corona.Lindsey@dol.gov no later than Friday, August 10, 2018.
- (18) Defendant shall pay all covered H-2A workers any undisputed but unpaid wages for work performed since June 22, 2018, through Sunday, July 29, 2018, on or before Friday, August 10, 2018, and shall pay such workers undisputed wages for work performed through Sunday, August 5, 2018, on or before Monday, August 13, 2018. Insofar as the Parties may disagree in good faith as to whether any additional wages are due, their disagreement and subsequent resort to appropriate judicial procedures to resolve fact and law disputes shall not be considered a violation of this Order.
- (19) Defendant shall provide a roster of covered workers respectively under Form 9142A Temporary Employment Certifications H-300-18102-843410 and H-300-18124-947696 to the Wage and Hour Division of the Department of Labor on or before Friday, August 10, 2018.

- (20) Defendant shall provide a roster of covered workers housed, under either Job Order, at 84 West or in any other location, if any, to the Wage and Hour Division of the Department of Labor through WHI Lindsey Corona at email address: Corona.Lindsey@dol.gov no later than 5:00 p.m. C.D.T. Friday, August 10, 2018.
- (21) Defendant shall not threaten or coerce any covered H-2A worker into making payments or kick-backs of any kind to itself, its agents, associates or employees, or from exercising their rights to communicate fully and freely with Department of Labor investigators without fear of retribution.
- (22) Within five (5) days of the entry of this Order, at a mutually convenient time and place or places, Defendant shall permit a representative of the Secretary, in the presence of Defendant, to read aloud, in both English and Spanish, and thereafter provide a written copy to each employee, of this Order, as well as the following statement:
- You are protected by the H-2A visa statute and regulations and have the right to participate freely in the U.S. Department of Labor's investigation into your employer's pay practices. You have the right to speak freely with investigators or other official from the Department of Labor. Your employer is prohibited from retaliating against you in any way because you spoke with the Department of Labor.
- (23) Defendant shall provide notice to the Department of Labor through WHI Lindsey Corona at email address: Corona.Lindsey@dol.gov within twenty-four (24) hours of such action that it has terminated any covered H-2A worker.

Dated this ___ day of August, 2018.

Stephen N. Limbaugh, Jr.
United States District Court Judge