IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STATE OF NEVADA, *et al.*, Plaintiffs, v. UNITED STATES DEPARTMENT OF LABOR, *et al.*, Defendants.	Civil Action No. 4:16-CV-731-ALM

EMERGENCY MOTION OF RESPONDENTS CARMEN ALVAREZ AND HER COUNSEL FOR INTERIM STAY

For the reasons set forth below, Respondents, Carmen Alvarez and her Counsel, move for an interim stay of this Court's March, 19, 2018 order (Dkt. No. 129) ("Contempt Order") until seven days after this Court's disposition of Respondents' Emergency Motion for a Stay Pending Appeal (Dkt. No. 131).[1] In support of this request, Respondents state as follows:

1. On March 19, 2018, this Court held Respondents in contempt of the preliminary injunction entered in this case on November 22, 2016 (Dkt. No. 60). The Contempt Order directs Respondents to withdraw certain allegations in a pending action in the U.S. District Court for the District of New Jersey by Monday, March 26, 2018.

2. On March 20, 2018, Respondents filed a Notice of Appeal (Dkt. No. 130) and an Emergency Motion for a Stay Pending Appeal (Dkt. No. 131). The Emergency Motion argues, as relevant, that withdrawing allegations in the New Jersey action on Monday, March 26, would irreparably harm Respondents.

[1] Respondents continue to explicitly reserve, and do not waive, their challenges to personal jurisdiction and insufficient process. *See* Dkt. No. 107, at 1 n.1.

3. Earlier today, on March 21, 2018, the Court entered an Order (Dkt. No. 132) directing any party that wishes to respond to the Emergency Motion to do so by 12:30 p.m. on Friday, March 23, 2018.

4. Respondents hope that this Court will grant their Emergency Motion for a Stay Pending Appeal (Dkt. No. 131). However, in the event the Emergency Motion is unsuccessful, Respondents respectfully intend to seek a stay pending appeal from the U.S. Court of Appeals for the Fifth Circuit. Among other considerations, Respondent attorneys believe that it is in the best interest of their client, Ms. Alvarez, to exhaust all potential avenues for relief.

5. Under the briefing schedule reflected in this Court's March 21, 2018, Order, the Emergency Motion for a Stay Pending Appeal (Dkt. No. 131) will not be fully briefed until Friday afternoon, one business day before the Contempt Order requires Respondents to withdraw the relevant allegations in the New Jersey action.

6. Respondents therefore respectfully ask this Court to enter an interim order staying the Contempt Order until one week (7 days) after the disposition of the Emergency Motion for a Stay Pending Appeal (Dkt. No. 131). In the event the Court ultimately denies the Emergency Motion, this interim relief will ensure an opportunity for full and orderly review of the stay request by the Fifth Circuit before the provisions of the Contempt Order requiring withdrawal of the allegations in New Jersey take effect. In addition, granting this interim relief will avoid any need for Respondents to move for a stay pending appeal in the Fifth Circuit before this Court has ruled or risk forfeiting their opportunity for meaningful appellate review.

7. As explained in the Emergency Motion for a Stay Pending Appeal (Dkt. No. 131), Respondents have already asked to continue the stay of the New Jersey action until this matter can be resolved. *See* Ex. A. Moreover, on March 20, 2018, the U.S. District Court for the District of

New Jersey entered an Order directing the parties to file a joint letter outlining their positions regarding the proper course for moving forward in that case by March 30, 2018. *See* Order, *Alvarez v. Chipotle Mexican Grill, Inc.*, No. 2:17-cv-4095 (D.N.J. Mar. 20, 2018), Dkt. 33 (attached as Exhibit B). Accordingly, Chipotle will suffer no prejudice if the Contempt Order is stayed until one week from the disposition of the Emergency Motion for a Stay Pending Appeal (Dkt. No. 131).

8. Respondents have met and conferred with Chipotle regarding this motion, and Chipotle has advised Respondents that it opposes the relief sought in this motion.

WHEREFORE, for the reasons set forth above, Respondents respectfully request that this Court enter an order staying the effect of the Contempt Order until seven days after the disposition of Respondents' pending Emergency Motion for a Stay Pending Appeal (Dkt. No. 131).

Dated: March 21, 2018

Respectfully submitted,

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

By: */s/ Clyde M. Siebman*

Clyde M. Siebman
Texas Bar No. 18341600
clydesiebman@siebman.com
Stephanie R. Barnes
Texas Bar No. 24045696
stephaniebarnes@siebman.com
Elizabeth S. Forrest
Texas Bar No. 24086207
elizabethforrest@siebman.com
SIEBMAN, BURG, PHILLIPS & SMITH LLP
300 North Travis
Sherman, Texas 75090
(903) 870-0070 – Telephone
(903) 870-0066 – Fax

COUNSEL FOR RESPONDENTS,
Ms. Carmen Alvarez and her counsel

CERTIFICATE OF SERVICE

The undersigned certifies that on this 21st day of March, 2018, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

By: */s/ Clyde M. Siebman*

CERTIFICATE OF CONFERENCE

Counsel has complied with the meet and confer requirement in Local Rule CV-7(h). I certify that on March 21st, 2018 Counsel for Respondents Carmen Alvarez and her Counsel, Stephanie Barnes, had a telephone conference with Counsel for Chipotle, Kendra Beckwith, discussing the relief requested in this motion. Counsel for Chipotle indicated that the relief requested herein is opposed by Chipotle. Thus, discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

By: */s/ Clyde M. Siebman*