

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Hung Pham

Plaintiff/Petitioner(s)

VS.

Wood Tech, Inc. et al

Defendant/Respondent(s)

No. 22CV011080

Date: 01/03/2023

Time: 4:30 PM

Dept: 23

Judge: Brad Seligman

ORDER re: Ex-Parte Proceedings TRO

Plaintiff seeks a temporary restraining order regarding defendant's communications with the putative class, and in particular concerning a release it asked its current and former employees to sign. At the hearing on this matter defendant produced copies of the release forms. While defendant correctly notes that much of plaintiff's request is based on hearsay, the release itself raises serious questions. It does not identify the current case as a class action nor provide contact information for class counsel. It does not disclose that a class certification motion is about to be filed. It includes detailed factual statements, which the class member is asked to agree to, essentially absolving defendant from any misconduct and agreeing with overtime calculations that are not explained. There is no statement acknowledging the adverse or potentially adverse relationship between employees, or former employees, and the company. The release includes a waiver of Civil Code 1524. The release further requires future repayment of any PAGA recovery.

Prior to class certification, either party may contact class members. That said, the court notes that defendant has thus far resisted providing class counsel with class contact information. It is also true that a defendant may seek to resolve individual claims of class members prior to class certification. While the court cannot limit class communications absent a clear record and specific findings, it has the duty and authority, faced with a potential for abuse, to exercise control and take appropriate action in a class case. (*Hernandez v. Vitamin Shoppe Industries, Inc.* (2009) 174 Cal.App.4th 1441, 1454.) The court finds, based on the releases, that there is potential serious abuse, and accordingly orders the following on a temporary basis, pending a hearing on an order to show cause re preliminary injunction, to be set 1/24/2023 at 3 pm.:

1. Defendant may not solicit or collect any release from a current or former employees.
2. No later than 1/9/2023, defendant shall produce to plaintiff copies of all signed releases along with releasee contact information, including, if, available, address, email and phone number. Plaintiff shall not disclose this information to anyone other than the releasee, plaintiffs' own staff and consultants, or experts, court reporters, or the court. Nothing here precludes plaintiff from using the releases as an exhibit for a deposition of a defense witness, so long as identifying information is redacted.
3. Plaintiff may notice an expedited deposition of a corporate representative about the circumstances under which the releases were obtained.
4. Supplemental briefs shall be filed by each party by 1/18/2023 (and emailed to the department clerk). The hearing date and briefing schedule may be modified by stipulation.
5. The court does not, at this point, preclude defendant communications with putative class

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members, but cautions defendant that misleading or coercive communications may result in further orders of this court or sanctions.

IT IS SO ORDERED

Dated: 01/03/2023

A handwritten signature in black ink, appearing to read 'Brad Seligman', is positioned above the printed name.

Brad Seligman / Judge