

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Case No.: 1:23-mc-00066-PJG

Judge Phillip J. Green

Petitioner,

v.

FORGE INDUSTRIAL STAFFING, INC.,

Respondent.

RESPONDENT FORGE INDUSTRIAL STAFFING, INC.'S RESPONSE TO
PETITIONER SECRETARY OF LABOR'S PETITION TO ENFORCE
ADMINISTRATIVE SUBPOENAS *DUCES TECUM*

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I. INTRODUCTION

The Department mischaracterizes the nature of this matter, claiming that it involves the question of whether a company being investigated for compliance with the Fair Labor Standards Act (“FLSA”) “has the authority to limit the investigation as it sees fit.” Respondent, Forge Industrial Staffing, Inc. (“Forge”), is not seeking to limit the Department’s investigation, but is rather requesting that the Department conduct its investigation in a manner that does not materially harm Forge’s business or drive Forge out of business altogether. That is not hyperbole. Forge has already suffered substantial harm, and it is desperate to avoid further, fatal harm to its operations. For that reason, outside of the information at issue here, Forge has produced every single document that has been requested and done everything else in its power to cooperate with the Department, all in an effort to avoid this very dispute.

The Department’s Petition involves a single, disputed request: the identification of each and every one of Forge’s approximately 600 clients at its twelve business locations across Michigan and Indiana, along with Forge’s contracts with those clients. The Department asserts that this request is nothing more than a matter of purported efficiency. But Forge has already provided the Department with the name and contact information for every single person who has worked for Forge for the past three years. Forge has also offered – and remains willing – to produce any of its employees for interviews by the Department at Forge’s offices, at Forge’s time and expense. In an effort to resolve this dispute, Forge did just that, and a Department investigator met with and interviewed a group of Forge employees that the Department selected. However, the Department thinks it will be easier if it can show up at Forge’s customer locations, announce that it is investigating child labor violations involving Forge employees, and interview workers. Forge is asking that the Court balance and weigh the Department’s purported efficiency claim against the material, substantial harm that Forge will incur.

This harm is not hypothetical. Forge has already lost multiple clients and millions of dollars in revenue because of the Department's investigation. If Forge is tarred with the brush of a child labor law investigation, more clients will cut their ties and terminate their contracts. And if the Department subsequently determines that there have been no violations, as Forge believes will be the case, it will be too late. The damage will have already been done. Moreover, these third-party clients, who are not under investigation, could themselves suffer substantial harm by way of the publicity surrounding such interviews.

At this point, the Court may be wondering why Forge has not discussed why it is being investigated. The reason is simple: Forge has no idea. Here is what Forge does know. On February 25, 2023, the New York Times published an expansive article addressing claimed violations of child labor laws involving numerous employers in twenty different states. The article quotes a former Forge employee, Nubia Malacara, as indicating that one of Forge's clients, Hearthside Foods, was knowingly employing minors. Ms. Malacara does not make any statements regarding Forge in the article. In the days and weeks following the publication of that article, Forge has been under the spotlight of numerous state and federal agencies.

The past nine months of intensive, exhaustive investigations have not resulted in a single claimed violation against Forge. Certainly, if any state or federal agency believed it had any evidence that Forge was wrongfully employing minors, swift action would have been taken. There is a reason that no violations have been claimed, and that no other state or federal agency has filed a subpoena enforcement action. Forge takes extensive efforts to comply with the law and it has cooperated with all investigators – including the Department – because Forge wants to be the first to know if it has any problems that need to be addressed.

In sum, based on an article from last February that quoted *one* former Forge employee in *one* of Forge's offices involving *one* of Forge's clients, the Department seeks the identification of every single client from every single Forge location in two different states, based on no claimed violations and nothing more than the stated purpose of determining *whether* Forge is complying with the FLSA. Under these circumstances, the requested material is not relevant, the Department already has the means to determine joint-employer information for any particular worker, and the scope and purpose of the requested information is unduly broad and overly burdensome to Forge. For these reasons, Forge respectfully requests that the Court deny the Department's Petition.

II. FACTUAL BACKGROUND

A. BACKGROUND REGARDING FORGE'S BUSINESS AND OPERATIONS

Forge is a temporary staffing agency, connecting businesses and workers for temporary or contract work. The company was founded in 1995 by its two individual owners. *See* Declaration of Brian Oele, **Exhibit A**, at ¶ 2. Through its focus on relationships, with both clients and workers, Forge has built a reputation as a trusted business partner for industrial manufacturers and as a highly regarded employer among job candidates. The company now operates twelve offices across Michigan and Indiana. *Id.* at ¶ 3-4.

B. FORGE TAKES EXTENSIVE PRECAUTIONS TO AVOID EMPLOYING MINORS

Employers like Forge must deal with the reality that underage workers will provide false information and present falsified documents in an effort to gain employment, and that bad actors are growing more sophisticated. Faced with that reality, Forge invests significant time and effort to avoid inadvertently employing underage workers. In its 28-year history, Forge has never even been accused of a child labor law violation. *See* Ex. A at ¶ 5. Under no circumstances would Forge ever knowingly place a child under the age of 18 with one of its clients. *Id.* at ¶ 6.

Forge has multiple safeguards in place in its application, interview, and onboarding processes to confirm that applicants are at least 18 years old. *Id.* Forge’s staff is continuously trained regarding Forge’s policies and identity verification practices, and staff members are periodically tested, including by “mystery shoppers,” paid “applicants” who intentionally attempt to get hired while being out of compliance with Forge policies. *Id.* at ¶ 7-9. Forge also periodically engages outside counsel to audit its policies and procedures. *Id.* at ¶ 9.

C. THE FEBRUARY 25, 2023 NEW YORK TIMES ARTICLE

On February 25, 2023, the New York Times published an expansive article on child labor violations, which it claimed was the result of a 20-state investigation involving interviews with over 100 migrant child workers.¹ Included in the article is a reference to three under-age workers who allegedly worked at one of Forge’s clients, Hearthside Food Solutions (“Hearthside”) in the last year. One of Forge’s former employees, Nubia Malacara, is quoted in the article as stating that she worked at Hearthside as a minor, and that “Hearthside didn’t care” that it was “getting young-looking workers whose identities had been flagged as false.” There are no statements or assertions in the article that Forge knowingly placed minors at Hearthside or that Forge otherwise violated any laws. *See id.* In response to the article, Forge retained outside counsel and immediately undertook an extensive internal investigation to determine whether any of its supervisors or administrative staff were either intentionally placing minors with clients or otherwise failing to comply with company policies. *See Ex. A* at ¶ 11. Forge found no evidence that either of those issues were occurring. *Id.* at ¶ 12.

¹ *See* <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

Forge also reviewed its employment records for information related to Ms. Malacara, and it found information for Ms. Malacara in two different databases, representing two distinct types and periods of employment with the company. Ms. Malacara first worked for Forge twelve years ago as a temporary worker in Grand Rapids for *three days* in 2011. *Id.* at ¶ 13, 15-16. Ms. Malacara reported a date of birth of November 10, 1992 in her application materials, which would have made her 19 at the time. *Id.* at ¶ 16. This would have been the only time that Ms. Malacara worked at Hearthside, despite the New York Times article seemingly referencing employment within the past year, a false assertion.

Ms. Malacara was hired again by Forge ten years later, in August 2021, as a Service Coordinator, a full-time administrative position with Forge that involved her recruiting and screening potential candidates for placement with Forge clients. After working for less than a year, Ms. Malacara voluntarily resigned without notice in July 2022. *Id.* at ¶ 17. Forge later determined that Ms. Malacara deleted all of her company e-mail folders before she resigned. *Id.* at ¶ 21. Significantly, Forge has no record of Ms. Malacara ever reporting any issues with child labor violations or concerns while working for Forge. *Id.* at ¶ 20. It is also significant to note that Ms. Malacara listed a different date of birth, November 10, 1995, in her second application with Forge, and applied with social security number different than the one she used ten years prior. *Id.* at ¶ 22.

D. FORGE FULLY COOPERATED WITH ALL STATE AND FEDERAL INVESTIGATORS

Forge was investigated by multiple state and federal agencies in the aftermath of the article. With the sole exception of the client information at issue in this case, Forge has fully responded to every request for information from every agency, has not had any disputes with any agency, and has not been accused of any violations of law by any of the investigators.

Forge first received contact from the Michigan Department of Labor and Economic Opportunity (“LEO”). Forge produced voluminous information to the LEO, including a list of current and former employees who were employed with Forge and placed at Hearthside for the period of February 27, 2022 to present. *See* Ex. A at ¶ 23. Forge also received Notices of Inspection from the U.S. Department of Homeland Security (“DHS”), related to Forge’s Grand Rapids offices. Forge fully complied with all of the requests, which again included a voluminous production of information and documents related to current and former workers.

In addition, Forge also received subpoena requests from the Department, which were much more expansive than the requests from the other agencies. *See Exhibit B.* The twenty-six categories of requested information included expansive requests for general corporate information. Moreover, unlike other agency requests, the Department’s subpoena requests were not limited to workers in Grand Rapids or those placed at Hearthside. Rather, the Department requested extensive records for all current and former workers at every Forge location in Michigan and Indiana for the past three years. With the exception of the client information at issue in this case, Forge produced all responsive information. Specifically, Forge made two separate productions to the Department, in March and May 2023, which together involved over 60,000 pages of material and the production of native spreadsheets with tens of thousands of lines of information related to Forge’s workers.

E. FORGE WORKED FOR SEVERAL MONTHS TO RESOLVE THE DEPARTMENT’S DISPUTED REQUEST FOR CLIENT INFORMATION

From the very beginning, counsel for Forge explained Forge’s belief that producing client information would cause significant, and perhaps fatal, damage to the company. *See* Declaration of Brion Doyle, **Exhibit C**, at ¶ 2. As counsel for Forge explained to the Department, all of Forge’s client contracts are terminable at will upon a short period of notice. *See* Ex. A at ¶ 26. Moreover,

Forge has multiple competitors. *Id.* at ¶ 27. Thus, all of Forge's clients have the right to terminate their contracts with Forge, with ready access to many other staffing agencies. *Id.* at ¶ 28.

Forge has already experienced devastating losses related to the article and investigation, having lost 17 clients, representing approximately \$9.5 million in annual revenue, with multiple clients indicating that they were terminating or scaling back business in direct response to the article and resulting investigation. *Id.* at ¶ 29. Forge also lost eight potential clients who either intimated that they could no longer move forward with Forge due to the article and investigation or simply broke off contact at that time. *Id.* at ¶ 30. These losses have resulted in layoffs at Forge, and Forge's overall revenue with its existing clients is down approximately 40%, much more so than industry trends would dictate. *Id.* As of last month, Forge is struggling to break even.

Forge has already suffered devastating harm, and additional client losses will put the company out of business. For these reasons, Forge has worked extensively to reach a compromise with the Department on this issue. For months before this litigation was initiated, counsel for Forge engaged in discussions and proposed to Rina Russo, a Department investigator, that Forge could make workers available for interviews at Forge's offices. *See* Ex. C at ¶ 4. While the Department was ostensibly considering that offer, they filed this Petition, to Forge's surprise and disappointment. Counsel for Forge immediately made contact with the Department's attorney, picking up the conversation about a resolution from where it had been dropped by Ms. Russo. *Id.* at ¶ 5.

First, counsel for Forge proposed a tolling agreement on any claims by the Department, and the parties entered into such an agreement, setting a tolling period from August 15, 2023 through February 15, 2024. *See* Tolling Agreement, **Exhibit D**. Counsel for Forge then continued to propose the alternative approach that Forge would provide its workers for interviews at Forge's

offices. As counsel for Forge explained, if Department personnel show up on job sites, they have no guarantees that any workers will talk to investigators. *See* Ex. C at ¶ 6. In contrast, Forge indicated that it was willing to pay workers and encourage and coordinate their participation, guaranteeing a much higher likelihood of participation. Counsel for Forge also indicated that the Department should select the workers it wanted to interview and would have unfettered access to workers at Forge’s offices. *Id.* at ¶ 7.

The Department agreed to Forge’s proposal, and, on August 8, 2023, the parties notified the Court of their agreement on a proposed interim measure. *See* ECF No. 9, PageID.70. On September 19, 2023, counsel for the Department provided Forge with its initial list of requested employees for interviews. Forge immediately took steps to coordinate the interviews, informing the selected employees that they should participate, should speak freely, would face no adverse employment consequences, and would be paid double time for participating. *See* Ex. A at ¶ 33.

At the end of the first round of Department interviews on September 28, a Forge representative reminded the Department investigator that additional interviews had been scheduled for the following day, to which the investigator responded “I think we are good, don’t you?” The Forge representative responded that it was completely up to the Department, at which point the investigator referenced the looming government shutdown and said that Forge could cancel the remaining interviews and that the workers could call her if they wanted to do so. *Id.* at ¶ 36.

On October 5, 2023, counsel for the Department contacted counsel for Forge with a proposal to resolve this matter, indicating that the Department “would be willing to resolve the subpoena enforcement action/forego the contractor information” if Forge agreed to produce a package of employment documents for each employee, relinquishing its request for the client information. *See* October 5, 2023 E-mail, attached as **Exhibit E** (emphasis added). However,

even as Forge was preparing materials to respond to this request and resolve this matter, counsel for the Department wrote six days later to indicate that the Department was no longer willing to consider any compromise to resolve the subpoena dispute. *See* October 11, 2023 E-mail, attached as **Exhibit F**. Counsel for Forge reached out to counsel for the Department to seek an explanation for this abrupt change in course, and none was given, other than vague references to the political nature of child labor issues.

III. LAW AND ARGUMENT

A. RELEVANT LEGAL STANDARDS

An administrative subpoena “is properly enforced if (1) it satisfies the terms of its authorizing statute, (2) the documents requested were relevant to the [agency]’s investigation, (3) the information sought is not already in the [agency]’s possession, and (4) enforcing the subpoena will not constitute an abuse of the court’s process.” *Doe v. United States*, 253 F.3d 256, 265 (6th Cir. 2001). Even if the agency satisfies its initial burden on the first three points above, a subpoena will not be enforced if the party opposing enforcement “demonstrates that the subpoena is unreasonable, or issued in bad faith or for other improper purposes, or that compliance would be ‘unnecessarily burdensome.’” *N.L.R.B. v. Am. Med. Response, Inc.*, 438 F.3d 188, 192–93 (2d Cir. 2006).

B. THE REQUESTED INFORMATION IS NOT RELEVANT TO THE INVESTIGATION

The Department argues that because it has “opened an investigation of Forge to determine the company’s compliance with the FLSA,” it has the unfettered right to any and all information that could potentially relate to compliance, including the identity and contracts with each and every one of Forge’s clients, in every office and state in which the company does business. But that argument is circular, and it makes the showing of relevancy a nullity. Under the Department’s theory, any record tangentially related to a company’s employees or employment practices would

automatically be relevant, without exception, without any suspicion of a violation, and just because the Department “wants assurances” that the FLSA is not being violated. Such an argument is not consistent with the law and is not supported by the authority in the Department’s briefing.

“Although relevance is viewed broadly, the court does not have to simply accept the agency's opinion as to what is or is not relevant to the investigation. Instead, the court should weigh the likely relevance of the requested material to the investigation against the burden of producing the material.” *Doe v. United States*, 253 F.3d 256, 267 (6th Cir. 2001). Thus, “a proper subpoena is sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *United States v. Palmer*, 536 F.2d 1278, 1282 (9th Cir. 1976). Courts routinely limit or strike agency investigatory subpoenas based on arguments of relevancy that are much more specific and expansive than what has been presented in this case.²

Here, the Department gives nothing more than the unsupported opinion that the requested information is relevant to a general FLSA “compliance” investigation, and the Department has not provided any information about the nature of that investigation to assist the Court in determining relevancy. The Department does not contend that it has suspicions of violations at any particular Forge location, or that it has uncovered any violations at all after several months of investigations. Likewise, the Department does not explain why it needs client information from all Forge locations, or why a concern at one of Forge’s independent branches (no concern has been identified) would implicate concerns at others. Again, the argument here that “we get everything

² Cf. *E.E.O.C. v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir. 1994); *E.E.O.C. v. United Air Lines, Inc.*, 287 F.3d 643, 653 (7th Cir. 2002); *E.E.O.C. v. Se. Food Servs. Co., LLC*, No. 3:16-MC-46-TAV-HBG, 2017 WL 2728422, at *4 (E.D. Tenn. June 23, 2017).

so we can see whether there might be a violation” is not just contrary to the relevancy standard – it would destroy that standard altogether.

Moreover, the case law presented by the Department does not support a standard of relevancy under which the Department’s pronouncement that it is generally investigating a company for compliance with the FLSA opens the floodgates to any and all information related to employees and employment, across a company’s entire business enterprise. To the contrary, and as is summarized on the chart attached as **Exhibit G**, the case law in the Department’s briefing involves (1) much more targeted investigations, allowing the courts to evaluate the claimed relevancy of the requests; (2) outright refusals to produce documents and to reach any accommodation with the Department; and (3) instances in which the courts limit the scope of the requests even under those circumstances. The Department does not present a single case in which it has been authorized to obtain all of a company’s employment–related records (let alone client records) across all operations based merely on a general desire to determine whether a company is complying with the FLSA.

Here, the Department does not articulate why any particular client identification is relevant to its investigation, nor does it articulate why the identity of all clients is relevant. Instead, the Department argues that it needs the client information so it can conduct on-site interviews. That is not a demonstration of relevancy, but the expression of an investigative preference: the Department desires to interview workers at one location as opposed to another.

C. THE DEPARTMENT HAS ACCESS TO THE REQUESTED INFORMATION

The Department has had contact information for Forge’s employees for more than six months, and the ability to interview any and all of those workers. The Department has also therefore had the ability to ask questions to determine joint-employer status in connection with any work assignment. To Forge’s knowledge, the only interviews the Department has conducted

to date are of those workers that Forge made available at the Department's request. Regardless, the Department has access to the information being sought, and it does not need the identification of, and contracts with, Forge's clients.

"Concerns as to duplicative production," and the government "seeking information already within its possession threaten an undue burden upon the subpoenaed party." *In re Civil Investigative Demand 15-439*, 2016 WL 4275853 at *7-8 (W.D. Va. Aug. 12, 2016). Here, the Department's request is based solely on the Department's preference as to where worker interviews occur. The Department apparently does not want to contact workers directly to set up interviews or to have Forge set up the interviews; it wants to conduct the interviews at Forge's client locations. This is not a matter of the Department not having the means or information to interview workers, or to determine joint-employer status when it does interview workers. The Department already has the ability to interview workers and determine joint-employer status, which is why it cannot satisfy this standard.

D. ENFORCING THE SUBPOENA WILL BE UNNECESSARILY BURDENSOME AND AN ABUSE OF PROCESS

Finally, even if the Department could meet its initial burden, the Petition should still be denied, as the requested information is unduly burdensome and an abuse of process. In evaluating this standard, the Court is tasked with "weigh[ing] the likely relevance of the requested material to the investigation against the burden to [respondent] of producing the material." *E.E.O.C. v. Wal-Mart Stores East, LP*, 2016 WL 1242540 (E.D. Ky. Mar. 29, 2016). Put another way, "[a]n administrative subpoena thus may not be so broad as to be in the nature of a 'fishing expedition.'" *F.D.I.C. v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997).

Forge requests that the Court weigh the Department's request, which boils down to a preference as to where it conducts interviews, against the disruption and harm to Forge's business

and to the business operations of numerous third-party businesses who are not implicated in this investigation in any way. Simply put, on-site interviews will destroy what is left of Forge's business, which is down 40% year to date and has already experienced multiple lost clients just by being associated with this investigation. Moreover, it is not at all speculative to anticipate the substantial harm that would result to any of Forge's clients who are publicly implicated in a "child labor" investigation, which is exactly what would happen if the Department conducts interviews at client locations.

The Court should also weigh the fact that the Department was willing to resolve this issue without any client information – but withdrew the request before Forge could comply. The fact that the Department itself concluded in writing that it could move forward without the client information is not indicative of a good-faith need for the information and must tip the scale in favor of Forge. The Department did a complete about-face in six days, with no intervening changes and based on no claimed violations, without any regard for the harm that Forge will incur. This is an abuse of process.

Finally, and at minimum, Forge requests that the Court restrict the Department from conducting interviews on site at Forge's clients' locations. "Since the enforcement of a subpoena is an independent judicial action . . . a court is free to change the terms of an agency subpoena as it sees fit." *United States v. Exxon Corp.*, 628 F.2d 70, 77 (D.C. Cir. 1980). *See also F.T.C. v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 973–74 (D.C. Cir. 1980).; *United States v. Exxon Corp.*, 628 F.2d at 77; *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 881 (D.C. Cir. 1997). "It is a legitimate exercise of the court's authority to modify the terms of an agency subpoena by providing additional confidentiality protections for a person or entity to whom the subpoena is directed, and particularly for innocent third parties about whom the respondent that is the subject of subpoena may possess

information.” *Adair v. Rose Law Firm*, 867 F. Supp. 1111, 1115 (D.D.C. 1994). To avoid harm to Forge and to its clients, the Department should be precluded from interviewing Forge workers on site at client locations given the adequate alternate means of obtaining those interviews.

IV. CONCLUSION

Based on the foregoing, Forge respectfully requests that the Court deny the Department’s Petition or, alternatively, enter an appropriate protective order that limits both the scope and use of the requested information.

Respectfully Submitted,

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Dated: November 14, 2023

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Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JULIE A. SU, Acting Secretary of Labor, Case No.: 1:23-mc-00066-PJG
United States Department of Labor,

Mag. Judge Phillip J. Green

Petitioner,

v.

DECLARATION OF BRIAN OELE

FORGE INDUSTRIAL STAFFING, INC.,

Respondent.

Brian Oele states for this declaration as follows and would testify to the same if called as a witness:

1. I am the Director of Risk Management and Human Resources at Forge Industrial Staffing, Inc. ("Forge").
2. Forge is a temporary staffing agency, connecting businesses and workers for temporary or contract work. The company was founded in 1995 by its two individual owners.
3. Forge prides itself on the fact that the average length of service among members of the company's sales and management team is more than sixteen years.
4. Forge has experienced remarkable growth since its founding in 1995, and the company now operates twelve offices across Michigan and Indiana.
5. In its 28-year history, Forge has never even been accused of a child labor law violation.
6. Forge has multiple safeguards in place in its application, interview, and onboarding processes to confirm that applicants are at least 18 years old. Under no circumstances would Forge ever knowingly place a child under the age of 18 with one of its clients.

7. As a first step, any applicant who attempts to apply with Forge with a birthdate indicating an age of less than 18 is automatically rejected by Forge's software.

8. For applicants who continue through the hiring process, Forge verifies applicant identities in person against required documents for the I-9 process to confirm that all workers are 18 years or older.

9. Forge's staff is continuously trained regarding Forge's policies and identity verification practices, and staff members are periodically tested, including by "mystery shoppers," who are paid "applicants" who present themselves to Forge staff and intentionally attempt to get hired while being out of compliance with Forge policies, in order to confirm that proper procedures are being followed. Forge also periodically engages outside counsel to audit its policies and procedures.

10. In addition, Forge strives to ensure that accurate documentation is being provided by applicants, works with local, state, and federal agencies to ensure compliance with policies and procedures.

11. In response to a February 25, 2023 New York Times article, Forge retained outside counsel and immediately undertook an extensive internal investigation to determine whether any of its supervisors or administrative staff were either intentionally placing minors with clients or otherwise failing to comply with company policies.

12. Forge found no evidence that either of those issues were occurring.

13. Forge also reviewed its files related to the workers quoted and referenced in the article.

14. With respect to Kevin Thomas, one of the workers referenced in the article as working at Hearthside, Forge has no employment records for anyone with that name.

15. Forge does have records related to Ms. Malacara. Ms. Malacara worked for the company on two separate occasions.

16. Her first period of employment was for three days in 2011. Ms. Malacara reported a date of birth of November 10, 1992 in her application materials, which would have made her 19 at the time.

17. Ms. Malacara was hired again by Forge ten years later, in August 2021, worked for approximately two weeks, took a leave of absence, and then returned to work.

18. Ms. Malacara worked as a Service Coordinator during this time, an administrative position with Forge that involved her recruiting and screening potential candidates for placement with Forge clients. After working for less than a year, Ms. Malacara voluntarily resigned without notice in July 2022.

19. During her brief tenure, Ms. Malacara received written counseling/warning about being late for work and attending to personal matters in her vehicle while on the clock.

20. Forge has no record of Ms. Malacara ever reporting any issues with child labor violations or concerns while working for Forge.

21. Forge later determined that Ms. Malacara deleted all of her company e-mail folders before she resigned.

22. In connection with her second round of employment at Forge, Ms. Malacara listed a different date of birth, November 10, 1995. Ms. Malacara also applied with a social security number that was different from the social security number she provided ten years prior.

23. Forge first received contact from the Michigan Department of Labor and Economic Opportunity ("MDOL") in the days following the New York Times publication. Over the course of the next month, Forge identified for the MDOL various general information about its business,

and it produced voluminous information, including a list of current and former employees who were employed with Forge and placed at Hearthside for the period of February 27, 2022 to present, form I-9s for all of those workers, and payroll records for those workers.

24. Forge also received Notices of Inspection from the U.S. Department of Homeland Security ("DHS"), related to Forge's Grand Rapids offices. Again, Forge fully complied with all of the requests, which again included a voluminous production of information and documents related to current and former workers, along with various general information related to the business. Forge has worked with DHS over the course of the past several months in connection with follow up questions and requests for supplemental information.

25. With the exception of the client information at issue in this case, Forge produced all responsive information. Specifically, Forge made two separate productions to the U.S. Department of Labor (the "Department"), in March and May 2023, which together involved over 60,000 pages of material, as well as the production of native spreadsheets with tens of thousands of lines of information related to Forge's workers.

26. All of Forge's client contracts are terminable at will upon a short period of notice.

27. Moreover, in every one of its office markets, Forge has multiple competitors.

28. Thus, all of Forge's clients have the right to terminate their contracts with Forge and know that they have ready access to many other staffing agencies.

29. Forge has already experienced devastating losses related to the article and investigation, having lost 17 clients, representing approximately \$9.5 million in annual revenue, with multiple clients indicating that they were terminating or scaling back business in direct response to the article and resulting investigation.

30. Forge also lost eight potential clients who either intimated that they could no longer move forward with Forge due to the article and investigation or simply broke off contact at that time. These losses have resulted in layoffs at Forge, and Forge's overall revenue with its existing clients is down approximately 40%, much more so than industry trends would dictate. As of last month, Forge is struggling to break even.

31. In its highly competitive industry, Forge considers the identity of its client companies to be strictly confidential.

32. This is reflected in Forge's business practices. For instance:

- a. Electronic data about clients is stored on an infrastructure and platform that is verified with SSAE16 Type II certification and requires multi-factor authentication to access;
- b. Forge staff members are required to sign confidentiality agreements upon hire;
- c. Forge requires all of its clients to execute a Confidentiality Agreement prior to its provision of services;
- d. Physical access to areas of the building with client information is restricted with keycard-only access; and
- e. Forge maintains and enforces a suite of corporate securities policies, covering physical access controls, employee passwords and credentials, printing and storage of confidential information, and data encryption.

33. When asked to facilitate Department interviews with its employees, Forge immediately took steps to coordinate the interviews, informing the selected employees that they

should participate, should speak freely, would face no adverse employment consequences, and would be paid double time for participating.

34. A Department investigator conducted the first round of interviews on September 28, 2023. The investigator interviewed some of the selected workers in person in a conference room provided by Forge, while other workers elected to conduct the interviews via phone.

35. Forge personnel did not participate in the interviews in any way, and the Department investigator had unfettered access to the workers. Forge also paid participating workers double time for hours spent interviewing.

36. At the end of the day on September 28, I reminded the Department investigator that additional interviews had been scheduled for the following day, to which the investigator responded "I think we are good, don't you?" I responded that it was completely up to the Department, at which point the investigator referenced the looming government shutdown and said that Forge could cancel the remaining interviews and that the workers could call her if they wanted to do so.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: November 14, 2023



Brian Oele

21987946.1

Exhibit B

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

SUBPOENA DUCES TECUM

To: Forge Industrial Staffing, Inc.
7437 W 10th St
Indianapolis, IN 46214

Pursuant to the Fair Labor Standards Act, 29 U.S.C §§ 209 and 211, you are hereby required to provide to Acting District Director, Fernando Hernandez WAGE AND HOUR DIVISION, INDIANAPOLIS DISTRICT OFFICE, UNITED STATES DEPARTMENT OF LABOR, or her designee/representative, all books, papers, and other documents, as specifically described in the Attachment, by presenting such documents electronically to Acting District Director via e-mail at Hernandez.Fernando@dol.gov or by contacting Acting District Director Hernandez to arrange for an in-person delivery to the Indianapolis District Office located at 135 North Pennsylvania Suite 700 Indianapolis, IN 46204 on or before March 28, 2023 at 10:00 a.m.

FAIL NOT AT YOUR PERIL



IN TESTIMONY WHEREOF I have hereunto affixed my signature and the seal of the UNITED STATES DEPARTMENT OF LABOR at Chicago, Illinois this 21^h day of March 2023.

MICHAEL LAZZERI

Digitally signed by MICHAEL
LAZZERI

Date: 2023.03.20 16:42:58 -05'00'

MICHAEL LAZZERI, REGIONAL ADMINISTRATOR
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

ATTACHMENT to SUBPOENA

Forge Industrial Staffing, Inc.

A. DEFINITIONS AND INSTRUCTIONS

1. “Forge Industrial Staffing” means Forge Industrial Staffing, Inc., including its current and former officers, directors, employees, attorneys, representatives, agents, assigns, subsidiaries, and any predecessor or successor entities.

2. “Document” or “documents” shall mean all writings and recordings within the meaning of Rules 1001(a) and (b) of the Federal Rules of Evidence (i.e., “letters, words, or numbers, or their equivalent set down in any form” and “letters, words, or numbers, or their equivalent recorded in any manner”), however produced or reproduced, of every kind or description in Forge Industrial Staffing’s possession, custody, or control, or within the custody or control of any agent, employee representative or other persons acting or purporting to act for or on behalf of Forge Industrial Staffing, including notes; memoranda; records, reports, correspondence; telefaxes and faxes; agreements or contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; tabulations; text messages; instant message or messages from other electronic messaging software or applications; and all draft copies of such documents containing additional marks or notations not found on the originals.

3. “Person” is defined by 29 U.S.C. § 203(a) as: “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.”

4. “Relating to” or “reflecting,” means stating, constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

5. “Worker” or “workers” includes individuals contracted, employed, hired, utilized, or retained by and/or who worked for Forge Industrial Staffing.

6. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the documents required by this subpoena inclusive rather than exclusive.

7. “Including” shall be construed to mean “without limitation.”

8. Unless otherwise specified, the time period covered by this subpoena is from March 21, 2020, to the date of production. Documents created prior to March 21, 2020, which have been used or relied on since March 21, 2020, or which describe legal duties which remain in effect after March 21, 2020 (such as contracts and trust agreements), shall be considered as included within the time period covered by this subpoena.

9. If any document required to be produced pursuant to this subpoena is withheld because of a claim of privilege, identify with respect each such document the:

- a. Specific privilege being asserted;
- b. Nature of the document;
- c. Author of the document and the date of preparation;
- d. Recipients of the document or copies thereof; and
- e. Subject matter of the document.

10. If any document required to be produced pursuant to this subpoena has been destroyed, identify with respect to each such document the:

- a. Date destroyed;
- b. Method of destruction;
- c. Reason for destruction;
- d. Person or person(s) who authorized the destruction; and
- e. Subject matter of the document destroyed.

B. DOCUMENTS TO BE PRODUCED

1. Documents reflecting the names, addresses, and telephone numbers of each owner, corporate officer, and manager of Forge Industrial Staffing.

2. Documents reflecting the ownership interest (percentage of ownership) of each owner of Forge Industrial Staffing.

3. Documents identifying all branches and establishments, controlled by, or operating with Forge Industrial Staffing

4. Forge Industrial Staffing's company organizational chart.

5. Documents relating to the business structure of Forge Industrial Staffing, including articles of incorporation, partnership records, membership records, and corporate filings with the Secretary of State.

6. All federal and state income tax forms submitted and signed by or on behalf of Forge Industrial Staffing, including all schedules, attachments, and worksheets.

7. Documents – including monthly, quarterly, and annual records – stating the annual gross dollar volume of sales made or business done, or total volume of goods purchased or received, by Forge Industrial Staffing

8. Documents reflecting the full name, last known addresses, and telephone numbers of each worker performing work for Forge Industrial Staffing.

9. Documents reflecting the dates of birth of each worker who was under the age of 18 during the time period described in Section A, Paragraph 8 of this Attachment.

10. All documents stating the job descriptions, duties, and occupations of Forge Industrial Staffing's workers.

11. Documents relating to workers treated as exempt from the minimum wage or overtime wage requirements under the Fair Labor Standards Act of 1938, as Amended, 29 U.S.C. § 201 *et seq.*

12. All contracts and agreements between Forge Industrial Staffing and workers who Forge Industrial Staffing considers to be independent contractors or subcontractors.

13. All W-2 Forms and/or 1099 Forms distributed by Forge Industrial Staffing to workers.

14. All documents reflecting the rate of pay per worker, per pay period and any changes made to the rate of pay and applicable date(s) of the rate of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis for each worker.

15. All documents reflecting the total gross wages paid per pay period for each worker, including payroll records, payroll ledgers, payroll journals, pay stubs, and check stubs.

16. All documents relating to cash payments to workers.

17. All documents reflecting schedules of work for workers.

18. Documents reflecting each worker's starting and ending time and day for each workweek. If the worker was part of a workforce or employed in or by an establishment whose workers have a workweek beginning at the same time on the same day, a single document noting the time of day and beginning day of the workweek for the whole workforce or establishment will suffice.

19. All documents reflecting the hours worked each workday and total hours worked by workers each workweek, including timesheets, time cards, logs, journals, and diaries.

20. All documents reflecting the total daily or weekly regular earnings or wages due for hours worked during each workday or workweek for each worker.

21. All documents reflecting additions to, or deductions from, wages paid each pay period to each worker.

22. A complete listing of all client's names and addresses of the facilities for which Forge Industrial Staffing provides labor on a day laborer, temporary labor, contract or permanent labor basis.

23. A copy of all client contracts between Forge Industrial Staffing and employer utilizing its services to provide labor on a day laborer, temporary labor, contract or permanent labor basis.

24. All of Forge Industrial Staffing's employment policies and procedures related to compensation paid to workers and hours worked (or pieces completed) by workers, including

supervisory procedures, recordkeeping procedures, compensation policies, disciplinary policies, and employee handbooks.

25. All documents reflecting identification for workers, including but not limited to employee photos and electronic employee data.

26. All documents, including but not limited to, electronic communications pertaining to the recruitment and hiring process, employment applications, and emergency contact for each worker.

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

SUBPOENA DUCES TECUM

To: Forge Industrial Staffing, Inc.
5011 28th SE Grand
Grand Rapids, MI 49512

Pursuant to the Fair Labor Standards Act, 29 U.S.C §§ 209 and 211, you are hereby required to provide to Fernando Hernandez, Acting District Director, WAGE AND HOUR DIVISION, INDIANAPOLIS DISTRICT OFFICE, UNITED STATES DEPARTMENT OF LABOR, or her designee/representative, all books, papers, and other documents, as specifically described in the Attachment, by presenting such documents electronically to Acting District Director via e-mail at Hernandez.Fernando@dol.gov or by contacting Acting District Director Hernandez to arrange for an in-person delivery to the Grand Rapids District Office located at 800 Monroe Ave. NW, Suite 315, Grand Rapids, MI 49503 on or before March 28, 2023 at 10:00 a.m.

FAIL NOT AT YOUR PERIL



IN TESTIMONY WHEREOF I have hereunto affixed my signature and the seal of the UNITED STATES DEPARTMENT OF LABOR at Chicago, Illinois this 21^h day of March 2023.

MICHAEL LAZZERI

Digitally signed by MICHAEL
LAZZERI
Date: 2023.03.20 16:41:56 -05'00'

**MICHAEL LAZZERI, REGIONAL ADMINISTRATOR
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR**

ATTACHMENT to SUBPOENA

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3. “Person” is defined by 29 U.S.C. § 203(a) as: “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.”

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5. “Worker” or “workers” includes individuals contracted, employed, hired, utilized, or retained by and/or who worked for Forge Industrial Staffing.

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2. Documents reflecting the ownership interest (percentage of ownership) of each owner of Forge Industrial Staffing.

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12. All contracts and agreements between Forge Industrial Staffing and workers who Forge Industrial Staffing considers to be independent contractors or subcontractors.
13. All W-2 Forms and/or 1099 Forms distributed by Forge Industrial Staffing to workers.
14. All documents reflecting the rate of pay per worker, per pay period and any changes made to the rate of pay and applicable date(s) of the rate of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis for each worker.
15. All documents reflecting the total gross wages paid per pay period for each worker, including payroll records, payroll ledgers, payroll journals, pay stubs, and check stubs.
16. All documents relating to cash payments to workers.
17. All documents reflecting schedules of work for workers.
18. Documents reflecting each worker's starting and ending time and day for each workweek. If the worker was part of a workforce or employed in or by an establishment whose workers have a workweek beginning at the same time on the same day, a single document noting the time of day and beginning day of the workweek for the whole workforce or establishment will suffice.
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20. All documents reflecting the total daily or weekly regular earnings or wages due for hours worked during each workday or workweek for each worker.
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23. A copy of all client contracts between Forge Industrial Staffing and employer utilizing its services to provide labor on a day laborer, temporary labor, contract or permanent labor basis.
24. All of Forge Industrial Staffing's employment policies and procedures related to compensation paid to workers and hours worked (or pieces completed) by workers, including

supervisory procedures, recordkeeping procedures, compensation policies, disciplinary policies, and employee handbooks.

25. All documents reflecting identification for workers, including but not limited to employee photos and electronic employee data.

26. All documents, including but not limited to, electronic communications pertaining to the recruitment and hiring process, employment applications, and emergency contact for each worker.

Exhibit C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JULIE A. SU, Acting Secretary of Labor, Case No.: 1:23-mc-00066-PJG
United States Department of Labor,

Mag. Judge Phillip J. Green

Petitioner,

v.

DECLARATION OF BRION DOYLE

FORGE INDUSTRIAL STAFFING, INC.,

Respondent.

Brion Doyle states for this declaration as follows and would testify to the same if called as a witness:

1. I represent the Respondent in connection with its response to two subpoenas that were issued by the U.S. Department of Labor ("Department").
2. In April 2023, I explained to the Department that Forge believed that producing client information so that the Department could conduct interviews on site at those client locations would cause significant, perhaps fatal, harm to Forge.
3. Forge has worked extensively to reach a compromise with the Department on this issue. For months before this litigation was initiated, I proposed to Rina Russo, a Department investigator, that the Department interview workers at any location other than at client facilities.
4. I reminded Ms. Russo that the Department had been provided with contact information for all workers, such that the Department could call and interview workers. I also offered to Ms. Russo that Forge would make workers available for interviews at Forge's offices.
5. While the Department was ostensibly considering this offer, the Department filed its Petition in the matter. After this litigation was initiated, counsel for the Department made an

appearance in the case, and I made contact with the Department's attorney, picking up the conversation about a resolution from where it had been dropped by Ms. Russo.

6. The Department has always indicated that it wants client information so that it can conduct on-site interviews of Forge workers at those client worksite locations. Understanding that request, I continued to propose an alternative approach, that Forge would provide its workers for interviews at Forge's offices. As I explained, if Department personnel show up on job sites, they have no guarantees that any workers will talk to investigators.

7. In contrast, Forge indicated that it was willing to pay workers for their time and encourage and coordinate their participation, guaranteeing a much higher likelihood that the Department investigators could actually talk to workers. I also indicated that the Department could and should select the workers it wanted to interview, and further informed the Department that its investigators would have unfettered access to workers at Forge's offices.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: November 14, 2023



Brion Doyle

Exhibit D

STATUTE OF LIMITATIONS TOLLING AGREEMENT

The Acting Secretary of Labor, U.S. Department of Labor, Wage and Hour Division (“the Secretary”), is conducting an investigation of Forge Industrial Staffing, Inc. (hereinafter “Employer”) pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (“FLSA” or “the Act”). The Secretary and Employer want the opportunity for further discussions in this matter, to attempt to reach a settlement, and to attempt to resolve outstanding disputes. Accordingly, the Secretary and Employer, in consideration of the promises and statements made herein, understand and agree as follows:

1. The undersigned representative of the Secretary and of Employer certify that they are authorized to enter into the terms and conditions of this Tolling Agreement (“Agreement”), and to bind the party(ies) whom they represent in this Agreement.

2. The Secretary or affected employees of Employer may ultimately bring legal proceedings under the Act as a result of the Secretary’s findings from this investigation; however, the statute of limitations set forth at Section 6 of the Portal-to-Portal Act, 29 U.S.C. § 255, and/or other applicable statutes of limitations, may bar the assertion of certain rights under the Act in legal proceedings brought by the Secretary or by affected employees of Employer.

3. In exchange for the Secretary’s agreement to withhold filing legal proceedings under the Act and to allow time for the Secretary and Employer to discuss and to attempt to resolve this matter, Employer agrees to toll the time period needed to conduct such discussions.

4. The Secretary and Employer agree that the time period beginning on August 15, 2023 until February 15, 2023 (the “Tolling Period”), will not be included in computing the time limited by any statute of limitations, nor will the Tolling Period be raised in any other defense raised by Employer (including laches) that otherwise would be available to Employer concerning

the timeliness of any legal proceedings that may be brought against Employer as a result of the Secretary's findings from this investigation. The Secretary and Employer specifically agree that any applicable statute of limitations shall be tolled for the entire Tolling Period set forth herein.

5. In exchange for Employer agreeing to the Tolling Period addressed in the Agreement, the Secretary agrees not to institute any additional legal proceedings against Employer under the FLSA (the pending subpoena enforcement case will proceed in the normal course), as a result of findings made in this investigation, without first giving Employer thirty (30) days' written notice of the Secretary's intent to institute such proceedings. The parties agree that the Tolling Period shall continue even after the Secretary provides such notice.

6. Employer agrees that this Agreement (or any copy thereof) may be introduced into evidence as proof of the waiver and tolling agreed to herein, in all legal proceedings that may be brought pursuant to Sections 16(b), 16(c), and/or 17 of the Act.

7. This Agreement does not constitute any admission of liability on the part of Employer, nor does it constitute any waiver of other defenses that may be available to Employer, other than statute of limitations defenses specifically addressed in this Agreement.

8. This document contains the entire agreement between the Secretary and Employer, and this Agreement may not be modified, altered, or extended except in writing signed by the parties.

Dated: 8/15/2023

Dated: 8/18/2023

For Employer:

By B Oele
Forge Industrial Staffing, Inc.
Brian Oele
Director of Human Resources and
Risk Management

For the Secretary:

By Kenneth Rock
Kenneth M. Rock
Trial Attorney
U.S. Department of Labor
1240 East Ninth Street, Room 881
Cleveland, Ohio 44199

Digitally signed by
Kenneth Rock
Date: 2023.08.18
15:36:48 -04'00'

Exhibit E

From: Rock, Kenneth M - SOL <Rock.Kenneth.M@dol.gov>
Sent: Thursday, October 5, 2023 9:28 AM
To: Doyle, Brion B.
Cc: Russo, Rina R - SOL
Subject: Acting Secretary v. Forge

Hi Brion,

Thanks for your help in setting up the interviews last week. We are looking at ways to resolve this subpoena, and would be willing to resolve the subpoena enforcement action/forego the contractor information if Forge would provide what we envision are "employee profiles" for all employees during the period of the subpoena request (March 21, 2020-present). These "employee profiles" should contain all information Forge would collect when a worker applies for a job. We envision these employee profiles would include (at least), the employees' job applications, photo IDs, any other photos of employees taken by Forge, and emergency contact information. We believe much of this information is responsive to #25 and #26 of the subpoenas (both IN and MI).

If this is something Forge would agree to, we would like to first get a sample of 10-15 of these employee profiles to make sure we don't need to ask for anything else and that this is a workable solution to the subpoena for us.

Please let me know if this is a solution Forge would agree to, and if you would like to discuss anything about this.

Thanks,

Ken

Kenneth M. Rock
Trial Attorney
United States Department of Labor
Office of the Solicitor
1240 East 9th Street, Suite 881
Cleveland, Ohio 44199
Office: (216) 357-5392
Email: rock.kenneth.m@dol.gov

Until further notice, please direct all communications to me via phone or email. Please do not send correspondence by paper mail, courier, or fax to the Cleveland Solicitor's Office.

Exhibit F

From: Rock, Kenneth M - SOL <Rock.Kenneth.M@dol.gov>
Sent: Wednesday, October 11, 2023 10:56 AM
To: Doyle, Brion B.
Cc: Russo, Rina R - SOL
Subject: RE: Acting Secretary v. Forge

Hi Brion,

The Secretary is withdrawing its below offer to resolve the subpoena. We have determined that based on the volume of employee data, we cannot conduct this investigation without all of the information sought in the subpoena, including the full client list. Please let me know if Forge has reconsidered and will agree to provide the client list. If Forge continues to oppose this, we will reach out to the Court and ask to lift the stay and proceed with our motion to enforce the subpoena. If you would like to have a call to discuss any of this, I'm happy to do so.

Thanks,

Ken

From: Rock, Kenneth M - SOL
Sent: Thursday, October 5, 2023 9:28 AM
To: Doyle, Brion B. <bbdoyle@varnumlaw.com>
Cc: Russo, Rina R - SOL <Russo.Rina.R@dol.gov>
Subject: Acting Secretary v. Forge

Hi Brion,

Thanks for your help in setting up the interviews last week. We are looking at ways to resolve this subpoena, and would be willing to resolve the subpoena enforcement action/forego the contractor information if Forge would provide what we envision are "employee profiles" for all employees during the period of the subpoena request (March 21, 2020-present). These "employee profiles" should contain all information Forge would collect when a worker applies for a job. We envision these employee profiles would include (at least), the employees' job applications, photo IDs, any other photos of employees taken by Forge, and emergency contact information. We believe much of this information is responsive to #25 and #26 of the subpoenas (both IN and MI).

If this is something Forge would agree to, we would like to first get a sample of 10-15 of these employee profiles to make sure we don't need to ask for anything else and that this is a workable solution to the subpoena for us.

Please let me know if this is a solution Forge would agree to, and if you would like to discuss anything about this.

Thanks,

Ken

Kenneth M. Rock
Trial Attorney
United States Department of Labor
Office of the Solicitor
1240 East 9th Street, Suite 881

Cleveland, Ohio 44199

Office: (216) 357-5392

Email: rock.kenneth.m@dol.gov

Until further notice, please direct all communications to me via phone or email. Please do not send correspondence by paper mail, courier, or fax to the Cleveland Solicitor's Office.

Exhibit G

Case	Nature of Investigation	Nature of Cooperation/Compromise Offered by Respondent/Subpoena Modification by Court
<i>Donovan v. Mehlenbacher</i> , 652 F.2d 228 (2d Cir. 1981)	Investigation of farming operations under the Fair Labor Standards Act and the Farm Labor Contractor Registration Act related to two of respondent's farm labor contractors (both of whom had previously been cited for labor violations) and newspaper report concerning conditions on respondent's farm.	None – outright refusal to produce requested documents and to reach any accommodation with the Department. District court modified the subpoena by (1) limiting the times of interviews with workers to between 6:00pm and 9:00pm, (2) denying permission for investigators to enter work areas, and (3) denying access to information sought pertaining to violations of child labor laws, but provided that if the investigation as allowed disclosed the need for such information, the department could reapply to the court for an order to obtain it. Affirmed on appeal.
<i>United States v. Markwood</i> , 48 F.3d 969 (6th Cir. 1995)	DOJ false claims civil investigative demand to investigate whether or not company included the requisite amount of federal excise tax when it bid on a billion-dollar contract to supply the Army with trucks.	Respondent produced documents but refused United States' ability to retain information from respondent's oral deposition.
<i>Doe v. United States</i> , 253 F.3d 256 (6th Cir. 2001)	Investigation of doctor for health care fraud for an alleged kickback arrangement with two medical testing laboratories pursuant to Health Insurance Portability and Accountability Act.	None at first – refused to produce any of requested 9 categories of documents. After district court denied motion to quash and compelled compliance, respondent continued to refuse production of 7 of the 9 categories of requested documents.
<i>Solis v. PulteGroup, Inc.</i> , No. 12-50286, 2013 WL 4482978 (E.D. Mich. Aug. 19, 2013)	DOL launched investigation for the purpose of ensuring that vulnerable workers on residential projects are paid in compliance with the FLSA.	None – outright refusal to produce requested documents. Only during hearing did respondent attempt to reach accommodation with the Department to produce only certain documents relevant to only six employees.
<i>United States v. Comley</i> , 890 F.2d 539 (1st Cir. 1989)	Nuclear Regulatory Commission investigation into NRC employee. Subpoena sought tape recordings or transcripts prepared by respondent of phone conversations between respondent and NRC employee.	None – outright refusal to produce requested documents and to reach any accommodation with the Commission.
<i>United States v. Morton Salt Co.</i> , 338 U.S. 632 (1950)	Federal Trade Commission required certain corporations to file reports showing how	None – outright refusal to produce requested new reports and to reach any accommodation with the Commission.

	they have complied with a decree of the Court of Appeals enforcing the Commission's cease and desist order, in addition to those reports required by the decree itself.	
<i>Dole v. Trinity Indus., Inc.</i> , 904 F.2d 867 (3d Cir. 1990)	Investigation under Occupational Safety and Health Act into work conditions after receiving formal complaint that alleged that no hard hats and safety glasses were provided for non-production employees when walking through shop work areas.	None – outright refusal to produce requested documents and to reach any accommodation with the Department.
<i>NLRB v. Champagne Drywall, Inc.</i> , 502 F. Supp. 2d 179 (D. Mass. 2007)	NLRB investigation of employer's alleged practice of refusing to consider and hire qualified job applicants based on their union affiliation.	None – outright refusal to produce requested documents and to reach any accommodation with the Department. Court enforced subpoena, but limited the requests for information related to the value of the respondent's jobs because it did not find that it was relevant to the NLRB's investigation into possible discrimination when hiring employees.
<i>Resol. Tr. Corp. v. Walde</i> , 18 F.3d 943 (D.C. Cir. 1994)	Investigation into whether a director of the company and other former Trustbank officials might be liable to the RTC because of their operation of the company.	None – outright refusal to produce requested documents and to reach any accommodation. Court enforced subpoena but limited subpoena to the extent it sought information relevant to wealth rather than liability.
<i>United States v. Powell</i> , 379 U.S. 48 (1964)	Internal Revenue Service administrative summons directing corporation president to produce certain corporate tax records to be re-examined.	None – outright refusal to produce requested documents and to reach any accommodation.
<i>SEC v. Howatt</i> , 525 F.2d 226 (1st Cir. 1975)	Securities and Exchange Commission investigation into alleged securities law violations.	None – outright refusal to produce requested documents and to reach any accommodation.