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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

R. ALEXANDER ACOSTA,)	Case No. CV 16-4547 FMO (AGRx)
Plaintiff,)	
v.)	ORDER GRANTING TEMPORARY
SOUTHWEST FUEL MANAGEMENT,)	RESTRAINING ORDER AND ISSUING
INC., <u>et al.</u> ,)	ORDER TO SHOW CAUSE
Defendants.)	

Having reviewed and considered plaintiff’s Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (Dkt. 184, “Application”), the court concludes that oral argument is not necessary to resolve the Application. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass’n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

INTRODUCTION

On January 23, 2018, plaintiff filed the instant Application to: (1) “enjoin[] defendants, their agents, and their attorneys from retaliating or discriminating in any way against any current or former employee of the 12 car washes at issue in this litigation, or any potential witness in this litigation;” (2) “preclud[e] Defendants and their attorneys from using at trial or in support of or in response to any motion the 37 non-managerial employees declarations that Defendants attached to their Opposition to the Secretary’s Motion for Partial Summary Judgment (see Dkt. 172) to prove the truth of the matters stated therein, or for any other purpose;” (3) “order[] Defendants to produce all documents associated with securing or attempting to secure declarations from non-managerial employees, including all notes, memos, forms, communications, recordings,

1 statements, declarations (whether signed or unsigned), signature pages, and drafts thereof;” (4)
2 “order[] defendants’ attorneys who were involved in securing or attempting to secure declarations
3 from non-managerial employees to submit to a deposition concerning the circumstances under
4 which these declarations were solicited or secured;” (5) “enjoin[] Defendants and their attorneys
5 from asking or coercing any witnesses to sign a declaration or other written statement about their
6 wages or other terms and conditions of their employment;” (6) “provid[e] for costs and expenses
7 to reimburse the Secretary for having to prepare and bring this application;” and (7) “order[] all
8 such other relief as may be appropriate, just, and proper, including imposing sanctions against
9 Defendants and Defendants’ attorneys.” (Dkt. 184, Application at 1-2) (footnote omitted).
10 Defendants filed an Opposition on January 25, 2018. (See Dkt. 188, Defendants’ Response to
11 Secretary’s Application for Temporary Restraining Order [] (“Opposition”). The Secretary filed a
12 Reply on January 27, 2018. (See Dkt. 189, Secretary’s Reply [] (“Reply”).

13 **BACKGROUND**

14 On June 23, 2016, plaintiff R. Alexander Acosta,¹ Secretary of the United States
15 Department of Labor (“DOL”) (“plaintiff” or “the Secretary”) filed a complaint against defendants
16 Southwest Fuel Management, Inc. dba Brea Car Wash Detail & Castrol Express Lube
17 (“Southwest”), Vahid David Delrahim (“V. Delrahim”), and Martin Lizarraga (“Lizarraga”), asserting
18 claims for violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq. (See Dkt.
19 1, Complaint). Plaintiff filed a First Amended Complaint (“FAC”) on November 29, 2016, adding
20 as defendants Goldenwest Solutions Group, Inc. (“Goldenwest”) and California Payroll Group, Inc.
21 (“CPG”), (see Dkt. 42, FAC), and the operative Second Amended Complaint (“SAC”) on May 22,
22 2017, adding Shannon Delrahim (“S. Delrahim”) as a defendant. (See Dkt. 102, SAC). The
23 Secretary alleges that defendants violated the FLSA by failing to pay their employees overtime
24 and the federal minimum wage, and by failing to maintain, keep and preserve records of
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28 ¹ R. Alexander Acosta was sworn in as the Secretary of Labor on April 28, 2017, (see Dkt. 102, SAC at 1) and replaced Thomas E. Perez as plaintiff. (See Dkt. 1, Complaint at 1-2).

1 employees and their wages, including by requiring their employees to work “off the clock.” (See
2 id. at ¶¶ 1, 14-18).

3 On May 2, 2017, the Special Master found that defendants “failed to preserve and not
4 destroy emails, text messages and video recordings, and failed to instruct all employees and
5 others to preserve potentially responsive documents[.]”² (See Dkt. 99, Special Master’s Order of
6 May 2, 2017, at 9). The Special Master found that “Defendants’ intentional spoliation of evidence
7 warrants sanctioning[.]” (See id.). Because “Southwest’s and Delrahim’s resistance to preserving
8 the Brea Videos supports the reasonable inference that Defendants acted with the intent to
9 deprive the Secretary of the use of the videos[.]” the Special Master found “that the videos are
10 unfavorable to Defendants Southwest and Delrahim.” (See id. at 23-24). The Special Master had
11 previously concluded that Southwest was “deliberately and willfully stone-walling on discovery.”
12 (See id. at 6) (internal quotation marks omitted).

13 Approximately two months after the Special Master’s ruling, defendants’ counsel began
14 gathering declarations from current employees stating that the employees never worked “off the
15 clock.” (See, e.g., Dkts. 172-32–172-37, 172-39, Joint Evidentiary Appendix at Exhibits (“Exhs.”)
16 122-45, 147-53, 158-59, 161, 183-85 (“Employee Declarations”)). Defendants disclosed the 37
17 declarations for the first time when they submitted their briefing in the cross motions for summary
18 judgment on November 21, 2017. (See id.). Approximately 34 of the 37 submitted declarations
19 were signed by employees in July 2017. (See Dkts. 172-32–172-37, 172-39 at Exhs. 122-45, 147-
20 53, 158-59, 161, 183-85, Employee Declarations).

21 The Secretary brings the instant Application because of defendants’ and their counsel’s
22 alleged misconduct related to “solicit[ing] from their clients’ employees statements that contradict
23 what the video evidence would have shown to be true.” (Dkt. 185-1, Secretary’s Memorandum
24

25 ² Defendants have filed objections to this order, (see Dkt. 107, Defendants’ Objections to
26 Special Master’s Order Re Plaintiff’s Request for Sanctions for Spoliation of Evidence), on which
27 the court has not yet ruled. Defendants’ objections are “limited to the inferences the Special
28 Master made in her Order,” namely “the adoption of any presumption against Defendants[.]” (See
id. at 1). Should the court not concur with or accept the findings and conclusions of the Special
Master, it may revisit this Order.

1 of Points and Authorities (“Memo.”) at 2) (emphasis omitted). The Secretary contends that:
2 “Defendants’ counsel was well aware that they do not represent the employees and that their
3 clients’ interests are adverse to the [workers’] interests[;]” defendants are “keenly aware of the
4 economic power their clients had over the employee declarants and that these workers were
5 required to speak with defense counsel on work time and as a condition of employment[;]” “the
6 Secretary had identified specific damages for each of the employee declarants and thus . . .
7 defense counsel was seeking waivers that are unenforceable[;]” and, “the declarations were
8 coercive, and thus Defendants were potentially securing false testimony from their employees[.]”
9 (See id.). According to the Secretary, the “information gathered to date . . . suggests that defense
10 counsel abandoned their ethical duties and failed to safeguard the integrity of the fact-finding
11 process [and that] Defendants and their counsel should be enjoined from discussing this case with
12 employees or soliciting declarations while the Secretary completes his investigation.” (Id.). Based
13 on “Defendants’ intentional spoliation of evidence and defense counsels’ bad faith attempts to
14 further obscure the factual record in this case[.]” (see id. at 9), and the alleged violation of the
15 FLSA these actions constitute, the Secretary asks for a temporary restraining order and
16 preliminary injunction. (See id. at 2-3, 9).

17 LEGAL STANDARD

18 Rule 65 provides courts with the authority to issue temporary restraining orders and
19 preliminary injunctions. Fed. R. Civ. P. 65(a) & (b). The purpose of a preliminary injunction is to
20 preserve the status quo and the rights of the parties until a final judgment on the merits can be
21 rendered, see U.S. Philips Corp. v. KBC Bank N.V., 590 F.3d 1091, 1094 (9th Cir. 2010), while
22 the purpose of a temporary restraining order is to preserve the status quo before a preliminary
23 injunction hearing may be held. See Wahoo Intern., Inc. v. Phix Doctor, Inc., 2014 WL 2106482,
24 *2 (S.D. Cal. 2014). The standards for a temporary restraining order and a preliminary injunction
25 are the same. See Stuhlberg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n. 7 (9th
26 Cir. 2001); Rowe v. Naiman, 2014 WL 1686521, *2 (C.D. Cal. 2014) (“The standard for issuing a
27 temporary restraining order is identical to the standard for issuing a preliminary injunction.”).
28

1 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v.
2 Natural Res. Def. Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008). “A plaintiff seeking a
3 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
4 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
5 favor, and that an injunction is in the public interest.” Id., 555 U.S. at 20, 129 S.Ct. at 374; Garcia
6 v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (same). The Ninth Circuit also
7 employs a “sliding scale” formulation of the preliminary injunction test under which an injunction
8 could be issued where, for instance, “the likelihood of success is such that serious questions going
9 to the merits [are] raised and the balance of hardships tips sharply in plaintiff’s favor[.]” Alliance
10 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (internal quotation marks and
11 alteration marks omitted), provided the other elements of the Winter test are met. See Angelotti
12 Chiropractic, Inc. v. Baker, 791 F.3d 1075, 1081 (9th Cir. 2015), cert. denied, 136 S.Ct. 2379
13 (2016) (“Serious questions going to the merits and hardship balance that tips sharply towards
14 plaintiffs can also support issuance of a preliminary injunction, so long as there is a likelihood of
15 irreparable injury and the injunction is in the public interest.”) (internal quotation marks and
16 alteration marks omitted).

17 A preliminary injunction “should not be granted unless the movant, by a clear showing,
18 carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S.Ct. 1865,
19 1867 (1997) (emphasis in original) (internal quotation marks omitted); Silvas v. G.E. Money Bank,
20 449 F.Appx. 641, 644 (9th Cir. 2011) (same). Indeed, the moving party bears the burden of
21 meeting all prongs of the Winter test. See Alliance for the Wild Rockies, 632 F.3d at 1135; DISH
22 Network Corp. v. FCC, 653 F.3d 771, 776 (9th Cir. 2011), cert. denied 132 S.Ct. 1162 (2012) (“To
23 warrant a preliminary injunction, [plaintiff] must demonstrate that it meets all four of the elements
24 of the preliminary injunction test established in Winter[.]”). The decision of whether to grant or
25 deny a preliminary injunction is a matter of the district court’s equitable discretion. See Winter,
26 555 U.S. at 32, 129 S.Ct. at 381.

27 DISCUSSION

28 As an initial matter, there is an issue as to the timeliness of the disclosures of the subject

1 declarations. As noted above, even though the vast majority of the declarations were signed by
2 the employees in July 2017, (see Dkts. 172-32–172-37, 172-39 at Exhs. 122-45, 147-53, 158-59,
3 161, 183-85, Employee Declarations), defendants did not disclose them until November 21, 2017,
4 approximately four months later, (see id.; Dkt. 188, Opposition at 2), and three months after the
5 fact discovery cutoff of August 11, 2017. (See Dkt. 62, Court’s Order of January 23, 2017, at 2).
6 Defendants argue that the employee declarations are work product and not responsive to any
7 document requests because they are testimony, so there was no need to disclose them. (See
8 Dkt. 188, Opposition at 12-13). However, signed declarations from third party witnesses are not
9 protected work product. See Kuhl v. Guiter Center Stores, Inc., 2008 WL 5244570, *6 (N.D. Ill.
10 2008) (“Because they do not contain any legal advice, litigation strategy, or confidential
11 communications, this Court cannot determine how the signed Statements could be protected by
12 the work product doctrine or any related privilege.”); Camilotes v. Resurrection Health Care Corp.,
13 2012 WL 245202, *7 (N.D. Ill. 2012) (“Defendants have failed to establish that the signed
14 declarations are protected from disclosure by the work product doctrine, which protects attorney
15 impressions but does not protect non-privileged facts.”); Gonzalez v. State of Fla. Dep’t of Mgmt.
16 Servs., 124 F.Supp.3d 1317, 1326-27 (S.D. Fla. 2015) (disagreeing with contention that
17 declaration constituted work product). What’s more, it is clear that defendants should have
18 produced the declarations and the names, addresses and telephone numbers of the employee
19 declarants as soon as defendants and/or their counsel determined that the declarations and
20 employee declarants contained discoverable information that defendants were considering using
21 to support their defenses in this action. See, e.g., Fed. R. Civ. P. 26(a)(1)(A)(i)&(ii); Fed. R. Civ.
22 P. 26(e).

23 I. LIKELIHOOD OF SUCCESS ON THE MERITS.

24 “The first factor under Winter is the most important – likely success on the merits.” Garcia,
25 786 F.3d at 740. The Ninth Circuit has recognized that an injunction may be granted if “serious
26 questions going to the merits were raised and the balance of hardships tips sharply in plaintiff’s
27 favor[.]” so long as the moving party demonstrates irreparable harm and shows that the injunction
28 is in the public interest. See Alliance for the Wild Rockies, 632 F.3d at 1131 (internal quotation

1 marks and alteration marks omitted).

2 The FLSA provides that it is unlawful “for any person . . . to discharge or in any other
3 manner discriminate against any employee because such employee has filed any complaint or
4 instituted or caused to be instituted any proceeding under or related to this chapter, or has testified
5 or is about to testify in any such proceeding.” 29 U.S.C. § 215(a)(3). This anti-retaliation provision
6 prevents “fear of economic retaliation from inducing workers quietly to accept substandard
7 conditions.” Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1, 12, 131 S.Ct. 1325,
8 1333 (2011) (internal quotation marks omitted). The FLSA’s anti-retaliation provision “should be
9 interpreted broadly, to give effect to the statute’s remedial purpose.” In re Majewski, 310 F.3d
10 653, 655 (9th Cir. 2002).

11 To establish a violation of the FLSA’s anti-retaliation provision, a party must show that: (1)
12 an employee “engaged in or was engaging in activity protected under federal law,” (2) the
13 employee was subjected to “an adverse employment action[.]” and (3) the protected activity was
14 a “motivating reason” for the adverse action. See Avila v. Los Angeles Police Dep’t, 758 F.3d
15 1096, 1102-04 (9th Cir. 2014); see also 29 U.S.C. § 215(a)(3).

16 Here, the court is persuaded that the Secretary has established likelihood of success on
17 the merits with respect to the FLSA’s anti-retaliation provision. First, the 37 employees who
18 signed declarations regarding their wages and working conditions are potential witnesses in this
19 litigation engaged in protected activity by “testif[y]ing or [being] about to testify in” a proceeding
20 under the FLSA. See 29 U.S.C. § 215(a)(3); Mitchell v. Robert DeMario Jewelry, 361 U.S. 288,
21 292, 80 S.Ct. 332, 335 (1960) (“effective enforcement could thus only be expected if employees
22 felt free to approach officials with their grievances”); Perez v. Fatima/Zahra, Inc., 2014 WL
23 2154092, *2 (N.D. Cal. 2014) (“These threats, although taken in anticipation of employees
24 engaged in protected activity, are ‘no less retaliatory than action taken after the fact.’”) (quoting
25 Sauers v. Salt Lake Cnty., 1 F.3d 1122, 1128 (10th Cir. 1993)); see also Lambert v. Ackerley, 180
26 F.3d 997, 1005 n. 3 (9th Cir. 1999), cert. denied, 528 U.S. 116 (2000) (If the FLSA “is to function
27 effectively, inspectors must be free from the threat of retaliatory discharge for identifying safety
28 and quality problems.”) (internal quotation marks omitted).

1 Second, defendants' actions constitute an adverse action because those actions are
2 "reasonably likely to deter employees from engaging in protected activity." See, e.g., Ray v.
3 Henderson, 217 F.3d 1234, 1243 (9th Cir. 2000) (holding that because Title VII "does not limit its
4 reach only to acts of retaliation that take the form of cognizable employment actions such as
5 discharge, transfer, or demotion[,]" "decreas[ing an employee's] ability to influence workplace
6 policy" qualified as an adverse employment action) (internal quotation marks omitted); Perez v.
7 J&L Metal Polishing, Inc., 2016 WL 7655766, *5 (C.D. Cal. 2016) ("[T]hreats of retaliation are also
8 a basis for injunctive relief."); Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 57,
9 63-64, 126 S.Ct. 2405, 2409, 2412 (2006) ("the antiretaliation provision [of Title VII] does not
10 confine the actions and harms it forbids to those that are related to employment or occur at the
11 workplace."); Arias v. Raimondo, 860 F.3d 1185, 1190-92 (9th Cir. 2017), cert. denied, 2018 WL
12 311387 (2018) (discussing Burlington and applying it's reasoning to the FLSA); United States v.
13 Oregon State Med. Soc., 343 U.S. 326, 333, 72 S.Ct. 690, 695 (1952) ("All it takes to make the
14 cause of action for relief by injunction is a real threat of future violation or a contemporary violation
15 of a nature likely to continue or recur."). As discussed below, the Secretary has provided sufficient
16 evidence that defendants' "intimidation tactics are reasonably likely to deter [their] employees from
17 participating in the investigation." J&L Metal Polishing, Inc., 2016 WL 7655766, at *6; see Harris
18 v. Acme Universal, Inc., 2014 WL 3907107, *2 (D. Guam 2014) (enjoining employer who urged
19 former employees to withdraw their FLSA complaints, made threats, and coerced them into
20 signing false statements about their working conditions); (see, e.g., Dkt. 184-10, Declaration of
21 Jean Lui ("Lui Decl.") at ¶ 9). Thus, the court finds that soliciting and extracting coerced
22 declarations, which may include false and/or misleading testimony, constitutes an adverse
23 employment action for purposes of the FLSA's anti-retaliation provision.³

24
25 ³ Intimidating interviews and signed, coerced declarations are reasonably likely to deter
26 employees from engaging in the protected activity of testifying or otherwise asserting their rights
27 under the FLSA. For example, an employee may believe that she will face termination at work for
28 failure to comply with the company's "request" to sign a declaration – as the evidence shows
occurred here, (see Dkt. 184-10, Lui Decl. at ¶ 9) ("the employee told me that he signed it because
he felt he would lose his job or have his hours cut if he did not sign.") – or for stating that she has
violated a company policy. (See, e.g., Dkt. 172-32, at Exh. 123, Declaration of Antonio Rodriguez)

1 Third, causation is established as defendants sought and obtained signed declarations only
2 two months after the Special Master sanctioned them for intentionally destroying evidence. (See
3 Dkt. 99, Special Master’s Order of May 2, 2017; Dkts. 172-32–172-37, 172-39 at Exhs. 122-45,
4 147-53, 158-59, 161, 183-85, Employee Declarations (approximately 34 of 37 declarations signed
5 in July)); Whalen v. Roanoke Cty. Bd. of Sup’rs, 769 F.2d 221, 225 (4th Cir. 1985), on reh’g, 797
6 F.2d 170 (4th Cir. 1986) (upholding a jury’s finding of causation where a three-year interval
7 occurred between the protected activity and the adverse action).

8 Defendants do not attempt to rebut the Secretary’s contentions regarding protected activity
9 or causation, or that the coerced declarations constitute an adverse employment action. (See,
10 generally, Dkt. 188, Opposition). Instead, defendants argue only that the “Secretary has not and
11 cannot meet its burden to show abuse or coercion by Defendants.” (Id. at 6). Defendants assert
12 that the consent form “described the nature of the instant action, and the fact that the employee
13 may be eligible to collect money or obtain other remedies” and stated that any information an
14 employee shares “may be used in the lawsuit in a way that could affect their rights in the lawsuit.”
15 (Id. at 7). The form also states that “the interview and/or giving a written statement are voluntary,
16 and that there will be no retaliation against the employee if he or she declines to participate.” (Id.)

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19 (“One of the company’s policies is that if we are working we have to be punched in . . . and I have
20 always followed it.”). An employee may also be deterred from participating in an ongoing DOL
21 investigation if, for instance, she believes that the coerced declaration can subsequently be used
22 against her to claim (albeit mistakenly) that the employee perjured herself. See Talavera v.
23 Leprino Foods Co., 2016 WL 880550, *5 (E.D. Cal. 2016) (“the mandatory nature of the meetings,
24 the fact that they were conducted at the workplace during working hours, and the linking of the
25 lawsuit with the possibility of criminal perjury charges created a risk of coercion and potential for
26 chilling participation. Regardless of Mr. Tuttrup’s true intent, his role as the head onsite manager
27 can transform suggestions, requests, or observations into directives or threats.”); (see also Dkts.
28 172-32–172-37, 172-39 at Exhs. 122-45, 147-53, 158-59, 161, 183-85, Employee Declarations)
(employees signed declarations “under penalty of perjury”). The Ninth Circuit has broadly
interpreted FLSA’s anti-retaliation provision, bringing into its ambit not only terminations, but also
other threatening or intimidating actions by the employer or its attorneys. See Arias, 860 F.3d at
1186-88 (holding that worker may proceed with retaliation action against employer’s attorney, who
allegedly contacted Immigration and Customs Enforcement during the pendency of a wage and
hour lawsuit); id. at 1190 (The FLSA’s retaliation provision’s “purpose is to enable workers to avail
themselves of their statutory rights in court by invoking the legal process designed by Congress
to protect them.”).

1 Finally, defendants argue that “the form emphasizes that the interviewer only wants to hear truthful
2 information, and, if preparing a written statement, wants the statement to be completely accurate.”
3 (See id.). According to defendants, the “consent forms are not waivers” and “the factual
4 declarations themselves are not waivers either[.]” (See id. at 8). Defendants’ assertions are
5 unpersuasive.

6 While the forms make a vague reference that “[a]t some point, you may be eligible to collect
7 money and/or obtain other remedies[.]” (see Dkt. 184-4, Declaration of Nancy E. Steffan (“Steffan
8 Decl.”) at Exh. C (“Voluntary Interview Consent Forms”)), they fail to inform employees that they
9 are among a group of workers on whose behalf the Secretary seeks back wages and/or that the
10 Secretary has already computed wages owed to them. (See, generally, id.); see, e.g., Sjoblom
11 v. Charter Comm’ns, LLC, 2007 WL 5314916, *3 (W.D. Wis. 2007) (sanctioning employer who
12 obtained affidavits from potential FLSA class members in “blitz campaign” that included a consent
13 form describing litigation but failing to “notify them that they might be entitled to become a part of
14 the lawsuit”). The consent forms also do not reveal that defendants were found to have
15 intentionally destroyed video evidence of the employee working off the clock, or even that the
16 information they share might adversely affect their rights in the lawsuit. (See, generally, Dkt. 184-
17 4, Voluntary Interview Consent Forms; id. (stating only that it “could affect” their rights)).
18 Moreover, despite the consent forms’ representation that a worker’s decision to speak to defense
19 counsel is voluntary, there is no analogous statement as to whether signing a declaration is
20 voluntary or involuntary. (See, generally, id.). Under the circumstances, defendants’ “failure to
21 provide sufficient information relating to [the Secretary’s and the employees’] claims so that the
22 employees could make an informed decision” raises serious concerns as to whether the employee
23 declarants were misled and/or whether the employees voluntarily and intelligently understood and
24 agreed to sign the consent form and declaration. See Gonzalez v. Preferred Freezer Servs. LBF,
25 LLC, 2012 WL 4466605, *2 (C.D. Cal. 2012); id. (“Omission of important information relating to
26 a plaintiff’s case or claims is misleading.”); id. at *1 (granting motion to order defendants to release
27 names and contact information of individuals from whom defendant attempted to extract releases
28 that “did not state when this unnamed lawsuit was filed, the name of the former employee, the

1 names of the employee’s attorneys, the attorneys’ contact information, or the period of time
2 covered by the release” as it “was misleading in many ways.”).

3 Further, the Secretary has put forth evidence of coercive circumstances surrounding the
4 interviews and the signing of the consent forms and declarations. (See Dkt. 184-10, Lui Decl.; Dkt.
5 184-11, Declaration of Patricia Gatica (“Gatica Decl.”); Dkt. 184-12, Declaration of Maribel M.
6 Tapia (“Tapia Decl.”); Dkt. 184-13, Declaration of Claudia R. Cotne-Martinez (“Cotne-Martinez
7 Decl.”)). Employees were instructed by their managers to attend meetings with defense counsel
8 on work time, to “sign papers” or provide a declaration, and some employees were even driven
9 to the meetings by company representatives. (See Dkt. 184-10, Lui Decl. at ¶ 5; Dkt. 184-11,
10 Gatica Decl. at ¶ 5; Dkt. 184-12, Tapia Decl. at ¶ 5; Dkt. 184-13, Cotne-Martinez Decl. at ¶ 5); see
11 also Perez v. Blue Mountain Farms, 961 F.Supp.2d 1164, 1171 (E.D. Wash. 2013) (“the interviews
12 that have occurred may have been tainted by the presence of supervisors and video cameras”).
13 “The caselaw nearly universally observes that employer-employee contact is particularly prone
14 to coercion[.]” Camp v. Alexander, 300 F.R.D. 617, 624 (N.D. Cal. 2014).

15 Employees were not told that the Secretary had already concluded that they were owed
16 back wages. (See Dkt. 184-10, Lui Decl. at ¶¶ 6, 9; Dkt. 184-13, Cotne-Martinez Decl. at ¶¶ 5,
17 10). Nor were the employees provided with a copy of any of the documents they signed. (See
18 Dkt. 184-10, Lui Decl. at ¶¶ 7, 9, 10; Dkt. 184-13, Cotne Decl. at ¶¶ 7, 10); see Guifi Li v. A Perfect
19 Day Franchise, Inc., 270 F.R.D. 509, 518 (N.D. Cal. 2010) (in concluding that meetings with
20 employees “were inherently coercive[.]” court considered the failure “to provide copies of the
21 opt-out forms to workers to take away with them”). The court also has serious concerns as to not
22 only the written consent forms, but also the verbal representations made to the employees and
23 whether the employees were misled or otherwise coerced into believing the “interview” was
24 “voluntary.” For example, one employee stated that he was called into the car wash office directly
25 by defense counsel, was not told the meeting was optional, and signed the declaration for fear he
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1 would lose his job or have his hours cut.⁴ (See Dkt. 184-10, Lui Decl. at ¶ 9). Another employee
2 relayed that “a car wash manager held a meeting with all of the employees [and] told the
3 employees that the company’s attorneys wanted to meet with them.” (See Dkt. 184-13, Cotne-
4 Martinez Decl. at ¶ 9). The employee was then driven by the same manager to meet with
5 attorneys at a hotel on a subsequent day. (See *id.*). For another employee who was driven to and
6 from the car wash to another office, the round-trip, interview, preparation, review and signing of
7 both the declaration and consent form took about one hour; for another, the entire “meeting with
8 the attorney lasted at most five minutes[.]” (Dkt. 184-13, Cotne-Martinez Decl. at ¶¶ 7, 10; see Dkt.
9 184-10, Lui Decl. at ¶ 5), casting doubt on the integrity of the alleged fact-gathering process and
10 the resulting declarations. Finally, employees have come forward to state that testimony in their
11 solicited declarations is false or, at a minimum, misleading. (See, e.g., Dkt. 184-10, Lui Decl. at
12 ¶ 7) (declaration stated “the employee never had to wait to clock in” but employee told investigator
13 that currently he did have to wait to clock in and counsel did not ask about the past).

14 Based on the largely undisputed evidence before the court, the court concludes that
15 defendants’ conduct, especially as it relates to the meetings between defendants’ counsel and the
16 employees and content of the consent form, was inherently coercive.⁵ See, e.g., Guifi Li, 270

17
18 ⁴ Defendants argue that the Secretary’s proffered evidence, four declarations from DOL
19 investigators, “consist solely of hearsay[.]” “do not identify the individuals who allegedly claim they
20 were coerced” and “are not admissible or competent evidence[.]” (See Dkt. 188, Opposition at 8).
21 However, it is “within the discretion of the district court to accept this hearsay for purposes of
22 deciding whether to issue [a] preliminary injunction.” Republic of the Philippines v. Marcos, 862
23 F.2d 1355, 1363 (9th Cir. 1988) (*en banc*).

24 ⁵ Defendants claim that one employee did not sign a declaration and thus did not feel
25 coerced. (See Dkt. 188, Opposition at 10) (“this employee refused to sign what he was given . .
26 . and he is still employed, as Cotne-Martinez refers to this unidentified individual as a current
27 employee.”). However, “[e]ven though [one employee] was offered the [declaration], rejected it,
28 and contacted [the Secretary], this does not mean that every employee who received the
[declaration] was sufficiently informed.” Gonzalez, 2012 WL 4466605, at *3. In fact, the Secretary
has provided evidence that at least three employees felt pressured and intimidated into signing.
(See Dkt. 184-10, Lui Decl. at ¶¶ 9, 10; Dkt. 184-13, Cotne-Martinez Decl. at ¶ 10); see also
O’Connor v. UBER Techs., Inc., 2016 WL 122943, *1, 3 (N.D. Cal. 2016) (declining to stay an
order enjoining defendant’s communications with putative class members, and requiring a
corrective cover letter and revised arbitration agreement, where defendant sent an agreement to
current employees that caused actual confusion and could preclude putative class members from

1 F.R.D. at 518 (“Defendants admit that they presented opt-out forms to workers during required,
2 one-on-one meetings with managers during work hours and at the workplace . . . [and] that they
3 failed to provide copies of the opt-out forms to workers to take away with them[.] Based on these
4 undisputed facts, the Court concludes that these meetings were inherently coercive.”). Each of
5 the individual factors noted above could have led to coerced declarations. But the number of
6 factors here leaves little doubt that the signed declarations and consent forms were collected
7 under coercive circumstances. Further, the sequence and context of the interviews – which took
8 place after the Special Master found that defendants intentionally destroyed video evidence of the
9 subject of solicited employee testimony – only serves to underscore the coercive nature of
10 defendants’ conduct.

11 In short, the court finds that plaintiff is likely to prevail on his claim that defendants violated
12 FLSA’s anti-retaliation provision. In the alternative, the court finds that plaintiff raised “serious
13 questions going to the merits[.]” See Alliance for the Wild Rockies, 632 F.3d at 1131.

14 Plaintiff is also likely to prevail on his claim under § 11(a) of the FLSA, which gives the
15 Secretary the power to: (1) “investigate and gather data regarding the wages, hours, and other
16 conditions and practices of . . . employment”; (2) “enter and inspect” workplaces and records; and
17 (3) “question [] employees, and investigate such facts, conditions, practices, or matters as he may
18 deem necessary or appropriate to determine whether any person has violated” the FLSA. 29
19 U.S.C. § 211(a). The FLSA grants the Secretary these investigatory powers because the statute’s
20 enforcement relies “not upon continuing detailed federal supervision or inspection of payrolls, but
21 upon information and complaints received from employees seeking to vindicate rights claimed to
22 have been denied.” Kasten, 563 U.S. at 11, 131 S.Ct. at 1333 (internal quotation marks omitted).

23 The Secretary argues that defendants violated the FLSA’s investigations and inspections
24 provision “by securing declarations from their current employees under inherently coercive
25 circumstances . . . precisely the kind of employer intimidation that chills employees’ cooperation
26 with a wage and hour litigation.” (See Dkt. 185-1, Memo. at 14). As the court found above, the

27 _____
28 participating in ongoing litigation).

1 circumstances surrounding the collection of declarations demonstrates a strong likelihood of
2 coercion or duress. See supra at § I. Thus, the court finds that there is a strong likelihood of
3 success on the merits for plaintiff’s claims of violations of § 11(a) of the FLSA. In the alternative,
4 the court finds that plaintiff raised “serious questions going to the merits” as to whether defendants
5 interfered with the Secretary’s investigatory powers under § 11(a) of the FLSA. See Alliance for
6 the Wild Rockies, 632 F.3d at 1131.

7 II. IRREPARABLE HARM.

8 As a general rule, plaintiff must demonstrate that he is likely to suffer irreparable harm in
9 the absence of the temporary restraining order or preliminary injunction. See Winter, 555 U.S. at
10 20, 129 S.Ct. at 374. However, “the standard requirements for equitable relief need not be
11 satisfied when an injunction is sought to prevent the violation of a federal statute which specifically
12 provides for injunctive relief.” Antoninetti v. Chipotle Mexican Grill, Inc., 643 F.3d 1165, 1175-76
13 (9th Cir. 2010), cert. denied, 563 U.S. 956 (2011) (internal quotation marks and alteration marks
14 omitted). The Secretary seeks to enjoin defendants from violating the FLSA, which specifically
15 provides for injunctive relief, see 29 U.S.C. § 217, so the Secretary need not prove irreparable
16 harm. See Trailer Train Co. v. State Bd. of Equalization, 697 F.2d 860, 869 (9th Cir.), cert. denied,
17 464 U.S. 846 (1983); Marxe v. Jackson, 833 F.2d 1121, 1128 n. 3 (3d Cir. 1987) (collecting cases
18 in which the court “appl[ied] federal statutes expressly providing injunctive relief without a showing
19 of irreparable injury”).

20 However, even assuming the Secretary was required to show irreparable harm, the court
21 is satisfied that the Secretary has done so.⁶ It is well-established that “allegations of retaliation

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23 ⁶ Defendants argue that the Secretary delayed in filing the instant Application and that it
24 should be denied or heard on a regularly noticed motion schedule because the “application for a
25 TRO was ultimately filed . . . eight weeks and six days after the Secretary first received the
26 declarations in question.” (See Dkt. 188, Opposition at 1-4). The court is not persuaded,
27 because, as defendants admit, (see id. at 3), the Secretary only received the consent forms on
28 January 11, 2018, 12 days before the filing of the instant Application. (See id.). Further, the
Secretary promptly met and conferred with defendants to attempt to informally resolve the issues
raised, investigated the circumstances to determine whether emergency injunctive relief was
justified, and filed the Application after the government shut down ended on January 23, 2018.
(See Dkt. 189, Reply at 2, 4).

1 for the exercise of statutorily protected rights represent possible irreparable harm far beyond
2 economic loss . . . because retaliatory action for protected activity carries with it the risk that
3 employees may be deterred from engaging in legitimate conduct.” Arcamuzi v. Continental Air
4 Lines, Inc., 819 F.2d 935, 938-39 (9th Cir. 1987) (footnote and citation omitted). Indeed,
5 “[u]nchecked retaliation . . . and the resulting weakened enforcement of federal law can itself be
6 irreparable harm in the context of a preliminary injunction application.” Mullins v. City of New York,
7 626 F.3d 47, 55 (2d Cir. 2010) (internal quotation marks omitted). The Secretary has provided
8 evidence that his investigation and the employees’ exercise of their FLSA rights have been
9 impaired by defendants’ conduct. (See Dkt. 184-10, Lui Decl. at ¶¶ 4-9; Dkt. 184-11, Gatica Decl.
10 at ¶¶ 4-5; Dkt. 184-12, Tapia Decl. at ¶¶ 4-5; Dkt. 184-13, Cotne-Martinez Decl. at ¶¶ 4-10); see
11 also Perez, 2014 WL 2154092, at *3 (“Plaintiff will not be able to gather the information necessary
12 to conduct the investigation.”). The court is also persuaded that the Secretary’s complainants –
13 all of whom are low wage workers – will be irreparably harmed if the “fear of economic retaliation
14 [] induc[es] workers quietly to accept substandard conditions.” Kasten, 563 U.S. at 12, 131 S.Ct.
15 at 1333 (internal quotation marks omitted); see Socias v. Vornado Realty, L.P., 297 F.R.D. 38, 40
16 (E.D.N.Y. 2014) (“Low wage employees . . . often face extenuating economic and social
17 circumstances and lack equal bargaining power; therefore, they are more susceptible to
18 coercion[.]”).

19 III. BALANCE OF HARDSHIPS.

20 The harm that will be caused to plaintiff should defendants be allowed to interfere with the
21 Secretary’s investigation, and deny employees their rights to testify and be free from retaliation,
22 far outweighs the harm to defendants. Defendants will suffer no hardships, as the Secretary
23 merely “seeks only an order requiring Defendants to comply with the law[.]” (See Dkt. 185-1,
24 Memo. at 16); Carrillo v. Schneider Logistics, Inc., 823 F.Supp.2d 1040, 1046 (C.D. Cal. 2011)
25 (“Plaintiffs request only that defendants be required to comply with . . . federal and state law.
26 Defendants will suffer no hardships other than those associated with bringing their recordkeeping
27 procedures and paycheck information into compliance with state and federal requirements – costs
28 that defendants should already be incurring.”).

1 Based on the conduct of defendants and their counsel throughout the course of this case
2 – conduct for which the Special Master has imposed sanctions – and the record before the court,
3 the court could institute a complete prohibition on contacting employee witnesses. Nonetheless,
4 the court will, in an abundance of caution, narrow the proposed temporary restraining order. See
5 Consumer Fin. Prot. Bureau v. Gordon, 819 F.3d 1179, 1198 (9th Cir. 2016), cert. denied, 137
6 S.Ct. 2291 (2017) (finding that the district court did not abuse its discretion because it “carefully
7 considered the scope of the injunction and tailored it to match the risk of harm it identified and
8 minimize the impact on [defendant’s] legal business”). Defendants will be able to continue to seek
9 out and obtain employee testimony to support their defense, but given the evidence of incomplete
10 and/or misleading information and the coercive circumstances surrounding the interviews,
11 defendants will be prohibited from meeting with the employees in connection with this lawsuit
12 outside the presence of counsel for the Secretary.⁷

13 In short, the court concludes that balance of hardships tips sharply in favor of plaintiff.

14 IV. PUBLIC INTEREST.

15 The court gives substantial weight to the fact that “the Secretary seeks to vindicate a
16 public, and not a private right.” Perez v. Jie, 2014 WL 1320130, *2 (W.D. Wash. 2014) (quoting
17 Marshall v. Chala Enterprises, Inc., 645 F.2d 799, 808 (9th Cir. 1983)). There is a strong public
18 interest in favor of enforcement of the FLSA, which seeks to eliminate “labor conditions detrimental
19 to the maintenance of the minimum standard of living” of workers. 29 U.S.C. § 202(a).
20 Defendants thus have no legitimate interest in preventing plaintiff from conducting what appears
21 to be a reasonable and lawful investigation. See Perez, 2014 WL 2154092, at *3.

22 The court concludes that the Secretary has, by a clear showing, carried his burden of
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24 ⁷ Given that the court’s order will not prevent defendants from talking to their employees
25 about this case, defendants’ prior restraint arguments are unpersuasive. (See Dkt. 188,
26 Opposition at 15-16). The limited order balances any alleged First Amendment rights of the
27 employers against its employees’ rights under federal statutes designed to protect them. See
28 Horizon Air Indus., Inc. v. Nat’l Mediation Bd., 232 F.3d 1126, 1136 (9th Cir. 2000), cert. denied,
533 U.S. 915 (2001) (“An employer’s free speech right . . . is not absolute, however, and must be
balanced against the employees’ rights to associate freely and to be free of coercion, which can
sneak in through seemingly-neutral employer communications”).

1 persuasion of showing that a temporary restraining order should issue. See Mazurek, 520 U.S.
2 at 972, 117 S.Ct. at 1867. The Secretary has established that he is likely to succeed on the merits
3 of his claims under both 29 U.S.C. §§ 211(a) and 215(a)(3). See supra at § I. In the alternative,
4 the Secretary has at a minimum raised “serious questions going to the merits” of his claims under
5 both 29 U.S.C. §§ 211(a) and 215(a)(3). See supra at § I.; Alliance for the Wild Rockies, 632 F.3d
6 at 1131. Although the Secretary is not required to demonstrate irreparable harm when he seeks
7 “to prevent the violation of a federal statute [the FLSA] which specifically provides for injunctive
8 relief[,]” see Trailer Train Co., 697 F.2d at 869; 29 U.S.C. § 217, the Secretary has established
9 that he and the employee complainants are likely to suffer irreparable harm in the absence of a
10 temporary restraining order. See supra at § II. Finally, the balance of equities tips sharply in
11 plaintiff’s favor, see supra at § III.; Alliance for the Wild Rockies, 632 F.3d at 1131, and an
12 injunction is in the public interest. See supra at § IV.

13 V. SCOPE OF TEMPORARY RESTRAINING ORDER.

14 The court adopts only the provisions that are necessary to prevent retaliation and
15 interference by defendants. See Perez, 2014 WL 2154092, at *3 (“The Court adopts only those
16 provisions that are reasonably necessary to accomplish this goal before the preliminary injunction
17 motion can be heard.”); J&L Metal Polishing, Inc., 2016 WL 7655766, at *6–8 (narrowing the scope
18 of a temporary restraining order in case involving FLSA violations). Although this is not a class
19 action in the traditional sense, the court heeds the Supreme Court’s instruction that “an order
20 limiting communications between parties and potential class members should be based on a clear
21 record and specific findings that reflect a weighing of the need for a limitation and the potential
22 interference with the rights of the parties.” Gulf Oil Co. v. Bernard, 452 U.S. 89, 101, 101 S. Ct.
23 2193, 2200 (1981). Given “the finding of actual or imminent abuse” the court has made here, see
24 supra at § I.; Gulf Oil, 452 U.S. at 98, 101 S.Ct. 2198, the court will issue “a carefully drawn order
25 that limits speech as little as possible, consistent with the rights of the parties under the
26 circumstances.” Gulf Oil, 452 U.S. at 102, 101 S.Ct. at 2201.

27 Finally, the court is troubled by the allegations leveraged against defendants’ counsel.
28 (See, generally, Dkt. 185-1, Memo.). The court is persuaded that the circumstances here,

1 particularly in light of the Ninth Circuit’s recent Arias decision, may justify an order permitting
2 defendants’ counsel to be deposed.⁸ See 860 F.3d at 1186. At this time, the court will not impose
3 such an order. In their response to the Order to Show Cause Why a Preliminary Injunction Should
4 Not Issue, the parties shall address this issue and apply the test set forth in In re Subpoena Issued
5 to Dennis Friedman, 350 F.3d 65, 71-72 (2d Cir. 2003). See Boeing Co. v. KB Yuzhnoye, 2015
6 WL 12803452, *9 (C.D. Cal. 2015) (“The Ninth Circuit Court of Appeals has not adopted the Eighth
7 Circuit’s reasoning in Shelton v. American Motors Corp., 805 F.2d 1323, 1327-28 (8th Cir. 1986)
8 and its progeny[.] Rather, the Court finds the Second Circuit’s reasoning in [Friedman] to be the
9 persuasive authority in allowing attorney deposition[.]”) (internal citation omitted).

10 CONCLUSION

11 Based on the foregoing, IT IS ORDERED THAT:

12 1. Plaintiff’s Application for Temporary Restraining Order and Order to Show Cause Why
13 a Preliminary Injunction Should Not Issue (**Document No. 184**) is **granted** in part and **denied** in
14 part, as set forth herein.

15 2. The Secretary shall be awarded attorneys’ fees and costs incurred in connection with
16 the instant Application. The Special Master shall make the determination as to amount of
17 attorneys’ fees and costs.

18 3. Defendants, their agents, and their counsel are hereby enjoined from taking any further
19 steps to retaliate or discriminate in any way against any current or former employee of the 12 car
20 washes at issue in this litigation, or any potential witness in this litigation, including communicating
21 with any non-managerial worker regarding any underpayment or nonpayment of wages due or
22 other violation of the FLSA outside the presence of counsel for the Secretary. Defendants and
23 their counsel shall not coerce or otherwise encourage any employee to sign any declaration or
24 other document purporting to or having the potential effect of relinquishing the employee’s rights

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26 ⁸ In their Opposition, defendants claim that the Secretary provides no authority justifying
27 deposing counsel. (See, generally, Dkt. 188, Opposition at 14-15). In fact, the Secretary provides
28 ample authority, including Arias, 860 F.3d at 1191-92. (See Dkt. 185, Application at 10; see also
Dkt. 189, Reply at 8-9).

1 under the FLSA. See J&L Metal Polishing, Inc., 2016 WL 7655766, at *6-8 (court enjoined
2 defendants from: “retaliating or discriminating in any way, including threatening to terminate,
3 actually terminating or threatening physical violence against any employee or witness cooperating
4 in the Secretary’s litigation or investigation because the employee or witness exercises any right
5 protected under the FLSA[;]” “communicating with any worker regarding underpayment or
6 nonpayment of wages due or other violation of the [FLSA] outside the presence of counsel for the
7 Secretary[;]” and “coercing any of their employees to sign waivers or other document[s] purporting
8 to relinquish their rights under the FLSA[.]”).

9 4. Defendants shall, no later than **February 23, 2018**, produce all documents associated
10 with securing or attempting to secure declarations from non-managerial employees, including all
11 notes, memos, forms, communications, recordings, statements, declarations (whether signed or
12 unsigned), signature pages, and drafts thereof, to the Secretary. Defendants shall also provide
13 the Secretary with a list of all employees (and their contact information) interviewed, and/or for
14 whom defendants drafted, solicited, or obtained declarations, no later than **February 16, 2018**.

15 5. For any document that is withheld and/or redacted on the basis of the work-product
16 protection, defendants shall provide a privilege log at the time the documents are produced, i.e.,
17 by the deadline set forth in paragraph four above. The privilege log shall contain sufficient
18 information to enable the court to determine whether *each element* of the work product protection
19 has been satisfied. The privilege log shall comply with Form No. 11:A as set forth in the California
20 Practice Guide: Federal Civil Procedure Before Trial (The Rutter Group 2017). Any document that
21 contains both protected and responsive information shall be redacted to eliminate any reference
22 to the work-product protection. However, defendants may not redact information that they believe
23 is irrelevant. See Flynn v. Goldman, Sachs & Co., 1991 WL 238186, at *2 (S.D.N.Y. 1991) (“[I]f
24 material really is irrelevant, it will be inadmissible at trial and little harm can flow from discovery
25 except the expense of production[.]”); Seafirst Corp. v. Jenkins, 644 F.Supp. 1160, 1165 (W.D.
26 Wash. 1986) (party must disclose whole report even if parts are irrelevant; disclosure of irrelevant
27 material causes no harm and “partial disclosure may tend to distort the tenor of the reports[.]”).

28 6. Defendants shall, no later than **February 23, 2018**, submit for in camera review to the

1 Special Master all documents⁹ that defendants claim are entitled to the work-product protection.
2 After reviewing the documents and conducting whatever proceedings the Special Master deems
3 appropriate, the Special Master shall prepare written findings as to the applicability of the work-
4 product protection as to each document produced by defendants.

5 7. The Special Master shall also conduct proceedings with respect to the 37 declarations
6 that are the subject of the instant Application. Given that the vast majority of the declarations were
7 signed in July 2017, and not produced until November 2017, the Special Master shall determine
8 whether defendants' violated their discovery obligations under, among other things, Fed. R. Civ.
9 P. 26 and 37 (e.g., supplementing disclosures and discovery responses) by failing to produce the
10 declarations and/or provide the names and addresses of the subject declarants for approximately
11 four months. If the Special Master determines that defendants have violated any of their discovery
12 obligations, the Special Master may impose and/or recommend the appropriate sanctions to be
13 imposed. In particular, the Special Master shall address whether defendants should be precluded
14 from using at trial or in support of or in response to any motion the aforementioned 37
15 declarations, including whether the declarations should be stricken, whether the court should
16 exclude the 37 witnesses at trial, whether and the amount of attorney's fees and costs to be
17 awarded, and any other appropriate sanction(s) the Special Master deems appropriate. The
18 Special Master shall conduct whatever proceedings she believes are appropriate to decide these
19 issues.

20 8. The parties are reminded that they must comply with the court's previous orders relating
21 to the appointment of the Special Master. (See, e.g., Dkt. 69, Court's Order of February 13, 2017;
22 Dkt. 87, Court's Order of April 4, 2017; Dkt. 110, Court's Order of May 26, 2017).

23 9. Defendants shall provide a copy of this Order to each individual named defendant and
24 the President and General Counsel for each corporate entity or business no later than one
25 business day from the filing date of this Order. No later than three business days from the filing
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27 ⁹ The court has already concluded that signed declarations are not subject to the work
28 product doctrine's protection.

1 date of this Order, defendants' counsel shall provide a declaration, under penalty of perjury, setting
2 forth the name and business address of each person who received a copy of this Order.

3 10. Defendants shall forthwith provide a copy of this Order to all persons acting in concert
4 or participating with defendants in business operations. Defendants shall provide all necessary
5 information about this Order to such parties. Defendants shall keep a log with the names and
6 addresses of all persons who have been provided with a copy of this Order.

7 11. Defendants shall file their written response to the Order to Show Cause why a
8 preliminary injunction should not be issued no later than **5:00 p.m. on February 6, 2018**. Plaintiff
9 shall file his reply to defendants' written response no later than **5:00 p.m. on February 10, 2018**.
10 Counsel for the parties shall attend a hearing regarding the Order to Show Cause on **February**
11 **13, 2018, at 2:30 p.m.**

12 12. The Clerk shall serve a copy of this Order on the Special Master.

13 Dated this 2nd day of February, 2018.

14 /s/

15 _____
16 Fernando M. Olguin
17 United States District Judge
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