

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

No. C 15-04963 WHA

v.

i2a TECHNOLOGIES, INC., a California
Corporation, VICTOR BATINOVICH, an
individual,

Defendants.

**ORDER GRANTING
SECRETARY OF LABOR'S
MOTION TO INCARCERATE
DEFENDANT VICTOR
BATINOVICH FOR FAILING TO
PURGE DEFENDANTS' CIVIL
CONTEMPT**

INTRODUCTION

In this wage-and-hour action, a prior order held defendants in civil contempt for failing to comply with a temporary restraining order and subsequent preliminary injunction. The Secretary of Labor now moves for a bench warrant to arrest and incarcerate one defendant until defendants purge themselves of civil contempt. For the reasons stated below, the motion of the Secretary of Labor is **GRANTED**.

STATEMENT

The facts of this case have been detailed in a prior order (Dkt. No. 27). Briefly, defendants i2a Technologies, Inc., and Victor Batinovich, CEO, majority shareholder, and member of the board of directors of i2a, failed to pay their employees' wages for work relating to the manufacture of semiconductors. On October 28, 2015, plaintiff Thomas E. Perez, Secretary of Labor of the United States Department of Labor, moved for a temporary restraining

1 order enjoining defendants from failing to pay their employees' wages, from shipping or selling
2 goods manufactured by employees that had not been paid, and from discouraging employees
3 from pursuing their rights under the Fair Labor Standards Act (Dkt. No. 3). The Court ordered
4 the Secretary to serve defendants with the summons, complaint, motion for a temporary
5 restraining order, and all supporting declarations and gave defendants an opportunity to oppose
6 the motion (Dkt. No. 9). The Secretary served both defendants by overnight delivery to i2a's
7 headquarters (Dkt. No. 10). Defendants did not respond. After a hearing at which defendants
8 did not appear, the Court granted the Secretary's motion for a temporary restraining order, and
9 issued an order to show cause why a preliminary injunction should not issue (Dkt. No. 12).

10 Plaintiffs served the temporary restraining order and order to show cause on defendants
11 by hand delivering it to Andrew Batinovich, Victor's adult son, at i2a's headquarters and by
12 mailing the order to i2a's headquarters (Dkt. Nos. 14–15). Additionally, Attorney Rose
13 Darling, counsel for the Secretary, spoke with Victor Batinovich on the phone regarding the
14 preliminary injunction hearing. Defendants did not file a response brief.

15 On November 17, the Court held a hearing on the Secretary's request for a preliminary
16 injunction. Approximately fifteen minutes after the hearing began, Victor Batinovich appeared.
17 Attorney Darling personally served Batinovich with the temporary restraining order and order
18 to show cause why a preliminary injunction should not issue.

19 Batinovich stated that although he remained the owner of i2a, he had been absent from
20 the company as of July 28 while he sought a buyer for the company. The Court heard sworn
21 testimony from several employees of i2a, which confirmed that Batinovich had largely
22 abandoned the company and that Frederick Solomon, the vice president of engineering at i2a
23 had taken over some of the day-to-day responsibilities at i2a, although Batinovich retained
24 responsibility over payroll (*id.* at 25–35).

25 The Court converted the temporary restraining order into a preliminary injunction and
26 ordered Batinovich to appear at a hearing on December 1 to show cause why he and i2a should
27 not be held in contempt for violating the temporary restraining order by failing to pay his
28 employees. The Court admonished Batinovich that he should retain counsel three times and

1 warned that he could face liens on his car or his home and that he could face jail time.

2 Batinovich provided the address of i2a's headquarters as the location at which he could be
3 served until such time that he retained counsel. Batinovich stated he would pick up any
4 messages at that location (*id.* at 40–51).

5 Batinovich did not file a response to the order to show cause, but he did appear at the
6 hearing on December 1. The Secretary presented evidence that Batinovich and i2a had failed to
7 pay wages to its employees totaling \$56,470.42 from the date the temporary restraining order
8 took effect until November 17 when Batinovich instructed i2a's employees to stop working.
9 The Secretary also presented evidence that Batinovich could be held personally liable as an
10 employer under the FLSA. Batinovich offered no evidence to dispute the Secretary's evidence
11 but claimed he lacked funds to pay the outstanding wages.

12 An order issued following the hearing holding Batinovich personally liable for the
13 unpaid wages as an employer under the FLSA. That order further held Batinovich and i2a in
14 civil contempt as follows (Dkt. No. 27 at 8):

15 This order finds Victor Batinovich and i2a in civil contempt of the
16 temporary restraining order dated November 3, 2015 and the
17 preliminary injunction dated November 17, 2015 by reason of their
18 failure to pay the payroll for the periods ending October 4, 2015,
19 October 18, 2015, November 1, 2015, and November 15, 2015.
20 Batinovich and i2a may purge this contempt by paying the
21 outstanding \$56,470.42 to their employees by **DECEMBER 31**. The
22 Secretary may immediately begin discovery into Batinovich's
23 personal financial circumstances, including taking records and
24 taking the depositions of Batinovich, his spouse, and i2a. On
25 **JANUARY 1** or thereafter, the Court will then entertain a motion for
26 further specific sanctions. Defendants are hereby **ORDERED** not to
27 hide or dispose of their assets or income sources other than for
28 ordinary living expenses.

22 The Secretary served Batinovich with a deposition notice and document request on
23 December 4 by overnight mail to him at the address of i2a's headquarters. The notice required
24 Batinovich to produce documents relating to his personal finances by December 11 and to
25 appear for a deposition on December 17. Batinovich did not comply (Darling Decl. ¶ 4,
26 Exh. A).

27 On December 8, the Secretary served Batinovich's wife, Ann, with a subpoena by taping
28 it to the front door of the Batinovich's home while three cars sat in the driveway and several

1 people remained inside but refused to answer the door. The notice required Ann Batinovich to
2 produce documents relating to her personal finances by December 11 and to appear for a
3 deposition on December 16. Ann Batinovich did not comply (*id.* ¶ 4, Exh. B).

4 Attorney Darling made several attempts to contact Victor and Ann Batinovich to no
5 avail (*id.* ¶¶ 4–5).

6 On January 13, the Secretary filed a request for an order to show cause why Batinovich
7 should not be incarcerated until he or i2a purge themselves of contempt (Dkt. No. 29). The
8 Secretary’s motion noted that an informant stated that Batinovich had sold i2a, though the
9 paperwork had not been finalized (Pham Decl. ¶ 2). The Court issued an order to show cause
10 on January 19 and scheduled a hearing for February 18. Batinovich’s response was due on
11 January 27.

12 The Court held a case management conference on January 28 at which both sides
13 appeared. Batinovich stated that he had contacted the Department of Labor seeking
14 clarification of the sum of money he would need to pay in order to settle the entire action, but
15 he claims he did not receive a clear response. Batinovich stated that he had not been served
16 with any deposition papers or any other papers in the action, but he admitted he had not been
17 checking his mail at the i2a headquarters. The Court informed Batinovich that he needed to
18 check his mail at that address and that he would be deemed to have notice of any documents
19 mailed there.

20 The Court again admonished Batinovich to retain counsel and noted that he would need
21 to pay \$56,470.42, as indicated in the order holding him in contempt, in order to purge the
22 contempt. The deadline for Batinovich to respond to the order to show cause regarding his
23 incarceration was extended to February 4. Batinovich has not responded.

24 This order follows a brief from the Secretary and oral argument held on February 18 at
25 which both sides appeared.

26 ANALYSIS

27 The order holding Batinovich in contempt clearly stated “Batinovich and i2a may purge
28 this contempt by paying the outstanding \$56,470.42 to their employees by **DECEMBER 31.**” To

1 date, neither Batinovich nor i2a has paid a penny of the outstanding wages, and accordingly,
2 both defendants remain in contempt.

3 The purpose of civil contempt is to coerce compliance with the court's order rather than
4 punish disobedience. *Spallone v. United States*, 493 U.S. 265, 280 (1990). Batinovich has
5 squandered numerous opportunities to make his case on the merits or to show that he cannot
6 pay the outstanding amount. This order finds that in order to coerce Batinovich's compliance
7 with the temporary restraining order and subsequent preliminary injunction in this action, he
8 must be incarcerated.


9 **CONCLUSION**

10 For the reasons stated above, it is hereby **ORDERED** as follows:

- 11 1. On **MARCH 1, 2016, AT NOON** or before, Victor Batinovich shall
12 self-surrender to the United States Marshal Office at 450 Golden
13 Gate Ave., San Francisco, 20th Floor, and the Marshal shall keep
14 him in custody until further order of the Court. Once the Court
15 determines that he has paid the \$56,470.42 in outstanding wages,
16 then it will either rescind this custody order or, if the payment is
17 after March 1, order the Marshal to release him. The absence of
18 any such rescission or modification means the custody order is in
19 effect.
- 20 2. The only reasons the Court is not ordering Victor Batinovich into
21 immediate custody are (i) to give him a brief further period to pay,
22 and (ii) to give him an opportunity to initiate an appeal of this order.
23 (However, this order will not be stayed while an appeal is pursued
24 to conclusion. Any such stay will be up to the appellate judges.)
- 25 3. Failure to report to the Marshal on **MARCH 1 AT NOON** or before
26 will result in a bench warrant for the arrest and detention of Victor
27 Batinovich.
- 28 4. The foregoing is the least drastic remedy available to the Court to
obtain compliance, many other lesser remedies have been
exhausted.

IT IS SO ORDERED.

Dated: February 18, 2016.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE