

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

OLGER NESTOR URENA FLORES,	:
MARIA SABINA FAJARDO DE URENA,	:
MERCEDES BALDROMINA FAJARDO ZUNIGA,	:
ANGELICA ANGELITAD URENA FAJARDO, AND	:
MONICA BEATRIZ OBANDO FAJARDO,	:
Plaintiffs,	:
	:
v.	: CIVIL NO: 3:08CV884 (AVC)
	:
	:
ANTONIO DIBENEDETO a.k.a. ANTONIO	:
D. BENNETTO, ANNA DIBENEDETTO,	:
GIOVANNI DIBENEDETTO,	:
FERDINANDO DIBENEDETTO, AND	:
ROCCO'S PASTRY SHOP AND BAKERY LLC,	:
Defendants.	:

RULING ON THE PLAINTIFFS' MOTION FOR PROTECTIVE ORDERS

This is an action for damages in which the plaintiffs, Nestor Urena, Maria Fajardo, Mercedes Fajardo, Angelica Urena, and Monica Obando assert that the defendants, Antonio DiBenedetto a.k.a. Antonio D. Bennetto (hereinafter "Antonio DiBenedetto"), Anna DiBenedetto, Giovanni DiBenedetto, Ferdinando DiBenedetto, and Rocco's Pastry Shop and Bakery LLC violated the Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. §201 *et seq.*, 42 U.S.C. § 1981 and Connecticut law. The plaintiffs seek to recover unpaid wages and other damages inflicted by the defendants, who are owners, principals, employees and agents of Rocco's Bakery Shop a.k.a. Rocco's

Bakery. On June 11, 2008, the plaintiffs filed a complaint in this case.

The plaintiffs filed a motion for a protective order with respect to certain documents, status information, and receipts. For the reasons that follow, the motion is GRANTED.

Standard

Federal Rule of Civil Procedure 26(c) states that "[u]pon motion by a party, . . . for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" Fed. R. Civ. P. 26(c). Accordingly, a party seeking a protective order pursuant to Fed R. Civ. P. 26, bears "the burden of showing good cause exists for issuance of that order." In re Agent Orange Product Liability Litigation, 821 F.2d 139, 145 (2d Cir. 1987).

I. Protective Order Re: Immigration Status

On May 25, 2013, the defendants requested written discovery concerning the plaintiffs' immigration status. The plaintiffs state that evidence of their immigration status is irrelevant. Specifically, the plaintiffs contend that courts have held that the FLSA covers protected workers regardless of their immigration status, and, in some cases, beyond the FLSA into trafficking and false imprisonment causes of action. Campos v.

Zopouindis, 2011 WL 4852491 at 1(D. Conn. Oct. 13, 2011); Topo v. Dhir, 210 F.R.D. 76 (S.D.N.Y. 2002)). The plaintiffs argue that the defendants primarily seek the plaintiffs' immigration status in order to attack their credibility. This strategy has been rejected by many courts because "the opportunity to test the credibility of a party does not outweigh the chilling effect that disclosure of immigration status has on employees seeking to enforce their rights." Rengifo v. Erevos Enterprises, Inc. WL 894376 (S.D.N.Y. Mar. 20, 2007)

The defendants respond that immigration status is relevant to the plaintiffs' wage and overtime cause of action because the complaint alleges that the defendants paid the plaintiffs in cash, despite the plaintiffs' request to be paid by check, as well as alleging the failure to keep adequate records. The defendants argue that the plaintiffs' immigration status would explain the absence of written records, an issue that may affect the "jury's assessment of the credibility" of the plaintiffs' underpayment cause of action and "assessment of the willfulness of any found violations." Campos v. Lemay, 2007 U.S. Dist. LEXIS 33877, at 25 (S.D.N.Y. May 7, 2007)).

The court concludes that the issue of the plaintiffs' credibility does not outweigh the chilling effect that disclosure of immigration status has on enforcing their rights.

The motion for a protective order regarding the plaintiffs' immigration status is GRANTED.

II. Protective Order Re: Income Tax Returns

On May 25, 2013 the defendants sought production of the tax returns filed by the plaintiffs for each of the years in which they were employed by the defendants. The plaintiffs argue that although not inherently privileged, courts are normally reluctant to compel the disclosure of income tax returns, and require a two-part test to compel disclosure. First, the returns must be relevant, and second, there must be a compelling need for the returns because the information is not otherwise freely attainable. See Rhea v. Uhry, 2007 WL 926908 at 2 (Mar. 26, 2007); Smith v. Bader, 83 F.R.D. 437, 438 (S.D.N.Y. 1979). Specifically, the plaintiffs argue that the two-part test has not been met by the defendants because they have failed to show a compelling need for the plaintiffs' tax returns and, even if the request is found to be relevant to the action, the information is otherwise readily obtainable.

The defendants respond that the request for production of income tax returns is not limited to those the plaintiffs may have filed for wages earned at Rocco's Bakery and are relevant to the subject of this action. Specifically, the defendants argue that the documents are probative of whether the plaintiffs were truly dependent, as alleged in the complaint.

The court concludes that the defendants have not demonstrated a compelling need for the plaintiffs' income tax returns. The motion for a protective order regarding income tax returns is GRANTED.

III. Protective Order Re: Social Security Numbers

On May 25, 2013 the defendants sought production of the plaintiffs' social security numbers. The plaintiffs argue that courts have recognized that this is a back door attempt to learn of immigration status. Rengifo WL 894376 at *3 (S.D.N.Y. Mar. 20, 2007). Specifically, the plaintiffs argue that the need to test their credibility does not outweigh the chilling effect that the disclosure would have in their pursuit to enforce their rights.

The defendants did not specifically respond to the provisions of plaintiffs' protective order regarding prohibiting discovery of the plaintiffs' social security numbers. However, as noted above, the defendants argued that the plaintiffs' immigration status would explain the absence of written records, an issue that may affect the jury's assessment of the credibility of the plaintiffs' underpayment cause of action and assessment of the willfulness of any found violations.

The motion for a protective order regarding social security numbers is GRANTED.

