

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR H. ALVARADO BALDERRAMO,
*individually and on behalf of all other persons
similarly situated*, ET AL.,

Plaintiffs,

– against –

GO NEW YORK TOURS INC., and ASEN
KOSTADINOV, *jointly and severally*,

Defendants.

ORDER

15 Civ. 2326 (ER)

Ramos, D.J.:

The Court is in receipt of cross motions for a Rule 37.2 conference and Plaintiffs' motion for an extension of time to file a response to Defendants' motion for summary judgment. Docs. 199, 208. For the following reasons, a discovery conference will be scheduled for December 1, 2020 to discuss the issues raised by the parties in their letters. However, Plaintiffs' request for an extension of time to file a response to Defendants' summary judgment brief is denied.

This Court held a pre-motion conference on September 17, 2020, at which it permitted Defendants to file a motion for summary judgment arguing that the case should be dismissed based on the doctrine of primary jurisdiction. Defendants filed their motion for summary judgment on October 8, 2020. Doc. 186.

On October 27, 2020, Plaintiffs filed a letter motion seeking leave to move to compel production of certain discovery responses that Plaintiffs alleged were necessary for them to respond to Defendants' summary judgment motion. Doc. 193. Plaintiffs also sought to extend their deadline to respond to Defendants' summary judgment motion until after either Defendants respond to Plaintiffs' discovery demands or the Court denied Plaintiffs' motion to compel. Doc.

196. Defendants replied that they would respond to the discovery requests by Monday, November 2, 2020 and accordingly suggested new deadlines for the summary judgment opposition and reply briefs. Doc. 197. The Court therefore denied Plaintiffs' request for a pre-motion conference as moot and adopted the deadlines set by defendants. Doc. 198.

Plaintiffs now request an additional extension of time to respond to Defendants' summary judgment motion because the discovery responses proffered by Defendants on November 3 were allegedly deficient. Doc. 208. Plaintiffs also move to compel production of wage and hour records on behalf of the entire class on this basis. *Id.* Plaintiffs cite other discovery deficiencies that do not directly relate to their summary judgment defenses as well. *Id.*

A Rule 37.2 Conference will be held to discuss these alleged discovery deficiencies. At this conference, the parties may also discuss Defendants' intention to move for a confidentiality stipulation and Plaintiffs' response. *See* Docs. 199, 209. Defendants are permitted to respond to Plaintiffs' letter requesting this conference, Doc. 208, no later than November 17, 2020.

However, because at this stage the Court is unable to conclude that Plaintiffs' request for leave to file a motion to compel will be granted (or that the motion itself will be granted in the event it is filed), and to avoid further delay, Plaintiffs' request for an extension of time to reply to Defendants' summary judgment motion is denied. In the event that Defendants are ordered to produce additional documents that impact Plaintiffs' defenses to the summary judgment motion, Plaintiffs may move for leave to file a sur-reply to Defendants' summary judgment motion on that basis. Any such motion should be made within two weeks of receipt of additional discovery documents.

In sum:

- Defendants' letter motion for a Local Rule 37.2 conference is granted. The Conference will be held telephonically on December 1, 2020 at 11 a.m. The

parties are instructed to call 877-411-9748 and enter access code 3029857# when prompted.

- Plaintiffs' letter motion for a Local Rule 37.2 conference is granted in part and denied in part. Plaintiffs may discuss their intention to file a motion to compel at the December 1 Rule 37.2 conference. However, Plaintiffs will receive no extension to respond to Defendants' summary judgment motion.
- Defendants may file a response to Plaintiffs' Local Rule 37.2 motion by no later than November 17, 2020.
- In the event that Defendants are ordered to produce additional documents, Plaintiffs may move for leave to file a sur-reply to Defendants' summary judgment motion. Any such motion must be filed within two weeks of the receipt of such discovery.

The Clerk of Court is respectfully directed to terminate docket numbers 199 and 208.

SO ORDERED.

Dated: November 12, 2020
New York, New York



Edgardo Ramos, U.S.D.J.