IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

MILTON AL STEWART, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF, v. PARAGON CONTRACTORS CORP., JAMES JESSOP and BRIAN JESSOP, individually, and PAR 2 CONTRACTORS, LLC, DEFENDANTS,	**ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION AND MOTION FOR DISCOVERY** Case No. 2:06-cv-700-TC U.S. District Court Judge Tena Campbell

In this child labor case, Milton Al Stewart, Acting Secretary of Labor for the United States Department of Labor (the "Secretary" or "DOL"), seeks a preliminary injunction against Defendants Paragon Contractors Corporation ("Paragon") and Par 2 Contractors, LLC ("Par 2") (collectively "Defendants") to prevent them from formally dissolving and transferring, concealing, encumbering, or dissipating assets and business operations during this litigation. The Secretary also seeks an order compelling the immediate production of documents related to Defendants' business activities and for *in camera* deposition testimony from Don Jessop and Brian Jessop. (See Mot. for Prelim. Inj. & to Compel Business Records & *In Camera* Dep. Testimony (ECF No. 267) ("Motion for Preliminary Injunction").)

Because the Secretary has satisfied all the elements necessary to obtain a preliminary injunction, the court grants that motion. The Secretary has also established the need for discovery, and, as set forth in more detail below, the court orders Defendants to provide the information requested by the Secretary and to allow the Secretary to depose both Don Jessop and Brian Jessop.

STATEMENT OF FACTS

In June 2016, the court found Defendants Paragon and Brian Jessop in contempt of a 2007 permanent injunction ("2007 Injunction") (ECF No. 26) prohibiting future violations of the child labor provisions of the Fair Labor Standards Act ("FLSA"). (See June 16, 2016 Findings of Fact & Conclusions of Law, ECF No. 99 ("2016 Contempt Order").) As a remedy for their contempt, the court ordered them to pay $1,012,960.90 in back wages to compensate the minors who worked for them at the Southern Utah Pecan Ranch in violation of the 2007 Injunction. (See Dec. 6, 2016 Order on Sanctions, ECF No. 109 ("2016 Sanction Order"); July 2, 2019 Order, ECF No. 241 ("2019 Back Wages Order").)[1] Defendants paid an initial $200,000 into a back wage fund established by the Secretary in 2017, but have failed to pay the additional $812,960.90 ordered by the court.[2]

While litigating the contempt action and back wage judgment, the Secretary learned that Paragon continued business operations under the name Par 2 and promptly resumed using unlawful child labor. The Secretary filed a second contempt action arguing that Par 2, as a successor and a person in active concert and participation with Paragon and Brian Jessop, was bound by and in contempt of the 2007 Injunction. Par 2 intervened. After an evidentiary hearing, United States District Court Judge David Nuffer entered an order in September 2018 finding that Par 2, as a

[1] Defendants appealed the 2016 Contempt Order, the 2016 Sanction Order, and the 2019 Back Wages Order. The appeals court affirmed in relevant part. See Acosta v. Paragon Contractors Corp., 884 F.3d 1225, 1229 (10th Cir. 2018); Scalia v. Paragon Contractors Corp., 957 F.3d 1156 (10th Cir. 2020).

[2] The 2016 Sanction Order required Paragon and Brian Jessop to make an initial deposit of $200,000 into a back wage fund and ordered them to make additional future payments as necessary to satisfy all court-approved claims. After the one-year claims period and subsequent hearing, the court ordered Defendants to pay an additional $812,960.90 into the fund. See 2019 Back Wages Order. Defendants appealed that back wage order, which the Tenth Circuit affirmed in May 2020. Scalia v. Paragon Contractors Corp., 957 F.3d at 1156.

successor to and party in active concert and participation with Paragon, was bound by and in contempt of the 2007 Injunction. (Sept. 10, 2018 Mem. Decision Including Findings of Fact & Conclusions of Law & Contempt Order, ECF No. 209 ("2018 Contempt Order").)[3] Judge Nuffer specifically found that "Par 2 is a successor to Paragon and Paragon's business was transferred to Par 2 to evade the 2007 injunction and the related subpoena enforcement and contempt proceedings that followed in 2013 (and culminated in a finding of contempt and sanctions order)." (Id. at 25.)

Paragon, Brian Jessop, and Par 2 appealed, but the Tenth Circuit affirmed Judge Nuffer's Order on grounds that Par 2 was bound by the 2007 injunction under Rule 65 as "the instrumentality through which Paragon and Jessop sought to evade the injunction." Scalia v. Paragon Contractors Corp., 796 F. App'x 962, 968 (10th Cir. 2019).

In September 2020, after the Tenth Circuit affirmed this court's back wage contempt remedy of $1,012,960.90, the Secretary filed a motion for an order to show cause (ECF No. 255) why Par 2 should not also be held liable for the back wages under Fed. R. Civ. P. 65 as a person in active concert and participation with Paragon and Brian Jessop, or as a successor to Paragon. The court granted the show cause motion (ECF No. 263), and after a hearing, issued an order on February 5, 2021, finding Par 2 liable for the balance of unpaid back wages. Based on findings in the court's previous 2018 Contempt Order, the court held:

> Par 2 is Paragon. "Paragon simply changed its name to Par 2 and continued business as usual." ([2018 Contempt Order] at 26.) That name change "is the only real distinction to be made between the two companies." (Id. at 32.) On appeal, the Tenth Circuit agreed: "[T]he record clearly and convincingly establishes Par 2 operated as a disguised continuance of Paragon. … Par 2 simply picked up Paragon's operations." Scalia v. Paragon Contractors Corp., 796 F. App'x at 968.

[3] Perez v. Paragon Contractors Corp., 340 F. Supp. 3d 1194 (D. Utah 2018).

(Feb. 5, 2021 Order & Mem. Decision Finding Par 2 Contractors, LLC Liable for Backwage Contempt Remedy at 8, ECF No. 281 (emphasis added).)

In the meantime, on December 11, 2020, the court entered two orders awarding costs and attorney's fees to the Secretary associated with prosecuting the 2018 contempt proceedings and ordering Defendants to place $50,000 into a fund to provide training on the child labor provisions of the FLSA and its implementing regulations to all of Defendants' employees and management. (See Dec. 11, 2020 Order Awarding Costs & Attorneys' Fees, ECF No. 265; Dec. 11, 2020 Order Re: Training Fund, ECF No. 266.)

The Secretary promptly contacted counsel for Paragon and Par 2 to discuss the logistics of the training fund order. On December 16, 2020, counsel for Par 2 represented that Par 2 is a "defunct company" that has not operated over the last year, no longer has employees, and intends to formally dissolve after it completes its 2020 taxes. Counsel for Paragon represented that Paragon has not operated for years and he does not know Brian Jessop's current employment status or relationship with Defendants. Before these communications, Defendants did not notify the Secretary of their intent to dissolve Par 2 or that Par 2 allegedly discontinued business operations.

Upon learning this information, counsel for the Secretary searched the Utah Department of Commerce's website and discovered that on September 1, 2020, Par 2 filed a voluntary Statement of Dissolution. (See Ex. 1 to Mot. for Prelim. Inj., ECF No. 267-1.) Paragon is noted as "expired" for not filing its annual report.

The Secretary then filed his Motion for Preliminary Injunction. For the reasons set forth below, the motion is granted.

PRELIMINARY INJUNCTION

To obtain a preliminary injunction, the Secretary must show that: (1) he will suffer

irreparable injury unless the court issues the injunction; (2) the threatened injury to the Secretary outweighs damage the injunction may cause the Defendants; (3) issuing the injunction would not be adverse to the public interest; and (4) the Secretary has a substantial likelihood of success on the merits. Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc., 805 F.2d 351, 355 (10th Cir. 1986).

As the history of this case establishes, Defendants, through Don Jessop and Brian Jessop, have demonstrated their willingness to go "to great lengths to conceal and minimize" a transfer from Paragon to Par 2, using Par 2 as the "instrumentality through which" Paragon could evade court orders. (2018 Contempt Order at 25.) By granting the Secretary temporary injunctive relief, the court is preserving "the status quo pending the outcome of the case" in order to preserve the court's "power to render a meaningful decision on the merits." Tri-State Generation & Transmission Ass'n, 805 F.2d at 354–55.

The Secretary contends that allowing Par 2 (and, for that matter, Paragon) to formally dissolve would allow Defendants and their principals to hide any ongoing business activities and arrangements from the Secretary that are an attempt to evade court orders. Defendants' previous acts—most particularly, moving Paragon's business operations to a new business entity and name (Par 2) to evade contempt orders and the 2007 Injunction; failing to notify the Secretary of intent to dissolve Par 2; and Par 2's undisclosed September 1, 2020 filing of a Statement of Dissolution with the State of Utah—support the Secretary's well-founded suspicions that Defendants are once again attempting to evade their obligations by continuing their business operations under other organizations or arrangements.

Given the situation, and based on an analysis of the requirements for injunctive relief, the court finds the Secretary is entitled to the preliminary injunction he seeks.

The Secretary Has Established Irreparable Harm.

The threatened injury to the Secretary includes loss of information about Defendants' business operations and the ability to hold them accountable for their court-ordered obligations, including substantial back-wage liability and payment of $50,000 into a court-ordered training fund.[4] (See, e.g., 2018 Contempt Order at 36–38 (requiring payment of $50,000 into training fund, payment of attorneys' fees, and potential monetary penalties for failure to comply with the order); Feb. 5, 2021 Order & Mem. Decision, ECF No. 281 (affirming Par 2's obligation to pay $812,960.90 in back wages).) The final dissolution of Defendants may hinder the Secretary's effort to prevent Defendants from transferring, concealing, dissipating, or encumbering assets and transferring business operations to other business arrangements owned or controlled by them, as they have done before, to evade their responsibilities. And that of course would make it even more difficult to collect the contempt remedies ordered in this case. For these reasons, failure to enter injunctive relief will cause irreparable harm to the Secretary. Tri-State Generation & Transmission Ass'n, 805 F.2d at 354–55.

Injury to the DOL Outweighs Injury to the Defendants.

The DOL's efforts to collect the funds will once again be hampered if corporate transactions, including transfers of assets and business operations, have occurred or are about to occur in an effort to evade financial obligations imposed by the court. Because the requested injunctive relief maintains the status quo and Defendants have not identified any injury they will

[4] Par 2 has unilaterally determined that it need not pay the $50,000 because "no employees exist to train." (Par 2 Resp. to Mot. for Prelim. Inj. at 4, ECF No. 270.) The court has not addressed that issue, and until it finds otherwise, Par 2 remains obligated.

suffer if the court issues the injunction, the Secretary's injury clearly outweighs any harm to Defendants that might result.

The Injunction is in the Best Interest of the Public.

Enjoining Defendants from formally dissolving during this litigation will serve the public interest in facilitating Defendants' accountability for outstanding sanctions orders, including costs and fees, a training fund to protect against future child labor violations, and over one million dollars in back wages owed to children who worked for Defendants in violation of the child labor provisions of the FLSA.

The Secretary is Very Likely to Succeed on the Merits.

The Secretary has also established a substantial likelihood that he will prevail on the merits in this case. The court has already found Defendants to be in contempt and has ordered related sanctions and remedies that are at the heart of the Secretary's motion for preliminary injunction. The Secretary is attempting to enforce what has already been ordered.

Still, Paragon objects to the Secretary's motion because, it says, the issue is moot so the court does not have jurisdiction to enjoin Paragon:

> The relief being sought by Plaintiff to prevent Paragon from "transferring, concealing, encumbering, or dissipating assets and business operations during this litigation" is clearly, by this Court's own binding determination, moot to the extent it may pertain to Paragon. It is also impossible to comply with inasmuch as Paragon has no assets or business operations that could be transferred, concealed, encumbered or dissipated.

(Paragon's Resp. to Mot. for Prelim. Inj. at 3, ECF No. 271. See also Paragon's Suppl. Resp. to Mot. for Prelim. Inj. at 2–3, ECF No. 277 (citing Thournir v. Buchanan, 710 F.2d 1461, 1462–63 (10th Cir. 1983) (discussing jurisdiction when issue on appeal is moot).)

The binding determination to which Paragon refers is the following finding of fact in the

2018 Contempt Order:

> While Paragon remains an active company, it has no contracts for work, jobs, or employees. Paragon sold most of its tools and equipment over the last few years. At most, Paragon had "a job or two" that was "still going on" in 2016 somewhere in Louisiana, but Brian Jessop does not remember any details of the job. Paragon had no jobs or contracts for work in 2017.

(2018 Contempt Order at p. 5 ¶ 11.) Paragon then says the court's "factual findings were a foundational requirement for the Court's subsequent conclusion that Par 2 was the successor in interest to Paragon. Moreover, as is also noted in Plaintiff's Motion, Paragon's corporate charter with the State of Utah has now expired, so it no longer even has active status." (Paragon's Resp. to Mot. for Prelim. Inj. at 3.)

In the 2018 Contempt Order, the court did not hold that Paragon is no longer liable for the contempt remedies. In fact, the court recognized that Paragon was at that time an active company and that it was again in violation of the 2007 Injunction. "Defendants and Par 2 cannot be permitted to avoid all responsibility for compliance with the 2007 Injunction entered against Paragon, Brian Jessop, and James Jessop, by the simple expedient of unofficially transferring Paragon's business operations to Par 2 under the individual control of the same family members." (2018 Contempt Order at 32.)

Paragon is still a defendant. The fact that Paragon let its corporate charter lapse[5] does not automatically absolve it of liability imposed during these contempt proceedings. Moreover, the court has already found that "Par 2 is Paragon" and that "Paragon simply changed its name to Par 2 and continued business as usual." (Feb. 5, 2021 Order & Mem. Decision at 8, ECF No. 281 (reiterating finding made in 2018 Contempt Order).) Given the interweaving of Paragon with Par

[5] The record does not indicate when that occurred.

2, as well as credibility concerns that both entities (through their principals and employees) have generated throughout this litigation, the Secretary has raised a valid concern that Paragon, in some form, continues to operate and is involved in Par 2's business matters, including Par 2's decision to dissolve. Whether the Secretary can, as a practical matter, ultimately recover funds from Paragon is for another day. But based on the record before the court, the issue is not moot.

For the foregoing reasons, the court finds that this factor weighs in the Secretary's favor.

Conclusion

The Secretary has satisfied his burden to show he is entitled to the injunctive relief he requests. There being no harm to Defendants to maintain the status quo, **THE COURT HEREBY ENJOINS DEFENDANTS AS FOLLOWS:**

It is hereby **ORDERED, ADJUDGED, AND DECREED,** pursuant to Fed. R. Civ. P. 65, that Defendants, their officers, agents, servants, employees, and all persons in active concert and participation with them are hereby temporarily enjoined and restrained from formally dissolving and transferring, concealing, encumbering, or dissipating assets and business operations during this litigation.

ORDER REQUIRING REQUESTED DISCOVERY

In his motion, the Secretary submitted requests for documents and deposition testimony that he says he needs in order to collect the remedies ordered by this court. (See Ex. 2 to Mot. for Prelim. Inj., ECF No. 267-2.)

Par 2 objects that "some are exceedingly broad and unrelated to Par 2's decision to winddown its business operations." (Par 2 Suppl. Resp. to Mot. for Prelim. Inj. at 2, ECF No. 276.) In lieu of the documents requested, Par 2 offers to provide tax returns for the years 2017–2019, a financial statement for 2020, and a corporate representative for deposition to follow up on

questions about the documents. In reply, the Secretary says "all of the documents requested are necessary to evaluate Defendants' business activities to identify any attempts to transfer, conceal, encumber, or dissipate assets and business operations to avoid liability in this case." (Pl.'s Reply in Supp. of Mot. for Prelim. Inj. at 4, ECF No. 279.) Based on a review of the requests, and for the reasons stated in the Secretary's Reply, the court finds the requests are reasonable, relevant, and not unduly burdensome. (See id. at 4–5.)

Paragon objects that it cannot comply with the requests because it is no longer an active company. Because the court has determined that the issues raised by the motion for preliminary injunction are not moot as to Paragon, the court orders Paragon to respond to the requests to the extent it is able.

For the foregoing reasons, and for good cause shown by the Secretary, Defendants are ordered to produce to the Secretary the following records no later than February 19, 2021:

1. All State and Federal income tax returns of Defendants for 2017, 2018, 2019, and 2020. If 2020 tax returns are not prepared, such documents should be produced within five business days upon final preparation.

2. Copies of all Audited Annual Financial Statements of Defendants for the past three years.

3. Copies of all Unaudited Financial Statements of Defendants for the past three years and up to the date of production. This request includes any year to date financial statements.

4. Copies of bank statements for the past three years from all banks, or other financial institutions where Defendants have an account of any kind, including checking, savings, investments, and credit cards. This shall include bank account numbers, date account was opened, the opening balances, and present balances. This shall also include accounts for any sole

proprietorship, partnership or corporation in which Defendants may own any interest.

5. Copies of all audited and unaudited business and accounting records (e.g., income statements, operating statements, profit and loss statements, balance sheets) for the past three years which reflect all assets, liabilities, sales, income, and expenses. This request shall include records for any sole proprietorship, partnership or corporation in which Defendants may own any interest.

6. Copies of all contracts (including subcontracts) for jobs performed by Defendants over the past three years.

7. Copies of all legal documents reflecting Defendants' corporate structure and transactions, including without limitation articles or certificates of incorporation/organization, operating agreements, shareholder agreements, stock/member ledgers, annual corporate filings, asset purchase or sales agreements, dissolution notices, stock/unit purchase or sales agreements.

8. Copies of all business licenses, permits and registrations obtained by Defendants over the last three years, whether obtained by localities, states, or industries.

9. Copies of all insurance policies held by Defendants over the last three years, including business liability insurance, auto insurance, or any other policies.

10. All promissory notes held by Defendants and all other documents evidencing any money owed to Defendants, either now or in the future.

11. Copies of all deeds, bills of sale or other documents prepared in connection with any transfer made by Defendants, either by gift, sale or otherwise within the last three years.

12. Copies of all deeds, leases, contracts and other documents representing any ownership interest the Defendant has in any real property, and all deeds of trust, mortgages or other documents evidencing encumbrances of any kind on the Defendants' real property.

Parties are also ordered to confer with each other and the court as soon as possible to schedule a date and time for Don Jessop and Brian Jessop to appear via Zoom or other similar platform to give deposition testimony during the first half of March. The court will be available by telephone to address parties' questions or concerns that arise during the depositions.

SO ORDERED this 11th day of February, 2021.

Tena Campbell
United States District Court Judge