

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

BAYOU LAWN & LANDSCAPE SERVICES,)	
CHAMBER OF COMMERCE OF THE UNITED)	
STATES OF AMERICA, NATIONAL HISPANIC)	
LANDSCAPE ALLIANCE, PROFESSIONAL)	
LANDCARE NETWORK, SILVICULTURAL)	
MANAGEMENT ASSOCIATES, INC.,)	
FLORIDA FORESTRY ASSOCIATION,)	
)	
Plaintiffs)	
)	
v.)	No.3:12-cv-00183 (MCR-
)	EMT)
THOMAS PEREZ, JR. and JANE)	
OATES,)	
)	
Defendants.)	

SUPPLEMENTAL DECLARATION OF SABEENA HICKMAN

1. My name is Sabeena Hickman. I am the Chief Executive Officer of the Professional Landcare Network (“PLANET”), a not-for-profit membership corporation headquartered in Herndon, VA, which along with its members is a named Plaintiff in the above-referenced case.

2. On April 16, 2012, I submitted a Declaration to the Court describing the imminent and irreparable injury that would occur to the green industry if the Department of Labor (“DOL”) were allowed to impose legally binding substantive standards for the wages and workings conditions of H-2B nonimmigrants and others in connection with the H-2B program. In particular, I described the economic scope of the green industry; the variety of services that green industry professionals provide to their customers; how hiring a qualified legally-authorized workforce is a challenge for PLANET’s members; how the H-2B program is essential to the

survival of many of PLANET's members; and how implementation of the regulations that DOL compiled and promulgated in the Federal Register as Employment and Training Administration, *Temporary Non-Agricultural Employment of H-2B Aliens in the United States, Part II*, 78 Fed. Reg. 10038 (Feb. 21, 2012) ("2012 H-2B Comprehensive Final Rule"; "2012 Program Rule"), would cause PLANET and PLANET's members irreparable injury.

3. This Court entered a Preliminary Injunction on April 26, 2012 enjoining DOL from enforcing the provisions of the 2012 H-2B Comprehensive Final Rule pending the Court's adjudication of PLANET's and the other Plaintiffs' claims. The Court entered this Order because it found that we and the other Plaintiffs were likely to succeed on the merits of our claims, that there was a substantial threat that enforcement of the 2012 H-2B Comprehensive Final Rule would have significant and irreparable losses of revenue, customers, and goodwill, and that any harm to DOL was outweighed by the devastating effects of the regulations in the 2012 H-2B Comprehensive Final Rule.

4. This Court also stated that preliminarily enjoining DOL's enforcement of the 2012 H-2B Comprehensive Final Rule was in the public interest because delaying the rule while the Courts adjudicated its legality was necessary to ensure that DOL was acting legally.

5. DOL then appealed the Court's decision to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals affirmed. It ruled that Congress had not expressly authorized DOL to set legally binding standards governing the wages and working conditions of H-2B nonimmigrants admitted to the United States or governing any other aspect of an employer's participation in the H-2B program. The Court of Appeals also rejected DOL's argument that the "text, structure, and object" of the statutory provisions relating to the H-2B program implicitly delegated lawmaking power to DOL. The Court of Appeals also agreed with

this Court that we Plaintiffs had sufficiently shown that we would be irreparably injured by the provisions of 2012 H-2B Comprehensive Rule and that the public interest favored a preliminary injunction.

6. After the Court of Appeals issued its mandate, it is my understanding that this Court entered an Order requiring the parties to make additional submissions so that the Court could adjudicate our claims.

7. In connection with the resumption of these proceedings, I reviewed the Declaration that I submitted at the beginning of this litigation. I have attached it for ease of reference. Everything in that Declaration is still true. The reasons that the 2012 H-2B Comprehensive Final Rule will cause irreparable injury bear repetition:

11. There are several other elements of the Final Rule that will directly, certainly, and adversely affect PLANET's H-2B members. They range from increased recruiting and advertising costs and a more complicated and burdensome application process. PLANET members face substantially increased business costs as well as complex, inflexible regulations. In short, the Final Rule will significantly, immediately, and adversely affect PLANET and its members that participate in the H-2B program.

12. PLANET and its H-2B members will be immediately affected by the Final Rule even if they plan to file applications for temporary labor certification later in the year. Most landscape companies get most of their business through competitive bidding. If a bid is successful, the company and the customer will then enter into a long-term contract. Such contracts lock in prices for the landscape company and costs for the customer. They also assure the landscape company a "book of business" which helps the company to estimate its expenses and profits in advance. Because the current contracts were bid well before DOL issued the Final Rule, PLANET's H-2B members have no realistic option to recover the additional costs required by the Final Rule from their customers. They must either perform the contract at a loss or cancel it. If they seek to renegotiate with the customer, price-sensitive customers will cancel and re-bid the project. No matter what option PLANET's members choose, the Final Rule will cause them severe and immediate economic injury.

13. Not only will PLANET's H-2B members lose current customers, they are unlikely to be able to replace them. From a consumer perspective, landscape services are discretionary. There is a limit to how much consumers will pay for

professional landscaping services before they choose to simply forgo them. By increasing the price that PLANET's H-2B members have to charge for their services, the Final Rule will lose businesses and good will as others who do not participate in the H-2B program underbid them


14. The Final Rule will be devastating to PLANET's H-2B members as well as the public generally. Congress has determined that the public interest is best served when employers can access foreign labor markets to meet their temporary, non-agricultural labor needs. This policy judgment has been an element of this Nation's immigration law since the 1950's. The experience of PLANET's H-2B members shows that the H-2B program achieves Congress' goal and supports a large number of jobs for U.S. workers. The Final Rule rejects Congress' judgment that access to foreign labor markets serves the public interest and actively seeks to discourage participation in the H-2B program.

15. The Final Rule grants a large competitive advantage to employers who do not pay a premium to hire legal workers. PLANET's H-2B members already pay additional costs to ensure that they are complying with our Nation's immigration laws. Encouraging less than complete compliance with the immigration laws by the competitors of PLANET's H-2B members does not protect the jobs of U.S. workers. The Final Rule places them at a severe competitive disadvantage and works against this objective by punishing them for their compliance. The Final Rule will stunt, if not reverse, the growth of PLANET's H-2B members' businesses and the career opportunities of their year-round, U.S. workers.

8. This Supplemental Declaration consists of four pages and eight paragraphs. I ask that the Court treat my Declaration as incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2013



Sabeena Hickman