IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Christian Employers Alliance, *Plaintiff*, v. United States Equal Employment Opportunity Commission, *et al.*. *Defendants*.	)	Case No. 1:21-cv-195-MDT-CRH

UNOPPOSED MOTION TO AMEND SUMMARY JUDGMENT ORDER PURSUANT TO RULES 59(E) AND 60(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Defendants hereby move the Court to amend its Order Granting Motion for Partial Summary Judgment, ECF No. 82 ("Summary Judgment Order"), to clarify that Defendants do not violate the permanent injunction issued by the Court by taking any action under either Section 1557 or Title VII as to any people or entities that Defendants are unaware are covered by the scope of the injunction, provided that Defendants promptly comply with the injunction upon receiving proper notice that a person or entity is covered by the injunction. Because Plaintiff Christian Employers Alliance ("Plaintiff" or "CEA") has not identified its members, Defendants respectfully submit that the requested relief is necessary to meet the requirements of Federal Rule of Civil Procedure 65(d) to describe the acts restrained in reasonable detail. The amendment Defendants seek is similar to a modification the Court made[1] to its Preliminary Injunction Order,[2] in response

[1] Order Granting Motion to Amend/Correct, ECF No. 44 ("Preliminary Injunction Amendment Order").
[2] Order Granting Motion for Preliminary Injunction, ECF No. 39 ("Preliminary Injunction Order").

to Defendants' unopposed motion to amend the Preliminary Injunction Order.[3] As with the Preliminary Injunction Amendment Motion, counsel for Plaintiff has informed Defendants' counsel that Plaintiff does not intend to oppose this motion.

BACKGROUND

Given that the Court has issued detailed decisions in this case, Defendants do not recount again here the full factual and procedural background. As relevant to this motion, on March 4, 2024, the Court granted Plaintiff's Motion for Partial Summary Judgment, ECF No. 69, and directed entry of partial final judgment for CEA on its first and third claims for relief under the Religious Freedom Restoration Act. Summary Judgment Order at 18. The Court permanently enjoined and restrained HHS and EEOC and related parties from taking certain actions "against CEA or its present or future members, or anyone acting in concert or participation with them, and their respective health plans and any insurers or [third-party administrators] in connection with such health plans." *Id.* at 19. CEA has not identified its members to Defendants other than two members identified in the First Amended Complaint, and Defendants understand from CEA's counsel that CEA does not wish to identify its members to Defendants.

Earlier in the case, the Court entered a preliminary injunction that, much like the permanent injunction, enjoined HHS and EEOC from taking certain actions against CEA's "present or future members" and, in the case of EEOC, "the insurers and third-party administrators of [CEA]'s present and future members." Preliminary Injunction Order at 17-18. Defendants filed an unopposed motion asking the Court to modify the preliminary injunction to add language that is similar to the language Defendants here ask the Court to add to the permanent injunction. *See*

[3] Motion to Amend Injunction Order Pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, ECF No. 43 ("Preliminary Injunction Amendment Motion").

Preliminary Injunction Amendment Motion at 9-10. The Court granted the motion and added the following "clarifying language" to the preliminary injunction:

> (1) Neither HHS nor the EEOC violates this order by taking any of the above-described actions against any Alliance member, anyone acting in concert or participation with an Alliance member, or an Alliance member's health plans and any insurers or third-party administrators in connection with such health plans if the agency officials directly responsible for taking these actions are unaware of that entity's status as an Alliance member or relevant relationship to an Alliance member.
>
> (2) However, if either agency, unaware of an entity's status as an Alliance member or relevant relationship to an Alliance member, takes any of the above-described actions, the Alliance member and the Alliance may promptly notify a directly responsible agency official of the fact of the member's membership in the Alliance or the entity's relevant relationship to an Alliance member and its protection under this order. Once such an official receives such notice from the Alliance member and verification of the same by the Alliance, the agency shall promptly comply with this order with respect to such member or related entity.

Preliminary Injunction Amendment Order at 4-5.[4]

ARGUMENT

This Court has discretion under Rules 59(e) or 60(b) of the Federal Rules of Civil Procedure to amend the Summary Judgment Order. Under Rule 59(e), a party may file "[a] motion to alter or amend a judgment." Fed. R. Civ. P. 59(e).[5] "District courts have broad discretion in determining whether to alter or amend judgment under Rule 59(e)." *Continental Indem. Co. v. IPFS of N.Y., LLC*, 7 F.3d 713, 717 (8th Cir. 2021) (citations and quotations omitted). Likewise,

[4] The Court also added language clarifying that the preliminary injunction did not prevent the EEOC from taking certain steps relating to accepting and processing charges of discrimination from members of the public. *See id.* at 5. Because the permanent injunction already contains similar language, Summary Judgment Order at 20, that language is not at issue in this motion.

[5] The Summary Judgment Order directed the entry of "partial final judgment for CEA" pursuant to Rule 54(b), Summary Judgment Order at 18, but the Court has not yet entered judgment in a separate document pursuant to Rule 58. If the Court determines that because of the lack of a separate document setting forth the judgment, this Motion should be construed as a motion for reconsideration of an interlocutory order rather than a motion to amend a judgment, *see* Fed. R. Civ. P. 54(b) (providing that interlocutory orders "may be revised at any time before the entry of a judgment"), the Court should grant this Motion for the same reasons.

under Rule 60(b), the Court may "relieve a party . . . from a[n] . . . order . . . for . . . any . . . reason that justifies relief." Fed. R. Civ. P. 60(b). "Rule 60(b) is to be given a liberal construction so as to do substantial justice." *MIF Realty L.P. v. Rochester Assocs.*, 92 F.3d 752, 755 (8th Cir. 1996). Both Rule 59(e) and Rule 60(b) are proper vehicles for the Court to reconsider an appealable order. *See Ackerland v. United States*, 633 F.3d 698, 701 (8th Cir. 2011). Defendants respectfully submit that amendment of the Court's Summary Judgment Order is necessary and appropriate here.

Modification is necessary because CEA has not disclosed the identities of its members (other than two members identified in the First Amended Complaint), and CEA's counsel has informed Defendants that CEA does not wish to disclose its membership. Therefore, Defendants are unable to ascertain exactly what conduct the Court's permanent injunction proscribes. Rule 65(d) requires that "[e]very order granting an injunction" must "state its terms specifically" and "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Rule 65(d) "is designed to prevent uncertainty and confusion on the part of those to whom the injunction is directed, to avoid the possible founding of contempt citations on an order that is too vague to be understood, and to ascertain that the appellate court knows precisely what it is reviewing." *Calvin Klein Cosmetics Corp. v. Parfums de Coeur, Ltd.*, 824 F.2d 665, 669 (8th Cir. 1987).

"The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid." *Schmidt v. Lessard*, 414 U.S. 473, 476 n.2 (1974) (citation omitted). Thus, courts have found injunctions too vague when they failed to provide sufficient notice of the individuals or entities against whom conduct was enjoined. *See, e.g.*, *Am.*

Red Cross v. Palm Beach Blood Bank, Inc., 143 F.3d 1407, 1411 (11th Cir. 1998) (injunction prohibiting entity from contacting "any donor whose name is contained on Plaintiff's [trade secret donor] lists" impermissibly vague because enjoined party had "no way to determine whether a given member of the public might happen to appear on" a list not in its possession); *NLRB v. Teamsters*, 419 F.2d 1282, 1283 (6th Cir. 1970) (injunction directing employers to cease from restraining or coercing the employees of a specified company "or the employees of any other employer within its jurisdictional territory" was too vague where, inter alia, the injunction failed to define the specified jurisdiction "and thus it provides no means of defining the people for whom protection is sought").

Here, because CEA has not disclosed the identities of its members, Defendants lack the necessary information to determine what conduct is proscribed. Defendants therefore respectfully request that the Court modify the permanent injunction to make clear that Defendants are not enjoined from taking any action against a person or entity if the agency officials directly responsible for taking any of the prohibited actions are unaware of the relevant person or entity's status as a CEA member or of the person or entity's relevant relationship to a CEA member. Defendants propose that, if either agency takes any of the prohibited actions against a CEA member or person or entity with a relevant relationship to a CEA member, the person or entity may notify the directly responsible agency official of the fact of its membership in CEA or relationship to a CEA member. And once the official receives such notice from the CEA member and verification from CEA, the agency shall promptly comply with the permanent injunction as to the relevant person or entity.

Defendants respectfully submit that this proposed amendment would continue to provide relief to CEA's members and those with relevant relationships to CEA's members, while also

providing necessary protection so that Defendants may otherwise carry out their statutory obligations without risk of violating the Summary Judgment Order. And, of course, once the responsible agency official is aware of the person or entity's status as a CEA member, or relevant relationship with such a member, the relevant agency will not proceed further to enforce Section 1557 and/or Title VII on any basis prohibited by the permanent injunction.

Defendants requested a similar modification to the Preliminary Injunction Order for the same reasons. *See generally* Preliminary Injunction Amendment Motion at 3-5. The Court granted that motion, finding Defendants' "arguments to be reasonable." Preliminary Injunction Amendment Order at 4. The preliminary injunction, as modified, remained in place for more than a year and a half, and no disputes regarding compliance with the preliminary injunction arose during that time.[6] Further showing that this requested modification would not prejudice CEA's interests, CEA does not oppose this Motion.

As set forth in the accompanying Proposed Order, Defendants propose that the Court add the following language to the Summary Judgment Order:

> (1) HHS, Secretary Becerra, EEOC, Chair Burrows, and their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, do not violate this order or the Court's judgment by taking any of the above-described actions against any CEA member, anyone acting in concert or participation with a CEA member, or a CEA member's health plans and any insurers or third-party administrators in connection with such health plans if the agency officials directly responsible for taking these actions are unaware of that person or entity's status as a CEA member or relevant relationship to a CEA member.
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> (2) However, if either agency, unaware of a person or entity's status as a CEA member or relevant relationship to a CEA member, takes any of the above-described actions, the CEA

[6] Judge Welte also included similar language with respect to the Catholic Benefits Association (CBA), another nonprofit membership corporation that was organized to protect the interests of religious employers in operating their businesses in accordance with their religious beliefs, in the final judgment entered in *Religious Sisters of Mercy v. Cochran*, Case No. 3:16-cv-00386, Case No. 3:16-cv-00432, 2021 WL 1574628, at *2 (D.N.D. Feb. 19, 2021). On appeal from that final judgment, the Eighth Circuit held that CBA lacked associational standing to represent its unnamed members. *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 602 (8th Cir. 2022).

member and the CEA may promptly notify a directly responsible agency official of the fact of the member's membership in the CEA or the person or entity's relevant relationship to a CEA member and its protection under this order and the Court's judgment. Once such an official receives such notice from the CEA member and verification of the same by the CEA, the agency shall promptly comply with this order and the Court's judgment with respect to such member or related person or entity.

CONCLUSION

For the foregoing reasons, Defendants respectfully ask that the Court amend its Summary Judgment Order as proposed in the accompanying Proposed Order.

Dated: March 22, 2024

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman
Jeremy S.B. Newman
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 532-3114
Email: jeremy.s.newman@usdoj.gov
Counsel for Defendants

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[PROPOSED] ORDER

Having considered Defendants' unopposed motion to amend the Court's March 4, 2024 Order Granting Partial Summary Judgment ("Summary Judgment Order") (ECF No. 82), and the entire record herein, IT IS HEREBY ORDERED:

The Court's Summary Judgment Order is modified on page 20 to include the following language:

> (1) HHS, Secretary Becerra, EEOC, Chair Burrows, and their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, do not violate this order or the Court's judgment by taking any of the above-described actions against any CEA member, anyone acting in concert or participation with a CEA member, or a CEA member's health plans and any insurers or third-party administrators in connection with such health plans if the agency officials directly responsible for taking these actions are unaware of that person or entity's status as a CEA member or relevant relationship to a CEA member.
>
> (2) However, if either agency, unaware of a person or entity's status as a CEA member or relevant relationship to a CEA member, takes any of the above-described actions, the CEA member and the CEA may promptly notify a directly responsible agency official of the fact of the member's membership in the CEA or the person or entity's relevant relationship to a CEA member and its protection under this order and the Court's judgment. Once such an official receives such notice from the CEA member and verification of the same by the

CEA, the agency shall promptly comply with this order and the Court's judgment with respect to such member or related person or entity.

SO ORDERED.

Dated: _____

_____
Daniel M. Traynor, District Judge
United States District Court