

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

DO NO HARM,

Plaintiff,

v.

Case No. 3:23cv24746-TKW-HTC

VITUITY,

Defendant.

ORDER ESTABLISHING RESPONSE DEADLINE

Earlier today, Plaintiff filed a verified complaint (Doc 1) and an emergency motion for a temporary restraining order (TRO) (Doc. 5) with a supporting memorandum (Doc. 6). The verified complaint challenges the legality of a hiring incentive program operated by Defendant that, on its face, is limited to “Black physicians.” The application period for the program is scheduled to close on December 17, 2023, and Plaintiff seeks a TRO enjoining Defendant from closing the application period pending adjudication of the merits of its challenge to the program.

Plaintiff makes a compelling argument in its filings that the program blatantly violates various federal laws and that a TRO is necessary to prohibit irreparable harm to Plaintiff’s non-black physician members who are categorically excluded from participating in the program based on their race. Defendant has yet to be served and there is insufficient time between now and December 17 to adjudicate this case to a judgment on the merits. Thus, it appears that a TRO may be warranted to preserve the status quo.

The Court has authority to issue a TRO under Fed. R. Civ. P. 65. A TRO may be issued without notice to the opposing party if the movant “clearly show[s] that immediate and irreparable

injury, loss, or damage will result to the movant before the adverse party can be heard in opposition” and “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

Here, there does not appear to be any reason why Defendant should not be notified of the motion for a TRO, and to that end, Plaintiff’s counsel detailed the efforts he has made today to give Defendant notice of this case and the motion for a TRO. *See* Doc. 6-1. Plaintiff’s filings persuasively show that time is of the essence in ruling on the motion for a TRO, but the Court sees no reason why Defendant cannot be given to the middle of next week to respond to the motion for a TRO since it does not appear that Plaintiff and its members will suffer any harm—much less irreparable harm—until December 17.¹ If, for whatever reason, Defendant chooses not to respond to the motion, the Court will rule on it as if it is an *ex parte* motion.

Accordingly, it is **ORDERED** that:

1. Defendant shall have until 1:00 p.m. (central time) on Wednesday, December 13, 2023, to respond to Plaintiff’s motion for a TRO.
2. Counsel for Plaintiff shall email a copy of this Order to Defendant’s counsel today and file a notice of compliance with the Court.

DONE and ORDERED this 8th day of December, 2023.



T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE

¹ A party normally has 14 days to respond to a motion, *see* N.D. Fla. Loc. R. 7.1(E), but the Court can shorten that period when necessary.