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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

GLOBAL HORIZONS, INC., d/b/a
Global Horizons Manpower, Inc.;
GREEN ACRE FARMS, INC.; VALLEY
FRUIT ORCHARDS, LLC; and DOES 1-10
inclusive,

Defendants.

No.: CV-11-3045-EFS

**ORDER GRANTING THE GROWER
DEFENDANTS' JOINED MOTION RE:
PROTECTIVE ORDER (IMMIGRATION
MATTERS) AND DENYING THE GROWER
DEFENDANTS' MOTION FOR ATTORNEY'S
FEES**

A hearing occurred in the above-captioned matter on July 25, 2013. Plaintiff Equal Employment Opportunity Commission (EEOC) was represented by Elizabeth Esparza-Cervantes. Beth Joffe and Olivia Gonzalez appeared on behalf of Defendants Green Acre Farms, Inc. and Valley Fruit Orchards, LLC (collectively, "Grower Defendants"). Global Horizons, Inc. ("Global") was represented by Javier Lopez-Perez. Before the Court were the Grower Defendants' Joint Motion to Modify Protective Order Re: Immigration Status to Allow Discovery of Claimants' T-Visa Status and Application Information, ECF No. 345; Grower Defendants' Motion for Fees as Prevailing Party, ECF No. 350; and Global's Motion Joining Grower Defendants' Motion to Modify

1 Protective Order Re: Immigration Status, ECF No. 363. After reviewing
2 the record and relevant authority and hearing from counsel, the Court
3 is fully informed. This Order supplements and memorializes the
4 Court's oral rulings. For the reasons set forth below and articulated
5 on the record, Defendants' motions to modify the protective order are
6 granted and the Grower Defendants' motion for attorney's fees is
7 denied.

8 **A. Defendants' Motions to Modify Protective Order**

9 The Grower Defendants filed a Joint Motion to Modify Protective
10 Order Re: Immigration Status to Allow Discovery of Claimants' T-Visa
11 Status and Application Information, ECF No. 345; Global thereafter
12 filed a Motion Joining Grower Defendants' Motion to Modify Protective
13 Order Re: Immigration Status, ECF No. 363. Collectively, Defendants
14 ask the Court to modify the November 29, 2012 protective order, ECF
15 No. 245, to permit them to discover the Claimants' T-Visa status and
16 applications¹ because such information is vital to 1) assess the
17 Claimants' credibility by comparing the information contained on, or
18 submitted with, the T-Visa applications with the Claimants' Charges of
19 Discrimination and deposition testimony, and 2) support Defendants'
20 defense that the Claimants were encouraged to make human-trafficking
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22
23 ¹ At the hearing, defense counsel clarified that they seek the T-
24 Visa applications, evidence submitted in support of the applications,
25 and T-Visa status for all Claimants: not simply for the five Claimants
26 that have been deposed.

1 statements against Global and the Grower Defendants to secure T-Visa
2 status.

3 The EEOC opposes the motions, arguing Defendants fail to
4 identify that discovery of the requested information is appropriate in
5 light of the prejudice the Claimants will suffer if they must disclose
6 information pertaining to their immigration status given the EEOC's
7 understanding that not all Claimants have been granted a T-Visa.² The
8 EEOC also argues the Claimants' T-Visa status and applications are
9 irrelevant because 1) this lawsuit concerns employment discrimination,
10 not human trafficking, and 2) it is the Department of Homeland
11 Security, not the Thai Community Development Center (Thai CDC) or
12 EEOC, which ascertains whether T-Visas should be granted to the
13 Claimants.

14 **1. Background**

15 The EEOC brought this Title VII lawsuit on behalf of the Thai H-
16 2A guest workers who were brought by Global to work at the Grower
17 Defendants' orchards in Washington's Yakima Valley. In connection
18 with the Grower Defendants' prior motions to dismiss, the Court found
19 the First Amended Complaint, ECF No. 141, plausibly alleges the Grower
20 Defendants employed the Claimants in regard to "orchard-related
21 matters." ECF No. 178 at 7. Specifically, the Court found the First
22 Amended Complaint alleges hostile-work-environment and constructive-

23
24 ² At the hearing, counsel for the EEOC advised that the EEOC does
25 not know the immigration status of all of the Claimants and has not
26 reviewed copies of any Claimant's T-Visa application.

1 discharge claims (and related pattern-and-practice claims) against the
2 Grower Defendants based on the following orchard-related employment
3 actions on account of the Claimants' race and national origin:

- 4 • the Claimants were disciplined and yelled at if their work
5 was not properly done, ECF No. 141 ¶¶ 127 (Green Acre) &
6 233 (Valley Fruit);
- 7 • the Claimants were subject to deplorable working
8 conditions, *id.* ¶¶ 131 (Green Acre) & 189 (Valley Fruit);
- 9 • the Claimants had to work four hours without a break, *id.* ¶
10 148 (Green Acre);
- 11 • the Claimants had to do more difficult work than the
12 workers of Mexican descent, *id.* ¶¶ 150 (Green Acre) & 214-
13 16 (Valley Fruit);
- 14 • the working conditions became so intolerable that the
15 Claimants felt compelled to escape, *id.* ¶¶ 162 (Green Acre)
16 & 228 (Valley Fruit);
- 17 • the Claimants were harassed and threatened to meet quotas,
18 *id.* ¶¶ 163-67 (Green Acre) & 229-32 (Valley Fruit);
- 19 • the Claimants were told that their work was not good
20 enough, *id.* ¶ 185 (Green Acre); and
- 21 • the Claimants were required to continue working in 100
22 degree weather, *id.* ¶ 218 (Valley Fruit).

23 ECF No. 178 at 11. The Court also found the First Amended Complaint's
24 orchard-related factual allegations plausibly state a claim of
25 retaliation (and related pattern and practice claim) against Green
26 Acre. *Id.* at 12.

27 Last fall, the parties disagreed as to the scope of permissible
28 discovery, *inter alia*; and the Court was asked to ascertain the scope
29 of discovery pertaining to immigration matters. In a November 29,
30 2012 Order, the Court recognized that a civil litigant is typically
31 unable to discover another litigant's immigration status simply for
32 the purpose of challenging the litigant's credibility. ECF No. 245
33 (citing *Barrera v. Boughton*, No. 3:07-cv-1436(RNC), 2010 WL 124094 (D.
34 Conn. Mar. 19, 2010); *David v. Signal Int'l, LLC*, 257 F.R.D. 114 (E.D.
35 La. 2009); *Sandoval v. Rizzuti Farms, Ltd.*, No. CV-07-3076-EFS, 2009

1 WL 2058145 (E.D. Wash. July 15, 2009); *Montoya v. S.C.C.P. Painting*
2 *Contractors, Inc.*, 530 F. Supp. 2d 746 (D. Md. 2008); *Galviz Zamora v.*
3 *Brady Farms, Inc.*, 230 F.R.D. 499, 502 (W.D. Mich. 2005); *Catalan v.*
4 *Vermillion Ranch Ltd. P'ship*, No. 06-cv-01043 WYD-MJW, 2007 WL 951781
5 (D. Col. Mar. 28, 2007). The Court's Order required the Grower
6 Defendants to engage in structured discovery relating to the
7 Claimant's immigration information: the Grower Defendants were ordered
8 to depose the Claimants to discern "the alleged bases for their
9 hostile-work-environment and constructive-discharge claims and related
10 pattern-and-practice claims against the Grower Defendants as to
11 orchard-related matters, as well as the alleged bases for their
12 retaliation claim and related pattern-and-practice claim against Green
13 Acre as to orchard-related matters." ECF No. 245 at 12-13. The Court
14 invited Defendants to seek leave of Court to obtain information about
15 the Claimants' immigration information if, after deposing the
16 Claimants, they believed "there is a need to compare or contrast the
17 information received from that Claimant regarding their treatment by
18 the Grower Defendants with that contained in the Claimant's T-Visa
19 application." *Id.* at 13.

20 Global did not participate in the briefing or oral argument
21 relating to the prior dismissal or discovery motions as Global had yet
22 to fully appear in this lawsuit. Global's counsel was granted
23 permission to participate *pro hac vice* in November 2012, ECF No. 237;
24 and the previously-entered default against Global was set aside on
25 January 24, 2013, ECF No. 292. Global filed its answer on January 31,
26 2013. ECF No. 294.

1 Thus far, five Claimants, including the two named Claimants,
2 have been deposed: three Claimants in December 2012, and two Claimants
3 in spring 2013. See ECF Nos. 346, 352, 356, & 360. Defendants also
4 deposed a representative from the Thai CDC. The deposed Claimants
5 testified that while working at the Grower Defendants' orchards they
6 primarily interacted with the Global representatives. The deposed
7 Claimants complained about the lack of work hours, the delay in
8 initial work payment, the limited ability to travel to get food, the
9 limited food, the living quarters, having to drink tap water, and
10 having to share one refrigerator. These Claimants testified they
11 received \$50 a week for food, in addition to the money that was direct
12 deposited to an account in Thailand for the work they performed.
13 Their interaction with Grower Defendants' employees was limited to
14 when a Grower Defendant employee would demonstrate how an orchard task
15 was to be performed. The deposed Claimants testified that a Global
16 employee came to their residence to discuss a report that a Thai
17 worker had called an attorney: during this meeting, the Global
18 employee placed a pistol on the table. The Claimants testified that
19 they left the provided housing in the early morning hours because they
20 knew their H-2A guest-worker status was nearing an end and they were
21 unhappy with their amount of work. The deposed Claimants were afraid
22 to return to Thailand because they had paid approximately \$16,000
23 American dollars to come to the United States to work and had
24 mortgaged their land to pay this amount. These Claimants made
25 contacts with others who picked them up near the provided housing; the
26 Claimants then made it to the Los Angeles area either by car or by

1 bus. They began working in the restaurant industry, which was illegal
2 as the H-2A guest-worker visas only granted permission to perform work
3 at the identified orchards. The deposed Claimants also made contact
4 with the Thai CDC to assist them with gaining permission to stay in
5 the United States.

6 Some of the Claimants also made contact with the Department of
7 Homeland Security (DHS) in hopes of receiving a T-Visa. DHS
8 ascertains whether an individual qualifies for a T-Visa by considering
9 whether the individual:

- 10 (1) Is or has been a victim of a severe form of
11 trafficking in persons;
12 (2) Is physically present in the United States, American
13 Samoa, or at a port-of-entry thereto, on account of
14 such trafficking in persons;
15 (3) Either:
16 (i) Has complied with any reasonable request for
17 assistance in the investigation or prosecution of
18 acts of such trafficking in persons, or
19 (ii) Is less than 15 years of age; and
20 (4) Would suffer extreme hardship involving unusual and
21 severe harm upon removal, as described in paragraph
22 (i) of this section.

23 8 U.S.C. § 214.11(b). To evaluate whether removal will result in
24 extreme hardship involving unusual and severe harm, the Department of
25 Homeland Security considers:

- 26 (i) The age and personal circumstances of the applicant;
(ii) Serious physical or mental illness of the applicant
that necessitates medical or psychological attention
not reasonably available in the foreign country;
(iii) The nature and extent of the physical and
psychological consequences of severe forms of
trafficking in persons;
(iv) The impact of the loss of access to the United States
courts and the criminal justice system for purposes
relating to the incident of severe forms of
trafficking in persons or other crimes perpetrated
against the applicant, including criminal and civil

1 redress for acts of trafficking in persons, criminal
prosecution, restitution, and protection;

- 2 (v) The reasonable expectation that the existence of laws,
3 social practices, or customs in the foreign country to
4 which the applicant would be returned would penalize
the applicant severely for having been the victim of a
5 severe form of trafficking in persons;
6 (vi) The likelihood of re-victimization and the need,
7 ability, or willingness of foreign authorities to
protect the applicant;
8 (vii) The likelihood that the trafficker in persons or
9 others acting on behalf of the trafficker in the
foreign country would severely harm the applicant; and
10 (viii) The likelihood that the applicant's individual
safety would be seriously threatened by the existence
of civil unrest or armed conflict as demonstrated by
the designation of Temporary Protected Status, under
section 244 of the Act, or the granting of other
relevant protections.

11 *Id.* § 214.11(i)(1). The applicant is:

12 encouraged to describe and document all factors that may be
13 relevant to his or her case, since there is no guarantee
14 that a particular reason or reasons will result in a
finding that removal would cause extreme hardship involving
15 unusual and severe harm to the applicant. Hardship to
persons other than the alien victim of a severe form of
16 trafficking in persons cannot be considered in determining
whether an applicant would suffer extreme hardship
involving unusual and severe harm.

17 *Id.* § 214.11(i)(2). An individual seeking a T-Visa completes Form I-
18 914, which at the time of this Order requires the applicant to sign
19 the form under penalty of perjury and contains a preparer and/or
20 interpreter certification.³ I-914, Application for T Nonimmigrant
21 Status, <http://www.uscis.gov/I-914> (last visited July 30, 2013).

22
23
24 ³ The Court takes judicial notice of this form. Fed. R. Evid.
25 201. The Court is aware that this is likely not the form completed by
26 the Claimants given this form became effective on May 4, 2012. Yet,

1 **2. Analysis**

2 With this background, the Court analyzes Defendants' motions to
3 lift the discovery prohibition on immigration information. As the
4 Court discussed in its November 2012 discovery order, the discovery of
5 relevant immigration-related information can be limited under Federal
6 Rule of Civil Procedure 26(c). Rule 26(c) permits the Court to issue
7 a protective order "for good cause" shown "to protect a party or
8 person from annoyance, embarrassment, oppression, or undue burden or
9 expense." Fed. R. Civ. P. 26(c). The burden is on the party seeking
10 the protective order to "show good cause" by "demonstrating harm or
11 prejudice that will result from the discovery." *Rivera v. NIBCO,*
12 *Inc.*, 364 F.3d 1057, 1063-64 (9th Cir. 2004).

13 The Court is guided by the Ninth Circuit's decision in *Rivera* to
14 assess whether immigration-related information is discoverable. In
15 *Rivera*, the Ninth Circuit upheld a protective order, which restricted
16 the employer's ability at the early stage of the litigation to obtain
17 its employees' immigration status. The Ninth Circuit found "the
18 protective order was justified because the substantial and
19 particularized harm of the discovery—the chilling effect that the
20 disclosure of plaintiffs' immigration status could have upon their
21 ability to effectuate their rights—outweighed [the employer's]
22 interests in obtaining the information during the initial discovery
23 stage of the litigation." *Id.* at 1063-64. Thus, *Rivera* does not

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25 _____ because the form is consistent with the statutory requirements, the
26 Court understands the prior version(s) would be substantially similar.

1 establish a blanket discovery prohibition as to immigration
2 information. Rather, *Rivera* directs the district court to abide by
3 Rule 26: first, assess whether the requested immigration information
4 is relevant, and then, if it is relevant, balance each party's
5 respective interests. Here, as the requesting party, Defendants have
6 the initial burden of establishing relevance; and then the EEOC, as
7 the party seeking the protective order, has the burden of showing good
8 cause for the continued entry of the protective order. The Court
9 engages in its Rule 26 analysis below.

10 a. Relevance

11 First, the Court finds the T-Visa applications, and evidence
12 submitted in support, are more than likely to contain information
13 relevant to the EEOC's claims filed on behalf of the Claimants and the
14 Defendants' defenses. It is understood that the sole basis for a
15 Claimant's T-Visa application is that the Claimant asserts he was the
16 victim of human trafficking at the hands of Global, the Grower
17 Defendants, or another entity involved in the process of coordinating
18 the Claimant's ability to work in the United States as guest workers.
19 Consistent with the statutory requirements for obtaining a T-Visa
20 under 8 U.S.C. § 214.11, a Claimant applying for a T-Visa would have
21 "describe[d] and document[ed] all factors relevant to his or her
22 case." *Id.* 214.11(i)(2). Because the Claimants' work in the United
23 States was limited to that performed at the Grower Defendants'
24 orchards and other locales coordinated by Global, a Claimant's
25 description of human trafficking would necessarily include discussion
26 of Global's and/or the Grower Defendants' treatment of that particular

1 Claimant: the treatment of Claimants by Defendants is highly relevant
2 to the EEOC's employment claims. Therefore, the T-Visa applications
3 are a non-privileged matter that is relevant to a party's claims or
4 defenses. Fed. R. Civ. P. 26(b).

5 The EEOC emphasizes that this lawsuit does not involve causes of
6 action regarding human trafficking. This statement is technically
7 true: the EEOC's claims in this lawsuit allege that Defendants
8 discriminated against the Claimants on the basis of their race and
9 national origin. However, the underlying premise is that the
10 Defendants intentionally hired Thai guest workers believing that they
11 could subject them to undesirable and unfair working practices, as
12 compared to the Mexican workers, and the Thai guest workers would be
13 too fearful to complain about their working and living conditions.
14 Therefore, the Court understands that the EEOC will in fact emphasize
15 the Claimants' Thai race and ethnicity to help prove Defendants'
16 alleged discriminatory animus.

17 In addition, the Court determines that whether a Claimant
18 successfully obtained a T-Visa, i.e., a Claimant's T-Visa status, is
19 relevant. Not only is this important information to assess the
20 credibility and motivation of a Claimant to file a Charge of
21 Discrimination, it can potentially lead to information regarding what
22 the EEOC knew about Global's and/or the Grower Defendants' conduct
23 when the EEOC engaged in the "conciliation process" and/or when this
24 lawsuit was filed.

25 The EEOC argues that this information is irrelevant because
26 Defendants failed to show that the deposed Claimants lied about how

1 they were treated at the Grower Defendants' orchards or as to how they
2 were recruited. This argument is not persuasive. Rule 26 permits the
3 discovery of "any nonprivileged matter that is relevant to any party's
4 claim or defense." Fed. R. Civ. P. 26(b)(1). Rule 26 does not
5 require the Grower Defendants to establish that the Claimants lied in
6 order to establish the relevance of this immigration information.

7 For the above-given reasons, the Claimants' T-Visa applications,
8 material filed to support such applications, and T-Visa status are
9 relevant to the EEOC's claims and the Defendants' defenses.⁴

10 b. Cause

11 Having found that a Claimant's T-Visa application and supporting
12 material and T-Visa status are relevant to the claims and defenses,
13 the Court now finds the EEOC fails to show that good cause exists for
14 the continued discovery restriction regarding T-Visa-related
15 information. It is undisputed that all of the Claimants were in the
16 United States unlawfully after they chose to leave their guest-worker
17 relationship. Therefore, there is no undue prejudice to be suffered
18 by a Claimant if Defendants discover that the Claimant has a T-Visa.
19 And there is no evidence before the Court that a Claimant has a
20 justifiable fear of deportation if their T-Visa application,
21 supporting material, or resulting T-Visa status is discovered by
22 Defendants in this lawsuit. In addition, Defendants agree that any
23 discovered immigration-related information will be subject to the

24
25 ⁴ The question of whether this immigration information is
26 admissible is not before the Court at this time.

1 stipulated protective order, ECF No. 312. Finally, each of the
2 Claimants have interacted with the Thai CDC and EEOC and thus are
3 familiar with the services that each of these entities can provide if
4 a Claimant is concerned about his T-Visa information being disclosed,
5 subject to a confidentiality order, in this lawsuit.

6 The EEOC suggests that the discovery prohibition as to
7 immigration information be lifted as to each Claimant only *after*
8 Defendants have deposed that particular Claimant. Based on the
9 testimony of the five Claimants deposed thus far, the Court finds no
10 basis for this unduly restrictive proposal. Requiring Defendants to
11 first depose each of the Claimants⁵ and then seek Court permission to
12 discover the relevant T-Visa-related information as to the deposed
13 Claimants would unfairly burden Defendants with a costly discovery
14 process, especially since the Claimants reside throughout the United
15 States. Deposition costs are already increased due to the Claimants'
16 monolingual Thai-language abilities, which result in the need for an
17 interpreter. Because an interpreter is necessary and the Claimants
18 are not sophisticated individuals, the ability to decrease deposition
19 costs through the use of telephonic or videoconference depositions is
20 unavailable. The Court therefore finds a Claimant-by-Claimant
21 immigration-information review process is both unnecessary and

22
23 ⁵ At the hearing, counsel for the EEOC advised that it still
24 does not know the number of Claimants. The EEOC will identify the
25 Claimants by the Court-ordered August 2, 2013 deadline, ECF No. 348.
26 At this time, Defendants understand the Claimants number 101.

1 unreasonable. The EEOC has failed to establish good cause for the
2 continued discovery prohibition as to the Claimants' T-Visa
3 information.

4 **3. Conclusion**

5 For the above-given reasons, the Court grants the Defendants'
6 motions and permits the defense to discover the Claimants' T-Visa
7 applications, supporting material, and resulting T-Visa status.
8 Because the EEOC does not possess any T-Visa information as to the
9 Claimants, Defendants may utilize the appropriate discovery methods to
10 obtain this information. Any discovered immigration information will
11 be subject to the parties' stipulated confidentiality order, ECF No.
12 312.

13 **B. Grower Defendants' Motion for Fees as Prevailing Party, ECF No.**

14 **350**

15 The Grower Defendants ask the Court to find that they are the
16 prevailing party as to their previously granted summary-judgment
17 motion to dismiss untimely claims and, therefore, ask the Court to
18 award them their reasonable attorney's fees under 42 U.S.C. §
19 2000e5(k). The EEOC opposes the motion arguing that 1) the Grower
20 Defendants do not qualify as prevailing parties, 2) the Grower
21 Defendants failed to sufficiently meet and confer, and 3) the EEOC's
22 position on the summary-judgment issue was not frivolous,
23 unreasonable, without foundation, or in bad faith.

24 **1. Background**

25 Pretrial, there has been much communication between counsel as
26 to who is a "Claimant." The First Amended Complaint defines

1 "Claimants," stating in pertinent part: "This is an action . . . to
2 provide appropriate relief to Marut Konpia, Laphit Khadthan, and the
3 class of similarly situated Thai and/or Asian individuals
4 (collectively, the "Claimants"). ECF No. 141 ¶ 1. On February 6,
5 2013, the EEOC identified 245 Claimants as to Green Acre and 199
6 Claimants as to Valley Fruit.

7 After the Grower Defendants examined the work dates for these
8 Claimants, they advised the EEOC that only 58 "Green Acre" Claimants
9 and 97 "Valley Fruit" Claimants worked at the Grower Defendants'
10 orchards during the applicable 300-day period preceding the Charges of
11 Discrimination. On February 11, 2013, the Grower Defendants' counsel
12 wrote EEOC Regional Director Anna Park:

13 We have received the EEOC's answers to Interrogatory 30.
14 In response the EEOC has identified 175 individuals who
15 worked on Green Acre Farms' orchards in 2004 only and 87
16 individuals who worked on Valley Fruit's Orchards in 2004
17 only. Pursuant to Judge Shea's July 27, 2012 Order, the
18 claims of these individuals are time-barred. We are
19 requesting that the EEOC dismiss its claims on behalf of
20 these individuals within fourteen days of today's date or
21 we will move for summary judgment and seek sanctions
22 pursuant to Rule 11 and the Supreme Court case,
23 *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), and
24 for the cost of the motion, as well as for a proportionate
25 share of Grower Defendants' attorney's fees in litigating
26 this suit from July 27, 2012 forward.

ECF No. 351, Ex. A (emphasis added).

21 On March 4, 2013, Sue Noh, Acting Supervisory Trial Attorney for
22 the EEOC, wrote Grower Defendants' counsel. *Id.*, Ex. B at 7. Ms. Noh
23 highlighted that because the EEOC is the Plaintiff, not the Claimants,
24 "dismissal" is not the mechanism for limiting the class of Claimants
25 on whose behalf the EEOC seeks relief. *Id.* Ms. Noh stated, "[T]he
26

1 EEOC acknowledges that this Court has ruled on Grower Defendants'
2 motion to dismiss (ECF No. 178) to limit claims for damages to those
3 individuals employed during 300 days prior to the filing of the
4 charge." *Id.* Ms. Noh continued:

5 Moreover, the claimants are identified by the EEOC not only
6 for the purposes of support [sic] the EEOC's case for
7 monetary damages, but also identified for purposes of
8 injunctive relief, and as third party witnesses. To the
9 extent your question relates to EEOC's position as it
10 relates to damages, without waiving the EEOC's right to
11 appeal the Court's rulings, the EEOC is willing to identify
the group within the 300 days period. . . . Assuming
arguendo that discovery has been completed and no
modifications or corrections are needed to be made to the
EEOC's interrogatory responses, the Order (ECF No. 178) did
not preclude injunctive relief for those Claimants who
worked for Grower Defendants in 2004 only.

12 *Id.* at 7-8. Ms. Noh finished by stating she was willing to work with
13 the Grower Defendants to "come to an agreement . . . on the dates of
14 employment." *Id.* at 8.

15 On March 5, 2013, Ms. Joffe responded, stating, in pertinent
16 part:

17 We do not agree that the EEOC may seek injunctive relief on
18 behalf of individuals whose claims are time-barred and the
19 case law, including *Morgan*, supports this position. Nor do
20 we agree that this is a reasonable or justified
21 interpretation of the Court's ruling. While the EEOC need
22 not submit a formal dismissal for all time-barred
claimants, it certainly could provide formal notice to
Grower Defendants that it is withdrawing their names as
Claimants and is instead offering them up as potential
third-party witnesses. . . . Leaving them as Claimants
makes clear the EEOC is seeking relief on their behalf.

23 *Id.*, Ex. C at 11. There is also email correspondence between opposing
24 counsel during this time frame; the emails reiterate the information
25 and positions taken in the letters. *Id.*, Ex. E.

1 The Grower Defendants filed their Motion for Summary Judgment as
2 to Untimely Claims, ECF No. 328, on March 29, 2013. On June 12, 2013,
3 the Court granted the Grower Defendants' motion, requiring the EEOC to
4 identify the Claimants by August 2, 2013. ECF No. 348.

5 **2. Standard**

6 Title VII permits an award of a reasonable attorney's fees to
7 the prevailing party. 42 U.S.C. § 2000e-5(k). The statute in
8 pertinent part states:

9 In any action or proceeding under this subchapter the
10 court, in its discretion, may allow the prevailing party,
11 other than the Commission or the United States, a
12 reasonable attorney's fee (including expert fees) as part
13 of the costs, and the Commission and the United States
14 shall be liable for costs the same as a private person.

15 *Id.* Although the statute refers to a "prevailing party," case law has
16 established that a prevailing defendant under Title VII is entitled to
17 an award of reasonable attorney's fees only for prevailing as to
18 claims that are "frivolous, unreasonable, or groundless." *Harris v.*
19 *Maricopa Cnty. Sup'r. Ct.*, 631 F.3d 963 (9th Cir. 2011). To determine
20 whether this standard is met, the court assesses "the claim at the
21 time the complaint was filed, and must avoid *post hoc* reasoning by
22 concluding that, because a plaintiff did not ultimately prevail, his
23 action must have been unreasonable or without foundation." *Harris*,
24 631 F.3d at 976 (quoting *Tutor-Saliba Corp. v. City of Hailey*, 452
25 F.3d 1055, 1060 (9th Cir. 2006)). "The purpose of awarding attorneys'
26 fees to a defendant in a civil rights case is to deter frivolous or
harassing litigation." *Ellis v. Cassidy*, 625 F.2d 227, 230 (9th Cir.
1980).

1 A defendant need not prevail on all claims and issues but rather
2 a defendant is considered a prevailing party if the ruling on the
3 frivolous, unreasonable, or groundless claim "materially alters the
4 legal relationship between the parties by modifying the [plaintiff's]
5 behavior in a way that directly benefits the [defendant]." *Farrar v.*
6 *Hobby*, 506 U.S. 103, 111-12 (1992). "The degree of the [defendant's]
7 success in relation to the other goals of the lawsuit is a factor
8 critical to the determination of the size of a reasonable fee, not to
9 eligibility for a fee award at all." *Tex. State Teachers Ass'n v.*
10 *Garland Indep.*, 489 U.S. 782, 790 (1989) (emphasis in original). A
11 party can achieve "prevailing party" status as to a claim that is
12 resolved during the pendency of the lawsuit. *Id.* Yet, if a party's
13 "success on a legal claim can be characterized as purely technical or
14 de minimis," a court can determine that the prevailing party threshold
15 is not met. *Id.*

16 3. Analysis

17 First, the Court finds the Grower Defendants sufficiently met
18 and conferred in order to provide the EEOC with an opportunity to
19 identify the Claimants before they filed the summary-judgment motion.
20 The correspondence between counsel identifies that the Grower
21 Defendants clearly explained that they believed the Court's July 2012
22 Order restricted the EEOC's ability to seek either injunctive or
23 monetary relief on behalf of only those Claimants who worked at the
24 Grower Defendants' orchards within the applicable 300-day period,
25 i.e., not on behalf of Claimants who only worked at a Grower Defendant
26 orchard in 2004. The EEOC responded that it could seek injunctive

1 relief, but not monetary relief, on behalf of all Thai individuals who
2 worked at the Grower Defendants' orchards irrespective of the 300-day
3 limitation. Based on the EEOC's response, the Grower Defendants
4 replied on March 5, 2013, that they "will proceed accordingly," which,
5 based on counsel's prior February 11, 2013 letter, should have been
6 understood to mean that the Grower Defendants would move for summary
7 judgment on the issue. ECF No. 351, Exs. A & C. The EEOC filed its
8 Motion for Summary Judgment as to Untimely Claims, ECF No. 328, on
9 March 29, 2013. Accordingly, the EEOC had approximately three weeks
10 to clarify its position and to prevent the filing of the summary-
11 judgment motion by the Grower Defendants. Instead, the EEOC waited
12 until responding to the summary-judgment motion to clearly state that
13 the EEOC is not basing its injunctive-relief claims on behalf of a
14 Thai individual who only worked at a Grower Defendants' orchard prior
15 to the 300-day window.

16 Although the Grower Defendants sufficiently met and conferred
17 before filing their motion for attorney's fees, the Court denies the
18 Grower Defendants' motion for attorneys' fees. The Court's summary-
19 judgment Order, ECF No. 348, did not sufficiently alter the legal
20 relationship between the parties as to justify an award of attorney's
21 fees to the Grower Defendants at this time. In the summary-judgment
22 Order, the Court ruled that the EEOC cannot seek relief, injunctive or
23 otherwise, on behalf of an individual who did not work at a Grower
24 Defendants' orchard during the 300 days preceding the applicable
25 Charges of Discrimination. *Id.* This ruling did not dispose of any
26 EEOC claim but rather restricted the individuals on whose behalf the

1 EEOC can seek relief through its claims and narrowed the window of
2 conduct against which Defendants must defend. Therefore, the relief
3 granted to the Grower Defendants in the summary-judgment Order is not
4 sufficient for them to be considered a prevailing party. It is
5 premature for the Court to assess whether the EEOC's injunctive relief
6 claims are frivolous or brought in bad faith.

7 **4. Conclusion**

8 For these reasons, the Court denies the Grower Defendants'
9 Motion for Fees as Prevailing Party, ECF No. 350.

10 **C. Summary**

11 For the above-given reasons, **IT IS HEREBY ORDERED:**

12 1. The Grower Defendants' Joint Motion to Modify Protective
13 Order Re: Immigration Status to Allow Discovery of
14 Claimants' T-Visa Status and Application Information, **ECF**
15 **No. 345**, is **GRANTED**.

16 2. Global's Motion Joining Grower Defendants' Motion to Modify
17 Protective Order Re: Immigration Status, **ECF No. 363**, is
18 **GRANTED**.

19 3. The Grower Defendants' Motion for Fees as Prevailing Party,
20 **ECF No. 350**, is **DENIED**.

21 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
22 Order and provide copies to counsel.

23 **DATED** this 31st day of July 2013.

24
25 s/ Edward F. Shea

EDWARD F. SHEA

26 Senior United States District Judge