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U.S. DIST. COURT  
EASTERN DISTRICT OF CALIF.  
[Signature]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, et al.,

CASE NO. CV-F-02-6199 AWI LJO

Plaintiffs,

ORDER ON PLAINTIFFS' MOTION TO  
COMPEL DEFENDANT'S F.R.Civ.P. 30(b)(6)  
DEPOSITION  
(Doc. 54.)

vs.

HARRIS FARMS, INC.

Defendant.

**INTRODUCTION**

Plaintiffs Equal Employment Opportunity Commission ("EEOC") and Olivia Tamayo ("Ms. Tamayo") seek a F.R.Civ.P. 30(b)(6) deposition of defendant Harris Farms, Inc. ("Harris Farms") regarding Harris Farms' action to control rumors and plaintiffs' alleged financial benefits to witnesses advancing Ms. Tamayo's claims. This Court conducted a July 7, 2004 hearing on plaintiffs' motion to compel Harris Farms' F.R.Civ.P. 30(b)(6) deposition. EEOC appeared by counsel Linda S. Ordonio-Dixon. Ms. Tamayo appeared by counsel William J. Smith, Richtel and Smith. Harris Farms appeared by counsel Lowell T. Carruth, McCormick, Barstow, Sheppard, Wayte & Carruth LLP. After review of the record and the parties' arguments, this Court issues the order below.

[Handwritten mark]

1 **BACKGROUND**

2 On September 24, 1999, Ms. Tamayo filed with EEOC a charge against Harris Farms to allege  
3 employment discrimination, sexual harassment and retaliation. On August 22, 2001, EEOC issued its  
4 determination that Harris Ranch sexually harassed and retaliated against Ms. Tamayo to violate Title VII  
5 of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e, et seq.

6 On September 30, 2002, without issuing a right-to-sue letter, EEOC filed this action to correct  
7 Harris Farms’ alleged unlawful employment practices. EEOC’s complaint alleges that since August  
8 1999, Harris Farms subjected Ms. Tamayo to adverse employment action to retaliate for her opposition  
9 to and rejection of sexual harassment. The complaint further alleges unlawful employment practices  
10 included demotion, isolation, continued harassment, and suspension for filing a grievance to result in  
11 her March 13, 2001 constructive discharge. The complaint seeks injunctive relief, Harris Farms’  
12 institution of policies and practices to provide equal employment opportunities for women, and  
13 compensatory and punitive damages for Ms. Tamayo.

14 This Court’s November 18, 2003 order granted Ms. Tamayo leave to intervene and to file her  
15 complaint in intervention to allege sexual harassment and retaliation claims under Title VII and the  
16 California Fair Employment and Housing Act (“FEHA”), California Government Code, §§ 12900, et  
17 seq. Ms. Tamayo’s complaint in intervention substantively mirrors EEOC’s complaint and like EEOC’s  
18 complaint seeks back and front pay, employment benefits, emotional distress damages, and punitive  
19 damages. Unlike EEOC’s complaint, Ms. Tamayo’s complaint in intervention seeks her attorney fees  
20 and adds FEHA claims.

21 EEOC and Ms. Tamayo (collectively “plaintiffs”) claim Harris Farms subjected Ms. Tamayo to  
22 a sexually hostile work environment by permitting persistent rumors regarding her. Plaintiffs further  
23 claim Harris Farms failed to address Ms. Tamayo’s complaint regarding the rumors.

24 Harris Farms propounded to plaintiff its Interrogatory Nos. 20 and 21 to ask whether plaintiffs  
25 guaranteed or promised Matias Barrera (“Mr. Barrera”) and Trinidad Tamayo (“Mr. Tamayo”) money  
26 or favors for testimony and if so, the methods, date of contact and what was offered to them for their  
27 testimony. In correspondence to EEOC’s counsel, defense counsel noted Interrogatory Nos. 20 and 21  
28 addressed “whether there is anything we need to pursue in view of rumors among Harris Farms

1 employees, and apparently former employees, that someone, possibly Ms. Tamayo, has promised money  
2 to people who would support her allegations against Harris Farms.”

3 Plaintiffs served a F.R.Civ.P. 30(b)(6) deposition notice to set a June 16, 2004 Harris Farms’  
4 deposition on:

- 5 1. All information which is the basis for Harris Farms’ Interrogatory Nos. 20 and 21,  
6 including information that supports or implies allegations and/or rumors that plaintiffs  
7 or anyone else guaranteed or promised money or favors in return for testimony;
- 8 2. The source of information which is the basis for Harris Farms’ Interrogatory Nos. 20 and  
9 21;
- 10 3. An articulation of all information provided to Harris Farms that supports or implies  
11 allegations and/or rumors that plaintiffs or anyone else guaranteed or promised money  
12 or favors in return for testimony;
- 13 4. Harris Farms’ knowledge of conversations and/or communications by anyone with Mr.  
14 Barrera and Mr. Tamayo; and
- 15 5. Details of corrective, preventative and/or disciplinary action taken by Harris Farms from  
16 July 1996 to April 23, 2004 to control rumors.

17 Defense counsel’s May 17, 2004 correspondence to EEOC’s counsel noted Harris Farms has no  
18 “specific names” regarding its Interrogatory Nos. 20 and 21 and “we do not believe depositions of any  
19 specific parties will be necessary on the issue of financial restitution of witnesses.” With his June 15,  
20 2004 correspondence, defense counsel noted “we consider the matter of rumors of monetary enticements  
21 to be closed, and we have no fact witnesses to present on the issue. Therefore, Harris Farms will not  
22 present a witness for a deposition tomorrow.”

23 Plaintiffs contend Harris Farms failed to meet its F.R.Civ.P. 30(b)(6) obligation to provide and  
24 prepare a witness on the subjects listed in their deposition notice. Plaintiffs note that they seek discovery  
25 into Harris Farms’ information regarding the untrue rumors as to Ms. Tamayo, the identity of persons  
26 who communicated the rumors, and details of Harris Farms’ corrective, preventative and disciplinary  
27 action, if any, to address rumors.

28 Harris Farms contends plaintiffs seek duplicative depositions of a Harris Farms’ representative(s)

1 in that plaintiffs deposed on the issue of rumors seven Harris Farms' witnesses, including executives,  
2 the current human resources director, and managers. Harris Farms argues that interrogatories are the  
3 more appropriate discovery device to seek the identity of persons who might have knowledge of rumors.  
4 According to Harris Farms, it will not pursue the issue of financial benefits to Mr. Barrera and Mr.  
5 Tamayo for their testimony and it has no witnesses regarding its Interrogatory Nos. 20 and 21.

## 6 DISCUSSION

### 7 Scope Of Discovery

8 The purpose of discovery is to make trial "less a game of blind man's bluff and more a fair  
9 contest with the basic issues and facts disclosed to the fullest practicable extent possible," *United States*  
10 *v. Procter & Gamble*, 356 U.S. 677, 683, 78 S.Ct. 983, 987 (1958), and to narrow and clarify the issues  
11 in dispute, *Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 388 (1947).

12 F.R.Civ.P. 26(b)(1) establishes the scope of discovery and states in pertinent part:

13 Parties may obtain discovery regarding any matter, not privileged, that is relevant  
14 to the claim or defense of any party, including the existence, description, nature, custody,  
15 condition, and location of any books, documents, or other tangible things and the identity  
16 and location of persons having knowledge of any discoverable matter. For good cause,  
the court may order discovery of any matter relevant to the subject matter involved in the  
action. Relevant information need not be admissible at trial if the discovery appears  
reasonably calculated to lead to the discovery of admissible evidence.

17 F.R.Civ.P. 30(b)(6) authorizes depositions of "persons most knowledgeable":

18 A party may . . . name as the deponent a public or private corporation . . . and describe  
19 with reasonable particularity the matters on which examination is requested. In that  
20 event, the organization so named shall designate one or more officers, directors, or  
21 managing agents, or other persons who consent to testify on its behalf, and may set forth,  
for each person designated, the matters on which the person will testify. . . . The persons  
so designated shall testify as to matters known or reasonably available to the  
organization.

22 F.R.Civ.P. 30(b)(6) obligates the responding entity "to provide a witness who can answer  
23 questions regarding the subject matter listed in the notice." *Detoy v. City and County of San Francisco*,  
24 196 F.R.D. 362, 366 (N.D. Cal. 2000) (quoting *King v. Pratt & Whitney, a Div. of United Technologies*  
25 *Corp.*, 161 F.R.D. 475, 476 (S.D. Fla. 1995)).

26 F.R.Civ.P. 37(d) provides that if a party fails to appear for a properly noticed deposition, "the  
27 court in which the action is pending on motion may make such orders in regard to the failure as are just."

28 F.R.Civ.P. 37(d) continues: "The failure to act described in this subdivision may not be excused on the

1 ground that the discovery sought is objectionable unless the party failing to act has a pending motion for  
2 a protective order as provided by Rule 26(c).”

3 “The party who resists discovery has the burden to show that discovery should not be allowed,  
4 and has the burden of clarifying, explaining, and supporting its objections.” *Oakes v. Halvorsen Marine*  
5 *Ltd.*, 179 F.R.D 281, 283 (C.D. Cal. 1998); *Nestle Foods Corp. v. Aetna Casualty & Surety Co.*, 135  
6 F.R.D. 101, 104 (D. N.J. 1990).

### 7 **Plaintiff’s Motion To Compel**

8 Plaintiffs seek Harris Farms’ F.R.Civ.P. 30(b)(6) deposition on: (1) alleged financial benefits for  
9 testimony; and (2) Harris Farms’ corrective, preventative and disciplinary action to control employee  
10 rumors. The financial benefits appears a dead issue. Harris Farms agrees it will not pursue the issue and  
11 lacks supporting witnesses. A Harris Farms’ declaration to such effect will satisfy plaintiffs’ concerns  
12 regarding financial benefits for testimony.

13 The issue of Harris Farms’ corrective, preventative and disciplinary action to control employee  
14 rumors remains alive. Plaintiffs contend Harris Farms permitted rumors regarding Ms. Tamayo and  
15 failed to take action. Plaintiffs have deposed in great detail Harris Farms’ executives and managers on  
16 the issue of rumors. Interrogatories are a more appropriate device, at this stage, to address Harris Farms’  
17 corrective, preventative and disciplinary action.

### 18 **CONCLUSION AND ORDER**

19 For the reasons discussed above, this Court:

- 20 1. ORDERS Harris Farms, no later than July 19, 2004, to provide its corporate declaration  
21 to state that Harris Farms has neither facts nor knowledge to substantiate rumors subject  
22 to its Interrogatory Nos. 20 and 21 propounded to plaintiffs;
- 23 2. PERMITS plaintiffs, no later than July 19, 2004, to propound to Harris Farms no more  
24 than 10 interrogatories without subsections or subparts on the direct, succinct issue of  
25 Harris Farms’ corrective, preventive and disciplinary action to address employee rumors;
- 26 3. ORDERS Harris Farms, no later than 20 days after service of the interrogatories, to serve  
27 its responses by fax to plaintiffs; and
- 28 4. ORDERS the parties’ counsel to arrange an immediate conference call with this Court


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at (559) 498-7322 to address, if necessary, Harris Farms' objections or responses to the interrogatories; and

5. ORDERS that the November 30, 2004 trial to proceed despite this order.

IT IS SO ORDERED.

DATED: July 12, 2004

  
LAWRENCE J. O'NEILL  
UNITED STATES MAGISTRATE JUDGE

United States District Court  
for the  
Eastern District of California  
July 13, 2004

\* \* CERTIFICATE OF SERVICE \* \*

1:02-cv-06199

Equal Employment

v.

Harris Farms Inc

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on July 13, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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