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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,	)	NO. CV-05-3061-MWL
et al.,	)	
	)	ORDER REGARDING PLAINTIFFS'
Plaintiffs,	)	MOTION TO COMPEL DISCOVERY
	)	
vs.	)	
	)	
GLOBAL HORIZONS, INC., GREEN	)	
ACRE FARMS, INC., VALLEY	)	
FRUIT ORCHARDS, LLC, and	)	
PLATTE RIVER INSURANCE	)	
COMPANY,	)	
	)	
Defendants.	)	
	)	

Before the Court is Plaintiffs' November 20, 2006 motion to compel discovery from Defendant Global Horizons, Inc., ("Global") and request for discovery sanctions. (Ct. Rec. 173).

**Background**

In the instant motion, Plaintiffs request that Global be compelled to answer certain interrogatories from Plaintiffs' First Set of Interrogatories and Requests for Production. (Ct. Rec. 174, p. 2). In this same motion, Plaintiffs additionally ask the Court to order Defendants Green Acre Farms and Valley Fruit Orchards to respond to

1 discovery requests. (Ct. Rec. 173). On November 28, 2006, at the  
2 hearing on the instant motion, the Court granted Plaintiffs' request  
3 with respect to Green Acre Farms and Valley Fruit Orchards and ordered  
4 additional briefing from Plaintiffs and Global with respect to the  
5 discovery request of Global. (Ct. Rec. 173, 186, 190). Counsel for  
6 Plaintiffs and Global were to file additional briefing with the Court  
7 no later than December 6, 2006. (Ct. Rec. 186). Plaintiffs filed a  
8 timely supplemental memorandum on December 6, 2006. (Ct. Rec. 195).  
9 Global filed an untimely memorandum on December 8, 2006.<sup>1</sup> (Ct. Rec.  
10 196).

#### 11 Legal Standards

12 The function of interrogatory requests includes obtaining  
13 evidence, information which may lead to evidence and admissions, and  
14 to narrow issues to be tried. *United States v. West Virginia Pulp and*  
15 *Paper Co.*, 36 F.R.D. 250, 252 (S.D. N.Y. 1964) (citing *United States*  
16 *v. Watchmakers of Switzerland Information Center, Inc.*, 2 F.R.Serv.2d  
17 33.353, Case 3 (S.D. N.Y. 1959)). The party answering interrogatories  
18 must furnish "such information as is available to the party." Fed. R.  
19 Civ. P. 33(a). Fed. R. Civ. P. 33(b)(1) requires an interrogatory to  
20 be answered "separately and fully in writing under oath, unless it is

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25 <sup>1</sup>Although it is within this Court's discretion to impose sanctions, including  
26 striking Global's supplemental brief, for Global's failure to follow this Court's  
27 order to file a supplemental brief no later than December 6, 2006, the Court chooses  
to ignore the untimeliness of Global's brief on this occasion. However, all counsel  
are hereby forewarned that all future pleadings which are improperly or untimely  
filed with the Court shall be stricken from the record and disregarded by the Court.

1 objected to, in which event the objecting party shall state the  
2 reasons for objection and shall answer to the extent the interrogatory  
3 is not objectionable."

4 Fed. R. Civ. P. 34(b) requires a written response to a request  
5 for production to "state, with respect to each item or category, that  
6 inspection and related activities will be permitted as requested,  
7 unless the request is objected to, in which event the reasons for the  
8 objection shall be stated." A party is obliged to produce all  
9 specified relevant and nonprivileged documents or other things which  
10 are in its "possession, custody or control" on the date specified in  
11 the request. Fed. R. Civ. P. 34(a); *Norman Rockwell Int'l Corp. v. H.*  
12 *Wolfe Iron & Metal Co.*, 576 F.Supp. 511, 512 (W.D. Pa. 1983).

13 Pursuant to the Federal Rules of Civil Procedure, if a party  
14 fails to answer an interrogatory submitted under Fed. R. Civ. P. 33 or  
15 fails to respond to a request for production under Fed. R. Civ. P. 34,  
16 the party requesting the discovery may apply for an order compelling  
17 discovery and for appropriate sanctions. Fed. R. Civ. P. 37(a).  
18 Pursuant to Fed. R. Civ. P. 37(a)(4), the party who prevails on a  
19 motion to compel is entitled to his or her expenses, including  
20 reasonable attorney's fees incurred in making the motion, unless the  
21 losing party was substantially justified in making or opposing the  
22 motion or other circumstances that make such an award unjust. The  
23 burden is on the losing party to affirmatively demonstrate that its  
24 position was substantially justified. Fed. R. Civ. P. 37(a)(4),  
25 Advisory Comm. Notes (1970).

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1 Analysis

2 **1. Plaintiffs' motion to compel**

3 Plaintiffs argue that they are entitled to obtain evidence of  
4 past violations in order to assist in calculating damages and to  
5 discover whether Global has engaged in a pattern and practice of  
6 violating the AWP. (Ct. Rec. 174, p. 4).

7 Plaintiffs also assert that they are entitled to discover  
8 information as to prior race or national origin discrimination suits  
9 or agency actions relevant to their § 1981 race and national origin  
10 claims and the requested injunctive relief and punitive damages under  
11 those claims. (Ct. Rec. 174, p. 5).

12 Plaintiffs' supplemental briefing argues that, in order for  
13 Plaintiffs to obtain an injunction against Global, they must put forth  
14 evidence that what happened in Washington in 2004 was not an  
15 aberration, but was consistent with Global's pattern and practice of  
16 conducting business throughout the nation. (Ct. Rec. 195, p. 2).  
17 Plaintiffs assert that if Global violated labor laws in other states  
18 before or after it conducted business in Washington in 2004, that  
19 information is relevant to whether Global has a pattern of repeatedly  
20 violating the law. Plaintiffs additionally contend that evidence of  
21 past business practices may reveal that Global's alleged unlawful  
22 conduct was part of a larger pattern of discrimination. (Ct. Rec.  
23 195, p. 4). Plaintiffs also argue that the "existence and frequency"  
24 of a defendant's similar past conduct or prior violations of laws is  
25 relevant in determining the amount of punitive damages. (Ct. Rec.  
26 195, pp. 5-6); *TXO Production Corp. v. Alliance Resources Corp.*, 509  
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1 U.S. 443, 462 (1993); *Hopkins v. Dow Corning Corp.*, 33 F.3d 1116, 1127  
2 (9<sup>th</sup> Cir. 1994). Finally, with respect to their AWPA claims,  
3 Plaintiffs assert that the issues of nature and persistence of alleged  
4 violations by Global would be relevant in determining the amount of  
5 statutory damages to be awarded for AWPA violations. (Ct. Rec. 195,  
6 pp. 7-9).

7 Global responds that they have produced all documents related to  
8 violations alleged by the class members, but have objected to the  
9 production as it relates to non-class members. (Ct. Rec. 181, pp. 3-  
10 4). Global argues that the extent and persistence of violations  
11 relating to class members are relevant for damages under the AWPA, but  
12 violations relating to non-class members are not. (Ct. Rec. 181, p.  
13 4). Global also asserts that Plaintiffs fail to cite to authority for  
14 the proposition that unrelated allegations of discrimination by non-  
15 class members is properly discoverable. (Ct. Rec. 181, p. 4).

16 Global's untimely supplemental brief asserts that Plaintiffs have  
17 not demonstrated that prior discrimination allegations are relevant to  
18 their Section 1981 claims. Other potential violations involving other  
19 plaintiffs are not relevant to the inquiry of whether a defendant's  
20 conduct is shown to be motivated by evil motive or intent. (Ct. Rec.  
21 196, pp. 2-3). Global argues that prior allegations of discrimination  
22 have no connection with this case. Global also reiterates that  
23 Plaintiffs are not entitled to documents related to AWPA violations  
24 against individuals who are not class members.

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

7 Fed. R. Civ. P. 26(b) establishes the scope of discovery and  
8 states in pertinent part:

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

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

24 Global has failed in its burden to show that the discovery of  
25 documents related to their prior violations of the Migrant and  
26 Seasonal Agricultural Worker Protection Act should not be allowed.  
27 This information appears to be relevant to Plaintiffs' claims and is  
28 properly discoverable.

With respect to allegations of discrimination, the undersigned  
agrees with Global that prior allegations of discrimination with no  
relation to any plaintiff in this case is not relevant. Global shall

1 not be required to produce information about allegations of  
2 discrimination involving non-class members.

3 **2. Plaintiffs' request for attorneys' fees**

4 The evidence before the Court is such that the undersigned does  
5 not find that sanctions are warranted. Global's position with respect  
6 to Plaintiffs' discovery requests was substantially justified. See  
7 Fed. R. Civ. P. 37(a)(4), Advisory Comm. Notes (1970). Accordingly,  
8 the Court denies Plaintiffs' motion for monetary sanctions against  
9 Global.

10 **Conclusion**

11 Based on the foregoing, **IT IS ORDERED** as follows:

- 12 1. Plaintiffs' motion to compel discovery responses from  
13 Defendant Global Horizons, Inc., (**Ct. Rec. 173**) is  
**GRANTED in part** and **DENIED in part**.
- 14 2. Defendant Global Horizons, Inc., shall provide  
15 responses to Plaintiffs' First Set of Interrogatories  
16 and Requests for Production with respect to information  
17 regarding prior violations of the Migrant and Seasonal  
18 Agricultural Worker Protection Act ("AWPA") within **ten**  
19 **(10) days** from the date of this order.
- 20 3. Defendant Global Horizons, Inc., shall not be required  
21 to produce information with respect to allegations of  
22 race or national origin discrimination pertaining to  
23 non-class members.
- 24 4. Plaintiff's request that Defendant Global Horizons,  
25 Inc., be required to pay sanctions for the necessity of  
26 bringing the underlying motion is **DENIED**.

27 **IT IS SO ORDERED.** The District Court Executive is directed to  
28 enter this Order and forward copies to counsel.

**DATED** this 18<sup>th</sup> day of December, 2006.

s/Michael W. Leavitt  
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MICHAEL W. LEAVITT  
UNITED STATES MAGISTRATE JUDGE