

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,)	NO. CV-05-3061-MWL
et al.,)	
)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,)	MOTION TO COMPEL DISCOVERY
)	AND FOR SANCTIONS
vs.)	
)	
GLOBAL HORIZONS, INC., et)	
al.,)	
)	
Defendants.)	

Before the Court is Plaintiffs' February 23, 2007 motion to compel discovery from Defendant Global Horizons, Inc. ("Defendant") and request for discovery sanctions. (Ct. Rec. 245). Plaintiffs specifically request that Defendant respond to Plaintiffs' Third Set of Requests for Production #11 and #12 and Plaintiffs' Fourth Set of Requests for Production #6; Defendant's objections to the deposition of James S. Holt be found without merit; and Defendant be required to produce documents pertaining to Mr. Holt's dealings with Defendant. (Ct. Rec. 245). Plaintiffs additionally ask the Court to order Defendant, and the attorney advising Defendant, Howard Foster, to pay Plaintiffs' reasonable expenses, including attorney's fees, in connection with this motion to compel. (Ct. Rec. 245).

///

1 The instant motion was noted for hearing on an expedited
2 basis and without oral argument on March 9, 2007. (Ct. Rec. 254).
3 Defendant was permitted to submit a response to Plaintiffs' motion
4 on or before the close of business on March 8, 2007. (Ct. Rec.
5 254). Defendant failed to timely provide any response to
6 Plaintiffs' motion. Defendant has not provided a response to
7 Plaintiffs' motion to compel or otherwise advised the Court as to
8 their position regarding this motion.

9 Local Rule 7.1(h)(5) holds that "[a] failure to timely file a
10 memorandum of points and authorities in support of or in
11 opposition to any motion may be considered by the Court as consent
12 on the part of the party failing to file such memorandum to the
13 entry of an Order adverse to the party in default." Accordingly,
14 the undersigned finds that Defendant has acquiesced to the entry
15 of an order granting Plaintiffs' motion.

16 The Court therefore finds that Defendant must be required to
17 provide full production of documents in response to Plaintiffs'
18 Third Set of Requests for Production #11 and #12 and Plaintiffs'
19 Fourth Set of Requests for Production #6. Since no response in
20 opposition was received by the Court, Defendant's objections to
21 the deposition of Mr. Holt are deemed without merit. Plaintiffs
22 are additionally entitled to obtain the requested documents
23 identified in Plaintiffs' motion to compel which pertain to Mr.
24 Holt.

25 Moreover, by Defendant's failure to respond to the instant
26 motion, Defendant and its attorney have also failed to show good
27 faith and/or substantial justification for the failure to provide
28 discovery to Plaintiffs. Pursuant to Fed. R. Civ. P. 37(a)(4),

1 the party who prevails on a motion to compel is entitled to his or
2 her expenses, including reasonable attorney's fees, incurred in
3 making the motion, unless the losing party was substantially
4 justified in making or opposing the motion or other circumstances
5 that make such an award unjust. The burden is on the losing party
6 to affirmatively demonstrate that its position was substantially
7 justified. Fed. R. Civ. P. 37(a)(4), Advisory Comm. Notes (1970).
8 Defendant has failed to file anything in response to Plaintiffs'
9 motion regarding Plaintiffs' discovery requests. Accordingly, the
10 Court further grants monetary sanctions against Defendant.

11 On June 6, 2006, the Court ordered sanctions in the amount of
12 \$400.00 against Defendants Green Acre and Valley Fruit and/or
13 their attorneys for their failure to timely respond to Plaintiffs'
14 discovery requests. (Ct. Rec. 114). On that occasion, the co-
15 defendants also failed to file a response to Plaintiffs' motion to
16 compel or otherwise contact the Court with respect to Plaintiffs'
17 motion. A second occurrence by these co-defendants warranted
18 sanctions in the amount \$500.00 on February 8, 2007. (Ct. Rec.
19 233).

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

21 1. Plaintiffs' motion to compel discovery responses from
22 Defendant Global Horizons, Inc., and for sanctions (**Ct. Rec. 245**)
23 is **GRANTED**.

24 2. Defendant Global Horizons, Inc. shall produce all
25 documents requested in Plaintiffs' Third Set of Requests for
26 Production #11 and #12 and Plaintiffs' Fourth Set of Requests for
27 Production #6 within **five (5) calendar days** from the date of this
28 order.

1 3. Defendant's objections to producing James S. Holt for
2 deposition are deemed without merit as a result of Defendant's
3 failure to timely respond to the instant motion.

4 4. Defendant Global Horizons, Inc. shall also produce all
5 documents sought by Plaintiffs and identified in Plaintiff's most
6 recent motion to compel (Ct. Rec. 245, pp. 2-3) within **five (5)**
7 **calendar days** from the date of this order. Specifically,
8 Defendant shall provide the following:

- 9 a. All memorandum or other documents prepared by James
10 S. Holt regarding the agricultural labor shortage
in Washington State in 2004.
- 11 b. All written training materials produced for and/or
12 provided to Global Horizons, Inc. and/or its
employees related to Global's use of the H-2A
13 program by James S. Holt.
- 14 c. All written manuals produced for and/or provided to
15 Global for use by its employees by James S. Holt
related to Global's H-2A business operations
16 including, but not limited to, recruitment,
application and interview process, hiring,
17 progressive discipline process and all other
aspects of the business operations.
- 18 d. All written memorandum provided to Global by James
19 S. Holt related to its business practices
including, but not limited to, the Migrant and
20 Seasonal Agricultural Worker Protection Act, the
Social Security Number Verification process, and/or
the recruitment or employment of agricultural
21 workers.
- 22 e. All correspondence including, but not limited to,
23 letters, e-mails, and facsimiles, that relates to
the documents referenced above and to Global's
24 business practices in Washington State in 2003 and
2004 between James S. Holt and Global.
- 25 f. All contracts for services between James S. Holt
and Global from 2002 through 2004.

26 ///

27 ///

28 ///

