

United States District Court Western District of Washington

State of Washington

Plaintiff(s)

V.

THE GEO GROUP, INC.

Defendant(s)

Case Number: 3:17-cv-05806

APPLICATION FOR LEAVE TO APPEAR
PRO HAC VICE

Pursuant to LCR 83.1(d) of the United States District Court for the Western District of Washington,

Charles A. Deacon hereby applies for permission to appear and participate as counsel in the above entitled action on behalf of the following party or parties:

Defendant, THE GEO GROUP, INC.

The particular need for my appearance and participation is:

Applying counsel has knowledge and experience litigating issues in a similar case in the U.S.D.C. Colorado, Cause No. 1:14-cv-02887.

I, Charles A. Deacon understand that I am charged with knowing and complying with all applicable local rules;

I have not been disbarred or formally censured by a court of record or by a state bar association; and there are not disciplinary proceedings against me.

I declare under penalty of perjury that the foregoing is true and correct.

Date: Oct 10, 2017

Signature of Applicant: s/ Charles A. Deacon

Pro Hac Vice Attorney

Applicant's Name: Charles A. Deacon

Law Firm Name: Norton Rose Fulbright US LLP

Street Address 1: 300 Convent St.

Address Line 2: Suite 2100

City: San Antonio State: Texas Zip: 78205

Phone Number w/ Area Code 210-270-7133 Bar # 05673300 State Texas

Primary E-mail Address: charlie.deacon@nortonrosefulbright.com Secondary E-mail Address: _____

STATEMENT OF LOCAL COUNSEL

I am authorized and will be prepared to handle this matter, including trial, in the event the applicant Charles A. Deacon is unable to be present upon any date assigned by the court.

Date: Oct 9, 2017 Signature of Local Counsel: s/ Joan K. Mell

Local Counsel's Name: Joan K. Mell Bar # 21319

Law Firm Name: III Branches Law, PLLC

Street Address 1: 1019 Regents Boulevard, Suite 204

Address Line 2: _____

City: Fircrest State: Washington Zip: 98466

Phone Number w/ Area Code Example: 999-999-9999 253-566-2510

Electronic Case Filing Agreement

By submitting this form, the undersigned understands and agrees to the following:

1. The CM/ECF system is to be used for filing and reviewing electronic documents, docket sheets, and notices.
2. The password issued to you by the court, combined with your login, serves as your signature under Federal Rule of Civil Procedure 11. Therefore, you are responsible for protecting and securing this password against unauthorized use.
3. If you have any reason to suspect that your password has been compromised in any way, you are responsible for immediately notifying the court. Members of the court's systems staff will assess the risk and advise you accordingly.
4. By signing this Registration Form, you consent to receive notice electronically, and to waive your right to receive notice by personal service or first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(C), except with regard to service of a complaint and summons. This provision *does* include electronic notice of the entry of an order or judgment.
5. You will continue to access court information via the Western District of Washington's internet site or through the Public Access to Court Electronic Records (PACER) system. You will continue to need a PACER login, in addition to the court-issued password. You can register for PACER at their web site: <http://pacer.psc.uscourts.gov>.
6. By this registration, the undersigned agrees to abide by the rules and regulations in the most recent General Order, the Electronic Filing Procedures developed by the Clerk's Office, and any changes or additions that may be made to such administrative procedures in the future.

Charles A. Deacon

Signature (use an "s/" and type your name)

Oct 10, 2017

Date Signed

United States District Court Western District of Washington

State of Washington

Plaintiff(s)

Case Number: 3:17-cv-05806

V.

THE GEO GROUP, INC.

Defendant(s)

APPLICATION FOR LEAVE TO APPEAR
PRO HAC VICE

Pursuant to LCR 83.1(d) of the United States District Court for the Western District of Washington,

Mark Emery hereby applies for permission to appear and participate as counsel in the above entitled action on behalf of the following party or parties:

Defendant, THE GEO GROUP, INC.

The particular need for my appearance and participation is:

Applying counsel has knowledge and experience litigating issues in a similar case in the U.S.D.C. Colorado, Cause No. 1:14-cv-02887.

I, Mark Emery understand that I am charged with knowing and complying with all applicable local rules;

I have not been disbarred or formally censured by a court of record or by a state bar association; and there are not disciplinary proceedings against me.

I declare under penalty of perjury that the foregoing is true and correct.

Date: Oct 10, 2017

Signature of Applicant: s/ Mark Emery

Pro Hac Vice Attorney

Applicant's Name: Mark Emery

Law Firm Name: Norton Rose Fulbright US LLP

Street Address 1: 799 9th Street

Address Line 2: Suite 1000

City: Washington State: District of Columb Zip: 20001

Phone Number w/ Area Code 202 662 0210 Bar # 988017 State District of Columbia

Primary E-mail Address: mark.emery@nortonrosefulbright.com Secondary E-mail Address: _____

STATEMENT OF LOCAL COUNSEL

I am authorized and will be prepared to handle this matter, including trial, in the event the applicant Mark Emery is unable to be present upon any date assigned by the court.

Date: Oct 9, 2017 Signature of Local Counsel: s/ Joan K. Mell

Local Counsel's Name: Joan K. Mell Bar # 21319

Law Firm Name: III Branches Law, PLLC

Street Address 1: 1019 Regents Boulevard, Suite 204

Address Line 2: _____

City: Fircrest State: Washington Zip: 98466

Phone Number w/ Area Code Example: 999-999-9999 253-566-2510

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6. By this registration, the undersigned agrees to abide by the rules and regulations in the most recent General Order, the Electronic Filing Procedures developed by the Clerk's Office, and any changes or additions that may be made to such administrative procedures in the future.

Mark Emery

Signature (use an "s/" and type your name)

Oct 10, 2017

Date Signed

1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-464-7744

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON,
13
14 Plaintiff,

15 v.

16 HORNING BROTHERS,
17 L.L.C., and HERMILO CRUZ,
18 in his individual capacity and
19 as a member of the marital
20 community of HERMILO
21 CRUZ and CLAUDIA
22 SANCHEZ,

23 Defendants.

24 SOCORRO DIAZ SILVAS,
25 ROXANA RODRIGUEZ DE
26 ALFARO, YESICA
27 CABRERA NAVARRO,
28 YASMIN CABRERA
29 NAVARRO, and SAMANTHA
30 MENDOZA,

31 Plaintiffs-Intervenors,

32 v.

33 HORNING BROTHERS,
34 L.L.C.,

35 Defendant.

CIVIL ACTION NO. 2:17-cv-00149-TOR

JOINT STATUS REPORT AND DISCOVERY PLAN

Telephonic Scheduling Conference: 8/31/2017 at 10:45 a.m.

1 Plaintiff State of Washington (the “State”); Plaintiffs-Intervenors Socorro
 2 Diaz Silvas, Roxana Rodriguez de Alfaro, Yesica Cabrera Navarro, Yasmin Cabrera
 3 Navarro, and Samantha Mendoza; Defendant Horning Brothers, L.L.C. (“Horning
 4 Brothers”); and Defendant Hermilo Cruz, in his individual capacity and as a
 5 member of the marital community of Hermilo Cruz and Claudia Sanchez, by and
 6 through their undersigned counsel,¹ respectfully submit this Joint Status Report and
 7 Discovery Plan.

8 **A. Whether Jurisdiction and Venue Exist and, If They Do Exist, the Basis**
 9 **for Each**

10 The State’s Action. The Court has jurisdiction over the State’s Title VII
 11 claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3). State of
 12 Washington Complaint (“State Complaint”), ECF No. 1, ¶ 2; Defendants Hermilo
 13 Cruz and Claudia Sanchez’s Answer and Affirmative Defenses and Jury Demand
 14 (“Cruz Answer”), ECF No. 13, ¶ II; Defendant’s Horning Brothers, LLC’s Answer
 15 and Affirmative Defenses and Jury Demand (“Horning Bros. Answer”), ECF No.
 16 15. The Court has supplemental jurisdiction to adjudicate the State’s claims under
 17 the Washington Law Against Discrimination pursuant to 28 U.S.C. § 1367(a). Id.

18 Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and 42
 19 U.S.C. § 2000e-5(f)(3) because the alleged unlawful employment practices were
 20 alleged to have been committed within the Eastern District of Washington. State
 21 Complaint ¶ 3; Cruz Answer ¶ III; Horning Bros. Answer ¶ III.

22 **Plaintiffs-Intervenors’ Action.** The Court has jurisdiction over the
 23 Plaintiffs-Intervenors’ claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 42

24 ¹ Counsel for Defendant Horning Brothers, L.L.C., and counsel for
 25 Defendant Hermilo Cruz participated in the preparation of this Joint Status
 26 Report and authorized its filing, but have declined to sign for the reasons stated in
 Section I.4.

1 U.S.C. §§ 2000e-5(f)(3). First Amended Complaint in Intervention (“Intervenors’
2 Complaint”), ECF No. 12, ¶ 2.

3 The Court has jurisdiction over the Plaintiffs-Intervenors’ state law claims
4 pursuant to 28 U.S.C. §1367(a). Intervenors’ Complaint ¶ 3.

5 The proper venue for Plaintiffs-Intervenors’ action is in the Eastern
6 District of Washington pursuant to 28 U.S.C. § 1391, as a substantial part of the
7 alleged events or omissions giving rise to the Intervenors’ claims occurred within
8 the boundaries of the District. *Id.* ¶ 4.

9 Defendants agree that the Court has jurisdiction over Plaintiffs-
10 Intervenors’ claims and venue is proper in this Court.

11 **B. Whether Service of Process is Complete and, if Not, a Deadline for
12 Completion**

13 Plaintiff and Plaintiffs-Intervenors contend service of process is complete.
14 Defendant Hermilo Cruz has been served. Defendant Horning Brothers, L.L.C.
15 reserves the right to contest service of process with respect to the Plaintiffs-
16 Intervenors.

17 The parties have each consented to receive electronic service of pleadings
18 and other papers pursuant to Federal Rule of Civil Procedure 5(b)(2)(E).

19 **C. A Brief Description of the Claims and Defenses**

20 This case alleges a pattern or practice of sex discrimination in
21 employment. The State alleges that Defendant Horning Brothers, an agricultural
22 employer that operates an onion packing shed in Quincy, Washington, and
23 Defendant Hermilo Cruz, Supervisor of the packing shed, from at least 2012 to
24 the present, employed a policy or practice of hiring only women to sort onions on
25 the onion packing line and limiting women to positions on the onion packing
26 line. The State further alleges that Defendant Cruz subjected female employees

1 of the onion packing shed to unlawful harassment on the basis of sex, including
2 quid pro quo sexual harassment and/or severe, pervasive, and unwelcome sexual
3 conduct that gave rise to a hostile work environment. The State also alleges that
4 Defendant Horning Brothers knew or should have known about Defendant
5 Cruz’s conduct—which included requesting dates and sex, requesting intimate
6 photographs, making unwelcome comments of a sexual nature, groping or
7 touching female employees without their permission, and requiring or attempting
8 to require that employees have sex with him in order to secure continued
9 employment—but failed to take reasonably prompt and adequate corrective action.
10 The State additionally alleges that the above-referenced conduct resulted in the
11 constructive discharge of several employees, and that Defendants Horning
12 Brothers and Cruz retaliated against employees who rejected his advances or who
13 complained to others, including to the owners and managers of Horning Brothers,
14 about Defendant Cruz’s behavior.

15 The State filed this action on April 25, 2017. State Complaint. The State’s
16 Complaint asserts violations of (1) Title VII – Discriminatory Hiring Practices,
17 (2) Title VII – Segregated Employment Practices, (3) Title VII – Sexual
18 Harassment, (4) Title VII – Retaliation, (5) the Washington Law Against
19 Discrimination (“WLAD”) – Discriminatory Hiring Practices, (6) the WLAD –
20 Sexual Harassment, (7) the WLAD – Retaliation, and (8) the WLAD – Aiding
21 and Abetting. The State seeks declaratory and injunctive relief, as well as
22 damages, including punitive damages, attorneys’ fees, and costs.

23 On May 26, 2017, Plaintiffs-Intervenors Socorro Diaz Silvas, Roxana
24 Rodriguez de Alfaro, Yesica Cabrera Navarro, Yasmin Cabrera Navarro, and
25 Samantha Mendoza filed a motion to intervene in this action. ECF No. 5. The
26 motion was unopposed. On June 15, 2017, the Court granted Plaintiffs-

1 Intervenor’s motion to intervene. ECF No. 10. On June 20, 2017, Plaintiffs-
2 Intervenor’s filed their Complaint in Intervention against Defendant Horning
3 Brothers. ECF No. 11. On June 26, 2017, Plaintiffs-Intervenor’s filed a First
4 Amended Complaint in Intervention, which is the operative pleading. ECF No.
5 12.

6 Plaintiffs-Intervenor’s allege that they were employees of Defendant
7 Horning Brothers between 2012 and 2016. Plaintiffs-Intervenor’s allege they were
8 subjected to a hostile work environment based on their sex by Defendant Horning
9 Brothers. Plaintiff-Intervenor Roxana Rodriguez de Alfaro further alleges she
10 was constructively discharged. Plaintiff-Intervenor Yesica Cabrera Navarro
11 additionally asserts she was constructively discharged and retaliated against after
12 reporting Hermilo Cruz’s sexual harassment to Warren Horning, one of Horning
13 Brothers’ managers.

14 The First Amended Complaint in Intervention asserts claims for (1) Sexual
15 Harassment in Violation of Title VII, (2) Constructive Discharge in Violation of
16 Title VII, (3) Sexual Harassment in Violation of the WLAD, (3) Constructive
17 Discharge in Violation of the WLAD, and (4) Retaliation in Violation of the
18 WLAD. Plaintiffs-Intervenor’s seek damages, including punitive damages, and
19 attorneys’ fees and costs.

20 Defendants deny the States’ and Plaintiffs-Intervenor’s allegations. In their
21 Answers to the State’s Complaint, Defendants plead the following affirmative
22 defenses: (1) failure to state a claim for which relief may be granted, (2) failure to
23 mitigate damages, (3) unclean hands, (4) estoppel, (5) statute of limitations, (6)
24 laches, and (7) failure to reasonably investigate before asserting claims in the
25 Complaint.

1 **D. Whether a Statute’s Constitutionality is Being Challenged, see Fed. R.**
2 **Civ. P. 5.1, and Whether the Required Noticed Has Been Provided**

3 The constitutionality of a statute is not being challenged in this action.

4 **E. Whether Any Issues Should be Certified to a State Supreme Court**

5 The parties are not aware of any issues that should be certified to the
6 Washington State Supreme Court.

7 **F. Suggested Deadline for Adding Additional Parties, Amending the**
8 **Pleadings, and Seeking Class Certification**

9 The parties suggest that the deadline for adding additional parties and
10 amending the pleadings shall be September 29, 2017. This action is not a
11 purported class action.

12 **G. Whether All Non-Government Corporate Parties Have Filed the**
13 **Necessary Ownership Statement, see Fed. R. Civ. P. 7.1**

14 Defendant Horning Brothers has filed a corporate disclosure statement.

15 **H. Whether the Case Involves a Minor or Incompetent Party and Whether**
16 **the Appointment of a Guardian Ad Litem is Necessary, see LR 17.1**

17 To date, the case does not involve a minor or incompetent party or require
18 the appointment of a guardian ad litem.

19 **I. Discovery**

20 **1. Confirmation That Initial Disclosures, see Fed. R. Civ. P. 26(a)(1),**
21 **Will Be Accomplished By the Time of the Hearing**

22 The parties held their Rule 26(f) conference on July 21, 2017 and agreed to
23 serve their initial disclosures by August 16, 2017.

24 **2. Subjects On Which Discovery May Be Needed**

25 The State may need discovery regarding Defendants’ policies and practices
26 relating to the hiring, management, and discipline of employees, discrimination,
and/or sexual harassment; the names and contact information of Horning
Brothers’ employees following the 2015-2016 season to the present; employment

1 records of current and former employees of Horning Brothers; additional victims
2 and/or witnesses of the alleged sex discrimination; Horning Brothers' knowledge
3 of, and response to, the alleged sex discrimination; Defendants' investigation(s)
4 relating to the alleged sex discrimination; and Defendants' financial condition.

5 Plaintiffs-Intervenors may need discovery regarding policies and practices
6 relating to the hiring, management, and discipline of employees, discrimination,
7 and/or sexual harassment; additional witnesses of the alleged sex discrimination;
8 Defendants' investigation(s) relating to alleged sex discrimination; Defendant's
9 Separation Questionnaire(s) and employment records of Plaintiffs-Intervenors;
10 and Defendants' financial condition.

11 Defendants may need discovery regarding communications among
12 employees regarding the State's and Intervenors' allegations, including
13 employees' cell phone records, electronic communications and social media
14 postings; all written statements concerning the allegations obtained by the State
15 and Intervenors; all complaints or communications related to the allegations
16 made by employees to any governmental agencies; the criminal histories of all
17 claimants and witnesses identified by the State and Intervenors; all evidence
18 purporting to support or contradict the allegations made by the State and the
19 Intervenors; information concerning the financial condition of each claimant or
20 witness; information concerning any immigration visas applied for by any
21 claimant or which any claimant intends to apply for based on the allegations
22 made by the State or the Intervenors.

23 **3. Any Issues About Preserving Discoverable Information,**
24 **Including Electronically Stored Information**

25 The parties are aware of their duty to take reasonable and proportional
26 steps to preserve potentially relevant information relating to the claims and

1 defenses in this case. *See* Fed. R. Civ. P. 26(b)(1). The parties agree that
2 voicemail messages need not be preserved, provided that a transcription of any
3 potentially relevant voicemail(s) is maintained.

4 **4. Claims of Privilege, Protection of Confidentiality, and Proposed**
5 **Confidentiality Agreements**

6 Pursuant to Federal Rule of Civil Procedure 26(b)(5), the parties agree to
7 log by category documents that are privileged or protected under the attorney-
8 client privilege, work product doctrine, common interest privilege, deliberative
9 process privilege, and/or law enforcement privilege. Notwithstanding this
10 agreement, any party may challenge the scope of materials designated as subject
11 to categorical logging through conference of the parties or motion to the Court.

12 Pursuant to Federal Rule of Civil Procedure 26(c), the State proposes that
13 the parties enter into a Stipulated Confidentiality Agreement and Protective
14 Order which has been provided to counsel for the parties.

15 **Plaintiff's Position:** The parties are largely in agreement as to form and
16 content of the stipulation, with only three issues remaining: (1) whether
17 Defendants or their agents or employees should be allowed to contact the alleged
18 sexual harassment victims and witnesses during the litigation directly, instead of
19 contacting alleged victims and witnesses through their counsel of record and/or
20 counsel's employees; (2) the scope of personally identifying information, or
21 personal data identifiers, of alleged sexual harassment victims and witnesses that
22 may be designated confidential; and (3) whether parties intending to file home
23 address and telephone numbers of a party, witness, or potential witness with the
24 Court should have to confer with the designating party before filing said
25 information. Attached hereto as **Exhibit A** is the draft Stipulated Confidentiality
26

1 Agreement and Protective Order the State proposed to the parties containing
2 Defendants' proposed redlined edits.

- 3 a. **Whether Defendants or their agents or employees should be**
4 **allowed to contact the alleged sexual harassment victims and**
5 **witnesses during the litigation, in addition to their counsel of record**
6 **and counsel's employees.** The State has concerns with Kayla Horning,
7 Defendant Horning Brothers' employee and family member, and
8 Defendant Hermilo Cruz, the alleged harasser, contacting victims and
9 witnesses in this case and soliciting statements from them. Counsel for
10 the Defendants are aware that these contacts are occurring. The State
11 understands that Ms. Horning and Mr. Cruz contact former employees
12 via phone and/or in person (sometimes via visits to the employee's
13 home) to solicit favorable statements for use in litigation. Given the
14 relative power imbalance, potential for confusion and intimidation
15 (whether intended or not), and vulnerability of witnesses who may not
16 fully understand their rights or feel free to act voluntarily before a
17 former and potential future employer, and who are at a further
18 disadvantage due to a language barrier, these contacts are highly
19 concerning. To balance these concerns with Defendants' right to defend
20 this action, the State proposes that Defendants (and their agents,
21 employees, and others acting on their behalf) not contact or attempt to
22 contact victims or witnesses in this case but, rather, leave litigation-
23 related contacts to counsel of record and counsel's employees. *See*
24 Exhibit A, proposed Stipulated Confidentiality Agreement and
25 Protective Order ¶ A.
26

1 Defendants would reject the reasonable and appropriate proposed
2 contact restriction as between Defendants and victims and witnesses
3 identified by the State. Counsel for Defendants have taken the position
4 that contacts between witnesses and Defendants should be presumed
5 voluntary and have dismissed concerns about intimidation, confusion,
6 or pressure to cooperate. Counsel have also stated that permitting
7 Defendants and their agents directly to communicate with witnesses for
8 purposes of litigation is necessary because defense counsel do not speak
9 Spanish and their offices are not located near Quincy. The State
10 believes that the balance of interests tips in favor of restricting
11 communications related to this litigation to counsel and/or their
12 employees, including individuals local to Quincy with whom they wish
13 to contract.

14 b. **The scope of personally identifying information, or personal data**
15 **identifiers, of alleged sexual harassment victims and witnesses that**
16 **may be designated confidential, including home address or**
17 **telephone information.** In addition to personal and business financial
18 and tax information, and other sensitive information exchanged in
19 discovery, the State proposes that “personally identifying information
20 and personal data identifiers” and “current home address or telephone
21 information” of parties and witnesses may be designated confidential.
22 See Exhibit A, proposed Stipulated Confidentiality Agreement and
23 Protective Order ¶ B.1. This provision would apply to any individual
24 witness, whether designated by the State, Plaintiffs-Intervenors, or
25 either Defendant. The proposed protection would allow the parties to
26 freely exchange such information in discovery while providing that

1 personally identifying information and personal data identifiers of
2 victims and witnesses are not filed in the public domain without a
3 meeting and conference of counsel to assure adequate safeguards. *See*
4 *id.* ¶ C.1. The proposed provision creates no presumption of redaction,
5 sealing, or other limitation on the use of personally identifying
6 information—it requires only that the parties confer before any party
7 files personal identifiers on the public docket. *See id.* This case arises in
8 a small community in Central Washington and the State is concerned
9 with protecting the alleged sexual harassment victims and third-party
10 witnesses (regardless of the party that designated them) from
11 annoyance, embarrassment, oppression, and/or retaliation for having
12 been designated as a potential witness in this action. *See Fed. R. Civ. P.*
13 *26(c)(1).*

14 Defendants would limit the personally identifying information and
15 personal data identifiers that the parties could protect as confidential to
16 those “required to be redacted by the Federal Rule of Civil Procedure
17 [5.2].” *See id.* ¶¶ B.1., B.4. This approach would effectively limit the
18 proposed safeguard to the five categories of information that *already*
19 require mandatory redaction under the federal rules, thereby ignoring
20 the State’s concerns and providing no additional protections.

21 Defendants would also strike “current home address or telephone
22 information for any party, witness, or potential witness” from the
23 definition of Confidential Information so that they would not be
24 required to confer with the designating party in advance of filing home
25 addresses or telephone numbers in the public domain. *See id.* ¶ B.1. The
26 meeting and conference requirement, however, does not shift the

1 burden of protecting Confidential Information away from the
 2 designating party, and contemplates that the parties may come up with
 3 an easy solution, like redacting the document. Additionally, counsel for
 4 Defendant Horning Brothers, L.L.C., has indicated that he could not
 5 recall any instance in which he had included a witness' home address or
 6 telephone number in a public court filing. In short, Defendants dismiss
 7 the State's reasonable concerns without providing any justification why
 8 filing home address and phone information before conferring with
 9 counsel is somehow necessary to their preparation or presentation of a
 10 defense.

11 **Plaintiffs-Intervenors' Position:** Plaintiffs-Intervenors are amenable to
 12 the State's proposed Stipulated Confidentiality Agreement and Protective Order.

13 **Defendants' Position:** Defendants strenuously object to Plaintiffs'
 14 statement regarding the parties' issues regarding the Stipulated Protective Order
 15 and Confidentiality Agreement. Defendants' statement is full of prejudicial,
 16 unsupported factual assertions and amounts to an improper effort to pre-litigate
 17 the motion for a protective order before it has been filed. Instead, Defendants
 18 proposed the following language for Section I(4) of the Joint Status Report:

19 The parties have circulated a proposed Stipulated Protective Order
 20 and Confidentiality Agreement. The parties agree to all of the
 21 provisions of the proposed stipulation with the exception of two
 22 issues on which they disagree:

23 (1) Plaintiffs wish to prohibit
 24 communications between the defendants and non-party
 25 witnesses (some of whom the State claims may be "victims"),
 26 instead limiting such communications to the defendants'

1 counsel; defendants oppose such a restriction and believe they
2 should be able to communicate with their employees (Horning
3 Brothers, LLC) and co-workers (Hermilo Cruz).

4 (2) Plaintiffs wish to designate as confidential
5 information they describe as “personally identifying
6 information” or “personal data identifiers” of parties and
7 witnesses without fully defining what those terms mean;
8 defendants propose limiting the confidential designation
9 regarding personal information (as opposed to financial
10 information) to that which is required to be redacted under
11 F.R.C.P. 5.2.

12 If the parties cannot resolve these issues by agreement, they will be
13 submitted by motion for resolution by the Court.

14 Defendants request that the Court disregard Plaintiffs’ superfluous
15 statements above until they are properly supported and presented in a motion.
16 Defendants’ counsel are withholding their signatures to the Joint Status Report
17 report due to Plaintiffs’ insistence that their improper statements be included in
18 this document.

19 **5. Proposed Agreements Reached Under Fed. R. Evid. 502**

20 For purposes of Federal Rule of Evidence 502(d), the parties agree that the
21 provisions of Federal Rules of Evidence 502(a) and (b) regarding waiver and
22 inadvertent disclosures of attorney-client privilege and work product protected
23 information shall apply to this case.

24 **6. Proposed Modifications to the Standard Discovery Procedures,
25 Including Bifurcation and/or Consolidation of Discovery, or an
26 Increase in the Allowed Number of Depositions (10),**

1 **Interrogatories (25), Requests for Production (30), or Requests for**
2 **Admission (15)**

3 **Plaintiff's and Plaintiffs-Intervenors' Position:** Plaintiffs and

4 Defendants shall be permitted to take up to 15 depositions per side, subject to
5 change upon mutual agreement or an order of the Court.

6 **Defendants' Position:** Plaintiffs and Defendants shall be permitted to take
7 up to 10 depositions per side, subject to change upon mutual agreement or an
8 order of the Court.

9 **7. Suggested Expert Disclosure Deadlines**

10 The parties agree to and suggest the following expert disclosure deadlines:

11 The parties shall identify their experts and serve those experts' Rule
12 26(a)(2) reports on all other parties no later than January 19, 2018. The parties'
13 Rule 26(a)(2) disclosure(s) shall also provide dates for which their expert(s) can
14 be available for deposition.

15 The parties shall identify their rebuttal experts and serve those experts'
16 Rule 26(a)(2) reports on all other parties no later than March 19, 2018. The
17 parties' Rule 26(a)(2) disclosure(s) shall also provide dates for which their
18 rebuttal expert(s) can be available for deposition.

19 **8. Suggested Discovery Cut-Off**

20 The parties suggest that all fact discovery, including depositions, shall be
21 completed by February 28, 2018.

22 The parties suggest that all expert discovery, including depositions, shall
23 be completed by April 20, 2018.

24 **J. Anticipated Motions and Suggested Dispositive Motion Filing Deadlines**

25 The parties anticipate that discovery motions and summary judgment
26 motions may be filed.

1 The parties suggest that all dispositive motions shall be filed on or before
2 May 29, 2018.

3 **K. Trial**

4 **1. Whether a Jury Has Been Requested**

5 The parties have requested a jury.

6 **2. Suggested Trial Date(s) and Suggested Location**

7 The parties suggest that trial shall commence on October 22, 2018, as
8 September/October 2018 is peak harvest season for Defendant Horning Brothers,
9 L.L.C., and be held in Spokane, Washington.

10 **3. Anticipated Length of Trial**

11 The parties anticipate 14 trial days.

12 **4. Requests for Bifurcation**

13 The parties do not request bifurcation.

14 **5. The Need for Special Audio/Visual Courtroom Technology**

15 Several of the Plaintiffs-Intervenors, victims, and witnesses are
16 monolingual Spanish speakers and will require an interpreter. Plaintiffs-
17 Intervenors request that they have access to audio headsets that allow them to
18 hear simultaneous interpretation of all proceedings. To the extent the Court has
19 audio headsets that also allow members of the jury to listen to the simultaneous
20 interpretation during trial, the State and Plaintiffs-Intervenors request that such
21 equipment be made available.

22 The State may use Trial Director or other similar trial presentation
23 software.

24 **L. The Likelihood for Settlement and the Point at Which the Parties Can**
25 **Conduct Meaningful Dispute Resolution**

1 The State presented Defendant Horning Brothers a pre-suit settlement
 2 offer. Defendant Horning Brothers presented a counteroffer and the State rejected
 3 that counteroffer. The parties remain amenable to settlement discussions.
 4 Meaningful dispute resolution may not be possible until after the parties conduct
 5 discovery and/or the Court rules on any motions for summary judgment and/or
 6 partial summary judgment.

7 **M. Any Other Matters That May Be Conducive to the Just, Speedy, and**
 8 **Inexpensive Determination of the Action**

9 **Purported Appearance by Extraneous Defendant Requiring Attention.**

10 The State sues Defendant Hermilo Cruz, in his individual capacity and as a
 11 member of the marital community of Hermilo Cruz and Claudia Sanchez.
 12 Complaint, ECF No. 1, Caption and ¶ 18. In an abundance of caution, Mr. Cruz
 13 and Ms. Sanchez together filed an Answer, under the impression that Ms.
 14 Sanchez was a defendant in the case. Answer, ECF No. 13. However, the parties
 15 agree that Ms. Sanchez is not a defendant and the State will not pursue liability
 16 against her in her individual capacity, and ask that the Court strike Ms. Sanchez’s
 17 appearance as a defendant from the Answer, ECF No. 13, the docket, and any
 18 and all pleadings and papers filed in the case.

19 **Format of Production of Documents and Electronically Stored**
 20 **Information (“ESI”).** The parties agree that documents shall be produced in a

21 manner consistent with FRCP 34.

22 **Proposed Case Schedule.** The parties agree to the following case
 23 schedule:

24	Deadline to Serve Initial Disclosures (14 days after	Aug. 16, 2017
25	Rule 26(f) conference)	
26	Deadline to add additional parties & amend the pleadings	Sep. 29, 2017

1	Deadline to identify experts, serve those experts’	Jan. 19, 2018
2	Rule 26(a)(2) reports, and provide dates of availability	
3	for experts’ depositions	
4	Fact discovery cut-off, including depositions	Feb. 28, 2018
5	Deadline to file fact discovery motions	Feb. 28, 2018
6	Deadline to identify rebuttal experts, serve those	Mar. 19, 2018
7	experts’ Rule 26(a)(2) reports, and provide dates of	
8	availability for rebuttal experts’ depositions	
9	Expert discovery cut-off, including depositions	Apr. 20, 2018
10	Deadline to file expert discovery motions	Apr. 20, 2018
11	Deadline to file dispositive motions	May 29, 2018
12	Deadline to file <i>Daubert</i> motions (noted for hearing	July 13, 2018
13	at least 30 days after date filed)	
14	Deadline to file motions in limine	July 27, 2018
15	Deadline to file and serve witness/exhibit lists, provide	Aug. 3, 2018
16	copies, and/or make exhibits available to parties	
17	for inspection	
18	Deadline to serve, but not file, deposition designations	Aug. 3, 2018
19	Deadline to file and serve objections to witnesses/exhibits	Aug. 10, 2018
20	Deadline to serve, but not file, deposition cross-designations	Aug. 10, 2018
21	Deadline to file trial briefs, requested <i>voir dire</i> , and	Aug. 31, 2018
22	joint proposed jury instructions	
23	Pretrial Conference	Sep. 13, 2018
24	Trial	Oct. 22, 2018
25		
26		

1 DATED this 17th day of August, 2017.

2 Respectfully submitted,

3
4 BOB FERGUSON, WSBA
5 #26004
6 Attorney General of
7 Washington

8 /s/ Patricio A. Marquez
9 COLLEEN M. MELODY,
10 WSBA #42275
11 PATRICIO A. MARQUEZ,
12 WSBA #47693
13 Assistant Attorneys General
14 Office of the Attorney General
15 800 Fifth Avenue, Suite 2000
16 Seattle, WA 98104
17 (206) 464-7744
18 ColleenM1@atg.wa.gov
19 PatricioM@atg.wa.gov

20 *Attorneys for Plaintiff State of
21 Washington*

22 NORTHWEST JUSTICE
23 PROJECT

24 /s/ Alyson Dimmit Gnam
25 ALYSON DIMMITT GNAM,
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*Attorneys for Plaintiffs-
Intervenors Socorro Diaz
Silvas, Roxana Rodriguez de*

LAW OFFICE OF WILLIAM R.
SPURR

/s/ Declined to sign
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*Attorney for Defendant Horning
Brothers, L.L.C.*

RANDALL | DANSKIN, P.S.

/s/ Declined to sign
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*Attorneys for Defendant Hermilo Cruz,
and Claudia Sanchez*

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*Alfaro, Yesica Cabrera
Navarro, Yasmin Cabrera
Navarro, and Samantha
Mendoza*

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2017, I electronically filed the foregoing with the Clerk of the Court using the Court’s CM/ECF system which will send notification of such filing to the following:

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Attorneys for Intervenor Plaintiffs Socorro Diaz
Silvas, Roxana Rodriguez de Alfaro,
Yesica Cabrera Navarro, Yasmin
Cabrera Navarro, and Samantha Mendoza

Dated: August 17, 2017

/s/Patricio A. Marquez

Plaintiff's Exhibit A

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

HORNING BROTHERS, L.L.C.,
and HERMILO CRUZ, in his
individual capacity and as a
member of the marital community
of HERMILO CRUZ and
CLAUDIA SANCHEZ,

Defendants.

CIVIL ACTION NO. 2:17-cv-
00149-TOR

STIPULATED
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER

SOCORRO DIAZ SILVAS,
ROXANA RODRIGUEZ DE
ALFARO, YESICA CABRERA
NAVARRO, YASMIN
CABRERA NAVARRO, and
SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS, L.L.C,

Defendant.

This is a joint agreement between: the State of Washington; Plaintiffs-
Intervenors Socorro Diaz Silvas, Roxana Rodriguez de Alfaro, Yesica Cabrera

1 Navarro, Yasmin Cabrera Navarro, and Samantha Mendoza; Defendant Horning
2 Brothers, L.L.C.; and Defendant Hermilo Cruz (“the parties”). The parties expect
3 that disclosure of documents in this case may involve the exchange of sensitive
4 information, including, for example, personal financial and tax information,
5 business financial and tax information, personally identifying information of
6 parties and witnesses required to be redacted by the Federal Rules of Civil
7 Procedure, and/or other information of a private nature that is covered by the
8 scope of Federal Rules of Civil Procedure 5.2 and 26(c).
9
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11

12 Accordingly, the parties stipulate and agree to, and the Court finds good
13 cause for, entry of this Confidentiality Agreement and Protective Order pursuant
14 to Federal Rule of Civil Procedure 26(c). The parties further stipulate and agree
15 that certain forms of contact between the Defendants and their agents, on the one
16 hand, and Plaintiff-Intervenors and witnesses for the State on the other, can and
17 should be avoided.
18

19 It is hereby ordered that:

20
21 **A. Contact Between Defendants, Plaintiff-Intervenors, and Witnesses for**
22 **the State**
23

24 Defendants and their agents, employees, or anyone acting on their behalf
25 or at their direction (excluding counsel of record and counsel’s employees) shall
26

1 not contact or attempt to contact Plaintiffs-Intervenors, ~~or persons identified in~~
2 ~~discovery responses by the State as victims of or witnesses to Defendants'~~
3 ~~alleged employment practices, with the exception that Defendants and their~~
4 ~~agents, employees, or anyone acting on their behalf may have contact with any~~
5 ~~current employees named as witnesses in this action, provided that any such~~
6 ~~contact be limited to matters unrelated to this litigation.~~

9 **B. Designation of Confidential Information**

- 10 1. "Confidential Information" refers to any record, document, tangible
11 thing, discovery response, testimony, information, or other material
12 disclosed or to be disclosed through formal or informal discovery or
13 otherwise in the course of this litigation that contains: personally
14 identifying information and personal data identifiers required to be
15 redacted under the Federal Rules of Civil Procedure; income tax
16 returns; ~~current home address or telephone information for any party,~~
17 ~~witness, or potential witness;~~ and material designated as sensitive
18 information by any party.
19
20 2. Any party may designate any record, document, tangible thing,
21 discovery response, testimony, information, or other material as
22 confidential. All documents, tangible things, discovery responses,
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1 testimony information, or other materials containing confidential
2 information pursuant to this Order shall be marked
3 “CONFIDENTIAL.” Such designation shall, without more, subject the
4 information produced or provided under such designation to the
5 provisions of this Confidentiality Agreement and Protective Order.
6

7
8 3. Counsel for any party may designate deposition testimony or part of
9 any deposition testimony as confidential by advising the court reporter
10 and counsel of such designation during the course of the deposition.
11

12 4. Confidential information includes all material designated confidential
13 pursuant to the terms of this Order, as well as summaries and
14 compilations derived from such confidential material, including but not
15 limited to charts, tables, models, and textual summaries, to the extent
16 that the material retains restricted personal identifiers required to be
17 redacted under the Federal Rules of Civil Procedure, sensitive financial
18 information, or other sensitive material.
19

20
21 5. Inadvertent failure to designate a document as confidential may be
22 corrected by supplemental written notice given as soon as practicable.
23

24 6. The parties must have a good-faith basis in fact and in law to designate
25 material as confidential.
26

1 7. If any party objects to the designation of any information as
2 confidential, that party shall confer with the party designating the
3 information as confidential in an effort to resolve any dispute. If the
4 parties are unable to resolve such dispute, the party designating the
5 material as confidential may move to have the Court declare the
6 contested information confidential.
7

8
9 8. If non-confidential information is contained in or otherwise derived
10 from confidential materials, any portion that consists solely of non-
11 confidential information shall not be confidential for purposes of this
12 Order.
13

14 **C. Treatment of Confidential Information**

15
16 1. In any judicial proceeding in which confidential information may
17 become part of a written submission to the Court, the party making the
18 submission will provide reasonable notice of the submission to
19 opposing counsel so that the parties may confer regarding removing the
20 designation, redacting the document, or so that opposing counsel can
21 seek, if necessary, an order from the Court protecting the confidentiality
22 of the document—including an order that the document be redacted or
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1 filed under seal—subject to the Court’s review on a document-by-
2 document basis.

3
4 2. If confidential testimony or information is filed under seal, the entire
5 filing or submission containing the confidential information shall be
6 made under seal.

7
8 3. Except as provided herein, no party having access to confidential
9 information shall make public disclosures of that material without
10 further order of this Court. Information designated as confidential shall
11 be held in the strictest confidence and maintained securely.

12
13 4. If a party learns that, by inadvertence or otherwise, it has disclosed
14 confidential material to any person or in any circumstance not
15 authorized by this Order, that party must immediately (1) notify the
16 other parties in writing of the unauthorized disclosure, (2) inform the
17 person or persons to whom unauthorized disclosures were made of all
18 the terms of this Order, (3) use best efforts to retrieve all copies of the
19 confidential material, and (4) request that such person execute the
20 Acknowledgment of Confidentiality Agreement and Protective Order,
21 appended hereto as Attachment A.
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1 5. Upon conclusion of this case, including any appeals, all originals and
2 copies of confidential materials, including all summaries thereof, shall
3 be returned to the producing party’s counsel or representative or
4 destroyed, unless (1) otherwise ordered by the Court for good cause
5 shown, (2) the return or destruction of such materials is prohibited by
6 law, or (3) the document has been filed with the Court in unredacted
7 form or used as an exhibit.
8

9
10 6. Notwithstanding anything to the contrary herein, the parties to this
11 action shall have no obligation under this Order with respect to
12 information that (1) is or becomes publicly available (except by
13 unauthorized disclosure), or (2) is received from a third-party who is
14 rightfully in possession of such information and who has the right to
15 disclose it.
16
17

18 **D. Access to Confidential Information**
19

20 1. Access to confidential information shall be limited to individuals who
21 must handle such information for purposes of this litigation (“qualified
22 persons”). Individuals authorized to handle confidential information
23 include:
24

25 a. The Court and its officers;
26

- b. Court reporters, their assistants, and administrative staff;
- c. The parties and their counsel, including counsel's paralegals, administrative staff, or contractors;
- d. Any mediator or other third-party neutral used to attempt to resolve this litigation;
- e. Witnesses, potential witnesses, and their counsel to the extent necessary in preparation for or during the course of depositions, hearings, interviews, or trial in this action;
- f. Experts and consultants, including their employees and administrative staff, who are employed, retained, or otherwise consulted by counsel or any party for the purpose of providing information or opinions to assist in this litigation.

2. All individuals who fall within categories D(1)(e)–(f) above who review confidential information must first execute the Acknowledgment of Confidentiality Agreement and Protective Order, appended hereto as Attachment A, stating that they will abide by the terms of this Order. Copies of all Acknowledgments of Confidentiality Agreement and Protective Order executed pursuant to this paragraph shall be kept by counsel who provided the confidential information for

1 review. For witnesses required to be disclosed by the Federal Rules of
2 Civil Procedure, copies of the executed Acknowledgment of
3 Confidentiality Agreement and Protective Order shall be disclosed to
4 opposing counsel not later than the disclosure date of the witness list for
5 trial.
6

7
8 **E. Other Litigation**

9 1. If a party in receipt of confidential information (“receiving party”) is
10 served with a discovery request, subpoena, civil investigative demand,
11 or an order from any court or other authority that would compel
12 disclosure of any information or items bearing the designation
13 “CONFIDENTIAL,” the receiving party shall so notify the party that
14 designated the material confidential (“designating party”) in writing,
15 including a copy of the discovery request, subpoena, civil investigative
16 demand, or order as soon as reasonably practicable.
17

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20 2. The receiving party must immediately inform the party who caused the
21 discovery request, subpoena, civil investigative demand, or order to
22 issue in the other litigation that some or all of responsive materials is
23 the subject of this Confidentiality Agreement and Protective Order.
24 The receiving party must deliver a copy of this Order promptly to the
25
26

1 party in the other action that issued the discovery request, subpoena,
2 civil investigative demand, or order to issue.
3

- 4 3. If the designating party is unable to secure the voluntary withdrawal of
5 the discovery request, subpoena, civil investigative demand, or order
6 that would compel disclosure of any information or items designated
7 confidential, the designating party may move for the issuance of an
8 order to quash, strike, or modify the discovery request, subpoena, civil
9 investigative demand, or order. The burden and expense shall be on the
10 designating party to obtain an order staying production. In the absence
11 of an order staying, limiting, or barring production, the Federal Rules of
12 Civil Procedure regarding discovery remain in effect.
13
14
15

16 **F. Scope and Enforcement of Order**

- 17 1. Except as otherwise provided herein, the restrictions and obligations
18 provided in this Order shall not terminate upon the conclusion of this
19 lawsuit but shall continue subject to order of this Court.
20
21 2. Entering into, agreeing to, and/or complying with the terms of this
22 Order shall not:
23
24 a. Operate as an admission that any particular discovery material
25 constitutes, contains, or reflects confidential matter;
26

- 1 b. Operate as a requirement that any attorney produce his or her own
2 attorney work product;
3
4 c. Prejudice the rights of any party to object to the production of
5 documents or information it considers non-discoverable, or to seek a
6 Court determination whether particular discovery materials should
7 be protected;
8
9 d. Prejudice a party from seeking modification or rescission of this
10 Confidentiality Agreement and Protective Order; or
11
12 e. Limit a party's right to seek additional protective orders as may
13 become necessary due to a change in circumstances or for other
14 good cause shown.
15

16 3. Any party may petition the Court concerning a violation of this Order and
17 request any available remedies, including, but not limited to, contempt
18 proceedings.
19

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22 Dated this ___ day of _____, 20__.

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United States District Judge

ATTACHMENT A

Acknowledgment of Confidentiality Agreement and Protective Order

I, _____ [print full name], of
_____ [print or type full address],

declare under penalty of perjury under the laws of the State of Washington that I have read in its entirety and understand the Confidentiality Agreement and Protective Order that was issued by the U.S. District Court for the Eastern District of Washington, in *State of Washington et al. v. Horning Brothers L.L.C. et al.*, 2:17-cv-00149-TOR (E.D. Wash.).

I agree to comply with and to be bound by all the terms of this Confidentiality Agreement and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I promise that I will not disclose in any manner any information or item that is subject to this Confidentiality Agreement and Protective Order to any person or entity except in strict compliance with the provisions of the Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Eastern District of Washington for the purpose of enforcing the terms of this

1 Confidentiality Agreement and Protective Order, even if such enforcement
2 proceedings occur after termination of this action.
3
4

5 Date: _____

6
7
8 City and State where sworn and signed: _____

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10 Printed name: _____

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13 Signature: _____
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

HORNING BROTHERS LLC, et al.,

Defendants.

Case No. 2:17-CV-00149-TOR

CIVIL MINUTES

DATE: 8/31/2017

LOCATION: Telephonic

SCHEDULING CONFERENCE

CHIEF JUDGE THOMAS O. RICE

Linda Hansen Courtroom Deputy			Ronelle Corbey Court Reporter
Colleen M Melody and Patricio A Marquez <i>for Plaintiff</i> Maria D Velazquez and Alyson D Gnam <i>for Intervenor Plaintiffs</i> Plaintiffs' Counsel		William R Spurr <i>for Defendant Horning Brothers</i> Brook L Cunningham <i>for Defendant Hermilo Cruz</i> Defendants' Counsel	

Open Court

Chambers

Telephonic

All parties present by telephone. The Court has reviewed the submission of the parties.

The Court will allow the parties to take up to 12 depositions per side, any additional will require leave of court.

The Court and counsel discuss Claudia Sanchez' status as a party. The parties agree that she should be dismissed from the matter. The Court will address this issue in a written order.

The Court and counsel discuss the entry of a protective order. The Court directed that the parties reach an agreement as to confidentiality and submit it to the Court. The Court will resolve any disputes that may arise.

Court advised counsel that he is available for informal discovery conferences, if needed, and that the Judges in this district are available to assist with mediation. The Court established the following schedule:

Add Parties/Amend pleadings:	9/29/2017
Discovery Cut Off:	7/16/2018
Jury Trial:	10/22/2018 in Spokane, WA

CONVENED: 10:45 AM	ADJOURNED: 11:05 AM	TIME: 20 MINS	ORDER FORTHCOMING <input checked="" type="checkbox"/>
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

and

SOCORRO DIAZ SILVAS,
ROXANA RODRIQUEZ,
YESICA CABRERA NAVARRO,
YASMIN CABRERA NAVARRO,
and SAMANTHA MENDOZA,

Plaintiff-Intervenors,

v.

HORNING BROTHERS, LLC, and
HERMILO CRUZ,

Defendants.

NO: 2:17-CV-0149-TOR

JURY TRIAL SCHEDULING ORDER

A telephonic scheduling conference was held in the above-entitled matter on August 31, 2017. Colleen M. Melody and Patricio A. Marquez appeared on behalf of Plaintiff. Maria D. Velazquez and Alyson D. Gnam appeared on behalf of Plaintiff-Intervenors. William R. Spurr appeared on behalf of Defendant Horning Brothers. Brook L. Cunningham appeared on behalf of Defendant Hermilo Cruz.

1 The Court reviewed the Joint Status Certificate (ECF No. 25), heard from counsel,
2 and is fully informed. **IT IS ORDERED:**

3 **1. General Court Procedures**

4 Pursuant to Fed. R. Civ. P. 16(b)(4), the dates set forth in this Order may be
5 amended **only** by Order of the Court and upon a showing of good cause. Pursuant
6 to Fed. R. Civ. P. 29, the parties may stipulate to other procedures governing or
7 limiting discovery, except the dates set forth in this Order.

8 Counsel are to review and employ Local Rule 83.1 (Civility) and
9 Washington Rule of Professional Conduct 3.4 (Fairness To Opposing Party And
10 Counsel).

11 **2. Motions to Amend Pleadings or Add Parties**

12 Any motion to amend the pleadings or add parties shall be filed
13 no later than **September 29, 2017**.

14 **3. Mediation**

15 If parties elect to proceed to mediation, it should be completed as early as
16 possible to avoid the unnecessary expenditure of judicial resources.

17 **4. Rule 26(a)(1) Exchange**

18 If not already accomplished, the parties shall disclose their Fed. R. Civ. P.
19 26(a)(1) material forthwith.
20

1 **5. Rule 26(a)(2) Expert Identification and Reports**

2 The Parties are cautioned that failure to timely identify experts or provide
3 reports in accordance with Rule 26 and this scheduling order may result in
4 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*
5 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

6 **A. Plaintiff - Initial Expert Disclosures**

7 Each Plaintiff shall identify its experts and serve those experts' Rule
8 26(a)(2) reports on all other parties no later than **May 7, 2018**. Each Plaintiff shall
9 also provide dates for which those experts can be available for deposition.

10 **B. Defendant - Initial Expert Disclosure**

11 Each Defendant shall identify its experts and serve those experts' Rule
12 26(a)(2) reports on all other parties no later than **June 4, 2018**. Each Defendant
13 shall also provide dates for which those experts can be available for deposition.

14 **C. Plaintiff - Rebuttal Expert Disclosure**

15 Each Plaintiff shall identify its rebuttal experts and serve those experts' Rule
16 26(a)(2) reports on all other parties no later than **June 25, 2018**. Each Plaintiff
17 shall also provide dates for which those experts can be available for deposition.

18 //

19 //

20 //

1 **6. Discovery Cutoff**

2 **A. Generally**

3 All discovery, including depositions and perpetuation depositions, shall be
4 completed by **July 16, 2018** (“Discovery Cutoff”). To be timely, discovery
5 requests must be served sufficiently in advance of the deadline to allow for timely
6 response by the cutoff date. The parties shall not file discovery, except those
7 portions necessary to support motions or objections.

8 **B. Depositions, Interrogatories, Requests for
9 Production/Admission**

10 Absent leave of Court or unless otherwise stipulated, **no more than 12**
11 **depositions** up to seven hours long, may be taken by the plaintiffs or by the
12 defendants. Fed. R. Civ. P. 30(a)(2)(A) and (d)(1).

13 Unless otherwise stipulated, any one party may serve no more than 25 written
14 interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P.
15 33(a)(1) and advisory committee notes (1993) explaining “discrete subparts”.

16 Unless otherwise stipulated, any one party may serve no more than 30
17 requests for production, including discrete subparts, on any other party.

18 Unless otherwise stipulated, any one party may serve no more than 15
19 requests for admission, including discrete subparts, on any other party. LR 36.1.

20 A party needing relief from these limitations should timely seek relief from
the Court by motion.

1 **C. Protective Orders**

2 Any stipulation or motion for a confidentiality agreement or protective order
3 must be timely filed so as not to delay the discovery process or the Court’s
4 deadlines. If confidential records are attached to court filings, “compelling
5 reasons” must be shown to seal records attached to a dispositive motion and “good
6 cause” must be shown to seal records attached to a non-dispositive motion.
7 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
8 2006).

9 **D. Motions to Compel**

10 To avoid wasted time and expense, counsel may contact chambers to schedule
11 a telephonic conference to obtain an expedited ruling on discovery disputes.
12 Motions to compel seeking sanctions shall be filed in writing.

13 **7. Dispositive and *Daubert* Motions**

14 All dispositive and *Daubert* motions shall be filed on or before **July 23,**
15 **2018.** Responses and replies to dispositive and *Daubert* motions shall comply with
16 Local Rule 7.1. No supplemental responses or supplemental replies to any
17 dispositive or *Daubert* motion may be filed without Court permission.

18 Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**
19 **days** after the date of filing.

1 **8. Motion Practice**

2 **A. Notice of Hearing**

3 Parties are to comply with Local Rule 7.1(h) when noting motions for
4 hearing. If oral argument is sought by a party, counsel shall contact Chambers
5 staff at (509) 458-2470 to obtain a hearing date and time. All non-dispositive
6 motion hearings shall be conducted telephonically, unless in-person argument is
7 approved by the Court. Counsel shall not use cell phones during any telephonic
8 hearing. Dispositive motion hearings in which oral argument has been requested
9 will be set for in-person appearance.

10 **B. Motions to Expedite**

11 If there is a need to have a motion heard on an expedited basis, the party must
12 file a Motion for Expedited Hearing and an accompanying memorandum (or
13 declaration) establishing the need for an expedited hearing. The Motion for
14 Expedited Hearing shall be noted for hearing, without oral argument, **no earlier**
15 **than two (2) days** after the filing of the motion, absent good cause shown.

16 **C. Citing Previously-Filed Documents**

17 All references to a previously filed document shall cite to the electronic case
18 filing (ECF) record number and page number within that ECF record, in the
19 following format, “ECF No. ___ at ___.” Such documents shall not be attached as
20 exhibits.

1 **D. Reliance on Deposition Testimony**

2 When a party relies on deposition testimony to support a position it takes in
3 support or opposition to an issue, that party shall provide the Court with the
4 pertinent excerpts of the deposition testimony relied upon and shall cite to page
5 and line numbers of the deposition it believes supports its position. *See generally*
6 LR 56.1(e). Submission of the entire deposition and/or failure to cite to specific
7 portions of the deposition may result in the submission being stricken from the
8 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

9 **E. Supplemental Responses or Replies**

10 No supplemental responses or supplemental replies to any motion may be
11 filed unless the Court grants a motion to file such documents.

12 **F. Motions to Reconsider**

13 Motions to Reconsider are disfavored. Motions must show manifest error in
14 the prior ruling or reveal new facts or legal authority which could not have been
15 brought to the Court's attention earlier. The motion shall be noted for expedited
16 hearing without oral argument seven days after it is filed. No response to a motion
17 for reconsideration need be filed unless requested by the Court. No motion for
18 reconsideration will be granted without such a request by the Court.

19 //

20 //

1 **G. Decisions on Motions**

2 Parties and counsel may call chambers at (509) 458-2470 to inquire about the
3 status of a decision on a motion if the Court has not issued an order within **thirty**
4 **(30) days after** the hearing on a motion.

5 **9. Witness/Exhibit Lists**

6 Witness/Exhibit lists shall be filed and served and exhibits made available for
7 inspection or copies provided to the parties on or before **September 4, 2018**.

8 **A. Witness Lists**

9 Witness lists shall include a brief description of the witness, a brief summary
10 of the witness' anticipated testimony, whether the witness will be called as an
11 expert, and any known trial date/time conflicts the witness may have.

12 **B. Exhibit Lists**

13 Exhibit lists shall include a brief description of the exhibit. All exhibits shall
14 be pre-marked; Plaintiffs' exhibits shall be numbered 1-499; Defendants' exhibits
15 shall be numbered 500-999.

16 **C. Objections**

17 Objections to witnesses/exhibits shall be filed and served on or before
18 **September 11, 2018, AND SHALL BE HEARD AT THE PRETRIAL**
19 **CONFERENCE.** All objections to witnesses shall set forth a legal basis and
20 explanation for the objection. Objections to an exhibit or portion thereof, shall be

1 accompanied by a full and complete copy of the exhibit in question and a short
2 legal explanation for the objection. The party seeking the admission of the witness
3 or exhibit has five (5) days, excluding federal holidays and weekends, to file a
4 response to the opposing party's objection; no reply shall be filed.

5 **10. Deposition Designations**

6 **A. Generally**

7 Designation of substantive, as opposed to impeachment, deposition or prior
8 testimony to be used at trial shall be highlighted in yellow by Plaintiff or in blue by
9 Defendant in a complete transcript of the deposition or prior testimony and served
10 but not filed on or before **September 4, 2018**.

11 **B. Cross-Designations**

12 Cross-designations shall be highlighted in yellow by Plaintiff or in blue by
13 Defendant in the transcript containing the opposing party's initial designations and
14 shall be served but not filed on or before **September 11, 2018**.

15 **C. Objections**

16 All objections to designated deposition or prior testimony and the legal bases
17 for the objections, shall be filed and served on or before **September 18, 2018**.

18 Any designated deposition or prior testimony objected to shall be underlined in
19 black in a complete yellow/blue highlighted copy of the deposition/prior testimony
20 transcript described above. A paper copy of the underlined document shall be filed

1 and served with the objections. The party seeking admission of the testimony has
2 five (5) days, excluding federal holidays and weekends, to file a response; no reply
3 shall be filed. If the deposition was videotaped, and the videotape is to be used at
4 trial, the party seeking to use the videotaped deposition shall indicate the relevant
5 portion on both the written transcript and the videotape. Similarly, objections shall
6 be made on the written transcript as explained above along with the applicable time
7 stamp on the video tape noted. All objections to deposition and prior testimony
8 designations shall be heard and resolved at the pretrial conference with the
9 videotape available for display.

10 **11. Motions in Limine**

11 All unresolved substantive or evidentiary issues that may foreseeably arise
12 during trial shall be addressed by motions in limine to be filed and served on or
13 before **September 10, 2018**. Such motions will be addressed and resolved at the
14 pretrial conference. However, Motions in Limine may not reargue issues already
15 decided by the Court.

16 **12. Pretrial Order**

17 **A. Generally**

18 A joint proposed pretrial order prepared in accordance with Local Rule
19 16.1(b) shall be filed on or before **October 1, 2018**, and a copy e-mailed, in
20 Microsoft Word format, to “riceorders@waed.uscourts.gov”.

1 **B. Exhibit List**

2 The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect
3 the exhibit marking scheme described above. In preparing the Joint Proposed
4 Pretrial Order, the parties shall confer regarding duplicative exhibits and determine
5 which party will submit such exhibits for trial.

6 **13. Trial Briefs, *Voir Dire*, and Jury Instructions**

7 **A. Generally**

8 Trial briefs, requested *voir dire*, and joint proposed jury instructions shall be
9 filed and served on or before **October 1, 2018**.

10 **B. Trial Brief Length**

11 Trial briefs shall not exceed twenty (20) pages without prior court approval.
12 LR 39.1. To obtain court approval, a party must file a motion to file an overlength
13 brief, demonstrating good cause why supplemental briefing is necessary.

14 **C. Jury Instructions**

15 The parties' joint proposed jury instructions shall include a table of contents,
16 preliminary instructions, final substantive instructions, and a verdict form. The
17 instructions shall be sequentially numbered and include a citation of authority for
18 each. The instructions shall, at a minimum, include instructions regarding the
19 elements of each claim or defense, the relief sought, and otherwise comply with
20 Local Rule 51.1(c). A party proposing a Jury Instruction that differs from a Ninth

1 Circuit Model Civil Jury Instruction should submit a memorandum analyzing cases
2 to support the modification.

3 **D. Individually Proposed Jury Instructions**

4 If the parties are unable to agree on certain instructions, they are to submit
5 individually proposed jury instructions no later than the date the joint proposed
6 instructions are due. All individually submitted proposed jury instructions must
7 adhere to the format described above and not repeat the joint proposed instructions.

8 **E. Objections**

9 Any objections to the opposing party's individually submitted proposed
10 instructions must be filed no later than five (5) days, excluding federal holidays
11 and weekends, after the individual proposed instructions were filed. All objections
12 shall set forth the basis for the objection and briefly explain why the instruction in
13 question should not be used or should be altered.

14 **F. Courtesy Copies**

15 Counsel are instructed to e-mail courtesy copies of their **joint** and
16 **individually** proposed jury instructions, in Microsoft Word or text only format, to
17 "riceorders@waed.uscourts.gov".

18 //

19 //

20 //

1 **14. Pretrial Conference**

2 An **in-person** pretrial conference will be held on **October 11, 2018, at 10:00**
3 **a.m.**, in Spokane, Washington. All counsel trying the case must be present at the
4 pretrial conference.

5 **15. Trial**

6 The jury trial shall commence on **October 22, 2018, at 8:30 p.m.**, in
7 Spokane, Washington. Counsel shall appear at 8:30 a.m. on the first day of trial to
8 address any pending pretrial matters. Jury selection will begin at 9:00 a.m.

9 **16. Terminated Party**

10 Pursuant to the Court's oral ruling, Claudia Sanchez is terminated from this
11 action as she is not a named Defendant and Plaintiffs do not intend to pursue
12 liability against her in her individual capacity.

13 IT IS SO ORDERED.

14 The District Court Clerk is directed to enter this Order, provide copies to
15 counsel, and terminate Claudia Sanchez from this action.

16 **DATED** September 1, 2017.



19 *Thomas O. Rice*
THOMAS O. RICE
Chief United States District Judge

20

1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-464-7744

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF WASHINGTON**

9 STATE OF WASHINGTON,
10 Plaintiff,

11 v.

12 HORNING BROTHERS,
13 L.L.C., and HERMILO CRUZ,
14 in his individual capacity and
15 as a member of the marital
16 community of HERMILO
17 CRUZ and CLAUDIA
18 SANCHEZ,

16 Defendants.

CIVIL ACTION NO. 2:17-cv-
00149

STIPULATION TO
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER

17 SOCORRO DIAZ SILVAS,
18 ROXANA RODRIGUEZ DE
19 ALFARO, YESICA
20 CABRERA NAVARRO,
21 YASMIN CABRERA
22 NAVARRO, and SAMANTHA
23 MENDOZA,

21 Plaintiffs-

22 Intervenors,

23 v.

24 HORNING BROTHERS,
25 L.L.C.,

26 Defendant.

1 Pursuant to Federal Rule of Civil Procedure 26(c), by the signatures of
2 their counsel below, the parties hereto stipulate and agree to the entry of the
3 Stipulated Confidentiality Agreement and Protective Order attached hereto as
4 Exhibit A.
5

6 DATED this 22nd day of September, 2017.
7

8 Respectfully submitted,

9 BOB FERGUSON,
10 WSBA #26004
11 Attorney General of
12 Washington

13 /s/Patricio Marquez
14 COLLEEN M. MELODY,
15 WSBA #42275
16 PATRICIO A. MARQUEZ,
17 WSBA #47693
18 Assistant Attorneys General
19 Office of the Attorney General
20 800 Fifth Avenue, Suite 2000
21 Seattle, WA 98104
22 (206) 464-7744
23 ColleenM1@atg.wa.gov
24 PatricioM@atg.wa.gov

25 *Attorneys for Plaintiff State of
26 Washington*

NORTHWEST JUSTICE
PROJECT

21 /s/Alyson Dimmitt Gnam
22 ALYSON DIMMITT GNAM,
23 WSBA #48143
24 Northwest Justice Project
25 300 Okanogan Ave., Suite 3A
26 Wenatchee, WA 98801
Telephone: (509) 664-5101
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LAW OFFICE OF WILLIAM R.
SPURR

/s/ William R. Spurr
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1001 4th Ave., Suite 4400
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*Attorney for Defendant Horning
Brothers, L.L.C.*

RANDALL | DANSKIN, P.S.

/s/Brook L. Cunningham
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#39270
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Fax: (509) 624-2528
Email: b1c@randalldanskin.com

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Attorneys for Defendant Hermilo Cruz

MARIA D. VELAZQUEZ,
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*Attorneys for Plaintiffs-
Intervenors Socorro Diaz
Silvas, Roxana Rodriguez de
Alfaro, Yesica Cabrera
Navarro, Yasmin Cabrera
Navarro, and Samantha
Mendoza*

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2017, I electronically filed the foregoing with the Clerk of the Court using the Court’s CM/ECF system which will send notification of such filing to the following:

William R. Spurr
Law Office of William R. Spurr
1001 Fourth Ave., Ste. 4400
Seattle, WA 98154
Phone: (206) 682-2692
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Maria Dolores Velazquez
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(509) 574-4234

Attorneys for Intervenor Plaintiffs Socorro Diaz
Silvas, Roxana Rodriguez de Alfaro,
Yesica Cabrera Navarro, Yasmin
Cabrera Navarro, and Samantha Mendoza

Dated: September 22, 2017
/s/Patricio A. Marquez

EXHIBIT A

1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-464-7744

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON,
13 Plaintiff,

14 v.

15 HORNING BROTHERS,
16 L.L.C., and HERMILO CRUZ,
17 in his individual capacity and
18 as a member of the marital
19 community of HERMILO
20 CRUZ and CLAUDIA
21 SANCHEZ,

22 Defendants.

CIVIL ACTION NO. 2:17-cv-
00149-TOR

[PROPOSED] STIPULATED
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER

23 SOCORRO DIAZ SILVAS,
24 ROXANA RODRIGUEZ DE
25 ALFARO, YESICA
26 CABRERA NAVARRO,
YASMIN CABRERA
NAVARRO, and SAMANTHA
MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS,
L.L.C.,

Defendant.

[PROPOSED] STIPULATED
CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 This is a joint agreement between: the State of Washington; Plaintiffs-
2 Intervenors Socorro Diaz Silvas, Roxana Rodriguez de Alfaro, Yesica Cabrera
3 Navarro, Yasmin Cabrera Navarro, and Samantha Mendoza; Defendant Horning
4 Brothers, L.L.C.; and Defendant Hermilo Cruz (“the parties”). The parties expect
5 that disclosure of documents in this case may involve the exchange of
6 confidential information, as identified herein, that is covered by the scope of
7 Federal Rule of Civil Procedure 26(c).
8
9

10 Accordingly, the parties stipulate and agree to, and the Court finds good
11 cause for, entry of this Confidentiality Agreement and Protective Order pursuant
12 to Federal Rule of Civil Procedure 26(c).
13

14 It is hereby ordered that:
15

16 **A. Designation of Confidential Information**

17 1. “Confidential Information” refers to any record, document, tangible
18 thing, discovery response, testimony, information, or other material
19 disclosed or to be disclosed through formal or informal discovery or
20 otherwise in the course of this litigation that contains: physical and
21 mental health information; personal and business financial and tax
22 information; immigration information or status; home address, home
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1 phone number, cell phone number, or email address information;
2 passport numbers, drivers' license numbers, resident identification
3 numbers, social security numbers, or alien numbers; and birthdates.
4

5 2. Any party may designate any record, document, tangible thing,
6 discovery response, testimony, information, or other material as
7 confidential. All documents, tangible things, discovery responses,
8 testimony information, or other materials containing confidential
9 information pursuant to this Order shall be marked
10

11 "CONFIDENTIAL." Such designation shall, without more, subject the
12 information produced or provided under such designation to the
13 provisions of this Confidentiality Agreement and Protective Order.
14

15
16 3. Counsel for any party may designate deposition testimony or part of
17 any deposition testimony as confidential by advising the court reporter
18 and counsel of such designation during the course of the deposition.
19

20 4. Confidential information includes all material designated confidential
21 pursuant to the terms of this Order, as well as summaries and
22 compilations derived from such confidential material, including but not
23 limited to charts, tables, models, and textual summaries, to the extent
24
25
26

1 that the material retains restricted information as defined by Paragraph
2 A.1. above (i.e. “Confidential Information”).
3

4 5. Inadvertent failure to designate a document as confidential may be
5 corrected by supplemental written notice given as soon as practicable.
6

7 6. The parties must have a good-faith basis in fact and in law to designate
8 material as confidential.

9 7. If any party objects to the designation of any information as
10 confidential, that party shall confer with the party designating the
11 information as confidential in an effort to resolve any dispute. If the
12 parties are unable to resolve such dispute, the party designating the
13 material as confidential may move to have the Court declare the
14 contested information confidential.
15

16 8. If non-confidential information is contained in or otherwise derived
17 from confidential materials, any portion that consists solely of non-
18 confidential information shall not be confidential for purposes of this
19 Order.
20
21

22 **B. Treatment of Confidential Information**
23

24 1. In any judicial proceeding in which confidential information may
25 become part of a written submission to the Court, the party making the
26

1 submission will provide reasonable notice of the submission to
2 opposing counsel so that the parties may confer regarding removing the
3 designation, redacting the document, or so that opposing counsel can
4 seek, if necessary, an order from the Court protecting the confidentiality
5 of the document—including an order that the document be redacted or
6 filed under seal—subject to the Court’s review on a document-by-
7 document basis.
8

9
10 2. If confidential testimony or information is filed under seal, the entire
11 filing or submission containing the confidential information shall be
12 made under seal.
13

14 3. Except as provided herein, no party having access to confidential
15 information shall make public disclosures of that material without
16 further order of this Court. Information designated as confidential shall
17 be held in the strictest confidence and maintained securely.
18

19
20 4. If a party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not
22 authorized by this Order, that party must immediately (1) notify the
23 other parties in writing of the unauthorized disclosure, (2) inform the
24 person or persons to whom unauthorized disclosures were made of all
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26

1 the terms of this Order, (3) use best efforts to retrieve all copies of the
2 confidential material, and (4) request that such person execute the
3 Acknowledgment of Confidentiality Agreement and Protective Order,
4 appended hereto as Attachment A.
5

6 5. Upon conclusion of this case, including any appeals, all originals and
7 copies of confidential materials, including all summaries thereof, shall
8 be returned to the producing party's counsel or representative or
9 destroyed, unless (1) otherwise ordered by the Court for good cause
10 shown, (2) the return or destruction of such materials is prohibited by
11 law, or (3) the document has been filed with the Court in unredacted
12 form or used as an exhibit.
13

14 6. Notwithstanding anything to the contrary herein, the parties to this
15 action shall have no obligation under this Order with respect to
16 information that (1) is or becomes publicly available (except by
17 unauthorized disclosure), or (2) is received from a third-party who is
18 rightfully in possession of such information and who has the right to
19 disclose it.
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1 **C. Access to Confidential Information**

2 1. Access to confidential information shall be limited to individuals who
3 must handle such information for purposes of this litigation (“qualified
4 persons”). Individuals authorized to handle confidential information
5 include:
6

- 7 a. The Court and its officers;
8
9 b. Court reporters, their assistants, and administrative staff;
10
11 c. The parties and their counsel, including counsel’s paralegals,
12 administrative staff, or contractors;
13
14 d. Any mediator or other third-party neutral used to attempt to resolve
15 this litigation;
16
17 e. Witnesses, potential witnesses, and their counsel to the extent
18 necessary in preparation for or during the course of depositions,
19 hearings, interviews, or trial in this action;
20
21 f. Experts and consultants, including their employees and
22 administrative staff, who are employed, retained, or otherwise
23 consulted by counsel or any party for the purpose of providing
24 information or opinions to assist in this litigation.
25
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1 2. All individuals who fall within categories C(1)(e)–(f) above who
2 review confidential information must first execute the
3
4 Acknowledgment of Confidentiality Agreement and Protective Order,
5 appended hereto as Attachment A, stating that they will abide by the
6 terms of this Order. Copies of all Acknowledgments of Confidentiality
7 Agreement and Protective Order executed pursuant to this paragraph
8 shall be kept by counsel who provided the confidential information for
9 review. For witnesses required to be disclosed by the Federal Rules of
10 Civil Procedure, copies of the executed Acknowledgment of
11 Confidentiality Agreement and Protective Order shall be disclosed to
12 opposing counsel not later than the disclosure date of the witness list for
13 trial.
14
15
16

17 **D. Other Litigation**

18 1. If a party in receipt of confidential information (“receiving party”) is
19 served with a discovery request, subpoena, civil investigative demand,
20 or an order from any court or other authority that would compel
21 disclosure of any information or items bearing the designation
22 “CONFIDENTIAL,” the receiving party shall so notify the party that
23 designated the material confidential (“designating party”) in writing,
24
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1 including a copy of the discovery request, subpoena, civil investigative
2 demand, or order as soon as reasonably practicable.

3
4 2. The receiving party must immediately inform the party who caused the
5 discovery request, subpoena, civil investigative demand, or order to
6 issue in the other litigation that some or all of responsive materials is
7 the subject of this Confidentiality Agreement and Protective Order.
8 The receiving party must deliver a copy of this Order promptly to the
9 party in the other action that issued the discovery request, subpoena,
10 civil investigative demand, or order to issue.
11

12
13 3. If the designating party is unable to secure the voluntary withdrawal of
14 the discovery request, subpoena, civil investigative demand, or order
15 that would compel disclosure of any information or items designated
16 confidential, the designating party may move for the issuance of an
17 order to quash, strike, or modify the discovery request, subpoena, civil
18 investigative demand, or order. The burden and expense shall be on the
19 designating party to obtain an order staying production. In the absence
20 of an order staying, limiting, or barring production, the Federal Rules of
21 Civil Procedure regarding discovery remain in effect.
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1 **E. Scope and Enforcement of Order**

2 1. Except as otherwise provided herein, the restrictions and obligations
3 provided in this Order shall not terminate upon the conclusion of this
4 lawsuit but shall continue subject to order of this Court.
5

6 2. Entering into, agreeing to, and/or complying with the terms of this
7 Order shall not:
8

9 a. Operate as an admission that any particular discovery material
10 constitutes, contains, or reflects confidential matter;
11

12 b. Operate as a requirement that any attorney produce his or her own
13 attorney work product;
14

15 c. Prejudice the rights of any party to object to the production of
16 documents or information it considers non-discoverable, or to seek a
17 Court determination whether particular discovery materials should
18 be protected;
19

20 d. Prejudice a party from seeking modification or rescission of this
21 Confidentiality Agreement and Protective Order; or
22

23 e. Limit a party's right to seek additional protective orders as may
24 become necessary due to a change in circumstances or for other
25 good cause shown.
26

1 3. Any party may petition the Court concerning a violation of this Order
2 and request any available remedies, including, but not limited to,
3 contempt proceedings.
4

5 Dated this ___ day of _____, 20__.
6

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9 _____
10 United States District Judge
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ATTACHMENT A

Acknowledgment of Confidentiality Agreement and Protective Order

I, _____ [print full name], of
_____ [print or type full address],

declare under penalty of perjury under the laws of the State of Washington that I have read in its entirety and understand the Confidentiality Agreement and Protective Order that was issued by the U.S. District Court for the Eastern District of Washington, in *State of Washington et al. v. Horning Brothers L.L.C. et al.*, 2:17-cv-00149-TOR (E.D. Wash.).

I agree to comply with and to be bound by all the terms of this Confidentiality Agreement and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I promise that I will not disclose in any manner any information or item that is subject to this Confidentiality Agreement and Protective Order to any person or entity except in strict compliance with the provisions of the Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Eastern District of Washington for the purpose of enforcing the terms of this

1 Confidentiality Agreement and Protective Order, even if such enforcement
2 proceedings occur after termination of this action.
3
4

5 Date: _____
6

7
8 City and State where sworn and signed: _____
9

10 Printed name: _____
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12
13 Signature: _____
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1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-464-7744

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON,
13 Plaintiff,

14 v.

15 HORNING BROTHERS,
16 L.L.C., and HERMILO CRUZ,
17 in his individual capacity and
18 as a member of the marital
19 community of HERMILO
20 CRUZ and CLAUDIA
21 SANCHEZ,

22 Defendants.

CIVIL ACTION NO. 2:17-cv-
00149-TOR

[PROPOSED] STIPULATED
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER

23 SOCORRO DIAZ SILVAS,
24 ROXANA RODRIGUEZ DE
25 ALFARO, YESICA
26 CABRERA NAVARRO,
YASMIN CABRERA
NAVARRO, and SAMANTHA
MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS,
L.L.C.,

Defendant.

[PROPOSED] STIPULATED
CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 This is a joint agreement between: the State of Washington; Plaintiffs-
2 Intervenors Socorro Diaz Silvas, Roxana Rodriguez de Alfaro, Yesica Cabrera
3 Navarro, Yasmin Cabrera Navarro, and Samantha Mendoza; Defendant Horning
4 Brothers, L.L.C.; and Defendant Hermilo Cruz (“the parties”). The parties expect
5 that disclosure of documents in this case may involve the exchange of
6 confidential information, as identified herein, that is covered by the scope of
7 Federal Rule of Civil Procedure 26(c).
8
9

10 Accordingly, the parties stipulate and agree to, and the Court finds good
11 cause for, entry of this Confidentiality Agreement and Protective Order pursuant
12 to Federal Rule of Civil Procedure 26(c).
13

14 It is hereby ordered that:
15

16 **A. Designation of Confidential Information**

17 1. “Confidential Information” refers to any record, document, tangible
18 thing, discovery response, testimony, information, or other material
19 disclosed or to be disclosed through formal or informal discovery or
20 otherwise in the course of this litigation that contains: physical and
21 mental health information; personal and business financial and tax
22 information; immigration information or status; home address, home
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1 phone number, cell phone number, or email address information;
2 passport numbers, drivers' license numbers, resident identification
3 numbers, social security numbers, or alien numbers; and birthdates.
4

5 2. Any party may designate any record, document, tangible thing,
6 discovery response, testimony, information, or other material as
7 confidential. All documents, tangible things, discovery responses,
8 testimony information, or other materials containing confidential
9 information pursuant to this Order shall be marked
10

11 "CONFIDENTIAL." Such designation shall, without more, subject the
12 information produced or provided under such designation to the
13 provisions of this Confidentiality Agreement and Protective Order.
14

15
16 3. Counsel for any party may designate deposition testimony or part of
17 any deposition testimony as confidential by advising the court reporter
18 and counsel of such designation during the course of the deposition.
19

20 4. Confidential information includes all material designated confidential
21 pursuant to the terms of this Order, as well as summaries and
22 compilations derived from such confidential material, including but not
23 limited to charts, tables, models, and textual summaries, to the extent
24
25
26

1 that the material retains restricted information as defined by Paragraph
2 A.1. above (i.e. “Confidential Information”).
3

4 5. Inadvertent failure to designate a document as confidential may be
5 corrected by supplemental written notice given as soon as practicable.
6

7 6. The parties must have a good-faith basis in fact and in law to designate
8 material as confidential.

9 7. If any party objects to the designation of any information as
10 confidential, that party shall confer with the party designating the
11 information as confidential in an effort to resolve any dispute. If the
12 parties are unable to resolve such dispute, the party designating the
13 material as confidential may move to have the Court declare the
14 contested information confidential.
15

16 8. If non-confidential information is contained in or otherwise derived
17 from confidential materials, any portion that consists solely of non-
18 confidential information shall not be confidential for purposes of this
19 Order.
20
21

22 **B. Treatment of Confidential Information**
23

24 1. In any judicial proceeding in which confidential information may
25 become part of a written submission to the Court, the party making the
26

1 submission will provide reasonable notice of the submission to
2 opposing counsel so that the parties may confer regarding removing the
3 designation, redacting the document, or so that opposing counsel can
4 seek, if necessary, an order from the Court protecting the confidentiality
5 of the document—including an order that the document be redacted or
6 filed under seal—subject to the Court’s review on a document-by-
7 document basis.
8

9
10 2. If confidential testimony or information is filed under seal, the entire
11 filing or submission containing the confidential information shall be
12 made under seal.
13

14 3. Except as provided herein, no party having access to confidential
15 information shall make public disclosures of that material without
16 further order of this Court. Information designated as confidential shall
17 be held in the strictest confidence and maintained securely.
18

19
20 4. If a party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not
22 authorized by this Order, that party must immediately (1) notify the
23 other parties in writing of the unauthorized disclosure, (2) inform the
24 person or persons to whom unauthorized disclosures were made of all
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1 the terms of this Order, (3) use best efforts to retrieve all copies of the
2 confidential material, and (4) request that such person execute the
3 Acknowledgment of Confidentiality Agreement and Protective Order,
4 appended hereto as Attachment A.
5

6 5. Upon conclusion of this case, including any appeals, all originals and
7 copies of confidential materials, including all summaries thereof, shall
8 be returned to the producing party's counsel or representative or
9 destroyed, unless (1) otherwise ordered by the Court for good cause
10 shown, (2) the return or destruction of such materials is prohibited by
11 law, or (3) the document has been filed with the Court in unredacted
12 form or used as an exhibit.
13

14 6. Notwithstanding anything to the contrary herein, the parties to this
15 action shall have no obligation under this Order with respect to
16 information that (1) is or becomes publicly available (except by
17 unauthorized disclosure), or (2) is received from a third-party who is
18 rightfully in possession of such information and who has the right to
19 disclose it.
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1 **C. Access to Confidential Information**

2 1. Access to confidential information shall be limited to individuals who
3 must handle such information for purposes of this litigation (“qualified
4 persons”). Individuals authorized to handle confidential information
5 include:
6

- 7
- 8 a. The Court and its officers;
 - 9 b. Court reporters, their assistants, and administrative staff;
 - 10 c. The parties and their counsel, including counsel’s paralegals,
11 administrative staff, or contractors;
 - 12 d. Any mediator or other third-party neutral used to attempt to resolve
13 this litigation;
 - 14 e. Witnesses, potential witnesses, and their counsel to the extent
15 necessary in preparation for or during the course of depositions,
16 hearings, interviews, or trial in this action;
 - 17 f. Experts and consultants, including their employees and
18 administrative staff, who are employed, retained, or otherwise
19 consulted by counsel or any party for the purpose of providing
20 information or opinions to assist in this litigation.
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1 2. All individuals who fall within categories C(1)(e)–(f) above who
2 review confidential information must first execute the
3
4 Acknowledgment of Confidentiality Agreement and Protective Order,
5 appended hereto as Attachment A, stating that they will abide by the
6 terms of this Order. Copies of all Acknowledgments of Confidentiality
7 Agreement and Protective Order executed pursuant to this paragraph
8 shall be kept by counsel who provided the confidential information for
9 review. For witnesses required to be disclosed by the Federal Rules of
10 Civil Procedure, copies of the executed Acknowledgment of
11 Confidentiality Agreement and Protective Order shall be disclosed to
12 opposing counsel not later than the disclosure date of the witness list for
13 trial.
14
15
16

17 **D. Other Litigation**

18 1. If a party in receipt of confidential information (“receiving party”) is
19 served with a discovery request, subpoena, civil investigative demand,
20 or an order from any court or other authority that would compel
21 disclosure of any information or items bearing the designation
22 “CONFIDENTIAL,” the receiving party shall so notify the party that
23 designated the material confidential (“designating party”) in writing,
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1 including a copy of the discovery request, subpoena, civil investigative
2 demand, or order as soon as reasonably practicable.

3
4 2. The receiving party must immediately inform the party who caused the
5 discovery request, subpoena, civil investigative demand, or order to
6 issue in the other litigation that some or all of responsive materials is
7 the subject of this Confidentiality Agreement and Protective Order.
8 The receiving party must deliver a copy of this Order promptly to the
9 party in the other action that issued the discovery request, subpoena,
10 civil investigative demand, or order to issue.
11

12
13 3. If the designating party is unable to secure the voluntary withdrawal of
14 the discovery request, subpoena, civil investigative demand, or order
15 that would compel disclosure of any information or items designated
16 confidential, the designating party may move for the issuance of an
17 order to quash, strike, or modify the discovery request, subpoena, civil
18 investigative demand, or order. The burden and expense shall be on the
19 designating party to obtain an order staying production. In the absence
20 of an order staying, limiting, or barring production, the Federal Rules of
21 Civil Procedure regarding discovery remain in effect.
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1 **E. Scope and Enforcement of Order**

2 1. Except as otherwise provided herein, the restrictions and obligations
3 provided in this Order shall not terminate upon the conclusion of this
4 lawsuit but shall continue subject to order of this Court.
5

6 2. Entering into, agreeing to, and/or complying with the terms of this
7 Order shall not:
8

9 a. Operate as an admission that any particular discovery material
10 constitutes, contains, or reflects confidential matter;
11

12 b. Operate as a requirement that any attorney produce his or her own
13 attorney work product;
14

15 c. Prejudice the rights of any party to object to the production of
16 documents or information it considers non-discoverable, or to seek a
17 Court determination whether particular discovery materials should
18 be protected;
19

20 d. Prejudice a party from seeking modification or rescission of this
21 Confidentiality Agreement and Protective Order; or
22

23 e. Limit a party's right to seek additional protective orders as may
24 become necessary due to a change in circumstances or for other
25 good cause shown.
26

1 3. Any party may petition the Court concerning a violation of this Order
2 and request any available remedies, including, but not limited to,
3 contempt proceedings.
4

5 Dated this ___ day of _____, 20__.

6
7
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9 _____
10 United States District Judge
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ATTACHMENT A

Acknowledgment of Confidentiality Agreement and Protective Order

I, _____ [print full name], of
_____ [print or type full address],

declare under penalty of perjury under the laws of the State of Washington that I have read in its entirety and understand the Confidentiality Agreement and Protective Order that was issued by the U.S. District Court for the Eastern District of Washington, in *State of Washington et al. v. Horning Brothers L.L.C. et al.*, 2:17-cv-00149-TOR (E.D. Wash.).

I agree to comply with and to be bound by all the terms of this Confidentiality Agreement and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I promise that I will not disclose in any manner any information or item that is subject to this Confidentiality Agreement and Protective Order to any person or entity except in strict compliance with the provisions of the Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Eastern District of Washington for the purpose of enforcing the terms of this

1 Confidentiality Agreement and Protective Order, even if such enforcement
2 proceedings occur after termination of this action.
3
4

5 Date: _____
6
7

8 City and State where sworn and signed: _____
9

10 Printed name: _____
11
12

13 Signature: _____
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1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-464-7744

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON,
13
14 Plaintiff,

15 v.

16 HORNING BROTHERS,
17 L.L.C., and HERMILO CRUZ,
18 in his individual capacity and
19 as a member of the marital
20 community of HERMILO
21 CRUZ and CLAUDIA
22 SANCHEZ,

23 Defendants.

NO. 2:17-CV-0149-TOR

STIPULATED
CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER

24 SOCORRO DIAZ SILVAS,
25 ROXANA RODRIGUEZ DE
26 ALFARO, YESICA
CABRERA NAVARRO,
YASMIN CABRERA
NAVARRO, and SAMANTHA
MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS,
L.L.C.,

Defendant.

STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE ORDER

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 This is a joint agreement between: the State of Washington; Plaintiffs-
2 Intervenors Socorro Diaz Silvas, Roxana Rodriguez de Alfaro, Yesica Cabrera
3 Navarro, Yasmin Cabrera Navarro, and Samantha Mendoza; Defendant Horning
4 Brothers, L.L.C.; and Defendant Hermilo Cruz (“the parties”). The parties expect
5 that disclosure of documents in this case may involve the exchange of
6 confidential information, as identified herein, that is covered by the scope of
7 Federal Rule of Civil Procedure 26(c).
8
9

10 Accordingly, the parties stipulate and agree to, and the Court finds good
11 cause for, entry of this Confidentiality Agreement and Protective Order pursuant
12 to Federal Rule of Civil Procedure 26(c).
13

14 It is hereby ordered that:
15

16 **A. Designation of Confidential Information**

17 1. “Confidential Information” refers to any record, document, tangible
18 thing, discovery response, testimony, information, or other material
19 disclosed or to be disclosed through formal or informal discovery or
20 otherwise in the course of this litigation that contains: physical and
21 mental health information; personal and business financial and tax
22 information; immigration information or status; home address, home
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1 phone number, cell phone number, or email address information;
2 passport numbers, drivers' license numbers, resident identification
3 numbers, social security numbers, or alien numbers; and birthdates.
4

5 2. Any party may designate any record, document, tangible thing,
6 discovery response, testimony, information, or other material as
7 confidential. All documents, tangible things, discovery responses,
8 testimony information, or other materials containing confidential
9 information pursuant to this Order shall be marked
10

11 "CONFIDENTIAL." Such designation shall, without more, subject the
12 information produced or provided under such designation to the
13 provisions of this Confidentiality Agreement and Protective Order.
14

15 3. Counsel for any party may designate deposition testimony or part of
16 any deposition testimony as confidential by advising the court reporter
17 and counsel of such designation during the course of the deposition.
18

19 4. Confidential information includes all material designated confidential
20 pursuant to the terms of this Order, as well as summaries and
21 compilations derived from such confidential material, including but not
22 limited to charts, tables, models, and textual summaries, to the extent
23
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1 that the material retains restricted information as defined by Paragraph
2 A.1. above (i.e. “Confidential Information”).
3

4 5. Inadvertent failure to designate a document as confidential may be
5 corrected by supplemental written notice given as soon as practicable.
6

7 6. The parties must have a good-faith basis in fact and in law to designate
8 material as confidential.

9 7. If any party objects to the designation of any information as
10 confidential, that party shall confer with the party designating the
11 information as confidential in an effort to resolve any dispute. If the
12 parties are unable to resolve such dispute, the party designating the
13 material as confidential may move to have the Court declare the
14 contested information confidential.
15

16 8. If non-confidential information is contained in or otherwise derived
17 from confidential materials, any portion that consists solely of non-
18 confidential information shall not be confidential for purposes of this
19 Order.
20
21

22 **B. Treatment of Confidential Information**
23

24 1. In any judicial proceeding in which confidential information may
25 become part of a written submission to the Court, the party making the
26

1 submission will provide reasonable notice of the submission to
2 opposing counsel so that the parties may confer regarding removing the
3 designation, redacting the document, or so that opposing counsel can
4 seek, if necessary, an order from the Court protecting the confidentiality
5 of the document—including an order that the document be redacted or
6 filed under seal—subject to the Court’s review on a document-by-
7 document basis.
8

9
10 2. If confidential testimony or information is filed under seal, the entire
11 filing or submission containing the confidential information shall be
12 made under seal.
13

14 3. Except as provided herein, no party having access to confidential
15 information shall make public disclosures of that material without
16 further order of this Court. Information designated as confidential shall
17 be held in the strictest confidence and maintained securely.
18

19
20 4. If a party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not
22 authorized by this Order, that party must immediately (1) notify the
23 other parties in writing of the unauthorized disclosure, (2) inform the
24 person or persons to whom unauthorized disclosures were made of all
25
26

1 the terms of this Order, (3) use best efforts to retrieve all copies of the
2 confidential material, and (4) request that such person execute the
3 Acknowledgment of Confidentiality Agreement and Protective Order,
4 appended hereto as Attachment A.
5

6 5. Upon conclusion of this case, including any appeals, all originals and
7 copies of confidential materials, including all summaries thereof, shall
8 be returned to the producing party’s counsel or representative or
9 destroyed, unless (1) otherwise ordered by the Court for good cause
10 shown, (2) the return or destruction of such materials is prohibited by
11 law, or (3) the document has been filed with the Court in unredacted
12 form or used as an exhibit.
13

14 6. Notwithstanding anything to the contrary herein, the parties to this
15 action shall have no obligation under this Order with respect to
16 information that (1) is or becomes publicly available (except by
17 unauthorized disclosure), or (2) is received from a third-party who is
18 rightfully in possession of such information and who has the right to
19 disclose it.
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1 **C. Access to Confidential Information**

2 1. Access to confidential information shall be limited to individuals who
3 must handle such information for purposes of this litigation (“qualified
4 persons”). Individuals authorized to handle confidential information
5 include:
6

- 7
- 8 a. The Court and its officers;
 - 9 b. Court reporters, their assistants, and administrative staff;
 - 10 c. The parties and their counsel, including counsel’s paralegals,
11 administrative staff, or contractors;
 - 12 d. Any mediator or other third-party neutral used to attempt to resolve
13 this litigation;
 - 14 e. Witnesses, potential witnesses, and their counsel to the extent
15 necessary in preparation for or during the course of depositions,
16 hearings, interviews, or trial in this action;
 - 17 f. Experts and consultants, including their employees and
18 administrative staff, who are employed, retained, or otherwise
19 consulted by counsel or any party for the purpose of providing
20 information or opinions to assist in this litigation.
21
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23
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25
26

1 2. All individuals who fall within categories C(1)(e)–(f) above who
2 review confidential information must first execute the
3
4 Acknowledgment of Confidentiality Agreement and Protective Order,
5 appended hereto as Attachment A, stating that they will abide by the
6 terms of this Order. Copies of all Acknowledgments of Confidentiality
7 Agreement and Protective Order executed pursuant to this paragraph
8 shall be kept by counsel who provided the confidential information for
9 review. For witnesses required to be disclosed by the Federal Rules of
10 Civil Procedure, copies of the executed Acknowledgment of
11 Confidentiality Agreement and Protective Order shall be disclosed to
12 opposing counsel not later than the disclosure date of the witness list for
13 trial.
14
15
16

17 **D. Other Litigation**

18 1. If a party in receipt of confidential information (“receiving party”) is
19 served with a discovery request, subpoena, civil investigative demand,
20 or an order from any court or other authority that would compel
21 disclosure of any information or items bearing the designation
22 “CONFIDENTIAL,” the receiving party shall so notify the party that
23 designated the material confidential (“designating party”) in writing,
24
25
26

1 including a copy of the discovery request, subpoena, civil investigative
2 demand, or order as soon as reasonably practicable.

3
4 2. The receiving party must immediately inform the party who caused the
5 discovery request, subpoena, civil investigative demand, or order to
6 issue in the other litigation that some or all of responsive materials is
7 the subject of this Confidentiality Agreement and Protective Order.
8 The receiving party must deliver a copy of this Order promptly to the
9 party in the other action that issued the discovery request, subpoena,
10 civil investigative demand, or order to issue.
11

12
13 3. If the designating party is unable to secure the voluntary withdrawal of
14 the discovery request, subpoena, civil investigative demand, or order
15 that would compel disclosure of any information or items designated
16 confidential, the designating party may move for the issuance of an
17 order to quash, strike, or modify the discovery request, subpoena, civil
18 investigative demand, or order. The burden and expense shall be on the
19 designating party to obtain an order staying production. In the absence
20 of an order staying, limiting, or barring production, the Federal Rules of
21 Civil Procedure regarding discovery remain in effect.
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26

1 **E. Scope and Enforcement of Order**

- 2 1. Except as otherwise provided herein, the restrictions and obligations
3 provided in this Order shall not terminate upon the conclusion of this
4 lawsuit but shall continue subject to order of this Court.
5
- 6 2. Entering into, agreeing to, and/or complying with the terms of this
7 Order shall not:
8
- 9 a. Operate as an admission that any particular discovery material
10 constitutes, contains, or reflects confidential matter;
11
 - 12 b. Operate as a requirement that any attorney produce his or her own
13 attorney work product;
14
 - 15 c. Prejudice the rights of any party to object to the production of
16 documents or information it considers non-discoverable, or to seek a
17 Court determination whether particular discovery materials should
18 be protected;
19
 - 20 d. Prejudice a party from seeking modification or rescission of this
21 Confidentiality Agreement and Protective Order; or
22
 - 23 e. Limit a party's right to seek additional protective orders as may
24 become necessary due to a change in circumstances or for other
25 good cause shown.
26

1 3. Any party may petition the Court concerning a violation of this Order
2 and request any available remedies, including, but not limited to,
3 contempt proceedings.
4

5 Dated September 29, 2017.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

ATTACHMENT A

Acknowledgment of Confidentiality Agreement and Protective Order

I, _____ [print full name], of
_____ [print or type full address],

declare under penalty of perjury under the laws of the State of Washington that I have read in its entirety and understand the Confidentiality Agreement and Protective Order that was issued by the U.S. District Court for the Eastern District of Washington, in *State of Washington et al. v. Horning Brothers L.L.C. et al.*, 2:17-cv-00149-TOR (E.D. Wash.).

I agree to comply with and to be bound by all the terms of this Confidentiality Agreement and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I promise that I will not disclose in any manner any information or item that is subject to this Confidentiality Agreement and Protective Order to any person or entity except in strict compliance with the provisions of the Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Eastern District of Washington for the purpose of enforcing the terms of this

1 Confidentiality Agreement and Protective Order, even if such enforcement
2 proceedings occur after termination of this action.
3
4

5 Date: _____
6
7

8 City and State where sworn and signed: _____
9

10 Printed name: _____
11
12

13 Signature: _____
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1 ALYSON DIMMITT GNAM
2 MARIA DOLORES VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20 SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiff-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

NOTICE OF UNAVAILABILITY OF
COUNSEL FOR PLAINTIFFS-
INTERVENORS

1 PLEASE TAKE NOTE THAT counsel for Plaintiffs-Intervenors will be
2 unavailable from Monday, March 26, 2018, through Monday, April 2, 2018. The
3 undersigned respectfully requests that no events requiring the undersigned's
4 immediate attention be noted or scheduled during that time period.
5

6 Respectfully submitted this 22nd day of March of 2018.
7

8
9 By: s/ Alyson Dimmitt Gnam
Alyson Dimmitt Gnam
10 alysond@nwjustice.org
Northwest Justice Project
11 300 Okanogan Avenue Ste. 3A
Wenatchee, WA 98801
12 (509) 664-5101
13

14 By: s/ María Dolores Velázquez
María Dolores Velázquez
15 lolav@nwjustice.org
Northwest Justice Project
16 300 Okanogan Avenue Ste. 3A
Wenatchee, WA 98801
17 (509) 664-5101
18

19 *Attorneys for Plaintiffs-Intervenors*
20
21
22
23
24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 I hereby certify that on March 22, 2018, I electronically filed the foregoing
4 with the Clerk of the Court using the CM/ECF system which will send
5 notification of such filing to the following:

6 Colleen M Melody: colleenm1@atg.wa.gov

7 Patricio A Marquez: patriciom@atg.wa.gov

8 William Spurr: bill@williamrspurr.com

9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 22 day of March, 2018.

12 BY: /s/ Alyson Dimmitt Gnam

13 Alyson Dimmitt Gnam
14 Attorney for Plaintiffs-Intervenors

1 Thomas A. Saenz* (Cal. Bar No. 159430)
 2 Andrés R. Holguin-Flores* (Cal. Bar No. 305860)
 3 MEXICAN AMERICAN LEGAL
 4 DEFENSE AND EDUCATION FUND
 5 634 South Spring Street, 11th Floor
 6 Los Angeles, California 90014
 7 Telephone: (213) 629-2512
 8 E-mail: tsaenz@maldef.org
 9 aholguin-flores@maldef.org
 10 *admitted pro hac vice

11 Nina Perales* (Tex. Bar No. 24005046)
 12 MEXICAN AMERICAN LEGAL
 13 DEFENSE AND EDUCATION FUND
 14 110 Broadway St., Suite 300
 15 San Antonio, TX 78205
 16 Telephone: (210) 224-5476
 17 E-mail: nperales@maldef.org
 18 *admitted pro hac vice

19 Daniel R. Ortega, Jr. (Ariz. Bar No. 005015)
 20 ORTEGA LAW FIRM, P.C.
 21 361 East Coronado Rd., Suite 101
 22 Phoenix, AZ 85004-1525
 23 Telephone: (602) 386-4455
 24 Facsimile: (602) 386-4480
 25 E-mail: danny@ortegalaw.com

26 *Attorneys for Plaintiffs*

27 IN THE UNITED STATES DISTRICT COURT
 28 FOR THE DISTRICT OF ARIZONA

19 Jane V.; John A.; John E.; Jane F.; John D.;
 20 John M.; Jane N.; and John W.; individually
 21 and on behalf of all others similarly
 22 situated,,

23 Plaintiff,

24 v.

25 Motel 6 Operating L.P., a limited
 26 partnership; G6 Hospitality LLC, a limited
 27 liability company, dba Motel 6; and Does 1-
 28 10,

29 Defendant.

No. 2:18-cv-00242-DGC

**CONSENT MOTION FOR
 EXTENSION OF TIME TO
 PREPARE CLASS-WIDE
 SETTLEMENT DOCUMENTS
 SEEKING PRELIMINARY
 APPROVAL OF SETTLEMENT**

1 Plaintiffs move this Court for an extension of time to November 2, 2018, to file the
2 Parties' joint motion for preliminary approval of class-wide settlement. The Parties have
3 met and conferred and Defendants consent to the filing of this motion.

4 It is well-established that settlement is particularly appropriate in complex class
5 litigation. *See 4 Newberg on Class Actions* § 11.41 (and cases cited therein); *Churchill*
6 *Village, L.L.C. v. General Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). It is also well-
7 established that the law favors and prefers the compromise and settlement of class action
8 suits. *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982);
9 *Safeco Corp. v. Van Bronkhorst*, 529 F.2d 943, 950 (9th Cir. 1976) (emphasizing that the
10 policy in favor of settlement is "particularly true in class actions").

11 Good cause exists for an extension of time to allow the Parties sufficient time to
12 complete the documentation necessary to seek approval of the proposed nationwide class
13 settlement. To date, the Parties have reached agreement on the principal terms of the
14 proposed settlement. Although the Parties have, and will continue to, work diligently to
15 finalize these pleadings and to file them expeditiously, the logistical issues to be
16 coordinated in order to complete the necessary documentation in this particular
17 nationwide class action are uniquely challenging.

18 DATED this 4th day of October, 2018.

19 MEXICAN AMERICAN LEGAL
20 DEFENSE AND EDUCATION FUND, INC.

21 By: s/Andres R. Holguin-Flores

22 Thomas A. Saénz
23 Andres R. Holguin-Flores
24 Nina Perales
25 Daniel R. Ortega, Jr.
26 *Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2018, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants in this matter.

DATED: October 4, 2018

/s/ Andres R. Holguin-Flores

Andres R. Holguin-Flores
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20

SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiff-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

PLAINTIFFS-INTERVENORS
MOTION TO EXPEDITE HEARING
OF MOTION TO EXCEED PAGE
LIMITATION

Hearing date: April 18, 2018
Without Oral Argument

1 Plaintiffs-Intervenors (hereinafter “Intervenors”) move this court, pursuant
2 to LR 7.1(h)(2)(C), for an order granting expedited hearing on Intervenors’ Motion
3 to Exceed Page Limitations, filed contemporaneously. Intervenors seek leave to
4 exceed the 10-page limitation in Local Rule 7.1(e) for a Motion for Protective
5 Order Regarding Discovery of U Visa Information. *See* Motion to Exceed Page
6 Limitation. In order to facilitate timely resolution of this discovery dispute,
7 Plaintiffs Intervenors seek approval from this Court in order to promptly file our
8 Motion for Protective Order.
9

10 Good cause exists for the Court to order an expedited hearing. The parties
11 were unable to resolve a dispute regarding Defendant’s demand for discovery of U
12 visa information from Intervenors at a March 23, 2018, discovery conference.
13 Intervenors now seek the protection of this court against forced disclosure that
14 would cause serious harm to Intervenors and burden public policy. Opposing
15 counsel, Mr. William Spurr, opposes both this motion to expedite and the motion
16 to exceed page limits. However, the request for leave to exceed the ten (10) page
17 limit has been made for good cause. *See* Motion to Exceed Page Limitation.
18 Plaintiffs-Intervenors respectfully request that the Court expedite the hearing on
19 the Motion to Exceed Page Limitation in order to avoid delay.
20
21

22 \\
23 \\
24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 I hereby certify that on April 11, 2018, I electronically filed the foregoing
4 with the Clerk of the Court using the CM/ECF system, which will send
5 notification of such filing to the following:

6 Colleen M Melody: colleenm1@atg.wa.gov

7 Patricio A Marquez: patriciom@atg.wa.gov

8 William Spurr: bill@williamrspurr.com

9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 11th day of April, 2018.

12 BY: s/ Vicki Morales
13 Vicki Morales
14 *Legal Assistant*

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20

SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiff-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

[PROPOSED] ORDER GRANTING
PLAINTIFFS-INTERVENORS
MOTION TO EXPEDITE HEARING
OF MOTION TO EXCEED PAGE
LIMITATION

1 THIS MATTER came before the Court on Plaintiffs-Intervenors Motion to
2 Expedite Hearing of Plaintiffs-Intervenors' Motion to Exceed Page Limitation. The
3 Court has reviewed the Motion and all evidence submitted in support of and in
4 opposition to the Motion, the pleadings on file, and is fully informed.
5

6 IT IS HEREBY ORDERED THAT Plaintiffs-Intervenors Motion to
7 Expedite Hearing is GRANTED.

8 DATED this _____ day of _____ 2018.
9

10
11 _____
12 United States District Judge
13

14 Presented by:

15 By: s/ Alyson Dimmitt Gnam
16 Alyson Dimmitt Gnam
17 Attorney for Plaintiffs-Intervenors
18 alysond@nwjustice.org
19 Northwest Justice Project
20 300 Okanogan Avenue Ste. 3A
21 Wenatchee, WA 98801
22 (509) 664-5101
23
24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 I hereby certify that on April 11, 2018, I electronically filed the foregoing
4 with the Clerk of the Court using the CM/ECF system, which will send
5 notification of such filing to the following:

6 Colleen M Melody: colleenm1@atg.wa.gov

7 Patricio A Marquez: patriciom@atg.wa.gov

8 William Spurr: bill@williamrspurr.com

9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 11th day of April, 2018.

12 BY: s/ Vicki Morales
13 Vicki Morales
14 *Legal Assistant*

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

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13 HORNING BROTHERS, L.L.C.,
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15 individual capacity and as a
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17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20

SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
25 SAMANTHA MENDOZA

26 Plaintiff-Intervenors,

27 v.

28

HORNING BROTHERS, L.L.C.,
29 Defendant.

No. 2:17-cv-00149

PLAINTIFFS-INTERVENORS
MOTION TO EXCEED PAGE
LIMITATION

Hearing date: April 18, 2018
Without Oral Argument

1 Plaintiffs-Intervenors move this court, pursuant to LR 7.1(e)(4), for an order
2 granting Plaintiffs-Intervenors leave to exceed the 10 page limitation in Local Rule
3 7.1(e)(2) for its Motion for Protective Order Regarding Discovery of U Visa
4 Information. Plaintiffs-Intervenors estimate that the substantive body of the
5 memorandum shall be approximately fifteen pages. Given the public interest at
6 stake in protecting the purpose of antidiscrimination laws (Title VII and the
7 Washington Law Against Discrimination) and the U Visa program against the
8 chilling effect caused by such discovery, as well as the lack of precedent on this
9 issue, this Motion involves sufficiently complex issues to merit a finding of good
10 cause for filing an overlength motion. This Motion is not made for the purpose of
11 delay or harassment.
12

13
14 Respectfully submitted this 11th day of April of 2018.

15
16 By: s/ Alyson Dimmitt Gnam
17 Alyson Dimmitt Gnam
18 alysond@nwjustice.org
19 Northwest Justice Project
20 300 Okanogan Avenue Ste. 3A
21 Wenatchee, WA 98801
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23
24 *Attorney for Plaintiffs-Intervenors*

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20 SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiff-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

[PROPOSED] ORDER GRANTING
PLAINTIFFS-INTERVENORS
MOTION TO EXCEED PAGE
LIMITATION

1 THIS MATTER came before the Court on Plaintiffs-Intervenors Motion to
2 Exceed Page Limitation for Motion for Protective Order. This Court has reviewed
3 the Motion and all evidence submitted in support of and in opposition to the
4 Motion, the pleadings on file, and is fully informed.

5
6 IT IS HEREBY ORDERED THAT Plaintiffs-Intervenors Motion to Exceed
7 Page Limitation for a Motion for Protective Order is GRANTED.

8 DATED this _____ day of _____ 2018.

9
10
11 _____
United States District Judge

12
13
14 Presented by:

15 By: s/ Alyson Dimmitt Gnam
16 Alyson Dimmitt Gnam
17 Attorney for Plaintiffs-Intervenors
18 alysond@nwjustice.org
19 Northwest Justice Project
300 Okanogan Avenue Ste. 3A
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(509) 664-5101

From: waed_cmecf@waed.uscourts.gov
To: waed_cmecf@waed.uscourts.gov
Subject: Case 2:17-cv-00149-TOR State of Washington v. Horning Brothers, LLC et al Order on Motion to Expedite
Date: Thursday, April 12, 2018 2:54:43 PM

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Eastern District of Washington

U.S. District Court

Notice of Electronic Filing

The following transaction was entered on 4/12/2018 at 2:53 PM PDT and filed on 4/12/2018

Case Name: State of Washington v. Horning Brothers, LLC et al

Case Number: 2:17-cv-00149-TOR

Filer:

Document Number: 33(No document attached)

Docket Text:

ORDER granting [31] Motion to Expedite. Signed by Chief Judge Thomas O. Rice. TEXT ONLY ORDER; NO PDF WILL ISSUE. (BF, Paralegal)

2:17-cv-00149-TOR Notice has been electronically mailed to:

Alyson Dimmitt Gnam alysond@nwjustice.org, vickim@nwjustice.org

Brook L Cunningham blc@randalldanskin.com, kmd@randalldanskin.com

Colleen M Melody colleenm1@atg.wa.gov, chamenew@atg.wa.gov, cruecf@atg.wa.gov

Maria Dolores Velazquez lolav@nwjustice.org, mariaah@nwjustice.org,
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Patricio A Marquez patriciom@atg.wa.gov, chamenew@atg.wa.gov

William R Spurr bill@williamrspurr.com

2:17-cv-00149-TOR Notice has been delivered by other means to:

From: waed_cmecef@waed.uscourts.gov
To: waed_cmecef@waed.uscourts.gov
Subject: Case 2:17-cv-00149-TOR State of Washington v. Horning Brothers, LLC et al Order on Motion for Leave to File Excess Pages
Date: Thursday, April 12, 2018 2:56:13 PM

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Eastern District of Washington

U.S. District Court

Notice of Electronic Filing

The following transaction was entered on 4/12/2018 at 2:55 PM PDT and filed on 4/12/2018

Case Name: State of Washington v. Horning Brothers, LLC et al

Case Number: 2:17-cv-00149-TOR

Filer:

Document Number: 34(No document attached)

Docket Text:

ORDER granting [32] Motion for Leave to File Excess Pages. Plaintiff/Plaintiffs-Intervenors' forthcoming Motion for Protective shall not exceed 15 pages.

Signed by Chief Judge Thomas O. Rice. TEXT ONLY ORDER; NO PDF WILL ISSUE.(BF, Paralegal)

2:17-cv-00149-TOR Notice has been electronically mailed to:

Alyson Dimmitt Gnam alysond@nwjustice.org, vickim@nwjustice.org

Brook L Cunningham blc@randalldanskin.com, kmd@randalldanskin.com

Colleen M Melody colleenm1@atg.wa.gov, chamenew@atg.wa.gov, cruecf@atg.wa.gov

Maria Dolores Velazquez lolav@nwjustice.org, mariah@nwjustice.org, vickim@nwjustice.org

Patricio A Marquez patriciom@atg.wa.gov, chamenew@atg.wa.gov

William R Spurr bill@williamrspurr.com

2:17-cv-00149-TOR Notice has been delivered by other means to:

1 William R. Spurr, WSBA #20064
2 Law Office of William R. Spurr
3 1001 4th Ave., Suite 4400
4 Seattle, WA 98154
5 Phone: (206) 682-2692
6 bill@williamrspurr.com

7 Attorney for Defendant Horning Brothers, LLC

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF WASHINGTON**

11 STATE OF WASHINGTON,
12

13 Plaintiff,

14 v.

15 HORNING BROTHERS, L.L.C., and
16 HERMILO CRUZ, in his individual
17 capacity and as a member of the marital
18 community of HERMILO CRUZ and
19 CLAUDIA SANCHEZ,

20 Defendants.

21 SOCORRO DIAZ SILVAS, ROXANA
22 RODRIGUEZ DE ALFARO, YESICA
23 CABRERA CABRERA, YASMIN
24 CABRERA NAVARRO, and
25 SAMANTHA MEDOZA,

26 Plaintiffs-Intervenors,

27 v.

28 HORNING BROTHERS, LLC,

Defendant.

No. CV-17-00149-TOR

DEFENDANT HORNING
BROTHERS, LLC's MOTION AND
MEMORANDUM TO COMPEL
PRODUCTION OF U-VISA
DOCUMENTS

Noted on Motion Calendar:
May 14, 2018

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 1

WILLIAM R. SPURR
1001 FOURTH AVENUE, STE. 4400
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(206)682-2692

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I. MOTION

Defendant Horning Brothers, LLC moves this Court for an order compelling the Plaintiffs-Intervenors to produce any U-visa documents that they signed under oath and/or have submitted to federal immigration authorities, if any, that relate to the allegations they have made against the defendants in this case, subject to any additional safeguards or protections the Court deems appropriate.

II. FACTUAL BACKGROUND

This case involves a number of extremely lurid sexual harassment claims against the Horning Brothers, LLC (“Horning Brothers”) and its foreman, Hermilo Cruz, alleged to have occurred in the Horning Brothers’ small, seasonal onion packing operation over the past several years. **See First Amended Complaint in Intervention (ECF No. 12)**. Mr. Cruz has denied these fantastic and grotesque allegations in their entirety, both in his answer (**ECF No. 13**) and under oath at his deposition.

The Horning Brothers’ onion packing operation (which has since been shut down after the last packing season) was located in a metal farm building (the “Onion Shed”) located less than 70 yards from the home of Warren Horning and his wife Kathy, the patriarch and matriarch of the Horning family. Each

DEFENDANT HORNING BROTHERS,
LLC’s MOTION TO COMPEL - 2

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1 packing season, running from late October/early November to late
2 February/early March, the Hornings would hire 20-25 seasonal workers, both
3 men and women, to sort, bag and load onions on pallets. The machinery and
4 conveyor belts that were involved in this operation were contained in an area of
5 the Onion Shed approximately 20 feet by 70 feet. Therefore, while working, all
6 of the workers were generally located within this small area, and many were
7 within just a couple of feet of several other workers. Among the seasonal
8 workers who worked all or parts of the last four or five onion packing seasons
9 were Mr. Cruz's wife, Claudia, her daughter and her mother. Many if not most
10 of the egregious acts of sexual harassment alleged by Plaintiffs-Intervenors are
11 alleged to have occurred in this small area despite female members of Mr.
12 Cruz's family being present, as well as the other workers, including family
13 members and/or the husbands/boyfriends of *every one of the Plaintiffs-*
14 *Intervenors.* **Declaration of Allen Horning in Support of Motion to Compel**
15 **(A. Horning Dec.)**, ¶ 2, Exhibit A.

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24 In addition to the close proximity of all of the Onion Shed workers to each
25 other and yet the puzzling lack of corroborating witnesses to support the
26 egregious allegations, the deposition testimony of the Plaintiffs-Intervenors casts
27 considerable doubt on the veracity of their allegations. Excerpts of these
28

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 3

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1 depositions are attached as **Exhibits A through E to the accompanying**
2 **Declaration of William R. Spurr in Support of Motion to Compel (“Spurr**
3 **Dec.”)**. Among the uncontrovertible facts that have been established by the
4 depositions of the Plaintiffs-Intervenors are:
5
6

7 ▶ None of the Plaintiffs-Intervenors except Yesica Cabrera Navarro
8 even *claims* to have reported Mr. Cruz’ alleged sexual harassment to any
9 of the Hornings during or after any of the packing seasons she worked.
10 **Yasmin CN Dep., p. 21; Roxana RDA Dep., p. 70; Samantha M Dep.,**
11 **pp. 87-88; Socorro DS Dep., p. 94.** Yesica Cabrera Navarro, because she
12 does not speak English, does not know whether her alleged complaint
13 about Mr. Cruz’ sexual harassment was translated into English to Warren
14 Horning. **Yesica CN Dep., p. 100.**

15 ▶ All of the Plaintiffs-Intervenors admit that they attended at least
16 one Onion Shed Safety Meeting. **Yasmin CN Dep., pp. 19-21; Roxana**
17 **RDA Dep., pp. 56-57; Samantha M Dep., p. 41; Socorro DS Dep., pp.**
18 **50-51; Yesica CN Dep., p. 45.** Yasmin Cabrera Navarro and Socorro
19 Diaz Silvas admit that during these meetings they were urged in English
20 by one of the Hornings (and translated to Spanish by Mr. Cruz or another
21 bilingual worker) to report any harassment to Hermilo Cruz, Allen
22 Horning, Warren Horning or Greg Horning. **Yasmin CN Dep., pp. 19-21;**
23 **Socorro DS Dep., pp. 50-51.**

24 ▶ In *direct conflict* with the other Plaintiffs-Intervenors’ testimony,
25 Samantha Mendoza, who testified in English at her deposition, incredibly
26 claimed that *she never saw a single member of the Horning family during*
27 *the entire packing season she worked until she picked up her last*
28 *paycheck.* **Samantha M Dep., p. 109.** She was also the only witness to
testify that *only* Mr. Cruz spoke (in Spanish) at the Onion Shed Safety
Meetings she attended. **Samantha M Dep., p. 39.**

 ▶ Yesica Cabrera Navarro and Yasmin Cabrera Navarro are sisters
who frequently commuted together to work at the Horning Brothers. Each
testified that *she never uttered a single word to her sister* about the

DEFENDANT HORNING BROTHERS,
LLC’s MOTION TO COMPEL - 4

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1 alleged sexual harassment by Hermilo Cruz during the entire first packing
2 season that they worked for the Horning Brothers. **Yasmin CN Dep., p.**
3 **109; Yesica CN Dep., p. 31.**

4 ▶ Socorro Diaz Silvas and Samantha Mendoza are mother and
5 daughter. Ms. Diaz Silvas arranged to have Ms. Mendoza work for the
6 Horning Brothers. Each testified that *she never uttered a single word to*
7 *her mother/daughter* about the alleged sexual harassment by Hermilo
8 Cruz either before hiring on or while working for the Horning Brothers.
9 Each claimed to be unaware that Mr. Cruz was allegedly sexually
10 harassing her daughter/mother. **Samantha M Dep., p. 107; Socorro DS**
11 **Dep., pp. 154-155.**

12 ▶ During the packing season that Socorro Diaz Silvas and her
13 daughter Samantha Mendoza worked in the Onion Shed together, Ms.
14 Diaz Silvas' and her then-boyfriend (now husband) played cards almost
15 every weekend during the packing season with Mr. Cruz and his wife,
16 Claudia. Ms. Mendoza even played cards with Mr. Cruz and his wife on at
17 least one of those occasions. **Samantha M Dep., p. 23-24.**

18 ▶ Roxana Rodriguez De Alfaro worked most of one packing
19 season in the Horning Brothers' Onion Shed with her husband, Victor.
20 Ms. Rodriguez De Alfaro testified that *she never uttered a single word to*
21 *her husband* about the alleged sexual harassment by Hermilo Cruz while
22 working for the Horning Brothers. Ms. Rodriguez De Alfaro quit working
23 for the Horning Brothers before the end of that packing season the same
24 day that her husband quit after getting in an argument with Mr. Cruz,
25 which argument was unrelated to any alleged sexual harassment of Ms.
26 Rodriguez De Alfaro by Mr. Cruz. **Roxana RDA Dep., pp. 142-143.**

27 ▶ None of the Plaintiffs-Intervenors claims that the possibility of
28 monetary compensation motivated her to participate in this lawsuit.
Yasmin CN Dep., p. 112; Roxana RDA Dep., p. 132 ; Samantha M
Dep., p. 128; Socorro DS Dep., p. 101; Yesica CN Dep., p. 118.

▶ Samantha Mendoza recently told another former co-worker,
Maria Ramirez, that she joined the lawsuit against her will because she
was told to do so by her mother (Socorro Diaz Silvas) to add credibility to

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 5

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1 the case because of Samantha's legal resident status. Ms. Mendoza also
2 told Ms. Ramirez that her mother told her what to say. **Supplemental**
3 **Declaration of Maria Ramirez, ¶ 8.**

4 ▶ During the entire 20 years that the Horning Brothers ran their
5 onion packing operation, they never fired or terminated a single employee.
6 **A. Horning Dec., ¶ 3.**

7 ▶ During the entire 20 years that the Horning Brothers ran their
8 onion packing operation, they never contacted ICE or any other federal
9 immigration authorities to report a single employee. **A. Horning Dec., ¶4.**

10
11 Given the above testimony that casts doubt on the credibility of the
12 allegations, as well as the unbelievably graphic and lurid nature of many of the
13 allegations against Mr. Cruz (which he denies), one is compelled to wonder if
14 there could be any other motive besides money for one or more of these alleged
15 victims to fabricate or embellish her claims. And indeed there is one: the
16 protection and possibility of permanent legal residency provided by a U-visa. A
17 U-visa provides protection from deportation to undocumented immigrants who
18 are witnesses to or victims of **criminal conduct** that is being prosecuted by a
19 governmental law enforcement agency (like the Washington State AG's Office).
20 Included in the examples of criminal conduct that may qualify for a U-visa are
21 "Sexual Assault," "Abusive Sexual Contact," or "Sexual Exploitation." See U
22 **Nonimmigrant Status Certification (Form I-918, Supplement B), attached**
23 **hereto as Attachment A.** The U-visa application, Form I-918, must describe the

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DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 6

WILLIAM R. SPURR
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1 nature of the conduct involved, be sworn under oath by the applicant, and must
2
3 be supported by a qualifying law enforcement agency that is prosecuting the
4 criminal conduct. **See U-visa Application, Form I-918, attached hereto as**
5
6 **Attachment B.**

7 The defendants seek production of the U-visa applications and the
8
9 accompanying sworn statements from each of the Plaintiffs-Intervenors that
10 applied for them. These documents would be responsive to the Requests for
11
12 Production of Documents that the Horning Brothers propounded to the
13
14 Plaintiffs-Intervenors, specifically RFP Nos. 1, 2, 8 and 14. **Spurr Dec., ¶ 7.**
15
16 The Plaintiffs-Intervenors have refused to produce any information that reflects
17
18 on their immigration status. The undersigned wrote a letter to Plaintiffs-
19
20 Intervenors' counsel outlining defendants' position regarding this discovery and
21
22 requesting a discovery conference. The discovery conference was held on
23
24 March 23, 2018, nothing was resolved, and this issue is now ripe for the Court's
25
26 consideration. **Spurr Dec., ¶ 8, Exhibit F.**

27 **III. LEGAL DISCUSSION**

28 The immigration status of litigants is generally protected and not
discoverable. *See Rivera v. Nibco, Inc.*, 364 F.3d 1057 (9th Cir. 2004). The
rationale for this policy is understandable: bad employers who treat their

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 7

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1 undocumented workers illegally should not be able to escape liability by
2 reporting their employees to ICE or other immigration authorities to have the
3 victims and witnesses of such conduct arrested and deported before the case can
4 be heard.
5
6

7 However, U-visa applicants *have already reported their immigration*
8 *status to immigration authorities* by submitting their U-visa applications, thus
9 strongly mitigating the concerns embodied in the policy of nondiscoverability.
10
11

12 There are two pertinent cases that address this issue. The first is *Cazorla*
13 *v. Koch Foods of Mississippi, LLC*, No. 15-60562 (5th Cir., February 23, 2017)
14 (attached hereto as **Attachment C**). In *Cazorla*, the defendant investigated
15 similarly egregious claims of sexual assault/harassment and could not
16 corroborate them. Suspecting that the outrageous allegations were motivated by
17 the desire of the alleged victims to seek the protection of U-visas, the defendants
18 sought discovery of U-visa information from the individual plaintiffs. The 5th
19 Circuit, after much analysis and balancing of the competing interests involved,
20 ultimately reversed the district court's *specific order* allowing U-visa discovery,
21 but suggested that such discovery may be permissible under the right
22 circumstances and with appropriate protective conditions. The court stated:
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 Rather than impose an order of our own, we remand to the
district court to devise an approach to U-visa discovery that

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 8

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1 adequately protects the diverse and competing interests at stake.
2 Our discussion indicates the basics of that approach. Beyond these
3 broad contours, we leave the management of U-visa discovery to
4 the district court. Rule 26(d) gives that court wide discretion to
5 craft flexible and nuanced terms of discovery.

6 *Id.* at 33-34.

7
8 The other case that bears on this issue comes from this very district,
9 *E.E.O.C. v. Global Horizons, Inc.*, 2013 WL 3940674 (E.D. WA 2013) (attached
10 hereto as **Attachment D**). In *Global Horizons*, the court considered whether T-
11 visa information was discoverable in a civil employment case. T-visas apply to
12 victims of human trafficking and provide similar protections to those provided
13 by U-visas, specifically protection from removal or deportation due to
14 undocumented immigration status. *Id.* at 3-4. Considering the competing
15 interests involved, the court allowed the discovery of the plaintiffs' T-visa
16 information and stated:
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22 Having found that a Claimant's T-Visa application and supporting
23 material and T-Visa status are relevant to the claims and defenses,
24 the Court now finds the EEOC fails to show that good cause exists
25 for the continued discovery restriction regarding T-Visa-related
26 information. It is undisputed that all of the Claimants were in the
27 United States unlawfully after they chose to leave their guest-worker
28 relationship. Therefore, there is no undue prejudice to be suffered by
a Claimant if Defendants discover that the Claimant has a T-Visa.
And there is no evidence before the Court that a Claimant has a
justifiable fear of deportation if their T-Visa application, supporting
material, or resulting T-Visa status is discovered by Defendants in

DEFENDANT HORNING BROTHERS,
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1 this lawsuit. In addition, Defendants agree that any discovered
2 immigration-related information will be subject to the stipulated
3 protective order, ECF No. 312.

4 *Id.* at 5.

5
6 In this case, it would be fundamentally unfair for the defendants to not
7 have access to the prior sworn statements about the very allegations in this case
8 that form the bases of the Plaintiffs-Intervenors U-visa applications. Obviously,
9 being arrested and deported, separated from one's family and friends, and
10 perhaps subject to severe treatment in the country from which the applicant
11 emigrated, are horrific concerns. Thus, the U-visa provides a perhaps life-or-
12 death incentive for an applicant to fabricate or exaggerate his or her allegations
13 in order to stave off adverse immigration consequences by alleging that the
14 applicant has been a victim of essentially *criminal* sexual assault. The Horning
15 Brothers should not only be entitled to the Plaintiffs-Intervenors' prior sworn
16 statements about the very allegations that are the subject of this lawsuit, but they
17 should be entitled to inform the jury of the extreme motivation of the Plaintiffs-
18 Intervenors to fabricate or embellish their claims of sexual harassment so that
19 they may be characterized as "criminal conduct" that qualifies them for the
20 protection of a U-visa. It is difficult to imagine a more compelling source of bias
21 that would affect the testimony of a witness.
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DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 10

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IV. CONCLUSION

The Court should grant the Horning Brothers' motion to compel the U-visa information of the Plaintiffs-Intervenors. The Horning Brothers are amenable to any usage restrictions that the Court deems appropriate, so long as the Horning Brothers may use for impeachment the sworn statements that may contradict the deposition testimony of the Plaintiffs-Intervenors, and so long as the Horning Brothers are permitted to inform the jury of this very crucial source of bias and the incentive to fabricate and embellish claims of sexual harassment. A proposed order is attached hereto as **Attachment E**.

Dated this 13th day of April, 2018.

LAW OFFICE OF WILLIAM R. SPURR

By: s/ William R. Spurr

William R. Spurr, WSBA #20064
Attorney for Horning Brothers, LLC
1001 4th Ave., Suite 4400
Seattle, WA 98154
Phone: (206) 682-2692
bill@williamrspurr.com

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 11

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2018, I electronically filed the foregoing document, as well as the Declaration of William R. Spurr in Support of Motion to Compel, the Declaration of Allen Horning in Support of Motion to Compel, and the Supplemental Declaration of Maria Ramirez with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Colleen M. Melody Office of the Attorney General – SEA Civil Rights Unit colleenm1@atg.wa.gov <i>Attorney for Plaintiff</i>	Patricio A. Marquez Office of the Attorney General – SEA Civil Rights Unit patriciom@atg.wa.gov <i>Attorney for Plaintiff</i>
Alyson Dimmitt Gnam Northwest Justice Project alysond@nwjustice.org <i>Attorney for Plaintiffs-Intervenors</i>	Maria D. Velazquez Northwest Justice Project lolav@nwjustice.org <i>Attorney for Plaintiffs-Intervenors</i>
Brook L. Cunningham Randall Danskin, P.S. blc@randalldanskin.com <i>Attorney for Defendants Cruz and Sanchez</i>	

DATED this 13th day of April, 2018.

By: s/ William R. Spurr
William R. Spurr, WSBA #20064
Attorney for Horning Brothers, LLC
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Seattle, WA 98154
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bill@williamrspurr.com

DEFENDANT HORNING BROTHERS,
LLC's MOTION TO COMPEL - 12

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Attachment E

1 William R. Spurr, WSBA #20064
2 Law Office of William R. Spurr
3 1001 4th Ave., Suite 4400
4 Seattle, WA 98154
5 Phone: (206) 682-2692
6 bill@williamrspurr.com

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 STATE OF WASHINGTON,)

10 Plaintiff,)

No. 2:17-cv-00149 TOR

11 SOCORRO DIAZ SILVAS, ROXANA)

12 RODRIGUEZ DE ALFARO, YESICA)

[Proposed]

13 CABRERA NAVARRO, YASMIN)

ORDER GRANTING HORNING

14 CABRERA NAVARRO, AND)

BROTHERS, LLC's MOTION TO

15 SAMANTHA MENDOZA,)

COMPEL

16 Plaintiffs-)

Noted on Motion Calendar:

17 Intervenors)

May 14, 2018

18 v.)

19 HORNING BROTHERS, LLC and)

20 HERMILO CRUZ,)

21 Defendants.

22 THIS MATTER came on for hearing before the undersigned judge of the above-
23 entitled court on Defendant's Horning Brothers, LLC's Motion and Memorandum to
24 Compel Production of U-Visa Documents. The court did not hear oral argument. The
25 court considered the following documents submitted by the parties:

26 *Attachment E*

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1. Defendant's Horning Brothers, LLC's Motion and Memorandum to Compel Production of U-Visa Documents;
2. Declaration of William R. Spurr in Support of Motion to Compel;
3. Declaration of Allen Horning in Support of Motion to Compel;
4. Supplemental Declaration of Maria Ramirez;
5. _____;
6. _____;
7. _____;
8. _____; and
9. The pleadings and records on file in this case.

The court, being fully advised in the premises, and finding that the motion to compel of Horning Brothers, LLC motion should be granted, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant's Horning Brothers, LLC's Motion and Memorandum to Compel Production of U-Visa Documents is hereby **GRANTED**. Plaintiffs-Intervenors shall produce all documents pertaining to their U-visa applications, if any, within 20 days of this order, which documents shall be produced subject to the stipulated protective order that has been entered in this case.

DATED this _____ day of May, 2018.

Judge Thomas O. Rice

WILLIAM R. SPURR
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SEATTLE, WA 98154
(206) 682-2692

1 Presented by:

2 **LAW OFFICE OF WILLIAM R. SPURR**

3
4
5 By /s/ William R. Spurr
6 William R. Spurr, WSBA #20064
7 Attorney for Horning Brothers, LLC
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Attachment A



Office of Communications

U.S. Citizenship
and Immigration
Services

September 5, 2007

Fact Sheet

CERTIFYING U NONIMMIGRANT STATUS

U Nonimmigrant Status Certification (Form I-918, Supplement B)

An alien victim of criminal activity may file for U Nonimmigrant Status – status set aside for victims of crimes who have suffered substantial mental or physical abuse because of the activity and who also are willing to assist law enforcement agencies or government officials in the investigation of that activity.

In order to file for that status, the alien must provide a certification from a federal, state, or local law enforcement official certifying the following:

- The alien has been a victim of qualifying criminal activity;
- The alien possesses information about the qualifying criminal activity; and
- The alien has been, is being or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.

This certification must be executed using the U Nonimmigrant Status Certification (Form I-918, Supplement B). USCIS will give the certification significant weight during adjudication; however, it alone will not be the sole evidence that a petitioner meets eligibility requirements. USCIS will look at the totality of the circumstances surrounding the petition before rendering a decision.

It is important to note that a certifying agency is under no legal obligation to complete this certification. However, the alien petitioner will be ineligible for U nonimmigrant status without one. **The petitioner is responsible for filing the completed certification with his/her initial Petition for U Nonimmigrant Status (Form I-918).**

Certifications shall be prepared by the certifying agency and should provide specific details about the nature of the crime being investigated and/or prosecuted and describe the petitioner's helpfulness in the case. Form I-918 Supplement B must be prepared by a certifying agency, and signed by a qualifying official within six months immediately preceding the alien's submission of Form I-918.

U NONIMMIGRANT STATUS CERTIFICATION SPECIFICATIONS

Qualified certifying agencies include:

- Federal, State or local law enforcement agencies; or
- Other agencies that have criminal investigative jurisdiction in their respective areas of expertise such as child protective services, the Equal Opportunity Commission and the Department of Labor.

www.uscis.gov

Certifying officials include:

- The head of a qualifying certifying agency;
- Any person in a supervisory role in a qualifying agency who is specifically designated by the head of that agency to issue U nonimmigrant certifications; or
- Federal, State or local judges

Certification must contain an affirmation of the following:

- The official signing the certificate is authorized to do so;
- The agency is a federal, state, or local law enforcement agency, prosecutor, judge, or other authority having responsibility for the detection, investigation, prosecution, conviction, or sentencing of a qualifying criminal activity;
- The petitioner has been a victim of a qualifying criminal activity;
- The petitioner possesses information regarding that activity;
- The petitioner has been, is being, or will likely be helpful to the investigation; and
- The criminal activity violated U.S. law, or occurred within the United States, or its territories and possessions.

Qualifying criminal activity includes:

Abduction	Incest	Rape
Abusive Sexual Contact	Involuntary Servitude	Sexual Assault
Blackmail	Kidnapping	Sexual Exploitation
Domestic Violence	Manslaughter	Slave Trade
Extortion	Murder	Torture
False Imprisonment	Obstruction of Justice	Trafficking
Felonious Assault	Peonage	Unlawful Criminal Restraint
Female Genital Mutilation	Perjury	Witness Tampering
Hostage	Prostitution	Other Related Crimes

Note: Certifying agencies must notify USCIS in writing if, at any time, the petitioner unreasonably refuses to assist in the investigation of the criminal activity, or if the agency wishes to withdraw its certification for any other reason. Send that notice (including the alien's name, date of birth and A-file number (if available) along with the reason for the withdrawal of the certification to:

U.S. Citizenship and Immigration Services
Vermont Service Center—U-visa Unit
75 Lower Welden St.
St. Albans, Vermont 05479-0001

Attachment B



Petition for U Nonimmigrant Status

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

For USCIS Use Only	Remarks		Receipt		Action Block	
	U.S. Embassy Consulate	Validity Dates (mm/dd/yyyy)		Wait Listed		
		From: / /		Stamp Number		Date (mm/dd/yyyy)
To: / /						

To be completed by an attorney or accredited representative (if any).	<input type="checkbox"/> Select this box if Form G-28 is attached.	Attorney State Bar Number (if applicable) <input type="text"/>	Attorney or Accredited Representative USCIS Online Account Number (if any) <input type="text"/>
------------------------------------------------------------------------------	---------------------------------------------------------------------------	--------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------

▶ **START HERE - Type or print in black or blue ink.**

Part 1. Information About You (Person filing this petition as a victim)

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

Other Names Used (Include maiden name, nicknames, and aliases, if applicable)

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Home Address

3.a. Street Number and Name

3.b. Apt. Ste. Flr.

3.c. City or Town

3.d. State 3.e. ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Safe Mailing Address (if other than Home Address)

4.a. In Care Of Name

4.b. Street Number and Name

4.c. Apt. Ste. Flr.

4.d. City or Town

4.e. State 4.f. ZIP Code

4.g. Province

4.h. Postal Code

4.i. Country

Other Information

5. Alien Registration Number (A-Number) (if any)
▶ A-

6. U.S. Social Security Number (if any)
▶

7. USCIS Online Account Number (if any)
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8. Marital Status
 Single Married Divorced Widowed

Part 1. Information About You (continued)

9. Gender Male Female

10. Date of Birth (mm/dd/yyyy)

11. Country of Birth

12. Country of Citizenship or Nationality

13. Form I-94 Arrival-Departure Record Number

14. Passport Number

15. Travel Document Number

16. Country of Issuance for Passport or Travel Document

17. Date of Issuance for Passport or Travel Document (mm/dd/yyyy)

18. Expiration Date for Passport or Travel Document (mm/dd/yyyy)

Place and Date of Last Entry into the United States and Date Authorized Stay Expired

19.a. City or Town

19.b. State

20. Date of Last Entry into the United States (mm/dd/yyyy)

21. Date Authorized Stay Expired (mm/dd/yyyy)

22. Current Immigration Status

Part 2. Additional Information About You

Answering "Yes" to the following questions below requires explanations and supporting documentation. Attach relevant documents in support of your claims that you are a victim of criminal activity listed in the Immigration and Nationality Act (INA) section 101(a)(15)(U)(iii). You must also attach a personal narrative statement describing the criminal activity of which you are a victim. If you are only petitioning for U derivative status for qualifying family members subsequent to your (the principal petitioner) initial filing, you are not required to submit evidence supporting the original petition with the new Form I-918.

If you need extra space to complete Part 2., use the space provided in Part 8. Additional Information.

Select "Yes" or "No," as appropriate, for each of the following questions.

1. I am a victim of criminal activity listed in the INA at section 101(a)(15)(U)(iii). Yes No
2. I have suffered substantial physical or mental abuse as a result of having been a victim of this criminal activity. Yes No
3. I possess information concerning the criminal activity of which I was a victim. Yes No
4. I am submitting Form I-918, Supplement B, U Nonimmigrant Status Certification, from a certifying official. Yes No
5. The crime of which I am a victim occurred in the United States (including Indian country and military installations) or violated the laws of the United States. Yes No
6. I am under 16 years of age. Yes No
- 7.a. I was or am in immigration proceedings. Yes No

If you answered "Yes," select the type of proceedings. If you were in proceedings in the past and are no longer in proceedings, provide the date of action. If you are currently in proceedings, type or print "Current" in the appropriate date field. Select **all applicable** boxes. Use the space provided in Part 8. Additional Information to provide an explanation.

- 7.b. Removal Proceedings
Removal Date (mm/dd/yyyy)
- 7.c. Exclusion Proceedings
Exclusion Date (mm/dd/yyyy)
- 7.d. Deportation Proceedings
Deportation Date (mm/dd/yyyy)
- 7.e. Rescission Proceedings
Rescission Date (mm/dd/yyyy)
- 7.f. Judicial Proceedings
Judicial Date (mm/dd/yyyy)

Part 2. Additional Information About You
(continued)

Provide the date of entry, place of entry, and status under which you entered the United States for each entry during the five years preceding the filing of this petition.

8.a. Date of Entry (mm/dd/yyyy)

Place of Entry into the United States

8.b. City or Town

8.c. State

8.d. Status at the Time of Entry (for example, F-1 student, B-2 tourist, entered without inspection)

9.a. Date of Entry (mm/dd/yyyy)

Place of Entry into the United States

9.b. City or Town

9.c. State

9.d. Status at the Time of Entry (for example, F-1 student, B-2 tourist, entered without inspection)

10.a. Date of Entry (mm/dd/yyyy)

Place of Entry into the United States

10.b. City or Town

10.c. State

10.d. Status at the Time of Entry (for example, F-1 student, B-2 tourist, entered without inspection)

If you are outside of the United States, provide the U.S. Consulate or inspection facility or a safe foreign mailing address you want notified if this petition is approved.

11.a. Type of Office (Select **only one** box):
 U.S. Consulate Pre-Flight Inspection
 Port-of-Entry

11.b. City or Town

11.c. State

11.d. Country

Safe Foreign Address Where You Want Notification Sent
(if other than U.S. Consulate, Pre-Flight Inspection, or Port-of-Entry)

12.a. Street Number and Name

12.b. Apt. Ste. Flr.

12.c. City or Town

12.d. Province

12.e. Postal Code

12.f. Country

Part 3. Processing Information

Answer the following questions about yourself. For the purposes of this petition, you must answer "Yes" to the following questions, if applicable, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record.

NOTE: If you answer "Yes" to **ANY** question in Part 3., provide an explanation in the space provided in Part 8. **Additional Information.**

NOTE: Answering "Yes" does not necessarily mean that U.S. Citizenship and Immigration Services (USCIS) will deny your Petition for U Nonimmigrant Status.

Have you **EVER**:

- 1.a. Committed a crime or offense for which you have not been arrested? Yes No
- 1.b. Been arrested, cited, or detained by any law enforcement officer (including Department of Homeland Security (DHS), former Immigration and Naturalization Service (INS), and military officers) for any reason? Yes No
- 1.c. Been charged with committing any crime or offense? Yes No
- 1.d. Been convicted of a crime or offense (even if the violation was subsequently expunged or pardoned)? Yes No
- 1.e. Been placed in an alternative sentencing or a rehabilitative program (for example, diversion, deferred prosecution, withheld adjudication, deferred adjudication)? Yes No

Part 3. Processing Information (continued)

- 1.f. Received a suspended sentence, been placed on probation, or been paroled? Yes No
- 1.g. Been in jail or prison? Yes No
- 1.h. Been the beneficiary of a pardon, amnesty, rehabilitation, or other act of clemency or similar action? Yes No
- 1.i. Exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States? Yes No

Information About Arrests, Citations, Detentions, or Charges

If you answered "Yes" to any of the above questions, respond to the questions below to provide additional details. If you need extra space, use the space provided in **Part 8. Additional Information**.

2.a. Why were you arrested, cited, detained, or charged?

2.b. Date of arrest, citation, detention, or charge (mm/dd/yyyy)

Where were you arrested, cited, detained, or charged?

2.c. City or Town

2.d. State

2.e. Country

2.f. Outcome or disposition (for example, no charges filed, charges dismissed, jail, probation)

3.a. Why were you arrested, cited, detained, or charged?

3.b. Date of arrest, citation, detention, or charge (mm/dd/yyyy)

Where were you arrested, cited, detained, or charged?

3.c. City or Town

3.d. State

3.e. Country

3.f. Outcome or disposition (for example, no charges filed, charges dismissed, jail, probation)

Have you **EVER**:

- 4.a. Engaged in, or do you intend to engage in, prostitution or procurement of prostitution? Yes No
- 4.b. Engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? Yes No
- 4.c. Knowingly encouraged, induced, assisted, abetted, or aided any alien to try to enter the United States illegally? Yes No
- 4.d. Illicitly trafficked in any controlled substance or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance? Yes No

Have you **EVER** committed, planned or prepared, participated in, threatened to, attempted to, conspired to commit, gathered information for, or solicited funds for any of the following:

- 5.a. Hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)? Yes No
- 5.b. Seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained? Yes No
- 5.c. Assassination? Yes No
- 5.d. The use of any firearm with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property? Yes No
- 5.e. The use of any biological agent, chemical agent, nuclear weapon or device, explosive, or other weapon or dangerous device, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property? Yes No

Have you **EVER** been a member of, solicited money or members for, provided support for, attended military training (as defined in section 2339D(c)(1) of Title 18, United States Code) by or on behalf of, or been associated with any other group of two or more individuals, whether organized or not, which has been designated as, or has engaged in or has a subgroup which has been designated as, or has engaged in:

- 6.a. A terrorist organization under section 219 of the INA? Yes No
- 6.b. Hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)? Yes No

Part 3. Processing Information (continued)

- 6.c. Seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained? Yes No
- 6.d. Assassination? Yes No
- 6.e. The use of any firearm with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property? Yes No
- 6.f. The use of any biological agent, chemical agent, nuclear weapon or device, explosive, or other weapon or dangerous device, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property? Yes No
- 6.g. Soliciting money or members or otherwise providing material support to a terrorist organization? Yes No

Do you intend to engage in the United States in:

- 7.a. Espionage? Yes No
- 7.b. Any unlawful activity, or any activity the purpose of which is in opposition to, or the control, or overthrow of the government of the United States? Yes No
- 7.c. Solely, principally, or incidentally in any activity related to espionage or sabotage or to violate any law involving the export of goods, technology, or sensitive information? Yes No
- 8. Have you **EVER** been or do you continue to be a member of the Communist or other totalitarian party, except when membership was involuntary? Yes No
- 9. Have you **EVER**, during the period of March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion, nationality, membership in a particular social group, or political opinion? Yes No

Have you **EVER** ordered, incited, called for, committed, assisted, helped with, or otherwise participated in any of the following:

- 10.a. Acts involving torture or genocide? Yes No
- 10.b. Killing any person? Yes No
- 10.c. Intentionally and severely injuring any person? Yes No
- 10.d. Engaging in any kind of sexual conduct or relations with any person who was being forced or threatened? Yes No
- 10.e. Limiting or denying any person's ability to exercise religious beliefs? Yes No
- 10.f. The persecution of any person because of race, religion, national origin, membership in a particular social group, or political opinion? Yes No
- 10.g. Displacing or moving any person from their residence by force, threat of force, compulsion, or duress? Yes No

NOTE: If you answered "Yes" to any question in **Item Numbers 10.a. - 10.g.**, please describe the circumstances in **Part 8. Additional Information.**

- 11. Have you **EVER** advocated that another person commit any of the acts described in the preceding question, urged, or encouraged another person, to commit such acts? Yes No

Have you **EVER** been present or nearby when any person was:

- 12.a. Intentionally killed, tortured, beaten, or injured? Yes No
- 12.b. Displaced or moved from his or her residence by force, compulsion, or duress? Yes No
- 12.c. In any way compelled or forced to engage in any kind of sexual contact or relations? Yes No

Have you **EVER**:

- 13.a. Served in, been a member of, assisted in, or participated in any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, rebel group, guerilla group, militia, or other insurgent organization? Yes No

Part 3. Processing Information (continued)

- 13.b. Served in any prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons? Yes No
- 13.c. Served in, been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons transported, possessed, or used any type of weapon? Yes No

NOTE: If you answered "Yes" to any question in **Item Numbers 13.a. - 13.c.**, please describe the circumstances in **Part 8. Additional Information.**

Have you **EVER**:

- 14.a. Received any type of military, paramilitary, or weapons training? Yes No
- 14.b. Been a member of, assisted in, or participated in any group, unit, or organization of any kind in which you or other persons used any type of weapon against any person or threatened to do so? Yes No
- 14.c. Assisted or participated in selling or providing weapons to any person who to your knowledge used them against another person, or in transporting weapons to any person who to your knowledge used them against another person? Yes No

NOTE: If you answered "Yes" to any question in **Item Numbers 14.a. - 14.c.**, please describe the circumstances in **Part 8. Additional Information.**

Have you **EVER**:

- 15.a. Recruited, enlisted, conscripted, or used any person under 15 years of age to serve in or help an armed force or group? Yes No
- 15.b. Used any person under 15 years of age to take part in hostilities, or to help or provide services to people in combat? Yes No
- 16. Are you **NOW** in removal, exclusion, rescission, or deportation proceedings? Yes No
- 17. Have you **EVER** had removal, exclusion, rescission, or deportation proceedings initiated against you? Yes No
- 18. Have you **EVER** been removed, excluded, or deported from the United States? Yes No

- 19. Have you **EVER** been ordered to be removed, excluded, or deported from the United States? Yes No
- 20. Have you **EVER** been denied a visa or denied admission to the United States? Yes No
- 21. Have you **EVER** been granted voluntary departure by an immigration officer or an immigration judge and failed to depart within the allotted time? Yes No
- 22. Are you **NOW** under a final order or civil penalty for violating section 274C of the INA (producing and/or using false documentation to unlawfully satisfy a requirement of the INA)? Yes No
- 23. Have you **EVER**, by fraud or willful misrepresentation of a material fact, sought to procure or procured a visa or other documentation, for entry into the United States or any immigration benefit? Yes No
- 24. Have you **EVER** left the United States to avoid being drafted into the U.S. Armed Forces or U.S. Coast Guard? Yes No
- 25. Have you **EVER** been a J nonimmigrant exchange visitor who was subject to the 2-year foreign residence requirement and not yet complied with that requirement or obtained a waiver of such? Yes No
- 26. Have you **EVER** detained, retained, or withheld the custody of a child, having a lawful claim to United States citizenship, outside the United States from a United States citizen granted custody? Yes No
- 27. Do you plan to practice polygamy in the United States? Yes No
- 28. Have you **EVER** entered the United States as a stowaway? Yes No
- 29.a. Do you **NOW** have a communicable disease of public health significance? Yes No
- 29.b. Do you **NOW** have or have you **EVER** had a physical or mental disorder and behavior (or a history of behavior that is likely to recur) associated with the disorder which has posed or may pose a threat to the property, safety, or welfare of yourself or others? Yes No
- 29.c. Are you **NOW** or have you **EVER** been a drug abuser or drug addict? Yes No

Part 4. Information About Your Spouse and/or Children

If you need extra space to complete Part 4., use the space provided in Part 8. Additional Information.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Date of Birth (mm/dd/yyyy)

3. Country of Birth

4. Relationship

5. Current Location

6.a. Family Name (Last Name)

6.b. Given Name (First Name)

6.c. Middle Name

7. Date of Birth (mm/dd/yyyy)

8. Country of Birth

9. Relationship

10. Current Location

11.a. Family Name (Last Name)

11.b. Given Name (First Name)

11.c. Middle Name

12. Date of Birth (mm/dd/yyyy)

13. Country of Birth

14. Relationship

15. Current Location

16.a. Family Name (Last Name)

16.b. Given Name (First Name)

16.c. Middle Name

17. Date of Birth (mm/dd/yyyy)

18. Country of Birth

19. Relationship

20. Current Location

21.a. Family Name (Last Name)

21.b. Given Name (First Name)

21.c. Middle Name

22. Date of Birth (mm/dd/yyyy)

23. Country of Birth

24. Relationship

25. Current Location

Filing On Behalf of Family Members

26. I am petitioning for one or more qualifying family members. Yes No

NOTE: If you answered "Yes" to 26., you must complete and include Supplement A for each family member for whom you are petitioning.

Part 5. Petitioner's Statement, Contact Information, Declaration, and Signature

NOTE: Read the **Penalties** section of the Form I-918 Instructions before completing this part.

Petitioner's Statement

NOTE: Select the box for either **1.a.** or **1.b.** If applicable, select the box for **2.**

- 1.a. I can read and understand English, and I have read and understand every question and instruction on this petition and my answer to every question.
- 1.b. The interpreter named in **Part 6.** read to me every question and instruction on this petition and my answer to every question in a language in which I am fluent, and I understood everything.
- 2. At my request, the preparer named in **Part 7.**, prepared this petition for me based only upon information I provided or authorized.

Petitioner's Contact Information

- 3. Petitioner's Daytime Telephone Number
- 4. Petitioner's Mobile Telephone Number (if any)
- 5. Petitioner's Email Address (if any)

Petitioner's Declaration and Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this petition, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

- 1) I provided or authorized all of the information contained in, and submitted with, my petition;
- 2) I reviewed and understood all of the information in, and submitted with, my petition; and
- 3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury, that all of the information in my petition and any document submitted with it were provided or authorized by me, that I reviewed and understand all of the information contained in, and submitted with, my petition, and that all of this information is complete, true, and correct.

Petitioner's Signature

- 6.a. Petitioner's Signature
- 6.b. Date of Signature (mm/dd/yyyy)

NOTE TO ALL PETITIONERS: If you do not completely fill out this petition or fail to submit required documents listed in the Instructions, USCIS may deny your petition.

NOTE: A parent or legal guardian may sign for a person who is less than 14 years of age. A legal guardian may sign for a mentally incompetent person.

Part 6. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

- 1.a. Interpreter's Family Name (Last Name)
- 1.b. Interpreter's Given Name (First Name)
- 2. Interpreter's Business or Organization Name (if any)

Part 6. Interpreter's Contact Information, Certification, and Signature (continued)

Interpreter's Mailing Address

3.a. Street Number and Name

3.b. Apt. Ste. Flr.

3.c. City or Town

3.d. State 3.e. ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:
 I am fluent in English and
 which is the same language specified in Part 5, 1.b., and I have read to this petitioner in the identified language every question and instruction on this petition and his or her answer to every question. The petitioner informed me that he or she understands every instruction, question, and answer on the petition, including the **Petitioner's Declaration and Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7.a. Interpreter's Signature (sign in ink)

7.b. Date of Signature (mm/dd/yyyy)

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner

Provide the following information about the preparer.

Preparer's Full Name

1.a. Preparer's Family Name (Last Name)

1.b. Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. Ste. Flr.

3.c. City or Town

3.d. State 3.e. ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

- 7.a. I am not an attorney or accredited representative but have prepared this petition on behalf of the petitioner and with the petitioner's consent.
- 7.b. I am an attorney or accredited representative and my representation of the petitioner in this case
 extends does not extend beyond the preparation of this petition.

NOTE: If you are an attorney or accredited representative whose representation extends beyond preparation of this petition, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this petition.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this petition at the request of the petitioner. The petitioner then reviewed this completed petition and informed me that he or she understands all of the information contained in, and submitted with, his or her petition, including the **Petitioner's Declaration and Certification**, and that all of this information is complete, true, and correct. I completed this petition based only on information that the petitioner provided to me or authorized me to obtain or use.

Preparer's Signature

8.a. Preparer's Signature (sign in ink)

8.b. Date of Signature (mm/dd/yyyy)

Part 8. Additional Information

If you need extra space to provide any additional information within this petition, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this petition or attach a separate sheet of paper. Include your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. A-Number (if any) ▶ A-

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d.

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.

7.a. Page Number 7.b. Part Number 7.c. Item Number

7.d.

Attachment C

REVISED February 23, 2017

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-60562

United States Court of Appeals
Fifth Circuit

FILED

September 27, 2016

Lyle W. Cayce
Clerk

MARIA CAZORLA, ET AL,

Plaintiffs

v.

KOCH FOODS OF MISSISSIPPI, L.L.C.; JESSIE ICKOM,

Defendants

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff - Appellant Cross-Appellee

v.

KOCH FOODS OF MISSISSIPPI, L.L.C.,

Defendant - Appellee Cross-Appellant

Appeals from the United States District Court
for the Southern District of Mississippi

No. 15-60562

Before HIGGINBOTHAM, DENNIS, and CLEMENT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Hispanic employees of Koch Foods (“Koch”), a poultry processor, allege harassment and abuse on the job. Koch claims they made up the allegations in order to get U visas, which are available to abuse victims who assist in government investigations. The company sought discovery of any information related to the employees’ U visa applications. Plaintiffs objected, pointing out that the discovery would reveal to Koch the immigration status of any applicants and their families. The district court allowed the discovery in part, and both sides appealed. We VACATE the district court’s certified discovery orders and REMAND.

I

Koch Foods (“Koch”) operates a large poultry processing plant in Morton, Mississippi. This suit arises from events that allegedly took place in the plant’s debone department, where some eighty-five employees debone and package chicken thighs. The workers in this department, some of whom Koch apparently still employs, were overwhelmingly Hispanic. Most were illiterate and spoke little or no English, and many were undocumented aliens.¹ Between 2004 and 2008, they allegedly suffered routine abuse at work. Koch supervisors allegedly groped female workers, and in some cases assaulted them more violently;² offered female workers money or promotions for sex; made sexist and racist comments; punched, elbowed, and otherwise physically abused workers of both sexes; and demanded money from them in exchange for permission for bathroom breaks, sick leave, and transfers to other positions.

¹ Plaintiffs seem to have implicitly conceded that many of the individual claimants are undocumented.

² One female employee testified that a supervisor, Jessie Ickom, penetrated her vagina with his hand. Another testified that Ickom forced her against a wall and ran his hands under her shirt.

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Jessie Ickom (“Ickom”), a debone department supervisor, was allegedly responsible for much of the abuse, but other supervisors also allegedly participated. When workers complained or resisted, Koch managers allegedly ignored them, and some debone supervisors allegedly retaliated by docking their pay; demoting, reassigning, or firing them; and threatening to physically harm them or have them arrested or deported.

Koch calls these allegations “baffling,” “outrageous and extraordinary,” and “fantastic,” and claims that the “record show[s] that [they] were made to obtain immigration benefits under the U-visa program.” Since 2000, this program has offered temporary nonimmigrant status to victims of “substantial physical or mental abuse” resulting from certain offenses, including sexual assault, abusive sexual contact, extortion, and felonious assault.³ For a victim to receive a U visa, a law enforcement agency such as the Equal Employment Opportunity Commission (EEOC) must certify that he or she is aiding an investigation into the alleged offenses, and the U.S. Customs and Immigration Service (USCIS) must conduct its own *de novo* review of relevant evidence and confirm the victim’s eligibility.⁴ U visas generally entitle their holders and their family members to four years of nonimmigrant status; holders may also apply for lawful permanent residence (a “green card”) after three years.⁵ Finally, aliens with “pending, bona fide” U visa applications may obtain work authorization.⁶

Koch claims that the claimants made up their accusations in hopes of securing U visas, and that the EEOC solicited and certified their false claims in order to build a high-profile, class-based discrimination suit against the

³ 8 U.S.C. § 1101(a)(15)(U)(i), (iii); see Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513, 114 Stat. 1464, 1533-35.

⁴ See 8 U.S.C. § 1101(a)(15)(U)(i); *id.* § 1184(p)(1), (4); 8 C.F.R. § 214.14(c)(2), (4)-(5).

⁵ 8 U.S.C. §§ 1184(p)(6), 1255(m)(1)(A).

⁶ 8 U.S.C. § 1184(p)(6).

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company. This appeal concerns Koch's attempt to obtain concrete evidence of this malfeasance – namely, any and all records relating to the claimants' speculated U visa applications – through discovery.⁷

Litigation over the alleged wrongdoing at the Morton plant began in 2009, when ten workers filed Title VII discrimination charges with the EEOC alleging abuse by Ickom. In 2010 and 2011, several of the same workers sued Koch and Ickom in federal district court, alleging that Ickom's abuse and Koch's failure to remedy it violated federal and Mississippi law. The suit was stayed pending the resolution of their EEOC charges.

The EEOC investigated the workers' discrimination charges, found reasonable cause to believe that Title VII violations had occurred, and attempted conciliation with Koch. The conciliation process failed, and in June 2011, the EEOC filed its own suit against the company, alleging discrimination against the individuals that had filed charges as well as "an estimated class of 50 to 75 other Hispanic men and women" who had worked at the Morton plant. The district court consolidated the EEOC's suit with that of the individual employees. Several employees then intervened in the EEOC's suit.

In August 2012, Koch served the agency and the individual plaintiffs with discovery requests. All plaintiffs moved for a Rule 26 protective order insofar as Koch sought information relating to the individual employees' and class members' (collectively, the "individual claimants" or "claimants") immigration status and history. In response, Koch did not argue that the claimants might be lying in order to obtain U visas, instead citing other reasons why immigration status might be relevant to the case. A magistrate judge

⁷ Koch also sought to discover any records related to other immigration benefits, including T visas (available to human trafficking victims), Violence Against Women Act benefits, and Temporary Protected Status benefits. On appeal, however, both parties focus on U visas.

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rejected Koch's arguments and granted the order in relevant part, opining that "[a]ny relevance of immigration status is clearly outweighed by the *in terror[e]m* effect disclosure of this information would have in discouraging the individual plaintiffs and claimants from asserting their rights in this lawsuit."

In April 2013, after several months of discovery, Koch served a second set of discovery requests specifically demanding information and records relating to claimants' efforts to obtain U visas. That discovery inevitably would have revealed the immigration status of any claimants who applied for U visas, as well as that of their families. The plaintiffs refused Koch's demands on several grounds, including the magistrate judge's protective order. The individual plaintiffs also rejected Koch's demand that they execute waivers allowing the Department of Homeland Security to share information about them with Koch, claiming that 8 U.S.C. § 1367 protected such information from disclosure.

Koch moved to compel production and for reconsideration of the existing protective order. The magistrate judge granted the motion in relevant part, allowing discovery of U visa-related information:

[Koch] now focuses on one particular area not raised earlier: discovery concerning the individual plaintiffs' and claimants' attempts to obtain U visas [and] other immigration benefits that may be available to them because of the allegations they have made. It is Koch Foods's contention that some of the allegations . . . are false and were made solely for the purpose of obtaining such benefits. . . . Koch Foods has raised a legitimate defense The relevance of this information clearly outweighs its *in terror[e]m* effect, as any individuals who have applied for immigration benefits have, necessarily, already disclosed their immigration status to federal authorities.

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Plaintiffs moved for review of the magistrate judge's order.⁸ After examining some of the information Koch sought in camera, the district court upheld the order in part and modified it in part. The court found that 8 U.S.C. § 1367 and its implementing regulation barred the EEOC from revealing any information related to the claimants' U visa applications. Accordingly, it excused the agency from complying with Koch's demand. However, the court found that § 1367 did not similarly excuse the claimants themselves. The court then determined that Rule 26 did not otherwise preclude U visa discovery from the individual claimants, reasoning that the discovery was relevant to the claimants' credibility, that it might explain an "exponential jump in claims after the EEOC became involved,"⁹ and that the relevance of the information sought outweighed the *in terrorem* effect of producing it.¹⁰ In a subsequent order, the court clarified that Koch Foods could obtain U visa information from *all* claimants: that is, from both the workers who had separately sued Koch, and the workers whom the EEOC claimed had been harassed, but who had not joined the separate lawsuit. Nevertheless, the court emphasized that not all information about claimants' immigration history was discoverable: discovery was to be "limited to information regarding efforts to obtain U Visas, or other immigration benefits, that arose out of the allegations in this civil action against Koch Foods."

At the district court's direction, the magistrate judge entered a protective order to govern U visa discovery. That order prohibited use of the discovered

⁸ See FED. R. CIV. P. 72(a) (allowing such review, and requiring the district court to "modify or set aside any part of the [magistrate judge's] order that is clearly erroneous or is contrary to law").

⁹ Specifically, the court noted that "[t]his matter started with just eight complaining parties, but two-and-a-half years after the litigation began, the EEOC filed its Second Amended Complaint in which the number jumped to 117."

¹⁰ See FED. R. CIV. P. 26(b), (d).

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information for business purposes unrelated to the lawsuit “unless . . . required by relevant law,” and barred Koch from sharing the information with law enforcement “unless a failure to do so would constitute a violation of criminal law.” The magistrate judge disregarded plaintiffs’ suggestions to require the use of anonymous identifiers and to allow disclosure only to Koch’s attorneys and not to the company itself.

The EEOC then sought interlocutory review of the district court’s discovery orders under 28 U.S.C. § 1292(b). The district court certified the orders for interlocutory appeal and stayed proceedings in the meantime. We granted the parties’ ensuing petition and cross-petition for review.

II

We review the district court’s statutory interpretation *de novo*¹¹ and its Rule 26 balancing analysis for abuse of discretion.¹² A court engaging in a balancing analysis abuses its discretion “when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment.”¹³

III

We first confirm our jurisdiction. Koch raises two jurisdictional objections to plaintiffs’ appeals. Each fails.

¹¹ *United States v. Kay*, 359 F.3d 738, 742 (5th Cir. 2004).

¹² *Moore v. CITGO Ref. & Chems. Co., L.P.*, 735 F.3d 309, 315 (5th Cir. 2013).

¹³ *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984), *cited with approval by In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc); *see generally United States v. Taylor*, 487 U.S. 326, 336 (1988) (“Whether discretion has been abused depends, of course, on the bounds of that discretion and the principles that guide its exercise. [If] Congress merely commit[s] the choice of remedy to the discretion of district courts, without specifying factors to be considered, a district court would be expected to consider ‘all relevant public and private interest factors,’ and to balance those factors reasonably.” (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981))).

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First, Koch asks us to exercise our discretion not to review the district court's Rule 26 balance on interlocutory review. We decline Koch's late invitation. To be sure, outside the context of § 1292(b), Rule 26 balancing disputes do not normally merit interlocutory review.¹⁴ Nonetheless, by fully addressing this one, we may be able to hasten the end of this already long-running litigation, e.g., by preventing post-trial appeals on the same topic and clarifying the permissible scope of U visa discovery, preventing further pretrial disputes.¹⁵ We therefore see fit to review the district court's discovery order in its entirety.¹⁶

Second, Koch argues that "Individual Plaintiffs' intervention is not proper because they failed to timely file a petition for permission to appeal." We granted the EEOC's petition for interlocutory review on August 12, 2015. The individual plaintiffs petitioned to intervene in the EEOC's appeal twelve days later. In their petition, they acknowledged that no rule or precedent set forth deadlines for intervention in an interlocutory appeal, and suggested that

¹⁴ See *Honig v. E. I. duPont de Nemours & Co.*, 404 F.2d 410, 410 (5th Cir. 1968). *But cf. Hyde Const. Co. v. Koehring Co.*, 455 F.2d 337, 338-39, 342-44 (5th Cir. 1972) (accepting interlocutory appeal of a complex attorney-client privilege dispute "at the heart of a pending controversy," and, after resolving the relevant legal issue, completing an "an independent examination of the 81 documents in question" and determining which ones were and were not privileged).

¹⁵ See, e.g., *Brabham v. A.G. Edwards & Sons Inc.*, 376 F.3d 377, 380 & n.2 (5th Cir. 2004) (addressing an element of the appeal other than the "controlling question of law" at issue when doing so would "most expeditiously resolve th[e] litigation"). At least one other appellate court has exercised its discretion under § 1292 to review a district court's Rule 26 balancing analysis. See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063, 1074-75 (9th Cir. 2004).

¹⁶ The district court certified its order for interlocutory review because it found that its interpretation of 8 U.S.C. § 1367 was a "controlling question of law." But as it correctly noted, an "appellate court may address any issue fairly included within [a] certified order because 'it is the order that is appealable, and not the controlling question identified by the district court.'" *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 205 (1996) (quoting 9 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶ 110.25[1] (2d ed. 1995)); see also *Castellanos-Contreras v. Decatur Hotels, LLC*, 622 F.3d 393, 398-99 (5th Cir. 2010) (en banc) (collecting cases); *Linton v. Shell Oil Co.*, 563 F.3d 556, 557 (5th Cir. 2009) (per curiam) ("[S]ection 1292(b) authorizes certification of orders for interlocutory appeal, not certification of questions.").

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we apply a deadline of fourteen days from the initial petition for interlocutory review (i.e., the one to be joined), following Rule 4(a)'s timeline for intervention in an appeal as of right.¹⁷ A motions panel of this court allowed intervention in a summary order, thus implicitly accepting the individual plaintiffs' proposal.¹⁸

Koch appears to argue that a deadline of ten days from the district court's certification order should apply, following 28 U.S.C. § 1292(b). But § 1292(b)'s ten-day deadline applies only to an initial application for interlocutory appeal, not a subsequent motion to intervene in such an appeal. Rule 4(a)'s deadlines are more apposite to plaintiffs' petition to intervene: Rule 5 states that a petition for discretionary review, e.g., § 1292 interlocutory review,¹⁹ "must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal," and § 1292 specifies no deadline for the individual plaintiffs' petition.²⁰ We find that the individual plaintiffs timely intervened.

¹⁷ See FED. R. APP. P. 4(a)(3) ("If one party timely files a notice of appeal [as of right], any other party may file a notice of appeal within 14 days after the date when the first notice was filed.").

¹⁸ *But see In re Piperi*, 108 F.3d 333, 1997 WL 73798, at *1 n.2 (5th Cir. 1997) (unpublished table decision) ("[A] motions panel's refusal to dismiss an appeal does not preclude the merits panel from reconsidering the existence of appellate jurisdiction." (summarizing *United States v. Bear Marine Servs.*, 696 F.2d 1117, 1119-20 & n.6 (5th Cir. 1983))).

¹⁹ See *Castellanos-Contreras*, 622 F.3d at 399 ("Interlocutory review under § 1292(b) is not mandatory; rather, it is discretionary.").

²⁰ See FED. R. APP. P. 5(a)(2). To hold otherwise – that is, to apply the same deadline to the initial application for interlocutory appeal and a subsequent effort to intervene – would be to treat interlocutory appeals differently from appeals as of right: the Rules impose different deadlines for one party's initial notice of appeal as of right and another party's subsequent attempt to join that appeal. See FED. R. APP. P. 4(a)(1), (3). We see no reason why interlocutory appeals should be treated differently in this regard.

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IV

We turn to the appropriate legal standard and procedure for this discovery dispute. In allowing discovery from the individual claimants, the district court applied Rule 26(c)(1), which allows restrictions on discovery “for good cause . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” The court acknowledged plaintiffs’ burden to “show good cause, ‘which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements,’” in order to prevent discovery. It found that they had not carried their burden, rejecting their arguments that 8 U.S.C. § 1367’s confidentiality provisions protected the individual claimants and that U visa discovery’s *in terrorem* effect would outweigh its relevance.

Plaintiffs dispute these conclusions, as discussed in the following sections. More generally, however, they also claim that the district court erred at the outset by allocating them the burden of showing good cause. As they put it, the district court should not have applied “standard Rule 26(c) procedure.” Instead, they “urge this Court to hold that U-visa information is . . . presumptively sensitive information, and the party seeking this information always bears the burden of proving a particularized need for it.”²¹ They analogize U visa information to data that we and other courts have subjected to similar standards, including tax returns, depositions of senior officials and

²¹ Somewhat relatedly, they also argue that Koch had to plead fraud with particularity and that its failure to do so precludes U visa discovery here. But Koch is merely disputing claimants’ credibility, not arguing that they are defrauding the company. If Rule 9(b) applies here, it should presumably also apply in every case in which the defendant disputes the plaintiff’s claims. We decline to reach such an absurd result.

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opposing counsel, nonparty personnel files, and presentence investigation reports.²²

Plaintiffs' argument, however compelling, is waived. They do not appear to have presented anything like it to the district court, and the district court did not appear to detect it in what they did offer.²³ Burden-shifting, presumptions of sensitivity, references to tax-return cases, and the like are wholly absent both from the district court's opinion and from plaintiffs' motions opposing U visa discovery. In their appeal briefing, plaintiffs reference several points in the record where they purportedly pressed their argument, but each shows, at most, that plaintiffs occasionally used the term "need" and advocated a balancing approach in contesting whether Koch was entitled to the discovery it sought. This did not suffice to preserve the more elaborate theory they advance on appeal.

V

Finally, we turn to the merits of the parties' appeals. We begin with their dispute over 8 U.S.C. § 1367. That statute states, in relevant part:

Except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

[. . .]

²² See, e.g., *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1411 (5th Cir. 1993) (personal tax returns); *United States v. Huckaby*, 43 F.3d 135, 138 (5th Cir. 1995) (presentence investigation reports); *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986) (depositions of opposing counsel).

²³ See *AG Acceptance Corp. v. Veigel*, 564 F.3d 695, 700 (5th Cir. 2009) ("Under this Circuit's general rule, arguments not raised before the district court are waived and will not be considered on appeal unless the party can demonstrate 'extraordinary circumstances.'"). Plaintiffs do not argue that extraordinary circumstances are present here.

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(2) permit use by or disclosure to anyone . . . of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act

U visa applications arise from paragraph (15)(U) of section 101(a) of the Immigration and Nationality Act and therefore fall within the scope of § 1367(a)(2).²⁴ In addition, 8 C.F.R. § 214.14, which implements the U visa program, provides that “[a]gencies receiving information under this section . . . are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.” The EEOC asserts, and Koch does not dispute, that it is an “agency receiving information under” § 214.14.

As noted above, the district court found that 8 U.S.C. § 1367 and 8 C.F.R. § 214.14 collectively precluded discovery of U visa records from the EEOC, but that discovery from the individual claimants and plaintiffs could proceed. We address each ruling, but turn first to the issue of waiver.

1. Koch’s waiver argument

Koch argues that plaintiffs waived their § 1367 claims by not expressly alleging in their discovery responses that they fell within the statute’s protection. We are not persuaded. First, some of plaintiffs’ discovery responses *did* explicitly cite § 1367.²⁵ Second, Rule 26(b)(5), on which Koch relies, states only that “[w]hen a party withholds information otherwise discoverable by claiming that the information is privileged . . . the party must expressly make

²⁴ See Immigration and Nationality Act § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); see also 8 C.F.R. § 214.14(e)(1) (“The use or disclosure . . . of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited.”).

²⁵ Specifically, in addressing Koch’s request that they sign privacy waivers authorizing the Department of Homeland Security to release their U visa files (if any), the individual plaintiffs “object[ed] . . . to the extent [the request] [sought] personal and private information that is expressly protected by federal law, see 8 U.S.C. § 1367(a)(2).”

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the claim.” Plaintiffs did so: they claimed that the information Koch sought was exempt from discovery under the magistrate judge’s original protective order, which was then in effect, and various other privileges.²⁶ We reject Koch’s waiver claim.

2. Section 1367’s application to the EEOC

The district court found that § 1367’s text, coupled with that of 8 C.F.R. § 214.14, was unambiguous: because the EEOC is an “agenc[y] receiving information” under the U visa program, it is “bound” by § 1367’s confidentiality provisions, and in turn, it may not “permit use by or disclosure to anyone . . . of any information which relates to” a U visa applicant. To comply with Koch’s discovery requests would necessarily violate this command.

Koch disputes this straightforward reading on several grounds.²⁷ First, Koch argues that § 1367 does not explicitly mention discovery or state that it

²⁶ If Koch is arguing that plaintiffs’ references to the protective order were insufficient because they did not use the word “privilege,” we find its argument unconvincing. See *Privilege*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“privilege” can simply refer to “the right to prevent disclosure of certain information in court”); cf. *infra* note 29 (citing cases holding that a statute need not use the word “privilege” to create an evidentiary privilege).

²⁷ In addition to the reasons discussed below, Koch appears to argue in its reply brief that 8 C.F.R. § 214.14 is invalid insofar as it purports to create a privilege or to extend § 1367’s confidentiality provisions to the EEOC. That argument is waived. See *Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994) (“An appellant abandons all issues not raised and argued in its *initial* brief on appeal.”). Koch’s initial brief also included a somewhat confusing citation to an unrelated statute. Koch significantly expands on its citation in a footnote in its reply brief, explaining that it was actually *analogizing* the cited provision to § 1367, and that the provision evinces Congress’s intent to allow U visa disclosure pursuant to court order notwithstanding § 1367. This argument is also waived. See *id.*; *de la O v. Hous. Auth. of City of El Paso, Tex.*, 417 F.3d 495, 501 (5th Cir. 2005) (“Judges are not like pigs, hunting for truffles buried in briefs.”) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). It is also dubious: if anything, the fact that Congress explicitly permitted disclosure pursuant to court order in other confidentiality provisions of VAWA suggests an intent *not* to allow such disclosure in § 1367, which has no such text.

The EEOC contends that Koch waived *its* argument on this issue by failing to specifically state in its opening brief that the district court’s ruling forbidding discovery from the EEOC violated Koch’s substantial rights. See *Green v. Life Ins. Co. of N. Am.*, 754 F.3d 324, 329 (5th Cir. 2014) (we will vacate a district court’s decision to limit discovery only “if it

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creates an evidentiary privilege. That is so, and as Koch correctly notes, the Supreme Court and others have observed that Congress is usually explicit when it creates an evidentiary privilege.²⁸ But as a purely textual matter, it is unclear why a provision broadly barring *any* “disclosure” would have to specify “including in discovery” in order to have effect. In *Baldrige v. Shapiro*, the Supreme Court held that a statute barring disclosure of census records without explicitly mentioning evidentiary privilege nonetheless prevented civil discovery of the records.²⁹ Koch claims that an earlier decision of the Court, *St. Regis Paper Co v. United States*, supports its reading, but that case is distinguishable. In *St. Regis*, the Court held that a provision barring government officials from disclosing certain Census Bureau reports did not excuse a private company from disclosing the same reports in discovery.³⁰ Here, Koch seeks disclosure from the same officials subject to § 1367’s confidentiality requirements.³¹

We find the D.C. Circuit’s decision in *In re England* to be persuasive. In *England*, the D.C. Circuit construed a provision barring “disclos[ure]” of certain military promotion records “to any person not a member of the

affected the substantial rights of the appellant”). Because we find that Koch’s § 1367 argument fails on the merits, we need not consider this claim.

²⁸ See *St. Regis Paper Co. v. United States*, 368 U.S. 208, 218 (1961) (“[W]hen Congress has intended [data] not to be subject to compulsory process it has said so.”); *Jicarilla Apache Nation v. United States*, 60 Fed. Cl. 611, 613 & n.1 (Fed. Cl. 2004) (collecting statutes).

²⁹ 455 U.S. 345, 354-61 (1982) (“[Section] 8(b) and § 9(a) of the Census Act embody explicit congressional intent to preclude all disclosure of raw census data reported by or on behalf of individuals. This strong policy of nondisclosure indicates that Congress intended the confidentiality provisions to constitute a ‘privilege’ within the meaning of the Federal Rules.”); see also *In re England*, 375 F.3d 1169, 1179 (D.C. Cir. 2004) (Roberts, J.) (dismissing a proposition essentially identical to Koch’s). See generally *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 689 (2001) (“[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.” (quoting *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998))).

³⁰ 368 U.S. at 217-20.

³¹ *St. Regis* is highly relevant to the individual claimants’ assertions of privilege, however. See *infra* note 38 and accompanying text.

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[promotion] board” to forbid civil discovery of the records.³² Then-Judge Roberts’s opinion for the court deemed this text unambiguous, but noted for good measure that discovery would inhibit Congress’s purpose in enacting the provision – to encourage “frank and open discussion” of inherently sensitive information.³³ Section 1367’s similar text and analogous purpose counsel the same result here as in *England*.

3. Section 1367’s application to the individual claimants

Section 1367 and its implementing regulation clearly preclude discovery from the EEOC, but they just as clearly do *not* preclude discovery from the individual claimants. As the district court noted, the statute applies only to certain enumerated government officials, and says nothing about whether other individuals may disclose U visa information.³⁴ It must therefore be read not to preclude such disclosure.³⁵

Plaintiffs’ arguments to the contrary are unpersuasive. They primarily argue that interpreting § 1367 not to bar discovery from the individual claimants would frustrate the statute’s goal of fostering reporting of abuse. But because § 1367’s text is unambiguous, any exploration of purpose is beside the

³² 375 F.3d 1169, 1177 (D.C. Cir. 2004) (Roberts, J.) (interpreting 10 U.S.C. § 618(f), *repealed*, Pub. L. 109-364, § 547(a)(2), 120 Stat. 2216).

³³ *Id.* at 1177-78.

³⁴ The same is true of 8 C.F.R. § 214.14’s confidentiality provision. *See id.* § 214.14(e).

³⁵ *See Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) (“Where Congress explicitly enumerates certain exceptions . . . additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”).

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point.³⁶ This follows from basic principles of statutory interpretation³⁷ and from the Court's decision in *St. Regis*. On similar facts, the *St. Regis* Court rejected an essentially identical argument:

[T]he prohibitions against disclosure [in the Census Act] . . . run only against the officials receiving [certain reports] and do not purport to generally clothe census information with secrecy. The Solicitor General admits that 'literally construed' the restrictions of the statute go no further. But he insists that since the purpose of the statute is to encourage the free and full submission of statistical data to the Bureau, this can be accomplished only through the creation of a confidential relationship which will extend the privilege to the petitioner [a private company] and like reporting companies. . . . We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act. It does not . . . grant copies of the report not in the hands of the Census Bureau an immunity from legal process. Ours is the duty to avoid a construction that would suppress otherwise competent evidence unless the statute, strictly construed, requires such a result. That this statute does not do. Congress did not prohibit the use of the reports per se but merely restricted their use while in the hands of those persons receiving them, i.e., the government officials.³⁸

³⁶ In any event, the scant evidence of Congress's intent in enacting and amending § 1367 (as distinguished from its broader intent in enacting the U visa program as a whole) does not clearly support plaintiffs' purpose-based argument. See 151 CONG. REC. E2605-04 (Dec. 17, 2005) (statement of Rep. Conyers), 2005 WL 3453763 (in discussing enhancements to 8 U.S.C. § 1367's confidentiality protections, omitting specific mention of civil discovery while explicitly stating that the provision prevents "abusers using *DHS* to obtain information about their victims, including the existence of a VAWA immigration petition" (emphasis added), but also stating more generally that the provision prevents abusers from "interfering with or undermining their victims' immigration cases").

³⁷ See *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) "[W]hen [a] statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 6 (2000)); see also *Pierce County, Wash. v. Guillen*, 537 U.S. 129, 144 (2003) ("We have often recognized that statutes establishing evidentiary privileges must be construed narrowly because privileges impede the search for the truth.").

³⁸ *St. Regis*, 368 U.S. at 217-18.

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St. Regis squarely supports the district court's reading of § 1367. The subsequent *Baldrige* case offers plaintiffs no support because the only issue before the Court in *Baldrige* was whether the Census Bureau itself could claim privilege.³⁹

In addition to that analysis, plaintiffs offer two textual arguments. First, they claim that the district court's reading of § 1367 not to preclude discovery from individuals renders the provision meaningless, since it allows litigants like Koch to obtain from individuals the same information they might have sought from the officials and agencies within the statute's scope.⁴⁰ This is a variant of the purpose argument: both insist that discovery from individuals undermines the statutory confidentiality of U visa applications. And indeed, Koch appears able to get most, if not all, of the information it wants from the individual claimants.

Plaintiffs' argument has weight, and as we discuss below, the harm Koch's desired discovery might cause to Congress's purposes is highly relevant to our Rule 26 analysis. But from a purely interpretive standpoint, plaintiffs' argument is questionable: § 1367's confidentiality protections are not meaningless without similar protections for individuals. In turn, there is no need to depart from the straightforward text of the statute (i.e., by implying an additional privilege not explicitly set forth) in order to save it from superfluity.⁴¹ There are many situations in which § 1367, as we read it, could provide a layer of confidentiality that cannot be circumvented by subpoenaing

³⁹ *Baldrige v. Shapiro*, 455 U.S. 345, 349-51 (1982).

⁴⁰ See generally *Bennett v. Spear*, 520 U.S. 154, 173 (1997) ("It is the cardinal principle of statutory construction that it is our duty to give effect, if possible, to every clause and word of a statute." (internal alterations, quotation marks, and ellipses omitted) (quoting *United States v. Menasche*, 348 U.S. 528, 538 (1955))).

⁴¹ Cf. *Scheidler v. Nat'l Org. for Women, Inc.*, 547 U.S. 9, 21-22 (2006) (declining to apply the canon against superfluity where phrases alleged to have been rendered superfluous "[did] a small amount of additional work").

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individuals. Most obviously, discovery assumes a lawsuit; without one, an individual presumably has the right not to disclose U visa information, and § 1367 cuts off additional potential sources of the information in barring federal officials from doing so. Even within litigation, it might be more burdensome for an individual to disclose the records than for an agency to do so, potentially enabling the individual to avoid discovery pursuant to Rule 26(b)(1) where an agency could not.⁴² And U visa-related information might be protected by other privileges, e.g., attorney-client, in the hands of an individual but not in those of a federal official.

In any event, *St. Regis* forecloses plaintiffs' meaninglessness argument. The party seeking discovery in that case attempted essentially the same "end run" as Koch: it sought discovery of certain information from an individual litigant, circumventing a statute preventing federal officials in possession of the same information from disclosing it. But the *St. Regis* Court allowed this maneuver. In so doing, it implicitly but necessarily held that the "end run" did not render the relevant confidentiality statute meaningless.⁴³ We see no principled way to avoid applying its logic in this highly analogous case.

Second, plaintiffs argue that because another subsection of the statute, § 1367(b)(4), allows U visa applicants to free federal officials from the statute's constraints by consenting to disclosure, individual applicants must also have the power to refuse a subpoena seeking that information directly from them, otherwise (b)(4) is meaningless.⁴⁴ Again, we disagree. The right to regulate a third party's disclosure of one's information is logically distinct from the right

⁴² See FED. R. CIV. P. 26(b)(1) (the scope of discovery depends in part on "whether the burden or expense of the proposed discovery outweighs its likely benefit").

⁴³ The canon against superfluity was just as well established at the time of *St. Regis* as it is now. See, e.g., *Menasche*, 348 U.S. at 538-39; *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879).

⁴⁴ See 8 U.S.C. § 1367(b)(4).

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not to personally disclose that information; conceptually, it is possible, if perhaps unusual, that someone might have one but not the other.⁴⁵ Thus, the district court's reading does not render § 1367's consent provision superfluous.

4. Summary

The district court correctly interpreted 8 U.S.C. § 1367. The statute bars discovery of U visa records from the EEOC, but it does not bar discovery of the records from the individual claimants. Their protection, if any, lies in the basic constraints of the discovery process – constraints we now consider.

VI

Having determined that § 1367 did not preclude U visa discovery from the individual claimants, the district court proceeded to analyze whether there was nonetheless reason to forbid such discovery under Rule 26(c). Rule 26(c) allows the court, “for good cause, [to] issue an order” restricting discovery “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” “[T]he federal courts have superimposed a somewhat demanding balancing of interests approach to the Rule. Under the balancing standard, the district judge must compare the hardship to the party against whom discovery is sought against the probative value of the information to the other party.”⁴⁶ Courts also weigh relevant public interests in this analysis.⁴⁷

⁴⁵ The reasons for this arrangement would presumably be similar to those for allowing the agency, but not the individual, to refuse discovery in the first place. *See supra* notes 41-42 and accompanying text.

⁴⁶ 6 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶ 26.101[1][c] (3d ed. 2011); *see, e.g., Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1313 (11th Cir. 2001).

⁴⁷ *See, e.g., Nguyen v. Excel Corp.*, 197 F.3d 200, 209 & n.26 (5th Cir. 1999) (suggesting that “a request to depose opposing counsel generally would provide a district court with good cause to issue a protective order,” and citing in support another court's observations that such depositions “disrupt[] the adversarial system, lower[] the standards of the profession, add[]

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The district court ruled that Rule 26 allowed discovery of U visa information from the individual claimants. The court's balancing analysis turned on three basic determinations.⁴⁸ First, although there were prior cases to support both allowing and denying the discovery under Rule 26, none of them were binding and most seemed distinguishable. Second, the discovery Koch sought had significant probative value. Third, the discovery's relevance outweighed any possible harm from allowing it.⁴⁹ We address each determination in turn.

1. Relevant case law

The district court's analysis of precedent was accurate: this dispute presents an issue of first impression in our circuit, much of the precedent the parties deem relevant is not, and what remains is equivocal.

Although courts have often barred discovery of immigration-related information, in many of these cases, immigration benefits were not alleged to have motivated or shaped the claims at issue and did not otherwise affect the plaintiffs' right to relief.⁵⁰ In such cases, courts have frequently rejected the

to the already burdensome time and costs of litigation, and detract[] from the quality of client representation" (quoting *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)); *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787-89 (3d Cir. 1994); 6 MOORE ET AL., *supra* note 46, at ¶ 26.101[1][c].

⁴⁸ As discussed above, plaintiffs' argument that the district court should not have applied the usual Rule 26 balancing analysis is waived.

⁴⁹ The court did limit discovery to "information regarding efforts to obtain U Visas, or other immigration benefits, that arose out of the allegations in this civil action against Koch Foods" and specifically excused the claimants from revealing prior crimes.

⁵⁰ Many of the parties' cases are distinguishable on this basis, including *In re Reyes*, 814 F.2d 168, 169-71 (5th Cir. 1987) (barring discovery of petitioners' immigration status because their entitlement to relief under the Fair Labor Standards Act did not depend on that status, which apparently was not at issue in any other way in the appeal); *Rivera*, 364 F.3d at 1069-72, 1074-75 (barring discovery of employment discrimination complainants' immigration status where that status was legally irrelevant to the issue of liability, its relevance to the issue of remedies was conjectural, and remedies, if any, could be addressed in a separate proceeding); *E.E.O.C. v. DiMare Rushin, Inc.*, No. 2:11-CV-158-FTM-99, 2012

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notion that immigration status is itself important enough evidence of plaintiffs' broader credibility to be discoverable.⁵¹

But where immigration status and benefits have related more directly to the parties' claims, defenses, and credibility, as here, district courts have reached divergent results. Some have disallowed it. Most analogous to this case, in *David v. Signal International*, the defendant employer, accused of human trafficking, stressed "the self-evident, overwhelming temptation to fabricate or to exaggerate evidence to gain entry to this country for oneself and one's wife and children" in seeking discovery of plaintiffs' T and U visa applications.⁵² The Eastern District of Louisiana forbade the discovery,

WL 12067868, at *4-5 (M.D. Fla. Feb. 15, 2012) (similar to *Reyes*); *Demaj v. Sakaj*, No. 3:09 CV 255 JGM, 2012 WL 476168, at *3-6 (D. Conn. Feb. 14, 2012) (in Hague Convention child abduction case, disallowing discovery of mother's U visa application; reasoning that production was not necessary to resolve the legal issue to which the application was purportedly relevant, and was not justified in order to allow the father to check the mother's account of abuse for consistency); *Castillo v. Hernandez*, No. EP-10-CV-247-KC, 2011 WL 1528762, at *8 (W.D. Tex. Apr. 20, 2011) (similar to *Reyes*); *EEOC v. Willamette Tree Wholesale, Inc.*, No. CV 09-690-PK, 2010 U.S. Dist LEXIS 97380, at *13 (D. Or. July 8, 2010) (refusing defendant employer's request for production of immigration documents in order to enable an exploration of plaintiffs' employment history, where such history "had no bearing" on plaintiffs' claims and, insofar as employers' defenses were concerned, would at best duplicate facts already in the record); *Avila-Blum v. Casa de Cambio Delgado, Inc.*, 236 F.R.D. 190, 192 (S.D.N.Y. 2006) (similar to *Rivera*); *E.E.O.C. v. Rest. Co.*, 448 F. Supp. 2d 1085, 1087 (D. Minn. 2006) (barring discovery of Title VII complainant's immigration status where that status was legally irrelevant to the defendant's asserted defense, and might otherwise be relevant only at a distant stage of the litigation, if then); *Topo v. Dhir*, 210 F.R.D. 76, 78 (S.D.N.Y. 2002) (barring discovery of plaintiffs' immigration status where that status was "a collateral issue not relevant to any material aspect of the case"); *Zeng Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191, 192 (S.D.N.Y. 2002) (similar to *Reyes*); *De La Rosa v. N. Harvest Furniture*, 210 F.R.D. 237, 239 (C.D. Ill. 2002) (similar to *Reyes*); and several of the cases cited *infra* note 51.

⁵¹ See, e.g., *DiMare Ruskin*, 2012 WL 12067868, at *5; *Widjaja v. Kang Yue USA Corp.*, No. 09 CV 2089, 2010 WL 2132068, at *1 (E.D.N.Y. May 20, 2010); *Sandoval v. Am. Bldg. Maint. Indus., Inc.*, 267 F.R.D. 257, 276-77 (D. Minn. 2007); *Avila-Blum*, 236 F.R.D. at 192; *E.E.O.C. v. Bice of Chi.*, 229 F.R.D. 581, 583 (N.D. Ill. 2005) (rejecting "Defendants' argu[ment] that the charging parties' credibility is directly relevant and therefore, they should be able to inquire about falsification of identity and immigration status"); *Galaviz-Zamora v. Brady Farms, Inc.*, 230 F.R.D. 499, 502 (W.D. Mich. 2005).

⁵² *David v. Signal Int'l, LLC*, 735 F. Supp. 2d 440, 444 (E.D. La. 2010).

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reasoning that “any inquiry into plaintiffs’ current immigration[] status . . . will most assuredly strike paralyzing fear in the plaintiffs sufficient to chill any inclination they may have had to prosecute their pending claims,” thus “impos[ing] an undue burden on private enforcement of employment discrimination laws,” and that “defendants’ opportunity to test the credibility of plaintiffs does not outweigh the public interest in allowing employees to enforce their rights.”⁵³ However, the *David* court allowed discovery of sworn statements attached to the applications, as such discovery would not reveal plaintiffs’ immigration status.⁵⁴

In a few other such cases, however, district courts have permitted discovery of sensitive immigration-related information. For example, in a labor case involving allegations of numerous torts and federal and state labor law violations, the District of Colorado allowed discovery of T and U visa materials because they were relevant to many of plaintiffs’ diverse claims and to “the issue of motivation and fabrication of each of the Plaintiffs’ testimony.”⁵⁵

⁵³ *Id.* at 444, 447 (E.D. La. 2010) (internal quotation marks omitted) (discussing and reaffirming *David v. Signal Int’l, LLC*, 257 F.R.D. 114, 124 (E.D. La. 2009), objections overruled, No. CIV.A. 08-1220, 2009 WL 2030382 (E.D. La. June 2, 2009)); *see also id.* at 444 (“Signal argues that bias and prejudice taint the [visa] applications in that plaintiffs will exaggerate their claims to allow their wives and children to remain in the country.”).

⁵⁴ *Id.* at 448. *See also E.E.O.C. v. First Wireless Grp., Inc.*, 225 F.R.D. 404, 406-07 (E.D.N.Y. 2004) (barring disclosure of plaintiffs’ immigration status without rebutting defendants’ claim that their status was relevant to the issue of damages); *Flores v. Albertsons, Inc.*, No. CV0100515AHM(SHX), 2002 WL 1163623, at *5-6 (C.D. Cal. Apr. 9, 2002) (“even assuming” immigration documents’ relevance to the issue of damages, barring discovery in light of the *in terrorem* effect of production).

⁵⁵ *Camayo v. John Peroulis & Sons Sheep, Inc.*, No. 10-CV-00772-MSK-MJW, 2012 WL 5931716, at *1-2 (D. Colo. Nov. 27, 2012). The court further concluded, without analysis, that “any *in terrorem* effect is outweighed by the . . . Defendants’ compelling need to obtain this relevant information.” *Id.* at *2; *see also Fragoso v. Builders FirstSource Se. Grp. LLC*, No. 4:10-503-TLW-SVH, 2011 WL 767442, at *2 (D.S.C. Feb. 25, 2011) (allowing discovery of personal injury plaintiff’s immigration status because, among other things, plaintiff’s claim for past and future wage loss damages would be undermined if he were not “lawfully eligible for past and future work in the United States,” and rejecting without analysis plaintiff’s arguments based on “privacy concerns and . . . harassment”). In another Title VII case Koch cites, the Eastern District of Washington allowed discovery of T visa applications, finding

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In sum, the case law on this issue is nonbinding, mostly distinguishable, and equivocal even where relevant. Although existing authorities may inform our Rule 26 inquiry, the district court correctly recognized that none provide definitive guidance.

2. *The probative value of U visa discovery*

Finding nothing binding in the case law, the district court set out on its own Rule 26(c) balancing analysis. It first found that Koch had an appreciable interest in obtaining the discovery, since the claimants' "motive [was] relevant." The court explained that the number of claimants against Koch appeared to have "spike[d]" once the EEOC became involved, and because the EEOC has the authority to issue U visas, this was at least some evidence that the claimants may have lied in hopes of obtaining them.

We discern no fundamental error in the district court's analysis, nor in its conclusion that the discovery sought might well have significant probative value. To be sure, the court's "spike in claims" datum, on its own, is not

relevance for reasons similar to those offered in *Camayo. E.E.O.C. v. Glob. Horizons, Inc.*, No. CV-11-3045-EFS, 2013 WL 3940674, at *5-6 (E.D. Wash. July 31, 2013). That case is distinguishable, however, because the potential *in terrorem* effect from discovery was limited: every claimant's immigration status was known and undisputed when discovery was sought, unlike in this case. *Id.* at *6; *see also Catalan v. Vermillion Ranch Ltd. P'ship*, No. CIV.A. 06-CV-01043WY, 2007 WL 951781, at *1 (D. Colo. Mar. 28, 2007) (allowing discovery of plaintiff guest workers' immigration history because that history was "material" to several claims and defenses in dispute, and because defendant employer had already been obligated to report them to immigration authorities on account of their absconding from the workplace).

A compromise approach is illustrated in *Perez v. Seafood Peddler of San Rafael Inc.*, No. 12-cv-00116 WHO (NC), 2013 U.S. Dist. LEXIS 190839, at *15 (N.D. Cal. Sept. 10, 2013) ("[D]efendants may not ask questions of witnesses regarding U Visas unless (1) there is a factual basis showing that plaintiff [the Department of Labor] offered, provided, or was requested to provide, U Visa certification to any Seafood Peddler employee in connection with the investigation or prosecution of this case; (2) that employee's testimony will be relied upon by plaintiff in this case; and (3) the employee is not a U Visa beneficiary within the meaning of § 1367(a)(2).").

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particularly suggestive of mass fraud.⁵⁶ The EEOC's involvement could have caused the case's ranks to swell for any number of legitimate reasons; most obviously, the EEOC may have discovered additional harassment claimants during the pre-suit conciliation and investigation processes. Moreover, although Koch marshals what it characterizes as unequivocal evidence of claimants' duplicity, on the whole, the parties' briefing indicates genuine ambiguities in the still-developing factual record. We further note that the U visa process contains numerous protections against fraud,⁵⁷ which should deter claimants from lying in their U visa applications and the EEOC from abetting applications that it knows or suspects to be fraudulent.⁵⁸ Finally, we reject Koch's repeated suggestions that plaintiffs' claims are so outlandish as to be unbelievable. In fact, substantial evidence suggests that serious abuse is all too common in many industries reliant on immigrant workers, including the modern-day poultry industry.⁵⁹

⁵⁶ Plaintiffs claim that the district court's "spike in claims" observation was factually erroneous. But as the court correctly explained, this action began with a suit by eight individual claimants; the EEOC's separate suit eventually brought in over a hundred others.

⁵⁷ Specifically, although the EEOC can certify U visa applications for further consideration, it is USCIS that has the power to grant each application, and it does so only after a de novo review of all relevant evidence. Moreover, USCIS can revoke U visas and initiate deportation proceedings if application fraud is uncovered. See 8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. §§ 214.14(c)(1), (c)(4), (h)(2), (i).

⁵⁸ If the EEOC solicited and certified applications that USCIS then found to be questionable or fraudulent, the claimants would be denied visas and possibly deported, despite having cooperated with the agency and revealed significant personal information. Such a result would hardly encourage future claimants to do the same, even if their claims were valid. Perhaps more importantly, the EEOC's own credibility with USCIS would suffer, making approval of future EEOC-certified U visa applicants less likely and further eroding the agency's ability to take advantage of the program. And the EEOC's credibility and reputation might also suffer in other contexts, harming the agency and its mission more broadly.

⁵⁹ See, e.g., *No Relief: Denial of Bathroom Breaks in the Poultry Industry*, OXFAM AMERICA (2016), https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf; *Lives on the Line: The Human Cost of Cheap Chicken*, OXFAM AMERICA (2015), https://www.oxfamamerica.org/static/media/files/Lives_on_the_Line_Full_Report_Final.pdf;

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But although plaintiffs' claims are facially credible, and although the possibility that immigration benefits may have induced some claimants to step forward does not necessarily suggest that their claims are false, we find it plausible that some undocumented immigrants might be tempted to stretch the truth in order to obtain lawful status – and perhaps even lawful *permanent* status – for themselves and their families.⁶⁰ U visa applicants are analogous to testifying informants in criminal trials, and in that context, as one court has pithily observed, “[a]ny competent lawyer would . . . know[] that . . . special immigration treatment by [law enforcement agencies] [is] highly relevant impeachment material.”⁶¹ Given this, and given the considerable deference we owe the district court in its discovery rulings,⁶² we cannot conclude that the

Tom Fritzsche et al., *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers*, SOUTHERN POVERTY LAW CTR. (2013), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Unsafe_at_These_Speeds_web.pdf; Mary Bauer et al., *Injustice On Our Plates: Immigrant Women in the U.S. Food Industry*, SOUTHERN POVERTY LAW CTR. (2010), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf; Lance Compa et al., *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, HUMAN RIGHTS WATCH (2004), <https://www.hrw.org/sites/default/files/reports/usa0105.pdf>. See generally Charlotte S. Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 IND. L.J. 1069, 1085-89, 1125 (2014) (immigrant workers in urban environments); Bernice Yeung & Grace Rubenstein, *Rape in the Fields: Female Workers Face Rape, Harassment In U.S. Agriculture Industry*, PBS: FRONTLINE (June 25, 2013, 2:39 AM), <http://www.pbs.org/wgbh/pages/frontline/social-issues/rape-in-the-fields/female-workers-face-rape-harassment-in-u-s-agriculture-industry> (immigrant fieldworkers); Grace Meng et al., *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, HUMAN RIGHTS WATCH (May 2012), https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf (immigrant fieldworkers).

⁶⁰ See *supra* notes 5-6 and accompanying text. Indeed, it appears that U visa fraud is not unheard of, although there is little to suggest it is common. See, e.g., Mark Becker, *9 Investigates: Illegal Immigrants Faking Crimes to Stay in Charlotte*, WSOC-TV (Nov. 11, 2014, 10:44 AM), <http://www.wsoc.tv/news/special-reports/9-investigates-illegal-immigrants-faking-crimes-st/113455640>.

⁶¹ *United States v. Blanco*, 392 F.3d 382, 392 (9th Cir. 2004).

⁶² See, e.g., *Sanders v. Shell Oil Co.*, 678 F.2d 614, 618 (5th Cir. 1982) (“A trial court enjoys wide discretion in determining the scope and effect of discovery. It is, in fact, unusual to find an abuse of discretion in discovery matters.” (citations omitted)).

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district court abused its discretion in finding U visa discovery relevant and potentially probative of fraud.

3. Plaintiffs' and the public's interest in preventing U visa discovery

After finding U visa discovery relevant, the court turned to the other side of the ledger, analyzing whether the discovery would create an undue burden. It reasoned that the claimants did not need to fear being fired once Koch discovered that they sought U visas, since most of them no longer worked for the company and others “may have other protection” or could be sheltered by a protective order. Moreover, the claimants did not need to fear that Koch would report them to criminal or immigration authorities, because a protective order could bar Koch from doing so and because any claimants who had sought U visas would already have revealed their undocumented status to federal officials. And the court stressed that it was not allowing a “fishing expedition,” but only limited discovery of information related to U visas only. For these reasons, the court concluded, the relevance of the discovery sought outweighed any burden it might impose.⁶³ Below, we address the district court’s stated reasons, then discuss factors it did not consider.

a. Claimants' fears of being fired

Plaintiffs don’t dispute that few of the claimants still work for Koch. However, they emphasize that some still do, and that Koch said earlier in the litigation that it will fire them if it turns out they are undocumented. Koch’s statement is unsurprising: it is illegal to knowingly employ an undocumented worker, and U visa discovery would necessarily show Koch which of its

⁶³ The court also noted claimants’ fear that U visa discovery might reveal their criminal histories, and responded by barring discovery of “prior crimes that may be reflected in their applications.”

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employees are undocumented.⁶⁴ The district court apparently believed that a protective order could protect the employees from being fired. But it is unclear whether the protective order ultimately entered in this case does so, because it allows use of U visa discovery for purposes unrelated to this litigation if “required by relevant law.” It is uncertain whether a protective order *could* protect the employees in the way the district court envisioned: doing so might force Koch to violate the law.⁶⁵

Koch responds, correctly, that any workers with U visas *are* authorized to work in the United States, and that even workers with pending U visas may receive work authorization.⁶⁶ That should indeed reduce claimants’ fear of being fired. But assuming that some claimants did apply for U visas, their applications may still be pending or may have been rejected, so they may not be authorized to work.⁶⁷ In turn, despite the protective order and the

⁶⁴ See 8 U.S.C. § 1324a(a)(2).

⁶⁵ This assumes that the knowledge of Koch employees privy to the U visa discovery would necessarily be imputed to the company for purposes of the Immigration and Naturalization Act, an issue we do not address here.

⁶⁶ See 8 U.S.C. § 1184(p)(6).

⁶⁷ It seems less likely that U visa applicants in this case (if any) would have been rejected outright, both because of the program’s relatively high acceptance rate and because there is currently a years-long backlog of U visa applicants. *Number of I-918 Petitions for U Nonimmigrant Status (Victims of Certain Criminal Activities and Family Members) by Fiscal Year, Quarter, and Case Status 2009-2016*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Dec. 2015), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2016_qtr1.pdf (at the end of fiscal year 2015, 10,026 applications were approved, 2,715 were denied, and 63,762 were pending (all excluding derivative applications)). As for applicants whose applications remain pending – probably most of them, given the backlog – the U visa statute says that they “may” receive work authorization, but the record and briefs do not indicate how many pending applicants are in fact authorized. See 8 U.S.C. § 1184(p)(6); see also Krisztina E. Sabo et al., *Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJ. at 7 (Feb. 12, 2014), <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf> (asserting that “[w]hile express statutory authority to grant work authorization to U visa applicants who have met bona fide determination exists, this has not been implemented for all U visa applicants” (emphasis omitted)).

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protections of the U visa program itself, there remains a risk that U visa discovery will cause some claimants or family members to lose their jobs.

This is a serious risk, but also a highly speculative one. It is unclear how many claimants remain employed by Koch, and how many will still be working for the company by the time U visa discovery takes place.⁶⁸ Moreover, it is uncertain how many in that group may have applied for or received U visas; put differently, because the U visa applications in this case are entirely hypothetical, the *in terrorem* effect of discovering them is hypothetical as well. Nonetheless, if claimants have applied for U visas, their jobs may still be on the line, contrary to the district court's apparent belief.

b. Claimants' fears of being reported

Although few claimants need to fear termination, all could fear that Koch will report them and their families to immigration authorities if it learns of their U visa applications. Of course, the protective order in place does not allow this: although Koch cannot knowingly *employ* undocumented workers, nothing suggests that it would legally have to *report* current or former employees upon learning that they are undocumented. Nevertheless, the claimants might fear that Koch will violate the order and turn them in anyway. And employers commonly and unlawfully retaliate against irksome workers by reporting or threatening to report them to immigration authorities.⁶⁹ A protective order

⁶⁸ In early 2014, plaintiffs asserted that "30 of the Aggrieved Individuals in this action, as well as dozens of their family members, are still employed by Defendant Koch Foods." However, employee turnover rates are high in the poultry processing industry. See *Compa et al.*, *supra* note 59, at 108.

⁶⁹ See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 886-87 (1984); *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064-65 (9th Cir. 2004) (collecting cases); Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1122-23 (2009) (discussing empirical studies indicating a link between employers' anti-union animus and their use of immigration-related intimidation); Fritzsche et al., *supra* note 59, at 4-5; Meng et al., *supra* note 59, at 7, 48, 81; Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations*

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would not necessarily quell claimants' fear of suffering the same fate, regardless of Koch's intent to comply with the order.⁷⁰

In downplaying claimants' asserted fears of being reported, the district court stressed that any claimants who submitted U visa applications have already revealed their undocumented status to the EEOC and possibly USCIS. But as Plaintiffs note, claimants might not have feared revealing their status only to federal officials who process U visa applications, since those officials apparently are not involved in immigration enforcement. An abuse victim might well be willing to disclose sensitive information to a few sympathetic officials, yet nonetheless fear that his or her abuser might obtain that information and spread it far and wide.⁷¹ In other words, the claimants reasonably might fear disclosure of their status to certain authorities, but not others, so their having submitted U visa applications does not rule out an *in terrorem* effect from further disclosure, as the district court apparently believed.⁷²

of Employment and Labor Laws in America's Cities, NATL. EMPLOYMENT LAW PROJ. 24-25 (2009), http://nelp.3cdn.net/e470538bfa5a7e7a46_2um6br7o3.pdf.

⁷⁰ See, e.g., *David v. Signal Int'l, LLC*, 257 F.R.D. 114, 126 (E.D. La. 2009) ("Even under the umbrella of a protective order, the danger of intimidation would inhibit plaintiffs in pursuing their rights in this case."). Cf. *Rivera*, 364 F.3d at 1065 n.5 ("The fact that NIBCO has pledged not to use the plaintiffs' immigration status to retaliate against them does not eliminate the substantial risk of chilling the rights of these and future plaintiffs. . . . [T]he existence of post hoc legal remedies for retaliation do[es] not necessarily provide adequate protection when plaintiffs anticipate retaliation that would result in extraordinarily burdensome consequences.").

⁷¹ Undocumented immigrants can and do distinguish between revealing their status to U visa authorities and other officials: tens of thousands apply for U visas each year. See *Number of I-918 Petitions*, *supra* note 67.

⁷² Plaintiffs also point out that an immigrant need not be undocumented to fear U visa discovery. See *Rivera*, 364 F.3d at 1065 ("Even documented workers may be chilled by the type of discovery at issue here. Documented workers may fear that their immigration status would be changed, or that their status would reveal the immigration problems of their family or friends; similarly, new legal residents or citizens may feel intimidated by the prospect of having their immigration history examined in a public proceeding. Any of these individuals, failing to understand the relationship between their litigation and immigration status, might choose to forego civil rights litigation.").

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c. The extent of additional discovery

In allowing U visa discovery, the district court acknowledged that besides potentially revealing sensitive information, U visa discovery “at this late date will delay[] the resolution of this matter and creat[e] an enormous, costly hardship on Plaintiffs.” On appeal, plaintiffs claim that this delay and hardship are undue regardless of the sensitivity of the information at issue. Their arguments have force, but do not suggest an abuse of discretion.

Plaintiffs’ main argument is that Koch does not need U visa discovery because the company has other material with which to undermine the claimants’ allegations. That may be true, but U visa applications would be novel and significant impeachment evidence, as we noted.⁷³ Assuming that that discovery is permissible, it should not be barred simply because other impeachment evidence exists.

Plaintiffs further argue that the district court has in principle authorized dozens more depositions and subpoenas; that this new discovery will follow an already lengthy and intensive initial round; and that they lack resources to engage in such arduous additional discovery, unlike Koch. Their arguments have weight, especially since the limited written discovery explicitly approved by the district court would presumably give Koch the basic information it needs to argue its U visa fraud theory. Nevertheless, plaintiffs’ arguments implicate the *quantity* of additional discovery, rather than the *substantive scope* of additional discovery. And the quantity of additional discovery remains within the district court’s discretion to control. Although that court stated that U visa discovery was not necessarily limited to the written discovery it specifically discussed, it also emphasized that it was not allowing a “fishing expedition” and appeared sympathetic to plaintiffs’ concerns about time, expense, and

⁷³ See *supra* notes 60-61 and accompanying text.

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logistical complication. Plaintiffs can seek from the district court relief from any unduly burdensome demands.

d. The burden on non-claimants

The district court's analysis of the harm that U visa discovery might cause the claimants was imperfect, but not critically so. More pressing is that the district court did not address how U visa litigation might intimidate individuals outside this litigation, compromising the U visa program and law enforcement efforts more broadly.

These dynamics jeopardize the EEOC's interests and those of the broader public. The district court could and should have weighed them in its Rule 26 analysis. But its analysis considered only the immediate chilling effect of U visa discovery *on the individual claimants in this case*. Those individuals are not the only ones who might be affected by the disclosure of the claimants' U visa information. Thousands apply for U visas each year, and they do so with the assurance that federal authorities will keep their applications confidential.⁷⁴ Allowing U visa discovery from the claimants themselves in this high-profile case will undermine the spirit, if not the letter, of those Congressionally sanctioned assurances and may sow confusion over when and how U visa information may be disclosed, deterring immigrant victims of abuse

⁷⁴ See, e.g., *Immigration Options for Victims of Crimes: Information for Law Enforcement, Healthcare Providers, and Others*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Feb. 2010), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse,%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf> (brochure stating that "all agencies within the Department of Homeland Security (DHS), including USCIS, are legally prohibited from disclosing that a victim has applied for VAWA, T, or U immigration benefits"); U.S. Citizenship & Immigration Servs., Privacy Waiver Authorizing Disclosure to a Third Party, ICE Form 60-001 (Feb. 2011), at 1-2, <https://www.ice.gov/doclib/news/library/forms/pdf/60-001.pdf> ("[Y]ou are under no obligation to consent to the release of your information to any third party. . . . If you have applied for or received [a U visa], you are legally entitled to confidentiality.").

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– many of whom already mistrust the government⁷⁵ – from stepping forward and thereby frustrating Congress’s intent in enacting the U visa program.

This is a serious concern for plaintiff EEOC, *amicus* NLRB, and the federal and state departments of labor, all of which certify U visa applications.⁷⁶ Considerable evidence suggests that immigrants are disproportionately vulnerable to workplace abuse and, not coincidentally, highly reluctant to report it for fear of discovery and retaliation.⁷⁷ And threats of deportation are among the most familiar and dreaded means by which unscrupulous employers retaliate against immigrant employees.⁷⁸ Thus, if the

⁷⁵ See, e.g., Alexander & Prasad, *supra* note 59, at 1101 & n.10; Stephen Lee, *Monitoring Immigration Enforcement*, 53 ARIZ. L. REV. 1089, 1100-03 (2011); Meng et al., *supra* note 59, at 72-76.

⁷⁶ See 8 C.F.R. § 214.14(a)(2); *The U Visa: A Potential Immigration Remedy for Immigrant Workers Facing Labor Abuse*, NAT’L EMPLOYMENT LAW PROJ. at 3-4 (Mar. 2014), <http://www.nelp.org/content/uploads/2015/03/UVisa.pdf>.

⁷⁷ See, e.g., sources cited *supra* note 59 and 69; Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 676-79 (2003) (collecting evidence that undocumented workers underreport labor violations); Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 CORNELL J.L. & PUB. POL’Y 611, 616-17 (2012) (a 2008 survey of 4,387 low-wage immigrant workers in three cities suggested that immigrants are disproportionately likely to experience wage and hour violations); Chirag Mehta et al., *Chicago’s Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions*, UNIV. OF ILLINOIS AT CHICAGO CTR. FOR URBAN ECONOMIC DEVELOPMENT at 27-29 (Feb. 2002), https://cued.uic.edu/wp-content/uploads/undoc_wages_working_64.pdf (in an analysis of 1,186 Chicago immigrant workers, finding that “undocumented workers more often experience unsafe working conditions than do immigrants with legal status,” that they file claims less frequently than would be expected given their rates of reported serious injury and unsafe working conditions, and that there is a strong and statistically significant correlation between undocumented status and wage and hour complaints). *But see* Alexander & Prasad, *supra* note 59, at 1087, 1090, 1092, 1127-29 (in an analysis of 2008 survey conducted by Griffith, failing to find statistically significant correlations between immigration status and reports of workplace problems, likelihood to make a complaint related to a workplace problem, and employer retaliation for such complaints).

⁷⁸ On employers’ use of threats of deportation and similar immigration consequences, see *supra* note 69; see generally 151 CONG. REC. E2605-04 (Dec. 17, 2005) (statement of Rep. Conyers), 2005 WL 3453763 (in discussing amendments to 8 U.S.C. § 1367, noting that “[t]hreats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution”). On employees’ fear of such consequences, see Compa et al., *supra* note 59, at 103-04, *Lives on the*

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agencies cannot credibly assure potential U visa seekers that their sensitive information will be kept private, they may become much less able to use the program to solicit cooperation from those most in need of their help. Protective orders will not necessarily reassure potential claimants.⁷⁹ Nor can the agencies easily reassure potential claimants that although U visa discovery was allowed in *this* case, it will not be allowed in *their* cases. Most of Koch's and the district court's reasons for allowing U visa discovery here – e.g., that U visas provide a motive to fabricate abuse, that a protective order could be entered, that U visa applicants already would have revealed their status to federal authorities, and that the evidence of abuse is debatable – are likely present in virtually every immigrant-abuse case in which the EEOC or a similar agency is involved.

In sum, allowing discovery of U visa information may have a chilling effect extending well beyond this case, imperiling important public purposes. The district court, while thoughtful, confined its focus to the interests of the individuals before it. We agree with most of the district court's careful consideration of the sensitive issues presented. But having weighed *all* of the problems U visa discovery may cause against Koch's admittedly significant interest in obtaining the discovery, we are compelled to conclude that the discovery the district court approved would impose an undue burden and must be redefined.

VII

Rather than impose an order of our own, we remand to the district court to devise an approach to U visa discovery that adequately protects the diverse and competing interests at stake. Our discussion indicates the basics of that

Line, supra note 59, at 28; Fritzsche et al., *supra* note 59, at 38; Bauer et al., *supra* note 59, at 23, 42, 49-51; *supra* note 59; Meng et al., *supra* note 59, at 19, 49; Mehta et al., *supra* note 77, at 28-29.

⁷⁹ See *supra* notes 69-70 and accompanying text.

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approach. Beyond these broad contours, we leave the management of U visa discovery to the district court. Rule 26(d) gives that court wide discretion to craft flexible and nuanced terms of discovery.⁸⁰

In light of the above, we VACATE the district court's certified discovery orders and REMAND for further proceedings not inconsistent with this opinion.

⁸⁰ See generally FED. R. CIV. P. 26(c)(1)(A)-(H); *Granger v. Slade*, 90 F. App'x 741, 742 (5th Cir. 2004) (unpublished) (Rule 26 protective orders are "designed to shape the changing needs of the litigation and subject to continued modification by the district court").

Attachment D

2013 WL 3940674

Only the Westlaw citation is currently available.
United States District Court,
E.D. 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.

July 31, 2013.

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Opinion

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

EDWARD F. SHEA, Senior District Judge.

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

A. Defendants' Motions to Modify Protective Order

The Grower Defendants filed a Joint Motion to Modify Protective Order Re: Immigration Status to Allow Discovery of Claimants' T–Visa Status and Application Information, ECF No. 345; Global thereafter filed a Motion Joining Grower Defendants' Motion to Modify Protective Order Re: Immigration Status, ECF No. 363. Collectively, Defendants ask the Court to modify the November 29, 2012 protective order, ECF No. 245, to permit them to discover the Claimants' T–Visa status and applications¹ because such information is vital to 1) assess the Claimants' credibility by comparing the information contained on, or submitted with, the T–Visa applications with the Claimants' Charges of Discrimination and deposition testimony, and 2) support Defendants' defense that the Claimants were encouraged to make human-trafficking statements against Global and the Grower Defendants to secure T–Visa status.

The EEOC opposes the motions, arguing Defendants fail to identify that discovery of the requested information is appropriate in light of the prejudice the Claimants will suffer if they must disclose information pertaining to their immigration status given the EEOC's understanding that not all Claimants have been granted a T–Visa.²

The EEOC also argues the Claimants' T-Visa status and applications are irrelevant because 1) this lawsuit concerns employment discrimination, not human trafficking, and 2) it is the Department of Homeland Security, not the Thai Community Development Center (Thai CDC) or EEOC, which ascertains whether T-Visas should be granted to the Claimants.

1. Background

The EEOC brought this Title VII lawsuit on behalf of the Thai H-2A guest workers who were brought by Global to work at the Grower Defendants' orchards in Washington's Yakima Valley. In connection with the Grower Defendants' prior motions to dismiss, the Court found the First Amended Complaint, ECF No. 141, plausibly alleges the Grower Defendants employed the Claimants in regard to "orchard-related matters." ECF No. 178 at 7. Specifically, the Court found the First Amended Complaint alleges hostile-work-environment and constructive—discharge claims (and related pattern-and-practice claims) against the Grower Defendants based on the following orchard-related employment actions on account of the Claimants' race and national origin:

- *2 • the Claimants were disciplined and yelled at if their work was not properly done, ECF No. 141 ¶¶ 127 (Green Acre) & 233 (Valley Fruit);
- the Claimants were subject to deplorable working conditions, *id.* ¶¶ 131 (Green Acre) & 189 (Valley Fruit);
- the Claimants had to work four hours without a break, *id.* ¶ 148 (Green Acre);
- the Claimants had to do more difficult work than the workers of Mexican descent, *id.* ¶¶ 150 (Green Acre) & 214–16 (Valley Fruit);
- the working conditions became so intolerable that the Claimants felt compelled to escape, *id.* ¶¶ 162 (Green Acre) & 228 (Valley Fruit);
- the Claimants were harassed and threatened to meet quotas, *id.* ¶¶ 163–67 (Green Acre) & 229–32 (Valley Fruit);
- the Claimants were told that their work was not good enough, *id.* ¶ 185 (Green Acre); and

- the Claimants were required to continue working in 100 degree weather, *id.* ¶ 218 (Valley Fruit).

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

Last fall, the parties disagreed as to the scope of permissible discovery, *inter alia*; and the Court was asked to ascertain the scope of discovery pertaining to immigration matters. In a November 29, 2012 Order, the Court recognized that a civil litigant is typically unable to discover another litigant's immigration status simply for the purpose of challenging the litigant's credibility. ECF No. 245 (citing *Barrera v. Boughton*, No. 3:07-cv-1436(RNC), 2010 WL 124094 (D.Conn. Mar. 19, 2010); *David v. Signal Int'l, LLC*, 257 F.R.D. 114 (E.D.La.2009); *Sandoval v. Rizzuti Farms, Ltd.*, No. CV-07-3076-EFS, 2009 WL 2058145 (E.D.Wash. July 15, 2009); *Montoya v. S.C.C.P. Painting Contractors, Inc.*, 530 F.Supp.2d 746 (D.Md.2008); *Galviz Zamora v. Brady Farms, Inc.*, 230 F.R.D. 499, 502 (W.D.Mich.2005); *Catalan v. Vermillion Ranch Ltd. P'ship*, No. 06-cv-01043 WYD-MJW, 2007 WL 951781 (D.Col. Mar.28, 2007). The Court's Order required the Grower Defendants to engage in structured discovery relating to the Claimant's immigration information: the Grower Defendants were ordered to depose the Claimants to discern "the alleged bases for their hostile-work-environment and constructive-discharge claims and related pattern-and-practice claims against the Grower Defendants as to orchard-related matters, as well as the alleged bases for their retaliation claim and related pattern-and-practice claim against Green Acre as to orchard-related matters." ECF No. 245 at 12–13. The Court invited Defendants to seek leave of Court to obtain information about the Claimants' immigration information if, after deposing the Claimants, they believed "there is a need to compare or contrast the information received from that Claimant regarding their treatment by the Grower Defendants with that contained in the Claimant's T-Visa application." *Id.* at 13.

*3 Global did not participate in the briefing or oral argument relating to the prior dismissal or discovery motions as Global had yet to fully appear in this lawsuit. Global's counsel was granted permission to participate *pro hac vice* in November 2012, ECF No. 237; and the

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previously-entered default against Global was set aside on January 24, 2013, ECF No. 292. Global filed its answer on January 31, 2013. ECF No. 294.

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

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

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

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

- (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 redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- (v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- (vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;

- (vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
- (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.

Id. § 214.11(i)(1). The applicant is:

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

Id. § 214.11(j)(2). An individual seeking a T-Visa completes Form I914, which at the time of this Order requires the applicant to sign the form under penalty of perjury and contains a preparer and/or interpreter certification.³ I-914, Application for T Nonimmigrant Status, <http://www.uscis.gov/I-914> (last visited July 30, 2013).

2. Analysis

With this background, the Court analyzes Defendants' motions to lift the discovery prohibition on immigration information. As the Court discussed in its November 2012 discovery order, the discovery of relevant immigration-related information can be limited under Federal Rule of Civil Procedure 26(c). Rule 26(c) permits the Court to issue a protective order "for good cause" shown "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed.R.Civ.P. 26(c). The burden is on the party seeking the protective order to "show good cause" by "demonstrating

harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063-64 (9th Cir.2004).

*5 The Court is guided by the Ninth Circuit's decision in *Rivera* to assess whether immigration-related information is discoverable. In *Rivera*, the Ninth Circuit upheld a protective order, which restricted the employer's ability at the early stage of the litigation to obtain its employees' immigration status. The Ninth Circuit found "the protective order was justified because the substantial and particularized harm of the discovery—the chilling effect that the disclosure of plaintiffs' immigration status could have upon their ability to effectuate their rights—outweighed [the employer's] interests in obtaining the information during the initial discovery stage of the litigation." *Id.* at 1063-64. Thus, *Rivera* does not establish a blanket discovery prohibition as to immigration information. Rather, *Rivera* directs the district court to abide by Rule 26: first, assess whether the requested immigration information is relevant, and then, if it is relevant, balance each party's respective interests. Here, as the requesting party, Defendants have the initial burden of establishing relevance; and then the EEOC, as the party seeking the protective order, has the burden of showing good cause for the continued entry of the protective order. The Court engages in its Rule 26 analysis below.

a. Relevance

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

Defendants is highly relevant to the EEOC's employment claims. Therefore, the T-Visa applications are a non-privileged matter that is relevant to a party's claims or defenses. Fed.R.Civ.P. 26(b).

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

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

The EEOC argues that this information is irrelevant because Defendants failed to show that the deposed Claimants lied about how they were treated at the Grower Defendants' orchards or as to how they were recruited. This argument is not persuasive. Rule 26 permits the discovery of "any nonprivileged matter that is relevant to any party's claim or defense." Fed.R.Civ.P. 26(b)(1). Rule 26 does not require the Grower Defendants to establish that the Claimants lied in order to establish the relevance of this immigration information.

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

b. Cause

Having found that a Claimant's T-Visa application and supporting material and T-Visa status are relevant to the claims and defenses, the Court now finds the EEOC fails to show that good cause exists for the continued discovery restriction regarding T-Visa-related information. It is undisputed that all of the Claimants were in the United States unlawfully after they chose to leave their guest-worker relationship. Therefore, there is no undue prejudice to be suffered by a Claimant if Defendants discover that the Claimant has a T-Visa. And there is no evidence before the Court that a Claimant has a justifiable fear of deportation if their T-Visa application, supporting material, or resulting T-Visa status is discovered by Defendants in this lawsuit. In addition, Defendants agree that any discovered immigration-related information will be subject to the stipulated protective order, ECF No. 312. Finally, each of the Claimants have interacted with the Thai CDC and EEOC and thus are familiar with the services that each of these entities can provide if a Claimant is concerned about his T-Visa information being disclosed, subject to a confidentiality order, in this lawsuit.

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

3. Conclusion

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

B. Grower Defendants' Motion for Fees as Prevailing Party, ECF No. 350

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

I. Background

Pretrial, there has been much communication between counsel as to who is a "Claimant." The First Amended Complaint defines "Claimants," stating in pertinent part: "This is an action ... to provide appropriate relief to Marut Konpia, Laphit Khadthan, and the class of similarly situated Thai and/or Asian individuals (collectively, the "Claimants"). ECF No. 141 ¶ 1. On February 6, 2013, the EEOC identified 245 Claimants as to Green Acre and 199 Claimants as to Valley Fruit.

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

We have received the EEOC's answers to Interrogatory 30. In response the EEOC has identified 175 individuals who worked on

Green Acre Farms' orchards in 2004 only and 87 individuals who worked on Valley Fruit's Orchards in 2004 only. Pursuant to Judge Shea's July 27, 2012 Order, the claims of these individuals are time-barred. We are requesting that the EEOC dismiss its claims on behalf of these individuals within fourteen days of today's date or we will move for summary judgment and seek sanctions pursuant to Rule 11 and the Supreme Court case, *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978), and for the cost of the motion, as well as for a proportionate share of Grower Defendants' attorney's fees in litigating this suit from July 27, 2012 forward.

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

On March 4, 2013, Sue Noh, Acting Supervisory Trial Attorney for the EEOC, wrote Grower Defendants' counsel. *Id.*, Ex. B at 7. Ms. Noh highlighted that because the EEOC is the Plaintiff, not the Claimants, "dismissal" is not the mechanism for limiting the class of Claimants on whose behalf the EEOC seeks relief. *Id.* Ms. Noh stated, "[T]he EEOC acknowledges that this Court has ruled on Grower Defendants' motion to dismiss (ECF No. 178) to limit claims for damages to those individuals employed during 300 days prior to the filing of the charge." *Id.* Ms. Noh continued:

*8 Moreover, the claimants are identified by the EEOC not only for the purposes of support [sic] the EEOC's case for monetary damages, but also identified for purposes of injunctive relief, and as third party witnesses. To the extent your question relates to EEOC's position as it relates to damages, without waiving the EEOC's right to 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.

Id. at 7–8. Ms. Noh finished by stating she was willing to work with the Grower Defendants to “come to an agreement ... on the dates of employment.” *Id.* at 8.

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

We do not agree that the EEOC may seek injunctive relief on behalf of individuals whose claims are time-barred and the case law, including *Morgan*, supports this position. Nor do we agree that this is a reasonable or justified interpretation of the Court's ruling. While the EEOC need 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.

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

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

2. Standard

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

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

Id. Although the statute refers to a “prevailing party,” case law has established that a prevailing defendant under Title VII is entitled to an award of reasonable attorney's fees only for prevailing as to claims that are “frivolous, unreasonable, or groundless.” *Harris v. Maricopa Cnty. Sup'r. Ct.*, 631 F.3d 963 (9th Cir.2011). To determine whether this standard is met, the court assesses “the claim at the time the complaint was filed, and must avoid post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.” *Harris*, 631 F.3d at 976 (quoting *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1060 (9th Cir.2006)). “The purpose of awarding attorneys' 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).

*9 A defendant need not prevail on all claims and issues but rather a defendant is considered a prevailing party if the ruling on the frivolous, unreasonable, or groundless claim “materially alters the legal relationship between the parties by modifying the [plaintiff's] behavior in a way that directly benefits the [defendant].” *Farrar v. Hobby*, 506 U.S. 103, 111–12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992). “The degree of the [defendant's] success in relation to the other goals of the lawsuit is a factor critical to the determination of the size of a reasonable fee, not to eligibility for a fee award at all.” *Tex. State Teachers Ass'n v. Garland Indep.*, 489 U.S. 782, 790, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989) (emphasis in original). A party can achieve “prevailing party” status as to a claim that is resolved during the pendency of the lawsuit. *Id.* Yet, if a party's “success on a legal claim can be characterized as purely technical or de minimis,” a court can determine that the prevailing party threshold is not met. *Id.*

3. Analysis

First, the Court finds the Grower Defendants sufficiently met and conferred in order to provide the EEOC with an opportunity to identify the Claimants before they filed the summary-judgment motion. The correspondence between counsel identifies that the Grower Defendants clearly explained that they believed the Court's July 2012 Order restricted the EEOC's ability to seek either injunctive or monetary relief on behalf of only those Claimants who worked at the Grower Defendants' orchards within the applicable 300-day period, i.e., not on behalf of Claimants who only worked at a Grower Defendant orchard in 2004. The EEOC responded that it could seek injunctive relief, but not monetary relief, on behalf of all Thai individuals who worked at the Grower Defendants' orchards irrespective of the 300-day limitation. Based on the EEOC's response, the Grower Defendants replied on March 5, 2013, that they "will proceed accordingly," which, based on counsel's prior February 11, 2013 letter, should have been understood to mean that the Grower Defendants would move for summary judgment on the issue. ECF No. 351, Exs. A & C. The EEOC filed its Motion for Summary Judgment as to Untimely Claims, ECF No. 328, on March 29, 2013. Accordingly, the EEOC had approximately three weeks to clarify its position and to prevent the filing of the summary-judgment motion by the Grower Defendants. Instead, the EEOC waited until responding to the summary-judgment motion to clearly state that the EEOC is not basing its injunctive-relief claims on behalf of a Thai individual who only worked at a Grower Defendants' orchard prior to the 300-day window.

Although the Grower Defendants sufficiently met and conferred before filing their motion for attorney's fees, the Court denies the Grower Defendants' motion for attorneys' fees. The Court's summary-judgment Order, ECF No. 348, did not sufficiently alter the legal relationship between the parties as to justify an award of attorney's fees to the Grower Defendants at this time. In the summary-judgment Order, the Court ruled that

the EEOC cannot seek relief, injunctive or otherwise, on behalf of an individual who did not work at a Grower Defendants' orchard during the 300 days preceding the applicable Charges of Discrimination. *Id.* This ruling did not dispose of any EEOC claim but rather restricted the individuals on whose behalf the EEOC can seek relief through its claims and narrowed the window of conduct against which Defendants must defend. Therefore, the relief granted to the Grower Defendants in the summary-judgment Order is not sufficient for them to be considered a prevailing party. It is premature for the Court to assess whether the EEOC's injunctive relief claims are frivolous or brought in bad faith.

4. Conclusion

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

C. Summary

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

1. 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, is **GRANTED**.
2. Global's Motion Joining Grower Defendants' Motion to Modify Protective Order Re: Immigration Status, ECF No. 363, is **GRANTED**.
3. The Grower Defendants' Motion for Fees as Prevailing Party, ECF No. 350, is **DENIED**.

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

All Citations

Not Reported in F.Supp.2d, 2013 WL 3940674

Footnotes

- 1 At the hearing, defense counsel clarified that they seek the T-Visa applications, evidence submitted in support of the applications, and T-Visa status for all Claimants: not simply for the five Claimants that have been deposed.
- 2 At the hearing, counsel for the EEOC advised that the EEOC does not know the immigration status of all of the Claimants and has not reviewed copies of any Claimant's T-Visa application.

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- 3 The Court takes judicial notice of this form. Fed.R.Evid. 201. The Court is aware that this is likely not the form completed by the Claimants given this form became effective on May 4, 2012. Yet, because the form is consistent with the statutory requirements, the Court understands the prior version(s) would be substantially similar.
- 4 The question of whether this immigration information is admissible is not before the Court at this time.
- 5 At the hearing, counsel for the EEOC advised that it still does not know the number of Claimants. The EEOC will identify the Claimants by the Court-ordered August 2, 2013 deadline, ECF No. 348. At this time, Defendants understand the Claimants number 101.

End of Document

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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 STATE OF WASHINGTON,)

10 Plaintiff,)

) No. 2:17-cv-00149 TOR

11 SOCORRO DIAZ SILVAS, ROXANA)
12 RODRIGUEZ DE ALFARO, YESICA)
13 CABRERA NAVARRO, YASMIN CABRERA)
14 NAVARRO, AND SAMANTHA MENDOZA,)

) DECLARATION OF WILLIAM R. SPURR IN
) SUPPORT OF MOTION TO COMPEL

15 Plaintiffs-Intervenors)

) **Noted on Motion Calendar:**
) **May 14, 2018**

16 v.)

17 HORNING BROTHERS, LLC and HERMILO)
18 CRUZ,)

19 Defendants.)

20 William R. Spurr certifies and declares as follows:

21 1. I am the attorney for the Horning Brothers, LLC in this matter. I am over the age of
22 eighteen years, have personal knowledge of and am competent to testify to the matters contained herein.

23 2. Attached hereto as Exhibit A are true and correct copies of excerpts of the condensed
24 transcript of the deposition of Socorro Diaz Silvas, which was a deposition I took on February 11,
25 2018. This deposition is cited as "Socorro DS Dep." in the Horning Brothers motion.

26 3. Attached hereto as Exhibit B are true and correct copies of excerpts of the condensed
transcript of the deposition of Yasmin Cabrera Navarro, which was a deposition I took on February 12,
2018. This deposition is cited as "Yasmin CN Dep." in the Horning Brothers motion.

1 4. Attached hereto as Exhibit C are true and correct copies of excerpts of the condensed
2 transcript of the deposition of Yesica Cabrera Navarro, which was a deposition I took on February 12,
3 2018. This deposition is cited as "Yesica CN Dep." in the Horning Brothers motion.

4 5. Attached hereto as Exhibit D are true and correct copies of excerpts of the condensed
5 transcript of the deposition of Roxana Rodriguez De Alfaro, which was a deposition I took on February
6 13, 2018. This deposition is cited as "Roxana RDA Dep." in the Horning Brothers motion.

7 6. Attached hereto as Exhibit E are true and correct copies of excerpts of the condensed
8 transcript of the deposition of Samantha Mendoza, which was a deposition I took on February 13, 2018.
9 This deposition is cited as "Samantha M Dep." in the Horning Brothers motion.

10 7. Plaintiffs-Interveors U-visa documents would be responsive to the Requests for
11 Production of Documents that the Horning Brothers propounded to the Plaintiffs-Intervenors,
12 specifically RFP Nos. 1, 2, 8 and 14.

13 8. Attached hereto as Exhibit F is a true and correct copy of a letter I e-mailed to defense
14 counsel on March 16, 2018, addressing the issues in this motion to compel and requesting a discovery
15 conference. Ms. Dimmit Gnam and I had a telephonic discovery conference on March 23, 2018, but we
16 were unable to reconcile our positions on these U-visa discovery issues.
17

18 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
19 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.
20

21 Dated at Seattle, Washington this th12 day of April, 2018.

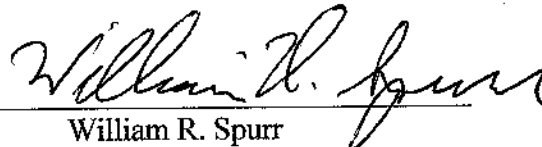
22 
23 William R. Spurr

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

HORNING BROTHERS, LLC, and
HERMILO CRUZ, in his individual
capacity and as a member of the
marital community of HERMILO
CRUZ and CLAUDIA SANCHEZ,

Defendants.

NO. 2:17-cv-00149-TOR

SOCORRO DIAZ SILVAS, ROXANA
RODRIGUEZ DE ALFARO, YESICA
CABRERA NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

vs.

HORNING BROTHERS, LLC,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
SOCORRO DIAZ SILVAS

Taken on Sunday, February 11, 2018
at Quincy Port District
101 F Street SW
Quincy, Washington 98848

REPORTED BY: RENE' T. LaCOURSIERE, RMR, CRR
CCR NO. 2472

Exhibit A

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1 translated by either Hermilo or Jose?
 2 A. Yes.
 3 Q. Okay. I'd like you to look at Item No. 11. Item No. 11
 4 says: Report any threats or harassment immediately to
 5 Hermilo, Warren, Greg, or Allen. Harassment or threats to
 6 other workers will not be tolerated.
 7 Do you see that?
 8 A. I remember not much was said about that.
 9 Q. But you do remember something about that being said and then
 10 being translated into Spanish by either Hermilo or Jose?
 11 A. Yes.
 12 Q. When the Horning brothers or when a member of the Horning
 13 family spoke at an onion shed safety meeting and they were
 14 going down their piece of paper, did they always refer to
 15 the number of the item they were discussing?
 16 A. Yes.
 17 Q. So it would be 1, 2, 3, 4, 5, 6? Do you remember how many
 18 numbers ultimately were discussed at the onion shed safety
 19 meetings?
 20 MS. DIMMITT GNAM: Objection. Compound.
 21 A. I don't remember up to what number they got.
 22 Q. Uh-huh.
 23 Was it more than ten?
 24 A. I don't remember.
 25 Q. Okay. Do you remember if during any of the onion safety

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1 shed meetings whether the Hornings or Jose or Hermilo
 2 skipped a number?
 3 MS. MELODY: Objection. Foundation. And
 4 compound.
 5 A. They didn't skip any.
 6 Q. Okay. You said you were given a piece of paper at these
 7 onion shed meetings; is that correct?
 8 A. True.
 9 Q. Describe this document for me.
 10 A. It was similar to this one, but it didn't have these letters
 11 that it has here, because on here there are some letters
 12 bigger than the others. And it didn't have the spaces that
 13 this one has. And it didn't have anyone's name.
 14 Q. Okay. How many pages was the document?
 15 A. Only one.
 16 Q. Was it in English or Spanish?
 17 A. In English.
 18 Q. Okay. Did you get the same piece of paper at every onion
 19 shed safety meeting?
 20 THE INTERPRETER: The interpreter was
 21 wondering whether "the same," meaning the same sheet or the
 22 same...
 23 MR. SPURR: The same document.
 24 Q. (By Mr. Spurr) Okay. A copy of the same document?
 25 A. Yes.

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1 Q. Did you save those documents that you received at onion shed
 2 safety meetings?
 3 A. No.
 4 Q. What did you do with the documents you received from the
 5 onion shed safety meetings?
 6 A. I would throw them away.
 7 Q. But looking at Exhibit No. 2, as you sit here today you are
 8 swearing under oath that the copy of the document you
 9 received at this meeting is different than this document,
 10 Exhibit No. 2?
 11 A. The one that I would see over there that they would show us
 12 is different than this one that is here.
 13 Q. All right.
 14 MR. SPURR: How are we doing on time? How's
 15 everybody doing break-wise? And how's the witness doing?
 16 MS. DIMMITT GNAM: I would love a break at
 17 this point. We've been going for a while, an hour and 45.
 18 MR. SPURR: That would be fine.
 19 So ten minutes?
 20 MS. DIMMITT GNAM: Yeah. Thank you.
 21 MR. SPURR: Okay. Great.
 22 (2:48 PM RECESS 3:05 PM)
 23 MR. SPURR: All right. We're back on the
 24 record.
 25 If you could, I would like you to mark this as

Page 53

1 Defendant's Exhibit No. 3.
 2 (DEFENDANT'S EXHIBIT NO. 3 MARKED)
 3 Q. (By Mr. Spurr) Ms. Diaz Silvas, the court reporter has
 4 handed you what's been marked as Defendant's Exhibit No. 3.
 5 Please take a look --
 6 A. Yes.
 7 Q. Please take a look at the two pages.
 8 Looking at the second page of Defendant's Exhibit
 9 No. 3 titled "Horning Brothers LLC Safety Meeting Attendance
 10 Form, Date 12-2-14," is that your signature second from the
 11 top on this document?
 12 A. Yes.
 13 Q. And do you remember attending an onion shed safety meeting
 14 on December 12th [sic] in 2014?
 15 A. I don't.
 16 Q. Okay. If you signed page 2 of this document --
 17 A. Yes, I did sign it.
 18 Q. Yeah.
 19 A. It's my signature.
 20 Q. And --
 21 A. I just don't remember on what date.
 22 Q. Well, let's put it this way: When you signed documents like
 23 the second page of Defendant's Exhibit No. 3, it was always
 24 because you attended an onion shed safety meeting, isn't
 25 that correct?

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1 to stop making those comments; is that correct?
2 A. I didn't do it with words, but he should have understood
3 that whenever he made a comment and I -- I just wouldn't
4 respond.
5 Q. It's also correct, is it not, that you never complained to
6 any members of the Horning family about Mr. Cruz's conduct
7 during that last season you worked for Horning Brothers?
8 A. That's right, I didn't do it.
9 Q. Uh-huh.
10 And you also did not tell the Horning Brothers
11 about the physical contact that Mr. Cruz made with you
12 during your last season working at Horning Brothers; is that
13 correct?
14 A. I didn't, because I didn't want it to be known.
15 Q. From what you knew of the Horning Brothers before you went
16 to work there, did you understand them to be a good employer
17 to work for?
18 A. Before I started working for the Horning Brothers I didn't
19 know anything about them.
20 Q. Uh-huh.
21 A. Who they were or anything.
22 Q. After you worked parts of three seasons for the Horning
23 Brothers, did you believe they were good employers?
24 MS. DIMMITT GNAM: Objection. Vague.
25 A. I don't know much about them, but from what I've heard

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1 they're good people.
2 Q. During the entire time you worked for the Horning Brothers
3 did you ever hear another employee complain about them as
4 employers?
5 A. No.
6 Q. Have you ever heard of the Horning Brothers firing an
7 employee?
8 MS. DIMMITT GNAM: Objection. Vague.
9 A. I don't know.
10 Q. Well, have you ever heard anyone -- well, strike that.
11 Have you ever heard of the Horning Brothers firing
12 anyone?
13 MS. DIMMITT GNAM: Objection. Vague.
14 A. Maybe so.
15 Q. Who?
16 A. I don't know for sure, but I heard some talk about a
17 coworker being fired.
18 Q. Who?
19 A. Victor. Victor something. I don't know the last name.
20 Q. Have you ever heard of the Horning Brothers firing an
21 employee for complaining?
22 MS. DIMMITT GNAM: Objection. Vague. Calls
23 for speculation.
24 A. No, not them, but it was said that -- it was said that it
25 was a sure thing, if a person went to the office and

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1 complained, then there would be no work for that person the
2 next season. But I don't know if it was actually them or
3 another person.
4 Q. Who said that?
5 A. Well, that's what was said there at the warehouse.
6 Q. Well, are you actually aware of any employee that was fired
7 by the Horning Brothers for complaining?
8 MS. DIMMITT GNAM: Objection. Vague.
9 A. The only thing that I do know, that out of the people that
10 I've already mentioned to you that did go to the office,
11 that they did not come back to work, and it's not because
12 they didn't want to.
13 Q. Do you know if the Horning Brothers fired those employees?
14 MS. DIMMITT GNAM: Objection. Vague.
15 A. No, I don't know.
16 Q. Okay. Have you ever heard of the Horning Brothers calling
17 immigration authorities on any of their employees?
18 A. No.
19 Q. After your last season working for Horning Brothers, did
20 your daughter come back for an additional season?
21 A. No.
22 Q. Did your husband come back for an additional season?
23 A. No. He was no longer hired, not even the last season that I
24 worked there.
25 MS. DIMMITT GNAM: Objection. The last phrase

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1 of the answer wasn't interpreted.
2 THE INTERPRETER: Repeat your question -- your
3 answer. I'm sorry.
4 A. He no longer worked there the last season that I worked
5 there, because they would not hire him there anymore to work
6 there.
7 Q. How do you know that?
8 A. Because he wanted to, he wanted to return. And he went to
9 ask for work, and Don Hermilo wouldn't hire him.
10 And he went and he asked Mr. Warren if he would
11 give him work, and his answer was -- his answer was, No, I'm
12 not in charge of hiring. Hermilo's in charge of hiring, so
13 go see him.
14 And, well, neither one of them hired him back.
15 Q. Are you aware that the Horning Brothers would sometimes loan
16 money to their employees?
17 A. No, I never heard that.
18 Q. You never heard of anybody borrowing money from the Horning
19 Brothers?
20 MS. DIMMITT GNAM: Objection. Vague.
21 A. No.
22 Q. Are you aware of whether your husband, in fact, took out
23 loans from the Horning Brothers at zero interest?
24 MS. DIMMITT GNAM: Objection. Vague.
25 Compound.

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1 MS. MELODY: And assumes facts.
 2 A. If he ever received a loan from them, he never said anything
 3 to me.
 4 Q. Okay. So you don't know whether or not your husband ever
 5 took out a loan from the Horning Brothers?
 6 A. No, I have no idea if he did.
 7 Q. Is it possible that he did?
 8 MS. MELODY: Objection. Foundation.
 9 A. I cannot say for sure whether he did or didn't.
 10 Q. He never told you about it, in any event?
 11 A. No.
 12 Q. Okay. Are you aware of other employees taking out loans
 13 from the Horning Brothers?
 14 MS. DIMMITT GNAM: Objection.
 15 MS. MELODY: Objection.
 16 MS. DIMMITT GNAM: Vague. Asked and answered.
 17 MS. MELODY: Asked and answered. And assumes
 18 facts as to "other."
 19 A. I never heard anything.
 20 Q. Okay. Were you ever personally treated badly -- strike
 21 that.
 22 Do you have any complaints about any member of the
 23 Horning family, about the way you were treated when you
 24 worked there?
 25 MS. DIMMITT GNAM: Objection. Vague. Calls

Page 99

1 for a legal conclusion.
 2 A. I do not have any complaint.
 3 Q. Okay.
 4 A. About them.
 5 Q. So you have no complaint about any individual member of the
 6 Horning family and about the way they treated you?
 7 MS. DIMMITT GNAM: Objection. Vague. Calls
 8 for a legal conclusion. And compound.
 9 A. No. They didn't do anything to me.
 10 Q. After you stopped working for the Horning Brothers, this is
 11 a hard question to ask, were you still affected by
 12 Mr. Cruz's actions while you were working for the Horning
 13 Brothers?
 14 A. Yes.
 15 Q. How so?
 16 A. Because every time that I would go to work I would always
 17 think: Okay. So I wonder what he's gonna say to me today.
 18 I wonder if he's gonna come up to me today.
 19 Q. Okay. I'm talking about after you were done working for
 20 Horning Brothers. Were you still suffering in any way from
 21 what occurred before with Hermilo, Milo?
 22 A. That's right.
 23 Q. How so?
 24 A. Well, I've noticed that when I go to other jobs -- see, I
 25 used to be different than how I am now, and I mean in the

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1 way that I behave towards other people.
 2 Q. Explain, please.
 3 A. Well, I was always very --
 4 THE INTERPRETER: Let's see.
 5 A. Very happy. I enjoyed being happy. I liked being kind to
 6 people. I liked speaking to everyone, whether it was a man
 7 or a woman, no difference, I liked speaking to them.
 8 And what I have noticed now, that at the place
 9 where I'm working, it's a warehouse, I try to only speak
 10 when I really need to, to men. Because I believe that if I
 11 speak to them too much, they're going to think that it's
 12 because I'm looking for something from them.
 13 THE INTERPRETER: And the interpreter would
 14 just like to say that she did omit -- the interpreter did
 15 omit the word: They might misinterpret my talking to them.
 16 A. And then I also believe that the same thing that happened at
 17 Horning Brothers might happen over here with them.
 18 Q. Has anything similar to what happened to you at Horning
 19 Brothers occurred in your subsequent job?
 20 A. No.
 21 Q. Okay. What is your understanding of what you ...
 22 What do you seek in this lawsuit personally?
 23 A. I -- well, why don't I tell you about everything since
 24 things started.
 25 Q. No, answer --

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1 A. It's brief.
 2 Q. Perhaps somebody else will ask you a question where you can
 3 talk how you want to talk, but right now I need you to
 4 answer my question.
 5 A. But it's related to --
 6 (WITNESS CONVERSING WITH INTERPRETER)
 7 A. But it's related to your question.
 8 Okay. So what did you ask me?
 9 Q. (By Mr. Spurr) I asked what are you seeking out of this
 10 lawsuit personally?
 11 A. What I want from this lawsuit is that no other woman suffers
 12 what I've suffered through this.
 13 Q. Are you asking for money in this lawsuit?
 14 MS. DIMMITT GNAM: Objection.
 15 A. Definitely not.
 16 MS. DIMMITT GNAM: Calls for a legal
 17 conclusion.
 18 A. Definitely not.
 19 Q. Is it your understanding that this lawsuit does not seek
 20 money as compensation for injuries?
 21 MS. DIMMITT GNAM: Objection. Calls for a
 22 legal conclusion.
 23 MS. MELODY: And I'll add that there's more
 24 than one plaintiff, so it calls for a legal conclusion as to
 25 multiple plaintiffs.

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1 yeah, the interpreter is tired. So please, yes, for both
2 the person asking the question and the person responding, I
3 need shorter.
4 MS. DIMMITT GNAM: So objection to the
5 translation. Can we let the interpreter correct -- get a --
6 refresh?
7 (INTERPRETER CONVERSING WITH WITNESS)
8 A. I couldn't see if he touched her or not. What I am sure of
9 is that he would say something to her. But I also couldn't
10 hear what he would say to her, if it was about work or if it
11 was things like what he would say to me, inappropriate
12 things.
13 Q. (By Mr. Cunningham) If you knew he was saying things to
14 your daughter a few feet away, why didn't you ask her if he
15 was saying inappropriate comments to her as he was to you?
16 A. It just didn't occur to me to ask her, because I just never
17 imagined that he would -- he would say something to her that
18 wasn't right.
19 Q. Even at the same time he was saying things to you that were
20 inappropriate?
21 A. Even though.
22 Q. So just two quick questions: In the entire 2015 to '16, in
23 the onion packing shed, you never saw Hermilo Cruz touch
24 your daughter inappropriately as you worked next to her,
25 correct?

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1 MS. DIMMITT GNAM: Objection. Misstates
2 testimony. And compound.
3 A. I did not see him.
4 Q. Okay. And in the entire 2015-2016 onion packing season you
5 never overheard Hermilo Cruz say something inappropriate to
6 your daughter as you worked next to her; correct?
7 MS. DIMMITT GNAM: Objection. Compound. And
8 misstates testimony.
9 A. No.
10 Q. And you never talked to her about it?
11 A. I did not.
12 Q. Okay.
13 MR. CUNNINGHAM: That's it. Thank you.
14
15 EXAMINATION
16 BY MS. MELODY:
17 Q. Ms. Diaz, you mentioned, in response to Mr. Spurr's
18 question, that you were aware of women who were also victims
19 of Mr. Cruz's conduct; correct?
20 A. Yes.
21 Q. And you talked about Yesica?
22 A. Yes.
23 Q. And Yasmin?
24 A. Yes.
25 Q. And Roxana?

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1 A. Yes.
2 Q. And your daughter, Samantha; correct?
3 A. I did not mention Samantha. I did not tell you that I knew
4 about her, because at that time I didn't know about her.
5 Q. Are you aware of any other women who have been victims of
6 Mr. Cruz's conduct?
7 MR. CUNNINGHAM: I'm going to object as to
8 form.
9 A. I was aware of two others.
10 Q. What are their names?
11 A. One is Soelia, but I don't remember her last name. And the
12 other one is Erika.
13 Q. Do you know her last name?
14 A. No.
15 MS. MELODY: Thank you.
16
17 EXAMINATION
18 BY MR. SPURR:
19 Q. I guess I should follow up with one question.
20 How did you know that they claimed to also be
21 victims of Mr. Cruz?
22 A. As far as Soelia, I would only hear comments about her.
23 Q. When did you hear those comments?
24 A. I don't remember during which season, but what I do remember
25 is that I heard that she was touched by Don Hermilo.

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1 Q. When did you hear that?
2 A. I don't know if it was during the second season. I'm
3 assuming it was, because -- during the second season,
4 because she was not there during my third season. She
5 didn't go.
6 Q. Okay. How about the other woman that you mentioned that you
7 found out about?
8 A. The other one, I found out about her because she told me
9 herself.
10 Q. When did you find out about her?
11 A. I don't know when it was, but she did tell me herself that
12 Don Hermilo would go up to her when she was working and that
13 he would say words to her, words that would make her un-
14 comfortable.
15 Q. I'm asking about when you heard this. Was it after you were
16 no longer working for the Horning Brothers?
17 A. No, before.
18 Q. Was it the last season that you worked for the Horning
19 Brothers?
20 A. Yes.
21 Q. Okay. So you knew that Mr. Cruz had made -- had engaged in
22 behavior that you found -- that bothered you?
23 A. That's right.
24 Q. And you knew that there were at least two other women that
25 had suffered this kind of behavior at the hands of Mr. Cruz

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

HORNING BROTHERS, LLC, and
HERMILO CRUZ, in his individual
capacity and as a member of the
marital community of HERMILO
CRUZ and CLAUDIA SANCHEZ,

Defendants.

NO. 2:17-cv-00149-TOR

SOCORRO DIAZ SILVAS, ROXANA
RODRIGUEZ DE ALFARO, YESICA
CABRERA NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

vs.

HORNING BROTHERS, LLC,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
YASMIN CABRERA NAVARRO

Taken on Monday, February 12, 2018
at Quincy Port District
101 F Street SW
Quincy, Washington 98848

REPORTED BY: RENE' T. LaCOURSIERE, RMR, CRR
CCR NO. 2472

Exhibit B

Page 18

1 speculation.

2 A. Yes.

3 Q. Do you recall if as one of the Horning brothers was speaking

4 about this piece of paper that he had, if he listed numbers

5 as he was speaking?

6 MS. DIMMITT GNAM: Objection. Vague.

7 A. I believe so, but I'm not sure.

8 Q. Do you remember --

9 MR. SPURR: Well, let's get right to it. I

10 think this is a fresh one, I looked through my copies and

11 didn't see a duplicate. So if we could have this one marked

12 with the next number.

13 (DEFENDANT'S EXHIBIT NO. 17 MARKED)

14 Q. (By Mr. Spurr) Ms. Cabrera, the court reporter has handed

15 you what's been marked as Defendant's Exhibit No. 17. Do

16 you recognize this document?

17 A. Yes.

18 Q. Is that your signature in the bottom left-hand corner of

19 this document?

20 A. Yes.

21 Q. How did you get this document?

22 A. Because when they would have the meeting for us, they would

23 give us this paper and we were supposed to sign it.

24 Q. And I believe you testified that one of the Hornings who was

25 speaking would have a piece of paper in his hand; right?

Page 19

1 A. Yes.

2 Q. And then he would say something and then that would be

3 translated by Hermilo?

4 MS. DIMMITT GNAM: Objection. Calls for

5 speculation.

6 A. Yes.

7 Q. And do you remember, when Mr. Cruz was translating for one

8 of the Hornings would he read, 1: Keep guards in place?

9 MR. SPURR: Oh.

10 THE INTERPRETER: And the interpreter will

11 just be literal and use "guards."

12 A. I don't know what that is. I don't.

13 Q. (By Mr. Spurr) Yeah, let me try something else.

14 Do you remember at a safety meeting -- well, do you

15 remember attending a safety meeting on November 5th, 2012?

16 A. I don't remember, but I think so.

17 Q. Uh-huh.

18 Were the onion shed meetings, safety meetings,

19 mostly the same during your years of working at the Horning

20 Brothers?

21 MS. DIMMITT GNAM: Objection. Vague.

22 A. Yes.

23 Q. Okay. So as Mr. Cruz was translating for one of the

24 Hornings, do you recall if he used numbers in his

25 translation?

Page 20

1 A. I honestly don't remember.

2 Q. You do see that this document has numbers for each section

3 down the left-hand side; right?

4 A. Yes.

5 Q. But you don't remember one way or another whether Mr. Cruz,

6 when he was translating, said 1, 2, 3?

7 A. Maybe so, and I just don't remember right now.

8 Q. That's fair.

9 Could you take a look at No. 8? Number 8 says: If

10 you have a safety concern or question, talk to Warren, Greg,

11 or Allen.

12 A. Yes.

13 Q. Do you remember Hermilo Cruz translating that in onion

14 safety meetings?

15 A. Yes.

16 Q. I'd like you to take a look at No. 11. Number 11 reads, in

17 English: Report any threats or harassment immediately to

18 Warren, Greg, or Allen. Harassment or threats to other

19 workers will not be tolerated.

20 Do you remember that being translated by Mr. Cruz

21 as he interpreted for one of the Hornings?

22 A. No, because what he said was that if any worker bothered

23 you, you could report that person to the bosses. But I

24 don't remember him saying if they're harassing you.

25 Q. So you remember Mr. Cruz saying that if you had a problem

Page 21

1 with any worker you should report that to the bosses?

2 MS. DIMMITT GNAM: Objection. Misstates

3 testimony.

4 A. I don't remember him having said it that way.

5 Q. How do you remember him saying it?

6 A. He just said, If a worker bothers you, you can report him.

7 Q. To whom?

8 A. To the bosses.

9 Q. And what did you understand him to mean --

10 MS. DIMMITT GNAM: Bill --

11 Q. -- by "the bosses"?

12 MS. DIMMITT GNAM: Bill, she's not done with

13 her answer. So we just need to give a minute, so she can

14 let the interpreter translate.

15 A. But we couldn't report it, because they didn't speak

16 Spanish. And in my case, I don't speak English.

17 Q. But you were aware of other bilingual employees at Horning

18 Brothers at the time, were you not?

19 A. Yes.

20 Q. And so you could have asked one of them to interpret for

21 you, couldn't you?

22 A. Yes.

23 MR. SPURR: I'd like to dig through the

24 exhibits and hand the witness Exhibit No. 11, if you could.

25 (COURT REPORTER COMPLIED)

6 (Pages 18 to 21)

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1 speculation.
2 A. If there were no pallets around there, then, yes, you can.
3 But usually there were pallets right in that area.
4 Q. About how far away was the machine that was bagging onions,
5 about how many meters from Mr. Cruz's office?
6 A. I do not understand your question when you talk about the
7 machine that bags onions.
8 Q. Was there a machine in which the onions would go into
9 approximately 50-pound bags?
10 A. Yes.
11 Q. And then would workers take those bags and then stack them
12 in a truck?
13 A. No, on the pallets.
14 Q. Okay. But workers would take those bags and then go stack
15 them on pallets?
16 A. Yes.
17 Q. Okay. And how far away from Mr. Cruz's office was that
18 machine that they would take the 50-pound bags to stack on
19 the pallets, in meters?
20 MR. MARQUEZ: Vague.
21 A. About 5 or 3. I don't know, 5 or 3 meters. I never
22 measured it.
23 Q. Okay. If the worker turned in the direction of Mr. Cruz's
24 office from that location, could he see what was going on?
25 MS. DIMMITT GNAM: Objection. Calls for

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1 speculation.
2 A. Yes. If there were no pallets there, then they would be
3 able to see.
4 Q. Where did you eat lunch at the onion packing shed?
5 A. Outside, sometimes inside.
6 In the beginning we didn't have a lunchroom, it was
7 tables like this along the wall.
8 Q. Would you ever eat at those tables during the day?
9 A. Hardly ever.
10 Q. When did the lunchroom come about?
11 A. I don't remember the exact date, but -- I'm not sure, but I
12 think during the third season.
13 Q. And when the lunchroom was built in the third season, would
14 you often eat lunch in the lunchroom?
15 A. No.
16 MS. DIMMITT GNAM: Objection. Vague.
17 MR. MARQUEZ: Misstates testimony.
18 A. No.
19 Q. Okay. How often would you eat lunch in the lunchroom?
20 A. I would hardly ever go inside, not until the last season
21 that I worked there, that's when I went in there the most.
22 Q. Okay. In the third season approximately how many days of
23 the week would you eat lunch in the lunchroom?
24 A. Hardly ever. I really don't remember, but no.
25 Q. Okay. What about the fourth season, how many days,

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1 approximately, a week would you eat lunch in the lunchroom?
2 A. I would hardly ever go into the lunchroom. It wasn't until
3 my last season that I did go in there more often, but I
4 didn't. We would always eat in the car -- well, almost
5 always.
6 Q. Why did you eat in the car?
7 A. Because we wanted to go outside.
8 Q. And who is "we"?
9 A. My sister, Yesica; myself; and Soelia.
10 Q. Okay. When you did eat in the lunchroom on occasion, would
11 Mr. Cruz be in there?
12 A. Yes.
13 Q. Would you ever talk to Mr. Cruz in the lunchroom?
14 A. No.
15 Q. Would your sister ever talk to Mr. Cruz in the lunchroom?
16 A. No.
17 MS. DIMMITT GNAM: Objection. Misstates
18 facts. Calls for speculation.
19 A. No.
20 Q. Was Mr. Cruz's presence in the lunchroom a reason that you
21 didn't eat in the lunchroom?
22 A. Yes.
23 Q. Were there any other reasons you didn't eat in the
24 lunchroom?
25 A. None.

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1 Q. Did you ever discuss with your sister the experiences you
2 had with Mr. Cruz that you found offensive?
3 A. The first season she was there, I didn't say anything to
4 her. The second season, I think that's when I started
5 telling her, but not everything.
6 Q. Why did you wait until the second season?
7 MS. DIMMITT GNAM: Objection. Confusing.
8 A. Do you think I was going to imagine that Don Hermilo was
9 also going to say things to her?
10 Q. Did Mr. Hermilo, when you spoke with your sister -- strike
11 that.
12 When you spoke with your sister, did she describe
13 offensive comments and experiences that she had with
14 Mr. Cruz?
15 A. Yes.
16 Q. Okay. And when did she first tell you about an offensive
17 comment or some sort of touching by Mr. Cruz?
18 MS. DIMMITT GNAM: Objection. Compound.
19 A. I don't remember dates.
20 Q. Okay. Do you remember seasons?
21 A. About her? I don't know. I really don't remember. I think
22 it could have been the second season, but I really don't
23 remember.
24 Q. How often?
25 MR. MARQUEZ: Interpreter clarification: I

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1 think she -- I think you translated "it could have been the
 2 second season," and I heard the witness say her, referring
 3 to Yesica's second season.
 4 (INTERPRETER CONVERSING WITH WITNESS)
 5 A. Yesica's second season.
 6 Q. (By Mr. Cunningham) How often would you two discuss the
 7 experiences you were having with Mr. Cruz that you found
 8 offensive?
 9 MS. DIMMITT GNAM: Objection. Vague.
 10 A. No, I really didn't tell her things that often.
 11 Q. Okay. How often would she tell you about experiences she
 12 would have with Mr. Cruz that she found offensive?
 13 A. I don't remember how many times she told me.
 14 Q. Was it under ten times?
 15 A. I believe so.
 16 Q. Was it under five times?
 17 A. Maybe around five times or four. I don't know.
 18 Q. How many times did you discuss -- strike that.
 19 When you discussed the experiences you were having
 20 with Mr. Cruz that you found offensive, approximately how
 21 many times did that -- strike that.
 22 Approximately how many times did you discuss with
 23 your sister the offensive comments or touching that you were
 24 experiencing from Mr. Cruz?
 25 MS. DIMMITT GNAM: Objection. Vague.

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1 Compound. Asked and answered.
 2 A. I hardly ever told anyone what I was going through.
 3 Q. I'm asking specifically about your sister. Did you tell her
 4 under ten times the experiences you were having with
 5 Mr. Cruz?
 6 A. Yes.
 7 Q. Was it under five times?
 8 A. Around three or two times. I don't remember.
 9 Q. Were there any discussions between you and your sister about
 10 going to the Horning Brothers with the behavior of Mr. Cruz
 11 that you found offensive?
 12 A. No.
 13 Q. Have you discussed with other women potentially joining this
 14 lawsuit, other than the named plaintiffs that are here?
 15 A. No.
 16 Q. Has there been any discussions about receiving money as part
 17 of this lawsuit in an attempt to recruit other women who
 18 worked at the onion packing shed?
 19 MS. DIMMITT GNAM: Objection. Vague. And
 20 confusing. And compound.
 21 MR. MARQUEZ: Assumes facts.
 22 MS. DIMMITT GNAM: And misstates testimony.
 23 A. I did not understand the question. Maybe you can explain it
 24 more.
 25 Q. Have you spoke with other women who worked at the onion

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1 packing shed about joining this lawsuit?
 2 A. No.
 3 Q. Are you seeking money in this lawsuit?
 4 MS. DIMMITT GNAM: Objection. Calls for a
 5 legal conclusion.
 6 A. No, not at the beginning, all I wanted was justice. Because
 7 he, Don Hermilo, had said -- he said to me, No one's going
 8 to believe you. And so just like he mocked me, telling me
 9 that no one would believe me, and now he can see that I was
 10 believed and here I am.
 11 And then later on I became aware that you could get
 12 some help and you could get some money, and I thought: Oh
 13 Well, that's good.
 14 Q. So you are seeking money in this lawsuit?
 15 MS. DIMMITT GNAM: Objection. Calls for a
 16 legal conclusion.
 17 A. I wasn't seeking money, I just wanted him to see that there
 18 are people that'll listen to us.
 19 Q. My question is very clear: Are you seeking money in this
 20 lawsuit as you sit here today?
 21 MS. DIMMITT GNAM: Objection. Calls for a
 22 legal conclusion.
 23 A. I was not seeking money, but then afterwards we were told,
 24 Well, you could get some money, and I thought: Well, why
 25 not?

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1 Q. Okay. Excluding conversations with your attorneys, who told
 2 you you could get money?
 3 MS. DIMMITT GNAM: Objection.
 4 Just to be clear, for my client, anything that
 5 you talked about just with your lawyers is protected by
 6 attorney-client privilege, and I'll instruct you not to
 7 answer about those conversations.
 8 Mr. Cunningham is asking about any other
 9 conversations not with your lawyer.
 10 A. Through a person I found out that money was going to be
 11 given, through a woman, through Huicha.
 12 Q. Is Huicha a person?
 13 A. She worked at the Horning warehouse.
 14 Q. When did she tell you you could get money as a part of this
 15 lawsuit?
 16 MS. DIMMITT GNAM: Objection. Misstates
 17 testimony.
 18 A. I don't remember the date, but she did tell me. It was a
 19 while back.
 20 Q. Was this while you were working for Horning Brothers?
 21 A. No.
 22 Q. Was this after you had stopped working for Horning Brothers?
 23 A. It was once they found out about the lawsuit or -- I don't
 24 know. But I ran into her and she told me that.
 25 Q. Approximately what point in time did you have this

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

HORNING BROTHERS, LLC, and
HERMILO CRUZ, in his individual
capacity and as a member of the
marital community of HERMILO
CRUZ and CLAUDIA SANCHEZ,

Defendants.

NO. 2:17-cv-00149-TOR

SOCORRO DIAZ SILVAS, ROXANA
RODRIGUEZ DE ALFARO, YESICA
CABRERA NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

vs.

HORNING BROTHERS, LLC,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
YESICA CABRERA NAVARRO

Taken on Monday, February 12, 2018
at Quincy Port District
101 F Street SW
Quincy, Washington 98848

REPORTED BY: RENE' T. LaCOURSIERE, RMR, CRR.
CCR NO. 2472

Exhibit C

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1 Q. And isn't it true that you'd just had a baby before you
 2 started work at the Horning Brothers?
 3 A. Yes.
 4 Q. Do you think it's possible that he was referring to the fact
 5 that you just had a baby?
 6 A. Oh, please.
 7 Q. So how many times do you think he called you mommy during
 8 that first short period of time you worked for the Horning
 9 Brothers?
 10 A. I can't give you a number as to how many times.
 11 Q. Did it happen, like, every day?
 12 A. During the first season maybe not every day.
 13 Q. And how often did he make gestures that you didn't like
 14 during your first season working at the Horning Brothers?
 15 A. That was almost daily.
 16 Q. During the first period of time that you worked for the
 17 Horning Brothers where were you living?
 18 A. With my parents.
 19 Q. Was your sister, Yasmin, also living with your parents at
 20 the time?
 21 A. I don't believe so.
 22 Q. Did you and your sister commute together during that first
 23 season you worked for the Horning Brothers?
 24 A. Yes.
 25 Q. How did you -- describe your commute for me.

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1 A. Well, she -- I believe my brother would take her to my
 2 parents' house, and from there she would go with me.
 3 Q. In a car?
 4 A. In my truck.
 5 Q. Okay. And so your sister would ride with you in your truck
 6 to work every day?
 7 A. Yes.
 8 Q. And would you also go home together at the end of the day?
 9 A. Yes.
 10 Q. And you worked very close to her in the onion shed also;
 11 right?
 12 MS. DIMMITT GNAM: Objection. Vague.
 13 A. Well, not that close, but I believe that during the first
 14 season she was there with me showing me how to do my job.
 15 Q. So as you commuted with your sister to work and home from
 16 work during that first season, did you talk about work?
 17 A. No.
 18 Q. Did you ever talk to your sister about Mr. Cruz's conduct
 19 that you found objectionable during that first year you were
 20 commuting with your sister?
 21 A. Not to her, no.
 22 Q. Did your sister, during that first year, ever make any
 23 complaints to you about Mr. Cruz's behavior?
 24 A. Yes.
 25 Q. What complaints did she make to you?

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1 A. Of his behavior, and I don't remember exactly what. She and
 2 I really didn't talk that much.
 3 Q. Did you ever hear Mr. Cruz call your sister mommy?
 4 A. No. I didn't hear it myself, no.
 5 Q. Did you ever see Mr. Cruz make unpleasant gestures towards
 6 your sister during that first season?
 7 A. During that first season, you know, to be honest, I'm not
 8 sure. When he was next to me, I couldn't see what he was
 9 doing to my sister.
 10 Q. Can you remember anything about any complaint your sister
 11 had about Mr. Cruz during that first year you worked there?
 12 A. Possibly. I just can't remember what the complaints were.
 13 Q. Now's when I would like you to remember, if you can.
 14 You say "possibly," so what can we do to maybe
 15 revive your memory about whatever complaints your sister
 16 had?
 17 A. It's just that during that first season I don't really have
 18 an exact memory. I just know that he would say things to
 19 her, I just don't know during what stage.
 20 Q. What season you mean?
 21 A. Yes.
 22 Q. Yeah.
 23 But what you do remember about the first season is
 24 that you never told your sister about any of your complaints
 25 about Mr. Cruz; is that right?

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1 A. If I had mentioned to him -- excuse me, to her? Your
 2 question is if I remember her complaining to me or if I
 3 complained to her?
 4 Q. I'm just trying to get -- understand your testimony. And my
 5 understanding of your testimony is, you said you never told
 6 your sister about any complaints you had about Mr. Cruz
 7 during that first year?
 8 A. Yes.
 9 Q. On the other hand, you do remember your sister having some
 10 complaints to you about Mr. Cruz's conduct during that first
 11 year?
 12 A. No, I'm not sure what season it was in.
 13 Q. So now you're not sure that your sister ever did have any
 14 complaint that she expressed to you about Mr. Cruz during
 15 that first season?
 16 MR. MARQUEZ: Misstates testimony.
 17 A. Like I said, I don't know in what season it was, I don't
 18 remember.
 19 Q. Okay. So your testimony is, then, it's possible that your
 20 sister did tell you about some complaints that she had about
 21 Mr. Cruz during that first season?
 22 MS. DIMMITT GNAM: Objection. Misstates
 23 testimony.
 24 A. And I will repeat the same thing: That I'm not sure in
 25 which season it happened, so I cannot say for sure.

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1 THE INTERPRETER: And, again, for the
2 interpreter, the word "guards" as to?
3 MR. SPURR: Oh. I picked a bad one again,
4 didn't I?
5 THE INTERPRETER: Yeah.
6 Q. (By Mr. Spurr) Let's look at Item No. 2. Oh, and then we
7 have "sprockets" problems.
8 THE INTERPRETER: The interpreter may look
9 them up.
10 Q. (By Mr. Spurr) Let's go to No. 3. Number 3: Use stairs
11 and ladders correctly, do not jump off the side of the
12 railings.
13 Do you see that?
14 A. I don't remember that.
15 Q. Do you remember anybody mentioning that at any of these
16 safety meetings?
17 A. No.
18 Q. Okay. Please look at No. 4. Item No. 4, it says: Park all
19 cars in designated parking lot. Do not park in front of
20 shed or next to yard.
21 Do you see that and do you remember that being said
22 at any one of these onion shed meetings that you attended?
23 A. No.
24 Q. Look at Item No. 8, please. It says: If you have a safety
25 concern or question, talk to Warren, Greg, or Allen.

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1 Do you see that?
2 A. Yes.
3 Q. Do you ever remember that being mentioned at any of the
4 onion shed safety meetings?
5 MS. DIMMITT GNAM: Objection. Mis-
6 characterizes testimony. Assumes facts.
7 A. No.
8 Q. What about Item No. 13: No using cell phones during work?
9 A. Oh, yes.
10 Q. You do remember that being mentioned at an onion shed safety
11 meeting?
12 MS. DIMMITT GNAM: Objection.
13 MR. MARQUEZ: Misstates --
14 MS. DIMMITT GNAM: Misstates testimony.
15 A. I'm not sure if where I heard it was a safety meeting. I
16 don't know.
17 Q. Please look at Item No. 14. It says: Do not punch any time
18 card other than your own.
19 Do you remember if that was ever mentioned at an
20 onion shed safety meeting?
21 A. I don't know if it was mentioned at a safety meeting, but I
22 know I did hear it.
23 Q. And then, finally, let's look at Item No. 11. It
24 says: Report any threats or harassment immediately to
25 Warren, Greg, or Allen. Harassment or threats to other

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1 workers will not be tolerated.
2 A. No.
3 Q. I didn't ask a question yet.
4 A. Well, but you've been asking if I remember.
5 Q. Yeah. Do you remember that ever being mentioned at an onion
6 shed safety meeting?
7 A. No.
8 Q. Do you recall there being a sign on the wall in the onion
9 shed, next to the phone by the door, that had the Horning
10 family members' names and phone numbers on it?
11 MS. DIMMITT GNAM: Objection. Assumes facts.
12 A. No.
13 MR. SPURR: I'd like to have this marked as
14 Defendant's Exhibit No. 12.
15 (DEFENDANT'S EXHIBIT NO. 12 MARKED)
16 MS. DIMMITT GNAM: Thank you.
17 Q. (By Mr. Spurr) Ms. Cabrera, do you see Defendant's
18 Exhibit No. 12 in front of you?
19 A. Yes.
20 Q. Do you recognize the document?
21 A. I believe it's the same one from before.
22 Q. Is that your signature on the bottom of this document?
23 A. Yes.
24 Q. And this is dated November 14th, 2013. Do you see that?
25 A. Yes.

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1 Q. Do you agree that this document means that you attended an
2 onion shed safety meeting on November 14th, 2013, by your
3 signature on this document?
4 MS. DIMMITT GNAM: Objection. Argumentative.
5 MR. MARQUEZ: Lacks foundation. The witness
6 has testified that she does not read English.
7 A. Yes.
8 Q. And please look at Item No. 11. It says: Report any
9 threats or harassment immediately to Warren, Greg, or Allen.
10 Harassment or threats to other workers will not be
11 tolerated.
12 Do you remember that being mentioned at this onion
13 shed meeting on November 14th, 2013?
14 A. I can say for sure that I didn't.
15 MR. SPURR: Could I please have this marked as
16 Defendant's Exhibit No. 13?
17 (DEFENDANT'S EXHIBIT NO. 13 MARKED)
18 Q. (By Mr. Spurr) Ms. Cabrera, the court reporter has handed
19 you what's been marked as Defendant's Exhibit No. 13. Could
20 you please take a minute to review both pages of this
21 document.
22 A. Yes, I looked at it.
23 Q. Is your signature on the second page of Defendant's
24 Exhibit No. 13?
25 A. Yes.

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1 A. I -- I don't know.
 2 Q. Well, so we don't have to go through the testimony twice.
 3 So bear with me, please. Okay?
 4 So you told Mr. Horning or you told -- in Spanish
 5 you told Jose Garay about the boot-touching incident where
 6 the onion was thrown?
 7 A. Yes.
 8 Q. And you told him about the bachelor party discussion?
 9 A. Yes.
 10 Q. And you told him about the time you were in Mr. Cruz's car
 11 and he touched your leg?
 12 A. Yes.
 13 Q. And you talked to him and you said in Spanish to Jose Garay,
 14 told him about all the inappropriate and offensive comments
 15 Mr. Cruz had made to you?
 16 A. Yes.
 17 Q. And you told Jose about the time Hermilo yelled at you in
 18 front of the other employees when you wanted to leave early?
 19 MR. MARQUEZ: Objection. Misstates facts.
 20 Q. If the answer is no, you can say that's not something you
 21 complained about.
 22 A. It's not that it's a no. What I know is that I texted Jose,
 23 I sent messages.
 24 Q. My understanding is that you were having a personal meeting
 25 with Mr. Horning and Jose Garay and you.

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1 A. And you're right.
 2 (MR. MORALES EXITING PROCEEDINGS)
 3 Q. (By Mr. Spurr) Yes.
 4 And so you were making your complaints about
 5 Hermilo in Spanish to Mr. Garay; correct?
 6 A. Yes.
 7 Q. And then he was supposed to translate those into English for
 8 Mr. Horning; is that correct?
 9 A. Yes.
 10 Q. And what you told Jose in Spanish was about all of the
 11 incidents we've discussed here today?
 12 MS. DIMMITT GNAM: Objection. Misstates
 13 testimony.
 14 A. In part what we've talked here, yes.
 15 Q. Uh-huh.
 16 How long was this meeting?
 17 A. I don't remember an exact time.
 18 Q. Well, was it more than --
 19 A. But possibly 30 to 45 minutes.
 20 Q. Oh. So it was less than an hour?
 21 A. Possibly.
 22 Q. So you don't understand English very well; is that correct?
 23 A. Correct.
 24 Q. And that's one of the reasons we have an interpreter today;
 25 right?

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1 A. Yes.
 2 Q. So you don't know whether Jose translated everything you
 3 told him correctly to Mr. Horning, do you?
 4 A. Well, because of the language, no, I don't know. But
 5 because of his expression and how angry he was, then I know
 6 he did.
 7 Q. So you said he looked angry during this discussion?
 8 MS. DIMMITT GNAM: Objection.
 9 A. He was angry.
 10 Q. And that's Mr. Horning?
 11 A. No, I'm talking about Jose Garay, who was my interpreter.
 12 Q. Oh, Mr. Garay was angry?
 13 A. Yes.
 14 Q. Okay. But you don't know what he said in English to Warren
 15 Horning; isn't that correct?
 16 A. I don't know exactly, but he said that he would interpret
 17 things as I said them to him; that he was not going to add
 18 or subtract from that. And he said it to him in English,
 19 because, well, that's what he said to me. And the same
 20 thing for both, it would go both ways. He would interpret
 21 what I had said, and then I would be told what was said.
 22 Q. But because you don't speak or understand English very well,
 23 you couldn't know what he, what Jose, said to Mr. Horning;
 24 is that correct?
 25 A. Correct.

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1 Q. And as far as you know, Mr. Horning could not understand
 2 whatever Spanish things you were saying to Mr. Garay;
 3 correct?
 4 A. That's true. However, I also understand that the man asked
 5 that if I -- well, asked if I was willing to speak to Don
 6 Hermilo, so I imagine that we were talking about the same
 7 thing.
 8 Q. What did Mr. Horning say during that meeting?
 9 Actually, I should probably rephrase that
 10 question. What did Mr. Garay translate to you that
 11 Mr. Horning said?
 12 A. I don't remember all the words that were said, but what I do
 13 remember is that he touched my arm because I was crying. He
 14 said he was very sorry. And he said, Are you willing to
 15 talk to Don Hermilo? And I said, Yes.
 16 Q. And what happened next?
 17 A. He called Hermilo over. We went into the warehouse that's
 18 right by there. And I guess I would say in quotation marks
 19 that the three of us were going to talk there.
 20 Q. So at that point Jose left?
 21 A. Oh, well, excuse me, all four of us.
 22 Q. So all four of you then had a discussion?
 23 A. Well, if that's what you want to call it.
 24 Q. What do you call it?
 25 A. Well, I don't know, because Don Hermilo started talking and

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1 MS. DIMMITT GNAM: Objection. Calls for a
 2 legal conclusion.
 3 A. No.
 4 Q. You're not seeking any money damages at the conclusion of
 5 this lawsuit?
 6 MS. DIMMITT GNAM: Objection. Calls for a
 7 legal conclusion.
 8 A. The only thing that I'm seeking with this lawsuit is for
 9 justice to be done, that's it.
 10 Q. And as part of that justice are you seeking to be paid money
 11 at the conclusion of this lawsuit?
 12 MS. DIMMITT GNAM: Objection. Calls for a
 13 legal conclusion.
 14 A. I've already answered that.
 15 Q. And is it yes or no?
 16 A. I said no.
 17 MR. MARQUEZ: And, for the record, there are
 18 other plaintiffs in this case who may be seeking other
 19 remedies.
 20 Q. When you say you're seeking "justice," what do you mean?
 21 A. I don't know. Based on the law, whatever that . . .
 22 I'm not an attorney, I don't know anything about
 23 the law.
 24 Q. No, I'm not asking you for a legal conclusion, I'm asking
 25 you -- well . . .

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1 A. And I'm answering that whatever can be done legally, that's
 2 what I want.
 3 Q. During the time you worked for Horning Brothers did you ever
 4 see a therapist?
 5 A. No.
 6 Q. And after you stopped working for Horning Brothers have you
 7 ever seen a therapist for to deal with any of the incidents
 8 or comments that we've talked about today?
 9 A. No.
 10 Q. And as we sit here today do you have any plans to see a
 11 therapist in the future for any of the comments or actions
 12 of Mr. Hermilo Cruz that you've described?
 13 A. Well, no, it's not in my thoughts or my plans.
 14 MR. CUNNINGHAM: Do you have anything for
 15 her?
 16 (MR. SPURR MOVING HEAD SIDE TO SIDE)
 17 MR. CUNNINGHAM: Okay. That's it.
 18
 19 EXAMINATION
 20 BY MR. MARQUEZ:
 21 Q. Good afternoon, Ms. Cabrera, I just have a few questions for
 22 you.
 23 Earlier you were asked by Mr. Spurr what you could
 24 see from where you worked in the onion shed. Do you
 25 remember that?

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1 A. Well, you -- practically you really couldn't see people,
 2 because you had to be working. And when we would stop
 3 working, then you could see a little, but . . .
 4 I'm not sure if I responded to your question.
 5 Q. So if I understand correctly, when the belt was operating,
 6 it wasn't really possible to look around?
 7 A. It was not possible.
 8 Q. Why not?
 9 A. Because we had to be looking at the onions and sorting
 10 them.
 11 Q. You were asked questions about onion shed safety meetings.
 12 Do you remember those questions?
 13 A. Oh, I really don't.
 14 Q. I'm going to show you documents that were shown to you
 15 earlier, they're Defendant's Exhibits J1, 12, and 13.
 16 A. Uh-huh.
 17 Q. Do you remember being asked questions about these documents
 18 by Mr. Spurr?
 19 A. Yes.
 20 Q. Did you ever see documents like the documents on the first
 21 page of each of those exhibits while you worked at Horning
 22 Brothers?
 23 A. No.
 24 Q. Were you ever given an Onion Shed Safety Meeting sheet in
 25 Spanish?

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1 A. No.
 2 Q. And you don't read English?
 3 A. No.
 4 Q. Are you aware whether other workers at Horning Brothers were
 5 unable to read English?
 6 A. No.
 7 Q. Do you know whether Don Hermilo knew that at least some
 8 workers at Horning Brothers did not speak English?
 9 MR. CUNNINGHAM: Object as to form.
 10 Speculation.
 11 A. Well, he knew that we did not know how to speak English.
 12 Q. How did he know that?
 13 MR. CUNNINGHAM: Same objection.
 14 THE INTERPRETER: For the interpreter, how did
 15 he or how did you?
 16 MR. MARQUEZ: "How did he know that?"
 17 MR. CUNNINGHAM: Same objection.
 18 A. Well, because he was the one that was interpreting.
 19 Q. (By Mr. Marquez) Do you know whether the Hornings knew that
 20 at least some workers at the onion packing shed didn't speak
 21 English?
 22 A. No, I don't know if they knew.
 23 Well, I imagine that they did, because they would
 24 use Don Hermilo for interpreting.
 25 Q. You earlier also testified about having complained to the

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

HORNING BROTHERS, LLC, and
HERMILO CRUZ, in his individual
capacity and as a member of the
marital community of HERMILO
CRUZ and CLAUDIA SANCHEZ,

Defendants.

NO. 2:17-cv-00149-TOR

SOCORRO DIAZ SILVAS, ROXANA
RODRIGUEZ DE ALFARO, YESICA
CABRERA NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

vs.

HORNING BROTHERS, LLC,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
ROXANA RODRIGUEZ DE ALFARO

Taken on Tuesday, February 13, 2018
at Quincy Port District
101 F Street SW
Quincy, Washington 98848

REPORTED BY: RENE' T. LaCOURSIERE, RMR, CRR
CCR NO. 2472

Exhibit D

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1 (MS. DIMMITT GNAM INDICATING)
 2 THE WITNESS: (Without interpreter) Oh.
 3 Q. (By Mr. Spurr) I was asking, at these meetings that you
 4 referred to, were you also handed a document that looked
 5 like the first page of Defendant's Exhibit No. 3?
 6 A. Yes, they would hand out a page.
 7 Q. But it was in English; right?
 8 A. Yes.
 9 Q. Uh-huh.
 10 The date at the top of this document, Defendant's
 11 Exhibit No. 3, is December 2nd, 2014. Do you see that?
 12 A. I do.
 13 Q. So do you remember attending a meeting about three weeks
 14 after you started work in the onion shed?
 15 A. Well, I don't remember when it was, but I do remember that
 16 they had a meeting.
 17 Q. Well, please look at the second page of Exhibit No. 3 again.
 18 You can see the date on this document at the top is also
 19 December 2nd, 2014. Do you see that?
 20 A. Yes.
 21 Q. And the time indicated is around 10:00 AM. Do you see that?
 22 A. Yes.
 23 Q. And your signature is also on this document; right?
 24 A. Yes, my name is on it.
 25 Q. So after seeing this document and the first page and your

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1 signature on this document, does that lead you to believe
 2 that you attended this meeting on December 2nd, 2014?
 3 MS. DIMMITT GNAM: Objection. Misstates
 4 testimony.
 5 A. Yes, I did attend a meeting.
 6 Q. Describe that meeting for me.
 7 A. Oh. The meeting was for they talked about precautions one
 8 should have at work, because your sweater could get caught
 9 on the machine. It was about safety, that's what the
 10 meeting was about.
 11 Q. Okay. So where were the onion shed workers when this
 12 meeting was occurring?
 13 A. Oh, we were all gathered. We had been called. They would
 14 have us get together. And then he would talk and
 15 Mr. Hermilo would do the translation, he was the
 16 interpreter.
 17 Q. Okay. So the person who spoke at these meetings spoke
 18 English?
 19 A. Yes.
 20 Q. Do you remember which one of the Hornings was the one
 21 speaking at this meeting?
 22 A. I really don't remember, but the two owners would come.
 23 Q. So you remember two owners being at this safety meeting?
 24 A. Yes.
 25 Q. And when they spoke to you, they spoke in English?

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1 A. Yes.
 2 Q. And would they read down a list of items and speak the
 3 numbers out loud, 1, 2, 3, 4?
 4 MS. DIMMITT GNAM: Objection. Confusing.
 5 A. I don't remember them saying the numbers, but -- but they
 6 would read it, and then Mr. Hermilo would interpret this.
 7 Q. So you remember one of the Hornings reading this document in
 8 English at the meeting?
 9 MS. DIMMITT GNAM: Objection. Calls for
 10 speculation.
 11 A. I don't remember clearly which one of them had the paper,
 12 but then they would hand it around for everyone.
 13 Q. But one of them would read the paper and hold it in his
 14 hands and read it to the workers; is that correct?
 15 MS. DIMMITT GNAM: Objection. Calls for
 16 speculation.
 17 A. Yes.
 18 Q. And then someone translated what they were reading into
 19 Spanish; is that correct?
 20 MS. DIMMITT GNAM: Objection. Calls for
 21 speculation.
 22 A. Yes.
 23 Q. And who was that person translating into Spanish?
 24 A. Mr. Hermilo.
 25 Q. And how many of these safety meetings do you think you

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1 attended when you worked at Horning Brothers?
 2 A. Around two, three.
 3 Q. And were all of them pretty much the same?
 4 A. Yes. They would just talk about us being very
 5 precautions [sic]. And that if we got injured, we were
 6 to notify them.
 7 Q. Okay. Let's look at Item No. 4 on Defendant's Exhibit
 8 No. 3. Do you see that?
 9 Number 4 in English says: Park all cars in
 10 designated parking lot. Do not park in front of shed or
 11 next to yard.
 12 A. Yes.
 13 Q. Do you remember Mr. Cruz saying something like this in
 14 Spanish at the safety meeting?
 15 A. Yes. I remember him saying not to park the cars in front or
 16 not to park near the -- there was something, there was like
 17 something of gas, like a gas container.
 18 Q. And he said this at the safety meeting?
 19 A. Yes. He would say, Move your cars.
 20 Q. Do you remember if Mr. Cruz said numero cuatro before
 21 telling you about where to park your cars?
 22 A. No, that I don't remember.
 23 Q. You don't remember the numbers?
 24 A. No.
 25 Q. Okay. Let's look at Item No. 7. In English it says: Keep

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1 correct?
 2 A. No, I couldn't say anything.
 3 Q. Why not?
 4 A. Because, well, if I said something, he was going to fire me
 5 or he was going to take -- well, he would mistreat me, the
 6 way he had been doing it.
 7 Q. Did you understand that Mr. Cruz had bosses?
 8 MS. DIMMITT GNAM: Objection. Vague.
 9 A. Yes.
 10 Q. Who were his bosses?
 11 MS. DIMMITT GNAM: Objection. Calls for
 12 speculation. And vague.
 13 A. Well, the men, the older men.
 14 Q. Uh-huh.
 15 Did you consider telling the older men, the bosses,
 16 about Mr. Cruz's offensive conduct?
 17 A. No.
 18 Q. Why not?
 19 A. Because I don't speak English, and he only speaks English.
 20 Q. When you worked on the onion sorting line you worked right
 21 next to Blanca; correct?
 22 A. Yes.
 23 Q. Do you know whether Blanca spoke English?
 24 A. Yes.
 25 Q. She was bilingual, wasn't she?

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1 MS. DIMMITT GNAM: Objection. Calls for
 2 speculation.
 3 A. I don't know if she was bilingual.
 4 Q. But you understand that she spoke English; is that correct?
 5 MS. DIMMITT GNAM: Objection. Vague.
 6 A. Well, no, I did not know she spoke English.
 7 Q. Why, when I asked you the first time if Blanca spoke
 8 English, did you answer yes?
 9 A. Because she's bilingual. But that's what I don't know, if
 10 she's bilingual.
 11 Q. You know she speaks English, though?
 12 MS. DIMMITT GNAM: Objection. Vague.
 13 A. The thing is, I really don't remember if she did speak
 14 English, because we really didn't talk much amongst the
 15 coworkers. And we were paying attention to the onions, not
 16 talking. And I really didn't become friends with anyone
 17 there. I couldn't be there just talking to Blanca.
 18 Q. Did you get breaks when you were working on the onion line?
 19 A. Yes, we did.
 20 Q. Did you --
 21 A. We did get breaks.
 22 Q. Did you speak with your coworkers during those breaks?
 23 MS. DIMMITT GNAM: Objection. Vague.
 24 A. I would go to the car. The other people would go to the --
 25 well, where they would eat, that's what they would say.

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1 Q. There is a lunchroom in the onion shed, isn't there?
 2 A. Yes.
 3 Q. Did you ever eat in the lunchroom during the three months
 4 you worked for the Horning Brothers in the onion shed?
 5 A. No.
 6 Q. Not a single time?
 7 A. No.
 8 Q. You always ate in your car. Is that your testimony?
 9 A. Yes.
 10 Q. How long were the breaks when you were working in the onion
 11 shed at Horning Brothers?
 12 A. I believe they were 15 minutes, and the lunch break was half
 13 an hour.
 14 Q. So during the time you worked on the sorting line did you
 15 ever talk with any of your coworkers during those 15-minute
 16 breaks?
 17 A. Sometimes I would.
 18 Q. Who would you talk to?
 19 A. I didn't have any -- well, when I would go into the
 20 warehouse, some women were there, and they would just tell
 21 me, Don't feel bad.
 22 But I didn't want to talk about it with them.
 23 They're the ones that would say that to me.
 24 Q. Who were those women? Do you know?
 25 A. The woman by the name of Mauricia. And the other woman was

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1 Dona Socorro. They would just say, Don't pay attention to
 2 him.
 3 But it was impossible for me to feel okay, because
 4 the workplace was intolerable for me.
 5 Q. Did you ever think of asking anyone to interpret for you so
 6 you could report Mr. Cruz's abusive conduct to the bosses?
 7 A. No, because they're just coworkers. They couldn't do
 8 anything or say anything, because they were afraid of
 9 Hermilo. No one could say anything about Hermilo's
 10 behavior. It's difficult to report that. The coworkers are
 11 afraid, because then he retaliates against them.
 12 And nobody wants to get involved. Nobody wants to
 13 get into trouble. Nobody wants to get involved in a
 14 coworker's troubles. Nobody wants to get in trouble or
 15 defend me. Who would defend me?
 16 Q. So after the incident up in the tank area when Mr. Cruz
 17 touched you offensively, can you think of another incident
 18 that was offensive to you that Mr. Cruz did?
 19 A. Yes.
 20 Q. What was the next thing you remember Mr. Cruz doing that was
 21 offensive to you?
 22 A. It was offensive, because he stood behind me and he was
 23 pointing to an onion and I could feel his penis touching
 24 my -- my bottom.
 25 MS. DIMMITT GNAM: Objection. For the record,

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1 And I would go and ask for permission, I'd say, I'm going
 2 to the bathroom. And then by the time I came out of the
 3 bathroom, Hermilo was already right outside. But Hermilo
 4 was not able to touch me there, because sometimes there
 5 was another woman in the bathroom, because there were
 6 two bathrooms. But I was able to go out there when
 7 there was another woman also on her way there, because he
 8 would harass me. He made my job there get to the point
 9 where I could no longer tolerate it. I couldn't continue
 10 working.
 11 Q. Did Mr. Cruz ever touch you during these bathroom incidents
 12 where you'd go back and forth?
 13 A. No. No, but he would go out there to see if he could. He
 14 didn't do it, because he knew the other woman could come
 15 out, but he would stand right outside.
 16 Q. Okay. But Mr. Cruz never touched you in any of these
 17 incidents by the bathroom. Am I correct?
 18 A. Yes.
 19 MS. DIMMITT GNAM: Objection. Asked and
 20 answered.
 21 Q. Are you and Victor still married?
 22 A. Yes.
 23 Q. But Victor doesn't live with you any longer?
 24 A. No.
 25 Q. Okay. Where is Victor?

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1 A. He lives in George.
 2 Q. So he lives near this area?
 3 A. Yes.
 4 Q. But in a separate residence?
 5 A. Yes.
 6 Q. You referred to an incident where Mr. Cruz put the word
 7 macho on an onion. Do you recall testifying about that?
 8 A. Yes.
 9 Q. Isn't it true that the term macho refers to a hard onion
 10 with a hollowed-out center, and that the women and men
 11 would refer to this as an onion that they would need to
 12 discard -- dis -- to throw away as it went through the
 13 onion packing line?
 14 A. No.
 15 MS. DIMMITT GNAM: Objection. Calls for
 16 speculation. Vague. Compound.
 17 A. No, because he added "I am your macho," so there's a
 18 difference.
 19 Q. But the term "macho" does refer to a hard onion with a
 20 hollowed-out center. Am I correct?
 21 A. I didn't know that an onion was called macho. What I know
 22 is that with his pen he wrote: I am your macho. And he
 23 would show it to me.
 24 Q. How much money are you seeking in this lawsuit?
 25 MS. DIMMITT GNAM: Objection. Calls for

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1 a legal conclusion.
 2 A. I'm not seeking money, I just want this to get cleared up;
 3 that I want that man to go to jail and pay for what he did.
 4 I don't want things to stay as they are, because
 5 it's not fair what I suffered there and for him to be out
 6 without being punished. So what I'm asking for is for him
 7 to be taken to jail, that's the only way I'm going to have
 8 some peace.
 9 Q. Okay. So --
 10 A. Because it was very difficult to work in that, with that
 11 person.
 12 Q. So that's what you want from this lawsuit and you don't
 13 want money?
 14 MS. DIMMITT GNAM: Objection. Calls for a
 15 legal conclusion.
 16 A. That's what I want.
 17 MS. MELODY: And I'll object to the extent
 18 that Ms. Rodriguez hasn't brought a lawsuit against your
 19 client. And so to the extent that you're calling for a
 20 legal conclusion about her claims against your client, she
 21 hasn't made any.
 22 Q. Do you want money from Horning Brothers?
 23 MS. DIMMITT GNAM: Objection. Calls for a
 24 legal conclusion. And vague.
 25 A. No, I have no interest.

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1 Q. Okay. Last two questions: Have you ever seen a therapist
 2 for the incidents you've described, either when you worked
 3 for Horning Brothers or after working for Horning Brothers?
 4 A. Yes.
 5 (MS. VELASQUEZ EXITING PROCEEDINGS)
 6 Q. (By Mr. Cunningham) When did you start seeing this
 7 therapist?
 8 A. It was -- I don't remember if it was in the month of August,
 9 but it was after I spoke to Alyson.
 10 MS. DIMMITT GNAM: Objection.
 11 A. I met Alyson --
 12 MS. DIMMITT GNAM: To the extent the answer
 13 relates to any communication with me, your lawyer, I'll
 14 instruct my client not to answer on the basis of attorney-
 15 client privilege.
 16 THE WITNESS: Okay.
 17 Q. So let me ask you pointed questions. So you started seeing
 18 a therapist in August 2017; is that correct?
 19 A. No.
 20 (MS. VELASQUEZ ENTERING PROCEEDINGS)
 21 A. 2015.
 22 Q. (By Mr. Cunningham) So you started seeing a therapist in
 23 August of 2015, if I understand your testimony?
 24 A. Right around there.
 25 Q. Okay. And how many times from August 2015 to the present

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1 Rights Commission about the way Hermilo had treated you?
 2 A. Yes, correct.
 3 Q. That is a complaint, correct?
 4 A. Yes.
 5 MS. MELODY: I don't have any further
 6 questions.
 7
 8 EXAMINATION
 9 BY MR. SPURR:
 10 Q. I apologize, but I just have a few questions.
 11 A. Okay.
 12 Q. Ms. Melody just asked you a question about when Victor
 13 picked up his check and talked to the old man; is that
 14 correct?
 15 A. Yes.
 16 Q. And it's your testimony that Victor told you he talked to
 17 the old man and told the old man that he resigned because of
 18 Mr. Cruz's treatment of you; is that correct?
 19 A. Yes.
 20 Q. And this conversation occurred at the time that Victor was
 21 picking up his last check at the Hornings; is that correct?
 22 A. Yes.
 23 Q. And at that time you had not told your husband, Victor,
 24 about any of the sexual harassment that occurred up in the
 25 tank area of the onion shed, had he?

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1 THE INTERPRETER: "Had he?"
 2 MS. DIMMITT GNAM: Objection.
 3 MR. SPURR: Oh.
 4 Q. (By Mr. Spurr) Had you?
 5 MS. DIMMITT GNAM: Thank you.
 6 A. No.
 7 Q. So the abuse that Victor talked about with the old man, when
 8 he picked up his last check, was the criticisms and
 9 humiliation about your work performance when you were
 10 working on the onion line; isn't that correct?
 11 MS. DIMMITT GNAM: Objection. Misstates
 12 testimony.
 13 A. Yes.
 14 MR. SPURR: Thank you. We're done.
 15 MR. CUNNINGHAM: Are you done?
 16 (MS. MELODY MOVING HEAD UP AND DOWN)
 17 MR. CUNNINGHAM: Cool.
 18 MS. MELODY: Off the record.
 19 MS. DIMMITT GNAM: Yes.
 20 (OFF-THE-RECORD DISCUSSION REGARDING THE
 21 CONFIDENTIAL PORTIONS OF EXHIBITS/TRANSCRIPT)
 22 MS. DIMMITT GNAM: And we'll reserve
 23 signature.
 24 (PROCEEDINGS CONCLUDED AT 9:18 PM)
 25 (SIGNATURE RESERVED)

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1 INTERPRETER CERTIFICATE OF SIGNATURE
 2
 3
 4
 5 I do hereby certify that on the day
 6 of , 2018, before me personally appeared
 7 ROXANA RODRIGUEZ DE ALFARO, whose testimony appears
 8 hereinbefore.
 9 That as the interpreter I have interpreted
 10 transcript testimony to witness, who, having made such
 11 changes and corrections thereon as were desired, thereupon
 12 approved and signed transcript in my presence.
 13 IN WITNESS WHEREOF, I have hereunto signed and
 14 dated this Interpreter Certificate of Signature.
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

 PRINTED NAME OF INTERPRETER

 SIGNATURE OF INTERPRETER

 ROXANA RODRIGUEZ DE ALFARO

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1 STATE vs. HORNING BROTHERS, LLC; et al.
 2 NO. 2:17-cv-00149-TOR
 3
 4 ORIGINAL CORRECTION SHEET
 5
 6 CHANGES IN FORM AND SUBSTANCE REQUESTED BE MADE IN THE
 7 FOREGOING ORAL EXAMINATION TRANSCRIPT:
 8 PAGE LINE CORRECTION AND REASON
 9
 10
 11
 12
 13
 14
 15
 16 I hereby certify, under penalty of perjury, that this is a
 17 true and correct copy of my testimony, with the exception of
 18 the corrections noted above.
 19
 20
 21
 22
 23
 24
 25

ROXANA RODRIGUEZ DE ALFARO

Date

See: Rule CR 30(e)
 RETURN TO: rene@acr.rocks (via email)
 or
 RENE T. LaCOURSIERE, RMR, CRR, CCR
 AFFILIATED COURT REPORTERS
 PO BOX 994, YAKIMA, WA 98907

Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

HORNING BROTHERS, LLC, and
HERMILO CRUZ, in his individual
capacity and as a member of the
marital community of HERMILO
CRUZ and CLAUDIA SANCHEZ,

Defendants.

NO. 2:17-cv-00149-TOR

SOCORRO DIAZ SILVAS, ROXANA
RODRIGUEZ DE ALFARO, YESICA
CABRERA NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA MENDOZA,

Plaintiffs-Intervenors,

vs.

HORNING BROTHERS, LLC,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
SAMANTHA MENDOZA

Taken on Tuesday, February 13, 2018
at Quincy Port District
101 F Street SW
Quincy, Washington 98848

REPORTED BY: RENE' T. LaCOURSIERE, RMR, CRR
CCR NO. 2472

Exhibit E

Page 22

1 a card. And it has, like, pictures, and so -- and then
 2 there's, like, a deck of cards too with the pictures. So if
 3 they say, like, the bird, and you have the bird, you'll just
 4 put, like, a quarter on it or something. And once you fill
 5 out the -- like the sheet with, like, the quarters, you win.
 6 You just say buenas and ...
 7 Q. So it's a card game of some sort?
 8 MS. DIMMITT GNAM: Objection.
 9 Q. Is that correct?
 10 MS. DIMMITT GNAM: Misstates testimony.
 11 A. Yes.
 12 Q. But it's not with a normal 52-card deck of playing cards; is
 13 that right?
 14 A. Yes, that's right.
 15 Q. It's a special set of cards?
 16 A. Yes.
 17 Q. Okay. Did your mother tell you about those card games at
 18 the Cruzes'?
 19 MS. DIMMITT GNAM: Objection. Confusing as to
 20 "card games."
 21 A. Loteria? Yeah, she told me. She would invite me on some
 22 occasions. I did go once, but I didn't like it, so I didn't
 23 go again.
 24 Q. So you went over to the Cruzes' house before actually
 25 starting work at the Horning Brothers?

Page 23

1 MS. DIMMITT GNAM: Objection. Misstates --
 2 MS. MELODY: Objection. Misstates testimony.
 3 Q. Let me reask it: Did this one occasion where you went over
 4 to the Cruzes' to play cards occur before or after you
 5 started work at Horning Brothers?
 6 MS. DIMMITT GNAM: Objection. Misstates
 7 testimony.
 8 A. It wasn't Don Hermilo's house, it was somebody else's house,
 9 but he was there.
 10 Sorry. What was your other question?
 11 Q. The question was: Did that occasion where you played cards
 12 with Mr. Cruz occur before or after you started working at
 13 Horning Brothers?
 14 A. I don't remember. I'm guessing it was during, during when I
 15 was working right there.
 16 Q. So after you started working at Horning Brothers, then?
 17 A. Like during maybe, during when I was working, like, with the
 18 Horning Brothers.
 19 Q. Okay. I think I understand your answer.
 20 But I think what you're saying is it was while you
 21 were working, after you started work at Horning Brothers,
 22 that you think you played cards with Mr. Cruz?
 23 A. Yes, while I was --
 24 MS. DIMMITT GNAM: Objection. Misstates
 25 testimony.

Page 24

1 A. While I was working there.
 2 Q. Prior to starting work at Horning Brothers how many times,
 3 to the best of your recollection, had your mother and her
 4 boyfriend, Pablo, gone to play cards with the Cruzes, with
 5 Mr. Cruz and with his wife?
 6 MS. DIMMITT GNAM: Objection. Misstates
 7 testimony. And calls for speculation.
 8 MS. MELODY: Objection. Foundation.
 9 A. I do remember they would kind of sometimes go, like, every
 10 weekend or when they could.
 11 Q. How many years before you started at Horning Brothers were
 12 your mother and Pablo going to the Cruzes' every weekend to
 13 play cards?
 14 MS. DIMMITT GNAM: Objection. Misstates
 15 testimony --
 16 MS. MELODY: There's no testimony that it was
 17 at the Cruzes'.
 18 MS. DIMMITT GNAM: -- on multiple fronts.
 19 (INTERRUPTION BY COURT REPORTER
 20 DUE TO SIMULTANEOUS CROSSTALK)
 21 MS. DIMMITT GNAM: On multiple fronts.
 22 MS. MELODY: And it calls for speculation. It
 23 lacks foundation.
 24 MR. SPURR: Which are all improper trial
 25 objections in this discovery deposition, I would hope that

Page 25

1 you would know that by now. But you may keep talking and
 2 cluttering up the record, and at some point I think I may
 3 just address that with the judge.
 4 A. Could you repeat your question?
 5 Q. (By Mr. Spurr) I will.
 6 I believe it was your testimony that at one point
 7 your mother and her boyfriend were playing cards almost
 8 every weekend with the Cruzes?
 9 MS. DIMMITT GNAM: Objection. Misstates
 10 testimony.
 11 Q. Is that true?
 12 A. I'm sorry, one more time. Thank you.
 13 Q. Unless I misunderstood your testimony, I thought you said
 14 that there was a period of time when your mother and Pablo
 15 were playing almost every weekend with Mr. Cruz and his
 16 wife?
 17 MS. DIMMITT GNAM: Objection. Misstates
 18 testimony.
 19 A. I'm sure how many years they'd been playing. To me it
 20 seemed like they had just started playing with them. I
 21 wouldn't know. She didn't mention it to me earlier if they
 22 did go play. But when she did mention it, she invited me,
 23 and I didn't -- I didn't want to go.
 24 I did go once, but I didn't like the game so I
 25 didn't go again.

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1 Q. You do remember attending at least one safety meeting,
 2 thought; is that correct?
 3 A. I don't remember anything being talked about safety, but I
 4 do remember we -- us having meetings.
 5 Q. So could you describe for me how those meetings were
 6 conducted?
 7 A. Can you define "conducted"?
 8 Q. How did those meetings work?
 9 MS. DIMMITT GNAM: Objection. Vague.
 10 A. So Don Hermilo would kind of speak to us of, like, how to do
 11 a job, especially when we had different kinds of onions.
 12 Like, he told us, like, what to look for in them, and pretty
 13 much just explained to us again how to do the job. That's
 14 all I remember.
 15 (MS. POLETTI EXITING PROCEEDINGS)
 16 Q. (By Mr. Spurr) Well, where did the meetings occur?
 17 A. At the packing shed.
 18 Q. Were you seated for these meetings?
 19 A. No, never.
 20 Q. So you were all standing in some area of the onion shed; is
 21 that correct?
 22 A. Yes, that is correct.
 23 Q. And then Mr. Cruz spoke to the group. Is that the way it
 24 worked?
 25 A. Yes.

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1 Q. And where did he stand as he addressed the workers at those
 2 meetings?
 3 A. It depended where in the packing shed we were. Sometimes we
 4 would kind of, like, do a circle around him. Or if he was,
 5 like, at the entrance of the packing shed, we would just
 6 kind of, like -- he would be, like, right there towards the
 7 wall and we would all just be looking at him.
 8 Q. Do you remember if any of the Horning family members
 9 attended those meetings?
 10 A. No.
 11 Q. You don't remember?
 12 A. I don't remember seeing them there.
 13 Q. Is it possible they were there and you didn't see them?
 14 A. I don't know, 'cause I didn't even know who they were.
 15 Q. During the meetings you attended, did anyone speak other
 16 than Mr. Cruz?
 17 A. To my memory, it was just Don Hermilo.
 18 Q. And what language did he speak?
 19 A. Spanish.
 20 Q. Did he speak only Spanish at these meetings?
 21 A. That I remember, yes.
 22 Q. And you could understand everything he said in Spanish at
 23 those safety meetings?
 24 MS. DIMMITT GNAM: Objection. Misstates
 25 testimony.

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1 A. Yes.
 2 MR. SPURR: This has been previously marked as
 3 Defendant's Exhibit 6, so I would ask the court reporter if
 4 she could please hand Defendant's Exhibit 6 to the witness.
 5 (COURT REPORTER COMPLIED)
 6 Q. (By Mr. Spurr) Ms. Mendoza, I'd like you to take a look at
 7 Defendant's Exhibit No. 6, which has been handed to you.
 8 And I'd like you to review all three pages for me, if you
 9 could.
 10 Do you recognize Defendant's Exhibit No. 6?
 11 A. Yes.
 12 Q. What is it?
 13 A. It's a "Onion Shed Safety Meeting" sheet.
 14 Q. And do you see the date on this document?
 15 A. Yes, I see it.
 16 Q. What is the date?
 17 A. 10/29/2015.
 18 Q. I would like you to look at the last page, the third page of
 19 Defendant's Exhibit No. 6.
 20 Is your signature on this document?
 21 A. Yes.
 22 Q. Why did you sign this document?
 23 A. It was a meeting that we had. I don't remember signing it,
 24 but my name is on there, so . . .
 25 Q. That is your signature?

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1 A. Yes, that's my name.
 2 Q. Do you understand, as you sit here today, that your
 3 signature on this third page of Defendant's Exhibit No. 6
 4 means that you attended an onion shed safety meeting on
 5 October 29th, 2015?
 6 A. I attended a meeting, but, again, I don't remember anything
 7 being talked about safety.
 8 Q. I'm not asking about the subject of the meeting yet, but I'm
 9 simply asking you do you understand that your signature on
 10 this document indicates that you attended the meeting on
 11 October 29th, 2015?
 12 A. Yes, I understand.
 13 Q. Wasn't your first day of work November 5th, 2015?
 14 A. I don't remember the date, but sounds like . . .
 15 November, that's when I started.
 16 Q. Then after looking at Defendant's Exhibit No. 6, do you now
 17 recall that you attended this onion shed safety meeting
 18 prior to starting work at Horning Brothers?
 19 A. I'm sorry. Could you repeat that?
 20 Q. Uh-huh.
 21 (MS. POLETTI ENTERING PROCEEDINGS)
 22 Q. (By Mr. Spurr) Well, if your first day of work was
 23 November 5th and you attended an onion shed safety meeting
 24 on October 29th, 2015, does that refresh your recollection
 25 that perhaps you attended this meeting before you started

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1 sound about right?

2 A. Yes.

3 Q. Okay. So how long before you got your last paycheck did

4 those two incidents that we just discussed occur?

5 A. I -- I don't remember.

6 Q. Okay. Do you recall any other instances in which Mr. Cruz's

7 conduct offended you while you were working at Horning

8 Brothers?

9 A. I don't remember right now. I might, there might be

10 something else, but I can't remember at the moment.

11 Q. Well, this is our opportunity to find out all of your

12 knowledge about the case. And I need you to use your best

13 efforts to remember everything that you can today, so that

14 we don't finish this and then suddenly afterwards other

15 things are remembered and we don't know about it because you

16 didn't remember when you were here at your deposition. Do

17 you understand that?

18 A. Yes, I understand.

19 Q. Okay. So would you like to take a break and see if you can

20 remember any more incidents before we continue?

21 A. Yes.

22 Q. Okay.

23 A. Yes, please.

24 (11:28 AM RECESS 11:39 AM)

25 MR. SPURR: Okay. Could we go back on the

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1 record.

2 Q. (By Mr. Spurr) Ms. Mendoza, you understand that you're

3 still under oath?

4 A. Yes.

5 Q. Okay. So for the last hour or so we've been discussing

6 instances while you worked at the Horning Brothers where

7 Mr. Cruz's conduct offended you; correct?

8 A. Yes.

9 Q. And so far we have heard about an incident where you came to

10 work without your glasses and he told you you were

11 beautiful; correct?

12 A. Yes.

13 Q. Did you consider reporting that to the bosses?

14 A. No. Especially because, I mean, I didn't even know who they

15 were. I didn't even know where the office was there. If

16 something did happen, like they didn't mention where to go

17 to.

18 Q. That incident in which Mr. Cruz said you looked very

19 beautiful without your glasses, was that something that if

20 you knew where to report his behavior you would have?

21 A. Probably not. But, like I said earlier, I did find it very

22 uncomfortable. I'd prefer for him not to say anything.

23 Q. Did you --

24 A. So yes.

25 Q. -- tell him that you would prefer he didn't compliment you

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1 on your appearance?

2 A. I didn't.

3 Q. Do you think that he could tell that you were upset by that

4 comment by looking at you?

5 A. Maybe. I mean, 'cause I just ignored him. I looked down

6 and I went back to work.

7 Q. You didn't make a face at him or blush or anything?

8 A. No.

9 Q. The second incident that you testified about in which

10 Mr. Cruz's conduct offended you was an occasion when he

11 covered for you when you needed to go to the restroom and he

12 touched you as you were exchanging places; isn't that

13 correct?

14 A. Yes.

15 Q. Is that an incident that you would have reported if you knew

16 where to report?

17 A. Yes, I would have.

18 He did it, actually, on multiple occasions where I

19 would ask him to cover for me. Yes. I rarely -- I tried to

20 not ask him, but when I have to go, I have to go, so I had

21 to ask him to cover for me. And he did touch me those times

22 too as well.

23 Q. Okay. About how many times do you think when you asked

24 Mr. Cruz to cover for you did he touch you?

25 A. Like three or four times at the most. I tried to avoid him

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1 a lot, so ...

2 Q. On those three or four occasions where Mr. Cruz touched you

3 as you exchanged places and he was covering for you, did he

4 always touch you in the exact same way?

5 A. Yes.

6 Q. So it was always a couple hands on the hips, moving down for

7 a second or two; is that right?

8 MS. DIMMITT GNAM: Objection. Misstates

9 testimony.

10 A. Yes.

11 Q. Another incident that you indicated, that you testified

12 about earlier, was when Mr. Cruz touched you and kissed you

13 when you were leaving work early because you were ill; is

14 that correct?

15 A. Yes, that is correct.

16 Q. Okay. And then a fourth incident in which Mr. Cruz's

17 conduct offended you was when, and maybe this is multiple

18 incidents, but he asked you for pictures a number of times

19 and there was an incident in particular where you showed him

20 a picture of yourself on your phone?

21 A. Yes.

22 Q. Well, let's go back to the third incident, where he touched

23 you when you were leaving because you were ill.

24 A. Uh-huh.

25 Q. Is that something that you would have reported to the bosses

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1 that?

2 A. No. He only told me about that one girl that tried

3 reporting it and nothing was done about it, so . . .

4 Q. Did he give you any advice at all as to what you should do

5 about those incidents?

6 A. No.

7 Q. So other than Rigo and your Aunt Leticia, is there anybody

8 else that you told about these incidents during the time you

9 were working for the Horning Brothers?

10 A. No.

11 Q. Did Rigo tell you the name of the woman who had reported an

12 incident about Hermilo Cruz's conduct to the Hornings?

13 A. No, he didn't.

14 Q. You didn't know the name of this person?

15 A. No.

16 Q. Do you know now?

17 A. Still don't.

18 Q. When is the first time you told your mother about any of

19 these incidents that you testified about today?

20 MS. DIMMITT GNAM: Objection.

21 For my client, to the extent that the answer is

22 about conversations with your mother that are related to

23 this lawsuit, I instruct you not to answer, otherwise, if

24 there's things beyond that, you can answer Mr. Spurr's

25 question. Because it's covered by common-interest

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1 privilege. Thank you.

2 Q. And my question was: When is the first time you told your

3 mother about these incidents?

4 A. I never did. And up until this day she still doesn't know

5 what he did to me, unless there was other incidents that --

6 I don't know the incidents that my aunt told her.

7 Q. But you never, never even to this day, talked to your mother

8 about these incidents with Mr. Cruz while you were working

9 for the Horning Brothers?

10 A. Never.

11 MS. DIMMITT GNAM: Same instruction and

12 objection.

13 A. Never.

14 Q. The 2015-2016 onion packing season was the only season you

15 worked for the Horning Brothers; isn't that correct?

16 A. Yes.

17 Q. Do you know if that was also the last season that your

18 mother worked for the Horning Brothers as well?

19 A. Yes.

20 Q. And by the time the season ended you had decided that you

21 were not going to return to the Horning Brothers; is that

22 correct?

23 A. Yes.

24 Q. And, in fact, you never did return to the Horning Brothers;

25 correct?

Page 108

1 A. That's correct.

2 Q. Was one of the reasons that you didn't --

3 MS. DIMMITT GNAM: Bill, just a moment.

4 Do you need to take a break?

5 MR. SPURR: No, you can't take a break right

6 now, I'm in the middle of my question.

7 MS. DIMMITT GNAM: Go ahead and finish that.

8 And I just think -- I'm looking at the time. I think my

9 witness needs a break.

10 MR. SPURR: Well, I'm almost done, real close.

11 MS. DIMMITT GNAM: How long do you think?

12 MR. SPURR: Oh, probably no more than

13 five minutes.

14 MS. DIMMITT GNAM: Can you go for five

15 more minutes?

16 THE WITNESS: I think, yes. Yes.

17 Q. (By Mr. Spurr) Was one of the reasons --

18 MS. DIMMITT GNAM: Are you sure?

19 MS. MELODY: What's going on?

20 THE WITNESS: I just need to go use the

21 restroom.

22 MS. DIMMITT GNAM: She just needs to use the

23 restroom.

24 MR. SPURR: Okay. Well, I'm not going to hold

25 you if you need to go to the restroom.

Page 109

1 THE WITNESS: Okay.

2 MR. SPURR: Go ahead.

3 THE WITNESS: Yeah.

4 MS. DIMMITT GNAM: Do you want to take a break

5 for a minute?

6 MR. SPURR: Yeah, let's take a break, might as

7 well.

8 MS. DIMMITT GNAM: Thank you.

9 (12:11 PM RECESS 12:23 PM)

10 MR. SPURR: Let's go back on the record.

11 Q. (By Mr. Spurr) Ms. Mendoza, I only have a few more minutes

12 of questions, and then I think you'll probably be asked

13 questions by some of the other attorneys here. Okay?

14 A. Okay.

15 Q. So it's your testimony that while you worked for the Horning

16 Brothers that season you didn't know where the office was;

17 correct?

18 A. That is correct.

19 Q. And you never saw any of the Horning family members during

20 the season that you worked in the onion shed; is that also

21 correct?

22 A. I saw them towards the end, when they gave me my last

23 paycheck.

24 Q. Where did they give you your last paycheck?

25 A. In the packing shed.

Page 126

1 still friends. I wouldn't know.
 2 Q. Did you consider your mother, Socorro Diaz, and Pablo to be
 3 friends with Hermilo Cruz and his wife?
 4 MS. DIMMITT GNAM: Objection. Vague.
 5 A. Yes.
 6 Q. Do you know if Hermilo Cruz and Claudia ever loaned money to
 7 your mother, Socorro?
 8 A. No, I wouldn't know.
 9 Q. Did you have any conversations with your mother, Socorro
 10 Diaz, before you started working at Horning Brothers about
 11 her experiences with Hermilo Cruz?
 12 A. No.
 13 Q. Prior to you starting at Horning Brothers did your mother,
 14 Socorro Diaz, ever complain about Hermilo Cruz's behavior
 15 towards her?
 16 A. No.
 17 Q. During the time that you and your mother worked at Horning
 18 Brothers during the 2015 and '16 onion packing season, did
 19 your mother ever complain to you about Hermilo Cruz's
 20 behavior towards her?
 21 A. Nope.
 22 Q. At any point in time has your mother complained to you about
 23 Hermilo Cruz's behavior towards her?
 24 MS. DIMMITT GNAM: Objection to the extent the
 25 answer calls for information protected by common-interest

Page 127

1 privilege. I'll instruct my client not to answer about
 2 communications with her mother related to this lawsuit --
 3 MS. MELODY: It's also --
 4 MS. DIMMITT GNAM: -- or when her lawyers are
 5 present.
 6 If there's any other conversations prior to
 7 beginning the process of this case, then you may answer.
 8 (INTERRUPTION BY COURT REPORTER
 9 DUE TO SIMULTANEOUS CROSSTALK)
 10 MS. MELODY: Which I apologize for.
 11 And my objection is that it's been asked and
 12 answered.
 13 A. And I would follow my client's [sic] instructions.
 14 Q. Did you have any conversations -- strike that.
 15 Did your mother ever talk to you about Hermilo
 16 Cruz's actions towards her that she found offensive prior to
 17 filing this lawsuit?
 18 A. She didn't.
 19 Q. During the 2015-16 onion packing season, when you worked at
 20 the onion packing shed with your mother, did you ever
 21 witness Hermilo Cruz touch your mother inappropriately?
 22 A. I didn't.
 23 Q. During the 2015-2016 season at the onion packing shed did
 24 you ever see Hermilo Cruz say anything inappropriate to your
 25 mother?

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1 A. No.
 2 Q. Did any other worker at the onion packing shed witness the
 3 offensive touching that you've described today that was done
 4 by Hermilo Cruz, that you're aware of?
 5 MS. DIMMITT GNAM: Objection. Calls for
 6 speculation.
 7 A. I wouldn't know. I wouldn't know if anybody else saw.
 8 Q. Did anybody ever come up to you and talk to you about
 9 something that could potentially be offensive that they
 10 witnessed between you and Mr. Cruz?
 11 MS. DIMMITT GNAM: Objection.
 12 A. No.
 13 MS. DIMMITT GNAM: Vague.
 14 Q. Did you say "no"?
 15 A. Yeah, I said no.
 16 Q. Are you seeking money in this lawsuit?
 17 MS. DIMMITT GNAM: Objection. Calls for a
 18 legal conclusion.
 19 A. No, I'm not.
 20 Q. If you're not seeking money, what are you seeking in this
 21 lawsuit?
 22 MS. MELODY: I'm going to object to the extent
 23 that your client isn't a defendant who Ms. Mendoza has sued.
 24 And so the State has sued your client and named a number of
 25 victims, including Ms. Mendoza. But if you're asking for a

Page 129

1 legal conclusion about the State's position with respect to
 2 your client, I object to the question.
 3 MR. CUNNINGHAM: I asked a very simple
 4 question of whether she's seeking money in this lawsuit.
 5 MS. MELODY: I just want on the record that
 6 Ms. Mendoza hasn't sued your client at all.
 7 MR. CUNNINGHAM: Okay.
 8 Q. (By Mr. Cunningham) If you're not seeking money in this
 9 lawsuit, what are you seeking at the conclusion of this
 10 lawsuit?
 11 MS. DIMMITT GNAM: Objection. Vague. And
 12 calls for a legal conclusion.
 13 MS. MELODY: Same objection.
 14 A. What I want is for the Horning Brothers to learn how to
 15 protect their people, because I wasn't protected. And I'm
 16 here -- if me going through this is going to prevent
 17 somebody else going through something like that, then I'm
 18 perfectly okay with that.
 19 Q. Are you seeking money damages from Horning Brothers?
 20 MS. DIMMITT GNAM: Objection. Calls for a
 21 legal conclusion.
 22 A. I don't want --
 23 MS. DIMMITT GNAM: And vague.
 24 A. I don't want any money.
 25 Q. When you were working for Horning Brothers did you ever see

Exhibit F

WILLIAM R. SPURR
ATTORNEY AT LAW

March 16, 2018

Via Email Only

Alyson Dimmitt Gnam

alysond@nwjustice.org

Maria D. Velazquez

lolav@nwjustice.org

Attorneys for Plaintiffs-Intervenors

Re: *State of Washington v. Horning Brothers, LLC No. 2:17-cv-00149-TOR*
(E.D. Wash)

Dear Counsel:

We believe that the deposition testimony of your clients was incredibly damaging to your case in two ways. First, your clients admitted crucial facts concerning their failure to report the alleged sexual harassment to the Hornings, their attendance at Onion Shed Safety Meetings during which they were told how and to whom to report such conduct, and a whole host of other damaging facts. In addition, your clients testified about supposedly constant, egregious acts by Mr. Cruz that seem utterly incredible in light of their testimony that they uniformly never mentioned such conduct to another living soul (despite the facts that two of the plaintiffs are sisters and two other plaintiffs are mother and daughter!) and that there were no other witnesses to this conduct. Moreover, your clients uniformly testified that they do not seek monetary compensation for the supposedly horrific treatment they claim to have endured.

Given your clients' incredible testimony and the absence of their desire for monetary compensation, we believe that your clients' fantastic and exaggerated claims are motivated by their desperate attempts to obtain U-visas, which require that the applicant either be a victim of or material witness to criminal conduct, including sexual assault. Your clients' U-visa applications (if any) are, therefore, vitally relevant to your clients' bias and motives to fabricate and exaggerate their claims to avoid being potentially arrested and deported. In fact, we believe it would be fundamentally unfair if our clients were prohibited from pointing out this source of bias to the jury.

Obviously, the AG's office (which we suspect is the sponsoring governmental agency) has recently pursued an aggressive campaign to oppose the new administration's immigration policies, and we view this case as part of that effort. While we support the sentiments in general, we believe our clients (private parties) are utterly inappropriate victims of this campaign.

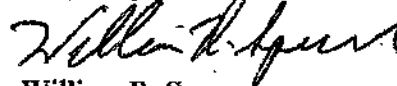
Exhibit F

Ms. Dimmitt Gnam
Ms. Velazquez
March 16, 2018
Page - 2

I attach Form I-918, the application for a U-visa. As you can see, the application requires sworn statements by the applicant and the sponsoring law enforcement agency regarding the "criminal" allegations that are being prosecuted. My clients' RFP Nos. 1, 2, 8 and 14 all request witness statements and immigration documents that are pertinent to this case. It could be that your clients (and other witnesses) have not applied for U-visas; if not, please confirm this. If so, we insist that all such applications and sworn statements be produced to us as soon as possible, as they are clearly discoverable. *See E.E.O.C. v. Global Horizons, Inc.*, 2013 WL 3940674 (E.D. Wash 2013) (attached; involved T-visas, which were *less* germane to that case than the U-visas are to this case).

Please produce all U-visa documents pertaining to all of your clients and material witnesses by 5:00 p.m. on March 23, 2018. If you intend to stand on your objections and not produce these clearly relevant documents, then I will call you at 11:00 a.m. on March 26, 2018 for a discovery conference, after which, if we fail to reach agreement, we will file a motion to compel.

Very truly yours,



William R. Spurr

cc. Client

Brook Cunningham, blc@randalldanskin.com
Colleen M. Melody, Colleenm1@atg.wa.gov
Patricio A. Marquez, PatricioM@atg.wa.gov

1 William R. Spurr, WSBA #20064
2 Law Office of William R. Spurr
3 1001 4th Ave., Suite 4400
4 Seattle, WA 98154
5 Phone: (206) 682-2692
6 bill@williamrspurr.com

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 STATE OF WASHINGTON,)
10)
11 Plaintiff,) No. 2:17-cv-00149
12)
13 SOCORRO DIAZ SILVAS, ROXANA)
14 RODRIGUEZ DE ALFARO, YESICA) DECLARATION OF ALLEN HORNING IN
15 CABRERA NAVARRO, YASMIN CABRERA) SUPPORT OF MOTION TO COMPEL
16 NAVARRO, AND SAMANTHA MENDOZA,)
17) **Noted on Motion Calendar:**
18) **May 14, 2018**
19)
20)
21)
22)
23)
24)
25)
26)
Plaintiffs-Intervenors)
v.)
HORNING BROTHERS, LLC and HERMILO)
CRUZ,)
Defendants.)

17 Allen Horning certifies and declares as follows:

- 18 1. I am one of the principals of Horning Brothers, LLC. I am over the age of eighteen years,
19 have personal knowledge of and am competent to testify to the matters contained herein.
20
21 2. The Horning Brothers, LLC's onion packing operation (which has since been shut down
22 after the last packing season) was located in a metal farm building (the "Onion Shed") located less than
23 70 yards from the home of Warren Horning and his wife Kathy, the patriarch and matriarch of the
24 Horning family. Each packing season, running from late October/early November to late February/early
25 March, we would hire 20-25 seasonal workers, both men and women, to sort, bag and load onions on
26

DECLARATION OF ALLEN HORNING - 1

WILLIAM R. SPURR
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SEATTLE, WA 98154
(206) 682-2692

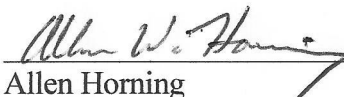
1 pallets. The machinery and conveyor belts that were involved in this operation were contained in an
2 area of the Onion Shed that was approximately 20 feet by 70 feet. While working, all of the workers
3 were generally located within this small area, and many were within just a couple of feet of several
4 other workers. Attached hereto as **Exhibit A** is a drawing of the onion packing line and machinery, and
5 I have marked with an X where workers were generally stationed. Among the seasonal workers who
6 worked all or parts of the last four or five onion packing seasons were Mr. Cruz's wife, Claudia, her
7 daughter and her mother. Many, if not most, of the acts of sexual harassment alleged by Plaintiffs-
8 Intervenor are alleged to have occurred in this small area, despite female members of Mr. Cruz's
9 family being present, as well as the other workers, including at least one family member and/or the
10 husband/boyfriend of every one of the Plaintiffs-Intervenors.
11

12 3. During the entire 20 years that Horning Brothers, LLC ran our onion packing operation,
13 we never fired or terminated a single employee.

14 4. During the entire 20 years that Horning Brothers, LLC ran our onion packing operation,
15 we never contacted ICE or any other federal immigration authorities to report a single employee.
16

17 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
18 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

19 Dated at Quincy, Washington this 12th day of April, 2018.

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Allen Horning

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

HORNING BROTHERS, L.L.C.,
and HERMILO CRUZ, in his
individual capacity and as a member
of the marital community of
HERMILO CRUZ and CLAUDIA
SANCHEZ,

Defendants.

CIVIL ACTION NO. 2:17-cv-00149-
TOR

SUPPLEMENTAL DECLARATION
OF MARIA RAMIREZ

**Noted on Motion Calendar:
May 14, 2018**

SOCORRO DIAZ SILVAS,
ROXANA RODRIGUEZ DE
ALFARO, YESICA CABRERA
NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA
MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS, L.L.C,

Defendant.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

HORNING BROTHERS, L.L.C.,
and HERMILO CRUZ, in his
individual capacity and as a member
of the marital community of
HERMILO CRUZ and CLAUDIA
SANCHEZ,

Defendants.

CIVIL ACTION NO. 2:17-cv-00149-
TOR

SUPPLEMENTAL DECLARATION
OF MARIA RAMIREZ

SOCORRO DIAZ SILVAS,
ROXANA RODRIGUEZ DE
ALFARO, YESICA CABRERA
NAVARRO, YASMIN CABRERA
NAVARRO, and SAMANTHA
MENDOZA,

Plaintiffs-Intervenors,

v.

HORNING BROTHERS, L.L.C,

Defendant.

MARIA RAMIREZ certifies and declares as follows:

1. I am over the age of eighteen years, have personal knowledge of and am competent to testify to the matters contained herein.

SUPPLEMENTAL DECLARATION OF MARIA RAMIREZ - 1

WILLIAM R. SPURR
1001 FOURTH AVE, STE 4400
SEATTLE, WA 98154
(206) 682-2692

1 2. My primary language is Spanish. Miguel Herrera is bilingual and helped to translate parts
2 of this declaration for me so that I fully understood everything in it.

3 3. I was employed by the Horning Brothers, LLC as a seasonal worker sorting onions in the
4 onion shed during the 2015-2016 and 2016-2017 seasons. I have read the sexual harassment allegations
5 in the complaint in this matter and I can definitely state that I never experienced such treatment or
6 behavior in the onion shed, nor did I ever hear about such things when I worked in the onion shed.
7 Hermilo Cruz used to give me rides to and from work when it was just the two of us and he was never
8 once disrespectful to me. Also, I do not understand the claim that only women were employed in the
9 onion shed, as I worked with several men on the sorting line and I understood they were paid the same
10 rate as all of the women.

11 4. If I had suffered any of the sexual harassment as was described in the complaint, I would
12 have had no problem coming to talk to the owners. We all knew who the owners were, and I can recall
13 multiple times when Mr. Cruz was absent and either Warren Horning, Allen Horning, or Greg Horning
14 was in the onion shed all day long.

15 5. I know Socorro Diaz, and my impression of her is consistent with her reputation in the
16 community: she seems somewhat mentally unstable, like she is bipolar or something.

17 6. The rumors going around the Quincy Hispanic community are that Pablo Arrendondo
18 (Socorro Diaz's husband) has been contacting past Horning Brothers' employees to back up Socorro
19 Diaz's story. Pablo has been telling these employees that if they do so, they will get money and
20 resident papers. Specifically, the rumor around town is that the workers will get \$2,000,000 and legal
21 resident status if they win.

22 7. Jessica Cabrera is also looking for people to join in the lawsuit. She is telling people that
23 every employee who joins will each get \$80,000 and legal resident status.

24
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26
SUPPLEMENTAL DECLARATION OF MARIA RAMIREZ - 2

WILLIAM R. SPURR
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1 8. In January of 2018, I ran into Samantha Mendoza, one of the women accusing Horning
2 Brothers and Hermilo Cruz of sexual harassment, at Walmart. She is the daughter of Socorro Diaz
3 Silvas, another accuser in this case. I asked Ms. Mendoza why she was doing this to Hermilo Cruz and
4 Claudia, and I told her that I thought they were nice people. Ms. Mendoza said that it was not her idea.
5 She said her mother told her to participate and what to say. Ms. Mendoza said that her mother told her
6 to participate because she (Ms. Mendoza) was a legal resident and that it would add "credibility" to the
7 lawsuit. Ms. Mendoza also said, "You know my mother. She kicked me out of the house when I was
8 16 years old."

9
10 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
11 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

12 Dated this 12 day of April, 2018, at Quincy, Washington.

13
14 *Maria Ramirez*
15 _____
16 Maria Ramirez

17 *Miguel Herrera*
18 _____
19 Miguel Herrera

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TRIBUNAL DEL DISTRITO DE LOS ESTADOS UNIDOS
DISTRITO ORIENTAL DE WASHINGTON

ESTADO DE WASHINGTON,)
)
Demandante,)
v.)
)
HORNING BROTHERS, LLC, y HERMILO)
CRUZ, en su capacidad individual y como)
miembro de la comunidad matrimonial de)
HERMILO CRUZ y CLAUDIA SANCHEZ,)
)
Demandados.)

No. 2:17-cv-00149

DECLARACIÓN DE MARIA RAMIREZ

MARIA RAMIREZ certifica y declara lo siguiente:

1. Tengo más de dieciocho años de edad, tengo conocimiento personal y soy competente para testificar sobre los asuntos aquí contenidos.
2. Mi idioma principal es el español. Miguel Herrera es bilingüe y me ayudó a traducir parte de esta declaración para mí, para que yo entendiera todo en esta declaración.
3. Yo era empleado de Horning Brothers, LLC como trabajador estacional clasificando cebollas en el cobertizo de cebolla durante las temporadas 2015-2016 y 2016-2017. He leído las denuncias de acoso sexual en la queja sobre este asunto y definitivamente puedo afirmar que nunca he experimentado tal tratamiento o comportamiento en el cobertizo de cebolla, ni he oído hablar de tales cosas cuando trabajé en el cobertizo de cebolla. Hermilo Cruz solía darme paseos en coche desde y hacia el trabajo cuando sólo éramos los dos y Hermilo nunca fue irrespetuoso conmigo. Además, no entiendo la afirmación de que sólo las mujeres estaban empleadas en el cobertizo de cebolla, ya que

DECLARACIÓN DE MARIA RAMIREZ - 1

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(206) 682-2692

1 trabajé con varios hombres en la línea de clasificación y entendí que se les pagaba la misma tasa que
2 todas las mujeres.

3 4. Si hubiera sufrido cualquiera de los acoso sexual como se describe en la queja, no habría
4 tenido ningún problema para venir a hablar con los propietarios. Todos sabíamos quiénes eran los
5 propietarios, y puedo recordar varias veces cuando el señor Cruz estaba ausente y Warren Horning,
6 Allen Horning o Greg Horning estaba en el cobertizo de cebolla todo el día.

7 5. Conozco a Socorro Díaz, y mi impresión de ella es consistente con su reputación en la
8 comunidad: parece algo mentalmente inestable, como si fuera bipolar o algo así.

9 6. Los rumores que rodean a la comunidad hispana de Quincy son que Pablo Arrendondo
10 (esposo de Socorro Díaz) ha estado contactando a empleados pasados de Horning Brothers para apoyar
11 la historia de Socorro Díaz. Pablo ha dicho a estos empleados que si lo hacen, obtendrán dinero y
12 papeles residentes. Específicamente, el rumor alrededor de la ciudad es que los trabajadores recibirán
13 \$2,000,000 y estado de residente legal si ganan.

14 7. Jessica Cabrera también está buscando personas para unirse a la demanda. Ella está
15 diciendo a la gente que cada empleado que se une cada uno recibirá \$ 80,000 y el estatus de residente
16 legal.

17 8. En enero de 2018, me encontré con Samantha Mendoza, una de las mujeres que acusaba
18 a Horning Brothers y Hermilo Cruz de acoso sexual, en Walmart. Ella es la hija de Socorro Díaz Silvas,
19 otra acusadora en este caso. Le pregunté a la Sra. Mendoza por qué le estaba haciendo esto a Hermilo
20 Cruz y Claudia, y le dije que pensaba que eran buenas personas. La Sra. Mendoza dijo que no era su
21 idea. Ella dijo que su madre le dijo que participara y que decir. La Sra. Mendoza dijo que su madre le
22 dijo que participara porque ella (la Sra. Mendoza) era residente legal y que agregaría "credibilidad" al
23
24
25
26

DECLARACIÓN DE MARIA RAMIREZ - 2

WILLIAM R. SPURR
1001 FOURTH AVE, STE 4400
SEATTLE, WA 98154
(206) 682-2692

1 pleito. La Sra. Mendoza también dijo: "Conoces a mi madre. Ella me echó de la casa cuando tenía 16
2 años."

3 CERTIFICO BAJO PENA DE PERJURIO BAJO LAS LEYES DEL ESTADO DE
4 WASHINGTON QUE LO ANTERIOR ES VERDADERO Y CORRECTO.

5 Fechado este 12 día de Abril de 2018, en Quincy, Washington.

6 

7 Maria Ramirez

8 

9 Miguel Herrera

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Plaintiffs-Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20 SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiffs-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

PLAINTIFFS-INTERVENORS'
MOTION FOR PROTECTIVE ORDER
REGARDING DISCOVERY OF U
VISA AND IMMIGRATION STATUS
INFORMATION

Hearing Date: May 14, 2018
Without Oral Argument

1 Plaintiffs-Intervenors (hereinafter “Intervenors”) move for a protective
2 order pursuant to Fed. R. Civ. P. 26(c) to protect Intervenors from annoyance,
3 embarrassment, oppression, and undue burden resulting from inquiries into U visa
4 and immigration status information. Discovery of immigration status has a well-
5 established chilling effect, which impermissibly burdens the public interest in
6 enforcing Title VII and the Washington Law Against Discrimination (WLAD).
7 Disclosure of U visa information would force immigrant litigants to reveal their
8 immigration status, subjecting them to risk of deportation, criminal prosecution,
9 and loss of employment. Such discovery would undermine the U visa program,
10 which Congress created for the express purpose of encouraging immigrant victims
11 to cooperate with law enforcement. Intervenors therefore request this Court
12 prohibit Defendants from discovery of U visa information.

13
14
15 **I. FACTUAL BACKGROUND**

16 Intervenors are five farmworker women who worked seasonally as onion
17 sorters at Defendant Horning Brothers’ packing shed in Quincy, Washington.
18 Amended Complaint in Intervention, ECF No. 12 at ¶ 23, 29. Socorro Diaz Silvas,
19 Yasmin Cabrera Navarro, Yesica Cabrera Navarro, Samantha Mendoza, and
20 Roxana Rodriguez de Alfaro bring sexual harassment claims under Title VII and
21 the WLAD against Defendant Horning Brothers. *Id.* at ¶ 47-72. Intervenors allege
22 that the onion shed supervisor, Hermilo Cruz, offered them job benefits in
23
24

1 exchange for sexual favors, groped their breasts, touched their buttocks, and
2 subjected them to unwanted sexual comments. *Id.* at ¶31-37.

3 On March 16, 2018, Defendant Horning Brothers demanded information
4 about whether individual Intervenors have applied for U visas and if so, demanded
5 that they produce all U visa applications and related sworn statements. Declaration
6 of Dimmitt Gnam (hereinafter “Gnam Decl.”) at ¶ 2; Gnam Decl. Ex. A. Because
7 U visa information would reveal Intervenors’ immigration status and other
8 sensitive information, Intervenors notified Defendant they would seek a protective
9 order from this Court. *Id.* at ¶ 4; Gnam Decl. Ex. B. Defendant has made clear its
10 intent is to introduce U visa information at trial, disclosing the information to the
11 public. Gnam Decl. at ¶ 6; Gnam Decl. Ex. A. Pursuant to Fed. R. Civ. P. 26(c)(1)
12 and LR 37.1(b), counsel held a discovery conference on March 20, 2018, and were
13 unable to resolve this issue. Gnam Decl. at ¶ 6. Because of the substantial harm to
14 Intervenors, immigrant workers, and crime victims that would result from the
15 disclosure of U visa information, Intervenors seek a protective order from this
16 Court to prevent this oppressive, harmful, and unduly burdensome discovery.
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20 II. LEGAL STANDARD

21 Fed. R. Civ. P. 26(c) allows a court to “make any order which justice
22 requires to protect a party or person from annoyance, embarrassment, oppression,
23 or undue burden or expense...” when the movant shows good cause. Typically, the
24

1 burden is on the party seeking the protective order to show good cause by
2 “demonstrating harm or prejudice that will result from the discovery.” *Rivera v.*
3 *NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004). The law, however, imposes a
4 heightened standard when a party seeks information protected for public policy
5 reasons. *See* Fed. R. Evid. 412 (Advisory Comm. Notes) (“courts should
6 presumptively issue protective orders barring discovery” of sexual history to
7 safeguard “against the invasion of privacy, potential embarrassment and sexual
8 stereotyping” and to “encourage[] victims of sexual misconduct to institute and to
9 participate in legal proceedings”); *Macklin v. Mendenhall*, 257 F.R.D. 596, 604
10 (E.D. Cal. 2009) (granting protective order limiting discovery of sexual history);
11 *Premium Serv. Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir.
12 1975) (recognizing public policy against disclosure of tax return); *Alaskan Anvil,*
13 *LLC v. Majestik Fisheries*, No. 13-cv-05702, 2014 WL 12674380, at *1 (W.D.
14 Wash. Aug. 1, 2014) (denying motion to compel discovery of tax returns).

17 Courts in this district, as well as the State of Washington, have determined a
18 litigant’s immigration status is inadmissible due to its prejudicial effect and the
19 public interest in access to courts. *Sandoval v. Rizzuti Farms, Ltd.*, No. CV-07-
20 3076-EFS, 2010 WL 11526835, at *1 (E.D. Wash. April 29, 2010) (“Defendants
21 are barred from introducing evidence or argument about immigration status at trial.
22 Immigration status is irrelevant...and evidence of immigration status would
23

1 unfairly prejudice Plaintiffs.”); Wash R. Evid. 413 (effective September 1, 2018)
2 (evidence of a civil litigant’s immigration status is inadmissible); Proposal to
3 Adopt New Rule of Evidence 413 (the purpose of Wash. R. Evid. 413 is to avoid
4 prejudice and ensure equal and impartial access to the courts). For these public
5 policy reasons, the Court should presumptively issue a protective order barring
6 inquiry into U visa and immigration status information. Should Defendant
7 demonstrate a substantial need for such information, the Court can then “balance[]
8 the public and private interests.” *Rivera*, 364 F.3d at 1064 (citing *Phillips ex rel.*
9 *Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.2002)).
10

11 III. ARGUMENT

12 A. Ninth Circuit precedent is clear that discovery of immigration status 13 causes a chilling effect that unduly burdens litigants and the public interest

14 The Ninth Circuit held that the harm caused by discovery of immigration
15 status information in employment discrimination litigation creates a chilling effect
16 that unduly burdens plaintiffs and the public interest. *Rivera*, 364 F.3d at 1065,
17 1074-75. The *Rivera* court noted:

18 Granting employers the right to inquire into workers' immigration
19 status in cases like this would allow them to raise implicitly the threat
20 of deportation and criminal prosecution every time a worker,
21 documented or undocumented, reports illegal practices or files a Title
22 VII action. Indeed, were we to direct district courts to grant discovery
23 requests for information related to immigration status ...countless acts
24 of illegal and reprehensible conduct would go unreported...The
chilling effect such discovery could have on the bringing of civil
rights actions unacceptably burdens the public interest.

1 *Id.* at 1065.

2
3 Following *Rivera*, this court has repeatedly held that immigration status
4 discovery impermissibly intimidates plaintiffs and undermines statutes meant to
5 rectify worker abuse. *See Ruiz v. Mercer Canyons, Inc.*, No. 1:14-cv-03032-SAB,
6 2014 WL 6389445, at *2 (Nov. 14, 2014 E.D. Wash) (prohibiting discovery related
7 to immigration status due to potential to intimidate and discourage plaintiffs from
8 pursuing their employment rights in court); *Saucedo v. NW Mgmt. & Realty Servs.*,
9 No. 12-CV-0478-TOR, 2013 WL 163425, at *2 (E.D. Wash. Jan. 15, 2013)
10 (prohibiting inquiries into immigration status because discovery would be
11 coercive, intimidating, and likely inadmissible for impeachment purposes);
12 *Sandoval v. Rizzuti Farms, Ltd.*, CV-07-3076-EFS, 2009 WL 2058145, at *3 (E.D.
13 Wash. July 15, 2009) (barring discovery regarding immigration status to prevent
14 “manifest injustice and a chilling” of plaintiffs’ claims); *Perez-Farias et al. v.*
15 *Global Horizons, Inc. et al.*, No. CV-05-3061-MWL, 2007 WL 1412796, at *3
16 (E.D. Wash May 10, 2007) (though immigration status information may be
17 relevant to damages, need was outweighed by the harm of such discovery).¹

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21 ¹ Counsel is aware of only one case in this district permitting discovery of
22 immigration status information, which appears counter to *Rivera*. *See E.E.O.C. v.*
23 *Evans Fruit Co.*, CV-10-3033-LRS, 2011 WL 2471749 (E.D. Wash. June 21,
24

1 The Ninth Circuit has not addressed the specific question of whether U visa
2 information should be protected from disclosure.² One court in this district
3 permitted discovery of T visa information; however, because claimants were H2A
4 workers and had left their employer, their immigration status was an undisputed
5 fact, completely changing the harms at issue. *See EEOC v. Global Horizons, Inc.*,
6 No. CV-11-3045-EFS, 2013 WL 3940674 (E.D. Wash. July 31, 2013).

8 **B. Forced disclosure of U visa information will harm Intervenors and chill**
9 **immigrant victims of crime and workplace abuses**

10 Intervenors as well as future civil rights plaintiffs and crime victims in
11 undocumented status or with family members in undocumented status³ could face
12

13 2011) (permitting immigration status discovery when emotional distress damages
14 sought). Other courts have held immigration status is not discoverable based on
15 emotional distress damages. *E.g. E.E.O.C. v. Global Horizons, Inc.*, No. Civil 11-
16 00257 LEK, 2013 WL 704923, at *3 (D. Haw. Feb. 26, 2013).

17 ² Only the Fifth Circuit has addressed the issue. *See Cazorla v. Koch Foods of*
18 *Miss. LLC*, 838 F.3d 540, 564 (2016) (remanding to the district court because of its
19 failure to consider the chilling effect on individuals outside of the litigation that
20 would compromise the U visa program and law enforcement).

21 ³ Intervenors do not admit information about their immigration status nor do they
22 admit or deny the existence of U visa information. Both documented and
23
24

1 possible detention or removal, criminal prosecution, and job loss if forced to
2 disclose U visa information. *Rivera*, 364 F.3d at 1064-65; Smith Decl. at ¶ 15, 19-
3 21. Information about whether a plaintiff has sought or applied for a U visa will
4 reveal immigration status, as only a person without permanent legal status will
5 apply for a temporary U visa. An application for U nonimmigrant status also
6 includes information about the petitioner and their family, including but not limited
7 to: immigration history; entrances into the United States; arrests, criminal charges,
8 and convictions; mental and physical disorders; communicable diseases; drug
9 abuse or addiction; address history; financial situation; and receipt of public
10 benefits. Gnam Decl. at ¶ 19-25.

11
12
13 Intervenor expressed fear of retaliation by Defendants and harm by Cruz.
14 *See* Gnam Decl. Ex. C at 138:21-139:19; Ex. D at 51:16-20, 71:21-72:1, 73:4-7;
15 Ex. E at 69:8-18; 117:19-118:9; Ex. F at 135:25-136:8; Ex. G at 62:18-24, 73:5-15,
16 129:17-20. This fear would be exacerbated if Intervenor are forced to disclose U
17 visa information, which is akin to revealing their immigration status, and which
18 could be used to retaliate, cause harm, or intimidate.

19
20 undocumented litigants experience the chilling effect due to discovery of status.

21 *Rivera*, 364 F.3d at 1065. Intervenor respectfully request the Court accept this
22 representation of harms rather than require them to disclose information about their
23 status that would have a chilling effect on them, their families, and future litigants.

1 Fear that a defendant will use immigration status to retaliate or interfere with
2 a plaintiff's legal remedies is substantiated by case law. *See, e.g. Sure-Tan, Inc. v.*
3 *NLRB*, 467 U.S. 883, 886–87 (1984) (employer reported undocumented workers to
4 immigration after they voted in favor of union representation); *Aguilar v. E.C.*
5 *Mgmt. Corp.*, NO. 12-20678, 2012 WL 12875471, at *1 (S.D. Fla. Sep. 18, 2012)
6 (employer reported worker to immigration authorities after worker sued for unpaid
7 overtime); *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056, 1057
8 (N.D.Cal.2002) (employer reported worker to immigration after he filed a claim
9 for unpaid wages); *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25
10 F.Supp.2d 1053, 1055 (N.D.Cal.1998) (employer reported worker to immigration
11 after she filed a claim for unpaid wages); Gnam Decl. Ex. K (describing increase in
12 immigration-related retaliation against workers enforcing rights in California).
13
14

15 Even if a particular defendant does not share immigration status information
16 directly with Immigration and Customs Enforcement (ICE), current immigration
17 enforcement policies indicate ICE will pursue workers and victims attempting to
18 enforce their legal rights. Current ICE policy is to undertake enforcement action
19 inside courthouses, including against a victim seeking protection from her abuser.
20 Smith Decl. at ¶ 21; Gnam Decl. Ex. M. ICE has also targeted immigrants workers
21 seeking to enforce workplace laws in California. Smith Decl. at ¶ 21; Gnam Decl.
22 Ex. N. These practices and policies cause increased reluctance among immigrant
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1 victims to report crimes to law enforcement. Smith Decl. at ¶ 21; Gnam Decl. Ex.
2 L, O. If immigration status information is disclosed in these proceedings, ICE may
3 use such information to pursue enforcement action.

4
5 Immigrant litigants forced to disclose their immigrant status would also risk
6 criminal prosecution based on their immigration history. *Rivera*, 364 F.3d at 1064-
7 65; 8 U.S.C. § 1325(a) (unlawful entry or attempted entry into the United States). In
8 addition, though Intervenors are no longer employed by Defendant, a worker and
9 her family could risk loss of employment if their immigration status became
10 known to a current employer. As a result of the fear of deportation, criminal
11 prosecution, and job loss, workers will choose to forego valid claims “due to their
12 perception that immigration status would become an issue in litigation.” Smith
13 Decl. at ¶14. *See also Rivera*, 364 F.3d at 1065.

14
15 Regardless of whether or not these tangible harms occur, “requiring the
16 plaintiffs to answer such questions [about their immigration status] in the discovery
17 process would likely deter them, and future plaintiffs, from bringing meritorious
18 claims.” *Rivera*, 364 F.3d at 1064. *See also* Smith Decl. at ¶ 18-20. Permitting
19 employers to use the federal courts as agents in their intimidation of immigrant
20 workers will chill those workers from pursuing their civil rights and will result in
21 unscrupulous employers getting a free pass on complying with labor laws. *Rivera*,
22 364 F.3d at 1065, 1072; Smith Decl. at ¶ 18-21, 23.

1 **C. Forced disclosure of U visa information conflicts with public policy and**
2 **Congressional intent in U nonimmigrant status nondisclosure provisions**

3 Forcing disclosure of U visa information will create an *in terrorem* effect
4 that would undermine Congress' purpose in creating the U visa. Congress created
5 the U visa in the Victims of Trafficking and Violence Protection Act of 2000 for
6 two primary purposes: 1) to "facilitate the reporting of crimes to law enforcement
7 by trafficked, exploited, victimized, and abused [immigrants] who are not in lawful
8 immigration status" and thereby strengthen the ability of law enforcement to
9 detect, investigate and prosecute crimes; and 2) to comport with the humanitarian
10 interests of the United States. Pub. L. No. 106-386, § 1513(a)(2)(A)-(B), 114 Stat.
11 1464, 1533 (2000). To fulfill this purpose, Congress created the U visa, a
12 temporary nonimmigrant status, for immigrant victims who have suffered
13 substantial abuse as a result of criminal activity, possess information about that
14 criminal activity, and have been helpful to law enforcement in the investigation,
15 detection, or prosecution of that criminal activity. 8 U.S.C. § 1101(a)(15)(U)(i); 8
16 C.F.R. § 214.14(a)(5). An agency must certify that the petitioner has been helpful.
17 8 C.F.R. § 214.14(c)(2)(i).

18 Congress considered the nondisclosure of U visa information essential to
19 fulfill the legislative purpose of the U nonimmigrant status. The statute mandates
20 that agencies "*in no case may...permit use by or disclosure to anyone...of any*
21 information which relates to an [immigrant] who is the beneficiary of an
22
23
24

1 application for relief under paragraph 15(T), 15(U)...” 8 U.S.C. § 1367(a)(2)
2 (emphasis added). The prohibition on disclosure applies to all agencies,
3 governmental or non-governmental, receiving information related to U visa
4 petitions. 8 C.F.R. § 214.14(e)(2). Congress was clear about its intent: “These
5 provisions are designed to ensure that abusers and criminals cannot use the
6 immigration system against their victims....” H.R. Rep. No. 109-233, at 120
7 (2005). Because the Equal Employment Opportunity Commission (EEOC) and the
8 Department of Labor (DOL) are listed as certifying agencies, Congress’ intent to
9 keep U visa information from abusers should be applied to defendant employers
10 under investigation for workplace violations. *See* 8 C.F.R. § 214.14(a)(2). Current
11 ICE enforcement practices, *see supra* Sec. III. B., make it critically important that
12 courts guard the Congressional intent of the U visa program.
13
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15 The limited exceptions to nondisclosure permit federal prosecutors to
16 disclose information in order to comply with constitutional obligations. 8 U.S.C. §
17 1367(b); 8 C.F.R. § 214.14(e)(1)(ix). The exceptions do not include civil litigants,
18 except to require written consent by petitioners for a waiver of nondisclosure. 8
19 U.S.C. § 1367(b)(4); 8 C.F.R. § 214.14(e)(1)(iv). This recognition of the criminal
20 context indicates Congress did not anticipate disclosure would be compelled from
21 an immigrant victim enforcing her civil rights. Circumvention of Congress’ intent
22 by Defendant employers in civil discovery will conflict with the statute’s purpose
23
24

1 of facilitating immigrant crime victims' cooperation with law enforcement.

2 **D. *In terrorem* effect of disclosure of immigration information undermines**
3 **public policy of Title VII and the WLAD**

4 The *in terrorem* effect of forcing employees to disclose immigration status
5 to the allegedly abusive employer will undermine the public policy behind
6 workplace antidiscrimination laws. The central statutory purpose of Title VII is
7 "eradicating discrimination throughout the economy and making persons whole for
8 injuries suffered through past discrimination." *Albemarle Paper Co. v. Moody*, 422
9 U.S. 405, 421 (1975). Congress intended for individual workers to enforce Title
10 VII. 42 U.S.C. § 2000a-3(a); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 45
11 (1974) ("[T]he private right of action remains an essential means of obtaining
12 judicial enforcement of Title VII...the private litigant not only redresses his own
13 injury but also vindicates the important congressional policy against discriminatory
14 employment practices.") (internal citations omitted). Forced disclosure of
15 immigration status information will deter both documented and undocumented
16 immigrant workers from reporting discrimination and thereby unacceptably burden
17 the public interest in enforcing Title VII. *Rivera*, 364 F.3d at 1065-66.

18 Similarly, the WLAD's "overarching purpose...is to deter and to eradicate
19 discrimination in Washington." *Brown v. Scott Paper Worldwide Co.*, 143
20 Wash.2d 349, 360, 20 P.3d 921, 927 (2001) (citation omitted). The WLAD
21 depends primarily on private plaintiffs to enforce its antidiscrimination provisions.
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1 RCW 49.60.030(2); *Allison v. Housing Auth.*, 118 Wash.2d 79, 86, 821 P.2d 34, 37
2 (1991) (“enforcement...depends in large measure on employees’ willingness to
3 come forth and file charges or testify in discrimination cases”). The Washington
4 Supreme Court also recognizes that implicating immigration status in civil
5 proceedings interferes with the functioning of the judicial system. *See* Wash. Rules
6 of Pro. Conduct 4.4 cmt. 4 (prohibiting counsel from inquiries into immigration
7 status made to intimidate, coerce, or obstruct participation); Wash. R. Evid. 413
8 (immigration status inadmissible in civil cases). Forced disclosure of civil
9 plaintiffs’ immigration status will undermine Washington State’s strong public
10 policy of eliminating discrimination and avoiding interference in the legal system.

11
12
13 **E. Potential availability of U nonimmigrant status does not limit chilling effect**

14 An applicant will wait 3½ to 4½ years after submitting a U visa petition to
15 USCIS before it is processed. Gnam Decl. ¶ 15; Gnam Decl. Ex. I. During that
16 time, she remains without legal status or work authorization. A pending U visa
17 petition has no effect on ICE’s authority to execute a final order of removal or
18 deportation. 8 C.F.R. § 214.14(c)(1)(ii). If a pending U visa petitioner is placed in
19 removal proceedings, a motion to terminate those proceedings must be made
20 jointly with ICE at their discretion. *Id.* at (i). Therefore, an immigrant worker who
21 files a U visa petition at the inception of a case to enforce her workplace rights will
22 remain without status or protection from deportation throughout the litigation.
23
24

1 Once processed, a U visa petition can be denied or granted deferred action
2 and placed on a waiting list until a visa becomes available. 8 C.F.R. §
3 214.14(d)(1)-(2). There are only 10,000 U-1 nonimmigrant visas available each
4 fiscal year, and more than 110,000 petitioners pending. Gnam Decl. ¶ 17; Gnam
5 Dec. Ex. J. Because a petitioner will have no immigration status for over three
6 years and will not have a temporary visa for many more years, the possible
7 availability of a U visa cannot mitigate the chilling effect of disclosure.
8

9 **F. Any limited relevance asserted by Defendants is outweighed by the harm**

10 The harm that will result from disclosure of U visa information outweighs
11 the relevance Defendant asserts to justify its discovery demand. Given the lack of
12 protection provided by filing a U visa petition and the length of time before a
13 petitioner receives any status, the potential motivation created by such a remote
14 benefit is minimal. This minimal relevance does not outweigh the harm that would
15 be caused both to current and future litigants and the public interest.
16

17 **CONCLUSION**

18 Forced disclosure of U visa information would subject Intervenors and their
19 family members to the risk of deportation, detention, criminal prosecution, and job
20 loss. This discovery would cause harm and create a chilling effect on Intervenors
21 and future immigrant workers and crime victims, impermissibly burdening the
22 public interest in fulfilling the purposes of Title VII, the WLAD, and the U visa
23
24

1 program. Intervenors therefore respectfully request this Court forbid Defendants
2 from seeking U visa information.⁴
3
4
5

6 Respectfully submitted this 13th day of April of 2018.

7 By: s/ Alyson Dimmitt Gnam
8 *Attorney for Plaintiffs-Intervenors*
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10 alysond@nwjustice.org
11 Northwest Justice Project
12 300 Okanogan Avenue Ste. 3A
13 Wenatchee, WA 98801
14 (509) 664-5101
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20 _____
21 ⁴ In the alternative, should this Court determine that some disclosure of U visa
22 information is necessary, Intervenors request an opportunity to present alternative
23 means that would reduce harm of disclosure (*e.g.* anonymous written questions).
24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 I hereby certify that on April 13, 2018, I electronically filed the foregoing
4 with the Clerk of the Court using the CM/ECF system which will send
5 notification of such filing to the following:

6 Colleen M Melody: colleenml@atg.wa.gov

7 Patricio A Marquez: patriciom@atg.wa.gov

8 William Spurr: bill@williamrspurr.com

9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 13th day of April, 2018.

12 BY: s/ Alyson Dimmitt Gnam

13 Alyson Dimmitt Gnam
14 *Attorney for Plaintiffs-Intervenors*

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
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6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20 SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiffs-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

[PROPOSED] ORDER GRANTING
PLAINTIFFS-INTERVENORS'
MOTION FOR PROTECTIVE ORDER
REGARDING DISCOVERY OF U
VISA AND IMMIGRATION STATUS
INFORMATION

1 THIS MATTER came before the Court on Plaintiffs-Intervenors' Motion for
2 Protective Order Regarding Discovery of U Visa and Immigration Status
3 Information. This Court has reviewed the Motion and all evidence submitted in
4 support of and in opposition to the Motion, the pleadings on file, and is fully
5 informed.
6

7 IT IS HEREBY ORDERED THAT Plaintiffs-Intervenors Motion for
8 Protective Order Regarding Discovery of U Visa and Immigration Status
9 Information GRANTED. Defendants are prohibited from inquiring as to U visa
10 information, including application information and related sworn statements, of
11 Plaintiffs-Intervenors.
12

13 DATED this _____ day of _____ 2018.
14
15

16 _____
United States District Judge

17 Presented by:
18

19 By: s/ Alyson Dimmitt Gnam
20 Alyson Dimmitt Gnam
21 Attorney for Plaintiffs-Intervenors
22 alysond@nwjustice.org
23 Northwest Justice Project
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

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9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 13th day of April, 2018.

12 BY: s/ Alyson Dimmitt Gnam

13 Alyson Dimmitt Gnam
14 *Attorney for Plaintiffs-Intervenors*

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 STATE OF WASHINGTON,
11 Plaintiff,

No. 2:17-cv-00149

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,
19 Defendants.

DECLARATION OF REBECCA
SMITH IN SUPPORT OF
PLAINTIFFS-INTERVENORS'
MOTION FOR PROTECTIVE
ORDER REGARDING DISCOVERY
OF U VISA AND IMMIGRATION
STATUS INFORMATION

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DECLARATION OF REBECCA SMITH IN SUPPORT OF
INTERVENORS' MOTION FOR PROTECTIVE ORDER - 1

Northwest Justice Project

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Wenatchee, WA 98801

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SM-01553
PRR-2019-0353

1 I, Rebecca A. Smith, declare under penalty of perjury under the laws of the
2 State of Washington:

3 1. I am over the age of eighteen and competent to testify to the following from
4 personal knowledge.

5 2. I am an attorney licensed to practice law in the State of Washington. I have
6 been practicing law for 36 years. My entire legal career has involved representing
7 low-wage and immigrant workers in employment related litigation and policy
8 advocacy. For the first 18 years of my practice, I represented, almost exclusively,
9 migrant and seasonal farm workers in employment law matters in Washington
10 State, including complex litigation and legislative representation.

11 3. I obtained two undergraduate degrees, one from Washington State
12 University in 1978, and the second from the University of Washington in 1980. I
13 obtained my law degree from the University of Washington Law School in 1982.

14 4. From 1982-2000, I was employed by Evergreen Legal Services and then
15 Columbia Legal Services. I litigated farm worker employment law cases
16 throughout my legal services career and was considered at that time a national
17 expert on representing and advocating for farm workers. Throughout my legal
18 services career, I have worked to ensure that immigrant workers were afforded the
19 same rights under federal and state employment laws as were their U.S. citizen
20 counterparts.

1 5. I joined the National Employment Law Project (NELP) in 2000. At NELP, I
2 have also worked primarily on policy and litigation to advance the workplace
3 rights of immigrant workers within the United States, including the application of
4 international human rights laws to help protect immigrant workers.

5 6. Early in my legal services career, I obtained an unpublished protective order
6 from then-federal judge James McNichols in a case called *Guerra v. Sutton*, later
7 reported at 783 F.2d 1371 (9th Cir. 1986). In *Guerra*, Judge McNichols ruled that
8 my immigrant clients, who had been subjected to an early morning warrantless raid
9 at their home in Zillah, Washington, could not be compelled to disclose their
10 immigration status in litigation against immigration authorities. Among other
11 damages, my clients claimed emotional distress damages.

12 7. I was lead counsel as well in *Peters v. U.S.*, 853 F.2d 692 (9th Cir. 1987)
13 where the Ninth Circuit reversed the district court's ruling, and denied enforcement
14 of the then-named U.S. Immigration Service's third party subpoena directed at a
15 labor camp and intended to identify undocumented workers living in the camp.

16 8. I was lead counsel in *Escobar v. Baker*, 814 F.Supp. 1491 (W.D. Wash.
17 1993). That case involved multiple violations of the AWPAA. The Court found that
18 the farmworkers' immigration status was irrelevant to their claims under the state
19 and federal laws.

20 9. On behalf of NELP and several other organizations representing immigrant

1 workers, I co-wrote an amicus brief in *Hoffman Plastic Compounds, Inc. v. Nat'l.*
2 *Labor Relations Bd.*, 535 U.S. 137 (2002), outlining over thirty cases in which
3 employers had used immigration status as a way of retaliating against workers who
4 made claims for violations of their labor rights. Our brief concentrated on the
5 chilling effect that an adverse decision in that case would have on immigrant
6 workers' enforcement of labor rights.

7 10. After the *Hoffman* case was decided, I began to monitor litigation nationally
8 on the question of the discoverability and relevance of immigration status to labor
9 rights and remedies. Among the cases that I have litigated in an amicus capacity
10 are *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004), where NELP's brief
11 focused on the chilling effect that disclosure of immigration status would have on
12 valid claims by immigrant workers, and *Salas v. Hi-Tech Erectors*, 168 Wash. 2d
13 664 (2010), in which the Washington State Supreme Court held that immigration
14 status is inadmissible in tort litigation.

15 11. In addition to *Hoffman*, *Rivera* and *Salas*, my NELP colleagues and I have
16 written and co-written amicus briefs in other significant litigation around the
17 country on the issue of immigrant workers' rights and the disclosure of
18 immigration status in litigation. See, e.g. *Velasquez v Centrome*, 233 Cal.App.4th
19 1191, 183 Cal.Rptr.3d 150 (2015) (immigration status is irrelevant in a personal
20 injury claim where the injured worker is not seeking damages for lost wages); *Staff*

1 *Management v. Jimenez*, 839 N.W. 640 (Iowa 2013) (Iowa Supreme Court ruling
2 that undocumented immigrant worker had right to state workers' compensation
3 benefits); *Bollinger Shipyards, Inc. v. Director, Office of Worker's Compensation*
4 *Programs*, 604 F.3d 864 (5th Cir. 2010) (holding immigration status irrelevant to
5 federal workers' compensation claim); *Cagnoli v. Tandem Staffing*, 914 So.2d 950
6 (Fla . 2005) (State may not require injured workers to present a social security
7 number as a pre-condition for application for workers' compensation benefits);
8 *Design Kitchen and Bath v. Lagos*, 882 A.2d 817, (MD. Ct. Apps., 2005) (Injured
9 undocumented workers remain entitled to state workers' compensation benefits
10 after *Hoffman Plastics Compounds*).

11 12. Further, following co-authorship of an amicus brief in a successful effort to
12 obtain an advisory opinion from the Interamerican Court of Human Rights related
13 to *Hoffman*, I was also co-counsel in litigation in the Interamerican Commission on
14 Human Rights, in which the Commission recommended that the U.S. government
15 prohibit employer inquiries into the immigration status of workers asserting their
16 employment and labor rights in administrative proceedings and litigation.¹

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19 ¹ Report No. 50/16 Case 12.834, Report on Merits, Undocumented Workers,
20 (November 30, 2016), available at <https://www.aclu.org/legal->

1 13. Both before and since *Hoffman*, I have consulted with attorneys nationwide
2 on issues related to disclosure of immigration status in litigation. I estimate that I
3 have consulted in at least three dozen cases around the country. In addition, I have
4 provided trainings to legal services advocates and private attorneys at conferences,
5 including the American Bar Association, the Workers' Injury Law and Advocacy
6 Group, the National Employment Lawyers' Association, the King County
7 Newcomers' Project, the Washington State Trial Lawyers' Association, and the
8 Yakima and Benton-Franklin County Bar Associations, on both the substance and
9 process of representing immigrant workers in employment litigation. I served until
10 2017 as the co-chair of the ABA Labor and Employment Committee's
11 subcommittee on Immigration.

12 14. In my direct experience representing workers in labor and employment
13 cases, many clients simply choose to forego valid claims, due to their perception
14 that immigration status would become an issue in litigation.

15 15. I know both first-hand and through my consultations with lawyers around
16 the country that employers regularly explicitly or implicitly threaten immigrant
17 workers with reporting them to immigration authorities when the subject of labor
18

19 [document/violations-human-rights-undocumented-workers-united-states-](#)
20 [america?redirect=legal-document/merits-report.](#)

1 violations is raised by the worker. I co-authored two collections of instances
2 around the country in which employers had misused workers' immigration status
3 as a means of retaliation against them.²

4 16. In addition to my litigation experience, I have acted as an expert on policy
5 proposals to better protect immigrant workers from retaliation, resulting in the
6 passage of a groundbreaking retaliation law in California, and contributing as well
7 to the development of the US Department of Labor's Memorandum of
8 Understanding with Immigration and Customs Enforcement, (-ICE) meant to
9 deconflict immigration enforcement from the enforcement of labor laws.³

10 17. I have also written four law review articles and a book chapter on issues
11 around the labor rights of immigrant workers, listed below.

12
13

² See, AFL-CIO, American Rights at Work Education Fund, National Employment
14 Law Project, "Iced Out, How Immigration Enforcement Has Interfered with
15 Workers' Rights," 14 (Oct., 2009); Rebecca Smith and Eunice Cho, "Workers'
16 Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance
17 Labor Rights," (National Employment Law Project, 2013).

18 ³ Revised Memorandum of Understanding between the Departments of Homeland
19 Security and Labor Concerning Enforcement Activities at Worksites, (2011),
20 <https://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf>.

1 18. In both my direct and indirect experience, as well as my research, employers
2 regularly engage in aggressive attempts to seek disclosure of otherwise irrelevant
3 immigration status in litigation. These claims that immigrations status is somehow
4 relevant to a workers' claim have a long history. They have included assertions
5 that a contract between an employer and an unauthorized immigrant is "illegal"
6 and therefore cannot be enforced in court,⁴ that immigration status is somehow
7 relevant to credibility of a worker's claims,⁵ and have sought disclosure of tax
8

9 ⁴ See *Gates v. Rivers Constr.*, 515 P. 2d 1020, 1022 (Alaska, 1975); *Dowling v.*
10 *Slotnik*, 712 A.2d 396, 409 (Ct. 1998) ("we do not agree that an employment
11 agreement between an employer and an illegal alien is so tainted by illegality that,
12 as a matter of law, the agreement cannot constitute a 'contract of service'").

13 ⁵ See, e.g., *Garcia v. Palomino*, 2010 U.S. Dist. LEXIS 131817 at *4 (D. Kan.,
14 2010) (denying motion to reopen discovery holding that any benefits discovery
15 materials would provide in establishing credibility did not outweigh prejudice that
16 would result to Plaintiffs were discovery into immigration status permitted.);
17 *Corona v. Adriatic Italian Rest. & Pizzeria*, 2010 U.S. Dist. LEXIS 15788, *2-4
18 (S.D.N.Y. Feb. 22, 2010) (precluding inquiry into immigration status to attack
19 credibility when evidence related to immigration status was not already before the
20 court, and the impact of cross-examination on immigration status, as it relates to

1 returns, social security numbers, birth certificates and other identity documents.⁶
2 Employers have argued that immigration status is relevant to all kinds of claims
3 and remedies including the simple failure to pay wages for work performed,
4 workers' compensation benefits, statutory claims, future lost wages, and other
5 damages. More recently, some employers and their counsel have put forth an
6 argument that immigrant workers must disclose the contents of U visa applications,
7 on the theory that immigrants have falsified claims against them in order to get an
8 immigration visa. In my view, the likely motivation for these attempts is either to
9 discourage workers from going forward with their claims or to ensure that juries'

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12 credibility, was speculative); *Widjaja v. Kang Yue USA Corp.*, 2010 WL 2132068
13 at *1 (rejecting defendant argument that immigration status was relevant to
14 credibility).

15 ⁶ See, e.g., *Melendez v. Primavera Meats, Inc.*, 270 F.R.D. 143, 144 (E.D.N.Y.
16 2010) (rejecting argument that tax returns were necessary to determine plaintiff
17 employers' identity, noting that there were less intrusive means for obtaining that
18 information); *Uto v. Job Site Servs.*, 269 F.R.D. 209, 212 (E.D.N.Y. 2010)
19 (granting protective order against requests for Social Security numbers noting that
20 permitting inquiry into a party's immigration status, when not relevant, presents a
21 "danger of intimidation [that] would inhibit plaintiffs in pursuing their rights;")

1 opinions are inflamed as they consider both liability and damages, or both.

2 19. Whatever the motivation for these attempts at discovery of immigration
3 status, they create huge barriers to immigrant workers filing claims and attending
4 court proceedings, in case immigration officials arrest them in their homes or even
5 during court proceedings as a result of their pursuit of valid claims.

6 20. Workers' fears are not unfounded. In a few cases in my experience,
7 immigration officials have, at the behest of an employer, have arrested plaintiffs
8 who were pursuing claims against their employer. Examples like these are rare but
9 employer threats of retaliation and turning workers into immigration authorities are
10 not rare, unfortunately. These can spread real terror in the immigrant community,
11 and reinforce the perception that it is better to keep silent than to speak up about
12 labor violations.⁷

13
14 ⁷ See e.g., Court's protective order would have an in terrorem effect or create "the
15 danger of intimidation that would inhibit plaintiffs in pursuing their rights in this
16 case." *David v. Signal*, 2009 U.S. Dist. LEXIS 29007, *11; *In re Reyes*, 814 F.2d
17 168, 170 (5th Cir. 1987) (denying discovery of plaintiffs' immigration status,
18 noting that such discovery could inhibit the pursuit of their legal rights); *Villareal*
19 *v. El Chile, Inc.*, 2010 WL 725557, *8 (N.D.Ill. 2010) (allowing discovery into
20 immigration status in FLSA actions would cause undocumented plaintiffs to

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2 withdraw their claims or refrain from bringing an action); *Baca v. Brother's Fried*
3 *Chicken*, 2009 WL 1349783, *1 (E.D. La. 2009) (holding that allowing discovery
4 into immigration status could inhibit plaintiffs from pursuing their rights);
5 *Sandoval v. Rizzuti Farms, Ltd.*, 2009 WL 959478, *2 (E.D.Wash. 2009) (holding
6 that the chilling effect of disclosing Plaintiffs' immigration status would prevent
7 workers from exercising their rights); *Serrano v. Underground Util. Corp.*, 407
8 N.J.Super. 253, 272-273, 970 A.2d 1054 (N.J.Super.A.D. 2009) (holding that
9 investigation of immigration status may have a chilling effect on the assertion of
10 rights by both undocumented and documented workers); *Rengifo v. Erevos Enter.,*
11 *Inc.*, 2007 WL 894376 (S.D.N.Y. Mar. 20, 2007) (granting protective order where
12 immigration status only went to collateral issue because of in terrorem effect);
13 *Avila-Blum v. Casa De Cambio Delgado, Inc., et al.*, 2006 WL 1378470, at *2
14 (S.D.N.Y. May 16, 2006) (barring evidence of immigration status in the liability
15 phase of a lawsuit because the inquiry would have a chilling effect on the rights of
16 the plaintiff and because its probative value was questionable); *Liu v. Donna*
17 *Karan Int'l., Inc.*, 207 F. Supp. 2d 191, 193 (S.D.N.Y. 2002) (denying discovery of
18 immigration status based on risk of intimidation and chilling effect); *E.E.O.C. v.*
19 *Bice of Chicago*, 229 F.R.D. at 583 (denying discovery as to immigration status
20 "because questions about immigration status are oppressive, they constitute a

1 21. Current Immigration and Customs Enforcement policy, as well as a political
2 context that is the most hostile to immigrants that I have ever observed over my
3 career, makes it even more difficult for workers with valid claims to come forward.
4 For example, although the Chief Justice of the Washington State Supreme Court
5 has requested that ICE agents to stay out of Washington State Courts in order to
6 ensure individuals of a “trusted public forum where they will be treated with
7 dignity, respect, and fairness,” a new ICE directive allows ICE agents to undertake
8 enforcement actions against undocumented immigrants inside courthouses.⁸

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11 substantial burden on the parties and the public interest and they would have a
12 chilling effect on victims of discrimination from coming forward to assert
13 discrimination claims”); *Patel v. Quality Inn South*, 846 F.2d 700, 704 (noting that
14 chilling undocumented worker’s rights to assert claims under FLSA would be
15 counterproductive to government efforts to discourage employer hiring of these
16 workers).

16 ⁸ Compare Letter from Justice Mary E Fairhurst to John F. Kelly, Secretary of the
17 U.S. Department of Homeland Security, dated March 22, 2017,

18 <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf>, Civil Immigration Enforcement Actions Inside
19 Courthouses, Directive Number 11072.1 (U.S. Immigration and Customs
20

1 As another example, immigration agents have reportedly sought information about
2 workers in California who were pursuing claims against their employers,
3 prompting the California Labor Commissioner to direct her staff to turn away
4 enforcement agents who do not present warrants.⁹

5 22. In my view, policies such as the recent ICE directive will only encourage
6 unscrupulous employers to use immigration agencies as a way to ensure that
7 workers cannot pursue legitimate claims against them.

8 23. While it is impossible to conduct a study that would quantify the degree of
9 chilling of workplace rights caused by the threat of disclosure of immigration
10 status, the Ninth Circuit has noted, both in *Rivera v. NIBCO* and prior cases that
11 forced disclosure of immigration status in litigation and the potential deportation
12 that may result can seriously undermine the enforcement of workers' rights. *Local*
13 *512, Warehouse & Office Workers' Union v. NLRB* (FELBRO), 795 F.2d 705, 719

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Enforcement, Jan 10, 2018),

16 <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcement>
17 [ActionsCourthouses.pdf](#).

18 ⁹ Adam Ashton, Boss tells state workers: Kick ICE out of California Labor
19 Offices, Sacramento Bee, Aug 3, 2017, <http://www.sacbee.com/news/politics->
20 [government/the-state-worker/article165111922.html](http://www.sacbee.com/news/politics-government/the-state-worker/article165111922.html).

1 (9th Cir. 1986) overruled in *Hoffman*, 535 U.S. at 142, n.2. (“The knowledge that
2 deportation proceedings are a likely consequence of filing a successful unfair labor
3 practice charge would chill severely the inclination of any unlawfully treated
4 undocumented worker to vindicate his or her rights.”)

5 24. As many courts have held, when workers are deterred by these tactics,
6 unscrupulous employers learn that it pays to hire the undocumented, since
7 employers can get a free pass on compliance with labor laws.¹⁰ In my view, this
8 not only puts undocumented immigrants at risk, but also those who work alongside
9 them on construction sites, in orchards and nursing homes across the state. When
10 the labor rights of the most vulnerable are chilled, the labor rights of all workers
11 and the very purposes of both the immigration laws and the anti-discrimination
12 laws are undermined.

13 **Selected Publications**

14 Prosecute, Protect, Prevent: Migrant Labor, Forced Labor and Human Rights, in

15 HUMAN RIGHTS IN LABOR AND EMPLOYMENT RELATIONS:

16 INTERNATIONAL AND DOMESTIC PERSPECTIVES (Labor & Employment
17 _____

18 ¹⁰ See, e.g., *Singh v. Jutla & C.D. & R’s Oil, Inc.*, 214 F. Supp. 2d at 1062 (N.D.
19 Cal. 2002) (“[E]very remedy denied to undocumented workers provides a marginal
20 incentive for employers to hire those workers.”).

1 Relations Association: 3rd Edition 2009).

2 “Human Rights at Home: Human Rights as an Organizing and Legal Tool in Low
3 Wage Worker Communities,” Stanford Journal of Civil Rights and Civil Liberties
4 (2007).

5 “Solutions, Not Scapegoats: Abating Sweatshop Conditions for All Low-Wage
6 Workers as a Centerpiece of Immigration Reform,” New York University Journal
7 of Legislation & Public Policy (2007).

8 “Low Pay, High Risk: State Models for Advancing Immigrant Workers’ Rights,”
9 New York University Review of Law & Social Change (2004).

10 “Interamerican Court of Human Rights Amicus Curiae Brief: The United States
11 Violates International Law When Labor Law Remedies are Restricted Based on
12 Workers’ Migrant Status,” Seattle Journal for Social Justice (Spring/Summer
13 2003).

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21 DECLARATION OF REBECCA SMITH IN SUPPORT OF
INTERVENORS’ MOTION FOR PROTECTIVE ORDER - 15

SM-01567
PRR-2019-0353

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of April, 2018 in Seattle, Washington.

NATIONAL EMPLOYMENT LAW PROJECT

/s/ Rebecca Smith
Rebecca A. Smith, WSBA #12834
NATIONAL EMPLOYMENT LAW PROJECT
317 17th Ave S
Seattle, WA 98144
Phone: (206) 324-4000
E-mail: rsmith@nelp.org

1 CERTIFICATE OF SERVICE

2 I hereby certify that on April 13, 2018, I electronically filed the foregoing
3 document titled "DECLARATION OF REBECCA SMITH IN SUPPORT OF
4 PLAINTIFF-INTERVENOR'S MOTION FOR PROTECTIVE ORDER
5 REGARDING DISCOVERY OF U VISA AND IMMIGRATION STATUS
6 INFORMATION" with the Clerk of the Court using the CMF/ECF system, which
7 will send notice of such filing to the following individuals listed below:

8 Colleen M Melody: colleenml@atg.wa.gov

9 Patricio A Marquez: patriciom@atg.wa.gov

10 William Spurr: bill@williamrspurr.com

11 Brooke Cunningham: blc@randalldanskin.com

12
13 DATED this 13th day of April, 2018.

14 BY: s/ Alyson Dimmitt Gnam

15 Alyson Dimmitt Gnam
16 *Attorney for Plaintiffs-Intervenors*

1 ALYSON DIMMITT GNAM
2 MARIA D. VELAZQUEZ
3 Attorneys for Intervenors
4 Northwest Justice Project
5 300 Okanogan Ave. Ste. 3A
6 Wenatchee, WA 98801
7 (509) 664-5101

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 HORNING BROTHERS, L.L.C.,
14 and HERMILO CRUZ, in his
15 individual capacity and as a
16 member of the marital community
17 of HERMILO CRUZ and
18 CLAUDIA SANCHEZ,

19 Defendants.

20

SOCORRO DIAZ SILVAS,
21 ROXANA RODRIGUEZ DE
22 ALFARO, YESICA CABRERA
23 NAVARRO, YASMIN
24 CABRERA NAVARRO, and
SAMANTHA MENDOZA

Plaintiff-Intervenors,

v.

HORNING BROTHERS, L.L.C.,
Defendant.

No. 2:17-cv-00149

DECLARATION OF ALYSON
DIMMITT GNAM IN SUPPORT OF
PLAINTIFFS-INTERVENORS'
MOTION FOR PROTECTIVE ORDER
REGARDING DISCOVERY OF U
VISA INFORMATION

1 I, Alyson Dimmitt Gnam, declare under penalty of perjury under the laws of
2 the State of Washington that the following statements are true and correct, that I
3 am over eighteen years of age, and that I am competent to testify to the following
4 from personal knowledge:

- 5
6 1. I am an attorney representing Plaintiffs-Intervenors Socorro Diaz Silvas,
7 Roxana Rodriguez de Alfaro, Yesica Cabrera Navarro, Yasmin Cabrera
8 Navarro, and Samantha Mendoza (hereinafter “Intervenors”) in *State of*
9 *Washington et al. v. Horning Brothers, LLC et al.*
- 10 2. On March 16, 2018, counsel for Defendant Horning Brothers, Mr. William
11 Spurr, sent a letter by email demanding information about whether
12 individual Intervenors applied for U visas and if so, all U visa applications
13 and sworn statements.
- 14 3. Attached as Exhibit A is a true and accurate copy of the email and letter
15 attachment sent by Mr. Spurr on March 16, 2018, demanding U visa
16 information.
- 17 4. On March 20, 2018, I, as counsel for Intervenors, communicated with Mr.
18 Spurr by email and declined to produce such discovery because U visa
19 information necessarily reveals immigration status, as well as other highly
20 personal information about a petitioner and her family members.
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- 1 5. Attached as Exhibit B is a true and accurate copy of my email
2 communication to Mr. Spurr on March 20, 2018.
- 3 6. Pursuant to Fed. R. Civ. P. 26(c)(1) and LR 37.1(b), Mr. Spurr and I held a
4 discovery conference by phone on March 20, 2018. We discussed our
5 respective positions and relevant case law, and determined we would not be
6 able to reach an agreement about whether U visa information was
7 discoverable in this case. Mr. Spurr indicated that he believed U visa
8 information should ultimately be presented to the jury, should this case reach
9 trial. I requested that in the alternative, Defendant review written questions I
10 would propose, in an attempt to reach a compromise of questions
11 Intervenor would respond to in lieu of Defendant's demand for all U visa
12 application information and documents. Counsel refused to consider this
13 compromise, and indicated a motion to compel was forthcoming.
- 14 7. Prior to this discovery dispute, Defendant took the depositions of Intervenor
15 on February 11-13, 2018. During the depositions of Socorro Diaz Silvas and
16 Yesica Cabrera Navarro, Mr. Spurr attempted to ask questions about exhibits
17 that contained W-4s and I-9s for the purpose of establishing the Intervenor's
18 dates of employment at Horning Brothers. *See* Ex. C 27:22-30:11; Ex. D
19 23:7-21. I objected, as courts in this district have repeatedly held that
20 questions about social security numbers and immigration status, including
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1 questions regarding W-4s and I-9s, would have an impermissible chilling
2 and intimidating effect on a plaintiff enforcing her workplace rights. After
3 the first two depositions of Intervenors, Mr. Spurr asked no further questions
4 of remaining Intervenors related to immigration status.

5
6 8. Attached as Exhibit C is a true and accurate copy of excerpts of the
7 deposition upon oral examination of Socorro Diaz Silvas taken on Sunday,
8 February 11, 2018.

9
10 9. Attached as Exhibit D is a true and accurate copy of excerpts of the
11 deposition upon oral examination of Yesica Cabrera Navarro taken on
12 Monday, February 12, 2018.

13
14 10. Attached as Exhibit E is a true and accurate copy of excerpts of the
15 deposition upon oral examination of Yasmin Cabrera Navarro taken on
16 Monday, February 12, 2018.

17
18 11. Attached as Exhibit F is a true and accurate copy of excerpts of the
19 deposition upon oral examination of Samantha Mendoza taken on Tuesday,
20 February 13, 2018.

21
22 12. Attached as Exhibit G is a true and accurate copy of excerpts of the
23 deposition upon oral examination of Roxana Rodriguez de Alfaro taken on
24 Tuesday, February 13, 2018.

1 13. Following the depositions of Intervenors, on February 20, 2018, I followed
2 up by email with Mr. Spurr and counsel for Defendant Hermilo Cruz, Mr.
3 Brook Cunningham, to expand on Intervenors' legal position for not
4 answering questions about immigration status. I asked whether any legal
5 dispute remained that would require Intervenors to file a Motion for
6 Protective Order. Counsel for Defendants did not respond.

8 14. Attached as Exhibit H is a true and accurate copy of my email
9 communication to Mr. Spurr and Mr. Cunningham on February 20, 2018.

10 15. According to processing time information provided to the public by the
11 United States Citizenship and Immigration Services (USCIS), after
12 submitting a U visa petition to USCIS, a petitioner will wait 42 to 54.5
13 months (3 ½ to 4 ½ years) for her petition for U nonimmigrant status to be
14 processed. Ex. I.

16 16. Attached as Exhibit I is a true and accurate copy of USCIS Case Processing
17 Times for Form I-918 (U visa petition) at the Vermont Service Center and
18 Nebraska Service Center, both indicating processing delays of 42-54.5
19 months, *available at* <https://egov.uscis.gov/processing-times/>. No other
20 Service Centers process U visa petitions. *See id.*

- 1 17. According to quarterly data provided by USCIS to the public, there were
2 110,511 principal U nonimmigrant status petitions pending with USCIS due
3 to the cap of 10,000 visas per fiscal year. *See infra* Ex. J.
- 4 18. Attached as Exhibit J is a true and accurate copy of USCIS Number of Form
5 I-918 by Fiscal Year 2009-2017, *available at*
6 [https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-](https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-918-application-u-nonimmigrant-status)
7 [set-form-i-918-application-u-nonimmigrant-status](https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-918-application-u-nonimmigrant-status) (showing 110,511
8 principal I-918 petitions pending).
- 9 19. An immigrant seeking U nonimmigrant status must submit Form I-918,
10 Petition for U Nonimmigrant Status, *available at* [https://www.uscis.gov/i-](https://www.uscis.gov/i-918)
11 [918](https://www.uscis.gov/i-918). *See* 8 CFR § 214.14(c)(1). This form requires that the petitioner reveal
12 sensitive and confidential information about themselves and their family
13 members. *See* Form I-918 at 2 (immigration status), 2-3 (time and place of
14 entrances to U.S.), 3-4 (criminal charges and convictions), 4 (engagement in
15 prostitution), 6 (immigration history, mental or physical disorder,
16 communicable disease, and drug abuse or addiction), 7 (names and
17 birthplaces of immediate family members).
- 18 20. An immigrant seeking to include their qualifying family members as
19 derivatives in their petition for U nonimmigrant status must submit Form I-
20 918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient
21
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1 for each family member, *available at* <https://www.uscis.gov/i-918>. *See* 8
2 CFR § 214.14(f)(2). This form requires that the petitioner reveal sensitive
3 and confidential information about their family members. *See* Form I-918
4 Supplement A at 2 (safe mailing address, immigration status, time and place
5 of entrances to U.S.), 3 & 6-7 (immigration history), 4 (criminal charges and
6 convictions), 5 (engagement in prostitution), 7 (mental or physical disorder,
7 communicable disease, drug abuse or addiction, and names and birthplaces
8 of immediate family members).

9
10 21. An immigrant seeking U nonimmigrant status must submit Form I-918
11 Supplement B, U Nonimmigrant Status Certification, *available at*
12 <https://www.uscis.gov/i-918>, signed by a certifying law enforcement agency.
13 8 CFR § 214.14(c)(2)(i). Supplement B contains sensitive information about
14 law enforcement processes. *See* Form I-918 Supplement B at 2-3 (describing
15 law enforcement investigation methods and describing victim's
16 cooperation).

17
18 22. An immigrant seeking U nonimmigrant status who has immigration
19 inadmissibility factors must submit Form I-192, Application for Advance
20 Permission to Enter as a Nonimmigrant, *available at*
21 <https://www.uscis.gov/i-192>. 8 CFR § 214.14(c)(2)(iv). This form contains
22 additional sensitive information. *See* Form I-192 at 1 (immigration history),
23
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1 2-3 (address history), 3 (inadmissibility factors, including criminal, and
2 immigration history).

3 23. An immigrant seeking U nonimmigrant status seeking a fee waiver must
4 submit Form I-912, Request for Fee Waiver, *available at*
5 <https://www.uscis.gov/i-912>. *See* 8 CFR § 214.14(c)(1). This form contains
6 the petitioner's financial information. *See* Form I-912 at 1-2 (receipt of
7 public benefits), 1-5 (financial status information).
8

9 24. An immigrant seeking U nonimmigrant status must submit a signed
10 statement describing the facts of victimization, as well as her immigration
11 history, criminal history, family relationships, and why she should be
12 permitted to stay in the United States, such as to support family members or
13 continue mental health or medical treatment *See* 8 C.F.R. § 214.14(c)(2). *See*
14 *also* Cho, Eunice Hynhye, *U Visas for Victims of Crime in the Workplace: A*
15 *Practice Manual*, National Employment Law Project, at App. C6, C7 (May
16 2014), *available at* [http://www.nelp.org/content/uploads/2015/03/U-Visas-](http://www.nelp.org/content/uploads/2015/03/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf)
17 [for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf](http://www.nelp.org/content/uploads/2015/03/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf) (sample U
18 nonimmigrant status declarations).
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21 25. Supporting evidence includes birth certificates, medical records, letters of
22 support, and documents related to criminal history and rehabilitation. *See*
23
24

1 *supra* Cho, at App. C1 (sample cover letter with list of necessary
2 documents).

3 26. Attached as Exhibit K is a true and accurate copy of Andrew Khouri, *More*
4 *workers say their bosses are threatening to have them deported*, Los
5 Angeles Times, Jan 02, 2018, available at
6 [http://www.latimes.com/business/la-fi-immigration-retaliation-20180102-
8 story.html](http://www.latimes.com/business/la-fi-immigration-retaliation-20180102-
7 story.html) (reporting increase in immigration-related threats against workers
9 in California).

10 27. Attached as Exhibit L is a true and accurate copy of Maya Rhodan,
11 *Deportation Fears Silence Some Domestic Violence Victims*, TIME, May 30,
12 2017, available at [http://time.com/4798422/domestic-violence-deportation-
14 immigration/](http://time.com/4798422/domestic-violence-deportation-
13 immigration/) (reporting drop in reporting of domestic violence and rape
15 among Latinos possibly due to “deportation fears”).

16 28. Attached as Exhibit M is a true and accurate copy of United States
17 Commission on Civil Rights, *U.S. Commission on Civil Rights Expresses*
18 *Concern with Immigrants’ Access to Justice* (April 24, 2017), available at
19 [http://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-Access-
21 Justice.pdf](http://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-Access-
20 Justice.pdf) (expressing concern about chilling effect of ICE enforcement in
22 courthouses).

1 29. Attached as Exhibit N is a true and accurate copy of Adam Ashton, *ICE*
2 *agents asked to leave CA labor offices*, The Sacramento Bee, August 3,
3 2017, [http://www.sacbee.com/news/politics-government/the-state-
5 worker/article165111922.html](http://www.sacbee.com/news/politics-government/the-state-
4 worker/article165111922.html) (reporting on ICE agents awaiting workers
6 outside labor enforcement office).

7 30. Attached as Exhibit O is a true and accurate copy of Jennifer Medina, *Too*
8 *Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y. Times, April
9 30, 2017, available at [https://www.nytimes.com/2017/04/30/us/immigrants-
11 deportation-sexual-abuse.html](https://www.nytimes.com/2017/04/30/us/immigrants-
10 deportation-sexual-abuse.html) (reporting of decrease in reporting of rapes by
12 Latinos and case of ICE agents arresting woman in courthouse after she
13 received a protective order against alleged abuser).

14 Respectfully submitted this 13th day of April of 2018.

15
16 By: s/ Alyson Dimmitt Gnam
17 *Attorney for Intervenors*
18 Alyson Dimmitt Gnam
19 alysond@nwjustice.org
20 Northwest Justice Project
21 300 Okanogan Avenue Ste. 3A
22 Wenatchee, WA 98801
23 (509) 664-5101
24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WASHINGTON

3 I hereby certify that on April 13, 2018, I electronically filed the foregoing
4 with the Clerk of the Court using the CM/ECF system which will send
5 notification of such filing to the following:

6 Colleen M Melody: colleenm1@atg.wa.gov

7 Patricio A Marquez: patriciom@atg.wa.gov

8 William Spurr: bill@williamrspurr.com

9 Brooke Cunningham: blc@randalldanskin.com

10
11 DATED this 13th day of April, 2018.

12 BY: s/ Alyson Dimmitt Gnam

13 Alyson Dimmitt Gnam
14 Attorney for Intervenors

Exhibit A

WILLIAM R. SPURR

ATTORNEY AT LAW

March 16, 2018

Via Email Only

Alyson Dimmitt Gnam
alysond@nwjustice.org

Maria D. Velazquez
lolav@nwjustice.org

Attorneys for Plaintiffs-Intervenors

Re: *State of Washington v. Horning Brothers, LLC No. 2:17-cv-00149-TOR*
(E.D. Wash)

Dear Counsel:

We believe that the deposition testimony of your clients was incredibly damaging to your case in two ways. First, your clients admitted crucial facts concerning their failure to report the alleged sexual harassment to the Hornings, their attendance at Onion Shed Safety Meetings during which they were told how and to whom to report such conduct, and a whole host of other damaging facts. In addition, your clients testified about supposedly constant, egregious acts by Mr. Cruz that seem utterly incredible in light of their testimony that they uniformly never mentioned such conduct to another living soul (despite the facts that two of the plaintiffs are sisters and two other plaintiffs are mother and daughter!) and that there were no other witnesses to this conduct. Moreover, your clients uniformly testified that they do not seek monetary compensation for the supposedly horrific treatment they claim to have endured.

Given your clients' incredible testimony and the absence of their desire for monetary compensation, we believe that your clients' fantastic and exaggerated claims are motivated by their desperate attempts to obtain U-visas, which require that the applicant either be a victim of or material witness to criminal conduct, including sexual assault. Your clients' U-visa applications (if any) are, therefore, vitally relevant to your clients' bias and motives to fabricate and exaggerate their claims to avoid being potentially arrested and deported. In fact, we believe it would be fundamentally unfair if our clients were prohibited from pointing out this source of bias to the jury.

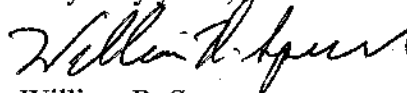
Obviously, the AG's office (which we suspect is the sponsoring governmental agency) has recently pursued an aggressive campaign to oppose the new administration's immigration policies, and we view this case as part of that effort. While we support the sentiments in general, we believe our clients (private parties) are utterly inappropriate victims of this campaign.

Ms. Dimmitt Gnam
Ms. Velazquez
March 16, 2018
Page – 2

I attach Form I-918, the application for a U-visa. As you can see, the application requires sworn statements by the applicant and the sponsoring law enforcement agency regarding the “criminal” allegations that are being prosecuted. My clients’ RFP Nos. 1, 2, 8 and 14 all request witness statements and immigration documents that are pertinent to this case. It could be that your clients (and other witnesses) have not applied for U-visas; if not, please confirm this. If so, we insist that all such applications and sworn statements be produced to us as soon as possible, as they are clearly discoverable. *See E.E.O.C. v. Global Horizons, Inc.*, 2013 WL 3940674 (E.D. Wash 2013) (attached; involved T-visas, which were *less* germane to that case than the U-visas are to this case).

Please produce all U-visa documents pertaining to all of your clients and material witnesses by 5:00 p.m. on March 23, 2018. If you intend to stand on your objections and not produce these clearly relevant documents, then I will call you at 11:00 a.m. on March 26, 2018 for a discovery conference, after which, if we fail to reach agreement, we will file a motion to compel.

Very truly yours,



William R. Spurr

cc. Client

Brook Cunningham, blc@randalldanskin.com
Colleen M. Melody, Colleenm1@atg.wa.gov
Patricio A. Marquez, PatricioM@atg.wa.gov

Exhibit B

From: [Alyson Dimmitt Gnam](#)
To: "William R. Spurr"
Cc: [Melody, Colleen \(ATG\)](#); [Marquez, Patricio \(ATG\)](#); [Brook L. Cunningham](#); [Lola Velazquez](#)
Subject: RE: State of WA, et al v. Horning Brothers, LLC, et al -- Discovery
Date: Tuesday, March 20, 2018 4:02:00 PM

Dear Bill,

We are in receipt of your letter of March 16. Plaintiffs-Intervenors at this time continue to object to your demand for discovery of information related to immigration status. We have clearly laid out the basis for this objection in our response to your written discovery, during depositions, and in our email communication following depositions, to which you never responded or objected. While we neither confirm nor deny the existence of such information, we believe that U Visa information is equivalent to immigration status information and discovery of such information would have particular and far-reaching chilling effects.

As you know, prior to filing an FRCP 37 discovery motion, the parties are required to confer in good faith. You have demanded such a conference on March 26 at 11:00 am, however, as we indicated several times during our communications about deposition and mediation scheduling, counsel for Plaintiffs-Intervenors are not available between March 26 and April 2. In the alternative, we are available March 23 for a phone conference, ideally at 12:15 pm, though we can be available at other times that day. I do understand you may be in trial on March 23. If that is still the case, Plaintiffs-Intervenors are available anytime April 5 or 6, following the depositions scheduled for April 3 and 4, for a discovery conference addressing your letter.

Thank you,
Alyson

Alyson Dimmitt Gnam
Northwest Justice Project
(509) 381-2317

From: William R. Spurr <bill@williamrspurr.com>
Sent: Friday, March 16, 2018 3:59 PM
To: Alyson Dimmitt Gnam <alysond@nwjustice.org>; Lola Velazquez <lolav@nwjustice.org>
Cc: Melody, Colleen (ATG) <ColleenM1@ATG.WA.GOV>; Marquez, Patricio (ATG) <PatricioM@ATG.WA.GOV>; Brook L. Cunningham <bkc@randalldanskin.com>
Subject: State of WA, et al v. Horning Brothers, LLC, et al -- Discovery

Please see attached letter of today's date and accompanying attachments.

William R. Spurr
Law Office of William R. Spurr
1001 Fourth Ave., Ste. 4400
Seattle, WA 98154

WWW.williamrspurr.com