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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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

Before the Court is Plaintiffs' March 8, 2007 motion to compel discovery from Defendant Global Horizons, Inc. ("Defendant") and request for discovery sanctions. (Ct. Rec. 266). Plaintiffs specifically ask for the following production of documents:

1. Supplement their answer and responses to Plaintiffs' First Set of Interrogatories and Requests for Production, Interrogatory No. 1 and Request for Production No. 1 and include in their response all agency charges, actions, notices of violation or any civil suits related to violations of the AWPAs and H-2A regulations, regardless of whether any charge, action, notice or violation of civil suit has been appealed or not reached final judgment.
2. Produce all documents in response to Plaintiffs' Second Set of Interrogatories and Third Request for Production, Request for Production No. 17 including all documents and statements made in the course of the DOL investigation and resulting proceedings related to Taft Farm.
3. Produce the documents requested in Plaintiffs' Fourth Request for Production No. 15 in the format requested by Plaintiffs with all information regarding applicants and employees in Washington State intact.

1 4. Produce the documents requested in Plaintiffs'
2 Second Set of Interrogatories and Third Requests for
3 Production, Requests for Production Nos. 4 and 5 and
4 Plaintiffs' Fourth Request for Production No. 2 involving
5 requests for communication between Defendants and Bruce
6 Schwartz and Amnon Gonnene as well as all email related to
7 the allegations or defenses in this action. The documents
8 requested by Plaintiffs in their Third Request for
9 Production, Requests for Production No. 7 shall be included
10 as email related to the allegations or defenses in this
11 action.

12 5. Produce the documents requested in Plaintiffs'
13 Second Set of Interrogatories and Third Request for
14 Production, Request for Production No. 13 involving requests
15 for Defendant Global's phone records from November 1, 2003,
16 through July 30, 2004.

17 6. Produce the documents requested in Plaintiffs'
18 Second Set of Interrogatories and Third Requests for
19 Production, Request for Production Nos. 8 and 9 and
20 Plaintiffs' Fourth Request for Production No. 7 involving
21 requests for recruitment of H-2A workers.

22 7. Produce the documents requested in Plaintiffs'
23 Second Set of Interrogatories and Third Requests for
24 Production, Request for Production Nos. 6 and 14, and
25 Plaintiffs' Fourth Request for Production No. 14, 17 and 21.

26 8. Produce the document identified in the 30(b)(6)
27 deposition of Global, a spreadsheet summarizing time card
28 information for U.S. Resident Workers and H-2A Workers in
Washington State in 2004 in its electronic and native format.

(Ct. Rec. 266-2). In addition to requesting that Defendant be
ordered to respond to Plaintiffs' discovery requests, Plaintiffs'
ask the Court to order Defendant, and the attorney advising
Defendant, Howard Foster, to pay Plaintiffs' reasonable expenses,
including attorney's fees, in connection with this motion to
compel. (Ct. Rec. 266).

The instant motion was noted for hearing on an expedited
basis and without oral argument on March 16, 2007. (Ct. Rec.
270). Defendant was permitted to submit a response to Plaintiffs'
motion on or before the close of business on March 15, 2007. (Ct.
Rec. 270). Defendant failed to timely provide any response to

1 Plaintiffs' motion. Defendant has not provided a response to
2 Plaintiffs' motion to compel or otherwise advised the Court as to
3 their position regarding this motion. Plaintiffs filed a
4 declaration on March 15, 2007, which indicated that Defendant has
5 not provided any additional documents in response to their
6 discovery requests or this motion to compel. (Ct. Rec. 278).

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

14 Based on Defendant's failure to respond, and apparent consent
15 to the entry of an order adverse to their position, the Court
16 finds that Defendant must be required to provide responses to
17 Plaintiffs' requests for production.

18 Plaintiffs' Requests

19 **1. Violations of AWPA and H-2A Information**

20 Plaintiffs argue that Defendants have failed to provide
21 discovery in violation of Court Orders. (Ct. Rec. 267, pp. 3-5).

22 The Court's December 18, 2005 order directed Global to
23 provide responses to Plaintiffs' requests regarding prior
24 violations of AWPA. (Ct. Rec. 199). Global apparently provided
25 documents to Plaintiffs which evidence two instances of past
26 violations. (Ct. Rec. 267, p. 4).

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1 The Court's February 13, 2007 order addressed Defendants'
2 motion for a protective order. (Ct. Rec. 241). The Court denied
3 the motion for a protective order, indicating that discovery of
4 Defendants' H-2A violations, as related to Plaintiffs' claims,
5 would not be prohibited. (Ct. Rec. 241, p. 6). However, contrary
6 to Plaintiffs' argument in the instant motion (Ct. Rec. 267, p.
7 4), the Court did not direct Defendants to respond in any
8 particular manner following the February 13, 2007 order. (Ct.
9 Rec. 241).

10 Nevertheless, since no response in opposition was received by
11 the Court, the Court finds that Defendant is compelled, as
12 requested by Plaintiffs, to supplement their responses and include
13 all agency charges, actions, notices of violation or any civil
14 suits related to violations of the AWPAs and H-2A regulations,
15 regardless of whether any charge, action, notice or violation of
16 civil suit has been appealed or not reached final judgment, if
17 such information exists and was not previously provided to
18 Plaintiffs.¹

19 **2. ACT Database**

20 Plaintiffs have requested that Defendant produce its ACT
21 database. (Ct. Rec. 267, pp. 5-7). The ACT database was used by
22 Global to track information related to U.S. Resident Workers in
23 2004. Instead of producing the ACT database in its native format,
24 Defendant produced an Excel spreadsheet of the material in the
25 database. (Ct. Rec. 267, p. 5). Plaintiffs assert that the
26 spreadsheet is inadequate. Having received no opposition from
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28 ¹This finding does not change or dissipate any prior order of the Court
with respect to previous discovery issues. All prior orders of this Court
remain in full force and effect.

1 Defendant with regard to the instant motion, the Court finds that
2 Defendant is compelled to produce the ACT database in its native
3 format.

4 **3. Promised Production**

5 Plaintiffs assert that Defendants have promised to produce
6 all email between Defendants and Bruce Schwartz, email between
7 Defendants and Amnon Gonnene, a recruiter of H-2A workers in 2003
8 and 2004, and all email relevant to this litigation. (Ct. Rec.
9 267, p. 8). There being no response or opposition filed by
10 Defendant, the Court again considers the matter consented to and
11 orders that Defendant produce this information.

12 **4. Other Documents**

13 Plaintiffs contend that Defendants have also refused to
14 produce phone records from November 1, 2003 through July 30, 2004,
15 a package related to recruiting identified by Mr. Orian, H-2A
16 employee agreements, and the recruitment criteria used by
17 Defendants. (Ct. Rec. 267, pp. 8-9). There being no opposition
18 from Defendant, the Court also orders that Defendant produce this
19 information.

20 **5. Agreed Production Not Yet Produced**

21 Plaintiffs assert that Defendants have agreed to produce or
22 responded that they "will endeavor" to produce the following
23 documents: the power of attorney with Amnon Gonnene, all
24 communications with Washington State regarding Defendants' Farm
25 Labor Contractor's License in 2003 and 2004, all communication
26 with the Social Security Administration regarding class members,
27 all notes prepared by a former Global employee, Maria Ramirez, in
28 2003 and 2004, records of when Global translated Clearance Orders

1 that were certified in Washington State in 2004, and an Excel
2 spreadsheet summarizing time card information for U.S. Resident
3 workers and H-2A workers in Washington State in 2004. (Ct. Rec.
4 267, pp. 9-10). Plaintiffs' March 15, 2007 declaration indicates
5 that Defendants have still not produced these items. (Ct. Rec.
6 278). Again, since no response in opposition was filed by
7 Defendants, the Court orders that Defendant provide this
8 information to Plaintiffs.

9 **Sanctions**

10 It is perplexing to this Court why Defendants made no
11 response of any nature to this motion. According to Plaintiffs'
12 motion, Defendants had even previously agreed to produce several
13 of the items which are the subject of this motion but ultimately
14 failed to do so. Defendants have failed to show good faith and/or
15 substantial justification for the failure to provide discovery to
16 Plaintiffs. Pursuant to Fed. R. Civ. P. 37(a)(4), the party who
17 prevails on a motion to compel is entitled to his or her expenses,
18 including reasonable attorney's fees, incurred in making the
19 motion, unless the losing party was substantially justified in
20 making or opposing the motion or other circumstances that make
21 such an award unjust. The burden is on the losing party to
22 affirmatively demonstrate that its position was substantially
23 justified. Fed. R. Civ. P. 37(a)(4), Advisory Comm. Notes (1970).
24 Defendant has failed to file anything in response to Plaintiffs'
25 motion regarding Plaintiffs' discovery requests. Accordingly, the
26 Court further grants monetary sanctions against Defendant.

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1 On March 12, 2007, the Court ordered sanctions in the amount
2 of \$400.00 against Defendant Global Horizons, Inc., for its
3 failure to timely respond to Plaintiffs' motion to compel. (Ct.
4 Rec. 274). In this instance, Defendant again failed to respond in
5 any manner to Plaintiffs' motion to compel. This repeat
6 occurrence, just days following the Court's order of sanctions for
7 the same conduct, warrants sanctions of \$600.00 to be imposed
8 against Defendant Global Horizons, Inc.

9 **Conclusion**

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

11 1. Plaintiffs' motion to compel discovery responses from
12 Defendant Global Horizons, Inc., and for sanctions (**Ct. Rec. 266**)
13 is **GRANTED**.

14 2. Defendant Global Horizons, Inc. shall produce all
15 documents, as outlined in the body of this order, within **five (5)**
16 **calendar days** from the date of this order.

17 3. Defendant Global Horizons, Inc. shall pay to Plaintiffs
18 sanctions in the amount of **\$600.00**.

19 **IT IS SO ORDERED.** The District Court Executive is directed
20 to file this Order and provide copies to counsel for Plaintiffs
21 and Defendants.

22 **DATED** this 20th day of March, 2007.

23
24 s/Michael W. Leavitt
25 MICHAEL W. LEAVITT
26 UNITED STATES MAGISTRATE JUDGE
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