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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF 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

**ORDER GRANTING THE GROWER  
DEFENDANTS' JOINT MOTION FOR  
ATTORNEY'S FEES AS PREVAILING  
PARTIES UNDER TITLE VII**

Congress established Title VII, 42 U.S.C. § 2000e *et al.*, with the purpose of eliminating discrimination in the workplace and placed the responsibility to implement and carry out Title VII on the Equal Employment Opportunity Commission (EEOC). To balance Title VII's purpose with the need to ensure that businesses are not forced to litigate baseless discrimination claims, Congress imposed a statutory duty on the EEOC to provide notice to an employer of the charged discriminatory practice, investigate the charge, and conciliate with the business before filing a lawsuit. Title VII and Supreme Court case law encourages the EEOC to utilize these processes to ensure that a lawsuit is filed reasonably, with foundation, and is not frivolous,

1 imposing a potential award of attorney's fees against the EEOC if it  
2 files a lawsuit that did not meet these standards. Whether the EEOC's  
3 lawsuit against Defendants Green Acre Farms, Inc. ("Green Acre") and  
4 Valley Fruit Orchards, LLC ("Valley Fruit") (collectively, "Grower  
5 Defendants") was reasonable, not frivolous, or filed with foundation  
6 is the matter presently before the Court.

7 After examining the record and considering the importance of Title  
8 VII and the EEOC's intended purpose, the Court finds the EEOC filed  
9 foundationless Title VII claims against the Grower Defendants.<sup>1</sup> As a  
10 result, the Grower Defendants, as prevailing parties in this baseless  
11 lawsuit against them, are entitled to reasonable attorney's fees and  
12 costs under Title VII.

13 **A. Authority**

14 Although litigants must typically bear their own attorney's fees,  
15 the parties agree that a prevailing defendant in a Title VII action  
16 may be awarded costs, including attorney's fees, pursuant to 42 U.S.C.  
17 § 2000e-5(k). Section 2000e-5(k) states, "In any action or proceeding  
18 under this subchapter the court, in its discretion, may allow the  
19 prevailing party, other than the [EEOC] or the United States, a  
20 reasonable attorney's fee (including expert fees) as part of the costs."  
21 *Id.* § 2000e-5(k). Relying on this statutory language, the Supreme  
22 Court ruled that a "district court may in its discretion award  
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24 <sup>1</sup> The EEOC's claims against Global were reasonable, founded, and not  
25 frivolous. This motion deals solely with whether the EEOC's claims against  
26 the Grower Defendants satisfy these same standards: they do not.

1 attorney's fees to a prevailing defendant in a Title VII case upon a  
2 finding that the plaintiff's action was frivolous, unreasonable, or  
3 without foundation, even though not brought in subjective bad faith."  
4 *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). This is  
5 a stringent standard. *Harris v. Maricopa Cty. Sup. Ct.*, 631 F.3d 963,  
6 971 (9th Cir. 2011); *EEOC v. Propak Logistics*, 746 F.3d 145, 151 (4th  
7 Cir. 2014); *EEOC v. Great Steaks, Inc.*, 667 F.3d 510, 517 (4th Cir.  
8 2012).

9       There is no dispute that the Grower Defendants prevailed in this  
10 lawsuit. *See, e.g., Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)  
11 (setting forth the prevailing-party standard). Yet, the EEOC contends  
12 the Grower Defendants are unable to satisfy § 2000e-5(k)'s high burden  
13 for an award of attorney's fees to a prevailing defendant because "the  
14 full factual record developed in litigation demonstrates that the  
15 EEOC's suit was not frivolous, unreasonable, or without foundation  
16 after the EEOC conducted a nationwide investigation of [Global's]  
17 pattern or practice of discrimination which also manifested at" the  
18 Grower Defendants' orchards. EEOC's Opposition to Grower Defendants'  
19 Joint Motion for Attorney's Fees as Prevailing Parties under Title VII,  
20 ECF No. 601 at 2. And the parties disagree as to what information the  
21 Court may consider in conducting its Title VII prevailing-defendant  
22 attorneys-fee analysis. The Court begins its analysis with this scope-  
23 of-review issue.

24 **B. Scope of Review**

25       The EEOC emphasizes that the Court may not engage in a *post hoc*  
26 review of the EEOC's decision to file a lawsuit but rather must conduct

1 a "de novo review of all the facts obtained in the litigation." EEOC's  
2 Opp. to Grower Defendants' Joint Motion for Attorney's Fees as  
3 Prevailing Parties under Title VII, ECF No. 601 at 2. The EEOC does  
4 not support its de novo-review request with a legal citation. The EEOC  
5 also argues that the Court's inquiry into the EEOC's pre-lawsuit actions  
6 is limited because of the discretion granted to the EEOC by Congress.<sup>2</sup>

7 To determine the scope of review, the Court turns to the seminal  
8 case: *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978). In  
9 *Christiansburg Garment*, the Supreme Court emphasized that a district  
10 court is to "resist the understandable temptation to engage in *post*  
11 *hoc* reasoning by concluding that, because a plaintiff did not ultimately

12  
13 <sup>2</sup> The EEOC raised similar agency-discretion arguments earlier in  
14 this litigation, arguing that because of the discretion given to it by  
15 Congress, the Court could not inquire into the sufficiency of the EEOC's  
16 pre-lawsuit activities for purposes of ascertaining whether a  
17 defendant's affirmative defense of failure to satisfy pre-lawsuit  
18 requirements could be granted. In connection with that argument, the  
19 Court ruled that "prior to a liability determination in a Title VII  
20 lawsuit, a court's review of the EEOC's pre-lawsuit conciliation efforts  
21 are [sic] limited to reviewing the [face of the] EEOC's complaint to  
22 ensure that it plead that it satisfied this pre-lawsuit requirement."  
23 ECF No. 582 at 32-33. At that time, the Court noted that it need not  
24 determine whether a "court may review the EEOC's pre-lawsuit  
25 conciliation efforts when ascertaining whether attorney's fees should  
26 be awarded to the prevailing employer defendant." *Id.* at 32.

1 prevail, his action must have been unreasonable or without foundation."  
2 *Id.* at 421-22. This is to ensure that a Title VII plaintiff, including  
3 the EEOC, is not discouraged from bringing claims that are not airtight  
4 as "[d]ecisive facts may not emerge until discovery or trial." *Id.* at  
5 422.

6 After reviewing *Christiansburg Garment* and its progeny, the Court  
7 holds that, once the EEOC's Title VII claims have been resolved in the  
8 defendant's favor and the defendant files a motion for attorney's fees,  
9 a court must consider the totality of the information possessed by the  
10 EEOC when it filed the lawsuit in order to determine if the filing was  
11 reasonable, frivolous, or without foundation. This totality-of-the-  
12 circumstances assessment requires the court to consider what the EEOC  
13 learned during its investigation, prior to its reasonable-cause  
14 determination, and during its conciliation process and thereafter.  
15 Although the Court is not reviewing the individual sufficiency of the  
16 EEOC's reasonable-cause determination or conciliation process, the  
17 Court must consider the information discovered (or failed to be  
18 discovered) during these processes in order to assess whether the EEOC  
19 filed the lawsuit with foundation or whether the filing was reasonable  
20 or frivolous. Permitting judicial review of the EEOC's pre-lawsuit  
21 knowledge and decision to file the lawsuit based on such knowledge, at  
22 this stage of the litigation, *i.e.*, after liability has been determined  
23 in the defendant's favor, is consistent with Title VII's purposes—which  
24 is to ensure that discriminatory conduct is eliminated while at the  
25 same time ensuring that businesses are not unduly burdened by the Title  
26 VII process. See *Christiansburg Garment Co.*, 434 U.S. at 422, n.20

1 ("The other side of this coin is the fact that many defendants in Title  
2 VII claims are small- and moderate-size employers for whom the expense  
3 of defending even a frivolous case may become a strong disincentive to  
4 the exercise of their legal rights.").

5 Although the Court considers the totality of the information  
6 possessed by the EEOC when it filed the lawsuit, the Court need not  
7 consider the EEOC's intent when it filed the lawsuit. See *Propak*  
8 *Logistics*, 746 F.3d at 151. With this scope of review, the Court turns  
9 to the facts at hand.

10 **C. Facts**

11 **1. Request to Strike**

12 In support of the EEOC's opposition to the attorneys-fee motion,  
13 EEOC counsel Derek Li filed a declaration, ECF No. 602. The Grower  
14 Defendants ask the Court to strike the following portions of Mr. Li's  
15 Declaration because they contain counsel's opinions and are therefore  
16 not evidence: paragraphs 2.a-m, 3.a-k, and paragraph 4 (EEOC's response  
17 column). ECF No. 604 at 2.

18 After reviewing the declaration, the Court finds portions of Mr.  
19 Li's declaration contain his opinion regarding the facts summarized  
20 therein. For example, Mr. Li opined, "As a result [of the previously  
21 listed experiences], Chumpang escaped from working at the farm  
22 supporting the EEOC's constructive discharge claims." ECF No. 602 at  
23 2 (emphasis added). To the extent the declaration contains Mr. Li's  
24 opinion regarding the evidence, the Court strikes those portions of  
25 Mr. Li's declaration and does not consider these opinions. The Court  
26 has considered the filed declarations and statements of the Thai

1 workers' themselves, documented communications between counsel, EEOC  
2 documentation, and other factual events, in light of the entire record.

3 **2. Pertinent Events**

4 The Court is familiar with this case, parties, and background,  
5 having addressed motions to dismiss, discovery motions, and summary-  
6 judgment motions. The Court includes herein facts pertinent to the  
7 motion at hand in this "Pertinent Events" section. More details  
8 regarding the occurrences at the orchards and the Thai workers' housing,  
9 living, and transportation while working at the Washington orchards  
10 can be found in the Court's summary-judgment orders. ECF Nos. 348,  
11 582, & 608 (tentative order).

12 In 2004 and 2005, Thai individuals were brought to the United  
13 States by Global to work at Green Acre and Valley Fruit orchards in  
14 Washington, as well as at other agricultural businesses in California,  
15 Hawaii, and other states, pursuant to a federal H-2A guest worker  
16 program. In the fall of 2004 and 2005, some of the Thai individuals  
17 absconded from the farms. Many of these Thai individuals went to  
18 California and made contact with the Thai Community Development Center  
19 (CDC) in Los Angeles. At some point either the Thai CDC, or the Thai  
20 individuals with the assistance of the Thai CDC, contacted the EEOC to  
21 seek assistance for the Thai individuals regarding their immigration  
22 status and the experiences they had while employed by Global.

23 Many of the Thai individuals filed charges of discrimination with  
24 the EEOC. For instance, on April 12, 2006, Laphit Khadthan filed a  
25 charge of discrimination with the EEOC against Green Acre and Global,  
26 claiming he was discriminated and retaliated against on the basis of

1 his national origin by these companies. ECF No. 265, Ex. A at 1-2;  
2 ECF No. 556, Ex. 215. Likewise, Marut Kongpia filed a charge of  
3 discrimination against Valley Fruit and Global, alleging that he was  
4 discriminated and retaliated against on the basis of his national  
5 origin. ECF No. 265, Ex. B at 1; ECF No. 557, Ex. 216. Notably, the  
6 descriptive language in the "particulars" section of these charges of  
7 discrimination is the same, stating:

8 I. Since [2003/2005], I have been harassed, subjected to  
9 different terms and conditions of employment, and  
10 intimidated in all aspects of employment with [Green  
Acre/Valley Fruit/Global], due to my national origin  
(Thailand).

11 II. On many occasions, I objected [sic] the terms and  
conditions of employment but was ignored.

12 III. I believe I have been harassed, subjected to different  
13 terms and conditions of employment, and intimidated  
14 because of my national origin (Thailand) and retaliated  
against for engaging in a protected activity, in  
violation of Title VII of the Civil Rights Act of 1964,  
as amended.

15 IV. Further since [2003/2005], I believe that employees as  
16 a class have been discriminated against due to their  
national origin (Thailand) and retaliated against for  
engaging in a protected activity, in violation of Title  
VII of the Civil Rights Act of 1964, as amended.

17 *Id.*, Exs. A & B. Similar charges of discrimination were filed by 71  
18 other Thai workers against Green Acre, and 27 Thai workers against  
19 Valley Fruit. ECF No. 301 ¶ 13.

20 In June and July 2006, the Grower Defendants' counsel wrote  
21 position-statement letters to the EEOC in response to the charges of  
22 discrimination. These letters 1) advised the EEOC that the Thai workers  
23 were not employed by the Grower Defendants but rather by Global, 2)  
24 highlighted that the allegations contained in the charges of  
25 discrimination were vague, and 3) requested that the EEOC provide the  
26



1 Grower Defendants with specifics as to the alleged discriminatory and  
2 retaliatory acts. ECF No. 265, Ex. C at 2-3 & Ex. D at 2-21. There  
3 is no filed documentation reflecting whether the EEOC responded to  
4 these letters.

5 In September 2007, the EEOC interviewed Phiphop Khamkaeo, ECF No.  
6 602, Ex. 6. Mr. Khamkaeo discussed his experiences working for Global  
7 at Green Acre in 2004, Valley Fruit in 2005, and then at farms in  
8 Hawaii and California thereafter. The only complaints that Mr. Khamkaeo  
9 shared regarding his work and living experiences in Washington were  
10 that in 2004 the residence he lived in was unclean because it was  
11 difficult to keep the three-bedroom house clean with ten people living  
12 there and that they also had to stand in line for the bathrooms as they  
13 got ready for work in the morning. Mr. Khamkaeo states that the Thai  
14 workers were "treated the same as Mexicans" and that Thai workers  
15 stopped working at the orchards because there was no more work to do.  
16 *Id.*, Ex. 6 at 1-2. It is not clear whether other Thai workers were  
17 also interviewed at this time. There are several undated and unsigned  
18 "Personal Statements of the Thai workers"; these interviews possibly  
19 occurred in September 2007. See, e.g., Personal Statement of Wichai  
20 Charoen, ECF No. 602, Ex. 2 (describing his experiences while working  
21 at Washington orchards in 2004 and 2005 but not mentioning any  
22 discriminatory conduct by the Grower Defendants); Personal Statement  
23 of Phanuphong Wongworn, ECF No. 602, Ex. 12 (detailing experiences  
24 while at Washington orchards in 2004 and 2005, including delayed payment  
25 and use of guards to prevent Thai workers from escaping by Global, but  
26

1 not referencing any discriminatory conduct by the Grower Defendants  
2 toward the Thai workers).

3 In December 2007, the Grower Defendants' counsel wrote the EEOC  
4 another position statement for three more then-recent filed charges of  
5 discrimination; this position statement articulated the previous  
6 vagueness objection and also indicated that the Grower Defendants  
7 believed the charges were untimely. *Id.*, Ex. D at 22-23. There is no  
8 filed documentation reflecting whether the EEOC responded to this  
9 letter.

10 Approximately one year later, in September 2008, the Grower  
11 Defendants' counsel again communicated in writing with the EEOC. ECF  
12 No. 265, Ex. C at 4-6 & Ex. D at 24-26. This letter to EEOC Enforcement  
13 Supervisor Brian Nelson emphasized the vagueness of the allegations in  
14 the charges of discrimination and that a federal judge had found that  
15 the Grower Defendants were not joint employers with Global. *Id.*  
16 Counsel for the Grower Defendants also wrote, "In our conversation  
17 yesterday, it became apparent that none of the charging parties has  
18 [sic] been interviewed by the EEOC," *id.*, Ex. D. at 25, and:

19 [T]he EEOC did not receive any of the Charging Documents  
20 directly from the charging parties, but instead received them  
21 from the Thai CDC in Los Angeles. Accordingly, the EEOC has  
22 no information about what the charging parties were told the  
23 Charging Documents said, or that they were being signed under  
24 oath. All of the Charging Documents are in the English  
25 language, which none of the charging parties was able to read  
26 when they were in Washington state.

*Id.* Counsel also advises that he had a conversation with Hema Perumal,  
who was with the EEOC's Alternative Dispute Resolution Unit, regarding  
the impossibility of mediating the charges without receiving a

1 description of the substantive facts alleged to constitute  
2 discrimination or retaliation.

3 One year later, in August 2009, the EEOC interviewed several Thai  
4 workers. The interview notes do not indicate any discrimination or  
5 retaliation by the Grower Defendants, e.g.:

- 6 • Marut Kongpia: "There were non-Thai workers while working  
7 at the farm, appeared to be Mexicans. I do not know if they  
8 were Global Horizon or farm employees. They performed the  
9 same work as the Thai workers, but they did not live in the  
10 same place. I was unaware of where they lived or if they  
11 were treated differently because I only saw them  
12 occasionally. I do not know of anyone who was treated poorly  
13 by Global Horizons or the farm because of their religion,  
14 race, or because they were Thai. No one in the farm ever  
15 say anything negative about my race, religion or Thailand  
16 or took away something from me that was an important part  
17 of my religion or national identity." ECF No. 599, Ex. F.
- 18 • Srinapha Vasunilashorn: "At Green Acres [sic], there were  
19 some people who watched us work. They worked for the farm  
20 owner. They never told us anything about our work. Charlie  
21 [Blevins, a Global supervisor,] would discipline us at the  
22 farm." ECF No. 599, Ex. G at EEOC 0002112.
- 23 • Supap Promson: Reporting that he 1) did not notice the  
24 Latino workers were being treated differently, 2) reporting  
25 that the Green Acre owner cautioned the Thai workers that  
26 fruit could not be damaged or else the Thai workers would  
not be able to continue working, and 3) the Thai workers  
were timely paid. ECF No. 599, Ex. J.
- Saiam Rodphan: Advising that the Thai workers were  
disciplined by Global supervisors for failing to get  
sufficient work done, and that the Latino workers did the  
same work as the Thai workers. ECF No. 599, Ex. L at EEOC  
0002230-31.
- Aran Saengvan: "No negative remarks about Thailand or Thai  
people or my religion were made, nor items taken away that's  
related to this." ECF No. 599, Ex. M at EEOC 0001850.
- Praiswan Thongbai: "[N]obody from the farm supervised us."  
ECF No. 599, Ex. P at EEOC 0002206.

1 Next, on March 8, 2010, the EEOC sent the Grower Defendants  
2 separate letters advising that "[a]dditional information is necessary  
3 in order to **begin the investigation**" of the EEOC charges against them.  
4 ECF No. 265, Ex. C at 7 & Ex. D at 7 (emphasis added). Attached to  
5 these letters was a three-and-a-half-page request for information,  
6 including:

7 Provide a list of all employees who performed farm work for  
8 your organization during the period April 1, 2004, to the  
9 present. This list should include all farm workers,  
10 regardless of whether they filed a charge of discrimination  
11 and regardless of whether they were employed by your  
12 organization, Global Horizons, or another entity.

13 *Id.*, Ex. C at 8-14 & Ex. D at 8-14. The EEOC set a March 29, 2010  
14 response deadline. Also attached to the letter was a "[l]ist of  
15 Charging Parties who filed EEOC Discrimination Charges [a]gainst" the  
16 Grower Defendants: there were 75 listed charging parties as to Green  
17 Acre, and 28 listed charging parties as to Valley Fruit. *Id.*, Ex. D  
18 at 27 & 32.

19 On March 23, 2010, counsel for Grower Defendants wrote the EEOC  
20 regarding the charges of discrimination, again relaying that the Grower  
21 Defendants believed 1) the charges were untimely because no charging  
22 party had worked at the orchards since October 2005, 2) the charging  
23 parties were employed by Global, with whom the Grower Defendants were  
24 not a joint employer, and 3) the charging allegations were too vague  
25 to support "a substantive response other than a general denial." ECF  
26 No. 265, Ex. C. at 12-15 & Ex. D at 35-38. Counsel for the Grower  
Defendants also advised that the only documentation they possessed were  
billing invoices provided by Global. *Id.*, Ex. C at 15 & Ex. D at 38.