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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.¹ 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

23
24 ¹ 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.²

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 ² 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
11 Acre/Valley Fruit/Global], due to my national origin
12 (Thailand).

11 II. On many occasions, I objected [sic] the terms and
12 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
15 against for engaging in a protected activity, in
16 violation of Title VII of the Civil Rights Act of 1964,
17 as amended.

15 IV. Further since [2003/2005], I believe that employees as
16 a class have been discriminated against due to their
17 national origin (Thailand) and retaliated against for
18 engaging in a protected activity, in violation of Title
19 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
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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

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.
- Praiwan 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.

1 In April 2010, the EEOC interviewed a number of the charging
2 parties. Information received from these Thai workers include:

- 3 • Praphan Lomajan: The Thai workers performed the same work
4 as the Latino workers. "The [Thai] workers were forbidden
5 from contacting outsiders. The farm feared that they would
6 run off. The farm was worried about Laotians who lived in
7 the area who may convince the workers to run off." "The
8 supervisor of the farm threatened the workers that if they
9 didn't work, they would be deported." ECF No. 599, Ex. H
10 at EEOC 0004727, 0004728, & 0004730.
- 11 • Bunhom Philuk: Thai workers were threatened with
12 deportation if they did not perform well, and supervisors
13 from both Global and the Grower Defendants inspected their
14 work. ECF No. 602, Ex. 10.
- 15 • Choetchai Chumpang: Thai workers worked about 8-12 hours per
16 day at the orchards. ECF No. 599, Ex. D.
- 17 • Laphit Khadthan: The Latino workers did the same work as the
18 Thai workers. He was not threatened with deportation or
19 physically threatened. Although the Grower Defendants'
20 managers would inspect their work, they did not discipline
21 the Thai workers. ECF No. 599, Ex. Q at EEOC 0002081-83.
- 22 • Prachon Ratanarak: He was paid on time and in full while
23 he worked at Green Acre, and no Green Acre manager
24 disciplined a Thai worker. ECF No. 599, Ex. K at EEOC
25 0000898-99.
- 26 • Samian Hanchat: When he worked at Green Acre in 2005, the
Latino workers did the same work as the Thai workers, and
the Grower Defendants gave instructions to Global
supervisors and the Thai workers but did not discipline the
Thai workers. ECF No. 602, Ex. 5 at EEOC 0002236-38.
- Meechok Chanphut: Green Acre did not discipline the Thai
workers when he worked there during the summer and fall of
both 2004 and 2005. ECF No. 602, Ex. 3 at EEOC 0002406.
- Bunthiang Suriwong: When he worked for Green Acre for two
months in 2005 Green Acre management could discipline a Thai
worker by speaking to a Global supervisor. ECF No. 559, Ex.
N at EEOC 0000751.
- Sirithon Thanasombat: The Grower Defendants would not
supervise the Thai workers but did establish the work
performance expectations for the Thai workers. The Thai

1 workers did the same work as the Latino workers. ECF No.
2 599, Ex. I at EEOC 00057662-63.

- 3 • Chit Intip: No one from the Grower Defendants disciplined
4 a Thai worker while he worked at the orchards during the
5 summer of 2005. He worked approximately 8 hours a day for
6 5-6 days each week at the orchards. ECF No. 599, Ex. E.

7 During the period in which these interviews were occurring, EEOC
8 Senior Investigator Vincient Robertson made a notation summarizing a
9 conversation that he had with Grower Defendants' counsel on April 14,
10 2010, wherein Grower Defendants' counsel advised that responding to
11 the requested document production was overly burdensome and that the
12 requested production sought largely irrelevant documents. ECF No. 265,
13 Ex. E at 3. Investigator Robertson also noted, "[defense counsel] said
14 he could provide copies of invoices from Global that he believes may
15 have the names of Global employees on them. I stated that I will get
16 back with him." *Id.*

17 On April 22, 2010, the EEOC wrote the Grower Defendants' counsel
18 and asserted that the investigation was 1) appropriate because the
19 EEOC's investigation revealed evidence suggesting a joint-employer
20 relationship between the Grower Defendants and Global, and 2) timely
21 because the "EEOC has at least one timely charge against your farms."
22 ECF No. 265, Ex. C at 16-17 & Ex. D at 39. The EEOC did not detail
23 the referenced evidence, the claimed timely charge, or the charged
24 discriminatory and retaliatory conduct. *Id.* The EEOC repeated that
25 it expected the Grower Defendants to provide it with the information
26 requested, and extended the production deadline to April 30, 2010, but
did not specifically request that the Grower Defendants provide the
Global billing invoices. *Id.*

1 On April 26, 2010, the Grower Defendants' counsel wrote the EEOC
2 again seeking information as to the nature and timing of the charges
3 of national origin discrimination, maintaining the lack of a joint-
4 employer relationship, and contesting the requested information on the
5 grounds of relevance. *Id.*, Ex. C at 20-21, & Ex. D at 41-42. Counsel
6 stated, "I want to remind you my clients were willing to discuss
7 providing copies of the records they have regarding Global Horizon's
8 employment of nonimmigrant alien and resident workers between April
9 2004 and October [] 2005. The invoices from Global distinguished
10 between workers who had to be provided housing (nonimmigrant aliens),
11 who were more expensive, and local residents who were not provided
12 housing." *Id.*, Ex. C at 21-22, & Ex. D at 41-42. Also on this date,
13 Investigator Robertson summarized in a Memorandum to File a
14 conversation that he had with Grower Defendants' counsel wherein
15 counsel relayed the names of the custodian of records for the Grower
16 Defendants, and shared the district court case number wherein the court
17 found that there was no joint-employer relationship between Global and
18 the Grower Defendants. ECF No. 265, Ex. E at 2.

19 On May 6, 2010, the EEOC issued subpoenas to the Grower Defendants
20 for the previously requested information. *Id.*, Ex. C at 32-54, & Ex.
21 D at 54-66. On May 14, 2010, the Grower Defendants asked the EEOC to
22 revoke or modify the subpoenas because they were overly burdensome and
23 required the Grower Defendants to spend tens of thousands of dollars
24 to produce largely irrelevant information. *Id.*, Ex. C at 25-30, & Ex.
25 D at 47-52. A month later, the Grower Defendants advised the EEOC, in
26 writing, that their position regarding the subpoenas remained the same

1 but, if the EEOC was interested in reviewing the documents that were
2 in the Grower Defendants' possession, Grower Defendants' counsel would
3 discuss making "those documents available to [the EEOC] as soon as we
4 can resolve the jurisdictional and time-bar issues." *Id.*, Ex. D at
5 67.

6 There is nothing in the record reflecting that the EEOC requested
7 the Global invoices from the Grower Defendants before the EEOC issued
8 substantively identical letters of determination for 71 charging
9 parties as to Green Acre and 30 charging parties as to Valley Fruit on
10 August 17, 2010. See ECF No. 265, Ex. A at 4-5 & Ex. B at 4-5; ECF
11 No. 308 ¶ 5, & Ex. 4. In pertinent part, these letters of determination
12 state:

13 The Commission has determined that there is reasonable
14 cause to believe that Respondent discriminated and/or engaged
15 in a pattern or practice of discrimination against a class of
16 individuals, including the Charging Party, based on their
17 national origin, Thai, and that Respondent retaliated against
18 the Charging Party and the class for participating in a
19 protected activity, in that Respondent subjected them to
20 harassment, intimidation and different terms and conditions
21 of employment, in violation of Title VII of the Civil Rights
22 Act of 1964, as amended.

23 The Commission also makes a like and related finding
24 that there is reasonable cause to believe that Respondent
25 discriminated and/or engaged in a pattern or practice of
26 discrimination against a class of individuals, including the
Charging Party, based on their race, Asian, when it subjected
them to harassment, intimidation and different terms and
conditions of employment, in violation of Title VII of the
Civil Rights Act of 1964, as amended.

Furthermore, the Commission makes a like and related
finding that there is reasonable cause to believe that
Respondent constructively discharged a class of individuals
when it discriminated and/or engaged in a pattern or practice
of discrimination against a class of individuals, based on
their national origin, Thai, race, Asian, and in retaliation

1 for engaging in a protected activity, in violation of Title
2 VII of the Civil Rights Act of 1964, as amended.

3 ECF No. 265, Ex. A at 4-5 & Ex. B at 4-5. The letters of determination
4 invite the Grower Defendants to "join" the EEOC "in a collective effort
5 toward a just resolution of this matter." *Id.*, Ex. A at 5, & Ex. B at
6 5.

7 On August 26, 2010, the EEOC issued its conciliation proposal to
8 the Grower Defendants. *Id.*, Ex. F. at 20-23, 40-43, & Ex. G at 19-24.
9 Nineteen specific requests for relief were listed, including 1)
10 requiring the Grower Defendants to "hire all interested individuals
11 who are otherwise qualified to work," 2) "provid[ing] sponsorship of
12 visas and other immigrant documents necessary for those interested
13 individuals to work in the U.S.," and 3) demanding \$250,000 in pecuniary
14 and non-pecuniary compensation for each listed charging party: 29
15 listed charging parties for Valley Fruit, for a total compensatory
16 amount of \$7,250,000, *id.*, Ex. F at 20-24; and 73 listed charging
17 parties for Green Acre, for a total compensatory amount of \$18,000,000,
18 *id.*, Ex. G at 20-24. In total, the EEOC demanded \$21,080,000 from
19 Green Acre and \$9,685,000 from Valley Fruit. *Id.* These letters
20 cautioned the Grower Defendants that, if conciliation was unsuccessful,
21 the EEOC might seek additional remedies for additional class members.
22 *Id.*, Ex. F. at 22, & Ex. G at 21.

23 On September 9, 2010, Grower Defendants' counsel wrote
24 Investigator Robertson and advised that Grower Defendants still had
25 yet to be informed of the substantive facts supporting the asserted
26 charges against them. ECF No. 265, Ex. F at 32-39. In addition, the

1 letter advised that no Grower Defendants' representative had been
2 interviewed by the EEOC. Counsel again shared that the Grower
3 Defendants would provide the EEOC with copies of Global's invoices and
4 supporting documentation if the EEOC so desired. *Id.*, Ex. F. at 34,
5 37-38.

6 On September 13, 2010, the EEOC sent a follow-up letter to the
7 Grower Defendants, which stated in part:

8 [T]he EEOC found reasonable cause to believe that Charging
9 Parties and a class of similarly situated individuals were
10 subjected to unlawful discrimination and retaliation. The
11 EEOC made its determinations after conducting a thorough
12 investigation, including reviews of the original charges of
13 discrimination filed against [Green Acre/Valley Fruit]
14 (Respondent), requesting and reviewing documents from
15 Respondent and/or Global, and interviewing both Charging
16 Parties and various Respondent and/or Global supervisors.
17 The EEOC's August 17, 2010 Letter of Determination describes
18 with sufficient specificity the particular determinations
19 made by the EEOC.

20 ECF No. 265, Ex. F at 10-11 & Ex. G at 10-11. In response, on September
21 14, 2010, the Grower Defendants' counsel wrote the EEOC and advised
22 that the letters of determination:

23 do not provide any substantive information other than the
24 statement that the EEOC has found reasonable cause to believe
25 the Charging Parties and a class of similarly situated
26 individuals were subjected to unlawful discrimination and
retaliation. Those Determinations do not articulate any
substantive information describing the alleged statements or
conduct that the EEOC contends constitute unlawful
discrimination or retaliation.

Id., Ex. C at 58, & Ex. F at 4. The letter also advised that the
Grower Defendants were legally unable to hire the charging parties
given their immigration status but that the Grower Defendants agreed
to 1) preclude discrimination on the basis of national origin or

1 retaliation against any employee who complains about such, 2) not
2 retaliate against any charging party, 3) provide the EEOC with a copy
3 of its anti-discrimination policy, 4) distribute the anti-
4 discrimination policy to its employees after the EEOC reviewed and
5 revised it, and 5) provide annual training to all management and non-
6 management employees and report compliance of such training to the
7 EEOC. *Id.*, Ex. C at 60, & Ex. D. at 5-6.

8 On September 15, 2010, Investigator Robertson and Grower
9 Defendants' counsel conversed. Grower Defendants' counsel advised that
10 his clients would not offer a monetary settlement component and that a
11 federal judge had ruled there was no joint-employer relationship
12 between the Grower Defendants and Global. *Id.*, Ex. F at 7-8. Between
13 September 17 and 23, 2010, the EEOC sent Notices of a Failure to
14 Conciliate to Green Acre for 71 charging parties, and similar notices
15 to Valley Fruit for 28 charging parties. These notices advised that
16 the EEOC "determines that further conciliation efforts would be futile
17 or non-productive Accordingly, we are at this time forwarding
18 the case to our Legal Department for possible litigation." *Id.*, Ex. A
19 at 6, & Ex. B at 6; ECF No. 308 ¶ 7.

20 Seven months later, on April 19, 2011, the EEOC filed this
21 lawsuit. ECF No. 1. The next day, the EEOC issued a press release,
22 in which Global is identified as "engag[ing] in a pattern or practice
23 of national origin and race discrimination, harassment, and
24 retaliation, when it trafficked over 200 Thai male victims to farms in
25 Hawaii and Washington where they were subjected to severe abuse." ECF
26 No. 599, Ex. A. The press release also states, "[t]he EEOC asserts

1 that the farms not only ignored abuses, but also participated in the
2 obvious mistreatment, intimidation, harassment, and unequal pay of the
3 Thai workers." *Id.*

4 On March 11, 2012, almost a year after the lawsuit was filed, the
5 EEOC disclosed its Federal Rule of Civil Procedure 26(a) initial
6 disclosures, wherein the EEOC attached a list of Thai claimants by
7 initials only: 87 claimants as to Green Acre, and 37 claimants as to
8 Valley Fruit. ECF No. 273 at 2; ECF No. 274, Ex. 1. Then in October
9 2012, the EEOC advised that it sought \$300,000 in emotional distress
10 and punitive damages per class member: 140 claimants as to Green Acre,
11 for a total requested monetary damages award of \$42,000,000, and 85
12 claimants as to Valley Fruit, for a total requested damages award of
13 \$25,500,000. ECF No. 274, Ex. 2.

14 On November 13, 2012, EEOC counsel advised the Court that it had
15 reviewed the Global invoices, which included the names and
16 corresponding dates of paid employment for the Thai workers who worked
17 at the Grower Defendants' orchards, which the Grower Defendants had
18 produced to Global on October 5, 2012, and the EEOC discovered more
19 Thai individuals who had worked at the Grower Defendants' orchards and
20 thus would add claimants. ECF No. 232 at 2:19-3:3 & 4:22-5:1. On
21 November 29, 2012, the EEOC supplemented its discovery responses and
22 identified 143 claimants as to Green Acre and 86 claimants as to Valley
23 Fruit. ECF No. 274, Ex. 3.

24 On December 7, 2012, the Grower Defendants filed a motion to
25 dismiss newly-added Thai claimants for lack of jurisdiction because
26 the EEOC did not make a reasonable-cause determination or conciliate

1 the claims for the newly added Thai claimants before pursuing litigation
2 on their behalf. ECF No. 255. One month later, on January 10, 2013,
3 the EEOC again supplemented its discovery responses, identifying 145
4 claimants as to Green Acre and 199 claimants as to Valley Fruit. ECF
5 No. 274, Ex. 4.

6 On January 17, 2013, the Court ordered the EEOC to supplement its
7 response to the dismissal motion by providing certain factual
8 information. ECF No. 280. On January 25, 2013, the Court granted the
9 EEOC an extension of time to provide the requested information and also
10 clarified that the Court was seeking:

11 1) [a] list [of] the individuals that the EEOC interviewed
12 after receiving the charges of discrimination against the
13 Grower Defendants in April 2006 and terminating the
14 conciliation process in September 2010, and 2) [a]
15 descri[ption of] the documents that were requested regarding
the Grower Defendants or the Thai individuals working at those
orchards from the Claimants, Global, or other individual or
non-Grower-Defendant entities during the identified time
period.

16 ECF No. 293 at 2. On February 7, 2013, the EEOC filed its supplement:
17 Anna Park's Declaration. ECF No. 301. Ms. Park, counsel for the EEOC,
18 declared that 72 charging parties were interviewed regarding the
19 alleged discrimination occurring at Green Acre, and 28 charging parties
20 were interviewed regarding the alleged discrimination at Valley Fruit.
21 ECF No. 301 at 8. Ms. Park did not specify who conducted those
22 interviews or when the interviews occurred. *Id.* Ms. Park also did
23 not identify whether any Grower Defendant agent or representative was
24 interviewed by the EEOC in connection with the alleged discrimination
25 and retaliation occurring at the Grower Defendants' orchards, stating
26 that Title VII prohibits the EEOC from naming non-charging parties that

1 were interviewed "where such a witness testified to the agency regarding
2 Global's farm-clients that were not sued by the EEOC." *Id.* ¶ 17. Ms.

3 Park did disclose:

4 The EEOC's investigation revealed that Global supplied 199
5 Thai workers to work at farms operated by the Grower
6 Defendants Green Acre Farms, Inc. and 245 Thai workers to
7 work at farms operated by Defendant Valley Fruit Orchards,
8 LLC. That is the full scope of the potential class for each
9 of the defendants before this Court.

10 Park Decl., ECF No. 301 ¶ 24. Also in early February 2013, the EEOC
11 again supplemented its discovery responses, identifying 245 Claimants
12 as to Green Acre and 199 Claimants as to Valley Fruit: the reverse of
13 that indicated in Ms. Park's declaration. ECF No. 308 ¶ 11 & Ex. 9.

14 On March 13, 2013, EEOC counsel Ms. Park and Sue Noh traveled to
15 Yakima to meet with the Grower Defendants' counsel regarding the
16 possibility of settlement. Ms. Park proposed a settlement demand of
17 approximately \$25,000 per claimant, which at that time included 444
18 individuals, many of whom worked on Grower Defendants' orchards only
19 in 2004, for a total of \$11,100,000. On March 20, 2013, the EEOC sent
20 a proposed consent decree to Grower Defendants' counsel. ECF No. 599,
21 Ex. R. On April 11, 2013, the Grower Defendants sent a counter-proposal
22 to the EEOC's consent decree. ECF No. 599, Ex. S. Upon receiving the
23 counter-proposal, EEOC counsel advised that she would get back to the
24 Grower Defendants' counsel regarding the counter-proposal. ECF No.
25 599, Ex. S. No timely substantive response was received by the Grower
26 Defendants' counsel regarding the counter-proposal but in July 2013
EEOC counsel emailed Grower Defendants' counsel advising them that Los
Angeles-based EEOC counsel would travel to visit Grower Defendants'

1 counsel in Yakima, Washington in either August or September 2013. ECF
2 No. 602, Ex. 1

3 In June 2013, the Court granted the Grower Defendants' Motion for
4 Summary Judgment as to Untimely Claimants and ruled that the EEOC could
5 not pursue relief on behalf of untimely claimants: those who did not
6 work at Green Acre after June 22, 2005, or Valley Fruit after June 28,
7 2005. ECF No. 348. The Court ordered EEOC to disclose the names of
8 the claimants on whose behalf it timely sought relief. *Id.* On August
9 2, 2013, pursuant to the Court's June Order, the EEOC disclosed the
10 names of 58 timely claimants as to Green Acre and 83 timely claimants
11 as to Valley Fruit. ECF No. 409, Ex. A. The EEOC did not at that time
12 disclose whether these claimants were claimants for whom the EEOC issued
13 a reasonable-cause determination or whether these were claimants that
14 were added during the course of the lawsuit.

15 In February 2014, the EEOC filed declarations, which were signed
16 by Thai workers in 2013 and 2014, pertaining to the Thai workers'
17 experiences at the Grower Defendants' orchards in 2004 and 2005. ECF
18 Nos. 485-487. In these 2013 and 2014-signed declarations, many of the
19 Thai workers declare that they were paid late, worked less than 40
20 hours a week, were threatened with deportation if they did not meet
21 quotas, lived in overcrowded and dirty housing, rode overcrowded
22 transportation, and did not receive medical care when they worked at
23 the Grower Defendants' orchards in Washington, Maui Plantation in
24 Hawaii, and other farms.

25 On May 28, 2014, after reviewing the numerous declarations,
26 deposition testimony, and other evidence, the Court granted summary

1 judgment in the Grower Defendants' favor because the EEOC failed to
2 present evidence to establish a triable issue of fact that the Grower
3 Defendants violated Title VII by creating a hostile work environment,
4 taking an adverse employment action against a Thai worker, retaliating
5 against a Thai worker, or constructively discharging a Thai worker on
6 the basis of his race or national origin, notwithstanding a triable
7 dispute of fact as to whether the Grower Defendants, along with Global,
8 could be considered the Thai workers' employer. ECF No. 582. This
9 motion for attorney's fees by the Grower Defendants followed the entry
10 of summary judgment in their favor.

11 **D. Analysis**

12 This case presented challenges to the EEOC: numerous non-English
13 speaking Thai individuals who worked at a variety of farms in the United
14 States performing various tasks for varying periods of time and then
15 who, following employment, resided at various locations throughout the
16 United States or Thailand. Detailing what conduct and events occurred
17 at what farm and/or by what business would have been a challenging task
18 for the EEOC. Yet, these challenges were not an excuse for the EEOC
19 to forego a reasonable and diligent investigation of the allegations
20 of discrimination as to each business before filing a Title VII lawsuit
21 that plausibly stated a claim for relief against that business. The
22 Court finds the EEOC failed to conduct an adequate investigation before
23 filing the lawsuit against the Grower Defendants and as a result its
24 Title VII claims against the Grower Defendants were baseless,
25 unreasonable, and frivolous.

1 The Court's conclusion is not a *post hoc* determination based on
2 the entry of summary judgment in the Grower Defendants' favor. See,
3 e.g., *EEOC v. Reeves*, 262 Fed. App'x 42, 44 (9th Cir. 2007) (unpublished
4 opinion) (recognizing that if a claim withstands summary judgment it
5 is unlikely to be frivolous) (citing *Sullivan v. Sch. Bd. of Pinellas*
6 *Cnty.*, 773 F.2d 1182, 1189 (11th Cir. 1985)). Rather, the evidence
7 and documentation pertaining to the parties' pre-lawsuit communications
8 and the EEOC's investigation (or lack thereof) as to the Grower
9 Defendants shows that the EEOC was not prepared to allege plausible,
10 reasonable, or non-frivolous Title VII claims against the Grower
11 Defendants.

12 This unpreparedness is highlighted by the ever-changing number of
13 Thai claimants throughout this lawsuit. The EEOC filed this lawsuit
14 without knowing which Thai claimants worked at the Grower Defendants
15 and when. This lack of knowledge occurred notwithstanding that the
16 EEOC had a simple method of determining which Thai claimants worked at
17 the Grower Defendants and when: reviewing the Global invoices. The
18 EEOC was aware of the existence of these invoices before issuing its
19 letters of determination, which was before the filing of the lawsuit.
20 For an unexplained reason, the EEOC did not obtain and review the Global
21 invoices until after it filed the lawsuit. The EEOC also filed the
22 lawsuit without interviewing a Grower Defendant manager, supervisor,
23 or owner.

24 Further, although the EEOC should have known that many of the
25 Thai workers worked at different farms throughout the United States
26 while employed with Global, there is no indication that the EEOC took

1 steps to identify and clarify at which farm a worker experienced the
2 claimed discriminatory treatment, e.g., lack of pay, lack of work hours,
3 racial and national origin slurs, deficient housing and transportation,
4 and unequal treatment. There is no indication that the EEOC considered
5 or reacted to the August 2009 and April 2010 interview notes where
6 several Thai workers provided information that the Grower Defendants
7 did not treat the Thai workers unfairly, provided 40 hours of work a
8 week, and treated the Thai workers the same as the Latino workers.

9 The EEOC cannot claim that it was unaware of such deficiencies in
10 its investigation against the Grower Defendants as the Grower
11 Defendants' counsel repeatedly advised the EEOC that the charges of
12 discrimination, and subsequent letters of determination, failed to
13 allege the purported discrimination by the Grower Defendants with
14 sufficient specificity so as to put the Grower Defendants on notice of
15 their challenged conduct. See *EEOC v. Agro Dist., LLC*, 555 F.3d at
16 473; *EEOC v. Tricore Reference Labs.*, Nos. 11-2096, 11-2247, 493 F.
17 App'x 955 (10th Cir. 2012) (unpublished opinion) (affirming an award
18 of attorney's fees to a prevailing defendant because the EEOC should
19 have ceased the proceeding once the defendant issued a position letter
20 identifying the deficiencies in the EEOC's case). And then with
21 knowledge that the charges of discrimination and letters of
22 determination were vague as to the Grower Defendants' purported
23 discriminatory conduct, the EEOC made a conciliation demand against
24 the Grower Defendants for \$300,000 in emotional distress and punitive
25 damages per class member: resulting in a monetary damages request that
26 exceeded 9 million dollars for each Grower Defendant. Following the

1 Grower Defendants' unsurprising declination of this damages demand in
2 light of the vague and factually unexplained charges, the EEOC declined
3 to consider the Grower Defendants' non-damages offers of conciliation.
4 There is no information or documentation before the Court that the EEOC
5 conducted any further investigation before filing this lawsuit seven
6 months later, which again sought damages exceeding 25 million per Grower
7 Defendant and reinstatement of the Thai workers' employment at the
8 orchards, where they had not worked since 2004 or 2005.

9 The EEOC maintains that it had a factual basis to assert Title
10 VII claims against the Grower Defendants under the joint-employer
11 theory of liability, highlighting that the Court found genuine disputes
12 of fact as to whether the Grower Defendants jointly employed the Thai
13 workers with Global. However, the EEOC's interpretation of the joint-
14 employer theory of liability was not based on a reasonable reading of
15 the case law supporting this doctrine. Relying on *EEOC v. Global*
16 *Horizons*, 860 F. Supp. 2d 1172 (D. Haw. 2012), the EEOC maintained that
17 the Grower Defendants would be liable for Global's discriminatory
18 practices if the Grower Defendants knew or should have known about
19 these practices and failed to address them, without regard to whether
20 Global's discriminatory practice was in a matter over which a Grower
21 Defendant had control. See EEOC's Reply Memorandum Supporting its
22 Motions to Compel the Grower Defendants to Respond to the EEOC's
23 Documents Requests and Interrogatories, ECF No. 452 at 2-3. The EEOC's
24 reading of the Hawaii District Court's joint-employer-liability
25 analysis in *EEOC v. Global Horizons* was unfounded. The case law cited
26 and quoted by the Hawaii District Court:

1 all recognize that in order for an entity to be held liable
2 under Title VII that entity must 1) be an "employer" of the
3 plaintiff and 2a) have discriminated against the plaintiff by
4 its own conduct, or 2b) knew or should have known of a joint
5 employer's discriminatory conduct against the plaintiff in a
6 matter within the entity's control, and the entity failed to
7 take measures within its control to correct the joint
8 employer's discriminatory conduct.

9 Order Ruling on the EEOC's Motions to Compel Discovery Responses from
10 the Grower Defendants, ECF No. 460 at 5-6 (citing cases). This standard
11 was in place when the EEOC conducted its investigation before it filed
12 this lawsuit.

13 Therefore, the EEOC's expansive argument that a joint employer is
14 always liable for the discriminatory acts of the other joint employer
15 was frivolous. The existing case law required more than a joint-
16 employer relationship in order to impose liability for the other
17 employer's discriminatory acts. Instead, to pursue Title VII claims
18 against the Grower Defendants, the EEOC needed information supporting
19 a plausible finding that the Grower Defendants 1) discriminated against
20 a Thai worker (direct liability), or 2) knew or should have known that
21 Global discriminated against a Thai worker in a matter that was within
22 a Grower Defendant's control and that the Grower Defendant failed to
23 take measures within its control to correct Global's discriminatory
24 conduct (joint-employer liability). The sparse investigation conducted
25 by the EEOC before filing the lawsuit did not present any information
26 that would lead the EEOC to reasonably conclude that either of these
bases for liability was potentially satisfied as to the Grower
Defendants and certainly did not reasonably support the damage demands.
The EEOC was aware of the contractual division of responsibilities

1 between Global and the Grower Defendants and that the information
2 provided by the Thai claimants as to claimed discriminatory practices
3 fell within matters that were Global's responsibility.

4 The EEOC maintains that pre-lawsuit interview notes supported a
5 reasonable conclusion that the Grower Defendants were liable as a joint
6 employer with Global, and also contends that the pre-lawsuit interview
7 notes were consistent with the Thai workers' post-lawsuit statements.

8 First, the Court finds that many of pre-lawsuit interview notes, which
9 summarize the Thai-workers' experiences while working for Global, vary
10 from what that particular Thai worker later stated in a 2013 and 2014
11 signed declaration. See Grower Defendants' Joint Motion for Attorney's
12 Fees as Prevailing Parties under Title VII, ECF No. 598 at 8-9. The
13 EEOC attributes these variances to the fact that the Thai workers did
14 not review the pre-lawsuit investigation notes for accuracy. The Court
15 questions whether it is reasonable for the EEOC to base its decision
16 to file a lawsuit against a business on interview notes that were
17 neither reviewed nor signed by a claimant. Yet, the Court need not
18 resolve that question because here the information before the EEOC in
19 April 2010, including the pre-lawsuit investigation notes, clearly did
20 not justify the filing of Title VII claims against the Grower Defendants
21 on a specific Thai worker's behalf, or as a pattern-and-practice claim
22 of discrimination, even under the joint-employer theory of liability.
23 See *EEOC v. Agro Dist., LLC*, 555 F.3d 462, 473 (5th Cir. 2009)
24 (affirming award of attorney's fees to prevailing defendant because
25 once the worker's deposition was taken it was clear the EEOC's action
26 lacked foundation); *EEOC v. Peoplemark, Inc.*, 732 F.3d 584, 591-92 (6th

1 Cir. 2012) (finding that when litigation discovery uncovered that a
2 claim was groundless, the EEOC should have reassessed the claim and
3 chosen not to pursue it). The pre-lawsuit notes purportedly reflecting
4 the personal experiences of the interviewed Thai workers did not
5 identify that any claimed experienced discrimination, including hostile
6 work environment, unfair treatment, or constructive discharge, was in
7 a matter that was in the control of both the Grower Defendants and
8 Global, and that the Grower Defendants should have reasonably known
9 about this claimed experienced discrimination.

10 Further, in the complaint, the EEOC frivolously sought backpay
11 and reinstatement for the Thai claimants, requesting that Global and
12 the Grower Defendants make "whole [Laphit Khadthan/Marut Kongpia] and
13 similarly situated individuals, by providing *appropriate backpay with*
14 *prejudgment interest*, in amounts to be determined at trial, and other
15 affirmative relief necessary to eradicate the effects of its unlawful
16 employment practices, including but not limited to *reinstatement* of
17 [Laphit Khadthan/Marut Kongpia] and similarly situated individual."
18 ECF No. 1 at 10 ¶¶ J & K (emphasis added). In April 2011, the EEOC
19 knew, or should have known, that Global was no longer approved to
20 provide H-2A guest workers to American farms and that many of the Thai
21 individuals were not lawfully in the United States. Accordingly, an
22 award of backpay was inappropriate and reinstatement of these Thai
23 workers was impossible for the Grower Defendants. *See Propak Logistics*,
24 746 F.3d at 151 (finding that attorney's fees were justified in part
25 because plaintiff sought relief that it knew or should have known was
26 unavailable).

1 **E. Conclusion**

2 In summary, this is an exceptional case where the EEOC failed to
3 conduct an adequate investigation to ensure that Title VII claims could
4 reasonably be brought against the Grower Defendants, pursued a
5 frivolous theory of joint-employer liability, sought frivolous
6 remedies, and disregarded the need to have a factual basis to assert a
7 plausible basis for relief under Title VII against the Grower
8 Defendants. See *Pierce Packing*, 669 F.2d at 609 (finding that the
9 premature filing of a Title VII case by the EEOC can be deemed an
10 unreasonable action, thereby justifying an award of attorney's fees to
11 the prevailing defendant). The Court's finding is not based on the
12 EEOC's litigation and discovery practices. Cf. *Serrano v. Cintas Corp.*,
13 699 F.3d 884, 905 (6th Cir. 2012) (reversing district court's award of
14 attorney's fees to the defendant because, in part, the district court
15 based its ruling on the EEOC's litigation filings and discovery
16 practices). The Court exercised "caution" when finding that an award
17 of attorney's fees to the prevailing Grower Defendants is appropriate.

18 For the above-given reasons, **IT IS HEREBY ORDERED:**

- 19 1. The Grower Defendants' Joint Motion for Attorney's Fees as
20 Prevailing Parties under Title VII, **ECF No. 598**, is **GRANTED**.
- 21 2. No later than **30 days** after this Order's entry, the Grower
22 Defendants may file a motion seeking an award of reasonable

23 ///

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1 attorney's fees and costs, which is to be supported by
2 declarations from counsel.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
4 Order and provide copies to counsel.

5 **DATED** this 18th day of March 2015.

6
7 s/Edward F. Shea

EDWARD F. SHEA

8 Senior United States District Judge
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