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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 U.S. EQUAL EMPLOYMENT ) 1:09-cv-2255 OWW SKO  
10 OPPORTUNITY COMMISSION, )  
11 Plaintiff, ) SCHEDULING CONFERENCE ORDER  
12 v. ) Discovery Cut-Off: 6/30/11  
13 GIUMARRA VINEYARDS, CORPORATION, ) Non-Dispositive Motion  
14 and DOES 1-10, inclusive, ) Filing Deadline: 7/15/11  
15 Defendants. ) Non-Dispositive Motion  
16 ) Hearing Date: 8/19/11 9:00  
17 ) Ctrm. 8  
18 )  
19 Dispositive Motion Filing  
20 Deadline: 7/29/11  
21 Dispositive Motion Hearing  
22 Date: 8/29/11 10:00 Ctrm.  
23 3  
24 Settlement Conference Date:  
25 7/6/11 10:30 Ctrm. 8  
26 Pre-Trial Conference Date:  
27 10/3/11 11:00 Ctrm. 3  
28 Trial Date: 11/15/11 9:00  
Ctrm. 3 (JT-15 days)

25 I. Date of Scheduling Conference.

26 July 1, 2010.

27 II. Appearances Of Counsel.

28 U.S. Equal Employment Opportunity Commission by Connie K.

1 Liem, Esq., appeared on behalf of Plaintiff.

2 Kirtland & Packard LLP by Mark E. Goldsmith, Esq., and  
3 Joshua A. Fields, Esq., appeared on behalf of Defendant.

4 Marcos Camacho, A Law Corporation, by Marcos R. Camacho,  
5 Esq., and Mario Martinez, Esq., appeared on behalf of proposed  
6 Intervenor.

7 III. Summary of Pleadings.

8 1. On or about July of 2007, Defendant engaged in unlawful  
9 employment practices at their Edison, California facilities in  
10 violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).  
11 Defendant tolerated Charging Party Maribel Ochoa being subjected  
12 to a hostile work environment based on her sex (female).

13 2. Maribel Ochoa was subjected to unwelcome conduct of a  
14 sexual nature by a coworker. That conduct included, but was not  
15 limited to, repeated sexual advances; graphic requests for her to  
16 have sex with him; and offensive sexual comments such as telling  
17 her that he had a large penis and that he wanted to stick it in  
18 her.

19 3. The sexual conduct by the coworker was unwelcome.  
20 Maribel Ochoa always rejected his advances and made significant  
21 efforts to avoid the coworker. As explained below, Maribel Ochoa  
22 also demonstrated the conduct was unwelcome when she attempted to  
23 complain to Defendant's management in order to have the conduct  
24 stopped.

25 4. The conduct was sufficiently severe and pervasive to  
26 create a hostile and abusive work environment. The conduct was  
27 pervasive as it occurred on an almost daily basis. The conduct  
28 was severe as it included graphic requests that Maribel Ochoa

1 engage in sexual acts with the coworker and highly offensive  
2 statements by the coworker regarding his penis and how he wanted  
3 to stick it in her. The fact that Maribel Ochoa was seventeen  
4 years old at the time the coworker was making such vulgar remarks  
5 to her, heightens the severity of the conduct.

6 5. Defendant is liable for the sexual harassment by  
7 Maribel Ochoa's coworker as the claimants complained to  
8 Defendant's management of the harassment, yet Defendants failed  
9 to take any effective, remedial action at all.

10 6. On or about July 20, 2007, Defendants engaged in  
11 unlawful employment practices at its Edison, California  
12 facilities in violation of Section 704(a) of Title VII, 42 U.S.C.  
13 § 2000e-3(a), when they retaliated against Charging Parties  
14 Maribel Ochoa, Delfina Ochoa, Jose Ochoa, or alleged similarly-  
15 situated individual Guadalupe Martinez (claimants) for engaging  
16 in a protected activity.

17 7. All four claimants engaged in a protected activity. On  
18 or about July 19, 2007 all four claimants complained to  
19 Defendant's management officials regarding the sexual harassment  
20 to which Maribel Ochoa was being subjected.

21 8. The claimants were all subjected to an adverse  
22 employment action when they were summarily terminated on July 20,  
23 2007.

24 9. Defendant terminated all four claimants in retaliation  
25 for their opposition to the unlawful sexual harassment in their  
26 workplace. The terminations occurred less than 24 hours after  
27 the complaints were made and well in advance of the end of the  
28 growing season the claimants were scheduled to work through.

1 None of the claimants were given any reason for the abrupt  
2 terminations and no other similarly situated farm workers were  
3 discharged at that time and in that manner.

4 10. The EEOC seeks economic damages; compensatory damages;  
5 punitive damages; injunctive relief; and its taxable costs  
6 incurred in bringing this action. The EEOC seeks economic  
7 damages suffered by Maribel Ochoa, Delfina Ochoa, and Jose Ochoa,  
8 and Guadalupe Martinez. Specifically, the EEOC seeks their lost  
9 wages suffered as a direct result of Defendant's retaliatory  
10 discharge during July 2007. During this time, the claimants were  
11 earning approximately \$7.50 to \$7.75/hour. The EEOC seeks the  
12 difference in wages between what they would have earned but for  
13 the discharges and what they actually did earn. All the  
14 information necessary to make a precise calculation of those  
15 economic losses is in Defendant's exclusive possession and  
16 control. Upon receipt of such evidence, the EEOC will supplement  
17 its response in this regard. In addition, the EEOC seeks to  
18 recover prejudgment interest on all the identified claimants'  
19 economic losses calculated at the relevant IRS interest rate for  
20 underpayment of taxes and compounded quarterly, and a positive  
21 letter of reference for potential future employers.

22 11. Furthermore, the EEOC seeks compensatory damages for  
23 the emotional distress (garden-variety), pain, suffering,  
24 humiliation, frustration and inconvenience the four identified  
25 claimants suffered as a direct result of the discriminatory  
26 conduct complained of in this lawsuit. The EEOC seeks punitive  
27 damages due to Defendant's malice and reckless indifference  
28 towards their federally protected rights, and to deter any such

1 future unlawful conduct. Accordingly, the EEOC seeks  
2 compensatory and punitive damages in the combined maximum amount  
3 permitted by federal statute, i.e., \$300,000.00 plus economic  
4 damages.

5 12. Lastly, the EEOC seeks injunctive and equitable relief  
6 as reflected in its Complaint to ensure Defendant's future  
7 compliance with Title VII including, but not limited to, the  
8 implementation and/or revision of its anti-discrimination and  
9 anti-retaliation policies in languages best understood by its  
10 workforce, the hiring of a professional EEOC consultant, a notice  
11 posting in the workplace, periodic monitoring reports to the  
12 EEOC, and mandatory training for management and employees  
13 regarding their rights and responsibilities under Title VII.

14 13. Defendant denies the EEOC's allegations entirely.  
15 Defendant denies that Maribel Ochoa was in any way sexually  
16 harassed or subjected to a hostile work environment based on sex  
17 while at Giumarra. In addition, Defendant denies that Charging  
18 Parties Maribel Ochoa, Delfina Ochoa, Jose Ochoa (collectively  
19 "Charging Parties"), or alleged similarly-situated individual  
20 Guadalupe Martinez ("Martinez"), complained to anyone at Giumarra  
21 regarding the allegations in EEOC's Complaint, and denies that  
22 they were in any way retaliated against. Instead, each of these  
23 individuals voluntarily quit their employment at the company.  
24 Defendant denies that plaintiff EEOC, Charging Parties, or  
25 Martinez are in any way entitled to damages, and denies that  
26 Plaintiff EEOC is entitled to injunctive and equitable relief.

27 IV. Orders Re Amendments To Pleadings.

28 1. Presently, the EEOC does not anticipate amending its

1 Complaint.

2 2. Defendant has answered the EEOC's Complaint and does  
3 not presently intend to amend its Answer.

4 3. The proposed Intervenor has submitted a proposed  
5 Complaint-in-Intervention which includes supplemental claims  
6 under state law including discrimination and retaliation.

7 V. Factual Summary.

8 A. Admitted Facts Which Are Deemed Proven Without Further  
9 Proceedings.

10 1. The parties agree that Charging Parties Maribel  
11 Ochoa, Delfina Ochoa, Jose Ochoa, and alleged similarly-situated  
12 Plaintiff, individual Guadalupe Martinez, were employed at  
13 Giumarra Vineyards at times alleged in the complaint.

14 2. Giumarra Vineyards Corporation is a corporation  
15 formed under the laws of the State of California.

16 B. Contested Facts.

17 1. All remaining facts are contested.

18 VI. Legal Issues.

19 A. Uncontested.

20 1. Jurisdiction exists under 28 U.S.C. § 1331 and  
21 Title VII, 42 U.S.C. § 2000e, et seq.

22 2. Venue is proper under 28 U.S.C. § 1391 and 28  
23 U.S.C. § 1343.

24 3. In the event intervention is granted, and the  
25 proposed Complaint-in-Intervention filed, the supplemental claims  
26 shall be governed by the substantive law of the State of  
27 California.

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1           B.     Contested.

2                 1.     All legal issues asserted in the Complaint,  
3 Answer, affirmative defenses, and proposed Complaint-in-  
4 Intervention are disputed.

5 VII. Consent to Magistrate Judge Jurisdiction.

6                 1.     The parties have not consented to transfer the  
7 case to the Magistrate Judge for all purposes, including trial.

8 VIII.         Corporate Identification Statement.

9                 1.     Any nongovernmental corporate party to any action in  
10 this court shall file a statement identifying all its parent  
11 corporations and listing any entity that owns 10% or more of the  
12 party's equity securities. A party shall file the statement with  
13 its initial pleading filed in this court and shall supplement the  
14 statement within a reasonable time of any change in the  
15 information.

16 IX.     Discovery Plan and Cut-Off Date.

17                 1.     The EEOC contends that discovery will be needed on the  
18 following subjects: facts and witnesses supporting the EEOC's  
19 claims of sexual harassment towards Maribel Ochoa, and  
20 retaliation towards Maribel Ochoa, Delfina Ochoa, Jose Ochoa and  
21 Guadalupe Martinez in violation of Title VII; the facts and  
22 witnesses supporting Defendant's affirmative defenses;  
23 Defendant's anti-discrimination policies; training and  
24 implementation of the policies; Defendant's liability for  
25 compensatory and punitive damages; and injunctive relief  
26 remedies.

27                 2.     At this time, Giumarra anticipates pursuing discovery  
28 concerning: any evidence EEOC may have to support its claims

1 regarding the allegations contained in the EEOC Complaint and the  
2 EEOC Charges of Charging Parties Delfina Ochoa, Maribel Ochoa,  
3 and Jose Ochoa, as well as the EEOC's claims regarding alleged  
4 similarly situated individual Guadalupe Martinez; any evidence  
5 EEOC may have to support its claims related to the Charging  
6 Parties' and Martinez's employment with and separation from  
7 Giumarra, and any evidence the EEOC may have to support its  
8 claims for damages and injunctive and equitable relief; any  
9 evidence of EEOC's bias. There may be additional issues Giumarra  
10 will pursue through discovery.

11 3. The parties have agreed that discovery does not need to  
12 be conducted in phases or limited to certain issues.

13 4. All written discovery shall be conducted in accordance  
14 with the Federal Rules of Civil Procedure and Local Rules. The  
15 parties further agree (1) that each party will bear its own costs  
16 for copying documents produced under Fed. R. Civ. P. 34 and in  
17 response to any subpoena; (2) that depositions will be taken in  
18 accordance with Fed. R. Civ. P. 30; (3) that each side can take a  
19 maximum of twenty (20) depositions; (4) to act reasonably in  
20 attempting to informally resolve issues that may arise concerning  
21 limitations on the length and manner of taking depositions in  
22 light of some witnesses' lack of English proficiency; and (5)  
23 that discovery pleadings, including discovery requests and  
24 responses, with the exception of document productions, will be  
25 served both by regular mail and electronic service. However,  
26 documents produced in response to production requests need only  
27 be served by regular mail.

28 5. The parties intend to participate in a meet and confer

1 process regarding a stipulated protective order covering private  
2 and confidential information. At this time, Plaintiff EEOC seeks  
3 a protective order regarding, *inter alia*, the oral deposition of  
4 any EEOC employee. Defendant intends to bring a Motion to Compel  
5 depositions of Plaintiff EEOC's employees, if they are not  
6 produced voluntarily.

7 6. The present Plaintiff and Defendant have made their  
8 Rule 26 disclosures.

9 7. The parties are ordered to complete all discovery on or  
10 before June 30, 2011.

11 8. The parties are directed to disclose all expert  
12 witnesses, in writing, on or before May 2, 2011. Any rebuttal or  
13 supplemental expert disclosures will be made on or before June 2,  
14 2011. The parties will comply with the provisions of Federal  
15 Rule of Civil Procedure 26(a)(2) regarding their expert  
16 designations. Local Rule 16-240(a) notwithstanding, the written  
17 designation of experts shall be made pursuant to F. R. Civ. P.  
18 Rule 26(a)(2), (A) and (B) and shall include all information  
19 required thereunder. Failure to designate experts in compliance  
20 with this order may result in the Court excluding the testimony  
21 or other evidence offered through such experts that are not  
22 disclosed pursuant to this order.

23 9. The provisions of F. R. Civ. P. 26(b)(4) shall  
24 apply to all discovery relating to experts and their opinions.  
25 Experts may be fully prepared to be examined on all subjects and  
26 opinions included in the designation. Failure to comply will  
27 result in the imposition of sanctions.

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1 X. Pre-Trial Motion Schedule.

2 1. All Non-Dispositive Pre-Trial Motions, including any  
3 discovery motions, will be filed on or before July 15, 2011, and  
4 heard on August 19, 2011, at 9:00 a.m. before Magistrate Judge  
5 Sheila K. Oberto in Courtroom 8.

6 2. In scheduling such motions, the Magistrate  
7 Judge may grant applications for an order shortening time  
8 pursuant to Local Rule 142(d). However, if counsel does not  
9 obtain an order shortening time, the notice of motion must comply  
10 with Local Rule 251.

11 3. All Dispositive Pre-Trial Motions are to be  
12 filed no later than July 29, 2011, and will be heard on August  
13 29, 2011, at 10:00 a.m. before the Honorable Oliver W. Wanger,  
14 United States District Judge, in Courtroom 3, 7th Floor. In  
15 scheduling such motions, counsel shall comply with Local Rule  
16 230.

17 XI. Pre-Trial Conference Date.

18 1. October 3, 2011, at 11:00 a.m. in Courtroom 3, 7th  
19 Floor, before the Honorable Oliver W. Wanger, United States  
20 District Judge.

21 2. The parties are ordered to file a Joint Pre-  
22 Trial Statement pursuant to Local Rule 281(a)(2).

23 3. Counsel's attention is directed to Rules 281  
24 and 282 of the Local Rules of Practice for the Eastern District  
25 of California, as to the obligations of counsel in preparing for  
26 the pre-trial conference. The Court will insist upon strict  
27 compliance with those rules.

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XII. Motions - Hard Copy.

1. The parties shall submit one (1) courtesy paper copy to the Court of any motions filed. Exhibits shall be marked with protruding numbered or lettered tabs so that the Court can easily identify such exhibits.

XIII. Trial Date.

1. November 15, 2011, at the hour of 9:00 a.m. in Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger, United States District Judge.

2. This is a jury trial.

3. Counsels' Estimate Of Trial Time:

a. 12-15 days.

4. Counsels' attention is directed to Local Rules of Practice for the Eastern District of California, Rule 285.

XIV. Settlement Conference.

1. A Settlement Conference is scheduled for July 6, 2011, at 10:30 a.m. in Courtroom 8 before the Honorable Sheila K. Oberto, United States Magistrate Judge.

2. Unless otherwise permitted in advance by the Court, the attorneys who will try the case shall appear at the Settlement Conference with the parties and the person or persons having full authority to negotiate and settle the case on any terms at the conference.

3. Permission for a party [not attorney] to attend by telephone may be granted upon request, by letter, with a copy to the other parties, if the party [not attorney] lives and works outside the Eastern District of California, and attendance in person would constitute a hardship. If telephone attendance is

1 allowed, the party must be immediately available throughout the  
2 conference until excused regardless of time zone differences.  
3 Any other special arrangements desired in cases where settlement  
4 authority rests with a governing body, shall also be proposed in  
5 advance by letter copied to all other parties.

6 4. Confidential Settlement Conference Statement.

7 At least five (5) days prior to the Settlement Conference the  
8 parties shall submit, directly to the Magistrate Judge's  
9 chambers, a confidential settlement conference statement. The  
10 statement should not be filed with the Clerk of the Court nor  
11 served on any other party. Each statement shall be clearly  
12 marked "confidential" with the date and time of the Settlement  
13 Conference indicated prominently thereon. Counsel are urged to  
14 request the return of their statements if settlement is not  
15 achieved and if such a request is not made the Court will dispose  
16 of the statement.

17 5. The Confidential Settlement Conference  
18 Statement shall include the following:

19 a. A brief statement of the facts of the  
20 case.

21 b. A brief statement of the claims and  
22 defenses, i.e., statutory or other grounds upon which the claims  
23 are founded; a forthright evaluation of the parties' likelihood  
24 of prevailing on the claims and defenses; and a description of  
25 the major issues in dispute.

26 c. A summary of the proceedings to date.

27 d. An estimate of the cost and time to be  
28 expended for further discovery, pre-trial and trial.

1 e. The relief sought.

2 f. The parties' position on settlement,  
3 including present demands and offers and a history of past  
4 settlement discussions, offers and demands.

5 XV. Request For Bifurcation, Appointment Of Special Master,  
6 Or Other Techniques To Shorten Trial.

7 1. To the extent punitive damages are sought as to the  
8 amount, if any, that issue shall be tried in a continuous trial  
9 in a second phase before the same jury.

10 XVI. Related Matters Pending.

11 1. There are no related matters.

12 XVII. Compliance With Federal Procedure.

13 1. The Court requires compliance with the Federal  
14 Rules of Civil Procedure and the Local Rules of Practice for the  
15 Eastern District of California. To aid the court in the  
16 efficient administration of this case, all counsel are directed  
17 to familiarize themselves with the Federal Rules of Civil  
18 Procedure and the Local Rules of Practice of the Eastern District  
19 of California, and keep abreast of any amendments thereto.

20 XVIII. Effect Of This Order.

21 1. The foregoing order represents the best  
22 estimate of the court and counsel as to the agenda most suitable  
23 to bring this case to resolution. The trial date reserved is  
24 specifically reserved for this case. If the parties determine at  
25 any time that the schedule outlined in this order cannot be met,  
26 counsel are ordered to notify the court immediately of that fact  
27 so that adjustments may be made, either by stipulation or by  
28 subsequent scheduling conference.

1           2.     Stipulations extending the deadlines contained  
2 herein will not be considered unless they are accompanied by  
3 affidavits or declarations, and where appropriate attached  
4 exhibits, which establish good cause for granting the relief  
5 requested.

6           3.     Failure to comply with this order may result in  
7 the imposition of sanctions.

8  
9 IT IS SO ORDERED.

10 Dated: July 1, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE