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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

THOMAS E. PEREZ, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

SEAFOOD PEDDLER OF SAN  
RAFAEL, INC., dba SEAFOOD  
PEDDLER; ALPHONSE SILVESTRI;  
RICHARD MAYFIELD; FIDEL  
CHACON,

Defendants.

Case No. 12-cv-00116 WHO (NC)

**ORDER DENYING DEFENDANTS'  
REQUESTS TO COMPEL  
ADDITIONAL DISCOVERY**

Re: Dkt. 203, 212, 215

This discovery order addresses Seafood Peddler's request to compel additional discovery in this labor case. Specifically, Seafood Peddler seeks (1) more depositions of its former employees so that it may ask them about any U-visa applications they made; and (2) supplemental interrogatory responses from the Secretary concerning his calculation of alleged cash payments made by Seafood Peddler. In considering both requests, the Court is aware that the deadline for fact discovery has passed, the deadline for filing summary judgment motions is April 21, and trial is scheduled for August 2014. Dkt. 191. Because Seafood Peddler does not establish good cause to compel additional discovery, the requests for relief are DENIED.

Case No. 12-cv-00116 WHO (NC)  
ORDER DENYING REQUESTS TO COMPEL

1 **I. Procedural History**

2 This discovery order is written in summary form, as the parties are familiar with  
3 the case history and the discovery issues presented. The Court held a discovery hearing  
4 on February 26, 2014, after which the Secretary filed a supplemental interrogatory  
5 response to request number 7. Dkt. 215. Both parties submitted extensive excerpts of  
6 relevant deposition transcripts. Dkt. 205, 210. The Court has reviewed all the information  
7 submitted.

8 **II. Analysis**

9 **A. Deposition Questions About U-Visas**

10 In a letter brief docketed at 203, Seafood Peddler seeks to compel additional  
11 deposition testimony and documents from six of its former employees concerning  
12 whether they applied for U-visas. A footnote states that Seafood Peddler desires an order  
13 that would apply to all fourteen former-employee witnesses, not just the six that were  
14 deposed. Dkt. 203 at n.3. The preliminary question presented is whether the Secretary  
15 properly instructed witnesses not to answer deposition questions about whether they had  
16 applied for U-visas.

17 As an illustration, at the deposition of Luis Sandoval, Seafood Peddler’s counsel  
18 asked if the witness had been “promised a U visa” before going to a July 2011 meeting  
19 with the Department of Labor. Sandoval Dep. at 12:27:58, Dkt. 211-2. The Secretary’s  
20 counsel objected and instructed the witness not to answer: “Objection. Do not answer -- I  
21 am directing the witness not to answer the question. I will also state for the record that  
22 there is a protective order in place barring the questions into U visas.” *Id.* at 12:28:13.

23 The underpinning of the Secretary’s objection are three rulings from this Court.  
24 On March 29, 2013, Judge Phyllis J. Hamilton ruled that defendants may not ask any  
25 witness what their immigration status is, but may ask indirect questions that may have  
26 some bearing on immigration status. Dkt. 92 at 3.

27 On September 10, 2013, this Court ordered:

28 “In conclusion, defendants may not ask questions of witnesses regarding U

1 Visas unless (1) there is a factual basis showing that plaintiff offered,  
2 provided, or was requested to provide, U Visa certification to any Seafood  
3 Peddler employee in connection with the investigation or prosecution of this  
4 case; (2) that employee’s testimony will be relied upon by plaintiff in this  
5 case; and (3) the employee is not a U Visa beneficiary within the meaning  
6 of § 1367(a)(2).” Dkt. 162.

7 Then, on October 2, 2013, Judge William H. Orrick affirmed the September 10  
8 discovery order, commenting that “The defendants are entitled to prepare for trial  
9 knowing all discoverable information, including impeachment evidence, and should have  
10 the opportunity to explore those issues with the witnesses in this case.” Dkt. 181 at 4.

11 The Court denies Seafood Peddler’s request for four reasons.

12 First, there is no factual record presented that plaintiff offered, provided, or was  
13 requested to provide a U-visa certification to any Seafood Peddler employee in  
14 connection with the investigation or prosecution of this case. Dkt. 162.

15 Second, two of the employee witnesses did answer deposition questions about U-  
16 visas and denied that they had been offered or promised a U-visa.

17 Third, Seafood Peddler squandered its opportunity to discover relevant information  
18 with deposition questions that frequently were sloppy, argumentative, or both. For  
19 illustration, Seafood Peddler’s counsel asked witness Sergio Mejia: “Is it possible that  
20 you came here today to tell the, quote, truth, close quote, because you received a u. visa to  
21 cooperate with a government investigation?” Mejia Dep. at 15:01:16, Dkt. 211-4.

22 And finally, Seafood Peddler was not diligent in waiting to challenge the  
23 deposition objections until after the close of fact discovery. The Court now must consider  
24 the benefit of further discovery against the burden to six witnesses of being re-deposed.  
25 Having considered the speculative basis for Seafood Peddler’s request, the Court  
26 determines that further discovery is not warranted.

