

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 15, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERNESTO AVINA ESPINOZA;
JESUS BELLO PAREDES;
JOSE RUTILO GAMBOA NÚÑEZ;
LUCIA YUNUEN GAMBOA URBINA;
MARIA LIBRADA ESPINOZA

NICOLAS;

Plaintiffs,

v.

PERRAULT FARMS, INC.;
JEFFREY PERRAULT; and
JUDY PERRAULT AND STEVE
PERRAULT, and the marital community
thereof;

Defendants.

No. 1:19-CV-03287-SAB

**ORDER GRANTING
PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER**

Before the Court is Plaintiffs' Motion and Memorandum for a Protective Order on Immigration Status Discovery for Nonparty Witnesses, ECF No. 17. The motion was considered without oral argument. Plaintiffs are represented by David Morales and Maria Dolores Velazquez. Defendants are represented by Brendan Monahan, Lance Pelletier, and Sarah Wixson.

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Introduction

1
2 Plaintiffs allege that Defendants Perrault Farms, Inc., Jeffrey Perrault, and
3 Judy and Steve Perrault (“Defendants”) hired them as local seasonal farmworkers
4 to work on Defendants’ blueberry and hop harvests in early April 2017, but then
5 fired them when the foreign H-2A workers Defendants had hired from Mexico
6 arrived later that month. Plaintiffs are alleging that Defendants’ actions violated
7 H-2A requirements, which require employers to hire local workers over foreign
8 workers if the local workers are able, qualified, and available to do the work.
9 Plaintiffs also allege that Defendants breached their contracts by expecting
10 Plaintiffs to perform at a faster rate than that listed in the contract, expecting
11 Plaintiffs to perform tasks not listed in the contract, and discharging Plaintiffs
12 without adequate warning or cause.

13 Plaintiffs are bringing three claims. First, Plaintiffs allege violations of the
14 Migrant and Seasonal Agricultural Worker Protection Act, 28 U.S.C. §§ 1801 et
15 seq. (“AWPA”). Plaintiffs allege that Defendants violated their working
16 arrangement with Plaintiffs without justification and knowingly provided them
17 false and misleading information regarding the terms and conditions of
18 employment. ECF No. 1 at 2, 17. Second, Plaintiffs allege a state law breach of
19 contract claim. Plaintiffs allege that Defendants materially breached their
20 employment contracts by imposing minimum productivity requirements that were
21 not listed in their H-2A contracts, failing to provide adequate cause for disciplinary
22 actions, and failing to adhere to the disciplinary and firing procedures set out in the
23 contract. *Id.* at 18. Finally, Plaintiffs allege violations of the Washington Consumer
24 Protection Act (“CPA”), Wash. Rev. Code § 19.86.010 et seq. Plaintiffs allege that
25 Defendants’ failure to include specific production standards as a condition of
26 continued employment in the contract, tell employees when they received
27 disciplinary warnings, and tell Plaintiffs that they only needed workers for a few
28 weeks were unfair and deceptive. Plaintiffs seek statutory damages under the

1 AWWPA, expectation damages for breach of contract, treble damages under the
2 CPA, and an injunction against Defendants under the CPA from disqualifying
3 Plaintiffs and any workers from working at Perrault Farms in the future based on
4 failure to complete the 2017 contract. *Id.* at 19-20.

5 Plaintiffs filed this present motion to seek a Rule 26 protective order
6 prohibiting discovery regarding the immigration statuses of nonparty witnesses.
7 Plaintiffs argue that this information is not relevant to any claims or defenses in
8 this case and allowing discovery of this information would discourage nonparty
9 witnesses from coming forward. ECF No. 17 at 2. Defendants argue that there is no
10 need for the Court to grant Plaintiffs' request because Defendants have already
11 agreed not to seek this information during discovery. ECF No. 22 at 2.

12 **Legal Standard**

13 Federal Rule of Civil Procedure 26(b) allows discovery of "any
14 nonprivileged matter that is relevant to any party's claim or defense." But, despite
15 the general liberal policies of the federal discovery rules, Rule 26(c) permits a
16 court to enter a protective order "forbidding the disclosure or discovery" of
17 information if a party demonstrates good cause for protecting that party from
18 "annoyance, embarrassment, oppression, or undue burden or expense." Upon a
19 finding that "particularized harm will result from disclosure of information to the
20 public" a court must "balance[] the public and private interests [involved] to decide
21 whether a protective order is necessary. *Phillips ex rel. Estates of Byrd v. General
22 Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

23 **Analysis**

24 Plaintiffs filed this present motion to seek a protective order under Fed. R.
25 Civ. P. 26(c) prohibiting discovery of nonparty witnesses' immigration statuses.
26 Plaintiffs' requested protective order would prohibit Defendants from (1) inquiring
27 into the immigration status of any nonparty witnesses and (2) posing immigration-
28 related inquiries to any nonparty witnesses, including any questions or requests for

**ORDER GRANTING PLAINTIFFS' MOTION FOR A PROTECTIVE
ORDER * 3**

1 documents regarding immigration status, place of birth, national origin,
2 immigration documents, passports, visas, social security numbers or statements,
3 tax identification numbers or other tax information, and information from prior
4 employers that may indicate immigration status. ECF No. 17 at 2-3. Plaintiffs
5 argue that discovery of nonparty witness immigration status is not relevant to
6 proving Plaintiffs' claims and that "such improper and invasive discovery would
7 only serve to introduce unfair prejudice into the proceedings and discourage
8 witnesses from testifying in Plaintiffs' meritorious civil rights action." *Id.* at 2.
9 Defendants argue that there is no need for the Court to grant Plaintiffs' request for
10 a Rule 26 protective order because Defendants already agreed that the immigration
11 status of nonparty witnesses is irrelevant to this case, have represented to Plaintiffs
12 that they would not seek this information through discovery, and indeed have not
13 requested this information. ECF No. 22 at 2. Defendants also argue that, if the
14 Court grants Plaintiffs' motion, the Court should clarify that Plaintiffs' protective
15 order is only intended to protect *nonparty* witnesses and that Plaintiffs' claims are
16 purely personal in nature, rather than intended to seek relief on behalf of
17 unidentified nonparties. *Id.*

18 1. Whether the Court should grant Plaintiffs' request for a Rule 26 protective
19 order prohibiting discovery of the immigration status of nonparty witnesses

20 Substantively, there is no disagreement between the parties on this point.

21 Both Plaintiffs and Defendants agree that (1) the immigration status of nonparty
22 witnesses is not relevant to any claim or defense in this case and (2) inquiring into
23 immigration status may have a chilling effect on nonparty witnesses' willingness to
24 come forward. ECF No. 17 at 2; ECF No. 22 at 7. Instead, Defendants argue that
25 "there is simply no dispute for this Court to resolve" because Defendants already
26 agreed not to seek this information during discovery. ECF No. 22 at 2. Defendants
27 claim that there is no basis for Plaintiffs' motion because Rule 26 only allows for a
28 protective order after the parties have conferred in good faith to resolve the dispute

1 without court action—and here, Defendants, argue, the parties have already
2 resolved the dispute. *Id.* at 4.

3 But Plaintiffs argue that it was *Defendants* who told them to file a motion for
4 a Rule 26 protective order to resolve this issue. Plaintiffs state that the parties,
5 through their attorneys, conferred in good faith about a stipulated protection order
6 on May 15, May 27, and June 5, 2020. ECF No. 17 at 2. After Plaintiffs presented
7 Defendants with a draft of the proposed order, Defendants responded on June 5:

8 It is our understanding that the purpose of the proposed order is to
9 articulate the parties’ agreement (a) that the immigration status of
10 third party witnesses is irrelevant to any claims or defenses and
11 unlikely to lead to the discovery of admissible evidence and (b) not to
12 seek this information in discovery or at deposition. If our
13 understanding is correct, that can be handled through a Rule 26
14 motion for protective order. We will not oppose a motion for
15 protective order that is consistent with these concepts, should your
16 office file one.

17 ECF No. 24 at ¶ 5. Plaintiff subsequently filed their Motion for a Protective
18 Order on September 4. ECF No. 17.

19 In order for the Court to grant a motion for a Rule 26 protective order,
20 the moving party must show (1) they have in good faith conferred with the
21 other party to resolve the dispute without court action and (2) good cause
22 exists to grant the protective order, which includes to protect a person from
23 annoyance, embarrassment, oppression, or undue burden or expense. Fed. R.
24 Civ. P. 26(c). Here, Plaintiffs have shown they did confer with Defendants
25 in good faith about the best way to protect the immigration statuses of
26 nonparty witnesses during the discovery process, and that Defendants told
27 them to file a Rule 26 protective order. ECF Nos. 17, 24. Additionally, both
28 parties agree that this information is not relevant to this litigation and that
asking nonparty witnesses about their immigration status would impose an
undue burden due to the potential chilling effect. ECF Nos. 17, 22. Thus, the

1 Court finds good cause to grant Plaintiffs' motion for a Rule 26 protective
2 order.

3 2. Whether Plaintiffs are entitled to seek more broadly applicable relief

4 Because the Court can fully resolve Plaintiffs' motion based on the first
5 point, the Court does not find it necessary to address the proper scope of Plaintiffs'
6 requested relief at this time.

7 Accordingly, **IT IS ORDERED:**

8 1. Plaintiffs' Motion for a Protective Order on Immigration Status
9 Discovery for Nonparty Witnesses, ECF No. 17, is **GRANTED**.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
11 and provide copies to counsel.

12 **DATED** this 15th day of October 2020.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

18 Stanley A. Bastian
19 United States District Judge
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