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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff,

and

ELODIA SANCHEZ

Plaintiff-Intervenor,

v.

EVANS FRUIT CO., INC.

Defendant,

and

JUAN MARIN and ANGELITA
MARIN, a marital community,

Defendants-Intervenors.

NO. CV-10-3033-LRS

**ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION**

BEFORE THE COURT is the Plaintiff's Motion For Preliminary Injunction
(Ct. Rec. 65). An evidentiary hearing was conducted on September 1, 2, 3, and 7,

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1 2010, and closing argument was heard on September 7.¹ Counsel provided the court
2 with proposed findings of fact and conclusions of law which it considered in
3 fashioning this order. The court has also reviewed the transcripts of the hearing
4 which have been prepared and filed. (Ct. Rec. 170, 171, 172 and 173).²

6 **I. BACKGROUND**

7 The Complaint filed by Plaintiff Equal Employment Opportunity Commission
8 (EEOC) alleges Defendant Evans Fruit Co., Inc., violated Section 703(a) of Title VII,
9 42 U.S.C. § 2000e-2(a), of the Civil Rights Act of 1964, as amended, as a result of
10 Juan Marin and other supervisors subjecting female employees to sexual harassment
11 and a hostile work environment because of sex. One of those employees, Elodia
12 Sanchez, subsequently intervened as a Plaintiff in this action, alleging individual
13 causes of action against Evans Fruit, and against Juan and Angelita Marin, for sexual
14 harassment under Title VII and under the Washington Law Against Discrimination
15 (WLAD), RCW Chapter 49.60. She also alleges a common law claim for negligent

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22 ¹Live testimony is appropriate on a preliminary injunction motion where
23 facts are contested and credibility determinations must be made to decide whether
24 injunctive relief should issue. *McDonald's Corp. v. Robertson*, 147 F.3d 1301,
1312 (11th Cir. 1998).

25 ² References to the Transcripts are "Tr. at p. ."

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1 infliction of emotional distress.³

2 On June 24, 2010, this court entered a temporary restraining order (Ct. Rec. 30)
3 against Defendant and its supervisors from, among other things, “taking any
4 retaliatory measures or other adverse actions based on retaliatory intent affecting
5 identified Charging Parties, identified and/or reasonably known Class Members, and
6 identified and/or reasonably known potential witnesses, or any of their family
7 members.” Threats of physical harm and other intimidation tactics are adverse
8 actions constituting retaliation pursuant to Section 704(a) of Title VII, 42 U.S.C. §
9 2000e-3(a), of the Civil Rights Act, as amended. Neither the EEOC’s complaint, or
10 the Complaint in Intervention, assert independent retaliation claims under Title VII.
11 As this court explained in its July 2, 2010 “Order Re Notice Of Errata” (Ct. Rec. 41)
12 at pp. 1-2:

13 Plaintiff has yet to assert independent retaliation claims as
14 part of its Complaint. Plaintiff alleges that individuals who
15 have claimed sexual discrimination by managers/supervisors
16 of Defendant have been threatened with retaliation by those individuals.
17 The court found those allegations of threatened retaliation to be
18 sufficient to warrant issuance of a temporary restraining order. The
19 allegations of threatened retaliation (if retaliation occurred) lend
20 credence to the claims of sexual discrimination set forth in the
21 Complaint. Moreover, one of the declarations submitted by a male
22 individual in support of the application for temporary restraining order
23 refers to specific
24 instances of sexual discrimination against his female partner
25 which are consistent with the claims of sexual discrimination
26 contained in the Complaint (i.e., offering money to the individual

27 ³ At this juncture, there are three current or former female employees of
28 Defendant who filed formal charges with the EEOC alleging sexual
harassment/discrimination. These individuals are referred to in the EEOC’s
Complaint as “Charging Parties.” Four other current or former employees are
identified in the Complaint as “Class Members.” Elodia Sanchez is a “Class
Member.”

**ORDER GRANTING MOTION
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1 in exchange for sex with the female partner; offering to buy son of
2 the individual and his female partner).

3 The purpose of the preliminary injunction hearing was to allow the court to
4 better ascertain the credibility of allegations of threatened retaliation and/or actual
5 retaliation by Juan Marin and other of the Defendant's supervisors, and in turn, to
6 determine whether the temporary restraining order should be converted into a
7 preliminary injunction which would remain in effect pending completion of a trial on
8 the merits of the sexual harassment/discrimination claims. Prior to the preliminary
9 injunction hearing, the parties were given leave to engage in discovery and
10 accordingly, depositions were taken of various individuals who testified on behalf of
11 both the Plaintiffs and the Defendants at the hearing. The discovery was limited to
12 the issue of retaliation and did not delve into the underlying claims of sexual
13 harassment/discrimination.⁴ Nonetheless, the court once again observes that in
14 assessing the likelihood of success on the merits, or that there are "serious questions"
15 going to the merits, it is necessarily constrained to determining whether there is such
16 a likelihood, or that serious questions exist, with regard to the sexual
17 harassment/discrimination claims. At present, these are the only claims upon which
18 there will ultimately be a ruling "on the merits." That said, if there is a probability
19 of irreparable injury arising from threatened retaliation or actual retaliation, that could
20 create, at a minimum, "serious questions" going to merits of the sexual
21 harassment/discrimination claims on the reasonable assumption that any threatened
22 retaliation or actual retaliation is because of the sexual harassment/discrimination
23 claims.

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25 ⁴ This court notes that it never issued an order specifically limiting the
26 scope of the discovery prior to the preliminary injunction hearing.

II. DISCUSSION

In order to obtain a preliminary injunction, a plaintiff must establish irreparable harm is likely, not just possible. *Winter v. Natural Resources Defense Council*, U.S. , 129 S.Ct. 365, 375-76 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 374. “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* at 376.

Recently, in *Alliance For The Wild Rockies v. Cottrell*, F.3d. , 2010 WL 3665149 (9th Cir. 2010)⁵, the Ninth Circuit Court of Appeals held that the “serious questions” version of the sliding scale test for preliminary injunctions remains viable after the U.S. Supreme Court’s decision in *Winter*. Under the sliding scale approach, the elements of the preliminary injunction test, as articulated by the Supreme Court in *Winter*, are balanced so that a stronger showing of one element may offset a weaker showing of another. *Id.* at *4-5 . Thus, a stronger showing of irreparable harm might offset a lesser showing of likelihood of success on the merits. *Id.* In the Ninth Circuit, the “serious questions” version of the sliding scale test is as follows:

A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.

Id. at *8, quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008).

According to the Ninth Circuit, although this test remains viable after *Winter*, a

⁵ The court’s July 28, 2010 opinion at 2010 WL 2926463 was amended on September 22, 2010.

1 plaintiff must still “satisfy the other *Winter* factors, including the likelihood of
2 irreparable harm.” *Id.* What this means is that a preliminary injunction cannot be
3 obtained by showing only that there are “serious questions” going to the merits and
4 that the balance of hardships tips sharply in the plaintiff’s favor. The plaintiff must
5 also satisfy the two other prongs of *Winter*, those being a likelihood of irreparable
6 injury and that the injunction is in the public interest. ““Serious questions going to
7 the merits’ and a hardship balance that tips sharply towards the plaintiff can support
8 issuance of an injunction, so long as the plaintiff also shows a likelihood of
9 irreparable injury and that the injunction is in the public interest.” *Id.*

10 The burden of persuasion is on the party seeking the preliminary injunction.
11 The movant must carry its burden by a "clear showing" establishing likelihood of
12 irreparable harm and a likelihood of success on the merits. *Mazurek v. Armstrong*,
13 520 U.S. 968, 972, 117 S.Ct. 1865 (1997). The EEOC has the burden of producing
14 affirmative evidence from which it can be inferred that a chill of Title VII protected
15 activity has occurred or is threatened. *EEOC v. Goodyear Aerospace Corp.*, 813 F.2d
16 1539, 1544 (9th Cir. 1987).

17 **A. Likelihood of Irreparable Harm**

18 The concern here is whether such an environment of intimidation has been
19 created at Evans Fruit that current and former employees would fear making
20 allegations of sexual harassment/discrimination and retaliation, and therefore not
21 cooperate with the EEOC’s investigation of the same.

22 Defendant contends the Plaintiff’s motion for preliminary injunction depends
23 almost entirely on the credibility of Gregorio Aguila. While there may be some
24 inconsistencies in the testimony of Mr. Aguila (his live testimony and that contained
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27 **ORDER GRANTING MOTION**
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1 in his declarations)⁶, and some inconsistencies between his testimony and the
2 testimony of his partner, Elodia Sanchez, the court does not consider any particular
3 inconsistency to be so glaring and damaging that it eliminates a likelihood that Juan
4 Marin was monitoring those who alleged he had engaged in sexual
5 harassment/discrimination of female employees. The primary reason for this is the
6 hearing testimony of Domingo Cuenca Lugo and Alvaro Bernardino Rojas, as well
7 as some inconsistencies in their testimony, as to exactly what they were doing in the
8 Sunnyside library on February 10, 2010, during the meeting the EEOC was
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10 ⁶ In a May 28, 2010 Declaration filed in support of the EEOC's application
11 for temporary restraining order, Gregorio Aguila asserted he "cut all ties with Juan
12 Marin and Evans Fruit" after an October 2009 meeting with Marin and that he
13 "did not hear anything from Juan Marin or any other Evans Fruit workers until
14 around February 10, 2010." (Ct. Rec. 9-4, Paragraph 18 at p. 9). Evans Fruit
15 contends Aguila's phone records show otherwise. It does not appear that the
16 specific phone records were used during the cross-examination of Gregorio Aguila
17 or during the direct examinations of Juan Marin and Alberto Sanchez Ramos,
18 although exhibits containing these records were admitted into evidence
19 (Defendant's Exs. 48, 51, 52, 53 and 55). Some of the calls from Sanchez to
20 Aguila appear to have occurred around the time Sanchez says Aguila was doing
21 work for him at his (Sanchez's) house (November 2009 and January 10, 2010) and
22 for which Sanchez claims he has receipts for items purchased related to that work.
(Tr. at p. 477). It appears that during his cross-examination, Aguila acknowledged
the existence of these calls during that period of time, but asserted the FBI asked
him to keep them confidential because the calls were being recorded by the FBI.
According to Aguila, he felt that in open court he was now at leave to
acknowledge the existence of these calls. (Tr. at pp. 46-51).

23 The fact Aguila and Elodia Sanchez had some contact with Marin and
24 Sanchez following the February 10 meeting and prior to their departure to
25 California in May does not necessarily mean they did not fear Marin, but could
26 just as easily have been an effort on their part to maintain as much normalcy as
possible and to not arouse suspicion on the part of Marin.

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1 conducting with the former employees of Evans Fruit.

2 On direct examination, Cuenca testified it was possible he had been at the
3 library two or three times in February 2010, and that within the past year he had been
4 there “some three or four times.” (Tr. at pp. 449 and 451). Yet at his deposition,
5 Cuenca testified that Rojas (aka “Grandulon”) had accompanied him to the library
6 only once (on February 10, 2010) and this had been “[t]he only time I went there this
7 year to make copies.” (*Id.* at p. 458). Cuenca testified the trip to the library was
8 necessary because a friend’s computer was usually used to make the copies, but at
9 that time, the computer was not working. (*Id.* at pp. 459-60). Cuenca testified the
10 February 10 trip to the library was also the only time he went to the library with
11 Rojas. (*Id.* at p. 460). Rojas, on the other hand, acknowledged he had testified
12 during his deposition that he was at the library every week making copies. (*Id.* at p.
13 577).

14 According to Cuenca, while he and Rojas were in the library, Rojas pointed out
15 the former Evans Fruit employees in the library as the folks who were “making the
16 lawsuit.”⁷ Cuenca acknowledged that Rojas asked him “to approach and see who it
17 was” and to look again and “see who’s there.” (*Id.* at pp. 460-61). In his deposition
18 testimony, Rojas acknowledged he and Cuenca “compared notes” as to who each of

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20 ⁷ This is seemingly a reference to the captioned lawsuit. Angela Mendoza,
21 one of the “Charging Parties” in this matter, filed an EEOC charge of sexual
22 harassment/discrimination against Marin in November 2006 (Tr. at pp. 152-53;
23 Ex. T to Ct. Rec. 105) and so a reasonable inference is that Marin would have
24 known of the same well prior to the February 10, 2010 meeting at the Sunnyside
25 library. The record reflects that Jacqueline Abundez Mendoza, the daughter of
26 Angela Mendoza, filed an EEOC charge against Marin in August 2006 (Ex. V to
27 Ct. Rec. 105); and that Norma Valdez filed such a charge in September 2008 (Ex.
28 U to Ct. Rec. 105).

1 them saw at the meeting and that he had made a “comment” that Cuenca should look
2 through the window of the library to identify every person that he could. (*Id.* at p.
3 574).

4 On direct examination, Rojas testified that two days after the February 10
5 meeting at the library, he told Juan Marin who he had seen at the library. Rojas said
6 he had not seen Marin in awhile and commented to him that he (Rojas) had seen
7 Marin’s brother (Cirilo aka Mr. Jaime or Mr. Jaimito) at the library. (*Id.* at 571).
8 During his deposition, Rojas acknowledged that the folks he saw gathered at the
9 library were the ones who had “left the ranch,” were “mad at Juan,” and it was known
10 had filed “the previous lawsuit” against Juan Marin.⁸ (*Id.* at 576). Rojas testified he
11 told Juan Marin about who he had seen at the library because in the past, Marin had
12 specifically asked Rojas if he had seen any of these people. (*Id.* at 576-77).⁹

13 As yet, there are no actual photographs which would conclusively establish that
14 either Cuenca or Rojas took photographs of the participants at the February 10
15 meeting. It is also not conclusively established, however, that no photographs exist,

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21 ⁸ The “previous lawsuit” may refer to the 2006 lawsuit brought by
22 Ambrocio Marin and others against Tim Evans and Juan Marin. This lawsuit filed
23 in this court (CV-06-3090-RHW) alleged that Defendants deliberately hired illegal
immigrants in order to depress wages paid to farm workers.

24 ⁹ Rojas says it was two days after the meeting that he told Marin (Tr. at p.
25 571); Marin says it was the day of the meeting that Rojas told him about the
26 meeting. (Tr. at pp. 414-15).

1 or that they never existed.¹⁰ Gregorio Aguila is the only participant at the meeting
2 who testified he saw photographs being taken. He specifically testified he saw Rojas
3 taking photographs with his cell phone. (*Id.* at 18). Rojas denied that he used his cell
4 phone to take any photographs while in the library, and stated he did not observe
5 Cuenca take any photographs with his (Cuenca's) cell phone. (*Id.* at pp. 569-70).
6 Cuenca said he never saw Rojas with a phone or camera in his hand, but also said he
7 was standing in front of Rojas and did not "look back until [he] turned," presumably
8 to leave the library. (*Id.* at p. 453). Whether or not photographs were taken, however,
9 there is still sufficient evidence from which to reasonably infer that Cuenca and Rojas
10 were sent to the Sunnyside library by Juan Marin to gather information about who
11 was attending the February 10 meeting.

12 Simon Ramirez has known Juan Marin for over 40 years and obtained his
13 employment at Evans Fruit through Marin. (Tr. at pp. 591-92). Evans Fruit contends
14 Ramirez is particularly credible in testifying that Marin never asked him to threaten
15 anyone, due to the fact that Ramirez's testimony was not flattering towards Marin in
16 certain other respects. This unflattering testimony portrays Marin as a powerful man,
17 by virtue of his position as General Manager of Evans Fruit and his lengthy tenure
18 with the Defendant in that position (over 30 years), and also by virtue of his own real
19 property interests. Ramirez testified Marin is the person who makes the decisions
20 about hiring and firing and it is necessary that he be informed about any issues which
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23 ¹⁰ The forensic expert for Evans Fruit states the phone he examined "is a
24 model that did not allow the collection [of] deleted data from the permanent
25 storage located in the device with current . . . tools." (Ct. Rec. 107). The EEOC
26 says its expert has not commenced a forensic analysis of the phone. (Tr. at p.
27 686).

1 arise. (Tr. at pp. 586-87). According to Ramirez, Marin charged him rent for living
2 on Evans Fruit property which Marin did not own, and that when Ramirez refused to
3 pay that rent, Marin cut off the hot water to the property. (Tr. at p. 596). During his
4 deposition, Ramirez testified that after work hours at Evans Fruit, individuals would
5 work for Marin at apartments he owned because they feared losing their Evans Fruit
6 jobs if they did not. (Tr. at pp. 599-600).¹¹ Ramirez testified he did not want Marin
7 to drive him to his (Ramirez's) deposition because he was afraid Marin would
8 influence his testimony. (Tr. at p. 608). Ramirez's unflattering testimony regarding
9 Marin suggests Marin has the means for intimidating others and there is at least a
10 likelihood he would employ those means for that purpose in response to those
11 bringing claims against him.

12 Miguel Aguila Camacho is the nephew of Gregorio Aguila. Initially, he was
13 not expected to testify at the hearing, but he drove his father, Eliseo, to the hearing
14 to testify and was then served with a subpoena to provide his own testimony. Miguel
15 Aguilai'm sure he wil testified it was not at the behest of Juan Marin that he sought
16 to locate his uncle, Gregorio, in California in July 2010, but rather it was on his own

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23 ¹¹ In fact, the July 23, 2010 letter Evans Fruit sent to Marin advising of his
24 termination stated the termination was "the result of an investigation into the
25 misuse of Company time cards and the allegation that Company resources were
26 used to compensate employees for work on properties owned by you."
27 (Defendant's Ex. 36).

1 initiative because his uncle owed him some money. (Tr. at pp. 344-47).¹² Aguila
2 testified he declined to talk to EEOC attorneys because they attempted to intimidate
3 him and because his uncle (Gregorio) “is a person who really likes to lie a lot.” (*Id.*
4 at pp. 351-52). Asked why Flavio Aguila, his other uncle who resides in California,
5 would sign a declaration under perjury (Ct. Rec. 68) stating he been called by Miguel
6 Aguila who wanted Gregorio’s contact information to give to Juan Marin, Miguel
7 Aguila’s response was only that “I called Flavio Aguila to ask him where Gregorio
8 was because of my money. I never called him because of Juan.” (*Id.* at p. 353).¹³
9 Flavio Aguila’s declaration asserts Miguel stated to Flavio that Juan Marin had
10 threatened to have Miguel arrested and deported unless he obtained Gregorio’s
11 contact information. The court notes that when Miguel Aguila finished testifying and
12 was leaving the stand, he made a point of asking out loud whether he could go over
13 and say hello to Juan Marin who was seated in the jury box with his attorney. (*Id.* at
14 p. 355). Based on this request, and reviewing Miguel Aguila’s testimony as a whole,
15 it appears Mr. Aguila was overtly attempting to ingratiate himself with Juan Marin.
16 In doing so, he lessened the credibility of his testimony.

17 Miguel Aguila Camacho’s father, Eliseo Aguila, the brother of Gregorio
18 Aguila, also testified at the hearing. His testimony was notable because of his
19 obvious discomfort with being on the stand. Asked whether Juan Marin had Miguel
20 beaten and deported two years ago, Eliseo Aguila responded he did not know “what
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22 ¹² The temporary restraining order was entered on June 24, 2010. Juan
23 Marin was served with an English version of the order on June 25, and with a
24 Spanish version on June 29. (Ct. Rec. 52).

25 ¹³ Flavio Aguila did not testify at the hearing and therefore, was not subject
26 to cross-examination.

1 arrangements he (Marin) may have had with him (Aguila).” (Tr. at p. 336). He did
2 know that Miguel had in fact been deported. (*Id.*), but did not know “what to say”
3 about the allegation that Miguel had been beaten, stating that he (Eliseo) was in
4 Mexico at the time and therefore, did not know. (*Id.* at pp. 336-37). Eliseo Aguila
5 acknowledged he had declined Gregorio’s invitation to talk to EEOC attorneys and
6 that he had become quite upset with his brother, telling him “I don’t want to have
7 anything to do with your problems.” (*Id.* at p. 338). Considering the nature of
8 Miguel Aguila’s testimony, the court cannot discount the distinct possibility that
9 Eliseo Aguila was, like his son, trying very hard not to say anything to offend Juan
10 Marin who was present listening to the testimony. In the record is a declaration (Ct.
11 Rec. 70) from Eliseo’s brother, Jose, who resides in California. In that declaration,
12 Jose states that beginning in late May 2010, he started receiving phone calls from
13 Eliseo inquiring as to Gregorio’s whereabouts and indicating that Juan Marin wanted
14 to know this information.

15 The court recognizes evidence has been presented raising questions as to the
16 true motivation of Gregorio Aguila, Gerardo Silva, Cirilo Marin (brother of Juan
17 Marin), and Ambrocio Marin (cousin of Juan Marin) for attending the February 10
18 meeting and seeking to be involved in an EEOC investigation into sexual
19 harassment/discrimination of current and former Evans Fruit employees.¹⁴ As should
20 be apparent, however, it is the testimony of others (Domingo Cuenca, Alvaro Rojas,
21 Juan Marin, Miguel Aguila, and Eliseo Aguila) which leads the court to conclude
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23 ¹⁴ It is noted that there were others at the meeting: Angela Mendoza, Elodia
24 Sanchez (Gregorio’s partner), Norma Valdez (Gerardo Silva’s wife), Wendy
25 Granados and Lauretia Garcia. (Ct. Rec. 9-2). Testimony from those who were in
26 attendance at the meeting indicates that not all of the participants knew each other.

1 there is a likelihood of irreparable harm if a preliminary injunction is not granted.
2 That irreparable harm is the potential intimidation of current and former Evans Fruit
3 employees to prevent them from talking to EEOC investigators regarding the EEOC's
4 sexual harassment/discrimination and retaliation investigation.

5 The court is not making any final credibility determinations at this time.
6 Credibility will be revisited and determined in conjunction with the adjudication of
7 the merits of the underlying sexual harassment/discrimination claims and any
8 retaliation claims which may be subsequently pled. Of particular importance will be
9 the credibility of current and former female Evans Fruit employees who allege that
10 Juan Marin sexually harassed them.

11 It is true that Juan Marin is no longer employed by Evans Fruit and no longer
12 lives on Evans Fruit property. The court, however, finds there remains a potential for
13 intimidation of current Evans Fruit employees because Marin provides rental housing
14 to some Evans Fruit employees (Tr. at pp. 405-06; 559), and because of his seemingly
15 close relationship with Alberto Sanchez Ramos who remains employed by Evans
16 Fruit.¹⁵ Although Sanchez appears to be currently isolated from the rest of the
17 employees, there was testimony that up to 80 workers will be required at that location
18 when the harvest begins. (Tr. at pp. 602-03).

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20 **B. Likelihood of Success on Merits- "Serious Questions"**

21 "Serious questions" refers to questions which cannot be resolved one way or
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23 ¹⁵ Marin was Sanchez's foreman. (Tr. at p. 467). Marin once paid \$500 to
24 bail Sanchez out of jail (Tr. at p. 413) and considers him a very hard worker. (Tr.
25 at pp. 414-15). Marin apparently drove Sanchez to his deposition in this matter.
26 (Tr. at p. 417).

1 the other at the hearing on the injunction and as to which the court perceives a need
2 to preserve the status quo lest one side prevent resolution of the questions or
3 execution of any judgment by altering the status quo.” *Republic of the Phillipines v.*
4 *Marcos*, 862 F.2d 1355, 1361-62 (9th Cir. 1988) (en banc), *cert. denied*, 490 U.S.
5 1035, 109 S.Ct. 1933 (1989). “Serious questions are ‘substantial, difficult and
6 doubtful, so as to make them a fair ground for litigation and thus for more
7 deliberative investigation.’” *Id.* “Serious questions need not promise a certainty of
8 success, nor even present a probability of success, but must involve a ‘fair chance of
9 success on the merits.’” *Id.*, quoting *National Wildlife Fed’n v. Coston*, 773 F.2d
10 1513, 1517 (9th Cir. 1985).

11 Little to no evidence was presented at the hearing regarding the underlying
12 sexual harassment/discrimination claims. Nevertheless, the court concludes Juan
13 Marin was aware EEOC sexual harassment/discrimination charges had been filed
14 against him beginning in 2006. The fact Angela Mendoza, the person who filed the
15 charge in 2006, was present at the February 10, 2010 meeting, along with at least one
16 other charging party (Granados), reasonably suggests Cuenca and Rojas had been
17 directed by Marin to go to the library in an effort to intimidate those who had already
18 filed such charges and those who were considering filing such charges. Such action
19 leads the court to conclude the Plaintiffs (EEOC and Elodia Sanchez) have at least a
20 fair chance of succeeding on the merits of these claims and therefore, they are “fair
21 ground for litigation” and for “more deliberative investigation.”

22 23 **C. Balance of Hardships/Equities**

24 The balance of the hardships tips sharply in favor of the EEOC and the
25 charging parties and class members whose sexual harassment/discrimination claims

26
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1 it is pursuing. Without a preliminary injunction, there is a likelihood the EEOC's
2 continuing investigation and pursuit of those claims will be stymied. The court
3 recognizes a hardship is also placed on Evans Fruit in having to comply with a
4 preliminary injunction, but this hardship, primarily administrative in nature, is simply
5 not as great as the hardship that would be placed on the EEOC in the absence of a
6 preliminary injunction.¹⁶ Evans Fruit is concerned that a preliminary injunction will
7 damage its reputation in the community, but a preliminary injunction is not a ruling
8 on the merits of any claims brought by the EEOC or Elodia Sanchez.

9 10 **D. Public Interest**

11 It is in the public interest that individuals with legitimate complaints about
12 sexual harassment/discrimination and retaliation in the workplace not be intimidated
13 about making those complaints known.

14 15 **III. CONCLUSION**

16 The court concludes the EEOC has met its burden of clearly showing a
17 likelihood of irreparable harm and there are, at a minimum, "serious questions" going
18 to the merits of the sexual harassment/discrimination claims. The EEOC has
19 produced affirmative evidence from which it can be inferred that a chill of Title VII
20 protected activity has occurred or is threatened.

21 Accordingly, the EEOC's Motion For Preliminary Injunction (Ct. Rec. 65) is
22 **GRANTED** and **IT IS HEREBY ORDERED** that Juan Marin and Evans Fruit

23 _____
24 ¹⁶ The court does not grant all of the relief sought by the EEOC, concluding
25 that some of what is sought would create an undue burden on Evans Fruit which
26 cannot be justified.

27 **ORDER GRANTING MOTION**
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1 Company, and officers, agents, managers and employees of Evans Fruit Company,
2 including Alberto Sanchez and Simon Ramirez, and any other persons in active
3 concert with Evans Fruit Company, be, and hereby are, preliminary enjoined,
4 pending final disposition of the captioned matter, from engaging in or performing the
5 following:

- 6 (a) taking any retaliatory measures or other adverse actions based on
7 retaliatory intent affecting identified Charging Parties, identified and/or
8 reasonably known Class Members, and identified and/or reasonably
9 known potential witnesses, or any of their family members, in *EEOC v.*
10 *Evans Fruit Company*;
- 11 (b) taking any action calculated to discourage current or past employees of
12 Evans Fruit from free and open association with any identified Charging
13 Party, identified and/or reasonably known Class Member, or identified
14 and/or reasonably known potential witness in *EEOC v. Evans Fruit*
15 *Company*;
- 16 (c) paying or offering to pay persons for favorable testimony in *EEOC v.*
17 *Evans Fruit Company* or for information about EEOC's case or
18 investigation of the retaliation charges filed against Evans Fruit
19 Company; and
- 20 (d) discharging, firing, terminating, suspending, failing to pay, disciplining
21 or taking any other similar adverse action which has the anticipated or
22 intended effect of precluding or discouraging any current Evans Fruit
23 employee from (i) making charges, testifying, assisting or participating
24 in any proceeding, hearing or investigation under Title VII, including
25 the EEOC's investigation of the pending retaliation charges against

1 Evans Fruit, or (ii) in any manner opposing a practice made unlawful by
2 Title VII; provided, however, that nothing in this Order shall prevent
3 Evans Fruit from making normal and customary hiring and firing
4 decisions in the normal course of business.

5 It is further **ORDERED** that Defendant Evans Fruit Company shall distribute
6 and deliver a copy of this preliminary injunction order in English and Spanish to the
7 following entities in the following manner:

- 8 (a) **within five (5) business days of the entry of this order**, arrange for
9 Alberto Sanchez and Simon Ramirez, and for all supervisors at Evans
10 Fruit's Sunnyside facility to be personally served by defense counsel or
11 a third party process server with a copy of this preliminary injunction
12 order; and for the preliminary injunction order to be similarly
13 communicated to the Ranch Managers at Mattawa and Yakima, as well
14 as the Warehouse Managers at Yakima, Tieton and Cowiche.¹⁷
- 15 (b) **within five (5) business days of the entry of this order**, mail or email
16 a copy of the preliminary injunction order to each of Defendant's
17 officers, directors, managers, officers, agents at their place of business
18 or home;
- 19 (c) **within five (5) business days of the entry of this order**, post a copy of
20

21
22 ¹⁷ Testimony given at the preliminary injunction hearing justifies
23 dissemination of the order beyond the Sunnyside facility. There is uncertainty
24 whether the Factory Road location where Sanchez and Ramirez are currently
25 working is part of the Sunnyside facility or the Grandview facility. (Tr. at p. 492).
26 Ramirez testified that when he was a supervisor, his crew would assist at locations
27 other than Sunnyside, including Yakima and Mattawa. (Tr. at pp. 603-04).

1 the preliminary injunction order in English and Spanish on a
2 prominently located bulletin board easily and customarily accessible by
3 employees in the offices of **all** Evans Fruit facilities;

4 (d) **within twenty one (21) calendar days of the entry of this order,**
5 distribute to each and every current employee of the Sunnyside facility,
6 along with their paychecks, an English and Spanish copy of the
7 preliminary injunction order; and include an English and Spanish copy
8 of the Preliminary Injunction with the first paycheck of every new
9 orchard worker at the Sunnyside facility until the preliminary injunction
10 is dissolved, or this case is resolved on its merits; and

11 (e) **within thirty five (35) calendar days of the entry of this order,** mail
12 a copy of the preliminary injunction order via U.S. Mail First Class to
13 any former employee who worked for the Sunnyside facility of the
14 Evans Fruit Company from December 2007 through present at his/her
15 last known address;

16
17 It is further **ORDERED** that Defendant Evans Fruit Company file an affidavit
18 with the Court, five (5) days after the time for distributing notice of the preliminary
19 injunction order has expired, explaining the means by which it has complied with the
20 order with respect to the above-enumerated subparagraphs;

21 It is further **ORDERED** that the District Executive set this matter for a
22 telephonic scheduling conference and send a notice to all counsel of record setting
23 forth the date and time of the conference.

24 Considering a preliminary injunction hearing has been conducted and the
25 identities of the majority of the Charging Parties, Class Members, and other witnesses

26
27 **ORDER GRANTING MOTION**
28 **FOR PRELIMINARY INJUNCTION - 19**

1 have been revealed in open court, it is not apparent that there is any further need for
2 the names of those individuals to be redacted in filings with the court, including this
3 preliminary injunction order. **Accordingly, this preliminary injunction will not be**
4 **filed under seal and within ten (10) days from the date of this order, the court**
5 **intends to unseal all filings currently under seal, including the transcripts of the**
6 **preliminary injunction hearing.**

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
8 Order and forward copies to all counsel of record.

9 **DATED** this 26th day of October, 2010.

10
11 *s/Lonny R. Suko*

12 _____
13 LONNY R. SUKO
14 Chief United States District Judge