UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ABELARDO SAUCEDO, et al., Plaintiffs, v. NW MANAGEMENT AND REALTY SERVICES, INC., et al., Defendants.	NO: 12-CV-0478-TOR ORDER DENYING DEFENDANTS' REQUEST TO TAKE DISCOVERY RE: IMMIGRATION STATUS AND DIRECTING ENTRY OF JUDGMENT FOR PLAINTIFFS

BEFORE THE COURT are Plaintiffs' motion for partial summary judgment on the issue of damages (ECF Nos. 220 and 225), and Defendants' request to take discovery on individual class members' immigration status. The Court previously granted Plaintiffs' motion in part and requested supplemental briefing from the parties on the immigration discovery issue (ECF No. 260). Based upon the Court's determination that oral argument would not materially assist it in reaching a decision, these matters were submitted for consideration without oral argument.

The Court has reviewed the supplemental briefing and the record and files herein, and is fully informed.

BACKGROUND

Relying upon the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137 (2002), Defendants contend that class members who were not authorized to live and/or work in the United States in 2009, 2010 and 2011 are not entitled to an award of statutory damages under the Farm Labor Contractors Act ("FLCA"). Defendants request leave to take discovery on each class member's immigration status prior to entry of a final judgment. For the reasons discussed below, the Court concludes that *Hoffman* does not preclude an award of statutory damages to illegal aliens under the FLCA. Accordingly, the Court will deny Defendants' request and enter judgment in favor of the Plaintiffs.

PROCEDURAL HISTORY

Plaintiffs filed this lawsuit on July 25, 2012, asserting class claims for violations of the FLCA, RCW 19.30.010, *et seq.* and the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1801, *et seq.* ECF No. 1. Farmland and the John Hancock Defendants moved to dismiss the FLCA claims on September 26, 2012. ECF Nos. 12 and 13. The Court denied the motions on December 3, 2012, finding that Plaintiffs had asserted cognizable

claims for vicarious liability against these Defendants under RCW 19.30.200. ECF No. 64.

Plaintiffs moved to certify the case as a class action on November 30, 2011. ECF No. 57. While the motion was pending, Plaintiffs moved for a protective order barring Defendants from taking discovery relating to putative class members' immigration status. ECF No. 78. The Court granted the motion on January 15, 2013, finding that (1) immigration status was not particularly relevant to any issue to be decided in conjunction with the pending motion for class certification; and (2) at that early stage of the proceedings, the putative class members' interest in pursuing their claims without being intimidated outweighed Defendants' interest in asking inherently coercive questions about immigration status. ECF No. 97 at 3-5.

On February 27, 2013, the Court certified the case as a class action as to claims arising from Defendant NW Management's alleged (1) failure to obtain a farm labor contractor license in violation of the FLCA; and (2) failure to provide written disclosures concerning the terms and conditions of employment in violation of the FLCA. ECF No. 164. The Court declined to certify two other claims arising under the FLCA and the AWPA. ECF No. 164.

Following certification, the parties filed cross-motions for partial summary judgment on the issue of liability. ECF Nos. 114 and 183. Plaintiffs prevailed in two separate orders dated April 12, 2013, and June 17, 2013. ECF Nos. 186 and

223. Plaintiffs then moved for partial summary judgment on the issue of damages, requesting an award of statutory damages in the aggregate amount of $1,004,000 pursuant to RCW 19.30.170. ECF Nos. 220 and 225. Plaintiffs did not request an award of actual damages or pursue other equitable relief. In response, Defendants renewed their request to take discovery on each class member's immigration status, arguing that class members who were not authorized to live and/or work in the United States in 2009, 2010 or 2011 are precluded from recovering statutory damages under *Hoffman*. ECF No. 236 at 13-14.

The Court granted the motion in part on September 4, 2013, finding that the class consists of 722 farm workers and that the appropriate measure of statutory damages is $500 per person per violation per year worked. ECF No. 260 at 3-10. The Court reserved ruling on Defendants' request to take discovery on class members' immigration status and requested supplemental briefing on two issues: (1) whether an award of statutory damages to an illegal alien for violations of the FLCA is permissible under *Hoffman*; and (2) whether any such award would be preempted by federal immigration law. ECF No. 260 at 11. The parties submitted their responsive briefing on September 30, 2013. ECF Nos. 262 and 263.

DISCUSSION

In *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, the Supreme Court held that the National Labor Relations Board ("NLRB") lacked authority to issue an

award of backpay to an illegal alien whose employment was terminated in violation of the National Labor Relations Act ("NLRA"). 535 U.S. 137, 151-52 (2002). Central to this decision was the Court's judgment that such an award would undermine federal immigration policy as expressed in the Immigration Reform and Control Act ("IRCA"):

> [A]llowing the Board to award backpay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations.

Id. at 151. Given that the NLRB lacked authority to enforce or administer federal immigration policy, the Court reasoned, an award of backpay to an illegal alien "lies beyond the bounds of the Board's remedial discretion." *Id.* at 149.

Hoffman's relevance to the instant case is somewhat limited. Because Plaintiffs have sought relief under Washington law rather than federal law, the Court is not in a position to balance competing policy interests as the Supreme Court did in *Hoffman*. Instead, the Court's sole task is to determine whether an award of statutory damages to an illegal alien under the FLCA is preempted by federal law. While *Hoffman*'s discussion of federal immigration law and policy is informative, the case is not controlling. *See Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856, 865 (9th Cir. 2009), *aff'd sub nom Chamber of Commerce of United States v. Whiting*, --- U.S. ---, 131 S. Ct. 1968 (2011) (finding

Hoffman not directly relevant to resolution of conflict between IRCA and Arizona law regulating employment of illegal aliens).

A. Preemption

Preemption occurs when federal law supersedes state law by operation of the Supremacy Clause of the United States Constitution. *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954, 961 (9th Cir. 2010). "There are three classes of preemption: express preemption, field preemption and conflict preemption." *Valle del Sol, Inc. v. Whiting*, --- F.3d ----, 2013 WL 5526525 at *9 (9th Cir., Oct. 8, 2013) (quotation and citation omitted). The analysis of any preemption issue begins "with the starting presumption that Congress did not intend to supplant state law." *Air Conditioning and Refrigeration Inst. v. Energy Res. Conservation and Dev. Comm'n*, 410 F.3d 492, 496 (9th Cir. 2005) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Applying this presumption promotes "respect for the states as independent sovereigns in our federal system." *McDaniel v. Wells Fargo Inv., LLC*, 717 F.3d 668, 675 (9th Cir. 2013) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 n. 3 (2009)).

Depending upon the type of preemption implicated, the presumption against preemption can be overcome "by express language in a congressional enactment, by implication from the depth and breadth of a congressional scheme that occupies the legislative field, of by implication because of a conflict with a congressional

enactment." *Holmes v. Merck & Co., Inc.*, 697 F.3d 1080, 1085 (9th Cir. 2012). The purpose of Congress is the "ultimate touchstone" of the inquiry. *Medtronic*, 518 U.S. at 485. As a general rule, courts should not find a statute preempted "unless that was the clear and manifest purpose of Congress." *Arizona v. United States*, --- U.S. ---, 132 S. Ct. 2492, 2501 (2012); *see also Medtronic*, 518 U.S. at 485 ("In all pre-emption cases, and particularly those in which Congress has legislated in a field which the states have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.") (internal quotations and citations omitted).

1. Express Preemption

Express preemption "arises when the text of a federal statute explicitly manifests Congress's intent to displace state law." *Valle del Sol*, --- F.3d ----, 2013 WL 5526525 at *9 (quotation and citation omitted). In construing an express preemption clause, a reviewing court must "necessarily begin by examining the clause's plain wording, as this necessarily contains the best evidence of Congress' pre-emptive intent." *Holmes*, 697 F.3d at 1085 (quotation and citation omitted). The court "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Id.* (quotation and citation omitted).

The IRCA expressly preempts "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." 8 U.S.C. § 1324a(h)(2). As Plaintiff correctly notes, this language does not reflect a clear intent on the part of Congress to preempt state laws relating to the licensing and regulation of farm labor contractors. Thus, remedies for violations of the FLCA are not expressly preempted by the IRCA.

Defendants contend that the RCW 19.30.170 is expressly preempted "to the extent it sanctions employers of undocumented aliens." ECF No. 263 at 6. This argument is unavailing. No provision of the FLCA purports to sanction the employment, recruiting or referral of "unauthorized aliens." Instead, the FLCA regulates the "recruiting, soliciting, employing, supplying, transporting, or hiring [of] *agricultural employees*." RCW 19.30.010(3) (emphasis added). Because immigration status is irrelevant to whether a farm labor is an "agricultural employee" within the meaning of RCW 19.30.010(5), no portion of the FLCA is expressly preempted.

2. Field Preemption

Field preemption occurs when federal law occupies a legislative field so thoroughly as to give rise to "[an] inference that Congress left no room for the States to supplement it." *Cippollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516

(1992). In other words, field preemption occurs when Congress manifests its intent to "occupy a given field to the exclusion of state law." *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007) (citing *Cippollone*, 505 U.S. at 516). Such intent may be inferred from (1) "a framework of regulation so pervasive . . . that Congress left no room for the States to supplement it"; or (2) the existence of "a federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Arizona*, --- U.S. ---, 132 S. Ct. at 2501 (quotations and citation omitted).

The FLCA is not field preempted by IRCA, as these regulatory schemes occupy two entirely different fields. *See Perez-Farias v. Global Horizons, Inc.*, 2008 WL 833055 at *13 (E.D. Wash. 2008) (unpublished) (FLCA is not field preempted by IRCA because Congress did not clearly intend to occupy the field of immigration to the exclusion of state regulation of labor and employment of migrant workers). Nor is the FLCA field preempted by its federal counterpart, the AWPA. *See* 29 U.S.C. § 1871 ("This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation."); *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 649 (1990) ("AWPA pre-empts state law to the limited extent that it does not permit States to supplant, rather than to supplement, AWPA's remedial scheme.").

3. Conflict Preemption

There are two subcategories of conflict preemption: impossibility preemption and obstacle preemption. *Valle del Sol*, --- F.3d. ----, 2013 WL 5526525 at *10. Impossibility preemption occurs when "it is impossible for a private party to comply with both state and federal law." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). Obstacle preemption, by contrast, occurs when "under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 373 (quotation and citation omitted).

Here, the central issue is whether an award of statutory damages to an illegal alien under RCW 19.30.170(2) would stand as an obstacle to Congress's ability to effectively regulate immigration under the IRCA. Resolution of this issue depends upon the degree of "conflict" required to trigger obstacle preemption. "What [qualifies as] a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects[.]" *Crosby*, 530 U.S. at 373. "Beginning with th[e] presumption [against preemption], courts should consider the purpose of Congress in enacting the federal statute at issue . . . and determine whether 'there is a *significant conflict* between some federal policy or interest and the use of state law.'" *Mason and Dixon Intermodal, Inc. v. Lapmaster Int'l, LLC*, 632 F.3d 1056, 1061 (9th Cir.

2011) (emphasis added) (quoting *O'Melveny & Myers v. F.D.I.C.*, 512 U.S. 79, 87 (1994)). "If the purpose of the [federal statute] *cannot otherwise be accomplished*—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield[.]" *Crosby*, 530 U.S. at 373 (emphasis added) (quotation and citation omitted).

Having carefully reviewed the relevant authorities, the Court concludes that an award of statutory damages to an illegal alien under RCW 19.30.170(2) does not pose a significant obstacle to Congress's authority to regulate immigration. The IRCA is a "comprehensive scheme prohibiting the employment of illegal aliens in the United States." *Hoffman*, 535 U.S. at 147. The overarching purpose of the statute is to deter illegal immigration by making it more difficult for illegal aliens to find employment. *See Hoffman*, 535 U.S. at 155 (Breyer, J., dissenting) ("[T]he general purpose of [IRCA's] employment prohibition is to diminish the attractive force of employment, which like a 'magnet' pulls illegal immigrants toward the United States.") (citing H.R. Rep. No. 99-682(I) at 45, *reprinted in* 1986 U.S.C.C.A.N. at 5649); *Patel v. Quality Inn South*, 846 F.2d 700, 704 (11th Cir. 1988) ("Congress enacted the IRCA to reduce illegal immigration by eliminating employers' economic incentive to hire undocumented aliens.").

This purpose is not materially frustrated by an award of statutory damages to an illegal alien for an employer's violation of state labor laws. As several courts

have aptly observed, the prospect of earning wages—rather than winning damages awards—is what draws illegal aliens into the United States. *See, e.g., Patel*, 846 F.2d at 704 ("We doubt . . . that many illegal aliens come to this country to gain the protection of our labor laws. Rather it is the hope of getting a job—at any wage—that prompts most illegal aliens to cross our borders."); *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 719 (Tex. App. 2012) ("Most courts considering the issue of whether damage awards under state law thwart Congress's purpose [in enacting IRCA] have concluded . . . that potential damage awards are not meaningful incentives to draw illegal immigrants into this country."); *see also Hoffman*, 535 U.S. at 155 (Breyer, J., dissenting) ("To permit the Board to award backpay could not significantly increase the strength of this magnetic force, for so speculative a future possibility could not realistically influence an individual's decision to migrate illegally."). This reasoning applies with particular force to awards of statutory damages under RCW 19.30.170(2), which are capped at $500 per violation of the FLCA. At bottom, there is no reason to believe that the possibility of recovering such a small sum would give foreign workers any further incentive to enter the country illegally. Thus, there is no "significant conflict" between a statutory damages award to an illegal alien under the FLCA and Congress's ability to enforce federal immigration policy through the IRCA. *Mason and Dixon Intermodal*, 632 F.3d at 1061. As a result, RCW 19.30.170(2) is

not preempted. Defendants' request to take discovery on the individual class members' immigration status is denied.

B. Judgment

The Court previously found that class consists of 722 farm workers and that the appropriate measure of statutory damages under RCW 19.30.170(2) is $500 per person per violation per year worked. ECF No. 260 at 3-10. Based upon the ruling above, Plaintiffs' motion for partial summary judgment on the issue of damages is granted in remaining part. Plaintiffs are entitled to judgment in the amount of **$1,004,000.00**.

IT IS HEREBY ORDERED:

1. Plaintiffs' motion for partial summary judgment on the issue of damages (ECF Nos. 220 and 225), is **GRANTED in remaining part**. The Clerk of Court shall enter **JUDGMENT** in the amount of **$1,004,000** in favor of the following class of plaintiffs:

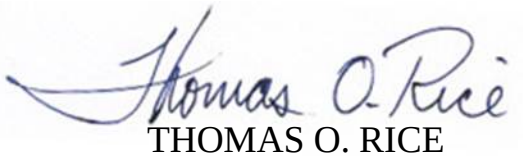
> **All farm workers who worked for NW Management Services in the orchards known as Alexander I, Alexander II and Independence during the years 2009, 2010 and 2011.**

The Judgment shall further reflect that (1) the class consists of 722 individual plaintiffs; (2) all class members received the best notice practicable of these proceedings; and (3) no class members have requested exclusion from the certified class.

2. Defendants' request to take discovery on individual class members' immigration status is **DENIED**.
3. The jury trial currently scheduled for November 18, 2013, is hereby **STRICKEN**.
4. Class counsel shall not distribute funds to class members until after the Court has approved a proposed distribution plan.
5. Class counsel shall file any motion(s) for attorney's fees and costs on or before **November 15, 2013**.
6. The Court retains continuing jurisdiction for purposes of resolving any disputes that may arise concerning the distribution of funds to class members.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

DATED October 10, 2013.



THOMAS O. RICE
United States District Judge