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SUPERIOR COURT OF WASHINGTON FOR
THURSTON COUNTY

FAMILIAS UNIDAS POR LA JUSTICIA,
AFL-CIO, a labor organization,

Petitioner,

vs.

WASHINGTON STATE DEPARTMENT OF
LABOR & INDUSTRIES and
WASHINGTON STATE DEPARTMENT OF
HEALTH,

Respondents.

No. 20-2-00368-29

Declaration of Erik Nicholson

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1. My name is Erik Nicholson. I am a National Vice-President for the United Farm Workers of America (“UFW’s”), and am responsible for UFW’s organizing work in the State of Washington. I live and work in the State of Washington and oversee various organizing projects in other states and in Mexico, as well. In addition to serving as a Board member of the UFW, I also am a Board member of the Equitable Food Initiative (EFI) and CIERTO, a not for profit labor recruiter. The goal of the EFI is to work with workers, growers and retailers to produce ethically produced fruits and vegetables in the United States and Mexico, in a manner that respects the employment and human rights of farmworkers. The goal of CIERTO is to educate workers in Mexico about their rights in Mexico and the United States, to train them, and to ensure they are not abused or exploited by unscrupulous labor recruiters or employers when they travel to the United States to work on U.S. farms. I also serve on other Boards involving the protection of farmworkers and their rights.

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2. I make this declaration in response to numerous false claims made by Plaintiff Familias Unidas por la Justicia (“FUJ”) and its counsel in filings with this court. I have communicated

1 and engaged with FUJ, and its counsel Columbia Legal Services (CLS) over the course of
2 many years working on issues surrounding farmworkers in the State of Washington, and
3 personally know Ramon Torres, FUJ President, and several CLS attorneys including Andrea
4 Schmidt and Joe Morrison.

5 3. UFW and FUJ were co-plaintiffs in a lawsuit recently filed in Skagit County Superior
6 Court (*Familias Unidas por la Justicia and United Farm Workers v. Wa. State Dept. of Labor*
7 *& Industries*, Case No. 20-2-00368-29), wherein we sought protections and rulemaking from
8 the state regarding farmworkers and the COVID-19 pandemic. UFW and FUJ had coordinated
9 their petitions to the state and legal strategy to create improved protections for farmworkers in
10 the face of the COVID-19 pandemic, but during the litigation in Skagit County, UFW and FUJ
11 began to have divergent approaches. However, UFW has not used this divergent approach to
12 lie, mislead, or make false claims to the court about FUJ.

13 4. In its filings, FUJ, CLS and its other lawyers claim that I negotiated a secret backroom
14 deal or engaged in private rule “deal-making” with representatives for growers regarding rules
15 that were eventually promulgated by the State regarding farmworker housing, transportation
16 and worksite protections relating to COVID-19 and farmworkers. This statement is false. With
17 respect to the negotiations between myself and grower representative Kristin Kershaw Snapp, I
18 sought to have FUJ, and specifically Ramon Torres to participate with me in negotiations with
19 Kristin. Having experienced litigation over the course of many years and in consultation with
20 the worker leadership of our union members here in Washington State, we saw the opportunity
21 for a negotiated settlement of the case presented a better opportunity for our organizations than
22 what we believed could be achieved in litigation. My first conversation with Mr. Torres about
23 this opportunity was April 26, 2020. During that first call, Mr. Torres expressed willingness,
24 and indeed, eagerness, to participate in negotiations that would give farmworkers a voice over
25 how to protect them during this pandemic. He shared with me that he was attending to a family
26 emergency in California and asked me to follow up the next day with his staff. On April 27th, I
spoke with FUJ staff members Edgar Franks and Kent Kok. We had an amicable conversation
in which I explained the opportunity and expressed the UFW’s desire to work together in the
subsequent negotiations. Edgar and Kent indicated they needed to consult with the leadership
of their organization and committed to getting back in touch in the next several hours. They did

1 not. On the morning of April 28th, I emailed both Edgar and Ramon asking to schedule a time
2 to talk further. No response. On April 29th. I left Ramon a voice mail, then followed up with an
3 email and text requesting we find time to talk. Again, no response.

4 5. I am informed and believe that UFW counsel spoke to 2 of FUJ's counsel (Andrea
5 Schmidt and Kathleen Barnard) about the opportunity to negotiate a deal on rules with the
6 grower representative and am informed that FUJ counsel declined. At all times I informed FUJ
7 staff that we would proceed with negotiations, and am informed and believe that UFW counsel
8 represented that UFW would proceed absent FUJ's participation to FUJ's counsel. Based on
9 the foregoing, the idea that my discussions with Kristin were "secret" or "backroom" are false.
10 At all times FUJ and their counsel had an opportunity to be part of those discussions, but they
11 declined to participate after repeated requests by me and UFW counsel and after being
12 informed that UFW intended on participating in the negotiations.

13 6. Based on my earlier discussions with Ramon and his willingness to participate in the
14 negotiations, and based on my years of experience with CLS attorneys, I can only conclude
15 that Ramon was strong-armed by his lawyers to decline participating in the negotiations he
16 initially expressed eagerness to be a part of. The fact that FUJ was refusing to engage in a
17 process that farmworkers were urgently asking us to attend to was all the more disheartening.

18 7. Even after FUJ declined the initial opportunity to negotiate, after a hearing, I believe on
19 May 1, 2020 in the Skagit County case, Judge Needy directed the parties to continue
20 discussions for a possible informal resolution. At that time, attorneys for State of Washington
21 and for the grower representatives offered to enter into mediation to try to resolve the Skagit
22 County case. All parties were willing to negotiate, but once again, FUJ declined to participate
23 in mediation. Because FUJ did not want to mediate, UFW continued its negotiations with the
24 grower representative on a potential deal.

25 8. Therefore, FUJ and its attorneys had two distinct opportunities to be part of discussions
26 concerning a potential resolution to the issuance of rules by the State of Washington, but they
declined. Based on this course of conduct, to claim that the discussions I had with Kristin were
"secret" is simply false.

9. With respect to FUJ's claim that I or anyone at UFW has a financial interest in
farmworker housing in Washington, that claim is false and is either the result of an intentional

1 misrepresentation by FUJ's attorneys or blatant ignorance. At all times during negotiations, I
2 represented only the interests of the UFW in ensuring the best COVID-19 protections for
3 farmworkers in the areas of housing, transportation, and employment. The fact that we
4 disagree with FUJ about how best to protect farmworkers in the area of housing and bunkbeds
5 does not mean I have a financial interest in housing. It simply means we disagree. FUJ's
6 repeated stated goal is to end the federal H2A program in Washington and believes that a ban
7 on bunkbeds will achieve that goal. However, despite our wish for better protections for
8 farmworkers and a long held desire that the H2A program become unnecessary, the reality is
9 that the H2A program is not going to be eliminated, but is going to continue to grow. Our goal
10 then is to ensure the maximum protections we can for farmworkers, whether they are domestic
11 or H2A workers.

10. With respect to my position at the non-profit organization CIERTO, I am a Board
11 member of the organization, but it is an unpaid position and I do not receive any compensation
12 from CIERTO and never have. I proactively shared this information with FUJ and Columbia
13 Legal Services in an email on April 22nd and also informed them that UFW had no financial
14 interest of any kind in CIERTO's operations. The allegation that I'm the CEO of CIERTO is
15 patently false. A close reading of the Secretary of State filing referenced by FUJ in its
16 Corrected Motion for Permanent Injunction shows that the State requires listing three officers
17 and that the titles on the pre-printed form may not be altered. For that reason alone, my name
18 appears as CEO, but I am in fact not a CEO, but simply an unpaid Board member. CIERTO's
19 IRS 990 form filed for that same year shows my true board position. Had CLS bothered to ask
20 me about this, I would have explained this. With respect to FUJ's claims that CIERTO is a
21 labor contractor, it is true that under Washington law, CIERTO is considered a labor contractor
22 because it is a labor recruiter. However, CIERTO does not employ, house or transport
23 workers. It simply recruits, educates and trains workers so that they are not charged illegal
24 recruitment fees, and so that they understand and protect their rights as H2A workers. I will
25 not receive and have not received any compensation from CIERTO for workers that become
26 H2A workers and have no financial interest in whether or not workers receive housing in
Washington state. UFW does not receive and will never receive any compensation from
CIERTO for workers that become H2A workers and it has no financial interest in whether or

1 not workers receive housing in Washington state. FUJ's and its lawyers suggestion to the
2 contrary appears to be intentionally misleading.

3 11. With respect to the set of rules that UFW and grower representatives negotiated, the
4 resulting compromise was exactly that: a compromise of concerns and issues between the
5 parties. Moreover, while the UFW and growers agreed on a resulting framework agreement,
6 the state never participated in those discussions and never committed to adopting anything that
7 was agreed to. Instead, as happened at the May 6, 2020 roundtable, the resulting framework
8 agreement was considered a proposal for discussion and consideration by all the stakeholders,
9 including FUJ's counsel. FUJ's counsel participated fully at that roundtable, along with
10 numerous other stakeholders. The resulting rules did not track everything that UFW and the
11 grower representatives agreed to; rather, the State made adjustments based the roundtable
12 discussion.

13 12. It is unfortunate that FUJ's counsel has resorted to making incomplete, false, ignorant,
14 and unethical statements in its filings with this court, and for this reason, I felt compelled to
15 clarify the course of events and UFW's position.

16 I declare under penalty of perjury under the laws of Washington that the foregoing is true and
17 correct. Executed in Richland, Washington, this 8th day of July, 2020.

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