

Tentative Ruling:

For the reasons discussed below, the motions to compel are denied.

Cases:

<i>García-Brower v. Alco Harvesting, LLC, et al.</i> (Assigned to SM3)		
Case No. 21CV02855		
Plaintiff	Lilia Garcia-Brower (Labor Commissioner for State of CA)	Dept. of Labor Standards Enforcement Alec Segarich Anel Flores
Defendants	Alco Harvesting LLC, Betteravia Farms LLC, Betteravia Investment LLC, Grubstake Investments, LLC, Bonita Packing Co., each of which is alleged to d/b/a as Bonipak Produce Inc.	Fisher & Phillips Alden Parker Rebecca Hause-Schultz Ryan Harrison Angela Fuentes

<i>Guzman v. Alco Harvesting, LLC</i> (Assigned to SM3)		
Case No. 21CV00299		
Plaintiff	Jesus Guzman	California Rural Legal Assistance (SM) Corrie Meals Sandra Aguila California Rural Legal Assistance, Inc. (Salinas) Ana Vicente de Castro Dennise Silva
Defendants	Alco Harvesting LLC, Betteravia Farms LLC, Bonipak Produce Inc.	See above

<i>Cisneros v. Alco Harvest, Inc.</i> (Transferred from SLO Superior Court)		
Case No. 21CV04639		
Plaintiff	Edgar Cisneros (on behalf of State)	LEX OPUS

		Mohammed Ghods Jeremy Rhyne WORKWORLD LAW CORP. Ruben Escobedo
Defendants	Alco Harvest Inc., Rancho Harvest, Inc. Jesus Manriquez, Alain Pincot, Robert Ferini, Michell Ardantz, Craig Read, Jeremy Mackenzie	

<i>Rodales v. Alco Harvest, Inc.</i>		
Case No. 22CV02506		
Plaintiff	Laura Frutos Rodales	MELMED LAW GROUP Jonathan Melmed Meghan N. Higday
Defendants	Alco Harvest Inc.	See above

<i>Rodales v. Alco Harvest, Inc.</i>		
Case No. 23CV03669		
Plaintiff	Laura Frutos Rodales	MELMED LAW GROUP Jonathan Melmed Meghan N. Higday
Defendants	Alco Harvesting Inc.	See above

<i>Crowley v. Alco Harvesting, LLC</i>		
Case No. 23CV04823		
Plaintiff	Patrick Crowley and Stanton Wood	WORKWORLD LAW CORP. Ruben Escobedo
Defendants	Alco Harvest Inc.	See above

The Alco Harvesting LLC Cases

There are six Alco Harvesting LLC cases pending before this court that are related or consolidated.

On September 8, 2021, the court ordered the following cases consolidated for purposes of discovery, pretrial motions, and trial. (See Order filed September 13, 2021.)

- *García-Brower v. Alco Harvesting, LLC, et al.* (Case No. 21CV02855) [Designated lead case]
- *State ex rel. Edgar Cisneros v. Alco Harvest, Inc., et al.* (21CV04639)¹
- *Guzman v. Alco Harvesting, LLC* (Case No. 21CV00299)

These will be referred to as the consolidated action.

On November 30, 2022, the court ordered *Rodales v. Alco Harvest, Inc.* (Case No. 22CV02506) related to the lead case of the consolidated action, *García-Brower v. Alco Harvesting, LLC* (Case No. 21CV02855). (See 11/30/22 MO.)

On February 29, 2024, Judge Rigali ordered *Crowley v. Alco Harvesting, LLC* (Case No. 23CV04823) related to the lead case of the consolidated action, *García-Brower v. Alco Harvesting, LLC, et al.* (Case No. 21CV02855).

On April 22, 2024, the court ordered *Rodales v. Alco Harvesting LLC* (Case No. 23CV03669) related to the lead case of the consolidated action, *García-Brower v. Alco Harvesting, LLC, et al.* (Case No. 21CV02855).

To be clear, related cases are not consolidated cases. Related cases maintain their separate identities but are heard by the same trial judge. Consolidated cases, on the other hand, essentially merge and proceed under a single case number. A different procedure must be followed before a trial court orders the consolidation of civil actions. (Code Civ. Proc., § 1048; Cal. Rules of Court, rule 3.350.) Moreover, unless all parties in the involved cases stipulate, consolidation requires a written, noticed motion. (Cal. Rules of Court, rule 3.350(a); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 514.) No such stipulation appears in the file. Thus, the cases that are related, but not consolidated, retain their separate identities.

Factual Summary

For convenience, a factual summary each consolidated/related case follows:

1. *García-Brower v. Alco Harvesting, LLC, et al.* (Case No. 21CV02855)

¹ Transferred from San Luis Obispo Superior Court and assigned a Santa Barbara County case number.

Plaintiff Lilia Garcia-Brower is the Labor Commissioner for the State of California. She filed a complaint against defendants Alco Harvesting LLC, Betteravia Farms LLC, Betteravia Investment LLC, Grubstake Investments, LLC, Bonita Packing Co., each of which is alleged to d/b/a as Bonipak Produce Inc., for Labor Code violations, including: (1) failure to comply with paid sick leave requirements; (2) failure to comply with COVID-19 Supplemental paid sick leave requirements; (3) failure to pay minimum wages; (4) failure to timely pay earned wages upon separation from employment; (5) failure to timely pay earned wages during employment; and (6) failure to provide accurate itemized wage statements.

2. *Guzman v. Alco Harvesting, LLC* (Case No. 21CV00299)

Plaintiff Jesus Guzman is a Mexican national admitted to the United States to harvest and process strawberries as an employee for Defendants as a non-exempt, hourly employee pursuant to the federal H-2A Visa program.² He filed a complaint against defendants for Labor Code violations, as follows: (1) failure to pay all contractual wages; (2) failure to pay overtime wages; (3) failure to pay minimum wages; (4) liquidated damages for failure to pay minimum wages; (5) failure to pay all wages due upon termination; (6) failure to provide meal periods; (7) failure to provide rest periods; (8) failure to provide accurate and complete itemized wage statements; (9) failure to grant and pay medical leave; (10) retaliation; (11) unlawful and unfair competition; and (12) enforcement of PAGA penalties.

3. *Cisneros v. Alco Harvest, Inc.* (Case No. 21CV04639)

Plaintiff Edgar Cisneros “is an adult individual residing in Santa Barbara County, California. Mr. Cisneros is not suing in his individual capacity; she (sic) is proceeding herein solely under the PAGA, on behalf of the State of California.” (FAC, ¶ 7.) The complaint requests PAGA penalties for: (1) failure to provide or pay for recovery periods; (2) failure to provide compliant rest periods or pay rest premiums; and (3) failure to provide compliant meal periods or pay meal premiums.

4. *Rodales v. Alco Harvest, Inc.* (Case No. 22CV02506)

In this *related but not consolidated* matter, plaintiff Laura Frutos Rodales was employed by defendant Alco Harvest, Inc. as a non-exempt hourly employee. She brings this action on behalf of herself and the following class pursuant to section 382 of the Code of Civil Procedure as follows: All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period (the “Class Members”). The complaint for Labor Code violations includes

² H-2A is a federal visa program that allows agricultural employers to bring in workers from Mexico and Central America to perform seasonal agricultural work. These workers may be employed under the terms and conditions of the H-2A Certification and Job Order approved by the United States Department of Labor. The H-2A job order number is H-300—20017-261083.

causes of action for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenses; (9) failure to furnish accurate itemized wage statements; and (10) violations of California's Unfair Competition Law.

5. *Rodales v. Alco Harvesting LLC* (Case No. 23CV03669)

Plaintiff Laura Frutos Rodales's complaint seeks penalties pursuant to the Private Attorneys General Act (PAGA) for the failure to comply with the Labor Code, as alleged in Case No. 22CV02506 (above). It is not related to *Rodales v. Alco Harvest, Inc.* Case No. 22CV02506. It is related to the lead case of the consolidated action, *García-Brower v. Alco Harvesting, LLC, et al.* (Case No. 21CV02855).

6. *Crowley v. Alco Harvesting, LLC* (Case No. 23CV04823)

Plaintiffs Patrick Crowley and Stanton Wood were employed by defendant Alco Harvest, Inc. Stanton Wood was employed from May 28, 2021 to January 16, 2023. Patrick Crowley began working at Alco on August 26, 2019. It appears he is still employed there and has held various positions. The complaint is brought under the Private Attorneys General Act for alleged failures to comply with the Labor Code on behalf of approximately 5,000 aggrieved non-exempt employees employed by Alco Harvesting LLC between August 17, 2022, and the conclusion of this action.

Procedural Status

On September 20, 2022, Labor Commissioner served on Alco:

- Special Interrogatories, Set No. One;
- Requests for Admissions;
- Form Interrogatories, Set No. One; and
- Demand for Production of Documents, Set No. One.

Responses to these discovery requests were due on October 22, 2022. However, the parties agreed to several extensions of Alco's deadline to respond to the requests because motions to compel arbitration had been filed in the *Guzman* and *Cisneros* cases. On February 1, 2023, the court denied motions to compel arbitration. On March 1, 2023, Alco appealed the court's denial of the motions to compel arbitration [and commensurately, the motion to stay this action]. (Case No. B327137.) Discovery in the consolidated cases was stayed by court order through March 17, 2023. (See February 1, 2023 Court Order Denying *Guzman* and *Cisneros*

Petitions for Arbitration.) On September 6, 2023, the court further stayed discovery pending the appellate court decision.

The appellate court filed its decision on November 22, 2023, affirming the trial court in *Guzman*. The appellate court further reported that Cisneros agreed to dismiss all his claims except those brought under PAGA and that Alco and Betteravia sought no relief as to Cisneros in this appeal. (*State ex rel. Cisneros v. Alco Harvest, Inc.* (2023) 97 Cal.App.5th 456.) Petition for review was denied by the California Supreme Court on March 1, 2024. Remittitur issued that same date. The court order staying discovery thus expired.

On Calendar

1. Labor Commissioner's Motion to Compel Responses to Demand for Production and Inspection of Documents, Set No. One (Sanctions Requested: \$3,048.75);
2. Labor Commissioner's Motion to Compel Answers, Without Objections, to Form Interrogatories, Set One (Sanctions Requested: \$2,992.50);
3. Labor Commissioner's Motion to Deem Requests for Admissions Admitted (\$2,452.50); and
4. Labor Commissioner's Motion to Compel Answers, Without Objections, to Special Interrogatories, Set One (Sanctions Requested: \$2,137.50).

Alco opposes each motion, asserting that Labor Commissioner failed to meet and confer, that no agreement on a new deadline had been reached, that it has now responded to the outstanding discovery, and additionally requests sanctions for having to oppose each motion.

Merits

According to the email record attached to the attorney Segarich's Declaration, the parties met and conferred in advance of the March 27, 2024 CMC, the first case management conference after the appeal was concluded. In the meet and confer, they discussed in part, the status of discovery due to the Labor Commissioner. In that meeting, "Alco agreed that it would provide its responses to the Labor Commissioner's outstanding discovery within 30 days, i.e., April 26, 2024, and produce responsive documents on a rolling basis, with priority focused on documents relating to wage statements and paid sick leave compliance." (Segarich Decl., ¶ 13.) On April 25, 2024, Alco's counsel (attorney Rebecca Hause-Schultz) emailed all counsel and reported that Alco was pulling paystubs and she "hope[d] to produce sometime in the next two weeks." (Segarich Decl., Exh. D.) Attorney Segarich emailed Hause-Schultz on May 13, 2024, observing that the Commissioner had still not received responses to the outstanding discovery, and indicated he would file motions to compel if responses were not received by May 20, 2024.

Attorney Hause-Schultz responded on May 15, 2024, that she expected to produce by May 22, 2024. On May 22, 2024, “[Alco] did produce a limited number of documents that day, without any explanation of how they were responsive to any particular request. Two days later, it produced additional documents.” (Segarich Decl., ¶ 17.) It did not respond to the other outstanding discovery. (Segarich Decl., ¶ 18.) Motions to compel were filed on June 24, 2024. On July 17, 2024, after this motion was filed, Alco’s responses were served.

Alco denies that during the March 27, 2024 meet and confer call, it agreed to provide written discovery responses by April 26, 2024. Alco attorney Ryan Harrison states: “Alco did not agree to this deadline. Rather, Alco merely agreed to produce sampling documents on a rolling basis. No discovery written response deadline was agreed upon by the parties. Plaintiff unilaterally asserted that the Parties agreed to a written discovery response deadline, but this self-serving representation is not true. The Parties did not agree on a written discovery response deadline. Additionally, Alco did not set a written discovery response deadline for itself. Since the appeals concluded, at no time has Alco been operating under a written discovery response deadline.” (Harrison Decl., ¶ 9.)

In the very next paragraph, attorney Harrison states he did not substitute into this matter until April 16, 2024 (Harrison Decl., ¶ 10), which is *after* the date of the contested meet and confer call. Plaintiff responds with objections based on lacks foundation (Evid. Code § 403); lack of personal knowledge (Evid. Code, § 702, subd. (a), *Elkins v. Super. Ct.* (2007) 41 Cal.4th 1337, 1345); and hearsay (Evid. Code § 1200). Mr. Segarich confirms “[c]ounsel for Alco, Ryan Harrison, did not attend the meeting.” (Segarich Decl. filed 7/24/24, ¶ 3.) The objections are granted.

There is some evidence of an agreement to respond in the record aside from that contained in attorney Segarich’s declaration. On April 25, 2024, attorney Rebecca Hause-Schultz, Alco’s counsel, emailed that outstanding travel reports responsive to Guzman’s discovery requests “will not [be] ready for you by tomorrow,” [e.g., April 26]. (Segarich Decl., Exh. D.) This suggests that a deadline *was* contemplated by Alco as reported, and it corresponds with the purported agreement to respond within 30 days reported by attorney Segarich. Attorney Segarich also reported this agreement to the court in the CMC statement dated March 29, 2024 as follows:

“Prior to Alco’s motion to compel arbitration, the Labor Commissioner had propounded written discovery, including special and form interrogatories, requests for admission, and requests for production of documents. Because Alco’s time to respond had not passed when the parties agreed to stay discovery, it did not respond. However, those responses are now due. At the parties’ meet and confer, the Labor Commissioner and Alco agreed that it would provide its responses within 30 days, and produce responsive documents on a rolling basis,

with priority focused on documents relating to wage statements and paid sick leave compliance.”

Nevertheless, the email record memorializing the discussions between the parties is unclear about the scope of any such agreement. What is clear is that the focus was on production of documents, as those responses are discussed specifically in the emails and in the above report.

Against this background, the court is asked to compel Alco’s discovery responses without objection, and to impose monetary sanctions against Alco (and/or the Labor Commissioner). For interrogatories (both special and form) and document requests, failing to respond within the time limit waives most objections, including claims of privilege and “work product” protection. (Code Civ. Proc., § 2030.290, subd. (a) [interrogatories]; § 2031.300, subd. (a) [document requests].) However, no such relief is available for tardy responses to requests for admissions if the court finds “that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response ... in substantial compliance with Section 2033.220.” (Code Civ. Proc. § 2033.280, subd. (c).)

Here, written responses to the interrogatories (special and form), document requests, and requests for admissions were served on July 17, 2024. (Segarich Decl. filed 7/24/24, Exh. A.) Responses to the 8 special interrogatories propounded included objection plus response (Spec. Interrog. No. 1), objection only (Spec. Interrog. Nos. 2-4, 6, 8) and objection plus an invitation to meet and confer (Spec. Interrog. Nos. 5, 7). Responses to the 11 form interrogatories served include objections along with a response as to 9 of them and objections only as to 2 of them. Responses to the request for production of 35 categories of documents include an imposition of objections plus an invitation to meet and confer on 23 of the categories (Nos. 7-29). Three categories of documents were objected to without agreement to produce. The remaining categories drew objection plus a representation documents were produced, or an inability to respond because there are no responsive documents.

The court denies the request for an order deeming all objections waived. The court finds that substantially compliant responses to requests for admissions were served on July 17, 2024, and there is thus no basis for such an order. (Code Civ. Proc. § 2033.280, subd. (c).) The court further finds that substantially compliant responses to the interrogatory requests and document requests have been served and Alco’s failure to serve a timely response was the “result of mistake, inadvertence, or excusable neglect.” (Code Civ. Proc., §§ 2030.290(a)(1),(2) [interrogatories]; 2031.300(a)(1),(2) [inspection demand].)³ The record is not clear whether the meet and confer yielded a firm date for response as to all discovery

³ The court is aware that such relief must generally be sought by a noticed motion, but does not wish to delay this discovery proceeding any further.

sought. For the same reason, the court denies monetary sanctions and finds that Alco acted with substantial justification. (Code Civ. Proc., § 2023.030, subd. (a)—"If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.")⁴

The motions are denied. Any further objection to the July 17, 2024 responses must be challenged by a motion to compel further response. The court expects the parties to meet and confer in good faith prior to the filing of any such motion.

CMC

This case is a complex case. (See Civil Case Cover Sheet, ¶ 2, Calif. Rules Court, rule 3.401.) Although the court has discretion to remove the designation, it has no reason to believe the matter is not complex, particularly given its current procedural status, consisting of some consolidated cases and some related cases. (Calif. Rules Court, rule 3.403.) The court will thus proceed accordingly.

The court directs the parties to be prepared to discuss the topics listed in Calif. Rules of Court, rule 3.750 (b). In particular, the court is interested in discussing how the parties envision these actions to proceed. Will there be further motions to consolidate the cases? If not, how will the consolidated matter interact with the related cases and vice versa?

Are the cases all seeking remedies (damages or penalties) for violations that occurred in the same period or do they each cover separate periods? If there is an overlap, how do the parties anticipate that be handled? Do any of the parties have reason to believe there are either other cases pending in this court that have yet to be related or consolidated, or expect any to be filed?

Can any duplication of discovery efforts be avoided? Is there a discovery plan or a formal or informal agreement to share discovery?

The parties should be prepared to discuss these matters.

⁴ To be clear, the court also denies Alco's request for sanctions for Labor Commissioner's purported failure to meet and confer.