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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOURDES OLIVO, et al,  
Plaintiffs,  
v.  
FRESH HARVEST INC., et al,  
Defendants.

Case No.: 17-CV-2153-L-WVG

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR LEAVE TO TAKE ADDITIONAL DEPOSITIONS**

**[ECF NO. 36.]**

**I. INTRODUCTION**

Plaintiffs Lourdes Olivo and Socorro Olivo De Vasquez have moved the Court for an order allowing them to take a total of nineteen depositions in the above-entitled matter. (Mot., ECF No. 36-1.) Defendants Fresh Harvest Inc. and Seco Packaging have jointly opposed. (Defs' Opp'n, ECF No. 38.) For the following reasons, Plaintiffs' Motion is **GRANTED IN PART AND DENIED IN PART.**

**II. RELEVANT BACKGROUND**

Plaintiffs filed a Complaint alleging wage and hour violations as well as claims for retaliation. Plaintiffs, and other allegedly aggrieved employees, used busses, vans, or shuttles provided by Fresh Harvest to move to and from the fields in which the employees worked. The employees were not compensated for the time in which they were transported.

1 Plaintiffs allege these transportation services were not optional but rather mandatory and  
2 thus compensable. Defendants maintain the transportation services were optional, its use  
3 voluntary, and thus not compensable. At the heart of the case at bar is the transportation  
4 policies and procedures maintained by Fresh Harvest.

5 On September 17, 2018, Plaintiffs filed the present motion seeking leave to depose  
6 an additional nine witnesses over the ten allowed without leave of court. Plaintiffs have  
7 deposed the following eight percipient witnesses: David Maciel, Daniel Pedraza Calderon,<sup>1</sup>  
8 Moises Medel, Adolfo Mendoza,<sup>2</sup> Rosalva Ramos,<sup>3</sup> Santiago Palacios, Cindy Da Silwa,<sup>4</sup>  
9 and Lydia Rivera,<sup>5</sup> all of which were foremen or supervisors, with the exception of Da  
10 Silwa who was a human resources representative. (Rice Decl., ECF No. 26-2 at ¶¶ 10-15.)  
11 Plaintiffs have also noticed the depositions of two witnesses from Fresh Harvest pursuant  
12 to Rule 30(b)(6). The depositions already taken as well as the two noticed complete  
13 Plaintiffs' ten depositions allowed without leave of Court.

14 Plaintiffs seek leave to depose a witness from Seco Packacing pursuant to Rule  
15 30(b)(6).<sup>6</sup> (Rice Decl., at ¶ 17; Opp'n at 6:11-22.) Plaintiffs also seek to depose Blanca  
16 Torres, a Field HR Safety Representative, and Edgar Garcia, a field worker, along with  
17 Jesus Santamaria, Francisco Guido, Ramon Lua, Rogelio Vega, Fidel Villapudua, Chava  
18 Martinez, all of whom are either supervisors or foremen for Fresh Harvest. (Rice Decl. at  
19 ¶¶ 19-20, 23.) Torres and Garcia were identified by Fresh Harvest in its Rule 26 disclosures  
20 served on March 8, 2018. (Rice Decl. at ¶¶ 19-20; Opp'n at 14:8-11.) The remaining six  
21 were identified as a result of written discovery produced by Fresh Harvest. (Rice Decl. at  
22 ¶ 22.)

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24 <sup>1</sup> Maciel and Calderon were deposed on August 15, 2018.

25 <sup>2</sup> Medel and Mendoza were deposed on August 16, 2018.

26 <sup>3</sup> Ramos was deposed on August 28, 2018.

27 <sup>4</sup> Palacios and Da Silwa were deposed on August 29, 2018.

28 <sup>5</sup> Rivera was deposed on September 12, 2018.

<sup>6</sup> Since Plaintiffs filed their motion, the parties have agreed to this deposition, which would be the eleventh by Plaintiffs. (Opp'n at 6:23-26.) Accordingly, the Court need not address the argument regarding this witness. *See* Fed. R. Civ. P. 30(a)(2)(A).

1 On October 4, 2018, the Court convened a telephonic discovery conference  
2 regarding the subject motion. Cynthia Rice appeared on behalf of Plaintiffs. Jennifer  
3 Schermerhorn and Rebecca Hause-Schultz appeared on behalf of Fresh Harvest. Daniel  
4 Qualls appeared on behalf of Seco Packaging.

### 5 **III. LEGAL STANDARD**

6 Pursuant to Federal Rule of Civil Procedure (“Rule”) 30, a party is entitled to ten  
7 depositions without leave of court. Fed. R. Civ. P. 30(a). A court must grant leave for  
8 additional depositions “to the extent consistent with Rule 26(b)(1) and (2).” Fed. R. Civ.  
9 P. 30(a)(2).

10 Rule 26(b)(1) provides, in relevant part, as follows:

11 Parties may obtain discovery regarding any nonprivileged matter that is  
12 relevant to any party's claim or defense and proportional to the needs of the  
13 case, considering the importance of the issues at stake in the action, the  
14 amount in controversy, the parties' relative access to relevant information, the  
15 parties' resources, the importance of the discovery in resolving the issues, and  
16 whether the burden or expense of the proposed discovery outweighs its likely  
benefit. Information within this scope of discovery need not be admissible in  
evidence to be discoverable.

17 Fed. R. Civ. P. 26(b)(1). Rule 26(b)(2)(C) provides that the court must limit the extent of  
18 discovery if it determines that the discovery is “unreasonably cumulative or duplicative, or  
19 can be obtained from some other source that is more convenient, less burdensome, or less  
20 expensive;” “the party seeking discovery has had ample opportunity to obtain the  
21 information by discovery in the action;” or “the proposed discovery is outside the scope  
22 permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii). “A party seeking to exceed  
23 the presumptive limit bears the burden of making a particularized showing of the need for  
24 additional depositions.” *Kaseberg v. Conaco, LLC*, No. 15-CV-1637-JLS-DHB, 2016 WL  
25 8729927, at \*3 (S.D. Cal. Aug. 19, 2016).

### 26 **IV. DISCUSSION**

27 Plaintiffs seek leave to depose eight additional witnesses beyond the ten allowed and  
28 the eleventh witness agreed upon by the parties.

1           **A. Jesus Santamaria, Francisco Guido, Ramon Lua, Rogelio Vega, Fidel**  
2           **Villapudua, Chava Martinez**

3           Tellingly, Plaintiffs group all of the above named witnesses into a single section of  
4 their motion. All of these witnesses are either supervisors or foremen of different labor  
5 crews within Fresh Harvest. In conclusory fashion, Plaintiffs claim all six of these  
6 witnesses have non-duplicative knowledge regarding the transportation policies of Fresh  
7 Harvest. (Mot. at 6.) These six witnesses, in conjunction with depositions already taken,  
8 would account for twenty-three of the thirty-two crews Fresh Harvest employs. (*Id.* at 6:22-  
9 25.) However, Plaintiffs fail to show that the transportation policies somehow differ from  
10 crew to crew. Moreover, Plaintiffs fail to show how the deposition from the first six  
11 supervisors and foremen lead to incomplete or inconsistent information and that conducting  
12 an additional six depositions of supervisors and foremen would somehow lead to further  
13 clarity or additional information. Defendants note that each of the previously deposed  
14 supervisors and foremen have already testified about their knowledge of the transportation  
15 policies and procedures. (Opp'n at 7:21-8:17.)

16           Simply put, Plaintiffs have not provided evidence that these additional depositions  
17 would reveal anything other than what has already been obtained. Plaintiffs have failed to  
18 make a particularized showing of the need for the depositions. Moreover, the depositions  
19 appear to be “unreasonably cumulative [and] duplicative,” and Plaintiffs have “had ample  
20 opportunity to obtain the information” they are now seeking by having already deposed six  
21 percipient witnesses with the same roles. Fed. R. Civ. P. 26(b)(2)(C)(i)-(ii). The Court  
22 **DENIES** Plaintiffs’ motion as to Santamaria, Guido, Lua, Vega, Villapudua, and Martinez.

23           **B. Blanca Torres**

24           Blanca Torres is human resources employee for Fresh Harvest who conducted an  
25 investigation into alleged labor law violations committed by Rosalva Ramos. (Mot. at 4:8-  
26 14.) Olivo responded to questions from Torres regarding mandatory and scheduled breaks  
27 as part of the investigation of Ramos. (*Id.*) Olivo claims that her responses to these  
28 questions resulted in her getting demoted. (*Id.*) In support of her argument that the

1 deposition of Torres is necessary, Olivo claims that no other witness will “have any  
2 knowledge of [their] conversation, or how it was communicated to decision makers at  
3 Defendant Fresh Harvest.” (*Id.* at 4:17-19.) Olivo claims she was not able to glean  
4 information regarding her conversation with Torres from the other human resources  
5 witness, Cindy Da Silwa. Given this, the deposition of Torres does not appear to be  
6 cumulative or duplicative and is well within the scope of Rule 26(b)(1). Moreover, Torres  
7 appears to be a central witness to the case. While the Court is still puzzled as to why  
8 Plaintiffs elected to depose ten other witnesses, including Da Silwa, and risk the possibility  
9 they may not be able to depose Torres, a person whose importance in this case is critical  
10 according to Plaintiffs, the Court will nevertheless **GRANT** Plaintiffs’ motion in regards  
11 to Torres.

### 12 **C. Edgar Garcia**

13 Edgar Garcia is or was a field worker with Fresh Harvest. (Mot. at 5:2-3.) Fresh  
14 Harvest has asserted that Olivo was demoted because there were complaints about her work  
15 performance and poor interaction with other crewmembers and not in retaliation for  
16 speaking to Torres, as discussed above. (*Id.* at 5:4-9.) Plaintiffs believe, based on written  
17 discovery, that Fresh Harvest will rely on the testimony of Garcia to substantiate its defense  
18 that Olivo was demoted due to work performance and not retaliation. (*Id.*)

19 In support of their contention that Garcia should be deposed, Plaintiffs cite *Mintz v.*  
20 *Mark Bartelstein & Assoc., Inc.*, 2012 WL 12886492, 2012 U.S. Dist. LEXIS 196340 (C.D.  
21 Cal. Sept. 14, 2012). In *Mintz*, the plaintiff disclosed forty-two witnesses in initial  
22 disclosures. *Id.* at \*1. Given the high number of identified witnesses, the defendants moved  
23 for an additional twenty depositions, a number settled on because “at least twenty-two  
24 individuals out of the forty-two individuals were very likely to be trial witnesses.” *Id.* at  
25 \*2. The court allowed the defendant to take thirty depositions. *Id.* at \*3. Plaintiff argues  
26 the present case is analogous because here, like in *Mintz*, the number of requested  
27 depositions is “lower than the number of witnesses identified in discovery or initial  
28 disclosures.” (Mot. at 5.)

1 The application of *Mintz* to this case is perplexing at best. In *Mintz*, the court allowed  
2 thirty of the forty-two identified witnesses to be deposed. However, “only two of the  
3 individuals Plaintiffs seek to depose (Edgar Garcia and Blanca Torres) were identified” in  
4 Fresh Harvest’s initial disclosures. (Opp’n at 10:9-11.) In fact, Fresh Harvest only  
5 identified seventeen witnesses, a number lower than that which Plaintiffs now seek leave  
6 to depose. (Mot. at Ex. B, ECF No. 36-4 at ¶¶ 1-17.) In sum, Plaintiffs’ reliance on *Mintz*  
7 is misplaced.

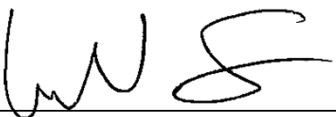
8 Plaintiffs have known Garcia was a potential witness since disclosures were made  
9 on March 8, 2018, at the latest. Plaintiffs have offered no reason why they have not taken  
10 the deposition of Garcia nor have they offered a reason why they took the depositions of  
11 numerous supervisors and foremen that may have been able to testify about Olivo in lieu  
12 of Garcia. Given this, Plaintiffs have not made a particularized showing that there is a need  
13 for this deposition and they had “ample opportunity to obtain the information” they now  
14 seek to acquire from Garcia. Fed. R. Civ. P. 26(b)(2)(C)(ii). Accordingly, the Court  
15 **DENIES** Plaintiffs’ motion as to Garcia.

16 **CONCLUSION**

17 For the preceding reasons, the Court **GRANTS** Plaintiffs’ Motion in respect to  
18 Blanca Torres and **DENIES** Plaintiffs’ Motion in regards to all other percipient witnesses.

19 **IT IS SO ORDERED.**

20 Dated: October 10, 2018

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23 Hon. William V. Gallo  
24 United States Magistrate Judge  
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