

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

**OCEAN MIST FARMS,** ) Case No. **2017-CE-006-VIS**  
 )  
 Respondent, ) (46 ALRB No. 5)  
 )  
 and )  
 ) ORDER GRANTING REGIONAL  
 ) DIRECTOR’S REQUEST FOR  
 **JUAN ANTONIO ORTIZ,** ) ENFORCEMENT OF SUBPOENA  
 ) DUCES TECUM AND FOR  
 Charging Party. ) ENFORCEMENT OF BOARD  
 ) ORDER 46 ALRB NO. 5  
 )  
 ) Admin. Order No. 2025-06  
 )  
 ) (June 26, 2025)

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On May 29, 2025, the Regional Director of the Agricultural Labor Relations Board (ALRB or Board) filed a request for subpoena enforcement along with a request to seek enforcement of the Board’s order in *Ocean Mist Farms* (2020) 45 ALRB No. 5. The requests were made pursuant to sections 1160.8, and 1151, subdivision (b) of the Agricultural Labor Relations Act (ALRA)<sup>1</sup>, and Board regulation section 20250, subdivision (k).<sup>2</sup> For the reasons discussed below, we GRANT the requests and urge the Regional Director to immediately seek enforcement of the subpoena in accordance with Labor Code section 1151, subdivision (b) as well as court enforcement of our order pursuant to Labor Code section 1160.8.

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<sup>1</sup> The ALRA is codified at Labor Code section 1140 et seq.

<sup>2</sup> The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

## PROCEDURAL BACKGROUND

The Regional Director issued the subpoena duces tecum on October 16, 2024, and requested respondent Ocean Mist Farms (Ocean Mist) produce documents, including crew sheets, payroll records and documents identifying farm labor contractors and custom harvesters or any other entities providing agricultural labor at all of Ocean Mist's locations. The documents were sought to assist regional staff in carrying out and completing the notice, posting and reading remedies ordered by the Board in *Ocean Mist Farms, supra*, 46 ALRB No. 5.<sup>3</sup>

Ocean Mist filed a petition to revoke the subpoena on October 25, 2024.

Ocean Mist objected on the grounds that the requests in the subpoena were overbroad,

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<sup>3</sup> The Board found that Ocean Mist, through its farm labor contractor, Valley Pride, Inc., unlawfully suspended three workers in retaliation for exercising protected rights when they briefly stopped working in slippery, dangerous conditions. (*Ocean Mist Farms, supra*, 46 ALRB No. 5, pp. 1-2.) The Board ordered Ocean Mist to: 1) cease and desist from threatening to call the police, suspending, or interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by Section 1152 of the Act; 2) take the following affirmative actions: a) make the discriminatees whole for all wages and economic losses; b) sign a Notice to Agricultural Employees ("Notice"); c) post copies of the Notice "in all appropriate languages, to all employees then employed, on company time and property; d) arrange for a representative of Respondent or a Board agent to distribute and read the Notice, in appropriate languages, to all employees then employed, on company time and property, at time(s) and place(s) to be determined by the Regional Director; e) mail copies of the Notice to all agricultural employees employed by Respondent; f) provide a copy of the Notice to each agricultural employee hired to work for Respondent during the 12-month period following the issuance of the final order; and g) notify the Regional Director in writing, within thirty days after the date of issuance of the Order, of the steps Respondent has taken to comply with its terms. Ocean Mist filed a petition for review of the Board's decision and order that was summarily denied by the Sixth District Court of Appeal on October 19, 2021. (Case No. H048797.) Ocean Mist did not seek further court review, and the matter was subsequently released for compliance. Ocean Mist has complied with part of the Board's order, including making the three discriminatees whole, and signing and mailing the notice to all agricultural employees. However, the notice reading remedy ordered in item 2 (d) above remains unsatisfied.

burdensome, oppressive, vague, and ambiguous, and in the case of two requests for contracts, sought confidential trade secret information.

On November 20, 2024, an Administrative Law Judge (ALJ) denied the petition to revoke on the grounds that Ocean Mist's objections were not explained with the particularity required by Board regulation section 20170, subdivision (f), and lacked merit. The ALJ found Ocean Mist's claims with regard to several requests being overbroad, burdensome, and oppressive were speculative rather than founded upon any known facts. With respect to Ocean Mist's claim the request for documents could include individuals who worked on Ocean Mist's property but are not necessarily agricultural employees of Ocean Mist, the ALJ observed Ocean Mist was withholding information needed to make the determination as to whether someone is an agricultural employee or employer under Labor Code section 1140.4, and was asking to simply be taken on its word that the Regional Director sought more information than she was entitled to obtain.

The ALJ also rejected Ocean Mist's assertion of a trade secret privilege with respect to the economic terms of contracts subpoenaed by the Regional Director because Ocean Mist did not provide a privilege log as required by Board regulation section 20250, subdivision (f). Finally, the ALJ disagreed with Ocean Mist's argument that the term "agricultural services" used in the request was vague, ambiguous and overbroad because the term was clearly defined in the subpoena.

The ALJ ordered Ocean Mist to produce the documents requested in the subpoena by November 30, 2024. According to the Regional Director, to date, Ocean Mist has failed to produce a single document responsive to the subpoena.

The Regional Director's request for subpoena enforcement and request to seek enforcement of the Board's order describes communications between regional staff

and Ocean Mist's counsel between January 2023 and August 15, 2024, as regional staff attempted to obtain documents needed to implement the reading and posting of the notice to agricultural workers. Attached to the request is a declaration by regional attorney Michael Marsh detailing efforts regional staff made to try to determine the make-up, location and schedules of crews of agricultural workers working on all Ocean Mist properties in order to complete the reading and noticing remedy. Also attached are various email communications between regional staff and Ocean Mist's counsel.

The Regional Director also requests evidentiary sanctions against Ocean Mist for its persistent intransigence and repeated unjustified refusal to produce documents required to comply with the Board's order pursuant to Labor Code section 1151 and Board regulation sections 20238 and 20262. Specifically, the Regional Director requests that the Board sanction Ocean Mist by ordering that it can no longer argue or present additional evidence that the entities that provide its farm labor are custom harvesters and not farm labor contractors.

Ocean Mist filed its opposition to the Regional Director's request for enforcement on June 5, 2025. Ocean Mist repeats its argument that the subpoena seeks documents from a packing house not subject to ALRB jurisdiction and from third party agricultural employers not subject to a Board order and over whom Ocean Mist has no control. Ocean Mist states that it no longer employs agricultural employees and no longer uses the farm labor contractor (Valley Pride, Inc.) it used at the time the Board issued its 2020 order. Further, Ocean Mist argues, in January 2023, its representative attempted to arrange for the Regional Director to perform readings and make postings, but the Regional Director declined without explanation.

Ocean Mist argues the Regional Director's request for evidentiary sanctions

is moot as it applies to Ocean Mist and Valley Pride because Valley Pride is no longer providing labor to Ocean Mist, and because it applies to different parties and different agreements. Finally, Ocean Mist places the blame for the delays in completing the notice remedy on the Regional Director and argues the equitable defense of laches now bars further action in this matter. Ocean Mist requests the Board find it has fulfilled all its obligations under the Board’s order in 46 ALRB No. 5, and dismiss this matter in its entirety.

## **DISCUSSION**

### **I. The ALRB’s Subpoena Power and Judicial Enforcement**

The ALRA expressly grants the Board, access to “any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.” (Lab. Code, § 1151, subd. (a); *D’Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, p. 803.)

Judicial enforcement is available when a person fails to comply with an investigative subpoena. (Lab. Code, § 1151, subd. (b); Board regs. 20217, subd. (g), 20250, subd. (k).) In such circumstances the Act contemplates the prompt enforcement of subpoenas through summary proceedings. (Lab. Code, § 1151, subd. (b).) Notably, like National Labor Relations Act (NLRA)<sup>4</sup> Section 11(2) [29 U.S.C. § 161(2)], Labor Code section 1151, subdivision (b) vests jurisdiction in a superior court to enforce an ALRB subpoena upon “application” by the Board. (*Goodyear Tire & Rubber Co. v. NLRB* (6th Cir. 1941) 122 F.2d 450, p. 451; *Cudahy Packing Co. v. NLRB* (10th Cir. 1941) 117 F.2d

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<sup>4</sup> The NLRA is codified at 29 U.S.C. § 151 et seq. Labor Code section 1151 is modeled after NLRA Section 11 [29 U.S.C. § 161]. (*ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, p. 663; see Lab. Code, § 1148 [stating the ALRB shall follow applicable precedent under the NLRA].)

692, p. 694.) In such a proceeding, “a subpoena enforcement order should issue if it appears the administrative subpoena was regularly issued, and the records sought are relevant to the administrative inquiry and identified with sufficient particularity.” (*Laflin & Laflin, supra*, 89 Cal.App.3d 651, p. 664.)

In evaluating a request to enforce a subpoena, Board regulation 20250, subdivision (k) requires the Board to exercise its judgment concerning whether “the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act.” In making this determination, the Board has considered whether the subpoena to be enforced “was regularly issued and the records sought are relevant to the administrative inquiry and identified with sufficient particularity.” (*ALRB v. Laflin & Laflin, supra*, 89 Cal.App.3d 651, pp. 663-664; *St. Supéry, Inc.* (Sept. 28, 2022) ALRB Admin. Order No. 2022-06-P, p. 6.)

## **II. The Subpoena Issued Properly**

There is no dispute the subpoena complies with Board regulation section 20250 and was properly served.<sup>5</sup>

## **III. Enforcement of the Subpoena Duces Tecum Is Warranted**

The Regional Director correctly asserts the documents sought are relevant because they will enable regional staff to identify appropriate crews and workers and

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<sup>5</sup> The Board denied a prior request for subpoena enforcement in this matter as the subpoena in question failed to meet the requirement of being properly issued because it was issued by the General Counsel, rather than the Regional Director. (*Ocean Mist Farms* (August 28, 2023) ALRB Admin. Order No. 2023-08.) Authority over compliance matters rests with the Board and the processing and litigation of disputed compliance matters is delegated to the Regional Directors. (Board regs. 20290-20292.) The Board denied the 2023 enforcement request without prejudice to considering enforcement of a subsequent subpoena properly served by the Regional Director. The current subpoena meets this requirement.

ascertain the location and schedule of those crews and workers so that the noticing and reading remedy can be carried out for agricultural employees during peak season in the different regions where Ocean Mist does business. The Board’s notice remedies serve important purposes of informing workers of the outcome of the unfair labor practice proceedings and answering their questions about the rights guaranteed to them by the Act. (*United Farm Workers of America (Lopez)* (2018) 44 ALRB No. 6, p. 15, citing *M. Caratan, Inc.* (1980) 6 ALRB No. 14; *Jasmine Vineyards, Inc. v. ALRB* (1980) 113 Cal.App.3d 968, pp. 979-982.)

The ALJ properly found the subpoena was neither vague, ambiguous, overbroad, nor burdensome. Ocean Mist’s arguments to the contrary continue to be based on mere speculation and lack any declaratory or evidentiary support. Rather than cooperate with regional staff to provide the information necessary for staff to evaluate how to complete the Board-ordered remedies, Ocean Mist obstinately makes the same assertion it has made unsuccessfully at each juncture of this case: that it does not employ agricultural employees subject to the Board’s jurisdiction. As the ALJ pointed out, Ocean Mist’s counsel asks to be taken on his word that the entities providing Ocean Mist’s farm labor are custom harvesters. (See *Rincon Pacific, LLC* (2020) 46 ALRB No. 4, pp. 7-8, FN 7 [citing *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, p. 139 [“Statements and arguments by counsel are not evidence”]; *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, p. 454 [“These unsworn averments in a memorandum of law prepared by counsel do not constitute evidence”].)

Moreover, Ocean Mist’s contention regarding the Board’s jurisdiction is irrelevant with respect to Ocean Mist’s obligation to provide documents requested in the subpoena, and we reject it. It is not a basis for refusing to comply with the subpoena nor

does it excuse the continued noncompliance with it. (*Myers v. Bethlehem Shipbuilding Corp.* (1938) 303 U.S. 41, pp. 49-51 [party cannot avoid unfair labor practice proceedings based on claim NLRB lacks jurisdiction over it]; *Saginaw Chippewa Indian Tribe v. NLRB* (E.D. Mich. 2011) 838 F.Supp.2d 598, p. 600 [same].)

Ocean Mist states it tried to arrange a reading with regional staff in January 2023, but the Regional Director declined without explanation. However, it is clear from copies of the email exchange provided by the Regional Director in support of her request for enforcement that instead of providing requested information about all agricultural employees and crews on all Ocean Mist properties, Ocean Mist's counsel insisted that there was only one crew of workers in the Coachella Valley subject to the noticing remedy, and then refused to provide any information to substantiate that claim after regional staff requested it. (Reginal Director's Request for Enforcement of Board Order and Subpoena Duces Tecum, Exhibits C-E.)

We can only conclude Ocean Mist's years' long efforts to rebuff the ALRB's regional staff are intended to prevent agricultural employees from learning about Ocean Mist's unlawful conduct and about their rights protected under the ALRA.

We find no merit in Ocean Mist's argument that laches now bars further action in this matter. First, it is clear from the record Ocean Mist bears the lion's share of responsibility for the delay in completing the Board's noticing remedy. Second, laches is not available as a defense in ALRB unfair labor practice proceedings. (See, e.g., *Rincon Pacific, LLC, supra*, 46 ALRB No. 4, pp. 6-8; *Tri-Fanucchi Farms* (2014) 40 ALRB No. 4, p. 10 ["laches is not available as a defense to an unfair labor practice allegation under the ALRA"].)

California state courts have also held even where the elements are

otherwise established, equitable defenses such as estoppel and laches generally will not lie against a governmental agency where the result would be to frustrate strong public policy. (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 248 [“laches is not available where it would nullify an important policy adopted for the benefit of the public”], quoting *Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346, 1381.)

As indicated above, the Board’s notice remedies serve important purposes of informing workers of the outcome of the unfair labor practice proceedings and answering their questions about the rights guaranteed to them by the Act. (*United Farm Workers of America (Lopez)*, *supra*, 44 ALRB No. 6, p. 15, including, as in this case, the right to protest unsafe working conditions.

In addition, it is of no importance that the entities providing Ocean Mist’s labor may have changed since the Board’s order in this matter issued. Where time has passed since the Board’s order and there has been significant or even complete turnover in the workforce since the time of the unlawful conduct, a notice reading to current employees remains an appropriate remedy. (*M. Caratan, Inc.*, *supra*, 6 ALRB No. 14, pp. 5-6; *Jasmine Vineyards, Inc.* (1980) 6 ALRB No. 17, p. 2; *Jasmine Vineyards, Inc. v. ALRB*, *supra*, 113 Cal.App.3d 968, pp. 979-982.) Even if a determination about what type of entity was providing labor was relevant at this point in the compliance proceedings that argument has been waived. Ocean Mist provides no evidence to support its assertion.

The Board therefore finds immediate action to enforce the subpoena duces tecum is warranted, and the Regional Director’s request for subpoena enforcement is GRANTED.<sup>6</sup>

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<sup>6</sup> We find the Regional Director’s request for evidentiary sanctions against Ocean

#### **IV. Court enforcement of the Board's order under Labor Code section 1160.8 is appropriate**

Labor Code section 1160.8 provides where the time for review of the Board's order has lapsed and a respondent has not voluntarily complied with the order, "the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order." In this matter, Ocean Mist filed a petition for review of the Board's decision and order. The petition was summarily denied by the Sixth District Court of Appeal on October 19, 2021. (Case No. H048797.) Ocean Mist did not seek further court review. As explained above, while Ocean Mist has complied with part of the Board's order, it has not complied with the portion of the order requiring Ocean Mist to "arrange for a representative of Respondent or a Board agent to distribute and read the Notice, in appropriate languages, to all employees then employed, on company time and property, at time(s) and place(s) to be determined by the Regional Director."

Ocean Mist violated the ALRA when it unlawfully suspended the three workers involved in this matter in retaliation for exercising protected rights. (*Ocean Mist Farms, supra*, 46 ALRB No. 5, pp. 1-2.) It repeatedly asserted the Board was without jurisdiction on the theory that its workers are employees of custom harvesters. This defense failed at the trial level, and failed on exceptions before the Board. It then sought judicial review of our order, and its petition was summarily denied. It now – *without any evidence* – tries to assert it need not comply with the outstanding remedies ordered – informing workers of their rights – again because they allege they utilize a custom harvester. This argument has repeatedly failed and now at this stage has been waived.

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Mist is premature at this time.

Ocean Mist must comply with our ordered remedies. The continued obstruction of the Board's remedies cannot – and will not – be tolerated

Accordingly, the Regional Director's request for leave to seek court enforcement of our order pursuant to Labor Code section 1160.8 is GRANTED.<sup>7</sup>

DATED: June 26, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

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<sup>7</sup> The Board emphasizes the need to urgently file this matter. The Board expects the Region to file to enforce the subpoena within 30 days. In an effort to ensure this is filed timely, the Board will offer counsel to assist.