

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS, INC.,	)	
	)	
Respondent,	)	Case Nos. 80-CE-12-D
	)	80-CE-16-D
and	)	
	)	
PEDRO VERA, MANUEL JASSO,	)	
and JUANITA SANTOYO,	)	7 ALRB No. 7
	)	
Charging Parties.	)	

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DECISION AND ORDER

On August 22, 1980, Administrative Law Officer (ALO) Stuart Herman issued the attached Decision in this proceeding. Thereafter, General Counsel and Respondent each timely filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and supporting briefs, and has decided to affirm the ALO's rulings, findings, and conclusions and to adopt his recommended remedial order as modified herein.

General Counsel has excepted to the ALO's finding that the Piano Padillo crew voluntarily left work on Thursday, February 7, 1980, after being given the choice of redoing the work of the previous day at an unspecified wage rate or going home until Monday. General Counsel contends that Respondent sent the Padillo crew home until Monday as punishment for their concerted activity. However, the record contains insufficient evidence to support this contention.

The ALO concluded that Respondent issued disciplinary slips to certain crew members<sup>1/</sup> on February 12, 1980, because of the crew's protected concerted activity on February 7 and February 11, and thereby violated sections 1153(c) and (a) of the Act. Respondent excepted to this conclusion. We find merit in Respondent's exception.

The ALO rejected Respondent's defense of cumulative poor work by the crew members as the motivation for the issuance of the disciplinary slips. Relying primarily on the fact that the entire crew did not receive warning slips, he found a pattern of issuing disciplinary slips only to those employees identified as outspoken in the February 11 negotiations with Giumarra.

The testimony is uncontroverted that members of the crew were having difficulty performing their work to the standards set by Respondent. Gonzalo Chavez testified that Piano Padillo had criticized his work on earlier occasions. Giumarra testified that the entire crew was performing its work below standard. Defective workmanship and low production, reasons given by Respondent for the disciplinary slips, were not new problems for this crew, which had received numerous training sessions since the tying season began.

The record establishes that Respondent issued disciplinary slips to several members of the crew. It does not,

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<sup>1/</sup>In addition to Gonzalo Chavez, Manuel Jasso, Jesus Oropezda, and Juanita Santoyo, other crew members also received disciplinary slips but were not identified by name in the record. Juanita Santoyo's disciplinary slip was discussed separately by the ALO and will be discussed below.

however, establish the identity of every crew member who was given a disciplinary slip on February 12. The ALO relied upon Chavez's testimony to establish unlawful discrimination by Respondent. In his testimony, Chavez stated that he, Jesus Oropezda, and Manuel Jasso received disciplinary slips from Giumarra on February 12. He claimed that disciplinary slips were "given to the main ones, those of us who had been spoken to ... or had been speaking to him, trying to negotiate." Chavez then went on to testify, "I don't recall the rest."

There is little or no additional evidence of participation by the named employees, or by the unidentified employees who also received disciplinary slips, delineating what their roles were in the concerted activities of February 7 and 11. Without more evidence, the finding that Respondent issued disciplinary slips only to the leaders in retaliation for the concerted activity is unsupported. We conclude that there is insufficient evidence to establish a violation involving Gonzalo Chavez, Manuel Jasso, Jesus Oropezda, or any of the employees who received disciplinary slips on February 12, but were not identified at the hearing. The allegations of the complaint are hereby dismissed insofar as they involve the aforesaid employees.

Respondent has excepted to the ALO's finding that it disciplined Juanita Santoyo because of her participation in the crew's concerted activity on February 7, and her conversation about the United Farm Workers of America, AFL-CIO (UFW) on February 12, and his conclusion that such action constituted a violation of section 1153(c) and (a) of the Act. We find no

merit to this exception.

The record supports a finding that the employees were engaged in a concerted activity protected by section 1152 of the Act when they sought a meeting with Giumarra regarding their grievance. Under the circumstances of this case, the employees' concerted refusal to work, as a manifestation of their concern over wages, was clearly a protected activity. Air Surrey (1977) 229 NLRB 1064 [95 LRRM 1212]; Resetar Farms (Feb. 24, 1977) 3 ALRB No. 18; Tenneco West, Inc. (Sept. 13, 1980) 6 ALRB No. 53.

The evidence supports the ALO's finding that Santoyo was disciplined because of her leadership of the February 7 work stoppage and her conversation of February 12 about the union. Al Giumarra testified that Santoyo's work was "passable" and had not deteriorated prior to her receiving the disciplinary slip. In the five years of her employment with Respondent, Santoyo had received no warning slips prior to February 12. The disciplinary slip Santoyo received on February 12 was issued immediately following her conversation with other employees, in which McGill overheard references by her to "Chavez" and "strike." This occurred on the first working day after Santoyo led and spoke for the entire crew in their concerted action. We find the above evidence sufficient to establish that Santoyo's participation in the concerted activity in refusing to work and her subsequent on-the-job conversation about the union motivated Respondent to issue the disciplinary slip to her. C & I Conditioning, Inc. (1971) 193 NLRB 911 (enforcement denied on other grounds) 486 F.2d 977 [34 LRRM 2625]; Charles McLauley Assoc. (1980) 248 NLRB

47 [103 LRRM 1439]; W. T. Grant (1974) 210 NLRB 622 [85 LRRM 1374]. Therefore, we conclude that Respondent violated section 1153(c) and (a) of the Act by disciplining Santoyo for engaging in union activity and protected concerted activities.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Giumarra Vineyards, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Disciplining or discriminating against any agricultural employee for participating in a concerted work stoppage, or any union activity or protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of rights guaranteed in section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Remove from the personnel file of Juanita Santoyo the disciplinary slip issued to her on or about February 12, 1980, and any other record thereof.

(b) Sign the attached Notice to Employees and, after its translation by the Regional Director into appropriate languages, reproduce sufficient copies thereof in each language for the purposes set forth hereinafter.

(c) Post copies of the attached Notice to Employees at conspicuous locations on its premises for a period of 60 days,

the time(s) and place(s) of the posting to be determined by the Regional Director. Respondent shall exercise due care to replace any posted Notice which has been altered, defaced, covered, or removed.

(d) Mail copies of the attached Notice to Employees in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed at any time during the period from June 18, 1979, through the date of issuance of this Order.

(e) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice to Employees in appropriate languages to the assembled employees of Respondent on company time. The reading(s) shall be at such time(s) and place(s) as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly employees to compensate them for time lost 'at this reading and the question-and-answer period.

(f) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him/her periodically thereafter

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in writing what further steps have been taken in compliance with  
this Order.

Dated: April 3, 1951

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN L. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board found that we interfered with the right of one of our employees to discuss and attempt to change working conditions. The Board has told us to send out and post this Notice. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives you and all California farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL NOT restrain, interfere with, or coerce you in the exercise of your right to act together with other workers to help or protect one another.

SPECIFICALLY, the Board found that it was unlawful for us to discipline Juanita Santoyo for participating with other employees in a concerted protest about wages and working conditions and speaking of the Union to the other crew members.

WE WILL NOT hereafter discipline any employee for engaging in such union or concerted activity.

WE WILL remove from our personnel files and records any mention of the disciplinary slip we issued on February 12, 1980, to Juanita Santoyo.

Dated:

GIUMARRA VINEYARDS

By:

\_\_\_\_\_ (Title)

(Representative)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.



## CASE SUMMARY

Giumarra Vineyards, Inc.

7 ALRB No, 7  
Case No. 80-CE-12-D  
80-CE-16-D

### ALO DECISION

The ALO concluded that Respondent violated section 1153(a) of the Act by issuing disciplinary slips to Gonzalo Chavez, Manual Jasso, Jesus Oropezda, Juanita Santoyo, and other members of the Piano Padillo crew who were not identified by name in the record. Respondent claimed that it disciplined these employees for their unsatisfactory work performance. The ALO, relying on the fact that the entire crew did not receive disciplinary slips, found a pattern of issuing disciplinary slips only to those employees who were the identified leaders of the concerted work stoppage on February 7 and 11, 1980.

The ALO also concluded that Respondent did not violate section 1153(a) of the Act by refusing to meet with the crew on February 7, 1980. The ALO found that Superintendent Al Giumarra was not unreasonable in refusing to meet with the crew in light of his injury, and that the subsequent walkout by the crew was voluntary.

### BOARD DECISION

The Board affirmed the ALO's conclusion that Respondent discriminatorily issued a disciplinary slip to Juanita Santoyo. The Board found that Respondent issued the disciplinary slip to Santoyo because of her participation in the concerted work stoppage and subsequent on-the-job conversation about the union. The Board overturned the ALO's conclusion that the disciplinary slips issued to the remaining crew members were in violation of section 1153(a). The Board concluded that there was insufficient evidence in the record as to which employees received disciplinary slips and what their roles in the concerted activities were. Without additional evidence, the contention that Respondent issued disciplinary slips only to the leaders in retaliation for the concerted activity is unsupported.

The Board also affirmed the ALO's conclusion that Respondent did not violate section 1153(a) of the Act by refusing to meet with the Padillo crew on February 7, 1980.

### REMEDIAL ORDER

The Board issued a cease-and-desist order, and ordered the reading, posting, distribution, and mailing of a Notice to Agricultural Employees. The Board also ordered Respondent to remove from the personnel file of Juanita Santoyo the disciplinary slip issued to her on February 12, 1980, and any other record thereof.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA  
BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
GIUMARRA VINEYARDS, INC.,	)	Case Nos. 30-CF-12-D
	)	SO-CE-16-D
Respondent,	)	
	)	
and	)	<u>DECISION</u>
	)	
PEDRO VERA, MANUEL B. JASSO	)	
and JUANITA SANTOYO,	)	
	)	
Charging Parties.	)	
_____	)	

APPEARANCES

Richardo Ornalas of Fresno, California for the General Counsel; Marian Quensenbery, Esq., Dresslar, Stoll, Quensenbery, Laws & Barsamian, Newport Beach, California, for the Respondent.

STATEMENT OF THE CASE

STUART P. HERMAN, Administrative Law Officer: This matter was tried before this Administrative Law Officer in Delano, California on June 18, 1980. Charge No. 30-CE-12-D was filed by Pedro Vera and Manuel Jasso on February 3, 1980; Charge No. 80-CE-16-D was filed by Juanita Santoyo on February 15, 1980. The charges were consolidated by Order of the Regional Director on April 25, 1980 and a Complaint was issued on that date. Said Complaint alleges, inter alia, that Giumarra Vineyards, Inc. (hereinafter referred to as "Respondent") violated Sections 1153(a) and 1153 (c) of the Agricultural Labor Relations Act (hereinafter referred to as "Act").

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All parties were given full opportunity to participate in the hearing. Respondent and General Counsel filed post hearing briefs in support of their respective positions.

Upon the entire record, including my observations of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. Jurisdiction

Respondent is a company engaged in agricultural operation in Kern and Tulare Counties, California. It is an agricultural employer within the meaning of Section 1140.4 (c) of the Act.

At all times material hereto, Charging Parties were agricultural employees within the meaning of Section 1140.4(c) of the Act.

##### II. The Alleged Unfair Labor Practices

The Complaint alleges that Respondent violated Sections 1153(c) and 1153 (a) by laying off a crew of its employees from February 7 until February 11, 1980, because the crew had engaged in concerted activity to obtain higher wages and thereafter on February 12, 1980, by threatening and reprimanding employees because of their concerted activities and their support for the United Farm Workers Union.

Respondent denies that it committed the alleged unfair labor practices.

##### III. The Facts

###### A. Alleged Retaliatory Layoffs

During early February 1980, a crew under the direction of Supervisor Piano Padillo had been tying and pruning Thompson seedless grapevines for Respondent. The standard practice was for

the crew to prune in the morning and tie in the afternoon, when it is warmer. The workers also feel they can make more money pruning than tying. Giumarra's workers are not covered under a collective bargaining agreement.

On Thursday morning, February 7, 1930, the crew of approximately 30-35 people began pruning in the Ducor area, about 13 miles from Porterville. Shortly after starting work, they were told by Supervisor Larry McGill to report to Ranch 15 where the crew had been tying the previous afternoon. Once at Ranch 15, the crew was informed that Alfred Giumarra, the area supervisor and part owner of Respondent, was dissatisfied with their work and that it would have to be redone before the crew could return to pruning.

Crew members led by Juanita Santoyo, who is bi-lingual, insisted on talking to Alfred Giumarra about what they would be paid before redoing the work. Santoyo testified that the crew told both Padillo and McGill that they wanted to talk to Giumarra before starting work.

McGill left the job site to telephone Giumarra and, upon his return, he informed the crew that they could do the tying work but that Giumarra could not meet with them that morning. There is substantial dispute about what else was said. Gonzoio Chavez, a crew member and General Counsel witness, testified that McGill said if the crew "didn't start there for us to come home and return on Monday." (TR., page 73). Ms. Santoyo testified McGill told the crew "if you don't want to go to work, do the job that we're telling you to do, go home and for punishment, it's three days, and don't come back until Monday." (TR., page 18).

Alfrad Giumarra testified that he was at home that morning in severe pain because of a shoulder ailment which forced him to have surgery two weeks later. He testified that he told McGill on the phone to tell the crew they could either work or "do whatever they want to do" but he could not meet with them that morning. McGill testified that he so informed the crew. Padillo did not testify at the hearing nor did any other crew members, including Pedro Vera or Manuel Jasso, the two charging parties. None of the crew went to work that day.

Giumarra further testified that he spoke to Padillo that evening and found out the nature of the grievance. He told Padillo to inform the crew that he would meet with them Monday morning, which he did. After a lengthy discussion on Monday, February 11, a procedure was agreed to whereby pruning would continue to be done in the morning. Giumarra then told the crew, according to Chavez, to "talk among ourselves that if we wanted to start working that day, or whatever other day, the job was there." (TR., page 74). The crew decided to not work on Monday, but did return to its regular work pattern on Tuesday, February 12. No testimony was offered or claim made by the General Counsel that Giumarra obtained other workers to do the pruning and tying work between Thursday and Tuesday.

### 3. The Alleged Retaliatory Disciplinary Slips

During the afternoon of February 12, 1930, the first day back to work, Ms. Santoyo was tying a row of vines in conjunction with her husband and in the same work area with four other crew members. The group, while working, was engaging in a discussion in Spanish about the Union during which Ms. Santoyo used words

like "huelga" and "Chavez". McGill, who was standing nearby, then approached Ms. Santoyo and reprimanded her for doing a poor job of tying. The next morning, McGill gave her a warning notice for poor work performance which she refused to sign and, in fact, cursed at McGill. Under Giumarra's practice, after three written warnings, an employee is terminated. This, however, was the first warning ever received by Ms. Santoyo.

Also on the day the crew returned to work, Al Giumarra gave disciplinary warning slips to Pedro Vera, Manuel Jasso, Jesus Oropeza, Gonzalo Chavez and several other members of the crew. The slips were for alleged poor work performance particularly with regard to the tying on the afternoon of February 6.

In his testimony, McGill, who does not speak Spanish, admitted that prior to reprimanding Santoyo, he heard Santoyo and her work group "jabber, jabber", saying "something like you'd hear you know like 'huelga'". (TR., pages 126-127). McGill claimed the warning was for poor work performance, but when asked why he also did not write up Mr. Santoyo, McGill replied because "he didn't cuss me". However, he also testified that he had written the warning notice before being cussed at by Ms. Santoyo.

Alfred Giumarra testified that he had been dissatisfied with the tying work of this crew for several days, that it was a cumulative thing and that after the work on February 5, he decided that some action had to be taken. He therefore decided to give the warning notices on the next day the crew worked, i.e., the 12th. Although neither party listed all the persons given the written warnings, it was not disputed that Vera, Jasso, Oroceza and Chavez were among them. It was also not disputed that they

had been outspoken in the Monday morning negotiations with Alfred Giumarra.

Additionally, Gonzale Chavez testified without rebuttal that on the afternoon of February 6, he, Oropeza, Jasso and a fourth member of the crew did not work but went to another job site to check on work they had done previously because of a pay dispute.

#### ANALYSIS AND CONCLUSIONS

##### I. The Layoff

It is concluded that Alfred Giumarra's refusal to meet with crew members until Monday, February 11 did not violate Sections 1153 (a) or (c).

It is undisputed that the crew was given the opportunity to do the work that Giumarra Vineyards wanted done on February 7, 1980. It is also undisputed that the crew members chose not to work until they had the opportunity to discuss terms and conditions of their employment with Alfred Giumarra. The fact that Mr. Giumarra would not meet with the crew until February 11, 1980 was not unreasonable and I cannot conclude that this refusal constitutes an interference with, restraint or coercion of his work crew in violation of Section 1153(a) in the exercise of their rights guaranteed under Section 1152.

As the United States Supreme Court observed in American Shipbuilding v. NLRB, 380 U.S. 300 (1965), the right to bargain collectively does not entail any "right" to insist on one's position free from economic disadvantage nor to determine the timing and duration of all work stoppages.

On Monday, February 11, Alfred Giumarra met with the crew and worked out a settlement satisfactory to all. The crew members were given the option to return to work immediately, which they chose to decline at that time. I cannot conclude that the Act requires employers to meet with employees upon demand while at the same time workers may withhold labor whenever they wish. The General Counsel has failed to make a showing that the refusal to meet until Monday, February 11 constituted an unlawful employment practice.

## II. The Warning Notices

It is concluded that the issuance of disciplinary warning slips on February 12, 1980 violated Section 1153 (a) and 1153(c) of the Act.<sup>1/</sup>

As to Ms. Santoyo's warning notice, it is undisputed that she was the spokesperson for the crew during the dispute and it is also undisputed that McGill approached her immediately after hearing the word "huelga" in her conversation with other workers.

McGill's lack of credible explanation for why, if the tying work was being done improperly, he only reprimanded Ms. Santoyo and not her husband, who was working with her, leads to

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<sup>1/</sup> At the hearing, the Complaint was amended to specifically include Gonzalo Chavez and delete Pedro Vera. However, the Complaint alleges the reprimands were given on February 12 to "other employees" beside Juanita Santoyo and Gonzalo Chavez. I conclude that Respondent had sufficient notice of the alleged wrongful conduct that a remedy is warranted for all members of the crew given such warning notices.



the conclusion that the warning notice was given to discourage interest in the Union and to coerce a leader of the concerted action of the previous days.

Similarly, with regard to the warning notices given to Chavez, Jasso, Oropeza, Vera and the several other crew members, Alfred Giumarra neither gave the entire 30-35 person crew warnings nor attempted to determine which individuals were performing unsatisfactorily. It is undisputed that the tying work of February 6 upset Giumarra, yet it is also undisputed that warning notices were given to at least three individuals who were not aver, working on the afternoon of the 6th. The only pattern the warning notices seem to follow is they were given to identified leaders of the dispute of the previous days to punish and coerce them for their roles during the concerted activity.

I therefore conclude that the disciplinary warning notices violated Sections 1.153 (a) and (c).

#### REMEDY

Having found that Respondent did not violate the Act with regard to the layoff as alleged in Charge No. 80-CE-12-D, I recommend that that portion of the Complaint be dismissed.

With respect to the retaliatory warning notices to employees in violation of Sections 1153 (a) and (c), I recommend, that the Board require management to cease and desist from such conduct and take the affirmative action specified in the proposed order.

Upon the basis of the entire record, the Findings of Fact, and the Conclusions of Law and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders Respondent, Giumarra Vineyards, Inc., its owners, agents, successors and assigns, to:

1. Cease and desist from:

(a) Disciplining employees because of their union actions or other concerted activities for the purpose of mutual aid or protection;

(b) In any like or related manner interfering with, restraining or coercing agricultural employees in the exercise of those rights guaranteed by Labor Code Section 1152.

2. Take the following affirmative actions which are necessary to effectuate the purpose of the Act:

(a) Revoke the disciplinary warning slips given to Juanita Santoyo, Gonzalo Chavez and other employees on the Piano Padillo crew on February 12, 1980;

(b) Execute the Notice to Employees attached hereto upon its translation by a Board agent into Spanish; Respondent shall reproduce sufficient copies in English and Spanish for the purposes set forth hereafter;

(c) Mail copies of the attached notice in English and Spanish within 20 days from receipt of this Order to all employees assigned to Piano Padillo's crew on February 12, 1980;

(d) Post copies of the attached notice at times and places to be determined by the Regional Director. Such notices shall remain posted for a period of 90 days ;

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(e) Notify the Regional Director in writing within 30 days from the day of the receipt of this Order, what steps have been taken to comply with it;

(f) It is further ORDERED that all allegations contained in the Complaint and not found herein to be in violation of the Act are hereby dismissed.

DATED:

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STUART P. HERMAN  
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and we tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another; and
5. To decide not to do any of these things.

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do or stops you from doing, any of the things listed above

Especially:

WE WILL revoke the disciplinary warning notices given to Juanita Santoyo, Gonzalo Chavez and other employees on the Piano Padillo crew on February 12, 1980.

WE WILL NOT discipline or retaliate against employees because of your union activities or other concerted activities for the purpose of mutual aid or protection.

DATED:

GIUMARRA VINEYARDS, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE