

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACOB DIEPERSLOOT,)	Case No.	2015-CE-027-VIS
INDIVIDUAL, AND dba JD)		
FARMS; JACOBO D. FARMS; JD)		
FARMS MANAGEMENT, INC.,)		
)		
Respondent,)		
)		
and,)		
)		
ANTONIO RENTERIA,)	44 ALRB No. 12	
)		
Charging Party.)	(November 16, 2018)	
)		

DECISION AND ORDER

On June 28, 2018, administrative law judge John J. McCarrick (the “ALJ”) issued the attached decision granting the Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relations Board (the “ALRB” or “Board”) against respondent Jacob Diepersloot, individually, and dba JD Farms; Jacobo D. Farms; JD Farms Management, Inc. (collectively, “Respondent”). The First Amended Complaint alleged that Respondent violated the Act by threatening, terminating and refusing to rehire charging party Antonio Renteria (“Renteria”) after he engaged in activity protected by the Agricultural Labor Relations Act (“ALRA” or “Act”). Respondent did not file a timely answer to the First Amended Complaint. Accordingly, the ALJ ordered that Renteria be reinstated with backpay for lost wages, and also ordered that Respondent

cease and desist from engaging in the unlawful conduct, along with notice posting, mailing and reading remedies. Respondent filed timely exceptions to the ALJ's decision.

The Board has considered the record and the ALJ's decision in light of the exceptions and briefs filed by the parties. The Board affirms the ALJ's decision for the reasons set forth below.

BACKGROUND

Renteria filed an unfair labor practice charge on July 21, 2015, alleging that Respondent, through its agent JSV Farm Labor, Inc. ("JSV"), violated the Act by discharging Renteria for reporting to JSV a safety incident that occurred at Respondent's farm. The General Counsel served the charge on Diepersloot at 41208 Rd. 32, Kingsburg, CA 93631. This is the address listed on a June 2015 wage statement issued to Renteria by JSV. (See Lab. Code, § 226, subd. (a)(8).) On August 7, 2017, the General Counsel issued a complaint on the unfair labor practice charge and served it on Respondent at that same address provided on the wage statement.¹ With service of the complaint on Respondent, the General Counsel included information pertaining to the filing of an answer to the complaint. Respondent never answered this complaint.

On February 22, 2018, the General Counsel issued the First Amended Complaint alleging that Respondent violated the Act by threatening, terminating and

¹ The General Counsel originally issued the complaint on June 30 and served it on an attorney, Anthony Raimondo. Raimondo does not represent Respondent. Upon realizing its mistake, the General Counsel re-issued the complaint on August 7, serving it on Respondent.

refusing to rehire Renteria after he engaged in protected conduct. The First Amended Complaint was served on Respondent at multiple addresses, including the address stated above, a 40101 Road 28 address in Kingsburg, and at an address of 38541 Ward Drive, also in Kingsburg.²

On March 7, 2018, the period for filing an answer to the First Amended Complaint expired. On March 26, the General Counsel filed a Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment (“motion”). On April 6, Respondent filed an opposition to the General Counsel’s motion and simultaneously filed an answer to the First Amended Complaint, as well as a declaration from Jacob Diepersloot. In the declaration, Diepersloot states that he learned of Renteria’s July 21, 2015 unfair labor practice charge “during the summer of 2015.”³ He also admits receiving the General Counsel’s First Amended Complaint. After first

² The First Amended Complaint identifies JD Farms Management, Inc. as a party-respondent. The First Amended Complaint alleges Jacob Diepersloot filed Articles of Incorporation with the state on or about January 26, 2017, for this named corporation. The Articles of Incorporation available on the Secretary of State’s business search website confirm a filing date of January 26, 2017, and identify Diepersloot as the agent for service of process at the Ward Drive address identified above. This information is reiterated in a Statement of Information filed with the Secretary of State on February 8, 2017. A Statement of Information filed with the Secretary of State on April 13, 2018, lists Diepersloot as the agent for service of process at the 40101 Road 28 address. We take administrative notice of these official records of the Secretary of State. (Evid. Code, § 452, subd. (c); *Pedus Building Services v. Allen* (2002) 96 Cal.App.4th 152, 156, fn. 2; *California Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 344, fn. 7, citing *People v. Haugh* (1963) 216 Cal.App.2d 603, 606.)

³ Diepersloot provides no information detailing how he learned of the charge. We note that the General Counsel served the unfair labor practice charge on Diepersloot at his 41208 Road 32 address.

learning about the charge in 2015, he states that he “contacted [JSV], to inquire about the matter,” and “was informed by JSV, that JSV and their attorneys would be handling the matter on [his] behalf.” After receiving the First Amended Complaint, he states that he “contacted JSV, and was again told that JSV and their attorneys, were handling this matter on [his] behalf.” Diepersloot maintains that he retained counsel after receiving the General Counsel’s motion.⁴

In a subsequent declaration filed in response to a motion by the General Counsel for leave to respond to Respondent’s opposition to the motion to deem the First Amended Complaint allegations true and for default judgment, Diepersloot provides additional details concerning the averments of his April 6 declaration. Specifically, he identifies Santos Villalobos, owner of JSV, as the individual whom he contacted after learning of the charge in 2015 and after receiving the First Amended Complaint in February 2018. He additionally describes a third inquiry he made to JSV in the “fall of 2017,” in which he contacted Mr. Villalobos’ daughter “to reaffirm that JSV and their attorneys were still handling this matter” and that she “confirmed that JSV and their attorneys were still handling everything.”

⁴ Diepersloot states that he received the General Counsel’s motion on April 3, 2018. He further states that on that same day he “also obtained a number of unopened letters that had been sent to [his] former address (41208 Road 32),” including the original Complaint issued by the General Counsel. While he alleges that he has “not resided or received mail” at that address since 2013, it is unclear from his declaration how he “obtained” these “unopened letters” that had been delivered to the 41208 Road 32 address. In any event, these ambiguous assertions are immaterial at this stage as he admits receiving service of the General Counsel’s First Amended Complaint, the operative pleading here.

DISCUSSION

It is undisputed Respondent received service of the First Amended Complaint in February 2018. It also is undisputed that Respondent did not file an answer to the First Amended Complaint within the required time limits set forth in ALRB Regulation section 20230.

ALRB Regulation section 20232 provides that any allegation not denied in an answer shall be admitted. Since the ALRA itself does not define the circumstances under which it is appropriate for the Board to grant relief from default, we have looked to the precedents of the California courts and the National Labor Relations Board for guidance. Thus, the Board has looked to the standard set forth in Code of Civil Procedure section 473. (*All Star Seed Co.* (2003) 29 ALRB No. 2, p. 3.) The pertinent portion of that provision is found in subdivision (b), which states:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

Under this statute, a party seeking relief from a default judgment based on an alleged mistake, like Respondent here, “must show good cause for that relief by proving the existence of a satisfactory excuse for the occurrence of that mistake.” (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1440, internal quotations omitted.) Our precedent similarly assesses whether a party has established good cause to support granting relief. (*Azteca Farms Inc.* (1992) 18 ALRB No. 15, at ALJ Dec. p. 7; *Lu-Ette Farms, Inc.* (1985) 11 ALRB No. 4, p. 1, fn. 2 and at ALJ Dec. p. 5; *John Gardoni*

(1982) 8 ALRB No. 62, p. 2.) When there is no good cause to excuse a party's failure to file a timely answer, a motion to deem the allegations in the complaint admitted and for default judgment should be granted. (*Azteca Farms, Inc., supra*, 18 ALRB No. 15, at ALJ Dec. p. 7; *Lu-Ette Farms, Inc., supra*, 11 ALRB No. 4, at ALJ Dec. p. 7 ["Before the Board will accept a late answer, the respondent must establish good cause for its failure to abide the time limits established in section 20230"], citing *John Garibaldi, supra*, 8 ALRB No. 62, p. 2.)

The Board takes care to favor, wherever possible, a hearing on the merits. (*Allstar Seed Co., supra*, 20 ALRB No. 2, p. 4, citing *Weitz v. Yankosky* (1966) 63 Cal. 23 849, 854.) However, "[i]gnorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief." (*Allstar Seed Co., supra*, 20 ALRB No. 2, p. 4, quoting *Robbins v. Los Angeles Unified School District*. (1992) 3 Cal.App.4th 313, 319; *A & S Air Conditioning v. John J. Moore Co.* (1960) 184 Cal.App.2d 617, 620.)

In its exceptions, Respondent contends, primarily, that its mistake in believing that JSV would be litigating the administrative process on Respondent's behalf combined with its mistake in believing that JSV was the employer in the matter excuses the untimely filing of its answer. We disagree, and find that the ALJ properly determined that Respondent did not act reasonably in assessing whether JSV was litigating the matter on Respondent's behalf from the time of the filing of the charge in 2015 to when Respondent received the General Counsel's motion, and that good cause thus does not exist to excuse Respondent's failure to file a timely answer.

With service of the First Amended Complaint, the General Counsel included information pertaining to the filing of an answer. The information included with the First Amended Complaint clearly notified respondent that failure to respond could result in the allegations of the complaint being deemed admitted.

Respondent knew, or should have known, that it, not JSV, was named in the First Amended Complaint. The caption plainly identifies Respondent. Paragraph 7 of the First Amended Complaint further alleges that Respondent “was an agricultural employer, as defined in California Labor Code section 1140.4(c).” That section expressly defines the term “agricultural employer” to include any person or employer engaging a farm labor contractor, and makes clear that that person or entity — and not the farm labor contractor — is deemed to be the employer for all purposes under the ALRA. (Lab. Code, § 1140.4, subd. (c).) Accordingly, to the extent Respondent argues that its mistaken belief that JSV, and not Respondent, was liable for the alleged unfair labor practices and that this factor weighs toward a finding of good cause, Respondent’s contention lacks merit. The ALJ correctly relied on *Allstar Seed Co.*, *supra*, 29 ALRB No. 2 in concluding that Respondent’s alleged ignorance of the law and negligence in ascertaining it is insufficient to support a finding of good cause. (*Allstar Seed*, *supra*, 29 ALRB No. 2, p. 4 [respondent’s untimely filed answer due to its incorrect assumption that the National Labor Relations Board had jurisdiction over the matter and its lack of inquiry into the proper administrative forum precluded a finding of good cause to excuse respondent’s untimely answer]; *Robbins*, *supra*, 3 Cal.App.4th at p. 319.)

We also find Respondent's factual averments that it simply did nothing based on JSV's representations to it that it was handling the case insufficient to establish good cause entitling it to relief. There is nothing in the record memorializing any agreement between Respondent and JSV regarding JSV representing Respondent in this matter. It appears from Diepersloot's assertions that he simply accepted, without question or further inquiry, JSV's alleged statements it was handling the case. Moreover, as the ALJ found, there is an absence of evidence that Respondent adequately monitored the case, and JSV's alleged handling of it, from the time Respondent first learned of the charge upon its filing in 2015 until it received the General Counsel's motion for default judgment in 2018. The only time Respondent allegedly contacted JSV between the time it first learned of the charge and when it received the First Amended Complaint was in "the fall of 2017."⁵ It was not reasonable for Respondent to have simply taken JSV's affirmation that it was handling the matter without any additional validation, especially considering Respondent had notice of the consequences of not filing an answer. We additionally note that while the First Amended Complaint was served on Respondent at multiple addresses, JSV is included nowhere on the proof of service. This should have

⁵ Diepersloot's April 6, 2018 declaration does not mention this interaction, and instead avers that he "did not inquire further into this matter" after first communicating with JSV in 2015 until he received the First Amended Complaint in 2018. It is unclear from Diepersloot's April 23, 2018 declaration what prompted him to initiate this contact in 2017, but it does suggest, if true, that he was aware the case was still pending at that time over two years after he first learned of it. According to his declaration, other than "reaffirming" JSV was handling the case, Diepersloot made no substantive inquiry about the status of the matter, any filings or documents related to it, or what exactly JSV was doing to protect his interests. Nor does it appear at any time that Respondent inquired of JSV who were the attorneys allegedly handling the case.

alerted Respondent to the fact JSV or any attorneys representing JSV were not involved in the case. Moreover, nothing prevented Respondent from communicating with the General Counsel to ask whether it needed to file an answer itself or ask whether JSV had been performing any representational duties. Accordingly, we agree with the ALJ that, in these circumstances, “a prudent and reasonable person would have inquired of JSV what it and its attorneys were doing to represent Respondent’s interests to insure a timely answer was filed.” (See *Couser v. Couser* (1954) 125 Cal.App.2d 475, 477 [party’s failure to retain counsel does not compel an order granting relief]; *Price v. Hibbs* (1964) 225 Cal.App.2d 209, 215 [it is the party’s duty “to take timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment”]; see also *Patrician Assisted Living Facility* (2003) 339 NLRB 1153, 1153-1154 [“merely being unrepresented by counsel does not establish a good cause explanation for failing to file a timely answer”].)

Respondent asserts that the ALJ erred by not relying on standards set forth in *Livingston Powdered Metal v. NLRB* (3rd Cir. 1982) 669 F.2d 133 (*Livingston*) for its contentions that: 1) the ALJ should have weighed the lack of delay in the proceedings had the untimely answer been accepted; and 2) the ALJ should have taken into account Respondent’s inexperience with the ALRB administrative process as part of its determination of good cause.

The ALJ did not err by not relying on *Livingston* in finding that Respondent failed to establish good cause. The ALJ correctly recognized that the Board in *All Star Seed Co.*, *supra*, 29 ALRB No. 2, pp. 3-4 determined that Code of Civil Procedure

section 473, and not federal law, applied in the context of whether a party has established a basis for relief from a default judgment. We additionally find the National Labor Relations Board's rejection of *Livingston* and adherence to a "good cause" standard developed under its precedent more consistent with our own precedent on this issue. (*Rick's Painting & Drywall* (2003) 338 NLRB 1091.)⁶

Further, we reject Respondent's contention that the ALJ was required to consider Respondent's alleged unfamiliarity with ALRB proceedings in determining whether good cause existed to excuse its failure to timely answer the First Amended Complaint. As set forth above, service of the First Amended Complaint was accompanied by information concerning the filing of an answer. Respondent's lack of diligence in protecting its interests and failure to retain counsel more expeditiously weigh against a finding of good cause.

We emphasize that we do not take lightly a decision to deny relief from default judgment. However, doing otherwise under these circumstances runs the risk of having no standards. (*All Star Seed Co., supra*, 29 ALRB No. 2, p. 7.) Hence, for the foregoing reasons, we affirm the ALJ's granting of the General Counsel's Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment and thus find that Respondent violated section 1153, subdivision (a) of the Act by threatening, terminating and by refusing to rehire Renteria after he engaged in conduct protected under the Act. Additionally, we affirm the ALJ's recommended order.

⁶ See also Lab. Code, § 1148; *Arnaudo Brothers, L.P. v. ALRB* (2018) 22 Cal.App.5th 1213, 1226 [under Labor Code section 1148, the Board may look to precedent of "the United States Supreme Court, federal appellate courts or the National Labor Relations Board"].

ORDER

Pursuant to Labor Code section 1160.3, Respondent Jacob Diepersloot, individually, and dba JD Farms, Jacobo D. Farms and JD Farms Management, Inc., its agents and officers, successors and assigns shall:

1. Cease and desist from:
 - a. Unlawfully threatening its agricultural employees with bodily harm for engaging in protected concerted activity under section 1152 of the Act;
 - b. Unlawfully discharging its agricultural employees because they have engaged in activity protected by section 1152 of the Act;
and
 - c. In any like or related manner interfering with, restraining or coercing its agricultural employees in the exercise of their rights guaranteed by section 1152 of the Act.
2. Take the following affirmative steps which are found necessary to effectuate the purposes of the Act:
 - a. Offer Antonio Renteria immediate reinstatement to his former or substantially equivalent employment without prejudice to his seniority or other rights and privileges of employment;
 - b. Make Antonio Renteria whole for all wages and economic losses he has suffered since on or about June 13, 2015, as a result of his discharge. Loss of pay or other economic losses are to be

determined in accordance with established Board precedent.

Such amounts shall include interest to be determined in the matter set forth in *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and excess tax liability to be computed in accordance with *Tortillas Don Chavas* (2014) 361 NLRB No. 10, minus tax withholdings required by federal and state laws.

Compensation shall be issued to Renteria and sent to the Region, which will thereafter disburse payment to Renteria;

- c. Preserve and, upon request, make available to the Board or its agents for examination and copying, all records relevant and necessary to a determination by the Regional Director of the backpay amounts due under the terms of this Order. Upon request of the Regional Director, the records shall be provided in electronic form if they are customarily maintained in that form;
- d. Sign the attached Notice to Employees and, after its translation by a Board agent(s) into all appropriate languages, as determined by the Regional Director, reproduce sufficient copies in each language for all purposes set forth in this Order;
- e. Upon request, provide the Regional Director with the dates of its next peak season. Should the peak season have already begun at the time the Regional Director request peak season dates, Respondent will inform the Regional Director of when the

present peak season began and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season;

- f. Mail copies of the Notice, in all appropriate languages, within 30 days after the date of this Order becomes final, or when directed by the Regional Director, to all agricultural employees employed by Respondent at any time during the period from June 13, 2015 until June 13, 2016;
- g. Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for a 60 day period, the period and place(s) of posting to be determined by the Regional Director, and exercise care to replace any Notice which may be altered, defaced, covered or removed. Pursuant to the authority granted under Labor Code section 1151, subdivision (a), give agents of the Board access to its premises to confirm the posting of the Notice;
- h. Arrange for a representative of Respondent or a Board agent(s) to distribute and read the Notice in all appropriate languages to all of Respondents' agricultural employees on company time and property time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent(s) shall be given the opportunity, outside the presence of supervisors and

management, to answer any questions the 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 non-hourly wage employees in order to compensate them for time lost at the reading and during the question and answer period;

- i. Provide a copy of the attached Notice to each agricultural employee hire to work for Respondent during the one-year period following the date this Order becomes final and;
- j. Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondent has taken to comply with its terms. Upon request of the Regional Director, notify them periodically thereafter in writing of further steps taken until full compliance with the Order is achieved.

DATED: November 16, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Visalia Regional Office of the Agricultural Labor Relations Board (“ALRB”), the General Counsel of the ALRB issued a complaint that we had violated the law. Because we did not contest such charges by timely filing an answer to the complaint, the ALRB deemed the allegations to be true and found that we violated the Agricultural Labor Relations Act (“ALRA”) by threatening and discharging an employee for complaining about the terms and conditions of his employment.

The ALRB has told us to post and publish this Notice.

The Agricultural Labor Relations Act is a law that gives you and all other farmworkers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 ALRB;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT threaten employees with bodily harm because they engage in protected concerted activity.

WE WILL NOT discharge employees who engage in protected concerted activity.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees from exercising their rights under the ALRA.

WE WILL offer to Antonio Renteria reinstatement to his former or substantially equivalent position of employment and make him whole for all loss of pay or other economic loss he has suffered as a result of our unlawful conduct.

Dated: _____

Jacob Diepersloot, individually, and dba JD Farms, Jacobo D. Farms and JD Farms Management, Inc.

By: _____
(Name and title of representative)

If you have any questions about your rights as farmworkers or about this Notice, you may contact any office of the ALRB. One office is located at 1642 West Walnut Avenue, Visalia, CA 93277-5348. The telephone number for the Visalia ALRB Regional Office is (559) 627-0995. 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

**JACOB DIEPERSLOOT, INDIVIDUALLY AND
dba JD FARMS, JACOBO D. FARMS; AND
JD FARMS MANAGEMENT, INC.**

44 ALRB No. 12
Case No. 2015-CE-027-VIS

Background

On June 28, 2018, administrative law judge John J. McCarrick (the “ALJ”) issued a decision granting a Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relation’s Board (the “ALRB” or “Board”) against Respondent Jacob Diepersloot, individually, and dba JD Farms; Jacobo D. Farms; JD Farms Management, Inc. (collectively, “Respondent”). A First Amended Complaint alleged that Respondent violated the Act by threatening, terminating and by refusing to rehire charging party Antonio Renteria (“Renteria”) after he engaged in activity protected by the Agricultural Labor Relations Act (“ALRA” or “Act”). Respondent did not file a timely answer to the First Amended Complaint, contending that it mistakenly believed that its agent, JSV Farm Labor, Inc. (“JSV”) was the employer, and that JSV would be “handling” the matter on Respondent’s behalf. In finding that the Respondent did not demonstrate good cause, the ALJ ordered that Renteria be reinstated and awarded backpay for lost wages, along with a cease and desist order and notice posting, mailing and reading remedies.

Board Decision and Order

The Board found that the Respondent failed to establish good cause to excuse the untimely filed answer. Concluding that the ALJ relied on applicable precedent in making its determination, the Board affirmed the ALJ’s decision to grant the General Counsel’s Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment and affirmed the ALJ’s recommended order.

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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2 **STATE OF CALIFORNIA**

3 **AGRICULTURAL LABOR RELATIONS BOARD**
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5
6 JACOB DIEPERSLOOT,
7 INDIVIDUALLY, AND dba JD FARMS;
8 JACOBO D. FARMS; JD FARMS
9 MANAGEMENT, INC.

10 Respondent,

11 and

12
13 ANTONIO RENTERIA,


14
15 Charging party,

Case Nos.: 2015-CE-027-VIS

**DECISION OF ADMINISTRATIVE
LAW JUDGE; ORDER
TRANSFERRING MATTER TO
BOARD**

16 The above-captioned decision is hereby ordered transferred to the Board.
17 (ALRB Reg. § 20280.) The parties are given until Monday July 23, 2018, to file any
18 exceptions to the Decision of the Administrative Law Judge attached and served with
19 this Order. (ALRB Reg. § section 20282, subd. (a).) Reply briefs are due by no later
20 than Monday, August 6, 2018 (ALRB Reg. § 20282, subd. (b).)
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22 Dated: June 28, 2018

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25 _____
26 Santiago Avila-Gomez
27 Executive Secretary
28 Agricultural Labor Relations Board

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACOB DIEPERSLOOT,
INDIVIDUALLY, AND dba JD FARMS;
JACOBO D. FARMS; JD FARMS
MANAGEMENT, INC.

Respondent,

and

ANTONIO RENTERIA,

Charging Party

Case No.: 2015-CE-027-VIS

**[CORRECTED] ORDER GRANTING
GENERAL COUNSEL'S MOTION
FOR DEFAULT JUDGMENT;
ADMITTING ALLEGATIONS OF
THE FIRST AMENDED COMPLAINT;
AND STRIKING RESPONDENT'S
PROPOSED ORDER**

PROCEDURAL HISTORY

On June 30, 2017, the General Counsel issued a complaint in the above captioned case alleging that Jacobo D. Farms, (Respondent) through its agent JSV Farm Labor Inc., (JSV) violated the Act by terminating employee Antonio Renteria (Renteria) for engaging in protected-concerted activity. The complaint was served on Anthony P. Raimondo, Raimondo & Associates, 7080 N. Marks Ave, Suite 117, Fresno CA 93711, on or about June 30, 2017.

When it was discovered that Anthony Raimondo did not represent Respondent but rather JSV, the complaint was served on Jacob Diepersloot (Diepersloot) at 41208 Rd. 32, Kingsburg CA 93631, Respondent's alleged principal place of business, on August 2, 2017 together with information pertaining to the regulatory requirements for filing an answer to the complaint.

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1 On February 22, 2018¹, General Counsel issued a First Amended
2 Complaint alleging that Jacob Diepersloot, individually and doing business as Jacobo D.
3 Farms and JD Farms violated the Act by threatening, terminating and by refusing to
4 rehire Renteria. The First Amended Complaint was served on Respondent at multiple
5 addresses. Respondent admits that it was served with the First Amended Complaint on or
6 about February 25, together with attachments explaining the regulatory requirement for
7 filing an answer.

8 On March 26, the period for filing an answer to the First Amended
9 Complaint having expired on March 7, General Counsel filed a Motion to Deem
10 Allegations in the First Amended Complaint Admitted and Motion for Default
11 Judgement.

12 On April 6, Respondent filed its opposition to General Counsel's Motion
13 together with a proposed answer and the affidavit of Diepersloot. According to
14 Diepersloot's affidavit, after receiving the charge in this case, he was advised by JSV that
15 they and their attorneys would handle the charge. He admitted that since June 2016 he
16 has resided at 40101 Rd. 28 in Kingsburg CA. He further admitted being served with the
17 First Amended Complaint on about February 25. After receiving the First Amended
18 Complaint, Diepersloot avers that he was told by JSV that they or their attorneys would
19 deal with the First Amended Complaint.

20 On April 13, General Counsel filed a Motion to Strike Respondent's
21 Answer.

22 On April 16, General Counsel filed a Motion to Respond to Respondent's
23 Opposition.

24 On April 20, Respondent filed its opposition to General Counsel's latest
25 response. On April 23, Respondent file a further opposition to General Counsel's initial
26

27
28 ¹ All references are to 2018 unless otherwise stated.

1 motion and on April 27, General Counsel moved to strike any new arguments and
2 evidence Respondent had submitted since it filed its initial opposition on April 6.

3 THE POSITIONS OF THE PARTIES

4 From the multitude of motions and oppositions to motions filed herein it
5 can be said that essentially General Counsel contends that Respondent failed to file an
6 answer to the First Amended Complaint within the time limits provided in the regulations
7 and that Respondent has failed to show good cause for why it failed to file a timely
8 answer. Respondent admits it failed to file an answer but argues that it has established
9 good cause for its failure to do so.

10 THE LAW

11 8 C.C.R. section 20232 provides in pertinent part that, "Any allegation not
12 denied (in an answer) shall be deemed admitted." In *Azteca Farms, Inc.*, (1992) 18
13 ALRB No. 15, and *Lu-Ette Farms, Inc.*, (1985) 11 ALRB No. 4, the Board affirmed the
14 ALJs who found no good cause for Respondents' failure to timely file answers and who
15 granted summary judgement on the pleadings.

16 In *All Star Seed Co.*, (2003) 29 ALRB No. 4 the Board found it appropriate
17 to grant a motion for default judgment and applied a reasonable person standard in
18 determining whether to grant relief from a Respondent's default in failing to file a timely
19 answer. The Board noted that California Code of Civil Procedure Section 473 governed
20 relief from default judgments. At page four of its opinion the Board noted that ignorance
21 of the law coupled with negligence in ascertaining the law's requirements will not justify
22 relief from default, citing *Robbins v. Los Angeles Unified School District* (1992) 3 Cal
23 App 4th 313.

24 The National Labor Relations Board (NLRB) has provided guidance in
25 granting motions for summary judgement where no timely answer has been filed. Section
26 102.20 of the NLRB's Rules and Regulations provides that the allegations in the
27 complaint shall be deemed admitted if an answer is not filed within 14 days of the service
28 of the complaint. This provision is similar to 8 C.C.R. section 20232. In *Rick's Painting*

1 & *Drywall*, 338 NLRB 1091 (2003), the Board rejected the holding in *Livingston*
2 *Powdered Metal v. NLRB*, 669 F.2d 133 (3d Cir, 1982) finding that the court misapplied
3 federal appellate court standards for relief from default judgments as applicable to
4 NLRB administrative proceedings and found further that the court's conclusion that the
5 NLRB regulations were deficiently vague in advising litigants of time limits for filing an
6 answer was moot as the NLRB had since amended its regulations to provide greater
7 clarity. In both *Ricks Painting, supra* and in *Patrician Assisted Living*, 339 NLRB 1153
8 (2003), the Board reaffirmed its long standing test that a respondent must show good
9 cause to be relieved of its duty to file a timely answer. In *Rick's Painting, supra at 1092*,
10 the Board dismissed the argument that respondent's pro se status established good cause
11 for its failure to file an answer. The Board noted that the complaint clearly stated that
12 failure to file an answer could result in complaint allegations being deemed admitted. In
13 *Patrician, supra, at 1154*, the NLRB likewise rejected respondent's argument that it was
14 without legal counsel as establishing "good cause." The Board found further that failure
15 to request an extension to file an answer is a factor in determining lack of good cause.
16 The Board also found that a claim to a meritorious defense will not be considered absent
17 a showing of good cause.

18 THE ANALYSIS

19 Respondent argues that the several part test set forth in *Livingston*
20 *Powdered Metal v. NLRB, supra*, should be applied herein. For the reasons set forth in
21 *Rick's Painting, supra at 1092*, application of the *Livingston* test here is inapposite. The
22 NLRB's reasoning provides further ground for distinguishing *Livingston* herein as the
23 ALRB has found in *All Star Seed Co.*, that California Code of Civil Procedure section
24 473 rather than federal law applies to ALRB administrative proceedings. Contrary to
25 Respondent's contention, I am guided by the Board's decisions in *All Star Seed, supra*;
26 *Azteca Farms, Inc., supra*, and *Lu-Ette Farms, Inc., supra* as well as the NLRB decisions
27 in *Ricks Painting, supra* and *Patrician Assisted Living, supra*, where a good cause
28 standard was applied to determine if relief from default was warranted.

1 Here Respondent essentially admits it was served with the original charge
2 herein as well as the First Amended Complaint which advised Respondent of the
3 consequences of failure to file a timely answer. While Diepersloot denies receiving the
4 original complaint, there is no doubt that it was served at his principle place of business.
5 Respondent's good cause for failing to file an answer rests on its contention that it was
6 ignorant of the intricacies of the Act and that its agent JSV represented that it would deal
7 with both the original charge and the complaints.

8 There is an absence of evidence that Respondent adequately monitored its
9 agent JSV's pursuit of Respondent's case from the time the charge was filed in 2015 until
10 March 26, 2018, when General Counsel filed its Motion to Deem Allegation in the First
11 Amended Complaint Admitted and Motion for Default Judgment. There is simply no
12 evidence that Respondent inquired of JSV who was representing its interest or what they
13 were doing in that regard. Given that Respondent was aware that it, not JSV, was
14 accused of committing unfair labor practices in the First Amended Complaint and that it
15 was on notice that failure to file an answer could result in the allegations of the complaint
16 being deemed admitted, a prudent and reasonable person would have inquired of JSV
17 what it and its attorneys were doing to represent Respondent's interests to insure a timely
18 answer was filed. Now Respondent seeks to lay the burden of failing to file an answer at
19 the feet of JSV, who Respondent apparently claims misrepresented it would handle
20 Respondent's case before the ALRB. A perfunctory inquiry by Respondent of JSV's
21 alleged representation would have disclosed there was in fact no representation at all. As
22 the Board has noted in *All Star Seed, supra*, ignorance of the law coupled with negligence
23 in ascertaining the law's requirements is insufficient to establish good cause. Given
24 these facts, I find that Respondent did not act as a reasonable and prudent person would
25 have to protect their interests and therefore has failed to establish good cause for failing
26 to file an answer in a timely fashion as required by 8 C.C.R. sections 20230 and 20232.

27 Having so found, it is unnecessary to rule on General Counsels' further
28 motion to strike new evidence or to reject respondent's additional arguments.

1 Given the voluminous filings, thorough exposition of the law and facts and
2 extensive arguments by both parties concerning the merits of this case, I find no
3 justification for issuance of an order to show-cause why General Counsel's motions
4 should not be granted.

5 Accordingly, IT IS HEREBY ORDERED that General Counsel's Motion
6 for Default Judgement is granted and that the allegations of the First Amended Complaint
7 herein are deemed admitted.

8 IT IS FURTHER ORDERED that Respondent's proposed answer is
9 stricken.

10 Having so found, I find, in accordance with the pleadings:

11 1. On February 22, 2018, the Visalia Regional Director issued a First
12 Amended Complaint against Respondents Jacob Diepersloot, individually, and dba JD
13 Farms, Jacobo D. Farms and JD Farms Management, Inc., (Respondents) and on that
14 same date, a copy was served by certified mail on Respondents, along with a fact sheet
15 advising Respondents of the need to file an answer.

16 2. No answer to the First Amended Complaint was timely filed to date.
17 I, therefore find:

- 18 a. A true and correct copy of the original charge in the above captioned
19 case was filed on July 21, 2015 and served on Respondents on the
20 same date.
 - 21 b. Respondents have at all times been an agricultural employer engaged
22 in agriculture in Kingsburg, California within the meaning of
23 Section 1140.4(a) and (c) of the Agricultural Labor Relations Act
24 (Act).
 - 25 c. Respondents contracted with JSV to provide labor for its farming
26 operations.
 - 27 d. JSV employed Renteria to provide labor for Respondents.
- 28

- 1 e. At all times material Antonio Renteria was an agricultural employee
2 within the meaning of section 1140.4(b) of the Act and was
3 employed by Respondents.
- 4 f. At all times material Balthazar Rodriguez (Rodriguez) was a
5 supervisor for Respondents within the meaning of section 1140.4(j)
6 of the Act with authority to direct the work of agricultural employees
7 and to discipline them.
- 8 g. On about June 12, 2015, an accident occurred at Respondents'
9 farming operation when Rodriguez' tractor ran over an employee's
10 foot. Later that day Renteria reported the accident to JSV.
- 11 h. On June 13, 2015, Rodriguez failed to pick Renteria for work, as had
12 been his practice, causing Renteria to lose a day's work. That
13 afternoon Renteria told Rodriguez that he had reported the
14 employee's accident to JSV and Rodriguez replied that as a result he
15 would no longer provide Renteria with transportation.
- 16 i. That evening at Renteria's house, Rodriguez threatened to kick
17 Renteria's ass and told Renteria he was fired.
- 18 j. About three weeks later at JSV's offices, Edith Villalvazo, JSV's
19 owner, told Renteria he would not be offered any work in the future
20 because he was a problem employee. To date Renteria has received
21 no employment through JSV.
- 22 k. By threatening Renteria on or about June 13, 2015, Respondents
23 violated section 1153(a) of the Act by interfering with, restraining or
24 coercing employees in the exercise of their rights guaranteed in
25 section 1152 of the Act.
- 26 l. By terminating and refusing to consider for future hire Renteria, for
27 engaging in protected-concerted activity in expressing concern for
28 employees' safety, Respondents violated section 1153(a) of the Act.

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1. Cease and desist from:
 - a. Unlawfully threatening its agricultural employees with bodily harm for engaging in protected concerted activity protected under section 1152 of the Act.
 - b. Unlawfully discharging its agricultural employees because they have engaged in activity protected by section 1152 of the Act.
 - c. In any like or related manner interfering with, restraining or coercing its agricultural employees in the exercise of their rights guaranteed by section 1152 of the Act.
2. Take the following affirmative action, necessary to effectuate the policies of the Act:
 - a. Offer Antonio Renteria immediate reinstatement to his former or substantially equivalent employment without prejudice to his seniority or other rights and privileges of employment;
 - b. Make Antonio Renteria whole for all wages and economic losses he has suffered since on or about June 13, 2015, as a result of his discharge. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. Such amounts shall include interest to be determined in the manner set forth in *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and excess tax liability to be computed in accordance with *Tortillas Don Chavas* (2014) 361 NLRB No. 10, minus tax withholdings required by federal and state laws. Compensation shall be issued to Renteria

1 and sent to the Region, which will thereafter disburse payment to
2 Renteria;

3 c. Preserve and, upon request, make available to the Board or its agents
4 for examination and copying, all record relevant and necessary to a
5 determination by the Regional Director of the back pay amounts due
6 under the terms of this Order. Upon request of the Regional
7 Director, the records shall be provided in electronic form if they are
8 customarily maintained in that form;

9 d. Sign the attached Notice to Employees and, after its translation by a
10 Board agent(s) into all appropriate languages, as determined by the
11 Regional Director, reproduce sufficient copies in each language for
12 all purposes set forth in this Order;

13 e. Upon request, provide the Regional Director with the dates of its next
14 peak season. Should the peak season have already begun at the time
15 the Regional Director requests peak season dates, Respondent will
16 inform the Regional Director of when the present peak season began
17 and when it is anticipated to end, in addition to informing the
18 Regional Director of the anticipated dates of the next peak season;

19 f. Mail copies of the Notice, in all appropriate languages, within 30
20 days after the date of this Order becomes final, or when directed by
21 the Regional Director, to all agricultural employees employed by
22 Respondents at any time during the period from June 13, 2015 until
23 June 13, 2016;

24 g. Post copies of the Notice, in all appropriate languages, in
25 conspicuous places on Respondent's property for a 60-day period, the
26 period and place(s) of posting to be determined by the Regional
27 Director, and exercise care to replace any Notice which may be
28 altered, defaced, covered or removed. Pursuant to the authority

1 granted under Labor Code section 1151(a), give agents of the Board
2 access to its premises to confirm the posting of the Notice;

- 3 h. Arrange for a representative of Respondent or a Board agent(s) to
4 distribute and read the Notice in all appropriate languages to all of
5 Respondents' agricultural employees on company time and property
6 at time(s) and place(s) to be determined by the Regional Director.
7 Following the reading, the Board agent(s) shall be given the
8 opportunity, outside the presence of supervisors and management, to
9 answer any questions the employees may have concerning the Notice
10 or their rights under the Act. The Regional Director shall determine a
11 reasonable rate of compensation to be paid by Respondents to all
12 non-hourly wage employees in order to compensate them for time
13 lost at the reading and during the question and answer period;
- 14 i. Provide a copy of the attached Notice to each agricultural employee
15 hire to work for Respondents during the one-year period following
16 the date this Order becomes final and;
- 17 j. Notify the Regional Director in writing, within 30 days after the date
18 this Order becomes final, of the steps Respondents have taken to
19 comply with its terms. Upon request of the Regional Director, notify
20 them periodically thereafter in writing of further steps taken until full
21 compliance with the Order is achieved.

22 Dated: June 28, 2018

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25 _____
26 JOHN J. MCCARRICK
27 Administrative Law Judge, ALRB
28

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. Because we did not contest such charges by timely filing answer to the complaint, the ALRB deemed the allegations to be true and found that we violated the Agricultural Labor Relations Act (ALRA) by threatening and discharging an employee for complaining about the terms and conditions of his employment.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

We also want to inform you that the ALRA is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 ALRB;
5. To act together with other workers to help and protect one another;
6. To decide not to do any of these things.

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1 Because it is true that you have these rights, we promise that;

2 **WE WILL NOT** threaten employees with bodily harm because they
3 engage in protected-concerted activity.

4 **WE WILL NOT** discharge employees who engage in protected-concerted
5 activity.

6 **WE WILL NOT** in any like or related manner, interfere with, restrain or
7 coerce employees from exercising their rights under the ALRA.

8 **WE WILL** offer to Antonio Renteria reinstatement to his former or
9 substantially equivalent position of employment and make him whole for all loss of pay
10 or other economic loss he has suffered as a result of our unlawful conduct.

11
12 Dated: _____

13
14 By: _____
15 (Representative) (Title)

16
17 If you have any questions about your rights as farm workers or about this
18 Notice, you may contact any office of the ALRB. One office is located at 1642 West
19 Walnut Avenue, Visalia, California, 93277-5348. The telephone number is (559) 627-
20 0995.

21 This is an official notice of the Agricultural Labor Relations Board, an
22 agency of the State of California.

23
24 **DO NOT REMOVE OR MUTILATE**