

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GJ FARMS, INC.,)	Case No.	2017-CE-020-SAL
)		
Respondent,)		
)		
and,)		
)		
DAMIAN FUENTES,)	45 ALRB No. 2	
)		
Charging Party.)	(January 22, 2019)	
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DECISION AND ORDER

On September 4, 2018, administrative law judge John J. McCarrick (the “ALJ”) issued the attached decision granting a Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relations Board (the “ALRB” or “Board”) against respondent GJ Farms, Inc. (“Respondent”) in the above-captioned case. The Complaint alleged that Respondent violated the Act by terminating the employment of charging party Damian Fuentes (“Fuentes”) after he engaged in activity protected by the Agricultural Labor Relations Act (“ALRA” or “Act”). The ALJ found that Respondent did not file a timely answer to the Complaint and, even if the answer were timely, the answer failed to admit or deny the allegations set forth in the Complaint. Accordingly, the ALJ ordered that Fuentes 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.

I. Background

Fuentes filed an unfair labor practice charge on April 26, 2017, alleging that Respondent violated the Act by discharging him for complaining to his supervisor about working conditions, including whether workers were given an afternoon rest period, the need for toilet paper for the restroom, the need for drinking water, the location of the restroom, and the need for gloves for the workers. On May 11, 2018, the General Counsel served, by certified mail, a Complaint on Respondent alleging that Respondent violated section 1153, subdivision (a) of the Act by interfering with, restraining, and coercing Fuentes in the exercise of his right to engage in protected concerted activity. Under section 20230 of the ALRB's regulations, a respondent served with a complaint is required to file an answer "within 10 days of the service of the complaint . . ." (Cal. Code Regs., tit. 8, § 20230.) Thus, Respondent was required to file its answer no later than May 24, 2018. (Cal. Code Regs., tit. 8, §§ 20230, 20170, subd. (b).)

On June 1, 2018, the Executive Secretary of the ALRB received what Respondent styled as an answer to the Complaint, which included a proof of service stating that the answer was served by "United States mail" on May 24, 2018. The envelope containing the answer had a "stamps.com" postage stamp for first class mail

dated May 25, 2018, and a United States Postal Service (“USPS”) stamp dated May 29, 2018.¹ On July 2, 2018, the General Counsel filed a Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment (“motion”), arguing that Respondent’s answer was not timely filed and further arguing that the answer that was filed did not deny the allegations of the Complaint. On July 16, 2018, the ALJ issued an order to show cause requiring Respondent to file a response to the General Counsel’s motion.

On July 26, 2018, Respondent filed an opposition to the General Counsel’s motion. In its opposition, Respondent contends that its answer was timely filed, as the attached proof of service indicates that the answer was mailed on May 24, 2018. Respondent’s opposition did not address the General Counsel’s argument that it failed to deny the allegations in the Complaint.

II. Discussion

A. Timeliness

ALRB Regulation section 20232 requires a respondent served with a complaint to timely file an answer that states whether the facts alleged in the complaint are admitted, denied, or outside the respondent’s knowledge. Any allegation not denied in an answer “shall be considered admitted.” (Cal. Code Regs., tit. 8, § 20232.) The ALJ concluded that Respondent’s answer was not timely filed and, furthermore, the untimely

¹ May 25, 2018 was a Friday. Monday, May 28, 2018 was a state and federal holiday, making Tuesday, May 29, 2018 the next business day.

filed answer failed to admit or deny the allegations in the Complaint. Accordingly, the ALJ deemed the allegations of the Complaint admitted.

As noted above, under the Board's regulations, Respondent was required to file an answer on or before May 24, 2018. Under section 20170, subdivision (c) of the Board's regulations, documents required to be filed with the Board must be received by the Board by 5:00 p.m. on the day that the filing deadline expires unless the document is "mailed by registered or certified mail postmarked by that last day . . ."² (Cal. Code Regs., tit. 8, § 20170, subd. (c); see *Silver Terrace Nurseries, Inc.* (1993) 19 ALRB No. 5, p. 5.) The usage of the postmark date as the controlling date for filing has been referred to as the "postmark rule." To trigger application of the Board's "postmark rule," a party must utilize either registered mail or certified mail to effect service. (Cal. Code Regs., tit. 8, § 20170, subd. (c).)

Respondent's answer was not received by the Board before the filing deadline expired. Thus, the answer could only be deemed timely if it was mailed by registered or certified mail and postmarked by the day of the filing deadline. Respondent did not use either of these mailing methods to trigger application of the Board's "postmark rule." Furthermore, Respondent's answer was not postmarked by the day of the filing deadline. Accordingly, Respondent's answer was untimely.

² Documents may also be filed with the Board via facsimile transmission or through the Board's electronic filing system. (Cal. Code Regs., tit. 8, §§ 20168, 20169.) Respondent did not utilize either of these methods to file its answer.

In its exceptions, Respondent contends that it timely filed its answer by the May 24, 2018 deadline and that the ALJ should have relied solely on the proof of service attached to the answer—which states that Respondent’s counsel’s legal assistant served the answer on May 24, 2018—to determine the date of filing. According to Respondent, the date on the “stamps.com” marking automatically “advances to the next date at 5PM each day and is not a reliable source for any inference,” and the USPS postal processing stamp is “vague and ambiguous” and constitutes “rank hearsay.” We find Respondent’s arguments meritless.

The critical issue here is whether the answer was timely *filed*, not when it was served. Thus, Respondent’s reliance on the proof of service included with its answer is unavailing. The purpose of a proof of service is to establish required delivery to the other parties, not to establish timely filing. As set forth above, our regulations govern the inquiry whether Respondent’s answer was timely filed. In this respect, we find the parties’, and the ALJ’s, focus on Code of Civil Procedure section 1013a—regarding permissible methods of service by mail—inapposite in addressing the issue whether the answer was timely filed.³ Finally, we reject Respondent’s unsupported assertion the postmark constitutes unreliable “rank hearsay.” (*Preis v. American Indemnity Co.* (1990) 220 Cal.App.3d 752, 759 [postal receipt was admissible under the Evidence Code section 1280 hearsay exception for records made by public employees]; *United States v. Cowley*

³ Although we find the discussion of Code of Civil Procedure section 1013a inapposite, we note Respondent’s proof of service does not comply with the requirements for any of the permissible methods identified in that statute.

(9th Cir. 1983) 720 F.2d 1037, 1044-1045 [USPS postmark fell within federal hearsay exception because “the postmark is very reliable [and] there is little risk of misperception or fabrication on the part of the postal official”].)

B. Excusal of Respondent’s Untimely Filing

Respondent has not established any reason for the Board to excuse its untimely filed answer. Since the ALRA itself does not define the circumstances under which it is appropriate for the Board to grant relief from default judgment, 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. (*Jacob Diepersloot, et al.* (2018) 44 ALRB No. 12, p. 5; *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 default “has the burden of showing good cause.” (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904.) “Our precedent similarly assesses whether a party has established good cause to support granting relief.” (*Jacob Diepersloot, et al., supra*, 44 ALRB No. 12, pp. 5-6, and cases cited therein.) “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.” (*Id.* at p. 6; *Lu-Ette Farms, Inc.* (1985) 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 Gardoni* (1982) 8 ALRB No. 62, p. 2.) While the Board’s policy is to favor adjudication on the merits rather than through default judgment (*Allstar Seed Co., supra*, 20 ALRB No. 2, p. 4, citing *Weitz v. Yankosky* (1966) 63 Cal. 23 849, 854), the party seeking relief from default “must present a reasonable excuse” explaining the grounds for its mistake, inadvertence, surprise, or neglect. (*Davis, supra*, 113 Cal.App.3d at p. 905; see *Cochran v. Linn* (1984) 159 Cal.App.3d 245, 252.)

Respondent’s exceptions do not set forth any arguments or factual bases for excusal of its late filing. We therefore find that Respondent is not entitled to relief from default judgment. (See *Jacob Diepersloot, et al., supra*, 44 ALRB No. 12; *Azteca Farms, Inc.* (1992) 18 ALRB No. 15; *Lu-Ette Farms, Inc., supra*, 11 ALRB No. 4.) Accordingly, we affirm the ALJ’s finding that Respondent failed to establish good cause to excuse its untimely filing.

For the foregoing reasons, we affirm the ALJ’s granting of the General Counsel’s Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment, and therefore find that Respondent violated section 1153, subdivision (a) of the Act by terminating Fuentes’ employment after he engaged in conduct protected under the Act. Additionally, we affirm the ALJ’s recommended order. Finally, because we affirm the ALJ’s finding that Respondent’s answer was untimely filed and no good cause exists to excuse the untimely filing, we see no need to reach the issue of whether Respondent’s answer failed to deny the allegations of the Complaint.

ORDER

Pursuant to Labor Code section 1160.3, Respondent GJ Farms, Inc., its agents and officers, successors and assigns shall:

1. Cease and desist from:
 - a. Unlawfully discharging its agricultural employees because they have engaged in activity protected by section 1152 of the Act;
and
 - b. 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 Fuentes immediate reinstatement to his former or substantially equivalent employment without prejudice to his seniority or other rights and privileges of employment;
 - b. Make Fuentes 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 Fuentes and sent to the Region, which will thereafter disburse payment to Fuentes;

- 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 April 23, 2017 until April 23, 2018;
- 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 Respondent's 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: January 22, 2019

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a change 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 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 Damian Fuentes 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: _____

GJ Farms, 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 CUIAB Building 1901 North Rice Avenue, Suite 300, Oxnard, California 93030. The telephone number is

(805) 973-5062. 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

GJ FARMS, INC.
(Damian Fuentes)

45 ALRB No. 2
Case No. 2015-CE-027-VIS

Background

On September 4, 2018, administrative law judge John J. McCarrick (the “ALJ”) issued a decision granting a Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relations Board (the “ALRB” or “Board”) against Respondent GJ Farms, Inc. (“Respondent”). The Complaint alleged that Respondent violated the Act by terminating the employment of charging party Damian Fuentes (“Fuentes”) after he engaged in activity protected by the Agricultural Labor Relations Act (“ALRA” or “Act”). Under the Board’s regulations, Respondent was required to file an answer on or before May 24, 2018. On June 1, 2018, the Executive Secretary of the ALRB received what Respondent styled as an answer to the Complaint. The envelope containing the answer was postmarked May 29, 2018. The ALJ found: Respondent did not file a timely answer to the Complaint; Respondent failed to demonstrate good cause to excuse the untimely filing; and the answer failed to deny the allegations in the Complaint. The ALJ ordered that Fuentes 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 affirmed the ALJ’s finding that Respondent’s answer was untimely filed. The Board found that Respondent’s answer was not received by the Board by the filing deadline and Respondent could not rely upon the Board’s “postmark rule” because the answer was not mailed using registered or certified mail and was not postmarked by the filing deadline. Additionally, the Board found that Respondent failed to provide reason to excuse its untimely filing and therefore Respondent was not entitled to relief from default judgment. In reaching these conclusions, the Board affirmed the ALJ’s decision to grant the General Counsel’s Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment and affirmed the ALJ’s recommended order. Because the Board found that the answer was untimely filed, it did not reach the issue of whether the answer failed to deny the allegations in the Complaint.

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

Respondent filed what was styled an answer to the complaint.

Respondent's answer avers that the Charging Party and the General Counsel engaged in perjury and subornation of perjury, makes a demand for discovery of all ALRB file material, states that the unfair labor practice charge is duplicative of other actions and constitutes double jeopardy, that the complaint omits all factual content and denies Respondent due process. However, the answer fails to specifically admit or deny any complaint allegation. The proof of service attached to the answer indicates mailing on May 24, 2018. However, the postage on the envelope containing the answer reflects a date of May 25, 2018 and the US Postal Service stamp reflects receipt of the answer on May 29, 2018. The answer was not received by the Executive Secretary until June 1, 2018.

On July 2, 2018, General Counsel filed a Motion to Deem Allegations in the Complaint Admitted and Motion for Summary Judgement. On July 26, 2018, Respondent filed its Opposition to General Counsel's Motion together with a Motion to Enlarge Time to File Answer and Clarification of Previously Filed Answer.

THE POSITIONS OF THE PARTIES

General Counsel contends that Respondent failed to file an answer to the Complaint within the time limits provided in the regulations and that Respondent has failed to show good cause for why it failed to file a timely answer. In addition, General Counsel contends that Respondent's answer fails to admit or deny the allegations of the complaint. Respondent contends that its written proof of service, reflecting service on May 24, 2018, should be accepted as the filing date, citing Code of Civil Procedure

(CCP) section 1013(a). However, Respondent does not address its failure to admit or deny the complaint allegations nor does it offer any evidence of good cause to excuse its failure. Respondent simply alleges that deeming the allegations of the complaint admitted and granting summary judgment would prejudice Respondent. Respondent further contends, without any support in law or fact, that the Agricultural Labor Relations Board's (ALRB or Board) knowing falsification of the complaint and subornation of perjury is a sufficient answer and should be sufficient cause to allow Respondent to amend the answer. Finally, Respondent argues that under California Code of Civil Procedure section 473, it should be granted relief from default.

THE LAW

Code of Civil Procedure section 1013(a) provides:

... In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address last given by that person or any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. Service is complete at the time of deposit.

Code of Civil Procedure section 2009 provides that an affidavit may be used to verify a pleading or paper or to prove service of a paper in an action or special proceeding.

... Code of Civil Procedure section 473(a)(1) provides that the court may allow a party to amend any pleading and to allow an answer to be made after the time limited by the code.

California Code of Regulations, title 8, section 20232 provides in pertinent part that, “Any allegation not denied (in an answer) shall be deemed admitted.”

In *Azteca Farms, Inc.* (1992) 18 ALRB No. 15, and *Lu-Ette Farms, Inc.* (1985) 11 ALRB No. 4, the Board affirmed the ALJs who found no good cause for Respondents’ failure to timely file answers and who granted summary judgment on the pleadings.

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

THE ANALYSIS

It is clear that while Respondent’s proof of service avers that its answer was served on May 24, 2018, it is clear from the evidence attached to General Counsel’s motion that it was not deposited in the mail until after May 25, 2018, and accepted by the Postal Service on May 29, 2018. It is plain from the language of Code of Civil Procedure section 1013(a) that a notice or other paper must be deposited in the mail with “postage paid.” Respondent’s argument that its proof of service is the only evidence that may be considered, not only is unsupported in law, but must fail in view of the evidence that no

postage was paid until at least May 25, 2018. I find that Respondent failed to timely file its answer which was due on May 24, 2018.

Moreover, it is clear that Respondent's purported answer failed to admit or deny the allegations in the complaint. Respondent's slanderous and unsupported charges that charging party committed perjury, that General Counsel suborned perjury, that the complaint results in double jeopardy and denial of due process does not constitute an answer within the meaning of California Code of Regulations, title 8, section 20232. Last, Respondent has failed to offer a scintilla of evidence that establishes good cause to grant it relief from default under Code of Civil Procedure section 473(a) or *All Star Seed Co., supra*, 29 ALRB No. 4.

Accordingly, IT IS HEREBY ORDERED that General Counsel's Motion to Deem the Allegations of the Complaint Admitted and for Summary Judgement is granted.

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

1. On May 7, 2018, the Salinas Regional Director issued a complaint against Respondent GJ Farms, Inc., (Respondent) and on May 11, 2018, a copy was served by certified mail on Respondent, along with a fact sheet advising Respondent of the need to file an answer.

2. No answer to the complaint was timely filed to date. I, therefore find:

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- a. A true and correct copy of the original charge in the above captioned case was filed on April 26, 2017 and served on Respondent on the same date.
- b. Respondent has at all times been an agricultural employer engaged in agriculture in the State of California with an office and place of business located in Fillmore, California within the meaning of sections 1140.4(a) and (c) of the Agricultural Labor Relations Act (Act).
- c. At all times material, Fuentes was an agricultural employee within the meaning of section 1140.4(b) of the Act and was employed by Respondent.
- d. At all times material Carlos Huchin Chan (Chan) and Teresa De Jesus Tzab (Tzab) were supervisors for Respondent within the meaning of section 1140.4(j) of the Act with authority to direct the work of agricultural employees and to discipline them.
- e. In about February 2017, Fuentes and co-workers discussed their working conditions including lack of rest periods, lack of toilet paper and the distance from the workplace to the toilets.
- f. In about February or March, Fuentes complained to Tzab about the lack of toilet paper in restrooms and complained to Chan that Respondent failed to provide he and co-workers rest breaks and that the distance from restrooms to the work site was too far.

- g. On April 20, 2017, Fuentes complained to Chan that he and co-workers had no clean water to drink.
- h. On April 23, 2017, Tzab told Fuentes that there was no more work for him until further notice.
- i. To date, Respondent has not reemployed Fuentes.
- j. By terminating Fuentes for having engaged in protected-concerted activity, Respondent violated section 1153(a) of the Act by interfering with, restraining or coercing employees in the exercise of their rights guaranteed in section 1152 of the Act.
- k. By terminating Fuentes for engaging in protected-concerted activity, Respondent violated section 1153(a) of the Act.

ORDER

By the authority of section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondent GJ Farms, Inc., its agents and officers, successors and assigns are ordered to do the following:

- 1. Cease and desist from:
 - a. Unlawfully discharging its agricultural employees because they have engaged in activity protected by section 1152 of the Act.

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- b. 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 Fuentes immediate reinstatement to his former or substantially equivalent employment without prejudice to his seniority or other rights and privileges of employment;
 - b. Make Fuentes whole for all wages and economic losses he has suffered since on or about April 23, 2017, 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 Fuentes and sent to the Region, which will thereafter disburse payment to Fuentes;
 - c. Preserve and, upon request, make available to the Board or its agents for examination and copying, all record relevant and necessary to a determination by the Regional Director of the back

pay 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 requests 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 Respondents at any time during the period from April 23, 2017 until April 23, 2018;
- 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(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 at 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 Respondents 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 Respondents during the one-year period following the date this Order becomes final and;

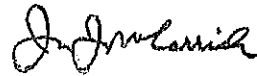
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- j. Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondents have taken to comply with its terms. Upon request of the Regional Director, notify them periodically thereafter in writing of further steps taken until full compliance with the Order is achieved.

Dated: August 22, 2018



JOHN J. McCARRICK
Administrative Law Judge
Agricultural Labor Relations Board

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Oxnard 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 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. 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.

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

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 Damian Fuentes Martinez 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: _____

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at CUIAB Building 1901 North Rice Avenue, Suite 300, Oxnard, California 93030. The telephone number is (805) 973-5062.

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

DO NOT REMOVE OR MUTILATE