STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FOWLER PACKING COMPANY, INC.,	)	Case No. 2016-CE-003-VIS
Respondent,	)	
and	)	
BEATRIZ ALDAPA and ELMER AVALOS,	)	
Charging Parties.	)	

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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This matter was heard by Mark R. Soble, Principal Administrative Law Judge ("ALJ"), State of California Agricultural Labor Relations Board ("ALRB"), at the State of California Building, 2550 Mariposa Mall, Fresno, California 93610, on Monday, April 16, 2018.

BACKGROUND

In Spring 2015, Charging Parties filed a federal lawsuit against Respondent alleging that Fowler Packing Company (hereafter "Fowler") failed to pay proper wages and overtime, and failed to compensate workers for mandated rest periods. (Aldapa v. Fowler Packing Company, Inc., Case No. 1:15-cv-00420-DAD-SAB.[1]) Charging Parties sought that their lawsuit be certified as a class action against Respondent.

On or about August 8, 2015, Plaintiffs' counsel in the proposed class action met with multiple Fowler employees in connection with that case. On August 10, 2015, and August 11, 2015, at depositions in the federal litigation, Fowler's attorneys asked the Charging Parties to divulge the names of the Fowler employees present at the meeting(s) with plaintiffs' counsel. Fowler's attorneys also requested a copy of any sign-in sheets from such meeting(s). Charging Parties refused to answer the questions

[1] Joint Exhibit No. 2.

or provide copies of the sign-in sheets. Fowler's attorneys continued to demand this information during multiple meet and confer sessions with Charging Parties' attorneys that were held on September 9, 2015, October 2, 2015 and January 8, 2016.

Fowler then filed a motion to compel, which was then heard by a federal magistrate and then reviewed by a federal district court judge. The district court judge ruled against Fowler based upon associational privilege under the First Amendment. In his ruling, the U.S. District Court Judge found that Fowler had not made a showing of need for the discovery at that juncture of the litigation.

ISSUES

The issues raised by this matter are as follows:

1. When a small group of Fowler non-supervisory farm workers met with charging parties and class action counsel, were the farm workers engaged in protected, concerted activity as defined by the Agricultural Labor Relations Act ("ARLA")?

2. Did Fowler commit an unfair labor practice by asking at depositions for charging parties to reveal the identity of other Fowler workers that attended such meetings, and by repeating that request during subsequent meet and confer sessions?

3. Was the unfair labor practice charge in this matter timely filed or alternatively time-barred?

FINDINGS OF FACT

A. Jurisdiction and Procedural History

Respondent admits that the charge and complaint in this matter were properly filed and served. (Prehearing Conference Order dated March 14, 2018, at page 2, lines

12-13.) During the pertinent time period for the lawsuit, Fowler had as many as five thousand agricultural employees in a single year, and grew grapes, mandarins and, at times, stone fruit.[2] Respondent admits that, during all pertinent time periods, it was an agricultural employer as defined by the ALRA. (Id. at page 2, lines 13-15; see California Labor Code section 11.40, subdivision (c)) Charging Parties were employed as non-supervisory agricultural workers by Fowler. (See California Labor Code section 1140.4 subdivision (b)) For these reasons, the ALRB has jurisdiction to hear and resolve the issues presented here pursuant to California Labor Code section 1160 *et seq*.

B. Procedural History

On February 26, 2016, the charge was filed in this matter with the Visalia Regional Office of the Agricultural Labor Relations Board ("ALRB"). On March 9, 2016, the Visalia Regional Office served on Fowler a copy of the charge. (Respondent's Exhibit No. 66[3].) On January 8, 2018, the General Counsel filed her complaint in this matter. On February 5, 2018, Fowler filed its answer in this matter.[4] On February 5, 2018, a Notice of Hearing was issued and served in this matter. On March 9, 2018, Fowler filed a motion to dismiss this matter. On March 22, 2018, the

[2] Respondent's Exhibit No. 14, page 18, line 16, to page 19, line 1.
[3] The Visalia Regional Office's March 9, 2016 letter erroneously stated that the charge was filed by the United Farm Workers of America (Hereafter "UFW"). On March 11, 2016, the Charging Party's attorneys sent an email to the Regional Office noting the error. (Charging Parties' Exhibit No. 1.) In "numbered" Paragraph 2 of her complaint, the General Counsel also alleges that she served a copy of the charge on Fowler on February 26, 2016. (Complaint, page 2, lines 13-14.) In its answer, Fowler admitted to the allegations in Paragraph 2.
[4] None of the parties have alleged that Fowler failed to timely file its answer. ALRB Regulations typically give a respondent only ten days to file an answer from the date of service of the complaint. (Title 2, California Code of Regulations, section 20230.)

undersigned issued an order denying Fowler's motion to dismiss. Prehearing conference calls were held on this matter on March 12, 2018 and April 10, 2018, with prehearing conference orders issuing on March 14, 2018 and April 13, 2018, respectively. The hearing was held in this matter on April 16, 2018 and post-hearing briefs were filed on May 25, 2018.

C. Filing of federal wage and hour class action litigation

On March 17, 2015, Plaintiffs Beatriz Aldapa and Elmer Avalos filed the class action complaint against Fowler. (Joint Exhibit No. 2.) The class action complaint alleges various types of violations including that Fowler failed to properly pay wages and overtime, or to correctly compensate for mandated rest periods.[5]

On April 10, 2015, Defendant Fowler filed an answer to the class action complaint. (Joint Exhibit No. 2.) Fowler's counsel of record included Howard A. Sagaser[6] of the law firm Sagaser, Watkins and Wieland. (RT 61:13-17)

D. Attorney meetings with workers

The class action plaintiffs' counsel apparently advertised on local radio their desire to meet with Fowler workers. (Joint Exhibit No. 6, at page GC 114, lines 14-16; Respondent's Exhibit No. 8, page 36, lines 10-12.) Specifically, the meetings were

[5] The six causes of action listed on the complaint caption are as follows: (1) Violation of Migrant and Seasonal Agricultural Worker Protection Act; (2) Failure to Pay Wages and/or Overtime; (3) Failure to Compensate for Mandated Rest Periods; (4) Failure to Reimburse Expenses for Tools and Equipment in Violation of 29 U.S.C. section 1832, subdivision (c) and Cal. Labor Code section 2802; (5) Waiting Time Penalties Pursuant to Labor Code section 203; and (6) Unfair Competition Pursuant to Bus. And Prof. Code section 17200 Failure to Keep Accurate Information Cal. Labor Code section 226 and IWC Wage Order and 14-2001, 29 U.S.C. section 1831, subdivision (c).

[6] Attorney Howard Sagaser was permitted to testify as a percipient witness at the hearing.

limited to workers who had worked at Fowler or its farm labor contractor, Ag Force, during the four years prior to the lawsuit or currently. (Joint Exhibit No. 6, at page GC 115, lines 7-10) Class action plaintiffs' counsel may have met with workers in March, May and August 2015. (Joint Exhibit No. 6, at page GC 116, lines 5-25; RT 104:7-10.) Approximately twenty workers attended the August 2015 meeting. (Joint Exhibit No. 6, at page GC 114, lines 8-10; RT 30:6-22)

E. Deposition inquiries about meeting attendance and seeking sign-in sheets

On August 10, 2015, Fowler's attorneys took the deposition of Beatriz Aldapa. (Joint Exhibit No. 6, page GC 113; RT 61:22-24) On August 11, 2015, Fowler's attorneys took the deposition of Elmer Avalos. (Joint Exhibit No. 7, page GC 121)

Fowler's attorney, Sagaser, asked Ms. Aldapa for the names of the individuals at the August 8, 2015 meeting. (RT 61:22-62:7) Sagaser also asked for a copy of the attendance sign-in sheet for the meeting. (Joint Exhibit No. 6, at page GC 115, lines 14-18) Ms. Aldapa's attorney, Mario Martinez, directed Ms. Aldapa to refuse to answer Sagaser's question and also refused to provide a copy of the attendance sheet. (Joint Exhibit No. 6, at page GC 116, line 2, to GC 117, line 12)

Fowler's other attorney, Ian Wieland, asked Elmer Avalos similar questions about meeting attendance. (Joint Exhibit No. 7, at page GC 123, line 6, to GC 124, line 22) Mr. Avalos' attorney, Ira Gottlieb, directed Avalos to refuse to answer Wieland's questions. (*Id.*)

F. Reasons stated by attorney Sagaser as to why Fowler wanted information about meeting attendance

Fowler's attorney, Howard Sagaser, has defended approximately forty wage and hour class action lawsuits.[7] (RT 60:5-9) Sagaser understood there to be seven meetings. (RT 147:4-5) Sagaser believed that no attorney-client privilege would exist if non-clients were present at the meeting. (RT 63:15-20) The attorneys' "clients" would be different before and after the class was certified. At hearing, Sagaser testified as to the reasons why Fowler wanted information about worker attendance at meetings with plaintiff's attorneys.[8] (RT 62:3-64:3)

First, Sagaser contended that joint witness preparation affects recollection (RT 62:7-17) In the event that witnesses attending joint meetings later submitted declarations, Sagaser wanted to be able to show bias. (RT 69:7-17) Similarly, if witnesses attending joint meetings were questioned at depositions, Sagaser wanted to demonstrate bias. (RT 146:5-15)

Second, Sagaser wanted to eliminate bias from survey samples (RT 63: 5-10) and pilot studies (RT 72:21-23). Sagaser testified that this was critical to defend against the class action and to challenge the mechanism used to measure extent of what took place. (RT 185:20-186:5) The only value to names not on declarations,

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[7] I followed NLRB precedent and overruled dual-role objections based on canons of ethics. (Reno Hilton (1995) 319 NLRB 1154) Thus, I did not place any restrictions on Sagaser serving as Fowler's attorney at this hearing despite him also giving percipient witness testimony under oath. (Order dated March 22, 2018, at page 3, lines 3-11)

[8] Sagaser offered to plaintiffs' attorneys to have a protective order that only Fowler's attorneys (and not the client) could see the names on the meeting sign-in sheets. (RT 67:5-16)

depositions, surveys and/or pilot studies would be to verify the names of those who were participated in one of the those roles. (RT 190:14-17)

G. Reiteration of inquiries about meeting attendance and seeking sign-in sheets as part of meet and confer process

It is very clear from the record that as of January 8, 2016, Fowlers attorneys continued to seek the identity of workers who met with plaintiffs' counsel. Respondent's attorneys sought this information from plaintiffs' counsel during meet and confer sessions held on September 9, 2015, October 2, 2015 and January 8, 2016. (Respondent's Exhibit No. 8, page 2, lines 2-4, and Joint Exhibit No. 4, page 2, lines 14-18) On September 17, 2015, plaintiff's counsel Ira Gottlieb sent a ten page letter to Fowler's attorneys explaining plaintiffs' position to refuse to identify Fowler employees who met with co-workers and plaintiffs' counsel. (Respondent's Exhibit No. 9, pages 13-22)

The discovery dispute over the identity of these workers is argued in great detail in a joint statement filed with the court on March 2, 2016, just four days after the ALRB charge was filed. (Joint Exhibit No. 4, page 4, line 10, to page 25, line 5) This joint statement sets forth the positions of the respective parties. The joint statement also makes very clear that the parties met and conferred over this dispute on January 8, 2016, which was seven weeks before the ALRB charge was filed. (Id. at page 2, lines 14-16)

H. Ruling by United States Magistrate Stanley A. Boone

On March 2, 2016, the class action parties asked United States Magistrate Stanley A. Boone to hear Fowler's motion to compel further deposition responses. (Respondent's Exhibit No. 21, page 1, lines 20-25) Federal Magistrate Boone set a hearing on that issue, and others, for March 16, 2016. (Id. at lines 26-28) On March 18, 2016, Magistrate Boone issued a nineteen page order which ruled on Fowler's motion to compel further deposition responses as well as a separate request by Fowler to reopen one of the depositions.[9] (Respondent's Exhibit No. 26)

For the reasons discussed below, Magistrate Boone granted Fowler's request to compel further deposition responses regarding the identities of workers who attended meetings with plaintiffs' attorneys. (Respondent's Exhibit No. 26, page 18, lines 17-19)

Magistrate Boone concluded that the attorney-client privilege did not provide a basis for plaintiffs to refuse to identify other Fowler workers who met with their attorney. (Respondent's Exhibit No. 26, pages 7-10) Magistrate Boone noted Fowler's position that: (1) putative class members are not represented by plaintiffs' attorneys before class certification, and (2) there is no attorney-client privilege between plaintiffs' attorneys and putative class members prior to class certification.[10] (Respondent's

[9] Fowler also apparently asked the U.S. Magistrate to stay Plaintiff's pending ALRB charges, but the Magistrate Judge stated that Fowler failed to provide authority to support that request, and thus denied it. (Respondent's Exhibit No. 26, page 13, lines 6-10)

[10] A putative class action means the class has not yet been certified by the court.

Exhibit No. 26, page 8, lines 16-19) Magistrate Boone states that plaintiffs concede that the weight of authority holds that, prior to class certification, there is no attorney-client relationship in the context of communications to the whole putative class. (Respondent's Exhibit No. 26, page 8 [citing Atari v. Superior Court, 166 Cal. App. 3d 867, 873 (1985)])

Magistrate Boone also rejected plaintiffs' argument that a privilege was created because the other workers approached counsel and, as such, it was a confidential communication. (Respondent's Exhibit No. 26, page 8, lines 22-24) Boone concluded that plaintiffs had failed to show how disclosing identify of the workers at the meetings would betray a client confidence. (Respondent's Exhibit No. 26, page 9, 11-16)

Magistrate Boone also rejected plaintiffs' argument that their counsels' representation to workers that the meeting was confidential was a basis to deny Fowler's motion to compel identification of the names of attendees. (Respondent's Exhibit No. 26, page, lines 17-24) Boone further denied plaintiffs' argument that they could withhold the names because they were uncovered due to their own industry and effort. (Respondent's Exhibit No. 26, pages 9-10 [distinguishing the matter from Coito v. Superior Court, 54 Cal. 4th 480 480 (2012)])

Magistrate Boone found that the ALRA did not provide a basis for plaintiffs to refuse to identify other Fowler workers who met with their attorney. (Respondent's Exhibit No. 26, pages 10 to 13) Plaintiffs argued to Magistrate Boone that they were entitled to ALRA protections to engage in concerted activity to improve their working conditions. (Respondent's Exhibit No. 26, page 10, lines 26-28) Plaintiffs argued that

the Magistrate should defer to the ALRB (and National Labor Relations Board ("NLRB") precedent[11]) to determine whether or not plaintiffs need to disclose the identities of the workers who met with their attorneys. (Respondent's Exhibit No. 26, page 11, lines 1-16) Magistrate Boone disagreed with plaintiffs' position. Boone stated that the federal court, and not the ALRB, oversees orders in federal class action discovery. Boone concluded that the issue was not one of preemption but rather whether the information sought was privileged under the federal rules of evidence. (Respondent's Exhibit No. 26, page 11, lines 17-22, and page 12, lines 1-8)

Notwithstanding his conclusion that ALRB and NLRB law was not determinative in the matter, Judge Boone proceeded to analyze the issue using the standard set forth in Guess? Inc., 339 N.L.R.B. 432 (2003). (Respondent's Exhibit No. 26, pages 12-13) The *Guess? Inc.* case holds that, in some instances, employer questions in a litigation framework about protected, concerted activity may violate the National Labor Relations Act ("NLRA") by tending to interfere with the exercise of employee rights. The *Guess? Inc.* standard posited by the NLRB has three factors considered for determining the lawfulness of employer questioning about employee activity: (1) whether the information sought is relevant; (2) whether or not the employer has an illegal purpose for the inquiry; and, (3) whether the litigation need for the information outweighs the employees' NLRA rights. (Respondent's Exhibit No. 26, page 12, lines 12-16)

[11] California Labor Code section 1148 states that the ALRB shall follow applicable precedents of the National Labor Relations Act, as amended.

Magistrate Boone concludes that, even under the *The Guess? Inc.* standard, the questions by Fowler's attorneys were permissible. Boone holds that the information sought was relevant and that there was no evidence in the record of an illegal purpose. (Respondent's Exhibit No. 26, page 12, lines 17-18) Boone concludes that the "employees' confidentiality interests are outweighed by Defendants' need for this information." (Respondent's Exhibit No. 26, page 12, lines 25-26)

Magistrate Boone found that the First Amendment did not provide a basis for plaintiffs to refuse to identify other Fowler workers who met with their attorney. (Respondent's Exhibit No. 26, pages 13 to 14) Boone concluded that the information sought was relevant and not a member list of a dissident group. Respondent's Exhibit No. 26, pages 13-14) Boone states that, "Plaintiffs have not shown that Defendants are likely to harass or retaliate against the individuals who met with Plaintiffs and class counsel." (Respondent's Exhibit No. 26, page 14, lines 1-3) Boone adds that, "Disclosing the identities of the putative class members who have met with Plaintiffs and class counsel will not have a chilling effect on the putative class members' First Amendment rights." (Respondent's Exhibit No. 26, page 14, lines 4-6) Thus, Magistrate Boone ruled against plaintiffs' claim of First Amendment privilege, concluding that plaintiffs should have answered Fowler's questions about the identity of meeting attendees.

I. Ruling by United States District Court Judge Dale A. Drozd

Plaintiffs sought reconsideration of Magistrate Boone's March 18, 2016 Order and, on June 16, 2016, U.S. District Court Judge Dale A. Drozd issued an order

reversing the holding that plaintiffs must identify the other workers who attended meetings with them and their counsel. (Joint Exhibit No. 11) Judge Drozd left undisturbed Magistrate Boone's holding with respect to NLRA or ALRA law not preventing the inquiry.[12] (Joint Exhibit No. 11, page 2, line 28, to page 3, line 5)

On the other hand, Judge Drozd did review and reverse Magistrate Boone's analysis of the associational privilege under the First Amendment. Judge Drozd held that the appropriate standard for evaluating this privilege was set forth in Perry v. Schwarzenegger, 591 F.3d 1147 (9th Cir. 2009). (Joint Exhibit No. 11, at page 3, lines 25-27) In Perry v. Schwarzenegger, the Court found that the party asserting the privilege must first make a showing that the requests will result in harassment or chilling of associational rights. If the party is able to make that showing, the burden is then shifted to the requesting party to show that the sought information is rationally related to a compelling interest and that it is the least restrictive manner of obtaining the desired information. (Joint Exhibit No. 11, at page 3, line 4-17 [citing Perry v. Schwarzenegger, 591 F.3d 1147, 1160-1161 (9th Cir. 2009)])

In addressing the first prong of the test, Judge Drozd cited a declaration of one of plaintiffs' attorneys, Edgar Aguilasocho. In his declaration, Aguilasocho stated that:

> Putative class members expressed concern with their employer knowing they were involved and concern with suffering retaliation through harassment at work, being laid off or fired, or not being rehired in subsequent seasons – as their employment is seasonal. Putative class members also expressed concerns that owner Grant Parnagian (whom the workers refer to as "Grant") would learn they were participating in the

[12] Judge Drozd explained that his review of the Magistrate's order was subject to the "clearly erroneous or contrary to law" standard. (Joint Exhibit No. 11, page 2, lines 2-18)

> lawsuit and that he would retaliate against them by laying them off, firing them, or not rehiring them in subsequent seasons. The employees expressed reluctance to continue their participation if that participation became known to their employers.

(Joint Exhibit No. 11, at page 8, lines 3-12 [citing Doc. No. 85-1, at 3.)

Judge Drozd found that plaintiffs' *prima facie* showing provided a sufficient basis to demonstrate a chilling effect on associational rights that the burden shifted to Fowler to demonstrate a sufficient interest to justify the deterrent effect on associational rights. (Joint Exhibit No. 11, at page 9, line 27, to page 10, line 2) In that regard, Judge Drozd found that, at present early stage of the litigation, Fowler had no valid interest in the information sought. (Joint Exhibit No. 11, at page 10, line 10-11)

Defendants introduced two reasons why they needed the names of meeting attendees. The first reason was to conduct pre-certification depositions on the chance that those individuals might later submit declarations in support of class certification. (Joint Exhibit No. 11, at page 10, line 13-16) Judge Drozd dismissed that reason stating that such depositions are rarely permitted and of questionable relevance. (Joint Exhibit No. 11, at page 10, line 17-20) The second reason proffered to identify the meeting attendees was to later remove those "tainted" individuals from any surveys or statistical analysis. (Joint Exhibit No. 11, at page 12, line 3-6) Judge Drozd dismissed this second concern, noting that any statistical analysis would more likely focus on Fowler's records rather than worker testimony. (Joint Exhibit No. 11, at page 12, lines 8-13) Further, Judge Drozd noted, any alleged taint of a very small number of workers would

occur in the context of a huge class size of at least 14,000 employees.[13] (Joint Exhibit No. 11, at page 12, lines 8-13)

Using the analysis described above, Judge Drozd found that Fowler failed to show any need for the identity of the meeting attendees. (Joint Exhibit No. 11, at page 12, lines 21-22) For that reason, Drozd concludes that their interest in obtaining the information does not outweigh its impact on the workers' First Amendment associational rights. (Joint Exhibit No. 11, at page 12, lines 22-25) According, Judge Drozd granted plaintiffs' request for reconsideration and denied Fowler's motion to compel further answers as to the identity of the meeting attendees. (Joint Exhibit No. 11, at page 12, lines 25-28)

J. Other litigation that Fowler believes prejudices General Counsel against company

Fowler alleges that the General Counsel's decision to prosecute this unfair labor practice constitutes selective enforcement and retaliation. The charge was filed on February 26, 2016 and the complaint did not issue until over twenty-two months later on January 8, 2018. Fowler believes that its role in litigating the access rule[14] and Assembly Bill 1513[15] are the real reasons that the General Counsel filed this complaint

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[13] See also RT 95:6-24. There would be nothing inappropriate about Fowler asking how many workers attended the meetings in question.

[14] On July 27, 2016, plaintiffs filed a notice of appeal in their efforts to overturn the ALRB's four decades-old access regulation (Title 8, California Code of Regulations, section 20900). Plaintiffs challenged the regulation based upon federal constitutional grounds, including under the Fourth Amendment's seizure clause and the Fifth Amendment's takings clause. The 9th Circuit heard oral argument on this case on November 17, 2017.

[15] Assembly Bill 1513 added a new section 226.2 to the California Labor Code concerning piece-rate compensation. (See Fowler Packing Co. v. Lanier (9th

almost two years after the charge was filed. (Prehearing Conference Order dated March 14, 2018, at page 4, lines 9-13.) AB 1513 excluded Fowler Packing and two other entities from its provisions. (RT 118:18-20)

FINDINGS OF LAW

A. When a small group of Fowler non-supervisory farm workers met with charging parties and class action counsel, the farm workers engaged in protected, concerted activity as defined by the ARLA

"In considering the paramount interest of the State of California in regulating labor relations in California agriculture, [the ALRB Board notes] that Congress specifically excluded 'agricultural laborers' from the coverage of the NLRA . . . The California Legislature's momentous decision to fill the vacuum left by Congress by enactment of the ALRA, when viewed in the historical context of California Agriculture, emerges as a significant assertion of 'local responsibility' worthy of deference as a compelling state interest." (Rigi Agricultural Services, Inc. (1985) 11 ALRB No. 27, at pages 8-9 [citing Bill Johnson's Restaurants v. NLRB (1983) 461 U.S. 731; San Diego Building Trades Council v. Garmon (1959) 359 U.S. 236)].[16]

Cir. 2016) 844 F.3d 809, 813) The bill created a "safe harbor" that gave employers an affirmative defense against new claims if the employer made back-payments under certain conditions. The bill also "carved-out" three or four employers, including Fowler, from using the safe harbor in already-existing litigation. On December 20, 2016, the 9th Circuit issued a decision finding that the only conceivable explanation for AB 1513's carve-outs was that they were necessary to procure the UFW's support in passing the legislation. The panel held that because this justification would not survive even rational basis scrutiny, Fowler and the other entities plausibly stated a claim that the cut-out provisions violated the Equal Protection Clause.

[16] "The compelling state interest in the scheme of our federalism in the maintenance of domestic peace is not overridden in the absence of a clearly

1. ALRA section 1152 Gives Agricultural Workers the Right to Engage in Protected, Concerted Activity

ALRA section 1152, which became law in 1975[17], states as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

This means that employees have the right to engage in conduct for their "mutual aid or protection" that is concerted[18] in nature. Activity for "mutual aid or protection" does not need to be pursued for union-related purposes.[19] Employee discussions of their salaries is "an inherently concerted activity clearly protected by [the NLRA"].[20] Mutual aid or protection in lay terms is one employee interacting with a co-worker to

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expressed congressional directive." (San Diego Building Trades Council v. Garmon (1959) 359 U.S. 236)

[17] The NLRA preceded the ALRA by four decades, being enacted in 1935.

[18] In Fresh & Easy Neighborhood Market, the NLRB noted that, to qualify as "concerted" activity, the activity "must be engaged in with the object of initiating or inducing group action," and may include mere "preliminary discussion" among employees, as well as a single employee seeking the aid of co-workers. ("Fresh & Easy Neighborhood Market, Inc.", Harvard Law Review, volume 128, no. 2 (December 2014) discussing Fresh & Easy Neighborhood Market (2014) 361 NLRB 151)

[19] Protected, concerted activity does not require union involvement. (Kyutoku Nusery, Inc. (1977) 3 ALRB No. 30, ALJ Decision at page 14; M. Caratan (1982) 8 ALRB No. 41, page 12) In cases not involving union activity, to be protected, employee action must be concerted. This generally means the employee must act in concert with, or on behalf of others. Protected concerted activity includes conduct arising from any issue involving employment, wages, hours, and working conditions. (Hadley's Date Gardens, Inc. (2005) 31 ALRB No. 1, ALJ Decision at page 11)

[20] Monterey Mushrooms, Inc. (2019), 45 ALRB No. 1, at page 8 [citing Triana Industries, Inc. (1979) 245 NLRB 1258, 1258 ("such discussion [of wages] may be necessary as a precursor to seeking union assistance and is clearly concerted activity")

address an unjust practice or improve a work condition.[21] The NLRA and ALRA prohibit employers from questioning employees about their protected, concerted activity, and doing so is generally an unfair labor practice.[22]

2. Filing of Court Actions, and Soliciting the Support of Co-workers, is Protected, Concerted Activity

The U.S. Supreme Court has held the "mutual aid and protection" language to extend protection to concerted activities by employees to improve employment conditions through administrative and judicial forums.[23] (Eastex, Inc. v. NLRB (1978) 437 U.S. 556) One such employment condition is wages and hours. (Williams Contracting (1992) 309 NLRB 433; Cristy Janitorial Services (1984) 271 NLRB 857)

In Fresh & Easy Neighborhood Market, a worker asked colleagues for assistance in preserving evidence for a sexual harassment complaint that she planned to raise with her employer. (Fresh & Easy Neighborhood Market (2014) 361 NLRB 151) The NLRB ruled in the worker's favor, holding that when an employee seeks assistance

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[21] In Fresh & Easy, the NLRB explained that "mutual aid or protection" is best understood under the "solidarity" principle, a "bedrock principle" of U.S. labor law that sees one employee asking another for aid in raising an issue with management as a tacit request that a "coworker[] exercise vigilance against the employer's perceived unjust practices" that affect the workplace as a whole. "Fresh & Easy Neighborhood Market, Inc.", Harvard Law Review, volume 128, no. 2 (December 2014) discussing Fresh & Easy (2014) 361 NLRB 151.

[22] Surveillance or the impression of surveillance interferes with an employee's exercise of rights protected by Labor Code Section 1152 and thereby violated Section 1153, subdivision(a). Abatti Farms, Inc., and Abatti Produce, Inc.(1979) 5 ALRB No. 34 [citing Tomooka Brothers, 2 ALRB No. 52 (1976); Merzoian Bros., 3 ALRB No. 62 (1977); Better Val-U Stores, 174 NLRB No. 32 (1969), 70 LRRM 1169]

[23] "Congress knew well enough that labor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context." (Eastex, Inc. v. NLRB (1978) 437 U.S. 556, 565)

from co-workers with respect to a Title VII violation, the action is not only concerted[24], but also it is for mutual aid and protection. (Fresh & Easy Neighborhood Market (2014) 361 NLRB 151) Further, in Dish Network, the Board held that employees who solicit co-workers to join a wage and hour lawsuit engage in protected, concerted activity. (Dish Network (2016) 363 NLRB 141.) In 200 East 81st Restaurant Corporation, the NLRB found that filing a Fair Labor Standards case in U.S. District Court was protected, concerted activity. (200 East 81st Restaurant Corporation (2015) 362 NLRB No. 152 [finding that the employee acting on the behalf of others, even without their knowledge or consent, was still engaged in protected concerted activity]) In this case, plaintiff had alleged that the restaurant violated Fair Labor Standards Act provisions as to tipped employees. Upon his filing the class-action, the restaurant fired him. Plaintiff than filed a NLRA unfair labor practice claim, notwithstanding the retaliation prohibitions and remedies available directly through the Fair Labor Standards Act.

Even while ruling that the NLRA imposes no limits on the enforceability of arbitration agreements, the California Supreme Court expressly states that the arbitration agreement in question in that case did not prohibit joint or consolidated claims in arbitration, discussing claims with one another, soliciting support from co-workers, or pooling resources to hire a lawyer. (Iskanian v. CLS Transportation Los

[24] The NLRB concluded that the worker's actions sought not only to address her instance of sexual harassment, but also to prevent similar such future occurrences to other co-workers. (Fresh & Easy Neighborhood Market (2014) 361 NLRB 151)

Angeles, LLC (2014) 59 Cal.4th 348, 359 (2014) [also holding that an employer's arbitration agreement cannot require employees to waive representative claims under California's Private Attorneys General Act of 2004])

Thus, up until the May 21, 2018 issuance of the U.S. Supreme Court's case in Epic Systems Corp. v. Lewis, discussed *infra*, the then-existing case law was clear-cut that workers are engaged in protected, concerted activity when they meet with co-workers and/or counsel to discuss possible wage and hour violations or sought-after wage and hour improvements.

3. While Signaling a Policy Shift from the U.S. Supreme Court and NLRB Board, the Epic and Cordua Cases do not eliminate the longstanding protected, concerted status of meeting with co-workers and/or counsel about wage and hour conditions

One of the sub-headings within Fowler's post-hearing brief is that, "The United States Supreme Court Decision in Epic Systems is Fatal to the Charging Parties' Complaint." (Respondent's Post-hearing Brief, at page 20, lines 7-8) This sub-section of the decision will include a discussion of Epic Systems, both what it holds and what it does not hold.

In Epic Systems, the U.S. Supreme Court upheld the validity of employment contracts in which workers surrender their right to class action litigation against the company. (Epic Systems Corp. v. Lewis (2018) 138 S. Ct. 1612) The issue before the Court was a perceived conflict between the NLRA and the Federal Arbitration Act ("FAA"). The FAA was enacted ten years prior to the NLRA. Epic Systems and two

parallel matters raised the issue of whether NLRA Section 7 gave workers a substantive right to class action litigation which could not be waived notwithstanding the FAA. Section 7 has the same "mutual aid or protection" language of ALRA section 1152.

In Epic Systems, the company added a provision stating that all employee claims relating to wages would be resolved by arbitration, and that such claims could not be consolidated.[25] An employee thereafter filed a class action lawsuit in U.S. District Court alleging Fair Labor Standards Act violations. The employee argued that the NLRB's D.R. Horton decision made class action rights substantive and not FAA-waivable. (See D.R. Horton (2012) 357 NLRB 2277) While the federal court of appeals found that the NLRA protected the substantive right of employees to act together, the U.S. Supreme Court held that the NLRA did not interfere with enforcement of FAA arbitration agreements. However, Epic Systems does not state that it overturns all Section 7 protections of concerted efforts by employees to involve an administrative or judicial forum. Nor does Epic Systems state that it overturns all Section 7 protections of workers to meet and discuss non-ALRA legal claims, either with or without the presence of counsel. The more helpful case for Fowler is Cordua Restaurants. In Cordua, on April 26, 2018, the NLRB issued a decision finding that the company had violated the NLRA by firing an employee for filing a collective wage and hour lawsuit against it. (Cordua Restaurants, Inc. (2018) 366 NLRB 72) This NLRB

[25] The Epic Systems Supreme Court case was actually the consolidation of three prior Circuit Court cases which had created a split opinion on the interaction of the NLRA and FAA regarding there was a right to file class actions and/or collective actions that could not be waived. The other two cases were Ernst & Young LLP v. Morris and NLRB v. Murphy Oil USA, Inc.

decision was issued approximately one month before the U.S. Supreme Court's decision in Epic Systems. On August 15, 2018, the NLRB decided *sua sponte* to vacate the earlier decision. But the General Counsel later withdrew the charge and no additional NLRB decision has issued.[26] The on April 24, 2019, the U.S. Supreme Court issued its decision in Lamps Plus, Inc. v. Varela, No. 17-988, holding that an ambiguous arbitration agreement does not provide the necessary contractual basis for compelling class arbitration under the FAA. But these cases at most foster speculation as to where the U.S. Supreme Court and NLRB might go.[27] The general political shift

[26] While my decision does not rely upon the memorandum language to reach my conclusions of law, I do note that on October 2, 2018, the NLRB Regional Director for Region 19 issued an advice memorandum in the matter of Uber Technologies, Inc., Case 19-CA-199000. In their advice memorandum, the Region concluded that the Employer gave an unlawful directive to employees by telling them not to comment on an ongoing class-action lawsuit and to contact in-house counsel if anyone contacted the worker about the case. Page three of the memorandum states, "Employees' right to communicate with one another and with third parties and the media about grievances and potential remedies to those grievances, including lawsuits, is a significant Section 7 interest."

[27] While my decision does not rely upon the language of the NLRB website to reach my conclusions of law, I do note that the site still prominently has a page that states "Rights We Protect". That page specifically references "Activity Outside a Union" and states as follows:

Employees who are not represented by a union also have rights under the NLRA. Specifically, the National Labor Relations Board protects the rights of employees to engage in "concerted activity", which is when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action.

A few examples of protected concerted activities are:

- Two or more employees addressing their employer about improving their pay.
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other.
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

of the highest court and NLRB are not precedential in the absence of a decision or order.

In its post-hearing brief, Respondent Fowler argues that Epic Systems is analogous to using the ALRA to limit permissible discovery under the federal rules of civil procedure. Respondent Fowler also argues that constitutional due process requirements insist that the company be able to use every possible litigation defense tactic.

Under the Respondent's reasoning, it would not be protected, concerted activity for co-workers to discuss a wage and hour matter set for arbitration.[28] Nor would it be protected, concerted activity for co-workers to discuss a Private Attorney General Action. Using Respondent's logic, farmworkers need to know what type of legal proceeding they wish to commence before seeking counsel or communicating with one another.[29] Given that many farmworkers speak limited English, migrate to seasonal employment, and live in poverty, lifting all protections for co-workers to discuss non-ALRA claims would have an even greater impact on them than on most other workforce sectors.[30] (See Giumarra Vineyards Corporation (1977) 3 ALRB No. 21; Title 8, California Code of Regulations section 20236, subdivision (a))

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[28] Employers may not prohibit workers from discussing their wages. See NLRB v. Main Street Terrace Care Center, 218 F.3d 531 (6th Cir. 2000). Additionally, the California Equal Pay Act provides that an employer cannot prohibit workers from disclosing their wages, discussing the wages of others, or inquiring about others' wages. (California Labor Code sections 1197.5 and 432.3)

[29] If a worker individually goes to see an attorney, most communications would be protected by the attorney-client privilege.

[30] It also stands to reason that for those agricultural laborers who are undocumented, there is an even greater fear of being identified as part of a

Anonymous conversations with co-workers in their native language(s) are thus critical to enable agricultural workers to learn about their myriad of rights and potential associated remedies. To allow an employer to interrogate farm workers about all non-union activity would be contrary to the plain meaning of "other mutual aid and protection" in ALRA section 1152. For the reasons discussed above, I find that ALRA protected, concerted activity does not require any union involvement.

4. The NLRB used the Guess standard to balance litigation need against the right to protected, concerted activity free from interrogation

Guess?, Inc. (hereafter "Guess") is a 2013 NLRB Board decision which addresses an employer asking employee Maria Perez, during a deposition in a workers' compensation case, for the identity of workers who attended union meetings. (Guess? Inc. (2003) 339 NLRB 432)

The ALJ hearing the matter found that the company did not violate the NLRA, as the he found the questions relevant and the absence of any illegal objective. In his decision, the ALJ cited Bill Johnson's Restaurants v. NLRB (1983) for the proposition a state court case may be enjoined for unlawful objective as an unfair labor practice. The ALJ also concluded that the Board is generally reluctant to limit a party's discovery in a non-NLRB civil proceeding. (Bill Johnson's Restaurants v. NLRB (1983) 461 U.S. 731, 738, at footnote 5)

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group of workers seeking better wages and/or working conditions, for fear of deportation.

The Board disagreed with the ALJ's standard and conclusion. Instead of the two prongs outlined by the judge, the Board described three prongs to the test. If the company's questions are relevant and devoid of an illegal objective, then the third prong required is a weighing or balancing test between the employer's need to know and the worker's rights under the NLRA.[31] The Board compared the employer's ability to safeguard its interests using different techniques with the intimidation and chilling effect[32] if the workers' names were revealed. Under the facts before it in Guess, the

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[31] This balancing concept can also be seen in the Federal Rules of Civil Procedure. The December 2015 amendment to Rule 26 defines the scope of discovery to consist of "any nonprivileged matter that is relevant to any party's claim or defense and **proportional** to the needs of the case. . ." (Fed. R. Civ. P. 26(b)(1)[emphasis added]) The specific proportionality factors to be considered are "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Because FRCP 26 specifically incorporates this balancing test, the Guess standard – whether applied to NLRB or ALRB matters – does not conflict with the federal discovery statute. Clearly, there is nothing in FRCP 26 which prohibits the Board from finding a ULP for discovery not permitted by the rule. In the instant case, we have employer interrogations already found impermissible by a U.S. District Court Judge, so there is no federal preemption issue. In the General Counsel's complaint, the request for relief seeks an order requiring Fowler to cease and desist from unlawfully interrogating its agricultural employees about protected, concerted activities. Issuance of such an order does not mean inquiring about whether a particular worker attended meetings with co-workers and/or counsel is always prohibited. Under the federal rules, just like in ALRB hearing practice, the lawfulness of such interrogation depends upon the totality of the circumstances. For example, by the time a witness takes the stand at hearing or trial, the employee's identity is already disclosed.

[32] In Guess, footnote 8, the Board states that the employee's confidentiality interests are not diminished by the presence of counsel. The Board pointed out the possibility that employees would choose to refrain from protected activity if they knew their employer could find out their identities through the normal course of litigation. See also Chinese Daily News (2008) 353 NLRB 613 (Board holding that the presence of attorneys for the workers does not minimize the impact of the unlawful interrogation or make the inquiries less coercive)

Nor will a protective order limiting access to the information to "attorneys' eyes only" eliminate the chilling effect because workers may believe that owner will find out anyway. The harm emanates from the very

Board found that the employee's confidentiality interests outweighed the company's need for the information. The Board stated: "[W]e do not believe that the Respondent has demonstrated that its need for this information justifies compromising its employees' Section 7 right to confidentiality . . . While we assume that the questioning was relevant, the relevance was only marginal."

The Guess decision concludes: "inasmuch as we have found that the Section 7 rights here outweigh the Respondent's discovery rights under California State law, we conclude that the discovery here is preempted under the Act," citing Wright Electric, Inc.[33] (1999) 327 NLRB 1194, 1195, enf'd, 200 F.3d 1162 (8th Cir. 2000) and Bill Johnson's Restaurants v. NLRB (1983) 461 U.S. 731, 738 at footnote 5.

5. ALJ adoption and application of the Guess standard

I find that Fowler's deposition questions to Charging Parties about the identity of meeting attendees are not irrelevant, but are marginally relevant only at a *de minimus* level. Fowler could have permissibly asked further questions to determine the total number of different workers who attended such meetings. Based upon the record, we are talking about twenty or slightly more workers out of a potential class action population of fourteen thousand employees. Fowler expresses concern that the class action judge will use a poor statistical sampling methodology that allows counsel for

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question itself, which has a chilling effect on workers' willingness to engage in protected conversations about wages and hours.

[33] Wright Electric is a factually dissimilar case involving a worker allegedly falsifying an employment application to conceal that he was a union "salt" (an organizer surreptitiously implanted into an unorganized workforce in the hopes of organizing it). Wright Electric, Inc. (1999) 327 NLRB 1194, 1195, enf'd, 200 F.3d 1162 (8th Cir. 2000)

charging parties to stack the deck against the company. But with a group of 14,000 employees, there are many available alternatives that enable capturing an accurate representation of the class and to ensure that any sample used is not disproportionately comprised with the handful of workers who confidentially met with charging parties and their counsel. Nor was there any reason to single out those workers for special depositions at that early juncture, as noted by the U.S. District Court Judge.

The next prong to evaluate is whether Fowler's questions to Charging Parties had an illegal objective. While the General Counsel suggests that Fowler's real reason for the inquiry could have been to undermine a potential union organizing campaign, I find that the General Counsel did not meet its burden of proof to show this or any other illegal objective on the part of Fowler and/or its counsel. Nor did the federal magistrate or U.S. District Court Judge find such an illegal motive.

So next I have the very simple task of balancing the *de minimus* level of relevance for Fowler to know the names of the meeting attendees against the high probability that such divulgence would have a substantial chilling effect on the willingness of workers to engage in such protected, concerted activities.[34]

Fowler clearly loses this balancing test and, under the ALRA, has committed an unfair labor practice of California Labor Code section 1153, subdivision (a).[35] There

[34] The chilling effect that an employer's demand for information has is on all workers that learn of the request, not just those who are actually interrogated.

[35] California Labor Code section 1153, subdivision (a), states that "It shall be an unfair labor practice for an agricultural employer to do any of the following: (a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152."

are less intrusive methods for the company to ensure that class action plaintiffs do not stack the deck in a statistical sampling. My holding does not prohibit Fowler from asking witnesses, at depositions or hearings, as to whether they, themselves, personally attended meetings with counsel and co-workers. ALRB law protects the identity of non-supervisory worker witnesses up until such witness testifies at a hearing.

B. There is no evidence in the record to support Fowler's claim that the General Counsel filed the complaint in this matter as retaliation for other litigation initiated or involving Fowler Packing.

As previously noted, Fowler alleges that the General Counsel's decision to prosecute this unfair labor practice constitutes selective enforcement and retaliation. The charge was filed on February 26, 2016 and the complaint did not issue until over twenty-two months later on January 8, 2018. The other litigation cited by Fowlers' attorneys were all initiated prior to the charge in the instant matter.

While it is true that, on July 27, 2016, Fowler filed a notice of appeal in their efforts to overturn the ALRB's four decades-old access regulation, there is no evidence in the instant record which suggests that the General Counsel was influenced by that filing. Indeed, the General Counsel still did not file her complaint in this matter for an additional eighteen months following that appeal. Appeals by large farms in labor law litigation are hardly a rarity. The 9th Circuit heard oral argument on the access issue on November 17, 2017 and issued a decision only long after the General Counsel's complaint in this matter. There are many other factors – such as investigations and actions involving other entities that competed for limited staff resources – which

theoretically could have resulted in the delay in filing the complaint. The General Counsel did not present any evidence on that topic. However, I find no evidence in the record to conclude that the General Counsel's complaint was in any manner influenced by Fowler's role in the access litigation.

While the access litigation could have impacted all California agricultural employers, the litigation involving Assembly Bill 1513 had a special importance to Fowler in particular. Fowler was one of only three or four companies essentially "carved out" of certain AB 1513 safe harbor provisions. The 9th Circuit issued its decision regarding AB 1513 on December 20, 2016. The 9th Circuit found that the carve-outs were inappropriately included to get the UFW's support for the legislation, but there is nothing in the litigation or decision to support Fowler's retaliation claim. There is no evidence in the record that General Counsel had a special role in the AB 1513 litigation. Further, the General Counsel did not issue its complaint for more than a year after the 9th Circuit's decision, so it is clear that animus did not instantly propel the complaint to the top of the General Counsel's priorities.

I find that Fowler failed to show that the General Counsel was in any manner motivated by retaliation in filing and pursuing this complaint.

C. The charge in this matter is timely because Fowler's repeated demand for the identity of meeting attendees continued to occur during the six months prior to the filing of the February 26, 2016 charge.

California Labor Code section 1160.2 states in pertinent part: "No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board. . ." Fowler correctly points out that the charge was filed on February 26, 2016, which was more than six months after the depositions on August 10 and 11, 2015 when the company interrogated Charging Parties regarding the identity of meeting attendees. For this reason, Fowler argues that the matter is outside the statute of limitations and time-barred.

Fowler also correctly points out that the company's motion to compel further deposition responses occurred only after the charge was filed and thus could not form the basis for the charge. The charge necessarily encompasses acts that have already occurred.

The less persuasive aspect of Fowler's argument is their casual dismissal of the importance of the company repeating its demand for the identity of meeting attendees over and over during the meet-and-confer process.[36] Specifically, Respondent's attorneys sought this information from plaintiffs' counsel during meet and confer sessions held on September 9, 2015, October 2, 2015 and January 8, 2016. All of these dates fall within the six month period preceding the charge.

[36] The February 26, 2016 charge states "On or about August 10 and 11, 2015, and continuing to date, Fowler Packing, Ag Force and Fowler Marketing, through its counsel, owners, agents and/or representatives have violated the Act by insisting on discovering the identities of workers who attended and/or participated in meetings about a pending lawsuit against Fowler Packing, Ag Force and Fowler Marketing. Because participation in a pending lawsuit constitutes protected concerted activities for mutual aid and protection, insisting on knowing the identities of participants who attended confidential meetings about the lawsuit is a blatant violation of the Act."

Fowler's meet and confer demands were both "sufficiently related" to the original request and also a continuation of that request. Fowler was not legally obligated to continue its unlawful demands as part of the meet and confer process. Fowler could have acquiesced to Charging Parties position or offered a compromise that did not interrogate about protected, concerted activity. In this instance, the meet and confer request is clearly the same type of conduct as the original deposition question. Both were attempts to interrogate a worker about those who met anonymously for mutual aid and protection, the meet and confer was simply a follow-up to the initial inquiry. Indeed, during the pertinent six month period, Fowler was escalating its efforts to get the information that it wanted which could only increase the magnitude of the chilling effect on those workers contemplating whether to engage in mutual aid and protection. The motion to compel itself, which occurred after the charge was filed, is only relevant to the extent that it memorializes Fowler's ongoing discovery efforts during the six months prior to the filing of the February 26, 2016 charge.

For the above reasons, I find that this matter is not time-barred.

ORDER

Pursuant to California Labor Code section 1160.3, Respondent Fowler Packing Company, Inc. ("Respondent"), its officers, attorneys, agents, labor contractors, successors and assigns shall:

1. Cease and desist from unlawfully interrogating its agricultural employees about protected, concerted activities.

2. Take the following affirmative actions that are deemed necessary to effectuate the policies of the Agricultural Labor Relations Act (the "Act"):

    a. Upon request of the Visalia ALRB Regional Director, sign the attached Notice to Agricultural Employees ("Notice") and, after its translation by a Board agent(s) into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

    b. Post photocopies of the Notice, in all appropriate languages, in conspicuous places on its property for sixty days, the places of posting to be determined by the Visalia ALRB Regional Director, and exercise due care to replace any notice which has been altered, defaced, covered, or removed.

    c. Mail photocopies of the notice, in all appropriate languages, within thirty days after the issuance of this Order, to all non-supervisory agricultural workers employed by the Respondent during September 9, 2015 through September 8, 2016, at their last known addresses.

d. Provide a photocopy of the notice to each non-supervisory agricultural employee hired to work for Respondent during the twelve-month period following the date of issuance of this Order.

e. Arrange for a representative of Respondent or a Board Agent to distribute and read the Notice, in appropriate languages, to all non-supervisory agricultural employees then employed, on company time and property, at times and places to be determined by the Visalia ALRB Regional Director. Shortly after the reading, Board agents shall be given opportunity, outside the presence of company management and supervisors, to answer any questions employees may have concerning the notice or their rights under the Act. The Visalia ALRB Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost during the reading of the notice and the question-and-answer period.

f. Notify the Visalia ALRB Regional Director in writing, within thirty days after the issuance of this Order, of the steps that Respondent has taken to comply with the Order's requirements. Upon request of the Visalia ALRB Regional Director, Respondent shall notify the Regional Director periodically in writing of the additional steps taken to comply with the terms of this Order.

It is so ORDERED.

Dated: June 13, 2019

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Mark R. Soble
Principal Administrative Law Judge
Agricultural Labor Relations Board

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed with the Visalia Regional Office of the Agricultural Labor Relations Board ("ALRB"), the General Counsel of the ALRB issued a complaint that we, Fowler Packing Company, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the Agricultural Labor Relations Act during September 9, 2015 through January 8, 2016, when Fowler Packing Company repeatedly asked during litigation for information about the identity of non-supervisory agricultural workers who met with co-workers and counsel to discuss wage and hour topics. This information was not provided to the company.

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 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; and
6. To decide not to do any of these things.

The Agricultural Labor Relations Act protects your right to engage in protected, concerted activity for mutual aid and protection. Because you have these rights, Fowler Packing Company promises that we will not unlawfully ask you about any meetings or discussions you may have with co-workers about wage and hour conditions.

Dated: _____ Fowler Packing Company, Inc.

By: _____
(Name and title of representative)

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 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