STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

REVEILLE FARMS, LLC,	)	Case No. 2017-CE-066-SAL
	)	
Respondent,	)	
	)	
and,	)	
	)	
DIONICIO PEREZ LOPEZ,	)	45 ALRB No. 6
	)	
Charging Party.	)	(July 3, 2019)
	)	
	)	
	)	
	)	

DECISION AND ORDER

On March 8, 2019, Administrative Law Judge Mary Miller Cracraft (the "ALJ") issued the attached order granting a Motion to Deem Allegations in the Complaint Admitted and granting a Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relations Board (the "ALRB" or "Board") against Respondent Reveille Farms, LLC. ("Respondent") in the above-captioned case. The Complaint alleged that Respondent violated the Act by terminating the employment of charging party Dionicio Perez Lopez ("Lopez") and four other workers after they 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 that Respondent did not establish good cause for its failure to do so. Accordingly, the ALJ ordered the allegations in the Complaint be deemed admitted. As a remedy, the ALJ

ordered that Lopez and the other discriminatees 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 order in light of the exceptions and briefs filed by the parties. The Board affirms the ALJ's order for the reasons set forth below.

Discussion

The Board looks to precedent under Code of Civil Procedure section 473 for guidance in determining whether to grant a party relief from a default judgment. (*GJ Farms, Inc.* (2019) 45 ALRB No. 2, p. 6; *Jacob Diepersloot, et al.* (2018) 44 ALRB No. 12, p. 5.) Subdivision (b) of section 473 states, in relevant part:

> 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, 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. 5

["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.* (2003) 29 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.)

In its exceptions to the ALJ's order, Respondent argues that the ALJ incorrectly applied Code of Civil Procedure section 473 and failed to consider evidence of (1) Respondent's counsel's unfamiliarity with Board procedures, (2) the General Counsel's alleged failure to inform Respondent's counsel that a default would be sought, and (3) the General Counsel issuance of the complaint during the holiday season on December 28, 2018.

Respondent also asserts Respondent's counsel acted diligently after becoming aware of his failure to timely answer the complaint and that neither the General Counsel nor charging party would suffer any prejudice if relief from default were granted.

First, Respondent's counsel's alleged unfamiliarity with ALRB procedures and law, including the ALRA's exclusion of farm labor contractors from the definition of agricultural employer, does not constitute good cause to support granting relief from

default. (Lab. Code, § 1140.4, subd. (c).) We recently rejected virtually the same argument in *Jacob Diepersloot, supra*, 44 ALRB No. 12, p. 7.

We find no support in the record for Respondent's argument that its counsel was misled into thinking Respondent would not be liable for the actions of its farm labor contractor ("FLC") Michel. The charge was filed against Respondent. ALRB field examiners, on at least two occasions, informed Respondent's counsel via email that the charge was against his client. "Reveille Farms, LLC" is the sole respondent named in the complaint. The complaint identifies Respondent as an agricultural employer under Labor Code section 1140.4, subdivision (c), and expressly alleges FLC Michel acted as an agent of Respondent.[1] Although Respondent's counsel asserted a number of employees whose interviews were taken during the General Counsel's investigation of the charge were employees of FLC Michel, the complaint clearly alleges those employees are statutory supervisors of Respondent under Labor Code section 1140.4, subdivision (j). Furthermore, after the General Counsel served subpoenas on FLC Michel during its investigation of the charge, FLC Michel filed a petition to revoke those subpoenas *as a non-party*. Respondent's counsel was served with those filings. Finally, even if Respondent or its counsel erroneously believed that FLC Michel should have been the entity charged with violations of the Act, this would not constitute good cause to fail to answer the complaint, which plainly named Reveille Farms as the liable party.

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[1] Labor Code section 1140.4, subdivision (c), plainly excludes "any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor" from the definition of "agricultural employer." The statute further clearly states: "The employer engaging such labor contractor or person shall be deemed the employer for all purposes under" the ALRA.

In sum, the allegedly mistaken belief of Respondent's counsel that FLC Michel, and not Respondent, was responsible for either responding to the complaint or defending it is not good cause to warrant granting relief from default. Likewise, the asserted belief of Respondent's counsel that the complaint served on him by certified mail was only a courtesy copy lacks merit. The proof of service for the complaint shows service on Respondent's counsel and does not separately show any service being provided to Respondent itself.[2] Furthermore, Respondent's counsel made no effort to contact the General Counsel to clarify or determine whether any action was required in response to the complaint. (*Jacob Diepersloot*, *supra*, 44 ALRB No. 12, p. 9.)

Next, Respondent's allegation that it was "surprised" by the General Counsel's service of the complaint soon after the Christmas holiday has no merit. The record contains no facts to show that the timing of the General Counsel's service of the complaint has any relevance.[3] Notably, Respondent proffers no facts whatsoever that it was prevented from answering the complaint, or seeking an extension of time to do so, within the required time. Board regulation 20230 clearly states "[t]he respondent shall file an answer within 10 days of service of the complaint."[4] The "Excerpts from ALRB Regulations" included with the

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[2] Shortly after the charge was filed, Respondent's counsel wrote in an email to an ARLB staff, "I represent Reveille Farms and will be handling the above-referenced case. Please send all future communications and requests to me."

[3] Rather, Respondent's position actually is that it did not believe it had to respond to the complaint, not that the timing of service of the complaint prevented it from doing so.

[4] The Board's regulations are codified at California Code of Regulations, title 8, section 20100.

complaint reiterate this.[5] Respondent's counsel admitted his office received the complaint. He averred that he "thereafter tendered" defense of the case to FLC Michel's attorney, but he does not identify when he did so, or even if FLC Michel responded in any fashion or accepted the defense.[6] Respondent's counsel does not aver to researching our regulations pertaining to service of a complaint until the end of January 2019 – after he had received the General Counsel's motion for default judgment. The failure of Respondent's counsel to research our regulations, coupled with his failure to consult the governing law that his client, not FLC Michel, was the agricultural employer liable for the alleged unfair labor practices, do not support a finding of good cause to grant relief from default. (*Munroe v. Los Angeles County Civil Service Com.* (2009) 173 Cal.App.4th 1295, 1303 [counsel's failure to comply with agency rules that were "on the books and readily available" and "neither complex nor obscure" is not good cause to excuse a late filing]; *Ontario v. Superior Court* (1970) 2 Cal.3d 335, 346 ["ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief"]; see also *Lake Elsinore Unified School District* (June 28, 2017) PERB Order No. Ad-446-E, pp. 11-12 [good cause did not exist where party's counsel failed "to

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[5] The General Counsel routinely serves with an unfair labor practice complaint a packet containing excerpts to our regulations to inform unrepresented parties or their counsel of the ALRB's unfair labor practice hearing procedures, including the requirements for answering a complaint and seeking extensions of time. In addition, our regulations are readily accessible online at <https://www.alrb.ca.gov/statutes-regulations/regulations/>.

[6] As noted above, FLC Michel previously filed petitions to revoke subpoenas served upon it as "a non-party."

carefully review PERB Regulations or other materials regarding the filing deadlines, nor counsel's failure to seek clarification or an extension of time"].)

Respondent's additional argument that the General Counsel's failure to notify it that it would seek a default judgment amounts to "surprise" similarly lacks merit. First, the General Counsel had no legal obligation to provide such notice. Second, even had the General Counsel notified Respondent that it would seek a default before filing its motion, it does not change the fact that Respondent's answer already was late. We previously have stated that "[b]efore 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." (*Lu-Ette Farms, Inc.*, *supra*, 11 ALRB No. 4, at ALJ Dec. p. 5.) Thus, even if the General Counsel had provided the type of notice to which Respondent claims it was entitled, we ultimately arrive back at the same place, asking: Does good cause exist to support granting a respondent relief from its failure to timely answer the complaint?

We also reject Respondent's argument that relief from default is warranted because neither the General Counsel, the charging party, nor the public at large would suffer any prejudice if its late-filed answer were accepted. The court in *Munroe*, *supra*, 173 Cal.App.4th at p. 1303 rejected a similar argument, finding the absence of prejudice to an agency did not excuse a party's failure to comply with its rules. We conclude it is unnecessary to reach this issue concerning the alleged absence of prejudice to the other parties where a respondent fails to first establish good cause for its failure to file a timely answer. The Public Employment Relations Board ("PERB") has adopted a similar approach. (*Regents of the University of California* (2018) PERB Dec. No. 2601-H, p. 17

[finding it unnecessary "to consider whether the late filing would have prejudiced" the other party where good cause to excuse the untimely filing is not first established]; *Bellflower Unified School District* (June 28, 2017) PERB Order No. Ad-447-E, p. 5 [stating "we must separately determine whether good cause exists to excuse [a party's] late filing, despite the apparent absence of any prejudice"].)

Finally, we reject Respondent's argument that the ALJ should have considered the diligence of Respondent's counsel in responding to the complaint after he became aware of the missed deadline as a factor in determining whether there was good cause to excuse the failure to file a timely answer. We find the alleged diligence of Respondent's counsel after its failure to timely answer the complaint does not support a showing of good cause for granting relief from default. The court in *Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 294 rejected a similar argument that a party's diligence in seeking relief from default, itself, may constitute good cause to warrant such relief. As the court found, "diligence is a further requirement, not an alternative to the first requirement" that good cause for accepting a late-filed pleading be shown. (*Ibid.*) Because Respondent has not met its burden of showing good cause to excuse its failure to timely answer the complaint, we need not consider its counsel's purported diligence after-the-fact.

For the foregoing reasons, we affirm the ALJ's order granting 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 the employment of Dionicio Perez Lopez, Pedro Esparza,

Antonio Mendez Guillen, Francisco Javier Gutierrez and Alfonso Flores after they engaged in conduct protected under the Act. Additionally, we affirm the ALJ's recommended order.

ORDER

Pursuant to Labor Code section 1160.3, Respondent Reveille Farms, LLC., 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 Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez and Alfonso Flores immediate reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges of employment;
    b. Make Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez and Alfonso Flores whole for

all wages and economic losses they have suffered since on or about October 12, 2017, as a result of their 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;

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 director by the Regional Director, to all agricultural employees employed by Respondent at any time during the period from October 12, 2017 until October 12, 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 replay any Notice which may be altered, defaced, covered or removed. Pursuant to the authority granted under Labor Code section 1151, subdivision (a), give agents of the Board access to its premises to confirm the posting of the Notice;

h. Arrange for a representative of Respondent or a Board agent(s) to distribute and read the Notice in all appropriate languages to all of Respondents' agricultural employees on company time and property time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent(s) shall be

given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees in order to compensate them for time lost at the reading and during the question and answer period;

i. Provide a copy of the attached Notice to each agricultural employee hire to work for Respondent during the one-year period following the date this Order becomes final and;

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

DATED: July 3, 2019

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

Barry D. Broad

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a change that was filed in the Salinas 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 discharging employees for complaining about terms and conditions of their employment such as failure to provide water, shade and bathrooms.

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 Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez and Alfonso Flores reinstatement to their former or substantially equivalent position of employment and make them whole for all loss of pay or other economic loss they have suffered as a result of our unlawful conduct.

Dated: _____ Reveille Farms, LLC

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 342 Pajaro Street, Salinas, California 93901. The telephone number is (831) 769-8031. 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

REVEILLE FARMS, LLC **Case No. 2017-CE-066-SAL**
(Dionicio Perez Lopez)

Background

Complaint issued on December 28, 2018, alleging discharge of five agricultural workers because they concertedly complained about their terms and conditions of employment. The complaint was served on Respondent's attorney by certified mail. A return receipt acknowledged service. No answer was filed by January 10, 2019, the due date for the answer. On January 24, 2019, the General Counsel moved that all complaint allegations be deemed admitted and requested default judgment.

Respondent argued that a timely answer was not filed due to mistake, inadvertence, surprise, and/or excusable neglect. This was Respondent's attorney's first experience in ALRB law and he did not appreciate the significance of the farm labor contractor exclusion. Because the investigation had focused on the actions of the farm labor contractor, whose attorney was present throughout the regional office investigation, Respondent's attorney "tendered" the complaint to that attorney for further handling. Moreover, Respondent received no warning that its answer was overdue.

The Administrative Law Judge found that the facts in *AllStar Seed Company* (2003) 29 ALRB No. 2 were quite similar to those present here. In *AllStar* as here, although the mistake of law might have been reasonable, a prudent person would have made further inquiry upon receipt of a complaint. Thus inexcusable neglect was found. Further, no surprise was found because there is no legal requirement that the General Counsel notify a respondent that the answer is overdue. Although public policy favors trial on the merits, as the Board found in *AllStar,* to withhold default judgment under such circumstances runs the risk of having no standards at all. Thus, finding all complaint allegations to be true, default judgment was granted.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

REVEILLE FARMS, LLC, **Respondent,** **and** **DIONICIO PEREZ LOPEZ,** **Charging Party**	**Case No.: 2017-CE-066-SAL** **ORDER GRANTING GENERAL COUNSEL'S MOTION TO DEEM ALLEGATIONS IN THE COMPLAINT ADMITTED; ORDER GRANTING GENERAL COUNSEL'S MOTION FOR DEFAULT JUDGMENT**

On January 24, 2019,[1] the General Counsel moved for default judgment against Reveille Farms, LLC (Respondent). The Complaint in this matter was filed and served on Respondent's attorney on December 28, 2018. Respondent's attorney acknowledged receipt. No Answer was filed by the due date, January 10. Thus, the General Counsel seeks an order that all Complaint allegations be deemed admitted and for entry of default judgment. After being granted a three-week extension of time to pursue settlement, on March 1, Respondent filed its opposition to the Motion for Default Judgment along with a proposed Answer to the Complaint. The General Counsel is without doubt entitled to take default judgment pursuant to the nearly identical facts in *AllStar Seed Co.*[2] Default judgment is granted based upon the following facts and

[1] All further dates are in 2019 unless otherwise specified.

[2] (2003) 29 ALRB No. 2, pp. 6-7 (Respondent's mistake of law in failing to file an answer, although reasonable, was not excusable neglect as it was not the act of a reasonably prudent person under the same circumstances. The Board rationalized that to hold otherwise would run the risk of having no standards.)

analysis.

I. Procedural Facts

1. Farm labor contractor Michel Labor Services (FLC Michel) provided labor for a project at Respondent's property from late September to early October 2017.

2. The unfair labor practice charge in this case was filed on October 22, 2017, alleging that Respondent violated the Agricultural Labor Relations Act (the Act)[3] when its agent FLC Michel terminated employees because they engaged in protected concerted activity.

3. Respondent's attorney became involved in the investigation of the underlying unfair labor practice charge in October 2017 when he received a letter from the Agricultural Labor Relations Board (ALRB) about alleged unfair labor practices. Along with an attorney for FLC Michel, Respondent's attorney attended informal interviews of witnesses conducted by the ALRB in August and September 2018.

4. Respondent's attorney did not at any time enter a "formal" notice of appearance as attorney for Respondent. However, on October 30, 2017, he emailed the Regional Office of the ALRB stating that he would be representing Respondent in connection with the investigation.

5. Respondent's attorney concedes that during the 2018 holidays, he received a copy of the Complaint. He believed however, that it was a courtesy copy and thought that the Complaint would have to be personally served on Respondent. It does not appear that a copy of the Complaint was served on the Respondent at its principal place of business.

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[3] California Labor Code §§ 1140-1166.3.

6. There is no record evidence that prior to moving for default judgment, Respondent's attorney was informed by the General Counsel that his client's Answer was overdue. The first he learned of this was when the motion for default judgment was filed.

II. Arguments

The General Counsel asserts that the Complaint was properly served on Respondent by email and certified mail to its attorney on December 28. Attached to the Complaint were excerpts from ALRB regulations.[4] The first such excerpted regulation, Section 20230, was reprinted stating, "The respondent shall file an answer within 10 days of the service of the complaint. . . ." Following issuance of the complaint, the General Counsel received a signed certified mail receipt for the Complaint. No Answer was filed by January 10. The General Counsel states that these undisputed facts entitle it to default judgment. Thus, the General Counsel claims that Respondent was properly served through service to its attorney, Respondent's attorney acknowledged receipt, and Respondent did not file an Answer.[5] According to the General Counsel, the allegations of the Complaint should be deemed admitted and default judgment is appropriate.

Respondent argues that a timely Answer was not filed due to mistake, inadvertence, surprise, and/or excusable neglect. Respondent's attorney points out that he had never been involved in an ALRB proceeding prior to this one. Moreover, he asserts that throughout the investigation, there was never a request for documents or witnesses from Respondent. All such requests were addressed to FLC Michel. FLC Michel had its own attorney present during the informal interviews conducted by the Regional Office.

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[4] 8 C.C.R. §20100 et seq.

[5] The General Counsel cites *Azteca Farms, Inc.* (1992) 18 ALRB No. 15, at p. 10, which holds that in order to deem complaint allegations admitted the General Counsel must show that the complaint was served on Respondent at its principal place of business, Respondent acknowledged receipt, and Respondent did not file an answer within 10 days of receipt.

Respondent's attorney was also present at these interviews. When the complaint was received by Respondent's attorney during the 2018 holidays, he assumed it was a courtesy copy and "tendered" the complaint to FLC Michel's counsel. Thus, Respondent asserts mistake, inadvertence, and excusable neglect.

Moreover, at no time between receipt of the Complaint and filing of the motion for default judgment did the General Counsel alert Respondent's attorney that an Answer was overdue.[6] Respondent avers that if prior notice had been provided, it would have immediately filed an Answer. Thus, Respondent asserts "surprise."

Further, Respondent argues that attorney involvement in the investigation was not a formal appearance pursuant to ALRB Regulations Sections 20162 and 20164. Read together, Respondent argues that these regulations mean it is appropriate to serve documents on a party's counsel only if the attorney has filed a formal notice of appearance or a signed pleading. Because Respondent's attorney did not enter a formal notice of appearance and did not file a pleading until February 6, there was no formal entry of appearance. As mentioned before, he acknowledges, however, that on October 30, 2017, he sent an email to the ALRB investigators stating that he would be representing Respondent in connection with the investigation.

Finally, relying on Section 473(b) of the Califonia Code of Civil Procedure,[7] Respondent asserts that it would be equitably just that it be relieved of strict enforcement of technical rules of procedure.[8]

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[6] Respondent cites the voluntary California Attorney Guidelines of Civility and Professionalism which provide, "An attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning."

[7] The section provides in relevant part: "The court may, upon any terms as may be just, relieve a party . . . from a judgment . . . taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

[8] Respondent cites *Melde v. Reynolds* (1900) 129 Cal. 308, 311: [Section 473(b)] is a remedial provision . . . which require[s] it to be liberally construed with a view to effect its objects and promote justice, is best observed by disposing of causes upon their substantial merits, rather than with strict regard to technical rules of procedure. To the same effect, Respondent cites *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 736; *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 608-609.

III. Analysis

The proof of service of the Complaint lists only service on Respondent's attorney via certified mail and email. That is, it does not reflect service of the Complaint on Respondent itself at its principal place of business. Prior pleadings in this case were also served only on Respondent's attorney.[9] Service solely on Respondent's attorney by certified mail appears to satisfy the requirements on the Act. Although he had not filed a formal notice of appearance and had not signed a pleading filed with the Board, those requirements are not necessary for service of the Complaint. The applicable regulation, section 20166, requires service, inter alia, "on the attorney or representative of each party." The rule does not specify that a formal notice of appearance or signed pleading be filed in order for service on a party's attorney to satisfy proper service. Accordingly, Respondent's argument that default judgment is not appropriate because the Complaint was not properly served lacks merit.

Respondent also seeks to avoid default judgment based upon mistake, inadvertence or excusable neglect. Respondent's attorney believed that FLC Michel was the focus of the investigation and would take care of answering the Complaint. As a practical matter, farm labor contractors are statutorily excluded from the definition of employer.[10] Consistent with this exclusion, both the underlying unfair labor practice charge and the Complaint clearly identify Reveille Farms, LLC, as the employer in this matter. Both the charge and Complaint refer to FLC Michel as an agent of Reveille Farms, LLC. Thus, Respondent's attorney knew or should have known that Reveille

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[9] For instance, the General Counsel's subpoenas of July 24, 2018 were served only on Respondent's attorney but not on Respondent's principal place of business. The same is true for a non-party petition to revoke deposition subpoenas filed by attorneys for FLC Michel on July 30, 2018; and an order denying the petition of August 14, 2018, among others.

[10] ALRA, Labor Code §1140.4(c)" "The term 'agricultural employer . . . shall exclude . . . any farm labor contractor. . . . The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part." See also, *Gourmet Harvesting & Packing* (1978) 4 ALRB No. 14, p. 3 (company that fits within the definition of a farm labor contractor is excluded from definition of employer).

Farms, LLC was the Respondent and FLC Michel was not the Respondent.[11] Attached to the Complaint was notice that " respondent shall file an answer within 10 days of service of the complaint. . . ."

Obviously, Respondent's attorney did not appreciate any of these facts due to his lack of experience in ALRB practice and his failure to become acquainted with this area of the law at some point between October 2017 and January 10, 2019. The definitional exclusion of farm labor contractors as employers is perhaps counterintuitive and unique to the ALRA. Even given the extensive length of time between his entry into ALRB practice and issuance of the Complaint, it is possible nonetheless to find the failure to understand the definitional exclusion of farm labor contractors is an excusable mistake of law.[12]

However, an excusable mistake of law does not automatically constitute excusable negligence. The question of whether conduct may be classified as excusable negligence must be answered by determining, as a question of fact,[13] whether Respondent had a duty to make some inquiry into the significance of the Compliant.[14] There is no record evidence that Respondent made any inquiry.

Under similar circumstances, the Board has found that failure to make any inquiry does not represent the conduct of a reasonably prudent person even in light of a excusable mistake of law and thus does not constitute excusable negligence.[15] Thus it is found that Respondent's ignorance of the law coupled with negligence in ascertaining the

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[11] See, e.g., *Jacob Diepersloot d/b/a JD Farms* (2018) 44 ALRB No. 12, p. 9 (mistake in believing farm labor contractor would be litigating the administrative process combined with mistake in believing the farm labor contractor was the employer does excuse untimely filing of answer).

[12] See *AllStar Seed Company* (2003) 29 ALRB No. 2, p 6 (failure to file answer due to error to appreciate that withdrawal of NLRB charge did not prevent assertion of jurisdiction by ALRB was reasonable mistake of law.)

[13] Id.

[14] Id.

[15] Id. at p. 7.

law's requirements does not constitute excusable neglect and therefore does not afford relief from entry of default.[16]

Finally, Respondent's argument of "surprise" is unavailing. Failure of the General Counsel to warn Respondent's attorney that its Answer was overdue is not fatal to the General Counsel's motion. As Respondent points out, in a perfect world such notice would have been given. However, as Respondent acknowledges, the law does not require such notice and lack of such notice does not provide a basis for failure to enter default judgment.

Respondent also argues that California Code of Civil Procedure Section 473(b), which sets forth standards for setting aside default judgment, teaches that public policy favors trial on the merits whenever possible.[17] In citing to Section 473(b), the ALRB stated:[18]

> The overriding principle [of public policy favoring trial on the merits] is illustrated by the following passage from Weitz v. Yankosky (1966) 63 Cal.2d 849:
>
> > It is the policy of the law to favor, wherever possible, a hearing on the merits, and appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand and it appears that a substantial defense could be made. Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. (Citations omitted.)

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[16] Id. at p. 4, citing *Robbins v. Los Angeles Unified School District* (1992) 3 Cal.App.4th 313, 319 (while mistake of law is a ground for relief under section 473, the issue of which mistake of law constitutes excusable neglect presents a question of fact).

[17] Respondent cites *Ron Burns Construction Co. v. Moore* (2010) 184 Ca.App.4th 1406, 1413.

[18] *AllStar Seed Co.*, supra, 29 ALRB No. 2, p. 4; see also, *Jacob Diepersloot d/b/a JD Farms* (2018) 44 ALRB No. 12, p. 6-7, adopting standard in CCP section 473.

Under the circumstances of this case, it appears that neither the General Counsel, the charging party, nor the public at large would suffer any great prejudice due to two months of time elapsing for a late-filed Answer. However, the precedent cited above in *AllStar Seed Company* appears to foreclose denial of default judgment on this basis. In *AllStar,* the Board held under similar circumstances:[19]

> While we recognize that the courts have erred on the side of granting relief from default, it is also true that courts have made it clear that there are standards that must be met in order to grant such relief. While we do not take lightly a decision to deny relief from default, to do otherwise in this case does run the risk of having no standards. Therefore, we affirm the ALJ's [grant of default] and adopt her recommended Order, as modified.

Pursuant to 8 CCR § 20232, all allegations not denied in an Answer shall be deemed admitted. Because there is not good cause for failure to file an Answer, it is hereby ORDERED that all the allegations of the complaint are admitted, the General Counsel's motion for default judgment is GRANTED, and Respondent's proposed Answer is STRICKEN.

Having found the allegations of the complaint admitted, the following findings of fact and conclusions of law are made:

IV. Findings of Fact

1. On October 22, 2017 Dionicio Perez Lopez properly and timely filed unfair labor practice charge 2017-CE-066-SAL alleging that Respondent committed an unfair labor practice when its agent FLC Michel terminated him as well as Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez and Alfonso Flores (collectively "discriminatees") from employment on October 12, 2017 because they engaged in

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[19] *AllStar Seed Co.,* supra, 29 ALRB No. 2, p. 7.

protected concerted activity. On October 24, 2017, the Regional Director served Respondent with the charge via certified mail.

2. At all material times, Respondent was an agricultural employer within the meaning of Section 1140.4(a) and (c) of the Act. Respondent is a limited liability company duly organized and existing under the laws of the State of California. Respondent grows and harvests beans and almonds in Sacramento County.

3. At all material times, FLC Michel was acting as an agent for Respondent.

4. At all material times, Dionicio Perez Lopez (Perez), Pedro Esparza (Esparza), Antonio Mendez Guillen (Guillen), Francisco Javier Gutierrez (Gutierrez), and Alfonso Flores (Flores) were agricultural workers, as defined in Section 1140.4(b), employed by Respondent. (Complaint paragraphs 4-8)

5. At all material times, Supervisor Juan Medina (Supervisor Medina), Foreman Jose Lugo (Foreman Lugo), Foreman Juan Andrade (Foreman Andrade), owner Manuel Michel (Owner Michel), Payroll Officer Pedro Campos (Payroll Campos), Receptionist Dalia Figueroa (Receptionist Figueroa), and Office Manager Maria Torres (Manager Torres) were statutory supervisors within the meaning of Section 1140.4(j). (Complaint paragraphs 9-15)

6. In October 2017 Respondent contracted with FLC Michel to provide labor to harvest almonds and beans.

7. In October 2017, FLC Michel hired the discriminatees to harvest for Respondent.

8. The discriminatees worked in crews supervised by Foreman Lugo, Foreman Andrade, and Supervisor Medina.

9. The discriminatees drove to work together in Esparza's van.

10. Before the beginning of each workday, Esparza would contact one of the foremen or supervisors via telephone for the location of the field where the workers were supposed to report.

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11. On October 9, the foreman tasked the discriminatees with tying down the almond trees.

12. That day, when the discriminatees arrived to the field at around 6:30 a.m., they discovered that it was extremely windy.

13. The discriminatees attempted to tie down the trees but were unable to do so due to the wind.

14. The discriminatees discussed and agreed that they could not continue working because of the windy conditions and they decided to leave for the day.

15. Esparza told Foreman Lugo that he and the discriminatees would be leaving for the day because the wind prevented them from tying down the trees.

16. Foreman Lugo suggested that the workers go to a different field and pick up roots and debris instead.

17. The discriminatees agreed and went to a different location to pick up roots and debris.

18. After an hour, the discriminatees still felt that the conditions were too windy to continue working as the wind blew dirt into their eyes and it was unsafe.

19. Mr. Esparza contacted Foreman Lugo and informed him that he and the discriminatees were leaving because it was too windy and it was unsafe.

20. Foreman Lugo acknowledged that the workers were leaving for the day.

21. On October 11, the discriminatees harvested beans for Respondent. At or around 10 a.m., the discriminatees noticed that the foreman failed to leave water, bathrooms, and shade. They discussed the problem.

22. Esparza called Foreman Andrade and complained on behalf of the discriminatees that there was no water, bathrooms, or shade in the field.

23. Foreman Andrade responded that he was too busy to bring the water, bathrooms, and shade.

24. Esparza then called Foreman Medina to complain about the lack of water, bathrooms, and shade.

25. Foreman Medina also responded that he was too busy.

26. The workers continued working and eventually noticed that someone had brought water and shade, but no bathrooms were brought to the field that day.

27. The following day, on October 12, the workers arrived to Respondent's field at or around 6:30 a.m. and immediately noticed that there was no waters, bathrooms, or shade at the field.

28. Mr. Esparza called Foreman Andrade and complained on behalf of the discriminatees that there was no water, bathrooms, or shade at the field.

29. Foreman Andrade responded again that he did not have time to deliver the items to the field.

30. The discriminatees continued working until approximately noon without water, bathrooms, or shade.

31. At or around noon, the discriminatees again discussed the problem and agreed to leave the field for the day because the foremen refused to deliver water, bathrooms, or shade.

32. Esparza contacted Foreman Andrade to inform him that he and the discriminatees were leaving because there was no water, bathrooms, or shade at the field.

33. Foreman Andrade acknowledged their decision to leave.

34. At or around 6 p.m. that day Esparza called Foreman Andrade to inquire about the work location and assignment for the following day.

35. Foreman Andrade responded that he would have to call Esparza later in the evening to provide him with the information.

36. Foreman Andrade called Esparza at or around 9 p.m. that night and told him that after speaking to Supervisor Medina, there was no more work available for the discriminatees.

37. The following day, October 13, at or around 10 a.m., the discriminatees went to FLC Michel's administrative offices to inquire about their employment and to return a water jug.

38. Once there, the discriminatees spoke to Receptionist Figueroa and Manager Torres. Both women responded that they did not know the status of their employment and recommended that they speak to Payroll Campos.

39. Payroll Campos arrived to the office and the discriminatees renewed their complaints about the lack of water, bathrooms, and shade and asked about whether their employment had been terminated.

40. Payroll Campos stated that he could not assist them but that he would speak to Owner Michel and contact them once he had more information.

41. Esparza then requested to speak to Owner Michel personally but Payroll Campos asserted that Owner Michel was unavailable.

42. The discriminatees left the office and Esparza called Owner Michel on his cell phone.

43. Owner Michel did not answer but Esparza left a voice message, renewing the discriminatees' complaints and inquiring as to the status of their employment.

44. The discriminatees never heard back from FLC Michel.

V. Conclusions of Law

Based upon these admitted facts, it is found that:

1. The discriminatees engaged in protected concerted activity by requesting water, bathrooms, and shade.

2. Respondent, through its agent FLC Michel, had knowledge that the discriminatees engaged in protected concerted activity.

3. Immediately thereafter, Respondent refused to provide further work to the discriminatees thus terminating the discriminatees' employment.

4. By terminating the discriminatees' employment because they engaged in protected, concerted activity, Respondent unlawfully retaliated against the discriminatees, interfering, restraining, and coercing them in violation of their right to engage in protected, concerted activity for the purpose of mutual aid and protection and in violation

of section 1153(a) of the Act.

ORDER

By the authority of section 1160.3 of the Act, the Agricultural Labor Relations Board (Board) hereby order that Respondent Reveille Farms, LLC, its agents and officers, successors and assigns are order 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.
    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 Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez, and Alfonso Flores immediate reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges of employment.
    b. Make Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez, and Alfonso Flores whole for all wages and economic losses they have suffered since on or about October 12, 2017, as a result of their discharge. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. Such amounts hall include interest to be determine 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.

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 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. 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 October 12, 2017 until October 12, 2018.

f. Post copies of the Notices 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 tis premises to confirm the posting of the Notice.

g. 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 at time(s) and place(s) to be determined by the Regional Director.

Following the reading, the Board agent(s) shall be given an 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.

h. Provide a copy of the attached Notice to each agricultural employee hired to work for Respondent during the one-year period following the date this Order becomes final.

i. 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 the terms. Upon request of the Regional Director, the regional office periodically thereafter in writing of further steps taken until full compliance with this Order is achieved.

SO ORDERED. Dated: March, 8, 2019

Mary Miller Cracraft
Administrative Law Judge
Agricultural Labor Relations Board

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Salinas 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 discharging employees for complaining about the terms and conditions of his employment such as failure to provide water, shade, and bathrooms.

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.

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WE WILL offer reinstatement to Dionicio Perez Lopez, Pedro Esparza, Antonio Mendez Guillen, Francisco Javier Gutierrez, and Alfonso Flores to their former or substantially equivalent positions of employment and make them whole for all loss of pay or other economic loss they 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 342 Pajaro Street, Salinas, California 93901. The telephone number is (831) 769-8031.

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

DO NOT REMOVE OR MUTILATE

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE
(Code Civ. Proc., §§ 1013a, 2015.5)

CASE NAME: REVEILLE FARMS, LLC, Respondent, and DIONIOCIO PEREZ LOPEZ, Charging Party

CASE NO: 2017-CE-066-SAL

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within action. My business address is 1325 J Street, Suite 1900-B, Sacramento, California 95814.

On July 3, 2019, I served the within DECISION AND ORDER [45 ALRB No. 6] on the parties in said action, by EMAIL and/or CERTIFIED U.S. MAIL and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as follows:

Daniel A. Street Christine Lampman The Law Office of Daniel A. Street 555 University Avenue, Suite 284 Sacramento, CA 95825.	**Email/Certified Mail** dstreet@saclawyers.com christine@saclawyers.com 9414 7266 9904 2968 9488 18
Jennifer Randlett Madden Delfino Madden O'Malley Coyle Koewler 500 Capitol Mall, Suite 1550 Sacramento, CA 95814	**Email/Certified Mail** jmadden@delfinomadden.com 9414 7266 9904 2968 9488 01
Courtesy Copy to: Dioniocio Perez Lopez 2396A Bogue Road Yuba City, CA 95993	**Certified Mail only** No Email on File 9414 7266 9904 2968 9487 95
Franchesca Herrera, Regional Director ALRB Salinas Regional Office 342 Pajaro Street Salinas, CA 93901	**Email/Certified Mail** fherrera@alrb.ca.gov 9414 7266 9904 2968 9487 88

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Audrey Hsia, AGPA	sshawver@alrb.ca.gov
Agricultural Labor Relations Board	Audrey.Hsia@alrb.ca.gov
1325 J Street, Suite 1900-A	
Sacramento, CA 95814	

Executed on July 3, 2019, at Sacramento, California. I certify under penalty of perjury that the foregoing is true and correct

Caroline Molumby
Legal Secretary

PROOF OF SERVICE