

**STATE OF CALIFORNIA**  
**AGRICULTURAL LABOR RELATIONS BOARD**

**RINCON PACIFIC, LLC,**

**Respondent,**

**and**

**JUAN ALVAREZ, ET AL.,**

**Charging Parties**

**Case No.: 2014-CE-044-SAL**

**DECISION AND RECOMMENDED  
ORDER**

Appearances:

For the General Counsel:

*Andres Garcia, Assistant General Counsel*  
*Silas Shawver, Deputy General Counsel*

For the Respondent:

*Rob Roy, Attorney*

**DECISION AND ORDER**

**John J. McCarrick, Administrative Law Judge.** This case presents threshold issues of whether certain employees of Respondent are supervisors or agents authorized to make certain statements binding on Respondent and whether Respondent had adequate notice that the issue of agency would be litigated in this case. After those issues are resolved, the issue of whether Respondent refused to hire or rehire employees because

they engaged in protected concerted activity and filed unfair labor practice charges will be considered.

### STATEMENT OF THE CASE

On November 26, 2014<sup>1</sup>, Juan Alvarez (Alvarez) filed a charge with the Agricultural Labor Relations Board (Board) in Case 2014-CE-044-SAL, alleging that Rincon Pacific, LLC, (Respondent) violated section 1153(a) of the Agricultural Labor Relations Act (Act) by discriminating against its employees for engaging in a work stoppage. On February 1, 2019, the Regional Director of the Salinas Regional Office of the Board issued a complaint alleging that Respondent violated section 1153(a) and (d) of the Act by instituting a policy of refusing to rehire laid off employees Flora Reyes (Reyes), Gilberto Cervantes (Cervantes), Juan Alvarez (J. Alvarez), Antonio Alvarez (A. Alvarez), Julio Garcia (Garcia), Javier Reyes (Reyes), Arturo Alvarado (A. Alvarado), Diana Alvarado (D. Alvarado), Juana Fajardo (Fajardo), Luis Espinosa (L. Espinosa), Gloria Espinosa (G. Espinosa), Alexis Rodriguez (Rodriguez), Norma Martinez (Martinez), Maria Gregoria (Gregoria), Adrian De Jesus (De Jesus), and Celene Zamudio (Zamudio) because they had engaged in protected concerted activity and filed unfair labor practice charges. Respondent filed a timely answer denying it had committed any unfair labor practices.

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<sup>1</sup> The date in the Complaint is in error and should read 2014.

I took testimony in this case from May 16-18, 2019, in Oxnard, California. Having considered the entire record including the testimony of the witnesses and the briefs filed by General Counsel and Respondent, I make the following:

### **FINDINGS OF FACT**

Respondent admitted that it is an agricultural employer within the meaning of the Act. Respondent admitted that Alvarez has been employed as an agricultural employee of Respondent harvesting berries and that Jorge Aguilera (Aguilera) and Alberto Vasquez (Vasquez) were statutory supervisors at all times material herein, having the authority to discipline and fire employees under their supervision.

#### **Respondent's Business and Chain of Command**

At all times material herein, Respondent has grown and harvested raspberries at its ranches in Oxnard, California,<sup>2</sup> including Limoneira, Mesa, Kotake, Santa Clara (Central) and Navarro. Respondent was one of several companies owned by Ken Hasegawa (Hasegawa) and was operated by Anacapa Property Management (Anacapa) and later Rincon Fresh. Respondent's upper management included Hasegawa, Chad Ianneo (Ianneo), COO and President of all farming operations and Joe Lopez (Lopez) at Anacapa, handled all human resources for Respondent.

Under Ianneo was Jorge Aguilera (Aguilera), the grower supervisor who supervised foremen at all of Respondent's ranches. Under Aguilera was Alberto Vasquez (Vasquez) who was lead foreman over all of Respondent's ranches. At each ranch there

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<sup>2</sup> Respondent is no longer engaged in the production of raspberries but has converted all of its operations to the growing of strawberries.

was a foreman who supervised all ranch employees, a puncher and row or crew boss. Punchers kept track of how many boxes fruit pickers brought in and for the quality of the fruit and row bosses kept track of work quality.

### **Punchers and Row Bosses as Respondent's Agents**

#### **The Facts**

General Counsel contends that punchers and row bosses, sometimes referred to as crew bosses<sup>3</sup>, were Respondent's agents. Respondent contends that because General Counsel's complaint failed to allege Respondent's row bosses and punchers were its agents, it failed to provide Respondent with adequate notice in order to defend that the row bosses and punchers were not its agents.

While the ranch foremen generally hired ranch employees, at times they were assisted by punchers and row bosses. On occasion punchers would assist new employees fill out their hiring documents. According to Respondent's HR Director Joe Lopez, on occasion row bosses hired employees.<sup>4</sup> As a puncher Flora Reyes assisted prospective employees in filling out employment forms and on occasion called employees in to work. According to Guadalupe Vega (Vega), Respondent's Meza ranch foreman, either Vasquez or Aguilera gave him a memo<sup>5</sup> dealing with hiring of family members. The memo provides:

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<sup>3</sup> Transcript Volume III, page 113.

<sup>4</sup> See Transcript Volume III, page 51-52, 113.

<sup>5</sup> General Counsel's exhibit 4.

## MEMORANDUM

**\*\*This memorandum is for all persons in charge of directing or hiring a group of employees. For example; Supervisors, Foremen, Row Bosses and Punchers\*\***

Beginning 4/24/2014, the hiring of family members shall be strictly supervised. Hired family members should be treated strictly as regular employees. Special privileges should not be conceded. In the case that the company discovers special treatment toward hired family members, disciplinary action shall be taken and you may possibly be terminated.

### **The Law**

The Board and the California Supreme Court have followed NLRB precedent concerning respondent liability for unfair labor practices caused by its agents. In *Vista Verde Farms v. ALRB*, (1981) 29 Cal 3d 307, 322, the Supreme Court found that under the Act's liberal application of agency principles, an employer may be found liable for the unauthorized or unratified improperly coercive actions directed against its employees if the workers could reasonably believe the coercing individual was acting on the employers' behalf.

In *Corralitos Farms, LLC*, (2013) 39 ALRB No. 8, slip opinion at page 17, citing *Vista Verde Farms, supra* and *Omnix International Corp.*, 286 NLRB 425 (1987), the Board found that punchers were not respondent's agents since there was insufficient evidence to conclude that employees would reasonably perceive that the punchers were speaking for the employer. In making this finding, the Board relied on the fact that punchers simply inspected boxes of fruit for quality control and that there was no other evidence that they held a special status that would make it reasonable for employees to perceive they were acting on behalf of management.

In this case both punchers and row bosses had duties that distinguish them from the punchers in *Corralitos Farms, LLC, supra*. As Respondent's human resources director Lopez testified, on occasion row bosses hired employees. There is ample credible and uncontradicted testimony, *infra*, from employees Flora Reyes, Juan and Antonio Alvarez and supervisor Guadalupe Vega that row bosses and punchers often assisted in the hiring process by filling out new employees' paperwork or by calling new employees in to work. Confirming this testimony, it is apparent from its 2014 memorandum GC #4 that Respondent considered row bosses and punchers to be involved in hiring or directing new employees.

Based upon this evidence, I conclude that the duties of row bosses/crew bosses and punchers in the hiring process would lead a reasonable person to conclude that the row bosses and punchers were speaking for Respondent concerning the availability of work at its ranches. I find that row bosses and punchers were Respondent's agents. Since they were Respondent's agents with respect to hiring issues, their statements to prospective employees may be considered admissions, not hearsay, and admissible in the record.

### **Adequacy of the Complaint**

General Counsel must plead specific violations of the Act in the complaint in order to afford a respondent due process in order to adequately provide respondent with the opportunity to address those allegations. *JR Norton Co. v. ALR B*, (1987) 192 Cal App. 3d 824, 888; *Sunnyside Nurseries, Inc., v. ALR B*, (1979) 93 Cal App 3d 922, 933. All that is required in a valid complaint is that there be a plain statement of the

things charged to constitute an unfair labor practice that respondent be put on his defense. *American Newspaper Publishers v. NLRB*, 193 F. 2d 782, 800 (7<sup>th</sup> Cir. 1951); *affd.*, 345 U.S. 100 (1953). General Counsel is not required to plead evidence or the theory of the case in the complaint. *McDonald's USA, LLC.*, 362 NLRB No. 168 (2015).

The complaint herein alleges that Respondent violated section 1153(a) and (d) of the Act by instructing its hiring staff to refuse to rehire its Limoneira Ranch employees because they engaged in protected concerted activity and for filing unfair labor practice charges with the ALRB. Complaint paragraphs 17 through 22 specify which laid off employees sought rehire by Respondent, when and where they sought rehire and who told them there was no work. Paragraphs 18 and 19 allege Respondent's punchers told the employees they were not eligible for work or did not hire them.

Respondent cites two cases in support of its argument that it was denied due process because the complaint does not allege that punchers and row bosses were agents of Respondent. In both *JR Norton and Sunnyside Nurseries, supra*, the courts reversed the Board's finding of violations of the Act where the complaints failed to allege the violations found. These cases are inapposite to the facts herein. In both *JR Norton and Sunnyside Nurseries*, the complaint failed to put respondents on notice as to which sections of the Act they had violated. Herein, the complaint has alleged specific violations of the Act based upon Respondent's refusal to rehire employees. No new allegations have been alleged during the hearing or post hearing. The complaint put Respondent on notice not only that its hiring staff but also that its punchers refused to rehire some employees. While General Counsel has an obligation in the complaint to put

Respondent on notice of which sections of the Act it is alleged to have violated, there is no obligation to plead evidence as to who specifically refused to rehire laid off employees or to divulge the theory of the case that they were Respondent's agents.

I find that Respondent has not been denied due process herein since it has been put on notice of the alleged violations of the Act in the complaint.

Respondent, in its brief, requests reconsideration of my March 8, 2019, Order Denying Motion to Dismiss Complaint in which I addressed Respondent's contention that the complaint herein was barred by the doctrine of laches and the statute of limitations. I find no basis in the record herein to reconsider my previous order.

### **Background**

The record reflects<sup>6</sup> that on July 15 and 16, 2014, about 46 out of about 200 of Respondent's raspberry harvesters engaged in a work stoppage at Respondent's Limoneira Ranch near Oxnard, California. On July 16, 2014, unfair labor practice charges were filed in cases 2014-CE-024 and 025 SAL with the Oxnard subregional office of the Board. Respondent's Limoneira employees returned to work on Jul 17, 2014 and continued working until November 18, 2014. On August 26, 2015, the General Counsel and Respondent settled the charges in cases 2014-CE-024 and 025 SAL. As part of the settlement the following employees, inter alia, received backpay: Flora Reyes (Reyes), Gilberto Cervantes (Cervantes), Juan Alvarez (J. Alvarez), Antonio Alvarez (A. Alvarez), Julio Garcia (Garcia), Javier Reyes (Reyes), Arturo Alvarado (A. Alvarado),

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<sup>6</sup> See General Counsel's exhibit 1, joint stipulations as to facts and exhibits

Diana Alvarado (D. Alvarado), Juana Fajardo (Fajardo), Luis Espinosa (L. Espinosa), Gloria Espinosa (G. Espinosa), Alexis Rodriguez (Rodriguez), Norma Martinez (Martinez), Maria Gregoria (Gregoria), Adrian De Jesus (De Jesus), and Celene Zamudio (Zamudio).

On November 18, 2014, due to a nearby toxic explosion, Respondent halted work at the Limoneira Ranch and on November 28, 2014, Respondent permanently laid off all of its Limoneira raspberry harvesters. On December 31, 2014, by its terms, Respondent's lease at the Limoneira Ranch expired.

### **Limoneira Employees who Sought Rehire**

#### **Juan Alvarez**

Juan Alvarez was employed by Respondent as a harvester from 2012-2014 at several of its ranches, including Limoneira until it closed in November 2014. Juan Alvarez also did clean-up work on strawberry fields at season's end that took four to six weeks utilizing 40 to 60 employees. About three weeks before work at Limoneira ceased Alvarez looked for work at Respondent's Navarro Ranch. There he spoke to Joaquin, the foreman. Alvarez believed Joaquin was a foreman at the ranch since he was at a desk filling out applications for new employees. When Alvarez said he was waiting for a transfer from Limoneira to Navarro and was looking for work, Joaquin said Alvarez was on a list of the most wanted that he couldn't hire. Juan Alvarez testimony was corroborated by his brother Jose. I credit Juan Alvarez testimony as it was uncontradicted and consistent. In my observation Juan Alvarez seemed a credible witness.

### **Jose Antonio Alvarez**

Jose Antonio Alvarez worked for Respondent as a harvester from 2012-2014. He worked at several of Respondent's ranches including at Limoneira until it closed, and he was laid off. Jose Alvarez also did clean-up work at seasons end. Within a few days of his November 28, 2014 layoff, Jose Alvarez looked for work at Respondent's other ranches, including Navarro. At Navarro, together with his brother Juan, Jose Alvarez spoke with Joaquin who was filling out applications for new hires. When Joaquin learned Jose had worked at Limoneira Ranch, Joaquin asked Alvarez, "What have you done? You are first on the list with instructions not to give you work." I credit Jose Alvarez testimony. It is consistent with his brother Juan's testimony and had a sense of credibility based upon my observations.

### **Gilberto Cervantes**

Gilberto Cervantes worked for Respondent as a field worker in its raspberry field from 2008-2014. In his capacity as a field worker for Respondent, Cervantes has driven a tractor, picked berries, irrigated the fields, planted vines and created the hoop structures housing the berry vines. Cervantes also did tear down work where the raspberry fields were dismantled. From 2008 to 2014 Cervantes worked at Respondent's Central Ranch (also known as the Santa Clara Ranch) where his supervisor was Jorge Aguilera. During this time, Cervantes also worked at Respondent's other raspberry ranches including Navarro Ranches 1, 3 and 5, Kotaki and Limoneira. In 2012, Cervantes was appointed supervisor at Limoneira by Aguilera and Serafin Ortiz. According to Cervantes, Respondent's hiring practices were the same at all of Respondent's ranches.

Applications were given out to prospective employees by the ranch foreman who would decide whether to hire the applicant.

In November 2014 there was an explosion near the Limoneira Ranch and all employees had to leave the fields. This was the last day Cervantes worked for Respondent. On November 28, 2014, Respondent gave Cervantes a formal layoff letter.<sup>7</sup>

At the end of November 2014, Cervantes went with Luis Espinosa to Respondent's Navarro #1 ranch, another of Respondent's raspberry ranches, to look for work. Cervantes spoke with Dorotea Hernandez, a puncher, to whom he gave his phone number but never received a call from Respondent. Cervantes was a credible witness who was not contradicted and gave testimony in a very specific and knowledgeable manner.

### **Flora Reyes**

Cervantes wife, Flora Reyes, was employed by Respondent as a harvester and puncher at several of Respondent's ranches including Limoneira until the Limoneira Ranch closed in November 2014. As a puncher, Reyes was responsible for quality control of the fruit and counted the boxes picked by each employee. While working as a puncher at Respondent's Kotake Ranch in 2012, she also helped prospective employees fill out job applications about six times a month. On occasion she called employees in to begin work. As a puncher at Limoneira Ranch, Reyes did not assist with hiring as her husband, Gilberto Cervantes, performed this job. After being laid off at Limoneira,

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<sup>7</sup> Joint Exhibit 3

Reyes and Gloria Espinosa went to Respondent's Navarro #1 Ranch where they spoke to puncher Dorotea Hernandez who said Respondent was hiring at that ranch but not that day. They returned later and spoke to Dorotea about work and Dorotea asked where they had worked. When they said Limoneira, Dorotea said she had a list of Limoneira employees and put their names in a notebook. Reyes was not rehired by Respondent. Dorotea did not testify. I credit Reyes testimony as it was not contradicted, was specific and generally believable.

### **Norma Martinez**

Norma Martinez was employed by Respondent from 2013-2014 where she worked at three of Respondent's ranches including Limoneira until Respondent closed that ranch in November 2014. After the explosion that closed Limoneira, Martinez went to Respondent's Santa Clara (Central) Ranch with Maria Rangel to look for work. Present were row boss Juan and puncher Mari. Martinez observed about five new pickers having their hiring paperwork being processed by Juan. Martinez had worked with Mari in the past at Respondent's Meza Ranch where Mari was a puncher. At Meza, Mari had told employees when they were going to be laid off and when they might be called back to work. After initially saying Respondent was hiring at Santa Clara after Martinez told Mari she had worked at Limoneira, Mari said they were not hiring since Martinez had worked at Limoneira. Martinez was not offered work by Respondent. Martinez admitted that she was unable to do harvesting for four weeks after the explosion due to a work-related injury. I found Martinez to be a responsive witness who testified in much detail. I credit her testimony. While Mari, also known as Mana Maria Chavez, testified that no

prospective employees in late 2014 or early 2015 said they were from Limoneira Ranch, I find this not credible in view of the testimony of several employees who applied for work at the Santa Clara Ranch and told her they had worked at Limoneira. While she said she had no list of employees from Limoneira Ranch who should not be hired, this is in contradiction of Vega's testimony and the list he was given. I do not credit Mari's testimony.

**Maria Rangel**

Maria Rangel worked for Respondent as a berry picker at Limoneira Ranch in 2013 and 2014. She was laid off by Respondent after the explosion at Limoneira Ranch. In addition to accompanying Martinez to Central Ranch and asking for work there, she sought work at Respondent's Navarro Ranch and left her name with the ranch foreman Chenco. She was not rehired by Respondent. I credit Rangel's testimony.

**Javier Reyes**

Javier Reyes worked for Respondent at several of its ranches from 2012-November 2014. Reyes worked at Limoneira in 2014. A week after being laid off from Limoneira, Reyes went to Respondent's Navarro Ranch to look for work. He spoke with Benjamin, a row boss, and asked if there was work. Benjamin said there was no work for those who had worked at Limoneira. Reyes left his name and phone number but received no offer of employment from Respondent. I credit Reyes' uncontradicted testimony.

**Gloria Espinosa**

Gloria Espinosa was employed by Respondent from 2013-2014. While working at Limoneira Ranch in 2014 she was both a puncher and row boss. After her lay off from

Limoneira Ranch after the explosion, Espinosa went to Respondent's Central and Navarro Ranches to look for work with Luis Espinosa, Alexis Rodriguez and Flora Reyes. At Central Ranch the employees said they were looking for any work. They spoke with a puncher named Mari. When Espinosa said they were from the Limoneira Ranch, Mari checked a list and told them to leave phone numbers. Later in her testimony, Espinosa said Mari told them they would not be hired since they were from the Limoneira Ranch. However, on cross examination, when Espinosa was asked to repeat her testimony with Mari at the Navarro Ranch, she failed to state Mari told the employees they would not be hired because they were from Limoneira Ranch. Flora Reyes and Luis Espinosa did not corroborate Espinosa's testimony about Mari telling employees they would not be hired because they were from Limoneira Ranch. Alexis Rodriguez said that he went to look for work with Luis and Gloria Espinosa and that a lady said she had a list of employees from the company and they could leave their names. I do not credit Espinosa's testimony that Mari said they would not be hired since they were from the Limoneira Ranch. I will otherwise credit her testimony since much of it is corroborated by other witnesses. Gloria Espinosa was not rehired by Respondent.

### **Luis Espinosa**

Luis Espinosa worked for Respondent from 2013- November 28, 2014 as a picker. He worked at Respondent's Limoneira Ranch from April to November 28, 2014. A week after his layoff at Limoneira, Luis Espinosa went to Respondent's Navarro Ranch with Gilberto Cervantes. They spoke with puncher Dorotea and asked if they were hiring. They left their names and phone numbers with Dorotea. Luis also went to Respondent's

Central Ranch with Alexis Rodriguez and Gloria Espinosa. Luis and Alexis went to a trailer where they spoke with a female puncher and asked if there was work. When they told her they were from Limoneira Ranch, they were told to leave their names and phone numbers. Luis Espinosa was not rehired by Respondent. I credit Luis Espinosa's testimony.

### **Rosa Gregoria Navarro**

Rosa Navarro worked for Respondent for two years, ending on November 28, 2014, at Limoneira Ranch where she worked as a picker. Navarro said she looked for work a month later but was unable to describe the name of the ranch or where it was located. She said she looked for work with her husband Marcos Torres and Maria Alejandro Torres. Rosa Navarro said that Norma Martinez did the driving. The following day she went to another ranch with her husband but was unable to identify the ranch. She said she spoke with an unnamed puncher who asked where they had worked. When they said Limoneira, the puncher looked at a list and said there was no work for Gilberto's crew because they are strikers. Navarro also looked for work at two other ranches but was again unable to identify if these were ranches owned by Respondent. Finally, Navarro went to Respondent's office and asked a clerk if there was work. They said they had worked with Gilberto at Limoneira. Navarro was not offered rehire by Respondent. Navarro's testimony lacked foundation to determine if she applied for work at Respondent's ranches. However, it is clear that she applied for work at Respondent's office and from her husband, Marco Torres' testimony below that she applied for work at Respondent's Central ranch.

### **Marco Torres**

Torres was employed by Respondent as a picker. He does not know the dates of his employment but said he worked for Gilberto Cervantes, presumably at Limoneira Ranch. Torres does not know when he ceased work at Limoneira but there is no dispute that all employees were laid off on November 28, 2014. A few days later, Torres said he looked for work at a ranch on Rice and Rose roads in Oxnard, California but does not know if Respondent owned this ranch. Two days later he and his wife Rosa Navarro went to a ranch on the 118 highway with Norma and Maria, last names unknown. They asked for work from a man sitting at a table. Torres does not know what the man's job was. A few days later Torres and his wife went to Respondent's Central Ranch and spoke with an unknown man, whose position was unknown to Torres. Torres asked if there was work and gave his name. The man looked at a list and said there was no work. Torres corroborated his wife's testimony that they went to Respondent's office and asked for work from a clerk. Torres said they were given no answer to their request. Finally, Torres said he and his wife went to a ranch off highway 126. They asked a man at a gate to the ranch if there was work and when their names were given to him he looked at a list and said there was no work. There is no foundation this was Respondent's ranch. Torres was not rehired by Respondent. There is credible testimony from Torres that both he and his wife applied for work at at least one of Respondent's ranches and at Respondent's office.

### **Alexis Rodriguez**

Alexis Rodriguez worked for Respondent as a picker for about four to five months in 2014 at the Limoneira Ranch until it was closed after the explosion. He sought work with Luis and Gloria Espinosa. Rodriguez has no independent recollection of which ranches he went to with the Espinosas. From their testimony it appears they went to Respondent's Central Ranch. He said they went to where the workers were located and a lady said she had a list of people that got let go from the company. Rodriguez testimony was vague and lacked specificity and foundation. I will credit it only to the extent it is corroborated by other credible testimony. Both Luis and Gloria Espinosa testified they looked for work at Respondent's Central Ranch with Rodriguez. Luis made no mention of this conversation in his testimony and Gloria's credible testimony is that a puncher looked at a list and told them to leave their phone numbers. I do not credit Rodriguez that the puncher said she had a list of employees the company let go. Rodriguez was not rehired by Respondent.

### **The Blacklist**

In October and November 2014, Guadalupe Vega (Vega) was employed by Respondent as a ranch supervisor at its Meza Ranch. Vega's supervisors were Jorge Aguilera and Alberto Vasquez. Vega had the authority to hire employees and is a supervisor within the meaning of the Act. Vega testified without contradiction that in October or November 2014, Vasquez came to Meza Ranch and spoke with him about

hiring. Vasquez gave Vega a list of employees<sup>8</sup> and told him to be careful hiring anyone on this list as they were involved in a strike at Limoneira Ranch.<sup>9</sup> I will credit Vega's testimony as he was a consistent, responsive, detailed witness who was not shaken by argumentative questions on cross examination.<sup>10</sup> A list of Limoneira employees was mentioned by Respondent's supervisors and agents when former Limoneira employees sought work after the close of Limoneira Ranch. Thus, Juan Alvarez and his brother Jose gave credible testimony that foreman Joaquin told them they were on a most wanted list of employees he could not hire. Flora Reyes said that when she sought work, Puncher Dorotea told her she had a list of Limoneira workers. Alexis Rodriguez and Gloria Espinosa were also told about a list of employees by puncher Mari at Central Ranch when they sought work.

### **Complaint Allegations Lacking Supporting Evidence**

Complaint allegations 19, 21 and 22 allege that Respondent's Limoneira Ranch employees Julio Garcia, Arturo Alvarado, Diana Alvarado, Juana Fajardo, Maria Gregorio, Adrian De Jesus and Celene Zamudio were not rehired by Respondent. No evidence was presented by General Counsel concerning these employees. In its brief General Counsel withdrew the allegations that the above individuals were refused rehire by Respondent. The withdrawal of the allegations is granted.

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<sup>8</sup> General Counsel's exhibit 3.

<sup>9</sup> Vasquez did not testify at the hearing.

<sup>10</sup> I find no evidence that General Counsel's exhibit 3 is not an authentic document or was tampered with in any way.

### **Lack of Complaint Allegations re Marcos Torres and Rosa Gregoria Navarro**

At the hearing herein, General Counsel offered evidence that Respondent failed to rehire its employees Marcos Torres and Rosa Gregoria Navarro. However, there is no allegation in the complaint alleging that Respondent's refusal to rehire them violated the Act.

General Counsel contends that the allegations of the complaint concerning refusal to rehire Limoneira employees are sufficiently broad to encompass individuals who are similarly related but not named in the complaint where the issues were fully litigated.

An unpleaded matter may support an unfair practice finding if it is closely related to the subject matter of the complaint and has been fully litigated. *Airborne Freight Corp.*, 343 NLRB 580, 581 (2004); *Pergament United States*, 296 NLRB 333, 334 (1989). This is particularly true where the unpleaded claim relies on the same theory of liability. *United States Postal Service*, 352 NLRB 923, 923 (2008). The ALRB has adopted the NLRB rule regarding related but unpled allegations. *George Amaral Ranches, Inc.*, (2014) 40 ALRB No. 10, page 17.

Here while the complaint failed to specifically allege that Respondent violated the Act by failing to rehire Marcos Torres and Rosa Gregoria Navarro, these unpled allegations are closely related to numerous other employees who the complaint alleges Respondent refused to rehire. With respect to Torres and Navarro, General Counsel's theory of the case is identical to other pled allegations. Moreover, the allegations regarding Navarro and Torres were fully litigated at the hearing, as both testified. I will consider allegations that Respondent refused to rehire Navarro and Torres.

### **The alleged violations of the Act**

Complaint paragraphs 24 and 25 allege that Respondent violated sections 1152 and 1153(a) of the Act by refusing to rehire workers from its Limoneira Ranch for engaging in protected concerted activity. Complaint paragraphs 26 and 27 allege that Respondent violated sections 1152 and 1153(d) of the Act by refusing to rehire its Limoneira Ranch employees for filing unfair labor practice charges with the Board.

### **Refusal to rehire**

In *H&R Gunlund Ranches, Inc.*, (2013) 39 ALRB No. 21 pages 3-4, the ALRB held that in refusal to rehire cases General Counsel must establish the employee engaged in protected-concerted activity, that the employer had knowledge of that activity, that the employer's action was taken at least in part due to that protected activity, that the employee applied for an available position for which they were qualified and that they were unequivocally rejected for employment. Once these initial showings are made, the burden shifts to the employer to establish that it would not have hired the applicants even in the absence of their protected activity. See also *FES, a Division of Thermo Power*, 331 NLRB 9 (2000); *Toering Electric Company*, 351 NLRB 225 (2007).

Here the record reflects that on July 15 and 16, 2014, about 46 out of about 200 of Respondent's raspberry harvesters engaged in a work stoppage at Respondent's Limoneira Ranch. As a result of the work stoppage, unfair labor practice charges were filed against Respondent in cases 2014-CE-024 and 025 SAL and on August 26, 2015, the General Counsel and Respondent settled cases 2014-CE-024 and 025 SAL with employees receiving backpay.

There is no dispute that about 46 of Respondent's employees engaged in protected concerted activity at the Limoneira Ranch in July 2014. Nor is there any dispute that Respondent was aware of the activities of those employees. Thus, General Counsel has established the first two elements of its prima facie case.

There is also ample evidence after the shutdown of the Limoneira Ranch and the layoff of the Limoneira employees, many of the former Limoneira employees made efforts to apply for work at Respondent's other ranches. Thus, from early November 2014 through January 2015, 12 of Respondent's former employees from Limoneira Ranch applied for work at Respondent's other ranches or at its office, including: Juan Alvarez, Jose Antonio Alvarez, Gilberto Cervantes, Flora Reyes, Norma Martinez, Maria Rangel, Javier Reyes, Gloria Espinosa, Luis Espinosa, Rosa Gregoria Navarro, Marco Torres and Alexis Rodriguez. All were told there was no work. None were hired. The record also reflects that all of the employees were qualified for the jobs they applied for, harvesting berries.

Respondent contends they were not hired because there was no work. But the record belies this contention. There is testimony that Flora Reyes was told by puncher Dorotea Hernandez at Navarro Ranch that Respondent was hiring when Reyes went to apply for work. When Norma Martinez went to the Central Ranch looking for work, she observed the row boss, Juan, hiring about five individuals. During the same visit to Central Ranch, Martinez was also told by puncher Mari that Respondent was hiring. This testimony is corroborated by evidence that between November 25, 2014, and June 1, 2015, Respondent hired 16 new raspberry harvesters for the first time at its Oxnard

ranches.<sup>11</sup> While Respondent contends that the dates of hire of these new employees establishes that there was limited work available and that there was no work on the dates the alleged discriminatees herein sought work, the facts establish that Respondent hired raspberry harvesters at the time the Limoneira workers sought work. In addition, according to HR Manager Lopez, there was shut down work at Limoneira Ranch that did not occur until well after November 28, 2014, as well as at Meza Ranch in November and December 2014 and clean up work at other Ranches at the season's end at about the time the Limoneira employees were laid off. According to Lopez he did not know if there was a special crew that did tear down and clean up.

There is ample evidence that the true reason Respondent failed to hire any of the Limoneira workers is because they engaged in protected activity. Many of the Limoneira employees were told that because they had worked at Limoneira Ranch they would not be hired. Thus when Juan and Jose Alvarez told foreman Joaquin at the Navarro Ranch that they were from Limoneira Ranch, he said he could not hire them. Javier Reyes was told by row boss Benjamin at Navarro Ranch there was no work for Limoneira employees.

It is clear from October or November 2014 conversation between foreman Vega and Vasquez at Meza Ranch that the real reason Respondent failed to rehire any Limoneira employees was due to the July 2014 work stoppage. The purpose of the visit could not be plainer when Vasquez gave Vega a list of Limoneira employees and told

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<sup>11</sup> Joint exhibit 1.

him to be careful hiring anyone on this list as they were involved in a strike at Limoneira Ranch. Respondent's contention that there is no evidence of such a list being distributed at other ranches is of no avail. Vasquez was lead foreman over all of Respondent's ranches. A reasonable inference can be drawn that Vasquez would not have simply given this list to the foreman at one ranch. Indeed the reference by other foremen, punchers and crew bosses to a list of employees when Limoneira employees sought work, supports this inference. Moreover Vasquez was never called to deny Vega's testimony.

It was pretext that the Limoneira employees were not hired because there was no work. The real reason for failing to rehire the above named Limoneira employees was that they engaged in a strike. The strike and concomitant filing of unfair labor practice charges cannot be reasonably distinguished. I conclude that Respondent's failure to rehire the Limoneira employees was motivated not only by their strike activity but by their concurrent filing of unfair labor practice charges.

I find that General Counsel has established a prima facie case that Respondent refused to rehire the Limoneira employees because of their protected concerted activity and filing of unfair labor practice charges. Thus the burden shifts to Respondent to establish it would not have hired the Limoneira employees in the absence of their protected activity.

### **Wright Line**

Respondent's defense is essentially it did not hire Limoneira employees because there was no work for them. This defense must fail. As stated above, there was work for the Limoneira employees not only in the raspberry fields where Respondent hired after

Limoneira closed but also in its strawberry fields. There is evidence that Respondent was growing strawberries in 2014 in the Oxnard area. To suggest that Respondent's raspberry pickers were not qualified to harvest strawberries is belied by the July 15, 2016 letter<sup>12</sup> sent to Respondent's raspberry harvesters advising they could apply for strawberry jobs when Respondent closed its Santa Clara raspberry ranch. Moreover, it is clear that this defense is nothing but pretext, as Respondent's true motivation was communicated to Vega and to employees who were told they would not be hired because they had worked at Limoneira, a code word for engaging in protected activity. It was futile for the Limoneira employees to apply for jobs at any of Respondent's ranches as they had all been blacklisted.

### **Conclusions of Law**

I find that General Counsel has established that Respondent violated sections 1152, 1153(a) and (d) of the Act when it refused to rehire the above named Limoneira Ranch employees.

### **Remedy**

General Counsel contends that the standard remedies of posting, mailing and reading the Notice to Employees is necessary because the evidence reflects that Respondent's unlawful conduct was neither isolated nor minimal. I agree. The Board has broad discretion in fashioning remedies to effectuate the purposes of the Act. *United Farm Workers of America*, (2018) 44 ALRB #6 at page 13. In addition any departure

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<sup>12</sup> General Counsel's exhibit 5.

from the Board's standard non-economic remedies of posting mailing and reading notices must be established by Respondent by compelling evidence. *Id.* at 13. The evidence shows that Respondent's unlawful conduct occurred in the presence of many employees at multiple locations. I find no compelling reasons herein to depart from the Board's standard non-economic remedies.

#### ORDER

Pursuant to Labor Code section 1160.3, Respondent, Rincon Pacific, LLC., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to rehire its employees for engaging in protected-concerted activity protected under section 1153(a) of the Agricultural Labor Relations Act (Act).

(b) Refusing to rehire its employees for filing unfair labor practice charges with the Agricultural Labor Relations Board, protected under section 1153(d) of the Agricultural Labor Relations Act (Act).

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

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

(a) Offer Juan Alvarez, Jose Antonio Alvarez, Gilberto Cervantes, Flora Reyes Norma Martinez, Maria Rangel, Javier Reyes, Gloria Espinosa, Luis Espinosa, Rosa Gregoria Navarro, Marco Torres and Alexis Rodriguez immediate reinstatement to

their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges of employment;

(b) Make Juan Alvarez, Jose Antonio Alvarez, Gilberto Cervantes, Flora Reyes Norma Martinez, Maria Rangel, Javier Reyes, Gloria Espinosa, Luis Espinosa, Rosa Gregoria Navarro, Marco Torres and Alexis Rodriguez whole for all wages and economic losses they have suffered since on or about December 1, 2014, as a result of their refusal to rehire. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. Such amounts shall include interest to be determined in the manner set forth in Kentucky River Medical Center (2010) 356 NLRB No. 8 and excess tax liability to be computed in accordance with Tortillas Don Chavas (2014) 361 NLRB No. 10, minus tax withholdings required by federal and state laws. Compensation shall be issued to Juan Alvarez, Jose Antonio Alvarez, Gilberto Cervantes, Flora Reyes Norma Martinez, Maria Rangel, Javier Reyes, Gloria Espinosa, Luis Espinosa, Rosa Gregoria Navarro, Marco Torres and Alexis Rodriguez and sent to the Region, which will thereafter disburse payment to these individuals;

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

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

(e) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property, for 60 days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all employees then employed, on company time and property, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions 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 during the reading of the Notice and the question-and-answer period.

(g) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the issuance of this Order to all agricultural employees employed by Respondent at any time during the period May 15, 2014, to May 15, 2015, at their last known addresses.

(h) Provide a copy of the Notice to each agricultural employee hired to work for Respondent during the twelve-month period following the issuance of a final order in this matter.

(i) Notify the Regional Director in writing, within thirty days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms. Upon request of the Regional Director, Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

Dated: December 9, 2019



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John J. McCarrick  
Administrative Law Judge

## 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. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by refusing to rehire employees for engaging in protected concerted activity and for filing unfair labor practice charges with the ALRB. 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** refuse to rehire employees who engage in protected-concerted activity.

**WE WILL NOT** refuse to rehire employees who file unfair labor practice charges with the ALRB.

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

**WE WILL** offer to Juan Alvarez, Jose Antonio Alvarez, Gilberto Cervantes, Flora Reyes Norma Martinez, Maria Rangel, Javier Reyes, Gloria Espinosa, Luis Espinosa, Rosa Gregoria Navarro, Marco Torres and Alexis Rodriguez reinstatement to their former or substantially equivalent positions 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: \_\_\_\_\_

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) 769-8039.

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

**DO NOT REMOVE OR MUTILATE**