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## **ALRB PUBLIC MEETING LITIGATION REPORT**

DATE: August 10, 2020  
TO: Agricultural Labor Relations Board  
FROM: Todd M. Ratshin, Chief Board Counsel

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This report discusses updates and developments that have occurred in litigation matters involving the Board since its June 23, 2020 meeting.

### **Petitions for Writ of Review of Unfair Labor Practice Decisions**

#### California Appellate Courts

► ***Wonderful Orchards, LLC v. ALRB*, Fifth District Court of Appeal, [Case No. F081172](#)**

**Summary:** Petition for writ of review of the Board's decision in 46 ALRB No. 2, in which the Board found the employer unlawfully terminated a group of employees for engaging in protected concerted activity.

**Status:** Wonderful filed its opening brief on July 17. The Board's respondent's brief is due August 21. Wonderful's reply brief will be due 25 days after the Board's brief is filed.

► ***United Farm Workers of America v. ALRB*, Fifth District Court of Appeal, [Case No. F080469](#)**

**Summary:** Petition for writ of review of the Board's decisions in 45 ALRB Nos. 8 and 4, in which the Board found the United Farm Workers of America unlawfully threatened to picket Gerawan Farming, Inc. if it did not recognize and bargain with the union, which had been decertified as the employees' bargaining representative in the Board's decision in 44 ALRB No. 10.

**Status:** The UFW filed its opening brief on July 7. On July 23, the court approved a stipulated extension of time so that the Board's respondent's brief and Gerawan's opposition brief are due October 9. The UFW's reply brief will be due 25 days after the Board's and Gerawan's briefs are filed.

► *P & M Vanderpoel Dairy v. ALRB*, Fifth District Court of Appeal, [Case No. F077513](#)

**Summary:** Petition for writ of review of the Board’s decision in 44 ALRB No. 4, involving an award of backpay to an unlawfully terminated employee.

**Status:** On May 8, the court issued an unpublished opinion affirming the Board’s decision. No petition for review was filed in the California Supreme Court, and the appellate court issued its remittitur on July 8, 2020. This litigation now is final.

► *Gerawan Farming, Inc.*, Fifth District Court of Appeal, [Case No. F077033](#)

**Summary:** Petition for writ of review of the Board’s decision in 44 ALRB No. 1, in which the Board found that Gerawan committed unfair labor practices by engaging in surface bargaining with the United Farm Workers of America and by insisting on the exclusion of workers employed by farm labor contractors from the terms of a collective bargaining agreement.

**Status:** The court issued an opinion on July 15, affirming the Board’s unfair labor practice findings and bargaining makewhole remedy. (*Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal.App.5th 141.) The opinion becomes final on August 14, and any petition for review in the California Supreme Court is due August 24.

## **Other Board Litigation**

### United States Supreme Court

► *Cedar Point Nursery and Fowler Packing Co., Inc. v. Hassid, et al.*, U.S. Supreme Court, [Case No. 20-107](#)

**Summary:** The growers seek review of the Ninth Circuit’s opinion rejecting their argument the Board’s access regulation (Cal. Code Regs., tit. 8, § 20900) violates the Fifth Amendment’s Takings Clause. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2019) 923 F.3d 524; see also *Cedar Point Nursery v. Shiroma* (9th Cir. 2020) 956 F.3d 1152 [order denying petition for rehearing en banc].)

**Status:** The growers filed a petition for writ of certiorari in the United States Supreme Court on July 29, 2020. On August 6, the growers filed a blanket consent to the filing of amicus briefs. The Board’s response to the petition is due September 2.