

1 The General Counsel hereby respectfully takes exception to the following portions of the
2 Administrative Law Judge's ("ALJ") Decision ("ALJD"), including the evidentiary and
3 credibility determinations upon which they are based:

- 4 1. The ALJ's conclusion that "Mendoza was not a means or mechanism of the unlawful
5 firing of workers, but rather a casualty of it." (ALJD p. 69-71; Reporter's Transcript,
6 ("RT"), I 35:2-10; II 120:4-16; IV 85:22-86:17, 132:6-15, 132:16-25; VI 32:7-10, 130:9-
7 10, 179:3-7) The ALJ erroneously concluded that foreman Victor Mendoza's ("foreman
8 Mendoza") termination is not protected by the Act. Foreman Mendoza's termination
9 falls squarely within one of the exceptions to the general rule that supervisors are not
10 protected by the Agricultural Labor Relations Act. (ALJD p. 71). This exception is
11 supported by the accompanying brief, the Complaint, General Counsel's Post-Hearing
12 Brief, and General Counsel's Reply to Respondent's Post-Hearing Brief.
- 13 2. The ALJ's denial of the General Counsel's request that Respondent provide foreman
14 Mendoza with reinstatement and backpay. (ALJD p. 71; RT I 35:2-10; II 120:4-16; IV
15 85:22-86:17, 132:6-15, 132:16-25; VI 32:7-10, 130:9-10, 179:3-7). The ALJ erroneously
16 found that foreman Mendoza "was not a means or mechanism of the unlawful firing of
17 workers, but rather a casualty of it. Nor is Mendoza's reinstatement required in order for
18 Cinagro to offer reinstatement to the rest of the crew...Accordingly foreperson Mendoza
19 is not entitled to reinstatement or backpay." (ALJD p. 71). This exception is supported by
20 the accompanying brief, the Complaint, General Counsel's Post-Hearing Brief, and
21 General Counsel's Reply to Respondent's Post-Hearing Brief.

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1 Dated: December 1, 2021

Respectfully submitted,

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3 AGRICULTURAL LABOR RELATIONS BOARD
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State of California
Agricultural Labor Relations Board
PROOF OF SERVICE
(8 Cal. Code Regs. § 20164)

I am a citizen of the United States and a resident of the County of Monterey. I am over the age of eighteen years and not a party to the within entitled action. My business address is: ALRB, 342 Pajaro Street, Salinas, California, 93901.

On **December 1, 2021**, I served a copy of the within **GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** in Case Name: **CINAGRO FARMS, INC., 2017-CE-008-SAL**, on the parties in said action, in the following manner:

By Electronic File: The above-referenced documents were e-filed today to the following parties at the listed e-file address; and

By Electronic mail: The above-referenced document was e-mailed to the following parties at the listed e-mail addresses.

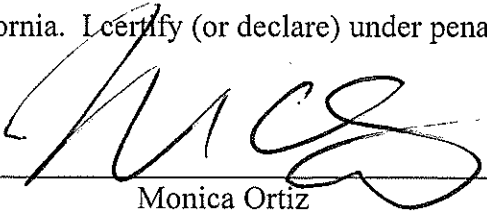
By U.S. Certified mail: The above referenced document was mailed to the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oxnard, California; and

Via E-File:	Via Electronic and Certified Mail:
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GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE
CINAGRO FARMS, INC.-2017-CE-008-SAL

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Executed on December 1, 2021, at Salinas, California. I certify (or declare) under penalty of perjury that the foregoing is true and correct.



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19 STATE OF CALIFORNIA

20 AGRICULTURAL LABOR RELATIONS BOARD

21 In the Matter of:
22 CINAGRO FARMS, INC.,
23 Respondent,
24 and
25 MARISOL JIMENEZ,
26 Charging Party.

Case No.: 2017-CE-008-SAL

**GENERAL COUNSEL'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

Cal. Code of Regs., tit. 8, §20282

1 **I. INTRODUCTION**

2 The General Counsel of the Agricultural Labor Relations Board files these exceptions to
3 the Administrative Law Judge’s (“ALJ”) Decision (“ALJD”) issued on October 27, 2021, in the
4 matter of Cinagro Farms, Inc. (“Cinagro”). The General Counsel takes exception to the ALJ’s
5 conclusion that foreman Victor Mendoza (“foreman Mendoza”) is not protected under the Act
6 and therefore ineligible for remedies under the Agricultural Labor Relations Act (“Act”) because
7 “Mendoza was not a means or mechanism of the unlawful firing of workers, but rather a casualty
8 of it.” (ALJD p. 69-71). Relatedly, the General Counsel also takes exception to the ALJ’s denial
9 of the General Counsel’s request that Respondent provide foreman Mendoza with reinstatement
10 and back pay. (ALJD p. 71).

11 The Board should not adopt these findings as they are not supported by the record and go
12 against the purposes of the Act. The General Counsel requests that the Board exercise its
13 authority to review the record de novo, set aside the ALJ’s findings as to foreman Mendoza, and
14 order Cinagro to make foreman Mendoza whole and offer him reinstatement.

15 **II. STANDARD OF REVIEW**

16 The Board reviews applicable law and evidence to determine whether findings of fact are
17 supported by a preponderance of the evidence. (Cal. Code Regs., tit. 8, § 20286(b).) The Board
18 reviews factual findings and legal conclusions *de novo*. (*Standard Drywall Products, Inc.* (1950)
19 91 NLRB 544, 545; *UFW (Corralitos)* (2014) 40 ALRB No. 6, pp. 6-7. See *George A. Lucas &*
20 *Sons* (1984) 10 ALRB No. 33, p. 4; *Cienega Farms, Inc.* (2001) 27 ALRB No. 5, pp. 3-4.)

21 The Board defers to the ALJ’s credibility determinations based on the witnesses’
22 demeanor, and “will not disturb them unless the clear preponderance of all the relevant evidence
23 demonstrates that they are incorrect.” (*South Lakes Dairy Farm* (2013) 39 ALRB No. 1, p. 3; See
24 *Standard Dry Wall, supra*, 91 NLRB 544, 545; *David Freedman & Co.* (1989) 15 ALRB No. 9,
25 pp. 7-8; *UFW (Ocegueda)* (2011) 37 ALRB No. 3 at p.2; *P.H. Ranch* (1996) 22 ALRB No. 1 at
26 p. 1, fn. 1.) In instances where credibility determinations are based on things other than
27 demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or
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1 absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless
2 they conflict with well-supported inferences from the record considered as a whole. (*P.H. Ranch*
3 (1966) 22 ALRB No.1; See *Rivera Vineyards* (2003) 29 ALRB No. 5, p. 3, fn. 3; *UFW*
4 (*Ocegueda*), supra; *S&S Ranch, Inc.* (1996) 22 ALRB No. 7, p. 4.)

5 III. STATEMENT OF PERTINENT FACTS

6 In September and October 2016, farm labor contractor ("FLC") Mike's Farm Labor
7 employed foreman Mendoza as the supervisor of a crew which consisted of Marisol Jimenez,
8 Hector Cruz, Yolanda Antonio, Rigoberto Perez, Maria Duarte, and Maria Santiago. (Reporter's
9 Transcript, ("RT") II 118:9-10.) In November 2016, FLC Mike's Farm Labor transferred
10 foreman Mendoza and his crew to work for FLC Art's Labor Service ("Art's Labor") where
11 foreman Mendoza continued to supervise the crew. (RT V 30:6-15, 31:6-9.) The crew members
12 followed foreman Mendoza when the crew started working for FLC Art's Labor. (RT V 73:21-
13 73:23).

14 FLC Art's Labor assigned foreman Mendoza and his crew to perform work for several
15 growers, including Cinagro. (RT II 32:17-33:4, 55:15-56:19.) In late October or November 2016,
16 Cinagro hired foreman Mendoza and his crew directly. (RT IV 78:10-15; V 73:24-74:6.) Shortly
17 thereafter, Cinagro's General Manager Rene Macias ("GM Macias") and Owner Tony Dighera
18 ("Owner Dighera") met with foreman Mendoza's crew. (RT I 40; 8-10; II 121:6-12; III 90:1-3;
19 VII 65:10-14, 65:23-66:2.) GM Macias told foreman Mendoza and the crew that their work
20 conditions would not change. (RT IV 79:22-25, 82:4-7.) The crew performed the same work for
21 Cinagro that it had when FLC Art's Labor paid them, harvesting vegetables, and weeding the
22 land. (RT IV 85:1-10; V 39:18-23.)

23 A. Foreman Mendoza was the only Foreperson Cinagro employed.

24 When Cinagro hired foreman Mendoza and his crew, it did not have any other
25 forepersons. (RT VII 32:7-10, 130:9-10.) Cinagro paid foreman Mendoza hourly and identified
26 him as a foreman. (General Counsel's Exhibit, ("GCX") 2.)

1 GM Macias instructed foreman Mendoza where his crew should report to work and what
2 crops to pick. (RT VII 179:3-7.) Foreman Mendoza used the information from GM Macias to
3 direct his crew. (RT I 35:2-10; II 120:4-16.) Foreman Mendoza oversaw the crew, ensured their
4 quality of work, communicated workers' daily production to GM Macias, and handed out
5 checks. (RT IV 85:22-86:17; 106:1-2.)

6 **B. Foreman Mendoza and his crew complained about the missing payroll**
7 **deductions and wage statements.**

8 Cinagro paid the crew Fridays for the prior week's work.. (RT IV 105:18-105:23.) When
9 Cinagro directly hired foreman Mendoza and his crew, it did not tell them how it would classify
10 them, or that it would not make deductions from their gross wages. (RT I 127:25-128:7, 152:15-
11 153; IV 81: 8-21.) Cinagro issued paychecks to foreman Mendoza and his crew without a wage
12 statement and without making payroll deductions from November 2016 through February 2017.¹
13 (RT V 122:7-123:10; VII 59:9-60:2.) Foreman Mendoza and his crew compared Cinagro's stubs
14 with FLC Mike's and Art's Labor which listed the gross amount and deductions. (RT IV 81:6-
15 13). Foreman Mendoza and his crew grew concerned that the checks did not contain itemized
16 deductions or a detailed description of the earnings received (the wage rate, pieces picked, etc.).
17 (RT I 45:8-11; II 53:23-25, 123:24-124:1; 127:11-14; III 20:6-8; IV 106:3-7; VII 8:407.)

18 When foreman Mendoza and his crew expressed concerns to Owner Dighera about the
19 lack of itemized deductions, Owner Dighera told them that Cinagro was "not set up for this" and
20 that Cinagro "would get it as quickly as [Respondent] could." (RT VII 65: 10-14, 65:23-66:2.)
21 After the workers received their second paycheck from Cinagro they asked foreman Mendoza
22 about the missing paycheck stub information, and he told them he would find out. (RT IV 106:8-
23 23.) Foreman Mendoza told GM Macias "*people, including me*, wanted to know when [Cinagro]
24 were going to start paying" the crew and me "with a paycheck stub." (emphasis added) (RT IV
25 107:7-16.) GM Macias told foreman Mendoza and his crew that Cinagro was going to resolve
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27 ¹ As of February 2021, Cinagro still classified agricultural workers as non-employee vendors and did not make
28 payroll deductions. (RT VII 84:5-10). Similarly, they did not provide a wage statement containing a detailed
description of the wages paid, wage rate, or pay period. (RT V 119:7-11, 15-24.)

1 the paystub issue. (RT II 7:21-8:21.) But future paychecks continued to lack wage statements
2 (RT I 153:2-3.)

3 As a result, crewmembers discussed their concerns about the missing paystubs among
4 themselves and again took their concerns to foreman Mendoza. (RT I 43:2-9, 45:8-11, 153:4-12;
5 III 95:23-25, 96:1-8; IV 106:8-23.) Foreman Mendoza reported workers' concerns regarding the
6 lack of paystubs to GM Macias. (RT IV 106:24-25.) In November and December workers told
7 foreman Mendoza that they needed the missing wage statements to show proof of income for
8 Medi-Cal, and other personal reasons. (RT I 40:22-41, 42:21-25, 46:9-14; II 127:15-19, 129:6-
9 11; III 96:6-12.) Foreman Mendoza again took the complaints to GM Macias. (RT II 129:6-1; III
10 96:6-12.)

11 **C. Workers complained directly to GM Macias about the lack of paystubs.**

12 In December 2016, workers talked to GM Macias directly. (RT I 47:14-48:1.) GM
13 Macias informed Ms. Jimenez he would relay their complaints to "the boss." (RT I 47:19-23.) On
14 another occasion, GM Macias told them to be patient because Cinagro was a small company,
15 "just starting out," and promised the next paystubs would be different. (RT I 152:15-153:1.) GM
16 Macias said he would ask the office and asked foreman Mendoza to relay that information to his
17 crew. (RT IV 107:21-108:4.) Foreman Mendoza did so. (*Id.*)

18 In February 2017, Cinagro was still paying the workers without paystubs or itemized
19 deductions. (RT I 48:18-49:1; II 127:15-19; 129:6-123; III 96:6-12.) The workers again complained
20 to GM Macias and explained the urgency of their requests. (RT II 129:6-23, 130:1-5; III 97:22-
21 98:1.) GM Macias told the workers that Respondent was in the process of changing and that
22 Cinagro would provide them with paycheck stubs. (RT II 130:7-8; III 98:2-4.)

23 In February 2017, foreman Mendoza organized his crew to discuss the lack of a paystub
24 with GM Macias at a meeting. (RT I 48:18-49:1; IV 111:17-25.) Workers pled for GM Macias to
25 tell them when they would receive paystubs because they needed to provide proof of their
26 incomes. (RT I 49:15-19, 51:2-12; III 159:6-12, 15-18, 100:2-4.) GM Macias responded that
27 Cinagro was "on it" and they would receive a paystub the following week. (RT II 134:17-23.)
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1 GM Macias said he gave their message to "the boss," and that "the company was working on
2 getting them paystubs." (RT II 134:19-23; RT III 100:9-19.)

3 **D. Respondent hired a new crew without a foreman in mid-February 2017.**

4 In mid-February 2017, GM Macias hired a new crew to help foreman Mendoza's crew.
5 (RT VII 130:21-24; IV 126:15-19, 127:24-128:2.) GM Macias hired four to five people,
6 including Cesar Miranda. (RT VII 84:24-85:9.) Contrary to Respondent's assertions, Miranda
7 was not a foreman. Unlike foreman Mendoza, Miranda was paid for the pieces he harvested, not
8 an hourly rate. (GCX 5:I, GCX 2.) Cinagro also did not label Miranda as a "FORMAN [sic]" as
9 they did with foreman Mendoza. (GCX 5:I.) Owner Dighera said that Miranda's crew was paid
10 the same way as foreman Mendoza's crew but did not complain about the missing paystubs or
11 deductions. (RT VII 88:5-23.) Cinagro only attempted to label Miranda as a foreman at the
12 hearing conducted in this matter. (RT VII 131 3-10).

13 **E. In February 2017, foreman Mendoza's crew met GM Macias again because**
14 **Cinagro continued to omit payroll information.**

15 In February 2017, Cinagro issued "something" along with workers' paychecks, but it
16 lacked information about payroll deductions and the year to-date totals. (RT I 54:10-12; II 55:3-
17 25.) Foreman Mendoza's crew spoke among themselves about the ongoing issue. (RT II 57:19-
18 22.) Ms. Antonio complained to GM Macias about the new document and said she wanted a
19 paycheck stub that listed deductions. (RT II 130:14-21; 132:25-133:1.) Frustrated, the workers
20 asked foreman Mendoza to coordinate another meeting with GM Macias. (RT II 5:3-15; IV
21 123:13-25.) Foreman Mendoza organized a meeting again with the workers, him and GM Macias
22 the following day. (RT I 51:19-52:4; II 5:3-15, 5:20-23, 58:18-24.) The meeting took place on a
23 Saturday at the end of February. (RT IV 124:10-14.) The workers told GM Macias that they
24 wanted a paycheck stub that specified "the deductions that should be on the check." (RT III
25 39:16-40:5; IV 124:21-23.) GM Macias said that the company was "working on that still." (RT II
26 57:14-18.) Workers again expressed their urgent need to provide paystubs to maintain public
27 benefits. (RT II 133:2-6.) GM Macias told the workers that he would call the office and "see
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1 what they could arrange so that they could provide the paycheck stub." (RT IV 124:17-125:15,
2 126:2-14.) Sometime after that meeting, GM Macias told foreman Mendoza that he did not know
3 how long it would be before they would be able to receive the paycheck stubs "the way it should
4 be." (RT IV 126:2-7.)

5 **F. Cinagro discharged foreman Mendoza and his crew in March 2017.**

6 On Saturday, March 4, 2017, foreman Mendoza's crew and the other group of workers
7 worked at the same ranch. (RT I 61:1-2; II 10:23-11:3; IV 132:3-5.) GM Macias stopped
8 foreman Mendoza's crew at noon and sent him and his crew home. (RT III 58:8-9; IV 130:21-
9 131:24.) GM Macias told them it was because there was not a lot of work. (RT III 58:8-9; IV
10 130:21-131:24). However, the other crew continued to work. (RT I 61:1-2; IV 132:3-5) GM
11 Macias told foreman Mendoza he would let him know if there would be work the upcoming
12 Monday and told foreman Mendoza to let his crew know. (RT 131:4-7.) Foreman Mendoza
13 informed the crew there would not be work. (RT I 61:16-18; RT II 6:22-7:1, 60:12-20; IV 131:4-
14 7.)

15 The next day, Sunday, March 5, 2017, GM Macias asked foreman Mendoza to inform his
16 crew that there was no work on Monday. (RT IV 132:6-15.) That same day, foreman Mendoza
17 relayed the message to the crew. (RT I 62:3-6, 64:8-9, 65:5-7, 71:18-20; II 11:4-9, 11:18-20; IV
18 132:6-15.) On Monday, March 6, workers from foreman Mendoza's crew saw workers
19 harvesting at Respondent's Moorpark Ranch. (RT I 73:1-3; II 12:3-5; IV 132:25-133:11.) Ms.
20 Jimenez called GM Macias and shared that a worker at the Moorpark Ranch called her to ask
21 where she was working "because they had not seen us." (RT I 73:8-11.) GM Macias responded,
22 "...nobody was working because they did not have any orders and the cooler was full of
23 vegetables." (RT I 73:13-15.) GM Macias said there was no work "until further notice." (RT I
24 73:17-19.)

25 That same day, GM Macias called foreman Mendoza to inform him that there was no
26 work for him and his crew on Tuesday and asked that he inform the crew. (RT I 61:24-62:2; II
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1 11:4-9, 19-20, 60:14-20; IV 132:16-25.) Foreman Mendoza called workers to inform them there
2 was no work on Tuesday, March 7. (RT III 63:17-21; IV 132:16-25.)

3 The other crew where Miranda worked with others did not work on Tuesday, March 7,
4 but they returned to work on Wednesday, March 8. (RT IV 134:2-5, GCX 6). On Wednesday,
5 March 8, GM Macias called foreman Mendoza to inform him that he and his crew would not
6 work for a few days due to a lack of work and instructed foreman Mendoza to pick up his and his
7 crewmembers' paychecks on Friday. (RT IV 133:15-134:5.) During this call, foreman Mendoza
8 told GM Macias that he knew the other group of workers worked on Monday. (RT IV 134:6-10.)
9 GM Macias ended the call by firing foreman Mendoza and his crew. (RT IV 134:24-135:2.)

10 On Friday, March 10, foreman Mendoza picked up his and his crew's paychecks from
11 GM Macias. (RT V 9:14-25, 11:21-24, 135:3-22.) GM Macias again told foreman Mendoza that
12 he did not know when foreman Mendoza and his crew would return to work, asked foreman
13 Mendoza to inform his crew it was their last day worked, and said he would call them when there
14 was more work. (RT V 135:3-136:2.) Foreman Mendoza thanked GM Macias for the checks and
15 for the job because he understood that Cinagro would not call him or his crew for work again.
16 (RT IV 136:3-5, 147:24-148:4; VI 2:17-13:7.) Foreman Mendoza handed each worker two
17 Cinagro checks. (RT IV 144:14-144:16; V 9:14-25, 17:2-5.) He told the crew what GM Macias
18 said about there being no more work until further notice. (RT I 121:4-21; IV 136:6-140:2.)

19 **G. GM Macias hired new workers and did not recall foreman Mendoza.**

20 GM Macias did not call foreman Mendoza back to work. (RT II 15:22-24, 138:8-9; II
21 138:8-9; III 103:9-11; V 91:5-8) Owner Dighera acknowledged that there was enough work for
22 foreman Mendoza's crew and the other crew and that "there was always work, even later in .
23 March 2017." (RT VII 93:4-9, 94:8-11, 95:13-14.) Ms. Jimenez and her co-workers filed the
24 unfair labor practice (ULP) charge on March 13, 2017. (GCX 1.) Owner Dighera knew that
25 workers alleged that Respondent terminated foreman Mendoza and his crew's employment
26 because they complained about the paystubs and other working conditions. (RT VII 73:11-14.)
27 Despite this knowledge, Owner Dighera did not call foreman Mendoza or his crew back to work
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1 or clarify that Cinagro did not terminate his and his crew's employment. (RT I 75:9-11; II 15:22-
2 24 VII 74:22-24, 106:3-6.) Instead, Cinagro hired new workers. (RT II 15:22-24, 138:8-9; III
3 103:9-11; V 91:5-8; VII 102:17-18.)

4 **IV. LEGAL ARGUMENT**

5 The Act grants agricultural employees the right "to engage in...concerted activities for
6 the purpose of mutual aid and protection." Retaliation against employees for engaging in
7 protected concerted activities is considered interference, restraint, or coercion in the exercise of
8 that right, in violation of Section 1153(a). (*Gurinder S. Sandhu dba Sandhu Brothers Poultry*
9 *and Farming* (2014) 40 ALRB No. 12, p. 12; *J & L Farms* (1982) 8 ALRB No. 46; *Lawrence*
10 *Scarrone* (1981) 7 ALRB No. 13; *Miranda Mushroom Farm, Inc., et al.* (1980) 6 ALRB No. 22;
11 *NLRB v. Washington Aluminum Co.* (1962) 370 U.S. 9; *Phillips Industries, Inc.* (1968) 172
12 NLRB 2119, pp. 21-28.)

13 **A. Exceptions to the general rule that supervisors are not protected by the Act exist** 14 **where blind adherence to the rule would result in consequences clearly repugnant to** 15 **the express purposes of the Act.**

16 Cinagro's discharge of foreman Mendoza is repugnant to the Act. The Board "long ago
17 acted to assure supervisors' exclusion" from protections of the Act, such as explicitly excluding
18 supervisor's participation in bargaining units with employees under their supervision. (*Ruline*
19 *Nursery Co.*, at 10-11.) The legislative purpose of excluding supervisors stems from "problems
20 of divided loyalty," because supervisors are "management, obliged to be loyal to their
21 employer's interests, and their identity with the interests of rank-and-file employees might
22 impair that loyalty and threaten realization of basic ends of federal labor legislation." (*Ruline*
23 *Nursery*, citing *Yoder Brothers, Inc.* (1976) 2 ALRB No. 4; *Beasley v. Food Fair of North*
24 *Carolina, Inc.* (1974) 416 U.S. 653 at pp. 660-661.)

25 However, exceptions to the general rule exist because there are "factual situations where
26 blind adherence to the general rule would result in consequences clearly repugnant to the express
27 purposes of the Act." *Ruline Nursery* at pp. 12-13; See *Sequoia Orange, Co.* (1985) 11 ALRB
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1 No. 21, ALJD p. 92. The Board has recognized three exceptions when a supervisor's discharge
2 may constitute a violation of the Act: (1) discharging a supervisor for refusing to engage in
3 activities prohibited by the Act; (2) discharging a supervisor for engaging in conduct designed to
4 protect employee rights, such as testifying adversely to the employer in an ALRB proceeding; and
5 (3) discharging a supervisor as the method to unlawfully discriminate against the employees.
6 (*Ruline Nursery* (1981) 7 ALRB No. 21, pp. 10-11.)

7 **B. Cinagro discharged foreman Mendoza as a means to discharge his crew after he**
8 **communicated the crew's concerns about Cinagro's failure to provide wage**
9 **statements and deductions.**

10 The General Counsel demonstrated that Cinagro's termination of foreman Mendoza falls
11 within the third exception in *Ruline Nursery*. A prima facie case is made when (1) the employees'
12 tenure is expressly conditioned on the continued employment of their supervisor, (2) the
13 employees engaged in protected concerted activities, and (3) their supervisor's discharge was a
14 means of terminating the employees because of their concerted activity. (*Ruline Nursery* (1981)
15 7 ALRB No. 21, p. 11, citing *Pioneer Drilling Co., Inc.* (1967) 162 NLRB 918; *Krebs and King*
16 *Toyota, Inc.* (1972) 197 NLRB 462; *VADA of Oklahoma, Inc.* (1975) 216 NLRB 750.)

17 In *Sequoia Orange*, the Board found that the employer discharged a foreman as a means
18 of terminating the employees in his crew after the foreman relayed the workers' request for a
19 raise. (*Sequoia Orange, Co.* (1985) 11 ALRB No. 21.) The foreman in *Sequoia Orange* hired his
20 crew, informed the crew where to work, and oversaw their work. The workers complained to the
21 foreman about the availability of fruit to pick and asked him to talk to the supervisor about a rate
22 increase. (*Sequoia Orange, Co.* (1985) 11 ALRB No. 21, ALJD pp. 86-87.) The foreman told the
23 supervisor "that the people were asking for a raise and that the fruit was very bad." (*Id.* at p. 87.)
24 The supervisor responded, "... no. There is no more raise. There is no more work for you
25 [meaning the plural you, him and the crew.]" *Id.* at ALJD p. 87. The Foreman informed his crew
26 that the company did not grant a raise and dismissed them. *Id.* at ALJD p. 88. The supervisor
27 assumed that "once the foreman had been discharged, the crew would not remain." *Id.* at ALJD

1 p. 94. Similarly, in the present case, GM Macias fired foreman Mendoza and his crew after
2 Foreman Mendoza relayed his and the workers' concerns about the lack of wage statements and
3 payroll deductions.

4 **i. The crew's employment was dependent on foreman Mendoza's employment.**

5 As in *Sequoia Orange*, foreman Mendoza provided his own crew. Foreman Mendoza
6 worked together with most of his crew for other employers prior to working for Cinagro,
7 including FLCs Mike's Labor and Art's Labor. Foreman Mendoza worked as a foreman at
8 Mike's Labor where he oversaw crew members Marisol Jimenez, Hector Cruz, Yolanda
9 Antonio, Rigoberto Perez, Maria Duarte, and Maria Santiago. (RT II 118:9-10.) In November
10 2016, foreman Mendoza continued supervising his crew when transferred to Art's Labor. (RT V
11 30:6-15, 31:6-9.) Later, Cinagro hired foreman Mendoza and his crew. (RT IV 78:10-15; V
12 73:24-74:6.) Cinagro's hiring of foreman Mendoza was the means to effectuate the hiring of the
13 discriminatees. At that time, Cinagro did not have any forepersons or a workforce of its own.
14 (RT VII 32:7-10, 130:9-10.)

15 At Cinagro, Foreman Mendoza oversaw his crew, ensured the quality of their work,
16 communicated worker productivity to management, and informed his crew where to work and
17 what to pick. (RT I 43:2-9; IV 85:22-86:17.) The crew looked to foreman Mendoza to know
18 when and where to report to work, complained to him directly about working conditions, and
19 received their checks from him. (RT I 35:2-10, 43:2-9; II 120:4-16; VII 179:3-7; IV 85:22-
20 86:17.) If GM Macias did not inform foreman Mendoza where he was to report to work, what
21 crop his crew was to harvest and when he would work, the crew would not be privy to this
22 information and thus, would not work. (RT I 35:2-10; II 120:4-2; IV 85:22-86:17, 106:1-2.)
23 Therefore, foreman Mendoza was a conduit for work for his crewmembers. The crew's
24 employment was thus conditioned on foreman Mendoza's employment.

25 **ii. Foreman Mendoza and his crew engaged in PCA.**

26 Similar to the pay increase request in *Sequoia Orange*, foreman Mendoza's crew
27 discussed concerns about the lack of paystubs and deductions amongst themselves and then
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1 complained to foreman Mendoza. (RT I 43:2-9, 45:8-11, 153:4-12; III 95:23-25, 96:1-8; IV
2 106:8-23.) The lack of paystubs and deductions was an issue that affected both foreman
3 Mendoza and his crew members. When foreman Mendoza initially told GM Macias that he and
4 his crew needed paystubs, he said, "people, including me" wanted to know when Cinagro would
5 provide complete paystubs. (RT IV 107:7-16.) Members of foreman Mendoza's crew continued
6 complaining to foreman Mendoza about needing proper paystubs and itemizations. (RT I 43:2-9,
7 45:8-11, 153:4-12; III 95:23-25, 96:1-8; IV 106:8-23.) Foreman Mendoza relayed the concerns
8 to GM Macias and organized meetings for his crew with GM Macias. (RT II 5:3-15; IV 123:13-
9 25.)

10 In December 2016, workers complained directly to GM Macias. (RT I 47:14-48:1.) GM
11 Macias informed foreman Mendoza he would check with the office and asked foreman Mendoza
12 to notify his crew. (RT IV 107:21-108:4.) Respondent was therefore aware of foreman
13 Mendoza's and his crew's protected concerted activity. (*Foster Poultry Farms* (1980) 6 ALRB
14 No. 15, p.7; See also *Wonderful Orchards, LLC* (2020) 46 ALRB No. 2, ALJD p. 14, fn. 54 ("A
15 supervisor's knowledge of protected concerted activities is imputed to an employer in the
16 absence of credible evidence to the contrary,") citing *State Plaza Hotel* (2006) 7 347 NLRB 755,
17 756-757.) (RT I 47:14-48:1.) Owner Dighera acknowledged at hearing that he was aware of the
18 foreman Mendoza's crew's complaints. (VII 64:17-66:9.)

19 **iii. Cinagro discharged foreman Mendoza as a means of terminating his crew**
20 **because of their complaints about the lack of paystubs and deductions.**

21 As in *Sequoia Orange*, after the crew's protected concerted activity, GM Macias told
22 foreman Mendoza that there was no more work for him and his crew until further notice,
23 effectively terminating foreman Mendoza's crew by terminating foreman Mendoza. (RT II
24 129:6-1; III 96:6-12; IV 106:24-25.) GM Macias did not contact the workers in foreman
25 Mendoza's crew who lodged complaints about how they were paid to notify them of their
26 discharges because he knew that firing foreman Mendoza meant firing the workers in his crew.
27 (RT I 75:9-11; VII 74:22-24, 106:3-6.) This was consistent with GM Macias' established method
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1 of communicating exclusively through foreman Mendoza for communicating with the crew. GM
2 Macias relied on foreman Mendoza to notify workers when and where to report to work, to
3 receive and relay complaints, and to disburse checks. (RT I 43:2-9; IV 85:22-86:17; 106:1-2.)
4 The facts in this case are therefore directly analogous to those in *Sequoia Orange*. Thus, foreman
5 Mendoza should receive the protections of the Act.

6 **C. While the General Counsel maintains that foreman Mendoza should be protected**
7 **under *Sequoia Orange*, if the Board finds that he is not, the Board should expand**
8 **the instances where supervisors are protected under the Act.**

9 If the Board adopts the ALJ decision and finds that foreman Mendoza’s termination falls
10 outside the protections for supervisors in *Sequoia Orange*, the Board should carve out an
11 additional exception to prevent a result repugnant to the purposes of the Act. The purpose of the
12 Act is to encourage and protect the right of agricultural employees to full freedom of association,
13 self-organization, and designation of representatives of their own choosing, and to be free from
14 the interference, restraint, or coercion of employers of labor, or their agents. (Lab. Code,
15 §1140.) Generally, the Act excludes supervisors. However, the Board has carved exceptions for
16 circumstances “where blind adherence to the general rule would result in consequences clearly
17 repugnant to the express purposes of the Act.” (*Ruline Nursery Co.* (1981) 7 ALRB No. 21, p. 5.)

18 The statutory exclusion of supervisors from the Act stems from the NLRB principle
19 addressing employers’ concerns that “during strikes or labor unrest among his other employees
20 he will have a core of plant protection employees who could enforce the employer’ rules for
21 protection of his property and persons without being confronted with a division of loyalty.”
22 (*Yoder Brothers, Inc.* (1976) 2 ALRB No. 4 citing *McDonnell Aircraft Corp* (1954) 109 NLRB
23 No. 147; See *NLRB v. Jones and Laughlin Steel Corp.* (1946) 154 F.2d 932.) Supervisors are
24 expected to exhibit “loyalty” to the employer “and not to subordinate such interests to the
25 concerns of the rank-and-file employees” they supervise. (*Sequoia Orange Co.* (2018) 11 ALRB
26 No. 21, ALDJ p. 92.)

1 A supervisor's discharge runs against the "Act's underlying philosophy of guaranteeing
2 to agricultural workers 'full freedom of association,' and freedom 'from interference, restraint or
3 coercion of employers in... concerted activities for the purpose of... mutual aid or protection'"
4 in certain exceptions. (*Sequoia Orange Co.* (2018) 11 ALRB No. 21, ALDJ p. 92; See
5 *McCaffrey Goldner Roses* (2002) 8 ALRB No. 8, p. 10 (exception where discrimination against
6 supervisors directly affects the employment of statutory employees and chills the employees'
7 exercise of their rights under the Act); See also *Parker-Robb Chevrolet* (1982) 26 NLRB 402,
8 404 (finding the discharge of supervisors to be unlawful when it interferes with employees'
9 rights to exercise their NLRA rights).) These exceptions include discharging a supervisor who
10 refused to engage in activities outlawed by the Act or discharging a supervisor who engaged in
11 conduct designed to protect employee rights, such as giving testimony adverse to the employer in
12 a Board proceeding. (*Ruline Nursery* (1981) 7 ALRB No. 21, pp. 9-10.)

13 An additional exception to supervisor exclusion should exist in situations such as the one
14 at hand where the supervisor and the crew complain about the company's statutory violation and
15 the supervisor is terminated along with the crew for doing so. Under these circumstances, the
16 company targets the supervisor and discharges him in a wholesale manner along with his crew
17 because he shared and relayed his and his crew's complaints about the company's potential labor
18 code violations. Such actions interfere with the workers' right and ability to complain through
19 their supervisor about the company's potential statutory violations. Further, this deters
20 supervisors from conveying workers' complaints and closes the line of communication between
21 workers and upper management. The line of communication between foremen and workers is
22 especially important in agricultural workplaces where the work location often changes daily, and
23 the foreman is the main person with whom workers interact as their access to upper management
24 is more limited.

25 Extending coverage to supervisors in this circumstance will also discourage employers
26 from discriminating against supervisors who convey complaints about potential legal violations
27 and may help increase employer compliance with the labor code. Additionally, allowing
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1 supervisors to benefit from the Act's reinstatement remedy would strengthen the crew's right
2 under the Act to engage in concerted protected activity by complaining to their foreperson. To
3 hold otherwise discourages workers from complaining to their foreman and sends the message
4 that involving the foreman will get him fired instead of their complaints being addressed.

5 **D. The Board should order Cinagro to make foreman Mendoza whole by offering**
6 **reinstatement and backpay.**

7 The Board has the authority to take affirmative action, including reinstatement of
8 employees with backpay, when the Board determines an employer committed an unfair labor
9 practice. The Board should be "guided by the principle that the wrongdoer, rather than the
10 victims of the wrongdoing, should bear the consequences of his unlawful conduct, and that the
11 remedy should 'be adapted to the situation that calls for redress.'" (*Highland Ranch v. ALRB*
12 (1981) 29 Cal.3d 848, 862 citing *Transmarine Navigation Corp.* (1968) 170 NLRB 389.)

13 Here, the General Counsel takes exception to the ALJ's finding that "Mendoza's
14 reinstatement [is not] required in order for Cinagro to offer reinstatement or backpay" to the rest
15 of the crew. (ALJD p. 71). The General Counsel proved by a preponderance of the evidence that
16 Cinagro unlawfully discharged foreman Mendoza as a means to unlawfully discharge the rest of
17 his crew. Cinagro did not recall foreman Mendoza at any point after discharging him, nor did
18 Cinagro clarify that they had not discharged him. Cinagro should be ordered to make foreman
19 Mendoza whole from the date of his discharge to the date that Respondent provides him an
20 unconditional offer of reinstatement. (*Mario Saikhon, Inc.* (1991) 17 ALRB No. 10.)

21 The Board should also require Respondent offer foreman Mendoza reinstatement and
22 backpay.

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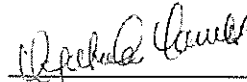
1 **V. CONCLUSION**

2 For the foregoing reasons, the General Counsel respectfully requests that the Board
3 modify the ALJ's order to hold that Cinagro violated the Act when it discharged Foreman
4 Mendoza and order appropriate remedies to make him whole. and The General Counsel also
5 requests that the Board adopt the ALJ's findings on all remaining issues.

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7 Dated: December 1, 2021

Respectfully submitted,

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9 AGRICULTURAL LABOR RELATIONS BOARD
10 JULIA MONTGOMERY
General Counsel

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14 Gabriela Correa
15 Assistant General Counsel
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State of California
Agricultural Labor Relations Board
PROOF OF SERVICE
(8 Cal. Code Regs. § 20164)

I am a citizen of the United States and a resident of the County of Monterey. I am over the age of eighteen years and not a party to the within entitled action. My business address is: ALRB, 342 Pajaro Street, Salinas, California, 93901.

On **December 1, 2021**, I served a copy of the within **GENERAL COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** in Case Name: **CINAGRO FARMS, INC., 2017-CE-008-SAL**, on the parties in said action, in the following manner:

By Electronic File: The above-referenced documents were e-filed today to the following parties at the listed e-file address; and

By Electronic mail: The above-referenced document was e-mailed to the following parties at the listed e-mail addresses.


By U.S. Certified mail: The above referenced document was mailed to the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oxnard, California; and

Via E-File: Santiago Avila-Gomez Executive Secretary Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-File: efile@alrb.ca.gov	Via Electronic and Certified Mail: Robert P. Roy Ventura County Agricultural Association 916 W. Ventura Blvd. Camarillo, CA 93010 E-Mail: rob-vcaa@pacbell.net Certified Mail No. 7018 1830 0001 0041 8772
Via Electronic Mail: Julia Montgomery General Counsel Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-Mail: julia.montgomery@alrb.ca.gov	Via Certified Mail: Marisol Jimenez 1201 W. Gonzalez Rd., Apt 30 Oxnard, CA 93033 Certified Mail No: 7018 1830 0001 0041 8789

GENERAL COUNSEL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE
CINAGRO FARMS, INC.-2017-CE-008-SAL

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Executed on December 1, 2021, at Salinas, California. I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Monica Ortiz