



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

CINAGRO FARMS, INC.,  Respondent,  and,  MARISOL JIMENEZ,  Charging Party.	}	Case No. 2017-CE-008-SAL
--	---	--------------------------

---

DECISION OF THE ADMINISTRATIVE LAW JUDGE

Appearances:

For the General Counsel:

Julia L. Montgomery, General Counsel  
Franchesca C. Herrera, Regional Director  
Jessica Arciniega, Assistant General Counsel  
Amisha G. De Young-Dominguez, Assistant General Counsel  
ALRB Oxnard Sub-Regional Office  
1901 North Rice Avenue, Suite # 300  
Oxnard, California 93030  
Telephone: (805) 973-5062  
JArciniega@ALRB.ca.gov

For Respondent:

Robert P. Roy, Esq.  
Ventura County Agricultural Association  
916 W. Ventura Boulevard  
Camarillo, California 93010  
Telephone: (805) 388-2727  
Rob-VCAA@PacBell.net

This matter was heard by Mark R. Soble, Chief Administrative Law Judge (“ALJ”), State of California Agricultural Labor Relations Board (“ALRB”) on the seven days of February 23-26, 2021, and March 1-3, 2021.

## **I. JURISDICTION**

The charge was filed in this matter on March 13, 2017. (GC Exhibit # 1) The charge alleges that Cinagro Farms, Inc. (hereafter “Cinagro”) “discriminatorily terminated” the employment of Charging Party and her crew. The General Counsel served a complaint in this matter on June 10, 2020, which was three years and three months after the charge was filed. The June 10, 2020 Complaint stated that the workers were first directly hired by Cinagro in February 2017. (Complaint, page 3, lines 15-18)

The February 11, 2021 Amended Complaint states that workers were first directly hired by Cinagro in November 2016. (Amended Complaint, page 2, lines 19-21) The Complaint and Amended Complaint mention a single instance where a Cinagro supervisor asked the workers to purchase water. (Complaint, page 4, lines 2-5, and Amended Complaint, page 3, line 26, to page 4, line 1) The Complaint and Amended Complaint describe how the workers requested pay stubs showing payroll deductions, but that the company failed to provide the pay stubs. (Complaint, page 3, lines 10-24, and Amended Complaint, page 3, lines 6-20)

The Answer was filed in this matter on June 16, 2020. The Answer to the Amended Complaint was filed on February 11, 2021. Respondent presented an affirmative defense both that the crew did not show up for work and quit. (Answer, at page 2, line 12, and Answer to Amended Complaint, at page 2, lines 12-13) The

Answer to the Amended Complaint deleted the defense in the initial answer that the crew's farm labor contractor (hereafter "FLC") did not show up leaving the crew with no supervision. (Answer, at page 2, lines 13-14)

At the December 7, 2020, Prehearing Conference, the General Counsel repeated these allegations. (Prehearing Conference Order, dated January 4, 2021, at page 2, line 14, to page 3, line 2) At that same Prehearing Conference, the Respondent stated that it did not have a model payroll system and eventually hired a new bookkeeper.

(Prehearing Conference Order, dated January 4, 2021, at page 3, lines 4-6) The Respondent explained that the FLC stopped coming and the workers became unhappy and left, some to a nearby grower. (Prehearing Conference Order, dated January 4, 2021, at page 3, lines 5-9)

Respondent admits that the charge and complaint in this matter were properly filed and served. (Prehearing Conference Order dated January 4, 2021, at page 1, line 26.) Respondent admits that, during all pertinent time periods, it was an agricultural employer as defined by the ALRA. (Prehearing Conference Order dated January 4, 2021, at page 1, line 27.) Respondent admits that, during all pertinent time periods, Charging Party was a non-supervisory agricultural employee. (Prehearing Conference Order dated January 4, 2021, at page 1, line 28.)

## **II. FORMAT OF HEARING**

Due to the COVID-19 pandemic, the General Counsel proposed that this hearing be conducted using a video-conference platform. The Respondent did not take a position one way or the other as to the format of the hearing. Generally, Title 2,

California Code of Regulations, section 20269, gives parties the right to appear in person at the hearing. This right was suspended by the Governor's Executive Order N-63-20, paragraph 11, dated May 7, 2020. In light of that suspension, the decision of how to best proceed and the format to be used therefore falls before the undersigned ALJ pursuant to Title 2, California Code of Regulations, section 20262. In the absence of any objection from the Respondent, the undersigned found the health and safety concerns to be valid and persuasive and ordered that the hearing would be conducted using a video-conference platform, namely Webex (Webex is similar to Zoom and FaceTime).<sup>1</sup>

The undersigned ALJ and counsel for both sides worked out an arrangement that ultimately worked well at hearing. We had the almost all of the witnesses go to an empty conference room in the building shared by the Oxnard ALRB Sub-Regional Office and the California Unemployment Insurance Appeals Board (hereafter "CUIAB"). An ALRB field examiner set up the laptop computer on Webex and wiped down the room with disinfectants between witnesses. The laptop was set up to show a head and shoulders view of the witness. I felt better able to make credibility determinations seeing the witnesses on Webex than I would have had all parties and witnesses been in person, thirty feet apart, and wearing masks for the entire day. And

---

<sup>1</sup> The General Counsel withdrew her request to have an out-of-state witness appear by telephone (audio-only), indicating that the witness would use her smart phone to appear via Webex with both audio and video. The ALJ indicated that he was prepared to disallow telephone (audio-only) testimony and that the General Counsel would have had to make alternate arrangements to give the witness internet/Webex access in that instance. (*Westside Painting, Inc.*, 328 NLRB 796, 796-797 (1999))

in person, those distance and masking precautions would have been minimally required given the seriousness of the pandemic at the time.

The witnesses were provided with a physical notebook binder with paper copies of the exhibits. Paper or PDF copies of these same exhibits were generally provided to all parties and counsel beforehand, as well as to the ALJ, court reporter and interpreter.

When the field examiner entered the room to provide technology assistance or to bring in a hearing exhibit, both she and the witness wore masks, but the witnesses were permitted to remove their masks when they were alone in the room. All parties, counsel and court reporters were told that video-recording of the hearing was strictly prohibited. I felt that the video-recording of witnesses could have a chilling effect on the future willingness of farmworkers to testify at ALRB hearing, especially since some of those farm workers may have immigration issues.

Respondent's counsel participated from his office, and the ALJ, interpreter and court reporter were all located in different buildings, indeed, even in different cities. While the new technology required a few additional breaks, the only challenge was on one occasion when the court reporter had trouble replaying a specific witness answer. As the hearing moved forward, the court reporter addressed that technical requirement.

I feel confident that all parties' due process rights were appropriately protected at this hearing. In addition to when health and safety needs require it, I would recommend to the Board allowing use of the video-conference platform for other simple hearings. I also believe that our use of paper exhibits made it much easier for

the witnesses, who likely held varying levels of experience using videoconference platforms.

### **III. ISSUES PRESENTED**

1. Did the crew quit or were they fired, discharged or let go?
2. If the crew was fired, discharged or let go, was the reason for the end of employment in whole or in part because of the crew members' protected, concerted activity?
3. Does the time gap of three and a quarter years between the date of the charge and the date of the complaint provide any sort of defense to the Respondent?
4. If Respondent committed an unfair labor practice, is the foreperson eligible for a remedy along with his crew?

### **IV. WITNESS TESTIMONY**

There were twelve witnesses in this case. The names of the witnesses are (1) Marisol Jimenez, (2) Hector Cruz, (3) Maria Duarte, (4) Yolanda Antonio Garcia, (5) Rigoberto Perez Martinez, (6) Maria Angelica Santiago, (7) Victor Mendoza, (8) Barbara Ito, (9) Marie Lariano, (10) Ignacia Sanchez, (11) Anthony George Dighera, and (12) Rene Macias Diaz.

#### **1. Marisol Jimenez**

In 2016, Marisol Jimenez first worked for Mike's Farm Labor. (Transcript volume one, page 33, lines 17-20; hereafter abbreviated 1/33:17-33:20.) In approximately October 2016, Marisol first worked at Cinagro with Art's Labor Contractor. (1/33:17-33:23 and 39:18-39:20) The crew typically worked six days per

week. (1/34:20-34:21) Her foreperson was Victor Mendoza. (1/34:11-34:15) The supervisor was Rene Macias. (1/34:16-34:17) The crew cut vegetables and was mostly paid piece-rate. (1/33:24-33:25, 1/35:23-36:1 and 1/127:17-127:24)

**A. Pay Stub Issue**

After three or four weeks, the crew changed from working for Art's Labor Contractor to working directly for Cinagro. (1/39:12-39:20 and 40:7-40:9) Unlike Art's Labor Contractor, Cinagro did not make payroll deductions nor provide a pay stub or paper explaining the payment. (1/39:21-40:40:2 and 1/42:18-42:24) Marisol was unhappy with this failure. (1/82:24-82:25) Rene told the crew that it was a new company and in the process of fixing its paperwork. (1/40:11-40:18).

In December 2016, Marisol and Hector Cruz spoke to Victor about the payroll paperwork and deduction situation. (1/46:9-46:14) In addition to being a fellow crew member, Hector was Marisol's partner. (1/131:19-131:20) Marisol asked Victor to inquire with Rene as to when they would be able to get their pay stubs. (1/46:18-46:21) Victor told them that he would speak to Rene and find out the response. (1/46:15-46:17) Approximately one week later, Marisol spoke to Rene by herself, expressing her need for the pay stub. (1/47:16-48:4) Rene stated that he was limited to passing the message along to the boss, and that there was nothing else he could do in that regard. (1/47:18-47:23)

In earlier February 2017, Marisol's crew met with Rene. (1/48:18-49:1) Marisol told Rene that they needed pay stubs to provide proof of employment. (1/49:16-49:19) Her colleague Yolanda Antonio spoke at the meeting, explaining that



she needed to be able to prove her income. (1/50:4-50:22) Colleague Maria Angelica also spoke, stating that she needed to obtain proof of income. (1/50:8-12) Additionally, colleague Rigoberto Perez spoke, indicating a need for the paycheck stubs. (1/50:2-50:6 and 1/51:2-50:7) Rene responded that he had given their messages on the topic to the boss. (1/50:13-50:18)

In late February 2017, Marisol's crew met with Rene. (1/51:19-51:22) Colleagues present at the meeting included Maria Angelica, Yolanda Antonio, Hector Cruz, Maria Duarte, Maria Laureano, Ignacia Sanchez, as well as herself, Victor and Rene. (1/52:1-52:4) Maria Duarte indicated that she immediately needed proof of employment. (1/52:10-52:15) Hector and Yolanda expressed similar sentiments. (1/52:16-53:6) Rene informed the crew members that the company was still working on the paperwork but that the company would provide an interim document at the end of the week. (1/53:9-52:13) The interim document did not have traditional payroll information. (1/54:7-54:12)

## **B. Water Issue**

Marisol alleged that the company "never brought us water". (1/55:2-4) Marisol was emphatic that the company brought zero water, saying "no, never". (1/55:5-6) Marisol states that she and two co-workers, Hector Cruz and Maria Duarte, discussed the issue with Victor. (55:7-55:24) Victor told Marisol that he would mention it to Rene. (1/56:1-10)

Marisol later testified that she asked Rene about the water, saying that the company did not bring enough. (1/57:13-58:3) No one else was present during this first conversation about water. (1/58:17-58:19) Marisol asked Rene about the water on a second occasion when Hector Cruz was also present. (1/58:20-58:23) Rene told them that if they went to the store near the ranch he would reimburse them, though he never did. (1/59:3-59:21)

During cross-examination, Marisol recalled that Victor's truck had yellow water coolers that held water. (1/83:18-83:20) Marisol testified that the crew bought the water stored in those coolers. (1/83:21-83:23, 84:5-84:7 and 85:19-85:22) She also testified that the crew gave Victor money so that he could purchase the water in the morning. (1/86:7-86:11)

### **C. Last Day of Work**

The last day that Marisol worked at Cinagro was Saturday, March 4, 2017. (1/60:2-60:5) Marisol was never told by Victor Mendoza that she had been terminated. (1/118:9-118:12) But Victor did tell her that Rene advised that there would be no work on Monday, March 6, 20217. (1/61:16-62:6)

On Monday, March 6, 2017, Marisol and two of her colleagues, Hector Cruz and Maria Duarte, went driving to look for work. (1/71:21-71:24 and 73:2-73:3) They drove by the Moorpark Cinagro Ranch and saw a crew working there. (1/72:24-73:1) Marisol then telephoned Rene. (1/73:4-73:6) Marisol had her phone on speakerphone and Hector and Maria could hear the conversation. (1/75:12-75:14) Rene told Marisol that his understanding was that no crew was working. (1/73:12-73:14) Marisol asked

when her crew was next getting work and Rene replied that he did not know, until further notice. (1/73:16-73:19 and 118:13-118:16) Rene never called or spoke with her thereafter either to offer work or otherwise. (1/119:16-119:20 and 1/120:20-120:24) Nor did Marisol ever call Rene after Monday, March 6, 2017. (1/129:1-129:6)

On that same Monday, March 6, 2017, Marisol applied for work harvesting blueberries at Silent Springs. (1/93:4-93:22) Silent Springs hired Marisol on Tuesday, March 7, 2017, and her first day of work was Wednesday, March 8, 2017. (1/95:15-95:17) Hector Cruz and Maria Duarte were also hired and started on those dates. (1/95:19-95:25) During March 8, 2017 to June 2, 2027, Marisol worked full-time with Silent Springs. (1/98:13-98:16)

On Friday, March 10, 2017, Marisol received her final Cinagro paycheck from Victor Mendoza. (1/121:5-121:8)

#### **D. Telephoning Other Witnesses**

During the thirty days prior to the hearing, Marisol telephoned Ignacia Sanchez. (1/106:20-106:23) Prior to that call, she had not spoken with Ms. Sanchez in a long time. (1/106:5-106:8) Marisol called Ignacia to find out if she was participating in the ALRB hearing. (1/107:17-107:21) Two weeks prior to the hearing, Marisol also called Maria Lauriano. (1/105:6-105:9) Marisol decided to call Ignacia and Maria after the General Counsel's Office told her that two other workers would be testifying at the hearing. (1/112:13-112:20)

## **2. Hector Cruz Vasquez**

During the first half of 2016, Hector worked for the farm labor contractors at Houweling's Nursery. (1/140:1-140:10 and 149:1-149:11) For the first couple days the farm labor contractor was Mike's Farm Labor but it was called Art's Labor or Arturo Farms after that. (1/140:4-140:7 and 2/31:13-32:32:12) The farm labor contractors provided the workers with medical insurance. (2/38:13-38:16) In mid-October 2016, Hector started working for Cinagro, where he harvested vegetables. (1/140:15-140:19) There were some days where the crew just did weeding. (2/30:7-30:9) The foreperson for Hector's crew was Victor Mendoza and the supervisor was Rene Macias. (1/140:20-140:23 and 2/33:8-33:15) Initially, Hector's crew had approximately thirteen to fifteen workers but the number diminished over time. (2/24:9-24:12) Later on, Cinagro had a second separate crew. (2/28:24-29:7) The two crews never merged together. (2/29:8-29:16)

Hector's wages were calculated by piece rate, with a minimum hourly amount if his tallies did not meet a certain threshold. (1/143:13-143:15 and 142:2-142:11) Victor would inform Hector by telephone or text as to which of the two Cinagro ranches to report. (1/145:19-145:24 and 146:5-146:7)

### **A. Pay Stub Issue**

After Cinagro replaced Art's Labor as Hector's employer, Cinagro paid Hector using personal checks. (1/141:19-141:20 and 150:3-150:6) What the crew members described as personal checks were company checks that were unaccompanied by a pay stub and provided no documentation to suggest that any withholding was done for

social security, insurance, etc. Hector recalled that when one worker was injured, the company gave the worker a personal check and told the worker to say that he was cut at home. (2/42:1-42:9) Rene Macias told Hector's crew that Cinagro had different checks because they were a small company that had just started, but that the checks would be different by the next week. (1/152:22-153:1) However, the type of check did not change by the next week. (1/153:2-153:3) In fact, in February 2017, Cinagro was still paying Hector's crew with checks that were unaccompanied by typical pay stubs, a concern which the crew repeatedly raised with Rene. (1/154:16-156:18, 2/6:9-7:1 and 2/34:19-35:7)

#### **B. Water Issue**

Hector indicated that there was a single instance when he went to purchase water. (1/9:15-9:17) On that occasion, water had "run out". (2/9:18-9:23) Rene asked him and Marisol to pick up water for that one day, but never reimbursed them. (2/10:1-10:10)

Hector confirmed that his foreman Victor had large ten or fifteen gallon water jobs on his truck and additionally provided cups. (2/37:16-37:20) Hector said that Victor would pay for half of the water and the crew would pay for the other half. (2/45:5-45:15)

#### **C. Last Day of Work**

After the last Friday that the crew worked for Cinagro, the crew was never called back. (2/10:11-10:22) On the next Sunday, Victor told the crew that Rene had told him there would be no work for that Monday. (2/11:18-11:20) Hector applied for a new

job the following Tuesday, March 7, 2017, and started at that job the next Wednesday, March 8, 2017. (2/18:22-18:25) On Tuesday, March 7, 2017, prospective workers had to arrive at the blueberry ranch by 5:00 a.m. because there were a lot of interested workers. (2/21:8-21:12) On the way back from submitting the applications, Hector and Marisol saw the other crew working at Cinagro and Marisol telephoned Rene. (2/21:13-21:18) During that call, Rene did not say anything about the crew being fired. (2/43:9-43:14) In fact, at no time has anyone from the company ever communicated that the crew was fired in those words. (2/44:14-44:17)

### **3. Maria Duarte Melgoza**

Maria initially testified that she started working at Cinagro in February 2017. (2/53:11-53:12) She is close friends with Marisol and knew her long before working at Cinagro. (2/82:10-82:15) In fact, Maria traveled to California and was with Marisol for a few days in mid-January 2021. (2/112:20-112-23) At Cinagro, she picked vegetables and her crew foreperson was Victor. (2/53:15-53:19) If a worker met her quotas, she was paid piece-rate; otherwise, it would be hourly wages. (104:16-104:25) Victor would let the crew know whether to go to the Cinagro ranch in Moorpark or to the Cinagro ranch in Fillmore. (2/54:1-54:11) Maria recalled the crew having eight or nine members. (2/84:5-84:17)

#### **A. Pay Stub Issues**

Cinagro paid her with “personal checks”. (2/54:23-53:25) By “personal checks”, Maria meant that there was no pay stub showing deductions for things like social security or health insurance. (2/55:16-55:25) She asked the Cinagro supervisor

Rene about the missing pay stubs and Rene told her the company office was working on it. (2/57:1-57:18) The crew also met with Rene on the subject shortly before she stopped working at Cinagro. (2/58:5-58:24) At this meeting, Maria told people that she needed a paystub. (2/59:2-59:3) Her colleagues echoed these concerns to Rene at the meeting. (2/59:16-59:19) At first, Maria testified that Rene did not respond at all. (2/59:8-59:10) Then a minute later, Maria testified that Rene told the crew that the company office was working on it. (2/59:20-59:23)

**B. Water Issue**

At the same meeting where the crew discussed pay stubs with Rene, Maria spoke at the meeting and said that “the water wasn’t good and Victor was the only one who would bring good water”. (2/59:6-59:7) Victor brought water to her crew every day. (2/111:6-111:18) No one ever asked Maria to pay for the water that Victor brought on his truck. (2/111:24-112:2)

**C. Last Day of Work and Shortly Thereafter**

Maria stated that she stopped working at Cinagro because Victor told her that Rene said that the available work had decreased and that they would call back when there was work. (2/60:1-60:5 and 2/83:15-83:16) On the day Maria, Marisol and Hector applied at the blueberry ranch, Maria drove, and they also went by the Cinagro Moorpark ranch. (2/61:1-61:10 and 2/85:5-85:10) The three of them saw the other crew working and Maria took cell phone pictures. (2/61:11-61:15, 65:11-65:13 and 84:19-85:1) Maria identified these photos from among the exhibits. (2/64:9-67:21) Maria testified that what she saw with her eyes was clearer and sharper than her cell

phone pictures. (2/89:2-89:11) After they took the photos, they called Victor and told him that the other crew was working. (2/77:3-78:2) Victor told them that Rene said the company would let them know when there was more work. (2/79:1-79:3) They never received a call back from the company. (2/82:16-82:20 and 2/109:25-110:1) Nor did she thereafter ever call Rene to inquire about work. (2/109:10-109:14)

#### **D. The Blueberry Farm**

The blueberry farm offered medical insurance, paid sick leave and other benefits. (2/105:13-105:18) The blueberry farm also provided pay stubs showing payroll deductions. (2/105:19-105:21) The blueberry farm also paid with a piece rate formula. (2/105:22-105:25) Maria indicated that she met the piece rate threshold more easily at Cinagro because she had more experience harvesting vegetables than picking blueberries. (2/108:2-108:16)

#### **4. Yolanda Antonio Garcia**

Yolanda began working at Cinagro picking vegetables in an October, but she could not identify which year. (2/118:7-118:14) Yolanda recalled that she was there for approximately four to five months. (3/58:2-58:4) Her foreperson was Victor Mendoza and the crew was paid piece-rate. (2/118:15-118:19 and 2/120:13-120:15) Her crew typically worked at two ranches Monday through Saturday, Fillmore and Tierra Rejada (Moorpark). (2/119:21-120:121:3) She would only know which ranch to go to when she received a call from Victor passing along what he had heard from supervisor Rene. (2/120:4-120:19) The crew was typically paid on the following Friday after a payroll week ended. (3/68:21-68:24)



**A. Pay Stub Issue**

Unlike the farm labor contractor, Cinagro paid the crew using checks with no pay stubs or itemized deductions. (2/123:1-124:1, 2/127:11-127:14 and 3/20:6-20:8) Yolanda needed the pay stubs for her children's Medi-Cal. (2/127:15-127:19) Yolanda and her husband Rigoberto spoke with Victor about the pay stub issue. (2/129:1-129:11) Victor told Yolanda to discuss the issue with Supervisor Rene, which she did in February. (2/129:14-129:23) Rene told them that the company was working on it, but the company never provided pay stubs, just piece-rate tallies. (2/130:2-130:13) Yolanda spoke to Rene again and told him that Medi-Cal would not accept solely piece rate tallies because that did not comprise a pay stub. (2/130:14-131:21) Rene told Yolanda that the company was new and they were working on it. (2/130:23-131:2, 2/132:22-133:1 and 3/54:8-54:12)

Yolanda also recalled a meeting with the whole crew where both Rene and Victor were present. At this meeting, Yolanda, Marisol and others spoke about the need for the pay stubs. (2/133:23-134:18 and 134:24-135:6) Rene responded that the company was working on it and they would get pay stubs the next week, but the next week the attachment still only had piece rate information, but not pay stub deductions. (2/134:19-135:18, 3/39:18-40:6, 3/41:14-41:16 and 3/54:13-54:15)

On one occasion, Yolanda met Rene's boss, Tony, when he brought bread to the crew. (3/138:19-138:24) This took place about two weeks before the crew stopped receiving work. (2/139:24-140:2) Yolanda mentioned the pay stub issue, speaking in Spanish to Rene, who then translated her comment to English for Tony. (2/138:16-

139:2) After Tony responded in English, Rene told Yolanda in Spanish that the company was working on it. (2/139:2-139:3) However, the company never provided the pay stubs. (2/150:12-150:15)

**B. Water Issue**

Victor would bring water to the field every day. (2/151:1-151:4) Yolanda did not need to contribute money for the water on Victor's truck, but the crew was asked to donate their recyclables. (2/152:15-152:18, 3/28:17-29:1 and 3/44:2-44:13)

**C. Last Day of Work**

Yolanda learned from Victor that there would be no work until further notice. (2/135:23-135:24) They had called Victor on a Sunday since they did not yet have reporting location instructions for the next morning. (2/135:1-135:3) Victor did not say that he had been fired or terminated. (3/27:14-27:16) Yolanda tried twice to telephone Rene, but he did not answer. (2/136:15-136:17 and 3/30:1-30:9) Yolanda did not go to work at the blueberry farm. (1/96:11-96:13 and 2/140:21-141:3) Yolanda called Victor one more time during the week. (3/30:10-30:22) Victor indicated that he had heard nothing from Rene and that he (Victor) was going to start looking for work. (3/30:23-31:2 and 3/64:6-64:10) Rather, approximately a week later, Yolanda and Rigoberto went to work harvesting vegetables at Deardorff Farms in Oxnard. (2/142:4-142:16, 2/143:22-143:25, and 2/144:1-144:14, and 2/147:22-147:25) Unlike Cinagro, Deardorff provided insurance and pay stubs. (2/151:8-15)

## **5. Rigoberto Perez Martinez**

Rigoberto first worked in Victor Mendoza's crew at Deardorff Family Farms, possibly for two years. (3/83:19-83:25, 3/111:8-111:16 and 3/133:25-134:3) When he worked at Cinagro, there were two ranches. (3/88:23-88:25) One ranch was in Fillmore and the other ranch was in Moorpark. (3/89:1-89:2) Victor Mendoza continued as his foreperson at Cinagro and would advise Rigoberto as to which ranch to report, either at work or via the telephone. (3/89:11-89:16) Victor's supervisor was Rene Macias. (3/89:24-89:25) Rigoberto's wife, Yolanda Antonio Garcia, was also in his crew. (3/128:9-128:22) Rene told Rigoberto that he and his wife Yolanda were good workers. (3/93:20-93:22 and 3/94:19-94:23)

At Cinagro, Rigoberto harvested green kale, black kale and red kale. (3/85:8-85:18) Rigoberto reported completed boxes to his foreperson, who recorded the tallies. (3/85:16-85:22) In this manner, Rigoberto typically worked ten hour days on Monday through Saturday and was paid piece-rate on a weekly basis. (3/87:11-87:14, 3/89:3-89:10 and 3/113:14-113:16)

### **A. Paystub Issue**

When Rigoberto received his first Cinagro check, there was no accompanying paystub. (3/95:23-96:1) He and his wife spoke to foreperson Mendoza about the absence of a paystub. (3/96:4-96:12) Victor said that he would talk to the company and later relayed that Rene said that the paystub was not processed. (3/96:13-96:16) The next pay check also was unaccompanied by a paystub. (3/97:4-97:7) Rigoberto raised the issue again with Victor and thereafter also spoke about it with Rene. (3/97:8-

97:18) He and his wife explained to Rene that they needed the paystubs for their children to get services at medical clinics. (3/97:24-98:1) Rene advised Rigoberto and Yolanda that the company was in the process of creating paystubs. (3/97:17-97:19 and 3/98:2-98:4)

Cinagro eventually provided documents accompanying the paychecks, but they did not include the boxes or amounts. (3/98:5-98:15) After that, the crew spoke with Rene about the paystub situation in approximately February 2017. (3/99:15-99:24) Rene again reiterated that the company was in the process of generating paystubs. (3/100:9-100:10)

**B. Water Issue**

When Victor Mendoza was his foreperson at Deardorff farms, the employer provided water to his crew. (3/131:5-131:8) At Cinagro, Victor brought the crew water and they provided Victor with their recyclables. (3/132:6-132:12) Rigoberto never gave Victor cash for water at work. (3/132:13-132:16)

**C. End of Work at Cinagro**

Approximately three weeks after the above-described meeting with Rene, Cinagro stopped providing work. (3/100:18-100:22) Rigoberto called Victor, who advised him that there was no work until further notice. (3/101:1-101:5) Neither Victor nor Rene ever specifically said that he was fired or terminated. (3/114:12-114:25) Rigoberto called again and Victor told him the same thing, there was no work until further notice. (3/102:18-102:19) Rigoberto also called Rene directly, but Rene did not answer the phone. (3/102:19-103:2 and 3/130:9-130:12) Approximately seven

to ten days after work ended at Cinagro, Rigoberto went back to his prior employer, Deardorff Farms. (3/108:13-108:17 and 3/115:20-115:23) Deardorff Farms provided Rigoberto with both medical insurance and also provided drinking water. (3/116:10-116:22) Deardorff Farms provided paystubs to the workers and his amount of pay was almost the same. (3/117:13-117:22)

**6. Maria Angelica Santiago**

Maria Santiago worked at Cinagro harvesting vegetables. (3/154:13-154:154) Her foreperson was Victor, and the supervisor was Rene. (3/154:15-23)

**A. Water Issue**

Maria testified that the crew brought its own water. (3/155:155:20-155:23) Supervisor Rene did not bring the crew water. (3/156:17-156:23) While Rene did not bring drinking water to the crew, foreperson Victor did bring water on his truck for the crew every day. (4/18:17-18:22)

**B. Paystub Issue**

Cinagro did not provide the workers with paycheck stubs. (3/158:14-158:17) The crew complained about the absence of pay stubs. (4/22:11-22:19) Rene told the crew that the company was working on it. (2/22:20-22:22)

**C. Finger Injury and Last Day of Work**

During her last two weeks at Cinagro, Maria saw a second crew working at the farm. (28:25-29:9) On her last day while working at Cinagro, Maria cut her finger. (3/160:14-160:16) Thereafter, Rene and Tony arrived at the scene. (3/160:23-160:25) Maria's cut was very deep but the company discouraged her from going to the doctor,

only giving her ointment. (3/161:2-161:25) Rene told her to take the days that she needed for her finger to heal. (4/5:16-5:18) Maria later went to urgent care, where they provided Maria with paperwork saying that she could not work for two weeks. (3/162:7-162:14) The following Tuesday, Maria dropped off that paperwork with the company at their Fillmore site. (4/8:1-8:8 and 4/12:2-12:5)

On cross-examination, Maria acknowledged that her last day of work was Saturday, March 4, 2017. (4/11:4-11:6) Maria testified that she thought that the day that she cut her finger was the last day of work for her crew. (4/59:2-59:11) Respondent's Exhibit Number One shows Maria Santiago receiving pay for Friday, March 3, 2017, but not on Saturday, March 4, 2017. Based upon the testimony and documentary evidence, I find that it is most likely that Maria Santiago cut her finger on Friday, March 3, 2017. In any event, whether Maria's last day was March 3, 2017, or March 4, 2017, appears inconsequential to resolving the determinative issues in this matter.

After two weeks had passed, Rene called Maria and told her that she could pick up a paycheck for the two weeks because her finger was cut. (4/9:2-9:4 and 4/63:16-63:22) During that call, Maria asked if she could return to work. (4/9:4-9:5, 4/52:23-52:25, 4/57:1-57:4 and 4/58:8-58:13) Rene told Maria that there was no work at the moment and that he did not know if there would be future work. (4/9:7-9:16) Victor also indicated that there was no work until further notice. (4/16:1-16:4) Neither Rene nor Victor ever told Maria that she had been fired or terminated. (4/16:19-16:25) But no one from Cinagro ever called her after that to offer work. (4/9:20-9:24)

#### **D. Employment at Blueberry Farm**

Maria eventually sought work and was hired at the blueberry farm. (4/13:2-13:4 and 4/14:9-15:2) It may have been three weeks from Maria's last day at Cinagro until she started work with the blueberry farm. (4/29:21-29:24) The blueberry farm provided her with paystubs, drinking water and health insurance. (4/14:25-15:9) Maria received higher pay at the blueberry farm than what she had received at Cinagro. (4/15:19-15:22)

#### **7. Victor Mendoza**

Victor Mendoza had a crew with Mike's Farm Labor at Deardorff Farms. Marisol and Hector were also part of his crew at Deardorff Farms. (5/73:5-73:15) Victor knew crew member Marisol Jimenez even before he worked for Mike's Farm Labor. (5/63:9-63:19) Apart from work, Victor was friends with Marisol and her partner Hector. (5/64:14-64:16) Most of his crew came with him when the crew changed jobs. (5/73:21-73:23)

Victor Mendoza began working at Cinagro in summer 2016. (4/76:11-76:17) He initially went to work there through the same contractor, Mike's Farm Labor under which he had worked at Deardorff Farms. (4/76:18-76:24 and 5/29:14-29:16) Arturo, who was also known as Art, was Mike's brother or son. (4/78:23-78:25 and 5/94:1-94:3) After working for Mike's Farm Labor, the crew then worked for Art's Farm Labor. (5/30:6-30:9 and 5/31:3-31:5) Victor does not know why his crew was shifted from Mike's Farm Labor to Art's Farm Labor. When they moved to Cinagro, his crew had about ten workers. (4/77:10-77:14)

The crew harvested black kale, green kale, red kale, cilantro, radishes, cabbage, lettuce and anise. (4/85:15-85:18 and 5/82:20-82:24) As the crew foreperson, Victor was paid hourly. (4/77:7-77:9 and 4/85:19-85:21) After a couple months, the crew was directly hired by Cinagro. (4/77:24-78:18 and 5/31:6-31:9) Rene indicated that the work conditions were going to remain the same. (4/82:6-82:7) The crew was typically paid on a Friday for the preceding Monday through Saturday. (5/84:3-84:14)

At Cinagro, Victor received the crew's work instructions from Rene, who was the supervisor. (4/77:15-77:23 and 4/78:21-78:22) Rene would tell Victor where they were going to work the next day. (5/14:13-13:14) The only exception would be if it would rain. (5/14:2-14:3) Victor kept track of the number of boxes of vegetables harvested by each crew member and provided written tallies to Rene. (4/85:22-86:17) Rene added to his crew two workers that were already at Cinagro. (4/84:18-84:24 and 4/85:12-85:14) After the crew was directly hired by Cinagro, workers were given access to only a single bathroom in the field, whereas previously there had been separate bathrooms for male and female workers. (4/87:1-87:23) If workers had a complaint, Victor would inform Rene. (5/37:10-37:13 and 5/62:13-62:16)

**A. Paystub and Deduction Issue**

At Cinagro, the crew was typically paid on a Friday for the preceding week's work. (4/105:18-105:23) Cinagro paid the crew with checks that were unaccompanied by pay stubs and that did not specify the usual government deductions. (4/80:12-80:22) When Victor refers to the checks as personal checks, what he means is that the checks were handwritten and were unaccompanied by traditional paystubs. (5/32-32:19) The



crew talked to him about the lack of paystubs. (4/106:3-106:23 and 5/38:9-38:12) Victor told the crew that he would speak to Rene about it. (4/106:24-106:25) Later that day, Victor spoke with Rene on the telephone and asked about the missing paystubs. (4/107:1-107:10) Rene told him that he would inquire with the office about when paystubs would be available for Victor to pass that message along to the crew. (4/107:11-107:23)

When the crew received their next checks, there were still no pay stubs. (4/108:20-108:24) The crew then asked for a meeting with Rene on the subject. (4/108:25-109:2) Victor advised Rene that the crew wanted to meet with him and Rene showed up approximately one hour thereafter. (4/111:17-111:25) Victor did not hear the conversation because he was doing work over by the truck. (4/112:20-23) But immediately afterwards, Rene approached Victor and told him that he had advised the crew to wait a little bit longer for the office to process pay stubs. (4/113:2-113:20 and 4/114:24-115:1)

Following that meeting with Rene, when the crew received their next checks there was a document that accompanied the checks, but it was not a pay stub. (4/117:2-117:6) When the crew received this new document, they asked to speak again with Rene. (4/123:13-123:25) Victor again advised Rene that the crew wanted to speak with him. (4/124:4-124:6) Rene advised Victor that he would come to the ranch the following morning, which he did. (4/124:7-124:19) At the meeting, the workers again told Rene that they wanted a pay stub that specified the deductions. (4/124:20-124:23) Rene responded that he would call the office again to see what could be done.

(4/125:3-125:6) Rene later told Victor that he did not know how long that it would take to revise the pay stubs, news which Victor passed along to the crew. (4/126:2-126:13)

Victor also indicated that Cinagro did not provide the crew with worker's compensation insurance, knowing this from when two workplace injuries had occurred. (4/94:13-94:15)

**B. Other Crew**

When Victor first arrived at Cinagro, they were the only crew working there. (4/126:15-126:19) Later, there was a second crew at Tierra Rejada that worked separately from Victor's crew. (4/128:16-128:18, 4/129:18-129:25 and 5/40:5-40:6 and 5/40:17-40:19)

**C. Water Issue**

Victor testified that the farm labor contractor paid him one extra hour per day to move the bathroom and to set up water. (4/88:1-88:4 and 5/33:12-33:14) Victor alleges that Cinagro paid him only his regular work hours, not for the crew's water, which he had to pay for out of his own pocket. (4/88:6-88:9 and 5/33:15-34:6) See infra the testimony of Rene Macias who testified that the company paid Victor one extra hour per day which covered the expense of the water. (7/133:2-133:13) When Victor purchased water, he went to a machine outside a supermarket and used the machine to fill up the large plastic jugs on his pickup truck. (4/90:5-90:22 and 5/76:8-76:22) There were a couple of days when the company brought water, but he and the crew tasted the water and found it unsatisfactory. (4/89:5-89:16, 4/92:2-92:4, 4/92:17-

92:21, 5/34:14-34:17 and 5/77:11-77:22) Victor told Rene that the company's water tasted bad. (5/77:23-77:25)

**D. Maria Santiago's Cut Finger**

When crewperson Maria Santiago cut her finger, Victor reported it to Rene. (5/15:6-15:24) Victor had no knowledge of whether or not Maria was paid for her lost work time. (5/50:25-51:3)

**E. Last Day of Work**

Victor recalls that the crew's last day of work fell on a Saturday and that, on that day, the crew only worked until noon. (4/131:2-131:3) They stopped at noon because Victor called Rene and said that there was not enough work to keep going that day. (4/131:16-131:18) When Victor's crew stopped, the other separate crew was out there still working. (4/132:3-132:5) On that Saturday, Rene told Victor that he would let him know if there was work on Monday. (4/131:4-131:7) Rene then called Victor on Sunday and told him that there was no work for his crew the next day, Monday. (4/132:6-132:11) Victor passed this information along to his crew. (4/132:12-132:15) Rene called Victor that Monday and indicated that there would be no work the next day, Tuesday, and that Victor should advise the crew accordingly. (4/132:18-132:22)

Victor advised his crew that there was no work on Tuesday and while talking to two of the crew members, he was told that they saw the other separate crew working at Tierra Rejada on Monday. (4/132:23-133:7) On Wednesday of the same week, Victor then received a call from Rene. (133:15-133:17) In that call, Rene told Victor that, due to a lack of work, Victor's crew was going to stop working and that Victor's should

pick up the crew's checks on Friday. (4/133:18-133:19 and 4/144:17-144:19) In the same call, Victor told Rene that the other crew had worked on the Monday two days earlier and Rene denied it. (4/134:6-134:16)

In this last call on Wednesday, Rene told Victor that there was not a specific day to return to work. (4/134:24-135:2) On the Friday, Victor went to the Moorpark ranch to pick up checks from Rene for him and his crew. (4/135:3-135:10, 5/11:21-11:24, 5/46:14-46:20 and 5/87:12-87:19) There were two checks for Victor and two checks for each crew member. (5/9:23-9:25) When Victor met Rene, he was told by Rene that due to lack of work, it was unknown when the crew would return to work. (4/135:14-135:21) Rene said that the crew was off until further notice. (5/88:25-89:2) Rene said that there wasn't much work, and that he would call Victor when there was work, but no call was ever received. (4/135:21-135:22, 5/5:25-6:4, 5/51:13-51:20 and 5/91:5-91:8) It was not the end of the harvest season for any of the crops, nor did Rene make such an allegation. (5/85:10-86:21)

Victor then made arrangements that same day to meet his crew members and distribute their checks. (4/136:6-136:12 and 5/46:25-7) When distributing the checks at a park in Oxnard, Victor told his crew what Rene had indicated. (4/136:13-136:16, 5/5:25-6:4, 5/47:8-47:10 and 5/49:8-49:11) The crew was bothered by that and understood Rene's comments to mean that Cinagro would not be calling them back for further work. (4/136:17-136:19, 4/140:23-141:2 and 5/90:4-90:7) Seeing the other crew still working, Victor's crew felt it was obvious that they were being fired. (4/144:2-144:3) Because Rene gave Victor two checks for each worker, this further

reinforced his believe that the company was firing his crew. (4/144:14-144:16, 4/146:23-147:6 and 4/148:3-148:4)

Victor did not find work until a few weeks after his last day of work at Cinagro. (5/53:9-53:13) Out of necessity, Victor sought jobs as a worker, not solely as a foreperson. (5/74:7-74:12)

## **8. Barbara Ito**

Barbara Ito is the owner of a small bookkeeping business called Five Star Bookkeeping. (5/113:16-113:18) Barbara has run her business for approximately twenty-five years. (5/114:11-114:12) One of Ms. Ito's specialties is agricultural payroll. (5/114:7-10 and 5/114:19-144:20) At present, Barbara prepares payroll for eight agricultural employers. (5/115:5-115:8)

Barbara current performs payroll work for Cinagro. (5/115:21-115:23) She started performing work for Cinagro in February 2017. (5/116:1-116:7 and 5/117:17-117:19) Tony Dighera wanted Barbara to make the calculations so he could pay workers the correct wages for piece rate and hourly work. (5/117:21-118:1) Tony only had Barbara work on new payroll, he did not have Barbara review or work on past payroll. (5/156:6-156:9) The company provided Barbara with worker timesheets. (5/118:19-118:22) Tony Dighera instructed Barbara to calculate gross pay so Barbara did not calculate any withholding. (5/119:4-119:14 and 5/120:3-120:8) Tony told Barbara that the workers would be treated as vendors or independent contractors. (5/127:15-127:25) None of Barbara's other agricultural clients at the time treated the

workers as vendors. (5/137:8-137:10) To this date, that is how Barbara calculates the Cinagro payroll. (5/119:15-119:24)

Barbara recalled that in February 2017, a Cinagro employee named Arlis wrote by hand the employee checks out of the company checkbook. (5/120:17-120:23) Barbara prepared a document to accompany the checks which showed the hours worked, the pieces harvested, what each piece was worth, and the wage calculation. (5/122:6-122:14) Barbara then gave these documents to Arlis. (5/123:11-123:14) A few weeks later, Barbara began printing checks from her software program. (5/120:23-120:25) Barbara believes that General Counsel Exhibits Two, Three, Five, and Six are all documents that her office generated. (5/15-157:7) Barbara does not have in her office copies of any of the Cinagro checks. (5/170:18-171:2)

## **9. Maria Lauriano**

Maria Lauriano first worked for Cinagro in 2015. (6/34:17-34:19) She was sometimes called Doña Marie. (7/136:10-136:11) Rene was the person who hired her. (6/49:21-49:24) She harvested vegetables, parsley and cilantro. (6/50:9-50:12) In 2015, Maria received instructions either from Rene or Andres. (6/51:1-51:4) Maria recalled receiving company checks, but not a paystub. (6/50:5-50:10) Later, Marie worked for Cinagro in 2016-2017. (6/35:9-36:3) When Victor arrived, Maria was put in his crew. (6/52:23-53:18) Ignacia was added to Victor's crew at the same time. (6/54:11-54:13 and 6/83:2-83:6) Maria and Ignacia often ate their lunch together and apart from the other members of Victor's crew. (6/14-87:21) At Cinagro, she was paid on a Friday or Saturday. (6/38:19-38:21) When the Assistant General Counsel asked

Marie if she recalled harvesting a particular vegetable on two specific days four years earlier, she did not. (6/61:15-61:17)

**A. Water Issue**

There was water for the workers in Victor Mendoza's truck. (6/43:25-44:4) The water was in yellow jugs. (6/51:9-51:11) Maria does not know how the water made its way into the jugs. (6/51:12-51:22) Maria was never asked to pay for water. (6/44:5-44:7) Maria never heard any of the crew complain about the water. (6/51:25-52:3) When asked slightly different questions, Maria repeatedly volunteered that the crew always had water. For example, when counsel asked if Rene had ever brought water the answer was that the crew always had water. (6/44:8-44:13) When asked if Marisol had raised the water issue with Maria in a phone call, Maria responded that the crew always had water. (6/46:2-46:8) Maria never raised concerns with either Victor or Rene. (6/47:24-48:5)

**B. Paystub Issue**

Maria did not remember a meeting where the crew complained about the missing paystubs. (6/52:4-52:7 and 6/52:11-52:16)

**C. Crew Member That Cut Finger**

Maria did remember that a female member of Victor's crew had cut her finger at work. (6/84:20-84:23) Maria recalled that the crewperson cut her finger and that someone drove the woman to the doctor. (6/84:24-85:2 and 6/88:9-88:12) Maria later conceded that she really didn't know if the worker went to the doctor or not, that Maria simply went back to work. (6/88:17-88:25)

**D. End of work and Subsequent Employment**

Rene never said that she was fired. (6/43:15-42:17) Rather, the company said that it was a layoff both because there had been a lot of rain and also because it was getting hot. (6/43:18-43:20) Maria seemed to try to work the “rain” topic into her testimony at times when it was not responsive the question proffered. (6/62:1-62:10) So the company just said that there would be no work until further notice and that they would let the workers know when to come back. (6/43:22-43:24) Maria received her last paycheck directly from Rene. (6/40:19-40:23) After her last day of work, Maria applied one week later for work at the blueberry farm. (6/41:4-41:9 and 6/41:18-41:21) Maria stayed at the blueberry farm until the season ended. (6/42:9-42:11)

**E. Telephone Calls from Rene Macias and Marisol Jimenez**

Around February 10, 2021, Marisol Jimenez called Maria and asked if she wanted to join the lawsuit. (6/36:18-36:20 and 6/45:8-45:18) Marisol did not say anything unethical to Maria and Maria hung up right after indicating “no” to Marisol. (6/86:10-86:20) This was the day after Rene had called her. (6/72:22-72:24 and 6/87:1-87:6) Rene had called to inquire if Maria could appear at this hearing. (6/77:6-77:9) Maria said that she did not want to join the lawsuit because the company treated the workers nicely, bringing them coffee and chicken. (6/46:20-46:21) Maria called Rene to tell him about Marisol’s phone call. (6/70:1-70:23 and 6/73:3-73:5)

**F. Transportation to Hearing**

When Maria was asked if someone had driven her to the hearing, she replied, “A friend”. (6/80:16-80:18 and 6/81:12) Maria was then asked if she had seen Rene that



morning, and she testified “No”. (6/81:16-81:17) Her answer was refuted the next day by the testimony of Rene Macias, who admitted that he had drove Maria Lauriano to the hearing on the preceding day. (7/147:6-147:8) Rene testified that he had offered to reimburse Marie for Uber or gas money, but that she had asked him to drive her. (7/205:7-206:22)

#### **10. Ignacia Sanchez**

Rene was the person who first hired Ignacia to work at Cinagro. (6/108:12-108:13) Initially, Ignacia with a small group of workers at Cinagro, Victor’s crew did not start until a later time. (6/108:10-108:11) Maria Lauriano also worked in that small group. (6/109:16-109:17 and 6/132:23-133:1) While in the small group of workers, Rene was the person who brought the water and bathrooms. (6/129:6-129:13) Ignacia has known both Rene and Maria for many years, but she did not know who owns Cinagro. (6/131:3-131:17) At Cinagro, Ignacia was paid on Fridays. (6/97:8-97:15)

Ignacia works for a different company as a quality control inspector for chilies. (6/113:14-113:15) Ignacia spends about seven months working with the chilies. (6/113:23-113:25) Cinagro always gives her work when she returns from the chilies. (6/114:1-114:3) One time, when Ignacia went back from the chilies to Cinagro, Victor’s crew was there. (6/113:13-113:16)

##### **A. Water Issue**

Ignacia testified that there was always water at the field when she worked at Cinagro. (8/112:2-112:5) Ignacia was not aware of either the company or the crew paying Victor to get water. (6/133:2-133:5) However, Ignacia would bring her own

water to work. (6/112:20-112:24) Ignacia never heard the workers in Victor's crew complain about water. (2/119:13-119:16) Nor was Ignacia ever at a meeting where the workers complained about the water to Rene. (6/119:17-119:19) Ignacia recalls the boss bringing Starbucks coffee and bread to the workers. (6/125:1-125:2)

**B. Pay Stub Issue**

Ignacia never heard the workers in Victor's crew complain about the lack of a paystub. (6/124:4-124:7) Nor did Ignacia recall whether Cinagro took payroll deductions from her pay. (6/111:10-111:14)

**C. End of Work and Last Check**

Victor called Ignacia and told her that there was no work until further notice. (6/102:1-102:2) Ignacia told Victor that she had found a job at the blueberry farm. (6/102:4-102:6)

The last day that Ignacia worked with Victor's crew was Saturday, March 4, 2017. (6/98:898:14) Ignacia went with Maria Lauriano to pick up her last check. (6/98:21-98:24 and 6/101:8-101:9) Ignacia received her last check from Rene. (2/106:5-106:8) In September 2017, Ignacia went back to work for Cinagro. (6/143:16-143:18)

**D. Telephone Calls from Rene Macias and Marisol Jimenez**

On approximately Monday, February 8, 2021, Ignacia received a telephone call from Rene Macias. (6/126:7-126:12) Rene told Ignacia that he needed her to testify at this hearing. (6/126:17-126:19) Approximately two days later, on Wednesday morning, February 10, 2021, Ignacia received a telephone call from Marisol Jimenez.

(6/102:7-102:18 and 6/126:11-126:12) Marisol told Ignacia that she had some questions related to a government investigation of Cinagro. (6/102:19-102:25) Ignacia testified that Marisol told her to say that the crew did not have water. (6/103:10-103:12) She added that Marisol then said Ignacia could just say that Victor had to go get bottled water. (6/103:19-103:20)

**11. Anthony (“Tony”) George Dighera**

Tony Dighera is the sole owner of Cinagro, starting the company in approximately 2004. (7/29:3-29:7 and 7/78:18-78:20) The company grew row crops, including organic vegetables such as kale, cilantro, parsley and lettuce. (7/30:6-30:17) The company name Cinagro is “organic” spelled backwards. In approximately 2010, Tony hired Rene Macias to be the supervisor, and Rene continues in that capacity at present. (7/35:4-35:6 and 7/35:24-35:25) During the pertinent time periods, Rene was in the field most days. (7/35:9-35:23) Tony and Rene would communicate either in-person, by telephone call or by text message. (7/36:8-36:10 and 7/109:24-110:1)

Tony states that he was never in attendance for a meeting with workers during January 1, 2017 through March 4, 2017. (7/8:2-9:19) Tony was present on a couple of occasions when Rene showed the crew how to carefully bunch and pack a box. (7/40:4-40:25) If Tony was ever to talk to a worker, Rene would always have been his interpreter. (7/10:10-10:12)

**A. Paystub Issue**

As of 2016, Tony had always used labor contractors to provide workers. (7/4:11-4:14) The Victor Mendoza crew came to his company near the end of 2016.

(7/7:9-7:14) Workers were paid with company checks that had the dollar amount written in by hand and that were signed by Tony himself. (7/7:15-8:13) Workers were paid on a Friday following the last day of work of the previous week. (7/17:6-17:10)

Tony testified that his company's wage and hour practices did not comply with the law during that period of time. (7/19:4-19:7 and 7/91:1-91:16) Tony admitted that he was concerned that their practices could result in penalties or fines. (7/91:19-91:22) Tony had one office worker named Arlis, but it was Tony and Rene who handled the payroll. (7/58:21-58:23, 7/59:19-59:24 and 7/62:1-62:3) Tony eventually hired Barbara Ito to handle company payroll, something that she still does for the Cinagro. (7/57:3-57:7 and 7/60:23-60:25) Tony denies having instructed Barbara Ito to classify the workers as vendors. (7/61:5-61:7) Tony concedes that he did not request Barbara Ito to transition the workers from vendors to employees. (7/71:19-71:23)

When the company first absorbed the labor contractor crew, Tony had Rene explain that Cinagro was not set up to do regular payroll and that the company would get to it as soon as possible. (7/65:11-65:14, 7/66:12-66:21 and 7/69:11-69:12) Rene told Tony that the workers later inquired when the payroll issues were going to be straightened out. (7/64:20-64:22) Tony had Rene tell the workers that the company was working on it. (7/64:22-64:23) Tony conceded that due to other competing demands for his attention, he did not want to make the change. (7/66:21-67:2)

Tony does not recall hearing anything further on the subject after Barbara Ito took over responsibility for payroll. (7/72:16-72:22)

**B. Water Issue**

Victor was paid to bring water to the crew every day. (7/10:13-10:20) The company paid Victor an extra hour for every day to compensate him for bringing water to his crew. (7/11:11-11:14) The company has its own reverse osmosis water system at the Fillmore Ranch. (7/89:21-90:5)

**C. Termination of Victor's Crew and Hiring of Separate Crew**

Tony alleges that the attendance for Victor's crew got worse after they transitioned from the labor contractor to working directly for the company. (7/33:21-33:22) Tony recalled that during the last couple weeks, there were at least two days when Victor did not show up for all or part of a day. (7/45:11-45:16 and 7/46:5-46:18) Until the last couple weeks, Rene was not unhappy with Victor. (7/47:24-48:3 and 7/116:22-116:25) Tony and Rene never had a conversation about whether Victor's absences rose to a level that was detrimental to Cinagro. (7/117:18-117:24)

Rene never told Tony that he wanted to replace Victor's crew. (7/47:15-17) Tony never told Rene or Victor to tell the workers that they were terminated in 2017. (7/12:9-12:14) During this time period, Tony was dealing with extremely difficult family health issues. (7/25:14-25:21) Shortly before Victor's crew stopped working, Cinagro started a separate crew. (7/12:15-13:14:11 and 7/85:1-85:4) Tony testified that the hiring of the other crew was an indicator that the company had work that needed to be completed. (7/93:10-93:15 and 7/94:11-94:12) Eventually, Andres Cruz served as the foreman of the other crew. (7/62:10-62:22 and 7/58:5-58:6) Tony viewed the two crews as equally skilled. (7/86:11-86:18)

To Tony's knowledge, Rene never would have told Victor's crew that there was no work, except if due to weather conditions. (7/95:4-95:8, 7/96:5-96:8 and 7/102:3-102:9) Tony said that there was always work during that time period. (7/95:13-95:14) Rene told Tony that Victor's crew was not returning. (7/74:5-74:12) Tony understood that the crew had left to get a better job. (7/94:17-94:19) Tony received a phone call from Rene that no one had shown up. (7/94:21-94:23 and 7/99:12-99:24) Tony was unaware that any of the crew wanted to work that day. (7/97:1-97:4) When Victor's crew stopped working, the company needed more workers. (7/102:13-102:17)

**D. Telephone Call to Josh Waters at Silent Springs Blueberry Farm**

After Tony learned of the ALRB charge, he spoke with Josh Waters, co-owner of the Silent Springs blueberry farm. (7/75:8-75:22 and 7/113:2-113:4) It must have been Rene who told him that some of the former workers were now at the blueberry farm. (7/104:14-104:17) Josh Waters confirmed for him that some of Victor's crew listed on the ALRB charge now worked for Silent Springs. (7/75:23-76:1 and 7/77:3-77:10) Tony called Josh because confirming the employment status of his former workers might be helpful with respect to the ALRB charge. (7/104:18-106:12)

**12. Rene Macias**

In approximately 2008, Rene Macias started working at Cinagro. (7/172:7-172:10) In approximately 2011, Rene became Cinagro's general manager. (7/130:12-130:13 and 7/174:8-174:14) He does not have an ownership interest in the company. (7/174:15-174:16) Rene denied having spoken with Cinagro's attorney about his testimony in the month prior to the hearing. (7/147:14-148:11 and 7/202:11-202:22)

At the beginning, there was a small group of workers that included Ignacia Sanchez and Marie Lauriano. (7/174:17-174:20 and 7/199:4-199:7) Rene was the person who gave directions to those workers. (7/174:21-174:23) Then the company brought in the crew where Victor Mendoza was the foreperson. (7/130:14-130:16) The crew was initially brought in through farm labor contractors. (7/199:17-200:15) Rene was the person who gave instructions to Victor. (7/179:3-179:7)

Rene testified that he had a lot of problems with Victor's crew. (7/154:15-154:16, 7/176:19-176:21 and 7/201:7-201:10) Rene stated that the workers that Victor was bringing from Oxnard were not doing a good job. (7/154:15-154:18) There was one occasion when Victor needed to leave early and asked Rene to supervise his crew for the rest of the day. (7/193:21-193:25) Rene said that Tony frequently visited the crew, bringing warm beverages when the temperature was cold, and cold beverages when the weather was warm. (7/181:7-181:17) A second crew started work almost two weeks before Victor's crew ended. (7/130:21-130:24) Rene testified that the second crew was willing to do whatever was needed whether it was harvesting or weeding. (7/155:15-155:17) Rene also testified that the second crew did not have product rejected, which made his job less stressful. (7/201:14-201:18)

**A. Water Issue**

Victor was assigned to bring water to his crew. (7/132:16-132:21) Although Victor started and ended his day at the same time as the rest of his crew, Victor was paid one extra hour of time every day which covered his expense for the water. (7/132:2-132:13 and 7/186:1-186:25) Rene denied ever bring water to Victor's crew

from the company's reverse osmosis system. (7/188:1-188:8) Rene claimed that he always tasted the water to make sure that the taste was acceptable. (7/133:14-133:18)

**B. Paystub Issue**

There was never a meeting where the workers complained about the lack of a pay stub. (7/142:14-142:19) Rene testified that the workers brought up the paystub issue when they first started to directly work for the company, but never again raised the topic. (7/189:4-189:12 and 7/190:20-190:22) But Rene later conceded recalling workers who needed the paystubs for schools or Medi-Cal. (7/191:12-192:19) Rene testified that Tony told him that the change had been made. (7/203:7-203:11)

**C. Worker Who Cut a Finger**

Rene did recall that a worker in Victor's crew cut their finger. (7/204:1-204:3) Rene's recollection was that the worker came back to work after their finger had healed. (7/204:2-204:3)

**D. Crew's Last Day**

Following the crew's last day, Rene did not tell Victor that there was no more work. (7/153:5-153:6) Rene told Victor that the only work the next day was weeding in Moorpark. (7/153:2-153:8 and 7/208:22-209:5) Rene did not call Victor when the company received product orders because his crew was missing a lot and that were not enough orders to call the whole group back. (7/172:1-172:6) Rene testified that the second crew did mostly weeding the following week. (7/194:21-195:2) Rene told Tony when Victor's crew did not show up. (7/209:6-209:16) Tony told Rene that if



Victor's crew did not want to weed, the company would not force them to do so.

(7/209:15-209:16)

One day when Rene left the Moorpark Ranch, he took a different route due to traffic and saw Ignacia Sanchez and Marie Lauriano crossing the street from the blueberry ranch. (7/138:18-138:25, 7/196:2-196:3 and 7/197:9-197:10) Even prior to seeing the workers leave the blueberry ranch, Rene presumed that they had left Cinagro because they did not like weeding. (7/207:8-207:13) Rene asked Ignacia and Marie who else from the crew worked there. (7/139:22-139:24) Rene also saw Marisol and Hector departing the blueberry ranch. (7/139:24-140:10 and 7/197:16-197:17)

#### **E. Distribution of Final Checks**

Rene gave most of the checks for the crew to Victor. (7/135:1-135:3) Most of the crew lived closer to Oxnard, those checks were given to Victor. (7/135:4-135:5) When Rene gave Victor those checks, he told Victor that there were not a lot of product orders. (7/137:10-137:11 and 7/148:13-148:19) Rene testified that he told Victor that there was weeding work available for his crew. (7/137:11-137:12 and 7/143:9-143:10) Rene indicated that Victor told him he would check because his crew did not like to weed. (7/137:13-14) Rene told Victor that if orders come in, the crew can go from weeding to harvesting. (7/149:18-149:23) Rene did not terminate Victor's employment. (7/144:17-144:18)

Two workers lived closer to Fillmore and Santa Paula and Rene gave checks directly to those two workers. (7/135:6-135:7) The latter two workers were Ignacia Sanchez and Marie Lauriano. (7/136:6-136:10) Rene testified that both of these

women were sometimes called Doña Marie. (7/136:10-136:11) Approximately three to four months later, Ignacia called Rene seeking work, but no one else did. (7/194:2-194:6)

## **V. DOCUMENTARY EVIDENCE**

There were fifteen exhibits in this case. The exhibits include General Counsel's exhibit numbers one to thirteen, Respondent's exhibit number one, and a joint stipulation on authenticity and admissibility of exhibits. General Counsel's exhibit number thirteen was not offered for admission; all of the other exhibits were admitted either by stipulation or by ruling of the ALJ.

### **1. General Counsel's Exhibit Number One**

This exhibit is a copy of the charge. The charge was filed on March 13, 2017.

The charge states:

On or around March 4, 2017, Cinagro Farms, Inc., through its representatives and agents, Rene Macias, and others, discriminatorily terminated the employment of Marisol Jimenez, Hector Vazquez, Maria Duarte, Victor Mendoza, Maria Santiago, Yolanda Antonio and Rigoberto Perez because they engaged in protected concerted activity.

The words "and others" are added to the list of names of discriminates along with an arrow. In both of the spots with the word "others" and the spot with the word "because" the photocopy seems to show a smudge or white-out tape under the word. I would urge the General Counsel to cross out corrections with only a single line rather than to use white-out so that no one falsely concludes that any changes were after the

date that the charge was filed. Either that or if the draft has not yet been stamped as filed, then re-write the document and have the charging party sign the new draft. The Respondent did not raise this issue and so I have treated the charge as if there were no smudges or white-out. The parties stipulated to the admission into evidence of General Counsel's Exhibit Number One. I accepted the parties' stipulation to admit exhibit one. (2/40:6-40:7) General Counsel's Exhibit One was admitted on February 24, 2021. (5/24:4-24:5)

The charge says nothing about personal checks, pay stubs or lack of access to water in the fields.

**2. General Counsel's Exhibit Number Two**

This exhibit shows March 10, 2017 pay information for foreperson Victor Mendoza. There is nothing in this exhibit which proves or disproves that Respondent paid the foreperson an extra hour of wages per day to cover the foreperson's expenses for getting water for the crew. On February 26, 2021, I admitted General Counsel's Exhibit Number Two into evidence. (4/120:2-120:14 and 5/24:4-24:5)

**3. General Counsel's Exhibit Number Three**

This exhibit shows March 10, 2017 pay information for crew member Rigoberto Perez. It is Bates number CP00005. I admitted General Counsel Exhibit Number Three into evidence.

**4. General Counsel's Exhibit Number Four**

This exhibit is comprised of five pages. Each page is a low quality color print of a photograph. The five pages have Bates numbers CP00008, CP00009, CP00010,

CP00011 and CP00012, respectively. The first page, CP00008, is a picture with a wire fence in the foreground, a field in the middle, and in the far background there is a hill. You can see a white pickup truck and another car off to the right. The second page, CP00009, shows multiple workers bent over in the field. The third page, CP00010, is even blurrier than CP00009. It seems to also show workers in the field, though if I saw CP00010 in the absence of other photos and testimony, I would be hard pressed to say that the workers were indeed workers. The fourth page, CP00011, and fifth page, CP00012, are similar to the first page, CP00008, except that CP00008 zooms slightly closer.

On February 24, 2021, I admitted General Counsel's Exhibit Number Four into evidence. (2/71:14-71:25, 2/73:9-73:13 and 5/24:4-24:5) However, my decision affords very little weight to these photographs. It was appropriate to admit the exhibit in conjunction with witness testimony. But it is the testimony and not the photographs upon which I ultimately needed to rely, given that the images were distant and blurry.

#### **5. General Counsel's Exhibit Number Five**

This exhibit is comprised of eight pages. The eight pages have Bates numbers CFI 011025 to CFI 011032. The exhibit appears to be payroll information for the other crew at Cinagro. The first page is payroll information for Cesar Miranda. The second page is payroll information for Blanca Alejandre. The third page is payroll information for Pedro Torres. The fourth page is payroll information for Isidro Villavicencio. The fifth page is payroll information for Jose Ismael Pineda. The sixth page is payroll

information for Emiliano Cruz. The seventh page is payroll information for Ruth Macinas. The eighth page is payroll information for Franco Olivares.

These pages appear to show payroll charts that begins on “Day 25” and that ends on “Day 4” of the following month. The parties stipulated that “Day 25” refers to February 25, 2017 and that “Day 4” refers to March 4, 2017. I accepted the parties’ stipulation to admit this exhibit. (5/24:16-24:22)

I see that on March 1, 2017, and also on March 2, 2017, the crew spent the full day doing weeding. On those dates, both Cesar Miranda and the other crew members were paid \$11.00 per hour.

#### **6. General Counsel’s Exhibit Number Six**

This exhibit is comprised of seven pages. The seven pages have Bates numbers CFI 000071 through CFI 000077. The first page has summary information about six members of the crew documented in exhibit number five. Two of those eight workers, Pedro Torres and Jose Ismael Pineda, are not part of this exhibit. Of the remaining six pages, the first page is payroll information for Cesar Miranda. The second page is payroll information for Franco Olivares. The third page is payroll information for Ruth Macinas. The fourth page is payroll information for Emiliano Cruz. The fifth page is payroll information for Isidro Villavicencio. The sixth page is payroll information for Blanca Alejandre.

The parties initially stipulated to the authenticity (but not admission) of these documents as being Cinagro weekly payroll records for March 6-12, 2017. The parties later stipulated to the admission of Exhibits Six through Nine. (5/20:1-20:10) I

admitted General Counsel Exhibit Number Six into evidence. (5/23:2-23:4) These records appear to show that the crew worked on March 6, 8, 9, 10 and 11, 2017, but that the crew did not work on Tuesday, March 7, 2017.

**7. General Counsel's Exhibit Number Seven**

This exhibit is comprised of eight pages. The eight pages have Bates numbers CFI 000094 through CFI 000101. The first page has summary information about seven members of the crew documented in exhibit number five. One of those workers, Pedro Torres, is not part of this exhibit. Of the remaining seven pages, the first page is payroll information for Cesar Miranda. The second page is payroll information for Franco Olivares. The third page is payroll information for Ruth Macinas. The fourth page is payroll information for Emiliano Cruz. The fifth page is payroll information for Jose Ismael Pineda. The sixth page is payroll information for Isidro Villavicencio. The seventh page is payroll information for Blanca Alejandre.

The parties initially stipulated to the authenticity (but not admission) of these documents as being Cinagro weekly payroll records for March 13-19, 2017. The parties later stipulated to the admission of Exhibits Six through Nine. (5/20:1-20:10) I admitted General Counsel Exhibit Number Seven into evidence. (5/23:2-23:4)

**8. General Counsel's Exhibit Number Eight**

This exhibit is comprised of eight pages. The eight pages have Bates numbers CFI 000122 through CFI 000129. The first page has summary information about six members of the crew documented in exhibit number five. Two of those workers, Pedro Torres and Jose Ismael Pineda, are not part of this exhibit. There is one new worker,

Efrain Ramos Morales. Of the seven pages that follow the summary page, the first page is payroll information for Cesar Miranda. The second page is payroll information for Franco Olivares. The third page is payroll information for Ruth Macinas. The fourth page is payroll information for Emiliano Cruz. The fifth page is payroll information for Isidro Villavicencio. The sixth page is payroll information for Blanca Alejandre. The seventh page is payroll information for Efrain Ramos Morales.

The parties initially stipulated to the authenticity (but not admission) of these documents as being Cinagro weekly payroll records for March 20-26, 2017. The parties later stipulated to the admission of Exhibits Six through Nine. (5/20:1-20:10) I admitted General Counsel Exhibit Number Eight into evidence. (5/23:2-23:4)

#### **9. General Counsel's Exhibit Number Nine**

This exhibit is comprised of twelve pages. The twelve pages have Bates numbers CFI 000144 through CFI 000155. The first page has summary information about seven members of the crew documented in exhibit number five. One of those workers, Pedro Torres, is not part of this exhibit. There are four additional workers. One of those four workers is Efrain Ramos Morales, who worked the preceding week. There are three additional workers not listed in the prior payroll exhibits, namely, Medrano Ribaz, Miguel Torralva and Zulma Castro. Of the eleven pages that follow the summary page, the first page is payroll information for Cesar Miranda. The second page is payroll information for Franco Olivares. The third page is payroll information for Ruth Macinas. The fourth page is payroll information for Emiliano Cruz. The fifth page is payroll information for Jose Ismael Pineda. The sixth page is payroll

information for Isidro Villavicencio. The seventh page is payroll information for Blanca Alejandre. The eighth page is payroll information for Efrain Ramos Morales. The ninth page is payroll information for Medrano Ribaz. The tenth page is payroll information for Miguel Torralva. The eleventh page is payroll information for Zulma Castro.

The parties initially stipulated to the authenticity (but not admission) of these documents as being Cinagro weekly payroll records for March 27, 2017 to April 2, 2017. The parties later stipulated to the admission of Exhibits Six through Nine. (5/20:1-20:10) I admitted General Counsel Exhibit Number Nine into evidence. (5/23:2-23:4)

#### **10. General Counsel's Exhibit Number Ten**

This exhibit is comprised of twenty-four pages. The twenty-four pages have Bates numbers CFI 000176 to CFI 000199. The first page has summary information about twelve crew members, including six that were listed in exhibit five. Those six are Cesar Miranda, Franco Olivares, Ruth Mancinas, Emiliano Cruz, Isidro Villavicencio and Blanca Alejandre. It also has Efrain Ramos Morales who first shows up in exhibit eight, and Medrano Ribaz and Miguel Torralva, who first show up in exhibit nine. There are three additional workers, Jose Inez Perez, Marisol Hernandez and Candido Gonzalez.

The pages following the summary page fit into two groups. The first group is similar to the other payroll exhibits and comprises Bates numbers CFI 000177 through CFI 000188. These pages in sequential order are Cesar Miranda, Franco Olivares, Ruth



Macinas, Emiliano Cruz, Isidro Villavicencio, Blanca Alejandre, Efrain Ramos Morales, Medrano Ribaz, Miguel Torralva, Jose Inez Perez, Marisol Hernandez and Candido Gonzalez. The next eleven pages, Bates numbers CFI 0189 through CFI 000199, have the same information as Bates numbers CFI 000177 through CFI 000188, except the earlier pages are organized by worker and then by date, whereas the latter pages appear to be organized by worked than by crop.

The parties stipulated to the authenticity (but not admission) of these documents as being Cinagro weekly payroll records for April 3, 2017 through April 9, 2017. I admitted General Counsel Exhibit Number Ten into evidence. (5/147:1-147:25 and 5/150:3-150:5)

#### **11. General Counsel's Exhibit Number Eleven**

This exhibit is comprised of two pages. The first page is a document that shows the crops harvested by Yolanda Antonio on February 24, 2017. The second page is a document that shows the crops harvested by Yolanda Antonio on March 3, 2017. The documents show the company address, the check numbers, and minimum wage adjustments, but there is nothing that shows whether or not any deductions were made for things like taxes, social security, health care or workers' compensation insurance. The parties stipulated to admit this exhibit and I accepted the exhibit into evidence. (3/36:8-36:23, 3/41:18-42:20 and 3/45:15-46:16)

#### **12. General Counsel's Exhibit Number Twelve**

This exhibit (6/64:4-64:5) is comprised of fourteen pages with Bates numbers CFI 011001 through CFI 011014. On its face, it appears to show payroll information

from February 21, 2017 through February 25, 2017, for both the Victor Mendoza crew and also the Cesar Miranda crew.

For the Victor Mendoza crew, the exhibit shows the following workers: (1) Victor Mendoza (CFI 011001), (2) Rigoberto Perez (CFI 011002), Yolanda Antonio (CFI 011003), (4) Marisol Jimenez (CFI 011004, (5) Hector Vasquez Cruz (CFI 011005), (6) Maria Lauriano (CFI 011006), (7) Ignacia Sanchez (CFI 011007), and (8) Maria Duarte (CFI 011008). Page CF 011009 is blank.

For the Cesar Miranda crew, the exhibit shows the following workers: (1) Cesar Miranda (CFI 011010), (2) Maria A. Santiago (CFI 011011), (3) Franco Olivares (CFI 011012), (4) Ruth Monicas, which probably should read “Macinas” (CFI 011013), and (5) Emiliano Crus, which probably should read “Cruz” (CFI 011014).

Maria Angelica Santiago was a worker in Victor Mendoza’s crew during February 27, 2017 through March 3, 2017. (See *infra*, Respondent’s Exhibit Number One) There was no testimony indicating that Maria Santiago worked in both crews so it is possible that this exhibit just has her payroll information incorrectly grouped with the other crew.

During the dates covered, both the Mendoza and Miranda crews worked on green kale, black kale and spinach.

I admitted General Counsel’s Exhibit number twelve into evidence. (6/64:4-64:5)

**13. General Counsel’s Exhibit Number Thirteen**

This exhibit is comprised of twenty-five pages with Bates numbers CFI 001125 through CFI 001149. (6/138:19-138:21) None of the parties offered to admit Exhibit Number Thirteen into evidence. (6/147:3-147:8) Therefore, Exhibit Number Thirteen is not admitted into evidence.

**14. Respondent’s Exhibit Number One**

This exhibit is payroll information for the Victor Mendoza crew. The exhibit is comprised of eleven pages, a cover page and a proof of service, followed by nine pages of payroll information. In order, these nine pages show: (1) Victor Mendoza, Yolanda Antonio, Maria Angelica Santiago, Maria Duarte, Ignacia Sanchez, Maria Lauriano, Hector Vasquez Cruz, Marisol Jimenez and Rigoberto Perez.

I note that on March 2, 2017, the crew appears to have solely done weeding. On the weeding day, the crew members were paid for eight hours of work, but foreperson Victor Mendoza was paid for nine hours, one more than the other crew members. There are various theoretical possibilities as to what the extra hour of pay could cover, such as picking up and paying for water, contacting crew members with work site information, receiving instructions from supervisor Rene Macias, or bringing equipment or bathrooms. Foreperson Mendoza received \$14.00 per hour for the nine hours. The other crew members received \$11.00 per hour for eight hours.

Comparing General Counsel’s Exhibit Number Five and Respondent’s Exhibit Number One, you can see the work performed by the Miranda crew and the Mendoza crew for the time period including February 27, 2017 through March 4, 2017. For

example, on February 27, 2017, both crews worked on black kale and spinach. As another example, on March 3, 2017, both crews worked on black kale and also did weeding. Finally, on March 4, 2017, both crews worked on both green kale and black kale.

The parties stipulated to admit into evidence Respondent's Exhibit Number One. Pursuant to the stipulation, I admitted Respondent's Exhibit Number One into evidence.

### **15. Joint Stipulation of Authenticity and Admissibility of Exhibits**

This exhibit is a joint stipulation by the parties that I received and accepted. It is comprised of three pages. The first page is a cover page and is not numbered. The third page is a signature page.

With respect to the second page, the parties stipulated to the admission of two documents. The parties also stipulated to the authenticity of six documents.

The two exhibits where the parties stipulated to their admission are General Counsel's Exhibit Number Five and Respondent's Exhibit Number One.

The six exhibits where the parties stipulated as to their authenticity are General Counsel's Exhibit Number Two, and General Counsel's Exhibit Numbers Six through Ten.

## **VI. FINDINGS OF FACT AND CREDIBILITY DETERMINATIONS**

1. Cinagro Farms, Inc. (hereafter "Cinagro" or "Respondent") is an agricultural employer. (California Labor Code section 1140.4, subdivision (c)) Cinagro grew vegetables, including kale, parsley and spinach, in Fillmore, Ventura County, California, and Moorpark (Tierra Rejada), Ventura County, California.

2. The following eight workers were agricultural employees: (1) Marisol Jimenez, (2) Hector Cruz, (3) Maria Duarte, (4) Yolanda Antonio Garcia, (5) Rigoberto Perez Martinez, (6) Maria Angelica Santiago, (7) Marie Lariano, and (8) Ignacia Sanchez. (California Labor Code section 1140.4, subdivision (b))

3. The following three persons were supervisors: (1) owner Anthony George Dighera, (2) general manager Rene Macias Diaz, and (3) foreperson Victor Mendoza. (California Labor Code 1140.4, subdivision (j)) During the pertinent time periods, owner Dighera was under a lot of stress due to personal and family health matters, and also due to the company's financial difficulties.

4. In summer 2016, owner Dighera retained a crew from a farm labor contractor, Mike Vasquez Farm Labor. This crew included foreperson Victor Mendoza, the workers listed in finding # 2 and possibly a few other workers. Barring bad weather, the crew typically worked six days a week, Monday through Saturday.

5. After a few months, Mike Vasquez Farm Labor transferred Victor's harvest crew to Art Vasquez Farm Labor Services. Mike and Art were related to each other. The crew continued to work for Cinagro in that capacity for a few more weeks without any changes in working conditions.

6. In approximately November 2016, Art Vasquez Farm Labor Services ended its relationship with Cinagro. Art Vasquez Farm Labor Services and Cinagro reached an understanding to allow Cinagro to directly hire Victor and his crew.

7. When Victor's crew worked for the two farm labor contractors, they were paid as employees and provided with a paystub that showed deductions and

withholding. After they were directly hired by Cinagro, they were incorrectly classified as vendors without the required deductions and withholdings for taxes and insurance. Cinagro did not provide the workers with worker's compensation insurance or health insurance.

8. Owner Dighera suspected that his method paying the workers was illegal and was apprehensive of problems arising from paying the workers as vendors. As a result, worker complaints regarding paystubs and deductions was concerning to the company. Nonetheless, Cinagro has continued to pay farm workers in this manner from that time up until the present.

9. When the workers in Victor's crew repeatedly raised the paystub issue with company supervisors, they were told in every instance that the company was working on it. The employees repeatedly explained that they needed the paystubs for routine aspects of life, like government programs, medical care and schools. When the crew told Victor about these concerns, he repeated their concerns to Rene but took no additional steps.

10. Owner Dighera conceded that company did not ever work on switching the workers from being vendors to being treated like employees as he surmised was required by the law. Eventually, Dighera hired a professional bookkeeper to assist with payroll functions. But the bookkeeper, Barbara Ito, testified that Dighera never asked her to change the workers from vendors to employees. Ito did produce for Dighera a document showed each worker's weekly piece-rate tallies, hourly work, and adjustments when piece-rate payments did not reach minimum wage thresholds.

11. Two workers, Marie Lauriano and Ignacia Sanchez, denied ever hearing the crew raise concerns about the lack of paystubs. Both of these workers were hired by the company prior to the arrival of Victor's crew. I discredited their testimony. Marie gave a purposefully evasive answer when asked who drove her to the hearing. She answered "a friend" when the correct answer was that general manager Macias drove her to the hearing. Ignacia also seemed biased toward the company. She works for another company as a quality control supervisor and then Rene regularly hires her back when the season ends at her other job. Despite having worked for the company on many occasions, she claimed not to recall whether Cinagro made payroll deductions. Ignacia may have felt pressured to say what she thought the company would want to hear. It is also possible that since Ignacia and Marie routinely had lunch and breaks together but away from the rest of the crew, that they did not hear some of the complaints expressed by other crew members to supervisors about the lack of paystubs.

12. Some of the workers described payments as being "personal checks". This would be incorrect. The workers were paid with company checks, although the lack of paystubs, deductions and withholdings may have confused the workers into thinking the hand-signed checks were "personal".

13. When working at Cinagro, Victor's crew was always provided with water. The company paid Victor an extra one hour per day more than the other crew members. Part of the reason for the payment of the extra hour was to cover Victor's time and expense to bring water for the crew, which he consistently did. Victor put the water in jugs on his pickup truck. Rene testified that Victor was paid one extra hour

and Victor denied it. I was not particularly persuaded by the testimony of either of them on the subject. Based solely on testimony, I would conclude that neither side established the facts based upon a preponderance of the evidence. But I found that the company payroll records seemed to support Rene's position that Victor was paid an extra hour per day. When the workers were paid piece rate, it was harder to directly compare the number of hours that Victor was paid compared to his crew. But on a day when the crew was paid hourly, the records illustrate that Victor was paid for one hour more than the workers in his crew. It is clear that the crew was not terminated because of any water issue.

14. While charging party Marisol Jimenez claimed that the company never brought water, her testimony was repudiated by most of the other witnesses, including her own partner. Later in her testimony, Marisol alleged that the workers paid for the water on Victor's truck, testimony that was also repudiated by most of the other workers. Some workers did say that at most they contributed some recyclables to Victor. The inaccuracy and shifting of Marisol's testimony caused me to generally discredit her testimony. I do not think Marisol was merely imprecise in her word choice, but rather that her testimony was subject to exaggeration and inaccuracy.

15. The company had a reverse osmosis water system at one of its ranches. On at least one or two days, general manger Macias or foreperson Mendoza brought the crew water from the company's system. But this was not the general routine. There also was a single day when either Victor was absent or the crew ran out of water, where



general manager Macias asked a couple of the workers to go to the store to get water. The workers gave Macias a receipt for the water, but were never reimbursed.

16. On or about February 20, 2017, Cinagro hired a new crew that did similar work to Victor's crew. The crew started with six workers but was expanded to ten workers on March 27, 2017.

17. The last day of work for Victor's crew was Saturday, March 4, 2017. On this day, one worker in Victor's crew cut her finger and required medical attention. The workers had recently reiterated their paystub concerns to management. It is possible that the worker injury further amplified the company's concern that the lack of paystubs, insurance deductions and tax withholding could essentially come back to bite them. Later that day, Victor asked Rene about the work on Monday, March 6, 2021. Rene advised Victor that he would let him know, as there were insufficient vegetables to be harvested. When Victor followed up with Rene, Rene told him that there was no work for his crew "until further notice". Victor told all of the crew members what Rene had said. Respondent's witness Ignacia Sanchez was very clear that Victor told her that Rene had said that there was no work until further notice. Rene testified that he told Victor that there was weeding work available, but I discredited this testimony.

18. During his testimony, it was evident that Rene disliked Victor and his crew. Rene seemed angry that Victor needed to leave early on one or two days to go to an appointment and that crew members were sometimes absent. The company did not provide records to corroborate this testimony. More importantly, the testimony was inconsistent with owner Digerá's testimony and with the Respondent's roadmap at the

prehearing conference. The company always took the position that the crew quit and not that it was fired for attendance reasons. While there was testimony that on one occasion a supermarket rejected the product packed by the crew, owner Dighera was very clear that he needed the workers and that they were not fired because of any packing deficiency. It hardly seems coincidental that Rene brought in a new crew just two weeks before letting the old crew go, and that by the end of March 2017, the new crew was bigger than Victor's crew had been just four weeks earlier.

19. On Monday, March 6, 2017, three of the crew members traveled to the Silent Springs blueberry ranch. Already uncertain if work had ended at Cinagro, they dropped off job applications. On their way back home, they passed a Cinagro ranch and believed that they saw the other crew harvesting vegetables. From a distance, they took blurry cell phone photos of what they saw. One of the workers then called Rene to ask if the other crew was working, which he denied. Based upon a preponderance of the evidence, I find that Rene did not indicate that there was "weeding work" available during that phone call. Neither side called workers from the other crew to testify. The payroll records demonstrate that the other crew did in fact work on Monday, March 6, 2021.

20. Between being told that there was no work "until further notice" and being told false information about whether the other crew was working, the workers reasonably concluded that the company had terminated their crew. The workers shared what they saw and heard with the other crew members.

21. Within a day or two of dropping off the applications, some of the crew members started at the blueberry ranch. Others may have started at the blueberry ranch shortly after the first batch of them began. There was no testimony as to whether the blueberry harvest season differed from the vegetable harvest season, but the witnesses general conceded that the terms of employment were better at the blueberry ranch than at Cinagro. One worker did state that her familiarity with vegetable harvests made it easier for her to tally better piece rates with vegetables than with blueberries. The blueberry ranch provided paystubs, deductions, withholdings, worker's compensation insurance and health insurance. Two workers, Rigoberto Perez and Yolanda Antonio, did not go to the blueberry ranch but instead returned to Deardorff Farms on or about March 13, 2017, a farm where they had previously worked. That employer also provided paystubs, deductions, withholdings, worker's compensation insurance and health insurance.

22. On Friday, March 10, 2017, Rene personally gave Ignacia and Marie their last checks and gave the remainder of the checks to Victor to distribute to the other crew members. Rene was "short" with Victor and did not offer work to him or the crew.

23. Shortly after some of the workers started at the blueberry ranch, Rene testified that, one day due to traffic, he drove a different route than normal and happened to see some of the former crew members leaving the blueberry ranch. Rene spoke with Ignacia and Marie. The pair told him that they were working at the blueberry ranch as well as were some of the other former crew members. Marie

Lauriano testified that she and Ignacia Sanchez most likely started working at the blueberry ranch on Monday, March 13, 2017. The company did not introduce any personnel records from the blueberry ranch to attempt to rebut this testimony.

24. On March 13, 2017, the unfair labor practice charge was filed.

25. After owner Dighera became aware of the unfair labor practice charge in this matter, he contacted a co-owner of the blueberry ranch and confirmed which of his former workers were employed there.

26. On June 20, 2020, the complaint was filed in this matter.<sup>2</sup>

27. The General Counsel did not offer any evidence or explanation as to why the complaint followed three years and three months after the March 13, 2017 unfair labor practice charge, despite the case involving a small group of easily identifiable workers who mostly found similar or better paying work shortly after losing their jobs at Cinagro.

28. The General Counsel's Amended Complaint was filed on February 11, 2021, almost four years after Victor's crew was discharged.

---

<sup>2</sup> As noted in the NLRB Bench Book (January 2021), a complaint is not restricted to the precise allegations of the charge. The complaint may also allege matters relating to and growing out of the charged conduct. *NLRB v. Fant Milling Co.*, above, 360 U.S. 301, 309 (1959). The test is stated in *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988): If a charge was filed and served within six months after the violations alleged in the charge, the complaint (or amended complaint), although filed after the six months, may allege violations not alleged in the charge if (a) they are closely related to the violations named in the charge, and (b) occurred within six months before the filing of the charge. See also *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at 5 n. 15 (2020) ("The General Counsel is not required to plead the exact testimony in his complaint.")

29. Respondent concedes that it has never made offers of reinstatement to any of these workers, although it did later rehire Ignacia Sanchez. (7/73:15-74:24)

## VII. FINDINGS OF LAW

California Labor Code section 1152 states that, “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.”

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

To establish a *prima facie* case of unlawful discrimination, the General Counsel must prove by a preponderance of the evidence that: (1) the employees engaged in protected concerted activity, (2) the employer had knowledge of such activity, and (3) that the protected activity provided a motive for the employer’s adverse action. *H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, pp. 3-4; *Lawrence Scarrone* (1981) 7 ALRB No. 13, at p. 4. In the instant case, I find that the workers engaged in protected, concerted activity by repeatedly requesting a proper paystub and in so doing, impliedly

questioning why proper withholdings and deductions were not being made. The employer conceded that it had notice of these requests.

To the extent that there is any difference in testimony, I find that based upon a preponderance of the evidence, the crew members repeated these requests in close proximity to the time that they were discharged. The protected activity clearly provided a motive for the employer's adverse action. Owner Dighera conceded his apprehension over his decision to treat the workers as vendors rather than employees. The company tried to string the workers along with false promises that they were working on changing their payroll system, but four years later, the company still pays its direct hire workers as vendors.

The third element of the *prima facie* case, showing causal connection between the protected activity and the adverse action, may be established by circumstantial evidence. *H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, at p. 3. *See also East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 n. 7 (2018), citing *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 229 (D.C. Cir. 1995) (“In most cases only circumstantial evidence of motive is likely to be available.”).

There are multiple factors that the Board and courts have considered to infer the actual motive for the adverse action. *H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, pp. 3-4. These factors may include: (1) The timing, or proximity of the adverse action to the concerted activity; (2) disparate treatment; (3) failure to follow established rules or procedures; (4) cursory investigation of the alleged misconduct; (5) false or inconsistent reasons given for the adverse action, or the late addition or shifting

of reasons for the adverse action; (6) the absence of prior warnings; and (7) the severity of punishment for the alleged misconduct. (*H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, pp. 3-4, *citing Miranda Mushroom Farm, Inc. et al.* (1980) 6 ALRB No. 22; *Namba Farms, Inc.* (1990) 16 ALRB No. 4.) *See also Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 27–28 (2018), *enfd. per curiam* 779 Fed. Appx. 752 (D.C. Cir. July 12, 2019).

In this instance, the proximity of the crew’s last round of paystub complaints was very close in time to when they were discharged. The crew members had never been disciplined or warned about their work. There was a separate recently hired crew that was not discharged. The company also gave false testimony alleging that the Victor Mendoza crew quit.

### **1. The Victor Mendoza Crew Did Not Quit, They Were Fired**

Given the chronology established at trial, the crew with eight workers reasonably concluded that they had been fired.<sup>3</sup> Two weeks before they were discharged, a new

---

<sup>3</sup> Even if the situation was beset by some degree of ambiguity, that is of no aid to the Employer here. A discharge occurs if an employer’s conduct or words would reasonably cause employees to believe that they were discharged and in such circumstances it is incumbent upon the employer to clarify its intent. (*Boyd Branson Flowers, Inc.* (1995) 21 ALRB No. 4; *see also American Protection Industries, et al.* (1991) 17 ALRB No. 21, ALJ Dec., p. 18; *Ridgeway Trucking Co.* (1979) 243 NLRB 1048, *enf'd* (5th Cir. 1980) 622 F.2d 1222; *NLRB v. Trumbull Asphalt Company of Delaware* (8th Cir. 1964) 327 F.2d 841, 843 ("It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated.") *H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, at pp. 5-6, footnote # 3. *See also Sequoia Orange, Co.* (1985) 11 ALRB No. 21, at pp. 95-96, discussing *Superior Farming v. A.L.R.B.* (1984) 151 Cal.App.3d 100. Even if a foreperson mistakenly informed his crew that they were discharged, the conveying of this mistaken information, which resulted in their dismissal, would have a coercive effect on the employees, thus giving rise to a violation of ALRA section 1153, subdivision(a). In *Superior Farming*, a crew leader relayed to a representative of management his crew's request for a wage increase. In that case, although the crew leader was not directly told

crew with six workers was hired. The new crew was hired at approximately the same date as the old crew had reiterated their pay stub concerns directly to owner Dighera. The new crew did the same type of work as the old crew. Then the old crew was told that there was no work until further notice. This occurred despite the owner testifying that there was still work to be done and the workers testifying that the harvest season was not over. The old crew was then told by the general manager that the new crew was also not working, but the old crew discovered that this was a false statement. Then later in the month, shortly after the old crew was discharged, the company expanded the new crew from six to ten workers. Only three days after handing the former crew their final checks on March 10, 2017, did Cinagro learn on March 13, 2017 from Ignacia Sanchez and Marie Lauriano that most of the former crew had in the prior week found work at a nearby blueberry farm.

## **2. The Crew Was Fired Because of Their Protected, Concerted Activity**

With the General Counsel having established these facts, the burden then shifted to Cinagro show that it would have taken the same adverse action even in the absence of the employee's protected, concerted activity. *H & R Gunland Ranches, Inc.* (2013) 39 ALRB No. 21, at p. 4; *Woolf Farming Company of California, Inc.* (2009) 35 ALRB No. 2, pp. 1-2; *J & L Farms* (1982) 8 ALRB No. 46, p. 2; *Wright Line, a Division of Wright Line, Inc.* (1980) 251 NLRB 1083, 1087. In the instant case, owner Dighera made it clear that the company did not fire the crew due to bad work or attendance

---

that he or the crew had been dismissed, when he reported to the crew that such had been the case, the crew could reasonably believe that he was speaking on management's behalf.



issues. Dighera indicated that one supermarket was unsatisfied with how vegetables were packed, but that he was still happy to have the crew. The crew was not terminated in close proximity to the order that was canceled, but rather occurred substantially later after the crew reiterated their paystub concerns. The company took the position that it did not discharge the crew but rather was surprised and disappointed when it left. But it was very clear from the testimony of general manager Rene Macias that he was not disappointed that Victor's crew no longer worked at Cinagro. The company did not introduce any documents to show attendance records and provided only limited documents to show the distribution of work between harvesting and weeding. As a result, there were only two conclusions that the factfinder could reach, either the crew quit to search for not-yet obtained alternative employment or they were discharged for their protected, concerted activity. The latter is the conclusion best supported by the hearing testimony and exhibits. Cinagro failed to produce persuasive evidence that the crew quit. Given that the crew was discharged for its protected, concerted activity, the workers are entitled to reinstatement and backpay.

**3. Does the time gap of three and a quarter years between the date of the charge and the date of the complaint provide any sort of defense to the Respondent?**

**A. The ALRA and NLRA provide statutes of limitation for filing a charge, not for filing a complaint.**

The charge in this matter was timely filed. The charge provided the Respondent with enough information to investigate this matter. Indeed, the charge prompted owner

Dighera to promptly check with a nearby ranch as to whether some of his former workers had accepted employment there. The ALRA and NLRA only provide a statute of limitation for filing a charge, not a statute of limitation for a filing a complaint.

There is a reason that they are called statute of limitations and not regulations of limitation. Given that a statute of limitation already exists for filing a charge, without conducting legal research on the subject, it is not clear to me that the Board would even have the authority to adopt a “regulation of limitation”. The Board does not have to follow NLRB precedent when there is something unique to agricultural workers. But Respondent does not articulate a basis for such a divergence.

**B. The ALRA and NLRA generally disallow laches as a defense in unfair labor practice proceedings.**

The Board has recently summarized why laches is rarely allowed as a defense in unfair labor practice proceedings. (*Rincon Pacific, LLC* (2020) 46 ALRB No. 4, at pp. 6-7) In *NLRB v. J.H. Rutter-Rex Manufacturing Co.* (1969) 396 U.S. 258, 264-265, the U.S. Supreme Court held that the NLRB “is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers.”

In *Rincon*, the Board proceeded to list multiple cases where it had found laches inapplicable to unfair labor practices proceedings. See, e.g., *TriFanucchi Farms* (2014) 40 ALRB No. 4, p. 10 (“laches is not available as a defense to an unfair labor practice allegation under the ALRA”); *Stamoules Produce Co., Inc.* (1990) 16 ALRB No. 13, at

ALJ Dec. p. 3 (stating that administrative delay is not a basis for denying employees their statutory rights); *Tri-Fanucchi Farms* (1986) 12 ALRB No. 8, p. 5; *Ukegawa Brothers* (1982) 8 ALRB No. 90, pp. 67-68; *Mission Packing Co.* (1982) 8 ALRB No. 47, p. 2; *Golden Valley Farming* (1980) 6 ALRB No. 8, at ALJ Dec. p. 21 (“the doctrine of laches has no applicability in ALRB proceedings”).

As noted in the NLRB Bench Book (January 2021), the NLRB generally does not apply the doctrine of laches to itself or the General Counsel. *Newark Electric Corp.*, 366 NLRB No. 145, slip op. at 1 n. 1 (2018); and *UPS Ground Freight, Inc.*, 366 NLRB No. 100, slip op. at 2 (2018). *See also Midwest Terminals of Toledo*, 365 NLRB No. 157, slip op. at 1 n. 1 (2017), reaffg. 362 NLRB 468 n. 1 (2015) (rejecting defense even though the supervisor allegedly made statement over 4 years before the hearing commenced and he no longer worked for the company and was unavailable as a witness), *enfd.* 783 Fed. Appx. 1 (D.C. Cir. 2019); *Teamsters Local 75 (Schreiber Foods)*, 365 NLRB No. 48, slip op. at 5 n. 6 (2017) (rejecting defense even though the alleged unlawful events occurred in 1989 and the Board did not issue its second supplemental decision on remand from the court of appeals until 9 years after the court’s remand order); *United Electrical Contractors Assn.*, 347 NLRB 1, 2–3 (2006) (denying motion to dismiss complaint against members of the employer association, notwithstanding the General Counsel’s “inordinate and inexcusable” 5 ½ year delay in naming them as respondents, given the absence of any showing of prejudice); *Rogan Bros. Sanitation, Inc.*, 369 NLRB No. 53, slip op. at 5 n. 6 (2020) (rejecting defense despite 7-year delay between Board’s original decision granting summary judgment

pursuant to the noncompliance provisions of a settlement agreement and issuance of backpay specification); *Human Development Assn.*, 348 NLRB 677 (2006) (rejecting defense despite the 13-year delay between enforcement of the Board’s remedial order and issuance of the compliance specification), *enfd.* 275 Fed. Appx. 64 (2d Cir. 2008); and *Entergy Mississippi, Inc.*, 361 NLRB 892, 893 n. 5 (2014) (considerable delay by the Board in issuing the backpay specification did not warrant a reduction in the backpay award even assuming the delay contravened the APA), *affd.* in relevant part 810 F.3d 287, 298–299 (5th Cir. 2015).

In *Rincon*, the Board also notes that California state courts have held that, even where the elements are otherwise shown, equitable defenses such as estoppel and laches are not applied to a governmental agency where the result would be to frustrate strong public policy. (*Bib’le v. Committee of Bar Examiners of The State Bar* (1980) 26 Cal.3d 548, 553-554 [“Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public policy”]; *City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 248 [“laches is not available where it would nullify an important policy adopted for the benefit of the public”], quoting *Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346, 1381. *Rincon*, at pp. 7-8, footnote # 6.

In this instance, the Respondent has not demonstrated any prejudice due to the delay. Upon receiving the charge, the Respondent was able to investigate if the Mendoza crew was fired or quit. They were even able to promptly investigate the

subsequent employment of some of their former workers. The payroll documents largely speak for themselves.

Moreover, in this instance, there is no evidence of delay by the Charging Party. The charge was promptly filed on March 13, 2017. If there was any delay, it was by the General Counsel, not the Charging Party.

**C. The General Counsel is encouraged to take advantage of the ALJ Unit to help expedite case resolution.**

This case involves eight or nine workers and most of them found new employment within days or a few weeks after being discharged. The dollar amounts at issue are seemingly small.<sup>4</sup> The General Counsel should consider establishing a streamlined settlement program for simple unfair labor practice cases involving a small number of workers and a small amount of back-pay.

If it would add value to the process, the ALJ Unit would be willing to make judges available for pre-complaint settlement conferences.

**D. The hearing process is not the best methodology for the Board to monitor any General Counsel case processing delay.**

In its Reply Brief, Respondent requests that the ALJ make a recommendation to the Board regarding the delay in this matter between the filing of the charge and the filing of the complaint.

---

<sup>4</sup> During all seven days of this hearing, the General Counsel had four staff persons in attendance, while Respondent had only one attorney present.

In an unfair labor practice, ALJs are generally not going to inquire as to the reason for any General Counsel delay in filing a complaint. To make such inquiries would essentially require calling the attorneys as witnesses. Theoretically, I could solicit testimony about budget limitations, staff departures and illnesses, how long it took to locate witnesses, delays in document production, pandemic issues and when settlement offers were first made. In my opinion, those questions would only cloud the hearing process, not add value to it.

On the other hand, if the Board is concerned about case processing delays, the Board can effectively shine light in this area independently of the hearing process. For example, the Board could pass a regulation requiring the General Counsel to submit a quarterly list of cases where the charge is over two years old and the complaint has not yet been filed. For each of those cases, the Board could require the General Counsel to indicate (1) whether the Respondent has responded to all pending requests or subpoenas for documents, and (2) whether the General Counsel has provided the Respondent with a written settlement offer. Requiring such a public report might focus attention on the reasons for case processing delays.

**4. Given that the Respondent committed an unfair labor practice, is the foreperson in this instance eligible for a remedy along with his crew?**

ALRA protections afforded to agricultural employees are generally unavailable to supervisors. *Ruline Nursery Co.* (1981) 7 ALRB No. 21, at p. 8 (citing *Yoder Brothers, Inc.* (1976) 2 ALRB No. 4) Ruline outlines three established exceptions to the general rule. The three exceptions are not designed to protect the supervisor, but

rather to protect the workers. The first exception is when the supervisor is fired for refusing to commit unfair labor practices. *Ruline*, at p. 10. The first exception does not apply to Victor Mendoza. The second exception is when the supervisor is fired for engaging in activities to protect worker rights, such as by providing witness testimony at hearing. *Ruline*, at pp. 10-11. Victor Mendoza was fired four years before this hearing started so the second exception also does not apply to him. The third exception is when the supervisor firing is the means to unlawfully discriminate against the workers. *Ruline*, at p. 11.

A *prima facie* case is made out in the third category when (1) the employees' employment is expressly conditioned on the continued employment of their supervisor, (2) the employees have engaged in protected concerted activities, and (3) their supervisor is discharged as a means of terminating the employees because of their concerted activity. *Ruline*, at p. 11 (citing *Pioneer Drilling Co., Inc.*<sup>5</sup> (1967) 162 NLRB 918 [64 LRRM 1126], enforced in pertinent part sub nom. *Pioneer Drilling Co., Inc. v. NLRB* (10<sup>th</sup> Cir. 1968) 391 F.2d 961 [67 LRRM 2956]; *Krebs and King Toyota, Inc.* (1972) 197 NLRE 462 [80 LRRM 1570]; *VADA of Oklahoma, Inc.* (1975) 216 NLRB 750 [88 LRRM 1631])

---

<sup>5</sup> The hearing testimony supports a finding that Mendoza conveyed the crew's paystub concerns to management. The testimony in totality does not support a finding that Mendoza told Macias that he joined in those concerns. Regardless, the mere participation of a supervisor in protected, concerted activity does not avail the supervisor protection under the NLRA or ALRA.

The *Pioneer Drilling* case instead involved a unique factual situation that whenever the driller (who served as the crew supervisor) was discharged, the other members of that crew were also automatically terminated. Thus, the employer was able to fire the driller as a means to get rid of pro-union crew members.

The General Counsel correctly notes that Victor assembled and hired his crew before arriving with the farm labor contractor at Cinagro. Victor engaged in many of the typical foreperson duties and was the primary conduit of information between management and the workers. Cinagro had also hired workers directly prior to the arrival of Victor and his crew with the farm labor contractor. Indeed, Cinagro added two of those workers to Victor's crew. There was also testimony that the crew worked when Victor was absent. But in *Sequoia Orange, Co.* (1985) 11 ALRB No. 21, ALJD p. 86-94, the employer fired the foreperson as a means to terminate the entire crew. In the instant case, Cinagro discharged the entire crew at the same time, telling them that there was no work until further notice and lying about the fact that the second crew was working. Mendoza was not a means or mechanism of the unlawful firing of workers, but rather a casualty of it. Nor is Mendoza's reinstatement required in order for Cinagro to offer reinstatement to the rest of the crew.

The question therefore is whether an exception presently exists when an entire crew is unlawfully discharged for protected, concerted activity and the foreperson's employment is expressly conditioned on having that crew to supervise. This exception is what I will call a "reverse Sequoia Orange". While the Board has the authority to consider and create such an exception, I find that under existing case law, no such exception presently exists. Accordingly, foreperson Mendoza is not entitled to reinstatement or backpay.

### **VIII. CONCLUSION AND ORDER**



Pursuant to California Labor Code section 1160.3, respondent Cinagro Farms, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Immediately cease and desist from interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by California Labor Code Section 1152;
2. Immediately cease and desist from discriminating or retaliating against any agricultural worker because the worker has engaged in protected, concerted activity covered by California Labor Code Section 1152; and,
3. Immediately cease and desist from refusing to rehire its employees for engaging in concerted activity protected under California Labor Code section 1153, subdivision (a).

Cinagro Farms, Inc. shall take the following affirmative steps which are deemed necessary to effectuate the policies of the Agricultural Labor Relations Act:

1. Offer Marisol Jimenez, Hector Cruz, Maria Duarte, Yolanda Antonio Garcia, Rigoberto Perez Martinez and Maria Angelica Santiago immediate reinstatement to their former or substantially equivalent employment without prejudice to their prior rights and privileges of employment;
2. Make whole Marisol Jimenez, Hector Cruz, Maria Duarte, Yolanda Antonio Garcia, Rigoberto Perez Martinez and Maria Angelica Santiago for all wages or other economic losses they suffered since on or about

Monday, March 6, 2017 as a result of Cinagro Farms, Inc.'s refusal to rehire, to be determined in accordance with established Board precedent;

3. The award shall include interest to be determined in accordance with *Kentucky River Medical Center* (2010) 356 NLRB 6, and excess tax liability is to be computed in accordance with *Tortillas Don Chavas* (2014) 361 NLRB No. 10, minus tax withholdings required by federal and state laws;
4. Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records, and all other records relevant and necessary for a determination by the Regional Director of the economic losses due under this order ; and,
5. Compensation shall be issued to Marisol Jimenez, Hector Cruz, Maria Duarte, Yolanda Antonio Garcia, Rigoberto Perez Martinez and Maria Angelica Santiago and sent to the ALRB's Oxnard Sub-Regional Office, which will thereafter disburse payment to them.

Cinagro Farms, Inc. shall additionally take the following steps to provide notice to its agricultural workers:

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

2. Within thirty days after this Order becomes final, post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for sixty 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;
3. Within thirty days after this Order becomes final, arrange for a Board agent or representative of Cinagro 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 Cinagro 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;
4. Mail copies of the attached Notice, in all appropriate languages, within thirty days after 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 July 1, 2016, to June 30, 2017, at their last known addresses;

5. Provide a copy of the Notice to each agricultural employee hired to work for respondent during the twelve-month period following the date that this Order becomes final; and,
6. 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 the request of the Regional Director, Respondent Cinagro Farms, Inc. shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

Dated: October 26, 2021

A handwritten signature in black ink, appearing to read "Mark R. Soble", is written over a horizontal line. The signature is stylized and cursive.

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

## NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed with the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB determined that we violated the Agricultural Labor Relations Act by terminating employees for engaging in protected concerted activity. The ALRB has told us to publish this Notice. We will do what the ALRB has ordered us to do. The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these 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 Board.
5. To act together with other workers to help and protect one another.
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT discharge you because you complain about wages, hours, and working conditions on behalf of yourself and your coworkers.

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

WE WILL make whole Marisol Jimenez, Hector Cruz, Maria Duarte, Yolanda Antonio Garcia, Rigoberto Perez Martinez and Maria Angelica Santiago for all wages or other economic losses that they suffered as a result of our unlawful conduct.

Cinagro Farms, Inc.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Title of Representative Signing Notice: \_\_\_\_\_

If you have any questions about your rights as farm workers or about this Notice, you may

contact any office of the Agricultural Labor Relations Board. The closest office is the ALRB Oxnard Sub-Regional Office, 1901 N. Rice Avenue, Suite # 300, Oxnard, CA 93030-7912. The telephone number is (805) 973-5062. Another office is the ALRB Salinas Regional located at 342 Pajaro Street, Salinas, California. The telephone number is (831) 769-8031. This is an official notice of the ALRB, an agency of the State of California.

**PLEASE DO NOT REMOVE OR MUTILATE**

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

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

Case Name: CINAGRO FARMS, INC Respondent ,and  
MARISOL JIMENEZ, Charging Party  
Case No. Case No. 2017-CE-008-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 entitled action. My business address is 1325 “J” Street, Suite 1900-B, Sacramento, California 95814.

On October 27, 2021, I served the within **NOTICE OF TRANSFER; and DECISION OF THE ADMINISTRATIVE LAW JUDGE** on the parties in the above-entitled action as follows:

- **By Email and Certified Mail** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, with return receipt requested, in the United States mail at Sacramento, California, addressed as follows:

Robert P. Roy, General Counsel  
Michael P. Roy  
Ventura County Agricultural Association  
916 W. Ventura Boulevard  
Camarillo, California 93010  
[Rob-VCAA@PacBell.net](mailto:Rob-VCAA@PacBell.net)  
[Mike-VCAA@PacBell.net](mailto:Mike-VCAA@PacBell.net)

- **By Email** to the persons listed below and addressed as follows:

Franchesca C. Herrera, Regional Director  
Monica Ortiz, Senior Legal Typist  
ALRB Salinas Regional Office  
[FHerrera@ALRB.ca.gov](mailto:FHerrera@ALRB.ca.gov)  
[Monica.Ortiz@ALRB.ca.gov](mailto:Monica.Ortiz@ALRB.ca.gov)

Jessica Arciniega, Assistant General Counsel  
Amisha G. DeYoung-Dominguez, Assistant General Counsel  
Gabriela Vega, Field Examiner  
Sheila Fountain, Legal Secretary  
ALRB Oxnard Sub-Regional Office  
[JArciniega@ALRB.ca.gov](mailto:JArciniega@ALRB.ca.gov)  
[Amisha.DeYoung-Dominguez@ALRB.ca.gov](mailto:Amisha.DeYoung-Dominguez@ALRB.ca.gov)  
[Gabriela.Vega@ALRB.ca.gov](mailto:Gabriela.Vega@ALRB.ca.gov)  
[Sheila.Fountain@ALRB.ca.gov](mailto:Sheila.Fountain@ALRB.ca.gov)

Julia L. Montgomery, General  
CounselALRB Sacramento  
Regional Office  
[JMontgomery@ALRB.ca.gov](mailto:JMontgomery@ALRB.ca.gov)

No email address on file

**By Certified Mail only to:**

70210950000047476538  
Marisol Jimenez  
508 North Hill Street, # 10  
Oxnard, California 93033

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 27, 2021, at Sacramento California.



Angelique Duran