

1 Julia L. Montgomery, General Counsel, SBN 184083
2 AGRICULTURAL LABOR RELATIONS BOARD
3 1325 J Street, Suite 1900 A
4 Sacramento, CA 95814-2944
5 Tel: (916) 653-2690
6 jmontgomery@alrb.ca.gov

7 Franchesca C. Herrera, Regional Director, SBN 239081
8 Jessica Arciniega, Assistant General Counsel, SBN 261169
9 Amisha DeYoung-Dominguez, Assistant General Counsel, SBN 327998
10 AGRICULTURAL LABOR RELATIONS BOARD
11 1901 North Rice Avenue, Suite 300
12 Oxnard, CA 93030
13 Tel: (805) 973-5062
14 Fax: (805) 973-1251
15 fherrera@alrb.ca.gov
16 jarciniega@alrb.ca.gov
17 amisha.deyoung-dominguez@alrb.ca.gov

18 Attorneys for the General Counsel

19 STATE OF CALIFORNIA

20 AGRICULTURAL LABOR RELATIONS BOARD

21 In the Matter of:

22 CINAGRO FARMS, INC.

23 Respondent,

24 and

25 MARISOL JIMENEZ,

26 Charging Party.

27) Case No.: 2017-CE-008-SAL

28) **FIRST AMENDED COMPLAINT**

1 The General Counsel of the Agricultural Labor Relations Board (“ALRB”), pursuant to
2 Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section
3 1140 *et seq.* (the “Act”) and California Code of Regulations, title 8, section 20220, hereby issues
4 this Complaint against Respondent Cinagro Farms, Inc. This Complaint alleges that Respondent
5 committed an unfair labor practice, as described below.

6 **JURISDICTION AND PARTIES**

7 1. On March 13, 2017, Marisol Jimenez (“Ms. Jimenez”) properly and timely filed
8 unfair labor practice charge 2017-CE-008-SAL (“charge”) alleging that on or about March 4,
9 2017, Cinagro Farms, Inc. through its agents, terminated the employment of Ms. Jimenez, Hector
10 Vasquez, Maria Duarte, Victor Mendoza, Maria Santiago, Yolanda Antonio, and Rigoberto
11 Perez because they complained together about their working conditions.

12 2. On March 13, 2017, the Oxnard Sub-Regional Office served Cinagro with the
13 charge via certified mail.

14 3. At all material times, Cinagro Farms, Inc. (“Cinagro”) grew vegetables in Ventura
15 County and thus was an agricultural employer within the meaning of Section 1140.4(a) and (c)
16 of the Act.¹ Cinagro is a corporation duly organized and existing under the laws of the State of
17 California.

18 4. At all material times, Cinagro Owner Anthony Dighera (“Owner Dighera”) was
19 a statutory supervisor for Cinagro within the meaning of Section 1140.4(j). Owner Dighera
20 oversees Cinagro’s operations and all supervisors report to him. Owner Dighera has the authority
21 to discipline, hire, fire and direct the work of agricultural workers.

22 5. At all material times, Cinagro Supervisor Rene Macias (“Supervisor Macias”) was
23 a statutory supervisor for Cinagro within the meaning of Section 1140.4(j). Supervisor
24 Macias supervises the harvesting of the agricultural commodities. Supervisor Macias has the
25 authority to discipline, hire, fire and direct the work of agricultural workers.

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¹ All further references are the California Labor Code unless otherwise indicated.

1 6. At all material times, Foreman Victor Mendoza (“Foreman Mendoza”) was a
2 statutory supervisor for Cinagro within the meaning of Section 1140.4(j) with authority to direct
3 the work of agricultural workers.

4 7. At all material times, Ms. Jimenez harvested vegetables and thus was an
5 agricultural worker, as defined in Section 1140.4(b), employed by Cinagro.

6 8. At all material times, Hector Vazquez, Maria Duarte, Maria Santiago, Yolanda
7 Antonio and Rigoberto Perez harvested vegetables and thus were agricultural workers, as defined
8 in Section 1140.4(b), employed by Cinagro.

9 **FACTS**

10 9. In 2016 and 2017, Cinagro grew cilantro, spinach, kale, pumpkins and other
11 vegetables at ranches located in Fillmore and Moorpark, California.

12 10. On or about October and November 2016, Marisol Jimenez, Hector Vasquez,
13 Maria Duarte, Maria Santiago, Yolanda Antonio and Rigoberto Perez (collectively “the
14 discriminatees”) and Foreman Mendoza performed work for Cinagro and were paid by a farm
15 labor contractor.

16 11. Foremen Mendoza oversaw the discriminatees’ crew.

17 12. Supervisor Macias gave instructions and work assignments for the crew to
18 Foreman Mendoza.

19 13. On or about November 2016, Supervisor Macias held a meeting with Foreman
20 Mendoza’s crew. He told the discriminatees that Cinagro now employed them directly and
21 “nothing would change” in regard to their working conditions.

22 14. When Cinagro directly hired the discriminatees, Owner Dighera instructed his
23 payroll provider to classify the discriminatees as independent contractors instead of employees.

24 15. Cinagro did not tell the discriminatees that they would be classified as
25 independent contractors.

26 16. On or about November and December 2016, Supervisor Macias went to the field
27 where Ms. Jimenez and her co-workers were working. Ms. Jimenez reported to Supervisor
28 Macias that there was no drinking water for them and requested that Cinagro provide it.

1 17. Supervisor Macias asked that Ms. Jimenez purchase drinking water for the crew.
2 Ms. Jimenez purchased drinking water for the crew.

3 18. On or about November 2016, Cinagro paid the discriminatees for the first time.
4 Cinagro issued them personal checks signed by Owner Dighera. Cinagro did not provide the
5 discriminatees with a paystub or documentation with their paychecks.

6 19. Upon receiving these paychecks, the discriminatees complained to Foreman
7 Mendoza they wanted paystubs with their paychecks and information about how Cinagro made
8 deductions to their earnings.

9 20. Foreman Mendoza told the discriminatees that he would relay their requests to
10 Supervisor Macias.

11 21. After he told Supervisor Macias about the workers' complaints, Foreman
12 Mendoza returned and told the workers that Supervisor Macias said that Cinagro was "working
13 on it" and would issue the paystubs soon.

14 22. When the discriminatees did not receive paystubs with the following paychecks,
15 they again complained about this to Foreman Mendoza and asked for a meeting with Supervisor
16 Macias.

17 23. On or about February 2017, Supervisor Macias met with the discriminatees in the
18 field. The discriminatees complained about not receiving paystubs or calculations of deductions
19 from their paychecks from Cinagro. Supervisor Macias told the discriminatees that Cinagro was
20 working on providing them with paystubs.

21 24. After the meeting with Supervisor Macias, Cinagro assigned the discriminatees
22 fewer hours of work.

23 25. The last day the discriminatees worked was Saturday, March 4.

24 26. On Sunday, March 5, Supervisor Macias informed Foreman Mendoza that
25 Cinagro did not have any work for Foreman Mendoza and the discriminatees on Monday, March
26 6.

27 27. Foreman Mendoza informed the discriminatees on March 5 that there was no
28 work available the next day.

1 28. On Monday, March 6, Ms. Jimenez, Mr. Vasquez and Ms. Duarte drove by
2 Cinagro's ranch in Moorpark and saw another crew working at Cinagro's ranch.

3 29. Ms. Jimenez called Supervisor Macias to ask if work was available for her and
4 the discriminatees.

5 30. Supervisor Macias told Ms. Jimenez that no one was working at Cinagro on
6 March 6.

7 31. On Monday, March 6, Supervisor Macias informed Foreman Mendoza that
8 Cinagro did not have any work for the discriminatees on Tuesday, March 7, and did not provide
9 any information about when they could return to work.

10 32. Foreman Mendoza relayed this information to the discriminatees.

11 33. After March 6, Supervisor Macias did not contact the discriminatees or Foreman
12 Mendoza again to advise them when they could return to work at Cinagro.

13 34. On March 10, Foreman Mendoza went to pick up the discriminatees' paychecks.

14 35. At that time, Supervisor Macias told Foreman Mendoza that there was no more
15 work for him and the discriminatees at Cinagro.

16 **FIRST CAUSE OF ACTION**

17 **California Labor Code § 1153 (c)**

18 *(Unlawful Retaliatory Discharge of Charging Party and Discriminatees)*

19 36. By the acts set forth in paragraphs 9 through 35 above, Cinagro, by and through
20 Owner Dighera and Supervisor Macias, committed an unfair labor practice in violation of
21 Section 1153(a) of the Act when it retaliated against the discriminatees because they engaged in
22 protected concerted activity for the purpose of mutual aid or protection under Section 1152.

23 37. By terminating the discriminatees' employment because they complained about
24 not receiving drinking water and not receiving paystubs with their paychecks, Cinagro
25 unlawfully retaliated against the discriminatees due to their protected concerted activity.

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1 **SECOND CAUSE OF ACTION**
2 **California Labor Code § 1153 (c)**
3 *(Unlawful Retaliatory Discharge of Foreman)*

4 38. By the acts set forth in paragraphs 9 through 35 above, Cinagro committed an
5 unfair labor practice in violation of Section 1153(a) of the Act when it terminated Foreman
6 Mendoza's employment because Foreman Mendoza's termination is the means by which
7 Cinagro discriminated against the employees. *Sequoia Orange Co.*, (1985) 11 ALRB No. 21.

8 **REQUEST FOR RELIEF**

9 As the remedy for the unfair labor practices set forth above, the General Counsel seeks
10 an order requiring Cinagro, its officers, agents, successors and assigns to:

- 11 A. Immediately cease and desist from discriminating or retaliating against any
12 agricultural worker because the worker has engaged in protected concerted activity
13 under Labor Code section 1152;
- 14 B. Immediately cease and desist from interfering with agricultural employees' rights
15 and/or coercing them in the exercise of their rights under the Act;
- 16 C. Provide ALRB agents access to all Cinagro's agricultural workers during paid time,
17 for a reading of a Notice, informing them of Respondent's violation of the Act and
18 the workers' rights under the Act;
- 19 D. Provide for ALRB agents to post the Notice on all company bulletin boards and break
20 rooms or rest areas used by the agricultural workers for ninety (90) days;
- 21 E. Provide stamped, addressed envelopes for all agricultural workers that worked for
22 Cinagro at any time from March 4, 2017 through the date the Order is issued to the
23 Oxnard ALRB office with a copy of the Notice in Spanish and English inside.
24 Respondent shall also provide the ALRB a list of all of the workers and their contact
25 information so that the ALRB can verify compliance;
- 26 F. Make Ms. Jimenez, Hector Vazquez, Maria Duarte, Maria Santiago, Yolanda
27 Antonio, Rigoberto Perez and Victor Mendoza whole for any economic losses
28 incurred as a result of Respondent's violations of the Act. The award shall include

1 compounded daily interest consistent with the National Labor Relations Board's
2 decision in *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and excess tax
3 liability for a backpay amount to be paid in a lump sum, if applicable; and

4 G. Reinstate Marisol Jimenez, Hector Vazquez, Maria Duarte, Maria Santiago, Yolanda
5 Antonio, Rigoberto Perez and Victor Mendoza to employment at Cinagro;

6 H. Provide ALRB agents access to ensure compliance with the Order.

7
8 FURTHER, the General Counsel requests all such other relief available under the Act that
9 may be just and proper to remedy the unfair labor practices alleged herein.

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11 Dated this 11th day of February 2021, at Salinas, California.

12 AGRICULTURAL LABOR RELATIONS BOARD
13 JULIA L. MONTGOMERY
14 General Counsel

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18 FRANCHESCA HERRERA
19 Regional Director
20 Salinas Regional Office

EXCERPTS FROM ALRB REGULATIONS

WHAT TO INCLUDE IN AN ANSWER

Section 20230 – Answer; Time for Filing

The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

Section 20232 – Contents of Answer

The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint.

Any allegation not denied shall be considered admitted.

Section 20234 – Filing

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

MANNER IN WHICH PAPERS ARE TO BE FILED AND SERVED

Section 20164 – Service of Papers by the Board or on the Board

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service.

All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the

name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

Section 20166 – Service on Others of Papers Filed with the Board

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in section 20164, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or his or her attorney or representative of record.

RIGHTS OF THE PARTIES TO A HEARING

Section 20269 – Rights of Parties to a Hearing

Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

HOW HEARINGS ARE SET

Section 20224 – Notice of Hearing

(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general

counsel may arrange with the chief administrative law judge to include the time and place of hearing in the complaint.

(b) Except where circumstances warrant an expedited hearing, no hearing shall be scheduled to commence less than fifteen (15) days after the issuance of the complaint, and no prehearing conference shall be scheduled to commence less than ten (10) days after the issuance of the complaint.

DISCOVERY RIGHTS

Section 20235 – Request for Particulars.

Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

Section 20236 – Matters Discoverable

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the

possession or control of the responding party, it shall be identified with reasonable specificity.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backpay or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

Section 20237 – Requests for Discovery

(a) Requests pursuant to sections 20235 and 20236 shall be in writing and directed to the party from whom the information is sought. Copies need not be served on the Board.

(b) Requests shall be made no later than 15 days following service of the answer, and responses shall be due 15 days after receipt of the request; except that, for good cause shown, the chief administrative law judge or the executive secretary, as appropriate in accordance with sections 20240 and 20241, may extend or shorten the time to request or respond.

(c) Requests shall be deemed continuing. Any requested information which becomes available or is discovered after the initial response is to be provided as soon as reasonably possible.

Section 20238 – Order Compelling Discovery Sanctions

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the responding party. If the responding party desires to oppose the application, he or she shall immediately notify the office of the chief administrative law judge. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created

by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcised document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

EXTENSIONS OF TIME AND CONTINUANCES

Section 20190 – Continuances of Hearing Dates

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select

other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter

promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

- (1) The official case file and any supporting declaration submitted with the motion.
- (2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.
- (3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.
- (4) The proximity of the hearing date.
- (5) The condition of the hearing calendar.
- (6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.
- (7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.
- (8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

- (1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.
- (2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.
- (3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.
- (4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

Section 20192 – Extensions of Time

- (a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.
- (b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.
- (c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

RIGHT TO APPEAR

Section 20370 – Investigative Hearings--Types of Hearings and Disqualification of IHE's

Investigative Hearings--Powers of IHE's

- (b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

Section 20402 – Evaluation of the Declaration and Answer

- (d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:
 - (1) Notice of hearing shall be served in the manner required by Section 20164.

- (2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.
- (3) The hearings shall be reported by any appropriate means designated by the Board.
- (4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.
- (5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.
- (6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.
 - (A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.
 - (B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.
 - (7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b)

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State of California
Agricultural Labor Relations Board
PROOF OF SERVICE
(8 Cal. Code Regs. § 20164)

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

On February 11, 2021 I served a copy of the within **GENERAL COUNSEL'S FIRST AMENDED COMPLAINT; EXCERPTS FROM ALRB REGULATIONS;** in Case Name: **Cinagro Farms, Inc.;** Case Number: **2017-CE-008-SAL** on the parties in said action, in the following manner:

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

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

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

<u>Via E-File:</u>	<u>Via Electronic Mail:</u>
Santiago Avila-Gomez Executive Secretary Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-File: efile@ALRB.ca.gov	Robert P. Roy Ventura County Agricultural Association 916 W. Ventura Blvd. Camarillo, CA 93010 E-Mail: rob-vcaa@pacbell.net
<u>Via Electronic Mail:</u> Julia Montgomery General Counsel Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-Mail: julia.montgomery@alrb.ca.gov	<u>Via Certified Mail:</u> Marisol Jimenez 1201 W. Gonzalez Rd., Apt. 30 Oxnard, CA 93033 Certified Mail No: 7018 1830 0001 0141 3035

Executed on February 11, 2021, at Salinas, California. I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Monica Ortiz