

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
)  
CINAGRO FARMS, INC. ) Case Nos.: 2017-CE-008-SAL  
)  
Respondent, )  
)  
and )  
)  
MARISOL JIMENEZ, )  
)  
)  
Charging Party. )

VOLUME 5

HEARING

Remote via WebEx

Monday, March 1, 2021

Location: ALRB Oxnard Sub-Regional Office  
1901 North Rice Avenue  
Suite 300  
Oxnard, California 93030

Reported by:

Peter Petty

APPEARANCES

BEFORE: THE HONORABLE MARK SOBLE,  
Administrative Law Judge

On behalf of Respondent:

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Spanish-To-English Interpreter: Rosario Lucas

I N D E X

WITNESSES	DIRECT	CROSS	VOIR DIRE
<u>Charging Party:</u>			
Victor Mendoza	8 93	26 101	72 105
Barbara Ito	113 157	153	155

EXHIBITS

	ADMITTED
<u>Charging Party:</u>	
GC-00005	24
GC-00006	20
GC-00007	20
GC-00008	20
GC-00009	20
GC-00010	150

P R O C E E D I N G S

9:30 A.M.

CALIFORNIA, MONDAY, MARCH 1, 2021

(Spanish Interpreter is present and has been previously sworn.)

(Witness is present and has been previously sworn.)

(Spanish Interpreter is present and has been previously sworn.)

(Witness is present and has been previously sworn.)

ADMINISTRATIVE LAW JUDGE SOBLE: It is Monday morning, March 1, 2021. This is the matter of Cinagro Farms, Inc., Respondent, and Marisol Jimenez, Charging Party, Case Number 2017-CE-008-Salinas.

We started this morning at 9:30 a.m. at the General Counsel's request. It's my understanding, we won't be taking the morning break that they have requested in the past but, rather, we will go until approximately 11:40, 11:45, depending on witness testimony, and then take our lunch break somewhere around that time today.

The end of Friday's session, we had one bit of witness testimony that was difficult to hear. In the interim, I sent an email to the court reporting firm and they attempted to facilitate with our Court Reporter today

1 to be able to play that back. So we're going to, possibly  
2 in a minute or so, do that before we resume with additional  
3 questions from the General Counsel.

4 I'm going to go off the record for a second so  
5 the Court Reporter can indicate to us his understanding of  
6 that, so we'll go off the record.

7 (Off the record at 9:31 a.m.)

8 (On the record at 10:02 a.m.)

9 (Spanish Interpreter is present.)

10 (Witness is present.)

11 ADMINISTRATIVE LAW JUDGE SOBLE: It is 10:02 a.m.  
12 We spent approximately 20 minutes to get a 44-second  
13 playback from last Friday. It appears that the last time  
14 we had it so that it was sufficiently clear for the  
15 Interpreter.

16 One of the Counsel asked me if I would have the  
17 Interpreter repeat what was said, first in Spanish, and  
18 then her translation of it. And I indicated to the  
19 Interpreter, yes, that would be fine to do if she thinks  
20 she is able to have heard the playback sufficiently.

21 THE INTERPRETER: Okay. Should we wait for Mr.  
22 Roy?

23 MR. ROY: Yeah, I'm here.

24 THE INTERPRETER: Okay. (Speaking Spanish.)

25 THE WITNESS: (Through Interpreter.) I told them

1 that Rene had said that there wasn't too much work, that he  
2 would call us when we should return to work. And the way  
3 we had been working, we understood that he wasn't going to  
4 give us more work, and each of us began looking for work.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So we  
6 have that interpretation.

7 Now, I'll start with the General Counsel. Do you  
8 have any sort of challenge to that translation?

9 MS. ARCINIEGA: No, Your Honor.

10 ADMINISTRATIVE LAW JUDGE SOBLE: And to the  
11 Respondent?

12 MR. ROY: No, Your Honor.

13 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

14 Mr. Petty, would you like to go off for the  
15 record and try to play something else back, or do you  
16 think, perhaps, we could wait until we finish with this  
17 (indiscernible) this time to go forward?

18 COURT REPORTER: (Off mike.)

19 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Let's do  
20 that.

21 So the General Counsel can ask her next question  
22 of the witness once I have a brief introductory remark to  
23 Mr. Mendoza.

24 Mr. Mendoza --

25 MS. ARCINIEGA: Your Honor, I apologize for

1 interrupting. I just wanted to bring something to your  
2 attention.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Does it involve  
4 Mr. Mendoza?

5 MS. ARCINIEGA: No, Your Honor. It's just an  
6 initial matter.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Let me phrase it  
8 this way, is it something appropriate? I mean, I can't  
9 really ask you. I mean, just keeping in mind Mr. Mendoza  
10 is here, what is it?

11 MS. ARCINIEGA: The General Counsel and  
12 Respondent's Counsel have reached stipulation on many of  
13 the General Counsel's exhibits that have been identified in  
14 the exhibit binder. And I just wanted to bring that to  
15 your attention before we started with the witness.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. And I  
17 think when we have a natural break, perhaps when the  
18 General Counsel finishes its direct exam of this witness,  
19 at that point we may go through any additional stipulations  
20 of the exhibits from there. Okay.

21 MS. ARCINIEGA: Thank you.

22 ADMINISTRATIVE LAW JUDGE SOBLE: Mr. Mendoza,  
23 thank you for coming back this morning. I trust that none  
24 of the attorneys spoke to you about this matter over the  
25 weekend? And you understand that you are still under oath?

1 THE WITNESS: Yes.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

3 Ms. Arciniega?

4 CONTINUED DIRECT EXAMINATION

5 BY MS. ARCINIEGA:

6 Q. Good morning, Mr. Mendoza.

7 A. Good morning.

8 Q. When you were here last week, you said that Rene  
9 called you on Wednesday to pick up the checks. Did he say  
10 that they were ready that same day?

11 A. No.

12 Q. What day did he say the checks would be ready?

13 A. Friday.

14 Q. And when he called you on that Wednesday to tell  
15 you about the checks on Friday did you think it was likely  
16 he was going to call you after that to return you and your  
17 crew to work?

18 MR. ROY: Objection; speculation.

19 ADMINISTRATIVE LAW JUDGE SOBLE: The objection is  
20 overruled.

21 You can answer the question.

22 MR. ROY: Leading.

23 ADMINISTRATIVE LAW JUDGE SOBLE: That objection  
24 is also overruled.

25 The witness can still answer the question.



1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Why?

3 THE WITNESS: He just told me that the checks  
4 were going to be there on Friday. And I didn't receive a  
5 call from him again.

6 MR. ROY: Objection, Your Honor; nonresponsive.

7 ADMINISTRATIVE LAW JUDGE SOBLE: I'm not going to  
8 strike the testimony but I agree that the answer was not  
9 particularly responsive. And I will leave it to Counsel  
10 during direct and cross-examination to further address that  
11 as they see appropriate.

12 You can ask your next question, Ms. Arciniega.

13 BY MS. ARCINIEGA:

14 Q. And what day did you pick up the checks from  
15 Rene?

16 A. Friday, midday.

17 Q. Okay. And you said before that you personally  
18 received two checks. Were those two checks in -- together  
19 in one envelope?

20 MR. ROY: Objection; leading, Your Honor.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

22 BY MS. ARCINIEGA:

23 Q. You said that you received two checks?

24 A. It was two checks that were mine. And aside from  
25 that, the other people's checks.

1 ADMINISTRATIVE LAW JUDGE SOBLE: And how many  
2 different --

3 MS. ARCINIEGA: I'm sorry, Your Honor.

4 ADMINISTRATIVE LAW JUDGE SOBLE: -- envelopes  
5 were your checks in?

6 MS. ARCINIEGA: I understand. I wanted to say  
7 that I don't know if that was a correct translation because  
8 I heard that he said in Spanish that there were two checks  
9 for each of the workers but that wasn't translated.

10 MR. ROY: Your Honor, that -- I object to that  
11 characterization. That was not a proper interpretation.

12 ADMINISTRATIVE LAW JUDGE SOBLE: I'm not sure if  
13 Mr. Roy is objecting to the interpretation by the  
14 Interpreter or the interpretation by the Assistant General  
15 Counsel.

16 MR. ROY: Assistant General Counsel --

17 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

18 MR. ROY: -- Your Honor.

19 ADMINISTRATIVE LAW JUDGE SOBLE: What I'd ask for  
20 both of you -- more -- this more applies in this instance  
21 to the Assistant General Counsel, is when you have an  
22 objection to the interpretation to wait before saying what  
23 it is until I indicate that I want to hear that , so I can  
24 decide whether or not I want to discuss that outside of the  
25 presence of the witness.

1           In this instance, Ms. Lucas, having heard the  
2 Assistant General Counsel's comment, does your translation  
3 stand, A, or B, would you actually need to hear again what  
4 the witness says?

5           THE INTERPRETER: My translation stands, Your  
6 Honor.

7           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm going  
8 to overrule the objection. I think the Assistant General  
9 Counsel can ask further questions if there's any  
10 uncertainty on the topic. I'll start by, again,  
11 interjecting one question.

12           Mr. Mendoza, how many different envelopes were  
13 the checks that were made payable to you personally within?

14           THE INTERPRETER: Your Honor, I -- can you please  
15 restate that question?

16           ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

17           Mr. Mendoza, how many different envelopes were  
18 the checks made out to you personally inside of?

19           THE WITNESS: It wasn't without -- it wasn't in  
20 an envelope.

21           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Do you  
22 recall who, if anyone, handed you the checks on the last  
23 day that you received a check from Cinagro?

24           THE WITNESS: Rene.

25           ADMINISTRATIVE LAW JUDGE SOBLE: And the time

1 that Rene handed you the check that last time, what was his  
2 demeanor, if you recall?

3 THE WITNESS: He was very short with his words,  
4 as if he wanted to end the conversation quickly, so that  
5 everybody could go their way.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. When you  
7 received that last check from Mr. Macias did you -- do you  
8 recall that you said anything to him?

9 THE WITNESS: No, I did not tell him anything.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

11 Ms. Arciniega?

12 MS. ARCINIEGA: Thank you.

13 BY MS. ARCINIEGA:

14 Q. Do you know how many checks Rene gave you for  
15 each of the workers in your crew on that Friday?

16 A. I don't remember.

17 Q. On that day, on Friday when you received the  
18 checks did you think that Rene would call you and your crew  
19 back to work after that day?

20 MR. ROY: Objection; calls for speculation, and  
21 leading.

22 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled as to  
23 leading. To some extent it does call for speculation. And  
24 I thought it was quite similar, if not identical, to the  
25 question that was asked before. And I previously allowed

1 that question with the idea that the next question would  
2 explain the foundation of how the witness might know that  
3 or not.

4 I mean, I'm going to allow it.

5 Do you recall the question, Mr. Mendoza?

6 THE WITNESS: Yes. No. I expected a call but he  
7 never made it.

8 BY MS. ARCINIEGA:

9 Q. And when you worked at Cinagro were there any  
10 days that you and your crew didn't work because there  
11 wasn't work for more than one day?

12 MR. ROY: Objection.

13 ADMINISTRATIVE LAW JUDGE SOBLE: I heard  
14 objection but I didn't hear the basis for it.

15 MR. ROY: Vagueness. Vagueness, Your Honor.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

17 BY MS. ARCINIEGA:

18 Q. You testified that you worked Monday through  
19 Saturday while you worked at Cinagro.

20 Were there any weeks when you didn't work Monday  
21 through Saturday?

22 A. Most of the time we worked Monday through  
23 Saturday.

24 ADMINISTRATIVE LAW JUDGE SOBLE: If there was a  
25 day when work was skipped, was it always due to the rain or

1 were there other reasons?

2 THE WITNESS: No. It would have been because of  
3 the rain.

4 BY MS. ARCINIEGA:

5 Q. And on the days that you missed because of the  
6 rain, when would Rene tell you the next day that you would  
7 return to work?

8 MR. ROY: Objection; vague, Your Honor.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled,  
10 although I think that it may be a difficult question for  
11 the witness to answer without going through each day that  
12 rained individual, but I'll allow the question.

13 THE WITNESS: He would let us know that same day  
14 we were going to work tomorrow.

15 MS. ARCINIEGA: Okay.

16 BY MS. ARCINIEGA:

17 Q. And from the last day you worked at Cinagro until  
18 you came to testify at this hearing last week did Rene  
19 contact you about testifying at this hearing for Cinagro?

20 A. No.

21 Q. Did anybody, apart from the General Counsel's  
22 office, contact you about testifying at the hearing for  
23 Cinagro?

24 A. No.

25 Q. Okay. Now I'd like to talk about a -- well, I'll

1 just -- sorry. Strike that.

2 Did Maria Santiago work in your crew while you  
3 were at Cinagro?

4 THE INTERPRETER: While you what, Counsel?

5 BY MS. ARCINIEGA:

6 Q. Did Maria Santiago work in your crew at Cinagro?

7 A. Yes.

8 Q. And were you aware that she cut her finger while  
9 working?

10 A. Yes.

11 Q. What happened?

12 MR. ROY: Objection, Your Honor. It's vague.  
13 Relevance.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled as to  
15 vague. Overruled as to relevance.

16 Mr. Mendoza, you can answer.

17 THE WITNESS: When she was cut, I reported the  
18 accident to Rene. He came and he spoke to her. He was in  
19 charge of speaking to her. I did not hear the conversation  
20 between them.

21 BY MS. ARCINIEGA:

22 Q. After the conversation that Rene had with Maria  
23 Santiago did he give you any instructions?

24 A. No, he didn't tell me anything else.

25 Q. And did Maria Santiago continue working that day?

1           A.    No.  I don't know what the conversation was  
2 between them but she went to her house.

3           Q.    And did she return to work the following day?

4           MR. ROY:  Objection, Your Honor; calls for  
5 speculation.  We don't even know what day this happened  
6 originally.

7           ADMINISTRATIVE LAW JUDGE SOBLE:  Overruled.

8           You can answer.  But Mr. Mendoza, only answer the  
9 question if it's something that you saw with your own eyes.  
10 Don't guess.

11          THE WITNESS:  That's fine.

12          ADMINISTRATIVE LAW JUDGE SOBLE:  But Mr. Mendoza,  
13 did your crew work the day after Ms. Santiago cut her  
14 finger?

15          THE WITNESS:  Yes.

16          ADMINISTRATIVE LAW JUDGE SOBLE:  And on the day  
17 after Ms. Santiago cut her finger did she show up with the  
18 rest of your crew?

19          THE WITNESS:  Yes.

20          ADMINISTRATIVE LAW JUDGE SOBLE:  Do you recall  
21 approximately how many weeks that occurred before the last  
22 day that your crew worked at Cinagro?

23          THE WITNESS:  I don't remember.

24          ADMINISTRATIVE LAW JUDGE SOBLE:  Thank you.

25          Ms. Arciniega, back to you.



1 BY MS. ARCINIEGA:

2 Q. Mr. Mendoza, when you gave the last checks to the  
3 workers in your crew, how many checks did you give to each  
4 worker?

5 A. It was two to each one.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Was it typically  
7 every Friday for you to give two checks to each worker?

8 THE WITNESS: No. Only one.

9 MS. ARCINIEGA: One minute, Your Honor. I just  
10 want to review my notes. Those are all the questions I  
11 have, Your Honor.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Before we  
13 begin with any cross-examination of this witness, we're  
14 going to do two things.

15 First, it's my understanding that there are some  
16 additional stipulations that have been reached between the  
17 parties. It sounds like those would be things that would  
18 be fine to address while the witness is still in the  
19 hearing room.

20 Ms. Arciniega, why don't we start with you. What  
21 is your understanding as to the remainder of the exhibits?

22 MS. ARCINIEGA: My understanding, Your Honor, is  
23 that Respondent's Counsel has agreed to the -- he  
24 previously agreed to the authenticity of the General  
25 Counsel's Exhibits 6, 7, 8 and 9. And he communicated to

1 our office over the weekend and he agreed to the  
2 admissibility of those stipulated, to the admissibility of  
3 those, General Counsel's exhibits.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Mr. Roy, I  
5 understand the Assistant General Counsel as to say that you  
6 are stipulating to admit Exhibits 6, 7, 8 and 9; is that  
7 correct?

8 MR. ROY: (Indiscernible.) Your Honor, I can't  
9 hear. There's a lot of background noise.

10 ADMINISTRATIVE LAW JUDGE SOBLE: I did hear. It  
11 sounded like someone was unwrapping their holiday presents  
12 from here.

13 MR. ROY: If --

14 ADMINISTRATIVE LAW JUDGE SOBLE: So my  
15 understanding from the Assistant General Counsel that your  
16 client has stipulated to admit Exhibits 6, 7, 8 and 9; is  
17 that correct?

18 MR. ROY: Before I answer that question, I just  
19 want to verify with the Assistant General Counsel.

20 Exhibit 6 has already been stipulated into  
21 evidence; is that correct? It starts with CFI000071; is  
22 that correct, Jessica?

23 MS. ARCINIEGA: Rob, what I understand is that,  
24 no, that you had stipulated to the authenticity. You may  
25 be referring to --

1 MR. ROY: This is the payroll record for the week  
2 of 03/16/17 for Cesar Miranda's crew.

3 MS. ARCINIEGA: Right.

4 MR. ROY: That's already in evidence; right?

5 MS. ARCINIEGA: No.

6 MR. ROY: That's already in evidence? All right.

7 And then the next one that I proposed was for the  
8 same crew on 03/13, followed by 03/20/17, and the final  
9 payroll period of 03/27/17. Are these the four documents  
10 we're agreeing to?

11 MS. ARCINIEGA: Well, those are the four  
12 documents that General Counsel put in her exhibits. And I  
13 understand from Staff's review of what you proposed, what  
14 you sent, the attachments, that those documents are the  
15 same -- your documents are the same ones that are in  
16 General Counsel's Exhibit 6 through 9.

17 MR. ROY: Okay. And we're not including.

18 MS. ARCINIEGA: Excuse me. Excuse me. I'm  
19 sorry. I just want to be very clear. With the exception  
20 of one of the weeks where you didn't include one page that  
21 is included in General Counsel's -- it's the email I sent  
22 you.

23 MR. ROY: I understand that. I understand that.  
24 So we're not agreeing to your GC Exhibit 10; is that  
25 correct?

1 MS. ARCINIEGA: Well, I'm agreeing to it.

2 MR. ROY: I'm not agreeing to admissibility on  
3 that. 6, 7, 8 and 9, I'm willing to admit those and  
4 stipulate to their admission.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

6 MS. ARCINIEGA: Great.

7 ADMINISTRATIVE LAW JUDGE SOBLE: So it's my  
8 understanding as follows, that I am -- have before me a  
9 stipulation to admit Exhibits 6 through 9. They are  
10 offered on 03/01/2021. And I am admitting on 03/01/2021.

11 (General Counsel Exhibits GC-00006 through GC-00009  
12 are admitted.)

13 ADMINISTRATIVE LAW JUDGE SOBLE: It is now my  
14 understanding that Exhibits, from the General Counsel, 1,  
15 4, 5 -- no, 1, 4, 6, 7, 8 and 9 have been admitted, so only  
16 2, 3, 5, and 10 have not yet been admitted.

17 MS. ARCINIEGA: Your Honor, may I?

18 ADMINISTRATIVE LAW JUDGE SOBLE: You can. Let me  
19 finish.

20 MS. ARCINIEGA: Oh. Um-hmm.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Number 5 was  
22 also stipulated to at the beginning of the hearing, so that  
23 leaves 2, 3 and 10 left and, as well, also leaves the  
24 Respondent's exhibit left as the ones that have not yet  
25 been admitted.

1           Ms. Arciniega, do you agree that we have not yet  
2 admitted 2, 3 and 10?

3           MS. ARCINIEGA: I don't, Your Honor. 2 was  
4 admitted with Mr. Mendoza on Friday --

5           ADMINISTRATIVE LAW JUDGE SOBLE: Well, let me  
6 take a look.

7           MS. ARCINIEGA: -- from what I recall, at 3:41, I  
8 believe.

9           ADMINISTRATIVE LAW JUDGE SOBLE: I don't show  
10 that right now in my notes.

11           Mr. Roy, do you recall that Exhibit 2 was  
12 admitted on Friday afternoon?

13           MR. ROY: Yes, Your Honor.

14           ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

15           MR. ROY: I still have some confusion here. I am  
16 willing to stipulate to entry into the record the payroll  
17 weeks for Cesar Miranda's crew, the other crew, for the  
18 weeks of 03/06, the weeks of 03/13, the weeks of 03/20, and  
19 the last is 03/27. Those are the only ones I'm willing to  
20 agree to submission. I am not agreeing to Cinagro's  
21 payroll records from that crew of the week of 04/03, nor  
22 05/01/17. And if it's not acceptable, then I'll get those

23           ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

24           MR. ROY: -- (indiscernible).

25           ADMINISTRATIVE LAW JUDGE SOBLE: Well, just to

1 avoid any confusion, thus far nobody has offered the  
2 records for May 1st. So my understanding is all exhibits  
3 have been stipulated to except -- or admitted, one way or  
4 the other, except for the following three, General Counsel  
5 Exhibit 3 which is Bates Number CP-00005, General Counsel  
6 Exhibit Number 10 which is the payroll for the week of  
7 April 3rd, and the Respondent's exhibit, and those three  
8 still are outstanding, and that the others have all been  
9 admitted thus far.

10 So again, Mr. Roy, nobody has offered one for the  
11 week of May 1st, so it hasn't come up yet. It may come up  
12 later but not yet.

13 MR. ROY: And also, is that the same -- is that  
14 true for the week of 04/03?

15 ADMINISTRATIVE LAW JUDGE SOBLE: No. For the  
16 week of 04/03, that is one of the General Counsel's  
17 exhibits but it hasn't been admitted yet, and so it hasn't  
18 come before me to rule on it yet.

19 MR. ROY: Okay. I'm not stipulating to admission  
20 on that document.

21 ADMINISTRATIVE LAW JUDGE SOBLE: That's  
22 understood. That's why it's on the list of three that I  
23 haven't admitted yet.

24 MR. ROY: Okay. So with those clarifications,  
25 we'll agree to submit to these Cinagro payroll documents

1 into the record.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well,  
3 again, my understanding is that Exhibit 2 was admitted on  
4 02/26. And Exhibits 6, 7, 8 and 9 are admitted today. I  
5 have -- I don't have the dates in front of me right now.  
6 But I saw when I flipped through my notes that 1 and 4 have  
7 been admitted. I might as well flip through right now and  
8 see. I believe that GC-00001 was admitted on the 24th, the  
9 second day of hearing. And GC-00004 was also admitted on  
10 the 24th.

11 MR. ROY: Your Honor, I just wanted to clarify  
12 that because I have the GC Exhibit list 1 through 6. And  
13 yet there were other exhibits that were sent to me that go  
14 all the way up to ten, so that was my confusion here. I  
15 just wanted to make sure that we're lined up for the  
16 correct weeks that we will stipulate.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Well, the  
18 General Counsel provided me with their exhibits with a  
19 cover sheet that has Exhibits 1 through 10.

20 MR. ROY: Okay.

21 ADMINISTRATIVE LAW JUDGE SOBLE: If the General  
22 Counsel has not provided that same exhibit list to Mr. Roy,  
23 please, at lunchtime provide him with a duplicate copy of  
24 that exhibit list cover sheet. And, in fact, even if you  
25 think you've provided it to him before, go ahead and

1 provide it again then, just so we have no confusion.

2 MR. ROY: Thank you, Your Honor.

3 ADMINISTRATIVE LAW JUDGE SOBLE: So, and again,  
4 using that list of 1 through 10, Exhibit 1 was admitted on  
5 02/24, 2 on 02/26, 3 has not been admitted, 4 on 02/24, 6  
6 through 9 today, and so that leaves 3, 5 and 10. And  
7 thought that 5 was addressed but I don't remember when.

8 MR. ROY: Your Honor --

9 MS. ARCINIEGA: May I --

10 MR. ROY: -- since you're looking at those  
11 documents, Your Honor --

12 ADMINISTRATIVE LAW JUDGE SOBLE: I'm trying to  
13 find the one that is on the stipulation. 1 and 5, Exhibits  
14 1 and 5 are prehearing stip to admission.

15 MS. ARCINIEGA: Correct.

16 ADMINISTRATIVE LAW JUDGE SOBLE: So I don't know  
17 if I've actually formally ruled that I'm admitting Exhibit  
18 5 prior to now or not. So just to make it clear, pursuant  
19 to that stipulation, if I haven't already admitting it then  
20 I'm admitting it now pursuant to the earlier stipulation of  
21 the parties, and that is the payroll for the week of  
22 February 25th.

23 (General Counsel Exhibit GC-00005 is admitted.)

24 MR. ROY: Okay. Your Honor, just to be clear,  
25 since you have those in front of you, 6 through 9, I



1 understand to be the week of 03/06, 03/13, 03/20 and 03/27;  
2 is that correct, sir?

3 ADMINISTRATIVE LAW JUDGE SOBLE: That is the  
4 first date of each of those weeks.

5 MR. ROY: Yes.

6 ADMINISTRATIVE LAW JUDGE SOBLE: That's correct.

7 MR. ROY: Yes, Your Honor.

8 ADMINISTRATIVE LAW JUDGE SOBLE: What we haven't  
9 yet addressed, and at some point Counsel can address it if  
10 it's offered by the General Counsel, is the week of April  
11 3rd. And there's also an exhibit that involves a specific  
12 check to a specific worker, and I'm not going to mention  
13 who it is while we have the other witness present.

14 So with that in mind, Mr. Petty, did you have a  
15 different method of playing back testimony that you wanted  
16 to test right now before Mr. Roy begins his cross-  
17 examination, or should we, again, defer that for now and  
18 proceed with the exam.

19 COURT REPORTER: (Off mike.)

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Hello?

21 MR. ROY: Yes. Are you ready, Your Honor?

22 ADMINISTRATIVE LAW JUDGE SOBLE: I'm trying to --  
23 okay. I lost everybody for a split second because my  
24 binder hit my keyboard. But fortunately, it just closed  
25 the screen, not the WebEx.

1           So does the General Counsel have any statements  
2 of any sort reporting prior statements or interviews with  
3 Mr. Mendoza?

4           MS. ARCINIEGA: No, Your Honor.

5           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Mr. Roy,  
6 do you have some questions for this witness?

7           MR. ROY: Yes, Your Honor. Thank you.

8           ADMINISTRATIVE LAW JUDGE SOBLE: Please proceed.

9                           CROSS-EXAMINATION

10          BY MR. ROY:

11           Q. Mr. Mendoza, I'm the attorney for Cinagro Farms  
12 and I'm going to have quite a few questions for you this  
13 morning based upon your testimony of Friday and this  
14 morning; is that understood?

15           A. Yes.

16           Q. And I want you to be very accurate with regard to  
17 your testimony and not to guess or to speculate. I would  
18 ask that you only testify to those things you have seen or  
19 heard; is that understood?

20           A. Yes.

21           Q. Okay. Did you file the unfair labor practice  
22 charge that started this case?

23           A. Can you repeat the question?

24           Q. Did you file the unfair labor practice charge  
25 which initiated this case?

1 A. No.

2 Q. Have you spoken to anyone from today back to the  
3 last 30 days from the ALRB about this case?

4 A. No.

5 Q. Let me ask you this question, have you ever  
6 spoken to anyone from the ALRB about this case or your  
7 testimony?

8 A. What is RB?

9 Q. The ALRB, sir, is the agency that is conducting  
10 this hearing.

11 Have you ever been subjected to an interview with  
12 representatives of the ALRB?

13 A. Before the hearing?

14 Q. Yes.

15 A. Yes.

16 Q. When did that occur?

17 A. Last month.

18 Q. Okay. And did -- prior to that date, at any time  
19 during the last three-and-a-half years or so, did anyone  
20 from the ALRB speak to you about your testimony in this  
21 case?

22 A. No.

23 Q. That's because you weren't part of this case;  
24 isn't that correct?

25 A. No, I don't understand the question.

1 Q. You're not one of the people who initiated this  
2 charging; is that correct?

3 A. The ones that started it? No.

4 Q. When you spoke with the ALRB about a month ago,  
5 was that to obtain information where you worked after  
6 Cinagro, including paychecks?

7 MS. ARCINIEGA: Objection, Your Honor; relevance.

8 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

9 You can answer.

10 THE WITNESS: Yes.

11 BY MR. ROY:

12 Q. Did anyone from the ALRB ever speak to you about  
13 the issues that you spoke about Friday and today?

14 A. Can you repeat the question?

15 Q. Did anyone from the ALRB speak to you about the  
16 content of your testimony Friday and today on a prior  
17 occasion?

18 MS. ARCINIEGA: Objection; asked and answered.

19 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled as to  
20 asked and answered but sustained as to vague.

21 When you were asking about the content of his  
22 testimony, it's confusing as to whether it's the content of  
23 his actual testimony, which would have been afterward, or  
24 the general subject matter of it, so you can rephrase the  
25 question as you see fit.

1 MR. ROY: All right.

2 BY MR. ROY:

3 Q. Mr. Mendoza, you just testified that you spoke to  
4 someone from the ALRB about a month ago and that they asked  
5 for your work after Cinagro and paychecks; is that correct?

6 A. Yes.

7 Q. And at that time did they discuss anything else?

8 A. No.

9 Q. Do you know the name of that person who spoke  
10 with you? Was it Gabriella?

11 A. Yes.

12 Q. Mr. Mendoza, let's go back so we get a clearer  
13 picture of your employment starting in July of 2016.

14 Do you remember testifying that you worked for  
15 Cinagro Farms in July 2016 through Mike's Farm Labor?

16 A. Yes.

17 Q. And how long did you work with Mike's Farm Labor  
18 in 2016?

19 A. Only in 2016?

20 Q. Yes.

21 A. Since the beginning of the year.

22 Q. So your testimony is that you working for Mike's  
23 Farm Labor back in January of 2016; is that what you're  
24 saying?

25 A. Yes.

1 Q. And then in July 2016, Mike's Farm Labor began  
2 work for Cinagro; correct?

3 A. Yes.

4 Q. And you were the foreman for that crew; correct?

5 A. Yes.

6 Q. At any time after you started at Cinagro with  
7 Mike's Farm Labor did you go to work for Art's Labor  
8 Service?

9 A. Yes.

10 Q. And was that on or about the 8th day of November  
11 2016?

12 A. I don't remember it well.

13 Q. Do you estimate that it was in -- sometime in  
14 November of 2016?

15 A. Yes.

16 Q. And when you went to work for Art's Labor  
17 Service, you brought over the crew that you supervised from  
18 Mike's Farm Labor; is that right?

19 A. Yes.

20 Q. And isn't it true that Art's Labor Service was  
21 working for Cinagro at that time for only about a week to  
22 ten days; correct?

23 A. Can you repeat that question?

24 Q. Did your employment with Art's Labor Service,  
25 including your crew, stop after about eight to ten days in

1 November 2016?

2 A. Yes.

3 Q. Do you know why your employment was switched from  
4 Mike's Farm Labor to Art's Labor Service, if you know?

5 A. No, I don't know.

6 Q. And after you and your crew stopped working for  
7 Art's Labor Service, that is when you were hired directly  
8 by Rene at Cinagro Farms; is that correct?

9 A. Yes.

10 Q. Okay. And you were asked if you were paid the  
11 first week working for Cinagro and you said you received a  
12 personal check; is that your testimony?

13 A. Yes.

14 Q. And when you referred to a personal check, is  
15 that one that's filled out in handwriting and signed by  
16 somebody?

17 MS. ARCINIEGA: Objection; vague.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

19 The witness can answer.

20 THE WITNESS: Yes.

21 BY MR. ROY:

22 Q. And did that check on the top left-hand corner,  
23 did it have the name Cinagro Farms, Inc. and the address  
24 and the telephone number; isn't that true?

25 MS. ARCINIEGA: Objection; vague.

1 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

2 THE WITNESS: I don't remember that.

3 BY MR. ROY:

4 Q. You received payroll checks from November 2016,  
5 January, February and March, and you don't remember if they  
6 had the name of the company, the address, and the telephone  
7 number on them?

8 MS. ARCINIEGA: Objection; argumentative. This  
9 is why I said vague before.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. It's  
11 cross-examination. I'll allow the question.

12 You can answer if you recall, Mr. Mendoza.

13 THE WITNESS: I don't remember.

14 BY MR. ROY:

15 Q. And so when we're referring to a quote, "personal  
16 check," we're referring to one where the amount that was  
17 paid is in handwriting as opposed to being type written; is  
18 that right?

19 A. Yes.

20 Q. Thank you. Now you also testified that when you  
21 worked for Art's Labor, that you would get paid \$1.00 [sic]  
22 for bringing water. Was that every day or once a week?

23 MS. ARCINIEGA: Objection; misstates prior  
24 testimony.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.



1 BY MR. ROY:

2 Q. When you worked for Art's Labor, did they  
3 compensate you for bringing water; yes or no?

4 A. Yes.

5 Q. And that was one hour of pay; correct?

6 A. Yes.

7 Q. And was that for every day you brought water of  
8 just once a week?

9 A. You mean bringing the water or the payment?

10 Q. Yes, the water.

11 A. It was daily I had to bring the clean water.

12 Q. And you got paid one hour of pay each day that  
13 you did that in your payroll check; correct?

14 A. Yes.

15 Q. And isn't it true when you went from Art's Labor  
16 with your crew to Cinagro Farms that Cinagro Farms also  
17 continued to pay you \$1.00 -- one hour of pay each day for  
18 bringing water; correct?

19 A. They didn't give me anything.

20 Q. Your testimony is that you were not compensated b  
21 Cinagro Farms for bringing water to your crew each day; is  
22 that your testimony?

23 MS. ARCINIEGA: Objection; misstates prior  
24 testimony.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

1 THE WITNESS: No, they did not compensate me  
2 anything.

3 BY MR. ROY:

4 Q. So you paid for it yourself every single day; is  
5 that right?

6 A. Yes.

7 Q. And did you provide water to the crew every day?

8 A. Yes.

9 Q. And was this water in some yellow plastic jugs in  
10 your truck?

11 A. Yes.

12 Q. And you also provided drinking cups; correct?

13 A. Yes. Yes.

14 Q. You testified that Rene brought some water but  
15 the workers didn't like the taste; do you recall saying  
16 that?

17 A. Yes, that's true.

18 Q. And when did that happen?

19 A. I don't remember the exact date.

20 Q. Well, how about the month? Was it in December  
21 when you started at Cinagro or January of 2017; do you  
22 remember?

23 MS. ARCINIEGA: Objection; misstates prior  
24 testimony.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. But

1 it's a compound question.

2 Why don't you break it down?

3 BY MR. ROY:

4 Q. When was the first time that Rene brought water  
5 to your truck?

6 A. I don't remember.

7 Q. Was it in December 2016?

8 A. No, I don't remember it well.

9 Q. Isn't it true he never brought any water to your  
10 truck?

11 A. Can you repeat the question?

12 Q. Isn't it true that Rene did -- never brought any  
13 water to your truck in boxes?

14 A. He brought the gallons of water.

15 Q. So he brought gallons of water but they were not  
16 in boxes, were they?

17 A. No.

18 Q. Maria Santiago testified that she hurt her finger  
19 on the last day of work on Saturday, March 4th, 2017. You  
20 testified today that it was on another day and that the  
21 crew worked the following day; is that your testimony?

22 MS. ARCINIEGA: Objection; misstates prior  
23 testimony.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Are you  
25 objecting that it misstates his prior testimony?

1 MS. ARCINIEGA: No. I'm objecting that it  
2 misstates --

3 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Then I'm  
4 going to overrule the objection.

5 Mr. Mendoza, you can answer the question.

6 THE WITNESS: I don't remember the date.

7 BY MR. ROY:

8 Q. Could she have injured herself on the last day of  
9 work that you would observe as the foreman of the crew?

10 A. No. I don't understand the question.

11 Q. Is it probable that she injured her finger on the  
12 last day of work for the crew; yes or no?

13 A. At the end of the day?

14 Q. Yes, at the end of the day on the final day of  
15 work; is that correct?

16 A. She was cut in the morning.

17 Q. And was that on the last day that the crew  
18 worked; yes or no?

19 A. I don't remember it.

20 Q. Would it be fair to say, based on your testimony  
21 at this hearing -- would you translate that? -- that  
22 whenever crew members had a complaint, you would merely  
23 convey that complaint to Rene Macias; correct?

24 MS. ARCINIEGA: Objection; vague.

25 ADMINISTRATIVE LAW JUDGE SOBLE: sustained.

1 BY MR. ROY:

2 Q. Whenever the workers would complain to you, did  
3 you convey their complaint to Rene Macias; yes or no?

4 MS. ARCINIEGA: Objection; vague.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

6 Mr. Mendoza, attorneys sometimes will ask you to  
7 answer a question with yes or no. You can answer it with  
8 yes or no or, if there are other words that you find answer  
9 the question better, you can select those.

10 Here the attorney wants to know if members of the  
11 crew had a complaint, would you tell Mr. Macias what it is  
12 that the worker complained about?

13 THE WITNESS: Yes.

14 BY MR. ROY:

15 Q. Did you ever resolve their complaints?

16 MS. ARCINIEGA: Objection; vague.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

18 You can answer the question if you understand it.

19 THE WITNESS: No, I don't understand.

20 BY MR. ROY:

21 Q. My question, Mr. Mendoza, is whether you resolved  
22 any of the complaints of the workers, such as a lack of  
23 wage statements? Did you ever correct that personally?

24 A. No.

25 Q. So it would be fair to say that you left any

1 resolution of this to Rene; isn't that right?

2 A. Yes.

3 Q. And isn't it true that Rene never resolved any of  
4 these complaints?

5 A. Can you repeat the question?

6 Q. Isn't it true that Rene never resolved any of the  
7 workers complaints?

8 A. That's right.

9 Q. And your testimony on Friday indicated that in  
10 January, and for two or three weeks, the workers complained  
11 about a lack of a wage statement; is -- do you recall that?

12 A. Yes.

13 Q. Why did those complaints stop for the next month  
14 or so?

15 A. Because we were waiting for Rene's answer.

16 Q. Did the company ever provide workers with a  
17 letter to prove to a school that that person was working  
18 for Cinagro?

19 MS. ARCINIEGA: Objection; calls for speculation.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

21 You can answer the question if it's something  
22 that you saw, or you can indicate if someone told you it,  
23 but don't guess.

24

25

1 THE WITNESS: The answer is no.

2 BY MR. ROY:

3 Q. Would it be fair to say that after the company  
4 failed to get back to the crew members on their complaints  
5 that the workers were frustrated?

6 A. That's right.

7 Q. And during the last two months of employment at  
8 Cinagro, isn't it true that it rained a number of times?

9 A. I don't remember exactly the days that it rained  
10 but it was a few.

11 Q. And on those days when it rained a few times  
12 there would be no work; isn't that right?

13 A. We would show up to work.

14 Q. But there would be no work if the fields were  
15 muddy; is that correct?

16 A. There were days in which we were able to work but  
17 then Rene would stop us from working.

18 Q. Did Rene ever assign your crew to do weeding  
19 work?

20 A. Yes.

21 Q. How many times in January, February, and the  
22 first week of March did you do weeding, if you recall?

23 A. I don't remember.

24 Q. There was another crew working at Cinagro and Mr.  
25 Cesar Miranda was their foreman. Do you know that to be

1 true?

2 A. No, I don't remember it.

3 Q. You don't remember his crew working at the same  
4 ranches as your crew?

5 A. I remember a crew but I don't remember the name  
6 of the foreman.

7 Q. And when did you first see that crew start  
8 working at Cinagro?

9 A. I don't remember the date.

10 Q. Was it in February of 2017?

11 A. No, I don't remember.

12 Q. And you don't remember if it was in January 2017;  
13 correct?

14 A. No, I don't remember.

15 Q. Did you ever speak with anyone in that crew?

16 A. No.

17 Q. Would it be fair to say that that crew worked  
18 separate from your particular crew; yes?

19 A. Yes.

20 Q. Do you remember the last day of your employment  
21 being Saturday, March 4, 2017?

22 A. I don't remember it.

23 Q. Do you remember there being no work on the  
24 following day, on Sunday, which was the usual day off?

25 A. Yes, I remember that.



1 Q. And you didn't work that day; correct?

2 MS. ARCINIEGA: Objection; vague.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

4 It's also not clear to me if the witness's  
5 previous answer was just that he remembered that it was  
6 common not to work on the Sunday or if he was remembering  
7 that he didn't work on a specific Sunday that followed a  
8 particular day. You're free to ask any of those questions  
9 if you want.

10 BY MR. ROY:

11 Q. The week after you -- your crew stopped working  
12 did you stay home that day, on Monday, March 6th, 2017?

13 A. I don't remember it.

14 Q. Did you get a phone call from Marisol that day,  
15 on Monday?

16 A. I remember that I called them to let them know  
17 that there was not going to be work.

18 Q. I understand that. But did you receive a call  
19 from Marisol on Monday, March 6th, 2017; yes or no?

20 MS. ARCINIEGA: Objection; asked and answered.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

22 THE WITNESS: I don't remember.

23 BY MR. ROY:

24 Q. And on Wednesday -- on Tuesday, March 7, 2017,  
25 there was no work being performed at the company at all;

1 isn't that right?

2 MS. ARCINIEGA: Objection; calls for speculation.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

4 The witness can answer the question if he saw  
5 something or heard something but don't guess.

6 THE WITNESS: I remember that nobody worked.

7 MR. ROY: Correct.

8 BY MR. ROY:

9 Q. Would it be fair to say that the next time you  
10 saw your crew members was on Friday when you received the  
11 paycheck from the prior week?

12 MS. ARCINIEGA: Objection; assumes facts not in  
13 evidence.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. It's  
15 cross-examination.

16 You can answer the question.

17 THE WITNESS: I don't remember.

18 BY MR. ROY:

19 Q. You don't remember meeting with your crew members  
20 to give them their checks on Friday, March 10th, 2017?

21 A. I don't remember the date.

22 Q. But it was on the normal pay day; isn't that  
23 right?

24 A. Yes.

25 Q. You said that the -- that you received two

1 paychecks on the day, along with the paychecks for the  
2 crew; is that a correct statement?

3 A. Yes.

4 Q. All right. And since you didn't work at any time  
5 that week following the last day that your crew worked,  
6 what was that second check for?

7 A. That was for some days that they owned us. It  
8 was back pay for some days that they owed us.

9 Q. But isn't it true that they paid you every  
10 workweek, in the week following the work in which work was  
11 performed, on Fridays?

12 A. They would pay us on Friday.

13 Q. Okay. And would those be the complete paychecks  
14 for the prior week?

15 MS. ARCINIEGA: Objection; calls for speculation.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. He  
17 can answer as to what his understanding of what he was  
18 being paid for, and I heard him answer.

19 THE INTERPRETER: Sorry, Counsel -- Your Honor.  
20 I didn't hear what you said.

21 ADMINISTRATIVE LAW JUDGE SOBLE: I said he could  
22 answer as to what his understanding of what he was being  
23 paid for and I heard and answer.

24 MR. ROY: And that was, Your Honor, "yes?"

25 ADMINISTRATIVE LAW JUDGE SOBLE: I was going to

1 let the Interpreter --

2 MR. ROY: Oh.

3 ADMINISTRATIVE LAW JUDGE SOBLE: -- interpret it  
4 but --

5 MR. ROY: I'm sorry. I'm sorry. Thank you.

6 THE INTERPRETER: (Speaking Spanish.)

7 THE WITNESS: Yes.

8 BY MR. ROY:

9 Q. Please describe to me what days that second check  
10 was attributed to?

11 MS. ARCINIEGA: Objection; calls for speculation.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

13 The witness can answer based on his  
14 understanding.

15 THE WITNESS: Can you repeat the question?

16 MR. ROY: Yes.

17 BY MR. ROY:

18 Q. Can you tell me what days that check was  
19 attributed to?

20 A. It was of hours that they owed us from previous  
21 weeks.

22 Q. But I thought you said you were paid the  
23 following week or the weeks in which you worked.

24 Are you now claiming that you did not get enough  
25 hours paid?

1           A.    There was one week where they didn't pay us for  
2 the complete hours.

3           Q.    And what payroll week did that pertain to?

4           A.    I don't remember that.

5           Q.    Was it the last week they worked?

6           A.    No.

7           Q.    How about the prior week? Did that happen on the  
8 prior week?

9           MS. ARCINIEGA:  Objection; vague.

10          ADMINISTRATIVE LAW JUDGE SOBLE:  Overruled.

11          The witness can answer if he knows.

12          THE WITNESS:  Yes.

13 BY MR. ROY:

14          Q.    So you're saying it happened in the second  
15 week -- in two weeks prior to your last day that the crew  
16 worked; is that right?

17          A.    One week.

18          Q.    One week.  Okay.  One week from there to the week  
19 that you ended your employment; correct?

20          A.    Yes.

21          Q.    Okay.  On the payday, you said that you went to  
22 get the paychecks.  Where did you go?

23          A.    To the ranch.

24          Q.    Which ranch?

25          A.    Moorpark.

1 Q. Okay. Did you see any other crews working that  
2 day?

3 A. At that ranch? No.

4 Q. And where did you retrieve the checks?

5 THE INTERPRETER: I'm sorry, Counsel. Can you  
6 repeat the question?

7 BY MR. ROY:

8 Q. Where did you retrieve the checks?

9 A. There in the field.

10 Q. Did Rene call you to ask you to come to the field  
11 to get the checks?

12 A. He had let me know that we would see each other  
13 in Moorpark.

14 Q. Okay. So you went to Moorpark to meet Rene to  
15 pass out the paychecks, the final paychecks; is that right?

16 MS. ARCINIEGA: Objection; misstates prior  
17 testimony.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

19 The witness can answer the question.

20 THE WITNESS: Yes.

21 BY MR. ROY:

22 Q. And did all the crew members meet with you that  
23 day to get their checks?

24 A. No. It was at another place.

25 Q. Okay. So you did not distribute the checks on

1 that payday to the crew members; isn't that right?

2 A. It was that same day but at a different time.

3 Q. And was that later in the day?

4 A. Yes.

5 Q. And that's after you met with Rene to get the  
6 checks; correct?

7 A. Yes.

8 Q. Where did you meet the employees to give them  
9 their final checks?

10 A. It was at a park in Oxnard.

11 Q. And tell me who was present to get their checks?

12 A. Each one of them showed up to get their check.

13 Q. And you're absolutely sure of that?

14 A. Yes.

15 Q. And if I told you that Marisol and Hector were  
16 working at a blueberry ranch, would that change your  
17 testimony?

18 A. I don't remember.

19 Q. Did they tell you that they were working at an  
20 adjacent blueberry ranch called Silent Springs? And I'm  
21 talking about Marisol and Hector.

22 ADMINISTRATIVE LAW JUDGE SOBLE: I'm going to  
23 object to that as being vague. Are you asking him --

24 MS. ARCINIEGA: It is.

25 ADMINISTRATIVE LAW JUDGE SOBLE: -- if they told

1 him that on that day or if they ever told him that? You  
2 can ask either question. I just want to know which.

3 MR. ROY: Yeah.

4 ADMINISTRATIVE LAW JUDGE SOBLE: You can ask both  
5 of them.

6 MR. ROY: Yeah.

7 BY MR. ROY:

8 Q. Did you see Marisol and Hector on that day you  
9 gave the checks in Oxnard; yes or no?

10 A. Yes.

11 Q. And it's your testimony that they were present to  
12 get their checks? They were not working elsewhere?

13 MS. ARCINIEGA: Objection; calls for speculation,  
14 and it's vague. It's compound as well.

15 ADMINISTRATIVE LAW JUDGE SOBLE: I'm going to  
16 overrule the objection, only because I construed the  
17 question as asking at the time they picked up the checks  
18 from him, they weren't working somewhere else, which is  
19 sort of self-evident if you assume that as part of the  
20 question.

21 So you may want to rephrase your question, Mr.  
22 Roy, if you're asking something different than that.

23 BY MR. ROY:

24 Q. At any time prior to the day you gave the payroll  
25 checks to the crew did any of the crew members tell you



1 they were working elsewhere?

2 A. No, no one.

3 Q. So would it be fair to say that when you gave  
4 them their checks in Oxnard, you were not aware of what  
5 the -- whether the employees were working elsewhere; is  
6 that correct?

7 A. Exactly.

8 Q. And when you met with them, you told them that  
9 Rene said that there wasn't enough work and that he would  
10 let them know; is that correct?

11 A. Yes.

12 Q. And did you also testify that the crew members  
13 assumed that they would not get called back and that they  
14 should work -- look for work elsewhere?

15 MS. ARCINIEGA: Objection; misstates prior  
16 testimony.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. By  
18 allowing the question as part of cross-examination, I'm not  
19 indicating that the witness actually said that but, rather,  
20 that Counsel was asking the witness if he said that.

21 You can answer.

22 THE WITNESS: Can you repeat the question?

23 BY MR. ROY:

24 Q. Do you recall testifying that when you gave the  
25 checks to the crew members that the crew members assumed

1 that they would not be called back to work and they should  
2 look for work elsewhere?

3 MS. ARCINIEGA: Objection; calls for speculation.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

5 He can answer.

6 THE WITNESS: That's right.

7 MR. ROY: Thank you.

8 BY MR. ROY:

9 Q. You testified this morning that when you got the  
10 checks from Rene on the payday that his demeanor was very  
11 short and he acted as if he wanted to leave or to go  
12 elsewhere. Is that a fair statement of your testimony?

13 A. Yes.

14 Q. And isn't it true that Rene did not tell you you  
15 were terminated?

16 A. Those were not his words.

17 Q. So he did not tell you that your employment was  
18 terminated; correct?

19 A. His exact words were that there was no more work  
20 until further notice.

21 Q. And I wish to clarify that at the time he said  
22 that he did not say you were discharged from the company;  
23 correct?

24 A. That's right.

25 Q. Do you know if Maria Santiago, who cut her

1 finger, do you remember if she was paid for her lost work  
2 time?

3 A. I don't know.

4 Q. After that day, you did not call Rene again;  
5 correct?

6 MS. ARCINIEGA: Objection; vague.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

8 It's unclear if you're talking about the day that  
9 Ms. Santiago cut her finger or the day that he last  
10 received paychecks from Mr. Macias.

11 MR. ROY: I'll clarify.

12 BY MR. ROY:

13 Q. After the week you collected the paychecks from  
14 Rene, you did not have any further conversations with him;  
15 correct?

16 A. Yeah, I did not.

17 Q. And you did not call him after that date;  
18 correct?

19 Where did you go to work?

20 A. With him? No.

21 Q. Oh, I'm sorry.

22 Where did you go to work next?

23 ADMINISTRATIVE LAW JUDGE SOBLE: Just a moment.

24 I didn't hear the Interpreter's last translation of the  
25 witness's last answer.

1 THE INTERPRETER: "To him, I did not." He did  
2 not call him.

3 BY MR. ROY:

4 Q. After the day that you collected the checks with  
5 Rene, did you seek employment elsewhere?

6 MS. ARCINIEGA: Objection; relevance.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

8 THE WITNESS: That's right.

9 BY MR. ROY:

10 Q. And do you know when that started?

11 MS. ARCINIEGA: Objection; vague.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

13 THE WITNESS: I don't remember.

14 BY MR. ROY:

15 Q. Was it the week after you spoke with Rene when  
16 you collected the checks?

17 A. It was some time before I found work. I didn't  
18 find work around those days.

19 Q. Did you go to work for Art's Labor Service?

20 A. Right after that? No.

21 Q. How soon after the last day you worked did you go  
22 to work for Art's Labor Service?

23 A. No, I don't remember.

24 Q. Do you remember the month?

25 A. No.

1 Q. And did you also work as a crew foreman?

2 MS. ARCINIEGA: Objection; vague and relevance.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained as to  
4 vague.

5 After the last day that you worked at Cinagro did  
6 you ever work again for the Art's Labor Service, if you  
7 recall?

8 THE WITNESS: No, I did not.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. After the  
10 last day that you worked for Cinagro did you find a new job  
11 within one week?

12 THE WITNESS: No. It was a few weeks before I  
13 found work.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Mr. Roy?  
15 BY MR. ROY:

16 Q. Did you ever have occasion after the day you  
17 collected the paychecks, other than in Oxnard that day, did  
18 you have occasion to speak with your crew members about  
19 where they were working?

20 MS. ARCINIEGA: Objection; relevance.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

22 THE WITNESS: I only gave them their checks and  
23 everybody left.

24 BY MR. ROY:

25 Q. And that's -- and is it correct that that was the

1 last time you spoke to any of them?

2 A. Yes.

3 Q. And isn't it true that you have not spoken to any  
4 of them since the last day that you collected that check up  
5 until this date; correct?

6 A. Yes, that's right.

7 Q. Mr. Mendoza, did you ask the ALRB to be part of  
8 this charge?

9 MS. ARCINIEGA: Objection; relevance, Your Honor.  
10 I'd also like to be heard.

11 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm going  
12 to go ahead and hear that objection. And what we're going  
13 to do is as follows, because we're pretty much at our lunch  
14 breaking point anyhow, I'm going to have Ms. Vega let the  
15 witness out of the conference room and instruct him to come  
16 back at 1:05. And then, once he's out of the room, we can  
17 discuss the objection.

18 I'm assuming, Mr. Roy, you have more than one or  
19 two more questions for this witness; correct?

20 MR. ROY: Yes.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

22 So, Ms. Vega, you can go ahead and let the  
23 witness out of the witness room. I'll hear the General  
24 Counsel's objection once Mr. Mendoza is here.

25 Mr. Mendoza, please return at 1:05 p.m. Please

1 do not discuss with either the attorneys or anybody else  
2 anything that you've heard at the hearing during the lunch  
3 break. Thank you for coming back at 1:05.

4 THE WITNESS: Yeah, that's fine.

5 (Witness exits the hearing room.)

6 ADMINISTRATIVE LAW JUDGE SOBLE: We'll go --

7 MR. ROY: Your Honor, I would --

8 ADMINISTRATIVE LAW JUDGE SOBLE: -- off the  
9 record.

10 MR. ROY: -- also like to be heard.

11 ADMINISTRATIVE LAW JUDGE SOBLE: We're going off  
12 the record for a second.

13 (Off the record at 11:43 a.m.)

14 (On the record at 11:44 a.m.)

15 (Spanish Interpreter is present.)

16 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. The  
17 General Counsel had an objection to the last question. I  
18 believe, to paraphrase the last question, it was,  
19 essentially, whether or not the witness was part of the  
20 charge in this matter; is that correct, Mr. Roy, as you  
21 recall your question?

22 MR. ROY: As I recall I thought it was whether he  
23 had requested to be part of this charge.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Assuming  
25 for a moment that the objection is not that it calls for a

1 legal conclusion, what, otherwise, would be the General  
2 Counsel's objection, if any?

3 MS. ARCINIEGA: Relevance, Your Honor. And I'd  
4 also like to be heard.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I just  
6 wanted to know what it is. I'm going to give both of you a  
7 chance to be heard on this briefly.

8 So I wanted to find out if there was something  
9 else. Because, obviously, to the extent that I do allow  
10 the question, and I haven't decided until I hear what both  
11 Counsel have to say, I wouldn't be taking it as going to  
12 the legal conclusion of whether he's part of the charge or  
13 not part of the charge. That has nothing to do with his  
14 understanding of it. But let's hear what the other  
15 objections might be.

16 So, Ms. Arciniega, you've got about a minute-and-  
17 a-half. Use it as you choose.

18 MS. ARCINIEGA: Thank you, Your Honor.

19 I would like to object as to relevance and  
20 because Mr. Roy has the unfair labor practice as part of  
21 this record. It lists Mr. Mendoza's name in here, along  
22 with the other employees. He's admitted to it in his  
23 amended answer to our complaint that Victor Mendoza was  
24 part of this charge. And I think that this line of  
25 questioning may potentially be meant to harass or



1 intimidate the witness. Particularly, I'm concerned as it  
2 may approach a line of witnesses participation in the ALRB  
3 process and any potential chilling or discouraging or  
4 interfering or coercing with that free exercise of their  
5 right to participate in these processes.

6 This is not an issue in dispute, Your Honor.  
7 It's on the face of the charge. And it's also something  
8 that's submitted in the amended answer.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Mr. Roy?

10 MR. ROY: Your Honor, very simply, we have the  
11 evidence that this individual was never investigated by the  
12 ALRB. He did not request to be part of this charge or the  
13 complaint. And we believe that he was not given a subpoena  
14 to testify here today. And he has been gratuitously thrown  
15 into this mix without his knowledge or consent. And  
16 further questioning will prove that.

17 I don't believe Mr. Mendoza was stated in the  
18 charge, Your Honor.

19 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

20 MS. ARCINIEGA: Rob, you can look at it.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Well, hold on.

22 MS. ARCINIEGA: Look at the basis of the charge.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Hold on. You  
24 had an opportunity to speak. He had an opportunity to  
25 speak.

1 MS. ARCINIEGA: Yes.

2 ADMINISTRATIVE LAW JUDGE SOBLE: So I have in  
3 front of me what's already been admitted as Exhibit 1.

4 We're back on the record; correct?

5 COURT REPORTER: (Off mike.)

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So on  
7 Exhibit 1, if you go to page one of it, if you look at the  
8 basis of the charge, the charge that on its face says it  
9 was filed by Marisol Jimenez, it makes reference to Victor  
10 Mendoza, so the Respondent should have had a copy of that  
11 charge served on them back in 2017. So the Respondent  
12 would know if the name Victor Mendoza that's on the charge  
13 now was on the charge back in 2017. So I don't think we  
14 need to have any question of whether or not his name is  
15 mentioned in the charge.

16 Now that's a totally different issue from whether  
17 or not the ALRB chose to interview him in 2017 or chose not  
18 to interview him in 2017, '18, '19, '20, and '21. I am  
19 going to allow Respondent to ask questions as to,  
20 seemingly, whether or not the General Counsel's office any  
21 time in the past 3 years 11-and-a-half months spoke with  
22 Mr. Mendoza or not.

23 But whether or not the charge includes Mr.  
24 Mendoza or not is a legal issue that is not going to be  
25 successfully answered by Mr. Mendoza whether he's

1 questioned on it or not. Whether or not the General  
2 Counsel investigated that, Mr. Mendoza would have no  
3 knowledge other than whether or not someone spoke to him or  
4 not. So I have allowed and will allow questions as to  
5 whether or not Mr. Mendoza spoke with the General Counsel's  
6 office, whether or not Mr. Mendoza spoke with other members  
7 of his crew. I've allowed those questions.

8 MS. ARCINIEGA: He's already asked them and  
9 they've ben answered.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Some of them  
11 have been answered clearly. Some of them may have been  
12 answered in a way that I don't think was clear. But in any  
13 event, that's there.

14 Again, so if the question is did he file the  
15 charge? Well, no, in the same sense of that the answer  
16 would be for all of the other crew members who aren't Ms.  
17 Jimenez, they didn't file the charge either. And that's,  
18 on the face of the complaint, obvious.

19 So that's separate from the legal conclusion as  
20 to who the charge may cover. And again, Mr. Mendoza is in  
21 no more a position to answer that than Ms. Duarte or Ms.  
22 Santiago or Mr. Perez.

23 So I don't think any of the questions that have  
24 been asked in any way intimidate the witness. He didn't  
25 look the least bit intimidated by this line of questioning.

1 But I don't think there's any more relevant information to  
2 be had, so I'll rule on each specific question as we get to  
3 them after the break. But I don't think there's additional  
4 questions to be asked about what's in the charge that's  
5 productive. There are instances where I might view it as  
6 intended to harass or intimidate a witness asking about the  
7 charge filing process but I don't think that's the case  
8 here.

9           And, in fact, my impression from the witness was  
10 that he did not understand himself to be a person who went  
11 to the ALRB to bring the charge. But that doesn't go to  
12 the legal conclusion as to whether or not the charge  
13 encompasses him anyhow. So that's my ruling on that.

14           Is there anything else that we need to discuss  
15 prior to taking a break?

16           MR. ROY: Your Honor, are we going on a break or  
17 lunchtime?

18           ADMINISTRATIVE LAW JUDGE SOBLE: Break that is  
19 lunchtime, however you want to call that --

20           MR. ROY: Okay. That's fine.

21           ADMINISTRATIVE LAW JUDGE SOBLE: -- a lunch  
22 break.

23           MR. ROY: We gave it up. Thank you.

24           ADMINISTRATIVE LAW JUDGE SOBLE: So, in other  
25 words, we're taking the 80-minute lunch period as requested

1 by the General Counsel. It is 11:53, so that means that we  
2 would be coming back at 1:13. If there's nothing else  
3 anyone needs to bring up between now and then, I'll have  
4 you all come back at 1:13. I will have the virtual hearing  
5 room open, perhaps about four or five minutes before then.

6 And it is helpful for me, Mr. Roy, if you have an  
7 approximately time estimate as to how long your cross-  
8 examination of this witness would be. Would you say less  
9 than an hour more?

10 MR. ROY: Oh, yeah. Yeah. Just --

11 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

12 MR. ROY: -- you know, barring objections.

13 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So the  
14 General Counsel will have their next witness available,  
15 let's say about half-an-hour after we resume. I will have  
16 at least a few questions for this witness but they may not  
17 be that long. So I'll see everyone back at 1:13.

18 We're off the record. Thank you.

19 (Off the record at 11:54 a.m.)

20 (On the record at 1:15 p.m.)

21 (Spanish Interpreter is present.)

22 (Witness is present.)

23 ADMINISTRATIVE LAW JUDGE SOBLE: Mr. Roy, I  
24 believe you have some additional questions for Mr. Mendoza.

25 MR. ROY: Yes, I do, Your Honor.

1 ADMINISTRATIVE LAW JUDGE SOBLE: You can proceed.

2 BY MR. ROY:

3 Q. Mr. Mendoza, did you ever fail to pass on the  
4 complaints of the crew to Rene?

5 A. No.

6 Q. So whenever they had a complaint, you would  
7 always pass them on to Rene; correct?

8 A. That's right.

9 Q. Okay. And other than pass the information on to  
10 Rene, did you ever negotiate on behalf of the workers  
11 concerning their complaints?

12 A. Can you repeat the question?

13 Q. Aside from passing on the crews complaints to  
14 Rene -- please translate -- did you ever negotiate with  
15 Rene to try to resolve them?

16 A. No.

17 Q. Did you ever stop the crew from making complaints  
18 to you about working conditions?

19 A. No.

20 Q. And that includes pay stubs; correct?

21 A. Yes.

22 Q. And also the alleged lack of water; correct?

23 A. Yes.

24 MS. ARCINIEGA: Objection; argumentative.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

1 BY MR. ROY:

2 Q. Does that same response apply, also, to any  
3 bathrooms?

4 MS. ARCINIEGA: Objection; vague.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

6 THE WITNESS: That's right.

7 MR. ROY: Thank you.

8 BY MR. ROY:

9 Q. Let's go on to your relationship with Marisol.  
10 How long have you been good friends with Marisol  
11 Jimenez?

12 A. I don't remember very well but it's been a long  
13 time in relations to being outside of work.

14 Q. Did you know Marisol at the time you were in  
15 Mike's Labor crew at Cinagro?

16 A. It was further back.

17 Q. Okay. So before you ever came to work with  
18 Mike's Labor at Cinagro, you knew Marisol; correct?

19 A. Yes.

20 Q. Did you hire her into the -- Mike's Farm Labor  
21 crew?

22 MS. ARCINIEGA: Objection; relevance.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled as to  
24 relevance. I'll allow the question, not as a conclusion of  
25 law, whether he was actually the person who hired her but,

1 rather, his understanding of what took place.

2 THE WITNESS: That was through the contractor.

3 BY MR. ROY:

4 Q. Were you -- did you tell her about the job at  
5 Mike's Farm Labor at Cinagro?

6 A. I don't understand the question.

7 Q. Did you tell Marisol about work at Mike's Farm  
8 Labor with Cinagro Farms?

9 A. No.

10 Q. How about her husband Hector, did you inform  
11 Hector that there was work available at Mike's Farm Labor  
12 at Cinagro Farms?

13 A. No.

14 Q. Would it be fair to say that you know Marisol and  
15 Hector as friends, apart from work?

16 A. Yes.

17 Q. And you've gone to barbeques with both of them;  
18 correct?

19 MS. ARCINIEGA: Objection; relevance.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. And  
21 I am taking the question as at any time ever, whether it's  
22 before they worked before Cinagro or after regard  
23 (phonetic).

24 THE WITNESS: Outside of work, my personal life  
25 is very private. When I'm at work, I try to perform the



1 job that I'm supposed to do.

2

3 BY MR. ROY:

4 Q. I understand that, Mr. Mendoza, but the question  
5 is: Did you ever go to a barbeque with Marisol and Hector  
6 before Mike's Farm Labor or after farms -- Mike's Farm  
7 Labor?

8 MS. ARCINIEGA: Objection; relevance. I do not  
9 see the relevance of this, Your Honor.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

11 THE INTERPRETER: I don't know if he said  
12 something.

13 ADMINISTRATIVE LAW JUDGE SOBLE: I indicated  
14 overruled, so the witness can answer. I don't know if the  
15 witness has said anything or not. I didn't hear anything.

16 THE INTERPRETER: Okay. (Speaking Spanish.)

17 THE WITNESS: No, outside of working at Mike's  
18 Labor, it was not common for us to see -- to visit each  
19 other. It was on rare occasion.

20 BY MR. ROY:

21 Q. Isn't it true that you visited Marisol's home  
22 quite frequently?

23 MS. ARCINIEGA: Objection; vague.

24 ADMINISTRATIVE LAW JUDGE SOBLE: I'll sustain  
25 that. I think that question makes no sense without a time

1 period.

2 BY MR. ROY:

3 Q. Do you know other employees in the crew as  
4 friends, much like Marisol?

5 THE INTERPRETER: Do you know other employees in  
6 the crew; was that the question, Counsel?

7 MR. ROY: Yes, much like Marisol.

8 ADMINISTRATIVE LAW JUDGE SOBLE: I'll sustain  
9 that as vague.

10 BY MR. ROY:

11 Q. Did you ever meet any employees in the crew  
12 outside of work?

13 MS. ARCINIEGA: Objection; vague.

14 ADMINISTRATIVE LAW JUDGE SOBLE: I'll sustain  
15 that. I think it makes more sense to ask that question as  
16 to a time period. You can ask it before they worked  
17 together, while they worked together, after they worked  
18 together, but specify which.

19 BY MR. ROY:

20 Q. When you were the foreman of Cinagro's crew and  
21 your crew was hired directly did you ever get together with  
22 any of the crew members outside of work?

23 A. No.

24 Q. Only Marisol and Hector?

25 MS. ARCINIEGA: Objection; asked and answered.

1 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. He's  
2 asked a similar question, and I'm not sure if the witness  
3 answered the question as part of his previous question, so  
4 I'll allow it.

5 So the question, Mr. Mendoza, is while you were  
6 at Cinagro did you ever interact with Marisol and Hector  
7 outside of work?

8 THE WITNESS: You mean at the end of the day or  
9 at the end of work?

10 MR. ROY: After work.

11 THE WITNESS: No.

12 BY MR. ROY:

13 Q. After work, since you started work at Cinagro,  
14 you have never gotten together with Marisol and Hector?

15 A. No.

16 Q. Isn't it true that you used to bring extra boxes  
17 to assist Marisol when she was harvesting?

18 A. I don't understand the question.

19 Q. Isn't it true that you would bring extra boxes  
20 for Marisol while she was harvesting?

21 A. No. Everybody performed each one's boxes.

22 Q. Did you ever receive a complaint from any of the  
23 female workers in the crew that you were helping out  
24 Marisol?

25 A. No. None.

1 Q. Did you ever receive any complaints from the  
2 workers about not always showing up at work on time?

3 A. None.

4 Q. Were there any occasions between January and  
5 March 4th that you left work early and left the crew  
6 without supervision?

7 A. None.

8 Q. Were there any days between January and March 4,  
9 2017 that you did not appear at work?

10 A. I missed one day. I don't remember the date. It  
11 was a personal issue and I notified Rene.

12 Q. During that same period did you ever leave work  
13 early and left the crew without supervision?

14 MS. ARCINIEGA: Objection; asked and answered.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

16 THE WITNESS: (Speaking Spanish.)

17 ADMINISTRATIVE LAW JUDGE SOBLE: I had already  
18 sustained the objection that's fine. It's the same answer.

19 BY MR. ROY:

20 Q. Mr. Mendoza, did the ALRB give you a subpoena to  
21 appear on Friday to testify in this case?

22 MS. ARCINIEGA: Objection; relevance. Sorry. I  
23 thought you were done.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. I'll  
25 also let the Interpreter know, some of the witnesses may

1 understand the ALRB under different names, like La Ley  
2 Laboral or some different things, but the witness can  
3 answer.

4 THE WITNESS: I did not understand the question.

5 BY MR. ROY:

6 Q. Very simply, Mr. Mendoza, did the ALRB ever give  
7 you a subpoena to order you to testify today; yes or no?

8 A. I showed up because of what they told me on from,  
9 that I had to come.

10 Q. What about on Friday, how did you know to come on  
11 Friday?

12 A. It was through a message from the ALRB.

13 Q. And at any time prior to that date, going back  
14 all the way to 2017, did you ever receive a subpoena to  
15 appear at this hearing?

16 MS. ARCINIEGA: Objection; relevance.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Objection to  
18 relevance is overruled but this is taking too long.

19 Mr. Mendoza, do you know what a subpoena is?

20 THE WITNESS: If you'd explain it? I don't know.

21 ADMINISTRATIVE LAW JUDGE SOBLE: A subpoena is a  
22 piece of paper from either an attorney or a government  
23 agency that says you are required to come to the hearing.

24 So the attorney wants to know if you received a  
25 piece of paper that said you had to come to the hearing

1 last Friday?

2 THE WITNESS: I changed my address, so I didn't  
3 receive anything. Everything was based over the phone.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

5 BY MR. ROY:

6 Q. Would it be fair to say that your testimony here  
7 today is an attempt to assist your friend Marisol?

8 MS. ARCINIEGA: Objection; argumentative.

9 ADMINISTRATIVE LAW JUDGE SOBLE: I'll overrule  
10 the objection but I'm pretty close to finding that we're  
11 not productively using time, so -- but I'll allow this  
12 question.

13 THE WITNESS: I haven't had communications with  
14 them about this meeting.

15 MR. ROY: Okay.

16 BY MR. ROY:

17 Q. And finally, have you told anyone in the last  
18 three months that you don't want to be involved in this  
19 case?

20 MS. ARCINIEGA: Objection; relevance. It leads  
21 to chilling the free exercise of workers' rights to  
22 participate in these processes.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.  
24 Nobody's asked who he spoke with. He can discuss it if the  
25 answer is yes. But until we get to that the objection is

1 overruled.

2 THE WITNESS: I have not had communication with  
3 anybody.

4 BY MR. ROY:

5 Q. Would it be fair to say that in the last three  
6 months you have never expressed to anyone outside your crew  
7 that you did not want to be involved in this case; yes or  
8 no?

9 MS. ARCINIEGA: Objection; relevance.

10 ADMINISTRATIVE LAW JUDGE SOBLE: I'm going to  
11 overrule it as to relevance. I'm going to sustain an  
12 objection as to it being vague and assuming facts not in  
13 evidence.

14 You can ask the next question.

15 BY MR. ROY:

16 Q. Mr. Mendoza, have you told anyone in the last  
17 three months that you don't want to be involved in this  
18 case; yes or no?

19 MS. ARCINIEGA: Objection; asked and answered.

20 ADMINISTRATIVE LAW JUDGE SOBLE: I think this is  
21 a slightly different question, although, to be honest, I  
22 can't figure out for the life of me why Counsel is still  
23 pursuing this, but I'll allow this question. And then  
24 we're going to move to some different line of questioning  
25 if there are others.

1 But you can answer the question.

2 THE WITNESS: No.

3 MR. ROY: Okay. I have no further questions.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. We're  
5 going to take about a 60-second break, and then I have a  
6 few questions for the witness. So don't go far. I don't  
7 need more than about a minute to glance at my notes

8 (Off the record at 1:37 p.m.)

9 (On the record at 1:39 p.m.)

10 ADMINISTRATIVE LAW JUDGE SOBLE: On the record.

11 Mr. Mendoza, thank you for having come here last  
12 Friday and today.

13 VOIR DIRE

14 BY ADMINISTRATIVE LAW JUDGE SOBLE:

15 Q. Were you a foreman for a crew with a labor  
16 contractor that performed services at Deodar Farms?

17 MR. ROY: What? You said Deer Family Farms, Your  
18 Honor?

19 ADMINISTRATIVE LAW JUDGE SOBLE: I know what I  
20 asked as my question.

21 MR. ROY: All right.

22 THE WITNESS: Yes, I worked with them.

23 BY ADMINISTRATIVE LAW JUDGE SOBLE:

24 Q. And that was before you had ever heard of Cinagro  
25 Farms; correct?



1 A. Yes.

2 Q. And when you were a foreman at Deodar Farms,  
3 Marisol Jimenez was on your crew; correct?

4 A. Before that, I used to be a forklift driver.

5 Q. Okay. When you were at foreman for a labor  
6 contractor at Deodar Farms, is it correct that Marisol  
7 Jimenez was part of your crew?

8 A. Yes.

9 Q. And her husband Hector Cruz also worked on that  
10 crew at Deodar Farms where you were the foreman; correct?

11 A. Yes.

12 Q. Do you remember the name of the labor contractor  
13 who paid your crew at Deodar Farms?

14 A. Mike's.

15 Q. Mike's Labor?

16 A. Mike's Labor. Mike's.

17 Q. And then at some point Mike's Labor moved your  
18 entire crew from Deodar Farms to a different ranch;  
19 correct?

20 A. Yes.

21 Q. And when you changed jobs, most or all of your  
22 crew came with you?

23 A. Most of them.

24 Q. Okay. When your crew went from working from  
25 Mike's Labor to Art's Labor, most of the crew came along

1 with you again; correct?

2 A. Yes.

3 Q. And when your crew went from working from Art's  
4 Labor to directly working for Cinagro, most of the crew  
5 came with you again; correct?

6 A. Yes.

7 Q. When you looked for a job after you worked at  
8 Cinagro were you looking for a job as a foreman or as a  
9 worker or both?

10 A. As a worker.

11 Q. Okay. Why was that?

12 A. I needed to work, and so whatever it was.

13 Q. Okay. When you first met Rene Macias did he seem  
14 like he was a friendly person?

15 A. Yes, he showed that.

16 Q. Who did you meet first, Rene Macias or Tony  
17 Dighera?

18 A. Rene.

19 Q. When the crew had concerns did you always bring  
20 them to Rene or did you sometimes talk to Tony?

21 A. No. With Rene.

22 Q. Okay. There's been some discussion of yellow  
23 containers in your truck that -- your truck, is that a  
24 pickup truck?

25 A. Yes.

1 Q. That's your personal pickup truck; right?

2 A. Yes.

3 Q. And these yellow containers hold how many gallons  
4 of water?

5 A. Five gallons each.

6 Q. Okay. For a crew of approximately 12 people  
7 spending a day in the field, do you need to fill up both of  
8 the five-gallon containers or only one?

9 A. Most of the time -- or I should say, all of the  
10 time I filled out -- filled up both of them when there was  
11 more -- when it was hotter.

12 Q. Okay. When you started working at Cinagro on  
13 the -- directly for Cinagro do you recall the first day  
14 whether or not the company provided water to you?

15 A. They did not provide it.

16 Q. There was a later time where they provided some  
17 water?

18 A. It wasn't until people started telling -- asking  
19 me why Cinagro was not providing water.

20 Q. How did your crew members know that Cinagro was  
21 not providing water if you put water in the yellow  
22 containers?

23 A. During the whole time that I've worked over there  
24 I have had the water in the same place. They noticed a  
25 difference in the taste of water.

1 Q. Okay. Did you ever ask any of the members of  
2 your crew to give you cash to pay for water?

3 A. No, I never did.

4 Q. Okay. Did workers ever complain about the taste  
5 of the water that you brought as separate from water that  
6 Cinagro provided? Let me explain that because that  
7 question is sort of confusing. Okay.

8 When you obtained water to put it in the yellow  
9 containers, where did you get the water from?

10 A. From the containers of the water deposits that  
11 are out on the streets.

12 Q. Explain that to me. I don't understand.

13 A. So at the big stores, at the big food stores,  
14 outside there's containers or water dispensers where you  
15 can get drinking water.

16 Q. Okay. So outside of a supermarket there's a  
17 machine. And you put money in the machine and water comes  
18 out; correct?

19 A. Yes.

20 Q. And did the water go directly from the machine  
21 into your yellow containers?

22 A. Yes.

23 Q. Okay. When the company provided water at  
24 Cinagro, how did the water arrive?

25 A. In one-gallon bottles.

1 Q. Were the bottles plastic?

2 A. Yes.

3 Q. And how many bottles did they give you for one  
4 day?

5 A. It was eight.

6 Q. Did you notice if the bottles of the water, the  
7 caps were sealed or if they had been opened and replaced?

8 A. The bottles were sealed. Only one occasion did  
9 we see a bottle that was open.

10 Q. Okay. And did the workers tell you anything  
11 about whether they liked or disliked the water provided by  
12 the company?

13 A. They told me that the water tasted differently,  
14 that they didn't like the taste of the water, and they were  
15 not drinking it.

16 Q. Did you taste that water?

17 A. Yes.

18 Q. Did it taste different to you?

19 A. Yes.

20 Q. Can you try to describe how the water tasted  
21 differently?

22 A. It tasted like metal or like a tube.

23 Q. Okay. Did you ever tell Rene that the company's  
24 water tasted bad?

25 A. Yes.

1 Q. When you told Rene that the company's water  
2 tasted bad did he say anything in response?

3 A. He said that that was the only water that they  
4 could provide.

5 Q. Do you recall if the plastic containers of water  
6 had a name or a brand on them that the company provided?

7 A. They did not have one.

8 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

9 (Pause)

10 ADMINISTRATIVE LAW JUDGE SOBLE: I'm going to be  
11 asking a few questions that go outside the scope of direct  
12 because I don't anticipate asking the witness to come back,  
13 just to let Counsel know.

14 BY ADMINISTRATIVE LAW JUDGE SOBLE:

15 Q. Mr. Mendoza, have you ever met someone named  
16 Barbara Ito?

17 A. I don't remember.

18 Q. Okay. Mr. Mendoza, I'm going to ask you for  
19 about six or seven names, if you've talked to any of the  
20 following people in the past three years. I'm going to go  
21 through the names one at a time.

22 Tony Dighera; have you talked to Tony Dighera in  
23 the past three years?

24 A. No.

25 Q. And again, three years is at least several months

1 past when you worked for Cinagro.

2 Same question for Rene Macias. Have you talked  
3 to Rene Macias in the past three years?

4 A. No.

5 Q. Maria Duarte; have you talked to her in the past  
6 three years?

7 A. No.

8 Q. Marie Lauriano; have you talked to her in the  
9 past three years?

10 A. No.

11 Q. The person who has been letting you in and out of  
12 the hearing room is known to us as Gabriella Vega. Have  
13 you talked to her in the past three years, other than when  
14 she let you in and out of the hearing room?

15 A. No.

16 Q. The first attorney who was asking you questions,  
17 the female attorney, her name is Jessica Arciniega. Have  
18 you talked to her in the past three years, other than  
19 during this hearing?

20 MS. ARCINIEGA: Objection; Your Honor. I think  
21 this is getting close to very chilling to be asking these  
22 questions to workers who want to participate in our  
23 proceedings.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well, I  
25 think I'm very mindful of that chilling people's

1 participation in these hearings. And I don't think asking  
2 how many times or if someone met with an Assistant General  
3 Counsel is at all chilling to ask a worker in this context,  
4 in this hearing. Because it's my understanding typically,  
5 and by the way, not inappropriately, that someone from the  
6 General Counsel's office often does talk with witnesses  
7 sometime in the three years before a hearing.

8           So I don't think there's anything in appropriate.  
9 I did not ask, for example, who initiated the conversation,  
10 which isn't something I'm interested in knowing. I didn't  
11 ask what was the substance of the conversation. I asked  
12 whether there was a conversation. And so the objection is  
13 overruled.

14           And I thought an answer but now I don't recall.  
15 BY ADMINISTRATIVE LAW JUDGE SOBLE:

16           Q. So Mr. Mendoza, in the past three years have you  
17 ever spoke with the attorney, Ms. Arciniega, from the  
18 General Counsel's office?

19           A. Only to hand her some documents.

20           Q. Okay. When you say to answer some documents,  
21 what does that mean?

22           A. Some reports of my paychecks where I have worked.

23           Q. Okay. And how long ago was that conversation, if  
24 you recall?

25           A. I don't remember it very well.



1 Q. Was it within the past 12 months?

2 A. Yes.

3 Q. Okay. It's my understanding that Cinagro had two  
4 ranches; correct?

5 A. Yes.

6 THE WITNESS: One question?

7 ADMINISTRATIVE LAW JUDGE SOBLE: Sure.

8 THE WITNESS: My stomach is hurting. Can I go to  
9 the restroom?

10 ADMINISTRATIVE LAW JUDGE SOBLE: Of course. This  
11 is the time we can -- we probably, otherwise, wouldn't take  
12 a break for 55 minutes. So why don't we take a five-minute  
13 break right now to allow Mr. Mendoza to use the bathroom  
14 and we will resume at 2:10.

15 (Off the record 2:05 p.m.)

16 (On the record at 2:14 p.m.)

17 (Spanish Interpreter is present.)

18 (Witness is present.)

19 BY ADMINISTRATIVE LAW JUDGE SOBLE:

20 Q. There was some testimony that one of the members  
21 of your crew at Cinagro cut her finger; do you recall that,  
22 Mr. Mendoza?

23 A. Yes.

24 Q. And do you remember, what was the name of that  
25 employee?

1 A. I don't remember.

2 Q. Okay. But the day that that happened do you  
3 recall if it was during the last two weeks that you worked  
4 at Cinagro or was it before the last two weeks that you  
5 worked at Cinagro?

6 A. Are you talking about a man or a woman?

7 Q. A woman.

8 A. Okay. Can you repeat the question again?

9 Q. Yes. Do you remember a female member of your  
10 crew cutting her finger while working for Cinagro?

11 A. Yes, I remember that.

12 Q. With respect to that worker, do you remember her  
13 name?

14 A. Ignacia.

15 Q. Okay. And was Ignacia the only female worker who  
16 you remember cutting her finger while working at Cinagro?

17 A. There was a man.

18 Q. Okay.

19 A. There was another one.

20 Q. Okay. Tell me what some of the crops were that  
21 your crew harvested at Cinagro.

22 A. Black kale, green kale, red kale, cilantro,  
23 radishes, anise, cabbage, lettuce. Those are the ones that  
24 I remember right now.

25 Q. Okay. When you worked for Cinagro did you

1 normally get paid on a particular day of the week?

2 A. Yes.

3 Q. And what day of the week was that?

4 A. Fridays.

5 Q. When you got paid on a Friday were you paid for  
6 past work or future work?

7 A. They would pay us for what we had already worked.

8 Q. Okay. And when you got a paycheck on a Friday  
9 did it include all of the days up until the day before that  
10 Friday or was there a cutoff date where your paycheck only  
11 included up to a certain day?

12 ADMINISTRATIVE LAW JUDGE SOBLE: I think Ms.  
13 Arciniega is trying to talk but I didn't hear her say  
14 anything.

15 MS. ARCINIEGA: I apologize. I thought my mike  
16 was on.

17 I said, Objection; it calls for speculation.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm going  
19 to allow a witness to answer. It's my experience that most  
20 employees know a little bit about what's in their paycheck,  
21 so overruled.

22 MS. ARCINIEGA: May I be heard?

23 ADMINISTRATIVE LAW JUDGE SOBLE: No, but you will  
24 be given the opportunity, if the witness answers, to ask  
25 questions, if you think needed, afterward.

1 MS. ARCINIEGA: Thank you.

2 BY ADMINISTRATIVE LAW JUDGE SOBLE:

3 Q. Mr. Mendoza, if you know, through how many days  
4 before the paycheck did the paycheck include? Don't guess.  
5 But if you have an understanding, you can indicate what it  
6 is.

7 A. Monday through Saturday.

8 Q. Okay. Did it vary from week to week or did you  
9 usually get paid for the same days every Friday?

10 A. It was the same all the time. Friday was payday.

11 Q. And on Friday you got your pay for every day in  
12 the previous week, that is Monday through Saturday the week  
13 before the Friday?

14 A. Yes.

15 Q. Did it ever rain on a Friday so that work was  
16 canceled at Cinagro?

17 A. We would go in and start working and about an  
18 hour, an hour-and-a-half when they would tell us we had to  
19 stop working.

20 Q. Okay. So every time you got a paycheck from  
21 Cinagro, you were out in the field working; is that  
22 correct?

23 THE INTERPRETER: Your Honor, I'm sorry. Can you  
24 please -- I missed some of that question and I'm not  
25 allowed -- I'm not able to interpret it correctly,

1 accurately.

2 BY ADMINISTRATIVE LAW JUDGE SOBLE:

3 Q. With the exception of the very last paycheck, was  
4 the crew always working in the field when they received  
5 their paychecks?

6 A. Yes.

7 Q. A couple minutes ago I asked you about some of  
8 the crops that Cinagro grows; do you remember that?

9 A. Yes.

10 Q. When Rene told you -- when Rene gave you the last  
11 check did he tell you that it was the end of the season for  
12 any of the crops?

13 A. No.

14 Q. Based upon your knowledge of green kale, was the  
15 season over for green kale in the first week of March?

16 A. The end of the harvest?

17 Q. Correct.

18 A. It had not ended yet because there was other  
19 products ready to harvest.

20 MR. ROY: Objection, Your Honor; nonresponsive.  
21 I think you were asking about green kale and he responded  
22 otherwise.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Great. I was  
24 going to go through each of the crops one at a time, so  
25 I'll ask another question and/or a more general question.

1 BY ADMINISTRATIVE LAW JUDGE SOBLE:

2 Q. With respect to green kale only, Mr. Mendoza, do  
3 you know if there was green kale left in the Cinagro field  
4 to harvest?

5 A. Yes, there was still some.

6 Q. What about red kale? Was there still red kale  
7 left to harvest at the time that your crew stopped working  
8 for Cinagro?

9 A. Yes.

10 Q. And black kale? Was there black kale left to  
11 harvest at the time your crew stopped working?

12 A. Yes.

13 Q. What about cilantro? Was there cilantro left to  
14 harvest at the time your crew stopped working?

15 A. Yes.

16 Q. What about radishes? At the time your crew  
17 stopped working were there radishes left to harvest?

18 A. Yes.

19 Q. And lettuce; was there lettuce left to harvest at  
20 the time that your crew stopped working?

21 A. Yes.

22 Q. Okay. On the day that you got the last paychecks  
23 from Rene, what city did you meet in him?

24 A. Moorpark.

25 Q. In Moorpark.

1           Was it Moorpark or Fillmore or both where there  
2 were still vegetables left to harvest at Cinagro?

3           A.    It was in Fillmore in Tierra Rejada.

4           Q.    Okay.  But Rene met you in which city?

5           A.    In Moorpark.

6           Q.    Did the company have an office in Moorpark?

7           A.    Honestly, we never found out where the office was  
8 at.

9           Q.    Okay.  When you met Mr. Macias in Moorpark, where  
10 did you meet?

11          A.    Can you repeat the question?

12          Q.    Yes.  When you met Mr. Macias and received the  
13 last checks for both yourself and the crew could you  
14 describe as specifically as possible the place that you met  
15 Mr. Macias?

16          A.    It was in the field at the Moorpark ranch.

17          Q.    Was it the middle of the field or was it  
18 somewhere where you would park cars?

19          A.    Where we would park.

20          Q.    When you got the checks from Mr. Macias could you  
21 see anybody else within 500 feet of the two of you?

22          A.    I don't remember that.

23          Q.    Okay.  On the day that Mr. Macias gave you the  
24 checks for the last time do you recall if it was raining?

25          A.    No, it was not raining.

1 Q. Before you picked up the checks from Mr. Macias,  
2 did he telephone you that day?

3 A. I called him to ask him where he was at.

4 Q. Okay. And what did he say?

5 A. That he was at the ranch in Moorpark.

6 Q. And did you ask him about the checks?

7 A. Yes. He told me they were ready.

8 Q. Okay. And did he say -- and this was on a  
9 telephone call; correct?

10 A. Yes.

11 Q. And how much time passed between the telephone  
12 call and when you picked up the checks?

13 A. It was maybe a matter of 40 minutes.

14 Q. Okay. Did Mr. Macias tell you to give the checks  
15 to the other crew members?

16 A. No. He just gave me all of them.

17 Q. Okay. And when he gave you the checks did he say  
18 anything?

19 A. No.

20 Q. When he gave you the checks did you ask him if  
21 there would be any more work?

22 A. I asked him when we should show up for work  
23 again.

24 Q. And what did he say?

25 A. He was kind of short, and he said that there was



1 very little work, and that we had to be off until further  
2 notice.

3 Q. What did you do next, after you spoke with Mr.  
4 Macias?

5 A. I got into my car and I left the ranch.

6 Q. Okay. What did you do after that?

7 A. I started to call the people to arrange to meet  
8 at the place to give them the checks.

9 Q. Okay. Did you call the people before you left --  
10 I'm sorry. Let me make sure I have this right and I don't  
11 misspeak.

12 You met Mr. Macias in Fillmore?

13 A. No. It was Moorpark.

14 Q. Okay. So did you call the other workers before  
15 you left Moorpark or did you call them after you left  
16 Moorpark?

17 A. After I left.

18 Q. Okay. And how long did it take you from when you  
19 left Moorpark until you began handing the checks to the  
20 crew members?

21 THE INTERPRETER: Your Honor, I'm sorry, you cut  
22 off on the last part of your question.

23 BY ADMINISTRATIVE LAW JUDGE SOBLE:

24 Q. How much time passed, Mr. Mendoza, from when you  
25 left Moorpark until you began handing the last checks of

1 Cinagro to members of your crew?

2 A. An hour-and-a-half transpired until the last one  
3 got there.

4 Q. Okay. Were any of the crew members angry when  
5 you gave them their last check?

6 A. They seemed bothered by what I had told them,  
7 that it wasn't until further notice.

8 Q. Okay. Did any of the crew members, when they  
9 picked up their last check, say that they did not believe  
10 the company would bring them back?

11 A. Because they were giving us very little work,  
12 they were all -- they were also suspecting that they were  
13 not going to give us more work.

14 MR. ROY: Objection, Your Honor. I don't think  
15 it's responsive to the question.

16 ADMINISTRATIVE LAW JUDGE SOBLE: I'll overrule  
17 the objection but I'll ask another question or two because  
18 I'm not sure I understand that.

19 BY ADMINISTRATIVE LAW JUDGE SOBLE:

20 Q. When did Cinagro give your crew very little work?

21 A. It was during various times. I don't remember  
22 the date but it was a few different days.

23 Q. Okay. When you handed the last paycheck to the  
24 crew members did any of them tell you that they had found a  
25 new job?

1 A. No. None.

2 Q. Did any of the crew members ask you if you were  
3 going to start a crew at a different employer?

4 A. No, not that either.

5 Q. After you handed the last checks to the members  
6 of your crew did you ever get a telephone call again from  
7 Rene?

8 A. No.

9 Q. And after you handed the last checks to your crew  
10 did you ever make a telephone call to Rene?

11 A. I didn't either.

12 Q. Okay. Is there something, Mr. Mendoza, that I  
13 should be asking you that I haven't asked you about the end  
14 of when you worked at Cinagro?

15 A. No, I don't understand the question.

16 Q. The attorneys and I have asked you a lot of  
17 questions and we appreciate your time.

18 I'm asking you, if you were me, what other  
19 questions should I be asking, if any?

20 A. I think that after everything that I've been  
21 asked, there wouldn't be another one.

22 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Thank  
23 you. In that case, I don't have any additional questions.

24 Okay, we'll start now with the General Counsel --  
25 the Assistant General Counsel. Do you have a few more

1 questions?

2 MS. ARCINIEGA: I do, Your Honor. May I?

3 ADMINISTRATIVE LAW JUDGE SOBLE: You may. But I  
4 just realized I did have one other line of questioning, so  
5 I'll finish with that first.

6 BY ADMINISTRATIVE LAW JUDGE SOBLE:

7 Q. I believe one of the attorneys asked you if you  
8 knew who Cesar Miranda was; correct?

9 A. No, I don't remember.

10 Q. Okay. When you worked at Cinagro did you ever  
11 meet a foreman for another crew?

12 A. Just by sight.

13 Q. Okay. Did Rene tell you that he had hired  
14 another crew to work at Cinagro?

15 A. He didn't mention anything.

16 Q. Okay. Do you have any reason to know whether or  
17 not another crew worked at Cinagro after your crew stopped  
18 working?

19 MR. ROY: Objection; calls for speculation, Your  
20 Honor.

21 ADMINISTRATIVE LAW JUDGE SOBLE: I'll allow the  
22 question. But if he answers yes, obviously, I'll follow up  
23 to figure out how he would know that.

24 MR. ROY: Understood.

25 THE WITNESS: No, I don't have any knowledge.

1 THE INTERPRETER: Your Honor, did you hear my  
2 response?

3 ADMINISTRATIVE LAW JUDGE SOBLE: I did. Okay. I  
4 don't have any additional questions.

5 The Assistant General Counsel can proceed.

6 MS. ARCINIEGA: Okay. Can I just check with Your  
7 Honor about are we doing an afternoon break and if, when,  
8 or any of that?

9 ADMINISTRATIVE LAW JUDGE SOBLE: The  
10 (indiscernible) --

11 MS. ARCINIEGA: Has that been decided?

12 ADMINISTRATIVE LAW JUDGE SOBLE: -- was to be  
13 doing an afternoon break at approximately three o'clock.  
14 But depending upon where you are with your questions, we  
15 may deviate by five to ten minutes later than that. But we  
16 certainly will take the break no later than 3:15 unless you  
17 office advises me that it's not needed, and I don't expect  
18 to hear that.

19 MS. ARCINIEGA: Okay.

20 REDIRECT EXAMINATION

21 BY MS. ARCINIEGA:

22 Q. Mr. Mendoza, I have a couple more questions.

23 Do you know if there was a relationship between  
24 Mike's Farm Labor and Art's Labor Service?

25 A. Personally, yes.

1 Q. Do you mean that there was a personal  
2 relationship between those two companies?

3 A. Yes. They are brothers.

4 Q. Okay. And you testified earlier that you and  
5 your crew were moved from Mike's to Art's.

6 Who made that decision to move you and your crew  
7 from Mike's to Art's?

8 A. I don't know who made that decision.

9 Q. Okay. Did you have any say in that decision?

10 A. No. None.

11 Q. Okay. And how made the decision to move you and  
12 your crew from Art's to Cinagro directly?

13 A. Arturo is the one that mentioned it to me.

14 Q. Okay. Thank you.

15 And you called -- you told us that you called  
16 Marisol on Monday to let her know -- you called her on  
17 Monday to let her know that there was no work the following  
18 day; is that correct?

19 A. Yes.

20 Q. Was it during that call that she told you she saw  
21 others working at Cinagro on that Monday?

22 MR. ROY: Objection; leading.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

24 BY MS. ARCINIEGA:

25 Q. When did she tell you that she saw other workers

1 working at Cinagro on --

2 MR. ROY: Same objection, Your Honor.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

4 BY MS. ARCINIEGA:

5 Q. When Marisol told you that she saw other workers  
6 working at Cinagro on Monday did you have any reason not to  
7 believe her?

8 MR. ROY: Objection; assumes facts not in  
9 evidence that she said that.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. That  
11 objection is overruled. But I'll sustain it again as to  
12 leading question.

13 MR. ROY: All right. Thank you.

14 BY MS. ARCINIEGA:

15 Q. Mr. Mendoza, can I please have you look at the  
16 binder that's in front of you on the desk?

17 A. This one?

18 Q. Yes. Can you look where there's the tab number  
19 two?

20 A. I'm ready.

21 Q. Do you want to show -- put the page up to the  
22 camera for us please? Do you mind?

23 MR. ROY: Just to clarify, that's his payroll  
24 check dated 03/10/17; is that correct?

25 MS. ARCINIEGA: Yes. General Counsel's Exhibit

1 2. And --

2 ADMINISTRATIVE LAW JUDGE SOBLE: I'm just going  
3 to clarify for the record, because if someone's reading the  
4 transcript it may seem confusing, that is not his check  
5 that is Exhibit 2.

6 MS. ARCINIEGA: Thank you.

7 ADMINISTRATIVE LAW JUDGE SOBLE: I think Exhibit  
8 2 speaks for itself as to what it is. I don't need to  
9 describe it further but it is not an actual check.

10 You can ask your next question.

11 BY MS. ARCINIEGA:

12 Q. From looking at this, Mr. Mendoza, can you tell  
13 what date this payment was for?

14 MR. ROY: Objection; calls for speculation.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled. It's  
16 possible the witness has some method that they know based  
17 on their experience. We'll know momentarily.

18 THE INTERPRETER: Counsel, can you please repeat  
19 your question? I want to make sure I had it correctly.

20 MS. ARCINIEGA: Sure.

21 BY MS. ARCINIEGA:

22 Q. Mr. Mendoza, looking at this page can you tell  
23 what date this payment is for?

24 A. It's 03/10 of 2017.

25 Q. And from looking at this page can you tell what



1 hours you were receiving this payment for?

2 MR. ROY: Objection, Your Honor; relevance. And  
3 the hours are listed.

4 MS. ARCINIEGA: That's an untrue statement.

5 ADMINISTRATIVE LAW JUDGE SOBLE: I don't know  
6 that it's an untrue statement but the objection is  
7 overruled. So I have an opinion as to whether it might be  
8 but we haven't heard evidence one way or another.

9 MR. ROY: Thank you.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Why don't I just  
11 ask the question, unless you're going to.

12 Can you tell me, Mr. Mendoza, what you understand  
13 this document to be?

14 MS. ARCINIEGA: Your Honor, that wasn't my  
15 question.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Well, you can  
17 ask your next question then --

18 MS. ARCINIEGA: It was pending.

19 ADMINISTRATIVE LAW JUDGE SOBLE: -- or your  
20 pending question but I don't think it's particularly clear.  
21 But go ahead and try and let's see if the witness  
22 understands it.

23 MS. ARCINIEGA: Did you --

24 ADMINISTRATIVE LAW JUDGE SOBLE: Can you restate  
25 the last question?

1 THE INTERPRETER: I couldn't. I was interrupted,  
2 my interpretation. I'm sorry.

3 MS. ARCINIEGA: Oh, okay.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Go ahead.

5 MS. ARCINIEGA: I'm sorry. Okay.

6 BY MS. ARCINIEGA:

7 Q. From looking at this page, Mr. Mendoza, can you  
8 tell what hours you were paid for?

9 A. In this way it doesn't show how many hours  
10 they're paying me.

11 Q. Does this page show you any of the days that they  
12 were paying you for?

13 A. No.

14 Q. Thank you.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Okay, Mr.  
16 Mendoza, when you look at the document, the left column  
17 near the bottom, there is a number, 601.00. Do you have  
18 any idea of what that number may mean?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE SOBLE: In the second  
21 column there are some numbers, 112, 133, 126, 77, and 66.5.  
22 Do you have any idea what those numbers are?

23 THE WITNESS: I imagine that it's what they were  
24 paying me.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Do you think

1 each of those numbers represents what you were paid for a  
2 single day?

3 THE WITNESS: I imagine so.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I have to  
5 do the math. But I'll note for the record that if you add  
6 those five numbers up it would appear to equal the 514.50  
7 that is to the right of it. Okay.

8 Mr. Mendoza, this document that's here, did you  
9 get something like that with most of your paychecks?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE SOBLE: And did you get  
12 an additional document which showed your deduction for  
13 either -- well, that showed your deductions?

14 THE WITNESS: Can you repeat the question?

15 ADMINISTRATIVE LAW JUDGE SOBLE: Yes. In  
16 addition to this document, on March 10th did you get  
17 another document that showed your deductions on that day?

18 THE WITNESS: No.

19 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

20 Ms. Arciniega?

21 MS. ARCINIEGA: Okay.

22 BY MS. ARCINIEGA:

23 Q. Mr. Mendoza, on the Friday that you went to pick  
24 up the checks from Rene at Moorpark, do you know if others  
25 were working at Cinagro's other ranch?

1 THE INTERPRETER: I'm sorry, I messed that up,  
2 Counsel. Can you please repeat that question?

3 MS. ARCINIEGA: Yes.

4 BY MS. ARCINIEGA:

5 Q. When you went to pick up the checks from Rene on  
6 Friday at the Moorpark ranch, do you know if others were  
7 working at Cinagro's other ranch?

8 A. I didn't see anyone.

9 Q. You didn't see anyone at the Moorpark ranch?

10 MR. ROY: Your Honor, objection; asked and  
11 answered.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

13 Mr. Mendoza, you didn't see anyone working at the  
14 Moorpark ranch when you received the checks from Rene for  
15 the last time; correct?

16 THE WITNESS: That's right.

17 ADMINISTRATIVE LAW JUDGE SOBLE: And that day,  
18 you didn't go to the Fillmore ranch; correct?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE SOBLE: So you have no  
21 way of knowing if people were or were not working at  
22 Fillmore?

23 THE WITNESS: Exactly.

24 MS. ARCINIEGA: No further questions, Your Honor.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

1 Mr. Roy, a few --

2 MR. ROY: Yeah. That's --

3 ADMINISTRATIVE LAW JUDGE SOBLE: -- more  
4 questions?

5 MR. ROY: I just have a few.

6 ADMINISTRATIVE LAW JUDGE SOBLE: And you think  
7 they're going to be less than ten minutes?

8 MR. ROY: Yes.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Then  
10 we're going to defer our break and see if we can wrap up  
11 with this witness first.

12 RE-CROSS-EXAMINATION

13 BY MR. ROY:

14 Q. Mr. Mendoza, you said that the bottle -- the  
15 containers or water that Rene brought to the field, with  
16 the exception of one of them, they were all sealed and they  
17 had no label on the outside; is that your testimony?

18 A. Yes.

19 Q. You said you harvested -- your crew harvested a  
20 number of vegetables, including red kale, green kale, black  
21 kale, cilantro, radishes, et cetera.

22 Is it fair to say that you harvested only those  
23 vegetables for which there were customer orders?

24 MS. ARCINIEGA: Objection; calls for speculation.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Sustained.

1 MR. ROY: Was that sustained, Your Honor?

2 ADMINISTRATIVE LAW JUDGE SOBLE: Yes, it was.

3 You can ask him if he knows anything about customer orders  
4 in the company or company policies for whether or not --

5 MR. ROY: All right.

6 ADMINISTRATIVE LAW JUDGE SOBLE: -- to harvest  
7 things --

8 MR. ROY: Oh, I got it.

9 ADMINISTRATIVE LAW JUDGE SOBLE: -- with or  
10 without orders. But none of the attorneys have established  
11 any foundation in that area.

12 BY MR. ROY:

13 Q. Mr. Mendoza, how would you receive orders on  
14 which vegetables to harvest each day?

15 A. Who would give me the --

16 Q. Yes.

17 A. Rene.

18 Q. Okay. And would, if you know, would he give you  
19 only orders for which there was a customer order?

20 A. I'm not sure how he handles that. He would only  
21 tell me to harvest a certain amount of boxes on each group.

22 Q. Okay. Thank you.

23 This other crew that you have not spoken to, do  
24 you know whether or not they harvest all the same  
25 vegetables that your crew did?

1 MS. ARCINIEGA: Objection; calls for speculation.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

3 The witness can answer if he knows but only  
4 answer the question if you saw the other crew either  
5 harvesting the same or different types of vegetables than  
6 your crew. Don't guess.

7 THE WITNESS: They would cut other produce.

8 BY MR. ROY:

9 Q. Would they cut green kale?

10 A. Black kale.

11 Q. Okay. Cilantro?

12 A. I never saw those.

13 Q. Radishes?

14 A. Yes.

15 Q. Cabbage

16 A. I never saw those.

17 Q. Lettuce?

18 A. No that either.

19 Q. Okay. And lastly, when you refer to the ranches  
20 in Fillmore and Moorpark, isn't it true that the Moorpark  
21 ranch is also called the Tierra Rejada ranch; correct?

22 MS. ARCINIEGA: Objection; misstates prior  
23 testimony.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Overruled.

25 You can answer if you know.

1 THE WITNESS: No, I don't know.

2 BY MR. ROY:

3 Q. Do you know if the Moorpark ranch --

4 ADMINISTRATIVE LAW JUDGE SOBLE: Just a moment.  
5 Did you -- just a second.

6 Did you ever hear of any ranch that was called  
7 Tierra Rejada?

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE SOBLE: And what city  
10 was that ranch in?

11 THE WITNESS: I don't know.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

13 BY MR. ROY:

14 Q. Mr. Mendoza, we already have testimony that the  
15 company worked in Moorpark and in Fillmore. Are you saying  
16 that there was another ranch in Tierra Rejada where they  
17 worked?

18 A. No.

19 Q. Isn't it true that Moorpark is located in the  
20 Tierra Rejada Valley; yes or no?

21 A. I don't know that.

22 MR. ROY: Okay. Nothing further, Your Honor.  
23 Gracias.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I think I  
25 have just one more question for Mr. Mendoza.



## 1 FURTHER VOIR DIRE

2 BY ADMINISTRATIVE LAW JUDGE SOBLE:

3 Q. Are there any vegetables that you saw the other  
4 crew harvest that your crew never harvested?

5 A. I never saw that.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I assume  
7 no additional questions? Okay.

8 MS. ARCINIEGA: None from the General Counsel.

9 MR. ROY: Nothing, Your Honor.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Mr.  
11 Mendoza, we appreciate your time. There is a very small  
12 chance that someone could call you back as a witness later  
13 in the case but it's not very likely.14 We remind you that it's inappropriate to discuss  
15 this matter with anybody who could be a witness in this  
16 case, which means please do not discuss anything you heard  
17 at the hearing or that you said at the hearing with anybody  
18 who ever used to work for Cinagro. That includes crew  
19 workers or supervisors.

20 THE WITNESS: Agreed.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.  
22 You're free to go.

23 THE WITNESS: Thank you.

24 (Witness exits the hearing room.)

25 ADMINISTRATIVE LAW JUDGE SOBLE: Is there

1 anything that we need to discuss before we take our next  
2 break? During our next break, I will re-email a couple of  
3 the documents in our case to our Court Reporter that may  
4 have some name spellings in it. And then before we get to  
5 the end of the day, he can let us know if he needs any  
6 spellings beyond what's in there.

7           So is there anything else we need to discuss  
8 before we go on the break? Otherwise, we will take a break  
9 from 3:11 to 3:31.

10           MR. ROY: Your Honor, I guess we're expecting the  
11 next witness, which would be Barbara Ito. And we'll  
12 probably be coming back at 3:35. So there may be an  
13 opportunity for me to do an opening statement before five  
14 o'clock so that we can start our case in chief tomorrow  
15 morning.

16           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well, I  
17 can't predict how short of long that witness is. So,  
18 unfortunately, I was going to suggest that, for the  
19 remainder of the afternoon, that the Interpreter stays with  
20 us. But she can hit her mute button and turn off her video  
21 feed if she wants to try to do something else. But I still  
22 want to have her around in case things move much more  
23 rapidly than we expect.

24           But at some point, when we get to like, maybe,  
25 four o'clock, if we haven't finished with Ms. Ito -- well,

1 do you know, is your first witness going to be English- or  
2 Spanish-speaking?

3 MR. ROY: Your Honor, I'm hoping that we start  
4 off tomorrow morning with both of my Spanish-speaking  
5 witnesses.

6 ADMINISTRATIVE LAW JUDGE SOBLE: If we had one of  
7 your witnesses today, which would -- would it be an  
8 English- or Spanish-speaking?

9 MR. ROY: It's going to be -- it will be Mr.  
10 Dighera.

11 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So if it  
12 was today, it would be an English-speaking witness?

13 MR. ROY: Correct.

14 ADMINISTRATIVE LAW JUDGE SOBLE: And I, as I  
15 indicated before, I make you start another witness, most  
16 likely, if it's already 4:00 or 4:15 by the time we're done  
17 with Ms. Ito. Then, at that point, if you wish to do an  
18 opening statement, we certainly won't start with the next  
19 witness. That does seem like the most likely thing. But  
20 for all I know Ms. Ito is only going to be ten minutes and  
21 so I'm not going to like say for sure what's going on.

22 So most likely, sometime before 4:15 we'll let  
23 the Interpreter go. But let's suppose tomorrow we start  
24 with Spanish-speaking witnesses, yeah, I don't think we can  
25 really avoid having Ms. Lucas just be present for all of

1 tomorrow realistically.

2 MR. ROY: Your Honor, I have three witnesses who  
3 are going to speak in Spanish tomorrow.

4 ADMINISTRATIVE LAW JUDGE SOBLE: So most likely  
5 they will take up the majority, if not all, of the day?

6 MR. ROY: Not really.

7 ADMINISTRATIVE LAW JUDGE SOBLE: I'm sorry?

8 MR. ROY: I don't think they're going to be that  
9 long, Your Honor.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So put  
11 differently, do you think we're going to have a period of  
12 time of multiple hours at some point during the hearing  
13 when it's just English-speaking witnesses, or do you think  
14 the English-speaking witnesses are also going to be short?

15 MR. ROY: Well, I'm trying to start off with the  
16 two worker witnesses because I want to make sure that they  
17 get back to work timely that afternoon, number one. They  
18 would be --

19 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm only  
20 asking for purposes of being able to tell the Interpreter  
21 if there's part of a day that she is not going to need to  
22 attend. And I don't think I'm going to get enough  
23 information to be able to do that now.

24 So let's go on our break now. It's now 3:15.  
25 I'll have everyone back at 3:35. Thank you.

1 (Off the record at 3:15 p.m.)

2 (On the record at 3:33 p.m.)

3 ADMINISTRATIVE LAW JUDGE SOBLE: Right now I am  
4 only seeing Respondent's counsel and the Court Reporter,  
5 and the Regional Director. So far everybody else is  
6 missing, even though it was time to resume a minute ago.

7 MS. HERRERA: Your Honor, do you not see Ms.  
8 Arciniega?

9 ADMINISTRATIVE LAW JUDGE SOBLE: I do not.

10 MS. HERRERA: Oh.

11 ADMINISTRATIVE LAW JUDGE SOBLE: I now see the  
12 Interpreter just popped back.

13 MS. ARCINIEGA: Here, Your Honor.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Not seeing  
15 either of the Assistant General Counsels. I do not see a  
16 witness. And I do not see a Field Examiner.

17 MS. ARCINIEGA: Do you hear me, Your Honor? This  
18 is Jessica.

19 MR. ROY: I can see you.

20 ADMINISTRATIVE LAW JUDGE SOBLE: I now see you,  
21 just like as of when you spoke.

22 So I still do not see Ms. Vega, Ms. DeYoung-  
23 Dominguez, or anyone in the witness room.

24 MR. ROY: Two out of five if good, Your Honor.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Let's go off the

1 record for a second.

2 (Off 3:35 p.m.)

3 (On the record at 3:45 p.m.)

4 (Witness is present.)

5 ADMINISTRATIVE LAW JUDGE SOBLE: Would the  
6 witness please state her full name for the record?

7 THE WITNESS: My name is Barbara Ito.

8 ADMINISTRATIVE LAW JUDGE SOBLE: And Ms. Ito,  
9 what is the language you speak the best?

10 THE WITNESS: English.

11 ADMINISTRATIVE LAW JUDGE SOBLE: Ms. Ito, do you  
12 solemnly swear or affirm that your testimony in this  
13 hearing will be the truth, the whole truth, and nothing but  
14 the truth?

15 THE WITNESS: I do.

16 ADMINISTRATIVE LAW JUDGE SOBLE: What will happen  
17 this afternoon is that some of the attorneys, and possibly  
18 myself, will be asking you some questions. After we ask a  
19 question, if you would pause for a second or two before you  
20 answer? That is because one of the attorneys or myself may  
21 object to a question, in which case I'll let you know  
22 whether it's appropriate to answer the question or,  
23 instead, to wait for the next question.

24 THE WITNESS: Okay.

25 ADMINISTRATIVE LAW JUDGE SOBLE: For all of your

1 answers, it's important that you answer orally or audibly.  
2 If you merely gesture with your hands or nod your head back  
3 and forth the Court Reporter cannot fully incorporate that  
4 into the transcript, so we need an oral or audible answer.

5 THE WITNESS: I understand.

6 ADMINISTRATIVE LAW JUDGE SOBLE: If at any point  
7 you do not understand a question, please let me know and  
8 I'll determine if there's a way that the attorney can  
9 rephrase the question so you better understand it.

10 THE WITNESS: Understood.

11 ADMINISTRATIVE LAW JUDGE SOBLE: If any point you  
12 need to take a break to get a drink of water, to use the  
13 restroom, or to stand up and stretch, please let me know  
14 because that's permitted.

15 THE WITNESS: Understood.

16 ADMINISTRATIVE LAW JUDGE SOBLE: I have not  
17 noticed this with any of the previous witnesses but I am  
18 noticing now about a one-second lag between the video and  
19 the voice. So can the General Counsels explain that?

20 MS. ARCINIEGA: I haven't noticed that, Your  
21 Honor. You're saying from the hearing room?

22 ADMINISTRATIVE LAW JUDGE SOBLE: Only with this  
23 witness, but I see her mouth begin to move approximately a  
24 second or two after I hear her voice.

25 MS. ARCINIEGA: I didn't see that. However, Ms.

1 Vega is our go-to.

2 ADMINISTRATIVE LAW JUDGE SOBLE: It was not  
3 happening with Ms. Arciniega. Otherwise, I would assume  
4 it's some sort of technical issue on my end. But it was  
5 only happening with mi.

6 MS. ARCINIEGA: Yeah, I don't notice that.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I'm  
8 prepared to allow you to go forward with your examination  
9 if nobody else objects. And if at some point I find it too  
10 distracting, I may decide that we need to address that.

11 MR. ROY: No objection, Your Honor.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Ms.  
13 Arciniega, you can proceed then.

14 MS. ARCINIEGA: Thank you.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Well, hold on.

16 Ms. Ito, do you speak any Spanish?

17 THE WITNESS: Not really.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Thank  
19 you.

20 Ms. Arciniega, you can proceed.

21 MS. ARCINIEGA: Thank you very much.

22 Whereupon,

23 BARBARA ITO,  
24 was called as a witness herein and, having been previously  
25 duly sworn, was examined and testified in Spanish as



1 follows:

2 DIRECT EXAMINATION

3 BY MS. ARCINIEGA:

4 Q. Good afternoon, mi.

5 A. Good afternoon.

6 Q. My name is Jessica Arciniega and I work for the  
7 State of California Agricultural Labor Relations Board. I  
8 want to, first, thank you for your patience. I know that  
9 you've been waiting and I appreciate you being here. I'm  
10 going to have a few questions for you today.

11 If you experience any issues on your end that you  
12 can hear us or you can't see us on the screen, or you see a  
13 lag, something that's bothering you, please don't hesitate  
14 to let us know.

15 A. Okay.

16 Q. Okay. So who do you work for?

17 A. I have a small bookkeeping business called Five  
18 Star Bookkeeping. I own it.

19 Q. Okay. And in addition to being the owner, do you  
20 have any other title there at your bus?

21 A. I'm not sure I understand the question. I'm the  
22 boss. I own the company. I'm the partner -- I mean --

23 Q. Okay. Thank you.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Just a moment.

25 What city is your business located in?

1 THE WITNESS: Camarillo, California.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Camarillo.

3 Okay.

4 THE WITNESS: Yes.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

6 BY MS. ARCINIEGA:

7 Q. What kind of work do you perform?

8 A. I do general ledger bookkeeping. But, also, my  
9 expertise is in agricultural payroll, cost accounting, that  
10 kind of thing.

11 Q. And how long have you had this business?

12 A. It will be 25 years in September.

13 Q. Do you hold any certifications related to this  
14 payroll and general ledger work that you do.

15 A. No, just 45 years of experience.

16 Q. And do you have any licenses related to the  
17 payroll work?

18 A. No.

19 Q. Okay. Now you said you were an expert. You have  
20 expertise in agricultural payroll.

21 A. Yes.

22 Q. So can you tell me more about what that -- how  
23 you obtained that expertise?

24 A. From experience in working in the field for close  
25 to 45 years and following the different changes in the

1 laws, making sure that I understood piece rate wages,  
2 hourly wages, overtime wages. I use a bookkeeping software  
3 that enables me to do the calculations precisely so that  
4 there isn't a question about the payments.

5 Q. Okay. And currently, roughly, how many  
6 agricultural employers do you prepare payroll for in  
7 Ventura County, if you know?

8 A. Right now, I'm trying to count in my head, eight?

9 Q. Okay. And are you familiar with the difference  
10 between employees and independent contractors?

11 A. Yes.

12 Q. And do you have -- oh, yeah.

13 You said you had experience preparing payroll for  
14 ag employers that pay piece rate; is that correct?

15 A. Yes. Yes.

16 Q. And do you have experience calculating payroll  
17 deductions?

18 A. Yes.

19 Q. Okay. Are you familiar with Cinagro Farms?

20 A. Yes.

21 Q. Okay. And are you currently performing payroll  
22 work for Cinagro Farms?

23 A. Yes.

24 Q. When did you start performing work for Cinagro?

25 A. March of '17.

1 Q. Do you recall -- oh. Do you recall any specific  
2 date?

3 A. The first conversation that I had with Tony was  
4 in February of '17. But the first billing that I did for  
5 him was for -- just a second, I wrote it down -- the first  
6 payroll that I ran for him was, I guess, February 24th of  
7 '17, not March, February.

8 MS. ARCINIEGA: Okay. I would just want the  
9 record to reflect that the witness is using some type of --  
10 I think it's an iPad. It's really a little challenging for  
11 me to see from here.

12 Is that --

13 THE WITNESS: It's just -- it just is my written  
14 notes.

15 MS. ARCINIEGA: Oh, I'm sorry. Okay. It looked  
16 like you swiped, so I wasn't sure about that.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I believe  
18 it's what called a pad of paper, Counsel.

19 THE WITNESS: It's actually called a reMarkable.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Oh.

21 THE WITNESS: And you just -- you write on it  
22 like you would a piece of paper. It's electronic but it's  
23 just -- it's like a piece of paper.

24 ADMINISTRATIVE LAW JUDGE SOBLE: So, just so you  
25 know, at some point one or more -- Ms. Ito, one or more of

1 the counsel may ask to see that, so please do not erase it  
2 during the course of the questions.

3 THE WITNESS: Okay.

4 MS. ARCINIEGA: Right.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

6 BY MS. ARCINIEGA:

7 Q. Do you have the ability to print out those notes  
8 from that device?

9 A. Sure. I can.

10 Q. Okay.

11 A. I can email it.

12 Q. And are those notes that you prepared before  
13 coming here today?

14 A. Yes. I just hand wrote some information down so  
15 that I would get it right.

16 Q. Okay. Thank you.

17 And so you said -- I'm sorry -- payroll for  
18 February 24th, 2017 is when you started?

19 A. Yes, I believe so.

20 Q. Okay. Let me just orient myself real quick.

21 When -- I believe you said you had a conversation  
22 with Mr. Dighera in February of 2017. What did he ask you  
23 to do at that time?

24 A. If I recall correctly, he wanted me to make the  
25 calculations for payroll so that he could pay the people

1 the correct wages for piece rate and hourly wage.

2 Q. Okay. And at the beginning of your work for  
3 Cinagro did you review any records regarding or related to  
4 payroll that the company had prepared prior to hiring you?

5 A. No.

6 Q. Okay. And were you instructed on how often you  
7 were going to complete payroll?

8 A. Weekly.

9 Q. Okay.

10 ADMINISTRATIVE LAW JUDGE SOBLE: Can I interject  
11 a quick question?

12 Ms. Ito, you were not involved in putting  
13 together W-2s for the employees for the 2016 calendar year;  
14 correct?

15 THE WITNESS: No.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

17 MS. ARCINIEGA: Okay.

18 BY MS. ARCINIEGA:

19 Q. And did Cinagro, in February 2017, provide you  
20 with -- what records did it provide you with to prepare the  
21 weekly payroll?

22 A. The time sheets.

23 Q. Okay. And what information was contained on  
24 those time sheets?

25 A. The employees name. The field. The type of work

1 they were doing. The number of hours that they spent doing  
2 that. The time of the breaks. The time of the lunches.  
3 How many pieces. And the rate.

4 Q. Okay. And did Cinagro provide you with the  
5 documents you needed to allow you to calculate withholdings  
6 for the employees?

7 A. I don't calculate withholdings.

8 Q. Do you mean that you don't calculate withholdings  
9 for employees at Cinagro?

10 A. The only thing I was given was the time sheets.  
11 I do a gross payroll for them.

12 Q. Okay. And who instructed you to do a gross  
13 payroll?

14 A. Tony.

15 Q. Is that how you continue to prepare payroll for  
16 Cinagro employees?

17 A. Yes.

18 ADMINISTRATIVE LAW JUDGE SOBLE: That last  
19 question is a little bit vague to me. Was Counsel asking,  
20 is that how she continues to do it up until this day?

21 MS. ARCINIEGA: Yes, I was, Your Honor.

22 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

23 Is that how you understood the question, Ms. Ito?

24 THE WITNESS: Yes.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Perfect.

1           You can proceed.

2 BY MS. ARCINIEGA:

3           Q.    Okay.  And based on that instruction, you then  
4 prepared the weekly paychecks for the employees with only  
5 gross wages based off of --

6           A.    Yes.

7           Q.    -- the time sheets?

8           A.    Yes.

9           Q.    Okay.

10           ADMINISTRATIVE LAW JUDGE SOBLE:  I'm not sure I  
11 understand, Ms. Ito.  Does that mean that no money is  
12 withheld for deductions from the checks that go to the  
13 employees?

14           THE WITNESS:  That's correct.

15           MS. ARCINIEGA:  Okay.

16 BY MS. ARCINIEGA:

17           Q.    So when you prepared the first checks, February  
18 2017, what -- do you remember what kind of checks those  
19 were?

20           A.    From my recollections, I gave Arlis, who works  
21 for Tony, a spreadsheet or a piece of paper that showed the  
22 wages for each person and she handwrote checks out of their  
23 checkbook.  But it might have been a couple of weeks later  
24 that I started printing them from my program, which is just  
25 blank check stock.  And then I filled in the company name.



1 And the employee's name was on there with their address,  
2 and the total amount of money and the account number.

3 ADMINISTRATIVE LAW JUDGE SOBLE: For the benefit  
4 of our Court Reporter, how do you spell Arlis?

5 THE WITNESS: A-R-L-I-S.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. And  
7 that's the name of a person?

8 THE WITNESS: That's the name of the person who  
9 we have contact with for the farm. She's the only person  
10 that we talk to as far as the payroll was concerned.

11 ADMINISTRATIVE LAW JUDGE SOBLE: And do you know  
12 what her position is?

13 THE WITNESS: I don't know what it is exactly.  
14 She comes into the office and collects the payroll and  
15 that's about it.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Do you know her  
17 last name?

18 THE WITNESS: I don't know it. I can look it up  
19 but I don't know it offhand.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Why don't  
21 you wait and see? Maybe one of the attorneys will ask that  
22 later. But for now, that's fine. Thank you.

23 Ms. Arciniega?

24 MS. ARCINIEGA: Yes.

25 BY MS. ARCINIEGA:

1 Q. So when you -- you're talking about February  
2 2017. At that time did you prepare any type of a statement  
3 that -- for the employees, explaining what that check that  
4 they were receiving was for?

5 A. Yes.

6 Q. And can you tell me what that looked like?

7 A. It was what we call a check voucher, so it showed  
8 each piece that they -- it showed line items with the --  
9 how many hours they spent, how many pieces, how much each  
10 piece was worth, and then their wage off of that. But it  
11 was all the gross calculation. It was an Excel  
12 spreadsheet. So each person got one sheet of paper with  
13 just their information on it and that correlated to the  
14 amount of the gross check.

15 Q. Okay. So this -- just a second here. So the --

16 A. That's this piece of paper right here.

17 Q. That's difficult for me to see.

18 A. Well, it's --

19 Q. Where are you getting that from?

20 A. From the piece of -- from the -- I don't know if  
21 you can see it. It was sitting on the desk right here.

22 Q. Uh-huh.

23 A. It's Cinagro Farms and Marisol Jimenez. It's  
24 part of the -- it's part of this packet that was sitting on  
25 the desk, but this is what I was giving them. So it shows

1 each day what they did, what it represented, how much it --  
2 how much they got paid for each piece, and their breaks,  
3 and their rest and recovery time. This is what I would  
4 give her, so this is what each person got with their check.

5 Q. That's what -- okay. That's what you would  
6 provide to Arlis; is that your testimony?

7 A. Yes. This is what --

8 Q. Okay.

9 A. -- I gave. And this is what I continue to give  
10 them.

11 Q. Okay. But you didn't hand that out to the  
12 workers?

13 A. No. I gave everything to Arlis when she picked  
14 up the payroll.

15 Q. Okay.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Is it fair to  
17 say, Ms. Ito, that through the end of March 2017, you  
18 didn't actually meet in person any of the farmworkers?

19 THE WITNESS: I never have to this day.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

21 THE WITNESS: Um-hmm.

22 MS. ARCINIEGA: Okay. So you gave that to Arlis.  
23 Thank you.

24 BY MS. ARCINIEGA:

25 Q. And is it your testimony that with the first

1 checks that you prepared, the ones that you said were  
2 handwritten in a checkbook, had that type of piece of paper  
3 you gave to Arlis?

4 A. Yes.

5 Q. I'm going to ask you to look at what has been  
6 admitted as General Counsel's Exhibit 11. And I'm -- can  
7 you look in the notebook in front you, please, and turn to  
8 Tab 11?

9 MR. ROY: Your Honor, can I ask Counsel to  
10 describe what that document is? I thought we only went to  
11 ten.

12 THE WITNESS: Yeah. I don't have an 11.

13 MS. ARCINIEGA: Earlier on, during the direct  
14 testimony of one of the witnesses, we had admitted it and  
15 added it as General Counsel's Exhibit 11.

16 MR. ROY: Is this Vasquez's gross pay?

17 MS. ARCINIEGA: I believe it was for Yolanda  
18 Antonio.

19 MR. ROY: Okay.

20 MS. ARCINIEGA: Your Honor, it may need to be  
21 taken over to the witness.

22 THE WITNESS: Pardon me.

23 MS. ARCINIEGA: Is that something that I can ask  
24 Ms. Vega to do?

25 ADMINISTRATIVE LAW JUDGE SOBLE: Remind, Ms.

1 Arciniega, was this .pdf emailed to me?

2 MS. ARCINIEGA: Yes, Your Honor. It was on --

3 ADMINISTRATIVE LAW JUDGE SOBLE: I'm assuming  
4 that it was on the 25th?

5 MS. ARCINIEGA: Yes.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Give me about 30  
7 seconds before you ask your next question. I just want to  
8 pull it up here on my screen. Okay. Here's my problem, I  
9 just didn't call it number 11.

10 (Background conversation.)

11 ADMINISTRATIVE LAW JUDGE SOBLE: Just for  
12 purposes of the record, I'll note that this check, on its  
13 face has -- this document, excuse me, has, on its face, a  
14 date of February 24, 2017 near the top left. And I don't  
15 believe there is a Bates number on it. No. This is a two-  
16 page document and on the first page at the top left it says  
17 February 24, so, okay.

18 You can proceed with your next question.

19 BY MS. ARCINIEGA:

20 Q. Do you have that in front of you, Ms. Ito?

21 A. Yes. Okay. So this is what the check stub  
22 looked like. So the check stub would take the information  
23 on the Excel sheet and it combines it. So each person got  
24 a check with this kind of listing and an Excel spreadsheet  
25 for each check.

1 Q. Okay. I'm going to ask this again but I think I  
2 asked it.

3 Were you personally there when workers were  
4 handed their paychecks?

5 A. No.

6 Q. Okay. So you don't know if -- what workers  
7 actually received; is that correct?

8 A. No.

9 Q. Okay.

10 A. No.

11 Q. So looking at this document in front of you  
12 that's dated February 24th, 2017, is this a document that  
13 your office prepared?

14 A. It looks like that was probably the first check  
15 that we did issue, so I'm sorry if I'm remembering  
16 incorrectly. I thought that the first check that we did  
17 were handwritten but this is something that would have come  
18 out of my program. This is what the check stub would look  
19 like.

20 Q. Okay.

21 A. So this was -- yeah.

22 Q. I mean, yeah, and this is not a check; right?  
23 This is just the stub?

24 A. Yes.

25 Q. Okay.

1 A. Yes.

2 Q. And can you just tell us what the number 601 on  
3 the left-hand column represents?

4 A. That represents the general ledger account number  
5 for labor.

6 Q. Okay. And there's nowhere on here that shows the  
7 hours worked; correct?

8 A. No.

9 Q. And there's nowhere here that shows the number of  
10 pieces that this worker harvested?

11 A. Not on the check stub.

12 Q. And there's nowhere here that shows the rates at  
13 which the pieces were paid; correct?

14 A. Correct.

15 Q. Okay. And did you ask Tony, when he instructed  
16 you to not take deductions, did you ask him how the  
17 deductions were going to be taken for the employees?

18 A. We discussed the fact that they would be handled  
19 as vendors, not employees.

20 Q. And what does vendors mean?

21 A. Independent contractor.

22 Q. Okay. Did you provide Tony with information  
23 about what the significance of that was?

24 A. Yes, we talked about it. Tony and I talked about  
25 that, yes.

1 Q. And what did you tell him?

2 A. That he had to be very careful to make sure that  
3 he had information from each employee, a W-9.

4 Q. Okay. Did you tell --

5 (Background conversation.)

6 MS. ARCINIEGA: May I proceed?

7 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

8 MS. ARCINIEGA: Okay.

9 BY MS. ARCINIEGA:

10 Q. Did you tell him anything else about his  
11 responsibility by classifying him that way?

12 A. I did.

13 Q. What did you say?

14 A. That if he was going to treat them as vendors, he  
15 needed to do 1099s at the end of the year.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I need to  
17 take about a 60-second break. I'll be right back.

18 (Off the record at 4:11 p.m.)

19 (On the record at 4:13 p.m.)

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. You can  
21 resume, Ms. Arciniega.

22 MS. ARCINIEGA: Great. Thank you.

23 BY MS. ARCINIEGA:

24 Q. Did you tell Tony anything in relation to what he  
25 needed to inform workers about their responsibility for



1 taxes at the end of the year?

2 MR. ROY: Objection; Your Honor. It lacks  
3 relevance. They've already established that there was no  
4 wage statement provided. Her statement to Mr. Dighera  
5 about what his legal obligations are to the workers is not  
6 relevant.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. That's  
8 pushing what I think was being a speaking objection, just  
9 for you to know for the future. But in any event, the  
10 objection is overruled. I'm not going to state the reason  
11 why in front of the witness. If you want to hear the  
12 reason why, we can have the witness step out, and I'm happy  
13 to address it.

14 MR. ROY: Fine.

15 ADMINISTRATIVE LAW JUDGE SOBLE: I think at this  
16 point it will be quicker to have Ms. Vega escort the  
17 witness out of the room, just for like two minutes, and  
18 bring her back, rather than our trying to go to the break  
19 room and back because this will be pretty quick. If it  
20 wasn't for the fact that the door locked, we, otherwise,  
21 wouldn't even need to involve Ms. Vega. But I was told at  
22 the beginning of the hearing, we couldn't just put like a  
23 book or a doorstop there for the really short ones.

24 Should I assume she's not in the hearing room?

25 THE WITNESS: No.

1 ADMINISTRATIVE LAW JUDGE SOBLE: I can't tell  
2 because --

3 THE WITNESS: I'm still here. I'm -- I'm still  
4 here.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I see you  
6 now.

7 MR. ROY: Oh, gosh.

8 ADMINISTRATIVE LAW JUDGE SOBLE: I just saw the  
9 chair but --

10 THE WITNESS: Okay.

11 ADMINISTRATIVE LAW JUDGE SOBLE: -- now I can see  
12 you.

13 THE WITNESS: Here she comes.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

15 THE WITNESS: Okay.

16 (Witness exist the hearing room.)

17 ADMINISTRATIVE LAW JUDGE SOBLE: I think I heard  
18 her leave the room but --

19 MR. ROY: You did.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So, no, I  
21 think I -- from what I can tell, since she's described that  
22 there were no withholdings made and that they were being  
23 treated as vendors, that could conceivably been a motive  
24 for the employer to be concerned if the crew was asking  
25 questions or complaining about that. Now we haven't heard

1 testimony yet as to what was done with the other crew. But  
2 based upon what Ms. Ito has said so far, I'm assuming that  
3 the other true was -- the other crew, excuse me, was  
4 treated the same. But we can ask people, like Cesar  
5 Miranda and others, about that when they come.

6           So just like I've allowed a lot of your questions  
7 about who's talked to who, because I want to see if there's  
8 any sort of bias with a particular witness, again, this  
9 might be relevant as a motivation. Otherwise, one might  
10 think, okay, well, someone complained about pay stubs not  
11 being a particular way. Well, why would the company care?  
12 Well, the company might care if it's a way that they're  
13 technically not supposed to be doing it.

14           MR. ROY: Your Honor, may I be heard?

15           ADMINISTRATIVE LAW JUDGE SOBLE: Of course.  
16 That's why I had the witness step out, because I thought  
17 you might want to respond to that.

18           MR. ROY: The protected concerted activity here  
19 raised by the employees was the lack of a wage statement  
20 and other issues pertaining to the workplace. Whether they  
21 were taking taxes out or what Ms. Ito explained in the  
22 future that Mr. Dighera should be doing is not relevant. I  
23 disagree that it goes to any motive simply because these  
24 issues were raised their first week of employment and, yet,  
25 for two-and-a-half months they continued working there

1 without any action by the company. So the company, based on  
2 the evidence in the record, there's no evidence of any  
3 motivation to take against the employees.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Well, that's  
5 something that still remains to be explored with both the  
6 witnesses who remain and has been discussed to some extent  
7 with employees there. But even if the employees themselves  
8 didn't know that nothing was being properly withheld, the  
9 fact that they were asking about the withholdings and  
10 asking to get withholding statements could conceivably have  
11 caused the ownership to worry that this was going to shed  
12 light on the way they were handling the workers as vendors  
13 rather than as employees. I'm not saying that is what took  
14 place. I'm saying that Counsel is entitled to explore that  
15 as a possibility among different competing possibilities.

16 MR. ROY: Okay.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Anything  
18 further?

19 MR. ROY: No.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. We can  
21 bring Ms. Ito back then.

22 MS. ARCINIEGA: Okay. (Indiscernible.)

23 ADMINISTRATIVE LAW JUDGE SOBLE: I will make it  
24 clear, though, it's only relevant during the time period  
25 before they got their last paycheck, the time period after

1 that. Well, certainly, the time period more than like,  
2 say, a month after that doesn't seem particularly  
3 pertinent. So I would limit questions to say April 30th,  
4 2017 and before. I mean, I don't think there's any  
5 relevance to what the company is doing today, for example.

6 (Witness is present.)

7 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you for  
8 coming back, Ms. Ito.

9 THE WITNESS: You're welcome.

10 ADMINISTRATIVE LAW JUDGE SOBLE: If you know with  
11 respect to March 10th and before, do you know if the  
12 company was providing health insurance for any of the  
13 workers?

14 THE WITNESS: I don't know.

15 ADMINISTRATIVE LAW JUDGE SOBLE: And do you know  
16 if they were providing Worker's Compensation Insurance for  
17 any of the workers?

18 THE WITNESS: I don't know.

19 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Thank  
20 you.

21 Ms. Arciniega, you can proceed.

22 MS. ARCINIEGA: Okay. So I think my question --  
23 I had a pending question, Your Honor, was that --

24 ADMINISTRATIVE LAW JUDGE SOBLE: I think you did,  
25 as well.

1 MS. ARCINIEGA: I'm sorry?

2 ADMINISTRATIVE LAW JUDGE SOBLE: You did.

3 MS. ARCINIEGA: Okay.

4 BY MS. ARCINIEGA:

5 Q. My pending question, if I can remember it, was  
6 did you tell Tony or instruct Tony what he had to tell the  
7 workers in relation to the responsibility for taxes at the  
8 end of the year?

9 A. I don't believe I did, no.

10 Q. And did you receive copies of W-9s from the  
11 workers in 2017 from Cinagro?

12 A. I would assume I did. I can't say for sure when  
13 I received them, so I have some W-9s but I can't tell you  
14 what years they are, unless I look at the file.

15 Q. Would you have copies of W-9s from 2017,  
16 February, I'd say through March 2017?

17 A. I prepare the 1099s at the end of the year, so I  
18 would have given a list to Arlis as to whose W-9 I needed,  
19 and those would be in my file, whatever I received from  
20 her. I don't receive them on a -- like when they hire  
21 somebody. I get them one time at the end of the year.

22 Q. Okay. I'm sorry. I'm a little bit new to this  
23 but I understood -- okay, so let me just back -- pull back.

24 So you had said that you told Tony that he needed  
25 to instruct -- he needed to have workers fill out the

1 W-9 --

2 A. Yes.

3 Q. -- because he decided to pay them without  
4 withholdings.

5 A. Yes.

6 Q. Isn't that something that they do when they start  
7 with the employer, like a W-4?

8 MR. ROY: Objection.

9 THE WITNESS: That's not --

10 MR. ROY: Relevance, Your Honor.

11 THE WITNESS: Okay.

12 ADMINISTRATIVE LAW JUDGE SOBLE: The objection is  
13 overruled as to relevance. But it seems like, to me, that  
14 given that Ms. Ito did not work for the company when these  
15 workers started there, asking her is almost like you're  
16 trying to ask her a question as an expert witness. And Ms.  
17 Ito was only here as a percipient witness, so I'm not going  
18 to have her ask questions about what is common to the  
19 industry.

20 MS. ARCINIEGA: Okay. I was doing that to  
21 clarify for myself. I apologize if I went out of bounds.

22 BY MS. ARCINIEGA:

23 Q. So the question then is do you currently retain  
24 copies of W-9s that you received in 2017 from Cinagro?

25 A. I would have them in the file, yes.

1 Q. Okay. And you said that you prepared 1099s in  
2 2017 for Cinagro employees; is that correct?

3 A. I -- I believe so.

4 Q. Okay. And would you have those? Would you have  
5 copies of those as well?

6 A. I would in the file.

7 Q. Okay. And is that file accessible, like  
8 electronically?

9 A. No. They're paper copies.

10 Q. Paper copies. But they are maintained in your  
11 office?

12 A. Yes.

13 Q. Okay. Okay. And when you --

14 ADMINISTRATIVE LAW JUDGE SOBLE: Just a moment.

15 Ms. Ito, as of March 2017, how many different  
16 agricultural clients did you have back then?

17 THE WITNESS: Probably about the same number. I  
18 have clients come and go, so I'm not sure the exact number.  
19 I'd have to look at my records.

20 ADMINISTRATIVE LAW JUDGE SOBLE: Did you have  
21 other clients, and I don't want you to name them, who also  
22 treated their workers as vendors, as was being done in this  
23 instance?

24 MR. ROY: Objection; relevance.

25 ADMINISTRATIVE LAW JUDGE SOBLE: I'm going to



1 overrule that. I'm not -- I'm asking it to get a sense of  
2 how familiar this witness was when she came across that  
3 scenario. Again, I'm not going to ask her who they were or  
4 the details. I just want to know if there were others that  
5 were that way. Nor am I asking her whether it's permitted  
6 or not permitted. I mean, that's, again, an expert  
7 question that I don't wish to use this witness for.

8           So at the time did you have other clients who did  
9 that as well?

10           THE WITNESS: No.

11           MS. ARCINIEGA: Okay. I may proceed?

12           ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

13           MS. ARCINIEGA: Thank you.

14 BY MS. ARCINIEGA:

15           Q. And do you also retain copies of any payroll  
16 checks that you prepared for Cinagro in 2017?

17           A. No, I don't.

18           MR. ROY: Objection, Your Honor; relevance. I  
19 think I know where this is going. But if Counsel is trying  
20 to solicit these documents, she's had almost four years to  
21 solicit them as part of the investigation. I have not seen  
22 any such documents. And it's kind of surprising at this  
23 point that they're going this direction.

24           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well, I  
25 would assume that if the General Counsel requested

1 documents from Cinagro or Mr. Dighera that documents that  
2 would have been considered under their control and that you  
3 would have sought would include any that would have been  
4 maintained by their bookkeeper Ms. Ito. So I'm a little  
5 bit confused, both with them asking for them at this late  
6 time period, and also with your not having already asked  
7 her for them if the General Counsel asks for them from your  
8 client.

9           So let's break that down into two parts and deal  
10 with the second part.

11           When the General Counsel asked you for documents  
12 did part of your diligent search for looking for documents  
13 include asking Ms. Ito for anything that she had?

14           MR. ROY: It did not specifically request W-9s,  
15 1099, or payroll checks, Your Honor.

16           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm not  
17 sure surprised that it didn't include the first two. I  
18 would be surprised if the General Counsel didn't ask for  
19 payroll checks.

20           MR. ROY: She did not.

21           ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

22           MR. ROY: She produced a couple from the employee  
23 witnesses that they had --

24           ADMINISTRATIVE LAW JUDGE SOBLE: That's fine.

25           MR. ROY: -- (indiscernible).

1 ADMINISTRATIVE LAW JUDGE SOBLE: I'm just telling  
2 you what I would have thought initially. I'm not saying  
3 what took place. I wouldn't have seen those requests.

4 So Ms. Arciniega, do you have anything you want  
5 to add?

6 MS. ARCINIEGA: Your Honor, I was at the  
7 interview of Ms. Ito in 2017. And I don't recall that, at  
8 that time, she provided this information that she  
9 instructed Mr. Dighera to provide W-9s and 1099s. And so  
10 this is new information that she said today and I would be  
11 interested. I think that -- you know, I don't want to talk  
12 more in front of the witness, so let me just keep it right  
13 there and maybe ask if I can have a couple of minutes  
14 further with Your Honor and outside of the witness and Mr.  
15 Roy?

16 ADMINISTRATIVE LAW JUDGE SOBLE: My question  
17 would be this: Are there -- without throwing out --

18 MR. ROY: Your Honor --

19 ADMINISTRATIVE LAW JUDGE SOBLE: -- too much what  
20 you intend to ask, are there other questions you can ask  
21 and then, perhaps, we can address that at a particular  
22 time?

23 MS. ARCINIEGA: Yeah.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Because it's  
25 become pretty clear to me that we are not going to finish

1 this witness today. And so --

2 MR. ROY: Your Honor, may I be heard please?

3 ADMINISTRATIVE LAW JUDGE SOBLE: You can in a  
4 moment. But what I'd like to do, without having both of  
5 you address this, is see how much we can do in terms of  
6 addressing questions because we're going to have some time  
7 at the end when the witness is going to step out because  
8 she's going to have to come back, probably, tomorrow  
9 morning anyhow.

10 So why don't we have Ms. Arciniega, if she has a  
11 different question, go to that? And then we can address  
12 this. And if I'm wrong, perhaps we can address all of the  
13 questions that can be asked today but let's see.

14 MR. ROY: Your Honor --

15 ADMINISTRATIVE LAW JUDGE SOBLE: But go ahead and  
16 ask your next question first.

17 MS. ARCINIEGA: Okay.

18 BY MS. ARCINIEGA:

19 Q. And when you told Mr. Dighera about these  
20 responsibilities, what did he respond?

21 A. To tell you the truth, I don't remember  
22 specifically what we talked about. I told him that he  
23 needed to pay his employees properly as far as the  
24 calculation and it was up to him, after that, what he  
25 decided to do. And that if he wasn't going to withhold the

1 taxes, then I would prepare a 1099 at the end of the year.

2 Q. And how did he respond when you told him that?

3 A. He said, okay, he would let me know.

4 MS. ARCINIEGA: Okay. Let me move on, Your  
5 Honor.

6 MS. ARCINIEGA: I want to show you, Ms. Ito, a  
7 document that has been -- in the white binder that's been --  
8 -- well, let me ask this of Your Honor first.

9 Your Honor, if I may, I would like to show the  
10 witness a document that's been previously identified as  
11 General Counsel's Exhibit 10?

12 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

13 MS. ARCINIEGA: Okay.

14 BY MS. ARCINIEGA:

15 Q. Ms. Ito, can you please look at that white  
16 binder --

17 ADMINISTRATIVE LAW JUDGE SOBLE: Hold on. Hold  
18 on for a moment.

19 For the record, Exhibit 10 has Bates number C  
20 like cat, F like field, 1176 and continues with consecutive  
21 number, seemingly, through CF 1199, so it's approximately  
22 23 or 24 pages.

23 MR. ROY: Your Honor, could you describe what it  
24 is? Is it a payroll document or --

25 ADMINISTRATIVE LAW JUDGE SOBLE: The first

1 page --

2 MR. ROY: -- (indiscernible)?

3 ADMINISTRATIVE LAW JUDGE SOBLE: -- is a  
4 rectangular box that says Cinagro 04/03-04/09/17. It if  
5 helps, this is the document that you have not stipulated to  
6 admit.

7 MR. ROY: That's correct.

8 MS. ARCINIEGA: Respondent's Counsel did  
9 stipulate to its authenticity --

10 MR. ROY: Only.

11 MS. ARCINIEGA: -- but not admissibility.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Right.

13 MS. ARCINIEGA: Um-hmm. Okay.

14 ADMINISTRATIVE LAW JUDGE SOBLE: So do you want  
15 her to flip through all of the pages of it or do you want  
16 to ask questions or -- because, otherwise, if you want her  
17 to look at all 24 pages, we can do that.

18 MS. ARCINIEGA: I would like her to page through  
19 them, Your Honor. And it has been stipulated as to its  
20 authenticity. But I would like her to have the opportunity  
21 to page through.

22 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

23 MR. ROY: While she's doing that, Your Honor, I'd  
24 like to interpose an objection on the basis of relevance. I  
25 don't know what these documents have to do with what

1 happened at the last week of employment. This is over a  
2 month later. So I don't see how it has any relevance to  
3 protected concerted activity of any termination of  
4 employment.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I can  
6 think of at least two theories under which some of these  
7 documents would be relevant. I'm not going to articulate  
8 them in front of the witness.

9 Actually, thinking about it, I'm not sure there's  
10 any harm in articulating it while she's going through it,  
11 while we're on the record. One of them is just simply to  
12 establish that the other crew was working during those  
13 dates, which may or may not be relevant depending upon if,  
14 and I'm not saying it is, a defense that the company wanted  
15 to offer was that there was no work to be done.

16 MR. ROY: Your Honor, we have already stipulated  
17 to the General Counsel's exhibits showing that the other  
18 crew continued to work after March 4th, all the way through  
19 the last week of March 2017. The fact that they continued  
20 thereafter is not relevant because that fact has already  
21 been established.

22 ADMINISTRATIVE LAW JUDGE SOBLE: So you would be  
23 willing to stipulate that the other crew worked during  
24 April 3rd through April 9th, for example?

25 MR. ROY: Only for the fact that they worked

1 without the necessity of the documents.

2 MS. ARCINIEGA: I'd like to be heard when you --

3 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

4 MS. ARCINIEGA: -- allow me to, Your Honor.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Well, the second  
6 reason why I will be interested in it, and it may not  
7 require the document to do that, is just simply to confirm  
8 that the methodology of paying the other crew in April was  
9 no different than the methodology used to pay the crews  
10 before that.

11 MR. ROY: I'll stipulate to that, Your Honor.

12 ADMINISTRATIVE LAW JUDGE SOBLE: But, Ms.  
13 Arciniega, you have another reason you'd like to admit it?

14 MS. ARCINIEGA: Yes, Your Honor. It shows that  
15 the -- that work continued at Cinagro. But this also shows  
16 that additional workers were hired throughout those -- the  
17 month, from March. The documents that are part of the  
18 exhibits, on the front page you'll see the number of  
19 workers that worked for that week. And on April 3rd  
20 through the 9th the number of those workers increased.

21 So to the extent that Respondent's Counsel -- I  
22 don't know, Your Honor, you know, they've alluded that  
23 there was no work or that there was no jobs, Your Honor,  
24 but they clearly hired other people, and they didn't hire  
25 any of the discriminatees, so I believe it is relevant.



1           MR. ROY: Your Honor, it's the General Counsel's  
2 own witnesses that said there was another crew working.  
3 And the other crew was working before the March 4th  
4 incident. We have stipulated into the record as admissible  
5 the following four workweeks that show a declining number  
6 of people that worked in that, quote, "other crew" as it  
7 existed prior to the incident. And the General Counsel is  
8 trying to make the argument that, you know, we hired  
9 people. That crew was an independent crew, as we will  
10 develop in the record. And it's our position, based upon  
11 the evidence already admitted into the record, that the  
12 other crew declined in members for the next four weeks in  
13 March of 2017. That's already before you. So the fact  
14 that it increased in May is not relevant.

15           MS. ARCINIEGA: This is April.

16           MR. ROY: I'm sorry. April. Excuse me.

17           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well, I  
18 don't agree with that. I think if there was additional  
19 people hired in April, I'm going to allow the General  
20 Counsel to introduce that evidence. At this point I  
21 haven't decided how much I would give weight to it or not  
22 but I will permit that.

23           MR. ROY: And I will object on relevance grounds,  
24 Your Honor.

25           ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Noted.

1 MS. ARCINIEGA: I would like to move this  
2 exhibit, request that it be moved into evidence, Your  
3 Honor.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Denied at this  
5 point without prejudice to do so after you --

6 MS. ARCINIEGA: Oh, I'm sorry, we were already  
7 arguing so I didn't get to finish. Yes. Correct. I Thank  
8 you.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Just to  
10 clarify, there has been a stipulation as to that it is an  
11 authentic document.

12 MS. ARCINIEGA: Right.

13 ADMINISTRATIVE LAW JUDGE SOBLE: But I still  
14 think it's appropriate to ask the witness, for example, if  
15 she generated or if she knows what it is.

16 MS. ARCINIEGA: Right. Thank you

17 BY MS. ARCINIEGA:

18 Q. Ms. Ito, have you had a chance to page through  
19 those pages?

20 A. Yes.

21 Q. Great. And are you familiar with them?

22 A. Yes.

23 Q. Okay. Did you prepare them?

24 A. It seems so, yes.

25 MS. ARCINIEGA: Okay. At this time, Your Honor,

1 I'd like to request that General Counsel's Exhibit 10 be  
2 moved into evidence.

3 MR. ROY: Your Honor, we object on the basis of  
4 relevance. And it has no probative value to the issues  
5 before you. It is cumulative in nature because we already  
6 have evidence in the record showing that for the four weeks  
7 following the incident that crew continued to work with  
8 less people than it had in the week of the incident.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. The  
10 objection is overruled. I want to flip through all of the  
11 pages of the document to see if I -- if there's anything  
12 that I find objectionable.

13 But I'll note, for example, if you look at the  
14 next page of the document, it does mention what appeared to  
15 be some of the different commodities that may have been  
16 handled, like radishes, green kale, romaine, and so forth  
17 on the other documents. I don't see anything in here that  
18 would need to be redacted, like there's no social security  
19 numbers as far as I can tell. There is a number on the top  
20 right of each of these boxes.

21 Do you know, Ms. Ito, what that number is? Is  
22 that like an employee number? Perhaps you can tell me.  
23 There's a box on the top left and top right if you look at  
24 what is the page -- the second page of that exhibit.

25 THE WITNESS: The top left is the employee number

1 --

2 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

3 THE WITNESS: -- or the vendor. Actually, it's a  
4 vendor number. It's the identifier for my program.

5 ADMINISTRATIVE LAW JUDGE SOBLE: And if I --

6 THE WITNESS: And --

7 ADMINISTRATIVE LAW JUDGE SOBLE: -- call them an  
8 employee, I'm not trying to get you to use or not use my  
9 phraseology. That's just a shorthand for me, so -- okay.

10 That number on the top left. And the one on the  
11 top right?

12 THE WITNESS: The one on the top right is the --  
13 the record number.

14 ADMINISTRATIVE LAW JUDGE SOBLE: Okay, like an  
15 invoice number or record number. Okay.

16 THE WITNESS: No. In the program itself each --  
17 I don't know how to put it. The cumulative record of this  
18 one person, of this one vendor, this whole record, so this  
19 whole sheet, this whole amount of information is this  
20 record number.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Jump  
22 ahead to the page that is marked CF-1189.

23 THE WITNESS: Okay. I'm there.

24 ADMINISTRATIVE LAW JUDGE SOBLE: On that and on  
25 successive pages there is some handwriting on the far

1 right. Are you familiar with what that handwriting is?

2 THE WITNESS: Yes.

3 ADMINISTRATIVE LAW JUDGE SOBLE: What is it?

4 THE WITNESS: It's the check number.

5 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

6 THE WITNESS: If you look -- if you look at the  
7 first page the check numbers are listed right here.

8 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

9 THE WITNESS: And that corresponds to the  
10 handwritten notes on the other sheets. So the check number  
11 that's listed right here corresponds to the handwritten  
12 numbers on the succeeding pages.

13 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

14 With that in mind, the General Counsel has moved  
15 to admit Exhibit 11 [sic]. It is possible for me to know  
16 how important this exhibit will be until I hear all of the  
17 testimony by Respondent's witnesses. But at this point I  
18 don't think there's any prejudicial or damaging about the  
19 documents, other than that they and some pages to the  
20 record. So I'm going to admit it at this time because it  
21 may be relevant on some of these things. Although it may  
22 not be significantly important, at this point I'll still --  
23 I'll admit it.

24 So Exhibit 11 is offered and admitted.

25 MS. ARCINIEGA: Your Honor, if may, it's 10. It

1 was previously admitted as --

2 ADMINISTRATIVE LAW JUDGE SOBLE: Excuse me.

3 You're correct. Exhibit 10 is offered and admitted

4 03/01/2021.

5 (General Counsel Exhibit 10 is admitted.)

6 ADMINISTRATIVE LAW JUDGE SOBLE: So does the  
7 Assistant General Counsel have an estimate as to how much  
8 longer her questioning for this witness might be?

9 MS. ARCINIEGA: I believe I'm nearing the end,  
10 Your Honor.

11 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

12 MS. ARCINIEGA: Yes.

13 ADMINISTRATIVE LAW JUDGE SOBLE: Then go ahead  
14 and proceed.

15 MS. ARCINIEGA: Okay. Great.

16 BY MS. ARCINIEGA:

17 Q. And Ms. Ito, did you talk to anyone at Cinagro  
18 about your testimony here today?

19 A. No.

20 Q. Did you talk to Mr. Roy?

21 ADMINISTRATIVE LAW JUDGE SOBLE: Mr. Roy has a  
22 veto. I understood that question to be ever, so not just  
23 today or yesterday but, say, like in the past several  
24 years, did you ever talk to anyone with Cinagro about this  
25 hearing?

1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Thank you.

3 MS. ARCINIEGA: Okay.

4 BY MS. ARCINIEGA:

5 Q. And did you talk to Mr. Roy, Cinagro's counsel,  
6 about your testimony here today in the last 60 days?

7 A. Specifically about what -- I don't understand the  
8 question. Yes, I talked to him about being here.

9 Q. Okay. Did you talk to him about your testimony  
10 of what you would say while you were here?

11 A. No.

12 Q. Okay. And did you review any records in  
13 preparation for your testimony here today?

14 A. Yes.

15 Q. And what records were those?

16 A. I looked up the first time that I had invoiced  
17 Cinagro for my services in my own personal QuickBooks file.  
18 And I looked at the first payroll that I did.

19 Q. Okay. And did Mr. Roy show you any documents in  
20 preparation for your testimony here today?

21 A. No.

22 MS. ARCINIEGA: At this time, Your Honor, I would  
23 like to request a copy of the witness's notes that she  
24 referred to when she entered the room or when she opened  
25 them. And, if possible, have a copy printed before I rest.

1 ADMINISTRATIVE LAW JUDGE SOBLE: What I would  
2 like to do is this way, if the witness can simply turn her  
3 pad around toward the camera so that we can vaguely see  
4 what it's like, and then have her follow up by emailing it  
5 to both Ms. Arciniega and Mr. Roy.

6 Now, Ms. Ito, can you talk, saying anything you  
7 like not relevant to the case, because that will cause you  
8 to look larger on other people's screen.

9 THE WITNESS: You don't want me to talk or you do  
10 want me to talk?

11 ADMINISTRATIVE LAW JUDGE SOBLE: I would like you  
12 to say something. It doesn't matter what.

13 THE WITNESS: I can email this from my tablet but  
14 I don't have an internet connection from my tablet. I have  
15 to connect to Wi-Fi in order to email this, but I could  
16 email this exact document to anybody.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Understood.

18 Ms. Arciniega, would it work for you if she  
19 simply emails that at the end of today?

20 MS. ARCINIEGA: I believe that would work, Your  
21 Honor. Is it just one page?

22 THE WITNESS: Yes.

23 MS. ARCINIEGA: Okay.

24 ADMINISTRATIVE LAW JUDGE SOBLE: Is that  
25 acceptable to you, as well, to have Ms. Ito email that



1     sometime after five o'clock?

2             MR. ROY: To both parties, yes.

3             ADMINISTRATIVE LAW JUDGE SOBLE: Yes, to both you  
4 and to Ms. Arciniega. It does not need to be emailed to  
5 me. If one of you seeks to introduce it as an exhibit, at  
6 that point one of you will email it to me.

7             Okay, Mr. Roy, would you like to ask some  
8 questions of this witness?

9             MR. ROY: Yes, Your Honor.

10                             CROSS-EXAMINATION

11 BY MR. ROY:

12             Q. Ms. Ito, do you recall making out payroll  
13 records -- or excuse me, payroll checks for another crew at  
14 Cinagro in the last weeks of February 2017?

15             A. Right now --

16             ADMINISTRATIVE LAW JUDGE SOBLE: I think that  
17 question is vague.

18             So Ms. Ito, in the time period Mr. Roy indicated,  
19 do you recall making out checks for more than one crew  
20 total during that time period?

21             THE WITNESS: Normally, I make out one set of  
22 checks. There was not, from my recollections, there was  
23 not an extra payroll made out. It was just one payroll.  
24 The sheets were handed in and we made to the payroll as we  
25 normally do.

1 BY MR. ROY:

2 Q. So would it be fair to say that you don't have  
3 any knowledge whether or not they had a crew other than  
4 this particular crew?

5 A. The payroll records that I have --

6 ADMINISTRATIVE LAW JUDGE SOBLE: But I think it's  
7 vague when you refer to this particular crew which one you  
8 might be making reference to. Your question is  
9 permissible. And if Ms. Ito thinks she understands it,  
10 I'll allow her to answer. But I'm not sure she's indicated  
11 that she even knows what "this particular crew" means.

12 BY MR. ROY:

13 Q. Ms. Ito, I'm trying to establish whether there  
14 was only one crew or two crews out there. And I believe  
15 you testified that you only did one payroll.

16 How many people were subject to that payroll in  
17 late February 2017?

18 A. The -- the way that I do the payroll is that the  
19 sheets are turned in and I'm not aware of the  
20 differentiation of crews. So I have 15 employees and I do  
21 15 checks. And I'm not necessarily kept apprised of who's  
22 in what crew, so I can't really specify this crew or that  
23 crew, it's just I have 15 employees, I write 15 checks.

24 MR. ROY: Okay. I have no further questions,  
25 Your Honor.

1 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Ms. Ito,  
2 I have a couple of quick questions.

3 VOIR DIRE

4 BY ADMINISTRATIVE LAW JUDGE SOBLE:

5 Q. If you know, is anyone paying for your time here  
6 today?

7 A. No.

8 Q. Okay. Did you ever talk with someone named  
9 Rene --

10 A. I don't recall.

11 Q. -- who worked for Cinagro?

12 A. The only person I've ever talked to that works  
13 for Cinagro is either Tony or Arlis.

14 Q. Okay. And you have no reason to believe that  
15 Arlis is related to Tony?

16 A. I don't believe she is.

17 Q. Okay. Have you met Arlis in person or over the  
18 phone or both?

19 A. Both. She's been to my office to pick up  
20 payroll.

21 Q. Okay. And Mr. Dighera, have you met him over the  
22 phone, in person, or both?

23 A. Both.

24 Q. Okay. When you first began working for Mr.  
25 Dighera did he tell you that there were mistakes that

1 needed to be corrected in their payroll process?

2 A. I don't recall specifically why he wanted me to  
3 do the payroll, he just wanted it to be correct, so he  
4 engaged my services to do -- to make sure that the payroll  
5 was paid correctly.

6 Q. He only had you work on things prospectively? He  
7 didn't have you go back and look at things that were done  
8 before you started; correct?

9 A. Correct.

10 Q. And do you have somewhere in your records a  
11 document that would authoritatively say the first day you  
12 began working for Cinagro?

13 A. It would have to be the time sheets for the first  
14 payroll that I ran.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I'm going  
16 to have the witness look at Exhibit 2.

17 BY ADMINISTRATIVE LAW JUDGE SOBLE:

18 Q. Do you think this is a document that your office  
19 created?

20 A. It looks like it.

21 Q. Let's look at Exhibit 3.

22 A. Yes.

23 Q. Does this look like a document that your office  
24 created?

25 A. Yes.

1 Q. Let's go to Exhibit number 5. Does this look  
2 like a document -- the first page of Exhibit 5, does it  
3 look like a document that your office created?

4 A. Yes.

5 Q. Okay. Let's go to Exhibit 6, first page, does it  
6 look like something that your office did?

7 A. Yes.

8 Q. So based upon the first page of Exhibit 6, does  
9 that mean, as far as you know, there were only six people  
10 working in Cinagro's fields?

11 A. For this time period, yes.

12 Q. And then when you go to exhibit -- so that's six  
13 people.

14 When you go to Exhibit 10 there are 12 of them;  
15 correct?

16 A. Yes.

17 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I don't  
18 have any additional questions for Ms. Ito.

19 Does the General Counsel have any additional  
20 questions, other than those that may relate to documents  
21 that they want to see?

22 MS. ARCINIEGA: Let me just review my notes here,  
23 Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. ARCINIEGA:

1 Q. Did you ever prepare checks for Cinagro in March  
2 2017 for payments to workers for anything other than  
3 payroll?

4 A. No.

5 MR. ROY: Objection; beyond the scope of direct,  
6 and vague.

7 MS. ARCINIEGA: Okay.

8 ADMINISTRATIVE LAW JUDGE SOBLE: Hold on. I  
9 haven't ruled on the objection yet. I don't think it's  
10 vague. And I think what Counsel meant to say is it's  
11 beyond the scope of cross-examination, not direct. But  
12 either way, I think he's correct. And I don't think this  
13 witness needs to be asked that question. If that's  
14 information that you want to seek you can probably ask one  
15 of the subsequent company witnesses that anyhow.

16 So let's focus instead on you indicated before  
17 that there may be some documents that you think you may  
18 have requested from the company that they did not provide  
19 that Ms. Ito might have. Are there any such documents and,  
20 if so, what are they?

21 MS. ARCINIEGA: You're asking me, Your Honor?

22 ADMINISTRATIVE LAW JUDGE SOBLE: I'm asking Ms.  
23 Arciniega, correct.

24 MS. ARCINIEGA: Yes.

25 ADMINISTRATIVE LAW JUDGE SOBLE: Apart from the

1 question of things like 1099s that you may or may not have  
2 known existed, are there any documents that you believe you  
3 requested from Cinagro that they did not provide that you  
4 think Ms. Ito might have?

5 MS. ARCINIEGA: Sitting right here, Your Honor,  
6 the only thing that comes to mind is the request for the  
7 pay -- we kind of went over this before, Mr. Roy and I --  
8 with the payroll for February 2017 and the checks,  
9 possibly. But that's as far -- as much specificity that I  
10 can do at this, sitting here.

11 MR. ROY: Your Honor, may I be heard?

12 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

13 MR. ROY: I'm looking at a document dated April  
14 4th from the ALRB signed by Ms. Arciniega.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Of what year?

16 MR. ROY: 2017. Items number 18, 29 and 20 only  
17 requesting a copy of the paycheck and pay stub issued to  
18 Marisol Jimenez in October 2016, February 2017, and March  
19 2017. Those were the only time, only person for which any  
20 paycheck was requested.

21 ADMINISTRATIVE LAW JUDGE SOBLE: Ms. Arciniega,  
22 are you aware of any requests that were made since April  
23 2017?

24 MS. ARCINIEGA: There was a subpoena at issue in  
25 this matter so I'm going to pull that up because it's very

1 likely that there was requests in that subpoena, Your  
2 Honor.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Who was the  
4 subpoena directed to?

5 MS. ARCINIEGA: To Cinagro.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

7 MS. ARCINIEGA: And I'm -- it was handled by  
8 another Assistant General Counsel. At the time, I was in a  
9 hearing here. So I'm just going to have to pull it up to  
10 refresh myself here.

11 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. I am  
12 going to take a 20-second pause to go off the record.

13 Is it okay if we let our interpreter go for the  
14 day and have her come back?

15 (Off the record at 4:58 p.m.)

16 (On the record at 4:58 p.m.)

17 MS. ARCINIEGA: I have one more place to look,  
18 Your Honor.

19 THE WITNESS: Your Honor, can I ask a question?

20 ADMINISTRATIVE LAW JUDGE SOBLE: I'm trying to  
21 decide who it was. Was that Ms. Ito?

22 THE WITNESS: That was me, yes.

23 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

24 THE WITNESS: I need the Wi-Fi for the building  
25 so that I can email that document to you. I don't know if



1 Gabriella can get me the password so I can use the  
2 internet?

3 ADMINISTRATIVE LAW JUDGE SOBLE: I was actually  
4 thinking that since it wasn't going to be until after 5:00,  
5 that you could just simply email that to the two attorneys  
6 whenever you're back at your own location with Wi-Fi, even  
7 if --

8 THE WITNESS: Okay.

9 ADMINISTRATIVE LAW JUDGE SOBLE: -- it's an hour  
10 or two from now.

11 THE WITNESS: Okay.

12 ADMINISTRATIVE LAW JUDGE SOBLE: The only thing  
13 you need to do before we have you leave is make sure that  
14 you have the two email addresses that you're sending it to.

15 THE WITNESS: Okay.

16 ADMINISTRATIVE LAW JUDGE SOBLE: What we're  
17 trying to decide, Ms. Ito, is, one, are there documents  
18 that we're going to be seeking to have you bring and, two,  
19 whether we need you to come back tomorrow. So while we are  
20 going a few minutes past 5:00 here, it makes sense to keep  
21 you while we have that discussion.

22 THE WITNESS: Okay. That's fine.

23 MS. ARCINIEGA: Your Honor, we do --

24 ADMINISTRATIVE LAW JUDGE SOBLE: Have you found  
25 your subpoena?

1 MS. ARCINIEGA: Yeah, that was for another part  
2 of this investigation, but we did request payroll records  
3 for the Charging Party and each of the discriminatees for  
4 their first date of employment in or around October 2016 to  
5 their last date of employment in March 2017.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

7 MS. ARCINIEGA: And I believe the crew sheets --

8 ADMINISTRATIVE LAW JUDGE SOBLE: Ms. Arciniega --

9 MS. ARCINIEGA: -- that --

10 ADMINISTRATIVE LAW JUDGE SOBLE: -- describe what  
11 it is that you requested for those dates? Can you read it  
12 verbatim?

13 MS. ARCINIEGA: Sure. It's the -- it just says  
14 "Payroll records" for Marisol Jimenez from her first date  
15 of employment in October 2016 through her last date of  
16 employment on March 3rd, 2017. This was sent on April 4th,  
17 2017.

18 MR. ROY: Your Honor, that was just for Marisol  
19 Jimenez, not anyone else.

20 MS. ARCINIEGA: Huh-uh. The copy of it here, you  
21 know, shows Marisol, Hector, Maria Duarte, Victor, Maria  
22 Santiago, Yolanda Antonio, and Rigoberto Perez. This is an  
23 April 4th, 2017 correspondence.

24 MR. ROY: And in their request that I previously  
25 indicted on the 4th, they distinguished a copy of a

1 paycheck and pay stub. Here we're talking about payroll  
2 records in general. I don't know if that was part of their  
3 investigation into potential back pay -

4 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

5 MR. ROY: -- which the General Counsel  
6 routinely --

7 ADMINISTRATIVE LAW JUDGE SOBLE: Here's the  
8 thing, one, we're talking about subpoenas and  
9 correspondence. So I'm asking the General Counsel what was  
10 in their subpoena, not what's in the correspondence?

11 MS. ARCINIEGA: As I stated, Your Honor, the  
12 subpoena was prepared by a different General Counsel than  
13 myself. And when I reviewed it right now I did not see any  
14 requests in there related to checks or payroll.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So the  
16 correspondence that was April 14th for approximately half a  
17 dozen of the crew members, you asked for the payroll  
18 documents; is that correct?

19 MS. ARCINIEGA: Correct.

20 ADMINISTRATIVE LAW JUDGE SOBLE: And what  
21 response did you get back? Did you get documents or did  
22 you get an answer with documents?

23 MS. ARCINIEGA: I'm going to have to review the  
24 file right now.

25 MR. ROY: Your Honor, for the record, these are

1 standard. I never object to payroll records or copies of  
2 personnel files. There's no need to do that. And I  
3 understand that the General Counsel, as a matter of course,  
4 always requests the payroll records in order to assist in  
5 preparing a backpay specification.

6 ADMINISTRATIVE LAW JUDGE SOBLE: Well, in any  
7 event --

8 MR. ROY: I responded.

9 ADMINISTRATIVE LAW JUDGE SOBLE: -- my question  
10 is that I think it would be useful to have part -- as part  
11 of the record the actual checks, if any, that went from the  
12 company to the workers, and it doesn't need to be all of  
13 them as long as it's some of them because I think that the  
14 odds are all of the crew members got the same types of  
15 checks, from the time period that they started through  
16 March 10th.

17 I don't know if Ms. Ito has any of those checks.  
18 But if she does, we've had some questions on the record  
19 that those were personal checks. We've had some other  
20 testimony that suggest they weren't personal checks but,  
21 rather, were corporate checks that were handwritten. And  
22 then we've had some discussion that suggest that they were  
23 regular payroll checks that were printed out.

24 So I don't think there would be any harm, and  
25 there certainly would be added clarity to the record, to

1 have examples of those if Ms. Ito has them.

2           The flip side of the coin is, quite frankly,  
3 again, as I indicated before, I'm sure the company has had  
4 them all along. And for the life of me, I can't figure out  
5 why the General Counsel didn't request those in 2017 or '18  
6 or '19 or '20 or earlier in 2021 to have a custodian of  
7 records for the company bring them to the hearing.

8           I'm pausing at this point.

9           So I think it would add something to the record,  
10 although I don't know why someone didn't introduce them  
11 beforehand. Now, this may all be mute.

12           Mr. Roy, if you're telling me you're going to be  
13 introducing those checks as part of your case, I don't want  
14 to waste much time on this because I don't care if they  
15 come from the company or they come from Ms. Ito. And I  
16 don't think there's any questions at this point that the  
17 Assistant General Counsels would have that would be very  
18 useful to ask with those checks in front of them of Ms.  
19 Ito.

20           I just think, with the amount of testimony that  
21 we have, at some point I'm going to have to make a  
22 determination as to whether or not these were just personal  
23 checks. And from some of the witness testimony, it  
24 wouldn't even be clear as to whether or not those personal  
25 checks were checks that simply came from Mr. Dighera's

1 personal accounts or if they came from a Cinagro account.

2 MR. ROY: Your Honor, may I be heard?

3 ADMINISTRATIVE LAW JUDGE SOBLE: I wonder what  
4 Mr. Roy thinks the answer to that is. And I suspect I know  
5 what his witnesses are going to testify. But we'll also  
6 have some testimony that could be interpreted otherwise.  
7 And the checks themselves would be the best evidence of  
8 that.

9 MR. ROY: Your Honor, may I be heard?

10 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

11 MR. ROY: Your Honor, this is a surprise move by  
12 the General Counsel. We have objected in an affirmative  
13 defense to this case under due process reasons because of  
14 almost a four-year period. These documents could have been  
15 requested. I doubt very seriously that my client still has  
16 bank records going back to 2017 in light of his other  
17 practices. And lastly, I think if you ask Ms. Ito, she  
18 doesn't keep those checks. They go from the bank to my  
19 client.

20 So the question is whether or not they're even in  
21 existence anymore?

22 ADMINISTRATIVE LAW JUDGE SOBLE: No. But if she  
23 doesn't have them there's no harm, with all of us agreeing,  
24 that she can look in her records and determine if she has  
25 any checks that went to and give her the names of four or

1 five of the workers from Mr. Mendoza's crew, from March  
2 10th or before.

3 MR. ROY: That's fine.

4 ADMINISTRATIVE LAW JUDGE SOBLE: I mean, I --

5 MR. ROY: That's fine.

6 ADMINISTRATIVE LAW JUDGE SOBLE: And I you don't  
7 think --

8 MR. ROY: I just don't want -- I'm sorry. I just  
9 didn't want a shotgun approach, you know, copies of all  
10 checks from January through March or April. The chance of  
11 those checks being around is very, very remote.

12 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I was  
13 thinking of a more selective approach, like maybe that we  
14 take two crew workers for the time period they were there  
15 and we can get those checks and see if they differed. But  
16 I think that most likely there are only two places that  
17 those checks would exist. They're either going to exist  
18 with Ms. Ito and/or they're going to exist at Mr. Dighera's  
19 bank. Those are the two places where they were. And --

20 MR. ROY: Your Honor, do you --

21 ADMINISTRATIVE LAW JUDGE SOBLE: -- at this  
22 point --

23 MR. ROY: -- expect us to get a subpoena to a  
24 bank by tomorrow when we're starting our case on this  
25 particular issue? A bank is not going to --

1 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I wouldn't  
2 expect you to do it. You're not the person who seeks to  
3 introduce it, so I don't expect you to do anything here.

4 MR. ROY: Well, we're unduly prolonging this  
5 proceeding then, waiting around for the bank to provide us  
6 records from four years ago.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Well, it's also  
8 possible that the General Counsel could subpoena those  
9 documents, that I could decide to take the rest of the  
10 testimony, and then have solely the question of whether or  
11 not to submit such documents, if any, at that juncture.  
12 Now all of that would be solved if we had a copy of the  
13 very first check that was given to one of the crew members  
14 but right now we don't. And I suspect that when you  
15 clients take the stand they're going to -- or not clients,  
16 plural, but Mr. Dighera may well deny that any of these  
17 were personal checks written off of his account rather than  
18 Cinagro's account.

19 MR. ROY: That's correct. That's exactly what  
20 he's going to say.

21 ADMINISTRATIVE LAW JUDGE SOBLE: And without  
22 having that document, then otherwise both side are at the  
23 peril of my deciding who is more credible based solely on  
24 their oral testimony and having no check in front of me.

25 So that's why I think it's in everyone's interest



1 to get a copy of one of those checks because that may not  
2 be determinative in the overall outcome of the case but it  
3 will be one factor among many in my deciding which  
4 recollections are credible and which statements are  
5 accurate.

6 MR. ROY: Well, why don't we request a copy of a  
7 check from either late December or early January when the  
8 crew started. And Victor testified that it was personal.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Well, I don't  
10 see why we can't see one from the first week that they  
11 directly worked for Cinagro.

12 MR. ROY: I don't object to that. What I'm  
13 saying is it's been unclear in this receive, until Victor's  
14 testimony today, that they went to Art Vasquez in November,  
15 and then after that they were directly hired by Cinagro.  
16 And it would be either in late November or early December  
17 2016 when they were issued a first check.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Well, let's go  
19 back to Ms. Ito, since she's the one who is fortunate  
20 enough to get to enjoy all of this conversation at the end  
21 of the day.

22 If we ask you tonight to go through your records  
23 and determine if you have any checks -- to determine if you  
24 have any checks between, say, November 1st and March 10th  
25 for two particular workers, are you able to look and

1 determine whether or not you have those? Mr. Roy suspects  
2 that you won't. I have no reason of knowing one way or  
3 another. Would that amount of time for you to look through  
4 your records to do that?

5 THE WITNESS: Well, I can tell you, I don't have  
6 copies of any checks. I don't take copies of the checks  
7 before I give them to Cinagro, so I wouldn't have a copy of  
8 the checks. I don't take care of his bank statements, so I  
9 don't even have a bank statement, like, you know, to -- I  
10 don't do the reconciliations.

11 I only have the copy of the stub that I take for  
12 my records. I don't take a copy of the whole check. I  
13 just take a copy of the stub.

14 ADMINISTRATIVE LAW JUDGE SOBLE: So if I was to  
15 ask you right now, when we go back on -- we're still off  
16 the record, correct Mr. Petty?

17 COURT REPORTER: (Off mike.)

18 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Then if I  
19 was to ask you right now while still on the record that, to  
20 the best of your knowledge, you have no copies of any  
21 checks, personal or company or payroll of any sort, to any  
22 Cinagro employee from March 10th or older, can you say with  
23 a very high level of certainty that you have no such  
24 documents?

25 THE WITNESS: I absolutely can. I don't have any

1 copies of any checks for any time period for Cinagro in my  
2 office.

3 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. Well, I  
4 will allow the Assistant General Counsel, if they want, to  
5 ask a follow-up question to Ms. Ito on that. But  
6 otherwise, I'm prepared to accept that as being credible,  
7 that if she says she doesn't have them, that she probably  
8 doesn't.

9 But would you like to ask a question or two of  
10 the witness on that, Ms. Arciniega?

11 MS. ARCINIEGA: No, Your Honor. I don't have a  
12 question about that to the witness.

13 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

14 MS. ARCINIEGA: I mean --

15 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So that  
16 then only leaves us the question of whether or not the  
17 General Counsel is going to seek such documents from the  
18 company's bank or not. If you're going to do that, you  
19 should let me know by the time we start tomorrow morning at  
20 8:30 that you intend to do that and how you intend to go  
21 about that.

22 I don't -- I'm not lost on Mr. Roy's comment  
23 that, while I personally believe that both sides would have  
24 wanted to introduce that. We're now almost four years from  
25 when the employees left the company. While I suspect the

1 bank still have those records, you're certainly not going  
2 to get them from the bank in less than a few weeks. And,  
3 again, it's always possible that one of the crew members  
4 actually deposited them in an account and could get them  
5 quicker, I don't know.

6 But I am not going to force either side to  
7 introduce copies of the check. I could do that for  
8 purposes of conducting the hearing but I don't intend to  
9 having thought about it.

10 MS. ARCINIEGA: May I be heard, Your Honor?

11 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

12 MS. ARCINIEGA: I just want to clarify that the  
13 actual physical nature of the checks for the General  
14 Counsel was not what the complaint put forth. The  
15 complaint put forth that workers were concerned about the  
16 lack of deductions, as well as any itemization on the  
17 person not receiving a pay stub, and then when they  
18 received the pay stub, the lack of itemization and  
19 deductions on the pay stub. So --

20 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

21 MS. ARCINIEGA: -- I believe --

22 ADMINISTRATIVE LAW JUDGE SOBLE: I don't really  
23 need to hear argument about what the case was about.

24 MS. ARCINIEGA: I haven't --

25 ADMINISTRATIVE LAW JUDGE SOBLE: I am not

1 suggesting that whether the checks were personal checks or  
2 company checks that didn't have certain things that people  
3 are used to seeing with company checks is -- I'm not saying  
4 what is needed as part of the case and what isn't. I'm just  
5 saying that there's likely going to be, at the end, some  
6 inconsistent testimony on that.

7 MS. ARCINIEGA: Right. And that --

8 ADMINISTRATIVE LAW JUDGE SOBLE: If you  
9 (indiscernible) produce those checks it's quite possible I  
10 will reach the conclusion that one or the other side's  
11 witnesses have a mistaken recollection. They could have  
12 received a check, for example, with no deductions, with no  
13 traditional stub attached to it, and assumed that meant it  
14 was a personal check when, in fact, it could have meant  
15 that, no, instead it was a check where someone was trying  
16 to characterize them as an vendor rather than as an  
17 employee, unaware to them or aware to them, either.

18 MR. ROY: Your Honor, I've already submitted --

19 MS. ARCINIEGA: I was still speaking, if you --

20 MR. ROY: -- last Friday --

21 MS. ARCINIEGA: -- if I may, Your Honor? I --

22 ADMINISTRATIVE LAW JUDGE SOBLE: Neither of you  
23 were speaking at that moment. I had been speaking and I  
24 hadn't yet given someone else a chance to speak.

25 MR. ROY: May I be heard?

1 ADMINISTRATIVE LAW JUDGE SOBLE: I'll go to Mr.  
2 Roy now.

3 MR. ROY: May I be heard, Your Honor?

4 ADMINISTRATIVE LAW JUDGE SOBLE: Yes, briefly.

5 MS. ARCINIEGA: I was speaking when you  
6 interrupted, though, Your Honor. I was still speaking.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Well, maybe you  
8 were when I interrupted but you weren't by the time Mr. Roy  
9 interrupted. And I'm going to go to him for a moment. I'm  
10 going to come back to you. I'm going to give you both a  
11 chance to speak out briefly and, if necessary, more than  
12 briefly.

13 But again, my point is if I interrupted you it's  
14 because you began, basically, arguing what's important to  
15 your case and that's not what I want to hear, what's  
16 important to your case. You'll both have plenty of  
17 opportunity to put in your post-hearing briefs and as you  
18 continue to exam further witnesses.

19 What I'm trying to figure out is whether or not  
20 you have an argument why at this point you want to go to  
21 bank to get copies of these checks? And it seems like to  
22 me that, with the argument that you were saying there, you  
23 may not think that's necessary. Mr. Roy may not think  
24 that's not necessary. And I've indicated that, while I  
25 think it would make the record more complete, I don't think

1 it's so necessary that I'm going to be shoving it down  
2 either Counsel's throat saying you have to do it. In other  
3 words, I'm not requiring it.

4 And so, Mr. Roy, it may not even be necessary for  
5 you to say anything until we hear -- if Ms. Arciniega is  
6 saying that she thinks she doesn't need that for her case,  
7 then we may all be at the same place.

8 MR. ROY: That's fine with me, Your Honor.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

10 Ms. Arciniega, the floor is yours.

11 MS. ARCINIEGA: At this point, Your Honor, I'd  
12 just like to clarify on the record that the workers  
13 testified as to their belief on what a personal check  
14 meant, whether that was lack of a pay stub, a difference in  
15 the checks they're normally accustomed to receiving, or --

16 ADMINISTRATIVE LAW JUDGE SOBLE: That's argument.

17 MS. ARCINIEGA: -- handwritten checks.

18 ADMINISTRATIVE LAW JUDGE SOBLE: I don't want to  
19 hear argument. I want -- I understand what you're saying.  
20 I may even agree with it. But I don't need to hear that  
21 type of argument now. What I just --

22 MS. ARCINIEGA: Okay.

23 ADMINISTRATIVE LAW JUDGE SOBLE: -- know is --

24 MS. ARCINIEGA: I will get to my question then,  
25 if you would allow me?

1 ADMINISTRATIVE LAW JUDGE SOBLE: Yes.

2 MS. ARCINIEGA: I want to ask if at this point  
3 you would like the General Counsel to ask the Field  
4 Examiner, Gabriella Vega, to follow up with any of the  
5 workers who have testified to find out if they have a bank  
6 and if they have any access to any of these checks, Your  
7 Honor?

8 ADMINISTRATIVE LAW JUDGE SOBLE: I am not going  
9 to direct you either way on what to do there. I would have  
10 done that before the hearing started. But at this point I  
11 am not going to give any direction requiring it or even  
12 recommending one way or the other.

13 MS. ARCINIEGA: I wonder. Because in light of  
14 your admonishment for the witnesses not to talk to us,  
15 that's why I'm seeking clarification.

16 ADMINISTRATIVE LAW JUDGE SOBLE: Explain to me  
17 the nexus of those two. I appreciate your point but I'm  
18 not sure I understand it.

19 MS. ARCINIEGA: Well, I understood, maybe I was  
20 mistaken, that you admonished the witnesses who had given  
21 their testimony not to talk to any of the attorneys for the  
22 General Counsel's office. And so I just want to be 100  
23 percent clear and thorough on whether Ms. Vega speaking to  
24 them around this particular issue would be considered by  
25 Your Honor that our office is speaking to the workers in



1 spite of your admonishment for them not to talk to us?

2 ADMINISTRATIVE LAW JUDGE SOBLE: I believe what  
3 I've directed the witnesses to do was to not to talk to  
4 anyone during their testimony and to not say, even after  
5 their testimony, anything that they heard or saw. I don't  
6 think there's anything --

7 MS. ARCINIEGA: Okay.

8 ADMINISTRATIVE LAW JUDGE SOBLE: -- that  
9 precludes Ms. Vega from asking them if they have a copy of  
10 those at this point if they're witnesses who have already  
11 been called.

12 So with that --

13 MS. ARCINIEGA: Great, and we appreciate the  
14 clarification.

15 ADMINISTRATIVE LAW JUDGE SOBLE: Yeah. At this  
16 point, though, what I anticipate asking you is, if there  
17 are no further questions for Ms. Ito, are you throughout  
18 presenting your case? And if not, are we going to wait  
19 until 8:30 to determine if you're through presenting your  
20 case?

21 MS. ARCINIEGA: Do you mean 8:30 this evening?

22 ADMINISTRATIVE LAW JUDGE SOBLE: No, in the  
23 morning when we start tomorrow.

24 MS. ARCINIEGA: Oh. I would like the opportunity  
25 to review my notes and to start tomorrow and let you know

1 that. I would really appreciate that.

2 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. But is it  
3 fair to say that we can let Ms. Ito go and she doesn't need  
4 to come back tomorrow morning or not?

5 MS. ARCINIEGA: Yes, Your Honor, but we may want  
6 to recall her if we need to on rebuttal. I'm not -- I  
7 can't tell you right now sitting right here. It's been a  
8 day.

9 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. When you  
10 say recalling her on rebuttal, I want to clarify that  
11 that's exclusive to any testimony that's given in  
12 Respondent's case. That's not because of any of the topics  
13 we've discussed just now.

14 MS. ARCINIEGA: Okay. Then I'm sorry. Then I  
15 would like to say that I would like to reserve the right to  
16 possibly continue with her in the morning after I'm able to  
17 review my notes. And if I do, I don't foresee a very long  
18 line of questioning.

19 ADMINISTRATIVE LAW JUDGE SOBLE: So here's my  
20 question for you, and this is up to Counsel how we proceed  
21 on this, we're already going to have to give the email from  
22 Ms. Arciniega and Mr. Roy to the witness so that she can  
23 email the page of her notes on her, whatever you want to  
24 call it, electronic pad that's not an iPad.

25 And so perhaps when she does that would Mr. Roy

1 be amendable to Ms. Arciniega sending an email back to both  
2 of you by sometime this evening that we can all agree upon  
3 where she lets Ms. Ito know whether she needs to come back  
4 tomorrow morning?

5 MR. ROY: Yes, I would like to know, Your Honor.

6 MS. ARCINIEGA: That's fine, Your Honor.

7 ADMINISTRATIVE LAW JUDGE SOBLE: Because this  
8 affects two things. One, it affects the timing of when we  
9 start with the next witness, although mostly likely not by  
10 a lot. And more significantly, it affects Ms. Ito. I have  
11 no idea if she drives from two minutes away or 40. But I'm  
12 sure, given a choice, she probably would prefer not to come  
13 unless there's a question.

14 So what's a reasonable amount of time for you to  
15 reach your final decision on that?

16 MS. ARCINIEGA: I could probably email -- I will  
17 email him by 7:30.

18 ADMINISTRATIVE LAW JUDGE SOBLE: Okay. So what  
19 you're going to do is before 7:30 you should get an email  
20 from Ms. Ito to both Mr. Roy and Ms. Arciniega, and in a  
21 second we'll say, off the record, what both of those emails  
22 are so both of your emails aren't in the transcript  
23 forever. And then when you get that, but within, let's  
24 say, two-and-a-half hours, so no later than 8:00 p.m., you  
25 will send something back to Ms. Ito and Mr. Roy that is

1 limited to either saying Ms. Ito needs to return at 8:30  
2 a.m. or Ms. Ito does not need to return at 8:30 a.m.

3 MS. ARCINIEGA: I agree.

4 ADMINISTRATIVE LAW JUDGE SOBLE: Okay.

5 MR. ROY: And, Your Honor, I'm assuming that if  
6 she's required to return it's for further testimony on  
7 this, her notes?

8 ADMINISTRATIVE LAW JUDGE SOBLE: Well, it has to  
9 be something that was on the last cross-examination and/or  
10 notes. And I don't believe there were any other questions  
11 on the last cross-examination, so --

12 MR. ROY: Yeah, I didn't --

13 ADMINISTRATIVE LAW JUDGE SOBLE: -- I can't  
14 really imagine what she would be coming back with respect  
15 to, to be honest. However, there's not enough time really  
16 for us to flush that out and for me to rule on it. But, if  
17 necessary, we'll have Ms. Ito come back. And there's  
18 always the chance I'll conclude that there are no questions  
19 that fit in that category but I won't know until I hear  
20 them. But Ms. Ito has already represented that she doesn't  
21 have any of the payroll checks, so I really don't know what  
22 else. I mean, my guess is that if we gave Ms. Arciniega  
23 like 20 minutes to confer with her co-counsels, the odds  
24 are she could probably tell us now rather than at 8:00.

25 But I think the only exception to that that I

1 could see, therefore, for her questions, and the only  
2 reason I'm allowing this without thinking more is that her  
3 questions relate to what Ms. Ito emailed.

4 MR. ROY: That's what I think too. That's very  
5 limited.

6 ADMINISTRATIVE LAW JUDGE SOBLE: So, however, if  
7 on that page there's something on there that I didn't see  
8 in that split glimpse that Ms. Ito kindly enough showed to  
9 the screen, then we'd address that at the time.

10 So, okay, Ms. Ito, whether you come back tomorrow  
11 or not, just a reminder, please do not discuss your  
12 testimony or anything that you heard at this hearing with  
13 anyone who could be a witness in this matter, that means  
14 with anybody who owns the Cinagro company, anybody who is a  
15 supervisor or employee there, or a worker there. So if it  
16 was a farmworker in the crew called you, you shouldn't talk  
17 to them about what you heard. The same if it was their  
18 bookkeeper or their owner. Do you understand that?

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE SOBLE: And you  
21 understand that you're going to be emailing to two people  
22 what -- the notes that you had in front of you. And then  
23 they will be letting you know if you need to come back  
24 tomorrow or not.

25 THE WITNESS: Yes.

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ADMINISTRATIVE LAW JUDGE SOBLE: Okay. We'll go  
off the record for a second.

MS. ARCINIEGA: Thank you.

MR. ROY: Thank you.

(The hearing recessed at 5:35 p.m.)

**REPORTER' S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of March, 2021.



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PETER PETTY  
CER\*\*D-493  
Notary Public

**CERTIFICATE OF TRANSCRIBER**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



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MARTHA L. NELSON, CERT\*\*367

March 14, 2021