

1 Robert P. Roy, Esq. (SBN 74982)
2 General Counsel
3 Ventura County Agricultural Association
4 916 W. Ventura Boulevard
5 Camarillo, California 93010
6 Telephone: (805) 388-2727
7 Facsimile: (805) 388-2767
8 E-Mail: rob-vcaa@pacbell.net

9 Attorney for Respondent
10 Cinagro Farms, Inc.

11 STATE OF CALIFORNIA
12 AGRICULTURAL LABOR RELATIONS BOARD
13 SALINAS REGIONAL OFFICE

14 In the Matter of:

15 CINAGRO FARMS, INC.,

16 Respondent,

17 And

18 MARISOL JIMENEZ,

19 Charging Party.

CASE NO. 2017-CE-008-SAL

RESPONDENT'S EXCEPTIONS TO THE
DECISION AND RECOMMENDED ORDER
OF THE ADMINISTRATIVE LAW JUDGE
[TITLE 8, CCR § 20282]

20 Pursuant to Title 8, California Code of Regulations, Section 20282(a)(1), Respondent
21 Cinagro Farms, Inc., respectfully files its exceptions to the following findings of the fact and
22 conclusions of the law by Administrative Law Judge, Mark Soble ("ALJ") in his Decision and
23 Recommended Order ("ALJD") which was issued on October 27, 2021, including certain
24 evidentiary and credibility determinations on which they are based, in the above-entitled case. A
25 brief in support of these Exceptions is being concurrently filed with these Exceptions, and
26 addresses in more detail Respondent's reasons for its Exceptions.

27 **RESPONDENT'S STATEMENT OF EXCEPTIONS**

28 1. Respondent excepts to the ALJ's conclusion that the harvest crew of Victor
Mendoza was discharged for its protected, concerted activity. [ALJD: 63-64]

1 Respondent submits that a thorough review of the administrative record, including the
2 testimony of the various witnesses, demonstrates that at no time were any members of the crew
3 informed that they had been discharged or terminated from employment. Indeed, the ALJ's
4 decision admits the same. [See, ALJD: 63-64]

5 Accordingly, the ALJ was left with what he believed to be the difficult decision of
6 deciding between two conclusions, i.e., (1) either the crew quit to seek for not yet obtained
7 alternative employment or (2) they were discharged for their protected concerted activity. The
8 ALJ opted for the latter.

9 Respondent intends to demonstrate hereafter that there was sufficient evidence in the
10 record to demonstrate that the discriminatees had almost immediately found better, alternative
11 employment with other agricultural employers within the week following their last date of actual
12 work. As such, they had voluntarily relinquished their employment with Cinagro. More
13 importantly, contrary to the ALJ's decision, there was **available** weeding work for Mendoza's
14 harvest crew, yet they did not like to perform such work. This conclusion was supported by the
15 testimony of the foreman Victor Mendoza and his supervisor, Rene Macias.

16 Had the Mendoza crew waited a little longer until harvest work increased, payroll exhibits
17 specifically demonstrate that the separate and independent harvest crew employed by Respondent
18 started to employ individuals within three weeks after the alleged termination date. By then,
19 however, the Charging Parties had effectively abandoned their jobs at Cinagro on March 6, 2014,
20 to start alternative employment with the better wages and working conditions.

21 Lastly, to the extent that the ALJ implies that the second harvest crew's continuation of
22 employment beyond the alleged termination date of the Mendoza harvest crew is evidence of
23 retaliation is pure speculation and is not supported by the record. Record evidence will
24 demonstrate that this was a separate harvest crew that was hired by the company during the course
25

1 of the harvest season. There was no interchange of employees of each crew and there was
2 separate supervision. The fact that it may have continued to harvest vegetables for Respondent
3 was explained by Respondent's owner that they were more motivated and willing to work. More
4 importantly, although the second harvest crew continued to work after the alleged termination
5 date of Mendoza's crew, other work remained available in the form of weeding and field cleanup
6 for the Mendoza crew, yet they did not want to perform such work. The General Counsel did
7 not present any evidence that the Mendoza crew had seniority or preferential treatment over the
8 second crew that would have allowed continuation of harvest work. Of further importance is the
9 fact that none of the Mendoza crew workers sought work with Cinagro after obtaining almost
10 immediate alternative employment with better wages, benefits, wage statements, water and
11 workers' compensation insurance. The evidence will show that the discriminatees sought
12 alternative employment before they questioned whether further harvest work was available on
13 March 6, 2017.
14

15
16 As will be demonstrated in Respondent's legal Brief, all of these factors, taken in their totality,
17 demonstrate that (1) Mendoza's crew was not terminated; (2) Mendoza's crew had no reasonable
18 belief that they had been terminated on or about March 10, 2017¹; (3) Mendoza's crew voluntarily
19 quit their employment with no intent to return to inferior wages and working conditions; and (4)
20 Respondent had a legitimate non-discriminatory reason for not recalling Mendoza's crew back to
21 work because (a) weeding and cleaning work remained available, but was eschewed by the crew
22 in favor of better employment; and (b) Respondent reasonably believed that Mendoza's crew had
23 voluntarily quit their employment by obtaining almost immediate, alternative and better
24

25
26 ¹ This was the date when they received their normal paycheck following the last day of employment of actual work
27 on Saturday, March 4, 2017. It should be noted that California Labor Code specifically requires that workers who
28 are terminated must be paid all of their accrued wages at the time of the employment separation. Here, the fact
that they continued to receive their paycheck on the *regular* payday further demonstrates that they were not
terminated on March 10, 2017.

1 employment conditions. Indeed, the disriminatees all worked on Saturday, March 4, 2017 and on
2 Monday, March 6, 2017, they applied for work at the adjacent blueberry farmer before ascertaining
3 in any harvest work was available. If, as the ALJ stated at page 63 of his decision, that he had to
4 choose one of two equal alternatives, he chose to find a violation of the Act. Respondent contends
5 that his decision clearly imparts that the General Counsel had not proven by a preponderance of
6 the evidence taken, as there was equal evidence in the record to prove no discharge of the Mendoza
7 crew.
8

9 For all of the foregoing reasons, Respondent respectfully requests the Board to dismiss the
10 ALJ's Decision and Recommended Order in its entirety as it relates to the discharge of the Victor
11 Mendoza harvest crew.

12 DATED: December 1, 2021

13 Respectfully submitted,

14
15
16 BY: 

17 Robert P. Roy
18 Michael P. Roy
19 Attorneys for Respondent
20 Cinagro Farms, Inc
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I, Aggie Salanoa, declare as follows:

3 I am a citizen of the United States, employed in the County of Ventura, State of
4 California. I am over the age of 18 years and not a party to the within action; my business address
is: 916 W. Ventura Blvd., Camarillo, CA 93010.

5 On December 1, 2021, I served the attached:

6 **RESPONDENT'S EXCEPTIONS TO THE DECISION AND RECOMMENDED**
7 **ORDER OF THE ADMINISTRATIVE LAW JUDGE**
8 **[TITLE 8, CCR § 20282]**
9 **[Case No. 2017-CE-008-SAL]**

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

11 **By Certified Mail:** The above-referenced documents were mailed to the specified parties in said
12 action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
prepaid, in the United States mail at Camarillo, California; and

13 **By Electronic Mail:** The above-referenced documents were e-mailed, as noted, to the following
14 parties at the listed e-mail addresses.

15 **DISTRIBUTION LIST**

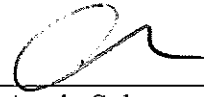
16 Santiago Avila-Gomez Executive Secretary 17 Agricultural Labor Relations Board 1325 J Street, Suite 1900 18 Sacramento, CA 95814 E-File: Efile@alrb.ca.gov	Tony Dighera Cinagro Farms, Inc. 1547 Riverside Avenue Fillmore, CA 93015 E-Mail: tdighera@yahoo.com
20 Mark R. Soble Administrative Law Judge Agricultural Labor Relations Board 21 1325 J Street, Suite 1900 22 Sacramento, CA 95814 E-Mail: mark.soble@alrb.ca.gov	Marisol Jimenez 1201 W. Gonzalez Rd., Apt. 73 Oxnard, CA 93033 Certified Mail # 70150640000198016190
23 Jessica Arciniega, Regional Director Agricultural Labor Relations Board 24 1901 N. Rice Avenue, Suite 300 25 Oxnard CA 93030 E-Mail: jessica.arciniega@alrb.ca.gov	

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2021, at Camarillo, California.



Aggie Salanoa

1 Robert P. Roy, Esq. (SBN 74982)
2 General Counsel
3 Michael P. Roy (SBN 299511)
4 Legal Counsel
5 Ventura County Agricultural Association
6 916 W. Ventura Boulevard
7 Camarillo, California 93010
8 Telephone: (805) 388-2727
9 Facsimile: (805) 388-2767
10 E-Mail: rob-vcaa@pacbell.net

11 Attorney for Respondent
12 Cinagro Farms, Inc.

13 STATE OF CALIFORNIA
14 AGRICULTURAL LABOR RELATIONS BOARD
15 SALINAS REGIONAL OFFICE

16 In the Matter of:

17 CINAGRO FARMS, INC.,

18 Respondent,

19 And

20 MARISOL JIMENEZ,

21 Charging Party.

CASE NO. 2017-CE-008-SAL

RESPONDENT'S BRIEF IN SUPPORT OF
EXCEPTIONS TO THE DECISION AND
RECOMMENDED ORDER OF THE
ADMINISTRATIVE LAW JUDGE

[TITLE 8, CCR § 20282]

22 Pursuant to Title 8, California Code of Regulations, Section 20282(a)(1), Respondent
23 Cinagro Farms, Inc., respectfully files its legal brief in support of its Exceptions to the Decision
24 and Order of the ALJ, Mark R. Soble, dated October 27, 2021.

25 **I. LEGAL BRIEF**

26 **THE PREPONDERANCE OF THE EVIDENCE TAKEN DEMONSTRATES**
27 **THAT VICTOR MENDOZA'S CREW VOLUNTARILY QUIT EMPLOYMENT AND**
28 **WAS NOT DISCHARGED.**

Excerpt from the ALJ's Decision

1 At pages 62-63 of the ALJ's Decision (ALJD) the ALJ finds that the Victor Mendoza
2 crew did not quit, but was fired. [ALJD 62] For purpose of a review of the ALJ Decision,
3 Respondent is setting forth the specific paragraph providing the factual basis upon which the ALJ
4 decided that the Mendoza crew was fired:

5 * * *

6
7 *"Given the chronology established at trial, the crew of eight workers*
8 *reasonably concluded that they had been fired. Two weeks before they were*
9 *discharged, a new crew with six workers was hired. That crew was hired*
10 *at approximately the same date as the old crew who had reiterated their*
11 *paystub concerns directly to owner Dighera. The new crew did the same*
12 *type of work as the old crew. Then the old crew was told that there was no*
13 *work until further notice. This occurred despite the owner testifying that*
14 *there was still work to be done and the workers testifying that the season*
15 *was not over. The old crew was then told by the General Manager that the*
16 *new crew was also not working, but the old crew discovered that this was a*
17 *false statement. Then, later in the month, shortly after the old crew was*
18 *discharged, the company expanded the new crew from six to ten workers.*
19 *Only three days after handling the former crew their final checks on March*
20 *10, 2017, did Cinagro learn on March 13, 2017, from Ignacia Sanchez and*
21 *Marie Lauriano that most of the former crew had in the prior week found*
22 *work at a nearby blueberry farm."* [ALJD: 63]
23

24 * * *

25
26 Before proceeding to some of the arguments supporting the Respondent's contention that
27 the Mendoza crew had not been terminated, but had voluntarily relinquished their employment
28

1 weeding and cleaning the vegetable plants, but elected not to do so. [RT/9:144:18-20] The ALJ
2 impermissibly assumes that the second crew was hired to *replace* the Mendoza crew after the
3 latter had engaged in complaints about their pay check stubs.

4 (3) That crew was hired at approximately the same date as the old crew had reiterated
5 their paystub concerns to owner Dighera. (Not correct).

6
7 First, the Mendoza crew (old crew) started working with Cinagro on or about late
8 November or early December 2016. [RT/4:78-79; RT/5:30-31; 73:21-23]. Its only complaints
9 about the lack of paycheck stubs occurred during the first three weeks of January 2017.
10 [RT/5:38:9-12] This was over six weeks prior to the employment of the second harvest crew
11 (second crew) which occurred in the mid-February 2017, not on the same date, as suggested by
12 the ALJ above. More importantly, the second crew was hired during the rainy time of the season
13 and additional help was necessary. Lastly, the Mendoza crew never complained directly to the
14 owner Dighera, only to Foreman Mendoza and the Ranch Manager, Rene Macias, who conveyed
15 this to the owner. Mendoza's crew continued to work believing their complaint would be
16 resolved. [RT/5:38:13-15]

17
18 (4) "The new crew did the same type of work as the old crew." True, but the second
19 crew also harvested the same types of vegetables and performed weeding and cleanup work.

20 (5) "Then the old crew was told that there was no work until further notice." Partially
21 true. Following their last day of actual work on March 4, 2017, the Mendoza crew ["old crew"]
22 was informed that there would be no work until further notice. However, there remained
23 significant amounts of weeding and clean-up for the Mendoza crew to perform and Foreman
24 Mendoza was so informed by the Ranch Manager, Macias. Yet, the Mendoza crew chose not to
25 take advantage of this work, as they preferred to do *harvest* work. [RT/7:137:10-14]
26
27
28

1 (6) “This occurred despite the owner testifying that there was still work to be done
2 and the workers testifying that the harvest season was not over.” This is a true statement.

3 (7) “The old crew was then told by the General Manager that the new crew was also
4 not working, but the old crew discovered that this was a false statement.” Not True. After the
5 Mendoza crew members started to seek employment on the morning of March 6, 2017, they
6 allegedly went to one of the employer’s fields in Moorpark later that day and saw a crew working.
7 One of the employees, Maria Duarte, took photos of the operation which were of bad quality and
8 of no assistance to the fact finder. They then called Rene Macias, the General Manager, and
9 asked if there was any available work. He indicated that he “**understood**” that there was no work
10 available at that time and that he would let them know. [RT/5] There is no credible evidence that
11 the General Manager actually knew that the second crew was harvesting on March 6, 2017, or
12 that he was at this field location that day. Nevertheless, the ALJ found that “this was a false
13 statement” that was used by the ALJ to conclude, based upon speculation, that the Respondent
14 was hiding work from the Mendoza crew and had no intention to rehire them. Even if Rene
15 Macias had known that the second crew was working on March 6, 2017, it does not prove that
16 the Mendoza crew was entitled to work instead of the second harvest crew. The General Counsel
17 failed to present any evidence demonstrating the Mendoz crew had seniority or any preference
18 to that harvest work.

21 (8) “Then later in the month, shortly after the old crew [Mendoza crew] was
22 discharged the company expanded the new crew from six to ten workers.” Untrue. The Mendoza
23 crew was not “discharged”. On the morning of March 6, 2017, *prior to* Maria Duarte, Marisol
24 Jimenez, and Hector Martinez, calling both Victor Mendoza and Rene Macias to verify if there
25 was any work, these employees submitted applications at the adjacent blueberry farm along with
26 virtually all of the crew members. [RT/2:60:17-25; 61:1-2] They continued to work until the end
27

1 of the blueberry harvest season in June 2017. Within one week of March 6, 2017, Rigoberto
2 Rodriguez and Maria Angelica Santiago, fellow crew-members, found employment at Deardorff
3 Family Farms. [RT/2:146:18-25; 147:1-25] The evidence clearly demonstrates that these jobs
4 had higher wages, benefits, conditions of employment, workers' compensation insurance, field
5 sanitation units, employee paystub statements, and water, and all of the employment conditions
6 that were allegedly lacking at Cinagro Farms. The Mendoza crew was not discharged. When
7 asked by the General Counsel why no offers of reinstatement had been made, Dighera responded:
8 "I specifically didn't because they had already been working...thirty feet across the road.
9 [RT/7:20-25; 75:1] Thus, the company's owner reasonably believed that they had voluntarily
10 relinquished their employment.
11

12 Moreover, while the second harvest crew continued to work following March 6, 2017,
13 and continued through the remainder of the season, it did not increase the size of the crew until
14 the week of March 27, 2017. During the intervening weeks of March 6, 2017, the second harvest
15 crew employed seven workers. During the weeks of March 13, and March 20, 2017, it employed
16 six workers. Finally, starting the week of March 27, 2017, it increased the crew to 10 workers.
17 Therefore, contrary to the ALJ's statement, the second crew was not expanded "... **shortly** after
18 the Mendoza crew was "discharged". (Emphasis added) [See, GCX-4 & 6 for the weeks of
19 3/6/27, 3/13/17, 3/20/17 and 3/27/17.] There were NO increases in the number of employees in
20 the second harvest crew, until the week of March 27, 2017, over three weeks later! [Id.]
21

22 (9) "Only three days after handing the former crew their final paychecks on March
23 10, 2017, did Cinagro learn on March 13, 2017, from Ignacia Sanchez and Marie Lauriano that
24 most of the former crew had in the prior week found work at a nearby blueberry farm." Incorrect.
25

26 It is correct that on March 10, 2017, the Mendoza crew's regular pay day, [RT/5:42: 19-24; 84:3-
27 14], Foreman Mendoza passed out paychecks from the prior work week that ended on March 4,
28

1 2017, to most of the Mendoza crew members who lived in Oxnard. Rene Macias passed out the
2 paychecks for Ignacia Sanchez and Marie Lauriano who lived in Fillmore. [RT/7:135-136;
3 RT/5:22-24] Marie Lauriano, before receiving her payroll check on March 10, 2017, informed
4 Foreman Victor Mendoza that many of the workers had already obtained employment at the
5 blueberry farm next door. [RT/5:102:4-6] Thus, it was clear that no later than March 10, 2017,
6 Victor Mendoza, an authorized statutory supervisor of the Respondent, was already informed
7 that virtually all the crew members had obtained alternative employment, yet Mendoza denied
8 such knowledge. [RT/5:48:24-25; 49:1-2] As confirmation of this fact, Rene Macias credibly
9 testified that he ran into Ignacia Sanchez and Marie Lauriano one afternoon after March 4, 2017,
10 when he was returning from the ranch. He took a different direction and went by the blueberry
11 ranch and saw Ignacia and Marie walking out of the workplace. He stopped and spoke with them
12 for a few minutes. [TR/7:138-145] Aside from Ms. Sanchez and Lauriano finding employment
13 at the blueberry farm, they informed him that Marisol Jimenez, Hector Cruz, and Maria Duarte,
14 had already obtained employment at the blueberry ranch. This information was immediately
15 conveyed to Mr. Tony Dighera, owner of Cinagro Farms. [Id.] When this was discovered, Mr.
16 Dighera confirmed this with the owner of the blueberry farm; Mr. Josh Waters. [RT/7:75:8-14]
17 As a result, Dighera concluded that the workers had voluntarily relinquished their employment
18 with Cinagro. Up until this point and thereafter, all workers testified that they were never
19 informed by Victor Mendoza, Rene Macias or the owner Tony Dighera that their employment
20 had been terminated. Once they left employment on March 6, 2017, there were no further
21 communications between the workers and the company's representatives, as there was no need.
22
23
24

25 **PORTIONS OF THE ADMINISTRATIVE RECORD SUPPORTING**

26 **RESPONDENT'S CONTENTIONS**

27 A. **Respondent's Need for Hiring the Second Harvest Crew**

1 1. A more experienced second harvest crew was hired around mid-February 2017 to
2 help out with production needs. This was the rainy time of the season and Mendoza's crew was
3 behind in weeding. [RT/7:85:1-9] It harvested vegetables and also engaged in weeding and
4 cleanup work. [RT/7:85:1-9; 93:13-15]

5 2. Weeding and cleaning work remained available through March 4, 2017, and
6 thereafter, to members of Mendoza's crew, as well as the second crew. [RT/7:137:10-14; 143:9-
7 13; 144:17-20]

8 3. Mendoza informed Rene that his crew did not like to perform weeding and
9 cleanup work. [RT/7:137-10-14] and many would not show up when such work was available.
10 [RT/7:12-18]

11 4. Mendoza was advised of the availability of such work by Rene who informed
12 Rene that many times they would not show up to perform such work. [RT/7:1512-18]

13 5. Rene never told Mendoza or his crew members that they were discharged.
14 [RT/5:50:14-24; RT/7:121:11-13]

15 6. The second harvest crew was a separate and independent crew from Mendoza's
16 crew with its own foreman. [RT/7:12:15-25; 16:1-2; 130-132]

17 7. There was no evidence introduced by the General Counsel that demonstrated the
18 Mendoza crew had seniority or priority to continue work and displace the second harvest crew
19 after March 4, 2017. [Id.]

20 8. A preponderance of the evidence demonstrates that the second harvest crew had
21 better quality work and were willing to perform weeding and cleaning work when harvest work
22 was not available, unlike Mendoza's crew. [RT/7:9-17]

23
24
25
26
27 **B. Respondent's Decision Not to Recall Mendoza's Crew was Justified**

1 1. There were reductions in customer orders and until customer orders increased,
2 Mendoza's crew would need to weed and clean until harvest orders came in. [RT/7:147:9-24]

3 2. Victor Mendoza's crew was never advised that there would be no work anymore.
4 Macias merely informed Mendoza that if they were going to cut (i.e., harvest) he would let him
5 know. [RT/7:153:2-8] There weren't enough harvest orders for both crews. [RT/7:172:3-6]

6 3. Respondent's owner reasonably believed that the Mendoza crew had voluntarily
7 quit their employment. [RT/7:74:24-25; 75:1]

8 4. Respondent's owner confirmed the alternative employment by the Mendoza crew
9 with the owner of the adjacent blueberry farm (Silent Springs). [RT/7:75:8-25; 26:1-10]

10 5. Former employees in Mendoza's crew also confirmed to Rene Macias which
11 employees had obtained immediate employment at Silent Springs starting on March 7, 2017,
12 including themselves. [RT/7:137-138]

13 6. Foreman Mendoza was informed that workers had already obtained alternative
14 employment at the adjacent blueberry farms prior to the March 10, 2017, payday. [RT/5:102:4-
15 6]

16 7. All of Mendoza's crew members went to work at Silent Springs, except for a
17 husband and wife who were re-employed by Deardorff Family Farms on March 13, 2017.
18 [RT/7:138-145]

19 8. When Rene Macias was informed that virtually all of Mendoza's crew went to
20 work at the blueberry farm, he realized that they had voluntarily quit their employment.
21 [RT/7:207-208]

22 9. Mendoza's crew never sought re-employment with the Respondent having found
23 alternative employment with higher wages, and better benefits and working conditions.
24 [RT/7:74:11-25; 26:1-14]

1 **C. Rene Macias’s Testimony was Credible and Supported by the Record.**

2 1. The ALJ’s finding that Rene Macias lied about not knowing that the second
3 harvest crew worked on March 6, 2017, is not supported by credible evidence.

4 2. Rene Macias was not present with the second harvest crew on March 6, 2017.
5 When asked by Marisol Jimenez whether the second harvest crew was working on that date he
6 responded: “...that it was his understanding that no crew was working on that date.” [ALJD:9]
7 [Emphasis added]
8

9 3. General Counsel’s photos taken by Maria Rangel on her cellphone do not prove
10 that the crew working in the field on March 6, 2017, was actually Respondent’s second harvest
11 crew, or the type of crop that was being harvested, or whether Rene Macias was actually present
12 at the field, or whether Rene actually knew that the second crew was working early that morning
13 on March 6, 2017, as it had its own foreman or crew leader.
14

15 4. Early the morning of March 6, 2021, Marisol Jimenez had just filed an application
16 for employment with Silent Springs before Maria Rangel took the photos of the above crew and
17 called Rene Macias. She was accompanied by Hector Cruz and Maria Rangel who also filed
18 employment applications at the same blueberry farm. [ALJD:9]

19 5. Marisol Jimenez was not found to be credible by the ALJ. [ALJD: 55]

20 6. Contrary to the ALJ’s conclusion, Rene Macias credibly testified that weeding
21 and cleaning work remained available for Mendoza’s crew on March 6, 2017, and thereafter.
22 [RT/7:144:17-20; RT/7:137:10-14]
23

24 7. Tony Dighera also confirmed the availability of weeding and cleaning work
25 following March 4, 2017. [RT/7:92:22-25; 93:1-15]

26 // // //

27 // // //

1 **D. Respondent's Failure to Recall the Mendoza Crew was not Unlawful**
2 **Retaliation because the crew had already obtained more favorable**
3 **alternative employment**

4 1. Once Respondent's owner found out that Mendoza's crew had already obtained
5 alternative employment, he had a legitimate reason not to recall the Mendoza crew. [RT/7:20-
6 25; 75:1]

7
8 2. There was weeding and cleanup work available for Mendoza's crew during the
9 weeks following March 4, 2017. [RT/7:22-25; 93:1-15] Yet, Marisol Jimenez, Hector Cruz
10 Vasquez, and Maria Duarte, opted to obtain alternative immediate and better employment at the
11 adjacent Silent Springs (blueberry farm), along with fellow crew members, Maria Lauriano and
12 Ignacia Sanchez. [RT/2:60:17-25; 61:1-2] The two remaining crew members, Yolanda Antonio
13 Garcia and her husband, Rigoberto Perez Martinez, both opted to obtain alternative employment
14 at Deardorff family Farms where they had worked in past seasons. This occurred on or about
15 March 13, 2017. [RT/2:146:18-25; 147:1-25] The last remaining employee, Maria Angelica
16 Santiago who had sustained a cut finger, did not obtain alternative work at the blueberry farm as
17 she was disabled until three weeks following the injury. [RT/4:29:21-29; 24]

18
19 3. Marisol Jimenez, Hector Tapia and Maria Duarte submitted applications for
20 employment at Silent Springs on the morning of March 6, 2017, before they spoke with
21 Supervisor Rene to see if there was any work. They were hired on the following morning, as
22 were most of the other member of Mendoza's crew within a day or two. [RT/2:146:18-25; 147:1-
23 25]

24
25 4. The Mendoza crew did not wait around to see when the next **harvest** work would
26 become available. Although weeding and cleanup work remained available, the crew did not like
27 to do such mundane and dirty work and opted to seek out alternative work. [RT/7:137:10-14]

1 5. Harvest work in the second harvest crew remained the same and did not pick up
2 until the last week of March 27, 2017, by which time all of Mendoza's crew members had already
3 obtained better, alternative employment at Silent Springs and Deardorff Family Farms. Thus,
4 additional harvest work did become available by March 27, 2017, when the second harvest crew
5 hired four additional workers, but the Mendoza crew was unavailable. [GCX-9] Additionally, the
6 entire Mendoza crew had already obtained more favor alternative employment and had no reason
7 to leave that work to return to Cinagro's lower wages, benefits and working conditions.
8

9 6. Under no circumstances can it be concluded that Respondent's decision not to
10 recall the Mendoza crew was causally-connected to the crew's protected concerted activity of
11 complaining about the paychecks: (1) The crew continued to work following their complaints in
12 early January 2017; (2) weeding work and cleanup work remained available following March 4,
13 2017, and thereafter, which they did not like to perform according to their foreman Mendoza; (3)
14 none of the crew members, including the Foreman Mendoza, were ever informed that they had
15 been terminated; (4) many of the crew members immediately sought alternative employment on
16 the morning of the first day of the following the March 4, 2017, before they were informed of
17 any available work; and (5) lastly, crew members had voluntarily quit their employment and
18 opted to obtain alternative employment which had higher wages, and better benefits and working
19 conditions before they had even collected their last paycheck on March 10, 2017, i.e., on their
20 usual and customary pay day.
21

22 Based upon the foregoing facts and circumstances, Respondent had a legitimate and
23 reasonable belief that the Mendoza crew had voluntarily relinquished its employment. Therefore,
24 Respondent's failure to displace the second harvest crew was not a pretext for unlawful
25 retaliation.
26
27
28

1 **E. Foreman Mendoza's Crew had no Reasonable Belief on March 10, 2017,**
2 **that they had been Terminated from their Employment**

3 1. Contrary to the ALJ's erroneous finding at page 63, that Respondent first learned
4 on March 13, 2017, that that the crew had obtained work in the prior week, the record
5 demonstrates that Foreman Mendoza had been advised prior to (March 10, 2017), that most of
6 the crew had already relinquished their employment. Crew member, Ms. Ignacia Sanchez,
7 testified that after the last day of work on March 4, 2017, she had a conversation with Foreman
8 Mendoza and informed him that she had obtained employment elsewhere. [RT/5:102:4-6] This
9 knowledge is imputed to Respondent because Foreman Mendoza is an authorized agent.
10

11 2. The ALJ's conclusion that the Mendoza crew could reasonably believe that they
12 had been fired [ALJD:62, fn.3] is contrary to the facts. On Monday, March 6, 2017, the first day
13 of the following week, crew members had already filed employment applications early that
14 morning with the adjacent blueberry farm, BEFORE they saw the second harvest crew allegedly
15 working later that morning. Thus, they were looking for alternative work before there was any
16 evidence on which to conclude that they had been terminated, thereby demonstrating that they
17 had already voluntarily decided to relinquish their employment at Cinagro Farms.
18

19 3. **The cases relied on by the ALJ to conclude that the Mendoza crew had**
20 **reasonable cause to believe they had been discharged are distinguishable. [ALJD:63-64,**
21 **fn.3]**

22 The ALJ argues that even if the facts were beset with some ambiguity, he would have
23 no difficulty in concluding that the Mendoza crew had been discharged. The ALJ cites a number
24 of case arising under the ALRA and NLRA for the proposition that: "A discharge occurs if an
25 employer's conduct or words would reasonably cause employees to believe that they were
26 discharged and in such circumstances it is incumbent upon the employer to clarify its intent.
27
28

1 [ALJD:63-64, fn.3] All of the cases cited, however, deal with facts where the employees either
2 directly or indirectly are informed that they are discharged either verbally and, in some cases,
3 this conclusion was reinforced by concurrent employer conduct reaffirming the same.

4 For example, in *Boyd Branson Flowers, Inc.* (1995) 21 ALRB No. 4, the workers were
5 informed by the Company's owner that they were discharged, used profanity and instructed them
6 to go home. In *American Protection Industries, et al* (1991) 17 ALRB No. 21, employees engaged
7 in a work stoppage over their request for a piece rate increase were informed by the owner to
8 pick up their pay checks and go home. In *H. R. Gunlund Ranches, Inc.* (2013), a crew that was
9 protesting an announced reduction in piece rates was informed that it was discharged the same
10 day. Also, in *Sequoia Orange, Co et al.* (1983), a foreman who conveyed his crew's protest over
11 current piece rate was informed that he and his crew were discharged.

12 In each of the above cases, the workers (and sometimes their foremen) clearly had a
13 reasonable belief that they had been discharged because they were informed of that fact. That is
14 to be contrasted with the facts in the present case, where contrary to the above cases, Respondent
15 had no reason to clarify its intent for the following reasons: First of all, all of the employees,
16 including the Foreman Mendoza, testified that they were never informed that they had been
17 discharged. Secondly, the crew was waiting around to hear back from the General Manager when
18 harvest work would become available. Third, at all times material after the Mendoza crew's last
19 date of work, there was available weeding and cleanup work which they eschewed. Fourth, rather
20 than wait to hear when such work might be available, the entire crew immediately sought
21 alternative employment on the first day of the following work week which had higher wages, and
22 better benefits and working conditions.

23 With the foregoing information in mind, Respondent had no reason to clarify to the
24 Mendoza Crew whether they had been discharged because (1) in reality, they had not been
25

1 discharged; and (2) they voluntarily relinquished their employment at the start of the next work
2 week without notice to the employer, except in the case of Marie Lauriano who informed
3 Foreman Mendoza she had obtained alternative employment.

4 Therefore, based upon the unique facts of the present case, this line of cases does not
5 support a finding that the six members of the Mendoza crew reasonably believed that they had
6 been discharged from their employment.
7

8 **II. CONCLUSION**

9 Based upon the foregoing exceptions, relevant citations to testimony in the proceeding,
10 pertinent exhibits and case law, Respondent respectfully submits that the General Counsel has
11 failed to prove by a preponderance of the evidence taken that the Mendoza crew was terminated
12 because of its protected concerted activities. The crew simply “jumped the gun” by seeking out
13 better, alternative employment before they had any reasonable belief that the statements or
14 actions of Respondent had resulted in their termination of employment. Clearly, the crew
15 voluntarily relinquished their employment to find better wages and working conditions just
16 across the road at a different farm at a time when there was available weeding and cleanup work
17 available with Respondent.
18

19 WHEREFORE, Respondent respectfully requests that the ALJ’s conclusion that the
20 Foreman Mendoza crew was discharged be dismissed, in its entirety.

21 DATED: December 1, 2021
22

23 Respectfully submitted,

24 BY: 

25 Robert P. Roy
26 Michael P. Roy
27 Attorneys for Respondent
28 Cinagro Farms, Inc.

1 **PROOF OF SERVICE**

2 I, Aggie Salanoa, declare as follows:

3 I am a citizen of the United States, employed in the County of Ventura, State of
4 California. I am over the age of 18 years and not a party to the within action; my business address
is: 916 W. Ventura Blvd., Camarillo, CA 93010.

5 On December 1, 2021, I served the attached:

6 **RESPONDENT’S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION AND**
7 **RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE**

8 [TITLE 8, CCR § 20282]
9 [Case No. 2017-CE-008-SAL]

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

11 **By Certified Mail:** The above-referenced documents were mailed to the specified parties in said
12 action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at Camarillo, California; and

14 **By Electronic Mail:** The above-referenced documents were e-mailed, as noted, to the following
parties at the listed e-mail addresses.

15 **DISTRIBUTION LIST**


16 Santiago Avila-Gomez 17 Executive Secretary Agricultural Labor Relations Board 18 1325 J Street, Suite 1900 Sacramento, CA 95814 19 E-File: Efile@alrb.ca.gov	Tony Dighera Cinagro Farms, Inc. 1547 Riverside Avenue Fillmore, CA 93015 E-Mail: tdighera@yahoo.com
20 Mark R. Soble Administrative Law Judge Agricultural Labor Relations Board 21 1325 J Street, Suite 1900 Sacramento, CA 95814 22 E-Mail: mark.soble@alrb.ca.gov	Marisol Jimenez 1201 W. Gonzalez Rd., Apt. 30 Oxnard, CA 93033 Certified Mail # 70150640000198016190
24 Jessica Arciniega, Regional Director Agricultural Labor Relations Board 1901 N. Rice Avenue, Suite 300 Oxnard CA 93030 26 E-Mail: jessica.arciniega@alrb.ca.gov	

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2021, at Camarillo, California.



Aggie Salanoa