

1 On June 9, 2022, Respondent filed its Answer to Counsel for the General Counsel's
2 Consolidated Complaint.

3
4 On June 13, 2022, Respondent filed its Opposition to General Counsel's motions.

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6 On June 14, 2022, I issued a Notice to Show Cause why General Counsel's Motions
7 should not be granted.

8 On June 24, 2022, General Counsel filed its Response to my Order to Show Cause.

9
10 2. The Parties' Positions

11 In its Motions General Counsel contends that Respondent's Answer herein was due under
12 Board regulation sections 20170 and 20230 on May 31, 2022. The record reflects that
13 Respondent has agreed to electronic service of documents by utilizing efileing on September 8,
14 2021, to submit Respondent's Opposition to the Board's Order to Show Cause. Thus,
15 Respondent's answer was untimely under Board's regulation 20230. General Counsel contends
16 that the Consolidated Complaint allegations should be deemed admitted under Board regulation
17 section 20232.
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20 In its Opposition to General Counsel's motions, Respondent avers that its counsel, Mark
21 Paschowitz, left on a vacation on May 19, 2022. It is further declared that during Mr.
22 Paschowitz' absence his staff calendared an answer to General Counsel's Consolidated
23 Complaint for 30 days after May 19, 2022. Respondent contends that there has been no
24 prejudice to the Board or General Counsel in its late filing of an answer herein and that there is
25 good cause under California Code of Civil Procedure section 473(b) to grant relief from default.
26 Respondent essentially asserts that its staff made an excusable error in assuming Respondent's
27 answer was due in 30 days.
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1 General Counsel counters that under CCP section 473(b), it is Respondent's burden of
2 establishing good cause for relief. Absent a showing of good cause for failure to file a timely
3 answer, it is appropriate to grant a motion to deem allegations of a complaint admitted.
4

5 3. The Analysis

6 There is no dispute that the Consolidated Complaint was served on Respondent's counsel
7 which satisfies the requirements of the Act for service. In addition, it is clear that Respondent
8 failed to file its answer in a timely manner under Board's regulation section 20230.
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10 California Code of Civil Procedure section 473(b) provides that a court can upon terms
11 that may be just relieve a party or its representative from a judgement or order caused by their
12 mistake, inadvertence, or excusable neglect.

13 In addition, in the absence of good cause the issue of prejudice is irrelevant. Nor does a
14 mistake of law require relief from default. *Allstar Seed Company* (2003) 29 ALRB No. 2 page 5.
15 While a mistake of law may form the basis for good cause for relief, the Board has held to be
16 excusable the misconception must be reasonable and the lack of relying on the correct law is
17 justified. *Allstar Seed Company, supra at 4*. An excusable mistake of law does not necessarily
18 constitute excusable negligence. This is a question of fact. In this case did Respondent, its
19 three attorneys and legal staff have duty to inquire into the Board's procedural requirements for
20 filing an answer.
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22 In the instant case, General Counsel served not one but three of Respondent's attorneys
23 with the Consolidated Complaint. General Counsel also served all of Respondent's counsel the
24 Board's regulations specifying that an answer was due 10 days after service of the complaint.
25 There is no evidence that anyone reviewed the regulations attached to the consolidated complaint
26 detailing that an answer was due in 10 not 30 days. Three attorneys were served with the
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1 Consolidated Complaint. The absence of one attorney does not relieve the other two attorneys of
2 record from ascertaining the appropriate Board procedures. It is disingenuous to lay blame for
3 failing to research the correct law on non-attorney staff. Counsel's failure to read the
4 regulations attached to the Consolidated Complaint explicitly informing counsel of the due date
5 for Respondent's answer is not the action of a reasonable and prudent person. In *Reveille Farms,*
6 *LLC* (2019) 45 ALRB No. 6, page 3-4, in a case factually like this case, the Board found that
7 failure to file a timely answer due to ignorance and failure to ascertain the appropriate law is not
8 the act of a reasonable and prudent person and does not support a finding of good cause to
9 support relief from default.
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11
12 That Respondent failed to act in a reasonably prudent manner by failing to file a timely
13 answer is affirmed by Respondent's previous failure to read Board regulations and failed to file a
14 timely petition to revoke subpoena in this case. The Board concluded that counsel failed act in a
15 reasonably prudent manner when they failed to determine when they were required to file a
16 petition to revoke subpoena under Board regulations. Their failure to timely file a petition to
17 revoke resulted in waiver of any objections to General Counsel's investigatory subpoena and the
18 Board's enforcement of the subpoena. *Lily's Green Garden, Inc.*, Admin Order No. 2021-19,
19 page 7, October 26, 2021.
20

21
22 Respondent's argument that no one was prejudiced by its late filing of its answer, is
23 unavailing.
24

25 As the Board held in *Reveille Farms, supra*, page 8, where a Respondent has failed to
26 show good cause for its failure to abide by Board regulations, the issue of prejudice is moot and
27 need not be addressed.
28

1 Under Board's regulation section 20232 in the absence of an answer all allegations of a
2 complaint not denied are deemed admitted. Because Respondent failed to file a timely answer
3 and there is no good cause to excuse this failure, the allegations in the complaint are deemed
4 admitted. General Counsels' Motion to Deem the Complaint Allegations Admitted is granted
5 and its Motion for Default Judgment is likewise granted.
6

7 Having found the allegations of the complaint admitted, the following findings of fact
8 and conclusions of law are made:
9

10 4. Findings of Fact

- 11 1. On May 19, 2022, the Salinas Regional Director issued a Consolidated Complaint against
12 Respondent Lily's Green Garden, Inc., on that same date, a copy was served by email and
13 certified mail on Respondent, along with a fact sheet advising Respondent of the need to file
14 an answer and the time for filing an answer.
15
16 2. No answer to the First Amended Complaint was timely filed.
17

18 I, therefore, find:

- 19 a. A true and correct copy of the original charge in case number 2020 CE 025 SAL the
20 above captioned case was filed by charging party on June 19, 2020, and served on
21 Respondent on the same date. A true and correct copy of the original charge in case
22 number 2020 CE 037 SAL in the above captioned case was filed by charging party on
23 August 3, 2020 and served on Respondent on the same date.
24
25 b. Respondent has at all times been an agricultural employer in Nipomo, California, where
26 it engages in the production of cannabis, and is engaged in agriculture within the
27 meaning of Section 1140.4(a) and (c) of the Agricultural Labor Relations Act (Act).
28

- 1 c. At all times material Lisbeth Jimenez (Jimenez) was an agricultural employee within the
2 meaning of section 1140.4(b) of the Act and was employed by Respondents.
- 3 d. At all times material Respondent's owner, Gerry Goldberg (Goldberg), Ana Becerra
4 (Becerra), Respondent's trimming supervisor, and Respondent's general Manager
5 Bernard were supervisors for Respondent within the meaning of section 1140.4(j) of the
6 Act with authority to hire, fire discipline and direct the work of Respondent's
7 agricultural employees.
- 8 e. At all times material Respondent's director of HR, Blanca Placentia (Placentia) and
9 Respondent's Compliance Officer, Daniel Cadena (Cadena) were agents of Respondent.
- 10 f. On about August 27, 2019, Jimenez began working for Respondent as a cannabis
11 trimmer.
- 12 g. In March 2020, Jimenez and coworker complained to Placentia that Becerra was rude,
13 unprofessional, insulted employees and disciplined employees in the presence of other
14 employees.
- 15 h. The next day Becerra held a meeting of trimming employees and told them despite their
16 complaints about her HR would do nothing.
- 17 i. After the meeting, Becerra assigned Jimenez more difficult work.
- 18 j. In April and May 2020, Becerra criticized Jimenez' work. When Jimenez and other
19 employees tried to respond, Becerra told them if they did not like it, they could leave.
- 20 k. In June 2020, Jimenez and another employee spoke to Placentia and reported that Becerra
21 used offensive language to them and other co-workers saying they were like bitches
22 laughing.
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- 1 l. During an investigation in June by Respondent employees complained to Respondent
2 about Becerra.
- 3 m. On June 24, 2020, Becerra threw a bag of cannabis at Jimenez and at a meeting later that
4 day told the employees they could complaint, but she did not care.
- 5
6 n. On June 26, 2020, Becerra yelled at Jimenez in front of other employees causing Jimenez
7 to leave work for the day with Cadena's permission.
- 8
9 o. On June 29, 2020, when Jimenez returned to work, Becerra told Placentia to give Becerra
10 resignation papers to give to Jimenez. Jimenez told Placentia she was not resigning.
- 11
12 p. On June 29, 2020, Becerra isolated Jimenez from other employees by removing her from
13 her normal work area and having Jimenez sit at a table with her back to employees.

14 5. Conclusions of law

- 15 a. In April and May 2020, by threatening employees, including Jimenez, with
16 termination because they had engaged in protected-concerted activity, Respondent
17 violated section 1153(a) of the Act by interfering with, restraining or coercing
18 employees in the exercise of their rights guaranteed in section 1152 of the Act.
- 19
20 b. On June 29, 2020, by threatening to terminate Jimenez and by isolating her from
21 other employees and in March 2020, by assigning her more difficult work, because
22 she engaged in protected-concerted activity, Respondent violated section 1153(a) of
23 the Act.
- 24
25 c. In March 2020, Respondent violated Section 1153(a) of the Act and interfered,
26 restrained and coerced employees in the exercise of their rights guaranteed in section
27 1152 of the Act, when Becerra told employees that their complaints had no effect,
28 and that HR would do nothing about their complaints.

1 d. Respondent violated Section 1153(d) of the Act in Becerra's retaliation against
2 Jimenez by threatening to terminate her, giving her more difficult working
3 conditions and isolating her for filing unfair labor practice charges under the Act.
4

5 ORDER

6 By the authority of section 1160.3 of the Act, the Agricultural Labor Relations Board
7 (Board) hereby order Respondent Lily's Green Garden, Inc., its agents, officers, successors and
8 assigns to do the following:

9 1. Cease and desist from:

- 10 a. Unlawfully threatening its agricultural employees with termination for engaging in
11 protected concerted activity protected under section 1152 of the Act, including filing
12 charges under the Act.
13
14 b. Unlawfully telling its agricultural employees that it is futile to engage in protected-
15 concerted activity to discourage employees from exercising their rights protected by
16 section 1152 of the Act, including filing charges under the Act.
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18 c. Unlawfully isolating and assigning more difficult work to its agricultural employees for
19 engaging in protected concerted activity protected under section 1152 of the Act,
20 including filing charges under the Act.
21
22 d. In any like or related manner interfering with, restraining or coercing its agricultural
23 employees in the exercise of their rights guaranteed by section 1152 of the Act.
24

25 2. Take the following affirmative action, necessary to effectuate the policies of the Act:

- 26 a. Sign the attached Notice to Employees and, after its translation by a Board agent(s)
27 into all appropriate languages, as determined by the Regional Director, reproduce
28 sufficient copies in each language for all purposes set forth in this Order;

1 b. Upon request, provide the Regional Director with the dates of its next peak season.

2 Should the peak season have already begun at the time the Regional Director requests
3 peak season dates, Respondent will inform the Regional Director of when the present
4 peak season began and when it is anticipated to end, in addition to informing the
5 Regional Director of the anticipated dates of the next peak season;
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8 c. Mail copies of the Notice, in all appropriate languages, within 30 days after the date of
9 this Order becomes final, or when directed by the Regional Director, to all agricultural
10 employees employed by Respondents at any time during the period from March 1,
11 2020 until July 1, 2020;
12

13 d. Post copies of the Notice, in all appropriate languages, in conspicuous places on
14 Respondent's property for a 60-day period, the period and place(s) of posting to be
15 determined by the Regional Director, and exercise care to replace any Notice which
16 may be altered, defaced, covered or removed. Pursuant to the authority granted under
17 Labor Code section 1151(a), give agents of the Board access to its premises to confirm
18 the posting of the Notice;
19

20 e. Arrange for a representative of Respondent or a Board agent(s) to distribute and read
21 the Notice in all appropriate languages to all of Respondents' agricultural employees
22 on company time and property at time(s) and place(s) to be determined by the Regional
23 Director.
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25 Following the reading, the Board agent(s) shall be given the opportunity, outside the
26 presence of supervisors and management, to answer any questions the employees may
27 have concerning the Notice or their rights under the Act.
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The Regional Director shall determine a reasonable rate of compensation to be paid by Respondents to all non-hourly wage employees in order to compensate them for time lost at the reading and during the question and answer period;

f. Provide a copy of the attached Notice to each agricultural employee hire to work for Respondents during the one-year period following the date this Order becomes final and;

g. Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondents have taken to comply with its terms. Upon request of the Regional Director, notify them periodically thereafter in writing of further steps taken until full compliance with the Order is achieved.

Dated: July 12, 2022



JOHN J. MCCARRICK
Administrative Law Judge
Agricultural Labor Relations Board

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NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. Because we did not contest such charges by timely filing answer to the complaint, the ALRB deemed the allegations to be true and found that we violated the Agricultural Labor Relations Act (ALRA) by threatening and discriminating against an employee for complaining about the terms and conditions of her employment and for filing unfair labor practice charges.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

We also want to inform you that the ALRA is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
5. To act together with other workers to help and protect one another;
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that;

WE WILL NOT threaten employees with discharge because they engage in protected-concerted activity or filed charges with the ALRB.

WE WILL NOT impose more difficult conditions of employment or tell our employees it is futile to engage in in protected-concerted activity because they engage in protected-concerted activity or file charges with the ALRB.

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

Dated: July _____, 2022

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 342 Pajaro St., Salinas CA 93901-3423. The telephone number is (831) 769-8031.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

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STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

LILY’S GREEN GARDEN, INC.,)	Case No. 2020-CE-025-SAL
)	2020-CE-037-SAL
Respondent,)	
)	DECISION OF THE ADMINISTRATIVE
and,)	LAW JUDGE; ORDER TRANSFERRING
)	MATTER TO THE BOARD
LISBETH JIMENEZ,)	
)	
Charging Party.)	

The above case is deemed transferred to the Board on July 14, 2022. (ALRB regulation section 20280. The parties have until August 4, 2022 at 4:00pm to file any exceptions to the Decision of the Administrative Law Judge attached and served with this Order (ALRB regulation section 20282, subdivision (a).) Reply briefs are due no later than August 15, 2022, at 4:00pm (ALRB regulations section 20282 (b).)

Dated: July 14, 2022

 for _____
 Santiago Avila-Gomez
 Executive Secretary
 Agricultural Labor Relations Board

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STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD
PROOF OF SERVICE

(1013a, 2015.5 C.C.P.)

Case Name: LILY’S GREEN GARDEN, INC., Respondent, and,
LISBETH JIMENEZ, Charging Party

Case Nos. 2020-CE-025-SAL, 2020-CE-037-SAL

I am a citizen of the United States and a resident of the County of Sacramento, I am over the age of eighteen years and not a party to the within entitled action. My business address is 1325 “J” Street, Suite 1900-B, Sacramento, California 95814.

I served ORDER GRANTING GENERAL COUNSEL’S MOTION TO DEEM ALLEGATIONS IN THE CONSOLIDATED COMPLAINT ADMITTED AND MOTION FOR A DEFAULT JUDGMENT and DECISION OF THE ADMINISTRATIVE LAW JUDGE; ORDER TRANSFERRING MATTER TO THE BOARD ,, on the parties in the above-entitled action as follows:

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

7021 2720 0002 2632 4471
Lisbeth Jimenez
P.O. Box 1328
Santa Maria, CA 93456

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

Peter A. Goldenring
PACHOWICZ GOLDENRING
6050 Seahawk Street
Ventura, CA 93003-6622
peter@gopro-law.com
mark@pglaw.law
sally@gopro-law.com
tina@pglaw.law

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Julia L. Montgomery, General Counsel
Franchesca C. Herrera, Acting Regional Director
Audrey Hsia, AGPA
Agricultural Labor Relations Board
julia.montgomery@alrb.ca.gov
franchesca.herrera@alrb.ca.gov
audrey.hsia@alrb.ca.gov

Jessica Arciniega, Regional Director
Monica De La Hoya, Assistant General Counsel
Yesenia De Luna, Assistant General Counsel
Salinas Regional Office
jessica.arciniega@alrb.ca.gov
gabriela.correa@alrb.ca.gov
yesenia.deluna@alrb.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 14, 2022 at Sacramento California.



Angelique Duran
Legal Secret