

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ZABALA FARMS OF SALINAS, LLC,)	Case No. 2021-CE-018-SAL
Respondent,)	
)	DEFAULT DECISION AND ORDER;
)	ORDER GRANTING GENERAL
and,)	COUNSEL’S REQUEST THAT THE
)	COMPLAINT’S ALLEGATIONS BE
)	DEEMED ADMITTED
)	
BERENICE VARGAS MARTINEZ,)	
Charging Party.)	
)	
)	
)	
)	

On December 1, 2021, the ALRB Regional Director served the charge in this matter upon Respondent Zabala Farms of Salinas, LLC.

The Regional Director served the Charge on Respondent as follows:

Zabala Farms of Salinas, LLC
50 Zabala Road
Salinas, CA 93908
Certified Mail No.: 7018 1830 0001 0041 8826

On June 21, 2022, the General Counsel filed and served a complaint and other required documents upon Respondent Zabala Farms of Salinas, LLC. The other documents included excerpts from ALRB Regulations, a hearing action request form, and a complaint summary form.

The complaint alleges that Respondent committed unfair labor practices as defined by the Agricultural Labor Relations Act. According to her proof of service, the General Counsel served the complaint on the Respondent as follows:

Via Certified and Electronic Mail:
Alejandro H. Herrera
Agent for Service of Process for Zabala
Farms of Salinas, LLC
100 Wilshire Boulevard Ste 700
Santa Monica, CA 90401
Email: Alex@HCH.Law
Certified Mail No.: 7021 0350 0001 8208 8937

On July 19, 2022, the General Counsel filed and served a motion for a default judgment and for the complaint's allegations to be deemed admitted. According to her proof of service, the General Counsel served this motion on the Respondent as follows:

Via Certified and Electronic Mail:
Alejandro H. Herrera
Agent for Service of Process for Zabala
Farms of Salinas, LLC
100 Wilshire Boulevard Ste 700
Santa Monica, CA 90401
Email: Alex@HCH.Law
Certified Mail No.: 7020 3160 0001 2880 9481

Via Certified Mail:
Zabala Farms of Salinas, LLC
50 Zabala Road
Salinas, CA 93908
Certified Mail No.: 7020 3160 0001 2880 9498

Via Certified Mail:
Zabala Farms of Salinas, LLC
16554 Chatsworth St.
Granada Hills, CA 91344-6704
Certified Mail No.: 7020 3160 0001 2880 9504

On or about August 31, 2022, the Administrative Law Judge Unit served an Order on the General Counsel and the Respondent inquiring whether the Respondent had filed for bankruptcy protection and, in that instance, whether the General Counsel had properly served its complaint and/or request for a default judgment. According to the proof of service, this Order was served upon:

Zabala Farms of Salinas, LLC
50 Zabala Road
Salinas, CA 93908
Certified Mail No.: 7022 1670 0001 5158 2999

Zabala Farms of Salinas, LLC
16554 Chatsworth St.
Granada Hills, CA 91344-6704
Certified Mail No.: 7022 1670 0001 5158 3002

Zabala Farms of Salinas, LLC
1522 Constitution Boulevard
Salinas, CA 93905
Certified Mail No.: 7022 1670 0001 5158 3019

Alejandro H. Herrera, Esq.
Herrera Clifton Hess, P.C.
100 Wilshire Boulevard, Suite # 700
Santa Monica, CA 90401
Alex@HCH.law
Certified Mail No.: 7022 1670 0001 5158 3026

Alejandro H. Herrera, Esq.
Herrera Clifton Hess, P.C.
2497 Harbor Boulevard, Suite # 3
Ventura, CA 93001
Certified Mail No.: 7022 1670 0001 5158 3033

Trustee Zabala Farms of Salinas, LLC
U.S. Bank Tower
633 West 5th Street, Suite 2600
Los Angeles, CA 90071
Certified Mail No.: 7022 1670 0001 5158 3040

Trustee Zabala Farms of Salinas, LLC
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017
Certified Mail No.: 7022 1670 0001 5158 3057

On or about September 7, 2022, the General Counsel filed and served a brief as required by the August 31, 2022 Order. The General Counsel served her brief on

Respondent as follows:

Via Certified and Electronic Mail:
Alejandro H. Herrera
Agent for Service of Process for Zabala
Farms of Salinas, LLC
100 Wilshire Boulevard Ste 700
Santa Monica, CA 90401
Email: Alex@hch.law
Certified Mail No.: 7021 0350 0001 8208 8784

Via Certified Mail:
Zabala Farms of Salinas, LLC
50 Zabala Road
Salinas, CA 93908
Certified Mail No.: 7019 0160 0000 2158 5829

In her September 7, 2022, brief, the General Counsel admitted learning – prior to when she filed her request for a default judgment – that Respondent had filed for bankruptcy on May 2, 2022. (Brief, at page 1, lines 11-12) Nonetheless, the General Counsel did not disclose that fact in her request for a default judgment dated July 19, 2022. The General Counsel’s investigation also found that the bankruptcy judge had dismissed Respondent’s bankruptcy filing on May 26, 2022. (Brief, at page 1, lines 14-16) The General Counsel’s investigation found email addresses and telephone numbers of two listed trustees in the bankruptcy court’s summary but concluded that since the case had been

dismissed, there was no need to contact them. (Brief at page 1, lines 19-21, and Brief at page 2, lines 14-15)

Neither the Respondent nor any other representative or trustee responded to the Administrative Law Judge's August 31, 2022 Order.

ALRB Regulation section 20221 states that the complaint shall be served as required by Chapter 1.5. In Chapter 1.5, ALRB Regulation sections 20164¹ and 20166²

¹ ALRB Regulation section 20164 states:

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above, with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

² ALRB Regulation section 20166 states:

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

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of

govern. Section 20164 addresses service of papers by the Board or on the Board. Section 20166 addresses service on others of papers filed with the Board.

A search of the California Secretary of State's "Bizfile Online"³ shows Zabala Farms of Salinas, LLC as a limited liability company with its agent as:

Alejandro H. Herrera, Esq.
100 Wilshire Boulevard, Suite # 700
Santa Monica, CA 90401

The company's initial filing was made on March 7, 2017 and a statement of information was due on March 31, 2021.

A search of Alejandro Herrera on the State Bar of California website listed his address as:

Alejandro H. Herrera, Esq.
100 Wilshire Boulevard, Suite # 700
Santa Monica, CA 90401

Clicking the website for his law firm, the site showed the following addresses:

Herrera Clifton Hess, P.C.
100 Wilshire Boulevard, Suite # 700
Santa Monica, CA 90401

Herrera Clifton Hess, P.C.
2497 Harbor Boulevard, Suite # 3
Ventura, CA 93001

perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

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

³ I take administrative notice of these official records of the California Secretary of State.

One issue that I have grappled with is does it matter that the General Counsel served the charge and complaint to different locations as follows:

Charge to:

Zabala Farms of Salinas, LLC
50 Zabala Road
Salinas, CA 93908

Complaint to:

Alejandro H. Herrera
Agent for Service of Process for Zabala
Farms of Salinas, LLC
100 Wilshire Boulevard Ste 700
Santa Monica, CA 90401
Email: Alex@HCH.Law

The first address is Respondent's alleged principal place of business and the second address is the LLC's registered agent for service of process. Also, does it matter that Respondent has failed to timely file an information form regarding the company's registered agent?

“Service of process on an authorized agent constitutes effective service on the agent's principal. See *Spectrum Mechanical Services, LLC*, 368 NLRB No. 85, slip op. at 1, n. 1 (2019) (General Counsel's service of the complaint and reminder letters by certified and regular mail on the designated individual listed with the state division of corporations to receive service was sufficient service on the respondent company), and cases cited there.” NLRB Bench Book (January 2022 Edition), at p. 43-44.

Having reviewed this matter, I find that the Regional Director's service of the charge and the General Counsel's service of the complaint are both legally sufficient. The

Respondent has been given an opportunity to file an answer and/or a brief in this matter and has not responded at all. As a result, I will grant the General Counsel's request that I issue a default decision in this matter and deem the Complaint's allegations as admitted.

It is hereby found as follows:

1. On December 1, 2021, the charge in this matter was served on Zabala Farms of Salinas, LLC.
2. On June 21, 2022, the complaint in this matter was served on Zabala Farms of Salinas, LCC.
3. Respondent Zabala Farms of Salinas, LLC, has failed to timely file an answer to the complaint in this matter. The deadline set for in ALRB Regulation section 20230 has long passed. There is no evidence that Respondent was under bankruptcy protection during any of the time period from when the complaint was filed and served until the present.
4. On July 19, 2022, the General Counsel filed and served a motion for a default judgment and for the complaint's allegations to be deemed admitted.
5. Respondent Zabala Farms of Salinas, LLC, has failed to respond to General Counsel's motion for a default judgment and for the complaint's allegations to be deemed admitted.
6. While a hearing on the merits is favored, ALRB Regulation section 20232 provides that any allegation not denied in an answer shall be deemed admitted. (Jacob Diepersloot (2018) 44 ALRB No. 12, pp. 5-6)

7. At all material times, Zabala Farms cultivated cannabis in Salinas, California and thus was an agricultural employer within the meaning of California Labor Code section 1140.4, subdivisions (a) and (c).

8. Valle Dorado began providing labor services to Zabala Farms in April 2021.

9. Charging Party Berenice Vargas Martinez worked trimming cannabis for Zabala Farms and its farm labor contractor (“FLC”) Valle Dorado.

10. At all material times, Berenice Martinez trimmed and defoliated cannabis plants, and thus was an agricultural worker, as defined by California Labor Code section 1140.4, subdivision (b). Because this is a default decision, with limited information, this decision should not be used as precedent to distinguish between cannabis cultivation, trimming and packaging, nor for purposes of assessing, in other cases, the jurisdictional coverage of the ALRB and NLRB respectively.

11. Berenice Martinez began working for Zabala Farms through Valle Dorado on June 11, 2021. As a cannabis trimmer, Berenice Martinez maintained plant health by pruning and forming plants for optimal growth.

12. Valle Dorado chief executive officer Noe Perez had the authority to discipline, hire and fire agricultural workers and was thus a statutory supervisory for Zabala farms. FLC foreperson Yareli Gonzalez also had the authority to discipline and direct agricultural workers.

13. On or about July 12, 2021, Valle Dorado chief executive Noe Perez and/or Foreperson Gonzalez told Berenice Martice and 15-20 of her colleagues that that they were reducing the piece rate from \$75 per pound to \$60 per pound.

14. Upon being told of the reduced piece rate, Berenice Martinez and the other trimmers talked to each other and then complained to Foreperson Gonzalez. Berenice Martiez and her colleagues then refused to work and verbally protested the wage reduction, demanding to speak with Noe Perez. Later, Martinez and her co-workers returned to work under protest.

15. A security guard told the workers that they had to wait outside Zabala Farms' premises. Berenice Martinez and her colleagues left and waited for Noe Perez by their vehicles.

16. Noe Perez arrived the same morning and spoke with the workers. During this conversation, Berenice Martinez spoke up and urged the workers to refuse the new piece rate because it was not fair. Berenice Martinez further stated that if the workers accepted the new piece rate it would just make the owner richer and that Noe Perez wanted their money for himself.

17. After speaking with Noe Perez, Berenice Martinez and her colleagues returned to the trim room to work, while continuing to object to the decreased piece rate.

18. Upon reentering the trim room, the workers returned to their stations and began work. Workers continued to discuss with adjacent colleagues about the decreased piece rate and work stoppage.

19. Approximately twenty minutes after the workers returned to the trim room, the security guard approached Berenice Martinez and told her to step outside to speak with Noe Perez.

20. Noe Perez verbally reprimanded Berenice Martinez, telling her that “it was her fault that people wanted to leave the ranch and not work.” (“Fue culpable que la gente queria salir del rancho y no trabajar.”)

21. Noe Perez proceeded to write out a disciplinary notice for Berenice Martinez which indicated on its face that she was being written up for “disobedience” and instigating coworkers, not staying in her work area.”

22. When Berenice Martinez refused to sign the disciplinary notice, Noe Perez yelled “leave,” terminating Berenice Martinez. (“Vete.”)

23. Noe Perez then told Berenice Martinez that security would bring her personal items, but Ms. Martinez insisted that she be allowed to go and retrieve her own belongings.

24. Following her conversation with Noe Perez, the security guard then escorted Berenice Martinez to the trim room to get her personal belongings. When Berenice Martinez entered the trim room. She announced to her colleagues that she was terminated for instigating co-workers.

25. The security guard then escorted Bernice Martinez off of the premises.

26. At least two other workers left that day in protest of the termination of Berenice Martinez.

27. Berenice Martinez engaged in protected concerted activity by encouraging and engaging in a work stoppage following announcement of the piece rate wage reduction.

28. By issuing a disciplinary notice and firing Berenice Martinez, Respondent unlawfully retaliated against her.

29. By issuing a disciplinary notice and terminating Berenice Martinez, Respondent unlawfully interfered with and chilled its workers' exercise of their rights.

30. Respondent violated California Labor Code section 1153, subdivisions (a) and (c).

ORDER

By the authority of California Labor Code section 1160.3, the Agricultural Labor Relations Board ("Board") hereby orders Respondent Zabala Farms of Salinas, LLC, its agents, officers, successors and assigns, to do the following:

1.) Cease and desist from:

(a) Unlawfully threatening its agricultural employees with discipline or termination for engaging in protected concerted activity protected pursuant to California Labor Code section 1152.

(b) Unlawfully discriminating or retaliating against its agricultural employees because the workers has engaged in protected concerted activity protected pursuant to California Labor Code section 1152.

2.) Take the following affirmative action necessary to effectuate the policies of the Agricultural Labor Relations Act:

(a) Make Berenice Martinz whole for all wages and economic losses that she has suffered as a result of Respondent's unlawful conduct. Loss of pay or other economic losses are to be determined in accordance with established Board precedent. The award shall include interest to be determined in accordance with *Kentucky River Medical Center* (2010) 356 NLRB 6 and excess tax liability is to be computed in accordance with *Tortillas Don Chavas* (2014) 361 NLRB No. 10, minus tax withholdings required by federal and state laws.

Compensations shall be issued to Berenice Martinez and sent to the ALRB's Salinas Regional Office which will thereafter disburse payment to her.

(b) Reinstate Berenice Martinez to employment at Zabala Farms of Salinas, LLC.

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records, and all other records relevant and necessary for a determination by the Salinas Regional Director of the economic losses due under this order.

- (d) Upon request of the Salinas Regional Director, the records shall be provided in electronic format if they are customarily maintained in that manner.
- (e) Sign the attached Notice to Employees and, after its translation by a Board agent into all appropriate languages, as determined by the Salinas Regional Director, reproduce sufficient photocopies in each language for all purposes set forth in this order.
- (f) Mail photocopies of the Notice, in all appropriate languages, within thirty days of the date that this order becomes final, or when directed by the Salinas Regional Director, to all agricultural employees employed by Respondent at any time during the period from May 1, 2021 to May 2, 2022.
- (g) Post copies of the Notice, in all appropriate languages, in conspicuous places on respondent's property for a sixty-day period, the period and places of posting to be determined by the Salinas Regional Director, and exercise care to replace any Notice which may be altered, defaced, covered or removed. Pursuant to the authority granted under California Labor Code section 1151, subdivision (a), give agents of the Board access to its premises to confirm posting of the Notice.

- (h) Arrange for a representative of Respondent or a Board agent to distribute and read the Notice in all appropriate languages to all of Respondent's agricultural employees on company time and property at a time and place to be determined by the Salinas Regional Director.
 - (i) Following the reading, the Board agent shall be given the opportunity, outside of the presence of owners, management and supervisors, to answer any questions the employees may have concerning the contents of the Notice or their rights under the Agricultural Labor Relations Act.
 - (j) The Salinas Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for the time taken at the reading and during any question-and-answer period as described above.
 - (k) Provide a photocopy of the attached Notice to each agricultural employee hired to work for Respondent during the one-year period following the date that this order becomes final; and,
 - (l) Notify the Salinas Regional Director in writing, within thirty days after the date that this order becomes final, of the steps that Respondent has taken to comply with the order's terms.
- Upon request of the Salinas Regional Director, Respondent

shall notify her periodically thereafter in writing of further steps taken until full compliance with the order is completed.

January 18, 2023

Date

Mark R. Soble

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

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed with the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB determined that we violated the Agricultural Labor Relations Act by terminating employees for engaging in protected concerted activity. The ALRB has told us to publish this Notice. We will do what the ALRB has ordered us to do. The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

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

Because you have these rights, we promise that:

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

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

WE WILL make whole Berenice Martinez for all wages or other economic losses that she suffered as a result of our unlawful conduct.

Zabala Farms of Salinas, LLC

Dated: _____

By: _____

Title of Representative Signing Notice:

If you have any questions about your rights as farm workers or about this Notice, you may contact any ALRB office. The ALRB Salinas Regional Office is located at 342 Pajaro Street, Salinas, CA 93901-3423. The telephone number for the ALRB Salinas Regional Office is (831) 769-8031. The website for the ALRB is www.ALRB.ca.gov.

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

DO NOT REMOVE OR MUTILATE