STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CYMA ORCHIDS CORPORATION, Respondent, and VERONICA GONZALEZ, Charging Party.	)	Case No. 2023-CE-016-SAL 51 ALRB No. 2 (June 2, 2025)

DECISION

On December 23, 2024, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued an unfair labor practice complaint against Cyma Orchids Corporation (Cyma or Respondent), alleging that Cyma violated section 1153, subdivision (a) of the Agricultural Labor Relations Act (ALRA or Act).[1] The complaint alleged Cyma maintained and enforced an unlawful "No Talking Rule" against its agricultural workers, and by unlawfully terminating employees Veronica Gonzalez and Leticia Carmona in April 2023 for complaining about the rule and other working conditions. In addition, the complaint alleged that Cyma unlawfully promulgated another workplace rule requiring employees to be escorted between greenhouses in retaliation for

[1] The ALRA is codified at Labor Code section 1140 et seq.

complaints about the "No Talking Rule."

Cyma failed to file a timely answer to the complaint. On April 2, 2025, the Administrative Law Judge (ALJ) issued an order denying Cyma's motion to extend time to file an answer, and partially granted a motion for entry of default judgment filed by the General Counsel.[2]

Exceptions to the ALJ's Order were due on or before April 28, 2025. Counsel for Cyma electronically filed exceptions at 5:04pm on that date. The Board's Executive Secretary Informed Cyma's counsel by voicemail the exceptions would be deemed filed on April 29. Cyma's counsel submitted a declaration after he received the voicemail explaining that it "was 5pm when [he] clicked send." He asked for leniency for the late filing.

Under Board regulation 20169, subdivision (a)(2), electronically filed documents "received after 5:00 p.m. on a business day … will be deemed filed on the next regular business day."[3] Cyma's counsel offers no explanation for the late filing except to state he had "many emails to input and [his] secretary left for the day at 3p.m." We therefore find Cyma's exceptions untimely. (*Reveille Farms, LLC* (2019) 45 ALRB No. 6, pp. 2-3 [party seeking relief from default has the burden of showing good cause].)

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[2] The ALJ granted the General Counsel's motion for default judgment as to the first and second causes of action pled in the complaint, but denied the motion as to the third cause of action because he concluded the allegations of the third cause of action were not sufficiently pled.

[3] The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

Even if we were to consider Cyma's exceptions as timely filed, we would still uphold the ALJ's conclusion that Cyma did not establish good cause for the untimely filing of the answer to the complaint. As the ALJ reasoned, Cyma did not explain why it made no attempt to seek an extension of time until the February 7, 2025 deadline for filing had already expired. Cyma's paralegal did not email the Board's Executive Secretary until February 10, 2025. Nor was there any explanation for Cyma's failure to obtain new counsel to handle this matter until February 17, 2025. The Board has consistently rejected arguments that a respondent's unfamiliarity with ALRB procedures warrants relief from default judgment. (*Allstar Seed Co*. (2003) 29 ALRB No. 2, *Jacob Diepersloot, et al.* (2018) 44 ALRB No. 12, p. 7, *Reveille Farms, LLC, supra,* 45 ALRB No. 6, pp. 3-4.)

Cyma's argument that ALRB staff misled Cyma into presuming it could file a late answer has no merit. The Board's Executive Secretary directed Cyma's paralegal to the Board's regulations governing request extensions of time, but did not indicate such a request would be granted. Nor does the General Counsel's issuance of discovery requests constitute an acceptance of the late filed answer. The ALJ's decision on motion for default judgment was still pending at the time the requests were made.

Finally, there is no merit in Cyma's assertion the General Counsel had an obligation to provide notice before filing the Motion for Default Judgment. As the Board stated in *Reveille Farms, LLC, supra*, 45 ALRB No. 6, "even had the General Counsel notified Respondent that it would seek a default before filing its motion, it does not change the fact that Respondent's answer already was late." (*Id*. at p. 7.)

ORDER

The ALJ's Orders Re: Respondent's Motion to Extend Time to File Answer to Complaint, and General Counsel's Amended Motion for Default Judgment as well as his recommended remedial order are **AFFIRMED**.

Pursuant to Labor Code section 1160.3, Respondent Cyma Orchids Corporation, its officers, agents, labor contractors, successors and assigns are hereby ordered to do the following:

1. Immediately cease and desist from:

(a) Promulgating or enforcing any rule prohibiting agricultural workers from talking to other workers during the workday, with the exception of a rule that explicitly excludes from such prohibition conversations between workers regarding their terms and conditions of employment and other matters covered by section 1152 of the ALRA.

(b) Discharging or otherwise retaliating against any agricultural employee with regard to hire or tenure of employment because the employee has engaged in concerted activity protected under section 1152 of the ALRA.

(c) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of their rights guaranteed by section 1152 of the ALRA.

2. Take the following affirmative actions, which are deemed necessary to effectuate the policies of the ALRA:

(a) Rescind the "No Talking Rule" under which Respondent's agricultural

employees were prohibited from talking to their co-workers during working hours.

(b) Rescind the written warnings (issued on April 7, 2023) and discharge notices (issued on April 18, 2023) to Veronica Gonzalez and Leticia Carmona, and expunge such warnings and notices from their personnel files.

(c) Offer Veronica Gonzalez and Leticia Carmona immediate reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges of employment.

(d) Make Veronica Gonzalez and Leticia Carmona whole for all wages and other economic losses incurred since April 18, 2023, as a result of their unlawful terminations, with amounts due to be determined in accordance with established Board precedent. The awards shall include interest to be determined in accordance with *Kentucky River Medical Center* (2010) 356 NLRB 6, and excess tax liability to be computed in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas* (2014) 361 NLRB 101, minus tax withholdings required by federal and state laws. Compensation shall be issued to Veronica Gonzalez and Leticia Carmona, and sent to the ALRB's Oxnard Regional Office, which will thereafter disburse the payments to them

(e) Pay a civil penalty to the State, pursuant to Labor Code section 1160.10, subdivisions (a)(1) and (a)(2), in an amount to be determined in compliance proceedings giving due consideration to the factors enumerated in section 1160.10, subdivision (b).

(f) In order to facilitate the determination of lost wage and other economic losses, if any, for the period commencing April 18, 2023, 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 Regional Director of economic losses due under the terms of this order. Upon request of the Regional Director, the records shall be provided in electronic form if they are customarily maintained in that form.

(g) Upon request of the Regional Director, sign the attached Notice to Employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(h) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed. This posting shall commence within 30 days after this Order becomes final unless the Regional Director determines that commencement on a later date would more appropriately effectuate the purposes of the ALRA.

(i) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all employees then employed, on company time and property, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the ALRA. Respondent shall compensate employees for time during the reading of the Notice and the question-

and-answer period at not less than their regular hourly rate of ay (including piece rate earnings for any pay period during which those employees receive any piece-rate payments, to be calculated in accordance with Labor Code section 226.2(a)(3)(A).)

(j) Mail copies of the attached Notice, in all appropriate languages within 30 days after this Order becomes final or when directed by the Regional Director, to all agricultural employees employed by Respondent at any time during the period from April 18, 2023, to April 17, 2024, at their last known addresses.

(k) Provide a copy of the Notice to each agricultural employee hired to work for Respondent during the twelve-month period following the date this Order becomes final.

(l) Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondent has taken to comply with its terms. Upon the request of the Regional Director, the Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

DATED: June 2, 2025

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

CASE SUMMARY

CYMA ORCHIDS CORPORATION

51 ALRB No. 2

Case No. 2023-CE-016-SAL

Veronica Gonzales,
Charging Party

Background

On December 23, 2024, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued an unfair labor practice complaint against Cyma Orchids Corporation (Cyma or Respondent), alleging that Cyma violated section 1153, subdivision (a) of the Agricultural Labor Relations Act (ALRA or Act). The complaint alleged Cyma maintained and enforced an unlawful "No Talking Rule" against its agricultural workers, and by unlawfully terminating employees Veronica Gonzalez and Leticia Carmona in April 2023 for complaining about the rule and other working conditions. In addition, the complaint alleged that Cyma unlawfully promulgated another workplace rule requiring employees to be escorted between greenhouses in retaliation for complaints about the "No Talking Rule."

Administrative Law Judge (ALJ) Order

Cyma failed to file a timely answer to the complaint. On April 2, 2025, the Administrative Law Judge (ALJ) issued an order denying Cyma's motion to extend time to file an answer, and partially granted a motion for entry of default judgment filed by the General Counsel. The ALJ concluded that Cyma did not establish good cause for the untimely filing of the answer to the complaint.

Board Decision and Order

The Board affirmed the ALJ's order. Cyma's exceptions to the ALJ's order were untimely as they were electronically filed after 5:00 p.m. on the due date. (See Board regulation 20169, subdivision (a)(2).) The Board stated that even if Cyma's exceptions had been timely filed, the Board would still uphold the ALJ's conclusion that Cyma did not establish good cause for the untimely filing of the answer to the complaint.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: **CYMA ORCHIDS CORPORATION**, Respondent, and **VERONICA GONZALEZ**, Charging Party.	Case No.: 2023-CE-016-SAL **ORDERS RE: RESPONDENT'S MOTION TO EXTEND TIME TO FILE ANSWER TO COMPLAINT, AND GENERAL COUNSEL'S AMENDED MOTION FOR DEFAULT JUDGMENT**

PROCEDURAL HISTORY

On December 23, 2024, the General Counsel of the Agricultural Labor Relations Board ("ALRB" or "the Board") issued an unfair labor practice complaint against Cyma Orchids Corporation ("Cyma" or "Respondent"), alleging that Respondent maintained and enforced an unlawful "No Talking Rule" against its agricultural workers, and unlawfully terminated Veronica Gonzalez and Leticia Carmona for complaining about the No Talking Rule and other working conditions. The complaint seeks an order requiring Respondent to cease and desist from interfering with employees' rights under the Agricultural Labor Relations Act ("ALRA" or "the Act"), imposing civil penalties against Respondent pursuant to Labor Code section 1160.10, requiring Respondent to offer Veronica Gonzalez and Leticia Carmona reinstatement to their former positions and to make them whole for all economic losses incurred because of Respondent's violation

of the Act, and to provide appropriate notice to Respondent's current and former employees of their rights.

A proof of service filed with the Board on December 23, 2024 indicates that the complaint and various related documents were served on that date via certified mail addressed to Kyung S. Chung, Cyma Orchids Corporation, 2929 Etting Road, Oxnard, CA 93033.[1] Presumably, some issue regarding service by certified mail caused the General Counsel to take other actions to serve the complaint as a subsequent proof of service filed with the Board on January 28, 2025 indicates that the complaint and various related documents were served on that date via "personal service on a representative of Cyma Orchids Corporation, by handing a true copy thereof to B.W. Park at 2929 Etting Road, in Oxnard, California."[2] Excerpts of Board regulations, including the regulations governing the time for filing an answer and the method for requesting an extension of time for filing an answer, were included among the related documents served along with the complaint.[3]

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[11] I take administrative notice pursuant to Evidence Code § 452(c) that the most recent Statement of Information filed by Respondent with the California Secretary of State on June 26, 2024 confirms that this is the corporation's business address, and that the person to whom this mail was addressed is the corporation's chief executive officer, chief financial officer, sole director and agent for service of process.

[2] Labor Code section 1151.4 provides that unfair labor practice complaints "may be served either personally or by registered mail or … by leaving a copy thereof at the principal office or place of business of the person required to be served." The proof of service filed on January 28, 2025, establishes that service was effected through this latter method, and Respondent does not dispute the adequacy of service. Paragraph 6 of the unfair labor practice complaint alleges that B.W. Park is Respondent's general manager.

[3] Specifically, the excerpted portions of the regulations served on Respondent quotes Board Regulation 20230 as follows: "The respondent shall file an answer within 10 days of service of the complaint or any amendment to the complaint." (Cal. Code Regs., tit. 8, § 20230.) Also,

On February 19, 2025, Respondent, through its counsel Ho-El Park, filed a motion to extend time to file its answer to the complaint. In this motion, Respondent asserts:

(1) Its prior counsel sent an email to the Board requesting an extension of time, and that on February 10, 2025, the Board advised Respondent it needed to comply with Board Regulations 20234 and 20240 in order to formally request the extension;[4]

(2) On February 17, 2025, Respondent retained Ho-El Park to formally appear as its new counsel in this matter; and

(3) Newly retained counsel "had no time to review the file in this matter," and "needs additional time to investigate the allegations gather necessary evidence to file a meaningful response.

Respondent contends that these facts constitute good cause for an extension of time, and that an extension "will not prejudice the proceedings but will allow both parties to clarify issues before litigation." Accordingly, Respondent seeks an order granting its

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Board Regulation 20232 is also quoted as follows: "The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents…. Any allegation not denied shall be considered admitted." Furthermore, Board Regulation 20234 is quoted as follows: "The answer shall be filed with the Executive Secretary and the regional office that issued the complaint…. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240." Although Board Regulation 20240 was not included in the excerpted regulations served on Respondent, I take administrative notice pursuant to Evidence Code § 452(h) that the Board's regulations, including Regulation 20240 (Cal. Code Regs., tit. 8, § 20240) are accessible on the Board's website, at https://www.alrb.ca.gov/statutes-regulations.

[4] The declaration of Jino Im, Cyma's vice president for sales, subsequently filed by Respondent in its opposition to a General Counsel filing, includes the entire email chain regarding this request for an extension of time. The email request was sent on February 10, 2025 by Mike Jun, a senior paralegal with the Law Offices of Kim, Au & Associates, identified as general counsels for Cyma. The response from the Board's Executive Secretary, Santiago Avila-Gomez, was emailed to Mr. Jun later that same day.

motion for an extension of time and an extension of 14 days from the date of such order.

On February 27, 2025, the General Counsel filed an Amended Motion for Default Judgment and Opposition to Respondent's Motion to Extend Time to File an Answer. The General Counsel asserts that this filing constitutes an amendment of a prior motion that was filed on February 26, 2025, but was not properly served on the Charging Party, hence the need for the filing of the amended motion. This is a misstatement of events. The ALRB's e-filing records reveal that the General Counsel attempted to file this motion (then labeled "Motion to Deem Allegations in the Complaint Admitted, and for Default Judgment") on February 26, 2025, at 4:56 p.m. However, on February 27, 2025, at 9:55 a.m., the General Counsel was informed via email that the attempted filing was rejected due to the absence of the Charging Party on the proof of service. Later that day, the General Counsel filed what is incorrectly labeled an "Amended Motion." This filing does not amend any previously *filed* motion, and hence, constitutes the original motion.[5]

In its "Amended Motion," the General Counsel notes that under Board Regulation

[5] I can only conclude that this incorrect labeling of the motion and the false assertion that prior to the "amendment," the motion had been filed on February 26, 2025 was designed to evade the consequences of Board Regulation 20240, under which responses to any motion made before the prehearing conference "shall be filed within seven days after the filing of the motion." Thus, to be a timely, a response to Cyma's motion was required by February 26, 2025, and the General Counsel's February 27, 2025 filing was untimely. However, the "Amended Motion" that was filed by the General Counsel constitutes both an opposition to Cyma's motion (which, ordinarily would not be considered due to its untimeliness), and a new motion filed by the General Counsel for entry of default judgment (which was properly filed, and which raises issues that are inextricably linked to a challenge to the merits of Cyma's motion). As such, the contentions raised by the General Counsel's challenge to the merits of Cyma's motion must be considered in the context of analyzing the merits of the motion for a default judgment. Nonetheless, I take this occasion to strongly caution the General Counsel to be far more careful and forthright in its portrayal of relevant facts in filings with the Board.

20230, Respondent's answer was due "within 10 days of service of the complaint," and that Respondent failed to file an answer or file a motion to extend time for filing an answer during this 10-day period that started running on January 28, 2025. The General Counsel argues that Respondent did nothing until February 10, 2025, when it emailed the Executive Secretary regarding an extension of time to answer, and did not file its untimely motion for an extension until February 19, 2025 – 12 days after the February 7th deadline for filing. Further, the General Counsel contends that Respondent failed to establish good cause for the untimely filing, and as such, urges that the motion for an extension of time lacks merit. The General Counsel argues that by failing to file an answer, Respondent failed to deny any of the allegations in the complaint, and that under Regulation 20232, all allegations set out in the complaint must therefore be deemed admitted. Consequently, the General Counsel maintains that she is entitled to entry of a default judgment.

On February 28, 2025, Respondent filed a timely opposition to the General Counsel's "Amended Motion" for Default Judgment. Respondent argues that the General Counsel's motion is untimely and should be stricken from the record.[6] Respondent urges that leniency is warranted in light of its counsel's inexperience regarding ALRB procedures and its prior cooperation with the ALRB investigator in this matter. Finally, Respondent contends that general civil law principles, which hold that it is a policy of the

[6] Again, as discussed above, though the General Counsel's opposition to Respondent's motion to extend time was untimely, the motion for default judgment was not subject to any deadline, and hence, is properly before the undersigned administrative law judge for resolution.

law to provide a trial on the merits whenever possible, should apply to ALRB proceedings, and that an order granting a default judgment would deprive Cyma of its due process rights by preventing an adjudication on the merits.

On March 6, 2025, Respondent filed an answer to the complaint.

UNDER THE CONTROLLING LEGAL STANDARD, RESPONDENT FAILED TO ESTABLISH GOOD CAUSE FOR THE UNTIMELY FILING OF ITS ANSWER, AND THUS, ITS MOTION TO EXTEND TIME IS DENIED

A series of Board decisions sets out the analysis that must now be followed in ruling on Respondent's motion for an extension of time. *GJ Farms, Inc.* (2019) 45 ALRB No. 2 is particularly instructive, with the Board upholding the administrative law judge's decision to deem allegations of the complaint admitted and granting a motion for default judgment on the ground that the answer to the complaint was untimely filed and the employer failed to provide any reason to excuse its untimely filed answer. The Board explained that it follows the standard set forth in Code of Civil Procedure section 473 in evaluating the merits of claim for relief from default. (*Id.,* at p. 6, citing *Jacob Diepersloot* (2018) 44 ALRB No. 12, p. 6; *All Star Seed Co*. (2003) 29 ALRB No. 2, p. 3.) Thus, "upon any terms as may be just," the court (or in cases before the ALRB, the Board) may relieve a party or the party's legal representative from a judgment, dismissal, or order "taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473(b).) "Under this statute, a party seeking relief from default 'has the burden of showing good cause.'" (*GJ Farms, Inc., supra,* 45

ALRB No. 2, at p. 6, quoting *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904.)

Therefore:

> When there is no good cause to excuse a party's failure to file a timely answer, a motion to deem the allegations in the complaint admitted and for default judgment should be granted…. While the Board's policy is to favor adjudication on the merits rather than through default judgment, the party seeking relief from default must present a reasonable excuse for its mistake, inadvertence, surprise or neglect.

(*GJ Farms, supra,* at p. 6-7, internal citations and quotes omitted.)

None of the excuses offered by Respondent constitute "good cause" for its failure to file a timely answer to the complaint. Notably, Respondent offers *no explanation* for its failure to make *any* attempt (much less an adequate attempt) to seek an extension of time until the deadline for filing an answer within the time allowed by Board Regulation 20230 had already expired. That February 7, 2025 deadline came and went prior to the February 10, 2025 email from paralegal Mike Jun to the Board's Executive Secretary. Nor is there any explanation for Respondent's failure to obtain new counsel to handle this matter until February 17, 2025. Here, as in *Jacob Diepersloot*, "service of the … [c]omplaint was accompanied by information concerning the filing of an answer. Respondent's lack of diligence in protecting its interests and failure to retain counsel more expeditiously weigh against a finding of good cause." (*Jacob Diepersloot, supra,* 44 ALRB No, 12, at p. 10.)

This new counsel's alleged inexperience as to ALRB procedures does nothing to explain the failure to file an answer prior to the retention of the new

counsel. In any event, "[i]gnorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief" under Code of Civil Procedure section 473. (*All Star Seed Co., supra,* 29 ALRB No. 2, at p. 4; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 319.)

Respondent's counsel's assertion that an extension of time will not result in prejudice need not be considered, as "lack of prejudice will only be taken into account where there is 'at least … some excuse for the delay in question.'" (*Azteca Farms, Inc.* (1992) 18 ALRB No. 15, ALJ Dec. at p, 7, quoting *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 531-532.) Here, Respondent failed to advance any excuse that would warrant this next-step analysis. And while it is true that courts generally favor trial on the merits in considering whether to grant relief from default, "it is also true that courts have made it clear that there are standards that must be met in order to grant such relief. While we do not take lightly a decision to deny relief from default, to otherwise in this case does run the risk of having no standards." (*All Star Seed Co., supra,* 29 ALRB No. 2, at p. 7.)

For the reasons set forth above, Respondent's motion for an extension of time to file an answer to the complaint is hereby **DENIED**.

DEFAULT IS APPROPRIATELY GRANTED BUT ONLY AS TO THOSE CAUSES OF ACTION SUFFICIENTLY PLED IN THE COMPLAINT

The consequences of Respondent's failure to answer the complaint (or to establish good cause for such failure so as to justify an extension of time to

answer) derive from Regulation 20232's directive that "[a]ny allegation not denied shall be considered admitted." Following that directive, the Board granted default judgments in *GJ Farms, Inc., supra,* 45 ALRB No. 2, *Jacob Diepersloot, supra,* 44 ALRB No. 12, and *All Star Seed Company, supra,* 29 ALRB No. 2.

However, even where every allegation contained within a complaint is deemed admitted pursuant to Regulation 20232, an order granting default judgment is not automatic. In ruling on a motion for default judgment under such circumstances, the administrative law judge must determine whether the allegations of the complaint are sufficient to constitute a cause of action against a respondent. For example, in *Kaplan's Fruit & Produce Co.* (1985) 11 ALRB No. 7, the Board granted the General Counsel's motion for default judgment, while limiting the remedies awarded as a result of the complaint's insufficiencies. The Board reasoned: "[E]ven though the complaint alleged that Respondent engaged in bad faith bargaining and prayed for contractual makewhole relief … we conclude that the allegations in the complaint are not sufficient to warrant a finding of surface bargaining and imposition of contractual makewhole." (*Id.*, at p. 3.) Thus, a ruling on a motion for default judgment in an ALRB proceeding turns on the same issue that must be considered in deciding a motion for judgment on the pleadings under Code of Civil Procedure section 438, namely, whether the complaint states facts sufficient to constitute a cause of action against the respondent, with respect to each cause of action alleged in the complaint.

The operative factual allegations of the complaint, which are deemed true and correct pursuant to Regulation 20232, are set out as follows:

1. The unfair labor practice charge in this matter was filed on April 21, 2023, and served by the ALRB Oxnard office on Respondent by certified mail on April 26, 2023.

2. At all material times herein, Respondent grew, harvested and packaged orchids in Ventura County, California, and was an agricultural employer within the meaning of Labor Code section 1140.4, subdivisions (a) and (c).

3. At all material times herein, Veronica Gonzalez and Leticia Carmona packaged orchids and succulents for Respondent, and were agricultural employees within the meaning of Labor Code section 1140.4, subdivision (b).

4. At all material times herein, Respondent's General Manager B.W. Park, Human Resources Contractor Patrick Miller, Crew Lead Ana Lilia Belman, Production and Growing Supervisor Jose Calderon Ayapantecatl, and Operations Manager Rosalba Cayetano had the authority to discipline, hire and terminate agricultural workers and thus were statutory supervisors for Respondent within the meaning of Labor Code section 1140.4, subdivision (j).

5. In or around 2021, Respondent instituted a No Taking Rule, prohibiting agricultural employees from talking to each other about non-work-related matters during work hours, with violators subject to written warning or termination.

6. Notwithstanding the ostensible exclusion of work-related discussions from the No Talking Rule, on various occasions in 2021 and 2022, Respondent, through Crew

Lead Belman and Human Resources Contractor Miller, issued oral and written warnings to agricultural employees for violations of the rule based upon conversations concerning work-related topics, such as conversations concerning the day's work assignment or the availability of extra supplies needed to carry out a work assignment.

7. In or around February 2023 at a crew meeting, Veronica Gonzalez and Leticia Carmona voiced complaints about the No Talking Rule, telling Crew Lead Belman in the presence of other workers that they did not agree with its enforcement because productivity was not impacted if workers spoke to each other during their shifts.

8. On April 3, 2023, Veronica Gonzalez noticed that she needed scissors to perform her assigned work, and she asked Leticia Carmona if she had scissors. Crew Lead Belman reported this interaction as a violation of the No Talking Rule to Human Resources Contractor Miller and Supervisor Calderon. On April 7, 2023, Operations Manager Cayetano issued written warnings to Veronica Gonzalez and Leticia Carmona, stating that they violated the No Talking Rule on April 3, 2023.

9. On April 17, 2023, Crew Lead Belman held a crew meeting and informed the workers of a new rule, which would require the Crew Lead to accompany any worker who needed to go to from the greenhouse in which they were working to an adjoining greenhouse ('the Greenhouse Rule"). At this meeting, Veronica Gonzalez and Leticia Carmona, along with some other workers, voiced their dissatisfaction with this new rule. Crew Lead Belman stated the rule came from Operations Manager Cayetano. Veronica Gonzalez then requested to speak to Manager Cayetano. Crew Lead Belman stated that

Manager Cayetano would meet with the crew later that day, but Manager Cayetano did not show up for the planned meeting.

10. On April 18, 2023, Ms. Carmona was assigned to work with bamboo supports and when she realized she needed more supplies, she asked Ms. Gonzalez if she had any bamboo that could be used. Manager Cayetano witnessed these two employees talking but did not hear what was said. Later that day, Manager Cayetano, Human Resources Contractor Miller, and General Manager Park terminated Ms. Gonzalez and Ms. Carmona, stating that they had violated the No Talking Rule.

Stemming from these facts, the General Counsel alleges three separate causes of action, as follows:

1. First Cause of Action (Maintenance and Enforcement of Unlawful Rule): The General Counsel asserts that the No Talking Rule and the manner in which it was enforced resulted in an outright ban on any workplace conversations between workers, which interfered and restrained agricultural workers in the exercise of rights provided by Labor Code section 1152. As such, the General Counsel contends Respondent committed an unfair labor practice in violation of Labor Code section 1153, subdivision (a).

An employer violates National Labor Relations Act ("NLRA") section 8(a)(1) (which mirrors ALRA section 1153(a)) when it maintains workplace rules or policies that would reasonably tend to chill employees in the exercise of their Section 7 rights (the NLRA analogue to ALRA section 1152).[7] (*Lafayette Park Hotel* (1998) 326 NLRB 824,

[7] Labor Code section 1153, subdivision (a) makes it an unfair labor practice for an agricultural

825, enf'd. 203 F.3d 52 (D.C. Cir. 1999).) With respect to facially neutral work rules that may be reasonably interpreted to restrict Section 7 rights, the NLRB interprets these rules from the perspective of an employee who is economically dependent on the employer, and thus inclined to interpret an ambiguous rule to prohibit protected activity she might otherwise engage in. (*Stericycle, Inc.* (2023) 372 NLRB No. 113, at p. 9.) If such an employee could reasonably interpret the rule to have a coercive effect on the exercise of Section 7 rights, the rule is presumptively unlawful even if a disinterested individual would reasonably interpret the rule to impose no restriction on Section 7 rights, and even if the employer did not intend for its rule to restrict the exercise of those rights. (*Id.,* at p. 9-10.) Ordinarily, an employer may rebut this presumption by proving that the rule advances a legitimate and substantial business interest that cannot be achieved by a more narrowly tailored rule.[8] (*Id.*, at p. 10.)

It is beyond question that ALRA section 1152 (and NLRA section 7) confer upon employees the right to discuss their wages, hours, and working conditions with fellow employees, and to discuss banding together for mutual aid and protection with regard to these matters. As alleged in the complaint, Respondent's No Talking Rule was enacted to apply to "non-work-related matters." Regardless of how that ambiguous phrase might be interpreted by a disinterested legal scholar, I have no doubt that an agricultural worker

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employer to interfere with, restrain, or coerce agricultural employees in the exercise of rights guaranteed in section 1152. Among other rights, Labor Code section 1152 guarantees employees the right to engage in "concerted activities for the purpose of … mutual aid or protection."

[8] Here, however, Respondent's failure to answer the complaint operates to deprive it of the opportunity to present any such rebuttal evidence.

economically dependent on Respondent would reasonably interpret the phrase to embrace discussions with co-workers over topics that come within the ambit of section 1152 protections. In any event, the manner in which the No Talking Rule was enforced by Respondent, so as to apply to workers' conversations that were unquestionably work-related, amounted to a *de facto* ban on *all* conversations in the workplace. As such, I find that the allegations of the complaint sufficiently plead this cause of action.

2. Second Cause of Action (Unlawful Retaliation): The General Counsel asserts the Respondent violated ALRA section 1153(a) by retaliating against Ms. Gonzalez and Ms. Carmona by issuing written warnings to them and ultimately terminating them from their employment for having voiced complaints about the No Talking Rule and other working conditions, concerted activities that are protected under ALRA section 1152.

The elements for unlawful retaliation under section 1153, subdivision (a) are as follows: (a) the employees engaged in protected concerted activity, (b) the employer knew of or suspected such activity, and (c) there was a causal relationship between the employees' protected activity and the adverse employment action on the part of the employer (i.e., the employee's protected activity was a 'motivating factor' for the adverse action). (*Smith Packing, Inc*. (2020) 46 ALRB No. 3, at p. 14-15.)

With respect to the third element of causal connection, the Board may infer a discriminatory motive from direct or circumstantial evidence. (*New Breed Leasing Corp. v. NLRB* (9th Cir. 1997) 111 F.3d 1460, 1465.) Relevant factors considered by the Board in drawing such an inference include, *inter alia*, the timing or proximity of the adverse

action to the activity, and the severity of punishment for alleged misconduct. (*Aukeman Farms* (2008) 34 ALRB No. 2, p. 5.)

I find the allegations contained in the complaint set out all the required elements for a finding of unlawful retaliation under ALRA section 1153(a).

3. Third Cause of Action (Retaliatory Promulgation of Unlawful Rules): The General Counsel asserts that "Respondent unlawfully retaliated against its agricultural workers by promulgating unlawful rules which interfered with the ability of agricultural workers to engage in protected concerted activity, *after* ... Gonzalez and … Carmona complained about the No Talking Rule and other working conditions," and as such, violated ALRA section 1153(a). (Complaint, ¶ 49-50, emphasis added.)

The only protected concerted activity described in the complaint is alleged to have occurred in or around February 2023 (when both workers voiced complaints about the No Talking Rule, which had been promulgated over one year, and possibly two years earlier) and on April 17, 2023 (when both workers voiced complaints *after* being told of the enactment of the Greenhouse Rule). Consequently, the only possible linkage between protected activity and the *subsequent* promulgation of a work rule would be the February complaints regarding the No Talking Rule and the mid-April enactment of the Greenhouse Rule.

Unlike the No Talking Rule, the Greenhouse Rule is not ambiguous, and cannot conceivably be interpreted by an agricultural worker as in any manner impacting rights under ALRA section 1152. Further, there are no factual allegations in the complaint from

which an inference could reasonably be drawn that this facially neutral work rule was promulgated in response to the protected activity which occurred anywhere from one and a half to two and a half months prior to the rule's enactment. This is fundamentally different from what confronted the NLRB in *First American Enterprises d/b/a Heritage Lakeside* (2020) 369 NLRB No. 54, wherein the Board held that a facially neutral rule prohibiting "non-resident centered communications" in work areas violated NLRA section 8(a)(1) based on its enactment of only six days following the filing of a union representation petition. (*Id.,* at p. 1, fn. 7.)

I therefore find that the allegations in the complaint are insufficient to state a cause of action for retaliatory promulgation of a work rule.

Based on the foregoing, the General Counsel's "Amended Motion" for Default Judgment is hereby **GRANTED** as to the First and Second Causes of Action pled in the complaint, but **DENIED** as to the Third Cause of Action. In accordance with this ruling, the General Counsel is entitled to relief as specified in the following order.

ORDER

Pursuant to Labor Code section 1160.3, Respondent Cyma Orchids Corporation, its officers, agents, labor contractors, successors and assigns are hereby ordered to do the following:

1. Immediately cease and desist from:

(a) Promulgating or enforcing any rule prohibiting agricultural workers from talking to other workers during the workday, with the exception of a rule that

explicitly excludes from such prohibition conversations between workers regarding their terms and conditions of employment and other matters covered by section 1152 of the Act.

(b) Discharging or otherwise retaliating against any agricultural employee with regard to hire or tenure of employment because the employee has engaged in concerted activity protected under section 1152 of the Agricultural Labor Relations Act ("ALRA" or "the Act").

(c) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of their rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions, which are deemed necessary to effectuate the policies of the Act:

(a) Rescind the "No Talking Rule" under which Respondent's agricultural employees were prohibited from talking to their co-workers during working hours.

(b) Rescind the written warnings (issued on April 7, 2023) and discharge notices (issued on April 18, 2023) to Veronica Gonzalez and Leticia Carmona, and expunge such warnings and notices from their personnel files.

(c) Offer Veronica Gonzalez and Leticia Carmona immediate reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges of employment.

(d) Make Veronica Gonzalez and Leticia Carmona whole for all wages and

other economic losses incurred since April 18, 2023, as a result of their unlawful terminations, with amounts due to be determined in accordance with established Board precedent. The awards shall include interest to be determined in accordance with *Kentucky River Medical Center* (2010) 356 NLRB 6, and excess tax liability to be computed in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas* (2014) 361 NLRB 101, minus tax withholdings required by federal and state laws. Compensation shall be issued to Veronica Gonzalez and Leticia Carmona, and sent to the ALRB's Oxnard Regional Office, which will thereafter disburse the payments to them

(e) Pay a civil penalty to the State, pursuant to Labor Code section 1160.10, subdivisions (a)(1) and (a)(2), in an amount to be determined in compliance proceedings giving due consideration to the factors enumerated in section 1160.10, subdivision (b).

(f) In order to facilitate the determination of lost wage and other economic losses, if any, for the period commencing April 18, 2023, 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 Regional Director of economic losses due under the terms of this order. Upon request of the Regional Director, the records shall be provided in electronic form if they are customarily maintained in that form.

(g) Upon request of the Regional Director, sign the attached Notice to

Employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below.

(h) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed. This posting shall commence within 30 days after this Order becomes final unless the Regional Director determines that commencement on a later date would more appropriately effectuate the purposes of the Act.

(i) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all employees then employed, on company time and property, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. Respondent shall compensate employees for time during the reading of the Notice and the question-and-answer period at not less than their regular hourly rate of ay (including piece rate earnings for any pay period during which those employees receive any piece-rate payments, to be calculated in accordance with Labor Code section 226.2(a)(3)(A).)

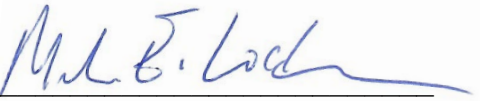
(j) Mail copies of the attached Notice, in all appropriate languages within 30 days after this Order becomes final or when directed by the Regional Director, to all

agricultural employees employed by Respondent at any time during the period from April 18, 2023 to April 17, 2024, at their last known addresses.

(k) Provide a copy of the Notice to each agricultural employee hired to work for Respondent during the twelve-month period following the date this Order becomes final.

(l) Notify the Regional Director in writing, within 30 days after the date this Order becomes final, of the steps Respondent has taken to comply with its terms. Upon the request of the Regional Director, the Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

Date: April 2, 2025



Miles E. Locker
Chief Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Oxnard 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 filing a timely answer to the complaint, the ALRB deemed the allegations to be true and found that we violated the Agricultural Labor Relations Act (ALRA) by maintaining an enforcing a rule that prohibited employees from talking to other employees during the workday (without making exceptions to allow for conversations about workers' terms and conditions of employment), and by discharging two employees for complaining about terms and conditions of employment.

The ALRB told us to publish and post 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 or by signing union authorization cards 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; and
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 maintain or enforce any rule prohibiting you from talking to your co-workers during work hours unless the rule clearly allows you to talk to your co-workers about matters concerning your employment.

WE WILL NOT discharge or otherwise retaliate you for complaining about your terms and conditions of employment.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employes in the exercise of rights guaranteed to you under the ALRA.

WE WILL offer to Veronica Gonzalez and Leticia Carmona reinstatement to their former or substantially equivalent positions of employment and make them whole for all losses of pay and other economic losses suffered as a result of our unlawful conduct.

Dated: _____

By: _____

(Representative) (Title)

If you have questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 1901 Solar Drive, Suite 240, Oxnard, California. The telephone number is (805) 973-5062.

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

DO NOT REMOVE OR MUTILATE