

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NORMAN’S NURSERY, INC.,                    ) Case No. 2022-CE-010-VIS  
  )  
      Respondent,                                )  
  ) ORDER DENYING GENERAL  
and   ) COUNSEL’S REQUEST FOR  
  ) ENFORCEMENT OF SUBPOENA  
LAURA FLORES TORRES,                    ) DUCES TECUM  
  )  
      Charging Party.                         )  
  )  
  ) Admin. Order No. 2023-18  
  )  
  ) (November 27, 2023)  
  )  
\_\_\_\_\_ )

On October 27, 2023, the General Counsel filed a request with the Agricultural Labor Relations Board (ALRB or Board) for authorization to seek judicial enforcement of a subpoena duces tecum pursuant to Labor Code sections 1149 and 1151, subdivision (a), and Board regulation section 20217.<sup>1</sup>

The General Counsel’s request seeks enforcement against respondent Norman’s Nursery, Inc. (Norman’s Nursery); however, the subpoena itself is directed to the custodian of records for America’s Labor Supply (ALS), and requests that ALS produce several categories of records covering the time period of August 1, 2022, to the present. According to statements in the declaration accompanying the subpoena, Norman’s Nursery informed regional staff that it used the services of ALS as a farm labor

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<sup>1</sup> The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

contractor, and that ALS is in possession of documents responsive to the subpoena. The General Counsel states the information sought in the subpoena is necessary to complete its investigation of unfair labor practice charge no. 2022-CE-010-VIS filed on September 22, 2022, that Norman’s Nursery did not file a petition to revoke the subpoena, and that Norman’s Nursery has not produced any of the information requested.

In evaluating a request to enforce a subpoena, Board regulation 20250, subdivision (k) requires the Board to exercise its judgment concerning whether “the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act.” In making this determination, the Board has considered whether the subpoena to be enforced “was regularly issued and the records sought are relevant to the administrative inquiry and identified with sufficient particularity.” (*ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, 663-664; *St. Supéry, Inc.* (Sept. 28, 2022) ALRB Admin. Order No. 2022-06-P, p. 6; *Tri-Fanucchi Farms* (Aug. 11, 2023) ALRB Admin. Order No. 2023-06, p. 3.)

The record before us does not establish the subpoena was properly served. The General Counsel states it served the subpoena on Norman’s Nursery, and the General Counsel seeks to enforce the subpoena in court against Norman’s Nursery, but the subpoena is directed to ALS. Both the subpoena itself and the enforcement request were served by certified mail on attorney Scott A. Wilson but it is unclear whether Wilson represents both Norman’s Nursery and ALS or just one of those entities.<sup>2</sup> If the General

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<sup>2</sup> The Board has previously advised the General Counsel that supporting evidence such as relevant records and writings, including correspondence exchanged between the parties, be submitted to the Board along with enforcement requests. (See *Ocean Mist Farms* (Aug. 28, 2023) ALRB Admin. Order No. 2023-08, p. 3.) The request for subpoena enforcement in this matter is accompanied only by a brief declaration by an assistant general counsel that contains minimal information. There is no information

Counsel contends it properly served the subpoena on ALS, then enforcement of the subpoena must be sought against ALS. On the other hand, if the General Counsel is seeking the records from Norman’s Nursery, then it must subpoena such records from Norman’s Nursery and, in the event of any noncompliance, seek enforcement from that party. Alternatively, if the General Counsel believes Norman’s Nursery should be deemed to be in “constructive possession” of the records it seeks by virtue of its relationship with ALS, then the subpoena still must be directed to Norman’s Nursery.<sup>3</sup>

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about efforts to obtain the documents sought by voluntary means, no information about who regional staff contacted in an effort to obtain the documents, and no information that allows the Board to confirm that the subpoena was served on the proper representative. Statements summarizing or describing the parties’ statements, assertions, or positions on disputed issues are improper and may not be relied upon; the writings themselves are the best evidence of their contents. (Evid. Code, § 1523, subd. (a) [“oral testimony is not admissible to prove the content of a writing”].) The provision of all relevant exhibits with a subpoena, or other type of enforcement request ensures a complete record and efficient review of such matters.

<sup>3</sup> We note that Norman’s Nursery is required by Labor Code section 1157.3 to maintain accurate and current payroll records of its employees, including employees provided through a farm labor contractor.

PLEASE TAKE NOTICE that for the foregoing reasons, we DENY the request to seek judicial enforcement of the General Counsel's subpoena duces tecum without prejudice to considering a subsequent application to enforce a subpoena properly issued and served.

DATED: November 27, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member