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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: GERAWAN FARMING, INC., Respondent, and UNITED FARM WORKERS OF AMERICA Charging Party.	Case Nos. 2014-CE-003-VIS **COMPLAINT**

The General Counsel of the Agricultural Labor Relations Board, ("ALRB"), pursuant to Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section 1140 *et seq.* (the "Act") and California Code of Regulations, title 8, section 20220, hereby issues this Complaint against Gerawan Farming, Inc. ("Gerawan"). The General Counsel alleges that Gerawan has committed unfair labor practices in violation of the Act as follows:

JURISDICTION AND PARTIES

1. On January 31, 2014, the United Farm Workers of America ("UFW") filed charge 2014-CE-003-VIS. The charge was properly served on Gerawan on January 31, 2014 by the Visalia Regional Office of the Agricultural Labor Relations Board.

2. At all times material herein, Gerawan was an agricultural employer within the meaning of Sections 1140.4(a) & (c) of the Act. Gerawan is a corporation duly organized and existing under the laws of California. Gerawan's principal place of business is in Fresno, California. Gerawan is engaged in growing, packing and shipping fresh fruit.

3. At all times material herein, the UFW was a labor organization within the meaning of Section 1140.4(f) of the Act, and was certified by the Agricultural Labor Relations Board ("Board") as the bargaining representative of Gerawan's agricultural employees in Fresno County, California.

FACTS

4. The UFW was certified as the exclusive bargaining representative of Gerawan's agricultural employees in 1992. Until November 19, 2013, the UFW and Gerawan had never reached a collective bargaining agreement ("CBA" or "agreement") over the terms and conditions of employment for Gerawan's agricultural employees.

5. On November 19, 2013 a CBA between Gerawan and the UFW came into effect as a result of their participation in the Mandatory Mediation and Conciliation ("MMC") process of the Agricultural Labor Relations Act ("Act"), Labor Code Section 1164 *et seq.* After failing to voluntarily reach an agreement through the MMC process, mediator Matthew Goldberg issued a report containing the final terms of the CBA on September 18, 2013. After a request for review by Gerawan, the Board accepted all but six provisions of the mediator's report and

remanded the matter back to the mediator for further proceedings. After being remanded, the mediator, Gerawan, and the UFW reached agreement on the six final provisions and the mediator issued a second mediator's report. The second mediator's report was approved by the Board and immediately put into effect as the CBA through a final Board Order on November 19, 2013, *Gerawan Farming, Inc.* (2013) 39 ALRB No. 17.

6. The mediator's second report ordered that a contract be put in to effect that included, *inter alia,* yearly wage increases, vacation benefits, holidays, a grievance procedure, and just cause termination. The mediator's report identified the effective dates of the CBA to be from July 1, 2013 to June 30, 2016.

7. After the Board issued its Order putting the mediator's second report into effect, Gerawan refused to implement the CBA. To date, Gerawan has not implemented the CBA and has treated it as if it were not in effect and not enforceable.

8. On December 16, 2013, Gerawan filed a petition for writ of review with the Fifth District Court of Appeal in Fresno, California, seeking to overturn the Board's Decision to order the second mediator's report into effect as a binding CBA. Gerawan's petition for writ of review is pending before the Court of Appeal and a decision is not expected for over one year.

9. On February 10, 2014, Gerawan filed a request for an immediate stay of the Board's Decision ordering the contract into effect, so that they would be relieved of a legal duty to implement the contract during the pendency of the petition for review in the Court of Appeal.

10. On February 11, 2014, the Court of Appeal for the Fifth District denied Gerawan's request for an immediate stay of the Board's Order. Still, Gerawan has refused to implement the CBA.

11. In refusing to implement the CBA, Gerawan has, *inter alia,* paid its employees wages below those set forth in the CBA, has terminated workers pursuant to an at-will employment policy in violation of the CBA, and prevented its employees' union from effectively representing them.

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FIRST CAUSE OF ACTION

California Labor Code § 1153(a)

(Unlawful Restraint and Interference)

12. As set forth in paragraphs 4-11 above, Gerawan has committed an unfair labor practice by refusing to implement the legally binding Collective Bargaining Agreement between itself and the UFW, its agricultural employees' certified bargaining representative.

13. By refusing to implement the Collective Bargaining Agreement, Gerawan has and continues to unlawfully restrain and interfere with its agricultural employees in the exercise of their collective bargaining rights, in violation of Section 1153(a) of the Act.

SECOND CAUSE OF ACTION

California Labor Code § 1153(e)

(Bad Faith Bargaining)

14. As set forth in paragraphs 4-11 above, Gerawan has committed an unfair labor practice by refusing to implement the legally binding Collective Bargaining Agreement between itself and the UFW.

15. By refusing to implement the Collective Bargaining Agreement, Gerawan has and continues to violate its duty to bargain in good faith with the UFW, the certified bargaining representative of its agricultural employees, in violation of Section 1153(e) of the Act.

REQUEST FOR RELIEF

As the remedy for the unfair labor practice set forth above, the General Counsel seeks an Order requiring Gerawan, its officers, agents, successors and assigns to:

A. Cease and desist from refusing to implement that Collective Bargaining Agreement between Gerawan and the UFW;

B. Make whole Gerawan's agricultural employees for any and all legally recognized losses, including, but not limited to the loss of wages and benefits, resulting from Gerawan's refusal to implement the CBA;

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FURTHER, the General Counsel seeks all such other relief that is just and proper to remedy the unfair labor practices alleged herein.

Dated this 4th day of April, 2014, at Visalia, California.

AGRICULTURAL LABOR RELATIONS BOARD
SYLVIA TORRES-GUILLÉN
General Counsel

SILAS SHAWVER
Regional Director

EXCERPTS FROM ALRB REGULATIONS

WHAT TO INCLUDE IN AN ANSWER

Section 20230 – Answer; Time for Filing
The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

Section 20232 – Contents of Answer
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. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint.
Any allegation not denied shall be considered admitted.

Section 20234 – Filing
The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

MANNER IN WHICH PAPERS ARE TO BE FILED AND SERVED

Section 20164 – Service of Papers by the Board or on the Board
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.

Section 20166 – Service on Others of Papers Filed with the Board
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 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.

RIGHTS OF THE PARTIES TO A HEARING

Section 20269 – Rights of Parties to a Hearing
Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

HOW HEARINGS ARE SET

Section 20224 – Notice of Hearing
(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general

by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcised document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

EXTENSIONS OF TIME AND CONTINUANCES

Section 20190 – Continuances of Hearing Dates

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter

promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

(1) The official case file and any supporting declaration submitted with the motion.

(2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.

(3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.

(4) The proximity of the hearing date.

(5) The condition of the hearing calendar.

(6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.

(7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.

(8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

(1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.

(2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.

(3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.

(4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

Section 20192 – Extensions of Time

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

RIGHT TO APPEAR

Section 20370 – Investigative Hearings--Types of Hearings and Disqualification of IHE's

Investigative Hearings--Powers of IHE's

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

Section 20402 – Evaluation of the Declaration and Answer

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b)

State Of California

Agricultural Labor Relations Board

PROOF OF SERVICE BY MAIL
(8 Cal.Code Regs. Sec. 20164)

I am a citizen of the United States and a resident of the County of Tulare. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1642 W. Walnut Avenue, Visalia, California 93277.

On **April 4, 2014**, I served the within **COMPLAINT, GERAWAN FARMING, INC.,** Case No. **2014-CE-003-VIS** and FACT SHEET (re requirements for an Answer, the right to a hearing, and the manner in which hearings are scheduled) and EXCERPTS FROM ALRB REGULATIONS, 8 Cal. Code Regs., Sections 20232, 20166, 20164, 20224, 20235-20238, 20192, 20190, on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Visalia, California, addressed as follows:

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Executed on **April 4, 2014**, at Visalia, California. I declare under penalty of perjury that the foregoing is true and correct.

Leonardo Pescador

CERTIFIED MAIL™

7012 3460 0000 3915 8591

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RECEIVED APR 07 2014