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10 STATE OF CALIFORNIA

11 AGRICULTURAL LABOR RELATIONS BOARD

12
13 GERAWAN FARMING INC.,)

14 Employer,)

15 And)

16 SILVIA LOPEZ,)

17 Petitioner,)

18 And)

19 UNITED FARM WORKERS OF)
20 AMERICA)

21 Certified Bargaining Representative.)

22 GERAWAN FARMING INC.,)

23 Respondent,)

24 And)

25 UNITED FARM WORKERS OF AMERICA,)

26 Charging Party.)

Case Nos.:

2012-CE-041-VIS

2013-CE-007-VIS

2013-CE-009-VIS

2013-CE-010-VIS

2013-CE-030-VIS

2013-CE-041-VIS

2013-CE-044-VIS

2013-CE-045-VIS

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**SECOND AMENDED
CONSOLIDATED COMPLAINT**

1 The General Counsel of the Agricultural Labor Relations Board ("ALRB"), under
2 Section 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section
3 1140, *et seq.* ("Act"), and California Code of Regulations, title 8, sections 20220 and 20222,
4 issues this amended consolidated complaint against Gerawan Farming, Inc. ("Gerawan"). This
5 amended consolidated complaint is issued for "Phase II" of the hearing on the matter of
6 2013-RD-003-VIS, *et. al.* (42 ALRB No. 1), which encompasses the above-captioned charges.
7 The General Counsel alleges that Gerawan committed unfair labor practices in violation of the
8 Act as follows:

9 **JURISDICTION AND PARTIES**

10 1. On December 6, 2012, the United Farm Workers of America ("UFW") properly
11 filed and served charge 2012-CE-041-VIS, alleging that on or about November 2, 2012 and
12 continuing thereafter, Gerawan, by its officers, agents, and representatives, including Dan
13 Gerawan, Mike Gerawan, Ray Gerawan, and others, actively engaged in bad faith bargaining.

14 2. On February 26, 2013, the UFW properly filed charge 2013-CE-007-VIS,
15 alleging, in pertinent part, that on or about February 22, 2013, and continuing thereafter,
16 Gerawan violated the Agricultural Labor Relations Act when Gerawan, in a flyer distributed to
17 its employees, used identifying information provided at negotiation meetings by worker
18 members of the union bargaining committee in a manner that was threatening and coercive.

19 3. On March 18, 2013, the UFW properly filed charge 2013-CE-009-VIS, alleging
20 that on or about February 12, 2013, and continuing thereafter, Gerawan has refused to provide
21 accurate employee contact information to the UFW, which is the exclusive bargaining
22 representative.

23 4. On March 20, 2013, the UFW properly filed charge 2013-CE-010-VIS alleging
24 that on or about January 28, 2013 and continuing, Gerawan committed an unfair labor practice
25 by proposing and insisting on excluding agricultural employees hired through farm labor
26 contractors ("FLC employees") from the terms of the collective bargaining agreement ("CBA").
27 Such a proposed exclusion of farm labor contractor employees from coverage of the terms of a
28 CBA is a violation of the Act.

1 5. On August 16, 2013, the UFW properly filed and served charge 2013-CE-030-
2 VIS, alleging that on or about August 12, 2013, and continuing thereafter, Gerawan, through its
3 foremen, supervisors, and/or agents, willfully resisted, prevented, impeded, or interfered with
4 ALRB agents in the investigation of charges filed with the ALRB against Gerawan Farming in
5 violation of Labor Code section 1151.6. This conduct interfered with employee rights to
6 participate in a board investigation and coerced employees in the exercise of their rights.

7 6. On October 2, 2013, the UFW properly filed and served charge 2013-CE-044-
8 VIS, alleging that on or about September 1, 2013, and continuing thereafter, Gerawan, through
9 its agents, representatives, and attorneys, has continued to refuse to provide correct employee
10 contact information to the UFW by giving employee contact information that is inaccurate and
11 failing to correct it, in violation of the Act.

12 7. On October 2, 2013, the UFW properly filed and served charge 2013-CE-045-
13 VIS, alleging that on or about September 6, 2013, and continuing thereafter, Gerawan, through
14 its agents, representatives, and attorneys, continues to refuse to provide relevant and requested
15 information to the UFW by refusing to provide financial information to the UFW in violation of
16 the Act.

17 8. At all relevant times, the UFW was a labor organization within the meaning of
18 Section 1140.4, subdivision (f), of the Act. At all times material herein, the UFW was the
19 certified bargaining representative of Gerawan's agricultural employees in California.

20 9. At all relevant times, Gerawan was an agricultural employer within the meaning
21 of Sections 1140.4, subdivisions (a) and (c), of the Act. Gerawan is a corporation duly organized
22 and existing under the laws of California. Gerawan's principal place of business is in Fresno,
23 California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

24 10. At all relevant times, Dan Gerawan, Mike Gerawan, and Ray Gerawan were the
25 owners of Gerawan.

26 11. At all relevant times, Crew Boss Leonel Nuñez ("CB Nuñez") was a statutory
27 supervisor for Gerawan within the meaning of Section 1140.4, subdivision (j).
28

1 **FACTUAL ALLEGATIONS**

2 12. The Agricultural Labor Relations Board ("Board") certified the UFW as the
3 exclusive bargaining representative of Gerawan's agricultural employees in 1992 after a Board
4 supervised election in 1990 during which a majority of Gerawan's agricultural employees voted
5 in favor of representation by the UFW.

6 13. Following certification in 1992, the UFW and Gerawan engaged in limited
7 negotiations over a collective bargaining agreement, but no voluntary collective bargaining
8 agreement has ever been reached between Gerawan and the UFW.

9 14. On October 12, 2012, the UFW contacted Gerawan to request to bargain and to
10 request information related to bargaining.

11 15. The UFW's October 12, 2012 bargaining request sparked an intensive and
12 ongoing campaign by Gerawan to: undermine the UFW's status as its employees' bargaining
13 representative; to turn its employees against the union; to promote decertification of the UFW;
14 and to prevent the UFW from ever representing its employees under a collective bargaining
15 agreement.

16 **Gerawan Engaged in Bad-Faith Bargaining**

17 16. During the same time period that the UFW renewed its attempts to negotiate with
18 Gerawan, it began to contact Gerawan's agricultural employees to form a negotiation committee
19 and to inform members of the bargaining unit about the union and its efforts to obtain a contract
20 for the workers.

21 17. On November 2, 2012, Gerawan sent the UFW a letter stating that the company
22 was open to bargaining, but that the union had abandoned Gerawan workers for almost twenty
23 years and questioned the extent of Gerawan's obligation to bargain with the union.

24 18. Gerawan responded to the UFW's renewed attempts at negotiations on November
25 13, 2012 by sending a notice to all of its employees informing them that although the union won
26 an election twenty-two years ago, it had only contacted the company one time since the election,
27 twenty years ago ("November 13, 2012 Notice").
28

1 19. The November 13, 2012 Notice issued by Gerawan’s owners, Ray, Mike, and Dan
2 Gerawan, stated that the union had demanded that the company turn over its employees’ personal
3 information and that although Gerawan did not want to turn over the information, it was required
4 to do so.

5 20. The November 13, 2012 Notice also stated that workers were not required to
6 speak to union representatives if they showed up at the workers’ homes. Gerawan ended the
7 notice by stating that the “The UFW says they represent you, even though you probably did not
8 even work here 22 years ago and some of you were not even born yet.”

9 *Gerawan Insisted on Excluding Farm Labor Contractor Employees from the Terms of the*
10 *Collective Bargaining Agreement*

11 21. From approximately January 2013 to April 2013, the UFW and Gerawan engaged
12 in negotiations over the terms of a collective bargaining agreement (“CBA”) to apply to
13 Gerawan’s agricultural employees.

14 22. On or about January 17, 2013, the UFW proposed contract language that would
15 include Gerawan’s farm labor contractor (“FLC”) employees in the bargaining unit and apply all
16 terms of any CBA to such employees.

17 23. On or about January 18, 2013, Gerawan communicated to the UFW its intention
18 to exclude FLC employees from the terms of the CBA.

19 24. Throughout the bargaining sessions from January 2013 to April 2013, Gerawan
20 insisted on excluding FLC employees from the CBA and communicated this intention to the
21 UFW and Gerawan’s agricultural employees.

22 25. During bargaining sessions with the UFW from January 2013 to April 2013,
23 Gerawan informed its agricultural employees, including those who are regularly hired through
24 FLCs, that it intended to exclude FLC employees from the CBA.

25 26. Throughout the bargaining sessions from January 2013 to April 2013, Gerawan
26 insisted that the terms of any CBA reached with the UFW not apply to FLC employees.

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1 *Gerawan Failed to Correct Employee Addresses*

2 27. On October 12, 2012, the UFW requested information relevant to bargaining,
3 including employee addresses.¹

4 28. On November 16, 2012, Gerawan partly complied with the UFW's information
5 request by providing the union with a 2012 employee list for its direct hire employees that
6 contained addresses.

7 29. Gerawan provided the UFW with employee contact information for one group of
8 FLC employees on December 14, 2012, and on December 23, 2012 for another group of FLC
9 employees. Gerawan did not provide the UFW with all the requested employee lists until
10 approximately January 2013.

11 30. From mid-November 2012 through mid-January 2013, UFW organizers visited
12 and attempted to visit Gerawan employees at the addresses that Gerawan provided.

13 31. The UFW organizers kept records of their visits and documented addresses that
14 did not exist or that were incorrect, such as the address being non-residential and the worker not
15 residing at the address.

16 32. During the period of November 2012 to January 2013, the UFW documented over
17 2,000 addresses provided by Gerawan that were either non-existent, non-residential or where the
18 employee did not live.

19 33. On January 25, 2013, the UFW informed Gerawan that the employee list provided
20 contained over 2,000 bad addresses and identified the specific addresses that were not correct.
21 The UFW requested that Gerawan provide correct addresses.

22 34. On March 6, 2013, the UFW sent Gerawan another request for correct
23 employee addresses. The letter also asked Gerawan to provide the UFW with further information
24 about the employee addresses discussed in Gerawan's February 12, 2013 letter to the UFW.

25
26 _____
27 ¹ The request included: employee lists, maps of company properties in California, number of acres involved in the
28 company's operations, names and titles of company representatives, farm labor contractor contact and license
information, length of season, numbers of hours worked by all employees on a daily and yearly basis, types of
agricultural products that the company produces, detailed summary of wages and benefits, and copies of the current
employee manuals and policies.

1 35. On April 29, 2013, the UFW asked Gerawan again for correct employee addresses
2 and information.

3 36. On May 15, 2013, the UFW attempted yet again through e-mail to obtain the
4 correct employee addresses from Gerawan.

5 37. On July 11, 2013, Gerawan provided the UFW with a new list of direct hire
6 employee addresses.

7 38. On September 18, 2013, the UFW notified Gerawan that the most recent
8 employee list contained 2,994 incorrect addresses and asked that the addresses be corrected.

9 39. To date, Gerawan has not corrected the addresses submitted by the UFW.

10 Gerawan's failure to provide correct addresses has hindered the UFW's ability to communicate
11 with its members and interfered with Gerawan employees' ability to communicate with their
12 bargaining representative.

13 *Gerawan Refused to Provide Financial Information*

14 40. In a Wall Street Journal article dated September 2, 2013, owner Dan Gerawan
15 was quoted as saying that an imposed Mandatory Mediation and Conciliation contract would
16 hurt the company's ability to manage staff and resources and could ultimately force the company
17 out of business.

18 41. On September 5, 2013, the UFW requested relevant financial information from
19 Gerawan to substantiate Dan Gerawan's statement to the Wall Street Journal about the financial
20 and economic impact an MMC contract would have on business operations.

21 42. On September 6, 2013, Gerawan informed that UFW that it will not provide any
22 of the information or documents requested.

23 43. On September 13, 2013, the UFW renewed its request for information.

24 44. To date, Gerawan has not provided the relevant financial information to the UFW.

25 **Gerawan Told Employees to Lie to Board Agents**

26 45. On or about July 28, 2013, Gerawan supervisory employee, CB Nuñez, gathered
27 approximately 20 members of his crew for a meeting before the start of the work day. During the
28 meeting, CB Nuñez held out a petition to decertify the UFW.

1 46. CB Nuñez told the workers in his crew that they should sign the petition to get rid
2 of the union. CB Nuñez added that if the union were successful, the company would go out of
3 business.

4 47. After telling the members of his crew that they should get rid of the union, CB
5 Nuñez approached one worker who refused to sign the petition after the meeting.

6 48. CB Nuñez told this worker that he knew that there were two union supporters in
7 his crew and seven in Francisco Maldonado's crew.

8 49. On approximately July 29, 2013, CB Nuñez approached two of his employees and
9 told them that if someone from the ALRB or from Gerawan management came and asked
10 questions that they should say that CB Nuñez was not present during any meeting where the
11 petition was discussed.

12 **Gerawan Publicized the Employment History of the UFW's Negotiation Committee**

13 50. In February 2013, Gerawan issued a flyer questioning the employment status and
14 employment history of negotiating committee members.

15 51. The flyer stated that some members of the committee had not been confirmed as
16 employees. It also stated that most of the committee members who were confirmed employees
17 had been employed by Gerawan for a little over a year on average, and that half of the confirmed
18 employees on the negotiating committee had worked less than five months for Gerawan.

19 52. Gerawan's notice discourages workers from participating in contract negotiations
20 and undermines the union by conveying that Gerawan scrutinizes and investigates the
21 employment history of committee members, and that the committee members were not adequate
22 representatives of Gerawan's employees.

23 **Gerawan Materially Assisted in anti-UFW Protests**

24 53. In 2014, Gerawan allowed, and continues to allow busses to park at its office in
25 Madera, California to pick-up non-supervisory employees in the middle of the work day to travel
26 to anti-UFW protests in Visalia or Sacramento.

27 54. Thereafter, Gerawan has allowed the busses to park at its office to drop off
28 employees when work has ended or is about to end.

1 the terms and benefits of any CBA, Gerawan violated its duty to bargain in good faith over terms
2 and conditions of employment for its bargaining unit employees.

3 68. By proposing and insisting that the UFW agree to unlawful contract terms to
4 exclude agricultural workers who are protected by the Act, Gerawan has violated its duty to
5 bargain in good faith with the UFW, as required by the Act.

6 **FOURTH CAUSE OF ACTION**

7 (2013-CE-010-VIS)

8 **California Labor Code § 1153, subdivision (a)**

9 *(Interference and Restraint of Agricultural Employees in the Exercise of their Collective
Bargaining Rights)*

10 69. As set forth in paragraphs 21 through 26 above, Gerawan has committed an unfair
11 labor practice under Section 1153(a) of the Act by seeking and proposing to exclude agricultural
12 employees from the benefits of a CBA on the basis that they were hired through a farm labor
13 contractor.

14 70. By proposing and insisting on excluding farm labor contractor employees from
15 the benefits of the CBA, and by reiterating its exclusionary proposals in the presence of farm
16 labor contractor employees, Gerawan has unlawfully interfered with and restrained its
17 agricultural employees in the exercise of their collective bargaining and concerted activity rights
18 under the Act.

19 71. By proposing to exclude farm labor contractor employees and insisting that the
20 UFW agree to an unlawful contract proposal that contravenes the purposes of the Agricultural
21 Labor Relations Act, Gerawan has unlawfully restrained and coerced its agricultural employees
22 in the exercise of their collective bargaining rights.

23 **SIXTH CAUSE OF ACTION**

24 (2013-CE-030-VIS)

25 **California Labor Code §1153, subdivision (a)**

26 *(Interference and Restraint of Agricultural Employees)*

27 72. As set forth in paragraphs 45 through 49 above, Gerawan committed and is
28 continuing to commit an unfair labor practice under Section 1153, subdivision (a), of the Act by
threatening employees and instructing them to provide false information to the ALRB.

1 **REQUEST FOR RELIEF**

2 As the remedy for the unfair labor practices set forth above, the General Counsel seeks an
3 order requiring Respondent, its officers, agents, successors, and assigns to:

4 A. Cease and desist from, in any like or related manner, interfering with,
5 restraining, or coercing agricultural employees in the exercise of their rights guaranteed
6 by Labor Code section 1152;

7 B. Cease and desist from refusing to bargain in good faith with the UFW by
8 denying its relevant requests for information;

9 C. Cease and desist from insisting on excluding farm labor contractor
10 employees from the terms of the collective bargaining agreement;

11 D. Cease and desist from telling employees to provide inaccurate information
12 to the Board agents;

13 E. Provide the UFW with a complete and accurate employee address list for
14 its 2015 and current employees;

15 F. Provide the UFW with relevant financial information responsive to its
16 September 5, 2013 request for financial information;

17 G. Mail copies of a Notice to Agricultural Employees ("Notice") to all of
18 Gerawan's agricultural employees employed during the period of November 2012 to
19 September 2015;

20 H. Grant ALRB agents access to worksites where Gerawan's agricultural
21 employees are employed to provide a reading of the Notice outside the presence of
22 supervisory personnel, and to post the Notice at Gerawan's work sites for a period of 60
23 days during the period of peak employment. Following the reading, Gerawan's
24 agricultural employees will have a reasonable period of time in which to ask questions of
25 ALRB agents about the Notice or about their rights under the Act. The time spent during
26 the reading and question and answer period shall be compensated by Gerawan at the
27 employees' regular hourly rates, or each employee's average hourly rate based on their
28 piece-rate production during the prior pay period;

1 I. Provide a copy of the signed Notice to each agricultural employee hired to
2 work for Gerawan as an agricultural employee during the twelve-month period following
3 the issuance of a final Board order in this matter;

4 J. Grant ALRB agents access to Gerawan worksites to inspect the posting
5 and ensure compliance for a period of 60 days following the first day of posting;

6 K. Provide access to ALRB agents to give a one-hour training to all of
7 Gerawan's statutory supervisors of field labor regarding their responsibilities under the
8 Act to allow employees to engage in protected concerted activity and union activity free
9 from coercion, interference and restraint;

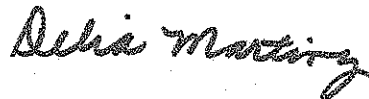
10 L. Make whole agricultural employees hired through farm labor contractors
11 for the value of all benefits lost plus interest as a result of Gerawan's violations of the
12 Act, as alleged in the complaint;

13 M. Make whole all agricultural employees for all benefits lost as a result of its
14 failure to bargain in good faith.

15 FURTHER, the General Counsel seeks any other relief that is just and proper to remedy
16 the unfair labor practices.

17 Dated this 17th day of June, 2016.

18
19 AGRICULTURAL LABOR RELATIONS BOARD
20 JULIA MONTGOMERY
21 General Counsel

22 

23 _____
24 DELIA MARTINEZ
25 Acting Regional Director
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27
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State of California
AGRICULTURAL LABOR RELATIONS BOARD
PROOF OF SERVICE
(8 Cal. Code Regs. § 20164.)

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

On **June 17, 2016** all parties received courtesy copies via email; on **June 6, 2016** I filed, via mail and hand delivery, of the within: **SECOND AMENDED CONSOLIDATED COMPLAINT**. Case Name: **Gerawan Farming** Case Number: **2012-CE-041-VIS et al** on the parties in said action, in the following manner:

By U.S. Certified Mail: The above referenced document was mailed to the parties in said action placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California.

By Electronic Mail: The above referenced document was e-mailed to the following parties at the listed e-mail addresses.

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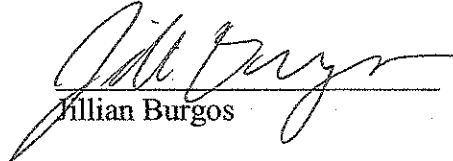
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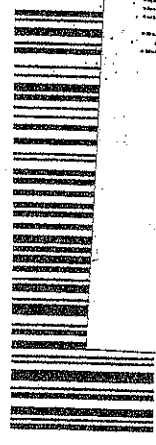
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Executed on **June 17, 2016** in Sacramento, California. I certify (or declare) under penalty of perjury that the foregoing is true and correct.


William Burgos

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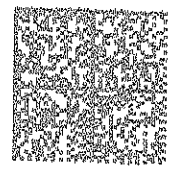
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