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12 STATE OF CALIFORNIA  
13 AGRICULTURAL LABOR RELATIONS BOARD

14 In the Matter of:	)	Case Nos.:	
15 GERAWAN FARMING, INC.,	)	2012-CE-041-VIS	2013-CE-041-VIS
16 Respondent,	)	2012-CE-042-VIS	2013-CE-042-VIS
17 and	)	2012-CE-046-VIS	2013-CE-043-VIS
18 UNITED FARM WORKERS OF AMERICA	)	2012-CE-047-VIS	2013-CE-044-VIS
19 Charging Party.	)	2013-CE-007-VIS	2013-CE-045-VIS
	)	2013-CE-009-VIS	2013-CE-055-VIS
	)	2013-CE-025-VIS	2013-CE-058-VIS
	)	2013-CE-027-VIS	2013-CE-060-VIS
	)	2013-CE-030-VIS	2013-CE-062-VIS
	)	2013-CE-038-VIS	2013-CE-063-VIS
	)	2013-CE-039-VIS	

22 **AMENDED CONSOLIDATED**  
23 **COMPLAINT**

1  
2 The General Counsel of the Agricultural Labor Relations Board, pursuant to Section  
3 1160.2 of the Agricultural Labor Relations Act of 1975, California Labor Code section 1140 *et*  
4 *seq.* ("Act"), and California Code of Regulations, title 8, sections 20220 and 20222, hereby  
5 issues this amended consolidated complaint against Gerawan Farming, Inc. ("Gerawan"). The  
6 General Counsel alleges that Gerawan committed unfair labor practices in violation of the Act as  
7 follows:

8 **JURISDICTION AND PARTIES**

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

13 2. On December 6, 2012, the UFW properly filed and served charge 2012-CE-042-VIS,  
14 alleging that on or about November 2, 2012, and continuing thereafter, Gerawan, by its officers,  
15 agents, and representatives, including Dan Gerawan, Mike Gerawan, Ray Gerawan, and others,  
16 engaged in the unlawful initiation of a decertification campaign.

17 3. On December 18, 2012, the UFW properly filed and served charge 2012-CE-046-  
18 VIS, alleging that on or about November 13, 2012, and continuing thereafter, Gerawan, through  
19 its owner, supervisors, agents and/or representatives, has sought to solicit employee grievances  
20 concerning union representation.

21 4. On December 18, 2012, the UFW properly filed and served charge 2012-CE-047-  
22 VIS, alleging that on or about November 13, 2012, and continuing thereafter, Gerawan, through  
23 its owners, supervisors, agents, and/or representatives, has sought to undermine the UFW's status  
24 as the exclusive bargaining representative of its employees through various written and oral  
25 communications with bargaining unit members.

26 5. On February 26, 2013, the UFW properly filed charge 2013-CE-007-VIS, alleging, in  
27 pertinent part, that on or about February 22, 2013, and continuing thereafter, Gerawan violated  
28 the Agricultural Labor Relations Act in the following ways: (1) Gerawan used identifying

1 information of workers on the UFW's negotiating committee in a manner that was threatening  
2 and coercive; (2) Gerawan engaged in surveillance; (3) Gerawan undermined the UFW's status  
3 as the exclusive bargaining representative of employees; and (4) Gerawan engaged in direct  
4 dealing with employees.

5 6. On March 18, 2013, the UFW properly filed charge 2013-CE-009-VIS, alleging  
6 that on or about February 12, 2013, and continuing thereafter, the employer has refused to  
7 provide accurate employee contact information to the UFW, who is the exclusive bargaining  
8 representative.

9 7. On July 9, 2013, the UFW properly filed charge 2013-CE-025-VIS, alleging that on  
10 or about June 2013, Gerawan, through its supervisors, representatives, and agents, unilaterally  
11 implemented a wage increase for farm labor contractor employees, without providing the UFW  
12 with notice or an opportunity to bargain over this change.

13 8. On July 15, 2013, the UFW properly filed and served charge 2013-CE-027-VIS,  
14 alleging that on or about July 1, 2013, and continuing thereafter, Gerawan's supervisors,  
15 foremen, and/or agents circulated a decertification petition among workers and coerced  
16 employees into signing the decertification petition.

17 9. On August 16, 2013, the UFW properly filed and served charge 2013-CE-030-VIS,  
18 alleging that on or about August 12, 2013, and continuing thereafter, Gerawan, through its  
19 foremen, supervisors, and/or agents, has willfully resisted, prevented, impeded, or interfered with  
20 ALRB agents in the investigation of charges filed with the ALRB.

21 10. On September 12, 2013, the UFW properly filed and served charge 2013-CE-038-  
22 VIS, alleging that on or about August 21, 2013, and continuing thereafter, Gerawan violated the  
23 Act by unlawfully soliciting employee concerns regarding unionization by directing its  
24 supervisors to tell workers that any questions they have about the union should be directed to  
25 José Erevia.

26 11. On September 12, 2013, the UFW properly filed and served charge 2013-CE-039-  
27 VIS, alleging that on or about June 1, 2013, and continuing thereafter, Gerawan violated the Act  
28 by allowing supporters of the effort to decertify the UFW to collect signatures in support of

1 decertification during work hours, while denying pro-UFW employees the opportunity to  
2 circulate petitions during work hours.

3 12. On October 2, 2013, the UFW properly filed and served charge 2013-CE-041-  
4 VIS, alleging that on or about September 30, 2013 and continuing thereafter, Gerawan, through  
5 its owners, supervisors, labor contractors, and others, unlawfully dominated and assisted  
6 decertification efforts by planning and providing material support to anti-UFW protests in and  
7 around its fields and in Sacramento, California.

8 13. On October 2, 2013, the UFW properly filed and served charge 2013-CE-042-VIS,  
9 alleging that on or about September 30, 2013, and continuing thereafter, Gerawan, through its  
10 supervisors, agents, and/or representatives, coerced employees in the exercise of their rights by  
11 blocking ranch entrances to coerce employees into signing a decertification petition; by  
12 canceling work to support anti-UFW and anti-ALRB protests; and by asking or requiring  
13 workers to attend anti-UFW and anti-ALRB protests instead of performing work.

14 14. On October 2, 2013, the UFW properly filed and served charge 2013-CE-043-VIS,  
15 alleging that on or about August 2013, and continuing thereafter, Gerawan, through its  
16 representatives, agents, supervisors, and/or foremen, communicated to workers that if the Union  
17 is successful or obtains a contract, the company will go out of business.

18 15. On October 2, 2013, the UFW properly filed and served charge 2013-CE-044-VIS,  
19 alleging that on or about September 1, 2013, and continuing thereafter, Gerawan, through its  
20 agents, representatives, and attorneys, has continued to refuse to provide correct employee  
21 contact information to the UFW by giving employee contact information that is inaccurate and  
22 failing to correct it.

23 16. On October 2, 2013, the UFW properly filed and served charge 2013-CE-045-VIS,  
24 alleging that on or about September 6, 2013, and continuing thereafter, Gerawan, through its  
25 agents, representatives, and attorneys, continues to refuse to provide relevant and requested  
26 information to the UFW by refusing to provide financial information to the UFW.

27 17. On November 26, 2013, the UFW properly filed and served charge 2013-CE-055-  
28

1 VIS, alleging that on or about October 2013, and continuing thereafter, Gerawan, through its  
2 officers, agents, and representatives, including but not limited to forepersons Martin Elizondo,  
3 Esteban Cruz, Francisco Mendoza, and Supervisor Lucio, interrogated employees about their  
4 union support.

5 18. On November 26, 2013, the UFW properly filed and served charge 2013-CE-058-  
6 VIS, alleging that on or about October 25, 2013, Gerawan, through its supervisors,  
7 representatives, and agents, interfered with, restrained, and coerced its employees by granting an  
8 unlawful wage increase to its packing workers prior to an election.

9 19. On November 26, 2013, the UFW properly filed and served charge 2013-CE-060-  
10 VIS, alleging that on or about October 25, 2103, Gerawan unilaterally implemented wage  
11 increases for its packing workers, without providing the UFW with notice or an opportunity to  
12 bargain over this change.

13 20. On December 11, 2013, the UFW properly filed and served charge 2013-CE-062-  
14 VIS, alleging that on or about July 2013, and continuing thereafter, Gerawan unilaterally  
15 implemented a new "Employee Discount Program" and provided new benefits and/or changed  
16 the medical provider network for its employees, thereby restraining and coercing its employees  
17 in the exercise of their rights.

18 21. On December 11, 2013, the UFW properly filed and served charge 2013-CE-063-  
19 VIS, alleging that on or about July, 2013, and continuing thereafter, Gerawan unilaterally  
20 implemented a new "Employee Discount Program" and provided new benefits and/or changed its  
21 medical provider network for its employees, without providing the UFW with notice or an  
22 opportunity to bargain over this change.

23 22. At all times material herein, the UFW was a labor organization within the meaning of  
24 Section 1140.4 (f) of the Act. At all times material herein, the UFW was the certified bargaining  
25 representative of Gerawan's agricultural employees in California.

26 23. At all times material herein, Gerawan was an agricultural employer within the  
27 meaning of Sections 1140.4 (a) and (c) of the Act. Gerawan is a corporation duly organized and  
28

1 existing under the laws of California. Gerawan's principal place of business is in Fresno,  
2 California. Gerawan is engaged in growing, packing, and shipping fresh fruit.

3 24. At all times material herein, Sunshine Agricultural Services and R&T Grafting Labor  
4 Inc. were farm labor contractors hired by Gerawan and, therefore, are agents of Gerawan.

5 25. At all times material herein, the following individuals were statutory supervisors  
6 employed by Gerawan and/or one of its farm labor contractors: José Erevia, Alfredo Zarate,  
7 Benigno Gonzalez, Mayté Serrano, Jesús Pérez, Gabriel Suarez, Ramiro Cruz, Francisco  
8 Mendoza, Jorge Rueda, Santos Rios, Juan Berdejo, Rafael Rodriguez, Silvia Arreola, Francisco  
9 Maldonado, Jesús Padilla, Sonia Martinez, Candelario Rojas, Mario Montes, Telésforo Mendoza,  
10 José Cabello, Antonio Sánchez, Emma Cortez, Israel López, Reynaldo Villavicencio, Benjamin  
11 Gallardo, Horacio Gómez, Santiago López, José Evangelista, René Palacios, Eugenio López,  
12 Ismael Portillo, Gloria Mendez, Raquel Villavicencio, Gabriel Ruiz, Leonel Nuñez, Martin  
13 Elizondo, Julio (Last Name Unknown), Rigoberto Hernandez, Emetrio Gonzalez, Dan Gerawan,  
14 and Mike Gerawan.

15 26. The California Grape and Tree Fruit League (now, California Fresh Fruit  
16 Association) is an association of agricultural employers based in Fresno, California. During the  
17 relevant period, Gerawan was a dues-paying member of the California Grape and Tree Fruit  
18 League and Gerawan's Vice-President George Nickolich served on its Board of Directors.

19 27. Anthony Raimondo ("Mr. Raimondo") is an attorney who regularly represents  
20 agricultural employers and farm labor contractors. During the relevant period, Mr. Raimondo  
21 represented two of Gerawan's farm labor contractors: Sunshine Agricultural Services and R&T  
22 Grafting Labor, Inc. Mr. Raimondo served as the attorney for these farm labor contractors during  
23 the investigation of case 2013-RD-002-VIS and insisted on being present during any interviews  
24 of these farm labor contractors' supervisors. While representing these two farm labor contractors,  
25 Mr. Raimondo also represented the Gerawan employee who filed decertification petitions 2013-  
26 RD-002-VIS and 2013-RD-003-VIS, Silvia Lopez (also referred to as "Petitioner"), and other  
27 supervisory and non-supervisory Gerawan employees involved in the effort to gather signatures  
28 in support of decertification, including Martina Barba, Rosa Madrigal, Liddeli Gonzalez, Jovita

1 Eligio, Alicia Diaz, Clara Cornejo, Berenice Chavez, Guadalupe Lopez, Lourdes Dominguez,  
2 Rene Palacios, Belen Solano, Angel Lopez, Lucrita Lopez, Maria Maurez, Erica Solano,  
3 Virginia Chairez, Marta Mendez, Felix Eligio, and Rolando Padilla.

4 **FACTS**

5 28. The Board certified the UFW as the exclusive bargaining representative of Gerawan's  
6 agricultural employees in 1992 after a Board-supervised election in 1990 during which a  
7 majority of Gerawan's agricultural employees voted in favor of representation by the UFW.

8 29. Following certification, the UFW and Gerawan engaged in limited negotiations over  
9 a collective bargaining agreement, but were unsuccessful in reaching an accord. No voluntary  
10 collective bargaining agreement has ever been reached between Gerawan and the UFW.

11 30. In October 2012, the UFW contacted Gerawan and made a request to bargain and a  
12 request for information, including employee addresses. During this same period, the UFW  
13 contacted employees and began to form an employee negotiations committee.

14 **Gerawan Unlawfully Undermined the UFW's Status as the Bargaining Agent**

15 31. The UFW's bargaining request in October 2012 sparked an intensive and ongoing  
16 campaign by Gerawan to: undermine the UFW's status as its employees' bargaining  
17 representative; to turn its employees against the union; to promote decertification of the UFW;  
18 and to prevent the UFW from ever representing its employees under a collective bargaining  
19 agreement.

20 32. On November 13, 2012, Gerawan sent its first notice to field employees about the  
21 UFW. The notice stated that the UFW demanded that Gerawan turn over its employees'  
22 "personal information" and that the UFW demanded that Gerawan start negotiating with them.  
23 Gerawan's notice says, "As your employer, we did not want this to happen but we have no  
24 control over this. The UFW says they represent you, even though you probably did not even  
25 work here 22 years ago..."

26 33. On November 22, 2012, Gerawan issued a notice to all field employees where it  
27 purports to answer questions from employees about the UFW. The questions are, "Will I have to  
28 give the UFW some of the money that I earn?"; "Don't we have a choice in whether we want the

1 UFW to represent us?"; "Do the company's owners want this to happen?"; "What happens if I  
2 refuse to let them represent me or if I refuse to give them money?"; "We already make the  
3 highest wages, so why is the UFW doing this to us?"; and, "This is unfair. I wasn't here 22 years  
4 ago and don't know anyone here that was. It makes no sense that the UFW can claim to represent  
5 me. Who can I talk to about this?" Through these questions, Gerawan told its employees that  
6 collective bargaining is unfair and futile, and directed them to contact the ALRB to express their  
7 concerns about the union or to ask questions.

8 34. On November 30, 2012, Gerawan issued a notice to all field employees, again  
9 purporting to answer questions from employees about the UFW. The first question, posed in  
10 large font is: "When do we vote?" The answer, in bold letters, is that there is no vote planned.  
11 The flyer then states "If you want to know why there is no vote planned, you can call the  
12 ALRB...and have them explain how elections are scheduled and conducted." The next questions  
13 are: "When will I have to give the UFW some of the money I earn?"; "Do Ray, Mike, and Dan  
14 want this to happen?"; "If we already make more money at Gerawan, then why is the UFW  
15 doing this?"; and, "The UFW came to my house. How did they get my address?" Through these  
16 questions, Gerawan told its employees that collective bargaining is unfair and futile. Gerawan  
17 also directed employees to the ALRB to ask why there was no vote planned and to find out "how  
18 elections are scheduled and conducted."

19 35. In early December 2012, Gerawan held captive-audience meetings with all of its  
20 agricultural employees where manager José Erevia told employees that "the UFW says they  
21 represent you, even though you probably did not even work here 22 years ago and some of you  
22 were not even born yet." During his presentation, José Erevia made the following statements:  
23 "Some of you have asked if you will have to give the UFW some of the money you earn";  
24 "Some of you have asked if you have a choice about whether you want the UFW to represent  
25 you"; "Some of you have asked if the company's owners want this to happen"; "Some of you  
26 have asked what happens if you refuse to let the UFW represent you or if you refuse to give the  
27 UFW money"; "Many of you have said that you already make the highest wages, so you asked  
28 us why the UFW is doing this to you"; "Some of you have said (1) this is unfair, (2) you weren't



1 here 22 years ago, (3) you don't know anyone here that was, and (4) you have said that it makes  
2 no sense that the UFW can claim to represent you. Because of that, you have asked who you can  
3 talk to about this"; and "Some of you have asked when you will vote." José Erevia used these  
4 purported employee questions to issue Gerawan's message that collective bargaining is unfair  
5 and futile. José Erevia also told employees to call the ALRB if they wanted to know why there  
6 was no vote planned.

7 36. Later in December 2012, Gerawan distributed another notice to all of its field  
8 employees. The first sentence of the notice states, "The UFW says they represent you even  
9 though they went away 20 years ago and have not done anything at our company since then."  
10 The flyer purports to answer the question, "Why did you bring the union in if we don't want  
11 them?" Gerawan's answer is: "**We did not bring them in.**" The workers 22 years ago voted for  
12 the union, but then the union disappeared. Now the union says they still represent you." The flyer  
13 concludes by saying that "if you have any questions about this, you can call the ALRB at 1 (800)  
14 449-3699."

15 37. In February 2013, Gerawan issued a notice to all its employees that said, "You have  
16 told us that the UFW people told you that eventually money would be taken from your paycheck  
17 and that you do not want that to happen. We understand. You can call ALRB to see if they can  
18 help you at 1 (800) 449-3699." In the same flyer, Gerawan attacked the UFW's employee  
19 negotiations committee. The flyer alleged that some members of the committee had not been  
20 confirmed as employees and understated the collective company experience and seniority of the  
21 members of the negotiations committee. Gerawan used this notice to intimidate workers from  
22 participating in contract negotiations and to undermine the union by spreading misinformation  
23 about the negotiations committee.

24 38. In the midst of negotiations with the union in March 2013, Gerawan issued a notice  
25 to its field employees announcing a \$.50 raise to \$9.50 per hour. The notice makes no mention  
26 of negotiating with the union over a new wage. Instead, the flyer states that Gerawan "informed"  
27 the UFW of its plan to give a raise, and assumes the union will not cause any unnecessary delay.  
28 The flyer reinforces the lack of a role for the union in setting wages by stating that just as it has

1 always been done in the past, the decision to give a raise was made by Ray, Mike, and Dan  
2 Gerawan. Shortly after, Gerawan announced that the \$.50 raise would go in to effect by stating  
3 that Gerawan had given the employees another raise.

4 39. Later in March 2013, Gerawan issued another notice to employees announcing  
5 another \$.50 raise to \$10.00. This notice makes no mention of the UFW or its role in the  
6 negotiation process in setting wages. Gerawan claimed that "as always, we want to make sure  
7 that you are paid more than what other employers in our industry pay." Gerawan gave official  
8 notice of the wage increase the next day and undermined the union by avoiding any mention of  
9 the UFW or any negotiation process.

10 40. In April 2013, Gerawan issued a notice to all of its field employees. The notice  
11 purports to answer two questions asked by employees: "If the union gets a contract, will  
12 employees have to give them money for dues?" The answer is: "Probably. At a recent  
13 negotiation session the union told us that they will require you to pay them 3% of your wages.  
14 (They used to charge 2%, but now they want 3%)." The next question is "What happens if an  
15 employee doesn't give the union some of his or her money?" The answer is "The union wants us  
16 to fire you if you don't give them some of your money for dues. We told the union that they  
17 should not force you to give them some of your money, but they disagreed and told us that if you  
18 refuse, they will try to make us fire you." This same flyer says, "As always, our door is open.  
19 José Erevia helps with any questions or problems..."

20 41. During approximately April 2013, Gerawan issued a notice to its field employees  
21 stating at the top of the page "Our Door is Always Open". The flyer also says in bold capital  
22 letters: "What the Union Wants: 'every employee must give money to the union whether they  
23 want to or not. If an employee refuses to give money to the union, the union wants that employee  
24 to be fired.'" Then it states, also in bold, capital letters: "What Gerawan 'La Prima' Wants:  
25 'every employee has the freedom to choose whether to give money to the union or not. If the  
26 employee does not want to give money to the union, he or she does not have to.'"

27 42. On approximately July 15, 2013, Gerawan issued a notice to its employees where it  
28

1 informed them that if they have a problem, suggestions, or wish to file a complaint of an unfair  
2 or unsafe labor practice, or wish to appeal an adverse employment action, that they should talk to  
3 Gerawan management directly. The flier states that if any worker believes that his or her rights  
4 have been violated that he or she should call José Erevia. During the same time, Gerawan began  
5 circulating a business card for manager José Erevia that stated that employees should call him  
6 with questions about union issues. In approximately September 2013 Gerawan issued a notice to  
7 its employees as part of their pay stub. This notice includes a headline saying that thanks to  
8 Gerawan's open door policy, there is no need for an intermediary. Under this headline is a notice  
9 that Gerawan's management will listen, investigate and expeditiously resolve any issue that  
10 employees may bring to them. By inviting direct complaints to management about unfair labor  
11 practices and adverse employment actions, Gerawan deviated from its past practice of handling  
12 employee complaints and concerns.

### 13 **Gerawan Unilaterally Changed the Terms and Conditions of Employment**

14 43. In approximately June 2013, Gerawan gave a \$1.00 per hour wage increase to its  
15 agricultural employees hired through farm labor contractors. Gerawan did not negotiate with the  
16 UFW over the wage increase, nor did it inform the UFW of its intention of increasing the wages  
17 for employees hired through farm labor contractors until after the increase was put in to effect.  
18 The unilateral wage increase undermined the UFW's status as the bargaining agent by  
19 communicating to employees that collective bargaining was futile and that the employer was  
20 solely responsible for setting the terms and conditions of employment.

21 44. In approximately July 2013, Gerawan unilaterally implemented a new employee  
22 discount program. Gerawan did not negotiate with the UFW over the new employee benefit, nor  
23 did it inform the UFW of its intention to implement the new benefit program. The unilateral  
24 implementation of a new employee benefit undermined the UFW's status as the bargaining agent  
25 by communicating to employees that collective bargaining was futile and that the employer was  
26 solely responsible for setting the terms and conditions of employment.

27 45. On October 25, 2013, Gerawan unilaterally issued an increase to the piece-rate pay  
28

1 for grape packers from \$1.25 to \$1.50 per box. Gerawan provided no notice to the UFW of the  
2 pay increase, nor did it provide the union with an opportunity to bargain over the increase. The  
3 unilateral wage increase undermined the UFW's status as the bargaining agent by  
4 communicating to employees that collective bargaining was futile and that the employer was  
5 solely responsible for setting the terms and conditions of employment.

6 **Gerawan Refused to Provide Relevant Information to the UFW**

7 46. Since the UFW has renewed its effort to bargain, Gerawan has refused to provide the  
8 union with accurate employee contact information. Gerawan's refusal to provide correct  
9 addresses for employees has interfered with the UFW's ability to represent and communicate  
10 with employees and has prevented employees from communicating with their bargaining  
11 representative.

12 47. During the period from November 2012 to January 2013, the UFW documented over  
13 2,000 employee addresses provided by Gerawan that were either non-existent, non-residential or  
14 where the employee did not live. On January 25, 2013 the UFW informed Gerawan that the  
15 employee list contained over 2,000 incorrect addresses and identified the specific addresses that  
16 were not correct. The UFW asked that Gerawan provide it with correct addresses. Gerawan  
17 failed to provide correct employees addresses to the UFW.

18 48. The UFW repeated its request for a corrected address list in March, April, and May,  
19 2013. Despite its multiple requests, Gerawan failed to provide the UFW with corrected addresses  
20 for its employees.

21 49. On July 11, 2013, Gerawan provided the UFW with a new list of direct hire  
22 employee addresses. A large percentage of these addresses were incorrect. On September 18,  
23 2013, the UFW notified Gerawan that the most recent employee list contained 2,994 incorrect  
24 addresses and asked that the addresses be corrected. Gerawan failed to provide correct addresses  
25 to the UFW.

26 50. On September 5, 2013, the UFW requested that Gerawan provide it with various  
27 forms of relevant financial information that would permit the union to respond to statements by  
28 the company that it may go out of business if a collective bargaining agreement were to go into

1 effect. The UFW requested, *inter alia*, accounting reports, copies of filings with the Securities  
2 Exchange Commission, documents regarding possible downsizing, and documents about  
3 expected changes in operation as a result of the implementation of a collective bargaining  
4 agreement. Gerawan refused to provide any of the financial information that the UFW requested.

#### 5 **Gerawan Supported the Decertification Effort**

6 51. In June 2013, Gerawan hired Petitioner Silvia Lopez. Before returning to Gerawan,  
7 Silvia Lopez had not worked for the company since approximately 2010. At the time that she  
8 returned to work for Gerawan, Silvia Lopez lived with her boyfriend, Mario Montes, a Gerawan  
9 Supervisor, with her daughter, Gerawan employee Lucerita Lopez, and with her son-in-law,  
10 Angel Lopez, also employed by Gerawan.

11 52. Silvia Lopez began her involvement in anti-union activities at Gerawan before she  
12 started working for the company in late June 2013. On June 11, 2013, Silvia Lopez travelled to  
13 Modesto, California with several Gerawan employees and attorney Paul Bauer, an employer  
14 defense attorney who at the time represented Gerawan employee Lupe Garcia in a case against  
15 the UFW. While in Modesto, Silvia Lopez and a group of Gerawan employees unsuccessfully  
16 sought to participate in the Mandatory Mediation and Conciliation (“MMC”) process between  
17 Gerawan and the UFW.

18 53. Shortly after travelling to Modesto with Silvia Lopez and the Gerawan employees, in  
19 approximately late June, 2013, Paul Bauer began representing and advising Silvia Lopez as to  
20 how to decertify the UFW as the collective bargaining representative at Gerawan.

21 54. By late June 2013, Silvia Lopez began to work sporadically for Gerawan in Crew  
22 Boss Reynaldo Villavicencio’s crew. By mid-July 2013, Silvia Lopez, her daughter, Belen  
23 Solano, her son-in-law, Angel Lopez, and other employees were actively engaged in a campaign  
24 of gathering signatures to support the decertification of the UFW at Gerawan. Silvia Lopez and  
25 other employees, including supervisory personnel, began to approach employees in Gerawan’s  
26 crews in Kerman and Reedley on a regular basis, during work hours, after work hours, and  
27 during breaks, to gather signatures to decertify the UFW. During this period, Silvia Lopez rarely  
28

1 worked a full day in her crew. Several other employees also took significant amounts of time off  
2 to engage in decertification signature gathering activities during work hours.

3 55. In August 2013, owner Dan Gerawan called Silvia Lopez, Rolando Padilla and other  
4 Gerawan employees engaged in the decertification signature gathering effort and invited them to  
5 join him on a trip to Sacramento to lobby State Legislators over SB 25 – a bill that would have  
6 amended the Act and, in Dan Gerawan’s view, made it more difficult for agricultural employees  
7 to decertify their union. On approximately August 14, 2013, Silvia Lopez, Rolando Padilla and  
8 other employees accompanied Dan Gerawan and the president of the California Grape and Tree  
9 Fruit League, Barry Bedwell, on a trip to Sacramento where they met with legislators to urge  
10 them to vote against SB 25.

11 56. On September 18, 2013, Silvia Lopez, with assistance from attorney Anthony  
12 Raimondo and his associate Joanna McMillan, filed a decertification petition (2013-RD-002-  
13 VIS) in the Visalia Regional Office of the ALRB. On September 22, 2013, the Visalia Regional  
14 Director informed Mr. Raimondo that insufficient signatures had been submitted and that  
15 petitioner could have an additional 24 hours to gather valid signatures for the petition. Silvia  
16 Lopez and attorney Joanna McMillan submitted additional signatures on September 23, 2013.

17 57. On September 25, 2013, the Visalia Regional Director dismissed the decertification  
18 petition. After investigation, the regional staff found that Silvia Lopez, through her attorney,  
19 submitted at least 100 forged signatures in support of the petition. In accordance with the law,  
20 the Regional Director invalidated these forged signatures and the remaining signatures were  
21 insufficient to meet the Act’s showing of interest requirement. In addition, the decertification  
22 petition was dismissed based on evidence of employer assistance in filing the decertification  
23 petition.

24 58. The signature gathering effort for a new decertification petition resumed  
25 after petition 2013-RD-002-VIS was dismissed. For the second decertification effort, instead of  
26 relying primarily on signature gathering in the crews to obtain most of the signatures, Gerawan’s  
27 pro-decertification employees and supervisors used mass work stoppages and protests. During  
28 the supervisor-supported protests and work stoppages, the Petitioner and those working with her

1 gathered approximately half of the signatures submitted in support of the next decertification  
2 petition, 2013-RD-003-VIS.

3 59. On multiple days, including, but not limited to, September 27, 2013, September 30,  
4 2013, October 2, 2013, October 25, 2013, and November 1, 2013, Gerawan employees with  
5 direction and support from Gerawan and its supervisors, stopped work and engaged in anti-UFW  
6 and anti-ALRB protests for the purpose of gathering signatures on the decertification petition  
7 and gaining support among employees, the public, and state government officials for  
8 decertification.

9 60. On October 25, 2013, Silvia Lopez, through her attorneys, Anthony Raimondo and  
10 Joanna MacMillan, filed decertification petition 2013-RD-003-VIS. The Visalia Regional  
11 Director issued a decision to block the election on October 31, 2013, based on the existence of  
12 outstanding and unremedied unfair labor practice complaints against Gerawan. Notwithstanding  
13 the extensive evidence presented to the Board, the decision to block was overruled by the Board  
14 on November 1, 2013. The ALRB held an election on November 5, 2013 and impounded the  
15 ballots subject to the resolution of multiple unfair labor practice charges.

#### 16 **Gerawan Expressed Its Support for the Decertification Effort**

17 61. During the course of the decertification signature gathering effort from  
18 approximately July 10, 2013 through November 1, 2013, Gerawan, through its owners,  
19 supervisors, and crew bosses, regularly made statements that encouraged and assisted in the  
20 effort to decertify the union and coerced employees in their ability to choose whether to support  
21 decertification.

22 62. During the time of the signature gathering effort in September and October, 2013,  
23 Gerawan set up a website ([helpfarmworkers.com](http://helpfarmworkers.com)) to promote the decertification effort. Gerawan  
24 described the website as Gerawan's employees' "effort to insure that their voices are heard in  
25 Sacramento, and they get to make their own decision." The website featured pro-decertification  
26 messages and regularly updated links to pro-decertification news articles. Visitors to the website  
27 could click on a button and automatically send an electronic mail message to the Visalia  
28

1 Regional Director of the ALRB and to the Members of the Board, urging that employees be  
2 allowed to vote to decertify the UFW.

3 63. Gerawan offered its company website ([www.prima.com](http://www.prima.com)) as a means to provide vocal  
4 support to employees engaged in the decertification effort and to the early effort for employees  
5 to intervene in the ALRB's MMC process. Gerawan's website offered links to pro-  
6 decertification news articles and to pro-decertification statements by the company's owners. One  
7 such statement, released the day the decision to hold an election was issued (November 1, 2013),  
8 called the decision to hold an election a "victory" and said that Gerawan's owners are "humbled  
9 by the perseverance of so many workers who refused to give up in their quest to hold a secret  
10 ballot election."

11 64. During the time of the signature gathering effort, Gerawan's representatives and crew  
12 bosses regularly made statements to encourage decertification and communicate that Gerawan's  
13 employees' jobs would be at risk if the union were successful in obtaining a collective  
14 bargaining agreement.

15 65. In September 2013, owner Dan Gerawan, his wife, Norma Gerawan, and manager  
16 José Erevia held captive-audience meetings in most of the Gerawan crews to promote the  
17 company and purportedly congratulate employees for successfully petitioning for a  
18 decertification election. Also in September 2013, Dan Gerawan was quoted in a Wall Street  
19 Journal article as saying that if a law passed allowing the union to obtain successor contracts  
20 through the MMC process, he did not think the company would survive.

21 66. In July, August, and September 2013 Gerawan's crew bosses, including  
22 Leonel Nuñez, Benigno Gonzalez, Alfredo Zarate, Emma Cortez and others, made statements to  
23 discourage workers from supporting the union and told employees that Gerawan might go out of  
24 business if the union were successful in being able to represent Gerawan's employees.

25 **Gerawan's Supervisors Were Directly Involved in the Decertification Signature Gathering**

26 67. On or about July 28, 2013, Gerawan Crew Boss Leonel Nuñez gathered  
27 approximately 20 members of his crew for a meeting before the start of the work day. During the  
28 meeting, Leonel Nuñez held out a petition to decertify the UFW. Leonel Nuñez told the workers



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

3 68. After telling the members of his crew that they should get rid of the union, Leonel  
4 Nuñez approached one worker who refused to sign the petition after the meeting. Leonel Nuñez  
5 told this worker that he knew that there were two union supporters in his crew and seven in  
6 Francisco Maldonado's crew.

7 69. On approximately July 29, 2013, Leonel Nuñez approached two employees of his  
8 crew and told them that if someone from the Agricultural Labor Relations Board or from  
9 Gerawan management were to come and ask questions that they should say that Leonel Nuñez  
10 was not present during any meeting where the petition was discussed.

11 70. On or about July 29, 2013, Gerawan Crew Boss Sonia Martinez showed a de-  
12 certification petition to employees while giving instructions to her crew for the day. Martinez  
13 told the workers in her crew that they could sign the petition to get rid of the union.

14 71. After explaining the petition and sending the employees to work, Sonia Martinez  
15 went row by row and provided the employees in her crew with the signature sheet for them to  
16 sign in support of the decertification petition.

17 72. On or about July 19, 2013, Gerawan Crew Boss Cirilo Gomez was leaving a field in  
18 Kerman, California at the end of the shift while several women were gathering signatures in  
19 support of decertification. Cirilo Gomez took several signature sheets of the decertification  
20 petition from the women and told employees in his crew that they should sign the petition.

21 73. That same day, after telling workers in his crew to sign the decertification petition,  
22 Cirilo Gomez put several sheets of the petition in his van so that the employees that he drove to  
23 and from work could sign the decertification petition.

24 74. Between approximately July 19, 2013 and September 10, 2013, on multiple  
25 occasions, Gerawan Crew Boss Emma Cortez went to Gerawan crews, other than her own, and  
26 directly asked workers for signatures on the decertification petition.

1           75. In approximately mid-August 2013, Gerawan Crew Boss Jesus Padilla, in the  
2 presence of other employees, provided signature pages in support of decertification to an  
3 employee in his crew during work hours.

4           76. In approximately July 2013, Gerawan Crew Boss Jose Carrillo provided the  
5 signature pages of the decertification petition to employee members of his crew and instructed  
6 them to gather signature from employees.

7           77. In approximately September 2013, Gerawan Crew Boss Santos Rios provided sheets  
8 from the decertification petition to a member of his crew and, in the presence of at least one  
9 other worker, instructed a crew member to gather signatures from members of the crew.

10           78. In approximately August 2013, Gerawan Assistant Crew Boss Rene Palacios assisted  
11 in the decertification effort by signing the petition and asking members of his crew to sign the  
12 petition in support of decertification.

13           79. In approximately August 2013, Gerawan Assistant Crew Boss Benjamin Gallardo  
14 assisted in the decertification effort by signing the petition and making his support visible to  
15 other members of his crew.

16           80. On approximately September 21, 2013, Supervisor Horacio Gomez of Gerawan's  
17 farm labor contractor, R&T Grafting Labor, Inc., provided copies of the petition in support of  
18 decertification to members of Crew Boss Israel Lopez's crew. Horacio Gomez told the workers  
19 who were gathered together to receive their paychecks that Gerawan had given him the sheets for  
20 the workers to sign because Gerawan wanted to get rid of the union.

21           81. On approximately September 21, 2013, Crew Boss Ismael Portillo of Gerawan's farm  
22 labor contractor R&T Grafting Labor, Inc., supported the decertification effort by signing the  
23 petition.

24           82. On approximately September 21, 2013, Gerawan's farm labor contractor, Sunshine  
25 Agricultural Services, unlawfully assisted the decertification effort by providing names of  
26 employees to signature gatherers for the purpose of having employees sign the petition or for  
27 having their signatures forged on the decertification petition.

1 83. In approximately August 2013, Gerawan began a program of free fruit giveaways on  
2 Fridays. During the fruit giveaways, Gerawan owner Dan Gerawan and other top management  
3 would frequently be present to greet employees as they helped themselves to fruit and a variety  
4 of aguas frescas (fresh fruit drinks). Gerawan had provided free fruit to employees during  
5 previous seasons, but the offerings improved significantly during the 2013 season in the midst of  
6 the decertification campaign. On approximately August 30, 2013 and September 6, 2013,  
7 Gerawan supported the decertification effort by allowing signature gathering in the area of the  
8 fruit giveaways and within close distance of the owner. By allowing the signature gathering to  
9 occur during the fruit giveaways, Gerawan communicated to its employees that it sponsored and  
10 supported the effort to decertify the UFW.

11 84. During the period of approximately July 12, 2013, through approximately October 25,  
12 2013, Gerawan, through its owners, managers, supervisors and crew bosses regularly assisted the  
13 decertification effort by discriminatorily allowing decertification signature gathering during  
14 work hours while denying similar access to employees engaged in pro-union activities.

15 85. At various times during the period of approximately July 2013 through October  
16 2013, the following crew bosses and assistant crew bosses knowingly permitted signature  
17 gathering in support of the decertification petition during work hours: Martin Elizondo, Leonel  
18 Nuñez, Raquel Villavicencio, José Cabello, Gloria Mendez, Eugenio Lopez, José Evangelista,  
19 Santiago Lopez, Antonio Sanchez, Telesforo Mendoza, José Carrillo, Sonia Martinez, Jesus  
20 Padilla, Francisco Maldonado, Gabriel Ruiz, Rafael Rodriguez, Juan Berdejo, Jorge Rueda,  
21 Francisco Mendoza, Ramiro Cruz, Jesus Perez, Maité Serrano, and Alfredo Zarate.

22 86. On or about August 27, 2014, several Gerawan crew bosses, including, but not  
23 limited to, Antonio Sanchez, Cirilo Gomez, Martin Elizondo, Rafael Rodriguez, Alfredo Zarate,  
24 and Francisco Maldonado, refused to allow employees to gather signatures for a pro-union  
25 petition during work hours. At no time during the relevant period has Gerawan allowed pro-  
26 union signature gathering during work hours.

27 **Gerawan Discriminatorily Used Attendance Policies to Support Decertification**

28 87. During the period of approximately July 1, 2013 through October 25, 2013,

1 Gerawan, through its owners, supervisors, crew bosses, assistant crew bosses, and other  
2 supervisory staff, applied preferential attendance policies for the benefit of employees engaged  
3 in signature gathering for the decertification petition. During this period, Gerawan, through its  
4 owners, managers, supervisors, and crew bosses, regularly allowed employees supporting the  
5 decertification effort to arrive late to work, leave early, access Gerawan's fields on days the  
6 employee did not work, take extended breaks during the work day, and to avoid work altogether  
7 to engage in signature gathering, protests and other activities in furtherance of the decertification  
8 effort.

9 88. During the period of Gerawan's negotiations with the UFW in 2013 and during the  
10 period of July 2013 through October 25, 2013, Gerawan applied strict attendance policies for  
11 union supporters and for employees whose absences were unrelated to decertification activities.

12 89. Gerawan Crew Boss Reynaldo Villavicencio allowed employees Silvia Lopez and  
13 Belen Solano to miss work approximately 75% of the time during the period of approximately  
14 July 1, 2013 through October 25, 2013, without requiring justification and without employee  
15 discipline. Crew boss Reynaldo Villavicencio applied stricter attendance policies toward  
16 employees not involved in the decertification effort, including, but not limited to, informing  
17 employees that they could be disciplined for excessive absences from work.

18 90. During the period of August 2013 through October 2013, Gerawan Crew Boss Jesus  
19 Padilla regularly allowed his brother and crew member, Rolando Padilla, to leave his crew to  
20 gather signatures for the decertification petition and to participate in protests in support of the  
21 decertification effort. During this period, including, but not limited to October 25, 2013, Crew  
22 Boss Jesus Padilla paid Rolando Padilla for time that he spent on decertification activities.

### 23 Gerawan Supported Protest Activities to Decertify the UFW

24 91. In September 2013 and October 2013, Gerawan, through its crew bosses, assistant  
25 crew bosses and other supervisory personnel, actively recruited and encouraged employees to  
26 join in protests against the ALRB and the UFW. During this period, Gerawan's supervisory  
27 employees cancelled work and directed workers to protests in Kerman, Visalia, and Fresno in  
28 support of the decertification effort. Approximately one-half of the signatures submitted in

1 support of decertification petition 2013-RD-003-VIS were obtained during protest activities  
2 sponsored by Gerawan against the ALRB and the UFW.

3 92. On Friday, September 27, 2013, with support from Gerawan, hundreds of farm  
4 workers left their crews and travelled to Visalia to protest the ALRB Regional Director's  
5 dismissal of decertification petition 2013-RD-002-VIS. During the course of the protest,  
6 hundreds of signatures were gathered in support of a second decertification petition.

7 93. On Monday, September 30, 2013, Gerawan, through its supervisors, supported the  
8 decertification effort by shutting down Gerawan's operation in Kerman, California for one day.  
9 As workers arrived to work, Gerawan allowed employees to block all access to the fields and  
10 packing areas. Instead of being allowed to enter the fields and work, Gerawan's employees were  
11 presented with the decertification petition and asked to sign. Gerawan's crew bosses then  
12 directed employees to a protest against the ALRB and the UFW instead of allowing employees  
13 to work.

14 94. At approximately 3:00 a.m. that same day, Gerawan supervisory employee Julio,  
15 Last Name Unknown used a trailer to block access to Yard 42 in Kerman where grape packing  
16 activities were occurring, and used one of Gerawan's forklifts to block access to the fields with  
17 crates and other Gerawan equipment. Gerawan's supervisors provided assistance to the protest  
18 effort by refusing to take necessary equipment to the fields, including tools, water, and  
19 restrooms. Gerawan further allowed non-supervisory employees to freely block access to fields  
20 with Gerawan's ladders, tractors and other equipment to coerce employees into stopping work  
21 and signing the decertification petition. Through its actions, Gerawan made sure that employees  
22 would not be able to access fields and work on September 30, 2013, thus coercing them into  
23 participating in protests in support of decertification.

24 95. Gerawan Crew Bosses Emma Cortez, Gloria Mendez, and others, as well as several  
25 of Gerawan's assistant crew bosses, including, but not limited to Gabriel Suarez, assisted in the  
26 effort to gather signatures for decertification by participating with workers in the protest on  
27 September 30, 2013. During this protest, pro-decertification activists gathered over 1,000  
28 signatures for the decertification petition.

1           96. On October 2, 2013, the California Grape and Tree Fruit League provided buses and  
2 food to Gerawan employees to travel to Sacramento and engage in protests and lobbying in  
3 support of the decertification effort. Gerawan allowed the buses to arrive early in the morning at  
4 its packing house to pick up supervisory and non-supervisory employees to travel to Sacramento  
5 for the protest. The League also paid for anti-union T-shirts to be printed and distributed to  
6 Gerawan employees in support of the decertification effort. Various Gerawan supervisory  
7 personnel, including, but not limited to Gerawan Crew Boss Gloria Mendez and Assistant Crew  
8 Boss Gabriel Suarez recruited employees to skip work and travel on the buses to Sacramento to  
9 support the decertification effort.

10           97. During September and October 2013, Gerawan's crew bosses regularly encouraged  
11 employees to participate in protests for the purpose of gaining support for the decertification  
12 petition. The crew bosses who encouraged the decertification protest activities included, but were  
13 not limited to, Crew Boss Gloria Mendez, Assistant Crew Boss Gabriel Ruiz, Crew Boss  
14 Emetrio Gonzalez, Assistant Crew Boss Rafael Rodriguez, Crew Boss Benigno Gonzalez, Crew  
15 Boss Francisco Ginez, Crew Boss José Carrillo, Crew Boss Rigoberto Hernandez, and Crew  
16 Boss Jesus Perez.

17           98. On October 25, 2013, Gerawan provided support to a media event in support of the  
18 decertification petition that was filed that day by Petitioner Silvia Lopez in Visalia. Gerawan,  
19 through its Crew Boss Gloria Mendez and others, encouraged several hundred workers to leave  
20 work in the middle of the day to attend a protest in Fresno. Upon their return to work, Gerawan  
21 paid for the workers who participated in the protest to receive free pizza and tacos.

22                           **Gerawan Provided Legal Support to the Decertification Effort**

23           99. In approximately August 2013, employer defense attorney Anthony Raimondo  
24 began to represent Silvia Lopez in furtherance of her efforts to decertify the UFW at Gerawan.  
25 At the time that Mr. Raimondo began to represent Silvia Lopez, Mr. Raimondo represented  
26 Sunshine Agricultural Services, a farm labor contractor, supplying labor to Gerawan. Mr.  
27 Raimondo had represented Sunshine Agricultural Services and its owner for several years. Mr.

1 Raimondo charged Sunshine Agricultural Services for his services and provided free services to  
2 Silvia Lopez.

3 100. On approximately September 20, 2013, Mr. Raimondo informed the ALRB that, in  
4 addition to Silvia Lopez, he was representing Gerawan Assistant Crew Boss Rene Palacios and  
5 non-supervisory workers Rolando Padilla, Guadalupe Lopez, Jovita Eligio, Rosa Madrigal,  
6 Martina Barba, Clara Cornejo, Liddeli Gonzalez, Angel Lopez, and Lourdes Dominguez in the  
7 matter of the decertification of the UFW.

8 101. During the same time that Mr. Raimondo represented Gerawan employees in the  
9 decertification process, Mr. Raimondo represented Gerawan farm labor contractors Sunshine  
10 Agricultural Services and R&T Grafting Labor, Inc., in the same matter and insisted on being  
11 present for the investigative interviews of any Gerawan supervisors employed by R&T Grafting  
12 Labor Services, Inc., or Sunshine Agricultural Services.

13 102. As an attorney for Gerawan's farm labor contractors, Mr. Raimondo provided free  
14 legal services to Silvia Lopez and other employees in support of their effort to decertify the  
15 UFW.

16 103. Through his representation of Ms. Lopez and other Gerawan employees, Mr.  
17 Raimondo, on behalf of Gerawan's agents, Sunshine Agricultural Services and R&T Grafting  
18 Labor, Inc., committed unlawful surveillance of employee union activity by gained access to all  
19 the signatures sheets of the decertification petition and to information about who signed the  
20 decertification petition and who did not sign the decertification petition.

21  
22 **FIRST CAUSE OF ACTION**  
**California Labor Code § 1153 (a)**

23 *(Instigation and Unlawful Assistance in the Decertification Effort)*

24 104. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
25 practices under Section 1153(a) of the Act by coercing, restraining, and interfering with its  
26 employees in the exercise of their rights under Section 1152 of the Act to freely choose whether  
27 to support the UFW or support a decertification petition.

1 105. By instigating and providing material assistance to the decertification effort,  
2 including assisting in signature gathering, providing legal support, engaging in a pro-  
3 decertification messaging campaign, supporting pro-decertification protest efforts, and  
4 discriminating in favor of pro-decertification activities in the application of workplace policies,  
5 as alleged in paragraphs 51 through 103 above, Gerawan unlawfully coerced, restrained, and  
6 interfered with its employees in the exercise of their rights in violation of the Act.

7 106. By unlawfully undermining the UFW's status as the bargaining representative for  
8 Gerawan's employees and causing disaffection with the UFW, as alleged in paragraphs 28  
9 through 50 above, Gerawan unlawfully coerced, restrained, and interfered with its employees in  
10 the exercise of their rights in violation of the Act.

11  
12 **SECOND CAUSE OF ACTION**  
**California Labor Code §1153 (e)**

13 *(Instigation and Unlawful Assistance in the Decertification Effort)*

14 107. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair  
15 labor practices under Section 1153(e) of the Act by instigating and providing material assistance  
16 to the decertification effort.

17 108. By instigating and providing material assistance to the decertification effort, as  
18 alleged in paragraphs 51 through 103 above, Gerawan failed to bargain in good faith with the  
19 union and unlawfully undermined the UFW's status as Gerawan's employees' bargaining  
20 representative in violation of the Act.

21 **THIRD CAUSE OF ACTION**  
22 **California Labor Code §1153 (e)**  
23 *(Unilateral Changes)*

24 109. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor  
25 practices under Section 1153(e) of the Act by making unilateral changes to its employees' terms  
26 and conditions of employment and thereby unlawfully undermining the UFW's status as  
27 Gerawan's employees' bargaining representative through its anti-union campaign.



1 110. By making unilateral changes to the terms and conditions of employment without  
2 bargaining with the UFW, as alleged in paragraphs 43 through 45 above, Gerawan violated its  
3 duty to bargain in good faith with the union in violation of the Act.

4 111. By unlawfully undermining the UFW's status as the bargaining representative  
5 through its anti-union campaign and through its bad faith bargaining practices, as alleged in  
6 paragraphs 28 through 50 above, Gerawan violated its duty to bargain in good faith with the  
7 union in violation of the Act.

8  
9 **FOURTH CAUSE OF ACTION**  
10 **California Labor Code §1153 (e)**  
11 ***(Refusal to Provide Information)***

12 112. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair  
13 labor practices under Section 1153(e) of the Act by refusing to provide relevant information to  
14 the UFW and thereby unlawfully undermining the UFW's status as Gerawan's employees'  
15 bargaining representative.

16 113. By refusing to provide the UFW with relevant and accurate information, including,  
17 but not limited to, employee contact information and Gerawan's financial information, as alleged  
18 in paragraphs 46 through 50 above, Gerawan interfered with and limited the UFW's ability to  
19 communicate with Gerawan's employees and effectively bargain with the company on their  
20 behalf in violation of the Act.

21 114. By refusing to provide the UFW with relevant and accurate information, including,  
22 but not limited to, employee contact information and Gerawan's financial information, as alleged  
23 in paragraphs 46 through 50 above, Gerawan unlawfully undermined the UFW's status as  
24 Gerawan's employees' bargaining representative and caused disaffection with the UFW in  
25 violation of the Act.

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**FIFTH CAUSE OF ACTION**  
**California Labor Code §1153 (e)**  
*(Solicitation of Grievances)*

115. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor practices under Section 1153(e) of the Act by soliciting grievances by employees and thereby unlawfully undermining the UFW's status as Gerawan's employees' bargaining representative.

116. By soliciting grievances and asking employees to directly contact management to discuss unfair labor practices and other workplace grievances, as alleged in paragraphs 40 through 42 above, Gerawan has violated its duty to bargain in good faith with the union in violation of the Act.

117. By soliciting grievances, as alleged in paragraphs 40 through 42 above, Gerawan unlawfully undermined the UFW's status as Gerawan's employees' bargaining representative and caused disaffection with the UFW in violation of the Act.

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**SIXTH CAUSE OF ACTION**  
**California Labor Code §1153(a)**  
*(Coercion and Restraint through Bad Faith Bargaining)*

118. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor practices under Section 1153(a) of the Act by engaging in bad faith bargaining with the UFW.

119. By unlawfully undermining the UFW's status as Gerawan's employees' bargaining representative through Gerawan's bad faith bargaining practices and anti-union campaign, as alleged in paragraphs 28 through 50 above, Gerawan unlawfully coerced and restrained its employees in the exercise of their collective bargaining rights in violation of the Act.

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**SEVENTH CAUSE OF ACTION**  
**California Labor Code § 1153 (a)**  
*(Threats, Interrogation, Interference and Surveillance)*

120. As set forth in paragraphs 28 through 103 above, Gerawan committed unfair labor practices under Section 1153(a) of the Act by coercing, restraining, and interfering with its employees in the exercise of their rights under Section 1152 of the Act to freely choose whether to support the UFW or to support a decertification petition.

1 121. By issuing pro-decertification communications and threatening employees with,  
2 among other things, the company going out of business if the UFW were to obtain a collective  
3 bargaining agreement, as alleged in paragraphs 61 through 66 above, Gerawan unlawfully  
4 threatened and coerced its employees in violation of the Act.

5 123. By engaging in unlawful surveillance and interrogation of Gerawan's employees'  
6 union and decertification activities, including allowing supervisors to gather signatures on  
7 decertification petitions, as alleged in paragraphs 67 through 86 and 91 through 103 above,  
8 Gerawan unlawfully coerced and restrained its employees in the exercise of their rights in  
9 violation of the Act.

10 124. By threatening employees and instructing them to falsify information to the ALRB,  
11 as alleged in paragraph 69 above, Gerawan unlawfully interfered with its employees' rights to  
12 participate in the ALRB's investigation of Gerawan's unfair labor practices and their right to  
13 engage in union and protected concerted activities in violation of the Act.

14 **REQUEST FOR RELIEF**

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

- 17 A. Cease and desist from initiating, sponsoring, supporting, approving,  
18 encouraging, and circulating a decertification petition among employees;
- 19 B. Cease and desist from interrogating and surveilling its agricultural  
20 employees with respect to their support or opposition to the UFW;
- 21 C. Cease and desist from, in any like or related manner, interfering with,  
22 restraining, or coercing agricultural employees in the exercise of their  
23 rights guaranteed by Labor Code section 1152;
- 24 D. Cease and desist from taking actions to undermine the UFW's status as  
25 the collective bargaining representative of Gerawan's employees;
- 26 E. Cease and desist from refusing to bargain in good faith with the UFW by  
27 denying its requests for information;
- 28

- 1 F. Cease and desist from implementing unilateral changes to the terms and  
2 conditions of employment;
- 3 G. Cease and desist from soliciting grievances from employees;
- 4 H. Cease and desist from intimidating members of the UFW's negotiations  
5 committee;
- 6 I. Provide the UFW with a complete and accurate employee address list for its  
7 2012, 2013, and current employees;
- 8 J. Provide the UFW with relevant financial information in accordance with its  
9 September 5, 2013 request for information directed to Gerawan.
- 10 K. Issue a mailing of a Notice of Agricultural Workers' Rights Under the  
11 Act ("Notice") to all of Gerawan's agricultural employees employed  
12 during the 2013 season;
- 13 L. Grant ALRB agents access to worksites where Gerawan's agricultural  
14 employees are employed to provide a reading of the Notice outside the  
15 presence of supervisory personnel, and to post the Notice at Gerawan's  
16 work sites for a period of 60 days during the period of peak employment.  
17 Following the reading, Gerawan's agricultural employees will have a  
18 reasonable period of time in which to ask questions to the ALRB agents  
19 about the Notice or about their rights under the Act. The time spent  
20 during the reading and question and answer period shall be compensated  
21 by Gerawan at the employees' regular hourly rates, or each employee's  
22 average hourly rate based on their piece-rate production during the prior  
23 pay period;
- 24 M. Provide a copy of the signed Notice to each agricultural employee hired  
25 to work for Gerawan as an agricultural employee during the twelve-  
26 month period following the issuance of a final Board order in this matter;
- 27 N. Grant ALRB agents access to Gerawan worksites to inspect the posting  
28 and ensure compliance for a period of 60 days following the first day of

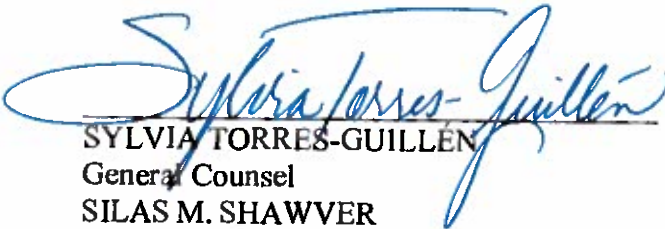
1 posting;

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

7 FURTHER, the General Counsel seeks any other relief that is just and proper to remedy  
8 the unfair labor practices alleged herein, including, but not limited to, the destruction of the  
9 ballots and the dismissal of the Petition for Decertification in Gerawan Farming, Inc., Case No.  
10 2013-RD-003-VIS.

11 Dated this 9th day of September, 2014.

12  
13 AGRICULTURAL LABOR RELATIONS BOARD

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16 SYLVIA TORRES-GUILLEN

17 General Counsel  
18 SILAS M. SHAWVER  
19 Regional Director

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11 Attorneys for the General Counsel

12  
13 STATE OF CALIFORNIA  
14 AGRICULTURAL LABOR RELATIONS BOARD

16 In the Matter of:	)	Case Nos.:	
17 GERAWAN FARMING, INC.	)	2012-CE-041-VIS	2013-CE-042-VIS
	)	2012-CE-042-VIS	2013-CE-043-VIS
18 Respondent,	)	2012-CE-046-VIS	2013-CE-044-VIS
	)	2012-CE-047-VIS	2013-CE-045-VIS
19 and	)	2013-CE-007-VIS	2013-CE-055-VIS
	)	2013-CE-009-VIS	2013-CE-058-VIS
20 UNITED FARM WORKERS OF AMERICA,	)	2013-CE-025-VIS	2013-CE-060-VIS
	)	2013-CE-027-VIS	2013-CE-062-VIS
21 Charging Party.	)	2013-CE-030-VIS	2013-CE-063-VIS
	)	2013-CE-038-VIS	
	)	2013-CE-039-VIS	
	)	2013-CE-041-VIS	

22  
23  
24  
25 ORDER TO CONSOLIDATE CASES  
26  
27  
28

1 Charges were duly filed in the above-captioned cases, pursuant to Labor Code section  
2 1160.2 and California Code of Regulations, title 8, section 20220, *et seq.* As explained below,  
3 the General Counsel has considered the matter and deems it appropriate to consolidate these  
4 charges for hearing to effectuate the purposes of the Act and to avoid unnecessary costs or delay.

5 **A. The General Counsel's Duty to Consolidate Related Cases to Avoid Piecemeal**  
6 **Litigation and Promote Efficiency**

7 Section 20244(a) of the ALRB's Regulations authorizes the General Counsel to  
8 consolidate charges into one complaint for hearing up to 10 days prior to hearing. This authority  
9 is consistent with Section 1149 of the Act, which provides that the General Counsel has final  
10 authority with respect to the issuance of complaints and the prosecution of such complaints  
11 before the Board. Given that this matter is set for hearing on September 29, 2014, consolidation  
12 is well within the General Counsel's authority under the Regulations.

13 The question of consolidating charges is not merely one of discretion based on  
14 considerations of judicial economy. Relevant precedent from the National Labor Relations Board  
15 states that piecemeal litigation against Respondents and re-trying facts under distinct legal  
16 theories may be barred. *Jefferson Chemical* (1972) 200 NLRB 992. A failure to consolidate  
17 factually related charges into a single complaint for hearing may result in a subsequent complaint  
18 being dismissed. *Id.*; *Service Employees Int'l Union* (1997) 324 NLRB 774, 774-75. The key  
19 consideration supporting a requirement for consolidation is whether the facts involved in the  
20 separate complaints are intertwined. *Service Employees Int'l Union, supra, at 775.* Failure to  
21 fully litigate the facts in the initial proceeding may bar the General Counsel from re-litigating the  
22 same facts in a separate proceeding. *Id.*; *Jefferson Chemical* at 995. Here, the closely intertwined  
23 relationship between the facts of each of the consolidated charges prevents them from being  
24 separately litigated without substantial risk of later charges being dismissed.

25 ///

26 ///

27 ///

1                   **B. All of the Consolidated Charges Involve Related Facts That Militate Against**  
2                   **Piecemeal Litigation**

3                   Where a petition for either representation or decertification is tainted, it must be  
4 dismissed because there is no *bona fide* question of representation. Lab. Code §1156.3(b). Each  
5 of the charges consolidated in this complaint involves facts relevant to the material issue of  
6 whether the employer committed unfair labor practices which would taint the entire  
7 decertification petition itself, rendering it invalid as the basis for an election. *Penn Tank Lines,*  
8 *Inc.* (2001) 336 NLRB 1066. Additionally, apart from the commonality of the facts as  
9 independent bases for unfair labor practices, each individual charge provides relevant and  
10 admissible background with respect to each of the other inextricably intertwined charges.  
11 *D'Arrigo Bros.* (2013) 39 ALRB No. 4 at 15-16.

12                   1. The Unfair Labor Practices Alleged All Relate to Gerawan's Unlawful Taint of the  
13                   Decertification Petition.

14                   Generally, under the Act, a decertification petition is only valid where the process is  
15 untainted by an employer's unfair labor practices. *Gallo Vineyards* (2004) 30 ALRB No. 2; *Penn*  
16 *Tank Lines, Inc., supra*, 336 NLRB 1066. It is well-established under the Act that an employer  
17 commits an unfair labor practice by providing any non-ministerial assistance to employees in the  
18 decertification process. *Gallo Vineyards* at 16. Such assistance is considered coercive and tends  
19 to give the impression to employees that the employer is sponsoring or supporting the effort to  
20 obtain signatures for the decertification petition. *D'Arrigo Bros.* at 15. Under the National Labor  
21 Relations Act ("NLRA"), it is also clear that a decertification petition is unlawfully tainted where  
22 the employer commits unfair labor practices that cause its employees to become disaffected with  
23 the union. *Penn Tank Lines* at 1066. The NLRB, in relevant precedent, has refused to permit an  
24 employer to withdraw recognition from a union based on a decertification petition that resulted  
25 from its unremedied unfair labor practices. *Id. citing Olson Bodies* (1973) 206 NLRB 779, 780.  
26 Unfair labor practices that have been found to unlawfully cause disaffection with the union and  
27 thereby to taint a decertification petition include: (1) unilateral changes to terms and conditions  
28 of employment; (2) threats of plant closure or discharge; and (3) discrimination based on union  
activities. *Penn Tank Lines* at 1068; *Olson Bodies, supra*, at 780. As explained in *Penn Tank*



1 *Lines*, with respect to unilateral increases, “by unilaterally changing the employees’ terms and  
2 conditions of employment, the Respondent minimized the influence of organized bargaining and  
3 emphasized to the employees that there is no necessity for a collective-bargaining agent.” *Id.*  
4 *citing May Department Stores Co. v. NLRB*, (1945) 326 U.S. 376, 385. In this case, Gerawan  
5 Farming has fatally tainted the entire decertification petition process by engaging in the  
6 following unfair labor practices: making unilateral changes to the terms and conditions of  
7 employment; repeatedly failing to provide the union with relevant information; solicitation of  
8 employee grievances; publically campaigning to undermine the union’s authority;  
9 communicating the futility of collective bargaining to its employees; and unlawful assistance and  
10 discrimination in the decertification signature gathering process. As such, all of these charges go  
11 directly to the question of the validity of the decertification petition—a question that, by its  
12 nature, should precede a ballot count. *Cattle Valley Farms* (1982) 8 ALRB No. 24.

13 2. The Facts at Issue in the Consolidated Charges Constitute Relevant Background in  
14 Determining the Respondent’s Role in Sponsoring and Supporting the Decertification  
15 Petition.

16 The Board has recognized the importance and relevance of background information  
17 about the bargaining relationship between the union and the employer prior to filing a  
18 decertification petition and of statements by an employer about the union, even when they do not  
19 constitute unfair labor practices, in and of themselves. In *D’Arrigo*, as in this case, “evidence of  
20 conduct that is time-barred or is otherwise not subject to adjudication on the merits may be  
21 admissible as background to shed light on the character of the events that properly are being  
22 litigated.” *D’Arrigo Bros., supra*, 39 ALRB No. 4 at 15-17; *M. Caratan* (1983) 9 ALRB No. 33  
23 at 10-11. In *D’Arrigo Bros.*, the ALJ properly considered broader evidence of employer support  
24 for the decertification petition than what was alleged in the complaint. *Id.* In *M. Caratan*, the  
25 Board stated that a series of employer statements in the course of a decertification process,  
26 “overwhelmingly presented” a general scheme of interference with Section 1152 rights. *M.*  
27 *Caratan, supra*, at 10-11. Here, the facts underlying the unfair labor practice charges, in addition  
28 to what is alleged in charges 2013-CE-027-VIS and 2013-CE-039-VIS, also constitute highly  
relevant background information to the charges that Gerawan Farming unlawfully assisted in the

1 decertification effort and generally show a scheme of interference with its employees' Section  
2 1152 rights. These facts would necessarily be a part of the record and are, therefore, rightfully  
3 included in the consolidated complaint. For these reasons, and in the interests of efficiency and  
4 fairness to the parties and witnesses, the General Counsel finds that consolidation of the charges  
5 is warranted.

6  
7 IT IS HEREBY ORDERED, for the above reasons and pursuant to section 20244(a) of  
8 the ALRB's Regulations, that the above-captioned charges be consolidated for hearing.

9 Dated this 9th day of September 2014.

10  
11 AGRICULTURAL LABOR RELATIONS BOARD

12  
13   
14 ~~SYLVIA TORRES-GUILLEN~~

15 General Counsel

16 SILAS M. SHAWVER

17 Regional Director  
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**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 Sacramento. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1325 J Street, Suite 1900 A, Sacramento, CA 95814.

On September 9, 2014, I served the within **ORDER TO CONSOLIDATE AND AMENDED CONSOLIDATED COMPLAINT, GERAWAN FARMING, INC., Case No: 2013-CE-027-VIS, et al.**, 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 Sacramento, California, addressed as follows:

CERTIFIED MAIL AND FAX

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VIA HAND DELIVERY

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Hon. Mark Soble, ALJ  
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Sacramento, CA 95814

J. Antonio Barbosa, Executive Secretary  
Agricultural Labor Relations Board  
1325 J St. Suite 1900 B  
Sacramento, California 95814

Executed on September 9, 2014, at Sacramento, California. I declare under penalty of perjury that the foregoing is true and correct.

  
Samantha Cooper