

1 STATE OF CALIFORNIA

2 AGRICULTURAL LABOR RELATIONS BOARD

3
4 JACOB DIEPERSLOOT,
5 INDIVIDUALLY, AND dba JD FARMS;
6 JACOBO D. FARMS; JD FARMS
MANAGEMENT, INC.

Case No.: 2015-CE-027-VIS

7 Respondent,

ORDER

8 and

9 UNITED FARM WORKERS OF
10 AMERICA,

11 Charging Party
12

13
14 **PROCEDURAL HISTORY**

15 On June 30, 2017, the General Counsel issued a complaint in the above
16 captioned case alleging that Jacobo D. Farms, (Respondent) through its agent JSV Farm
17 Labor Inc., (JSV) violated the Act by terminating employee Antonio Renteria (Renteria)
18 for engaging in protected-concerted activity. The complaint was served on Anthony P.
19 Raimondo, Raimondo & Associates, 7080 N. Marks Ave, Suite 117, Fresno CA 93711,
20 on or about June 30, 2017.

21 When it was discovered that Anthony Raimondo did not represent
22 Respondent but rather JSV, the complaint was served on Jacob Diepersloot (Diepersloot)
23 at 41208 Rd. 32, Kingsburg CA 93631, Respondent's alleged principal place of business,
24 on August 2, 2017 together with information pertaining to the regulatory requirements for
25 filing an answer to the complaint.

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1 On February 22, 2018¹, General Counsel issued a First Amended
2 Complaint alleging that Jacob Diepersloot, individually and doing business as Jacobo D.
3 Farms and JD Farms violated the Act by threatening, terminating and by refusing to
4 rehire Renteria. The First Amended Complaint was served on Respondent at multiple
5 addresses. Respondent admits that it was served with the First Amended Complaint on or
6 about February 25, together with attachments explaining the regulatory requirement for
7 filing an answer.

8 On March 26, the period for filing an answer to the First Amended
9 Complaint having expired on March 7, General Counsel filed a Motion to Deem
10 Allegations in the First Amended Complaint Admitted and Motion for Default
11 Judgement.

12 On April 6, Respondent filed its opposition to General Counsel's Motion
13 together with a proposed answer and the affidavit of Diepersloot. According to
14 Diepersloot's affidavit, after receiving the charge in this case, he was advised by JSV that
15 they and their attorneys would handle the charge. He admitted that since June 2016 he
16 has resided at 40101 Rd. 28 in Kingsburg CA. He further admitted being served with the
17 First Amended Complaint on about February 25. After receiving the First Amended
18 Complaint, Diepersloot avers that he was told by JSV that they or their attorneys would
19 deal with the First Amended Complaint.

20 On April 13, General Counsel filed a Motion to Strike Respondent's
21 Answer.

22 On April 16, General Counsel filed a Motion to Respond to Respondent's
23 Opposition.

24 On April 20, Respondent filed its opposition to General Counsel's latest
25 response. On April 23, Respondent file a further opposition to General Counsel's initial
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28 ¹ All references are to 2018 unless otherwise stated.

1 motion and on April 27, General Counsel moved to strike any new arguments and
2 evidence Respondent had submitted since it filed its initial opposition on April 6.

3 THE POSITIONS OF THE PARTIES

4 From the multitude of motions and oppositions to motions filed herein it
5 can be said that essentially General Counsel contends that Respondent failed to file an
6 answer to the First Amended Complaint within the time limits provided in the regulations
7 and that Respondent has failed to show good cause for why it failed to file a timely
8 answer. Respondent admits it failed to file an answer but argues that it has established
9 good cause for its failure to do so.

10 THE LAW

11 8 C.C.R. section 20232 provides in pertinent part that, "Any allegation not
12 denied (in an answer) shall be deemed admitted." In *Azteca Farms, Inc.*, (1992) 18
13 ALRB No. 15, and *Lu-Ette Farms, Inc.*, (1985) 11 ALRB No. 4, the Board affirmed the
14 ALJs who found no good cause for Respondents' failure to timely file answers and who
15 granted summary judgement on the pleadings.

16 In *All Star Seed Co.*, (2003) 29 ALRB No. 4 the Board found it appropriate
17 to grant a motion for default judgment and applied a reasonable person standard in
18 determining whether to grant relief from a Respondent's default in failing to file a timely
19 answer. The Board noted that California Code of Civil Procedure Section 473 governed
20 relief from default judgments. At page four of its opinion the Board noted that ignorance
21 of the law coupled with negligence in ascertaining the law's requirements will not justify
22 relief from default, citing *Robbins v. Los Angeles Unified School District* (1992) 3 Cal
23 App 4th313.

24 The National Labor Relations Board (NLRB) has provided guidance in
25 granting motions for summary judgement where no timely answer has been filed. Section
26 102.20 of the NLRB's Rules and Regulations provides that the allegations in the
27 complaint shall be deemed admitted if an answer is not filed within 14 days of the service
28 of the complaint. This provision is similar to 8 C.C.R. section 20232. In *Rick's Painting*

1 & *Drywall*, 338 NLRB 1091 (2003), the Board rejected the holding in *Livingston*
2 *Powdered Metal v. NLRB*, 669 F.2d 133 (3d Cir, 1982) finding that the court misapplied
3 federal appellate court standards for relief from default judgements as applicable to
4 NLRB administrative proceedings and found further that the court's conclusion that the
5 NLRB regulations were deficiently vague in advising litigants of time limits for filing an
6 answer was moot as the NLRB had since amended its regulations to provide greater
7 clarity. In both *Ricks Painting, supra* and in *Patrician Assisted Living*, 339 NLRB 1153
8 (2003), the Board reaffirmed its long standing test that a respondent must show good
9 cause to be relieved of its duty to file a timely answer. In *Rick's Painting, supra at 1092*,
10 the Board dismissed the argument that respondent's pro se status established good cause
11 for its failure to file an answer. The Board noted that the complaint clearly stated that
12 failure to file an answer could result in complaint allegations being deemed admitted. In
13 *Patrician, supra, at 1154*, the NLRB likewise rejected respondent's argument that it was
14 without legal counsel as establishing "good cause." The Board found further that failure
15 to request an extension to file an answer is a factor in determining lack of good cause.
16 The Board also found that a claim to a meritorious defense will not be considered absent
17 a showing of good cause.

18 THE ANALYSIS

19 Respondent argues that the several part test set forth in *Livingston*
20 *Powdered Metal v. NLRB, supra*, should be applied herein. For the reasons set forth in
21 *Rick's Painting, supra at 1092*, application of the *Livingston* test here is inapposite. The
22 NLRB's reasoning provides further ground for distinguishing *Livingston* herein as the
23 ALRB has found in *All Star Seed Co.*, that California Code of Civil Procedure section
24 473 rather than federal law applies to ALRB administrative proceedings. Contrary to
25 Respondent's contention, I am guided by the Board's decisions in *All Star Seed, supra*;
26 *Azteca Farms, Inc., supra*, and *Lu-Ette Farms, Inc., supra* as well as the NLRB decisions
27 in *Ricks Painting, supra* and *Patrician Assisted Living, supra*, where a good cause
28 standard was applied to determine if relief from default was warranted.

1 Here Respondent essentially admits it was served with the original charge
2 herein as well as the First Amended Complaint which advised Respondent of the
3 consequences of failure to file a timely answer. While Diepersloot denies receiving the
4 original complaint, there is no doubt that it was served at his principle place of business.
5 Respondent's good cause for failing to file an answer rests on its contention that it was
6 ignorant of the intricacies of the Act and that its agent JSV represented that it would deal
7 with both the original charge and the complaints.

8 There is an absence of evidence that Respondent adequately monitored its
9 agent JSV's pursuit of Respondent's case from the time the charge was filed in 2015 until
10 March 26, 2018, when General Counsel filed its Motion to Deem Allegation in the First
11 Amended Complaint Admitted and Motion for Default Judgment. There is simply no
12 evidence that Respondent inquired of JSV who was representing its interest or what they
13 were doing in that regard. Given that Respondent was aware that it, not JSV, was
14 accused of committing unfair labor practices in the First Amended Complaint and that it
15 was on notice that failure to file an answer could result in the allegations of the complaint
16 being deemed admitted, a prudent and reasonable person would have inquired of JSV
17 what it and its attorneys were doing to represent Respondent's interests to insure a timely
18 answer was filed. Now Respondent seeks to lay the burden of failing to file an answer at
19 the feet of JSV, who Respondent apparently claims misrepresented it would handle
20 Respondent's case before the ALRB. A perfunctory inquiry by Respondent of JSV's
21 alleged representation would have disclosed there was in fact no representation at all. As
22 the Board has noted in *All Star Seed, supra*, ignorance of the law coupled with negligence
23 in ascertaining the law's requirements is insufficient to establish good cause. Given
24 these facts, I find that Respondent did not act as a reasonable and prudent person would
25 have to protect their interests and therefore has failed to establish good cause for failing
26 to file an answer in a timely fashion as required by 8 C.C.R. sections 20230 and 20232.

27 Having so found, it is unnecessary to rule on General Counsels' further
28 motion to strike new evidence or to reject respondent's additional arguments.

1 Given the voluminous filings, thorough exposition of the law and facts and
2 extensive arguments by both parties concerning the merits of this case, I find no
3 justification for issuance of an order to show-cause why General Counsel's motions
4 should not be granted.

5 Accordingly, IT IS HEREBY ORDERED that General Counsel's Motion
6 for Default Judgement is granted and that the allegations of the First Amended Complaint
7 herein are deemed admitted.

8 IT IS FURTHER ORDERED that Respondent's proposed answer is
9 stricken.

10 Having so found, I find, in accordance with the pleadings:

11 1. On February 22, 2018, the Visalia Regional Director issued a First
12 Amended Complaint against Respondents Jacob Diepersloot, individually, and dba JD
13 Farms, Jacobo D. Farms and JD Farms Management, Inc., (Respondents) and on that
14 same date, a copy was served by certified mail on Respondents, along with a fact sheet
15 advising Respondents of the need to file an answer.

16 2. No answer to the First Amended Complaint was timely filed to date.
17 I, therefore find:

- 18 a. A true and correct copy of the original charge in the above captioned
19 case was filed on July 21, 2015 and served on Respondents on the
20 same date.
- 21 b. Respondents have at all times been an agricultural employer engaged
22 in agriculture in Kingsburg, California within the meaning of
23 Section 1140.4(a) and (c) of the Agricultural Labor Relations Act
24 (Act).
- 25 c. Respondents contracted with JSV to provide labor for its farming
26 operations.
- 27 d. JSV employed Renteria to provide labor for Respondents.

- 1 e. At all times material Antonio Renteria was an agricultural employee
2 within the meaning of section 1140.4(b) of the Act and was
3 employed by Respondents.
- 4 f. At all times material Balthazar Rodriguez (Rodriguez) was a
5 supervisor for Respondents within the meaning of section 1140.4(j)
6 of the Act with authority to direct the work of agricultural employees
7 and to discipline them.
- 8 g. On about June 12, 2015, an accident occurred at Respondents'
9 farming operation when Rodriguez' tractor ran over an employee's
10 foot. Later that day Renteria reported the accident to JSV.
- 11 h. On June 13, 2015, Rodriguez failed to pick Renteria for work, as had
12 been his practice, causing Renteria to lose a day's work. That
13 afternoon Renteria told Rodriguez that he had reported the
14 employee's accident to JSV and Rodriguez replied that as a result he
15 would no longer provide Renteria with transportation.
- 16 i. That evening at Renteria's house, Rodriguez threatened to kick
17 Renteria's ass and told Renteria he was fired.
- 18 j. About three weeks later at JSV's offices, Edith Villalvazo, JSV's
19 owner, told Renteria he would not be offered any work in the future
20 because he was a problem employee. To date Renteria has received
21 no employment through JSV.
- 22 k. By threatening Renteria on or about June 13, 2015, Respondents
23 violated section 1153(a) of the Act by interfering with, restraining or
24 coercing employees in the exercise of their rights guaranteed in
25 section 1152 of the Act.
- 26 l. By terminating and refusing to consider for future hire Renteria, for
27 engaging in protected-concerted activity in expressing concern for
28 employees' safety, Respondents violated section 1153(a) of the Act.

1 ORDER

2 By the authority of section 1160.3 of the Act, the Agricultural Labor
3 Relations Board (Board) hereby orders that Respondents Jacob Diepersloot, individually,
4 and dba JD Farms, Jacobo D. Farms and JD Farms Management, Inc., its agents and
5 officers, successors and assigns are ordered to do the following:

- 6 1. Cease and desist from:
- 7 a. Unlawfully threatening its agricultural employees with bodily harm
8 for engaging in protected concerted activity protected under section
9 1152 of the Act.
- 10 b. Unlawfully discharging its agricultural employees because they have
11 engaged in activity protected by section 1152 of the Act.
- 12 c. In any like or related manner interfering with, restraining or coercing
13 its agricultural employees in the exercise of their rights guaranteed
14 by section 1152 of the Act.
- 15 2. Take the following affirmative action, necessary to effectuate the
16 policies of the Act:
- 17 a. Offer Antonio Renteria immediate reinstatement to his former or
18 substantially equivalent employment without prejudice to his
19 seniority or other rights and privileges of employment;
- 20 b. Make Antonio Renteria whole for all wages and economic losses he
21 has suffered since on or about June 13, 2015, as a result of his
22 discharge. Loss of pay or other economic losses are to be
23 determined in accordance with established Board precedent. Such
24 amounts shall include interest to be determined in the manner set
25 forth in *Kentucky River Medical Center* (2010) 356 NLRB No. 8 and
26 excess tax liability to be computed in accordance with *Tortillas Don*
27 *Chavas* (2014) 361 NLRB No. 10, minus tax withholdings required
28 by federal and state laws. Compensation shall be issue to Renteria

1 and sent to the Region, which will thereafter disburse payment to
2 Renteria;

3 c. Preserve and, upon request, make available to the Board or its agents
4 for examination and copying, all record relevant and necessary to a
5 determination by the Regional Director of the back pay amounts due
6 under the terms of this Order. Upon request of the Regional
7 Director, the records shall be provided in electronic form if they are
8 customarily maintained in that form;

9 d. Sign the attached Notice to Employees and, after its translation by a
10 Board agent(s) into all appropriate languages, as determined by the
11 Regional Director, reproduce sufficient copies in each language for
12 all purposes set forth in this Order;

13 e. Upon request, provide the Regional Director with the dates of its next
14 peak season. Should the peak season have already begun at the time
15 the Regional Director requests peak season dates, Respondent will
16 inform the Regional Director of when the present peak season began
17 and when it is anticipated to end, in addition to informing the
18 Regional Director of the anticipated dates of the next peak season;

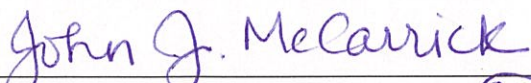

19 f. Mail copies of the Notice, in all appropriate languages, within 30
20 days after the date of this Order becomes final, or when directed by
21 the Regional Director, to all agricultural employees employed by
22 Respondents at any time during the period from June 13, 2015 until
23 June 13, 2016;

24 g. Post copies of the Notice, in all appropriate languages, in
25 conspicuous places on Respondent's property for a 60-day period, the
26 period and place(s) of posting to be determined by the Regional
27 Director, and exercise care to replace any Notice which may be
28 altered, defaced, covered or removed. Pursuant to the authority

1 granted under Labor Code section 1151(a), give agents of the Board
2 access to its premises to confirm the posting of the Notice;

- 3 h. Arrange for a representative of Respondent or a Board agent(s) to
4 distribute and read the Notice in all appropriate languages to all of
5 Respondents' agricultural employees on company time and property
6 at time(s) and place(s) to be determined by the Regional Director.
7 Following the reading, the Board agent(s) shall be given the
8 opportunity, outside the presence of supervisors and management, to
9 answer any questions the employees may have concerning the Notice
10 or their rights under the Act. The Regional Director shall determine a
11 reasonable rate of compensation to be paid by Respondents to all
12 non-hourly wage employees in order to compensate them for time
13 lost at the reading and during the question and answer period;
- 14 i. Provide a copy of the attached Notice to each agricultural employee
15 hire to work for Respondents during the one-year period following
16 the date this Order becomes final and;
- 17 j. Notify the Regional Director in writing, within 30 days after the date
18 this Order becomes final, of the steps Respondents have taken to
19 comply with its terms. Upon request of the Regional Director, notify
20 them periodically thereafter in writing of further steps taken until full
21 compliance with the Order is achieved.

22 Dated: June 21, 2018

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24 
25 JOHN J. MCCARRICK 
26 Administrative Law Judge, ALRB
27
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1 Because it is true that you have these rights, we promise that;
2 **WE WILL NOT** threaten employees with bodily harm because they
3 engage in protected-concerted activity.

4 **WE WILL NOT** discharge employees who engage in protected-concerted
5 activity.

6 **WE WILL NOT** in any like or related manner, interfere with, restrain or
7 coerce employees from exercising their rights under the ALRA.

8 **WE WILL** offer to Antonio Renteria reinstatement to his former or
9 substantially equivalent position of employment and make him whole for all loss of pay
10 or other economic loss he has suffered as a result of our unlawful conduct.

11
12 Dated: _____

13
14 By: _____

15 (Representative) (Title)

16
17 If you have any questions about your rights as farm workers or about this
18 Notice, you may contact any office of the ALRB. One office is located at 1642 West
19 Walnut Avenue, Visalia, California, 93277-5348. The telephone number is (559) 627-
20 0995.

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

23
24 **DO NOT REMOVE OR MUTILATE**