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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF MONTEREY

20 STATE OF CALIFORNIA,
21 AGRICULTURAL LABOR RELATIONS
22 BOARD,

23 Petitioner,

24 v.

25 UNITED FARM WORKERS OF AMERICA,

26 Respondent.

27) Case No.:
28)
29) **PETITIONER STATE OF CALIFORNIA,**
30) **AGRICULTURAL LABOR RELATIONS**
31) **BOARD'S MEMORANDUM OF POINTS**
32) **AND AUTHORITIES IN SUPPORT OF**
33) **PETITIONER'S APPLICATION FOR**
34) **ORDER REQUIRING COMPLIANCE**
35) **WITH ADMINISTRATIVE SUBPOENA**
36) **DUCES TECUM**

37) DATE:
38) TIME:
39) DEPT:
40) JUDGE:

1 **I. INTRODUCTION**

2 The California Agricultural Labor Relations Board (“Board” or “ALRB”) oversees and
3 enforces the Agricultural Labor Relations Act (“Act” or “ALRA”). The ALRA encourages and
4 protects the right of agricultural employees to full freedom of association, self-organization,
5 and designation of representatives of their own choosing.¹ The ALRA also shields agricultural
6 employees from employer and union interference, restraint, or coercion when they are engaged
7 in activities protected by the Act.² When an agricultural employee believes that his or her union
8 has committed an unfair labor practice in violation of the Act, the employee may file an unfair
9 labor practice charge against the labor organization with the ALRB.³ The General Counsel of
10 the ALRB (“General Counsel”) has broad authority under the Act to investigate and prosecute
11 unfair labor practice charges.⁴

12 The General Counsel’s investigatory power includes the ability to issue subpoenas
13 “requiring attendance and testimony of witnesses or the production of any evidence in such
14 proceeding or investigation.”⁵ Here, agricultural employees filed unfair labor practice charges
15 against the United Farm Workers Union (“UFW” or “Respondent”) alleging the UFW
16 retaliated against them because they engaged in protected activities against the UFW.⁶ As part
17 of the General Counsel’s investigation of the charges, the General Counsel issued a Subpoena
18 Duces Tecum (“Subpoena”) on May 21, 2020.⁷ After Respondent filed a Petition to Revoke the
19 General Counsel’s subpoena, and the General Counsel opposed said petition, Administrative
20 Law Judge John J. McCarrick (“ALJ”) issued an order denying Respondent’s Petition to
21 Revoke.⁸ Respondent then sought special permission to appeal the ALJ’s Order.⁹ On November
22

23 ¹ See California Agricultural Labor Relations Act, Cal. Lab. Code §1140 et seq.

24 ² *Ibid.*

25 ³ Labor Code § 1154; Cal. Code Regs., tit. 8, § 20201.

26 ⁴ Cal. Lab. Code §§ 1149, 1151, subd. (a).

27 ⁵ Lab. Code §1151, subd. (a); Cal. Code Regs, tit., 8, §§20217, subd. (a); 20250, subd. (a).

28 ⁶ Declaration of Yesenia De Luna in Support of Petitioner’s Application for Order Requiring Compliance with Administrative Subpoena Duces Tecum (“De Luna Dec.”) ¶¶ 4-8, Exs. A-E.

⁷ *Id.* at ¶ 9, Ex. F.

⁸ *Id.* at ¶¶ 10-11, Ex. G; ALJ Order Denying Petition to Revoke General Counsel’s Subpoena Duces Tecum (July 2, 2020).

⁹ *Id.* at ¶ 12.

1 20, 2020, the Board denied Respondent's Request for Special Permission to Appeal on the
2 merits, affirming the ALJ's Order that Respondent produce the subpoenaed records.¹⁰ On
3 March 16, 2021, the Board granted the General Counsel's February 12, 2021, Request for
4 Subpoena Enforcement, finding that the Subpoena seeks materials that are relevant to the
5 General Counsel's investigation of the charges, describes the documents with sufficient
6 particularity and that Respondent's objections, previously litigated and rejected, fail.¹¹
7 Thereafter, General Counsel staff met and conferred with Respondent and obtained additional
8 responsive documents, but the parties continue to disagree over the production of certain
9 requested documents.

10 The General Counsel submits this Memorandum of Points and Authorities in support of
11 her application for an order requiring Respondent's compliance with Request nos. 1, 3-5, and
12 7-12 contained in the General Counsel's May 21, 2020, subpoena duces tecum ("Subpoena").
13 The General Counsel issued this Subpoena in furtherance of her investigation of unfair labor
14 practice Charge Nos. 2019-CL-005-SAL, 2019-CL-006-SAL, 2019-CL-007-SAL, 2019-CL-
15 008-SAL and 2020-CL-001-SAL filed against Respondent. Under the Act's regulations, a party
16 who fails to comply with a subpoena may be subjected to a subpoena enforcement proceeding
17 in an appropriate California superior court.¹²

18 For these reasons, the General Counsel requests that this Court order Respondent to
19 comply with the Subpoena.

20 **II. STATEMENT OF FACTS**

21 Charging Parties Jose Flores Ramirez ("CP Flores") and Joel Tapia ("CP Tapia") filed
22 charges 2019-CL-005-SAL and 2019-CL-006-SAL against Respondent on October 2, 2019.¹³
23 The charges allege that in September 2019 and continuing, Respondent retaliated against Mr.
24

25 ¹⁰ *Id.* at ¶12, Ex. H. Order Affirming Administrative Law Judge's Order Denying Petition to Revoke (November 20,
26 2020) Administrative Order 2020-19, p. 11.

27 ¹¹ *Id.* at ¶ 13, Exs. I and J; Order Granting General Counsel's Request for Subpoena Enforcement, *United Farm
Workers of America* (March 16, 2021) Admin Order No. 2021-06, pp. 4-5.

28 ¹² See Cal. Lab. Code §115, subd. (b); Cal. Code Regs., tit. 8, §20250, subd. (k).

¹³ De Luna Dec., ¶¶ 4-5 Exs. A-B.

1 Flores, Mr. Tapia, Olvan Cantarero, and others when its agent, Casimiro Alvarez, threatened,
2 coerced, and otherwise prevented the charging parties from registering for employment at
3 Monterey Mushrooms, Inc. at Respondent's hiring hall.¹⁴ The charges further allege that the
4 retaliation was motivated by the charging parties' involvement with a decertification campaign
5 of Respondent at Mushroom Farms, Inc.¹⁵ Charging Party Teresita Avila ("CP Avila") filed
6 charge 2019-CL-007-SAL against Respondent on November 4, 2019.¹⁶ The charge alleges that
7 on or about September 20, 2019, and continuing, Respondent retaliated against Ms. Avila and
8 other workers by refusing or preventing them from being hired at Monterey Mushrooms, Inc.
9 because those workers campaigned for decertification of Respondent at Mushroom Farms, Inc.¹⁷
10 Horacio Ramirez Reyes ("CP Reyes") filed charge 2019-CL-008-SAL against Respondent on
11 November 6, 2019.¹⁸ The charge alleges that on or about August 2019 and continuing,
12 Respondent failed to call Mr. Reyes to work at Monterey Mushrooms, Inc.¹⁹ Charging Party Jose
13 Luis Sanchez ("CP Sanchez") filed charge 2020-CL-001-SAL against Respondent on January
14 21, 2020.²⁰ The charge alleges that on or about December 5, 2019, and continuing, Respondent,
15 through its agent Casimiro Alvarez retaliated against Mr. Sanchez, Ricardo Garcia and others
16 because they supported the decertification of Respondent at Mushroom Farms, Inc.²¹ The charge
17 alleges that the retaliation occurred when Respondent cancelled a previously scheduled hiring
18 hall orientation for Mr. Sanchez and others and refused to reschedule the hiring hall orientation
19 because of Mr. Sanchez's and others' membership in a rival union.²²

20 As part of the investigation of the allegations in the unfair labor practice charges, the
21 General Counsel sent Respondent a request for documents and information on October 25,
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24 ¹⁴ *Ibid.*

25 ¹⁵ *Ibid.*

26 ¹⁶ *Id.* at ¶ 6, Ex. C.

27 ¹⁷ *Ibid.*

28 ¹⁸ *Id.* at ¶ 7, Ex. D.

¹⁹ *Ibid.*

²⁰ *Id.* at ¶ 8, Ex. E.

²¹ *Ibid.*

²² *Ibid.*

1 2019.²³ After not receiving the requested documents despite multiple attempts to meet and
2 confer, the General Counsel served Respondent with an investigative subpoena duces tecum on
3 May 21, 2020.²⁴ After Respondent filed a Petition to Revoke the subpoena and the General
4 Counsel opposed said petition,²⁵ ALRB Administrative Law Judge (ALJ) John McCarrick issued
5 an order denying Respondent's Petition to Revoke.²⁶ Respondent then sought special permission
6 to appeal the ALJ's Order.²⁷ On November 20, 2020, the Board denied Respondent's Request for
7 Special Permission to Appeal on the merits, affirming the ALJ's Order that Respondent produce
8 the subpoenaed records.²⁸

9 As required by Section 20250, subd. (k) of ALRB's regulations, the General Counsel
10 filed a Request for Subpoena Enforcement to commence subpoena enforcement proceedings in
11 superior court on February 12, 2021.²⁹ The Board granted the General Counsel's Request for
12 Subpoena Enforcement on March 16, 2021, affirming that the Subpoena seeks materials that
13 are relevant to the General Counsel's investigation of Charge nos. 2019-CL-005-SAL, 2019-
14 CL-006-SAL, 2019-CL-007-SAL, 2019-CL-008-SAL and 2020-CL-001-SAL, and describes
15 the documents with sufficient particularity.³⁰

16 After General Counsel staff met and conferred with Respondent's counsel regarding
17 pending records, including unredacted copies of Respondent's initial production, Respondent
18 produced some responsive documents.³¹ However, despite the Board's Orders, Respondent has
19 not produced responsive documents for Request nos. 1, 3, 5, 9-12. Further, the records it
20 produced in response to Requests nos. 3, 4, 7, 8, 11 and 12 are incomplete as Respondent
21 continues to redact relevant information to which the ALRB is entitled.³²

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23 ²³ *Id.* at ¶ 15.

24 ²⁴ *Id.* at ¶ 9, Ex. F.

25 ²⁵ *Id.* at ¶ 10.

26 ²⁶ *Id.* at ¶ 11, Ex. G. Order Denying Petition to Revoke General Counsel's Subpoena Duces Tecum (July 2, 2020).

27 ²⁷ *Id.* at ¶ 12.

28 ²⁸ *Ibid.*, Ex. H.

29 De Luna Dec., ¶ 13, Ex. I.

30 *Id.* at ¶ 13, Ex. J; Order Granting General Counsel's Request for Subpoena Enforcement, *United Farm Workers of America, supra*, Admin Order No. 2021-06, p. 4.

31 *Id.* at ¶ 14.

32 *Ibid.*

1 **A. Records Not Produced Through the Present**

2 The General Counsel’s Requests for documents in her May 21, 2020 subpoena seek
3 documents from April 2019 (or thereafter) through “the present” because Charge Nos. 2019-CL-
4 005-SAL, 2019-CL-006-SAL, 2019-CL-007-SAL, 2019-CL-008-SAL and 2020-CL-001-SAL
5 allege continuing violations of the Act.³³ Respondent, in its production through July 29, 2021,
6 argues that “to the present” means to the date the request was issued. No such limit was stated in
7 the General Counsel’s requests. To properly investigate an alleged continuing violation, the
8 phrase “to the present” must mean the date on which Respondent produces complete responsive
9 documents. Respondent’s own actions have significantly delayed the General Counsel’s
10 investigation, as it has declined to produce the requested records absent a subpoena, sought
11 numerous extensions to produce, followed by a partial production of documents on a staggered
12 basis over a span of many months.

13 **B. Request Nos. 1, 9 and 11**

14 Request no. 1 states: “For workers who sought work at MONTEREY MUSHROOMS through
15 RESPONDENT’S HIRING HALL between April 11, 2019, and the present, all DOCUMENTS
16 RELATING TO the position for which each worker applied.”³⁴ Request no. 9 seeks “all
17 COMMUNICATIONS between MONTEREY MUSHROOMS and RESPONDENT requesting
18 employees for hire between April 11, 2019, and the present.”³⁵ Request no. 11 states: “All
19 COMMUNICATIONS between RESPONDENT and MONTEREY MUSHROOMS providing
20 information on employees available for hire between April 11, 2019 and the present.”

21 In its August 27, 2021, correspondence, while Respondent initially claims it is not aware
22 of any documents responsive to Request no. 1, Respondent later acknowledges that “e-mails
23 between MMW and UFW regarding MMW’s needs and names of applicants being sent to MMW
24 for application and testing” might be considered responsive to Request No. 1, indicating that it
25 previously produced Bates-stamped documents numbered U280-U574 (in February 2020) and
26

27 ³³ *Id.* at ¶¶ 4-9, Exs. A-F. General Counsel issued a Subpoena Duces Tecum (“Subpoena”) (May 21, 2020), pp. 3-5.

28 ³⁴ *Id.* at ¶ 9, Ex. F; Subpoena p. 3.

³⁵ *Ibid.*

1 was supplementing its production (on August 27, 2021) with Bates numbers U876-U991.³⁶ To
2 date, Respondent's production ends with U1322 despite referring to U1323-U1327.

3 A close review of the records indicates the production is incomplete. The General
4 Counsel requires that Respondent produce any communications between Monterey Mushrooms
5 and the UFW between May 14, 2020, and June 7, 2020, and U1323-U1327 to comply with what
6 is requested in Request nos. 1, 9 and 11.

7 **C. Request Nos. 3 and 5**

8 Request no. 3 states: "For workers who sought work at Monterey Mushrooms through
9 RESPONDENT'S HIRING HALL between April 11, 2019, and the present, all DOCUMENTS
10 containing the date or time each worker scheduled to report to work."³⁷ Request no. 5 states:
11 "For workers who sought work at Monterey Mushrooms through RESPONDENT'S HIRING
12 HALL between April 11, 2019, and the present, all DOCUMENTS containing the job
13 classification or description of each worker hired by Monterey Mushrooms."³⁸

14 In an August 27, 2021, correspondence, Respondent claimed it was not aware of any
15 documents responsive to Request no. 3. Later, in the same correspondence, Respondent indicated
16 that "[i]t is possible that the date or time marked on Union Dues or Agency Fees Check Off
17 Authorization forms (*see* U154-U279 and U661-U810) or stated in "MMW dispatches" (*see*
18 U280-U574 and U876-U991) indicates the date or time of actual hire."³⁹ However, Respondent
19 did not produce the Union Dues and Agency Free Check Off Authorization forms, which are also
20 responsive to Request no. 5, for April and May 2019.⁴⁰ The General Counsel brought this to
21 Respondent's attention in her July 29, 2021, correspondence and to date, Respondent has not
22 produced these records.

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26 ³⁶ De Luna Dec., ¶ 17, Ex. K.

27 ³⁷ *Id.* at ¶ 9, Ex. F; Subpoena p. 3.

28 ³⁸ *Ibid.*

³⁹ *Id.* at ¶ 17, Ex. K.

⁴⁰ *Ibid.*

1 While Respondent's limited production is responsive, it is incomplete. Respondent has
2 failed to produce Union Dues or Agency Fee Check Off Authorization cards forms for April
3 2019 and May 2019.⁴¹

4 **D. Request No. 10**

5 Request no. 10 states: "All COMMUNICATIONS between MONTEREY MUSHROOMS and
6 RESPONDENT RELATING TO the fitness for duty of any worker who sought employment at
7 MONTEREY MUSHROOMS through RESPONDENT'S HIRING HALL between April 11,
8 2019 and the present." While respondent produced various responsive records, including those
9 submitted on August 27, 2021, Respondent has not provided any records for the period between
10 April 11, 2019, through April 17, 2019 and from February 11, 2020, through March 9, 2020.

11 **E. Request No. 12**

12 Request no. 12 states: "Phone records for all incoming and outgoing calls for
13 RESPONDENT'S HIRING HALL telephone number (831) 757-6000, and outgoing calls for any
14 telephone number used by RESPONDENT to call workers related to employment at
15 MONTEREY MUSHROOMS from April 11, 2019, through the present."⁴² Respondent
16 produced redacted phone records for outgoing phone calls from April 2019 through July 2019
17 and from January 2020 through July 2021. While it finally produced unredacted phone records
18 for the months of August 2019 through November 2019 on August 27, 2021, various pages
19 including U104, U992 and U1014 had information whited out.

20 To date Respondent has not produced U1166 or complete unredacted phone records for
21 all incoming and outgoing calls.

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27 ⁴¹ De Luna Dec., ¶ 17.

28 ⁴² *Id.* at ¶ 9, Ex. F; Subpoena p. 4.

1 **F. Redactions of Telephone Numbers, Address and Other Records Responsive**
2 **to Requests nos. 3, 4, 7, 8, 11 and 12**

3 In its production to Requests 4, 7, 8, 11 and in part to Request Nos. 3 and 12,
4 Respondent redacted telephone numbers, addresses and other unknown information, contrary to
5 ALRB precedent. Specifically, Respondent has redacted the following documents:

- 6 • Documents produced in response to Request 3: Telephone numbers and
7 addresses on documents attached to U419, labelled “01-2018 to 07-2019
8 Hires.xls” and “Contact Listing. Xlsx” (U819-844).
- 9 • Documents produced in response to Requests 4 & 8: Telephone numbers of
10 workers that participated/were called to participate in a December 5, 2019,
11 hiring hall orientation (U153).
- 12 • Documents produced in response to Requests 7 & 11: Telephone numbers on
13 Hiring Hall Lists for April- July 2019 and January through July 2021; Redacted
14 writing (using whiteout) in October and November 2019 and March 2020.
- 15 • Documents produced in response to Request 12: Telephone numbers for
16 outbound calls from April 2019 through July 2019 and from January 2020
17 through July 2021.

18 **III. ARGUMENT**

19 The court should order Respondent to comply with the Board’s Subpoena for Request
20 Nos. 1, 3-5, and 7-12 because the Board has met the statutory and regulatory requirements for
21 enforcement of the Subpoena, the evidence sought by the Subpoena is reasonably related to the
22 investigation of Charge Nos. 2019-CL-005-SAL, 2019-CL-006-SAL, 2019-CL-007-SAL, 2019-
23 CL-008-SAL and 2020-CL-001-SAL, and the requests are sufficiently particular.⁴³

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28 ⁴³ Cal. Labor Code § 1151, subd. (b); *United Farm Workers of America, supra*, Admin Order No. 2021-06, p. 4.

1 **A. The ALRB’s administrative subpoenas are enforceable in superior court.**

2 The ALRA and its regulations permit the ALRB to seek a court order requiring
3 compliance with an administrative subpoena issued by the agency.⁴⁴ A subpoena enforcement
4 proceeding is summary in nature-"not requiring the issuance of process, hearing, findings of fact,
5 and elaborate process of a civil suit."⁴⁵

6 1. The court has statutory and regulatory authority to enforce subpoenas issued
7 by the ALRB.

8 California Labor Code section 1151(b) states that “any superior court in any county
9 within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which
10 such person allegedly guilty of contumacy or refusal to obey is found or resides or transacts
11 business, shall, upon application by the board, have jurisdiction to issue to such person an order
12 requiring such person [...] to produce evidence...”⁴⁶ Likewise, Section 20250(k) of the
13 regulations states “upon any other failure of any person to comply with a subpoena or notice,
14 the Board may apply to an appropriate superior court for an order requiring such person to
15 appear and produce evidence and give testimony regarding the matter under investigation...”⁴⁷
16 The Superior Court for the County of Monterey is an appropriate forum because Respondent
17 transacts business in Monterey County and the events alleged in Charge Nos. 2019-CL-005-
18 SAL, 2019-CL-006-SAL, 2019-CL-007-SAL, 2019-CL-008-SAL and 2020-CL-001-SAL
19 occurred in Monterey County.⁴⁸ Further, the General Counsel properly requested that the Board
20 apply to Superior Court for enforcement of these investigative subpoenas and the Board
21 delegated such authority to the General Counsel.⁴⁹

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24 ⁴⁴ Lab. Code §1151, subd. (b); Cal. Code Regs, tit., 8, §§20217, subd. (g); 20250, subd. (k).

25 ⁴⁵ Cal. Labor Code § 1148; *Goodyear Tire & Rubber Co. v. Nat. labor Relations Bd.* (6th 1941) 122 F.2d 450, 451.

26 ⁴⁶ Cal. Lab. Code §1151(b).

27 ⁴⁷ Cal. Code Regs., tit. 8, §20250(k).

28 ⁴⁸ De Luna Dec., ¶¶ 4-8, Exs. A-E.

⁴⁹ *United Farm Workers of America, supra*, Admin Order No. 2021-06, p. 5; *see also* Cal. Code Regs., tit. 8, §§ 20217, subd. (g); 20250 subd. (k).

1 2. The Superior Court engages in a limited inquiry in Board subpoena
2 enforcement actions.

3 The Superior Court plays an important, but limited role in enforcing Board
4 administrative subpoenas.⁵⁰ The “scope of judicial inquiry by the trial court is quite limited in
5 subpoena enforcement proceedings under section 1151, subdivision (b)” of the Act.⁵¹ The
6 ALRB has exclusive jurisdiction over conduct protected by the Act.⁵² The agency’s
7 interpretation of the Act “is to be accorded ‘great respect by the courts and will be followed if
8 not clearly erroneous.’”⁵³

9 **B. The Court should grant the ALRB’s request for an order**

10 The court should grant the Board’s request for an order requiring Respondent to comply
11 with the Board’s subpoena duces tecum if (1) the inquiry is within the agency’s authority, (2)
12 the documents sought are reasonably related to the inquiry, and (3) the documents/information
13 sought are identified with sufficient particularity—unless the subpoena is overbroad, unduly
14 burdensome, or oppressive.⁵⁴

15 1. The documents/information requested are well within the agency’s authority.

16 The Act grants the General Counsel exclusive and broad investigatory and prosecutorial
17 powers over unfair labor practices, including the duty to investigate unfair labor practice
18 charges, and issue and prosecute complaints before the Board.⁵⁵ The Act vests the General
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21 ⁵⁰ *ALRB v. Richard A. Glass Co.* (1985) 175 Cal.App.3d 703, 713; *ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d
22 651, 663 (“*Laflin & Laflin*”).

23 ⁵¹ *Richard A. Glass, supra*, 175 Cal.App.3d at 713, citing *ALRB v. Laflin & Laflin, supra*, 89 Cal.App.3d at 663; see
24 also *Nat. Labor Relations Bd v. G.H.R. Energy Corp.* (5th Cir. 1982) 707 F.2d 110, 113 (“*G.H.R.*”) (“subpoenas
25 from the Board are subject to extremely limited judicial review”); *Nat. Labor Relations Bd. v. American Medical
26 Response* (2nd Cir. 2006) 438 F.3d 188, 192 (“*American Medical Response*”) (“the court’s role in a proceeding to
27 enforce an administrative subpoena is extremely limited,”) (internal citations omitted); *Nat. Labor Relations Bd. v.
28 North American Van Lines, Inc.* (N.D. Ind. 1985) 611 F.Supp. 760, 763, (“*North American Van Lines*”) (“court’s
review [...] is ‘extremely limited,’ ‘extremely narrow,’ and of ‘a summary nature,’”) citations omitted.

⁵² *Banales v. Municipal Court* (1982) 132 Cal.App.3d 67, 70.

⁵³ *Artesia Dairy v. ALRB* (2008) 168 Cal. App. 4th 598, 605.

⁵⁴ *Laflin & Laflin, supra*, 89 Cal.App.3d at 663-664; *G.H.R., supra*, 707 F.2d at 113; *North American Van lines,
supra*, 611 F.Supp. at 763; see *American Medical Response, supra*, 438 F.3d at 192.

⁵⁵ Lab. Code §1149; *Sunrise Mushrooms, Inc.*, (1996) 22 ALRB No. 2, p. 18.

1 Counsel with authority to subpoena all materials that are relevant to the subject matter of her
2 investigation or that may lead to the discovery of admissible evidence.⁵⁶

3 As the Board stated in its Order Granting General Counsel's Request for Subpoena
4 Enforcement, "There is no dispute the General Counsel's subpoena was properly issued and
5 served..."⁵⁷ As described below, the documents requested are relevant to the subject matter of
6 the investigation and/or may lead to discovery of admissible evidence.

7 2. The documents and information sought are reasonably related to matters in
8 question.

9 Courts defer to the "agency's appraisal of relevancy, which must be accepted so long as it
10 is not obviously wrong."⁵⁸ Courts interpret relevancy broadly when enforcing administrative
11 subpoenas.⁵⁹ The United States Supreme Court characterized the relevancy requirement as not
12 "especially constraining."⁶⁰ The term "relevant" is "generously construed" to afford the agency or
13 commission access to "virtually any material that might cast light on the allegations" against the
14 respondent.⁶¹ Relevance "is measured against the general purposes of the agency's investigation,
15 which necessarily presupposes an inquiry into the permissible range of the investigation under
16 statute."⁶² As a result, documents and information subpoenaed are relevant if they relate to *any*
17 matter or question under investigation.⁶³

18 Here, the Court should defer to the Board's finding that the subpoena sought relevant
19 information related to a matter or question under investigation— "the records sought by the
20 subpoena are relevant to the General Counsel's investigation of the underlying unfair labor
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22 ⁵⁶ Lab. Code §1151; Cal. Code Regs, tit., 8, §§20217, subd. (a), 20250 subd. (a).

23 ⁵⁷ *United Farm Workers of America, supra*, Admin Order No. 2021-06, p. 4.

24 ⁵⁸ *American Medical Response, supra*, 438 F.3d at p. 193, quotations and citations omitted.

25 ⁵⁹ *Ibid.*

26 ⁶⁰ *Equal Employment Opportunity Com. v. Shell Oil Co.* (1983) 466 U.S. 54, 68.

27 ⁶¹ *Id.* at pp. 68-69.

28 ⁶² *American Medical Response, supra*, 438 F.3d at p. 193, internal quotations and citations omitted; *North American Van Lines, supra*, 611 F.Supp. at p. 764 [determining relevance "in terms of investigation [...] as opposed to viewing in terms of evidentiary relevance," original italics].

⁶³ *American Medical Response, supra*, 438 F.3d at p. 188; *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bd.* (5th Cir. 1989) 878 F.2d 875, 882 [an "administrative subpoena will survive" a relevance challenge "so long as the material requested touches a matter under investigation," quotations and citations omitted].

1 practice charges...”⁶⁴ The Board need only show “a reasonable basis for believing that the
2 information will prove relevant.”⁶⁵

3 The requests are related to the core matter under investigation. Section 1154 of the Labor
4 Code makes it an unfair labor practice for a labor organization or its agents to restrain or coerce
5 agricultural employees in the exercise of their rights guaranteed in Section 1152 and for a labor
6 organization to cause or attempt to cause an agricultural employer to discriminate against an
7 employee in violation of Section 1153(c).⁶⁶ The General Counsel is investigating whether the
8 UFW restrained or coerced workers in the exercise of their rights under Section 1152 by
9 discriminatorily applying its hiring hall practices so as to prevent the charging parties and others
10 from being referred for jobs at Monterey Mushrooms.

11 There is a heightened duty standard in hiring hall cases; a union commits an unfair labor
12 practice if it administers the exclusive hall arbitrarily or without reference to objective criteria
13 and thereby affects the employment status of those it is expected to represent.⁶⁷ Under this
14 precept, a union must operate a hiring hall with objective, consistent standards, unaccompanied
15 by ill will, discrimination, unlawful favoritism, and without causing or attempting to cause an
16 employer to discriminate against an employee in regard to employment so as to encourage union
17 membership.⁶⁸ The investigations naturally involve inquiries related to employment
18 opportunities available through the hiring hall, what Respondent’s referral procedures are,
19 whether it implemented them, and how workers were hired and into which positions.

20 Obtaining the missing communications between Monterey Mushrooms and Respondent,
21 the requests and referrals for workers for hire from May 14 through June 7, 2020 (Request 1 &
22 9), the missing Union Dues & Agency Fee Check Off Authorizations forms containing hired
23 workers’ job descriptions for April and May 2019 and November 2020 (Request no. 3 & 5), and
24

25 ⁶⁴ *United Farm Workers of America, supra*, Admin Order No. 2021-06, p. 4, citing *United Farm Workers of*
26 *America, supra*, ALRB Admin. Order No. 2020-19.

27 ⁶⁵ (*Nat. Labor Relations Bd v. Internal. Systems, Inc.* (9th Cir. 1 98 I) 640 F.2d 1110, 1114 fn. 2, citation omitted.)

28 ⁶⁶ Labor Code §§ 1152, subd. (a) and 1154.

⁶⁷ *Jacoby v. National Labor Relations Board* (2003) 325 F.3d 301, 308.

⁶⁸ *Id.* at 308-309.

1 incoming and outgoing phone records to verify whether charging parties and other discriminatees
2 contacted the hiring hall for hire, or vice versa, (Request no. 12) are all necessary for the General
3 Counsel to evaluate whether there is an evidentiary pattern of the UFW's hiring practices, how it
4 dispatched workers for hire, whether it discriminated against the charging parties, and to test the
5 UFW's defenses. The unredacted contact information for percipient witnesses is needed to
6 complete this investigation.

7 As the ALRB's assessment of relevance is "not obviously wrong," it should be accepted.

8 3. The documents and information sought are described with sufficient particularity.

9 The Court should also defer to the Board's finding that the "records sought by the
10 Subpoena [...] are described with sufficient particularity."⁶⁹ The General Counsel's subpoena
11 seeks specific missing documents and information, of a type already produced, directly tied to
12 the allegations of the charge and Respondent's proffered defense.⁷⁰ The General Counsel's
13 requests are clear and limited in time to issues relating directly to (1) whether Respondent
14 restrained or coerced workers in the exercise of their rights under Section 1152 by
15 discriminatorily applying its hiring hall practices so as to prevent the charging parties and others
16 from being referred for jobs at Monterey Mushrooms and (2) whether Respondent operates a
17 hiring hall with objective, consistent standards, without discrimination, and without causing or
18 attempting to cause an employer to discriminate against an employee in regard to employment so
19 as to encourage union membership.⁷¹ The General Counsel narrowly tailored the subpoena
20 requests as closely as possible to the exigencies of this case.⁷²

21 The requests are sufficiently particular on their face and not subject to limitations,
22 including privacy claims. An answering party owes a duty to answer if "the nature of the
23 information sought is apparent."⁷³

24
25 ⁶⁹ *United Farm Workers of America, supra*, ALRB Admin. Order No. 2021-06, p. 3.

26 ⁷⁰ *North Bay Plumbing, supra*, 102 F.3d at p.1009, citing *North American Van Lines, supra*, 611 F. Supp. at 765.

27 ⁷¹ *De Luna Dec.*, ¶ 9, Ex. F.

28 ⁷² See *G.H.R. Energy Corp., supra*, 707 F.2d at 114.

⁷³ *Deyo v. Kilbourne, supra*, 84 Cal.App.3d at 783 (holding that the answering party owes a duty to answer if "the nature of the information sought is apparent.")

1 a. The requests are not overbroad, unduly burdensome, oppressive, or subject
2 to privacy.

3 Respondent may claim that the pending documents at issue are overbroad, unduly
4 burdensome, oppressive, and subject to privacy. These arguments, which have been litigated
5 before an ALJ and the Board and rejected three times should once again fail for a number of
6 reasons. First, Respondent has not met its burden and shown that the requests are burdensome,
7 oppressive, or subject to privacy considerations. The party asserting burdensomeness, for
8 example, must meet a high standard to establish its burden of proof.⁷⁴ To satisfy its burden the
9 party must show that production of the subpoenaed information would seriously disrupt its
10 normal business operations.⁷⁵ In addition, the Board has held that requests for telephone numbers
11 does not violate privacy considerations, and that access to potential witnesses is a routine part of
12 an investigation.⁷⁶ Second, Respondent has already produced the bulk of the productions and
13 selectively unredacted phone numbers and other information it claimed was subject to privacy,
14 undermining its own position. Respondent need only produce additional documents and records
15 that were missing and/or redacted, of the same nature as those already produced. Lastly,
16 Respondent should not be permitted to only selectively produce unredacted records for “only
17 dates of alleged wrongdoing in the underlying charges.” The General Counsel’s investigation is
18 “not confined by the facts and theories framed in the original charge.” *Ruline Nursery Co. v.*
19 *Agricultural Labor Relations Bd.*, 169 Cal. App. 3d 247, 268; *Nish Noroian Farms v.*
20 *Agricultural Labor Relations Bd.* (1984) 35 Cal. 3d 732, 736. Once a charge invokes the Board’s
21 jurisdiction, the General counsel “is free to make a full inquiry under its broad investigatory
22 power” in the public interest. *Ruline Nursery*, 169 Cal. App. 3d at 268; see also *San Diego*
23 *Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 139 (holding that
24 the Legislature “did not envisage a narrowly confined use of the investigatory powers.”
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26 ⁷⁴ De Luna Dec., ¶ 11, Ex. G; ALJ Order Denying Petition to Revoke, *supra*, p. 5;

27 ⁷⁵ *Ibid*, *NLRB v. Carolina Food Processors, Inc.* (4th Cir. 1996) 81 F.3d 507, 513-514.

28 ⁷⁶ De Luna Dec., ¶ 11, Ex. G; ALJ Order Denying Petition to Revoke, *supra*, p. 5; *King City Nursery, LLC*,
Administrative Order No. 2020-01-P, citing *Puerto v. Superior Court* (2008) 158 Cal. App. 4th 1242, 1252.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the General Counsel respectfully requests that this Court
3 affirm the Board's findings and issue the proposed order to enforce the ALRB's Subpoena so
4 that the General Counsel may proceed with and conclude the investigation.

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6 Dated: November 29, 2021

7 Respectfully Submitted,
8 AGRICULTURAL LABOR RELATIONS BOARD
9 Julia L. Montgomery
10 General Counsel

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12 _____
13 Yesenia De Luna
14 Assistant General Counsel
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