

SUPREME COURT COPY

Case No. S227243

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

GERAWAN FARMING, INC.,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

Respondent,

UNITED FARM WORKERS OF AMERICA,

Real Party in Interest.

SUPREME COURT

FILED

MAY 09 2017

Jorge Navarrete Clerk

Deputy

Fifth Appellate District, Case No. F068526
ALRB Case No. 2013-MMC-003 [39 ALRB No. 17]

Fifth Appellate District, Case No. F068676
Fresno County Superior Court, Case No. 13CECG01408
The Honorable Donald S. Black, Judge

GERAWAN FARMING, INC.'S OPPOSITION TO REAL PARTY IN INTEREST'S REQUEST FOR JUDICIAL NOTICE

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Real Party in Interest United Farm Workers of America (“UFW”) asks this Court to take judicial notice of a non-final “Decision and Recommended Order” by an administrative judge in an unrelated proceeding now pending before the California Agricultural Labor Relations Board (“ALRB”). (*See Gerawan Farming, Inc. v. United Farm Workers of America*, 2012-CE-Q41-VIS (the “Decision”) (Apr. 14, 2017).) Gerawan Farming, Inc. (“Gerawan”) opposes the UFW’s motion (the “Motion”).

California Rule of Court 8.252(a)(2) requires that a motion requesting judicial notice must state “[w]hy the matter to be noticed is relevant to the appeal.” The UFW argues that “the ALJ Decision sheds light on the background to the MMC process here, but does not affect the legal issues before this Court.” (Motion at p. 2.) By correctly admitting that the Decision is unrelated to the legal issues before this Court, the Motion itself explains why it should be denied.

A legal issue before this Court is whether “abandonment may be raised defensively in response to a union’s demand to invoke” the MMC process. (*Gerawan Farming, Inc. v. Agricultural Labor Relations Board* (2015) 236 Cal.App.4th 1024, 1054.) The Fifth District correctly found error in the ALRB refusing to consider evidence of the UFW’s near two-decade abandonment of its obligations as a certified representative of Gerawan workers. (*Gerawan Farming, Inc., supra*, at pp. 1053-1065.) This motion is an improper attempt to put abandonment evidence before

this Court. It is also inconsistent with the UFW's argument before this Court that such evidence should not be considered.

The Decision's findings are not subject to judicial notice.

“[A]lthough courts may notice official acts and public records, [they] do not take judicial notice of the truth of all matters stated therein.” (*People v. Castillo* (2010) 49 Cal.4th 145, 157.) This rule applies to factual findings of quasi-adjudicative bodies, including the ALRB. (*See Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 121.) Here, the Motion highlights seven factual conclusions of the ALJ for their truth. This is improper.

The authority cited in the Motion involves situations where courts took judicial notice of the existence of an official document, not of the factual conclusions contained within that document. (*See United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 528 [taking notice of official “legislative history” and a “relevant collective bargaining provision”]; *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 7 n.2 [taking notice of a legislative enactment and official legislative history]; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 928 [taking notice of an regional water basin plan].)

Gerawan respectfully requests that the Motion be denied.

Dated: May 8, 2017

Respectfully submitted,

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BARSAMIAN & MOODY P.C.
Ronald H. Barsamian

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GERAWAN FARMING, INC.

By: David A. Schwarz

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On May 8, 2017 I served the foregoing document described as:

GERAWAN FARMING, INC.'s OPPOSITION TO REAL PARTY IN INTEREST'S REQUEST FOR JUDICIAL NOTICE

on each interested party, as stated on the attached service list.

- (OVERNIGHT DELIVERY) I caused the forgoing documents to be served by FedEx, an express service carrier which provides overnight delivery. I caused a true copy of the foregoing document to be placed in sealed envelopes or packages designated by the express service carrier for pickup, addressed as stated on the attached service list.

Executed on May 8, 2017, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Michael D. Harbour

(Type or print name)



(Signature)

SERVICE LIST

Gerawan Farming, Inc. v. Agricultural Labor Relations Board
Case No. S227243

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<p>Clerk of the Court Court of Appeal Fifth Appellate District 2424 Ventura Street Fresno, CA 93721</p> <p><i>(F068526 and F068676)</i></p>	