IRELL & MANELLA LLP
A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

840 NEWPORT CENTER DRIVE, SUITE 400
NEWPORT BEACH, CA 92660-6324
TELEPHONE (949) 760-0991
FACSIMILE (949) 760-5200

1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CALIFORNIA 90067-4276

TELEPHONE (310) 277-1010
FACSIMILE (310) 203-7199
WEBSITE: www.irell.com

WRITER'S DIRECT
TELEPHONE (310) 203-7943
dschwarz@irell.com

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VIA FACSIMILE & U.S. MAIL

The Honorable Genevieve A. Shiroma
Chairwoman
California Agricultural Labor Relations
Board
1325 J Street, Suite 1900
Sacramento, CA 95814-2944

Re: Case No. 2013-MMC-003 (Gerawan Farming)

Dear Chairwoman Shiroma:

We represent Gerawan Farming, Inc. ("Gerawan"). The purpose of this letter is to set out our strong exceptions to 39 ALRB No. 11, issued on July 29, 2013 (the "Order"). We necessarily have to accept the Order as a decision of the Board, but because the secrecy sanctioned by the Board as to its MMC proceedings is blatantly unconstitutional, we cannot remain silent. The result is a constitutional travesty and inconsistent with the openness required by our state and federal constitutions.

As you must fully understand, Lupe Garcia asked to intervene in this proceeding only because he, along with about 15 other Gerawan employees, were excluded from the joint sessions of the MMC proceedings at which a contract that will be binding on them was to be discussed with a Mediator empowered to make a decision about the contract's terms. Gerawan stood up for his right to attend. The UFW and the Mediator had a different view and wanted to conduct the proceedings in secret. The Order explains: "The Mediator informed Garcia that he would not be permitted to attend because the [joint session] of the mediation was confidential and open only to the parties. The instant Petition for Intervention followed." The Board had the opportunity to address this injustice and chose not to do so.

Mr. Garcia's Petition squarely presented to the Board the question of whether joint proceedings would be conducted in the sunshine for everyone to see or in secret behind closed doors. The Board chose secrecy by refusing to act, knowing the Mediator's conclusion that Mr. Garcia and his colleagues are barred from even listening and watching the proceedings, including those deemed by statute and this Board to be "on the record".

The California Supreme Court has recognized that "[o]penness in government is essential to the functioning of a democracy," and granting the public access to observe the government's actions "permits checks against the arbitrary exercise of official power and secrecy in the political process." *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 328-29 (2007).

Article I, Section 3(b) of the California Constitution "enshrined" this principle of openness. *Id.* at 329. That section provides: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." There is no "constitutional-carve out" that bars Mr. Garcia, the press, or the public from exercising this right.

These protections are also codified in California's Public Records Act, the Brown Act, and the Bagley-Keene Open Meeting Act. *See* Cal. Gov't Code § 6250 (providing that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state" (emphasis added)); *id.* § 54950 ("The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for people to know and what is not good for them to know."); *id.* § 11120 (same). The First Amendment similarly protects the right of openness and transparency in civil proceedings. *See NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1212 (1999) ("[T]he First Amendment provides a right of access to ordinary civil trials and proceedings.").

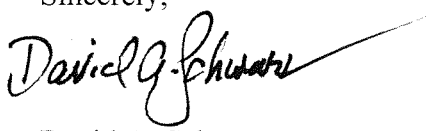
The Board's statement in the Order that the proceeding is "quasi-legislative" rather than "quasi-judicial" in no way justifies secrecy. Whether you compare the MMC process to a courtroom or a legislature, the conclusion that it must be open is the same. Gerawan has standing to raise these points because it "has an interest in seeking vindication of the public's right to know what legislators are doing and the public's ability to ensure democratically elected government officials are following the law." *McKee v. Orange Unified School Dist.*, 110 Cal. App. 4th 1310, 1319 (2003). Whether or not Gerawan has been compelled into this process does not change this analysis – Article I, Section 3(b) of the California Constitution guarantees ***"the people"*** of this State the right of access to information and the guarantee that "the meetings of public bodies . . . shall be open to public scrutiny." But Gerawan has been compelled to participate in the MMC process that could result in a government-imposed collective bargaining "agreement." It has a "concrete and actual" interest in ensuring that the proceedings are open to public scrutiny, so that interested persons can observe the process first hand. *Holmes v. California Nat'l Guard*, 90 Cal. App. 4th 297, 315 (2007). Gerawan has standing to insist that the process be open to

the public in accordance with the law. Gov't Code § 6259 (providing *"[a]ny person* may institute proceedings for injunctive or declarative relief" under the Public Records Act); *id.* § 54960 (providing that "any interested person may commence an action by mandamus, injunction, or declaratory relief" to enforce the Brown Act) (emphasis added); *id.* § 11130 (providing same remedies for "any interested person" to enforce the Bagley-Keene Open Meeting Act); *Sacramento Newspaper Guild v. Sacramento Bd. of Sup'rs*, 263 Cal. App. 2d 41, 46 (1968) (finding newspaper guild had standing "to seek legal restraint against violations or threatened violations" of the Brown Act). Gerawan is uniquely situated to demand compliance with the constitutional and statutory guarantee of open meetings that have a direct and immediate impact on its rights.

The Board may not lightly side-step this issue. By refusing to recognize the right of public access to MMC proceedings, this process (and any resulting decision), may be nullified, whether on constitutional or statutory grounds. *See, e.g., U.S. v. Rivera*, 682 F.3d 1223, 1236-37 (9th Cir. 2012) (vacating sentence and remanding for new proceedings because "district court's closure of the sentencing proceedings violated Rivera's Sixth Amendment right to a public trial"); *id.* at 1229 (explaining relationship to public's First Amendment right to access).

Gerawan takes exception to the Board's July 29, 2013 Order, and hereby reserves all rights and remedies.

Sincerely,



David A. Schwarz

cc: All counsel of record