GERAWAN FARMING
established 1938
PrimaPagaMas.com

Gerawan Farming, Inc.
7108 N. Fresno St., Suite 450
Fresno, CA 93720

www.gerawan.com

June 23, 2014

VIA EMAIL AND FEDEX

The Hon. Cruz Reynoso
U.C. Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616-5201

Re: *"The Long Road to Justice for California Farmworkers"*

Dear Justice Reynoso:

I was disappointed that you lent your name and reputation to an article entitled "The Long Road to Justice for California Farmworkers," published by the Rosenberg Foundation. Your article contains many misstatements and omissions about my family, our farm, and the current effort by our employees to achieve their right to a free and fair election.

You once wrote that "[t]he search for truth is not served but hindered by the concealment of relevant and material evidence." *In re Misener* (1985), 38 Cal. 3d 543, 551 (Reynoso, J., concurring) (citation omitted). Your article does not reveal the truth. It obscures the facts. It disserves the public's understanding of a vitally important issue of labor law and human rights. It does not advance the goal of social equality. It denigrates the efforts of thousands of farmworkers who fought for their right to choose whether the UFW may speak for them at the bargaining table, or impose upon them a "contract" they were never asked to ratify.

Over 2,600 Gerawan workers – an overwhelming majority – petitioned the ALRB to hold a decertification election, precisely so that they could challenge the UFW's efforts to impose this so-called contract. The ALRB ordered an election after it found that there is a bona fide question as to whether the UFW represents these workers. The UFW tried repeatedly to block that election because it knows that many workers do not want to be compelled to pay a union that abandoned them nearly a quarter century ago. The workers fought for the right to a secret ballot election. That is, in your words, "the most basic of labor protections."

The workers won that right in spite of the orchestrated efforts of the UFW and the ALRB Regional Director, who twice tried to dismiss the decertification petition. (The Fresno Superior Court went so far as to say that it appeared that the ALRB staff and the union were "in cahoots.") The Board instructed the Regional Director to cease in his attempts to nullify the petition. Unable to stop the election, the Regional Director then engaged in the mass segregation of voters at the polling stations, based only on their status as a member of a work crew. The Regional Director's staff separated workers, questioned their right to vote

in front of their fellow employees, and then put their ballots in yellow envelopes to ominously denote their suspect status.

This mass segregation of ballots, reminiscent of the Jim Crow era, sent a message to every worker that the Regional Director's staff presumes that these voters are unable to exercise their own independent judgment. It created an atmosphere of coercion and intimidation, including subtle threats about immigration status when the workers were questioned at the polling station. You railed against allegations of voter disenfranchisement during the 2000 presidential election in Florida, claiming that voters "were told they couldn't vote and many of them got discouraged and gave up."[1] This happened during the Gerawan election, and was directly caused by the UFW's demand that several entire crews be challenged despite the lack of any evidence presented to the Regional Director. [Petitioner's Objections to the Conduct of the Election, Objection No. 10].[2] This was taxpayer-financed voter suppression and intimidation. You did not raise your voice in protest, or even mention these troubling facts in your article.

You claim that "Gerawan workers finally got what they voted for: a union contract that the state ordered the company to implement." The workers did not "vote for" a Board-imposed CBA. They were barred from participating in any aspect of this compulsory contracting process. They were not even permitted to attend the "on the record" proceedings before the arbitrator. Yet that contract requires the workers to either pay three percent of their earnings to the UFW or lose their jobs.

You claim that that this contract would "produce many millions of dollars" for Gerawan's workers. That's an outrageous statement, given that the primary beneficiary of this contract is the UFW. Our workers already have a history of being paid the industry's highest wages without any help from the UFW. Neither the UFW nor the Board-appointed mediator challenged this fact. The workers are net losers under this "agreement," as the three percent dues or fees deduction ordered by the Board is more than the 2.5 percent pay increase ordered in the contract. The union will be enriched at the expense of the workers. Besides, at the time of the decertification election, the employees knew the contents of the so-called contract when they voted, so it is wrong for you to displace the employees' desires with your and UFW's dictates.

Many or most of our employees do not want this contract, and want nothing to do with the UFW. Ninety-eight percent of our current employees did not work here when the

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[1] Civil rights panel questions Gov. Jeb Bush

[2] Petitioner's Objections to the Conduct of the Election, Objection No. 10

election took place almost a quarter century ago (some were not even born yet). There is a serious question as to whether the UFW may legitimately claim that it represents these workers, or that it may bind them to this contract. The conflict of interest is obvious: The UFW seeks to entrench itself, bar decertification challenges, enjoin worker protests, and demand that any employee who refuses to pay dues be fired. As the Fresno Superior Court held, "[n]early every aspect of their work lives could be dictated by the collective bargaining agreement: wages, hours, breaks, meal periods, grievances, supervision etc. [The worker's] interest is not adequately represented by the UFW, which [the worker] does not affirm as his representative and which has done nothing for him in 20 years." [Order After Hearing at 2-3, *Gerawan Farming, Inc. v. ALRB*, Case No. 13CECG03374 (Fresno Super. Ct. March 20, 2014).][3]

You demand immediate enforcement of this so-called contract, without once considering the consequences to our company, our employees, and our continued viability as one of Fresno's best and largest employers. During the UFW's absence, we built an innovative and successful business. Our business depends on retaining and rewarding employees by offering the industry's highest wages and benefits. The CBA would disrupt every aspect of our labor-management relationships, bar the workers' First Amendment right to strike (which they have now done several times *against* UFW and ALRB), and empower the UFW to decide whether our most productive workers should be passed over for advancement.

As another Fresno Superior Court judge held, "requiring Gerawan to implement the CBA is a blatant departure from the existing status quo of no operative CBA. In particular, the CBA would invoke a long term bar to an employee election," thus disenfranchising workers of their right to decertify the UFW. The UFW wants to terminate the pending election, and to bar future attempts on the part of workers to exercise their right to choose. That is not consistent with the purpose of the ALRA, or the wishes of many or most of our employees. As the Court noted: "Such an election, however, is, at this point, a clear objective of numerous Gerawan employees." Immediate enforcement would be contrary to "evidence . . . describ[ing] the UFW's lengthy absence from Gerawan as well as the disputed mediation procedure giving rise to the CBA now under review by the Fifth District Court of Appeals." [Order After Hearing at 3, *ALRB v. Gerawan Farming, Inc.*, No. 14CECG00987 (Fresno Super. Ct. June 2, 2014) (Hamilton, J.).][4] You chose to side with the forces that would strip our employees of their right to vote and to entrench a union which has done nothing for them. This is inexcusable.

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[3] Order After Hearing at 2-3, *Gerawan Farming, Inc. v. ALRB*

[4] Order After Hearing at 3, *ALRB v. Gerawan Farming, Inc.*

Instead, you ignore the irrefutable fact that the UFW abandoned our employees for nearly two decades. The UFW cannot spin this record of neglect to avoid this reality.

The UFW won a contested election in May 1990. We, as was our right, challenged the election (just as the UFW currently is challenging the pending decertification election). After the Board resolved these challenges, the UFW was certified in July 1992. The UFW did not submit any bargaining proposal until late 1994. After one introductory meeting in early 1995, the UFW disappeared. We did not receive any communication from the UFW for another 17 years!

You state that "a 1994 UFW drive that involved thousands of Gerawan workers produced a complete bargaining proposal." Aside from the fact that there were not "thousands" working here in 1994, what "drive" are you referring to? What "complete bargaining proposal"? The UFW waited more than two years to make any proposal. When it did – in late 1994 – it was a boilerplate, form contract that did not contain a single economic term. When we asked for the UFW to do so, it never responded. Instead, it disappeared.

If the UFW believed back in 1994 that we "never submitted a counterproposal," then why didn't the UFW file a charge with the ALRB? A bad faith refusal to bargain was as unlawful in 1994 as it is now.

What is the basis for your suspicious claim that "the UFW launched a new campaign to organize Gerawan workers" in 2004? You do not mention that the union failed to contact us before, during, or after 2004 to resume negotiations. No letter, no phone call, no fax, nothing. And if UFW had "launched a new campaign," then why did the union yet again abandon the employees?

Your claim of a "long history of egregious labor violations by Gerawan" is false. The UFW *never once* filed a single charge against us, or complained about unfair labor practices at our farm, in the twenty years after it was certified to represent the workers. There is no "long record" of violations, because not even once have we been found to have violated the law after the UFW was certified – in 1992.

The UFW has made such false statements in the recent past and each time it claimed to have been "misquoted." It is deeply troubling that you would attempt to miscast the facts, or claim that we have denied workers "even the most basic of labor protections," or claim that our company "refuses to implement the contract."

First, we never "refused to implement" an agreement. The ALRB compelled us into mandatory arbitration, at the behest of the UFW in April 2013, and thereafter issued an order that, once enforceable, would impose wages, terms, and conditions on us and our em-

ployees by agency decree. We are challenging that order in the Court of Appeal, as is our right, under the appellate procedures set forth under the ALRA.

As a retired justice, surely you understand that judicial review is essential to the due process rights of any party facing the imposition of an administrative agency order. The Fifth District Court of Appeal is now considering whether the UFW's longstanding abandonment renders it an inadequate representative, among other statutory and constitutional challenges. By statute, the California appellate courts are the only venue for review of the Board's order. The appellate courts must first affirm the Board's order before it can be enforced.

On four occasions the UFW or the General Counsel of the ALRB attempted to force implementation of that order. The Superior Courts and the Court of Appeal rejected this effort to compel enforcement first, judgment later. Each time the courts held that we and our employees have a right to challenge the Board's order *before* it is imposed.

Second, you claim that California "lets workers call in neutral state mediators to hammer out contracts when growers refuse to sign them." The workers didn't "call in" a mediator, or invoke this forced contracting process. It was done at the request of the UFW, without the approval of our workers. This so-called "Mandatory Mediation and Conciliation" law was enacted over a decade ago (and for a purpose that has nothing to do with how UFW is using that law now). The UFW made no effort to invoke this process with us for over a decade. You blame "poor enforcement of the state's farm labor law," but that's a feeble excuse for the UFW's two-decade lack of activity. Unlike any other labor law in this nation, California's ALRA gives certified labor organizations unique protections and powers. The UFW chose to do nothing.

When the UFW resurfaced in October 2012, it didn't propose a single economic term, let alone a "contract" which we "refuse[d] to sign." Instead, the UFW asked the Board to compel us into a forced contracting process. The mediator did not "hammer out" a contract. He dictated terms and conditions, which the Board then imposed on our company and employees. This is not, in any sense of the word, a negotiation resulting in an "agreement," let alone one "reached" by us.

The claim that we "refuse[d] to sign" a contract" suggests that we reneged on an agreement negotiated with the UFW. The UFW never attempted to negotiate in good faith. We were not given a choice as to whether we would be forced into this "agreement." To suggest that our decision to exercise our statutory right to challenge the constitutionality of this forced contracting scheme amounts to a "refusal" to implement an agreement is false and misleading.

Third, you insinuate that our "long history of egregious labor violations" is part of a sustained refusal to negotiate with the UFW, or that "Gerawan has used appeals and endless legal motions to avoid paying the compensation their workers are owed." The UFW has made the same false charges in the past. When confronted with the misstatement that we "continued fighting [the UFW] for 20 years," the UFW claimed it was misquoted. When asked to defend the statement that "the UFW says it's always tried to work out a contract, but ran into roadblocks for the last 20 years," the UFW denied making the statement, and blamed the reporter for a lack of professionalism.

There *is* an important story to be reported about conflict in California's agricultural fields. But it isn't a conflict between workers and their employer. It is a conflict between workers and the UFW, as reflected in numerous employee attempts to decertify the union over the last decade. This happened at Arnaudo Bros., Gallo, Dole Berry, Coastal Berry, Pictsweet Mushroom Farms, D'Arrigo, and Gerawan, to name a few examples. The on-going UFW effort at my family's farm isn't to vindicate the rights of workers. It is a concerted effort to prevent the workers from voting, or to have their ballots counted. This is not "organizing," but rather an attempt to prevent workers from deciding whether the UFW may bind them to an "agreement" which our employees cannot ratify or reject.

In every decertification campaign, the UFW charges that management "instigated" the election. You repeat these charges, by citing as "truth" allegations made by the ALRB staff based on self-serving complaints filed by the union. You neglect to mention that the election held at Gerawan was based on a *second* decertification petition filed by the workers. When the Regional Director of the Board dismissed that first petition, some 1,500 workers walked off the job in protest. This was not a conflict orchestrated by the company. It was an authentic expression of the workers' frustration with the UFW and the Board. Besides, it is logical for the industry's highest-paid employees to want to decertify a union that abandoned them twenty years ago, lost 90% of its membership, and then suddenly returns to take 3% of their wages or fire them.

When a second petition drive succeeded in securing an election, the Board overruled the efforts of the Regional Director to block the election. You spin these events by a complaint filed by the ALRB general counsel, based on unproven charges made by the UFW. You rush to judgment, citing these allegations as part of a "history" of "egregious labor violations." The complaint you reference makes no mention of the fact that Gerawan voluntarily permitted the Regional Director unprecedented access at our farm so that he could conduct unsupervised educational sessions with our employees. The staff met with over 2,000 of our employees. After explaining to our workers their rights under the ALRA to decide for themselves whether to support or oppose the decertification petition, the Regional Director reported to the Fresno Superior Court that this was a productive exercise.

The Regional Director, Mr. Shawver, asked the Superior Court to order this access. He told the Court that it was necessary to help insure that the petition drive reflected the will of the employees, rather than the desires of Gerawan. We voluntarily granted the Board staff access, and paid workers to attend these training sessions. Yet Mr. Shawver still dismissed the decertification petitions, claiming employer interference in the petition drive. Not once did he mention the impact of his own "training" efforts to cure any perceived interference with the workers' freedom of choice, an omission which clearly troubled the Board. [*Gerawan Farming, Inc.*, Admin. Order No. 2013-46 at 3 (Nov. 1, 2013).][5] That omission also concerned Fresno Superior Court Judge Jeffrey Hamilton. He stated that "it appears that [Mr. Shawver, the Regional Director] is trying his level best to ensure that [the workers] don't get the election that they have chosen, which is why he continues to block." [*ALRB v. Gerawan Farming, Inc.*, Case No. 14CECG00987 (Fresno Super. Ct. April 8, 2014) (April 10, 2014 Hr'g Tr. at 18:11-15).] [6]

The Court noted that Mr. Shawver omitted from his October 28, 2013 decision to dismiss the decertification petition any reference to his representations to the Superior Court, or the remedial effect of the injunctive relief granted by the Court or the training which occurred at Mr. Shawver's request, and under his direct supervision. Twice the Court corrected the ALRB general counsel, telling her "that's not what [Mr. Shawver] said" to the Board or to the Court. Rather, "it's not what he did that you're saying he did. He actually omitted it, which again calls into question his honesty and veracity . . . and that he was neutral." (April 10, 2014 Hr'g Tr. at 18:4-10.) In stark terms the Court spelled out the very real problem that exists here:

> What [Mr. Shawver] said in the TRO [hearing] was that he was going to educate; that he was going to go out, and he was going to appear at the farm, and he was going to ensure that all of the workers understood, because back then the issue was "Were certain supervisors at Gerawan inappropriately affecting the field worker's decision. Were they saying, 'No. You need to side with us.'"
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> And so Shawver was here before the Court, as an Officer of the Court, saying "we just need to go out and have these classes, so to speak, and we're going to tell them what they can do."

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[5] *Gerawan Farming, Inc.*, Admin. Order No. 2013-46 at 3 (Nov. 1, 2013)

[6] *ALRB v. Gerawan Farming, Inc.*, Case No. 14CECG00987

> And the Court had a very long hearing. And the Court didn't just rubber stamp the ALRB, much to the chagrin of Mr. Shawver, but I changed the terms so that the Court felt that they were most fair.
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> It's very interesting, then, Mr. Shawver leaves that out when he talks to the Board. (April 10, 2014 Hr'g Tr. 18:23-19:13.)

Our employees are still waiting for their ballots to be counted, and have filed a federal lawsuit demanding that to occur. We have repeatedly stated that we will continue to lawfully abide by any and all statutes that protect employees' right to union representation. We will stand by the results of the election, if – and when – the ballots are counted.

The employees earned the right to a free and fair election to determine their representation, and the state of California now must count the ballots.

You speak at length about the "human consequences" of these legal battles. Yet you do not acknowledge that our workers are fighting for simple justice and human dignity in the form of the right to vote. Your article does not serve that cause.

We ask that you disavow authorship of the article. If you refuse to do so, then we ask that you correct the false and misleading statements made in the article, and retract these defamatory statements. The retraction must be complete and unequivocal.

Sincerely,

Dan Gerawan

cc: Arturo S. Rodriguez