

Case No. S227270

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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TRI-FANUCCHI FARMS,  
Petitioner and Respondent,

v.

AGRICULTURAL LABOR RELATIONS BOARD,  
Petitioner and Respondent,

UNITED FARM WORKERS OF AMERICA,  
Real Party in Interest.

SUPREME COURT  
**FILED**

FEB 17 2016

Frank A. McGuire Clerk  

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Deputy

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After a decision by the Court of Appeal, Fifth Appellate District,  
Case No. F069419

Affirming in part a decision of the ALRB  
[*In re Tri-Fanucchi Farms* (2014) 40 ALRB No. 4]

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**REAL PARTY IN INTEREST UNITED FARM WORKERS OF  
AMERICA'S MOTION FOR JUDICIAL NOTICE**

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*Counsel for Real Party in Interest United Farm Workers of America*

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## MOTION FOR JUDICIAL NOTICE

Pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court and Evidence Code §459, Real Party in Interest United Farm Workers of America (“UFW”), moves for judicial notice of Exhibits A and B to the accompanying Declaration of Mario Martinez.

Exhibit A is the text, as amended in the California Assembly Committee on Labor and Employment, on May 04, 2015, of Assembly Bill 1389, “AB-1389 Agricultural labor relations: unfair labor practices” (hereafter “AB 1389”), introduced by Assembly Member Jim Patterson, February 27, 2015, with principal coauthor, Assembly Member Grove, and coauthor, Assembly Member Chávez.<sup>1</sup>

Exhibit B is a state legislative record of the vote of May 06, 2015, in the Assembly Committee on Labor and Employment, during which AB 1389 failed to pass out of the Committee: “Do pass and be re-referred to the Committee on Appropriations.”<sup>2</sup> The ballot contained in Exhibit B has been published by the California legislature at [www.leginfo.ca.gov](http://www.leginfo.ca.gov) and a summary also published at <https://leginfo.legislature.ca.gov>.<sup>3</sup>

Evidence Code §459(a) provides that a “reviewing court may take judicial notice of any matter specified in Section 452.” As discussed below, the documents are subject to judicial notice pursuant to Evidence Code §452(c), which provides for judicial notice of “[o]fficial acts of the

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<sup>1</sup> As of February 10, 2016, AB 1389 is available for download at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1389)

<sup>2</sup> As of February 10, 2016, the vote on AB 1389 is available for download at: [http://leginfo.ca.gov/pub/15-16/bill/asm/ab\\_1351-1400/ab\\_1389\\_vote\\_20150506\\_000001\\_asm\\_comm.html](http://leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1389_vote_20150506_000001_asm_comm.html)

<sup>3</sup> As of February 10, 2016, the ballot on AB 1389 is available for download at: [https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160AB1389)

legislative, executive, and judicial departments of the United States and of any state of the United States.” The California State Assembly and its Committee on Labor and Employment is a governmental legislative body, and the official acts of the legislature, including the introduction, amendments and vote on AB 1389, submitted here, are therefore the proper subject of judicial notice, as “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” [Evid. Code §452(c); *see also*, Evid. Code §452.5]

The two documents sought to be judicially noticed are also relevant to the actions taken by the Legislature rejecting an amendment of the ALRA that would have required the Agricultural Labor Relations Board to decertify a union for “abandoning or failing to represent a bargaining unit for 3 or more years.” (*Legislative Counsel’s Digest*, AB-1389(1), *as amended* May 04, 2015) In *Dole Fresh Fruit Company* (1996) 22 ALRB No. 4, at p. 16, the Board stated that it could not

“extend its present regulations or case law precedents in regards to initiating an abandonment procedure without distorting the express directives of the ALRA and invading the province of the Legislature. Since California is a code state, the power to enact and amend statutes is constitutionally entrusted to the Legislature and not to the judiciary or any quasi-judicial subdivision of the executive branch. Thus . . . the Legislature [] is [where] employers must look.”

Tri-Fanucchi is presently arguing that the ALRA permits the courts to recognize an “abandonment defense” or abandonment procedure. For more than 30 years, the ALRB has rejected that position, and the Fifth DCA, in its opinion in this matter, similarly rejected that position. The two documents demonstrate that as recently as 2015, the Assembly Labor and Employment Committee considered amending the ALRA to provide an abandonment procedure, but the proposed legislation did not make it out of the Committee. The Legislature’s failure to amend the ALRA to provide an

abandonment procedure is relevant to the question of whether or not the Legislature accepted or ratified the ALRA's and the courts' interpretations that employers cannot raise an abandonment "defense" in support of their refusal to bargain.

For these reasons, UFW respectfully requests that the Court take judicial notice of the documents discussed above.

Dated: February 12, 2016

Respectfully submitted,

MARIO MARTÍNEZ  
MARTÍNEZ AGUILASOCHO &  
LYNCH APLC

By: 

*Attorneys for Real Party in Interest UFW*

Case No. S227270

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Affirming in part a decision of the ALRB  
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**DECLARATION OF MARIO MARTINEZ IN SUPPORT OF  
REAL PARTY IN INTEREST UNITED FARM WORKERS OF  
AMERICA'S MOTION FOR JUDICIAL NOTICE**

MARIO MARTINEZ (SBN 200721)  
MARTINEZ AGUILASOCHO & LYNCH, APLC  
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*Counsel for Real Party in Interest United Farm Workers of America*

## DECLARATION OF MARIO MARTINEZ

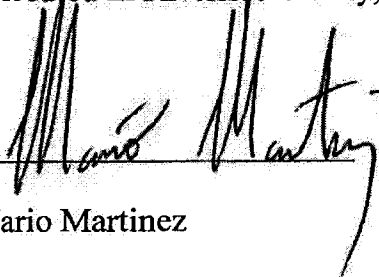
I, Mario Martinez, hereby declare as follows:

1. I am a partner at Martinez Aguilasocho & Lynch, A Professional Law Corporation and one of the attorneys for Real Party in Interest United Farm Workers of America ("UFW").
2. Attached as Exhibit A is a true and correct copy of the text of the Assembly Bill 1389, as amended in the California Assembly Committee on Labor and Employment on May 04, 2015, "AB-1389 Agricultural labor relations: unfair labor practices," introduced by Assembly Member Jim Patterson, February 27, 2015, with principal coauthor, Assembly Member Grove, and coauthor, Assembly Member Chávez.
3. Attached as Exhibit B is a true and correct copy of a state legislative record of the vote of May 06, 2015 in the California Assembly Committee on Labor and Employment, in which AB 1389 failed the Motion and did not pass out of the Committee: "Do pass and be re-referred to the Committee on Appropriations." The unofficial ballot contained in Exhibit B has been published by the California legislature at [www.leginfo.ca.gov](http://www.leginfo.ca.gov) and a summary also published at <https://leginfo.legislature.ca.gov>.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed in Riverside County, California this 12 day of February,

2016.



Mario Martinez

# EXHIBIT A



AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1389

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Introduced by Assembly Member Patterson  
(Principal coauthor: Assembly Member Grove)  
(Coauthor: Assembly Member Chávez)

February 27, 2015

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~~An act to add Section 1164.1 to the Labor Code, relating to employment. An act to amend Sections 1154 and 1164 of, and to add Section 1164.1 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Patterson. ~~Agricultural Labor Relations Act: binding mediation.~~ *Agricultural labor relations: unfair labor practices.*

(1) Existing law establishes the right of agricultural employees to form, join, or assist labor organizations to engage in collective bargaining activities with agricultural employers regarding wages, working conditions, or other aspects of employment. Existing law prohibits a labor organization or its agents from engaging in specified unfair labor practices.

This bill would additionally prohibit a labor organization from abandoning or failing to represent a bargaining unit for 3 or more years. This bill would require the Agricultural Labor Relations Board to decertify a labor organization that violates this provision.

(2) Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Once triggered, the mediation under these provisions is immediately scheduled

*at a time and location reasonably accessible to the parties and proceeds for 30 days, with an additional 30-day extension upon the mutual agreement of the parties.*

*This bill would deem members of the bargaining unit to be parties for the purposes of the mediation.*

Existing law establishes the conditions and time periods under which an agricultural employer, as defined, or a certified labor organization representing agricultural employees may file a declaration with the Agricultural Labor Relations Board stating that the parties have failed to reach a collective bargaining agreement, thus triggering a board order for mandatory mediation.

Existing law authorizes a party, within 60 days of the order by the Agricultural Labor Relations Board taking effect, to file an action to enforce the order. Existing law prohibits an order of the board from being stayed during the pendency of any appeal of the order unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

This bill would condition the effect and enforcement of an order resulting from the binding mediation on the order being approved by a majority of the members of the affected bargaining unit.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1154 of the Labor Code is amended to  
2     read:

3     1154. It shall be an unfair labor practice for a labor organization  
4     or its agents to do any of the following:

5     (a) To restrain or coerce:

6     (1) Agricultural employees in the exercise of the rights  
7     guaranteed in Section 1152. This paragraph shall not impair the  
8     right of a labor organization to prescribe its own rules with respect  
9     to the acquisition or retention of membership therein.

10    (2) An agricultural employer in the selection of his or her  
11    representatives for the purposes of collective bargaining or the  
12    adjustment of grievances.

13    (b) To cause or attempt to cause an agricultural employer to  
14    discriminate against an employee in violation of subdivision (c)

1 of Section 1153, or to discriminate against an employee with  
2 respect to whom membership in such organization has been denied  
3 or terminated for reasons other than failure to satisfy the  
4 membership requirements specified in subdivision (c) of Section  
5 1153.

6 (c) To refuse to bargain collectively in good faith with an  
7 agricultural employer, provided it is the representative of his *or*  
8 *her* employees subject to the provisions of Chapter 5 (commencing  
9 with Section 1156) of this part.

10 (d) To do either of the following: (i) To engage in, or to induce  
11 or encourage any individual employed by any person to engage  
12 in, a strike or a refusal in the course of his *or her* employment to  
13 use, manufacture, process, transport, or otherwise handle or work  
14 on any goods, articles, materials, or commodities, or to perform  
15 any services; or (ii) to threaten, coerce, or restrain any person;  
16 where in either case (i) or (ii) an object thereof is any of the  
17 following:

18 (1) Forcing or requiring any employer or self-employed person  
19 to join any labor or employer organization or to enter into any  
20 agreement which is prohibited by Section 1154.5.

21 (2) Forcing or requiring any person to cease using, selling,  
22 transporting, or otherwise dealing in the products of any other  
23 producer, processor, or manufacturer, or to cease doing business  
24 with any other person, or forcing or requiring any other employer  
25 to recognize or bargain with a labor organization as the  
26 representative of his *or her* employees unless such labor  
27 organization has been certified as the representative of such  
28 employees. Nothing contained in this paragraph shall be construed  
29 to make unlawful, where not otherwise unlawful, any primary  
30 strike or primary picketing.

31 (3) Forcing or requiring any employer to recognize or bargain  
32 with a particular labor organization as the representative of his *or*  
33 *her* agricultural employees if another labor organization has been  
34 certified as the representative of such employees under the  
35 provisions of Chapter 5 (commencing with Section 1156) of this  
36 part.

37 (4) Forcing or requiring any employer to assign particular work  
38 to employees in a particular labor organization or in a particular  
39 trade, craft, or class, unless such employer is failing to conform

1 to an order or certification of the board determining the bargaining  
2 representative for employees performing such work.

3 Nothing contained in this subdivision (d) shall be construed to  
4 prohibit publicity, including picketing for the purpose of truthfully  
5 advising the public, including consumers, that a product or products  
6 or ingredients thereof are produced by an agricultural employer  
7 with whom the labor organization has a primary dispute and are  
8 distributed by another employer, as long as such publicity does  
9 not have an effect of inducing any individual employed by any  
10 person other than the primary employer in the course of his *or her*  
11 employment to refuse to pick up, deliver, or transport any goods,  
12 or not to perform any services at the establishment of the employer  
13 engaged in such distribution, and as long as such publicity does  
14 not have the effect of requesting the public to cease patronizing  
15 ~~such~~ *the* other employer.

16 However, publicity which includes picketing and has the effect  
17 of requesting the public to cease patronizing ~~such~~ *the* other  
18 employer, shall be permitted only if the labor organization is  
19 currently certified as the representative of the primary employer's  
20 employees.

21 Further, publicity other than picketing, but including peaceful  
22 distribution of literature which has the effect of requesting the  
23 public to cease patronizing ~~such~~ *the* other employer, shall be  
24 permitted only if the labor organization has not lost an election for  
25 the primary employer's employees within the preceding 12-month  
26 period, and no other labor organization is currently certified as the  
27 representative of the primary employer's employees.

28 Nothing contained in this subdivision (d) shall be construed to  
29 prohibit publicity, including picketing, which may not be prohibited  
30 under the United States Constitution or the California Constitution.

31 Nor shall anything in this subdivision (d) be construed to apply  
32 or be applicable to any labor organization in its representation of  
33 workers who are not agricultural employees. Any such labor  
34 organization shall continue to be governed in its intrastate activities  
35 for nonagricultural workers by Section 923 and applicable judicial  
36 precedents.

37 (e) To require of employees covered by an agreement authorized  
38 under subdivision (c) of Section 1153 the payment, as a condition  
39 precedent to becoming a member of such organization, of a fee in  
40 an amount which the board finds excessive or discriminatory under

1 all circumstances. In making such a finding, the board shall  
2 consider, among other relevant factors, the practices and customs  
3 of labor organizations in the agriculture industry and the wages  
4 currently paid to the employees affected.

5 (f) To cause or attempt to cause an agricultural employer to pay  
6 or deliver, or agree to pay or deliver, any money or other thing of  
7 value, in the nature of an exaction, for services which are not  
8 performed or not to be performed.

9 (g) To picket or cause to be picketed, or threaten to picket or  
10 cause to be picketed, any employer where an object thereof is  
11 either forcing or requiring an employer to recognize or bargain  
12 with a labor organization as the representative of his *or her*  
13 employees, or forcing or requiring the employees of an employer  
14 to accept or select ~~such~~ *the* labor organization as their  
15 collective-bargaining representative, unless such labor organization  
16 is currently certified as the representative of such employees, in  
17 any of the following cases:

18 (1) Where the employer has lawfully recognized in accordance  
19 with this part any other labor organization and a question  
20 concerning representation may not appropriately be raised under  
21 Section 1156.3.

22 (2) Where within the preceding 12 months a valid election under  
23 Chapter 5 (commencing with Section 1156) of this part has been  
24 conducted.

25 Nothing in this subdivision shall be construed to prohibit any  
26 picketing or other publicity for the purpose of truthfully advising  
27 the public (including consumers) that an employer does not employ  
28 members of, or have a contract with, a labor organization, unless  
29 an effect of such picketing is to induce any individual employed  
30 by any other person in the course of his *or her* employment, not  
31 to pick up, deliver, or transport any goods or not to perform any  
32 services.

33 Nothing in this subdivision (g) shall be construed to permit any  
34 act which would otherwise be an unfair labor practice under this  
35 section.

36 (h) To picket or cause to be picketed, or threaten to picket or  
37 cause to be picketed, any employer where an object thereof is  
38 either forcing or requiring an employer to recognize or bargain  
39 with the labor organization as a representative of his *or her*

1 employees unless such labor organization is currently certified as  
2 the collective-bargaining representative of such employees.

3 (i) *To abandon or fail to represent the bargaining unit for a*  
4 *period of three years or more. The board shall decertify a labor*  
5 *organization that violates this subdivision.*

6 (†)

7 (j) Nothing contained in this section shall be construed to make  
8 unlawful a refusal by any person to enter upon the premises of any  
9 agricultural employer, other than his *or her* own employer, if the  
10 employees of ~~such~~ *the* employer are engaged in a strike ratified or  
11 approved by a representative of ~~such~~ *the* employees whom ~~such~~  
12 *the* employer is required to recognize under this part.

13 *SEC. 2. Section 1164 of the Labor Code is amended to read:*

14 1164. (a) An agricultural employer or a labor organization  
15 certified as the exclusive bargaining agent of a bargaining unit of  
16 agricultural employees may file with the board, at any time  
17 following (1) 90 days after a renewed demand to bargain by an  
18 agricultural employer or a labor organization certified prior to  
19 January 1, 2003, which meets the conditions specified in Section  
20 1164.11, (2) 90 days after an initial request to bargain by an  
21 agricultural employer or a labor organization certified after January  
22 1, 2003, (3) 60 days after the board has certified the labor  
23 organization pursuant to subdivision (f) of Section 1156.3, or (4)  
24 60 days after the board has dismissed a decertification petition  
25 upon a finding that the employer has unlawfully initiated,  
26 supported, sponsored, or assisted in the filing of a decertification  
27 petition a declaration that the parties have failed to reach a  
28 collective bargaining agreement and a request that the board issue  
29 an order directing the parties to mandatory mediation and  
30 conciliation of their issues. "Agricultural employer," for purposes  
31 of this chapter, means an agricultural employer, as defined in  
32 subdivision (c) of Section 1140.4, who has employed or engaged  
33 25 or more agricultural employees during any calendar week in  
34 the year preceding the filing of a declaration pursuant to this  
35 subdivision.

36 (b) Upon receipt of a declaration pursuant to subdivision (a),  
37 the board shall immediately issue an order directing the parties to  
38 mandatory mediation and conciliation of their issues. The board  
39 shall request from the California State Mediation and Conciliation  
40 Service a list of nine mediators who have experience in labor

1 mediation. The California State Mediation and Conciliation Service  
2 may include names chosen from its own mediators, or from a list  
3 of names supplied by the American Arbitration Association or the  
4 Federal Mediation Service. The parties shall select a mediator from  
5 the list within seven days of receipt of the list. If the parties cannot  
6 agree on a mediator, they shall strike names from the list until a  
7 mediator is chosen by process of elimination. If a party refuses to  
8 participate in selecting a mediator, the other party may choose a  
9 mediator from the list. The costs of mediation and conciliation  
10 shall be borne equally by the parties.

11 (c) Upon appointment, the mediator shall immediately schedule  
12 meetings at a time and location reasonably accessible to the parties.  
13 Mediation shall proceed for a period of 30 days. Upon expiration  
14 of the 30-day period, if the parties do not resolve the issues to their  
15 mutual satisfaction, the mediator shall certify that the mediation  
16 process has been exhausted. Upon mutual agreement of the parties,  
17 the mediator may extend the mediation period for an additional  
18 30 days. *Members of the bargaining unit shall be considered*  
19 *parties for purposes of this subdivision and shall be entitled to*  
20 *attend all meetings scheduled by the mediator.*

21 (d) Within 21 days, the mediator shall file a report with the  
22 board that resolves all of the issues between the parties and  
23 establishes the final terms of a collective bargaining agreement,  
24 including all issues subject to mediation and all issues resolved by  
25 the parties prior to the certification of the exhaustion of the  
26 mediation process. With respect to any issues in dispute between  
27 the parties, the report shall include the basis for the mediator's  
28 determination. The mediator's determination shall be supported  
29 by the record.

30 (e) In resolving the issues in dispute, the mediator may consider  
31 those factors commonly considered in similar proceedings,  
32 including:

33 (1) The stipulations of the parties.

34 (2) The financial condition of the employer and its ability to  
35 meet the costs of the contract in those instances where the employer  
36 claims an inability to meet the union's wage and benefit demands.

37 (3) The corresponding wages, benefits, and terms and conditions  
38 of employment in other collective bargaining agreements covering  
39 similar agricultural operations with similar labor requirements.

1 (4) The corresponding wages, benefits, and terms and conditions  
2 of employment prevailing in comparable firms or industries in  
3 geographical areas with similar economic conditions, taking into  
4 account the size of the employer, the skills, experience, and training  
5 required of the employees, and the difficulty and nature of the  
6 work performed.

7 (5) The average consumer prices for goods and services  
8 according to the California Consumer Price Index, and the overall  
9 cost of living, in the area where the work is performed.

10 ~~SECTION 1.~~

11 *SEC. 3.* Section 1164.1 is added to the Labor Code, to read:

12 1164.1. An order issued by the mediator, the board, or the court  
13 that would impose the terms of binding mediation pursuant Section  
14 1164 shall not take effect or be enforceable until it is approved by  
15 a majority of the agricultural employees of the bargaining unit  
16 affected by the order.



# EXHIBIT B

UNOFFICIAL BALLOT

MEASURE: AB 1389

AUTHOR: Patterson

TOPIC: Agricultural labor relations: unfair labor pr

DATE: 05/06/2015

LOCATION: ASM. L. & E.

MOTION: Do pass and be re-referred to the Committee on Appropriations.

(AYES 2. NOES 5.) (FAIL)

AYES

\*\*\*\*

Harper Patterson

NOES

\*\*\*\*

Roger Hernández Chu      Low      McCarty  
Thurmond

ABSENT, ABSTAINING, OR NOT VOTING

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IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

Case Name: Tri-Fanucchi Farms v. Agricultural Labor Relations Board

Case No.: S227270

I am a resident of the County of Kern. I am over the age of eighteen years and not a party to the within entitled action. My business address is P.O. Box 11208, Bakersfield, California, 93389. On February 12, 2016, I served foregoing documents described as:

1. REAL PARTY IN INTEREST UNITED FARM WORKERS OF AMERICA'S MOTION FOR JUDICIAL NOTICE
2. DECLARATION OF MARIO MARTINEZ IN SUPPORT OF REAL PARTY IN INTEREST UNITED FARM WORKERS OF AMERICA'S MOTION FOR JUDICIAL NOTICE

(BY REGULAR MAIL) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Bakersfield, California addressed as set forth below.

(BY ELECTRONIC MAIL). By causing a true copy thereof to be electronically transmitted to the person(s) email address below.

See Service List

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on February 12, 2016, in the County of Kern, California.

  
Molly Hart

Service List

1  
2 Howard A. Sagaser  
3 Sagaser, Watkins & Wieland, PC  
4 7550 N. Palm Avenue, Suite 100  
5 Fresno, CA 93711-5500  
6 [has@sw2law.com](mailto:has@sw2law.com)

Antonio Barbosa, Executive Secretary  
Scott P. Inciardi, Senior Board Counsel  
Agricultural Labor Relations Board  
1325 J. Street, Suite 1900-A  
Sacramento, CA 95814  
[JBarbosa@alrb.ca.gov](mailto:JBarbosa@alrb.ca.gov)  
[Scott.Inciardi@alrb.ca.gov](mailto:Scott.Inciardi@alrb.ca.gov)

7 Office of the Clerk  
8 Fifth District Court of Appeal  
9 2424 Ventura Street  
10 Fresno, CA 93721  
11 *Via regular mail only*