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ASSOCIATION and ten other trade
6 associations listed on Exhibit A

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF KERN

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11 WONDERFUL NURSERIES LLC,) Case No. BCV-24-101649
12)
Petitioner and Plaintiff,)
13 vs.)
14)
AGRICULTURAL LABOR RELATIONS)
BOARD, et al,)
15)
Respondent and Defendants,)
16)
UNITED FARMWORKERS OF AMERICA,)
17)
Real Party in Interest.)
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Division: H
Judge: Hon. Bernard C. Barmann, Jr.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

21 The Western Growers Association hereby applies for leave to file the accompanying five-
22 page amicus curiae brief for itself and ten other trade associations (listed on the attached Exhibit A)
23 in support of Plaintiff Wonderful Nurseries LLC's Motion for Preliminary Injunction (the
24 "Motion").

25 Counsel for amici notified counsel for the parties of this application. Real Party in Interest
26 United Farm Workers of America opposes this application. The Agricultural Labor Relations Board
27 defendants take no position on the application.

1 Trial judges have discretion to accept amicus briefs. (*In re Veterans' Industries, Inc.* (1970)
2 8 Cal.App.3d 902, 924; 3 California Forms of Pleading and Practice—Annotated § 22.16 (2024).)

3 Proposed amici collectively have over 25,000 members in the farming industry in California
4 and many of these members are subject to Agricultural Labor Relations Act provisions that are at
5 issue in this litigation. Amici have closely followed developments surrounding Section 1156.37 and
6 are familiar with the issues presented in this case. As detailed in the accompanying brief, Amici
7 believe that the public interest will be served in reaching the merits of the pending motion and
8 granting the injunction.

9 No party or attorney for a party drafted the proposed amicus brief or participate in decision
10 to file it, in whole or in part. Other than amici, no person, including any party or party's counsel,
11 made a monetary contribution to fund the preparation and filing of the amicus brief.

12 Irell & Manella LLP is representing Amici. David Schwarz at Sheppard Mullin is
13 representing plaintiff Wonderful Nurseries LLC. Mr. Schwarz previously worked at Irell & Manella.
14 He left in January 2020 to join Sheppard Mullin.

15 Amici respectfully request that this Court grant their Application for Leave to File an Amicus
16 Curiae brief.

17
18 Dated: June 6, 2024

Respectfully submitted,

19 By: /s/ Bruce A. Wessel
20 Bruce A. Wessel

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27 associations list on Exhibit A.
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1 **AMICUS CURIAE BRIEF**

2 This amicus brief supports the preliminary injunction motion of Wonderful Nurseries LLC
3 and addresses the public interest factors relating to the requested relief, including the right to free
4 choice on the issue of representation for employees and their employers’ right to have a
5 constitutionally proper process to assess that choice and thereby avoid unnecessary disruptions of
6 their businesses and related controversies.

7 Defendant Agricultural Labor Relations Board (ALRB) explains “the public interest *must* be
8 considered” when considering whether to grant the requested relief. Defendants’ Response in
9 Opposition to Plaintiff’s Motion for Preliminary Injunction (ALRB Opp.) at 21 (emphasis in the
10 original). Amici agree. Those public interest factors include proper treatment of both employees and
11 their employers in the certification process.

12 Amici, listed on the attached Exhibit A, are ten trade associations representing the
13 agricultural industry in California and the western United States. Collectively amici have over
14 25,000 members with a significant interest in the outcome of this proceeding.

15 By eliminating the requirement of secret ballot elections in California agricultural labor
16 relations, the 2023 enactment of Section 1156.37 of the Agricultural Labor Relations Act (ALRA)
17 dramatically altered the union certification process for hundreds of thousands of California
18 farmworkers and thousands of California farms. Before this change, elections were at the heart of
19 the certification process. As the Court of Appeal explained in 2018: “A secret ballot election under
20 the ALRA is intended to embody and reflect the workers’ fundamental right to choose concerning
21 a question of representation. That right is at the heart of what the ALRA is designed to protect and
22 promote.” *Gerawan Farming v. Agricultural Labor Relations Board* (2018) 23 Cal.App. 5th 1129,
23 1240 (*Gerawan Farming* 2018). Thus it is in the public interest to pause the new non-election
24 certification process to address Wonderful Nurseries’ challenges to that process and address any
25 constitutional infirmities. Otherwise, what is happening at Wonderful Nurseries will happen at many
26 farms across the state—potentially thousands of farms—overwhelming the ALRB and creating
27 massive problems if courts were later to conclude that the new processes are legally flawed. It is in
28 the public interest to consider and address any problems with the Section 1157.37 procedures now.

1 Real Party in Interest United Farm Workers of America (UFW) itself has recognized the role
2 of courts in correcting problems with new statutes governing agricultural organizing. In the United
3 States Supreme Court case *Babbitt v. United Farm Workers Nat'l Union* (1979) 442 U.S. 289, the
4 UFW challenged Arizona's Agricultural Employment Relations Act on constitutional grounds and
5 sought a preliminary injunction, just as Wonderful Nurseries is doing here. The Supreme Court
6 found that some of the UFW's challenges to the Arizona law had constitutional merit, but on
7 abstention grounds directed the UFW to present those arguments to state courts in Arizona in the
8 first instance. Two justices dissented, believing the abstention was not appropriate, and federal
9 courts should enjoin the unconstitutional parts of the law pending further litigation in state court. *Id.*
10 at 314-318. Because Wonderful Nurseries filed this action in state court, consistent with *Babbitt*,
11 the merits can be addressed now.

12 In opposing Wonderful Nurseries' motion, the ALRB references "the public interest
13 articulated by the Legislature" in enacting Section 1157.37. ALRB Opp. at 22 (emphasis added).
14 The public interest factors that this Court should consider go beyond the Legislature's stated purpose
15 in passing the law. Those public interest factors include making sure the process of determining
16 whether employees want representation—now without secret ballot elections—is nevertheless
17 constitutionally proper.

18 California's appellate courts issued four important Gerawan Farming opinions in the 2016-
19 2019 timeframe. The ALRB opposition brief cites three opinions from this quartet—the Gerawan
20 Farming decisions from 2016, 2017, and 2019—but omits a citation to a fourth and most important
21 decision, the one in 2018 concerning representation issues. The Court of Appeal in *Gerawan*
22 *Farming* 2018 recognized that "protecting the farmworkers' right to choose . . . is a fundamental
23 part of the Board's mission under the ALRA" and "a secret ballot election under the ALRA
24 [embodies and reflects] the workers' fundamental right to choose concerning a question of
25 representation, [a] right [that] is at the heart of what the ALRA is designed to protect and promote."
26 *Gerawan Farming* 2018 at 1140.

27 The ALRB had ordered a union decertification election at Gerawan Farming on November
28 5, 2013 but then "rather than promptly tallying the ballots . . . [the ALRB] ordered the ballots

1 impounded.” *Id.* at 1142. For five years, the ALRB refused to count the ballots. The Court of Appeal
2 held that this refusal was improper because it disenfranchised the employees. According to the Court
3 of Appeal, the ALRB had “lost sight of the . . . value of protecting the farmworkers’ right to choose.”
4 *Id.* at 1144. The Court of Appeal ordered the ALRB to count the ballots and when the ballots were
5 tallied there were 197 votes for keeping the union and 1,098 votes for no union. The ALRB then
6 decertified the union—five years after the decertification election. *Gerawan Farming and Sylvia*
7 *Lopez v. United Farm Workers*, 44 ALRB No. 10 (September 27, 2018).

8 *Gerawan Farming* 2018 demonstrates that the Court of Appeal understands that the votes of
9 employees are of paramount importance when enforcing the rights of employees to choose whether
10 to have a union. In opposing Wonderful Nurseries’ motion, the ALRB argues that “[a]llowing an
11 employer to bypass the ALRA’s administrative and judicial review procedures . . . and stop the
12 Board in its tracks would bless the precise sort of dilatory and obstructionist tactics the Legislature
13 intentionally sought to prevent.” ALRB Opp. at 22. But as evidenced by *Gerawan Farming* 2018,
14 the ALRB itself has engaged in delay in the past by failing to even count votes for five years,
15 suggesting that there could be long delays here too. The ALRB administrative processes can be
16 exceedingly slow. Early judicial review by deciding the pending preliminary injunction motion on
17 the merits is in the public interest. Requesting an early decision on the merits is neither dilatory nor
18 obstructionist. It is the opposite.

19 *Gerawan Farming* 2018 is important for another reason. The delay at Gerawan Farming on
20 whether the ALRB would even permit a vote on decertification led to a “work stoppage, which
21 involved blocking work entrances to the fields early in the morning and urging all the arriving
22 workers to gather at a designated location where a massive protest took place.” *Id.* at 1155. The
23 ALRB’s argument that unwarranted chaos will result unless judicial review deferred, fails to
24 consider the chaos that may result if there is delay, as actually happened at Gerawan Farming. ALRB
25 Opp. at 22 (“deferring judicial review is a lesser evil than the potential chaos which would be created
26 by permitting initial jurisdiction in the courts . . . chaos that is especially unwarranted amidst an
27 ongoing administrative proceeding that may grant Wonderful the relief it seeks without resort to the
28 courts at all” (citation omitted)). If employees at hundreds of farms across the state are notified that

1 they are now represented by a union and questions are raised about the legality and fairness of the
2 process for making that determination, protests and work disruptions could follow. Now is the time
3 to test whether the Legislature’s newly-designed processes for determining majority support are
4 constitutionally permissible and adequately protect the employees’ right to choose. Given that the
5 ALRB believes that Wonderful Nurseries’ complaint does not raise serious constitutional issues, the
6 ALRB suffers no real harm if its beliefs are tested now. ALRB Opp. at 16 (“There is no
7 constitutional issue, let alone a plain or substantial one”).

8 This case and the motion for a preliminary injunction are being widely followed by
9 employers in the California farming community. The ALRB argues that the issues in the case are
10 not ripe for review and a ruling of the merits should be deferred to a future day. Amici believe that
11 delay is not in the public interest and that all parties would benefit from a decision on the merits
12 addressing the flaws in the challenged statutory scheme and its implementation. The California
13 Supreme Court has recognized that where ALRB’s procedures are being challenged, addressing the
14 merits can be the appropriate path because of the impact of those procedures on the wider
15 community. *Lindeleaf v. Agricultural Labor Relations Board* (1986) 41 Cal.3d 861, 870-71 (“we
16 elect to address this challenge on its merits . . . we may agree to hear a case involving important
17 questions of public policy”). Amici respectfully request a ruling on the merits addressing important
18 questions of public policy raised by Wonderful Nurseries in this litigation.

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Dated: June 6, 2024

Respectfully submitted,

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Fresh Fruit Association, California Citrus Mutual, Western Agricultural Processors Association, The Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, California Cotton Ginners and Growers Association, California Association of Winegrape Growers, and Ventura County Agricultural Association

1 **EXHIBIT A – Amici**

2 Western Growers Association represents farmers growing fresh produce in Arizona,
3 California, Colorado, and New Mexico. Its members grow over half the fresh produce in the United
4 States.

5 California Farm Bureau Federation is a voluntary trade association consisting of 54 county
6 Farm Bureaus with more than 26,900 members. Members include agricultural employers subject to
7 the ALRA.

8 Agricultural Council of California represents 15,000 farmers in California including
9 agricultural cooperatives, food processing plants, and farms.

10 California Fresh Fruit Association represents the California fresh fruit industry with 300
11 members primarily located in San Joaquin Valley. Members grow 95 percent of the deciduous tree
12 fruit and 85 percent of the fresh grapes shipped from California.

13 California Citrus Mutual represents growers of oranges, lemons, mandarins, and grapefruit
14 in California. Its members produce approximately 90 percent of the domestic fresh citrus supply.

15 Western Agricultural Processors Association represents more than 180 tree nut hullers and
16 processor of almonds, pecans, pistachios, and walnuts in California.

17 The Grower-Shipper Association of Central California represents more than 300
18 farmers, shippers, processors, and harvesters of fruits and vegetables in Monterey, Santa Cruz,
19 San Benilo, and Santa Clara counties.

20 Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties represents over
21 170 growers, shippers, and agribusinesses in Santa Barbara and San Luis Obispo Counties.

22 California Cotton Ginners and Growers Association represents all 400 cotton growers in
23 California and all 14 operating cotton gins.

24 California Association of Winegrape Growers represents wine growers in California. There
25 are 5,900 growers in the state with 615,000 acres of vineyards.

26 Ventura County Agricultural Association represents 200 agriculture-related employers in
27 Ventura and Santa Barbara Counties.

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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.

On June 6, 2024, I served the foregoing document described as **APPLICATION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION AND ADDRESSING PUBLIC INTEREST; PROPOSED BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION AND ADDRESSING PUBLIC INTEREST** on each interested party, as stated on the attached service list.

(BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically by electronically mailing a true and correct copy through Irell & Manella LLP’s electronic mail system to the e-mail address(es), as stated on the attached service list, and the transmission was reported as complete and no error was reported.

Executed on June 6, 2024, 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.

Koo, Justin (Jkoo@irell.com)

(Type or print name)

/s/ Justin Koo

(Signature)

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