

## Two Major Court Victories for the Agricultural Industry

Written by Robert Roy, President/General Counsel, Ventura County Agricultural Association

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*The Saqui Law Group wishes to thank Mr. Roy for providing permission to reproduce this article.*

Very rarely does the agricultural industry have much to celebrate in terms of legal victories. However, two significant legal decisions issued within the last 48 hours have provided some long-awaited relief to many in the California agricultural industry.

In the decision of ***Martinez v. Combs, et. al***, S 121552 (May 20, 2010), the California Supreme Court rejected an extremely broad interpretation of IWC Order 14-2001 with respect to the definitions of the terms "employer" and "employ" as urged by the California Rural Legal Assistance (CRLA) on behalf of farm workers who were not paid wages. Munoz & Sons, a strawberry farmer, grew and harvested strawberries in the Santa Maria Valley during 2000. Munoz employed up to 180 agricultural workers to harvest berries. He grew and harvested strawberries for two distinct markets: fresh sale to consumers and markets; and sale for processing (typically freezer berries). Apio Farms and Combs acted as produce brokers selling strawberries for commission and remitting him the net proceeds. Munoz also sold freezer berries to Frozsun. These arrangements were not uncommon within the California strawberry and vegetable industries and are referred to commonly as grower-shipper arrangements.

Despite the cash advances from Apio and Combs, and despite increasing payments from Frozsun, Munoz at some point in May 2000 began having problems paying his workers. At some point during the 2000 season, Munoz also fell behind in workers' compensation insurance payments. In the end, Munoz did not have sufficient funding to pay all of his employees' wages which precipitated litigation by CRLA on behalf of the unpaid farm workers.

On November 21, 2000, CRLA filed a lawsuit against defendants, Apio and Combs, Juan Ruiz, the field representative for Combs, and Munoz, the grower. CRLA asserted a variety of claims involving unpaid wages, waiting time penalties, failure to provide wage statements, breach of contract, unfair competition, etc.

All of the defendants moved for summary judgment on all claims. CRLA opposed the summary judgment motions, but the Superior Court ruled in favor of the defendants. On appeal to the Second District Court of Appeal, the appellate court affirmed in part and reversed in part. The appellate court found no California case law interpreting the IWC's definitions of the terms

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"employ" and "employer". The appellate court also found that the defendants did not exercise sufficient control over the agricultural operation to be considered as joint employers and thus affirmed summary judgment in favor of the defendants.

The Supreme Court granted review for consideration in light of a related issue in the case of **Reynolds v. Biement** (2005) 36 Cal 4th, 1075.

After an exhaustive review of the history of the Industrial Welfare Commissions orders and related case law arising under the **Fair Labor Standards Act**, the court came to a number of conclusions. First of all, the court held that Order 14-2001's definitions of the employment relationship do not apply in actions brought under Labor Code § 1194. The court's previous decisions in **Reynolds**, properly holds that the IWC's definition of "employer" does not impose liability on **individual** corporate agents acting within the scope of their agency. The court noted that its previous opinion in **Reynolds** should not be read more broadly than that.

Secondly, the court concluded that IWC's definition of the employment relationship does not incorporate Federal law. Thus, the non-statutory "economic realities" test for employment developed under Federal case law under the **Fair Labor Standards Act** has no application in determining the definition of employment found in California's wage orders regularly adopted by the Industrial Welfare Commission. This is especially true with respect to IWC Order 14-2001 which governs "agricultural occupations". According to the Court, courts must give the IWC's wage orders independent effect in order to protect the Commission's delegated authority to enforce the State's wage laws and, as appropriate, to provide greater protection of workers than Federal law affords.

Lastly, in addressing the summary judgement issue, the Court noted that it saw no reason to refrain from giving the IWC's definition of "employ" its historical meaning. That meaning was well-established when the IWC first used the phrase "suffer, or permit" to define employment, and the Court noted that no reason exists to believe the IWC intended another meaning. Furthermore, the historical meaning continues to be highly relevant today: A proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work by failing to prevent it, while having the power to do so. The Court found that neither Apio nor Combs either suffered or permitted plaintiffs to work because neither had the power to **prevent** the plaintiff

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workers from working.

The Court noted that CRLA's interpretation of Order 14 was also unreasonably broad. For the same reason that defendants benefited from the plaintiff's work, so to did the grocery stores that purchased strawberries from defendants, and the consumers who in turn purchased strawberries from the grocery stores. The Court noted that had the IWC intended to impose a rule capable of creating such potentially **endless** chains of liability, one would expect the Commission to have announced it in the plainest terms after vigorous debate. The concept of "downstream benefit" as a sufficient basis for liability appears nowhere in the Wage Order's definition of "employ" or in the decisions interpreting the child labor statutes from which the IWC borrowed the definition. Thus, the Court noted "We reject plaintiffs' broad interpretation of the IWC's definition of 'employ' for this reason."

The Court re-affirmed the overarching concept of the "exercise of control" over the working conditions of employees as the key factor in determining whether one is an employer of those employees. The Court noted that "One of the reasons the IWC defined 'employer' in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship.... ...To read the wage order in this way makes it consistent with other areas of the law, in which control over how services are performed is an important, even the principle, test for the existence of an employment relationship..."

Therefore, while there was evidence that indicated that Apio's and Comb's field representatives spoke with the grower's employees about the manner in which strawberries were to be packed, the evidence does not indicate that the field representatives ever supervised or exercised control over the grower's employees. This is a critical factor in any grower-shipper arrangement. While the packer may have the right to visit the fields, observe production, discuss with the grower the timing of the harvest, and the quality of the berries, so long as the shipper's representative is **not** supervising or exercising any control over the employees' working conditions, the grower continues to remain the sole employer of those employees, at least for wage and hour enforcement issues.

Of course, each and every grower-shipper agreement must be evaluated based upon the individual facts and circumstances of each case. Nevertheless, this case re-affirms the necessity of such arrangements within the California agricultural industry.

Congratulations to Terry O'Connor of the law firm of Noland, Hamerly, Etienne & Hoss,

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Salinas, California, and to the law offices of Effie Anastasiou, Anastasiou & Associates, Salinas, California, who represented the defendants, and to Monte Lake, Esq., a Washington, D.C.-based labor law attorney, who filed the friend-of-the-court brief on behalf of VCAA and the coalition of other Statewide agricultural associations.

The second victory came in a case filed by the San Luis and Delta Mendota Water Authority and Westland Water Districts in which they sought a temporary restraining order and a preliminary injunction against implementation of Reasonable and Prudent Alternatives (RPAs) set forth in a National Marine Fishery Services (June 4, 2009), Biological Opinion. The Biological Opinion addressed the impacts of the coordinated operations of the Federal Central Valley Project and State Water Project on the Central Valley Winter-Run and Spring-Run Chinook Salmon, Central Valley Steelhead, southern distinct population segment of Green Sturgeon and southern resident killer whales.

In a statement issued by the Pacific Legal Foundation, one of the representative attorneys in the lawsuit, PLF noted "Judge Wanger recognized that Federal regulators had not taken account of how water cut-offs could damage the human environment, and they did not use the best available science." According to PLF's attorney, "This is a powerful, excellent ruling. The Judge is telling the Federal government that they can't ignore the harsh human and environmental impacts of cutting water to farms, workers, businesses and communities. The Judge is also saying the Federal government can't get away with using slippery science to justify environmental restrictions that rob communities of their lifeblood - water."

Although the Judge issued the preliminary injunction on May 18, 2010, a second hearing was conducted today to address the exact nature of the injunctive relief and how much more water pumping must be permitted. At the time of the preparation of this E-Memo, VCAA was not advised as to the outcome of that second court hearing.

The Court's decision is 134 pages long and members who wish to obtain a copy may contact Rob Roy at the Association office.

Within the Court's 134-page decision, an excerpt from the Judge's opinion is noteworthy:

"This is a case of first impression. The stakes are high, the harms to the affected human

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communities great, and the injuries unacceptable if they can be mitigated. National Marine Fishery Services (NMFS) and Reclamation (Bureau of Reclamation) have not complied with the **National Environment Policy Act** (NEPA). This prevented in-depth analysis of the potential Reasonable and Prudent Alternative (RPA) actions through a properly-focused study to identify and select alternative remedial measures that minimize jeopardy to affected humans and their communities, as well as protecting the threatened species. No party has suggested that humans and their environment are less deserving of protection than the species. Until defendant agencies have complied with the law, some injunctive relief pending NEPA compliance is appropriate, so long as it will not further jeopardize the species or their habitat."

Judge Wanger has been on the front-line of the entire history of environmental and water litigation involving the Central Valley. The fact that he would issue a preliminary injunction against these Federal agencies should send a significant message to environmental advocacy groups, as well as the Federal agencies, that future Biological Opinions must necessarily incorporate adverse impacts to the human species, as well as any endangered species.

Congratulations to the Pacific Legal Foundation and its attorneys for its consistent legal challenges to the **Endangered Species Act** Biological Opinions that have triggered these dramatic cuts in water pumping in the San Joaquin Valley.

Robert P. Roy, Esq.  
President/General Counsel  
Ventura County Agricultural Association