

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CALIFORNIA ARTICHOKE	)	Case Nos.	2012-CE-044-VIS
AND VEGETABLE GROWERS	)		2013-CE-012-VIS
CORP., dba OCEAN MIST	)		
FARMS,	)		
	)		
Respondent,	)		
	)	ORDER DENYING GENERAL	
	)	COUNSEL'S APPLICATION FOR	
and	)	PERMISSION TO APPEAL	
	)	RULING OF THE	
	)	ADMINISTRATIVE LAW JUDGE	
JUAN MARTIN HERNANDEZ	)		
and JAIME BOYZO ARAUJO,	)		
	)		
Charging Parties.	)	Admin. Order No.	2014-06

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On April 9, 2014, the General Counsel of the Agricultural Labor Relations Board (Board), pursuant to section 20242(b) of the Board's regulations<sup>1</sup>, filed an Application for Permission to Appeal (Application) an evidentiary ruling made on April 3, 2014, by the Administrative Law Judge (ALJ) regarding March 28, 2014, Petition to Revoke a Notice in Lieu of Subpoena (Petition). The General Counsel alleged in the Application that the ALJ's ruling was in violation of section 2018.030 of the Code of Civil Procedure and section 915 of the Evidence Code, in that the ruling instructed the General Counsel to provide materials for in camera review which,

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<sup>1</sup> The Board's regulations are codified at California Code of Regulations, Title 8, section 20100 *et seq.*

according to the General Counsel, were absolutely protected from disclosure under the attorney work-product privilege. The General Counsel's Application in this matter is DENIED, for the reasons discussed below.

Section 20242, subdivision (b) of the Board's regulations provides that rulings and orders of an ALJ are only appealable upon special permission of the Board. The standard of review for such appeals (of ALJ rulings during an evidentiary hearing) was set forth in *Premiere Raspberries* (2012) 38 ALRB No. 11 (*Premiere*), as limited to issues that could not be resolved pursuant to the exceptions process outlined elsewhere in the Board's regulations. *Premiere* spoke to striking the proper balance between judicial efficiency and providing an avenue for review of rulings that would otherwise be effectively immunized from appeal. Although no standard exists for appeal of ALJ rulings made before hearing, the Board believes that the standard described in *Premiere* should also be applied to applications made before evidentiary hearings as well.

In *Coito v. Superior Court* (2012) 54 Cal.4th 480 (*Coito*), the California Supreme Court stated the proper procedure for a court to follow when ruling on a claim of work-product privilege. The attorney resisting discovery of work-product based on absolute privilege, as the General Counsel is here, must make a preliminary or foundational showing that disclosure would reveal his or her impressions, conclusions, opinions, or legal research or theories. (*Id.* at pp. 499-500.) Upon an adequate showing, the trial court should then, by making an in camera inspection of the materials as necessary, out of the presence and hearing of all persons except the person

authorized to claim privilege, determine whether absolute work product protection applies to some or all of the materials. (*Id.*) If the party claiming privilege is able to demonstrate that its materials do indeed contain the information described in Code Civ. Proc. § 2018.030(a), then the court must find them to be absolutely privileged work-product, and cannot order disclosure of the materials. (*Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807, 814.)

In the instant matter, since the ALJ's ruling has begun the procedure described in *Coito*, the General Counsel will be afforded the opportunity at the start of the July 8, 2014 evidentiary hearing in this matter to make a foundational showing that the materials claimed to be privileged are in fact absolutely protected attorney work-product. The Board has reviewed the Application in the instant matter and finds that it is unnecessary and thus DENIED.

By Direction of the Board.

Dated: May 5, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member