STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC., A California Corporation, DELTA PRE-PACK CO., A California Company, BERENDA RANCH LLC, A Limited Liability Company, CHRISTOPHER G. LAGORIO, An Individual, CHRISTOPHER G. LAGORIO TRUSTS, CREEKSIDE VINEYARDS, INC., A California Corporation, DEAN JANSSEN, An Individual, JANN JANSSEN, An Individual, KATHLEEN LAGORIO JANSSEN, An Individual, KATHLEEN LAGORIO JANSSEN TRUST, K.L.J. LLC, Limited Liability Company, K.L. JANSSEN LIVING TRUST, JANSSEN PROPERTIES, LLC, A Limited Liability Company, JANSSEN & SONS LLC, Limited Liability Company, LAGORIO FARMING CO., INC., A California Corporation, LAGORIO FARMS, LLC, A Limited Liability Company, LAGORIO LEASING CO., A California Company, LAGORIO PROPERTIES LP, A Limited Partnership, ROLLING HILLS VINEYARD LP, A Limited Partnership, QUAIL CREEK VINEYARD, a California Company, Respondents, and UNITED FARM WORKERS OF AMERICA, Charging Party.	)	Case Nos. 93-CE-037-VI (20 ALRB No. 7) ORDER DENYING GENERAL COUNSEL'S APPLICATION FOR PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE'S ORDER GRANTING MOTION TO DISMISS; CLARIFICATION OF GENERAL COUNSEL'S ROLE IN HEARING AND SETTLEMENT Admin. Order No. 2014-39

On October 16, 2014, the General Counsel of the Agricultural Labor Relations Board (Board), pursuant to section 20242(b) of the Board's regulations[1], filed an Application for Permission to Appeal (Application) an order made on October 10, 2014, by the Administrative Law Judge (ALJ) granting a motion to dismiss made by certain Respondents (Order). The General Counsel alleged in the Application that the ALJ's Order was made in error, and that the process of satisfying any makewhole judgment would be delayed if the challenge to the Order had to be resolved via the exceptions process. The Executive Secretary directed that the parties would be allowed to file a response to the Application, by 4 p.m. on October 29, 2014.

The certain Respondents timely filed a response arguing that the Application should be denied for failure to meet the Board's standards for the appeal of an ALJ's ruling. The certain Respondents contended that the Application failed to demonstrate that the Order could not be satisfactorily addressed via the exceptions process, and that denial of the Application would not jeopardize any rights of the General Counsel.

Respondent Ace Tomato Company, Inc. (Ace), on November 5, 2014, filed a request (Request) with the Board seeking clarification of the General Counsel's role in the hearing and settlement of this matter. Ace correctly pointed out, in the

[1] The Board's regulations are codified at California Code of Regulations, title 8, section 20100 *et seq*.

Request, that the Board instructed, in Administrative Order (Admin. Order) No. 2014-07, issued on May 13, 2014, that responsibility for litigating and settling the instant matter did not lie with the General Counsel, but rather with the Regional Director for the Visalia Regional Office of the Board. As a result, the Application is invalid and not properly before the Board, as it was filed by the General Counsel, who lacked the authorization to make the same. The Application should have been made by the Regional Director, as he is delegated by the Board the authority, pursuant to sections 20290-20292 of the Board's regulations, for the handling of compliance proceedings.

Furthermore, in the instant matter, an order issued on June 10, 2014, by the Board's Executive Secretary, stated that counsel for the General Counsel was expected to participate in a pre-hearing conference regarding this matter, as well as the actual hearing. That order was erroneous, as it should have specified that counsel for the Regional Director, and not the General Counsel, was expected to participate in the listed proceedings, and such confusion may have led to the General Counsel, instead of the Regional Director, filing the Application. However, even had the Application been properly made by the Regional Director, it would still be 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 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.

In the instant matter, the Application fails to include legal authority for the assertions contained therein. Moreover, the Application does not state any legal reason why the Order cannot be satisfactorily addressed via the exceptions process. Furthermore, both decisional and statutory authority indicate that rulings similar to the Order are not suitable for interlocutory appeal. Under Federal law, interlocutory appeals from federal district courts are addressed by 28 U.S.C. § 1291. The U. S. Supreme Court, in *Cohen v. Beneficial Industrial Loan Corp.* (1949) 337 U.S. 541, set forth the standard for assessing the appealability of orders under said statute, holding, at p. 546: "The effect of the statute is to disallow appeal from any decision which is tentative, informal or incomplete. Appeal gives the upper court a power of review, not one of intervention. So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal. . . . Nor does the statute permit appeals, even from fully consummated decisions, where they are but steps towards final judgment in which they will merge. The purpose is to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results." California law follows a similar course.

In *Barry v. Rodgers* (1956) 141 Cal.App.2d 340, the plaintiff appealed the trial court's order granting a motion to dismiss made by certain defendants, and the Court of Appeal held that such an order is not appealable. (*Id.* at p. 343.) Moreover,

section 904.1 of the California Code of Civil Procedure, which limits appeals in civil matters, "codifies the so-called 'one final judgment rule,' pursuant to which '[o]nly *final* judgments are appealable ....'" (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1222, 1226, citing *Day v. Papadakis* (1991) 231 Cal.App.3d 503, 507; emphasis in original.) Thus, the Order contains nothing which cannot be addressed via the exceptions process, and is not suitable for interlocutory appeal.

Because the Application in the instant matter was filed by the General Counsel, rather than the Regional Director, the filing was invalid. However, even were it to be considered, the Board would find that it is unnecessary and thus would be denied.

Dated: November 6, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member