

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC.,)	Case Nos.	93-CE-037-VI
A California Corporation, DELTA PRE-)		(20 ALRB No. 7)
PACK CO., A California Company,)		
BERENDA RANCH LLC, A Limited)		41 ALRB No. 5
Liability Company,)		41 ALRB No. 7
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)	ORDER APPROVING BILATERAL	
PROPERTIES LP, A Limited)	FORMAL SETTLEMENT	
Partnership, ROLLING HILLS)	AGREEMENT	
VINEYARD LP, A Limited)		
Partnership, QUAIL CREEK)		
VINEYARD, a California Company,)	[Cal. Code Regs., tit. 8, § 20298]	
)		
Respondents,)		
)		
and)		
)	Admin. Order No. 2016-04	
UNITED FARM WORKERS OF)		
AMERICA,)	(February 26, 2016)	
)		
Charging Party.)		

On February 18, 2016, the Visalia Acting Regional Director (Regional Director) of the Agricultural Labor Relations Board (ALRB or Board) submitted to the Board for approval a Bilateral Formal Settlement Agreement (Agreement) between Ace Tomato Company, Inc. (Ace), the other related parties listed as Respondents in the caption, the Charging Party, United Farm Workers of America (UFW), the Visalia Regional Director, and Acting General Counsel (General Counsel). The Agreement adjusts the Board orders in *Ace Tomato Company, Inc. (2015) 20 ALRB No. 7*, *41 ALRB No. 5*, and *41 ALRB No. 7* (case number 93-CE-37-VI). The parties executed the Agreement on February 16, 2016. The General Counsel submitted a full statement in support of the Agreement on February 18, 2016, as required by Board regulation 20298, subdivision (f)(1)(A).¹ In his statement, the General Counsel described in detail the Board's remedy ordered in the three decisions referenced above, and lists the remedies with which Ace already has complied. The General Counsel states that the only remedy outstanding is the payment of the makewhole remedy.

In its final decision in this matter, the Board ordered that Respondent Ace pay bargaining makewhole to the approximately 1,800 employees set forth in the makewhole specification, as reflected in *Ace Tomato Company, Inc. (2015) 41 ALRB No. 5*, and *Ace Tomato Company, Inc. (2015) 41 ALRB No. 7*, in the

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

amount of \$510,469 for the period, June 14, 1993 to July 27, 1994. Neither Ace nor the UFW sought review of the Board's final decision and order.

In his statement of support, the General Counsel describes the unsuccessful efforts in achieving monetary compliance from Ace over the past twenty years. He describes the financial issues experienced by Ace starting in 2006, including being sold in 2012 and going out of business. These are findings of fact described by the ALRB Administrative Law Judge (ALJ) in his 2015 decision following the compliance hearing on the makewhole specification. The General Counsel also describes the ALJ and Board rulings that Kathleen Lagorio Janssen, an individual and President of Ace, is not derivatively liable for the makewhole remedy. In response to the General Counsel's request that Ace disclose a list of any and all of its remaining assets, Ace represented that its sole asset was a bank account with a balance of \$18,564.69. The General Counsel describes additional documentation sought and received from Ace, and states that based upon a review of that documentation, he accepts Ace's representations that Ace only has \$18,564.69 with which to satisfy the Board's makewhole award. Moreover, Ace's assets continue to diminish each year.

The Agreement states that Ace and the Related Parties will pay an aggregate amount of \$200,000 to the ALRB for distribution to the qualifying workers. Specifically, the Acting General Counsel states in his letter of February 18, 2016 that Ms. Jansen will pay \$200,000 out of her own funds. In the same letter, the General Counsel describes the efforts over the past two years to

locate workers and includes an assessment that there is a high likelihood that each worker found will receive a full remedy, including interest, within an ensuing two year period, and that additional monies should be available in the event other eligible workers come forward within that period. The Agreement states that any remaining funds after two years will be deposited in the Agricultural Employee Relief Fund as required by section 20299 of the Board's regulations. (Cal. Code Regs., tit. 8, § 20299.)

In deciding whether it will effectuate the purposes and policies of the Act to give effect to a settlement, the NLRB considers such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concessions, and the conservation of the NLRB's resources. In addition, the NLRB also considers whether the parties to, and the employees affected by, the dispute have agreed to the settlement, whether the settlement was the product of a grievance-arbitration mechanism, and whether the agreement was entered into voluntarily by the parties, without fraud or coercion. (*Independent Stave Co., Inc.* (1987) 287 NLRB 740.) The General Counsel's statement addresses how each of the *Independent Stave* criteria is met, except for the early restoration of industrial harmony (given the passage of time and because Ace is no longer operating).

Overall, the General Counsel concludes that the Agreement minimizes the challenges of collecting a final judgment given Ace's closure of business and few assets. He argues that the Agreement represents a compromise

that provides a high likelihood of making whole those workers who have been found. We agree. The Board has reviewed the Bilateral Formal Settlement Agreement and the General Counsel's supporting statement and finds that the Agreement sufficiently comports with the Board's order and effectuates the purposes of the Agricultural Labor Relations Act.

PLEASE TAKE NOTICE that the Board hereby approves the Bilateral Formal Settlement Agreement in the above-captioned matter.

Dated: February 26, 2016

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member