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7 Attorneys for Defendant  
8 James G. Garcia, Inc.

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Benjamin Comejo-Ramirez, Jose D. Cortez, ) **NO. CIV 99-0201-PHX-RCB**  
12 Luis Fen-ales, Manuel Garcia Ruiz, )  
13 Alejandro Martinez-Rios, and ) **DEFENDANT'S MOTION FOR**  
14 Alfredo Salas-Rodriquez, ) **PARTIAL SUMMARY**  
15 ) **JUDGMENT**  
16 ) **(Oral Argument Requested)**  
17 Plaintiffs, )  
18 vs. )  
19 James G. Garcia, Inc. )  
20 )  
21 )  
22 Defendant. )

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23 Defendant James G. Garcia, Inc. ("Garcia"), by and through counsel undersigned  
24 hereby moves this Court for judgment in its favor pursuant to Rule 56, Fed. R. Civ. P.,  
25 on Counts I and III as the record fails to demonstrate a genuine issue of material fact  
26 and the Defendant is entitled to partial summary judgment as a matter of law. This  
Motion is supported by the attached Memorandum of Points and Authorities.

..



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1 was travelling eastbound on State Route 78 on its way to the Blythe area. *Id.* The van  
2 was travelling at approximately 60 miles per hour when it started veering to the left.  
3 (See SSOF, ¶ 8.) Mr. Gonzales overcorrected to the right and the vehicle rolled. (See  
4 SSOF, ¶ 9.) Of the seven passengers, five went to Palo Verde Hospital in Blythe with  
5 injuries, including the three Plaintiffs to whom this Motion for Summary Judgment is  
6 directed. (See SSOF, ¶ 10.)

8 Benjamin Comejo-Ramirez, Luis Ferrales, and Manuel Garcia-Ruiz filed for  
9 workers compensation benefits subsequent to the accident. (See SSOF, ¶ 11.) A formal  
10 hearing was convened in Yuma, Arizona on May 6, 1999 wherein the Industrial  
11 Commission of Arizona (“ICA”) found that the three Plaintiffs’ injuries were non-  
12 compensable because they were not within the course and scope of their employment  
13 when the accident happened. (See SSOF, ¶ 12.) The ICA further found that the subject  
14 vehicle was not owned by Garcia and was not under Garcia’s control. (See SSOF, ¶  
15 13.) Plaintiffs filed a written Request for Review of the decision that was granted. *Id.*  
16 The results of the decision upon review were identical to the decision upon hearing  
17 except the ICA additionally found that Plaintiff Comejo-Ramirez was not an employee  
18 of Garcia at the time of the accident. (See SSOF, ¶ 14.)

22 Plaintiffs then filed a Complaint in Arizona District Court alleging five causes of  
23 action. (See SSOF, ¶ 15.) Only two of those causes of action apply to the Plaintiffs to  
24 whom this summary judgment motion is directed. (See SSOF, ¶ 16.) The first cause of  
25 action alleges that Garcia violated various provisions of 29 U.S.C. § 1801. *Id.* The  
26

1 second cause of action alleges that Garcia was negligent in transporting Plaintiffs in a  
1 vehicle that contained various defects. *Id.*

3  
4 **II. Argument.**

5 **A. Garcia Is Entitled To Summary Judgment As A Matter Of Law On**  
6 **The Plaintiffs' Negligence Claim Because The Issue Of Course And**  
7 **Scope Was Previously Decided.**

8 The Plaintiffs argue that Garcia is negligent because he owed them a duty of care  
9 to transport them and other employees in a safe and reasonable manner. Before an  
10 employer can be liable to its employees, it must be shown that the employees were  
11 acting within the course and scope of their employment. *See E.G. Robarge v. Bechtel*  
12 *Power Corp.*, 13 1 Ariz. 280, 640 P.2d 211 (App. 1982); see also *Raycort Chevrolet v.*  
13 *Simmons*, 117 Ariz. 202, 571 P.2d 699 (App. 1977). Because the determination of  
14 whether the Plaintiffs were employees or were acting within the course and scope of  
15 their employment at the time of the accident has been or could have been litigated and  
16 decided in the previous ICA proceedings, Garcia is entitled to summary judgment as a  
17 matter of law.  
18

19  
20 1. Collateral Estoppel Precludes Plaintiffs' Claims.

21 The doctrine of collateral estoppel is a doctrine of issue preclusion and bars a  
22 party from re-litigating an issue identical to one he has previously litigated to a  
23 determination on the merits in another action. *Gilbert v. Board of Medical Examiners*,  
24 155 Ariz. 169, 174, 745 P.2d 617, 622 (App. 1987). The elements necessary to plead  
25 collateral estoppel are: (1) the issue was actually litigated in a previous proceeding; (2)  
26

1 there was a full and fair opportunity to litigate that issue in the previous proceeding; (3)  
2 the resolution of that issue was essential to the decision; (4) there was a valid and final  
3 decision on the merits; and (5) there is a common identity of the parties between the  
4 present proceeding and the previous proceeding. *Id.*  
5

6 “Both doctrines of res judicata and collateral estoppel may apply to decisions of  
7 administrative agencies acting in a quasi-judicial capacity.” *Hawkins*, 183 Ariz. at 103,  
8 900 P.2d at 1239. Where a party does not appeal a final administrative decision that  
9 decision becomes final. *Id.*, at 104, 900 P.2d at 1240.  
10

11 The Plaintiffs previously litigated the issue surrounding the automobile accident  
12 and specifically the issue of course and scope in front of the ICA. The ICA found that  
13 the Plaintiffs were not acting within the course and scope of their employment when the  
14 accident occurred. (See SSOF, ¶ 12.) That issue was essential to the administrative law  
15 judge’s decision that the Plaintiffs were not entitled to workers compensation.  
16 Similarly, the issue here of whether the Plaintiffs were acting within the course and  
17 scope of their employment is necessary to the determination of negligence on the part of  
18 Garcia. As such, the ICA’s ruling bars the Plaintiffs from re-litigating course and scope  
19 here.  
20  
21

22 The general rule, followed by Arizona Courts, is that incidents that occur while  
23 employees are going to or returning from their regular place of work, are not incident to  
24 the employment and are held not compensable as arising out of and in the course of the  
25 employment. *Anderson v. Gobeau*, 18 Ariz. App. 277, 280, 501 P.2d 453, 456 (1972).  
26

1 Although the going and coming rule is ordinarily applied in workman's compensation  
2 cases, there are instances when the workman's compensation principles are appropriate  
3 for tort cases and can be invoked. See *Robarge*, 131 Ariz. at 282, 640 P.2d at 213; see  
4 also *Anderson v. Gobeau*, 18 Ariz. App. 277, 280, 501 P.2d 453, 456. This is such a  
5 case.  
6

7 In *Robarge*, the Court differentiated workman's compensation law and  
8 respondeat superior doctrine law by explaining that workman's compensation benefits  
9 turn solely upon whether the employee was injured while performing an activity related  
10 to his job whereas respondeat superior subjects employers to liability for injuries  
11 suffered by an indefinite number of third persons. 131 Ariz. at 282, 640 P.2d at 213.  
12 Just as in the ICA proceedings, the Plaintiffs' negligence claim involves injuries  
13 sustained by an alleged employee while allegedly performing an activity related to his  
14 job. There is no third party claiming injuries as a result of an employee's conduct as is  
15 found in cases involving respondeat superior. Accordingly, application of workman's  
16 compensation principles and cases are appropriate and the ICA's finding that the  
17 Plaintiffs were not within the course and scope of their employment when the accident  
18 occurred collaterally estops the Plaintiffs from bringing the negligence action against  
19 Garcia.  
20

21 Moreover, the ICA specifically held that Plaintiff Comejo-Ramirez was not  
22 Garcia's employee (see SSOF, ¶ 14.) and therefore, any negligence action brought by  
23 him is precluded.  
24  
25  
26



1           **B. Garcia Is Entitled To Summary Judgment On The Plaintiffs’**  
2           **Agricultural Worker Protection Action (“AWPA”) Claim As A**  
3           **Matter Of Law.**

4           Pursuant to 29 U.S.C. § 1854(c), Plaintiffs allege that Garcia violated three  
5 separate provisions of the AWPA and are entitled to the amount of their actual damages  
6 sustained as a result of those alleged violations or statutory damages of up to five  
7 hundred dollars (\$500.00) per Plaintiff per violation. Specifically, the Plaintiffs allege  
8 that Garcia violated 29 U.S.C. §§18 11, 183 1 (e), and 184 1. The facts and the record do  
9 not disclose a violation of any of these three provisions and therefore Garcia is entitled  
10 to summary judgment as a matter of law on the Plaintiffs’ AWPA claim.  
11

12           1.       The Plaintiff Has Failed To Allege A Violation Of § 183 1 (e).  
13

14           Section 183 1(e), 29 U.S.C., provides in pertinent part:

15           No farm labor contractor, agricultural employer, or agricultural association  
16 shall knowingly provide false or misleading information to any seasonal  
17 agricultural worker concerning the terms, conditions, or existence of  
18 agricultural employment required to be disclosed by subsection (a), (b), or  
19 (c) of this section.

20           Subsection (a) requires that a farm labor contractor ascertain and upon request, disclose  
21 *in writing* various information when an offer of employment is made to such worker.

22           Subsection (b) provides that each farm labor contractor shall post in a conspicuous place  
23 at the place of employment a poster provided by the secretary setting forth the rights  
24 and protections afforded workers defined under the AWPA chapter. Subsection (b)  
25 further requires that the employer provide upon request a written statement of the  
26 information described in subsection (a). Subsection (c) requires farm labor contractors

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1 who employ seasonal agricultural workers to make, keep and preserve records for three  
2 years of general information regarding wages, hours, earnings, withholdings, etc.  
3 Subsection (c) further requires that the farm labor contractor provide to each worker for  
4 each pay period an itemized written statement to the information required by Paragraph  
5 1.  
6

7 The Plaintiffs' Complaint does not allege any facts that would provide support  
8 for a violation of subsections (a), (b), and (c). In fact, the Plaintiffs merely allege that  
9 "Defendants assured Plaintiffs that Defendants would be responsible for payment of  
10 their medical treatment. Defendants later informed Plaintiffs that Plaintiffs were  
11 responsible for the medical costs they had incurred." (See ¶ 37 of Plaintiffs' First  
12 Amended Complaint.) The Plaintiffs maintain that this was "knowingly providing false  
13 or misleading information to Plaintiffs regarding Plaintiffs' right to compensation for  
14 medical expenses, in violation of 29 U.S.C. § 183 1 (e)." That is the only reference made  
15 by the Plaintiffs to a violation of § 183 1. Accordingly, because § 183 1 requires a  
16 violation of certain written disclosure requirements, posting requirements, and record  
17 keeping and information requirements, and the Plaintiff has failed to allege any  
18 violation of such a requirement, the Plaintiffs' claim for an alleged violation of §  
19 183 1(e) fails as a matter of law and judgment must be granted in Garcia's favor.  
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2. The Issue Of Emulovment Relationship Is Precluded Pursuant To The Doctrine of Res Judicata And Summary Judgment Should Be Granted In Favor Of Garcia On The Plaintiffs' Alleged Violation Of § 1 1 .

The Plaintiff alleges that Garcia Violated § 18 11 by engaging in transportation activities without being properly registered to transport and by violating certain safety requirements. Section 18 1 l(b), 29 U.S.C. provides that a farm labor contractor can only be sued for violations of § 18 11 by an employee.

The principles of res judicata and administrative proceedings apply equally to Federal claims as well as State law claims. *See University of Tennessee v. Elliott*, 478 U.S. 788, 106 S. Ct. 3220, 92 L.Ed.2d 635 (1986) (The United States Supreme Court has recognized that it is sound policy to apply principles of res judicata to the fact finding of administrative bodies acting in a judicial capacity).

The ICA found that Plaintiff Comejo-Ramirez was not Garcia's employee. Thus, his allegation that Garcia violated § 1811 must fail. With respect to Plaintiffs Ferrales and Garcia-Ruiz, because the ICA could have concluded that they were also not Garcia's employees, they are similarly precluded from re-litigating that point before this Court. *See Hawkins, 183 Ariz. at 103,900 P.2d at 1239; see also Hoff v. City of Mesa, 86 Ariz. 259, 344 P.2d 10 13 (1959)*. Therefore, Garcia is entitled to summary judgment on the § 18 11 claim as a matter of law.

...  
...

1                   3.     Because The Record Fails To Demonstrate That Garcia Had The  
2                                   Requisite State Of Mind Pursuant To § 1854. The Plaintiffs Claim  
3                                   For A Violation of § 184 l Fails As A Matter Of Law.

4                   Lastly, the Plaintiffs argue that Garcia violated the provisions set forth in § 184 1  
5 regarding motor vehicle safety. In order for the Plaintiffs to succeed on this claim,  
6 however, the facts must demonstrate that Garcia intentionally violated that provision.  
7 See 29 U.S.C. § 1854. Not only does the record fail to reveal that Garcia had the  
8 requisite state of mind of intent, but it also fails to reveal any facts to even support  
9 Plaintiffs' claim.  
10

11                   Specifically, the Plaintiffs allege that Garcia failed to provide worker's  
12 compensation coverage for transportation injuries in violation of § 184 l(c). Plaintiffs  
13 further allege that Garcia failed to ensure that the Ford van in which the Plaintiffs were  
14 travelling was in compliance with Federal safety standards pursuant to § 1841 (b)(1)(A)  
15 and failed to provide liability insurance on the Ford van for transportation injuries in  
16 violation of § 1841(b)(1)(C). The record fails to disclose any facts to support any of  
17 these violations.  
18

19                   First, the record demonstrates that Garcia did have worker's compensation  
20 insurance (see deposition transcript of James Garcia, attached as Exhibit H to SSOF at  
21 p. 12), but the ICA determined, after a full and fair litigation of the issues, that the  
22 Plaintiffs were not entitled to compensation for their injuries on the ground that they  
23 were not acting within the course and scope of their employment. (See SSOF, ¶ 12.)  
24 Accordingly, any allegation of the Plaintiffs with respect to worker's compensation  
25  
26

1 insurance is groundless and cannot succeed. As for the other two allegations, the record  
2 does not reveal that Garcia intentionally violated those provisions.

3  
4 As for Plaintiffs' claims that Garcia violated § 184 1 (b)(1)(A) and 184 1 (b)(1)(C),  
5 the facts as disclosed by the record and the ICA found that the subject vehicle was  
6 neither owned by Garcia nor was it under Garcia's control. (See SSOF, ¶ 13.) The  
7 facts, including deposition testimony, reveal that Garcia did not provide transportation  
8 for the farm laborers and they in fact were required to find their own way to the field.  
9 (See SSOF, ¶ 4.) The record does not support any allegation that Garcia knew who  
10 would be driving to the fields nor whether they could carry passengers. Indeed, it was  
11 common knowledge among Garcia's employees that they were responsible for finding  
12 their own transportation to the field. (See SSOF, ¶ 4.) There was nothing to preclude a  
13 worker from driving himself, or finding a ride with another worker. Thus, the manner  
14 in which the farm laborers traveled to the fields necessarily suggests that Garcia did not,  
15 nor could he, anticipate who would be driving to the fields. Because Garcia neither  
16 owned nor controlled the vehicles the workers utilized as transportation to the fields,  
17 and specifically did not own or control the Ford van involved in the accident, Garcia  
18 was under no obligation or duty to provide other liability insurance on that vehicle or  
19 insure that it complied with Federal safety standards. In fact, because of the procedure  
20 in which the workers obtained transportation to the fields, there is no way that Garcia  
21 could have even known which vehicles would be utilized. Accordingly, there are no  
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1 facts to support a violation of § 1841 and consequently, the required mental state  
2 necessary to establish a violation of that provision absent.

3 **III. Conclusion.**

4  
5 The doctrines of res judicata and collateral estoppel preclude the Plaintiffs from  
6 alleging their negligence claims against Garcia. The ICA has already made a final and  
7 binding determination as to the issue of whether the Plaintiffs were within the course  
8 and scope of their employment when the accident occurred. Further, the ICA made a  
9 final and binding determination as to the employment status of Plaintiff Cornejo-  
10 Ramirez and could have made the same determination with respect to Plaintiffs Ferrales  
11 and Garcia-Ruiz. Consequently, the employment relationship with Garcia, which must  
12 be proven before prevailing on the negligence claim, has or could have been litigated  
13 and they are therefore precluded by the doctrine of res judicata from re-litigating that  
14 point. Accordingly, Garcia is entitled to summary judgment on the Plaintiffs'  
15 negligence claim as a matter of law.

16  
17  
18 As for the Plaintiffs' AWPAs claims, the record unequivocally fails to support  
19 and the Plaintiffs do not allege that Garcia failed to provide written disclosure  
20 requirements, *see* § 183 1 (a), failed to post requirements at the place of employment, see  
21 § 183 1(b), or failed to keep written records regarding the worker's wages, hours, etc.,  
22 see § 1831(c). Consequently, without support or even an allegation of these three  
23 sections, the Plaintiffs' claim for violation of § 183 1(e) fails as a matter of law.  
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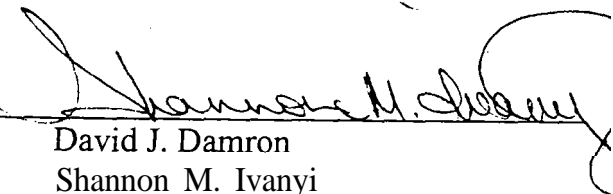
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1 Nor have the Plaintiffs demonstrated a violation of § 18 11. The fact that the ICP  
2 decided that Comejo-Ramirez was not an employee of Garcia and could have decided  
3 that Fen-ales and Garcia-Ruiz were not employees, the Plaintiffs' claim under this  
4 provision is precluded as a matter of law.  
5

6 Finally, the record does not support a violation of § 1841. Accordingly, the  
7 requisite mental state required pursuant to § 1854(c) is absent and cannot be shown.  
8

9 DATED this 12<sup>th</sup> day of July, 2000.

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