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ON POVERTY LAW

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Benjamin Cornejo-Ramirez,)
 et al.,)
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 Plaintiffs,)
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 vs.)
)
 Ames G. Garcia, Inc.,)
)
 Defendant.)

No. CIV 99-0201 PHX RCB

O R D E R

Pending before the court is Defendant's motion for partial summary judgment pursuant to Fed. R. Civ. P. 56. The court heard oral argument on October 2, 2000, and took the matter under advisement. Having carefully considered the arguments raised, the court now grants Defendant's motion regarding Plaintiffs' claim under 29 U.S.C. § 1831(e) in Count I and denies Defendant's motion regarding Plaintiffs' other claims.

I. BACKGROUND

Defendant's motion for partial summary judgment concerns only three plaintiffs: Benjamin Cornejo-Ramirez, Luis Ferrales, and

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1 Manuel Garcia-Ruiz.¹ Their claims against Defendant arise from a
2 July 4, 1998, automobile accident in which the three were traveling
3 from San Luis, Arizona, to melon fields in Palo Verde, California.
4 The parties agree that Plaintiffs are "seasonal agricultural
5 workers" and Defendant is a "farm labor contractor" as defined by
6 the Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §
7 1802(10)(A). Am. Compl. (doc. 13) ¶¶ 10-11; Def. Ans. (doc. 19) ¶¶
8 7-8. The claims that are the subject of Defendant's motion for
9 partial summary judgment rest on the AWPA and the common law of
10 negligence. Am. Compl. (doc. 13) ¶¶ 59-63, 67-74.

11 A. The Accident

12 The factual circumstances surrounding the July 4 accident are
13 highly contested. The parties agree to the following. On the
14 morning of July 4, 1998, Plaintiffs and other laborers gathered in
15 the Del Sol Market parking lot in San Luis, Arizona. Plaintiffs
16 boarded a 1970 Ford van driven and owned by Encarnacion Salgado
17 Gonzalez. P. S.O.F. (doc. 49) ¶ 13; D. C.S.O.F. (doc. 53) ¶ 13.
18 Salgado, a tractor driver employed by Defendant, undertook to
19 transport Plaintiffs to melon fields in Palo Verde. D. S.O.F.
20 (doc. 45) Ex. B at 10 lines 2-8. Defendant was responsible for
21

22
23 ¹ Six plaintiffs filed suit against Defendants James G.
24 Garcia, Inc., and Robinson Farms on February 2, 1999, seeking
25 damages for violations of the Agricultural Worker Protection Act,
26 29 U.S.C. § 1801 et seq., and for violations of state law regarding
27 wage payment, negligence, and contract. In July 1999, Plaintiffs
28 amended their complaint, dismissing Robinson Farms as a defendant
and adding Danny Robinson and Betty Robinson as defendants. In
October 1999, this court granted Danny and Betty Robinson's motion
to dismiss for lack of personal jurisdiction. The claims of the
six Plaintiffs against corporate Defendant Garcia remain.

1 hiring workers for those fields. D. S.O.F. (doc. 45) ¶ 3.

2 The Ford van carried no insurance. It had numerous defects
3 including no rear view mirror, poor tires, and seats consisting of
4 wooden benches and plastic milk boxes that were not securely
5 attached to the base of the vehicle. Am. Compl. (doc. 13) ¶¶ 28-
6 29; Def. Ans. (doc. 19) ¶ 12. During the trip to California, the
7 van's left rear tire blew. The driver overcorrected the vehicle
8 and it flipped several times, causing Plaintiffs' injuries.

9 Plaintiff Cornejo-Ramirez suffered a fractured nose and a bruised
10 chest. Plaintiff Ferrales suffered a fractured neck and multiple
11 injuries to his left leg and back. Plaintiff Garcia-Ruiz suffered
12 injuries to his right side and a deep cut on his right hand. All
13 were transported to Palo Verde Hospital in Blythe, California. Am.
14 Compl. (doc. 13) ¶ 33; Def. Ans. (doc. 19) ¶ 12.

15 B. Defendant's Involvement in Transporting Laborers

16 The parties vigorously contest Defendant's involvement in
17 transporting laborers from San Luis to the fields in Palo Verde.
18 Plaintiffs Ferrales and Garcia-Ruiz contend that they reported to
19 the Del Sol Market every morning between 2:30 and 3:00 a.m. because
20 Defendant's foreman, Raul Escoto, instructed them to do so. The
21 two allege that foreman Escoto told them to ride to the fields with
22 Salgado. Almost every day they were employed that season, the two
23 rode in Salgado's van to Palo Verde. ICA Hrng. at 19-20, 25-26,
24 41; Ferrales Aff. ¶ 4; Ferrales Dep. at 9; Garcia-Ruiz Dep. at 10.
25 Plaintiff Ferrales supports this contention with claims that when
26 he worked for Defendant from 1993-1997, foremen also arranged
27 transporting crew to and from the fields. Ferrales Aff. ¶ 14-16.

28 Unlike Ferrales and Garcia-Ruiz, Plaintiff Cornejo-Ramirez had

not previously worked for Defendant. He approached foreman Escoto in the parking lot of the Del Sol Market on July 4, asking about work opportunities. Escoto indicated that Cornejo-Ramirez could work picking melons. Escoto then instructed Cornejo-Ramirez to enter the Salgado van. Cornejo-Ramirez Aff. ¶¶ 1-2, 4, 7; Cornejo-Ramirez Dep. at 10-11.

Defendant presents a markedly different tale. It admits that Escoto is Defendant's foreman and employee. D. C.S.O.F. (doc. 53) ¶ 15. However, it avers that laborers gathered at the Del Sol Market daily to find out if work was available. Garcia Dep. (2.4.99) at 16. Work was only offered on a daily basis. ICA Hrng. at 71; Garcia Dep. (2.4.99) at 10. Laborers were responsible for finding their own transportation to the fields. Garcia Dep. (2.4.99) at 27; Escoto Dep. at 33. While Defendant had previously hired workers, it no longer provided transportation. Garcia Dep. (5.31.00) at 73. Defendant had no involvement in obtaining rides for laborers. Workers with cars would drive those without, arranging for gas compensation among themselves. Esteves Dep. at 13; Escoto Dep. at 25.

4. The Workers' Compensation Hearing

Plaintiffs sought workers' compensation benefits as a result of the accident: Defendant's insurance carrier denied their claims. P. S.O.F. (doc. 49) Ex. L. Plaintiffs contested the denial by submitting their claim to the Industrial Commission of Arizona ("ICA") on November 24, 1998. Id. Ex. M. The ICA held a hearing on Plaintiffs' claims in Yuma, Arizona, on May 6, 1999. On May 28, 1999, the ICA issued a written opinion, holding that the claims were non-compensable as Plaintiffs were not in the course of

their employment with Defendant at the time of the accident. Id.
Ex. N. Plaintiffs requested a review of the decision. In its
review, the ICA affirmed its decision and made the additional
Finding that Plaintiff Cornejo-Ramirez was not an employee of
Defendant. Id. Ex. O.

Plaintiffs did not appeal the ICA decision but filed suit in
this court on February 2, 1999. Plaintiffs claim that Defendant is
liable under the common law of negligence for transporting
Plaintiffs in an unsafe manner. Am Compl. (doc. 13) ¶¶ 67-74.
They also claim that Defendant is liable under the Agricultural
Worker Protection Act for transporting workers without a
certificate of registration, for providing false or misleading
information about payment of Plaintiffs' medical expenses, and for
transporting workers without insurance in an unsafe vehicle. Id.
it ¶¶ 58-63. Defendant seeks to dismiss all of these claims on
summary judgment.

STANDARD FOR SUMMARY JUDGMENT

To grant summary judgment, the court must determine that the
record before it contains "no genuine issue as to any material
fact" and, thus, "that the moving party is entitled to judgment as
matter of law." Fed. R. Civ. P. 56(c). In determining whether
to grant summary judgment, the court will view the facts and
inferences from these facts in the light most favorable to the
nonmoving party. See Matsushita Elec. Co. v. Zenith Radio Corp.,
75 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986).

The mere existence of some alleged factual dispute between the
parties will not defeat an otherwise properly supported motion for
summary judgment; the requirement is that there be no genuine issue

of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510 (1986). A material fact is any factual dispute that might affect the outcome of the case under the governing substantive law. Id. at 248, 106 S. Ct. at 2510. A factual dispute is genuine if the evidence is such that a reasonable jury could resolve the dispute in favor of the nonmoving party. Id. A party opposing a motion for summary judgment cannot rest upon mere allegations or denials in the pleadings or papers, but instead must set forth specific facts demonstrating a genuine issue for trial. See id. at 250, 106 S. Ct. at 2511. Finally, if the nonmoving party's evidence is merely colorable or is not significantly probative, a court may grant summary judgment. See, e.g., California Architectural Build. Prods., Inc. v. Franciscan Ceramics, 818 F.2d 1466, 1468 (9th Cir. 1987).

III. DISCUSSION

A. Negligence

Defendant presents several theories to justify summary judgment on Count III (negligence) of Plaintiffs' Amended Complaint. Defendant first argues that Plaintiffs' only remedy is workers' compensation. Second, Defendant contends that Plaintiffs' negligence theory was insufficiently pled in the First Amended Complaint. Finally, Defendant asserts that the ICA opinion bars Plaintiffs' claims both under claim preclusion (*res judicata*) and issue preclusion (*collateral estoppel*). Each of Defendant's arguments is discussed separately below.

Workers' Compensation Is Not Plaintiffs' Exclusive Remedy.

Defendant argues that Plaintiffs' negligence suit should be barred as an impermissible attempt to relitigate their industrial

injury. Although it is unclear from the pleadings, the court understands Defendant to assert an election of remedies argument. It claims that as Plaintiffs' pursued a workers' compensation remedy and lost, they are now barred from seeking tort relief.

Arizona has an extensive workers' compensation scheme for workers injured in the course of employment. The Arizona Constitution outlines the compensation scheme in Art. XVIII § 8 and the legislature completed the details by statute in Ariz. Rev. Stat. §§ 23-901 et sea. The right to receive workers' compensation is generally the exclusive remedy for employees injured while acting within the scope of employment. Ariz. Rev. Stat. § 23-1022A. Further, receiving workers' compensation benefits generally operates as a waiver of any right to tort remedies. Ariz. Rev. Stat. § 23-1024(A).

In the present case, however, the ICA determined that Plaintiffs were not acting in the course and scope of employment during the July 4 accident. P. S.O.F. (doc. 49) Ex. N. Thus, the ICA denied Plaintiffs' request for benefits. Id. The Arizona Workers' Compensation statute does not indicate that there is any election of remedies bar in such a situation. Defendant finds support in Stoecker v. Brush Wellman, Inc., 984 P.2d 534 (Ariz. 1999) (en banc), but that case fails to advance its argument. Actually, Stoecker differs significantly from the present claim. The Stoecker plaintiffs did incur injury during the course and scope of their employment and they received compensation benefits. The court analyzed the tort claims in light of this background and concluded the civil suit was not an attempt to relitigate the industrial injury; it presented claims not barred by the election

of remedies provision in Ariz. Rev. Stat. § 23-1024(A).

Furthermore, the principles articulated in Stoecker challenge Defendant's position. While the court cited a work on the danger of plaintiffs who circumvent the workers' compensation exclusivity provisions,² the court also noted that claims not falling within the scope of the workers' compensation statute are not barred by its exclusivity provision. Id. at 537.

The principle behind Arizona's compensation system is that employees trade their tort rights for a speedy, no-fault compensation method for work-related accidents. Id. The scheme was not intended to bar suits that do not fall within its provisions. Id. Here, the ICA's determination that Plaintiffs' claims were non-compensable allows them to proceed with their tort suit. Any other conclusion would leave Plaintiffs without a forum in which to pursue their claims.

2. Plaintiffs' Amended Complaint Is Sufficient To Proceed With A Claim Of Respondeat Superior.

Defendant seeks summary judgment on the basis that it owed no duty to Plaintiffs. Defendant relies upon the ICA determination that (1) Plaintiffs were not acting in the course of employment during the accident and (2) that Plaintiff Cornejo-Ramirez was not an employee of Defendant. Plaintiffs counter that their negligence claim is one of respondeat superior; their theory is that Defendant is liable for his employee Salgado's conduct which resulted in Plaintiffs' injury. Therefore, their claim does not require

² 6 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 65.38, at 2-49 to 12-53 (1999).

1 showing that Plaintiffs were in the course of employment during the
2 accident, merely that Salgado was. Defendant challenges this
3 position arguing that respondeat superior was not alleged in
4 Plaintiffs' first amended complaint.³

5 Plaintiffs' amended complaint did not specifically allege a
6 theory of respondeat superior, but generally alleged Defendant's
7 negligence. The amended complaint included the following claims:

8 68. As to Plaintiffs Cornejo-Ramirez, Ferrales, and
9 Garcia-Ruiz, Defendant Garcia arranged, controlled, and
10 directed the transportation of his employees to and from the
11 central meeting place and the place of employment.

12 69. Defendant Garcia owed Plaintiffs a duty of
13 reasonable care to transport them and other employees in a
14 safe and reasonable manner.

15 70. Defendant Garcia breached this duty of reasonable
16 care by transporting Plaintiff [sic] in a vehicle which
17 contained the following defects....

18 72. Defendant Garcia's violation of vehicle safety
19 requirements was a proximate cause of Plaintiffs' injuries.

20 According to a leading treatise, such general statements are
21 sufficient allegations of negligence. See 5 Charles A. Wright, et.
22 il., Federal Practice and Procedure § 1249 (2d ed. 1990).

23 Furthermore, a complaint that generally alleges an employer's
24 negligence need not specifically identify each employee involved to
25 hold the employer liable under respondeat superior. Arizona Prop.

26 ³ Defendant also challenges the respondeat superior claim as
27 jarred by Plaintiffs' general negligence pleadings in the joint
28 case management plan ("JCMP") (doc. 31). The court finds the JCMP
does not bar Plaintiffs' claims; the amended complaint provided
sufficient notice of the respondeat superior claim. C.f. Eyak
Native Village v. Exxon Corp., 25 F.3d 773 (9th Cir. 1994) (finding
removal untimely as Plaintiffs did not raise removable claim as a
new issue in the preliminary designation, but had given notice of
the claim in the facts presented in the earlier case management
plan such that Defendant was aware of the claim).

& Cas. Ins. Guar. Fund v. Helme, 735 P.2d 445 (Ariz. Ct. App. 1986) aff'd in part, vacated in part on other grounds by Arizona Prop. & Cas. Ins. Guar. Fund v. Helme, 735 P.2d 451, (Ariz. 1987).

The complaint in Arizona Prop. stated that the defendant "acting through its agents and/or servants and/or employees" caused the event leading to the lawsuit.⁴ While Plaintiffs' negligence claim is less specific, the statement of facts in the amended complaint does include the following: "The Driver of the van, Encarnacion Salgado-Gonzalez, was a tractor driver under the direction of Defendants and an agent of Defendants." Am. Compl. (doc. 13) ¶ 27 (emphasis added). This statement could be read either as a simple statement of an employee relationship or as an indication that Salgado was directed to drive laborers to the melon fields. The court is required to examine Plaintiffs' complaint under the standard set forth in Fed R. Civ. P. 8(f) that "all pleading shall be so construed as to do substantial justice." The court believes that Plaintiffs' general allegations gave Defendant sufficient notice of claims based on Salgado's transportation of Plaintiffs. Therefore, the court finds Plaintiffs' amended complaint sufficient to support a claim of respondeat superior.

The Preclusive Effect of the ICA Hearing.

Defendant contends that even if Plaintiffs properly pled respondeat superior, collateral estoppel and res judicata

⁴ Arizona Prop. involved the question of whether a plaintiff may file an action against an employer without naming the individual employees as defendants in order to hold the employer liable for the employees' negligent acts. The ultimate question differs, but the statements regarding the sufficiency of the pleadings are applicable.

1 nonetheless bar their claim. The United States Supreme Court has
2 established a two-part test for determining the preclusive effect
3 of a state administrative proceeding in federal court. See
4 University of Tenn. v. Elliot, 478 U.S. 788, 106 S. Ct. 3220
5 (1986). The preclusive effect of the state agency is first
6 established by the law of the forum state and then by application
7 of the fairness principles set forth in United States v. Utah
8 Constr. & Mining Co., 382 U.S. 394, 86 S. Ct. 1545 (1966). In Utah
9 Contr. & Minins Co., the court wrote:

10 When an administrative agency is acting in a judicial capacity
11 and resolves disputed issues of fact properly before it which
12 the parties have had an adequate opportunity to litigate, the
13 courts have not hesitated to apply res judicata to enforce
14 repose.

13 382 U.S. 394, 421-22, 86 S. Ct. 1545 (1966). See 18 Moore's
14 Federal Practice § 131.32[2] (March 1997).

15 Arizona generally holds that both collateral estoppel and res
16 judicata may apply to administrative agencies "acting in a quasi-
17 judicial capacity." Hawkins v. State Dept. of Economic Security,
18 900 P.2d 1236, 1239 (Ariz. Ct. App. 1995). Yet preclusive effect
19 is not automatic. In Hawkins, the court found that the state
20 personnel board's determination that cause existed for an
21 employee's demotion did not preclude that employee from bringing a
22 claim under the state Civil Rights Act. Id. at 1240. Therefore,
23 this court must look to see what preclusive effect should be given
24 specifically to the ICA determination.

25 a. *Res Judicata*

26 Res judicata is claim preclusion; parties cannot raise claims
27 previously litigated to a final judgment, or even those claims that
28 could have been raised. See 18 Moore's Federal Practice §

1 131.11[c] (June 2000). Claim preclusion requires that the first
2 suit present (i) the same cause of action, (ii) identity of
3 parties, and (iii) a final judgment on the merits. See Hawkins v.
4 State Dept. of Economic Security, 900 P.2d 1236, 1239 (Ariz. Ct.
5 App. 1995).

6 In the instant case, it is clear that the ICA acted in a
7 "quasi-judicial capacity" so as to open the possibility that res
8 judicata would apply: the ICA conducted a hearing, allowed the
9 parties to present evidence and ruled on a dispute of law.

10 Hawkins, 900 P.2d at 1239. It is also clear that there was
11 identity of parties: Plaintiffs and Defendant appeared, with
12 attorney representatives, before the ICA. There also was a final
13 judgment on the merits: Plaintiffs were denied workers'
14 compensation relief and had the right to appeal that decision to
15 the Court of Appeals of the State of Arizona. When a party does
16 not appeal an administrative order, it becomes final and res
17 judicata for later claims. Id. at 1240.

18 The parties' dispute focuses on the first element of res
19 judicata--identity of claims. Defendant argues that Plaintiffs'
20 civil suit presents the same claim as before the ICA:
21 compensability for injuries incurred in "employer-provided
22 transportation." Defendant cites Connors v. Parsons, 818 P.2d 232
23 (Ariz. Ct. App. 1991) for support. The court finds the Defendant's
24 reliance misplaced. The central issue in Connors was election of
25 remedies. The plaintiff had accepted workers' compensation and
26 the defendant claimed that barred her subsequent tort claims. In
27 answering the election question, the Connors court also addressed a
28 res judicata claim. The plaintiff's tort action charged her co-

worker with negligence. If the co-worker acted in the course and scope of employment during the accident, then the acceptance of workers' compensation would bar the tort claim. However, whether that co-worker was acting within the course and scope of employment was never litigated in the earlier administrative proceeding before the ICA. Therefore, res judicata did not apply and the case was remanded for further factual development.

In the instant case, this court finds res judicata does not bar Plaintiffs' suit. Plaintiffs' workers' compensation claims turned on the "sole issue" of whether Plaintiffs acted in the scope of employment during the accident. P. S.O.F. (doc. 49) Exs. N & O. In contrast, Plaintiffs' negligence claim requires establishing Defendant's liability for driver Salgado's actions. Just as in Connors, this issue was never before the ICA. While claim preclusion can bar claims that could have been raised at the earlier suit, Plaintiffs could not have raised this claim before the ICA. The ICA does not have general jurisdiction; its hearings are based upon its power to act "as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with the provisions of" the statute. Ariz. Rev. Stat. § 23-107(A) (6). Accordingly, res judicata does not bar Plaintiffs' negligence claim.

b. Collateral Estoppel

Collateral estoppel is issue preclusion; it blocks parties from raising issues already litigated and necessary to the outcome of a prior suit, even if the later suit involves different claims. See 18 Moore's Federal Practice § 131.10[1][a] (June 2000).

Collateral estoppel requires (i) actual litigation of the issue in

1 previous proceeding, (ii) a full and fair opportunity to litigate
2 that issue, (iii) that resolution of the issue be essential to the
3 decision, (iv) a valid and final decision on merits, and (v) common
4 identity of parties. See Gilbert v. Board of Medical Examiners,
5 745 P.2d 617, 622 (Ariz. Ct. App. 1987).

6 For the same reasons articulated in the res judicata analysis,
7 the court finds that collateral estoppel does not preclude
8 Plaintiffs' negligence suit. The negligence claim does not turn
9 upon whether Plaintiffs were in the course and scope of employment
10 during the accident, the "sole issue" determined by the ICA. P.
11 S.O.F. (doc. 49) Exs. N & O. Plaintiffs' claim turns on the
12 question of whether the driver Salgado was acting in the course and
13 scope of his employment. This issue was never before the ICA.

14 4. The Court Denies Partial Summary Judgment on Plaintiffs'
15 Negligence Claim.

16 The parties strongly contest the factual issue central to
17 Plaintiffs' negligence claim. They debate whether driver Salgado
18 was acting within the course and scope of his employment with
19 Defendant during the July 4 automobile accident. Plaintiffs assert
20 that they were directed by Raul Escoto to ride in Salgado's van.
21 ICA Hrng. at 19-20; Ferrales Aff. ¶ 4; Ferrales Dep. at 9; Garcia-
22 Ruiz Dep. at 10. Escoto was Defendant's foreman and responsible
23 for filling work crews. Garcia Dep. (2.4.99) at 7, 12; Garcia Dep.
24 (5.31.00) at 2.5. They argue that Escoto had the power to hire and
25 fire laborers and regularly went to the Del Sol Market to fill
26 vacant spots and arrange transportation to the fields. Garcia Dep.
27 (5.31.00) at 10, 27-28. In contrast, Defendant argues that
28 laborers who could not find their own transportation would not be

1 able to work. Garcia Dep. (2.4.99) at 70. Foremen who did not
2 fill their crews would not be punished; they would borrow workers
3 from other crews. Id. at 31-32. Salgado's relationship to
4 Defendant presents a genuine factual dispute that is material to
5 Plaintiffs' claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
6 106 S. Ct. 2505 (1986). Accordingly, Defendant's motion for
7 partial summary judgment is denied with respect to Count III of
8 Plaintiffs' amended complaint.

9 **B. The AWPA**

10 As a preliminary matter, the parties agree that the
11 Agricultural Worker Protection Act applies to Plaintiffs and
12 Defendant. Plaintiffs are "seasonal agricultural workers" and
13 Defendant is a "farm labor contractor" as defined by the AWPA at 29
14 J.S.C. § 1802(10) (A). Am. Compl. (doc. 13) ¶¶ 10-11; Def. Ans.
15 (doc. 19) ¶¶ 7-8. Plaintiffs allege that Defendant violated 29
16 J.S.C. §§ 1811, 1831(e), and 1841. The court finds that only the
17 section 1831(e) claim merits dismissal on summary judgment.

18 **1. 29 U.S.C. § 1811.**

19 Plaintiffs allege that Defendant violated section 1811 by
20 transporting workers without a certificate of registration.
21 Section 1811 provides that "No person shall engage in any farm
22 labor contract&g activity, unless such person has a certificate of
23 registration from the secretary specifying which farm labor
24 contracting activities such person is authorized to perform."
25 Section 1802(6) defines farm labor contracting activity to include
26 'recruiting, soliciting, hiring, employing, furnishing' or
27 transporting any migrant or seasonal agricultural worker."

28 Defendant first argues that under section 1811(b) only

1 employees can sue a farm labor contractor. Therefore, as the ICA
2 determined that Cornejo-Ramirez was not an employee, he cannot sue
3 under 1811(b) .⁵ Putting aside the preclusion issues inherent in
4 this argument, the court examines whether employee status is a
5 prerequisite to filing suit under section 1811.

6 The plain language of the statute must be the court's starting
7 point for analysis. See Caminetti v. United States, 242 U.S. 470,
8 37 s. ct. 192 (1917) . The language must be informed by other
9 provisions, as statutes are passed as a whole and interpretation of
10 one section necessarily depends upon the construction of others
11 See 2A Sutherland Statutory Construction §46.05 (5th ed. 1992).
12 When the language remains unclear, the court must examine the
13 intent of Congress as revealed in the history and purpose of the
14 statutory scheme. See Adams.Fruit Co., Inc. v. Barrett, 494 U.S.
15 638, 643, 110 S. Ct. 1384, 1387 (1990) (examining the AWPA).

16 Here, the debated clause states:

17 The farm labor contractor shall be held responsible for
18 violations of this chapter or any regulation under this
19 chapter by any employee regardless of whether the employee
possesses a certificate of registration based on the
contractor's certificate of registration.

20 29 U.S.C. § 1811(b) (emphasis added). This section must be read in
21 conjunction with section 1854(a) which allows enforcement of the

22
23 ⁵ Defendant further argues that 'With respect to Plaintiffs
24 Ferrales and Garcia-Ruiz, because the ICA could have concluded that
25 they were also not Garcia's employees, they are similarly precluded
26 from re-litigating this point before the Court." D. M.P.S.J. (doc.
27 44) at 10. This appears to be a defensive collateral estoppel
28 claim, but the court fails to understand Defendant's logic.
Assuming the ICA conclusively determined Cornejo-Ramirez's
employment status, there is no reason to conclude that its silence
on the employment status of Ferrales and Garcia-Ruiz should signify
that they too were not employees.

AWPA by "any person aggrieved by a violation" of the Act. As it is unclear if the section 1811(b) language is meant to limit the broad standing provision of 1854(a), the court must look at the congressional intent behind the AWFA. Circuit courts have found that the AWPA must be construed broadly as it was patterned after Civil Rights statutes and was intended to be a remedial statute. See Torrez-Lopez v. May, 111 F.3d 633, 639 (9th Cir. 1997); Bracamontes v. Weverhaeuser Co., 840 F.2d 271, 276 (5th Cir. 1988); Antenor v. D & S Farms, 88 F.3d 925, 933 (11th Cir. 1996); Caro-Galvan v. Curtis Richardson, Inc., 981 F.2d 501, 505 (11th Cir. 1993). In evaluating standing to sue under section 1641(b) of the AWPA, the Seventh Circuit specifically held that plaintiffs did not have to establish an employment relationship to pursue their cause of action. See Deck v. Peter Romein's Sons, Inc., 109 F. 3d 383, 390-91 (7th Cir. 1997). The court has found neither case law nor legislative history to suggest that Congress intended to treat violations of section 1811 differently from other violations of the AWPA. Thus, the court must construe section 1811(b) broadly to effectuate the remedial intent of Congress. To that end, the court finds that Plaintiffs need not establish an employment relationship to proceed with their § 1811 claim.

Alternatively, Defendant seeks to dismiss Plaintiffs' section 1811 claim on the basis that no factual dispute exists regarding Defendant's involvement in transporting workers. Defendant argues that it previously provided transportation to workers, but stopped. Garcia Dep. (5.31.00) at 73. Further, it contends that Plaintiffs Ferrales and Garcia-Ruiz admitted Defendant was not involved in transporting workers. ICA Hrng. at 31 (Ferrales told insurance

1 investigator that Mr. Garcia had nothing to do with getting
2 Plaintiff to the fields); Id. at 43 (Garcia-Ruiz was told if he
3 wanted work he would have to get transportation the fields). The
4 court cannot agree with Defendant's characterization of the record.
5 There appears to be a genuine dispute about Defendant's involvement
6 in transporting workers. Ferrales's statement that he did not
7 believe Mr. Garcia was involved in transporting workers does not
8 constitute an admission that conornate Defendant Garcia, acting
9 through Escoto, was likewise uninvolved. Neither does Plaintiff
10 Garcia-Ruiz' statement constitute an admission of Defendant
11 Garcia's non-involvement; it simply shows that at different times
12 Plaintiff Garcia-Ruiz was told to find his own transportation to
13 the fields and directed to "get on the van." ICA Hrng. at 43;
14 (Garcia-Ruiz Dep. at 10. Finding that a genuine dispute of fact
15 remains, the court declines to grant summary judgment on
16 Plaintiffs' claims of section 1811 violations.

17 2. 29 U.S.C. § 1831 (e).

18 Plaintiffs allege that Defendant violated 29 U.S.C. § 1831(e)
19 by "knowingly providing false or misleading information to
20 Plaintiffs regarding Plaintiffs' right to compensation for medical
21 expenses." Am Compl. ¶ 59d. Plaintiffs base this claim upon the
22 allegation that Defendant assured Plaintiffs that it would be
23 responsible for payment of their medical treatment and yet never
24 paid for the expenses. Am. Compl. ¶ 36-37.

25 Accepting Plaintiffs' claims as true, they nevertheless fail
26 to establish a violation of 29 U.S.C. § 1831(e). Section 1831(e)
27 prohibits farm labor contractors from knowingly providing false or
28 misleading information "concerning the terms, conditions, or

existence of agricultural employment required to be disclosed by subsection (a),(b) or (c) of this section." Subsection (a) requires farm labor contractors to make written disclosures when an offer of employment is made. Subsection (b) mandates that the contractor prominently place a poster outlining the rights and protections workers have under the AWPA. Finally, subsection (c) sets forth record-keeping duties of the contractor.

Plaintiffs argue that their allegations meet the "short and plain" requirements of Fed. R. Civ. P. 8(a). This court disagrees. Plaintiffs' allegations simply do not implicate any of the 29 J.S.C. § 1831(e) provisions. Further, Plaintiffs must present specific facts to oppose a motion for summary judgment; they cannot rest on mere allegations in the pleadings. See Anderson b. Liberty Lobby inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510 (1986).

In the alternative, Plaintiffs request permission to amend their Complaint to establish a § 1831(e) violation. Under Fed. R. Civ. Pro. 15(a), leave to amend "shall be freely given when justice so requires." Courts have strongly reinforced this proposition. See generally 6 Wright & Miller Federal Practice and Procedure (2d ed. 1990) § 1484. However, Plaintiffs fail to offer any suggestion that leave to amend would not be futile. See Foman v. Davis, 371 U.S. 178 (1962)' (finding District Court erred in allowing amendment of the complaint where it would have done no more than state an alternative theory for recovery); Sisseton-Wahneton Sioux Tribe, Lake Traverse Indian Reservation, North Dakota and South Dakota v. United States, 90 F.3d 351, 356 (9th Cir. 1996) (finding district court did not err in denying leave to amend which would be redundant and futile). Plaintiffs' § 1831(e) claim is based upon

1 an oral conversation between Defendant and Plaintiffs regarding
2 payment of medical expenses, assurances that do not fall under
3 § 1831(e). Accordingly, the court denies Plaintiffs' request to
4 amend their complaint and grants Defendant's motion for partial
5 summary judgment with respect to this issue.

6 3. 29 U.S.C. § 1841.

7 Finally, Defendant seeks dismissal of Plaintiffs' claims under
8 the motor vehicle safety provision of the AWPA, 29 U.S.C. § 1841.
9 Defendant believes dismissal is warranted as the record fails to
10 show Defendant acted intentionally, as required under 29 U.S.C.
11 § 1854 (c) (1).

12 Plaintiffs make several claims under section 1841. First,
13 Plaintiffs' claim that Defendant violated the AWPA by failing to
14 provide either liability insurance on the vehicle or workers'
15 compensation coverage for transportation injuries, in violation of
16 §§ 1841(b)(1)(C) and 1841 (c). Am Compl. (doc. 13) ¶ 59d. Under
17 § 1841(b) (1) (C), farm labor contractors are required to have an
18 insurance policy or liability bond to insure against liability for
19 damage to persons "arising from the ownership, operation, or the
20 causing to be operated, of any vehicle used to transport any
21 nigrant or seasonal agricultural worker." Section 1841(c) modifies
22 this provision. Where workers are transported such that they are
23 covered under the State workers' compensation laws, it is
24 sufficient for the farm labor contractor to carry state workers'
25 compensation coverage. 29 U.S.C. § 1841(c) (1). However,

26 An insurance policy or liability bond shall be required of the
27 employer for circumstances under which coverage for the
28 transportation of such workers is not provided under such
State law.

1 29 U.S.C. § 1841(c) (2).

2 Under Section 1854, Plaintiffs must show that these violations
3 by Defendant were "intentional." The term "intentional" has a
4 relaxed meaning under the AWPA. It requires a conscious or
5 deliberate act. See Alvarez v. Lonsbov, 697 F.2d 1333, 1338 (9th
6 Cir. 1983).⁶ This is the civil standard for intent and it differs
7 from specific intent. Alvarez v. Joan of Arc, Inc., 658 F.2d 1217,
8 1224 (7th Cir. 1981). It is a broad construction of intentionality
9 which stems from the fact that the AWPA is a remedial statute.
10 Rivera v. Adams Packing Ass'n, Inc., 707 F.2d 1278, 1281 (11th Cir.
11 1983). With this background, the court examines Plaintiffs'
12 section 1841 claims.

13 Defendant argues that § 1841 is inapplicable as it is
14 uncontested that Defendant had workers' compensation. Garcia Dep.
15 (5.31.00) at 12. Therefore, Defendant contends that section
16 1841(c)(1) alleviates any additional insurance burdens
17 Defendant's argument ignores the language of section 1841(c) (2).
18 Plaintiffs acknowledge that the transportation was not covered by
19 workers' compensation. That was the holding of the ICA. However,
20 the AWPA places an additional burden on farm labor contractors to
21 insure transportation not otherwise covered by the state's workers'
22 compensation laws. Accordingly, the court must focus not on
23 whether Defendant complied with § 1841, but whether there is a
24 genuine dispute about the applicability of § 1841 to Defendant.

25
26 ⁶ Alvarez, Joan of Arc, and Rivera all interpret the Farm
27 Labor Contractors Registration Act, the predecessor of the AWPA.
28 Legislative history shows that the standard of intent is identical
in both statutes. See Bueno v. Mattner, 829 F.2d 1380, 1385 n.4
(6th Cir. 1988) (citing 1982 U.S. Code Cong. & Admin. News 4567).

1 Defendant is required to post a bond according to § 1841(c)(2
2 only if "causing to be operated" uninsured transportation. The
3 same standard governs Plaintiffs' § 1841(b)(1)(A) claim that
4 Defendant violated the AWPA by "using, or causing to be used" for
5 transportation a vehicle not in compliance with federal safety
6 standards. Am. Compl. ¶ 59f. The term "used or caused to be used
7 is defined in C.F.R. § 500.100(c) and "does not include car poolin
8 arrangements made by the workers themselves, using one of the
9 worker's own vehicles." However, the term does include "any
10 transportation arrangement in which a farm labor contractor
11 participates." Id.⁷

12 Again, the parties disagree about Defendant's involvement in
13 transporting laborers. Plaintiffs contend that Defendant falls
14 squarely within the "participates" language of the C.F.R.. They
15 argue that Defendant participated in the transportation of workers
16 through its foreman Raul Escoto. Defendant was responsible for
17 hiring workers for the melon fields. Garcia Dep. (2.4.99) at 27.
18 As foreman, Escoto needed to have a full crew to work the fields.
19 Garcia Dep. (5.31.00) at 25; Garcia Dep. (2.4.99) at 12. Without
20 full crews, Defendant would not harvest as much as planned for the
21 day. Garcia Dep. (5.31.00) at 71. Escoto would often travel to
22 San Luis to obtain workers. Id. at 27-28. Most of the laborers
23 did not have transportation to get to the fields located some three
24 hours away. Ferrales Aff. ¶¶ 4, 7; Salas-Rodriguez Aff. ¶¶ 4-5;
25 Cornejo-Ramirez Aff. ¶ 2. Therefore, Plaintiffs assert, Escoto

26
27 ⁷ 29 C.F.R. § 500.100(c) refers to 29 U.S.C. § 1841(b)(1)(A).
28 C.F.R. § 500.120, which applies to 29 U.S.C. § 1841(b)(1)(C), uses
the same definition.

arranged the transportation of workers to the melon fields. ICA Hrng. at 19-20, 25-26, 41; Ferrales Aff. ¶ 4; Ferralee Dep. at 9; Garcia-Ruiz Dep at 10. According to Plaintiff Ferrales, other foremen of Defendant had similarly arranged transportation in the past. Ferrales Aff. ¶ 14-16.

In contrast, Defendant argues that its conduct falls under the car pool exception. Defendant points to the uncontroverted fact that it did not own the vehicle involved. CHP Report at 1 and 11. Defendant also contends that it was "common knowledge" that laborers needed to find their own transportation to the fields. Garcia Dep. (2.4.99) at 27; Escoto dep. at 33. Finally, Defendant argues that it is undisputed that it did not know who would drive to the fields nor whether they would carry passengers. ICA Hrng. at 43, 57-58, 67, Ferrales Dep. at 10. Defendant emphasizes this last point, declaring that under Arizona law, it cannot be liable for Escoto's acts unless clear evidence shows Defendant's approval of the wrongful conduct. Smith v. Amer. Express Travel Related Serv. Co., Inc., 876 P.2d 1166, 1172 (Ariz. Ct. App. 1994). Yet the Smith case is inapplicable. The Smith court noted that the employer's liability for an employee's acts turns on the generally factual issue of whether the employee acted in the course and scope of employment. Id. at 1170. However, when the employee's acts are outside the scope of employment, the employer may not be liable as a matter of law. Id. at 1171. This was the situation in Smith where the employee committed the torts of sexual assault and sexual harassment. The present case is distinguishable. Escoto's actions are not so far removed from the responsibilities of his employment; transporting workers is hardly so incompatible with Escoto's

employment as a foreman to require a decision as a matter of law.
2 A reasonable jury could determine that the facts show Escoto acted
in the course of employment. A jury could further infer from the
4 factual dispute about the structure of hiring workers that
6 Defendant "intended," under the AWPA's understanding of that term,
to violate section 1841 of the AWPA.

7 Given these vastly differing versions of Defendant's
8 participation in the transportation of laborers, the court cannot
9 grant summary judgment on the issue of Defendant's liability under
10 29 U.S.C. § 1841. There is clearly a genuine issue of material
11 fact. Plaintiffs must be given the opportunity to argue before a
12 jury that Defendant did intentionally participate in the
13 transportation of laborers.

14 IV. CONCLUSION

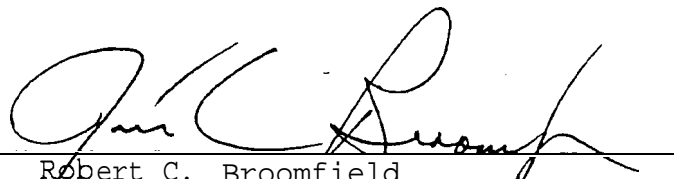
15 Defendant's involvement in the transportation of laborers is
16 both genuinely disputed by the parties and a material issue for
17 Plaintiffs' claims. Whether the driver of the car during the July
18 4 accident was acting on behalf of Defendant will establish
19 Defendant's negligence liability. Similarly, whether Defendant
20 participated in the transportation of laborers through his foreman
21 Escoto will establish liability under the AWPA. However, Defendant
22 correctly established that no genuine issue of material fact exists
23 about Defendant's liability under 29 U.S.C. § 1831(e); Defendant is
24 entitled to judgment as a matter of law on this point.

25 Accordingly, the motion for partial summary judgment is granted
26 only with respect to Plaintiffs' claim under 29 U.S.C. § 1831(e).

27 IT IS ORDERED granting in part and denying in part Defendant's
28 motion for partial summary judgment. Defendant's motion is granted

with respect to that part of Count I which charges Defendant with liability under 29 U.S.C. § 1831(e) and denied as to liability under 29 U.S.C. §§ 1811 and 1841. Defendant's motion as to Count III is denied without prejudice.

DATED this 20 day of November, 2000.



Robert C. Broomfield
Senior United States District Judge

copies to parties and counsel of record

