



1 Manuel Garcia-Ruiz.<sup>1</sup> 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 <sup>1</sup> 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

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

7 Defendant presents a markedly different tale. It admits that  
8 Escoto is Defendant's foreman and employee. D. C.S.O.F. (doc. 53)  
9 ¶ 15. However, it avers that laborers gathered at the Del Sol  
10 Market daily to find out if work was available. Garcia Dep.  
11 (2.4.99) at 16. Work was only offered on a daily basis. ICA Hrng.  
12 at 71; Garcia Dep. (2.4.99) at 10. Laborers were responsible for  
13 finding their own transportation to the fields. Garcia Dep.  
14 (2.4.99) at 27; Escoto Dep. at 33. While Defendant had previously  
15 bussed workers, it no longer provided transportation. Garcia Dep.  
16 (5.31.00) at 73. Defendant had no involvement in obtaining rides  
17 for laborers. Workers with cars would drive those without,  
18 arranging for gas compensation among themselves. Esteves Dep. at  
19 13; Escoto Dep. at 25.

20 **C. The Workers' Compensation Hearing**

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

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

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

#### 17 STANDARD FOR SUMMARY JUDGMENT

18 To grant summary judgment, the court must determine that the  
19 record before it contains "no genuine issue as to any material  
20 fact" and, thus, "that the moving party is entitled to judgment as  
21 a matter of law." Fed. R. Civ. P. 56(c). In determining whether  
22 to grant summary judgment, the court will view the facts and  
23 inferences from these facts in the light most favorable to the  
24 nonmoving party. See Matsushita Elec. Co. v. Zenith Radio Corp.,  
25 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986).

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

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

### 15 III. DISCUSSION

#### 16 A. Negligence

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

#### 26 1. Workers' Compensation Is Not Plaintiffs' Exclusive Remedy.

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

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

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

15 In the present case, however, the ICA determined that  
16 Plaintiffs were not acting in the course and scope of employment  
17 during the July 4 accident. P. S.O.F. (doc. 49) Ex. N. Thus, the  
18 ICA denied Plaintiffs' request for benefits. Id. The Arizona  
19 Workers' Compensation statute does not indicate that there is any  
20 election of remedies bar in such a situation. Defendant finds  
21 support in Stoecker v. Brush Wellman, Inc., 984 P.2d 534 (Ariz.  
22 1999) (en banc), but that case fails to advance its argument.  
23 Factually, Stoecker differs significantly from the present claim.  
24 The Stoecker plaintiffs did incur injury during the course and  
25 scope of their employment and they received compensation benefits.  
26 The court analyzed the tort claims in light of this background and  
27 concluded the civil suit was not an attempt to relitigate the  
28 industrial injury; it presented claims not barred by the election

1 of remedies provision in Ariz. Rev. Stat. § 23-1024(A).  
2 Furthermore, the principles articulated in Stoecker challenge  
3 Defendant's position. While the court cited a work on the danger  
4 of plaintiffs who circumvent the workers' compensation exclusivity  
5 provisions,<sup>2</sup> the court also noted that claims not falling within  
6 the scope of the workers' compensation statute are not barred by  
7 its exclusivity provision. Id. at 537.

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

16  
17 2. Plaintiffs' Amended Complaint Is Sufficient To Proceed With A  
Claim Of Respondeat Superior.

18 Defendant seeks summary judgment on the basis that it owed no  
19 duty to Plaintiffs. Defendant relies upon the ICA determination  
20 that (1) Plaintiffs were not acting in the course of employment  
21 during the accident and (2) that Plaintiff Cornejo-Ramirez was not  
22 an employee of Defendant. Plaintiffs counter that their negligence  
23 claim is one of respondeat superior; their theory is that Defendant  
24 is liable for his employee Salgado's conduct which resulted in  
25 Plaintiffs' injury. Therefore, their claim does not require  
26

---

27 <sup>2</sup> 6 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 65.38, at  
28 12-49 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.<sup>3</sup>

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 al., 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 <sup>3</sup> Defendant also challenges the respondeat superior claim as  
27 barred 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 (9<sup>th</sup> 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).

1 & Cas. Ins. Guar. Fund v. Helme, 735 P.2d 445 (Ariz. Ct. App.  
2 1986) aff'd in part, vacated in part on other grounds by Arizona  
3 Prop. & Cas. Ins. Guar. Fund v. Helme, 735 P.2d 451, (Ariz. 1987).  
4 The complaint in Arizona Prop. stated that the defendant "acting  
5 through its agents and/or servants and/or employees" caused the  
6 event leading to the lawsuit.<sup>4</sup> While Plaintiffs' negligence claim  
7 is less specific, the statement of facts in the amended complaint  
8 does include the following: "The Driver of the van, Encarnacion  
9 Salgado-Gonzalez, was a tractor driver under the direction of  
10 Defendants and an agent of Defendants." Am. Compl. (doc. 13) ¶ 27  
11 (emphasis added). This statement could be read either as a simple  
12 statement of an employee relationship or as an indication that  
13 Salgado was directed to drive laborers to the melon fields. The  
14 court is required to examine Plaintiffs' complaint under the  
15 standard set forth in Fed R. Civ. P. 8(f) that "all pleading shall  
16 be so construed as to do substantial justice." The court believes  
17 that Plaintiffs' general allegations gave Defendant sufficient  
18 notice of claims based on Salgado's transportation of Plaintiffs.  
19 Therefore, the court finds Plaintiffs' amended complaint sufficient  
20 to support a claim of respondeat superior.

21 3. The Preclusive Effect of the ICA Hearing.

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

---

24  
25 <sup>4</sup> Arizona Prop. involved the question of whether a plaintiff  
26 may file an action against an employer without naming the  
27 individual employees as defendants in order to hold the employer  
28 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. & Mining 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.

15       382 U.S. 394, 421-22, 86 S. Ct. 1545 (1966). See 18 Moore's  
16       Federal Practice § 131.32[2] (March 1997).

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

27       a. *Res Judicata*

28       Res judicata is claim preclusion; parties cannot raise claims  
previously litigated to a final judgment, or even those claims that  
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-

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

8 In the instant case, this court finds res judicata does not  
9 bar Plaintiffs' suit. Plaintiffs' workers' compensation claims  
10 turned on the "sole issue" of whether Plaintiffs acted in the scope  
11 of employment during the accident. P. S.O.F. (doc. 49) Exs. N & O.  
12 In contrast, Plaintiffs' negligence claim requires establishing  
13 Defendant's liability for driver Salgado's actions. Just as in  
14 Conners, this issue was never before the ICA. While claim  
15 preclusion can bar claims that could have been raised at the  
16 earlier suit, Plaintiffs could not have raised this claim before  
17 the ICA. The ICA does not have general jurisdiction; its hearings  
18 are based upon its power to act "as the regulatory agency insuring  
19 that workers' compensation carriers are processing claims in  
20 accordance with the provisions of" the statute. Ariz. Rev. Stat.  
21 § 23-107(A)(6). Accordingly, res judicata does not bar Plaintiffs'  
22 negligence claim.

23 b. *Collateral Estoppel*

24 Collateral estoppel is issue preclusion; it blocks parties  
25 from raising issues already litigated and necessary to the outcome  
26 of a prior suit, even if the later suit involves different claims.  
27 See 18 Moore's Federal Practice § 131.10[1][a] (June 2000).  
28 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 25. 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 U.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 U.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 contracting 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).<sup>5</sup> 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 (5<sup>th</sup> 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 <sup>5</sup> 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.

1 AWPA by "any person aggrieved by a violation" of the Act. As it is  
2 unclear if the section 1811(b) language is meant to limit the broad  
3 standing provision of 1854(a), the court must look at the  
4 congressional intent behind the AWPA. Circuit courts have found  
5 that the AWPA must be construed broadly as it was patterned after  
6 Civil Rights statutes and was intended to be a remedial statute.  
7 See *Torrez-Lopez v. May*, 111 F.3d 633, 639 (9<sup>th</sup> Cir. 1997);  
8 *Bracamontes v. Weyerhaeuser Co.*, 840 F.2d 271, 276 (5<sup>th</sup> Cir. 1988);  
9 *Antenor v. D & S Farms*, 88 F.3d 925, 933 (11<sup>th</sup> Cir. 1996);  
10 *Caro-Galvan v. Curtis Richardson, Inc.*, 981 F.2d 501, 505 (11<sup>th</sup>  
11 Cir. 1993). In evaluating standing to sue under section 1841(b) of  
12 the AWPA, the Seventh Circuit specifically held that plaintiffs did  
13 not have to establish an employment relationship to pursue their  
14 cause of action. See *Deck v. Peter Romein's Sons, Inc.*, 109 F. 3d  
15 383, 390-91 (7<sup>th</sup> Cir. 1997). The court has found neither case law  
16 nor legislative history to suggest that Congress intended to treat  
17 violations of section 1811 differently from other violations of the  
18 AWPA. Thus, the court must construe section 1811(b) broadly to  
19 effectuate the remedial intent of Congress. To that end, the court  
20 finds that Plaintiffs need not establish an employment relationship  
21 to proceed with their § 1811 claim.

22       Alternatively, Defendant seeks to dismiss Plaintiffs' section  
23 1811 claim on the basis that no factual dispute exists regarding  
24 Defendant's involvement in transporting workers. Defendant argues  
25 that it previously provided transportation to workers, but stopped.  
26 Garcia Dep. (5.31.00) at 73. Further, it contends that Plaintiffs  
27 Ferrales and Garcia-Ruiz admitted Defendant was not involved in  
28 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 corporate 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

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

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

15 In the alternative, Plaintiffs request permission to amend  
16 their Complaint to establish a § 1831(e) violation. Under Fed. R.  
17 Civ. Pro. 15(a), leave to amend "shall be freely given when justice  
18 so requires." Courts have strongly reinforced this proposition.  
19 See generally 6 Wright & Miller Federal Practice and Procedure (2d  
20 ed. 1990) § 1484. However, Plaintiffs fail to offer any suggestion  
21 that leave to amend would not be futile. See Foman v. Davis, 371  
22 U.S. 178 (1962) (finding District Court erred in allowing amendment  
23 of the complaint where it would have done no more than state an  
24 alternative theory for recovery); Sisseton-Wahpeton Sioux Tribe  
25 Lake Traverse Indian Reservation, North Dakota and South Dakota v.  
26 United States, 90 F.3d 351, 356 (9<sup>th</sup> Cir. 1996) (finding district  
27 court did not err in denying leave to amend which would be  
28 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 migrant 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 AWP. It requires a conscious or  
5 deliberate act. See Alvarez v. Longboy, 697 F.2d 1333, 1338 (9<sup>th</sup>  
6 Cir. 1983).<sup>6</sup> 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 (7<sup>th</sup> Cir. 1981). It is a broad construction of intentionality  
9 which stems from the fact that the AWP is a remedial statute.  
10 Rivera v. Adams Packing Ass'n, Inc., 707 F.2d 1278, 1281 (11<sup>th</sup> 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 AWP 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 <sup>6</sup> Alvarez, Joan of Arc, and Rivera all interpret the Farm  
27 Labor Contractors Registration Act, the predecessor of the AWP.  
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  
(6<sup>th</sup> 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 pooling  
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.<sup>7</sup>

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 <sup>7</sup> 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.

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

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

L

1 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  
3 in the course of employment. A jury could further infer from the  
4 factual dispute about the structure of hiring workers that  
5 Defendant "intended," under the AWPAs understanding of that term,  
6 to violate section 1841 of the AWPAs.

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

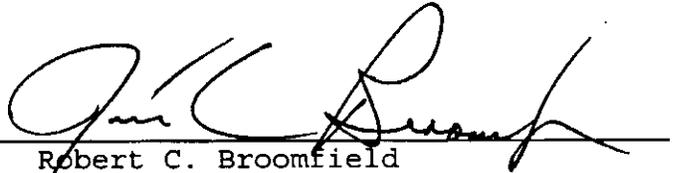
15 Defendant's involvement in the transportation of laborers is  
16 both genuinely disputed by the parties and a material issue for  
17 Plaintiffs' claims. Whether the driver of the car during the July  
18 4 accident was acting on behalf of Defendant will establish  
19 Defendant's negligence liability. Similarly, whether Defendant  
20 participated in the transportation of laborers through his foreman  
21 Escoto will establish liability under the AWPAs. 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

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

5 DATED this 20 day of November, 2000.

6  
7  
8 

9 Robert C. Broomfield  
Senior United States District Judge

10 Copies to parties and counsel of record

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28