BUYNAK LAW FIRM

EMPLOYER OF FARM WORKERS – FARMER OR LANDOWNER / MARKETER

Clear Responsibilities with "tight" agreements can protect an owner of growing fields from liability to employees of a grower who leased the fields. And that's so even if the owner is also the marketer of the produce grown. The landowner and marketer (even if the same entity) do not become a "client employer" under state and federal laws. It all depends on who has "direct control or supervision of the worker (s) or the work performed". Code of Federal Regulations, Title 29, Section S 500-20 (h)(5)(iv)(A). Both the California Supreme Court (*Martinez v. Combs, 231 P2nd 259 (2010)* and the Ninth Circuit Court of Appeals *(Morales – Garcia v. Better Produces (2023)* have now so held interpreting the Migrant and Seasonal Agricultural Worker Protection Act, United States Code, Title 29, Sections 1801 – 1872 and the California Labor Code, Section 2810.3.

The 2023 *Morales-Garcia* case involved strawberry pickers in Santa Barbara County, California. The actual farmers who employed the pickers were liable but went bankrupt. The two high courts in California have determined that the landowner and marketer, even though on either side of the farmer, were not liable even though they were the same entity. Wise choice by the marketer who owned the land to have subleased growing the produce, the strawberries. Significantly, the Ninth Circuit held that the marketer did not have significant control even if the berries had to be picked for the marketer's consignment sales. Downstream liability of sales entities has thus been limited; the Ninth Circuit stated that such an extension of liability would cause supermarket liability and was not appropriate.

Clear responsibilities and clear leases/ agreements with an understanding of state and federal court determinations, are essential. Sloppy documents without clear assessment of who is controlling the employee (s) can lead to significant liability for the landowner or the marketer of the produce. Specifically,

- **Marketers and Retailers** should make sure that their activities and agreements do not control agricultural workers and farmlands to avoid joint- employer or "client-employer" liability for wages.

- **Landowners** should lease their property by clear leases that do not "direct, control or supervise the worker (s) or the work performed". *Morales – Garcia, supra*

- **Growers** are liable for their employees and compliance with California's and federal wage in our laws.

All of this should be made clear by a comprehensive set of agreements, leases and other documents that do not contradict one another. “Extra” supervision or activities should not be undertaken. The controlling farmer alone should be liable for the working employees.

Helping Clients Thrive!

BUYNAK LAW FIRM

S. Timothy Buynak, Principal