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## POWER OF CALIFORNIA'S DIRECTOR OF AGRICULTURE TO REGULATE PRODUCE HANDLERS

In California there are approximately 12,000 individuals and firms which purchase "farm products" from producers for preparation and sale to retail outlets.<sup>1</sup> These processors, dealers, and other handlers pay farmers over \$3½ billion annually.<sup>2</sup> Every handler of "farm products" must be licensed by the California Director of Agriculture.<sup>3</sup> This note will examine in the light of two recent cases the Director's power to regulate California's produce handlers under licensing and disciplinary provisions of the Agricultural Code.

### The Director's Licensing Power

Whether any person or firm is a handler requiring a license depends on whether or not that person or firm engages in any business transaction involving "farm products."<sup>4</sup> This phrase is to be broadly construed.<sup>5</sup> Since it is a misdemeanor for a handler to act without a license,<sup>6</sup> the unlicensed handler operates at his peril. It is within

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<sup>1</sup> The number has remained at about this level for the last 20 years. There were 12,120 such licensed handlers as of December 31, 1966; the number was 12,632 in 1955, and 11,451 in 1945. *Partial Report of the Joint Legislative Comm. on Agricultural and Livestock Problems*, pt. 1, at 24, in 1957 APPENDIX TO THE JOURNAL OF THE SENATE.

CAL. AGRIC. CODE §§ 55402, 55407, 56102-07 define the categories of handlers that must be licensed; sections 55403, 56109 define "farm products," generally providing that all classes of plant products except timber and all classes of animal products except milk are included, for purposes of the two relevant code chapters, chapters 6 and 7 of division 20.

<sup>2</sup> CAL. STAT. ABSTRACT at x (1966). These figures, in the group "Miscellaneous," include the receipts from timber sales, not covered by the Agricultural Code chapters considered here. Total cash farm receipts in California equalled \$3.709 billion in 1964, and \$3.751 billion in 1965 (leading the nation). *Id.*

<sup>3</sup> CAL. AGRIC. CODE §§ 55481, 55521, 56181.

Beyond its immediate effect on the licensees, the regulation by the Director directly affects those who raise the crops on California's nearly 100,000 farms and those who are employed by partnership and corporate handlers.

By 1961 one-eighth of California's manufacturing workforce was engaged in processing and manufacture of food and kindred products. CAL. STAT. ABSTRACT 4 (1962). "Value added" to the economy by all manufacturing totaled \$18.3 billion in 1964, including \$2.5 billion by food product industries, the second largest industry group in terms of value added. CAL. STAT. ABSTRACT at x (1966).

<sup>4</sup> See note 1 *supra* for the code definition of "farm products."

<sup>5</sup> See, e.g., 7 OPS. CAL. ATT'Y GEN. 349 (1946) (turkey eggs are farm products); 7 OPS. CAL. ATT'Y GEN. 298 (1946) (wild fur-bearing animals may be "livestock," and therefore farm products); 10 OPS. CAL. ATT'Y GEN. 77 (1947) (barnyard fertilizer is included); 44 OPS. CAL. ATT'Y GEN. 70 (1964) (broker needs license if in sale of ranch and cattle the cattle are sold to one other than the buyer of the ranch).

<sup>6</sup> CAL. AGRIC. CODE §§ 55902, 56181.

the discretion of the Director to deny an applicant a license for having once operated without a license.<sup>7</sup>

Issuance or renewal of a license may be denied unless the applicant's "character, responsibility, and good faith"<sup>8</sup> are demonstrated to the Director.<sup>9</sup> Partnership and corporate applicants must convince the Director of the character, responsibility, and good faith of all persons holding management positions with the organization or owning a substantial interest in it.<sup>10</sup>

The Director may suspend or revoke a license for any code violation.<sup>11</sup> Such disciplinary action is the greatest administrative threat to the handler.<sup>12</sup> Examples of recent court review of Director adjudications demonstrate the application of the license suspension power.

### The Power of the Director to Suspend a License

In *Almaden-Santa Clara Vineyards v. Paul*,<sup>13</sup> a processor of farm products sought review of the suspension of its license by the Director.<sup>14</sup> The processor, Almaden, had paid a producer of grapes

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<sup>7</sup> CAL. AGRIC. CODE §§ 55488(a), 55528(a), 56191(a); see, e.g., *Camp v. Brock*, 75 Cal. App. 2d 169, 170 P.2d 702 (1946).

Besides subjecting themselves to penalties under the code, unlicensed operators cannot enforce contracts in the courts. See, e.g., *Capitelli v. Sawamura*, 123 Cal. App. 2d 169, 266 P.2d 939 (1954); *La Rosa v. Glaze*, 18 Cal. App. 2d 354, 63 P.2d 1181 (1937); cf. *Brock v. Fidelity & Deposit Co.*, 10 Cal. 2d 512, 75 P.2d 605 (1938). The possibility of entering into an unenforceable contract should prompt the producer to determine whether the buyer of his products is licensed.

<sup>8</sup> CAL. AGRIC. CODE §§ 55485, 55525, 56186; *Mosesian v. Parker*, 44 Cal. App. 2d 544, 112 P.2d 705 (1941).

<sup>9</sup> CAL. AGRIC. CODE §§ 55485, 55525, 56186.

<sup>10</sup> CAL. AGRIC. CODE §§ 55486, 55526, 56187. See generally *Partial Report of the Joint Legislative Comm. on Agricultural and Livestock Problems*, pt. 1, at 9, in 1957 APPENDIX TO THE JOURNAL OF THE SENATE.

Through bonding requirements the licensing process elicits a concurrent screening, carried out by surety companies. See CAL. AGRIC. CODE §§ 55551-59, 56221-30.

<sup>11</sup> The provisions outlining procedure for such disciplinary action are set out in CAL. AGRIC. CODE §§ 55841-51, 56531-43.

<sup>12</sup> Normally hearings and adjudications follow formal complaints filed with the Director by farmers. The California Bureau of Market Enforcement (Division of Compliance, Department of Agriculture) is responsible for the administrative enforcement, through delegation from the Director, of the handler-regulating provisions in the Agricultural Code. CALIFORNIA FARM AND RANCH LAW § 7.25 (Cal. Cont. Educ. Bar ed. 1967). Producers may file complaints with one of the five regional offices of the Bureau. *Id.* at § 7.33. If approached, the County Agricultural Commissioner will assist the producer in filing the complaint with the Bureau. *Id.* at § 7.33. Upon receiving a complaint, the Bureau of Market Enforcement first investigates the transaction in question and attempts to secure a settlement satisfactory to grower and handler. CAL. AGRIC. CODE §§ 55745, 56443. The formal hearing process is initiated only if it appears that the parties cannot reach a settlement. *Id.* Procedure for the hearing is set out in the CAL. AGRIC. CODE §§ 55741-813, 56441-503.

<sup>13</sup> 239 Cal. App. 2d 860, 49 Cal. Rptr. 256 (1966).

<sup>14</sup> Review was sought through administrative mandamus under CAL.

\$119,545. This figure was nearly \$23,000 less than the price demanded by the producer under an ambiguous contract clause calling for a minimum price of \$40 per ton "subject to provisions of federal marketing order on grapes."<sup>15</sup> The Director interpreted the contract in the grower's favor. After finding that Almaden had violated the Agricultural Code by refusing or failing to pay for farm products, the Director ordered Almaden's license suspended for the final 9½ months of the 1-year licensing period.<sup>16</sup> The court held that the Director may suspend a handler's license even though there is a bona fide dispute over the contract price and the licensee has paid the amount not in dispute.<sup>17</sup>

Six year's earlier in *Post v. Jacobsen*,<sup>18</sup> a case similar to *Almaden*, the court reviewed disciplinary proceedings held pursuant to the chapter regulating dealers<sup>19</sup> and containing provisions essentially the same as the handler-regulating provisions involved in *Almaden*.<sup>20</sup> Post had contracted to purchase a plum crop at a reduced price, agreed upon because of certain hail damage and scale infestation. Stricken from the printed form contract was the provision for passage of title to the buyer upon delivery of the fruit to the packing house and acceptance for purchase. Post had agreed to pick and haul the crop at his own expense. When it was discovered that the scale damage was more extensive than the parties had at first observed, Post discontinued picking and refused to release the fruit on the trees. The remainder of the crop became too ripe for use by either grower or dealer. The Director found that the dealer had breached the contract,<sup>21</sup> and on review the court affirmed the Director's license suspension order notwithstanding the fact that a bona fide dispute existed

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CODE CIV. PROC. § 1094.5. The court of appeal remanded the case to the trial court, which, in not making findings on all material issues, had failed to exercise its independent judgment on the evidence as required by § 1094.5. 239 Cal. App. 2d at 866-67, 49 Cal. Rptr. at 265.

The suspension was ordered by the Director pursuant to provisions in section 1300.4 of the Agricultural Code of 1933 (Cal. Stats. 1935, ch. 509, § 1, at 1582). The 1933 Code was repealed in 1967 and the current Code enacted. Cal. Stats. 1967, ch. 15, §§ 1, 2. In the 1967 Code similar provisions are found in sections 55841-51, with parallel provisions for other handlers in sections 56531-43.

<sup>15</sup> 239 Cal. App. 2d at 863, 49 Cal. Rptr. at 259-60. The Federal Grapes for Crushing Marketing Order, 26 Fed. Reg. 7797 (1961), set up a procedure under which a seasonal maximum tonnage for grape crush might be set, with a corresponding "setaside" provision for production beyond the desired maximum. No maximum crush was set in 1963, the season for which the contract in *Almaden* was entered. 239 Cal. App. 2d at 863-64, 49 Cal. Rptr. at 260. It was Almaden's contention that the \$40 per ton minimum was to have applied only if the tonnage available for crush had been limited that season pursuant to the federal order. *Id.* at 863, 49 Cal. Rptr. at 260.

<sup>16</sup> 239 Cal. App. 2d at 864-65, 49 Cal. Rptr. at 260-61.

<sup>17</sup> *Id.* at 871, 49 Cal. Rptr. at 264-65.

<sup>18</sup> 180 Cal. App. 2d 297, 4 Cal. Rptr. 817 (1960).

<sup>19</sup> CAL. AGRIC. CODE §§ 1261-73, Cal. Stats. 1933, ch. 26, §§ 1261-73, at 274-87 (now CAL. AGRIC. CODE §§ 56101-652).

<sup>20</sup> Sections 1299.18 to 1300.5 of the Agricultural Code of 1933, Cal. Stats. 1935, ch. 509, § 1, at 1579-83 (now CAL. AGRIC. CODE §§ 55401-992).

<sup>21</sup> 180 Cal. App. 2d at 300, 4 Cal. Rptr. at 819.

under the contract.<sup>22</sup>

The *Almaden* and *Post* cases illustrate the role of the Director in grower-handler disputes. The thrust of both cases is that the Director has the power to suspend or revoke a handler's license for the willful failure to comply with contract terms even though there exists a bona fide dispute over the performance required under the contract. The following factors should be considered in determining the justifiability of vesting in the Director this broad power: (1) the legislative goals in setting up the handler regulation framework, (2) the administrative procedural safeguards and the extent of judicial review available to the handler, and (3) the need today for administrative regulation of the relationship between producers and handlers of farm products.<sup>23</sup>

## Justification of the Director's Power

### Purpose of the Legislation

In California there have been many instances of unfair practices by dishonest farm product handlers.<sup>24</sup> The 1927 Report of the Department of Agriculture suggests the sentiment prevailing in the agricultural community between 1915 and 1927.<sup>25</sup> Seeking protection from dishonest handlers, California's farmers, through the agricultural press and farmers' organizations, called for legislation to license and regulate produce dealers.<sup>26</sup> Numerous bills for regulating dealers were introduced during the period, but no legislation was enacted.<sup>27</sup> When a bill finally did pass both houses of the legislature in 1925, it was not signed by the Governor.<sup>28</sup> In 1927 the Produce Dealers License Act was enacted with extensive support from the State Grange, California Farm Bureau Federation, and Farmers Educational Union—farmer organizations which anticipated that the legislation would decrease the uncertainties in producer-handler transactions.<sup>29</sup>

In the current code identical sections in the two chapters under consideration expressly state that the marketing of agricultural products is "affected with a public interest."<sup>30</sup> The code declares that the provisions of the two chapters are enacted in the exercise of California's police power to protect the health, peace, safety, and general welfare of the state.<sup>31</sup> All economic groups involved—farmers, handlers, and consumers—benefit from the successful regulation of the grower-handler relationship and the stimulation of a steady flow of

<sup>22</sup> *Id.* at 303, 4 Cal. Rptr. at 821.

<sup>23</sup> The constitutional aspect is not considered here. See K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 7.01-20 (1958).

<sup>24</sup> CALIFORNIA FARM AND RANCH LAW § 7.1 (Cal. Cont. Educ. Bar ed. 1967).

<sup>25</sup> See 1927 Report of the Dep't of Agriculture, Division of Markets 737, in Vol. 4, 1929 APPENDIX TO THE JOURNALS OF THE SENATE & ASSEMBLY.

<sup>26</sup> *Id.* at 738.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> CAL. AGRIC. CODE §§ 55431, 56131.

<sup>31</sup> *Id.* The federal government has long recognized that the states have never surrendered such general police power. See *Reid v. Colorado*, 187 U.S. 137, 147 (1902).

farm goods to retailers. If handlers are required to make prompt payment to farmers, the necessary money is available for growers to prepare for the following season. The reputation of the handler industry is improved and its bargaining power enhanced by the screening processes which help to eliminate unscrupulous dealers from the trade.<sup>32</sup> Handler regulation, by assisting the farmer carry on his work, helps to insure the availability of farm products for the consumer. Such goals of the police power clearly are advanced by the legislation considered here. Still, within this framework, immediate concern is directed to the farmer.

The court in *Almaden* said that unless the Director can retain jurisdiction of complaints whether or not a bona fide dispute exists, the legislative scheme for *protecting the farmer* could be thwarted whenever a handler merely disputed the claim of a producer.<sup>33</sup> Several cases besides *Almaden* have stated that the purpose of the two handler-control chapters is to protect the farmer by helping him to secure full payment for his farm products.<sup>34</sup> The *Almaden* and *Post* cases, in establishing the Director's broad jurisdiction over handlers, help to advance this goal.

#### Procedural Administrative Safeguards and Judicial Review Available to Handlers

Legislation provides several procedures by which a licensee may avoid the possibility of license suspension or revocation. There are two points in the complaint-hearing process at which such avoidance may occur.<sup>35</sup> When a complaint is filed with the Director by a producer, the first administrative act is an attempt to effect a settlement satisfactory to both parties.<sup>36</sup> At this point, handler and producer may settle their dispute under the informal supervision of an impartial investigator from within the Bureau of Market Enforcement. It is only when no satisfactory settlement between the two parties can be reached that a formal hearing is necessary.<sup>37</sup>

If a hearing is held and a handler's license is ordered suspended or revoked, the licensee may still avoid the effects of the order. The

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<sup>32</sup> See generally *Partial Report of the Joint Legislative Comm. on Agricultural and Livestock Problems*, pt. 1, at 9, in 1957 APPENDIX TO THE JOURNAL OF THE SENATE.

<sup>33</sup> 239 Cal. App. 2d at 871, 49 Cal. Rptr. at 265.

<sup>34</sup> See, e.g., *People v. Mulholland*, 16 Cal. 2d 62, 69, 104 P.2d 1045, 1048 (1941); *Mosesian v. Parker*, 44 Cal. App. 2d 544, 551, 112 P.2d 705, 709 (1941); 4 OPS. CAL. ATT'Y GEN. 344 (1944); cf. *La Rosa v. Glaze*, 18 Cal. App. 2d 354, 359, 63 P.2d 1181, 1184 (1936).

<sup>35</sup> Outside the administrative framework any person may seek declaratory relief respecting his rights under any contract by proceeding under CAL. CODE CIV. PROC. § 1060. See notes 25-30 *supra* and accompanying text.

The state's constitutional guarantee against imprisonment for debt, CAL. CONST. art. 1, § 15, was the basis for holding a provision making it a misdemeanor to fail to make settlement for produce purchased from a farmer unconstitutional. *People v. Rohe*, 114 Cal. App. 2d 605, 250 P.2d 647 (1953). It has never been successfully argued that the constitutional prohibition restricts the Director's power to revoke or suspend a license.

<sup>36</sup> CAL. AGRIC. CODE §§ 55745, 56443.

<sup>37</sup> *Id.*

Agricultural Code provides that any such order may be made conditional upon the settlement or satisfactory adjustment of the consequences of any violation.<sup>38</sup> The Director's order suspending Almaden's license was expressly made subject to modification or vacation in the event of Almaden's settlement with the producer.<sup>39</sup> The effective date of any order may be postponed to allow this further attempt to settle.<sup>40</sup> For example, in *Almaden* the Director modified his order, which was to become effective 25 days after issuance, by postponing the effective date 30 days, and again for 15 days, at the request of Almaden's counsel.<sup>41</sup>

In addition, the *Almaden* case points out an alternative to proceeding to a hearing before the Director.<sup>42</sup> This alternative is available to the processor if it notifies the Director of intent to arbitrate and faithfully observes the terms of an arbitration provision.<sup>43</sup> However, the availability of this procedure depends upon the existence of an arbitration provision in a written contract.<sup>44</sup>

This arbitration alternative is the sole instance in which the Agricultural Code provides that the Director's jurisdiction over a complaint is actually suspended.<sup>45</sup> If, without reasonable cause, the arbitrators "fail, refuse or neglect to adjudicate" the dispute within 90 days of the date of notification to the Director, his jurisdiction may be restored.<sup>46</sup> Jurisdiction may also be restored in the event that the processor fails to perform in accordance with the decision of the arbitrators.<sup>47</sup> Despite these limitations, an arbitration provision assures the processor of an alternative to the possibility of disciplinary action on his license.

Although the court in *Almaden* pointed out that the Director was not deprived of the power to suspend a license by the fact that civil remedies were available,<sup>48</sup> the reasoning expressed in *Charles L.*

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<sup>38</sup> CAL. AGRIC. CODE §§ 55851, 56538.

<sup>39</sup> Brief for Appellant at 2, 239 Cal. App. 2d 860, 49 Cal. Rptr. 256 (1966).

<sup>40</sup> CAL. AGRIC. CODE §§ 55851, 56538.

<sup>41</sup> Brief for Respondent at 20-22, 239 Cal. App. 2d 860, 49 Cal. Rptr. 256 (1966).

The primary goal of the Director clearly is not to discipline code violators, but rather to gain a settlement for the farmer on terms satisfactory to both parties. There is a likelihood, of course, that in the face of a suspension order the handler might agree to terms not truly satisfactory to him. But a suspension is ordered only after it has been determined that the handler did not honor his contract, as interpreted after a formal hearing. See CAL. AGRIC. CODE §§ 55741, 55841, 56531.

<sup>42</sup> 239 Cal. App. 2d at 871, 49 Cal. Rptr. at 265. See CAL. AGRIC. CODE §§ 55742-44; 11 OPS. CAL. ATT'Y GEN. 222 (1948). There is no similar code provision in chapter 7 of division 20 covering all handlers other than processors.

<sup>43</sup> CAL. AGRIC. CODE § 55742.

<sup>44</sup> *Id.* In California it is a custom among farmers to rely on oral contracts, but there is no indication that handlers are not successful when they request a writing. See CALIFORNIA FARM AND RANCH LAW § 7.12 (Cal. Cont. Educ. Bar ed. 1967).

<sup>45</sup> CAL. AGRIC. CODE § 55742.

<sup>46</sup> CAL. AGRIC. CODE § 55743.

<sup>47</sup> CAL. AGRIC. CODE § 55744.

<sup>48</sup> 239 Cal. App. 2d at 871, 49 Cal. Rptr. at 265. See also, *People v. Terkianian*, 27 Cal. App. 2d 460, 462, 81 P.2d 251, 253 (1938). CAL. AGRIC. CODE

*Harney, Inc. v. Contractor's State License Board*,<sup>49</sup> involving a different state agency, puts a gloss on that proposition. In the *Harney* case, the State Contractor's License Board adopted a regulation requiring licensed and qualified contractors to obtain separate specialty licenses before entering into certain kinds of contracts. The licensee sought a declaratory judgment<sup>50</sup> prior to the commencement of disciplinary proceedings, and the court stated that "[p]laintiff . . . is not required to violate the administrative regulations and thereby subject itself to possible criminal prosecution or disciplinary action in order to obtain a declaration of its rights and duties."<sup>51</sup> It was implicitly recognized that any action by the agency should be held in abeyance until the court's decision,<sup>52</sup> and that the agency would be bound by the declaration made by the court.<sup>53</sup> It is likely that a court would apply this rationale to a fact situation such as was involved in *Almaden*, since the same reasons would exist. This approach would avoid having the Director interpret a contract in a bona fide dispute. This may well be the proper result since he is nowhere expressly granted the power to interpret contracts,<sup>54</sup> and has no special aptitude for doing so.<sup>55</sup>

The doctrine of exhaustion of administrative remedies does not appear to bar the action for declaratory relief, since the possibility of irreparable injury and inadequacy of administrative relief are exceptions to the doctrine.<sup>56</sup> Certainly the anomalous result that might follow if exhaustion were required—that the Director could find the

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§ 55437 expressly provides that "[t]he rights, remedies, and penalties which are provided for in this chapter are in addition to any other rights, remedies, or penalties which are provided for by law . . . ." There is no parallel provision in chapter 7, concerning dealers, but apparently additional legal remedies for breach by dealers have always been available to the producer. See *People v. Terkanian*, *supra*; cf. *People v. Murray*, 87 Cal. App. 145, 150, 261 P. 740, 742 (1927).

In addition to the possible revocation or suspension of his license and suit against him by the grower, the handler is subject to other, cumulative penalties under the Agricultural Code. The Director may seek to recover a \$500 civil penalty from anyone who violates any handler regulation. CAL. AGRIC. CODE §§ 55922, 56652. The Director also has discretion to bring to the attention of a district attorney the facts concerning any code violation which may constitute a misdemeanor, with a \$1000 fine or 1-year jail sentence, or both. CAL. AGRIC. CODE §§ 55901-06, 56631-39. Furthermore, he may sue to enjoin a violation or threatened violation of any code provision in, or any order made pursuant to, the two handler-regulating chapters. CAL. AGRIC. CODE §§ 55921, 56651; see 11 OPS. CAL. ATT'Y GEN. 222 (1948).

<sup>49</sup> 39 Cal. 2d 561, 247 P.2d 913 (1952).

<sup>50</sup> Declaratory relief is available in California under section 1060 of the Code of Civil Procedure.

<sup>51</sup> 39 Cal. 2d at 563, 247 P.2d at 915.

<sup>52</sup> 39 Cal. 2d 561, 247 P.2d 913 (1952).

<sup>53</sup> *Id.*

<sup>54</sup> The Director's power to interpret contracts is implied from his power to discipline the handler for nonpayment and nonperformance. CAL. AGRIC. CODE §§ 55872-73.

<sup>55</sup> See *World Airways, Inc. v. Northeast Airlines, Inc.*, 349 F.2d 1007, 1011 (1st Cir. 1965), *cert. denied*, 382 U.S. 934 (1966).

<sup>56</sup> See, e.g., *Greenblatt v. Munro*, 161 Cal. App. 2d 596, 605-07, 326 P.2d 929, 935-36 (1958).



handler had breached and suspend its license, and in a later action on the contract the court find there was in fact no such breach<sup>57</sup>— leads to the conclusion that this situation is within one or both of the exceptions.

Judicial review of administrative orders through a writ of mandate is provided by section 1094.5 of the Code of Civil Procedure. All questions of license issuance and renewal are reviewable under this section, as are other questions arising out of complaints by farmers.<sup>58</sup> The handler is entitled to review of any such final administrative decision or order.<sup>59</sup> The court will inquire into the Director's jurisdiction, use of discretion and fairness of the hearing.<sup>60</sup> The *Almaden* case indicates that the court is to use its independent judgment when reviewing a license suspension order,<sup>61</sup> and this includes making independent findings as to the rights and duties of the parties under the disputed contract.<sup>62</sup> Judicial review affords handlers a substantial protection by insuring the right to a fair administrative hearing. However, in the case of a bona fide dispute over a contract, a processor would be well advised to seek declaratory relief before reaching the Director rather than waiting for a review of the Director's orders on a writ of mandate. Use of the declaratory relief procedure would allow the handler to avoid the risk of a license suspension by the Director, and at the same time the handler would have its rights under the contract determined by a court of law.

### Need Today for Regulation of the Producer-Handler Relationship

The Bureau of Market Enforcement, in administering the regulatory powers given to the Director, serves the producer of farm products somewhat like a collection agency. Quick, inexpensive "service" is available to any farmer who files a complaint against a handler. But is the farmer today really in need of such an agency, or is the

<sup>57</sup> Courts are not bound to accept the agency's interpretation of the contract. Cf. *Empire Star Mines Co. v. California Employment Commission*, 28 Cal. 2d 33, 48, 168 P.2d 686, 695 (1946).

<sup>58</sup> In *Albert Albek, Inc. v. Brock*, 75 Cal. App. 2d 173, 170 P.2d 508 (1946), the court held that the Director could not deny without a hearing an application for an unlimited license after the legislature had called in all limited licenses. Albek's license had been the subject of an investigation when it was called in, and the Director had later determined that Albek had violated the code. *Id.* at 174, 170 P.2d at 509.

Hearing is required under CAL. AGRIC. CODE §§ 55488(a), 55528(a), 55841, 56189, 56531.

<sup>59</sup> Review is available under CAL. CODE CIV. PROC. § 1094.5. See generally *W. DEERING, CALIFORNIA ADMINISTRATIVE MANDAMUS* (Cal. Cont. Educ. Bar, 1966). Operation of the order may be postponed pending review. CAL. CODE CIV. PROC. § 1094.5(f).

<sup>60</sup> CAL. CODE CIV. PROC. § 1094.5(b). The inquiry into possible abuse of discretion determines whether the Director's decision is supported by the findings and whether the findings are supported by the evidence. CAL. CODE CIV. PROC. § 1094.5(b).

<sup>61</sup> 239 Cal. App. 2d at 866, 49 Cal. Rptr. at 262. The test of the evidence to be applied depends upon the type of order reviewed. CAL. CODE CIV. PROC. § 1094.5(c). See *W. DEERING, CALIFORNIA ADMINISTRATIVE MANDAMUS* §§ 5.50-75 (Cal. Cont. Educ. Bar, 1966).

<sup>62</sup> 239 Cal. App. 2d at 867-68, 49 Cal. Rptr. at 262.

relationship one in which each party should fare for himself? Because economic strength differs among California's farmers, the answer is not the same for every producer.

The present trend toward development of "agribusiness"—the integration of the supply, production, and distribution functions of the food product industry under central management<sup>63</sup>—improves the position of some farmers in terms of increasing their bargaining power, assuring their income, and correspondingly raising their standard of living. The fact remains, however, that there are many California farmers whose modest incomes and bargaining positions make the Bureau of Market Enforcement a necessary and desirable agency.<sup>64</sup>

Administrative adjudication relieves the burden upon courts. Moreover, the agency's high degree of specialization makes it better suited than a court to understand and deal with the relative bargaining power of producers and handlers. The efforts of the Director and his staff, with personnel close to grower and handler problems also insure the public of a steady flow of food products by encouraging and protecting the grower.

The farmer's business prospects, while in several respects improving,<sup>65</sup> are still generally affected by such factors as the general climate, instances of weather extremes, damage or destruction by insect and animal pests, and the perishability of crops. These factors combine to minimize the bargaining power of many farmers nearly every growing season.<sup>66</sup> Because of the special nature of the commodity he sells, the farmer is often faced with the prospect of entering into an unfavorable contract.<sup>67</sup> By helping the farmer with

<sup>63</sup> See generally D. HARTMAN, CALIFORNIA AND MAN 220-53 (1964).

<sup>64</sup> In 1962 California's 100,000 farms realized an average net income of over \$9,600. See D. HARTMAN, *supra* note 59, at 220. But that figure, the arithmetic mean, is not in itself indicative of the wealth of many groups of California farmers. The last U.S. Census of Agriculture in 1959 indicated that 24 percent of all farms in the state were of less than 10 acres in size. CAL. STAT. ABSTRACT 122-23 (1966). An additional 35 percent of all farms were in the 10 to 50 acre category; therefore, about 59 percent of all California farms were no more than 50 acres. *Id.* The median size is currently about 40 acres. *Id.* It seems clear that the average net receipts figure is greatly influenced by the nearly 20 percent of California farms which exceed 250 acres, including the 93,000-acre Irvine Ranch Company in Orange County. *Id.*

<sup>65</sup> In addition to the advantages accruing to farmers by the trend toward agribusiness, farmers undoubtedly will continue to profit from improvements in irrigation, pest control, fertilization, and plant and animal varieties. D. HARTMAN, CALIFORNIA AND MAN 222-32 (1964).

<sup>66</sup> The plum crop in *Post v. Jacobsen*, 180 Cal. App. 2d 297, 4 Cal. Rptr. 817 (1960), was directly affected by three such factors—hail damage, scale infestation, and perishability. *Id.* at 299-300, 4 Cal. Rptr. at 818-19. Every crop is subject to extremes of weather in the form of heat, cold, drought, rain, wind—manifestations of what has been called the "capriciousness of nature." A. BERTRAND, RURAL SOCIOLOGY 26-27 (1958).

<sup>67</sup> For a discussion of the abuse of standardized contracts in producer-processor dealings, see Note, 58 YALE L.J. 1161 (1949). See generally Hale, *Bargaining, Duress, and Economic Liberty*, 43 COLUM. L. REV. 603 (1943); cf. Patterson, *Compulsory Contracts in the Crystal Ball*, 43 COLUM. L. REV. 731 (1943).

modest financial and bargaining strength to secure payment for his products, the Director is able to reduce to some extent the problems that producers face.

### Conclusion

The *Post* and *Almaden* cases recognize the broad power that the legislature has conferred upon the California Director of Agriculture to deal with disputes between farmers and farm product handlers. No case to date has set the limits of the Director's power or expressed fear of its potential abuse. In view of the many changes in the farming industry in recent years, it seems possible that the relative bargaining positions of farmers and handlers may no longer justify administrative intervention on behalf of the farmer, and close legislative scrutiny of the situation is advised.

*Almaden* and *Post* indicate that the Director, in determining code violations, has the power to interpret contracts entered into freely by the parties. Nevertheless, the handler does not have all avenues to court determination of the rights and duties under the contract closed to him, since it appears that declaratory relief is available. Moreover, the processor derives substantial protection through the procedures providing for settlement and review by writ of mandate.

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