

MAR 18 1981

ALEXANDER L. STEVAS,
CLERK

No. 87, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF TEXAS,
Defendant.

ACTION IN ORIGINAL JURISDICTION

MOTION TO DEFER

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State of California

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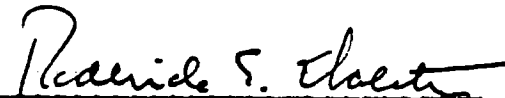
MOTION TO DEFER

Plaintiff State of California respectfully requests that this Court defer further consideration of plaintiff's motion for leave to file bill of complaint. This motion is based on the

Application of Roderick Walston,
attached hereto.

DATED: March 11, 1981

GEORGE DEUKMEJIAN,
Attorney General of the
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By 
RODERICK E. WALSTON
Deputy Attorney General

Attorneys for Plaintiff
State of California

APPLICATION OF RODERICK WALSTON

I, Roderick Walston, declare as follows:

1. I am a Deputy Attorney General for the State of California, and am the principal attorney representing the plaintiff herein.

2. On March 9, 1981, this Court issued a temporary restraining order in the above matter, restraining the State of Texas from imposing a quarantine against fruits and vegetables grown in California. The order further provides that the Texas quarantine is stayed until this Court acts on plaintiff's motion for leave to file bill of complaint, or until further order of this Court.

3. On March 7, 1981, as the result of an action initiated in a federal district court in Texas by a group of avocado growers based in California, the State of Texas voluntarily agreed, by stipulation, to withdraw its quarantine, subject to various conditions enumerated in the stipulation. On the basis of the stipulation, the district court dismissed the action. True and correct copies of the stipulation, and the dismissal order, are attached hereto.

4. On March 9, 1981, after this Court's issuance of the order described in paragraph 2 above, I spoke on the telephone with Richard E. Gray, Executive Assistant Attorney General for

the State of Texas. During the conversation, I advised Mr. Gray that the State of California would be willing to withdraw its motion for leave to file its bill of complaint if California could obtain "reasonable assurance" that, in the "foreseeable future," Texas would not impose another quarantine against fruits and vegetables grown in California. Mr. Gray indicated that Texas could not provide such assurance for the reason that, because of current warm weather conditions in California, the infestation of the Mediterranean fruit fly in California might spread beyond the areas presently quarantined by California and the U. S. Department of Agriculture. Under such possible future conditions, Mr. Gray stated, Texas may impose another

quarantine that extends beyond the quarantine boundaries established by California and the U. S. Department of Agriculture, even if the latter agencies extend their own quarantine boundaries in response to the spread of the infestation.

5. Under the circumstances described above, it would not be appropriate for the Court to grant our motion for leave to file bill of complaint, since Texas has withdrawn its former quarantine against fruits and vegetables grown in California. On the other hand, it would not be appropriate for the Court to deny our motion for leave to file bill of complaint, because of the possibility that Texas may adopt such a quarantine at a future time. Moreover, because of

the possibility that Texas may adopt such a future quarantine, it would not be appropriate for California to withdraw its motion for leave to file bill of complaint because (1), if Texas adopts such a future quarantine, the interests of California would be unprotected prior to the time that California is able to prepare and file new motions for leave to file bill of complaint and for interim relief, and prior to the time that the Court is able to act on such motions, and (2) California would incur additional expense in preparing and filing such motions.

6. For the reasons expressed in paragraph 5 above, it is respectfully requested that the Court defer consideration of the plaintiff's motion for

leave to file bill of complaint until July 1, 1981, unless future circumstances require earlier consideration of said motion. The plaintiff will undertake to advise the Court of any future circumstances that might require earlier consideration of the motion. If such circumstances have not occurred by July 1, 1981, the plaintiff intends to withdraw its motion for leave to file bill of complaint at that time. The significance of the date of July 1, 1981, is that, as a biological matter, it should be known by that time whether current eradication measures of California and the U. S. Department of Agriculture have proven successful, or whether the infestation has spread to areas beyond the quarantine boundaries

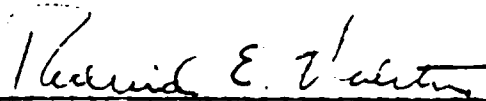
currently established by those agencies. Thus, it should be known at that time whether Texas intends to adopt another quarantine.

7. It is also respectfully requested that the Court not vacate its temporary restraining order during the period prior to the time that it acts on the plaintiff's motion for leave to file bill of complaint, or prior to the time that said motion is withdrawn. Such order, if not vacated, will continue to prevent Texas from adopting a quarantine that extends beyond areas quarantined by California and the U. S. Department of Agriculture, and will thus continue to protect the interests of California that prompted our earlier motions for interim relief. Moreover, since the U. S.

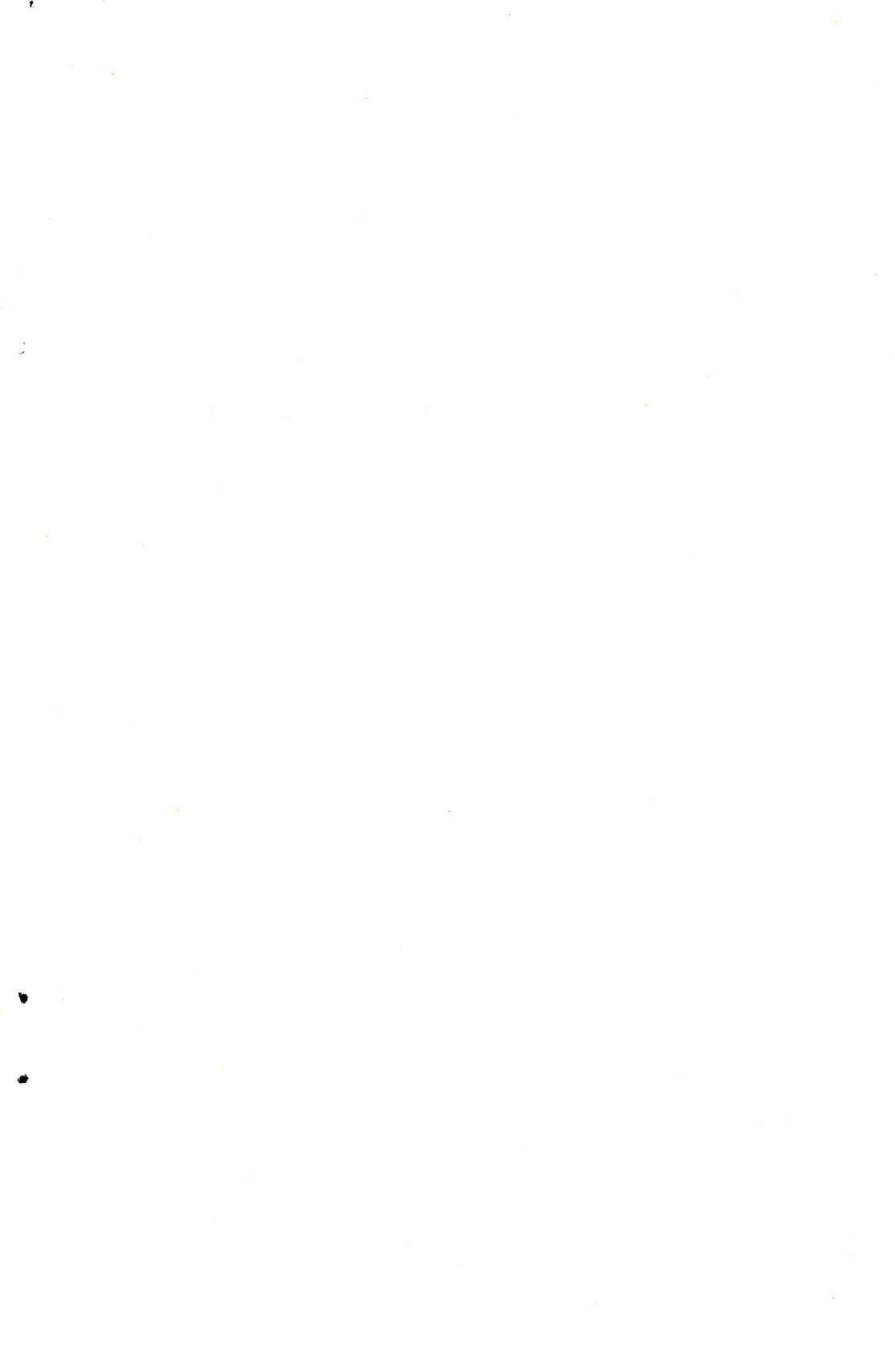
Department of Agriculture already administers its own quarantine program, Texas' interests will not be impaired by continuation of the temporary restraining order.

Executed on March 11, 1981, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.



RODERICK E. WALSTON





DOCKETED

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FILED

MAR 9 - 1981 M

JOSEPH J. McELROY, JR., CLERK
BY [Signature] Deputy

CALIFORNIA AVOCADO
COMMISSION, et al.,

Plaintiffs,

V.

REAGAN V. BROWN, COMMISSIONER
OF THE TEXAS DEPARTMENT OF
AGRICULTURE,

Defendant.

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CIVIL ACTION NO.
CA-3-81-0295-G

ORDER

This order is to confirm the dismissal of this case on March 6, 1981, done in open court, the parties then having agreed to a settlement, including the lifting on March 6, 1981, of the Texas Mediterranean Fruit Fly Quarantine (Rule 176.22.20.001); accordingly, this case is DISMISSED, with each party to bear its costs.

[Signature]
PATRICK E. HOGINBOTHAM
United States District Judge

APPENDIX

STIPULATION FOR DISMISSAL

[Transcript of remarks by
Judge Patrick Higgenbotham in
California Avocado Commission
v. Brown, U. S. District Court,
Northern District of Texas,
No. CA-3-81-0295-G, read into
the record on March 6, 1981:]

"I want to first outline the terms of
this agreement. First, the State of
Texas through its Commissioner,
Reagan V. Brown, Commissioner of Texas
Department of Agriculture will immediately
lift the emergency order that has earlier
been entered and became effective the
first of this month. The Department of
Agriculture has agreed that Commissioner
Brown may appoint a person of his
choosing to the Medfly Technical Committee
dealing with the California infestation
problem. The Department of Agriculture
has also agreed that within thirty days
of this date, it will hold public meetings

at places to be agreed upon with Mr. Brown as Commissioner of the Texas Department of Agriculture. The purpose of these meetings will be to allow the Department of Agriculture to explain its program to further public understanding and to be available to answer questions of persons who may be interested and concerned about this problem and to afford these persons opportunity to participate in that sense. The Department of Agriculture further agrees that it will continue to monitor and reevaluate the program that it has undertaken in the State of California to attack this problem."

