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13 Attorneys for Plaintiffs

14  
15 UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA  
17

18 CEDAR POINT NURSERY and FOWLER PACKING )  
CO., )

19 Plaintiffs, )

20 v. )

21 WILLIAM B. GOULD IV, GENEVIEVE SHIROMA, )  
22 CATHRYN RIVERA-HERNANDEZ, AND )  
23 J. ANTONIO BARBOSA, members of the Agricultural )  
Labor Relations Board in their official capacities, )

24 Defendants. )  
25  
26  
27  
28

No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURISDICTION**

1  
2 1. The claims in this action arise under the Fourth and Fifth Amendments to the United  
3 States Constitution, made applicable to the States by the Fourteenth Amendment. This Court has  
4 jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. A remedy is sought under 28 U.S.C.  
5 § 2201.

6 2. Under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), State officials may be  
7 sued for declaratory and injunctive relief when they act in violation of the Constitution. This Court  
8 has jurisdiction to grant the requested injunction against an unconstitutional regulation enforced  
9 by the Agricultural Labor Relations Board.

10 3. Venue is proper in this district because the conduct at issue took place within this  
11 district and the Plaintiffs' properties are all located within this district. 28 U.S.C. § 1391(b)(2).  
12 Venue is proper in the Fresno Division of this District Court under Local Court Rule 120(d)  
13 because Plaintiff Fowler Packing Co. is located in Fresno County.

**INTRODUCTION**

14  
15 4. Cedar Point Nursery (Cedar Point) and Fowler Packing Co. (Fowler) bring this  
16 action for declaratory and injunctive relief against the Members of the California Agricultural  
17 Labor Relations Board (the Board) in their official capacities. The action challenges a Board  
18 regulation that unlawfully permits union organizers to access private property in violation of the  
19 Fourth and Fifth Amendments (the access regulation).

20 5. The Fourth Amendment guarantees the right to be free from unreasonable searches  
21 and seizures, while the Fifth Amendment prevents the government from depriving property owners  
22 of the right to exclude trespassers from their property without just compensation. The Board  
23 regulation gives union organizers the right to access private property for the purposes of soliciting  
24 support, and thus authorizes a seizure and taking of possessory interests in private property,  
25 including the right to exclude others.

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1 6. Cedar Point experienced recent disruptions caused by United Farm Workers (the  
2 Union) organizers protesting on their property under the guise of the access regulation. The Union  
3 filed a charge against Fowler with the Board for violating the regulation by denying access to  
4 union organizers.

5 7. The access regulation imposes an easement across the private property of Cedar  
6 Point and Fowler for the benefit of union organizers. It deprives Plaintiffs of the right to exclude  
7 trespassers from private property and seizes a possessory interest in that property. Consequently,  
8 it violates the Fourth and Fifth Amendments to the United States Constitution, as applied to the  
9 States through the Fourteenth Amendment. Plaintiffs are entitled to equitable relief under 42  
10 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, including a preliminary  
11 injunction.

#### 12 THE PARTIES

13 8. Plaintiff Cedar Point Nursery is an Oregon corporation. Its nursery is located at 624  
14 Dorris Brownell Road in Dorris, California, a few miles from the Oregon border. Cedar Point  
15 raises strawberry plants for producers both statewide and nationally. It has recently been subject  
16 to a Union protest on its property under the guise of the access regulation.

17 9. Plaintiff Fowler Packing Co. is a California corporation with its headquarters in  
18 Fresno. It is one of the largest shippers in the fresh produce business, handling over 5 million  
19 boxes of table grapes, and 15 million boxes of citrus each year, including the popular mandarin  
20 brand "Halos." In July 2015, the Union filed a charge against Fowler with the Board, alleging that  
21 Fowler had unlawfully denied access to its property at 8570 South Cedar Avenue in Fresno on  
22 three separate days.

23 10. Defendant William B. Gould IV is Chairman of the California Agricultural Labor  
24 Relations Board. The Board is an agency of the State of California which has responsibility for  
25 administering the Agricultural Labor Relations Act (the Act), Cal. Lab. Code § 1140, *et seq.* The  
26 Board has the responsibility to investigate unfair labor practice charges and pursue remedies.  
27 Defendant William B. Gould is being sued in his official capacity as Chairman of the Board.

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1 11. Defendant Genevieve Shiroma is a Board Member. She is being sued in her official  
2 capacity.

3 12. Defendant Cathyrn Rivera-Hernandez is a Board Member. She is being sued in her  
4 official capacity.

5 13. Defendant J. Antonio Barbosa is Executive Secretary of the Board. He is being  
6 sued in his official capacity.

7 **FACTUAL BACKGROUND RELATING TO THE ACCESS REGULATION**

8 14. The Agricultural Labor Relations Act, Cal. Lab. Code § 1140, *et seq.*, went into  
9 effect on August 28, 1975. The Act does not include a provision permitting access for union  
10 organizers on private property.

11 15. After the Act took effect, the Board immediately promulgated an emergency access  
12 regulation. It took effect on August 29, 1975, and was duly certified on December 2, allowing it  
13 to remain in effect until amended or repealed.

14 16. Two groups of growers challenged the regulation as a violation of the Takings and  
15 Due Process Clauses of the United States Constitution in state court immediately after it was  
16 adopted. Two separate California trial courts issued temporary injunctions. *Agricultural Labor*  
17 *Relations Board v. Superior Court (Pandol & Sons)*, 16 Cal. 3d 392, 401 (1976). In a 4-3 decision,  
18 the California Supreme Court reversed. *Id.* at 409-11. The court held that the Board was not  
19 required to decide whether union access was necessary on a case-by-case basis, but could instead  
20 maintain a blanket rule granting access. *Id.* at 409. The dissent, on the other hand, concluded that  
21 “the regulation constitutes an unwarranted infringement on constitutionally protected property  
22 rights.” *Id.* at 421 (Clark, J., dissenting).

23 17. The current version of the access regulation declares that the Board “will consider  
24 the rights of employees under Labor Code Section 1152 to include the right of access by union  
25 organizers to the premises of an agricultural employer for the purpose of meeting and talking with  
26 employees and soliciting their support . . . .” Cal. Code Regs. tit. 8, § 20900(e).

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1 18. The regulation contains time, place, and manner restrictions: (1) access is available  
2 for no more than four 30-day periods in a calendar year; (2) each such period commences when  
3 the Union files a written Notice of Intent to Take Access as well as proof of service on the  
4 agricultural employer; (3) organizers can enter the property for one hour before the start of work,  
5 one hour after the completion of work, and one hour during the lunch break; (4) two organizers are  
6 permitted per work crew of up to 30 employees, with an additional organizer allowed for each  
7 additional 15 employees. *Id.* § 20900(e)(1)-(4).

8 19. Interference with the union organizers’ regulatory right of access “may constitute  
9 an unfair labor practice in violation of Labor Code Section 1153(a) if it independently constitutes  
10 interference with, restraint, or coercion of employees in the exercise of their rights under Labor  
11 Code Section 1152.” *Id.* § 20900(e)(5)(c).

12 20. In 2015, the Union filed 62 notices of intent to take access with the Board. *See*  
13 Exhibit A.

14 **FACTUAL BACKGROUND RELATING TO THE BOARD AND ITS PROCEEDINGS**

15 21. Board regulations allow any person to file a charge against any other person for  
16 engaging in an unfair labor practice. Cal. Code Regs. tit. 8, § 20201. The charge must contain “[a]  
17 short statement of the facts allegedly constituting an unfair labor practice.” *Id.* § 20202(c).

18 22. Once the charge has been filed, the regional director of the proper Board office has  
19 a duty to investigate whether an unfair labor practice has been committed. *Id.* § 20216. If the  
20 regional director concludes that no reasonable cause exists or there is insufficient evidence to  
21 support the charge, it is dismissed. *Id.* § 20218. The regional director must then issue a written  
22 notice explaining the reasons for the dismissal. *Id.*

23 23. Upon a dismissal, the charging party may seek review by the Board’s general  
24 counsel. *Id.* § 20219. The general counsel may affirm the regional director’s decision, remand for  
25 further factfinding, or issue a formal complaint in the name of the Board. *Id.* §§ 20219-20220.  
26 “The complaint shall contain a statement of the specific facts upon which jurisdiction of the Board  
27 is based, including the identity of the respondent, and shall state with particularity the conduct  
28 which is alleged to constitute an unfair labor practice.” *Id.* at 20220.

1 24. Once the complaint is issued, proceedings are similar to litigation. *See id.*  
2 §§ 20220-20278. At the conclusion of factfinding and argument, an administrative law judge  
3 (ALJ) makes the decision as to whether an unfair labor practice has been committed. *Id.* § 20279.  
4 If the ALJ finds that an unfair labor practice has been committed, “the decision shall contain an  
5 order for such affirmative action by the respondent as will effectuate the policies of the Act.” *Id.*

6 25. Within 20 days of the ALJ’s decision, any party may file an exception to the Board,  
7 seeking to reverse particular parts of the decision. *Id.* § 20282(a). If no exceptions are filed, the  
8 ALJ’s decision becomes final 20 days after it is served on the parties. *Id.* § 20286(a). If there are  
9 exceptions, “the Board shall review the applicable law and the evidence and determine whether  
10 the factual findings are supported by a preponderance of the evidence taken.” *Id.* § 20286(b).

11 **FACTS RELATING TO THE PLAINTIFFS**

12 **Cedar Point**

13 26. Cedar Point employs more than 400 seasonal and about 100 full-time workers at  
14 its Dorris, California nursery.

15 27. Seasonal workers at Cedar Point are housed in hotels in nearby Klamath Falls,  
16 Oregon. None of Cedar Point’s full-time or seasonal employees live on the Nursery’s property.

17 28. Cedar Point employees earn at or above market rates. Workers typically work 9-  
18 hour days beginning around 6:00 a.m., and complementary meals are served at designated times  
19 on the premises. Cedar Point’s management has never received complaints about the working  
20 conditions or housing provided to employees.

21 29. The Union staged a protest on Cedar Point’s property during the tail-end of the six-  
22 week strawberry harvesting season in 2015. It was Cedar Point’s first interaction with the Union.

23 30. On October 29, 2015, Union protesters entered Cedar Point’s property at  
24 approximately 5:00 a.m., without any prior notice of intent to access the property. By  
25 approximately 6:00 a.m. Union protesters trespassed across Cedar Point’s property to the trim  
26 sheds, where hundreds of employees were preparing Cedar Point’s strawberry plants. The  
27 protesters disrupted work by moving through the trim sheds with bullhorns, distracting and  
28 intimidating workers.

1           31.     Some workers who were present when the Union entered Cedar Point’s property  
2 left to protest with Union representatives. Other workers left the work site and did not join the  
3 protest. Many of the employees who left the work site or joined the protest were back at work at  
4 Cedar Point by Saturday, October 31. The majority of workers did not leave their work stations  
5 during the protest.

6           32.     After the Union entered Cedar Point’s property, the Union informed Cedar Point  
7 employees, including Human Resources Director Rachel Halpenny, that it had filed paperwork  
8 with the Board. It was at this point—after the Union had already trespassed throughout the  
9 property—that it finally served the notice of intent to take access.

10          33.     The Union claims that the access regulation grants it access rights to Cedar Point’s  
11 property.

12          34.     Cedar Point has filed a charge against the Union with the Board, alleging that the  
13 Union has violated the access regulation by taking access to Cedar Point’s property without  
14 providing proper notice. The Union has also filed a charge against Cedar Point, alleging that Cedar  
15 Point committed an unfair labor practice.

16          35.     Because the Union was ultimately unsuccessful in recruiting most of Cedar Point’s  
17 workers, it is likely the Union will attempt to take access again in the near future. If not for the  
18 challenged regulation, Cedar Point would exercise its right to exclude the Union trespassers from  
19 its property.

20 **Fowler**

21          36.     Fowler employs 1,800 - 2,500 people in its field operations and approximately 500  
22 people at its packing facility in Fresno, California. The company takes its social responsibility  
23 seriously; it provides free, wholesome meals for its packing house employees on premises, and  
24 maintains a medical clinic that serves all Fowler employees and their families free of charge. Each  
25 employee also carries a card with a “hotline” number, which they may anonymously call to report  
26 any signs of abuse, misconduct, harassment, or unsafe working conditions.

27          37.     Fowler’s employees do not live on the premises and are fully accessible to the  
28 Union when they are not at work.

1 38. The Union alleged in a charge that Fowler interfered with its access rights under  
2 the regulation for three days in July 2015. According to the charge filed with the Board, the Union  
3 duly provided notice before taking access, but Fowler blocked its organizers from taking the access  
4 permitted by the regulation.

5 39. Subsequently, the Union moved to withdraw its charge against Fowler. On  
6 January 13, 2016, the Board granted the Union's request. The Board did not indicate the Union's  
7 reason for seeking withdrawal.

8 40. Absent the challenged regulation, Fowler would oppose union access and exercise  
9 its right to exclude union trespassers from its property.

10 **DECLARATORY RELIEF ALLEGATIONS**

11 41. Under the Fourth, Fifth, and Fourteenth Amendment to the United States  
12 Constitution, Plaintiffs have a right to be free from laws that take or seize property for a public  
13 purpose, but on an unreasonable ground and without any mechanism for compensation.

14 42. Defendants are charged with enforcing the access regulation, which takes an interest  
15 in private property without providing a mechanism for compensation.

16 43. There is a justiciable controversy in this case as to whether the regulation violates  
17 the Fourth, Fifth, and Fourteenth Amendments as applied to Cedar Point and Fowler.

18 44. A declaratory judgment as to whether the regulation unconstitutionally takes or  
19 seizes property will clarify the legal relations between Plaintiffs and Defendants with respect to  
20 enforcement of the regulation.

21 45. A declaratory judgment as to the constitutionality and legality of the regulation will  
22 give the parties relief from the uncertainty and insecurity giving rise to this controversy.

23 **INJUNCTIVE RELIEF ALLEGATIONS**

24 46. Plaintiffs have no adequate remedy at law to address the unlawful and  
25 unconstitutional taking and deprivation of their property effected by the regulation and under color  
26 of state law.

27 47. There is a substantial likelihood that Plaintiffs will succeed on the merits of their  
28 claims that the regulation unconstitutionally takes and seizes private property.



1 48. Plaintiffs Cedar Point and Fowler are required to permit union trespassers to enter  
2 their property under the authority of the regulation. They cannot avoid those events without  
3 judicial relief, and will suffer irreparable injury absent a preliminary injunction restraining  
4 Defendants from enforcing the regulation.

5 49. Plaintiffs will suffer irreparable injury absent a permanent injunction restraining  
6 Defendants from enforcing the regulation.

7 50. Plaintiffs' injury—the immediate, unconstitutional, and illegal taking of a property  
8 interest for the benefit of union organizers—outweighs any harm the injunction might cause  
9 Defendants or the State of California.

10 **FIRST CLAIM FOR RELIEF**

11 **(Taking of an Easement Without Just Compensation, in**  
12 **Violation of the Fifth and Fourteenth Amendments, through 42 U.S.C. § 1983)**

13 51. Plaintiffs hereby re-allege each and every allegation contained in paragraphs 1  
14 through 50 as though fully set forth herein.

15 52. The Fifth Amendment to the United States Constitution, applied to the States  
16 through the Fourteenth Amendment, provides “nor shall private property be taken for public use,  
17 without just compensation.” U.S. Const. amend. V.

18 53. The Supreme Court of the United States has recognized that the Declaratory  
19 Judgment Act, 28 U.S.C. § 2201, “allows individuals threatened with a taking to seek a declaration  
20 of the constitutionality of the disputed governmental action before potentially uncompensable  
21 damages are sustained.” *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 71 n.15  
22 (1978).

23 54. As a result of the California Supreme Court's *Pandol & Sons* decision, there is no  
24 adequate state-law remedy for property owners affected by the Board's access regulation, and  
25 Plaintiffs need not seek such a remedy before bringing this action in federal court.

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1 55. In addition, monetary relief is not available as a matter of law in this action, because  
2 “the Eleventh Amendment bars reverse condemnation actions brought in federal court against state  
3 officials in their official capacities.” *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 956 (9th  
4 Cir. 2008).

5 56. Both Plaintiffs have reason to believe that the access regulation will be applied  
6 against them in the future. Fowler had a recent charge filed against it for violating the access  
7 regulation. The Union alleges Fowler prevented union organizers from trespassing after Fowler  
8 had been served with a notice of intent to take access. Cedar Point has a charge pending against  
9 the Union relating to the Union protest on October 29, 2015.

10 57. Given the foregoing, the only proper and possible remedy for the constitutional  
11 taking injury alleged in this case is declaratory and injunctive relief, and this Court is a proper  
12 forum for such relief.

13 58. Since the access regulation now creates an easement for union organizers to enter  
14 Plaintiffs’ private property without consent or compensation, it causes an unconstitutional taking.  
15 Plaintiffs are entitled to declaratory and injunctive relief preventing the application of Cal. Code  
16 Regs. tit. 8, § 20900(e) against them.

17 **SECOND CLAIM FOR RELIEF**

18 **(Unconstitutional Seizure in Violation of the**  
19 **Fourth Amendment, through 42 U.S.C. § 1983)**

20 59. Plaintiffs hereby re-allege each and every allegation contained in paragraphs 1  
21 through 58 as though fully set forth herein.

22 60. The Fourth Amendment to the United States Constitution, applied to the States  
23 through the Fourteenth Amendment, provides in relevant part: “The right of the people to be  
24 secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,  
25 shall not be violated . . . .” U.S. Const. amend. IV.

26 61. A seizure of property occurs whenever “there is some meaningful interference with  
27 an individual’s possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113  
28 (1984).



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5. An award to Plaintiffs of any other relief that the Court deems just and proper under the circumstances of this case.

DATED: February 10, 2016.

Respectfully submitted,

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