

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

1 DAMIEN M. SCHIFF, No. 235101
E-mail: dms@pacificlegal.org
2 JOSHUA P. THOMPSON, No. 250955
E-mail: jpt@pacificlegal.org
3 CHRISTOPHER M. KIESER, No. 298486
E-mail: cmk@pacificlegal.org
4 WENCONG FA, No. 301679
E-mail: wf@pacificlegal.org
5 Pacific Legal Foundation
930 G Street
6 Sacramento, California 95814
Telephone: (916) 419-7111
7 Facsimile: (916) 419-7747

8 HOWARD A. SAGASER, No. 72492
E-mail: has@sw2law.com
9 IAN B. WIELAND, No. 285721
E-mail: ian@sw2law.com
10 Sagaser, Watkins & Wieland, PC
7550 North Palm Avenue, Suite 100
11 Fresno, California 93711
Telephone: (559) 421-7000
12 Facsimile: (559) 473-1483

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.

26 ///

27 ///

28 ///

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).

27 ///

28 ///

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 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.

26 ///
27 ///
28 ///

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).

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,

DAMIEN M. SCHIFF
JOSHUA P. THOMPSON
CHRISTOPHER M. KIESER
WENCONG FA
HOWARD A. SAGASER
IAN B. WIELAND

By /s/ Joshua P. Thompson
JOSHUA P. THOMPSON

Attorneys for Plaintiffs

EXHIBIT A

**Notice of Intent to Take Access Filings
in 2015**

Notices to Take Access (NA) - Salinas

#	Date Filed	Case Number	Labor Organization	Employer
1.	06/24/15	2015-NA-001-SAL	UFW	Larse Farms, Inc.
2.	06/24/15	2015-NA-002-SAL	UFW	Rocha Brothers Farms
3.	06/26/15	2015-NA-003-SAL	UFW	Ortega Berry Farms
4.	06/26/15	2015-NA-004-SAL	UFW	Garroutte Farms
5.	06/26/15	2015-NA-005-SAL	UFW	Corralitos Farms
6.	06/26/15	2015-NA-006-SAL	UFW	Dutra Farms dba Premiere Raspberries
7.	07/08/15	2015-NA-007-SAL	UFW	Aptos Berry Farms
8.	07/08/15	2015-NA-008-SAL	UFW	Reiter Berry Farms
9.	07/08/15	2015-NA-009-SAL	UFW	Fernandez Bros. Inc.
10.	07/08/15	2015-NA-010-SAL	UFW	Scurich Berry Farm
11.	07/13/15	2015-NA-011-SAL	UFW	Tanimura & Antle Inc.
12.	07/16/15	2015-NA-012-SAL	UFW	Saticoy Berry Farms
13.	07/17/15	2015-NA-013-SAL	UFW	Ito Bros, Inc.
14.	07/21/15	2015-NA-014-SAL	UFW	Mandalay Berry Farms
15.	07/23/15	2015-NA-015-SAL	UFW	Marz Farms, Inc.
16.	07/23/15	2015-NA-016-SAL	UFW	Colorado Farms, LLC
17.	07/24/15	2015-NA-017-SAL	UFW	Camarillo Berry Farms
18.	07/27/15	2015-NA-018-SAL	UFW	Ortega Berry Farms (2 nd)
19.	07/30/15	2015-NA-019-SAL	UFW	Springfield Farms

#	Date Filed	Case Number	Labor Organization	Employer
20.	08/06/15	2015-NA-020-SAL	UFW	Harvest Moon Agricultural Services
21.	08/07/15	2015-NA-021-SAL	UFW	T.T. Miyasaka, Inc.
22.	08/10/15	2015-NA-022-SAL	UFW	Desert Best Farms
23.	08/17/15	2015-NA-023-SAL	UFW	Aptos Berry Farms
24.	08/17/15	2015-NA-024-SAL	UFW	Providence Farms, LLC
25.	08/17/15	2015-NA-025-SAL	UFW	Merrill Farms, LLC
26.	08/20/15	2015-NA-026-SAL	UFW	PV Farming Operations LLC
27.	08/25/15	2015-NA-027-SAL	UFW	Fernandez Brothers, Inc.
28.	08/20/15	2015-NA-028-SAL	UFW	Sunset Farming, Inc.
29.	08/20/15	2015-NA-029-SAL	UFW	Paraiso Organics, Inc.
30.	09/08/15	2015-NA-030-SAL	UFW	Camarillo Berry Farms
31.	09/10/15	2015-NA-031-SAL	UFW	Rio Mesa Organics Farms
32.	09/10/15	2015-NA-032-SAL	UFW	Royal Oaks Farms LLC
33.	09/10/15	2015-NA-033-SAL	UFW	Sakakihara Farms
24.	09/17/15	2015-NA-034-SAL	UFW	Elkhorn Berry Farms LLC
35.	09/17/15	2015-NA-035-SAL	UFW	Elkhorn Berry Organic Farms LLC
36.	10/29/15	2015-NA-036-SAL	UFW	Cedar Point Nursery
37.	11/09/15	2015-NA-037-SAL	UFW	Tanimura & Antle, Inc.
38.	11/09/15	2015-NA-038-SAL	UFW	Dutra Farms dba Premiere Raspberries, LLC
39.	11/09/15	2015-NA-039-SAL	UFW	Harvest Moon Agricultural Services
40.	11/09/15	2015-NA-040-SAL	UFW	Larse Farms, Inc.

#	Date Filed	Case Number	Labor Organization	Employer
41.	11/09/15	2015-NA-041-SAL	UFW	T.T. Miyasaka, Inc.
42.	11/09/15	2015-NA-042-SAL	UFW	Providence Farms, LLC

Notices to Take Access (NA) - Visalia

#	Date Filed	Case Number	Labor Organization	Employer
1.	06/25/15	2015-NA-001-VIS	UFW	Rogina Inc.
2.	06/25/15	2015-NA-002-VIS	UFW	Live Oak Farms
3.	06/29/15	2015-NA-003-VIS	UFW	Sweetwoods Farm . . . Inc. dba "Red Rooster"
4.	06/30/15	2015-NA-004-VIS	UFW	Mike Jensen Farms
5.	06/30/15	2015-NA-005-VIS	UFW	Dimare Fresh
6.	06/30/15	2015-NA-006-VIS	UFW	Family Ranch
7.	07/07/15	2015-NA-007-VIS	UFW	Valley Garlic Inc. dba Sequoia Packing
8.	07/09/15	2015-NA-008	UFW	Fowler Packing Co.
9.	07/09/15	2015-NA-009-VIS	UFW	Pappas & Co.
10.	07/09/15	2015-NA-010-VIS	UFW	Stamoules Produce Company
11.	07/09/15	2015-NA-011-VIS	UFW	Martinelli Vineyards
12.	07/10/15	2015-NA-012-VIS	UFW	John H. Kautz dba John Kautz Farms aka Diversified Farms
13.	07/10/15	2015-NA-013-VIS	UFW	Vino Farm Inc.
14.	07/13/15	2015-NA-014-VIS	UFW	Sonoma Cutrer Vineyards
15.	07/30/15	2015-NA-015-VIS	UFW	Dimare Fresh (2 nd)
16.	07/31/15	2015-NA-016-VIS	UFW	Live Oak Farms

#	Date Filed	Case Number	Labor Organization	Employer
17.	07/31/15	2015-NA-017-VIS	UFW	Stellar Distributing, Inc.
18.	08/03/15	2015-NA-018-VIS	UFW	Logoluso Farms Inc.
19.	08/04/15	2015-NA-019-VIS	UFW	Specialty Crop Co.
20.	08/24/15	2015-NA-020-VIS	UFW	J. Marchini Farms