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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

FAMILIAS UNIDAS POR LA JUSTICIA,

Plaintiff,

v.

SAKUMA BROTHERS FARMS, INC.,

Defendant.

No.

PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION AND RELIEF REQUESTED

In 2013, over 400 migrant farm workers at Sakuma Brothers Farms (“Sakuma”) joined together to form Familias Unidas por la Justicia (“Families United for Justice” in English and hereinafter “Familias”) to improve their working conditions. Many Familias members are long-standing employees, are married with children, and have lived in Sakuma’s on-farm housing with their families each harvest season for years. Many minor children of these families have also worked for Sakuma, as Sakuma has consistently employed children over 12 years of age.

Late last month, in an effort to retaliate against members of Familias by eliminating them from its 2014 harvest workforce, Sakuma sent the workers letters announcing three new work policies. Sakuma first told Familias members they are not eligible to work in 2014 because they missed five days of work due to strikes last harvest season. Next, Sakuma announced it will prohibit families from living in Sakuma’s on-farm housing. As a final blow to Familias members, Sakuma proclaimed it will no longer employ minor children. These actions violate Washington’s Little Norris-LaGuardia Act (“LNLA”) and the Washington Law Against Discrimination (“WLAD”). Plaintiff Familias asks the Court to enjoin Sakuma to rescind these policies and to inform Familias members that it has done so and that they are not ineligible to return to work because of their previous strike activity, to allow families to continue to reside in its on-farm housing, and to allow minors to work as in previous years.

II. FACTS

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Throughout the 2013 harvest season, migrant farm workers at Sakuma joined together to improve their wages and working conditions. Torres Dec. ¶¶ 6-34. In early July during the strawberry harvest, Sakuma fired a worker after he requested better wages and working conditions. *Id.* ¶ 6. In response, over 250 co-workers formed Familias and selected a leadership committee (“Committee”) to negotiate on the group’s behalf and elected Ramon Torres the president. Torres Dec. ¶ 8; Guillen Dec. ¶¶ 5-6. When Sakuma refused to raise the wage for strawberry picking, the workers went on strike. Torres Dec. ¶ 7. Although the first strike was resolved, disputes over wages and working conditions continued. *See generally* Torres Dec.

1 In early September, the workers held another work stoppage to seek an increase in the
2 wage for picking blackberries. *Id.* ¶ 27. The next day, Sakuma fired Mr. Torres. *Id.*
3 Approximately 300 workers immediately walked off the job in protest of the firing and later
4 decided to strike in support of Mr. Torres. *Id.*; Guillen Dec. ¶ 9. A few days later, Sakuma
5 stationed security guards in the labor camps where Familias members resided and held their
6 meetings. Torres Dec. ¶ 28. On September 24, worker Felimon Pineda and Familias filed a
7 lawsuit in this Court, an emergency hearing was held, and the Hon. John Meyer issued a
8 temporary restraining order enjoining Sakuma to remove the guards. Barnard Dec. ¶¶ 3-4, Ex. A.
9 The Order stated that “Defendants’ actions . . . have the effect of intimidating the Plaintiffs and
10 of chilling the exercise of their rights protected by Ch. 49.32 RCW [Washington’s LNLA].” *Id.*
11 at p.3 ¶ 4. Although strikes continued by a limited number of Familias members until the end of
12 the harvest season, most members returned to work out of financial need with the Committee’s
13 approval. Torres Dec. ¶ 29. Sakuma’s president, Ryan Sakuma, wrote a letter to those workers
14 which stated, “We welcome you all back to work,” and all were allowed to finish the season. *See*
15 Flores Dec. ¶ 6, Ex. A. To the Plaintiff’s knowledge, no one was fired or disciplined in 2013, or
16 in any prior year, for work absences. Torres Dec. ¶ 30; Santiago Dec. ¶ 9; F. Lopez Dec. ¶ 9.

15 In 2013, Sakuma brought in 160 foreign “guest workers” to work at the farm under a
16 program known as “H-2A.” Barnard Dec. ¶ 5, Ex. B. The H-2A program may only be used if
17 there is a shortage of workers in the local area. 20 C.F.R. § 655.103. H-2A workers receive
18 temporary visas; they may not bring their families to the U.S. with them; and they must return to
19 their country at the end of the season. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(a). In 2013, Sakuma
20 asked for H-2A workers beginning in August, but not for the June-July strawberry harvest.
21 Barnard Dec., Ex. B. Sakuma eventually brought about 70 H-2A workers from Mexico; they
22 were segregated from Familias members in housing and work crews, and were forbidden by
23 Sakuma from speaking to Familias members. Torres Dec. ¶ 19. The H-2A workers worked until
around the middle of October before returning to Mexico. Torres Dec. ¶ 20.

During the off-season, Sakuma rebuffed numerous attempts by Familias to meet with

1 Sakuma to negotiate a contract for 2014. *Id.* ¶ 32; Guillen Dec. ¶ 11. In April, Familias members
2 began contacting Sakuma to inform them of their availability to work in the 2014 season. Torres
3 Dec. ¶ 33; Vasquez Dec. ¶¶ 8, 10; F. Lopez Dec. ¶ 7. During March and April, Familias gathered
4 and delivered to Sakuma letters from more than 460 of its members, stating their intention to
5 return to work at Sakuma in 2014. Torres Dec. ¶ 31, 33; Guillen Dec. ¶ 12. Around April 14,
6 2014, Sakuma applied to the U.S. Department of Labor for 438 foreign H-2A workers for the
entire 2014 season, beginning with the strawberry harvest. *See* Barnard Dec. ¶¶ 6, 7 Exs. C, D.

7 In late April, Sakuma sent two letters (one blue, one green) to Familias members. The
8 “blue letter,” sent to 379 members, stated that the recipients were ineligible for future work at
9 Sakuma because they had “unexcused absences” of five consecutive days in 2013. Torres Dec. ¶
10 34, Ex. C; Vasquez Dec. ¶ 9; Garcia Dec. ¶ 8; C. Lopez Dec. ¶ 9. The members did not miss five
11 consecutive days of work in 2013 except when they lawfully participated in strikes. *See* Vasquez
12 Dec. ¶ 9; Garcia Dec. ¶ 8; C. Lopez Dec. ¶ 9. On May 2, 2014, Sakuma acknowledged the
13 connection between the strikes and its “blue letter” on its blog: “[i]f [workers] were part of the
14 work disruptions, under the guest worker contract, they abandoned their jobs and are therefore
15 not eligible to be rehired. We have mailed letters to 379 employees who worked for us in 2013 to
16 inform them that they abandoned their jobs and have disqualified themselves from working for
17 Sakuma this year.” Barnard Dec., Ex. D, ¶ 5. The “green letter” stated that Sakuma will no
longer employ anyone under 18, and housing will no longer be provided to married couples or
families with children. Torres Dec. ¶ 34, Ex. D; Flores Dec. ¶ 11, Ex. B; Garcia Dec. ¶ 11.

18 III. ARGUMENT

19 A. This Court Has the Authority to Issue Temporary Restraining Orders.

20 Courts have inherent authority to issue TROs to protect litigants’ rights until a matter can
21 be decided on the merits, where the moving party can show: (1) a clear legal or equitable right;
22 (2) a well-grounded fear of immediate invasion of that right; and (3) that the act complained of
23 will result or is resulting in actual or substantial injury. *Tyler Pipe Indus., Inc. v. State Dep’t of
Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). *See also* CR 65(b); RCW 7.40.010.

1 **B. Sakuma’s Actions Violate the Little Norris-LaGuardia Act, which Protects**
2 **Washington Workers’ Right to Organize Without Interference or Coercion.**

3 The members of Familias have a clear legal and equitable right to a temporary restraining
4 order under the Washington State Little Norris-LaGuardia Act, which states:

5 [workers] **shall be free from interference, restraint, or coercion of employers . . . in**
6 **self-organization or in other concerted activities for the purpose of collective bargaining**
7 **or other mutual aid or protections. . .**

8 RCW 49.32.020 (emphasis added). Workers have a private right of action under the Act,
9 including the right to injunctions. *Krystad v. Lau*, 65 Wn.2d 827, 846, 400 P.2d 72, 83 (1965).

10 Sakuma is coercively interfering with the rights of members of Familias to seek
11 continued employment and to self-organization through concerted action in three ways: (1) by
12 black-listing all workers known to have participated in the 2013 strikes; (2) by adopting a new
13 policy barring families from its on-farm housing; and (3) by adopting a new policy barring
14 children under 18 from working on the farm. Sakuma’s actions are also in retaliation for the
15 previous organizing activity of Familias members which is protected by the LNLA. *Bonita Fruit*
16 *Co., Inc.*, 64 NLRB 172, 175 (1945) (failure to re-hire unionized fruit-packing workers in
17 subsequent season violated the National Labor Relations Act prohibition on interference with
18 concerted activity); *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 755, 888 P.2d 147, 153 (1995)
19 (in the LNLA, the Legislature “intended to prohibit a wide range of actions that could operate to
20 deprive workers of protections under the statute” including “insulat[ing] employees from
21 discharge, refusal to hire, or other employer retaliation for engaging in concerted activities for
22 mutual aid or protection”) (emphasis added).¹ Sakuma admits it is targeting previously
23 striking workers to prohibit them from working. Barnard Dec. ¶ 7, Ex. D.²

¹ Washington courts use NLRA cases to interpret the LNLA. See, *Briggs v. Nova Services*, 166 Wn.2d 794, 803, n.4 (2009); *Krystad* 65 Wn.2d at 839. The language of Sections 7 and 8(a)(1) of the NLRA is similar to that of the LNLA. Compare 29 U.S.C. §§ 157, 158(a)(1) with RCW 49.32.020.

² Contrary to Sakuma’s public assertions, striking workers do not “abandon” their employment by going on strike. See *NLRB v. MacKay Radio*, 304 U.S. 333, 345 (1938) (protected strikers still employees); *Int’l Union of Operating Engineers Local No. 286, AFL-CIO v. Sand Point Country Club*, 83 Wn.2d 498, 501-02, 519 P.2d 985 (1974) (The LNLA “recognized the validity of [labor’s] tools of economic pressure, the strike and the peaceful picket line” and protects the continued employment rights of strikers). In *Marydale Products Co., Inc.*, 133 NLRB 1223, 1227-29 (1961), enforced, *Princeville Canning Company v. NLRB*, 316 F.2d 735, 5th Cir. (1963), the employer refused to hire back seasonal workers who had been on strike the previous season on the ground that they had abandoned their

1 Sakuma's newly adopted policies of not providing family housing and not employing
2 minors also violate the LNLA by dissuading members from working the 2014 season and forcing
3 them to search for rental housing before they can, as a practical matter, work at Sakuma.
4 Santiago Dec. ¶ 12; Vasquez Dec. ¶¶ 14-15. Most Familias members are married with minor
5 children, and many depend on teenage children's income. *See id.*; Garcia Dec. ¶ 12. These
6 reversals of longstanding practices by Sakuma are particularly effective ways to replace its self-
7 organized local workforce with guest workers, all of whom are men without families, thus
8 coercively interfering with Familias members' protected rights.

8 **C. The WLAD Prohibits Sakuma from Denying Housing to Families.**

9 Under the WLAD, it is unlawful to discriminate against married persons and families in
10 housing. RCW 49.60.222(1)(f); .040(21). The WLAD provides a private right of action,
11 including the right to seek injunctive relief. RCW 49.60.030(2). Sakuma announced a new policy
12 barring children and separating spouses in its housing, after years of allowing families to live in
13 its on-farm cabins. Demetrio Dec. ¶ ¶ 12-13; Flores Dec. ¶¶ 10, 12; Garcia Dec. ¶¶ 9-11.³ This
14 both bars workers with children from living in the housing and interferes with married workers'
15 enjoyment of the housing, in violation of RCW 49.60.222, and is causing actual and substantial
16 injury by driving away current members of Familias, by sending the message that Sakuma will
17 retaliate against workers who exercise their right to self-organization in the future, and by
18 depriving them of the right to fair housing. The harm grows daily, as the Familias workers face
19 pressing decisions about whether to hold out for Sakuma employment or to seek work and
20 housing elsewhere.

20 jobs by not being employed at that end of the season. The Court and the Board affirmed the ALJ's decision, which
21 called out this rationale as subterfuge: "To say that these were not hired, not because of their concerted activities, but
22 because they had not been employed at the end of the 1959 season, is to cite a distinction without a difference:
23 whether or not the failure to employ them in 1959 had been violative, it stemmed from their concerted activities, and
to cite their lack of employment is to rely on the concerted activities which led to it." *Id.* at 1228.

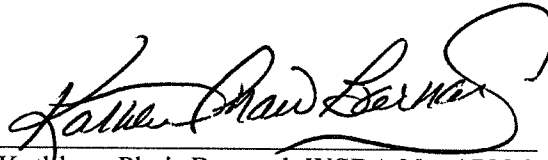
³ Migrant farm worker housing is covered under the federal Fair Housing Act. *Lauer Farms, Inc. v. Waushara Cnty. Bd. of Adjustment*, 986 F. Supp. 544, 559 (E.D. Wis. 1997); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1328-29 (D. Or. 1996). The WLAD is interpreted in the same manner as the FHA. *Green v. Cal. Court Apartments, LLC*, No. C-07-334-MJP, 2008 WL 681835, at *4 (W.D.Wash. March 10, 2008) (citing *Kees v. Wallenstein*, 161 F.3d 1196, 1199 (9th Cir.1998)).

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1 Plaintiff respectfully requests that this Court enter an order requiring Sakuma to
2 immediately comply with its legal obligations under the LNLA and the WLAD.

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4 RESPECTFULLY submitted this 15th day of May, 2014.

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