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THE HONORABLE SUSAN K. COOK

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. 14-2-00924-3

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION

On September 11, 2014, Familias Unidas filed a motion for preliminary injunction on issues concerning Sakuma's rules related to solicitation, distribution of literature and visitors in the labor camps at Sakuma. On October 27, 2014, this court held an evidentiary hearing with live testimony. After reviewing the parties' submissions and the testimony of witnesses, the Court makes the following

**FINDINGS OF FACT:**

**Familias Unidas's Activities**

1. Familias Unidas was formed in 2013 to improve the working conditions of farm workers at Sakuma.
2. Members of Familias engaged in organizing activity at Sakuma's labor camps in 2013.
3. Those organizing activities included meetings with workers in common areas of the labor camps.
4. On October 25, 2013, this Court found that Sakuma had interfered with Plaintiff

Familias Unidas por La Justicia's members' rights under the Little Norris LaGuardia  
ORDER GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION- 1

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1 Act (LNLA) by installing security guards at the workers' housing and having guards  
2 follow members and supporters on public roads.

3 5. In its June 26, 2014 order, this Court found that Sakuma had interfered with rights  
4 under the LNLA and retaliated against them for the exercise of those rights by  
5 denying housing previously provided to families and spouses of workers.

6 6. The order also found that Sakuma had previously engaged in interference and  
7 retaliation under the LNLA by informing workers they were ineligible for work  
8 because of their strike activity.

9 7. Familias Unidas communicates with residents of the employee housing by cell phone  
10 and their attendance at off-site events including bi-weekly union meetings in Mt.  
11 Vernon, Wa.

12 8. The thirty to forty people remaining in Sakuma's housing will be gone by October 31,  
13 2014, and the 2014 Housing Agreement will no longer be in effect after that date.

14 9. Sakuma revises its Temporary, Part-time, Seasonal, and Migrant Employee  
15 Handbook ("Employee Handbook") every year, and the 2014 Employee Handbook is  
16 no longer in effect because the 2014 seasonal piece-rate picking employment at issue  
17 ended on October 25, 2014.

18 10. Under a section titled "Purpose of this Handbook, the 2014 Employee Handbook  
19 states, "[n]o language contained in this Handbook, nor in any other documents  
20 provided by the Company, is an employment contract, or a promise of specific  
21 treatment in specific situations."

22 **Sakuma's Distribution and Solicitation Rule**

23 11. Sakuma's 2014 Employee Handbook prohibits solicitation by employees of other  
employees "for any purpose during the working time of any of the employees  
involved," and distribution of literature in non-work areas of its property including  
the parking areas, rest and break areas, and company-provided housing.

1 12. Sakuma's 2014 Employee Handbook prohibits solicitation by non-employees of  
2 employees and distribution of literature in non-work areas of its property including  
3 the parking areas, rest and break areas, and company-provided housing. The 2014  
4 Employee Handbook also prohibits access to these areas by all non-employees,  
5 except with authorization by the company.

6 **Sakuma's Housing Rules**

7 13. Sakuma 2014 Housing Agreement provides that "No visitors of Employees or  
8 occupants are allowed inside a unit. . ." Employee Housing Agreement ¶ 31. The  
9 effect of this rule is to prohibit solicitation for union activity in employee housing  
10 units except between occupants of the same housing unit. Sakuma adopted this rule  
11 for the first time in 2014.

12 14. Sakuma installed guard booths at the entrance to its camps for the first time in 2014.

13 15. Sakuma created the "food defense team," of which the camp entrance guards are part,  
14 for the first time in 2014.

15 16. When visitors arrive at the Sakuma guard booths, the guards ask them their name and  
16 whether they have an appointment. The guards have allowed some individuals to  
17 enter and denied access to other individuals.

18 17. Ernesto Morales lived at Camp #2 during the 2014 season.

19 18. He attempted to enter Camp #1 on multiple occasions to visit family and to play  
20 soccer with friends, and Sakuma guards did not allow him to visit his family's cabins  
21 or to enter to play soccer.

22 **"Visitor Center"**

23 19. Sakuma's 2014 "Employee Housing Agreement" states, in part: "29. Employees and  
permitted occupants may entertain guests in the visitor center from 9:00 a.m. to 9:00  
p.m. Visitors and guests are not allowed in other areas other than the designated  
visitor centers. No visitors are permitted on-site after 9:00 p.m."

20. Sakuma required camp residents to use the visitor center for the first time in 2014.

- 1 21. The “visitor centers” are temporary trailers with sparse furnishings.
- 2 22. In order to reach the visitor center in either Camp #1 or Camp #2, residents must walk
- 3 across the camp and pass the booth at the entrance to the property.
- 4 23. The visitor center is locked, and the keys are kept in the booth; camp residents have
- 5 to ask permission to use the visitor center.
- 6 24. Maria Ortiz was a resident of Sakuma Camp #1 in the 2014 season.
- 7 25. During that season, her father drove from California and arrived at the Sakuma
- 8 camps.
- 9 26. Sakuma guards did not allow Ms. Ortiz’s father to visit her in her home.
- 10 27. Ms. Ortiz did not wish to use the visitor center because she wanted to welcome her
- 11 father in her own home after his long drive, and she wanted to serve him food from
- 12 her own kitchen.
- 13 28. Sometime later in the 2014 season, Ms. Ortiz’s brother came to visit with a paper
- 14 bearing the name of a medicine that would help with her baby’s fever. Sakuma
- 15 eventually allowed her brother to enter the camp, but Ms. Ortiz had to meet him near
- 16 the camp bathrooms (in the center of the camp), and a guard followed Ms. Ortiz’s
- 17 brother to meet Ms. Ortiz, observed their interaction, and followed him out of the
- 18 camp again.
- 19 29. Felimon Pineda is the Vice-President of Familias Unidas.
- 20 30. Felimon Pineda visited the Camp #1 in September, 2014, and he did not feel
- 21 comfortable using the visitor center to meet with union members because he felt that
- 22 Sakuma might learn information about his conversations by surveilling the visitor
- 23 center.

**Sakuma’s Provision of Housing**

31. Sakuma provides housing to workers in connection with their jobs at Sakuma, and the workers do not pay rent in exchange for the housing.

1 32. Sakuma's 2014 "Employee Housing Agreement" reads, in part, "Purpose: To attract  
2 workers to harvest, Employer provides seasonal cost-free housing to certain eligible  
3 employees during employment."

4 33. Sakuma's migrant workers are poor, and many travel from California to work during  
5 harvest season.

6 34. There is a significant disparity in bargaining power between Sakuma and its workers  
7 with regard to terms and conditions of housing.

8 35. Sakuma does not negotiate the terms of housing with its workers, but rather requires  
9 the workers to sign all housing rules to receive housing.

10 36. Maria Ortiz and her family left California believing that they would be given a cabin  
11 in the Sakuma camps, as in previous years.

12 37. When Sakuma did not give them a cabin, Ms. Ortiz and her family, including three  
13 small children, slept in their car, which also contained their belongings for the season.

14 ~~38. A week after this Court ruled that workers with children were entitled to housing at  
15 Sakuma, Families brought a contempt motion to compel Sakuma to offer housing to  
16 workers. Sakuma began offering housing after the contempt motion was filed. See  
17 Proceedings on Motion for Contempt, July 2, 2014.~~

JKC

~~Comment [A51]: These facts go to unconscionability. Counsel disagree as to whether the Court wishes to include unconscionability in the order.~~

#### 16 Sakuma's Workforce

17 39. The 2014 harvest season ended on October 25, 2014.

18 40. Sakuma's fruit picking workforce is seasonal, and many workers return to work at  
19 Sakuma for multiple seasons.

20 Based upon the above **FINDINGS OF FACT**, the Court makes the following

#### 21 CONCLUSIONS OF LAW:

22 1. The LNL provides: "[workers] shall be free from interference, restraint, or coercion  
23 of employers . . . in self-organization or in other concerted activities for the purpose  
of collective bargaining or other mutual aid or protections. . ." RCW 49.32.020.

ORDER GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION- 5

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2. LNLA was “intended to prohibit a wide range of actions that could operate to deprive workers of protections under the statute.” *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 756, 888 P.2d 147, 153 (1995).
  3. Washington courts have looked to law on the National Labor Relations Act to interpret similar provisions of the Washington Little Norris LaGuardia Act. RCW 49.32.020 has language similar to sections 7 and 8(a)(1) of the NLRA. 29 U.S.C. §§ 157, 158(a)(1).
  4. “Time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline.” *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 803, 65 S. Ct. 982, 988, 89 L. Ed. 1372 (1945).
  5. Sakuma has not shown any facts demonstrating “special circumstances” that warrant its rule against employee-to-employee distribution of literature on non-working time in non-working areas. This rule violates the Washington Little Norris LaGuardia Act’s prohibition of interference with concerted activity.
  6. Workers have a right to be free from surveillance that restrains and deters protected concerted activity. See *Familias v. Sakuma*, Cause No. 13-2-014601-1 (Skagit County Sup. Ct., Sept. 25, 2013); *Local Joint Executive Bd. of Las Vegas v. N.L.R.B.*, 515 F.3d 942, 945-46 (9th Cir. 2008); *Cal. Acrylic Indus. v. NLRB*, 150 F.3d 1095, 1099–1100 (9th Cir. 1998); *Sands Hotel & Casino, San Juan*, 306 NLRB 172, \*189 (1992) (the posting of guards to observe and overhear employees who might be discussing strike action or other lawful protected concerted activities unlawfully

ORDER GRANTING PLAINTIFF’S MOTION FOR  
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1 interfered with protected activity), *enf. 'd sub nom. mem., S.J.R.R., Inc. v. NLRB*, 993  
2 F.2d 913 (D.C. Cir. 1993).

- 3 7. Sakuma restricted residents of the housing camp to meet together for protected  
4 concerted activities, by restricting all meetings with non-attorney visitors to a visitors  
5 center where Sakuma's security can surveil the activity or, at a minimum identify  
6 who is meeting together and when, that its surveillance chills the exercise of protected  
7 concerted activity and interferes with employee rights under the LNLA.  
8 8. Sakuma acted with intent to retaliate against Familias members because of their  
9 LNLA-protected concerted activities when it changed the visitor rules and installed  
10 guards at the camps in 2014. These actions violated the LNLA prohibition of  
11 interference with concerted activity.  
12 9. Familias members residing in the Sakuma labor camps are tenants-at-will under  
13 Washington common law, and they have the right to receive visitors in their housing  
14 units.  
15 10. For the purposes of the Washington common law of tenants' rights and the Little  
16 Norris LaGuardia Act, the visitor center is not an adequate substitute for having  
17 visitors in one's housing unit.  
18 11. Sakuma has a legal right to know, and keep track of, who is on its property, including  
19 the labor camps. Sakuma also has a legal right to maintain and enforce a list of  
20 individuals who are not welcome on Sakuma property, including the labor camps,  
21 because they have committed crimes on the property or have engaged in other conduct  
22 justifying exclusion.  
23 12. A contract term is void if it is either procedurally or substantively unconscionable.  
13. Procedural unconscionability is the lack of a meaningful choice, considering all the  
circumstances surrounding the transaction including the manner in which the contract  
was entered, whether the party had a reasonable opportunity to understand the terms  
of the contract, and whether the important terms were hidden in a maze of fine print.

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1 14. In determining whether a contract term is procedurally unconscionable, courts also  
2 consider the contract is a contract of adhesion -- whether the contract was a standard-  
3 form contract, whether it was prepared by one party and offered to the other on a  
4 "take it or leave it" basis, and whether there was an imbalance of bargaining power  
5 between the parties.

6 15. Contract terms are substantively unconscionable when they are one-sided or overly  
7 harsh.

8 16. Sakuma's ban on visitors in workers' cabins at the Sakuma labor camps is  
9 procedurally unconscionable because of the significant imbalance of bargaining  
10 power between the parties and the "adhesion" nature of the contract.

11 ~~17. Sakuma's ban on visitors in workers' cabins at the Sakuma labor camps is  
12 substantively unconscionable because it is one-sided and un-heard of in any  
13 residential lease.~~

14 18. Plaintiff's members have a clear legal right to be free from coercion in and  
15 interference with their LNLA-protected concerted activity.

16 19. Plaintiff's members have a clear legal right to be free from retaliation due to their  
17 LNLA-protected concerted activity.

18 20. Plaintiff's members residing in Sakuma's labor camps have a clear legal right, as  
19 tenants, to invite visitors into their housing units.

20 21. Invasion of these rights is ongoing for Sakuma's current residents, and any worker  
21 who wishes to return to housing at Sakuma for the 2015 season has a well-grounded  
22 fear of repeated invasion of that right.

23 22. This invasion of Plaintiff's members' right to engage in protected concerted activity  
and their right to receive visitors in their housing is in and of itself substantial injury.

24 23. The balance of the competing interests weighs in favor of Familias because  
Familias's members have an important interest in being free from coercion in and

JKC

~~Comment [AS2]: Counsel disagree as to whether  
the Court wishes to include findings on  
unconscionability.~~



1 interference with its protected concerted activity, and in exercising their rights as  
2 tenants.

3 24. Plaintiff's request for relief is not moot because this Court can still provide effective  
4 relief.

5 THEREFORE, IT IS ORDERED:

- 6
- 7 1. Sakuma must remove from its 2014 Temporary, Part-time, Seasonal, and Migrant  
8 Employee handbook prohibitions on solicitation and distribution of literature in  
9 non-work areas on non-work time.
  - 10 2. Sakuma may keep records of who enters the labor camps and may inquire as to the  
11 general purpose of the visit at the time the visitor seeks access. Sakuma may  
12 establish a list of individuals who are barred from access because they have  
13 committed crimes on the property or other acts that justify exclusion.
  - 14 3. If the visitor identifies herself or himself as being there to visit a labor camp  
15 resident, Sakuma may not ask the visitor to identify the individual(s) the visitor is  
16 there to visit.
  - 17 4. Sakuma may establish a reasonable curfew for visits from individuals who do not  
18 reside in the labor housing.
  - 19 5. Sakuma shall remove from its "Employee Housing Agreement" the provision  
20 stating that all guest visits must take place in the visitor center and that visitors and  
21 guests are not allowed in housing areas other than the designated visitor centers.
  - 22 6. Sakuma shall remove from its "Employee Housing Agreement" the provision  
23 prohibiting visitors from entering employees' housing units.
  - 24 7. That Sakuma inform current residents of its employee housing in writing of the  
25 change.

SKC

~~Comment [AS3]: Plaintiff's counsel propose this language. Defense counsel proposes Sakuma may ask a visitor to identify the individual(s) the visitor is there to visit, but a union organizer does not have to disclose the identity of labor camp residents she or he is there to visit.~~

~~The crux of the disagreement is over whether union organizers should have to identify themselves as such before they allowed to enter without identifying the people they are visiting.~~

1 This ORDER is binding upon the parties to this action, their officers, agents, servants,  
2 and employees.

3  
4 SIGNED IN OPEN COURT this 3 day of Nov, 2014.

5   
6 SUSAN K. COOK  
7 SKAGIT CO. SUPERIOR COURT JUDGE

8  
9 Presented by:

10  
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ORDER GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION- 10

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