

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,

Plaintiffs,

vs.

SAKUMA BROTHERS FARMS, INC.,

Defendant.

No. 14-2-00924-3

(PROPOSED) ORDER GRANTING
PLAINTIFFS' MOTION FOR
PERMANENT INJUNCTION

Plaintiff Familias Unidas por la Justica filed this suit seeking interim and permanent injunctive relief under the little Norris-LaGuardia Act (“LNLA”) and the Washington Law Against Discrimination (“WLAD”). Plaintiff alleges the following to be unlawful: Defendant’s hiring practices, Defendant’s rules about eligibility for on-farm housing, and part of Defendant’s employment application concerning employee conflict of interest with Defendant (the “yellow dog” provision).

On May 27, 2014, the Court granted a temporary restraining order concerning the hiring practices. On June 18, 2014 the Court (1) determined that the issue of alleged “yellow dog” provisions in Defendant’s employment application would be resolved at a later time, (2) entered a stipulated order requiring affirmative action by Defendant’s concerning its hiring practices regarding Plaintiff’s members and (3) conducted a bench trial on the merits of the Defendant’s recent policy change to deny housing to the spouses and families of workers in its seasonal labor

(Proposed) ORDER GRANTING PLAINTIFF’S
MOTION FOR PERMANENT INJUNCTION - 1

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1 camp housing.¹

2 On June 18, 2014, the Court took live testimony from witnesses for both parties and
3 admitted 12 exhibits offered by the Plaintiff into evidence. The Defendant offered no exhibits,
4 and none were admitted into evidence. After hearing the testimony and reviewing the evidence
5 admitted at trial along with oral argument from counsel, the Court makes the following

6 **FINDINGS OF FACT:**

- 7 1. Sakuma Bros. Farms, Inc. has operated as a berry farming operation in the Skagit
8 Valley for over 50 years.
- 9 2. Ryan Sakuma is the president of the company. He is in charge of overseeing the
10 crops, and making sure Sakuma hits its budgets, and of the picking the crops,
11 including management of the farm's workforce.
- 12 3. Steve Sakuma is part owner, and an officer, of the company and has complete
13 oversight as to what goes on at the company.
- 14 4. During the summer of 2013, Familias Unidas por la Justicia was formed to improve
15 the wages and working conditions of farm workers at Sakuma Bros. Farms.
- 16 5. At the time it was formed, Familias had 250 members, and the group has grown since
17 then to over 460 members.
- 18 6. Approximately 80% of the members of Familias have spouses, and a large majority of
19 those have children. Many of these members with families have worked at Sakuma
20 and lived in Sakuma's housing for many years.
- 21 7. Approximately 60 percent of Familias members are migrant farm workers who
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¹ After initially demanding a jury trial, the Defendant agreed to a bench trial as the Plaintiff only seeks injunctive
(Proposed) ORDER GRANTING PLAINTIFF'S
MOTION FOR PERMANENT INJUNCTION - 2

1 permanently reside in California or elsewhere and travel to Washington each year to
2 work during the berry harvest at Sakuma.

3 8. In 2013, members of Familias engaged in strikes and marches for the purpose of
4 obtaining a collective bargaining agreement with Sakuma.

5 9. In 2013, members of Familias also set up a Facebook page to make their activities
6 known in the community.

7 10. In 2013, Sakuma workers told Ryan Sakuma that they had concerns about their
8 working conditions.

9 11. In 2013, Sakuma workers told Ryan Sakuma that they were not appearing for work
10 because they objected to working conditions at the company. Many Sakuma workers
11 engaged in strike activity over the course of the berry season for the purpose of
12 obtaining a collective bargaining agreement with Sakuma.

13 12. In 2013, Ryan Sakuma observed marches in which his employees participated.

14 13. Since 2013, Ryan Sakuma has been aware of the Familias Facebook page and that
15 members of Familias were talking to the press and community groups about
16 Sakuma's employment practices.

17 14. In 2013, Steve Sakuma was aware of strikes by his employees.

18 15. Since 2013, Ryan and Steve Sakuma have been aware of a boycott effort of Sakuma
19 products conducted by its workers.

20 16. In 2013, the membership of Familias elected a leadership committee and a President
21 and Vice-President of Familias, and sent representatives to negotiate with Sakuma
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1 management to improve the terms and conditions of their employment.

2 17. Sakuma engaged in meetings with Familias representatives in the summer of 2013
3 where wages were discussed. Ramon Torres, President of Familias, and Felimon
4 Pineda, Vice-President of Familias, were present in the meetings.

5 18. On August 14, 2013, Sakuma reached a non-retaliation agreement with Familias.

6 19. In September, 2013, Felimon Pineda and Familias sued Sakuma in Skagit County
7 Superior Court to obtain injunctive relief to halt interference with their concerted
8 activity.

9 20. On September 25, 2013, this Court entered a temporary restraining order against
10 Sakuma requiring the company to remove security guards from the labor camps. The
11 order found the guards' presence gave Sakuma an opportunity to surveil the workers
12 protected concerted activity and that would intimidate and chill members of Familias
13 from exercising their rights under the LNLA.

14 21. The court's September 25, 2013 temporary restraining order also restrained Sakuma
15 from following the plaintiffs or workers or community supporters on public highways
16 or elsewhere because that unlawfully deterred protected concerted activity by
17 Familias members.

18 22. On October 7, 2013, this Court entered a final order restraining Sakuma from having
19 security guards in the labor camps and from following workers and supporters on
20 public roads for the remainder of the 2013 harvest season.

21 23. In the spring of 2013, in response to Sakuma's proposed use of H-2A foreign
22 workers, Familias collected letters from over 460 of its members stating that they
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1 wanted to return to their jobs and work at Sakuma in 2014.

2 24. Familias caused the first batch of letters to be delivered to Sakuma on April 9, 2014,
3 the second batch on April 14, 2014 and the third batch on April 21, 2014.

4 25. Familas workers acted in concern to create and deliver these letters.

5 Ryan Sakuma was aware of the arrival of the letters and the stated intention of the
6 workers who signed them to return to work at Sakuma in 2014.

7 26. On April 21, 2014, the same date of the delivery of the last batch of Familias letters to
8 Sakuma, Ryan Sakuma sent a letter that he authorized to workers saying there was no
9 housing at Sakuma for non-workers. Sakuma sent the letter to all workers Sakuma
10 deemed eligible for work who had worked in prior years.

11 27. The letter stated, “Beginning this year, you must be at least 18 years old at the time of
12 hire.” The letter was sent to all workers Sakuma deemed to be eligible for work in
13 2014 and who had worked for Sakuma in prior years.

14 28. The same April 21, 2014 letter informed former workers that there was a “change in
15 the housing camp policy. Beginning in 2014, Sakuma Bros. Farms will be providing
16 housing to workers only. This means that housing for non-working family members
17 will no longer be available. Cabins will be designated as Male Only of Female Only.
18 We do not have separate housing for married couples. . . . We are providing you with
19 this information so that if you are planning to work for Sakuma Bros. Farms in the
20 2014 season and you intend to bring your family, you can make housing
21 arrangements for your family members elsewhere.” (emphasis in original).

22 29. On April 23, 2014, Sakuma sent a letter to former workers advising them that they
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1 had “an unexcused absence of more than five (5) consecutive work days during your
2 employment at Sakuma Bros. Farms last season, you were reported as “abandoned” to
3 the Department of Labor. . . . As a result of your abandonment, you did not complete
4 the contract period and are ineligible for rehire by Sakuma Bros. Farms.”

5 30. Sakuma’s April 21 and April 23 letters were sent with the intent to retaliate against
6 Familias members because of their continued protected activities.

7 31. On May 27, 2014, this Court entered a temporary restraining order enjoining Sakuma:
8 “(a.) [f]rom barring Familias Unidas por la Justicia members from employment due to
9 absences occurring during the 2013 strikes; (b.) [t]o inform Familias Unidas por la
10 Justicia members immediately that workers are not barred from employment due to
11 absences accrued during the 2013 strikes; (c.) [f]rom interfering or retaliating against
12 Plaintiffs due to the exercise of their rights under chapter 49.32 RCW and chapter
13 49.60 RCW.” Sakuma did not inform the Court that it had complied with this order.

14 32. On June 18, 2014, this Court entered a stipulated order finding that Sakuma “has
15 informed Familias Unidas por la Justicia members that they are ineligible for work in
16 2014 because they missed five consecutive days of work due to 2013 strike activity.”

17 33. The June 18 stipulated order finds that Sakuma’s “activities have the effect of
18 interfering with the exercise of rights protected by chapter 49.32 RCW” and requires
19 Sakuma to “inform Familias Unidas por la Justicia members immediately (within one
20 week of the entry of the order containing these stipulations) that workers are not
21 barred from employment due to absences accrued during the 2013 strikes” and to
22 “consider Familias members eligible to apply for employment and to make
23 employment decisions without regard to their participation in any protected concerted

1 activity, including strikes, boycott activity, participation in or communication about
2 any labor disputes, or any other protected concerted activity for mutual aid and
3 protection”

4 34. Prior to 2014, Sakuma had a long-standing policy of providing housing to workers
5 with spouses and workers with families with children, even if the children were not
6 employed during the harvest season. The housing provided by Sakuma is used for the
7 activities of daily life, including meal preparation, bathing and sleeping.

8 35. Sakuma understood that the provision of housing to the spouses and families of its
9 workers allowed their workers to meet the economic “challenges” they faced and
10 allowed them to “achieve their goals.”

11 36. Sakuma also knew that providing housing to the spouses and families of its workers
12 operated as “an incentive program to bring in the labor [it] required.”

13 37. Because many members of Familias cannot afford to pay rent in two places during the
14 harvest season, they depend economically on the housing provided by Sakuma.
15 Without free housing at Sakuma, many families would not be able to afford to work
16 at Sakuma during the berry harvest.

17 38. There is limited housing for migrant farm workers in the Skagit County area. The
18 Skagit County Housing Authority has a five-year waiting list for farm-worker
19 housing it operates. The Housing Authority a vacancy rate of less than 1% in the
20 farm-worker housing it operates.

21 39. A group of service providers including the Skagit County Housing Authority has met
22 to attempt to plan for housing of farm worker families who will not be housed at
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1 Sakuma this year. That group is waiting on the results of a letter sent to the Governor
2 about the issue.

3 40. In 2012 and 2013, and 2014 the usual practice was for workers to call in beginning in
4 April to register for housing at Sakuma. Workers called in in 2014 as usual.

5 41. Irma Santiago is a 23 year-old migrant farm worker who lives in Stockton, California
6 and who has worked for Sakuma since she was 14 years old.

7 42. Ms. Santiago and her partner Guillermo Demetrio have a three-month-old baby.

8 43. The couple earn approximately \$16,000 a year working in agriculture.

9 44. Ms. Santiago and her partner pay rent in California, and they cannot afford to pay rent
10 in Washington as well.

11 45. Ms. Santiago and Mr. Demetrio worked for Sakuma in 2013 and lived in Sakuma's
12 housing.

13 46. In 2013, Ms. Santiago joined Familias Unidas and participated in strikes to earn better
14 wages.

15 47. Both Ms. Santiago and Mr. Demetrio received letters from Sakuma telling them they
16 were not eligible to work in 2014.

17 48. On May 1st, Ms. Santiago called Sakuma and inquired about work, but Sakuma told
18 her they were not eligible to work and they should seek other work.

19 49. At the time of trial on June 18, 2014, Ms. Santiago had not received any
20 communication from Sakuma rescinding its previous decision that she was ineligible
21 for work because of her absences related to her strike activity in 2013.

22 50. At time of trial, Ms. Santiago's family was staying temporarily with Ms. Santiago's
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1 father in Mount Vernon, Washington while they sought work and housing with
2 Sakuma, but they cannot stay there over the summer berry season.

3 51. Ms. Santiago and her partner cannot afford to pay for an apartment in Mount Vernon.

4 52. Ms. Santiago and her partner need to save money in the summer to be able to live
5 during the winter months, when work is scarce.

6 53. If Sakuma does not allow Ms. Santiago and her partner to live in the housing they
7 will have to look for other work or go back to California.

8 54. Ms. Santiago and her partner would work at Sakuma all season if they had housing.

9 55. Isidro Silva is married and has four children and the oldest child is 12 years old.

10 56. Mr. Silva and his family live in California for half of the year and in Washington for
11 the other half of the year.

12 57. Mr. Silva has worked for Sakuma since 2003, and he and his family have lived in
13 Sakuma's housing each year.

14 58. In 2013, he joined Familias Unidas and participated in its efforts.

15 59. Mr. Silva arrived in Washington on June 17, 2014, after being laid off for lack of
16 work at his other berry job in California.

17 60. Mr. Silva comes up to Washington about the same time each year to begin work with
18 Sakuma.

19 61. He plans to apply for work at Sakuma if they start offering housing.

20 62. If he is not offered housing, he would look for work and housing elsewhere for his
21 family.

22 63. Reasonable workers in the shoes of Familias members, would be deterred from
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1 engaging in protected concerted activity in the future, and would be deterred from
2 even returning to their work at Sakuma, by the loss of their regular housing because it
3 would be reasonable to conclude that Sakuma denied them housing because of their
4 previous protected concerted activity. Sakuma's denial of housing to workers who
5 engaged in protected concerted activity in the 2013 season is a deterrent to future
6 protected concerted activity by any of its workers.

7 64. Sakuma has previously engaged in interference in violation of LNLA by installing
8 security guards in the labor camp housing areas and by having security guards follow
9 Familias members and community supporters of Familias followed on the public
10 highways.

11 65. Sakuma has previously engaged in interference and retaliation in violation of the
12 LNLA by informing workers that they were ineligible for work at Sakuma because of
13 their strike activity.

14 66. Sakuma did not inform employees of the rescission of its decision to make workers
15 ineligible for work even after this Court ordered it to immediately do so.

16 67. Sakuma's actions set forth above are the context in which the Court finds that the
17 denial of housing previously provided to the families and spouses of workers
18 interferes with current and deters future protected concerted activities by the members
19 of Familias and other individuals who are or will be working for Sakuma.

20 68. Sakuma's actions set forth above are the context in which the Court finds that the
21 denial of housing previously provided to the families and spouses of workers was
22 motivated by animus towards Familias members' protected concerted activities and
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1 done in retaliation against the protected concerted activities of members of Familias.

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

3 **CONCLUSIONS OF LAW:**

- 4 1. Plaintiff Familias Unidas por la Justicia has a clear legal right under Washington’s
5 little Norris-LaGuardia Act, RCW 49.32.020 “to full freedom of association, self-
6 organization, and designation of representatives of [their] choosing, to negotiate the
7 terms and conditions of [their] employment, and [to] be free from interference,
8 restraint, or coercion of employers of labor, or their agents, in the designation of
9 such representatives or in self-organization or in other concerted activities for the
10 purpose of collective bargaining or other mutual aid or protections ...”. Those
11 rights include the right to have engaged in peaceful strike activity, to conduct a
12 boycott of Sakuma products, to engage with each other in peaceful marches and
13 demonstrations, to communicate with each other and to the public on the internet
14 and through other channels, and to act together to seek collective bargaining with
15 Sakuma without coercion by Sakuma through polices that categorically disqualify
16 them from employment and housing due to that lawful activity.
- 17 2. Plaintiff Familias Unidas por la Justicia have a well-grounded fear of continuing
18 invasion of those rights because Defendant Sakuma Brothers, Inc., has:
- 19 a. Informed Familias Unidas por la Justicia members that it will no longer allow
20 workers’ spouses and families to live with them in its on-farm housing;
- 21 b. Informed Familias Unidas por la Justicia members that it will segregate spouses in
22 its on-farm housing;
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- 1 3. Members of Plaintiff Familias have participated in concerted activity within the
2 meaning of chapter 49.32 RCW, including strikes, marches, public campaigns,
3 internet and other channels of communication among themselves and with their
4 community, and the delivery of pledges by members to return to work.
- 5 4. Familias members’ protected concerted activity was a substantial factor motivating
6 Sakuma’s decision to change its housing policy.
- 7 5. The actions of Defendant Sakuma to deny housing to families and separate spouses
8 restrains, coerces, and interferes with the protected concerted activities of members
9 of Plaintiff Familias because lack of family housing represents a hardship for
10 members of Familias, and in some cases makes further employment at Sakuma
11 impossible.
- 12 6. The actions of Defendant Sakuma to deny housing to families and separate spouses
13 were done in retaliation against the protected concerted activities of members of
14 Plaintiff Familias.
- 15 7. Familias Unidas por la Justicia will suffer irreparable injury and damage if
16 Defendant’s actions described above are not restrained, because those activities
17 were in retaliation for, and have the effect of interfering with the exercise of rights
18 protected by chapter 49.32 RCW, and because without the ability to exercise those
19 rights, the Plaintiffs are not able to “exercise actual liberty of contract and to protect
20 [their] freedom of labor, and thereby to obtain acceptable terms and conditions of
21 employment ...”, as provided in RCW. 49.32.020.
- 22 8. Plaintiff Familias Unidas por la Justicia has a clear legal right under the Washington
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1 Law Against Discrimination, RCW 49.60.222 and .2235 to be free from
2 discrimination and interference in housing based on marital and family status.

3 9. Housing provided in connection with employment in seasonal farm work is a
4 “dwelling” within the meaning of chapter 49.60 RCW.

5 10. Plaintiff Familias Unidas por la Justicia have a well-grounded fear of continuing
6 invasion of there rights under 49.60. RCW because Defendant Sakuma Brothers,
7 Inc., has:

8 a. Informed Familias Unidas por la Justicia members that it will no longer allow
9 workers’ spouses and families to live with them in its on-farm housing;

10 b. Informed Familias Unidas por la Justicia members that it will segregate spouses in
11 its on-farm housing;

12 11. Sakuma’s new 2014 housing policy is a facial violation of the prohibition of family
13 and marital status discrimination in RCW 49.60.222 and .2235 as it directly informs
14 former workers that if “you intend to bring your family, you [must] make housing
15 arrangements for your family members elsewhere.” The letter further advises,
16 “[Sakuma] do[es] not have separate housing for married couples.” As such,
17 Sakuma’s motivation for adopting the housing policy is immaterial.

18 12. Sakuma housing policy is not one that discriminates only on the basis of
19 “employment status.” To the extent the letters or trial testimony state the new
20 housing policy in terms of “employment status,” that is only a proxy for a facially
21 discriminatory policy in which individuals who are employed are housed without
22 their spouses or family members. Therefore “employment status” is simply a proxy
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1 for “family and marital status,” further rendering the policy facially discriminatory.
2 *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, 1496 (W.D. Wash.
3 1997); *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142,
4 1159-60 & n.23 (9th Cir. 2013) (“Proxy discrimination is a form of facial
5 discrimination).

6 13. Because Sakuma’s housing policy, on its face, violates chapter 49.60 RCW,
7 Sakuma has a defense only if: (1) the restrictions it places benefit the protected
8 class, or (2) the restrictions respond to safety concerns raised by the protected class
9 itself. The record contains no evidence to support either defense.

10 14. It is not a defense under chapter 49.60 RCW that Sakuma is not required by law to
11 provide housing. Sakuma does provide housing, and chapter 49.60 applies to its
12 provision of housing.

13 15. Familias Unidas por la Justicia will suffer irreparable injury and damage if
14 Defendants’ actions described above are not restrained, because those activities
15 have the effect of denying and interfering with enjoyment of housing in violation of
16 chapter 49.60 RCW.

17 16. The balance of the relative interests of the parties favors Familias Unidas por La
18 Justicia members, as they have a legal right to organize for better working
19 conditions, and those efforts will be significantly impaired if Sakuma is able to
20 enforce its new policies outlined above.

21 17. The balance of equities also favors the Plaintiff as the denial of housing to family
22 members will cause economic hardship on migrant farm worker families who
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1 cannot afford to rent housing in both Washington and their home state.

2 Additionally, there is no available rental housing in the public sector to make up for
3 the loss of housing for families at Sakuma.

4 18. There was no evidence from the Defendant that it would suffer a financial hardship
5 if this Court ordered it to continue to house families as they have done in the past,
6 nor was there any evidence that the current housing facilities at Sakuma were
7 altered in any way to make them inappropriate to house families.

8 19. The interests of the public are served by providing housing to families with
9 children.

10 20. The interests of the public are served by enforcing Washington's labor and anti-
11 discrimination housing laws.

12
13 THEREFORE, IT IS ORDERED that Plaintiffs' Motion For a Permanent Restraining Order is
14 Granted. Defendant Sakuma is restrained and enjoined:

- 15 a. To inform Familias Unidas por la Justicia members immediately that labor camp
16 housing offered at Sakuma Bros. Farms is available to families with children, and
17 children may reside in the same units as their parents.
- 18 b. To inform Familias Unidas por la Justicia members immediately that labor camp
19 housing offered at Sakuma Bros. Farms for is available for married couples, and
20 husbands and wives may reside in the same unit.
- 21 c. From retaliating against Plaintiffs due to the exercise of their rights under chapter
22 49.32 RCW and chapter 49.60 RCW.
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This ORDER is binding upon the parties to this action, their officers, agents, servants,
and employees.

IT IS FURTHER ORDERED that this order shall remain in effect through
_____.

SIGNED IN OPEN COURT this _____ day of June, 2014.

SUSAN K. COOK
SKAGIT CO. SUPERIOR COURT JUDGE

Presented by:

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CERTIFICATE OF SERVICE

(Proposed) ORDER GRANTING PLAINTIFF'S
MOTION FOR PERMANENT INJUNCTION -
16

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1 I hereby certify that on this 25th day of June, 2014, I caused a copy of the foregoing
2 Plaintiff's Proposed Order Granting Plaintiff's Motion for Permanent Injunction to be delivered
3 by legal messenger to:

4 Adam S. Belzberg
5 Graham & Dunn PC
6 Pier 70, 2801 Alaskan Way, Ste. 300
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8 _____
9 Kathleen Phair Barnard
10
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