UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-01537-NYW-GPG

TALBOTT'S MOUNTAIN GOLD LLLP, a Colorado limited liability limited partnership;
TALBOTT LAND AND PROPERTY LLLP, a Colorado limited liability limited partnership;
BLAINE D PRODUCE COMPANY LLC, a Colorado limited liability company;
BOX ELDER RANCH, LLC, a Colorado limited liability company;
BOX ELDER RANCH, INC., a Colorado corporation;
MARC ARNUSCH FARMS LLC, a Colorado limited liability company; and
MAUCH FARMS, INC., a Colorado corporation,

Plaintiffs,

v.

JOSEPH M. BARELA, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and
SCOTT MOSS, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment,

Defendants.

UNOPPOSED MOTION TO INTERVENE AS DEFENDANTS
AND SUPPORTING MEMORANDUM OF LAW

Colorado Legal Services ("CLS") and agricultural worker Jane Doe ("proposed Intervenors") move to intervene as Defendants as of right, or, in the alternative, to be granted permissive intervention. Fed. R. Civ. P. 24(a)-(b).[1] Plaintiffs challenge provisions of Colorado Senate Bill 21-087, the Agricultural Worker Bill of Rights, which is not only a bill on which CLS and Jane Doe rely, but one which CLS was directly involved in at the request of the sponsors of

[1] As required by Federal Rule of Civil Procedure 24(c), proposed Intervenors have also filed a proposed Answer. A motion to proceed under pseudonym for Jane Doe is forthcoming.

the bill. Asher Decl. ¶ 20 n.4 (Ex. A). CLS's role in providing agricultural workers necessary services as protected by the statute—such as legal assistance and health and social service referrals—is so significant, the Consul General of Peru has provided a declaration in support of this motion to ensure CLS can defend its ability to work with Peruvian nationals who comprise many of Colorado's sheepherders and range workers. Denegri Aguirre Decl. ¶¶ 4, 8, 10 (Ex. B); *see also* Asher Decl. ¶ 14, 28. Moreover, Defendants' papers reveal that without proposed Intervenors' involvement in this case, their rights are at risk. Not only do Defendants rely on CLS's testimony and expertise (as requested by the bill's sponsors) to justify the law, Dkt. No. 36, at 4, 12, 13, 14, 15, but Defendants failed to raise several arguments against Plaintiffs, such as contesting Plaintiffs' standing. CLS and Doe should be granted party status so that they can help secure the protections provided to them and other Colorado agricultural workers by Senate Bill 21-087.

I. CERTIFICATE OF CONFERRAL PURSUANT TO D.C. COLO.LCIVR 7.1

Proposed Defendant Intervenors have conferred with counsel for the parties. Plaintiffs and Defendant represent that they **do not** oppose this motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Agricultural Worker Isolation and Exploitation

There are more than 41,000 agricultural workers that labor in Colorado's fields, orchards, greenhouses, dairies, ranches and animal farms. Project Protect Food Systems Workers, *Why Colorado Must Protect Agricultural Workers* 2 (Mar. 30, 2021).[2] Agricultural workers are some

[2] https://drive.google.com/file/d/1ijP_e-DMruSuNw2F4DSgq7Ujz8vp5qRn/view (last accessed Nov. 3, 2022).

of the most vulnerable laborers in the United States of America. Asher Decl. ¶ 4. They work with dangerous chemicals and equipment, often for long hours at minimal pay, and are excluded from a variety of statutory protections because of race-based decisions designed to win support of Southern Democrats during the New Deal.

Frequent migration and social, linguistic and physical isolation exacerbate this vulnerability. *Id.* ¶ 5; *see also id.* ¶ 8. An increasing number of Colorado's migrant agricultural workers are wholly isolated because they live in employer owned or operated labor camps, which are usually located in rural areas, close to fields and other agricultural operations, and therefore distant from towns and community resources. *Id.* ¶ 5. These workers are often at the mercy of their employer for transportation to stores, medical facilities, and other necessary services, which reduces their ability to access food, healthcare, legal services and other community resources on their own. *Id.*

B. Attempts to Provide Key Services to Agricultural Workers

Years ago, in recognition of the significant barriers agricultural workers face in accessing legal assistance, healthcare, education, and other basic services, Congress established outreach programs to ameliorate the migrant agricultural workers' vulnerable plight. Asher Decl. ¶ 6. The Migrant Farm Worker Division within CLS is one of these specialized programs in Colorado. *Id.* ¶ 9. Meeting with agricultural workers face-to-face is essential to these programs, as that has proven necessary to aid the workers in understanding their rights and to gain the trust needed to assist them in exercising those rights (when necessary). *Id.* ¶ 10. Privacy, however, is also important, and thus key service providers including CLS *only* meet with agricultural workers when they are not engaged in work, usually after the workday and at their residence. *Id.* ¶ 11.

Unfortunately, agricultural employers frequently deny entry to service providers like CLS, even when they are attempting to reach workers at labor camps or in employer-provided housing. *Id.* ¶ 16; *see also* Project Protect, *supra*, at 6. This has been a widespread problem in Colorado. Farm and ranch owners would erect physical barriers to entry, tell service providers to leave the property, and pressure the providers to breach their duty of confidentiality by naming prospective clients who were seeking assistance. Asher Decl. ¶ 16. Service providers also experienced harassment and were threatened with arrest and even violence by the farm and ranch owners or operators. *Id*. There are instances when the decreased access agricultural workers' health have been shown to suffer. Project Protect, *supra*., at 1.

C. The Agricultural Worker Bill of Rights, Colorado Senate Bill 21-087

On June 25, 2021, Governor Jared Polis signed Senate Bill 21-087 into law. The bill, passed in large part in response to racial disparities in rates of COVID among agricultural workers and an increased awareness of the institutional racism embedded in the legal structures of agriculture, provided new and augmented rights to agricultural workers in Colorado. The bill established higher minimum wages for sheepherders and range workers, provided the right to agricultural workers to unionize, ensured agricultural workers received rest and meal breaks—just like many other Colorado workers—and prohibited the required use of the short-handled hoe. It also required the Director of the Department of Labor and Employment (CDLE) to develop overtime protections for agricultural workers that take into consideration the recognized racist origins of the agricultural exemption from overtime benefits as well as heat protections for when agricultural workers are working in temperatures of eighty degrees or higher.

Most relevant to this action, Senate Bill 21-087 addressed the access of agricultural workers to "key service provider[s]," defined as a "health care provider, a community health care worker, including a promotora; an education provider; an attorney; a legal advocate; a government official, including a consular representative; a member of the clergy and any other service provider to which a farmworker may need access." Colo. Rev. Stat. § 8-13.5-201(7). The law established a series of protections regarding those "key service providers," including prohibiting an employer from "interfer[ing]" with their access to workers in "employer-provided housing," when the worker was "not performing compensable work or during paid or unpaid rest and meal breaks," and when the worker is receiving healthcare services. *Id.* § 8-13.5-202(1)(a)-(b). It also required that *if* an employer provides "housing and transportation for agricultural workers," that "at least one day per week" or once "every three weeks for range workers," the employer provide transportation to localities where the workers can obtain "basic necessities" and "meet with key service providers." *Id.* § 8-13.5-202(e).

The law also created protections for employers. It made clear that employers can require key service providers to "follow protocols designed to manage biohazards and other risks of contamination" or injury to animals or property. *Id.* § 8-13.5-202(d). It further specified that if employees are allowed to have vehicles on the employer's property, then employers need not provide workers with transportation to key service providers. *Id.* § 8-13.5-202(f).

After the law was passed and with the benefit of guidance from the Supreme Court in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), regarding limits on state laws authorizing certain types of entry onto land, the CDLE promulgated regulations pursuant to Senate Bill 21-087. It explained that the provisions regarding key service providers were meant to ensure "housed

employees" could receive "visitors" and all employees could obtain "offsite services required by statute." 7 C.C.R. § 1103-15(4.1). Broader access is only contemplated if the employer requires the employee to work over forty hours per week and the employee may have difficulty accessing services outside of work hours. *Id.* § 1103-15(4.1). In those circumstances, the regulations require that employees have access to phone or internet services in a private setting to communicate with off-site providers and/or be provided the opportunity to go to offsite providers. *Id.* § 1103-15(4.2)-(4.3). The only circumstances in which an employer must consider "alternate means" to facilitate access to key service providers—which can include, but is not required to include, access at the worksite—is if the employer does not provide other means for the workers to communicate with key service providers. *Id.* § 1103-15(4.2(C)).

D. The Current Lawsuit

Nearly one year after Governor Polis signed Senate Bill 21-087, Plaintiffs—corporations that engage in farming and ranching—filed this action against State officials. They challenge the constitutionality of certain provisions they label "Access Provisions," and request a permanent injunction and declaratory judgment against those provisions of the law. Dkt. No. 1 ¶¶ 10-12.

The challenged provisions provide "[a]n employer shall not interfere with an agricultural worker's reasonable access to key service providers" to administer health care or during a break or any other time when an employee is not performing work. Colo. Rev. Stat. §§ 8-13.5-202(b). They further challenge the provision that directed the CDLE to promulgate the rules described above to prevent an employer from interfering with a service provider's access under additional circumstances, *id.* § 8-13.5-202(c)—rules Plaintiffs do not challenge, do not appear to have commented upon or filed administrative actions to enjoin, and which their papers entirely fail to

address. Finally, Plaintiffs challenge an enforcement provision, which authorizes suits by workers, whistleblowers, or key service providers if an employer violates the statute or the regulations. *Id.* § 8-13.5-204.

Plaintiffs contend those provisions, both facially and as-applied to them, are an unconstitutional taking under *Cedar Point Nursery*. *See, e.g.*, Dkt. No. 1 ¶¶ 13-17. They equate the law's limit on their interference with the provision of health care and legal services to "an easement upon Plaintiffs' properties," which they contend *Cedar Point* established is a *"per se* physical taking." *Id.* They never reconcile this position with the fact that the regulations explicit reference to "meaningful access" to key service providers, as required by § 8-13.5-202(c), can be accomplished through employers providing access in employee housing and offsite, with no requirement employers provide access in business areas. 7 C.C.R. § 1103-15(4.1)-(4.3). Plaintiffs also do not allege that any provision of Senate Bill 21-087 has ever been used to gain access to their properties, that they have been threatened with such action, or that they have been sued under the law—even though Plaintiffs provide lengthy descriptions of their agricultural activities. Dkt. No. 1 ¶¶ 37-109.

Seven weeks after filing their lawsuit, without providing any explanation for the delay, Plaintiffs moved the Court to enter a Preliminary Injunction against the challenged provision. Dkt. No. 13. That filing is largely a regurgitation of the Complaint and does not even attempt to establish Plaintiffs' standing. *Compare id. with* Dkt. No. 1. Plaintiffs then consented to extend the deadline for Defendants' response. Dkt. No. 34. Consistent with the extension, Defendants responded on October 21, 2022. Dkt. No. 36. Plaintiffs are to reply by November 4, 2022. At the time of this filing, oral argument regarding the motion has not been scheduled.

III. Interests of Proposed Intervenors

A. CLS

The Migrant Farm Worker Division of CLS provides comprehensive legal services to agricultural workers throughout Colorado on a variety of legal issues that have historically gone unmet, including wage theft, workplace safety, civil rights, and certain immigration issues. Asher Decl. ¶ 3. It also provides agricultural workers referrals for healthcare and other social services, such as entities that can assist with obtaining social security cards and drivers licenses. *Id.* ¶ 10. It does this work with agricultural workers who work in Colorado's fields, orchards, dairies, ranches, farms and on the range each year. *Id.* ¶ 9.

CLS regards the ability to meet with agricultural workers in person as essential to the success of its mission. *Id*. However, because CLS engages in privileged communications and speaks with workers about private legal matters, it will not do so during work hours, and frequently only speaks with workers in their place of residence. *Id.* ¶ 11.

Senate Bill 21-087 is essential for CLS to secure access to worker housing. Without Senate Bill 21-087 and its prohibitions on interference, there is no statute clearly giving workers an enforceable right to obtain services in the workers' own homes, and there is no statute expressly giving service providers including CLS recourse when they are denied access. *Id.* ¶ 18-19.

As a result, prior to Senate Bill 21-087, CLS regularly encountered physical obstacles, improper demands, and legal and physical threats when trying to lawfully access agricultural workers who sought its assistance. *Id.* ¶ 16-17. Following the law's enactment, CLS believed these obstacles to access would become things of the past. *Id.* ¶ 25. But CLS anticipates that, if any aspect of the key service provider provisions of the law were enjoined, employers would be

emboldened to renew efforts to block access, and CLS would need to expend its very limited resources counteracting such misconduct. *Id.* ¶ 24-27. Indeed, CLS has already encountered and had to engage in efforts to ameliorate the harassment it believes was due to the fact that this suit is pending. *Id.* ¶¶ 22-23.

B. Jane Doe

Ms. Doe has been an agricultural worker in Colorado for twenty-two years, employed by several different farms and contractors. Doe Decl. ¶¶ 2-3 (Ex. C). Due to the nature of her labor and the hours she worked, throughout her career she has been denied access to necessary services, including legal advice, doctors' appointments, and the opportunity to meet with her child's teachers. *Id.* ¶¶ 6, 8-9.

Because of Senate Bill 21-087, however, she has increased access to lawyers, and health care workers, and her child's teachers. *Id.* ¶¶ 10-11. Without the law, she believes her employers would impede her ability to obtain these resources. *Id.* ¶ 8.

IV. ARGUMENT

A. Proposed Intervenors Have the Right to Intervene Under Rule 24(a).

Non-parties may intervene in a pending action as a matter of right pursuant to Federal Rule of Civil Procedure 24(a). The Tenth Circuit has delineated the four factors under Rule 24(a) that courts must consider: whether "(1) the application is timely; (2) the applicants claim an interest relating to the property or transaction which is the subject of the action; (3) the applicants' interest may as a practical matter be impaired or impeded; and (4) the applicants' interest is not adequately represented by existing parties." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (cleaned up) (reversing denial of intervention); *see also* Fed. R. Civ. P. 24(a)(2).

However, "the[] factors are not rigid, technical requirements," they are simply intended to "capture the circumstances in which the practical effect on the prospective intervenor justifies its participation in the litigation." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (quotation omitted) (reversing denial of intervention). As a result, the Tenth Circuit "'has historically taken a liberal approach to intervention and thus favors the granting of motions to intervene.'" *Kane Cnty., Utah v. United States*, 928 F.3d 877, 890 (10th Cir. 2019) (reversing denial of intervention) (quoting *Zinke*, 877 F.3d at 1164). Moreover, of relevance here, "the requirements for intervention may be relaxed in cases raising significant public interests." *Id.*

Courts accept as true the non-conclusory factual allegations in the motion to intervene. *See, e.g., Romero v. Bradford*, No. 08-CV-1055 MCA/LFG, 2009 WL 10708255, at *6 & n.1 (D.N.M. Apr. 13, 2009) (citing *Stadin v. Union Elec. Co.*, 309 F.2d 912, 917 (8th Cir. 1962)).

That this suit will have a practical effect on proposed Intervenors is plain. It attacks provisions on which they rely. Indeed, it specifically seeks to enjoin a cause of action for workers and service providers like proposed Intervenors. Were that not sufficient (and it is), proposed Intervenors satisfy each of the four factors the Tenth Circuit considers. Their motion is timely, they have a direct interest in this case, that interest would be impaired by Plaintiffs' requested outcome and the denial of their motion to intervene, and their interest is not adequately represented by the existing defendants. They have a right to become parties.

1. Proposed Intervenors' motion is timely.

The Tenth Circuit considers three non-exhaustive factors to be "particularly important" in determining whether a request to intervene is timely: "(1) the length of time since the movants knew of their interests in the case; (2) prejudice to the existing parties; and (3) prejudice to the

movants." *Zinke.*, 877 F.3d at 1164; *see also SKIBO, Inc. v. Shelter Mut. Ins. Co.*, No. 19-CV-3526, 2021 WL 2290706, at *2 (D. Colo. June 4, 2021) (same).

Plaintiffs filed their complaint on June 21, 2022. Dkt. No. 1. Defendants waived service on July 26, 2022. Dkt. No. 10. Plaintiffs filed the Motion for Preliminary Injunction on August 8, 2022. Dkt. No. 13. The scheduling conference occurred on October 5. Dkt. No. 30. Defendants filed their opposition to a preliminary injunction on October 21. Dkt. No. 36. Plaintiffs reply is due November 4. Dkt. No. 34, at 3. Oral argument on that motion is not yet scheduled.

Thus, the motion to intervene comes less than five months from the initial filing, approximately three months from the effectuation of service, and just weeks since proposed Intervenors saw how Defendants would respond to the arguments. It is timely. *Klitzke v. DCP Midstream, LLC*, No. 19-cv-03207, 2020 WL 6546727, at *2 (D. Colo. Nov. 6, 2020) ("[C]ourts in this Circuit have allowed intervention in cases of two to five months of delay."); *see also Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1249-51 (10th Cir. 2001) (finding intervention timely three *years* after filing and reversing denial of intervention because the case was "far from ready for final disposition").

Indeed, given that proposed Intervenors seek to enter before the case has advanced beyond the preliminary filings, intervention can cause no undue delay. *Nat'l Sur. Corp. v. Bozeman*, No. 20-CV-1187, 2020 WL 11038521, at *1 (D. Colo. Nov. 2, 2020) ("given that trial has not been set, no delay is contemplated"); *see also* Dkt. No. 30 (setting schedule without a trial date, and anticipating summary judgment motions in April 2023).

For these same reasons, intervention poses no risk of prejudice to the existing parties. *See Kane Cnty.*, 928 F.3d at 890-91 (explaining prejudice must be "caused by the movant's delay, not

by the mere fact of intervention"). Even if the Court allows proposed Intervenors to weigh in on the pending motion for a preliminary injunction—as they intend to request—their doing so cannot delay the hearing on the motion as none has been set. Further, Plaintiffs themselves have shown no concern with expediting matters, waiting two months after filing (which itself was approximately a year after the challenged law took effect) to seek a preliminary injunction and allowing Defendants an extension to respond. And should the Court believe any prejudice would be caused by proposed Intervenors submitting briefing on the motion for a preliminary injunction, it could merely authorize intervention after it passes on that pending motion. *E.g.* Fed. R. Civ. P. 16(c) (authorizing district courts to manage case to avoid delay and facilitate justice).

2. Proposed Intervenors have substantial interests in the action.

"Whether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, and the interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1121 (10th Cir. 2019) (reversing denial of intervention). While the Tenth Circuit previously required that a movant's interest in the proceedings be "direct, substantial, and legally protectable," this rigid framework has more recently been abandoned in favor of a focus on whether the litigation will affect the proposed intervenor. *Kane Cnty.*, 928 F.3d at 891 & n.20.

A proposed intervenor's record of advocacy in favor of an outcome has been held to establish an interest in moving to intervene to defend that outcome. *See Coal. of Arizona/New Mexico Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 841-42 (10th Cir. 1996) (naturalist's consistent record of advocating for listing species as endangered created legally

protectable interest and supported intervention as of right under Rule 24(a) to defend listing decision); *see also Zinke*, 877 F.3d at 1165-66 (conservation groups had sufficient interest in defending public lands from oil and gas development, and specifically in preserving leasing reforms they had helped to implement).

Like the intervenors in *Coalition of Counties* and *Zinke*, CLS has a record of advocacy in favor of key service providers obtaining greater access to agricultural workers. In fact, CLS's advocacy—cited by Defendants in their papers—culminated in the successful passage of Senate Bill 21-087. CLS thus has an interest in preserving the hard-won protections that passage of that statute has afforded them.

The Tenth Circuit has also emphasized the practical nature of the interest inquiry. It explains, "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action," the courts "should" permit that absentee to intervene as of right under Rule 24(a)(2). *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1195 (10th Cir. 2007) (en banc), *abrogated on other grounds Hollingsworth v. Perry*, 570 U.S. 693 (2013) (quoting Fed. R. Civ. P. 24, Advisory Committee Notes (1966 Amend.)).

Here, both CLS and Jane Doe would be "substantially affected in a practical sense" by the outcome of this litigation. CLS is one of the providers that Senate Bill 21-087 protects from employer interference. *See* Asher Decl. ¶ 3. In fact, events following the filing of this action demonstrate how an injunction against Senate Bill 21-087 would negatively impact CLS' work. Although Plaintiffs state they do not challenge the provisions that ensure access to offsite services and services in employee housing, Dkt. No. 1 ¶¶ 33-36, 125-26, CLS has encountered employers who now state that "legal challenges" establish that CLS's access to workers in employer-owned

housing is unconstitutional, Asher Decl. ¶ 22, with one landowner threatening the service providers and pulling a gun. *Id.* ¶ 23. The claims at issue in this case cannot but cause such incidents. Plaintiffs are asserting their property rights prevent any prohibition on them interfering with service providers, thereby claiming agricultural operators have a constitutionally protected right to interfere with their workers obtaining basic services. And they are seeking to enjoin the provisions that would hold employers who violate the law accountable.

Ms. Doe is one of the farm workers who directly and personally benefits from the key service providers to whom the law grants her access, and relies on the protections in the law to secure those services. Doe Decl. ¶¶ 8,10-12. The declaration from the Peruvian Consulate confirms the essential need for and benefits of agricultural workers being able to access key service providers and that the methods of CLS, protected by Senate Bill 21-087, are core to this work. Denegri Aguirre Decl. ¶¶ 2-3, 5-9. Thus, were the Court to narrow the statute, it would do direct harm to both CLS and Colorado agricultural workers like Ms. Doe.

3. Proposed Intervenors' interests may be impaired by the outcome.

The showing to establish a would-be intervenor's interest *may* be impaired is "minimal." *WildEarth Guardians v. U.S. Forest Serv. (WildEarth Guardians I)*, 573 F.3d 992, 995 (10th Cir. 2009) (reversing denial of intervention). Moreover, functionally, "'the question of impairment is not separate from the question of existence of an interest.'" *Clinton*, 255 F.3d at 1253 (quoting *Natural Res. Def. Council v. United States Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)).

Thus, as with the second factor concerning would-be intervenor's interest in the action, the Tenth Circuit has explained that where a suit would undo the advocacy efforts of a proposed

intervenor, that is a sufficient impairment of the intervenor's interest to justify Rule 24(a) intervention. *Clinton*, 255 F.3d at 1253-54 (noting that conservation group's interest in protecting wilderness character of land declared a national monument, which designation the plaintiffs sought to undo, would be impaired by a judgment in the plaintiff's favor granting injunctive or declaratory relief); *see also Utahans for Better Transp. v. U.S. Dept. of Transp.*, 295 F.3d 1111, 1116 (10th Cir. 2002) (holding with "no hesitation" that organization satisfied potential impairment test when the lawsuit in which it sought to intervene sought to vacate approval of a transportation plan the organization supported).

As explained above, proposed Intervenor CLS responded to request from the sponsors to testify on Senate Bill 21-087 because of its varied experiences in seeking to provide services to agricultural workers throughout the state. Dkt. No. 36, at 4, 12, 13, 14, 15. By seeking to enjoin provisions of that statute and have a court declare them unconstitutional, Plaintiffs threaten to roll back the protections for both of the proposed Intervenors. In fact, a judgment in Plaintiffs' favor would impair or impede proposed Intervenors' interests to an even greater extent than restoring the status quo ante, because "the *stare decisis* effect" of an adverse judgment would make it more difficult to pass similar legislation in the future. *Clinton*, 255 F.3d at 1254.

4. Defendants cannot adequately represent proposed Intervenors' interests.

While "an applicant for intervention as of right bears the burden of showing inadequate representation," that burden too is "minimal" and requires only a "showing that representation 'may' be inadequate." *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1419 (10th Cir. 1984) (reversing denial of intervention) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). In other words, "[a]n intervenor need only show the *possibility* of inadequate

representation." *Barnes*, 945 F.3d at 1124 (emphasis in original); *see also SKIBO*, 2021 WL 2290706, at *4 (same).

Where, as here, the existing party to the litigation is a government entity, the showing of inadequate representation "'is easily made'" because the government's "'obligation is to represent not only the interest of the intervenor but the public interest generally,'" and it "'may not view that interest as coextensive with the intervenor's particular interest.'" *WildEarth Guardians*, 573 F.3d at 995 (quoting *Clinton*, 255 F.3d at 1254). Indeed, the Tenth Circuit has "held that the government cannot adequately represent the interests of a private intervenor *and* the interests of the public." *Zinke*, 877 F.3d at 1168 (emphasis in original). It explained, "'the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation.'" *Id.* (quoting *Clinton*, 255 F.3d 1255-56). That is because, "[i]n litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *Id.* (quoting *Clinton*, 255 F.3d 1255-56).

Consistent with this precedent, although proposed Intervenors and the existing government defendants both seek to uphold Senate Bill 21-087, their interests already diverge in important ways. First, proposed Intervenors' interest is solely to expand workers' access to key service providers, while Defendants have "multiple objectives" they must balance. *Zinke*, 877 F.3d at 1169. As representatives of the people of the State of Colorado, Defendants must represent the interests of landowners, farmers, and ranchers in Colorado who may be opposed to the access to workers provided in the law.

Perhaps for this reason, Defendants have failed to challenge Plaintiffs' standing, despite Plaintiffs alleging an indefinite and unlikely future injury. Further, Defendants have argued that Senate Bill 21-087 falls within a "health and safety" exception to the Takings Clause, Dkt. No. 36, at 10, but have not argued for broader governmental authority to authorize entry to Plaintiffs' property, either under the Constitution or Colorado common law. These are arguments proposed Intervenors could develop because they do not need to answer to property owners as Defendants do; their only interest is protecting agricultural workers and service providers to the fullest extent of the law.

Second, proposed Intervenors' interest would not be adequately protected by the Defendants in the event the Court holds that the law is a taking. In that situation, proposed Intervenors would unequivocally support implementation of the law with just compensation, while the government would need to consider the costs of compensating landowners. *See Zinke*, 877 F.3d at 1168 ("If the [government defendant] and intervenors would only be aligned if the district court rules in a particular way, then a possibility of inadequate representation exists.").

Third, were those current areas of divergence insufficient, the Court cannot "assume that the government agency's position will stay static or unaffected by unanticipated policy shifts." *Id.* Here there is good reason to think Defendants' position in this case could shift, as there is a gubernatorial election currently being held in Colorado. The potential for a "change in Administration raises 'the possibility of divergence of interest' or a 'shift' during litigation." *Id.* at 1169 (quoting *WildEarth Guardians I*, 573 F.3d at 997).

Further still, even without those direct areas of divergence, proposed Intervenors offer unique on the ground perspectives regarding the conditions both before and after the law's passage

that Defendants cannot provide. Similarly, because CLS, at the sponsors' request, reviewed and commented on the drafting of Senate Bill 21-087, it can also share a perspective on the legislative history of the bill and the purposes behind the challenged provisions that is not currently represented in this litigation. Indeed, the government's brief heavily relies on public testimony by Jenifer Rodriguez, an employee of proposed Intervenor CLS, to explain the purpose of the law and the negative impact of an injunction on the public interest. Dkt. No. 36, at 4, 12, 13, 14, 15. Rather than relying on those selected public quotes, the Court could hear first-hand from Intervenors about their experiences. For example, CLS would be able to describe that even a preliminary injunction limited to the portion of the law challenged by Plaintiffs could have a significant impact on workers' ability to vindicate their rights and could prevent key service providers from accessing workers in their homes, despite Plaintiffs' claim the suit does not challenge the housing access provisions. Asher Decl. ¶¶ 22-24. Such contributions both confirm that proposed Intervenors' rights and interests are at stake in this case and also that, without their involvement, their interests may—and in fact likely will—not be adequately represented.

* * *

The showing for intervention as of right is not high. This is particularly the case where an organization or individual is a direct beneficiary of the challenged law. However, even were the Tenth Circuit's approach to intervention not "liberal," *Kane Cnty*, 928 F.3d at 890, proposed Intervenors easily clear every hurdle. They filed in a timely manner to protect their rights that have already been threatened due to this suit in a case where the government-Defendants have divided loyalties and thus have not developed the full panoply of arguments proposed Intervenors would bring to bear. Proposed Intervenors should be allowed to intervene as of right.

B. Permissive Intervention is appropriate

Were the Court to disagree that proposed Intervenors can intervene as of right, it alternatively should exercise its discretion to permit intervention under Rule 24(b). That rule provides for intervention where a party would raise "a claim or defense that shares with the main action a common question of law or fact. Fed. R. Civ. P. 24(b)(1)(B).

When exercising discretion to grant permissive intervention, courts consider factors such as: "(1) whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights; (2) whether the would-be intervenor's input adds value to the existing litigation; (3) whether the petitioner's interests are adequately represented by the existing parties; and (4) the availability of an adequate remedy in another action." *Lower Ark. Valley Water Conservancy Dist. v. United States*, 252 F.R.D. 687, 691 (D. Colo. 2008).

Here, proposed Intervenors and Defendants both seek to defend the constitutionality of Senate Bill 21-087 and thus their defenses share the core legal question of whether the law is constitutional. *See, e.g., Am. Trad. Institute v. Epel*, No. 11-cv-00859-WJM-BNB, 2012 WL 5290265, at *1 (D. Colo. Oct. 26, 2012) (finding requirement of Rule 24(b)(1)(B) met where sole issue in case was constitutionality of Colorado law, and both intervenors and existing defendants sought to defend the law). And Intervention would not prejudice or delay the adjudication of the existing parties' rights. As described above, Intervenors are filing their motion before the deadline for Plaintiffs' delayed motion for a preliminary injunction to be fully briefed and well before any discovery or briefing on the merits has occurred. *See Cloud Peak Energy, Inc. v. U.S. Dep't of Interior*, No. 19-CV120-S, 2019 WL 12498085, at *3 (D. Wyo. Sept. 3, 2019) (finding permissive

intervention appropriate "though the cases are set for a preliminary injunction hearing shortly" because "the cases are still in the early stages").

On the other hand, intervention will "add value to the existing litigation" by providing the missing perspective of workers and key service providers to whom Senate Bill 21-087 is directed, and by allowing the Court to decide the legal issues with the benefit of "more complete briefing." *Lower Ark. Valley Water Conservancy Dist.*, 252 F.R.D. at 691; *see also Cloud Peak Energy, Inc.*, 2019 WL 12498085, at *3 (holding that intervenors could "contribute a different and valuable perspective in addressing the same questions of law" because they had "been involved in the [challenged rule]'s promulgation and litigation and have spent years advocating for and defending [the reforms at issue]"). Moreover, as described above, proposed Intervenors' interests are unlikely to be adequately represented by Defendants, and this is the only action in which they can raise their arguments defending the constitutionality of the law. *See Lower Ark. Valley Water Conservancy Dist.*, 252 F.R.D. at 692.

Thus, because intervention would not prejudice the existing parties and would meaningfully contribute to the Court's resolution of the factual and legal issues in the case, should the Court deny intervention as a matter of right, it should nonetheless grant proposed Intervenors' motion and allow them to intervene under Rule 24(d).

V. Conclusion

Proposed Intervenors request the Court allow them to intervene as of right under Rule 24(a), or, in the alternative, grant them permissive intervention under Rule 24(b).

November 4, 2022

Respectfully submitted,

/s/ Jenifer Rodriguez
Jenifer Rodriguez

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***** *Application for admission pending*

Exhibit A

Asher Declaration

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-01537-NYW-GPG

TALBOTT'S MOUNTAIN GOLD LLLP, a Colorado limited liability limited partnership;
TALBOTT LAND AND PROPERTY LLLP, a Colorado limited liability limited partnership;
BLAINE D PRODUCE COMPANY LLC, a Colorado limited liability company;
BOX ELDER RANCH, LLC, a Colorado limited liability company;
BOX ELDER RANCH, INC., a Colorado corporation;
MARC ARNUSCH FARMS LLC, a Colorado limited liability company; and
MAUCH FARMS, INC., a Colorado corporation,

Plaintiffs,

v.

JOSEPH M. BARELA, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and
SCOTT MOSS, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment,

Defendants.

DECLARATION OF JONATHAN D. ASHER

I, Jonathan D. Asher, declare as follows:

1. I am the Executive Director of Colorado Legal Services (CLS). I have been in my current position since October 1, 1999.

2. Colorado Legal Services seeks to provide meaningful access to high quality, civil legal services in the pursuit of justice for low-income persons and vulnerable populations in

Colorado. CLS has thirteen offices across the state and several statewide projects including its Migrant Farm Worker Division.[1]

3. Through education, advocacy and legal representation, the Migrant Farm Worker Division of CLS provides comprehensive legal services to agricultural workers throughout Colorado on a variety of legal issues that have historically gone unmet, such as wage theft, workplace safety, civil rights (including human trafficking and sexual harassment) and immigration (humanitarian visas & naturalization).[2]

4. The work of the Migrant Farm Worker Division is critical to the mission of Colorado Legal Services to provide access to justice for vulnerable and marginalized individuals residing in Colorado. Agricultural workers are among the most vulnerable laborers in American society and among those least protected.

5. Agricultural workers tend to be economically, culturally and geographically isolated. A large number of migrant agricultural workers in Colorado reside in remote locations, close to fields and other agricultural operations and are therefore often distant from towns and community resources. Most agricultural workers in Colorado speak Spanish, yet are residing in rural areas where it is difficult to find services in a language other than English. In addition, many are in the area for short periods of time and must rely on their employer for transportation to stores,

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[1] In 1999, Colorado Legal Services was formed as a result of a merger between Colorado Rural Legal Services, Legal Aid Society of Metropolitan Denver, and Pikes Peak Arkansas River Legal Aid.

[2] The Migrant Farm Worker Division has recovered hundreds of thousands of dollars in back wages, compensatory damages and punitive damages for migrant agricultural workers, including many sheepherders and range workers, who have brought claims under the Trafficking Victims Protection Act, Fair Labor Standards Act, Racketeer Influenced and Corrupt Organizations Act, Title VII as well as contractual and tort claims such as false imprisonment and assault and battery.

medical facilities, and other necessary services. Moreover, these workers tend to be unfamiliar with local communities and what services are even available to them. These factors create significant barriers inhibiting agricultural workers' ability to access essential services.

6. Recognizing the significant barriers agricultural workers face in accessing legal assistance, healthcare, education and social and other basic services, Congress has established specialized programs including targeted outreach designed to ameliorate the migrant agricultural workers' plight. These programs include the Migrant Health Program, Migrant Education Program, and Migrant Farmworker Legal Services Projects.

7. When the Legal Services Corporation Act was passed in 1974, Congress directed the new Legal Services Corporation (LSC) to study special barriers to access to justice for migrant and seasonal farmworkers, among other groups. LSC completed the study in 1977 and concluded that 1) migrant farm workers face special barriers which limit their access to the legal assistance delivered by most legal services programs; and 2) migrant farm workers have specialized legal needs which cannot and all too often are not adequately met through the standard legal services delivery system. [3]

8. This decades-old study remains the most comprehensive inquiry into the delivery of legal assistance to agricultural workers. It is as accurate and relevant today as it was forty years ago. The study detailed that isolation in remote locations; short length of time in the area; limited

[3] Legal Servs. Corp., *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers, Individuals in Sparsely Populated Areas: A Report to Congress As Required by Section 1007(h) of the Legal Services Corporation Act of 1974, As Amended*, at 34-36 (1978) (on file with authors) (hereinafter, "LSC Study"). The study identified that isolation in remote locations; short length of time in the area; language; economic dependence upon employers; and cultural isolation are the primary barriers restricting access to justice.

English proficiency; economic dependence upon employers; and cultural isolation were overwhelming barriers restricting access to justice. The study led to the designation of specialized units within existing Legal Services Corporation funded programs designed to meet the unique legal needs of agricultural workers and through outreach targeted to migrant agricultural workers.

9. As the specialized program in Colorado funded by LSC to meet the legal needs of migrant agricultural workers in Colorado, the Migrant Farm Worker Division spends significant time travelling throughout Colorado visiting and serving the legal needs of seasonal and migrant agricultural workers. CLS meets with and speaks with agricultural workers across Colorado each year, including those who work in the fields, orchards, dairies, ranches, farms and on the range. CLS visits with agricultural workers at their housing, at public places and at their worksite.

10. The ability to meet agricultural workers face-to-face is essential to inform them of the services provided by CLS and to share with them information about their legal rights and protections. Access to all agricultural workers is essential to the mission of CLS and its commitment to access to justice. CLS also provides, upon request, referrals for agricultural workers to service providers who can assist them with basic needs including healthcare, childcare, assistance in obtaining critical documents such as social security cards, drivers licenses, replacement identification documents, and educational services.

11. Due to the nature of the services CLS provides, it is imperative that the privacy and confidentiality of those who seek to engage the services provided by CLS are protected; whether a worker is seeking information about a particular legal issue, needs a referral for healthcare services or is seeking advice regarding an employment matter. For this reason, the Migrant Farm

Worker Division only visits with agricultural workers when they are not working – usually after the workday at the workers' place of residence.

12. The agricultural workers visited by the Migrant Farm Worker Division of CLS reside in various types of housing including government subsidized housing developments (i.e. USDA Farm Labor Housing), houses, apartments, and mobile homes owned or rented by the worker or owned or rented by their employer.

13. Many migrant agricultural workers visited by CLS live in employer owned or operated housing or migrant labor camps that are near the worksite and/or the home of the farm owner. In some instances, the agricultural worker may pay rent or receive "free" housing as part of their renumeration for the work that they perform. Those who employ foreign nationals working in the U.S. on a temporary agricultural H-2A visa are required to provide the worker (H-2A visaholder) with housing free of charge.

14. Sheepherders and cattle range workers ("range workers") are among those agricultural workers whom CLS seeks to serve. The range workers in Colorado are found primarily in the northwestern area of the state, as well as along the Western Slope and in the San Luis Valley. Employers of these range workers most often require them to live in mobile housing units (trailers) without electricity, running water, or toilets. The herders stay for extended periods of time in isolated mountainous terrain caring for the livestock all hours of the day, seven days a week.

15. One of the greatest challenges for the Migrant Farm Worker Division has been accessing migrant agricultural workers at the labor camps where they reside.

16. For years CLS and its predecessor Colorado Rural Legal Services has had to respond to agricultural employers who interfere with or outright prohibit access to their workers at a number of labor camps. In some situations there are physical barriers that make access impossible when employers place such fences and locked gates around the labor camp. At other camps, there have been employers or their agents who confront CLS outreach workers, accusing them of trespassing on their property, prohibiting access to the worker housing by demanding prior notice or requests for permission to enter the property, threatening arrest or acts of violence or insisting the outreach worker breach their duty of confidentiality and infringe on the privacy of the workers by naming prospective or current clients who are seeking or receiving assistance.

17. While visiting sheepherders and other range workers in the middle of range lands and miles away from the nearest town, the Migrant Farm Worker Division outreach workers have encountered ranchers reaching for guns and making similar threats of arrest or violence for simply providing the workers with information about their rights and/or assisting them in reaching out to and communicating with consulate officials in Denver.

18. There is currently no consistent legal framework in the U.S. that mandates access to agricultural worker labor camps or to agricultural workers in general. Rather, laws relating to camp access is generally left to each state. Some states have statutes, others have case law or opinion letters from the state's attorney general. Other than federal court decisions and common law principles, there has not been clarity in Colorado until SB 21-87 became law.

19. SB 21-87 provided the clear state law that allows the Migrant Farm Worker Division to overcome the historic and current barriers and fulfill its obligations to meet the legal needs of agricultural workers in Colorado. This new law has the potential to have a profound

impact on the work of the Migrant Farm Worker Division and the agricultural workers it seeks to serve.

20. Colo. Rev. Stat. § 8-13.5-202(1)(a) prohibits employers from interfering with their employees right to have visitors at the agricultural worker employer-provided housing (labor camps). Colo. Rev. Stat. § 8-13.5-202(1)(b) prohibits employer interference with workers' access to key service providers at other locations when the worker is not working and with respect to health-care providers, when the worker is or is not working. Colo. Rev. Stat. § 8-13.5-202(2) provides a distillation of the various types of interference that are prohibited and addresses the above-described scenarios CLS has encountered.[4]

21. The Plaintiffs in this action contend that they do not challenge the right to visitors at employer provided housing (labor camps) codified at Colo. Rev. Stat. § 8-13.5-202(1)(a), yet the potential chilling effect the relief Plaintiffs are seeking may have on the Migrant Farm Worker Divisions' access to workers at their housing is of serious concern.

22. This past summer, the Migrant Farm Worker Division had encounters with agricultural employers who attempted to deny access to worker housing and while doing so referenced "legal challenges" to the "Farmworker Bill of Rights" and characterized it as challenging the right of service providers to visit workers anywhere on the employers' property, including the housing.

23. On July 14, 2022, a paralegal and law student intern in the Migrant Farm Worker Division went with a migrant education recruiter, a promotora and a pesticides inspector from the

[4] Due to our expertise and knowledge of the legal rights of agricultural workers, CLS was requested by state legislators to provide information, analysis, comments and testimony regarding this legislation.

Colorado Department of Agriculture to visit a group of approximately fourteen (14) H-2A workers who were residing in a labor camp at the bottom of a canyon just north of Delta on the Western Slope of Colorado. After entering the property and driving directly to the worker housing, the paralegal, law student and other service providers went to the housing and provided the workers with information about their various rights and available resources. The landowner/employers drove up and began questioning the service providers in a hostile manner. The male employer complained about the "so-called Farmworker Bill of Rights" and reached into his pocket and pulled out a handgun as he told them how unsafe it is to come onto other people's property. The same employer then turned to look at the workers and punched his fist into his palm, as if gesturing that he wanted to or would hit someone.

24. If Plaintiffs obtain the injunctive relief they seek, based on what occurred this summer, many agricultural employers may misconstrue the injunction as preventing all access to an employer's property, including labor camps owned or operated by agricultural employers and the Migrant Farm Worker Division staff very likely will face increasing risks of danger while conducting the outreach required by its various funding sources.

25. After SB 21-087 became law, it was hoped that such behavior by agricultural employers would end, but it appears that the spread of misinformation regarding the right to exclude providers of services by property owners remains a serious concern for agricultural workers and those who seek to serve them and will have a devastating impact on access to justice for many, possibly even thousands of migrant agricultural workers in Colorado – workers who are already vulnerable and all too often subject to exploitation and inhumane working conditions.

26. It is likely that the agricultural employers who were previously preventing their workers from receiving visitors will continue to do so and additional employers will undoubtedly deny access as well.

27. The Migrant Farm Worker Division anticipates expending substantial resources, already very limited resources, educating agricultural employers regarding the protections for workers to receive visitors at their employer provided housing or litigating these issues irrespective of the outcome of the statutory provisions Plaintiffs challenge.

28. The Migrant Farm Worker Division likely will be less able to visit sheepherders and other range workers. Both sub-section (a) and (b) of Colo. Rev. Stat. § 8-13.5-202(1) provide the legal protection needed when conducting outreach to sheepherders and other range workers, given their varied work hours and mobile housing units that often travel with them as they lead the herds over public and private lands. This is of particular concern because the claims raised by sheepherders and other range workers working in Colorado frequently have entailed the most serious abuses.[5]

29. Decreased access to workers will limit the Migrant Farm Worker Division's ability to identify and serve victims of labor abuses, sexual assault and violence, child labor and human trafficking. Without the direct outreach by CLS and other service providers allowed by the statute, these workers will be denied access to basic services and Colorado's migrant agricultural workers

[5] CLS has represented many herders and cattle range workers in court and administrative proceedings on claims of wage theft, breach of the employment contract, false imprisonment, assault & battery, and human trafficking; including allegations of actual physical abuse and threats, withholding or failure to provide food and water, holding of documents and denial of medical care after serious and life threatening on the job injuries occur.

will face very serious consequences and an inability to assert and defend their basic legal and human rights.

30. The relief Plaintiffs seek will have a fundamental impact on CLS and the service provided by its Migrant Farm Worker Division. Allowing CLS to intervene will ensure that the unique interests of CLS are fully presented and protected.

I SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY KNOWLEDGE AS EXECUTIVE DIRECTOR AS COLORADO LEGAL SERVICES.

/s/ Jonathan D. Asher
Declarant's Signature

November 4, 2022
Date

Jonathan D. Asher
Declarant's Printed Name

Exhibit B

Denegri Aguirre Declaration

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-01537-NYW-GPG

TALBOTT'S MOUNTAIN GOLD LLLP, a Colorado limited liability limited partnership;
TALBOTT LAND AND PROPERTY LLLP, a Colorado limited liability limited partnership;
BLAINE D PRODUCE COMPANY LLC, a Colorado limited liability company;
BOX ELDER RANCH, LLC, a Colorado limited liability company;
BOX ELDER RANCH, INC., a Colorado corporation;
MARC ARNUSCH FARMS LLC, a Colorado limited liability company; and
MAUCH FARMS, INC., a Colorado corporation,

Plaintiffs,

v.

JOSEPH M. BARELA, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and
SCOTT MOSS, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment,

Defendants.

DECLARATION OF ROLAND DENEGRI AGUIRRE IN SUPPORT OF COLORADO LEGAL SERVICES'S MOTION TO INTERVENE

I, Minister Roland Denegri Aguirre, declare as follows:

1. I am the Consul General of Peru in Denver and I am responsible for protecting and defending the fundamental rights of Peruvian nationals on the jurisdiction of the Consulate General of Peru in Denver. I have been in my position since 2018. I have personal knowledge of the facts set forth below.

2. Among the main functions of the Peruvian Consulate is coordinating legal and humanitarian assistance, and preventing conditions of human trafficking and including (1) intervention and repatriation of nationals in cases of evacuation due to natural disasters and emergencies; (2) repatriation of deceased nationals' remains; (3) assistance to detainees; (4) providing national documents to the Peruvian citizens; and (5) locating Peruvian nationals on the jurisdiction of the Consulate General of Peru in Denver.

3. Regardless of what issue the Peruvian Consulate is addressing, our key function is to assist Peruvian nationals, including with ranch and agricultural workers, so we are able to provide them with information as to our services as well as their rights under international, federal, and state laws.

4. One thousand Peruvian nationals live and work in Colorado in the agricultural sector. Of those, six hundred work as herders in the sheep industry.

5. Sheep herders, or borregueros, spend most of their time in isolated mountainous areas with unreliable or non-existent cell phone service. They perform physically intensive labor and must withstand extreme weather conditions for long durations. Often there is no one, apart from the employer, who knows of their workers' exact whereabouts due to the fact herders follow large grazing paths that make up hundreds of miles traveled throughout the year.

6. Herders are exempt from many of the safety, working condition, and wage protections non-herders have and, as a result, are more susceptible to workplace exploitation than other agricultural workers.

7. As a result of the well-documented abuses and extreme isolation, the Peruvian Consulate's outreach to Peruvian herders in Colorado is essential to provide them with information as to our services.

8. Our outreach would be nearly impossible without the assistance of Colorado Legal Services (CLS). Through CLS, we are able to learn vital information about the location, health, and safety of Peruvian sheep herders.

9. We have also worked with and supported CLS in legal actions on the behalf of Peruvian nationals.

10. Should the Court deny CLS's motion to intervene to defend the constitutionality of the statutes at issue and issue the relief requested by Plaintiffs, our ability to ensure the health and safety of Peruvian agricultural workers would be severely curtailed.

I SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY PERSONAL KNOWLEDGE.

/s/ Roland Denegri Aguirre
Declarant's Signature

11/02/2022
Date

Roland Denegri Aguirre
Declarant's Printed Name

Exhibit C

Doe Declaration

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-01537-NYW-GPG

TALBOTT'S MOUNTAIN GOLD LLLP, a Colorado limited liability limited partnership;
TALBOTT LAND AND PROPERTY LLLP, a Colorado limited liability limited partnership;
BLAINE D PRODUCE COMPANY LLC, a Colorado limited liability company;
BOX ELDER RANCH, LLC, a Colorado limited liability company;
BOX ELDER RANCH, INC., a Colorado corporation;
MARC ARNUSCH FARMS LLC, a Colorado limited liability company; and
MAUCH FARMS, INC., a Colorado corporation,

Plaintiffs,

v.

JOSEPH M. BARELA, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and
SCOTT MOSS, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment,

Defendants.

DECLARATION OF JANE DOE

I declare as follows:

1. I am over the age of eighteen (18) years of age and am fully competent to make this declaration. I have personal knowledge of the facts set forth below.

2. I reside in the southeastern region of Colorado. I have lived in this area for approximately 22 years and have been working in agricultural for the entire time.

3. I have worked for several of the farm owners and contractors in this area. Sometimes I work in the fields topping onions, or cleaning the fields where the watermelons and cantaloupe are growing or I work in the packing sheds.

4. I am not providing my name because I am afraid of retaliation by my employers if they find out I wrote this. The farmers in this area are not happy about the law that passed giving more rights to farm workers, especially the law that said workers have a right to have visits by key service providers at their home or during their work breaks. I also fear retaliation from the farmers in the community I live in if they find out.

5. I was very happy when I heard about the law that passed allowing agricultural workers to have visitors at the employer provided housing and at their work during their rest breaks and lunch.

6. A lot of times, I have to work very long hours and I don't have time during the week to do anything else but work. It is not always possible to ask for days off or to leave early, you to need to work until they tell you to stop and if you ask for a day off, you can get fired. When I am working in the fields, sometimes I don't have my car and I am far away from the town where I live or any town. If the weather is going to change and we haven't finished all of our, sometimes we have to stay for a very long time.

7. At some of the farms I have worked there are other workers here on H-2A visas and they have even more restrictions than I do. They live on the farm owners' property and they don't have their own cars and they have to rely on the supervisor and the driver to take them places and they usually wont take them places during the workday other than to work.

8. If I need someone to bring me something, like a legal document to sign, or if I need to meet with a teacher or a health worker during my lunch or my break I would like to be able to. Before this law passed, I am certain that I would not be able to have a service provider visit me during my lunch or break.

9. Because I have worked in the fields for so many years, I know what types of services I have needed but have been unable to receive. I have missed school programs, meetings with teachers and going to the doctor. I wished to have the opportunity to see the doctor during my lunch break. I could not do any of those things because I could not get off work and it was not an option to have the teacher or doctor come to me at my workplace.

10. Now with the new law, I can offer that as an option to the teacher who wants to talk to me about my child or with my lawyer who wants to meet about a legal matter. There are also promotoras who can come visit during lunch or breaks and bring food, clothing or other resources to help the workers.

11. This new law has also allowed workers to get more help from the promotoras. The promotoras have been able to help the workers make phone calls to make appointments for things like getting drivers licenses, consular services and medical appointments or to help set up the appointments through online programs. The promotoras also help workers make calls to the bank or other places like that that are only open during business hours.

12. I do not think it is right that my employer should be able to go back to preventing me from having visitors at my work, especially if it is for something that I need and if I am on my break. If they are allowed to do this, I will suffer along with many other farm workers.

I SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY PERSONAL KNOWLEDGE.

[redacted]

Declarant's Signature

11-3-2022

Date

[redacted]

Declarant's Printed Name

UNITED STATES DISTRICT COURT
FOR COLORADO

Civil Action No. 22-cv-01537-NYW-GPG

TALBOTT'S MOUNTAIN GOLD LLLP, a Colorado limited liability limited partnership;
TALBOTT LAND AND PROPERTY LLLP, a Colorado limited liability limited partnership;
BLAINE D PRODUCE COMPANY LLC, a Colorado limited liability company;
BOX ELDER RANCH, LLC, a Colorado limited liability company;
BOX ELDER RANCH, INC., a Colorado corporation;
MARC ARNUSCH FARMS LLC, a Colorado limited liability company; and
MAUCH FARMS, INC., a Colorado corporation,

Plaintiffs,

v.

JOSEPH M. BARELA, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and
SCOTT MOSS, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment,

Defendants.

INTERVENOR DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Intervenor Defendants Colorado Legal Services and Jane Doe, by and through their attorneys, answer and respond to the numbered paragraphs of Plaintiffs' Complaint of Declaratory and Injunctive Relief as follows:

JURISDICTION AND VENUE[1]

1. The assertions in Paragraph 1 does not require a response because they constitute legal conclusions or legal arguments.

[1] Headings are used for clarity only, and do not constitute an admission.

2. The assertions in Paragraph 2 do not require a response because they constitute legal conclusions or legal arguments.
3. The assertions in Paragraph 3 do not require a response because they constitute legal conclusions or legal arguments.
4. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 4, and leave Plaintiffs to their proofs.

INTRODUCTION

5. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 5, and leave Plaintiffs to their proofs.
6. The first assertion in Paragraph 6 does not require a response because it constitutes legal conclusions or legal arguments. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the second assertion in Paragraph 6, and leave Plaintiffs to their proofs.
7. The assertions in Paragraph 7 do not require a response because they constitute legal conclusions or legal arguments.
8. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 8, and leave Plaintiffs to their proofs.
9. Intervenor Defendants admit the assertions in Paragraph 9 to the extent they constitute claims regarding the scope of this action. To the extent the assertions in Paragraph 9 characterize the law, they do not require a response because they constitute legal conclusions or legal arguments.

10. Intervenor Defendants admit the assertions in Paragraph 10 to the extent they constitute claims regarding the scope of this action. To the extent the assertions in Paragraph 10 characterize the law, they do not require a response because they constitute legal conclusions or legal arguments.
11. Intervenor Defendants admit the assertions in Paragraph 11 to the extent they constitute claims regarding the scope of this action. To the extent the assertions in Paragraph 11 characterize the law, they do not require a response because they constitute legal conclusions or legal arguments.
12. Intervenor Defendants admit the assertions in Paragraph 12 to the extent they constitute claims regarding the Complaint in this action. To the extent the assertions in Paragraph 12 characterize the law, they do not require a response because they constitute legal conclusions or legal arguments.
13. Intervenor Defendants admit the assertions in Paragraph 13 to the extent they constitute claims regarding the scope of this action. To the extent the assertions in Paragraph 13 characterize the law, they do not require a response because they constitute legal conclusions or legal arguments.
14. The assertions in Paragraph 14 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.
15. The assertions in Paragraph 15 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 15.

16. The assertions in Paragraph 16 do not require a response because they constitute legal conclusions or legal arguments.

17. The assertions in Paragraph 17 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 17.

THE PARTIES

18. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 18, and leave Plaintiffs to their proofs.

19. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 19, and leave Plaintiff to its proofs.

20. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 20, and leave Plaintiff to its proofs.

21. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 21, and leave Plaintiff to its proofs.

22. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 22, and leave Plaintiff to its proofs.

23. Intervenor Defendants admit the assertions in Paragraph 23.

24. Intervenor Defendants admit the assertions in Paragraph 24.

25. Intervenor Defendants admit the assertions in Paragraph 25.

THE COLORADO ACCESS PROVISIONS

26. Intervenor Defendants admit the assertions in Paragraph 26.

27. Intervenor Defendants deny the assertion that Colorado Senate Bill 21-087 is unprecedented. The remaining assertions in Paragraph 27 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself. To the extent that there may be additional statements of fact, Intervenor Defendants deny the assertions in Paragraph 27.
28. The assertions in Paragraph 28 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

THE DIVISION'S RULE

29. Intervenor Defendants admit the assertions in the first sentence of Paragraph 29. The remaining assertions in Paragraph 29 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.
30. The assertions in Paragraph 30 do not require a response because they constitute legal conclusions or legal arguments.
31. The assertions in Paragraph 31 do not require a response because they constitute legal conclusions or legal arguments.
32. The assertions in Paragraph 32 do not require a response because they constitute legal conclusions or legal arguments.

THE COLORADO EMPLOYER-PROVIDED HOUSING PROVISIONS

33. The assertions in Paragraph 33 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

34. The assertions in Paragraph 34 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

THE COLORADO TRANSPORTATION PROVISIONS

35. The assertions in Paragraph 35 do not require a response because the cited material speaks for itself.
36. The assertions in Paragraph 36 do not require a response because the cited material speaks for itself.

STANDING

Talbott Farms

37. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 37, and leave Plaintiff to its proofs.
38. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 38, and leave Plaintiff to its proofs.
39. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 39, and leave Plaintiff to its proofs.
40. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 40, and leave Plaintiff to its proofs.
41. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 41, and leave Plaintiff to its proofs.
42. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 42, and leave Plaintiff to its proofs.

43. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 43, and leave Plaintiff to its proofs.
44. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 44, and leave Plaintiff to its proofs.
45. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 45, and leave Plaintiff to its proofs.
46. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 46, and leave Plaintiff to its proofs.
47. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 47, and leave Plaintiff to its proofs.
48. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 48, and leave Plaintiff to its proofs.
49. The assertions in Paragraph 49 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 49.

Baine Produce

50. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 50, and leave Plaintiff to its proofs.
51. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 51, and leave Plaintiff to its proofs.

52. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 52, and leave Plaintiff to its proofs.

53. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 53, and leave Plaintiff to its proofs.

54. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 54, and leave Plaintiff to its proofs.

55. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 55, and leave Plaintiff to its proofs.

56. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 56, and leave Plaintiff to its proofs.

57. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 57, and leave Plaintiff to its proofs.

58. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 58, and leave Plaintiff to its proofs.

59. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 59, and leave Plaintiff to its proofs.

60. The assertions in Paragraph 60 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 60.

61. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 61, and leave Plaintiff to its proofs.

62. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 62, and leave Plaintiff to its proofs.

63. Intervenor Defendants admit Plaintiffs' assertion in Paragraph 63 that they are concerned about the tomato brown rugose fruit virus. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining assertions in Paragraph 63, and leave Plaintiff to its proofs.

64. The assertions in Paragraph 64 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 64.

65. The assertions in Paragraph 65 do not require a response because they constitute legal conclusions or legal arguments.

66. The assertions in Paragraph 66 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 66.

67. The assertions in Paragraph 67 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 49.

Box Elder Ranch

68. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 68, and leave Plaintiff to its proofs.
69. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 69, and leave Plaintiff to its proofs.
70. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 70, and leave Plaintiff to its proofs.
71. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 71, and leave Plaintiff to its proofs.
72. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 72, and leave Plaintiff to its proofs.
73. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 73, and leave Plaintiff to its proofs.
74. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 74, and leave Plaintiff to its proofs.
75. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 75, and leave Plaintiff to its proofs.
76. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 76, and leave Plaintiff to its proofs.
77. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 77, and leave Plaintiff to its proofs.

78. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 78, and leave Plaintiff to its proofs.

79. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 79, and leave Plaintiff to its proofs.

80. The assertions in Paragraph 80 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 80.

81. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 81, and leave Plaintiff to its proofs.

82. Intervenor Defendants admit the assertion in Paragraph 82 that C.R.S. § 8-13.5-202 (b) and (c) and C.R.S. § 8-13.5-204 are now in effect. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the remaining assertions in Paragraph 82.

83. The assertions in Paragraph 83 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 83.

Marc Arnusch Farms

84. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 84, and leave Plaintiff to its proofs.

85. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 85, and leave Plaintiff to its proofs.

86. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 86, and leave Plaintiff to its proofs.

87. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 87, and leave Plaintiff to its proofs.

88. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 88, and leave Plaintiff to its proofs.

89. The assertions in Paragraph 89 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 89.

90. The assertions in Paragraph 90 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 90.

91. The assertions in Paragraph 91 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 91.

92. The assertions in Paragraph 92 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor

Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 92.

93. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 93, and leave Plaintiff to its proofs.

94. The assertions in Paragraph 94 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 94.

95. The assertions in Paragraph 95 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 95.

Mauch Farms

96. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 96, and leave Plaintiff to its proofs.

97. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 97, and leave Plaintiff to its proofs.

98. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 98, and leave Plaintiff to its proofs.

99. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 99, and leave Plaintiff to its proofs.

100. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 100, and leave Plaintiff to its proofs.

101. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 101, and leave Plaintiff to its proofs.

102. The assertions in Paragraph 102 do not require a response because they constitute legal conclusions or legal arguments.

103. The assertions in Paragraph 103 do not require a response because they constitute legal conclusions or legal arguments.

104. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 104, and leave Plaintiff to its proofs.

105. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 105, and leave Plaintiff to its proofs.

106. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 106, and leave Plaintiff to its proofs.

107. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 107, and leave Plaintiff to its proofs.

108. Intervenor Defendants lack information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 108, and leave Plaintiff to its proofs. To the extent that the assertions in Paragraph 108 imply what the law requires, this do not require a response because they constitute legal conclusions or legal arguments.

109. The assertions in Paragraph 109 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact,

Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 109.

Plaintiffs' Injuries in Fact & Likelihood of Redress

110. The assertions in Paragraph 110 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 110.

111. The assertions in Paragraph 111 do not require a response because they constitute legal conclusions or legal arguments. To the extent that the assertions in Paragraph 111 imply what the law requires, this do not require a response because they constitute legal conclusions or legal arguments.

112. The assertions in Paragraph 112 do not require a response because they constitute legal conclusions or legal arguments.

***CEDAR POINT NURSERY v. HASSID* & THE COLORADO ACCESS PROVISIONS**

113. Intervenor-Defendants admit that on June 23, 2021 the United States Supreme Court issued an opinion in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). Intervenor-Defendants further admit that Senate Bill 21-087 was signed into law by Governor Polis on June 25, 2021 and that June 23, 2021 can be characterized as two days before June 25, 2021. The remaining assertions in Paragraph 113 do not require a response because they constitute legal conclusions or legal arguments.

114. The assertions in Paragraph 114 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

115. The assertions in Paragraph 115 do not require a response because they constitute legal conclusions or legal arguments.

116. The assertions in Paragraph 116 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

117. The assertions in Paragraph 117 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

118. The assertions in Paragraph 118 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

119. The assertions in Paragraph 119 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 119.

120. The assertions in Paragraph 120 do not require a response because they constitute legal conclusions or legal arguments.

121. The assertions in Paragraph 121 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself .

122. The assertions in Paragraph 122 do not require a response because they constitute legal conclusions or legal arguments.

123. The assertions in Paragraph 123 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself .

124. The assertions in Paragraph 124 do not require a response because they constitute legal conclusions or legal arguments.

125. Intervenor Defendants admit that Plaintiffs are not challenging C.R.S. § 8-13.5-202 (1) (a). The remaining assertions in Paragraph 125 do not require a response because they constitute legal conclusions or legal arguments.

126. Intervenor Defendants admit that Plaintiffs are not challenging C.R.S. § 8-13.5.202 (1) (e). The remaining assertions in Paragraph 126 do not require a response because they constitute legal conclusions or legal arguments.

127. The assertions in Paragraph 127 do not require a response because they constitute legal conclusions or legal arguments.

128. The assertions in Paragraph 128 do not require a response because they constitute legal conclusions or legal arguments.

FACIAL CONSTITUTIONAL CHALLENGE

129. The assertions in Paragraph 129 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 129.

130. The assertions in Paragraph 130 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 130.The assertions in Paragraph 131 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants deny the assertions in Paragraph 131.

AS-APPLIED CONSTITUTIONAL CHALLENGE

131. The assertions in Paragraph 132 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

132. The assertions in Paragraph 133 do not require a response because they constitute legal conclusions or legal arguments.

133. The assertions in Paragraph 134 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 134.

DECLARATORY RELIEF ALLEGATIONS

134. The assertions in Paragraph 135 do not require a response because they constitute legal conclusions or legal arguments.

135. The assertions in Paragraph 136 do not require a response because they constitute legal conclusions or legal arguments.

136. The assertions in Paragraph 137 do not require a response because they constitute legal conclusions or legal arguments.

137. The assertions in Paragraph 138 do not require a response because they constitute legal conclusions or legal arguments.

138. The assertions in Paragraph 139 do not require a response because they constitute legal conclusions or legal arguments.

139. The assertions in Paragraph 140 do not require a response because they constitute legal conclusions or legal arguments.

INJUNCTIVE RELIEF ALLEGATIONS

140. The assertions in Paragraph 141 do not require a response because they constitute legal conclusions or legal arguments.

141. The assertions in Paragraph 142 do not require a response because they constitute legal conclusions or legal arguments.

142. The assertions in Paragraph 143 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 143.

143. The assertions in Paragraph 144 do not require a response because they constitute legal conclusions or legal arguments. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 144.

144. The assertions in Paragraph 145 do not require a response because they constitute legal conclusions or legal arguments.

CLAIM FOR RELIEF

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

145. Paragraph 146 of Complainant's Complaint is an incorporation paragraph to which no responsive pleading is required. Intervenor Defendants hereby incorporate by reference Paragraphs One through One Hundred Forty-Five of their Answer, as if set forth in full.

146. The assertions in Paragraph 147 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

147. The assertions in Paragraph 148 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

148. The assertions in Paragraph 149 do not require a response because they constitute legal conclusions or legal arguments.

149. The assertions in Paragraph 150 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself. To the extent that there are statements of fact, Intervenor Defendants lack sufficient information or knowledge sufficient to form a belief as to the truth of the assertions in Paragraph 150.

150. The assertions in Paragraph 151 do not require a response because they constitute legal conclusions or legal arguments, and the cited material speaks for itself.

PRAYER FOR RELIEF

1. The portion of the Complaint captioned “Prayer for Relief” consists of Plaintiffs’ requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever. Intervenor Defendants further deny that the Colorado Access Provisions are facially unconstitutional.

2. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever. Intervenor Defendants further deny that the Colorado Access Provisions are unconstitutional as applied.
3. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever.
4. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever.
5. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever.
6. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever.

7. The portion of the Complaint captioned "Prayer for Relief" consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Intervenor Defendants deny that Plaintiffs are entitled to their requested relief, or any relief whatsoever.

DEFENDANTS' AFFIRMATIVE DEFENSES

Intervenor Defendants, by and through their attorneys, state the following affirmative defenses:

Defense 1: Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to demonstrate they have suffered damages.

Defense 2: Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to demonstrate that Defendants caused their damages, if any.

Defense 3: Plaintiffs may have failed to mitigate their damages, if any.

Defense 4: Some or all of Plaintiffs' losses and damages, if any, were caused by Plaintiffs' own conduct or the conduct of third parties and is not attributable to Defendant.

Defense 5: Plaintiffs have failed to establish Article III standing so that this court does not have subject matter jurisdiction.

Defense 6: Plaintiffs' claims are not ripe because they have failed to show an actionable future injury.

Defense 7: Plaintiffs have failed to exhaust administrative procedures.

Defense 8: Plaintiffs' claims are not ripe because they have failed to exhaust administrative procedures.

Defense 9: Plaintiffs fail to state a claim upon which relief can be granted.

Defense 10: Intervenor Defendants reserve the right to plead additional affirmative defenses or assert other matters as they become known, including all defenses available under court rules, and as the Court permits.

WHEREFORE, Intervenor Defendants respectfully request that this Court deny Plaintiff the relief it requests and request such further relief as is just and proper.

November 4, 2022

Respectfully submitted,

/s/ Jenifer Rodriguez
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***** *Application for admission pending*