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DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO City and County Building 1437 Bannock Street Denver, CO 80202	
Plaintiff: COLORADO LIVESTOCK ASSOCIATION, a Colorado nonprofit corporation, v. **Defendants:** STATE OF COLORADO; JARED POLIS, in his official capacity as Governor of Colorado; 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 *and* **Defendant-Intervenors**: COLORADO LEGAL SERVICES, INC., a Colorado nonprofit corporation; and JANE DOE	Δ COURT USE ONLY Δ
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MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant-Intervenors Colorado Legal Services, Inc., and Jane Doe respectfully move this Court to enter judgment on the pleadings in favor of Defendants and against Plaintiff Colorado Livestock Association ("Livestock Association"), pursuant to Colorado Rules of Civil Procedure 12(b)(1) and (c).

CERTIFICATE OF CONFERRAL

Pursuant to Colorado Rule of Civil Procedure 121 § 1-15(8), undersigned counsel certify that Defendant-Intervenors have conferred with Plaintiff Colorado Livestock Association and the Government Defendants regarding the relief requested herein. The Livestock Association opposes the relief requested. The Government Defendants do not oppose the relief requested.

INTRODUCTION

Colo. Rev. Stat. § 8-13.5-202(1)(b) provides a lifeline to agricultural workers who labor in Colorado's fields, orchards, dairies, ranches, and farms, and on the range. When these workers need to see a doctor, lawyer, or social worker, but cannot because of their isolation, grueling work schedules, or employer intimidation, the law ensures that, before or after work or during breaks, the workers have reasonable access to these service providers. *See* Mot. to Intervene Ex. A (Baca Decl.) ¶¶ 5, 9–10, 28; Mot. to Intervene Ex. B (Doe Decl.) ¶¶ 9–11. Yet in a threadbare complaint containing only three vague paragraphs about the Livestock Association's members and how Colo. Rev. Stat. § 8-13.5-202(1)(b) affects them, the Association asserts that this legal protection for farmworkers effects a taking of private property rights from all agricultural employers everywhere and demands that the law be declared unconstitutional on its face and permanently enjoined. The Livestock Association's assault on safeguards for agricultural workers, dressed in the garb of legal claims, should find no purchase in this Court. There are three reasons for this, each of which independently requires the complaint's dismissal.

First, the Livestock Association has failed to establish standing because, among other deficiencies,[1] it has not shown that any of its members would have standing to sue in their own right. The Livestock Association has come nowhere close to meeting its burden, failing to describe in any way a particular agricultural employer-member who it believes has suffered a

[1] Defendant-Intervenors adopt and incorporate by reference the Government Defendants' arguments that the Livestock Association lacks standing because the claim asserted requires the participation of individual members. *See* Gov't Defs.' Mot. for J. on the Pleadings 12–16; Reply Supp. Gov't Defs.' Mot. for J. on the Pleadings 14–15. As described below, Intervenors also contend that the Livestock Association has failed to establish that at least one member would have standing in their own right.

compensable loss of the member's right to exclude by virtue of the enforcement of Colo. Rev. Stat. § 8-13.5-202(1)(b).

Second, this lack of any present and specific controversy arising from the effect of the challenged law on any one member's private property rights means that the complaint is unripe under Colorado and U.S. Supreme Court precedent.

Third, even were those deficiencies not fatal, the complaint's demand for unavailable relief (and only unavailable relief) would be. The Livestock Association's central contention is that under the federal and Colorado Constitutions, "just compensation" is due for the alleged taking of its members' right to exclude. *See* Compl. ¶¶ 3, 27. Yet, as the Government Defendants explain,[2] the Association seeks only equitable relief, not the monetary compensation that *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 2176–77 (2019), and Colorado courts have made clear is the sole remedy for a taking when, as here, compensation is available. *Knick* mandates the claims' dismissal, too.

The Court thus faces insurmountable barriers to jurisdiction.[3] Colo. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); *Woo v. El Paso Cnty. Sheriff's Off.*, 490

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[2] Defendant-Intervenors adopt and incorporate by reference the Government Defendants' arguments on this point. *See* Gov't Defs.' Mot. for J. on the Pleadings 4–12; Reply Supp. Gov't Defs.' Mot. for J. on the Pleadings 2–14.

[3] Even if the Livestock Association could hypothetically cure the jurisdictional defects addressed in this motion — a failure to allege or show the existence of identifiable individual members who would have standing to sue in their own right and a failure to establish ripeness — no amendment could overcome the defects identified in the Government Defendants' Motion for Judgement on the Pleadings. That is, no amendment could make equitable relief proper where inverse condemnation is available, nor render unnecessary the participation of the Livestock Association's individual members. Thus, amendment would be futile and dismissal with prejudice is appropriate.

P.3d 884, 891 (Colo. App. 2020) ("Where . . . an insurmountable barrier exists to a court's jurisdiction . . . dismissal with prejudice is appropriate."). Accordingly, Defendant-Intervenors respectfully request that the Livestock Association's complaint be dismissed with prejudice and judgment entered in favor of Defendants.[4]

ARGUMENT

I. The Livestock Association Lacks Standing Because It Has Neither Alleged Nor Shown that Any Identifiable Member Would Have Standing in Their Own Right

The Livestock Association has failed to meet its burden to demonstrate standing. Because the Association asserts associational standing, it must allege and show that: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members [in] the lawsuit." *Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 510 (Colo. 2018).

To satisfy the first prong, the Livestock Association must show that at least one of its members has "suffered (1) an injury in fact (2) to a legally protected interest." *Am. Fam. Mut. Ins. Co. v. Am. Nat'l Prop. & Cas. Co.*, 370 P.3d 319, 325 (Colo. App. 2015). That member must be identifiable, not theoretical. *See TABOR Found. v. Colo. Dep't of Health Care Pol'y and Fin.*, 487 P.3d 1277, 1283 (Colo. App. 2020) (rejecting claims of associational standing because the associational plaintiffs' "two proffered members do not have standing, and [they] *have not identified* any other member who does" (emphasis added)); *Summers v. Earth Island Inst.*, 555

[4] Defendant-Intervenors agree with the statement in the Government Defendants' brief on the legal standard for a motion for judgment on the pleadings, *see* Gov't Defs.' Mot. for J. on the Pleadings 3–4, and will not repeat it here.

U.S. 488, 498 (2009) (associational plaintiffs must "make specific allegations establishing that at least one identified member had suffered or would suffer harm.").[5]

That identifiable member's injury in fact may be "tangible" — "physical damage or economic harm" — or "intangible," such as "the deprivation of civil liberties." *Am. Fam. Mut. Ins. Co.*, 370 P.3d at 325 (cleaned up). Either way, it "require[s] a concrete adverseness which sharpens the presentation of issues that parties argue to the courts." *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004) (cleaned up). "[N]either the remote possibility of a future injury nor an injury that is overly indirect and incidental to the defendant's action" will suffice. *Id.* (cleaned up). To meet the requirement that the injury be "to a legally protected interest," the plaintiff must state a "claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Am. Fam. Mut. Ins. Co.*, 370 P.3d at 325.

In the context of a Takings Clause claim like the one Livestock Association brings here, the injury in fact is of the "economic harm" variety — a diminution in property value for which the government has failed to pay just compensation. *See id*. (finding standing to pursue Takings claim where "property owners had suffered injuries-in-fact (property damage and economic loss)"). Takings caselaw confirms the monetary nature of the injury: "Just compensation reflects the value of the landowner's lost interest, not the taker's gain. The owner must be put in as good

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[5] Although Colorado's standing doctrine differs from federal caselaw in some respects, Colorado's test for associational standing comes from federal jurisprudence. S*ee Aspen*, 418 P.3d at 510 (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S 333, 344 (1977) (establishing canonical three-prong test)); *Buffalo Park Dev. Co. v. Mountain Mut. Reservoir Co.*, 195 P.3d 674, 688 (Colo. 2008) (relying on "United States Supreme Court jurisprudence" to hold that an association had standing). Thus, *Summers*'s requirement that an association's member be identifiable from the allegations applies here.

position pecuniarily as if the property had not been taken." *Fowler Irrevocable Tr. 1992-1 v. City of Boulder*, 17 P.3d 797, 802 (Colo. 2001) (cleaned up).

The Livestock Association has failed to allege that at least one identifiable member has a "sharpen[ed]" and "concrete" claim that they have suffered a quantifiable economic loss because of the challenged law. *Ainscough*, 90 P.3d at 856 (citation omitted). The complaint alleges that the Livestock Association's "members are cattle and sheep feeders, cow/calf producers, dairy farmers, swine operations, and agribusiness industry partners," makes a conclusory allegation of law (not fact) that those "members include agricultural employers and property owners engaged in the livestock industry whose right to exclude persons from their property is subjected to a *per se* taking by the statute at issue in this lawsuit," and claims in a venue paragraph that "real property of one or more CLA members [is] situated in Yuma County." Compl. ¶¶ 1–2, 9. The Livestock Association makes no other allegation shedding light on whether Colo. Rev. Stat. § 8-13.5-202(1)(b) affects any of its members in any way.

What the complaint does *not* allege speaks louder than what it does. For example, there is no allegation that any of the Livestock Association's members employs "agricultural workers" who have been or reasonably may be visited by a key service provider pursuant to Colo. Rev. Stat. § 8-13.5-202(1)(b), rather than under the provision preventing employers from interfering their workers' "reasonable access to visitors at the agricultural worker's employer-provided housing," Colo. Rev. Stat. § 8-13.5-202(1)(a), or some other law the Livestock Association has not challenged. And the Livestock Association has failed to allege the existence or amount of any economic harm to an identifiable member because of the enforcement of Colo. Rev. Stat. § 8-13.5-202(1)(b).

The Livestock Association may argue that its CEO's declaration, attached in support of the Association's opposition to the Government Defendants' Motion for Judgment on the Pleadings, plugs these holes. *See* Pl.'s Opp'n to Gov't Defs.' Mot. for J. on the Pleadings Ex. 3 (Riley Decl.). It does not. True, the declaration claims that "CLA's members have contacted [the declarant] since the enactment of [Colo. Rev. Stat. § 8-13.5-202(1)(b)] . . . to complain about individuals entering their private property and their businesses and contending to be providing services to those employed on the premises." *Id.* ¶ 6. But even if admissible and true, the vague assertion that an agricultural property owner somewhere has had an unwanted service provider visit their property provides no clarity as to whether those asserted entries were made pursuant to the challenged law, rather than pursuant to Colo. Rev. Stat. § 8-13.5-202(1)(a) or some other law, or unlawfully. Moreover, insofar as the Livestock Association seeks to introduce this fact to prove the truth of the matter asserted — that people have entered onto the Livestock Association's members' properties — it is inadmissible hearsay. *See* Colo. R. Evid. 802. It is double hearsay if offered to prove that the people who assertedly entered really were key service providers, as they purportedly claimed to the unnamed members who talked to Mr. Riley. Thus, the declaration cannot save the complaint's failure to allege standing.

In sum, even "accept[ing] as true the allegations set forth in the complaint and . . . weigh[ing] [the Livestock Association's] other evidence supportive of standing," *Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1289 (Colo. 1992), the Livestock Association has failed adequately to allege or show an injury in fact to an identifiable member. At most, the Livestock Association claims only "the remote possibility of a future injury" to unidentified members. *Ainscough*, 90 P.3d at 856. "If the complaint fails to allege injury, the case must be

dismissed." *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 516 (Colo. 1985); *Colo. Manufactured Hous. Ass'n v. Pueblo Cnty.*, 857 P.2d 507, 510 (Colo. App. 1993).

II. The Livestock Association's Takings Claim is Unripe

The absence of factual allegations as to how the challenged law has affected any particular landowner means that the Livestock Association not only lacks standing, but also that its claim is unripe. *Zook v. El Paso Cnty.*, 494 P.3d 659, 663 (Colo. App. 2021) ("ripeness is a separate, though related, doctrine" to standing). Ripeness requires an actual dispute subject to resolution — for a takings claim, identified property and compensable loss suffered — not mere nebulous predictions of a future controversy. *G & A Land, LLC v. City of Brighton*, 233 P.3d 701, 711–12 (Colo. App. 2010). Ripeness is thus another basis on which the Livestock Association's sweeping claims for facial relief should be dismissed.

A. *Colorado and U.S. Supreme Court Precedent Requires Dismissal of Unripe Facial Takings Challenges Such as This*

Courts lack jurisdiction to adjudicate unripe matters. *Zook*, 494 P.3d at 662 (ripeness is a question of subject matter jurisdiction, and "lack of subject matter jurisdiction requires dismissal" (cleaned up)). "Ripeness tests whether an issue is real, immediate, and fit for adjudication." *Id.* Courts thus regularly "refuse to consider uncertain or contingent future matters that suppose a speculative injury that may never occur." *Id.* (quoting *Bd. of Dirs., Metro Wastewater Reclamation Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 105 P.3d 653, 656 (Colo. 2005)). For takings plaintiffs, the Supreme Court has long made clear that fact development particularly matters: "Given the essentially ad hoc, factual inquiry involved in the takings analysis, we have found it particularly important in takings cases to adhere to our admonition that the constitutionality of statutes ought not be decided except in an actual factual

setting that makes such a decision necessary." *Pennell v. City of San Jose*, 485 U.S. 1, 10 (1988) (cleaned up).

Thus, the Supreme Court found a Takings Clause challenge to the Surface Mining Control and Reclamation Act of 1977 "premature . . . and not ripe for judicial resolution" when the property owners had neither "identified any property that had allegedly been taken by the Act, nor . . . sought administrative relief from the Act's restrictions on surface mining." *Id.* at 10 (citing *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 296–97 & n.37 (1981) (internal quotations omitted)). And in *Pennell*, "the mere fact" of the challenged rent control provision's enactment did not mechanically ripen a takings claim, as it "d[id] not present a sufficiently concrete factual setting for the adjudication of the" plaintiff landlord association's claim. 485 U.S. at 10. "[T]here simply is no evidence that the [challenged] 'tenant hardship clause' has in fact ever been relied upon . . . to reduce a rent below the figure it would have been set at" based on other factors, the Supreme Court explained, nor anything that would make such a reduction inevitable. *Id.* at 9–10. Because further facts would be necessary to tie the challenged provision to any compensable property loss, the claim was unripe. *Id.*

Courts nationwide have followed *Pennell* to dismiss premature facial Takings Clause challenges like the Livestock Association's here.[6] *See, e.g., Bldg. & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, No. 19-CV-11285 (KMK), 2021 WL 4198332, at *22

[6] Although no reported Colorado decision has cited *Pennell*'s ripeness discussion, Colorado courts look to Supreme Court and other federal precedent in determining ripeness. *See, e.g.*, *Beauprez v. Avalos*, 42 P.3d 642, 648 (Colo. 2002) (adopting standard for ripeness "in the context of court-ordered redistricting" from *White v. Weiser*, 412 U.S. 783, 794–95 (1973)); *Dev. Pathways v. Ritter*, 178 P.3d 524, 534–35 (Colo. 2008) (examining federal cases to determine ripeness of First Amendment challenge).

(S.D.N.Y. Sept. 14, 2021) (quoting *Pennell* and stating that "[t]he need for individualized analysis of such claims is why facial attacks face an uphill battle because whether a taking has occurred depends" on facts "unique to each" property owner (cleaned up)), *appeal docketed sub nom. G-Max Mgmt., Inc. v. New York*, No. 21-2448 (2d Cir. argument heard Jan. 11, 2023); *Auto. Importers of Am., Inc. v. Minnesota*, 681 F. Supp. 1374, 1381 (D. Minn. 1988) (citing *Pennell* to dismiss plaintiffs' "premature" takings claim where "[n]othing in the record before the court indicate[d] that" a complaint filed pursuant to the challenged law "has imposed financial costs on plaintiffs" and stressing that "[t]he consequences of the law need to be shown by specific facts"), *aff'd*, 871 F.2d 717 (8th Cir. 1989); *cf. Rent Stabilization Ass'n of City of New York v. Dinkins*, 5 F.3d 591, 596 (2d Cir. 1993) (following *Pennell* to find association's "claims that some of its members have been the victims of a taking" nonjusticiable, as court "would have to engage in an *ad hoc* factual inquiry for *each* landlord who alleges that he has suffered a taking").[7]

This holds true whether a plaintiff asserts a *per se* taking under *Cedar Point Nursery* or a regulatory taking under *Penn Central*, as *Cedar Point* – the Livestock Association's north star – makes clear. *Cedar Point* came to the high court upon specific allegations as to how the challenged regulation had affected the growers' property. Cedar Point Nursery "employ[ed] over

[7] *Knick*'s holding on when a takings plaintiff may pursue its claim in federal court does not affect this principle, as legal authority post-dating *Knick* confirms. *See, e.g.*, *Bldg. & Realty Inst. of Westchester*, 2021 WL 4198332, at *22 (relying on *Pennell*'s ripeness principle); *Cmty. Hous. Improvement Program v. City of New York*, 492 F. Supp. 3d 33, 45 (E.D.N.Y. 2020) (citing *Pennell*'s admonition that in takings cases, "the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary" (cleaned up)), *aff'd*, 59 F.4th 540 (2d Cir. 2023), and *aff'd sub nom. 74 Pinehurst LLC v. New York*, 59 F.4th 557 (2d Cir. 2023).

400 seasonal workers and around 100 full-time workers, none of whom live[d] on the property," and alleged that in 2015 it received visits from "members of the United Farm Workers" who, the nursery claimed, entered its premises and "disturbed operations." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2069–70 (2021); *see also Cedar Point Nursery v. Shiroma*, 923 F.3d 524, 528–29 (9th Cir. 2019), *rev'd sub nom. Cedar Point*, 141 S. Ct. 2063 ("*Shiroma*"). The nursery alleged that it was likely that the union would "attempt to take access again in the near future" pursuant to the challenged regulation. *Shiroma*, 923 F.3d at 529. The other plaintiff, Fowler Packing Company, alleged that none of its 2,300 to 3,000 employees "live[d] on the premises," *Cedar Point*, 141 S. Ct. at 2070, and that they were "fully accessible to the Union when they are not at work" so no special entry was required. *Shiroma*, 923 F.3d at 529. Nonetheless, Fowler claimed that the union had already "filed an unfair labor practice charge" after the grower allegedly blocked union "organizers from taking access permitted by the access regulation on three days in July 2015." *Id.*

These and other facts sharpening the dispute were critical for the Court to consider the growers' takings claims. *See, e.g., Cedar Point*, 141 S. Ct. at 2077 (declining to consider prior caselaw concerning organizers' access to employees "beyond the reach of reasonable union efforts to communicate with them," because such matters presented "specific takings issues" not present when employees did not live on growers' properties, the sole issued teed up in *Cedar Point*). *Cedar Point* is not a magic wand a plaintiff can wave to invalidate laws it believes are similar to the California regulation. Without any allegations of compensable loss of specific property – an actual entry as a result of the challenged law, resulting in actual harm or loss to an employer – the Livestock Association's claim is unripe and nonjusticiable. The mere incantation

of agricultural employers' claimed "right to exclude" and the existence of Colo. Rev. Stat. § 8-13.5-202(1)(b) do not "present a sufficiently concrete factual setting for the adjudication of" a takings claim. *Pennell*, 485 U.S. at 10.

B. *The Contingent and Fact-Specific Nature of the Right to Exclude Under Colorado Law Illustrates that the Livestock Association's Claim Is Unripe*

Even were the Court to conclude that alleging the potential for a taking (rather than the occurrence of one) is sufficient, additional details are needed to ripen the claim because it is far from clear that a Livestock Association member *has* a right to exclude, and thus that any taking would ever occur.

Background principles of Colorado property law and federal laws make clear that agricultural landowners' right to exclude is highly variable and fact-specific. Colorado's Fence Law, for example, provides that unless a landowner has maintained a "lawful fence," Colo. Rev. Stat. § 35-46-102(1), the owner cannot "recover certain damages from an owner of trespassing livestock." *Aspen Springs Metro. Dist. v. Keno*, 369 P.3d 716, 721 (Colo. App. 2015). Rural and agricultural property owners' right to exclude is thus qualified by statute — dependent, in part, on whether the owner's land is fenced in. *Id.*; *see also People v. Neckel*, 487 P.3d 1036, 1041–42 (Colo. App. 2019) (holding that "no trespassing" signs do not act "as a bar to any entry whatsoever," and that this qualification is true "[o]n rural property in particular").

As another example, federal mineral rights further qualify agricultural property owners' right to exclude, as the Colorado Court of Appeals explained in *Visintainer Sheep Company v. Centennial Gold Corporation*, 748 P.2d 358 (Colo. App. 1987). There, the court considered Visintainer's action for declaratory and injunctive relief seeking to bar an unwanted third party claiming mining rights "from entering on to Visintainer's property." *Id.* at 359. Visintainer

"own[ed] approximately 5,000 acres . . . on which it raise[d] sheep and cattle" pursuant to "property . . . granted by the United States," including under Stock Raising Homestead Act (SRHA) patents which reserved all mineral rights to the United States. *Id.* at 359. Centennial entered Visintainer's property, which was "enclosed by a sheep-tight fence which ha[d] very few gates" and was bisected only by "private ranch roads," and staked gold mining claims on the SRHA patents interspersed throughout the property. *Id.* The Court of Appeals affirmed that Visintainer did not have a right to exclude Centennial, because federal mining law limited that right. *Id.* at 360; *see also Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 927–28 (Colo. 1997), *as modified on denial of reh'g* (Oct. 20, 1997) (property owner's right to exclude dependent upon mineral rights entrant's "exceed[ing] the scope of" the "implied easement" to enter, the determination of which required court to "look to its nature and purpose," and specifically to the "reasonableness and necessity" of the entrant's conduct). In this manner, the unnamed Livestock Association members' land may be encumbered by prior agreements that prevent a takings claim.

Also coloring any assertion of an unfettered right to exclude is another provision in the Agricultural Workers' Rights law — which the Livestock Association does *not* challenge — enabling third parties to enter agricultural employers' property under certain circumstances. That provision prevents employers from interfering "with an agricultural worker's reasonable access to visitors at the agricultural worker's employer-provided housing during any time when the agricultural worker is present at such housing." *See* Colo. Rev. Stat. 8-13.5-202(1)(a). The Livestock Association has made no allegations as to whether its member-employers house workers. Nor has it shown that any visits its member-employers' workers may have received

from third parties the employers would otherwise exclude were made pursuant to the provision the Livestock Association challenges, Colo. Rev. Stat. § 8-13.5-202(1)(b), and not under Colo. Rev. Stat. § 8-13.5-202(1)(a) or another law.

As the foregoing demonstrates, whether any agricultural employer may have a right to exclude under a particular set of circumstances is a highly contingent and fact-specific question, especially given the qualified nature of the right to exclude under Colorado law in rural areas and on agricultural property. Unlike in *Cedar Point*, the Livestock Association has failed to allege facts that, if true, would render it "[un]dispute[d] that, without the [challenged] access regulation, the [agricultural property owners] would have . . . the right under [Colorado] law to exclude" unwanted third parties from their properties. *Cedar Point*, 141 S. Ct. at 2076. Landowner- and context-specific facts would be necessary to assess any claim that a Livestock Association's member's right to exclude exists, which is a prerequisite to it being taken. Absent allegations that would enable the Court to assess these claims, the Livestock Association's suit against Colo. Rev. Stat. § 8-13.5-202(1)(b) is unripe, this Court lacks jurisdiction, and the case must be dismissed.

CONCLUSION

This Court lacks jurisdiction to hear the Livestock Association's claims. Even if it had jurisdiction, judgment for the Defendants would be warranted because the Livestock Association seeks unavailable equitable relief. The Livestock Association's claims should be dismissed with prejudice.

December 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on December 15, 2023, the undersigned duly served the Motion for Judgment on the Pleadings upon all counsel of record who have entered their appearances on behalf of the parties to Case No. 2023CV495 via the Colorado Courts e-Filing System.

/s/ *Kelsey Eberly*
Kelsey Eberly