

No. 90, Original

Office Supreme Court, U.S.

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SUPREME COURT OF THE UNITED STATES

ALEXANDER L. STEVAS,
CLERK

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATES OF TEXAS, FLORIDA, ALABAMA,
SOUTH CAROLINA, AND GEORGIA,
Defendants.

ACTION IN ORIGINAL JURISDICTION

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF
AND SECOND SUPPLEMENTARY
SUPPORTING BRIEF

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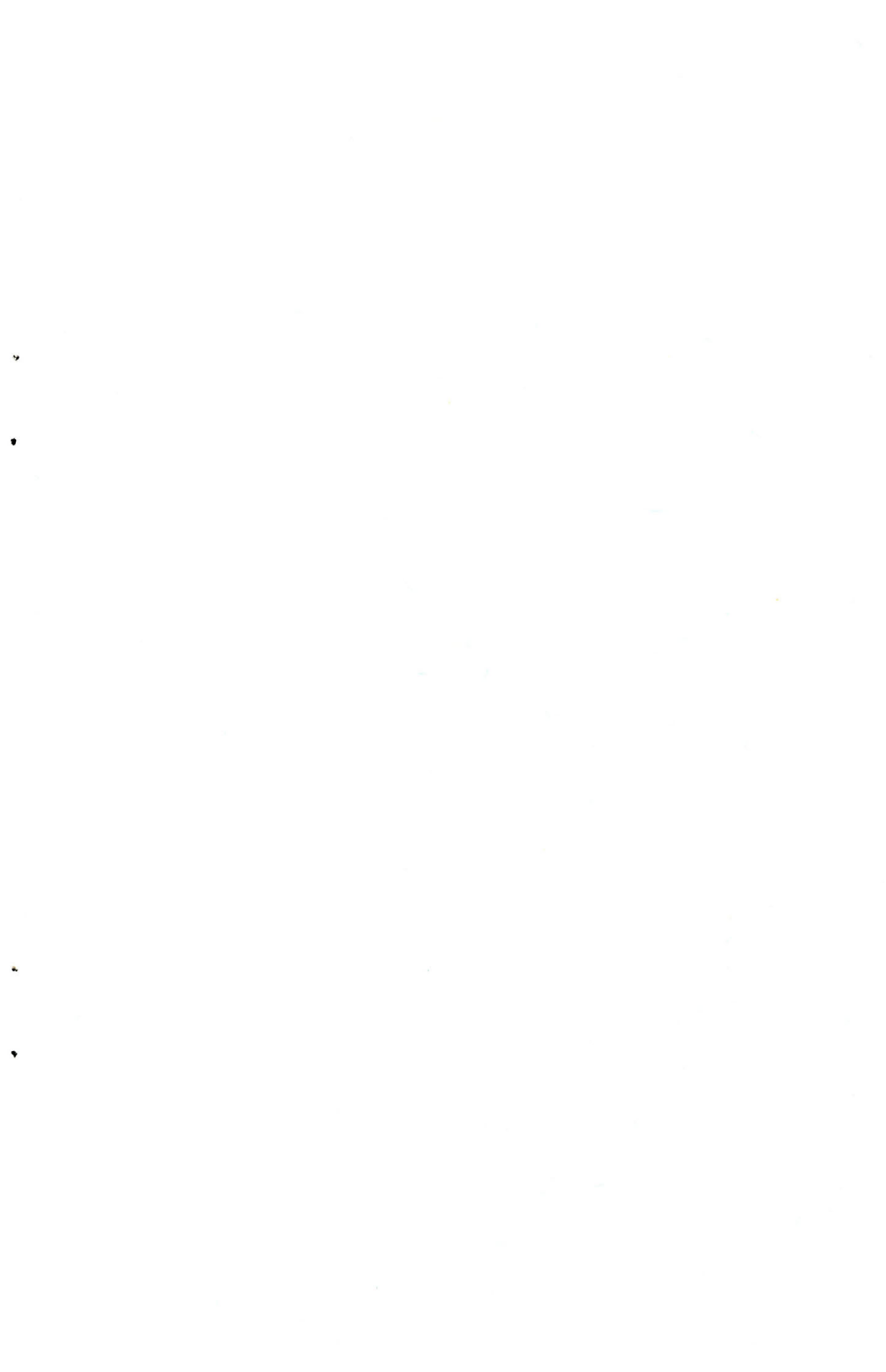
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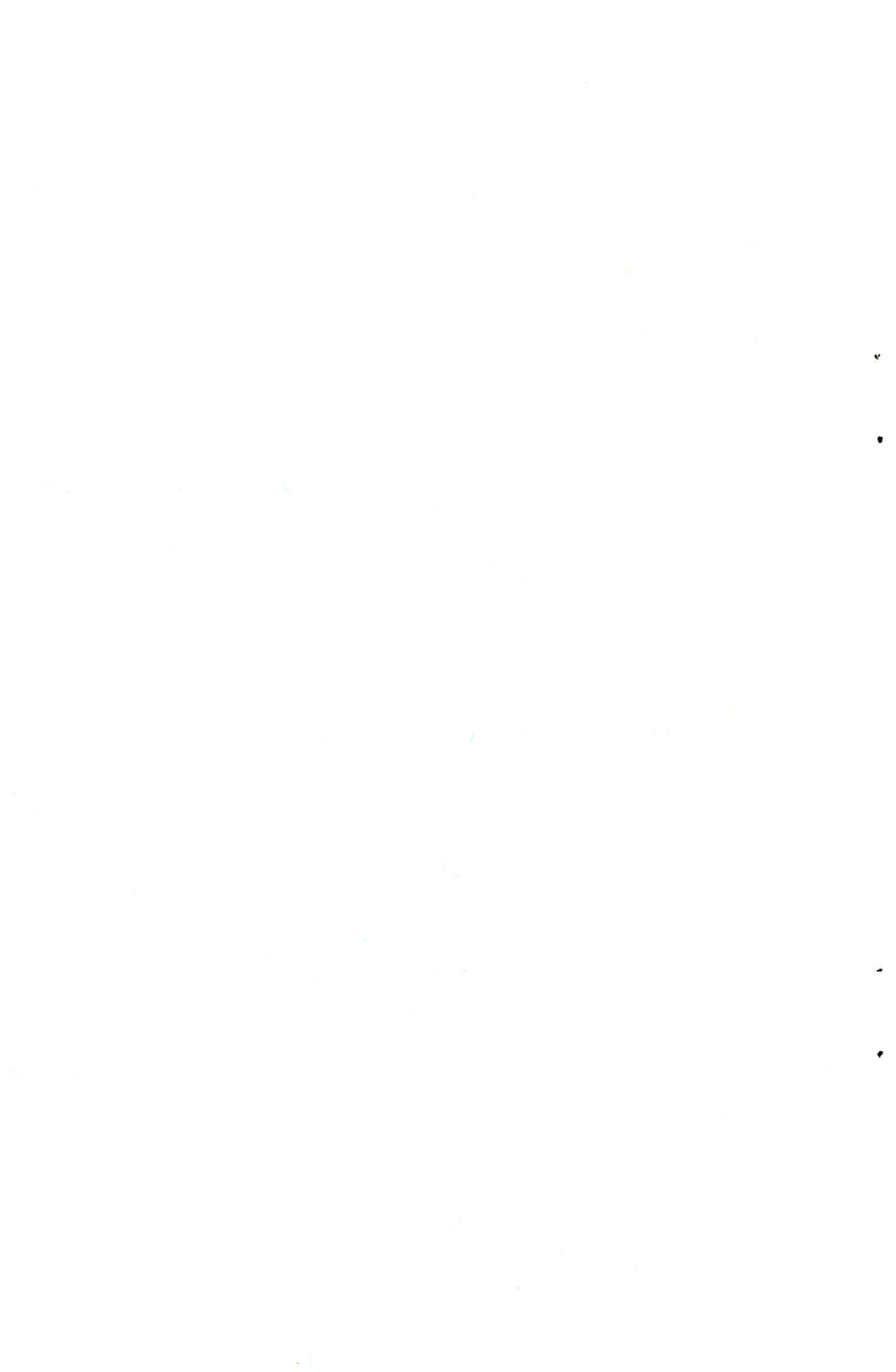


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UNITED STATES SUPREME COURT

STATE OF CALIFORNIA,)	
)	NO. 90, Original
Plaintiff,)	
	)	FIRST AMENDED
v.	)	COMPLAINT FOR
	)	INJUNCTIVE AND
STATES OF TEXAS,	)	DECLARATORY RELIEF
FLORIDA, ALABAMA,)	
SOUTH CAROLINA, AND)	
GEORGIA,)	
Defendants.)	
)	

The State of California brings this
action against the States of Texas,
Florida, Alabama, South Carolina and
Georgia to restrain those states from
restricting the movement in interstate

commerce of food products grown in California. Plaintiff State of California alleges as follows:

ACTION AND JURISDICTION

I

1. This is an action for injunctive and declaratory relief by the State of California against the States of Texas, Florida, Alabama, South Carolina and Georgia.

II

2. This Court has original and exclusive jurisdiction of this controversy pursuant to Article III, Section 2, Clause 2 of the United States Constitution, and pursuant to 28 U.S.C. § 1251(a)(1).

PARTIES

3. The STATE OF CALIFORNIA is a sovereign state of the United States of America, and was admitted into the Union on September 9, 1850.

4. The STATE OF TEXAS is a sovereign state of the United States of America, and was admitted into the Union on December 29, 1845.

5. The STATE OF FLORIDA is a sovereign state of the United States of America, and was admitted into the Union on March 3, 1845.

6. The STATE OF ALABAMA is a sovereign state of the United States of America, and was admitted into the Union on December 14, 1819.

7. The STATE OF SOUTH CAROLINA is a sovereign state of the United States of America and was admitted into the Union on May 23, 1788.

8. The STATE OF GEORGIA is a sovereign state of the United States of America, and was admitted into the Union on January 2, 1788.

NATURE OF THE CONTROVERSY

9. The Mediterranean fruit fly, Ceraltitis capitata Wiedeman ("Medfly"), is a pest that is destructive to many classes of fruits and vegetables, including citrus fruits. The female fly lays 10-20 eggs under the skin of the fruit, causing the fruit to become discolored and mushy. The fruit often ripens prematurely, and falls to the ground. The maggots then leave the fruit, enter the soil on the ground, and turn into pupae. After a few days, the pupae hatch into adults and fly away. The Medfly has a very short life cycle, which permits the rapid development of serious outbreaks. The Medfly can cause serious economic losses to large regions,

including complete loss of crops. It is presently found in most continents of the world.

10. California has been invaded by the Medfly three times in recent years. The first infestation was discovered in the Los Angeles area in 1975. The infestation, which covered 35 square miles, was eradicated by the combined action of state and county officials. The second infestation was discovered in the Los Angeles area on June 5, 1980. The infestation was again eradicated by the combined action of state and county officials, and the last fly was trapped on July 15, 1980. The third infestation, which is the subject of this action, was discovered in parts of Santa Clara County and Alameda County on June 5, 1980. This infestation has existed longer, and is more pervasive, than the other infestations described above.

CALIFORNIA ERADICATION AND
QUARANTINE PROGRAM

11. On June 6, 1980, the California Department of Food and Agriculture (CDFA) adopted an eradication program for the Medfly infestation in Santa Clara and Alameda Counties. See California Administrative Code, Title 3, § 3591.5. Under this eradication program, various methods are provided for the eradication of the Medfly from fruits and vegetables in the infested area. These methods include the use of pesticide sprays, liberation of millions of sterile male flies which breed with fertile female flies but produce no offspring, and removal of host fruits and vegetables in which eggs might mature.

12. On October 22, 1980, CDFA adopted a quarantine on the movement of certain fruits and vegetables grown in infested regions of Santa Clara and

Alameda Counties. See California Administrative Code, Title 3, § 3406. Under this quarantine, all fruits and vegetables grown within the quarantine area which might serve as hosts of the Medfly could not be removed from the area until such fruits and vegetables were treated by a method approved by the Director of the CDFA. The Director approved the movement of such fruits and vegetables only if they were treated by fumigation or cold storage. That fumigation consisted of application of ethyl dibromide or methyl bromide, depending on the type of fruit or vegetable.

13. The quarantine area initially established by CDFA encompassed approximately 500 square miles in Santa Clara and Alameda Counties, including a 50-square mile area that constituted the core area of the infestation. The quarantine area thus included a large

buffer zone surrounding the immediate infestation area. The quarantine line was established under agreement with federal, state and county officials. The quarantine line was drawn in appreciation of the fact that California, with its important agricultural industry, has the most to lose if the quarantine was not fully effective.

14. On December 24, 1980, Governor Edmund G. Brown, Jr. proclaimed a state of emergency with respect to the Medfly infestation. Pursuant to that emergency proclamation, state, federal and county officials undertook a vigorous program to eradicate the Medfly from the infested area in Santa Clara and Alameda Counties. This emergency program was implemented by personnel from various state and county agencies. Commencing in December 1980, several hundred members of the California Conservation Corps and other agencies

stripped all host fruit from trees within the 50-square mile core infestation area, and eventually collected approximately 2,000 tons of host fruit. Additionally, bait spray was applied to all host foliage within the core area, and insecticides were sprayed on the ground as a soil drench to kill larvae entering the soil and flies emerging from the pupae. Every resident in the core area was personally contacted, or otherwise received notice, advising of the schedule for the removal of host plants from each such residence. In addition, approximately 100 million sterile male flies were released each week to attract fertile female flies.

15. For several months, the initial CDFA quarantine and eradication effort appeared to be working. No finds of larvae or flies occurred outside the center of the 50-square mile core area

in Santa Clara County in December 1980, or January or February, 1981. Only one isolated fly find occurred in March, 1981. There were no wild Medfly finds in Alameda County, nor larvae finds during the same period.

16. Commencing on or about June 15, 1981, substantial amounts of additional larval finds have been made outside the original 50-square mile core area, but within the boundaries of the counties of Santa Clara, Alameda and San Mateo. Based upon the larval finds, CDFA in July 1981 expanded the quarantine area to encompass all of Santa Clara, Alameda and San Mateo Counties, an area of approximately 2200 square miles. In addition, CDFA on the same date expanded the core area of infestation to include an area of approximately 180 square miles located within the above three counties. The quarantine area thus continues to include

a large buffer zone surrounding the immediate infestation area. This expanded quarantine line was established under agreement with federal, state and county officials.

17. On or about July 10, 1981, the Governor of the State of California ordered the aerial application of pesticide spray to commence within the expanded 180-square mile core infestation area. On July 13, 1981, the application of Malathion by helicopter commenced within the core area of infestation. Pursuant to the Governor's order, the aerial application of Malathion bait sprays is continuing on a daily basis within the quarantine area established by CDFA.

18. On or about August 13, 1981, a number of wild flies were found in a single, isolated location in Stanislaus

County in the State of California. On the basis of the new discoveries, the CDFA expanded its quarantine to include a total of 264 square miles in Stanislaus County, which includes a large buffer zone around the new area of infestation. The CDFA is also aeriaily spraying pesticides in the core area of the new infestation.

FEDERAL QUARANTINE PROGRAM

19. On July 25, 1980, the U. S. Department of Agriculture (USDA) adopted its own quarantine program relating to the Medfly infestation of parts of Santa Clara and Alameda Counties. The quarantine was adopted pursuant to the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. See 45 Fed.Reg. 50318-50324 (July 29, 1980). The Medfly infestation is a dangerous plant disease, which is new or not theretofore widely prevalent or distributed within or throughout the

United States, and the Secretary of Agriculture so determined. Id.

20. Under the USDA quarantine program adopted on July 25, 1980, certain fruits and vegetables grown in the infested area cannot be moved in interstate commerce in the absence of a certificate or permit issued by the USDA. Id. at 50322, § 331.1-3. The USDA cannot issue such a certificate or permit unless the fruit or vegetable has been treated by fumigation or cold storage. Id. at 50322, 50324, §§ 331.1-3, 331.1-9. The fumigation, to the extent applicable, must consist of application of ethyl dibromide or methyl bromide, depending on the type of fruit or vegetable. Id.

21. Based upon the recent larval finds described above, the USDA, on or about July 21, 1981, amended its quarantine program pursuant to the Federal Plant Quarantine Act, 7 U.S.C. §§ 151-167.

See 46 Fed.Reg. 37710 (July 22, 1981). Pursuant to the amendment, the Federal Quarantine Program, like the expanded quarantine adopted by CDFA, now encompasses all of Santa Clara, Alameda and San Mateo Counties. Like the expanded quarantine adopted by CDFA, the amended federal quarantine also includes a large buffer zone surrounding the immediate infestation area. Fruits and vegetables grown within the expanded federal quarantine area are subject to the same fumigation and cold storage requirements imposed by the CDFA quarantine.

22. On or about July 15, 1981, in response to the recent discovery of wild flies in a specific location in Stanislaus County, the USDA expanded its quarantine to include a total of 264 square miles, which is the same area covered by the recently-amended CDFA quarantine. The expanded USDA quarantine was adopted

pursuant to the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. The expanded USDA quarantine includes a larger buffer zone around the core area of the infestation.

THE TEXAS AND FLORIDA
QUARANTINE PROGRAMS

23. On or about July 15, 1981, the States of Texas and Florida established quarantines on California fruits and vegetables. Said quarantines impose a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantines adopted by the USDA or the CDFA. First, the said quarantines apply to the entire State of California, not just the areas or counties where fertile Medflies or Medfly larvae have been found. Second, said quarantines impose a certification requirement upon fruits and vegetables grown in Medfly-free

counties outside the counties quarantined by the USDA. Under said certification requirements, shipments of California fruits and vegetables from Medfly-free counties may not enter or be transported through the States of Texas or Florida unless accompanied by a certificate of origin issued by CDFA or the USDA. Such certificate must state that the county of origin is Medfly-free and may be issued only when Jackson or Steiner Medfly traps have been placed throughout the county of origin at a density of five traps per square mile and baited with Tri-Med lure. Finally, in the alternative to such certification, said quarantines require that California fruits and vegetables grown outside the areas quarantined by the USDA must be fumigated and/or placed into cold storage.

24. In addition, the Texas quarantine requires the Jackson or Steiner

traps to have been operated, inspected and maintained for 30 days prior to the issuance of the certificate of origin.

25. The Texas Legislature recently adopted legislation authorizing the Texas agricultural commissioner, in his discretion, to impose any fumigation requirements on fruits and vegetables originating in California that might serve as host crops for the Medfly.

26. By imposing the above-described requirements, the Texas and Florida quarantines impose a de facto embargo on all California fruits and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a density of five traps per square mile in urban and host crop areas outside the area covered by the federal quarantine, but not in all parts of the counties of

origin. Because of the migratory patterns of the Medfly, the current trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presently possess sufficient Jackson or Steiner traps to comply with the trap density requirements imposed by the Texas and Florida quarantines. Said quarantines would require the placement of more than 800,000 traps in areas that are far from the closest Medfly or larval find, at a cost of more than \$100 million. The effect of the Texas and Florida quarantines is to embargo California fruits and vegetables that would otherwise be shipped into or through Texas and Florida from Medfly-free counties.

THE ALABAMA AND
SOUTH CAROLINA QUARANTINES

27. On or about July 15, 1981, the States of Alabama and South Carolina

established quarantines on California fruits and vegetables that are similar to the quarantines established by the States of Texas and Florida. The quarantines adopted by Alabama and South Carolina imposed a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantines adopted by the USDA and the CDFA.

First, said quarantines applied to the entire State of California, not just the areas or counties where fertile Medflies or larvae were found. Second, said quarantines imposed a certification requirement upon fruits and vegetables grown in Medfly-free counties outside the counties quarantined by the USDA. Under said certification requirements, shipments of California fruits and vegetables from Medfly-free counties could not enter or be transported through the

States of Alabama and South Carolina unless accompanied by a certificate of origin issued by CDFA or the USDA. Such certificate was required to state that the county of origin is Medfly-free and could be issued only when Jackson or Steiner Medfly traps were placed throughout the county of origin at a density of five traps per square mile and baited with Tri-Med lure. Finally, in the alternative to such certification, said quarantines required that California fruits and vegetables grown outside the areas quarantined by the USDA must be fumigated and/or placed into cold storage.

28. On or about July 22, 1981, the quarantines adopted by Alabama and South Carolina were modified in such a way that they are now in conformity with, and parallel to, the quarantine adopted by the USDA. A substantial possibility

exists, however, that the States of Alabama and South Carolina may alter their quarantines in the future by imposing more stringent restrictions on the movement of California fruits and vegetables than the restrictions found in the USDA quarantine.

GEORGIA QUARANTINE PROGRAM

29. On or about August 18, 1981, the State of Georgia established a quarantine on California fruits and vegetables. Said quarantine applies to California fruits and vegetables grown anywhere in the counties of San Joaquin, Calaveras, Tuolumne, Mariposa and Merced in the State of California. Under said quarantine, fruits and vegetables originating in said counties may not enter Georgia unless accompanied by evidence of fumigation provided by a qualified representative of the USDA, or of the agricultural department of any state, or

by the appropriate agricultural official of the county in which such fumigation occurs. The Georgia quarantine imposes more stringent restrictions than those found in the USDA and CDFA quarantines, in that the Georgia quarantine applies to fruits and vegetables grown in all parts of said five counties.

30. The Georgia quarantine effectively imposes an embargo on fruits and vegetables grown in the five said counties outside the areas which are the subject of the USDA and CDFA quarantines. The State of California presently lacks sufficient facilities to fumigate all the fruits and vegetables grown anywhere in said five counties.

PREEMPTION

31. Under the Federal Plant Quarantine Act, 7 U.S.C. §§ 150-167, and the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj, the quarantine established

by the USDA preempts the quarantines established by Texas, Florida, Alabama, South Carolina and Georgia. Those quarantine programs are therefore invalid to the extent that they prohibit or restrict the movement in interstate commerce of fruits and vegetables grown outside the infested areas of California.

BURDEN ON INTERSTATE COMMERCE

32. The quarantine programs of Texas, Florida, Alabama, South Carolina and Georgia impose an unreasonable burden on interstate commerce, and thus are in violation of Article I, § 8, Clause 3 of the U.S. Constitution. The said quarantine programs unreasonably restrict the free flow of fruits and vegetables from California that originate in areas beyond the quarantine areas established by California and the United States. There is no evidence of any kind that fruits and vegetables

grown beyond the quarantine areas established by California and the United States have been infested, or are in danger of being infested, by the Medfly. Further, fruits and vegetables grown in areas quarantined by California and the United States comprise a relatively small portion of California's total production of fruits and vegetables. Therefore, the said state quarantines effectively restrict the movement in interstate commerce of a substantial amount of California's production of fruits and vegetables, even though said fruits and vegetables are grown beyond the infested area and even though the United States and California are currently restricting the movement of fruits and vegetables grown in the areas of infestation. The quarantines established by California and the United States are sufficient to prevent the spread of the Medfly, and thus

to protect the interests of the defendant states and other states which receive shipments of products from California. For these reasons, the quarantines established by the defendant states are unnecessary to protect legitimate health, welfare and safety concerns of those states.

33. The quarantine programs established by the defendant states also impose an unreasonable burden on interstate commerce in that they unnecessarily burden California's agricultural industry, which industry is a major factor in California's economy. Agriculture is the largest industry in the State of California, generating total cash receipts in 1979 of \$12.1 billion. Fruits and vegetables comprise a significant part of California's agricultural economy, generating total cash receipts in 1979 of \$5 billion. About 75-80% of

fruits and vegetables grown in California are exported in interstate or international commerce. Therefore, the defendants' quarantines result in a severe burden upon California's agricultural economy. For this reason, the defendants' quarantines have, and will continue to have, a significant adverse effect upon California's agricultural industry, and upon California's economy.

34. California does not have the capability of meeting the certification requirements imposed by defendants' quarantines. Further, the fumigation requirements imposed by defendants' quarantines will increase the time within which California fruits and vegetables can be placed in interstate commerce, thus shortening their shelf lives, and will also result in a needless destruction of large amounts of produce as a

result of chemical reaction or increased ripening. Defendants' quarantine programs will thus needlessly decrease the quantity and quality of California produce in interstate commerce, thereby imposing a burden upon California's agricultural industry as well as consumers desiring California's produce.

35. For the above reasons, there exists a justiciable case and controversy between the State of California and the defendant states.

PRAYER

WHEREFORE, the State of California prays for relief as follows:

(1) For an order granting the State of California leave to file its Complaint for Injunctive and Declaratory Relief herein;

(2) For a preliminary and permanent injunction restraining the States of Texas, Florida, Alabama, South Carolina

and Georgia, and their officials, agents and employees, from prohibiting or restricting the movement in interstate commerce, and into and through those states, of fruits and vegetables that are grown in California beyond the boundaries of the quarantine programs established by California and the United States to control the infestation of the Mediterranean fruit fly in certain areas of the State of California;

(3) For a declaratory judgment that the quarantine programs established by the States of Texas, Florida, Alabama, South Carolina and Georgia prohibiting and restricting the movement in interstate commerce of fruits and vegetables grown beyond the quarantine areas established by California and the United States, are in violation of the U. S. Constitution, Article I, Section 8,

Clause 3, in that they place an unreasonable burden on interstate commerce, and further that said quarantine programs are invalid in that they have been preempted by the congressional enactment of the Federal Plant Quarantine Act, 7 U.S.C. §§ 150-167; and the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj.

(4) For a temporary restraining order prohibiting the States of Texas, Florida, Alabama, South Carolina and Georgia, and their officials, agents and employees from preventing or restricting the movement in interstate commerce, and into and through those states, of fruits and vegetables that are grown in California outside the boundaries of the quarantine programs established by California and the United States, which temporary restraining order is to remain in effect until the Court acts on the

motion for preliminary injunction submitted by plaintiff State of California herein;

(5) For plaintiff's cost of suit herein; and

(6) For such other relief as may be proper.

Respectfully submitted,

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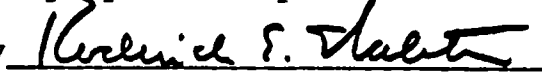
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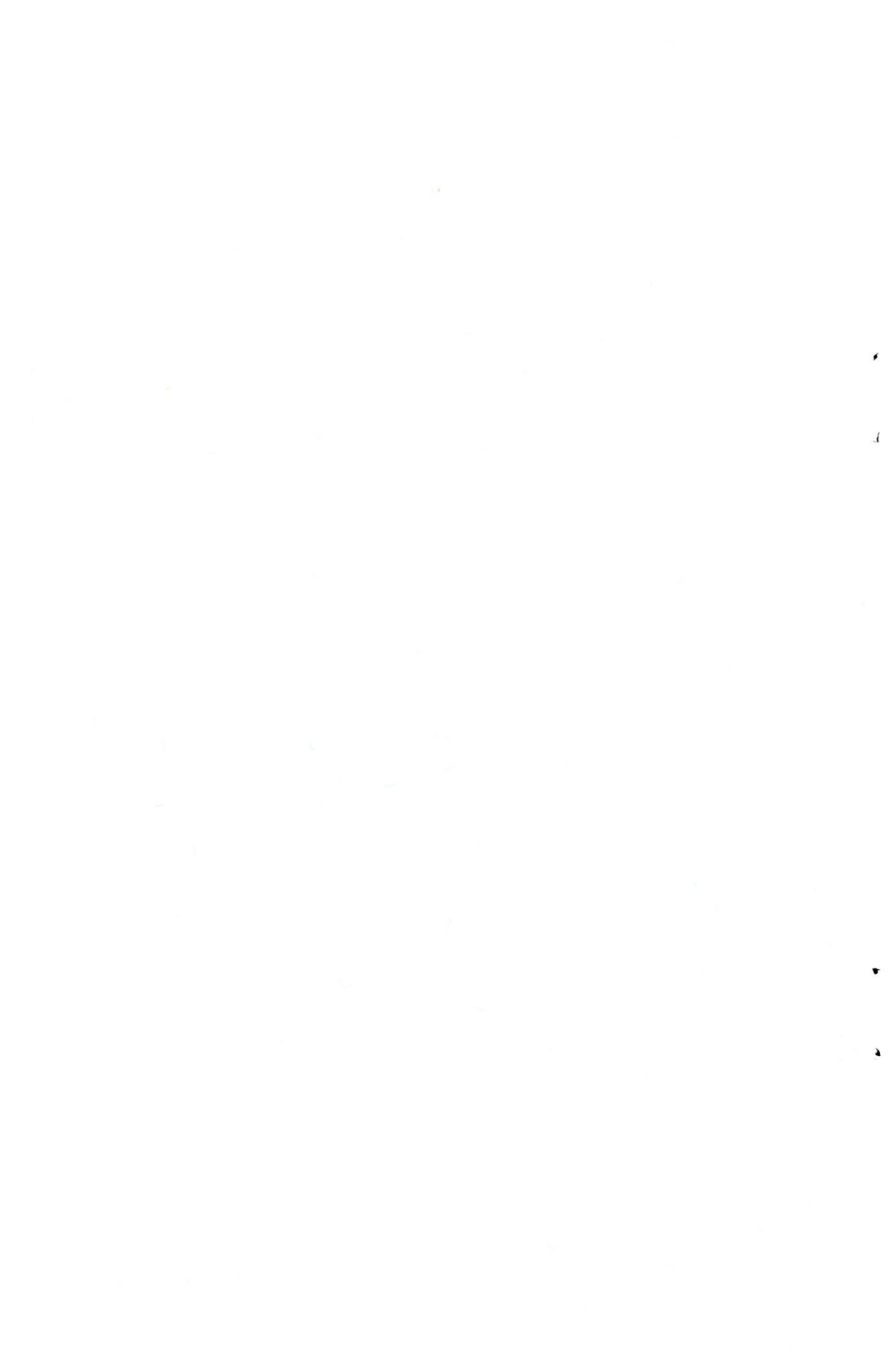


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UNITED STATES SUPREME COURT

STATE OF CALIFORNIA,)	
)	NO. 90, Original
Plaintiff,)	
	)	SECOND SUPPLE-
v.	)	MENTAL BRIEF IN
	)	SUPPORT OF
STATES OF TEXAS,	)	MOTION FOR
FLORIDA, ALABAMA,	)	LEAVE TO FILE
SOUTH CAROLINA, AND	)	BILL OF
GEORGIA,	)	COMPLAINT
Defendants.)	

Since the filing of our motion for leave to file bill of complaint, several events have transpired that provide an additional basis for the Court to grant our motion, and to issue the interim relief requested therein. These events

give added urgency to the need for this Court to review the case and to protect California's interests from the quarantines--actual and threatened--imposed by several of her sister states.

I. THE COURT SHOULD GRANT THE MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

During a five-day period commencing on or about August 13, 1981, approximately 61 fertile Medflies were found in an isolated location near the town of Westley, which is in Stanislaus County in California. See First Supplemental Declaration of Jerry Scribner, Ex. T, at 3-4. This area is in the northern part of California's San Joaquin Valley, where most of California's fruits and vegetables are grown. The USDA and the State of California have thereupon expanded their quarantines to encompass an area of 264 square miles in Stanislaus

County. Id. at 4.^{1/} This quarantine area includes the area where the Medflies were found, and also a larger surrounding buffer zone. See First Supplemental Declaration of Howard Ingham, Ex. U, at 2. The State has also expanded its aerial spraying program to include this new quarantine area. See First Supplemental Declaration of Jerry Scribner, Ex. T, at 4.^{2/}

After the discovery of the Medflies in Stanislaus County, the State of

1. The USDA and California have previously quarantined fruits and vegetables grown in three counties of the Santa Clara Valley where the infestation originated and is largely confined: the Counties of Santa Clara, Alameda, and San Mateo.

2. Also, a single wild fly was found in a remote location in Santa Cruz County, which lies south of the Santa Clara Valley where the infestation originated. The USDA and the State have also expanded their quarantines to include this area as well, and the State is now aerially spraying this area.

Georgia adopted a quarantine that restricts the movement in Georgia of fruits and vegetables grown in California. See Declaration of Roderick Walston, Ex. S, at 1. The quarantine applies to fruits and vegetables grown in any part of five counties in the northern part of the San Joaquin Valley: the counties of San Joaquin, Calaveras, Tuolumne, Mariposa and Merced. Id. The quarantine prohibits the entry into Georgia of fruits and vegetables grown in these counties unless such products are accompanied by evidence of fumigation provided by authorized federal, state or county officials. Id. at 2. The quarantine became effective on August 18, 1981, at 12:01 p.m. Id. The Georgia quarantine--which applies to all parts of five counties--thus covers a substantially larger area than the quarantines adopted by the USDA and California, which

apply only to a part of one such county. The Georgia quarantine thus imposes more stringent restrictions than the quarantines adopted by the United States and California, and is in effect at this time.

As the Court knows, the federal district courts of Texas and Florida have issued temporary restraining orders preventing enforcement of the quarantines adopted by the States of Texas and Florida, respectively. Cal.Rep.Br. 2 n.2. Subsequent to the action of the Texas district court, the Texas Legislature adopted legislation authorizing the Texas agricultural commissioner to quarantine fruits and vegetables grown anywhere in California, if in his judgment such a quarantine is necessary to protect Texas' interests. See Declaration of Roderick Walston, Ex. S, at 2. Also, after the recent discovery

of Medflies in Stanislaus County, the State of Texas filed a cross-complaint in the district court action, naming the USDA as a cross-defendant and requesting that said cross-defendant be required to expand the scope of its quarantine to cover the entire State of California.

Id. Texas has filed an application for temporary restraining order on this question, which is scheduled for hearing on August 22, 1981, at 9:00 a.m.

California takes the view that California is an indispensable party in such an action against the USDA, and that--since this Court has exclusive jurisdiction of any such action in which California is an indispensable party--the district court lacks jurisdiction to hear the cross-complaint.

With respect to Florida, a total number of five Medflies were recently found in two adjacent locations in

Florida. See First Supplemental Declaration of Jerry Scribner, Ex. T, at 6.

It is not known whether these flies originated in California, or instead were brought into Florida by ships or other means of commerce from foreign countries.

Id. In any event, the State of Florida filed a motion in the district court action requesting the court--on the basis of the discovery of the Medflies in Florida--to vacate its earlier injunction restraining Florida from enforcing its quarantine. See Declaration of Roderick Walston, Ex. S, at 3. The district court, after hearing, refused to vacate the order. Id.

On the basis of the foregoing, we believe that a strong basis exists for the Court to exercise its original jurisdiction in this case, and to review the validity of the ordinances adopted by the various states. First, Georgia

has imposed, and is presently enforcing, a quarantine that restricts the movement of California-grown fruits and vegetables in Georgia. Unlike the quarantines adopted by the other states, Georgia's quarantine is presently in effect, and has not been restrained by a district court or otherwise withdrawn or modified by Georgia. Further, unlike the situations in the other states, no private action is currently pending in Georgia that seeks to restrain the enforcement of the Georgia quarantine, nor do we anticipate that such an action will be filed. Therefore, it appears proper for the Court to exercise its original jurisdiction solely on the basis of the Georgia quarantine.

Second, this dispute involves not only California and Georgia, but several other states as well. The States of

Texas and Florida have adopted quarantines that--but for the intervention of the district courts of those two states--would limit the movement of California products in those states. The States of Alabama and South Carolina adopted quarantines that were withdrawn only after we filed this action under the Court's original jurisdiction. Thus, several other states apparently believe that their interests are served by the adoption of quarantines that restrict the movement of California products in interstate commerce. This continuing controversy is thus assuming increasingly national proportions that make it suitable for disposition by this Court, which has historically acted as the arbiter of national disputes involving several states.

II. THE COURT SHOULD GRANT THE APPLICATION AND MOTION FOR INTERIM RELIEF AS AGAINST THE STATE OF GEORGIA.

As noted above, the State of Georgia is the only state which, at this time, is currently applying and enforcing its quarantine against California. As we now explain, this quarantine is not necessary to protect legitimate safety and economic concerns of Georgia, and further has a substantial, adverse effect on the California agricultural industry. This industry is a mainstay of the California economy. Therefore, the balance of irreparable harm tips heavily in favor of California. The Court should thus grant the interim relief sought by California.

The original declaration of Jerry Scribner, the head of California's Medfly project, describes the steps taken by California to quarantine and eradicate

the Medfly infestation. See Declaration of Jerry Scribner, Ex. B. These steps include fruit stripping of host crops from the infested area, ground treatment of said areas with certain pesticides, release of millions of sterile fruit flies, and aerial spraying of Malathion. Id. Inspection activities have also been undertaken at various terminal facilities, such as airports, post offices, United Parcel Service offices, canneries, fruit-strands, retail and grower outlets, nurseries, bus depots, rail terminals, and so forth. Id. at 2. The terminals have been daily monitored by federal, state and county officials. Id. at 3. Also, as noted above, the USDA and the State of California have adopted quarantines that apply to all parts of Santa Clara, Alameda and San Mateo counties,

which comprise an area of approximately 2200 square miles. Id. at 3. The quarantines have been recently extended to encompass 264 square miles in and around the location where wild flies were recently found in Stanislaus County. See First Supplemental Declaration of Jerry Scribner, Ex. T, at 3-4.

Further, the State, in cooperation with the USDA, has established an intensive trapping program to detect any possible migration of Medflies outside the quarantine areas. See First Supplemental Declaration of Howard Ingham, Ex. U at 4. As many as 100 traps per square mile have been placed in the infested area, and a minimum of 5 traps per square mile have been established in all urban and host fruit flies. Id. A minimum of one trap per square mile has been established in all parts of the State. Id.

In recent weeks, a small number of new infestations have been found in and around the original infested area. See First Supplemental Declaration of Jerry Scribner, Ex. T at 3-4. Most such infestations were within the three-county quarantine area, but two infestations were beyond. Id. One consisted of a single wild fly find in Santa Cruz County. Id. The other consisted of 61 wild fly finds near the town of Westley in Stanislaus County, which lies in the northern part of California's San Joaquin Valley. Id. Both the USDA and the CDFA have responded quickly to the discoveries. They imposed new quarantines around the infested areas and increased the trapping density in each such area. Id. Additionally, aerially spraying of Malathion has been quickly undertaken in both areas. Id. Ground

treatment has been undertaken where feasible. Id. The USDA and the CDFA have thus responded quickly and effectively to each new development in this continuing crisis.

For example, when the new infestation was discovered near the town of Westley in Stanislaus County, a team of federal and state experts promptly set new traps in the area, examined the area, and imposed a quarantine of 264 square miles around the area. See First Supplemental Declaration of Howard Ingham, Ex. U, at 2. This quarantine area includes not only the infested area, but also a larger surrounding buffer zone. Id. Under the quarantine, all host crops must be treated before they can be shipped outside the quarantine area. Id. at 3. Further, aerial spraying of Malathion was undertaken

within 14 hours of the discovery. See First Supplemental Declaration of Jerry Scribner, Ex. T, at 4. Also, the Governor of California amended his emergency order to include those portions of Stanislaus and Santa Cruz Counties where the infestation was discovered or is suspected. Id. at 6.

Additionally, California has increased its road blocks to prevent persons within the quarantine area from taking host fruit outside the area. Id. at 9-10. Fixed road blocks have been established at major highways leading into the rich agricultural areas of California's San Joaquin Valley. Id. To date, the road blocks have stopped approximately 2.2 million vehicles, and have resulted in the confiscation of more than 50,000 tons of fruits and vegetables. Id. at 4. The fixed road

blocks have been augmented by "roving road blocks," under which California policemen patrol back roads and side roads to ensure that motorists do not evade the fixed road block locations. Id. Significantly, the only other state which presently has a Medfly infestation--Florida--has not established road blocks to prevent spread of the infestation. Id. at 6.

It is also significant that Florida, upon discovering its Medfly infestation, responded to the crisis in the same manner as California. That is, Florida--rather than quarantining the entire State of Florida--quarantined only the part of the state where the infestation was discovered, and commenced the aerial spraying of malathion. Id.

Florida, like California, thus tailored its response to the biological area of

the infestation rather than its man-drawn political boundaries.

It is thus clear that the USDA and the State of California have responded promptly, and properly, to the discovery of new Medflies in California. In the view of both entities, existing eradication and quarantine measures are adequate to resolve the crisis. In the view of both, the infestation is not out of control. Most other states have apparently concluded that the USDA quarantine is adequate to protect the agricultural economies of the various states, and have not adopted more stringent quarantines than that adopted by the USDA. The State of Georgia--as well as the States of Texas and Florida--are thus out of step with the rest of the nation in seeking to apply more stringent quarantines. In our judgment, they have reacted excessively to an

agricultural crisis that, although giving rise to legitimate concern, is capable of resolution by existing techniques.

On the other hand, if Georgia--or Texas and Florida--are allowed to impose their quarantines, the plaintiff State of California will suffer substantial and irreparable injury. California's agricultural industry is the largest industry in the State, and the largest such industry in the nation. See Declaration of Richard Rominger, Ex. A, at 2. This industry generated approximately \$12.1 billion in revenue in 1979. *Id.* The fruit and vegetable industry alone generated revenues of approximately \$4.5 billion that year. *Id.* Further, California's shipments of fruits and vegetables to Georgia are substantial. Indeed, California does not have sufficient fumigation facilities to treat

all crops that are required to be fumigated under the Georgia quarantine, and thus would be unable to ship a substantial portion of its crops in interstate commerce if the Georgia quarantine is enforced. See First Supplemental Declaration of Howard R. Ingham, Ex. U at 5-6. Certain such crops--such as nectarines--are not even suitable for fumigation in any event. *Id.*

For the foregoing reasons, the balance of irreparable harm weighs heavily in favor of California. Therefore, the Court should grant a temporary restraining order against enforcement of the Georgia quarantine.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court grant our motion for leave to file bill of complaint, and grant our application for temporary restraining order against the Georgia quarantine.

In our view, the Court, after granting our motion for leave to file bill of complaint, should proceed to resolve the preemption issue as expeditiously as possible. As we noted earlier, the preemption issue is ripe for expeditious disposition by this Court, because--unlike the interstate commerce issue--it raises a pure question of law unaffected by the changing facts of this controversy. Cal.Rep.Br.10-11. The Court could reach the preemption issue either by allowing California to file a motion for summary judgment on the issue,

or by simply requesting that the parties file briefs on this issue. Either way, the Court should set an expedited briefing schedule, and should schedule the matter for oral argument as soon as possible. Only in this way can the various states in this controversy properly understand their legal rights and obligations, and thus know how to conduct themselves during this unprecedented agricultural crisis.

Respectfully submitted,

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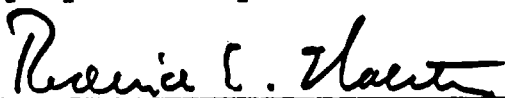
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