

STOREY & MILLER
COURT REPORTERS
601 W. RIVERSIDE
SUITE 1030
SPOKANE, WA 99201

ORIGINAL

1 Steve W. Berman, WSBA No. 12536
2 Andrew M. Volk, WSBA No. 27639
3 HAGENS BERMAN LLP
4 1301 Fifth Avenue, Suite 2900
5 Seattle, WA 98101
6 (206) 623-7292

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JAMES H. DANSEN, CLERK
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7 Howard W. Foster
8 JOHNSON & BELL, LTD.
9 222 N. LaSalle Street, Suite 2200
10 Chicago, IL 60601
11 (312) 372-0770

12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON

15 OLIVIA MENDOZA and JUANA
16 MENDIOLA, individually and on behalf
17 of all others similarly situated,

CY-00-3024-AAM

18 Plaintiffs,

19 v.

20 ZIRKLE FRUIT CO., a Washington
21 corporation, MATSON FRUIT
22 COMPANY, a Washington corporation,
23 and SELECTIVE EMPLOYMENT
24 AGENCY, INC., a Washington
25 corporation,

CLASS ACTION COMPLAINT FOR
VIOLATION OF RACKETEER
INFLUENCED AND CORRUPT
ORGANIZATION ACT AND
PENDENT STATE LAW CLAIM

26 Defendants.

I. NATURE OF ACTION

1. This is a class action brought on behalf of all persons legally authorized to be employed in the United States ("U.S.") who have been hired by defendants Zirkle Fruit Co. (Zirkle), and Matson Fruit Company (Matson) as hourly wage earners

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1 and who were recruited or referred to Zirkle and Matson by Selective Employment
2 Agency.

3 2. Defendants Matson and Zirkle, corporations engaged in the business of
4 growing, warehousing, packing and selling apples and other types of produce, have
5 embarked on a scheme to employ workforces substantially comprised of
6 undocumented immigrants who have no legal right to be employed in the U.S.
7 (hereinafter the "Illegal Immigrant Hiring Scheme"). Defendants' scheme violates the
8 Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et*
9 *seq.*, and Washington state law.

10 3. Matson and Zirkle are conducting the Illegal Immigrant Hiring Scheme
11 for the purpose of depressing employee wages below the levels they would otherwise
12 be required to pay if they were unable to hire substantial numbers of illegal
13 immigrants who, due to their economic situation and fear of asserting their rights due
14 to their illegal status, can be easily exploited and who are therefore willing to work for
15 depressed wages.

16 4. The Illegal Immigrant Hiring Scheme is perpetrated by defendants
17 Matson and Zirkle through their participation in association-in-fact enterprises,
18 comprised of each defendant and Selective Employment Agency (hereafter
19 "Selective"), a corporation organized under the laws of the State of Washington and
20 conducting business, employee recruiting and placement in Washington. Defendants
21 Matson and Zirkle use Selective as a "front company" for the purpose of perpetrating
22 this scheme and with the hope that each will be thus shielded from charges that they
23 violated federal law.

24 5. The Illegal Immigrant Hiring Scheme has resulted in the depression or
25 lowering of wages paid to hundreds, perhaps thousands, of persons who are legally
26 authorized to work in the U.S.

1 6. Defendants' scheme involving the knowing employment of illegal
2 immigrants in violation of § 274 of the Immigration and Nationality Act is ongoing,
3 threatening to continue, victimizing more persons every day, unless and until halted
4 by judicial intervention.

5 **II. PARTIES, JURISDICTION AND VENUE**

6 7. Plaintiffs Olivia Mendoza and Juana Mendiola are, and at all relevant
7 times have been, residents of the State of Washington and of this District and are all
8 lawfully entitled to be employed in the U.S. Each of the plaintiffs was employed by
9 defendant Zirkle as laborers.

10 8. Zirkle Fruit Company is a corporation organized under the laws of the
11 State of Washington with its principal place of businesses located in Selah,
12 Washington. Additionally, as detailed below, it has committed a pattern of
13 racketeering activity in this District and it operates its business in this District.

14 9. Matson Fruit Company is a corporation organized under the laws of the
15 State of Washington with its principal place of business located in Selah,
16 Washington. Additionally, as detailed below, it has committed a pattern of
17 racketeering activity in this District and it operates its business in this District.

18 10. Defendant Selective Employment Agency is a corporation organized
19 under the laws of the State of Washington with its principal place of business located
20 in Yakima, Washington. Defendant Selective has an existence and structure separate
21 and apart from the RICO enterprise described herein, including but not limited to its
22 incorporation under the laws of Washington.

23 11. This Court has subject matter jurisdiction over Count I under the federal
24 question doctrine pursuant to 28 U.S.C. § 1331 and 18 U.S.C. §§ 1964(a). This Court
25 may exercise supplemental jurisdiction over Count II pursuant to 28 U.S.C.
26 § 1367(a).

1 g. Whether Matson and Zirkle have engaged in a civil conspiracy
2 with Selective.

3 16. Plaintiffs' claims are typical of those of the members of the Class
4 inasmuch as they are caused by the Illegal Immigrant Hiring Scheme. Plaintiffs seek
5 no relief that is antagonistic or adverse to other Class members.

6 17. Plaintiffs are committed to the vigorous prosecution of this action and
7 have retained counsel who are competent in the prosecution of class actions, RICO
8 and complex litigation. Accordingly, plaintiffs will fairly and adequately protect and
9 represent the interests of the Class.

10 18. Questions of law or fact that are common to the members of the Class are
11 substantially similar and predominate over any questions affecting only individual
12 Class members, and a class action is the only appropriate method for the fair and
13 efficient adjudication of this controversy for the following reasons, among others:

14 a. The individual amounts of damages involved, while not
15 insubstantial, are generally not large enough to justify individual actions;

16 b. The costs of individual actions would unreasonably consume the
17 amounts that would be recovered;

18 c. Individual actions would unduly burden the judicial system; and

19 d. Individual actions brought by Class members would create a risk
20 of inconsistent results and would be unnecessarily duplicative of this litigation.

21 19. Plaintiffs anticipate no difficulty in the management of this action
22 because the evidence proving the Illegal Immigrant Hiring Scheme is ascertainable
23 through discovery, the identities of the members of the Class are known to Matson
24 and Zirkle and damages can be calculated through expert testimony.

25
26

IV. STATEMENT OF OPERATIVE FACTS

A. The Illegal Immigrant Hiring Scheme

20. Eastern Washington is the heart of Washington's famed apple and fruit industry. This area, which is uniquely situated for growing fruit due to a combination of abundant sunshine and cheap irrigation, has over the years generated hundreds of millions of dollars in annual revenues and has produced fruit recognized for its quality throughout the United States and many foreign countries.

21. In Washington state there are more than 15,000 fruit packers and 30,000 orchard pickers of fruit. Many operations require unskilled, low-wage laborers for harvesting and packing and other related tasks requiring manual labor. While the industry now generates over \$1 billion, many of these workers live in poverty.

22. Defendants Matson and Zirkle operate fruit orchards and packing houses. Matson and Zirkle are motivated to and do keep labor costs as low as possible and, due to a variety of complex social and economic factors, the industry's demand for low-skilled workers has attracted many workers of Mexican citizenship. Many of these Mexican nationals are illegal immigrants who have been smuggled into the U.S. and/or are harbored in the U.S. by relatives, friends and employers. Matson and Zirkle, with the essential role played by Selective (as detailed below), knowingly hire workers of illegal status because the illegal workers are willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers. Thus, Matson and Zirkle have willfully engaged in the Illegal Immigrant Hiring Scheme by continually and knowingly hiring illegal immigrants.

23. This practice has been so flagrant that defendants and others in the industry have been targeted for raids and other law enforcement procedures by the U.S. Department of Justice, Immigration and Naturalization Service ("the INS"). One

1 such procedure was "Operation Snowbird," a crackdown on illegal immigrant hiring
2 by apple growers, including defendant Matson, culminating in orders issued by the
3 INS in early 1999 to terminate many illegal immigrant workers. Prior to this
4 crackdown, Zirkle had been the subject of a previous investigation by the INS.

5 24. As a result of or during the course of Operation Snowbird, the INS
6 completed audits of the I-9 forms and other personnel records maintained by Matson.
7 The INS concluded that Matson had employed hundreds of illegal immigrants in
8 knowing or reckless disregard of their illegal status during the previous several years,
9 and that the practice was ongoing.

10 25. Plaintiffs are not aware of the precise number of illegal immigrants who
11 are or have been employed by Matson and Zirkle, because such information is in their
12 possession, but up on information and belief, plaintiffs allege, that the number
13 employed by each was in excess of 50, and as much as fifteen times that number.

14 26. The use of illegal aliens represents a pattern of unlawful conduct that has
15 occurred over a number of years and which is continuing.

16 27. For example, the INS determined that in 1998 defendant Matson had 661
17 employees working in its orchard and warehouse, and that 493 of them (74%) had
18 been hired with false/fraudulent documents supposedly establishing their right to be
19 employed. Thus, they were illegal immigrants and were hired by Matson as part of
20 the Illegal Immigrant Hiring Scheme.

21 28. Plaintiffs believe, and thereon allege, that many of these 493 illegal
22 immigrants were hired by Matson in violation of § 274(a)(3) the Immigration and
23 Nationality Act, which provides that:

24 Any person who, during any 12-month period, knowingly
25 hires for employment at least 10 individuals with actual
26 knowledge that the individuals are aliens... shall be fined
under Title 18, or imprisoned for not more than 5 years, or
both.

1 8 U.S.C. § 1324(a)(1)(B)(3)(A).

2 29. Specifically, Matson hired certain of the 493 employees with actual
3 knowledge that each person was an illegal immigrant (alien) who was not eligible to
4 be employed in the U.S., and Matson also knew that each person was either smuggled
5 into the U.S. and/or harbored once he or she was in the U.S. Further, Matson hired at
6 least 50 of these 493 people in 1998, and at least 50 in 1997 and 1996. Further,
7 plaintiffs believe, and thereon allege, that Matson has continued the Illegal Immigrant
8 Scheme in 1999 (by hiring at least 50 more), and through the present. Plaintiffs are
9 informed and believe, and thereon allege, that during the last three years Matson
10 maintained a work force comprised of approximately 50% illegal immigrants. The
11 INS has made similar findings of violations of the Act committed by Zirkle.

12 30. It is also well known in the industry by growers and packers which of
13 those persons in the workforce are illegal aliens. There is a conspiracy of silence, but
14 the fact is that Matson and Zirkle have been raided by the INS. When the INS arrives
15 to inspect, workers often disappear, putting Matson and Zirkle on notice of their
16 illegal workforce. Matson is alleged to maintain two sets of employment documents:
17 one set for the INS that carefully excludes known illegal workers, and another set that
18 includes them.

19 31. In many instances, Matson and Zirkle have rehired certain illegal
20 immigrants, even after being informed by the INS that they are ineligible for
21 employment, under different names and with different social security numbers, which
22 defendants know are fraudulent.

23 32. Plaintiffs allege that defendant Zirkle has employed at least 50 illegal
24 immigrants, with actual knowledge that each one was illegal and ineligible for
25 employment, and with knowledge that each one was either smuggled into the U.S. or
26 harbored once in the U.S.

1 **B. The I-9 Mail Fraud Scheme**

2 33. Matson and Zirkle have engaged in another scheme in violation of RICO
3 – “The I-9 Mail Fraud Scheme” – simultaneously with the Illegal Immigrant Hiring
4 Scheme, in order to effectuate the Illegal Immigrant Hiring Scheme.

5 34. The I-9 Mail Fraud Scheme works as follows: Whenever Matson and
6 Zirkle employ an illegal immigrant, they complete (or, in the alternative, they direct
7 Selective to complete, and Selective agrees to so complete, and to cause to be
8 deposited in the U.S. mail), an I-9 form (otherwise known as an “Employment
9 Eligibility Verification Form”) that is sent to the INS. Matson did this and/or directed
10 Selective to do so for each of the above-referenced 493 illegal immigrants.

11 35. The I-9 form requires the employer to certify, under penalty of perjury,
12 the following: “I have examined the document(s) presented by the above-named
13 employee, that the above-listed document(s) appear to be genuine and to relate to the
14 employee named ... and that to the best of my knowledge the employee is eligible to
15 work in the U.S.” Matson and/or Selective signed many of the 493 I-9 forms with
16 actual knowledge that the person being employed was ineligible for employment, thus
17 violating the “preparer certification.”

18 36. Matson and Selective hoped that the INS would accept the data
19 represented on each I-9 form, would not investigate the false/non-existent Social
20 Security numbers and/or other indices of work eligibility, and take no action against
21 them or the illegal immigrants for their violations of the Immigration and Nationality
22 Act. Thus, the Illegal Immigrant Hiring Scheme would be effectuated.

23 37. Each and every mailing of an I-9 form to the INS for the purpose of
24 facilitating the hiring of an illegal immigrant violates the mail fraud statute, 18 U.S.C.
25 § 1341.
26

1 38. Matson has perpetrated, and is continuing to perpetrate, a long-term mail
2 fraud scheme against the INS simultaneously with the Illegal Immigrant Hiring
3 Scheme that is perpetrated against the Class. Discovery will enable plaintiffs to
4 obtain the dates of the mailings of the false I-9 forms and the names of the Matson
5 agents/officers who caused them to be mailed. Plaintiffs do not, and cannot, have
6 access to these facts without discovery.

7 39. Defendant Zirkle is similarly engaged in the I-9 Mail Fraud Scheme for
8 the same purpose and in the same manner as described above. It has perpetrated this
9 scheme in the same relationship with Selective, as described below.

10 **C. The Enterprises**

11 40. Matson and Zirkle have each entered into contractual agreements with
12 Selective, a separate legal entity under separate ownership. Such agreements provide
13 for close cooperation between and among the two businesses for the employment of
14 hourly wage workers, a joint venture. The agreements establish a complex legal
15 relationship between Matson/Zirkle and Selective by which Matson/Zirkle have
16 directed Selective to employ workers and then "loan" them to Matson/Zirkle, who
17 determine when to terminate the employment of each worker, and so direct Selective,
18 which follows these directives. Accordingly, while the workers take direction from
19 Matson/Zirkle's foremen and managers, they are paid by Selective. Selective has also
20 assumed the responsibility for withholding taxes from the workers' wages and
21 remitting this money to the U.S. Government. In exchange for these responsibilities,
22 Matson/Zirkle reimburse Selective for the workers' wages and pay fees to Selective
23 for its role in the joint venture.

24 41. Matson and Zirkle have entered into these joint ventures for the primary
25 purpose of shifting certain aspects of the Illegal Immigrant Hiring Scheme from
26 themselves to an outside firm. They believe that this arrangement will conceal the

1 Illegal Immigrant Hiring Scheme, making detection by the INS more difficult, and, if
2 detected, enable defendants to shift blame onto Selective.

3 42. In actuality, defendants Matson/Zirkle conduct the scheme by directing
4 Selective to carry out certain aspects of it. Matson and Zirkle have reversed
5 Selective's usual manner of conducting business, which is to reject candidates for
6 employment when they offer suspect forms of work authorization documents. After
7 Matson and Zirkle have gained considerable influence with Selective, and induced it
8 to execute the Illegal Immigrant Hiring Scheme through the joint venture agreements,
9 it welcomes (and, in fact, accepts) individuals who are illegal immigrants and
10 ineligible for employment. Selective has been thoroughly corrupted into acting as a
11 tool of Matson and Zirkle to enable them to commit more immigration crimes, and to
12 do so more surreptitiously than they could otherwise commit.

13 43. Plaintiffs believe, and thereon allege, that, in carrying out the joint
14 venture with Selective, Matson and Zirkle have regular meetings with Selective
15 officers and managers to allocate proceeds from the Illegal Immigrant Hiring Scheme,
16 direct Selective as to the numbers of illegal immigrants needed and, as the needs
17 change from week to week, reject certain candidates for hiring who are known to be
18 legal aliens or U.S. citizens and keep abreast of all INS law enforcement activity in
19 the area in order to elude detection.

20 44. Accordingly, Matson and Zirkle and Selective have regularized their
21 relationships through months and months of ongoing cooperation and heavy-handed
22 intervention by Matson and Zirkle in Selective's conduct.

23 45. Thus, Matson Selective and Zirkle Selective each constitute association-
24 in-fact enterprises, affecting interstate commerce, under 18 U.S.C. § 1961(4).
25
26

1 **D. The Plaintiffs Are Victims of the Illegal Immigrant Hiring Scheme**

2 46. Plaintiffs, all of whom are legally authorized to be employed, have all
3 been employed by Zirkle Fruit Co. During 1999 at wages that are substantially
4 depressed because of the Illegal Immigrant Hiring Scheme.

5 47. Plaintiffs' wages are below the wage rate at which a labor market
6 comprised of workers legally entitled to work – namely, one without the operation of
7 the Illegal Immigrant Hiring Scheme, would be set.

8 **V. THE RICO VIOLATIONS**

9 48. Section 1961(1)(F) of RICO provides in relevant part that racketeering
10 activity includes “any act which is indictable under the Immigration and Nationality
11 Act, § 274... 277... or 278... if the act... was committed for the purpose of financial
12 gain.” Section 274 of the Immigration and Nationality Act, as detailed above,
13 codified at 8 U.S.C. § 1324(a)(3)(A), makes illegal the knowing employment of 10 or
14 more individuals during any 12-month period.

15 49. Section 1961(1)(B) of RICO further provides that mail fraud, 18 U.S.C.
16 § 1341, constitutes racketeering activity.

17 50. As set forth above, defendants Matson and Zirkle have each committed
18 the predicate RICO violations over a sustained period.

19 **COUNT I**

20 **FOR VIOLATIONS OF RICO**
21 **(18 U.S.C. § 1962(c))**

22 51. Plaintiffs incorporate the preceding allegations as if fully set forth above.

23 52. This claim is asserted against Matson and Zirkle. Both are “persons,” as
24 defined in 18 U.S.C. § 1961(3).

25 53. As stated above, Zirkle Selective and Matson Selective each constitute
26 an association-in-fact enterprise under 18 U.S.C. § 1961(4).

1 54. Defendants' violations of the Immigration and Nationality Act and the
2 federal mail fraud statute, as detailed in this Complaint, constitute a "pattern of
3 racketeering activity" under 18 U.S.C. § 1961(5).

4 55. Matson and Zirkle have been and are presently violating 18 U.S.C.
5 § 1962(c) of RICO, which provides that it "shall be unlawful for any person ...
6 associated with any enterprise ... to conduct or participate, directly or indirectly, in
7 the conduct of such enterprise's affairs ... through a pattern of racketeering activity."

8 56. Plaintiffs and members of the Class have been damaged by reason of
9 defendants' RICO violations because they have been employed by Matson and Zirkle
10 at wages which were depressed as a direct result of the Illegal Immigrant Hiring
11 Scheme. Plaintiffs and members of the Class were the intended and direct victims of
12 defendants' RICO scheme and their injury, working at depressed wages, was both
13 intended and foreseeable. As a direct result of this scheme defendants were able to
14 profit.

15 **COUNT II** 16 **CIVIL CONSPIRACY**

17 57. Plaintiffs reallege and incorporate herein the foregoing allegations of this
18 Complaint.

19 58. This claim is asserted against all defendants.

20 59. Matson and Zirkle have entered into a conspiracy with Selective (the
21 joint venture agreements) to violate the Immigration and Nationality Act.

22 60. These conspiracies are a substantial factor in the depression of the wages
23 of plaintiffs and the Class.

24 61. Defendants' conspiracies to violate the Immigration and Nationality Act
25 also violate Washington common law.
26

1 62. As a direct, foreseeable, intended and proximate cause of these
2 conspiracies, plaintiffs and the class will continue to suffer substantial injuries and
3 damages.

4 **VI. PRAYER FOR RELIEF**

5 63. Plaintiffs demand judgment and other relief, as follows:

6 64. Certification of the Class pursuant to Fed. R. Civ. P. 23(b)(3);

7 65. Judgment in an amount equal to three times the damage caused to the
8 putative class by the defendants' racketeering activity/the Illegal Immigrant Hiring
9 Scheme, pursuant to Count I and 18 U.S.C. § 1964(c);

10 66. For preliminary and permanent injunctions enjoining Matson and Zirkle
11 from any further racketeering activity or any further association with Selective
12 Employment Agency, pursuant to 18 U.S.C. § 1964;

13 67. Judgment in an amount equal to the damage caused to the putative class
14 by the conspiracy to violate the Immigration and Nationality Act/the Illegal
15 Immigrant Hiring Scheme, pursuant to Count II;

16 68. For appropriate attorney's fees, pursuant to 18 U.S.C. § 1964;

17 ///

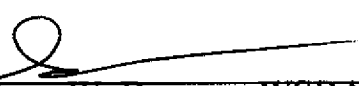
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69. For the costs of this action;
70. For any other relief the Court deems just and proper.
DATED: March 27, 2000.

HAGENS BERMAN LLP

By 
Steve W. Berman, WSBA #12536
Andrew M. Volk, WSBA #27639
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
(206) 623-7292

Howard W. Foster
JOHNSON & BELL, LTD.
222 N. LaSalle Street, Suite 2200
Chicago, IL 60601
(312) 372-0770

Attorneys for Plaintiffs