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FILED IN THE  
U.S. DISTRICT COURT  
Eastern District of Washington

FEB 18 2003

JAMES R. LARSEN, CLERK  
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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON  
10 AT YAKIMA

10 OLIVIA MENDOZA and JUANA )  
11 MENDIOLA, individually and on behalf ) NO. CY-00-3024-FVS  
12 of all others similarly situated, )  
13 Plaintiffs, ) DEFENDANT ZIRKLE FRUIT  
14 vs. ) COMPANY'S AMENDED  
15 ) ANSWER TO PLAINTIFFS'  
16 ZIRKLE FRUIT CO., a Washington ) FIRST AMENDED COMPLAINT  
17 corporation and MATSON FRUIT )  
18 COMPANY, a Washington corporation, )  
19 and SELECTIVE EMPLOYMENT )  
20 AGENCY, INC., a Washington )  
corporation, )  
Defendants. )  
\_\_\_\_\_ )

21 COMES NOW the Defendant Zirkle Fruit Company, a Washington corporation  
22 (hereinafter "Defendant"), and in answer to Plaintiffs' First Amended Class Action Complaint  
23 for Violation of Racketeer Influenced and Corrupt Organization Acts and Pendent State Law  
24 Claim, alleges and states as follows:  
25

26 1. Defendant denies the allegations of Paragraph 1, and specifically denies that this  
27 is a proper class-action lawsuit.  
28

DEFENDANT ZIRKLE AMENDED ANSWER TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT - 1

ORIGINAL

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1           2.     Defendant admits it is a corporation engaged in the business of growing, ware-  
2 housing, packing and selling apples and other types of products, but denies the remainder of the  
3 allegations of Paragraph 2.

4           3.     Defendant denies the allegations contained in Paragraphs 3-7.

5           4.     Defendant admits the allegations of Paragraph 8 insofar as it alleges that  
6 Plaintiffs Olivia Mendoza and Juana Mendiola were lawfully entitled to be employed in the  
7 United States at the time they were employed by Defendant; Defendant is without knowledge  
8 or information sufficient to form a belief as to the remainder of the allegations contained in  
9 Plaintiffs' Complaint and/or they are denied.  
10

11           5.     Defendant admits the allegations of Paragraph 9 insofar as it is a corporation  
12 organized under the laws of the State of Washington with its principal place of business located  
13 in Selah, Washington. Defendant denies the remainder of the allegations contained in Paragraph  
14 9.  
15

16           6.     Defendant is without knowledge or information sufficient to form a belief as to  
17 the truth of the allegations contained in Paragraphs 10-13 of Plaintiffs' Complaint, and/or they  
18 are denied.  
19

20           7.     Defendant denies the allegations contained in Paragraphs 14-20.

21           8.     Defendant is without knowledge or information sufficient to form a belief as to  
22 the truth of the allegations contained in Paragraphs 21-22 of Plaintiffs' Complaint, and/or they  
23 are denied.  
24

25           9.     Defendant admits the allegations of Paragraph 23 insofar as it alleges Defendants  
26 Zirkle and Matson operate fruit orchards and packing houses. Defendant denies the remainder  
27 of the allegations contained in Paragraph 23.  
28

1           10. Defendant denies the allegations contained in Paragraphs 24-34.

2           11. Defendant admits it entered into an agreement with an entity known as Selective  
3 Employment Agency (hereinafter "Selective") and that Selective was to furnish, among other  
4 things, properly documented, legal workers. Defendant is without knowledge or information  
5 sufficient to form a belief as to the truth of the remainder of the allegations contained in  
6 Paragraph 35, and/or they are denied.  
7

8           12. Defendant denies the allegations contained in Paragraphs 36-72.

9           13. As a further affirmative defense, Defendant alleges that Plaintiffs' claimed  
10 injuries and damages were caused in whole or in part by Plaintiffs' contributory fault/negligence,  
11 waiver, consent, payment, failure to mitigate, and/or assumption of the risk (and any other  
12 defense to the extent Plaintiffs knew or should have known about the presence of any illegal  
13 workers and failed to take steps to protect their interests or otherwise acquiesced in the  
14 continued presence of any illegal workers) and statute of limitations (to the extent any claim is  
15 being made for damages accrued outside the applicable statute of limitations).  
16

17           14. That the complaint fails to state a claim upon which relief can be granted as there  
18 is no private right of action for violation of the Immigration and Nationality Act or for injunctive  
19 relief under RICO.  
20

21           15. That the complaint has been filed in violation of FRCP 11 as the factual  
22 allegations concerning illegal activities are without any evidentiary support and are not likely  
23 to have evidentiary support after a reasonable opportunity for further investigation or discovery.  
24

25           **WHEREFORE**, having answered Plaintiffs' Complaint, Defendant prays for relief as  
26 follows:

27           1. For dismissal of Plaintiffs' Complaint with prejudice;  
28

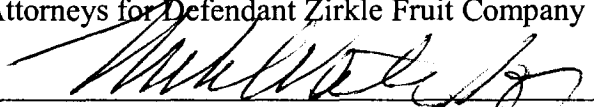
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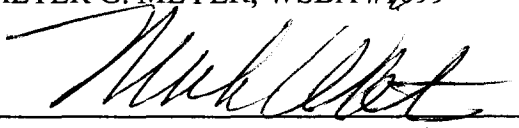
2. For an award of Defendant's costs, expenses and attorney's fees as provided by law; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 14 day of February, 2003.

MEYER, FLUEGGE & TENNEY, P.S.  
Attorneys for Defendant Zirkle Fruit Company

  
WALTER G. MEYER, WSBA #1099

  
MARK D. WATSON, WSBA #14693

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of my knowledge:

At all times herein mentioned the undersigned was and now is a citizen of the United States, and a resident of the State of Washington, and over the age of majority; that the undersigned is not a party to the above-entitled action nor interested therein.

That on February 14, 2003, the undersigned caused to be deposited in the United States Post Office at Yakima, Yakima County, Washington, envelopes containing true and correct copies of Defendant Zirkle Fruit Company's Amended Answer to Plaintiffs' First Amended Complaint; said envelopes bearing correct first class postage and being addressed to:

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DATED this 14<sup>th</sup> day of February, 2003, at Yakima, Washington.

  
KATHY MARUGG