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Honorable Fred Van Sickle

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OLIVIA MENDOZA and JUANA)
MENDIOLA, individually and on)
behalf of all other similarly situated,)

Plaintiffs,)

vs.)

ZIRKLE FRUIT CO., a Washington)
corporation, MATSON FRUIT)
COMPANY, a Washington corporation)
and SELECTIVE EMPLOYMENT)
AGENCY, INC., a Washington)
corporation,)

Defendants.)

NO. CY-00-3024-FVS

**ANSWER OF DEFENDANT
MATSON FRUIT COMPANY
TO THE FIRST AMENDED
CLASS ACTION COMPLAINT**

Defendant Matson Fruit Co. submits this Answer to the plaintiffs' First Amended Class Action Complaint, and responds to the allegations therein as follows:

1. Denies this action may be appropriately pursued on behalf of the putative class described in Paragraph No. 1 of the Complaint.
2. Admits Matson and Zirkle are corporations engaged in the business of growing, warehousing, packing and selling apples

**ANSWER OF DEFENDANT - 1
MATSON FRUIT COMPANY**

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and other types of produce. Matson Fruit Co. denies every other allegation included in Paragraph No. 2 of the Complaint.

3. Denies every allegation included in Paragraph No. 3 of the Complaint.

4. Admits Selective Employment Agency is a Washington corporation conducting business, employee recruiting and placement in the state of Washington. Matson Fruit Co. denies every other allegation included in Paragraph No. 4 of the Complaint.

5. Denies every allegation included in Paragraph No. 5 of the Complaint.

6. Denies every allegation included in Paragraph No. 6 of the Complaint.

7. Denies every allegation included in Paragraph No. 7 of the Complaint.

8. Matson Fruit Co. has insufficient information to form a belief as to the truth of the allegations contained in Paragraph No. 8 of the Complaint and, therefore, denies said allegations.

9. Admits that Zirkle Fruit Co. is a Washington corporation, with its principal place of business located in Selah, WA. Matson

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Fruit Co. denies every other allegation included in Paragraph No. 9 of the Complaint.

10. Admits that Matson Fruit Co. is a Washington corporation, with its principal place of business located in Selah, WA. Matson Fruit Co. denies every other allegation included in Paragraph No. 10 of the Complaint.

11. Admits that Selective Employment Agency is a Washington corporation, with its principal place of business located in Yakima, WA. Matson Fruit Co. denies every other allegation included in Paragraph No. 11 of the Complaint.

12. Admits this court has subject matter jurisdiction over Count I of the Complaint alleging violation of the Racketeer Influenced and Corrupt Organizations Act. Matson Fruit Co. denies that it would be appropriate for the court to exercise supplemental jurisdiction over Count II of the Complaint alleging violation of state common law.

13. Denies the occurrence of "illegal acts" alleged in Paragraph No. 13 of the Complaint. Matson Fruit Co. admits the parties reside and are domiciled in the Eastern District of Washington, and that venue is properly within this District.

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14. Denies this action may be appropriately pursued as a class action, or on behalf of the putative class described in Paragraph No. 14 of the Complaint, pursuant to Fed. R. Civ. P. 23(b)(2) or (b)(3).

15. Denies every allegation included in Paragraph No. 15 of the Complaint.

16. Denies every allegation included in Paragraph Nos. 16(a) through 16(g) of the Complaint.

17. Denies every allegation included in Paragraph No. 17 of the Complaint.

18. Matson Fruit Co. has insufficient information to form a belief as to the truth of the allegations included in Paragraph No. 18 of the Complaint and, therefore, denies said allegations.

19. Denies every allegation included in Paragraph No. 19, and in Paragraph Nos. 19(a) through 19(d) of the Complaint.

20. Denies every allegation included in Paragraph No. 20 of the Complaint.

21. Admits the allegations included in Paragraph No. 21 of the Complaint.

1 22. Matson Fruit Co. has insufficient information to form a belief as
2 to the truth of the allegations that “the industry now generates
3 over \$1 billion” or that “many of these workers live in poverty”
4 and, therefore, denies said allegations. Matson Fruit Co. admits
5 the remainder of the allegations included in Paragraph No. 22 of
6 the Complaint.
7

8 23. Admits Matson Fruit Co. and Zirkle Fruit Co. operate fruit
9 orchards and packing houses, and that they are motivated to
10 avoid excessive labor costs. Matson Fruit Co. further admits the
11 work in the fruit industry has attracted many workers of Mexican
12 citizenship. Matson Fruit Co. denies that it keeps labor costs “as
13 low as possible.” Matson Fruit Co. has insufficient information
14 to form a belief as to the truth of the allegations that “many” of
15 the “Mexican nationals are illegal immigrants who have been
16 smuggled into the U.S. and/or are harbored in the U.S. by
17 relatives, friends and employers” and, therefore, denies said
18 allegations. Matson Fruit Co. denies every other allegation
19 stated in Paragraph No. 23 of the Complaint.
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22 24. Admits Matson Fruit Co. had the I-9 Forms maintained for all
23 employees audited by the INS as part of “Operation Snowbird,”

1 and that Matson Fruit Co. was instructed by the INS to terminate
2 workers who the INS determined (sometimes erroneously) to be
3 aliens unauthorized to work in the United States. Matson Fruit
4 Co. denies every other allegation included in Paragraph No. 24
5 of the Complaint.
6

7 25. Admits the INS completed audits of the I-9 Forms and other
8 personnel records maintained by Matson Fruit Co. Matson Fruit
9 Co. denies every other allegation included in Paragraph No. 25
10 of the Complaint.
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12 26. Denies every allegation included in Paragraph No. 26 of the
13 Complaint.
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15 27. Denies every allegation included in Paragraph No. 27 of the
16 Complaint.
17

18 28. Admits the INS examined, in 1998, I-9 Forms maintained by
19 Matson Fruit Co. for 123 current employees, and determined that
20 62 employees (50%) had used fraudulent documents purportedly
21 establishing their authorization to work. Matson Fruit Co.
22 admits the INS examined, in 1998, a total of 661 I-9 Forms
23 maintained for current and former employees, and determined
that 493 employees (74%) had used fraudulent documents

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purportedly establishing their authorization to work. Matson Fruit Co. denies every other allegation included in Paragraph No. 28 of the Complaint.

29. Denies every allegation included in Paragraph No. 29 of the Complaint.

30. Denies every allegation included in Paragraph No. 30 of the Complaint.

31. Denies every allegation included in Paragraph No. 31 of the Complaint.

32. Denies every allegation included in Paragraph No. 32 of the Complaint.

33. Denies every allegation included in Paragraph No. 33 of the Complaint.

34. Matson Fruit Co. has insufficient information to form a belief as to the truth of the allegations stated in Paragraph No. 34 of the Complaint and, therefore, denies said allegations.

35. Admits Matson had entered into a contractual agreement with Selective, and that Selective is a separate legal entity under separate ownership. Matson admits Selective agreed to employ workers, pay said workers and withhold and remit taxes

1 applicable to the employment of said workers. Matson further
2 admits Selective agreed to "loan" said workers to Matson, and
3 that the workers would then take direction from Matson's
4 foremen and managers; and that Matson paid compensation to
5 Selective for the provision of workers described herein. Matson
6 denies the allegation of "close cooperation," and denies the
7 allegation of a "joint venture" existing between Matson Fruit Co.
8 and Selective Employment Agency. All other allegations
9 included in Paragraph No. 35 of the Complaint are denied unless
10 explicitly admitted herein.
11

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13 36. Denies every allegation included in Paragraph No. 36 of the
14 Complaint.

15 37. On information and belief, Matson Fruit Co. admits Selective's
16 usual manner of conducting business is to reject candidates for
17 employment if they offer suspect forms of work authorization
18 documents. Matson Fruit Co. denies every other allegation
19 included in Paragraph No. 37 of the Complaint.
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21 38. Denies every allegation included in Paragraph No. 38 of the
22 Complaint.
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- 39. Denies every allegation included in Paragraph No. 39 of the Complaint.
- 40. Denies every allegation included in Paragraph No. 40 of the Complaint.
- 41. Denies every allegation included in Paragraph No. 41 of the Complaint.
- 42. Admits plaintiff Olivia Mendoza was employed by Matson Fruit Co. for some part of calendar year 2000, but denies every other allegation included in Paragraph No. 42 of the Complaint.
- 43. Denies every allegation included in Paragraph No. 43 of the Complaint.
- 44. Denies the occurrence of the "Illegal Immigrant Hiring Scheme," and denies every other allegation included in Paragraph No. 44 of the Complaint.
- 45. Denies every allegation included in Paragraph No. 45 of the Complaint.
- 46. Denies every allegation included in Paragraph No. 46 of the Complaint.

- 1 47. Matson Fruit Co. has insufficient information to form a belief as
2 to the truth of the allegations included in Paragraph No. 47 of the
3 Complaint and, therefore, denies said allegations.
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5 48. Denies every allegation included in Paragraph No. 48 of the
6 Complaint.
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8 49. Denies every allegation included in Paragraph No. 49 of the
9 Complaint.
10 50. Denies that Paragraph No. 50 of the Complaint fully or
11 accurately states the applicable law.
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13 51. Denies every allegation included in Paragraph No. 51 of the
14 Complaint.
15
16 52. In answer to Paragraph No. 52 of the Complaint, Matson Fruit
17 Co. incorporates its preceding responses as if fully set forth.
18
19 53. Admits Matson Fruit Co. is a "person" as defined by 18 U.S.C.
20 §1961(3). Matson Fruit Co. denies every other allegation
21 included in Paragraph No. 53 of the Complaint.
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23 54. Denies every allegation included in Paragraph No. 54 of the
 Complaint.
 55. Denies every allegation included in Paragraph No. 55 of the
 Complaint.

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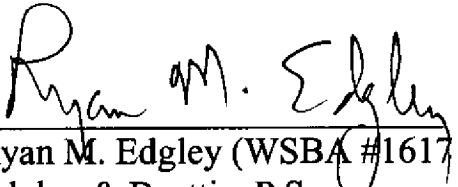
- 56. Denies every allegation included in Paragraph No. 56 of the Complaint.
- 57. Denies every allegation included in Paragraph No. 57 of the Complaint.
- 58. Denies every allegation included in Paragraph No. 58 of the Complaint.
- 59. In answer to Paragraph No. 59 of the Complaint, Matson Fruit Co. restates and incorporates its foregoing responses to the Complaint.
- 60. Paragraph 60 of the Complaint does not include any factual allegation, to which Matson Fruit Co. could respond.
- 61. Denies every allegation included in Paragraph No. 61 of the Complaint.
- 62. Denies every allegation included in Paragraph No. 62 of the Complaint.
- 63. Denies every allegation included in Paragraph No. 63 of the Complaint.
- 64. Denies every allegation included in Paragraph No. 64 of the Complaint.

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FURTHER, AS AFFIRMATIVE DEFENSES, Matson Fruit Co. contends the plaintiffs' claims are barred by the applicable statutes of limitation, estoppel, waiver, consent and payment; and that the plaintiffs have failed to mitigate their damages. Finally, Matson Fruit Co. contends Count II of the Complaint alleging civil conspiracy fails to state a claim on which relief may be granted.

HAVING ANSWERED the plaintiffs' Complaint, Matson Fruit Co. requests the court dismiss the plaintiffs' Complaint, with prejudice; and asks that the court award Matson Fruit Co. its costs and reasonable attorney fees incurred in this matter.

RESPECTFULLY SUBMITTED this 3rd day of March, 2003.


Ryan M. Edgley (WSBA #16171)
Edgley & Beattie, P.S.
Attorneys for Matson Fruit Co.