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17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF WASHINGTON
20 AT YAKIMA

21 OLIVIA MENDOZA, JUANA
22 MENDIOLA and VICTOR SANCHEZ,
23 individually and on behalf of all others
24 similarly situated,

25 Plaintiffs,

26 v.

ZIRKLE FRUIT CO., SELECTIVE
EMPLOYMENT AGENCY, INC.,
DARYL MATSON, RODERICK
MATSON, WILLIAM ZIRKLE, GARY
HUDSON and WILLIAM WANGLER,

Defendants.

No. 00 CY 3024-FVS

JURY TRIAL DEMANDED

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

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 06 2003

JAMES R. LARSEN, CLERK
DEPUTY

~~YAKIMA WASHINGTON~~
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SECOND AMENDED CLASS ACTION - 1 -
COMPLAINT

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I. NATURE OF ACTION

1
2 1. This is a class action brought on behalf of all persons legally authorized
3 to be employed in the United States who have been hired by Matson Fruit Co.
4 (“Matson” or “Matson Fruit”) and Zirkle Fruit Co. (“Zirkle” or “Zirkle Fruit”), either
5 directly or through Defendant Selective Employment Agency (“Selective”), for
6 employment in their packinghouses as hourly wage earners or in their fruit orchards as
7 either hourly wage or piece rate workers since 1996 (hereafter “the Class” or “Class
8 members”).

9 2. Matson and Zirkle are corporations engaged in the business of growing,
10 warehousing, packing and selling apples and other types of produce. Defendants
11 Daryl Matson, Roderick Matson, William Zirkle, William Wangler and Gary Hudson
12 have been engaged in a scheme to employ workforces at these companies that are
13 substantially comprised of undocumented immigrants who have no legal right to be
14 employed in the U.S. (hereinafter the “Illegal Immigrant Hiring Scheme” or the
15 “Scheme”).

16 3. The Illegal Immigrant Hiring Scheme was formulated at Zirkle Fruit by
17 Defendants William Zirkle and William Wangler. Later, when he became employed
18 by the company, Gary Hudson joined the Scheme. These Defendants have since
19 continuously executed the Scheme. Additionally, Defendants Daryl Matson and
20 Roderick Matson executed the same Scheme at their company, Matson Fruit. (These
21 persons are hereafter referred to collectively as “the individual Defendants.”) These
22 Schemes were intended to, and did, enrich the individual Defendants at the expense of
23 Class members, by depressing their wages.

24 4. Additionally, Zirkle Fruit has used Selective as a front company for the
25 perpetuation of the Illegal Immigrant Hiring Scheme.
26

1 5. The Illegal Immigrant Hiring Scheme violates the Racketeer Influenced
2 and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*, and Washington
3 state law.

4 6. The purpose of the Illegal Immigrant Hiring Scheme is to substantially
5 depress the wage rates below those which Matson and Zirkle would have to pay Class
6 members in a labor market comprised exclusively of legally authorized workers. This
7 is accomplished by employing work forces substantially comprised of illegal workers,
8 who, because of their undocumented status, are willing to be exploited at depressed
9 wages. These depressed wages are then paid to Class members.

10 7. Defendants' scheme involving the knowing employment and harboring
11 of illegal immigrants in violation of § 274 of the Immigration and Nationality Act is
12 ongoing, threatening to continue, and victimizing more persons every day, unless and
13 until halted by judicial intervention.

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

15 8. Plaintiff Olivia Mendoza is a resident of the State of Washington and of
16 this district. She is legally authorized to be employed in the U.S. She was employed
17 by Matson Fruit as an hourly paid worker during the Class period.

18 9. Plaintiff Juana Mendiola is a resident of the State of Washington and of
19 this district. She is legally authorized to be employed in the U.S. She was employed
20 by Selective to work at Zirkle Fruit as an hourly paid worker in 2000.

21 10. Plaintiff Victor Sanchez is a resident of the State of California and was at
22 all relevant times legally authorized to be employed in the U.S. He was employed by
23 Zirkle Fruit as an hourly or piece rate worker in its orchards for several years, through
24 the year 2,000.

1 11. Each of the Plaintiffs were employed by Matson, Zirkle or Selective at
2 wage and piece rates set by Defendants, which were depressed by the Illegal
3 Immigrant Hiring Scheme.

4 12. Defendant Zirkle Fruit Co. ("Zirkle" or "Zirkle Fruit") is a corporation
5 organized under the laws of the State of Washington with its principal place of
6 business located in Selah, Washington. Zirkle Fruit is named as a Defendant only in
7 Count II (for Civil Conspiracy).

8 13. Defendant William Zirkle is the President of Zirkle and has personally
9 directed his subordinates, Defendants William Wangler and Gary Hudson, to execute
10 the Illegal Immigrant Hiring Scheme through numerous actions, detailed below, which
11 resulted in hiring large numbers of persons who are ineligible for employment under
12 U.S. immigration law.

13 14. William Zirkle, William Wangler and Gary Hudson, all citizens of
14 Washington and of this district, have conspired to commit a pattern of racketeering
15 activity, as detailed herein, in this district.

16 15. Roderick Matson is the President of Matson Fruit and initially
17 implemented the Illegal Immigrant Hiring Scheme on behalf of Matson Fruit. Daryl
18 Matson is a principal in the company and, as its director of human resources, has
19 personally conspired to and has furthered and executed the Scheme. Roderick Matson
20 and Daryl Matson are citizens of Washington and of this district.

21 16. Defendant Selective Employment Agency ("Selective") is a corporation
22 organized under the laws of the State of Washington with its principal place of
23 business located in Yakima, Washington.

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

1 18. Venue is proper in this District because the illegal acts giving rise to this
2 case occurred in this District and all of the parties reside and are domiciled here.

3 **III. CLASS ALLEGATIONS**

4 19. This action is brought and may be maintained as a class action pursuant
5 to Fed. R. Civ. P. 23(b)(2) and (b)(3). Plaintiffs bring this action on behalf of
6 themselves and all other persons legally authorized to be employed in the U.S. who
7 have been hired by Matson and Zirkle, either directly or through Defendant Selective,
8 for employment in their packinghouses as hourly wage earners or in their fruit
9 orchards as either hourly wage or piece rate workers since September 30, 1996
10 (hereafter the Class" or "Class members").

11 20. The Class for whose benefit this action is brought is so numerous that
12 joinder of all Class members is impracticable. The actual number can be ascertained
13 through discovery of Defendants' books and records and cross-checking I-9 forms
14 filled out by Defendants with appropriate government agencies to determine whether
15 employees were legally authorized to be employed.

16 21. Among the questions of fact and law that are common to the Class are:

17 a. Whether the Defendants have been and are currently engaged in a
18 scheme to employ illegal immigrant workers in order to depress the wages they must
19 pay to workers;

20 b. To what extent the Illegal Immigrant Hiring Scheme has caused
21 Class members' wages to be depressed;

22 c. Whether the Illegal Immigrant Hiring Scheme violates the
23 Immigration and Nationality Act and RICO; and

24 d. Whether Zirkle has engaged in a civil conspiracy with Selective.

25 22. Plaintiffs' claims are typical of those of the members of the Class
26 inasmuch as their alleged damages were caused by the Illegal Immigrant Hiring

1 Scheme. Plaintiffs seek no relief that is antagonistic or adverse to other Class
2 members.

3 23. Plaintiffs are committed to the vigorous prosecution of this action and
4 have retained counsel who are competent in the prosecution of class actions, RICO
5 and complex litigation. Accordingly, Plaintiffs will fairly and adequately protect and
6 represent the interests of the Class.

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

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

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

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

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

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

22 IV. STATEMENT OF OPERATIVE FACTS

23 26. Eastern Washington is the heart of Washington's famed apple and fruit
24 industry. This area, which is uniquely situated for growing fruit due to a combination
25 of abundant sunshine and cheap irrigation, has over the years generated hundreds of
26

1 millions of dollars in annual revenues and has produced fruit recognized for its quality
2 throughout the United States and many foreign countries.

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

7 28. The individual Defendants own and manage Matson and Zirkle's fruit
8 orchards and packing houses. They keep labor costs as low as possible and, due to a
9 variety of complex social and economic factors, the industry's demand for low-skilled
10 workers has attracted many workers of Mexican citizenship. Many of these Mexican
11 nationals are illegal immigrants who have been smuggled into the U.S. and/or are
12 harbored in the U.S. by relatives, friends and employers.

13 **A. Roderick and Daryl Matson Commence And Perpetuate The Scheme At**
14 **Matson Fruit**

15 29. At some time before September 1996, Roderick Matson determined that
16 he could significantly reduce labor costs and increase profits for Matson Fruit Co. if
17 the company employed illegal immigrants, in violation of U.S. immigration law, at
18 depressed wages for work in the company's expansive fruit orchards and
19 packinghouse. Accordingly, Roderick Matson, as president and general manager of
20 the company, approved the following procedures: 1) employing orchard and
21 packinghouse workers without making copies of the documents workers present to the
22 company to establish identity and work eligibility in order to conceal the fact that
23 most of these workers were presenting documents which were facially defective; 2)
24 not subjecting the I-9 forms for these workers to any further verification, such as
25 calling the Social Security Administration to check the validity of the social security
26 numbers presented by the workers even though Mr. Matson knew that a substantial

1 number of persons seeking employment in the orchards and packinghouse were not
2 eligible for employment; and 3) separating the files (containing I-9 forms) of known
3 illegal workers from the other worker files so they could not be discovered in case of
4 an I.N.S. audit.

5 30. Roderick Matson also knew that the company had been subjected to an
6 I.N.S. audit of the work eligibility of its employees in 1990, presumably as a result of
7 reports the company was employing illegal immigrant workers.

8 31. As a result of these hiring policies, Roderick Matson caused the company
9 to employ hundreds of persons who presented falsified or fraudulent documents. He
10 then was able to set wage rates for all packinghouse and orchard workers which were
11 substantially depressed below the levels they would be in a labor market comprised of
12 legally documented workers.

13 32. As part of the Illegal Immigrant Hiring Scheme, Roderick Matson
14 shielded known illegal workers from detection by having supervisors, including
15 Gloria Salas, herself an illegal, undocumented worker, warn illegal workers in
16 advance of I.N.S. visits. Heeding the warnings, undocumented workers would not
17 appear for work on days when the I.N.S. was expected to make a visit.

18 33. In 1998, as part of "Operation Snowbird," a crackdown on illegal
19 immigrant hiring at Washington fruit orchards, the I.N.S. audited Matson Fruit's
20 employees and determined that 74% of its recently terminated seasonal employees and
21 50% of its current packinghouse workers were ineligible for employment based upon
22 falsified or fraudulent data provided on their I-9 forms. The I.N.S. ordered the
23 company to terminate many of these illegal workers. Supervisor Gloria Salas was
24 among those terminated.

25 34. In response to "Operation Snowbird," Roderick Matson asked his brother
26 Daryl Matson to become head of human resources for Matson Fruit in order to prevent

1 further run-ins with the I.N.S. while perpetrating the Illegal Immigrant Hiring Scheme
2 to the greatest extent possible. Daryl Matson agreed to assume this position. While
3 he implemented some changes in the company's hiring policies with respect to
4 packinghouse workers, he declined to institute changes that might have actually
5 abated the illegal hiring practices. Moreover, the Illegal Immigrant Hiring Scheme
6 continued unabated with respect to the hiring of orchard workers, which practice was
7 essentially unchanged even after Operation Snowbird. By taking no steps to prevent
8 hiring of illegal workers in the orchards – such as checking social security numbers
9 which can be done by employers through a simple phone call – Daryl Matson chose to
10 abet the practice of hiring illegal workers, and to harbor those he knew to be illegal --
11 the great majority of the orchard workers employed by Matson.

12 35. All of the acts alleged to have been committed by Daryl Matson were
13 acquiesced in by Roderick Matson and undertaken pursuant to their conspiracy to
14 employ and harbor illegal immigrant workers.

15 36. Daryl Matson and Roderick Matson have refused to order the persons
16 who conduct orchard hiring to copy the worker eligibility documents so they can be
17 scrutinized or to call the Social Security Administration to check social security
18 numbers presented, and have taken no other measures to verify the veracity of worker
19 documents. They refuse to do so because they know most of these workers are illegal
20 and are presenting falsified or fraudulent documents to the supervisors who Daryl
21 Matson and Roderick Matson have hand-picked to do orchard hiring. Daryl Matson
22 and Roderick Matson have thus deliberately turned a blind eye to the flagrant and
23 repeated illegal hiring that occurs on a daily basis in their company's orchards.

24 37. Plaintiffs allege, based upon their information and belief, that Roderick
25 Matson and Daryl Matson have caused Matson Fruit to hire hundreds of illegal
26 workers, more than 100 per year since 1996, and that a substantial majority of the

1 company's current orchard workers and many of its packinghouse workers are
2 undocumented and have obtained their employment by presenting falsified or
3 fraudulent documents to Matson Fruit, which the company accepted as part of the
4 Illegal Immigrant Hiring Scheme.

5 38. In addition, in 2000, Daryl Matson entered into an agreement with
6 Selective for the hiring of packinghouse workers. Daryl Matson knew Selective
7 would not take any steps to verify the eligibility of these workers, who would
8 technically be "employed" by Selective and "loaned" to Matson for a fee. In light of
9 Operation Snowbird, this appeared to him to be yet another ruse to conceal the
10 employment of illegal immigrant workers.

11 39. After this action was filed, in order to minimize his liability, Daryl
12 Matson requested that Selective verify the social security numbers of its workers at
13 Matson. Many were found to be using non-matching (*i.e.*, fake) numbers.

14 40. Therefore, Daryl Matson and Roderick Matson have conspired to violate
15 § 274 of the Immigration and Nationality Act in two separate respects:

16 **Violation I: Knowingly Employing Illegal Immigrants (Aliens)**

17 41. The statute provides, in relevant part:

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

23 8 U.S.C. § 1324(a)(1)(B)(3)(A).

24 42. Defendants Roderick Matson and Daryl Matson have violated the above-
25 cited statute by employing more than 10 undocumented, illegal aliens knowing them
26 to be smuggled into the country or harbored once they arrived here. Roderick Matson
has done so personally, through his actions as president of Matson and in directing his
subordinates from September 30, 1996 to the present. Defendant Daryl Matson has

1 conspired with Roderick Matson in all of these acts since he assumed his current
2 position as human resources manager for Matson in early 1999.

3 **Violation II: Harboring Illegal Immigrants (Aliens)**

4 43. By knowingly employing illegal immigrants and also by causing
5 supervisors to warn them of imminent I.N.S. visits, Daryl Matson and Roderick
6 Matson have each "harbored" many workers in Matson's packinghouse and orchards
7 in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), which makes it a federal crime for
8 anyone who "knowing or in reckless disregard of the fact that an alien has come to,
9 entered, or remains in the United States in violation of law, conceals, harbors, or
10 shields from detection, or attempts to conceal, harbor, or shield from detection, such
11 alien in any place, including any building or any means of transportation." This is a
12 RICO predicate offense.

13 44. Accordingly, Plaintiffs allege that Roderick Matson and Daryl Matson
14 have each violated the above-cited statute by their actions detailed above at Matson
15 Fruit, which constitute knowing or reckless harboring of illegal aliens.

16 **B. William Zirkle, William Wangler and Gary Hudson Commence And**
17 **Perpetuate The Illegal Immigrant Hiring Scheme At Zirkle Fruit**

18 45. At some time before September 1996, Defendant William Zirkle,
19 President and principle owner of Zirkle Fruit and a life-long orchardist, determined
20 that he could significantly reduce the labor costs of his company, and thereby increase
21 profits, by employing many of the illegal, undocumented Mexican workers in the area
22 at depressed wages.

23 46. William Wangler, who was at that time responsible for Zirkle Fruit's
24 hiring policies, determined that large numbers of illegal immigrant workers could be
25 hired at the company's vast orchards by dispersing the hiring to the orchard
26 supervisors and away from the company's offices. Accordingly, Wangler formed a

1 conspiracy with William Zirkle to direct the orchard supervisors not to copy the
2 verification documents presented by workers to prevent later scrutiny of them and not
3 to verify the social security numbers on the largely falsified or fraudulent documents
4 they presented to the supervisors. William Wangler and William Zirkle knew at all
5 times that a large majority of the workers who sought employment at the orchards
6 were illegal immigrants presenting falsified or fraudulent documents.

7 47. William Zirkle and William Wangler also conspired to employ illegal
8 workers in the company packinghouse in the same manner: by not copying or
9 scrutinizing employment eligibility documents, despite their knowledge that the
10 Yakima area was replete with illegal workers who carried fake social security cards
11 bearing non-existent numbers. Indeed, the person Zirkle Fruit currently employs to
12 complete worker I-9 forms at the packinghouse, Juana Castaneda, herself obtained
13 employment at Zirkle using a fake social security card and a fake Alien Registration
14 Card. As detailed below, Ms. Castaneda hires illegal workers with “a wink and a nod”
15 and at times fails to terminate the employment of other workers who she learns have
16 been employed using falsified or fraudulent documents. William Zirkle and William
17 Wangler use Ms. Castaneda to advance the Illegal Immigrant Hiring Scheme.

18 48. In 1997, the I.N.S. audited Zirkle’s I-9 forms and concluded that many of
19 the workers were ineligible for employment. Additionally, the I.N.S. raided the
20 packinghouse, apprehended several workers and deported them to Mexico. During
21 the raid, Zirkle supervisors told known illegal workers to hide, indicating that
22 Defendants knew they were illegal and were knowingly employing and harboring
23 them in violation of federal law.

24 49. After these events, Zirkle Fruit hired Gary Hudson to be human resources
25 manager. Although he knew from the I.N.S. audit that the company hired many
26 illegal workers, Hudson failed to change Zirkle Fruit’s strong preference for illegal

1 immigrant workers. He joined in the William Zirkle-William Wangler conspiracy to
2 violate § 274 of the Immigration and Naturalization Act. He failed to change the
3 orchard supervisors' policy of not copying or checking the veracity of eligibility
4 documents, even though he knew them to be largely fraudulent or falsified. He knew
5 that Juana Castaneda was hired by the company with a fraudulent social security card
6 and a falsified Alien Registration Card, yet maintained her in her powerful position of
7 verifying the accuracy of the document presented by new workers when filling out
8 their I-9 forms. Plaintiffs believe and thereby allege that Ms. Castaneda has
9 knowingly failed to terminate the employment of persons who have been determined
10 to be ineligible for employment. Yet she continues to enjoy the confidence of Mr.
11 Hudson and Mr. Zirkle.

12 **C. Zirkle "Outsources" The Illegal Immigrant Hiring Scheme To Selective**

13 50. In 1998, Mr. Hudson decided to "outsource" some of Zirkle Fruit's hiring
14 needs by using Selective as a front for employing packinghouse workers. According
15 to their agreement, Selective would actually examine the employees' eligibility
16 documents, "employ" them and loan the workers to Zirkle for a fee. Mr. Hudson
17 knew Selective would not copy the eligibility documents nor perform any check as to
18 their authenticity. Nor would Zirkle Fruit. He placed Ms. Castaneda in charge of the
19 day-to-day operation of the program knowing that she would harbor any workers she
20 believed were ineligible for employment.

21 51. After this action was filed, Mr. Hudson requested that Selective check the
22 social security numbers of its workers. Many workers were revealed to have used
23 fraudulent or falsified social security numbers. Nevertheless, Mr. Hudson chose to
24 continue the association with Selective and never asked any further questions about
25 the workers Selective provided to Zirkle Fruit.

1 **C. The Selective-Zirkle Fruit Co. Enterprise**

2 55. Zirkle Fruit and Selective are an association-in-fact enterprise pursuant to
3 18 U.S.C. § 1961(4) by virtue of their joint purpose of providing a supplemental
4 stream of illegal immigrant workers for Zirkle Fruit in furtherance of the Illegal
5 Immigrant Hiring Scheme. This enterprise affects interstate commerce and enabled
6 Zirkle Fruit to employ more illegal workers than it could have employed on its own.
7 The association has been maintained by a continuous interrelationship between the
8 two companies in order to effectively recruit and employ many different illegal
9 workers over a period of months.

10 56. Plaintiffs allege Selective knowingly employed certain workers for Zirkle
11 Fruit whom Selective knew to be illegal and undocumented, and harbored these illegal
12 workers in furtherance of the Illegal Immigrant Hiring Scheme.

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

14 57. Plaintiffs, all of whom are legally authorized to be employed, have been
15 employed by Zirkle Fruit and/or Matson Fruit during the Class period at wages that
16 are substantially depressed because of the Illegal Immigrant Hiring Scheme.

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

20 59. Defendants' Illegal Immigrant Hiring Scheme, by itself, was a substantial
21 factor in causing the depressed wages about which Plaintiffs and the Class complain.
22 Had the Defendants complied with the law, and only employed legally documented
23 workers, they would have had to pay higher wages to Plaintiffs and the Class in order
24 to maintain a legal workforce.

25 60. One purpose of the Illegal Immigrant Hiring Scheme is to deprive
26 Plaintiffs and the Class of collective bargaining power. Because the Zirkle Fruit and

1 Matson Fruit workforces are largely comprised of workers known by Defendants to be
2 illegal, those workers are beholden to Defendants. Undocumented workers will not
3 participate in collective bargaining activities because of fear of reprisal. The illegal
4 members of the workforce therefore accept low wages because they have no choice.
5 The legal members of the workforce accept the low wages with the knowledge that –
6 if they seek higher wages – they will be fired and replaced with illegal workers. In
7 this manner, Defendants’ Illegal Immigrant Hiring Scheme insures low wages for
8 Plaintiffs and the Class and directly depresses their wages.

9 61. But for Defendants’ participation in the affairs of the enterprise and their
10 RICO violations, Zirkle Fruit and Matson Fruit would have only hired legal workers
11 and would have paid those workers increased wages. The amount of the increased
12 wages can be calculated, among other methods, by comparing the hourly rates of
13 workers performing similar skills in workforces comprised solely of legal workers.

14 **COUNT I**
15 **FOR VIOLATIONS OF RICO**

16 **A. Violations of 18 U.S.C. § 1962(d) (By Conspiring to Violate 18 U.S.C. §**
17 **1962(c))**

18 62. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

19 63. This claim is asserted against the individual Defendants and Selective.

20 All are “persons,” as defined in 18 U.S.C. § 1961(3).

21 64. As stated above, the individual Defendants have entered into conspiracies
22 to perpetrate the Illegal Immigrant Hiring Scheme (racketeering activity) by joining
23 together to employ and harbor illegal immigrant workers, in violation of § 274 of the
24 Immigration and Nationality Act, which is made a RICO predicate offense by 18
25 U.S.C. § 1961(1)(F). (Matson Fruit and Zirkle Fruit are not named as RICO
26 persons/Defendants in this Count.)



1 65. The conspiracies by the individual Defendants to violate 18 U.S.C. §
2 1962(c) are violations of 18 U.S.C. § 1962(d) and thereby subject each conspirator to
3 joint and several liability for all of the damage caused by all the racketeering acts
4 committed by any of the conspirators.

5 **B. Violations of 18 U.S.C. § 1962(c)**

6 66. In violation of 18 U.S.C. § 1962(c), Defendant Selective has committed
7 the same predicate acts identified above by committing a pattern of racketeering
8 activity through the Selective-Zirkle Fruit Co. enterprise by knowingly employing
9 illegal immigrant workers for employment at Zirkle Fruit, and thereby harboring those
10 illegal workers.

11 67. Defendants' violations of the Immigration and Nationality Act, as
12 detailed in this Complaint, constitute a "pattern of racketeering activity" under 18
13 U.S.C. § 1961(5).

14 **C. Proximate Causation**

15 68. Plaintiffs and members of the Class have been damaged by reason of
16 Defendants' RICO violations because they have been employed by Matson Fruit and
17 Zirkle Fruit at wages which were depressed as a direct result of the Illegal Immigrant
18 Hiring Scheme. Plaintiffs and members of the Class were the intended and direct
19 victims of Defendants' RICO scheme and their injury, *i.e.*, working at depressed
20 wages, was both intended and foreseeable. As a direct result of this Scheme,
21 Defendants were able to profit.

22 69. Defendants' Illegal Immigrant Hiring Scheme, by itself, was a substantial
23 factor in causing the depressed wages about which Plaintiffs and the Class complain.

COUNT II
CIVIL CONSPIRACY

70. Plaintiffs incorporate the preceding allegations as if fully set forth herein, with the exception of ¶¶ 8, 15, 29-44, 53, and 62-69.

71. This claim is asserted against Defendants Zirkle Fruit and Selective, on behalf of those Class members who worked at Zirkle during the time period in which Selective procured workers for Zirkle.

72. Zirkle has entered into a conspiracy with Selective to violate the Immigration and Nationality Act.

73. This conspiracy is a substantial factor in the depression of the wages of Plaintiffs and Class members who worked at Zirkle during the time period in which Selective procured workers for Zirkle.

74. Defendants' conspiracy to violate the Immigration and Nationality Act also violates Washington common law.

75. As a direct, foreseeable, intended and proximate cause of the conspiracy, Plaintiffs and Class members employed by Zirkle will continue to suffer substantial injuries and damages.

V. PRAYER FOR RELIEF

76. Plaintiffs demand judgment and other relief, as follows:

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


78. Judgment in an amount equal to three times the damage caused to the Class by the Defendants' racketeering activity/the Illegal Immigrant Hiring Scheme, pursuant to Count I and 18 U.S.C. § 1964(c);

79. Judgment in an amount equal to the damage caused to those putative Class members damaged by the conspiracy to violate the Immigration and Nationality Act/the Illegal Immigrant Hiring Scheme, pursuant to Count II;

- 1 80. For appropriate attorney's fees, pursuant to 18 U.S.C. § 1964;
2 81. For the costs of this action;
3 82. For any other relief the Court deems just and proper.

4 DATED: November 5, 2003

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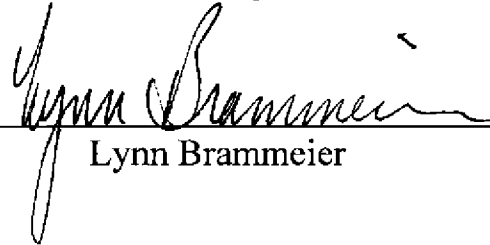
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Executed on November 6, 2003, in Seattle, Washington.



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