

DEC 03 2003

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7 Attorneys for the Matson Defendants

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 OLIVIA MENDOZA, JUANA)
11 MENDIOLA, and VICTOR SANCHEZ,)
Individually and on behalf of all others)
12 similarly situated,)

NO. CY-00-3024-FVS

13 Plaintiffs,)

14 vs.)

15 ZIRKLE FRUIT CO., a Washington)
corporation, SELECTIVE EMPLOYMENT)
16 AGENCY, INC., a Washington corporation,)
DARYL MATSON, RODERICK)
17 MATSON, WILLIAM ZIRKLE, GARY)
HUDSON, and WILLIAM WANGLER,)

**ANSWER OF DEFENDANTS
RODERICK MATSON AND
DARYL MATSON TO THE
SECOND AMENDED CLASS
ACTION COMPLAINT**

18 Defendants.)
19

20 Defendants Roderick Matson and Daryl Matson submit this Answer to
21 the plaintiffs' Second Amended Class Action Complaint, and respond to the
22 allegations therein as follows:
23

**ANSWER OF THE MATSON
DEFENDANTS TO THE
SECOND AMENDED COMPLAINT 1**

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1 1. Deny this action may be appropriately pursued on behalf of the
2 putative class described in Paragraph No. 1 of the Complaint.

3 2. Admit Matson and Zirkle are corporations engaged in the
4 business of growing, warehousing, packing and selling apples and other types
5 of produce. The Matson defendants deny every other allegation included in
6 Paragraph No. 2 of the Complaint.
7

8 3. Deny every allegation included in Paragraph No. 3 of the
9 Complaint.

10 4. Deny the allegation stated in Paragraph No. 4 of the Complaint.

11 5. Deny the allegations stated in Paragraph No. 5 of the Complaint.

12 6. Deny the allegations stated in Paragraph No. 6 of the Complaint.

13 7. Deny the allegations stated in Paragraph No. 7 of the Complaint.

14 8. Admit the allegations stated in Paragraph No. 8 of the
15
16 Complaint.

17 9. Do not have sufficient information to form a belief as to the truth
18 of the allegations stated in Paragraph No. 9 of the Complaint and, therefore,
19 deny said allegations.
20

21 10. Do not have sufficient information to form a belief as to the truth
22 of the allegations stated in Paragraph No. 10 of the Complaint and, therefore,
23 deny said allegations.

1 11. Admit that each of the plaintiffs was employed at some time by
2 Matson, Zirkle, or Selective, and that the wage or piece rate for such work
3 was set by one of the defendants. The Matson defendants deny every other
4 allegation stated in Paragraph No. 11 of the Complaint.
5

6 12. Admit that Zirkle Fruit Co. is a Washington corporation, with its
7 principal place of business located in Selah, WA. The Matson defendants
8 deny every other allegation stated in Paragraph No. 12 of the Complaint.
9

10 13. Admit William Zirkle is the President of Zirkle Fruit Co. The
11 Matson defendants deny every other allegation stated in Paragraph No. 13 of
12 the Complaint.

13 14. Deny the allegations stated in Paragraph No. 14 of the
14 Complaint.

15 15. Admit Roderick Matson is the President of Matson Fruit Co., a
16 citizen and resident of the state of Washington, and a resident of this judicial
17 district. Admit Daryl Matson is a principal in Matson Fruit Co. and the
18 company's director of human resources, a citizen and resident of the state of
19 Washington, and a resident of this judicial district. The Matson defendants
20 deny every other allegation stated in Paragraph No. 15 of the Complaint.
21

22 16. Admit Selective Employment Agency is a Washington
23 corporation, with its principal place of business located in Yakima, WA.

1 17. Admits this court has subject matter jurisdiction over Count I of
2 the Complaint alleging violation of the Racketeer Influenced and Corrupt
3 Organizations Act. The Matson defendants deny that it would be appropriate
4 for the court to exercise supplemental jurisdiction over Count II of the
5 Complaint alleging violation of state common law.
6

7 18. Denies the occurrence of "illegal acts" alleged in Paragraph No.
8 18 of the Complaint. The Matson defendants admit the defendants and at
9 least one of the plaintiffs reside and are domiciled in the Eastern District of
10 Washington, and that venue is properly within this District.
11

12 19. Deny this action may be appropriately pursued as a class action,
13 or on behalf of the putative class described in Paragraph No. 19 of the
14 Complaint, pursuant to Fed. R. Civ. P. 23(b)(2) or (b)(3).
15

16 20. Do not have sufficient information to form a belief as to the truth
17 of the allegations stated in Paragraph No. 20 of the Complaint and, therefore,
18 deny said allegations.
19

20 21. Deny every allegation stated in Paragraph Nos. 21(a) through
21 21(d) of the Complaint.
22

23 22. Deny every allegation stated in Paragraph No. 22 of the
Complaint.

1 23. Do not have sufficient information to form a belief as to the truth
2 of the allegations stated in Paragraph No. 23 of the Complaint and, therefore,
3 deny said allegations.

4 24. Deny every allegation stated in Paragraph No. 24, and in
5 Paragraph Nos. 24(a) through 24(d) of the Complaint.

6 25. Deny every allegation stated in Paragraph No. 25 of the
7 Complaint.

8 26. Admit the allegations stated in Paragraph No. 26 of the
9 Complaint.

10 27. The Matson defendants do not have sufficient information to
11 form a belief as to the truth of the allegations that “the industry now generates
12 over \$1 billion” or that “many of these workers live in poverty” and,
13 therefore, deny said allegations. The Matson defendants admit that many
14 operations primarily require manual labor, but deny the allegation that said
15 operations do not involve the workers’ application of skills. And the Matson
16 defendants admit there are more than 15,000 fruit packers and 30,000 pickers
17 of orchard fruit.

18 28. Admit they own and have certain management authority for
19 Matson Fruit Co., and further admit that they are motivated to avoid excessive
20 labor costs. The Matson defendants also admit the work in the fruit industry

1 has attracted many workers of Mexican citizenship. The Matson defendants
2 deny that they keep labor costs "as low as possible," and have insufficient
3 information to form a belief as to the truth of the allegations that "many" of
4 the "Mexican nationals are illegal immigrants who have been smuggled into
5 the U.S. and/or are harbored in the U.S. by relatives, friends and employers"
6 and, therefore, deny said allegations. The Matson defendants deny every
7 other allegation stated in Paragraph No. 28 of the Complaint.
8

9 29. Admit that Roderick Matson is president and general manager of
10 Matson Fruit Co., and that the company does not make copies of the
11 documents workers present to demonstrate employment eligibility at the time
12 of hire. The Matson defendants deny every other allegation stated in
13 Paragraph No. 29 of the Complaint.
14

15 30. Admit the I.N.S. did an audit of employment eligibility of
16 Matson Fruit Co. employees in 1990. The Matson defendants deny every
17 other allegation stated in Paragraph No. 30 of the Complaint.
18

19 31. Deny the allegations stated in Paragraph No. 31 of the
20 Complaint.
21

22 32. Deny the allegations stated in Paragraph No. 32 of the
23 Complaint.

1 33. Admit Matson Fruit Co. had the I-9 Forms maintained for all
2 employees audited by the INS as part of "Operation Snowbird," and that
3 Matson Fruit Co. was instructed by the INS to terminate workers who the INS
4 determined (sometimes erroneously) to be aliens unauthorized to work in the
5 United States. And further admit that supervisor Gloria Salas was one of the
6 employees Matson Fruit Co. was instructed to terminate, and whom the
7 company did promptly terminate. The Matson defendants deny every other
8 allegation included in Paragraph No. 33 of the Complaint.
9

10 34. Admit Daryl Matson became responsible for directing human
11 resources at Matson Fruit Co. during "Operation Snowbird." The Matson
12 defendants deny every other allegation stated in Paragraph No. 34 of the
13 Complaint.
14

15 35. Deny every allegation stated in Paragraph No. 35 of the
16 Complaint.
17

18 36. Admit that they have not instructed persons who conduct hiring
19 to copy employment eligibility documents presented by workers, but deny the
20 allegation that they have refused any request that they do so. The Matson
21 defendants deny every other allegation stated in Paragraph No. 36 of the
22 Complaint.
23

1 37. Deny every allegation stated in Paragraph No. 37 of the
2 Complaint.

3 38. Admit Matson Fruit Co. entered into an agreement with Selective
4 Employment Agency for the provision of packinghouse workers in 2000, and
5 that Daryl Matson negotiated and/or supervised the negotiation of the
6 agreement on behalf of Matson Fruit Co. And further admit workers were
7 employed by Selective pursuant to the agreement and loaned to Matson Fruit
8 Co. in return for payment of a fee. The Matson defendants deny every other
9 allegation stated in Paragraph No. 38 of the Complaint.
10

11 39. Deny that Matson Fruit Co.'s request that Selective verify Social
12 Security Numbers of workers provided to Matson Fruit Co. was made after
13 the plaintiffs filed a lawsuit. The Matson defendants contend the request was
14 made to Selective, and honored by Selective, before any workers were
15 provided. The Matson defendants further deny that any workers provided by
16 Selective were later determined to have provided a non-matching Social
17 Security Number.
18

19 40. Deny the allegations stated in Paragraph No. 40 of the
20 Complaint.
21

22 41. Paragraph No. 41 of the Complaint does not state any factual
23 allegation, and is therefore denied.

1 42. Deny every allegation stated in Paragraph No. 42 of the
2 Complaint.

3 43. Deny every factual allegation stated in Paragraph No. 43 of the
4 Complaint.

5 44. Deny every allegation stated in Paragraph No. 44 of the
6 Complaint.

7 45. The answers of the Matson defendants to Paragraphs 45 through
8 52 of the Complaint are based on information and belief arising out of the
9 previous deposition testimony of William Zirkle, William Wangler, Gary
10 Hudson and Juana Castaneda. Based on that information and belief, the
11 Matson defendants admit William Zirkle is President and principal owner of
12 Zirkle Fruit Co., and an orchardist. The Matson defendants deny every other
13 allegation stated in Paragraph No. 45 of the Complaint.

14 46. Deny every allegation stated in Paragraph No. 46 of the
15 Complaint.

16 47. Admit Juana Castaneda testified during her deposition that she
17 has, since 2000, completed the employer section of the I-9 Form for some of
18 the workers hired at Zirkle Fruit Co.'s packinghouse, and that she initially
19 obtained employment at Zirkle Fruit Co. in 1992 using a "fake" Social
20 Security Card and Alien Registration Card. On information and belief, based
21
22
23

1 on said deposition testimony, the Matson defendants contend Ms. Castaneda
2 obtained lawful resident status in 1992 or 1993 and deny every other
3 allegation stated in Paragraph No. 47 of the Complaint.
4

5 48. Admit the I.N.S. audited Zirkle Fruit Co.'s I-9 Forms in 1997
6 and concluded some number of workers were not eligible to be employed.
7 On information and belief, the Matson defendants further admit the I.N.S.
8 requested and received permission from Zirkle Fruit Co. to enter company
9 premises and apprehended several workers who were not eligible to remain in
10 the United States. The Matson defendants deny every other allegation stated
11 in Paragraph No. 48 of the Complaint.
12

13 49. Admits Zirkle Fruit Co. hired Gary Hudson to be human
14 resources manager sometime after 1997. The Matson defendants deny every
15 other allegation stated in Paragraph No. 49 of the Complaint.
16

17 50. Admits Gary Hudson, on behalf of Zirkle Fruit Co., negotiated
18 an agreement with Selective Employment Agency to provide temporary
19 packinghouse workers to Zirkle Fruit Co. And further admit, on information
20 and belief, that per the agreement Selective was to examine the workers'
21 employment eligibility documents, employ the workers, and loan the workers
22 to Zirkle Fruit Co. on a temporary basis in return for Zirkle's payment of a
23

1 fee. The Matson defendants deny every other allegation stated in Paragraph
2 No. 50 of the Complaint.

3 51. Admit Mr. Hudson requested, after the plaintiffs filed this
4 lawsuit, that Selective Employment verify the Social Security Numbers of
5 workers Selective was providing to Zirkle Fruit Co., and that some number of
6 workers were determined to have provided "non-matching" Social Security
7 Numbers. The Matson defendants deny every other allegation stated in
8 Paragraph No. 51 of the Complaint.

9
10 52. Deny every allegation stated in Paragraph No. 52 of the
11 Complaint.

12
13 53. Admit Roderick Matson is an officer (president) of Matson Fruit
14 Co., which is a Washington corporation affecting interstate commerce. And
15 further admit Daryl Matson is a 20% owner of Matson Fruit Co. The Matson
16 defendants deny every other allegation stated in Paragraph No. 53 of the
17 Complaint.

18
19 54. Admit William Zirkle is the president of Zirkle Fruit Co., which
20 is a Washington corporation affecting interstate commerce. And further
21 admit William Wangler and Gary Hudson are accountable to William Zirkle
22 and generally act pursuant to authority delegated to them by William Zirkle.
23

1 The Matson defendants deny every other allegation stated in Paragraph No.
2 54 of the Complaint.

3 55. On information and belief, based on previous deposition
4 testimony, deny every allegation stated in Paragraph No. 55 of the Complaint.
5

6 56. On information and belief, deny every allegation stated in
7 Paragraph No. 56 of the Complaint.

8 57. Deny the allegations stated in Paragraph No. 57 of the
9 Complaint.

10 58. Deny the allegations stated in Paragraph No. 58 of the
11 Complaint.
12

13 59. Deny the allegations stated in Paragraph No. 59 of the
14 Complaint.

15 60. Deny every allegation stated in Paragraph No. 60 of the
16 Complaint.

17 61. Deny every allegation stated in Paragraph No. 61 of the
18 Complaint.
19

20 62. The Matson defendants incorporate their preceding responses to
21 Paragraphs Nos. 1 through 61 of the Complaint as if fully set forth herein.

22 63. Admit the individual defendants and Selective Employment
23 Agency are "persons" within the meaning of 18 U.S.C. §1961(3). The

1 Matson defendants deny every other allegation stated in Paragraph No. 63 of
2 the Complaint.

3 64. Deny every allegation stated in Paragraph No. 64 of the
4 Complaint.

5 65. Deny every allegation stated in Paragraph No. 65 of the
6 Complaint.

7 66. Based on available information and belief, deny every allegation
8 stated in Paragraph No. 66 of the Complaint.

9 67. Based on available information and belief, deny every allegation
10 stated in Paragraph No. 67 of the Complaint.

11 68. Deny every allegation stated in Paragraph No. 68 of the
12 Complaint.

13 69. Deny every allegation stated in Paragraph No. 69 of the
14 Complaint.

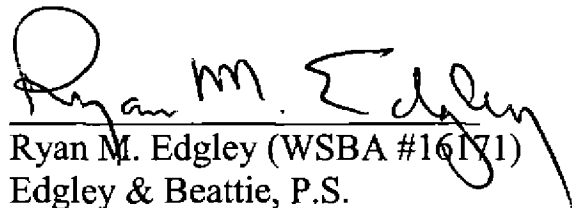
15 70-75. Paragraphs Nos. 70 through 75 of the Complaint do not purport
16 to stated a claim against, nor a conspiracy involving, the Matson defendants
17 and, therefore, the Matson defendants do not respond to said allegations.

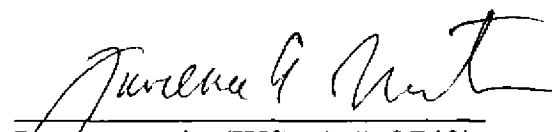
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19
20
21 FURTHER, AS AFFIRMATIVE DEFENSES, the Matson defendants
22 contend the claims asserted by the plaintiffs are barred by the applicable
23

1 statutes of limitation, estoppel, waiver, consent and payment; and that the
2 plaintiffs have failed to mitigate their damages.

3 HAVING ANSWERED the plaintiffs' Complaint, the Matson
4 defendants request the court dismiss the plaintiffs' Complaint, with prejudice;
5 and asks that the court award the Matson defendants their costs and
6 reasonable attorney fees incurred in this matter.
7

8 RESPECTFULLY SUBMITTED this 25th day of November, 2003.
9
10

11 
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13 Edgley & Beattie, P.S.
14 Attorneys for Defendants Matson.

15 
16 Larry Martin (WSBA #18743)
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7 Attorneys for the Matson Defendants

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 OLIVIA MENDOZA, JUANA)
11 MENDIOLA, and VICTOR SANCHEZ,)
Individually and on behalf of all others)
12 similarly situated,)
13 Plaintiffs,)

NO. CY-00-3024-FVS

14 vs.)
15 ZIRKLE FRUIT CO., a Washington)
corporation, SELECTIVE EMPLOYMENT)
16 AGENCY, INC., a Washington corporation,)
DARYL MATSON, RODERICK)
17 MATSON, WILLIAM ZIRKLE, GARY)
HUDSON, and WILLIAM WANGLER,)
18 Defendants.)
19

CERTIFICATE OF MAILING

20 The undersigned certifies that she is a citizen of the United States and over the age of 18
21 years; that on the 3rd day of December, 2003, she deposited in the United States mail at Yakima,
22 Washington, a properly stamped and addressed envelope containing a copy of the Answer of
23

1 Defendants Roderick Matson and Daryl Matson to the Second Amended Class Action Complaint,

2 to:

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19 
20 CINDY MALEY

21
22
23