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

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

OLIVIA MENDOZA, JUANA)
MENDIOLA and VICTOR SANCHEZ,) NO. CY-00-3024-FVS
individually and on behalf of all others)
similarly situated,) ANSWER OF DEFENDANTS ZIRKLE FRUIT
Plaintiffs,) COMPANY, WILLIAM ZIRKLE, GARY
v.) HUDSON, AND WILLIAM WANGLER TO
THE SECOND AMENDED CLASS-ACTION
COMPLAINT
ZIRKLE FRUIT CO., a Washington)
corporation, SELECTIVE)
EMPLOYMENT AGENCY, INC., a)
Washington corporation, DARYL)
MATSON, RODERICK MATSON,)
WILLIAM ZIRKLE, GARY HUDSON)
and WILLIAM WANGLER,)
Defendants.)

COME NOW Defendants Zirkle Fruit Company, a Washington corporation, William Zirkle, Gary Hudson, and William Wangler and in answer to Plaintiffs' Second Amended Class-Action Complaint, allege and state as follows:

1. Defendants deny the allegations of Paragraph 1, and specifically deny that this is a proper class-action lawsuit.

ANSWER OF DEFS. ZIRKLE FRUIT CO., W. ZIRKLE,
G. HUDSON & W. WANGLER TO SECOND AMENDED
CLASS-ACTION COMPLAINT- 1

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2. Defendants admit that Matson and Zirkle are corporations engaged in the business of growing, warehousing, packing and selling apples and other types of produce, but deny the remainder of the allegations of Paragraph 2.

3. Defendants deny the allegations of Paragraph 3.

4. Defendants deny the allegations of Paragraph 4.

5. Defendants deny the allegations of Paragraph 5.

6. Defendants deny the allegations of Paragraph 6.

7. Defendants deny the allegations of Paragraph 7.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and they are therefore denied.

9. Defendants admit the allegations of Paragraph 9 insofar as it alleges that Plaintiff Juana Mendiola was employed by Selective on an hourly basis to work at Zirkle Fruit at the warehouse only in late 1999 and early 2000. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 9 and they are therefore denied.

10. Defendants admit that Victor Sanchez was employed by Zirkle Fruit in its orchards as an hourly or piece rate worker last working in 2000, and that as far as Defendants know he was legally authorized to be employed in the U.S. at the time he was employed by Zirkle Fruit.

11. Defendants admit that each of the plaintiffs were employed at some time by Matson, Zirkle or Selective at rates set by one of the defendants. Defendants deny the remainder of the allegations contained in Paragraph 11.

12. Defendants admit that Zirkle Fruit Company is a Washington corporation with its principal place of business located in Selah, Washington. Defendants admit that Zirkle Fruit is named as a

1 defendant only in Count II (for Civil Conspiracy) of the Second Amended Class-Action Complaint, but
2 Defendants deny the allegations in Count II.
3

4 13. Defendants admit that William Zirkle is the president of Zirkle Fruit Company. Defendants
5 deny the remainder of the allegations of Paragraph 13.

6 14. Defendants deny the allegations of Paragraph 14.

7 15. Defendants admit that Roderick Matson is the president of Matson Fruit Company, is a
8 citizen and resident of the State of Washington, and is a resident of this judicial district. Defendants
9 admit that Daryl Matson is a principal in Matson Fruit Company and the company's director of human
10 resources, is a citizen and resident of the State of Washington, and a resident of this judicial district.

11 Defendants deny the remainder of the allegations of Paragraph 15. 16. Defendants admit Selective
12 Employment Agency has its principal place of business located in Yakima, Washington, but are without
13 knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations
14 contained in Paragraph 16 as it relates to the legal entity status of Selective.
15

16 17. Defendants are without knowledge or information sufficient to form a belief as to the truth
17 of the allegations contained in Paragraph 17 relating to subject matter jurisdiction and/or they are denied.
18

19 18. Defendants are without knowledge or information sufficient to form a belief as to the truth
20 of the allegations contained in Paragraph 18 relating to venue and/or they are denied.
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22 19. Defendants deny the allegations of Paragraph 19.

23 20. Defendants deny the allegations of Paragraph 20.

24 21. Defendants deny the allegations of Paragraph 21.

25 22. Defendants deny the allegations of Paragraph 22.

26 23. Defendants deny the allegations of Paragraph 23.
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1 24. Defendants deny the allegations of Paragraph 24.

2 25. Defendants deny the allegations of Paragraph 25.

3
4 26. Defendants admit that Eastern Washington is famous for its fruit industry and produces fruit
5 recognized for its quality throughout the United States and many foreign countries. Defendants are
6 without knowledge or information sufficient to form a belief as to the truth of the remainder of the
7 allegations contained in Paragraph 26, and/or they are denied.

8
9 27. Defendants admit that many fruit picking and packing operations require manual labor.
10 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
11 remainder of the allegations contained in Paragraph 27 and/or they are denied.

12 28. Defendants admit that as to the Zirkle Fruit Company operations, Defendants William Zirkle,
13 William Wangler, and Gary Hudson have at different times had differing and varying management
14 responsibilities relating to some aspects, but not all, of Zirkle Fruit Company's orchard or packing house
15 operations. Defendants deny that Defendants William Zirkle, William Wangler or Gary Hudson
16 individually own Zirkle Fruit Company's orchard operations or packing houses. Defendants admit that
17 due to a variety of complex social and economic factors, the fruit industry has attracted many workers
18 of Mexican citizenship. Defendants are without knowledge or information sufficient to form a belief
19 as to the truth of the remainder of the allegations contained in Paragraph 28, and/or they are denied.

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22 29. Defendants are without knowledge or information sufficient to form a belief as to the truth
23 of the allegations contained in Paragraph 29 and/or they are denied.

24 30. Defendants are without knowledge or information sufficient to form a belief as to the truth
25 of the allegations contained in Paragraph 30 and/or they are denied.
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3 31. Defendants are without knowledge or information sufficient to form a belief as to the truth
4 of the allegations contained in Paragraph 31 and/or they are denied.

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6 32. Defendants are without knowledge or information sufficient to form a belief as to the truth
7 of the allegations contained in Paragraph 32 and/or they are denied.

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9 33. Defendants are without knowledge or information sufficient to form a belief as to the truth
10 of the allegations contained in Paragraph 33 and/or they are denied.

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12 34. Defendants are without knowledge or information sufficient to form a belief as to the truth
13 of the allegations contained in Paragraph 34 and/or they are denied.

14
15 35. Defendants are without knowledge or information sufficient to form a belief as to the truth
16 of the allegations contained in Paragraph 35 and/or they are denied.

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18 36. Defendants are without knowledge or information sufficient to form a belief as to the truth
19 of the allegations contained in Paragraph 36 and/or they are denied.

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21 37. Defendants are without knowledge or information sufficient to form a belief as to the truth
22 of the allegations contained in Paragraph 37 and/or they are denied.

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24 38. Defendants are without knowledge or information sufficient to form a belief as to the truth
25 of the allegations contained in Paragraph 38 and/or they are denied.

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27 39. Defendants are without knowledge or information sufficient to form a belief as to the truth
28 of the allegations contained in Paragraph 39 and/or they are denied.

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31 40. Defendants are without knowledge or information sufficient to form a belief as to the truth
32 of the allegations contained in Paragraph 29 and/or they are denied.

33
34 41. Defendants deny the allegations of Paragraph 41. The provisions and correct cite of the
35 statute speaks for itself.

1 42. Defendants are without knowledge or information sufficient to form a belief as to the truth
2 of the allegations contained in Paragraph 42 and/or they are denied.
3

4 43. Defendants are without knowledge or information sufficient to form a belief as to the truth
5 of the allegations contained in Paragraph 43 and/or they are denied.
6

7 44. Defendants are without knowledge or information sufficient to form a belief as to the truth
8 of the allegations contained in Paragraph 44 and/or they are denied.
9

10 45. Defendants deny the allegations of Paragraph 45.

11 46. Defendants deny the allegations of Paragraph 46.

12 47. Defendants admit Juana Castenada testified in deposition that since 2000 she has had
13 occasion to complete the employer section of the I-9 form for some of the workers hired at the Zirkle
14 Fruit Company packing house, that she initially obtained employment at Zirkle Fruit Company in 1992
15 using invalid documentation without Zirkle Fruit Company's knowledge, but that she obtained valid
16 documentation in 1993. Defendants deny the remainder of the allegations contained in Paragraph 47.

17 48. Defendants admit that in 1997 the INS audited some of Zirkle Fruit Company's I-9 forms
18 and concluded that some of the work documentation which had been presented was not valid.
19 Defendants deny there was any INS "raid," but admit that the INS requested and received permission and
20 cooperation from Zirkle Fruit Company to enter company premises and that individuals may have been
21 apprehended. Defendants are without knowledge or information sufficient to form a belief as to whether
22 or not any such individuals were actually deported. Defendants deny the remainder of the allegations
23 contained in Paragraph 48.
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25 49. Defendants admit that Zirkle Fruit Company hired Gary Hudson to be human resources
26 manager in 1998. Defendants deny the remainder of the allegations contained in Paragraph 49.
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1 50. Defendants admit that Mr. Hudson was involved in the decision by Zirkle Fruit Company
2 to enter into an agreement with Selective to furnish properly documented, legal warehouse workers to
3 Zirkle Fruit Company on a temporary and/or "as needed" basis as provided in the agreement. These
4 workers were hired by Selective as Selective employees, with Zirkle paying Selective for this service.
5 Defendants deny the remainder of the allegations contained in Paragraph 50.
6

7 51. Defendants admit that after this lawsuit was filed Mr. Hudson first became informed that
8 Selective was not doing Social Security verification as was being done by Zirkle Fruit Company at the
9 Zirkle Fruit Company warehouse, that Mr. Hudson then requested Selective to do such verification, and
10 that Selective subsequently reported that some of the Social Security numbers reportedly did not match.
11 Defendants deny the remainder of the allegations contained in Paragraph 51.
12

13 52. Defendants deny the allegations of Paragraph 52.

14 53. Defendants are without knowledge or information sufficient to form a belief as to the truth
15 of the allegations contained in Paragraph 53 and/or they are denied.
16

17 54. Defendants deny the allegations of Paragraph 54.

18 55-61. Defendants deny the allegations of Paragraphs 55-61.

19 62. Defendants incorporate their preceding responses to Paragraphs 1-61 in response to the
20 allegations of Paragraph 62.
21

22 63. Defendants admit that the individual defendants are "persons" within the meaning of 18 USC
23 § 1961(3). Defendants are without knowledge or information sufficient to form a belief as to the truth
24 of the remainder of the allegations contained in Paragraph 63 and/or they are denied.
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26 64-69. Defendants deny the allegations of Paragraphs 64-69.
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1 70. Plaintiffs incorporate their preceding responses to Paragraphs 1-69 to the extent those
2 paragraph allegations are incorporated in Paragraph 70.

3
4 71-75. Defendants deny the allegations of Paragraphs 71-75.

5 As further affirmative defenses, Defendants allege and state as follows:

6 76. To the extent plaintiffs or class members knew or should have known about the presence or
7 alleged presence of any illegal workers and failed to take steps to protect their interests by reporting the
8 presence of these workers to their places of employment or to appropriate governmental agencies, or by
9 acquiescing in the continued presence of illegal workers, that plaintiffs'/class members' claimed injuries
10 and damages were caused (and are therefore barred) in whole or in part by plaintiffs'/class members'
11 contributory fault, contributory negligence, waiver, consent, acquiescence, ratification, estoppel, in pari
12 delicto, unclean hands, equal involvement, payment, failure to mitigate, and/or assumption of the risk,
13 and any other defense based upon the foregoing factual allegations.

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16 77. That plaintiffs/class members' claimed injuries and damages are barred in whole or in part
17 by the applicable statutes of limitations to the extent any claim is being made for damages outside the
18 applicable statutes of limitations as it relates to when the claims asserted herein were commenced against
19 the various respective defendants.

20
21 78. That plaintiffs/class members' Complaint fails to state a claim upon which relief can be
22 granted as there is no private right of action for violation of/conspiracy to violate the Immigration and
23 Nationality Act.

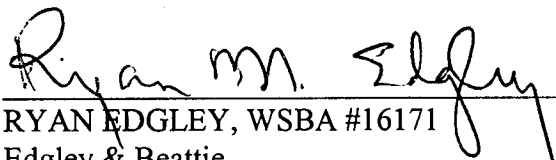
24 79. To the extent plaintiffs or class members participated either directly or indirectly in any
25 conduct alleged or found to be a part of any RICO violation or civil conspiracy as alleged by
26 plaintiffs/class members, including, but not limited to, improper work documentation practices (such
27


1 as the filling out of I-9 or other work-related forms), failing to adhere to Zirkle Fruit Company's policies
2 concerning only hiring properly documented workers, or failing to report/assisting/aiding or abetting
3 known or suspected illegal workers, plaintiffs'/class members' claims are barred by the doctrines of
4 unclean hands, in pari delicto, equal involvement, contributory fault, contributory negligence, waiver,
5 consent, acquiescence, ratification, estoppel, and failure to mitigate, and/or assumption of the risk, and
6 any other defense based upon such conduct.
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8
9 WHEREFORE, having answered Plaintiffs' Complaint, Defendants pray for relief as follows:

- 10 1. For dismissal of Plaintiffs' Complaint with prejudice;
11 2. For an award of Defendants' costs, expenses, and attorneys' fees as provided by law; and
12 3. For such other and further relief as the Court deems just and equitable.
13

14 DATED this 8th day of December, 2003.

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16 
17 RYAN EDGLEY, WSBA #16171
18 Edgley & Beattie
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21 Wangler

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

OLIVIA MENDOZA, JUANA)
MENDIOLA and VICTOR SANCHEZ,) NO. CY-00-3024-FVS
individually and on behalf of all others)
similarly situated,) CERTIFICATE OF SERVICE
)
Plaintiffs,)
)
v.)
)
ZIRKLE FRUIT CO., a Washington)
corporation, SELECTIVE)
EMPLOYMENT AGENCY, INC., a)
Washington corporation, DARYL)
MATSON, RODERICK MATSON,)
WILLIAM ZIRKLE, GARY HUDSON)
and WILLIAM WANGLER,)
)
Defendants.)
_____)

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.

1 That on December 8, 2003, the undersigned caused to be deposited in the United States Post
2 Office at Yakima, Yakima County, Washington, envelopes containing true and correct copies of this
3 **Certificate of Service and Answer of Defendants Zirkle Fruit Company, William Zirkle, Gary**
4 **Hudson, and William Wangler to The Second Amended Class-Action Complaint**, said envelopes
5 bearing correct first class postage and being addressed to:
6

7
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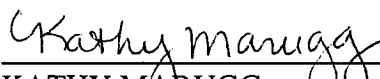
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18 DATED this 8th day of December, 2003, at Yakima, Washington.
19

20 
21 KATHY MARUGG