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

JAN 07 2003

JAMES R. LARSEN, CLERK
DEPUTY

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON
12 AT YAKIMA

13 OLIVIA MENDOZA and JUANA
14 MENDIOLA, individually and on behalf
of all others similarly situated,

15 Plaintiffs,

16 v.

17 ZIRKLE FRUIT CO., a Washington
18 corporation, MATSON FRUIT
19 COMPANY, a Washington corporation
and SELECTIVE EMPLOYMENT
20 AGENCY, INC., a Washington
corporation,

21 Defendants.

No. CY-00-3024-FVS

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR THE
COURT TO TAKE SUPPLEMENTAL
JURISDICTION OVER SELECTIVE
EMPLOYMENT AGENCY, INC.

23 Plaintiffs, Olivia Mendoza and Juana Mendiola, individually and on behalf of
24 all others similarly situated (hereafter "Plaintiffs"), submit the following

26 MEM. IN SUPPORT OF PLS'
MOT. RE JURISDICTION OVER - 1 -
SELECTIVE



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ORIGINAL

1 Memorandum in support of their request that the Court take supplemental jurisdiction
2 over defendant Selective Employment Agency, Inc. (“Selective”).

3 **I. INTRODUCTION**

4 As the Court is aware, the Ninth Circuit has made clear that its decision in
5 *Ayala*¹ should no longer be read to preclude the exercise of supplemental jurisdiction
6 over Plaintiffs’ claims against Selective. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163
7 (9th Cir. 2002). Accordingly, supplemental jurisdiction over Selective is appropriate
8 pursuant to 28 U.S.C. § 1367 so long as (i) “the state [law] conspiracy claims against
9 Selective Employment constitute part of the same constitutional case as the federal
10 RICO claims against the growers” and (ii) this Court in its discretion determines that
11 “such jurisdiction would be appropriate in the context of this litigation.” *Mendoza*,
12 301 F.3d at 1174-75.

13 Plaintiffs respectfully submit that there is no question but that their civil
14 conspiracy claims constitute part of the “same constitutional case” as the RICO claim,
15 as the claims arise out of the same nucleus of operative facts, and will involve the
16 same witnesses and documents. Accordingly, Plaintiffs move this Court to exercise
17 its discretion to take jurisdiction over those claims so that this case may be resolved
18 in a single proceeding and the purposes of the supplemental jurisdiction statute may
19 be fulfilled.

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¹ *Ayala v. United States*, 550 F.2d 1196, 1199-1200 (9th Cir. 1977).



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II. FACTUAL BACKGROUND

Plaintiffs have filed a two-count Complaint against Selective and the two grower defendants, Zirkle Fruit Co. (“Zirkle”) and Matson Fruit Co. (“Matson”).² Count I alleges violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, against defendants Zirkle Fruit Co. (“Zirkle”) and Matson Fruit Co. (“Matson”). Selective is not a defendant in Count I – instead, it is part of two “association-in-fact” enterprises under 18 U.S.C. § 1961(4) (the “Zirkle-Selective” enterprise and the “Matson-Selective” enterprise).

Count II alleges defendant Selective conspired with Zirkle and Matson to violate the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1324(a)(3)(A), by knowingly employing illegal aliens. The Complaint refers to the conspiracy as “the illegal immigrant hiring scheme,” and Plaintiffs allege that the conspiracy injured them by depressing the wages they received as employees of Zirkle and Matson. Because the conspiracy claims against Selective and the growers arise out of the same nucleus of operative fact as the RICO claims against the growers, the Complaint pleads “supplemental jurisdiction” over Selective as a “pendent party” pursuant to 28 U.S.C. § 1367(a).

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² On December 12, 2002, Plaintiffs filed a motion for leave to file their First Amended Complaint (“FAC”), which defendants have not opposed. Regardless of whether the Court considers the Complaint or the FAC, the analysis with respect to the supplemental jurisdiction question is unaffected.

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III. ARGUMENT

The Ninth Circuit’s ruling has asked that this Court “determine, in the first instance, whether the application of the *Gibbs*³ standard permits the exercise of supplemental jurisdiction, and . . . exercise discretion over whether such jurisdiction would be appropriate in the context of this litigation.” *Mendoza*, 301 F.3d at 1174-75. Plaintiffs accordingly request that the Court determine that supplemental jurisdiction is appropriate under *Gibbs*, and exercise it discretion to take jurisdiction over Plaintiffs’ state-law conspiracy claims against Selective and the grower defendants.

A. Plaintiffs’ State Law Civil Conspiracy Claims Constitute Part of the Same Constitutional “Case” as the Federal RICO Claims

As the supplemental jurisdiction statute provides:

The district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties. [28 U.S.C. § 1367(a).]

Under this statute and the United States Constitution, this Court may take jurisdiction over the claims against Selective and the growers so long as they constitute “‘but one constitutional ‘case’ and ‘derive from a common nucleus of operative fact’” with the federal RICO claims against the growers. *Mendoza*, 301 F.3d at 1173 (quoting *Gibbs*, 383 U.S. at 725.)

There can be no doubt that Plaintiffs’ civil conspiracy claim meets the *Gibbs* test. In order for supplemental jurisdiction to be Constitutional under *Gibbs*:

³ *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

1 The federal claim must have substance sufficient to confer
2 subject matter jurisdiction on the court. The state and
3 federal claims must derive from a common nucleus of
4 operative fact. But if, considered without regard to their
5 federal or state character, a plaintiff's claims are such that
6 he would ordinarily be expected to try them all in one
7 judicial proceeding, then, assuming substantiality of the
8 federal issues, there is power in the federal courts to hear
9 the whole. [Citations omitted.]

10 *Gibbs*, 383 U.S. at 725.

11 Here, as the Ninth Circuit found, Plaintiffs state a claim under RICO. The
12 gravamen of that claim — that defendants Zirkle and Matson used Selective to
13 knowingly acquire undocumented workers who were smuggled or harbored in
14 violation of U.S. immigration law — is the same as the gravamen of the state-law
15 civil conspiracy count against all three defendants. Quite obviously, given the
16 overwhelming identity of issues, witnesses and evidence that will be necessary to
17 resolve the state and federal claims, Plaintiffs would certainly be expected to try them
18 all in one judicial proceeding. In short, because Plaintiffs' entire Complaint raises a
19 single "case" involving substantial federal issues, supplemental jurisdiction over
20 Plaintiffs' claims against Selective fully comports with Article III of the Constitution.
21 *See, e.g., Palmer v. Hospital Auth.*, 22 F.3d 1559, 1566 (11th Cir. 1994) (finding that
22 district court had pendent party jurisdiction because claims involved the "same facts,
23 occurrences, witnessess, and evidence.")

24 **B. In Its Discretion, This Court Should Exercise Supplemental Jurisdiction
25 Over The Civil Conspiracy Claims Against Selective And The Growers**

26 As the Ninth Circuit held, this Court's analysis does end upon the finding that
it has the power to exercise supplemental jurisdiction over the state law civil
conspiracy claims. Indeed, "[t]he decision to exercise that jurisdiction remains
discretionary with the district court." *Mendoza*, 301 F.3d at 1174 (citing *City of
Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172-73 (1997)). Plaintiffs

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1 respectfully submit that there is every reason for exercising supplemental jurisdiction
2 in this case, and no reason for declining to do so.

3 As the Supreme Court reiterated in *Int'l Coll. of Surgeons*, in determining
4 whether to exercise supplemental jurisdiction, ““district courts [should] deal with
5 cases involving pendent claims in the manner that best serves the principles of
6 economy, convenience, fairness, and comity which underlie the pendent jurisdiction
7 doctrine.”” 522 U.S. at 172-173 (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S.
8 343, 357 (1988)). Here, these principles all counsel in favor of the exercise of pendent
9 jurisdiction.

10 Supplemental jurisdiction is economical, convenient and fair here. Were this
11 Court to decline jurisdiction, Plaintiffs would be forced to litigate virtually identical
12 claims in state court against Selective. Moreover, it would be wasteful and illogical
13 to bring state-law civil conspiracy claims against Selective alone – while proceeding
14 against its co-conspirators on the identical civil conspiracy claim in this Court. The
15 only economical, convenient and fair approach here is to fully resolve all these claims
16 in this Court.

17 Concerns of comity also counsel in favor of the exercise of supplemental
18 jurisdiction here. After all, both the predicate RICO acts, and the unlawful acts at the
19 heart of the civil conspiracy claim, are violations of federal Immigration law. There
20 is no reason to have a state court proceeding decide whether those predicate
21 violations are made out when the proceeding before this Court will resolve that very
22 issue – once, and for all.

23 Moreover, while the supplemental jurisdiction statute “enumerat[es] the
24 circumstances in which district courts can refuse its exercise” *Int'l Coll. of Surgeons*,

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1 522 U.S. at 173,⁴ no plausible argument can be made that any such circumstances
2 apply here. Indeed, 28 U.S.C. § 1367(c) provides that a court may decline to exercise
3 supplemental jurisdiction when:

- 4 (1) the claim raises a novel or complex issue of State law,
- 5 (2) the claim substantially predominates over the claim or
6 claims over which the district court has original jurisdiction,
- 7 (3) the district court has dismissed all claims over which it
has original jurisdiction, or
- 8 (4) in exceptional circumstances, there are other compelling
9 reasons for declining jurisdiction.

10 Here, Plaintiffs have alleged a straightforward civil conspiracy claim under
11 established Washington law. *See, e.g., Lewis Pacific Dairymen's Asso. v. Turner*, 50
12 Wn.2d 762, 772, 314 P.2d 625 (1957) (citing *Harrington v. Richeson*, 40 Wn.2d 557,
13 570, 245 P.2d 191 (1952)):

14 A conspiracy is a combination of two or more persons to
15 commit a criminal or unlawful act, or to commit a lawful act
16 by criminal or unlawful means; or a combination of two or
more persons by concerted action to accomplish an unlawful
purpose, or some purpose not in itself unlawful by unlawful
means. . . .

17 To constitute a conspiracy the purpose to be effected by it
18 must be unlawful in its nature or in the means to be
19 employed for its accomplishment

20
21 ⁴ *See also Executive Software N. Am. v. United States Dist. Court*, 24 F.3d 1545,
22 1551 (9th Cir. 1994) (“once it is determined that the assertion of supplemental
23 jurisdiction is permissible under sections 1367(a) and (b), section 1367(c) provides
24 the only valid basis upon which the district court may decline jurisdiction and remand
25 pendent claims.”)

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1 *Accord, Deschamps v. Luther*, 64 Wn.2d 728, 393 P.2d 945 (1964); *Sterling Bus.*
2 *Forms v. Thorpe*, 82 Wn. App. 446, 451, 918 P.2d 531, 533 (1996). Here, the
3 combination is between Selective and its grower-co-conspirators, and the purpose
4 may be characterized as either to commit criminal violations of the Immigration laws,
5 or to achieve the lawful purpose of lowering wages through violations of the
6 Immigration laws. Either way, Plaintiffs allege a classic civil conspiracy claim under
7 Washington law.

8 Nor can it be said that the civil conspiracy claim predominates over the federal
9 RICO claim. Indeed, both claims revolve around the same facts, and seek damages
10 resulting from depressed wages. If anything, the federal RICO claim (with its treble
11 damages) predominates over the state law civil conspiracy claim.

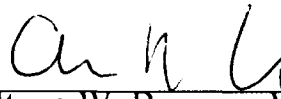
12 Finally, Plaintiffs' federal claims are pending in this Court, and there are no
13 other "exceptional" or "compelling" reasons for declining to exercise supplemental
14 jurisdiction as the statute requires. 28 U.S.C. § 1367(c)(4). To the contrary, strong
15 reasons exist for exercising supplemental jurisdiction here.

16 IV. CONCLUSION

17 For the reasons stated above, Plaintiffs respectfully request that this Court
18 exercise jurisdiction over Plaintiffs' state law civil conspiracy claims against
19 Selective.

20 DATED: January 6, 2003

21 HAGENS BERMAN LLP

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DECLARATION OF SERVICE

I, Lynn Brammeier, declare under penalty of perjury under the laws of the State of Washington that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within-entitled cause. I am an employee of the law firm Hagens Berman LLP, and my business address is 1301 Fifth Avenue, Suite 2900, Seattle, Washington 98101.

On January 6, 2003 I caused an original and one copy of the following document to be sent via UPS overnight mail for filing with the Clerk of the District Court, Eastern District of Washington, West 920 Riverside Ave., Room 840, U.S. District Courthouse, Spokane, WA., 99201 on January 7, 2003:

I also caused a copy of the following document to be served on counsel of record in the manner indicated below:

NOTICE OF HEARING

**PLAINTIFFS' MOTION FOR THE COURT TO TAKE
SUPPLEMENTAL JURISDICTION OVER SELECTIVE
EMPLOYMENT AGENCY, INC.;**

**PLAINTIFFS' MEMORANDUM IN SUPPORT MOTION FOR THE
COURT TO TAKE SUPPLEMENTAL JURISDICTION OVER
SELECTIVE EMPLOYMENT AGENCY, INC.;**

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR THE
COURT TO TAKE SUPPLEMENTAL JURISDICTION OVER
SELECTIVE EMPLOYMENT AGENCY, INC.; and**

DECLARATION OF SERVICE

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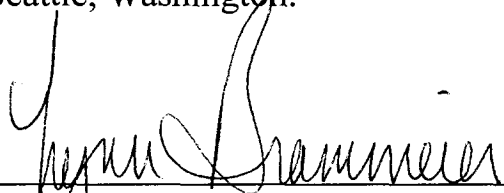


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Lynn Brammeier

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