

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

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

Plaintiffs,

v.

ZIRKLE FRUIT COMPANY,
SELECTIVE EMPLOYMENT
AGENCY INC., WILLIAM ZIRKLE,
GARY HUDSON and WILLIAM
WANGLER,

Defendants.

No. 00 CY 3024-FVS

CLASS ACTION SETTLEMENT
AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“*Settlement Agreement*”) is entered into by and between *Named Plaintiffs* in the *Mendoza Action*, for themselves and on behalf of the *Settlement Class*, on the one hand, and the *Defendants*, on the other. Italicized and capitalized terms and phrases have the meanings provided in Section 1 below.

RECITALS

WHEREAS, *Named Plaintiffs* have commenced the *Action* asserting *RICO* claims for relief on behalf of the *Settlement Class* against the *Defendants*, all of which claims are disputed by the *Defendants*;

WHEREAS, the *Mendoza Action* is pending before the Hon. Fred Van Sickle of the United States District Court for the Eastern District of Washington (the “*Court*”);

WHEREAS, the *Court* certified the *Named Plaintiffs'* claims for class treatment pursuant to Fed. R. Civ. P. 23 and appointed Johnson & Bell LLP and Hagens Berman Sobol Shapiro LLP as *Class Counsel* for Plaintiffs in the *Mendoza Action*;

WHEREAS, discovery is complete in the *Mendoza Action*, and the Court has ruled on *Defendants* Motions for Summary Judgment;

WHEREAS, the Court appointed Magistrate Judge Michael W. Leavitt to assist the *Settling Parties* in exploring settlement possibilities, and Judge Leavitt conducted a mediation session in which the *Settling Parties* participated;

WHEREAS, the *Settling Parties* are desirous of promptly and fully resolving and settling with finality all of the *Released Claims* asserted by the *Named Plaintiffs*, for themselves and on behalf of the *Settlement Class*, against the *Defendants*;

WHEREAS, to accomplish that goal, the *Settling Parties* have reached a settlement by and through their respective undersigned counsel on the terms and conditions set forth in this *Settlement Agreement*;

NOW, THEREFORE, the *Settling Parties*, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 “*Agreement Execution Date*” shall mean: the date on which this *Settlement Agreement* is fully executed, as provided in Section 11.14 below.

1.2 “*Complaint*” shall mean: the Second Amended Class Action Complaint filed on November 5, 2003 in the *Mendoza Action*.

1.3 “*Claims*” shall have the meaning set forth in Section 3.2.

1.4 “*Class Counsel*” shall mean: Hagens Berman Sobol Shapiro LLP and Johnson & Bell Ltd.

1.5 “*Class Notice*” shall mean: the *Mailed Notice* and the *Publication Notice*.

1.6 “*Class Period*” shall mean: the period from November 5, 1999 through September 8, 2004.

1.7 “*Company*” shall mean Zirkle Fruit Co.

1.8 “*Defendants*” shall mean: the following *Persons* named as defendants in the *Complaint*: Zirkle Fruit Company, Selective Employment Agency, Inc., William Zirkle, Gary Hudson and William Wangler.

1.9 “*Effective Date*” shall mean: the date, established pursuant to Section 8.1, on which all of the conditions to settlement set forth in Section 2 of this *Settlement Agreement* have been fully satisfied or waived and the *Settlement* shall have become *Unconditional*.

1.10 “*RICO*” shall mean: the Racketeer and Corrupt Organizations Act, as amended, 18 U.S.C. § 1961 *et seq.*

1.11 “*Fairness Hearing*” shall have the meaning set forth in Section 2.2.3.

1.12 “*Final*” shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, that there has occurred a full and final disposition of any such *Review Proceeding* without a reversal or any material

modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand.

1.13 “*Final Order*,” or *Order of Final Judgment and Dismissal*, shall have the meaning set forth in Section 2.2.4.

1.14 “*Incentive Awards*” shall mean: a requested amount of \$10,000 for each *Named Plaintiff* in recognition of the benefits each has generated for the *Settlement Class* by coming forward and devoting their time and knowledge to the prosecution of the *Mendoza Action*. Any such award is subject to approval of the *Court* upon *Notice* to the *Settlement Class*, and will come out of the *Settlement Amount*.

1.15 “*Individual Defendants*” shall mean: William Zirkle, Gary Hudson and William Wangler.

1.16 “*Mailed Notice*” shall mean: the Notice of Settlement of Class Action, to be approved by the *Court* in the *Preliminary Approval Order* and mailed to the last known address of all *Settlement Class* members in Spanish and in English.

1.17 “*Named Plaintiffs*” shall mean: the following persons, as plaintiffs on behalf of themselves and on behalf of all members of the *Settlement Class*: Olivia Mendoza, Juana Mendiola and Victor Sanchez, and each of their *Successors-In-Interest*. *Named Plaintiffs* intend that all rights and obligations that are binding on *Named Plaintiffs* under this *Settlement Agreement*, including each and every covenant, agreement, and warranty, also shall be binding on all members of the *Settlement Class*.

1.18 “*Net Settlement Amount*” shall mean: the balance of the *Settlement Fund* after payment of (a) all costs and expenses reasonably and actually incurred in connection with providing *Class Notice* to the *Settlement Class*; (b) all taxes incurred on the *Settlement Fund’s*

income as discussed in Section 7.1.1 below; (c) any award of fees and expenses to *Class Counsel* as discussed in Section 10.1 below; (d) any incentive awards to the *Named Plaintiffs* as discussed in Section 10.2 below; and (e) the costs of the administration of the Settlement.

1.19 “*Order of Final Judgment and Dismissal*,” or “*Final Order*,” shall have the meaning set forth in Section 2.2.4.

1.20 “*Person*” shall mean: an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.21 “*Plaintiff Releasees*” shall have the meaning set forth in Section 3.3 below.

1.22 “*Plan of Allocation*” shall mean: the plan or formula of allocation of the *Net Settlement Fund*, to be proposed by the *Named Plaintiffs* and approved by the *Court* upon *Notice* to the *Settlement Class*, whereby the *Net Settlement Fund* shall, after the *Effective Date*, be distributed for the benefit of the *Settlement Class*, as discussed in Section 8.3 below.

1.23 “*Preliminary Approval Order*” shall have the meaning set forth in Section 2.3.1.

1.24 “*Preliminary Motion*” shall have the meaning set forth in Section 2.2.1.

1.25 “*Publication Notice*” shall mean: the summary form of notice, to be approved by the *Court*.

1.26 “*Released Claims*” shall have the meaning set forth in Section 3.2.

1.27 “*Releasees*” shall mean: the *Defendants*; all their *Affiliated Entities* (Zirkle Aviation LLC; Zirkle State Investment Company LLC; Zirkle Investment LLC; Zirkle Vineyards LLC; Grand Estate Ranches LLC; Cougar Ranches LLC; Tripod Ranches LLC; Amy Chief Mattawa LLC; Ranier Fruit Co. Inc; Yobites LLC; Fuji Orchards Inc; Ann Louise Inc.); all former and current employees, coworkers, officers, shareholders, owners, operators, successors,

assigns, attorneys and attorney firms of the *Defendants* and their *Affiliated Entities*; and all former and current spouses and marital communities of any of the foregoing.

1.28 “*Releases*” shall mean the releases set forth in Section 3.2.

1.29 “*Settlement*” shall mean: the settlement to be consummated under this *Settlement Agreement* pursuant to the *Final Order*.

1.30 “*Settlement Amount*” shall mean the total of \$1.3 million dollars, to be deposited by the *Defendants* into an escrow account bearing interest for the benefit of the *Settlement Class* within two working days of *Preliminary Approval* of this *Settlement* as set forth in Section 7.1. The *Settlement Amount* is the total payment to be made by the Defendants. Once the *Effective Date* occurs, and the claims of the *Settlement Class* and the *Named Plaintiffs* are released in accordance with the provisions of this *Settlement Agreement*, under no circumstances will any of the *Settlement Amount* ever revert back to *Defendants*.

1.31 “*Settlement Agreement*” or “*Agreement*” means this Class Action Settlement Agreement.

1.32 “*Settlement Class*” shall mean: (a) all legally authorized *Persons* who worked at the Zirkle Fruit Company’s warehouse or orchards between November 5, 1999, and September 8, 2004, including warehouse workers obtained by Selective Employment Agency during this time period (excluding managers, foremen and salaried workers); and (b) as to each *Person* within the scope of subsection (a) of this paragraph, his, her or its beneficiaries, *Representatives* and *Successors-In-Interest*.

1.33 “*Settlement Fund*” shall have the meaning set forth in Section 7.1 below.

1.34 “*Settlement Fund Agreement*” shall mean: the agreement under which the *Settlement Fund* is established.

1.35 “*Settling Parties*” shall mean: the *Named Plaintiffs* and the *Defendants*.

1.36 “*Stipulated Dismissal*” shall mean the stipulated dismissal of the *Mendoza Action*.

1.37 “*Successor-In-Interest*” shall mean: a *Person’s* estate, legal representatives, heirs, successors or assigns.

1.38 “*Mendoza Action*” shall mean the case captioned: *Olivia Mendoza, Juana Mendiola and Victor Sanchez , individually and on behalf of all others similarly situated v. Zirkle Fruit Company, Selective Employment Agency, Inc., William Zirkle, Gary Hudson and William Wangler , Case No. 00 CY 3024 FVS, U.S. District Court (E.D. Wa.)*.

1.39 “*Unconditional*” shall have the meaning set forth in Section 2 below.

1.40 “*Zirkle Defendants*” shall mean: the *Individual Defendants and Zirkle Fruit Company*.

2. CONDITIONS TO FINALITY OF THE SETTLEMENT

2.1 Final and Unconditional Settlement. The *Settlement* provided for in this *Settlement Agreement* shall be final and unconditional (“*Unconditional*”) when each of the following conditions have been satisfied or waived:

2.2 Court Approval. The *Settlement* shall have been approved by the *Court*, as provided for in this Section 2. *Class Counsel* shall move the *Court* for a *Final Order* approving this *Settlement Agreement* and the *Settlement* contemplated hereunder. The *Settling Parties* agree to recommend to the *Court* that such order and judgment be entered, and to cooperate in good faith, including by taking all steps and efforts contemplated by this *Settlement Agreement* and any other steps or efforts which may become necessary by order of the *Court* (unless such order materially modifies the terms of this *Settlement Agreement*), to carry out this *Settlement Agreement*, including the following:

2.2.1 Motion for Preliminary Approval of Settlement and of Notices. As soon as reasonably possible upon the full execution of this *Settlement Agreement* by the *Settling Parties*, and by January 15, 2006, *Named Plaintiffs* will file a motion (“*Preliminary Motion*”) with the *Court* for an order substantially in the form annexed hereto as Exhibit A (the “*Preliminary Approval Order*”);

2.2.2 Issuance of Class Notice. On the date and in the manner set by the *Court* in its *Preliminary Approval Order*, the *Named Plaintiffs* shall cause the *Class Notice* (a) transmitted in the form and manner approved by the *Court* to the *Persons* as directed by the *Court* in the *Preliminary Approval Order*, and (b) published as directed by the *Court* in the *Preliminary Approval Order*.

2.2.3 The Fairness Hearing. On or after the date set by the *Court* for the hearing (the “*Fairness Hearing*”) the *Court* will determine: (i) whether to enter judgment finally approving the *Settlement* substantially in the form attached hereto as Exhibit B (which judgment is referred to herein as the “*Final Order*” or the “*Order of Final Judgment and Dismissal*”); (ii) whether the distribution of the *Net Settlement Amount* as provided in the *Plan of Allocation* should be approved; (iii) whether and in what amount the *Named Plaintiffs* should receive *Incentive Awards* as contemplated by Section 10.2 of this *Agreement*; and (iv) what legal fees and expenses should be awarded to *Class Counsel* as contemplated by Section 10.1 of this *Agreement*. The *Settling Parties* agree to support entry of the *Final Order* as contemplated by this Section 2. The *Settling Parties* covenant and agree that they will reasonably cooperate with one another in obtaining the *Final Order* as contemplated hereby at the *Fairness Hearing* and will not do anything inconsistent with obtaining the *Final Order*. The *Defendants* agree not to take any position with respect to the matters described in clauses (ii) – (iv) of this Section 2.2.3,

nor will the *Defendants* enter into any agreement that restricts the application or disposition of the *Settlement Fund*.

2.2.4 Finality of Order of Final Approval of Settlement. The Court shall have issued the *Final Order* and the *Final Order* shall have become *Final*.

2.2.5 Dismissals of Claims. The *Mendoza Action* and all *Released Claims* shall have been dismissed with prejudice as against the *Defendants* and their *Affiliated Entities*.

2.3 Funding of Settlement Fund. The *Settling Defendants* shall have caused the *Settlement Amount* to be deposited at the time prescribed by, and otherwise as provided for, in Section 7.

3. RELEASES AND COVENANT NOT TO SUE

3.1 Releases of the Releasees. Effective upon the entry of the *Final Order* by the *Court, Named Plaintiffs*, on behalf of themselves and on behalf of the *Settlement Class*, absolutely and unconditionally release and forever discharge the *Releasees* from *Released Claims* that *Named Plaintiffs* or the *Settlement Class* directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have for *Released Claims* arising up to the *Agreement Execution Date*.

3.2 Released Claims. Subject to Section 3.4 below, the *Released Claims* shall be: any and all claims and causes of action of any nature whatsoever (including claims and causes of action for any and all losses, damages, injuries, violations, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), whether known or unknown, suspected or unsuspected, vested or contingent, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, administrative or arbitration proceeding, or otherwise,

(collectively, “*Claims*”) which were or could have been asserted in the *Complaint* or that would be barred by principles of *res judicata* had the claims asserted in the *Complaint* been fully litigated and resulted in a *Final* judgment or order, including those claims arising up to the *Agreement Execution Date*.

Notwithstanding any provisions, rights and benefits conferred by any law, rule, regulation or common law doctrine in any federal, state or local jurisdiction, the *Settling Parties* understand and agree that the releases to be given pursuant to this *Settlement Agreement* shall include *Released Claims* that are not known or suspected to exist at the time such releases are given.

3.3 Settling Defendants’ Releases of Named Plaintiffs, the Settlement Class, Plaintiffs’ witnesses, and Plaintiffs’ Counsel. Effective upon the entry of the *Final Order* by the *Court*, the *Settling Defendants* absolutely and unconditionally release and forever discharge the *Named Plaintiffs*, Plaintiffs’ witnesses (including without limitation, Sylvia Garfias-Garcia, Melissa Merritt-Wood, Dina Guadron and Daniel Sanchez), the *Settlement Class*, *Class Counsel* and other counsel who represent members of the *Settlement Class* (collectively, the “*Plaintiff Releasees*”) from any and all *Claims* relating to the institution or prosecution of the *Mendoza Action* or the settlement of any *Released Claims* (the “*Settling Defendants’ Released Claims*”), as well as any and all *Claims* for contribution, for indemnification, or any other *Claims* relating to payment of the *Class Settlement Amount* by the *Settling Defendants*.

3.4 Persons and Claims Not Released. Nothing in this *Settlement Agreement* releases or shall be deemed to release any *Person* or *Claims* other than as set forth in the express terms and provisions of this *Settlement Agreement*.

3.5 Covenants Not to Sue. *Named Plaintiffs* covenant and agree on their own behalf, and on behalf of the *Settlement Class*: (i) not to file against any *Releasee* any *Claim* based on or

arising from any *Released Claims*; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such *Claims* against any of the respective *Releasees*.

4. COVENANTS

The *Settling Parties* covenant and agree as follows:

4.1 Joint Press Release. The parties will agree on the terms of a joint press release, and no other press releases shall issue. However, the parties and their lawyers are not prohibited from commenting on the *Settlement* in response to media inquiries.

4.2 Taxation of Class Settlement Amount. *Named Plaintiffs* acknowledge on their own behalf, and on behalf of the *Settlement Class*, that the *Releasees* have no responsibility for any taxes due on funds once deposited in the *Settlement Fund* or that *Settlement Class* members or *Class Counsel* receive from the *Settlement Fund*, should any such funds be awarded in accordance with Section 10.2 hereof. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the *Settlement Fund*.

4.3 Identification of Settlement Class Members and Distribution of Net Settlement Fund

Defendants agree to provide reasonable assistance in enabling Plaintiffs to identify *Settlement Class Members*. In particular and without limitation, Selective Employment Agency agrees to provide Plaintiffs with a list of the last-known address of all employees it hired for the *Company* during the *Class Period*, and payroll data for those same individuals, and the *Zirkle Defendants* agree to provide *Class Counsel* with the disc sent to the Social Security Administration on July 27, 2004. By providing such information, *Defendants* assume no responsibility or liability for the identification of *Settlement Class Members* or the distribution of the *Net Settlement Fund*. *Defendants* will take no position with respect to the distribution of the

Net Settlement Fund. The identification of *Settlement Class Members* and the distribution of the *Net Settlement Fund* is the responsibility of the *Named Plaintiffs* and *Class Counsel* subject to the approval of the *Court*.

4.4 Request for Costs and Attorneys' Fees. *Class Counsel* will request that their reasonable costs and attorneys' fees be paid out of the *Settlement Amount*, subject to *Court* approval, as set forth in Section 10 herein. *Defendants* will take no position with respect to *Class Counsel's* request for fees and costs.

5. REPRESENTATIONS AND WARRANTIES

Settling Parties' Representations and Warranties. The *Settling Parties*, and each of them, represent and warrant:

5.1 That they are voluntarily entering into this *Settlement Agreement* as a result of arm's-length negotiations among their counsel, with the assistance and recommendation of Magistrate Judge Leavitt, that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this *Settlement Agreement* by any representations, statements or omissions pertaining to any of the foregoing matters by any party or by any person representing any party to this *Settlement Agreement*. Each *Settling Party* assumes the risk of mistake as to facts or law; and

5.2 That they have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each individual executing this *Settlement Agreement* on

behalf of each of the *Settling Parties*. The *Settling Parties*, and each of them, further represent and warrant to each other that he, she or it has made such investigation of the facts pertaining to the *Settlement*, this *Settlement Agreement* and all of the matters pertaining thereto, as he, she or it deems necessary.

5.3 Signatories' Representations and Warranties. Each individual executing this *Settlement Agreement* on behalf of any *Settling Party* does hereby personally represent and warrant to the other *Settling Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal which such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY

6.1 The *Settling Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding of wrongdoing by any of the *Defendants*, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This *Settlement Agreement* and the payments made hereunder are made in compromise of disputed claims and are not admissions of liability of any kind, whether legal or factual. Moreover, the *Settling Defendants* specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this *Settlement Agreement* or arising out of or relating to the *Final Order*.

7. THE SETTLEMENT FUND; DELIVERY INTO THE SETTLEMENT FUND

7.1 The Settlement Fund. Within two working days after *Preliminary Approval* by the Court as contemplated under Section 2, the *Defendants* shall cause the *Settlement Amount* of \$1.3 million to be paid into an interest bearing escrow account maintained by *Class Counsel*. The resulting *Settlement Fund* shall be considered a common fund created as a result of the *Mendoza Action*.

7.1.1 The *Settlement Fund* shall bear interest for the benefit of the *Settlement Class*. The *Settlement Fund* will pay any federal, state or local taxes that may apply to the income of the *Settlement Fund*. *Class Counsel* shall arrange for the preparation and filing of all tax reports and tax returns required to be filed by the *Settlement Fund* and for the payment from the *Settlement Fund* of any taxes owed. All taxes on the income of the *Settlement Fund* and tax-related expenses incurred in connection with the taxation of the *Settlement Fund* shall be paid out of the *Settlement Fund*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid without further order of the *Court*.

7.1.2 The *Settling Parties* acknowledge and agree that the *Defendants* shall have no authority, control or liability in connection with the design, management, administration, investment, maintenance or control of the *Settlement Fund*.

7.2 Sole Monetary Contribution. The *Settlement Amount* of \$1.3 million shall be the full and sole monetary payments made by or on behalf of the *Defendants* to the *Settlement Class* in connection with the *Settlement*. Once the *Effective Date* has occurred and the *Settlement* becomes *Unconditional*, under no circumstances will any portion of the *Settlement Amount* revert back to *Defendants*. Except as otherwise specified in this *Settlement Agreement*, the

Settling Parties shall bear their own costs and expenses (including attorneys' fees) in connection with effectuating the *Settlement* and securing all necessary court orders and approvals with respect to the same.

8. EFFECTIVE DATE OF SETTLEMENT; DISTRIBUTION OF THE SETTLEMENT FUND

8.1 The *Effective Date* of the *Settlement* occurs when each and every condition in Section 2 has been satisfied. Any disputes as to whether the *Effective Date* has occurred shall be resolved by Magistrate Judge Leavitt upon the request of any of the *Settling Parties*.

8.2 Except as provided in Section 7.1 above, no distribution of any part, or all, of the *Settlement Fund*, shall be made from the *Settlement Fund* until the *Effective Date* has occurred.

8.3 The distribution of the *Net Settlement Amount* shall be subject to the *Plan of Allocation*, to be proposed by *Class Counsel* and approved by the *Court*. The *Plan of Allocation* shall provide for the allocation of the *Net Settlement Amount* (which is the *Settlement Amount* net of attorneys' fees and expenses and *Incentive Awards* awarded by the *Court* as contemplated in Section 10 below, net of the costs of *Notice*, net of any expenses of the *Settlement Fund* as contemplated in Section 7, and net of any other costs of the administration of the *Settlement*). *Defendants* shall take no position, and have no responsibility with respect to the *Plan of Allocation*, except that *Defendants* shall cooperate reasonably with *Class Counsel* in identifying *Settlement Class* members and providing such other information as reasonably may be required in order to administrate this *Settlement*.

8.4 Upon the *Effective Date*, *Class Counsel* may (a) distribute the *Net Settlement Amount* and (b) disburse attorneys' fees and expenses and *Named Plaintiffs' Incentive Awards* as determined by the *Court*.

9. TERMINATION OF THE SETTLEMENT AGREEMENT

9.1 Termination. This *Settlement Agreement* may automatically terminate or be terminated by the *Settling Parties*, and thereupon become null and void, in the following circumstances:

9.1.1 If the *Court* declines to enter the *Final Order*, then this *Settlement Agreement* shall automatically terminate, and thereupon become null and void.

9.1.2 If any *Settling Party* concludes that the *Final Order* does not satisfy the terms and conditions of this *Settlement Agreement* in any material respect, such *Settling Party* may, within ten (10) days after the *Court's* entry of the *Final Order*, give the *Settling Parties* written notice thereof. If within fourteen (14) days after the giving of such written notice the *Settling Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* pursuant to the *Final Order* as entered by the *Court*, any *Settling Party* may submit to Magistrate Judge Leavitt the issue as to whether the *Final Order* in fact does not satisfy the terms and conditions of this *Settlement Agreement* in any material respect. Magistrate Judge Leavitt's decision on the issue shall be binding. If Magistrate Judge Leavitt concludes that the *Final Order* does not satisfy the terms and conditions of this *Settlement Agreement* in any material respect, then the *Settling Party* who submitted the written notice contemplated by this Section 9.1.2 may terminate this *Settlement Agreement* by giving further written notice to all *Settling Parties*.

9.1.3 If the *Final Order* entered by the *Court* is reversed or modified in any material respect on appeal, and if within thirty-one (31) days after the date when such reversal or modification becomes *Final* the *Settling Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* in light of such ruling, then this *Settlement Agreement* shall automatically terminate, and thereupon become null and void.

9.2 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated and rendered null and void for any reason specified in Section 9.1 above, the following shall occur:

9.2.1 *Class Counsel* and *Defendants' Counsel* shall within thirty (30) days after the date of termination of the *Settlement* return to the *Settling Defendants* the amount contributed by them to the *Settlement Fund*, with all net income earned thereon, less taxes paid, if any, pursuant to Section 7.1.1.

9.2.2 The *Mendoza Action* shall for all purposes revert to its status as of the day immediately before the *Agreement Execution Date*;

9.2.3 All *Releases* given under or pursuant to this *Settlement Agreement*, and all *Stipulated Dismissals*, shall be null and void; none of the terms of the *Settlement Agreement* shall be effective or enforceable, except Section 9.2.1, Section 6, Section 7.1.1; neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence in the *Mendoza Action* or in any other action or proceeding for any purpose, except in an action or proceeding arising under this *Settlement Agreement* or arising out of or relating to the *Final Order*.

10. ATTORNEYS' FEES AND EXPENSES; INCENTIVE AWARDS FOR NAMED PLAINTIFFS

10.1 Application for Attorneys' Fees and Expenses: Pursuant to the common fund doctrine and/or any applicable statutory fee provision, *Class Counsel* may apply to the *Court* at the *Fairness Hearing* for an award to *Class Counsel* and to other counsel who represent the *Settlement Class* of attorneys' fees, and for reimbursement of expenses, to be paid from the *Settlement Fund*.

10.2 Application for Incentive Awards: The *Named Plaintiffs* may apply to the Court for *Incentive Awards*, payable solely from the *Settlement Fund*, and shall be entitled to receive such compensation from the *Settlement Fund* to the extent awarded by the *Court*.

10.3 Defendants Take No Position: The *Defendants* will take no position with respect to the *Named Plaintiffs*' application for *Incentive Awards* or *Class Counsel*'s application for an award of fees and costs.

10.4 Disbursement of Attorneys' Fees and Expenses and Named Plaintiffs' Incentive Awards: Upon the *Effective Date*, attorneys' fees and expenses and *Named Plaintiffs*' *Incentive Awards* may be distributed.

11. MISCELLANEOUS PROVISIONS

11.1 Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of Washington without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein.

11.2 Dispute Resolution. Except as otherwise provided herein, any dispute or controversy with respect to the rights or obligations of any *Settling Party*, or with respect to the terms and conditions of this *Settlement Agreement* shall be submitted to Magistrate Judge Leavitt for final and binding determination. The *Court* shall retain jurisdiction over all *Settling Parties* to enforce the decisions of the Magistrate Judge and to resolve any dispute as to whether any issue is subject to determination by the Magistrate Judge under the terms of this *Settlement Agreement*.

11.3 Severability. The provisions of this *Settlement Agreement* are not severable.

11.4 Amendment. Before entry of the *Final Order*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Settling Parties*.

Following entry of the *Final Order*, the *Settlement Agreement* may be modified or amended only by written agreement signed on behalf of all *Settling Parties*, and approved by the *Court*.

11.5 Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

11.6 Construction. None of the *Settling Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

11.7 Further Assurances. Each of the *Settling Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

11.8 Notices. Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice*, or other notices given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO NAMED PLAINTIFFS:

Howard Foster
JOHNSON & BELL, LTD.
33 W. Monroe St., Suite 2700
Chicago, IL 60603
Phone: (312) 372-0770
Fax: (312) 372-9818
Email: Fosterh@jbltd.com

Andrew M. Volk
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Phone: (206) 623-7292
Fax: (206) 623-0594
Email: Andrew@hbsslaw.com

IF TO ZIRKLE DEFENDANTS:

Diehl R. Rettig
RETTIG OSBORNE FORGETTE, LLP
6725 W. Clearwater Ave.
Kennewick, WA 99336
Phone: (509) 783-6154
Fax: (509) 783-0858
Email: diehl.rettig@rettiglaw.com

Mark Watson
Meyer, Fleuegge & Tenney
230 South Second Street
Yakima, WA 98907-2680
Phone: (509) 575-8500
Fax (509) 575-4676
Email: watson@mftlaw.com

Ryan M. Edgley
Edgley & Beattie, P.S.
201 East "D" Street
Yakima, WA 98901
Phone: (509) 248-1740
Fax (509) 248-1573
Email: edgleyr@hscis.net

IF TO DEFENDANT SELECTIVE EMPLOYMENT AGENCY, INC.

Mr. Brendan V. Monahan
VELIKANJE, MOORE & SHORE, P.S.
405 East Lincoln Avenue
P.O. Box 22550
Yakima, WA 98907
Phone: (509) 248-6030
Fax (509) 453-6880

11.9 *Any Settling Party* may change the address at which it is to receive notice by written notice delivered to the other *Settling Parties* in the manner described above.

11.10 Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Settling Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to the *Settling Defendants* that were previously agreed upon orally or in writing by any of the *Settling Parties*.

11.12 Counterparts. This *Settlement Agreement* may be executed by exchange of faxed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

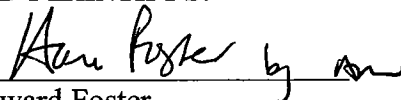
11.13 Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and successors.

11.14 Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

IN WITNESS WHEREOF, the *Settling Parties* have executed this *Settlement Agreement* on the dates set forth below.

Dated: Jan. 13, 2006

NAMED PLAINTIFFS:

By: Howard Foster by 

Howard Foster
JOHNSON & BELL, LTD.
33 W. Monroe St., Suite 2700
Chicago, IL 60603

Dated: Jan. 13, 2006

By: 


Andrew M. Volk
HAGENS BERMAN SOBOL
SHAPIRO LLP
1301 5th Avenue, Suite 2900
Seattle, WA 98101

*On behalf of Named Plaintiffs and
Settlement Class*

DEFENDANTS ZIRKLE FRUIT COMPANY, WILLIAM ZIRKLE,
GARY HUDSON AND WILLIAM WANGLER

Dated: 1-13-2006

By:


Diehl Rettig
RETTIG OSBORNE FORGETTE, LLP
6725 W. Clearwater Ave.
Kennewick, WA 99336

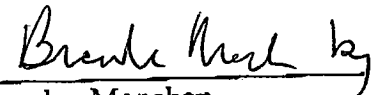
On behalf of Zirkle Defendants

DEFENDANT SELECTIVE EMPLOYMENT AGENCY, INC.

Dated:

1/13/06

By:

 by *aw w/ permission.*
Brendan Monahan
VELIKANJE, MOORE & SHORE, P.S.
405 East Lincoln Avenue
P.O. Box 22550
Yakima, WA 98907

On behalf of Defendant Selective
Employment Agency, Inc.

EXHIBITS TO THE SETTLEMENT AGREEMENT

Exhibits

- A. [Proposed] Order Preliminarily Approving Partial Settlement, Approving Form and Manner of Notice, and Scheduling Hearing on Fairness of Settlement Pursuant To Federal Rule Of Civil Procedure 23(E)
- B. [Proposed] Order of Final Judgment and Dismissal