

DEC - 3 2002

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8

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON  
11

12 OLIVIA MENDOZA and JUANA )  
13 MENDIOLA, individually and on )  
14 behalf of all other similarly situated, )

NO. CY-00-3024-FVS

15 )  
16 Plaintiffs, )

DEFENDANT SELECTIVE  
EMPLOYMENT'S  
ANSWER

17 v. )  
18 )

19 ZIRKLE FRUIT CO., a Washington )  
20 corporation, MATSON FRUIT )  
21 COMPANY, a Washington corporation )  
22 and SELECTIVE EMPLOYMENT )  
23 AGENCY, INC., a Washington )  
24 corporation, )

25 )  
26 Defendants. )  
27

28 Comes now Defendant Selective Employment Agency, Inc. ("Selective") and  
29 answers the Plaintiffs' complaint as follows:  
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ORIGINAL

1           1.     Selective disputes that the alleged class is appropriate from either a  
2  
3 factual or legal perspective, and accordingly denies the allegation set forth in  
4  
5 paragraph one (1) of the Plaintiffs' complaint.

6           2.     This allegation does not appear to pertain to Selective, and Selective  
7  
8 offers no response. To the extent Selective is alleged to have known of or  
9  
10 participated in the "scheme" alleged in paragraph two (2) of the Plaintiffs' complaint,  
11  
12 such allegation is denied.

13           3.     This allegation does not appear to pertain to Selective, and Selective  
14  
15 offers no response. To the extent Selective is alleged to have known of or  
16  
17 participated in the "scheme" alleged in paragraph three (3) of the Plaintiffs'  
18  
19 complaint, such allegation is denied.

20           4.     Selective admits that it is a corporation organized under the laws of  
21  
22 Washington, that it conducts business in Washington, and that it performs services  
23  
24 related to employee placement and recruiting. All other allegations in paragraph four  
25  
26 (4) of the Plaintiffs' complaint are denied.

27           5.     Denied.

28           6.     Denied.

29           7.     Selective admits that the named plaintiffs were employed by Zirkle as  
30  
31 laborers. Selective has insufficient knowledge or is otherwise unable to respond to  
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1 the remaining allegations in paragraph seven (7) of the Plaintiffs' complaint, and such  
2 allegations are therefore denied.  
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4 8. This allegation does not appear to pertain to Selective, and Selective  
5 offers no response.  
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8 9. This allegation does not appear to pertain to Selective, and Selective  
9 offers no response.  
10

11 10. Selective admits that is a corporation organized under the laws of the  
12 State of Washington, and that it is a legal entity that is separate, apart, and wholly  
13 unrelated to the other corporations that have been named as defendants in this action.  
14 All other allegations and implications contained in paragraph 10 of the Plaintiffs'  
15 complaint are denied.  
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18 11. Selective denies that supplemental jurisdiction is appropriate.  
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20 12. Selective denies all allegations and implications relating to "illegal acts",  
21 but admits that venue for this litigation is properly situated in the Eastern District of  
22 Washington.  
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25 13. Selective denies that this action may be appropriately pursued as a class  
26 action.  
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29 14. Denied.  
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1           15. Paragraph 15 of the Plaintiffs' complaint, including sub-parts a-g, is  
2  
3 denied in its entirety.

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5           16. Denied.

6           17. Selective has insufficient information to form a belief as to the truth or  
7  
8 falsity of the allegations contained in paragraph 17 of the Plaintiffs' complaint, and  
9  
10 such allegations are accordingly denied.

11  
12           18. Paragraph 18 of the Plaintiffs' complaint, including sub-parts a-d, is  
13  
14 denied in its entirety.

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16           19. Denied.

17  
18           20. Admitted.

19           21. Selective has insufficient information to form a belief as to the truth or  
20  
21 falsity of the allegations contained in paragraph 21 of the Plaintiffs' complaint, and  
22  
23 such allegations are accordingly denied.

24           22. Selective denies that it plays any role, much less an "essential role" in  
25  
26 the scheme alleged by Plaintiffs, and specifically denies that it has knowingly hired  
27  
28 workers of illegal status. As to the balance of the allegations set forth in paragraph  
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30 22 of the Plaintiffs' complaint, Selective has insufficient information to form a belief  
31  
32 as to the truth or falsity thereof, and such allegations are accordingly denied.  
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1           23. Selective has learned through media coverage that a project called  
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3 "Operation Snowbird" was undertaken by the INS. As to the balance of the  
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5 allegations set forth in paragraph 23 of the Plaintiffs' complaint, Selective has  
6  
7 insufficient information to form a belief as to the truth or falsity thereof, and such  
8  
9 allegations are accordingly denied.

10           24. Selective has insufficient information to form a belief as to the truth or  
11  
12 falsity of the allegations contained in paragraph 24 of the Plaintiffs' complaint, and  
13  
14 such allegations are accordingly denied.

15           25. Selective is not aware of either Zirkle or Matson ever hiring an "illegal  
16  
17 immigrant", and accordingly denies all allegations and implications contained in  
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19 paragraph 25 of the Plaintiffs' complaint.

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21           26. Denied.

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23           27. Selective denies that it had knowledge of or participated in any illegal  
24  
25 scheme with Matson. With respect to the balance of the allegations set forth in  
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27 paragraph 27 of the Plaintiffs' complaint, Selective has insufficient information to  
28  
29 form a belief as to the truth or falsity thereof, and such allegations are accordingly  
30  
31 denied.

32           28. Selective denies that it had any knowledge that any person it referred to  
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34 Matson or Zirkle was not lawfully permitted to work in the United States, and in fact  
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1 to this day has no knowledge that any person it referred to Matson or Zirkle was not  
2  
3 lawfully permitted to work in the United States. With respect to what Matson may  
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5 have known about any such workers, or about the 493 workers referred to in the  
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7 complaint, is unknown to Selective, and the allegations pertaining thereto are  
8  
9 accordingly denied.

10 29. Selective denies that it had any knowledge that any person it referred to  
11  
12 Matson or Zirkle was not lawfully permitted to work in the United States, and in fact  
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14 to this day has no knowledge that any person it referred to Matson or Zirkle was not  
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16 lawfully permitted to work in the United States. With respect to what Matson may  
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18 have known about any such workers, or about the 493 workers referred to in the  
19  
20 complaint, is unknown to Selective, and the allegations pertaining thereto are  
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22 accordingly denied. On the same basis, Selective denies the allegations regarding the  
23  
24 composition of Matson's workforce, and the allegations regarding the "findings" of  
25  
26 the INS.

27 30. Selective denies that there exists a "conspiracy of silence", denies that  
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29 it is well known whether a person in the agriculture workforce is an illegal alien, and  
30  
31 denies knowledge of or participation in any course of maintaining separate sets of  
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33 "books". With respect to the raids and other allegations set forth in paragraph 30 of  
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1 the Plaintiffs' complaint, Selective is without sufficient facts to form a belief as to the  
2 truth or falsity thereof, and accordingly such allegations are denied.  
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4  
5 31. Selective denies that it has participated in or had knowledge of any  
6 hirings or rehiring by Zirkle or Matson of persons who were known to be "illegal  
7 immigrants", or who were known to have "fraudulent" social security numbers.  
8

9  
10 32. Selective denies that it had any knowledge that any person it referred to  
11 Matson or Zirkle was not lawfully permitted to work in the United States, and in fact  
12 to this day has no knowledge that any person it referred to Matson or Zirkle was not  
13 lawfully permitted to work in the United States. With respect to what Zirkle may  
14 have known about the persons referred to it by Selective, or what it may have known  
15 about the 50 other workers referred to in the complaint, is unknown to Selective, and  
16 on that basis is denied.  
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22 33. Denied.

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24 34. Denied.

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27 35. Selective admits that there is a certification portion of I-9 forms, but  
28 denies that it has ever signed such certifications with actual knowledge that the  
29 person being employed (or referred for employment) was ineligible for employment.  
30

31  
32 36. Denied.

33  
34 37. Denied.  
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1           38. To the extent the continuing scheme is alleged to have been perpetrated  
2  
3 with the knowledge or participation of Selective, such allegation is denied.

4  
5           39. Denied.

6  
7           40. Selective admits that it has enjoyed contractual relationships with Zirkle  
8 and Matson whereby it interviews prospective employees, performs administrative  
9 duties pertaining to the hiring process, and refers the prospective employees on to  
10 Zirkle and Matson. If Zirkle and/or Matson decide that the candidate would make an  
11 appropriate addition to the workforce, Selective completes the hiring process and  
12 handles all payroll functions on behalf of Zirkle and Matson. Zirkle and Matson  
13 dictate the compensation actually received by the worker, the hours that the employee  
14 is to work, and the responsibilities that such worker is expected to perform. Whether  
15 such workers are the employees of Zirkle, Matson, or Selective is a conceptual and  
16 legal matter best left for interpretation by the Court. Selective admits is paid for its  
17 services. Selective denies that it "loans" workers, that it enjoys a "joint venture", and  
18 that this simple, routine transaction by any means establishes a "complex legal  
19 relationship".  
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30           41. Selective has no direct knowledge of why Matson or Zirkle have elected  
31 to utilize its services as an employment agency, and denies that the alleged scheme  
32 exists.  
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42. Paragraph 42 of the Plaintiffs' complaint, including all of its scurrilous fabrications, is denied in its entirety.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Selective denies that paragraph 48 of the Plaintiffs' complaint contains an accurate or full recitation of the law.

49. Paragraph 49 does not allege any facts that pertain to Selective, and Selective offers no response.

50. To the extent Selective is alleged to have known of or participated in the alleged predicate acts, such allegation is denied.

51. Selective incorporates its prior responses.

52. As this claim is not asserted against Selective, Selective offers no response.

53. Denied.

1           54. Although this claim is not asserted against Selective, it specifically  
2  
3 denies that any association-in-fact enterprise exists, or that it knew of or participated  
4  
5 in any of the alleged acts that give rise to this claim.

6           55. Although this claim is not asserted against Selective, it specifically  
7  
8 denies that any association-in-fact enterprise exists, or that it knew of or participated  
9  
10 in any of the alleged acts that give rise to this claim.

11  
12           56. Denied.

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14           57. Selective incorporates its prior responses.

15  
16           58. Paragraph 58 does not allege any facts that pertain to Selective, and  
17  
18 Selective offers no response.

19           59. Denied.

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21           60. Denied.

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23           61. Denied.

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25           62. Denied.

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27           WHEREFORE, HAVING ANSWERED THE PLAINTIFFS' COMPLAINT,  
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29 AND BY FURTHER ANSWER AND PLEADING, SELECTIVE OFFERS THE  
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31 FOLLOWING AFFIRMATIVE DEFENSES:

32           1. The Plaintiffs' damage claims are barred or limited by the statute of  
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34 limitations.

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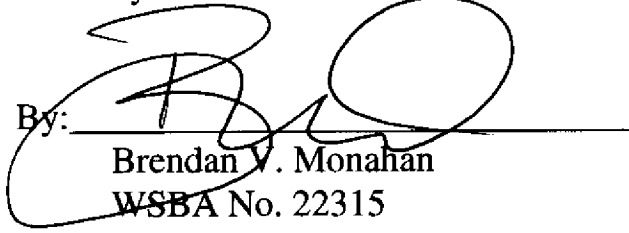
2. The Plaintiffs' claims are barred or limited by the doctrines of estoppel, waiver, consent and payment, and/or failure to mitigate.

HAVING FULLY ANSWERED THE PLAINTIFFS' COMPLAINT, SELECTIVE REQUESTS THE FOLLOWING RELIEF:

1. That the pending action be dismissed with prejudice;
2. That Selective be awarded its reasonable costs and attorneys' fees.

DATED this 3rd day of December, 2002.

VELIKANJE, MOORE & SHORE, P.S.  
Attorney for Defendant Selective

By:   
Brendan V. Monahan  
WSBA No. 22315

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on this date, I caused to be served in the manner noted below a copy of this document on the following individuals:

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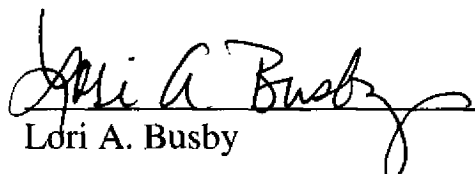
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DATED at Yakima, Washington, this 3<sup>rd</sup> day of December, 2002.

  
Lori A. Busby