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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

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

Plaintiffs,

v.

ZIRKLE FRUIT CO., a Washington corporation, MATSON FRUIT COMPANY, a Washington corporation and SELECTIVE EMPLOYMENT AGENCY, INC., a Washington corporation,

Defendants.

No. CY-00-3024-FVS

PLAINTIFFS' RESPONSE TO DEFENDANT SELECTIVE EMPLOYMENT, INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER

Plaintiffs, Olivia Mendoza and Juana Mendiola, individually and on behalf of all others similarly situated (hereafter "plaintiffs"), submit the following brief in opposition to defendant Selective Employment Agency, Inc.'s second motion to

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dismiss, brought pursuant to FED. R. CIV. P. 12(b)(1) and (h)(3), for lack of subject matter jurisdiction.[1]

I. INTRODUCTION

Plaintiffs have filed a two-count Complaint against three defendants. 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"). Count II alleges defendant Selective Employment Agency, Inc. ("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. This conspiracy to violate the Act is referred to in the complaint as "the illegal immigrant hiring scheme" and is alleged to have caused plaintiffs injuries, and depressed wages as employees of Zirkle and Matson.

However, Count II does not allege Selective violated RICO. The Complaint pleads "supplemental jurisdiction" over Selective, pursuant to on 28 U.S.C. § 1367(a), as a pendent party.

On June 27, 2000, nearly a month after filing its prior motion to dismiss, which raises no jurisdictional dispute or defect, Selective filed a second motion to dismiss, arguing this Court lacks subject matter jurisdiction over the corporation because "the exercise of supplemental jurisdiction over pendent parties (pendent party jurisdiction) violates Article III of the U.S. Constitution." Selective's Motion, pp. 2,6.

As demonstrated below, Selective's motion is premised upon cases which predate the enactment of 28 U.S.C. § 1367, providing for supplemental jurisdiction,

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[1] Selective has previously joined in the motion to dismiss brought pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim pursuant to Count II of the complaint, for common law conspiracy under Washington law.

and are therefore no longer valid. The motion further ignores this Court's precedent, most recently expressed in *Ziegler v. Ziegler*, 28 F. Supp.2d 601 (E.D. Wa. 1998), which recognizes and follows the supplemental jurisdiction statute without reservation. Additionally, the Ninth Circuit has acknowledged the application of the statute. *Yanez v. United States*, 989 F.2d 323, 326 n.3 (9th Cir. 1993).

II. PENDENT PARTY JURISDICTION DOES NOT VIOLATE THE CONSTITUTION

A. Pendent Party Jurisdiction is Established by Statute and Recognized by this Court

In 1990, Congress enacted 28 U.S.C. § 1367, creating "supplemental jurisdiction" over claims "that involve the joinder or intervention of additional parties."[2/3] Thus, as the statute provides, when a district court has original jurisdiction of a case (as does this Court over Count I, as a federal question), the court also has jurisdiction "over all other claims that are so related...." It is undisputed that Count II of Plaintiffs' Complaint against Selective is related to Count I, as it arises from the same facts and controversy (the illegal immigrant hiring scheme). Accordingly, this Court has jurisdiction over Count II and over Selective. *See Ziegler,* 28 F.Supp.2d at 618 (upholding supplemental jurisdiction of state law claims in federal question case of non-diverse parties). Thus, there is no applicable precedent following the

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[2] The Judicial Improvements Act of 1990, Pub. L. 101-650 § 310(c).

[3] As discussed below, the statute resolved any doubt as to the doctrine of pendent party jurisdiction created by prior Supreme Court decisions interpreting the prior statute, upon which the motion relies. *See McCray v. Holt*, 777 F. Supp. 945 (S.D. Fla. 1991), which has been expressly adopted by this Court in *Ziegler*, 28 F.Supp.2d at 618.

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enactment of the 1990 supplemental statute holding either that the statute or the concept of supplemental jurisdiction is unconstitutional. *See also* 13B WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 3567.2, "Pendent Parties" (2000).[4]

B. The Motion Cites Pre-1990 Case Law

The cases cited in the motion interpret the "pendent party jurisdiction" standards that were employed by federal courts prior to the enactment of the supplemental jurisdiction statute in 1990. Selective's Motion, pp. 3-9. As stated above, the Ninth Circuit has explicitly acknowledged that the enactment of the 1990 statute changed the law with respect to jurisdiction over pendent parties. *Yanez,* 989 F.2d at 326, n.3. Thus, the motion is entirely premised upon inapplicable case law.[5]

Accordingly, this Court's jurisdiction over Selective and Count II of the Complaint does not violate the constitution. The Court properly has such jurisdiction.

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[4] Selective's Motion at p. 4 cites two post-1990 cases. *Elsaas v. County of Placer*, 35 F. Supp.2d 757 (E.D. Cal. 1999)(motion, p.3), is inapplicable as it has not been affirmed by the Ninth Circuit. Accordingly, this Court's opinion in *Ziegler*, is applicable to this case. *See Yanez*, 989 F.2d at 326 which denied pendent party jurisdiction in a case brought before the enactment of the 1990 statute. However, it expressly recognized that the new law would change the outcome of cases filed after its enactment. *Id.* at n.3. Thus, the case supports plaintiffs' position.

[5] It, therefore, violates FED. R. CIV. P. 11, as it is not well grounded in law. However, plaintiffs have not, as of yet, filed a motion for sanctions for responding to this frivolous filing.

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Executed on July 7, 2000, in Seattle, Washington.

Lynn Brammeier

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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 July 7, 2000, I caused an original and one copy of the following document to be sent to the Clerk of the District Court, Eastern District of Washington, West 920 Riverside Ave., Room 840, U.S. District Courthouse, Spokane, WA., 99201, via United Parcel Service overnight mail for filing on July 10, 2000:

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

PLAINTIFFS' RESPONSE TO DEFENDANT SELECTIVE EMPLOYMENT, INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER (AND DECLARATION OF SERVICE)

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III. CONCLUSION

In conclusion, plaintiffs move the Court to deny Selective's motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(1) and (h)(3) and for any other relief the Court deems proper.

DATED: July 7, 2000

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