

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

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ERNESTO CARRILLO-RAMIREZ, JOSE )  
DELGADO-PALOMERA, NESTOR DELGADO- )  
ZAMORANO, OSCAR PACHECO-SANTANA, )  
VICTOR SANCHEZ-JAIMES, JOEL )

As set forth in the First Amended Complaint (“FAC”) at ¶¶ 33-46, in 2012, 2013, and 2014, Defendants Kathy Culpepper and Jon Clancy, through their association-in-fact enterprise, signed and submitted to the U.S. Department of Labor (“USDOL”) temporary labor certification applications. The applications set forth wages Ms. Culpepper and Mr. Clancy indicated would be paid to the Plaintiffs and other H-2B visa holders. At the time they signed these applications, Ms. Culpepper and Mr. Clancy knew they would not pay these wage rates.

Ms. Culpepper and Mr. Clancy, through their association-in-fact enterprise, used the mail and/or wires to transmit the temporary labor certification application materials between themselves and USDOL. They also used the mail and/or wires in other manners in furtherance of their scheme to provide false information to USDOL.

At the time the Plaintiffs were recruited for employment at Culpepper Enterprises, Defendant Cheri Clancy – on behalf of and through the association-in-fact enterprise – made promises to the Plaintiffs listed below about the wages they would earn while employed with the Defendants. Specifically, Defendant Cheri Clancy:

- a. Told Plaintiff Ernesto Carrillo-Ramirez in or about March

*and state the alleged misconduct of each wrongdoer.*

Plaintiffs do not allege Defendants Culpepper Enterprises, Inc. (“Culpepper Enterprises”) and North American Labor Services, Inc. (“NALS”) violated the RICO. Plaintiffs allege Culpepper Enterprises and NALS violated the Fair Labor Standards Act and Mississippi contract law.

L.R. 83.8(b)(4): *List the alleged victims and state how each victim was allegedly harmed.*

- b. Told Plaintiff Nestor Delgado-Zamorano in or about February 2014 that he would earn approximately \$11.10 per hour working for the Defendants;
- c. Told Plaintiff Victor Sanchez-Jaimes in or about April 2012 that he would earn approximately \$8.00 per hour working for the Defendants, told Plaintiff Victor Sanchez-Jaimes in or about April 2013 that he would earn approximately \$9.00 per hour working for the Defendants, and told Plaintiff Victor Sanchez-Jaimes in or about March 2014 that he would earn approximately \$9.00 per hour working for the Defendants; and
- d. Told Plaintiff Joel Tapia-Ruiz in or about March 2014 that he would earn approximately \$10.00 or \$11.00 per hour working for the Defendants.
  - o L.R. 83.8(b)(5)(C): *If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the “circumstances constituting fraud or mistake shall be stated with particularity.” FED. R. CIV. P. 9(b). Identify the time, place, and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made.*

The dates of the alleged misrepresentations are set forth in Plaintiffs’ response to L.R. 83.8(b)(5)(B), *supra*.

Upon information and belief, the misrepresentations in the USDOL labor certification applications were made at the offices of Culpepper Enterprises and/or NALS and transmitted to USDOL’s processing center, located at the Office of Foreign Labor Certification’s Chicago National Processing Center at 11 West Quincy Court, Chicago, Illinois 60604-2105.

The misrepresentations to Plaintiffs were made at the Las Palomas Hotel in the city of Tepic, Nayarit state, Mexico.

The contents of the misrepresentations consisted of statements about the wages Plaintiffs would be paid, which the RICO Defendants knew to be false.

As set forth above, the misrepresentations were made by Kathy Culpepper and Jon Clancy to the USDOL, and by Cheri Clancy to the plaintiffs.

- o L.R. 83.8(b)(5)(D): *State whether there has been a criminal conviction for violation of the predicate acts.*

There has not been a criminal conviction for the violations of the predicate acts.

- o L.R. 83.8(b)(5)(E): *State whether civil litigation has resulted in a judgment in regard to the predicate acts.*

Civil litigation has not resulted in a judgment in regard to the predicate acts.



- L.R. 83.8(b)(6)(B): *Describe the structure, purpose, function, and course of conduct of the enterprise.*

The RICO Enterprise is an ongoing business relationship between the RICO Defendants with the common purpose to recruit, contract, transport, and employ foreign workers to work as landscapers in the United States, and particularly in Mississippi.

- L.R. 83.8(b)(6)(C): *State whether any Defendants are employees, officers, or directors of the alleged enterprise.*

None of the RICO Defendants are employees, officers, or directors of the alleged enterprise.

- L.R. 83.8(b)(6)(D): *State whether any Defendants are associated with the alleged enterprise.*

Each RICO Defendant is associated with

As set forth above, the usual and daily activities of the enterprise consist of recruiting, contracting, transporting, and employing foreign workers to work as landscapers in the United States, and particularly in Mississippi. The RICO Defendants participated in and conducted the affairs of the enterprise through a pattern of defrauding the USDOL and the Plaintiffs about the wages they would earn working for the Defendants.

L.R. 83.8(b)(9): *Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.*

The RICO enterprise is not a legal entity and thus itself did not profit from the alleged pattern of racketeering activity. However, the alleged pattern of racketeering activity advanced the purpose and ge se througsv(hrr6no(i)-6(n)0 -1.15 (nd c)4(onduc)4(t)-9>u)3(of)3(i),n an 0 Tw [4(f)3(fc)4(onduc,

This sub-part does not apply to Plaintiffs' claims.

L.R. 83.8(b)(13): *If the Complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:*

- L.R. 83.8(b)(13)(A): *State who is employed by or associated with the enterprise; and,*

Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy are associated with the enterprise.

- L.R. 83.8(b)(13)(B): *State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).*

The RICO Defendants are not both the liable "persons" and the "enterprise" under § 1962(c).

L.R. 83.8(b)(14): *If the Complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.*

The RICO Defendants intended to further the endeavor of engaging, through the enterprise, in the above-described predicate acts of mail fraud, wire fraud, and fraud in foreign labor contracting. Upon information and belief, the RICO Defendants had a plan by which Kathy Culpepper and Jon Clancy would direct fraudulent communications to USDOL, and Cheri Clancy would direct fraudulent communications to the Plaintiffs. Each RICO Defendant supported the other RICO Defendants' endeavors.

L.R. 83.8(b)(15): *Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.*

Plaintiffs suffered damages by reason of the RICO Defendants' violations of the RICO statute. The RICO Defendants, through the RICO enterprise, knowingly provided false information to the USDOL regarding the wages they would pay the Plaintiffs. The USDOL relied upon these fraudulent communications when it granted labor certification to Culpepper Enterprises. The direct result of the RICO Defendants' fraud was the Plaintiffs' depressed wages and the Plaintiffs' recruitment, border crossing, and inbound transportation costs.

Further, the RICO Defendants, through the RICO enterprise, promised wages directly to the Plaintiffs which the RICO Defendants knew to be false. The Plaintiffs relied upon these misrepresentations when they accepted the job opportunities and paid the recruitment fees, inbound transportation costs, and border crossing costs. The Plaintiffs also earned depressed wages as a direct consequence of the RICO Defendants' fraud conducted through the RICO enterprise.

L.R. 83.8(b)(16): *List the actual damages for which Defendant is allegedly liable.*

The RICO Defendants are liable for the difference between the fraudulently-promised regular



and overtime wage rates and the wages Plaintiffs were paid, the recruitment fees and travel and border crossing expenses the Plaintiffs paid in reliance upon the Defendants' misrepresentations about the Plaintiffs' wages, and other pecuniary losses and/or losses to real or personal property up to the point at which each Plaintiff's employment with Defendants was terminated.

L.R. 83.8(b)(17): *List all other federal causes of action, if any, and provide citations to the relevant statute(s).*

Fair Labor Standards Act, 29 U.S.C. §§ 206 and 207.

L.R. 83.8(b)(18): *List all pendent state claims, if any.*

Mississippi contract law.

L.R. 83.8(b)(19): *Provide any additional information that you feel would be helpful to the Court in considering your RICO claim.*

Plaintiffs do not believe there is additional information not already provided in this statement and in the First Amended Complaint that would be helpful to the Court in considering the Plaintiffs' RICO claims.

Dated this 1st day of September, 2015.

Respectfully submitted,

/s/ Daniel Werner

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\* Admitted *pro hac vice*.

\*\* Admission *pro hac vice* pending.

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