

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

ERNESTO CARRILLO-RAMIREZ, JOSE)	
DELGADO-PALOMERA, NESTOR DELGADO-)	
ZAMORANO, OSCAR PACHECO-SANTANA,)	
VICTOR SANCHEZ-JAIMES, JOEL)	
TAPIA-RUIZ, and ADAN ESPARZA-HARO)	
)	
Plaintiffs,)	CIVIL ACTION
)	NO. 3:15-CV-00409-CWR-FKB
v.)	
)	
CULPEPPER ENTERPRISES, INC., KATHY)	
CULPEPPER, NORTH AMERICAN)	
LABOR SERVICES, INC., JON CLANCY,)	
and CHERI CLANCY,)	
)	
Defendants.)	
)	

Local Rule 83.8 RICO Statement

As set forth in Local Rule 83.8, Plaintiffs respectfully submit the following RICO

Statement:

- L.R. 83.8(b)(1): *State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).*

The alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(c) and (d).

- L.R. 83.8(b)(2); *List each Defendant and state the alleged misconduct and basis of liability of each Defendant.*

Plaintiffs allege Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy violated the RICO.¹ The alleged misconduct and basis of liability against each of the RICO Defendants is as follows:

¹ Plaintiffs will refer to Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy as “the RICO Defendants.” Plaintiffs do not allege Defendants Culpepper Enterprises, Inc. and North American Labor Services, Inc. violated the RICO.

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 2013 that he would earn approximately \$10.60 per hour working for the Defendants, and told Plaintiff Ernesto Carrillo-Ramirez in or about the beginning of March 2014 that he would earn approximately \$11.20 per hour working for the Defendants;
- 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.

Upon information and belief, Defendant Cheri Clancy knew these statements were false. At the time Defendant Cheri Clancy made these statements, the RICO Defendants knew they would not pay the Plaintiffs the promised wages. The RICO Defendants, through their enterprise, used the mails and wires in furtherance of the scheme to defraud Plaintiffs about the promised wages.

Specifically, the RICO Defendants conducted or participated in and/or conspired to conduct the affairs of the RICO Enterprise by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

- a. Mail fraud to further their unlawful scheme in violation of 18 U.S.C. § 1341;
 - b. Wire fraud to further their unlawful scheme in violation of 18 U.S.C. § 1343; and
 - c. Fraud in foreign labor contracting in violation of 18 U.S.C. § 1351.
- L.R. 83.8(b)(3): *List the alleged wrongdoers, other than the Defendant(s) listed above,*

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 injured.*

As a direct and proximate result of the RICO Defendants’ willful, knowing, and intentional acts discussed, each Plaintiff suffered injuries to his property and/or business, including but not limited to the difference between the fraudulently-promised regular and overtime wage rates and the wages each Plaintiff was paid, the recruitment fees and travel and border crossing expenses each Plaintiff paid in reliance upon the Defendants’ misrepresentations about the Plaintiff’s wages, and other pecuniary losses and/or losses to real or personal property.

- L.R. 83.8(b)(5): *Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering must include the following information:*
 - L.R. 83.8(b)(5)(A): *List the alleged predicate acts and the specific statutes which were allegedly violated.*

The RICO Defendants conducted or participated in and/or conspired to conduct the affairs of the RICO Enterprise by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

- a. Mail fraud to further their unlawful scheme in violation of 18 U.S.C. § 1341;
 - b. Wire fraud to further their unlawful scheme in violation of 18 U.S.C. § 1343; and
 - c. Fraud in foreign labor contracting in violation of 18 U.S.C. § 1351.
- L.R. 83.8(b)(5)(B): *Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts.*

Defendants Kathy Culpepper and Jon Clancy signed the 2012 labor certification application on April 2, 2012. Information about the date Kathy Culpepper and Jon Clancy signed the 2013 and 2014 labor certification applications is in the sole custody, possession, and control of the Defendants.

Further, Defendant Cheri Clancy:

- a. Told Plaintiff Ernesto Carrillo-Ramirez in or about March 2013 that he would earn approximately \$10.60 per hour working for the Defendants, and told Plaintiff Ernesto Carrillo-Ramirez in or about the beginning of March 2014 that he would earn approximately \$11.20 per hour working for the Defendants;

- 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.
 - 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.

- 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.

- 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)(5)(F): *Describe how the predicate acts form a “pattern of racketeering activity.”*

The RICO Defendants, through the RICO enterprise, engaged repeatedly in the racketeering activity set forth in Plaintiffs’ RICO claims starting in 2012 and continuing at least through 2014 with respect to dozens of workers. Further, Plaintiffs believe the RICO Defendants have sought new H-2B workers for employment at Culpepper who may be presently subject to similar racketeering activities.

The RICO Defendants, through the RICO enterprise, rely on the racketeering acts described in this Complaint to conduct their regular business activities.

The RICO Defendants’ racketeering acts have or had similar purposes: to profit from the fraudulent recruitment of Plaintiffs and other H-2B workers for employment on Mississippi Department of Transportation contracts in Mississippi.

The RICO Defendants’ acts yielded similar results and caused similar injuries to Plaintiffs, including Plaintiffs’ payment of recruitment fees and expenses, the difference between the fraudulently-promised wages and the wages Plaintiffs were paid, and the exorbitant cost of the employer-provided housing.

The racketeering acts have or had similar participants: the RICO Defendants and their agents.

The RICO Defendants, through the RICO Enterprise, directed their racketeering activities at similar individuals and entities: Plaintiffs and other H-2B workers, and federal and state government agencies.

The RICO Defendants’ acts have or had similar methods of commission, such as common recruitment tactics, relatively consistent practices with respect to collecting payments from Plaintiffs and other H-2B workers, and use of similar employment practices and policies with respect to Plaintiffs and other H-2B workers.

- L.R. 83.8(b)(5)(G): *State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.*

The alleged predicate acts related to each other as part of a common plan to profit from the fraudulent recruitment of Plaintiffs and other H-2B workers for employment on Mississippi Department of Transportation contracts in Mississippi.

- L.R. 83.8(b)(6): *Describe in detail the alleged enterprise for each RICO claim. A description of each enterprise must include the following information:*
 - L.R. 83.8(b)(6)(A): *State the names of the individuals, partnerships, corporations, associations, or other legal entities which allegedly constitute the enterprise.*

Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy constitute the association-in-fact enterprise.

- 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 the alleged enterprise.

- L.R. 83.8(b)(6)(E): *State whether the Plaintiff is alleging that the Defendants are individuals or entities separate from the alleged enterprise, or that the Defendants are the enterprise itself, or are members of the enterprise.*

Plaintiffs allege the RICO Defendants are individuals separate from the alleged enterprise.

- L.R. 83.8(b)(6)(F): *If any Defendants are alleged to be either the enterprise itself or members of the enterprise, explain whether such Defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.*

As members of the enterprise, the RICO Defendants are perpetrators, through the enterprise, of the alleged racketeering activity.

- L.R. 83.8(b)(7): *State whether the Plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity. In either event, describe in detail.*

The pattern of racketeering activity and the enterprise are separate. The enterprise exists independently from the racketeering activity as 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)(8): *Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.*

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 goal of the enterprise to recruit, contract, transport, and employ foreign workers to work as landscapers in the United States, and particularly in Mississippi. By paying less than the wages communicated to USDOL and the Plaintiffs and therefore reducing their overhead, the RICO Defendants likely made their bids for state contracts more competitive. Further, the RICO Defendants, as the operators and/or managers of the RICO enterprise, benefitted from conducting and participating in the RICO enterprise's affairs through the pattern of racketeering activity. The RICO Defendants increased their profits far above what those profits would have been absent the mail fraud, wire fraud, and fraud in foreign labor contracting predicate acts.

- L.R. 83.8(b)(10): *Describe the effect of the activities of the enterprise on interstate or foreign commerce.*

The RICO Defendants recruited the Plaintiffs in Mexico and transported them across international and state boundaries for the purpose of employing them in Mississippi on state contracts.

- L.R. 83.8(b)(11): *If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:*
 - L.R. 83.8(b)(11)(A): *State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and,*

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

- L.R. 83.8(b)(11)(B): *Describe the use, investment, or locus of such income.*

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

- L.R. 83.8(b)(12): *If the Complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.*

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.

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I further certify that the attached has been deposited in a U.S. Mail receptacle for delivery by first class mail, properly addressed and with postage pre-paid to:

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Collins, MS 39428

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Vanceleave, MS 39565

Cheri Clancy
3900 Red Hill Road
Vanceleave, MS 39565

North American Labor Services, Inc.
3900 Red Hill Road
Vanceleave, MS 39565

/s/ Daniel Werner

this 1st day of September, 2015.