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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

ROBIN BREWER, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

SCOTT SALYER

Defendant.

1:06-cv-01324-AWI-DLB

JURY TRIAL DEMANDED

SECOND AMENDED  
CLASS ACTION COMPLAINT

**SECOND AMENDED CLASS ACTION COMPLAINT<sup>1</sup>**

**I. NATURE OF ACTION**

1. This is a class action brought on behalf of all seasonal hourly-paid workers, legally authorized to be employed in the United States, who have been employed by SK Foods LP at its California processing plants (“SK Foods”), a vast enterprise employing thousands of employees from September 22, 2002 through the date

<sup>1</sup> This Second Amended Class Action Complaint is being filed pursuant to the Court’s Order (Court Doc. 112) to amend the class period, which will now extend until the date of this filing. Additionally, the class definition has been slightly altered from the definition stated in the First Amended Complaint so as to conform with the Court’s Orders regarding the exclusion of “year-round workers” from the class. (*See* Court Docs. 101 and 112). There are also a few other minor changes that were made to conform with the information obtained through bifurcated discovery thus far.

1 of filing of the Second Amended Complaint. Mr. Brewer contends that Defendant Scott  
2 Salyer, President of SK Foods, has depressed the wages of these workers by knowingly  
3 employing large numbers of illegal immigrants (likely in the hundreds or more), thereby  
4 depressing the market price for unskilled labor. (This is referred to as “the Illegal  
5 Immigrant Hiring Scheme” or “the Scheme”.)  
6

7 2. The Illegal Immigrant Hiring Scheme violates the Racketeer Influenced  
8 and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq. It is perpetrated every  
9 day, as an integral part of SK Foods’ regular manner of staffing its plants, and will  
10 continue unabated, victimizing every legal worker, until halted by judicial intervention.  
11

12 **II. PARTIES, JURISDICTION & VENUE**

13 3. Plaintiff Robin Brewer is a citizen of California. He was legally  
14 authorized to be employed in the U.S. and as an employee of SK Foods, was paid an  
15 hourly wage rate which was depressed as a direct result of the Illegal Immigrant Hiring  
16 Scheme.  
17

18 4. Defendant Scott Salyer is a citizen of California. He has conspired to  
19 operate SK Foods through a pattern of racketeering activity, the Illegal Immigrant hiring  
20 Scheme.  
21

22 5. This Court has subject matter jurisdiction of this case as a federal  
23 question, pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c).  
24

25 6. Venue is proper in this District because the illegal acts giving rise to this  
26 case occurred in this district and Mr. Brewer resides here.

1       **III. CLASS ALLEGATIONS**

2           7.       This action is brought and may be maintained as a class action pursuant to  
3       Fed. R. Civ. P. 23(b)(3). Mr. Brewer brings this action on behalf of himself and all other  
4       persons legally authorized to be employed in the U.S. who have been employed by SK  
5       Foods as seasonal hourly wage earners at its California processing plants from September  
6       22, 2002 through the date of filing of the Second Amended Complaint (hereafter the  
7       “Class” or “Class members”).  
8

9           8.       The Class is so numerous that joinder of all Class members is  
10       impracticable. The actual number can be ascertained through discovery of SK Foods’  
11       records.  
12

13           9.       Among the questions of fact and law that are common to the Class are:

14               a.       Whether Salyer has been and is currently engaged in the Illegal  
15       Immigrant Hiring Scheme in order to depress the wages of the Class;

16               b.       To what extent the Illegal Immigrant Hiring Scheme has caused  
17       Class members’ wages to be depressed; and

18               c.       Whether the Illegal Immigrant Hiring Scheme violates the  
19       Immigration and Nationality Act and RICO.  
20

21           10.       Mr. Brewer’s claim is typical of those of the members of the Class  
22       inasmuch as his damages were directly and proximately caused by the Illegal Immigrant  
23       Hiring Scheme. Mr. Brewer seeks no relief that is antagonistic or adverse to other Class  
24       members.

25           11.       Mr. Brewer is committed to the vigorous prosecution of this action and  
26       has retained counsel who are competent in the prosecution of RICO cases generally, and

1 this legal theory in particular. Accordingly, he and his counsel will fairly and adequately  
2 protect and represent the interests of the Class.

3 12. Questions of law or fact that are common to the members of the Class are  
4 substantially similar and predominate over any questions affecting only individual Class  
5 members, and a class action is the only appropriate method for the fair and efficient  
6 adjudication of this controversy for the following reasons, among others:  
7

8 a. The individual amounts of damages involved, while not  
9 insubstantial, are generally not large enough to justify individual actions;

10 b. The costs of individual actions would unreasonably consume the  
11 amounts that would be recovered;

12 c. Individual actions would unduly burden the judicial system; and

13 d. Individual actions brought by Class members would create a risk  
14 of inconsistent results and would be unnecessarily duplicative of this litigation.  
15

16 13. Mr. Brewer anticipates no difficulty in the management of this action  
17 because the evidence proving the Illegal Immigrant Hiring Scheme is ascertainable  
18 through discovery, the identities of the members of the Class are known to Salyer and SK  
19 Foods. Damages can be calculated through expert testimony.  
20

21 **IV. THE ILLEGAL IMMIGRANT HIRING SCHEME ENSURES THAT**  
22 **MOST SEASONAL HOURLY WORKERS ARE UNAUTHORIZED FOR**  
23 **EMPLOYMENT AND THAT WAGES ARE DEPRESSED**

24 14. The Illegal Immigrant Hiring Scheme saves SK Foods millions of dollars  
25 per year in labor costs. This is so because illegal immigrants will work for extremely low  
26 wages. Such hiring practices are in direct violation of the Immigration and Nationality  
Act and RICO, which makes the employment of illegal immigrants a predicate offense.

1 Thus, if SK Foods were not hiring large numbers of illegal immigrants, the Company  
2 would have to pay the Plaintiff Class significantly higher wages.

3 15. Mr. Brewer believes that Salyer, as President of SK Foods, has approved  
4 the following hiring criteria, which subvert the law against hiring illegal immigrants and  
5 effectively turns a blind eye to factors which any reasonable employer would know  
6 indicate job applicants are unauthorized for employment in the U.S.: 1) hiring workers  
7 who cannot speak English while claiming to be U.S. Citizens or Lawful Permanent  
8 Residents; 2) hiring workers who are recent arrivals to the U.S. and claim to be U.S.  
9 Citizens or Lawful Permanent Residents; 3) hiring workers who present authorization  
10 documents which are invalid on their face because the pictures are of a different person,  
11 are upside down, are on poor quality paper, etc.; 4) hiring workers who are personally  
12 known to SK Foods' hiring staff to be in the U.S. illegally and are using false documents;  
13 5) hiring workers who have previously been employed by SK Foods under different  
14 identities. A majority of the Company's seasonal hourly workforce falls into one or more  
15 of these categories.  
16  
17

18 16. Additionally, SK Foods is often informed that large numbers of its  
19 workers are using false social security numbers by the Social Security Administration.  
20 Most of these workers then simply assume new identities and continue to work for the  
21 Company.  
22

23 **A. Salyer Has Personally Approved The Scheme; His Co-Conspirators**  
24 **Implement It**

25 17. Scott Salyer is President and Chief Executive Officer of SK Foods. As  
26 Chief Executive Officer, he personally has approved the hiring policies identified above.

1 Additionally, he visits the plants on a regular basis and observes the largely illiterate,  
2 Spanish-speaking, illegal workforce. He knows most of these people are not U.S.  
3 citizens or lawful permanent residents, i.e., are ineligible for employment. He knows that  
4 SK Foods is committing a massive immigration law conspiracy in order to maintain this  
5 workforce.  
6

7 18. Many others are part of the conspiracy to facilitate the Scheme. Salyer has  
8 directed SK Foods' human resources personnel to implement the Scheme by turning a  
9 blind eye to the fact that workers who claim to be U.S. citizens or lawful permanent  
10 residents cannot speak English and are using false and stolen identity documents.  
11

12 19. The Immigration and Nationality Act provides, in relevant part:

13 Any person who, during any 12-month period,  
14 knowingly hires for employment at least 10  
15 individuals with actual knowledge that the individuals  
16 are aliens... shall be fined under Title 18, or  
17 imprisoned for not more than 5 years, or both. 8  
18 U.S.C. § 1324(a)(3)(A).

19 20. Salyer has violated this provision of the Act by conspiring to employ more  
20 than 10 undocumented illegal aliens each year, since 2002, knowing each was smuggled  
21 into the country and/or harbored once they arrived here.  
22

23 21. These are provisions of §274 of the Immigration and Nationality Act,  
24 which is a RICO predicate offense. 18 U.S.C. §1961(1)(F).  
25

26 **B. SK Foods Is a RICO Enterprise**

27 22. SK Foods, L.P. is a limited partnership affecting interstate commerce. It is  
28 therefore a RICO enterprise, pursuant to 18 U.S.C. §1961(4).  
29

1           **C. Salyer Has Violated 18 USC §1962(d) and Will Continue To Do So**  
2           **Indefinitely**

3           23. The conspiracy to perpetrate the Scheme is a violation of 18 U.S.C. §  
4 1962(d), an agreement among Salyer and his unnamed co-conspirators at SK Foods to  
5 violate §1962(c), by participating in the affairs of SK Foods, LP, the enterprise, through a  
6 pattern of racketeering activity. The Scheme is ongoing, open-ended, and has been  
7 perpetrated continuously since 2002. It will not stop without judicial intervention.

8           **V. BREWER IS A DIRECT VICTIM OF THE ILLEGAL IMMIGRANT**  
9           **HIRING SCHEME**

10           24. The Illegal Immigrant Hiring Scheme, by itself, was a substantial factor in  
11 causing the depressed wages about which Brewer and the Class complain. No other party  
12 has been damaged by the Scheme.

13           25. Salyer is subject to joint and several liability for all of the damage caused  
14 by all the racketeering acts committed by any of his co-conspirators.

15           **VI. PRAYER FOR RELIEF**

16           26. Brewer demands judgment and other relief, as follows:

17           27. Certification of the Class pursuant to Fed. R. Civ. P. 23(b)(3);

18           28. Judgment in an amount equal to three times the damage caused to the  
19 Class by Salyer's racketeering activity/the Illegal Immigrant Hiring Scheme, pursuant to  
20 18 U.S.C. §1964(c);

21           29. For appropriate attorney's fees, pursuant to 18 U.S.C. §1964;

22           30. For the costs of this action;

23           32. For a jury trial;

24           33. For any other relief the Court deems just and proper.  
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Dated: July 21, 2009

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on July 21, 2009 the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT** was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on the following:

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