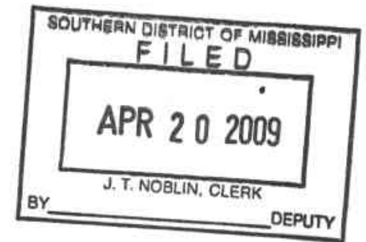
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



MIRO ALDOMAN SAUCEDO,
MOISES MOREIRA SANTOS, RONIVAN
P DA LUZ,DAVID GALDINO DA SILVA,
FRANCISCO ALMEIDA DA SILVA,
MILTON PEREIRA DE MATOS,
SONI JOSE DE OLIVEIRA,
TADEU APARECIDO DO NASCIMENTO,
GILBERTO DA SILVA NETO,
ORIDES R NUNES, MOISER PERTILLE,
JOAQUIM MARTINS DE OLIVEIRA,
individually and on behalf of others similarly
situated,

PLAINTIFFS

v. CIVIL ACTION NO. 1:09CV268 HSO-JMR

FIVE STAR CONTRACTORS L.L.C., KNIGHTS
MARINE & INDUSTRIAL SERVICES, INC., DAVID KNIGHT,
and BRIAN KNIGHT,

DEFENDANTS.

______________________________________/

COMPLAINT

PRELIMINARY STATEMENT

1. This action is brought by temporary H-2B guest workers from Brazil who were fraudulently imported to work as welders and pipefitters for labor brokers Five Star Contractors LLC ("Five Star") and Knights Marine & Industrial Services, Inc. ("Knights Marine") in the Mississippi Gulf Coast.

2. Defendants manipulated the H-2B guest worker program and defrauded the U.S. government and vulnerable migrant workers to generate a large pool of easily exploitable workers that Defendants could use to provide on-call labor to Gulf Coast shipyards. Five Star and Knights Marine deceived foreign workers about the terms and conditions of work being offered and deceived the U.S. Government about their intent to comply with the terms of the program including federal, state, and local worker protection laws.

3. Based on promises of consistent, well-compensated work at a reputable shipyard through a regulated U.S. Government visa program, Guest workers plunged their families into debt to pay hiring, visa, and relocation fees and reluctantly turned over deeds to their houses with agents of Five Star. Upon arrival in Mississippi, they were transported to a surveillance labor camp consisting of windowless portable metal buildings while they waited weeks to be leased out. They waited weeks without work as their debts grew and they became increasingly desperate for Five Star and Knights Marine to comply with their contractual promises to worker and the U.S. Government.

4. Five Star and Knights Marine took advantage of the rules of the H-2B guest worker program—which renders guest workers completely dependent on their sponsoring employer for legal status, employment, and housing—to further coerce and threaten the guest workers.

5. The guest workers seek a declaration that their rights have been violated and an award of damages on behalf of themselves and other workers similarly situated for Defendants' unlawful conduct, including violations of the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), the Fair Labor Standards Act, 29 U.S.C. §201 et seq., as well as for

breach of contract, common-law fraud, and breach of the duty of good faith and fair dealing. The guest workers seek this relief to make them whole for damages they have suffered and to ensure that they and other H-2B guest workers will not be subjected by the Defendants to such illegal conduct in the future.

JURISDICTION

5. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331 (federal question), 18 USC § 1962 (RICO), and 29 U.S.C. §216(b) (FLSA).

6. This Court has federal question jurisdiction over Plaintiff's breach of contract claim and supplemental jurisdiction pursuant to 28 U.S.C. §1367 over Plaintiff's state law claims.

VENUE

7. Venue is proper pursuant to 28 U.S.C. §1391(b) as a substantial part of the events giving rise to this action occurred within this district and Defendants are located, reside, or do business in this district.

PARTIES

8. Plaintiffs MIRO ALDOMAN SAUCEDO, MOISES MOREIRA SANTOS, RONIVAN P DA LUZ, DAVID GALDINO DA SILVA, FRANCISCO ALMEIDA DA SILVA, MILTON PEREIRA DE MATOS, SONI JOSE DE OLIVEIRA, TADEU APARECIDO DO NASCIMENTO, GILBERTO DA SILVA NETO, ORIDES R NUNES, MOISER PERTILLE, , JOAQUIM MARTINS DE OLIVEIRA are residents of the Federative Republic of Brazil.

9. Defendant FIVE STAR CONTRACTORS L.L.C. is a limited liability company organized under the laws of the State of Mississippi. It is a subsidiary of Defendant Knights

Marine and Industrial Services, Inc. It may be served with process through its registered agent, David Knight, 3000 Colmer Road, Moss Point, MS 39562.

10. Defendant KNIGHTS MARINE AND INDUSTRIAL SERVICES, INC., is a corporation organized under the laws of the State of Mississippi. It may be served with process through its registered agent David Knight, 2900 Colmer Road, Moss Point, MS 39562

11. Defendant DAVID KNIGHT is a resident of the State of Mississippi. He is an officer and/or director of Defendant Five Star Contractors LLC and is the Vice-President of Defendant Knights Marine and Industrial Services, Inc.

12. Defendant BRIAN KNIGHT is a resident of the State of Mississippi. He is an officer and/or director of Defendant Five Star Contractors LLC and is President of Defendant Knights Marine and Industrial Services, Inc.

CLASS/COLLECTIVE ACTION ALLEGATIONS

13. Plaintiffs bring their FLSA claims individually and as a collective action on behalf of a class defined as "all individuals who in 2006 and 2007 traveled to the United States on H-2B visas authorizing work for Defendant Five Star Contractors, LLC and/or Knights Marine and Industrial Services, Inc." Collective action treatment is appropriate because all members of the class are similarly situated with respect to Defendants' policy or practice of not taking into account the point-of-hire travel, visa, and recruitment fees incurred by H-2B workers in determining whether such workers received the wages required by the FLSA. Plaintiffs consent to sue forms are attached to this complaint.

14. Plaintiffs bring their RICO, breach of contract, and fraud claims on behalf of themselves and a class defined as "all individuals who in 2006 and 2007 traveled to the United

States on H-2B visas authorizing work for Defendant Five Star Contractors, LLC and/or Knights Marine and Industrial Services, Inc."

15. The classes defined in paragraphs 13 and 14 are so numerous that joiner of all members is impracticable. There are questions of law and fact common to the class; the claims of the named plaintiff are typical of the claims of the class; and the named plaintiff will fairly and adequately protect the interests of the class. Certification of the class pursuant to Rule 23(b)(3) is appropriate because the questions of law and fact common to the class predominate over any questions affecting only individual members of the class. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that the individual members of the class have no interest in controlling the prosecution of separate actions; on information and belief, no other litigation has been commenced by the members of the class; it is desirable and more efficient to concentrate the litigation of these claims in one forum; and, no difficulties are likely to be encountered in the management of the class action.

FACTS

16. At all times relevant herein, Defendants Five Star Contractors, LLC and Knights Marine and Industrial, Inc. acted as labor contractors, providing welders, metal fabricators, pipe fitters, and other types of construction workers to marine and industrial clients along the Gulf Coast.

17. On information and belief, Five Star and Knights Marine did not maintain separate corporate existences, but acted in concert with each other as a single entity and as a joint employer of the H-2B workers they imported.

18. Five Star and Knights Marine, together and separately, operated as an 'enterprise engaged in commerce' as that phrase is defined in the FLSA, 29 U.S.C. § 203(s).

19. At all times relevant herein, Defendants Brian and David Knight directed the operations of Five Star and Knights Marine and acted as joint employers of the workers employed by those entities.

20. On information and belief, since 2006 Defendants have engaged in an scheme to increase their profits by fraudulently obtaining permission from the government to create a large pool of easily exploitable H-2B workers who could be used to meet the contractual needs of Defendants' clients.

21. The H-2B program enables employers to hire foreign workers to come to the U.S. to perform temporary nonagricultural labor if qualified U.S. workers capable of performing such services or labor are not available.

22. Visas issued under the H-2B program are made out to both the sponsoring employer and to the prospective worker. The worker is bound to the sponsoring employer; if the employer terminates the employment relationship, the employer also terminates the H-2B workers' legal status in the United States.

23. To qualify for the program, an employer must submit an Application for Alien Employment Certification, Form ETA 750, to the U.S. Department of Labor (DOL) and the appropriate state employment agency. DOL evaluates the application to ensure that the offered work terms will not adversely affect similarly situated U.S. workers and to determine whether U.S. workers are available at those terms to fill the jobs. If the work terms are approved by DOL

and an insufficient number of U.S. workers can be found to accept the job at the offered terms, DOL issues a "labor certification" to certify the need for employment of aliens.

24. The employer then submits the DOL labor certification to the Bureau of Citizenship and Immigration Services (CIS) along with a petition for a non-immigrant worker visa, form I-129. CIS makes the final decision with respect to the employer's visa application, weighing a number of factors including the local labor information provided the state labor agency and the DOL certification.

25. If the Form I-129 is approved by the CIS, the employer then sends notice of the approval to the U.S. consulate office closest to the area from which the employer is recruiting prospective employees along with the names of the workers to whom the employer wants the visas issued. The U.S. Department of State (U.S. D.O.S.) decides whether foreign workers recruited to accept an employer's H-2B visas are eligible to receive H-2B visas.

26. The process for obtaining H-2B workers is complicated, requiring coordination of at least four different government agencies as well as contact with workers and the U.S. consulate in a foreign country. In the case of Defendants who filed multiple applications each year, more than one state agency was involved. Upon information and belief, the likelihood of a company obtaining H-2B visas without professional assistance is small.

27. H-2B workers are particularly vulnerable to exploitation by their sponsoring employers because they are usually bound by debt, lacking in resources, have few employment opportunities in their home countries, and know that their sponsoring employers have the power to control their livelihood as well as their immigration status making them vulnerable to retaliation and deportation.

28. Beginning in 2006, Defendants decided to take advantage of the H-2B program to create an easily exploitable pool of laborers which they could offer to potential clients and which they could rely upon as a means to expand their labor contracting business.

29. Realizing the complicated nature of the visa application process, Defendants utilized the services of North American Labor Services, Inc. a firm engaged in the business of helping companies obtain U.S. government approval to employ H-2B workers.

30. North American Labor Services, Inc. acted as agent for Defendants Five Star Contractors LLC and Knights Marine and Industrial Services, Inc.

31. On information and belief, in 2006 and 2007 Defendants, with the assistance of North American, prepared and submitted applications for labor certification to DOL on forms ETA 750 for hundreds of welders, pipefitters and other laborers to work during 2006, 2007 and 2008.

32. Defendants submitted these forms to DOL by mail or common interstate carrier.

33. On information and belief, the representations in Defendants'' ETA-750 applications were fraudulent. Among other things, the applications falsely represented that the jobs described in the applications actually existed; that the jobs would be for the full term of the visa; that the job qualifications were as described in the applications; and that the wage rates were accurately set forth in the applications.

34. On information and belief, Defendants did not have contractual commitments of the jobs described in the ETA-750 applications. Even to the extent Defendants did have contracts to supply laborers to clients, those contracts were did not guarantee that the clients would hire any particular number of workers or any particular job categories, let alone the specific jobs described

in the ETA-750s. Moreover, on information and belief, Defendants contracts with their clients gave the clients authority to terminate workers at will and to change the number and qualifications of workers needed at will.

35. Defendants and their agent North American Labor knew, or should have known, that the statements in the forms ETA 750 submitted to DOL by Defendants were fraudulent.

36. On information and belief, Defendants' communications with North American Labor regarding the preparation and filing of each year's ETA 750 forms and supporting materials were carried out by telephone, fax, mail and/or common interstate carrier..

37. On information and belief, Defendants' communications with state employment service agencies regarding their H-2B applications and recruitment were carried out by telephone, fax, mail and/or common interstate carrier..

38. Relying upon the fraudulent representations in Defendants' ETA-750 forms, DOL granted Defendants labor certification for employment of H-2B workers for 2006 and 2007. Those certifications were communicated by mail to Defendants' agent North American Labor.

39. After receiving certification from DOL in 2006 and 2007, Defendants, with the assistance of North American Labor, delivered I-129 petitions to CIS by U.S. mail or commercial interstate carrier. Upon information and belief separate petitions were filed for each state in which Defendants sought to employ H-2B workers.

40. On information and belief those petitions contained the same fraudulent representations regarding the length of the job opportunity, the term nature of the jobs, the qualifications for the jobs, and the wage rates to be paid as were contained in the applications to DOL.

41. Based upon the representations in Defendants' fraudulent I-129 forms and the labor certifications fraudulently obtained from DOL, CIS approved Defendants' applications to employ H-2B workers.

42. Upon information and belief, the expertise provided by North American Labor was critical to Defendants' success in obtaining DOL and INS approval of H-2B visas in each of the years 2006 and 2007.

43. Each year, while Defendants were obtaining approval for their fraudulent visa applications, Defendants, with the assistance of North American Labor, engaged the services of agents, including Job USA to assist them with contacting and recruiting workers in Brazil to accept Defendants H-2B visas and to assist with the processing of those workers through the U.S. consulate in Brazil.

44. On information and belief, Defendants, acting through their agents, recruited H-2B workers in Brazil to accept visas in 2006 and 2007 by fraudulently offering them term contracts of employment at fixed hourly and overtime rates.

45. In recruiting Plaintiffs and other workers to accept their H-2B visas, Defendants, acting through their agents, falsely represented to them that upon passing certain qualifying tests in Brazil (to the extent workers had not previously passed such exams) the workers would be qualified to perform the jobs being offered by Defendants.

46. For example, Plaintiff Ronivan Luiz Muller was recruited by Defendants in Brazil to work as a welder in a shipyard. He was told that his welding certificate qualified him for the visa job being offered to him and that he would work 12 hours/day for the term of his visa earning $18/hr plus overtime.

47. Plaintiff Gilberto Da Silva was recruited in Brazil to work as a pipefitter repairing oil platforms. He was told that, if he passed a specific welding test in Brazil (which he did), he would qualify for the visa and would make between $R14,000 - 15,000 per month.

48. On information and belief, communications between Defendants, North American Labor, and Job USA regarding the fraudulent terms of work to be offered to H-2B workers, including Plaintiff, were conducted by wire, mail, commercial interstate carrier, and fax.

49. In reliance upon the fraudulent terms of work offered to them by Defendants through their agents, Plaintiffs and other H-2B workers signed term employment contracts with Defendants specifying fixed hourly and overtime rates.

50. In addition, in reliance upon the fraudulent terms of work offered by Defendants, Plaintiffs and other H-2B workers who signed contracts with Defendants incurred thousands of dollars in costs in order to get their visas and travel to the United States to work for Defendants. These costs included, recruitment fees, visa fees, and transportation costs getting from the place of recruitment to the work site in the United States and other costs.

51. In addition to the costs associated with obtaining the visas and traveling to the United States, Plaintiffs and other H-2B workers were required to sign, and to obtain a guarantor to co-sign, a document guaranteeing payment of $R10,000 to $R20,000 and/or signing liens on their homes as a penalty in the event that the worker left work before the end of the visa/contract period.

52. All of the costs described in paragraph 50 and 51 were "primarily for the benefit and convenience" of Defendants as those that phrase is used in 29 C.F.R. §531.3(d)(1) and caused the first week's wages of Plaintiffs and other H-2B workers to fall below minimum wage.

53. Upon arrival in the United States, Plaintiffs and other H-2B workers were not employed as represented in the visa applications. Instead Defendants required Plaintiffs and other H-2B workers to go through a training period and pass additional tests before they would be assigned to work.

54. Upon information and belief, many H-2B workers, including Plaintiffs, could not pass the new tests imposed upon them and were never given work.

55. Plaintiffs and other H-2B workers passed the new tests but still were not placed in jobs until weeks after their arrival in the U.S. Even when they were placed in jobs they were placed in jobs that were different from the jobs they had contracted to perform.

56. When Plaintiffs and other H-2B workers complained about not receiving the terms of work they had contracted for, Defendants threatened them with deportation to their countries of origin.

57. Defendants discharged or constructively discharged Plaintiffs and other H-2B workers, without cause, prior to the end of the term of work offered to them.

58. After termination Plaintiffs and other H-2B workers may not have been fully reimbursed all of the monies they were required to pay for their own costs of transportation back to their countries of origin.

59. As a matter of practice or policy uniformly applied to Plaintiffs and other H-2B workers, Defendants did not take into account the expenses set forth in paragraphs 50 and 51 in determining whether their H-B workers received the wages required by the Fair Labor Standards Act during the first work week.

60. As a matter of practice or policy uniformly applied to Plaintiffs and other H-2B workers, Defendants did not take into account the expenses set forth in paragraph 58 in determining whether their H-2B workers received the wages required by the Fair Labor Standards Act during the worker's last week of work.

61. The expenses outlined in paragraph 50 and 51 operated as *de facto* deductions from the first week's wages of Plaintiff and other H-2B workers causing them to earn less than the wages required by the Fair Labor Standards Act.

62. The expenses outlined in paragraph 58, if unpaid, operated as *de facto* deductions from the last week's wages of Plaintiff and other H-2B workers causing them to earn less than the wages required by the Fair Labor Standards Act.

63. Defendants required Plaintiffs and other H-2B workers to purchase their own tools. The costs of those tools, if any, served to reduce workers' wages below minimum wage in the work week in which the tools were purchased.

64. Defendants' violations of the Fair Labor Standards Act were willful.

RICO Enterprises

65. Defendants Five Star Contracting LLC and Knights Marine and Industrial Services, Inc. separately and together form "enterprises" as defined in RICO, 18 U.S.C. §1961(a)(4).

66. The legitimate purpose of the enterprise was to provide labor to client companies.

67. The enterprise(s) was engaged in, or their activities affected, interstate and foreign commerce. Among other things, the enterprise(s) contracted to provide laborers, including Plaintiffs, to engage in the production of goods for interstate and foreign commerce for companies located in different states.

68. Through the criminal worker exploitation scheme described above, the Defendants Brian Knight and David Knight knowingly, and with specific intent to profit, operated and managed the enterprise through a pattern of racketeering activity in violation of RICO, 18 U.S.C. § 1962(c).

Predicate Racketeering Acts

69. In order to perpetrate their criminal worker exploitation scheme, Defendants Brian Knight and David Knight knowingly and willfully committed predicate racketeering offenses under RICO §1961(a)(B) including mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. 1343 and fraud in obtaining and using visas in violation of 18 U.S.C. 1546.

70. As part of its criminal worker exploitation scheme, Defendants knowingly and willfully devised a scheme to defraud DOL, CIS and U.S. DOS for the purpose of depriving Plaintiffs and other H-2B workers of the wages required by state and federal law and the DOL labor certifications and other federally protected legal rights including the right to organize.

71. As described above, Defendants knowingly used the mails, telephone, common interstate carriers, and fax to communicate with its agents, State employment service offices, DOL, CIS and U.S. DOS with the specific intent of executing and furthering this fraudulent scheme, in violation of 18 U.S.C. 1341 and 1343.

72. It was reasonably foreseeable to Defendants that its agents, including North American Labor and Jobs USA, would use the mails, telephone, interstate common carrier, and fax to communicate with Defendants, and to secure DOL, CIS, and USDOS' approval of Defendants fraudulent H-2B visa applications. These communications furthered Defendants criminal worker exploitation scheme.

73. Upon information and belief, DOL and CIS justifiably relied on the fraudulent labor certifications and I-129 petitions in remitting their approval of Defendants' application to employ H-2B workers through the mail.

74. Defendants knowingly made false statements under penalty of perjury in visa applications and other documents required by the immigration laws and knowingly presented such applications and documents in violation of 18 U.S.C. §1546(a).

75. Defendants knowingly obtained and made use of H-2B visas knowing them to have been procured by means of the false statements and fraud in violation of 18 U.S.C. § 1546(a)

Pattern of Racketeering Activity

80. The predicate acts of criminal racketeering activity described above constitute a "pattern of racketeering activity" as defined by RICO, 18 U.S.C. § 1961(5). As described above, Defendants repeatedly committed the predicate acts of visa fraud involving hundreds of visas over at least a two year period. In addition, Defendants repeatedly engaged in acts of mail and wire fraud to further their fraud upon the government and H-2B workers.

81. The predicate acts of criminal racketeering activity described above were related in at least the following ways: They had common participants. They each had the same victims, namely H-2B workers as well as the U.S. government. They each had the same purpose creating a pool of exploitable workers for the benefit of Defendants and at the expense of Plaintiffs and other H-2B workers. And they were interrelated in that without the acts of mail fraud, wire fraud, and document fraud in visas, the Defendants would not have been able to exploit Plaintiffs and other H-2B workers and deprive them of their lawful visa and contract rights.

82. Such acts of racketeering activity have been part of the Defendants' regular way of doing business through the enterprise(s) described above since at least 2006, implying a threat of continued criminal activity.

83. Throughout the relevant time period, Defendants operated as a legal entity capable of holding a legal or beneficial interest in property and therefore were a "person" as defined by RICO, 18 U.S.C. § 1961(3).

FIRST CAUSE OF ACTION

84. Defendants Brian and David Knight associated with an enterprise(s) engaged in, or whose the activities of which affect, interstate or foreign commerce, to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity, including repeated acts of mail fraud, wire fraud, and visa document fraud in violation of RICO, 18 U.S.C. § 1962(c).

85. As a direct, intended and foreseeable result of the Defendants' violations of RICO, through the criminal worker exploitation scheme described above, Plaintiff and other H-2B workers have suffered injury to their property, including the right to be paid contractual and lawful wages for their work.

86. The criminal acts of mail fraud, wire fraud, and document fraud committed by Defendants were directly related to and were substantial factors in causing injury to Plaintiff and other H-2B workers.

87. Plaintiffs and other similarly situated H-2B workers are entitled to relief, including treble damages and attorneys fees pursuant to RICO, 18 U.S.C. §1962(c).

SECOND CAUSE OF ACTION

88. The above facts constitute violations of the Fair Labor Standards Act, 29 U.S.C. §§206 and 207, by Defendants for which Plaintiff and similarly situated H-2B workers are entitled to relief pursuant to 29 U.S.C. §216(b).

THIRD CAUSE OF ACTION

89. The above facts constitute breach of contract by Defendants for which Plaintiff and other similarly situated H-2B workers are entitled to relief.

FOURTH CAUSE OF ACTION

90. The above facts constitute fraud by Defendants for which Plaintiff and other H-2B workers are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Allow Plaintiff to pursue his FLSA claims as a collective action and authorize Plaintiff to issue notice of the right to opt-into this action to all similarly situated H-2B workers;

b. Certify Plaintiffs RICO, breach of contract, and fraud claims as a Rule 23(b)(3) class action on behalf of H-2B workers employed by Defendants;

c. Award Plaintiff and other H-2B workers employed by Defendants treble compensatory damages for Defendants Brian and David Knight's violations of RICO;

d. Award Plaintiff and similarly situated H-2B workers their unpaid minimum wages, regular wages and overtime as well as an equal amount of liquidated damages pursuant to 29 U.S.C. §216(b) for Defendants violations of the FLSA;

e. Award Plaintiff and other H-2B workers compensatory damages for Defendants' breach of contract;

f. Award Plaintiff and other H-2B workers compensatory and punitive damages for Defendants' fraud;

g. Award Plaintiff his costs and reasonable attorneys fees;

h. Award Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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