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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
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 ALAN SLATER, Clerk of the Court
 BY: M. SAMELA, DEPUTY

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 9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 10 **COUNTY OF ORANGE**

11 EILEEN GARCIA, a taxpayer and resident of)
 12 the City of Laguna Beach, California, and)
 13 GEORGE RIVIERE, a taxpayer and resident)
 of the City of Laguna Beach, California,)
 14
 15 Plaintiffs,

16 vs.

17 CITY OF LAGUNA BEACH; STEVEN)
 18 DICTEROW, in his official capacity as)
 Mayor of the City of Laguna Beach; TONI)
 19 ISEMAN, in her official capacity as Mayor)
 Pro Tem of the City of Laguna Beach;)
 20 CHERYL KINSMAN, in her official capacity)
 as a member of the City Council of the City)
 21 of Laguna Beach; ELIZABETH PEARSON-)
 SCHNEIDER, in her official capacity as a)
 22 member of the City Council of the City of)
 Laguna Beach; JANE EGLY, in her official)
 23 capacity as member of the City Council of the)
 City of Laguna Beach; KENNETH FRANK,)
 in his official capacity as City Manager of the)
 City of Laguna Beach; and LAURA PARISI,)
 24 in her official capacity as the City Treasurer)
 of the City of Laguna Beach,)
 25
 26
 27 Defendants.

Case No. **06CC 10595**
 [UNLIMITED JURISDICTION]

[Prayer for Declaratory and Injunctive Relief, Costs and Attorney's Fees According to Proof]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JUDGE H. WARREN SIEGEL
DEPT. C13

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INTRODUCTION

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2 1. Plaintiffs Eileen Garcia and George Riviere, taxpayers and residents of the City of Laguna
3 Beach, seek to restrain, prevent and otherwise enjoin Defendants from continuing to expend taxpayer
4 funds and taxpayer-financed resources in furtherance of the community day labor site commonly
5 referred to as the "Laguna Beach Day Worker Center" (hereinafter "the Center" or "the facility").

JURISDICTION

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7 2. Jurisdiction in this case is found under California Code of Civil Procedure §
8 526a, which provides as follows:

9 An action to obtain a judgment, restraining and preventing any illegal expenditure of,
10 waste of, or injury to, the estate, funds, or other property of a county, town, city or city
11 and county of the state, may be maintained against any officer thereof, or any agent, or
12 other person, acting in its behalf, either by a citizen resident therein, or by a corporation,
13 who is assessed for and is liable to pay, or, within one year before the commencement of
14 the action, has paid, a tax therein.

15 3. In *Blair v. Pitchess*, 5 Cal. 3d 258, 267-68, 96 Cal. Rptr. 42, 48-49 (1971), the
16 Supreme Court of California stated that "[t]he primary purpose of this statute [Section 526a], originally
17 enacted in 1909, is to 'enable a large body of the citizenry to challenge governmental action which
18 would otherwise go unchallenged in the courts because of the standing requirement [citation omitted].'"
19 *See also Bledsoe v. Watson*, 30 Cal. App. 3d 105, 109, 106 Cal. Rptr 197, 199 (1973) ("[T]he purpose of
20 this section is to enable a citizen-resident taxpayer to question public expenditures of governments that
21 might otherwise pass unchallenged.").

PARTIES

22 4. Plaintiff Eileen Garcia is a taxpayer and resident of the City of Laguna Beach in Orange
23 County, California. Plaintiff Garcia has paid taxes to the City of Laguna Beach in the one-year period
24 prior to the commencement of this action.

25 5. Plaintiff George Riviere is a taxpayer and resident of the City of Laguna Beach in Orange
26 County, California. Plaintiff Riviere has paid taxes to the City of Laguna Beach in the one-year period
27 prior to the commencement of this action.

28 6. Defendant City of Laguna Beach is a municipal corporation situated within Orange
County, California. It is being sued herein solely for declaratory relief determining and declaring that

1 the expenditure of taxpayer funds and taxpayer-financed resources for the operation of the Center is
2 unlawful.

3 7. Defendant Steven Dieterow is the Mayor of the City of Laguna Beach and, on
4 information and belief, has the power and authority to terminate the expenditure of taxpayer funds and
5 taxpayer-financed resources for the operation of the Center. Mayor Dieterow is being sued in his official
6 capacity.

7 8. Defendant Toni Iseman is the Mayor Pro Tem of the City of Laguna Beach and, on
8 information and belief, has the power and authority to terminate the expenditure of taxpayer funds and
9 taxpayer-financed resources for the operation of the Center. Mayor Pro Tem Iseman is being sued in her
10 official capacity.

11 9. Defendant Cheryl Kinsman is a member of the City Council of the City of Laguna Beach
12 and, on information and belief, has the power and authority to terminate the expenditure of taxpayer
13 funds and taxpayer-financed resources for the operation of the Center. Councilmember Kinsman is
14 being sued in her official capacity.

15 10. Defendant Elizabeth Pearson-Schnieder is a member of the City Council of the City of
16 Laguna Beach and, on information and belief, has the power and authority to terminate the expenditure
17 of taxpayer funds and taxpayer-financed resources for the operation of the Center. Councilmember
18 Pearson-Schnieder is being sued in her official capacity.

19 11. Defendant Jane Egly is a member of the City Council of the City of Laguna Beach and,
20 on information and belief, has the power and authority to terminate the expenditure of taxpayer funds
21 and taxpayer-financed resources for the operation of the Center. Councilmember Egly is being sued in
22 her official capacity.

23 12. Defendant Kenneth Frank is the City Manager of the City of Laguna Beach and, on
24 information and belief, has the power and authority to terminate the expenditure of taxpayer funds and
25 taxpayer-financed resources for the operation of the Center. City Manager Frank is being sued in his
26 official capacity.

27 13. Defendant Laura Parisi is the City Treasurer of the City of Laguna Beach and, on
28 information and belief, has the power and authority to terminate the expenditure of taxpayer funds and

1 taxpayer-financed resources for the operation of the Center. City Treasurer Parisi is being sued in her
2 official capacity.

3 **NOTICE TO GOVERNMENT**

4 14. In September 2006, Plaintiffs provided a draft of this pleading to the City of Laguna
5 Beach and to each of the officials of the City of Laguna Beach named herein (collectively "the City of
6 Laguna Beach") and requested that they immediately terminate the expenditure of any and all taxpayer
7 funds and/or taxpayer-financed resources for the operation of the Center. The City of Laguna Beach
8 refused or failed to terminate such expenditures, and, on information and belief, will not do so in the
9 future, no matter how long Plaintiffs might wait. As a result of the failure and refusal of the City of
10 Laguna Beach to take appropriate action with respect to the Center, this taxpayer lawsuit is the only
11 viable means to stop the unlawful expenditure and waste of taxpayer funds and taxpayer-financed
12 resources.

13 **STATEMENT OF FACTS**

14 15. In 1999, the City of Laguna Beach established the Center at a site located along Highway
15 133, near 1900 Laguna Canyon Road. The Center has been in operation at this same location for
16 approximately seven years.

17 16. Since it established the Center in 1999, the City of Laguna Beach has provided a non-
18 profit organization, the South County Cross Cultural Council ("South County"), with funding to operate
19 the facility.

20 17. The Center is open Monday through Saturday, from 6:00 a.m. until 12:00 p.m. and is
21 used by approximately 1,500 day laborers per month. The Center currently places approximately sixty
22 percent (60%) of these 1,500 day laborers in employment each month.

23 18. Upon information and belief, day laborers using the Center receive employment referral
24 services from staff at the facility who match day laborers' skills with the needs of employers seeking to
25 hire day laborers. Upon information and belief, day laborers using the Center are charged a \$1.00
26 referral fee each day he or she receives employment at the facility. On information and belief, employers
27 using the Center are charged a \$5.00 referral fee for each day laborer hired at the facility.
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1 19. Upon information and belief, day laborers using the Center also are provided other public
2 benefits, including but not limited to English language instruction.

3 20. Upon information and belief, day laborers using the Center are not required to show any
4 formal identification, nor do staff at the facility verify the day laborers' eligibility for employment in the
5 United States or immigration status. Upon information and belief, day laborers using the Center are only
6 required to provide an address and telephone number for contact purposes.

7 21. Since 1999, the City of Laguna Beach has expended substantial taxpayer funds and
8 taxpayer-financed resources for the operation of the Center. According to public records, the City of
9 Laguna Beach awarded South County a \$21,000 grant for Fiscal Year 2005-06 and a \$22,000 financed
10 grant for Fiscal Year 2006-07 to operate the Center.

11 22. The City of Laguna Beach also has expended additional taxpayer funds and taxpayer-
12 financed resources to pay for costs and to provide services associated with the operation of the Center,
13 including the installation of a water line, garbage removal, and portable toilets. These costs and services
14 total approximately \$18,000 per year.

15 23. In addition, when Plaintiff Garcia discovered recently that the California Department of
16 Transportation ("CalTrans") owns the property on which the Center is located, the City of Laguna Beach
17 entered into a one-year lease agreement with CalTrans on July 10, 2006 to lease the site for the express
18 purpose of operating and maintaining a community day laborer center. This lease agreement obligates
19 the City of Laguna Beach to make monthly rental payments to CalTrans at a "Fair Market Value" to be
20 determined by a rent determination appraisal. On information and belief, the City of Laguna Beach's
21 rent payments to CalTrans are being paid from taxpayer funds and taxpayer-financed resources.

22 24. Under the July 10, 2006 lease, the City of Laguna Beach also obligated itself to assume
23 any and all legal liability for the property, providing for at least the possibility that the City of Laguna
24 Beach will be required to expend yet more taxpayer funds and taxpayer-financed resources on the Center
25 in the event of a legal claim or loss.

26 25. Upon information and belief, day laborers seeking employment at the Center consist
27 predominantly of undocumented aliens who lack authorization to work in the United States. Upon
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1 information and belief, at all relevant times the City of Laguna Beach has known and understood this to
2 be the case.

3 26. Upon information and belief, at all relevant times the City of Laguna Beach has been
4 aware of, and has authorized, ratified, and approved the manner in which the Center is operated,
5 including the provision of employment referral services to day laborers at the Center without verifying
6 their eligibility for employment in the United States and the provision of other public benefits to day
7 laborers at the Center without verifying their immigration status.

8 27. Upon information and belief, at no time has the City of Laguna Beach required
9 verification that day laborers receiving employment referral services at the Center are eligible for
10 employment in the United States or verification that day laborers receiving other public benefits at the
11 Center are lawfully present in the United States.

12 28. The Supremacy Clause of the U.S. Constitution declares:

13 This Constitution, and the Laws of the United States which shall be made in Pursuance
14 thereof; and all Treaties made, or which shall be made, under the Authority of the United
15 States, shall be the supreme Law of the Land; and the Judges in every State shall be
16 bound thereby; any Thing in the Constitution or Laws of any State to the Contrary
17 notwithstanding.

18 See U.S. Const., art. VI, cl. 2. Similarly, Article III, section 1 of the California Constitution provides,
19 "The State of California is an inseparable part of the United States of America, and the United States
20 Constitution is the supreme law of the land."

21 29. Federal law makes it unlawful to hire an alien or to recruit or refer an alien for
22 employment, for a fee, knowing that the alien is not authorized for such employment. 8 U.S.C. §
23 1324a(a)(1)(A). Federal law also makes it unlawful to hire any individual or to recruit or refer any
24 individual for employment, for a fee, without complying with federal employment eligibility verification
25 requirements. 8 U.S.C. § 1324a(a)(1)(B)(i).

26 30. Federal law also provides that undocumented aliens are not eligible for most types of
27 government-funded, state or local public benefits, including the types of government-funded services
28 and benefits being provided to undocumented aliens at the Center. 8 U.S.C. § 1621.

31. Federal law also makes it illegal to harbor an alien "knowing or in reckless disregard of
the fact that the alien has come to, entered, or remains in the United States in violation of law," or to

1 “encourage or induce an alien to come to, enter, or reside in the United States, knowing or in reckless
 2 disregard of the fact that such coming to, entry, or residence is or will be in violation of law.” 8 U.S.C. §
 3 1324(a)(1)(A)(iii)-(iv). Aiding and abetting the commission of such acts also is a violation of federal
 4 law. 8 U.S.C. § 1324(a)(1)(A)(v)(II).

5 32. Federal law also makes it illegal to aid or abet a violation of federal law or cause an act to
 6 be done by a third party, which, if done directly, would be unlawful. 18 U.S.C. § 2.

7 33. By authorizing, ratifying, and approving operation of the Center, at which employment
 8 referral services and other public benefits are being provided to day laborers without verifying the day
 9 laborers’ eligibility for employment in the United States or their immigration status, the City of Laguna
 10 Beach is violating federal law, including but not limited to 8 U.S.C. §§ 1324, 1324a, and 1621 and 18
 11 U.S.C. § 2.

12 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

13 **(Cal. Code Civ. Proc. § 1060)**

14 34. Plaintiffs incorporate paragraphs 1 to 33, and each of them as if they were set
 15 forth in full.

16 35. An actual controversy has arisen between Plaintiffs and the City of Laguna Beach.
 17 Plaintiffs contend that the City of Laguna Beach’s expenditure of taxpayer funds and taxpayer-financed
 18 resources for the operation of the Center contravenes federal law, including but not limited to 8 U.S.C.
 19 §§ 1324, 1324a, and 1621 and 18 U.S.C. § 2. On information and belief, the City of Laguna Beach
 20 denies this contention.

21 36. Plaintiffs seek a judicial determination and declaration that the City of Laguna Beach’s
 22 expenditure of taxpayer funds and taxpayer-financed resources for the operation of the Center is
 23 unlawful and void.

24 37. Plaintiffs also seek a judicial determination and declaration that the City of Laguna
 25 Beach’s expenditure of taxpayer funds and taxpayer-financed resources for the operation of the Center
 26 serves no useful, lawful purpose, provides no additional public benefit, and otherwise constitutes an
 27 unconscionable waste of taxpayer funds.

28 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

(Cal. Code. Civ. Proc. § 526)

38. Plaintiffs incorporate paragraphs 1 to 37, and each of them as if they were set forth in full.

39. Plaintiffs seek injunctive relief restraining, preventing, and otherwise enjoining the City of Laguna Beach from expending taxpayer funds and taxpayer-financed resources for the operation of the Center.

40. Plaintiffs have no adequate, alternative remedy at law and will suffer irreparable harm if injunctive relief is denied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

1. A declaration that the City of Laguna Beach's expenditure of taxpayer funds and taxpayer-financed resources for the operation of the Center is unlawful, void, and a waste of taxpayer funds;

SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF

2. The Court issue permanent injunctive relief restraining and preventing the City of Laguna Beach from expending any further taxpayer funds or taxpayer-financed resources for the operation of the Center;

3. Costs of suit herein;

4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

5. Other such relief as the Court deems just and proper.

1 DATED: October 3, 2006

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