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

10
11 EILEEN GARCIA, *et al.*,
12 Plaintiffs,
13 vs.
14 CITY OF LAGUNA BEACH, *et al.*,
15 Defendants.

) Case No. 06CC10595
[UNLIMITED JURISDICTION]

PLAINTIFFS' OPENING BRIEF

Assigned for All Purposes to:
Hon. Gregory Munoz, Dept. C56

Hearing: November 16, 2007, 8:30 a.m.

16
17 Complaint Filed: October 3, 2006
Trial Date: [Submitted on Briefs]

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1 Pursuant to the Court's October 1, 2007 Order approving the parties' Joint Application to Submit
2 This Matter on Briefs in Lieu of Bench Trial, Plaintiffs, by counsel, respectfully submit their Opening Brief.
3 The legal arguments herein are based on the parties' Stipulated Facts With Exhibits filed with the Court on
4 October 8, 2007.

5 INTRODUCTION

6 At issue in this case is whether a local government may openly defy the rule of law and use taxpayer
7 money to facilitate illegal activity. Plaintiffs, residents and taxpayers in the City of Laguna Beach, seek to
8 enjoin Defendants, the City and its officials (collectively the "City"), from expending further taxpayer funds
9 in support of the Laguna Beach Day Worker Center ("the Center"), an employment center for day laborers
10 operated by the South County Cross Cultural Council ("South County") with grant money and other
11 financial assistance from the City. As the undisputed facts in this matter will demonstrate, day laborers
12 receiving employment at the Center consist predominantly of undocumented aliens who lack authorization
13 to work in the United States. As a result, the City's use of taxpayer resources to operate the Center brazenly
14 ignores federal law proscribing the employment of illegal aliens. In fact, the City's funding of the Center
15 has been illegal for a variety of reasons since its inception. As taxpayers, Plaintiffs have the right to
16 challenge this illegal and wasteful expenditure of public funds. For the benefit of Plaintiffs and all other
17 taxpayers in the City and for the reasons set forth herein, Plaintiffs respectfully submit that the facts of this
18 case warrant declaratory and injunctive relief against Defendants.

19 FACTUAL BACKGROUND

20 In 1993, the City formally designated an area on the northwest side of the 1700 block of Laguna
21 Canyon Road as the City's day labor hiring area. Stipulated Facts with Exhibits ("S.F.") ¶ 9; Exh. F
22 (diagram of area). This location has been used ever since as the City's day labor hiring area. S.F. ¶ 9. The
23 City purportedly established the day labor hiring area to try to eliminate what it has described as "nuisances"
24 associated with day laborers and, therefore, located the area "in a place that would be least offensive to
25 people in the community." S.F. ¶ 15.

26 Since 1999, the City has provided South County, a nonprofit organization, with funding and support
27 to operate the day labor hiring area, which has since become known as the Center. S.F. ¶ 18. The Center
28 is open Monday through Saturday, from 6:00 a.m. until 12:00 p.m. S.F. ¶ 21. In order to use the Center,

1 a day laborer must register to do so by completing a form and providing an address and telephone number
2 and some form of identification. S.F. ¶ 22. The Center also takes and maintains a photograph of each day
3 laborer. S.F. ¶ 22. Day laborers who use the Center receive employment referral services from South
4 County's on-site staff, who match day laborers' skills, English proficiency, and wage requirements with the
5 needs fo th employers seeking to hire them. S.F. ¶ 23. In addition to employment referral, South County
6 provides food distribution, medical check ups, health information, education, and at least some English
7 language instruction to day laborers who use the Center. S.F. ¶ 24; Exh. J at 3. Currently, approximately
8 140 day laborers are registered to use the Center. S.F. ¶ 22. In a typical month, a total of approximately
9 1,000 day laborers will receive services at the Center, with roughly one-third (33%) of the those receiving
10 employment. S.F. ¶ 33.

11 Employers are not required to register to use the Center, but they are required to sign in. S.F. ¶ 25.
12 An employer may request a particular day laborer who the employer had hired in the past. S.F. ¶ 26.
13 Contractors can request individual workers, or ask for specific skills; otherwise, the next laborer on the list
14 is chosen." S.F. ¶ 45. South County retains records of the names and telephone numbers of day laborers
15 hired by particular employers at the Center. S.F. ¶ 27.

16 Since 1993, the City has expended taxpayer funds and taxpayer-financed resources on the day laborer
17 hiring area, including but not limited to adding a driveway, fencing, landscaping, benches, a waterline, and
18 drinking fountain, as well as installing portable toilets and paying for trash pick up. S.F. ¶ 17; Exh. D (letter
19 from Mayor describing City's support).

20 Since approximately August 1999, the City has provided taxpayer funds, usually in the form of
21 community assistance grants, to the South County to operate and manage the Center. S.F. ¶ 18. In its
22 application for a Community Assistance Grant for Fiscal Year 2007-08, South County described the Center
23 as "help[ing] Laguna Beach residents to find work at the same time it helps contractors/homeowners find
24 skilled and reliable workers." S.F. ¶ 46; Exh. J. Since 1999, the City has provided community assistance
25 grants to South County in the following amounts to support the Center:

26	1999	approximately \$8,000
27	2000-01	\$40,000
28	2001-02	\$24,000

1	2002-03	\$20,500
2	2003-04	\$28,000
3	2004-05	\$24,000
4	2005-06	\$20,000
5	2006-07	\$20,000
6	2007-08	<u>\$22,000</u>

7 S.F. ¶ 19, 46; Exh. J. The community assistance grants provided by the City to South County total \$206,500.

8 **ARGUMENT**

9 **I. The City’s Expenditure Of Taxpayer Funds To Support The Center Is Illegal And A Waste Of Public Funds**

10 **A. Cal. Code Civ. Proc. § 526a Authorizes This Court To Enjoin Defendants From Further Illegal And Wasteful Expenditures Of Public Funds For The Center**

11 Cal. Code Civ. Proc. § 526a grants standing to taxpayers to challenge expenditures of public funds;
 12 in relevant part, that statute provides:

13
 14 An action to obtain a judgment, restraining and preventing any illegal
 15 expenditure of, waste of, or injury to, the estate, funds, or other property of
 16 a . . . city . . . may be maintained against any officer thereof . . . by a citizen
 17 resident therein . . . who . . . within one year before the commencement of the
 18 action, has paid, a tax therein.

19 “The primary purpose of this statute, originally enacted in 1909, is to enable a large body of the citizenry
 20 to challenge governmental action which would otherwise go unchallenged in the courts because of the
 21 standing requirement.” *Blair v. Pitchess*, 5 Cal. 3d 258, 267-68 (1971) (internal quotation marks and
 22 citation omitted). “California courts have consistently construed section 526a liberally to achieve this
 23 remedial purpose.” *Id.* at 268.

24 In determining the illegality of expenditures of public funds and issuing injunctions against such
 25 expenditures, the California Supreme Court has “declared that it is immaterial that the amount of the
 26 illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds.” *Id.*
 27 Further, the “unlawfully spent funds” may come directly from tax revenues or derived from other
 28

1 sources of revenue accruing to a public entity, such as from operation of a public utility or from gas
2 revenues. *Id.* Even the money spent to employ police officers or other government employees to
3 perform illegal acts or enforce illegal ordinances is an unlawful use of funds that can be enjoined under
4 Section 526a. *See id.* A public expenditure can be deemed “illegal” whether the expenditure violates a
5 penal or nonpenal law. *See Ames v. Hermosa Beach*, 16 Cal. App. 3d 146, 151 (1971).

7 Here, Plaintiffs have standing under Section 526a because both Plaintiffs are residents of the City
8 of Laguna Beach who have paid taxes to the City within one year prior to commencement of this action.
9 S.F. ¶ 1. In analyzing Plaintiffs’ claims that the City’s expenditures of public funds on the Center is
10 illegal, the amount of taxpayer money spent on the Center, and any alleged benefits from public funding
11 of the Center, are immaterial issues to the central question of illegality. The stipulated facts of this case
12 concisely state that the City expends taxpayer funds on the Center (*see* S.F. ¶¶ 13, 17-19, Exh. E).
13 Because the Center operates unlawfully (for reasons explained in detail *infra*), the City’s expenditures of
14 taxpayer funds on the Center must be enjoined.

17 An expenditure of taxpayer money can be enjoined as a “waste” under Section 526a even if the
18 expenditure is not illegal. In analyzing whether an expenditure of public funds is a “waste” under
19 Section 526a, courts give deference to legislators but will enjoin public spending that serves no purpose:
20 “Admittedly, the term ‘waste’ as used in section 526a means something more than an alleged mistake by
21 public officials in matters involving the exercise of judgment or wide discretion. . . . Thus, the courts
22 should not take judicial cognizance of disputes which are primarily political in nature, nor should they
23 attempt to enjoin every expenditure which does not meet with a taxpayer’s approval. *On the other hand,*
24 *a court must not close its eyes to wasteful, improvident and completely unnecessary public spending,*

1 merely because it is done in the exercise of a lawful power.” *Ceres v. Modesto*, 274 Cal. App. 2d 545,
2 555 (1969) (emphasis added).

3 Failure to consider alternatives, or selection of a more expensive alternative without a showing of
4 increased public benefit, can render a public expenditure a “waste” of taxpayer funds. *See Los Altos*
5 *Property Owners Assn. v. Hutcheon*, 69 Cal. App. 3d 22, 30 (1977) (allegations that “defendants will be
6 expending public funds on a consolidation plan that costs a great deal more than alternative plans
7 considered, without a finding of any additional public benefit . . . go beyond a mere difference in
8 judgment between plaintiffs and defendants” and constitute a cause of action under Section 526a).

9 As shown *infra*, the City’s expenditures of public funds on the Center constitute legal waste of
10 public funds regardless of the actual illegality of such spending.

11 **B. The Center Is In Violation Of Federal Law (8 U.S.C. § 1324a) As It**
12 **Provides Employment Referral Services To Illegal Aliens**

13 Under federal law, it is unlawful for a person or entity “to hire, or to recruit or *refer for a fee*, for
14 employment in the United States an alien knowing the alien is an unauthorized alien (as defined in
15 subsection (h)(3))¹ with respect to such employment.” *See* 8 U.S.C. §1324a(a)(1)(A) (emphasis added).
16 This same provision also makes it unlawful “to hire for employment in the United States an individual
17 without complying with the requirements of subsection (b) [employment verification requirements]....”
18 *See* 8 U.S.C. § 1324a(a)(1)(B)(i).

19 Knowledge of whether an “alien is an unauthorized alien” can be actual *or* constructive
20 knowledge. Courts have found, for example, that “constructive knowledge” of unauthorized status
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¹ Section 1324a(h)(3), which defines the term “unauthorized alien,” states, “As used in this section, the term ‘unauthorized alien’ means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.”

1 exists when an employer deliberately fails to investigate suspicious circumstances relating to workers'
2 status. *See New El Rey Sausage Co. v. INS*, 925 F.2d 1153, 1157-58 (9th Cir. 1990) (failure to
3 investigate imputes [constructive] knowledge); *Mester Mfg. Co. v. INS*, 879 F.2d 561, 564 (9th Cir.
4 1989) (same); *see also United States v. Khanani*, 2007 U.S. App. LEXIS 23037 (11th Cir. Oct. 2, 2007).

5
6 The Center is operating in open and flagrant violation of section 1324a. It is undisputed that day
7 laborers using the Center receive "employment referral services" from South County's on-site staff,
8 "who match day laborers' skills, English proficiency, and wage requirements with the needs of
9 employers seeking to hire them." Stipulated Facts ("S.F.") ¶ 23. It also is undisputed that the Center
10 charges a fee for these referrals: \$5 per visit for employers and \$1 per day to day laborers. S.F. ¶ 28;
11 Exh. G (South County letter to employers discussing mandatory fee). A sign setting forth the fee
12 structure charged to employers and day laborers is displayed prominently on a fence in front of the
13 Center. S.F. ¶ 29; Exh. H (sign indicating \$5 fee). It is undisputed that the City is well aware of the fee
14 structure for using the Center. S.F. ¶ 30.

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17 At the same time, "South County makes no effort to verify that day laborers who use the Center
18 to obtain employment are eligible to work in the United States," and the "City does not require South
19 County to verify that day laborers who use the Center to obtain employment are eligible to work in the
20 United States." S.F. ¶¶ 31-32. Nor has the City "taken any steps to determine whether day laborers
21 using the Center are legally present in the United States and legally eligible for employment in the
22 United States." S.F. ¶ 32.

23
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25 This is important because the City and South County were and are fully aware that day laborers
26 who receive employment referral at the Center consist predominantly of "unauthorized aliens."
27 Evidence of this knowledge is substantial and persuasive.
28

1 It is undisputed that, as early as 1991, City officials indicated they did not want federal
2 immigration officials called in to try to address the City's day laborer "issues." S.F. ¶ 37. Clearly, the
3 City was and is well aware that its day laborers include illegal aliens. Otherwise, its reference to not
4 calling in federal immigration officials would not make any sense.
5

6 Similarly, City Manager Ken Frank testified that, at the time the Center was established in 1993,
7 the City and the day laborers had an "unspoken arrangement that [City officials] would not be calling in
8 the INS . . . they're cooperating by going to a location that's less of a problem, and we're cooperating by
9 not calling INS." S.F. ¶ 36. Again, Frank's testimony demonstrates that the City was and is well aware
10 its day laborers include illegal aliens. Otherwise, there would be no reason for the City to promise not to
11 call in the INS.
12

13 In 1999, the City's Chief of Police assured day laborers using the Center that the City would not
14 call in federal immigration officials. S.F. ¶ 37; Exh. B. Again, the City would not have made this
15 promise if it was not aware that the day laborers included illegal aliens.
16

17 Other evidence of Defendants' knowledge is equally compelling, if not more so. At a January
18 10, 2006 meeting of the City Council, Plaintiff Eileen Garcia provided council members with copies of a
19 report by the Center for the Study of Urban Poverty indicating that eighty-five percent (85%) of persons
20 seeking employment at day laborer sites are undocumented aliens. S.F. ¶ 39. In addition, prior to the
21 filing of this lawsuit, the City was provided a copy of a joint study, published in January 2006 by the
22 University of California at Los Angeles, the University of Illinois at Chicago, and the New School
23 University, which found that seventy-five percent (75%) of the day laborer work force consists of
24 undocumented workers. S.F. ¶ 38.
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1 Other sources also demonstrate that the City was and is well aware that day laborers using the
2 Center include illegal aliens. The City acknowledges receiving citizen complaints that the Center fosters
3 illegal immigration. S.F. ¶ 41. Furthermore, a July 12, 2006 article published in the *Orange County*
4 *Register* reported that persons who have used the Center, including a board member of South County
5 and the husband of the Center's coordinator, admittedly were and/or are illegal aliens:
6

7 Eduardo Gonzales, 35, said he has come to Laguna Beach for the past seven years looking
8 for day work. "We are happy because all the people in Laguna Beach need us, and we
9 need them," said Gonzalez, a Laguna Hills resident who said he came to the United States
10 illegally.

11 Tom Ronses, 42, said he would not be where he is today had the day-labor site not been a
12 place for him to find work. He entered the country illegally, but earned U.S. citizenship
13 and owns a business, he said. "If it weren't for the opportunity I had here, I'd be out on
14 the street, he told the council. I really appreciate what you guys are doing."

15 Laylan Connelly and Amy Taxin, "Day-Labor site gets one-year reprieve," *Orange County Register*, July
16 12, 2006. S.F. ¶ 40. Tim Ronses is a member of South County's Board of Directors and is the husband
17 of the Center's coordinator, Irma Ronses. S.F. ¶ 40.

18 South County too is aware that the day laborers who utilize the Center to obtain employment
19 include illegal aliens. Again, South County's own board member and the husband of the Center's
20 coordinator admitted to the *Orange County Register* that he used the Center as an illegal alien, as did
21 other persons. S.F. ¶ 40. David Peck, who at all relevant times is and was the President and Executive
22 Director of South County, admitted being aware that day laborers using the Center may be
23 undocumented aliens. S.F. ¶ 34.²
24

25 _____
26 ² At deposition, Peck testified as follows:

27 Q: Are you personally aware that some of the workers who utilize the day labor center may be
28 undocumented?

1 Finally, while on occasion the City has tried to make perfunctory denials of knowledge of day
2 laborers' immigration status, even these purported denials are revealing. City Manager Ken Frank
3 testified at deposition, with respect to the immigration status of day laborers using the Center, "I've
4 heard people say that some of them were legal and some of them are not legal, and all of them are legal
5 and all of them are illegal. I really don't know." S.F. ¶ 42. Frank's testimony demonstrates, at a
6 minimum, the City's awareness that a substantial question exists about whether day laborers using the
7 Center include illegal aliens. Similarly, according to the September 27, 2007 edition of the Laguna
8 Beach *Coastline Pilot*, Frank stated:
9

10
11 . . . the city spends money on the center in order keep workers (sic) -- legal or not -- from
12 seeking work on city streets. "It's not anything to do with immigration. It's about taking
13 a situation that the federal government can't control and making it bearable for our
14 residents."

15 S.F. Exh. K. Frank's statement concedes that the City is expending taxpayer resources on the Center
16 without regard to the immigration status of the day laborers who use the facility, even though it is well
17 aware that the issue of day laborers is inherently intertwined with illegal immigration.

18 This undisputed evidence amply demonstrates that both the City and South County have
19 substantial knowledge -- as that term is defined under section 1324a -- that day laborers using the Center
20 include unauthorized aliens ineligible to work in the United States. Nonetheless, no effort is made to
21 verify that the day laborers using the Center to obtain employment are eligible to work in the United
22 States. The charging of a fee to refer day laborers for employment at the Center, combined with the City
23 and South County's constructive, if not actual knowledge that day laborers using the Center are
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28 _____
A: Yes.

1 undocumented aliens not authorized to work in the United States, constitutes a clear violation of section
2 1324a.

3
4 The City cannot use taxpayer money to fund an employment referral service for illegal aliens any
5 more than it could provide funding to create a marketplace for drug dealers. Because the Center is being
6 operated in contravention of section 1324a, the City's use of taxpayer funds to support the Center is an
7 illegal expenditure and a waste of public funds.

8
9 **C. The Center Is In Violation Of Federal Law (8 U.S.C. §**
10 **1324(a)(1)(A)(iv)) Because It Encourages And Induces Residence By**
11 **Illegal Aliens**

12 It is a violation of federal law if a person "encourages or induces an alien to ... reside in the
13 United States, knowing or in reckless disregard of the fact that such ... residence is ... in violation of
14 law." 8 U.S.C. § 1324(a)(1)(A)(iv).^{3 4}

15 This particular provision, enacted as part of the Immigration Reform and Control Act of 1986
16 ("IRCA"), was part of a comprehensive statutory scheme enacted by Congress targeting the employment
17 of illegal aliens in the United States. The IRCA "forcefully" made combating the employment of illegal
18 aliens central to "the policy of immigration law." *INS v. National Center for Immigrants' Rights, Inc.*,
19 502 U.S. 183, 194 and n.8 (1991). In enacting the IRCA, the U.S. Congress declared, "employment [is]

23 ³ Reckless disregard can be proven by circumstantial evidence alone. *See United States v.*
24 *Balderas-Granados*, 162 Fed. Appx. 691, 693 (9th Cir. 2005) (upholding conviction for transporting aliens
25 in violation of 8 U.S.C. § 1324(a)(1)).

26 ⁴ This statute applies to any person, not just employers or employment referral agencies. *See*
27 *United States v. Oloyede*, 982 F.2d 133, 136 (4th Cir. 1992) ("Thus, appellants' argument that IRCA was
28 intended to apply only to employers must fall. Congress intended to give broad scope to the class of persons
whose conduct is proscribed by the statute."); *United States v. Zheng*, 306 F.3d 1080, 1085 (11th Cir. 2002);
Villegas-Valenzuela v. INS, 103 F.3d 805, 810 (9th Cir. 1996).

1 the magnet that attracts aliens here illegally.” See H.R. Rep. No. 99-682(I), at 46 (1986), reprinted in
2 1986 U.S.C.C.A.N. 5649, 5650.

3
4 Unsurprisingly, the touchstone of much case law applying subsection 1324(a)(1)(A)(iv) is this
5 very same concept of employment as the “magnet” that encourages or induces aliens to reside in the
6 United States. For example, in *United States v. Oloyede*, 982 F.3d 133 (4th Cir. 1992), the Court
7 declared:

8
9 IRCA’s plain language . . . indicates that “encouraging” is not limited to bringing in,
10 transporting, or concealing aliens. Rather, “encouraging relates to actions taken to
convince the illegal alien to come to this country or to stay in this country.

11 982 F.2d at 137. The Court further found:

12
13 IRCA corrected abuse by many groups, including foreign students and illegal workers . . .
[W]ith respect to illegal workers,

14
15 Employers will be deterred by the penalties in this legislation from hiring
16 unauthorized aliens and this, in turn, will deter aliens from entering
illegally or violating their status in search of employment.

17
18 IRCA mandated procedures to detect and deport these particular classes of illegal
19 immigrants by imposing severe sanctions on employers who hired aliens and by making
public assistance unavailable to illegal aliens. *The net effect of IRCA was to put illegal
aliens to a serious choice of either obtaining legal status or leaving this country.*

20 982 F.2d at 137-38 (internal citations omitted) (emphasis added). In so declaring, the Court upheld the
21 conviction of two persons who had helped illegal aliens obtain false employment, social security, and
22 other supporting documents, finding that the appellants’ actions “reassured their clients that they could
23 continue to work in the United States,” among other benefits. 982 F.2d at 137. The Court found that
24 “[t]he plain language of the statute supports appellants’ conviction for assisting aliens living within the
25 United States.” 982 F.2d at 137. “We find appellant’s scheme to be exactly the type of encouragement
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1 the statute was aimed at preventing, confirming its applicability to persons living in the United States.”
2 982 F.2d at 138.

3
4 Employment also was the touchstone of the violations at issue in *United States v. Ndiaye*, 434
5 F.3d 1270 (11th Cir. 2006) and *United States v. Kuku*, 129 F.3d 1435, 1437 (11th Cir. 1997). In *United*
6 *States v. Ndiaye*, which cited *Oloyede* with approval, a defendant’s conviction for violating subsection
7 1324(a)(1)(A)(iv) was upheld where the defendant had encouraged an illegal alien, Jaya, to remain in the
8 United States by helping the alien to obtain a social security card unlawfully, which, in turn, helped him
9 to find work:
10

11 Jaya was able to work in the United States because of the Social Security number he was
12 issued. A jury could reasonably find [the defendant’s] assistance in helping Jaya obtain a
13 Social Security card, which the evidence established he is not entitled to have,
14 encouraged or induced him to reside in this country in violation of the statute.

15 434 F.3d at 1298. The Court also noted that, in *United States v. Kuku*, it had “implicitly recognized that
16 conduct which involved helping an illegal alien obtain a Social Security card to which he was not
17 entitled *so that he could work and live in this country*” was sufficient to constitute a violation of the
18 statute. 434 F.3d at 1298; *see also United States v. Kim*, 193 F.3d 567, 574-75 (2d Cir. 1999)
19 (upholding conviction for harboring aliens by, among other things, providing employment); *United*
20 *States v. Castillo-Felix*, 539 F.2d 9, 11 (9th Cir. 1976) (upholding conviction under prior version of
21 subsection 1324 by, among other things, assisting an alien with employment); *United States v. Lopez*,
22 521 F.2d 439, 441 (2d Cir. 1975) (same).

23
24 In the instant case, the violation is more egregious than merely providing documentation that
25 assists illegal aliens in finding employment. In the instant case, the City is doing directly what the
26 defendants in *United States v. Oloyede*, *United States v. Ndiaye*, and *United States v. Kuku* did only
27 indirectly. The City is operating a marketplace where illegal aliens can offer their unlawful labor to
28

1 employers and is even matching illegal aliens' skills, English proficiency, and wage requirements with
2 the needs of employers seeking to hire them. S.F. ¶ 23.

3
4 In this regard, this case is similar to a very recent decision affirming the convictions of two
5 persons found to have violated and/or conspired to violate subsection 1324(a)(1)(A)(iv) by employing
6 illegal aliens. In *United States v. Khanani*, 2007 U.S. App. LEXIS 23037 (11th Cir. October 2, 2007),
7 the Court rejected the appellants' contention that the employment of illegal aliens did not, in and of
8 itself, constitute encouraging and inducing illegal aliens to remain in the United States. *United States v.*
9 *Khanani*, 2007 U.S. Appl LEXIS 23037 at *11-13. Moreover, evidence presented at trial established
10 that the appellants had "created a work environment that was well known in the alien community as
11 being open and safe for workers not authorized to work in the United States," and that appellants had
12 "shielded their unauthorized workforce from detection." *Id.* at *28.

13
14
15 The undisputed facts referenced above demonstrate that at all relevant times the City has sought
16 to assist day laborers to find employment at the Center despite actual or constructive knowledge that
17 they were very likely to be illegal aliens. The City's own program guidelines and handouts, prepared,
18 posted, and distributed at the Center by the Police Department, further confirm this conclusion. They
19 state, in both English and Spanish:

20
21 *The Laguna Beach Police Department wants to help you find work. We need your*
22 *assistance and cooperation in helping us to keep this area safe place to be hired by*
23 *contractors, homeowners and others.*

24 * * *

25 Thank you for helping us, and *we hope that you find much work.*

26 *The City of Laguna Beach wants you and your family and friends to be a part of the*
27 *community and to enjoy a healthy quality of life . . . You are a very important person in*
28 *our community. We want to help you find work so that you can stay here or send money*
to your loved ones back home.

1 S.F. ¶ 43 (emphasis added). A planning document prepared by South County for the operation of the
2 Center states that, South County, the Laguna Beach Police Department, and the Housing and Human
3 Service Committee all “believe that implementation will not only make the [day laborer hiring] site
4 safer, but will provide *more jobs for workers* and have long-term benefits for the City.” S.F. ¶ 44
5 (emphasis added). Similarly, a letter from a former mayor Paul P. Freeman touts how the City has
6 “worked closely” with South County to “provide an area which is safe for the day workers” and also for
7 those who seek to hire them. S.F. Exh. D. The letter continues:
8

9
10 The City provides restroom facilities, tables, benches, shade and other amenities for the
11 benefit of the workers. The City also provides approximately \$40,000 per year funding to
12 [South County] to allow that organization to hire staff to coordinate the day worker hiring
13 area. We believe that the City’s process has provided a benefit to everyone.”

14 S.F. Exh. D. The letter concludes by reiterating the City’s efforts to “work with the day laborers in a
15 mutually cooperative manner.” S.F. Exh. D.

16 For its part, South County touts the Center as being “the most effective and efficient way for
17 workers and contractors/homeowners to get together for mutual benefit.”⁵ S.F. Exh. I. South County
18 also has described the Center as offering “contractors and homeowners a safe and efficient way to find
19 reliable workers for both temporary and long term jobs” and “help[ing] Laguna Beach residents to find
20 work at the same time it helps contractors/homeowners find skilled and reliable workers.” S.F. ¶¶ 45
21 and 46. The City obvious agrees with this sentiment; otherwise it would not continue to fund South
22 County’s operation of the Center. *See, e.g.*, S.F. ¶ 46.
23
24
25
26

27
28 ⁵ Former Mayor Wayne Baglin endorsed this description of the Center, describing the Center
“one of the best things about Laguna Beach.” S.F. Exh. I.

1 The undisputed facts presented above also demonstrate the City’s intent to shield illegal aliens
2 using the Center from detection by federal law enforcement.⁶ Again, in addition to City officials stating
3 that they did not want federal immigration officials called in to try to address the City’s day laborer
4 “issues,” the City admits to having an “unspoken arrangement” with the day laborers that it would not
5 call in the INS as long the day laborers used the Center. S.F. ¶¶ 36, 37. The Chief of Police has assured
6 day laborers using the Center that the City would not call in federal immigration officials. S.F. ¶ 37; S.F.
7 Exh. B. These statements not only demonstrate an intent to shield illegal alien day laborers from federal
8 immigration officials, but they also demonstrate knowledge of day laborers’ unauthorized status. In this
9 regard, there cannot be any dispute that the City is acting with “knowing or reckless disregard” for the
10 illegal immigration status of the day laborers using the Center. *See* Section IIA, *supra*. As in *United*
11 *States v. Khanani*, the City is not only providing employment to illegal aliens, but it has created an
12 environment at the Center that is open and safe for workers not authorized to work in the United States
13 and has helped to shielded the aliens from detection.”⁷ 2007 U.S. Appl LEXIS 23037 at *28.

14
15
16
17 In summary, given that employment is the magnet that attracts illegal aliens to come to and reside
18 in this country, the City’s use of taxpayer resources to establish and operate the Center “encourages and
19 induces” illegal aliens to remain in the Unites States in violation of subsection 1324(a)(1)(A)(iv).

20
21 Without question, employment gives illegal aliens both the incentive and the financial means to maintain
22
23

24
25 ⁶ Subsection 1324(a)(1)(A)(iii) makes it unlawful to knowingly or recklessly conceal, harbor,
26 or shield from detection, or to attempt to conceal, harbor, or shield from detection, an alien who has come
to, entered, or remains in the United States in violation of law. 8 U.S.C. § 1232(a)(1)(A)(iii).

27 ⁷ In this regard, it is noteworthy that the Center also provides food distribution, medical check
28 ups, health information, education, and at lease some English language instructions to day laborers who use
the Center. S.F. ¶ 24.

1 their illegal residence in the United States, and by providing illegal aliens with a means to obtain
2 unlawful employment, the City is making it possible for them to do so.⁸

3
4 **D. The City Has Facilitated Illegal Hiring Of Illegal Aliens**

5 Federal law is unequivocal in that it is unlawful “to hire for employment in the United States an
6 individual without complying with the requirements of subsection (b) [employment verification
7 requirements]....” See 8 U.S.C. § 1324a(a)(1)(B)(i). The “employment verification system” established
8 by IRCA makes it unlawful to employ aliens who (a) are not lawfully present in the United States, or (b)
9 are not lawfully authorized to work in the United States.⁹ See 8 U.S.C. §§ 1324a(a)(1) and 1324a(h)(3).
10 This verification system is critical to the IRCA regime. To enforce this verification system, the IRCA
11 mandates that employers verify the identity and eligibility of all new hires by examining specified
12 documents before they begin work. *Id.* at § 1324a(b). If an illegal alien is unable to present the required
13 documentation, he cannot lawfully be hired. *Id.* at § 1324a(a)(1).
14
15
16
17

18 ⁸ While Plaintiffs submit that Defendants’ conduct constitutes a clear violation of subsection
19 1324(a)(1)(A)(iv), Plaintiffs also submit that Defendants’ conduct violates subsection 1324(a)(1)(A)(v)(II)
20 as well. This provision makes it unlawful for any person to aid or abet the commission of, among other
21 things, any act that knowingly encourages or induces an illegal alien to reside in this country. See 8 U.S.C.
22 § 1324(a)(1)(A)(v)(II). “To aid or abet another to commit a crime [violation of federal law] it is necessary
23 that a defendant ‘in some way associate himself with the venture, that he participate in it as in something
24 he wishes to bring about, [and] that he seek by his action to make it succeed.’” *Nye & Nissen v. United
States*, 336 U.S. 613, 619 (1949) (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938). Simply
put, “aiding and abetting means to assist the perpetrator of the crime.” *United States v. Williams*, 341 U.S.
58, 64 (1951).

25 ⁹ For an alien to be “authorized” to work in the United States, he or she must possess “a valid
26 social security account number card” (8 U.S.C. § 1324a(b)(C)(i)), or “other documentation evidencing
27 authorization of employment in the United States which the Attorney General [of the United States] finds,
28 by regulation, to be acceptable for purposes of this section,” (8 U.S.C. § 1324a(b)(C)(ii)). See also 8 U.S.C.
§ 1324a(h)(3)(B) (defining “unauthorized alien” as any alien “[not] authorized to be so employed by this
chapter or by the Attorney General”).

1 It is clear that unlawful activity -- the employment of illegal aliens -- is occurring at the Center.
2
3 The undisputed facts and reasonable inferences drawn therefrom demonstrate that the City is aware of
4 and condones this unlawful hiring and, in fact, is intentionally facilitating it by supporting and funding
5 the Center. The City knows that unlawful hiring of illegal aliens is occurring at the Center and is
6 intentionally facilitating such unlawful hiring because: (1) the stated purpose of the Center is to assist
7 day laborers to obtain employment (S.F. §§ 23, 43-46; Exh. D, I, and K; (2) it was and is well known to
8 City that the Center very likely would be used by illegal aliens ineligible to work in the United States
9 (S.F. §§ 32, 36-42; Exhs. B, K); (3) neither South County nor the City makes any effort to verify that day
10 laborers who use the Center to obtain employment are, in fact, eligible to work in the United States (S.F.
11 §§ 22, 31-32, and 35).

12
13 The City cannot lawfully expend taxpayer funds and taxpayer resources to facilitate unlawful
14 activity. Hence, the City's funding of the Center is an illegal expenditure and waste of public funds.

15
16 **E. The Center Operates In Violation Of The City's Grant To South**
17 **County And In Violation Of The City's Lease With CalTrans**

18 As demonstrated above, unlawful activity is occurring at the Center, and the City is knowingly
19 facilitating this activity. As a result, South County is in violation of the terms of its grant from the City,
20 and the City is in violation of its lease of the property on which the Center is located. This places the
21 taxpayers of Laguna Beach in danger of paying for damages association with the City's breach of its
22 lease agreement.

23
24 Since 1999, the City has provided community assistance grants to South County for the operation
25 of the Center. S.F. §§ 18-19 and 46. In its application for a Community Assistance Grant for Fiscal
26 Year 2007-08, South County certified that "our organization is in compliance with all state, federal, and
27 local laws regarding licensing and employment practices." S.F. § 46; Exh. J. For all the reasons
28

1 discussed above, South County obviously is in violation of this provision in its grant because the Center
2 is not being operated in compliance with federal employment law.

3
4 The illegal operation of the Center also violates the City's lease. In July 2006, the City entered
5 into a lease with the California Department of Transportation ("CalTrans") for the use of property on
6 which the Center is located. S.F. ¶ 13-14; Exh. E at ¶ 11. Pursuant to the terms of the City's lease with
7 CalTrans, the City is required to "comply with all Federal, State, and local laws and ordinances
8 concerning said property and the use thereof." S.F. ¶ 14; Exh. E ¶ 11. Again, because the Center is not
9 in compliance with the law, the City has and continues to violate the terms of its lease with CalTrans.
10

11 Both of these violations further illustrate the illegality of the City's funding and operation of the
12 Center and its inherently illegal and wasteful nature.

13
14 **F. The Unlawful Origin Of The Center Further Demonstrates The City's**
15 **Complete Disregard For The Law**

16 Finally, the City's operation of the Center has been lawless since its inception. In addition to the
17 violations of federal law discussed above, the City blatantly ignored the ownership of the property on
18 which the Center is located and made no effort to comply with various land use requirements.

19 Most strikingly, the City admittedly established the Center more than fourteen (14) years ago by
20 squatting on property owned not by the City, but by CalTrans and the Orange County Parks Department.

21 S.F. ¶ ¶ 9-10. The portion of the land owned by CalTrans is an unzoned state highway right-of-way.

22 S.F. ¶ 10. The portion of the land owned by the Orange County Parks Department is public parkland.

23 S.F. ¶ 10.
24

25 Not until July 2006 did the City bother to request or obtain permission from CalTrans to use the
26 land at issue for a day laborer hiring area or for any other purpose. S.F. ¶ 11. According to City
27 Manager Ken Frank, when the City first designated the land on which the Center is located as its day
28

1 laborer hiring area in 1993, “[t]o us it looked like [an] unused strip of dirt, state highway right-of-way,
2 which was public property and available for members of the public to use, to solicit for day labor.” S.F.
3 ¶ 11. Despite obviously knowing the land was a state highway right-of-way, the City used taxpayer
4 funds and taxpayer financed resources to install a driveway, fencing, landscaping, benches, a water line,
5 a drinking fountain, and portable toilets on the state highway right-of-way. S.F. ¶ 17. In approximately
6 2000, South County placed a “temporary” office structure on the state highway right-of-way, presumably
7 using grant monies received from the City. S.F. ¶ 20. Although the office structure itself has changed,
8 an office structure has been in place at the Center on a state highway right-of-way ever since. S.F. ¶ 20.
9 At no point did South County or the City apply for or obtain any type of permit for the office structure or
10 the Center. S.F. ¶ 20.

11
12
13
14 On or about June 29, 2006, CalTrans sent the City a letter demanding that it remove the Center
15 “as soon as possible” because the hiring area was “an unpermitted encroachment on State property.”
16 S.F. ¶ 13. In July 2006, the City finally entered into a lease with CalTrans for the use of property on
17 which the Center is located. *Id.*; Exh. E. The City now pays \$420 per month to lease the property from
18 CalTrans. S.F. ¶ 14.¹⁰ Critically, however, the property remains unzoned, and the City’s dedicated use
19 of the property for operation of the Center is therefore an *ultra vires* act. Dedicating the property for use
20 as a Center when the property remains unzoned for such a use is by definition a waste of taxpayer funds
21 insofar as public money is being spent toward an activity that is wholly unauthorized for that property.
22
23
24 *See, e.g., Harman v. San Francisco*, 7 Cal. 3d 150, 161 (1972) (plaintiff stated proper taxpayer standing
25
26

27 ¹⁰ In approximately 2006, Orange County Parks Department staff asked the City to move a fence
28 installed by the City on Orange County property along a hillside at the back of the day laborer hiring area.
S.F. ¶ 12. The City removed the fence. S.F. ¶ 12.

1 claim by alleging that city charter did not authorize city to collect less than fair market value for
2 easements conveyed to property owners).

3
4 Recently, in July 2007, the City attempted to ameliorate its previous errors by proposing an
5 Interim Urgency Ordinance to zone the property on which the Center is located as “Open Space -
6 Passive” after CalTrans announced its intent to sell the property at a public auction. S.F. ¶ 47; Exh. F.
7 The proposal was later withdrawn. S.F. ¶ 47.
8

9 Finally, although the property on which the Center is located lies within the California Coastal
10 Commission zone, neither the City nor South County has ever applied for a coastal development permit
11 for the Center. S.F. ¶ 48.

12 This colorful history -- squatting on land without permission and placing a driveway, fencing,
13 landscaping, benches, a water line, portable toilets, and even an office building on a state highway right-
14 of-way -- further illustrates the City’s completely lawless approach towards the Center and its activities.
15 Such lawlessness should not be countenanced by this Court.
16

17 **G. Operation Of The Center Constitutes A Public Nuisance**

18
19 The City will likely argue that the City bears no responsibility for the legality of the Center’s
20 operations because the Center, since 1999, has been operated and managed by South County, a private
21 non-profit organization. S.F. ¶ 18.¹¹ This attempt by the City to avoid responsibility for the legal and
22 non-wasteful spending of public funds cannot succeed; a similar attempt to evade responsibility was
23

24
25 _____
26 ¹¹ The City may try to emphasize that the City merely donates grant money to South County, which
27 organization just happens to run the Center; however, the City of Laguna Beach Community Assistance
28 Grant Application (S.F. Exh. J) makes it clear that the City is fully aware that South County uses the vast
majority of City funding it receives to operate the Center, which South County asserts “helps Laguna Beach
residents to find work [and] at the same time it helps contractors/homeowners find skilled and reliable
workers.” S.F. Exh. J, p. 2, 2nd full paragraph.

1 raised by the City of Huntington Beach and rejected by the Court of Appeal in 1936. In *Marshall v.*
2 *Standard Oil Co.*, 17 Cal. App. 2d 19 (1936), the Court affirmed the trial court’s permanent injunction
3 against the City of Huntington Beach *and its lessee Standard Oil* (a private company). In *Marshall*, a
4 city taxpayer brought suit to enjoin Huntington Beach and Standard Oil “from carrying on drilling and
5 oil production operations on and within a portion of that public street or highway known as ‘Ocean
6 Avenue.’” *Marshall*, 17 Cal. App. 2d at 21.
7

8
9 In *Marshall*, a private grantor had deeded a portion of land to the city to be used as a public
10 street. The Court noted that the subject property had in fact been used as a public street for many years –
11 until the city decided to lease the land to an oil company. The *Marshall* Court reasoned, “That the
12 erection of oil derricks and the sinking of oil wells upon a public street constitute a public nuisance and a
13 private nuisance to abutting property owners seems to us a question that admits of no argument, and one
14 of which the court can take judicial knowledge.” *Id.* at 29. The *Marshall* Court further reasoned that oil
15 drilling activity produced noise and odor, and that erection of oil derricks for drilling occupied a
16 substantial amount of space, and that these facts were “within the common experience or knowledge of
17 all men living in those portions of the country where oil and gas are produced, and courts will take notice
18 of whatever ought to be generally known within the limits of their jurisdiction.” *Id.*
19

20
21 The *Marshall* Court concluded that the city’s permissive use of land for oil drilling by a private
22 oil company when the land had previously been dedicated for public use as a street, constituted a public
23 nuisance that should be enjoined, and that “Any monetary benefit which the City of Huntington Beach
24 might receive by reason of the operation of the oil wells along the strip attempted to be leased to the Carr
25 Oil Corporation cannot be taken into consideration.” *Id.* at 29-30. Borrowing language from an Illinois
26 court decision, the California appellate court held that “The permanent encroachment upon a public
27
28

1 highway or street, unauthorized by the legislature, and the creation of a purpresture therein which
2 obstructs the free and uninterrupted passage of the public is as a matter of law a public nuisance. The
3 matter of inconvenience of the public, or that sufficient of the street may remain unobstructed and still
4 accommodate the public travel cannot be considered.” *Id.* at 30-31.

6 Here, the Center is being operated by designation and permission of the City on land that is
7 partially “an unzoned state highway right-of-way” and partially “public parkland.” S.F. ¶ 10. The
8 Center is an unlawful purpresture – a wrongful intrusion upon land belonging to the public at large.
9 Moreover, operation of a day worker center necessarily involves congregating of workers and vehicle
10 traffic of contractors seeking workers constituting a public nuisance to neighboring property owners.
11 Any benefit the City claims is served by designating this public property to exclusive use for operation
12 of the Center “cannot be taken into consideration,” and public expenditures for the Center should be
13 enjoined.
14
15

17 **II. Plaintiffs Are Entitled To Declaratory Relief And A Permanent Injunction**

18 “If a taxpayer can demonstrate that a state official did authorize the improper expenditure of
19 public funds, the taxpayer will be entitled, at least, to a declaratory judgment to that effect; if he
20 establishes that similar expenses are threatened in the future, he will also be entitled to injunctive relief.”
21 *Hooper v. Deukmejian*, 122 Cal. App. 3d 987, 1019 (1981). Plaintiffs here clearly meet these
22 requirements for (a) a declaratory judgment that monies spent up to the present time have been improper
23 expenditures of public funds, and (b) because the City and official Defendants assert no wrongdoing, it is
24 extremely likely that improper expenditures will continue in the future unless enjoined by the Court.
25
26
27
28

1 **III. Plaintiffs Are Entitled To Attorneys' Fees And Costs**

2
3 Cal. Code Civ. Proc. § 1021.5 specifically authorizes a successful party to recover attorneys' fees
4 against a public entity, in a case where the action results in conferring a significant benefit on the general
5 public or a large class of persons. If successful on claims for declaratory and/or injunctive relief,
6 Plaintiffs intend to move for an award of attorneys' fees via post-trial motion.
7

8
9 **CONCLUSION**

10 The City tries to cover its eyes to the reality that its proposed solution to what the City has
11 described as "nuisances" associated with day laborer solicitation is facilitating the employment of illegal
12 aliens and is encouraging and inducing illegal aliens to remain in the United States. The City may not
13 violate the law, even if its purported justification is to address a perceived local problem. Doing so
14 simply creates additional difficulties and, even more troublingly, undermines the rule of law. The City's
15 continued funding and operation of the Center cannot stand. For all the foregoing reasons, the Court
16 should issue a declaration that the City's expenditure of taxpayer funds and taxpayer-financed resources
17 for the operation of the Center is unlawful, void, and a waste of taxpayer funds.
18
19
20

21 Dated: October 19, 2007

Respectfully submitted,

22
23
24 By: 

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Attorneys for Plaintiffs

1 **PROOF OF SERVICE BY MAIL**

2 **Case Name:** *Garcia, et al. v. City of Laguna Beach, et al.*
3 **Location:** Orange County Superior Court
4 **Case Number:** 06CC10595

5 I am over the age of 18 years and am not a party to this action. My business address is 2540
6 Huntington Drive, Suite 201, San Marino, CA 91108, which is the location of the county where the
7 service described below took place. I am a member of the State Bar of California.

8 On October 19, 2007, I placed a true and correct copy of the foregoing document:

9 **PLAINTIFFS' OPENING BRIEF**

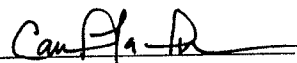
10 in an envelop, sealed same, placed proper first-class postage thereon, and placed same for collection with
11 the United States Postal Service mail pick-up located at 10 W. Bay St., Alhambra, California 91108.
12 The envelope was addressed to:

13 Robert O. Owen
14 Philip D. Kohn
15 RUTAN & TUCKER, LLP
16 611 Anton Blvd., Suite 1400
17 Costa Mesa, CA 92626-1931

18 *Attorneys for Defendants*

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct.

21 Executed on October 19, 2007 at Alhambra, California.

22 
23 Candice E. Jackson
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