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

11 EILEEN GARCIA, *et al.*,)
12 Plaintiffs,)

13 vs.)

14 CITY OF LAGUNA BEACH, *et al.*,)
15 Defendants.)

Case No. 06CC10595
[UNLIMITED JURISDICTION]

PLAINTIFFS' REPLY BRIEF

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

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

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Complaint Filed: October 3, 2006
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1 Pursuant to the to the Court's October 1, 2007 Order approving the parties' Joint Application to
2 Submit This Matter on Briefs in Lieu of Bench Trial, Plaintiffs, by counsel, respectfully submit this reply
3 brief. References herein to "S.F." are to the Stipulated Facts jointly filed by the parties on October 8, 2007.

4 **I. Introduction & Overview of the City's Arguments**

5 Defendants' Opening Brief contains numerous factual averments that must be disregarded, since the
6 parties submitted a set of Stipulated Facts for the express purpose of serving as a "closed universe" of facts
7 upon which this case should be decided. Thus, Defendants' factual assertions at pages 1-2 of Defendants'
8 Opening Brief (none of which cite to the Stipulated Facts for support) must be disregarded.

9 The Stipulated Facts of this case clearly demonstrate that Defendants City of Laguna Beach and its
10 officials (collectively herein, the "City") expend taxpayer resources to fund and support the Laguna Beach
11 Day Worker Center (the "Center") and that such expenditures on the Center should be enjoined as illegal
12 and wasteful expenditures of public funds. Although the City's Opening Brief tries to cloud the issue of
13 burden of proof by infusing its argument with discussion of the standards for imposing *criminal liability* for
14 certain federal law violations, Plaintiffs here do not stand in the shoes of federal prosecutors trying to prove
15 beyond a reasonable doubt that the City is in criminal violation of federal immigration laws. Rather,
16 Plaintiffs here in this civil suit need only show *by a preponderance of the evidence* that the City's
17 expenditures on the Center (a) constitute violation of federal or state law, and/or (b) constitute a waste of
18 public funds. Based on the Stipulated Facts of this case, Plaintiffs easily meet this burden, and the City's
19 expenditures of taxpayer funds must be declared illegal and must be permanently enjoined.

20 The City's defense of the Center can be summarized as follows: Faced with the "nuisance" of day
21 laborers soliciting employment along City streets, the City conceived of, established, and finances a
22 marketplace where day laborers obtain employment. Now, after claiming to have "decreased substantially"
23 the "nuisances connected with day laborer solicitation," the City denies any responsibility for the Center,
24 especially the referrals for a fee charged at the Center without verifying day laborers' eligibility for
25 employment. Essentially, the City's defense is to "hear no evil, see no evil, speak no evil."

26 Despite paying the Center's rent, paying for its staff, and providing substantial other necessary
27 financial and material support, the City claims it has no control over "any decisions concerning management
28 of the Center" and has "no say over whether or not the Center charges workers or employers a fee, whether

1 the Center requires workers to provide identification, or whether the Center attempts to verify workers' legal
2 immigration status." Defs.' Br. at 3.¹ Despite being inextricably tied to the Center since its establishment,
3 the City repeatedly tries to separate itself from the Center and the South County Cross Cultural Council
4 ("South County"), the instrumentality through which the City operates the Center. Conveniently, the City
5 attempts to disclaim control over the Center even though the City expressly requires South County to comply
6 with federal and state employment laws as a condition to receiving City grant money each year. S.F. ¶ 18,
7 Exh. J. Despite imposing this condition upon South County, the City is betraying its taxpayers by continuing
8 to expend taxpayer funds to South County for purposes of operating the Center while turning a blind eye to
9 the numerous ways in which the Center operates in violation of federal law.

10 In regard to the specific federal statutes at issue, the City does not dispute that the *Center* "provides
11 employment referrals to day laborers [for a fee] without asking the laborers to demonstrate their eligibility
12 to work in the United States." Defs. Br. at 3. As established by the substantial and undisputed evidence in
13 the record, the City is fully aware that these employment referrals are being provided to illegal aliens,
14 constituting a direct violation of 8 U.S.C. § 1324a. Furthermore, the evidence demonstrates the City fully
15 intended to encourage and induce aliens to reside in the United States in violation of 8 U.S.C. § 1324 by
16 helping them obtain employment, knowingly or recklessly disregarding their illegal immigrant status. As
17 the City itself stated to day laborers: "We want to help you find work so you can stay here." S.F. ¶ 43.

18 Accordingly, as set forth herein and in Plaintiffs' Opening Brief, the City's support of the Center is
19 unlawful as it is in violation of federal immigration and other laws. The City's action undermines the rule
20 of law. It cannot stand.

21 **II. The City's Support of the Center Is An Illegal and Wasteful Expenditure of Public Funds.**

22 **A. Section 526a Allows Taxpayers To Challenge the City's Illegal Expenditures.**

23 It is not in dispute that Code of Civil Procedure section 526a is a proper vehicle for taxpayers, such
24 as Plaintiffs, to challenge unlawful expenditures, nor do the parties dispute that the City has, in fact,
25 expended considerable sums in support of the Center. The City's sole argument relating to Plaintiffs'
26 request for relief under Section 526a is that a challenged action must be a government's own expenditure

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28 ¹ The City even makes the risible assertion that it provides Community Assistance Grants to
South County with "no strings attached." Defs.' Br. at 10 n. 12.

1 of funds and may not be enjoined “simply because the expenditure may promote or foster private illegal
2 activity.” Defs.’ Br. at 6 [citing *Humane Soc’y of the United States v. State Bd. Of Equalization*, (2007) 152
3 Cal. App. 4th 349 (1st App. Dist., Div. 2)]. The City’s reliance on *Humane Society* is misplaced because the
4 instant case is easily distinguishable from the factual situation in *Humane Society*.

5 At issue in *Humane Society* was a state statute that provided tax exemptions for “farm equipment
6 and machinery . . . used primarily in producing and harvesting agricultural products.” *Id.* at 352. The
7 taxpayers in *Humane Society* contended that one particular group that was eligible to receive the tax relief
8 – poultry and egg producers who allegedly used “battery cages” and confined hens in an inhumane manner
9 – should be excluded from claiming exemptions by the State Board of Equalization (“SBE”). The Appellate
10 Court rejected the taxpayers’ claim, finding that the only “‘government action’ at all involved in this process
11 is SBE’s failure to deny the 5.25 percent sales tax exemption” to battery cage purchasers. *Id.* at 361-62. The
12 Court also relied on the fact that the tax relief statute was directed to “many, many other forms of ‘farm
13 equipment and machinery’” (*Id.* at 362) and was not intended to address animal cruelty issues, but rather was
14 “purely and simply” tax relief for California’s agricultural industry. *Id.* at 363.

15 This case is very different. As discussed in Plaintiffs’ Opening Brief, undisputed facts prove that
16 the City is not only aware that illegal aliens utilize the Center, but that the specific purpose of the Center is
17 to help such persons find employment. S.F. ¶¶ 31, 32, 34-45. The government action challenged by
18 Plaintiffs – the funding of the City’s unlawful venture – is far removed from the generalized tax relief in
19 *Humane Society* and the alleged responsibility of the SBE to investigate possible illegal activity by recipients
20 of the tax break. Looked at in another way, the taxpayers in *Humane Society* were arguing essentially that
21 a taxpayer should not get a tax refund because he might spend it in an illegal manner. In this case, the
22 taxpayers of a municipality are challenging the knowing and intentional use of taxpayer resources to
23 facilitate illegal and wasteful activity. Section 526a is thus an entirely appropriate vehicle for seeking relief
24 from such conduct on behalf of Laguna Beach taxpayers.

25 **B. The Center Provides Employment Referral Services In Violation of Federal Law**
26 **(8 U.S.C. § 1324a).**

27 It is undisputed that the “Center provides employment referrals to day laborers without asking the
28 laborers to demonstrate their eligibility to work in the United States.” Defs.’ Br. at 3. It is also undisputed

1 that the Center charges a fee for its employment referrals. Together with the evidence of the City's
2 "substantial knowledge" that users of the Center are "unauthorized aliens," this constitutes a direct violation
3 of Section 1324a.² This alone is sufficient to establish that the City's taxpayer-financed support of the
4 Center is an unlawful expenditure.

5 In response, the City offers only the simplistic argument that the City itself does not hire Center
6 workers (Defs.' Br. at 9), and that the City does not refer illegal aliens for a fee. *Id.* at 10. The City's
7 argument is plainly without merit.

8 First, Plaintiffs have never argued that the City directly hired illegal aliens. Plaintiffs also have never
9 argued that the City directly referred illegal aliens for employment. Rather, Plaintiffs have argued -- and
10 demonstrated -- that the City provides support to the Center through its instrumentality, South County, for
11 the purpose of facilitating the employment of illegal aliens. The City's superficial attempt to evade
12 responsibility for its actions does not withstand scrutiny. It is a fundamental precept of law that government
13 may not do indirectly what the law does not allow to be done directly. *See Carmen v. Texas*, 529 U.S. 513,
14 541 (2000) ("for what cannot be done directly cannot be done indirectly" (quoting *Cummings v. Missouri*,
15 71 U.S. 277, 287 (1867))); *Rossi v. Brown*, 9 Cal. 4th 688, 723 (1995) ("what cannot be done directly cannot
16 be done indirectly"). In this case, South County is the instrumentality through which the City acts. The City
17 deliberately passed ordinances requiring day labor solicitation to occur in only one location within the City,
18 the City then selected and designated that location, the City paved the driveway, planted the trees, installed
19 the fences, benches, water line, drinking fountain, and the portable toilets, and when it was caught squatting
20 on state land, the City voluntarily entered into a lease with CalTrans obligating City taxpayers to payment
21 of monthly rent for the Center. S.F. ¶¶ 8, 9, 13, 17, 19. The City eventually invited South County to run
22 the Center. S.F. ¶ 18-19. The City provides funds for the Center's staff, and it now pays the rent. In a 2001
23 letter, Mayor Paul P. Freeman touted the City's substantial efforts in operating "our" day laborer hiring site:

24 Eight years ago, the Council designated a prominent area on Laguna Canyon Road, and it has
25 operated without incident since then.

26 Moreover, the City has worked closely with the Cross Cultural Council, which is a nonprofit
27 organization in our community, to provide an area which is safe for the day workers and also
28 for people who wish to hire temporary employees. The City provides restroom facilities,

² Section 1324a provides for civil monetary penalties for violations. *See* 8 U.S.C. § 1324a(e).

1 tables, benches, shade and other amenities for the benefit of workers. The City also provides
2 approximately \$40,000 per year funding to the Cross Cultural Council to allow that
organization to hire staff to coordinate the day worker hiring area.

3 We believe that the City's process has provided a benefit to everyone. The number of
4 workers being hired is rising each month. I would like to invite you to visit Laguna Beach
and meet with our staff and members of the Cross Cultural Council to discuss the City's
5 ordinance and to observe *our* day laborer hiring area.

6 S.F. Exh. D (emphasis added). The City cannot bury its head in the sand and claim it has no control or
7 responsibility for the Center or its operations.

8 In regard to South County, the City asserts that South County has not knowingly referred for a fee
9 illegal aliens for employment. Defs.' Br. at 19. This claim strains credulity beyond the breaking point.

10 As set forth in Plaintiffs' Opening Brief, evidence of the City and South County's knowledge of
11 "unauthorized aliens" using the Center is abundant and undisputed. Clearly, the only reason the City would
12 contemplate "calling in the INS" is because of its knowledge of the day laborers' unauthorized status. Pls.'
13 Br. at 7-9. Likewise, the City Manager would only refer to the Center as a "solution" to the federal
14 government's failure to control illegal immigration if the City Manager was aware that day laborers –
15 unauthorized to work in the United States – were the result of that failure. *Id.* at 9. Remarkably, one of
16 South County's own board members, and the husband of the Center's coordinator, even admitted that he
17 used the Center as an illegal alien, as did other persons. *Id.* at 8.

18 Again, South County is merely an instrumentality of the City, and the City and South County are
19 indistinguishable in terms of the operation of the Center. The knowledge of the City should be imputed to
20 South County and vice versa. Both the City and South County share the knowledge of the Center's purpose
21 – the referral and facilitation of the employment of illegal aliens. Viewed in this light, the City's assertion
22 that neither it nor South County had actual, or even constructive, knowledge of the unauthorized status of
23 users of the Center is not credible. Defs.' Br. at 19-22. In fact, the undisputed evidence in this case easily
24 satisfies the "constructive knowledge" test deemed sufficient by the Ninth Circuit in *Mester Mfg. Co. v. INS*,
25 879 F.2d 561 (9th Cir. 1989) and *New El Rey Sausage Co. v. INS*, 925 F.2d 1153 (9th Cir. 1991). In those
26 cases, both relied upon by the City, corporations were deemed to have constructive knowledge of employees'
27 undocumented status merely because they failed to investigate the possible use of false papers by certain
28 employees. *See* Defs.' Br. at 20. The evidence here is far more plentiful and compelling in that the City and

1 South County have all along had actual and constructive knowledge of the immigration status of the users
2 of the Center.³ See Pls.’ Opening Br. at 7-9. Further, the City expressly admits in the Stipulated Facts that
3 (a) South County does not verify workers’ employment eligibility [S.F. ¶ 31], (b) the City does not require
4 South County to verify workers’ eligibility [S.F. ¶ 32], (c) the City has taken no steps to determine whether
5 day laborers using the Center are legally present in the U.S. and legally eligible for the employment being
6 referred for them at the Center [S.F. ¶ 32] despite being on notice of the high probability that some (or many)
7 of the workers using the Center are illegal aliens [S.F. ¶¶ 34-42].

8 The City and South County are “knowingly” providing employment referrals to illegal aliens for a
9 fee at the Center. This is a direct violation of section 1324a and makes the City’s support of the Center an
10 unlawful, illegal expenditure.

11 **C. The Center is in Violation of Federal Law (8 U.S.C. § 1324(a)(1)(A)(iv)) Because**
12 **it Encourages and Induces Residence by Illegal Aliens.**

13 While the City claims that it is not a “person” for purposes of 8 U.S.C. § 1324, it cannot and does
14 not deny that it is a municipal corporation duly incorporated under California law enjoying all the attributes
15 of a legal person, including the ability to sue and be sued. For this reason alone, the City’s “person”
16 argument should be rejected in favor of the proper conclusion that the City is a “person” for purposes of 8
17 U.S.C. § 1324(a).

18 The definition of “person” contained in the statute makes this conclusion even more clear. As the
19 City notes, the statute defines “person” to include “an individual or an organization.” 8 U.S.C. § 1101(b)(3).
20 The statute defines an “organization” as follows:

21 As used in this Act -- [t]he term “organization” means, but is not limited to, an organization,
22 corporation, company, partnership, association, trust, foundation, or fund; and includes a
group of persons, whether or not incorporated, permanently or temporarily associated
together with joint action on any subjects.

23 8 U.S.C. § 1101(a)(28). It simply cannot be reasonably argued that this extraordinarily broad definition does
24 not include municipal corporations such as the City. In light of this broad, express definition, there is no
25

26 ³ A cause of action for aiding and abetting also is available in a civil action, for instance, when
27 party “knowingly gives substantial aid to another who, as he knows, intends to do a tortious act.” *Schulz v.*
28 *Neovi Data Corp.*, (2007) 152 Ca. App. 4th 86, 93 (4th App. Dist., Div. 3) (citing Rest. 2d Torts, § 876, com.
d., p. 317).

1 reason to delve into entirely irrelevant issues such as how the Code of Federal Regulations allows
2 organizations to designate representatives to practice before the Immigration Board of Appeals or to engage
3 in completely unsubstantiated speculation about what the U.S. Congress might or might not have intended.
4 Moreover, “Congress intended to give broad scope to the class of persons whose conduct is proscribed by
5 the statute.” *United States v. Oloyede*, 982 F.2d 133, 136 (4th Cir. 1992). There can be no doubt that the
6 term “person” includes municipal corporations such as the City.⁴

7 Plaintiffs also dispute the City’s assertion that, in order to demonstrate a violation of section
8 1324(a)(1)(A)(iv), they must show the City specifically intended to encourage or induce illegal aliens to
9 remain in the United States. The text of this particular subsection contains no such requirement, but instead
10 expressly refers to both “knowing” or “reckless” conduct. 8 U.S.C. § 1324(a)(1)(A)(iv) (making it unlawful
11 to encourage or induce “an alien to come to, enter, or reside in the United States, knowing or in reckless
12 disregard of the fact that such coming to, entry, or residence is or will be in violation of law”). In addition,
13 the authorities cited by the City in support of its argument do not even arise under subsection (iv). Rather,
14 both *United States v. Moreno-Duque*, 718 F. Supp. 254 (D. Vt. 1989) and *United States v. Armenta-Fiscal*,
15 185 Fed. Appx. 585 (9th Cir. 2006) are “transporting” violations arising under subsection (ii) of the statute,
16 and subsection (ii) contains an express provision, not included in subsection (iv), that requires the
17 transporting of an alien unlawfully present in the United States be “in furtherance of such violation of law.”
18 8 U.S.C. § 1324(a)(1)(A)(ii). In *Moreno-Duque*, the Court expressly addressed this “in furtherance of”
19 language at length in determining that the defendant did not have the requisite intent to violate subsection
20 (ii), noting that courts have “grappled” with this particular language. 718 F. Supp. at 256. The City’s
21 reliance on both *Moreno-Duque* and *Aremta-Fiscal* is misplaced. The other authority on which the City
22 relies, *Bland v. U.S.*, 299 F.2d 105 (5th Cir. 1962), was decided more than 20 years before the statute took
23 its current form. In fact, the version of section 1324 in effect at that time bears almost no resemblance to
24 the current version of the statute. *Bland*, 299 F.2d at 110. The City’s reliance on *Bland* is misplaced as well.

25 Plaintiffs can easily make such a showing nonetheless. While the City claims to have been
26

27 ⁴ The City’s argument also ignores the fact that Plaintiffs named numerous individuals as
28 defendants in this action, including City Manager Ken Frank, who has been city manager at all times relevant
to the establishment, funding, and operation of the Center. *See, e.g.*, S.F. ¶¶ 6, 11, 36, and 42.

1 attempting to address what it now characterizes as a “nuisance,” the City’s own, contemporaneous
2 admissions demonstrate that, in establishing the Center, it unquestionably sought to assist persons it knew
3 or should have known were illegal aliens to obtain work in order to remain in the United States. The City
4 clearly knew, and knows, persons using the Center were or are likely to be illegal aliens. *See* Plaintiffs’
5 Opening Brief at 5-9. Despite such knowledge, the City declared:

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

10 S.F. ¶ 43 (emphasis added). Similarly, in 2001, Mayor Freeman touted the Center as providing “a benefit
11 to everyone” and noted that “[t]he number of workers being hired is rising each month.” S.F. at Exhibit D.
12 In 2002, Mayor Baglin fully endorsed the Center as being “the most effective and efficient way for workers
13 and contractors/homeowners to get together for mutual benefit.” S.F. Exh. I. Mayor Baglin described the
14 Center as “one of the best things about Laguna Beach” and noted that “we all must work to make sure it
15 continues to operate in the future.” S.F. at Exh. I. Nor is there any other rational way to interpret the City’s
16 continued financial support for the South County’s stated goals, as set forth in its 2007/08 Community
17 Assistance Grant Application, to “help[] Laguna Beach residents find work,” “help integrate the newest
18 members into the community,” and “insure that new residents get the help they need in all aspects of their
19 lives.”⁵ S.F. at Exh. J.

20 In this regard, it is entirely disingenuous for the City to assert that providing illegal aliens with
21 assistance in obtaining employment to enable them to remain in the United States is even remotely similar
22 to the U.S. film and television industry’s portrayal of life in the United States in a favorable light. Frankly,
23 the City’s argument is absurd. Far from simply trying to make Laguna Beach a favorable place to live, the
24 City’s undisputed statements, including its direct admission that “[w]e want to help you find work so that
25 you can stay here” and its continued support for the Center, make clear that the City has intentionally
26 encouraged and induced illegal aliens to remain in the United States.

27 ⁵ In this regard, nowhere in South County’s Fiscal Year 2007/08 community assistance grant
28 application -- which the City funded -- does it purport to assist the City in addressing any “nuisances.” S.F.
¶ 46 and Exhibit J.

1 Equally misplaced is the City's argument that it somehow is incapable of violating section 1324.
2 In purported support of this assertion, the City cites authority for the proposition that a government entity
3 is incapable of forming the malicious intent necessary to establish a violation of federal racketeering statutes.
4 Defs' Opening Brief at 13-14 (citing *Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d
5 397 (9th Cir. 1991) and *Scott v. Bristol*, 1990 U.S. Dist. LEXIS 15313 (E.D. Pa. November 14, 1990)). But
6 Plaintiffs have not brought any RICO claims against the City, nor have they brought any type of claim that
7 requires a showing of malicious intent on the part of the City. Plaintiffs must demonstrate only that the City
8 encouraged or induced aliens to remain in the United States in "knowing or in reckless disregard" of the fact
9 that their residence is in violation of law. 8 U.S.C. § 1342(a)(1)(A)(iv). Plaintiffs clearly met this burden.
10 *See, e.g.*, Plaintiffs' Opening Brief at 5-9.

11 Moreover, the notion that government entities are incapable of forming the requisite intent to violate
12 federal racketeering statutes originates from a U.S. Supreme Court case reaffirming the general rule that
13 municipalities cannot be held liable for punitive damages unless expressly authorized by statute. *See Scott*,
14 1990 U.S. Dist. LEXIS 15313 at *24 (citing *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981)).
15 In *City of Newport*, the U.S. Supreme Court declared:

16 Indeed, punitive damages imposed on a municipality are in effect a windfall to a fully
17 compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of
18 public services for citizens footing the bill. Neither reason nor justice suggests that such
19 retribution should be visited upon the shoulder of blameless or unknowing taxpayers. Under
20 ordinary principals of retribution, it is the wrongdoer himself who is made to suffer for his
21 unlawful conduct. If a government official asks knowingly and maliciously to deprive others
22 of their civil rights, he may become the appropriate object of the community's vindictive
23 sentiments. A municipality, however, can have no malice independent of the malice of its
24 officials. Damages awarded for *punitive* purpose, therefore, are not sensibly assessed against
25 the government entity itself.

26 453 U.S. at 268 (emphasis original). Not only is no showing of malice necessary here, but Plaintiffs do not
27 seek to "visit" any damage claims "upon the shoulders of blameless or unknowing taxpayers." In fact, quite
28 the opposite is the case. Plaintiff taxpayers here seek to prevent further expenditure of taxpayer resources
on the Center. The entire rationale behind the purported rule is absent here.

Similarly baseless is the City's assertion that Plaintiffs must be able to point to some individual
illegal alien in order to demonstrate that the City's actions violate the statute. The City claims that in "all"
of the reported cases under section 1324(a)(1), the names of the specific alien(s) "encouraged by the

1 defendant to reside in the U.S. illegally was known.” Defs.’ Br. at 14. Not surprisingly, the City provides
2 no authority for this proposition, nor does the statute itself contain any requirement that a specific individual
3 alien be identified. In fact, Plaintiffs cited at least one case in their opening brief in which persons were
4 found to have violated subsection 1324(a)(1)(A)(iv) by encouraging or inducing unnamed aliens to remain
5 in the United States. See *United States v. Khanani*, 2007 U.S. App. LEXIS 23037 (11th Cir. October 2,
6 2007). *Khanani* involved a business enterprise that employed a “high percentage” of “unauthorized aliens”
7 and was “well known in the alien community as being open and safe for workers not authorized to work in
8 the United States.” *Khanani*, 2007 U.S. App. LEXIS 23037 at *28. *Khanani* also defeats the City’s
9 argument that employment of illegal aliens “alone” is insufficient to give rise to a violation of the statute.

10 Finally, and as Plaintiffs demonstrated in their opening brief, there is an even more direct causal link
11 between the City’s conduct and the conduct at issue in other cases where violations of the statute were found.
12 At issue in *United States v. Oloyede*, 982 F.2d 133 (4th Cir. 1992), *United States v. Ndiaye*, 434 F.3d 1270
13 (11th Cir. 2006), and *United States v. Kuku*, 129 F.3d 1435 (11th Cir. 1997) were the provision of false
14 documents to illegal aliens to assist them in obtaining employment. In the instant case, the City is doing
15 directly what the defendants in *Oloyede*, *Ndiaye*, and *Kuku* did only indirectly -- helping illegal aliens find
16 employment. Here, the City is funding and operating a marketplace where illegal aliens can offer their
17 unlawful labor to employers and matching illegal aliens’ skills, English proficiency, and wage requirements
18 with the needs of employers seeking to hire them, in addition to providing food distribution, medical check
19 ups, health information, education, and English language instruction. S.F. ¶¶ 23-24. At the same time, it
20 also has represented that it will not call in federal immigration officials, thereby helping to shelter them from
21 detection of their illegal status. S.F. ¶¶ 36-37. Such conduct constitutes a clear violation of subsection
22 1324(a)(1)(A)(iv).

23 **D. The City Funding and Operation of the Center Violates 8 U.S.C. § 1621.**

24 Section 1621 makes illegal aliens ineligible to receive certain “State or local public benefits,” which
25 include “any retirement, welfare, health, disability, public or assisted housing, post secondary education,
26 food assistance, unemployment benefits, or any other similar benefit for which payments or assistance are
27 provided to an individual, household, or family eligibility unit by an agency of a State or local government
28 or by appropriate funds of a State or local government.” 8 U.S.C. § 1621(c). It is undisputed that the City

1 appropriates local funds for the operation of the Center, including direct payments for rent and other
2 expenses and grant monies paid to South County, which in turn, provides employment referral services, food
3 distribution, medical check ups, health information, and education and English as a second language
4 instruction to day laborers at the Center. S.F. § 23-24. Both the City and South County know or have
5 substantial reason to know that day laborers using the Center are illegal aliens. *See* Plaintiffs' Opening Brief
6 at 5-9). Thus it is very likely that illegal aliens not eligible to receive "State or local public benefits" are,
7 in fact, receiving such benefits at the Center.

8 The City claims that section 1621 does not make the provision of such benefits to illegal aliens
9 "illegal." The City's argument is nothing more than semantics. Section 1621 clearly makes illegal aliens
10 ineligible to such benefits. The City is disregarding this provision by providing such benefits through South
11 County. Again, the City may not do indirectly what the law does not allow to be done directly. *See Carmen*
12 *v. Texas*, 529 U.S. 513, 541 (2000) ("for what cannot be done directly cannot be done indirectly" (quoting
13 *Cummings v. Missouri*, 71 U.S. 277, 287 (1867))); *Rossi v. Brown*, 9 Cal. 4th 688, 723 (1995) ("what cannot
14 be done directly cannot be done indirectly"). The City's actions are contrary to the statute. They are illegal.

15 The City is correct, however, in noting that section 1642(d) states that a nonprofit charitable
16 organization is not required "under this title" to determine, verify, or otherwise require proof of eligibility
17 of any applicant for State or local benefits. The key provision here is "under this title." Nothing prevents
18 the City itself from requiring South County to verify eligibility for benefits provided at the Center. In fact,
19 it would appear that such verification is required to the extent the City funds such benefits. Otherwise, the
20 City could quite easily flout the law simply by electing to have a cut-out, in this case South County, do what
21 it otherwise cannot do directly.⁶ The City's attempt to evade legal responsibility should not be condoned.

22 **E. The City's Actions Are Preempted By Federal Immigration Law.**

23 In response to Plaintiffs' complaint, the City claims that any actions it might to take to exclude illegal
24 aliens from receiving employment referrals would, in fact, be preempted by federal law. *Id.* at 4, 25. This
25 argument by the City turns federal law and the preemption doctrine on its head.

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28 ⁶ The City's attempted analogy to free trolley service misfires. Such generalized public services do not appear to be within the scope of the statute's definition of "State or local public benefits."

1 Under the well-recognized federal preemption doctrine, a locality is prohibited from taking actions
2 which -- whether or not they are otherwise illegal -- undermine or frustrate federal law. As the U.S. Supreme
3 Court has explained:

4 Even where Congress has not completely displaced state regulation in a specific area, state
5 law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises
6 when compliance with both federal and state regulations is a physical impossibility, . . . *or*
when state law stands as an obstacle to the accomplishment and execution of the full
purposes and objectives of Congress.

7 *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 152 (1982) (internal quotation marks and
8 citations omitted) (emphasis added). This federal preemption doctrine precludes the City from supporting
9 the Center for the simple reason that providing employment referral services to illegal aliens “stands as an
10 obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

11 These same preemption doctrine principles apply even though the subject matter may be one of
12 particular interest to a local government, such as preventing day laborers from congregating along city
13 streets. *De La Cuesta*, 458 U.S. at 152 (rejecting view that preemption should not apply “simply because
14 real property law is a matter of special concern to the States”). Furthermore, “[t]he relative importance to
15 the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of
16 our Constitution provided that the federal law must prevail.” *Id.* (internal quotation marks and citations
17 omitted). Thus, there is no exception in the federal preemption doctrine for actions involving a locality’s
18 use of local tax dollars to address perceived matters of local concern.

19 There is likewise no exception for local actions that tend to frustrate federal immigration laws. On
20 the contrary, the U.S. Supreme Court has treated those laws as having particular importance, striking down
21 governmental action tending to subvert those laws even when that action would advance other federal
22 policies. In *Hoffman Plastics Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002),
23 the Court reversed an order of the NLRB awarding backpay to an illegal alien. As the Court explained:

24 [A]llowing the Board to award backpay to illegal aliens would unduly trench upon explicit
25 statutory prohibitions critical to federal immigration policy It would encourage the
26 successful evasion of apprehension by immigration authorities, condone prior violations of
the immigration laws, and encourage future violations.

27 *Id.* at 151. So, too, allowing the City to assist illegal aliens in procuring employment would unduly trench
28 on these same prohibitions; it would encourage illegal aliens in successfully evading apprehension by federal

1 immigration authorities; and it would condone and encourage violations of immigration laws. If the NLRB,
2 an agency of the federal government, is precluded from taking action having such consequences, even when
3 such action would advance other federal law policies, then *a fortiori* the City, which invokes no competing
4 federal policies in their defense, must be precluded as well.

5 Significantly, as discussed in Plaintiffs' Opening Brief, Congress has described "employment as the
6 magnet that attracts aliens here illegally." Pls.' Br. at 10-11 (quoting H.R. Rep. No. 99-682(I), at 46 (1986),
7 reprinted in 1986 U.S.C.C.A.N. 5649, 5650. By using taxpayer funds to assist illegal aliens in obtaining
8 employment, the City is undermining federal immigration laws.

9 Thus, while Plaintiffs have established that the City has directly violated the prohibitions of federal
10 immigration law, the Court need not even go so far as to rule in Plaintiffs' favor. In order for Plaintiffs to
11 prevail, it is enough for them to establish that the City's establishment and funding of the Center "stand[s]
12 as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" when
13 it enacted the federal immigration laws invoked here. Because the Center facilitates the employment of
14 illegal aliens and is an "obstacle" to accomplishment of the purposes of federal law, the City's actions are
15 preempted by federal law.

16 **III. Conclusion**

17 For all the foregoing reasons, and for the reasons set forth in Plaintiffs' Opening Brief, the Court
18 should issue a declaration that the City's expenditure of taxpayer funds and taxpayer-financed resources
19 for the operation of the Center is unlawful, void, and a waste of taxpayer funds, and should enjoin the
20 City from any further expenditures of taxpayer resources on the Center.

21 Dated: November 2, 2007

Respectfully submitted,

22
23
24 By: _____

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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 November 2, 2007, I placed a true and correct copy of the foregoing document:

9 **PLAINTIFFS' REPLY BRIEF**

10 in an envelope, sealed same, placed proper first-class postage thereon, and placed same for collection
11 with the United States Postal Service mail pick-up located at 10 W. Bay St., Alhambra, California
12 91108. 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 November 2, 2007 at Alhambra, California.

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Candice E. Jackson