APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CANYON COUNTY, a political subdivision of the State of Idaho,	) FILED MAY 01, 2008
Plaintiff - Appellant,	) No. 06-35112
v.	) DC No. CV 05-0306 EJL D. Id.
SYNGENTA SEEDS, INC., a Delaware corporation; SORRENTO LACTALIS, INC., a Delaware corporation; SWIFT BEEF COMPANY, a Delaware corporation; HARRIS MORAN SEED CO., a California corporation; ALBERT PACHECO, an individual,	) **ORDER**
Defendants - Appellees.	)

Before: CANBY, TASHIMA, and CALLAHAN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Judge Callahan votes to deny the petition for rehearing en banc and Judges Canby and Tashima so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f). The petition for panel rehearing and the petition for rehearing en banc are denied.

APPENDIX B

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CANYON COUNTY, a political subdivision of the State of Idaho, *Plaintiff-Appellant,* v. SYNGENTA SEEDS, INC., a Delaware corporation; SORRENTO LACTALIS, INC., a Delaware corporation; SWIFT BEEF COMPANY, a Delaware corporation; HARRIS MORAN SEED CO., a California corporation; ALBERT PACHECO, an individual, *Defendants-Appellees.*	)))))))))))))))))))	No. 06-35112 D.C. No. CV 05-0306 EJL OPINION

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted
August 7, 2007—Seattle, Washington

Filed March 21, 2008

Before: William C. Canby, Jr., A. Wallace Tashima, and Consuelo M. Callahan, Circuit Judges.

Opinion by Judge Tashima

COUNSEL

Howard W. Foster, Johnson & Bell, Ltd., Chicago, Illinois, for the plaintiff-appellant.

George R. Wood, Littler Mendelson, P.C., Minneapolis, Minnesota, for defendant-appellee Syngenta Seeds, Inc.

Juan P. Morillo, Sidley Austin LLP, Washington, D.C., for defendant-appellee Sorrento Lactalis, Inc.

Marie R. Yeates, Vinson & Elkins LLP, Houston, Texas, for defendant-appellee Swift Beef Company.

Richard A. Leasia, Thelen Reid & Priest, LLP, San Jose, California, for defendant-appellee Harris Moran Seed Company.

Cynthia J. Wooley, Ketchum, Idaho, for defendant-appellee Albert Pacheco.

OPINION

TASHIMA, Circuit Judge:

This case involves an Idaho county's attempt to recover damages under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, for additional monies it claims to have expended on public health care and law enforcement services for undocumented immigrants. Plaintiff-appellant Canyon County commenced this action against four companies and one individual under RICO's civil enforcement provision, 18 U.S.C. § 1964(c), alleging that defendants engaged in an illegal scheme of hiring and/or harboring undocumented immigrant workers within the County, and that their actions forced the County to pay "millions of dollars for health care services and criminal justice services for the illegal immigrants."

The district court concluded that the County did not have statutory standing under § 1964(c) because the County did not meet the threshold requirement that a civil plaintiff be "injured in his business or property" by reason of the alleged RICO violation. Consequently, the court dismissed the County's complaint.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court. We agree with the district court that the County has failed to allege that it was injured in its business or property. We also conclude that, with respect to almost all of the defendants' alleged RICO violations, the County

cannot show that its claimed injuries were proximately caused by defendants' conduct. For both of these reasons, the County lacks statutory standing to pursue its federal RICO claims.

BACKGROUND

I. Civil Enforcement Under RICO

RICO focuses on "racketeering activity," which the statute defines as a number of specific criminal acts under federal and state laws. *See* 18 U.S.C. § 1961(1). As relevant to this case, acts which are indictable under § 274 of the Immigration and Nationality Act ("INA") are included in the definition of racketeering activity. 18 U.S.C. § 1961(1)(F). INA § 274 (codified as amended at 8 U.S.C. § 1324) criminalizes the bringing in, transportation, harboring, and employment of undocumented aliens.

Substantive violations of RICO are defined in 18 U.S.C. § 1962. Under § 1962(c), it is illegal for any person "to conductor participate, directly or indirectly, in the conduct of [an] enterprise's affairs through a pattern of racketeering activity," where that enterprise affects interstate commerce. It is also illegal for any person to conspire to do so. 18 U.S.C. § 1962(d). A "pattern of racketeering activity" requires at least two predicate acts of racketeering

activity, as defined in 18 U.S.C. § 1961(1), within a period of ten years. 18 U.S.C. § 1961(5).[1]

Under RICO's civil enforcement mechanism, "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . ." 18 U.S.C. § 1964(c). To have standing under § 1964(c), a civil RICO plaintiff must show: (1) that his alleged harm qualifies as injury to his business or property; and (2) that his harm was "by reason of" the RICO violation, which requires the plaintiff to establish proximate causation. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985).

II. Canyon County's Complaint

The County's first amended complaint ("complaint") names as defendants Syngenta Seeds, Inc. ("Syngenta"), Sorrento Lactalis, Inc. ("Sorrento"), Swift Beef Company ("Swift"), Harris Moran Seed Company ("Harris"), and Albert Pacheco. Because we are reviewing the dismissal of the complaint, we assume that the factual allegations of the complaint, summarized below, are true. According to the complaint, each of the four defendant companies

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[1] RICO violations are criminally punishable by fines, forfeiture, and imprisonment. 18 U.S.C. § 1963(a).

knowingly employed and/or harbored large numbers of illegal immigrants within Canyon County, in an "Illegal Immigrant Hiring Scheme."[2] The companies' actions have damaged the County because the County "has paid millions of dollars for health care services and criminal justice services for the illegal immigrants who have been employed by the defendants in violation of federal law." The individual defendant, Pacheco, has engaged in a policy of "Wilful Blindness and Harboring" of illegal immigrants, in his role as director of a local social service agency, which has resulted in similarly increased costs for the County.

Defendants Syngenta and Harris are both growers and processors of agricultural commodities. The County claims that both companies have deliberately hired hundreds of workers who the companies knew were not authorized to work in the United States. Working with a farm labor contractor, Ag Services, the companies agreed to employ undocumented immigrants supplied by Ag Services. The contractor acts as a "front" for Syngenta and Harris: in addition to supplying workers, the contractor channels the workers' wages to them, completes fraudulent I-9 employment eligibility forms for the workers, and supplies the workers with false documents. The companies have thus allegedly

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[2]Each defendant apparently conducted its own separate scheme, as there are no allegations that the defendants cooperated with each other in any way.

violated both 8 U.S.C. § 1324(a)(3),[3] which criminalizes knowing hiring of more than ten unauthorized aliens during a single year, and 8 U.S.C. § 1324(a)(1)(A)(iii),[4] which criminalizes harboring of unauthorized aliens.

The County further alleges that Syngenta and Harris have each formed an "association-in-fact enterprise" with the farm labor contractor, and that the companies' sustained custom of hiring and/or harboring undocumented workers amounts to a pattern of racketeering activity. As a consequence, the companies have allegedly violated 18 U.S.C. § 1962(c), by participating in the conduct of an enterprise's affairs through a pattern of racketeering activity.

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[3]Under 8 U.S.C. § 1324(a)(3)(A), it is illegal for any person "during any 12-month period, [to] knowingly hire[ ] for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) . . . ." An alien described in subparagraph B "is an alien who— (i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and (ii) has been brought into the United States in violation of this subsection." 8 U.S.C. § 1324(a)(3)(B).

[4]Under 8 U.S.C. § 1324(a)(1)(A)(iii), it is illegal for any person to "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, . . . harbor[ ] . . . or attempt[ ] to . . . harbor . . . such alien in any place, including any building or any means of transportation."

The complaint contains similar allegations against Sorrento, a cheese processor, and Swift, a meat packer, the only difference being that Sorrento and Swift have allegedly formed "association-in-fact" enterprises with a different labor contractor, Labor Ready.

The County's claim against defendant Pacheco is distinct, as it is not based on the hiring of undocumented immigrants. Instead, the County alleges that Pacheco, in his position as Executive Director of the Idaho Migrant Council, has directed his staff to assist immigrant workers in fraudulently applying for public benefits, despite Pacheco's knowledge that the workers lacked legal status in the United States and were ineligible for such benefits. In directing his staff to take these actions, Pacheco has allegedly committed a pattern of racketeering activity, by knowingly harboring undocumented immigrants in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). Thus, based on his association with the Migrant Council, which is asserted to be a RICO enterprise, Pacheco has allegedly violated 18 U.S.C. §§ 1962(c) and 1962(d).[5]

III. Dismissal by the District Court

Defendants filed motions to dismiss the County's complaint, challenging both the County's standing under RICO and the adequacy of the

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[5]The complaint also charges Pacheco with violations of the Idaho Racketeering Act, Idaho Code §§ 18-7801 to 18-7805.

County's allegations of substantive RICO violations. The district court granted defendants' motions and dismissed the complaint in its entirety. It held that the County lacked statutory standing to bring its federal RICO claims because it had not been injured in its business or property by the alleged conduct constituting the RICO violations.

In evaluating whether the County had alleged injuries of a type cognizable under § 1964(c), the district court first discussed the tort doctrine known as the "municipal cost recovery rule," drawing on our decision in *City of Flagstaff v. Atchison, Topeka & Santa Fe Ry.*, 719 F.2d 322 (9th Cir. 1983). In *City of Flagstaff*, we held that, under Arizona law, a municipality could not recover the cost of public services for fire or safety protection from a negligent tortfeasor. *Id.* at 323. We did, however, recognize several exceptions to the "municipal cost recovery rule," including exceptions allowing municipal recovery "where it is authorized by statute or regulation" and "where the acts of a private party create a public nuisance which the government seeks to abate." *Id.* at 324.

Noting that the County appeared "to concede the existence of the municipal cost recovery rule," the district court rejected the County's argument that its claims fit within either the exception for suits to abate a public nuisance, or the exception for suits authorized by statute. First, the district court stated that the County was not acting in its governmental capacity to abate a nuisance, but suing for treble

damages under civil RICO. It then considered the County's argument that the RICO statute itself authorized its recovery. The court rejected this contention, citing what it characterized as "extensive persuasive authority" from other circuits to the effect that a municipality may not recover under RICO for alleged injuries to its governmental functions.

Thus, relying on the municipal cost recovery rule and on case law from other circuits, the district court concluded that the County's claim for the costs of municipal services did not qualify as an injury to business or property within the meaning of RICO. On this basis, the court dismissed the federal RICO claims against all defendants and entered judgment against the County.[6] The County timely appealed.

STANDARD OF REVIEW

In reviewing dismissal of the County's complaint under Federal Rule of Civil Procedure 12(b)(6),[7] "we accept as true the factual allegations in

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[6]Upon dismissing the federal RICO counts against all defendants, the court also dismissed the Idaho Racketeering Act claims against Pacheco without prejudice to refiling those claims in state court.

[7]The district court did not specify whether its dismissal was based on Federal Rule of Civil Procedure 12(b)(1), lack of subject matter jurisdiction, or 12(b)(6), failure to state a claim upon which relief can be granted, noting that "the case law is unclear as to whether a challenge to a plaintiff's standing under RICO is jurisdictional." There is case law from other circuits suggesting that statutory standing may sometimes be a

the amended complaint." *Anza v. Ideal Steel Supply Corp.*, 126 S. Ct. 1991, 1994 (2006). We will uphold the dismissal "only if it is clear that no relief could be granted under any set of facts that could be proved

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jurisdictional prerequisite. *See Lerner v. Fleet Bank*, 318 F.3d 113, 126-29 (2d Cir. 2003). We have held, however, that the question of statutory standing is to be resolved under Rule 12(b)(6), once Article III standing has been established. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004) ("If a plaintiff has suffered sufficient injury to satisfy the jurisdictional requirement of Article III but Congress has not granted statutory standing, that plaintiff cannot state a claim upon which relief can be granted.").

In this instance, we preliminarily conclude that the County has met Article III's jurisdictional requirements. Although, as we discuss below, the County cannot show the proximate causation that is necessary for civil RICO standing, the County's allegation that the defendants' hiring and/or harboring of undocumented immigrants within the County caused additional strain on County-provided health and public safety services meets the less rigorous Article III causation threshold, at least at this stage of the proceedings. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (stating that Article III requires the plaintiff to have suffered an injury that is "fairly traceable" to the defendant's conduct); *Barbour v. Haley*, 471 F.3d 1222, 1226 (11th Cir. 2006) ("[F]or purposes of satisfying Article III's causation requirement, we are concerned with something less than the concept of proximate cause.") (citation and internal quotation marks omitted), *cert. denied*, 127 S. Ct. 2996 (2007); *Lerner*, 318 F.3d at 122 & n.8 (holding that plaintiffs' allegations failed to meet RICO proximate causation requirements but satisfied "the lesser burden for constitutional standing"). Thus, because Article III jurisdiction is not at issue, we review the question of whether the County satisfies civil RICO's standing requirements under the standard for Rule 12(b)(6).

consistent with the allegations."[8] *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1167 (9th Cir. 2002) (citation and internal quotation marks omitted). We may, however, affirm the dismissal on any ground supported by the record. *McKesson HBOC, Inc. v. N.Y. State Common Ret. Fund, Inc.*, 339 F.3d 1087, 1090 (9th Cir. 2003).

DISCUSSION

[1] A civil RICO "plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation." *Sedima*, 473 U.S. at 496; *see* 18 U.S.C. § 1964(c). Below, we examine whether the allegations in the County's complaint meet the requirements for standing under RICO's civil suit provision, 18 U.S.C. § 1964(c). We discuss first whether the County has alleged the requisite type of injury, then whether the defendants' alleged RICO violations could have proximately caused the County's injury.

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[8] Because the County cannot meet the more liberal "any set of facts" standard, we need not decide whether the Supreme Court's recent "retirement" of the "no set of facts" standard, *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1968-69 (2007), and its adoption of a new "plausibility" standard, *see id.* at 1965-67, applies to RICO complaints.

I. Canyon County Has Failed to Allege that It Has Been Injured in Its Business or Property

[2] To determine whether a plaintiff has sufficiently alleged that he has been "injured in his business or property," we must examine carefully the nature of the asserted harm. Our circuit requires that a plaintiff asserting injury to property allege "concrete financial loss." *Oscar v. Univ. Students Coop. Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992) (en banc). Financial loss alone, however, is insufficient. "Without a harm to a specific business or property interest — a categorical inquiry typically determined by reference to state law — there is no injury to business or property within the meaning of RICO." *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (enbanc), *cert. denied*, 546 U.S. 1131 (2006).

In this case, the County bases its RICO claims on the fact that "it has paid millions of dollars for health care services and criminal justice services for the illegal immigrants who have been employed [and/or harbored] by the defendants in violation of federal law." The County argues that it has sufficiently alleged that it has been injured in its property because it claims to have been forced to spend money. According to the County, "[a]ny involuntary expenditure of money is a loss of 'property.' " However, a government entity cannot rely on expenditures alone to establish civil RICO standing, and there is no indication that the County

holds a property interest in the law enforcement or health care services that it provides to the public.

A. Government Expenditures Alone Are Insufficient to Qualify as Injury to Property

In the ordinary context of a commercial transaction, a consumer who has been overcharged can claim an injury to her property, based on a wrongful deprivation of her money. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 342 (1979) (interpreting provision of the Clayton Act that grants standing to "any person . . . injured in his business or property" by an antitrust violation). As the Supreme Court reasoned in *Reiter*, "[i]n its dictionary definitions and in common usage 'property' comprehends anything of material value owned or possessed. Money, of course, is a form of property." *Id.* at 338 (citation omitted). Thus, the Court concluded that "where petitioner alleges a wrongful deprivation of her money because the price of the hearing aid she bought was artificially inflated . . . , she has alleged an injury in her 'property'. . . ." *Id.* at 342.

[3] Similarly, government entities that have been overcharged in commercial transactions and thus deprived of their money can claim injury to their property. *See Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U.S. 390, 396 (1906) (holding that city's claim that it was overcharged for its purchases of water pipe qualified as allegation that

it was "injured in its property . . . by being led to pay more than the worth of the pipe"); *County of Oakland v. City of Detroit*, 866 F.2d 839, 847 (6th Cir. 1989) (outlying counties "sustained an injury in their property when they paid the allegedly excessive charges" to Detroit for treatment and disposal of sewage).

[4] But the law commonly distinguishes between the status of a governmental entity acting to enforce the laws or promote the general welfare and that of a governmental entity acting as a consumer or other type of market participant. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-02 (1982) (distinguishing between the sovereign, quasi-sovereign, and proprietary interests of governmental bodies). When a governmental body acts in its sovereign or quasi-sovereign capacity, seeking to enforce the laws or promote the public well-being, it cannot claim to have been "injured in [its] . . . property" for RICO purposes based solely on the fact that it has spent money in order to act governmentally. All government actions require the expenditure of money in this sense, insofar as the government acts through public servants who are paid for their services. If government expenditures alone sufficed as injury to property, any RICO predicate act that provoked any sort of governmental response would provide the government entity with standing to sue under § 1964(c) — an interpretation of the statute that we think highly improbable. We find it particularly inappropriate to label a governmental entity "injured in its property" when it

spends money on the provision of additional public services, given that those services are based on legislative mandates and are intended to further the public interest.

B. The County Does Not Have a Property Interest in Services It Provides to Enforce the Laws and Promote the Public Welfare

[5] As the County cannot satisfy the requirement of injury to a "specific property interest" based solely on its expenditure of money to provide public services, we must examine whether the County can claim a property interest in the services themselves. We conclude that the government does not possess a property interest in the law enforcement or health care services that it provides to the public; therefore, a governmental entity is not "injured in its property" when greater demand causes it to provide additional public services of this type.

[6] We base this conclusion on several factors. First, the ordinary meaning of the term "property" does not include the interests of local governments in performing functions such as policing, caring for the indigent sick, and otherwise protecting the well-being of the public. Moreover, following *Diaz*'s instruction to determine whether the relevant state's law recognizes the alleged property interest, we see no indication that Idaho law creates a property-like entitlement in such services on the part of counties. *See Diaz*, 420 F.3d at 900. The

County has made no showing that Idaho law grants counties a protectable legal interest in the public services they provide, and we have found none. The persuasive authority of other jurisdictions tilts against such an interest. *Cf. id.* (plaintiff's claim for lost wages due to false imprisonment alleged harm to a property interest, because California law recognizes the torts of intentional interference with contract and interference with prospective business relations); *see also Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 364 (9th Cir. 2005) (plaintiff's claim alleging diminished litigation settlement due to the defendant's fraud alleged injury to a property interest, because fraudulent inducement is an actionable tort under Hawaii law), *cert. denied*, 126 S. Ct. 2861 (2006).

[7] Second, the Supreme Court has interpreted the statutory provision that served as a model for § 1964(c) to exclude claims for damages to governments' non-proprietary interests. The civil enforcement provision of the antitrust laws, § 4 of the Clayton Act, provides a private right of action to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . ." 15 U.S.C. § 15(a). Because Congress based the RICO private right of action on § 4, courts have often, though not invariably, interpreted the two statutory provisions in a like manner. *See, e.g.*, *Holmes*, 503 U.S. at 267-68; *Sedima*, 473 U.S. at 489, 498-99. Interpreting the Clayton Act, the Court has read the phrase "injured in his business or property" to encompass only injury

to a state's "commercial interests," meaning "the interests of the [state] as a party to a commercial transaction." *Reiter*, 442 U.S. at 341-42. If a similar interpretation of the identical phrase is applied in the RICO setting, a government's claim for its law enforcement and health care expenditures would not qualify as injury to property.

In *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972), the State of Hawaii sued four petroleum suppliers for antitrust violations. Hawaii raised claims in three capacities: a claim in the state's proprietary capacity for overcharges it paid directly as a consumer of petroleum products; a claim in its parens patriae capacity as a representative of the state's citizens; and a class action claim on behalf of all consumers in the state. *Id.* at 253-56. To support the claims brought in the state's parens patriae capacity, Hawaii alleged various harms, including loss of its citizens' revenues, increases in taxes as a result of lost revenues, lost opportunities in commerce, and frustration of state measures to promote its citizens' welfare. *Id.* at 255. The Court held that the state, acting in a parens patriae capacity to redress injury to its general economy, had not been injured in its property and thus lacked standing to recover damages under § 4 of the Clayton Act. The Court stated:

> Like the lower courts that have considered the meaning of the words 'business or property,' we conclude that they refer to commercial interests or

> enterprises. When the State seeks damages for injuries to its commercial interests, it may sue under § 4. But where, as here, the State seeks damages for other injuries, it is not properly within the Clayton Act.

Id. at 264 (citations omitted).

The Court also relied on 15 U.S.C. § 15a, an adjacent provision permitting the federal government to recover damages whenever "injured in its business or property" by an antitrust violation. That provision, the Court wrote, did not permit the United States to "recover for economic injuries to its sovereign interests, as opposed to its proprietary functions." *Id.* at 265. Similarly, the Court held, "[§] 4, which uses identical language, does not authorize recovery for economic injuries to the sovereign interests of a State." *Id.*

Later, in *Reiter*, the Court clarified that states could claim to have been injured in their property when alleging harm to their interests as consumers, despite the reference in *Hawaii* to the state's "commercial interests":

> The phrase 'commercial interests' was used [in *Hawaii*] as a generic reference to the interests of the State of Hawaii as a party to a commercial transaction. This is apparent from *Hawaii*'s explicit reaffirmance of the rule of *Chattanooga*

> *Foundry* and statement that, where injury to a state 'occurs in its capacity as a consumer in the marketplace' through a 'payment of money wrongfully induced,' treble damages are recoverable by a state under the Clayton Act.

Reiter, 442 U.S. at 341-42.

[8] As used in the Clayton Act's private right of action, then, the phrase "business or property" excludes states' interests in their sovereign or quasi-sovereign capacities, but does include states' interests as ordinary marketplace actors. We believe that this interpretation of the phrase "business or property" should apply in the context of a civil RICO claim, as well.

The Second Circuit has already applied *Hawaii* and *Reiter* in this way. In *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 103-04 (2d Cir. 1990), the court considered a town's civil RICO claims against abortion protesters who had demonstrated for two days at a local clinic. According to the town, the protesters' activities amounted to extortion against the town under the Hobbs Act and thus were a pattern of racketeering activity. *Id.* at 95-98. The town alleged that the protesters had limited the police department's ability to respond to other public safety needs, and caused extraordinary police overtime wage expenses, among other harms, all of

which amounted to "injury to the governmental functions and property" of the town. *Id.* at 95-96.

The court first concluded that extortion under the Hobbs Act required the "obtaining of property from another by wrongful means" and that neither "altered official conduct" nor overtime police expense qualified as property for this purpose. *Id.* at 101-02 (internal quotation marks omitted). Therefore, the town had failed properly to allege any RICO predicate acts and there was "no plausible basis for... assertion" of the RICO claim. *Id.* at 102-03. The court then analyzed whether the town had alleged injury to its "business or property" resulting from the RICO violation, as required for civil RICO standing. Relying on *Hawaii* and *Reiter* for the proposition that a governmental entity may "recover for such injury only when it functions 'as a party to a commercial transaction,'" the Second Circuit held that "[i]njuries of the sort asserted by the Town do not fall within the ambit of section 1964(c)." *Id.* at 104.

Thus, the Second Circuit held that the town's claimed injuries stemming from the burden the protesters placed on the town's police department — which included expenditures for increased overtime costs — did not qualify as injury to the town's business or property. Rather, these were injuries to the town's sovereign or quasi-sovereign interests of the sort held non-compensable in *Hawaii*.[9]

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[9]Although the Second Circuit's interpretation of "business or property" for RICO standing purposes in *Town of West Hartford*

[9] The injuries claimed by the County in this case, increased expenditures for law enforcement and health care services, are analogous to those that the Second Circuit ruled non-compensable in *Town of West Hartford*. The County sustained these injuries in its sovereign and/or quasi-sovereign capacities, and may not claim the costs as damages to its property for purposes of civil RICO standing.

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has been characterized as dicta, lower courts have relied on it in several instances. *See Attorney Gen. v. R.J. Reynolds Tobacco Holdings, Inc.*, 103 F. Supp. 2d 134,151-55 (N.D.N.Y. 2000) (holding that "*Town of West Hartford* compels the Court to conclude that [increased law enforcement] costs do not constitute a cognizable RICO injury to Canada as a party to a commercial transaction"), *aff'd on other grounds*, 268 F.3d 103 (2d Cir. 2001); *City of New York v. JAM Consultants, Inc.*, 889 F. Supp. 103, 105 (S.D.N.Y. 1995) (holding that city's relationship with its employees is a "commercial relationship" under *Town of West Hartford*, and thus inducement of disloyal employee conduct injures city in its property interests for purposes of RICO standing); *Town of Brookline v. Operation Rescue*, 762 F. Supp. 1521, 1523 (D. Mass. 1991) (holding that town could not establish that it had been injured in its business or property based on increased expenses resulting from abortion protests). *But see City of New York v. Cyco.Net, Inc.*, 383 F. Supp. 2d 526, 555-56 (S.D.N.Y. 2005) (characterizing the law as "unsettled" following *Town of West Hartford* and holding that city's loss of its right to collect sales taxes may qualify as injury to its business or property); *Eur. Cmty. v. RJR Nabisco, Inc.*, 150 F. Supp. 2d 456, 492-93 (E.D.N.Y. 2001) (concluding that foreign government's claim for lost tax revenues and increased law enforcement costs "are, at bottom, claims for lost money" and thus qualify as property for RICO standing purposes).

We note finally that the common law doctrine barring government recovery of the costs of public safety services in tort supports our holding. The rationale underlying the "municipal cost recovery rule" is twofold: (1) that there is little reason for courts to use tort law to unsettle expectations and disrupt the existing, tax-payer funded system of providing public safety services; and (2) that it is not the courts' role to disturb the legislature's decision to fund such services as a part of its overall fiscal policy choices. *See City of Flagstaff*, 719 F.2d at 323-24. A number of courts have applied this rule to bar recovery by local governments of public safety expenses.[10]

In this instance, we are not dealing with state common law, but with a statutory cause of action created by Congress. Therefore, we are not concerned that our court might upset the local legislative body's fiscal policy by allowing recovery for public safety services. Instead, the question is one of Congress' intent, specifically whether Congress meant to

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[10]*See, e.g.*, *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1080 (D.C. Cir. 1984); *County of San Luis Obispo v. Abalone Alliance*, 223 Cal. Rptr. 846, 850-52 (Ct. App. 1986); *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1144-47 (Ill. 2004); *City of Bridgeton v. B.P. Oil, Inc.*, 369 A.2d 49, 54 (N.J. Super. Ct. 1976); *Koch v. Consol. Edison Co.*, 468 N.E.2d 1, 7-8 (N.Y. 1984). *But cf. White v. Smith & Wesson Corp.*, 97 F. Supp. 2d 816, 821-23 (N.D. Ohio 2000); *City of Gary v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1242-44 (Ind. 2003); *James v. Arms Tech., Inc.*, 820 A.2d 27, 48-49 (N.J. Super. Ct. 2003); *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1149-50 (Ohio 2002).

disrupt settled expectations and alter the legislatively-chosen system of funding local government services. We recognize that Congress could have used its powers to do so, enabling local governments to pursue treble damages under RICO for injuries arising from their provision of governmental services. But had Congress intended such a result, we believe that Congress would have been more explicit; the term "business or property" does not readily connote a government's interest in the services it provides in its sovereign or quasi-sovereign capacity.[11] As we think it unlikely that Congress intended this type of recovery under RICO, and because Idaho's legislature has assigned the fiscal burden for law enforcement and health care services differently, it is not our place to disturb these decisions.

Contrary to the County's argument, in holding that the costs of their law enforcement and public health care services are not recoverable damages under civil RICO, we are not inserting an additional injury requirement into § 1964(c). Rather, our holding is based on the statutory language itself. We

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[11]There is no legislative history regarding Congress' intent in this regard. *Cf. Sedima*, 473 U.S. at 495 n.13 (referring to what lower court described as the "'clanging silence' of the legislative history" of § 1964(c) regarding the provision's scope); *see also Reiter*, 442 U.S. at 343 ("Many courts and commentators have observed that the respective legislative histories of § 4 of the Clayton Act and § 7 of the Sherman Act, its predecessor, shed no light on Congress' original understanding of the terms 'business or property.'").

simply do not think that the term "business or property" can be interpreted to encompass the sorts of interests that the County relies on in this case.

[10] In light of the foregoing reasoning, we conclude that the County lacks RICO standing and cannot bring suit under RICO for the injuries that it asserts in its complaint.

II. Canyon County Cannot Show That the Alleged RICO Violations Proximately Caused Its Injuries

Even if the County's claimed injuries were cognizable under § 1964(c) as injuries to property, the County's complaint is flawed in another critical aspect: most of the defendants' alleged RICO violations do not bear a direct connection to the County's asserted harms. *See Anza*, 126 S. Ct. at 1998 ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.").

A. The County's Claims Against the Defendant Companies

Canyon County alleges that it "has paid millions of dollars for health care services and criminal justice services for the illegal immigrants who have been employed by the defendants in violation of federal law." We conclude that the County cannot, as a matter of law, show an adequate

causal nexus between the four defendant companies' employment of undocumented workers and the financial harm the County claims to have suffered.

[11] A "showing that the defendant violated § 1962, the plaintiff was injured, and the defendant's violation was a 'but for' cause of plaintiff's injury" is insufficient to meet the requirement in § 1964(c) that the plaintiff's injury be "by reason of" the RICO violation. *Holmes*, 503 U.S. at 265-66. Rather, a plaintiff must also show that the defendant's RICO violation proximately caused her injury. *Id.* at 268. Proximate causation requires "some direct relation between the injury asserted and the injurious conduct alleged." *Id.*

In *Holmes*, the Court applied the proximate cause requirement to preclude a RICO suit by a plaintiff whose injury was entirely contingent on the injury of direct victims. *Id.* at 271-74. In that case, a number of conspirators had allegedly engaged in a fraudulent stock manipulation scheme which led to the insolvency of two securities broker-dealers. As a result of the insolvency, the broker-dealers could no longer meet their obligations to their customers, and the plaintiff, the Securities Investor Protection Corporation ("SIPC"), was forced to cover the broker-dealers' debts. *Id.* at 262-63. SIPC asserted the broker-dealers' customers' claims against the conspirators, arguing that the customers had been injured "by reason of" the conspirators' fraudulent scheme in violation of RICO. The Court disagreed, noting that "the conspirators have allegedly injured

these customers only insofar as the stock manipulation first injured the broker-dealers and left them without the wherewithal to pay customers' claims." *Id.* at 271. Finding "the link . . . too remote between the stock manipulation alleged and the customers' harm, being purely contingent on the harm suffered by the broker-dealers," the Court concluded that proximate causation was lacking. *Id.*

[12] Subsequently, in *Anza*, the Supreme Court clarified that the *Holmes* proximate cause requirement not only bars RICO suits by derivative victims, or those whose injuries are "purely contingent on the harm suffered by" direct victims, but generally precludes recovery by those whose injuries are only tenuously related to the RICO violation at issue. 126 S. Ct. at 1996. Under *Anza*, courts must scrutinize the causal link between the RICO violation and the injury, identifying with precision both the nature of the violation and the cause of the injury to the plaintiff. *See id.* at 1996-98. Where the violation is not itself the immediate cause of the plaintiff's injury, proximate cause may be lacking.

In *Anza*, Ideal Steel Supply Company sued its competitor, alleging that the competitor had violated RICO by conducting its business through a pattern of defrauding the State of New York of sales tax payments. *Id.* at 1994. According to Ideal, the defendant was able to undersell Ideal by not charging sales tax on cash purchases, and thus deprived Ideal of sales it otherwise would have made. *Id.* at 1994-95,

1997. The Court concluded, however, that the competitor's alleged violations could not have proximately caused Ideal's injuries, because "[t]he cause of Ideal's asserted harms . . . is a set of actions (offering lower prices) entirely distinct from the alleged RICO violation (defrauding the State)." *Id.* at 1997.

In support of this conclusion, the Court discussed the rationale for the requirement that the plaintiff's harm directly result from the alleged RICO violation. *Id.* (citing *Holmes*, 503 U.S. at 269-270). First, the Court cited "the difficulty that can arise when a court attempts to ascertain the damages caused by some remote action." *Id.* The Court emphasized the attenuated causal chain between the defendant's tax fraud and the plaintiff's loss of sales. It noted the difficulty of determining whether the defendant's lower prices were in fact based on the defendant's fraudulent failure to pay sales tax, or whether other causes determined the defendant's pricing. *Id.* The Court also pointed out that the plaintiff's lost sales could have resulted from a host of factors other than its competitor's fraud. *Id.*

Second, the Court discussed "the speculative nature of the proceedings that would follow if Ideal were permitted to maintain its claim." *Id.* at 1998. A court would have to determine the portion of Ideal's damages resulting from the RICO violation, by evaluating the relative causal role of the defendant's fraud in lowering the defendant's prices, and the relative causal role of those lowered prices in

diminishing Ideal's sales — in effect, requiring a complex apportionment of fault among various causes. *Id*. The proximate causation requirement "is meant to prevent these types of intricate, uncertain inquiries from overrunning RICO litigation." *Id*.

Finally, the Court referenced the consideration of whether "the immediate victims of an alleged RICO violation can be expected to vindicate the laws by pursuing their own claims." *Id*. In the case before the Court, the State of New York could be expected to pursue its own remedies for the fraud practiced upon it by the defendant. Thus, the Court found "no need to broaden the universe of actionable harms to permit RICO suits by parties who have been injured only indirectly." *Id*.

[13] Under *Anza*, we must determine whether the County meets the proximate cause requirement by examining "whether the alleged violation led directly to the plaintiff's injuries." *Id*.[12]

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[12]We are mindful that, in evaluating a complaint's adequacy at the motion to dismiss stage, we must "presume that general allegations embrace those specific facts . . . necessary to support the claim." *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 615 (6th Cir. 2004) (quoting *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 256 (1994), in support of the proposition that "a weak or insubstantial causal link" is not a good basis for dismissal on the pleadings). *Anza* itself, however, dealt with the adequacy of the proximate cause allegations at the motion to dismiss stage. 126 S. Ct. at 1994. It is therefore evident that courts need not allow RICO plaintiffs leeway to continue on with their case in an attempt to prove an entirely remote causal link.

The basis of the RICO violation, according to the County's complaint, is the defendant companies' knowing hiring of undocumented immigrants. The alleged harm is the County's increased expenditures on health care and criminal justice services. Here, just as in *Anza*, the cause of the plaintiff's asserted harms is a set of actions (increased demand by people within Canyon County for public health care and law enforcement services) entirely distinct from the alleged RICO violation (the defendants' knowing hiring of undocumented workers).

[14] The three rationales for the proximate cause requirement described in *Anza* also suggest that the County's harm fails the proximate cause test. *Cf. id.* at 1997. As to the first consideration, the difficulty of assessing causation, the asserted causal chain in this instance is quite attenuated, and there are numerous other factors that could lead to higher expenditures by the County. In fact, it is not clear how the companies' hiring of undocumented immigrants would increase demand for health care and law enforcement within Canyon County. Further, holding employers liable for the actions of their employees that are not even recognized as being a basis for respondent superior liability would be contrary to centuries of precedent concerning proximate causation.

[15] The causal chain would also be difficult to ascertain because there are numerous alternative causes that might be the actual source or sources of the County's alleged harm. Increased demand for

public health care and law enforcement may result from such varied factors as: demographic changes; alterations in criminal laws or policy; changes in public health practices; shifts in economic variables such as wages, insurance coverage, and unemployment; and improved community education and outreach by government.

[16] Second, the proceedings required to evaluate the County's injury would be speculative in the extreme, perhaps more so than those discussed in *Anza*. *Cf. id.* at 1998. A court would be forced to evaluate the extent to which the companies' illegal hiring practices had created increased demand for County services. This would not consist of simply estimating the number of undocumented immigrants employed by the companies and their average usage of County services. Rather, the court would have to construct the alternative scenario of what would have occurred had the companies employed legally authorized workers, and determine how this might have affected the County's total population, and how these alternative workers might have differed from the undocumented workers in their consumption of County services, if at all. This would be an "intricate, uncertain" inquiry of the type that the *Anza* Court warned against. *Id.*

Given the substantial — and fatal — shortcomings of the complaint in meeting *Anza*'s proximate cause requiremets, we need not inquire into the question of whether there are more immediate victims of the defendants' alleged RICO

violations who are likely to sue. *See Newcal Indus., Inc. v. IKON Office Solution*, 2008 WL 185520, at *13 (9th Cir. 2008).[13]

The County has attempted to limit *Anza*'s reach, characterizing the holding as applying only to "derivatively injured plaintiffs." Because the County's injury is not "derivative of an injury suffered by any other party," the County asserts that *Anza* is inapplicable.

We are, however, unpersuaded by the County's attempt to distinguish *Anza* as a "derivative or passed-on" injury case. It is true that the Court in *Holmes* dealt with derivative injury, in the sense that any harm to the plaintiff occurred only to the extent that a direct victim's injuries were "passed on," or flowed through another victim. But there was no such "passed-on" harm in *Anza*: the plaintiff alleged that it lost business due to the defendant's lowered prices, a harm which was distinct from and not contingent on the harm suffered by the state due to the defendant's sales tax fraud. Thus, *Anza* applies fully to cases like this one, where the harm to the plaintiff from the defendant's RICO violation does not flow through any intervening victims.

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[13]We note that under *Anza*, the likelihood of more direct victims bringing suit is not essential to a finding of no proximate cause. *See Anza*, 126 S. Ct. at 1998 (noting that "[t]he requirement of a direct causal connection is *especially warranted* where the immediate victim of an alleged RICO violation can be expected to vindicate the laws by pressing their own claims") (emphasis added).

[17] The County's claims against the defendant companies fail for lack of proximate causation. The asserted link between the companies' hiring practices and increased demand for County services is far too attenuated.

B. The County's Claim Against Pacheco

The County's claim against Albert Pacheco, the former Executive Director of the Idaho Migrant Council, is founded on two specific factual allegations: first, that Pacheco directed his staff to assist undocumented immigrants in filing false applications for the County's indigent medical assistance fund, which cost the County money; and second, that Pacheco directed his staff to assist undocumented immigrants in procuring public housing, and that those immigrants subsequently burdened the County's public assistance and criminal justice systems. As we noted above, neither of these allegations supports a claim that the County was injured in its "property," and so the claim against Pacheco was properly dismissed for that reason. The second allegation against Pacheco, that he assisted immigrants in securing housing, suffers from an additional flaw: lack of proximate causation.

Here, as in *Anza*, the defendant's alleged RICO violation (assisting undocumented immigrants in securing housing) is distinct from the cause of the plaintiff's harm (increased demand placing a burden on Canyon County's public assistance and criminal

justice systems). Further, the considerations cited in Anza demonstrate that proximate cause is absent. *See id.* at 1997-98. The causal chain between the RICO violation and the plaintiff's harm is dubious for any number of reasons: for example, the immigrants might have secured public housing without Pacheco's staff's assistance, and the immigrants might have remained in the County even without being able to occupy public housing. It is even more attenuated to postulate that having the benefit of public housing made the immigrants more prone to commit crimes, require health care, or otherwise increase their use of County services. Given the speculative nature of the causal links between the alleged harm and Pacheco's actions, a court attempting to identify the specific portion of the County's financial loss caused by Pacheco's actions would be sorely pressed to do so. Finally, to the extent that Pacheco's actions were indeed unlawful, the most direct victim is the public housing authority itself; there is little need to allow the County to pursue this RICO claim in order to vindicate the laws.

[18] Thus, we conclude that proximate causation is lacking as to this portion of the County's claim against Pacheco.

CONCLUSION

We conclude that the County lacks statutory standing under 18 U.S.C. § 1964(c) to proceed with its federal RICO claims against the four defendant companies. First, the County has failed to plead that

it has been "injured in [its] business or property" by reason of the defendants' alleged RICO violations. Second, the County cannot show that its claimed injuries were proximately caused "by reason of" the defendant companies' alleged RICO violations.

As for the County's claim against the individual defendant, Pacheco, the County lacks standing to pursue this claim as well: the County has not pled injury to its business or property, and proximate causation is lacking as to at least a portion of Pacheco's alleged RICO violations.

As a consequence, the judgment of the district court dismissing the County's federal RICO claims is **AFFIRMED.**

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CANYON COUNTY,	)	
	)	
Plaintiff,	)	Case No. CV05-306-S-EJL
	)	
vs.	)	MEMORANDUM DECISION AND ORDER
	)	
SYNGENTA SEEDS, INC., et al.,	)	
	)	
Defendants.	)	

Plaintiff Canyon County brings this action pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, against Defendants Syngenta Seeds, Inc. ("Syngenta"), Sorrento Lactalis, Inc. ("Sorrento"), Swift Beef Company ("Swift"), Harris Moran Seed Co. ("Harris"), and Albert Pacheco ("Pacheco") (collectively the "Defendants"),[1] seeking to recover

[1] Canyon County also originally named the Idaho Migrant Council, Inc., as defendant but later dismissed this party by

"damages it [allegedly] has suffered as a direct result of the knowing employment of large numbers of illegal immigrants by the defendants." (Am. Compl. ¶ 1). Defendants have moved to dismiss Canyon Canyon's Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The motions are now ripe. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without a hearing.

Standards

On a motion to dismiss, the Court's review is generally limited to the contents of the complaint. Warshaw v. Xoma Corp., 74 F.3d 955, 957 (9th Cir.1996). The Court must "take as true all allegations of material fact stated in the complaint and construe them in the light most favorable to the nonmoving party." Id. "The Court is not required, however, to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. Lord v. Swire Pacific Holdings, Inc., 203 F. Supp.2d 1175, 1178 (D. Idaho

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filing a Notice of Voluntary Dismissal pursuant to Federal Rule Civil Procedure 41(a)(1). (Docket no. 21).

2002) (citing Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir.1994)). A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. See Morley v. Walker, 175 F.3d 756, 759 (9th Cir. 1999).

Discussion

With respect to Defendants Syngenta, Sorrento, Swift and Harris, Canyon County alleges in its one-count Amended Complaint that these Defendants have engaged in an Illegal Immigrant Hiring Scheme that includes violations of the Immigration and Nationality Act. Specifically, Canyon County alleges that these Defendants have entered into association-in-fact enterprises for the purpose of obtaining and employing illegal immigrant workers to reduce labor costs. With regard to Defendant Pacheco, Canyon County alleges that he has formulated a "Policy of Willful Blindness and Harboring" for the purpose of falsely obtaining medical and housing assistance for illegal immigrants, in violation of federal law. Canyon County contends that the alleged actions of all these Defendants constitute illegal racketeering activity which has harmed Canyon County "because it has been forced to spend money to provide medical and criminal justice services for many of these illegal immigrants."(Am. Compl. ¶ 26; see also Am. Compl. ¶¶ 32, 41, 43 & 46). In accordance with RICO, Canyon County prays for relief "in an amount triple the damages each [Defendant] has caused Canyon

County through its or his racketeering activity." (Am. Compl. ¶ 52).

A violation of § 1962(c) of RICO, the provision upon which Canyon County relies, "requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). Furthermore, a RICO plaintiff must allege a direct causal link between the injury and the defendant's violation. Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268-69 (1992). Defendants contend that Canyon County has failed to adequately allege any of these RICO requirements and that therefore the Amended Complaint should be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

In addition to the RICO elements set forth above, the RICO "plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation." Sedima,, 473 U.S. at 496. This limitation flows from § 1964(c) which confers standing to bring civil RICO claims only upon those persons "injured in [their] business or property by reason of a violation of section 1962." Citing this statutory language, Defendants also challenge Canyon County's standing and move to dismiss the Amended Complaint pursuant to the applicable Federal Rule.[2] Because standing presents a threshold

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[2] As several of the Defendants note, the case law is unclear as to whether a challenge to a plaintiff's standing under RICO is jurisdictional and/or whether such a challenge should be brought pursuant to Rule 12(b)(1) or Rule 12(b)(6) of the Federal Rules of Civil Procedure. Lerner v. Fleet Bank, N.A., 318

question, the Court will address this issue first and determine whether Canyon County is authorized by RICO to bring its claim against Defendants. Bruce v. U.S., 759 F.2d 755, 757-58 (9th Cir. 1985) (explaining that question of statutory standing may bear on court's jurisdiction); Moore v. PaineWebber, Inc., 189 F.3d 165, 169 n. 3 (2d Cir.1999) (same in RICO context).

In asserting a bar to Canyon County's standing, Defendants first cite what is known as the "municipal cost recovery rule." As discussed in detail by the Ninth Circuit in City of Flagstaff v. Atchison, Topeka & Santa Fe, 719 F.2d 322 (9th Cir.1983), this doctrine stands for the proposition "that the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service."Id. at 323. This concept, the Ninth Circuit said, is a product of state and federal common law and "does not turn on the underlying theory of the tort for it is the identity of the claimant and the nature of the cost that combine to deny recovery." Id. at 324. As the Ninth Circuit explained, the reason for the municipal cost recovery bar is "[i]f the government has chosen to bear the cost

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F.3d 113, 126 (2nd Cir. 2003) (discussing case law on this issue in context of supplemental jurisdiction). The distinction does not matter here, as the Court applies the same standards under either Rule 12(b)(1) or Rule 12(b)(6), see Moore v. PaineWebber, Inc., 189 F.3d 165, 169 n. 3 (2nd Cir.1999), and each Defendant has moved to dismiss the Amended Complaint based on Canyon County's lack of standing under § 1964(c).

for reasons of economic efficiency, or even as a subsidy to the citizens and their business, the decision implicates fiscal policy; the legislature and its public deliberative processes, rather than the court, is the appropriate forum to address such fiscal concerns." Id. However, the Ninth Circuit acknowledged several exceptions to the municipal cost recovery rule that may permit a governmental entity to "recover the cost of its services." Id.

Canyon County appears to concede the existence of the municipal cost recovery rule, (Resp. 3, 11-12), and it admits that its lawsuit is "for the costs of municipal services,"[3] (id. at 5), but argues that it fits within two of the exceptions articulated by the Ninth Circuit in City of Flagstaff. Pointing to the first exception, Canyon County recites the City of Flagstaff statement that "[r]ecovery has also been allowed where the acts of a private party create a public nuisance which the government seeks to abate." City of Flagstaff, 719 F.2d at 324. And then it turns to a 1907 case of the Idaho Supreme Court, which according to Canyon County defines a public nuisance to include any criminal conduct. (Resp. 3, 11-12 (citing J.B. Mullen & Co. v. Mosley, 90 P. 986, 990 (Idaho 1907)). Reading the two cases together, Canyon County argues that its RICO action for damages based on alleged criminal activity fits under

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[3] The Court may treat representations of counsel in a brief as an admission. American Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224, 226-27 (9th Cir. 1988).

the public nuisance exception to the municipal cost recovery rule.

There are several problems with Canyon County's analysis. First, the definition of a public nuisance has been modified by the Idaho legislature and the current statutory provision has not been interpreted to include criminal conduct. IDAHO CODE § 52-101. To the contrary, the statutory language *does not* specifically identify criminal conduct as a public nuisance.[4] If the Idaho legislature intended to incorporate the Idaho Supreme Court's discussion from the 1907 Mosley case into § 52-101 it would have done so expressly, and it did not. It is telling that Canyon County failed to bring this most recent statutory provision to the Court's attention.

Second, Canyon County is not bringing a public nuisance lawsuit, it is a plaintiff in a federal RICO civil action. Consequently, it is not acting in its governmental capacity but instead as a private party to a civil lawsuit. Sedima, 473 U.S. at 483-87 (explaining that § 1962 of RICO provides a civil action for private suits). Because of that, Canyon County is not attempting to "abate" any activity but only seeks to recover monetary damages. City of Philadelphia v. Beretta U.S.A. Corp., 126 F. Supp.2d 882, 894-95 (E.D. Pa. 2000) (explaining that the City

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[4] Section 52-101 provides that: Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

cannot have it both ways; it is either suing in its "governmental capacity to abate a public nuisance" or "[i]f it sues for costs it has itself incurred . . . the action is barred under the municipal cost recovery rule"). If Canyon County was granted all the relief it requested it would do nothing to stop or "abate" the Defendants' alleged criminal conduct.[5] For all these reasons, the Court concludes that the RICO action by Canyon County is not within the public nuisance exception to the City of Flagstaff municipal cost recovery rule. See 719 F.2d at 323-24.

Canyon County also argues that it fits within a second City of Flagstaff exception that permits recovery of municipal cost "where it is authorized by statute." 719 F.2d at 324. Although not expressly articulated, Canyon County appears to contend that § 1964(c) of RICO, which allows persons "injured in business or property" to bring a RICO civil action, is authority for a municipal cost recovery suit rather than a bar to such an action as Defendants assert. The merits, then, of each party's respective position turns on the proper interpretation of the language from § 1964(c) that authorizes a civil lawsuit under

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[5] In its prayer for relief, Canyon County does request an injunction prohibiting Defendant Pacheco from further participation with Idaho Migrant Council or any other organization which seeks payments from Canyon County. But even if granted, the injunction would not otherwise prevent Defendant Pacheco from continuing his alleged wrongful conduct.

RICO by a person "injured in business or property."[6] In support of its position, Defendants offer extensive analysis with citations to numerous cases that the Court will discuss below.

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[6] Indeed, the proper interpretation of § 1964(c) is determinative on the standing issue. If § 1964(c) permits a municipality to sue under RICO to "recover the cost of its services," then this lawsuit is not barred by the municipal cost recovery rule. City of Flagstaff, 719 F.2d at 324. If, on the other hand, § 1964(c) does not afford standing for recovery of municipal cost this action is subject to dismissal without reference to the municipal cost recovery rule. See, e.g., Attorney General of Canada v. R.J. Reynolds Tobacco Holdings, Inc., 103 F. Supp.2d 134, 154 (N.D. N.Y. 2000). The Court's discussion of the municipal cost recovery rule is important, however, not only because it tracks the parties' briefing but because, as City of Flagstaff indicated, the rule is a product of state and federal common law. 719 F.2d at 323-24 (citing both state and federal case law). The Ninth Circuit has stated that the term "property" in § 1964(c) is typically determined by reference to state law. Diaz v. Gates, 420 F3d 897, 899 (9th Cir. 2005) (en banc) (explaining that under § 1964(c) "we typically look to state law to determine 'whether a particular interest amounts to property'"). Both City of Flagstaff and Idaho case law strongly suggest that a non-contractual interest in reimbursement for governmental services is not a recognized property right. See City of Grangeville v. Haskin, 777 P.2d 1208, 1211-12 (Idaho 1989) (holding that a city's effort to collect charges for water, sewer and garbage services "even though the services were not ordered, contracted for, or used" by the person is not permitted under Idaho law). Moreover, "[s]tatutes which invade the common law are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." Kasza v. Browner, 133 F.3d 1159, 1167 (9th Cir.1998) (quoting United States v. Texas, 507 U.S. 529, 534 (1993)).

Defendants concede that on this issue there is no binding precedent from either the Ninth Circuit or the United States Supreme Court. Accordingly, Defendants point to persuasive case law. In this regard, Defendants first observe that the "injured in business or property" requirement of § 1964(c) has been determined to have "restrictive significance." See, e.g., Oscar v. Univ. Students Co-op. Ass'n, 965 F.2d 783, 786 (9th Cir.1992). Thus, "it is well-established that not all injuries are compensable under this section." Id. at 785. For example, "personal injuries are not compensable under RICO." Id.; see also Diaz v. Gates, 420 F3d 897, 899 (9th Cir. 2005) (en banc) ("Without a harm to a specific business or property interest . . . there is no injury to business or property within the meaning of RICO."); Imagineering, Inc. v. Kiewit Pac. Co., 976 F.2d 1303, 1310 (9th Cir.1992) (stating that "[c]ase law in our circuit limits injuries compensable under RICO" and that a "showing of 'injury' requires proof of concrete financial loss").

In an effort to answer the specific question before this Court, Defendants note that because the language of § 1964(c) is based on the "quite similar" language of the Clayton Act, courts generally have turned to the interpretation of the Clayton Act's standing provision in order to construe the intended effect of § 1964(c). See, e.g., Mendoza v. Zirkle Fruit Co., 301 F.3d 1163, 1168 (9th Cir. 2002) (noting the similarity between RICO's standing provision, § 1964(c), and the standing provision of the Clayton Act, 15 U.S.C. § 15(a), which grants standing to "any person who shall be injured in his business or

property by reason of anything forbidden in the antitrust laws"). As the United States Supreme Court explained "both statutes aim to compensate the same type of injury; each requires that a plaintiff show injury 'in his business or property by reason of' a violation." Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 151 (1987). Furthermore, the "close similarity of the two provisions is no accident . . . .[t]he 'clearest current' in the legislative history of RICO 'is the reliance on the Clayton Act model.'" Id.

Consequently, the Ninth Circuit has stated that the two standing provisions should be "interpreted in tandem." Mendoza, 301 F.3d at 1168. In light of this directive it is most significant that the United States Supreme Court has interpreted the Clayton Act's standing provision to exclude recovery for the cost of public services. In the case Hawaii v. Standard Oil Co. of California, 405 U.S. 251 (1972), the Supreme Court construed the Clayton Act's standing provision, "which limits . . . recovery to damages to 'business or property,'" as authorizing recovery "not for general injury . . . or to the Government's ability to carry out its functions, but only for those injuries suffered in its capacity as a consumer of goods and services." Id. at 264-65. The Supreme Court elaborated further on this issue in the case Reiter v. Sonotone Corp., 442 U.S. 330 (1979), where it stated that a governmental entity suffers an injury to "business or property" when it is harmed "as a party to a commercial transaction." Id. at 341-42.

Given this Supreme Court precedent, it is not surprising that the only circuit court to address this

same standing issue in the context of a RICO action has reasoned that § 1964(c) does not permit a municipality to recover for alleged injuries to its governmental function. In Town of West Hartford v. Operation Rescue, 915 F.2d 92 (2nd Cir.1990), the Second Circuit relied on both Hawaii and Reiter to conclude that the type of recovery that Canyon County seeks here is for "[i]njuries of the sort [that] do not fall within the ambit of section 1964(c)." Id. at103-04 & n.2.

Although the Town of West Hartford discussion is dicta,[7] the majority of district courts to have considered the issue have applied the reasoning of Town of West Hartford to deny municipal cost recovery under § 1964(c). See, e.g., Attorney General of Canada v. R.J. Reynolds Tobacco Holdings, Inc., 103 F. Supp.2d 134, 154 (N.D. N.Y. 2000) ("In short, Town of West Hartford requires injury to the government's commercial interests in RICO claims."); City of New York v. JAM Consultants, Inc., 889 F. Supp. 103, 105 (S.D. N.Y.1995) ("[T]he Second Circuit has held that where a municipality sues under RICO, it must allege injury to its business or property in its capacity 'as a party to a commercial transaction.' Allegations that a municipality is seeking to vindicate its interests in the 'general economy' or in its 'ability to carry out its functions' do not state a claim under RICO."); Town of Brookline v. Operation Rescue, 762 F. Supp. 1521, 1523 (D. Mass.1991)

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[7] See Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings, Inc., 268 F.3d 103, 132 n.40 (2d Cir. 2001).

(stating the court is "persuaded that the Second Circuit is correct in concluding that upon these facts, a plaintiff town cannot establish . . . the requirement of 18 U.S.C. § 1964(c) that it has been 'injured in [its] business or property by reason of a violation of section 1962,' as required of a civil RICO plaintiff"). But see European Community v. RJR Nabisco, Inc., 150 F. Supp.2d 456, 497 (E.D. N.Y. 2001) (stating in dicta that it rejects Town of West Hartford).

In response to this extensive persuasive authority, Canyon County answers with one sentence and a footnote. In relevant part, Canyon County responds that its claim against Defendants "is asserted under RICO, a federal statute, which is a 'legislative authority,' a basis recognized by the City of Flagstaff court for permitting municipalities to recover for their costs" and that "[s]ince recovery is permitted [by RICO], such [municipal] costs are a loss to the County's 'property' [under § 1964(c)]. See, e.g., County of Oakland v. City of Detroit, 866 F.2d 839, 847 (6th Cir. 1989)." (Resp. 12 & n. 8). At best, Canyon County's circular reasoning – that RICO authorizes the action and so its municipal costs are "property" for standing purposes under § 1964(c) – is "unhelpfully tautological." Sedima, 473 U.S. at 494. Moreover, the case cited by Canyon County actually highlights the fatal flaw in the present lawsuit. In County of Oakland the counties were suing under RICO to recoup the illegal overcharge they allegedly suffered as buyers under a contract. County of Oakland, 866 F.2d at 844-45. Consistent with the case law examined above, the counties were deemed to "have standing" under RICO *because* the counties

"were the contracting parties" and "buyers" in a commercial transaction. Id. at 844. Unlike County of Oakland, Canyon County is not alleging its injuries flow from participation as a contracting party to a commercial transaction. Instead, by its own admission, it is asserting "claims for the costs of municipal services." (Resp. 5). This type of "general injury" to a county's "ability to carry out its functions" is not an injury to "business or property." Hawaii, 405 U.S. at 264-65. Therefore, Canyon County does not have standing to bring this action under § 1964(c) of RICO.[8] See, e.g., Attorney General of Canada v. R.J. Reynolds Tobacco Holdings, Inc., 103 F. Supp.2d 134, 154 (N.D. N.Y. 2000).

Summary and Conclusion

At common law, a governmental entity generally was not allowed to "recover the cost of its services" from a non-contracting party. City of Flagstaff, 719 F.2d at 323-24; City of Grangeville v. Haskin, 777 P.2d 1208, 1211-12 (Idaho 1989). "Statutes which invade the common law are to be

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[8] Although not relied upon in the standing context, Canyon County relies in general upon the Ninth Circuit case Mendoza v. Zirkle Fruit Co., 301 F.3d 1163 (9th Cir. 2002). The plaintiffs' standing in that case is easily distinguishable from the standing issue presented here. In Mendoza, the plaintiffs were deemed to have standing because their injuries, lost wages, were linked to an alleged "legal entitlement to business relations," something that Canyon County does not, and cannot, allege in this lawsuit. See 301 F.3d at 1168 n.4.

read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." Kasza v. Browner, 133 F.3d 1159, 1167 (9th Cir. 1998) (quoting United States v. Texas, 507 U.S. 529, 534 (1993)). Section 1964(c) of RICO provides statutory standing to persons "injured in [their] business or property." The Ninth Circuit has determined that this language has "restrictive significance," Oscar, 965 F.2d at 786, and should be "interpreted in tandem" with the similar language found in the Clayton Act, Mendoza, 301 F.3d at 1168. The Supreme Court has construed the Clayton Act to preclude standing for recovery of cost associated with general governmental functions. Hawaii, 405 U.S. at 264-65; Reiter, 442 U.S. at 341-42. Consequently, the courts have reasoned that the same language in § 1964(c) of RICO bars a governmental entity from suing for the "costs of municipal services." See, e.g., Town of West Hartford , 915 F.2d at 103-04. Canyon County has not advanced any argument, case, or statutory interpretation to distinguish or challenge this analysis. Accordingly, the Defendants' motions to dismiss must be granted.[9]

Because Canyon County's RICO action is predicated on recovery for the "costs of municipal services," it cannot cure this basic flaw in its pleading

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[9] Given the Court's ruling it is not necessary, or appropriate, to address the Defendants' additional arguments for dismissal. Dumas v. Major League Baseball Prop., 104 F. Supp.2d 1220, 1223 (S.D. Cal. 2000), aff'd sub nom., Chaset v. Fleer/Skybox Int'l, LP, 300 F.3d 1083 (9th Cir. 2002).

and therefore any further amendment to its Amended Complaint would be futile and will not be permitted. Chaset v. Fleer/Skybox Int'l, 300 F.3d 1083, 1087-88 (9th Cir. 2002) (denying plaintiff leave to amend where he lacked standing to sue under RICO). Although Canyon County asserts that it is bringing a "one-count Complaint," (Am. Compl. ¶ 10), in addition to its RICO claim it alleges that Defendant Pacheco's actions violate the Idaho Racketeering Act, (Am. Compl. ¶¶ 48-51). The Court's jurisdiction over any state law claim is supplemental in nature. 28 U.S.C. § 1367(a). Now that Canyon County's federal claims are to be dismissed, "the balance of factors... will point toward declining to exercise jurisdiction over the remaining state-law claims." Acri v. Varian Assoc., Inc., 114 F.3d 999, 1001 (9th Cir.1997). To the extent that Canyon County asserts a state law claim against Defendant Pacheco the Court declines to exercise jurisdiction over the same pursuant to § 1367(c)(3) and it will be dismissed without prejudice to Canyon County refiling the claim in state court. See Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1392 (9th Cir. 1997).

ORDER

Based on the foregoing, and the Court being fully advised in the premises, it is **HEREBY ORDERED** that Defendants' Motions to Dismiss (docket nos. 29, 31, 33, 34, & 36) are **GRANTED** as follows: all federal claims set forth in Plaintiff Canyon County's First Amended Complaint are **DISMISSED with prejudice;** any state law claim

for relief set forth in Plaintiff Canyon County's First Amended Complaint against Defendant Pacheco is **DISMISSED without prejudice** subject to refiling in state court; and the above entitled action is **DISMISSED** in its entirety. All other pending motions are rendered moot by this order and are dismissed.

DATED: **December 14, 2005**
Honorable Edward J. Lodge
U. S. District Judge

FOR THE DISTRICT OF IDAHO
SOUTHERN DIVISION

CANYON COUNTY, A Political Subdivision of the State of Idaho,	)	**Case No. CV05-306-S-EJL**
Plaintiff,	)	**FIRST AMENDED COMPLAINT AND DEMAND FOR A JURY TRIAL**
v.	)	
SYNGENTA SEEDS, INC., a Delaware Corp., SORRENTO LACTALIS, INC., a Delaware Corporation, SWIFT BEEF COMPANY, a Delaware Corporation, HARRIS MORAN SEED CO., a California Corporation, and ALBERT PACHECO, an individual,	)	
Defendants.	)	

Plaintiff, Canyon County, a political subdivision of the State of Idaho, hereby complains of the defendants, Syngenta Seeds, Inc., Sorrento Lactalis, Inc., Swift Beef Co., Harris Moran Seed Co., Idaho Migrant Council, Inc., and Albert Pacheco, as follows:

I. INTRODUCTION

1. This is an action brought by Canyon County for damages it has suffered as a direct result of the knowing employment of large numbers of illegal immigrants by the defendants. This is hereafter referred to as "the Illegal Immigrant Hiring Scheme."

2. Canyon County has been damaged by the Illegal Immigrant Hiring Scheme because it has paid millions of dollars for health care services and criminal justice services for the illegal immigrants who have been employed by the defendants in violation of federal law.

3. By bringing this action, Canyon County seeks to be reimbursed for these costs.

II. PARTIES, JURISDICTION AND VENUE

4. Plaintiff, Canyon County, Idaho is a political subdivision of the State of Idaho.

5. Defendant Albert Pacheco is a citizen of Idaho.

6. Defendant Sorrento Lactalis, Inc. is a corporation organized under the laws of the State of Delaware with its primary place of business in the State of New York.

7. Defendant Swift Beef Co. is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of Colorado.

8. Defendant Syngenta Seeds, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of Minnesota.

9. Harris Moran Seed Co. is a corporation organized under the laws of the State of California with its principal place of business in the State of California.

10. This Court has subject matter jurisdiction over this one-count Complaint pursuant to 28 U.S.C. §1331 as a federal question, as it arises from the Racketeer Influenced and Corrupt Organizations Act (hereafter "RICO"), 18 U.S.C. § 1961, *et seq*. The Court also has jurisdiction pursuant to the statute's jurisdictional provision for civil actions, 18 U.S.C. §1964(a).

11. Venue is proper in this district because the acts giving rise to the Complaint all occurred here.

III. DEFENDANTS SYNGENTA SEEDS, INC. AND HARRIS MORAN SEED CO. HAVE COMMITTED A PATTERN OF RACKETEERING ACTIVITY THROUGH THE AG SERVICES ASSOCIATION-IN-FACT ENTERPRISE

12. Defendants Syngenta Seeds, Inc. and Harris Moran Seed Co. are growers and processors of corn and other agricultural commodities. They each have large facilities in Canyon County employing several hundred workers.

13. For at least the last three years both of these companies have engaged in an Illegal Immigrant Hiring Scheme, a deliberate pattern of employing hundreds of workers who each company knew were unauthorized for employment in the U.S.

14. The employment of these illegal immigrants violates 274 of the Immigration and Nationality Act (hereafter "the INA"),codified at 8 U.S.C. §1324(a). In particular, Canyon County alleges that these defendants have each violated 8 U.S.C. § 1324(a)(3)(A) by knowingly employing ten (10) or more illegal immigrants per year for the last four (4) years. (This is hereafter referred to as "the knowingly hiring violation.")

15. In addition, Canyon County alleges that Syngenta Seeds, Inc. and Harris Moran Seed Co. have also violated a different provision of § 274 of the INA, 8 U.S.C. § 1324(a)(l)(A)(iii) by "harboring"

illegal immigrants. Employing illegal immigrants constitutes harboring them. (This is hereafter referred to as "the harboring violation.")

16. Canyon County has determined that these defendants are engaged in an Illegal Immigrant Hiring Scheme through a farm labor contractor, Ag Services Inc., and its principal, Roberto Corral, who recruit illegal immigrants for hire.

17. These defendants have entered into a long-term agreement with Ag Services and Roberto Corral to recruit workers who are known to have entered the U.S. illegally, typically recruited by Mr. Corral himself through his business operations in Mexico. Canyon County believes Roberto Corral is the principal of Ag Services. He operates the business from Canyon County and Mexico.

18. Syngenta Seeds, Inc. and Harris Moran Seed Co. have each agreed to employ illegal immigrants supplied by Mr. Corral and Ag Services. They know that Mr. Corral and Ag Services supply primarily illegal immigrants, thereby enabling them to easily execute the Illegal Immigrant Hiring Scheme, which they could not do on their own because they lack the virtually limitless pool of illegal Mexican workers that Mr. Corral and Ag Services offer. Additionally, through the use of Ag Services and Mr. Corral, defendants are able to distance themselves from their criminal activity, thereby using Ag Services as a "front company."

19. Accordingly, the illegal workers procured by Ag Services and Mr. Corral are paid by checks issued from Ag Services, when in reality they are employees of Syngenta Seeds, Inc. and Harris Moran Seed Co. Defendants then pay a fee to Ag Services to reimburse it for the wages it has paid to each illegal worker and an additional fee for providing the service.

20. The hiring process is "outsourced" by the defendants to Ag Services and Mr.Corral in other crucial ways. For example, Canyon County believes Ag Services and Mr. Corral complete the 1-9 forms for each illegal immigrant hired, noting on the form the fraudulent document numbers each worker is using to demonstrate employment authorization. In fact, at all times, Ag Services, Mr. Corral and defendants know the vast majority of these workers are illegal immigrants, not authorized for employment, and have purchased or been supplied false authorization documents.

21. Canyon County believes Ag Services obtains or facilitates the procurement of false documents for each illegal worker.

22. Thus, Syngenta Seeds, Inc, and Harris Moran Seed Co. are RICO persons, pursuant to 18 U.S.C. §1961(3).

23. In addition, both Syngenta Seeds, Inc., and Harris Moran have each entered into an association-in-fact enterprise, pursuant to 18 U.S.C.

§ 1961(4), with both Ag Services and Mr. Corral for the procurement of primarily illegal immigrant workers.

24. These enterprises have existed over time, have a hierarchical division of roles and responsibility and have succeeded in obtaining hundreds of illegal immigrant workers for each defendant for the purpose of reducing labor costs. Thus, the Illegal Immigrant Hiring Scheme is a "pattern of racketeering activity," pursuant to 18 U.S.C. § 1961(5).

25. Each association-in-fact enterprise affects interstate commerce. Additionally, each member of the enterprise has a separate, legal existence apart from the execution of the Illegal Immigrant Hiring Scheme. Ag Services is a corporation. It supplies some legal workers to some of its clients. Mr. Corral is its principal and engages in both legal business and the racketeering activity described herein.

26. Canyon County has been proximately harmed by the racketeering activity committed by Syngenta Seeds, Inc., and Harris Moran Seed Co., the Illegal Immigrant Hiring
Scheme, because it has been forced to spend money to provide medical and criminal justice services for many of these illegal immigrants.

27. Canyon County will be able to determine what portion of its damages have been caused by

each defendant after conducting discovery and through expert testimony.

28. Finally, Canyon County believes the Illegal Immigrant Hiring Scheme is open-ended racketeering activity, and will not stop without judicial intervention. The defendants are dedicated to employing as many illegal immigrant workers as they can in Canyon County.

29. Therefore, Canyon County alleges that Syngenta Seeds, Inc., and Harris Moran Seed Co., have each committed a long-term pattern of racketeering activity, the Illegal Immigrant Hiring Scheme, in violation of § 274 of the INA, which is made a RICO predicate offense by 18 U.S.C. § 1961(1)(F), by participating in an association-in-fact enterprise, consisting of itself, Ag Services and Mr. Corral, in violation of 18 U.S.C. § 1962(c). (Ag Services and Mr. Corral are not named as defendants.)

IV. SORRENTO LACTALIS, INC. AND SWIFT BEEF CO. HAVE FORMED ASSOCIATION-IN-FACT ENTERPRISES WITH LABOR READY

30. Defendants Sorrento Lactalis, Inc. and Swift Beef Co. are two of the largest employers in Canyon County. Sorrento Lactalis, Inc. is a cheese processor. Swift Beef Co. is a meat packer. Each needs large numbers of unskilled and semi-skilled workers. Each has met its hiring needs for the last four years by engaging in the same Illegal Immigrant

Hiring Scheme, for the same purpose, as detailed above. The only difference is that these defendants have formed association-in-fact enterprises with Labor Ready of Nampa, Idaho, primarily for the recruitment and employment of illegal immigrants. (Plaintiffs allege, however, some legal workers are also employed.)

31. Canyon County believes these association-in-fact enterprises have existed for the last four years and have resulted in the employment by each defendant of more than ten (10) illegal immigrants per year.

32. Canyon County believes these enterprises operate in the same manner as the enterprises described above and with the same results. As a direct and proximate result of the Illegal Immigrant Hiring Scheme, Canyon County has been forced to expend its resources for health care and criminal justice services for these illegal immigrants.

33. As asserted above, Canyon County has been directly and proximately harmed by the defendants' pattern of racketeering activity. The County believes it will be able to prove through discovery and expert testimony what portion of its damages have been caused by each of these defendants.

34. As asserted above, each of the defendants is a RICO person; each enterprise affects interstate commerce, and the Illegal Immigrant Hiring Scheme

is ongoing, long-term racketeering activity which will not stop unless halted by judicial intervention.

35. Additionally, the objective of the Illegal Immigrant Hiring Scheme is to reduce labor costs.

36. Accordingly, Canyon County alleges that both of these defendants have violated § 1962(c) of RICO by committing a pattern of racketeering activity, the Illegal Immigrant Hiring Scheme, through each association-in-fact enterprise with Labor Ready.

V. ALBERT PACHECO HAS CONSPIRED TO HARBOR ILLEGAL IMMIGRANTS IN CANYON COUNTY AND TO PRESENT FALSE CLAIMS TO THE COUNTY

A. Fraudulently Obtaining Benefits From The Canyon County Indigent Fund For Known Illegal Immigrants

37. Defendant Albert Pacheco (Pacheco) has been Executive Director of the Idaho Migrant Council, a non-for-profit corporation (hereafter "the Council"), since 2003. The Council provides services to needy persons (hereafter "Council recipients"). Pacheco has directed his staff of case workers at the Council to provide services to Council recipients without regard to their immigration status.

38. During the course of the relationships which develop between the case workers and Council

recipients, the case workers come to know that many of these persons are illegal immigrants and are using falsified identity documents, typically Resident Alien and Social Security Cards which they have illegally purchased.

39. Pacheco has been advised by the case workers that many of the Council recipients are illegal immigrants using false identity documents. He has consistently directed the case workers to ignore these facts and continue to take steps to enroll these illegal immigrants onto federal, state and county social programs with their false identity documents (hereafter "Pacheco's Policy of Willful Blindness and Harboring"). Pacheco knows these people are ineligible to receive any "public benefit" pursuant to federal law, 8 U.S.C. §1621, and is therefore, directing his staff to harbor these illegal immigrants by shielding them from detection, law enforcement and deportation proceedings.

40. Accordingly, pursuant to Pacheco's Policy of Willful Blindness and Harboring, Council case workers have taken known illegal immigrants to the Canyon County Courthouse and completed applications for medical assistance from the County's indigent fund knowing these people were using false and stolen drivers licenses and social security numbers, and further knowing they are making false statements on their Uniform County Medical Assistance Applications regarding their status as U.S. Citizens or Legal Aliens, sponsors, spouse's citizenship or lawful resident alien status.

41. Many such persons have subsequently obtained assistance from the County's indigent fund as a result of Pacheco's Policy of Willful Blindness and Harboring, which has cost the County an unspecified sum of money.

B. Fraudulently Obtaining Housing For Illegal Immigrants Through The Caldwell Housing Authority

42. Pursuant to Pacheco's Policy of Willful Blindness and Harboring, he has directed his staff at the Council to take efforts to obtain housing on behalf of persons known to be using false and fraudulent identity documents, i.e., are illegal immigrants. Pacheco does so in violation of 8 U.S.C. § 1621, which bars illegal immigrants from receiving any "public benefits," which includes housing provided by the Caldwell Housing Authority.

43. Pursuant to these directions, the Caldwell Housing Authority, whose executive director is Pacheco's wife, has provided housing to these illegal immigrants. Many of these illegal immigrants have cost Canyon County money by seeking public assistance from the County, to which they are not entitled, and by burdening the County's criminal justice system when they commit crimes.

C. Pacheco's Actions Violate RICO

44. As indicated, Pacheco has committed a pattern of racketeering activity, knowingly harboring illegal immigrants, through the Idaho Migrant Council, which is a RICO enterprise, pursuant to 18 U.S.C. § 1961(4). This enterprise affects interstate commerce.

45. The objective of Pacheco's racketeering activity is to obtain public assistance for illegal immigrants.

46. Pacheco's harboring of illegal immigrants is a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5), which has proximately damaged Canyon County by fraudulently causing it to expend money for these illegal immigrants.

47. Canyon County believes Pacheco is conspiring with others at the Idaho Migrant Council to perpetrate his racketeering activity. Therefore, the County alleges he has violated 18 U.S.C. § 1962(d), by conspiring to harbor illegal immigrants in violation of 18 U.S.C. §1962(c), with as of yet unnamed co-conspirators.

D. Pacheco's Actions Violate the Idaho Racketeering Act

48. In addition, Pacheco's Policy of Willful Blindness and Harboring violates the Idaho Racketeering Act. As indicated, the policy results in

the submission of false claims for payment to Canyon County. By conspiring to submit false documents to the County, Pacheco has violated Idaho Code, § 18-2706, which is a felony.

49. This provision is made a "racketeering" offense by § 18-7803(10) of the Idaho Racketeering Act (hereafter "the Act").

50. Canyon County asserts a claim against Pacheco pursuant to § 18-7804(d) of the Act for his pattern of conspiring to violate 18-2706, as described herein, through the Idaho Migrant Council, an enterprise, continuously, since 2003.

51. Canyon County is entitled to damages caused by Pacheco's violations of the Act, pursuant to § 18-7805 of the Act.

VI. PRAYER FOR RELIEF

52. Canyon County seeks damages as follows:

> A. Judgment in its favor against all of the defendants in an amount triple the damages each has caused Canyon County through its or his racketeering activity, pursuant to 18 U.S.C. § 1964(c);
>
> B. Judgment against Albert Pacheco in an amount triple the damages he has caused Canyon County through his

racketeering activity, pursuant to § 18-7805 of the Act.

C. For costs incurred in pursuing this action pursuant to *Federal Rules of Civil Procedure,* Rule 54 and §18-7805(a) of the Act.

D. For reasonable attorney' fees pursuant to 18 U.S.C. § 1964(c) and § 18-7805(a) of the Act;

E. For an injunction prohibiting Albert Pacheco from further participation with the Idaho Migrant Council or any other organization which seeks payments from Canyon County, pursuant to § 18-7805(c) and (d) of the Act;

F. For such other relief as this Court may deem just and proper.

VII. DEMAND FOR JURY TRIAL

53. Plaintiff hereby demands a jury trial pursuant to *Federal Rules of Civil Procedure,* Rule 38(b).

Dated this 17th day of August, 2005.

CANYON COUNTY, a Political Subdivision of the State of Idaho,

/s/Howard Foster
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Certificate of Service

I certify that on the 17th day of August, 2005, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing. Additionally, a copy of the foregoing was served on the following parties by first class mail, postage prepaid, addressed to:

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