

COPY

1 Thomas A. Saenz, State Bar No. 159430
2 Gladys Limón, State Bar No. 228773
3 MEXICAN AMERICAN LEGAL DEFENSE
4 AND EDUCATIONAL FUND
5 634 S. Spring Street
6 Los Angeles, California 90014
7 Telephone: (213) 629-2512
8 Facsimile: (213) 629-0266
9 Email: glimon@maldef.org

10 Belinda Escobosa Helzer, State Bar No. 214178
11 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
12 2140 West Chapman Ave, Suite 209
13 Orange, California 92868
14 Telephone: (714) 450-3962
15 Facsimile: (714) 450-3969
16 Email: bescobosahelzer@aclu-sc.org

17 *Attorneys for Plaintiffs*
18 (Additional Attorneys for Plaintiffs listed on next page)

19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ASOCIACION DE JORNALEROS DE
COSTA MESA, an unincorporated
association; and COLECTIVO
TONANTZIN, an unincorporated
association,

Plaintiffs,

v.

CITY OF COSTA MESA; and DOES 1
through 10, inclusive,

Defendants.

Case No. SACV10-00128 CJC (RNBx)

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

42 U.S.C. § 1983 (First and Fourteenth
Amendment)

DEMAND FOR JURY TRIAL

FILED
2010 FEB -2 AM 10:23
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY: _____

1 Additional Plaintiffs' Attorneys:

2 Hector O. Villagra, State Bar No. 177586
3 Peter J. Eliasberg, State Bar No. 189110
4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
5 1313 W. 8th Street
6 Los Angeles, CA 90017
7 Telephone: (213) 977-9500
8 Facsimile: (213) 977-5297
9 Email: hvillagra@aclu-sc.org
10 peliasberg@aclu-sc.org

11 Chris Newman, State Bar No. 255616
12 NATIONAL DAY LABORER ORGANIZING NETWORK
13 675 S Park View Street, Suite B
14 Los Angeles, CA 90057
15 Telephone: (213) 380-2785
16 Facsimile: (213) 380-2787
17 Email: newman@ndlon.org

18
19
20
21
22
23
24
25
26
27
28

1 INTRODUCTION

2 1. This civil rights action challenges a Costa Mesa Municipal Code provision
3 that suppresses and unduly chills protected speech and expression in violation of the
4 First and Fourteenth Amendments to the United States Constitution.

5 JURISDICTION & VENUE

6 2. This court has jurisdiction over this action under 28 U.S.C. §§ 1331,
7 1343(a), and 2201, as well as under 42 U.S.C. § 1983.

8 3. Under 28 U.S.C. § 1391(b), venue is proper in this district because
9 defendants reside in this district and the events giving rise to the claims occurred and
10 occur in this district.

11 PLAINTIFFS

12 4. The Asociación de Jornaleros de Costa Mesa (“Asociación de Jornaleros”),
13 or Association of Day Laborers of Costa Mesa, is an unincorporated association
14 comprised of day laborers who seek to defend their rights and to address the difficulties
15 that they face in seeking temporary work as day workers. The day laborers who make
16 up the Asociación de Jornaleros are largely disenfranchised members of society who
17 depend on day work to sustain their economic survival. Day labor is critical, and often
18 times the only means of sustainability, providing Plaintiff Asociación de Jornaleros’
19 members with an opportunity to work despite political and educational barriers, or lack
20 of well-paid work in the formal economy. The day laborers regularly seek to advocate
21 for and defend their plight by obtaining honest day work in the City of Costa Mesa.
22 This includes day laborers who desire to express their need and availability for work
23 through means prohibited by the municipal code provision challenged in this action.
24 But for the code provisions, these members would engage in expressive activity
25 indicating their need and availability for work on sidewalks and on other public areas of
26 Costa Mesa.

1 such as “waving arms, making hand signals, shouting to someone in a traveling vehicle,
2 jumping up and down, waving signs pointed so as to be readable by persons traveling in
3 vehicles, quickly approaching nearer to vehicles which are not lawfully parked, and
4 entering the roadway portion of a street.” COSTA MESA, CAL., CODE § 10-354.2(1). The
5 Ordinance excludes from the definition of “actively solicit” “peaceably standing on a
6 sidewalk, or on a parkway on any street segment without a sidewalk, with a sign seeking
7 employment, contribution or business,” distributing “literature to pedestrians or
8 occupants of legally parked vehicles,” or “verbally communicating desire or availability
9 for employment, contributions or business to pedestrians or to persons in lawfully
10 parked vehicles.” *Id.*

11 10. Costa Mesa Municipal Code § 10-354(b) makes it unlawful for any
12 occupant of a motor vehicle traveling along a street to solicit employment of, to solicit
13 from or make contributions to, or to solicit or engage in a business transaction with, any
14 person standing on a street.

15 11. The Ordinance deems a “solicitation” to be complete “when made whether
16 or not an actual employment relationship is created, a transaction is completed, or an
17 exchange of money takes place.” COSTA MESA, CAL., CODE § 10-354.2(9). The
18 Ordinance therefore regulates speech alone, on the basis of its content – messages
19 soliciting employment, business, and contributions – without requiring that any conduct
20 be attached.

21 12. A violation of the Ordinance is a misdemeanor punishable by a fine not
22 exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding
23 six (6) months, or by both such fine and imprisonment. *See* COSTA MESA, CAL., CODE
24 §§ 10-63, 1-33(b).

25 13. Many persons, including members of Plaintiffs Asociación de Jornaleros,
26 have previously expressed their need and availability for work while peacefully standing
27 on a public sidewalk or other public way, to persons in vehicles on the street, and have
28 obtained work performing services such as gardening, moving, and light construction.

1 Plaintiff Asociación de Jornaleros' members and other day laborers wish to continue to
2 engage in such expressive activity on sidewalks and other public areas in Costa Mesa to
3 indicate their availability to work.

4 14. Day laborers, including Plaintiff Asociación de Jornaleros' members, fear
5 expressing their need and availability for work in the manner they have used in the past
6 because Costa Mesa Municipal Code § 10-354(a) subjects them to the danger of arrest,
7 fines, and other penalties should they engage in such expression. These day laborers are
8 also harmed by Costa Mesa Municipal Code § 10-354(b), which prohibits individuals
9 who wish to hire them from receiving their communication and communicating to them
10 in response.

11 15. The Ordinance prohibits and regulates speech and other expressive activity
12 in areas, such as public sidewalks and other public areas that are traditional public fora.

13 16. The Ordinance applies only to speech soliciting employment, business, and
14 contributions, while speech of a different content, even if expressed in the same time,
15 place, and manner, is not proscribed or regulated.

16 17. Solicitation speech is undisputedly a form of expression entitled to the
17 same constitutional protections as traditional speech. The Ordinance is a content-based
18 regulation of protected free speech because it distinguishes favored speech from
19 disfavored speech based on the content of the message. The Ordinance prohibits
20 someone from waiving a sign making their availability to work known to passing
21 vehicles, but, for example, allows someone to shout and vigorously waive a sign at
22 motorists soliciting political support to end the war.

23 18. Enforcement of the Ordinance requires law enforcement officers to
24 scrutinize the content of the speech. While a person standing on a sidewalk waiving an
25 American flag and shouting at vehicles to "support the troops" would pass scrutiny
26 under the Ordinance, school children waiving an American flag and shouting, "car wash
27 for \$5" would be found in violation thereof. The legality of the speech therefore turns
28 on the message, or content, of the speech. Content-based speech restrictions in

1 traditional public fora are presumptively unconstitutional and must satisfy strict
2 scrutiny.

3 19. Defendant City lacks either a compelling or substantial legitimate
4 governmental interest in regulating speech and expression in the manner accomplished
5 by the Ordinance.

6 20. The Ordinance is not the least restrictive means to further any compelling
7 or substantial governmental interest.

8 21. Even if it were content-neutral, the Ordinance fails to pass constitutional
9 muster because its restrictions are not sufficiently narrowly tailored to serve any
10 significant governmental interest that the City designed it to serve.

11 22. The Ordinance also fails to leave ample alternative avenues of
12 communication open for proscribed speech of the specified content – solicitation of
13 employment, business, or contributions.

14 23. The Ordinance is overbroad and burdens substantially more speech than is
15 necessary to further any governmental interest.

16 24. The Ordinance is vague and fails to provide sufficient notice of what is
17 prohibited as to allow individuals to conform their conduct to the requirements of the
18 law and prevent arbitrary and discriminatory enforcement. Specifically, the
19 Ordinance's attempt to distinguish between unlawful "active solicitation" versus lawful
20 passive solicitation is illusory and impermissibly vague: the Ordinance allows an
21 individual to actively and publicly announce his or her availability for employment, but
22 only if he or she does so without intentionally attracting the attention of a passing
23 motorist. The purported distinction leaves both the speaker and law enforcement
24 officers to guess as to what speech activity is unlawful and requires law enforcement to
25 decipher the speaker's subjective intent. A person peacefully standing on a sidewalk
26 may turn her sign soliciting work in a manner to be better seen by passing pedestrians,
27 but a law enforcement officer may interpret the action of turning the sign as an act
28 intended to attract the attention of a passing vehicle. The purported distinction is

1 arbitrary, lends itself to discriminatory enforcement, and cannot meet the stringent
2 standards of clarity required by the First Amendment on restrictions of free speech
3 rights.

4 FIRST CLAIM

5 (42 U.S.C. § 1983 -- First and Fourteenth Amendments)

6 25. Plaintiffs reallege paragraphs 1- 24 of this Complaint as though fully set
7 forth here.

8 26. By leaving in place, enforcing, and/or threatening to enforce the Ordinance,
9 Defendant City deprives plaintiffs and others of rights guaranteed by the First
10 Amendment and Fourteenth Amendment of the United States Constitution. Defendant
11 commits these unconstitutional acts under color or authority of law.

12 27. Continued enforcement or threats of enforcement of the Ordinance violate
13 plaintiffs' rights and the rights of others that are protected by the First and Fourteenth
14 Amendments of the United States Constitution. This provision therefore should be
15 enjoined and its previous enforcement nullified.

16 SECOND CLAIM

17 (28 U.S.C. § 2201 – Declaratory Relief)

18 28. Plaintiffs reallege paragraphs 1- 27 of this Complaint as though fully set
19 forth here.

20 29. An actual controversy exists between Plaintiffs and Defendant regarding
21 the constitutionality and legal enforceability of the Ordinance.

22 30. Plaintiffs are entitled to a declaration of their rights with regard to the
23 Ordinance.

24 PRAYER FOR RELIEF

25
26 31. Because of the actions alleged above, Plaintiffs seek judgment against
27 Defendant as follows:
28

1 a. That Defendant be enjoined in perpetuity from enforcing Costa Mesa
2 Municipal Code § 10-354;

3 b. That Costa Mesa Municipal Code § 10-354 be declared null and void
4 as unconstitutional in violation of the First and Fourteenth Amendments of the United
5 States Constitution;


6 c. That Plaintiff Colectivo Tonanztin recover damages in an amount to
7 be proved at trial;

8 d. That Plaintiffs recover from Defendant, under 42 U.S.C. § 1988, all
9 of Plaintiffs' reasonable attorneys' fees, costs, and expenses of this litigation; and

10 e. That Plaintiffs recover such other relief as the Court deems just and
11 proper.

12
13
14 Dated: February 1, 2009

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

15
16 By 
17 Gladys Limón

18 Attorneys for Plaintiffs

19
20 Dated: February 1, 2009

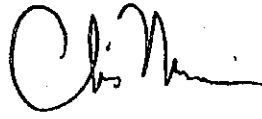
ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

21
22 By 
23 Belinda Escobosa Helzer

24 Attorneys for Plaintiffs
25
26
27
28

Dated: February 1, 2009

NATIONAL DAY LABORER
ORGANIZING NETWORK

By 
Chris Newman
Attorney for Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

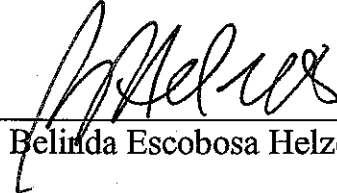
DEMAND FOR JURY TRIAL

Please take notice that Plaintiff COLECTIVO TONANTZIN demands trial by jury of all claims and issues to which it is available.

Dated: February 1, 2009

ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

By



Belinda Escobosa Helzer

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28