

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
[Houston Division]**

JORNALEROS de LAS PALMAS,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO.
	§	
CITY OF LEAGUE CITY, TEXAS, et al	§	4:11-cv-02703
	§	
	§	
Defendants	§	

**FIRST AMENDED ANSWER OF DEFENDANTS CITY OF LEAGUE CITY, TEXAS,
LEAGUE CITY POLICE DEPARTMENT AND DOUGLAS WOLOGO IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES AS CHIEF OF POLICE**

TO THE HONORABLE UNITED STATES MAGISTRATE:

DEFENDANTS, City of League City, Texas, (“League City”), Douglas Wologo, in his individual and official capacities as Acting Chief of Police of League City, (“Wologo”), and the League City Police Department (“LCPD”) (hereafter collectively the “League City Defendants”) answer as follows to Plaintiff’s Corrected First Amended Complaint for Declaratory and Injunctive Relief (the “Complaint”):

First Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted as to all respective Defendants except for the City of League City, Texas, individually, collectively or in their respective official capacities. FED. R. CIV. P. 12(b)(6). A 12(b)(6) Motion To Dismiss as to all Defendants save and except League City is filed under separate cover concurrently with this Answer. Defendants’ Amended Answer is subject to and incorporates verbatim Defendants’ Motion to Dismiss as if incorporated herein.

Second Affirmative Defense

Plaintiff, as an amorphous “association of members”, lacks legitimacy and legal capacity or authority to be a representative on behalf of its putative members or on behalf of other persons who are not members whether they be Latinos, Hispanics or day laborers. This is not a class action nor a collective action.

Third Affirmative Defense

Plaintiff lacks standing to sue in a representational capacity to seek remedies for its members. Plaintiff lacks any standing whatsoever to represent other day laborers, Hispanics or Latinos.

Fourth Affirmative Defense

League City Defendants each and all collectively assert a defense of sovereign, qualified and/or governmental immunity, as applicable. With respect to the matters complained of in the Complaint, League City acted within its discretionary power as a duly constituted, home rule, incorporated and chartered municipality. Defendant Wologo acted within his discretionary power as a governmental official and chief peace officer of League City. Defendant League City Police Department, to the extent that it is legally able, asserts governmental immunity.

Fifth Affirmative Defense

On the facts alleged in the Complaint, no municipal policy of Defendant League City exists for purposes of Plaintiff’s maintenance of an action under 42 U.S.C. § 1983. In the absence of a duly adopted municipal policy, no action can prevail under 42 U.S.C. § 1983, and no liability can attach to Defendant League City under 42 U.S.C. § 1983 or under the doctrine of *respondeat superior*. Special Order 09-07 is not policy of League City Defendants. Plaintiff has asserted no other custom, policy or practice that would constitute a municipal policy, actual or de

facto, for which the City of League City would be liable under 42 U.S.C. § 1983 or otherwise.

Sixth Affirmative Defense

Plaintiff's claims alleged against former, Chief Jez and currently against Defendant Wologo are not actionable under 42 U.S.C. § 1983. Although both, at their respective times, were vested with policymaking authority, with respect to the facts alleged in the Complaint, as is necessary for the acts of a municipal officer sued in his official capacity to be actionable under 42 U.S.C. § 1983 because neither one issued, promulgated nor implemented an official policy that served as the basis for the violation of Plaintiff's or its members' constitutional rights. Special Order 09-07 is not an official policy of any Defendant herein. No policy affecting Plaintiff or its members was ever adopted or passed by City Council of the City of League City.

Seventh Affirmative Defense

Pursuant to FED. R. CIV. P. 5.1(a), the Attorney General of the State of Texas is a necessary party, since Plaintiff challenges the constitutionality of a Texas statute.

Eighth, Ninth and Tenth Affirmative Defenses

The League City Defendants assert defenses of *res judicata* and collateral estoppel to Plaintiff's claims. Plaintiff seeks in this action to attack the constitutionality of a statute, Texas Transportation Code § 552.007, and § 30.05 of the Texas Penal Code under which certain persons, alleged in the Complaint to be members of Jornaleros de Las Palmas, have been arrested and prosecuted. Based on information and belief, all persons were charged and convicted on the basis of *nolo contendere* or guilty pleas to each charge. However, those misdemeanor criminal cases have already been concluded by final adjudication on the merits, in which the persons so arrested and prosecuted raised no constitutional challenge to the statute under which they were prosecuted and adjudged to be guilty, and the time allowed by state law for appeal of the

convictions in question has passed. In the instant case, Plaintiff's constitutional challenges to the adjudicated cases amounts to impermissible collateral attack on each conviction, outside of the appellate process, to which defenses of *res judicata* and collateral estoppel apply. Further, the arrests were valid and appropriate to which the arrestees pled guilty or nolo contendere and did not contest or appeal same. Consequently, none of the persons (if they include Plaintiff's members) who were arrested may assert a 42 U.S.C. § 1983 cause of action since their convictions were validated by their admissions of guilt; thereby precluding a § 1983 Plaintiff or member of Plaintiff from a cognizable cause of action under § 1983. A § 1983 Plaintiff must prove that the conviction has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v Humphrey*, 512 S.Ct. 477, 486-87 (1994); See also, *Hudson v. Hughes*, 98 F.3rd 868, 873 (5th Cir. 1996) and *King v. City of Pearl River*, 2010 WL 2651645(E.D.La.). If Plaintiff's members cannot assert cognizable §1983 claims and invalid, as the representative of such claimants, Plaintiff's rights are not greater, superior, cognizable or valid. Plaintiff derives its rights from its members only and has no individual rights itself, separate or distinct from its members.

Eleventh Affirmative Defense

Although the Complaint does not directly attack League City Ordinance § 78-39, the actions complained of in the Complaint were carried out by League City Police officers consistently with City of League City Ordinance § 78-39 ("solicitation by pedestrians on roadway"). The constitutionality of Ordinance § 78-39 was upheld, against a challenge raised under the First Amendment, by the United States Court of Appeals for the Fifth Circuit, in *Houston Chronicle Publishing Co. v. City of League City, Texas*, 488 F. 3d 613 (5th Cir. 2007).

Plaintiff should be estopped from collaterally attacking the extant effort and approach via this suit since the provisions of the challenged state statute are the same or similar to the Ordinance.

Twelfth Affirmative Defense

The actions complained of in the Complaint were a lawful exercise of League City's general police powers. Police officers of League City were at all relevant times legally enforcing one or more existing state laws as they have a legal obligation and authority to do granted to them by the State of Texas and the state legislature.

Thirteenth Affirmative Defense

To the extent that Plaintiff seeks equitable, injunctive relief against League City Defendants, such Defendants assert equitable defenses of estoppel, waiver, and laches. A party seeking equity must act diligently in pursuit of its claimed rights, but Plaintiff has failed to do so. Plaintiff's lack of diligence in bringing suit, in the face of alleged irreparable harm is counterintuitive and counterproductive decreasing veracity of irreparable harm.

Fourteenth Affirmative Defense

The Complaint fails to plead or establish any factual basis to establish that any irreparable harm or injury occasioned by arrests, citations or other alleged violations of members' or Plaintiff's constitutional rights has occurred or will continue to occur on or after February, 2010, which further precludes the granting of any equitable, injunctive relief either temporary or permanent.

Fifteenth Affirmative Defense

Police Officers of League City exercised equal enforcement of the same state and local laws with regard to all people who violated them regardless of race, color, ethnicity, age, sex, or any other protected category, status or classification. Neither Plaintiff, nor its alleged putative

members, were singled out or targeted for enforcement purposes. Plaintiff has failed to allege or provide any disparity among classifications or groups of persons. Other Latinos, day laborers or Hispanic non-members of Plaintiff were not singled out for enforcement and arrested or cited no less than nor more than any other demographic category of persons or those within protected groups.

Sixteenth Affirmative Defense

To the extent that members of Plaintiff or other persons upon whose behalf this action is purportedly brought are in the United States without valid, legal authorization or documentation and/or a valid permit that allows them to work, such status itself is a civil violation of federal law. Although solicitation for employment is not in and of itself an unlawful criminal activity, employment without authorization and appropriate documentation is illegal and prohibited. Illegal unauthorized presence together with solicitation for illegal employment does not rise to a level protected by the First or Fourteenth Amendments to the U.S. Constitution, or in equity. Instead of seeking equal enforcement of the laws on behalf of its members, Plaintiff seeks the unfettered ability and protection for itself and its members to be allowed to do illegal acts with impunity and immunity under the guise of First and 14th Amendment protection. Neither the First Amendment, the Fourteenth Amendment nor equity have ever been stretched to such an inequitable extent nor were they ever meant to.

Seventeenth Affirmative Defense

The acts of soliciting employment by day laborers amount to no more than expressive conduct under the continuum of First Amendment recognition. In the process of seeking employment in the context of pedestrian roadside solicitation, Plaintiff's members who consist of predominately uneducated, often illiterate males with limited to no understanding of the English

language or the ability to converse in English virtually never participate in any actual “speech” in the sense of the exchange of ideas or the discussion of intellectual issues and concepts (the usual content of free speech under the First Amendment). Instead, their alleged “speech” consists of the mutual acknowledgment that two fingers raised in their direction “means” two workers are needed for a job. Without any words being actually spoken, two or more day laborers jump into a truck/van/car with no discussion of wage rates, age, insurance, benefits, or even ability to do the work to be done, much less a discussion of work authorization or the presentation of I-9 documentation as required by federal law. The lack of actual speech content to the overly simplified acts of communicating this most basic of all commercial transactions underscores that this is not “speech solicitation” in the First Amendment sense of well established case law or the express language of the First Amendment itself. Pedestrian roadside solicitation is no more or less than commercial speech. As commercial speech, the constitutional standard for review of such speech is less stringent than traditional First Amendment speech. Further, commercial speech does not enjoy any constitutional protection if it is made in furtherance of an illegal purpose. Soliciting illegal employment is such an illegal purpose and is therefore without protection in the context of day laborers without legal or valid work authorizations.

Eighteenth Affirmative Defense

Section 552.007 of the Texas Transportation Code challenged in this legal action is not unconstitutional but, rather, reflects reasonable restrictions on the time, manner and place of speech; does not prohibit speech for its content; is narrowly tailored to meet a significant governmental interest (that is, public safety of all vehicular traffic, the safe flow of vehicular traffic on roadways within the jurisdiction of Defendant League City as well as the safety of pedestrians); and leaves open ample alternative means of expression for day laborers who require

open visibility and instantaneous recognition for successful employment opportunities.

Nineteenth Affirmative Defense

To the extent Plaintiff complains of the fact that League City does not expend public funds for Plaintiff or its members' benefit to maintain a place where Plaintiff or its members can solicit employment, League City answers further that it would be prohibited from doing so by the U.S. and Texas Constitutions, and by state and federal laws. Such an expenditure of public funds by League City to benefit a designated class of persons would amount to a denial of equal protection to citizens of League City who would not have the benefit of a publicly-funded municipal forum for soliciting employment; would violate federal laws making it illegal to aid or abet the illegal hiring or recruiting of undocumented labor; and would violate the provisions of the Texas Constitution setting out the permissible purposes for which a municipality can expend public funds. The Texas Constitution, Article 3 prohibits public funds expended for the benefit of private persons and further prohibits gifts of public funds. Further, all records and documents generated by such a facility would be subject to disclosure under the Texas Public Information Act and no records could be held confidentially.

Twentieth Affirmative Defense

The equitable relief sought by Plaintiff on behalf of its members is barred by the equitable doctrine of unclean hands. Plaintiff and its alleged members must do equity to expect equity from this Court. By encouraging themselves and others to violate federal and state laws, Plaintiff and its alleged members are not entitled to the protections of an injunction that would insulate them from the equal enforcement of the laws of this state for its members who violate the laws. Plaintiff cannot use equity to enforce unequal rights or gain protections no one else is entitled to, based upon principles of equity.

Twenty-First Affirmative Defense

League City Defendants, one and all, in all capacities, have never established, enforced, encouraged nor maintained any policy, custom, or practice that adversely affects Plaintiff or its alleged members related to the enforcement of Texas Transportation Code § 552.007, or any other state or federal laws including the First Amendment, the Fourteenth Amendment or the unequal application of federal or state laws for the benefit of or against any class of persons in a protected status. League City Defendants have never focused, targeted, racially profiled or singled out Plaintiff or its members for the disparate enforcement or treatment of any persons with regard to enforcement of the Texas (criminal trespass) Penal Code § 30.05 or any other state laws. League City Defendants do not enforce federal immigration laws and do not intend to, now or in the future (unless required by federal laws as they currently exist or may be amended in the future).

Twenty-Second Affirmative Defense

To the extent Plaintiff or its alleged members seek to enforce remedies for civil rights violations on the basis of race, ethnicity, or national origin discrimination, harassment or retaliation based on such protected status, Plaintiff has failed to allege a cause of action against League City Defendants under the 14th Amendment related to equal protection of the Plaintiff or its members or any other Hispanics, Latinos or non-member day laborers. Plaintiff has failed to allege any facts that would entitle it to any relief for violations of equal protection under the 14th Amendment or any other state or federal laws.

Twenty-Third Affirmative Defense

By this action, Plaintiff seeks unequal application and treatment for its members and requests protection of its members from the equal enforcement and application of state and

federal law, in order to favor and elevate the day laborers as a group to insulate them from the same obligations, restrictions, or responsibilities for compliance as all other persons must follow. By seeking to enjoin enforcement of Texas Transportation Code § 552.007 or Texas Penal Code § 30.05 against its members, Plaintiff seeks beneficial treatment for its members (as a protected group) that is not shared by all other persons under the laws in violation of the Fourteenth Amendment to the U.S. Constitution and Article I, §§ 3 and 3a of the Texas Constitution. Further, Plaintiff seeks to have this court provide greater protection of the laws for this self-selected group in securing an isolated application of the laws to preserve, institutionalize, and formalize an unique means or method of seeking employment that no other persons enjoy in the City of League City, this state, or this nation. Constitutional provisions for equal protection cannot be invoked to favor one group of persons over another as Plaintiff seeks in this action.

Twenty-Fourth Affirmative Defense

Plaintiff does not have, nor can it claim, a superior right on behalf of its members under the First and Fourteenth Amendments to the Constitution to use the streets of League City at any time as an instantaneous public forum to solicit employment. League City has a significant governmental interest in regulating public and private property, traffic and protecting public safety and in providing access for all persons to use the streets for lawful purposes. Streets are for traffic, safety, and direct access by pedestrians, and are not susceptible to characterization as a perpetual public forum uniquely available for public expression by Plaintiff and/or its members.

Twenty-Fifth Affirmative Defense

Defendant, League City Police Department, is not liable in the capacity in which it is sued. More specifically, the LCPD is a department established, funded and maintained by the City of League City and is not a separate entity in its own right or under a separate authority

other than the City Charter of the City of League City. The LCPD has no authority or capacity to establish formal city policy on its own. All policies that affect the City must be formally adopted by the City Council under state law and by City Charter. The LCPD did not, has not and will not formally adopt Special Order 09-07 as a policy of the Department. The LCPD has no custom, policy or practice of enforcing state laws, including § 552.007 of the Texas Transportation Code or § 30.05 of the Texas Penal Code in violation of the Plaintiff's or its members' constitutional rights or disparately based on protected statuses or classifications. The LCPD enforces the laws of this state equally and without consideration of race, sex, ethnicity, color or other classification including the Plaintiff and its members and all other Hispanics, Latinos and day laborers. Since Plaintiff has limited its relief and recovery to declaratory and injunctive relief, there is no basis under state or federal law to find liability against the LCPD as a separate entity.

Twenty-Sixth Affirmative Defense

Defendant, Douglas Wologo, Acting Chief of Police of LCPD, is not liable in the capacity in which he is sued in either his individual or official capacities. Plaintiff has alleged no facts that would serve as the basis for individual or official liability as to Chief Wologo. Wologo is an employee and agent of the City of League City. Wologo acts as a department head for the LCPD only. Chief Wologo neither established, issued or enforced Special Order 09-07 (issued by former Chief Jez) and he was in no way associated with the arrests that serve as the basis for the challenged state statutes that occurred before he became Acting Chief of Police. There is no basis to associate the Special Order 09-07 with Chief Wologo. Wologo has authority and capacity to establish policy for the LCPD only pursuant to General Orders; but no authority to affect City policy. All policies that affect the City must be formally adopted by the City Council under state law and by City Charter. Wologo did not, has not and will not formally adopt Special

Order 09-07 as a policy of the Department. Wologo has established no custom, policy or practice of enforcing state laws, including § 552.007 of the Texas Transportation Code or § 30.05 of the Texas Penal Code in violation of the Plaintiff's or its members' constitutional rights or disparately based on protected statuses or classifications. Wologo oversees and manages the equal enforcement the laws of this state without consideration of race, sex, ethnicity, color or other classification including the Plaintiff and its members and all other Hispanics, Latinos and day laborers. Since Plaintiff has limited its relief to declaratory and injunctive relief only, there is no basis under state or federal law to find Wologo liable in his official or individual capacities.

Twenty-Seventh Affirmative Defense

League City Defendants assert the statute of limitations as an affirmative defense.

Twenty-Eighth Affirmative Defense

League City Defendants assert that there is no 42 U.S.C. § 1983 liability for violations of state laws.

Twenty-Ninth Affirmative Defense

League City Defendants assert that Plaintiff has failed to allege any facts that articulate that Defendants, one, any or all have violated any clearly established constitutional rights of which any Defendant should be aware. Consequently, the only real party in interest is the City of League City for which liability may potentially be found under the causes of action alleged by the Plaintiff.

Answer on the Merits

Without waiver of their affirmative defenses, League City Defendants respond as follows to the allegations in the Complaint:

1. Since Paragraph 1 contains Plaintiff's characterization of its action, League City

Defendants deny Plaintiff's allegations and legal conclusions.

2. Admitted to the extent the Court has general subject matter jurisdiction over the types of claims alleged in the Complaint; denied to the extent that Plaintiff lacks legal capacity, and lacks standing, to assert the complaints made in the Complaint.

3. Admit. Venue is appropriately brought in this district.

4. League City Defendants are without sufficient knowledge to admit or deny the allegations made by the Plaintiff in paragraph 4.

5. Admit that League City is an incorporated home rule municipality located in Harris and Galveston Counties of Texas. Deny that the City enforces state statutes since only sworn peace officers have the authority to enforce violations of state statutes. The LCPD manages the sworn peace officers employed by the City.

6. Admit.

7. Deny that LCPD is an entity separate and apart from the City of League City. Admit that the LCPD is a department of the City responsible for all police related functions of the City for enforcement of local, state and some federal laws. The City established, supports, funds and maintains the LCPD. Deny that any actions taken by the LCPD violate the constitutional rights of Plaintiff or its members.

8. Admit.

9. Admit that at all times mentioned in Plaintiff's Corrected Complaint, LCPD and its sworn peace officers provided law enforcement activities under color of state law by virtue of enforcing the two state statutes at issue in this lawsuit to wit: § 552.007 of the Texas Transportation Code and § 30.05 of the Texas Penal Code. Deny that with regard to the actions alleged in Plaintiff's Corrected Complaint that LCPD and its sworn peace officers were acting

under color of any other state statutes, laws, City Charter, City ordinances, rules, regulations, customs or usages of the State of Texas, Harris County, Galveston County or League City.

10. Deny.

11. Admit that Wologo, in his current capacity as Acting Chief, and his predecessor, Michael W. Jez, performed the duties of the Chief of Police for the City and its LCPD as the City's agent, employee and public official. Deny that either or both acted with deliberate indifference to the constitutional rights of Plaintiff's members. Deny that Plaintiff has First or Fourteenth Amendment constitutional rights or that they were violated in any respect by these Defendants.

12. Deny.

13. Admit that in September, 2009, former Police Chief Jez drafted and issued a Special Order (09-07) that set forth guidance to LC Police Officers to enforce the laws of this state against all persons who violate its laws. This includes "guidelines for dealing with groups that routinely violate existing statutes" while at the same time protecting the constitutional rights of persons to peacefully assemble. Deny that Jez "announced and initiated" a LCPD policy aimed at Plaintiff or its members. Until the initiation of this lawsuit, League City Defendants were totally unaware of the existence of the Plaintiff. League City Defendants cannot admit or deny whether any members of the Plaintiff existed at any time relevant to this lawsuit, or before or since this lawsuit was filed. There were no arrests or citations given to any persons because they were members of the Plaintiff. No person arrested or cited ever acknowledged or stated that he/she was a member of the Plaintiff at any time before, at the time of filing of this lawsuit or at any time since.

14. Deny. Former Chief Jez stated that "the Department expects officers, in the

course of normal duties, to regularly monitor known gathering locations and take appropriate actions on all observed statutory violations”.

15. Admit that Wologo was appointed Acting Police Chief in December, 2011.

16. Admit that on or after September, 2009, some persons of seemingly Hispanic descent have been arrested, or cited and fined upon pleading guilty or “nolo contendere” to violations of state laws in League City. Some arrests or citations were for violation of Texas Penal Code § 30.05, but deny that (a) any such policy, custom or practice exists, (b) such arrests were (i) in accord with any policy, custom, or practice, (ii) directed at Latinos or day laborers, (iii) not directed against Plaintiff or its members and (iv) involve criminal acts greater than “waiting for employment opportunities in League City”. League City Defendants have insufficient knowledge to admit or deny whether any such persons arrested are or were members of Jornaleros de Las Palmas. Answering further to the allegations made in Paragraph 16, League City Defendants aver that Texas Penal Code § 30.05 does not criminalize or otherwise violate any constitutionally protected activity. No relief is sought in the Corrected Complaint with respect to the enforcement of Texas Penal Code § 30.05. League City Defendants deny that any persons of any race or ethnicity were ever targeted for arrest or citation for criminal trespass violations; LCPD officers arrested and/or cited all offenders without regard to race or ethnicity if such person(s) was(were) found to have violated state law.

17. League City Defendants have no knowledge relative to Plaintiff’s intentions previously, at the time this lawsuit was filed or in the future. Plaintiff acknowledges and readily admits that the actions of its members in soliciting employment in or around the streets of League City violate state laws for pedestrians once they enter the roadway. Answering further, Defendants aver that while a solicitation for employment may begin on a sidewalk, in a park, or

while a vehicle is stopped at a red traffic light, it may continue after the traffic light has turned green, which is a justification for the challenged statute, Texas Transportation Code §552.007, as reasonable public safety enactments, embodying restrictions as to time, place, and manner of speech, that are neutral as to the content of any speech, and which leave open ample alternative means of expression. The enforcement of the Texas Penal Code §30.05 has no such constitutional ramifications. To the extent that Plaintiff alleges that it or its members have been targeted because of their Hispanic, Latino or day laborer status for disparate treatment or enforcement, League City Defendants deny that their enforcement of the criminal trespass penal code violations are discriminatory, retaliatory, harassing, intimidating, threatening or otherwise violate any constitutional rights of the Plaintiff or its members.

18. Deny.

19. Deny.

20. Admit to the extent that League City Police enforce all laws against all violators in the City without regard to race, color, creed, ethnicity or other immutable status if their conduct violates Texas or League City laws. Deny that such actions are systematic or directed solely at Plaintiff or its members, or directed toward any particular persons.

21. Deny.

22. League City Defendants acknowledge upon information and belief, that from time to time day laborers were viewed to be congregating during the stated time frame outside a small convenience store of a small strip center located in the 1195 block of E. Main in League City. League City Defendants can neither admit or deny that the persons seen congregating were members of the Plaintiff. To Defendants' knowledge, the Plaintiff was not ever present at such location. League City Defendants have insufficient knowledge to admit or deny whether the

congregation of persons on said private property was done with the permission of the land owner prior to September 9, 2009. However, League City Defendants aver that the relevant owner of the strip center premises in question upon which the convenience store was a leasehold, executed a sworn Power of Attorney on September 9, 2009, authorizing the League City Police Department to arrest and file charges on its behalf against any person or persons found illegally on the property at any time. The convenience store owner lacked capacity to authorize person(s) to congregate within the strip center premises; Such leaseholder, if any there was, had limited authority over the physical area outside of the leasehold. If there was any such "permission" given by the leaseholder, it was given in derogation of the rights of the other leaseholders in the strip center and the land owner.

23. League City Defendants admit that, with the authorization of the premises owner, some day laborers were arrested and charged with criminal trespass in September 2009 and thereafter, near the store at 1195 E. Main in League City, but have insufficient knowledge to admit or deny whether such persons were members of the Plaintiff. Answering further to the allegations made in Paragraph 23, Defendants League City aver that the owner of the premises in question executed a sworn Power of Attorney on September 9, 2009, authorizing the League City Police Department to arrest and file charges on its behalf against any person or persons found, remaining or loitering illegally on the property.

24. League City Defendants admit that some arrests occurred in League City under Texas Penal Code § 30.05 on September 29, 2009 and on October 3, 2009, deny that any such arrests occurred on December 19, 2009, and have insufficient knowledge to admit or deny whether any such persons arrested are members of Jornaleros de Las Palmas. Answering further to the allegations made in Paragraph 24, League City Defendants aver that the owner of the

premises in question executed a sworn Power of Attorney on September 9, 2009, authorizing the League City Police Department to arrest and file charges on its behalf against any person or persons found, remaining or loitering illegally on the property.

25. League City Defendants have no knowledge to be able to admit or deny the allegations made in Paragraph 25.

26. League City Defendants admit that a meeting was held on January 20, 2010, and attended by persons of seemingly Hispanic and/or Latino descent among others, but have insufficient knowledge to admit or deny whether any participants in the meeting were members of Jornaleros de Las Palmas, and aver that no participants at the meeting so identified themselves to Chief Jez. Day laborer issues were discussed among others.

27. League City Defendants admit that in the meeting former Chief Jez may have said he had to “follow the law,” as paraphrased in Paragraph 27. Answering further, League City Defendants plead that efforts prior to January 20, 2010, to maintain a City-sponsored, dedicated, public site for solicitation by day laborer had failed because of offensive and dangerous conduct by day laborers using the facility. League City Defendants have insufficient knowledge to admit or deny whether any participants in the January 20, 2010, meeting were members of Jornaleros de Las Palmas, and aver that no participants at the meeting so identified themselves to Chief Jez. Answering further to the allegations made in Paragraph 27, League City Defendants aver that to the extent Plaintiff complains of the fact that League City does not expend public funds for Plaintiff’s or its members’ benefit to maintain a place where Plaintiff or its members can solicit employment, League City would be prohibited from doing so by the U.S. and Texas Constitutions, and by federal and state laws, as alleged in the Nineteenth Affirmative Defense.

28. League City Defendants admit that day laborers were arrested on February 5,

2010 for violation of § 552.007 Texas Transportation Code. League City Defendants have insufficient knowledge to admit or deny whether any such arrestees were members of Jornaleros de Las Palmas; and deny the remaining allegations made in Paragraph 28.

29. League City Defendants deny the allegations made in Paragraph 29 that at the time of the arrests, the suspects were standing in a public, grassy area off the road. Had they remained there, there would have been no arrests. The arrestees entered and remained in the roadway while they walked up to and piled into the truck. When they proceeded into the roadway, they violated the pedestrian solicitation state statute and became subject to arrest for which they plead guilty or nolo. None of the arrestees identified themselves as such nor contested the arrests as a violation of their constitutional rights. To the extent that these arrestees were not members of the Plaintiff and were “other Latino day laborers”, Plaintiff has no standing to represent their constitutional violations.

30. League City Defendants have insufficient knowledge to admit or deny whether any such persons arrested were members of Jornaleros de Las Palmas; and admit the remaining allegations made in Paragraph 30.

31. Admit.

32. Admit.

33. Admit.

34. League City Defendants have insufficient knowledge to admit or deny whether any of the persons arrested on February 5, 2010, were members of Jornaleros de Las Palmas or that the persons arrested in the February 5, 2010, arrests were not in the roadway.

35. League City Defendants have insufficient knowledge to admit or deny the allegations made in Paragraph 35.

36. League City Defendants have insufficient knowledge to admit or deny the 37.

37. Deny.

38. Deny. Answering further to the allegations made in Paragraph 38, League City Defendants aver that to the extent Plaintiff complains of the fact that League City does not expend public funds for Plaintiff's members' benefit to maintain a place where Plaintiff or its members can solicit employment, League City would be prohibited from doing so by the U.S. and Texas Constitutions, and by state and federal law, as alleged in the Nineteenth Affirmative Defense.

39. League City Defendants have insufficient knowledge to admit or deny the allegations made in Paragraph 39. League City Defendants deny that it has any customs, policies or practices that subject Plaintiff or its members, other Latinos or anyone else to danger of arrest, fines, and/or other penalties that are not warranted and legitimate.

40. Deny. Answering further to the allegations made in Paragraph 40, League City Defendants deny that any duly adopted municipal policy of League City, as required by 42 U.S.C. § 1983, exists with respect to the facts alleged that either (a) denies Plaintiff or its members of their First and Fourteenth Amendment rights in the enforcement of §552.007 of the Texas Transportation Code or (b) denies Plaintiff or its members equal protection of the laws by disparate treatment or enforcement of the criminal trespass penal laws of this state. League City Defendants further deny that the Special Order 09-07 issued by Police Chief Jez was a policy as required under 42 U.S.C. § 1983 for the claims alleged against League City Defendants to be actionable under 42 U.S.C. § 1983 .

41. League City Defendants are without sufficient information to admit or deny the allegations of paragraph 41.

42. Deny.

43. Deny.

44. Deny. Answering further to the allegations made in Paragraph 44, League City Defendants deny that any duly adopted municipal policy of League City, as required by 42 U.S.C. § 1983, exists with respect to the facts alleged, and further deny Special Order 09-07 issued by Former Chief Jez is or was a policy as required under 42 U.S.C. § 1983 for the claims alleged against League City Defendants to be actionable under 42 U.S.C. § 1983 or that the actions of LC Police Officers was a custom so wide spread so as to constitute custom or usage with force of law by the League City Defendants.

45. Deny.

46. Deny

47. Deny. Further, Defendant Wologo, in his official capacity did not promulgate a policy with respect to day laborers. In his individual capacity, Defendant Wologo took no actions that would be under color of state law including no promulgation or enforcement of the Special Order and took no actions that deprived Plaintiff or its members of their constitutional rights. No action of Wologo in his individual capacity had any affect on the Plaintiff or its members and no facts exist that would create liability since Plaintiff seeks only injunctive and declaratory relief and no damages, economic or otherwise. The same is true with regard to Wologo in his official capacity.

48. No response is required to Paragraph 48.

49. Deny. Answering further to the allegations made in Paragraph 49, League City Defendants deny that any duly adopted municipal policy of League City, as required by 42 U.S.C. § 1983, exists with respect to the facts alleged, and deny that Special order 09-07 was a policy,

custom or practice as required under 42 U.S.C. § 1983 for the claims alleged against League City Defendants to be actionable under 42 U.S.C. § 1983.

50. No response is required to Paragraph 50.

51. Deny. Answering further to the allegations made in Paragraph 51, League City Defendants deny that any duly adopted municipal policy of League City, as required by 42 U.S.C. § 1983, exists with respect to the facts alleged, and enforcement of §552.007 of the Texas Transportation Code violates the First or Fourteenth Amendment rights of the Plaintiff or its members.

52. No response is required to Paragraph 52.

53. Deny.

54. No response is required by Paragraph 54.

55. Deny.

56. No response is required to Paragraph 56.

57. Deny.

58. Deny.

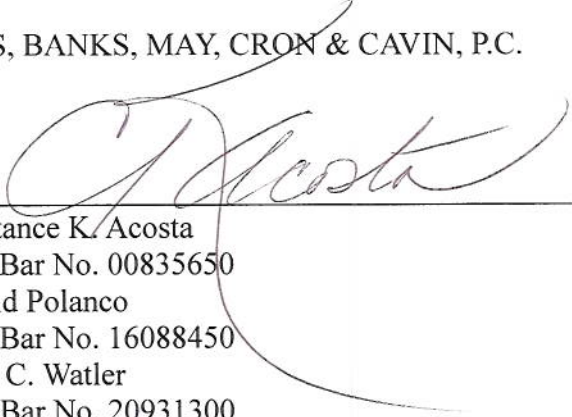
Wherefore, Premises Considered, League City Defendants deny that Plaintiff or its members is entitled to any monetary, injunctive, or declaratory relief from League City Defendants for violations of Plaintiff's or its members' or the constitutional rights of anyone else. League City Defendants pray that Plaintiff be denied all relief sought. Further, League City Defendants seek all relief to which they may be entitled such as prevailing party, including attorney fees and costs pursuant to the federal rules.

DATED: April 10, 2012.

Respectfully submitted,

ROSS, BANKS, MAY, CRON & CAVIN, P.C.

By: _____


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CERTIFICATE OF SERVICE

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