IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

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| STEPHANIE REYNOLDS, FLORENCE STREETER, JACQUELINE GRAY, CARLOS CISNERO, and THE METROPOLITAN ST. LOUIS EQUAL HOUSING OPPORTUNITY COUNSEL, INC., | ) | |
| Plaintiffs, | ) | |
| v. | ) | Cause No. 06-CC-3802 |
| CITY OF VALLEY PARK, MO, JEFFERY WHITTEAKER, in his official capacity as Mayor of the City of Valley Park, MO, and JOHN BRUST, DANIEL ADAMS, RANDY HELTON, DON CARROLL, MICHAEL PENNISE, ED WALKER, STEVE DRAKE, and MIKE WHITE, in their official capacity as Aldermen of the City of Valley Park, MO | ) | Division No. 13 |
| Defendants. | ) | |

**PLAINTIFFS' MOTION FOR AN AMENDED TEMPORARY RESTRAINING ORDER**

COME NOW Plaintiffs, and pursuant to MO.RCIV.P. 92.02, move this Court to modify the temporary restraining order ("TRO") granted in this matter on September 25, 2006. (A copy of the TRO is attached hereto as Exhibit A). The existing TRO enjoins Defendants and their agents from enforcing the provisions of Valley Park Ordinance No. 1708, entitled "An Ordinance Relating to Illegal Immigration Within the City of Valley Park, MO," enacted on July 17, 2006 (hereinafter referred to as the "July" Ordinance and attached as Exhibit B). Yesterday, the day after this Court's entry of the TRO, Defendants enacted Ordinance No. 1715, originally entitled "An Ordinance Repealing Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof with the Same

Subject," and retitled by oral motion on the day of enactment as "An Ordinance Repealing Sections 1, 2, 3, and 4 of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment and Harboring of Illegal Aliens in the City of Valley Park, MO" (hereinafter referred to as the "current" or "September" Ordinance, attached as Exhibit C). As the title indicates, the current Ordinance has repealed much of the July Ordinance (and what it has not repealed remains enjoined under the prior TRO). It has not, however, cured the manifest constitutional and statutory infirmities that caused this Court to enter the TRO, and therefore the Plaintiffs ask that that TRO be modified to enjoin the September as well as the July Ordinance until the hearing for a preliminary injunction in this matter, already scheduled for November 1, 2006.

The passage of Ordinance No. 1715, which is a newly titled but factually and legally similar law, merely serves to circumvent and/or frustrate the temporary restraining order entered by this Court. Just like its predecessor, the September Ordinance self-evidently seeks to regulate immigration into the United States and into the City of Valley Park. Its provisions: infringe the immigration power, which the United States Supreme Court has repeatedly held is reserved to the federal government; conflict with federal immigration law; were enacted in excess of Valley Park's delegated authority; promote discrimination in housing and violate the federal Fair Housing Act; unconstitutionally impair existing contracts; and conflict with the state law governing landlords and tenants.

As with its predecessor, enforcement of the September 25 Ordinance will immediately and irreparably harm the Plaintiffs. Unless a TRO is entered, Plaintiffs will suffer irreparable harm as they: lose business and tenants due to enforcement of the ordinance; are forced to choose between breaching valid contracts and acting discriminatorily and in violation of federal

law, on the one hand, or risking violation of the Ordinance, on the other; and divert resources from other programs to provide outreach activities to immigrants in the Valley Park community who, whether in this country legally or not, remain confused and fearful. See Affidavits of Stephanie Reynolds, Florence Streeter, Jacqueline Gray, Willie Jordan, and Thomas Gorski, attached hereto as Exhibits D, E, F, G, H, and I, respectively.

Plaintiffs will file affidavits in support of their Motion prior to any scheduled hearing. Additionally, Plaintiffs state as follows:

**Operation of the September Ordinance**

1. The current Ordinance subjects to substantial financial penalties any entity[1] who employs an "unlawful worker" and any property owner who allows an "illegal alien" to use, rent, or lease housing within Valley Park.

2. The definition of "unlawful worker" is a technical one; the Ordinance states: ""Unlawful worker" means a person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including, but not limited to, a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3)."

3. 8 U.S.C. § 1324a(h)(3) in turn defines an "unauthorized alien" only by reference. It states that the term "means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General."

4. The law incorporated by reference in 8 U.S.C. § 1324a(h)(3) and in turn by the

[1]The ordinance uses the language "business entity," but defines that term so broadly as to cover any entity of any type. See September Ordinance, Section 3(a): "Business entity" means any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit."

September Ordinance, which governs whether a particular non-citizen is authorized to be employed within the United States, is extremely complex. Many documents may be used to prove immigration and employment status under federal law, including court decisions, letters from federal immigration authorities, and passport inserts. In addition, many persons authorized to remain and work in the U.S. (including U.S. citizens) may not possess identification documents clearly so stating. *See, e.g.,* 71 Fed. Reg. 16,333 (Mar. 31, 2006) (extending validity of certain employment authorization documents past the expiration dates indicated on their face).

5. The current Ordinance specifies that when the City receives an employment-related complaint (from any city official or other city entity or resident), the next step is to "request identity information from the business entity regarding any persons alleged to be unlawful workers." The alleged violator must provide such identity information under penalty of suspension of its business license. September Ordinance at § 4(b)(3).

6. Next, without using any specified procedure whatsoever, the City—not the federal government—must determine the federal employability status of challenged workers. Compare September Ordinance at § 4(b) to § 5(b)(3).

7. On notice from the City that an employee is an "unlawful worker" the employer must "correct [the] violation" within three days, or have its business license suspended, for up to 20 days (on a second or subsequent offense).

8. The September Ordinance subjects property owners to a similar regulatory regime, forbidding them to rent or lease or otherwise allow their property to be used by an "illegal alien."

9. The September Ordinance defines "illegal alien" to mean:

> an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8,

> subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

September Ordinance, § 3(d).

10. Thus the Ordinance contemplates that federal officials will determine the immigration status of challenged residents, but that city officials will determine the immigration status of challenged workers.

11. The Ordinance gives a property owner notified that her tenant is deemed "illegal" just five days to evict that tenant, or face suspension of her occupancy permit and suspension of her right to charge rent. On a second or subsequent violation, such a property owner is subject to a fine of $250 per day. See September Ordinance §§ 5(a)(2); 5(b)(8).

12. The September Ordinance leaves in place the July Ordinance's declaration that all of Valley Park's official business—whether written or oral—must be conducted only in the English language. Thus the TRO as to that provision of the July Ordinance remains in effect.

**Likelihood of Success on the Merits**

13. Plaintiffs are likely to prevail on the merits of their claim. Like its predecessor, already enjoined by this Court, the September Ordinance's provisions: infringe the immigration power, which the United States Supreme Court has repeatedly held is reserved to the federal government; conflict with federal immigration law; were enacted in excess of Valley Park's delegated authority; promote discrimination in housing and violate the federal Fair Housing Act; unconstitutionally impair existing contracts. In addition, the September Ordinance adds a new legal infirmity; it conflicts with the state law governing landlords and tenants. Plaintiffs' success on any one of these claims will invalidate the Ordinance.

14. ***Immigration Preemption***: Plaintiffs are likely to prevail on their claim that the September Ordinance is void because it usurps the exclusive federal authority to regulate

immigration. More particularly, the immigration power is constitutionally reserved to the federal government, which has fully occupied the field, and which has enacted statutes flatly inconsistent with the September Ordinance.

a. The United States Supreme Court has declared that the "[p]ower to regulate immigration is unquestionably exclusively a federal power." DeCanas v. Bica, 424 U.S. 351, 354 (1976). States, and *a fortiori* municipalities, may not arrogate to themselves the regulation of immigration—even when states seek merely to "complement" federal law "or enforce additional or auxiliary regulations." Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941) (invalidating Pennsylvania alien registration law). The September Ordinance, like the July Ordinance, is unlawful for this reason.

b. Moreover, when Congress occupies a field, state law in that area is preempted. *See, e.g.,* Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000). In this area, any state laws that add to Congress's "comprehensive legislative plan for the nation-wide control and regulation of immigration and naturalization" (Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948), are therefore preempted. *See, e.g.,* Hines, 312 U.S. at 67; League of United Latin American Citizens v. Wilson, 908 F.Supp. 755, 776 (C.D. Cal.) ("Congress has fully occupied the field of immigration regulation through enactment and implementation of the INA [Immigration and Nationality Act].")

c. Finally, even if constitutional preemption and "field" preemption were not each themselves wholly sufficient to doom the statute, the September Ordinance would still be preempted because it acts "as an obstacle to the accomplishment and

execution of the full purposes and objectives of Congress" in the area of immigration. Hines, 312 U.S. at 67. It conflicts with:

i. Congress' considered provision of discretion to specifically designated agencies and officials responsible for administering the immigration laws, see, e.g., 8 U.S.C. § 1229b (providing for cancellation of removal in the discretion of the Attorney General);

ii. the extensive federal procedures for determining immigration status, *see, e.g.,* 8 U.S.C. §§ 1154, 1228-1252, 1255-1259;

iii. the specific federal statute that governs the employment of undocumented workers—the Immigration Reform and Control Act ("IRCA"), 8 U.S.C. §§ 1324a-1324b. The September Ordinance undermines IRCA's careful balance between the important goals of reducing employment of individuals who lack work authorization; creating a workable system for employers and employees; and avoiding harassment of, or discrimination against, employees. *See* H.R. Rep. 99-682(I), 1986 U.S.C.C.A.N. at 5664-66. For example whereas IRCA *prohibits* employers from seeking additional proof of immigration status once certain specified documents are presented that "reasonably appear to be genuine" (even if those documents turn out to be forged or otherwise flawed), *see* 8 U.S.C. § 1324b(a)(6); *see also* Getahun v. OCAHO, 124 F.3d 591, 596 (3d Cir. 1997), under the September Ordinance employers who wish to avoid future enforcement actions (with their highly disruptive potential) must undertake precisely the kind of searching inquiry prohibited by federal law.

15. ***Fair Housing Act Preemption***: The September Ordinance also conflicts with the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* ("FHA"). Landlords who wish to comply with the September Ordinance, either simply because it purports to be the operative law, or because they want to avoid the disruption and high business costs of losing tenants mid-tenancy, should a violation be found, have no way to know which of their tenants are "illegal aliens." The only course open to them is to avoid renting to would-be tenants who somehow seem foreign-born. Yet this conduct would violate federal law; the FHA prohibits housing practices based on *inter alia*, race, color, and national origin, including refusing to rent based on such criteria. *See* 42 U.S.C. § 3604. This untenable position indicates the illegal conflict, and federal fair housing

law trumps. *See* 42 U.S.C. § 3615 ("any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid"); Geier v. American Honda Motor Co., Inc., 529 U.S. 861, 873 (2000) (state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

16. ***Exceeding Delegated Powers***: Plaintiffs are also likely to prevail on the merits of their separate claim that the September Ordinance is void because Defendants exceeded their power in enacting it. See State ex rel. Curators of Univ. of MO v. McReynolds, 193 S.W.2d 611, 612 (Mo. en banc 1946) ("It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation - not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.") (*quoting* Dillon, Municipal Corporations § 237 (1911)); *see also* Premium Std. Farms, Inc. v. Lincoln Township of Putnam Cty., 946 S.W.2d 234, 238 (Mo. en banc 1997) (same). The September Ordinance rests on the same naked assertions of public need that flawed its predecessor; as Plaintiffs have previously briefed, its own supporters declare it "preventative" rather than curative. The TRO that enjoined operation of the July Ordinance on this basis should be extended to the September Ordinance.

17. ***Impairment Of Contract Obligations***: Plaintiffs are also likely to succeed on the separate ground that the September Ordinance is repugnant to Article I, § 13 of the Constitution of the State of Missouri, and Article I, § 10 of the United States Constitution both of which

prohibit the passing of any law impairing contract obligations. The Ordinance clearly impairs obligations made under contracts. To avoid prosecution under its provisions a property owner who has entered into a contract for the lease of rental property with someone who is deemed to be an "illegal alien" must breach that lease or be subject to penalty. This constitutional infirmity remains from the July Ordinance, and was among this Court's specified bases for the existing TRO, which should therefore remain in effect.

18. For similar reasons, the September Ordinance runs afoul of the state law governing landlords and tenants. It requires that landlords evict tenants deemed "illegal" within five days; even though far more time is needed for a lawful eviction under MO.R.STAT. § 441.060 (attached as Exhibit []), which requires that a landlord give a tenant in possession of property on a month-to-month lease notice of at least thirty days; and it compels a violation of general Missouri contract law which requires that landlords fulfill their lease obligations.

**Irreparable Harm and the Balance of the Equities**

19. Plaintiffs are owners of rental property and businesses in Valley Park, and a fair housing agency funded by the United States Department of Housing and Urban Development, which is charged with investigating and eliminating housing discrimination, and educating the public about fair housing matters. Each Plaintiff has a protectable interest in seeking a declaration of the lawfulness of the Ordinance.

20. As this Court has already found, Plaintiffs have suffered, and will continue to suffer serious and irreparable harm if Defendants enforce Ordinances aimed at regulating immigration in the ways that both the July and September Ordinances do. There is no adequate remedy at law to protect Plaintiffs from the harm, damage, and injury that they are enduring. By way of example only, as property owners who have both apartments with tenants and empty apartments

they are currently looking to rent, plaintiffs must decide whether and how to screen their tenants, risking noncompliance with either the September Ordinance or the Fair Housing Act. If one of their tenants should turn out to be an "illegal alien,"—a legal judgment they are not able or qualified to make—they must breach a lease with that tenant and demand his or her immediate evacuation from their leased property or risk city sanction. Entry of a TRO is the only way to prevent irreparable harm to Plaintiffs.

21. Finally, as the Court has already found, the balance of equities and the public interest favor injunctive relief. Plaintiffs and other residents, business owners, and landlords in Valley Park are being subjected to ongoing diminution of their livelihoods and threat of severe sanction and while the putative benefits of the Ordinance are illusory.

WHEREFORE, Plaintiffs respectively request that this Court modify the temporary restraining order entered on September 25, 2006, to enjoin Defendants and their agents from enforcing the provisions of Valley Park Ordinance No. 1715 and 1708, enacted on September 26, 2006 and July 17, 2006.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was forwarded, via facsimile and hand-delivery, on this 27th day of September, 2006, to:

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