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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 Charmaine Chua, *et al.*
21 Plaintiffs,
22 vs.
23 City of Los Angeles, *et al.*,
24 Defendants.

Case No. 16-00237-JAK-GJS(x)
[Honorable John A. Kronstadt]
SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CER-
TIFICATION.

Hearing Date: November 7, 2016
Hearing Time: 8:30 A.M.
Courtroom: 750

Trial Date: N/A
Time: N/A

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1 **I. THE NLG SUFFICIENTLY ALLEGES AN INJURY IN FACT**

2 The National Lawyers Guild-Los Angeles (“NLG”) brings claims in this ac-
3 tion for injunctive relief, asserting its own rights, the rights of its members, and as
4 a representative of the injunctive relief class. Compl. ¶¶ 8-9, 61. The NLG regular-
5 ly serves as a plaintiff in cases involving the rights of demonstrators. *Id.* ¶9.

6 An organization may demonstrate injury, and therefore standing either if it
7 has been injured as an entity. (*Havens Realty Corp. v. Coleman*, 455 U.S. 363,
8 378-79 (1992)) if it sues on behalf of its members to protect interests that affect the
9 organization’s purpose. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333,
10 343 (1977). The Complaint sufficiently alleges NLG’s standing on both bases.¹

11 **A. THE NLG ALLEGES AN ORGANIZATIONAL RESOURCE INJURY**

12 An organization has “direct standing to sue [when] it show[s] a drain on its
13 resources from both a diversion of its resources and frustration of its mission.”
14 *Fair Hous. Council of San Fernando Valley v. Roomate.com, LLC*, 666 F.3d 1216,
15 1219 (9th Cir. 2012) (finding standing where, to combat discriminatory practices,
16 plaintiffs “started new education and outreach campaigns targeted at discriminato-
17 ry roommate advertising”). The “allegation that the [challenged] policy frustrate[d]
18 [the plaintiff’s] goals” satisfied the frustration-of-mission prong. *El Rescate Legal*
19 *Services, Inc. v. Executive Office of Immigration Review*, 959 F.2d 742, 748
20 (1991); *see also, e.g., Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir.
21 2002) (standing by virtue of injury to organization’s ability to carry out its purpos-
22 es ...to resolve fair housing disputes, to find and to make available decent rental
23 housing ..., and to assure rights to the importantbenefits of association”).

24 The NLG’s mission includes “work[ing] to ensure legal and practical access

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26 ¹ At the hearing, the Court raised whether the NLG was necessary. The standard is
27 whether any party with standing is a proper plaintiff. *See, e.g. We Are Am./Somos Am.,*
28 *Coal. of Arizona v. Maricopa Cty. Bd. of Supervisors*, 809 F. Supp. 2d 1084, 1114 (D.
Ariz. 2011) and cases cited therein, reviewing plaintiffs’ standing (organizational, tax-
payer and individuals) and denying motions to dismiss as to those with standing.

1 to demonstrations in Southern California,” Compl. ¶8, as well as “advocat[ing]
2 against unlawful surveillance of persons engaged in protected First Amendment
3 activity, including the compilation of databases of participants in public protest.”
4 *Id.* ¶9. The Complaint alleges that Defendants frustrated the NLG’s mission when
5 they “kettled the demonstrators, issued an unlawful and inadequate dispersal order,
6 arrested them, denied them release on their own recognizance, and collected per-
7 sonal identifiers on individuals engaged in lawful First Amendment activity.” *Id.*
8 This is a clear allegation of mission frustration.

9 In *Smith v. Pacific Properties & Development Corp.*, 358 F.3d 1097 (9th
10 Cir. 2004) the complaint alleged that the plaintiff was “organized with the principal
11 purpose of helping to eliminate discrimination against individuals with disabilities
12 by ensuring compliance with laws intended to provide access to housing, public
13 buildings, transportation, goods and services.” *Id.* at 1105 (9th Cir. 2004). The
14 Court held that “[a]ny violation of the F[air Housing Amendments Act] would
15 therefore constitute a frustration of [the plaintiff’s] mission.” *Id.* (emphasis added;
16 internal quotation marks omitted). Allegations of violations of assembly rights and
17 unlawful surveillance “constitute a frustration of” the NLG’s “mission.” *Id.*

18 The NLG has also alleged a drain on its resources. It “expends money con-
19 ducting work to protect the right to lawfully demonstrate without police interfer-
20 ence in Los Angeles.” Complaint ¶8. This is sufficient at the pleadings stage. *See*
21 *El Rescate Legal Servs., Inc.*, 959 F.2d at 748 (“allegation that the [challenged]
22 policy ... requires the organizations to expend resources in representing clients they
23 otherwise would spend in other ways” was “enough” to satisfy the diversion-of-
24 resources prong of organizational resource injury standing).

25 **B. THE NLG ALLEGES MEMBERSHIP STANDING**

26 “[E]ven in the absence of injury to itself, an [organization] may have stand-
27 ing solely as representative of its members.” *Warth v. Seldin*, 422 U.S. 490, 511
28 (1975); *see, e.g., NAACP v. Alabama*, 357 U.S. 449 (1958); *International Union*,

1 *United Auto. v. Brock*, 477 U.S. 274 (1986). Under a three-prong membership
2 standing test, associational standing exists when: “(a) its members would otherwise
3 have standing to sue in their own right; (b) the interests it seeks to protect are ger-
4 mane to the organization’s purpose; and (c) neither the claim asserted nor the relief
5 requested requires the participation of individual members in the lawsuit.” *Hunt*,
6 432 U.S. 333, 343 (1977). That principle controls today. *See, e.g., Friends of the*
7 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–181 (2000)
8 (reaffirming this test). Moreover, bar organizations, like law firms, have standing
9 to assert the constitutional rights of their *clients*. *See Caplin & Drysdale, Char-*
10 *tered v. United States*, 491 U.S. 617, 623 n. 3 (1989).

11 As to the first prong of the membership standing test, the Supreme Court in
12 *Hunt* required only that “*some* Washington apple growers” had suffered injuries.
13 432 U.S. at 343 (emphasis added); *see also Laidlaw*, 528 U.S. at 181-83 (reasoning
14 that affidavits from *some* organization members were sufficient to establish that the
15 association’s “members would otherwise have standing to sue in their own right”).
16 The clear import of that requirement is that in the membership standing context,
17 the test ensures there is an actual case and controversy without inquiring into the
18 standing of every member of an organization.

19 The allegations of the Complaint are sufficient to meet this test. The Com-
20 plaint alleges that the NLG-LA “regularly provid[es] legal observers at [Southern
21 California] demonstrations to observe and document potentially unlawful or unjust-
22 ified interference with demonstrators’ rights from law enforcement.” Compl. ¶8.
23 “As a participant in ... coalitions [in Los Angeles working on issues raised by this
24 litigation], the NLG urges its members to participate in demonstrations organized
25 by the coalitions.” Sobel Supplement Declaration in Support of Motion for Class
26 Certification ¶7. The NLG and its membership have “long advocated against un-
27 lawful surveillance of persons engaged in protected First Amendment activity, in-
28 cluding the compilation of databases of participants in public protest.” Compl. ¶9.

1 The organization’s membership “plans to assist, plan, participate in, hold similar
2 events in the future, on its own or in conjunction with others, and is fearful that the
3 police actions of November, 2014, including the unlawful collection of information
4 on those participating in First Amendment activity in public places, will be
5 repeated absent injunctive relief to prohibit the practices, policies, and customs of
6 the LAPD that resulted in the unlawful action against peaceful demonstrators on
7 November 26, 2014 in downtown Los Angeles.” *Id.* In short, “Defendants’ actions
8 interfered with the NLG-LA’s right to assembly and speech.” *Id.*

9 The NLG also works to represent demonstrators, whether NLG members or
10 not, Compl. ¶8, and can assert the rights of its clients. *Caplin & Drysdale, Char-*
11 *tered*, 491 U.S. at 623 n. 3. These allegations more than satisfy the standing test
12 since the NLG’s members who participate in, organize, and observe demonstra-
13 tions in Los Angeles have standing of their own as “Defendants’ actions interfered
14 with” their First Amendment rights. *Id.* The demonstration rights and protection
15 from unlawful surveillance are germane to the NLG’s purpose. *Id.* ¶¶8-9. Neither
16 the claims nor the relief sought requires naming individual NLG members.

17 **II. THE INJUNCTIVE RELIEF CLASS PROPERLY INCLUDES** 18 **FUTURE CLASS MEMBERS**

19 Plaintiffs seek to certify an injunctive class of “all persons who have in the
20 past, or *may in the future*, participate in, or be present at, demonstrations within the
21 City of Los Angeles in the exercise of their rights of free speech and petition.”
22 Complaint ¶ 61 (emphasis added). The NLG, as an organizational Plaintiff that
23 directly and through its members regularly engages in the types of activity at issue
24 in this case, has a clear interest in protecting its future activities.

25 Injunctive relief classes commonly include future class members, who by
26 definition cannot be ascertained (e.g., future protestors in an injunctive relief action
27 regarding preconditions and standards for declaring an unlawful assembly). *See,*
28 *e.g., Manual for Complex Litigation, 4th Ed., §21.222,* (“A class may be defined to

1 include individuals who may not become part of the class until later.... There is no
 2 need to identify every individual member at the time of certification of a Rule
 3 23(b)(2) class action for injunctive relief as long as the court can determine at any
 4 given time whether a particular individual is a member of the class.”); *Probe v.*
 5 *State Teachers’ Retirement System*, 780 F.2d 776, 780 (9th Cir. 1986) (certification
 6 of those who “are or will be employed”; inclusion of “future members does not
 7 render the class definition so vague as to preclude certification”); *Nozzi v. Hous.*
 8 *Auth. of the City of Los Angeles*, 2016 WL 2647677, at *3 (C.D. Cal. May 6, 2016)
 9 (same for class of Section 8 beneficiaries, citing *Probe*); *Yaffe v. Powers*, 454 F.2d
 10 1362, 1364 (1st Cir. 1972) (class of “all other individuals who wish to ... engage ...
 11 in peaceful political discussion ... without surveillance ... by defendants”).

12 **III. PLAINTIFF TODD IS A PROPER CLASS REPRESENTATIVE**

13 While Plaintiff Todd acted as a legal observer here, Compl. ¶61, he does not
 14 allege claims based on that role. Instead, he alleges that he was detained, searched,
 15 and required to provide personal identifying information like all other sub-class
 16 members. *Id.* In other instances, the NLG explicitly distinguished legal observers’
 17 claims from those of other protestors where they were singled out for their role.
 18 Supp. Sobel Decl. ¶¶5-6. Todd’s claims are common and typical of the sub-class.

19 If the Court has concerns about the NLG’s or Mr. Todd’s standing due to
 20 any defects in the Complaint, which Plaintiffs do not believe it should, an oppor-
 21 tunity to amend the complaint should be given. *See, e.g., AmerisourceBergen orp.*
 22 *v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (“Rule 15(a) is very liber-
 23 al and leave to amend ‘shall be freely given when justice so requires’”) (citation
 24 omitted).

25 DATED: November 14, 2016 Respectfully Submitted,

26 KAYE, MCLANE, BEDNARSKI & LITT, LLP

27 By: ___/s/ Barrett S. Litt _____

28 Barrett S. Litt

Attorneys for Plaintiffs

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