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13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 NATIONAL RIFLE ASSOCIATION OF AMERICA; JOHN DOE,)	Case No.: 19-cv-03212-SVW-GJS
)	
17 Plaintiffs,)	DEFENDANT CITY OF LOS ANGELES'S
vs.)	MEMORANDUM OF CONTENTIONS OF
)	FACT AND LAW (LOCAL RULE 16-4)
18 CITY OF LOS ANGELES; ERIC GARCETTI, in his official capacity as Mayor of the City of Los Angeles;)	Pretrial Conference: February 10, 2020
19 HOLLY L. WOLCOTT, in her official capacity as City Clerk of the City of Los Angeles, and DOES 1-10,)	Time: 3:00 p.m.
)	Ctrm: 10A-First Street Courthouse
20 Defendants.)	Judge: Hon. Stephen V. Wilson
)	Action Filed: 04/24/2019
)	
)	
)	

1 Pursuant to Federal Rule of Civil Procedure (Fed. R. Civ. P.) 16 and Central District
2 Local Rule 16-4, Defendant CITY OF LOS ANGELES¹ (the “City”) submit the following
3 Memorandum of Contentions of Fact and Law.

4 **CLAIMS AND DEFENSES (L.R. 16-4.1)**

5 **A. Summary of Plaintiff’s Claims (L.R. 16-4.1(a)-(c)):**

6 **Claims 1, 2, and 4:** The City violated Plaintiffs’ constitutional rights under the
7 First Amendment to the United States Constitution under 42 U.S.C. § 1983.

8 **Elements:** 42 U.S.C. § 1983 provides that any person or persons, who under color
9 of state law, deprives another of any rights, privileges or immunities secured by the
10 Constitution or laws of the United States shall be liable to the injured party. *See* Ninth
11 Circuit Model Jury Instruction § 9.1 (2017). Section 1983 “is not a source of substantive
12 rights, but merely provides a method for vindicating federal rights conferred elsewhere.”
13 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). The elements of Plaintiffs’ claims
14 against the City are addressed below.

15 **Municipal Liability (City):** A local governing body, such as the City, is not liable
16 under Section 1983 “unless action pursuant to official municipal policy of some nature
17 caused a constitutional tort.” *Monell v. Dept. of Social Servs.*, 436 U.S. 658, 691 (1978).
18 In order to prevail on their Section 1983 claims against the City alleging liability based on
19 an official policy, practice, or custom, Plaintiffs must prove each of the following elements
20 by a preponderance of the evidence:

- 21 1. that defendant’s official or employee acted under color of state law;
- 22 2. the act(s) of defendant’s official or employee deprived the plaintiffs of their
23 particular rights under the United States Constitution as explained in later
24 instructions,
- 25 3. defendant’s official or employee acted pursuant to an expressly adopted policy
26 or a widespread or longstanding practice or custom of the defendant city; and
- 27 4. the defendant city’s official policy or widespread or longstanding custom or
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¹ Defendants Eric Garcetti and Holly Wolcott have been dismissed from the lawsuit.

1 practice caused the deprivation of plaintiffs’ rights by the defendant’s official or
2 employee; that is, the city’s official policy or widespread and longstanding
3 practice or custom is so closely related to the deprivation of the plaintiffs’ rights
4 as to be the moving force that caused the ultimate injury.

5 See Ninth Circuit Model Jury Instruction § 9.5; *Monell*, 436 U.S. at 691; see also
6 CACI § 3001 (Local Government Liability – Policy or Custom – Elements 42 U.S.C.
7 § 1983).

8 Moreover, compensatory damages in a section 1983 lawsuit are only allowed where
9 the plaintiff can prove that actual injury is caused by the deprivation of a constitutional
10 right. *Carey v. Phipps*, 435 U.S. 247, 264 (1978); *Memphis Community Sch. Dist. v.*
11 *Stachura*, 477 U.S. 299, 306-10 (1986) (holding that compensatory damages for a First
12 Amendment violation cannot be awarded “absent proof of actual injury” and “the abstract
13 value of a constitutional right may not form the basis for § 1983 damages”).

14 First Amendment Violation: Under the First Amendment, a person has the right to
15 [freedom of expressive association [Claim 1], free speech [Claim 2], or be free from
16 retaliation for engaging in free speech [Claim 4]]. In order to prove the defendant deprived
17 the plaintiffs of their First Amendment rights, the plaintiffs must prove the following
18 additional evidence by a preponderance of the evidence:

- 19 1. the plaintiffs were engaged in a constitutionally protected activity;
- 20 2. the defendant’s actions against the plaintiffs would chill a person of ordinary
21 firmness from continuing to engage in the protected activity; and
- 22 3. the plaintiffs’ protected activity was a substantial or motivating factor in the
23 defendant’s conduct.

24 See Ninth Circuit Model Jury Instruction § 9.11.

25 **Brief Description of Key Evidence in Opposition to the Section 1983 Claim:**

26 This lawsuit concerns the constitutionality of City Ordinance No. 186000 (the
27 “Ordinance”), which was passed by the City Council on February 12, 2019, and which
28 took effect on April 1, 2019. (Compl. ¶¶ 46, 49.) The Ordinance requires a potential City

1 contractor to disclose “all of its and its Subsidiaries’ contracts with or Sponsorships of the
2 NRA.” (*Id.* Exh. 9, p.3.) The term “Sponsorships” is defined as “an agreement [with] the
3 NRA to provide a discount to the NRA or an NRA member of the customary costs, fees
4 or service charges for goods of services provided by the Person to the NRA or an NRA
5 member.” (*Id.*)

6 Notably, the disclosure has no effect on whether a potential contractor obtains the
7 contract. Under the City Charter, which the City and its Council are bound to follow, the
8 City must accept the lowest bid for a contract, subject to a few exceptions that are not
9 relevant here. (City Charter § 371(a).)

10 The gravamen of the Complaint is that the City’s enactment of the Ordinance
11 violates the First Amendment to the United States Constitution. (Compl. ¶¶ 59-101.)
12 Plaintiffs have three remaining First Amendment-related claims: (1) violation of the right
13 to freedom of association; (2) violation of the right to free speech; and (3) retaliation.

14 On December 11, 2019, the Court issued an order granting in part and denying in
15 part Defendants’ motion to dismiss,² and granting a preliminary injunction enjoining the
16 City from enforcing the Ordinance. (Dkt. No. 36 (the “12/11/19 Order”).). The Los
17 Angeles City Council was on winter recess from December 13, 2019 to January 12,
18 2020. Thus, January 13, 2020 was the first day that the City Council could consider
19 repealing the Ordinance. Matters almost always go through a City Council Committee
20 before reaching the full Council. Accordingly, on January 13, the Budget & Finance
21 Committee considered a motion to repeal the Ordinance. The Committee approved the
22 motion. Subsequently, on January 21, the Council repealed the Ordinance.

23 Plaintiffs seek three different types of relief: (1) declaratory relief; (2) injunctive
24 relief; and (3) damages. (Prayer for Relief ¶¶ 1-6.) The first two are now moot. Plaintiff
25 is not entitled to the third.

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28 ² The Court dismissed Plaintiff’s third cause of action for compelled speech and fifth cause
of action for violation of the Fourteenth Amendment. (Dkt. No. 36.)

1 Plaintiffs’ Declaratory and Injunctive Relief Claims are now Moot:

2 Because the City has repealed the Ordinance, Plaintiffs’ declaratory and injunctive
3 relief claims are now moot. *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d
4 895 (9th Cir. 2007) is directly on point. There, the plaintiff alleged that the defendant’s
5 billboard ordinance violated the First and Fourteenth Amendments. *Id.* at 898. In
6 response, the defendant repealed the ordinance and replaced it with a different ordinance
7 that was not objectionable. *Id.* at 898-99. Subsequently, the district court dismissed the
8 plaintiff’s claims for injunctive and declaratory relief as moot. *Id.* at 899. The Ninth
9 Circuit Court of Appeal affirmed, holding that “[a] statutory change ... is usually enough
10 to render a case moot, even if the legislature possesses the power to reenact the statute
11 after the lawsuit is dismissed. Here, the district court correctly determined that the city’s
12 repeal of the sign ordinance moots [the plaintiff]’s claims for declaratory and injunctive
13 relief. Because there is no longer any risk that [the plaintiff] will be subject to the
14 challenged ordinance, there exists no live issue upon which the court could issue
15 prospective relief.” *Id.* at 901 (quotation marks omitted). Such is the case here.
16 Moreover, the City has no intention of re-enacting the Ordinance. Accordingly, Plaintiffs’
17 claims for injunctive and declaratory relief are moot.

18 Plaintiffs have not been Damaged by the Ordinance:

19 There are three possible damages claims here: (1) Plaintiff Doe’s damages; (2)
20 Plaintiff NRA’s damages based on associational standing; and (3) Plaintiff NRA’s own
21 damages. The first two are barred as a matter of law because neither Plaintiff has standing
22 to assert such claims. The third is not viable.

23 Plaintiff Doe:

24 The Complaint alleges that Plaintiff John Doe “operates a business with multiple
25 contracts with the City of Los Angeles.” (Compl. ¶ 6.) The Complaint also alleges that
26 Plaintiff John Doe is a “member and supporter of the NRA.” (*Id.*) The issue is that the
27 Ordinance only requires a putative contractor—in this case, Doe’s *business*—to file a
28 disclosure statement. Doe, an owner or employee of a business, is not required to file

1 anything. In other words, Doe is not subject to the Ordinance. So Doe has not suffered
2 an injury; thus, he has no standing to pursue damages.

3 Plaintiff NRA's Associational Standing:

4 Plaintiff NRA asserts claims on its behalf and on behalf of its members—"NRA
5 brings this suit on behalf of its members." (Compl. ¶ 4.) "Under the doctrine of
6 'associational' or 'representational' standing an organization may bring suit on behalf of
7 its members whether or not the organization itself has suffered an injury from the
8 challenged action." *Fleck & Assocs. v. City of Phoenix*, 471 F.3d 1100, 1105 (9th Cir.
9 2006). "To obtain associational standing, the entity must show that (1) at least one of its
10 members would have standing to sue in his own right, (2) the interests the suit seeks to
11 vindicate are germane to the organization's purpose, and (3) neither the claim asserted nor
12 the relief requested requires the participation of individual members in the lawsuit." *Id.*
13 at 1105-06.

14 However, it is well-established "that no federal court has allowed an association
15 standing to seek monetary relief on behalf of its members." *United Union of Roofers No.*
16 *40 v. Ins. Corp. of Am.*, 919 F.3d 1398, 1400 (9th Cir. 1990). "[C]laims for monetary
17 relief necessarily involve individualized proof and thus the individual participation of
18 association members thereby running afoul of the third prong of the [associational
19 standing] test." *Id.*; see also *Bano v. Union Carbide Corp.*, 361 F.3d 696, 714 (2d Cir.
20 2004) ("We know of no Supreme Court or federal court of appeals ruling that an
21 association has standing to pursue damages claims on behalf of its members."); *SEIU,*
22 *Local 721 v. County of Riverside*, No. EDCV 09-00561-VAP (JTLx), 2011 U.S. Dist.
23 LEXIS 46008, at *31 (C.D. Cal. Apr. 27, 2011) ("[B]ecause Plaintiff
24 seeks damages here, associational standing is precluded insofar as Plaintiff alleges
25 monetary damages.").

26 Accordingly, Plaintiff NRA has no associational standing to pursue damages.
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1 Plaintiff NRA’s Own Damages:

2 Plaintiff NRA can pursue damages for a First Amendment violation for the period
3 in which the Ordinance was in effect. However, this would be a waste of the Court’s
4 resources.

5 The Court indicated in its 12/11/19 Order that the NRA “maintains that the
6 Ordinance will also cause them to lose sponsors: if companies are forced to disclose their
7 sponsorship of the NRA to the City, those companies will be less likely to provide
8 sponsorship for fear of suffering the same stigma as Doe.” (12/11/19 Order at 19.) At
9 trial, the NRA will have to prove that the Ordinance caused them to lose sponsors. To
10 date, the NRA has not identified a lost sponsor—i.e., a company that did not provide a
11 sponsorship to the NRA because of the City’s law. The City seriously doubts that such a
12 company exists.

13 And even if the NRA could identify such a company, how could the NRA prove
14 that it has been damaged by a lack of sponsorship? In other words, how can the NRA
15 prove that it lost money because Company “X” did not provide the NRA a sponsorship?
16 Simply put, the NRA cannot prove that some unidentified person did not join the NRA
17 because a company refused to be a sponsor of the NRA because of the Ordinance. Indeed,
18 the NRA has already admitted that the availability of sponsorships has no bearing on
19 whether someone chooses to be an NRA member. For example, in response to certain
20 businesses terminating their discount programs with the NRA following the tragic mass
21 shooting at Marjory Stoneman Douglas High School last year, the NRA stated: “Let it be
22 absolutely clear. The loss of a discount will neither scare nor distract one single NRA
23 member from our mission to stand and defend the individual freedoms that have always

1 made America the greatest nation in the world.” (Dkt. No. 19-3 at p.56.)³ In sum, how is
2 the NRA going to be able to prove to a jury that it has been damaged in some specific
3 amount because of the Ordinance? It can’t.

4 It is the NRA’s burden to establish damages. The City highly doubts that it will be
5 able to satisfy this burden. Thus, the City is hopeful that Plaintiffs will withdraw their
6 claims for damages and take the trial off-calendar so as not to waste the Court’s valuable
7 resources.

8 **Summary of Defendants’ Affirmative Defenses (L.R. 16-4.1(d)-(f)):**

9 **Affirmative Defenses:** the affirmative defenses that Defendants have pleaded for
10 which Defendant bears the burden of proof are discussed below.

11 **Affirmative Defense 1: Standing:** Plaintiff John Doe does not have standing, and
12 the NRA does not have associational standing to seek damages.

13 **Elements:**

- 14 1. injury in fact that is concrete and particularized and not hypothetical;
- 15 2. a causal connection between the injury and the conduct complained of; and
- 16 3. a likelihood the injury will be redressed by a favorable decision.

17 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

18 **Brief Description of Key Evidence in Support of the Standing Affirmative**
19 **Defense:**

20 Please see the prior discussion above.

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24 ³ This same evidence is fatal to the NRA’s establishment of the second element of a First
25 Amendment claim—that the City’s actions against the NRA would chill a person of
26 ordinary firmness from continuing to engage in the protected activity. The NRA has
27 already admitted that the loss of sponsorships will not prevent it from continuing to engage
28 in the protected activity—“pro-firearm speech.” Indeed, current events dictate this to be
true—has the NRA curtailed their “pro-firearm speech” since the Ordinance was passed?
Of course not.

Evidentiary and Legal Issues (L.R. 16.4-1(g)-(i)):

Third-Party Claims or Counterclaims: There are no third party claims or counterclaims in this action.

Anticipated Evidentiary Issues: Defendant anticipates filing a motion *in limine* to exclude damages-related evidence Plaintiffs have failed to identify.

BIFURCATION OF ISSUES (L.R. 16-4.3)

Defendant is not requesting any bifurcation of issues at this time.

JURY TRIAL (L.R. 16-4.4)

Defendant demanded a jury trial in its Answer (Dkt. No. 38).

ATTORNEY’S FEES (L.R. 16-4.5)

The Court, in its discretion, may award attorneys’ fees to the prevailing party in a Section 1983 case. 42 U.S.C. § 1988(b).

ABANDONMENT OF ISSUES (L.R. 16-4.6)

None.

Dated: January 21, 2020

OFFICE OF THE CITY ATTORNEY OF
LOS ANGELES

By:

/s/ Benjamin Chapman

Benjamin Chapman

Attorneys for Defendant
CITY OF LOS ANGELES