Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; and RASIER, LLC, Plaintiffs, vs. THE CITY OF SEATTLE; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES; and FRED PODESTA, in his official capacity as Director, Finance and Administrative Services, City of Seattle, Defendants.	No. 17-cv-00370-RSL LCR 37 JOINT SUBMISSION REGARDING REQUESTS FOR PRODUCTION TO CHAMBER OF COMMERCE **NOTE ON CALENDAR: December 23, 2019**

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I. MOVING PARTY'S INTRODUCTORY STATEMENT

Defendant City of Seattle is the moving party for this submission. Following this Court's order permitting discovery essential to oppose the motion for summary judgment brought by Plaintiff Rasier, LLC ("Rasier") and Plaintiff the Chamber of Commerce of the United States of America ("the Chamber"), ECF No. #106, Defendant the City of Seattle ("Seattle") propounded requests for production on both Rasier and the Chamber.

The Chamber is not pursuing this lawsuit on its own behalf. Instead, its litigation of the suit is premised on its associational standing to represent Chamber members purportedly harmed by the challenged Seattle ordinance. In arguing that it has associational standing, the Chamber specifically identified three affected members: Uber, Lyft, and Eastside for Hire. In response to Seattle's discovery requests, however, the Chamber has refused to undertake any effort to produce relevant documents in the possession of Lyft, Eastside for Hire, or other Chamber members. Instead, the Chamber takes the position that it will produce only documents in its own possession, custody, or control, which it says are minimal.

The Chamber should be compelled to undertake its best efforts to produce documents from the parties upon whom it relies to establish its associational standing to participate in this lawsuit, including Lyft and Eastside for Hire. In the alternative, the Court should conclude that the Chamber lacks associational standing and must be dismissed from this lawsuit, because its failure to produce responsive documents highly relevant to the claims it asserts demonstrates that its members' individual participation in the lawsuit is necessary. *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 343 (1977).

II. RESPONDING PARTY'S INTRODUCTORY STATEMENT

Federal Rule of Civil Procedure 34 requires the Chamber to produce documents only in its "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Seattle ignores this governing standard. In Seattle's view, every party with associational standing must act as a clearinghouse for documents in the possession, custody, and control of its members. The Rules of Civil Procedure and law of the Ninth Circuit, however, impose no such a duty. Nor is the Chamber

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seeking to avoid the burdens of being a plaintiff in litigation. The Chamber is fully participating in discovery—as a party—and simply asks that Seattle follow the Civil Rules for discovery of documents in the possession, custody, and control of other parties or non-parties.

It is not as if Seattle has no recourse. The Rules already provide direct avenues for Seattle to seek any limited discovery required in this litigation through discovery requests (Rasier) and Rule 45 subpoenas (Lyft, Eastside). If the documents of the Chambers' members are "highly relevant," as Seattle contends, then Seattle can request those documents through the established channels, and the custodian entities may respond or object as appropriate. But whether the documents are relevant has nothing to do with whether they are in the Chamber's possession, custody, or control.

Nor is there any basis for Seattle's request to revisit the Chamber's associational standing. For one thing, a party's standing is determined as of the time a complaint is filed, not years later during discovery. For another, associational standing is no longer relevant, because Rasier is a party to the case and indisputably has standing.

III. DISPUTED DISCOVERY REQUESTS

INSTRUCTION 1 TO REQUESTS FOR PRODUCTION:

1. With respect to each document request, you are to produce all documents in the possession, custody, or control of you or your present and former agents, employees, representatives, attorneys, or other persons acting on your behalf, as well as any documents in the possession, custody, or control of any entity on whose behalf you are pursuing this action, or on whose membership you rely to establish your standing to pursue this action, including documents in the possession, custody, or control of Uber Technologies, Inc, Uber USA, LLC, Rasier, LLC, Lyft, Inc., or Eastside for Hire, or their agents, employees, representatives, attorneys, or other persons acting on their behalf. In providing documents in response to this request, you must make a diligent search of your written and electronic records and of other papers and materials and records in the possession of or under the custody or control of you or your present and former agents, employees, representatives, attorneys, or other persons acting on

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your behalf, or of Uber Technologies, Inc, Uber USA, LLC, Rasier, LLC, Lyft, Inc., or Eastside for Hire or their agents, employees, representatives, attorneys, or other persons acting on their behalf.

OBJECTION TO INSTRUCTION 1:

1. The Chamber objects to instruction 1 insofar it seeks documents not in the Chamber's possession, custody, or control. This includes Defendant's request for the Chamber to produce documents "in the possession, custody, or control of any entity on whose behalf you are pursuing this action, or on whose membership you rely to establish your standing to pursue this action." Defendant's Requests at 1, ¶ 1.

Discovery obligations are limited to documents "in the responding party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). No provision of the Rules authorizes a defendant to request documents from an associational plaintiff when those documents are in the possession, custody, and control of a third party on whose membership the association relies for standing. Further, the Chamber need not rely on any non-party for standing, as "the presence of one party [Rasier] with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 (2006).

Documents in the possession of the Chamber's members are not in the Chamber's possession or custody, nor are they in the Chamber's control. The Ninth Circuit has defined "control" as "the legal right to obtain documents upon demand." *In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999); *City of Seattle v. ZyLAB, N.A. LLC*, 2017 WL 4418636, at *6 (W.D. Wash. 2017). Such a right exists only through a "contractual or legal relationship … such that the [party receiving the document request] can force [a third party] to turn over documents in its possession." *City of Seattle*, 2017 WL 4418636, at *6. The party serving the document request bears the burden of proving the existence of a "contractual or legal relationship" for purposes of "control." *Id.* Here, no such relationship exists between the Chamber and its members.

Under this test, the Ninth Circuit and district courts within it have held that associations like the Chamber have no obligation to produce documents in the possession of their members.

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See United States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO, 870 F.2d 1450, 1452–54 (9th Cir. 1989) (in subpoena context, international union had no obligation to produce documents of local affiliate unions); *Rocky Mountain Farmers Union v. Goldstene*, 2011 WL 1403379, at *2 (E.D. Cal. 2011) (farmers' association had no obligation to produce documents held by the association's members, even where the associations "brought [the] action on behalf of their members, alleging harm only to their members"); *Oil Heat Inst. v. Northwest Natural Gas*, 123 F.R.D. 640, 642 (D. Or. 1988) (non-profit trade association had no obligation to produce documents held by its members because there was no evidence the association had "any legal right to documents that belong to the member organizations"); *see also Citric Acid*, 191 F.3d at 1106–08 (one member of an accounting association had no obligation to produce documents possessed by another member). Similarly, district courts in the Ninth Circuit routinely apply the narrow definition of "control" to refuse to require corporate entities to produce documents held by a corporate parent or other related entity. *City of Seattle*, 2017 WL 4418636, at *6 (rejecting Seattle's demand that defendant produce documents in the possession of a corporate parent); *Dugan v. Lloyds TSB Bank, PLC*, 2013 WL 4758055 (N.D. Cal. 2013) (subsidiary had no legal right to obtain documents held by parent).

Accordingly, the Chamber lacks the ability to, and will not, produce documents in response to Defendant's request for the Chamber to produce documents in the possession, custody, and control of its members.

Moving Party's Argument

The Chamber pursues this lawsuit solely on behalf of its members, and does not seek any relief on its own behalf. Its associational standing is premised entirely on the purported injury to its identified members—Uber, Lyft, and Eastside for Hire—that will occur if the challenged ordinance is allowed to take effect. *See* ECF No. 66 at 5 (noting Chamber's associational standing was based on members Uber, Lyft, and Eastside for Hire). Nonetheless, the Chamber contends that it is under no obligation to undertake any efforts to produce highly relevant documents from those members—evidence that Seattle requires to defend itself against the federal antitrust claims

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that the Chamber asserts on those members' behalf. *See* ECF No. 106 at 2-3. The Chamber's position is logically inconsistent, unfair, and legally meritless.

An entity that stands in another's shoes in bringing litigation may not avoid the discovery obligations the other entity would have if it pursued litigation directly. In *Aspen Grove Owners Ass'n v. Park Promenade Apartments, LLC*, for example, a homeowners' association brought suit based on an alleged failure to warn of a series of defects in a condominium complex. No. CV09-1110, 2010 WL 11561763 (W.D. Wash. May 11, 2010). The defendant sought documents relating to the individual homeowners' purchase, inspection, and repairs of the condominium units, which the association refused to produce on the basis "that the individual unit owners are not parties to this lawsuit, and that the [homeowners' association] does not have custody or control of the documents in question." *Id*. at *1. The court rejected these arguments and granted the defendants' motion to compel discovery, finding that "it would be manifestly unfair to permit the unit owners to divorce the *benefits* of litigation from the *attendant burdens*." *Id*. (citing *JPMorgan Chase Bank v. Winnick*, 228 F.R.D. 505, 506 (S.D.N.Y. 2005)) (emphasis added). Similarly, in *Winnick*, an administrative agent brought suit on behalf of a collection of banks. The administrative agent refused to respond to the defendant's discovery requests, arguing that the documents sought were not within its possession, custody, or control; that it had no right to demand the documents from the banks; that the banks were not parties to the action and had no obligation to respond to party discovery; that the banks had largely assigned their rights to the underlying debt; and that it was not more burdensome for the defendants to seek discovery from the banks. 228 F.R.D. at 506. The court rejected the plaintiff's argument and ordered it to produce the disputed discovery:

> Viewed from any angle, plaintiff's position cannot be correct. It is both logically inconsistent and unfair to allow the right to sue to be transferred . . . free of the obligations that go with litigating a claim. . . . Stated another way, on plaintiff's theory, by assigning their tort claims, the Banks also shifted onto defendants the cost of third-party discovery, where the third parties are the very institutions asserting that they were defrauded.
>
> It would be unfair to the defendants to permit plaintiff and the assignees to divorce the benefits of the claims from the obligations that come with the right to assert them, to the detriment of defendants.

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Id. at 506–07.

The same principles apply here. The Chamber seeks relief on behalf of its members, based on its members injuries and claims, but refuses to subject those same members to the discovery obligations that would apply if they had brought suit directly. The Chamber seeks to use associational standing as a sword to enter the courthouse to obtain relief on behalf of its members, and as a shield to avoid subjecting those same members to discovery. That position is both "logically inconsistent and unfair." *Winnick*, 228 F.R.D. at 506.[1]

The Chamber is also wrong in taking the position that Defendants can simply obtain the same documents from its members through third party discovery. Rather than using the efficient methods for party discovery provided by the Federal Rules, Defendants have been forced to resort to costly third-party discovery. Specifically, because the Chamber refused to undertake *any* effort to produce relevant documents from the members it purports to represent in bringing this lawsuit, Defendants have served third-party subpoenas on Lyft and Eastside for Hire, to which Lyft responded on November 27, 2019.[2]

Lyft's responses and objections demonstrate the prejudice that flows from the Chamber's

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[1] The authorities cited by the Chamber in its objection to Seattle's discovery request do not support its position. Most consider only whether *defendants* are obligated to produce documents of separate corporate relatives. *See United States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452-54 (9th Cir. 1989); *In re Citric Acid Litig*., 191 F.3d 1090, 1106-08 (9th Cir. 1999) ; *City of Seattle v. ZyLAB N. Am., LLC*, No. C17-0790-JCC, 2017 WL 4418636, at *6 (W.D. Wash. Oct. 5, 2017); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-cv-02549-WHA (NJV), 2013 WL 4758055, at *2-3 (N.D. Cal. Sept. 4, 2013). A defendant who is not in possession of requested documents is situated differently—and presents different fairness concerns and logical inconsistencies—from a plaintiff who has *elected* to represent the interests of another party in litigation but refuses to provide discovery in connection with those claims and defenses in that suit. The two cases involving associational plaintiffs do not consider the issue in depth, and entirely fail to address the contradictions in the Chamber's position that a party may hold the benefits of being a plaintiff in litigation without the burdens associated with doing so. *See Oil Heat Inst. of Oregon v. Nw. Nat. Gas*, 123 F.R.D. 640, 642 (D. Or. 1988); *Rocky Mountain Farmers Union v. Goldstene*, No. 1:09cv02234 LJO DLB, 2011 WL 1403379, at *2 (E.D. Cal. Apr. 12, 2011).

[2] Defendants did so without prejudice to their position that the Chamber is obligated to produce responsive documents from Lyft and Eastside for Hire because it relies on those members for its associational standing.

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refusal to participate in the discovery process on behalf of an entity it claims to represent.[3] First, Lyft objects to the Requests to the extent that they "impose a disproportional and undue burden on a nonparty," citing case law for the proposition that nonparties "subject to subpoena requests deserve extra protection from the courts." RFP responses at 2 ¶1 (quoting *Headley v. Ferro Corp.*, No. C07-717-JPD, 2008 WL 11344651, at *2 (W.D. Wash. Feb. 15, 2008)). Lyft also objects based on relevance and proportionality, "in particular in light of Lyft's nonparty status." *Id*. at 2 ¶4. Further, Lyft objects to the discovery requests to the extent that they impose a "significant expense" on it, arguing that the City may have to bear the costs of Lyft's compliance with such third-party discovery. *Id*. at 2 ¶3 (citing case law holding that expenses exceeding $9,000 may qualify as significant and that $20,000 does cross that threshold). Lurking behind these responses is another limitation on third-party discovery: that the remedies against a non-party that does not comply with discovery obligations are not the same as those against a party. *See* Fed. R. Civ. P. 37(b)(2) (discussing sanctions against noncompliant party); *Edifecs, Inc. v. Welltok, Inc.*, No. C18-1086JLR, 2019 WL 5862771, at *4 (W.D. Wash. Nov. 8, 2019) (discussing limited Ninth Circuit authority addressing spoliation of evidence by nonparty).

There is no good reason why Seattle's ability to procure discovery from the entities that the Chamber purports to represent in pursuing this litigation should be subject to the significant limitations that apply where discovery is sought from true non-parties. Rather than accepting the Chamber's logically inconsistent and unfair position, this Court should order the Chamber to produce relevant documents from Lyft and Eastside for Hire.

Alternatively, if the Chamber will not produce such documents, the Court should hold that the Chamber lacks associational standing and must be dismissed from this lawsuit. Although this Court previously concluded that participation by the Chamber's members was not required for the Court to evaluate "the anticompetitive potential of the Ordinance" or to fashion "an appropriate remedy," *see* ECF No. 66 at 5-6 (discussing *Hunt*, 432 U.S. at 343), the Chamber's position that

[3] Eastside for Hire has not even responded at all.

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it will not produce relevant documents that are in the possession of its members changes the material circumstances under which the Court reached that conclusion. Moreover, the Court has subsequently held that Seattle's theories as to why "per se rules of illegality under the antitrust laws may be inapplicable" merit discovery. ECF No. 106 at 2-3. Discovery into these issues will necessarily involve facts related to individual companies. Because Seattle's ability to defend itself is significantly prejudiced by the Chamber's failure to produce relevant documents from the members whom the Chamber purports to represent in bringing this case, "the claim[s] asserted" by the Chamber "require[] the participation of individual members in the lawsuit," and the Chamber should not be allowed to pursue its claims on an associational basis. *Hunt*, 432 U.S. at 343.[4]

Responding Party's Response

Seattle's demand for associational discovery asks this Court to ignore the Rules of Civil Procedure and Ninth Circuit precedent. The Rules impose no obligation on an associational plaintiff to produce documents belonging to its members; Ninth Circuit precedent affirmatively rejects such an obligation. Seattle simply seeks an extra-legal shortcut because it is not content with the governing law and the process for obtaining documents from other parties and non-parties.

Rule 34 requires a "party" to produce documents "in the … party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). The Chamber is a party here, while its members Lyft and Eastside are not. Documents in the possession of the Chamber's members are not in the Chamber's possession or custody, nor are they in the Chamber's control. The Ninth Circuit has defined "control" as "the legal right to obtain documents upon demand." *In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999); *City of Seattle v. ZyLAB, N.A. LLC*, 2017 WL 4418636, at *6 (W.D.

[4] The third prong of the test for associational standing is prudential in nature and "designed to promote efficiency in adjudication." *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 951 n.9 (9th Cir. 2002). Any efficiencies involved in having the Chamber represent the interests of its members is lost, however, if third-party discovery is necessary for Seattle to procure highly relevant documents necessary for Seattle to defend itself against the claims the Chamber is asserting on its members' behalf.

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Wash. 2017). Such a right exists only through a "contractual or legal relationship . . . such that the [party receiving the document request] can *force* [a third party] to turn over documents in its possession." *City of Seattle*, 2017 WL 4418636, at *6 (emphasis added). The party serving the document request bears the burden of proving the existence of a "contractual or legal relationship" for purposes of "control." *Id.* No such relationship exists between the Chamber and its members, a point which Seattle does not contest.

Under this "control" test, the Ninth Circuit and district courts within it have held that associational parties have no obligation to produce documents belonging to their members. *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452–54 (9th Cir. 1989) ("*Petroleum Workers*") (international union had no obligation to produce documents of local affiliate unions); *Rocky Mountain Farmers Union v. Goldstene*, 2011 WL 1403379, at *2 (E.D. Cal. 2011) (associational plaintiff had no obligation to produce documents held by the association's members, even where the associations "brought [the] action on behalf of their members, alleging harm only to their members"); *Oil Heat Inst. v. Northwest Natural Gas*, 123 F.R.D. 640, 642 (D. Or. 1988) (associational plaintiff had no obligation to produce documents held by its members because there was no evidence the association had "any legal right to documents that belong to the member organizations"); *see also Citric Acid*, 191 F.3d at 1106–08 (one member of an accounting association had no obligation to produce documents possessed by another member); *CBS Broad. Inc. v. Echostar Commc'ns Corp.*, 2003 WL 27387393, at *12 (S.D. Fla. 2003) (associational plaintiffs need not produce members' documents because "an association is not deemed to have control of its members' information or documents merely because it represents them"); *Sherwin-Williams Co. v. Spitzer*, 2005 WL 2128938, at *10 (N.D.N.Y. Aug. 24, 2005) (associational plaintiff has no "duty to be a clearinghouse for … information that would inextricably come from the individual members"). Similarly, district courts in the Ninth Circuit routinely apply the narrow definition of "control" to refuse to require corporate entities to produce documents held by a corporate parent or other related entity. *City of Seattle*, 2017 WL 4418636, at *6 (rejecting Seattle's demand that defendant produce documents in the possession of a

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corporate parent); *Dugan v. Lloyds TSB Bank, PLC*, 2013 WL 4758055 (N.D. Cal. 2013) (subsidiary had no legal right to obtain documents held by parent).

Against this controlling authority, Seattle has little to offer. Seattle cites no provision of the Rules and no Ninth Circuit precedent. It argues that some of the Chamber's cases involved an associational defendant, while the Chamber is a plaintiff. *Supra* at 6 n.1. But the holding and reasoning of these cases apply equally to associational plaintiffs and defendants. *See Petroleum Workers*, 870 F.2d at 1452–54. That is because Rule 34 applies equally to all parties: plaintiffs, defendants, associational plaintiffs, or otherwise. *See* Fed. R. Civ. P. 34(a) ("*A party* may serve on *any other party* a request" for production of documents … "in the *responding party's* possession, custody, or control") (emphasis added). The Rule conspicuously never mentions "plaintiffs" or "defendants," and instead refers to a "party" and "any other party," or a "requesting party" and a "responding party." *Id.* 34(a), (a)(1), (b)(2). Not surprisingly, Seattle cites no case distinguishing between plaintiffs and defendants for purposes of discovery.

For affirmative support, Seattle bases its motion on two inapposite district court cases. The first interpreted a Washington statute permitting formation of an apartment owner's association to institute litigation. *Aspen Grove Owners Ass'n v. Park Promenade Apartments, LLC*, 2010 WL 11561763 (W.D. Wash. 2010). The court did not cite Rule 34 or apply the Ninth Circuit's "control" test. From the court's cursory discussion, it is impossible to discern whether the court concluded that the Washington statute required the association to produce its members' documents, or whether it concluded that the members' documents were in fact under the association's control. Either way, the case has no persuasive value here.

Seattle also purports to rely on *JP Morgan Chase Bank v. Winnick*, 228 F.R.D. 505 (S.D.N.Y. 2005). But *Winnick* bears no resemblance to this case. To begin, the case is from the Southern District of New York, and the Second Circuit applies a broader "practical ability" test for control than the Ninth Circuit allows under *Petroleum Workers*. *See JPMorgan Chase Bank, N.A. v. KB Home*, 2010 WL 1994787, at *5 (D. Nev. 2010) ("[T]he Ninth Circuit defines control, for purposes of a Rule 34 request, as the legal right to obtain documents upon demand, while the

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Second Circuit defines control as the 'practical ability' to obtain the documents from a non-party.").

Winnick is also readily distinguishable on its facts. The plaintiff was not an associational plaintiff, but an administrative agent of several non-party banks who had assigned it their claims seeking damages for fraudulent misrepresentations. As Seattle points out, the court concluded that it would be unfair if "the assignor [could] assign a claim more valuable than it could ever have, because its claim, if pursued by the assignor, would entail certain obligations that, when assigned, would magically disappear." 228 F.R.D. at 506. But an assignor's discovery obligations differ in kind from an associational plaintiff's, because the tort "claims being asserted [by the assignee] are those of the original [assignors]." *Id.* at 507.

By contrast, associational members do not assign their claims (or entitlement to damages for those claims) to an association. *See Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977) ("[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."). No similar agency relationship exists in the associational standing context. That is, although *Hunt*'s third prong requires that the "members would have standing to bring the same suit," *N.Y. State Club Ass'n v. City of N.Y.*, 487 U.S. 1, 9 (1988), members do not assign their claims to the association as their agent, as the banks in *Winnick* did. *See Winnick*, 228 F.R.D. at 507 ("The Real Parties in Interest, through [plaintiff] as agent, are the Banks that continue to hold debt and the assignees that claim to be suing in the shoes of the Banks."). For this reason, Seattle's assertion that the Chamber "steps into the shoes" of its members as the associational plaintiff is a red herring.

Seattle's prejudice and fairness arguments are similarly misplaced. To begin, Seattle will suffer no prejudice here because it has other litigation tools—namely, party discovery (Rasier) and Rule 45 subpoenas (Lyft and Eastside)—to request any limited discovery it needs directly from

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the entities that possess or control those materials. Even if those entities object to some of Seattle's overbroad discovery requests, that does not render the Chamber a suitable substitute.

There is nothing unfair about following the Civil Rules of discovery for an associational plaintiff. Seattle claims that the Chamber is improperly seeking to use associational standing as a sword and a shield. It is not. Associational standing merely allows the Chamber to initiate the case under Article III. It is no sword. And this Court has already determined that the Chamber has associational standing and that the presence of its members is not necessary to adjudicate this case. Indeed, the City is always free to use Rule 45 subpoenas against any non-party to the case.

But in any event the point fails because the same could be said about every associational standing case. In every case, an association sues on behalf of its members, and in many cases the association will not have possession, custody, or control of its members' documents. The Supreme Court has nevertheless permitted associational standing, without ever suggesting that different discovery rules would apply to an associational plaintiff. *See Hunt*, 432 U.S. at 343. The Chamber is therefore properly proceeding in this case just as any other associational plaintiff, under well-established rules permitting associational standing. The only thing unfair is Seattle's request to abandon the Civil Rules.

Finally the Court should of course reject Seattle's request—which is unsupported by any authority—to revisit associational standing. First, a party's standing is determined as of the time a complaint is filed. *Lujan v. Defenders of Wildlif*e, 504 U.S. 555, 570 n.5 (1992) ("standing is to be determined as of the commencement of suit"). Seattle cites no case authorizing courts to revisit standing years after a suit is filed. Second, the Chamber's claims for declaratory and injunctive relief are not the kind of individualized damages claims that require individual member participation. *Warth v. Seldin*, 422 U.S. 490, 515–16 (1975); *see also Playboy Enterp., Inc. v. Pub. Serv. Comm'n of Puerto Rico*, 906 F.2d 25, 35 (1st Cir. 1990) ("just because a claim may require proof specific to individual members of an association does not mean the members are required to participate *as parties* in the lawsuit"); *Retired Chicago Police Ass'n v. City of Chicago*,

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7 F.3d 584, 601–03 (7th Cir. 1993) (allowing associational standing even though claim might require testimony by some individual members).

Moving Party's Reply

The Chamber cannot assert the rights of its members without permitting Defendants to test their claims through discovery.[5] The Chamber distinguishes cases in which an assignee stands in the shoes of another party, but where an association premises its standing on particular members, those members *are* the real parties in interest in the litigation. *See Pac. Coast Agr. Exp. Ass'n v. Sunkist Growers, Inc*., 526 F.2d 1196, 1207–08 (9th Cir. 1975) (association may sue under antitrust laws only as assignee of members); *Zee Medical Distributor Ass'n v. Zee Medical, Inc*., 23 F.Supp.2d 1151, 1155-56 (N.D. Cal. 1998). As the real parties in interest here, Lyft and Eastside should not be allowed to avoid necessary discovery simply by acting through the Chamber.

If the Court concludes it cannot require the Chamber to provide the requested discovery from those real parties, its associational standing must be reconsidered, because that would mean that individual participation of the Chamber's members is required for this case to proceed. *See, e.g., Nat'l Coal. Gov't of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329, 344 (C.D. Cal. 1997) (association's injunctive relief claims required participation of individual members). Contrary to the Chamber's arguments, a plaintiff bears the burden of proof to establish standing *at all stages* of the litigation, *Lujan v. Defenders of Wildlif*e, 504 U.S. 555, 561 (1992), and where a plaintiff fails to meet its burden, including at a later stage of the case, thar plaintiff is properly dismissed, *see, e.g., Keep Chicago Livable v. City of Chicago*, 913 F.3d 618, 623 (7th Cir. 2019).

[5] Defendants are undoubtedly prejudiced by the Chamber's position. The Chamber contends Defendants can subpoena the necessary documents. But Lyft has not yet produced *any* documents, and repeatedly objects that as a *nonparty* it is subject to lesser discovery obligations. *See supra* at 6-7; Leyton Decl. ¶¶ 6-7, Ex. D. And Eastside for Hire—a month after the subpoena's return date, and despite repeated efforts to procure a response—has not yet even provided a written response, let alone responsive documents. *Id* ¶ 8.

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CERTIFICATION

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

DATED this 23rd day of December, 2019.

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By: /s/ Stacey Leyton

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2019, I electronically filed this LCR 37 SUBMISSION REGARDING REQUESTS FOR PRODUCTION TO CHAMBER OF COMMERCE with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the below-listed:

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DATED this 23rd day of December, 2019, at San Francisco, California.

By: /s/ Stacey Leyton
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