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11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14
 15 JULIE WALTZ,

16 Plaintiff,

17 v.

18 LILLIANITA T. BRUMFIELD, et al.,

19 Defendants.

CASE NO. 5:08-cv-00432-SGL-OP

**~~PROPOSED~~ ORDER DENYING
 DEFENDANTS' MOTION TO
 DISMISS SECOND CLAIM OF
 COMPLAINT**

Hearing: August 25, 2008
 Time: 10:00 a.m.
 Courtroom: 1
 Judge: Hon. Stephen G. Larson

1 On August 25, 2008, the motion of Defendants Lillianita T. Brumfield,
2 Belinda Brown, and Phyllis Cheng to dismiss the Second Claim (for injunctive and
3 declaratory relief) of Plaintiff's Complaint came on for hearing in this Court, the
4 Honorable Stephen G. Larson presiding. The Court, having considered the papers
5 and arguments submitted in support of and in opposition to the motion, hereby
6 DENIES the motion.

7 The Court finds that Defendants cannot show that Plaintiff's Second Claim
8 fails as a matter of law. Specifically, the Court finds:

- 9 (1) The facts at the pleading stage are assumed true as alleged, and
10 construed in the light most favorable to Plaintiff as the non-moving
11 party. *See Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994).
12 Furthermore, when evaluating standing at the motion to dismiss stage,
13 it is presumed that general allegations embrace those specific facts that
14 are necessary to support the claim. *See Bennett v. Spear*, 520 U.S.
15 154, 168 (1997). Under these assumptions, Defendants cannot meet
16 their heavy burden of showing that plaintiff will be unable to prove
17 that she has standing.
- 18 (2) Plaintiff's Second Claim seeks an injunction preventing Defendants
19 from chilling First Amendment rights through extensive and overbroad
20 investigations, and a judgment declaring Defendants' alleged policy of
21 engaging in such investigations unconstitutional. Plaintiff alleges that
22 she posted signs in her yard and engaged in other forms of speech in
23 opposition to government policies regarding the placement of people
24 with behavioral problems in group homes located in residential
25 neighborhoods. (*See* Complaint ¶¶ 14-21.) Plaintiff alleges that she
26 was subjected to an investigation by employees of the California
27 Department of Fair Housing and Employment (DFEH) because of her
28 speech in opposition to government policies. (*See Id.* ¶¶ 22-44.)

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Furthermore, Plaintiff alleges that DFEH officials told her that the investigation was based on the content of her speech, that they attempted to pressure her into curtailing her speech, and that they continued their investigation of Plaintiff long after they knew that all of Plaintiff's activities that were at issue were protected by the First Amendment. (*See id.*) Plaintiff alleges that the investigation of her was conducted pursuant to a DFEH policy or custom, and that "DFEH officials continue to pursue and regulate protected speech in similar cases in a fashion consistent with the manner" in which they treated Plaintiff. (*See id.* ¶¶ 2, 54.) Plaintiff further alleges that she wants to continue to engage in the type of speech that was allegedly the focus of the DFEH investigation, and that she has been deterred from engaging in protected conduct because she reasonably fears that Defendants will subject her to further investigation because of her speech. (*See id.* ¶¶ 19, 48-52.) Plaintiff also alleges that, as a result of the DFEH investigation targeting her, the speech of others has been chilled because they "were unwilling to risk being the subject of a DFEH prosecution for opposing government policies." (*See id.* ¶ 3.)


(3) Plaintiff's allegations establish a "likelihood of future injury" sufficient to give her standing to seek declaratory and injunctive relief. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

For the reasons stated above, Defendants' Motion to Dismiss is DENIED.

IT IS SO ORDERED:

Dated:

9-29-08.


The Honorable Stephen G. Larson
United States District Court Judge