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8 FONTANA

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 INLAND COALITION FOR
13 IMMIGRANT JUSTICE,

14 Plaintiff,

15 vs.

16
17 CITY OF FONTANA, CITY
18 COUNCIL OF FONTANA, MAYOR
19 ACQUANETTA WARREN, PHILIP
20 BURUM, FONTANA CODE
21 COMPLIANCE DEPARTMENT,
4LEAF, INC., CRAIG TOLE, PETE
ROQUE,

22 Defendants.
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Case No. 5:25-cv-2092-SSS-SP

Assigned to: Hon. Sunshine S. Sykes
Magistrate Judge: Hon. Sheri Pym

**DEFENDANT CITY OF
FONTANA’S REPLY IN SUPPORT
OF MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P.
12(b)(6)**

Judge: Hon. Sunshine Suzanne Sykes

Date: December 19, 2025

Time: 2:00 P.M.

Crtrm.: 2

1 **I. INTRODUCTION**

2 Plaintiff Inland Coalition for Immigrant Justice’s Opposition confirms that its
3 First Amended Complaint (“FAC”) must be dismissed. Unable to rebut the arguments
4 raised in Defendant City of Fontana’s Motion to Dismiss, Plaintiff mischaracterizes the
5 City’s arguments and its own claims, and then repeats the same deficient arguments
6 from its FAC without additional analysis.

7 As explained in the Motion, Plaintiff lacks Article III standing because it has not
8 sufficiently alleged that either it, or any of its members, were harmed by any of the
9 Challenged Ordinance Provisions, let alone all of them. The Opposition fails to show
10 otherwise, and thus the FAC should be dismissed on this ground alone.

11 But even if Plaintiff had standing, each of its substantive claims fail as a matter
12 of law. Plaintiff cannot escape that its First Amendment challenge to the City’s
13 “Enforcement Obstruction Consequences” provision (“EOC Provision”) has been
14 rejected by numerous courts when analyzing similar statutes. Moreover, Plaintiff
15 cannot plausibly allege there are **no** set of circumstances where the Seizure Provisions
16 would be constitutional under the Fourth and Fifth Amendments, which is what its
17 facial challenge requires. Finally, Plaintiff’s Opposition fails to identify any conflict
18 between the City’s ordinances and state law, and thus its preemption claim fails.
19 Accordingly, the City’s Motion should be granted in its entirety.

20 **II. ARGUMENT**

21 **A. Plaintiff Has Failed to Allege Article III Standing**

22 1. Plaintiff Lacks Organizational Standing

23 Plaintiff contends that it has organizational standing because it was “forced” to
24 expend time and resources on education and advocacy related to the Challenged
25 Ordinance Provisions and this interfered with its core business activities. Opp. at 4:1-6.
26 However, these allegations cannot establish organizational standing. *See FDA v.*
27 *Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024) (finding that spending
28 ““considerable time, energy, and resources”” on “public advocacy and public

1 education” was insufficient to establish organizational standing). Instead, a plaintiff
2 must allege that the defendant’s conduct would have interfered with its “core mission”
3 even if it did not devote *any* resources in response. *See id.* (“[A]n organization that has
4 not suffered a concrete injury caused by a defendant's action cannot spend its way into
5 standing simply by expending money to gather information and advocate against the
6 defendant’s action.”).

7 For instance, in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), the
8 plaintiff had standing because its core business included “housing counseling” and the
9 defendants’ false information impaired the plaintiff’s ability to provide these services.
10 *Id.* at 395. Here, in contrast, Plaintiff contends its “core activities include providing
11 vendors with small business training, peer-to-peer technical assistance and grant
12 opportunities, and other individualized assistance.” Opp. 2:12-14. Plaintiff does not,
13 however, allege any facts suggesting that any of the Challenged Ordinance Provisions
14 (let alone all of them) interfered with its ability to provide these services. Instead,
15 Plaintiff alleges that it made the unilateral decision to devote additional resources to
16 education in response to the Challenged Ordinance Provisions. This is plainly
17 insufficient under *Hippocratic Medicine* to establish organizational standing.

18 2. Plaintiff Lacks Associational Standing

19 To allege associational standing “a plaintiff must demonstrate that its members
20 would have standing to sue in their own right.” *Humane Soc’y of the United States v.*
21 *United States Dep’t of Agric.*, 2021 WL 1593243, at *4 (C.D. Cal. Mar. 26, 2021).
22 “Thus, the complaint must allege facts that would permit a member to satisfy the three
23 elements [of standing]—injury-in-fact, causation, and redressability. *Id.* As such,
24 Plaintiff must allege that at least one of its members has standing for *each* of the
25 Challenged Ordinance Provisions. *See e.g. Coal. on Homelessness v. City & Cnty. of*
26 *San Francisco*, 758 F. Supp. 3d 1102, 1122-28 (N.D. Cal. 2024) (conducting
27 associational standing analysis for each asserted claim). As explained in the Motion,
28 Plaintiff has failed to allege facts demonstrating that at least one of its members has

1 standing to challenge *any* of the Challenged Ordinance Provisions, let alone *all* of
2 them.¹

3 In response, Plaintiff claims that it alleged that “A.M. and A.C.” “suffered
4 serious harms due to the City’s conduct.” *See* Opp. at 6:9-11, n. 5. However, Plaintiff
5 does not address the City’s arguments that these allegations are insufficient because the
6 FAC does not allege that A.C. or A.M. were (or will be) (a) charged with violating the
7 EOC Provision, (b) denied a permit *because of* their failure to comply with any of the
8 Permit Provisions (including, for example, by alleging that they would have otherwise
9 qualified for a permit if not for the Permit Provisions), or (c) denied an exemption to
10 the Permit Provisions. *See* Mot. at 6:27-8:9. Indeed, Plaintiff does not even allege that
11 A.C. applied for a permit at all. The failure to address these arguments should be
12 treated as a tacit concession of their merit. *See Est. of Posard v. Los Angeles Cnty.*
13 *Sheriff’s Dep’t*, 2024 WL 4403865, at *7 (C.D. Cal. Sept. 12, 2024) (“Failure to
14 address a movant’s argument for dismissal can constitute a tacit concession of the
15 issue.”).

16 Indeed, the only argument Plaintiff addressed in its Opposition was the City’s
17 contention that because Plaintiff did not allege that A.M. or A.C. appealed a permit
18 denial, they lacked standing to challenge the Permit Provisions under the
19 administrative exhaustion rule. Plaintiff claims this doctrine is inapplicable to section
20 1983 claims—but it only challenges the Permit Provisions through its preemption
21 claim. Plaintiff does not dispute that the doctrine applies to this claim.

22 Accordingly, the FAC fails to sufficiently allege associational standing.

23 **B. Plaintiff’s Constitutional Challenges to the EOC Provision Fail**

24 1. The EOC Provision Is Not Unconstitutionally Overbroad

25 As explained in the Motion, Plaintiff’s reliance on *City of Houston v. Hill*, 482
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27 ¹ Plaintiff falsely claims that the City objected to Plaintiff’s lack of evidence and to
28 Plaintiff’s use of initials to identify its members. Opp. at 7:4-21. However, the
Motion was based on the failure to sufficiently allege *facts* demonstrating standing.

1 U.S. 451 (1987) to argue the EOC Provision is overbroad is misplaced. An overbreadth
2 challenge requires a “showing that a law punishes a ‘substantial’ amount of protected
3 free speech, ‘judged in relation to the statute’s plainly legitimate sweep[.]’” *Virginia v.*
4 *Hicks*, 539 U.S. 113, 118 (2003). In *Hill*, the Supreme Court found that an obstruction
5 statute was overbroad because its language regarding physical obstruction was
6 preempted by state law and “the enforceable portion of the ordinance deal[t] not with
7 core criminal conduct, but with speech.” *Id.* at 460. Because the enforceable portion of
8 the statute only criminalized criticism, it had no plainly legitimate sweep and was thus
9 overbroad. Contrary to Plaintiff’s argument, “[c]entral to the decision in *Houston* was
10 the fact that state law preempted coverage of physical acts, leaving an ordinance that
11 prohibited verbal interruptions of police officers.” *In re Andre P.*, 226 Cal. App. 3d
12 1164, 1173 (1991).

13 Here, the City’s EOC Provision does have a plainly legitimate sweep—it targets
14 physical conduct and true threats. These terms are aimed at physical and coercive
15 interference, not mere verbal opposition, and the Ninth Circuit has upheld laws with a
16 similar scope. *See United States v. Murphy-Ellis*, 47 F. App’x 488, 490 (9th Cir. 2002)
17 (finding a provision criminalizing conduct that “[t]hreaten[s], resist[s], intimidat[es], or
18 interfer[es]” with an officer’s official duties is not facially overbroad); *United States v.*
19 *Brice*, 926 F.2d 925, 931 (9th Cir. 1991) (finding a provision criminalizing conduct
20 that “impedes or disrupts the performance of official duties” is not unconstitutionally
21 overbroad).

22 Plaintiff erroneously attempts to distinguish these cases because they involved
23 criminal laws and not city ordinances. However, the constitutional analysis turns on the
24 substance of the regulation, not its classification. Moreover, under California law, a
25 “[v]iolation of a city ordinance is a misdemeanor unless by ordinance it is made an
26 infraction” and thus a violation of the EOC Provision is a crime. Cal. Gov’t Code §
27 36900(a). Because the EOC Provision’s “plainly legitimate sweep” is not outweighed
28 by a substantial burden on protected speech, it is not overbroad.

2. The EOC Provision Is Not Unconstitutionally Vague

Plaintiff’s vagueness challenge fails because the EOC Provision, read as a whole, provides sufficient guidance to avoid arbitrary enforcement. Specifically, the requirement that the prohibited actions be directed at an official “engaged in the performance of their respective duties” provides an objective standard that cabins enforcement discretion. *See Hum. Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1021 (9th Cir. 2010) (“[O]therwise imprecise terms may avoid vagueness problems when used in combination with terms that provide sufficient clarity.”). Indeed, as explained in the Motion, numerous courts have rejected vagueness challenges to similar statutes. *See Murphy-Ellis*, 47 F. App’x at 488, *Brice*, 926 F.2d at 931, and *Martinelli v. City of Beaumont*, 820 F.2d 1491, 1494 (9th Cir. 1987).

Plaintiff once again, without support, tries to distinguish these cases on the grounds that they involved criminal statutes. However, not only is this distinction nonsensical, as the punishment provided for has no relationship to whether the language is vague—as explained above, a violation of the EOC Provision is a crime.

Accordingly, the EOC Provision is not unconstitutionally vague.

C. Plaintiff’s Constitutional Challenges to the Seizure Provisions Fail

1. The FAC Does Not Make an “As-Applied” Challenge

Plaintiff argues that it is only bringing “as-applied” challenges to the Seizure Provisions because it is asking the Court to find that the provisions are unconstitutional when applied to “sidewalk vendors operating within the City.” Opp. at 11:18-24. But the Seizure Provisions only apply to street vendors; thus, applying the provision to all street vendors is a facial challenge. Indeed, the FAC seeks a declaratory judgment that the provisions are unconstitutional in all applications—which is the remedy for a facial challenge. *See* FAC ¶ 87.a; *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998) (explaining that “[a] successful challenge to the facial constitutionality of a law invalidates the law itself....”).

Accordingly, because Plaintiff is making a facial challenge, the FAC fails

1 because the ordinances can be constitutionally applied to street vendors in numerous
2 circumstances, such as to abate an immediate safety hazard or public nuisance.²

3 2. Plaintiff’s Due Process Argument Fails

4 As explained in the Motion, in evaluating a pre-notice deprivation, courts
5 balance the three *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) factors: (1) the
6 private interest that will be affected by the official action; (2) the risk of an erroneous
7 deprivation of such interest through the procedures used, and the probable value, if
8 any, of additional or substitute procedural safeguards; and (3) the Government’s
9 interest, including the function involved and the fiscal and administrative burdens that
10 the additional or substitute procedural requirement. *See Miranda v. City of Cornelius*,
11 429 F.3d 858, 867 (9th Cir. 2005).

12 Plaintiff argues that the City has failed to provide “meaningful evidence that the
13 presence of sidewalk vendors in the City has created any significant health or safety
14 dangers to its citizens.” Opp. at 18:18-20. However, it is Plaintiff’s burden in to
15 establish that the Seizure Ordinance will *never* protect against health or safety dangers.
16 Plaintiff cannot do so because, as explained in the Motion, the City has a significant
17 and well-established interest in keeping public rights-of-way clear of obstructions and
18 addressing immediate safety hazards. *See e.g. Cuviallo v. City of Vallejo*, 944 F.3d 816,
19 828 (9th Cir. 2019) (finding a city has a strong interest in keeping public spaces safe
20 and accessible).

21 Plaintiff’s contention that the City has no interest in food-vending because the
22 DEHS is responsible for regulating this conduct fares no better. Opp. at 18:21-27. The
23 City is not attempting to enforce the Health and Safety Code through the Seizure
24 Provisions; it is merely enforcing its valid requirements that street-vendors must (a)
25 obtain a health permit to sell food and (b) maintain sanitary conditions in order to
26

27 ² Even if the FAC were asserting an as-applied challenge (and it is not), the FAC is
28 still deficient because it contains no allegations of any specific instances where the
Seizure Provisions have been applied in an unconstitutional manner.

1 maintain a City street-vending permit. These requirements are explicitly identified in
2 Cal. Gov't Code § 51038 as being “directly related to objective health, safety, or
3 welfare concerns.” *See* Cal. Gov't Code § 51038(c)(2), (6).

4 Next, Plaintiff argues that the impoundments cause severe intrusions on street-
5 vendors. *Opp.* at 19:6-12. However, because Plaintiff is raising a facial challenge, it
6 must establish that the seizures will *always* have this result. It cannot establish this. For
7 instance, if a street-vendor is causing a public disturbance using a loudspeaker and
8 refuses to stop, their private interests would be minimal if the City impounded the
9 loudspeaker under FMC § 15-829(b)(8).

10 Finally, Plaintiff erroneously claims that “the City does not offer sidewalk
11 vendors any meaningful opportunity for a post-seizure hearing” because it “does not
12 provide vendors with a genuine opportunity to be heard ‘at a meaningful time and in a
13 meaningful manner’” and because “4Leaf personnel ... typically fail entirely to inform
14 vendors of any post-seizure opportunity.” *Opp.* at 17:17-27. Plaintiff offers no support
15 for this contention and courts have upheld longer delays prior to a post-deprivation
16 hearing. *See e.g. Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 243-44 (1988)
17 (upholding 90-day post-deprivation hearing); *Cleanmaster Indus., Inc. v. Sandra*
18 *Shewry*, 491 F. Supp. 2d 937, 948 (C.D. Cal. 2007) (same).³

19 Because Plaintiff is bringing a facial challenge to invalidate the Seizure
20 Provisions in their entirety, it must show that the *Eldridge* factors will *never* justify a
21 seizure. It has not and cannot do so, and thus its due process challenge fails.

22 3. Plaintiff's Fourth Amendment Reasonableness Challenge Fails

23 To prevail on its facial Fourth Amendment challenge, Plaintiff must establish
24 that the Seizure Provisions violate the Fourth Amendment in *all* applications. *See*

25 _____
26 ³ Plaintiff's argument that vendors are not informed of their opportunity for a post-
27 deprivation hearing could only support an as-applied, not a facial, challenge.
28 Regardless, “[a] governmental agency is not required to provide individualized
notice[] ... beyond what is provided in “generally available state statutes and case
law.” *Untalan v. Stanley*, 2020 WL 6078474, at *7 (C.D. Cal. Oct. 15, 2020).

1 *Barstow Proprietor Ass’n v. City of Barstow*, 2024 WL 5134349, at *1 (9th Cir. Dec.
2 17, 2024). Here, the challenged seizures could be justified: (1) as administrative
3 seizures; (2) as seizures of evidence of a crime; and/or (3) under the “community
4 caretaking” doctrine. Because Plaintiff cannot establish that these exceptions could
5 *never* apply, its facial Fourth Amendment challenge fails.

6 In fact, Plaintiff does not even argue that these exceptions never apply, instead
7 claiming that the exceptions are irrelevant to the constitutional analysis based on a
8 misreading of *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). In *Patel*, the
9 Court explained that in a facial challenge, courts only consider “applications of the
10 statute in which it actually authorizes or prohibits conduct.” But that is precisely what
11 the City is focused on—the conduct authorized by the Seizure Provisions. And when
12 these doctrines apply, the seizures are considered constitutionally reasonable. *See*
13 *Verdun v. City of San Diego*, 51 F.4th 1033, 1047 (9th Cir. 2022) (explaining that
14 “[t]he administrative search exception is a paradigmatic example of” a way to establish
15 reasonableness without a warrant); *Soldal v. Cook Cnty., Ill.*, 506 U.S. 56, 68 (1992)
16 (finding seizures of property that are evidence of a crime or contraband do not violate
17 the Fourth Amendment); *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir.
18 2005) (finding impoundments justified by the community caretaking doctrine are
19 reasonable).

20 Finally, Plaintiff claims that the test for reasonableness involves “balanc[ing]
21 the nature and quality of the intrusion on the individual’s Fourth Amendment interests
22 against the importance of the governmental interest.” *Opp.* at 18:3-6 (citing *United*
23 *States v. Jacobsen*, 466 U.S. 109, 125 (1984)). But this test is just one of the factors
24 considered in determining whether the administrative seizure exception applies. *See*
25 *Killgore v. City of S. El Monte*, 3 F.4th 1186, 1189-90 (9th Cir. 2021) (citing *New York*
26 *v. Burger*, 482 U.S. 691, 702-03 (1987)). Regardless, as explained in Section II.C.2,
27 *supra*, even under Plaintiff’s proposed Fourth Amendment balancing test, its facial
28 challenge fails.

1 **D. Plaintiff’s Preemption Claim Fails**

2 Plaintiff argues at length that because the Seizure Provisions are preempted by
3 SB-946 and SB-972, they are unreasonable and thus unconstitutional. Opp. at 12:16-
4 16:16. However, state restrictions do not determine what is constitutionally reasonable
5 See *Virginia v. Moore*, 553 U.S. 164, 176 (2008). In *Moore*, officers arrested an
6 individual for driving with a suspended license, even though state law provided that
7 driving on a suspended license was not an arrestable offense. *Id.* at 167. The Supreme
8 Court found that although contrary to state law, the arrest did not violate the Fourth
9 Amendment because the probable cause made the arrest constitutionally reasonable
10 and the fact that a state “chooses to protect privacy beyond the level that the Fourth
11 Amendment requires” does not change this calculus. *Id.* at 171. Accordingly, even if
12 the Seizure Provisions were preempted by state law, that would be irrelevant to
13 Plaintiff’s constitutional claims.

14 But to be clear, the Challenged Ordinance Provisions do *not* conflict with state
15 law. Plaintiff argues that “the FAC alleges that impoundment and other sanctions are
16 punitive” and thus are preempted. This allegation is conclusory and should be
17 disregarded. Notably, Plaintiff acknowledges that it co-sponsored SB-635 which will
18 further amend Cal. Gov. Code §§ 51036-39. Opp. at 2:23-24. One of these
19 amendments clarifies that the statutes were intended to “prohibit[] criminal penalties.”
20 Impounding property is not a criminal penalty. Indeed, Plaintiff omits the fact that an
21 earlier version of SB-635 included the provision that “A local authority shall not
22 delegate or assign authority to a nonpublic entity, or enter into a contract with a
23 nonpublic entity, to do any of the following:...(2) *Impound sidewalk vending*
24 *equipment.*”⁴ (Emphasis added.) Although this provision passed in the state senate, it
25 was removed by the state assembly and did not make it into the final bill. As such, the
26 legislature (and Plaintiff) implicitly acknowledged that cities had impoundment

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28 ⁴ <https://legiscan.com/CA/text/SB635/id/3191081>.

1 authority they are capable of delegating. And the removal of the impound provision
2 confirms that the legislature decided *not* to limit this impoundment authority.

3 Plaintiff further argues that generally applicable nuisance laws were preempted,
4 but Cal. Gov. Code § 51038(c)(7) explicitly allows the City to require compliance with
5 generally applicable laws. Under state law, a “legislative body may prohibit ...
6 obstruction in or to any sidewalks ... and provide for the removal of such ...
7 obstruction.” Cal. Gov’t Code § 38775. Moreover, “[b]y ordinance the city legislative
8 body may declare what constitutes a nuisance” and “may provide for the summary
9 abatement of any nuisance.” Cal. Gov’t Code §§ 38771, 38773; *see also Thain v. City*
10 *of Palo Alto*, 207 Cal. App. 2d 173, 189–90 (1962) (“It is of course long and well
11 recognized that as a general rule municipalities have the power to provide for the
12 summary abatement of nuisances by municipal officials, particularly where an
13 emergency exists.”). Accordingly, the City’s nuisance ordinances are not preempted. A
14 street vendor without a permit has no legal right to occupy public space with their
15 property, rendering that property an unlawful obstruction that is subject to the City’s
16 generally applicable public nuisance laws. FMC § 16-155(a)(2). The Seizure
17 Provisions allow the City to abate these unlawful obstructions. As such, the Seizure
18 Provisions do not conflict with state law.

19 Finally, Plaintiff’s challenge to the Permit Provisions is a policy argument, not a
20 plausible legal claim. The Permit Provisions do not conflict with state law because they
21 are directly related to public safety and welfare. *See* Cal. Gov’t Code § 37358(c). *See*
22 *Kaahumanu v. Hawaii*, 682 F.3d 789, 809 (9th Cir. 2012) (insurance and
23 indemnification requirements serve a significant governmental interest).⁵

24 **III. CONCLUSION**

25 For the foregoing reasons and those stated in the City’s Motion to Dismiss, the
26 First Amended Complaint should be dismissed with prejudice.

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28 ⁵ Plaintiff’s argument regarding the LiveScan requirement is irrelevant because SB-
635 is not yet effective. The City intends to fully comply with SB-635.

1 Dated: December 5, 2025

LARSON LLP

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