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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

OUR WATCH WITH TIM THOMPSON,  
Plaintiff,  
v.  
ROB BONTA,  
Defendant.

No. 2:23-cv-00422-DAD-DB

ORDER GRANTING, IN PART,  
DEFENDANT’S MOTION TO DISMISS AND  
DENYING PLAINTIFF’S MOTION FOR A  
PRELIMINARY INJUNCTION

(Doc. Nos. 12, 13)

This matter came before the court on July 11, 2023 for a hearing on defendant’s motion to dismiss and plaintiff’s motion for a preliminary injunction against defendant Rob Bonta, in his official capacity as Attorney General of the state of California. (Doc. Nos. 12, 13.) Attorney Mariah Rose Gondeiro appeared by video for plaintiff. California Deputy Attorney General Nimrod Pitsker Elias appeared by video on behalf of defendant. For the reasons explained below, the court will grant defendant’s motion to dismiss, in part, and deny plaintiff’s motion for a preliminary injunction.

**BACKGROUND**

In the operative first amended complaint (“FAC”), plaintiff Our Watch with Tim Thompson (“Our Watch”) alleges that it is a nonprofit public benefit corporation “committed to protecting family and parental rights, religious liberty, and the right to life across California.” (Doc. No. 10 at ¶ 11.) Plaintiff states that it engages in “legislative advocacy, education of

1 California citizens, and mobilization of California citizens to get involved in community events.”  
2 (*Id.*) According to plaintiff, its mission consists of “tackling major cultural issues, including the  
3 sexual indoctrination of children, critical race theory, and abortion rights,” and plaintiff represents  
4 that it “firmly believes that transgenderism is a cultural issue that it must deal with in accordance  
5 with God’s design for every child, as outlined in the Bible.” (*Id.* at ¶ 12.)

6 Plaintiff brings several constitutional challenges to a recently enacted California statute  
7 pertaining to the provision of gender-affirming health care and gender-affirming mental health  
8 care to minors. (*See id.* at 18–21.) The challenged statute is summarized below.

9 **A. California Senate Bill 107**

10 On September 29, 2022, after passing both houses of the California state legislature,  
11 Governor Gavin Newsom signed into law Senate Bill 107 (“SB 107”). (Doc. No. 10 at ¶ 34.) SB  
12 107 added and/or amended sections of the California Civil Code, California Code of Civil  
13 Procedure, California Family Code, and California Penal Code.<sup>1</sup> 2022 Cal. Legis. Serv. Ch. 810  
14 (West). As previewed above, these additions and amendments pertain to California state law with  
15 respect to the provision of gender-affirming health care and gender-affirming mental health care  
16 to minors. *See id.* In defining “gender-affirming health care” and “gender-affirming mental  
17 health care,” SB 107 relies on the definitions stated in the California Welfare & Institutions Code:

18 (A) “Gender affirming health care” means medically necessary  
19 health care that respects the gender identity of the patient, as  
20 experienced and defined by the patient, and may include, but is not  
21 limited to, the following:

21 (i) Interventions to suppress the development of endogenous  
22 secondary sex characteristics.

22 (ii) Interventions to align the patient’s appearance or physical  
23 body with the patient’s gender identity.

23 (iii) Interventions to alleviate symptoms of clinically  
24 significant distress resulting from gender dysphoria, as

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25 <sup>1</sup> Because SB 107 modified several different sections of California’s codes, the parties “[f]or ease  
26 of reference . . . generally refer[] to the various sections of SB 107 in shorthand” rather than  
27 “always not[ing] the specific codes that were amended or added.” (Doc. No. 12 at 9 n.1.) For  
28 this same reason, unless otherwise noted in this order, the court will also refer to SB 107 as a  
shorthand for all of the modifications and/or additions to the California codes that became  
effective upon SB 107’s enactment.

1 defined in the Diagnostic and Statistical Manual of Mental  
2 Disorders, 5th Edition.

3 (B) “Gender affirming mental health care” means mental health care  
4 or behavioral health care that respects the gender identity of the  
5 patient, as experienced and defined by the patient, and may include,  
6 but is not limited to, developmentally appropriate exploration and  
7 integration of identity, reduction of distress, adaptive coping, and  
8 strategies to increase family acceptance.

9 Cal. Welf. & Inst. Code § 16010.2

10 The legislative history of SB 107 suggests that it was drafted—at least in part—in  
11 response to what SB 107’s Bill Analysis referred to as “a series of regressive transphobic laws  
12 and executive orders . . . adopted in other states that target transgender youth, their parents, and  
13 their medical providers . . . [by] impos[ing] civil and/or criminal liability on transgender youth  
14 and the adults who assisted them in obtaining gender-affirming care.” Cal. B. Analysis, S.  
15 Comm., SB 107 (Aug. 30, 2022). That Bill Analysis further states that “many of these laws and  
16 orders [from other states] are not limited in geographic scope, meaning the [other] state could  
17 attempt to penalize a transgender youth or other person for obtaining gender-affirming care in a  
18 state where that care is legal, such as California.” *Id.* In response to those laws, the author of SB  
19 107, state Senator Scott Weiner explained that SB 107 seeks to:

20 [1] mak[e] it clear that other state’s laws that punish people for  
21 providing or receiving gender-affirming health care is contrary to the  
22 public policy of California. . . .

23 [2] bar healthcare providers from complying with subpoenas  
24 requiring the disclosure of medical information related to gender-  
25 affirming health care that interferes with a person’s right to allow  
26 child to receive said care. . . .

27 [and 3] prohibit law enforcement agencies from making, or  
28 intentionally participating in, the arrest of an individual pursuant to  
an out-of-state arrest warrant based on another state’s law against  
receiving, or allowing a child to receive, gender-affirming health  
care.

*Id.*

In order to accomplish these stated goals, for example, Section 1 of SB 107 creates  
California Civil Code § 56.109, which provides that healthcare providers “shall not release  
medical information related to a person or entity allowing a child to receive gender-affirming

1 health care or gender-affirming mental health care in response to any civil action . . . based on  
2 another state’s law that authorizes a person to bring a civil action against a person or entity that  
3 allows a child to receive gender-affirming health care or gender-affirming mental health care.”  
4 Cal. Civil Code § 56.109(a). Similarly, Section 5 of SB 107 amends California Family Code  
5 § 3424 to state that a California court has temporary emergency jurisdiction over child custody  
6 determinations “if the child is present in this state and the child has been abandoned or it is  
7 necessary in an emergency to protect the child because the child, or a sibling or parent of the  
8 child, is subjected to, or threatened with, mistreatment or abuse, *or because the child has been*  
9 *unable to obtain gender-affirming health care or gender-affirming mental health care.*” Cal.  
10 Fam. Code § 3424(a) (emphasis added). Finally, Section 9 of SB 107 adds California Penal Code  
11 § 819, which forbids state law enforcement agencies from knowingly making or participating in  
12 the arrest or extradition of an individual “pursuant to an out-of-state arrest warrant for violation of  
13 another state’s law against providing, receiving, or allowing a child to receive gender-affirming  
14 health care and gender-affirming mental health care in this state, if that care is lawful under the  
15 laws of this state, to the fullest extent permitted by federal law.” Cal. Penal Code § 819(b).<sup>2</sup>

16 **B. The Present Action**

17 In its FAC, plaintiff alleges that SB 107 “conflicts with [plaintiff’s] mission by allowing  
18 children, without parental consent, to change their identity and therefore God’s design for their  
19 life and by stripping parents of custody.” (Doc. No. 10 at ¶ 12.) Plaintiff further alleges that  
20 since California’s enactment of the law, it has diverted its organizational resources “from its other  
21 focus areas like critical race theory and abortion rights [in order to] counteract the harms to  
22 parental rights resulting from SB 107.” (*Id.* at ¶ 13.) Specifically, plaintiff represents that in  
23 response to SB 107, it has: implemented educational outreach programs inside and outside of  
24 California; funded de-transitioning teenagers to come on the organization’s podcast to speak on  
25 “the issue”; and “hired individuals to warn parents and churches in California and outside of  
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27 <sup>2</sup> While not an exhaustive description of all of SB 107’s changes to state law, this brief summary  
28 provides sufficient factual background with respect to SB 107 to allow the court to resolve the  
pending motions.

1 California about the devastating effects of SB 107 and to explain how parents and churches can  
2 protect their children.” (*Id.* at ¶¶ 13–14.) Plaintiff alleges that the enactment of SB 107 has  
3 prompted it to focus “nearly exclusively on educating parents and churches about transgender  
4 issues and the effect on parental rights” and has caused plaintiff to “divert time and attention from  
5 other activities that align with its mission.” (*Id.* at ¶ 15.)

6 Plaintiff initiated this action on March 7, 2023, seeking damages, an order declaring SB  
7 107 unconstitutional on its face, and an injunction preventing further enforcement of SB 107.  
8 (Doc. No. 1 at ¶¶ 10, 16.) On April 13, 2023, plaintiff filed its operative FAC, bringing three  
9 claims under 42 U.S.C. § 1983: (1) violation of the Due Process Clause of the Fourteenth  
10 Amendment; (2) violation of the right to familial association under the First and Fourteenth  
11 Amendments; and (3) violation of the Full Faith and Credit Clause of the Fourth Amendment.  
12 (Doc. No. 10 at 18, 20, 21.)

13 On April 27, 2023, defendant filed a motion to dismiss plaintiff’s FAC pursuant to Rules  
14 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. No. 12.) Plaintiff filed its  
15 opposition to defendant’s pending motion on May 11, 2023, and defendant filed his reply thereto  
16 on May 22, 2023. (Doc. Nos. 15, 16.)

17 On April 27, 2023, plaintiff filed a motion for a preliminary injunction seeking an order  
18 enjoining defendant from enforcing SB 107. (Doc. No. 13 at 7.) Defendant filed his opposition  
19 to plaintiff’s pending motion on May 11, 2023, and plaintiff filed its reply thereto on May 22,  
20 2023. (Doc. Nos. 14, 17.)

## 21 LEGAL STANDARD

### 22 A. Motion to Dismiss Pursuant to Rule 12(b)(1)<sup>3</sup>

23 “Federal courts are courts of limited jurisdiction and are presumptively without  
24 jurisdiction over civil actions.” *Howard Jarvis Taxpayers Ass’n v. Cal. Secure Choice Ret. Sav.*  
25 *Program*, 443 F. Supp. 3d 1152, 1156 (E.D. Cal. 2020) (citing *Kokkonen v. Guardian Life Ins.*

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27 <sup>3</sup> This order does not address the legal standard governing consideration of motions to dismiss  
28 brought under Rule 12(b)(6) because, as explained below, the court does not reach defendant’s  
12(b)(6) arguments.

1 Co., 511 U.S. 375, 377 (1994)), *aff'd*, 997 F.3d 848 (9th Cir. 2021). Federal courts “possess only  
2 that power authorized by Constitution and statute, which is not to be expanded by judicial  
3 decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Subject matter jurisdiction is  
4 required; it cannot be forfeited or waived. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at  
5 1156. Indeed, “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the  
6 court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

7 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a party may  
8 “challenge a federal court’s jurisdiction over the subject matter of the complaint.” *Nat’l Photo*  
9 *Grp., LLC v. Allvoices, Inc.*, No. 3:13-cv-03627-JSC, 2014 WL 280391, at \*1 (N.D. Cal. Jan. 24,  
10 2014). “A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the  
11 challenger asserts that the allegations contained in a complaint are insufficient on their face to  
12 invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)  
13 (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). Here, because defendant argues that  
14 the allegations in plaintiff’s FAC are insufficient for the invocation of federal jurisdiction over  
15 plaintiff’s claims, defendant mounts a facial attack under Rule 12(b)(1).

16 A party making a facial attack does not submit supporting evidence with the motion  
17 because jurisdiction is challenged based solely on the pleadings. *Howard Jarvis Taxpayers Ass’n*,  
18 443 F. Supp. 3d at 1156; *see also Diva Limousine, Ltd. v. Uber Techs., Inc.*, 392 F. Supp. 3d  
19 1074, 1084 (N.D. Cal. 2019) (“[C]ourts do not consider evidence outside the pleadings when  
20 deciding a facial attack.”) (citation omitted). “The district court resolves a facial attack as it  
21 would a motion to dismiss under Rule 12(b)(6): [a]ccepting the plaintiff’s allegations as true and  
22 drawing all reasonable inferences in the plaintiff’s favor, the court determines whether the  
23 allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane Co.*,  
24 749 F.3d 1117, 1121 (9th Cir. 2014). However, the court need not assume the truth of legal  
25 conclusions cast in the form of factual allegations. *Warren v. Fox Family Worldwide, Inc.*, 328  
26 F.3d 1136, 1139 (9th Cir. 2003).

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1 **A. Motion for a Preliminary Injunction**

2 “The proper legal standard for preliminary injunctive relief requires a party to demonstrate  
3 ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the  
4 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction  
5 is in the public interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting  
6 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see also Ctr. for Food Safety v.*  
7 *Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011) (“After *Winter*, ‘plaintiffs must establish that  
8 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.’”) (quoting  
9 *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). The Ninth  
10 Circuit has also held that an “injunction is appropriate when a plaintiff demonstrates . . . that  
11 serious questions going to the merits were raised and the balance of hardships tips sharply in the  
12 plaintiff’s favor.” *All. for Wild Rockies*, 632 F.3d at 1134–35 (quoting *Lands Council v. McNair*,  
13 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*), *overruled on other grounds by Winter*, 555 U.S. 7).<sup>4</sup>  
14 The party seeking the injunction bears the burden of proof as to each of these elements. *Klein v.*  
15 *City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009); *Caribbean Marine Servs. Co. v.*  
16 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“A plaintiff must do more than merely allege  
17 imminent harm sufficient to establish standing; a plaintiff must *demonstrate* immediate threatened  
18 injury as a prerequisite to preliminary injunctive relief.”). Finally, an injunction is “an  
19 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled  
20 to such relief.” *Winter*, 555 U.S. at 22.

21 **ANALYSIS**

22 Defendant brings the pending motion to dismiss pursuant to Federal Rules of Civil  
23 Procedure 12(b)(1) and 12(b)(6), arguing that plaintiff’s entire FAC is subject to dismissal. (Doc.  
24 No. 12 at 8.) Conversely, in its motion for a preliminary injunction, plaintiff contends that it is

25 <sup>4</sup> The Ninth Circuit has found that this “serious question” version of the circuit’s sliding scale  
26 approach survives “when applied as part of the four-element *Winter* test.” *All. for the Wild*  
27 *Rockies*, 632 F.3d at 1134. “That is, ‘serious questions going to the merits’ and a balance of  
28 hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction,  
so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the  
injunction is in the public interest.” *Id.* at 1135.

1 likely to succeed on the merits of its claims, it will continue to suffer irreparable harm absent  
2 injunctive relief, and the balance of equities and public interest favor the granting of a preliminary  
3 injunction. (Doc. No. 13 at 16, 26–27.)

4 Because defendant’s motion to dismiss raises questions with respect to this court’s subject  
5 matter jurisdiction over this action, the court will first address defendant’s motion to dismiss  
6 before addressing plaintiff’s motion for preliminary injunction. *See* Fed. R. Civ. P. 12(h)(3) (“If  
7 the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss  
8 the action.”).

9 **A. Defendant’s Motion to Dismiss**

10 In his motion, defendant Bonta argues that plaintiff’s FAC must be dismissed pursuant to  
11 Rule 12(b)(1) because plaintiff lacks Article III standing, plaintiff lacks prudential standing  
12 pursuant to Rule 12(b)(6),<sup>5</sup> and plaintiff fails to state a claim upon which relief may be granted  
13 pursuant to Rule 12(b)(6). (Doc. No. 12 at 17, 22.)

14 1. Article III Standing

15 “[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the  
16 threshold requirement imposed by Article III of the Constitution by alleging an actual case or  
17 controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983); *see also Matter of East*  
18 *Coast Foods, Inc.*, 66 F.4th 1214, 1218 (9th Cir. 2023) (Because “standing is an ‘essential and  
19 unchanging’ requirement . . . a party must establish an Article III case or controversy before we  
20 exert subject matter jurisdiction.”) (citations omitted); *City of Oakland v. Lynch*, 798 F.3d 1159,  
21 1163 (9th Cir. 2015) (“A suit brought by a plaintiff without Article III standing is not a ‘case or  
22 controversy,’ and Article III federal courts lack subject matter jurisdiction over such suits.”)  
23 (quoting *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004)). An actual case or

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24  
25 <sup>5</sup> “While challenges to a party’s Article III standing are appropriate for resolution under Rule  
26 12(b)(1), issues of prudential standing are appropriately resolved under Rule 12(b)(6).” *Frazier*  
27 *v. City of Fresno*, No. 1:20-cv-01069-DAD-SAB, 2022 WL 1128991, at \*5 n.3 (E.D. Cal. Apr.  
28 15, 2022) (citing *Solarmore Mgmt. Servs., Inc. v. Bankr. Est. of DC Solar Sols.*, 2:19-cv-02544-  
JAM-DB, 2021WL 3077470, at \*2 (E.D. Cal. July 21, 2021)); *see also Kurshan v. Safeco Ins.*  
*Co. of Am.*, — F. Supp. 3d —, No. 2:22-cv-00225-DAD-AC, 2023 WL 1070614, at \*6 n.3 (E.D.  
Cal. Jan. 27, 2023).

1 controversy will be held to exist when a plaintiff establishes standing. *Lujan v. Defs. of Wildlife*,  
2 504 U.S. 555, 560 (1992).

3 “[S]tanding requires that (1) the plaintiff suffered an injury in fact, i.e., one that is  
4 sufficiently ‘concrete and particularized’ and ‘actual or imminent, not conjectural or  
5 hypothetical,’ (2) the injury is ‘fairly traceable’ to the challenged conduct, and (3) the injury is  
6 ‘likely’ to be ‘redressed by a favorable decision.’” *Bates v. United Parcel Serv., Inc.*, 511 F.3d  
7 974, 985 (9th Cir. 2007) (*en banc*) (citing *Lujan*, 504 U.S. at 560–61). “Standing must be shown  
8 with respect to each form of relief sought, whether it be injunctive relief, damages or civil  
9 penalties.” *Id.* “[T]o establish standing to pursue injunctive relief . . . [plaintiff] must  
10 demonstrate a real and immediate threat of repeated injury in the future.” *Chapman v. Pier 1*  
11 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (internal quotation omitted).

12 “To determine whether organizational standing requirements have been satisfied, [courts]  
13 ‘conduct the same inquiry as in the case of an individual: Has the plaintiff alleged such a  
14 personal stake in the outcome of the controversy as to warrant his invocation of federal-court  
15 jurisdiction?’” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 662 (9th Cir. 2021) (quoting  
16 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982)). “Organizations can assert  
17 standing on behalf of their own members, or in their own right.” *E. Bay Sanctuary Covenant*, 993  
18 F.3d at 662 (internal citations omitted); *see also Rodriguez v. City of San Jose*, 930 F.3d 1123,  
19 1134 (9th Cir. 2019) (“[A]bsent a member with standing, . . . an organizational plaintiff ‘may  
20 have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever  
21 rights and immunities the association itself may enjoy.’”) (quoting *Am. Fed’n of Gov’t Emps.*  
22 *Local 1 v. Stone*, 502 F.3d 1027, 1032 (9th Cir. 2007)). Here, plaintiff does not assert standing on  
23 behalf of its members and instead asserts only that it has standing to bring this action in its own  
24 right. (*See, e.g.*, Doc. No. 15 at 17–18) (explaining that “Our Watch is asserting its own legal  
25 rights via organizational standing”).

26 An organization has standing on its own behalf if it can show: (1) that the defendant’s  
27 actions have frustrated its mission; and (2) that it has spent resources counteracting that  
28 frustration. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013); *see also E. Bay*

1 *Sanctuary Covenant*, 993 F.3d at 663. “Of course, organizations cannot ‘manufacture the injury  
2 by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise  
3 would not affect the organization at all[.]’” *E. Bay Sanctuary Covenant*, 993 F.3d at 663 (quoting  
4 *La Asociacion de Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir.  
5 2010)). Rather, an organizational plaintiff must “show that it would have suffered some other  
6 injury if it had not diverted resources to counteracting the problem.” *E. Bay Sanctuary Covenant*  
7 *v. Garland*, 994 F.3d 962, 974 (9th Cir. 2020) (quoting *La Asociacion*, 624 F.3d at 1088). Thus,  
8 “[a]n organization may sue only if it was *forced* to choose between suffering an injury and  
9 diverting resources to counteract the injury.” *La Asociacion*, 624 F.3d at 1088 n.4 (emphasis  
10 added).

11 Defendant contends that plaintiff has not met the requirements for organizational standing  
12 because it has not identified an actual injury to plaintiff caused by SB 107. (Doc. No. 12 at 18.)  
13 Specifically, defendant argues that plaintiff “does not offer a single example describing how its  
14 pre-existing advocacy, education, and mobilization efforts were hindered by SB 107,” and thus,  
15 plaintiff “fail[s] to identify any injury that it would have suffered ‘if it had not diverted resources  
16 to counteracting the problem.’” (*Id.* at 18–19) (quoting *La Asociacion*, 624 F.3d at 1088). In  
17 opposition to defendant’s motion, plaintiff argues that it has standing to bring this action because  
18 SB 107 has frustrated its organizational mission of “tackling major cultural issues” by “allowing  
19 the state of California to remove children from parental custody when in pursuit of gender-  
20 affirming healthcare in violation of the very rights Our Watch advocates to protect.” (Doc. No.  
21 15 at 16–17.) Plaintiff also argues that it diverted its resources in response to this purported  
22 frustration of its mission, specifically by having “educated and assisted parents, spent time  
23 discussing potential outcomes of SB 107, and educated parents and churches both inside and  
24 outside of California about protecting parental rights in the wake of SB 107.” (*Id.* at 17.) In  
25 reply, defendant asserts that plaintiff’s alleged diversion of resources is “an entirely self-inflicted  
26 injury” that cannot confer standing upon Our Watch to bring this action because the plaintiff  
27 organization has failed to demonstrate that it would have been harmed by SB 107 in any way had  
28 it not diverted resources. (Doc. No. 16 at 4.)

1                   a.       *Frustration of Mission*

2           Having considered the parties’ respective arguments, the court finds that plaintiff has not  
3 adequately pled facts alleging that its mission was sufficiently frustrated by the enactment of SB  
4 107 for the purposes of conferring Article III standing. As noted above, plaintiff characterizes SB  
5 107 as “allowing the state of California to remove children from parental custody when in pursuit  
6 of gender-affirming healthcare.” (Doc. No. 15 at 17.) Even assuming, without deciding, that  
7 plaintiff’s characterization of the enactment in this regard is accurate, “[f]rustration of mission  
8 cannot just be a setback to an organization’s values or interests, it must result in ‘an actual  
9 impediment to the organization’s real-world efforts on behalf of such principles.’” *In Def. of*  
10 *Animals v. Sanderson Farms, Inc.*, No. 3:20-cv-05293-RS, 2021 WL 4243391, at \*3 (N.D. Cal.  
11 Sept. 17, 2021) (quoting *Jimenez v. Tsai*, 5:16-cv-04434-EJD, 2017 WL 2423186, at \*11 (N.D.  
12 Cal. June 5, 2017)); *see also Pierce v. Ducey*, 965 F.3d 1085, 1089 (9th Cir. 2020) (“To be  
13 ‘concrete,’ the injury ‘must actually exist’—an abstract, theoretical concern will not do.”). In its  
14 FAC, plaintiff makes only vague references to the organization’s broad mission (“protecting  
15 family and parental rights, religious liberty, and the right to life across California”) and to its  
16 alleged ordinary activities (“legislative advocacy, education of California citizens, and  
17 mobilization of California citizens” and “focus areas like critical race theory and abortion  
18 rights”). (*See* Doc. No. 10 at ¶¶ 11, 15.) Yet, critically, the FAC is devoid of any allegations  
19 pertaining to what plaintiff’s regular activities are and how SB 107’s enactment specifically  
20 impacts the organization’s functions. Thus, at most, plaintiff has pled facts suggesting that its  
21 values have been undermined by SB 107. (*See, e.g.*, Doc. No. 10 at ¶ 12) (“Our Watch firmly  
22 believes that transgenderism is a cultural issue that it must deal with in accordance with God’s  
23 design for every child, as outlined in the Bible.”) However, in order for plaintiff to have standing  
24 to bring this action, “the challenged conduct must harm the organization’s activities specifically,  
25 not merely frustrate [its] mission in a general sense.” *In Def. of Animals*, 2021 WL 4243391, at  
26 \*4. Plaintiff’s bare and conclusory allegations are insufficient to show that SB 107 has frustrated

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1 its mission by harming—or even bearing whatsoever upon—any of the organization’s activities.<sup>6</sup>  
2 *See In Def. of Animals*, 2021 WL 4243391, at \*5 (“[Plaintiff] only pleads facts showing the  
3 abstract interests it fights for have been set back by [defendant’s conduct]. . . . and asserts its  
4 mission has been frustrated. This is not enough.”); *Serv. Women’s Action Network v. Mattis*, 320  
5 F. Supp. 3d 1082, 1100 (N.D. Cal. 2018) (holding that an organizational plaintiff did not establish  
6 standing where it was unclear whether the challenged policies “constitute[d] more than a setback  
7 to [plaintiff’s] abstract social interest” because plaintiff’s “conclusory” allegations did not provide  
8 sufficient “specificity in describing (1) from what and (2) to what its resources have been  
9 reallocated”); *see also Conn. Parents Union v. Russel-Tucker*, 8 F.4th 167, 175 (2d Cir. 2021)  
10 (“[Plaintiff] speaks loosely of its expenditures to counteract activity—that is, the [challenged  
11 memorandum] ‘touching on’ its ‘core mission,’ but fails to identify any restrictions on its ability  
12 to perform the core activities—such as meetings, lectures, and general organizing—by which it  
13 pursued its mission prior to the [challenged memorandum].”); *cf. Animal Legal Def. Fund v.*  
14 *United States Dep’t of Agric.*, 223 F. Supp. 3d 1008, 1018 (C.D. Cal. 2016) (noting that

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16 <sup>6</sup> As noted by defendant, “[b]ecause organizational standing requires showing an . . . impediment  
17 to an organization’s activities [rather than simply its abstract interests], some courts have  
18 suggested that it is ‘easier for service organizations to show standing,’ as opposed to advocacy  
19 organizations like [p]laintiff.” (Doc. No. 12 at 20 n.15) (quoting *In Def. of Animals*, 2021 WL  
20 4243391, at \*4 n.4); *see also Ctr. for Law and Educ. v. Dep’t. of Educ.*, 396 F.3d 1152, 1162  
21 (D.C. Cir. 2005) (holding that the organizational plaintiffs failed to demonstrate standing and  
22 noting that “[h]ere, the only ‘service’ impaired is pure-issue advocacy—the very type of activity  
23 distinguished by *Havens*) (citing *Havens Realty Corp.*, 455 U.S. at 379); *Food & Water Watch,*  
24 *Inc. v. Vilsack*, 808 F.3d 905, 922 (D.C. Cir. 2015) (Edwards, J., concurring) (“I would reject  
25 [plaintiff’s] organizational standing argument because its only expenditures are made for ‘pure  
26 issue-advocacy,’ an insufficient injury to support standing . . .”). At the hearing on the pending  
27 motions, plaintiff disputed defendant’s assertion that plaintiff is only an advocacy organization,  
28 arguing that it is both an advocacy organization and a service organization because it provides  
services in the form of giving educational materials to parents and churches. The court takes no  
position with respect to whether plaintiff is an advocacy-only organization, which plaintiff  
appears to allege in its FAC (*see* Doc. No. 10 at ¶ 11) (alleging that plaintiff “accomplishes its  
mission through legislative advocacy”), or a mixed service-and-advocacy organization, as argued  
by plaintiff at the hearing. Rather, the court only notes that the discourse surrounding this issue  
“does not mean advocacy organizations can never have standing,” and the court’s conclusion  
regarding the sufficiency of plaintiff’s allegations of its standing to bring this action is unaffected  
by plaintiff’s status as an advocacy-only or a service-and-advocacy organization. *In Def. of*  
*Animals*, 2021 WL 4243391, at \*4.

1 organizational plaintiff “has spent over a decade pursuing petitions, campaigns, lawsuits, and  
2 outreach efforts to address force-fed foie gras” and thus, defendant’s decision to decline  
3 plaintiff’s petition to initiate rulemaking that would ban force-fed foie gras operated as a  
4 “substantial setback to [plaintiff’s] goal . . . [and] is fairly characterized as ‘frustrating’ its  
5 mission, even if that is only one of several goals pursued by [plaintiff]”) (internal quotation  
6 marks, brackets, and citation omitted).

7 *b. Forced Diversion of Resources*

8 The issue of whether SB 107 frustrated plaintiff’s mission is, at least in this case,  
9 inextricably intertwined with the issue of whether plaintiff was actually forced to divert resources  
10 to counteract an injury caused by defendant’s conduct. The paucity of allegations in the FAC  
11 regarding plaintiff’s activities or operations in furtherance of its broadly stated mission provides  
12 no indication that plaintiff would have suffered an injury had it *not* diverted resources in the wake  
13 of SB 107. As a result, the court has no basis upon which to conclude that its alleged diversion of  
14 resources was in any way “forced.” *See La Asociacion*, 624 F.3d at 1088 n.4 (“An organization  
15 may sue only if it was forced to choose between suffering an injury and diverting resources to  
16 counteract the injury.”). Put simply, because plaintiff has failed to allege that its operations have  
17 been “perceptibly impaired” whatsoever by SB 107, plaintiff has likewise failed to allege that it  
18 was “forced to respond to prevent injury” by diverting organizational resources to counteract  
19 harm caused by SB 107. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (finding  
20 that an organization suffered an injury-in-fact where the defendant’s practices “*perceptibly*  
21 *impaired* [the organization’s] ability to provide counseling and referral services” and explaining  
22 that such a “concrete and demonstrable injury to the organization’s activities—with the  
23 *consequent drain on the organization’s resources*—constitutes far more than simply a setback to  
24 the organization’s abstract social interests”) (emphasis added); *see also Food & Water Watch,*  
25 *Inc. v. Vilsack*, 808 F.3d 905, 921 (D.C. Cir. 2015) (“[Plaintiff] has alleged nothing more than an  
26 abstract injury to its interests that is insufficient to support standing. . . . Although [plaintiff]  
27 alleges that [it] will spend resources educating its members and the public about the [challenged  
28 conduct], nothing . . . indicates that [plaintiff’s] organizational activities have been perceptibly

1 impaired in any way.”); *In Def. of Animals*, 2021 WL 4243391, at \*4 (“The organization must be  
2 ‘forced’ into acting because the defendant affected its operations.”); *cf. Ranchers Cattlemen*  
3 *Action Legal Fund United Stockgrowers of Am. v. Vilsack*, 6 F.4th 983, 988 (9th Cir. 2021), *cert.*  
4 *denied*, — U.S. —, 142 S. Ct. 2867 (2022) (concluding that the organizational plaintiff had  
5 standing where plaintiff’s mission “includes protecting domestic, independent cattle producers”;  
6 plaintiff alleged that it normally devotes around 60% of its resources to educating cattle producers  
7 on mandatory assessments on cattle sales; plaintiff’s members include cattle producers who  
8 object to defendants’ use of funds generated by the mandatory assessments on cattle sales; the  
9 challenged mandatory assessment program “affects [plaintiff’s] mission”; and “if [plaintiff] did  
10 not pursue this litigation, [defendants] would have continued to use [mandatory assessment] funds  
11 in a way that would frustrate [plaintiff’s] organizational mission by allegedly promoting corporate  
12 consolidation in the beef industry”) (internal quotation marks and brackets omitted).<sup>7</sup>

13 Moreover, plaintiff’s failure to allege that SB 107 caused any “impediment to the  
14 organization’s real-world efforts on behalf of [its] principles” renders this action distinguishable  
15 from those cases in which courts have found that organizational plaintiffs that diverted resources

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17 <sup>7</sup> At the hearing on the pending motion, plaintiff’s counsel pointed the court to the Ninth  
18 Circuit’s recent unpublished memorandum decision in *Election Integrity Project Cal., Inc. v.*  
19 *Weber*, No. 21-56061, 2022 WL 16647768 (9th Cir. Nov. 3, 2022) in support of its argument that  
20 plaintiff has pled sufficient facts in its FAC to demonstrate that plaintiff has standing to bring this  
21 action. Because plaintiff did not cite this case in its opposition to defendant’s motion to dismiss,  
22 defendant has not had an opportunity to address plaintiff’s argument with respect to this decision.  
23 Nevertheless, the court has reviewed the decision and finds that the minimal analysis therein does  
24 not advance plaintiff’s argument. First, there, the Ninth Circuit concluded that the organizational  
25 plaintiff adequately alleged both a frustration of mission and a diversion of resources based on  
26 plaintiff’s allegations that (1) its operations include having volunteers observe and document  
27 voting practices in furtherance of its mission to “advocate for greater election integrity,” and (2)  
28 that a change in state voting procedures (“requiring every active registered voter in California to  
receive a vote-by-mail ballot” without “develop[ing] procedures to ensure that only eligible  
voters will receive such ballots in the future”) forced plaintiff to expend resources to facilitate  
these volunteer activities. *Election Integrity Project Cal.*, 2022 WL 16647768, at \*1. Here, by  
contrast, plaintiff has not made any showing that SB 107 would have impacted any of plaintiff’s  
core operations such that it was forced to divert resources in response to SB 107’s enactment.  
Second, notably, the Ninth Circuit’s decision in the cited case focused on a separate inquiry as to  
whether the plaintiff had plausibly alleged a credible threat—rather than a speculative fear—of  
future harm (i.e., election fraud committed through the use of vote-by-mail ballots in future  
elections). *Id.* Thus, plaintiff’s reference to this decision is unavailing here.

1 to combat a defendant’s practices had standing to bring suit. *Jimenez*, 2017 WL 2423186, at \*11;  
2 *see, e.g., E. Bay Sanctuary Covenant*, 993 F.3d at 663 (holding that the organizational plaintiffs  
3 who shared a mission of “assisting migrants seeking asylum” had established that a rule  
4 promulgated by the Departments of Justice and Homeland Security “perceptibly impaired”  
5 plaintiffs’ ability to perform the services they were formed to provide because the rule  
6 significantly discouraged a large number of asylum-seekers from seeking asylum; the rule  
7 hindered plaintiffs’ ability to represent certain asylum-seekers; after the rule was announced, one  
8 plaintiff became “overwhelmed” with requests for assistance by children who had traveled to the  
9 southern border to apply for asylum but could no longer do so, causing a “near complete  
10 diversion” of that plaintiff’s resources; and the rule “jeopardized” the funding on which plaintiffs  
11 “critically depend”); *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1039–40 (9th Cir.  
12 2015) (finding that a plaintiff civil rights organizations whose regular activities included  
13 conducting voter registration drives had standing based on their allegations that they were forced  
14 to expend additional resources registering individuals to vote who, if not for defendant’s actions,  
15 could have instead been registered to vote by the state public assistance offices); *Valle del Sol*,  
16 732 F.3d at 1012–13, 1018–19 (holding that the organizational plaintiffs had standing to  
17 challenge an Arizona law criminalizing “transporting . . . [or] harboring . . . an unauthorized  
18 alien” where plaintiffs’ “core activities” included transporting and/or sheltering undocumented  
19 immigrants, and plaintiffs “therefore reasonably fear[ed]” that their volunteers and/or members  
20 would be deterred from participating in organizational activities, causing plaintiffs to divert  
21 funding to address their members’ and volunteers’ concerns about the law’s effect); *La Clinica de*  
22 *la Raza v. Trump*, No. 4:19-cv-04980-PJH, 2020 WL 6940934, at \*4–5 (N.D. Cal. Nov. 25, 2020)  
23 (finding that the organizational plaintiffs, comprised of legal and healthcare organizations, had  
24 standing to challenge a rule promulgated by the Department of Homeland Security because  
25 plaintiffs had “demonstrate[d] that they would be injured by the Rule if they do nothing . . . [by  
26 alleging that] the Rule would increase the organization’s no-show rate due to a decrease in  
27 patients seeking care” and that the Rule’s impact on Medi-Cal enrollment would decrease  
28 plaintiffs’ revenue).

1 In contrast to these cases, here, plaintiff Our Watch does not allege, for example, that SB  
2 107 criminalizes any of its activities, that it has been overwhelmed by requests for assistance  
3 from out-of-state parents who have lost custody of their children as a result of SB 107's  
4 enactment, that plaintiff's funding has in any way been threatened by SB 107, or that any of  
5 plaintiff's regular operations would have been affected by SB 107 had plaintiff chosen not to  
6 divert resources after the law's enactment.<sup>8</sup> See *In Def. of Animals*, 2021 WL 4243391, at \*5  
7 (finding that an organizational plaintiff lacked standing where, *inter alia*, plaintiff "[did] not  
8 allege any members actually sought its guidance, let alone on a scale sufficient to justify  
9 diversion of resources"). In other words, plaintiff has simply failed to allege facts indicating that  
10 its alleged diversion of resources in response to SB 107 has been anything other than voluntary on  
11 its part. See *Valle del Sol*, 732 F.3d at 1018 ("An organization 'cannot manufacture the injury by  
12 . . . simply choosing to spend money fixing a problem that otherwise would not affect the  
13 organization at all.'") (quoting *La Asociacion*, 624 F.3d at 1088); *In Def. of Animals*, 2021 WL  
14 4243391, at \*4 (explaining that "[i]f the defendant's conduct did not force the plaintiff to divert  
15 resources, the only injury comes from the plaintiff's own actions"). Although plaintiff alleges  
16 that SB 107 has "prompted Our Watch to focus nearly exclusively on educating parents and  
17 churches about transgender issues and the effect on parental rights" (Doc. No. 10 at ¶ 15), courts  
18 have recognized that "[e]ven a large new campaign is not enough if the organization is not forced  
19 to undertake it." *In Def. of Animals*, 2021 WL 4243391, at \*5; see also *Conn. Parents Union*, 8  
20 F.4th at 175 ("[E]ven construing the record in [plaintiff's] favor, as we must, it is clear that  
21 [plaintiff] incurred costs because it decided to initiate a campaign against the [challenged  
22 memorandum] to advance its own 'abstract social interests'; thus any costs [plaintiff] incurred  
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24 <sup>8</sup> In addition, the court notes that plaintiff "makes no specific averments about what it would  
25 have done with its [diverted] time and money" if not for SB 107's enactment. *In Def. of Animals*,  
26 2021 WL 4243391, at \*5 (finding that "conclusory allegations" that if not for defendant's  
27 conduct, plaintiff would have used the diverted resources to accomplish other aspects of its  
28 organizational mission "cannot support a finding of diversion [of resources]" in the standing  
context). Rather, plaintiff states only that "[t]he bill has caused Our Watch to divert time and  
attention from its other focus areas and activities like legislative advocacy." (Doc. No. 10 at  
¶ 15).

1 from this campaign were not *involuntary*.”) (emphasis in original). In this case, plaintiff’s  
2 voluntary decision to allegedly divert its own resources is a “self-inflicted injury [that is not]  
3 fairly traceable to the defendant” and thus is insufficient to confer standing upon plaintiff. *In Def.*  
4 *of Animals*, 2021 WL 4243391, at \*4.

5 Plaintiff does not explicitly address the voluntary nature of its allegedly diverted resources  
6 in its opposition to the pending motion to dismiss.<sup>9</sup> Instead, plaintiff merely argues that “the  
7 diversion of resources to counteract the frustration of Our Watch’s mission is itself the actual or  
8 imminent injury to Our Watch.” (Doc. No. 15 at 14.) While the Ninth Circuit has held that “[a]n  
9 organization suing on its own behalf can establish an injury when it suffered both a diversion of  
10 its resources and a frustration of its mission,” plaintiff conveniently glosses over the well-  
11 established corollary to this principle: that such an organizational plaintiff “may only sue if it  
12 was forced to choose between suffering an injury and diverting resources to counteract the  
13 injury.” *La Asociacion*, 624 F.3d at 1088 & 1088 n.4 (internal quotation marks omitted). It  
14 would appear obvious that to hold otherwise “would effectively nullify the constitutional  
15 requirements for standing” because it would, in essence, allow an organization to manufacture  
16 standing simply by perfunctorily assigning itself a broad organizational mission and  
17 “investigating conduct or starting a new campaign against someone who frustrates [that] general  
18 mission.” *In Def. of Animals*, 2021 WL 4243391, at \*4 (explaining that such an outcome “would  
19 be inconsistent with the constitutional minimum for standing, as there is no injury that is “fairly  
20 traceable” to the defendant’s conduct [because] the plaintiff’s own choice causes the injury”).

21 Similarly, plaintiff cites the decisions in *Fair Housing Council of San Fernando Valley v.*  
22 *Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012) and *Smith v. Pacific Properties &*  
23 *Development Corp.*, 358 F.3d 1097 (9th Cir. 2004) in support of the proposition that “courts have  
24 routinely found organizational standing on the basis of similar organizational harms,”

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25 <sup>9</sup> At the hearing on the pending motions, plaintiff for the first time advanced the creative but  
26 ultimately unpersuasive argument that that in the standing context, an organization’s diversion of  
27 resources can be entirely voluntary. Plaintiff’s position in this regard is irreconcilable with the  
28 law in this circuit, which provides that “[a]n organization ‘cannot manufacture the injury by . . .  
simply choosing to spend money fixing a problem that otherwise would not affect the  
organization at all.’” *Valle del Sol*, 732 F.3d at 1018 (quoting *La Asociacion*, 624 F.3d at 1088).

1 specifically, harms suffered by organizational plaintiffs who diverted resources to create outreach  
2 and educational campaigns in response to the challenged conduct. (Doc. No. 15 at 16.) Plaintiff  
3 is correct that these decisions confirm that it is possible for organizational plaintiffs who divert  
4 resources toward outreach and educational campaigns to have standing to challenge a defendant’s  
5 conduct. *See Fair Hous. Council of San Fernando Valley*, 666 F.3d at 1219 (finding that the  
6 nonprofit organization’s investigation of defendant’s allegedly discriminatory practices and  
7 subsequent diversion of resources toward new education and outreach campaigns targeted at  
8 discriminatory roommate advertising constituted an injury caused by frustration of plaintiff’s  
9 central mission for purposes of standing); *Smith*, 358 F. 3d at 1105–06 (holding that the  
10 organizational plaintiff had standing where the plaintiff was a nonprofit corporation organized  
11 with the principal purpose of helping eliminate discrimination against individuals with  
12 disabilities, including by ensuring an adequate supply of accessible housing for individuals freed  
13 to leave nursing homes; plaintiff alleged that defendant designed inaccessible properties in  
14 violation of federal law; and plaintiff alleged that it diverted resources from its regular activities  
15 in order to promote awareness of and compliance with federal and state accessibility laws and to  
16 “benefit the disabled community in other ways”). Yet, in advancing this contention, plaintiff  
17 once again ignores binding Ninth Circuit precedent providing that in order for such a plaintiff to  
18 have standing, that organizational plaintiff must also “show that it would have suffered some  
19 other injury if it had not diverted resources to counteracting the problem.”<sup>10</sup> *La Asociacion*, 624  
20 F.3d at 1088; *see also E. Bay Sanctuary Covenant*, 993 F.3d at 663; *Valle del Sol*, 832 F.3d at  
21 1018; *People for the Ethical Treatment of Animals, Inc. v. United States Fish & Wildlife Serv.*,  
22 No. 2:12-cv-04435-DMG-MAN, 2014 WL 12580234, at \*5 (C.D. Cal. Jan. 31, 2014) (explaining

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<sup>10</sup> The court acknowledges that the Ninth Circuit has not engaged in an explicit analysis of this  
required showing in every case in which it has held that an organization had standing on the basis  
of frustration of mission and diversion of resources. *See, e.g., Fair Hous. Council of San  
Fernando Valley*, 666 F.3d at 1219. However, the absence of such an articulated analysis  
indicates that the plaintiffs in those cases easily met this requirement; it does not suggest that the  
Ninth Circuit has abandoned these long-held standing requirements. Indeed, recent decisions by  
the Ninth Circuit have reiterated the requirement that an organizational plaintiff must show that it  
would have suffered an injury had it not diverted resources to counteract the challenged conduct.  
*See, e.g., E. Bay Sanctuary Covenant*, 994 F.3d at 974 (quoting *La Asociacion*, 624 F.3d at 1088).

1 that “[s]ome other injury’ to the organization usually consists of harm to an organization’s  
2 existing programs or members”) (quoting *La Asociacion*, 624 F.3d at 1088). As explained in  
3 great detail above, plaintiff simply has not done so here.

4 In its opposition to defendant’s pending motion to dismiss, plaintiff also appears to  
5 advance the unpersuasive argument that its diversion of resources cannot be construed as merely  
6 an attempt to manufacture standing in this action because it began diverting resources as soon as  
7 SB 170 became law, rather than after initiating this litigation. (Doc. No. 15 at 15–16) (“Our  
8 Watch began diverting resources as soon as SB 107 became law due to the grave dangers  
9 presented by the bill—not for purposes of manufacturing standing. . . . Our Watch immediately  
10 began new educational outreach programs both inside and outside of California and even funded  
11 de-transitioning teenagers to come on the organization’s podcast to speak on the issue.”) While it  
12 is true that “[a]n organization cannot . . . manufacture the injury necessary to maintain a suit from  
13 its expenditure of resources on that very suit,” an organization likewise may not “manufacture the  
14 injury by . . . simply choosing to spend money fixing a problem that otherwise would not affect  
15 the organization at all.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 903 (9th Cir. 2002)  
16 (quoting *Spann v. Colonial Vill. Inc.*, 899 F.2d 24, 27–29 (D.C. Cir. 1990)); *La Asociacion*, 624  
17 F.3d at 1088. In other words, the fact that an organizational plaintiff expended its resources on  
18 campaigns not associated with litigation, without more, is not a golden ticket to obtaining Article  
19 III standing. Plaintiff’s argument in this regard therefore has no bearing upon the court’s  
20 conclusion that plaintiff has not pled sufficient facts to demonstrate that it has standing to bring  
21 this action.

22 Accordingly, the court finds that plaintiff lacks Article III standing to assert its claims in  
23 this action and will grant defendant’s motion to dismiss on that basis.

24 2. Leave to Amend

25 Plaintiff has requested leave to file a second amended complaint in the event that the court  
26 grants defendant’s motion to dismiss. (Doc. No. 15 at 30.) “Courts are free to grant a party leave  
27 to amend whenever ‘justice so requires,’ and requests for leave should be granted with ‘extreme  
28 liberality.’” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009) (citations omitted).

1 There are several factors a district court considers in determining whether to grant leave to  
2 amend, including undue delay, the movant's bad faith or dilatory motive, repeated failure to cure  
3 deficiencies by amendments previously allowed, undue prejudice to the opposing party, and  
4 futility. *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (citing *Foman v.*  
5 *Davis*, 371 U.S. 178, 182 (1962)).

6 The court notes that plaintiff has already amended its complaint in this action once, and  
7 the court is doubtful that plaintiff will be able to remedy the deficiencies described in this order.  
8 The court's doubts in this regard are based in part upon plaintiff's apparent position at the hearing  
9 on the pending motions that, in order to have standing, plaintiff need not allege anything more  
10 than a vague mission and a voluntary diversion of resources. Nonetheless, out of an abundance of  
11 caution, and because defendant does not assert that it will be unduly prejudiced by allowing  
12 plaintiff to file a second amended complaint, the court will grant plaintiff leave to amend. *See*  
13 *Nat'l Council of La Raza*, 800 F.3d at 1041 ("It is black-letter law that a district court must give  
14 plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that  
15 amendment would be futile.").

16 Therefore, defendant's motion to dismiss plaintiff's FAC pursuant to Rule 12(b)(1) will be  
17 granted with leave to amend.

18 3. Defendant's Motion to Dismiss Pursuant to Rule 12(b)(6)

19 Because the court concludes that plaintiff lacks Article III standing to bring this action  
20 pursuant to Rule 12(b)(1), the court need not reach defendant's arguments in support of his  
21 motion to dismiss pursuant to Rule 12(b)(6). Accordingly, defendant's motion to dismiss  
22 pursuant to Rule 12(b)(6) will be denied as having been rendered moot by this order. In the event  
23 plaintiff files a second amended complaint, defendant may re-assert his Rule 12(b)(6) arguments  
24 in response to that complaint.

25 **B. Plaintiff's Motion for a Preliminary Injunction**

26 In order to prevail on its motion for a preliminary injunction, plaintiff bears the burden of  
27 demonstrating that it is likely to succeed on the merits of its claims, that it is likely to suffer  
28 irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor,

1 and that an injunction is in the public interest. *Stormans*, 586 F.3d at 1127. With respect to the  
2 first requirement, plaintiff must show that at the very least, that “serious questions going to the  
3 merits were raised.” *All. for the Wild Rockies*, 632 F.3d at 1131.

4 Here, because plaintiff has failed to allege facts sufficient to show that it has standing to  
5 bring this action, plaintiff has likewise failed to meet its burden of showing that it is likely to  
6 succeed on the merits of its claims.<sup>11</sup> *See Deck v. Wells Fargo Bank, N.A.*, No. 2:17-cv-00234-  
7 MCE-KJN, 2017 WL 815678, at \*3 (E.D. Cal. Feb, 27, 2017) (“Due to his lack of standing,  
8 Plaintiff cannot show that he is reasonably likely to succeed on the merits, nor can even raise  
9 serious questions as to the merits, of any of his claims.”).

10 Therefore, the court will deny plaintiff’s motion for a preliminary injunction at this time.

### 11 CONCLUSION

12 For the reasons stated above:

- 13 1. Defendant’s motion to dismiss plaintiff’s first amended complaint due to  
14 plaintiff’s lack of Article III standing (Doc. No. 12) is granted, with leave to  
15 amend;
- 16 2. The remainder of defendants’ motion to dismiss (Doc. No. 12) is denied as having  
17 been rendered moot by this order;
- 18 3. Plaintiff’s motion for a preliminary injunction (Doc. No. 13) is denied;
- 19 4. Plaintiff shall file its second amended complaint, or alternatively, a notice of its  
20 intent to not file a second amended complaint, within fourteen (14) days from the  
21 date of entry of this order; and

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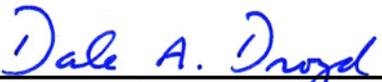
26 <sup>11</sup> The court notes that the parties raise identical arguments with respect to plaintiff’s standing in  
27 their briefing on plaintiff’s pending motion for a preliminary injunction as they did in their  
28 briefing on defendant’s motion to dismiss. (*See* Doc. Nos. 12 at 17–20; 14 at 16–19; 15 at 14–17;  
16 at 3–5; 17 at 7–10.)

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5. Plaintiff is warned that its failure to comply with this order may result in dismissal of this action due to plaintiff's failure to prosecute.

IT IS SO ORDERED.

Dated: July 17, 2023

  
UNITED STATES DISTRICT JUDGE