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**United States District Court
Central District of California**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA et al.,

Plaintiffs,

v.

CALIFORNIA AIR RESOURCES
BOARD et al.,

Defendants.

Case № 2:24-cv-00801-ODW (PVCx)

**ORDER GRANTING
DEFENDANTS’ MOTION TO
DISMISS PLAINTIFFS’ SECOND
AND THIRD CAUSES OF ACTION
[38]**

I. INTRODUCTION

Plaintiffs Chamber of Commerce of the United States of America (“U.S. Chamber”), California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association bring this action challenging California Senate Bills (“SB” or “SBs”) 253 and 261 against Defendants Chair of the California Air Resources Board (“CARB”) Liane M. Randolph, Executive Officer of CARB Steven S. Cliff, and California Attorney General Robert A. Bonta (collectively, the “State”) for violation of the United States Constitution’s First Amendment, Supremacy Clause, and limitations on extraterritorial regulation. (See First Am. Compl. (“FAC”) ¶¶ 92–112, ECF No. 28.) The State moves to dismiss Plaintiffs’ Supremacy Clause and

1 extraterritoriality claims. (Mem. P. & A. ISO Mot. Dismiss. (“Mot.” or “Motion”),
2 ECF No. 38-1).¹

3 For the reasons discussed below, the Court **GRANTS** the State’s Motion to
4 Dismiss and dismisses Plaintiffs’ Supremacy Clause and extraterritoriality claims.²

5 **II. BACKGROUND**³

6 On October 7, 2023, Governor Gavin Newsom signed SBs 253 and 261 into
7 law. (FAC ¶ 3.) A brief description of each law follows.

8 **A. Senate Bill 253**

9 SB 253 originally directed that by January 1, 2025, CARB “shall develop and
10 adopt regulations” for “reporting entit[ies]”—businesses with total annual revenues
11 over \$1 billion “that do[] business in California.” Cal. Health & Safety Code
12 §§ 38532(b)(2), (c)(1). After the FAC was filed, California delayed this deadline to
13 July 1, 2025. (Notice Amends. SBs 253 & 261 (“Not. Amends.”), ECF No. 72.)⁴
14 SB 253 is expected to directly apply to more than 5,300 companies. (FAC ¶ 44.)

15 SB 253 requires CARB to develop regulations that require reporting entities to
16 annually disclose their Scope 1, Scope 2, and Scope 3 emissions. (*Id.* ¶ 47); Cal.
17 Health & Safety Code § 38532(c)(1).

- 18 • Scope 1 emissions are “all direct greenhouse gas emissions that stem
19 from sources that a reporting entity owns or directly controls, regardless
20 of location, including, but not limited to, fuel combustion activities.”
21 (FAC ¶ 47a); Cal. Health & Safety Code § 38532(b)(3).

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23 ¹ The State also moved to dismiss all of Plaintiffs’ claims against Attorney General Bonta, arguing
24 that sovereign immunity bars these claims. (Mot. 21–22.) In their Reply, the State, without
25 conceding the point, withdrew this argument. (Reply 1 n.1, ECF No. 49.)

26 ² Having carefully considered the papers filed in connection with the Motion, the Court deemed the
27 matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

28 ³ All factual references derive from the FAC, unless otherwise noted. *See Ashcroft v. Iqbal*,
556 U.S. 662, 678 (2009) (stating that well-pleaded factual allegations are accepted as true for
purposes of a motion to dismiss).

⁴ On October 16, 2024, Defendants informed the Court that, on September 27, 2024, Governor
Newsom signed amendments to SBs 253 and 261 into law. (Not. Amends.) These amendments
took effect on January 1, 2025. (*Id.*)

- 1 • Scope 2 emissions are “indirect greenhouse gas emissions from
2 consumed electricity, steam, heating, or cooling purchased or acquired by
3 a reporting entity, regardless of location.” (FAC ¶ 47b); Cal. Health &
4 Safety Code § 38532(b)(4).
- 5 • Scope 3 emissions are “indirect upstream and downstream greenhouse
6 gas emissions, other than scope 2 emissions, from sources that the
7 reporting entity does not own or directly control and may include, but are
8 not limited to, purchased goods and services, business travel, employee
commutes, and processing and use of sold products.” (FAC ¶ 47c); Cal.
Health & Safety Code § 38532(b)(5).

9 SB 253 does not mandate entities to report avoided emissions, or so-called “Scope 4
10 emissions.” (FAC ¶¶ 50–51, 69.)

11 SB 253 requires CARB to ensure that its regulations mandate entities to
12 measure and report Scope 3 emissions “in conformance with the Greenhouse Gas
13 protocol standards and guidance.” (*Id.* ¶ 48); Cal. Health & Safety Code
14 § 38532(c)(2)(A)(ii). The law further directs CARB to develop and adopt regulations
15 to “minimize[] duplication of effort” by allowing entities “to submit to the emissions
16 reporting organization . . . reports prepared to meet other national and international
17 reporting requirements.” *Id.* § 38532(c)(2)(D)(i). CARB must also develop and adopt
18 regulations that ensure reporting entities obtain third-party assurances as to the quality
19 and accuracy of the reported emissions. *Id.* § 38532(c)(2)(F). These emissions data
20 will be publicly available, and CARB will ensure the creation of a public report on the
21 disclosures. (FAC ¶ 61); Cal. Health & Safety Code §§ 38532(d)(1), (e).

22 SB 253 requires CARB to adopt regulations that authorize it to seek
23 administrative penalties for “nonfiling, late filing, or other failure to meet the
24 requirements” of the law. (FAC ¶ 63); Cal. Health & Safety Code § 38532(f)(2)(A).
25 As of the date of the FAC, the law required CARB to adopt regulations mandating
26 reporting entities to pay an annual fee upon filing disclosures to cover the costs of
27 administration and implementation of the new reporting requirements. (FAC ¶ 62.)
28 The recent amendment still requires CARB to issue regulations mandating reporting

1 entities pay an annual fee, but no longer makes that fee due upon the filing of
2 disclosures. (Not. Amends.); Cal. Health & Safety Code § 38532(c)(2)(G)(i).

3 **B. Senate Bill 261**

4 SB 261 applies to any entity with total annual revenues over \$500 million “that
5 does business in California.” (FAC ¶ 34); Cal. Health & Safety Code § 38533(a)(4).
6 SB 261 is expected to apply to more than 10,000 companies. (FAC ¶ 34.)

7 Starting on January 1, 2026, SB 261 will mandate each applicable entity to
8 biennially disclose on its website two categories of climate-related financial risk
9 information, defined as information related to “material risk of harm to immediate and
10 long-term financial outcomes due to physical and transition risks” to the business. (*Id.*
11 ¶¶ 36, 39); Cal. Health & Safety Code § 38533(a)(2).⁵ These two categories are:

- 12 • The entity’s climate-related financial risk, in accordance with the
13 recommended framework and disclosures contained in the Final Report
14 of Recommendations of the Task Force on Climate-related Financial
15 Disclosures (June 2017), (FAC ¶ 36), Cal. Health & Safety Code
16 § 38533(b)(1)(A)(i); and
- 17 • The entity’s measures adopted to reduce and adapt to climate-related
18 financial risk disclosed in its biennial report, (FAC ¶ 37), Cal. Health &
19 Safety Code § 38533(b)(1)(A)(ii).

20 SB 261 requires CARB to adopt regulations that authorize it to seek
21 administrative penalties—no more than \$50,000—for reporting entities that fail to
22 publish a report or that make an inaccurate one. (FAC ¶ 43); Cal. Health & Safety
23 Code § 38533(f)(2). SB 261 required covered entities to pay an annual fee upon
24 filings disclosures starting on January 1, 2026. (FAC ¶ 43). This, too, was amended

25 _____
26 ⁵ The legislation’s full definition of “climate-related financial risk” is as follows: “material risk of
27 harm to immediate and long-term financial outcomes due to physical and transition risks, including,
28 but not limited to, risks to corporate operations, provision of goods and services, supply chains,
employee health and safety, capital and financial investments, institutional investments, financial
standing of loan recipients and borrowers, shareholder value, consumer demand, and financial
markets and economic health.” Cal. Health & Safety Code § 38533(a)(2).

1 to require covered entities to pay an annual fee, but to no longer make it due upon the
2 filing of disclosures. (Not. Amends.); Cal. Health & Safety Code § 38533(c)(2)(A).

3 In its FAC, Plaintiffs bring four causes of action under 42 U.S.C. § 1983. In
4 Count I, Plaintiffs allege that SBs 253 and 261 violate the First Amendment. (FAC
5 ¶¶ 92–99.) In Count II, Plaintiffs assert that the Constitution and federal law preempt
6 SBs 253 and 261, which violate the Supremacy Clause. (*Id.* ¶¶ 100–06.) In Count III,
7 Plaintiffs claim that the laws violate the U.S. Constitution’s limits on extraterritorial
8 regulation, including the dormant Commerce Clause. (*Id.* ¶¶ 107–12.) Lastly, in
9 Count IV, Plaintiffs seek payment of attorneys’ and expert fees. (*Id.* ¶¶ 113–15.) As
10 relief, Plaintiffs seek declarations that SBs 253 and 261 are “null, void, and with no
11 force or effect,” and an injunction enjoining the State from “implementing, applying,
12 or taking any action whatsoever to enforce” SBs 253 and 261. (FAC, Prayer for
13 Relief ¶ 116.)

14 Before discovery began, Plaintiffs moved for summary judgment on their First
15 Amendment claim, (Mot. Summ. J., ECF No. 48), and the State separately moved to
16 deny or defer the motion under Federal Rule (“Rule” or “Rules”) of Civil
17 Procedure 56(d), (Mot. Den. Defer Mot. Summ. J., ECF No. 57). The Court granted
18 the State’s motion to defer Plaintiff’s motion for summary judgment under Rule 56(d)
19 and granted Plaintiffs leave to re-file their motion after the close of discovery. (*See*
20 *Order Summ. J.*, ECF No. 73.)

21 The State now moves to dismiss Plaintiffs’ Supremacy Clause and
22 extraterritoriality claims under Rules 12(b)(1) and 12(b)(6). (Mot.) The Motion is
23 fully briefed. (Mot.; Opp’n, ECF No. 43; Reply, ECF No. 49.)⁶

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⁶ The State also requests that the Court take judicial notice of certain documents. Because the Court
28 reaches its conclusions without relying on those documents, it **DENIES** the request. (Req. Judicial
Notice, ECF No. 39.)

1 III. LEGAL STANDARD

2 A. Rule 12(b)(1)

3 Under Rule 12(b)(1), a party may move to dismiss based on a court’s lack of
4 subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). “A Rule 12(b)(1)
5 jurisdictional attack may be facial or factual.” *Safe Air for Everyone v. Meyer*,
6 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack “accepts the truth of the
7 plaintiff’s allegations but asserts that they are insufficient on their face to invoke
8 federal jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014)
9 (internal quotation marks omitted). Conversely, a factual attack “contests the truth of
10 the plaintiff’s factual allegations, usually by introducing evidence outside the
11 pleadings.” *Id.* The party attempting to invoke a court’s jurisdiction bears the burden
12 of proof for establishing jurisdiction. See *Sopcak v. N. Mountain Helicopter Serv.*,
13 52 F.3d 817, 818 (9th Cir. 1995).

14 B. Rule 12(b)(6)

15 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
16 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
17 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To
18 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
19 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
20 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
21 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
22 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual
23 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*,
24 556 U.S. at 678 (internal quotation marks omitted).

25 The determination of whether a complaint satisfies the plausibility standard is a
26 “context-specific task that requires the reviewing court to draw on its judicial
27 experience and common sense.” *Id.* at 679. A court is generally limited to the
28 pleadings and must construe all “factual allegations set forth in the complaint . . . as

1 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,
2 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept
3 conclusory allegations, unwarranted deductions of fact, and unreasonable inferences.
4 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

5 Where a district court grants a motion to dismiss, it should generally provide
6 leave to amend unless it is clear the complaint could not be saved by any amendment.
7 *See Fed. R. Civ. P. 15(a); Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
8 1025, 1034 (9th Cir. 2008). Leave to amend may be denied when “the court
9 determines that the allegation of other facts consistent with the challenged pleading
10 could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture*
11 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Thus, leave to amend “is properly
12 denied . . . if amendment would be futile.” *Carrico v. City & County of San*
13 *Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

14 IV. DISCUSSION

15 The State moves to dismiss Plaintiffs’ Supremacy Clause and extraterritoriality
16 claims on the basis that Plaintiffs lack standing, the claims are not ripe, and Plaintiffs
17 fail to state a claim on which relief can be granted. As it must, the Court begins with
18 the State’s arguments that Plaintiffs’ claims fail on ripeness and standing grounds.
19 Having found that Plaintiffs only have standing to bring these claims as to SB 261, the
20 Court then turns to the State’s Rule 12(b)(6) attack on that claim.

21 A. Standing and Ripeness

22 The State argues that Plaintiffs lack standing to pursue their Supremacy Clause
23 and extraterritoriality claims as to SB 261 and as to SB 253’s Scope 1 and Scope 2
24 reporting requirements because Plaintiffs fail to raise an injury in fact. (Mot. 10–12.)
25 At this stage, the State does not contest that Plaintiffs have standing to challenge
26 SB 253’s Scope 3 reporting requirement. (*See id.* at 12.) But the State does argue that
27 Plaintiffs’ challenges to SB 253, including the Scope 3 reporting requirement, is not
28 ripe for review. (*Id.* at 8–10.)

1 To establish standing under Article III of the U.S. Constitution, a plaintiff must
2 have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged
3 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
4 decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v.*
5 *Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). An injury in fact—the only
6 element at issue here—is “an invasion of a legally protected interest which is
7 (a) concrete and particularized and (b) actual or imminent, not conjectural or
8 hypothetical.” *Lujan*, 504 U.S. at 560. “A related doctrine,” ripeness, “is designed to
9 ‘separate matters that are premature for review because the injury is speculative and
10 may never occur from those cases that are appropriate for federal court action.’”
11 *Thomas v. County of Humboldt*, --- F.4th ---, No. 23-15846, 2024 WL 5243033, at *4
12 (9th Cir. Dec. 30, 2024) (quoting *Portman v. County of Santa Clara*, 995 F.2d 898,
13 902 (9th Cir. 1993)). Therefore, “[t]he constitutional component of the ripeness
14 inquiry is often treated under the rubric of standing and, in many cases, ripeness
15 coincides squarely with standing’s injury in fact prong.” *Id.* (alteration in original)
16 (quoting *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1138 (9th Cir.
17 2000)).

18 When “standing is challenged on the basis of the pleadings,” courts “accept as
19 true all material allegations of the complaint” and “construe the complaint in favor of
20 the complaining party.” *Id.* (quoting *Pennell v. City of San Jose*, 485 U.S. 1, 7
21 (1988)). “[G]eneral factual allegations of injury resulting from the defendant’s
22 conduct may suffice, for on a motion to dismiss” courts “presume that general
23 allegations embrace those specific facts that are necessary to support the claim.” *Cal.*
24 *Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1100 (9th Cir. 2024) (quoting *Lujan*,
25 504 U.S. at 561).

26 In the FAC, Plaintiffs allege that their members are subject to SBs 253
27 and 261’s requirements. (*See, e.g.*, FAC ¶ 9 (alleging that “members” of the U.S.
28 Chamber “are subject to” SBs 253 and 261), ¶ 20 (identifying Chevron Corp. and

1 U-Haul Holding Company as members of the U.S. Chamber, among other Plaintiffs,
2 whose annual revenues exceed \$1 billion and would thus be subject to reporting
3 requirements under SBs 253 and 261.) Plaintiffs also allege that “[b]oth laws compel
4 a substantial amount of speech at significant expense” and will require companies
5 spend “significant time and money . . . making public statements regarding climate
6 change.” (*Id.* ¶¶ 33, 109.) For example, with respect to SB 253, Plaintiffs allege that
7 “[e]stimating greenhouse-gas emissions is enormously burdensome.” (*Id.* ¶ 52.) And
8 they allege that the laws “compel companies” to make statements “that they otherwise
9 would not” make. (*Id.* ¶ 93.)

10 Taken together, these allegations establish that, at this stage, SBs 253 and 261
11 would injure at least one of Plaintiffs’ members. *See Nat’l Fam. Farm Coal. v. EPA*,
12 966 F.3d 893, 908 (9th Cir. 2020) (holding that associational standing requires, among
13 other things, that one of an organization’s “members would otherwise have standing
14 to sue in their own right”).⁷ The State challenges this conclusion, arguing that
15 Plaintiffs fail to allege that any of its members would incur costs associated with
16 SBs 253 and 261 that they would not otherwise incur as part of obligations under
17 other reporting requirements. (*See Mot.* 11–12.) But, as noted, Plaintiffs allege that
18 the laws “compel companies” to make statements “that they otherwise would not”
19 make and that the required disclosures are “unduly burdensome.” (*Id.* ¶¶ 80, 93.)
20 These general allegations are sufficient at this stage to show that the reporting
21 required by SBs 253 and 261 would injure at least one of Plaintiffs’ members. *See*
22 *Cal. Rest. Ass’n*, 89 F.4th at 1099–100.

23 This is not the end of the inquiry. A plaintiff bringing a pre-enforcement
24 challenge must also show three things for it to be ripe for review: (1) an “intention to
25 engage in a course of conduct arguably affected with a constitutional interest”; (2) that

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27 ⁷ The two other requirements—that the interests the organization seeks to protect are germane to its
28 purpose and that neither the claim asserted nor relief requested requires the participation of
individual members in the lawsuit—are undisputed and satisfied here. *See Nat’l Fam. Farm Coal.*,
966 F.3d at 908.

1 the conduct is “proscribed by a statute”; and (3) that there is a “credible threat of
2 prosecution” under that statute. *Arizona v. Yellen*, 34 F.4th 841, 849 (9th Cir. 2022)
3 (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)).

4 *I. SB 261*

5 Starting with SB 261, Plaintiffs demonstrate that this pre-enforcement challenge
6 is ripe. As to the first factor, Plaintiffs have adequately alleged that their members’
7 current business practices “are presently in conflict with the” statute. *City & County*
8 *of San Francisco v. Trump*, 897 F.3d 1225, 1237 (9th Cir. 2018); *see also Cal.*
9 *Trucking Ass’n v. Bonta*, 996 F.3d 644, 653 (9th Cir. 2021) (same). Therefore,
10 Plaintiffs “have ‘articulated . . . concrete plan[s]’ to violate the law.” *City & County*
11 *of San Francisco*, 897 F.3d at 1237 (alterations in original) (quoting *Anchorage Equal*
12 *Rts. Comm’n*, 220 F.3d at 1139).

13 As to the second factor, Plaintiffs’ members’ conduct—here, not reporting
14 information required by SB 261—will violate the law. SB 261 requires covered
15 entities to, among other things, “prepare a climate-related financial risk report
16 disclosing . . . its climate related-risk” and the measures it “adopted to reduce and
17 adapt to climate-related financial risk.” Cal. Health & Safety Code § 38533(b)(1)(A).
18 And SB 261 requires CARB to “adopt regulations that authorize it to seek
19 administrative penalties from a covered entity that fails to make the” required report.
20 *Id.* § 38533(f)(2).

21 As to the third factor—whether there is a credible threat of enforcement—
22 courts consider (1) “whether the plaintiffs have articulated a ‘concrete plan’ to violate
23 the law in question,” (2) “whether the prosecuting authorities have communicated a
24 specific warning or threat to initiate proceedings,” and (3) “the history of past
25 prosecution or enforcement under the challenged statute.” *Yellen*, 34 F.4th at 850
26 (quoting *Anchorage Equal Rts. Comm’n*, 220 F.3d at 1139). As noted, Plaintiffs have
27 shown a concrete plan to violate SB 261. And “a specific threat is [not] necessary to
28 demonstrate standing.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1015 n.5

1 (9th Cir. 2013). The State’s failure to disavow enforcement of SB 261 favors a
2 finding of credible threat of enforcement. *See, e.g., Cal. Trucking Ass’n*, 996 F.3d
3 at 653 (“[T]he state’s refusal to disavow enforcement of AB-5 against motor carriers
4 during this litigation is strong evidence that the state intends to enforce the law and
5 that [plaintiff’s] members face a credible threat.”) Finally, “[w]here the challenged
6 statute is new, as here, the history of past enforcement carries little, if any weight.”
7 *Yellen*, 34 F.4th at 850.

8 Plaintiffs have thus shown that they have standing to challenge SB 261 and that
9 this challenge is ripe.

10 2. *SB 253*

11 The foregoing analysis largely applies to SB 253. But there is one critical
12 difference: SB 253, on its own, does not mandate any action from any of Plaintiffs’
13 members or any other reporting entity. (*See* Mot. 8–10.) Instead, SB 253 requires
14 CARB to “develop and adopt regulations to require a reporting entity to annually
15 disclose all of the reporting entity’s scope 1 emissions, scope 2 emission, and scope 3
16 emissions” within the framework required in the legislation. Cal. Health & Safety
17 Code § 38532(c)(1). For example, the legislation does not compel reporting entities to
18 disclose Scope 3 emissions; rather, it requires CARB to “ensure that the regulations”
19 it adopts require reporting entities to publicly disclose their Scope 3 emissions starting
20 in 2027. *Id.* § 38532(c)(2)(A)(II). The parties have not made the Court aware of any
21 published CARB regulations imposing any obligation on reporting entities. (*See*
22 Mot. 8 (stating that CARB has not yet adopted any regulations implementing SB 253.)

23 The absence of implementing regulations may lead a controversy to be unripe
24 where “further development by state officials may reduce or avoid constitutional
25 problems, or change the nature of the issues presented.” *Valeria G. v. Wilson*, 12 F.
26 Supp. 2d 1007, 1026 (N.D. Cal. 1998). But this is not always the case. The Ninth
27 Circuit has held that a challenge is ripe where “it is clear that any standard required
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1 would impermissibly burden interstate commerce.” *Union Pac. R.R. Co. v. Cal. Pub.*
2 *Utils. Comm’n*, 346 F.3d 851, 870 n.20, 872 n.22 (9th Cir. 2003).

3 It is not clear to the Court that any possible regulations CARB issues would
4 impermissibly burden interstate commerce or violate the Supremacy Clause. And
5 while, as Plaintiffs correctly note, SB 253 provides that CARB “shall” issue
6 regulations that require companies to disclose certain emissions, (Opp’n 9 (citing Cal.
7 Health & Safety Code § 38532(c)(1))), the regulations CARB issues may alter the
8 constitutional analysis. For example, Plaintiffs’ extraterritoriality claim may depend,
9 in part, on “whether the burden on interstate commerce clearly exceeds the local
10 benefits.” *Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 444 (9th Cir. 2019). The
11 regulations CARB adopts may affect the burden on interstate commerce, and thus may
12 determine the outcome of that claim.

13 Plaintiffs also have failed to show a concrete plan to violate SB 253 where the
14 law, on its own, does not obligate Plaintiffs’ members to take any action. Further,
15 unlike with SB 261, the State’s failure to disavow enforcement of SB 253 does not
16 constitute a threat of enforcement where SB 253 does not impose any obligations on
17 Plaintiffs’ members, and Plaintiffs have not identified some other enforcement threat.
18 The Court’s role “is neither to issue advisory opinions nor to declare rights in
19 hypothetical cases.” *Anchorage Equal Rts. Comm’n*, 220 F.3d at 1138. The Court
20 thus finds Plaintiffs’ Supremacy Clause and extraterritoriality challenges to SB 253
21 are not ripe for review.

22 Even if Plaintiffs’ SB 253 challenge were constitutionally ripe, the Court would
23 decline to exercise jurisdiction on prudential grounds. In analyzing the prudential
24 components of ripeness, courts consider “the fitness of the issues for judicial decision
25 and the hardship to the parties of withholding court consideration.” *Id.* at 1141. For
26 the reasons explained above, the issues are not fit for judicial decision. And Plaintiffs
27 have not identified any hardship to delaying court consideration until after CARB
28 issues regulations actually imposing requirements on Plaintiffs. *Compare County of*

1 *Humboldt*, 2024 WL 5243033, at *8 (finding delay in adjudication would cause
2 hardship where plaintiffs “mod[ified] their behavior to avoid future adverse
3 consequences”).⁸

4 In sum, the Court has standing over Plaintiffs’ Supremacy Clause and
5 extraterritoriality challenges to SB 261. Conversely, whether labelled as standing or
6 ripeness, the Court finds that Plaintiffs’ Supremacy Clause and extraterritoriality
7 challenges to SB 253 are not yet justiciable. Thus, the Court **GRANTS** the State’s
8 Motion as to Plaintiffs’ Supremacy Clause and extraterritoriality challenges to SB 253
9 without prejudice.

10 **B. Failure to State a Claim**

11 Having found that Plaintiffs have standing to challenge SB 261 on Supremacy
12 Clause and extraterritorial grounds, and that these claims are ripe, the Court next
13 addresses the merits.

14 *1. Supremacy Clause*

15 In the FAC, Plaintiffs allege that “California lacks the authority to regulate
16 greenhouse-gas emissions outside of its own borders” under the Clean Air Act and
17 “principles of federalism inherent in the structure of” the Constitution. (FAC ¶ 105.)
18 So, they allege, SB 261 violates the Supremacy Clause. (*Id.* ¶ 106.) The State moves
19 to dismiss this claim under Rule 12(b)(6) as insufficiently pleaded. (Mot. 12–16.)

20 Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, federal law preempts
21 state law when “(1) Congress enacts a statute that explicitly pre-empts state law;
22 (2) state law actually conflicts with federal law; or (3) federal law occupies a
23 legislative field to such an extent that it is reasonable to conclude that Congress left no

24 ⁸ The only hardship Plaintiffs identify is that “the Court [would] be forced to rule on an emergency
25 basis.” (Opp’n 10 (alteration in original) (quoting *Comm. for Idaho’s High Desert v. Collinge*,
26 148 F. Supp. 2d 1097, 1100 (D. Idaho 2001)).) Even if this were a hardship to the parties—and not
27 just the Court—this harm is not sufficient for the Court to decline to exercise jurisdiction. First,
28 Plaintiffs may have an opportunity to challenge SB 253 and CARB’s regulations before the
regulations go into effect. Second, the Court is capable of ruling on an emergency basis, if
necessary, that would permit “the opportunity for a reasoned presentation and analysis.” *Collinge*,
148 F. Supp. 2d at 1100.

1 room for state regulation in that field.” *Chae v. SLM Corp.*, 593 F.3d 936, 941
2 (9th Cir. 2010). These are known as express, conflict, and field preemption,
3 respectively. *See id.* Regardless of the type of preemption, the “purpose of Congress
4 is the ultimate touchstone of pre-emption analysis.” *Cipollone v. Liggett Grp., Inc.*,
5 505 U.S. 504, 516 (1992) (internal quotation marks omitted).

6 The parties debate whether Plaintiffs identify a source of federal law that
7 precludes SB 261. (*See* Mot. 14–16; Opp’n 11–18; Reply 4–6.) Plaintiffs point
8 generally to the Clean Air Act and foreign affairs. (Opp’n 11–18.) They also
9 highlight “federalism and comity principles embodied in the Constitution,” including
10 that the “basic scheme of the Constitution” permits only the federal government to
11 regulate issues regarding “air and water in their ambient or interstate aspects.” (*Id.*)
12 The State notes Plaintiffs’ failure to point to specific text in the Constitution or Clean
13 Air Act. (Mot. 14–16; Reply 4–6.)

14 Before addressing this dispute, the Court must answer a more fundamental
15 question: what does SB 261 regulate? Certainly, as this Court has already found, this
16 law regulates speech. (Order Summ. J. 7–8.) But what, if anything, else? By their
17 own admission, Plaintiffs’ claims are premised on the assumption that, through
18 SB 261, the State is “attempt[ing] to regulate greenhouse-gas emissions.” (Opp’n 12
19 (emphasis added); *see also id.* (“Applying state law to attempt to regulate these global
20 emissions would necessarily violate the exclusivity of federal law.”); *id.* at 14 (arguing
21 that SB 261 is a “regulation[] over global greenhouse gas emissions”); *id.* at 17
22 (“[T]he Clean Air Act preempts state law to the extent it purports to regulate air
23 pollution originating out of state.”).) But in the FAC, Plaintiffs acknowledge that the
24 legislation “do[es] not directly require reductions in greenhouse-gas emissions in other
25 states.” (FAC ¶ 88.) Instead, they allege that the State enacted SB 261 “to force
26 actual reductions” through “disclosure.” (*Id.*) Specifically, they allege that the law is
27 “aimed at stigmatizing” and “sham[ing]” companies to “pressure[] them to lower their
28

1 emissions nation- and even world-wide.” (*Id.* ¶¶ 89–90; *see also* Opp’n 13–15
2 (discussing pressure from “third parties” (emphasis omitted)).)

3 Taking these allegations as true, as the Court must at this stage, Plaintiffs do not
4 state a claim on which relief can be granted. Plaintiffs fail to cite any relevant
5 authority to support the proposition that a disclosure regime intended to regulate
6 emissions through third-party actions is a de facto regulatory scheme subject to
7 preemption.

8 Instead, Plaintiffs point to cases concerning infringement of civil liberties under
9 the First and Fourteenth Amendments where third-party actions implicated the law’s
10 constitutionality. (*See* Opp’n 14); *NAACP v. Alabama ex rel. Patterson*, 357 U.S.
11 449, 463 (1958) (freedom of association); *Nat’l Ass’n of Mfrs. v. SEC*, 800 F.3d 518,
12 530 (D.C. Cir. 2015) (freedom of speech); *Students for Fair Admissions, Inc. v.*
13 *President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (equal protection).⁹

14 And Plaintiffs cite cases prohibiting a state from regulating emissions through
15 the imposition of damages (rather than through a direct cap). (*See* Opp’n 12–18); *City*
16 *of New York v. Chevron Corp.*, 993 F.3d 81, 85–86 (2d Cir. 2021) (liability for
17 damages caused by global greenhouse gas emissions); *Int’l Paper Co. v. Ouellette*,
18 479 U.S. 481, 491, 493 (1987) (liability on an out-of-state point source that would
19 allow states to “impose separate discharge standards”); *see also San Diego Bldg.*
20 *Trades Council, Millmen’s Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 247 (1959)
21 (“obligation to pay compensation” for conduct regulated by National Labor Relations
22 Act “can be . . . a potent method of governing conduct and controlling policy”). In
23

24 ⁹ *National Association of Manufacturers* concerned speech, which, as noted, the Court has found the
25 legislation regulates. (*See* Order Summ. J. 7–8.) Plaintiffs’ citation to *Students for Fair Admissions*
26 is further afield. They quote the Supreme Court’s admonition that “what cannot be done directly
27 cannot be done indirectly.” (Opp’n 13 (quoting *Students for Fair Admissions*, 600 U.S. at 230).)
28 But there, the Supreme Court rejected a potential workaround its ruling that would still result in
universities—not indirect third parties—violating the Constitution by considering race in
admissions. *Students for Fair Admissions*, 600 U.S. at 230 (permitting universities to consider an
applicant’s discussion of how race affected his or her life, but prohibiting universities from “simply
establish[ing] through application essays or other means the regime” the Court held unlawful).

1 such cases, if an entity wants to “avoid all liability, then their only solution would be
2 to” follow the de facto regulation restricting emissions. *Chevron Corp.*, 993 F.3d
3 at 93.

4 SB 261 does not force this choice. It imposes no liability for failure to reduce
5 emissions; only for failure to *disclose* climate-related financial risk and the measures
6 adopted to reduce such risk. (See FAC ¶¶ 43, 63); Cal. Health & Safety Code
7 § 38533(e)(2); cf. *Jensen Fam. Farms, Inc. v. Monterey Bay Unified Air Pollution*
8 *Control Dist.*, 644 F.3d 934, 939 (9th Cir. 2011) (holding that regulation requiring
9 owners of certain engines to register such engines by “provid[ing] information to the
10 [government] about their engines and to pay fees” are not regulations that “involve
11 emissions control” for purposes of preemption analysis). If Plaintiffs want to avoid
12 liability, all they must do is make disclosures in accordance with the legislation, not
13 reduce their emissions. The public pressure of which Plaintiffs complain is not
14 imposed by the statute, even if it provides information that supports such campaigns.
15 Therefore, that California enacted SB 261 “in order to stigmatize . . . companies and
16 shape their behavior,” (FAC ¶ 1), is irrelevant to the law’s compliance with the
17 Supremacy Clause.

18 This leaves whether the law’s compelled disclosure is preempted by the
19 Constitution or federal law. The Court thus returns to the parties’ debate on whether
20 Plaintiffs identify a source of federal law that preempts the disclosure at issue here.
21 (See Opp’n 11–15.) And the Court finds that Plaintiffs fail to do so.

22 As discussed, SB 261 does not regulate greenhouse-gas emissions. Therefore,
23 even if Plaintiffs are right and the “basic scheme of the Constitution” requires “that
24 federal law alone must govern issues concerning air and water in their ambient or
25 interstate aspects,” (Opp’n 12 (internal quotation marks omitted)), this does not
26 preempt the legislation.

27 In pointing to preemption based on foreign affairs, Plaintiffs cite one case
28 tangentially related to informational disclosures. (Opp’n 13 (citing *Zschernig v.*

1 *Miller*, 389 U.S. 429 (1968)).) But that case concerned conduct beyond the mere
2 disclosure at issue here. There, the Court invalidated probate legislation that “seems
3 to make unavoidable judicial criticism of nations established on a more authoritarian
4 basis than our own.” *Zschernig*, 389 U.S. at 440. In *Zschernig*, the criticism of
5 foreign governments and officials came from the government itself. *See id.* It also
6 concerned criticism of nations, not foreign companies doing business in California.
7 *See id.*

8 Plaintiffs fare no better by invoking the Clean Air Act. As to field preemption,
9 they cite a host of laws and regulations untethered to disclosure. (*See* Opp’n 15–16
10 (first citing 42 U.S.C. §§ 7521(a)(1)–(2), 7571(a)(2)(A), 7547(a)(1), (5) (greenhouse-
11 gas emissions standards for vehicles, aircraft, and nonroad engines and vehicles); then
12 citing 42 U.S.C. § 7411(b)(1)(A)–(B), (d) (regulation of emissions from stationary
13 sources); and then citing 42 U.S.C. § 7545(o) (regulation of consumption and use of
14 fossil fuels)).) But they cite no Clean Air Act provision or regulation concerning
15 disclosure of emissions that would support the notion that the field of the Clean Air
16 Act encompasses mere disclosure of climate-related information and, in particular,
17 climate risks and the measures adopted to minimize such risk. (*See* Opp’n 15–17.)

18 In arguing that SB 261 fails under conflict preemption, Plaintiffs contend that
19 SB 261’s requirements conflict with Congress’s decision to regulate greenhouse-gas
20 emissions by empowering the EPA to set emissions standards through the Clean Air
21 Act. (Opp’n 18.) Plaintiffs offer that “if the EPA does not set emissions limits for a
22 particular pollutant or source of pollution, California may petition for rulemaking on
23 the matter.” (Opp’n 18 (cleaned up) (quoting *Am. Elec. Power Co., Inc. v.*
24 *Connecticut*, 564 U.S. 410, 425 (2011)).) That may be so. But SB 261 does not set
25 emission limits. (*See generally* FAC); Cal. Health & Safety Code §§ 38532, 38533.

26 Accordingly, Plaintiffs’ Supremacy Clause claim challenging SB 261 cannot
27 survive. Having read SB 261 and the amendments thereto, the Court finds that
28 Plaintiffs are unable to allege facts that could cure the deficiencies noted by the Court.

1 *See Carrico*, 656 F.3d at 1008 (holding that leave to amend “is properly denied . . . if
2 amendment would be futile”). The Court thus **GRANTS** the State’s Motion and
3 dismisses Plaintiffs’ Supremacy Clause claim as to SB 261 **with prejudice**.

4 2. *Extraterritoriality*

5 The State also moves to dismiss Plaintiffs’ extraterritoriality cause of action.
6 (Mot. 16–21.) Plaintiffs allege that SB 261 “intrude[s]” on Congress’s “authority to
7 regulate interstate and foreign commerce” and “place[s] upon interstate commerce a
8 burden that far outweighs any benefits to” California. (FAC ¶ 108.) In so alleging,
9 Plaintiffs invoke the dormant Commerce Clause. (*See* Opp’n 18–19.)

10 “The primary purpose of the dormant Commerce Clause is to prohibit statutes
11 that discriminate against interstate commerce by providing benefits to in-state
12 economic interests while burdening out-of-state competitors.” *Ass’n des Eleveurs de*
13 *Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 947 (9th Cir. 2013) (internal
14 quotation marks omitted) (quoting *Nat’l Ass’n of Optometrists & Opticians v. Harris*,
15 682 F.3d 1144, 1147 (9th Cir. 2012)).

16 To aid courts’ review of challenges to state law under the dormant Commerce
17 Clause, the Supreme Court has adopted a “two-tiered approach”:

18 [1] When a state statute directly regulates or discriminates against
19 interstate commerce, or when its effect is to favor in-state economic
20 interests over out-of-state interests, we have generally struck down the
21 statute without further inquiry. [2] When, however, a statute has only
22 indirect effects on interstate commerce and regulates evenhandedly, we
23 have examined whether the State’s interest is legitimate and whether the
24 burden on interstate commerce clearly exceeds the local benefits.

25 *Rosenblatt*, 940 F.3d at 444 (quoting *Brown-Forman Distillers Corp. v. N.Y. State*
26 *Liquor Auth.*, 476 U.S. 573, 579 (1986)). This latter tier is known as the *Pike* test. *Id.*
27 at 451 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)).

28 a. First tier approach—direct regulation or discrimination

The Court begins where the parties do: the first-tier approach. (*See* Mot. 18;
Opp’n 18.) In their Opposition, for the first time, Plaintiffs assert that the State

1 enacted SB 261 with a “discriminatory purpose.” (Opp’n 19.) Plaintiffs’ FAC is
2 devoid of any such allegation. (*See generally* FAC.) On this basis alone, Plaintiffs’
3 late-invocation of the first-tier approach cannot save their claim.

4 In any event, such a claim would fail here because plaintiffs cannot allege
5 SB 261 discriminates against interstate commerce. *See Carrico*, 656 F.3d at 1008
6 (holding that leave to amend “is properly denied . . . if amendment would be futile”).
7 SB 261 contains no “differential treatment of in-state and out-of-state economic
8 interests that benefits the former and burdens the latter.” *Rosenblatt*, 940 F.3d at 448
9 (quoting *Or. Waste Sys., Inc. v. Dep’t of Env’t Quality*, 511 U.S. 93, 99 (1994)). Nor
10 does it “effectively prevent[] the sale” of goods in other states or “erect[] an economic
11 barrier protecting a major local industry against competition from without the state.”
12 *Id.* (quoting *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 352, 354 (1951)). And
13 the legislation does not “fix prices in other states, require states to adopt California
14 standards, or attempt to regulate transactions conducted wholly out of state.”
15 *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136, 1146 (9th Cir. 2015).
16 SB 261 merely requires disclosure of information related to climate risk.

17 Plaintiffs’ theory is as follows: the State intended to regulate greenhouse-gas
18 emissions, but if it had tailored SB 261 to California products or businesses—such
19 that only California products or businesses would have to comply with the law—
20 SB 261 would have put the State at a competitive disadvantage. (Opp’n 19.) So the
21 State “tried a workaround” to “impose costs on businesses nationwide.” (*Id.*) Now,
22 as Plaintiffs tell it, all applicable businesses would have to comply with the
23 legislation, and California businesses will no longer be at a competitive disadvantage
24 compared to their out-of-state peers. (*See id.*) Plaintiffs contend that, as a result,
25 California, through SB 261, “is depriving businesses and consumers in other states of
26 the competitive advantages they would possess otherwise freed from California’s
27 overly burdensome regulatory scheme.” (*Id.* (cleaned up).)

28

1 However, SB 261 applies to both California and out-of-state businesses doing
2 business in California equally, and as Plaintiffs allege, it imposes new reporting
3 obligations on companies doing business in California, regardless of whether they are
4 California companies. Cal. Health & Safety Code § 38533(a)(4). Therefore, Plaintiffs
5 cannot allege that SB 261 facially discriminates against out-of-state companies. *See*
6 *Am. Fuel & Petrochemical Mfrs. v. O’Keeffe*, 903 F.3d 903, 911 (9th Cir. 2018)
7 (finding no facial discrimination where there is no differential treatment).

8 Nor can Plaintiffs allege a discriminatory purpose. Even at the motion to
9 dismiss stage, where allegations are construed in favor of the plaintiff, courts
10 nevertheless “assume that the objectives articulated by the legislature are actual
11 purposes of the statute, unless an examination of the circumstances forces us to
12 conclude that they could not have been a goal of the legislation.” *Id.* at 912 (finding
13 no discriminatory purpose based on statements by state officials, “[e]ven construing
14 the allegations in the complaint in the light most favorable” to the plaintiff at the
15 motion to dismiss stage). As alleged, the purpose of the legislation was “to
16 stigmatize . . . companies and shape their behavior.” (FAC ¶ 1.) The legislature
17 designed the laws “to create accountability for those” not “doing their part to tackle
18 the climate crisis” and “to fuel pressure campaigns against businesses.” (*Id.* ¶¶ 4, 23
19 (internal quotation marks omitted).) SB 261 states the legislature found that “[f]ailure
20 of economic actors to adequately plan for and adapt to climate-related risks to their
21 businesses and to the economy will result in significant harm to California, residents,
22 and investors.” 2023 Cal. Stat. 383 § 1(c). Further, “mandatory and comprehensive
23 risk disclosure requirements” “are needed” “to address the climate crisis.” *Id.* § 1(j);
24 (see FAC ¶ 89.) Even assuming the purpose Plaintiffs articulate in the Opposition—to
25 impose costs on businesses nationwide so that California companies are not at a
26 competitive disadvantage— would be “discriminatory,” neither Plaintiffs’ allegations
27 nor the objectives articulated by the legislature support such a purpose. *O’Keeffe*,
28 903 F.3d at 912. Examining the circumstances of this case, the Court is unable to

1 conclude that the legislature’s avowed purpose could not have been a goal of the
2 legislation. *See id.*

3 Plaintiffs’ cases are inapposite. (*See* Opp’n 19–20 (citing *West Lynn Creamery,*
4 *Inc. v. Healy*, 512 U.S. 186, 194–96 (1994) and *Brown-Forman*, 476 U.S. at 580).)
5 The legislation in *West Lynn Creamery* had the “avowed purpose” and “undisputed
6 effect . . . to enable higher cost Massachusetts dairy farmers to compete with lower
7 cost dairy farmers in other States.” 512 U.S. at 194. It was “[l]ike an ordinary tariff”
8 that “effectively imposed” a “tax . . . only on out-of-state products.” *Id.* And “[i]n
9 *Brown-Forman*, New York required liquor distillers to affirm (on a monthly basis)
10 that their in-state prices were no higher than their out-of-state prices.” *Nat’l Pork*
11 *Producers Council v. Ross (NPPC II)*, 598 U.S. 356, 372 (2023) (citing
12 *Brown-Forman*, 476 U.S. at 576). The goal in *Brown-Forman* “was plain: New York
13 sought to force out-of-state distillers to ‘surrender’ whatever cost advantages they
14 enjoyed against their in-state rivals.” *Id.* (quoting *Brown-Forman*, 476 U.S. at 580).
15 Plaintiffs do not (nor could they) allege that the purpose of SB 261 is to benefit
16 California businesses at the expense of out-of-state competitors.

17 b. Second-tier approach—burden on interstate commerce

18 Next, the *Pike* test. As noted, this is the second tier of the dormant Commerce
19 Clause analysis concerning indirect regulation whose burden on interstate commerce
20 clearly exceeds the local benefits.

21 In their Opposition, Plaintiffs appear to rely on the *Pike* test only to the extent
22 that SB 261 has a discriminatory purpose. (*See* Opp’n 18–20.) Plaintiffs’ arguments
23 about the burdens and benefits of the legislation concern whether “[t]he ‘practical
24 effect[s]’ of the laws confirm their ‘discriminatory purpose.’” (Opp’n 19–20 (quoting
25 *NPPC II*, 598 U.S. at 378).) Thus, for Plaintiffs’ claim to survive, Plaintiffs must
26 have alleged that California enacted SB 261 for a discriminatory purpose. And as
27 discussed, above they have made no such allegation in the FAC.

28

1 Even putting aside that Plaintiffs have so limited their claim in the Opposition,
2 they fail to plead a *Pike* claim on which relief can be granted. In the FAC, Plaintiffs
3 allege three “significant burdens on interstate and foreign commerce.” (FAC ¶ 109.)

4 First, they assert that SB 261 “require[s] companies to spend significant time
5 and money . . . making public statements regarding climate change.” (*Id.*) This
6 allegation is insufficient because “[t]he mere fact that a firm engaged in interstate
7 commerce will face increased costs as a result of complying with state regulation does
8 not, on its own, suffice to establish a substantial burden on interstate commerce.”
9 *Ward v. United Airlines, Inc.*, 986 F.3d 1234, 1241–42 (9th Cir. 2021); *see also Nat’l*
10 *Pork Producers Council v. Ross (NPPC I)*, 6 F.4th 1021, 1032 (9th Cir. 2021) (“For
11 dormant Commerce Clause purposes, laws that increase compliance costs, without
12 more, do not constitute a significant burden on interstate commerce.”).

13 Second, Plaintiffs allege that the legislation will subject companies, including
14 those that do not business in California, “to significant political and economic
15 pressure.” (FAC ¶ 109.) Plaintiffs do not explain how these “pressures” are burdens
16 on interstate commerce. Nor do they show that these indirect pressures are among the
17 derivative burdens courts have considered susceptible to challenge under the dormant
18 Commerce Cause. *See, e.g., Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 527
19 (1959) (finding statute susceptible to dormant Commerce Clause challenge where
20 threat of “significant delay in an operation” and requirement of additional and
21 “exceedingly dangerous” labor); *Kassel v. Consol. Freightways Corp. of Del.*,
22 450 U.S. 662, 674 (1981) (plurality opinion) (finding substantial burden to interstate
23 commerce where “law may aggravate . . . the problem of highway accidents.”);
24 *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 445, & n.21 (1978) (finding
25 substantial burden where “the regulations slow the movement of goods in interstate
26 commerce . . .”).

27 Third, Plaintiffs allege that the law impermissibly “build[s] up domestic
28 commerce through burdens upon the industry of other States” by requiring disclosure

1 from companies that “do little business in California,” but not requiring disclosure
2 from in-state companies that fall just below the revenue threshold). (FAC ¶ 109
3 (cleaned up).) While this may be true, Plaintiffs fail to articulate how this
4 independently *burdens* commerce, a showing required to state a *Pike* claim. (See
5 *Opp’n*.)

6 Thus, Plaintiffs fail to plausibly allege a significant burden on interstate
7 commerce. Absent such an allegation, Plaintiffs, by definition, cannot show that “the
8 burden on interstate commerce clearly exceeds the local benefits.” *Rosenblatt*,
9 940 F.3d at 444. Therefore, Plaintiffs’ allegations about the limited, if not
10 nonexistent, benefits of the legislation, (see FAC ¶ 109), cannot save its claim. See
11 *Nat’l Ass’n of Optometrists & Opticians*, 682 F.3d at 1156 (holding that “[i]n the
12 absence of . . . [a] substantial burden on interstate commerce, we need not determine if
13 the benefits of a statute are illusory”); see also *id.* (“Because the challenged laws . . .
14 do not impose a significant burden on interstate commerce, it would be
15 inappropriate . . . to determine the constitutionality of the challenged laws based on
16 [the court’s] assessment of the benefits of those laws and the State’s wisdom in
17 adopting them”). Accordingly, the Court **GRANTS** the State’s Motion to Dismiss
18 Plaintiffs’ extraterritoriality claim as to SB 261. However, Plaintiffs may be able to
19 raise plausible facts that support a burden on interstate commerce sufficient to state a
20 claim on which relief can be granted. Therefore, the Court’s dismissal as to Plaintiffs’
21 extraterritoriality claim is **without prejudice**.

22 V. CONCLUSION

23 For the reasons discussed above, the Court **GRANTS** the State’s Motion to
24 Dismiss. (ECF No. 38.) The Court lacks jurisdiction over Plaintiffs’ Supremacy
25 Clause and extraterritoriality causes of action to the extent they challenge SB 253, and
26 therefore **DISMISSES WITHOUT PREJUDICE** these claims as to SB 253 pursuant
27 to Rule 12(b)(1). Additionally, the Court **DISMISSES WITH PREJUDICE**
28 Plaintiffs’ Supremacy Clause cause of action to the extent it challenges SB 261 for

1 failure to state a claim pursuant to Rule 12(b)(6). The Court also **DISMISSES**
2 **WITHOUT PREJUDICE** Plaintiffs' extraterritoriality cause of action to the extent it
3 challenges SB 261 for failure to state a claim pursuant to Rule 12(b)(6). Thus, the
4 Court dismisses both Counts II and III from the First Amended Complaint.

5 If Plaintiffs wish to amend, they must file a Second Amended Complaint no
6 later than **twenty-one days** from the date of this Order, in which case the State shall
7 answer or otherwise respond within **fourteen days** of the filing. If Plaintiffs do not
8 timely amend, the dismissal of the extraterritoriality cause of action as to SB 261 shall
9 be deemed a dismissal with prejudice as of the lapse of the deadline to amend.

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11 **IT IS SO ORDERED.**

12
13 February 3, 2025

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**
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