

1 HANSON BRIDGETT LLP
ALEXANDRA V. ATENCIO, SBN 227251
2 aatencio@hansonbridgett.com
HUONG (JENNY) V. DAO, SBN 342102
3 425 Market Street, 26th Floor
San Francisco, California 94105
4 Telephone: (415) 777-3200
Facsimile: (415) 5541-9366
5 Attorneys for Defendants
6 4LEAF, INC., CRAIG TOLE and PETE
ROQUE
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
10

11 INLAND COALITION FOR
IMMIGRANT JUSTICE

12 Plaintiff,

13 v.
14

15 CITY OF FONTANA, CITY
COUNCIL OF FONTANA, MAYOR
ACQUANETTA WARREN, PHILLIP
16 BURUM, FONTANA CODE
COMPLIANCE DEPARTMENT,
17 4LEAF, INC., CRAIG TOLE, PETE
ROQUE,

18 Defendants.
19

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

**DEFENDANT 4LEAF INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS PURSUANT
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(1) and 12(b)(6)**

Date: December 19, 2025
Time: 2:00 p.m.
Ctm: Courtroom 2, 2nd Floor
Judge: Honorable Sunshine S. Sykes

Complaint served: August 21, 2025

20 **NOTICE OF MOTION**

21 PLEASE TAKE NOTICE that on December 19, 2025 at 2:00 p.m., or as soon
22 thereafter as the matter may be heard in Courtroom 2 of the above-entitled Court,
23 located at 3470 Twelfth Street, Riverside, California 92501, Defendants 4LEAF,
24 INC., CRAIG TOLE, and PETE ROQUE (collectively, the “4LEAF Defendants”)
25 will, and hereby do, move to dismiss all claims asserted by Plaintiff Inland Coalition
26 for Immigrant Justice in the First Amended Complaint.

27 The 4LEAF Defendants bring this Motion to Dismiss pursuant to Federal
28 Rule of Civil Procedure 12(b)(1) on the ground that Plaintiff fails to establish

1 Article III standing. The 4LEAF Defendants also bring this Motion pursuant to
2 Federal Rule of Civil Procedure 12(b)(6) on the grounds that the First Amended
3 Complaint fails to state a plausible claim for relief. Specifically, Plaintiff fails to
4 allege that the 4LEAF Defendants deprived Plaintiff of a constitutional right or
5 acted under color of state law as required under 42 U.S.C. § 1983, fails to allege any
6 unlawful policy, custom, or personal participation by the 4LEAF Defendants, fails
7 to assert any conduct by the individual defendants that allegedly caused Plaintiff’s
8 injuries, and improperly asserts claims against individual defendants whose alleged
9 conduct is duplicative of the claims against 4LEAF, Inc.

10 This Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, all pleadings, records, and papers on file in
12 this action, and any further argument or evidence that the Court may permit or deem
13 just and proper.

14 This Motion is made following the conference of counsel pursuant to Local
15 Rule 7-3, which took place on Tuesday, October 28, 2025, and was unsuccessful in
16 resolving the issues raised by this Motion.

17 On October 24, 2025, counsel for the 4LEAF Defendants, Alexandra Atencio
18 and Jenny Dao of Hanson Bridgett LLP, sent Plaintiff’s counsel a detailed meet-
19 and-confer letter outlining the legal deficiencies in the First Amended Complaint
20 and requesting to confer by telephone or video conference. The letter identified,
21 among other issues, that (1) Plaintiff lacks Article III standing to sue 4LEAF, (2)
22 4LEAF and its employees are not state actors and cannot be held liable under 42
23 U.S.C. § 1983, (3) 4LEAF is not liable under *Monell v. Dep’t of Soc. Servs.*, 436
24 U.S. 658, (4) no individual liability alleged against Tole or Roque; (5) the First and
25 Second Causes of Action fail to allege any constitutional violation, and (6) the Third
26 Cause of Action for “Preemption by State Law” is not a cognizable claim.

27 On October 28, 2025, counsel for the 4LEAF Defendants (Alexandra Atencio
28 and Jenny Dao) met and conferred via telephone conference with Plaintiff’s counsel

1 (Daniel Shimmel, Matthew Heartney, Ritu Mahajan, and counsel from Public
2 Counsel) for approximately thirty (30) minutes. During the conference, the parties
3 discussed each of the issues identified in the 4LEAF Defendants’ letter. Plaintiff’s
4 counsel stated that they do not intend to dismiss or amend any of the claims against
5 the 4LEAF Defendants and declined to dismiss the individual defendants Mr. Tole
6 and Mr. Roque. Approximately two days after this call, Plaintiff’s counsel informed
7 counsel for the 4LEAF Defendants that Plaintiff will not pursue the preemption
8 claim against them, but would not amend the complaint to withdraw the claim. The
9 parties were unable to resolve any of the remaining issues raised in this Motion.
10 Accordingly, with the exception of any preemption argument, Plaintiff’s counsel
11 indicated that Plaintiff will oppose the instant Motion.

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Respectfully submitted,
HANSON BRIDGETT LLP

DATED: November 4, 2025

By: /s/ Alexandra V. Atencio
ALEXANDRA V. ATENCIO
Attorneys for Defendants
4LEAF, INC., CRAIG TOLE and PETE
ROQUE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Inland Coalition for Immigrant Justice (“Plaintiff”) attempts to
4 challenge a set of City of Fontana ordinances regulating street vending and
5 protecting City officials from obstruction or intimidation. Instead of limiting its
6 lawsuit to the City, the entity that actually enacted, implemented, and enforces those
7 ordinances, Plaintiff has named 4LEAF, Inc., a private contractor that merely
8 provides code-enforcement support to the City, along with two of its employees,
9 Craig Tole and Pete Roque (collectively, the “4LEAF Defendants”).

10 As a threshold matter, Plaintiff lacks Article III standing against the 4LEAF
11 Defendants. Plaintiff does not have organizational standing because its only direct
12 injury alleged – an expenditure of resources and frustration of its mission – have
13 been expressly rejected by the Supreme Court. Neither does Plaintiff have
14 associational standing because it fails to sufficiently allege any of its members
15 suffered an injury fairly traceable to the 4LEAF Defendants. Plaintiff’s lack of
16 standing alone is grounds for dismissal.

17 Even if Plaintiff has standing, the First Amended Complaint (“FAC”) fails to
18 state any claim against the 4LEAF Defendants. 4LEAF is a private contractor for the
19 City, but such relationship does not transform 4LEAF or its employees into state
20 actors. The FAC fails to sufficiently allege that the 4LEAF Defendants acted “under
21 color of state law” when performing its contracted services. Even assuming
22 arguendo that the 4LEAF Defendants acted under color of state law, Plaintiff
23 nevertheless fails to state a claim against them, as it neither alleges a 4LEAF policy
24 or custom that caused a constitutional deprivation sufficient to assert *Monell*
25 liability, nor any personal participation in any alleged constitutional violation by
26 Tole or Roque. At bottom, Plaintiff’s theories rest entirely on the City’s legislative
27 decisions, not on any of the 4LEAF Defendants’ actions.

28 In addition, Plaintiff’s facial challenge to the constitutionality of the City-

1 enacted ordinances fail as a matter of law against the 4LEAF Defendants, as it is
2 undisputed that the 4LEAF Defendants have no authority or power to enact or
3 modify the challenged ordinances. Further, 4LEAF’s alleged conduct does not give
4 rise to any violation of the First, Fourth, Fifth, or Fourteenth Amendments, as the
5 complaint fails to sufficiently allege a deprivation of protected speech, unreasonable
6 search or seizure, or due process violation caused by the 4LEAF Defendants.

7 Accordingly, the Court should dismiss all claims against the 4LEAF
8 Defendants with prejudice.

9 **II. RELEVANT FACTUAL ALLEGATIONS**

10 Plaintiff is a nonprofit organization based in the Inland Empire that purports
11 to work on “improving the quality of life for these communities by increasing their
12 access to needed resources, education, and policy decision-making.” (FAC ¶¶ 10,
13 12.)

14 In 2018, the California Legislature enacted SB-946 (Cal. Gov’t Code §§
15 51036 *et seq.*) which provides statewide standards for the local regulation of street-
16 vendors, and then enacted SB-972 in 2022, providing standards regarding food
17 street-vendors. (FAC ¶ 3.)

18 In 2019, the City of Fontana (“City”) enacted Ordinance 1789 (FMC §§ 15-
19 818–15-828), which established street-vending regulatory provisions that included
20 requirements for obtaining a street-vending permit, restrictions on the time, place,
21 and manner of street-vending, and provisions relating to impounding street-vending
22 property that violated these requirements. (FAC ¶ 5.) In 2022, the City enacted
23 Ordinance 1925 (FMC §§ 1-14, 15-829). (FAC ¶ 6.)

24 Plaintiff alleges that 14 provisions from these two ordinances are unlawful
25 (the “Challenged Ordinance Provisions”). (*Id.* ¶ 4.) Specifically, Plaintiff
26 challenges: (a) the Enforcement Obstruction Consequences provision (“EOC
27 Provision”) (FMC § 1-14), (b) three permitting provisions (FMC §§ 15-
28 820(A)(10),(15) and 15-820(B)), the “Permit Provisions”), and (c) one provision

1 regarding the seizure of evidence and nine provisions permitting City officials to
2 impound street-vending property under specified conditions (FMC § 15-828, 15-
3 829(b)(1)-(6),(8)-(9), and 18-529(c), the “Seizure Provisions”).

4 Plaintiff concedes that the 4LEAF Defendants played no role in drafting,
5 recommending, or approving any ordinance language. (FAC ¶¶ 38, 41–44, and 45–
6 37.) Indeed, 4LEAF, Inc. (“4LEAF”) is not alleged to, and has no, legislative
7 authority, nor did it enact the Challenged Ordinance Provisions. Rather, 4LEAF is a
8 private entity that entered into a professional services agreement with the City on or
9 about November 14, 2023 to provide evening assistance to the City to address “all
10 non-permitted sidewalk vendors, by providing education and explaining how to
11 obtain the proper permits to conduct business in the City of Fontana.” (FAC, ¶ 38 &
12 Ex. 2, Ex. A.) 4LEAF provides notices and warnings to unpermitted vendors; if
13 vendors refuse to comply after being warned, 4LEAF may confiscate property in
14 accordance with the City’s impoundment provisions and will notify the vendors how
15 to retrieve their items from the City. (*Id.* at p.6, fn. 2, ¶¶ 35, 37-38 & Ex. 2, Ex. A.)
16 4LEAF does not hold or exercise any delegated police power, issue citations in its
17 own name, or maintain City enforcement records. (FAC ¶ 38 & Ex. 2.) The City
18 retains exclusive authority to adopt, interpret, and enforce its ordinances, including
19 decisions to issue or revoke citations, permits, or impound orders. (FAC ¶¶ 35, 37–
20 38.)

21 While the FAC includes conclusory statements that 4LEAF and its employees
22 acted “under color of state law” and participated in property deprivations (see, e.g.,
23 FAC ¶¶ 8, 40–41, 63, 66–67), the FAC does not allege that 4LEAF independently
24 promulgated any policy, exercised discretionary enforcement authority, nor that any
25 of the 4LEAF Defendants personally interacted with any Plaintiff member. (FAC ¶¶
26 8, 20, fn.5, 38, 40-41, 63, 66-67.) It alleges generally that 4LEAF employees
27 “intimidate” street vendors by appearing in groups dressed in black with covered
28 faces, ordering vendors to leave, distributing warning notices, and confiscating

1 goods without due process. FAC ¶¶ 38, 40. Yet the FAC does not allege that any
2 vendor purportedly approached by 4LEAF was lawfully permitted to vend, suffered
3 any concrete injury, or was a member of, or otherwise affiliated with, Plaintiff.

4 Regarding the individual 4LEAF defendants, the FAC does not contain any
5 allegations that either Mr. Tole or Mr. Roque had any personal involvement in the
6 alleged constitutional violations. Mr. Tole is identified as the Project Manager for
7 4LEAF’s services to the City and as being involved in “obtaining and maintaining
8 the City’s contract.” (FAC ¶ 21.) Plaintiff alleges Mr. Roque was an “offsite
9 manager for the City contract” and allegedly managed and trained 4LEAF code
10 enforcement officers. *Id.*

11 **III. LEGAL STANDARD**

12 **A. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction**

13 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1)
14 challenges the court’s subject matter jurisdiction. See *Ramming v. United States*,
15 281 F.3d 158, 161 (5th Cir. 2001). When considering a Rule 12(b)(1) motion, the
16 court must determine whether the plaintiff has met the burden of establishing
17 jurisdiction. *Id.* A facial Rule 12(b)(1) motion contests the sufficiency of the
18 allegations in the complaint, thus, the court accepts all well-pleaded allegations as
19 true and construes them in the light most favorable to the plaintiff. See *Trinity*
20 *Indus., Inc. v. United States*, 757 F.3d 400, 403 (5th Cir. 2014). If the court
21 determines at any time that it lacks subject matter jurisdiction, it must dismiss the
22 action. See Fed. R. Civ. P. 12(h)(3).

23 **B. Rule 12(b)(6) – Failure to State a Claim**

24 To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain
25 sufficient factual matter, accepted as true, to “state a claim to relief that is plausible
26 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
27 *Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the plaintiff
28 pleads factual content that allows the court to draw the reasonable inference that the

1 defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. While the
2 court must accept all well-pleaded facts as true and view them in the light most
3 favorable to the plaintiff, it is not bound to accept “legal conclusions couched as
4 factual allegations.” *W. Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).
5 “Threadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. Dismissal is proper
7 when the complaint fails to plead “enough facts to state a claim to relief that is
8 plausible on its face.” *Twombly*, 550 U.S. at 570. If the court determines that the
9 complaint fails to state a claim upon which relief can be granted, dismissal is
10 appropriate.

11 **IV. ARGUMENT**

12 **A. Plaintiff Fails To Sufficiently Allege Article III Standing**

13 To have Article III standing, a plaintiff must allege a concrete, particularized
14 injury that is fairly traceable to the defendant’s conduct and redressable by a judicial
15 remedy. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Plaintiff fails to
16 meet this standard.

17 1. Plaintiff fails to allege organizational standing

18 Organizational standing arises when an organization suffers a direct injury
19 that meets the traditional Article III requirements: injury in fact, causation, and
20 redressability. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 369
21 (2024). Plaintiff alleges it has organizational standing because the City’s ordinances
22 caused it to divert resources and frustrated its mission. (FAC ¶¶ 17, 19.) However,
23 the Supreme Court has rejected “frustration-of-mission” and “diversion-of-
24 resources” theories to establish standing. *See Hippocratic Med.*, 602 U.S. at 369-70,
25 394. (holding that an organization “cannot spend its way into standing simply by
26 expending money to gather information and advocate against the defendant’s
27 action.”); see also *Ariz. All. for Immigr. & Econ. Just. v. Thornell*, 117 F.4th 1169,
28 1177–78 (9th Cir. 2024) (recognizing that prior Ninth Circuit cases allowing such

1 theories are “irreconcilable with *Hippocratic Medicine*—and thus overruled”).
2 Instead, organizations must show that the challenged action “directly injures the
3 organization's pre-existing core activities and does so *apart* from the plaintiffs’
4 response to that governmental action.” *Coalition on Homelessness v. City & County*
5 *of San Francisco*, 758 F. Supp. 3d 1102, 1128–29 (N.D. Cal. 2024) (emphasis in
6 original) (a mere reduction in membership or self-directed advocacy expenditure
7 does not suffice to plead injury in fact.).

8 Moreover, Plaintiff must sufficiently allege that it suffered a concrete injury
9 caused by the 4LEAF Defendants’ conduct, which it has failed to do. Plaintiff does
10 not allege that it diverted resources specifically in response to 4LEAF’s limited
11 enforcement role. Its purported organizational injury thus stems entirely from
12 opposition to the City’s ordinances and policy framework, not from 4LEAF’s
13 discrete, ministerial enforcement activities.

14 2. Plaintiff fails to allege associational standing

15 To establish associational standing, Plaintiff must show that (a) at least one
16 identified member has standing to sue individually, (b) the interests it seeks to
17 protect are germane to the organization’s purpose, and (c) neither the claim nor
18 relief requires participation of individual members. *Hunt v. Wash. State Apple*
19 *Advert. Comm’n*, 432 U.S. 333, 343 (1977). Plaintiff fails to establish associational
20 standing.

21 a. The FAC fails to show that at least one identified member has
22 standing

23 The first element of associational standing requires a demonstration of injury-
24 in-fact, causation, and redressability for the organization’s members. *Friends of the*
25 *Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). To satisfy
26 this element, Plaintiff must allege that at least one identified member has suffered or
27 will suffer a concrete and particularized injury as a result of defendant’s actions.
28 *Hunt v. Washington State Apple Comm’n*, 432 U.S. 333, 343 (1977). The Ninth

1 Circuit requires an association to make it “relatively clear that one member has
2 standing.” *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal.*
3 *Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013).

4 Plaintiff’s allegations of its members’ alleged harm are vague, conclusory,
5 and lack the necessary specificity to establish an injury-in-fact. Plaintiff broadly
6 alleges that the 4LEAF Defendants “implement” and “enforce” the challenged
7 provisions, but fails to allege any specific harm its members suffered as a result of
8 the 4LEAF Defendants’ alleged conduct. FAC, ¶ 21. Similarly, although Plaintiff
9 broadly alleges that 4LEAF “operatives” threaten and confiscate vendors’ property
10 (FAC ¶ 40), these allegations fall far short of pleading the required elements of
11 associational standing because Plaintiff does not allege that any of its members
12 personally experienced these actions. Courts repeatedly hold that generalized
13 references to a constituency or group do not suffice. *See, e.g., Disability Rights Wis.,*
14 *Inc. v. Walworth Cnty. Bd. of Supervisors*, 522 F.3d 796, 802 (7th Cir. 2008). The
15 Court should disregard these vague, conclusory allegations of speculative and
16 unspecific harm. *See Iqbal*, 556 U.S. at 678.

17 Plaintiff, in a footnote, refers to two of its members, “A.M.” and “A.C.,” but
18 provides no factual basis showing that either member suffered a concrete injury
19 caused by 4LEAF’s conduct. (FAC ¶ 20 fn. 5.) Plaintiff alleges that A.M. vended in
20 2022, before 4LEAF contracted with the City, that the City denied A.M. a permit
21 (not 4LEAF), and that “City agents confiscated A.M.’s vending cart” near Christmas
22 2023. (*Id.*) With regard to A.C., Plaintiff alleges that “Fontana officers told A.C. to
23 go elsewhere” and that A.C. “found permit requirements impossible to meet.” None
24 of these allegations are sufficient to establish a concrete injury fairly traceable to the
25 4LEAF Defendants, nor that enjoining 4LEAF’s alleged conduct would redress
26 either A.M.’s or A.C.’s injuries. In addition, Plaintiff alleges that both A.M. and A.C.
27 vend elsewhere, and though they “would return” to Fontana, whether they would be
28 harmed by 4LEAF’s future conduct is speculative, especially given that there is no

1 legally protectable interest in vending without a permit. See *Guatay Christian*
2 *Fellowship v. County of San Diego*, 670 F.3d 957, 981–82 (9th Cir. 2011) (no
3 property interest exists in operating unlawfully without required permits).

4 Accordingly, Plaintiff has not sufficiently alleged that A.M. or A.C. have
5 suffered a concrete and particularized injury as a result of any alleged actions by the
6 4LEAF Defendants. Thus, neither have standing to sue individually and, therefore,
7 Plaintiff lacks associational standing. See *American Fed’n of Gov’t Employees*
8 *Local 501 v. Biden*, 576 F. Supp. 3d 1155 (S.D. Fla. 2021); *Prairie Rivers Network*
9 *v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002 (7th Cir. 2021) (absence of any
10 specific, concrete harm to a named member defeats associational standing).

11 b. The FAC fails to sufficiently allege that the interests Plaintiff
12 seeks to protect are germane to its purpose

13 Plaintiff fails to allege how the 4LEAF Defendants’ alleged conduct impacts
14 the interests it seeks to protect and how those interest, if any, are germane to its
15 purpose. According to the FAC, the 4LEAF Defendants’ role is limited to
16 approaching unpermitted vendors, providing education about City requirements,
17 issuing warnings, and, only after repeated violations, confiscating goods. FAC ¶¶
18 38, 40, 78. Nothing in these allegations undermines Plaintiff’s mission. To the
19 contrary, education and compliance promotion are consistent with an organization
20 that purports to assist vendors in operating lawfully and safely. *NAACP v. City of*
21 *Richmond*, 743 F.2d 1346, 1352–53 (9th Cir. 1984) (the court rejected associational
22 standing where the asserted claims were not central to the organization’s core
23 mission); *Nat’l Fed’n of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185, 1192–93
24 (N.D. Cal. 2007) (germaneness requires alignment between the claim and the
25 association’s central mission). The FAC thus fails to establish that the interests it
26 seeks to protect are germane to Plaintiff’s organizational purpose and, therefore,
27 Plaintiff lacks associational standing.

28 **B. Plaintiff Cannot Demonstrate A Deprivation of A Constitutional Right
Caused By The 4LEAF Defendants, Or That The 4LEAF Defendants Are**

1 **State Actors**

2 A § 1983 plaintiff must demonstrate a deprivation of a right secured by the
3 Constitution or laws of the United States, and that the defendant acted under color of
4 state law. *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003).

5 1. Plaintiff Fails To State A Constitutional Claim Against The 4LEAF
6 Defendants

7 a. Plaintiff Cannot State A Facial Challenge Against The 4LEAF
8 Defendants

9 “The proper defendants to a facial constitutional challenge are the parties
10 responsible for creating or enforcing the challenged law or policy.” *Buchanan v.*
11 *Alexander*, 919 F.3d 847, 854 (5th Cir. 2019). Officials and individuals with limited
12 roles in the administration of the challenged polices, or parties who seek to enforce
13 challenged regulations, are not proper parties to a facial challenge. *Buchanan*, 919
14 F.3d at 854-855; *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192 (4th Cir.
15 1997).

16 Because the 4LEAF Defendants are not alleged to, and do not, enact or have
17 independent governmental enforcement authority, they are not proper parties to
18 Plaintiff’s facial challenge to the City’s ordinances. FAC ¶¶38, 40, & Ex. 2, Ex. A.

19 To the extent the Court finds it appropriate for Plaintiff to assert a facial
20 challenge against the 4LEAF Defendants, they hereby join and incorporate by
21 reference the City of Fontana’s Memorandum of Points and Authorities in Support
22 of its Motion to Dismiss at pages 8-11 (EOC Provision) and pages 11-21
23 (Impoundment/Seizure Provisions). Those sections address the facial
24 constitutionality of the challenged ordinances.

25 b. Plaintiff Fails To Allege A Constitutional Deprivation Caused
26 By The 4LEAF Defendants

27 (1) First Amendment

28 The FAC contains no allegations that the 4LEAF Defendants infringed upon
any vendor’s speech or expressive activity. The alleged conduct: enforcing vending

1 permit requirements by notifying unpermitted vendors and, when necessary,
2 confiscating goods, does not implicate the First Amendment. None of the 4LEAF
3 Defendants’ alleged actions regulate speech, expressive conduct, or any
4 communicative activity; rather, they enforce commercial vending regulations—a
5 non-expressive activity that the government may lawfully regulate through licensing
6 requirements. See *United States v. O’Brien*, 391 U.S. 367, 376 (1968) (“When
7 speech and nonspeech elements are combined in the same course of conduct, a
8 sufficiently important governmental interest in regulating the nonspeech element
9 can justify incidental limitations on First Amendment freedoms.”); *Heffron v. Int’l*
10 *Soc’y for Krishna Consciousness*, 452 U.S. 640, 649 (1981) (upholding neutral
11 regulations on vending and solicitation at a public fairground); *Hunt v. City of Los*
12 *Angeles*, 638 F.3d 703 (2011) (9th Cir.) (predominant purpose of vending is to
13 generate income rather than disseminate a message, therefore, vendors could not
14 challenge ordinance as a restriction on protected speech). The only reference to
15 speech-related conduct vaguely claims that 4LEAF “harassed vendors” and “told
16 vendors that they have no right to vend in the City.” (FAC, ¶ 78.) However, these
17 statements are not speech restrictions—they are administrative enforcement actions
18 advising unpermitted vendors of City regulations. Additionally, while the FAC
19 alleges that 4LEAF “fail[s] to inform vendors of their rights” (FAC ¶ 78), it
20 simultaneously concedes that 4LEAF personnel inform unpermitted vendors that
21 they lack authorization to vend in the City and distribute bulletins advising them to
22 obtain the required permits or cease vending. (FAC ¶ 40.) There are no allegations
23 that 4LEAF restricted expressive conduct, retaliated against protected speech, or
24 denied a permit based on viewpoint or content. FAC ¶¶ 38, 40. These actions
25 regulate commercial activity, not expressive speech. *United States v. O’Brien*, 391
26 U.S. 367, 376 (1968); *Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S.
27 640, 649 (1981).

28 Because Plaintiff fails to allege any protected expressive activity that the

1 4LEAF Defendants’ allegedly infringed, the FAC fails to show any causal
2 connection between 4LEAF’s conduct and a First Amendment injury. Accordingly,
3 Plaintiff fails to state a First Amendment claim against the 4LEAF Defendants.

4 (2) Fourth Amendment, Fifth and Fourteenth Amendment
5 Plaintiff alleges that 4LEAF violates the Fourth, Fifth and Fourteenth
6 Amendments “by their unlawful and unreasonable confiscations of vendors’ goods
7 and equipment and failure to provide the procedural protections required by the Due
8 Process clause.” FAC ¶¶ 41.

9 To obtain relief on § 1983 claims based upon procedural due process, the
10 plaintiff must establish the existence of: 1) a protected property interest; 2) a
11 deprivation of the interest by the government; and, 3) lack of process. See *Guatay*
12 *Christian Fellowship v. County of San Diego*, 670 F.3d 957, 983 (9th Cir. 2011).

13 No constitutionally protected property interest exists in property used without
14 a permit and in violation of regulations. See *Guatay*, 670 F.3d at 985-986. In
15 *Guatay*, a church used a building without a valid permit. When the County ordered
16 it to stop, the church claimed a due process violation. The Ninth Circuit granted the
17 County summary judgment, holding the church had not established the requisite
18 property interest to support a due process claim. *Id.* at 986. The court stated that a
19 property interest must arise from a “legitimate claim of entitlement” conferred by
20 state law—not from the mere fact of continued, unpermitted use. *Id.* Because the
21 church’s use of the property violated county ordinances, it lacked any protectable
22 property interest. *Id.*

23 As in *Guatay*, Plaintiff here fails to allege a protected property interest in the
24 vending of goods without a valid permit in violation of the City’s permitting
25 regulations. In the absence of such property interest, the court need not engage in the
26 constitutional analysis of determining whether such a property interest warrants the
27 protection of the Due Process Clause. *Id.*

28 However, even if the court does engage in that analysis, Plaintiff fails to

1 allege that the 4LEAF Defendants engaged in a due process violation. Due process
2 requires only that a party be given notice and an opportunity to be heard before
3 permanent deprivation of property. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).
4 Here, the FAC alleges that vendors receive warnings before property is taken, and it
5 is only after this notice that if vendors knowingly choose to vend without a permit
6 that their goods are removed. FAC ¶¶ 6, fn. 2, 20, fn. 5, 40. This process provides
7 both pre-deprivation notice and an opportunity to comply, thereby satisfying the
8 requirements of procedural due process. *City of West Covina v. Perkins*, 525 U.S.
9 234 (1999).

10 Further, Plaintiff does not allege how the confiscation of goods used for
11 unpermitted vending after being put on notice of a violation of the City’s ordinances
12 is “unlawful” or “unreasonable.” The seizure of items in plain view on City streets
13 being used by vendors identified as operating without a permit, and who have been
14 warned not to do so, is constitutionally justified. *Minnesota v. Dickerson*, 508 U.S.
15 366 (1993); *PPS, Inc. v. Faulkner County, Ark.*, 630 F.3d 1098, 1103-1104, 1107-
16 1108 (8th Cir. 2011). Thus, Plaintiff fails to allege a constitutional claim against the
17 4LEAF Defendants.

18 2. The 4LEAF Defendants Are Not State Actors

19 Private entities and their employees are liable under § 1983 only when their
20 conduct is “fairly attributable to the State.” *Lugar v. Edmondson Oil Co.*, 457 U.S.
21 922, 937 (1982). “Only in rare circumstances can a private party be viewed as a
22 ‘state actor’ for section 1983 purposes.” *Sutton v. Providence St. Joseph Medical*
23 *Center*, 192 F.3d 826 (1999) (internal citation omitted); *Price v. Hawaii*, 939 F.2d
24 702, 707–08 (9th Cir.1991) (“[P]rivate parties are not generally acting under color
25 of state law.”). The Ninth Circuit recognizes four different criteria to identify state
26 action: (1) public function; (2) joint action; (3) governmental compulsion or
27 coercion; and (4) governmental nexus. *Kirtley*, 326 F.3d at 1092.

28 a. Public Function

1 “The public function test is satisfied only on a showing that the function at
2 issue is ‘both traditionally and exclusively governmental.’” *Id.* at 1093. “While
3 many functions have been traditionally performed by governments, very few have
4 been ‘exclusively reserved to the State.’” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149,
5 158 (1978) (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 356
6 (1974)).

7 The type of enforcement activities in which 4LEAF is alleged to engage do
8 not constitute traditional and exclusive governmental functions. *Spencer v. Lee*, 864
9 F.2d 1376, 1380 (7th Cir.1989) (noting that powers of arrest and self-defense are not
10 exclusively governmental functions); *Carey v. Continental Airlines, Inc.*, 823 F.2d
11 1402, 1404 (10th Cir.1987) (holding citizen's arrest does not constitute state
12 action); *White v. Scrivner Corp.*, 594 F.2d 140, 142–43 (5th Cir.1979) (holding that
13 detaining suspected shoplifter is not an exclusive state function); *Gallagher v. Neil*
14 *Young Freedom Concert*, 49 F.3d 1442, 1457 (10th Cir.1995) (holding that public
15 university's acquiescence in private security team's pat-down searches of concert-
16 goers did not establish state action); *Stanley v. Goodwin*, 475 F.Supp.2d 1026 (2006)
17 (private security guards ejecting unruly individuals or reporting suspected crimes to
18 the police are not state actors); *Wade v. Byles*, 83 F.3d 902 (7th Cir. 1996) (private
19 actors engaging in security or enforcement activities do not become state actors
20 merely by relying on the law).

21 Here, Plaintiff alleges that 4LEAF is contracted to perform code enforcement
22 services for the City, which includes giving out warnings to non-permitted vendors
23 and removing items from individuals who continue to violate municipal regulations.
24 As alleged, 4LEAF employees do not display any badges or name tags identifying
25 them as City personnel, and the contract between the City and 4LEAF expressly
26 establishes that 4LEAF serves solely as an independent contractor. FAC ¶¶ 38, 40,
27 Ex. 2, Ex. A, ¶ 10. The agreement frames 4LEAF’s work as professional services,
28 akin to consulting or inspection, not police authority. (FAC Ex. 2, ¶¶ 5, 10, and Ex.

1 A.) This makes clear that 4LEAF’s conduct does not involve powers “traditionally
2 and exclusively reserved to the State.” *Spencer v. Lee*, 864 F.2d 1376, 1380 (7th
3 Cir.1989); *Carey v. Continental Airlines, Inc.*, 823 F.2d 1402, 1404 (10th
4 Cir.1987); *White v. Scrivner Corp.*, 594 F.2d 140, 142–43 (5th Cir.1979).

5 b. No Joint Action or Conspiracy With the City

6 The “joint-action” test requires “a substantial degree of cooperation” or “a
7 willful participation in joint activity” with state officials to deprive a person of
8 constitutional rights. *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002), abrogation
9 on other grounds recognized by *Pearson v. Callahan*, 555 U.S. 223 (2009).

10 Allegations of mere cooperation or coordination with public officials do not suffice.
11 *Favela v. City of Las Cruces ex rel. Las Cruces Police Department*, 398 F.Supp.3d
12 858 (2019) (emphasizing that "the mere acquiescence of a state official in the
13 actions of a private party is not sufficient" to establish state action under the joint-
14 action test); *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1453 (same).

15 The Ninth Circuit in *Howerton v. Gabica*, 708 F.2d 380 (9th Cir. 1983) found
16 that private landlords who evicted tenants acted “under color of state law” because
17 the police actively assisted in the eviction, accompanying the landlords and
18 recommending that the tenants leave, creating the appearance of official sanction.
19 *Id.* at 382. The Court emphasized that significant and joint participation by state
20 officials is required to transform private conduct into state action. *Id.* *Howerton*
21 demonstrates what is required for private conduct to be deemed state action: direct
22 and substantial police involvement. Here, there is no allegation that law enforcement
23 jointly participated with 4LEAF or that 4LEAF acted with the coercive power or
24 encouragement of the City, distinguishing this case from *Howerton*. Indeed, the
25 FAC alleges that 4LEAF “operate[s] independently,” contacting the City’s police
26 department for any enforcement action beyond its scope of work. FAC ¶¶ 7, 38.

27 Courts reject § 1983 liability in such circumstances. See *Brunette v. Humane Society*
28 *of Ventura County*, 294 F.3d 1205, 1213 (2002) (humane society acting under

1 warrant not a state actor where it neither conspired with nor was controlled by the
2 state).

3 c. No Coercion or Nexus

4 As the Supreme Court recently explained, the fact that the government
5 “licenses [or] contracts with” a private entity, “does not convert the entity into a
6 state actor.” *Polk v. Yee*, (2020) 481 F.Supp.3d 1060, 1068 (2020) (citing to
7 *Manhattan Community Access Corp. v. Halleck*, 587 U.S. 802 (2019) (affirming
8 dismissal of § 1983 claim against private operator of public access cable channels in
9 part because “fact the government licenses, contracts with, or grants a monopoly to
10 a private entity does not convert the private entity into a state actor—unless the
11 private entity is performing a traditional, exclusive public function”). Courts have
12 consistently held that private entities are not considered state actors unless the state
13 has exercised coercive power or provided significant encouragement, either overt or
14 covert, such that the private entity's actions must be deemed those of the state. *Blum*
15 *v. Yaretsky*, 457 U.S. 991, 1004 (1982) (state action requires a "sufficiently close
16 nexus between the State and the challenged action of the regulated entity so that the
17 action of the latter may be fairly treated as that of the State itself); *Nwauzor v. GEO*
18 *Group, Inc.*, 127 F.4th 750 (9th Cir. 2025) (private company operating an ICE
19 detention facility under federal contract was not federal actor); *Cabalce v. Thomas*
20 *E. Blanchard & Associates, Inc.*, 797 F.3d 720 (9th Cir. 2015) (independent
21 contractor performing services independently not state action). Relatedly, the
22 governmental nexus test evaluates whether there is a sufficiently close relationship
23 between the state and the private actor’s conduct, such that the private behavior can
24 be fairly treated as that of the state. This inquiry is fact-specific and begins with the
25 presumption that private conduct does not constitute governmental action. *Perez-*
26 *Morciglio v. Las Vegas Metropolitan Police Dept.*, 820 F.Supp.2d 1100 (2011).

27 Plaintiff alleges that the 4LEAF Defendants operate “independently,”
28 contacting the City’s police department for any enforcement action beyond its scope

1 of work. FAC ¶¶ 7, 38. Thus, no coercive control or direction is alleged. Nor are
2 there any facts alleged that the City coerced the 4LEAF Defendants to violate
3 vendor’s constitutional rights (nor could there be) or that the alleged conduct was
4 compelled by law. The mere approval or acquiescence by the state in a private
5 party’s conduct does not constitute state action. *Blum v. Yaretsky*, 457 U.S. 991,
6 1004-1005 (1982).

7 **C. No Entity Liability under *Monell***

8 Even assuming that 4LEAF acted under color of state law for purposes of
9 this motion, Plaintiff fails to sufficiently state a claim for *Monell* liability. A private
10 corporation acting under color of state law “cannot be held liable under § 1983 on a
11 respondeat-superior theory.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694
12 (1978); *Byers v. City of Richmond*, 746 F.Supp.3d 275 (2024) (extending *Monell* to
13 private entities acting under color of state law). Instead, liability attaches only if the
14 entity itself had a policy or custom that was the “moving force” behind the alleged
15 constitutional deprivation. *George v. Sonoma County Sheriff’s Dept.*, 732 F. Supp.
16 2d 922 (N.D. Cal. 2010); see also *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128 (9th
17 Cir. 2012); *Pasadena Republican Club v. Western Justice Center*, 424 F.Supp.3d
18 861 (2019) (liability requires proof that a constitutional violation resulted from an
19 official policy, custom, or practice of the entity).

20 In *George*, the family of a county jail inmate sued the Sonoma County
21 Sheriff’s Department and Santa Rosa Memorial Hospital after the inmate died
22 following allegedly inadequate medical care provided by a private hospital under
23 contract with the County. The court found no *Monell* liability for the private hospital
24 because there was no evidence that the hospital had a policy or practice causing
25 constitutional violations. *Id.* at 1143-44.

26 Here, Plaintiff does not identify any internal 4LEAF policy, custom or
27 practice that could have caused the alleged deprivation of rights; instead, the FAC
28 focus entirely on the constitutionality of the City’s ordinances. At most, Plaintiff

1 alleges isolated acts by individual employees, not any deliberate or pervasive
2 4LEAF policy or custom that caused the alleged constitutional deprivations. (FAC
3 ¶¶ 5–7, 31–35, 41.) Accordingly, 4LEAF cannot be held liable pursuant to § 1983.

4 **D. Plaintiff Fails To Sufficiently State Claims Against Craig Tole and Pete**
5 **Roque**

6 Individual § 1983 liability requires personal participation in the alleged
7 constitutional deprivation. *Iqbal v. Ashcroft*, 556 U.S. 662, 676 (2009) ("Because
8 vicarious liability is inapplicable to... § 1983 suits, a plaintiff must plead that each
9 Government-official defendant, through the official's own individual actions, has
10 violated the Constitution.") Supervisory or managerial status alone is insufficient.
11 *Mallison v. Connecticut Office of Early Childhood*, 634 F.Supp.3d 21 (2022) (an
12 individual may not be held liable "merely because [they] held a high position of
13 authority" or on a theory of vicarious liability); see also *Tavarez-Guerrero v.*
14 *Toldeo-Davila*, 597 F.Supp.2d 250 (2008). The Ninth Circuit has repeatedly rejected
15 liability theories based on vague allegations of inadequate training or supervision
16 without factual support. *Hydrick v. Hunter*, 669 F.3d 937, 940 (9th Cir. 2012)
17 ("[Plaintiffs] must allege that each defendant, through his own individual actions,
18 has violated the Constitution."); *Starr v. Baca*, 652 F.3d 1202, 1207–08 (9th Cir.
19 2011) (supervisory liability requires specific allegations showing deliberate
20 indifference to known constitutional violations).

21 The FAC contains no factual allegations that either Craig Tole or Pete Roque
22 personally engaged in or directed any specific act against Plaintiff or its members
23 causing a constitutional violation. Instead, Plaintiff relies on generalized assertions
24 that they "managed" or "oversaw" 4LEAF's work for the City. Such conclusory
25 allegations fall far short of the pleading requirements under 42 U.S.C. § 1983 and
26 fail as a matter of law.

27 Moreover, Plaintiff's claims against Tole and Roque are redundant of the
28 claims against 4Leaf itself and should be dismissed as duplicative. *Luke v. Abbott*,

1 954 F. Supp. 202, 203–04 (C.D. Cal. 1997) (dismissing official-capacity claims as
2 “duplicative of the claims asserted against the public entity itself”). The law is clear
3 that official-capacity suits “generally represent only another way of pleading an
4 action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473
5 U.S. 159, 165–66 (1985).

6 **E. Plaintiff Has Withdraw Its Preemption Claim**

7 Plaintiff has agreed in writing that it will not pursue its preemption claim
8 against the 4LEAF Defendants. Accordingly, the 4LEAF Defendants do not move to
9 dismiss that claim, as they understand it has been withdrawn.

10 **V. CONCLUSION**

11 For the foregoing reasons, the Court should grant the 4LEAF Defendants’
12 Motion to Dismiss in its entirety without leave to amend.

13
14 DATED: November 4, 2025

HANSON BRIDGETT LLP

15
16 By: /s/ Alexandra V. Atencio
17 ALEXANDRA V. ATENCIO
18 Attorneys for Defendants
19 4LEAF, INC., CRAIG TOLE and PETE
20 ROQUE.

21 The undersigned, counsel of record for by Defendants 4LEAF, Inc., Craig
22 Tole, and Pete Roque (collectively, the “4LEAF Defendants”), certifies that this
23 brief contains 6251 words, which complies with the word limit of L.R. 11-6.1.

24
25 DATED: November 4, 2025

HANSON BRIDGETT LLP

26 By: /s/ Alexandra V. Atencio
27 ALEXANDRA V. ATENCIO
28 Attorneys for Defendants
4LEAF, INC., CRAIG TOLE and PETE
ROQUE.