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

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11 DEANCO HEALTHCARE, LLC, doing  
12 business as MISSION COMMUNITY  
13 HOSPITAL, a California limited liability  
company,

14 Plaintiff,

15 v.

16 XAVIER BECERRA, in his official  
17 capacity as the Attorney General for the  
18 State of California; the OFFICE OF THE  
19 ATTORNEY GENERAL FOR THE  
STATE OF CALIFORNIA; and the  
STATE OF CALIFORNIA,

20 Defendants.

Case No. 2:18-cv-03934-ODW (PJW)

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS WITHOUT  
LEAVE TO AMEND [24]**

21  
22 **I. INTRODUCTION**

23 Before the Court is Defendants' Motion to Dismiss Plaintiff's Complaint for  
24 lack of jurisdiction and failure to state a claim. (Mot. to Dismiss, ECF No. 24.) For  
25 the following reasons, the Court **GRANTS** Defendant's motion to dismiss without  
26 leave to amend.<sup>1</sup> (ECF No. 24.)

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28 <sup>1</sup> After considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

## II. BACKGROUND

1  
2 In September 2010, the Office of the Attorney General for the State of  
3 California (“OAG”), as part of its responsibility for regulating charitable entities,  
4 approved Plaintiff Deanco Healthcare, LLC’s attempt to purchase Mission  
5 Community Hospital from a nonprofit organization. (Compl. ¶ 30, ECF No. 1.) As a  
6 condition of the approval, the OAG required Plaintiff to provide a minimum amount  
7 of charity care to indigent and uninsured individuals, or to provide financial support to  
8 nonprofit organizations in Plaintiff’s area that do (hereinafter, the “Charity Care  
9 Condition”). (*Id.* ¶¶ 33–34.) In July 2013, when the purchase “closed,” Plaintiff  
10 confirmed its commitment to comply with the conditions of purchase for the next six  
11 years. (*Id.* ¶ 31.)

12 Plaintiff now claims that, as a result of the Patient Protection and Affordable  
13 Care Act (“Affordable Care Act”) and the Health Care and Education Reconciliation  
14 Act of 2010, from 2013 to 2017, the number of uninsured individuals in California  
15 dropped from 17.2% to 7.2%. (Opp’n to Mot. to Dismiss (“Opp’n”) 1, ECF No. 25.)  
16 Plaintiff complains that instead of enjoying the success of the Affordable Care Act, it  
17 “has been punished by every individual since 2010 who has procured health  
18 insurance.” (Compl. ¶ 10.) As a result of more individuals having insurance, the  
19 demand for charity care at Plaintiff’s hospital decreased, resulting in Plaintiff’s  
20 alleged inability to comply with the Charity Care Condition. (*See* Opp’n 2.)

21 In 2016, Plaintiff requested that Defendants modify the threshold for the  
22 Charity Care Condition due to the impact of the Affordable Care Act. (Compl. ¶ 46.)  
23 In response, Defendants commissioned a third-party consultant to conduct a study of  
24 the charity care needs in Plaintiff’s hospital’s community, and, on March 9, 2018, held  
25 a public hearing on Plaintiff’s request. (*Id.* ¶¶ 58, 59.) Following the study and public  
26 hearing, on April 13, 2018, Defendants denied Plaintiff’s request. (*Id.* ¶ 60.)

27 On May 10, 2018, Plaintiff filed the instant suit seeking to invalidate the  
28 Charity Care Condition on the basis that it is preempted by federal law. (*See* Compl.)

1 Defendants move to dismiss Plaintiff’s Complaint pursuant to Federal Rules of Civil  
2 Procedure 12(b)(1) and 12(b)(6).

### 3 **III. LEGAL STANDARD**

#### 4 **A. RULE 12(b)(1)**

5 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may  
6 move to dismiss a complaint for lack of subject matter jurisdiction. Fed. R. Civ.  
7 P. 12(b)(1). “Jurisdictional dismissals in cases premised on federal-question  
8 jurisdiction are exceptional . . . .” *Sun Valley Gasoline, Inc. v. Ernst Enters.*, 711 F.2d  
9 138, 140 (9th Cir. 1983). “A Rule 12(b)(1) jurisdictional attack may be facial or  
10 factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing  
11 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A facial attack is based on the  
12 challenger’s assertion that allegations in the complaint are “insufficient on their face  
13 to invoke federal jurisdiction.” *Id.* A factual attack disputes the validity of allegations  
14 that, if true, would invoke federal jurisdiction. *Id.* In resolving a factual attack, the  
15 court “need not presume the truthfulness of the plaintiffs’ allegations.” *White*, 227  
16 F.3d at 1242. Once a defendant moves to dismiss for lack of subject matter  
17 jurisdiction, the plaintiff bears the burden of establishing the court’s subject matter  
18 jurisdiction. See *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994);  
19 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

#### 20 **B. RULE 12(b)(6)**

21 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable  
22 legal theory or insufficient facts pleaded to support an otherwise cognizable legal  
23 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To  
24 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading  
25 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*  
26 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to  
27 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550  
28 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,

1 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*  
2 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

3 The determination of whether a complaint satisfies the plausibility standard is a  
4 “context-specific task that requires the reviewing court to draw on its judicial  
5 experience and common sense.” *Id.* at 679. A court is generally limited to the  
6 pleadings and must construe all “factual allegations set forth in the complaint . . . as  
7 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,  
8 250 F.3d 668, 679 (9th Cir. 2001). But a court need not blindly accept conclusory  
9 allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v.*  
10 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

#### 11 **IV. DISCUSSION**

12 Defendants move to dismiss Plaintiff’s Complaint on two bases: (1) Defendants  
13 the OAG and State of California are immune from suit under the Eleventh  
14 Amendment and are not “persons” subject to liability under 42 U.S.C. § 1983; and  
15 (2) Plaintiff’s preemption claims must be dismissed for failure to state a claim.  
16 (Mot. 1–2.)

##### 17 **A. ELEVENTH AMENDMENT IMMUNITY**

18 Defendants the OAG and State of California move to dismiss under Rule  
19 12(b)(1) on the basis that they are immune from suit pursuant to the Eleventh  
20 Amendment.

21 The Eleventh Amendment immunizes states, an arm of the state, its  
22 instrumentalities, or its agencies from suits brought in federal courts. *Pennhurst State*  
23 *Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Franceschi v. Schwartz*, 57  
24 F.3d 828, 831 (9th Cir. 1995). There are three exceptions to this rule: (1) “Congress  
25 may abrogate that immunity pursuant to its lawmaking powers”; (2) “a state may  
26 waive its Eleventh Amendment immunity by consenting to suit”; and (3) “immunity  
27 does not apply when the plaintiff” sues a state official in his or her official capacity for  
28 prospective injunctive relief. *Steshenko v. Gayrard*, 70 F. Supp. 3d 979, 988–89

1 (N.D. Cal. 2014); *see Ex Parte Young*, 209 U.S. 123, 166 (1908); *Doe v. Lawrence*  
2 *Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997). Moreover, the Eleventh  
3 Amendment limits claims brought under § 1983. *Lawrence Livermore Nat'l Lab.*, 131  
4 F.3d at 839.

5 Here, Plaintiff does not dispute that the State of California is immune from suit  
6 pursuant to the Eleventh Amendment. Rather, Plaintiff requests that the dismissal be  
7 without prejudice.<sup>2</sup> However, it is evident that the State of California is immune from  
8 suit, and Plaintiff provides no reason why the dismissal should be without prejudice.  
9 Accordingly, the State of California is dismissed from this lawsuit with prejudice.

10 As to Defendant the OAG, Plaintiff argues that it should be stripped of its  
11 immunity because it operates independently from the state. (Opp'n 5.) Plaintiff  
12 identifies three factors that the Court should consider before stripping immunity from  
13 state agencies: "(1) whether the agency performs 'essentially governmental' functions,  
14 (2) whether the agency has the right to sue on its own behalf and (3) whether the  
15 agency has power to take and hold property in its own name." (*Id.*) Plaintiff has not  
16 met its burden. Plaintiff's Complaint contains no facts in support of any of these  
17 factors that would warrant stripping the OAG of its immunity. Additionally, Plaintiff  
18 provides no authority where a court has stripped the OAG of its immunity. The OAG  
19 is undoubtedly an arm of the state. "The Eleventh Amendment protects the State from  
20 the *risk* of adverse judgments . . . ." *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425,  
21 431 (1997) (emphasis added).<sup>3</sup> Accordingly, Defendants the OAG and State of

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23 <sup>2</sup> Plaintiff likewise does not oppose Defendants' request to dismiss the eighth and ninth claims for  
24 relief, which allege state law causes of action pursuant to California Code of Civil Procedure  
25 sections 1085 and 1094.5. *See Pennhurst*, 465 U.S. at 124–25 (holding that federal courts lack  
26 jurisdiction to enjoin "state institution and state officials on the basis of" state law). Accordingly,  
the eighth and ninth claims are **DISMISSED without leave to amend**. *See Qureshi v. Countrywide*  
*Home Loans, Inc.*, Case No. 09-4198 SBA, 2010 WL 841669, at \*6 n.2 (N.D. Cal. Mar. 10, 2010)  
(finding that a failure to oppose results in an abandonment of those claims).

27 <sup>3</sup> This does not prohibit a lawsuit against the Attorney General. *See Ass'n des Eleveurs de Canards*  
28 *et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013) (finding that the Attorney General  
may be subject to suit under *Ex Parte Young*).

1 California are entitled to immunity under the Eleventh Amendment and are dismissed  
2 from this lawsuit with prejudice.

3 **B. PREEMPTION**

4 There are three classes of preemption: express preemption, conflict preemption,  
5 and field preemption. Pursuant to the Supremacy Clause, U.S. Const. art. VI, cl. 2,  
6 federal law preempts state law when “(1) Congress enacts a statute that explicitly  
7 preempts state law; (2) state law actually conflicts with federal law; or (3) federal law  
8 occupies a legislative field to such an extent that it is reasonable to conclude that  
9 Congress left no room for state regulation in that field.” *Chae v. SLM Corp.*, 593 F.3d  
10 936, 941 (9th Cir. 2010).

11 Plaintiff claims that the Charity Care Condition is invalid under two theories:  
12 (1) field preemption based on the Emergency Medical Treatment and Active Labor  
13 Act (“EMTALA”), 42 U.S.C. § 1395dd, which prevents hospitals from refusing to  
14 provide emergency medical treatment or transferring patients before their conditions  
15 are stabilized; and (2) conflict preemption as to five federal laws.<sup>4</sup> (*See* Compl. ¶¶ 66,  
16 70, 75, 79, 84, 85.) Accordingly, the Court addresses whether Plaintiff’s Complaint  
17 sufficiently alleges a claim for field and conflict preemption.

18 **1. FIELD PREEMPTION**

19 EMTALA regulates hospitals with an emergency department. 42 U.S.C.  
20 § 1395dd(a). Specifically, when an individual “comes to the emergency department  
21 and a request is made on the individual’s behalf for examination or treatment for a  
22 medical condition, the hospital must provide for an appropriate medical screening  
23 examination within the capability of the hospital’s emergency department.” *Id.*  
24 EMTALA also prohibits hospitals from transferring individuals with an emergency  
25 medical condition prior to the individual being stabilized. *Id.* § 1395dd(c).

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27 <sup>4</sup> (1) EMTALA, 42 U.S.C. § 1395dd; (2) Medicaid Expansion, 42 U.S.C. § 1396a(74); (3) the  
28 individual mandate of the ACA, 26 U.S.C. § 5000A; (4) Health Benefit Exchanges under the ACA,  
42 U.S.C. § 18031; and (5) Medicaid, 42 C.F.R. § 447 *et seq.* (Compl. ¶¶ 62, 69, 75, 79, 84.)

1 In Plaintiff’s Complaint, Plaintiff claims that Congress, through EMTALA,  
2 intended to occupy the entire field, thus leaving no room for the Charity Care  
3 Condition. (*See* Compl. ¶¶ 65, 66.) However, in Plaintiff’s Opposition, Plaintiff does  
4 not address the issue of field preemption. (*See* Opp’n 19–21.) Instead, Plaintiff takes  
5 issue with Defendants’ characterization that the EMTALA claim is partially based on  
6 field preemption. (*Id.* at 19.) However, viewing the Complaint in the light most  
7 favorable to Plaintiff, the Court will construe the EMTALA claim as partially based  
8 on field preemption, despite Plaintiff’s failure to address the issue in its Opposition.

9 Field preemption occurs when states are precluded from regulating conduct in a  
10 field that Congress “has determined must be regulated by its exclusive governance.”  
11 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). Field preemption  
12 can be inferred from a regulation that is “so pervasive . . . that Congress left no room  
13 for the [s]tates to supplement it or where there is a federal interest . . . so dominant  
14 that the federal system will be assumed to preclude enforcement of state laws on the  
15 same subject.” *Id.* at 1022–23 (internal quotation marks omitted).

16 As an initial matter, Plaintiff does not identify the field that Congress intended  
17 to occupy through EMTALA. Thus, the Court is left to speculate what field Plaintiff  
18 believes Congress intended to occupy through EMTALA. *See Montalvo v. Spirit*  
19 *Airlines*, 508 F.3d 464, 470 (9th Cir. 2007) (identifying a field in which Congress  
20 intended to occupy for the purposes of field preemption).

21 Additionally, EMTALA is explicit regarding preemption. EMTALA contains a  
22 statement indicating a general congressional intent not to preempt state law: “[t]he  
23 provisions of this section do not preempt any State or local law requirement, except to  
24 the extent that the requirement directly conflicts with a requirement of this section.”  
25 42 U.S.C. § 1395dd(f). The text of the statute is unambiguous that EMTALA would  
26 preempt state law only if the state requirement directly conflicted with the  
27 requirements of EMTALA. Accordingly, “[w]hen Congress has considered the issue  
28 of preemption and has included . . . a provision explicitly addressing that issue . . .

1 there is no need to infer congressional intent to preempt state laws from the  
2 substantive provisions of the legislation.” *Draper v. Chiapuzio*, 9 F.3d 1391, 1393  
3 (9th Cir. 1993) (per curiam) (quoting *Cipollone v. Liggett Grp. Inc.*, 505 U.S. 504,  
4 517 (1992)). This leaves open only the possibility for conflict preemption as it relates  
5 to EMTALA.

6 As such, Plaintiff’s claim for field preemption pursuant to EMTALA is  
7 dismissed without leave to amend.

## 8 2. CONFLICT PREEMPTION

9 Plaintiff alleges that five federal laws preempt the Charity Care Condition:  
10 (1) EMTALA, 42 U.S.C. § 1395dd; (2) Medicaid Expansion, 42 U.S.C. § 1396a(74);  
11 (3) the individual mandate of the Affordable Care Act, 26 U.S.C. § 5000A; (4) Health  
12 Benefit Exchanges under the Affordable Care Act, 42 U.S.C. § 18031; and  
13 (5) Medicaid, 42 C.F.R. § 447 *et seq.* (Compl. ¶¶ 62, 69, 75, 79, 84.)

14 Conflict preemption occurs when state law conflicts with a federal statute.  
15 *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000). Conflict  
16 preemption has two forms: impossibility and obstacle preemption. *Id.* at 372.  
17 Impossibility preemption occurs where “it is impossible for a private party to comply  
18 with both state and federal law.” *Id.* Obstacle preemption occurs “where under the  
19 circumstances of a particular case, the challenged state law stands as an obstacle to the  
20 accomplishment and execution of the full purposes and objectives of Congress. *Id.* at  
21 373 (internal quotation marks and alterations omitted).

22 Beyond Plaintiff’s conclusory allegations, Plaintiff does not allege any facts  
23 regarding how the Charity Care Condition makes it impossible for Plaintiff to comply  
24 with the federal laws or stands as an obstacle to the full purposes and objectives of  
25 Congress. In fact, as it relates to EMTALA, Plaintiff freely admits that “[d]uring all  
26 relevant times herein, [Plaintiff] has complied with its obligations under 42 U.S.C.  
27 [§] 1395dd,” and Plaintiff makes no allegation that the Charity Care Condition  
28 obstructs the accomplishment and execution of EMTALA. (*See* Compl. ¶ 25.)



1           Additionally, as it relates to Medicaid and Medicaid Expansion, Plaintiff does  
2 not allege conflict preemption. Instead, Plaintiff’s allegation is that the Charity Care  
3 Condition makes it less lucrative to comply with Medicaid law, specifically that the  
4 Charity Care Condition penalizes Plaintiff and that “the incentives created by  
5 Congress become pyrrhic at best.” (*Id.* ¶ 73.) Like EMTALA, Plaintiff is able to  
6 comply with its Medicaid obligations and meet the Charity Care Condition; it just may  
7 not be as profitable as it once was. (*See id.* ¶ 90.) Moreover, Plaintiff makes no claim  
8 that the Charity Care Condition hindered Congress’s intent behind Medicaid and  
9 Medicaid Expansion or that the Charity Care Condition negatively affected  
10 Congress’s ability to subsidize medical services to needy individuals. *See Armstrong*  
11 *v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1382 (2015) (“Medicaid is a federal  
12 program that subsidizes the States’ provision of medical services . . .”).

13           The crux of Plaintiff’s claim is that there are more individuals who have  
14 medical insurance and less individuals who need charity care because of the  
15 Affordable Care Act, and as a result, Plaintiff cannot meet the minimum amount of  
16 charity care as set forth in the Charity Care Condition without having to drive the  
17 streets “looking for those most ill among the homeless population.” (Opp’n 2, 21.)  
18 Even if there are more people who have medical insurance as a result of the  
19 Affordable Care Act, this does not explain why Plaintiff cannot comply with the other  
20 component of the Charity Care Condition, specifically, providing financial support to  
21 nonprofit organizations in Plaintiff’s area that do provide charity care. Simply  
22 because it is more difficult for Plaintiff to comply with the Charity Care Condition  
23 does not mean that the Charity Care Condition has been preempted.

24           Moreover, Plaintiff has failed to identify how the Charity Care Condition stands  
25 as an obstacle to the full purposes and objectives of Congress when it enacted the  
26 ACA. Although the Court appreciates the history lesson of the different federal  
27 statutes and the purpose of charity care, neither the Opposition nor the Complaint  
28 explains how the Charity Care Condition contravenes Congress’s objective or intent.

1 Plaintiff’s Complaint actually alleges that the Charity Care Condition has *not* affected  
2 Congress’ goal in enacting the ACA, namely to decrease the number of uninsured  
3 individuals. (*See* Compl. ¶ 57.) Defendants are correct that Plaintiff has it backwards,  
4 “[a]lthough [Plaintiff] alleges that its compliance with federal law makes it more  
5 difficult (or most costly) to meet its charity care condition, it does not . . . allege that  
6 the charity care condition has any impact whatsoever on its ability to comply with  
7 federal law.” (Mot. 20.)

## 8 V. LEAVE TO AMEND

9 As a general rule, a court should freely give leave to amend a complaint that has  
10 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when  
11 “the court determines that the allegation of other facts consistent with the challenged  
12 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*  
13 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d  
14 1122, 1127 (9th Cir. 2000).

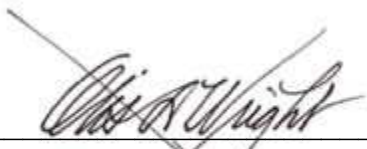
15 Plaintiff does not request leave to amend; nor does the Court find that leave to  
16 amend would be proper. Amendment would be futile as it could not possibly cure the  
17 deficiencies in Plaintiff’s Complaint. No amendment could change the fact, as alleged  
18 in Plaintiff’s Complaint, that Plaintiff continues to meet both its obligations under the  
19 federal laws discussed above and the Charity Care Condition, and that the Charity  
20 Care Condition does not stand as an obstacle to the federal laws previously discussed.  
21 Accordingly, the Motion to Dismiss is granted without leave to amend.

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**VI. CONCLUSION**

For the reasons discussed above, the Court **GRANTS** Defendant's Motion to Dismiss without leave to amend as amendment would be futile. (ECF No. 24.) The Clerk of the Court shall close the case.

February 6, 2019



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