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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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HOWARD JARVIS TAXPAYERS  
ASSOCIATION, JONATHAN COUPAL,  
and DEBRA DESROSIERS,

No. 2:18-cv-01584-MCE-KJN

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Plaintiffs,

**MEMORANDUM AND ORDER**

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v.

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THE CALIFORNIA SECURE CHOICE  
RETIREMENT SAVINGS PROGRAM  
and JOHN CHIANG, in his official  
capacity as Chair of the CALIFORNIA  
SECURE CHOICE RETIREMENT  
SAVINGS INVESTMENT BOARD,

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Defendants.

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The Howard Jarvis Taxpayers Association (“HJTA”) and individually named HJTA

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employees Jonathan Coupal and Debra Desrosiers (“HJTA Employees”) (collectively,

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“Plaintiffs”) filed this action against the California Secure Choice Retirement Savings

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Program (“CalSavers” or “the Program”) and California State Treasurer John Chiang

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(“Treasurer”) (collectively, “Defendants”) contending that the Employee Retirement

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Income Security Act (“ERISA” or “the Act”) preempts the Program. Plaintiffs’ Complaint

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requests two forms of relief: first, a declaratory judgment that CalSavers is preempted by

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ERISA; and second, an injunction pursuant to California Code of Civil Procedure

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Section 526a to permanently enjoin spending of taxpayer funds on the Program.

1 Presently before the Court is Defendants’ Motion to Dismiss (ECF No. 9) pursuant to  
2 Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1),<sup>1</sup> contending, in part, that: (1)  
3 Plaintiffs lack standing; (2) the case is not ripe because CalSavers is not yet accepting  
4 enrollments; and (3) the CalSavers program does not create an ERISA plan and thus is  
5 not preempted. The motion has been fully briefed.

6 This case presents novel legal questions concerning state-mandated retirement  
7 savings accounts. While the matter implicates a significant body of judicial and  
8 regulatory interpretations of ERISA, it nevertheless coalesces around a single narrow  
9 question: does CalSavers, a state-mandated auto-enrollment retirement savings  
10 program, create an “employee benefit plan,” such that it is preempted by ERISA? For  
11 the reasons set forth below, this Court finds that it does not and therefore GRANTS  
12 Defendants’ Motion to Dismiss.<sup>2</sup>

## 13 14 BACKGROUND

15  
16 Congress enacted ERISA in 1974 “to promote the interests of employees and  
17 their beneficiaries in employee benefit plans” and to “eliminate the threat of conflicting or  
18 inconsistent State and local regulation of employee benefit plans.” Bd. of Trs. of the  
19 Glazing Health & Welfare Tr. v. Chambers, 903 F.3d 829, 845 (9th Cir. 2018) (citations  
20 omitted); see also ERISA, 88 Stat. 832, as amended, 29 U.S.C. §§ 1001–1461. While  
21 ERISA does not require employers to provide any minimum set of benefits to employees,  
22 if such plans are “established or maintained . . . by any employer,” they must conform to  
23 various reporting and fiduciary requirements of the Act. Chambers, 903 F.3d at 845  
24 (citing 29 U.S.C. § 1003(a)). Regarding ERISA’s effect on State statutes, it “supersedes  
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26 <sup>1</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless  
27 otherwise noted.

28 <sup>2</sup> Because oral argument would not have been of material assistance, the Court ordered this  
matter submitted on the briefs. E.D. Cal. Local R. 230(g).

1 any and all State laws insofar as they may now or hereafter relate to any employee  
2 benefit plan . . . .” Chambers, 903 F.3d at 837 (internal citations and quotation omitted)  
3 (emphasis added).

4 The term “employee benefit plan” is “defined only tautologically in the [ERISA]  
5 statute . . . being described as ‘an employee welfare benefit plan or employee pension  
6 benefit plan or a plan which is both an employee welfare benefit plan and an employee  
7 pension benefit plan.’” Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 8-9 (1987) (citing  
8 29 U.S.C. § 1002(3)). The lack of a definition of “employee benefit plan” led the  
9 Department of Labor (“DOL”)<sup>3</sup> to “clarify the limits” of an employee pension benefit plan  
10 for purposes of ERISA. Daniels-Hall v. Nat’l Educ. Ass’n, 629 F.3d 992, 1003–04  
11 (9th Cir. 2010). This clarification came in the form of a regulatory safe harbor in 1975  
12 (“1975 Safe Harbor”), which exempted certain Individual Retirement Account (“IRA”)  
13 plans. 29 C.F.R. § 2510.3-2(d); Daniels-Hall, 629 F.3d at 999. Under the 1975 Safe  
14 Harbor, employer payroll deductions for remittance to an employee’s IRA are exempted  
15 from ERISA if:

16 (i) No contributions are made by the employer or employee  
17 association;

18 (ii) Participation is completely voluntary for employees or  
19 members;

20 (iii) The sole involvement of the employer or employee  
21 organization is without endorsement to permit the sponsor to  
22 publicize the program to employees or members, to collect  
23 contributions through payroll deductions or dues checkoffs and  
24 to remit them to the sponsor; and

25 (iv) The employer or employee organization receives no  
26 consideration in the form of cash or otherwise, other than  
27 reasonable compensation for services actually rendered in  
28 connection with payroll deductions or dues checkoffs.

29 C.F.R. § 2510.3-2(d)(1). “[A]n employer that qualifies for the [1975 Safe Harbor] is  
30 considered not to have established or maintained an employee pension benefit plan . . .

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31 <sup>3</sup> The DOL Secretary is empowered to enact regulations to carry out the provisions of ERISA.  
32 29 U.S.C. § 1135.

1 [and] would therefore not be considered an employee pension benefit plan” for purposes  
2 of ERISA. Daniels-Hall, 629 F.3d at 1003–04. Significant to the Court’s analysis here,  
3 discussed infra, is that the term “completely voluntary” is undefined within the 1975 Safe  
4 Harbor.

5 Defendants contend that in recent years a growing number of citizens lack  
6 sufficient retirement income. In response, several states began exploring state-run  
7 retirement savings programs. In 2012, the California Legislature passed the California  
8 Secure Choice Retirement Savings Trust Act, which created the CalSavers program to  
9 address the lack of retirement savings for many of the state’s citizens. Cal. Gov’t Code  
10 §§ 100000–100050. CalSavers creates a State-sponsored retirement savings plan for  
11 California employees who do not have access to an employer-provided plan. Cal. Gov’t  
12 Code § 100000(a), (c)–(d). The Program requires an “Eligible employer”<sup>4</sup> to “allow  
13 employee participation in the [CalSavers] program” via payroll deductions if that  
14 employer does not offer a retirement savings program of its own. Cal. Gov’t Code  
15 § 100032(b)–(d). Eligible employers must automatically enroll their employees and remit  
16 payroll deductions to the Program “unless the employee elects not to participate.” Cal.  
17 Gov’t Code § 100032(f)(1). That is, employees of Eligible employers are automatically  
18 enrolled, but can “opt out” of CalSavers if desired.

19 Faced with concerns that state-mandated retirement savings programs with “opt  
20 out,” as opposed to “opt in,” enrollments may not be “completely voluntary” as  
21 contemplated in the 1975 Safe Harbor, the DOL issued additional regulatory guidance in  
22 2016 (“2016 Safe Harbor”) establishing ERISA exemptions for state-sponsored auto-  
23 IRAs. See 81 FR 59464 (entitled “Savings Arrangements Established by States for Non-  
24 Governmental Employees”). The preamble to the 2016 Safe Harbor explained:

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26 <sup>4</sup> “Eligible employer” is defined as “a person or entity engaged in a business, industry, profession,  
27 trade, or other enterprise in the state, whether for profit or not for profit, excluding the federal government,  
28 the state, any county, any municipal corporation, or any of the state’s units or instrumentalities, that has  
five or more employees and that satisfies the requirements to establish or participate in a payroll deposit  
retirement savings arrangement.” Cal. Gov’t Code § 100000(d)(1).

1 With regard to the 1975 IRA Payroll Deduction Safe Harbor's  
2 condition requiring that an employee's participation be  
3 "completely voluntary," the Department intended this term to  
4 mean that the employee's enrollment in the program must be  
5 self-initiated. In other words, under the safe harbor, the  
6 decision to enroll in the program must be made by the  
7 employee, not the employer. If the employer automatically  
8 enrolls employees in a benefit program, the employees'  
9 participation would not be "completely voluntary" and the  
10 employer's actions would constitute the "establishment" of a  
11 pension plan, within the meaning of ERISA . . . . This is true  
12 even if the employee can affirmatively opt out of the program.

13 81 FR 59464, 59465 (emphasis added). The 2016 Safe Harbor set up a "voluntary"  
14 participation standard for "state required and administered programs," such that  
15 "automatic enrollment arrangements with employee opt-out features" would be expressly  
16 exempt from ERISA. 80 FR 72006, 72009. That the 2016 Safe Harbor would have  
17 exempted CalSavers from ERISA's provisions is undisputed. However, under the  
18 Congressional Review Act, Congress passed legislation in 2017 repealing the 2016 Safe  
19 Harbor, which the President signed into law.<sup>5</sup> Subsequent to the repeal of the 2016 Safe  
20 Harbor, California has continued in its efforts to implement the CalSavers program,  
21 which gave rise to this current action.

22 Plaintiffs filed their Complaint on May 31, 2018 (ECF No. 1), which Defendants  
23 moved to dismiss via the present Motion on July 25, 2018. ECF No. 9. After  
24 consideration of the Parties' briefs, the Court ordered supplemental briefings concerning  
25 interpretations of the 1975 Safe Harbor's "completely voluntary" requirement and how, if  
26 at all, this requirement applies to CalSavers, as well as how the principals of conflict and  
27 field preemption may apply in the ERISA context. ECF No. 19. Plaintiffs and  
28 Defendants filed their supplemental briefs on November 15, 2018. ECF Nos. 21 and 22.

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<sup>5</sup> See 115 P.L. 35, 131 Stat. 848 ("Congress disapproves the rule submitted by the Department of Labor relating to 'Savings Arrangements Established by States for Non-Governmental Employees' [ ] and such rule shall have no force or effect.") (citation omitted).



1 Savage v. Glendale High Union Sch. Dist. No. 205, 343 F.3d 1036, 1039 n.1 (9th Cir.  
2 2003). In the case of a facial attack, the motion to dismiss is granted only if the  
3 nonmoving party fails to allege an element necessary for subject matter jurisdiction. Id.  
4 However, in the case of a factual attack, district courts “may review evidence beyond the  
5 complaint without converting the motion to dismiss into a motion for summary judgment.”  
6 Safe Air for Everyone, 373 F.3d at 1039.

7 In the case of a factual attack, “no presumptive truthfulness attaches to plaintiff’s  
8 allegations.” Thornill, 594 F.2d at 733 (internal citation omitted). The party opposing the  
9 motion has the burden of proving that subject matter jurisdiction does exist, and must  
10 present any necessary evidence to satisfy this burden. St. Clair v. City of Chico,  
11 880 F.2d 199, 201 (9th Cir. 1989). If the plaintiff’s allegations of jurisdictional facts are  
12 challenged by the adversary in the appropriate manner, the plaintiff cannot rest on the  
13 mere assertion that factual issues may exist. Trentacosta v. Frontier Pac. Aircraft Ind.,  
14 Inc., 813 F.2d 1553, 1558 (9th Cir. 1987) (quoting Exch. Nat’l Bank of Chi. v. Touche  
15 Ross & Co., 544 F.2d 1126, 1131 (2d Cir. 1976)). Furthermore, the district court may  
16 review any evidence necessary, including affidavits and testimony, in order to determine  
17 whether subject matter jurisdiction exists. McCarthy v. United States, 850 F.2d 558, 560  
18 (9th Cir. 1988); Thornhill, 594 F.2d at 733. If the nonmoving party fails to meet its  
19 burden and the court determines that it lacks subject matter jurisdiction, the court must  
20 dismiss the action. Fed. R. Civ. P. 12(h)(3).

21 **B. Rule 12(b)(6)**

22 On a motion to dismiss for failure to state a claim under Rule 12(b)(6), all  
23 allegations of material fact must be accepted as true and construed in the light most  
24 favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38  
25 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain statement of the claim  
26 showing that the pleader is entitled to relief’ in order to ‘give the defendant fair notice of  
27 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly,  
28 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A

1 complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual  
2 allegations. However, “a plaintiff’s obligation to provide the grounds of his entitlement to  
3 relief requires more than labels and conclusions, and a formulaic recitation of the  
4 elements of a cause of action will not do.” Id. (internal citations and quotations omitted).  
5 A court is not required to accept as true a “legal conclusion couched as a factual  
6 allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at  
7 555). “Factual allegations must be enough to raise a right to relief above the speculative  
8 level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller,  
9 Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must  
10 contain something more than “a statement of facts that merely creates a suspicion [of] a  
11 legally cognizable right of action”)).

12 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
13 assertion, of entitlement to relief.” Twombly, 550 U.S. at 555 n.3 (internal citations and  
14 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard  
15 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of  
16 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing Wright &  
17 Miller, supra, at 94, 95). A pleading must contain “only enough facts to state a claim to  
18 relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have not nudged their  
19 claims across the line from conceivable to plausible, their complaint must be dismissed.”  
20 Id. However, “[a] well-pleaded complaint may proceed even if it strikes a savvy judge  
21 that actual proof of those facts is improbable, and ‘that a recovery is very remote and  
22 unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

### 23 **C. Leave to Amend**

24 A court granting a motion to dismiss a complaint must then decide whether to  
25 grant leave to amend. Leave to amend should be “freely given” where there is no  
26 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice  
27 to the opposing party by virtue of allowance of the amendment, [or] futility of the  
28 amendment . . . .” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.

1 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to  
2 be considered when deciding whether to grant leave to amend). Not all of these factors  
3 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .  
4 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,  
5 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that  
6 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,  
7 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,  
8 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.  
9 1989) (“Leave need not be granted where the amendment of the complaint . . .  
10 constitutes an exercise in futility . . .”)).

## 11 12 ANALYSIS

### 13 14 A. Standing

15 Defendants move under both Rules 12(b)(1) for lack of subject matter jurisdiction  
16 and 12(b)(6) for failure to state a claim, asserting that Plaintiffs lack Article III and ERISA  
17 standing. Article III standing, unlike statutory standing, is a jurisdictional requirement  
18 that Plaintiffs, as the parties invoking federal jurisdiction in this matter, have the burden  
19 of establishing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). It requires not  
20 only an injury in fact, but also a causal connection between Defendants’ conduct and a  
21 showing that action by the Court can redress that injury:

22 First, the plaintiff must have suffered an “injury in fact” – an  
23 invasion of a legally protected interest which is (a) concrete  
24 and particularized, and (b) “actual or imminent, not conjectural  
25 or hypothetical.” . . . Second, there must be a causal connection  
26 between the injury and the conduct complained of-- the injury  
27 has to be “fairly traceable to the challenged action of the  
defendant, and not the result of the independent action of  
some third party not before the court.” . . . Third, it must be  
“likely,” as opposed to merely “speculative,” that the injury will  
be “redressed by a favorable decision.”

28 Id. at 560-61 (internal citation and formatting omitted).

1 Here, HJTA asserts standing as an employer of California workers, as well as  
2 associational standing based on its members. ECF No. 16 at 2, 10. HJTA Employees  
3 allude to standing as California taxpayers. Id. at 5. Conversely, Defendants contend  
4 that each Plaintiff lacks standing because CalSavers is not open for enrollment and  
5 therefore no injury could have been caused by the Program.<sup>6</sup> ECF No. 9 at 9. As to  
6 HJTA’s associational standing, Defendants argue that the issues presented in this case  
7 are not germane to HJTA’s purpose as an organization (i.e., taxpayers’ rights). ECF  
8 No. 18 at 4–5. Finally, Defendants additionally argue that HJTA Employees lack  
9 standing because even if CalSavers creates an ERISA plan, they are not “participants” in  
10 the plan because they are not enrolled. Id. at 10–11.

11 As to the HJTA Employees, the Court finds that they lack standing. They are not  
12 yet participating in an ERISA plan, and their potential injuries, if any, are too remote to  
13 confer standing. See Miller v. Rite Aid Corp., 504 F.3d 1102, 1105–06 (9th Cir. 2007)  
14 (“civil action under ERISA may be brought by a ‘participant’ in or ‘beneficiary’ of an  
15 ERISA plan . . . [and] [w]e have repeatedly held that whether a living party is a  
16 ‘participant’ or ‘beneficiary’ is determined as of the time the lawsuit is filed.”) (emphasis  
17 added). Also, Plaintiffs cannot assert taxpayer standing to gain access to Federal Court.  
18 DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 346 (2006).

19 Turning to HJTA’s contentions regarding associational standing, the Court agrees  
20 with Defendants that the issues presented in this case are not germane to HJTA’s  
21 purpose such that it would be able to assert standing on behalf of its members.  
22 However, the Court nonetheless further finds that HJTA does have standing as an  
23 “Eligible employer” under the Program. If CalSavers does not create an ERISA plan,  
24 HJTA lacks ERISA standing—however, if the Program does create an ERISA plan,  
25 HJTA has both Article III and statutory standing as a potential plan fiduciary. The  
26 arguments concerning HJTA’s ERISA standing thus intertwine with the ultimate  
27 preemption questions of this case, and touch upon substantive elements of HJTA’s

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28 <sup>6</sup> Enrollment was projected to begin by the end of 2018 or early 2019. ECF No. 9 at 4.

1 claims. Precedent supports treating these situations as “nonjurisdictional” because  
2 HJTA’s “statutory standing or lack thereof under ERISA does not affect whether the  
3 Court has subject matter jurisdiction . . . [w]hether [a plaintiff] is a [plan] participant for  
4 purposes of ERISA is a substantive element of his claim, not a prerequisite for subject  
5 matter jurisdiction.” Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 971  
6 (9th Cir. 2012). Accordingly, for present purposes, the Court finds that HJTA has  
7 standing as a potential ERISA plan fiduciary.

8 **B. Ripeness**

9 The doctrine of ripeness is also a jurisdictional concept designed “to prevent the  
10 courts, through premature adjudication, from entangling themselves in abstract  
11 disagreements” that do not yet rise to the level of a concrete case or controversy.  
12 Thomas v. Union Carbide Agric. Prod. Co., 473 U.S. 568, 580 (1985). Whereas  
13 standing is concerned with whether the right party is suing, ripeness hinges on whether  
14 the lawsuit is brought at the proper time. See id. (citing Regional Rail Reorg. Act Cases,  
15 419 U.S. 102, 140 (1974)). “A claim is not ripe for adjudication if it rests upon ‘contingent  
16 future events that may not occur as anticipated, or indeed may not occur at all.’”  
17 Texas v. U.S., 523 U.S. 296, 300 (1998), citing Thomas, 473 U.S. at 580–81. The  
18 ripeness inquiry has thus been characterized as “standing on a timeline” in which the key  
19 determination is whether the case and controversy is such that judicial intervention is  
20 necessary. Bova v. City of Medford, 564 F.3d 1093, 1096 (9th Cir. 2009).  
21 Consequently, while ripeness and standing are related concepts and tend to significantly  
22 overlap, particularly in pre-enforcement challenges to laws and regulations, they still  
23 should be addressed separately. See, e.g., Eternal Word Tel. Network, Inc. v. Sebelius,  
24 935 F. Supp. 2d 1196, 1213 (N.D. Ala. 2013).

25 Defendants contend that this case is not ripe because enrollments have not yet  
26 occurred, CalSavers’ Board of Directors has not published final regulations, and HJTA  
27 would not be subject to CalSavers’ requirements for at least 36 months given its current  
28 number of employees. ECF No. 9 at 8. Plaintiffs of course disagree, pointing to the

1 2012 statute that created CalSavers and which provides that the Program “is approved  
2 by the Legislature and implemented as of January 1, 2017.” Cal. Gov’t Code § 100046  
3 (emphasis added). Plaintiffs have the better argument. CalSavers was enacted in 2012,  
4 is “implemented” as of 2017, and is on the eve of enrolling its first participants. Its most  
5 contentious requirement—the mandatory auto-enrollment feature—is already  
6 established. Furthermore, if CalSavers creates an ERISA plan, the harm to HJTA in  
7 becoming a forced fiduciary would be “reasonable and imminent, and not merely  
8 theoretically possible.” ProtectMarriage.com - Yes on 8 v. Bowen, 752 F.3d 827, 838–39  
9 (9th Cir. 2014); see also Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936, 945 (2016) (“[a]  
10 plan need not wait to bring a pre-emption claim until confronted with numerous  
11 inconsistent obligations and encumbered with any ensuing costs.”). Therefore, the Court  
12 finds that this case is ripe for adjudication.

### 13 **C. Preemption**

14 The heart of the parties’ dispute ultimately lies in their preemption arguments.  
15 The Court first addresses the 1975 Safe Harbor’s application to CalSavers, then turns to  
16 an analysis of preemption in the ERISA context.

#### 17 **1. CalSavers is not entitled to the exemptions set forth in the 1975** 18 **Safe Harbor.**

19 If CalSavers meets the requirements of the 1975 Safe Harbor, ERISA does not  
20 preempt it. The 1975 Safe Harbor outlined four requirements for ERISA exclusion of  
21 employer payroll deduction IRAs: (1) no employer contributions are allowed;  
22 (2) employee participation must be “completely voluntary”; (3) the employer cannot  
23 endorse the program; and (4) the employer cannot receive compensation from the  
24 program. 29 C.F.R. § 2510.3-2(d). Only one of these factors—whether CalSavers is  
25 completely voluntary—is at issue here.

26 Plaintiffs contend that if employers automatically enroll their employees into  
27 CalSavers, as is mandated by the California law, the Program is not completely  
28 voluntary and thus establishes an ERISA plan. ECF No. 16 at 15–16. Indeed, the

1 preamble to the 2016 Safe Harbor explained that the new regulation was necessary  
2 because state-mandated IRAs with auto-enrollment features would fall outside the  
3 provisions of the 1975 Safe Harbor. 81 FR 59464, 59465. This arises from the DOL’s  
4 2016 interpretation that “completely voluntary” under 1975 Safe Harbor requires that the  
5 employee initiate participation. Yet, no other authorities support this interpretation of  
6 “completely voluntary” with regard to state action; Plaintiffs did not give any, and simply  
7 rely upon the 2016 Safe Harbor to support this premise. See ECF No. 16 at 15. An  
8 agency’s interpretation of its own regulation is given significant deference. See Udall v.  
9 Tallman, 380 U.S. 1, 16 (1965) (“[w]hen the construction of an administrative regulation  
10 rather than a statute is in issue, deference [to the agency charged with its administration]  
11 is even more clearly in order.”). However, in repealing the 2016 Safe Harbor pursuant to  
12 the Congressional Review Act, Congress repealed the DOL’s interpretation of the  
13 matters at issue here, making determining congressional intent more difficult.

14 That said, based on the record as a whole, the Court declines to hold that  
15 CalSavers is subject to the exemptions afforded by the 1975 Safe Harbor. But that does  
16 not end the Court’s analysis if resort to a safe harbor is unnecessary in the first place.  
17 Accordingly, it must still examine Plaintiff’s claims under traditional federal preemption  
18 principles.

19 **2. Regardless of Whether CalSavers is Covered by the 1975 Safe**  
20 **Harbor, it is Still Not Preempted by ERISA.**

21 The Ninth Circuit has recently held that “under the modern approach a state law is  
22 not preempted merely because it has a literal ‘connection with’ an ERISA  
23 plan . . . . Instead, the law must actually ‘govern[ ] . . . a central matter of plan  
24 administration’ or ‘interfere[ ] with nationally uniform plan administration.’” Chambers,  
25 903 F.3d at 847 (citation omitted) (citing Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936,  
26 943 (2016)) (emphasis in original). Neither of these prohibited actions occur as a result  
27 of CalSavers.

28 ///

1 Here, Eligible employers are required to adhere to the administrative  
2 requirements of CalSavers, but because the Program only applies to employers without  
3 existing retirement plans, no ERISA plans are “governed” or “interfered” with because of  
4 the statute. See Cal. Gov’t Code § 100032(g)(1) (“An employer that provides an  
5 employer-sponsored retirement plan . . . shall be exempt from the requirements of  
6 [CalSavers].”). The primary purposes of ERISA are to (1) protect the interests of  
7 employees in receiving the benefits promised by an employer and (2) protect employers  
8 from the burdens of meeting multiple regulatory requirements for managing ERISA  
9 plans. Chambers, 903 F.3d at 845. Yet, Eligible employers are not required to make  
10 any promises to employees—they simply remit payroll deducted payments to the  
11 Program and otherwise have no discretion regarding the funds. Such ministerial duties  
12 fall outside of scope of conduct that Congress intended to regulate in enacting ERISA.  
13 See Golden Gate Rest. Ass’n v. City & Cty. of S.F., 546 F.3d 639, 650 (9th Cir. 2008) (“It  
14 is within the exercise of [ ] discretion that an employer has the opportunity to engage in  
15 the mismanagement of funds and other abuses with which Congress was concerned  
16 when it enacted ERISA.”).

17 Defendants cite several cases tending to show that state mandates concerning  
18 employee benefits are not preempted if the law does not force employers to create or  
19 alter ERISA plans. In Golden Gate, the court upheld a San Francisco ordinance  
20 requiring employers within the city to make minimum health care expenditures on behalf  
21 of their employees. 546 F.3d at 642. Employers who met minimum spending  
22 requirements via other methods (such as existing ERISA plans) were not required to  
23 make additional payments, but employers who did not were required to make payments  
24 to a City-administered health care program. Id. at 643–46. The ordinance required  
25 employers to track workers who performed qualifying work within the city, to include the  
26 number of hours worked and calculations on previously paid health care expenditures.  
27 Id. at 651. In finding that the ordinance did not create an ERISA plan, the court provided  
28 that, “[a]n employer’s administrative obligations under the City-payment option do not run

1 the risk of mismanagement of funds or other abuse . . . [and that] . . . maintaining these  
2 records amount[ed] to nothing more than the exercise of ‘a modicum of discretion.’”  
3 Golden Gate, 546 F.3d at 651.

4 In Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987), the Court found that a  
5 Maine statute requiring employers who closed factories within the State to give one-time  
6 severance payments to impacted employees did not “relate to any employee benefit  
7 plan,” and thus was not preempted by ERISA. The Court reasoned, “[i]f a State creates  
8 no prospect of conflict with a federal statute, there is no warrant for disabling it from  
9 attempting to address uniquely local social and economic problems.” Id. at 19.

10 While Plaintiffs rely on Donovan v. Dillingham, 688 F.2d 1367, 1373 (11th Cir.  
11 1982) to support the contention that CalSavers falls within ERISA’s provisions, this  
12 reliance is misplaced. The Donovan court provided that, a “plan, fund, or program under  
13 ERISA is established if from the surrounding circumstances a reasonable person can  
14 ascertain the intended benefits, a class of beneficiaries, the source of financing, and  
15 procedures for receiving benefits.” Id. at 1373. However, the Ninth Circuit declined to  
16 apply this test when considering government mandates on employers, stating that “[w]e  
17 would be very hesitant to hold that the Donovan criteria apply to statutory administrative  
18 burdens imposed on an employer where, as here, that employer has made no promises  
19 whatsoever to its employees . . . .” Golden Gate, 546 F.3d at 652. This Court holds the  
20 same hesitation here.

21 Finding that ERISA preempts CalSavers would be out-of-step with the underlying  
22 purposes of the Act. CalSavers does not govern a central matter of an ERISA plan’s  
23 administration, nor does it interfere with nationally uniform plan administration. On this

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1 basis, the Court finds that CalSavers is not preempted by ERISA. Accordingly,  
2 Defendants' Motion to Dismiss is GRANTED.<sup>7, 8</sup>

3  
4 **CONCLUSION**

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6 For all the foregoing reasons, Defendants' Motion to Dismiss (ECF No. 9) is  
7 GRANTED. Because CalSavers is not subject to preemption under ERISA, the Court  
8 further finds that providing Plaintiffs leave to amend would be futile. Accordingly,  
9 Plaintiffs' claims are hereby DISMISSED with one final leave to amend. The Court is  
10 very aware of the importance of this case and considered granting this motion without  
11 leave to amend. However, notwithstanding the Court's concern, allowing one final  
12 opportunity to amend may be in the parties' best interest. Plaintiffs will have twenty (20)  
13 days from the date this order is electronically filed to file an amended complaint. If no  
14 amended complaint is filed within said time period, this case will be dismissed without  
15 leave to amend with no further notice to the parties.

16 IT IS SO ORDERED.

17 Dated: March 28, 2019

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20 MORRISON C. ENGLAND, JR.  
21 UNITED STATES DISTRICT JUDGE  
22

23  
24 <sup>7</sup> Under Federal Rule of Evidence 201, a court may take judicial notice of matters which are "not  
25 subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the  
26 trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot  
27 reasonably be questioned." Fed. R. Evid. 201(b); Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir.  
28 2001). For purposes of the present Motion, Defendants' Requests for Judicial Notice ("RJN"), ECF  
Nos. 10 and 23, and Plaintiffs' RJN, ECF No. 17, are GRANTED.

<sup>8</sup> Defendants raise other contentions that Plaintiffs' claims are barred by the Eleventh  
Amendment. ECF No. 9 at 2, 19–20. However, given the ruling on Defendants' Motion, the Court finds it  
unnecessary to address these arguments.