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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12
13 ERICA JIMENEZ, individually and on
14 behalf of a class of similarly situated
individuals,

15 Plaintiff,

16 v.

17 DR. ERICA PAN, in her official
capacity as Director of the California
18 Department of Public Health;
DR. BARBARA FERRER, in her
19 official capacity as Director of the Los
Angeles County Department of Public
20 Health; MANUEL CARMONA, in his
official capacity as the Director of
21 Public Health for the Pasadena Public
Health Department; LOS ANGELES
22 COUNTY DEPARTMENT OF
PUBLIC HEALTH; and PASADENA
23 PUBLIC HEALTH DEPARTMENT,

24 Defendants.
25
26
27
28

CASE NO. 2:26-cv-03500 SPG (SPx)

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO F.R.C.P.
RULE 12(B)(1)**

Hearing Date: September 30, 2026
Hearing Time: 1:30 p.m.
Courtroom: 5C

Assigned to the Hon. Sherilyn Peace
Garnett and Magistrate Judge Sheri Pym

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3		
4	I. INTRODUCTION	4
5	II. PLAINTIFF LACKS STANDING	4
6	A. This Court’s August 28, 2026 Order Controls.....	4
7	1. The Court’s Uncontroverted Factual Findings	5
8	2. The Court’s Unchallenged Legal Conclusions.....	6
9	(a) The BIH Program Website and Form Were Not a	
10	Barrier.....	6
11	(b) Plaintiff Was Not “Ready and Able” to Apply	8
12	B. Plaintiff’s New Declaration is Not Credible.....	9
13	C. Plaintiff’s Remaining Arguments Do Not Establish Standing	11
14	1. Plaintiff’s Recasting of Her Injury Does Not Confer	
15	Standing	11
16	2. Plaintiff Attacks Strawmen and Hypothetical Harms	12
17	3. Plaintiff’s Futility Argument Has Already Been Rejected.....	14
18	D. Plaintiff’s Story About the City’s Letter Makes No Sense.....	14
19	E. Plaintiff Cannot Amend as a Matter of Law	15
20	III. CONCLUSION	16
21	CERTIFICATE OF COMPLIANCE.....	17
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>Airs Aromatics, LLC v. Victoria's Secret Stores Brand Mgmt., Inc.</i> , 744 F.3d 595 (9th Cir. 2014).....	16
<i>Alexandre v. Amazon.com, Inc.</i> , 2024 WL 2445705 (S.D. Cal. May 23, 2024).....	14
<i>Anderson v. United States</i> , 606 F. Supp. 3d 1040 (E.D. Wash. 2022)	10
<i>Cal. Trout, Inc. v. U.S. Bureau of Reclamation</i> , 115 F. Supp. 3d 1102 (C.D. Cal. 2015).....	10
<i>Carney v. Adams</i> , 592 U.S. 53 (2020)	8
<i>Carroll v. Nakatani</i> , 342 F.3d 934 (9th Cir. 2003).....	12, 14
<i>Fed. Election Comm'n v. Cruz</i> , 596 U.S. 289 (2022)	13
<i>Fed. Trade Comm'n v. Cardiff</i> , 2021 WL 12301359 (C.D. Cal. July 20, 2021)	5
<i>Food & Drug Admin. v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024)	15
<i>Hale v. Brinker Int'l, Inc.</i> , 2023 WL 5600293 (N.D. Cal. Aug. 29, 2023).....	12
<i>Int'l Partners for Ethical Care Inc v. Ferguson</i> , 146 F.4th 841 (9th Cir. 2025).....	13
<i>N.E. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.</i> 508 U.S. 656 (1993)	11

1 **I. INTRODUCTION**

2 Like her lawsuit, Plaintiff's Opposition to the County's Motion to Dismiss is
3 premised upon a façade. It relies on a new declaration from Plaintiff who now
4 conveniently states that "after further review and recollection" she has a new story
5 to tell this Court. But try as she might to rewrite facts and recast the relief she seeks,
6 she cannot meet her burden to establish standing.

7 Plaintiff's Opposition cannot sidestep the thorough factfinding and
8 conclusions in this Court's August 28, 2026 Order ("August 28 Order"). (*See* Dkt.
9 44 [Aug. 28 Order].) Plaintiff also fails to explain why she ignored the City of
10 Pasadena's letter (the "City Letter") inviting her to the Black Infant Health ("BIH")
11 Program. Her decision not to respond to the letter, let alone pursue enrollment in
12 the program—based on her subjective claim that she did not believe the offer was
13 "sincere"—further proves that she lacks standing. Plaintiff cannot escape the reality
14 that she never actually applied to the BIH Program, was never turned away due to
15 her race, and does not actually want to participate in the program.

16 Plaintiff's ideological opposition to a program that provides critical services
17 for infants and mothers does not imbue her with standing. The Court should dismiss
18 the case with prejudice.

19 **II. PLAINTIFF LACKS STANDING**

20 **A. This Court's August 28, 2026 Order Controls**

21 On August 28, 2026, this Court issued its thorough and well-reasoned order
22 denying Plaintiff's Motion for a Preliminary Injunction because Plaintiff lacks
23 standing. (*See* Dkt. 44 [Aug. 28 Order].) Rather than addressing the Court's ruling
24 head on, Plaintiff sidesteps the Order as if it does not exist, referencing it only once
25 in a throwaway sentence. (Opp. at 6:12–14.) Plaintiff does not offer any
26 meaningful facts or law to show why the Court's factual findings and holdings do
27 not apply here.

1 **1. The Court’s Uncontroverted Factual Findings**

2 The Court’s order made extensive findings of fact. (Dkt. 44 [Aug 28 Order]
3 at 2:19–14:12.) Plaintiff has not moved for reconsideration of that order, and does
4 not challenge those findings as part of her Opposition. Those factual findings
5 should control here. *See, e.g., Fed. Trade Comm’n v. Cardiff*, No. ED CV 18-2104-
6 DMG (PLAx), 2021 WL 12301359, at *5 (C.D. Cal. July 20, 2021) (the “Court
7 therefore sees no reason to revisit its prior factual findings.”)

8 The Court extensively detailed the genesis of the BIH Program, and the vital
9 reasons for its existence. (Dkt. 44 [Aug. 28 Order] at 2:21–6:15.) It then discussed
10 how the BIH Program was implemented across the State of California and within
11 Los Angeles County specifically. (*Id.* at 6:16–11:20.) The Court noted that the
12 California Department of Public Health (“CDPH”) provides BIH Program
13 administrators with a recruitment form that lists the reasons why an applicant
14 ultimately may not enroll in the BIH Program. (*Id.* at 10:3–7.) Race is not listed as
15 a reason, and nowhere does the form request the applicant provide information
16 about their race. (*Id.*)

17 The Court also cited the statements from the State and City of Pasadena’s
18 witnesses that they are unaware of anyone who was denied entry into the program
19 based upon their race. (Dkt. 44 [Aug. 28 Order] at 10:10–11, 11:16–20.)

20 The Court then turned to Plaintiff’s stated interest with the BIH Program. It
21 discussed the very same interest form that Plaintiff now appends to her new
22 declaration. (*Compare* Dkt. 44 [Aug. 28 Order] at 12:4–15 *with* Dkt. 45-10 [New
23 Jimenez Decl.] Ex. A.) It correctly found that neither that form nor the BIH
24 webpage expressly state that the BIH Program prohibits non-Black mothers and
25 infants from joining the program. (Dkt. 44 [Aug. 28 Order] at 12:12–15.)

26 The Court then discussed the conversation between Plaintiff and City of
27 Pasadena BIH Program coordinator McKenzie Scott. (Dkt. 44 [Aug. 28 Order] at
28 13:4–26.) It noted Ms. Scott’s sworn written testimony that she was not trained to

1 tell, and never told, any applicant that they were not eligible to participate in the
2 BIH Program via the telephone. (*Id.* at 13:18–20.) The Court also highlighted Ms.
3 Scott’s statement that she never told Plaintiff that she was ineligible for, or she was
4 denied admission to, the BIH Program. (*Id.* at 13:13–15.) As for Plaintiff’s
5 account, the Court correctly noted that Plaintiff simply stated that Ms. Scott
6 “indicated” that the BIH Program was “not for” Plaintiff. (*Id.* at 13:25–26.)

7 The Court concluded by finding that, after Plaintiff’s February 27, 2026 call,
8 Plaintiff took no other steps to participate in the BIH Program. (Dkt. 44 [Aug. 28
9 Order] at 14:1–12.) This remains true to this day. Despite receiving the City’s
10 Letter to complete the enrollment process, Plaintiff *still* refused to engage. (*See* Dkt.
11 39-1 [Motion to Dismiss] at 12:1–21.) Although Plaintiff attempts to spin a new
12 tale about her telephone call with Ms. Scott (*see infra* § II.B) her new declaration
13 does not otherwise attempt to controvert any of these settled factual findings.

14 **2. The Court’s Unchallenged Legal Conclusions**

15 The Court began by noting that Plaintiff has framed her dispute as an “as-
16 applied” challenge to the BIH Program as opposed to a facial challenge. (Dkt. 44
17 [Aug. 28 Order] at 17 n.1) After surveying the legal landscape, the Court concluded
18 that Plaintiff could not show standing because: (1) she showed no racial barrier to
19 the BIH Program as it applied to her; and (2) she has not shown she is ready and
20 able to participate in the BIH Program. (*Id.* at 24:24–27.) As discussed below,
21 although the Court’s conclusions were presented in a different procedural posture,
22 Plaintiff presents no new facts that mandate setting those conclusions aside here.

23 **(a) The BIH Program Website and Form Were Not a** 24 **Barrier**

25 The Court correctly noted that Plaintiff did not highlight any language, at any
26 State, County, or local level, to establish that race was a disqualifier for non-Black
27 applicants. (Dkt. 44 [Aug. 28 Order] at 26:10–20.) It further highlighted that
28 Plaintiff had not provided any evidence how a simple description on a website

1 “imposed a barrier preventing her in particular from applying to and participating in
2 the Program.” (*Id.* at 26:22–24.) Nor had Plaintiff stated that any content on the
3 City of Pasadena’s website discouraged her from obtaining and completing the
4 interest form. (*Id.* at 27:1–8.)

5 Notably, the Court questioned why Plaintiff did not “describe at all how she
6 learned of or arrived at the BIH Program on the [City of Pasadena] website.” (Dkt.
7 44 [Aug. 28 Order] at 26:24–26.) Plaintiff’s new declaration does not answer the
8 Court’s question either, for a reason which is increasingly clear: Plaintiff attempted
9 a coordinated attack on the BIH Program to manufacture an injury for the sole
10 purpose of bringing a lawsuit. (*See* Dkt. 45-10 [New Jimenez Decl.] ¶ 4 (stating
11 Plaintiff wanted to apply to the BIH Program simply “to confirm whether applicants
12 of a different race could access the program”).) This is the antithesis of standing.

13 In arriving at its conclusion, therefore, the Court correctly discounted
14 Plaintiff’s banging the table about the BIH Program’s online form and description.
15 (Dkt. 44 [Aug. 28 Order] at 27:17–28:11.) Yet Plaintiff—who had the benefit of
16 this Court’s Order prior to writing her Opposition—ignores the Court and repeatedly
17 goes back to the well of the BIH Program’s online application and program
18 descriptions. (*E.g.*, Opp. at 9:17–19.)

19 Next, the Court noted that Plaintiff’s only detail from her conversation with
20 Ms. Scott was that the latter “indicated” that the BIH Program was not for Plaintiff.
21 (Dkt. 44 [Aug. 28 Order] at 28:12–13.) The Court further found how Plaintiff’s
22 counsel doubled-down on these statements at the parties’ May 27, 2026, hearing,
23 saying it was Ms. Scott’s offering of alternative programs—not anything else—that
24 dissuaded Plaintiff from applying to the BIH Program. (*Id.* at 28:18–23.) Plaintiff
25 now provides an entirely different account of her conversation with Ms. Scott. (*See*
26 Dkt. 45-10 [New Jimenez Decl.] ¶ 5.) As discussed *infra*, this contradictory account
27 should be disregarded. (*See infra* § II.B.)

28 ///

1 Last, the Court discounted Plaintiff’s grievances about the BIH Program’s
2 exception procedure, noting simply that the procedure was not at issue for Plaintiff
3 at that time. (Dkt. 44 [Aug. 28 Order] at 29:15–30:8.) Nothing has changed. As
4 discussed in the County’s Motion, Plaintiff was offered a chance by the City of
5 Pasadena to pursue enrollment in the BIH Program, but Plaintiff ignored the City’s
6 Letter. (See Dkt. 39-1 [Motion to Dismiss] at 12:1–21.) Plaintiff now claims that
7 one of the reasons she did not respond to the City’s Letter is because the letter was
8 premised upon this same exception procedure. (See *infra* § II.D.) Wrong. The
9 City’s Letter contains no reference to the exception procedure at all. (See Dkt. 43
10 [Cusick Decl.] Ex. A [City Letter].)

11 (b) **Plaintiff Was Not “Ready and Able” to Apply**

12 In addition to the above, the Court held Plaintiff could not satisfy standing
13 because she could not establish she was “ready and able to apply” to the BIH
14 Program. (Dkt. 44 [Aug. 28 Order] at 30:11–34:24.) The Court compared
15 Plaintiff’s inaction to cases upon which Plaintiff now relies in her Opposition, such
16 as *Carney v. Adams*, 592 U.S. 53 (2020). (Compare Dkt. 44 [Aug. 28 Order] at
17 30:21–31:5 & 31:26–32:16 with Opp. 17:1–3.) Plaintiff does not cite to or dispute
18 the Court’s order, she merely pretends it does not exist. This is Plaintiff’s choice,
19 but she cannot now be heard to challenge the Court’s well-reasoned and settled legal
20 conclusions as to standing.

21 Elsewhere, the Court noted that Plaintiff abandoned her interest in the BIH
22 Program following her telephone call with Ms. Scott, and that her mere completion
23 of an interest form was insufficient to show that Plaintiff was ready and able to
24 apply. (Dkt. 44 [Aug. 28 Order] at 32:17–23.) Not only does that remain true, but
25 now there is even *more* evidence of Plaintiff abandoning any feigned interest in the
26 BIH Program by failing to respond to the City’s Letter. (See Dkt. 39-1 [Motion to
27 Dismiss] at 12:1–21.)

28 ///

1 Last, the Court concluded no standing exists because Plaintiff could not show
2 that an application would be futile. (Dkt. 44 [Aug. 28 Order] at 33:22–34:16.)
3 Nothing has changed. Plaintiff’s Opposition trots out the same misleading and
4 inaccurate arguments and caselaw that were already rejected by this Court. (*See*
5 *Opp.* at 14:1–16:3.)

6 **B. Plaintiff’s New Declaration is Not Credible**

7 Desperate to escape the Court’s prior order, Plaintiff invents a new account of
8 her conversation with Ms. Scott.

9 In connection with her Motion for a Preliminary Injunction, Plaintiff provided
10 sworn written testimony about her telephone call with Ms. Scott and the
11 circumstances leading up to that call. (Dkt. 13-5 [Original Jimenez Decl.] ¶¶ 3–4.)
12 Plaintiff simply stated that, on February 23, 2026, she completed the BIH Program
13 interest form on the City’s website, and had a call with Ms. Scott on February 27.
14 (*Id.*) During that call, she said Ms. Scott merely “indicated” that “the program is not
15 for” Plaintiff. (*Id.* ¶ 4.)

16 Now, after what Plaintiff self-servingly describes as “further review and
17 recollection,” Plaintiff’s story is entirely different. (*See* Dkt. 45-10 [New Jimenez
18 Decl.] ¶ 3.) Now, Plaintiff says she wanted to apply to the program “to confirm
19 whether applicants of a different race could access the program.” (*Id.* ¶ 4.) Instead
20 of her prior testimony saying Ms. Scott only “indicated” the program was not for
21 Plaintiff, Plaintiff now states Ms. Scott said the program was only for individuals
22 who identify as Black, and that Ms. Scott explicitly said “No, you would not be
23 eligible.” (*Id.* ¶ 5.)¹

24
25 ¹ Plaintiff also misstates the contents of Ms. Scott’s declaration, insinuating that
26 Plaintiff and Ms. Scott’s accounts are identical except as to whether Ms. Scott said
27 Plaintiff was ineligible. (*Opp.* at 5:5–6.) This is false. Ms. Scott repeatedly made
28 clear she *never* told Plaintiff she was ineligible due to her race, nor does she even
discuss the issue of race in such calls. (*See* Dkt. 44 [Aug. 28 Order] at 13:13–20.)

1 Plaintiff has changed her tune in another curious respect. In her original
2 declaration, Plaintiff concluded by stating “If my race and ethnicity and the race and
3 ethnicity of my child were eligible, I would be ready and able to apply for the Black
4 Infant Health Program.” (Dkt. 13-5 [Original Jimenez Decl.] ¶ 6.) Now, Plaintiff
5 states: “I am ready and able to apply to the Black Infant Health Program *if my*
6 *application were considered on the same terms as any other applicant without*
7 *regard to my or my child’s race.*” (Dkt. 45-10 [New Jimenez Decl.] ¶ 8 (emphasis
8 added).) Plaintiff is attempting to move the goalposts; now that she knows she will
9 not be denied entry into the BIH Program, she is pivoting to a hypothetical
10 challenge about how her application *could be* considered. But crucially, nowhere in
11 Plaintiff’s new declaration does she state she is incapable of being admitted into the
12 BIH Program. Nor can she. To the contrary, she has been expressly invited but has
13 refused to engage.

14 “When examining a factual attack under Rule 12(b)(1) . . . ‘the court can
15 actually weigh evidence to confirm the existence of the factual predicates for
16 subject-matter jurisdiction.’” *Anderson v. United States*, 606 F. Supp. 3d 1040,
17 1050 (E.D. Wash. 2022) (citations omitted); *Cal. Trout, Inc. v. U.S. Bureau of*
18 *Reclamation*, 115 F. Supp. 3d 1102, 1109 (C.D. Cal. 2015) (“If the extrinsic
19 evidence produced is disputed, the court can weigh the evidence and determine the
20 facts in order to satisfy itself that it has the power to hear the case.”).

21 The reason for Plaintiff’s new narrative is clear: this has never been about
22 Plaintiff’s acceptance into the BIH Program, it was always about Plaintiff, for
23 personal or ideological reasons, wanting to challenge the BIH Program’s existence.
24 Consequently, Plaintiff is willing to change her testimony to try and circumvent the
25 Court’s Order and her standing deficiencies. She has even refused, without valid
26 justification, to pursue enrollment in a program that she previously told this Court—
27 under penalty of perjury—that she was able and ready to join. The Court can, and
28 should, disregard Plaintiff’s new sham testimony. Plaintiff still lacks standing.

1 **C. Plaintiff’s Remaining Arguments Do Not Establish Standing**

2 Plaintiff attempts several arguments to circumvent the standing bar, most of
3 which have already been raised and rejected by the Court as part of its preliminary
4 injunction order. None work.

5 **1. Plaintiff’s Recasting of Her Injury Does Not Confer Standing**

6 Now that she knows she can join the BIH Program at any time, Plaintiff
7 argues that it does not matter whether she wanted to receive services from the BIH
8 Program at all. (*See Opp.* at 8:2–12.) Instead, according to Plaintiff, her subjective
9 belief that she was ineligible for a benefit is enough to imbue her with standing.
10 (*See id.*) This argument is based on a fundamental misreading of standing
11 jurisprudence and failure to acknowledge the facts of this case.

12 Plaintiff leans heavily into *Northeast Florida Chapter of Associated General*
13 *Contractors of America v. City of Jacksonville, Florida* (“*General Contractors*”),
14 508 U.S. 656 (1993). (*E.g. Opp.* at 8:2–4, 10:2–4.) But she fails to address the full
15 import of the case. *General Contractors* states that the denial of equal treatment
16 where a plaintiff **wants** to obtain a benefit can give rise to standing. *Id.* at 666. The
17 attempt, or at minimum a **desire to attempt**, is what matters. Thus, the Supreme
18 Court held that a party must be “able and ready” to seek a benefit, but is otherwise
19 precluded from doing so. *Id.* This Court’s August 28 Order provides a detailed
20 discussion of *General Contractors* that shares this understanding. (*See Dkt.* 44
21 [Aug. 28 Order] at 24:5–23.)

22 As the Court noted, Plaintiff did not establish any actual barrier to her
23 participation in the BIH Program. (*See supra* § II.A.2.) Nothing has changed—
24 Plaintiff simply trots out the same tired arguments as before. She does not cite to
25 any evidence to show she was denied “equal consideration” for enrollment. (*See*
26 *Opp.* at 9:10–12.) She then argues she was offered “no path to enrollment” (*id.* at
27 9:20–21) which is patently false, especially in light of the City’s Letter and
28 invitation to enroll.

1 Notably, Plaintiff ignores the Ninth Circuit’s controlling articulation of the
2 “able and ready” standard in *Carroll v. Nakatani*, 342 F.3d 934 (9th Cir. 2003).
3 Plaintiff is aware of this case—the Court discussed it extensively in its August 28
4 Order. (*See* Dkt. 44 [Aug. 28 Order] at 31:6–21.) But as with everything else that
5 harms her position, Plaintiff pretends that *Carroll* does not exist.

6 *Carroll* made clear that merely invoking the words “able and ready” is not
7 enough, and a court should also consider “the intent of the applicant.” *Carroll*, 342
8 F.3d at 942. In *Carroll*, the applicant did not complete the necessary steps to join a
9 state loan program, nor did he follow up when the program administrators requested
10 he provide additional information. *Id.* at 941–43; *see also* Dkt. 44 [Aug. 28 Order]
11 at 31:15–18. This mirrors the facts of this case. A cursory declaration of “interest”
12 and “submission of a meritless application falls short of being ‘able and ready’.”
13 *Carroll*, 342 F.3d at 943. “Generalized grievances,” such as Plaintiff’s here, will
14 not do. *Id.*

15 **2. Plaintiff Attacks Strawmen and Hypothetical Harms**

16 Seeking to divert attention from her failure to address controlling law,
17 Plaintiff targets a series of facts or arguments that do not apply to her case. This
18 similarly cannot save her.

19 ***First***, Plaintiff invokes what she characterizes as “eligibility” language from
20 programs in other counties across the state. (Opp. at 3:13–25.) Notably, she has not
21 requested that the Court take judicial notice of any of these statements. Setting that
22 aside, this case is not a referendum on the administration of programs in other
23 counties. Plaintiff does not live in Kern County, or Alameda County, or San Diego
24 County. She has not applied to any programs in those counties. Plaintiff lives in
25 Los Angeles County, and applied to the BIH Program in Pasadena. Other counties
26 are not at issue here. *E.g.*, *Hale v. Brinker Int’l, Inc.*, No. 21-cv-09978-VC, 2023
27 WL 5600293, at *1 (N.D. Cal. Aug. 29, 2023) (a plaintiff cannot create standing for
28 herself based on the allegedly redressable injuries of third parties).

1 **Second**, Plaintiff obliquely contends that the existence of an “exception
2 procedure” is what confers standing. (Opp. at 10:12–17.) But the County’s Motion
3 to Dismiss is not premised upon, and does not discuss, any exception procedure.
4 (*See generally* Dkt. 39-1 [Motion to Dismiss].) Instead, the Motion notes Plaintiff’s
5 lack of standing as evidenced by her failure to apply for and accept an offer of
6 enrollment in response to the City’s Letter. (*See id.*)

7 Turning this on its head, Plaintiff argues—without any supporting evidence—
8 that the only reason she could be accepted into the BIH Program is via an exception
9 procedure. But this is false: the City’s Letter makes an offer of unconditional
10 enrollment without any reference to an exception. (*See* Dkt. 43 [Decl. of Amanda
11 M. Cusick in Support of Motion to Dismiss], Ex. A [City Letter].)

12 In any event, Plaintiff’s “exception” argument is a distraction, because it does
13 not controvert the established evidence that race is not a barrier to the BIH Program,
14 therefore Plaintiff faced no unequal treatment. (*See supra* § II.A.1.) Plaintiff is not
15 “being forced to compete in a race-based process for maternal assistance.” (Opp. at
16 11:13–14.) She presents no facts to show this is a zero-sum game like the school
17 admissions cases, where individuals compete for a limited number of spots. As has
18 been established, the BIH Program has no such quota.

19 **Third**, Plaintiff incorrectly contends Ms. Scott’s suggestion of an alternative
20 program supports standing. This is not a case, like *Cruz*, where an individual must
21 avail themselves of an alternative remedy after suffering an alleged constitutional
22 injury. *Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 290 (2022). This is a case
23 where Plaintiff can potentially avail herself of numerous programs, including the
24 BIH Program. The only thing stopping Plaintiff from enrolling is Plaintiff. Such
25 self-inflicted injury cannot create standing. *Int’l Partners for Ethical Care Inc v.*
26 *Ferguson*, 146 F.4th 841, 848 (9th Cir. 2025) (“We have consistently held that self-
27 inflicted harm doesn’t satisfy the basic requirements for standing. Such harm does
28 not amount to an ‘injury’ cognizable under Article III.” (citation omitted)).

1 **3. Plaintiff's Futility Argument Has Already Been Rejected**

2 Plaintiff takes another run at the same futility argument this Court has already
3 considered and rejected on identical facts. (Opp. at 14:1–16:3.) Plaintiff contends
4 she “did not need to guess” at the BIH Program’s criteria. (*Id.* at 14:9.) That may
5 be true, but she did need to pursue enrollment. This Court noted as much in its
6 August 28 Order, when it rejected Plaintiff’s identical arguments about the BIH
7 Program’s website and interest form. (*See* Dkt. 44 [Aug. 28 Order] at 33:22–34:16.)

8 Plaintiff again argues that her mere completion of an interest form is enough.
9 (Opp. at 15:11–21.) She cites no new facts or argument that should cause the Court
10 to reconsider its prior ruling (nor has she filed a Motion for Reconsideration). As
11 *Carroll* makes clear, a plaintiff who does not earnestly participate in an application
12 process and who does not provide requested information cannot be said to have
13 suffered harm. *Carroll*, 342 F.3d at 942–43.

14 This is not a question of whether the Complaint used “magic words” about an
15 application. (*See* Opp. at 15:14–21.) It is about Plaintiff having a genuine interest
16 in a program that she claims excluded her, and taking steps to show that she has in
17 fact been excluded despite her best efforts. *See, e.g., Alexandre v. Amazon.com, Inc.*, No. 22-cv-1459-MMA (VET), 2024 WL 2445705, at *4–5 (S.D. Cal. May 23,
18 2024). As the Court noted, the mere fact that Plaintiff indicated she was not Black
19 would not preclude her from being contacted by BIH Program representatives to
20 discuss next steps. (Dkt. 44 [Aug. 28 Order] at 34:5–8.) We know that to be true:
21 as a matter of common sense, if attempting to join the BIH Program was “futile” for
22 Plaintiff, then the City would not have sent Plaintiff a letter inviting her to complete
23 enrollment. (*See* Dkt. 43 [Cusick Decl.] Ex. A [City Letter].)

24 **D. Plaintiff's Story About the City's Letter Makes No Sense**

25 Plaintiff offers no good reason why she did not complete enrollment in the
26 BIH Program when offered. That is because there is no good reason. Plaintiff never
27 actually wanted to join the BIH Program, which is now abundantly clear. She
28

1 simply cannot establish standing.

2 Plaintiff brushes aside the City’s Letter in a series of bizarre, contradictory
3 arguments. Previously, Plaintiff argued that all she wanted was an opportunity to
4 join the BIH Program. (*See* Dkt. 39-2 [Decl. of Amnon Z. Siegel in Support of
5 Motion to Dismiss] Ex. B at 38:14–20.) But when extended an open invitation to
6 complete enrollment, Plaintiff did not even bother to respond. (*See* Dkt. 43 [Cusick
7 Decl.] ¶¶ 7–8.)

8 Plaintiff offers the farcical explanation that the reason she did not respond is
9 because the City’s Letter was not clear whether “changes were being made to the
10 racial eligibility requirements” of the BIH Program. (Dkt. 45-10 [New Jimenez
11 Decl.] ¶ 7.) Plaintiff also says she felt no need to respond because the City’s Letter
12 did not make clear that she “would be considered on the same basis” as a Black
13 applicant (*id.*) and therefore did not believe the offer from the City was “sincere.”
14 (*Id.*) Nonsense.

15 Plaintiff is playing games and making hollow, self-serving statements in her
16 quest to create standing that never existed in the first place. “Article III standing
17 screens out plaintiffs who might have only a general legal, moral, ideological, or
18 policy objection to a particular government action.” *Food & Drug Admin. v. All. for*
19 *Hippocratic Med.*, 602 U.S. 367, 381 (2024). There could not be a clearer example
20 of such a plaintiff than here. If she truly wanted to participate in the program, she
21 should pursue enrollment, but she has deliberately refused to do so.

22 **E. Plaintiff Cannot Amend as a Matter of Law**

23 Plaintiff did not address the County’s argument that, because she lacked
24 standing from the outset, she is legally foreclosed from amending her Complaint.
25 (*See* Dkt. 39-1 [Motion to Dismiss] at 14:5–21.) She has conceded this argument.

26 In any event, Plaintiff’s Opposition underscores that no amendment can be
27 made. In a sense, Plaintiff has attempted a backdoor amendment through her new,
28 contradictory declaration. Such gamesmanship is prohibited in the Ninth Circuit.

1 *Airs Aromatics, LLC v. Victoria's Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595,
2 600 (9th Cir. 2014) (“A party cannot amend pleadings to ‘directly contradic[t] an
3 earlier assertion made in the same proceeding.’” (citation omitted)). But for all the
4 reasons set forth above, even that gambit is not enough to save Plaintiff’s case.
5 Plaintiff lacks standing, and her case should be dismissed without leave to amend.

6 **III. CONCLUSION**

7 For all the foregoing reasons, the Court should grant the Motion and dismiss
8 this case with prejudice.

9
10 DATED: September 16, 2026

MILLER BARONDESS, LLP



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13 By:

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants DR. BARBARA FERRER and LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH, certifies that this brief contains 4218 words and is less than 15 pages, which:

☐ complies with the word limit of L.R. 11-6.1.

☒ complies with the limits set by this Court's standing order.

DATED: September 16, 2026



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