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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CAE Aviation Academy Phoenix LLC and Thrust Flight, LLC, Plaintiffs, v. City of Mesa, Defendant.	Case No. CV-26-03325-PHX-KML Hon. Krissa M. Lanham **CITY OF MESA'S MOTION TO DISMISS FIRST AMENDED COMPLAINT** **ORAL ARGUMENT REQUESTED**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

INTRODUCTION

This case involves a dispute about landing fees at a general aviation airport owned by the defendant City of Mesa (the "City"). Congress has entrusted the resolution of such disputes to the Department of Transportation ("DOT") and the Federal Aviation Administration ("FAA"), which have established comprehensive regulations and an administrative enforcement scheme governing the review of airport rates and charges. But Plaintiffs seek to avoid the route Congress mapped for them. Instead, they ask the Court to imply causes of action that lack any statutory basis and to grant relief based on factual allegations that cannot state a claim. The Court should dismiss Plaintiffs' claims, and leave this dispute with FAA and DOT, where it belongs.

Specifically, Counts One and Two should be dismissed because there is no private right of action under the Supremacy Clause or the two federal statutes Plaintiffs invoke, the Airport Noise and Capacity Act ("ANCA") and the Anti-Head Tax Act ("AHTA"), and the Court cannot exercise equity jurisdiction to hear those claims. Plaintiffs cannot proceed under the Dormant Commerce Clause in Count Three, because, through its Commerce Clause powers, Congress has directed that DOT and FAA (rather than courts) shall review airport rate-setting. Even if Plaintiffs could bring a claim under ANCA, AHTA, or the Dormant Commerce Clause, they have failed to allege that the City's landing fees violate these federal statutes or burden interstate commerce. Plaintiffs' grab bag of state law claims in Counts Four through Six are also deficient. Plaintiffs have no private right of action under the Mesa City Code and cannot allege a violation of Arizona's Open Meeting Law or Constitution. Finally, Count Seven seeks injunctive relief, which is a remedy, not a claim. The Court should dismiss Plaintiffs' First Amended Complaint in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

The City owns and operates Falcon Field Airport ("Airport"), which serves general aviation users. Am. Compl. ¶ 9. The City receives federal grant funding in connection with its operation of the Airport. Am. Compl. ¶ 31. The two Plaintiffs (CAE

Aviation Academy Phoenix LLC and Thrust Flight, LLC) operate flight training companies out of the Airport. Am. Compl. ¶¶ 1, 4, 6. On March 23, 2026, the City enacted Resolution No. 12480 (the "Resolution"), which established landing fees for aircraft using the Airport. Am. Compl. ¶¶ 109-114.[1]

On May 11, 2026, Plaintiffs filed their original Complaint, ECF 1, and a Motion for Preliminary Injunction. ECF 2. The next day, Plaintiffs filed a Part 13 complaint with FAA under 14 C.F.R. § 13.2, requesting an investigation into the landing fees. Am. Compl. ¶ 132. On May 27, 2026, the City filed its Opposition to the Plaintiffs' Motion for Preliminary Injunction. ECF 17. The Plaintiffs filed their First Amended Complaint on June 2, 2026. ECF 18.

APPLICABLE FEDERAL REGULATORY FRAMEWORK

Plaintiffs' First Amended Complaint disregards the comprehensive regulatory scheme applicable to the review of airport rates and charges. Over 50 years ago, the Supreme Court ruled that the Commerce Clause did not prohibit airport operators from charging commercial airlines a "head tax" on passengers boarding flights at airports, to defray airport capital and operating costs. *Evansville–Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707 (1972). In response to *Evansville*, Congress promptly enacted the AHTA to "ensure . . . that local 'head' taxes [would] not be permitted to inhibit the flow of interstate commerce." *Nw. Airlines, Inc. v. Cnty. of Kent, Mich.*, 510 U.S. 355, 363 (1994) ("*Kent County*") (quoting S. Rep. No. 93–12, p. 4 (1973)). The AHTA prohibits airport-imposed charges related to the carriage of passengers or the sale of air transportation, but includes a "savings clause" for "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities." *Id.* at 363-64 (citing 49 U.S.C. § 1513); *see also* 49 U.S.C. § 40116 (Anti-Head Tax Act, as amended).

In *Kent County*, commercial airlines challenged certain airport fees, including

[1] Where necessary, additional facts as to each Count are addressed in the Argument section below.

landing fees, under the AHTA. 510 U.S. at 359-60. The Supreme Court found that the challenged landing fees were not prohibited "head taxes," because they fell within the savings clause, but noted that the AHTA "does not set standards for assessing reasonableness," and that the Court "lack[ed] guidance" on that point from the Secretary of DOT, who was "charged with administering the federal aviation laws, including the AHTA." *Id.* at 366-67. Following *Kent County*, Congress swiftly enacted 49 U.S.C. § 47129(b)(2), *see* 1994 FAA Reauthorization Act, Pub. L. No. 103-305, 108 Stat. 1569, § 113, directing DOT to promulgate "standards or guidelines" to be used by DOT to determine whether airport fees are "reasonable." FAA subsequently issued its "Rates and Charges Policy," 61 Fed. Reg. 31994 (June 21, 1996), amended at 78 Fed. Reg. 55330 (September 10, 2013), which governs FAA's review of charges imposed by operators of both commercial service and general aviation airports. And Congress has provided robust enforcement mechanisms: airlines may challenge the reasonableness of airport fees under 49 U.S.C. § 47129(a), and any aggrieved party may submit a complaint about fees to FAA pursuant to 14 CFR Part 13 or Part 16, as Plaintiffs have already done. *See* 14 C.F.R. § 13.2; 14 C.F.R. § 16.1; Am. Compl. ¶ 132.

Airport rates and charges also must comply with the Airport and Airway Improvement Act of 1982 ("AAIA"), as amended (codified at 49 U.S.C. § 47107), which requires all airports that accept federal grants to provide assurances to the Secretary that the airport will be available for public use on reasonable conditions and without unjust discrimination. 49 U.S.C. § 47107(a)(1). The enforcement mechanisms of Part 13 and Part 16 apply to claims of noncompliance with the grant assurances required by Section 47107. *See* 14 C.F.R. § 13.2; 14 C.F.R. § 16.1(a)(5). FAA applies the Rates and Charges Policy in all such enforcement actions "to determine if an airport sponsor is carrying out its obligation to make the airport available on reasonable terms." 78 Fed. Reg. 55330, 55331.

LEGAL STANDARD FOR MOTION TO DISMISS

Under Rule 12(b)(1), a defendant may challenge facts alleged in a complaint as

"insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). This includes whether the plaintiff can assert a claim based on the Court's equity jurisdiction. *See Delux Pub. Charter, LLC v. Cnty. of Orange*, 2022 WL 3574442, at *7-8 (C.D. Cal. July 29, 2022) (dismissing "preemption" claim under Rule 12(b)(1) for lack of equity jurisdiction). The plaintiff bears the burden of establishing subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Under Rule 12(b)(6), the Court should dismiss a claim when the plaintiff lacks a private right of action under the statute at issue. *See Segalman v. Sw. Airlines Co.*, 895 F.3d 1219, 1222 (9th Cir. 2018). The Court should also dismiss a claim where the plaintiff fails to plead sufficient facts to allow the Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court should not accept "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," *id.* at 678, or "legal conclusion[s] couched as a factual allegation[s]." *Id.* at 678-80 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Even where allegations are well-pleaded, the court must "determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679.

ARGUMENT

The Court should dismiss each of the Counts in Plaintiffs' First Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6).

I. Count One Should Be Dismissed (Preemption by Federal Law).

Count One should be dismissed because neither the Supremacy Clause nor ANCA confer a private right of action; the Court should not exercise equity jurisdiction; and Plaintiffs do not, and cannot, plausibly allege a violation of ANCA in any event.

A. Plaintiffs have no right of action under the Supremacy Clause or ANCA.

Plaintiffs style Count One as "Declaratory Relief-Preemption by Federal Law," but the Supremacy Clause is "not the source of any federal rights and certainly does not

create a cause of action." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324-25 (2015). Preemption is merely a "rule of decision" that "instructs courts what to do when state and federal law clash." *Id.* at 324-25. Plaintiffs have no claim under the Supremacy Clause.

Plaintiffs also cannot assert a claim under ANCA. Courts are unanimous that ANCA does not confer a private right of action. *See, e.g.*, *Delux Pub. Charter, LLC v. Cnty. of Orange,* 2022 WL 18228386, at *3 (C.D. Cal. Oct. 31, 2022) ("It is undisputed that ANCA" and other federal aviation laws "do not supply a private right of action"); *Horta, LLC v. City of San Jose*, 2008 WL 4067441, at *4 (N.D. Cal. Aug. 28, 2008) ("Congress did not intend to create a private right of action for ANCA violations"); *Tutor v. City of Hailey*, 2004 WL 344437, at *8 (D. Idaho Jan. 20, 2004) (no private right of action under ANCA).[2]

B. Congress foreclosed equity jurisdiction for ANCA claims.

Given that there is no private right of action conferred by ANCA, Plaintiffs appear to ask this Court to exercise equity jurisdiction over the ANCA claim, *see* Am. Compl. ¶ 154 (citing *Armstrong,* 575 U.S. 320).[3] *Armstrong* makes clear that this Court should not exercise equity jurisdiction to hear Plaintiffs' ANCA claim, because it would contravene Congress's intent for administrative, rather than judicial, enforcement. In *Armstrong*, the Supreme Court found that Congress had foreclosed equity jurisdiction to

[2] Count One also references 49 U.S.C. § 47107, Am. Compl. ¶ 141, which governs the grant assurances that airport operators must make to the Secretary of Transportation to obtain federal funding. It is black letter law that Congress provided no private right of action to enforce that statute. *See, e.g.*, *Airborne Tactical Advantage Co. v. Peninsula Airport Comm'n*, 2006 WL 753016, at *1 (E.D. Va. Mar. 21, 2006) (collecting cases that courts "interpreting § 47107 have uniformly held that airport users have no right to bring an action in federal court"); *Diaz Aviation Corp. v. Puerto Rico Ports Auth.*, 2015 WL 6554547, at *2 n.1 (D.P.R. Oct. 29, 2015) (collecting cases for that rule). Congress requires these claims be directed to FAA, not federal courts. 49 U.S.C. § 47107(g).

[3] Plaintiffs reference a case questioning whether a court can ever find irreparable harm to grant preliminary injunctive relief on preemption grounds after *Armstrong*, given that the Supremacy Clause confers no individual rights. *See Valenzuela v. Ducey*, 329 F. Supp. 3d 982, 998-99 n.5 (D. Ariz. 2018) (cited in Am. Compl. ¶ 154). Regardless of whether such relief remains available, to defeat a motion to dismiss, Plaintiffs must first establish that their claim can be heard in equity under the standard applied in *Armstrong*.

enforce the Medicaid Act for two reasons: 1) the statute solely vested the Secretary of Health and Human Services with enforcement authority, and 2) a claim through equity would require application of a "judicially unadministrable" standard. 575 U.S. at 328. The same reasons hold true for ANCA.

In *Armstrong*, the "sole remedy Congress provided" for failure to comply with Medicaid's requirements was "the withholding of Medicaid funds by the Secretary of Health and Human Services." *Id.* at 328 (citing 42 U.S.C. § 1396c). The "express provision" of one enforcement method showed "that Congress intended to preclude others." *Armstrong*, 575 U.S. at 328 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)). Congress enacted a similar scheme in ANCA. The Secretary of Transportation must be "satisfied that an airport is not imposing an airport noise or access restriction" for the airport to receive grant funding from the federal government or impose passenger facility charges. 49 U.S.C. § 47526. A second provision in ANCA vests enforcement authority specifically in DOT: the Secretary may "seek and obtain legal remedies" that the Secretary "considers appropriate" to remedy violations, "including injunctive relief." 49 U.S.C. § 47533. Congress specified that DOT, not private litigants, should remedy ANCA violations, which shows congressional intent to foreclose equity jurisdiction.

Exercising equity jurisdiction over an ANCA challenge would also require application of a "judicially unadministrable" standard. *Armstrong*, 575 U.S. at 328. Plaintiffs ask this Court to decide whether the landing fees are, in effect, a "noise or access restriction" that violates ANCA. Am. Compl. ¶¶ 146-54. But courts are not charged with deciding this issue—DOT is. The Secretary must be "satisfied that an airport is not imposing an airport noise or access restriction" that violates ANCA. 49 U.S.C. § 47526. "It is difficult to imagine a requirement broader and less specific" than whether the Secretary would be "satisfied" that a local law complies with ANCA. *See Armstrong*, 575 U.S. at 328. "Explicitly conferring enforcement of this judgment-laden standard upon the Secretary alone establishes" that "Congress wanted to make the agency remedy that it provided exclusive." *Id.*

Undersigned counsel is aware of only one post-*Armstrong* case in which a court exercised equity jurisdiction to hear an ANCA claim, but that Court misapplied *Armstrong* and the case involved markedly different facts. *See Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*, 841 F.3d 133 (2d Cir. 2016). In *East Hampton*, the Second Circuit found that Congress did not intend to foreclose plaintiffs from invoking equity jurisdiction to challenge local noise laws enacted in alleged violation of ANCA. 841 F.3d at 145-47. Central to this outcome, however, was the Second Circuit's conclusion that ANCA lacked a "sole remedy," because DOT has multiple enforcement mechanisms available. 841 F.3d at 145. But DOT having multiple remedies available does not mean Congress intended for private parties to enforce ANCA through equity. *See Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 74 (1996) ("Where Congress has created a remedial scheme for the enforcement of a particular federal right," courts should not "supplement that scheme with one created by the judiciary."). This Court should not compound the Second Circuit's error by presuming that Congress intended to allow private parties to enforce ANCA through equity. *See MSP Small Bus. Concessions Alliance v. Metro. Airports Comm'n*, 2025 WL 1295615, at *11 (D. Minn. May 5, 2025) (refusing to enforce aviation regulations through equity, which would allow plaintiff "to end-run the congressional choice for administrative, rather than private enforcement of the program").

East Hampton also involved unusual facts, because the parties stipulated that the challenged laws were noise restrictions under ANCA, 841 F.3d at 140, and so the only issue was whether the Town should have followed ANCA's procedural requirements. *Id.* at 146. The Second Circuit explained that it was "difficult to imagine more straightforward requirements" than whether the town in *East Hampton* checked certain procedural boxes. Plaintiffs' claim here, however, requires the Court to decide the threshold, substantive question of whether the Secretary of Transportation would be

"satisfied" that the landing fee is not a noise or access restriction. 49 U.S.C. § 47526.[4]

The Court should find it lacks equity jurisdiction to hear Count One.

C. Plaintiffs fail to allege facts that state a claim under ANCA.

Even if Plaintiffs had a right of action under ANCA (they do not) or the Court had equity jurisdiction to hear the ANCA claim (it does not), Plaintiffs fail to state a claim because they have not plausibly alleged that ANCA covers the challenged landing fees. ANCA applies only to "airport noise and access restrictions," 49 U.S.C. § 47524(a), and its implementing regulations define such restrictions as those "affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft," including "limits on the noise generated on either a single-event or cumulative basis," a "noise budget or noise allocation program," or "limits on hours of operations." 14 C.F.R. § 161.5. This covers, for instance, a mandatory curfew for all aircraft operations, explicit restrictions on operating hours for "Noisy Aircraft," and a weekly limit on the number of "Noisy Aircraft" operations, *East Hampton*, 841 F.3d at 141; a rule banning more than 60% of aircraft operating at a particular airport, *In re: Compliance with Fed. Obligations by the City of Santa Monica*, FAA Dkt. No. 16-02-08, 2008 WL 6895776 (May 27, 2008); or a blanket ban on all jet aircraft, *Palm Beach Cnty. v. Fed. Aviation Adm'r*, 53 F.4th 1318 (11th Cir. 2022); *see also Nat'l Bus. Aviation Ass'n, Inc. v. City of Naples Airport Auth.*, 162 F. Supp. 2d 1343 (M.D. Fla. 2001) (upholding, under ANCA, local laws that were undisputedly noise restrictions, but without any discussion of right of action, equity jurisdiction, or whether FAA must hear such claims in the first instance).

Neither the FAA nor any court has ever held that a landing fee constitutes a "noise or access restriction" under ANCA, and the FAA policy on landing fee requirements does not mention ANCA. *See* Rates and Charges Policy, 78 Fed. Reg. 55330. When the FAA decides challenges to airport landing fees, the FAA analyzes the fees against the Rates

[4] The cases Plaintiffs cite (Am. Compl. ¶¶ 139-140), *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633-39 (1973) and *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 985-87 (9th Cir. 1991), have nothing to do with ANCA, do not address equity jurisdiction, and were decided long before *Armstrong*.

and Charges Policy and its statutory basis "found at 49 U.S.C. § 47107, *et seq*." *E.g., Wadsworth Airport Ass'n v. City of Wadsworth*, FAA Dkt. No. 16-06-14, 2007 WL 2373611, at *5-6 (Aug. 8, 2007). There is good reason for this approach: landing fees have nothing to do with regulation of aircraft noise or access, besides requiring a fee for use of an airport. Under Plaintiffs' theory, any fee imposed for use of an airport could be construed as a "noise or access restriction," particularly where community members have made noise complaints (a common occurrence), simply because fees may discourage use of the airport. Plaintiffs' "conclusory statements" and "legal conclusions" that the landing fee falls within ANCA's scope are insufficient to survive under Fed. R. Civ. P. 12(b)(6). *Ashcroft*, 556 U.S. at 678.

II. Count Two Should Be Dismissed (Anti-Head Tax Act).

Count Two should be dismissed because the AHTA does not confer a private right of action, and even if it did, the statute does not apply to the landing fees challenged here.

A. Plaintiffs have no right of action under the AHTA.

There is no explicit grant of a private right of action under the AHTA, *see, e.g., Air Transp. Ass'n of Am. v. City of Los Angeles*, 844 F. Supp. 550, 553 (C.D. Cal. 1994), and there is no statutory basis to imply a private right of action. Although the Supreme Court in *Kent County,* 510 U.S. 355, did not decide this question,[5] it did note that "the AHTA does not set standards for assessing reasonableness" of airport fees, *id.* at 366, and courts "are scarcely equipped to oversee, without the initial superintendence of a regulatory agency, rate structures and practices." *Id.* For these reasons, the "Secretary of Transportation is charged with administering the federal aviation laws, including the AHTA" and is tasked "to regulate based on a full view of the relevant facts and circumstances." *Id.* at 366-67 (internal footnote omitted).

Applying this rationale, the two circuit courts post-*Kent County* that analyzed whether the AHTA confers an implied private right of action have held it does not. *See*

[5] The Court reached the AHTA claim without deciding if an implied private right of action existed, because the parties did not seek certiorari on the issue. 510 U.S. at 365.

Sw. Air Ambulance, Inc. v. City of Las Cruces, 268 F.3d 1162, 1170 (10th Cir. 2001) (holding that because violations of the AHTA "are fully enforceable through a general regulatory scheme. . .the weight of the evidence of congressional intent is against the suggestion that Congress intended to create a private right of action in the AHTA");[6] *Miller Aviation v. Milwaukee Cnty. Bd. of Supervisors*, 273 F.3d 722, 730 (7th Cir. 2001) (finding the AHTA does not "set standards for assessing the reasonableness of fees and charges established by state municipalities, and, more importantly, there is nothing in the text of § 40116 granting a private remedy for violations of the statute"). District courts, including one in the Ninth Circuit, have reached the same conclusion. *See Air Transp. Ass'n of Am.*, 844 F. Supp. at 554-55; *Star Marianas Air, Inc. v. Commonwealth Ports Auth.*, 2018 WL 4140780, at *3 (D. N. Mar. I. Aug. 30, 2018); *Evergreen Aviation Ground Logistics Enter., Inc. v. City of Atlanta*, 2006 WL 8431908, at *5 (N.D. Ga. June 27, 2006).[7] And none of these courts exercised equity jurisdiction to hear the AHTA claim.

B. Plaintiffs fail to allege facts that state a claim under the AHTA.

Even if Plaintiffs could assert a claim under the AHTA (they cannot), the statute does not apply to the City's landing fees. The AHTA only prohibits certain fees imposed on *commercial service airlines* and their passengers. 49 U.S.C. § 40116(b)(1)-(4).[8] The

[6] The Court in *Sw. Air Ambulance* did uphold the availability of a claim under 42 U.S.C. § 1983 to enforce the AHTA, even though it found no private right of action under the AHTA, but that was before the Supreme Court's decision in *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002), which explicitly restricted the availability of § 1983 remedies where Congress expresses no intent to create a private right of action. 536 U.S. 273, 285-86 (2002).

[7] As the *Sw. Air Ambulance* court noted, 268 F.3d at 1171-72, two circuit courts that had previously found a private right of action under the AHTA did not have the benefit of *Kent County*, 510 U.S. 355, or *Alexander,* 532 U.S. 275 (2001). The same is true of earlier district court cases that found a private right of action. *See Rocky Mountain Airways, Inc. v. Pitkin Cnty.*, 674 F. Supp. 312, 315-16 (D. Colo. 1987); *Niagara Frontier Transp. Auth. v. Eastern Airlines, Inc.*, 658 F. Supp. 247, 249-51 (W.D.N.Y. 1987).

[8] Although not relevant here, the AHTA, as amended, also prohibits airport operators from imposing taxes on the property of commercial service airlines, 49 U.S.C. § 40116(d)(2)(A)(i)-(iii), and fees that selectively target non-aeronautical operations (like ground transportation and parking) at commercial service airports. *Id.* § 40116(d)(2)(A)(iv)-(v).

AHTA's savings clause further provides that these prohibitions do not prevent airports from imposing "reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities." *Id.* at § 40116(e)(2); *Kent County*, 510 U.S. at 363-64. This language creates an exception to the statutory prohibition, such that other reasonable fees, including landing fees, imposed on *commercial service airlines* are allowed. The AHTA does not apply to fees imposed on private operators and businesses (like the Plaintiff flight schools) at general aviation airports. The FAA has confirmed this interpretation. *See* 61 Fed. Reg. 31994, 31995 (stating in original Rates and Charges Policy that the AHTA "allows a publicly-owned airport authority to collect only reasonable landing fees and charges from *airlines* using airport facilities" (emphasis added)). This does not leave the Plaintiffs without recourse: as explained in the Regulatory Framework above, landing fees imposed on general aviation operations still must be reasonable and non-discriminatory under 49 U.S.C. § 47107(a). Plaintiffs can pursue (and are pursuing) claims of non-compliance with Section 47107(a) through FAA's enforcement mechanisms. *See* 14 C.F.R. § 13.2; 14 C.F.R. § 16.1(a)(5).

III. Count Three Should Be Dismissed (Dormant Commerce Clause).

Count Three should be dismissed because Plaintiffs have no cause of action under the Dormant Commerce Clause when Congress has acted, pursuant to the Commerce Clause, to regulate this area. And even if there were a cause of action available to Plaintiffs, they fail to allege facts that state a claim.

A. Plaintiffs have no right of action under the Dormant Commerce Clause.

Under the Dormant Commerce Clause, courts "are not free to review" laws once "Congress has struck the balance it deems appropriate." *Kent County*, 510 U.S. at 373 n.20 (quotation omitted); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 131 (1982) ("Courts are final arbiters under the Commerce Clause only when Congress has not acted."); *Peridot Tree WA, Inc. v. Wash. State Liquor & Cannabis Control Bd.,* 162 F.4th 1179, 1188-89 (9th Cir. 2026) (rejecting Commerce Clause challenge to state cannabis laws because there is no interstate market to preserve where Congress criminalized the

market). As explained in the Regulatory Framework above, Congress has regulated airport fees, including landing fees, at both commercial and general aviation airports through a comprehensive regulatory framework, and has provided robust enforcement mechanisms for airport users. Plaintiffs may not upend Congress's chosen regulatory scheme. *See e.g.*, *Air Transp. Ass'n of Am.*, 844 F. Supp. at 556 (dismissing Commerce Clause claim challenging landing fees imposed on airlines where Congress "affirmatively acted" through the "AHTA coupled with the regulatory provisions providing for administrative and judicial review of challenged fees"); *see also Sw. Air Ambulance*, 268 F.3d at 1177 (same).

B. Plaintiffs fail to allege facts that state a claim under the Dormant Commerce Clause.

Even if Plaintiffs had a cause of action under the Dormant Commerce Clause (they do not), they fail to allege any burden on interstate commerce, much less a substantial or significant one. Plaintiffs assert that the City's landing fees will require flight-training businesses to "raise prices, curtail operations, or relocate training activity to airports in other states." Am. Compl. ¶ 179. Plaintiffs claim this will cause an "extreme and negative effect" on interstate commerce by interrupting "interstate pilot supply chains" and "international student training." Am. Compl. ¶ 178.

This boils down to an allegation that the challenged landing fee increases burden on the Plaintiffs, which will then pass on costs to customers who may take their business elsewhere. The Ninth Circuit, in a decision affirmed by the Supreme Court, recently rejected this argument. *Nat'l Pork Producers Council v. Ross*, 6 F.4th 1021, 1032 (9th Cir. 2021), *aff'd*, 598 U.S. 356 (2023) ("For dormant Commerce Clause purposes, laws that increase compliance costs, without more, do not constitute a significant burden on interstate commerce."). Plaintiffs cannot establish a burden on interstate commerce when all they allege is a burden to themselves or their customers. *See Flynt v. Bonta*, 131 F.4th 918, 932 (9th Cir. 2025) (rejecting Dormant Commerce Clause claim that "comes down to the fact that [the laws] impose a burden on" the plaintiffs); *Rosenblatt v. City of Santa*

Monica, 940 F.3d 439, 452 (9th Cir. 2019) (requiring more than allegations of "disparate impact" to state a Commerce Clause claim); *see Invenergy Thermal LLC v. Watson*, 2024 WL 5205745, at *2 (9th Cir. Dec. 24, 2024) (the Commerce Clause "protects neither the particular structure nor methods of operation" of a particular entity).

Plaintiffs allege no facts to support their bald assertion that the City's landing fees will burden interstate commerce by interrupting flight training or pilot supply chains across state lines. Am. Compl. ¶ 178. Plaintiffs must do more than speculate—they must provide specific numbers about how a particular law will create a "substantial or significant burden" on the interstate market. *Rosenblatt*, 940 F.3d at 453 (requiring specific allegations about the "magnitude" of the effect on interstate commerce). Even if Plaintiffs attempted such an allegation here, courts have rejected Dormant Commerce Clause claims involving much more expansive and burdensome regulations than the City's landing fee. *See, e.g., Flynt*, 131 F.4th at 932 (rejecting a Commerce Clause claim because the state law affected "only a small band of persons"); *Nat'l Pork Producers*, 6 F.4th at 1033 (same, despite allegation that regulation will cost "millions in upfront capital costs" and cause 9.2 percent increase in pork production costs nationwide).

More fundamentally, even if Plaintiffs could point to specific facts demonstrating that the landing fee will shift flight training "across state lines," Am. Compl. ¶ 180, that would mean the landing fee burdens local companies and benefits other states. This inverts the Dormant Commerce Clause, which prohibits localities from benefitting in-state interests by burdening out-of-state interests. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 386 (2023). The Dormant Commerce Clause does not prohibit a local regulation that could shift economic activity, and no case supports such a broad reading of the doctrine. *See Rosenblatt*, 940 F.3d at 453 (affirming dismissal because no Dormant Commerce Clause burden exists when "an otherwise valid regulation causes some business to shift" from one supplier to another).

IV. Count Four Should Be Dismissed (Mesa City Charter and City Code)

Count Four is premised on a violation of City Code Section 9-9-13, which

specifies that the City must operate the Airport "on behalf of the citizens of the City." Plaintiffs reference that the City must operate the Airport in a "businesslike operation," Am. Compl. ¶ 189, but omit the words that immediately follow: "with as little cost as possible to the taxpayer." (emphasis added). Because Section 9-9-13 was enacted to benefit the general public, and not for the "especial benefit" of Plaintiffs, they lack a private right of action to enforce it. *See McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 194-95 (2014) (considering, for implied private rights of action, if plaintiff was intended or incidental beneficiary of statute); *contra Chavez v. Brewer*, 222 Ariz. 309, 318 (Ct. App. 2009) (allowing an implied private right of action for voters for whom an elections law was specifically passed to benefit).

If this were not enough, Section 9-9-15 prescribes specific remedies for violations of Chapter 9-9. Subsection (A) contains criminal penalties and Subsection (B) allows the Airport Director to withdraw permission "to use the airport." Nowhere did the City allow a private entity, like the Plaintiffs, to sue. *McNamara*, 236 Ariz. at 196 ("Where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it."); *see Burns v. City of Tucson*, 245 Ariz. 594 (2018) (finding no implied private right of action where statute provided for final review by chief executive officer of relevant agency); *Fortitude Surgery Ctr. LLC v. Aetna Health Inc.*, 2025 WL 1432906, at *4 (D. Ariz. May 19, 2025) (same where statute empowered chief executive of agency to enforce law and refer violations for criminal prosecution).

V. Count Five Should Be Dismissed (Arizona Open Meeting Law)

Count Five alleges a violation of Arizona's Open Meeting Law, A.R.S. § 38-431 *et seq*., for failure to provide sufficient notice of the action to be taken. The City passed the Resolution after including it on the consent agenda as "Modifying fees and charges for Falcon Field Airport. (Citywide)." Am. Compl. ¶ 210. In addition, Plaintiffs admit that the agenda included a hyperlink to "the City Council's Report, Resolution, and a presentation" regarding the landing fee proposal. Am. Compl. ¶ 213.

The Open Meeting Law, A.R.S. § 38-431.02(G), requires notice to "include an

agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda." Agendas must list "specific matters to be discussed." A.R.S. § 38-431.02(H). The Arizona Attorney General has explained that such notice must be sufficient to "allow members of the public to decide whether they want to attend a particular meeting and to permit members of the public body to prepare themselves for meetings." Ariz. Op. Att'y Gen. No. I99-006 (Mar. 5, 1999); *see also* Ariz. Op. Att'y Gen. No. I82-108 (Oct. 5, 1982) (same). Guidance published by the Attorney General further explains that the requirement to list "specific matters" prohibits the use of "generic agenda items" such as "personnel" or "new business." Arizona Agency Handbook: Chapter 7: Open Meetings, at Section 7.7.2, *available at* *https://www.azag.gov/sites/default/files/2025-01/agency_handbook_chapter_7.pdf* (last visited June 14, 2026).

Here, City Council provided specific notice of the proposed modification of fees and charges at the Airport, provided hyperlinks to detailed information about the proposal, and then voted on that exact topic. Plaintiffs have failed to identify any violation of the Open Meeting law.

VI. Count Six Should Be Dismissed (Arizona Constitution).

Count Six alleges that the landing fee violates Article 9, Section 25 of the Arizona Constitution because it is a "fee" for "service" provided by the City at the Airport. Am. Compl. ¶¶ 220-226. But Arizona's Supreme Court allowed a similar airport user fee in *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239 (2020). In *Brnovich*, the City of Phoenix began charging ground transportation companies (*e.g.*, Uber) "passenger pick-up fees" and "new trip fees" at Sky Harbor Airport. *Id.* at 242. These fees were "intended to recoup the City's costs" for the companies' "proportionate share of existing and future ground-transportation infrastructure, improvements, and operation/maintenance of this infrastructure," as well as to "comply with federal law requiring [the Airport] to achieve and maintain economic self-sufficiency." *Id.* The Arizona Supreme Court found that the "trip fees are best characterized as 'authorized-user fees' paid in exchange for the

providers' privilege to use Airport property," and therefore fell outside the scope of "transaction-based fee," which they defined as "a fee based on consumer spending for delivered goods or services." *Id.* at 245. In approving the user fees, the court reasoned that Phoenix also "imposes landing fees" on a "per-landing rate" at Sky Harbor, which are allowed since landing fees are "triggered by the use of Airport property and not the transactions between carriers and their passengers that gave rise to the trip." *Id.* at 246.

This same analysis applies to the challenged landing fees here, as the example used in *Brnovich* demonstrates. The landing fees are triggered by use of Airport property, not the transaction between Plaintiffs and their customers, and they are intended to recoup infrastructure costs and ensure that the Airport operates in a self-sufficient manner. Count Six should be dismissed.

VII. Count Seven Should Be Dismissed (Injunctive Relief)

Count Seven asserts a claim for "Injunctive Relief," but that is a remedy, not a standalone cause of action. *See, e.g.*, *Diaz-Amador v. Wells Fargo Home Mortgs.*, 856 F. Supp. 2d 1074, 1083 (D. Ariz. 2012) ("Plaintiff cannot plead an independent cause of action for injunctive relief because this is a remedy for an underlying cause of action, not a separate cause of action in and of itself."). The Court should dismiss Count Seven.

VIII. If the Court Finds Plaintiffs Have Stated a Federal Claim, it Should Be Dismissed as Within the Primary Jurisdiction of DOT and FAA.

If the Court finds that Plaintiffs state a federal claim, it should nonetheless be dismissed under the prudential doctrine of primary jurisdiction. *See Syntek Semiconductor Co., Ltd. v. Microchip Tech. Inc.*, 307 F.3d 775, 780-81 (9th Cir. 2002). The Court may decide that the "initial decisionmaking responsibility should be performed by the relevant agency rather than the courts," *id.* at 780, upon consideration of four factors: "(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration." *Id.* at 781. Underlying these factors

is the need for "efficiency," which is the "deciding factor" in whether to invoke primary jurisdiction. *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015).

These factors are all present here. As explained above, Congress has entrusted the Secretary of DOT with deciding whether a local law is a noise or access restriction that violates ANCA, and with deciding whether airport landing fees are reasonable and non-discriminatory. Just as in *Syntek*, this case "requires the resolution of an issue within the jurisdiction of an administrative body exercising statutory and comprehensive regulatory authority over a national activity that requires expertise and uniformity in administration." 307 F.3d at 782. And given the need for uniformity for airports across the country, FAA and DOT should use their "expertise and uniformity" to consider the landing fee—as Congress intended. *See Astiana*, 783 F.3d at 761 ("Obtaining expert advice from that agency would help ensure uniformity in administration of the comprehensive regulatory regime established by" the agency.). The FAA is in fact already investigating the landing fees. Am. Compl. ¶ 132. The Court should find that this matter falls within the primary jurisdiction of FAA and DOT and dismiss any viable federal claim without prejudice. *See Syntek*, 307 F.3d at 782 (explaining that cases within primary jurisdiction of agency should normally "be dismissed without prejudice so that the parties may pursue their administrative remedies").

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' First Amended Complaint in its entirety. If the Court concludes that Plaintiffs have stated any viable federal claim, it should be dismissed without prejudice as within the primary jurisdiction of DOT and FAA.

Dated: June 16, 2026

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