

1 December 28, 2020, this court granted plaintiffs’ motion for preliminary injunction and denied
2 defendants’ motion to dismiss. Shortly thereafter, the Bureau withdrew its notice of citation. The
3 parties now bring cross-motions for summary judgment. For the reasons below, the court **grants**
4 **in part and denies in part** defendants’ motion and **grants in part and denies in part** plaintiffs’
5 motion.

6 **I. FACTUAL AND PROCEDURAL BACKGROUND**

7 The following facts are undisputed unless otherwise stated, and the court addresses
8 evidentiary objections, if relevant, as they arise.

9 **A. California’s Cemetery and Funeral Bureau and Act**

10 Gina Sanchez serves as Bureau Chief of California’s Cemetery and Funeral Bureau, which
11 regulates the “death care industry” in California and issues citations against unlicensed people or
12 organizations engaging in activity requiring licensure under the state’s Cemetery and Funeral Act
13 (the Act).¹ Decl. of Gina Sanchez (“Sanchez Decl.”) ¶¶ 1–2, ECF No. 34-4. The Act is codified
14 in sections 7600 through 7746 of the California Business and Professions Code. Bus. & Prof.
15 Code §§ 7600–7746. The Bureau’s “highest priority” is “[p]rotection of the public” *Id.*
16 § 7601.1.

17 Section 7615 defines a licensed funeral director as a “person engaged in or conducting, or
18 holding himself or herself out as engaged in any of the following”:

- 19 (a) [p]reparing for the transportation or burial or disposal, or
20 directing and supervising for transportation or burial or disposal of
21 human remains,” (b) “[m]aintaining an establishment for the
22 preparation for the transportation or disposition or for the care of

¹ The funeral industry is a widely regulated industry. Defendants request judicial notice of myriad “publications, statutes, and regulations related to the funeral industry in the United States, its territories, and the United Kingdom” Defs.’ Request for Judicial Not. (RJN), ECF No. 34-3. Plaintiffs do not oppose this request.

A court may take judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b)(2); *Jespersen v. Harrah’s Operating Co., Inc.*, 444 F.3d 1104, 1110 (9th Cir. 2006) (en banc). This includes “compacts, statutes, and regulations not included in the plaintiff’s complaint.” *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1153 (9th Cir. 2017); *see also London Assurance v. Lufty*, 184 F.2d 40, 43 (9th Cir. 1950). The court **grants** defendants’ request to take judicial notice of these documents.

1 human remains,” or (c) “[u]sing, in connection with his or her name
2 . . . any [] title implying that he or she is engaged as a funeral
3 director.”

4 *Id.* § 7615(a)–(c). An applicant for a funeral director’s license must have an associate’s degree or
5 higher, *id.* § 7619, and pass an examination covering

- 6 (a) The signs of death.
7 (b) The manner by which death may be determined.
8 (c) The laws governing the preparation, burial and disposal
9 of human remains, and the shipment of bodies dying from infectious
10 or contagious diseases.
11 (d) Local health and sanitary ordinances and regulations relating to
12 funeral directing and embalming.

13 *Id.* § 7622. The content of the examination is available on the Cemetery and Funeral Bureau’s
14 website.² Separately, section 7619.3 bars funeral directors from performing their duties unless
15 employed by or working as sole proprietor of a licensed funeral establishment. *Id.* § 7619.3.

16 Under § 7616 (a), a licensed funeral establishment is defined as

17 a place of business conducted in a building . . . and devoted
18 exclusively to those activities as are incident, convenient, or related
19 to the preparation and arrangements, financial and otherwise, for the
20 funeral, transportation, burial or other disposition of human remains
21 . . . including, but not limited to, either . . . (1) A suitable room for
22 the storage of human remains. (2) A preparation room equipped . . .
23 for the preparation, sanitation, or embalming of human remains for
24 burial or transportation.

25 *Id.* § 7616(a)(1)–(2). Under subsection (c), “no person shall operate or maintain or hold himself
26 or herself out as operating or maintaining any of the facilities specified in paragraph (2) of
27 subdivision (a), unless he or she is licensed as a funeral director.” *Id.* However, it is possible to
28 operate a licensed funeral establishment without being a licensed funeral director, so long as the
29 establishment does nothing more than store human remains. *See generally id.* §§ 7600–7746

² Funeral Director Written Examination, Candidate Handbook, available at <https://www.cfb.ca.gov/licensee/examhb.shtml> (last accessed December 7, 2022). The court *sua sponte* takes judicial notice of this handbook, as it falls within the realm of “[p]ublic records and government documents available from reliable sources on the Internet,” which includes websites run by governmental agencies. *U.S. ex rel. Modglin v. DJO Glob. Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014), *aff’d sub nom. United States v. DJO Glob., Inc.*, 678 F. App’x 594 (9th Cir. 2017) (internal quotes and citations omitted).

1 Title 16 of the California Code of Regulations, section 1246, which the court refers to here
2 simply as section 1246, authorizes the Bureau to “issue citations and fines against organizations
3 and individuals who engage in unlicensed activity under the Act,” including “advertising for
4 which licensure . . . is required.” Sanchez Decl. ¶ 9; Cal. Code Regs. tit. 16, § 1246.

5 The Cemetery and Funeral Bureau also issues the “Consumer Guide to Funeral &
6 Cemetery Purchases.” See State of California Dept. of Consumer Affairs Consumer Guide to
7 Funeral & Cemetery Purchases.³ In discussing “home death care,” the Bureau recognizes “[t]he
8 use of a funeral establishment and funeral director is not required by law when preparing a body
9 for disposition. You can arrange for your body, or that of a loved one, to be cared for and
10 prepared for disposition by family and friends at home.” *Id.* at 7. If someone chooses home
11 death care, that person must:

12 File a properly completed Certificate of Death, signed by the
13 attending physician or coroner, with the local registrar of births and
14 deaths. Obtain a Permit for Disposition from the local registrar of
15 births and deaths. Provide a casket or other suitable container. Make
16 arrangements directly with the cemetery or crematory.

17 *Id.* The Bureau notes, “Human remains may be kept at home without embalming or refrigeration
18 until disposition. Generally, decomposition will proceed more rapidly without refrigeration or
19 embalming.” *Id.* California’s Health and Safety Code provides that bodies must be interred
20 “within a reasonable time” Cal. Health & Safety Code § 7103.

21 **B. Full Circle and End-of-Life Doulas**

22 Full Circle is a non-profit organization operated by plaintiffs Bonnie “Akhila” Murphy
23 and Donna Peizer, who are “end-of-life doulas.” Defs.’ Response to Pls.’ Statement of
24 Undisputed Material Facts (SUMF) ¶ 12, ECF No. 42-1. They help families perform “home
25 funerals,” which may include informal counseling before death for the dying and after death for
26 the family; providing information about and assisting in organizing an end-of-life plan; and
27 providing “hands-on assistance” in preparing a home funeral, including “moving, washing, and

³ The Guide is available at https://www.cfb.ca.gov/consumer/consumer_guide.pdf (last accessed January 13, 2023); see also Exhibit A to Ms. Murphy’s Declaration (Murphy Decl. Exs.), ECF No. 35-4.

1 dressing human remains,” if requested by a family. *Id.* ¶¶ 17, 19, 23–24 (Decl. of Bonnie
 2 “Akhila” Murphy (“Murphy Decl.”), ECF No. 35-3)⁴; Pls.’ Response to Defs.’ SUMF ¶ 25, ECF
 3 No. 41-1. Full Circle has been offering these services since 2013. Compl. ¶ 56, ECF No. 1.
 4 Plaintiffs also include several past and potential clients who claim interests in having home
 5 funerals. *Id.* at 13⁵; Defs.’ Response to Pls.’ SUMF ¶ 16. These clients argue if Full Circle
 6 cannot offer its services, they will not be able to plan for end-of-life services as they are entitled
 7 to. Compl. ¶¶ 130–32. Most of Full Circle’s doulas operate on a volunteer basis, and the
 8 organization’s annual budget is less than \$11,000. Defs.’ Response to Pls.’ SUMF ¶ 13.
 9 Generally, Full Circle charges a flat fee of between \$150 and \$300 for preparing end-of-life plans,
 10 suggests a fee of \$35 to \$50 for doula services prior to death, and asks for a “suggested donation”
 11 of between \$500 and \$2,000 for both individualized guidance and hands-on assistance at a home
 12 funeral. *Id.* ¶¶ 22, 31. However, Full Circle has also provided these services at no cost. *Id.* ¶ 32.
 13 In contrast, the median cost of a traditional adult funeral and burial exceeds \$9,000.⁶

⁴ Parties may object to the evidence cited by another party to prove the undisputed facts. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 385–86 (9th Cir. 2010). But the evidentiary admission standard at summary judgment is lenient: A court may evaluate evidence in an inadmissible form if the evidentiary objections could be cured at trial. *See Burch v. Regents of the Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119–20 (E.D. Cal. 2006). In other words, “[a]dmisibility at trial” depends not on the evidence’s form, but on its content. *Block v. City of L.A.*, 253 F.3d 410, 418–19 (9th Cir. 2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

Defendants object on various grounds to many of the facts based on Ms. Murphy’s declaration and listed in plaintiffs’ SUMF. *See, e.g.*, Defs.’ Response to Pls. SUMF ¶¶ 1–5, 8–11, 13, 18–21, 23, 25–29, 32–33 (citing Fed. R. of Evid. 402, 403, 602, 701, and 702, as well as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) for the proposition some facts are not “material facts”). The court does not rely on irrelevant or prejudicial evidence, so any objections on those grounds are overruled. Likewise, the court has not relied on any of Ms. Murphy’s averments about events or facts for which she has no personal knowledge. *See Fed. R. Evid. 602* (“Evidence to prove personal knowledge may consist of the witness’s own testimony.”). These objections too are overruled.

⁵ When citing page numbers on filings, the court uses the pagination automatically generated by the CM/ECF system.

⁶ In early February 2022, this court granted leave for Compassion & Choices, “a non-profit organization whose mission is to improve care, expand options, and empower everyone to chart their end-of-life journey,” to file an amicus brief in support of plaintiffs’ motion. Motion for Leave to File Amicus Br., ECF No. 33; Br. of Amicus Curiae at 1, ECF No. 33-1; Order, ECF No. 46. The amicus brief details the unique services “death doulas” provide, explains how those

1 Generally, end-of-life doulas “do not provide medical treatment or advice, legal advice, or
 2 formal counseling or therapy.” Br. of Amicus Curiae at 2–3 (citing Marian Krawczyk &
 3 Merylynne Rush, *Describing the end-of-life doula role and practices of care: perspectives from*
 4 *four countries*. 14 J. Palliative Care & Soc. Prac. 1, 1 (2020)). Full Circle’s website states it
 5 provides “non-medical” support, and its doulas are “non-medical volunteers” who “do not
 6 dispense or endorse any medical advice.” Murphy Decl. Exs. C & D, ECF No. 35-4. Full
 7 Circle’s doulas do not administer medication, declare death, embalm remains, or provide
 8 transportation services. Defs.’ Response to Pls.’ SUMF ¶¶ 3, 10, 33; *see also* Br. of Amicus
 9 Curiae at 2–3 (observing similar limitations of death doulas’ practices, generally). Full Circle’s
 10 website includes multiple disclaimers that Full Circle “is not considered a funeral establishment,”
 11 and its representatives acknowledge they are not licensed funeral directors. Defs.’ Response to
 12 Pls.’ SUMF ¶ 36; Murphy Decl. Exs. C, D & E.⁷

13 C. The Bureau’s Enforcement Actions Against Full Circle

14 The conflict underlying this litigation took root in November 2019, when the Bureau
 15 issued a notice of citation and fine, which the court refers to here simply as the citation, against
 16 Full Circle. *See* Defs.’ Response to Pls.’ SUMF ¶ 54 (citing Murphy Decl. Ex. F). The citation
 17 stated, in part: “The Bureau’s investigation revealed a violation of CCR section 1246, unlicensed
 18 activity, when Full Circle [] engaged in the activity of advertising as a funeral establishment when
 19 Bureau records reveal that no funeral establishment license has been issued to Full Circle []. Full
 20 Circle of Living and Dying advertises services on its website [] for which a funeral establishment
 21 license is required.” Murphy Decl. Ex. F. Beyond identifying unlawful “unlicensed activity,” the
 22 citation did not identify or explain what, if any, specific provisions of the Act or sections of the
 23 California Business and Professions Code Full Circle violated. *See generally id.* The notice

services are distinct from those provided by funeral homes or directors, and sets out arguments as to why death doulas should not be subject to the same regulations as funeral homes or directors. Br. of Amicus Curiae at 9. It also provides additional information regarding death doulas’ impact on the funeral industry, including a citation to an empirical study, Victoria J. Haneman, *Funeral Poverty*, 55 U. Rich. L. Rev. 387 (2021). *Id.* at 7 n.28.

⁷ The organization’s website contains this disclaimer in red text at the bottom of every page. <http://www.fullcirclelivingdyingcollective.com/> (last accessed Jan. 13, 2023).

1 directed Full Circle to “immediately discontinue advertising and operating as a funeral
2 establishment until a license is issued by the Bureau,” and threatened fines of up to \$5,000. *Id.*
3 The citation would “become a final order of the Bureau [in] 30 days . . .” *Id.*

4 The next month, Full Circle and the Bureau met informally to review the citation, when,
5 according to Full Circle, Bureau staff told Full Circle it needed to have both funeral establishment
6 and funeral director licenses, and the Bureau needed to “inspect” their operation and “examine”
7 their fees. Defs.’ Response to Pls.’ SUMF ¶ 67 (citing Murphy Decl. ¶¶ 144–145 and Decl. of
8 Donna Peizer ¶¶ 109–110, ECF No. 35-5).⁸ On December 24, 2019, Deputy Bureau Chief
9 Sandra Patterson issued an affirmance in Bureau Chief Sanchez’s name, confirming the Bureau’s
10 initial determination. *Id.* ¶ 71 (citing Murphy Decl. Ex. G). While Bureau Chief Sanchez had not
11 participated in the interceding informal meeting, the affirmance stated “nothing” in Full Circle’s
12 “rebuttal provides any reason or belief that the findings of the investigation or the citation were
13 incorrect in their facts.” *Id.* The Bureau did not identify the precise offending speech or conduct
14 in the initial citation, at the informal hearing, or in its December 24 affirmation. Murphy Decl.
15 Exs. F & G. Following the informal hearing, Full Circle modified language on its website,
16 changing “assists with arranging options for burial or cremation” to “offer[s] guidance in
17 arranging options . . .” *Id.* Ex. D; Murphy Resp. Decl. ¶¶ 16–17, ECF No. 41-2. Likewise, Full
18 Circle revised the wording “assists [families with preparing or filling paperwork]” to read
19 “[s]upport[s] families in filling out and obtaining legal and other necessary paperwork (death
20 certificate, permit for disposition and cremation authorization . . .).” *Id.*

21 In mid-2020, Full Circle and family plaintiffs filed this suit asserting two as-applied First
22 Amendment challenges and one as-applied Fourteenth Amendment challenge to the Bureau’s

⁸ Defendants dispute plaintiffs’ recollection, arguing, “to the extent that they occurred,” the statements “are not accurate and taken out of context.” *Id.* However, defendants go on to say, “Licensure is required when businesses, such as Full Circle, engage in activities described in Business and Professions Code sections 7615 [defining licensed funeral director] and 7616 [defining licensed funeral establishment]. And licensed facilities are subject to inspection and document reviews.” *Id.* Based on defendants’ clarification, the court has no reason to doubt the veracity of plaintiffs’ statement, though the court does not rely here on plaintiffs’ recollection of the precise words exchanged.

1 enforcement of California’s funeral statutes and regulations. *See generally* Compl. Plaintiffs
2 base their First Amendment claims on the Bureau’s regulation of both Full Circle’s individualized
3 advice and advertisements. *Id.* Plaintiffs seek declaratory and injunctive relief constraining the
4 Bureau’s future application of the Cemetery and Funeral Act and related regulations, as well as its
5 policies and practices, to the extent they abridge plaintiffs’ freedom of speech, both commercial
6 and noncommercial, and due-process rights. *Id.* ¶ 4. Plaintiffs also moved for a preliminary
7 injunction barring the Bureau “from preventing Plaintiffs from exercising, during the pendency of
8 this litigation, their First Amendment rights to give and receive individualized advice, as well as
9 their rights to engage in and receive commercial speech.” Mot. for Prelim. Inj. at 25, ECF No.
10 12-1. The Bureau opposed plaintiffs’ motion and moved to dismiss the complaint. *See generally*
11 Mot. to Dismiss (MTD), ECF No. 13; Opp’n Prelim. Inj., ECF No. 16. In late December 2020,
12 the court denied the motion to dismiss and granted plaintiffs’ motion for a preliminary injunction.
13 *See generally* Prev. Order (Dec. 29, 2020), ECF No. 23.

14 **D. Enforcement Actions Following the Preliminary Injunction**

15 In early 2021, Bureau Chief Sanchez sent Full Circle a letter stating: “I have determined
16 that the [c]itation was issued in error without a complete and adequate investigation of all the
17 relevant factual circumstances.” Defs.’ Response to Pls.’ SUMF ¶¶ 84–85 (citing Murphy Decl.
18 Ex. H). Bureau Chief Sanchez also noted the Bureau staff who “offered their opinions or
19 recommendations relating to [Full Circle’s] activities” at the December 2019 informal meeting
20 were not authorized to do so. Murphy Decl. Ex. H. She continued:

21 The Bureau issued a formal citation here, but the scope of the
22 Bureau’s investigation was limited to website advertising, and the
23 Bureau did not investigate any scope of practice issues relating to
24 conduct as a funeral director, funeral establishment, or other Bureau
25 licensee. To that end, the Bureau acknowledges that the Order of
26 Abatement directing Full Circle to “immediately discontinue
27 advertising and operating as a funeral establishment,” was incorrect
28 and did not warrant the issuance of the [c]itation. The Bureau had
29 not yet conducted a complete and adequate investigation sufficient
30 to establish that Full Circle’s advertising or activities violated the

1 Cemetery and Funeral Act or required a license at the time of the
2 informal conference, or any time thereafter. Thus, the Bureau
3 prematurely issued the [c]itation against Full Circle.

4 *Id.* She also pointed to the “law applicable to the licensing of funeral establishments and handling
5 of decedents,” including provisions of the Business and Professions Code defining funeral
6 director and funeral establishment, Bus. & Prof. Code §§ 7615–7636, relating to funeral practices,
7 *id.* §§ 7685–7685.6, and relating to preneed funeral arrangements, *id.* §§ 7735–7746; Division 7
8 of the California Health and Safety Code, which provides general requirements relating to dead
9 bodies; and Title 16 of the California Code of Regulations, Divisions 12 and 23, which both cover
10 the Cemetery and Funeral Bureau. *Id.*

11 The Bureau now explains the citation was “procedurally defective” for two reasons.
12 Sanchez Decl. ¶ 27; Defs.’ Cross Mot. Summ. J. (MSJ) at 10, ECF No. 34-1. First, the citation
13 did not identify Business and Professions Code section 7616,⁹ the “specific statute that Full
14 Circle violated by its unlicensed activity.” Sanchez Decl. ¶ 27. Second, the citation directed Full
15 Circle to “discontinue advertising and operating as a funeral establishment” even though the
16 Bureau “did not investigate [their] operations,” and thus “inclusion of the word ‘operating’ was
17 incorrect.” *Id.* The Bureau “does not intend to issue a replacement or amended citation for the
18 unlicensed activity identified in its 2019 investigation.” Sanchez Decl. ¶ 27. The Bureau also
19 notes it “has no enforcement actions pending or planned against Full Circle or any of the
20 Plaintiffs.” *Id.* ¶ 28. However, the Bureau’s statements, including those made during this
21 litigation, suggest it believes Full Circle and its doulas are violating section 1246 by (1) providing

⁹ The court notes section 7616(a)(1)–(2) defines licensed funeral establishment. The Bureau’s reference may have been intended to focus on subsection (c), which provides as follows—with two exceptions not applicable to Full Circle—: “no person shall operate or maintain or hold himself or herself out as operating or maintaining any of the facilities specified in paragraph (2) of subdivision (a), unless he or she is licensed as a funeral director.” Bus. & Prof. Code § 7616(c). As discussed above, paragraph (2) of subdivision (a) describes “[a] preparation room equipped . . . for the preparation, sanitation, or embalming of human remains for burial or transportation.” *Id.* § 7616(a)(2). However, nothing in the record suggests Full Circle has ever maintained or advertised maintaining a room for embalming human remains. Given defendant’s arguments and the record, the court construes the Bureau’s position as arguing Full Circle violated section 1246 by advertising as a funeral establishment without a license.

1 their services, i.e., individualized end-of-life planning advice and guidance and hands-on
2 assistance at home funerals, and (2) advertising those services, because both activities suggest
3 Full Circle doulas are licensed funeral directors and Full Circle itself is a licensed funeral
4 establishment. Defs.’ Response to Pls.’ SUMF ¶ 86 (citing Murphy Decl. Ex. H; Rowes Decl.
5 Ex. F, Sanchez Dep. (July 29, 2021), ECF No. 35-10). Furthermore, the Bureau never told Glenn
6 Miller, the employee who investigated Full Circle and concluded it was engaging in unlicensed
7 activity, it had withdrawn the citation because his investigation was flawed. Defs.’ Response to
8 Pls.’ SUMF ¶¶ 44, 89. Miller stands by the conclusions in his original investigation report. *Id.*
9 ¶ 90.

10 As noted, the parties have filed cross-motions for summary judgment. *See generally*
11 Defs.’ Cross MSJ; Pls.’ Cross MSJ, ECF No. 35-1. Defendants first argue plaintiffs lack standing
12 and plaintiffs’ claims are not ripe. Defs.’ Cross MSJ at 25. Defendants also argue they are
13 entitled to judgment on both speech claims, and that the due process claim “fails as a matter of
14 law.” Defs.’ Cross MSJ at 13, 14, 23. Finally, defendants argue sovereign immunity bars
15 plaintiffs’ claims as to Secretary Lourdes M. Castro Ramirez. *Id.* at 26. Plaintiffs disagree and
16 argue they are entitled to judgment on both their speech claims (counts one and two) and due
17 process claim (count three). Pls.’ Cross MSJ at 12, 19. Plaintiffs also seek a permanent
18 injunction. *Id.* at 23.

19 On February 11, 2022, the court heard arguments on the cross-motions, with Ben Field,
20 Derek Mayor, and Jeffrey Rowe appearing for plaintiffs and Julianne Mossler appearing for
21 defendants. John Kappos and Gabe Castillo also appeared for amicus.

22 **II. DISCUSSION**

23 The court first addresses justiciability and whether Secretary Castro Ramirez is immune
24 from plaintiffs’ claims before turning to the merits of the cross-motions for summary judgment,
25 as well as the relief warranted.

26 **A. Justiciability**

27 The court previously found Full Circle had sufficiently alleged standing to challenge the
28 citation and seek a preliminary injunction and likewise found Full Circle’s claims ripe. *See Prev.*

1 Order (Dec. 29, 2020) at 4–6. Having withdrawn the citation, the Bureau now argues summary
2 judgment is appropriate because plaintiffs lack standing, pointing to their inability to “show a past
3 injury” and “vague fears about the possibility of a future enforcement action” Defs.’ Cross
4 MSJ at 25 (citing *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996)).
5 Similarly, the Bureau argues plaintiffs’ claims are unripe because their “as-applied challenge
6 depends on their unsupported speculation about ‘fluid and future facts,’” *Id.* (quoting *Hoye*
7 *v. City of Oakland*, 653 F.3d 835, 859 (9th Cir. 2011)). Plaintiffs disagree, arguing they can still
8 meet the requirements of standing, and their claims are ripe for judicial review.

9 1. Legal Standard

10 Standing and ripeness are “related doctrines of justiciability . . . originating in the case-or-
11 controversy requirement of Article III” *Trump v. New York*, 141 S. Ct. 530, 535 (2020).
12 “To establish Article III standing, an injury must be concrete, particularized, and actual or
13 imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.”
14 *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (internal quotation omitted). The
15 plaintiff must demonstrate the injury is not “conjectural or hypothetical.” *Carney v. Adams*,
16 141 S. Ct. 493, 499 (2020) (quotations omitted). By the same token, a case is constitutionally
17 “ripe” if it is “not dependent on ‘contingent future events that may not occur as anticipated, or
18 indeed may not occur at all.’” *Trump*, 141 S. Ct. at 535 (quoting *Texas v. United States*,
19 523 U.S. 296, 300 (1998)); *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8
20 (2007) (“standing and ripeness [may] boil down to the same question . . .”). “In suits seeking
21 both declaratory and injunctive relief against a defendant’s continuing practices, the ripeness
22 requirement serves the same function in limiting declaratory relief as the imminent-harm
23 requirement serves in limiting injunctive relief.” *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037,
24 1044 (9th Cir. 1999).

25 “When evaluating whether a claimed threat of prosecution is genuine [for the purposes of
26 imminent-harm and ripeness], [courts] consider: (1) whether the plaintiff has articulated a
27 concrete plan to violate the law in question; (2) whether the prosecuting authorities have
28 communicated a specific warning or threat to initiate proceedings; and (3) the history of past

1 prosecution or enforcement under the challenged statute.” *Wolfson v. Brammer*, 616 F.3d 1045,
2 1058 (9th Cir. 2010). The Supreme Court has “permitted pre-enforcement review under
3 circumstances that render the threatened enforcement sufficiently imminent,” *Susan B. Anthony*
4 *List v. Driehaus*, 573 U.S. 149, 159 (2014), including where plaintiffs have “an actual and well-
5 founded fear that the law will be enforced against them,” *id.* at 160 (quoting *Virginia v. American*
6 *Booksellers Assn. Inc.*, 484 U.S. 383, 393 (1988)).

7 “A plaintiff must demonstrate standing for each claim he or she seeks to press and for
8 each form of relief sought.” *Washington Env’t Council v. Bellon*, 732 F.3d 1131, 1139 (9th Cir.
9 2013) (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)). “The plaintiff also
10 bears the burden of proof to establish standing ‘with the manner and degree of evidence required
11 at the successive stages of the litigation.’” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S.
12 555, 561 (1992)). “While ‘[a]t the pleading stage, general factual allegations of injury resulting
13 from the defendant’s conduct may suffice,’ in responding to a summary judgment motion, ‘the
14 plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other
15 evidence specific facts, which for purposes of the summary judgment motion will be taken to be
16 true.’” *Id.* (citation and quotes omitted). “A plaintiff’s basis for standing must affirmatively
17 appear in the record.” *Salmon Spawning & Recovery All. v. Gutierrez*, 545 F.3d 1220, 1228 n.5
18 (9th Cir. 2008) (citation and quotes omitted).

19 2. Full Circle Has Standing and Its Claims Are Ripe

20 While the Bureau has withdrawn the citation and Bureau Chief Sanchez declares the
21 Bureau “does not intend to issue a replacement or amended citation,” Sanchez Decl. ¶ 27, the
22 court finds Full Circle’s “claimed threat of prosecution” for its hands-on assistance at home
23 funerals, individualized advice, and advertisements remains “genuine.” *Wolfson*, 616 F.3d at
24 1058. First, Full Circle confirms it intends to continue advertising and operating in substantially
25 the same way it did prior to receiving the citation. *See generally* Murphy Decl. The record also
26 suggests the Bureau has not “disavow[ed]” the possibility of issuing another citation. *Tingley v.*
27 *Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022) (“the government’s failure to *disavow* enforcement
28 of the law . . . weigh[s] in favor of standing.”) (emphasis in original, citing *Cal. Trucking Ass’n v.*

1 *Bonta*, 996 F.3d 644, 653 (9th Cir. 2021)). Nor has the Bureau concluded Full Circle and its
2 doulas are not engaging in unlicensed activity under section 1246. Defs.’ Response to Pls.’
3 SUMF ¶ 86 (citing Sanchez Dep. (July 29, 2021)). Indeed, Bureau Chief Sanchez has clarified
4 the Bureau’s view that bathing, dressing, and repositioning human remains “are all activities
5 related to the preparation of human remains for transportation, burial, or disposal,” and thus
6 “require licensure [as a funeral director] under the Act if performed by a business for a customer.”
7 Sanchez Decl. ¶¶ 30–31 (citing Bus. & Prof. Code § 7615).

8 The Bureau also maintains the “evidence shows [it] acted lawfully when it issued the
9 [c]itation,” Defs.’ Reply at 13, because Full Circle was engaged in “unlicensed activity” by
10 advertising as a funeral establishment, Sanchez Decl. ¶ 27 (citing Bus. & Prof. Code § 7615).
11 Likewise, Mr. Miller, the Bureau employee whose investigation and report led to the citation,
12 stands by his original conclusions, Defs.’ Response to Pls.’ SUMF ¶ 90 (citing Miller Dep.), and
13 the Bureau did not tell him his investigation was flawed, *id.* ¶ 89. Furthermore, while the Bureau
14 argues it “does not regulate the kind of pre-planning that Full Circle describes in this case” unless
15 Full Circle “accepts pre-payment for future funeral services as part of its pre-planning advice
16 services,” Defs.’ Reply at 6, the record as a whole casts doubt on this assertion. *See, e.g.*,
17 Sanchez Decl. ¶ 15 (“providing oversight and guidance related to conducting memorial services,
18 funeral processes, lying in honor or other ceremonies, and ‘after death care’” are “services [that]
19 require licensure under the Act if performed by a business for a consumer”); Defs.’ Cross MSJ
20 at 8 (“organizing and supervising death-related ceremonies” require licensure); *id.* at 9–10
21 (“supervision and direction related to conducting memorial services, funeral processes, lying in
22 honor or other ceremonies and ‘after death care’”). Finally, Ms. Murphy has declared, “[t]he
23 Withdrawal does not ameliorate any of my concerns that led me to file this lawsuit . . . [and]
24 provides no assurance that the Bureau will not take future enforcement action against Full Circle
25” Murphy Decl. ¶¶ 156–157.

26 Considering the undisputed facts, and taking Ms. Murphy’s affidavit as “true,” *Lujan*,
27 504 U.S. at 561, the court finds Full Circle has “demonstrated a sufficient likelihood of injury,”
28 *Hodgers-Durgin*, 199 F.3d at 1044, to support its seeking injunctive relief on all three claims.

1 For the same reasons, the court also finds Full Circle has established a “likelihood of future
2 injury” rendering its request for declaratory relief constitutionally ripe. *Id.*¹⁰ The court is not
3 persuaded otherwise by the Bureau’s citation to three cases to support its argument Full Circle has
4 not met standing’s injury requirement and their claims are not ripe. The court addresses each case
5 in turn.

6 First, the Bureau cites the Ninth Circuit’s decision in *San Diego Gun Rights Committee v.*
7 *Reno* for the proposition that where, as here, plaintiffs seek only declaratory and injunctive relief,
8 they must also “show a very significant threat of future harm; it is insufficient for them to
9 demonstrate only a past injury.” 98 F.3d at 1126 (citing cases). While an accurate statement of
10 law, the Bureau’s citation is unavailing because the case is easily distinguished on the facts. In
11 *San Diego Gun Rights Committee*, plaintiffs challenged the constitutionality of a law prohibiting
12 the manufacture, transfer, or possession of certain assault weapons. *Id.* at 1124. Plaintiffs argued
13 the “threat of being prosecuted under the [law]” sufficed to meet standing’s injury requirement.
14 *Id.* at 1126. The Ninth Circuit found plaintiffs could not assert standing on this basis because
15 they did not specify what activities they intended to engage in, nor point to any specific threat of
16 prosecution or past enforcement actions. *Id.* at 1126–28. Here, Full Circle and its doulas intend

¹⁰ Having met the requirements to show Article III injury, it is not clear the court need determine whether the “prudential ripeness” factors of “fitness” and “hardship” are satisfied. *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1154 (9th Cir. 2017) (“Prudential considerations of ripeness are discretionary.”); *see also Susan B. Anthony List*, 573 U.S. at 167 (“To the extent respondents would have us deem petitioners’ claims nonjusticiable on grounds that are prudential, rather than constitutional, that request is in some tension with our recent reaffirmation of the principle that a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging.” (internal quotations and citations omitted)); *see also Trump*, 141 S. Ct. at 532–37 (analyzing ripeness, but not prudential ripeness factors of fitness and hardship). Nonetheless, the court notes these two factors are easily met, as no further factual development is required to decide this issue, *Wolfson*, 616 F.3d at 1060, *see also Friedman Bros. Inv. Co. v. Lewis*, 676 F.2d 1317, 1319 (9th Cir. 1982). Furthermore, denying judicial review would impose a hardship on Full Circle, forcing them to choose between performing and speaking about their work on the one hand, or engaging in that practice and speech and risking another citation or fine on the other. *Susan B. Anthony List*, 573 U.S. at 167–68; *see also Wolfson*, 616 F.3d at 1059 (“self-censorship” is “constitutionally-recognized injury”).

1 to provide end-of-life services the Bureau has characterized as “unlicensed activity” and Full
2 Circle has identified more than “a general threat made against them” for previously engaging in
3 those activities. *Id.* at 1127–28. Accordingly, plaintiffs meet standing’s injury requirement under
4 *San Diego Gun Rights Committee*.

5 The Bureau also cites *Hoye v. City of Oakland*, 653 F.3d at 835, for the proposition that
6 the Ninth Circuit has “declined to entertain as-applied challenges that would require [it] to
7 speculate as to prospective facts,” because such challenges are not yet ripe. Defs.’ Cross MSJ at
8 26 (quoting *Hoye*, 653 F.3d at 859). As with *San Diego Gun Rights Committee*, *Hoye* is easily
9 distinguished on the facts. Plaintiff in *Hoye* sought to counsel women seeking abortions, but his
10 efforts were stymied by both (1) a city ordinance making it an offense to “knowingly and
11 willfully” approach individuals seeking entry into clinics if one’s purpose was to engage in
12 protest, counseling, or various other forms of speech with that individual, and (2) escorts intent on
13 drowning out his speech by making noises. *Hoye*, 653 F.3d at 839, 841. Because the court could
14 not “determine on the present record” whether plaintiff could show that the Ordinance’s
15 requirement, rather than the escorts’ noisemaking, deprived him of “ample alternative means of
16 communication,” it declined to entertain plaintiff’s as-applied challenge. *Id.* at 859. The court
17 continued, “[e]ven if the application of the Ordinance has in the past deprived [plaintiff] of ample
18 channels of communication, that defect may be cured if [the city] begins to enforce the Ordinance
19 in an evenhanded manner,” so plaintiff’s challenge depends “on fluid and future facts.” *Id.* *Hoye*
20 is distinguishable, because here the record is clear the Bureau’s refusal to disavow the citation is
21 the only factor restricting Full Circle’s speech, and the Bureau’s enforcement plans vis-à-vis other
22 establishments in the “death care industry” would not change the fact the Bureau claims Full
23 Circle is engaged in “unlicensed activity.” Sanchez Decl. ¶ 27.

24 Third, the Bureau points to *Hodgers-Durgin* and cautions the court against running afoul
25 of the “principles of federalism” by “enjoining the activities of a state agency based on an isolated
26 claim of constitutional harm that is not likely to recur.” Defs.’ Cross MSJ at 26 (citing *Hodgers-*
27 *Durgin*, 199 F.3d at 1041–42). However, the *Hodgers-Durgin* court clarified federalism was a
28 concern in that case only because plaintiffs did not establish a likelihood of injury. *Hodgers-*

1 *Durgin*, 199 F.3d at 1044 (“In the absence of a likelihood of injury to the named plaintiffs, there
2 is no basis for granting injunctive relief that would restructure the operations of the Border Patrol
3 and that would require ongoing judicial supervision of an agency normally, and properly,
4 overseen by the executive branch.”). As already explained, the Bureau’s statements and actions
5 suggest Full Circle has no reasonable assurance it would not be cited or subjected to future
6 enforcement actions. On this record the court cannot conclude the harm is not likely to take place
7 again.

8 To have Article III standing, Full Circle must also show the harm is “traceable” to the
9 Bureau’s enforcement actions and “redressable” by the court’s ruling. *Clapper*, 568 U.S. at 409.
10 As it did at the motion to dismiss stage, Full Circle easily meets these two additional
11 requirements: The asserted injuries flow from the Bureau’s imminent enforcement actions based
12 on section 1246; obtaining declaratory relief and a permanent injunction in this court would
13 redress those injuries. Because the court finds Full Circle has Article III standing to assert the
14 due process claim and two free speech claims, the court does not consider the standing of the
15 family plaintiffs to assert their two overlapping claims. *Poder in Action v. City of Phoenix*,
16 No. 20-01429, 2020 WL 7245072 (D. Ariz. Dec. 9, 2020) (“The Ninth Circuit has repeatedly
17 stated that it is unnecessary to address the standing of each plaintiff in a multi-plaintiff case, at
18 least where all plaintiffs seek the same form of relief, so long as one of the plaintiffs has
19 standing.”) (collecting cases).

20 Finally, the court briefly addresses an element of justiciability not raised by either party:
21 mootness. *Aguirre v. S.S. Sohio Intrepid*, 801 F.2d 1185, 1189 (9th Cir. 1986) (“Although the
22 parties did not raise the issue . . . mootness is an element of justiciability and raises a question as
23 to our jurisdiction, [so] we consider the matter *sua sponte*.”). “A case, or an issue in a case, is
24 considered moot if it has lost its character as a present, live controversy of the kind that must exist
25 if we are to avoid advisory opinions on abstract propositions of law.” *Lindquist v. Idaho State*
26 *Bd. of Corr.*, 776 F.2d 851, 853–54 (9th Cir. 1985) (quotations and citations omitted). Here, the
27 Bureau does not argue the case is mooted by its withdrawal of the citation, as it would be if the
28 Bureau both recognized the citation was in error and had no intention of engaging in any future

1 enforcement action against Full Circle. Instead, the Bureau sends mixed messages by
2 withdrawing the citation while in the same breath arguing it was issued “lawfully.” Defs.’ Reply
3 at 13. Moreover, it is settled law that “voluntary cessation of a challenged practice does not moot
4 a case unless ‘subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior
5 could not reasonably be expected to recur.’” *Trinity Lutheran Church of Columbia, Inc. v.*
6 *Comer*, 137 S. Ct. 2012, 2019 n.1 (2017) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t*
7 *Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (internal quotation marks omitted)). Here, the case
8 is not moot as the record demonstrates the Bureau could “not carr[y] the ‘heavy burden’ of
9 making ‘absolutely clear’” it “could not” issue another citation. *Id.*

10 For the reasons discussed above, the court finds the case justiciable and **denies** the
11 Bureau’s motion for summary judgment on these grounds.

12 **B. Secretary Castro Ramirez Does Not Have Sovereign Immunity**

13 Defendant Secretary Castro Ramirez is the Secretary of the California Business,
14 Consumer Services, and Housing Agency. The Bureau argues the Eleventh Amendment bars
15 plaintiffs’ claims against Secretary Castro Ramirez and moves to dismiss those claims. Defs.’
16 Cross MSJ at 26–27. Specifically, the Bureau argues the Secretary “lacks the requisite
17 connection to the enforcement of the statute at issue to permit Plaintiffs to bring suit against her
18 under *Ex parte Young*.” *Id.* at 27 (citing *Ex parte Young*, 209 U.S. 123 (1908)).

19 “Under the Eleventh Amendment, agencies of the state are immune from private damage
20 actions or suits for injunctive relief brought in federal court.” *Mitchell v. Los Angeles*
21 *Community. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (citing *Pennhurst State School &*
22 *Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (Eleventh Amendment proscribes suit against state
23 agencies “regardless of the nature of the relief sought”)). Because plaintiffs sue Secretary Castro
24 Ramirez in her official capacity as the leader of the Business, Consumer Services, and Housing
25 Agency, their suit is not against her as an individual but against her office, which is “no different”
26 from a suit against the state itself. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).
27 Thus, the Eleventh Amendment bars the suit unless the *Ex parte Young* exception applies.
28 *See* 209 U.S. at 155–56.

1 The *Ex parte Young* doctrine provides a narrow exception to the Eleventh Amendment
2 immunity when, as here, plaintiffs seek “prospective declaratory or injunctive relief against state
3 officers in their official capacities for their alleged violations of federal law.” *Coal. to Defend*
4 *Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (citing *Ex parte Young*,
5 209 U.S. at 155–56; *Alden v. Maine*, 527 U.S. 706, 747 (1999)); see Compl. at 29. For the
6 exception to apply the “officer must have some connection with the enforcement of the
7 act” *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) (quoting *Ex parte Young*, 209 U.S.
8 at 157). “This connection must be fairly direct; a generalized duty to enforce state law or general
9 supervisory power over the persons responsible for enforcing the challenged provision will not
10 subject an official to suit.” *L.A. Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992) (citation
11 omitted).

12 While Secretary Castro Ramirez does not “directly implement or enforce the Cemetery
13 and Funeral Act,” her Agency oversees the Department of Consumer Affairs. Pls.’ Response to
14 Defs.’ SUMF ¶ 39. Under California Government Code section 12804, the secretary “shall hold
15 the head of each department, office, or other unit responsible for management control over the
16 administrative, fiscal, and program performance of his or her department, office, or other unit.”
17 Cal. Gov’t Code § 12800(b). Accordingly, Secretary Castro Ramirez has authority over
18 defendant Kimberly Kirchmeyer, who directs the Department of Consumer Affairs, *id.* § 12804,
19 which houses the Cemetery and Funeral Bureau, Bus. & Prof. Code § 101(p). The Bureau has not
20 identified, and the court has not found, any case law in which an agency secretary was held
21 immune under similar circumstances. This is unsurprising, because secretary-level officials have
22 the statutory authority to direct subordinates to comply with their orders. Because plaintiffs have
23 requested only prospective declaratory and injunctive relief against Secretary Castro Ramirez and
24 there is a “fairly direct” connection between her and the violation, the Eleventh Amendment does
25 not bar suit. *L.A. Cnty. Bar Ass’n*, 979 F.2d at 704.

26 **C. Summary Judgment and Permanent Injunctions**

27 The court thus turns to the merits, having found no barrier to doing so. Both sets of
28 parties move for summary judgment on three claims: First, plaintiffs’ claimed violation of their

1 due process right to provide and receive hands-on support at home funerals; second, the claimed
2 violation of their First Amendment right to give and receive individualized advice, both for free
3 and for a fee; and third, the claimed violation of Full Circle’s First Amendment right to advertise
4 its end-of-life services. *See generally* Pls.’ Cross MSJ; Defs.’ Cross MSJ.¹¹ Because Full Circle’s
5 arguments for summary judgment on these three claims directly challenge the Bureau’s
6 arguments, and vice versa, the court addresses the claims together. Where applicable, the court
7 also addresses whether a permanent injunction is warranted based on the current record.

8 1. Cross-Motions for Summary Judgment

9 Summary judgment is appropriate if “there is no genuine dispute as to any material fact
10 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is
11 “genuine” if “a reasonable jury could return a verdict for the nonmoving party.” *Anderson v.*
12 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” if it “might affect the outcome
13 of the suit under the governing law.” *Id.*

14 The party moving for summary judgment must first show no material fact is in dispute.
15 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). It can do so by showing the record
16 establishes facts beyond genuine dispute, or it can show the adverse party “cannot produce
17 admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The nonmoving party must
18 then “establish that there is a genuine issue of material fact.” *Matsushita Elec. Indus. Co. v.*
19 *Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). Both must cite “particular parts of materials in the
20 record.” Fed. R. Civ. P. 56(c)(1). The court views the record in the light most favorable to the
21 nonmoving party and draws reasonable inferences in that party’s favor. *Matsushita*, 475 U.S. at
22 587–88; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

23 Cross-motions for summary judgment are evaluated separately under the same standard,
24 “giving the nonmoving party in each instance the benefit of all reasonable inferences.” *Am. C.L.*
25 *Union of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003).

¹¹ For the reasons discussed below, the court addresses the speech Full Circle gives for a fee along with Full Circle’s advertisements, as both are commercial speech.

1 **2. Permanent Injunctions**

2 To obtain a permanent injunction, a plaintiff “must demonstrate: (1) that it has suffered
3 an irreparable injury; (2) that remedies available at law, such as monetary damages, are
4 inadequate to compensate for that injury; (3) that, considering the balance of hardships between
5 the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would
6 not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388,
7 391 (2006). This standard mirrors the standard for a preliminary injunction, except that a plaintiff
8 must show success on the merits, not just likelihood of success. *See Amoco Prod. Co. v. Village*
9 *of Gambell*, 480 U.S. 531, 546 n.12 (1987).

10 **D. Due Process: Full Circle’s Hands-On Services**

11 The court addresses plaintiffs’ Fourteenth Amendment due process claim first because its
12 resolution informs that of plaintiffs’ First Amendment advertisement claim. Full Circle and
13 family plaintiffs argue the Bureau’s application of the Act violates their liberty interests to the
14 extent it prohibits them from providing and receiving in-person and hands-on assistance at home
15 funerals. Compl. ¶¶ 252, 259.

16 **1. Legal Standard**

17 “To state a substantive due process claim, the plaintiff must show as a threshold matter
18 that a state actor deprived it of a constitutionally protected life, liberty or property interest.”
19 *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008); *see also Action Apt. Ass’n, Inc. v. Santa*
20 *Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir.2007). “The touchstone of due process is
21 protection of the individual against arbitrary action of government.” *Cnty. of Sacramento v.*
22 *Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). Both
23 parties agree no fundamental liberty interest is at stake here, so rational basis is the appropriate
24 standard of review. *See* Pls.’ Opp’n at 12, ECF No. 41; Mot. Hr’g Tr., ECF No. 52.

25 Under rational basis review, plaintiffs face the onerous task of showing the Bureau’s
26 enforcement actions were constitutionally arbitrary, i.e., egregious conduct “lacking any
27 reasonable justification in the service of a legitimate governmental objective . . .” *Shanks*,

1 540 F.3d at 1088 (internal citation, quotation marks omitted); *see also Crown Point Dev., Inc. v.*
2 *City of Sun Valley*, 506 F.3d 851, 856 (9th Cir. 2007) (recognizing substantive due process claim
3 must be based on clearly arbitrary actions, having no substantial relation to public health, safety
4 or general welfare). The court will “accept ‘generalizations even when there is an imperfect fit
5 between means and ends.’” *United States v. Navarro*, 800 F.3d 1104, 1114 (9th Cir. 2015)
6 (*quoting Heller v. Doe ex rel. Doe*, 509 U.S. 312, 321 (1993)). Put differently, the “burden is on
7 the one attacking the legislative arrangement to negative every conceivable basis which might
8 support it.” *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 681 (2012) (internal quotation
9 marks, citation, and brackets omitted).

10 2. Analysis

11 Full Circle challenges the Bureau’s conclusion that Full Circle acts as funeral directors¹²
12 and a funeral establishment,¹³ and thus is engaged in unlicensed activity, *see* Cal. Code Regs. tit.
13 16, § 1246, by providing hands-on assistance at home funerals. Because the definitions and
14 requirements of funeral directors and funeral establishments are distinct and may serve as
15 independent grounds for citation, the court analyzes each separately. The “hands-on assistance”
16 is limited to washing, dressing, repositioning, and placing a cooling mechanism (e.g., dry ice),
17 around a body, as well as procuring cooling mechanisms for families of the deceased. *See* Defs.’
18 Response to Pls.’ SUMF ¶ 25 (hands-on assistance may include “relocating the deceased within
19 the home, washing and dressing the body, and placing dry ice around the body for temporary
20 preservation.” (citing Murphy Decl.)); *id.* ¶ 26 (discussing procurement of cooling mechanisms);
21 Sanchez Decl. ¶¶ 30–31 (“washing . . . dressing . . . and repositioning a body are all activities
22 related to the preparation of human remains for transportation, burial, or disposal,” and thus
23 require a funeral director license “if performed by a business for a customer.” (citing Bus. & Prof.

¹² In using the term “funeral director(s),” the court is referring specifically to “licensed funeral director” as defined in Business and Professions Code section 7615.

¹³ “[F]uneral establishment(s)” refers specifically to “licensed funeral establishment” as defined in Business and Professions Code section 7616.

1 Code § 7615(a)).¹⁴ Accordingly, the relevant question is whether the Bureau has a legitimate
2 interest in citing unlicensed funeral directors and funeral establishments, and whether citing Full
3 Circle and its doulas for providing these hands-on services is rationally related to that interest.

4 The Cemetery and Funeral Bureau has an indisputably legitimate interest in citing
5 unlicensed funeral directors and funeral establishments. The state’s legislature gave the Bureau
6 authority to administer and enforce the Cemetery and Funeral Act, *see* Bus. & Prof. Code § 7606,
7 which defines both funeral directors and funeral establishments, *see id.* §§ 7615, 7616. Likewise,
8 the legislature has declared, “Unlicensed activity in the professions and vocations regulated by
9 the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of
10 the State of California.” *Id.* § 145(a). So, the legislature authorized the Bureau to issue citations
11 “against unlicensed persons . . . or other organizations who engage in any activity including
12 advertising for which licensure by the bureau is required.” Cal. Code Regs. tit. 16, § 1246. This
13 comports with the legislature’s command that the “[p]rotection of the public shall be the highest
14 priority . . . for the [Bureau].” Bus. & Prof. Code § 7601.1. The Bureau specifically cites

¹⁴ Bureau Director Sanchez’s declaration also mentions “bathing,” “shrouding,” and “casketing” as activities that require licensure. Sanchez Decl. ¶ 31. The court understands “bathing” to be the functional equivalent of “washing” and “shrouding” to be the functional equivalent of “dressing,” so it does not separately consider those two activities. Full Circle disputes assisting with casketing human remains or advertising as much. Pls.’ Response to Defs.’ SUMF ¶ 24 (citing Murphy Decl.). “Casketing” is defined as “to enclose in a case, chest, or coffin.” *See* American Heritage Dictionary of the English Language, Fifth Edition (2011). The Bureau withdrew the citation in part because it “did not [actually] investigate Full Circle’s operations,” Sanchez Decl. ¶ 27, only its advertisements. Mr. Miller’s report on Full Circle’s advertisements found Full Circle advertised it would assist in procuring a cardboard casket, which is the only apparent basis for his conclusion that Full Circle casketed bodies. *See generally* Decl. of Glenn Miller (Miller Decl.) Ex. A, ECF No. 34-5. Accordingly, because the Bureau cites nothing in the record that would permit the court to reasonably infer Full Circle engaged or engages in casketing, the court does not consider casketing in analyzing Full Circle’s due process claim.

The Bureau’s motions also indicate it has concluded the procurement and placement of cooling mechanisms require a funeral director license. Defs.’ Reply at 11; Defs.’ Cross MSJ at 16. Finally, the Bureau’s motions indicate Full Circle doulas must also maintain a licensed funeral establishment to provide their services. Defs.’ Cross MSJ at 16.

1 “[d]ecomposing human remains” as presenting “a threat to public health, safety, and welfare.”
2 Defs.’ Opp’n. at 8, 24 (citing Defs.’ Suppl. SUMF, ECF No. 42-2¹⁵).

3 The Bureau also aims to protect “consumers from being financially victimized by
4 unscrupulous persons at what is often a highly emotional and vulnerable time.” Defs.’ Cross MSJ
5 at 8. Plaintiffs agree protecting consumers and public health and safety are legitimate
6 governmental interests. Pls.’ Cross MSJ at 19–20, 22; Pls.’ Opp’n at 13. And plaintiffs have “no
7 qualm with sensible regulation [of] the sensitive duties of mortuaries, embalmers, and
8 crematories.” Pls.’ Opp’n at 15–16.

9 The court thus turns to whether the Bureau’s reservation of its right to cite Full Circle and
10 its doulas for unlicensed activity—specifically, acting as a funeral establishment and funeral
11 directors by providing hands-on services—is rationally related to the state’s legitimate interests in
12 consumer protection and public health, safety, and welfare.

13 **a) Funeral Establishment Licensure**

14 *1. Plaintiffs’ Motion*

15 The court first addresses plaintiffs’ motion as it relates to Full Circle’s purportedly
16 unlicensed activity as a funeral establishment. Because Full Circle has “no physical location,”
17 plaintiffs argue it would be “irrational” to conclude Full Circle is acting as or must be licensed as
18 “a place of business conducted in a building . . . devoted exclusively to those activities . . . related
19 to . . . disposition of human remains and including” either a “suitable room for the storage of
20 human remains” or a “preparation room equipped” to prepare, sanitize, or embalm human
21 remains for burial or transportation. Pls.’ Cross MSJ at 21; Bus. & Prof. Code § 7616.

22 The Bureau has not advanced any arguments as to why Full Circle’s hands-on services
23 warrant treating it as a funeral establishment. Recognizing it is not the Bureau’s burden to do so,
24 the undisputed facts of record support plaintiffs’ argument. First, Full Circle only provides its
25 hands-on services in private homes and has never maintained a building exclusively for activities

¹⁵ Plaintiffs did not respond to this supplemental statement of undisputed material facts, which defendants submitted with their opposition to plaintiffs’ cross-motion for summary judgment.

1 related to storing or disposing of human remains. Requiring Full Circle to maintain a funeral
2 establishment would not protect the relevant class of consumers, as consumers of home funeral
3 services want funerals at home. Second, none of Full Circle’s hands-on, home funeral services
4 would be made safer by having a building in which to conduct these services and a room to store
5 or prepare human remains. These spaces would, presumably, sit unused and empty, because
6 using them would run counter to Full Circle’s core mission of supporting home funerals. In short,
7 it would be irrational for the Bureau to conclude citing Full Circle for not being a licensed funeral
8 establishment would advance health, safety, or consumer protection. *Cornwell v. Hamilton*,
9 80 F. Supp. 2d 1101, 1106 (S.D. Cal. 1999) (“There are limits to what the State may require
10 before its dictates are deemed arbitrary and irrational.”).

11 The court thus **grants plaintiffs’ cross-motion for summary judgment** on their Due
12 Process claim, as it relates to the Bureau’s conclusion that Full Circle must obtain a funeral
13 establishment license to provide hands-on services. The Bureau’s cross-motion on this issue thus
14 is moot. The court also finds a permanent injunction appropriate as a matter of law, given that
15 Full Circle indisputably has been injured by its inability to provide hands-on services, other
16 remedies available at law are inadequate compensation, the Bureau will suffer no hardship by not
17 citing Full Circle, and the public interest will not be disserved by Full Circle’s providing hands-
18 on services without a funeral establishment license. *See eBay Inc.*, 547 U.S. at 391 (listing
19 factors). Accordingly, the court **enjoins defendants** from citing Full Circle under section 1246,
20 on the grounds it is acting as an unlicensed funeral establishment by providing hands-on services.
21 Likewise, the court **enjoins defendants** from enforcing Business and Professions Code section
22 7619.3, which bars funeral directors from performing their duties unless employed by or working
23 as sole proprietor of a licensed funeral establishment, against Full Circle’s doulas, to the extent
24 the Bureau would require the doulas to be employed by or operate a funeral establishment.¹⁶

¹⁶ Business and Professions Code section 7619.3 effectively requires a funeral director to affiliate with a funeral establishment, which would be irrational as applied to Full Circle’s doulas, if they are required to become funeral directors. Because enjoining enforcement of section 7619.3 against Full Circle effectively untethers the definitions of funeral director and funeral establishment, the court must also consider whether the enjoined provisions of the Act are severable, i.e., whether the court can sever the provisions requiring Full Circle to become a

1 **b) Funeral Director Licensure**

2 *1. Plaintiffs' Motion*

3 The court next addresses plaintiffs' argument that summary judgment is appropriate on
4 their due process claim because the Bureau cannot rationally conclude Full Circle doulas are
5 acting as unlicensed funeral directors—and thereby putting consumers and public health and
6 safety at risk—by providing hands-on services. Again, plaintiffs agree public health, safety, and
7 consumer protection are legitimate interests. *See generally* Pls.' Cross MSJ. However, plaintiffs
8 argue the Bureau's licensure requirement for the doulas is "*unrelated* to [the Bureau's legitimate]
9 interests" and thus "lacks a rational basis." Pls.' Cross MSJ at 20 (quoting *Merrifield v. Lockyer*,
10 547 F.3d 978, 986 (9th Cir. 2008) (emphasis in original)).

11 First, plaintiffs argue the Bureau's consumer protection argument fails because the
12 undisputed facts show the doulas are being "swept into a comprehensive" and "overbroad"
13 licensing scheme, which suffices to refute the state's generalized consumer protection
14 justifications. *Id.* at 20–21 (citing *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir.
15 2013)). Plaintiffs' citation to *St. Joseph Abbey* is unavailing. In that case, monks selling caskets
16 challenged Louisiana's requirement that only licensed funeral directors and establishments make
17 intrastate casket sales. 712 F.3d at 218. The state's "sole regulation" of caskets was to "restrict
18 their intrastate sales to funeral homes," and there were "no other strictures over their quality or
19 use." *Id.* The state argued the law was "rationally related to consumer protection because it

licensed funeral establishment while allowing the Bureau to enforce provisions requiring its
doulas to become licensed funeral directors. The Act does not contain a severability clause. *See*
generally Bus. & Prof. Code § 7600 *et seq.* However, the Supreme Court of California has held
in the absence of a severability clause, a court may sever the invalid portions of a statute if the
invalid provisions are "grammatically, functionally, and volitionally separable." *California*
Redevelopment Assn. v. Matosantos, 53 Cal. 4th 231, 271 (2011) (internal quotes and cites
omitted). Put differently, can the invalid parts be removed without affecting the "coherence of
what remains," is the remainder of the statute "complete in itself," and would the remaining
provisions have been adopted by the legislature if it had "foreseen the partial invalidation of the
statute"? *Id.* (internal quotes and cites omitted). Here, the court finds the definition and
requirements of a licensed funeral director and a funeral establishment are not dependent clauses,
the remaining provisions are "complete" as applied to Full Circle and its doulas, and the
legislature would have an interest in regulating Full Circle doulas as funeral directors, even if
unaffiliated with funeral establishments.

1 restricts predatory sales practices by third-party sellers and protects consumers from purchasing a
2 casket that is not suitable for the given burial space.” *Id.* at 223.

3 The Fifth Circuit first observed that “[n]o provision mandates licensure requirements for
4 casket retailers,” rather, “the licensure requirements . . . create funeral industry control over
5 intrastate casket sales” via the state’s “interlocking definitions of ‘funeral establishment’ and
6 ‘funeral directing’” *Id.* at 223. In Louisiana, a “funeral establishment” includes an “office
7 or place for the practice of funeral directing,” and “funeral directing” includes the “retail sale and
8 display” of caskets. *Id.* at 223–24 (quoting La. Stat. Ann. §§ 37:831(39), 37:831(37)).

9 Accordingly, anyone selling caskets in Louisiana must become a licensed funeral director and
10 establishment. The district court found the mandated funeral director training “does not include
11 instruction on caskets,” Louisiana does not require a person be buried in a casket or restrict sales
12 from out of state, and “whatever special expertise a funeral director may have in casket selection
13 is irrelevant to it being the sole seller of caskets,” because funeral directors are contractually
14 bound to assist customers with casket selection, regardless of where a casket is purchased. *Id.* at
15 224–25. The appellate court also concluded the law was not rationally related to policing
16 deceptive sales tactics, citing the Federal Trade Commission’s (FTC) enactment of the Funeral
17 Rule,¹⁷ under which the FTC declined to extend the rule to third-party sellers of caskets and urns.
18 *Id.* at 225–26. The Fifth Circuit concluded the “undisputed facts” betrayed the “perfectly rational
19 statement of hypothesized footings for the challenged law.” *Id.* at 223.

20 Contrary to plaintiffs’ argument, what happened in *St. Joseph Abbey* is not “exactly what
21 is happening here.” Pls.’ Cross MSJ at 21. Unlike monks selling caskets but otherwise
22 uninvolved in funerals, the doulas are not engaging in a discrete activity merely tangential to the
23 funeral industry. Instead, the definition of “funeral director” in California encompasses those
24 who prepare for the transportation or burial of human remains, i.e., what the Bureau has
25 determined Full Circle doulas do in providing hands-on services. *See* Bus. & Prof. Code

¹⁷ “Beginning in the early 1980s, the FTC promulgated . . . the Funeral Rule, to mitigate unfair or deceptive practices of funeral providers.” *Id.* at 218 (citing Trade Regulation Rule; Funeral Industry Practices, 47 Fed. Reg. 42260 (Sept. 24, 1982); *see* 16 C.F.R. § 453.1 *et seq.*).

1 § 7615(a). And even assuming it is irrational for a funeral director to be tethered to a funeral
2 establishment, *see supra* at footnote 18 (discussing Bus. & Prof. Code § 7613),¹⁸ the court is
3 enjoining the Bureau from enforcing that provision to the extent it would otherwise require Full
4 Circle or its doulas to open or affiliate with a funeral establishment. Accordingly, the court
5 cannot find as a matter of law the separate funeral director licensing scheme is irrationally
6 overbroad as applied to Full Circle’s doulas.

7 Further distinguishing this case from *St. Joseph Abbey*, there is a rational connection
8 between consumer protection and citing Full Circle’s doulas for providing hands-on services
9 without a funeral director license. Full Circle’s doulas provide hands-on services in a home, for a
10 suggested donation, and over many hours or days. The Bureau has expressed concerns about the
11 “risk presented by unscrupulous businesses and people who would take advantage of vulnerable
12 consumers struggling with the loss of a loved one.” Sanchez Decl. ¶ 7. The court observes at
13 least part of the Funeral Director Written Examination, *see supra* note 2, covers consumer
14 disclosures relating to prices for funeral services. Assuming these disclosures increase
15 transparency, learning about and implementing price disclosures would protect consumers.
16 Finally, while plaintiffs are correct that California does not regulate home funerals, just as
17 Louisiana did not regulate caskets, Pls.’ Cross MSJ at 22, the state may rationally regulate
18 intimate services provided by third parties for a fee. *See, e.g., IDK, Inc., v. Clark Cnty.*, 836 F.2d
19 1185, 1193 (9th Cir. 1988) (relationship between paid escort and client is not intimate
20 relationship protected by substantive due process). Here, plaintiffs’ complaint emphasizes the
21 “free” nature of Full Circle’s home funeral services. Compl. ¶¶ 255–57, 259–61. The record
22 shows doulas have provided some services for free. Defs.’ Response to Pls.’ SUMF ¶ 32. At

¹⁸ The court also observes that standing alone, California’s definitions of funeral establishment and funeral director are not necessarily interlocking. A funeral director may be engaged in maintaining a funeral establishment, Bus. & Prof. Code § 7615(b), or may be engaged in “[p]reparing for the transportation or burial or disposal, or directing and supervising for transportation or burial or disposal of human remains,” *id.* § 7615(a), or may be using a title implying she is engaged as a funeral director, *id.* § 7615(c). Likewise, nothing in the definition of “licensed funeral establishment” requires the involvement of a licensed funeral director, unless the funeral establishment has a room for preparing human remains, *id.* § 7616(c), in lieu of a storage room.

1 hearing, defense counsel conceded there was no evidence doulas received an income for their
2 services. Hr’g Tr. (Feb. 11, 2022) at 8–9, ECF No. 52. However, Full Circle suggests a donation
3 of between \$500 and \$2,000 for both individualized guidance and hands-on services, Defs.’
4 Response to Pls.’ SUMF 31, and plaintiffs’ counsel confirmed Full Circle’s doulas request a
5 “donation based on ability to pay” for their hands-on services, Hr’g Tr. (Feb. 11, 2022) at 7. At
6 hearing, plaintiffs’ counsel also suggested the nature of the relationship between doula and
7 client—whether commercial or not, as discussed in *IDK, Inc., v. Clark County*—was irrelevant,
8 arguing the proper inquiry is whether “where the state is imposing [a] completely onerous
9 regulatory requirement that would put the doulas out of business, is it rational for them to do
10 that?” Hr’g Tr. (Feb. 11, 2022) at 17. Because plaintiffs argue the analysis and outcome should
11 be the same regardless of whether Full Circle’s doulas are in a commercial relationship with
12 families—and drawing all inferences in favor of the non-moving party—the court considers the
13 issue as though Full Circle and its doulas’ conduct is commercial. Accordingly, the court cannot
14 conclude as matter of law it is irrational for the Bureau to cite Full Circle’s doulas for engaging in
15 unlicensed activity as funeral directors, with the legitimate goal of protecting consumers. If at
16 trial the “commercial” nature of the relationship will be dispositive to the outcome, the court will
17 permit supplemental briefing on the issue.

18 Plaintiffs also argue *St. Joseph Abbey*’s reasoning vis-à-vis the state’s interest in health
19 and safety applies here. Pls.’ Cross MSJ at 22–23. The Fifth Circuit concluded “no rational
20 relationship exists between public health and safety and limiting intrastate sales of caskets to
21 funeral establishments” because the state does “not even require a casket for burial, does not
22 impose requirements for their construction or design, does not require a casket to be sealed before
23 burial, and does not require funeral directors to have any special expertise in caskets” *St.*
24 *Joseph Abbey*, 712 F.3d at 226. The court was not required “to accept nonsensical explanations”
25 even given the “deference due state economic regulation” *Id.*

1 Here, Full Circle argues there are similarly “no rules or standards about health and safety
2 for a home funeral,”¹⁹ so “it cannot rationally be the case that health-and-safety considerations
3 arise when families invite doulas into their home to help.” Pls.’ Cross MSJ at 23. But the Fifth
4 Circuit’s logic, grounded in the facts of that case, does not translate to the facts of this one. For
5 one, this case concerns the handling of human remains, which the Bureau avers presents a risk to
6 public health and safety, Defs.’ Suppl. SUMF ¶ 40; human remains are fundamentally different
7 from inert wooden caskets. And while the Bureau does not regulate family members’ washing,
8 dressing, repositioning, or placing dry ice around the bodies of the deceased, family relatives are
9 less likely than doulas to be in regular contact with human remains. Because the doulas are
10 regularly in contact with human remains and because those remains implicate public health
11 concerns, it is rational for the Bureau to treat them differently than close relatives attending to a
12 home funeral. The court cannot find as a matter of law it is irrational for the Bureau to determine
13 Full Circle’s doulas are acting as funeral directors and to require them to become licensed funeral
14 directors in order to protect public health and safety.

15 For these reasons, the court **denies plaintiffs’ motion for summary judgment** to the
16 extent it seeks to enjoin the Bureau from citing Full Circle’s doulas for acting as unlicensed
17 funeral directors by providing its hands-on services.

18 *2. Defendants’ Motion*

19 The court next addresses defendants’ motion for summary judgment as it relates to Full
20 Circle doulas’ hands-on services and the requirement they become licensed funeral directors.
21 The Bureau initially advanced largely conclusory arguments in support of its entitlement to
22 summary judgment on plaintiffs’ due process claim. Defs.’ Cross-MSJ at 23–25 (California “is
23 permitted to regulate professional conduct within its borders . . . particularly [] when the practice
24 at issue implicates public health and safety.” (citing cases); “Plaintiffs have no due process right
25 to engage in . . . activities for which a license . . . is required.”).

¹⁹ Without addressing this aspect of plaintiff’s argument in full, the court notes California law requires that remains be interred or cremated within a “reasonable” time, which is arguably a rule relating to the health and safety of home funerals. Cal. Health and Safety Code § 7103(a).

1 In addressing health and safety, the Bureau observed the “reasons” for various,
2 unspecified “requirements” imposed on licensed funeral establishments—not directors—are
3 “self-evident.” *Id.* at 20. The Bureau continued, “[s]pecial care should be taken to manage
4 infection risks when handling the deceased, including [certain infectious disease]” *Id.*
5 However, the Bureau did not articulate how citing Full Circle’s doulas for acting as unlicensed
6 funeral directors in providing hands-on services at a private home protected the public or
7 consumers’ health and safety. *See generally* Defs.’ Cross-MSJ. The Bureau also argued in its
8 opposition, “Decomposing human remains can present a threat to public health, safety, and
9 welfare.” Defs.’ Opp’n at 24. And in its reply, the Bureau argued, “[I]n conceding that they
10 handle human remains without having the training and qualifications required by the Act,
11 [p]laintiffs have already admitted that Full Circle [doulas] perform services that compromise
12 consumer protection and public health and safety.” Defs.’ Reply at 5.

13 But the Bureau never connects the dots by explaining how becoming licensed funeral
14 directors would ensure the doulas’ hands-on services are not detrimental to health and safety. For
15 example, at hearing, the Bureau could not identify any topics on the funeral director’s
16 examination²⁰ that doulas must master to attend to public health and safety when, for example,
17 repositioning human remains. Hr’g Tr. at 9–10. Instead, the Bureau replied generally that
18 anyone handling human remains “should be cognizant of any sort of health and safety concerns,”
19 and “as cognizant of these concerns as licensed funeral director would be.” *Id.* at 10. But health
20 and safety concerns provide the state’s legitimate interest; they do not satisfy the requirement of a
21 rational relationship, i.e., how doulas licensed as funeral directors would advance the state
22 interest, or how unlicensed doulas would undermine it. *See Merrifield*, 547 F.3d at 986
23 (discussing validity of state training requirements and noting “any qualification must have a
24 rational connection with the applicant’s fitness or capacity to practice [the profession]” (quoting
25 *Schwartz v. Bd. of Bar Exam’rs*, 353 U.S. 232, 239 (1957)); *see also Cornwell*, 80 F. Supp. 2d at

²⁰ The Bureau mentions this examination only once in its briefing, to distinguish this case from *St. Joseph Abbey*. Defs.’ Opp’n at 24. The Bureau does not explain the content of the examination, except that it “tests the applicant’s knowledge of the Act.” *Id.*

1 1108 (finding cosmetology “licensing regimen would be irrational as applied to [hair braider]
2 because of her limited range of activities” relative to activities of cosmetologist).

3 Furthermore, families are required to comply with various rules that appear designed to
4 ensure the human remains in question are safe to wash, dress, reposition, and cool. For example,
5 a coroner or attending physician must sign a death certificate, which presumably requires an
6 evaluation of the body. *See* State of California Dept. of Consumer Affairs Consumer Guide to
7 Funeral & Cemetery Purchases at 7. Families must obtain a permit for disposition, make
8 arrangements with a cemetery or crematory, *id.*, and inter bodies “within a reasonable time,” Cal.
9 Health & Safety Code § 7103(a), all of which reduce the likelihood of remains decomposing to a
10 point they pose a hazard to health. The Bureau does not attempt to explain how licensing a doula
11 who provides hands-on services is necessary or even beneficial given the existing requirements
12 imposed on home funerals.

13 The Bureau’s arguments regarding consumer financial protection are equally conclusory.
14 The Bureau notes “consumers are particularly vulnerable to manipulation and overreaching when
15 they are struggling with the impending or recent death of a loved one” and observes the Act
16 “requires that licensees comply with various fiscal provisions intended for consumer protection,
17 such as trust accounts, specific contract requirements, and published price lists.” Defs.’ Cross-
18 MSJ at 20–21. Again, the Bureau does not explain how consumer finances are protected by
19 citing Full Circle, a non-profit organization funded largely by donations, for not complying with
20 these requirements before providing hands-on services.

21 Finally, relying on the evidence in the record, nothing indicates Full Circle’s doulas’
22 hands-on services have harmed public or consumer health, safety, or finances, or that the existing
23 requirements imposed on home funerals are insufficient. At this stage, the court cannot find as a
24 matter of law that the Bureau has articulated a “rational relation” between its legitimate interest in
25 health, safety, and consumer protection, and applying the funeral director licensure scheme to the
26 doulas for providing their hands-on services. *Cornwell*, 80 F. Supp. 2d at 1106 (“There must be
27 some congruity between the means employed and the stated end or the test would be a nullity.”)
28 The court thus **denies defendants’ motion for summary judgment on plaintiffs’ due process**

1 **claim** to the extent the Bureau seeks to cite Full Circle’s doulas for acting as unlicensed funeral
2 directors by providing hands-on services.

3 **E. First Amendment: Full Circle’s Free Individualized Advice**

4 Full Circle’s second and third claims are based on the First Amendment. Plaintiffs first
5 argue the First Amendment protects Full Circle’s right to offer speech in the form of
6 individualized advice, as well as the right of their clients to receive that advice, whether Full
7 Circle collects a fee or not. Compl. ¶¶ 227–28. This advice consists of devising personalized
8 written plans before death and providing individualized advice during a home funeral. Next,
9 plaintiffs argue the First Amendment protects Full Circle’s right to advertise its nonprofit
10 services, i.e., engage in commercial speech. *Id.* ¶ 239. As explained in a separate section below,
11 both the individualized advice Full Circle offers or provides for a fee and its advertisements are
12 subject to the same analysis and warrant the same relief. *See discussion infra* at F.1–2. For
13 example, if the court finds summary judgment is appropriate on Full Circle’s First Amendment
14 claim as it applies to advertising pre-planning services, it would find the same with regard to Full
15 Circle providing those pre-planning services for a fee. Accordingly, the court addresses the
16 speech Full Circle provides for a fee in its discussion of Full Circle’s advertisements, *infra* at F.,
17 and only addresses speech offered and provided for free here.

18 **1. Legal Standard**

19 When a government places limits on speech protected by the First Amendment, the
20 restrictions must survive “more exacting or ‘heightened’ scrutiny” in the form of either
21 intermediate or strict scrutiny. *Pac. Coast Horseshoeing School, Inc. v. Kirchmeyer*, 961 F.3d
22 1062, 1068 (9th Cir. 2020) (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997)).
23 The court engages in intermediate scrutiny when the government “regulates conduct but
24 incidentally burdens expression,” while it applies strict scrutiny when the government “regulates
25 the content of the speech—when the government regulates who may speak or what we may say
26” *Id.* (also citing *Reed v. Town of Gilbert*, 576 U.S. 155, 135 (2015)).

27 Intermediate scrutiny requires a government defendant to show that the challenged law or
28 regulation “advances important governmental interests unrelated to the suppression of free speech

1 and does not burden substantially more speech than necessary to further those interests.” *Turner*
2 *Broad. Sys., Inc.*, 520 U.S. at 189. Strict scrutiny requires the regulating statute to “be narrowly
3 tailored to promote a compelling Government interest.” *United States v. Playboy Ent. Grp., Inc.*,
4 529 U.S. 803, 813 (2000) (citing *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126
5 (1989)). Under strict scrutiny, “[i]f a less restrictive alternative would serve the Government’s
6 purpose, the legislature must use that alternative.” *Id.* (citing *Reno v. Am. C.L. Union*, 521 U.S.
7 844, 874 (1997)).

8 2. Analysis

9 Plaintiffs’ free advice includes devising personalized written plans for people before their
10 deaths and providing individualized advice in someone’s home while a home funeral is
11 underway. The Bureau argues neither strict nor intermediate scrutiny are relevant to the court’s
12 analysis of this non-commercial speech, because the Bureau has “taken no action to restrict
13 plaintiffs’ pure speech.” Defs.’ Cross MSJ at 13. For the same reasons plaintiffs have standing to
14 bring this First Amendment claim, *see* discussion *supra* at II.A.2, the court considers the cross-
15 motions on this claim.

16 Full Circle argues the appropriate level of scrutiny is strict scrutiny. *See* Pls.’ Cross MSJ
17 at 13. Because the Bureau disputes it has infringed Full Circle’s free speech at all, it does not
18 articulate the governmental interests it would advance in citing Full Circle for giving free advice
19 or guidance without funeral establishment or funeral director licenses. Defs.’ Cross MSJ at 13–
20 14; Defs.’ Reply at 10. Despite the conflicting messages the Bureau has sent about whether Full
21 Circle’s non-commercial speech requires licensure, *see* discussion *supra* at II.A.2, it effectively
22 concedes in its moving papers that it has no important or compelling interest in regulating that
23 speech. Defs.’ Cross MSJ at 13–14; Defs.’ Reply at 10.

24 Accordingly, the court **grants plaintiffs’ motion on this claim and permanently enjoins**
25 the Bureau from citing Full Circle for providing any free guidance or advice without a funeral
26 establishment or director license, whether before or during a home funeral. Full Circle has
27 demonstrated injury by virtue of its speech having been chilled, *see Libertarian Party of Los*
28 *Angeles Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013) (“a chilling of the exercise of First

1 Amendment rights is, itself, a constitutionally sufficient injury”), monetary damages are an
2 insufficient remedy, the Bureau faces no hardship in being enjoined from citing Full Circle, and
3 the public is not harmed by Full Circle’s free speech. *See eBay Inc.*, 547 U.S. at 391 (listing
4 factors).

5 **F. First Amendment: Full Circle’s Advertisements and Commercial Speech**

6 The court turns last to Full Circle’s commercial speech, which includes both
7 advertisements and the guidance Full Circle offers or provides for a fee.

8 **1. Legal Standard**

9 Under *Central Hudson Gas & Electric v. Public Service Commission of New York*, the
10 government may restrict commercial speech “that is neither misleading nor connected to unlawful
11 activity, as long as the governmental interest in regulating the speech is substantial.” *Am.*
12 *Beverage Ass’n v. City & Cnty. of San Francisco*, 916 F.3d 749, 755 (9th Cir. 2019) (quoting
13 *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 564 (1980)).
14 If the regulated speech is not related to unlawful activity or misleading, “the government bears
15 the burden of showing that it has a substantial interest, that the restriction directly advances that
16 interest and that the restriction is not more extensive than necessary to serve the interest.” *Valle*
17 *Del Sol Inc. v. Whiting*, 709 F.3d 808, 816 (9th Cir. 2013) (citations omitted). This showing is
18 “critical; otherwise, ‘a State could with ease restrict commercial speech in the service of other
19 objectives that could not themselves justify a burden on commercial expression.’” *Rubin v.*
20 *Coors Brewing Co.*, 514 U.S. 476, 487 (1995) (quoting *Edenfield v. Fane*, 507 U.S. 761, 771
21 (1993)). “If the Government can achieve its interests in a manner that does not restrict
22 commercial speech, or that restricts less speech, the Government must do so.” *Thompson v. W.*
23 *States Med. Ctr.*, 535 U.S. 357, 358 (2002). “It is well established that ‘the party seeking to
24 uphold a restriction on commercial speech carries the burden of justifying it.’” *Edenfield*,
25 507 U.S. at 770 (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 71 n.20 (1983)).

1 **2. Analysis**

2 For clarity, the court addresses each of the following areas of commercial speech
3 separately: (a) speech relating to Full Circle’s hands-on services at home funerals;
4 (b) individualized consultations to develop end-of-life plans before death; (c) public education
5 about end-of-life planning and options; (d) acting as a liaison to arrange transportation of human
6 remains after the home funeral; (e) speech regarding services requiring licensure the Bureau avers
7 Full Circle advertises, but Full Circle disputes advertising or providing; (f) use of the term “home
8 funeral guide”; and (g) the website’s funeral establishment disclaimers. Where applicable, the
9 court considers separately the interests the Bureau may have in citing Full Circle for acting
10 without funeral establishment as contrasted to funeral director licenses, because these interests
11 provide independent grounds for citation.

12 **a) Full Circle’s Speech Relating to Hands-On Services**

13 The Bureau argues Full Circle’s speech relating to its hands-on services is not protected
14 speech because Full Circle may not legally provide those services. Defs.’ Cross MSJ at 15–17.

15 This court above has found plaintiffs’ motion for summary judgment should be granted on
16 their Due Process claim because the Bureau has no rational basis for requiring Full Circle to
17 obtain funeral establishment licensure to provide hands-on services. *See* discussion *supra* at
18 II.D.2.a.1.. Put differently, the court has found as a matter of law and on the undisputed factual
19 record that Full Circle may provide hands-on services without a funeral establishment license;
20 this ends the analysis under *Central Hudson*. 447 U.S. at 564. However, even if this speech were
21 “related to unlawful activity,” the Bureau’s inability to articulate a rational connection between
22 citing Full Circle for providing hands on services and public health and safety concerns indicates
23 the Bureau likewise does not have a “substantial interest” in restricting related speech unless Full
24 Circle becomes a licensed funeral establishment, as it is not required to do. *See Valle Del Sol*
25 *Inc.*, 709 F.3d at 816. Thus, the court **grants plaintiffs’ motion for summary judgment on this**
26 **aspect of their First Amendment claim**, to the extent the Bureau seeks to cite Full Circle or its
27 doulas for advertising, speaking about, or directing hands-on services without a funeral
28 establishment license. For the same reasons, the court **permanently enjoins** the Bureau from

1 citing Full Circle on these grounds, *see* Cal. Code Regs. tit. 15, § 1246, or enforcing Business and
2 Professions Code section 7619.3 against Full Circle’s doulas, to the extent it would require them
3 to be employed by or operate a funeral establishment. A permanent injunction is appropriate
4 because Full Circle’s speech has been chilled, money damages are an inadequate remedy, the
5 Bureau faces no privation in being enjoined from citing Full Circle, and the public is not harmed
6 by this category of Full Circle’s speech. *See eBay Inc.*, 547 U.S. at 391 (listing factors). Where
7 the court grants summary judgment for plaintiffs on their commercial speech claim, the court also
8 finds a permanent injunction appropriate for these same reasons, so it does not repeat the analysis
9 set forth above or restate the factors.

10 Likewise, this court has already denied plaintiffs’ and the Bureau’s cross-motions for
11 summary judgment on plaintiffs’ due process claim, *see supra* at II.D.2.b., as applicable to the
12 Bureau’s ability to cite Full Circle’s doulas for providing hands-on services without a funeral
13 director license. In other words, the court does not as a matter of law find Full Circle’s hands-on
14 services are permissible or lawful. Accordingly, the court also **denies both plaintiffs’ and the**
15 **Bureau’s cross-motions on plaintiffs’ First Amendment claim**, with respect to the question
16 regarding the Bureau’s ability to cite Full Circle for advertising its hands-on services or offering
17 guidance about how families themselves may perform those same services for a fee, without a
18 funeral director license.

19 **b) Individualized End-Of-Life Plans**

20 Based on its moving papers, the Bureau does not object to Full Circle’s “providing
21 individualized advice about death planning and home funerals” without a funeral establishment or
22 director license, Defs.’ Opp’n at 10–12, so long as Full Circle does not solicit or accept funds
23 intended to pre-pay for funeral services in the future, Defs.’ Reply at 10. Nothing in the record
24 indicates Full Circle accepts or advertises accepting pre-payment for future funeral services.
25 Accordingly, the Bureau effectively concedes it has no interest, substantial or otherwise, in citing
26 Full Circle for providing end-of-life plans for a fee. The court finds **summary judgment for**
27 **plaintiffs appropriate on this aspect of plaintiffs’ First Amendment claim**, and **permanently**

1 **enjoins** the Bureau from citing Full Circle for selling or advertising individualized end-of-life
2 plans without funeral director or establishment licenses. *See* Cal. Code Regs. tit. 15, § 1246.

3 **c) Public Education About End-of-Life Planning**

4 As with individualized end-of-life plans, the Bureau does not argue it has any interest in
5 requiring Full Circle to obtain funeral director or establishment licenses before educating the
6 public about end-of-life planning, even for a fee, so long as Full Circle does not collect funds
7 intended to pay for a future funeral. Defs.’ Cross-MSJ at 10–11, 13, 22; Defs.’ Opp’n at 12, 18.

8 Thus, the court also **grants summary judgment for plaintiffs on this aspect of their First**
9 **Amendment claim**, and **permanently enjoins** the Bureau from citing Full Circle for selling or
10 advertising educational events about end-of-life planning without funeral director or
11 establishment licenses. *See* Cal. Code Regs. tit. 15, § 1246.

12 **d) Acting as a Liaison to Arrange Transportation**

13 Full Circle does not dispute its doulas act as liaisons to arrange transportation of human
14 remains after a funeral. Pls.’ Response to Defs.’ SUMF ¶ 33. The Bureau argues the First
15 Amendment does not protect Full Circle’s right to engage in speech uttered in fulfilling this role
16 because Full Circle and its doulas are engaging in unlicensed activity requiring funeral director
17 licensure. Defs.’ Cross MSJ at 8–10, 16; Defs.’ Opp’n at 15 (citing Bus. & Prof. Code
18 § 7615(a)). Plaintiffs do not contest the Bureau’s conclusion that this liaison function requires
19 licensure under the Act. *See generally* Pls.’ Cross MSJ, Opp’n, and Reply. Because plaintiffs do
20 not contest the speech is related to an unlawful activity, **summary judgment is granted in favor**
21 **of defendants on this aspect of plaintiffs’ First Amendment claim.** *See 44 Liquormart, Inc. v.*
22 *Rhode Island*, 517 U.S. 484, 497 (1996) (“[T]he First Amendment does not protect
23 commercial speech about unlawful activities.”).

24 **e) Speech Full Circle Disputes Making**

25 Defendants aver Full Circle advertises the following services, all of which require
26 licensure under the Act: casketing, assistance with arranging options for burial or cremation, and
27 assistance with preparing or filling out paperwork. Defs.’ Cross MSJ at 8–9, 16; Defs.’ Opp’n
28 at 15. Full Circle disputes it advertises or provides these services, pointing in part to revisions it

1 made to its website that more specifically and accurately describe its services, following the
2 Bureau's citation. *See* Pls.' Response to Defs.' ¶¶ SUMF 24, 28–29, 33. Full Circle does not
3 dispute these services, in the abstract, require licensure, so the question is whether there is a
4 dispute of material fact regarding whether Full Circle actually provides or advertises these
5 services, as described by the Bureau.

6 As discussed above, “casketing” is defined as “to enclose in a case, chest, or coffin.”
7 American Heritage Dictionary of the English Language, Fifth Edition (2011). Full Circle
8 disputes providing or advertising this service, but admits it offers guidance and information about
9 low-cost casket options, and about decorating caskets. Defs.' Response to Pls.' SUMF ¶ 9; Pls.'
10 Response to Defs.' SUMF ¶ 24. Full Circle's website did not include the term “casketing” when
11 the Bureau initially investigated Full Circle's advertisements, *see* Miller Decl., Ex. A, and the
12 term does not appear on Full Circle's website as of this order's date, *see generally* Full Circle
13 Website.²¹ According to Mr. Miller's investigative report, Full Circle's website mentioned the
14 word “casket” in four contexts in 2019. Miller Decl., Ex. A. First, Full Circle may “[a]ssist in
15 procuring . . . cardboard casket” *Id.* Second and third, Full Circle notes that optional
16 additional services available upon request include “[p]ersonalized guided Casket decorating . . .”
17 and “Local handmade wood casket.” *Id.* Finally, Full Circle wrote, “Family Directed End-of-
18 Life and After Death Care Includes: . . . Eco-Friendly, low cost casket.” *Id.* However, none of
19 these statements indicates Full Circle participates in the enclosing of human bodies in a casket, as
20 discussed separately above.

21 Full Circle also disputes advertising “services like assistance with arranging options for
22 burial or cremation.” Pls.' Response to Defs.' SUMF ¶ 28. Shortly after meeting with Bureau
23 representatives, Full Circle removed the “assists” language from its website and replaced it with
24 “offer[s] guidance.” *Id.*; *see also* Full Circle Website.²² Likewise, Full Circle no longer
25 advertises that it “assists” with “preparing/filling out paperwork,” but rather “[s]upport[s] families

²¹ Available at <http://www.fullcirclelivingdyingcollective.com/> (last accessed Jan. 22, 2023).

²² Available at <http://www.fullcirclelivingdyingcollective.com/> (last accessed, Jan. 22, 2023).

1 in filling out and obtaining legal and other necessary paperwork” *Id.* ¶ 24. The Bureau does
2 not dispute these changes track what Full Circle does or argue this new language amounts to
3 holding oneself out as acting as an unlicensed funeral establishment or funeral director.

4 Because there is no dispute of material fact regarding whether Full Circle engages in
5 casketing, “assists” in arranging options for burial or cremation, or “assists” in preparing
6 paperwork, the court **grants summary judgment for plaintiffs on this aspect of their First**
7 **Amendment claim.** Accordingly, the court **permanently enjoins** the Bureau from citing Full
8 Circle for using language about caskets and the aforementioned, revised language on its website
9 without obtaining funeral director or establishment licenses. *See* Cal. Code Regs. tit. 15, § 1246.

10 **f) Full Circle’s Use of “Home Funeral Guide”**

11 The Bureau argues referring to Full Circle doulas as “home funeral guides” could
12 “mislead consumers into believing that Full Circle’s doulas are licensed funeral directors”
13 because “funeral director” includes anyone “[u]sing . . . any [] title implying that he or she is
14 engaged as a funeral director.” Defs.’ Cross MSJ at 18 (quoting Bus. & Prof. Code § 7615(c)).
15 Whether or not the title “home funeral guide” accurately characterizes the work Full Circle’s
16 doulas perform, the court finds a consumer could conclude it implies the doulas are licensed
17 funeral directors. But to restrict Full Circle’s use of this title, the Bureau must still show it has a
18 substantial interest in restricting the speech, the “restriction directly advances that interest,” and it
19 is “not more extensive than necessary to serve the interest.” *Valle Del Sol Inc.*, 709 F.3d at 816.
20 The Bureau does not articulate any interest in this respect, *see generally* Defs.’ Cross MSJ, so the
21 court **grants summary judgment for plaintiffs on this aspect of their First Amendment claim**
22 **and permanently enjoins** the Bureau from citing Full Circle’s doulas for using the title “home
23 funeral guide.” *See* Cal. Code Regs. tit. 15, § 1246.

24 **g) Full Circle’s Funeral Establishment Disclaimers**

25 Finally, the Bureau argues the First Amendment does not protect Full Circle’s advertising
26 because it is misleading. Defs.’ Cross MSJ at 17–18. Specifically, the Bureau argues the
27 prominent disclaimers on Full Circle’s website “could actually create confusion and increase risk
28 to consumers who may believe that they do not need the protections of a licensed funeral

1 professional and may be discouraged from reporting Full Circle’s unlicensed activities to the
2 Bureau.” *Id.* at 18 (e.g., pointing to language saying “Full Circle . . . is in no way considered a
3 funeral establishment.”). The argument that disclaimers may “create confusion” strains credulity,
4 and the Bureau does not attempt to explain how or why exactly a disclaimer would create
5 confusion and be misleading. The argument also assumes consumers should believe they “need
6 the protections of a licensed funeral professional,” which is irrelevant here. *Id.* The court **grants**
7 **summary judgment for plaintiffs on this aspect of their First Amendment claim**, and
8 **permanently enjoins** the Bureau from citing Full Circle for including funeral establishment
9 disclaimers on their website. *See* Cal. Code Regs. tit. 15, § 1246.

10 **III. CONCLUSION**

11 For the above reasons, the court **grants plaintiffs’ motion for summary judgment in**
12 **part and denies it in part**, and **grants defendants’ cross-motion in part and denies it in part**.
13 The Bureau is permanently enjoined from citing Full Circle pursuant to section 1246, *see* Cal.
14 Code Regs. tit. 15, § 1246:

- 15 • on the grounds they are acting as an unlicensed funeral establishment by providing hands-
16 on services, or enforcing Business and Professions Code section 7619.3 against Full
17 Circle’s doulas, to the extent it would require the doulas to be employed by or operate as
18 sole proprietors of a funeral establishment to provide hands-on services;
- 19 • for providing any free guidance or advice without a funeral establishment or director
20 license, whether before or during a home funeral;
- 21 • for advertising, speaking about, or directing hands-on services without a funeral
22 establishment license, or enforcing Business and Professions Code section 7619.3 against
23 Full Circle’s doulas, to the extent it would require them to be employed by or run a
24 funeral establishment in order to do the same;
- 25 • for selling or advertising individualized end-of-life plans without funeral director or
26 establishment licenses;
- 27 • for selling or advertising educational events about end-of-life planning without funeral
28 director or establishment licenses;

- 1 • for using language relating to caskets, but not casketing, on its website without funeral
2 director or funeral establishment licenses;
- 3 • for using the revised language described *supra* at II.F.2.e without funeral director or
4 funeral establishment licenses;
- 5 • for using the term “home funeral guide” without a funeral director or funeral
6 establishment license; or
- 7 • for including funeral establishment disclaimers on its website without funeral director or
8 funeral establishment licenses.

9 The parties are ordered to **meet and confer and submit a joint proposed formal**
10 **permanent injunction order within fourteen (14) days** of the filed date of this order. The
11 court’s preliminary injunction remains in full effect as to all issues not resolved at this stage. *See*
12 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction
13 is . . . to preserve the relative positions of the parties until a trial on the merits can be held.”); *see*
14 *also U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1093–94 (9th Cir. 2010) (preliminary
15 injunctions are dissolved when final judgment issued in case).

16 This order resolves ECF Nos 34 and 35.

17 IT IS SO ORDERED.

18 DATED: January 23, 2023.

19



CHIEF UNITED STATES DISTRICT JUDGE