

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 28, 2026

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRI-STATE MEMORIAL
HOSPITAL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 2:25-CV-0181-TOR

ORDER DENYING DEFENDANT’S
MOTION TO DISMISS

BEFORE THE COURT is Defendant’s Motion to Dismiss (ECF No. 28).

This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant’s Motion to Dismiss (ECF No. 28) is DENIED.

BACKGROUND

This case arises out of allegations that Plaintiff was wrongfully denied a tax refund for the first, second, and third quarters of 2021 under the Employee Retention Credit (“ERC”) under the Coronavirus Aid, Relief, and Economic

1 Security Act (“CARES act”). ECF No. 25 at 22-24; CARES Act, Pub. L. No. 116-
2 136, 134 Stat. 281 (2020); 26 U.S.C. § 3134. Plaintiff requests attorneys’ fees and
3 costs. ECF No. 25 at 24-25. On January 20, 2026, Defendant moved to dismiss
4 for failure to state a claim. ECF No. 28. Plaintiff opposes the motion. ECF No.
5 32.

6 DISCUSSION

7 A. Legal Standard

8 For a plaintiff to survive a motion to dismiss under Rule 12(b)(6), “a
9 complaint must contain sufficient factual matter, accepted as true, ‘to state a claim
10 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
11 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires
12 more than a simple “formulaic recitation of a cause of action’s elements.”
13 *Twombly*, 550 U.S. at 545. This requires facts to support legal conclusions beyond
14 simply stating conclusory legal statements. *Iqbal*, 556 U.S. at 663; *Twombly*, 550
15 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)) (stating that for a
16 motion to dismiss, courts are not obligated to accept alleged legal conclusions as
17 true factual allegations); *Kwan v. SanMedica Int’l*, 854 F.3d 1088, 1096 (9th Cir.
18 2017) (stating legal conclusions must be supported by factual allegations).
19 However, a court must construe facts in the light most favorable to the opposing
20

1 party of the motion and a court must take the allegations of the non-moving party
2 as true. *Twombly*, 550 U.S. at 556.

3 In addition, a plaintiff must “nudge[] their claims across the line from
4 conceivable to plausible” otherwise plaintiff’s complaint shall be dismissed.
5 *Twombly*, 550 U.S. at 570. In other words, the “plausibility standard requires more
6 than ‘a sheer possibility that a defendant has acted unlawfully’ but ‘is not akin to a
7 probability standard.’” *Kwan v. SanMedica Int’l*, 854 F.3d 1088, 1096 (9th Cir.
8 2017) (quoting *Turner v. City & Cnty. of San Francisco*, 788 F.3d 1206, 1210 (9th
9 Cir. 2015)).

10 **B. CARES Act and ERC**

11 In 2020, the federal, state, and local governments issued orders to stem the
12 spread of COVID-19. ECF No 25 at 4. The federal government enacted the
13 CARES Act in response to the COVID-19 pandemic to help businesses and
14 individuals. ECF Nos. 25 at 4-5; 28 at 2; CARES Act, Pub. L. No. 116-136, 134
15 Stat. 281 (2020).

16 Pursuant to that goal, the ERC was created to provide a tax credit against
17 applicable employment taxes for employers who paid qualified wages to their
18 employees during the calendar quarters in 2020 and 2021. ECF No. 25 at 4-5.
19 Under 26 U.S.C. § 3134, an eligible employer includes any employer that “was
20 carrying on a trade or business during the calendar quarter for which the credit is

determined” and “(ii) with respect to any calendar quarter” that meets one of the three specific additional requirements. 26 U.S.C. § 3134(c)(2)(A). These additional requirements include:

(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19), (“Suspension Test”)

(II) the gross receipts (within the meaning of section 448(c)) of such employer for such calendar quarter are less than 80 percent of the gross receipts of such employer for the same calendar quarter in calendar year 2019, or (“Gross Receipts Test”)

(III) the employer is a recovery startup business.

26 U.S.C. § 3134.

In November 2020, Governor of Washington State, Jay Inslee, issued Proclamation 20-24.2 (“Proclamation”) in response to COVID-19 that imposed restrictions on healthcare facilities. ECF No. 25 at 10. Plaintiff states that the Proclamation required Plaintiff to implement “over 30 separate requirements”, to adhere to guidance from state departments and the CDC regarding employee work restrictions. *Id.* Plaintiff contends, as a result, that it partially suspended operations because Plaintiff screened everyone who entered the facility. ECF No. 25 at 10. The screening process included monitoring the entrances, implementing screening procedures and isolating those who were suspected of contracting

1 COVID-19. ECF No. 25 at 13-16. To ensure compliance with the CDC's
2 protocol's Plaintiff implemented requiring testing for COVID-19 for its
3 employees, physical distancing and other restrictions. ECF No. 25 at 12.

4 Moreover, Plaintiff alleges many other actions it took to comply with
5 Proclamation 20-24.2 including opening a vaccination clinic inside the facility and
6 starting a vaccination hotline. ECF No. 25 at 16, 21. To effectuate this, Plaintiff
7 diverted Plaintiff's resources and personnel which resulted in a partial suspension
8 of its facility and operations. ECF No. 25 at 16.

9 Plaintiff continues that in 2020 the government orders required Plaintiff to
10 "isolate COVID-19 patients and cancel non-urgent procedures, reducing Tri-
11 State's usable space due to social distancing and barricade requirements, limiting
12 Tri-State's available personnel through quarantine periods and COVID-19
13 protocols, and tasking Tri-State with vaccinating first responders, healthcare
14 professionals, at-risk individuals, and the general community against COVID-19."
15 ECF No. 25 at 10.

16 Plaintiff states that it qualifies for the ERC "because it partially suspended
17 its business due to government orders in the first, second, and third quarters of
18 2021." ECF No. 25 at 10. Plaintiff states that it was required to follow the orders
19 that affected healthcare facilities to implement the restrictive infection prevention
20 protocols. ECF No. 25 at 17-22 (citing 26 U.S.C. § 3134(c)(2)(A)). Additionally,

1 Plaintiff claims that it filed its refund claim sixteen months ago, but the IRS failed
2 to process Plaintiff's claim and did not provide any refund. ECF No. 25 at 24.

3 However, Defendant alleges that Plaintiff fails to provide facts that it is
4 eligible because it was not "partially suspended." ECF No. 28 at 6-7. Defendant
5 claims Plaintiff fails to provide facts that it suspended nominal operations of its
6 trade or business. ECF No. 28 at 7-8. Additionally, Defendant claims that even if
7 the Court determines that Plaintiff's operations were partially suspended that it was
8 not "due to" a government order. ECF No. 28 at 14-21. Defendant hinges these
9 claims upon statutory interpretation. ECF No. 28.

10 **C. Statutory Interpretation**

11 Statutory interpretation always begins with the text of the statute to
12 determine whether it can be interpreted as plain and unambiguous. *United States v.*
13 *Torres*, 995 F.3d 695, 703 (9th Cir. 2021); *Barnhart v. Sigmon Coal Co.*, 534 U.S.
14 438, 450 (2002) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

15 When a court determines the plain language of a statute, the court considers "the
16 provisions of the entire law, including its object and policy, to ascertain the intent
17 of Congress." *United States v. Lyle*, 742 F.3d 434, 436 (9th Cir. 2014) (quoting
18 *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002)).

19 Terms are typically given their ordinary meaning unless they are defined.
20 *Torres*, 995 F.3d at 703. "To determine ordinary meaning, we consider dictionary

1 definitions.” *Tomczyk v. Garland*, 25 F.4th 638, 644 (9th Cir. 2022) (quoting
2 *United States v. Cox*, 963 F.3d 915, 920 (9th Cir. 2020)).

3 However, “[i]f a literal construction of the words of a statute be absurd, the
4 act must be so construed as to avoid the absurdity.” *Holy Trinity Church v. United*
5 *States*, 143 U.S. 457, 460 (1892). Specifically, “[g]eneral terms should be so
6 limited in their application as not to lead to injustice, oppression, or an absurd
7 consequence.” *Holy Trinity Church*, 143 U.S. at 461. If that is the outcome, it is
8 “presumed that the legislature intended exceptions to its language which would
9 avoid results of this character.” *Holy Trinity Church*, 143 U.S. at 461.

10 Importantly, “[c]ourts must exercise their independent judgment in deciding
11 whether an agency has acted within its statutory authority, as the APA
12 [Administrative Procedure Act] requires.” *Loper Bright Enters. v. Raimondo*, 603
13 U.S. 369, 412 (2024). The Ninth Circuit clarified after *Loper Bright*, that
14 deference should be given as defined in *Skidmore v. Swift & Co.*, 323 U.S. 134,
15 139-40 (1944). *Lemus-Escobar v. Bondi*, 158 F.4th 944, 960 (9th Cir. 2025).

16 In *Skidmore*, the court recognized that administration policies and guidance
17 are not binding on the court, however, these materials may provide guidance
18 regarding enforcement of policies. *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40
19 (1944). The Ninth Circuit summarized that “[t]he weight given to an agency's
20 interpretation under *Skidmore* depends on the thoroughness, consistency, and

1 persuasiveness of the decision itself.” *Lemus-Escobar v. Bondi*, 158 F.4th 944,
2 960 (9th Cir. 2025).

3 **D. “Partial Suspension” Interpretation**

4 First, Defendant argues that Plaintiff does not allege facts exhibiting that it
5 partially suspended “more than a nominal portion of its operations was
6 suspended.” ECF No. 28 at 7. Defendant states that because the statute does not
7 define “partially suspended”, it should be interpreted using the plain meaning,
8 statutory context, and administrative guidance. ECF No. 28 at 7; 26 U.S.C. §
9 3134. Defendant contends that Plaintiff “does not allege cessation of a significant
10 portion of its operations.” ECF No. 28 at 10. Neither party claims that any part of
11 the statute is ambiguous.

12 Plaintiff asserts that the parties agree to three terms and corresponding
13 definitions based on the briefs: suspension, full, and partial. ECF No. 32 at 9.
14 However, only the definition of “suspension” as “[t]he act of temporarily delaying,
15 interrupting, or terminating something,” or “[t]he state of such delay, interruption,
16 or termination” is clearly agreed upon. ECF Nos. 28 at 8; 32 at 9 (quoting
17 *Suspension*, Black’s Law Dictionary (12th ed. 2024)). Plaintiff asserts that “full”
18 means “[c]omplete in every particular” or “a complete stoppage of operations” and
19 that “partial” means a “portion” or “[o]f, relating to, being, or affecting only a part’
20 not total.” ECF No. 32 at 9 (citing Am. Heritage Dictionary (5th Ed. 2018))

1 (internal quotations omitted). Instead, Defendant only states that “full” means a
2 “complete stoppage of operations.” ECF No. 28 at 8. Additionally, Defendant
3 continues that “[a] ‘full suspension’ is thus a temporary but entire cessation of
4 business operations” and “[a] ‘partial suspension’ signifies a temporary cessation
5 of a portion of operations.” *Id.*

6 Based on the parties agreed upon definitions, the plain text of the statute, and
7 the ordinary dictionary definitions, a “partial suspension” is a temporary delay,
8 interruption, or termination of a portion an employer’s business. The language is
9 plain, and this interpretation is pursuant to the CARES Act and ERC’s goal and
10 does not result in absurdity. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (“It is
11 well established that ‘when the statute’s language is plain, the sole function of the
12 courts—at least where the disposition required by the text is not absurd—is to
13 enforce it according to its terms.’”) (quoting *Hartford Underwriters Ins. Co. v.*
14 *Union Planters Bank, N. A.*, 530 U.S. 1, 6 (2000)).

15 The Court may, while conducting their own review, consider guidance that
16 is meant to aid in the enforcement or interpretation of the statute at issue.
17 *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944). For example, Defendant
18 used IRS Notice 2021-20, where the IRS provided additional information
19 regarding the ERC. *Guidance on the Emp. Retention Credit Under Section 2301 of*
20 *the Coronavirus Aid, Relief, & Econ. Sec. Act*, 2021-11 I.R.B. 922 (2021). The

1 IRS clarified, “an employer that operates an essential business may be considered
2 to have a partial suspension of operations if, under the facts and circumstances,
3 more than a nominal portion of its business operations are suspended by a
4 governmental order.” *Id.* This guidance clearly provides insight into how the ERC
5 should be interpreted and considered. Accordingly, the Court recognizes its
6 persuasiveness to this issue. The Court will adopt this interpretation because it
7 does not contradict the agreed-upon definitions of the parties. Together, a “partial
8 suspension” is a temporary delay, interruption, or termination of a more than
9 nominal portion of an employer’s business.

10 While Defendant agrees on the definition of “partial suspension”, Defendant
11 clarifies that this disruption should be comparable to a closure that surpasses basic
12 economic impact that all employers faced during the pandemic such as increased
13 costs or adjustments to operations. ECF No. 28 at 8. Additionally, Defendant
14 further clarifies that the administrative guidance states that “partial suspension”
15 means “more than a nominal portion” and results in a requirement of “a temporary
16 closure of a significant portion of operations.” ECF No. 28 at 9-10.

17 Plaintiff contends that Defendant’s argument improperly interprets
18 additional requirements into the language of the statute. ECF No. 32 at 4-5. The
19 Court agrees. Defendant attempts to conflate “more than nominal” to suggest that
20 it means “significant” and must “surpass[] basic economic impact that all

1 employers faced during the pandemic.” ECF No. 28 at 8-10. However, the plain
2 language and ordinary meaning of partial and nominal do not suggest either of
3 those interpretations.

4 Defendant continues that if Congress intended to include every employer, it
5 would have followed a similar structure for eligibility for the ERC as it did for the
6 individual Economic Impact Payments (“EIPs”). ECF No. 28 at 8. The EIP statute
7 stated “any individual other than” rather than including only respective groups.
8 ECF No. 28 at 8. However, this interpretation relies on assumptions that most
9 employers would be eligible if the statute is not interpreted this way. However, the
10 statute specifies multiple requirements to be eligible for the ERC. Therefore, this
11 argument is unpersuasive.

12 Moreover, Defendant claims that this legislative history and guidance
13 support its interpretation. ECF No. 28 at 10. Defendant argues that the Joint
14 Committee on Taxation explained the credit applicability to “employers subject to
15 closure due to COVID-19.” ECF No. 28 at 8 (citing Staff of J. Comm. On Tax,
16 118th Cong., General Explanation of Tax Legislation Enacted in the 117th
17 Congress 63 (Comm. Print 2023)). Until the language is deemed ambiguous, the
18 Court does not look to legislative history. *United States v. Lyle*, 742 F.3d 434, 436
19 (9th Cir. 2014). Therefore, this argument fails.

20 Additionally, Defendant argues that the Generic Legal Advice Memorandum

1 (“GLAM”) addressed specific situations that were not considered partially
2 suspended. ECF No. 28 at 10. Plaintiff responds that the document itself states it
3 “may not be used or cited as precedent.” ECF Nos. 28-4 at 1; 32 at 14. Therefore,
4 this argument fails.

5 Even more, these scenarios included situations where an employer could not
6 specific products but could sell a “significant variety of its goods” and where a
7 different employer did meet the standard if they “were forced to secure alternative
8 suppliers and incur a 35% increase in costs for critical materials.” ECF No. 28 at
9 10. However, these situations are not comparable or persuasive.

10 Next, Defendant looks to the title of the act to further support its arguments
11 that “Employers Subject to Closure Due to COVID-19” suggests that Congress
12 meant for “suspension” to mean “closure.” ECF No. 28 at 9. Moreover, if the title
13 was a textual hint that suspension meant closure, it would then not be applicable to
14 the other methods of eligibility. It is more likely that the use of “closure” in the
15 title of the statute is used to recognize closure and other disruptions.

16 Defendant continues that the Gross Receipt’s Test in the statute provides a
17 different avenue for eligibility if the employer did not meet the partial or full
18 suspension test. ECF No. 28 at 9. This inclusion shows that the suspension
19 requirement was intended to be read narrowly. ECF No. 28 at 9. Defendant
20 responds that under Plaintiff’s interpretation, it would render the Gross Receipts

1 Test superfluous. ECF No. 37 at 5.

2 However, even Defendant’s own argument is contradictory. “Under the
3 Gross Receipts Test, an employer who did not experience even a partial suspension
4 of operations but had a certain reduction in gross receipts during the pandemic
5 would qualify for the same amount of ERC as if a government order had
6 suspended the employer’s operations.” ECF No. at 3. Under the Gross Receipts
7 Test, the act allows for employers who experienced a decrease in Gross Receipts
8 regarding “wages paid after June 30, 2021, and before October 1, 2021” to be an
9 eligible employer under the tax credit. § 3134(n). As Defendant points out, this
10 section recognizes that an employer may be economically affected without any
11 partial or full suspension of trade or business operations due to a government
12 order. Considering the Gross Receipts Test is by Defendant’s admission, another
13 method to qualify under for the credit, the fact an employer can be eligible and
14 affected without partial or full suspension is reasonable. This does not make the
15 Gross Receipts Test superfluous with the plain language interpretation of “partial
16 suspension” but instead logical within the scope of the act.

17 **E. Plaintiff’s Alleged “Partial Suspension”**

18 Now that the plain language interpretation of “partial suspension” is
19 determined whether Plaintiff alleges sufficient facts to survive dismissal under this
20 interpretation is still to be determined.

1 As previously stated, Plaintiff alleges that it was “forced to cancel non-
2 urgent services, surgeries, and procedures when surge limits were exceeded.” ECF
3 No. 32 at 15. This “resulted in approximately \$4.6 million less than anticipated in-
4 patient revenue for 2021.” ECF No. 32 at 16. This demonstrates an interruption
5 and stoppage of Plaintiff’s business of conducting specific procedures.

6 Next, Plaintiff states that it was required to continuously monitor different
7 hospital metrics to ensure it was maintaining “surge capacity.” ECF No. 32 at 16.
8 Plaintiff was required to “materially limit the number of non-essential procedures it
9 scheduled in 2021” and “non-essential procedures” to ensure compliance. ECF
10 No. 32 at 16 (citing ECF No. 25 at 12). This limitation was due to the government
11 order that “required the hospital to cancel patient visits when patients exhibited
12 COVID-19 symptoms or tested positive within 10 days of an appointment, which
13 resulted in lost patient visits and revenue” because Plaintiff could not reschedule
14 another patient in place of the cancelled appointment. ECF No. 32 at 16.

15 Additionally, Plaintiff exemplifies interruption of business operations
16 because of limitations and additional protocols. ECF No. 32 at 17. For example,
17 Plaintiff alleges that it reduced patient beds and visits. *Id.* Plaintiff was required to
18 isolate and examine individuals in single closed rooms instead of allowing an
19 additional patient to co-habitat the room as normal. *Id.* If a room housed a patient
20 infected with COVID-19, the room was required to be specifically treated until “air

1 changes and specialized cleaning.” ECF No. 32 at 17. Moreover, transporting
2 patients in compliance with the new procedures required limitations to accessibility
3 to screening and other testing treatment such as MRI and CT equipment. *Id.*

4 Also, Plaintiff focuses on the diversion of resources. For example,
5 Plaintiff’s Minor Care Center was accommodated to become a COVID-19 testing
6 and vaccination clinic. ECF No. 32 at 16. The staff in this area then shifted to a
7 different unit reducing the ability and number of patients treated daily. ECF No.
8 32 at 16-17. Plaintiff furthers that it was required “reduce Tri-State’s available
9 personnel through quarantine periods and COVID-19 protocols and tasking Tri-
10 State with vaccinating first responders, healthcare professionals, at-risk
11 individuals, and the general community against COVID-19.” ECF No. 25 at 10.
12 Accordingly, Plaintiff alleges enough facts to support the plausibility that more
13 than a nominal portion of its operations were either interrupted or stopped due to
14 Proclamation 20-24.2 to survive dismissal. ECF Nos. 25; 32.

15 Defendant contends that Plaintiff fails to state a claim because Plaintiff did
16 not argue or provide facts that Plaintiff met the 10% threshold, as stated in the IRS
17 Notice 20-21. ECF No. 28 at 10. Plaintiff responds that this is only administrative
18 guidance and is not stated in the statutory text. ECF No. 32 at 13-14. Moreover,
19 this guidance provides that if a business meets this threshold, then it meets the
20 requirement that the business operations that were suspended were more than

1 nominal. *Guidance on the Emp. Retention Credit Under Section 2301 of the*
2 *Coronavirus Aid, Relief, & Econ. Sec. Act*, 2021-11 I.R.B. 922 (2021). Plaintiff
3 furthers that this requirement ensures eligibility but is not the only means to be
4 eligible under the Suspension Test. ECF No. 32 at 13-14.

5 The Court agrees with Plaintiff. While the Court used this to support the
6 interpretation of “partial suspension” and adopted a portion of that meaning, it does
7 not require the Court to adopt additional requirements not provided for in the
8 statute. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“We
9 have stated time and again that courts must presume that a legislature says in a
10 statute what it means and means in a statute what it says there.”). Additionally,
11 this interpretation is supported by *Stenson Tamaddon LLC v. United States Internal*
12 *Revenue Serv.*, 2025 WL 1725942, at *8 (D. Ariz. June 20, 2025) which both
13 parties used for support. *Stenson Tamaddon LLC v. United States Internal*
14 *Revenue Serv.*, 2025 WL 1725942, at *8 (D. Ariz. June 20, 2025) (“[I]t still
15 contemplates the IRS exercising discretion in determining if other employers might
16 nonetheless qualify based on additional “facts and circumstances.”).

17 As a result, Plaintiff’s failure to allege facts that meets this threshold does
18 not result in a failure to state a claim. If the court were to do this, it would read
19 requirements into the statute that do not exist. Instead, the IRS Notice provides a
20 method for the test to be met not as a requirement to meet the test.

1 All in all, Plaintiff has provided sufficient plausible facts that its operations
2 were “partially suspended” as required under the ERC.

3 **F. “Due to” a Government Order Interpretation**

4 Second, Defendant alleges that Plaintiff does not provide facts that any
5 alleged suspension was “due to” a government order. ECF No. 28 at 14.
6 Defendant claims that “due to” should be narrowly construed and Plaintiff must
7 exhibit that “a qualifying government order was the proximate, independent and
8 sufficient cause of the suspension of its operations.” ECF No. 28 at 15. Defendant
9 replies that Plaintiff alleges facts that were not due to the government order but
10 instead due to the COVID-19 infection and sick patients and employees. ECF No.
11 37 at 8-9. Plaintiff responds that the plain language suggests that “due to” means
12 “because of” and must only meet the but-for causation requirement. ECF No. 32 at
13 19-21.

14 “Due to” is not defined in the statute. 26 U.S.C. § 3134. This Court must
15 begin with the text of the statute to determine if the plain language is unambiguous.
16 *United States v. Torres*, 995 F.3d 695, 703 (9th Cir. 2021). Both Plaintiff and
17 Defendant agree that the plain meaning of “due to” is “because of.” ECF Nos. 28
18 at 15; 32 at 19-21. The meaning is plain and unambiguous. The Court is not
19 required to interpret this statute further. *Connecticut Nat. Bank v. Germain*, 503
20 U.S. 249, 254 (1992) (“When the words of a statute are unambiguous, then, this

1 first canon is also the last: ‘judicial inquiry is complete.’”) (quoting *Rubin v.*
2 *United States*, 449 U.S. 424, 430 (1981)).

3 However, Defendant argues that “due to” has an expansive meaning in law.
4 ECF No. 28 at 15 (citing *U.S. Postal Serv. v. Postal Regul. Comm’n*, 640 F.3d
5 1263, 1267 (D.C. Cir. 2011). Defendant contends that this includes a proximate
6 cause requirement. ECF No. 28 at 15. This requirement means that the event must
7 be the “proximate, independent, and sufficient cause.” *Id.* Defendant relies on the
8 Tax Code, tax case law, and administrative materials to support this interpretation.
9 ECF No. 28 at 16.

10 Plaintiff states that “because of” required only a but-for causation
11 requirement. ECF No. 32 at 19-20. Plaintiff relies on Supreme Court and Circuit
12 Court interpretations for support. *Id.* For example, Plaintiff cites *Burrage v.*
13 *United States*, 571 U.S. 204, 216 (2014), where the court recognized a “but-for”
14 requirement for a statute stating “because.” ECF No. 32 at 19.

15 Other Courts agree with this interpretation. *Gross v. FBL Fin. Servs., Inc.*,
16 557 U.S. 167, 176 (2009) (recognizing that “because of” and similar phrases
17 supports a “but-for” requirement); *Burrage v. United States*, 571 U.S. 204, 216
18 (2014); *Thomas v. CalPortland Co.*, 993 F.3d 1204, 1209 (9th Cir. 2021)
19 (recognizing Supreme Court precedent and follows that precedent that states that
20 “because of” and similar language supports a “but for” causation requirement).

1 Defendant’s interpretation improperly adds words into the statute. It asks us to add
2 words to the law to produce what is thought to be a desirable result. *E.E.O.C. v.*
3 *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015) (stating that wrong
4 interpretations are typically caused by adding words “to produce what is thought to
5 be a desirable result.”). Accordingly, the Court recognizes that “due to” requires
6 “but-for” causation.

7 **G. Plaintiff’s Alleged “Partial Suspension” “Due to” a Government**
8 **Order**

9 Plaintiff alleged that Proclamation 20-24.2 required Plaintiff to follow the
10 CFC’s Interim Infection Prevention and Control Recommendation for Health Care
11 Personnel during the Coronavirus Disease 2019 (COVID-19) Pandemic. ECF No.
12 25 at 13. Plaintiff states to ensure compliance with this, Plaintiff was “(1) limited
13 and monitored its entrances; (2) established and implemented COVID-19 screening
14 procedures for all persons entering the Hospital; and (3) restricted or isolated
15 anyone with a suspected COVID-19 infection.” ECF No. 25 at 14. Additionally,
16 Plaintiff was required to execute specific procedures to prevent the spread of
17 COVID-19 including “physical distancing, barriers, and testing.” ECF No. 25 at
18 17. For example, Plaintiff removed 50% of its chairs in all waiting rooms. ECF
19 No. 25 at 17. Plaintiff alleges that these procedures were to ensure compliance
20 with Proclamation 20-24.2. In short, Plaintiff has alleged facts that but-for the

1 Proclamation, Plaintiff's operations would not be partially suspended.

2 In conjunction, Plaintiff was required to administer and check for testing
3 and results. ECF No. 32 at 23. Also, Plaintiff was required to transform its Minor
4 Care facility to a vaccination and testing center. *Id.* The Proclamation required
5 Plaintiff to only employ vaccinated individuals. *Id.* In short, Plaintiff was required
6 to make these changes to ensure compliance with the Proclamation. Plaintiff
7 alleges that these changes, diversions and interruptions were not voluntary. ECF
8 No. 32 at 23. As a result, Plaintiff alleged sufficient facts that the interruption was
9 caused by the Proclamation. Taking the factual allegations as true, Plaintiff's
10 Amended Complaint survives dismissal.

11 Defendant states that COVID-19 was the cause and not the government
12 orders. ECF No. 28 at 18-19. Defendant contends that the rescheduling and loss
13 of daily employees to work due to COVID-19 illness were due to the illness not the
14 Proclamation. ECF Nos. 28 at 18-19; 37 at 8-9. This is partially true. Some of the
15 interruptions and diversions were caused by COVID-19 illness, however, the
16 required protocols and procedures to comply with the Proclamation were not. The
17 Proclamation provided the guidance and procedures that the businesses were
18 required to adhere to and follow to be compliant with the order. Sick patients and
19 employees alone did not require additional protocols. Based on this argument,
20 there are not many businesses or any business that would be eligible under the

1 ERC at all. Therefore, this argument fails.

2 Additionally, Defendant states that Plaintiff's protocols and actions are steps
3 it would have taken regardless of the government order. ECF Nos. 28 at 19; 37 at
4 9. However, Plaintiff alleges otherwise. ECF No. 32 at 19. Moreover, Defendant
5 argues that the government order did not cease operations but provided specifics to
6 deal with patients or employees that contracted COVID. ECF No. 28 at 18-19.

7 However, Plaintiff provided many additional protocols, testing procedures,
8 reassignment of departments and restricted surgeries that provide facts supporting
9 that the order interrupted or suspended these operations. This is enough to survive
10 dismissal, however, the ability for Plaintiff to provide sufficient evidence to meet
11 this requirement is not at issue at this time. For the same reason, Defendant's case
12 law from a summary judgment motion is not relevant. ECF No. 28 at 19.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 1. Defendant's Motion to Dismiss (ECF No. 28) is **DENIED**.

15 The District Court Executive is directed to enter this Order and furnish
16 copies to counsel.

17 DATED May 28, 2026.




THOMAS O. RICE
United States District Judge