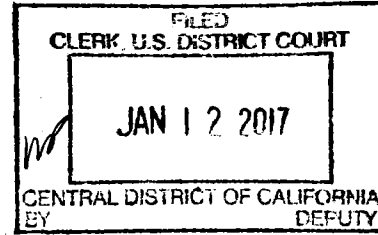


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6 REFUSAL FOR FRAUD – PAGES 1 OF 28
7 CENTRAL DISTRICT OF CALIFORNIA,
8 WESTERN DIVISION

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 TRAVIS MIDDLETON, (misnomer))
14 et al.,)
15 Plaintiff(s), Applicant(s))
16 vs.)

17 RICHARD PAN, et al.)
18 Defendants)

19 **PLAINTIFFS' REFUSAL FOR**
20 **FRAUD THE MAGISTRATE'S**
21 **REPORT AND**
22 **RECOMMENDATION PURSUANT**
23 **TO**
24 **Fed. R. Civ. P. 12(f)(2), 12(i) & UCC**
25 **1-103.6**

26 This Refusal is filed under the American Free
27 Flag of peace of the united states of America.
28 No jurisdiction under any American flags of
war or admiralty will be accepted in this Case
Incorporation

Incorporated Case No. 2:16-cv-05224-
SVW-AGR

Magistrate Judge: Hon. Alicia G.
Rosenberg
Ctrm: B – Eighth Floor

TO DEFENDANTS COUNSEL AND ALL PARTIES AT INTERST:

1 THIS Refusal for Fraud of MAGISTRATE’S REPORT AND
2 RECOMMENDATION Docket Nos. 123 & 124 to Parties Injured Complaint for
3 violations of the “RICO” and Civil Rights laws, 18 U.S.C. Sections 1962, 1961,
4 1964, 42 U.S.C. 1983, 1986 and 18 U.S.C. Sections 241 & 242, Pursuant To
5 F.R.C.P. 12(f)(2), 12(i) & UCC 1-103.6.

6 THIS IS A COMMERCIAL AFFIDAVIT AND MUST BE RESPONDED TO ON
7 A POINT BY POINT BASIS.

8 -----
9 I, Travis Middleton, and “Plaintiffs”, hereinafter Parties Injured, being duly
10 sworn according to law, having first-hand knowledge of the facts herein, and being
11 competent to testify, do affirm that the facts herein are stated by the Parties
12 Injured, and are true, correct and complete, stated under the penalties of perjury
13 pursuant to the laws of the United States of America.

14 1). I know all men by these presents, Travis Middleton, and “Plaintiffs”, Parties
15 Injured, brings this Refusal for Fraud, for the people of the united States of
16 America, under the American Free Flag of peace, without an attorney, ex rel.,
17 without Admiralty/Maritime jurisdiction, but on the Land of California Republic
18 and states: Ramsey v. Allegrie, 25 U.S. (12 Wheaton) 611, 631 (1827): “If the
19 common law can try the cause and give full redress, that alone takes away the
20 admiralty jurisdiction.”

21 2). Ex rel.: for the people of the united states; “...But it is the manner of
22 enforcement which gives Title 42 U.S.C. 1983 its unique importance, for the
23 enforcement is placed in the hands of the people.” Each citizen, “acts as a private
24 attorney general who takes on the mantle of the sovereign, guarding for all of us
25 the individual liberties enunciated in the constitution.” Section 1983 represents a
26 balancing feature in our government structure whereby individual citizens are
27 encouraged to police those who are charged with policing us all. Thus, it is of
28 special importance that suits brought under this statute be resolved by a
determination of truth.” Wood v. Breir, 54 F.R.D. 7, (1972).

3). Definition: “Case Incorporated”, the formation of a legal body, with the quality

1 of perpetual existence and succession. (2). Consisting of an association of
2 numerous individuals. (3). Matters relating to the common purpose of the
3 association, within the scope of the powers and authorities conferred upon such
4 bodies with the quality of perpetual existence and successions. Ref. Black's Law
5 Dictionary 67th, Pg. 690. "Case Incorporation" will establish the legal bounds of
6 the members of this lawful assembly to solve a specific "Case Number" and the
7 issues in motion.

8 4). This Incorporated Case is defined to be a Refusal for Fraud, Pursuant to
9 F.R.C.P. 12(f)(2), 12(i) & UCC 1-103.6 giving rise to F.R.C.P. 19 and 12(b)(7)
10 failure to join parties, 12(b)(6) Fails to state a claim upon which relief can be
11 granted, and Rule 56 granting summary judgment in favor of Plaintiffs, Travis
12 Middleton, Parties Injured as to the alleged Opposition by opposing attorneys for
13 Defendants **and** The Magistrate's Report And Recommendation (Docket Nos. 123
14 & 124) as assigned to Incorporated Case No. 2:16-cv-05224-SVW-AGR as
described above.

15 5). The Parties Injured herein brings this Incorporated Case, Refusal for Fraud, and
16 dispositive motions are, and or will be considered an act of conspiracy to the
17 crimes and violations defined in this Refusal for Fraud.

18 Hereinafter: F.R.C.P. = Federal Rules of Civil Procedure.

19 U.S.C.A. = United States Code Annotated.

20 U.S.C.S. = United States Code Service.

21 F.R.D. = Federal Rules Decision.

22 U.C.C. = Uniform Commercial Code

23 6). F.R.C.P. Rule 4. Process, (a) Summons, (b) Form, (c) Service, (d) Summons
and Complaint, (g) Return Proof, (h) Amendments, (j) Time.

24 7). F.R.C.P. Rule 5 Service, (a) Required (d) Filing certificate.

25 8). F.R.C.P. Rule 6 Time, (a) Computation (d) Motions and Affidavits.

26 9). F.R.C.P. Rule 7 Pleadings, (a) Pleadings (b) Motions.

27 10). F.R.C.P. Rule 8 Rules of Pleadings, (a) Claim for Relief (b) Defense form of
28 Denials (c) Affirmative Defense (d) Failure to deny (e) Pleading concise.

1 11). F.R.C.P. Rule 9 Pleading special (b) Fraud (e) Judgments (f) Time and place
2 (g) Special damage.

3 12). F.R.C.P. Rule 10 Form of Pleadings (a) Captions (b) Paragraphs.

4 13). F.R.C.P. Rule 11 Signing of Pleadings, Sanctions.

5 14). F.R.C.P. Rule 12 (a) Time of presented (b) How presented (c) Motion,
6 Judgment on Pleadings (f) Motion to Strike (h) Waiver (Subject Matter).

7 15). F.R.C.P. Rule 15 Amended and Supplemental Pleadings a.b.c.d.

8 F.R.C.P. Rule 16, (f) Sanctions (No contract, no fees).

9 F.R.C.P. Rule 18, and 19 Joinder.

10 F.R.C.P. Rule 24, Title 28, U.S.C. 2403 – Challenging Constitutionality.

11 F.R.C.P. Rule 38, Trial by Jury.

12 F.R.C.P. Rule 41, Dismissal of Action Voluntarily.

13 F.R.C.P. Rule 49, Issues sent to Jury by Demand.

14 F.R.C.P. Rule 50, New Trial.

15 F.R.C.P. Rule 54, Demand for Judgment.

16 F.R.C.P. Rule 55, Default.

17 F.R.C.P. Rule 56, Summary Judgment.

18 **(16). Notice:** “Joining”, was never completed between the Parties Injured herein,
19 and the “Defendants”. The lack of “Joining” as described herein above within this
20 complaint give rise to F.R.C.P. 19 and 12(b)(7) failure to join parties, F.R.C.P.
21 12(b)(6), fails to state a claim upon which relief can be granted and Rule 56
22 granting summary judgment in favor of Plaintiffs, Parties Injured, and Travis
23 Middleton. The real-party Defendants have yet to appear personally or on the
24 record in this Case Incorporation by affidavit or deposition.

25 **(17). Notice:** “Statements of counsel in brief or in argument are not sufficient for
26 motion to dismiss or for summary judgment,”; “Where there are no depositions
27 admissions, or affidavits submitted by actual real-party Defendants, the court has
28 no facts to rely on for a summary determination”. See *Trinsey v. Pagliaro*, D. C.
Pa. 1964, 229 F. Supp. 647.

1 **(18). Notice:** This applies both with Federal Rules of Evidence and State Rules of
2 Evidence.... there must be a competent first hand witness (a body). There has to be
3 a real person making the complaint and bringing evidence before the court.

4 Corporations are paper and can't testify. The opposing counsels' Oppositions fall
5 short of this evidence rule.

6 **(19). Notice:** "Manifestly, [such statements] cannot be properly considered by us
7 in the disposition of [a] case." United States v. Lovasco (06/09/77) 431 U.S. 783,
8 97 S. Ct. 2044, 52 L. Ed. 2d 752,

9 (20). "Under no possible view, however, of the findings we are considering can
10 they be held to constitute a compliance with the statute, since they merely embody
11 conflicting statements of counsel concerning the facts as they suppose them to be
12 and their appreciation of the law which they deem applicable, there being,
13 therefore, no attempt whatever to state the ultimate facts by a consideration of
14 which we would be able to conclude whether or not the judgment was warranted."
15 *Gonzales v. Buist.* (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463.

16 **(21). Notice:** The Magistrate Judge allowed "statements" of the attorneys in the
17 December 13th hearings as evidence and persuasive authority to support a Motion
18 to Dismiss. These statements were embodied around sited cases of Public Officials
19 being bribed, including but not limited to "*Chappell v. Robbins, 73 F.3d 918, 920,*
20 *924 (9th Cir. 1996) (civil RICO). Legislative immunity is parallel to the immunity*
21 *provided by the Speech or Debate Clause in the United States Constitution.4 Id. at*
22 *920*"; These statements of counsel and the Judge did not reach the issues addressed
23 by Plaintiffs. To be clear, the legal issues raised by Plaintiffs is the lack of
24 immunity by Defendants' Perjury of their Oaths of Offices and the Extortion of
25 Rights Under Color of Official Right, and under color of law.

26 (22). The Magistrate Judge's Report on page 8 grossly misquotes the *Exparte*
27 *Young* holding. Her report states "*The state official ""must have some*
28 *connection with the enforcement of the act"" that ""must be fairly direct; a*
generalized duty to enforce state law or general supervisory power over the

1 *persons responsible for enforcing the challenged provision will not subject an*
2 *official to suit.’’ Id. (citations omitted).’’*

3 (23). Actually, *Exparte Young* provides this ruling: “The attempt of a State officer
4 to enforce an unconstitutional statute is a proceeding without authority of, and does
5 not affect, the State in its sovereign or governmental capacity, and is an illegal act,
6 and the officer is stripped of his official character and is subjected in his person to
7 the consequences of his individual conduct. The State has no power to impart to its
8 officer immunity from responsibility to the supreme authority of the United States.
9 It is not necessary that the duty of a State officer to enforce a statute be declared in
10 that statute itself in order to permit his being joined as a party defendant from
11 enforcing it; if, by virtue of his office, he has some connection with the
12 enforcement of the act, it is immaterial whether it arises by common general law or
13 by statute. Page 209 U. S. 125.” Moreover, Defendant legislators are also being
14 sued in their individual personal capacities which invoke a “personal” liability.

15 (24). Moreover, the Magistrate Judge allowed more statements of attorneys on the
16 record as evidence in support of the Motion to Dismiss when allowing these cited
17 cases: “*Whitlow v. State of California, CV 16-1715 DMS.8 The court issued a well*
18 *reasoned order denying Plaintiffs’ motion for a preliminary injunction and the*
19 *case was subsequently dismissed by the plaintiffs. Whitlow v. State of California,*
20 *2016 WL 6495512 (S.D. Cal. Aug. 26, 2016). This court finds the reasoning in*
21 *Whitlow persuasive’’. “Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11*
22 *(1905).’’*

23 **(25). Notice:** The defendants in the Whitlow case included the State of California,
24 the Superintendent of the Department of Education in his official capacity, and the
25 director of the Department of Public Health in her official capacity. No defenses
26 where offered in that case as to the State of California or its officials having
27 immunity from suit. Apparently there are two sets of rules for Pro Se litigants and
28 bar card attorneys. Here, in Plaintiffs’ case in chief ALL officials are also sued in

1 their individual and personal capacities as well. The Magistrate’s Report makes no
2 mention of this distinction of liability, or the lack thereof for the Defendants.

3 Again, the Magistrate Judge is attempting to ignore the snare the Defendants are
4 obviously saddled with. The ignoring of issues plead by Plaintiffs constitute a due
5 process violation, equal protection of law violation while denying Plaintiffs equal
6 access to the court in violation of the provisions of the 14th Amendment to the
7 United States constitution. Consequently, this triggers an obstruction of justice
8 charge against the Magistrate Judge.

9 (26). For its “Police” powers to enforce mandatory vaccinations the opposing
10 counsels and the Magistrate’s report relies on the holdings in *Zucht v. King*, 260
11 U.S. 174, 175 (1922).

12 **(27). Notice: The only powers delegated to the States and its officials comes**
13 **only through the State’s constitution, balanced by the Federal Constitution**
14 **through the 14th Amendment restrictions.**

15 The so-called “police” powers of the State appear in the text of the Congressional
16 Record March 17, 1993 Vol. 33, page H-1303; House Joint Resolution (HJR) 192,
17 73rd Congress, June 5, 1933, 48 Stat. 1, Public Law 89-719; declared by President
18 Roosevelt as an established fact that the United States Federal Government has
19 been dissolved by the Emergency Banking Act. And as such, Joint Resolution to
20 Suspend The Gold Standard and Abrogate The Gold Clause dissolved the
21 Sovereign Authority of the United States and the official capacities of all United
22 States Governmental Offices, Officers, and Departments and is further evidence
23 that the **United States Federal Government exists today in name only.**

24 (28). Moreover, The receivers of the United States Bankruptcy are the International
25 Bankers, via the United Nations, the World Bank and the International Monetary
26 Fund. All United States Offices, Officials, and Departments are now operating
27 within a defacto status in name only under Emergency War Powers. With the
28 Constitutional Republican form of Government now dissolved, the receivers of the

1 Bankruptcy have adopted a new form of government for the United States. This
2 new form of government is known as a Democracy, being an established
3 Socialist/Communist order under a new governor for America. The Federal
4 Reserve System is based on the Canon law and the principles of sovereignty
5 protected in the Constitution and the Bill of Rights. The Federal Reserve is a
6 maritime lender, and/or maritime insurance underwriter to the federal United
7 States operating exclusively under **Admiralty/Maritime law**.

8 **(29). Notice:** Plaintiffs, Parties Injured do not support the federal international
9 bankruptcy declared legislatively by HJR-192, passed by Congress in 1933 and
10 declared judicially by the United States Supreme Court in *Erie Railway v.*

11 *Tompkins 1938*. Plaintiffs do not support the federal 51 shadow States that have
12 taken over the de jure state functions since the 1930's. Plaintiffs do not reside in,
13 nor has been a citizen or resident of, the federal shadow State of California.

14 Plaintiffs do not live in the federal territory of the Central District of California, a
15 federal area created out of thin air by the Buck Act and other legislation that has
16 usurped power and authority from de jure Government. Plaintiffs is not and has not
17 intended to be a federal State citizen or Resident as set forth and defined in the
18 Buck Act, Title 4 USC §§ 105-110. Due to the Police Powers and

19 admiralty/maritime jurisdiction (Flag or War) in this venue, Plaintiffs have invoked
20 jurisdiction under the American Free Flag or Peace, Common Law and the

21 Uniform Commercial Code. The Court has accepted Plaintiffs' venue and
22 jurisdiction in this case incorporation. The caption pages of the Magistrate's Notice
23 and Report and Recommendation attempts to shift the venue and jurisdiction of the
24 court from the common law, U.C.C. and constitutional jurisdiction to

25 admiralty/maritime jurisdiction by purposefully entering the names on the caption
26 page in all capital letters: "TRAVIS MIDDLETON et. al. PLAINTIFFS v.

27 RICHAR PAN et. al., DEFENDANTS." This caption is a "misnomer" and is
28 rejected and refused for fraud by Plaintiffs. This is a fraud upon the court and upon
Plaintiffs.

1 All of the other opinions of the Court with respect to its interpretation of plaintiffs
2 4th Amendment, 14th Amendment due process, 14th Amendment equal protection,
3 42 U.S.C. § 1986, and other Amendments are without merit.

4 (30). The Magistrate’s Report purposefully misconstrues Plaintiffs’ RICO claims
5 to suit her narrative for a deficient pleading.

6 The facts are numerous and voluminous, and are set forth in great detail in
7 the complaint. Plaintiffs have alleged that the Defendant Legislators have perjured
8 their oaths of office and obstructed justice in violation of 18 U.S.C. Section 1503;
9 and further engaged in a conspiracy to pervert or obstruct justice with the intent to
10 corruptly influence the outcome of the state legislative law making process on the
11 floor of the house and senate hearings in violation of 18 U.S.C. § 1962(d)). See 1st
12 Amend. Cmpl. @ pg 40 Para. 119-120. See also Cmpl. @ pg. 45 para.130,
13 Defendants engaged in “racketeering activity” within the meaning of 18 U.S.C. §
14 1961(1) by engaging in Obstruction of Justice in violation of 18 U.S.C. § 1503 by
15 corruptly influencing the outcome of the house and senate hearings to pass bill
16 SB277; and, Perjury of their Oaths to the California and U.S. Constitutions
17 resulting in treason and Seditious Conspiracy to overthrow the state and federal
18 Constitutions; and further engaged in a Conspiracy to Obstruct Justice in violation
19 of 18 U.S.C. § 1951 relating to interference with commerce, robbery, or extortion;
20 and, further engaged in a Conspiracy to Racketeer in violation of section 1951 of
21 section 1961 and 1962(d).

22 (31). See also, Extortion of Plaintiffs’ Liberty- A conviction for extortion within
23 the meaning of the Hobbs Act requires that the Defendants obtained “property” or
24 “liberty” from another, with his consent, induced by wrongful use of actual or
25 threatened force, or fear, or under color of official right. 18 U.S.C. § 1503.

26 Plaintiffs have a property right interest in their liberty and the liberty of their
27 offspring. The Magistrate’s Report is without merit.

28 (32). An understanding of the purposes of RICO and a knowledge that the

1 Supreme Court consistently liberally has construed civil RICO claims very broadly
2 are necessary to pursue civil RICO claims, in the face of a multitude of district
3 court and courts of appeals decisions that have attempted to limit and restrict the
4 use of civil RICO. RICO claims, being federal claims, are analyzed under federal
5 law, as enacted by Congress and as consistently liberally and broadly interpreted
6 by the Supreme Court in the civil context. As interpreted at least by the Supreme
7 Court, RICO has an exceptionally broad reach. According to the Supreme Court,
8 RICO legislatively sets out a “far-reaching civil enforcement scheme,” *Sedima*,
9 473 U.S. at 483, that spawned a “proliferation of civil RICO litigation,” and that
10 resulted in lower federal courts engaging in unprincipled statutory construction to
11 get rid of RICO civil claims. But the Supreme Court consistently has stopped the
12 lower courts' curtailment of civil RICO, reciting repeatedly the remedial purposes
13 of RICO, and establishing that RICO, and each of its elements, and thus, civil
14 RICO complaints, are to be broadly and liberally construed. *Id.* at 485-86.

15 (33). Conservative anti-civil RICO approaches were held “inconsistent with
16 Congress’ underlying policy concerns,” and the Court rejected “[restrictive] rule[s]
17 [which] would severely handicap potential plaintiffs [when]... Government itself
18 may choose to pursue only civil remedies [because] [p]rivate attorney general
19 provisions such as § 1964(c) are in part designed to fill [these] prosecutorial gaps.”
20 *Id.* at 492. 9 “By including a private fight of action in RICO, Congress intended to
21 bring the pressure of ‘private attorneys general’ on a serious... problem for which
22 public prosecutorial resources [Congress] deemed inadequate. *Holmes v. Securities*
23 *Investor Protection Corp.*, 503 U.S. 258, 281 (1992)(O'Connor, J.
24 concurring) (citations and internal quotation marks omitted). “[T]he lesson... of
25 Congress’ self-consciously expansive language and overall approach... [is that]
26 RICO is to be read [in no way less than] broadly.” *Sedima*, 473 U.S. at 497-98.
27 Congress codified in RICO an “express admonition that RICO [and each of its
28 elements] is to ‘be liberally construed to effectuate its remedial purposes.’” *Id.* at
498 (citation omitted). And, clearly, although lower courts consistently have

1 conveyed “distress at the 'extraordinary, if not outrageous,' uses to which civil
2 RICO has been put . . . being used against [not only] mobsters and organized
3 criminals [but also previously] ‘respected and legitimate enterprises,’”
4 “Congress [indisputably] wanted to reach both ‘legitimate’ and ‘illegitimate’
5 enterprises,” id. at 499 (citation omitted), because “legitimate” enterprises “enjoy
6 neither an inherent incapacity for criminal activity nor immunity from its
7 consequences.” Id. (emphasis added). “[T]he fact that RICO has been applied in
8 situations not expressly anticipated by Congress [or district judges or appeals court
9 judges or government civil attorneys] does not demonstrate ambiguity[:] [rather i]t
10 demonstrates its breadth.” Ibid. (emphasis added; citation omitted). RICO,
11 apropos its broad remedial purposes, is applicable both to illegitimate and
12 legitimate enterprises conducted through racketeering operations, *Turkette*, 452
13 U.S. 576, and civilly catches cops, sheriffs, judges, courts, and police departments,
14 whose affairs have been corruptly run. See e.g., *Salinas v. United States*, 522 U.S.
15 52 (1997) (sheriff and deputy sheriff); *United States v. Gonzalez*, 21 F.3d 1045 (1
16 s' Cir. 1994) (sheriff's department and deputies); *Cowan v. Corley*, 814 F.2d 223 (5
17 th Cir. 1987) (sheriff's department and deputies); *Guerrero*, 110 F.Supp. 2d 1287
18 (city police chief, city officials, and police officers); *Evans v. City of Chicago*,
19 2001 WL 1028401 (N.D. Ill. 2001)(city beat cops); *United States v. Qaoud*, 777
20 F.2d 1105 (6th Cir. 1985)(court, as conducted by a judge), cert. denied sub nom.
21 *Callanan v. United States*, 475 U.S. 1098 (1986); *United States v. Maloney*, 71
22 F.3d 645 (7th Cir. 1995)(state judge in performance of judicial "function"); *United*
23 *States v. Baker*, 227 F.3d 955, 957-59 (7 th Cir. 2000)(county sheriff is enterprise;
24 collecting numerous cases from various circuits finding courts, prosecutors, and
25 state agencies to be racketeers and enterprises). Further, in accord with RICO's
26 broad reach, those associated with or employed by or who manage an enterprise,
27 by those facts alone, are the racketeers who conduct the enterprise. *Cedric Kushner*
28 *Promotions, Ltd. v. King*, 121 S. Ct. 2087, 2090-92 (2001).

1 (34). RICO ELEMENTS- With RICO's broad remedial purposes in mind, the
2 Supreme Court held that a plaintiff who brings a civil RICO action pursuant to 18
3 U.S.C. § 1962(c), need allege only “(1) conduct (2) of an enterprise (3) through a
4 pattern (4) of racketeering activity . . . [and (5) standing, which derives from an
5 allegation of] injur[y] in [the plaintiff's] business or property by the conduct
6 constituting the violation.” *Sedima*, 473 U.S. at 496-97. See also, *Sun Sav. and*
7 *Loan Ass 'n v. Dierdorff* 825 F.2d 187, 191 (9 th Cir. 1987). “[T]he statute requires
8 no more than this.” *Ibid.*; accord *NOW v. Scheidler*, 510 U.S. 249, 255-57 (1994).
9 Accord, *Ove*, 264 F.3d at 825 (“To state a civil RICO claim, plaintiffs must alleged
10 (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (5)
11 causing injury to plaintiffs’ ‘business or property[,]’ 18 U.S.C. § 1964(c) ... [and]
12 show proof of concrete financial loss ’) Civil RICO plaintiffs also must allege a
13 causal connection between the pattern of racketeering activity and the injury to the
14 plaintiff. See *Grimmett v. Brown*, 75 F.3d 506, 510 (9 th Cir. 1996); *Bach v.*
15 *Mason*, 190 F.R.D. 567, 571 (N.D. Cal. 1999).

16 (35). The RICO net is woven tightly to trap even the smallest fish, those
17 peripherally involved with the enterprise,” *United States v. Gallo*, 688 F.Supp. 736,
18 748 (E.D.N.Y. 1987), because Congress cast the net of conspiracy RICO liability
19 as “a means for establishing vicarious liability for the underlying tort.” *Beck*, 529
20 U.S. at 503 (internal quotation marks and citations omitted). Thus, nor must have a
21 RICO conspirator committed any predicate act, because a RICO civil conspiracy
22 claim under § 1962(d) is alleged if the complaint 'sets forth general facts from
23 which one can infer that the conspirator merely adopted the goal of furthering or
24 facilitating the enterprise, although she did not commit any predicate act or even
25 agree to commit a predicate act, much less two predicate acts. *Salinas*, 522 U.S. at
26 61-62 (upholding conviction of deputy sheriff for conspiring to violate RICO,
27 although he committed no predicate act, because he knew about the sheriff's
28 scheme, and rejecting laundry list of appellate court decisions to the contrary;

1 approving *United States v. Carter*, 721 F.2d 1514, 1528-31 [11th Cir. 1984]).
2 Accord *Evans*, 2001 WL 1028401. Section 1962(d) merely requires, for liability
3 to attach to a particular defendant, that the defendant had knowledge of the general
4 nature of the enterprise. *Salinas*, 522 U.S. at 61-64; *United States v. Rastelli*, 870
5 F.2d 822, 827 (2d Cir.), cert. denied sub nom. *Agar v. United States*, 493 U.S. 982
6 (1989). RICO conspiracy liability is so broad it reaches those who did not even
7 participate in the commission of an overt act, *Salinas*, 522 U.S. at 64, much less
8 any predicate offense, or who even agreed to do so. *Id.* at 61-62 (approving *United*
9 *States v. Neapolitan*, 791 F.2d 489, 498 [7th Cir. 1986]. Accord *Gagen v.*
10 *American Cablevision, Inc.*, 77 F.3d 951,961 (7th Cir. 1996). “The mere
11 allegation of a conspiracy presumptively satisfies Rule 8(b) [F.R. Civ. P.], since
12 the allegation implies that the defendants named have engaged in the same series
13 of acts or transactions constituting an offense.” *United States v. Friedman*, 854
14 F.2d 535, 561 (2d Cir. 1988). It is of no moment whether the allegations connect
15 each conspirator with the predicates committed by other conspirators because “a
16 RICO conspiracy is by definition broader than an ordinary conspiracy to commit a
17 discrete crime. Each member of a RICO conspiracy need only conspire to
18 participate in the affairs of the alleged enterprise through two predicate crimes.”
19 *Id.* There is no requirement, as often is urged by civil RICO defendants, that all
20 conspirators be involved in each of the underlying acts of racketeering, or that the
21 predicate acts be interrelated in any way; all that is necessary is that the acts are
22 connected to the affairs of the enterprise. *United States v. Qaoud*, 777 F.2d at
23 1116; *U.S.v. Sinito*, 723 F.2d 1250, 1261 (6th Cir.1983), cert. denied, 469 U.S.
24 817 (1984); *Sutton*, 642 F.2d at 1017. A RICO conspiracy is alleged “[s]o long as
25 the alleged RICO co-conspirators [are alleged to] have agreed to participate in the
26 affairs of the same enterprise, [and] the mere fact that they do not conspire directly
27 with each other” does not negate the existence of the alleged conspiracy.
28 (36). *United States v. Alkins*, 925 F.2d 541, 554 (2d Cir. 1991). A RICO

1 conspiracy can be proved based merely on a tacit agreement or from an implicit
2 working relationship. *United States v. Patrick*, 248 F.3d 11, 20 (1 st Cir. 2001).
3 Under RICO it is irrelevant whether “each defendant participated in the enterprise’s
4 affairs through different, even unrelated crimes, so long as we may reasonably
5 infer that each crime was intended to further the enterprise’s affairs.” *United States*
6 *v. Stratton*, 649 F.2d 1066, 1074 (Sth Cir. 1981)(citation omitted). Since to prove a
7 RICO conspiracy a plaintiff does not have to establish that each conspirator
8 explicitly agreed with every other conspirator to commit the alleged predicate acts
9 or even knew her fellow conspirators, or was aware of all the details of the
10 conspiracy, there is no requirement that this even be alleged. *United States v. Pepe*,
11 747 F.2d 632, 658-59 (11 th Cir. 1984). Any defense arguments to the contrary,
12 that each conspirator may have contemplated participating in different and
13 unrelated crimes is irrelevant. *United States v. Lee Stoller Enterprises, Inc.*, 652
14 F.2d 1313, 1319 (7th Cir.)(en banc), cert. denied, 454 U.S. 1082 (1981).

15 **(37). Notice: STANDARD OF APPELLATE REVIEW-**

16 Appeals Court reviews a district court’s dismissal as a matter of law de novo. See
17 *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9 th Cir. 1998) (noting that
18 “a complaint should not be dismissed unless it appears beyond doubt that a
19 plaintiff can prove no set of facts in support of his claim which would entitled him
20 to relief”). See also, *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1121 (9 th
21 Cir. 2002). There is no heightened pleading standard, *ibid.*, and the rule that a
22 complaint should not be dismissed unless it appears beyond doubt that a plaintiff
23 can prove no facts to support the complaint “applies with particular force where
24 [sic] the plaintiff alleges civil rights violations.” *Chance v. Armstrong*, 143 F.3d
25 698, 701 (2d Cir. 1998); see also *Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir.
26 1994).

27 (38). Review is limited to the contents of the complaint. *Enesco Corp. v.*
28 *Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9 th Cir. 1998). Moreover, “[a]t the

1 12(b)(6) stage, [t]he issue is not whether a plaintiff is likely to prevail ultimately,
2 but whether the claimant is entitled to offer evidence to support the claims. In the
3 case in chief, Plaintiffs have filed on the record of this case volumes of evidence to
4 support their claims under RICO. See Plaintiffs' Criminal Affidavits, Docket Nos.
5 19, 75-79, 81-91, which includes attached Material Data Safety Sheets by OSHA
6 on the toxicity Formaldehyde, Mercury, Aluminum and Polysorbate 80; documents
7 from CDC whistle blower William Thompson where he admits to fraud and
8 falsifying data on the MMR vaccine studies. Additionally, evidence that Defendant
9 legislators have perjured their oaths of office. The Magistrate is purposefully
10 ignoring, and overtly choosing not to address this evidence within the record of
11 this case.

12 Indeed it may appear on the face of the pleading that a recovery is very remote and
13 unlikely but that is not the test." Chance, 143 F.3d at 701 (internal quotation marks
14 omitted; alteration in original). A grant of summary judgment is reviewed de novo,
15 see Clicks Billiards, Inc. v. Sixshooters, Inc., 251 F.3d 1252, 1257 (9 ta Cir. 2001),
16 and when no facts are in dispute, the issue is whether the district court correctly
17 applied the substantive law. See Oliver v. Keller, 289 F.3d 623,626 (9 ta Cir.
18 2002). There are no facts in dispute in the case in chief. Under these standards, the
19 recommendations of dismissal of the legislative Defendants and plaintiffs' claims
20 are erroneous as matters of law.

21 **(39). Notice:** The Magistrate judge and attorney(s) has taken an Oath and
22 Affirmation to support and defend that Constitution of the United States of
23 America and the Constitution of the STATE OF CALIFORNIA.

24 40). All officers should take the oath required by the constitution, whether the law
25 under which they hold office prescribe this duty or not. The injunctions of the
26 Constitution in this respect are as obligatory as those of a statute could be.

27 41). The Parties Injured herein accuses: the Magistrate Judge and Attorneys in this
28 action, pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC Section 1961(1)

1 1503 (relating to obstruction of justice), section 1951 (relating to interference with
2 commerce, robbery or extortion), section 1952 (relating to racketeering), having
3 superior knowledge of the law, having taken an Oath and Affirmation to support
4 and defend the Constitution of the United States and of the STATE OF
5 CALIFORNIA, have submitted a recommendation and Motions to Dismiss into
6 this Incorporated Case No. 2:16-cv-05224-SVW-AGR as described above, in
7 violation of the Constitution of the United States of America, Bill of Rights,
8 Articles I & XIV, due process and equal protection of the law, and Article V, due
9 process of law.

10 (42). **Notice:** The Parties Injured herein accuses: the Magistrate Judge and
11 Attorneys in this action, pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC
12 Section 1961(1) - 1503 (relating to obstruction of justice), section 1951 (relating to
13 interference with commerce, robbery or extortion), section 1952 (relating to
14 racketeering), Title 18 U.S.C. Sec. 513(a), the filing of Counterfeit Securities.

15 (43). **Notice:** This Court is hereby Noticed pursuant to Federal Rule of Civil
16 Procedure 17 and Federal Rules of Evidence 201 & UCC 1-103.6 that Respondent
17 Attorneys' Oppositions and the Magistrate's recommendation are deemed
18 Counterfeit Securities, and constitute violations of Title 18 U.S.C. Section 4 of the
19 commission of crimes cognizable by a court of the United States, or any
20 subdivision thereof under Title 18 U.S.C. Section 513(a) "Whoever makes, utters
21 or possesses a counterfeit security of a State of a political subdivision thereof or of
22 an organization, or whoever makes, utters, or possesses a forged security of a State
23 or political subdivision thereof or of an organization, with intent to deceive another
24 person, organization, or government shall be fined not more than \$250,000 or
25 imprisoned not more than ten years or both".

26 See also Sections 2311, 2314 and 2320 for additional fines and sanctions. Among
27 the securities defined at 18 U.S.C. Section 2311 is included "evidence of
28 indebtedness" which, in a broad sense, may mean anything that is due and owing

1 which could be a duty, obligation or right of action. The Magistrate's Notice and
2 Recommendation are attached under **Exhibit A**, Refused and Returned for fraud.
3 (44). The above referenced documents qualify as "counterfeit Securities" in that
4 the makers have stated them to have been officially signed and sealed as valid
5 claims of a duty, obligation, evidence of indebtedness, or right of action owed by
6 them against Parties Injured, the Plaintiffs.

7 (45). Additionally, the above referenced documents are counterfeit securities used
8 by fraud to adversely affect interstate and foreign commerce within the meaning of
9 Title 18 U.S.C. section 1951 & 1952 and 1962(a)(b)(c)(d).

10 (46). The Parties Injured herein accuses: the Magistrate Judge and Attorneys, of
11 committed crimes, Falsification, and Perjury as to their oath and Affirmation, Title
12 18 U.S.C.A. 1621, in a court proceeding, in Case No. 2:16-cv-05224-SVW-AGR,
13 causing violations of the Constitution of the United States of America.

14 (47). The Parties Injured herein accuses: the Magistrate Judge and Attorneys of
15 violations of 18 U.S.C.A. Sec. 72, Extortion of Rights, 18 U.S.C.A., 18 U.S.C.A.
16 Sec. 241, Criminal Conspiracy, 18 U.S.C.A. Sec. 1621, Perjury as to their Oaths
17 and Affirmation.

18 (48). The Magistrate Judge and Attorneys caused the Parties Injured herein
19 damages actionable for monetary relief, pursuant to 42 U.S.C.A. Sec. 1986 and 18
20 U.S.C. Sec. 1962(a)(b)(c), 1503 and 1961.

21 **FACTS AND FINDINGS OF LAW**

22 49). ////

23 50). ////

24 51). United States Constitution Article VI Section 2 provides: This Constitution,
25 and the laws of the United States which shall be made in pursuance thereof; and all
26 treaties made, or which shall be made, under the authority of the United States,
27 shall be the supreme law of the land; and the judges in every state shall be bound
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1 thereby, anything in the Constitution or laws of any State to the contrary
2 notwithstanding.

3 The Senators and Representatives before mentioned, and the members of the
4 several state legislatures, and all executive and judicial officers, both of the United
5 States and of the several states, shall be bound by oath or affirmation, to support
6 this Constitution; but no religious test shall ever be required as a qualification to
7 any office or public trust under the United States.

8 52). 1st Amendment: Freedom of speech and press, and to petition for a redress of
9 grievances.

10 53). 5th Amendment: No citizen shall be deprived of life, liberty, or property
11 without due process of law.

12 54). 6th Amendment: Right to a speedy and public trial, by an impartial jury of the
13 state and district wherein the crime shall have been committed, and informed of the
14 nature and cause of the accusation.

15 55). 7th Amendment: In suits of common law, where the value in controversy shall
16 exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried
17 except by jury.

18 56). 9th Amendment: The enumeration in the Constitution, of certain rights, shall
19 not be construed to deny or disparage others retained by the people.

20 57). 14th Amendment: No state shall make or enforce any law which shall abridge
21 the privileges or immunities of citizens of the U.S., nor shall any state deprive any
22 citizen of life, liberty, or property without due process of the law; nor to any citizen
23 the equal protection of the law.

24 58). F.R.C.P. Rule 4. Process, (a) Summons, (b) Form, (c) Service, (d) Summons
25 and Complaint, (g) Return Proof, (h) Amendments, (j) Time.

26 59). F.R.C.P. Rule 5 Service, (a) Required (d) Filing certificate.

27 60). F.R.C.P. Rule 6 Time, (a) Computation (d) Motions and Affidavits.

28 61). F.R.C.P. Rule 7 Pleadings, (a) Pleadings (b) Motions.

1 62). F.R.C.P. Rule 8 Rules of Pleadings, (a) Claim for Relief (b) Defense form of
2 Denials (c) Affirmative Defense (d) Failure to deny (e) Pleading concise.

3 63). F.R.C.P. Rule 9 Pleading special (b) Fraud (e) Judgments (f) Time and place
4 (g) Special damage.

5 64). F.R.C.P. Rule 10 Form of Pleadings (a) Captions (b) Paragraphs.

6 65). F.R.C.P. Rule 11 Signing of Pleadings, Sanctions.

7 66). F.R.C.P. Rule 12 (a) Time of presented (b) How presented (c) Motion,
8 Judgment on Pleadings (f) Motion to Strike (h) Waiver (Subject Matter).

9 67). F.R.C.P. Rule 15 Amended and Supplemental Pleadings a.b.c.d.

10 F.R.C.P. Rule 16, (f) Sanctions (No contract, no fees).

11 F.R.C.P. Rule 18, and 19 Joinder.

12 F.R.C.P. Rule 24, Title 28, U.S.C. 2403 – Challenging Constitutionality.

13 F.R.C.P. Rule 38, Trial by Jury.

14 F.R.C.P. Rule 41, Dismissal of Action Voluntarily.

15 F.R.C.P. Rule 49, Issues sent to Jury by Demand.

16 F.R.C.P. Rule 50, New Trial.

17 F.R.C.P. Rule 54, Demand for Judgment.

18 F.R.C.P. Rule 55, Default.

19 F.R.C.P. Rule 56, Summary Judgment.

20 (68). **Notice:** Title 18 U.S.C. 241. If two or more citizens conspire to injure,
21 oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any
22 right or privilege secured to him by the Constitution or laws of the United States,
23 or because of his having so exercised the same; or

24 If two or more citizens go in disguise on the highway, or on the premises
25 of another with intent to prevent or hinder his free exercise or enjoyment of any
26 right or privilege so secured-

27 They shall be fined not more than \$10,000 or imprisoned not more than
28 ten years, or both;

1 (69). **Notice:** Title 18 U.S.C. 242. Any Citizen, who under color of law, statute,
2 ordinance, regulation, or custom, willfully subjects any inhabitant of any State
3 Territory, or District to the deprivation of any rights, privileges, or immunities
4 secured or protected by the Constitution or laws of the United States, or to different
5 punishments, pains or penalties, on account of such inhabitant being an alien, or by
6 reason of his color, or race, than are prescribed for the punishment of citizens, shall
7 be fined not more than \$1,000 or imprisoned not more than one year or both;

8 (70). **Notice:** Title 28 U.S.C. 242 provides in pertinent part; Any Citizen who,
9 under color of law, statute, ordinance, regulation, or custom, willfully subjects any
10 inhabitant of any state, territory, or district to the deprivation of any rights,
11 privileges, or immunities secured or protected by the Constitution or laws of the
12 United States....shall be fined not more than \$1,000 or imprisoned not more than
13 one year or both.

14 71). "Joining", was never completed between the Parties Injured herein, and the
15 named Defendants. The lack of Defendants' appearance or submitted affidavits on
16 the record of this Incorporated Case No. 2:16-cv-05224-SVW-AGR as described
17 herein above within this complaint give rise to F.R.C.P. 19 and 12(b)(7) failure to
18 join parties, F.R.C.P. 12(b)(6), fails to state a claim upon which relief can be
19 granted and Rule 56 granting summary judgment in favor of Plaintiffs, Parties
20 Injured.

21 (72). **Notice: The law states: Title 18 U.S.C.A. 1621, note 554 2d a:** State pays
22 all fees when judge and attorneys in concert violate oath of office and "perjury of
23 oath"; Citizens cannot be made to pay fees to have their Constitutional rights
24 violated. F.R.C.P. Rule 9.

25 (73). **Notice:** The Parties Injured herein accuses: the Magistrate Judge and
26 Attorneys in this action, pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC
27 Section 1961(1) - 1503 (relating to obstruction of justice), section 1951 (relating to
28

1 interference with commerce, robbery or extortion), section 1952 (relating to
2 racketeering).

3 74). With reasonable expectations the Parties Injured herein believes that the
4 findings of fact presented and filed herein, of the United States Constitutional laws
5 and civil rights issues, including violations of the United States Constitution 14th
6 Amendment, show that the Magistrate Judge and Attorneys, did “perjure their
7 oaths”.

8 (75). **Notice to Judge:** With research, no cases, and no rules were discovered, or
9 previously prosecuted or written for the phrase, “Perjury of Oath of Office”. The
10 “Oath of Office”, is given first and before entering office. The Oath is incorporated
11 after the “Oath and Affirmation” is taken and signed. The term of an attorney’s
12 “oath” to support the Constitution never expires until they “Terminate Practice”.
13 All judges are attorneys under “oath”. Judges add affirmation to that oath but both
14 positions swear to support the united States Constitution at all times and when
15 rights are violated then “Perjury of Oath” and “Perjury” are relevant and become
16 violations by the facts of definition. F.R.C.P. Rule 9(b), 12(d), the 14th
17 Amendment, Title 42 U.S.C. 1983 note 337; Rucker v. Martin, Note 349.

18 76). The Parties Injured herein accuses the Magistrate Judge and Attorneys of:
19 “Perjury of Oath of Office”, Perjury; Inforjudgemental law, the willful assertion of
20 as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial
21 proceeding as part of his or her evidence, either upon oath or in any form allowed
22 by law to be substituted for an oath, whether such evidence is given in open court,
23 or in an affidavit, or otherwise, such assertion being material to the issue or point
24 of inquiry and known to such witness to be false. Perjury is a crime committed
25 when a lawful oath is administered, in some judicial proceeding, to a citizen who
26 swears willfully, absolutely, and falsely, in matters material to the issue or point in
27 question. Reference. Gatewood v State, 15 MD. App. 314, 290 A.2d 551, 553;
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1 F.R.C.P. Rule 9(b), 12(d)1,2,7; Title 42 U.S.C. 1986, 1985, 1983 note 349, 14th
2 Amendment U.S. Constitution.

3 77). The Parties Inured herein is accusing the Magistrate Judge and Attorneys of:
4 “Perjury of Oath of Office”, “Malice”, in law is not necessarily personal hate or ill
5 will, but is the state of mind which is reckless of law and of the legal rights of the
6 citizens. Reference. Chrisman v. Terminal R. Association of St. Louis, 237
7 Mo.App. 157 S.W. 2d 230, 235. F.R.C.P. 9(b) and Rule 12(d).

8 78). The Parties Injured herein is accusing the Magistrate Judge and Attorneys with
9 perjury to proceed by fraud; perjury of due process, 14th and 5th Amendment.
10 Further references Title 18 U.S.C.A. 1621; a citizen is guilty of perjury if in any
11 official proceeding he or she makes a false statement or swears or affirms the truth
12 of a statement previously made, when the statement is material and he or she does
13 not believe it to be true. Reference. Model Penal Code section 241.1, F.R.C.P. 9(b)
14 and Rule 12(d).

15 79). The Parties Injured herein accuses the Magistrate Judge and Attorneys of:
16 “Perjury of Oath”; “Constitutional Tort”, Title 42 U.S.C.A. 1983: Every citizen
17 who under color of any statute, ordinance, regulation, custom or usage, of any state
18 or territory, subjects, or causes to be subjected, any citizen of the United States or
19 any other citizen within the jurisdiction thereof to the deprivation of any rights,
20 privileges or immunities secured by the United States Constitution and laws shall
21 be liable to the party injured in an action at law, suit in equity or other proper
22 proceeding for redress. F.R.C.P. 9(b), Rule 12(d), Title 42 U.S.C.A. 1986 of the
23 wrongs committed, Title 42 U.S.C.A. 1985 the conspiracy with high standards, to
24 “fraud” the Parties Injured herein, and 42 U.S.C.A. 1983 for the injury of
25 Constitutional Rights 4th, 5th, 7th, 9th and 14th Amendment Equal Protection of the
26 law.

27 (80). **Notice: Title 42 U.S.C.A. 1986 “Action for neglect to prevent”**, Every
28 citizen who having knowledge that any of the wrongs conspired to be done, and

1 mentioned in section Title 42 U.S.C. 1985 of this title, are about to be committed,
2 and having power to prevent or aid in preventing the commission of the same,
3 neglects or refuses to do so, if such wrongful act be committed, shall be liable to
4 the party injured, or citizens legal representative, for all damages caused by such
5 wrongful act, which such citizen by reasonable diligence could have prevented;
6 and such damages may be recovered in an action on the case; and any number of
7 citizens guilty of such wrongful neglect or refusal may be joined as a party in
8 action.

9 81). The Parties Injured herein accuses the Magistrate Judge and Attorneys of
10 “Perjury of Oath of Office”, a Tort. A privilege or civil wrong or injury for which
11 the court will provide a remedy imposed by general law or otherwise upon all
12 citizens occupying the relation to each other which is involved in a given
13 transaction. Reference. Coleman v. California yearly meeting of Friends Church,
14 27 Cal. App. 2d. 579, 81 P. 2d 469, 470, Title 42 U.S.C.A. 1983 note 319, 333,
15 337, 349, 350, 351, and 352.

16 82). The Parties Injured herein accuses the Magistrate Judge and Attorneys of
17 “Perjury of Oath” and Falsification, by fraud and deception, fails to correct a false
18 impression which the deceiver previously created or reinforced, or which the
19 deceiver knows to be influencing another to whom the citizen stands in a
20 “fiduciary” or confidential relationship. Reference. F.R.C.P. 9(b) and 12(d), Title
21 42 U.S.C.A. 1986, 1985. The Parties Injured herein is witness with first-hand
22 knowledge accusing Judges and Attorneys as witness of fraud and for their neglect
23 to stop the wrongs, for equal protection of the law and due process. However, the
24 fraud continues as no citizen has been prosecuted to date. The legal system is
25 protecting its own, operating under “Policy and Custom”, Title 42 U.S.C.A. 1983
26 Note 319, 337, to violate rights in denying 14th and 5th Amendments due process.

27 83). “Fiduciary” – A citizen having duty, created by undertaking, to act primarily
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1 for another's benefit in matters connected with such undertaking. Ref. Black's Law
2 dictionary. 563 (High standards of Government).

3 84). The Parties Injured herein accuses the Magistrate Judge and Attorneys of;
4 "Extortion", perjury of oath, (commerce) Title 42 U.S.C.A 1985 (2) Ref.

5 Obstructing Justice: intimidating party, witness, (2) if two or more citizens in any
6 state or territory conspire to deter, by force, intimidation, or threat, any party or
7 witness in any court of the United States from "attending such court or from
8 testifying to any matter pending" therein, freely, fully, and truthfully, or to injure
9 such party or witness in his body or property on account of his having so attended
10 or testified, or to influence the verdict, presentment, or indictment of any kind of
11 grand or petit jury or property on account of any verdict, presentment, or
12 indictment lawfully assented to by him, or of his being or having been such juror,
13 or if two of more citizens conspire for the purpose of impeding, hindering,
14 obstructing, or defeating, in any matter, the due course of justice in any state or
15 territory, with intent to deny to any citizen the equal protection of the law, or to
16 injure him or his property for lawfully enforcing, or attempting to enforce, the right
17 of any citizen, or class of citizens, to the equal protection of the law.

18 85). Extortion: The obtaining of property from another induced by wrongful use of
19 actual or threatened force, or fear, or under color of official right. Ref. Title 18
20 U.S.C.A. Sec. 871 et seq., 1951.

21 **(86). Notice: Title 42 U.S.C.A. 1985 (3) Depriving citizen of rights or**
22 **privileges;** if two or more citizens in any state or territory conspire to go in
23 disguise, for the purpose of depriving, either directly or indirectly, any citizen or
24 class of citizens of the equal protection of the laws, or of equal privileges and
25 immunities under the laws; or for the purpose of preventing or hindering the
26 constituted authorities of any state or territory from giving or securing to all
27 citizens within such state or territory the equal protection of the laws; or if two or
28 more citizens conspire to prevent by force , intimidation, or threat, any citizen who

1 is lawfully who is lawfully entitled to vote, from giving his support or advocacy; in
2 any case of conspiracy set forth in this section, if one or more citizens engage
3 therein do, or cause to be done, any act in furtherance of the object of such
4 conspiracy, whereby another is injured in his body or property, or deprived of
5 having and exercising any right or privilege of a citizen of the United States, the
6 party so injured or deprived may have an action for the recovery of damages
7 occasioned by such injury or deprivation, against any one or more of the
8 conspirators. F.R.C.P. R. 9(b) Fraud, Rule 12(b).

9 87). The Parties Injured herein is accusing the Magistrate Judge and Attorneys of
10 Perjury of Oath of Office. "Falsification";

11 No citizen shall knowingly make a false statement, or knowingly swear or
12 affirm the truth of a false statement previously made, when any of the following
13 applies:

- 14 - The statement is made in any official proceeding.
- 15 -The statement is made with the purpose to mislead a public official in
16 performing a judicial function.
- 17 -The statement is in writing on, or in connection with a report or return
18 which is required or authorized by law.

19 **(88). Notice: Title 42 U.S.C.A. 1985 Pg. 36-37, Note 69:** Damages in claim for
20 violation of U.S. constitutionally guaranteed rights damages are recovered, normal
21 damages may be presumed, and nominal damages may in appropriate
22 circumstances support award of exemplary damages, Tracy V. Robbins, D.C.S.C.
23 1966, 40 Fed. 108 Appeal Dismissed 373 F. 3D 13.

24 **(89). Notice: Title 42 U.S.C.A. 1983 P77 No. 39:** In order to establish personal
25 liability part of government official in federal civil rights law action, under Title 42
26 U.S.C. 1983, it is enough to show that official acting under color of law caused
27 deprivation of Constitutional Right in contrast. Government entity is liable in
28 official capacity suit under Title 42 U.S.C. only when entity is moving force

1 behind deprivation. Thus requiring entity policy or custom to have played a part in
2 violation of Federal law. Ref. Kentucky V. Graham 1985 475, US 159 85 L.Ed. 2d.
3 114, 105 S. Ct. 3099.

4 90). Bar. The whole body of attorneys and counselors, or the members of the legal
5 profession, collectively, who are figuratively called the “bar”, from the place
6 which they usually occupy in court.

7 WHEREFORE:

8 91). The Parties Injured herein Refuses for Fraud The Magistrate’s Report and
9 Recommendation and opposing attorneys Oppositions and all Motions To Dismiss
10 assigned to Case Incorporated No. 2:16-cv-05224-SVW-AGR as described above,
11 giving rise to violations of F.R.C.P. 19, and 12(b)(7) joinder, F.R.C.P. 12(b)(6)
12 fails to state a claim.

13 92). The Parties Injured herein requests this court refund all payment of fees and
14 award Parties Injured herein damages totaling \$200,900,000.00 per F.R.C.P. 12 (c)
15 judgment on the pleadings and or Rule 56(c) Summary Judgment, injunctive and
16 declaratory relief within 10 days nun pro tunc as of December 13, 2016.

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23 Respectfully Submitted,

24 _____
25 Travis Middleton

26
27 27 West Anapamu St. #153
28 Santa Barbara, California [93101]
Dated this November 14, 2016

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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAVIS MIDDLETON, et al.,

PLAINTIFFS,

v.

RICHARD PAN, et al.,

DEFENDANTS.

CASE NUMBER:

CV 16-5224-SVW (AGR)

NOTICE OF FILING OF
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION

TO: All Parties of Record

You are hereby notified that the Magistrate Judge's Report and Recommendation has been filed on November 15, 2016.

Any party having Objections to the Report and Recommendation and/or order shall, not later than January 9, 2016, file and serve a written statement of Objections with points and authorities in support thereof before the Honorable Alicia G. Rosenberg, U.S. Magistrate Judge. A party may respond to another party's Objections within 14 days after being served with a copy of the Objections.

Failure to object within the time limit specified shall be deemed a consent to any proposed findings of fact. Upon receipt of Objections and any Response thereto, or upon expiration of the time for filing Objections or a Response, the case will be submitted to the District Judge for disposition. Following entry of Judgment and/or Order, all motions or other matters in the case will be considered and determined by the District Judge.

The Report and Recommendation of a Magistrate Judge is not a Final Appealable Order. A Notice of Appeal pursuant to Federal Rules of Appellate Procedure 4(a)(1) should not be filed until entry of a Judgment and/or Order by the District Judge.

CLERK, UNITED STATES DISTRICT COURT

Dated: December 15, 2016

By: Marine Pogosyan
Deputy Clerk

Refused For Fraud Per Filed U.S. District Court 12-10-16

Retrieved For Fraud Report

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAVIS MIDDLETON, et al.,
Plaintiffs,
v.
RICHARD PAN, et al.,
Defendants.

NO. CV 16-5224-SVW (AGR)

REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

The court submits this Report and Recommendation to the Honorable Stephen V. Wilson, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, the magistrate judge recommends that the Defendants' motions to dismiss be granted and that the First Amended Complaint be dismissed with leave to amend under the terms and conditions set forth below.

U.S.C. § 636

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I.

SUMMARY OF PROCEEDINGS

On August 10, 2016, the remaining Plaintiffs¹ Travis Middleton, Eric Durak, Jade Baxter, Julianna Pearce, Candyce Estave, Denise Michele Derusha, Melissa Christou, Andrea Lewis, Rachil Vincent, Don Demanlevesde, Jessica Haas, Paige Murphy, Lori Strantz, Anwanur Gielow, Lisa Ostendorf, JuliaAnne Whitney, Alice Tropper, Bret Nielsen, Brent Haas, Muriel Rosensweet and Marina Read, proceeding *pro se*, filed a First Amended Complaint (“FAC”) against the following remaining two categories of defendants:² (1) Legislative Defendants Richard Pan, Win-Li Wang, Martin Jeffrey “Marty” Block, Gerald A. “Jerry” Hill, Holly Mitchell, Catharine Baker, Christina Garcia, Adrin Nazarian, Jim Wood, Ben Allen, Kevin de Leon, Hannah-Beth Jackson, Jeff Stone, Richard Bloom, Bill Quirk, Lorena Gonzalez, Reginald Jones-Sawyer, Isadore Hall, Mark Leno, Bob Wieckowski, David Chiu, Evan Low, Anthony Rendon, Jim Beall, Robert Hertzberg, Mike McGuire, Lois Wolk, Bruce Wolk, Jim Cooper and Mark Stone; and (2) State Defendants Governor Brown, Ann Gust and the State of California.

On October 26, 2016, the Legislative Defendants and State Defendants filed motions to dismiss the FAC. (Dkt. No. 103, 105.) On November 16, 2016,

¹ Five plaintiffs have filed notices of voluntary dismissal. (Dkt. No. 20 (Andy Taft); Dkt. No. 71 (Jackie Kozak); Dkt. No. 73 (Pam Corner); Dkt. No. 74 (Christie Macias); Dkt. No. 93 (Jodie Tiserrand).)

² Plaintiffs filed notices of voluntary dismissal without prejudice of the following defendants: Kevin McCarthy and Judy McCarthy (Dkt. No. 102). Plaintiffs have been unable to serve the following defendants: Dan Baker (Dkt. No. 22), Robbie Black (Dkt. No. 23), Cindy Block (Dkt. No. 24), Candace Chen (Dkt. No. 25), Kristen Cooper (Dkt. No. 26), George Eskin (Dkt. No. 27), Douglas Jackson (Dkt. No. 28), Annie Lam (Dkt. No. 29), Sue Lemke (Dkt. No. 30), Erika McGuire (Dkt. No. 31), Diana Nazarian (Dkt. No. 32), Laura L. Quirk (Dkt. No. 33), Kathy Stone (Dkt. No. 34), Jane Wood (Dkt. No. 35), Pat or Pak Lafkas (Dkt. No. 92), Robbie Block (Dkt. No. 120) and Sky Hill (Dkt. No. 121). Plaintiffs previously indicated that they do not intend to pursue defendants who are the subject of “Non Service Reports” filed by Plaintiffs. (Dkt. No. 96.)

It is recommended that the court dismiss all of these defendants without prejudice.

1 Plaintiffs filed documents entitled “Notice to the Court to Obey Its Oath to the
2 Constitution for the United States of America” and “Plaintiffs’ Refusal for Fraud
3 Pursuant to Fed. R. Civ. P. 1(b), UCC 1-103.6.”³ (Dkt. Nos. 110, 112.) On
4 November 29, 2016, the State Defendants filed a reply (Dkt. No. 118) and the
5 Legislative Defendants filed a joinder (Dkt. No. 119). The matter came on for
6 hearing on December 13, 2016 and was taken under submission.

7 **II.**

8 **FIRST AMENDED COMPLAINT**

9 Plaintiffs object to California’s Senate Bill (“SB”) 277, which repealed the
10 personal belief exemption (“PBE”) to California’s immunization requirements for
11 children entering public and private educational and child care facilities in
12 California.

13 **A. SB 277**

14 In enacting SB 277, the California Legislature declared that its intent was to
15 provide a “means for the eventual achievement of total immunization of
16 appropriate age groups against the following childhood diseases:

- 17 (1) Diphtheria.
18 (2) Hepatitis B.
19 (3) Haemophilus influenzae type b.
20 (4) Measles.
21 (5) Mumps.
22 (6) Pertussis (whooping cough).
23 (7) Poliomyelitis.
24 (8) Rubella.

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³ Plaintiffs also filed a Verified Petition for Writ of Mandamus. (Dkt. No.
28 111.) The Petition was denied by the District Judge on November 22, 2016.
(Dkt. No. 116.)

1 (9) Tetanus.

2 (10)Varicella (chickenpox).

3 Cal. Health & Safety Code § 120325(a)(1)-(10). Under the current version of the
4 law, a student who had a PBE on file before January 1, 2016 is allowed
5 enrollment until the student enrolls in the next “grade span” as defined in the
6 statute. Cal. Health & Safety Code § 120335(g). First time enrollees and
7 students entering the 7th Grade are no longer allowed admission unless they
8 have complied with the vaccination requirements. *Id.* § 120335(g)(3).

9 SB 277 provides for three exemptions to the vaccination requirements: (1)
10 students who have on file “a written statement by a licensed physician to the
11 effect that the physical condition of the child is such, or medical circumstances
12 relating to the child are such, that immunization is not considered safe, indicating
13 the specific nature and probable duration of the medical condition or
14 circumstances, including, but not limited to, family medical history, for which the
15 physician does not recommend immunization,” *Id.* § 120370(a); (2) students who
16 are in a home-based private school or enrolled in an independent study program
17 and do not receive classroom-based instruction, *Id.* § 120335(f); and (3) students
18 who qualify for an individualized education program, *Id.* § 120335(h).

19 The FAC attaches Governor Brown’s transmittal dated June 30, 2015.
20 (Exh. A to FAC.)

21 **B. Allegations**

22 Plaintiffs allege that immunizations contain a “toxic list of ingredients”
23 including aluminum, formaldehyde and mercury thimerosal. (FAC at 5, 8-10.)
24 According to Plaintiffs, Defendants have removed “the ability of parents to invoke
25 their natural rights of self-preservation and or opt out of this criminal assault on
26 their children’s lives by being coerced, intimidated, and forced into compliance
27 under this dark cloud of medical and political tyranny.” (*Id.* at 12.)
28

1 Plaintiffs allege nine claims: (1) violation of RICO (Racketeering Influenced
2 and Corrupt Organizations Act) claim under 18 U.S.C. § 1961, against all
3 Defendants; (2) violation of RICO under 18 U.S.C. § 1962(a), (d), against all
4 defendants; (3) conspiracy to promote the sale and use of biological weapons on
5 California citizens in violation of 18 U.S.C. § 175, against the Legislative
6 Defendants; (4) conspiracy to promote the sale and use of chemical weapons on
7 California citizens in violation of 18 U.S.C. § 178, against Legislative Defendants;
8 (5) violation of 18 U.S.C. § 241 against Legislative Defendants; (6) violation of 18
9 U.S.C. § 242 against Legislative Defendants; (7) violation of 42 U.S.C. § 1983
10 against Legislative Defendants; (8) violation of 42 U.S.C. § 1986 against
11 Legislative Defendants; and (9) intentional infliction of emotional distress against
12 all Defendants. Plaintiffs seek damages, declaratory judgment and an injunction
13 against enforcement of SB 277.

14 III.

15 DISCUSSION

16 A. Fed. R. Civ. P. 12(b)(6)

17 “To survive a motion to dismiss, a complaint must contain sufficient factual
18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “A claim has facial
20 plausibility when the plaintiff pleads factual content that allows the court to draw
21 the reasonable inference that the defendant is liable for the misconduct alleged.
22 The plausibility standard is not akin to a ‘probability requirement,’ but it asks for
23 more than a sheer possibility that a defendant has acted unlawfully. Where a
24 complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it
25 ‘stops short of the line between possibility and plausibility of “entitlement to
26 relief.”’” *Id.* (citations omitted).

27 [T]he tenet that a court must accept as true all of the allegations contained
28 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the

1 elements of a cause of action, supported by mere conclusory statements, do not
2 suffice. *Id.* at 678; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “In
3 sum, for a complaint to survive a motion to dismiss, the non-conclusory ‘factual
4 content,’ and reasonable inferences from that content, must be plausibly
5 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*,
6 572 F.3d 962, 969 (9th Cir. 2009) (citation omitted).

7 As a general rule, the court must limit its review to the operative complaint.
8 See *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Materials that
9 are the subject of judicial notice and materials submitted as part of the complaint
10 are not “outside” the complaint and may be considered. *Id.*; *Hal Roach Studios,*
11 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).
12 Even if documents are not physically attached to the complaint, they may be
13 considered if their authenticity is uncontested and the complaint necessarily relies
14 on them. *Lee*, 250 F.3d at 688.

15 A *pro se* complaint is to be liberally construed. *Erickson v. Pardus*, 551
16 U.S. 89, 94 (2007) (per curiam). Before dismissing a *pro se* civil rights complaint
17 for failure to state a claim, the plaintiff should be given a statement of the
18 complaint’s deficiencies and an opportunity to cure them unless it is clear the
19 deficiencies cannot be cured by amendment. *Eldridge v. Block*, 832 F.2d 1132,
20 1135-36 (9th Cir. 1987). Nevertheless, “[u]nder Ninth Circuit case law, district
21 courts are only required to grant leave to amend if a complaint can possibly be
22 saved. Courts are not required to grant leave to amend if a complaint lacks merit
23 entirely.” *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000).

24 **B. Legislative Immunity**

25 The claims in the FAC clearly seek to impose liability on the Legislative
26 Defendants and Governor Brown for introducing, sponsoring, voting for,
27 persuading others to vote for or signing into law SB 277.

1 “[F]ederal, state, and regional legislators are entitled to absolute immunity
2 from civil liability for their legislative activities.” *Bogan v. Scott-Harris*, 523 U.S.
3 44, 46 (1998) (§ 1983 action); *Chappell v. Robbins*, 73 F.3d 918, 920, 924 (9th
4 Cir. 1996) (civil RICO). Legislative immunity is parallel to the immunity provided
5 by the Speech or Debate Clause in the United States Constitution.⁴ *Id.* at 920.

6 “Whether an act is legislative turns on the nature of the act, rather than on
7 the motive or intent of the official performing it.” *Bogan*, 523 U.S. at 54.

8 Allegations that legislators had improper purposes or motives do not destroy
9 legislative immunity. *Id.*; *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951);
10 *Chappell*, 73 F.3d at 921 (legislative immunity applies despite allegation that
11 legislator sponsored and pushed legislation because he received bribes).

12 The acts of introducing, voting for, persuading colleagues to vote for, and
13 signing legislation constitutes legislative activities entitled to absolute immunity.
14 *Bogan*, 523 U.S. at 46, 55-56 (immunity applies regardless of whether officials
15 are members of legislative or executive branch); *Community House, Inc. v. City of*
16 *Boise*, 623 F.3d 945, 959-60 (9th Cir. 2010); *Single Moms, Inc. v. Montana Power*
17 *Co.*, 331 F.3d 743, 750 (9th Cir. 2003) (applying legislative immunity to passage
18 of legislation deregulating energy market); *San Pedro Hotel Co., Inc. v. City of*
19 *Los Angeles*, 159 F.3d 470, 476 (9th Cir. 1998); *Chappell*, 73 F.3d at 921
20 (sponsoring and pushing for legislation are “quintessential legislative acts”); see
21 also *Gravel v. United States*, 408 U.S. 606, 625 (1972) (legislative acts
22 encompass “deliberative and communicative processes by which Members
23 participate in . . . the consideration and passage or rejection of proposed
24 legislation”; immunity extends to legislative aides and assistants).

25 _____
26 ⁴ The Speech or Debate Clause of the United States Constitution provides
27 in pertinent part that senators and representatives are privileged “for any Speech
28 or Debate in either House.” Art. I, § 6, Cl. 1; *Scheuer v. Rhodes*, 416 U.S. 232,
240 (1974) (“The Federal Constitution grants absolute immunity to Members of
both Houses of the Congress with respect to any speech, debate, vote, report, or
action done in session.”).

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1 Legislative immunity applies to actions for damages and injunctive relief.
2 *Supreme Court of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 732-
3 33 (1980); *Schmidt v. Contra Costa Cnty.*, 693 F.3d 1122, 1132 (9th Cir. 2012) (§
4 1983).

5 Legislative immunity also applies to California state law claims. *Id.* at
6 1138-39 (claims based on California Constitution).

7 It is recommended that Plaintiffs' claims against all individual Defendants
8 be dismissed. Plaintiffs' injury results from passage of the legislation. Plaintiffs
9 cannot state a claim upon which relief could be granted because the conduct
10 that caused their injuries is legislative and therefore immune. *See Chappell*, 73
11 F.3d at 921.

12 C. Eleventh Amendment Immunity

13 The Eleventh Amendment bars suits in federal court for damages or
14 injunctive relief against California. *Papasan v. Allain*, 478 U.S. 265, 276 (1986);
15 *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943
16 (9th Cir. 2013).

17 Plaintiffs also name Governor Brown. In his official capacity, the Eleventh
18 Amendment bars suits for damages. Under certain circumstances, prospective
19 injunctive relief for federal claims is available against a state official under the *Ex*
20 *Parte Young* exception.⁵ *Id.* at 943. The state official ""must have some
21 connection with the enforcement of the act"" that ""must be fairly direct; a
22 generalized duty to enforce state law or general supervisory power over the
23 persons responsible for enforcing the challenged provision will not subject an
24 official to suit."" *Id.* (citations omitted).

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⁵ The *Ex Parte Young* exception does not apply to state claims such as Plaintiffs' ninth claim for intentional infliction of emotional distress.

1 Governor Brown is entitled to Eleventh Amendment immunity because his
2 only connection to SB 277 is his general duty to enforce California law.⁶
3 Defendant Gust, as First Lady, is not alleged to have any connection to the
4 enforcement of SB 277.⁷

5 **D. Leave to Amend the Complaint**

6 The FAC seeks an injunction prohibiting enforcement of SB 277 against
7 Plaintiffs or their offspring. (FAC at 66.) This relief is not available against the
8 named defendants for the reasons discussed above.

9 It is recommended that the complaint be dismissed against the named
10 defendant with prejudice. The question is whether leave to amend is appropriate
11 to give Plaintiffs an opportunity to name the correct defendant(s) and attempt to
12 state viable claims. As discussed above, a *pro se* plaintiff generally should be
13 given a statement of the complaint's deficiencies and an opportunity to cure them
14 by amendment. *Eldridge*, 832 F.2d at 1135-36. Defendants correctly respond
15 that a court need not grant leave to amend when amendment would be futile.
16 *Lopez*, 203 F.3d at 1129. Nevertheless, it is recommended that the court grant
17 leave to amend. In the event Plaintiffs choose to file a First Amended Complaint,
18 the court provides the following guidance.

19 Plaintiffs allege that SB 277 is unconstitutional. (FAC at 57 ¶ 14.) In an
20 action in the Southern District of California, a group of plaintiffs, represented by
21 counsel, challenged SB 277 on constitutional grounds. *Whitlow v. State of*

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23 ⁶ Plaintiffs' citation to *Scheuer v. Rhodes* is not to the contrary. In that
24 case, the claims were based on the Governor's deployment of the Ohio National
25 Guard on the Kent State campus. 416 U.S. at 235-36. Plaintiffs did not seek
26 prospective injunctive relief. *Id.* at 237-38. As to claims for damages, a state
27 official in his or her individual capacity may argue for qualified immunity. *Brown*
28 *v. Oregon Dep't of Corr.*, 751 F.3d 983, 989 (9th Cir. 2014).

⁷ To the extent Gust is not shielded by Eleventh Amendment immunity, her
alleged acts in support of SB 277 would be shielded by the *Noerr* doctrine and
the First Amendment. See *Manistee Town Ctr. v. City of Glendale*, 227 F.3d
1090, 1093 (9th Cir. 2000) (lobbying of government protected by *Noerr* doctrine).

1 California, CV 16-1715 DMS.⁸ The court issued a well reasoned order denying
2 Plaintiffs' motion for a preliminary injunction and the case was subsequently
3 dismissed by the plaintiffs. *Whitlow v. State of California*, 2016 WL 6495512
4 (S.D. Cal. Aug. 26, 2016). This court finds the reasoning in *Whitlow* persuasive.

5 **1. Constitutional Challenges**

6 In *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), the
7 Supreme Court addressed a contention that a statute requiring vaccination was
8 unconstitutional on the grounds of "injurious or dangerous effects of vaccination."
9 *Id.* at 23. Jacobson contended that vaccination quite often causes serious and
10 permanent injury to the person vaccinated and sometimes results in death; that
11 vaccine matter is dangerous; and that he had contracted a disease produced by
12 vaccination when he was a child, as did his son. *Id.* at 36. Jacobson argued that
13 "a compulsory vaccination law is unreasonable, arbitrary and oppressive, and,
14 therefore, hostile to the inherent right of every freeman to care for his own body
15 and health in such way as to him seems best; and that the execution of such a
16 law against one who objects to vaccination, no matter for what reason, is nothing
17 short of an assault upon his person." *Id.* at 26. The Court rejected that
18 argument:

19 But the liberty secured by the Constitution of the United
20 States to every person within its jurisdiction does not import
21 an absolute right in each person to be, at all times and in all
22 circumstances, wholly freed from restraint. There are
23 manifold restraints to which every person is necessarily
24 subject for the common good. On any other basis
25 organized society could not exist with safety to its members.

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⁸ The defendants in the *Whitlow* case included the Superintendent of the
28 Department of Education in his official capacity, and the director of the
Department of Public Health in her official capacity.

1 Society based on the rule that each one is a law unto himself
2 would soon be confronted with disorder and anarchy. Real
3 liberty for all could not exist under the operation of a principle
4 which recognizes the right of each individual person to use
5 his own, whether in respect of his person or his property,
6 regardless of the injury that may be done to others.

7 *Id.* The Court concluded that Jacobson could not claim exemption because of his
8 beliefs about the dangers of vaccination. *Id.* at 37. The Court acknowledged that
9 a state may exercise its power “in such circumstances, or by regulations so
10 arbitrary and oppressive in particular cases, as to justify the interference of the
11 courts to prevent wrong and oppression.” *Id.* at 38. However, “we are not
12 inclined to hold that the statute establishes the absolute rule that an adult must be
13 vaccinated if it be apparent or can be shown with reasonable certainty that he is
14 not at the time a fit subject of vaccination or that vaccination, by reason of his
15 then condition, would seriously impair his health or probably cause his death. No
16 such case is here presented. It is the case of an adult who, for aught that
17 appears, was himself in perfect health and a fit subject of vaccination.” *Id.* at 39.

18 The Supreme Court addressed a mandatory vaccination law that prevented
19 children from attending school without a certificate of vaccination. *Zucht v. King*,
20 260 U.S. 174, 175 (1922). The Court noted *Jacobson* had established that “it is
21 within the police power of a State to provide for compulsory vaccination.” *Id.* at
22 176. The Court rejected challenges based on due process. A State could
23 delegate to municipal authorities “to determine under what conditions health
24 regulations shall become operative” and a municipal authority could vest in
25 officials “broad discretion in matters affecting the application and enforcement of
26 a health law.” *Id.* Moreover, “in the exercise of the police power reasonable
27 classification may be freely applied and that regulation is not violative of the equal
28 protection clause merely because it is not all-embracing.” *Id.* at 177.

1 In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court
2 addressed a defense to a conviction for violation of state child labor laws. The
3 Court noted that a parent “cannot claim freedom from compulsory vaccination for
4 the child more than for himself on religious grounds. The right to practice religion
5 freely does not include liberty to expose the community or the child to
6 communicable disease or the latter to ill health or death.” *Id.* at 166-67 (footnotes
7 omitted); see also *Phillips v. City of New York*, 775 F.3d 538, 542-43 (2d Cir.)
8 (per curiam), cert. denied, 136 S. Ct. 104 (2015) (due process, free exercise of
9 religion and equal protection); *Workman v. Mingo Cnty. Bd. of Ed.*, 419 Fed.
10 Appx. 348, 356 (4th Cir. 2011) (free exercise of religion, equal protection and
11 substantive due process).

12 The California Supreme Court rejected a constitutional challenge to a
13 mandatory vaccination law that excluded children who were not vaccinated from
14 enrolling in school. *Abeel v. Clark*, 84 Cal. 226 (1890). The Court concluded that
15 vaccination is within the scope of a state’s police power. *Id.* at 230.

16 The court in *Whitlow* summarized these decisions and noted:

17 [A]lthough the decision to eliminate the PBE, which had been
18 in existence for decades, raises principled and spirited
19 religious and conscientious objections by genuinely caring
20 parents and concerned citizens, the wisdom of the
21 Legislature’s decision is not for this Court to decide.
22 *Jacobson*, 197 U.S. at 30 [] (stating the existence of medical
23 opinion attaching little or no value to vaccination as a means
24 of preventing spread of smallpox was of no moment; it was
25 for the Legislature, and not the court, to determine the most
26 effective method of protecting the public against disease).

27 The objections and concerns with SB 277 were presented to
28 the Legislature, and it decided to proceed with the law over

1 those objections. Whether those objections were valid is not
2 for this Court to decide. Rather, the Court is concerned only
3 with whether the law is constitutional.

4 *Whitlow*, 2016 WL 6495512 at *4.

5 **a. Free Exercise of Religion**

6 Plaintiffs in this case argue that the First Amendment protects both
7 religious and personal freedoms. (FAC at 60 ¶ 181.) The *Whitlow* court properly
8 held that personal beliefs, as distinguished from religious beliefs, are not
9 protected by the First Amendment. *Wisconsin v. Yoder*, 406 U.S. 205, 215
10 (1972) (“A way of life, however virtuous and admirable, may not be interposed as
11 a barrier to reasonable state regulation of education if it is based on purely
12 secular consideration; to have the protection of the Religion Clauses, the claims
13 must be rooted in religious belief.”).

14 Plaintiffs allege that SB 277 requires them “to waive their rights under their
15 deeply held spiritual beliefs and training to comply with SB 277.” (FAC at 60 ¶
16 181.) The court assumes that this allegation refers to a religious belief. As
17 discussed above, the Supreme Court has stated that “[t]he right to practice
18 religion freely does not include liberty to expose the community or the child to
19 communicable disease or the latter to ill health or death.” *Prince*, 321 U.S. at
20 166-67 (footnote omitted). The Second Circuit has held that “mandatory
21 vaccination as a condition for admission to school does not violate the Free
22 Exercise Clause.” *Phillips*, 775 F.3d at 543. Although New York law allows an
23 exemption for parents with genuine and sincere religious beliefs, the *Phillips* court
24 acknowledged that, in this respect, “New York law goes beyond what the
25 Constitution requires.” *Id.* The unpublished Fourth Circuit case on which *Phillips*
26 relied held that “the West Virginia statute requiring vaccinations as a condition of
27 admission to school does not unconstitutionally infringe Workman’s right to free
28 exercise.” *Workman*, 419 Fed. Appx. at 353-54 (collecting cases).

1 Plaintiffs also assert a claim under the California Constitution as a basis for
2 relief under § 1983. (FAC at 60-61 ¶ 182.) To state a claim under § 1983, a
3 plaintiff must allege a violation of “a right secured by the Constitution or laws of
4 the United States.” *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.
5 2006). Moreover, the California Supreme Court reaffirmed *Abeel* in *French v.*
6 *Davidson*, 143 Cal. 658, 661-62 (1904) (affirming denial of writ of mandate to
7 compel enrollment of children to schools without vaccinations).

8 **b. Fourth Amendment**

9 The Fourth Amendment protects “the right of the people to be secure in
10 their persons, houses, papers, and effects, against unreasonable searches and
11 seizures.” It is not clear how Plaintiffs believe SB 277 violates the Fourth
12 Amendment. To the extent Plaintiffs allege violation of a right to medical privacy,
13 the Supreme Court has held that: “A student’s privacy interest is limited in a
14 public school environment where the State is responsible for maintaining
15 discipline, health, and safety. Schoolchildren are routinely required to submit to
16 physical examinations and vaccinations against disease.” *Bd. of Ed. v. Earls*, 536
17 U.S. 822, 830-31 (2002) (upholding school drug testing policy requiring students
18 who participate in competitive extracurricular activities to submit to drug testing).

19 **c. Due Process**

20 Plaintiffs allege that SB 277 requires them to submit to “unwanted
21 injections of poisons” that constitute “felony assault with intent to do serious
22 harm, including but not limited to maiming and or killing the individual” without
23 due process of law. (FAC at 61-62 ¶ 185.) Plaintiffs assert a right of self
24 defense. (*Id.* at 62 ¶ 186.) As discussed above, Plaintiffs’ due process claims
25 are foreclosed by *Zucht*. 260 U.S. at 176 (rejecting due process challenge to
26 exclusion from schools of children who did not have certificates and refused to
27 submit to vaccination); *Phillips*, 775 F.3d at 542-43 (rejecting substantive due
28 process challenge; “Plaintiffs argue that a growing body of scientific evidence

1 demonstrates that vaccines cause more harm to society than good, but as
2 *Jacobson* made clear, that is a determination for the legislature, not the individual
3 objectors.”); *Workman*, 419 Fed. Appx. at 355-56 (rejecting substantive due
4 process challenge to mandatory vaccination statute); *Whitlow*, 2016 WL 6495512
5 at *7 (rejecting substantive due process challenge to SB 277).

6 **d. Equal Protection**

7 Plaintiffs allege that SB 277 discriminates against their children “due to the
8 status of their vaccination schedules not their state of health at the time of
9 entering school.” (FAC at 63 ¶ 188.) It appears Plaintiffs are attempting to state
10 an equal protection claim.

11 The Equal Protection Clause “is essentially a direction that all persons
12 similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living*
13 *Center*, 473 U.S. 432, 439 (1985). Children who are vaccinated are not similarly
14 situated to children who are not vaccinated. *Whitlow*, 2016 WL 6495512 at *6;
15 see *Wright v. Incline Village Gen. Improvement Dist.*, 665 F.3d 1128, 1140 (9th
16 Cir. 2011) (“Evidence of different treatment of unlike groups does not support an
17 equal protection claim.”). Plaintiffs have not alleged that children with PBEs are a
18 suspect class and or that the classifications burden a fundamental right. *San*
19 *Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education .
20 . . is not among the rights afforded explicit protection under our Federal
21 Constitution. Nor do we find any basis for saying it is implicitly so protected.”).
22 Thus, the classifications are subject to rational basis review. *Whitlow*, 2016 WL
23 6495512 at *6. “[T]here is a rational basis for treating children with PBEs
24 differently from other children: The former are not completely vaccinated, if at all,
25 while the latter are fully vaccinated. Allowing the latter to attend school and
26 excluding the former is rationally related to the State’s interest in protecting public
27 health and safety.” *Id.*

1 **e. 42 U.S.C. § 1986**

2 Section 1986 imposes liability on a person who knows of an impending
3 violation of § 1985 but neglects or refuses to prevent it. *Karim-Panahi*, 839 F.2d
4 at 626. “A claim can be stated under section 1986 only if the complaint contains
5 a valid claim under section 1985.” *Id.*; see also *McCalden v. California Library*
6 *Ass’n*, 955 F.2d 1214, 1223 (9th Cir. 1990) (same). Plaintiffs’ failure to allege a
7 claim under § 1985 is fatal to any claim under § 1986.

8 **f. Other Amendments**

9 Plaintiffs cannot state a claim under the Ninth Amendment, which “has not
10 been interpreted as independently securing any constitutional rights for purposes
11 of making out a constitutional violation.” *Schowengerdt v. United States*, 944
12 F.2d 483, 490 (9th Cir. 1991); see also *San Diego Cnty. Gun Rights Comm. v.*
13 *Reno*, 98 F.3d 1121, 1125 (9th Cir. 1996).

14 Plaintiffs allege no facts supporting a claim of involuntary servitude under
15 the Thirteenth Amendment.

16 **g. Criminal Statutes**

17 Plaintiffs assert violations of various criminal statutes. 18 U.S.C. §§ 175,
18 178, 241, 242. Private individuals may not prosecute others for alleged crimes.
19 As explained succinctly by the First Circuit:

20 Not only are we unaware of any authority for permitting a private
21 individual to initiate a criminal prosecution in his own name in a United
22 States District Court, but also to sanction such a procedure would be
23 to provide a means to circumvent the legal safeguards provided for
24 persons accused of crime, such as arrest by an officer on probable
25 cause or pursuant to a warrant, prompt presentment for preliminary
26 examination by a United States Commissioner or other officer
27 empowered to commit persons charged with offenses against the
28 United States, and, in this case, indictment by a grand jury.

1 *Keenan v. McGrath*, 328 F.2d. 610, 611 (1st Cir. 1964).

2 The Supreme Court has not inferred a private right of action from the
3 existence of a criminal statute. *Central Bank of Denver v. First Interstate Bank of*
4 *Denver*, 511 U.S. 164, 190 (1994) (“we have not suggested that a private right of
5 action exists for all injuries caused by violations of criminal prohibitions”).

6 When, as here, the criminal statutes do not expressly provide for a private
7 right of action, the court examines four factors: (1) whether the plaintiff is one of
8 the class for whose especial benefit the statute was enacted; (2) whether
9 Congress explicitly or implicitly indicated an intent to create a private remedy; (3)
10 whether an implied private right of action would be consistent with the statute’s
11 underlying purposes; and (4) whether an implied cause of action would be in an
12 area traditionally relegated to state law. *Cort v. Ash*, 422 U.S. 66, 78 (1975).

13 The “central inquiry remains whether Congress intended to create, either
14 expressly or by implication, a private cause of action.” *Touche Ross v.*
15 *Redington*, 442 U.S. 560, 575 (1979). If Congress did not intend to create a
16 private right of action, a court need not consider the other factors. *Logan v. U.S.*
17 *Bank NA*, 722 F.3d 1163, 1170-71 (9th Cir. 2013). Plaintiffs have not argued any
18 basis for finding a private right of action under these criminal statutes. *Aldabe v.*
19 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam) (no private right of
20 action under §§ 241-42).

21 **h. Civil RICO**

22 Plaintiffs allege RICO claims under 18 U.S.C. § 1961 and § 1962(a),
23 (d) based on enactment of SB 277. (FAC at 47 ¶¶ 140-41.) As explained above,
24 Plaintiffs’ claims are barred by legislative immunity.

25 The court is hard pressed to see any way in which Plaintiffs’ challenge
26 to SB 277 could plausibly fall within RICO. Section 1961 contains only the
27 definitions. In the event Plaintiffs attempt to amend the RICO claims, Plaintiffs
28 are advised that they must allege injury to their business or property by reason of

1 a violation of § 1962. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495-97
2 (1985). The FAC does not contain allegations of injury to Plaintiffs' business or
3 property.

4 Section 1962(a) provides that it is unlawful "for any person who has
5 received any income derived, directly or indirectly, from a pattern of racketeering
6 activity . . . to use or invest . . . any part of such income . . . in . . . operation of . . .
7 any enterprise." The FAC contains no such allegations. Moreover, under §
8 1962(a), Plaintiffs must "allege facts tending to show that he or she was injured
9 by the use or investment of racketeering income." *Nugget Hydroelectric, L.P. v.*
10 *Pacific Gas & Elec. Co.*, 981 F.2d 429, 437 (9th Cir. 1992). Injury from alleged
11 racketeering acts that generated the income is not sufficient. *Id.*

12 Absent allegations of a viable RICO violation, Plaintiffs' allegations of a
13 conspiracy to violate RICO under § 1962(d) also fail to state a claim. *Sanford v.*
14 *MemberWorks*, 625 F.3d 550, 559 (9th Cir. 2010).

15 IV.

16 **RECOMMENDATION**

17 For the reasons discussed above, it is recommended that the district court
18 issue an order (1) accepting this Report's findings and recommendation; (2)
19 dismissing without prejudice under Fed. R. Civ. P. 4(m) the following defendants:
20 Dan Baker, Robbie Black, Robbie Block, Cindy Block, Candace Chen, Kristen
21 Cooper, George Eskin, Sky Hill, Douglas Jackson, Annie Lam, Sue Lemke, Kevin
22 McCarthy, Judy McCarthy, Erika McGuire, Diana Nazarian, Laura L. Quirk, Kathy
23 Stone, Jane Wood and Pat or Pak Lafkas; (3) granting Defendants' motion to
24 dismiss the First Amended Complaint; (4) dismissing the First Amended
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1 Complaint against the remaining defendants with prejudice; and (5) granting with
2 leave to amend within 30 days after the District Judge's Order.

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DATED: December 15, 2016

ALICIA G. ROSENBERG
United States Magistrate Judge

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Respectfully submitted,
Travis Middleton
Travis Middleton
Plaintiff, Pro Se

By: *Julianne Whitney*

By: *Eric Durak*
Eric Durak
Plaintiff, Pro Se

By: *Jade Baxter*
Jade Baxter
Plaintiff, Pro Se

By: *Juliana Pearce*
Juliana Pearce
Plaintiff, Pro Se

By: *Candyce Estave*
Candyce Estave
Plaintiff, Pro Se

By: *Denise Michele Derusha*
Denise Michele Derusha
Plaintiff, Pro Se

By: *Melissa Christou*
Melissa Christou
Plaintiff, Pro Se

By: *Andrea Lewis*
Andrea Lewis
Plaintiff, Pro Se

By: *Rachil Vincent*
Rachil Vincent
Plaintiff, Pro Se

By: *Jessica Haas*
Jessica Haas
Plaintiff, Pro Se

By: *Paige Murphy*
Paige Murphy
Plaintiff, Pro Se

By: *Lori Strantz*
Lori Strantz
Plaintiff, Pro Se

By: *Anwanur Gielow*
Anwanur Gielow
Plaintiff, Pro Se

By: *Lisa Ostendorf*
Lisa Ostendorf
Plaintiff, Pro Se

By: *Alice Trooper*
Alice Trooper
Plaintiff, Pro Se

By: *Bret Nielsen*
Bret Nielsen
Plaintiff, Pro Se

By: *Brent Haas*
Brent Haas
Plaintiff, Pro se

By: *Muriel Rosensweet*
Muriel Rosensweet
Plaintiff, Pro Se

By: *Marina Read*
Marina Read
Plaintiff, Pro Se

By: *Don Demanlevesde*
Don Demanlevesde
plaintiff pro se

CERTIFICATE OF SERVICE

This is to certify that I have on this 7th day of January, 2017 placed a true and correct copy of the:

APPLICANT PARTIES INJURED / PLAINTIFFS' REFUSAL FOR FRAUD OF The "The Magistrate's Report and Recommendation" filed by the Magistrate Judge in assigned Case Incorporated No. 2:16-cv-05224-SVW-AGR at the below address, or by depositing the same in the U.S. Mails, to DIANE F. BOYER-VINE (SBN: 124182) Legislative Counsel, ROBERT A. PRATT (SBN: 137704) Principal Deputy Legislative Counsel, CARA L. JENKINS (SBN: 271432) Deputy Legislative Counsel Office of Legislative Counsel 925 L Street, Suite 700 Sacramento, California 95814 Telephone: (916) 341-8245 E-mail: cara.jenkins@lc.ca.gov, Attorneys for Defendants:

Assembly Member Catharine Baker, Assembly Member Richard Bloom, Assembly Member David Chiu, Assembly Member Jim Cooper, Assembly Member Cristina Garcia, Assembly Member Lorena Gonzalez, Assembly Member Reginald Jones-Sawyer, Assembly Member Evan Low, Assembly Member Adrin Nazarian, Assembly Member Bill Quirk, Assembly Member Anthony Rendon, Assembly Member Mark Stone, Assembly Member Jim Wood, Senator Ben Allen, Senator Jim Beall, Senator Marty Block, Senator Kevin de Leon, Senator Robert Hertzberg, Senator Mark Leno, Senator Isadore Hall, Senator Jerry Hill, Senator Hannah-Beth Jackson, Senator Mike McGuire, Senator Holly Mitchell, Senator Richard Pan, Senator Jeff Stone, Senator Bob Wieckowski, Senator Lois Wolk;

To: KAMALA D. HARRIS Attorney General of California, RICHARD T. WALDOW ELIZABETH S. ANGRES, Supervising Deputy Attorneys General; JONATHAN E. RICH (SBN 187386), ELIZABETH G. O'DONNELL (SBN 162453), JACQUELYN Y. YOUNG (SBN 306094), Deputy Attorneys General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013 Telephone: (213) 897-2439 Fax: (213) 897-2805, E-mail: Jonathan.Rich@doj.ca.gov Attorneys for Defendants Governor Edmund G. Brown, Jr., and the State of California.

AND; To: Marine Pogosyan, Clerk to Magistrate Judge Alicia G. Rosenberg, United States District Court Central District of California 312 North Spring Street Los Angeles, California 90012. **Certified Mail No.: 7015173000201215991.**

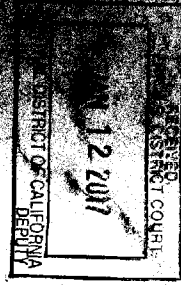
I declare under penalty of perjury that the above is true and correct.


Travis Middleton

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AGR



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Clerk of Court



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