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6 REFUSAL FOR FRAUD – PAGES 1 OF 92
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, et al.,
14 Plaintiff(s), Applicants

15 vs.

16 Richard Pan, et al.
17 Defendant(s)

) **PLAINTIFFS' REFUSAL FOR**
) **FRAUD PURSUANT TO**
) **Fed. R. Civ. P. 12(b), 12(f), 12(i),**
) **UCC 1-103.6**

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

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

)
) (*Trinsey v. Pagliaro, D. C. Pa. 1964,*
) *229 F. Supp. 647.*)

)
) Date: September 14, 2017
) Court Room 10A, Tenth Floor
) First Street Court House

)
) Hon. Stephen V. Wilson
) Oral Argument vacated

27
28 **TO DEFENDANTS' COUNSEL AND ALL PARTIES AT INTERST:**

1 THIS Refusal for Fraud of Opposing Counsels’[Legislative Defendants & State of
2 California, et. al.] Oppositions (Motions to Dismiss) to Parties Injured Complaint
3 for 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. 9(b), 121(f), 12(i), 12(c), 56(c), & UCC 1-103.6. Plaintiffs will address all
6 the opposing counsels’ arguments in one response because they all make the same
7 frivolous and illegitimate claims.

8 THIS IS A COMMERCIAL AFFIDAVIT AND MUST BE RESPONDED TO ON
9 A POINT BY POINT BASIS.

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

15 1). I know all men by these presents, Travis Middleton, and “Plaintiffs”, Parties
16 Injured, brings this Refusal for Fraud, for the people of the united States of
17 America, under the American Flag of peace, without an attorney, ex rel. and states:

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

26 3). Definition: “Case Incorporated”, the formation of a legal body, with the quality
27 of perpetual existence and succession. (2). Consisting of an association of
28 numerous individuals. (3). Matters relating to the common purpose of the
association, within the scope of the powers and authorities conferred upon such

1 bodies with the quality of perpetual existence and successions. Ref. Black's Law
2 Dictionary 67th, Pg. 690. "Case Incorporation" will establish the legal bounds of
3 the members of this lawful assembly to solve a specific "Case Number" and the
4 issues in motion.

5 4). This Incorporated Case is defined to be a Refusal for Fraud, Pursuant to
6 F.R.C.P. 9(b), 121(f), 12(i), giving rise to F.R.C.P. 19 and 12(b)(7) failure to join
7 parties, 12(b)(6) Fails to state a claim upon which relief can be granted, and Rule
8 56 granting summary judgment in favor of Plaintiffs, Travis Middleton, Parties
9 Injured as to the alleged Opposition by opposing attorneys for Defendants and
10 assigned Incorporated Case No. 2:16-cv-05224-SVW-AGR as described above.

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

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

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

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

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

18 U.C.C. = Uniform Commercial Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (16). **Notice:** “Joining”, was never completed between the Parties Injured herein,
13 and the “Defendants”. The lack of “Joining” as described herein above within this
14 complaint give rise to F.R.C.P. 19 and 12(b)(7) failure to join parties, F.R.C.P.
15 12(b)(6), fails to state a claim upon which relief can be granted and Rule 56
16 granting summary judgment in favor of Plaintiffs, Parties Injured, and Travis
17 Middleton. The real-party Defendants have yet to appear personally or on the
18 record in this Case Incorporation by affidavit or deposition.

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

24 (18). **Notice:** This applies both with Federal Rules of Evidence and State Rules of
25 Evidence.... there must be a competent first hand witness (a body). There has to be
26 a real person making the complaint and bringing evidence before the court.
27 Corporations are paper and can't testify. The opposing counsels' Oppositions fall
28 short of this evidence rule.

(19). **Notice:** "Manifestly, [such statements] cannot be properly considered by us in

1 the disposition of [a] case." United States v. Lovasco (06/09/77) 431 U.S. 783, 97
2 S. Ct. 2044, 52 L. Ed. 2d 752,

3 20). "Under no possible view, however, of the findings we are considering can they
4 be held to constitute a compliance with the statute, since they merely embody
5 conflicting statements of counsel concerning the facts as they suppose them to be
6 and their appreciation of the law which they deem applicable, there being,
7 therefore, no attempt whatever to state the ultimate facts by a consideration of
8 which we would be able to conclude whether or not the judgment was warranted."

9 Gonzales v. Buist. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463.

10 (21). **Notice:** The judge and attorney(s) has taken an Oath and Affirmation to
11 support and defend the Constitution of the United States of America and the
12 Constitution of the STATE OF CALIFORNIA.

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

16 23). The Plaintiffs, Parties Injured herein accuses: the Attorneys in this action,
17 pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC Section 1961(1) - 1503
18 (relating to obstruction of justice), section 1951 (relating to interference with
19 commerce, robbery or extortion), section 1952 (relating to racketeering), having
20 superior knowledge of the law, having taken an Oath and Affirmation to support
21 and defend the Constitution of the United States and of the STATE OF
22 CALIFORNIA, have submitted Motions to Dismiss into this Incorporated Case
23 No. 2:16-cv-05224-SVW-AGR as described above, in violation of the Constitution
24 of the United States of America, Bill of Rights, Articles I & XIV, due process and
25 equal protection of the law, and Article V, due process of law.

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

1 commerce, robbery or extortion), section 1952 (relating to racketeering), Title 18
2 U.S.C. Sec. 513(a), the filing of Counterfeit Securities.

3 (25). **Notice:** This Court is hereby Noticed pursuant to Federal Rule of Civil
4 Procedure 17 and Federal Rules of Evidence 201 & UCC 1-103.6 that Respondent
5 Attorneys' Oppositions are deemed Counterfeit Securities, and constitute
6 violations of Title 18 U.S.C. Section 4 of the commission of crimes cognizable by
7 a court of the United States, or any subdivision thereof under Title 18 U.S.C.

8 Section 513(a) "Whoever makes, utters or possesses a counterfeit security of a
9 State of a political subdivision thereof or of an organization, or whoever makes,
10 utters, or possesses a forged security of a State or political subdivision thereof or of
11 an organization, with intent to deceive another person, organization, or government
12 shall be fined not more than \$250,000 or imprisoned not more than ten years or
13 both".

14 See also Sections 2311, 2314 and 2320 for additional fines and sanctions. Among
15 the securities defined at 18 U.S.C. Section 2311 is included "evidence of
16 indebtedness" which, in a broad sense, may mean anything that is due and owing
17 which could be a duty, obligation or right of action. The attorneys Oppositions are
18 attached under **Exhibit A**, Refused and Returned as Counterfeit Securities.

19 26). The above referenced documents qualify as "counterfeit Securities" in that the
20 makers have stated them to have been officially signed and sealed as valid claims
21 of a duty, obligation, evidence of indebtedness, or right of action owed by them
22 against Plaintiffs, Parties Injured.

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

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

1 29). The Plaintiffs, Parties Injured herein accuses: the Attorneys of violations of 18
2 U.S.C.A. Sec. 72, Extortion of Rights, 18 U.S.C.A., 18 U.S.C.A. Sec. 241,
3 Criminal Conspiracy, 18 U.S.C.A. Sec. 1621, Perjury as to their Oaths and
4 Affirmation.

5 30). The Attorneys caused the Plaintiffs, Parties Injured herein damages actionable
6 for monetary relief, pursuant to 42 U.S.C.A. Sec. 1986.

7 **FACTS AND FINDINGS OF LAW**

8 31). /////

9 32). /////

10 33). United States Constitution Article VI Section 2 provides: This Constitution,
11 and the laws of the United States which shall be made in pursuance thereof; and all
12 treaties made, or which shall be made, under the authority of the United States,
13 shall be the supreme law of the land; and the judges in every state shall be bound
14 thereby, anything in the Constitution or laws of any State to the contrary
15 notwithstanding.

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

21 34). 1st Amendment: Freedom of speech and press, and to petition for a redress of
22 grievances.

23 35). 5th Amendment: No citizen shall be deprived of life, liberty, or property
24 without due process of law.

25 36). 6th Amendment: Right to a speedy and public trial, by an impartial jury of the
26 state and district wherein the crime shall have been committed, and informed of the
27 nature and cause of the accusation.
28

1 37). 7th Amendment: In suits of common law, where the value in controversy shall
2 exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried
3 except by jury.

4 38). 9th Amendment: The enumeration in the Constitution, of certain rights, shall
5 not be construed to deny or disparage others retained by the people.

6 39). 14th Amendment: No state shall make or enforce any law which shall abridge
7 the privileges or immunities of citizens of the U.S., nor shall any state deprive any
8 citizen of life, liberty, or property without due process of the law; nor to any citizen
9 the equal protection of the law. **SB277 is violative of this Constitutional Statute.**

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

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

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

14 43). F.R.C.P. Rule 7 Pleadings, (a) Pleadings (b) Motions.

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

17 45). F.R.C.P. Rule 9 Pleading special (b) Fraud (e) Judgments (f) Time and place
18 (g) Special damage.

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

20 47). F.R.C.P. Rule 11 Signing of Pleadings, Sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 53). "Joining", was never completed between the Plaintiffs, Parties Injured herein,
2 and the named Defendants. The lack of Defendants' appearance or submitted
3 affidavits on the record of this Incorporated Case No. 2:16-cv-05224-SVW-AGR
4 as described herein above within this complaint give rise to F.R.C.P. 19 and
5 12(b)(7) failure to join parties, F.R.C.P. 12(b)(6), fails to state a claim upon which
6 relief can be granted and Rule 56 granting summary judgment in favor of
7 Plaintiffs, Parties Injured.

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

12 **(55). Notice:** The Plaintiffs, Parties Injured herein accuses: the Attorneys in this
13 action, pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC Section 1961(1) -
14 1503 (relating to obstruction of justice), section 1951 (relating to interference with
15 commerce, robbery or extortion), section 1952 (relating to racketeering). Opposing
16 attorneys and the Magistrate Judge have absolutely refused to address the lawful
17 legal claims made by Plaintiffs. Plaintiffs have paid filing fees and costs to have
18 their issues adjudicated by a certified trained judicial officer. This has yet to occur.
19 Plaintiffs' alleged in their First Amended and Second Amended complaint that all
20 the defendants violated their Oaths of Office to the United States Constitution. See
21 paragraph 92, "On information and belief, in furtherance of their racketeering
22 scheme Defendant legislators routinely violate their Oaths of office which
23 mandates that they support and defend the California and United States
24 constitutions, including the Bill of Rights, from all enemies foreign and domestic,
25 especially with respect to any law making activities affecting the liberties of the
26 citizens of the state of California whom they purport to represent. The Defendant
27 legislators willfully, wantonly and recklessly violated their oaths to the California
28 and U.S. constitutions by passing SB277."

1 (56) Notice: The U.S. Supreme Court has stated that "No state legislator or
2 executive or judicial officer can war against the Constitution without violating his
3 undertaking to support it. "Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958)".
4 *Exparte Young* provides this ruling: "The attempt of a State officer to enforce an
5 unconstitutional statute is a proceeding without authority of, and does not affect,
6 the State in its sovereign or governmental capacity, and is an illegal act, and *the*
7 *officer is stripped of his official character and is subjected in his person to the*
8 *consequences of his individual conduct. The State has no power to impart to its*
9 *officer immunity from responsibility to the supreme authority of the United*
10 *States.* It is not necessary that the duty of a State officer to enforce a statute be
11 declared in that statute itself in order to permit his being joined as a party
12 defendant from enforcing it; if, by virtue of his office, he has some connection with
13 the enforcement of the act, it is immaterial whether it arises by common general
14 law or by statute. Page 209 U. S. 125." Additionally, since *Ex parte Young*, 209 U.
15 S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield
16 for a state official confronted by a claim that he had deprived another of a federal
17 right under the color of state law. None of the defendants can claim immunity from
18 breach of their oaths of office the United States Constitution and the Bill Of
19 Rights. Among the government units that have been held to be "enterprises" are
20 offices of **governors** and **state legislators**, courts and court clerks' offices. See
21 e.g., *United States v. Stratton*, 649 F.2d 1066, 1072-75 (5th Cir. 1981).

22 (57) Notice: There are no facts in dispute in the case in chief. Under these
23 standards, the recommendations of dismissal of the legislative Defendants and
24 plaintiffs' claims are erroneous a matter of law. See Plaintiffs' Criminal Affidavits,
25 Docket Nos. 19, 75-79, 81-91, which includes attached Material Data Safety
26 Sheets by OSHA on the toxicity Formaldehyde, Mercury, Aluminum and
27 Polysorbate 80; documents from CDC whistle blower William Thompson where
28 he admits to fraud and falsifying data on the MMR vaccine studies. The State and
its officials have no constitutional authority to mandate poisons to the public.

1 (58). With reasonable expectations the Plaintiffs, Injured Parties herein believes
2 that the findings of fact presented and filed herein, of the United States
3 Constitutional laws and civil rights issues, including violations of the United States
4 Constitution 14th Amendment, show the Attorneys, did “perjure their oaths”.

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

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

27 (61). The Plaintiffs, Parties Injured herein is accusing the Attorneys of: “Perjury of
28 Oath of Office”, “Malice”, in law is not necessarily personal hate or ill will, but is

1 the state of mind which is reckless of law and of the legal rights of the citizens.
2 Reference. Chrisman v. Terminal R. Association of St. Louis, 237 Mo.App. 157
3 S.W. 2d 230, 235. F.R.C.P. 9(b) and Rule 12(d).

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

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

22 (64). **Notice: Title 42 U.S.C.A. 1986 "Action for neglect to prevent"**, Every
23 citizen who having knowledge that any of the wrongs conspired to be done, and
24 mentioned in section Title 42 U.S.C. 1985 of this title, are about to be committed,
25 and having power to prevent or aid in preventing the commission of the same,
26 neglects or refuses to do so, if such wrongful act be committed, shall be liable to
27 the party injured, or citizens legal representative, for all damages caused by such
28 wrongful act, which such citizen by reasonable diligence could have prevented;

1 and such damages may be recovered in an action on the case; and any number of
2 citizens guilty of such wrongful neglect or refusal may be joined as a party in
3 action.

4 (65). The Plaintiffs, Parties Injured herein accuses Attorneys of “Perjury of Oath
5 of Office”, a Tort. A privilege or civil wrong or injury for which the court will
6 provide a remedy imposed by general law or otherwise upon all citizens occupying
7 the relation to each other which is involved in a given transaction. Reference.

8 Coleman v. California yearly meeting of Friends Church, 27 Cal. App. 2d. 579, 81
9 P. 2d 469, 470, Title 42 U.S.C.A. 1983 note 319, 333, 337, 349, 350, 351, and 352.

10 (66). The Plaintiffs, Parties Injured herein accuses Attorneys of “Perjury of Oath”
11 and Falsification, by fraud and deception, fails to correct a false impression which
12 the deceiver previously created or reinforced, or which the deceiver knows to be
13 influencing another to whom the citizen stands in a “fiduciary” or confidential
14 relationship. Reference. F.R.C.P. 9(b) and 12(d), Title 42 U.S.C.A. 1986, 1985.

15 The Plaintiffs, Parties Injured herein is witness with first-hand knowledge accusing
16 the Magistrate Judge and Attorneys as witness of fraud and for their neglect to stop
17 the wrongs, for equal protection of the law and due process. However, the fraud
18 continues as no citizen has been prosecuted to date. The legal system is protecting
19 its own, operating under “Policy and Custom”, Title 42 U.S.C.A. 1983 Note 319,
20 337, to violate rights in denying 14th and 5th Amendments due process.

21 (67). “Fiduciary” – A citizen having duty, created by undertaking, to act primarily
22 for another’s benefit in matters connected with such undertaking. Ref. Black’s Law
23 dictionary. 563 (High standards of Government).

24 (68). The Plaintiffs, Parties Injured herein accuses Attorneys of; “Extortion”,
25 perjury of oath, (commerce) Title 42 U.S.C.A 1985 (2) Ref. Obstructing Justice:
26 intimidating party, witness, (2) if two or more citizens in any state or territory
27 conspire to deter, by force, intimidation, or threat, any party or witness in any court
28 of the United States form “attending such court or from testifying to any matter

1 pending” therein, freely, fully, and truthfully, or to injure such party or witness in
2 his body or property on account of his having so attended or testified, or to
3 influence the verdict, presentment, or indictment of any kind of grand or petit jury
4 or property on account of any verdict, presentment, or indictment lawfully assented
5 to by him, or of his being or having been such juror, or if two or more citizens
6 conspire for the purpose of impeding, hindering, obstructing, or defeating, in any
7 matter, the due course of justice in any state or territory, with intent to deny to any
8 citizen the equal protection of the law, or to injure him or his property for lawfully
9 enforcing, or attempting to enforce, the right of any citizen, or class of citizens, to
10 the equal protection of the law.

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

14 **(70). Notice: Title 42 U.S.C.A. 1985 (3) Depriving citizen of rights or**
15 **privileges;** if two or more citizens in any state or territory conspire to go in
16 disguise, for the purpose of depriving, either directly or indirectly, any citizen or
17 class of citizens of the equal protection of the laws, or of equal privileges and
18 immunities under the laws; or for the purpose of preventing or hindering the
19 constituted authorities of any state or territory from giving or securing to all
20 citizens within such state or territory the equal protection of the laws; or if two or
21 more citizens conspire to prevent by force , intimidation, or threat, any citizen who
22 is lawfully who is lawfully entitled to vote, from giving his support or advocacy; in
23 any case of conspiracy set forth in this section, if one or more citizens engage
24 therein do, or cause to be done, any act in furtherance of the object of such
25 conspiracy, whereby another is injured in his body or property, or deprived of
26 having and exercising any right or privilege of a citizen of the United States, the
27 party so injured or deprived may have an action for the recovery of damages
28 occasioned by such injury or deprivation, against any one or more of the
conspirators. F.R.C.P. R. 9(b) Fraud, Rule 12(b).

1 (71). The Plaintiffs, Parties Injured herein is accusing Attorneys of Perjury of Oath
2 of Office. "Falsification";

3 No citizen shall knowingly make a false statement, or knowingly swear or
4 affirm the truth of a false statement previously made, when any of the following
5 applies:

- 6 - The statement is made in any official proceeding.
- 7 -The statement is made with the purpose to mislead a public official in
8 performing a judicial function.
- 9 -The statement is in writing on, or in connection with a report or return
10 which is required or authorized by law.

11 (72). **Notice: Title 42 U.S.C.A. 1985 Pg. 36-37, Note 69:** Damages in claim for
12 violation of U.S. constitutionally guaranteed rights damages are recovered, normal
13 damages may be presumed, and nominal damages may in appropriate
14 circumstances support award of exemplary damages, Tracy V. Robbins, D.C.S.C.
15 1966, 40 Fed. 108 Appeal Dismissed 373 F. 3D 13.

16 (73). **Notice: Title 42 U.S.C.A. 1983 P77 No. 39:** In order to establish personal
17 liability part of government official in federal civil rights law action, under Title 42
18 U.S.C. 1983, it is enough to show that official acting under color of law caused
19 deprivation of Constitutional Right in contrast. Government entity is liable in
20 official capacity suit under Title 42 U.S.C. only when entity is moving force
21 behind deprivation. Thus requiring entity policy or custom to have played a part in
22 violation of Federal law. Ref. Kentucky V. Graham 1985 475, US 159 85 L.Ed. 2d.
23 114, 105 S. Ct. 3099.

24 (74). Bar. The whole body of attorneys and counselors, or the members of the legal
25 profession, collectively, who are figuratively called the "bar", from the place
26 which they usually occupy in court.

27 WHEREFORE:

28 (75). The Plaintiffs, Parties Injured herein Refuses for Fraud The opposing
attorneys Oppositions and all Motions To Dismiss assigned to Case Incorporated

1 No. 2:16-cv-05224-SVW-AGR as described above, giving rise to violations of
2 F.R.C.P. 19, and 12(b)(7) joinder, F.R.C.P. 12(b)(6) fails to state a claim.
3 (76). The Plaintiffs, Parties Injured herein requests this court refund all payment of
4 fees and award Parties Injured herein damages totaling \$200,900,000.00 per
5 F.R.C.P. 12 (c) judgment on the pleadings and or Rule 56(c) Summary Judgment,
6 injunctive and declaratory relief from SB277 within 10 days nun pro tunc as of
7 September 14, 2017.
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Respectfully Submitted,


Travis Middleton

27 West Anapamu St. #153
Santa Barbara, California [93101]
Dated this September 14, 2017

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Respectfully submitted,

Travis Middleton
Travis Middleton
Plaintiff, Pro Se

By: *[Signature]*

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 Deman Levesde*
Don Deman Levesde
plaintiff pro se

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1–6 below)
- See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

1 _____
 2 _____
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 6 _____

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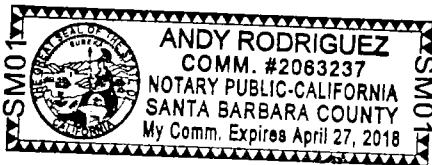
State of California
 County of Santa Barbara

Subscribed and sworn to (or affirmed) before me
 on this 13th day of Sept, 2017,
 by _____,
Date Month Year

(1) Travis Middleton

 (and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.



Signature _____
Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document US District Court Central District of CA
Title or Type of Document: Refusal for Fraud **Document Date:** 9/13/17
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EXHIBIT A
-Counterfeit Security-
18 USC 513(a)

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ELIZABETH S. ANGRES
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*Attorneys for Defendants the State of California,
Governor Edmund G. Brown, Jr., Anne Gust, and
Deputy Attorneys General Jonathan E. Rich and
Jacquelyn Y. Young*

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Travis Middleton, et al

2:16-cv-05224-SVW-AGR

Plaintiffs,

v.

Richard Pan, et al.,

Defendants.

**NOTICE OF MOTION AND
MOTION BY DEFENDANTS
STATE OF CALIFORNIA,
GOVERNOR BROWN, ANNE
GUST AND DEPUTY
ATTORNEYS GENERAL
JONATHAN E. RICH AND
JACQUELYN Y. YOUNG, TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

[Fed. R. Civ. P. 12(b)(6)]

[Filed Concurrently with
Memorandum of Points and
Authorities]

Date: September 11, 2017
Time: 1:30 p.m.
Courtroom: 10A (First Street
Courthouse)
Judge: Hon. Stephen V. Williams
Trial Date: None Set
Action Filed: July 15, 2016

*Plaintiffs' Notice of Motion to Dismiss
Second Amended Complaint
of Security Council*

*2:16-cv-05224-SVW-AGR
9/15/17 1:30 p.m.*

1 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on Monday, September 11, 2017, at 1:00
3 p.m., in the above-entitled Court, located at Courtroom 10A, First Street
4 Courthouse, 350 W. 1st Street, Courtroom 10th Floor, Los Angeles, California
5 90012, Defendants State of California, Governor Edmund G. Brown, in his official
6 capacity, Anne Gust, and Deputy Attorneys General Jonathan E. Rich and
7 Jacquelyn Y. Young (collectively, Defendants), will and hereby do move this Court
8 for an order dismissing Plaintiffs' Second Amended Complaint (ECF No. 136)
9 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the following
10 grounds:

- 11 1. Plaintiffs' Second Amended Complaint should be dismissed in its entirety
12 because it fails to cure or even address any of the deficiencies of their
13 First Amended Complaint, as detailed in the Magistrate's Report and
14 Recommendation dated December 15, 2016 (ECF No. 123), approved and
15 adopted by this Court on July 13, 2017 (ECF No. 135).
- 16 2. Plaintiffs' claims against the State of California are barred under the
17 Eleventh Amendment.
- 18 3. Plaintiffs' claims against Governor Brown are barred under the Eleventh
19 Amendment, the doctrine of legislative immunity, and the doctrine of
20 immunity under *Eastern Railroad Presidents Conference v. Noerr Motor*
21 *Freight, Inc.*, 365 U.S. 127, 135 (1961) and *United Mine Workers v.*
22 *Pennington*, 381 U.S. 657, 670 (1965) (*Noerr-Pennington*).
- 23 4. Plaintiffs' claims against Deputy Attorneys General Jonathan E. Rich and
24 Jacquelyn Y. Young are barred on the grounds that they are government
25 attorneys who are immune from suit for conduct in the performance of
26 their official duties.
- 27 5. Plaintiffs fail to assert a plausible claim against any of the moving
28 Defendants for a violation of Plaintiffs' constitutional rights because the

1 Legislature's enactment of California Senate Bill 277 (SB 277) is
2 constitutional under federal and state law, which for decades has
3 consistently held that (a) a state's exercise of its police powers in
4 protecting the public from communicable diseases is rationally based; and
5 (b) states have a compelling interest in requiring children to be vaccinated
6 before entering school.

7 6. Plaintiffs fail to state plausible claims for relief against all of the moving
8 Defendants under the federal Racketeer Influenced and Corrupt
9 Organizations (RICO) statutes.

10 7. Plaintiffs' claim for intentional infliction of emotional distress against all
11 of the moving Defendants fails to state a claim upon which relief may be
12 granted.¹

13 This Motion is made following the conference of Defendants' counsel and
14 Plaintiffs pursuant to Local Rule 7-3, which took place on August 3 and 7, 2017.

15 This Motion is and will be based upon this Notice, the Memorandum of
16 Points and Authorities submitted herewith, upon the Court's file in this action, and
17 all matters which may properly be the subject of judicial notice.

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26 ¹ Plaintiffs identify Governor Edmund G. Brown by his position of
27 "Governor of California," as distinct from other Defendants who are identified as
28 "Legislator Defendants" and are sued in both their individual and official
capacities. Thus, this motion is brought by Defendant Brown in the capacity in
which he has been sued and served.

1 Dated: August 10, 2017

Respectfully submitted,

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XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
ELIZABETH S. ANGRES
Supervising Deputy Attorneys General
ELIZABETH G. O'DONNELL
JACQUELYN Y. YOUNG
Deputy Attorneys General

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/s/ Jonathan E. Rich
JONATHAN E. RICH
Deputy Attorney General
Attorneys for Defendants
Governor Edmund G. Brown, Jr.,
Anne Gust, and the State of California

11 Dated: August 10, 2017

XAVIER BECERRA
Attorney General of California
ELIZABETH S. ANGRES
Supervising Deputy Attorney General

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/s/ Elizabeth G. O'Donnell
ELIZABETH G. O'DONNELL
Deputy Attorney General
Attorneys for Defendants
Deputy Attorneys General Jonathan E.
Rich and Jacquelyn Y. Young

20 *Pursuant to Local Rule 5-4.3.4 (a) (2) (i), the filer of this document attests that all
21 other signatories listed on whose behalf the filing is submitted concur in the filing's
content and have authorized the filing.

22 */s/ Jonathan E. Rich*
23 JONATHAN E. RICH

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CERTIFICATE OF SERVICE

Case Name: Middleton, et al. v. Pan et al. No. 2:16-cv-05224-SVW-AGR

I hereby certify that on August 10, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF MOTION AND MOTION BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN, ANNE GUST, AND DEPUTY ATTORNEYS GENERAL JONATHAN E. RICH AND JACQUELYN Y. YOUNG, TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 10, 2017, I caused to be delivered the foregoing document(s) via email to Plaintiff Travis Middleton, by agreement with him, to the following address: Travis_m_93101@yahoo.com.

On August 10, 2017, I caused to be delivered the foregoing document(s) by first class mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 10, 2017, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

SERVICE LIST

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10 *Attorneys for Defendants the State of California,*
Governor Edmund G. Brown, Jr., Anne Gust, and
Deputy Attorneys General Jonathan E. Rich and
11 *Jacquelyn Y. Young*

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 **Travis Middleton, et al.,**

16 Plaintiffs,

17 v.

18 **Richard Pan, et al.,**

19 Defendants.
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2:16-cv-05224-SVW-AGR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION BY DEFENDANTS
STATE OF CALIFORNIA,
GOVERNOR BROWN, ANNE
GUST, AND DEPUTY
ATTORNEYS GENERAL
JONATHAN E. RICH AND
JACQUELYN Y. YOUNG, TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

**[Filed Concurrently with Notice of
Motion and Motion to Dismiss]**

Date: September 11, 2017
Time: 1:30 p.m.
Courtroom: 10A (First Street
Courthouse)
Judge: Hon. Stephen V. Wilson
Trial Date: None Set
Action Filed: July 15, 2016

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 21 *Sprewell v. Golden State Warriors*
 22 266 F.3d 979, as amended by 275 F.3d 1187 (9th Cir. 2001)..... 4, 5
 23 *Swetlik v. Crawford*
 24 738 F.3d 818 (7th Cir. 2013) (concurring opinion)..... 8
 25 *Whitlow, et al. v. Department of Education et al.*
 26 S.D. Cal. Case No. 3:16-cv-01715-DMS-BGS 12, 13, 14
 27 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage*
 28 524 F.3d 1090 (9th Cir. 2008)..... 4
Wisconsin v. Yoder
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1	<i>Women’s Emergency Network v. Bush</i>	
2	323 F.3d 937 (11th Cir. 2003).....	8
3	<i>Zucht v. King</i>	
4	260 U.S. 174 (1922)	12, 13
5	STATUTES	
6	18 U.S.C.	
7	§ 175	5, 15
8	§ 178	5, 15
9	§ 241	5, 15
10	§ 242	5, 15
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12	§ 1961	2, 5, 9, 16, 17
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14	§ 1962(a)(d).....	5
15	§ 1983	5, 9
16	§ 1986	5, 15
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OTHER AUTHORITIES

California Senate Bill 277

SB 277 1, 2, 11, 13, 14

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Plaintiffs' Second Amended Complaint (SAC) (ECF No. 136) fails to
4 address any of the defects of their previous pleadings. Other than adding four
5 defendants – the U.S. Magistrate Judge and the state government attorneys
6 representing the Defendants – and the removal of some of the state legislators'
7 spouses as defendants, the SAC is virtually identical to the First Amended
8 Complaint (FAC) (ECF No. 15). By simply repeating their prior implausible
9 claims, without any substantive amendment, Plaintiffs have entirely disregarded the
10 Magistrate's Report and Recommendation (ECF No. 123) and this Court's order
11 adopting and approving the dismissal of the FAC (ECF No. 135). Plaintiffs' claims
12 should be dismissed without leave to amend.¹

13 Plaintiffs' allegations that the Governor, various state legislators, *and their*
14 *spouses*, engaged in an unlawful conspiracy to influence the enactment of
15 California's mandatory child vaccination statute, California Senate Bill 277 (Stats
16 2015 Ch. 35) (SB 277), are no more plausible now than when they were first
17 alleged a year ago. And, Plaintiffs' claims are certainly not made any more
18 plausible by naming the U.S. Magistrate Judge and counsel for the Defendants.

19 While *pro se* pleadings are to be liberally construed, a *pro se* action should
20 be dismissed if, after careful consideration, the Court concludes that the allegations
21 of the complaint disclose that no cognizable claim can be stated and that
22 amendment would be futile. *Cato v. United States*, 70 F.3d 1103, 1196 (9th Cir.
23 1995). Like the FAC, the SAC fails to establish any plausible claims. Given the
24 long-established, indisputable jurisprudence establishing Defendants' immunity

25 _____
26 ¹ Because the claims and allegations within the SAC (ECF No. 136) are
27 nearly identical to those in the FAC (ECF No. 15), Defendants' Motion to Dismiss
28 Plaintiffs' First Amended Complaint is incorporated by reference.

1 from Plaintiffs' claims and the constitutionality of mandatory school vaccination,
2 any further amendment to Plaintiffs' pleading would be futile.

3 First, the Eleventh Amendment prohibits suit against the State, and by
4 extension, the Governor in his official capacity, in federal court. Moreover, the
5 advocacy for and passage of legislation, as well as the acceptance of campaign
6 contributions, are protected activities under the *Noerr-Pennington* immunity
7 doctrine, which bars suit against the Governor and Defendant Anne Gust, the
8 Governor's wife. Furthermore, government attorneys sued for conduct related to
9 litigation duties, such as the defense of this unfounded lawsuit, have "absolute
10 official immunity" from Plaintiffs' claims. *Bly-Magee v. California*, 236 F.3d.
11 1014, 1018 (9th Cir. 2001.)

12 Second, even if this Court finds that one or more of the Defendants are not
13 immune, Plaintiffs' claims fail to state plausible allegations against Defendants in
14 their personal and official capacities. Federal Racketeer Influenced and Corrupt
15 Organizations (RICO) statutes cannot be used to address an alleged civil rights
16 violation. As such, Plaintiffs have not pled "predicate acts" upon which Plaintiffs
17 can base their claims, rendering these claims defective.

18 Moreover, the object of the alleged conspiracy, the enactment of SB 277 and
19 alleged violation of Plaintiffs' purported constitutional rights, was indisputably an
20 exercise of the Legislature's legitimate and compelling interest in protecting public
21 health and safety by mandating vaccinations for school children, something which
22 has been *unanimously* recognized by the U.S. Supreme Court, the California
23 Supreme Court, and every other federal and state court that has addressed the issue
24 *for over a century*. As such, Plaintiffs' foundational claim, that their constitutional
25 rights have been violated, fails as a matter of both state and federal law.

26 For the foregoing reasons, and for the reasons more specifically addressed in
27 Defendants' motions to dismiss Plaintiffs' FAC, Defendants respectfully request
28 that the Court dismiss Plaintiffs' SAC, without leave to amend, and dismiss this

1 action with prejudice.

2 STANDARD OF REVIEW

3 To survive a motion to dismiss for failure to state a claim under Rule
4 12(b)(6) of the Federal Rules of Civil Procedure (Rule 12(b)(6)), the complaint
5 must allege “enough facts to state a claim to relief that is plausible on its face.”
6 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

7 The “plausibility” requirement serves to ensure that the “plain statement”
8 required under Rule 8 of the Federal Rules of Civil Procedure (Rule 8) has “enough
9 heft to ‘sho[w] that the pleader is entitled to relief.’” *Twombly*, 550 U.S. at 557.
10 Purely conclusory allegations will not suffice; “a plaintiff’s obligation to provide
11 the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
12 conclusions” *Id.* at 555-556. Plaintiffs may not rely on wholly conclusory
13 allegations in the complaint and then simply hope that, through the discovery
14 process, the necessary facts will arise to support their claim. *Id.* at 557-558.

15 Moreover, the complaint must be dismissed if there could be an alternative,
16 non-nefarious explanation for defendants’ conduct, and that plaintiffs have failed to
17 plead specific facts to rebut it. *Twombly*, 550 U.S. at 567-567.

18 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court clarified that
19 the standards of Rule 8 it articulated in *Twombly*, *supra*, apply to all civil actions.
20 The Supreme Court re-affirmed that, “[w]here a complaint pleads facts that are
21 ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between
22 possibility and plausibility of ‘entitlement to relief.’” *Id.*, at 678 (quoting from
23 *Twombly*).

24 Adherence to the pleading requirements in Rule 8 is critical to ensuring that
25 government officials are not forced into litigation unnecessarily. As recognized in
26 *Ashcroft v. Iqbal*:

27 If a Government official is to devote time to his or her duties, and to the
28 formulation of sound and responsible policies, it is counterproductive to

1 require the substantial diversion that is attendant to participating in litigation
2 and making informed decisions as to how it should proceed.

3 *Iqbal*, 556 U.S. at 685.

4 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a
5 cognizable legal theory, or (2) insufficient facts under a cognizable legal theory.
6 *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). On a Rule
7 12(b)(6) motion to dismiss, all allegations of material fact are taken as true and
8 construed in the light most favorable to the nonmoving party. *Federation of*
9 *African American Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir.
10 1996). However, the Court is not required to accept as true allegations that are
11 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.
12 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988, as amended by 275 F.3d
13 1187 (9th Cir. 2001).²

14 In evaluating a complaint under Rule 12(b)(6), the court may consider not
15 only the allegations contained in the complaint, but also matters properly subject to
16 judicial notice. *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas*
17 *Storage*, 524 F.3d 1090, 1096 (9th Cir. 2008). Additionally, the court need not

18 ² There is some question as to whether dismissal based on Eleventh
19 Amendment immunity should be analyzed under Rule 12(b)(6) or as a jurisdictional
20 issue under Rule 12(b)(1). *Elwood v. Drescher*, 456 F.3d 943, 949 (9th Cir.
21 2006)(12(b)(6)); *but see Savage v. Glendale Union High Sch.*, 343 F.3d 1036,
22 1040–44 (9th Cir. 2003) (jurisdictional issue under Rule 12(b)(1)). The Ninth
23 Circuit has since attempted to reconcile these cases by calling Eleventh Amendment
24 immunity “quasi-jurisdictional.” *Bliemeister v. Bliemeister (In re Bliemeister)*, 296
25 F.3d 858, 861 (9th Cir. 2002). Since this motion is a facial challenge to the SAC,
26 the analysis is the same under both rules. *See, e.g., Hardesty v. Barcus*, Case No.
27 CV 11-103-M-DWM-JCL, 2012 U.S. Dist. LEXIS 28902, **8-9 (D. Montana,
28 January 20, 2012) (“[t]here is some confusion in the Ninth Circuit as to which of
these two rules [Rules 12(b)(1) and 12(b)(6)] provides the proper vehicle for
seeking dismissal based on Eleventh Amendment immunity. But because the legal
standards under both rules are essentially the same, the Court would reach the same
conclusion under either rule”).

1 accept as true allegations that contradict matters properly subject to judicial notice.
2 *Sprewell*, 266 F.3d at 988.

3 While *pro se* pleadings are liberally construed, a *pro se* action should be
4 dismissed if, after careful consideration, the court concludes that the allegations of
5 the complaint disclose that no cognizable claim can be stated and that amendment
6 would be futile. *Cato, supra*, 70 F.3d at p. 1196.

7 **ARGUMENT**

8 Plaintiffs' SAC asserts nine separate Claims for Relief: (1) violation of 18
9 U.S.C. § 1961 et seq. (RICO); (2) violation of 18 U.S.C. § 1962(a)(d) (RICO-
10 Conspiracy); (3) violation of 18 U.S.C. § 175 (Promoting the Sale and Use of
11 Biological Weapons); (4) violation of 18 U.S.C. § 178 (Promoting the Sale and Use
12 of Chemical Weapons); (5) violation of 18 U.S.C. § 241 (Infringement of
13 Constitutional Rights); (6) violation of 18 U.S.C. § 242 (Deprivation of Rights);
14 (7) violation of 18 U.S.C. § 1983 (Violation of Civil Rights); (8) violation of 18
15 U.S.C. § 1986 (Civil Rights); (9) intentional infliction of emotional distress. *See*
16 ECF No. 136.

17 Despite the thorough analysis provided in the Magistrate's Report and
18 Recommendation, Plaintiffs have simply refused to substantively amend their
19 pleading to establish any plausibility for their claims. Not only are the same causes
20 of action asserted, but also the same allegations within those claims. Also, naming
21 new defendants to previously asserted claims is not only beyond the leave to amend
22 granted by this Court, but futile in surviving a motion to dismiss when the
23 underlying claims are factually implausible and fail as a matter of law.³

24 _____
25 ³ In the FAC, the defendant state legislators and their spouses and Anne Gust
26 were named in all nine Claims for Relief. The State of California and the Governor
27 were only named in the First, Second, and Ninth Claims for Relief. In the SAC,
28 with the exception of the Seventh and Eighth Claims for Relief, all Defendants are
now named. The Seventh and Eighth Claims for Relief name the defendant state

(continued...)

1 For the reasons discussed below, each of these claims should be dismissed
2 with prejudice.

3 **I. DEFENDANTS ARE IMMUNE FROM SUIT IN THIS CASE**

4 In deciding that “relief is not available against the named defendants” in the
5 FAC and recommending that “the complaint be dismissed against the named
6 defendant[s] with prejudice,” the U.S. Magistrate Judge clearly delineated the
7 various forms of immunity protecting the State, the Governor, the Governor’s wife,
8 and the state legislators. Report and Recommendation, 9 ECF No. 123. Plaintiffs
9 have not only disregarded these admonitions by the Magistrate Judge by continuing
10 to name these Defendants, but have also named as additional defendants the
11 Magistrate Judge, herself, and three of the government attorneys representing the
12 Defendants, who are also immune from suit.

13 **A. Plaintiffs’ Claims Against the State and Governor Brown Are**
14 **Barred by the Eleventh Amendment**

15 Plaintiffs’ seven causes of action against the State of California and
16 Governor Brown are barred by the Eleventh Amendment, which provides:

17 The judicial power of the United States shall not be construed to
18 extend to any suit in law or equity, commenced or prosecuted
19 against one of the United States by citizens of another State, or by
20 citizens or subjects of any foreign state.

21 The immunity of the State from suit in federal court in cases such as this is
22 unquestioned. “The Eleventh Amendment grants a State immunity from suit in
23 federal court by citizens of other States, and by its own citizens as well.” *Lapides v.*
24 *Ed. Of Regents*, 535 U.S. 613, 616, 122 S. Ct. 1640, 152 L. Ed. 2d 806 (2002)
(citation omitted).⁴

25 (...continued)
26 legislators, the U.S. Magistrate Judge, Deputy Attorneys General Jonathan E. Rich
27 and Jacquelyn Y. Young, and Deputy Legislative Counsel Cara L. Jenkins.

28 ⁴ The Eleventh Amendment makes explicit reference only to the States’
immunity from suits “commenced or prosecuted against one of the United States by
(continued...)

1 In particular, as explained by the Magistrate Judge, “[t]he Eleventh
2 Amendment bars suits in federal court for damages or injunctive relief against
3 California.” Report and Recommendation, 8 ECF No. 123, citing *Papasan v.*
4 *Allain*, 478 U.S. 265, 276 (1986) and *Ass’n des Eleveurs de Canards et d’Oies du*
5 *Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013.)

6 A state agency is entitled to the same Eleventh Amendment immunity
7 enjoyed by the State when a judgment against the agency “would have had
8 essentially the same practical consequences as a judgment against the State itself.”
9 *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 401,
10 99 S. Ct. 1171, 1177, 59 L. Ed. 2d 401 (1979). Likewise, and most important for
11 the purposes of the current motion, the bar to jurisdiction imposed by the Eleventh
12 Amendment also applies to cases premised on federal questions and injunctions
13 against state officials. See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54
14 (1996); *Cory v. White*, 457 U.S. 85, 91 (1982); *Greater Los Angeles Council on*
15 *Deafness v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987). An official capacity suit is,
16 in all respects, to be treated as a suit against the State. See *Hafer v. Melo*, 502 U.S.
17 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991) (citing *Kentucky v. Graham*, 437
18 U.S. 159 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985).

19 Despite suing the Governor in both his personal and official capacities,
20 Plaintiffs fail to assert any allegations establishing a plausible claim against the
21 Governor in his personal capacity. As the Magistrate Judge explained, “the
22 Eleventh Amendment also bars suits for damages against the Governor in his
23 official capacity” and the Governor’s “only connection to SB 277 is his general
24

25

 (...continued)

26 Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S.
27 Const., Amdt. 11. The Supreme Court nevertheless has long recognized the
28 doctrine to apply to any suits by private parties against a State. *Alden v. Maine*, 527
U.S. 706, 712-713 (1999).

1 duty to enforce California law.” Report and Recommendation, 9 ECF No. 123.

2 It is well established that “a generalized duty to enforce state law or general
3 supervisory power over the persons responsible for enforcing the challenged
4 provision will not subject an official to suit.” *Snoeck v. Brussa*, 153 F.3d 984, 986
5 (9th Cir. 1998); *see also Los Angeles Branch NAACP v. Los Angeles Unified*
6 *School Dist.*, 714 F.2d 946, 953 (9th Cir. 1983) (governor’s “general duty to
7 enforce California law . . . does not establish the requisite connection between him
8 and the unconstitutional acts” alleged in suit claiming de jure segregation of city
9 school system); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) (“The mere
10 fact that a governor is under a general duty to enforce state laws does not make him
11 a proper defendant in every action attacking the constitutionality of a state statute”).
12 Additionally, “[w]here the enforcement of a statute is the responsibility of parties
13 other than the governor . . . the governor’s general executive power [to enforce laws]
14 is insufficient to confer jurisdiction”). *Women's Emergency Network v. Bush*, 323
15 F.3d 937, 949-50 (11th Cir. 2003).

16 All of Plaintiffs’ claims brought against the Governor of the State of
17 California are barred by operation of the Eleventh Amendment, as the Court has no
18 jurisdiction to hear such claims. As such, the claims should be dismissed.

19 **B. Plaintiffs’ Claims Against the Governor and His Wife Are Barred**
20 **by Operation of the *Noerr-Pennington* Immunity Doctrine**

21 The “*Noerr-Pennington*” immunity doctrine holds that “those who petition
22 any department of the government for redress are generally immune from statutory
23 liability for their petitioning conduct.” *Rupert v. Bond*, 68 F.Supp.3d 1142, 1156
24 (N.D. Cal. 2014). Conduct covered under the immunity doctrine includes speech,
25 proposals and petitions. *Swetlik v. Crawford*, 738 F.3d 818, 830 (7th Cir. 2013)
26 (concurring opinion); citing *Miracle Mile Associates v. Rochester*, 617 F.2d 18 (2d
27 Cir. 1980); *Mariana v. Fisher*, 338 F.3d 189 (3d Cir. 2003). The doctrine
28 encompasses any branch of government, including the executive, legislative,

1 judicial and administrative agencies. *California Motor Transp. Co. v. Trucking*
2 *Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972). The *Noerr-*
3 *Pennington* immunity is also applicable to both §1983 and RICO claims. *Sosa v.*
4 *DIRECTV, Inc.*, 437 F.3d 923, 942 (9th Cir. 2006); *Manistee Town Ctr. v. City of*
5 *Glendale*, 227 F.3d 1090, 1092 (9th Cir. 2000).

6 Here, the pertinent allegations against the Governor are that he colluded with
7 lawmakers and drug companies to espouse a position on the issue of mandatory
8 vaccinations and, when the legislation came before him, signed SB 277 into law.
9 Plaintiffs assert that the receipt of campaign contributions was the motivation for
10 these purported acts. However, the *Noerr-Pennington* immunity is applicable to all
11 the alleged acts of the Governor even if, as Plaintiffs allege, the Governor also
12 advocated for the law and worked for its passage behind the scenes, outside of the
13 view of the public. Plaintiffs' conclusory allegations of "secret," "closed door"
14 meetings to influence the outcome of the passage of the bill are clearly covered by
15 *Noerr-Pennington*. *Boone v. Redevelopment Agency of City of San Jose*, 841 F.2d
16 886, 895 (9th Cir. 1988). In *Boone*, the Ninth Circuit held that the plaintiffs'
17 allegations of "shadowy secret meetings and covert agreements" did not take their
18 claim outside of *Noerr-Pennington*. *Id.* at 894-895. Likewise, while Plaintiffs
19 allege that legislators accepted campaign contributions in exchange for passage of
20 the law, such allegations are not sufficient to negate the *Noerr-Pennington*
21 immunity. "Payments to public officials, in the form of honoraria or campaign
22 contributions, is a legal and well-accepted part of our political process" and "fall
23 within the *Noerr-Pennington* doctrine." *Id.* Thus, not only are Plaintiffs'
24 conclusions factually unsupported, but they all clearly entail activity that the *Noerr-*
25 *Pennington* doctrine covers.

26 The Magistrate Judge also determined that "[t]o the extent [Defendant] Gust
27 is not shielded by Eleventh Amendment immunity, her alleged acts in support of
28 SB 277 would be shielded by the *Noerr* doctrine and the First Amendment."

1 Report and Recommendation, 9 ECF No. 123, at n.9, citing *Manistee*, 227 F.3d at
2 p. 1093 (lobbying of government protected by *Noerr* doctrine). Plaintiffs fail to
3 dispute the application of these immunities to either the Governor or the Governor's
4 wife.

5 In short, the *Noerr-Pennington* immunity has evolved into "a generic rule of
6 statutory construction, applicable to any statutory interpretation that could implicate
7 the rights protected by the Petition Clause." *Sosa*, 437 F.3d at 931. Regardless of
8 the inflammatory language used by Plaintiffs, their claims against the Governor and
9 the Governor's wife, even if true, are not actionable in light of the immunity
10 afforded under the *Noerr-Pennington* doctrine and its progeny. As such, the claims
11 against the Governor in the SAC do not, and cannot, state a claim against them, and
12 this motion to dismiss should be granted.

13 **C. Claims Against Counsel for the State of California, the Governor**
14 **and the Governor's Wife Are Barred by Absolute Official**
15 **Immunity**

16 Without prior leave of court, Plaintiffs have named three government
17 attorneys as defendants in their SAC: Deputy Legislative Counsel Cara Jenkins, and
18 Deputy Attorney Generals Jonathan E. Rich and Jacquelyn Y. Young. Plaintiffs
19 also added U.S. Magistrate Judge Alicia G. Rosenberg as a defendant.

20 A government attorney representing a party in a civil action has absolute
21 immunity from any claim for damages "to assure that . . . advocates . . . can perform
22 their respective functions without harassment or intimidation." *Fry v. Melaragno*,
23 939 F.2d 832, 837 (9th Cir. 1991), citing *Butz v. Economou*, 438 U.S. 478, 512
24 (1978). Because of "the similarity of functions of government attorneys in civil,
25 criminal and agency proceedings, and the numerous checks on abuses of authority
26 inherent in the judicial process . . . [t]he reasons supporting the doctrine of absolute
27 immunity apply with equal force regardless of the nature of the underlying action."
28 *Fry*, 939 F.2d at 837, quoting *Flood v. Harrington*, 532 F.2d 1248, 1251 (9th Cir.
1976). Absolute immunity attaches so long as "the government attorney is

1 performing acts ‘intimately associated with the judicial phase’ of the litigation.”
2 *Fry v. Melaragno*, 939 F.2d 832, 837; accord, *Bly-Magee v. California*, 236 F.3d
3 1014, 1018 (9th Cir. 2001) (holding that state government attorneys for the
4 California Attorney General are immune from liability whether sued in their official
5 or individual capacities.)

6 Plaintiffs have not asserted any plausible claim against these government
7 attorneys. These claims should be dismissed with prejudice.

8 **II. PLAINTIFFS HAVE FAILED TO PLEAD A VIOLATION OF THEIR**
9 **CONSTITUTIONAL RIGHTS BECAUSE LAWS REQUIRING MANDATORY**
10 **IMMUNIZATION HAVE UNEQUIVOCALLY BEEN UPHELD AS**
11 **CONSTITUTIONAL FOR OVER A CENTURY**

12 Even if this Court should find that one or more of the Defendants are not
13 immune, Plaintiffs’ claims still fail, as a matter of law, to allege a violation of their
14 constitutional rights by any of the Defendants. As such, any further amendment
15 would be futile. The SAC should be dismissed without leave to amend and this
16 action should be dismissed with prejudice.

17 The thrust of Plaintiffs’ claims is that Defendants somehow conspired to
18 enact SB 277, and that, in so doing, Defendants violated Plaintiffs’ constitutional
19 rights. The facial implausibility of Plaintiffs’ conspiracy claims is addressed in
20 subsequent sections of this Memorandum. However, as discussed below, naming
21 additional defendants to the Third, Fourth, Fifth, Sixth, Seventh and Eighth Claims
22 for Relief is unavailing because the essence of these claims and the purported object
23 of the alleged conspiracy – the enactment of SB 277 – was a proper exercise of the
24 Legislature’s legitimate and compelling interest in protecting the public health
25 through mandatory vaccination of school children, continuously recognized as such
26 for decades by the U.S. Supreme Court, the California Supreme Court, and every
27 other federal and state court that has considered the issue.

28 Given that Plaintiffs’ claims and allegations in the SAC are materially and
substantively identical to those in the FAC, Defendants incorporate by reference the

1 legal arguments and summary of case law on pages 11 through 17 of their
2 Defendants' Motion to Dismiss FAC (ECF No. 105-1), and on pages 10 through 15
3 of the Magistrate Judge's Report and Recommendation (ECF No. 123).

4 **A. SB 277 Does Not Violate Any of the Plaintiffs' Purported**
5 **Constitutional Rights**

6 Citing extensively from *Jacobson v. Commonwealth of Massachusetts*, 197
7 U.S. 11, 27 (1905), *Zucht v. King*, 260 U.S. 174 (1922), *Prince v. Massachusetts*,
8 321 U.S. 158 (1944), and *Abeel v. Clark*, 84 Cal. 226 (1890), the Magistrate Judge
9 detailed the long-established, indisputable jurisprudence supporting the right of the
10 States to enact and enforce laws requiring citizens to be vaccinated. Report and
11 Recommendation, 10-15 ECF No. 123. Such precedent has withstood over a
12 century of constitutional challenges and been affirmed in a multitude of federal and
13 state courts, most notably in the United States Supreme Court and the California
14 Supreme Court. Moreover, the federal district court in San Diego confirmed the
15 unquestioned authority of *Jacobson* and its progeny and rejected a similar challenge
16 to SB 277 by a separate group of plaintiffs, in *Whitlow, et al. v. Department of*
17 *Education et al.*, S.D. Cal. Case No. 3:16-cv-01715-DMS-BGS (*Whitlow*). The
18 Magistrate Judge concluded that "[t]his [C]ourt finds the reasoning in *Whitow*
19 persuasive." Report and Recommendation, 10 ECF No. 123. In responding to the
20 Defendants' Motions to Dismiss the FAC, Plaintiffs made no attempt to distinguish
21 or overcome the longstanding jurisprudence supporting the constitutionality of
22 mandatory school vaccination laws such as SB 277. Plaintiffs' SAC similarly lacks
23 any allegations or reason for this Court to ignore this precedent.

24 Any further leave to amend is futile because Plaintiffs' claims fail as a matter
25 of law. The Magistrate Judge specifically addressed each of Plaintiffs' alleged
26 violations of their purported constitutional rights. Citing U.S. Supreme Court
27 precedent, the Magistrate Judge detailed how and why Plaintiffs' claims fail as a
28 matter of law, as follows.

1 **1. Free Exercise of Religion**

2 There is no constitutional right to be violated, because “[t]he right to
3 practice religion freely does not include liberty to expose the community or the
4 child to communicable disease or the latter to ill health and death.” Report and
5 Recommendation, 13 ECF No. 123 (citing *Prince*, 321 U.S. at 166-67.) As such,
6 Plaintiffs’ “personal beliefs, as distinguished from religious beliefs, are not
7 protected by the First Amendment.” *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205,
8 215 (1972) and *Whitlow*.)

9 **2. The Fourth Amendment**

10 “It is not clear how Plaintiffs believe SB 277 violates the Fourth
11 Amendment. To the extent Plaintiffs allege violation of a right to medical privacy,
12 the [U.S.] Supreme Court has held that: ‘[a] student’s privacy interest is limited in a
13 public school environment where the State is responsible for maintaining discipline,
14 health, and safety. Schoolchildren are routinely required to submit to physical
15 examinations and vaccinations against disease.’” Report and Recommendation, 14
16 ECF No. 123 (citing *Bd. of Ed. v. Earls*, 536 U.S. 822, 830-31 (2002)).

17 **3. Due Process**

18 Plaintiffs’ “claims are foreclosed by [the U.S. Supreme Court’s decision in]
19 *Zucht*.” Report and Recommendation, 14 ECF No. 123. “As *Jacobson* made
20 clear,” the decision of whether vaccines benefit or harm society “is a determination
21 for the legislature, not the individual objectors.” *Id.*, at 14-15 (citing *Phillips v.*
22 *City of New York*, 775 F.3d 538, 542-43 (2nd Cir. 2015).)

23 **4. Equal Protection**

24 Plaintiffs “have not alleged that children with [personal belief exemptions]
25 are a suspect class . . . or that the classifications burden a fundamental right . . .
26 Thus, the classifications are subject to rational basis review . . . Allowing [fully
27 vaccinated children] to attend school and excluding [children not fully vaccinated]
28 is rationally related to the State’s interest in protecting public health and safety.”

1 Report and Recommendation, 15 ECF No. 123 (citing *Whitlow*, 203 F.Supp. at
2 1088.)

3 **5. The Ninth Amendment**

4 “Plaintiffs *cannot state a claim*,” because the Ninth Amendment “has not
5 been interpreted as independently securing any constitutional rights for purposes of
6 making out a constitutional violation.” Report and Recommendation, 16 ECF No.
7 123 (emphasis added) (citing *Schowengerdt v. United States*, 944 F.2d 483, 490
8 (9th Cir. 1991) and *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121,
9 1125 (9th Cir. 1996).)

10 **6. The Thirteenth Amendment**

11 “[T]here are no facts supporting a claim of involuntary servitude” against the
12 State Defendants. Report and Recommendation, at 16 ECF No. 123. Plaintiffs
13 only direct their Thirteenth Amendment claim against the Magistrate Judge,
14 incoherently alleging that “Defendant Rosenberg is essentially ‘Making a Slave’ of
15 Plaintiffs.” SAC, ECF No. 136, at ¶100.

16 It is beyond dispute that SB 277 is a constitutional enactment. Therefore,
17 even if there were a shred of plausibility to Plaintiffs’ claims that Defendants
18 engaged in an alleged conspiracy, Plaintiffs’ claims fail regardless because, as a
19 matter of law, the object of that alleged conspiracy, the enactment of SB 277, was
20 entirely lawful and, indeed, constitutional.

21 **B. Plaintiffs’ Criminal Claims Fail as a Matter of Law**

22 In their SAC, Plaintiffs now name the State Defendants in their previous
23 claims under various criminal statutes against the Legislative Defendants and Anne
24 Gust. However, the Magistrate Judge clearly held that these claims fail as a matter
25 of law, as follows.

26 **1. 42 U.S.C. § 1986**

27 “Section 1986 imposes liability on a person who knows of an impending
28

1 violation of [42 U.S.C.] § 1985 but neglects to prevent it.” Report and
2 Recommendation, at p. 16 (citing *Karim-Panahi v. Los Angeles Police Dept.*, 839
3 F.2d 621, 626 (9th Cir. 1989).) “A claim can be stated under section 1986 only if
4 the complaint contains a valid claim under section 1985.” *Id.* (citing *Karim-*
5 *Panahi*, 839 F.2d at 626 and *McCalden v. California Library Ass’n*, 955 F.2d 1214,
6 1223 (9th Cir. 1990).) 42 U.S.C. § 1985 prohibits individuals from (1) preventing
7 an officer from performing duties; (2) obstructing justice and/or intimidating a
8 party, witness, or juror; and (3) depriving persons of rights or privileges.
9 “Plaintiffs’ failure to allege a [valid] claim under § 1985 is fatal to any claim under
10 § 1986.” *Id.*

11 **2. 18 U.S.C. §§ 175, 178, 241, 242**

12 Plaintiffs assert claims for relief under criminal statutes 18 U.S.C. § 175
13 (promoting the sale and use of biological weapons), §178 (promoting the sale and
14 use of chemical weapons), § 241 (infringement of constitutional rights); and § 242
15 (deprivation of rights). SAC, ECF No. 136, at ¶¶ 141-55. However, Plaintiffs fail
16 to explain how they have standing to assert such claims. “Private individuals may
17 not prosecute others for alleged crimes.” Report and Recommendation, 16 ECF
18 No. 123. “The [U.S.] Supreme Court has not inferred a private right of action from
19 the existence of a criminal statute.” *Id.*; see also *Central Bank of Denver v. First*
20 *Interstate Bank of Denver*, 511 U.S. 164, 190 (1994) (“[W]e have not suggested
21 that a private right of action exists for all injuries caused by violations of criminal
22 prohibitions.”)

23 As further explained by the First Circuit, “[n]ot only are we unaware of any
24 authority for permitting a private individual to initiate a criminal prosecution in his
25 own name in a United States District Court, but also to sanction such a procedure
26 would be to provide a means to circumvent the legal safeguards provided for
27 persons accused of crime.” *Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir. 1964.)
28 Even if there were some remote basis for finding a private right of action under

1 these criminal statutes, the causes of actions still fail because of (1) Plaintiffs' lack
2 of plausible allegations to support these claims; and (2) the longstanding
3 jurisprudence supporting mandatory school vaccinations. Thus, Plaintiffs' Third,
4 Fourth, Fifth, and Sixth Claims for Relief fail as a matter of law and should be
5 dismissed with prejudice.

6 **C. Plaintiffs Fail to State RICO Claims Against the Defendants**

7 Plaintiffs' allegations that Defendants engaged in racketeering activity by
8 "obstructing justice" in violation of 18 U.S.C. § 1503 are entirely conclusory and
9 facially implausible. As articulated by the Magistrate Judge, "[t]he [C]ourt is hard
10 pressed to see any way in which Plaintiffs' challenge to SB 277 could plausibly fall
11 within RICO." Report and Recommendation, 17 ECF No. 123.

12 Plaintiffs were specifically instructed by the Magistrate Judge to "allege
13 injury to their business or property by reason of a violation of [18 U.S.C.] § 1962"
14 and to allege "facts tending to show that he or she was injured by the use or
15 investment of racketeering income." 17-18 ECF No. 123, citing *Sedima, S.P.R.L. v.*
16 *Imrex Co.*, 473 U.S. 479, 495-97 (1985) and *Nugget Hydroelectric, L.P. v. Pacific*
17 *Gas & Elec. Co.*, 981 F.2d 429, 437 (9th Cir. 1992). Plaintiffs failed to do so.
18 Plaintiffs fail to even plausibly articulate any sort of "[i]njury from alleged
19 racketeering acts that generated the income" and even to that end, such allegations
20 are "not sufficient." *Id.*, at 18.

21 Plaintiffs assert that "under color of official right . . . the Hobbs Act could be
22 used to prosecute political corruption as long as there was quid pro quo." SAC,
23 ECF No. 136, at ¶ 91. Yet, there are no factual allegations to support such a claim
24 of quid pro quo. All elements of RICO liability must be pled particularly: "Rule
25 9(b)'s requirement that in all averments of fraud or mistake, the circumstances
26 constituting fraud or mistake shall be stated with particularity applies to civil RICO
27 fraud claims." *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-1066 (9th Cir.
28 2004). "To satisfy Rule 9(b), a pleading must identify the who, what, when, where,

1 and how of the misconduct charged, as well as what is false or misleading about the
2 purportedly fraudulent statement, and why it is false.” *Cafasso, U.S. ex rel. v.*
3 *General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). Under
4 Rule 9(b), “the complaint must specify such facts as the times, dates, places,
5 benefits received, and other details of the alleged fraudulent activity.” *Neubronner*
6 *v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993).

7 A cursory review of the overbroad and conclusory RICO allegations in the
8 SAC clearly shows a complete failure to set forth facts with the required specificity.
9 Plaintiffs merely allege in their pleading that certain lawmakers have taken political
10 contributions from pharmaceutical companies and had some “closed door”
11 meetings, and that Governor Brown entered into an enterprise with the legislators
12 and the pharmaceutical companies to pass a law based on science that Plaintiffs
13 reject. Thus, Plaintiffs conclude, all the Defendants engaged in a criminal
14 enterprise aimed at “extorting” Plaintiffs’ rights. This is simply insufficient to
15 support a claim under RICO. “Absent allegations of a viable RICO violation,
16 Plaintiffs’ allegations of a conspiracy to violate RICO under § 1962(d) also fail to
17 state a claim.” Report and Recommendation, 18 ECF No. 123 (citing *Sanford v.*
18 *MemberWorks*, 625 F.3d 550, 559 (9th Cir. 2010).

19 Given that Plaintiffs’ RICO claims in their SAC are identical to those in the
20 FAC, the State Defendants incorporate the legal arguments on pages 17 through 24
21 of their previous Motion to Dismiss.

22 CONCLUSION

23 For the foregoing reasons, Defendants respectfully request that the Court
24 dismiss Plaintiffs’ Second Amended Complaint, without leave to amend, and
25 dismiss this action with prejudice.

26 ///

27 ///

28 ///

1 Dated: August 10, 2017

Respectfully submitted,

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XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
ELIZABETH S. ANGRES
Supervising Deputy Attorneys General
ELIZABETH G. O'DONNELL
JACQUELYN Y. YOUNG
Deputy Attorneys General

8
9
10

/s/ Jonathan E. Rich
JONATHAN E. RICH
Deputy Attorney General
Attorneys for Defendants
Governor Edmund G. Brown, Jr.,
Anne Gust, and the State of California

11 Dated: August 10, 2017

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Attorney General of California
ELIZABETH S. ANGRES
Supervising Deputy Attorney General

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17
18

/s/ Elizabeth G. O'Donnell
ELIZABETH G. O'DONNELL
Deputy Attorney General
Attorneys for Defendants
Deputy Attorneys General Jonathan E.
Rich and Jacquelyn Y. Young

19 *Pursuant to Local Rule 5-4.3.4 (a) (2) (i), the filer of this document attests that all
20 other signatories listed on whose behalf the filing is submitted concur in the filing's
content and have authorized the filing.

21 */s/ Jonathan E. Rich*
JONATHAN E. RICH

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24 LA2016602117
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CERTIFICATE OF SERVICE

Case Name: Middleton, et al. v. Pan et al. No. 2:16-cv-05224-SVW-AGR

I hereby certify that on August 10, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN, ANNE GUST, AND DEPUTY ATTORNEYS GENERAL JONATHAN E. RICH AND JACQUELYN Y. YOUNG, TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 10, 2017, I caused to be delivered the foregoing document(s) via email to Plaintiff Travis Middleton, by agreement with him, to the following address: Travis_m_93101@yahoo.com.

On August 10, 2017, I caused to be delivered the foregoing document(s) by first class mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 10, 2017, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

SERVICE LIST

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Travis Middleton 27 West Anapamu Street, No. 153 Santa Barbara, CA 93101	Paige Murphy 2230 Memory Lane West Lake Village, CA 91361
Jade Baxter 207 West Victoria Street Santa Barbara, CA 93101	Bret Nielson 2230 Memory Lane West Lake Village, CA 91361
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Don Demanlevesde 618 West Ortega Santa Barbara, CA 93111	Julianna Pearce 28780 My Way Oneals, CA 93645
Denise Michelle Derusha 7125 Santa Ysabel, Apt. 1 Atascadero, CA 93422	Murid Rosensweet 2230 Memory Lane West Lake Village, CA 91361
Eric Durak 133 Campo Vista Drive Santa Barbara, CA 93111	Marina Read 322 Pebble Beach Drive Goleta, CA 93117
Candyce Estave 430 East Rose Avenue Santa Maria, CA 93454	Lori Strantz 120 Barranca No. B Santa Barbara, CA 93109
Anwanur Gielow 390 Park Street Buelton, CA 93427	Alice Trooper 1805 Mountain Avenue Santa Barbara, CA 93101
Brent Haas 2715 Verde Vista Santa Barbara, CA 93105	Rachil Vincent 4320 Viua Presada Santa Barbara, CA 93110
Jessica Haas 2715 Verde Vista Santa Barbara, CA 93105	JuliaAnne Whitney 55 Chrestview Lane Montecito, CA 93108
Andrea Lewis 1331 Santa Barbara Street, No. 10 Santa Barbara, CA 93101	

Applications/Ex Parte Applications/Motions/Petitions/Requests

2:16-cv-05224-SVW-AGR Travis Middleton et al v. Richard Pan et al

194

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Rich, Jonathan on 8/10/2017 at 1:50 PM PDT and filed on 8/10/2017

Case Name: Travis Middleton et al v. Richard Pan et al
Case Number: 2:16-cv-05224-SVW-AGR
Filer: Edmund G. Brown, Jr
Anne Gust
The State of California

Document Number: 138

Docket Text:

NOTICE OF MOTION AND MOTION to Dismiss Case *Second Amended Complaint* filed by Defendants Edmund G. Brown, Jr(individual), Anne Gust(individual), The State of California. Motion set for hearing on 9/11/2017 at 01:30 PM before Judge Stephen V. Wilson. (Attachments: # (1) Memorandum of Points and Authorities) (Rich, Jonathan)

2:16-cv-05224-SVW-AGR Notice has been electronically mailed to:

Cara L Jenkins cara.jenkins@lc.ca.gov, christina.witt@lc.ca.gov

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**2:16-cv-05224-SVW-AGR Notice has been delivered by First Class U. S. Mail or by other means
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Alice Tropper
1805 Mountain Avenue
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Andrea Lewis

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1331 Santa Barbara Street No. 10
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Buelton, CA 93427

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27 West Anapamu Street No 153
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The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\DEFENDANTS MOTION TO DISMISS.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/10/2017] [FileNumber=24026656-0
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bba5f01e7377d26333db628c67b2ec04505d7af38c1c2360e28362b2224e7]]

Document description:Memorandum of Points and Authorities

Original filename:C:\fakepath\DEFENDANTS MEMORANDUM OF POINTS AND
AUTHORITIES.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/10/2017] [FileNumber=24026656-1
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7cd270f60a26e1bedb6bdd2cdbc65aa9457c9bb6acb64572515e9665902ec]]

1 DIANE F. BOYER-VINE (SBN: 124182)
2 Legislative Counsel
3 ROBERT A. PRATT (SBN: 137704)
4 Principal Deputy Legislative Counsel
5 CARA L. JENKINS (SBN: 271432)
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12 E-mail: robert.pratt@lc.ca.gov
13 Attorneys for Legislative Defendants

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

15 Travis Middleton, et al.,

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

16 Plaintiffs,

16 NOTICE OF LEGISLATIVE
17 DEFENDANTS' MOTION AND
18 MOTION TO DISMISS
19 PLAINTIFFS' SECOND AMENDED
20 COMPLAINT

18 v.

19 Richard Pan, et al.,

[F.R.C.P., Rule 12(b)(1) and (6)]

20 Defendants.

21 Date: September 11, 2017

22 Time: 1:30 p.m.

23 Courtroom 10A, Tenth Floor
24 Hon. Stephen V. Wilson

Notice of Plaintiff's Motion for Security of Plaintiff's U.S. Counterfeit Banknotes

1 TO THE COURT AND ALL PARTIES HEREIN:

2 PLEASE TAKE NOTICE THAT on September 11, 2017, at 1:30 p.m., or as
3 soon as the matter may be heard by the Honorable Stephen V. Wilson in courtroom
4 10A of the above-entitled Court located at 350 W. 1st Street, Los Angeles, California
5 90012, Defendants Assembly Member Catharine Baker, Assembly Member Richard
6 Bloom, Assembly Member David Chiu, Assembly Member Jim Cooper, Assembly
7 Member Cristina Garcia (erroneously sued as Christina Garcia), Assembly Member
8 Lorena Gonzalez, Assembly Member Reginald Jones-Sawyer, Assembly Member
9 Evan Low, Assembly Member Adrin Nazarian, Assembly Member Bill Quirk,
10 Assembly Member Anthony Rendon, Assembly Member Mark Stone, Assembly
11 Member Jim Wood, Senator Ben Allen, Senator Jim Beall, Senator Marty Block,
12 Senator Kevin de Leon, Senator Robert Hertzberg, Senator Mark Leno, Senator
13 Isadore Hall, Senator Jerry Hill, Senator Hannah-Beth Jackson, Senator Mike
14 McGuire, Senator Holly Mitchell, Senator Richard Pan, Senator Jeff Stone, Senator
15 Bob Wieckowski, Senator Lois Wolk, Wen-Li Wang (erroneously sued as Win-Li
16 Wang), Bruce Wolk, and Deputy Legislative Counsel Cara L. Jenkins (collectively
17 “Legislative Defendants”) will and hereby moves to dismiss this action under Rule
18 12(b)(6) of the Federal Rules of Civil Procedure, on the following grounds:
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- 1 1. Plaintiffs' Second Amended Complaint fails to address the deficiencies in their
2 First Amended Complaint, as outlined in the Magistrate's Report and
3 Recommendation dated December 15, 2016 (Docket No. 123), which was
4 approved and adopted by this Court on July 13, 2017 (Docket No. 135).
- 5
6 2. Plaintiffs' claims against Legislative Defendants are barred by the doctrine of
7 legislative immunity.
- 8
9 3. Plaintiffs' claims against Legislative Defendants are barred by the Eleventh
10 Amendment to the United States Constitution.
- 11
12 4. Plaintiffs' claims against Deputy Legislative Counsel Cara L. Jenkins are
13 barred on the grounds that she is a government attorney and is immune from
14 suit for conduct in the performance of her official duties.
- 15
16 5. The Second Amended Complaint fails to state a claim upon which relief can be
17 granted against Legislative Defendants under Rule 12(b)(6) of the Federal
18 Rules of Civil Procedure.
- 19
20 6. The Second Amended Complaint does not comply with Rule 8 of the Federal
21 Rules of Civil Procedure.
- 22
- 23
- 24

25 This motion is based on this Notice of Motion, the Memorandum of Points and
26 Authorities in support thereof, the documents on file with the Court, such other
27 records and documents of which the Court may be requested to take judicial notice,
28

1 and any oral argument to the extent the Court deems such argument necessary.

2 This motion is made following a meet and confer conference pursuant to Local
3 Rule 7-3 between counsel for Legislative Defendants, Cara L. Jenkins, and *pro se*
4 Plaintiff Travis Middleton which took place on August 3, 2017.
5

6 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer of this document attests that all
7 signatories listed on whose behalf the filing is submitted concur in the content and
8 have authorized the filing.
9

10
11
12 Dated: August 14, 2017

Respectfully submitted,
DIANE F. BOYER-VINE
Legislative Counsel

13
14
15 By: /s/ Cara L. Jenkins
16 Cara L. Jenkins
17 Deputy Legislative Counsel
18 Attorneys for Legislative Defendants

19
20 DIANE F. BOYER-VINE
21 Legislative Counsel

22
23 By: /s/ Robert A. Pratt
24 Robert A. Pratt
25 Principal Deputy Legislative Counsel
26 Attorneys for Defendant Deputy Legislative
27 Counsel Cara L. Jenkins
28

Applications/Ex Parte Applications/Motions/Petitions/Requests

2:16-cv-05224-SVW-AGR Travis Middleton et al v. Richard Pan et al

194

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Jenkins, Cara on 8/14/2017 at 3:23 PM PDT and filed on 8/14/2017

Case Name: Travis Middleton et al v. Richard Pan et al

Case Number: 2:16-cv-05224-SVW-AGR

Filer: Ben Allen
Catharine Baker
Jim Beall
Martin Jeffrey Block
Richard Bloom
David Chiu
Jim Cooper
Christina Garcia
Lorena Gonzalez
Isadore Hall
Robert Hertzberg
Gerald A. Hill
Hannah-Beth Jackson
Reginald Jones-Sawyer
Mark Leno
Evan Low
Mike McGuire
Holly Mitchell
Adrin Nazarian
Richard Pan
Bill Quirk
Anthony Rendon
Jeff Stone
Mark Stone
Win-Li Wang
Bob Wieckowski
Bruce Wolk
Lois Wolk
Jim Wood
Kevin de Leon

Document Number: 140

Docket Text:

62

NOTICE OF MOTION AND MOTION to Dismiss Case *Second Amended Complaint* filed by Defendants Ben Allen(individual), Catharine Baker(Legislator sued in official capacity), Jim

8/14/2017

CM/ECF California Central District
#2455

Beall(individual), Martin Jeffrey Block(individual), Richard Bloom(individual), David Chiu(Legislator sued in official capacity), Jim Cooper(Legislator sued in official capacity), Christina Garcia(Legislator sued in official capacity), Lorena Gonzalez(Legislator sued in official capacity), Isadore Hall(individual), Robert Hertzberg(Legislator sued in official capacity), Gerald A. Hill("Jerry", Legislator sued in official capacity), Hannah-Beth Jackson(individual), Reginald Jones-Sawyer(individual), Mark Leno(individual), Evan Low(individual), Mike McGuire(individual), Holly Mitchell(individual), Adrin Nazarian(Legislator sued in official capacity), Richard Pan(individual), Bill Quirk(individual), Anthony Rendon(Legislator sued in official capacity), Jeff Stone(individual), Mark Stone(individual), Win-Li Wang(Legislator sued in official capacity), Bob Wieckowski(individual), Bruce Wolk(individual), Lois Wolk (Legislator sued in official capacity), Jim Wood(Legislator sued in official capacity), Kevin de Leon(Legislator sued in official capacity). Motion set for hearing on 9/11/2017 at 01:30 PM before Judge Stephen V. Wilson. (Attachments: # (1) Memorandum, # (2) Proposed Order) (Jenkins, Cara)

2:16-cv-05224-SVW-AGR Notice has been electronically mailed to:

Cara L Jenkins cara.jenkins@lc.ca.gov, christina.witt@lc.ca.gov

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Denise Michelle Derusha
7125 Santa Ysabel, Apt. 1
Atascadero, CA 93422

8/14/2017

CM/ECF, California Central District
#2450

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JuliaAnne Whitney
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Lisa Ostendorf
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Paige Murphy
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Travis Middleton

8/14/2017

CM/ECF 4 California Central District

27 West Anapamu Street No 153
Santa Barbara, CA 93101

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Middleton_MTD SAC Notice.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/14/2017] [FileNumber=24043656-0]
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8e390557fccc6b6f56f825865e5a8eb9dcafc4f7848e3b6e2826172cc8737]]

Document description:Memorandum

Original filename:C:\fakepath\Middleton_MPA ISO MTD SAC(1).pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/14/2017] [FileNumber=24043656-1]
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Document description:Proposed Order

Original filename:C:\fakepath\Middleton_MTD SAC proposed order.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/14/2017] [FileNumber=24043656-2]
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6eddd24fa16ac07f0593018da78adec9830a7db716142e2b95a146c434a31]]

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ROBERT A. PRATT (SBN: 137704)
Principal Deputy Legislative Counsel
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Travis Middleton, et al.) Case No. 2:16-cv-05224-SVW-AGR

Plaintiffs,

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
LEGISLATIVE DEFENDANTS'
MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT

v.
Richard Pan, et al.,
Defendants.

[*Ex. Civ. P.*, Rule 12(b)(1) and (6)]

Date: September 11, 2017
Time: 4:30 p.m.

Courtroom 10A, Ninth Floor
Hon. Stephen V. Wilson

Plaintiffs' Notice of Opposition to Counterfeit and Repetitive Construction of Justice - Security Div. - 1503 5130 UCC 1-103 6

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1 **I. INTRODUCTION**

2 Plaintiffs' Second Amended Complaint (SAC), which is almost identical to
3 their First Amended Complaint, is similarly bereft of any factual allegations to support
4 Plaintiffs' convoluted "conspiracy" claims of fraudulent activities related to the
5 passage of Senate Bill 277 (Ch. 35, Stats. 2015, hereafter "SB 277"), California's
6 "mandatory vaccine bill" that went into effect on July 1, 2016. Plaintiffs contend that
7 select Members of the California Legislature received payments from top drug
8 companies in exchange for their votes for SB 277, and that as a direct result of the
9 enactment of SB 277, Plaintiffs have been deprived of certain constitutional rights.
10 SAC, ¶ 94. On December 15, 2016, U.S. Magistrate Judge Alicia Rosenberg issued a
11 Report and Recommendation, which clearly delineated the deficiencies in Plaintiffs'
12 pleadings and recommended that the First Amended Complaint be dismissed with
13 prejudice as to the defendants who had appeared in the case. Docket No. 123. Instead
14 of addressing those deficiencies, Plaintiffs amended their complaint by asserting that
15 the magistrate judge and counsel for the Defendants joined the conspiracy against
16 Plaintiffs. SAC, ¶ 112.

17
18 As Plaintiffs' SAC offers nothing but unsupported conclusory allegations and
19 legal conclusions, Legislative Defendants bring this Motion to Dismiss pursuant to the
20 Federal Rules of Civil Procedure, Rule 12(b). As with their FAC, Plaintiffs' SAC
21 fails to provide any facts that would allow Legislative Defendants to reasonably or
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1 meaningfully respond to Plaintiffs' allegations. Plaintiffs have not – *and cannot* –
2 allege any facts to state a claim against Legislative Defendants that would not be
3 barred by any well-established doctrines of immunity. As any further amendment to
4 Plaintiffs' complaint would be futile, Legislative Defendants respectfully request that
5 this Court dismiss Plaintiffs' SAC without leave to amend.
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8 **II. PLAINTIFFS FAIL TO ALLEGE FACTS TO SUPPORT ANY**
9 **COGNIZABLE CAUSE OF ACTION AS TO LEGISLATIVE**
10 **DEFENDANTS.**

11 **A. Standard of Review.**

12 A party may bring a motion to dismiss a complaint for “failure to state a claim
13 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Such a motion tests the
14 legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
15 Although a court ruling on such a motion must accept as true facts alleged in the
16 complaint, it is not required to accept as true conclusory allegations or legal
17 conclusions. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.
18 1995); *Davis v. Astrue*, 513 F. Supp. 2d 1137, 1143 (N.D. Cal. 2007). Dismissal of a
19 challenged claim is appropriate where there is a “lack of a cognizable legal theory or
20 the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
21 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).
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23 Although federal pleading standards are not burdensome – Rule 8 requires that
24 a complaint include only a “short and plain statement of the claim showing that the
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1 pleader is entitled to relief” – a plaintiff’s obligation “requires more than labels and
2 conclusions, and a formulaic recitation of the elements of a cause of action.” *Bell*
3 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 167 L. Ed. 2d 929, 127 S. Ct. 1955
4 (2007). While a court must accept as true all factual allegations, threadbare recitals of
5 the elements of a claim, supported by mere conclusory statements, do not suffice. *Id.*
6 In other words, a plaintiff must plead more than “an unadorned, the-defendant-
7 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 173 L. Ed.
8 2d 868, 129 S. Ct. 1937 (2009). Thus, in order to survive a motion to dismiss, the non-
9 conclusory “factual content,” and reasonable inferences from that content, must be
10 plausibly suggestive of a claim entitling the plaintiff to relief. *Moss v. U.S. Secret*
11 *Service*, 572 F.3d 962, 970 (9th Cir. 2009) (quoting *Ibqual*, 556 U.S. at 679).

12 Furthermore, while a *pro se* complaint is to be liberally construed, a *pro se*
13 litigant bringing suit is not entitled to amend his complaint where it is clear that no
14 amendment can cure the defect. *Cato v. United States*, 70 F. 3d 1103, 1106 (9th Cir.
15 1995).

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22 **B. The Second Amended Complaint alleges no facts that support a claim**
23 **against any Legislative Defendant.**

24 The SAC is again replete with unsupported allegations that provide no basis to
25 impose liability against any Legislative Defendant. The SAC pleads no allegations
26 specific to Defendants Wen-Li Wang and Bruce Wolk. There is but a single
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1 paragraph in the SAC that pertains to the two spouses of Members of the Legislature
2 that have been named in this action. In that paragraph, Plaintiffs summarily claim that
3
4 “Defendant legislators’ spouses have conspired to aid, abet, encourage, and supported
5 the Defendant legislators in their corrupt and criminal enterprises while receiving the
6 financial benefit of their public officials’ corrupt activities.” SAC, ¶ 96. The SAC
7
8 contains no factual allegations revealing what Ms. Wang or Mr. Wolk did in support
9 of the alleged conspiracy. There are no specific facts plead as to any of them.

10
11 As to the named Members of the Legislature, Plaintiffs also fail to plead any
12 factual allegations so as to apprise these Defendants what conduct they are alleged to
13 have engaged in that gives rise to Plaintiffs’ claims. Plaintiffs’ SAC makes a broad,
14 nonspecific claim that the Defendant Members improperly received “bribes” from
15 drug companies in exchange for enacting SB 277. SAC, ¶¶ 81-84. In support of this
16 contention, Plaintiffs’ SAC includes various charts and references describing monies
17 that certain Members of the Legislature are alleged to have received from drug
18 companies in 2013-2014. SAC, ¶ 85. Plaintiffs then make the unsupported accusation
19 that these monies were offered by the drug companies and accepted by the Defendant
20 Legislators as a bribe to enact SB 277. SAC, ¶¶ 86-87. Completely absent from the
21 SAC are any factual allegations to support Plaintiffs’ bribery accusations. There are
22 no facts connecting any Member to the improper receipt of financial contributions.
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1 Furthermore, with regard to counsel for Legislative Defendants, Deputy
2 Legislative Counsel Cara Jenkins, Plaintiffs allege that Ms. Jenkins, by performing
3 her duties associated with litigating this matter, has joined the conspiracy of the other
4 named defendants by “joining their efforts to corruptly influence the outcome of the
5 December 13, 2016 hearing to create illegitimate claims against Plaintiffs’ law
6 arguments by placing on the court record invalid evidence that Plaintiffs’ complaint
7 was somehow deficient requiring dismissal.” SAC, ¶ 112. Again, Plaintiffs fail to
8 provide any facts that would support the expansion of Plaintiffs’ allegations of
9 conspiracy.
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13 Accordingly, Plaintiffs’ “factual allegations” lack the requisite particularity to
14 state a cause of action as to the Legislative Defendants. Plaintiffs’ vague allegations
15 leave the Legislative Defendants to guess, with no guidance, what each is alleged to
16 have done, and how exactly Plaintiffs were harmed. Insofar as the SAC fails to
17 provide clear allegations showing facts as to the Legislative Defendants that give rise
18 to liability under any cause of action, it would be unreasonable and contrary to Rule
19 8’s “short and plain statement” requirements to require the Legislative Defendants to
20 defend against Plaintiffs’ action.
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25 **C. Plaintiffs’ Second Amended Complaint should be dismissed without**
26 **leave to amend because Legislative Defendants are immune from suit in**
27 **this matter.**

28 U.S. Magistrate Judge Rosenberg found that Plaintiffs’ claims are barred by

1 clearly established doctrines of immunity, and recommended that “the complaint be
2 dismissed against the named defendant[s] with prejudice.” Report and
3 Recommendation, Docket No. 123. Despite this, Plaintiffs’ SAC names the same
4 Defendants, and includes the Magistrate Judge and the three government attorneys
5 representing the Defendants, who are also immune from suit.
6

7
8 ***1. The doctrine of legislative immunity bars any claim as to the actions of
9 the Members of the Legislature relating to legislation.***

10 Members of the State Legislature have complete immunity from civil liability
11 for acts or omissions occurring within the sphere of their legislative activities. *Tenney*
12 *v. Brandhove*, 341 U.S. 367, 95 L. Ed. 1019, 71 S. Ct. 783 (1951) (hereafter *Tenney*).
13

14 “The privilege of legislators to be free from arrest or civil process for what they
15 do or say in legislative proceedings has taproots in the Parliamentary struggles of the
16 Sixteenth and Seventeenth Centuries.” *Tenney, supra*, 341 U.S. at p. 372. In *Tenney*,
17 the plaintiff sued members of a committee of the California Legislature, among others,
18 under federal civil rights statutes claiming damages resulting from statements made
19 about him at a committee hearing. The United States Supreme Court concluded that
20 federal civil rights statutes did not alter the longstanding tradition of immunity from
21 civil liability of legislators for conduct within the sphere of legislative activity. *Id.*, at
22 p. 376; *see also Bogan v. Scott-Harris*, 523 U.S. 44, 49, 140 L. Ed. 2d 79, 118 S. Ct.
23 966 (1998); *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 731-734, 64 L.
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1 Ed. 2d 641, 100 S. Ct. 1967 (1980); *Lake Country Estates Inc. v. Tahoe Regional*
2 *Planning Agency*, 440 U.S. 391, 99 S. Ct. 1171, 59 L. Ed. 2d 401 (1979); *Gutierrez v.*
3 *Mun. Ct. of S.E. Judicial Dist.*, 838 F.2d 1031, 1046 (9th Cir. 1988).

4
5 This immunity applies to activities within “a field where legislators traditionally
6 have power to act.” *Tenney, supra*, 341 U.S. at 379. This includes acts that are “an
7 integral part of the deliberative and communicative processes by which Members
8 participate in committee and House proceedings with respect to the consideration and
9 passage or rejection of proposed legislation or with respect to matters which the
10 Constitution places within the jurisdiction of either House.” *Gravel v. United States*,
11 408 U.S. 606, 625, 33 L. Ed. 2d 583, 92 S. Ct. 2614 (1972).

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15 Legislative immunity has been held to apply even to civil actions charging
16 illegal activity –such as the taking of bribes – by legislators within the sphere of
17 legislative activity, since the proof of the illegal act would necessarily involve delving
18 into matters, including motive or purposes, underlying the legislative act. See
19 *Thillens, Inc. v. Community Currency Exchange*, 729 F.2d 1128, 1131 (7th Cir. 1984).
20
21 Importantly, the immunity of a legislator for legislative acts applies to the very claims
22 brought by Plaintiffs: civil RICO claims based on bribery. *Chappell v. Robbins*, 73
23 F.3d 918, 921 (9th Cir. 1996). In *Chappell v. Robbins*, purchasers of insurance brought
24 a civil RICO action against a former Member of the California Legislature. The
25 plaintiffs claimed that they were forced to pay excessive premiums because of a bill
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1 that was enacted by the Legislature as a result of activities of the former Member,
2 who, in fact, admitted to accepting bribes from insurance industry executives. The
3 Ninth Circuit Court of Appeals held that the legislative privilege precluded the
4 plaintiffs' RICO claim based on bribery, as the alleged harm was not caused by the
5 bribery, but rather by the passage of a bill pursuant to protected activity. *Id.*, at pp.
6 921-922.
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8
9 In the case at issue, Plaintiffs similarly allege that they have been deprived of
10 certain constitutional rights because SB 277 was enacted as a result of the efforts of
11 certain Members of the Legislature made in exchange for "bribes" received from drug
12 companies. As in *Chappell*, however, any harm to Plaintiffs was not the result of the
13 alleged bribery and conspiracy scheme, but would have resulted from passage of SB
14 277. Thus, to the extent that the actions of the Members of the Legislature in enacting
15 SB 277 caused Plaintiffs harm, those actions would necessarily be official actions
16 occurring within the sphere of the Members' official legislative activities. Plaintiffs'
17 SAC, therefore, cannot be amended to allege any claim arising from Defendant
18 Members' actions in enacting SB 277 because the Members are absolutely protected
19 by legislative immunity from liability stemming from such legislative activities.
20 Accordingly, Plaintiffs' SAC should be dismissed for failure to state a claim, and
21 leave to amend should be denied because no claim can be stated that would not be
22 covered by legislative immunity.
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1 **2. Plaintiffs' claims against government attorneys are barred by absolute**
2 **immunity.**

3 In Plaintiffs' SAC, Plaintiffs named counsel for the Defendants, Deputy
4 Attorney Generals Jonathan E. Rich and Jacquelyn Y. Young, and Deputy Legislative
5 Counsel Cara L. Jenkins as defendants. Plaintiffs' only basis for naming the
6 government attorneys as defendants is the attorneys' representation of their respective
7 defendants in this matter.
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10 A government attorney representing a party in a civil action has absolute
11 immunity from any claim for damages "to assure that . . . advocates . . . can perform
12 their respective functions without harassment or intimidation." *Fry v. Melaragno*, 939
13 F.2d 832, 837 (9th Cir. 1991), citing *Butz*, 438 U.S. 478, 512 (1978). Because of "the
14 similarity of functions of government attorneys in civil, criminal and agency
15 proceedings, and the numerous checks on abuses of authority inherent in the judicial
16 process . . . [t]he reasons supporting the doctrine of absolute immunity apply with
17 equal force regardless of the nature of the underlying action." *Fry*, 939 F.2d at 837,
18 quoting *Flood v. Harrington*, 532 F.2d 1248, 1251 (9th Cir. 1976). Absolute immunity
19 attaches so long as "the government attorney is performing acts 'intimately associated
20 with the judicial phase' of the litigation." *Fry v. Melaragno*, 939 F.2d 832, 837;
21 accord, *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001).
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1 Plaintiffs allege that in the course of representing their respective parties in this
2 civil action, counsel for Defendants joined the overall conspiracy upon which this
3 action to “corruptly influence the outcome of the December 13, 2016 hearing to create
4 illegitimate legal claims against Plaintiffs’ law arguments by placing on the court
5 record invalid evidence that Plaintiffs’ complaint was somehow deficient requiring
6 dismissal.” SAC, ¶ 112. To the contrary, in defending their clients, the government
7 attorneys were performing acts associated with the judicial phase of the litigation. As
8 such, any claims asserted by Plaintiffs are barred by absolute immunity, and should be
9 dismissed with prejudice.
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13 **3. Plaintiffs’ RICO claims fail as a matter of law.**
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15 Even if Plaintiffs’ SAC were not barred by the doctrines of legislative immunity
16 and absolute immunity, it would nevertheless warrant dismissal under Rule 12(b)(6),
17 as Plaintiffs’ RICO claims fail as a matter of law.
18

19 To establish a civil claim under RICO, a plaintiff must allege “ ‘(1) conduct (2)
20 of an enterprise (3) through a pattern (4) of racketeering activity.’ ” *Odom v. Microsoft*
21 *Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473
22 U.S. 479, 496, 105 S. Ct. 3275, 3285, 87 L. Ed. 2d 346 (1985)). The plaintiff must
23 also establish the defendant’s RICO violation proximately caused his or her injury.
24 *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S. 258, 265, 112 S. Ct. 1311, 1316, 117 L.
25 Ed. 2d 532 (1992); *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir.
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1 2008); see also *Rezner v. Bayerische Hypo–Und Vereinsbank AG*, 630 F.3d 866, 873
2 (9th Cir. 2010).

3
4 a. *The SAC fails to allege facts establishing the existence of an enterprise.*

5 “To show the existence of an enterprise..., plaintiffs must plead that the
6 enterprise has (A) a common purpose, (B) a structure or organization, and (C)
7 longevity necessary to accomplish the purpose.” *Eclectic Props. East, LLC v. Marcus*
8 *& Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (citing *Boyle v. United States*, 556
9 U.S. 938, 946, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009)); see also 18 U.S.C. §
10 1961(4) (defining “enterprise” as “any individual, partnership, corporation,
11 association, or other legal entity, and any union or group of individuals associated in
12 fact although not a legal entity”).
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16 Here, the SAC alleges no facts that establish the existence of an enterprise.
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18 Instead, the SAC provides conclusory statements, such as “Defendants and Co-
19 conspirators formed an association-in-fact for the specific purpose of obstructing
20 justice and extorting the constitutional rights of Plaintiffs and others similarly
21 situated;” and “this association in fact, was an enterprise within the meaning of RICO,
22 18 U.S.C. § 1961(4).” SAC, ¶¶ 106, 107, 128. However, alleging the existence of an
23 enterprise is not the same as pleading facts that show its existence. The SAC fails to
24 provide any details regarding the structure or organization of the alleged enterprise
25 and, thus, does not plead sufficient facts to establish this element of a RICO claim.
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1 *b. The SAC does not establish a pattern of racketeering activity.*

2 The SAC also fails to allege facts showing a “pattern of racketeering activity.”
3
4 For civil liability to result from a substantive violation of RICO, a defendant must be
5 shown to have engaged in a “pattern of racketeering activity.” 18 U.S.C. §§ 1962(a),
6 (b), and (c). “Racketeering activity” is defined as the commission of various state and
7 federal offenses enumerated in 18 U.S.C. § 1961(1), such as mail fraud, wire fraud,
8 drug trafficking, murder, arson, gambling, bribery, extortion, or embezzlement. To
9 sustain a RICO claim, at least one of these offenses must involve a pattern. These acts
10 are called “predicate acts” of racketeering. A “pattern of racketeering activity”
11 requires at least two related acts of racketeering activity within a ten-year period. 18
12 U.S.C. § 1961(5).
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16 Here, the SAC is devoid of any factual allegations establishing a “pattern of
17 racketeering activity.” Although it appears that Plaintiffs are alleging the RICO
18 predicate acts of bribery and extortion, as discussed at length throughout this
19 memorandum, Plaintiffs have failed to allege any facts supporting their conclusory
20 allegations of bribery and extortion.
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1 c. The SAC fails to establish that Plaintiffs suffered an injury from the alleged
2 predicate acts.

3 To have standing to sue under RICO, a plaintiff must allege that (1) he or she
4 suffered an injury to business or property and that (2) defendant's RICO predicate acts
5 were the cause of the injury. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 495-97
6 (1985) (plaintiff has standing only to the extent he has been injured "by the conduct
7 constituting the [RICO] violation"). The alleged RICO violations must be the
8 "proximate cause" that "led directly to" the plaintiff's injury. *Holmes*, 112 S. Ct. at
9 1317-18; *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 460-61 (2006); *Hemi Grp.,*
10 *LLC v. City of N.Y., N.Y.*, 559 U.S. 1, 130 S. Ct. 983, 175 L. Ed. 2d 943 (2010).
11 Proximate cause requires "some direct relation between the injury asserted and the
12 injurious conduct alleged." *Holmes*, 112 S. Ct. at 1316. "A link that is too remote,
13 purely contingent, or indirect is insufficient." *Hemi Grp.*, 130 S. Ct. at 989.

14 Plaintiffs' generalized allegations of injury are insufficient to meet this
15 standard. Plaintiffs allege that they have "lost a substantial amount of their time,
16 money, labor and constitutional freedoms" and that they have "been injured in their
17 business and property in accordance with U.S.C. § 1962(a)(c)(d) [sic] as a direct and
18 proximate result of the racketeering activities of Defendants..." SAC, ¶¶ 120, 136.
19 These conclusory statements provide no insight as to exactly how Plaintiffs have been
20 injured. As such, Plaintiffs have failed to properly plead a RICO injury to business or
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1 property. Furthermore, Plaintiffs appear to blame their alleged injuries to business and
2 property on Legislative Defendants' allegedly unlawful activities, but the SAC
3 contains no allegation showing a "direct causal link" between the alleged predicate
4 acts and such injuries.
5

6 To summarize, Plaintiffs' SAC contains no factual allegations establishing (1)
7 an enterprise; (2) a pattern of racketeering activity; or (3) an identifiable injury to
8 Plaintiffs. As such, Plaintiffs fail, as a matter of law, to state facts sufficient to state a
9 RICO claim. And because the SAC lacks allegations of a cognizable RICO violation,
10 Plaintiffs' claims of conspiracy to violate RICO also fail, as a matter of law. See
11 *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 559 (9th Cir. 2010).
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16 **III. CONCLUSION**
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18 As established by the U.S. Magistrate Judge, because Plaintiffs' alleged injury
19 results from the passage of SB 277, Plaintiffs cannot state a claim upon which relief
20 can be granted because the conduct that caused their injuries is legislative and
21 therefore immune. Even if Plaintiffs' Complaint were not barred by doctrines of
22 immunity, the Court should deny leave to amend because such leave would be futile.
23 Accordingly, the Legislative Defendants respectfully request this Court to grant the
24 Motion to Dismiss without leave to amend.
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28 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filers of this document attest that all

1 signatories listed on whose behalf the filing is submitted concur in the content and
2 have authorized the filing.
3
4

5
6 Dated: August 14, 2017

Respectfully submitted,
DIANE F. BOYER-VINE
Legislative Counsel

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8
9 By: /s/ Cara L. Jenkins
10 CARA L. JENKINS
11 Deputy Legislative Counsel
12 Attorneys for Legislative Defendants

13 DIANE F. BOYER-VINE
14 Legislative Counsel

15 By: /s/ Robert A. Pratt
16 Robert A. Pratt
17 Principal Deputy Legislative Counsel
18 Attorneys for Defendant Deputy Legislative
19 Counsel Cara L. Jenkins
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1 **CERTIFICATE OF SERVICE**

2 Case Name: Middleton et al. v. Pan et al.

3 Case Number: 2:16-cv-05224-SVW-AGR

4 I hereby certify that on **August 14, 2017**, I electronically filed the following
5 documents with the Clerk of the Court by using the CM/ECF system:

- 6
- 7 • **NOTICE OF LEGISLATIVE DEFENDANTS' MOTION AND MOTION**
 - 8 • **TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**
 - 9 • **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
 - 10 • **LEGISLATIVE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'**
 - 11 • **SECOND AMENDED COMPLAINT**
 - 12 • **[PROPOSED] ORDER GRANTING LEGISLATIVE DEFENDANTS'**
 - 13 • **MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED**
 - 14 • **COMPLAINT**

15 Participants in the case who are registered CM/ECF users will be served by the
16 CM/ECF system.

17 I further certify that some of the participants in the case are not registered
18 CM/ECF users. On **August 14, 2017**, I caused to be delivered the foregoing
19 document(s) via email to Plaintiff Travis Middleton at the email address
20 Travis_m_93101@yahoo.com, and by FedEx overnight courier to the non-CM/ECF
21 participants listed on the attached service list.

22 I declare under penalty of perjury under the laws of the State of California that
23 the foregoing is true and correct, and that this declaration was executed on **August 14,**
24 **2017**, at Sacramento, California.

25 Cara L. Jenkins

26 Declarant

27 /s/ Cara L. Jenkins

28 Signature

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SERVICE LIST

1		
2		
3	Travis Middleton	Eric Durak
4	27 West Anapamu Street, No. 153	133 Campo Vista Drive
5	Santa Barbara, CA 93101	Santa Barbara, CA 93111
6	Jade Baxter	Julianna Pearce
7	207 West Victoria Street	28780 My Way
8	Santa Barbara, CA 93101	Oneals, CA 93645
9	Candyce Estave	Denise Michelle Derusha
10	430 East Rose Avenue	7125 Santa Ysabel, Apt. 1
11	Santa Maria, CA 93454	Atascadero, CA 93422
12	Melissa Christou	Andrea Lewis
13	1522 Knoll Circle Drive	1331 Santa Barbara Street, No. 10
14	Santa Barbara, CA 93101	Santa Barbara, CA 93101
15	Rachil Vincent	Jessica Haas
16	4320 Viua Presada	2715 Verde Vista
17	Santa Barbara, CA 93110	Santa Barbara, CA 93105
18	Don Demanlevesde	Anwanur Gielow
19	618 West Ortega	390 Park Street
20	Santa Barbara, CA 93101	Buelton, CA 93427
21	Paige Murphy	JuliaAnne Whitney
22	2230 Memory Lane	55 Chrestview Lane
23	West Lake Village, CA 91361	Montecito, CA 93108
24	Lori Strantz	Bret Nielsen
25	120 Barranca No. B	2230 Memory Lane
26	Santa Barbara, CA 93109	West Lake Village, CA 91361
27	Lisa Ostendorf	Murid Rosensweet
28	5459 Place Court	2230 Memory Lane
	Santa Barbara, CA 93111	West Lake Village, CA 91361

1 Alice Tropper
2 1805 Mountain Avenue
3 Santa Barbara, CA 93101

Brent Haas
2715 Verde Vista
Santa Barbara, CA 93105

4 Marina Read
5 322 Pebble Beach Drive
6 Goleta, CA 93117

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1. DIANE F. BOYER-VINE (SBN: 124182)
Legislative Counsel
2. ROBERT A. PRATT (SBN: 137704)
Principal Deputy Legislative Counsel
3. CARA D. JENKINS (SBN: 271432)
Deputy Legislative Counsel
4. Office of Legislative Counsel
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6. Sacramento, California 95814
Telephone: (916) 341-8000
7. E-mail: robert.pratt@lc.ca.gov
8. E-mail: cara.jenkins@lc.ca.gov

9. Attorneys for Legislative Defendants

10. UNITED STATES DISTRICT COURT
11. FOR THE CENTRAL DISTRICT OF CALIFORNIA
12. WESTERN DIVISION

13. Travis Middleton, et al., Case No. 2:16-cv-05224-SVW-AGR

14. Plaintiffs,

15. v.

16. Richard Pan, et al.,

17. Defendants.

18. [PROPOSED] ORDER GRANTING
19. LEGISLATIVE DEFENDANTS'
20. MOTION TO DISMISS
21. PLAINTIFFS' SECOND AMENDED
22. COMPLAINT

23. Date: September 11, 2017
24. Time: 1:30 p.m.

25. Courtroom 10A, Tenth Floor
26. Hon. Stephen V. Wilson

Plaintiff's Motion for Injunction of Security Breach - 2:16-cv-05224-SVW-AGR

1 The Motion to Dismiss the First Amended Complaint filed by Defendants
2
3 Assembly Member Catharine Baker, Assembly Member Richard Bloom, Assembly
4 Member David Chiu, Assembly Member Jim Cooper, Assembly Member Cristina
5 Garcia (erroneously sued as Christina Garcia), Assembly Member Lorena Gonzalez,
6
7 Assembly Member Reginald Jones-Sawyer, Assembly Member Evan Low, Assembly
8 Member Adrin Nazarian, Assembly Member Bill Quirk, Assembly Member Anthony
9 Rendon, Assembly Member Mark Stone, Assembly Member Jim Wood, Senator Ben
10 Allen, Senator Jim Beall, Senator Marty Block, Senator Kevin de Leon, Senator
11 Robert Hertzberg, Senator Mark Leno, Senator Isadore Hall, Senator Jerry Hill,
12
13 Senator Hannah-Beth Jackson, Senator Mike McGuire, Senator Holly Mitchell,
14
15 Senator Richard Pan, Senator Jeff Stone, Senator Bob Wieckowski, Senator Lois
16
17 Wolk, Wen-Li Wang (erroneously sued as Win-Li Wang), Bruce Wolk, and Deputy
18 Legislative Counsel Cara L. Jenkins (collectively “Legislative Defendants”) in this
19
20 matter came on for hearing before this Court on September 11, 2017.

21 Having considered the moving and opposition papers, arguments, and all other
22 matters presented to the Court, the Court finds that Plaintiffs have failed to state a
23
24 claim upon which relief can be granted.

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IT IS HEREBY ORDERED that Legislative Defendants' Motion to Dismiss is GRANTED. The Second Amended Complaint in this case is ordered dismissed with prejudice as to the Legislative Defendants.

Dated: _____

Honorable Stephen V. Wilson

CERTIFICATE OF SERVICE

This is to certify that I have on this 14th day of September, 2017 placed a true and correct copy of the:

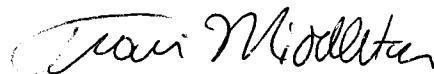
APPLICANT PARTIES INJURED / PLAINTIFFS' REFUSAL FOR FRAUD OF The "MOTIONS TO DISMISS" filed by the Attorneys in assigned Case Incorporated No. 2:16-cv-05224-SVW-AGR at the below address, or by depositing the same in the U.S. Mails, to DIANE F. BOYER-VINE (SBN: 124182) Legislative Counsel, ROBERT A. PRATT (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., Jonathan Rich, Jacquelyn Y. Young and the State of California.

AND; To: Marine Pogosyan, Clerk to Defendant Magistrate Judge Alicia G. Rosenberg, United States District Court Central District of California 312 North Spring Street Los Angeles, California 90 012. **Certified Mail No.:**
70161370000130208034.

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


Travis Middleton

27 West Anapamu St. #153
Santa Barbara, California [93101]

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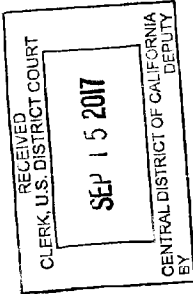
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