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8 *Attorneys for Defendants Governor Edmund G.  
 9 Brown, Jr., and the State of California*

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

13  
 14  
 15 **Travis Middleton, et al.,**

16 Plaintiffs,

17 v.

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

19 Defendants.

2:16-cv-05224-SVW (AGR)

**DEFENDANTS' EX PARTE  
 APPLICATION FOR AN ORDER  
 (1) TO STAY THE DEADLINES  
 FOR DEFENDANTS' RESPONSES  
 TO PLAINTIFFS' FIRST  
 AMENDED COMPLAINT; AND (2)  
 SETTING A STATUS  
 CONFERENCE; DECLARATION  
 OF DEPUTY ATTORNEY  
 GENERAL JONATHAN E. RICH**

**[Filed Concurrently with Proposed  
 Order]**

Courtroom: B  
 Judge: The Honorable Alicia G.  
 Rosenberg, Magistrate Judge  
 Trial Date: None Set  
 Action Filed: July 15, 2016

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1 TO THE COURT AND ALL PARTIES HEREIN:

2 PLEASE TAKE NOTICE THAT Defendants Governor Edmund G. Brown,  
3 Jr., and the State of California (collectively, Defendants) will move this Court *ex*  
4 *parte* for an order (1) to stay the deadlines for filing Defendants' responses to  
5 Plaintiffs' First Amended Complaint (FAC) until such time as all defendants named  
6 in the FAC have been served; and (2) setting a status conference for the purpose of  
7 directing a unified briefing schedule for the anticipated motions to dismiss and/or  
8 strike the FAC by the defendants named in the FAC, including Defendants herein,  
9 and to relieve Defendants of their obligation under Local Rule 7-3, if any, to meet  
10 and confer with each of the Plaintiffs in advance of filing any motions with this  
11 Court.

12 The grounds for this *ex parte* application are as follows:

13 1. There is insufficient time for a regularly noticed motion seeking the relief  
14 herein prior to the filing deadline for Defendants' anticipated motions to dismiss  
15 and/or strike Plaintiffs' FAC. Because Defendants Brown and the State of  
16 California were served with the FAC on September 9, 2016, their deadline to file  
17 their motions to dismiss and/or strike the FAC under Rule 12 of the Federal Rules  
18 of Civil Procedure is September 30, 2016. Under Local Rule 7-3, the deadline for  
19 these Defendants to meet and confer with each of the 26 Plaintiffs in this case, all of  
20 whom are proceeding *pro se*, may be as early September 23, 2016, assuming that  
21 Defendants are, in fact, required to meet and confer with all 26 Plaintiffs.

22 2. Plaintiffs commenced this action, proceeding *pro se*, with the filing of  
23 their Complaint on July 15, 2016. Complaint, ECF No. 1.

24 3. On July 21, 2016, this Court entered its Minute Order directing that  
25 Plaintiff Travis Middleton, who is not a licensed attorney, may not appear on behalf  
26 of another person or class of persons, and that accordingly, each of the 26 Plaintiffs  
27 represents only himself or herself in this case. Minute Order, ECF No. 7.

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1           4. Defendants were not served with the Complaint. Instead, on August 10,  
2 2016, Plaintiffs filed their First Amended Complaint (FAC), in which they have  
3 represented that they continue to proceed *pro se*. FAC, ECF No. 15.

4           5. Defendants Brown and the State of California were served with the FAC  
5 by Plaintiff Middleton on September 9, 2016. Other defendants named in the FAC  
6 were served by Plaintiff Middleton on September 9, 12, 15, 16 and 21, 2016. Still  
7 other defendants, including the spouses of many of the defendants named as  
8 legislators in the FAC, have apparently not been served as of the filing of this *ex*  
9 *parte* application.

10           6. Defendants intend to respond to the FAC with motions to dismiss and/or  
11 strike the FAC under Rule 12 of the Federal Rules of Civil Procedure, including,  
12 without limitation, on the grounds that Plaintiffs' claims against Defendant the  
13 State of California are barred by the Eleventh Amendment; Plaintiffs' claims  
14 against Defendant Brown are barred by the Eleventh Amendment, the *Noerr-*  
15 *Pennington* immunity doctrine, and the doctrine of qualified immunity; the  
16 enactment of Senate Bill 277 does not violate any recognized rights of the Plaintiffs  
17 because the U.S. Supreme Court, the California Supreme Court and various other  
18 federal and state courts have repeatedly and uniformly held that mandatory  
19 vaccination statutes are within the legitimate and compelling interests of the states  
20 to protect the public from the spread of dangerous communicable diseases; and that  
21 Plaintiffs have failed to state a plausible claim for a violation of the federal RICO  
22 statute or any other alleged conspiracy or other alleged unlawful conduct by and  
23 among the Defendants. Defendants understand that the other defendants who have  
24 been served with the FAC intend to file motions to dismiss and/or strike the FAC  
25 on similar grounds, as well as on other grounds unique to them.

26           7. Because Defendants have been served with the FAC on various separate  
27 dates, and other defendants have not yet been served, it is in the interests of justice  
28 and judicial economy for the Court to stay the deadlines for Defendants' responses

1 to the FAC pending the setting of a common date for Defendants' anticipated  
2 motions to dismiss and/or strike the FAC, a unified briefing schedule for such  
3 motions, and a common hearing date for these motions.

4 8. Moreover, because all of the 26 Plaintiffs are proceeding *pro se*, it is  
5 impossible for Defendants to meaningfully meet and confer with each of the  
6 Plaintiffs pursuant to Local Rule 7-3, if, indeed, Defendants are required to meet  
7 and confer with each of the 26 Plaintiffs in advance of filing their motions to  
8 dismiss and/or strike, or any other motion in this case. Further, of the 26 Plaintiffs,  
9 only one (Plaintiff Middleton) has provided a phone number or email at which he  
10 can be contacted.

11 9. Defendants believe that it is in the interests of judicial economy and all  
12 parties that the Court set a status conference for the purpose of setting a common  
13 date for Defendants' responses to the FAC, a unified briefing schedule for the  
14 anticipated motions to dismiss and/or strike, and other procedural orders, including,  
15 without limitation an order relieving Defendants of their meet and confer  
16 obligations, if any, under Local Rule 7-3.

17 10. Without the relief requested herein, the anticipated motions to dismiss  
18 and/or strike the FAC by Defendants Brown and the State of California will be due  
19 as early as September 30, 2016, and these Defendants may be required to meet and  
20 confer with each of the 26 Plaintiffs as early as September 23, 2016 under Local  
21 Rule 7-3, which is impossible given that 25 of the Plaintiffs can only be reached  
22 through the U.S. Mail.

23 11. Defendants understand and believe that other defendants in this case who  
24 have been served will be represented by the Office of Legislative Counsel, which  
25 concurs with the relief requested herein.

26 12. Because there are 26 separate Plaintiffs proceeding *pro se*, and due to  
27 exigency of the relief sought in this *ex parte* application, Defendants have been  
28 unable to meet and confer with Plaintiffs pursuant to Local Rules 7-3 and 7-19.

1 This Notice of Ex Parte Application and Ex Parte Application is based on this  
2 Notice, the accompanying Memorandum of Points and Authorities, the documents  
3 on file with the Court, such other records and documents of which the Court may be  
4 requested to take judicial notice, and any oral argument to the extent the Court  
5 deems such argument necessary.

6 Dated: September 22, 2016

Respectfully submitted,

7 KAMALA D. HARRIS  
8 Attorney General of California  
9 RICHARD T. WALDOW  
10 ELIZABETH S. ANGRES  
11 Supervising Deputy Attorneys  
12 General  
13 ELIZABETH G. O'DONNELL  
14 JACQUELYN Y. YOUNG  
15 Deputy Attorneys General

13 */s/ Jonathan E. Rich*  
14 JONATHAN E. RICH  
15 Deputy Attorney General

16 *Attorneys for Defendants Governor*  
17 *Edmund G. Brown, Jr., and the State*  
18 *of California*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Rule 6(b) of the Federal Rules of Civil Procedure provides in relevant part that, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Fed. R. Civ. Proc. 6(b). Rule 6(b) commits to the district court's discretion the decision to enlarge the time in which a party must respond to a complaint. *See, e.g., Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9<sup>th</sup> Cir. 1996).

Additionally, “federal courts are vested with inherent powers enabling them to manage their cases and courtrooms effectively.” *Aloe Vera of Am., Inc. v. United States*, 376 F.3d 960, 964–65 (9<sup>th</sup> Cir. 2004).

Here, good cause exists for the Court to enlarge the time within which Defendants are to respond to Plaintiffs’ First Amended Complaint (FAC) and to set a status conference for the purpose of establishing a uniform briefing schedule and hearing date for Defendants’ anticipated motion to dismiss and/or strike the FAC, as well as relieving Defendants of their obligation, if any, to meet and confer with the 26 individual Plaintiffs prior to filing any motions in this case.

Plaintiffs commenced this action, proceeding *pro se*, with the filing of their Complaint on July 15, 2016. Complaint, ECF No. 1.

On July 21, 2016, this Court entered its Minute Order directing that Plaintiff Travis Middleton, who is not a licensed attorney, may not appear on behalf of another person or class of persons, and that accordingly, each of the 26 Plaintiffs represents only himself or herself in this case. Minute Order, ECF No. 7.

Defendants were not served with the Complaint. Instead, on August 10, 2016, Plaintiffs filed their First Amended Complaint (FAC) in which they have represented that they continue to proceed *pro se*. FAC, ECF No. 15.

Defendants Brown and the State of California were served with the FAC on September 9, 2016. Declaration of Jonathan E. Rich (Rich Decl.), ¶ 2. Other

1 defendants named in the FAC were served on September 9, 12, 15, 16, 20 and 21,  
2 2016. *Id.* Still other defendants, including the spouses of many of the defendants  
3 named as legislators in the FAC, have apparently not been served as of the filing of  
4 this *ex parte* application. *Id.*

5 Defendants intend to respond to the FAC with motions to dismiss and/or  
6 strike the FAC under Rule 12 of the Federal Rules of Civil Procedure, including,  
7 without limitation, on the grounds that Plaintiffs' claims against Defendant the  
8 State of California are barred by the Eleventh Amendment; Plaintiffs' claims  
9 against Defendant Brown are barred by the Eleventh Amendment, the *Noerr-*  
10 *Pennington* immunity doctrine, and the doctrine of qualified immunity; the  
11 enactment of Senate Bill 277 does not violate any recognized rights of the Plaintiffs  
12 because the U.S. Supreme Court, the California Supreme Court and various other  
13 federal and state courts have repeatedly and uniformly held that mandatory  
14 vaccination statutes are within the legitimate and compelling interests of the states  
15 to protect the public health from the spread of dangerous communicable diseases;  
16 and that Plaintiffs have failed to state a plausible claim for a violation of the federal  
17 RICO statute or any other alleged conspiracy or other alleged unlawful conduct by  
18 and among the Defendants. Rich Decl., ¶ 3.<sup>1</sup>

19 <sup>1</sup> The legitimate and compelling state interest in protecting the public health  
20 through mandatory vaccinations, especially for school children, has remained  
21 unquestioned, and is firmly embedded in our jurisprudence since the U.S. Supreme  
22 Court's holding in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11  
23 (1905) (*Jacobson*). Courts have repeatedly upheld mandatory student vaccination  
24 laws over challenges predicated on the First Amendment, the Equal Protection  
25 Clause, the Due Process Clause, the Fourth Amendment, education rights, parental  
26 rights, and privacy rights, frequently citing *Jacobson*. See, e.g., *Zucht v. King*, 260  
27 U.S. 174, 175-177 (1922) ("it is within the police power of a state to provide for  
28 compulsory vaccination"); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (a parent  
"cannot claim freedom from compulsory vaccination for the child more than for  
himself on religious grounds. The right to practice religion freely does not include  
liberty to expose the community or the child to communicable disease or the latter  
to ill health or death."); *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995)  
("[f]or their own good and that of their classmates, public school children are  
routinely required to submit to various physical examinations, and to be vaccinated  
against various diseases"); *Phillips v. City of New York*, 775 F.3d 538, 543 (2nd  
Cir. 2015) (holding that "mandatory vaccination as a condition for admission to  
(continued...)

1 Defendants understand that the other defendants who have been served with  
 2 the FAC intend to file motions to dismiss and/or strike the FAC on similar grounds,  
 3 as well as on other grounds unique to them. Rich Decl., ¶ 3.

4 Because Defendants have been served with the FAC on various separate  
 5 dates, and other defendants have not yet been served, it is in the interests of justice  
 6 and judicial economy for the Court to stay the deadlines for Defendants' responses  
 7 to the FAC pending the setting of a common date for Defendants' anticipated  
 8 motions to dismiss and/or strike the FAC, a unified briefing schedule for such  
 9 motions, and a common hearing date for these motions. Rich Decl., ¶ 4.

10 Moreover, because all of the 26 Plaintiffs are proceeding *pro se*, it is  
 11 impossible for Defendants to meaningfully meet and confer with each of the  
 12 Plaintiffs pursuant to Local Rule 7-3, if, indeed, Defendants are required to meet  
 13 and confer with each of the 26 Plaintiffs in advance of filing their motions to  
 14 dismiss and/or strike, or any other motion in this case. Rich Decl., ¶ 5. Further, of  
 15 the 26 Plaintiffs, only one (Plaintiff Middleton) has provided a phone number or  
 16 email at which he can be contacted. *Id.*

17 Defendants believe that it is in the interests of judicial economy and all  
 18 parties that the Court set a status conference for the purpose of setting a common

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 (...continued)

20 school does not violate the Free Exercise Clause"); *Workman v. Mingo County Sch.*,  
 21 667 F. Supp.2d 679, 690-691 (S.D. W. Va. 2009) ("a requirement that a child must  
 22 be vaccinated and immunized before it can attend the local public schools violates  
 23 neither due process nor . . . the equal protection clause of the Constitution"),  
 24 affirmed *Workman v. Mingo County Bd. of Educ.*, 419 F. App'x 348, 353-54 (4th  
 25 Cir. 2011) (unpublished); *Boone v. Boozman*, 217 F. Supp.2d 938, 956 (E.D. Ark.  
 26 2002) ("the question presented by the facts of this case is whether the special  
 27 protection of the Due Process Clause includes a parent's right to refuse to have her  
 28 child immunized before attending public or private school where immunization is a  
 precondition to attending school. The Nation's history, legal traditions, and  
 practices answer with a resounding 'no.'). These precedents were recently applied  
 by the U.S. District Court for the Southern District of California to deny the motion  
 for preliminary injunction filed by another group of plaintiffs challenging SB 277,  
 in the matter entitled *Whitlow, et al. v. Department of Education et al.*, S.D. Cal.  
 Case No. 3:16-cv-01715-DMS-BGS (*Whitlow*), after which the plaintiffs in that  
 case dismissed their claims. See Rich Decl., Exh. 1.



1 date for Defendants’ responses to the FAC, a unified briefing schedule for the  
2 anticipated motions to dismiss and/or strike, and other procedural orders, including,  
3 without limitation an order relieving Defendants of their meet and confer  
4 obligations, if any, under Local Rule 7-3. Rich Decl., ¶ 6.

5 Without the relief requested herein, the anticipated motions to dismiss and/or  
6 strike the FAC by Defendants Brown and the State of California will be due as  
7 early as September 30, 2016, and these Defendants may be required to meet and  
8 confer with each of the 26 Plaintiffs as early as September 23, 2016 under Local  
9 Rule 7-3, which is impossible given that 25 of the Plaintiffs can only be reached  
10 through the U.S. Mail. Rich Decl., ¶ 7.

11 Defendants understand and believe that other defendants in this case who  
12 have been served will be represented by the Office of Legislative Counsel, which  
13 concurs with the relief requested herein. Rich Decl., ¶ 8.

14 Because there are 26 separate Plaintiffs proceeding *pro se*, and due to  
15 exigency of the relief sought in this *ex parte* application, Defendants have been  
16 unable to meet and confer with Plaintiffs pursuant to Local Rules 7-3 and 7-19.

17 **CONCLUSION**

18 For the reasons stated herein, Defendants respectfully request that this Court  
19 grant their *Ex Parte* Application for an order (1) to stay the deadlines for filing  
20 Defendants’ responses to Plaintiffs’ FAC until such time as all defendants named in  
21 the FAC have been served; and (2) setting a status conference for the purpose of  
22 directing a unified briefing schedule for the anticipated motions to dismiss the FAC  
23 by the defendants named in the FAC, including Defendants herein, and to relieve  
24 Defendants of their obligation under Local Rule 7-3, if any, to meet and confer with  
25 each of the Plaintiffs in advance of filing any motions with this Court.

1 Dated: September 22, 2016

Respectfully submitted,

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KAMALA D. HARRIS  
Attorney General of California

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RICHARD T. WALDOW

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ELIZABETH S. ANGRES  
Supervising Deputy Attorneys  
General

5

ELIZABETH G. O'DONNELL

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JACQUELYN Y. YOUNG

Deputy Attorneys General

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*/s/ Jonathan E. Rich*

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JONATHAN E. RICH

Deputy Attorney General

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*Attorneys for Defendants Governor  
Edmund G. Brown, Jr., and the State  
of California*

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**DECLARATION OF JONATHAN E. RICH**

I, Jonathan E. Rich, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am a Deputy Attorney General with the Office of the Attorney General, counsel for Defendants Governor Edmund G. Brown, Jr., and the State of California in this case. As such, I have personal knowledge of the facts stated herein:

2. Defendants Brown and the State of California were served with the FAC on September 9, 2016. I am informed by Cara L. Jenkins, Deputy Legislative Counsel, Office of Legislative Counsel, that the defendants named in the FAC who are state legislators, and two defendants identified as spouses of legislators, were served on September 9, 12, 15, 16 and 21, 2016. Other defendants, including the spouses of many of the defendants named as legislators in the FAC, have apparently not been served as of the filing of this *ex parte* application.

3. Defendants intend to respond to the FAC with motions to dismiss and/or strike the FAC under Rule 12 of the Federal Rules of Civil Procedure, including, without limitation, on the grounds that Plaintiffs' claims against Defendant the State of California are barred by the Eleventh Amendment; Plaintiffs' claims against Defendant Brown are barred by the Eleventh Amendment, the *Noerr-Pennington* immunity doctrine, and the doctrine of qualified immunity; the enactment of Senate Bill 277 does not violate any recognized rights of the Plaintiffs because the U.S. Supreme Court, the California Supreme Court and various other federal and state courts have repeatedly and uniformly held that mandatory vaccination statutes are within the legitimate and compelling interests of the states to protect the public health from the spread of dangerous communicable diseases; and that Plaintiffs have failed to state a plausible claim for a violation of the federal RICO statute or any other alleged conspiracy or other alleged unlawful conduct by and among the Defendants. I understand through conversations with Ms. Jenkins

1 that other defendants who have been served with the FAC intend to file motions to  
2 dismiss and/or strike the FAC on similar grounds, as well as on other grounds  
3 unique to them.

4 4. Because Defendants have been served with the FAC on various separate  
5 dates, and other defendants have not yet been served, it is in the interests of justice  
6 and judicial economy for the Court to stay the deadlines for Defendants' responses  
7 to the FAC pending the setting of a common date for Defendants' anticipated  
8 motions to dismiss and/or strike the FAC, a unified briefing schedule for such  
9 motions, and a common hearing date for these motions.

10 5. Because all of the 26 Plaintiffs are proceeding *pro se*, it is impossible for  
11 Defendants to meaningfully meet and confer with each of the Plaintiffs pursuant to  
12 Local Rule 7-3, if, indeed, Defendants are required to meet and confer with each of  
13 the 26 Plaintiffs in advance of filing their motions to dismiss and/or strike, or any  
14 other motion in this case. Further, of the 26 Plaintiffs, only one (Plaintiff  
15 Middleton) has provided a phone number or email at which he can be contacted.

16 6. Defendants believe that it is in the interests of judicial economy and all  
17 parties that the Court set a status conference for the purpose of setting a common  
18 date for Defendants' responses to the FAC, a unified briefing schedule for the  
19 anticipated motions to dismiss and/or strike, and other procedural orders, including,  
20 without limitation an order relieving Defendants of their meet and confer  
21 obligations, if any, under Local Rule 7-3.

22 7. Without the relief requested herein, the anticipated motions to dismiss  
23 and/or strike the FAC by Defendants Brown and the State of California will be due  
24 as early as September 30, 2016, and these Defendants may be required to meet and  
25 confer with each of the 26 Plaintiffs as early as September 23, 2016 under Local  
26 Rule 7-3, which is impossible given that 25 of the Plaintiffs can only be reached  
27 through the U.S. Mail.  
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1           8. I understand from Ms. Jenkins that the state legislators and their spouses  
2 who have been served will be represented by the Office of Legislative Counsel,  
3 which concurs with the relief requested herein.

4           9. Because there are 26 separate Plaintiffs proceeding *pro se*, and due to  
5 exigency of the relief sought in this *ex parte* application, Defendants have been  
6 unable to meet and confer with Plaintiffs pursuant to Local Rules 7-3 and 7-19.

7           10. Attached hereto and made a part hereof is a true and correct copy of the  
8 Order dated August 25, 2016, denying plaintiffs' motion for preliminary injunction  
9 in that certain matter entitled *Whitlow, et al. v. Department of Education et al.*, S.D.  
10 Cal. Case No. 3:16-cv-01715-DMS-BGS (*Whitlow*), after which the plaintiffs in  
11 that case dismissed their claims.

12           I declare under penalty of perjury under the laws of the United States and the  
13 State of California that the foregoing is true and correct and that this declaration  
14 was executed in Los Angeles, California on the below date.

15 Dated: September 22, 2016

  /s/ Jonathan E. Rich  
  JONATHAN E. RICH, Declarant

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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 September 22, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS’ EX PARTE APPLICATION FOR AN ORDER (1) TO STAY THE DEADLINES FOR DEFENDANTS’ RESPONSES TO PLAINTIFFS’ FIRST AMENDED COMPLAINT; AND (2) SETTING A STATUS CONFERENCE; DECLARATION OF DEPUTY ATTORNEY GENERAL JONATHAN E. RICH**

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 September 22, 2012, I caused to be delivered the foregoing document(s) by **overnight courier FedEx** 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 September 22, 2016, at Los Angeles, California.

Jonathan E. Rich  
Declarant

/s/ Jonathan E. Rich  
Signature

**SERVICE LIST**

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