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

14 Travis Middleton, et al., ) Case No. 2:16-cv-05224-SVW-AGR  
15 )  
16 Plaintiffs, ) **MEMORANDUM OF POINTS AND**  
17 ) **AUTHORITIES IN SUPPORT OF**  
18 v. ) **LEGISLATIVE DEFENDANTS’**  
19 Richard Pan, et al., ) **MOTION TO DISMISS**  
20 ) **PLAINTIFFS’ FIRST AMENDED**  
21 Defendants. ) **COMPLAINT**  
22 ) [F.R. Civ. P., Rule 12(b)(1) and (6)]  
23 )  
24 ) Date: December 13, 2016  
Time: 10:00 a.m.  
25 )  
26 ) Courtroom B, Eighth Floor  
27 ) Hon. Alicia G. Rosenberg  
28 )

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1 **I. INTRODUCTION**

2 Plaintiffs’ First Amended Complaint (FAC), spanning over 65 pages and almost  
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4 200 paragraphs, is a final attempt by Plaintiffs to express their dissatisfaction with the  
5  
6 passage of Senate Bill 277 (Ch. 35, Stats. 2015, hereafter “SB 277”), California’s  
7  
8 “mandatory vaccine bill” that went into effect on July 1, 2016. The FAC confusingly  
9  
10 intertwines conspiracy theory rhetoric with allegations of criminal misconduct by  
11  
12 Members of the California Legislature. Adding to the confusion, and in what can only  
13  
14 be described as a bad faith effort to target the families of the elected Members of the  
15  
16 Legislature, Plaintiffs arbitrarily name as defendants the innocent spouses and  
17  
18 significant others of the Members (collectively “Spouses” or “Spouse Defendants”).  
19  
20 As to both the Members and Spouses (collectively “Legislative Defendants”), the  
21  
22 FAC is bereft of any factual allegations to support Plaintiffs’ convoluted “conspiracy”  
23  
24 claims of fraudulent activities. Instead, Plaintiffs offer nothing but unsupported  
25  
26 conclusory allegations and legal conclusions. Yet Plaintiffs seek millions of dollars in  
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28 damages and, ironically, an order mandating the inoculation all of the named  
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30 Defendants. FAC, p. 66, ¶13; p. 67, ¶16.

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1 Legislative Defendants bring this Motion to Dismiss pursuant to the Federal  
2 Rules of Civil Procedure, Rule 12(b). Not only does the FAC fail to provide any facts  
3 that would allow Legislative Defendants to reasonably or meaningfully respond to  
4 Plaintiffs' allegations, but it is clear that Plaintiffs have not – and cannot – allege any  
5 facts to state a claim against Legislative Defendants. Moreover, Members of the  
6 Legislature enjoy both legislative immunity and Eleventh Amendment immunity for  
7 any allegations that Plaintiffs *could* make in an amended complaint. Therefore,  
8 Legislative Defendants respectfully request that this Court dismiss the entire FAC  
9 with prejudice.  
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## 13 **II. STATEMENT OF FACTS**

14 Plaintiffs' FAC appears to allege a vast conspiracy of criminal actions taken by  
15 Legislative Defendants. Specifically, Plaintiffs contend that select Members of the  
16 California Legislature received payments from top drug companies in exchange for  
17 their votes for SB 277, the mandatory vaccine bill. Plaintiffs contend that they have  
18 been deprived of certain constitutional rights as a direct result of the enactment of SB  
19 277. FAC, ¶ 134.  
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23 Among others, the FAC names as defendants 29 Members of the California  
24 Legislature, including 15 Senators and 14 Assembly Members. In addition, Plaintiffs  
25 have sued 18 spouses or significant others of the named Members. At the *ex parte*  
26 hearing held on October 6, 2016, Plaintiff Travis Middleton, on behalf of all of the  
27  
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1 Plaintiffs, represented to the court that Plaintiffs would be pursuing this matter against  
2 just two of the Spouse Defendants: Senator Richard Pan’s wife, Wen-Li Wang, and  
3 Senator Lois Wolk’s husband, Bruce Wolk. Docket #96, Court’s Minute Order dated  
4 October 6, 2016.  
5

6 **III. PLAINTIFFS FAIL TO ALLEGE FACTS TO SUPPORT ANY**  
7 **COGNIZABLE CAUSE OF ACTION AS TO LEGISLATIVE**  
8 **DEFENDANTS.**

9 **A. Standard of Review.**

10 A party may bring a motion to dismiss a complaint for “failure to state a claim  
11 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Such a motion tests the  
12 legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
13 Although a court ruling on such a motion must accept as true facts alleged in the  
14 complaint, it is not required to accept as true conclusory allegations or legal  
15 conclusions. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.  
16 1995); *Davis v. Astrue*, 513 F. Supp. 2d 1137, 1143 (N.D. Cal. 2007). Dismissal of a  
17 challenged claim is appropriate where there is a “lack of a cognizable legal theory or  
18 the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*  
19 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).  
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25 Although federal pleading standards are not burdensome – Rule 8 requires that  
26 a complaint include only a “short and plain statement of the claim showing that the  
27 pleader is entitled to relief” – a plaintiff’s obligation “requires more than labels and  
28



1 conclusions, and a formulaic recitation of the elements of a cause of action.” *Bell*  
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 167 L. Ed. 2d 929, 127 S. Ct. 1955  
3 (2007). While a court must accept as true all factual allegations, threadbare recitals of  
4 the elements of a claim, supported by mere conclusory statements, do not suffice. *Id.*  
5 In other words, a plaintiff must plead more than “an unadorned, the-defendant-  
6 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 173 L. Ed.  
7 2d 868, 129 S. Ct. 1937 (2009). Thus, in order to survive a motion to dismiss, the non-  
8 conclusory “factual content,” and reasonable inferences from that content, must be  
9 plausibly suggestive of a claim entitling the plaintiff to relief. *Moss v. U.S. Secret*  
10 *Service*, 572 F.3d 962, 970 (9<sup>th</sup> Cir. 2009) (quoting *Ibqual*, 556 U.S. at 679).

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15 **B. The First Amended Complaint alleges no facts that support a claim**  
16 **against any Legislative Defendant.**

17 The FAC is replete with unsupported allegations that provide no basis to  
18 impose liability against any Legislative Defendant. This is particularly true as to the  
19 two remaining Spouse Defendants against whom Plaintiffs have expressed an intent to  
20 pursue this action. The FAC pleads no allegations specific to Defendants Wen-Li  
21 Wang and Bruce Wolk. Even generally, there is but a single paragraph in the FAC  
22 (out of 198) that pertains to the Spouse Defendants. In that paragraph, Plaintiffs  
23 summarily claim that “Defendant legislators’ spouses have conspired to aid, abet,  
24 encourage, and supported the Defendant legislators in their corrupt and criminal  
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1 enterprises while receiving the financial benefit of their public officials' corrupt  
2 activities." FAC, ¶117. The FAC contains no factual allegations revealing what Ms.  
3 Wang or Mr. Wolk or, for that matter, any of the Spouse Defendants did in support of  
4 the alleged conspiracy. There are no specific facts plead as to any of them.<sup>1</sup> Certainly  
5 there is nothing in the FAC to put any of the Spouses on notice as to claims against  
6 them so that they can meaningfully respond to them.  
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9 As to the named Members of the Legislature, Plaintiffs also fail to plead any  
10 factual allegations so as to apprise these Defendants what conduct they are alleged to  
11 have engaged in that gives rise to Plaintiffs' claims. Plaintiffs' FAC makes a broad,  
12 nonspecific claim that the Defendant Members improperly received "bribes" from  
13 drug companies in exchange for enacting SB 277. FAC, ¶¶ 105, 108, 112, 116, 117,  
14 142. In support of this contention, Plaintiffs' FAC includes various charts and  
15 references describing monies that certain Members of the Legislature are alleged to  
16 have received from drug companies in 2013-2014. FAC, ¶ 106. Plaintiffs then make  
17 the unsupported accusation that these monies were offered by the drug companies and  
18 accepted by the Defendant Members as a bribe to enact SB 277. FAC, ¶¶ 106-108.  
19 Completely absent from the FAC are any factual allegations to support Plaintiffs'  
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26 <sup>1</sup> One need not be cynical to conclude that Plaintiffs' purpose in naming the 18  
27 Spouse Defendants, without pleading a single fact to support Plaintiffs' broad  
28 conspiracy claims against them, is to cause distress to the Members of the Legislature  
named as defendants by targeting their loved ones.

1 bribery accusations. There are no facts connecting any Member to the improper  
2 receipt of financial contributions.

3 Accordingly, Plaintiffs' "factual allegations" lack the requisite particularity to  
4 state a cause of action as to the Legislative Defendants. Plaintiffs' vague allegations  
5 leave the Legislative Defendants to guess, with no guidance, what each is alleged to  
6 have done, and how exactly Plaintiffs were harmed. Insofar as the FAC fails to  
7 provide clear allegations showing facts as to the Legislative Defendants that give rise  
8 to liability under any cause of action, it would be unreasonable and contrary to Rule  
9 8's "short and plain statement" requirements to require the Legislative Defendants to  
10 defend against Plaintiffs' action.  
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15 **C. Plaintiffs' First Amended Complaint should be dismissed with prejudice**  
16 **because it cannot be amended to state a cognizable right of action**  
17 **against any Legislative Defendant.**

18 As has been argued at length, the FAC makes no specific allegations as to any  
19 Legislative Defendant that give rise to liability under any cause of action. However, to  
20 the extent that Plaintiffs have named the Members of the Legislature for any actions  
21 performed within the scope of their legislative activities, Plaintiffs' claims are barred  
22 by the doctrines of legislative immunity and sovereign immunity, which will be  
23 discussed, in turn, below.  
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1                   ***1. The doctrine of legislative immunity bars any claim as to the actions of***  
2                   ***the Members of the Legislature relating to legislation.***

3                   Members of the State Legislature have complete immunity from civil liability  
4 for acts or omissions occurring within the sphere of their legislative activities. *Tenney*  
5 *v. Brandhove*, 341 U.S. 367, 95 L. Ed. 1019, 71 S. Ct. 783 (1951) (hereafter *Tenney*).  
6

7                   “The privilege of legislators to be free from arrest or civil process for what they  
8 do or say in legislative proceedings has taproots in the Parliamentary struggles of the  
9 Sixteenth and Seventeenth Centuries.” *Tenney, supra*, 341 U.S. at p. 372. In *Tenney*,  
10 the plaintiff sued members of a committee of the California Legislature, among others,  
11 under federal civil rights statutes claiming damages resulting from statements made  
12 about him at a committee hearing. The United States Supreme Court concluded that  
13 federal civil rights statutes did not alter the longstanding tradition of immunity from  
14 civil liability of legislators for conduct within the sphere of legislative activity. *Id.*, at  
15 p. 376; *see also Bogan v. Scott-Harris*, 523 U.S. 44, 49, 140 L. Ed. 2d 79, 118 S. Ct.  
16 966 (1998); *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 731-734, 64 L.  
17 Ed. 2d 641, 100 S. Ct. 1967 (1980); *Lake Country Estates Inc. v. Tahoe Regional*  
18 *Planning Agency*, 440 U.S. 391, 99 S. Ct. 1171, 59 L. Ed. 2d 401 (1979); *Gutierrez v.*  
19 *Mun. Ct. of S.E. Judicial Dist.*, 838 F.2d 1031, 1046 (9th Cir. 1988).  
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25                   This immunity applies to activities within “a field where legislators traditionally  
26 have power to act.” *Tenney, supra*, 341 U.S. at 379. This includes acts that are “an  
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1 integral part of the deliberative and communicative processes by which Members  
2 participate in committee and House proceedings with respect to the consideration and  
3 passage or rejection of proposed legislation or with respect to matters which the  
4 Constitution places within the jurisdiction of either House.” *Gravel v. United States*,  
5 408 U.S. 606, 625, 33 L. Ed. 2d 583, 92 S. Ct. 2614 (1972).  
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7  
8 Legislative immunity has been held to apply even to civil actions charging  
9 illegal activity –such as the taking of bribes – by legislators within the sphere of  
10 legislative activity, since the proof of the illegal act would necessarily involve delving  
11 into matters, including motive or purposes, underlying the legislative act. See  
12 *Thillens, Inc. v. Community Currency Exchange*, 729 F.2d 1128, 1131 (7th Cir. 1984).  
13  
14 Importantly, the immunity of a legislator for legislative acts applies to the very claims  
15 brought by Plaintiffs: civil RICO claims based on bribery. *Chappell v. Robbins*, 73  
16 F.3d 918, 921 (9<sup>th</sup> Cir. 1996). In *Chappell v. Robbins*, purchasers of insurance brought  
17 a civil RICO action against a former Member of the California Legislature. The  
18 plaintiffs claimed that they were forced to pay excessive premiums because of a bill  
19 that was enacted by the Legislature as a result of activities of the former Member,  
20 who, in fact, admitted to accepting bribes from insurance industry executives. The  
21 Ninth Circuit Court of Appeals held that the legislative privilege precluded the  
22 plaintiffs’ RICO claim based on bribery, as the alleged harm was not caused by the  
23 bribery, but rather by the passage of a bill pursuant to protected activity. *Id.*, at pp.  
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1 921-922.

2 In the case at issue, Plaintiffs similarly allege that they have been deprived of  
3 certain constitutional rights because SB 277 was enacted as a result of the efforts of  
4 certain Members of the Legislature made in exchange for “bribes” received from drug  
5 companies. As in *Chappell*, however, any harm to Plaintiffs was not the result of the  
6 alleged bribery and conspiracy scheme, but would have resulted from passage of SB  
7 277. Thus, to the extent that the actions of the Members of the Legislature in enacting  
8 SB 277 caused Plaintiffs harm, those actions would necessarily be official actions  
9 occurring within the sphere of the Members’ official legislative activities. Plaintiffs’  
10 FAC, therefore, cannot be amended to allege any claim arising from Defendant  
11 Members’ actions in enacting SB 277 because the Members are absolutely protected  
12 by legislative immunity from liability stemming from such legislative activities.  
13 Accordingly, Plaintiffs’ FAC should be dismissed for failure to state a claim, and  
14 leave to amend should be denied because no claim can be stated that would not be  
15 covered by legislative immunity.  
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22 ***2. The Eleventh Amendment bars claims against actions of the Members***  
23 ***of the Legislature taken in their official capacity.***

24 It has long been established that the doctrine of sovereign immunity bars suits  
25 against a state by its own citizens as well as citizens of other states. *Alden v. Maine*,  
26 527 U.S. 706, 712-713, 144 L. Ed. 2d 636, 119 S. Ct. 2240 (1999). This bar applies  
27  
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1 “regardless of relief sought.” *Pennhurst State School & Hospital v. Halderman*, 465  
2 U.S. 89, 98-99, 102, 79 L. Ed. 2d 67, 104 S. Ct. 900 (1984). A suit against a state  
3 agency is considered a suit against the state, and is thus barred by the Eleventh  
4 Amendment. *Id.*, at p. 100. Similarly, the Eleventh Amendment bars an action against  
5 a state employee, sued in his or her official capacity, because, with its funds at risk,  
6 “the state is the real, substantial party in interest.” *Id.*, at p.101; accord *Alden*, 527  
7 U.S. at pp.747-748; *Jackson v. Hayakawa*, 682 F.2d 1344, 1348 (9th Cir. 1982).

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11 Although the FAC provides no factual details related to the bribery and  
12 conspiracy that the Legislative Defendants are alleged to have engaged in, Plaintiffs’  
13 alleged harm is directly related to the passage of SB 277. Despite this, Plaintiffs are  
14 seeking damages in excess of two hundred million dollars “[f]or restitution to all  
15 Plaintiffs in an amount [sic] \$25,000 against each Defendant on each claim for relief  
16 and each count.” FAC, p. 66, ¶ 13. Members of the Legislature would generally be  
17 entitled to indemnification for any judgment against them. See Cal. Gov. Code §825.  
18 As such, it is the state’s treasury that is at risk to satisfy any judgment favorable to  
19 Plaintiffs. Accordingly, Plaintiffs’ FAC should be dismissed with prejudice because  
20 Plaintiffs cannot allege facts to state a cause of action that would not be barred by the  
21 Eleventh Amendment.

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26 **3. Plaintiffs’ RICO claims fail as a matter of law.**

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28 Even if Plaintiffs’ FAC were not barred by the doctrine of legislative immunity

1 and the Eleventh Amendment, it would nevertheless warrant dismissal under Rule  
2 12(b)(6), as Plaintiffs’ RICO claims fail as a matter of law.

3 To establish a civil claim under RICO, a plaintiff must allege “ ‘(1) conduct (2)  
4 of an enterprise (3) through a pattern (4) of racketeering activity.’ ” *Odom v. Microsoft*  
5 *Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473  
6 U.S. 479, 496, 105 S. Ct. 3275, 3285, 87 L. Ed. 2d 346 (1985)). The plaintiff must  
7 also establish the defendant’s RICO violation proximately caused his or her injury.  
8 *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S. 258, 265, 112 S. Ct. 1311, 1316, 117 L.  
9 Ed. 2d 532 (1992); *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir.  
10 2008); see also *Rezner v. Bayerische Hypo–Und Vereinsbank AG*, 630 F.3d 866, 873  
11 (9th Cir. 2010).

12 *a. The FAC fails to allege facts establishing the existence of an enterprise.*

13 “To show the existence of an enterprise..., plaintiffs must plead that the  
14 enterprise has (A) a common purpose, (B) a structure or organization, and (C)  
15 longevity necessary to accomplish the purpose.” *Eclectic Props. East, LLC v. Marcus*  
16 *& Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (citing *Boyle v. United States*, 556  
17 U.S. 938, 946, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009)); see also 18 U.S.C. §  
18 1961(4) (defining “enterprise” as “any individual, partnership, corporation,  
19 association, or other legal entity, and any union or group of individuals associated in  
20 fact although not a legal entity”).  
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1 Here, the FAC alleges no facts that establish the existence of an enterprise.  
2 Instead, the FAC provides conclusory statements, such as “Defendants and Co-  
3 conspirators formed an association-in-fact for the specific purpose of obstructing  
4 justice and extorting the constitutional rights of Plaintiffs and others similarly  
5 situated;” and “this association in fact, was an enterprise within the meaning of RICO,  
6 18 U.S.C. § 1961(4).” FAC, ¶¶ 125, 126, 144. However, alleging the existence of an  
7 enterprise is not the same as pleading facts that show its existence. The FAC fails to  
8 provide any details regarding the structure or organization of the alleged enterprise  
9 and, thus, does not plead sufficient facts to establish this element of a RICO claim.  
10  
11

12 *b. The FAC does not establish a pattern of racketeering activity.*

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

7  
8 *c. The FAC fails to establish that Plaintiffs suffered an injury from the alleged*  
9 *predicate acts.*

10 To have standing to sue under RICO, a plaintiff must allege that (1) he or she  
11 suffered an injury to business or property and that (2) defendant’s RICO predicate acts  
12 were the cause of the injury. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 495-97  
13 (1985) (plaintiff has standing only to the extent he has been injured “by the conduct  
14 constituting the [RICO] violation”). The alleged RICO violations must be the  
15 “proximate cause” that “led directly to” the plaintiff’s injury. *Holmes*, 112 S. Ct. at  
16 1317-18; *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 460-61 (2006); *Hemi Grp.,*  
17 *LLC v. City of N.Y., N.Y.*, 559 U.S. 1, 130 S. Ct. 983, 175 L. Ed. 2d 943 (2010).  
18 Proximate cause requires “some direct relation between the injury asserted and the  
19 injurious conduct alleged.” *Holmes*, 112 S. Ct. at 1316. “A link that is  
20 too remote, purely contingent, or indirect is insufficient.” *Hemi Grp.*, 130 S. Ct. at  
21 989.  
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1 Plaintiffs’ generalized allegations of injury are insufficient to meet this  
2 standard. Plaintiffs allege that they have “lost a substantial amount of their time,  
3 money, labor and constitutional freedoms” and that they have “been injured in their  
4 business and property in accordance with U.S.C. § 1962(a)(c)(d) [sic] as a direct and  
5 proximate result of the racketeering activities of Defendants...” FAC, ¶¶ 136, 152.  
6  
7 These conclusory statements provide no insight as to exactly how Plaintiffs have been  
8 injured. As such, Plaintiffs have failed to properly plead a RICO injury to business or  
9 property. Furthermore, Plaintiffs appear to blame their alleged injuries to business and  
10 property on Legislative Defendants’ allegedly unlawful activities, but the FAC  
11 contains no allegation showing a “direct causal link” between the alleged predicate  
12 acts and such injuries.  
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16 To summarize, Plaintiffs’ FAC contains no factual allegations establishing (1)  
17 an enterprise; (2) a pattern of racketeering activity; or (3) an identifiable injury to  
18 Plaintiffs. As such, Plaintiffs fail, as a matter of law, to state facts sufficient to state a  
19 RICO claim. And because the FAC lacks allegations of a cognizable RICO violation,  
20 Plaintiffs’ claims of conspiracy to violate RICO also fail, as a matter of law. See  
21 *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 559 (9th Cir. 2010).  
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#### 25 **IV. CONCLUSION**

26 For the foregoing reasons, Plaintiffs have failed to allege facts sufficient to  
27 constitute a cause of action against Legislative Defendants. Furthermore, since the  
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1 First Amended Complaint cannot be amended to state facts sufficient to constitute a  
2 cause of action as to any Legislative Defendant, the Court should grant the Motion to  
3 Dismiss as to Legislative Defendants without leave to amend.  
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6 Dated: October 26, 2016

Respectfully submitted,  
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Legislative Counsel

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