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9 *Attorneys for Defendants,*
 10 *Governor Edmund G. Brown, Jr.,*
 11 *Anne Gust, and the State of California*

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

<p>16 Travis Middleton, et al., 17 Plaintiffs, 18 v. 19 Richard Pan, et al., 20 Defendants.</p>	<p>2:16-cv-05224-SVW-AGR NOTICE OF MOTION AND MOTION BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN AND ANNE GUST TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT [Fed. R. Civ. P. 12(b)(6)] [Filed Concurrently with Memorandum of Points and Authorities] Date: December 13, 2016 Time: 10:00 a.m. Courtroom: B Judge: Hon. Alicia G. Rosenberg, Magistrate Judge Trial Date: None Set Action Filed: July 15, 2016</p>
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1 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on Tuesday, December 13, 2016, at 10:00
3 a.m., in Courtroom B, 8th Floor of the above entitled Court located at 312 N.
4 Spring St., Los Angeles, CA, 90012, Defendants State of California, Governor
5 Edmund G. Brown, in his official capacity, and Anne Gust (collectively,
6 Defendants), will and hereby do move this Court for an order dismissing Plaintiffs'
7 First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil
8 Procedure, on the following grounds:

- 9 1. Plaintiffs' claims against the State of California are barred under the
10 Eleventh Amendment.
- 11 2. Plaintiffs' claims against Governor Brown are barred under the Eleventh
12 Amendment, the doctrine of legislative immunity, and the doctrine of
13 immunity under *Eastern Railroad Presidents Conference v. Noerr Motor*
14 *Freight, Inc.*, 365 U.S. 127, 135 (1961) and *United Mine Workers v.*
15 *Pennington*, 381 U.S. 657, 670 (1965) (*Noerr-Pennington*).
- 16 3. Plaintiffs fail to assert a plausible claim against any of the moving
17 Defendants for a violation of Plaintiffs' constitutional rights because the
18 Legislature's enactment of California Senate Bill 277 (SB 277) is
19 constitutional under federal and state law, which for decades has
20 consistently held that (a) a state's exercise of its police powers in
21 protecting the public from communicable diseases is rationally based; and
22 (b) states have a compelling interest in requiring children to be vaccinated
23 before entering school.
- 24 4. Plaintiffs fail to state plausible claims for relief against all of the moving
25 Defendants under the federal Racketeer Influenced and Corrupt
26 Organizations (RICO) statutes.
- 27 5. Plaintiffs' claim for intentional infliction of emotional distress against all
28 of the moving Defendants fails to state a claim upon which relief may be

1 granted.¹

2 This Motion is made following the conference of Defendants' counsel and
3 Plaintiffs pursuant to Local Rule 7-3, which took place at the Status Conference on
4 October 7, 2016, under the guidance of the Magistrate Judge.

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

8 Dated: October 26, 2016

Respectfully submitted,

9 KAMALA D. HARRIS
10 Attorney General of California
11 RICHARD T. WALDOW
12 ELIZABETH S. ANGRES
13 Supervising Deputy Attorneys General
14 JONATHAN E. RICH
15 JACQUELYN Y. YOUNG
16 Deputy Attorneys General

17 */s/ Elizabeth G. O'Donnell*
18 ELIZABETH G. O'DONNELL
19 Deputy Attorney General
20 *Attorneys for Defendants*
21 *Governor Edmund G. Brown, Jr.,*
22 *Anne Gust, and the State of California*

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25 _____
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.