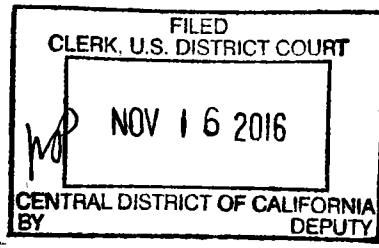


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6 REFUSAL FOR FRAUD – PAGES 1 OF 103
7 CENTRAL DISTRICT OF CALIFORNIA,
8 WESTERN DIVISION

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

13 Travis Middleton, et al.,
14 Plaintiff(s), Applicant
15 vs.

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

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

) 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
)

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

26 TO DEFENDANTS COUNSEL AND ALL PARTIES AT INTERST:
27 THIS Refusal for Fraud of Opposing Counsels’ Opposition (Motions to Dismiss)
28 to Parties Injured Complaint for violations of the “RICO” and Civil Rights laws,

1 18 U.S.C. Sections 1962, 1961, 1964, 42 U.S.C. 1983, 1986 and 18 U.S.C.
2 Sections 241 & 242, Pursuant To F.R.C.P. 9(b), 12(c), 56(c), & UCC 1-103.6.
3 THIS IS A COMMERCIAL AFFIDAVIT AND MUST BE RESPONDED TO ON
4 A POINT BY POINT BASIS.

5 -----
6 I, Travis Middleton, and “Plaintiffs”, hereinafter Parties Injured, being duly
7 sworn according to law, having first-hand knowledge of the facts herein, and being
8 competent to testify, do affirm that the facts herein are stated by the Parties
9 Injured, and are true, correct and complete, stated under the penalties of perjury
10 pursuant to the laws of the United States of America.

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

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

23 3). Definition: “Case Incorporated”, the formation of a legal body, with the quality
24 of perpetual existence and succession. (2). Consisting of an association of
25 numerous individuals. (3). Matters relating to the common purpose of the
26 association, within the scope of the powers and authorities conferred upon such
27 bodies with the quality of perpetual existence and successions. Ref. Black’s Law
28 Dictionary 67th, Pg. 690. “Case Incorporation” will establish the legal bounds of
the members of this lawful assembly to solve a specific “Case Number” and the
issues in motion.

1 4). This Incorporated Case is defined to be a Refusal for Fraud, Pursuant to
2 F.R.C.P. 9(b) giving rise to F.R.C.P. 19 and 12(b)(7) failure to join parties,
3 12(b)(6) Fails to state a claim upon which relief can be granted, and Rule 56
4 granting summary judgment in favor of Plaintiffs, Travis Middleton, Parties
5 Injured as to the alleged Opposition by opposing attorneys for Defendants and
6 assigned Incorporated Case No. 2:16-cv-05224-SVW-AGR as described above.

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

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

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

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

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

14 U.C.C. = Uniform Commercial Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (16). **Notice:** "Joining", was never completed between the Parties Injured herein,
9 and the "Defendants". The lack of "Joining" as described herein above within this
10 complaint give rise to F.R.C.P. 19 and 12(b)(7) failure to join parties, F.R.C.P.
11 12(b)(6), fails to state a claim upon which relief can be granted and Rule 56
12 granting summary judgment in favor of Plaintiffs, Parties Injured, and Travis
13 Middleton. The real-party Defendants have yet to appear personally or on the
14 record in this Case Incorporation by affidavit or deposition.

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

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

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

28 20). "Under no possible view, however, of the findings we are considering can they

1 be held to constitute a compliance with the statute, since they merely embody
2 conflicting statements of counsel concerning the facts as they suppose them to be
3 and their appreciation of the law which they deem applicable, there being,
4 therefore, no attempt whatever to state the ultimate facts by a consideration of
5 which we would be able to conclude whether or not the judgment was warranted."

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

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

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

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

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

28 (25). **Notice:** This Court is hereby Noticed pursuant to Federal Rule of Civil
Procedure 17 and Federal Rules of Evidence 201 & UCC 1-103.6 that Respondent

1 Attorneys' Oppositions are deemed Counterfeit Securities, and constitute
2 violations of Title 18 U.S.C. Section 4 of the commission of crimes cognizable by
3 a court of the United States, or any subdivision thereof under Title 18 U.S.C.
4 Section 513(a) "Whoever makes, utters or possesses a counterfeit security of a
5 State of a political subdivision thereof or of an organization, or whoever makes,
6 utters, or possesses a forged security of a State or political subdivision thereof or of
7 an organization, with intent to deceive another person, organization, or government
8 shall be fined not more than \$250,000 or imprisoned not more than ten years or
9 both".

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

15 26). The above referenced documents qualify as "counterfeit Securities" in that the
16 makers have stated them to have been officially signed and sealed as valid claims
17 of a duty, obligation, evidence of indebtedness, or right of action owed by them
18 against Parties Injured and Travis Middleton.

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

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

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

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

3 **FACTS AND FINDINGS OF LAW**

4 31). /////

5 32). /////

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

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

17 34). 1st Amendment: Freedom of speech and press, and to petition for a redress of
18 grievances.

19 35). 5th Amendment: No citizen shall be deprived of life, liberty, or property
20 without due process of law.

21 36). 6th Amendment: Right to a speedy and public trial, by an impartial jury of the
22 state and district wherein the crime shall have been committed, and informed of the
23 nature and cause of the accusation.

24 37). 7th Amendment: In suits of common law, where the value in controversy shall
25 exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried
26 except by jury.

27 38). 9th Amendment: The enumeration in the Constitution, of certain rights, shall
28 not be construed to deny or disparage others retained by the people.

1 39). 14th Amendment: No state shall make or enforce any law which shall abridge
2 the privileges or immunities of citizens of the U.S., nor shall any state deprive any
3 citizen of life, liberty, or property without due process of the law; nor to any citizen
4 the equal protection of the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 53). "Joining", was never completed between the Parties Injured herein, and the
24 named Defendants. The lack of Defendants' appearance or submitted affidavits on
25 the record of this Incorporated Case No. 2:16-cv-05224-SVW-AGR as described
26 herein above within this complaint give rise to F.R.C.P. 19 and 12(b)(7) failure to
27 join parties, F.R.C.P. 12(b)(6), fails to state a claim upon which relief can be
28

1 granted and Rule 56 granting summary judgment in favor of Plaintiffs, Parties
2 Injured.

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

7 (55). **Notice:** The Parties Injured herein accuses: the Attorneys in this action,
8 pursuant to Title 42 U.S.C.A. Section 1986, Title 18 USC Section 1961(1) - 1503
9 (relating to obstruction of justice), section 1951 (relating to interference with
10 commerce, robbery or extortion), section 1952 (relating to racketeering).

11 56). With reasonable expectations the Injured Parties herein believes that the
12 findings of fact presented and filed herein, of the United States Constitutional laws
13 and civil rights issues, including violations of the United States Constitution 14th
14 Amendment, show the Attorneys, did “perjure their oaths”.

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

25 58). The Parties Injured herein accuses the Attorneys of: “Perjury of Oath of
26 Office”, Perjury; Inforjudgemental law, the willful assertion of as to a matter of
27 fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as
28 part of his or her evidence, either upon oath or in any form allowed by law to be

1 substituted for an oath, whether such evidence is given in open court, or in an
2 affidavit, or otherwise, such assertion being material to the issue or point of inquiry
3 and known to such witness to be false. Perjury is a crime committed when a lawful
4 oath is administered, in some judicial proceeding, to a citizen who swears willfully,
5 absolutely, and falsely, in matters material to the issue or point in question.

6 Reference. Gatewood v State, 15 MD. App. 314, 290 A.2d 551, 553; F.R.C.P. Rule
7 9(b), 12(d)1,2,7; Title 42 U.S.C. 1986, 1985, 1983 note 349, 14th Amendment U.S.
8 Constitution.

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

14 60). The Parties Injured herein is accusing the Attorneys with perjury to proceed
15 by fraud; perjury of due process, 14th and 5th Amendment. Further references Title
16 18 U.S.C.A. 1621; a citizen is guilty of perjury if in any official proceeding he or
17 she makes a false statement or swears or affirms the truth of a statement previously
18 made, when the statement is material and he or she does not believe it to be true.
19 Reference. Model Penal Code section 241.1, F.R.C.P. 9(b) and Rule 12(d).

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

1 the Parties Injured herein, and 42 U.S.C.A. 1983 for the injury of Constitutional
2 Rights 4th, 5th, 7th, 9th and 14th Amendment Equal Protection of the law.

3 (62). **Notice: Title 42 U.S.C.A. 1986 “Action for neglect to prevent”**, Every
4 citizen who having knowledge that any of the wrongs conspired to be done, and
5 mentioned in section Title 42 U.S.C. 1985 of this title, are about to be committed,
6 and having power to prevent or aid in preventing the commission of the same,
7 neglects or refuses to do so, if such wrongful act be committed, shall be liable to
8 the party injured, or citizens legal representative, for all damages caused by such
9 wrongful act, which such citizen by reasonable diligence could have prevented;
10 and such damages may be recovered in an action on the case; and any number of
11 citizens guilty of such wrongful neglect or refusal may be joined as a party in
12 action.

13 63). The Parties Injured herein accuses Attorneys of “Perjury of Oath of Office”, a
14 Tort. A privilege or civil wrong or injury for which the court will provide a remedy
15 imposed by general law or otherwise upon all citizens occupying the relation to
16 each other which is involved in a given transaction. Reference. Coleman v.
17 California yearly meeting of Friends Church, 27 Cal. App. 2d. 579, 81 P. 2d 469,
18 470, Title 42 U.S.C.A. 1983 note 319, 333, 337, 349, 350, 351, and 352.

19 64). The Parties Injured herein accuses Attorneys of “Perjury of Oath” and
20 Falsification, by fraud and deception, fails to correct a false impression which the
21 deceiver previously created or reinforced, or which the deceiver knows to be
22 influencing another to whom the citizen stands in a “fiduciary” or confidential
23 relationship. Reference. F.R.C.P. 9(b) and 12(d), Title 42 U.S.C.A. 1986, 1985.
24 The Parties Injured herein is witness with first-hand knowledge accusing Judges
25 and Attorneys as witness of fraud and for their neglect to stop the wrongs, for
26 equal protection of the law and due process. However, the fraud continues as no
27 citizen has been prosecuted to date. The legal system is protecting its own,
28

1 operating under “Policy and Custom”, Title 42 U.S.C.A. 1983 Note 319, 337, to
2 violate rights in denying 14th and 5th Amendments due process.

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

6 66). The Parties Injured herein accuses Attorneys of; “Extortion”, perjury of oath,
7 (commerce) Title 42 U.S.C.A 1985 (2) Ref. Obstructing Justice: intimidating party,
8 witness, (2) if two or more citizens in any state or territory conspire to deter, by
9 force, intimidation, or threat, any party or witness in any court of the United States
10 form “attending such court or from testifying to any matter pending” therein,
11 freely, fully, and truthfully, or to injure such party or witness in his body or
12 property on account of his having so attended or testified, or to influence the
13 verdict, presentment, or indictment of any kind of grand or petit jury or property on
14 account of any verdict, presentment, or indictment lawfully assented to by him, or
15 of his being or having been such juror, or if two of more citizens conspire for the
16 purpose of impeding, hindering, obstructing, or defeating, in any matter, the due
17 course of justice in any state or territory, with intent to deny to any citizen the
18 equal protection of the law, or to injure him or his property for lawfully enforcing,
19 or attempting to enforce, the right of any citizen, or class of citizens, to the equal
20 protection of the law.

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

24 **(68). Notice: Title 42 U.S.C.A. 1985 (3) Depriving citizen of rights or**
25 **privileges;** if two or more citizens in any state or territory conspire to go in
26 disguise, for the purpose of depriving, either directly or indirectly, any citizen or
27 class of citizens of the equal protection of the laws, or of equal privileges and
28 immunities under the laws; or for the purpose of preventing or hindering the

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

12 69). The Parties Injured herein is accusing Attorneys of Perjury of Oath of Office.
13 “Falsification”;

14 No citizen shall knowingly make a false statement, or knowingly swear or
15 affirm the truth of a false statement previously made, when any of the following
16 applies:

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

22 (70). **Notice: Title 42 U.S.C.A. 1985 Pg. 36-37, Note 69:** Damages in claim for
23 violation of U.S. constitutionally guaranteed rights damages are recovered, normal
24 damages may be presumed, and nominal damages may in appropriate
25 circumstances support award of exemplary damages, Tracy V. Robbins, D.C.S.C.
26 1966, 40 Fed. 108 Appeal Dismissed 373 F. 3D 13.

27 (71). **Notice: Title 42 U.S.C.A. 1983 P77 No. 39:** In order to establish personal
28 liability part of government official in federal civil rights law action, under Title 42
U.S.C. 1983, it is enough to show that official acting under color of law caused

1 deprivation of Constitutional Right in contrast. Government entity is liable in
2 official capacity suit under Title 42 U.S.C. only when entity is moving force
3 behind deprivation. Thus requiring entity policy or custom to have played a part in
4 violation of Federal law. Ref. Kentucky V. Graham 1985 475, US 159 85 L.Ed. 2d.
5 114, 105 S. Ct. 3099.

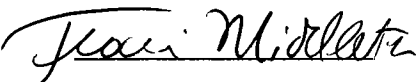
6 72). Bar. The whole body of attorneys and counselors, or the members of the legal
7 profession, collectively, who are figuratively called the "bar", from the place
8 which they usually occupy in court.

9 WHEREFORE:

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

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

18
19
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21
22
23
24 Respectfully Submitted,

25 

26 Travis Middleton

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

Dated this November 14, 2016

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Respectfully submitted,
Travis Middleton
Travis Middleton
Plaintiff, Pro Se

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

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

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

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

By: *Denise Michele Derusha*
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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
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By: *Paige Murphy*
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Lori Strantz
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By: *Anwanur Gielow*
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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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

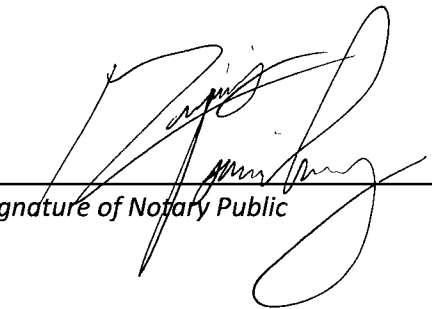
COUNTY OF Santa Barbara }

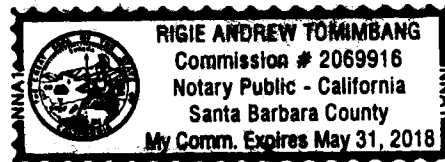
Subscribed and sworn to (or affirmed) before me on this 12 day of November, 2016
Date Month Year

by Travis Middleton

Name of Signers

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

Signature: 
Signature of Notary Public



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OPTIONAL

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

Description of Attached Document

Title or Type of Document: Plaintiff's Refusal for fraud pursuant to Fed R. Civ. P. 12(b), UCC 1-103.6

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

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EXHIBIT A
-Counterfeit Security-
18 USC 513(a)

1 DIANE F. BOYER-VINE (SBN: 124182)

2 Legislative Counsel

3 ROBERT A. PRATT (SBN: 137704)

4 Principal Deputy Legislative Counsel

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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 Travis Middleton, et al.,

17 Plaintiffs,

18 v.

19 Richard Pan, et al.,

20 Defendants.

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

21 NOTICE OF LEGISLATIVE
22 DEFENDANTS' MOTION AND
23 MOTION TO DISMISS
24 PLAINTIFFS' FIRST AMENDED
25 COMPLAINT

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

27 Date: December 13, 2016

28 Time: 10:40 a.m.

Courtroom B, Eighth Floor

Hon. Alicia G. Rosenberg

Handwritten: Fraud Per F.R.C.P. 1-103.6

1 TO THE COURT AND ALL PARTIES HEREIN:

2 PLEASE TAKE NOTICE THAT on December 13, 2016, at 10:00 a.m., or as
3 soon as the matter may be heard by the Honorable Alicia G. Rosenberg in courtroom
4 8B of the above-entitled Court located at 312 North Spring Street, Los Angeles,
5 California 90012, Defendants Assembly Member Catharine Baker, Assembly Member
6 Richard Bloom, Assembly Member David Chiu, Assembly Member Jim Cooper,
7 Assembly Member Cristina Garcia (erroneously sued as Christina Garcia), Assembly
8 Member Lorena Gonzalez, Assembly Member Reginald Jones-Sawyer, Assembly
9 Member Evan Low, Assembly Member Adrin Nazarian, Assembly Member Bill
10 Quirk, Assembly Member Anthony Rendon, Assembly Member Mark Stone,
11 Assembly Member Jim Wood, Senator Ben Allen, Senator Jim Beall, Senator Marty
12 Block, Senator Kevin de Leon, Senator Robert Hertzberg, Senator Mark Leno,
13 Senator 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), and Bruce Wolk (collectively "Legislative Defendants") will and hereby
17 moves to dismiss this action under Rule 12(b)(6) of the Federal Rules of Civil
18 Procedure, on the following grounds:

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- 26 1. Plaintiffs' claims against Legislative Defendants are barred by the doctrine of
- 27 legislative immunity.
- 28

- 1 2. Plaintiffs' claims against Legislative Defendants are barred by the Eleventh
2 Amendment to the United States Constitution.
3
4 3. The First Amended Complaint fails to state a claim upon which relief can be
5 granted against Legislative Defendants under Rule 12(b)(6) of the Federal
6 Rules of Civil Procedure.
7
8 4. The First Amended Complaint does not comply with Rule 8 of the Federal
9 Rules of Civil Procedure.

10 This motion is based on this Notice of Motion, the Memorandum of Points and
11 Authorities in support thereof, the documents on file with the Court, such other
12 records and documents of which the Court may be requested to take judicial notice,
13 and any oral argument to the extent the Court deems such argument necessary.
14
15

16 This motion is made following a meet and confer conference pursuant to Local
17 Rule 7-3 between counsel for Legislative Defendants, Cara L. Jenkins, and *pro se*
18 Plaintiff Travis Middleton which took place beginning on September 13, 2016, and
19 ending on October 24, 2016.
20
21

22 Dated: October 26, 2016

Respectfully submitted,
DIANE F. BOYER-VINE
Legislative Counsel

23
24
25 By: /s/ Cara L. Jenkins
26 Cara L. Jenkins
27 Deputy Legislative Counsel
28 Attorneys for Legislative Defendants

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 2 ROBERT A. PRATT (SBN: 137704)
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9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

14 Travis Middleton, et al.,
 15 Plaintiffs,

17 v.

18 Richard Pan, et al.,
 19 Defendants.

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

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

[F.R. Civ. P. rule 12(b)(1) and (6)]

Date: December 13, 2016

Time: 10:00 a.m.

Courtroom B, Eighth Floor
 Hon. Alicia G. Rosenberg

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I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. PLAINTIFFS FAIL TO ALLEGE FACTS TO SUPPORT ANY COGNIZABLE CAUSE OF ACTION AS TO LEGISLATIVE DEFENDANTS. 3

 A. Standard of Review. 3

 B. The First Amended Complaint alleges no facts that support a claim against any Legislative Defendant. 4

 C. Plaintiffs’ First Amended Complaint should be dismissed with prejudice because it cannot be amended to state a cognizable right of action against any Legislative Defendant. 6

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

 2. The Eleventh Amendment bars claims against actions of the Members of the Legislature taken in their official capacity. 9

 3. Plaintiffs’ RICO claims fail as a matter of law. 10

 a. The FAC fails to allege facts establishing the existence of an enterprise. 11

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

 c. The FAC fails to establish that Plaintiffs suffered an injury from the alleged predicate acts. 13

IV. CONCLUSION 14

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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 passage of Senate Bill 277 (Ch. 35, Stats. 2015, hereafter "SB 277"), California's
6
7 "mandatory vaccine bill" that went into effect on July 1, 2016. The FAC confusingly
8 intertwines conspiracy theory rhetoric with allegations of criminal misconduct by
9
10 Members of the California Legislature. Adding to the confusion, and in what can only
11 be described as a bad faith effort to target the families of the elected Members of the
12
13 Legislature, Plaintiffs arbitrarily name as defendants the innocent spouses and
14
15 significant others of the Members (collectively "Spouses" or "Spouse Defendants").
16
17 As to both the Members and Spouses (collectively "Legislative Defendants"), the
18
19 FAC is bereft of any factual allegations to support Plaintiffs' convoluted "conspiracy"
20
21 claims of fraudulent activities. Instead, Plaintiffs offer nothing but unsupported
22
23 conclusory allegations and legal conclusions. Yet Plaintiffs seek millions of dollars in
24
25 damages and, ironically, an order mandating the inoculation all of the named
26
27 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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14 **II. STATEMENT OF FACTS**

15 Plaintiffs' FAC appears to allege a vast conspiracy of criminal actions taken by
16 Legislative Defendants. Specifically, Plaintiffs contend that select Members of the
17 California Legislature received payments from top drug companies in exchange for
18 their votes for SB 277, the mandatory vaccine bill. Plaintiffs contend that they have
19 been deprived of certain constitutional rights as a direct result of the enactment of SB
20 277. FAC, ¶ 134.
21
22

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
28

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
5 October 6, 2016.

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).
20
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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 (9th 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.¹ 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.
7
8

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 ¹ 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
4 Accordingly, Plaintiffs' "factual allegations" lack the requisite particularity to
5 state a cause of action as to the Legislative Defendants. Plaintiffs' vague allegations
6 leave the Legislative Defendants to guess, with no guidance, what each is alleged to
7 have done, and how exactly Plaintiffs were harmed. Insofar as the FAC fails to
8 provide clear allegations showing facts as to the Legislative Defendants that give rise
9 to liability under any cause of action, it would be unreasonable and contrary to Rule
10 8's "short and plain statement" requirements to require the Legislative Defendants to
11 defend against Plaintiffs' action.
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14
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
6 *v. Brandhove*, 341 U.S. 367, 95 L. Ed. 1019, 71 S. Ct. 783 (1951) (hereafter *Tenney*).

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).

20
21 This immunity applies to activities within “a field where legislators traditionally
22 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).
6

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 (9th Cir. 1996). In *Chappell v. Robbins*, purchasers of insurance brought
17
18 a civil RICO action against a former Member of the California Legislature. The
19 plaintiffs claimed that they were forced to pay excessive premiums because of a bill
20 that was enacted by the Legislature as a result of activities of the former Member,
21 who, in fact, admitted to accepting bribes from insurance industry executives. The
22 Ninth Circuit Court of Appeals held that the legislative privilege precluded the
23 plaintiffs’ RICO claim based on bribery, as the alleged harm was not caused by the
24 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
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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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10 Although the FAC provides no factual details related to the bribery and
11 conspiracy that the Legislative Defendants are alleged to have engaged in, Plaintiffs’
12 alleged harm is directly related to the passage of SB 277. Despite this, Plaintiffs are
13 seeking damages in excess of two hundred million dollars “[f]or restitution to all
14 Plaintiffs in an amount [sic] \$25,000 against each Defendant on each claim for relief
15 and each count.” FAC, p. 66, ¶ 13. Members of the Legislature would generally be
16 entitled to indemnification for any judgment against them. See Cal. Gov. Code §825.
17 As such, it is the state’s treasury that is at risk to satisfy any judgment favorable to
18 Plaintiffs. Accordingly, Plaintiffs’ FAC should be dismissed with prejudice because
19 Plaintiffs cannot allege facts to state a cause of action that would not be barred by the
20 Eleventh Amendment.
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26 **3. Plaintiffs’ RICO claims fail as a matter of law.**

27 Even if Plaintiffs’ FAC were not barred by the doctrine of legislative immunity
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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).

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

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18 “To show the existence of an enterprise..., plaintiffs must plead that the
19 enterprise has (A) a common purpose, (B) a structure or organization, and (C)
20 longevity necessary to accomplish the purpose.” *Eclectic Props. East, LLC v. Marcus*
21 *& Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (citing *Boyle v. United States*, 556
22 U.S. 938, 946, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009)); see also 18 U.S.C. §
23 1961(4) (defining “enterprise” as “any individual, partnership, corporation,
24 association, or other legal entity, and any union or group of individuals associated in
25 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.
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13 *b. The FAC does not establish a pattern of racketeering activity.*
14

15 The FAC also fails to allege facts showing a “pattern of racketeering activity.”
16 For civil liability to result from a substantive violation of RICO, a defendant must be
17 shown to have engaged in a “pattern of racketeering activity.” 18 U.S.C. §§ 1962(a),
18 (b), and (c). “Racketeering activity” is defined as the commission of various state and
19 federal offenses enumerated in 18 U.S.C. § 1961(1), such as mail fraud, wire fraud,
20 drug trafficking, murder, arson, gambling, bribery, extortion, or embezzlement. To
21 sustain a RICO claim, at least one of these offenses must involve a pattern. These acts
22 are called “predicate acts” of racketeering. A “pattern of racketeering activity”
23 requires at least two related acts of racketeering activity within a ten-year period. 18
24 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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First Amended Complaint cannot be amended to state facts sufficient to constitute a cause of action as to any Legislative Defendant, the Court should grant the Motion to Dismiss as to Legislative Defendants without leave to amend.

Dated: October 26, 2016

Respectfully submitted,
DIANE F. BOYER-VINE
Legislative Counsel

By: /s/ Cara L. Jenkins
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Deputy Legislative Counsel
Attorneys for Legislative Defendants

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12 Attorneys for Legislative Defendants

13 UNITED STATES DISTRICT COURT
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 Travis Middleton, et al.,
 17 Plaintiffs,

18 v.

19 Richard Pan, et al.,
 20 Defendants.

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

21) DECLARATION OF CARA L.
 22) JENKINS DEMONSTRATING
 23) COMPLIANCE WITH LOCAL
 24) RULE 7.3

25) Date: December 13, 2016
 26) Time: 10:00 a.m.

27) Courtroom B, Eighth Floor
 28) Hon. Alicia G. Rosenberg

Handwritten: 2:16-cv-1-103-6
 2:16-cv-05224-SVW-AGR
 103-2

1 DECLARATION OF CARA L. JENKINS

2 I, Cara L. Jenkins, state and declare as follows:

3
4 1. I am an attorney duly licensed to practice in the courts of the State of
5 California and the United States District Court, Central District of California. I am a
6 Deputy Legislative Counsel employed by the Office of Legislative Counsel, attorneys
7
8 for Defendants Assembly Member Catharine Baker, Assembly Member Richard
9 Bloom, Assembly Member David Chiu, Assembly Member Jim Cooper, Assembly
10 Member Cristina Garcia (erroneously sued as Christina Garcia), Assembly Member
11 Lorena Gonzalez, Assembly Member Reginald Jones-Sawyer, Assembly Member
12 Evan Low, Assembly Member Adrin Nazarian, Assembly Member Bill Quirk,
13
14 Assembly Member Anthony Rendon, Assembly Member Mark Stone, Assembly
15 Member Jim Wood, Senator Ben Allen, Senator Jim Beall, Senator Marty Block,
16
17 Senator Kevin de Leon, Senator Robert Hertzberg, Senator Mark Leno, Senator
18 Isadore Hall, Senator Jerry Hill, Senator Hannah-Beth Jackson, Senator Mike
19 McGuire, Senator Holly Mitchell, Senator Richard Pan, Senator Jeff Stone, Senator
20 Bob Wieckowski, Senator Lois Wolk, Wen-Li Wang (erroneously sued as Win-Li
21 Wang), and Bruce Wolk (collectively "Legislative Defendants"). The facts set forth
22
23 herein are of my own personal knowledge and, if called to testify, I could and would
24
25 testify competently thereto.
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1 2. On September 9, 2016, our office accepted service of process on behalf
2 of several Members of the Legislature of the First Amended Complaint (FAC) in the
3 action entitled *Middleton, et al. v. Pan, et al.* (United States District Court, Central
4 District of California, Case No. 2:16-cv-05224-SVW-AGR).
5

6 3. On September 13, 2016, after reviewing the FAC, I contacted Plaintiff
7 Travis Middleton, who is appearing *pro se*, by telephone to discuss a stipulation to file
8 a response to the FAC and to begin the meet and confer process as required by Local
9 Rule 7-3, with respect to a Motion to Dismiss Plaintiffs' FAC. Among other concerns,
10 I noted that the FAC contained no factual allegations regarding the spouses of the
11 Members of the Legislature and asked Mr. Middleton to clarify their involvement. Mr.
12 Middleton stated his belief that the spouses' liability arises from their marital
13 relationships with each of the Members and because the spouses had received "perks"
14 as a result.
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19 4. On October 6, 2016, Deputy Attorney General Jonathan Rich, counsel for
20 the State, Governor Brown, and First Lady Gust, appeared at an ex parte hearing on
21 behalf of all defendants, as directed by the Court. Docket # 72. At the hearing, the
22 Court supervised the meet and confer process between Defendants and Plaintiff Travis
23 Middleton on behalf of Plaintiffs for the Defendants' anticipated motions to dismiss
24 and/or strike the FAC. Docket # 96.
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28 5. On October 24, 2016, I telephoned Mr. Middleton to confirm my desire

1 to move forward with a Motion to Dismiss by the deadline established by the Court,
2 and reiterated my concerns about the deficiencies in the FAC with regard to the lack
3 of factual allegations related to the Members of the Legislature and their spouses. Mr.
4 Middleton stated that he understood my concerns, and did not indicate any potential
5 resolution.
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7

8 Executed on October 26, 2016, in Sacramento, California.

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10 By: /s/ Cara L. Jenkins
11 Cara L. Jenkins
12 Declarant
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Proposed Order

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Travis Middleton, et al.,
Plaintiffs,

v.

Richard Pan, et al.,
Defendants.

Case No. 2:16-cv-05224-SVW-AGR
**[PROPOSED] ORDER GRANTING
LEGISLATIVE DEFENDANTS'
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**
Date: December 13, 2016
Time: 10:00 a.m.
Courtroom B, Eighth Floor
Hon. Alicia G. Rosenberg

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 Assembly Member Reginald Jones-Sawyer, Assembly Member Evan Low, Assembly
7 Member Adrin Nazarian, Assembly Member Bill Quirk, Assembly Member Anthony
8 Rendon, Assembly Member Mark Stone, Assembly Member Jim Wood, Senator Ben
9 Allen, Senator Jim Beall, Senator Marty Block, Senator Kevin de Leon, Senator
10 Robert Hertzberg, Senator Mark Leno, Senator Isadore Hall, Senator Jerry Hill,
11 Senator Hannah-Beth Jackson, Senator Mike McGuire, Senator Holly Mitchell,
12 Senator Richard Pan, Senator Jeff Stone, Senator Bob Wieckowski, Senator Lois
13 Wolk, Wen-Li Wang (erroneously sued as Win-Li Wang), and Bruce Wolk
14 (collectively “Legislative Defendants”) in this matter came on for hearing before this
15 Court on December 13, 2016, pursuant to Court Order dated October 6, 2016.
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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 claim upon which relief can be granted.
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IT IS HEREBY ORDERED that Legislative Defendants' Motion to Dismiss is GRANTED. The First Amended Complaint in this case is ordered dismissed with prejudice as to the Legislative Defendants.

Dated: _____

Honorable Alicia G. Rosenberg

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 for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Jenkins, Cara on 10/26/2016 at 11:06 AM PDT and filed on 10/26/2016

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: 103

Docket Text:

NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants Ben Allen(individual), Ben Allen(Legislator sued in official capacity), Catharine Baker(Legislator sued in official capacity), Catharine Baker(individual), Jim Beall(individual), Jim Beall(Legislator sued in official capacity), Martin Jeffrey Block(individual), Martin Jeffrey Block("Marty", Legislator sued in

10/26/2016

CM/ECF - California Central District

official capacity), Richard Bloom(individual), Richard Bloom(Legislator sued in official capacity), David Chiu(Legislator sued in official capacity), David Chiu(individual), Jim Cooper(Legislator sued in official capacity), Jim Cooper(individual), Christina Garcia(Legislator sued in official capacity), Christina Garcia(individual), Lorena Gonzalez(Legislator sued in official capacity), Lorena Gonzalez(individual), Isadore Hall(individual), Robert Hertzberg(Legislator sued in official capacity), Robert Hertzberg(individual), Gerald A. Hill("Jerry", Legislator sued in official capacity), Gerald A. Hill("Jerry", individual), Hannah-Beth Jackson(individual), Hannah-Beth Jackson(Legislator sued in official capacity), Reginald Jones-Sawyer(individual), Reginald Jones-Sawyer(Legislator sued in official capacity), Mark Leno(individual), Mark Leno(Legislator sued in official capacity), Evan Low(individual), Evan Low(Legislator sued in official capacity), Mike McGuire(individual), Mike McGuire(Legislator sued in official capacity), Holly Mitchell(individual), Holly Mitchell(Legislator sued in official capacity), Adrin Nazarian(Legislator sued in official capacity), Adrin Nazarian, Richard Pan(individual), Richard Pan(Legislator sued in official capacity), Bill Quirk(individual), Bill Quirk(Legislator sued in official capacity), Anthony Rendon(Legislator sued in official capacity), Anthony Rendon(individual), Jeff Stone(individual), Jeff Stone(Legislator sued in official capacity), Mark Stone(individual), Mark Stone(Legislator sued in official capacity), Win-Li Wang(Legislator sued in official capacity), Win-Li Wang(individual), Bob Wieckowski(individual), Bob Wieckowski(Legislator sued in official capacity), Bruce Wolk(individual), Bruce Wolk(Legislator sued in official capacity), Lois Wolk (Legislator sued in official capacity), Lois Wolk (individual), Jim Wood(Legislator sued in official capacity), Jim Wood(individual), Kevin de Leon(Legislator sued in official capacity), Kevin de Leon(individual). Motion set for hearing on 12/13/2016 at 10:00 AM before Magistrate Judge Alicia G. Rosenberg. (Attachments: # (1) Memorandum of Points & Authorities, # (2) Declaration of Cara L. Jenkins, # (3) Proposed Order) (Jenkins, Cara)

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

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2:16-cv-05224-SVW-AGR Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

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10/26/2016

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Santa Barbara, CA 93110

Travis Middleton
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 Notice.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/26/2016] [FileNumber=22418724-0] [5c0c4ecae17c530374063b202f61315a59006dcb09e3255806cf9dc8c19fd623b2de730c77dfa7a0bacdb538ed12d3bfb5912056d0199988ee9229668131d0f1]]

Document description:Memorandum of Points & Authorities

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

Electronic document Stamp:CMECF.widgit.ProcessingWindowDestroy() >

[STAMP cacdStamp_ID=1020290914 [Date=10/26/2016] [FileNumber=22418724-1] [92d90421c25c1b2eedb8352e1fe72ed37fad45901cba84c7e68b055c8810d6121b25ddf4f251d16036451d5e1db964fd3a3b35c1262e97a1b0113b8b38f5bf0d]]

Document description:Declaration of Cara L. Jenkins

Original filename:C:\fakepath\Middleton_Jenkins Decl.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/26/2016] [FileNumber=22418724-2] [77b10197e906a25f6a675c44abc49cdc58fe17f357ec5436005e51f4c50545589d0e2403880e00ec3eddc1007095c7a9bba48fbf5cf7f09f4844fed083e256d5]]

Document description:Proposed Order

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

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=10/26/2016] [FileNumber=22418724-3] [004b2f06a2deafda7f0751a931675462a6440a378bc15317669bc8e9f30fe898e2ee0d1fb9daadba454a65ce668589ad3e7474098591af3547bda013705f9309]]

CERTIFICATE OF SERVICE

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

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

I hereby certify that on **October 26, 2016**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- NOTICE OF LEGISLATIVE DEFENDANTS' MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT
- MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEGISLATIVE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT
- DECLARATION OF CARA L. JENKINS DEMONSTRATING COMPLIANCE WITH LOCAL RULE 7-3
- [PROPOSED] ORDER GRANTING LEGISLATIVE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST 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 **October 26, 2016**, I caused to be delivered the foregoing document by FedEx overnight courier to the following non-CM/ECF participants listed on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **October 26, 2016**, at Sacramento, California.

Cara L. Jenkins

Declarant

/s/ Cara L. Jenkins

Signature

SERVICE LIST

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Jade Baxter 207 West Victoria Street Santa Barbara, CA 93101	Julianna Pearce 28780 My Way Oneals, CA 93645
Candyce Estave 430 East Rose Avenue Santa Maria, CA 93454	Denise Michelle Derusha 7125 Santa Ysabel, Apt. 1 Atascadero, CA 93422
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Rachil Vincent 4320 Viua Presada Santa Barbara, CA 93110	Jessica Haas 2715 Verde Vista Santa Barbara, CA 93105
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EXHIBIT B
-Counterfeit Security-
18 USC 513(a)

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

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

14
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 16 **Travis Middleton, et al.,**

17 Plaintiffs,

18 v.

19
 20 **Richard Pan, et al.,**

21 Defendants.

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]

22
 23
 24 Date: December 13, 2016
 Time: 10:00 a.m.
 25 Courtroom: B
 Judge: Hon. Alicia G. Rosenberg,
 26 Magistrate Judge
 Trial Date: None Set
 27 Action Filed: July 15, 2016
 28

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

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granted.¹

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

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

Dated: October 26, 2016

Respectfully submitted,

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

LA2016602117
52266451.doc

¹ Plaintiffs identify Governor Edmund G. Brown by his position of "Governor of California," as distinct from other Defendants who are identified as "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.

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 16 **Travis Middleton, et al.,**

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Defendants.

2:16-cv-05224-SVW-AGR

**[PROPOSED] ORDER GRANTING
 MOTION OF THE STATE OF
 CALIFORNIA, GOVERNOR
 EDMUND G. BROWN AND ANNE
 GUST TO DISMISS PLAINTIFFS'
 FIRST AMENDED COMPLAINT**

21
 22 Date: December 13, 2016
 Time: 10:00 a.m.
 23 Courtroom: B
 Judge: Hon. Alicia G. Rosenberg,
 Magistrate Judge
 24 Trial Date: None Set
 25 Action Filed: July 15, 2016

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

2 The motion of Defendants, State of California, Governor Edmund G. Brown,
3 in his official capacity, and Anne Gust (collectively, Defendants), in this matter
4 came on for hearing before this Court on December 13, 2016.

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

8 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants
9 is GRANTED. The First Amended Complaint in this case is ordered dismissed with
10 prejudice as to Defendants, State of California, Governor Edmund G. Brown, in his
11 official capacity, and Anne Gust.

12

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14 Dated: _____

Honorable Alicia G. Rosenberg

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21 16-cv-05224-SVW-AGR

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MOTION BY DEFENDANTS
STATE OF CALIFORNIA,
GOVERNOR BROWN AND ANNE
GUST TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT

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

24 [Filed Concurrently with
25 Memorandum of Points and
26 Authorities]

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6 Defendants), will and hereby do move this Court for an order dismissing Plaintiffs'
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13 immunity under *Eastern Railroad Presidents Conference v. Noerr Motor*
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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
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23 before entering school.
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This Motion is made following the conference of Defendants' counsel and Plaintiffs pursuant to Local Rule 7-3, which took place at the Status Conference on October 7, 2016, under the guidance of the Magistrate Judge.

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

Dated: October 26, 2016

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Attorneys for Defendants
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¹ Plaintiffs identify Governor Edmund G. Brown by his position of "Governor of California," as distinct from other Defendants who are identified as "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.

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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 AND ANNE
 GUST TO DISMISS PLAINTIFFS'
 FIRST AMENDED COMPLAINT**

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

Date: December 13, 2016
 Time: 10:00 a.m.
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 Judge: Hon. Alicia G. Rosenberg,
 Magistrate Judge
 Trial Date: None Set
 Action Filed: July 15, 2016

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs' First Amended Complaint (FAC), predicated on the claim that the
4 Governor, various state legislators, *and their spouses*, engaged in an unlawful
5 conspiracy to influence the enactment of California's mandatory child vaccination
6 statute, California Senate Bill 277 (Stats 2015 Ch. 35) (SB 277), should be
7 dismissed with prejudice because Plaintiffs' claims fall dramatically short of the
8 plausibility standard for stating claims on which relief may be granted.

9 Plaintiffs assert that SB 277 violates their constitutional rights by subjecting
10 them to "chemical and biological warfare for [Defendants'] financial gain and
11 profit." FAC, ECF No. 15, at 13, lines 2-3.

12 Even if there were a shred of plausibility to Plaintiffs' claims, and there is
13 none, their claims fail as a matter of law. The Eleventh Amendment prohibits suit
14 against the State, and by extension, the Governor in his official capacity, in federal
15 court. Moreover, the advocacy for and passage of legislation, as well as the
16 acceptance of campaign contributions, are protected activities under the *Neorr-*
17 *Pennington* immunity doctrine.

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

26 Plaintiffs' claims under the federal Racketeer Influenced and Corrupt
27 Organizations (RICO) statutes are also defective. RICO cannot be used to address
28 an alleged civil rights violation. As such, Plaintiffs have not pled "predicate acts"

1 upon which Plaintiffs can base their claims.

2 As to Defendant Anne Gust, she is only identified as the spouse of Governor
3 Brown, and no allegations are made regarding her alleged role in the purported
4 “conspiracy.” In fact, Plaintiffs offer no insight whatsoever as to why the spouses
5 of the Governor and the legislators have been named in this civil action.

6 When stripped of their implausible conspiracy theory, Plaintiffs’ claims are
7 premised on the misguided supposition that their subjective personal beliefs against
8 childhood vaccinations outweigh the health and safety of the millions of children
9 enrolled in California schools, the health and safety of the general public, and the
10 considered judgment of the California Legislature in addressing a significant public
11 health issue that embodies a core function of government: to protect the health and
12 safety of its citizens against preventable harm.

13 The public health and welfare must not be allowed to be jeopardized by the
14 subjective beliefs and unfounded conspiracy theories of a small minority of
15 individuals who, against all recognized scientific and legal authority, stubbornly
16 disregard the long-recognized safety and effectiveness of vaccines, and who fail to
17 accept the public health threat that their unsupported opinions pose to the lives of
18 others around them.

19 **STANDARD OF REVIEW**

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

24 The “plausibility” requirement serves to ensure that the “plain statement”
25 required under Rule 8 of the Federal Rules of Civil Procedure (Rule 8) has “enough
26 heft to ‘sho[w] that the pleader is entitled to relief.’” *Twombly*, 550 U.S. at 557.
27 Purely conclusory allegations will not suffice; “a plaintiff’s obligation to provide
28 the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and

1 conclusions” *Id.* at 555-556. Plaintiffs may not rely on wholly conclusory
2 allegations in the complaint and then simply hope that, through the discovery
3 process, the necessary facts will arise to support their claim. *Id.* at 557-558.

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

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

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

15 If a Government official is to devote time to his or her duties, and to
16 the formulation of sound and responsible policies, it is
17 counterproductive to require the substantial diversion that is attendant
to participating in litigation and making informed decisions as to how
it should proceed.

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

19 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a cognizable
20 legal theory, or (2) insufficient facts under a cognizable legal theory. *Conservation*
21 *Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011). On a Rule 12(b)(6) motion
22 to dismiss, all allegations of material fact are taken as true and construed in the light
23 most favorable to the nonmoving party. *Federation of African American*
24 *Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996). However, the
25 Court is not required to accept as true allegations that are merely conclusory,
26 unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden*
27 *State Warriors*, 266 F.3d 979, 988, as amended by 275 F.3d 1187 (9th Cir. 2001).
28

1 In evaluating a complaint under Rule 12(b)(6), the court may consider not
2 only the allegations contained in the complaint, but also matters properly subject to
3 judicial notice. *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas*
4 *Storage*, 524 F.3d 1090, 1096 (9th Cir. 2008). Additionally, the court need not
5 accept as true allegations that contradict matters properly subject to judicial notice.
6 *Sprewell*, 266 F.3d at 988.¹

7 While *pro se* pleadings are liberally construed, a *pro se* action should be
8 dismissed if, after careful consideration, the court concludes that the allegations of
9 the complaint disclose that no cognizable claim can be stated and that amendment
10 would be futile. *Cato v. United States*, 70 F.3d 1103, 1196 (9th Cir. 1995).

11 ARGUMENT

12 Plaintiffs' FAC asserts nine separate Claims for Relief: (1) violation of 18
13 U.S.C. § 1961 et seq. (RICO); (2) violation of 18 U.S.C. § 1962(a)(d) (RICO-
14 Conspiracy); (3) violation of 18 U.S.C. § 175 (Promoting the Sale and Use of
15 Biological Weapons); (4) violation of 18 U.S.C. § 178 (Promoting the Sale and Use
16 of Chemical Weapons); (5) violation of 18 U.S.C. § 241 (Infringement of

17 ¹ There is some question as to whether dismissal based on Eleventh
18 Amendment immunity should be analyzed under Rule 12(b)(6) or as a jurisdictional
19 issue under Rule 12(b)(1). *Elwood v. Drescher*, 456 F.3d 943, 949 (9th
20 Cir.2006)(12(b)(6)); but see *Savage v. Glendale Union High Sch.*, 343 F.3d 1036,
21 1040–44 (9th Cir.2003) (jurisdictional issue under Rule 12(b)(1)). The Ninth
22 Circuit has since attempted to reconcile these cases by calling Eleventh Amendment
23 immunity “quasi-jurisdictional.” *Bliemeister v. Bliemeister (In re Bliemeister)*, 296
24 F.3d 858, 861 (9th Cir. 2002). Since this motion is a facial challenge to the FAC,
25 the analysis is the same under both rules. See, e.g., *Hardesty v. Barcus*, Case No.
26 CV 11-103-M-DWM-JCL, 2012 U.S. Dist. LEXIS 28902, **8-9 (D. Montana,
27 January 20, 2012) (“[t]here is some confusion in the Ninth Circuit as to which of
28 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 Constitutional Rights); (6) violation of 18 U.S.C. § 242 (Deprivation of Rights);
2 (7) violation of 18 U.S.C. § 1983 (Violation of Civil Rights); (8) violation of 18
3 U.S.C. § 1986 (Civil Rights); (9) intentional infliction of emotional distress.

4 The defendant state legislators and their spouses and Anne Gust are named in
5 all of the foregoing Claims for Relief. The State of California and the Governor are
6 named in the First, Second and Ninth Claims for Relief, asserting violations of
7 RICO and intentional infliction of emotional distress. For the reasons discussed
8 below, each of these claims is facially implausible and, respectfully, should be
9 dismissed with prejudice.

10 **I. THE STATE OF CALIFORNIA AND GOVERNOR BROWN ARE IMMUNE**
11 **FROM SUIT IN THIS CASE**

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

14 Plaintiffs' First, Second and Ninth Causes of Action against the State of
15 California and Governor Brown are barred by the Eleventh Amendment, which
16 provides:

17 The judicial power of the United States shall not be construed to extend to any
18 suit in law or equity, commenced or prosecuted against one of the United
19 States by citizens of another State, or by citizens or subjects of any foreign
20 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)
25 (citation omitted).²

26 ² The Eleventh Amendment makes explicit reference only to the States'
27 immunity from suits "commenced or prosecuted against one of the United States by
28 Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S.
Const., Amdt. 11. The Supreme Court nevertheless has long recognized the
doctrine to apply to any suits by private parties against a State. *Alden v. Maine*, 527
U.S. 706, 712-713 (1999) ("The phrase [Eleventh Amendment immunity] is
convenient shorthand but something of a misnomer, for the sovereign immunity of
the States neither derives from nor is limited by the terms of the Eleventh
Amendment ... but is a fundamental aspect of the sovereignty which the States
(continued...)

1 A state agency is entitled to the same Eleventh Amendment immunity enjoyed
2 by the State when a judgment against the agency “would have had essentially the
3 same practical consequences as a judgment against the State itself.” *Lake Country*
4 *Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 401, 99 S. Ct.
5 1171, 1177, 59 L. Ed. 2d 401 (1979). Likewise, and most important for the
6 purposes of the current motion, the bar to jurisdiction imposed by the Eleventh
7 Amendment also applies to cases premised on federal questions and injunctions
8 against state officials. See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54
9 (1996); *Cory v. White*, 457 U.S. 85, 91 (1982); *Greater Los Angeles Council on*
10 *Deafness v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987). An official capacity suit is,
11 in all respects, to be treated as a suit against the State. See *Hafer v. Melo*, 502 U.S.
12 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991) (citing *Kentucky v. Graham*, 437
13 U.S. 159 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985). As a result, the Eleventh
14 Amendment bars Plaintiffs’ claims against the State as well as the Governor.³

15 While there exists an exception to the bar against naming a state official in his
16 or her official capacity, that exception is not applicable to the present case and the
17 facts pled. Under the doctrine established by *Ex Parte Young*, 209 U.S. 123 (1908),
18 the Eleventh Amendment does not bar suits to enjoin state officials from enforcing
19 *unconstitutional* statutes. *Id.* at 159-160. In accordance with its original rationale,
20 “the exception applies only where the underlying authorization upon which the
21 named official acts is asserted to be illegal[.]” *Papasan v. Allain*, 478 U.S. 265,
22 277 (1986). As a threshold matter, Plaintiffs’ claims do not satisfy the *Ex Parte*

23
24 (... continued)
enjoyed before the ratification of the Constitution, and which they retain today”).

25 ³ “The *Ex parte Young* exception does not apply to state law claims brought
26 against the state.” Therefore, state law based claims such as Plaintiffs’ Ninth claim
27 for intentional infliction of emotional distress are barred against state officials in
28 their official capacities as suits against the state itself. *McKinley v. Abbott*, 643 F.3d
403, 406 (5th Cir. 2011) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, supra,
465 U.S. at 106.)

1 *Young* exception because Plaintiffs have not plausibly asserted that SB 277 is
2 unconstitutional since, as discussed below, federal and state courts have uniformly
3 upheld the constitutionality of state mandatory vaccination statutes.

4 Even so, “the theory of *Young* has not been provided an expansive
5 interpretation.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 104
6 S. Ct. 900, 79 L. Ed. 2d 67 (1984)). For example, the *Ex Parte Young* exception
7 does not apply when the state is the “real, substantial party in interest,” as when the
8 “judgment sought would expend itself on the public treasury . . . or interfere with
9 public administration.” *Va. Office for Protection and Advocacy v. Stewart*, 131 S.
10 Ct. 1632, 1638 (2011 (quoting *Pennhurst*, 465 U.S. at 101, n. 11)). The exception
11 only allows suit to be brought against a state officer in federal court for the purpose
12 of enforcing the Supremacy Clause to the Constitution if the following criteria are
13 met: (1) the state official named is responsible for enforcing the law at issue in that
14 person's official capacity; (2) the plaintiff has alleged an ongoing violation of
15 federal law; and (3) the plaintiff has requested the proper relief, that is, prospective,
16 injunctive relief, or relief that is ancillary to prospective relief. See *Walker v.*
17 *Livingston*, 381 F. App'x 477,478 (5th Cir. 2010) (per curiam) (citing *Seminole*
18 *Tribe of Fla.*, 517 U.S. at 73.

19 While in this instance Plaintiffs allege a violation of federal law and a request
20 for injunctive relief, the Governor is not the official “responsible for enforcing” SB
21 277. An official named in an *Ex Parte Young* suit “must have some connection
22 with the enforcement of the act. That connection must be fairly direct; a
23 generalized duty to enforce state law or general supervisory power over the persons
24 responsible for enforcing the challenged provision will not subject an official to
25 suit.” *Assn. des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937,
26 943 (9th Cir. 2013); quoting *National Audubon Society v. Davis*, 307 F.3d 835,
27 846-847 (9th Cir.2002) (Governor entitled to Eleventh Amendment immunity
28

1 because only connection to statute at issue is general duty to enforce California
2 law).

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

19 *Nichols v. Brown*, 859 F.Supp.2d 1118, 1131-32 (C.D. Cal. 2012)

20 Further, the fact that Governor Brown signed the law at issue is not enough to
21 establish that he is responsible for the enforcement of it. “A governor is entitled to
22 absolute immunity for the act of signing a bill into law.” *Nichols*, 859 F.Supp.2d at
23 1132. *See also Torres–Rivera v. Calderon–Serra*, 412 F.3d 205, 213 (1st Cir. 2005)
24 (governor who signs into law legislation passed by the legislature is entitled to
25 absolute immunity for that act); *Women’s Emergency Network*, 323 F.3d at 950
26 (“Under the doctrine of absolute legislative immunity, a governor cannot be sued
27 for signing a bill into law”) (citing *Supreme Ct. of Va. v. Consumers Union of*
28 *United States, Inc.*, 446 U.S. 719, 731–34 (1980)).⁴ As such, the Governor cannot
be named in a federal court action on the basis that he signed the law that is the
subject of the suit.

⁴ Similarly, the Governor is also immune under the doctrine of legislative immunity, which holds that state and local officials are absolutely immune from federal suit for personal damages for their legitimate legislative activities. *See, e.g., Empress Casino Joliet Corporation v. Blagojevich*, 638 F.3d 519 (7th Cir. 2011) (holding that the doctrine of legislative immunity applies to state governor acting in his legislative capacity in signing legislation, and was thus immune from civil RICO claims).

1 All of Plaintiffs' claims brought against the Governor of the State of
2 California are barred by operation of the Eleventh Amendment as the Court has no
3 jurisdiction to hear such claims. As such, the claims should be dismissed.

4 **B. Plaintiffs' Claims Against the Governor Are Barred by**
5 **Operation of the *Noerr-Pennington* Immunity Doctrine**

6 Derived from the *Eastern Railroad Presidents Conference v. Noerr Motor*
7 *Freight, Inc.*, 365 U.S. 127, 135 (1961) and *United Mine Workers v. Pennington*,
8 381 U.S. 657, 670 (1965) cases, the "*Noerr-Pennington*" immunity doctrine holds
9 that "those who petition any department of the government for redress are generally
10 immune from statutory liability for their petitioning conduct." *Rupert v. Bond*, 68
11 F.Supp.3d 1142, 1156 (N.D. Cal. 2014). Conduct covered under the immunity
12 doctrine includes speech, proposals and petitions. *Swetlik v. Crawford*, 738 F.3d
13 818, 830 (7th Cir. 2013) (concurring opinion); citing *Miracle Mile Associates v.*
14 *Rochester*, 617 F.2d 18 (2d Cir.1980); *Mariana v. Fisher*, 338 F.3d 189 (3d Cir.
15 2003). The doctrine encompasses any branch of government, including the
16 executive, legislative, judicial and administrative agencies. *California Motor*
17 *Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d
18 642 (1972).

19 While initially recognized in the context of anti-trust claims, the *Noerr-*
20 *Pennington* immunity is no longer limited to the antitrust context, but is also
21 applicable to both §1983 and RICO claims. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923,
22 942 (9th Cir.2006); *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092
23 (9th Cir. 2000). In *Manistee*, the Ninth Circuit noted:

24 Government officials are frequently called upon to be ombudsmen for their
25 constituents. In this capacity, they intercede, lobby, and generate publicity to
26 advance their constituents' goals, both expressed and perceived. This kind of
27 petitioning may be nearly as vital to the functioning of a modern
28 representative democracy as petitioning that originates with private citizens.
We decline to interpret § 1983 as regulating this quintessentially "political
activity." See *id.* The petitioning or lobbying of another governmental entity
is insufficient to "subject" or "cause to be subjected" a person "to the

1 deprivation of any rights, privileges, or immunities secured by the
2 Constitution and laws.” 42 U.S.C. § 1983.

3
4 *Manistee*, 227 F.3d at 1093.

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

24 In short, the *Noerr-Pennington* immunity has evolved into “a generic rule of
25 statutory construction, applicable to any statutory interpretation that could implicate
26 the rights protected by the Petition Clause.” *Sosa*, 437 F.3d at 931. Regardless of
27 the inflammatory language used by Plaintiffs, their claims against the Governor,
28 even if true, are not actionable in light of the immunity afforded to him under the

1 *Noerr-Pennington* doctrine and its progeny. As such, the first and second claims
2 against the Governor in the First Amended Complaint do not, and cannot, state a
3 claim against him, and this motion to dismiss should be granted.

4 **II. PLAINTIFFS HAVE FAILED TO PLEAD A VIOLATION OF THEIR**
5 **CONSTITUTIONAL RIGHTS BECAUSE LAWS REQUIRING MANDATORY**
6 **IMMUNIZATION HAVE UNEQUIVOCALLY BEEN UPHOLD AS**
7 **CONSTITUTIONAL FOR OVER A CENTURY**

8 Even if this Court should find that the State and the Governor are not immune,
9 Plaintiffs' claims fail, as a matter of law, to allege a violation of their constitutional
10 rights by any of the Defendants.

11 The thrust of Plaintiffs' claims is that Defendants somehow conspired to enact
12 SB 277, and that, in so doing, Defendants violated Plaintiffs' constitutional rights.
13 The facial implausibility of Plaintiffs' conspiracy claims is addressed in subsequent
14 sections of this Memorandum. However, as discussed below, Plaintiffs' claims
15 ultimately fail because the purported object of the alleged conspiracy, the
16 enactment of SB 277, was a proper exercise of the Legislature's legitimate and
17 compelling interest in protecting the public health through mandatory vaccination
18 of school children, continuously recognized for decades by the U.S. Supreme Court,
19 the California Supreme Court, and every other federal and state court that has
20 considered the issue.

21 **A. The Enactment of California Senate Bill 277**

22 Enacted over one year ago, on June 30, 2015, SB 277 eliminates the personal
23 belief exemption from the statutory requirement that children receive vaccines for
24 certain infectious diseases prior to being admitted to any public or private
25 elementary or secondary school, or day care center. In enacting SB 277, the
26 Legislature reaffirmed its intent "to provide . . . [a] means for the eventual
27 achievement of total immunization of appropriate age groups" against these
28 childhood diseases. Cal. Health & Saf. Code, § 120325(a). SB 277 requires
children to be immunized against (1) diphtheria, (2) hepatitis B, (3) haemophilus

1 influenza type b, (4) measles, (5) mumps, (6) pertussis (whooping cough), (7)
2 poliomyelitis, (8) rubella, (9) tetanus, (10) varicella (chickenpox), and (11) “[a]ny
3 other disease deemed appropriate by the [California Department of Public Health
4 (Department)].” Cal. Health & Saf. Code, § 120325(a). SB 277 revised the
5 California Health and Safety Code by amending sections 120325, 120335, 120370,
6 and 120375, adding section 120338, and repealing California Health and Safety
7 Code section 120365.

8 Vaccinations are not required for any student in a home-based private school
9 or independent study program who does not receive classroom-based instruction.
10 Cal. Health & Saf. Code, § 120335(f). Moreover, a child may be medically exempt
11 from the immunizations specified in the statute if a licensed physician states in
12 writing that “the physical condition of the child is such, or medical circumstances
13 relating to the child are such, that immunization is not considered safe.” Cal.
14 Health & Saf. Code, § 120370(a). Notwithstanding the immunizations listed, any
15 other immunizations may only be mandated “if exemptions are allowed for both
16 medical reasons and personal beliefs.” Cal. Health & Saf. Code, § 120338. SB 277
17 also provides an exception relating to children in individualized education
18 programs. Cal. Health & Saf. Code, § 120335(h).

19 **B. The U.S. Supreme Court, California Supreme Court, and State and**
20 **Federal Courts Have Consistently Upheld the Constitutionality of**
21 **Mandatory Vaccination Laws**

22 In enacting SB 277, the California Legislature expressed its intent to provide
23 a means for the eventual achievement of total immunization of school children
24 against a number of deadly, but highly preventable, childhood diseases. The
25 authority of the Legislature to require students to be vaccinated in order to protect
26 the health and safety of other students and the public at large, irrespective of their
27 parents' personal beliefs, is firmly embedded in our jurisprudence, and embodies a
28 quintessential function of an organized government to protect its people from
preventable harm.

1 For more than 100 years, the United States Supreme Court has upheld the
2 right of the States to enact and enforce laws requiring citizens to be vaccinated.
3 *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905). After facing
4 criminal charges for failing to comply with a regulation that called for
5 immunization against smallpox, the plaintiff in *Jacobson* argued that a compulsory
6 vaccination law infringed on his personal constitutional rights. The Supreme Court
7 disagreed, noting that “a community has the right to protect itself against an
8 epidemic of disease which threatens the safety of its members[.]” *Id.* at 27. The
9 Court further noted that “it was the duty of the constituted authorities primarily to
10 keep in view the welfare, comfort, and safety of the many, and not permit the
11 interests of the many to be subordinated to the wishes or convenience of the few.”
12 *Id.* at 29. The Court concluded that the statute was a proper exercise of the
13 legislative prerogative and that it did not deprive the plaintiff of his constitutional
14 guarantees of personal and religious liberty.

15 The Supreme Court again addressed the issue of compulsory vaccination, this
16 time in the context of schoolchildren, in the case of *Zucht v. King*, 260 U.S. 174
17 (1922). In *Zucht*, the plaintiff’s children were excluded from a Texas public school
18 because they were not vaccinated. The plaintiff in *Zucht* argued that the vaccination
19 laws violated her rights to due process and equal protection under the United States
20 Constitution, but the Court rejected those arguments. Relying on *Jacobson*, the
21 Court stated it was long-ago “settled that it is within the police power of a State to
22 provide for compulsory vaccination.” *Id.* at 176.

23 In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court again
24 affirmed the State’s overriding interest in the matter of public health, stating by way
25 of example that a parent “cannot claim freedom from compulsory vaccination for
26 the child more than for himself on religious grounds. The right to practice religion
27 freely does not include liberty to expose the community or the child to
28 communicable disease or the latter to ill health or death.” *Id.* at 166-167.

1 Since *Jacobson*, *Zucht*, and *Prince*, federal courts have repeatedly upheld
2 mandatory vaccination laws over challenges predicated on the First Amendment,
3 the Equal Protection Clause, the Due Process Clause, the Fourth Amendment,
4 education rights, parental rights, and privacy rights, frequently citing *Jacobson*. In
5 *Workman v. Mingo County Sch.*, 667 F. Supp.2d 679, 690-691 (S.D. W. Va. 2009),
6 affirmed *Workman v. Mingo County Bd. of Educ.*, 419 F. App'x 348, 353-54 (4th
7 Cir. 2011) (unpublished), the court rejected the argument that the plaintiff's rights
8 to free exercise, equal protection and substantive due process were violated when
9 her daughter was not permitted to attend public school without the immunizations
10 required by state law. The court noted that "a requirement that a child must be
11 vaccinated and immunized before it can attend the local public schools violates
12 neither due process nor . . . the equal protection clause of the Constitution." *Id.*

13 In *Phillips v. City of New York*, 775 F.3d 538 (2d Cir.), cert. denied, ___ U.S.
14 ___, 136 S. Ct. 104 (2015), citing *Jacobson*, the Second Circuit rejected the
15 plaintiffs' claims that New York's mandatory vaccination law violated their rights
16 to due process, free exercise of religion and equal protection, holding that
17 "mandatory vaccination as a condition for admission to school does not violate the
18 Free Exercise Clause." *Id.*

19 *Workman* and *Phillips* are the most recent in an extended line of cases from
20 various jurisdictions that have upheld state mandatory vaccination statutes. *See*,
21 e.g., *Sherr v. Northport-East Northport Union Free School Dist.* 672 F. Supp. 81
22 (E.D.N.Y. 1987) (recognizing that New York had a compelling state interest in
23 enacting its mandatory vaccination statute); *Hanzel v. Arter*, 625 F. Supp. 1259
24 (S.D. Ohio 1985) (holding parents' objections to vaccination based on "chiropractic
25 ethics" did not fall under the protection of the Establishment Clause); *Maricopa*
26 *County Health Dept. v. Harmon*, 750 P.2d 1364 (Ariz. 1987) (holding that the
27 state's health department did not violate the right to public education in Arizona's
28 Constitution when it excluded unvaccinated children from school); *Boone v.*

1 *Boozman*, 217 F. Supp.2d 938, 956 (E.D. Ark. 2002) (“the question presented by
2 the facts of this case is whether the special protection of the Due Process Clause
3 includes a parent’s right to refuse to have her child immunized before attending
4 public or private school where immunization is a precondition to attending school.
5 The Nation’s history, legal traditions, and practices answer with a resounding
6 ‘no.’”). *See also Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995)
7 (“[f]or their own good and that of their classmates, public school children are
8 routinely required to submit to various physical examinations, and to be vaccinated
9 against various diseases”).

10 Recognizing that mandatory vaccination laws are a proper exercise of police
11 powers, the California Supreme Court in *Abeel v. Clark*, 84 Cal. 226 (1890) (*Abeel*)
12 upheld the State’s school vaccination requirements, recognizing that “it was for the
13 legislature to determine whether the scholars of the public schools should be
14 subjected to [vaccination].” *Id.*, at 230. The California Supreme Court revisited the
15 issue in *French v. Davidson*, 143 Cal. 658 (1904) (*French*), in which the Court
16 upheld San Diego’s vaccination requirement, explaining that “the proper place to
17 commence in the attempt to prevent the spread of a contagion was among the
18 young, where they were kept together in considerable numbers in the same room
19 for long hours each day . . . children attending school occupy a natural class by
20 themselves, more liable to contagion, perhaps, than any other class that we can
21 think of.” *Id.* at 662, italics added; *see also Williams v. Wheeler*, 23 Cal. App. 619,
22 625 (1913) (the state legislature has the power to prescribe “the extent to which
23 persons seeking entrance as students in educational institutions within the state
24 must submit to its [vaccination] requirements as a condition of their admission”);
25 *Love v. Superior Court*, 226 Cal.App.3d 736, 740 (1990) (“[t]he adoption of
26 measures for the protection of the public health is universally conceded to be a
27 valid exercise of the police power of the state, as to which the legislature is
28 necessarily vested with large discretion not only in determining what are contagious

1 and infectious diseases, but also in adopting means for preventing the spread
2 thereof”).

3 The federal district court in San Diego recently confirmed the unquestioned
4 authority of *Jacobson* and its progeny and rejected a similar challenge to SB 277 by
5 a separate group of plaintiffs, in *Whitlow, et al. v. Department of Education et al.*,
6 S.D. Cal. Case No. 3:16-cv-01715-DMS-BGS (*Whitlow*). Like the plaintiffs here,
7 the *Whitlow* plaintiffs alleged violations of various constitutional rights arising from
8 the enactment of SB 277. *Id.* On July 15, 2016, the *Whitlow* plaintiffs filed their
9 motion for preliminary injunction, in which they sought to enjoin the enforcement
10 of SB 277. (See *Whitlow*, Pls.’ Mot., ECF Nos. 13, 14.) However, on August 26,
11 2016, the *Whitlow* court denied the plaintiffs’ motion, holding that the plaintiffs’
12 claims were unlikely to succeed because of the weight of authority represented by
13 *Jacobson* and its progeny:

14 State Legislatures have a long history of requiring children to be
15 vaccinated as a condition to school enrollment, and for as many
16 years, both state and federal courts have upheld those requirements
17 against constitutional challenge. History, in itself, does not compel
18 the result in this case, *but the case law makes clear that States may*
19 *impose mandatory vaccination requirements without providing for*
20 *religious or conscientious objections.*

21 (*Whitlow*, Order, ECF No. 43, at 17-18 (italics added).

22 The court in *Whitlow* further stated that, in light of such precedent, “this Court,
23 ‘is not prepared to hold that a minority, residing or remaining in any city or town
24 where [disease] is prevalent, may thus defy the will of its constituted authorities,
25 acting in good faith for all, under the legislative sanction of the State.’” *Id.*, at 18,
26 quoting *Jacobson*, 197 U.S. at pp. 37-38. On August 31, 2016, the *Whitlow*
27 plaintiffs filed their request for voluntary dismissal of their lawsuit, and thus
28 extinguished any possible appeal of the federal court’s Order. *Whitlow*, Pls.’
Notice, ECF No. 44.

1 Thus, the State's compelling interest in protecting public health and safety by
2 mandating vaccinations for school children has been unanimously recognized by
3 the U.S. Supreme Court, the California Supreme Court, and every other federal and
4 state court that has addressed the issue. As such, it is beyond dispute that SB 277 is
5 a constitutional enactment. Therefore, even if there were a shred of plausibility to
6 Plaintiffs' claims that Defendants engaged in an alleged conspiracy, Plaintiffs'
7 claims fail regardless because, as a matter of law, the object of that alleged
8 conspiracy, the enactment of SB 277, was entirely lawful and, indeed,
9 constitutional.

10 **III. PLAINTIFFS' CLAIMS UNDER RICO FAIL TO STATE CLAIMS AGAINST**
11 **DEFENDANTS**

12 **A. Plaintiffs' Allegations of RICO Violations**

13 Plaintiffs' allegations that the Governor, state legislators and their
14 spouses engaged in racketeering activity by "obstructing justice" in violation
15 of 18 U.S.C. § 1503, by influencing the outcome of state Assembly and
16 Senate hearings on the bill, are entirely conclusory and facially implausible.

17 Plaintiffs allege without any factual support that Defendants' alleged
18 motivation was financial gain in the form of campaign contributions by
19 pharmaceutical companies. FAC ¶ 114. Plaintiffs allege that Defendants
20 also engaged in "racketeering" activity by committing "perjury of their oaths
21 of office," resulting in treason and sedition and conspiracy to overthrow the
22 state and federal constitutions. Finally, Plaintiffs allege that Defendants
23 engaged in racketeering by engaging in a conspiracy to violate 18 U.S.C. §
24 1951 (the Hobbs Act) by extorting Plaintiffs' "liberty" from them "without
25 their consent, induced by wrongful use or threat of use of force, or fear, or
26 under color of official right" and further conspiring to "racketeer." FAC ¶
27 130. Once SB 277 was passed, Plaintiffs claim, the Governor and legislators
28 used their offices and positions to influence agencies in the State, in counties

1 and local law enforcement agencies, to enforce the law by means of threat
2 and intimidation. FAC ¶ 132.

3 All of these allegations fail because, as discussed above Plaintiffs have
4 no constitutional right to send their unimmunized children to school, and, as
5 discussed below, Plaintiffs fail to state any plausible claim under federal or
6 state law.

7 **B. RICO, the Hobbs Act and Obstruction of Justice**

8 RICO provides for civil remedies to “[a]ny person injured in his
9 business or property by reason of a violation of [18 U.S.C. § 1962].” 18
10 U.S.C. § 1964(c). Section 1962(c) prohibits “any person employed by or
11 associated with any enterprise engaged in, or the activities of which affect,
12 interstate or foreign commerce, to conduct or participate, directly or
13 indirectly, in the conduct of such enterprise's affairs through a pattern of
14 racketeering activity.” RICO defines “racketeering activity” as certain
15 ‘predicate acts’ which include among other things “any act or threat
16 involving . . . bribery, extortion. . . which is chargeable under State law and
17 punishable by imprisonment for more than one year; (B) any act which is
18 indictable under” enumerated sections of title 18 of the United States Code.
19 §§ 1961(1)(A)-(B) (2000 ed., Supp. IV).

20 Included in the enumerated sections of title 18 that may stand as a basis
21 for a RICO claim is 18 U.S.C. § 1503, which codifies obstruction of justice.
22 The “omnibus clause” of this statute makes it a federal crime to obstruct a
23 judicial proceeding:

24 Whoever . . . corruptly or by threats or force, or by any threatening letter
25 or communication, influences, obstructs, or impedes, or endeavors to
26 influence, obstruct, or impede, the due administration of justice, shall be
punished as provided in subsection (b). . .

27 The elements of obstructing justice pursuant to the omnibus clause of 18
28 U.S.C. § 1503 are: (1) a judicial proceeding must be pending; (2) the

1 defendant must know that the judicial proceeding is pending; and (3) the
2 defendants must act corruptly with the specific intent or purpose to obstruct,
3 influence or impede a proceeding in its due administration of justice. *United*
4 *States v. Bashaw*, 982 F.2d 168, 170 (6th Cir. 1992).

5 Also included in the enumerated sections of title 18 that may stand as a
6 basis for a RICO claim is 18 U.S.C. § 1951 (the Hobbs Act). That Act
7 subjects a person to criminal liability if he “in any way or degree obstructs,
8 delays, or affects commerce or the movement of any article or commodity in
9 commerce, by robbery or extortion or attempts or conspires so to do.” 18
10 U.S.C. § 1951(a). The Hobbs Act defines “extortion” to mean “the obtaining
11 of property from another, with his consent, induced by wrongful use of actual
12 or threatened force, violence, or fear, or under color of official right.” 18
13 U.S.C. § 1951(b)(2).

14 **C. Plaintiffs Have Failed to Plead Predicate Acts Upon Which**
15 **RICO Claims Can Be Based**

16 **1. Plaintiffs’ Reliance on An Allegation of Obstruction of**
17 **Justice Under 18 U.S.C. § 1503 to Support Their RICO**
Claims Fails

18 Plaintiffs’ allegation that Defendants obstructed justice and therefore violated
19 18 U.S.C. § 1503 (section 1503) by influencing the outcome of Assembly and
20 Senate hearings and by committing “perjury” of their oaths of office, cannot stand
21 as a basis for claims under RICO under the facts alleged by Plaintiffs.

22 In referring to “obstruction of justice,” section 1503 is not, as Plaintiffs appear
23 to believe, tied to *their* concept of “justice.” In other words, section 1503 has
24 nothing to do with what Plaintiffs believe is right or just, or in the case of SB 277,
25 wrong and an infringement of their rights. Rather, section 1503 addresses the
26 administration of justice within the judicial system. *Pettibone v. United States*, 148
27 U.S. 197 (1893). Thus, Plaintiffs cannot support their allegations of a violation of
28 RICO based on section 1503 by claiming that Defendants unduly influenced a

1 legislative, rather than judicial, matter.

2 Claims that Defendants somehow “perjured” their oaths of office as Governor
3 and legislators suffer a similar fate. Thus, Plaintiffs’ claim that Defendants violated
4 18 U.S.C. §1951 by “conspiring” to racketeer by violating section 1503 also fails.

5 **2. Plaintiffs’ Reliance on Allegations Of Extortion Under the**
6 **Hobbs Act to Support Their RICO Claims Fails**

7 Plaintiffs’ allegation that Defendants engaged in racketeering because
8 they “extorted” a liberty interest from Plaintiffs in violation of the Hobbs
9 Act, by influencing the passage of SB 277 is facially implausible because
10 “[c]ivil rights violations. . . do not fall within the statutory definition of
11 “racketeering activity.” *Bowen v. Oistead*, 125 F.3d 800, 806 (9th Cir. 1997)
12 (emphasis added).

13 Moreover, Plaintiffs’ assertion that Defendants obtained “property”
14 from them because they took away Plaintiffs’ “liberty,” by working to pass
15 SB 277, is facially implausible and legally insupportable. FAC ¶131. Under
16 the Hobbs Act, the property allegedly extorted cannot be a right, but must be
17 something tangible. *See Sekhar v. United States*, 133 S. Ct. 2720, 2726, 186
18 L. Ed. 2d 794 (2013) (“The principle announced there—that a defendant
19 must pursue something of value from the victim that can be exercised,
20 transferred, or sold—applies with equal force here. Whether one considers
21 the personal right at issue to be “property” in a broad sense or not, it certainly
22 was not obtainable property under the Hobbs Act.”)

23 Therefore, Plaintiffs’ reliance on the claim that Defendants “extorted”
24 their constitutional rights by working to pass and then passing SB 277, as the
25 basis for a RICO claim, also fails as a matter of law.

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1 **3. Plaintiffs Have Not Alleged Any Recognized Predicate Acts**
2 **by Defendants Under RICO**

3 The act of “influencing” the Assembly and Senate hearings in which
4 Defendants allegedly participated, in order to ensure the passage of SB 277, cannot
5 be considered a “predicate act” under RICO. Discussing legislation under
6 consideration and taking a position as to that legislation are part and parcel of the
7 job of legislators and the Governor, and said acts are undertaken for the State of
8 California. Acts undertaken by a public official for the benefit of the government
9 cannot constitute a predicate act of racketeering activity under RICO. *Wilkie v.*
10 *Robbins*, 551 U.S. 537, 5555-556, 127 S. Ct. 2588, 2605, 168 L. Ed. 2d 389 (2007).

11 In addressing claims that government employees engaged in racketeering
12 while enforcing forfeiture regulations against plaintiffs, the United States Supreme
13 Court in *Wilkie* noted that, “it is not just final judgments, but the fear of criminal
14 charges or civil claims for treble damages that could well take the starch out of
15 regulators who are supposed to bargain and press demands vigorously on behalf of
16 the Government and the public.” *Id.* at 567. “[Public] employees do not become
17 racketeers by acting like aggressive regulators.” *Id.* at 566; quoting *Sinclair v.*
18 *Hawke*, 314 F.3d 934, 944 (8th Cir. 2003).

19 This concept is in accord with the immunities afforded to the Governor and
20 legislators, such as the *Noerr-Pennington* immunity doctrine, discussed above.

21 **D. Plaintiffs Have Not Alleged an Injury to Business or Property**
22 **As Required by RICO**

23 Plaintiffs’ RICO claims also fail since, similar to the Hobbs Act discussed
24 above, RICO’s civil remedy section “requires as a threshold for standing an injury
25 to ‘business or property.’ ” *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir. 2010).

26 To have standing under § 1964(c), a civil RICO plaintiff must show: (1)
27 that his alleged harm qualifies as injury to his business or property; and
28 (2) that his harm was “by reason of” the RICO violation, which requires
the plaintiff to establish proximate causation. [citations omitted.]”

1 *Canyon Cty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008), *cert.*
2 *denied, Canyon County, Idaho v. Syngenta Seeds, Inc.* 555 U.S. 970, U.S.,
3 Oct. 20, 2008.

4 Despite their verbose and convoluted FAC, Plaintiffs have not alleged
5 an injury to a business or property interest. Instead, they have alleged injury
6 to their alleged personal “liberty” interest under the Constitution to not be
7 required to immunize their children in order to send them to school. Since
8 this liberty was extorted, Plaintiffs argue in a circular fashion, they lost “their
9 time, money, labor and constitutional freedoms.” FAC ¶¶ 131, 135.

10 Plaintiffs also allege that they “have lost hundreds of dollars in: petitioning
11 the Defendants to not violate their rights, [and] travel to and from the state
12 capital. . .” FAC ¶ 149. However, while alleging financial loss is necessary,
13 alleging a financial loss alone is insufficient if Plaintiffs have not also alleged
14 an injury to a business or property.

15 To determine whether a plaintiff has sufficiently alleged that he has
16 been “injured in his business or property,” we must examine carefully
17 the nature of the asserted harm. Our circuit requires that a plaintiff
18 asserting injury to property allege “concrete financial loss.” *Oscar v.*
19 *Univ. Students Coop. Ass’n*, 965 F.2d 783, 785 (9th Cir.1992) (en banc).
Financial loss alone, however, is insufficient. “Without a harm to a
specific business or property interest—a categorical inquiry typically
determined by reference to state law—there is no injury to business or
property within the meaning of RICO.” [citations omitted.]

20 *Id.*, at 975 (9th Cir. 2008) [Emphasis added.]

21 The loss that Plaintiffs claim is not an injury to either a business, or to a
22 property interest. Rather, Plaintiffs allege an injury to their liberty.

23 However, as noted above with regard to the Hobbs Act, a liberty is not
24 “property” for the purposes of RICO. More important, regardless of the
25 theory, right, or Amendment on which they base their arguments, *Plaintiffs*
26 *do not have a constitutional right to refuse to immunize their children and*
27 *then enroll those children in school.* Thus, even if Plaintiffs could
28 successfully argue that an injury to a constitutional right is an injury to a

1 “property interest” for the purposes of claiming injury under RICO, Plaintiffs
2 cannot rely on this argument to save their RICO claims, since the right
3 Plaintiffs claim was injured *does not exist*. The State’s compelling interest in
4 protecting public health and safety by mandating vaccinations for school
5 children has been unanimously recognized by the U.S. Supreme Court, the
6 California Supreme Court, and every other federal and state court that has
7 addressed the issue for over a century. Thus, no right has been violated, and
8 Plaintiffs have not alleged an injury to “business or property” as required to
9 plead a RICO claim.

10 **E. The Enactment of SB 277 Does Not Implicate Interstate Or**
11 **Foreign Commerce**

12 RICO applies only to an “enterprise engaged in, or the activities of
13 which affect, interstate or foreign commerce.” 18 U.S.C. § 1962(c).
14 Plaintiffs bear the burden of establishing that the alleged acts have an effect
15 on interstate commerce. *Musick v. Burke*, 913 F.2d 1390, 1398 (9th
16 Cir.1990). In a civil RICO prosecution, the plaintiffs must show at least a
17 “minimal” connection with interstate commerce.

18 Here, plaintiffs have pled no activities that affect interstate or foreign
19 commerce. The enactment of SB 277 was directed exclusively toward
20 activities within the State of California, *to wit*, the mandatory vaccination of
21 children attending schools or day care centers in California. The effect on
22 interstate or foreign commerce, if any, is insufficient for application of RICO
23 in this case.

24 **F. Plaintiffs Have Not Pled RICO Allegations with Sufficient**
25 **Particularity**

26 All elements of RICO liability must be pled particularly: “Rule 9(b)’s
27 requirement that in all averments of fraud or mistake, the circumstances
28 constituting fraud or mistake shall be stated with particularity applies to civil RICO
fraud claims.” *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-1066 (9th Cir.

1 2004). “To satisfy Rule 9(b), a pleading must identify the who, what, when, where,
2 and how of the misconduct charged, as well as what is false or misleading about the
3 purportedly fraudulent statement, and why it is false.” *Cafasso, U.S. ex rel. v.*
4 *General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). Under
5 Rule 9(b), “the complaint must specify such facts as the times, dates, places,
6 benefits received, and other details of the alleged fraudulent activity.” *Neubronner*
7 *v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993).

8 A cursory review of the overbroad and conclusory RICO allegations in the
9 FAC clearly shows a complete failure to set forth facts with the required specificity.
10 Plaintiffs merely allege in their complaint that certain lawmakers have taken
11 political contributions from pharmaceutical companies and had some “closed door”
12 meetings, and that Governor Brown entered into an enterprise with the legislators
13 and the pharmaceutical companies to pass a law based on science that Plaintiffs
14 reject. Thus, Plaintiffs conclude, all the legislators and the Governor engaged in a
15 criminal enterprise aimed at “extorting” Plaintiffs’ rights. This is simply
16 insufficient to support a claim under RICO.

17 **IV. PLAINTIFFS ASSERT NO FACTUAL ALLEGATIONS TO SUPPORT ANY**
18 **CLAIMS AGAINST DEFENDANT GUST**

19 Plaintiffs allege in their complaint that the legislators’ spouses and the
20 Governor’s wife “have conspired to aid, abet, encourage and supported[sic] the
21 other defendants and receive the financial benefit of their public office.” FAC ¶
22 117. This is the sum of the allegations against the spouses of the legislators and the
23 Governor’s wife found in the FAC. Plaintiffs have made no factual allegation that
24 supports their claim that the spouses, including Defendant Gust, had any knowledge
25 of the matters set forth in the FAC, or had any role in them, even if they were true.

26 Further, even if Plaintiffs were to allege communications between Gust and
27 the Governor or legislators regarding the passage of SB277, any such
28 communications or “petitioning” would be covered by the *Noerr-Pennington*

1 immunity as discussed above. Similarly, any such activity, even if Gust had taken
2 part, or was aware of it occurring, could not be considered a violation of RICO, as
3 discussed above. Thus, none of the causes of action against Defendant Gust can
4 stand, as they are factually void and facially implausible.

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CONCLUSION

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For the foregoing reasons, Defendants respectfully request that the Court
dismiss Plaintiffs' First Amended Complaint, without leave to amend.

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Dated: October 26, 2016

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Respectfully submitted,

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

22 **Travis Middleton, et al.,**
23
24 Plaintiffs,
25
26 v.
27
28 **Richard Pan, et al.,**
29
30 Defendants.

2:16-cv-05224-SVW-AGR
[PROPOSED] ORDER GRANTING
MOTION OF THE STATE OF
CALIFORNIA, GOVERNOR
EDMUND G. BROWN AND ANNE
GUST TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT

Date: December 13, 2016
Time: 10:00 a.m.
Courtroom: B
Judge: Hon. Alicia C. Rosenberg,
Magistrate Judge
Trial Date: None Set
Action Filed: July 15, 2016

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

2 The motion of Defendants, State of California, Governor Edmund G. Brown,
3 in his official capacity, and Anne Gust (collectively, Defendants), in this matter
4 came on for hearing before this Court on December 13, 2016.

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

8 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants
9 is GRANTED. The First Amended Complaint in this case is ordered dismissed with
10 prejudice as to Defendants, State of California, Governor Edmund G. Brown, in his
11 official capacity, and Anne Gust.

12
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14 Dated: _____

Honorable Alicia G. Rosenberg

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CERTIFICATE OF SERVICE

Case No. Middleton, Travis, et al. v. Pan, Richard, et al. No. LA CV16-05224-SVW-AGR

I hereby certify that on October 26, 2016, 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 AND ANNE GUST TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN AND ANNE GUST TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

[PROPOSED] ORDER GRANTING MOTION OF THE STATE OF CALIFORNIA, GOVERNOR EDWARD G. BROWN AND ANNE GUST TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On October 26, 2016, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Travis Middleton 27 West Anapamu Street, No. 153 Santa Barbara, CA 93101	Eric Durak 133 Campo Vista Drive Santa Barbara, CA 93111
Jade Baxter 207 West Victoria Street Santa Barbara, CA 93101	Julianna Pearce 28780 My Way Oneals, CA 93645
Candyce Estave 430 East Rose Avenue Santa Maria, CA 93454	Denise Michelle Derusha 7125 Santa Ysabel, Apt. 1 Atascadero, CA 93422

Refused for filing

Melissa Christou 1522 Knoll Circle Drive Santa Barbara, CA 93101	Andrea Lewis 1331 Santa Barbara Street, No. 10 Santa Barbara, CA 93101
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Murid Rosensweet 2230 Memory Lane West Lake Village, CA 91361	Marina Read 322 Pebble Beach Drive Goleta, CA 93117

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 October 26, 2016, at Los Angeles, California.

Elizabeth G. O'Donnell

Declarant

/s/ Elizabeth G. O'Donnell

Signature

LA2016602117

CERTIFICATE OF SERVICE

This is to certify that I have on this 14th day of November, 2016 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., and the State of California.

AND; To: Marine Pogosyan, Clerk to Magistrate Judge Alicia G. Rosenberg, United States District Court Central District of California 312 North Spring Street Los Angeles, California 90012. **Certified Mail No.: 70151730000201215977.**

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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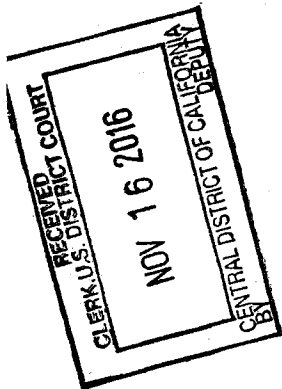
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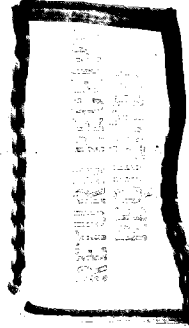
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FILED



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