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

<p>15 Travis Middleton, et al., 16 Plaintiffs, 17 v. 18 Richard Pan, et al., 19 Defendants. 20</p>	<p>2:16-cv-05224-SVW-AGR REPLY BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN AND ANNE GUST IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT Date: December 13, 2016 Time: 10:00 a.m. Courtroom: B Judge: Hon. Alicia G. Rosenberg, Magistrate Judge Trial Date: None Set Action Filed: July 15, 2016</p>
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs’ filings in opposition to Defendants’ motions to dismiss the First Amended Complaint (FAC) fail to address any of the defects of their pleading. Accordingly, Defendants’ motions to dismiss the FAC should be granted, and this case dismissed with prejudice.

Plaintiffs filed three submissions in opposition to Defendants’ motions: a Refusal for Fraud, a Notice to the Court to Obey its Oath Under the U.S. Constitution, and a Petition for Writ of Mandate. Plaintiffs’ Petition for Writ of Mandate was denied by the Court *sua sponte* on November 23, 2016, on the grounds that the district court does not have authority to convene a grand jury to investigate alleged criminal offenses by Defendants. *See* Order, ECF No. 116. Plaintiffs’ remaining submissions fail, and in fact, appear to affirmatively refuse, to address Defendants’ motions to dismiss.

Plaintiffs’ Refusal for Fraud is indecipherable. To the extent it may be understood, Plaintiffs appear to assert that Defendants’ motions should be denied because they are “Counterfeit Securities” and otherwise apparently the product of fraud by defense counsel. As with the conspiracy allegations in their FAC, these accusations are made without any factual or legal support. Plaintiffs’ Notice to the Court to Obey its Oath is similarly incomprehensible, but appears to be a repetition of the relief they are seeking in their pleading, and fails to address any of the defects raised in Defendants’ motions to dismiss.

The FAC must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While *pro se* pleadings are to be liberally construed, a *pro se* action should be dismissed if, after careful consideration, the Court concludes that the allegations of the complaint disclose that no cognizable claim can be stated and that amendment would be futile. *Cato v. United States*, 70 F.3d 1103, 1196 (9th Cir. 1995). Plaintiffs’ submissions

1 in opposition to Defendants’ motions to dismiss fail to establish the plausibility of
2 their claims, and confirm that any amendment to their pleading would be futile.

3 As discussed at length in Defendants’ motions to dismiss, Plaintiffs’
4 foundational claim, that their constitutional rights have been violated, fails as a
5 matter of both state and federal law. SB 277 is a mandatory school vaccination
6 statute aimed at serving the compelling state interest of protecting public health and
7 safety against the spread of communicable and potentially fatal diseases. Its
8 enactment was a narrowly tailored public health measure, not a conspiracy.
9 Plaintiffs’ conclusory and unfounded beliefs that mandatory vaccination is
10 unconstitutional falls far short of the pleading threshold.

11 Because Plaintiffs have failed to plead a violation of their constitutional rights,
12 their conspiracy and racketeering claims also fail as a matter of law. Not only have
13 Plaintiffs failed to address how the FAC meets any of the pleading requirements for
14 civil conspiracy, but they have failed to explain how their claims can possibly
15 survive in the face of the unquestionable constitutionality of SB 277.

16 For the foregoing reasons, and for the reasons more specifically addressed in
17 Defendants’ motions to dismiss, Defendants respectfully request that the Court
18 dismiss Plaintiffs’ FAC, without leave to amend, and to dismiss this action with
19 prejudice.

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1 Dated: November 29, 2016

Respectfully submitted,
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CERTIFICATE OF SERVICE

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

I hereby certify that on November 29, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

REPLY BY DEFENDANTS STATE OF CALIFORNIA, GOVERNOR BROWN AND ANNE GUST IN SUPPORT OF THEIR 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 November 29, 2016, I caused to be delivered the foregoing document(s) by first class mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 29, 2016, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

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