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

<p>15 <b>Travis Middleton, et al.,</b></p> <p>16</p> <p>17 Plaintiffs,</p> <p>18 v.</p> <p>19 <b>Richard Pan, et al.,</b></p> <p>20 Defendants.</p>	<p>2:16-cv-05224-SVW-AGR</p> <p><b>DEFENDANTS' REPLY TO          PLAINTIFFS' REFUSAL FOR          FRAUD DIRECTED TO THE          MAGISTRATE JUDGE'S REPORT          AND RECOMMENDATION</b></p> <p>Courtroom: 10A, 350 W. 1st Street          Judge: Hon. Stephen V. Wilson          Trial Date: None Set          Action Filed: July 15, 2016</p>
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On December 15, 2016, the Magistrate Judge filed and served a nineteen-page  
4 Report and Recommendation (the Recommendation) to all parties, detailing the  
5 various procedural and substantive defects in Plaintiffs’ First Amended Complaint  
6 (FAC). Recognizing that “a *pro se* complaint is to be liberally construed,” the  
7 Magistrate Judge recommended that the district court grant the Defendants’ Motion  
8 to Dismiss the FAC with leave to amend. R. & R. 6, ECF No. 123.

9 Pursuant to the Recommendation, Plaintiffs were given an opportunity to file  
10 objections to the Recommendation. On January 7, 2017, rather than file written  
11 objections, Plaintiffs filed a document entitled Plaintiffs’ Refusal for Fraud the  
12 Magistrate’s Report and Recommendation. Pls. Refusal for Fraud, ECF No.127.

13 Plaintiffs’ Refusal for Fraud fails to identify any specific error in the  
14 Recommendation. Therefore, Defendants respectfully request that the Court adopt  
15 the Recommendation and dismiss Plaintiffs’ FAC.

16 **ARGUMENT**

17 When a party files written objections to a magistrate judge’s proposed findings  
18 and recommendations, the district court “shall make a *de novo* determination of  
19 those portions of the report or specified proposed findings or recommendations to  
20 which objection is made.” 28 U.S.C. § 636 (2016); *see also* Fed. R. Civ. P. 72.  
21 However, *de novo* review is “unnecessary . . . when a party makes general and  
22 conclusory objections that do not direct the court to a specific error in the  
23 magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687  
24 F.2d 44, 47 (4th Cir. 1982).

25 In their Refusal for Fraud, Plaintiffs generally accuse the Magistrate Judge of  
26 “obstruction of justice . . . extortion . . . [and] racketeering” and argue that like the  
27 Defendants’ oppositions, the Magistrate Judge’s Recommendation is a Counterfeit  
28 Security. Pls.’ Refusal for Fraud 16, ECF No. 127. Plaintiffs fail to articulate any

1 specific objections that warrant the District Court’s de novo review. To the extent  
2 that any objections are decipherable, Plaintiffs appear to generally assert that the  
3 Recommendation “misconstrues” Plaintiffs’ RICO claims and “misquotes”  
4 jurisprudence regarding immunity. *Id.*, at 5-7, 9.

5 As discussed at length in the Recommendation, Plaintiffs’ foundational  
6 claim, that their constitutional rights have been violated, fails as a matter of both  
7 state and federal law. R. & R. 10-18, ECF No. 123. SB 277 is a mandatory school  
8 vaccination statute aimed at serving the compelling state interest of protecting  
9 public health and safety against the spread of communicable and potentially fatal  
10 diseases. Its enactment was a narrowly tailored public health measure, not a  
11 conspiracy. Plaintiffs’ conclusory and unfounded belief that mandatory vaccination  
12 is unconstitutional falls far short of establishing how the Magistrate Judge  
13 misconstrued the law.

14 As the Magistrate Judge explains, the “court is hard pressed to see any way in  
15 which Plaintiffs’ challenge to SB 277 could plausibly fall within RICO.” R. & R.  
16 17, ECF No. 123. Because Plaintiffs have failed to plead a violation of their  
17 constitutional rights, their conspiracy and racketeering claims also fail as a matter  
18 of law. Citing a chain of generic, unrelated criminal and civil RICO cases, as  
19 Plaintiffs do in their Refusal for Fraud (at 11, ECF No.127), does not address how  
20 the FAC can possibly meet any of the pleading requirements for civil conspiracy.  
21 Similarly, Plaintiffs’ paraphrasing of the elements of a civil RICO claim (*see id.* at  
22 11-14) is not a sufficient substitute for alleging “enough facts to state a claim to  
23 relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
24 570 (2007).

25 Plaintiffs also fail to address the Magistrate Judge’s findings that legislative  
26 and Eleventh Amendment immunity applies to all Defendants. *See* R. & R. 6-8,  
27 ECF No. 123. Merely restating a portion of the *Ex Parte Young* decision and  
28 generally alleging that the Magistrate Judge is treating the pro se Plaintiffs

1 differently from “bar card attorneys” is not a specific objection that warrants the  
2 District Court’s de novo review. Pls.’ Refusal for Fraud 6, ECF No. 127.

3 Plaintiffs’ response to the Recommendation not only fails to identify any  
4 specific errors by the Magistrate Judge, but confirms Defendants’ assertion in their  
5 Motion to Dismiss that Plaintiffs are unable to plausibly assert a cause of action  
6 against Defendants in any further amended pleading. For this reason, Defendants  
7 respectfully request that the Court consider granting Defendants’ Motion to Dismiss  
8 to Plaintiffs’ FAC without leave to amend.

9 **CONCLUSION**

10 For the foregoing reasons, and for the reasons more specifically addressed in  
11 the Recommendation, Defendants respectfully request that the Court adopt the  
12 Recommendation to dismiss Plaintiffs’ FAC with leave to amend. In the  
13 alternative, Defendants respectfully request that the Court dismiss the FAC without  
14 leave to amend.

15 Dated: January 19, 2017

16 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 January 19, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS’ REPLY TO PLAINTIFFS’ REFUSAL FOR FRAUD DIRECTED TO THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

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 January 19, 2017, 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 January 19, 2017, at Los Angeles, California.

Jonathan E. Rich  
Declarant

/s/ Jonathan E. Rich  
Signature

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