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9 *Attorneys for Defendants the State of California,*
 10 *Governor Edmund G. Brown, Jr., Anne Gust, and*
 11 *Deputy Attorneys General Jonathan E. Rich and*
Jacquelyn Y. Young

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

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

16 Plaintiffs,

17 v.

18
 19 **Richard Pan, et al.,**

20 Defendants.

2:16-cv-05224-SVW-AGR

**NOTICE OF MOTION AND
 MOTION BY DEFENDANTS
 STATE OF CALIFORNIA,
 GOVERNOR BROWN, ANNE
 GUST, AND DEPUTY
 ATTORNEYS GENERAL
 JONATHAN E. RICH AND
 JACQUELYN Y. YOUNG, TO
 DISMISS PLAINTIFFS' SECOND
 AMENDED COMPLAINT**

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

**[Filed Concurrently with
 Memorandum of Points and
 Authorities]**

Date: September 11, 2017
 Time: 1:30 p.m.
 Courtroom: 10A (First Street
 Courthouse)
 Judge: Hon. Stephen V. Wilson
 Trial Date: None Set
 Action Filed: July 15, 2016

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

2 PLEASE TAKE NOTICE THAT on Monday, September 11, 2017, at 1:00
3 p.m., in the above-entitled Court, located at Courtroom 10A, First Street
4 Courthouse, 350 W. 1st Street, Courtroom 10th Floor, Los Angeles, California
5 90012, Defendants State of California, Governor Edmund G. Brown, in his official
6 capacity, Anne Gust, and Deputy Attorneys General Jonathan E. Rich and
7 Jacquelyn Y. Young (collectively, Defendants), will and hereby do move this Court
8 for an order dismissing Plaintiffs' Second Amended Complaint (ECF No. 136)
9 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the following
10 grounds:

- 11 1. Plaintiffs' Second Amended Complaint should be dismissed in its entirety
12 because it fails to cure or even address any of the deficiencies of their
13 First Amended Complaint, as detailed in the Magistrate's Report and
14 Recommendation dated December 15, 2016 (ECF No. 123), approved and
15 adopted by this Court on July 13, 2017 (ECF No. 135).
- 16 2. Plaintiffs' claims against the State of California are barred under the
17 Eleventh Amendment.
- 18 3. Plaintiffs' claims against Governor Brown are barred under the Eleventh
19 Amendment, the doctrine of legislative immunity, and the doctrine of
20 immunity under *Eastern Railroad Presidents Conference v. Noerr Motor*
21 *Freight, Inc.*, 365 U.S. 127, 135 (1961) and *United Mine Workers v.*
22 *Pennington*, 381 U.S. 657, 670 (1965) (*Noerr-Pennington*).
- 23 4. Plaintiffs' claims against Deputy Attorneys General Jonathan E. Rich and
24 Jacquelyn Y. Young are barred on the grounds that they are government
25 attorneys who are immune from suit for conduct in the performance of
26 their official duties.
- 27 5. Plaintiffs fail to assert a plausible claim against any of the moving
28 Defendants for a violation of Plaintiffs' constitutional rights because the

1 Legislature’s enactment of California Senate Bill 277 (SB 277) is
2 constitutional under federal and state law, which for decades has
3 consistently held that (a) a state’s exercise of its police powers in
4 protecting the public from communicable diseases is rationally based; and
5 (b) states have a compelling interest in requiring children to be vaccinated
6 before entering school.

7 6. Plaintiffs fail to state plausible claims for relief against all of the moving
8 Defendants under the federal Racketeer Influenced and Corrupt
9 Organizations (RICO) statutes.

10 7. Plaintiffs’ claim for intentional infliction of emotional distress against all
11 of the moving Defendants fails to state a claim upon which relief may be
12 granted.¹

13 This Motion is made following the conference of Defendants’ counsel and
14 Plaintiffs pursuant to Local Rule 7-3, which took place on August 3 and 7, 2017.

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

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26 ¹ Plaintiffs identify Governor Edmund G. Brown by his position of
27 “Governor of California,” as distinct from other Defendants who are identified as
28 “Legislator Defendants” and are sued in both their individual and official
capacities. Thus, this motion is brought by Defendant Brown in the capacity in
which he has been sued and served.

1 Dated: August 10, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
ELIZABETH S. ANGRES
Supervising Deputy Attorneys General
ELIZABETH G. O'DONNELL
JACQUELYN Y. YOUNG
Deputy Attorneys General

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/s/ Jonathan E. Rich
JONATHAN E. RICH
Deputy Attorney General
Attorneys for Defendants
Governor Edmund G. Brown, Jr.,
Anne Gust, and the State of California

11 Dated: August 10, 2017

XAVIER BECERRA
Attorney General of California
ELIZABETH S. ANGRES
Supervising Deputy Attorney General

14

/s/ Elizabeth G. O'Donnell
ELIZABETH G. O'DONNELL
Deputy Attorney General
Attorneys for Defendants
Deputy Attorneys General Jonathan E.
Rich and Jacquelyn Y. Young

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20 *Pursuant to Local Rule 5-4.3.4 (a) (2) (i), the filer of this document attests that all
21 other signatories listed on whose behalf the filing is submitted concur in the filing's
content and have authorized the filing.

22 */s/ Jonathan E. Rich*
JONATHAN E. RICH

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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 August 10, 2017, 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, ANNE GUST, AND DEPUTY ATTORNEYS GENERAL JONATHAN E. RICH AND JACQUELYN Y. YOUNG, TO DISMISS PLAINTIFFS’ SECOND 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 August 10, 2017, I caused to be delivered the foregoing document(s) via email to Plaintiff Travis Middleton, by agreement with him, to the following address: Travis_m_93101@yahoo.com.

On August 10, 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 August 10, 2017, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

SERVICE LIST

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3	Travis Middleton 27 West Anapamu Street, No. 153 Santa Barbara, CA 93101	Paige Murphy 2230 Memory Lane West Lake Village, CA 91361
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5	Jade Baxter 207 West Victoria Street Santa Barbara, CA 93101	Bret Nielson 2230 Memory Lane West Lake Village, CA 91361
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7	Melissa Christou 1522 Knoll Circle Drive Santa Barbara, CA 93101	Lisa Ostendorf 5459 Place Court Santa Barbara, CA 93111
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9	Don Demanlevesde 618 West Ortega Santa Barbara, CA 93111	Julianna Pearce 28780 My Way Oneals, CA 93645
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11	Denise Michelle Derusha 7125 Santa Ysabel, Apt. 1 Atascadero, CA 93422	Murid Rosensweet 2230 Memory Lane West Lake Village, CA 91361
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13	Eric Durak 133 Campo Vista Drive Santa Barbara, CA 93111	Marina Read 322 Pebble Beach Drive Goleta, CA 93117
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19	Brent Haas 2715 Verde Vista Santa Barbara, CA 93105	Rachil Vincent 4320 Viua Presada Santa Barbara, CA 93110
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21	Jessica Haas 2715 Verde Vista Santa Barbara, CA 93105	JuliaAnne Whitney 55 Chrestview Lane Montecito, CA 93108
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23	Andrea Lewis 1331 Santa Barbara Street, No. 10 Santa Barbara, CA 93101	
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