

## **EXHIBIT 5**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 10/21/16

DEPT. 36

HONORABLE GREGORY W. ALARCON

JUDGE

C. MASON

DEPUTY CLERK

HONORABLE #7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G. RODRIGUEZ, CA

Deputy Sheriff

NONE

Reporter

11:30 am

BC617766

Plaintiff

TAMARA BUCK ET AL

Counsel

NO APPEARANCES

VS

Defendant

THE STATE OF CALIFORNIA

Counsel

**NATURE OF PROCEEDINGS:**

**RULING ON SUBMITTED MATTER**

The Court, having previously taken the matter under submission 10/20/16, now rules in accordance with the Ruling Re: sustaining demurrer without leave to amend and placing motion to strike off calendar as moot, consisting of 1 page, filed this date and incorporated herein by reference to the Court file.

Defendant to give notice.

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that I am not a party to the Cause herein, and that this date I served a copy of the above minute order and/or Court order reflected above upon each party/counsel named by depositing in the United States mail at the Courthouse in Los Angeles, California, a copy of the original entered herein in a separate sealed envelope for each as shown.

Date: 10/21/16

Sherrri R. Carter, Executive Officer/Clerk

By: \_\_\_\_\_

C. Mason

JONATHAN RICH  
Office of the Attorney General  
300 S. Spring Street  
Suite #1702  
Los Angeles, CA 90013

**MINUTES ENTERED**  
10/21/16  
**COUNTY CLERK**

Superior Court of California  
County of Los Angeles  
Department 36

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

OCT 21 2016

Sherri R. Carter, Executive Officer/Clerk  
By Cher Mason, Deputy

Case No.: BC617766

Hearing Date: 10/20/16

BUCK,

Plaintiff(s),

v.

THE STATE OF CALIFORNIA,

Defendant(s).

**RULING RE:**

- DEFENDANT KAREN SMITH'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT.
- MOTION THEREOF TO STRIKE PLAINTIFFS' SECOND AMENDED COMPLAINT.

The demurrer is sustained, without leave to amend, based upon its page numbers 1 through 15.

As to counsel's request for a Statement of Decision, the request is denied.

"As to demurrer rulings, statements of decision may consist of references to appropriate page numbers and paragraphs. CCP §472d."

The motion to strike is ordered off calendar as moot, in light of the ruling upon the demurrer.

Dated: 10/21/16

GREGORY W. ALARCON

Gregory Alarcon

Superior Court Judge

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*Fees Exempt per Gov't Code, § 6103*

**CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court**

**AUG 22 2016**

**Sherri R. Carter, Executive Officer/Clerk  
By: Moses Soto, Deputy**

8 *Attorneys for Defendant Karen Smith, in her  
capacity as the Director of the California  
Department of Public Health*  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 CENTRAL DISTRICT  
13

14 **TAMARA BUCK, SHARON BROWN,  
SARAH LUCAS, CHARLENE HOUSEN,  
15 DAWNIELLE SELDEN, SERGE  
EUSTACHE, TRICIA EUSTACHE, and  
16 NIKKI JENCEN,**

17 Plaintiffs,

18 v.

19 **THE STATE OF CALIFORNIA, and DOES  
20 1-99, inclusive,**

21 Defendants.  
22

Case No. BC617766

**DEFENDANT KAREN SMITH'S  
NOTICE OF DEMURRER AND  
DEMURRER TO PLAINTIFFS' SECOND  
AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
JONATHAN E. RICH**

[Code Civ. Proc., § 430.10]

[Filed Concurrently with (1) Notice of  
Motion and Motion to Strike with  
Supporting Memorandum of Points and  
Authorities; and (2) Request for Judicial  
Notice]

Date: October 6, 2016  
Time: 8:30 a.m.  
Dept: 36  
Judge: The Honorable Gregory W.  
Alarcon

Trial Date: None Set  
Action Filed: April 22, 2016

RES ID 160189152509-1

1 TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on October 6, 2016, at 8:30 a.m., or as soon thereafter as  
3 the matter may be heard, in Department 36 of the above-entitled Court, located at 111 N. Hill  
4 Street, Los Angeles, California, 90012, defendant Karen Smith, in her capacity as the Director of  
5 the California Department of Public Health (defendant), will bring on for hearing her attached  
6 demurrer to plaintiffs' Second Amended Complaint (SAC), without leave to amend.

7 Defendant's demurrer to the SAC is made on the following grounds:

- 8 1. Plaintiffs' First Cause of Action, asserting a violation of the Free Exercise Clause  
9 of article I, section 4 of the California Constitution, fails to state facts sufficient to constitute a  
10 cause of action. (Code Civ. Proc., § 430.10, subd. (e).)
- 11 2. Plaintiffs' Second Cause of Action, asserting a violation of plaintiffs' purported  
12 right to an education under article IX, section 5 of the California Constitution, fails to state facts  
13 sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)
- 14 3. Plaintiffs' Third Cause of Action, asserting a violation of the Equal Protection  
15 Clause of article I, section 7 of the California Constitution, on the grounds that California schools  
16 allegedly have a legal duty to enroll students regardless of whether they are vaccinated, fails to  
17 state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)
- 18 4. Plaintiffs' Fourth Cause of Action, asserting a violation of Health and Safety Code  
19 section 24175, subdivision (a), on the grounds that Senate Bill 277 (SB 277) allegedly constitutes  
20 a purported prohibited medical experiment, fails to state facts sufficient to constitute a cause of  
21 action. (Code Civ. Proc., § 430.10, subd. (e).)
- 22 5. Plaintiffs' Fifth Cause of Action, asserting a violation of the Due Process Clause  
23 of article I, section 7 of the California Constitution, on the grounds that the medical exemption  
24 provisions of SB 277 are allegedly unconstitutionally vague, fails to state facts sufficient to  
25 constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)
- 26 6. The SAC taken as a whole fails to state facts sufficient to constitute a cause of  
27 action. (Code Civ. Proc., § 430.10, subd. (e).)

28 Pursuant to Code of Civil Procedure section 430.41, on June 9, 2016, July 18, 2016,

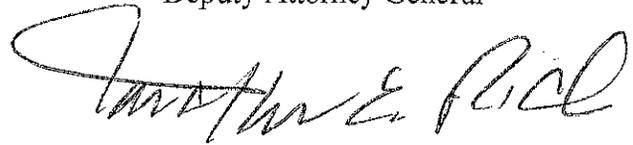
1 August 9, 2016, and at various other dates and times throughout the months of June, July and  
2 August 2016, the parties met and conferred by telephone concerning defendant's objections raised  
3 in this demurrer. The parties were unable to reach an agreement on defendant's objections. (See  
4 Declaration of Jonathan E. Rich, ¶¶ 2-9.)

5 This demurrer is based on the pleadings, on this notice and its attached memorandum of  
6 points and authorities and the request for judicial notice filed herein; on the documents, pleadings  
7 and records on file herein; and on the arguments to be made at the hearing.

8 Dated: August 22, 2016

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California  
RICHARD T. WALDOW  
Supervising Deputy Attorney General  
JACQUELYN Y. YOUNG  
Deputy Attorney General



JONATHAN E. RICH  
Deputy Attorney General

*Attorneys for Defendant Karen Smith, in her  
capacity as the Director of the California  
Department of Public Health*

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**DEMURRER**

Defendant demurs to each of the causes of action in plaintiffs’ Second Amended Complaint (SAC), and to the SAC taken as a whole, on the following grounds:

**FIRST GROUND**

**First Cause of Action  
Failure to State Facts Sufficient to Constitute a Cause of Action  
(Code Civ. Proc., § 430.10, subd. (e))**

1. Plaintiffs’ First Cause of Action, asserting a violation of the Free Exercise Clause of article I, section 4 of the California Constitution, fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

**SECOND GROUND**

**Second Cause of Action  
Failure to State Facts Sufficient to Constitute a Cause of Action  
(Code Civ. Proc., § 430.10, subd. (e))**

2. Plaintiffs’ Second Cause of Action, asserting a violation of plaintiffs’ purported right to an education under article IX, section 5 of the California Constitution, fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

**THIRD GROUND**

**Third Cause of Action  
Failure to State Facts Sufficient to Constitute a Cause of Action  
(Code Civ. Proc., § 430.10, subd. (e))**

3. Plaintiffs’ Third Cause of Action, asserting a violation of the Equal Protection Clause of article I, section 7 of the California Constitution, on the grounds that California schools allegedly have a legal duty to enroll students regardless of whether they are vaccinated, fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

**FOURTH GROUND**

**Fourth Cause of Action  
Failure to State Facts Sufficient to Constitute a Cause of Action  
(Code Civ. Proc., § 430.10, subd. (e))**

4. Plaintiffs’ Fourth Cause of Action, asserting a violation of Health and Safety Code section 24175, subdivision (a), on the grounds that SB 277 allegedly constitutes a purported prohibited medical experiment, fails to state facts sufficient to constitute a cause of action. (Code

1 Civ. Proc., § 430.10, subd. (e).)

2 **FIFTH GROUND**

3 **Fifth Cause of Action**  
4 **Failure to State Facts Sufficient to Constitute a Cause of Action**  
5 **(Code Civ. Proc., § 430.10, subd. (e))**

6 5. Plaintiffs' Fifth Cause of Action, asserting a violation of the Due Process Clause of  
7 article I, section 7 of the California Constitution, on the grounds that the medical exemption  
8 provisions of SB 277 are allegedly unconstitutionally vague, fails to state facts sufficient to  
9 constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

10 **SIXTH GROUND**

11 **Complaint Taken as a Whole**  
12 **Failure to State Facts Sufficient to Constitute a Cause of Action**  
13 **(Code Civ. Proc., § 430.10, subd. (e))**

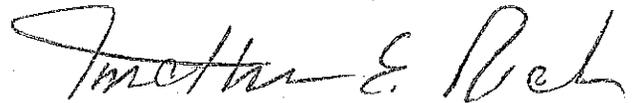
14 6. The complaint taken as a whole fails to state facts sufficient to constitute a cause of  
15 action. (Code Civ. Proc., § 430.10, subd. (e).)

16 Defendant therefore respectfully requests that her demurrer to the SAC be sustained  
17 without leave to amend.

18 Dated: August 22, 2016

19 Respectfully Submitted,

20 KAMALA D. HARRIS  
21 Attorney General of California  
22 RICHARD T. WALDOW  
23 Supervising Deputy Attorney General  
24 JACQUELYN Y. YOUNG  
25 Deputy Attorney General

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27 JONATHAN E. RICH  
28 Deputy Attorney General

*Attorneys for Defendant Karen Smith, in  
her capacity as the Director of the  
California Department of Public Health*

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**TABLE OF CONTENTS**

	<b>Page</b>
MEMORANDUM OF POINTS AND AUTHORITIES .....	1
RELEVANT FACTS .....	2
I.    THE STATE’S CHILD IMMUNIZATION STATUTES.....	2
II.   PLAINTIFFS’ CLAIMS .....	4
STANDARD OF REVIEW .....	4
ARGUMENT .....	5
I.    THE SAC FAILS TO STATE A CLAIM FOR RELIEF BECAUSE IMMUNIZATION LAWS ARE LONG-RECOGNIZED CONSTITUTIONAL PUBLIC HEALTH MEASURES. ....	5
II.   PLAINTIFFS FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A VIOLATION OF THE FREE EXERCISE CLAUSE.....	7
A.    Mandatory Vaccination as a Condition for Admission to School Does Not Violate the Free Exercise Clause. ....	7
B.    SB 277 Is Rationally Related to a Legitimate Interest. ....	9
III.  SB 277 DOES NOT VIOLATE THE RIGHT TO AN EDUCATION.....	10
A.    SB 277 Withstands Strict Scrutiny.....	11
B.    SB 277 Promotes Children’s Right to Education.....	12
IV.  PLAINTIFF’S EQUAL PROTECTION AND DUE PROCESS CLAIMS ARE WITHOUT MERIT .....	13
A.    Plaintiffs’ Fail to Plead a Valid Equal Protection Claim .....	13
B.    SB 277’s Medical Exemption Is Not Unconstitutionally Vague. ....	14
CONCLUSION.....	15
DECLARATION OF JONATHAN E. RICH.....	17

TABLE OF AUTHORITIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

CASES

*Abeel v. Clark*  
(1890) 84 Cal. 226 .....6

*Boone v. Boozman*  
(E.D. Ark. 2002) 217 F. Supp.2d 938 .....6

*Catholic Charities of Sacramento, Inc. v. Superior Court*  
(2004) 32 Cal.4th 527 .....7

*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*  
(1993) 508 U.S. 520 .....9

*Cruzan v. Director, Missouri Department of Health*  
(1990) 497 U.S. 261 .....6

*Davidovich v. City of San Diego*  
(S.D. Cal. Dec. 1, 2011) Case No. 11 cv 2675 WQH-NLS, 2011 U.S. Dist.  
LEXIS 138319 .....14

*Del E. Webb Corp. v. Structural Materials Co.*  
(1981) 123 Cal.App.3d 593.....5

*French v. Davidson*  
(1904) 143 Cal. 658 .....7, 11

*Friedman v. Southern California Permanente Medical Group*  
(2002) 102 Cal.App.4th 39 .....8

*Fundin v. Chicago Pneumatic Tool Co.*  
(1984) 152 Cal.App.3d 951.....5

*Hanzel v. Arter*  
(S.D. Ohio 1985) 625 F. Supp. 1259 .....8, 9

*Heller v. Doe by Doe*  
(1993) 509 U.S. 312 .....9

*Hernandez v. City of Pomona*  
(1996) 49 Cal.App.4th 1492 .....5

*Jacobson v. Commonwealth of Massachusetts*  
(1905) 197 U.S. 11 ..... 5, *passim*

**TABLE OF AUTHORITIES**  
(continued)

		<u>Page</u>
1		
2		
3	<i>Love v. Superior Court</i>	
4	(1990) 226 Cal.App.3d 736.....	7
5	<i>Marshall v. Gibson, Dunn &amp; Crutcher</i>	
6	(1995) 37 Cal.App.4th 1397 .....	5
7	<i>Massachusetts Bd. of Retirement v. Murgia</i>	
8	(1976) 427 U.S. 307 .....	9
9	<i>Patel v. City of Gilroy</i>	
10	(2002) 97 Cal.App.4th 483 .....	14
11	<i>Perez v. Nidek Co.</i>	
12	(9th Cir. 2013) 711 F.3d 1109.....	15
13	<i>Phillips v. City of New York</i>	
14	(2nd Cir. 2015) 775 F.3d 538.....	6, 10
15	<i>Prince v. Massachusetts</i>	
16	(1944) 321 U.S. 158.....	6
17	<i>Romer v. Evans</i>	
18	(1996) 517 U.S. 620 .....	9
19	<i>Saltarelli &amp; Steponovich v. Douglas</i>	
20	(1995) 40 Cal.App.4th 1 .....	5
21	<i>San Antonio Independent School Dist. v. Rodriguez</i>	
22	(1973) 411 U.S. 1 .....	11
23	<i>Serrano v. Priest</i>	
24	(1971) 5 Cal.3d 584 .....	5, 13
25	<i>Serrano v. Priest</i>	
26	(1976) 18 Cal.3d 728 .....	11
27	<i>Sherr v. Northport-East Northport Union Free School Dist.</i>	
28	(E.D.N.Y. 1987) 672 F. Supp. ....	12
	<i>Syska v. Montgomery County Bd. of Ed.</i>	
	(Md. Ct. Spec. App. 1980) 45 Md.App. 626.....	8
	<i>Vergara v. State of California</i>	
	(2016) 246 Cal.App.4th 619 .....	14

**TABLE OF AUTHORITIES**  
**(continued)**

		<u>Page</u>
3	<i>Vernonia School District 47J v. Acton</i>	
4	(1995) 515 U.S. 646.....	6, 13
5	<i>Viemeister v. White</i>	
6	(1904) 179 N.Y. 235 .....	11
7	<i>Walker v. Superior Court</i>	
8	(1988) 47 Cal.3d 112 .....	6
9	<i>Watson v. Los Altos School Dist.</i>	
10	(1957) 149 Cal.App.2d 768.....	5
11	<i>Williams v. Wheeler</i>	
12	(1913) 23 Cal.App. 619.....	7
13	<i>Wisconsin v. Yoder</i>	
14	(1972) 406 U.S. 205 .....	7, 9
15	<i>Workman v. Mingo County Sch.</i>	
16	(S.D. W. Va. 2009) 667 F. Supp.2d 679 .....	6
17	<i>Workman v. Mingo County Bd. of Educ.</i>	
18	(4th Cir. 2011) 419 F. App'x 348 .....	6, 12
19	<i>Zelig v. County of Los Angeles</i>	
20	(2002) 27 Cal.4th 1112 .....	5
21	<i>Zucht v. King</i>	
22	(1922) 260 U.S. 174 .....	6
23	<b>STATUTES</b>	
24	28 U.S.C. § 1446(b) .....	17
25	Code Civ. Proc.,	
26	§ 430.10, subd. (e).....	4
27	§ 430.30, subd. (a).....	5
28	§ 430.41.....	17
	Ed. Code, § 48216.....	11
	Health & Saf. Code,	
	§ 24174.....	15
	§ 24175, subd. (a).....	4, 17
	§ 120325.....	2, 9
	§ 120325, subd. (a).....	2

**TABLE OF AUTHORITIES**  
(continued)

		<u>Page</u>
1		
2		
3	§ 120335.....	2
4	§ 120335, subd. (f) .....	2, 12, 13
5	§ 120335, subd. (g) .....	3
6	§ 120335, subd. (g)(1).....	2
7	§ 120335, subd. (g)(3).....	2
8	§ 120335, subd. (h) .....	3
9	§ 120338.....	2, 3, 12
10	§ 120365.....	2
11	§ 120370.....	2
12	§ 120370, subd. (a).....	3
13	§ 120375.....	2
14	Senate Bill 277 (Stats 2015 Ch. 35).....	1, passim
15	<b>CONSTITUTIONAL PROVISIONS</b>	
16	First Amendment.....	6, 17
17	Fourth Amendment .....	6
18	Fourteenth Amendment.....	17
19	Cal. Const., Article I, § 28(7).....	13
20	Cal. Const., Article 4.....	4
21	Cal. Const., Article 7.....	4
22	Cal. Const., Article IX, § 5.....	4, 10, 11
23	Cal. Const., Article IX, § 5 (3).....	17
24	<b>COURT RULES</b>	
25	Federal Rules of Civil Procedure	
26	Rule 12(b) .....	17
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs' Second Amended Complaint (SAC) fails to state a claim on which relief may be  
4 granted because their claims are unsupported as a matter of federal and state constitutional law,  
5 which for decades has consistently held that (1) a state's exercise of its police powers in  
6 protecting the public from communicable diseases is rationally based; (2) states have a legitimate  
7 and compelling interest in requiring children to be vaccinated before entering school; and (3)  
8 personal belief exemptions in mandatory vaccination statutes are not constitutionally protected  
9 and, as such, may be eliminated by the Legislature.

10 In enacting Senate Bill 277 (Stats 2015 Ch. 35) (SB 277), the Legislature expressed its  
11 intent to provide a means for the eventual achievement of total immunization of school children  
12 against a number of deadly, but highly preventable, childhood diseases. Plaintiffs' claims are  
13 predicated on the misguided supposition that their subjective personal beliefs against childhood  
14 vaccinations outweigh the health and safety of the millions of children enrolled in California  
15 schools, the health and safety of the general public, and the considered judgment of the California  
16 Legislature in addressing a significant public health issue that embodies a core function of  
17 government: to protect the health and safety of its citizens against preventable harm.

18 The authority of the Legislature to require students to be vaccinated in order to protect the  
19 health and safety of other students and the public at large, irrespective of their parents' personal  
20 beliefs, is firmly embedded in our jurisprudence, and embodies a quintessential function of an  
21 organized government to protect its people from preventable harm. The State's legitimate and  
22 compelling interest in protecting public health and safety by mandating vaccinations for school  
23 children has been *unanimously* recognized by the U.S. Supreme Court, the California Supreme  
24 Court, and every other federal and state court that has addressed the issue.

25 By seeking to enjoin the enforcement of SB 277, plaintiffs are asking this Court to  
26 disregard decades of federal and state jurisprudence. The public health and welfare must not be  
27 jeopardized by the subjective beliefs and unfounded conspiracy theories of a small minority of  
28 individuals who, against all recognized scientific and legal authority, stubbornly disregard the

1 long-recognized safety and effectiveness of vaccines, and who fail to recognize the public health  
2 threat that their unsupported opinions have on the lives of others around them.

3 Because this is plaintiffs' *third* attempt at a cognizable pleading, defendant's demurrer  
4 should be sustained without leave to amend.

## 5 RELEVANT FACTS

### 6 I. THE STATE'S CHILD IMMUNIZATION STATUTES

7 Senate Bill 277 (SB 277) was enacted over one year ago, on June 30, 2015. (See Stats 2015  
8 Ch. 35.) In relevant part, SB 277 eliminates the personal belief exemption from the statutory  
9 requirement that children receive vaccines for certain infectious diseases prior to being admitted  
10 to any public or private elementary or secondary school, or day care center. (*Ibid.*) In so doing,  
11 SB 277 revised the Health and Safety Code by amending sections 120325, 120335, 120370, and  
12 120375, added section 120338, and repealed Health and Safety Code section 120365. (*Ibid.*)

13 In enacting SB 277, the Legislature reaffirmed its intent "to provide . . . [a] means for the  
14 eventual achievement of total immunization of appropriate age groups" against these childhood  
15 diseases. (Health & Saf. Code, § 120325, subd. (a).) SB 277 requires children to be immunized  
16 against (1) diphtheria, (2) hepatitis B, (3) haemophilus influenzae type b, (4) measles, (5) mumps,  
17 (6) pertussis (whooping cough), (7) poliomyelitis, (8) rubella, (9) tetanus, (10) varicella  
18 (chickenpox), and (11) "[a]ny other disease deemed appropriate by the [California Department of  
19 Public Health (Department)]." (*Ibid.*)

20 SB 277 has been in effect since January 1, 2016. Personal belief exemptions have been  
21 prohibited since that date. (Health & Saf. Code, § 120335, subd. (g)(1).) And, since July 1, 2016,  
22 school authorities may not unconditionally admit for the first time any child to preschool,  
23 kindergarten through sixth grade, or admit any pupil to seventh grade, unless the pupil either has  
24 been properly immunized, or qualifies for other exemptions recognized by statute. (Health & Saf.  
25 Code, § 120335, subd. (g)(3).)

26 There are exemptions to the immunization requirements under SB 277. Vaccinations are  
27 not required for any student in a home-based private school or independent study program who  
28 does not receive classroom-based instruction. (Health & Saf. Code, § 120335, subd. (f).)

1 Moreover, a child may be medically exempt from the immunizations specified in the statute if a  
2 licensed physician states in writing that “the physical condition of the child is such, or medical  
3 circumstances relating to the child are such, that immunization is not considered safe.” (Health &  
4 Saf. Code, § 120370, subd. (a).) Any other immunizations may only be mandated “if exemptions  
5 are allowed for both medical reasons and personal beliefs.” (Health & Saf. Code, § 120338.) SB  
6 277 also provides an exception relating to children in individualized education programs. (Health  
7 & Saf. Code, § 120335, subd. (h).)

8 SB 277 further provides that personal belief exemptions on file with a school or child care  
9 center prior to January 1, 2016, will continue to be honored through each of the designated grade  
10 spans (birth to preschool; kindergarten and grades one to six inclusive; and grades seven to  
11 twelve, inclusive), until the unvaccinated pupil advances to the next grade span. (Health & Saf.  
12 Code, § 120335, subd. (g).)

13 SB 277 was enacted in response to, among other things, a health emergency beginning in  
14 December 2014, when California “became the epicenter of a measles outbreak which was the  
15 result of unvaccinated individuals infecting vulnerable individuals including children who are  
16 unable to receive vaccinations due to health conditions or age requirements.” (See defendant’s  
17 concurrently-filed Request for Judicial Notice (RJN), Exh. 1, Sen. Com. on Education, Analysis  
18 of Sen. Bill No. 277 (2014-15 Reg. Sess.), at p. 5.)

19 “According to the Centers for Disease Control and Prevention, there were more  
20 cases of measles in January 2015 in the United States than in any one month in the  
21 past 20 years,” and “[m]easles has spread through California and the United  
States, in large part, because of communities with large numbers of unvaccinated  
people.”

22 (*Id.* (italics added).) As further noted in SB 277’s legislative history, “[a]ll of the diseases for  
23 which California requires school vaccinations are very serious conditions that pose very real  
24 health risks to children.” (RJN, Exh. 2, Ass. Com. on Health, Analysis of Sen. Bill No. 277  
25 (2014-15 Reg. Sess.), at p. 4.) “For example, measles in children has a mortality rate as high as  
26 about one in 500 among healthy children, higher if there are complicating health factors.” (*Id.*, at  
27 p. 3.) “Most of the diseases can be spread by contact with other infected children.” (*Id.*, at p. 4.)

1 The legislative history confirms that SB 277 was enacted with the support of recognized  
2 medical, educational and child-advocacy organizations in California, including, among others, the  
3 California Medical Association, the California Chapter of the American College of Emergency  
4 Physicians, the California Association for Nurse Practitioners, the California Primary Care  
5 Association, the California School Boards Association, the California School Nurses  
6 Organization, and the Children’s Defense Fund-California. (RJN, Exh. 1, Sen. Com. on  
7 Education, Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.), at 10.

8 **II. PLAINTIFFS’ CLAIMS**

9 Plaintiffs filed their initial complaint on April 22, 2016, and their summons on May 9,  
10 2016, against the State of California as the only named defendant. The case was removed to  
11 federal court on July 12, 2016, after plaintiffs filed their First Amended Complaint (FAC) in this  
12 Court asserting federal claims against newly named defendant Karen Smith, in her capacity as  
13 Director of the California Department of Public Health. The case was remanded to this Court  
14 after plaintiffs filed their *Second* Amended Complaint (SAC) in federal court, which plaintiffs  
15 admit is textually identical to their FAC, except that plaintiffs re-labeled their federal claims as  
16 state constitutional claims expressly to avoid federal jurisdiction.

17 The SAC asserts five causes of action: (1) a violation of the Free Exercise Clause of article  
18 I, section 4 of the California Constitution; (2) a denial of plaintiffs’ purported right to an  
19 education under article IX, section 5 of the California Constitution; (3) a violation of the Equal  
20 Protection Clause of article I, section 7 of the California Constitution, on the grounds that  
21 California schools allegedly have a legal duty to enroll students regardless of whether they are  
22 vaccinated; (4) a violation of Health and Safety Code section 24175, subdivision (a), on the  
23 grounds that SB 277 allegedly constitutes a purported prohibited medical experiment; and (5) a  
24 violation of the Due Process Clause of article I, section 7 of the California Constitution, on the  
25 grounds that the medical exemption provisions of SB 277 are allegedly unconstitutionally vague.

26 **STANDARD OF REVIEW**

27 A demurrer is proper when “[t]he pleading does not state facts sufficient to constitute a  
28 cause of action.” (Code Civ. Proc., § 430.10, subd. (e)). A demurrer tests the legal sufficiency of

1 the complaint. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) The court  
2 deems as true all material facts properly pled, and those facts that may be implied or inferred  
3 from those expressly alleged. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Marshall v. Gibson,*  
4 *Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.)

5 However, the court will not assume the truth of contentions, deductions or conclusions of  
6 fact or law, and the court may disregard allegations that are contrary to law, or are contrary to a  
7 fact of which judicial notice may be taken. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th  
8 1112, 1126.) Where an allegation “is contrary to law or to a fact of which a court may take  
9 judicial notice, it is to be treated as a nullity.” (*Fundin v. Chicago Pneumatic Tool Co.* (1984)  
10 152 Cal.App.3d 951, 955.) The court “will not close [its] eyes to situations where a complaint  
11 contains . . . allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v.*  
12 *Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

13 Consistent with the fundamental principle of truthful pleading, a complaint otherwise good  
14 on its face can be rendered defective by judicially noticed facts. (*Watson v. Los Altos School*  
15 *Dist.* (1957) 149 Cal.App.2d 768, 771-772; see Code Civ. Proc., § 430.30, subd. (a).) Thus, a  
16 demurrer may be sustained on the ground that matters properly subject to judicial notice show  
17 that the complaint fails to state facts sufficient to constitute a cause of action. (See *Saltarelli &*  
18 *Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

## 19 ARGUMENT

### 20 I. THE SAC FAILS TO STATE A CLAIM FOR RELIEF BECAUSE IMMUNIZATION LAWS 21 ARE LONG-RECOGNIZED CONSTITUTIONAL PUBLIC HEALTH MEASURES.

22 The authority of the California Legislature to require students to be vaccinated in order to  
23 protect the health and safety of other students and the public at large, irrespective of their parents’  
24 personal beliefs, is firmly embedded in our jurisprudence, and embodies a quintessential function  
25 of an organized government to protect its people from preventable harm. The State has an  
26 unquestionably legitimate, as well as a compelling interest in protecting public health and safety  
27 through mandatory vaccinations, as recognized by the U.S. Supreme Court in *Jacobson v.*  
28 *Commonwealth of Massachusetts* (1905) 197 U.S. 11, 32 (*Jacobson*), holding that a state’s

1 mandatory vaccination statute was a lawful exercise of the state’s police power to protect the  
2 public health and safety.

3 The Supreme Court’s holding in *Jacobson* remains good law. (See, e.g., *Cruzan v.*  
4 *Director, Missouri Department of Health* (1990) 497 U.S. 261, 278.) Indeed, since *Jacobson*, the  
5 legitimate and compelling state interest in protecting the public health through mandatory  
6 vaccinations, especially for school children, has remained unquestioned and been re-affirmed.  
7 Courts have repeatedly upheld mandatory vaccination laws over challenges predicated on the  
8 First Amendment, the Equal Protection Clause, the Due Process Clause, the Fourth Amendment,  
9 education rights, parental rights, and privacy rights, frequently citing *Jacobson*. (See, e.g., *Zucht*  
10 *v. King* (1922) 260 U.S. 174, 175-177 [“it is within the police power of a state to provide for  
11 compulsory vaccination”]; *Prince v. Massachusetts* (1944) 321 U.S. 158 (1944) [a parent “cannot  
12 claim freedom from compulsory vaccination for the child more than for himself on religious  
13 grounds”]; *Vernonia School District 47J v. Acton* (1995) 515 U.S. 646 [“[f]or their own good and  
14 that of their classmates, public school children are routinely required to submit to various physical  
15 examinations, and to be vaccinated against various diseases”]; *Phillips v. City of New York* (2nd  
16 Cir. 2015) 775 F.3d 538, 543 [holding that “mandatory vaccination as a condition for admission  
17 to school does not violate the Free Exercise Clause”]; *Workman v. Mingo County Sch.* (S.D. W.  
18 Va. 2009) 667 F. Supp.2d 679, 690-691 [“a requirement that a child must be vaccinated and  
19 immunized before it can attend the local public schools violates neither due process nor . . . the  
20 equal protection clause of the Constitution”], *affirmed Workman v. Mingo County Bd. of Educ.*  
21 (4th Cir. 2011) 419 F. App’x 348, 353-54; *Boone v. Boozman* (E.D. Ark. 2002) 217 F. Supp.2d  
22 938, 956 (“the question presented by the facts of this case is whether the special protection of the  
23 Due Process Clause includes a parent’s right to refuse to have her child immunized before  
24 attending public or private school where immunization is a precondition to attending school. The  
25 Nation’s history, legal traditions, and practices answer with a resounding ‘no.’”).

26 California courts are in accord. (See *Walker v. Superior Court* (1988) 47 Cal.3d 112, 140  
27 [“parents have no right to free exercise of religion at the price of a child’s life, regardless of the  
28 prohibitive or compulsive nature of the governmental infringement”], citing *Jacobson* and *Prince*;

1 *Abeel v. Clark* (1890) 84 Cal. 226, 230 (*Abeel*) [upholding the State’s school vaccination  
2 requirements, recognizing that “it was for the legislature to determine whether the scholars of the  
3 public schools should be subjected to [vaccination]”]; *French v. Davidson* (1904) 143 Cal. 658,  
4 662 (*French*) [California’s mandatory vaccination state “in no way interferes with the right of the  
5 child to attend school, provided the child complies with its provisions”]; *Williams v. Wheeler*  
6 (1913) 23 Cal.App. 619, 625 [the state legislature has the power to prescribe “the extent to which  
7 persons seeking entrance as students in educational institutions within the state must submit to its  
8 [vaccination] requirements as a condition of their admission”]; *Love v. Superior Court* (1990) 226  
9 Cal.App.3d 736, 740 [“[t]he adoption of measures for the protection of the public health is  
10 universally conceded to be a valid exercise of the police power of the state, as to which the  
11 legislature is necessarily vested with large discretion not only in determining what are contagious  
12 and infectious diseases, but also in adopting means for preventing the spread thereof”].)

13 In fact, defendant is unaware of any case in which a court has struck down a state’s  
14 mandatory school immunization law. Because the extensive precedent *unanimously* supports the  
15 constitutionality of SB 277, defendant’s demurrer should be sustained.

16 **II. PLAINTIFFS FAIL TO STATE FACTS SUFFICIENT TO CONSTITUTE A VIOLATION OF**  
17 **THE FREE EXERCISE CLAUSE.**

18 **A. Mandatory Vaccination as a Condition for Admission to School Does Not**  
19 **Violate the Free Exercise Clause.**

20 In their First Cause of Action, plaintiffs allege that SB 277 violates their rights because  
21 the statute no longer allows exemptions based on purported “philosophical objections.” (SAC, at  
22 p. 17:15-20.) These alleged beliefs, no matter how genuinely held by plaintiffs, provide no basis  
23 for relief under the Free Exercise Clause.<sup>1</sup>

24 The Free Exercise Clause protects religious beliefs, not personal beliefs. Citing *Wisconsin*  
25 *v. Yoder* (1972) 406 U.S. 205 (*Yoder*), plaintiffs argue in their SAC that it is a “fundamental  
26 interest of parents . . . to guide the religious education of their children.” (SAC, at p. 9:13-17.)

27 <sup>1</sup> California courts review challenges “under the free exercise clause of the California  
28 Constitution in the same way we might have reviewed a similar challenge under the federal  
Constitution.” (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527,  
562.)

1 Yet, the Supreme Court in *Yoder* was clear: “philosophical and personal . . . belief[s] [do] not rise  
2 to the demands of the Religion Clauses. (*Yoder, supra*, 406 U.S. at p. 216.)

3 Here, of the eight plaintiffs, only three individuals mention religion. None of the plaintiffs  
4 explains how the SB 277-mandated vaccines violate their right to freely exercise their religious  
5 beliefs. Plaintiffs Brown, Lucas and Selden allege that they are Christian. (SAC, at pp. 13:23-24,  
6 14:1-2, 14:16-17.) However, although Brown and Selden allege that they oppose vaccines that  
7 contain aborted fetal cells, they fail to specify which vaccines they oppose as a matter of religion,  
8 or the religious doctrine on which their beliefs are based, and fail to specify which vaccines  
9 purportedly contain aborted fetal cells. (*Id.*, at pp. 13:17-28, 14:16-24.) Plaintiff Lucas does not  
10 explain how vaccination interferes with her Christian beliefs – indeed, she admits that her  
11 children have previously been vaccinated. Lucas merely alleges that she believes that “failure to  
12 further vaccinate should not impact public school access.” (*Id.*, at p. 14:1-8.)

13 The other five plaintiffs make no mention of religion and merely allege purported  
14 philosophical and conscientious objections. Plaintiff Buck claims “[h]er philosophy on immunity  
15 is that natural immunity is safest.” (SAC, at p. 13:5-6.) Plaintiff Housen wants her daughter “to  
16 live natural, vaccine-free, organic, and vegetarian.” (*Ibid.*, at p. 14:10-11.) Plaintiff Serge  
17 Eustache wants to keep “our freedom of choice in the matter of vaccination.” (*Id.*, at pp. 15:1).  
18 Plaintiff Trishe Eustache “believes that health is best maintained by adhering to an organic diet,  
19 high in raw foods, as well as exercise, routine cleansing, and detox.” (*Id.*, at p. 15:10-12.)  
20 Plaintiff Jencen “believes that a holistic and organic lifestyle is best for all.” (*Id.*, at p. 15:26-27.)

21 Similar to the plaintiffs here, the plaintiffs in *Hanzel v. Arter* (S.D. Ohio 1985) 625 F.  
22 Supp. 1259, objected to the immunization of their children on the basis of their belief in “a body  
23 of thought which teaches that injection of foreign substances into the body is of no benefit and  
24 can only be harmful.” (*Id.*, 625 F. Supp. at p. 1260.) The *Hanzel* court disagreed, stating “[a]s  
25 made clear by the Supreme Court in *Wisconsin v. Yoder*, philosophical beliefs do not receive the  
26 same deference in our legal system as do religious beliefs, even when the aspirations flowing  
27 from each such set of beliefs coincide.” (*Id.*, at p. 1265; see also *Friedman v. Southern California*  
28 *Permanente Medical Group* (2002) 102 Cal.App.4th 39 [“While veganism compels plaintiff to

1 live in accord with strict dictates of behavior, it reflects a moral and secular, rather than religious,  
2 philosophy”]; *Syska v. Montgomery County Bd. of Ed.* (Md. Ct. Spec. App. 1980) 45 Md.App.  
3 626, 632 “[A]ppellant’s objections to the immunization program . . . are based on her own  
4 subjective evaluation of and rejection of the benefits to the public safety and to her children  
5 derived therefrom. Her beliefs . . . are philosophical and personal rather than religious.”<sup>2</sup>]

6 “A way of life, however virtuous and admirable, may not be interposed as a barrier to  
7 reasonable state regulation of education if it is based on purely secular considerations; to have the  
8 protection of the Religion Clauses, the claims must be rooted in religious belief.” (*Yoder, supra*,  
9 406 U.S. at p. 215.) That plaintiffs are entitled to their personal beliefs is without question. But  
10 these personal beliefs are not protected under the Free Exercise Clause. Nor are these personal  
11 beliefs a legitimate restraint on the State’s authority to protect the public from the spread of  
12 communicable diseases.

13 **B. SB 277 Is Rationally Related to a Legitimate Interest.**

14 Even if plaintiffs’ objections could be characterized as religious, rather than personal  
15 subjective beliefs, plaintiffs’ argument that strict scrutiny is the applicable standard of review for  
16 their claims is wrong. (SAC, at p. 18:1-2.) “[A] law that is neutral and of general applicability  
17 need not be justified by a compelling governmental interest even if the law has the incidental  
18 effect of burdening a particular religious practice.” (*Church of the Lukumi Babalu Aye, Inc. v.*  
19 *City of Hialeah* (1993) 508 U.S. 520, 531.) SB 277 is neutral and of general applicability; it  
20 applies to all children in day care, public and private schools. (See Health & Saf. Code, § 120325  
21 et seq.) Thus, rational basis review is the correct level of scrutiny.

22 “[T]he rational-basis standard . . . employs a relatively relaxed standard.” (*Massachusetts*  
23 *Bd. of Retirement v. Murgia* (1976) 427 U.S. 307, 314.) A law is upheld “so long as it bears a  
24 rational relation to some legitimate end.” (*Romer v. Evans* (1996) 517 U.S. 620, 631.) “[C]ourts

25  
26 <sup>2</sup> Plaintiff Brown also alleges that SB 277 violates her family’s privacy rights. (FAC, at p.  
27 13:27-28.) In *Hanzel, supra*, the court held that a statute mandating vaccination for school  
28 admission did not violate privacy rights, because “the immunization decision is not encompassed  
within the right of privacy.” (*Hanzel, supra*, 625 F.Supp. at p. 1263.)

1 are compelled . . . to accept a legislature’s generalizations even when there is an imperfect fit  
2 between means and ends.” (*Heller v. Doe by Doe* (1993) 509 U.S. 312, 321.)

3 The U.S. Supreme Court, the California Supreme Court, and numerous other federal and  
4 state courts have uniformly held that state immunization laws serve a rational, if not a compelling,  
5 state interest in protecting the public from the spread of communicable diseases. This interest  
6 was recognized by the U.S. Supreme Court in *Jacobson* 110 years ago and is consistently  
7 affirmed today. (*See, e.g., Phillips, supra*, 775 F.3d at 542.)

8 SB 277 is rationally related to a legitimate state interest of protecting the public from the  
9 spread of debilitating, and potentially fatal, diseases, as its legislative history confirms: “Vaccine  
10 coverage at the community level is vitally important for people too young to receive  
11 immunizations and [for] those unable to receive immunizations due to medical reasons.” (RJN,  
12 Exh. 3, Sen. Jud. Com., Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.), at p. 6.) “[W]hen  
13 belief exemptions to vaccination guidelines are permitted, vaccination rates decrease.” (*Id.*, Exh.  
14 2, at p. 5.) “Given the highly contagious nature of [these] diseases . . . vaccination rates of up to  
15 95% are necessary to preserve herd immunity and prevent future outbreaks.” (*Id.*, Exh. 3 at p. 5.)

16 Hence, plaintiffs’ claims fail as a matter of law because the Legislature’s removal of the  
17 personal beliefs exemption in SB 277 is rationally related to a legitimate, if not a compelling,  
18 state interest in protecting the health and safety of public school students and the general public.<sup>3</sup>

19 **III. SB 277 DOES NOT VIOLATE THE RIGHT TO AN EDUCATION.**

20 Plaintiffs wrongly assert that SB 277 violates the right to education under article IX,  
21 section 5 of the California Constitution. (SAC, at pp. 20-22.) To the contrary, the statute  
22 operates to *protect* children’s access to education by ensuring that it is not impaired by the  
23 proliferation of otherwise preventable diseases.

24  
25 <sup>3</sup> Plaintiffs’ allegations that vaccinations are ineffective and unsafe, and contain aborted  
26 fetal cells, are demonstrably false and improper, and are addressed in defendant’s concurrently-  
27 filed motion to strike. Indeed, as requested by defendant in her concurrently-filed Request for  
28 Judicial Notice, the Court, respectfully, should take judicial notice that the protection of school  
children against crippling and deadly diseases by vaccinations is done effectively and safely, and  
that such protection and safety are matters of common knowledge.

1           The California Constitution provides that the “Legislature shall provide for a system of  
2 common schools by which a free school shall be kept up and supported.” (Cal. Const., art. IX, §  
3 5.) In *French v. Davidson*, *supra*, the California Supreme Court expressly held that the State’s  
4 mandatory school vaccination statute “in no way interferes with the right of the child to attend  
5 school, provided the child complies with its provisions.” (*Id.*, 143 Cal. at p. 662.) Similarly, in a  
6 case cited extensively in *Jacobson*, the New York Court of Appeal in *Viemeister v. White* (1904)  
7 179 N.Y. 235, 72 N.E. 97, expressly held that New York’s mandatory school vaccination statute  
8 did not violate that state’s constitutional right to a free public education, which is virtually  
9 identical to that contained in California’s constitution. (*Id.*, 179 N.Y. at p. 238 [“[t]he right to  
10 attend the public schools of this state is necessarily subject to some restrictions and limitations in  
11 the interest of the public health”].)

12           In asserting their claim, plaintiffs improperly conflate their children’s right to a free public  
13 education with plaintiffs’ corresponding parental obligations under the Education Code to ensure  
14 that their children are properly vaccinated, and that they attend school. The Education Code  
15 requires all parents to ensure that their children are vaccinated in accordance with the Health and  
16 Safety Code. (Ed. Code, § 48216.) In turn, parents face penalties and contempt charges in the  
17 event they do not properly enroll their children in school. (Ed. Code, § 48216.) It is to these  
18 parental obligations that SB 277 is directed, not to their children’s right to an education.

19           To the contrary, plaintiffs’ decisions to not vaccinate their children and thereby withhold  
20 their children from the school classroom are personal decisions that they, alone, are making, and  
21 do not involve any state action that infringes on the right to a free public education.

22           **A. SB 277 Withstands Strict Scrutiny.**

23           Even if SB 277 arguably infringes on children’s right to an education (and it does not), the  
24 statute survives plaintiffs’ constitutional challenge.

25           In holding that “education is a fundamental interest,” the California Supreme Court has  
26 applied strict scrutiny review to laws affecting the right to education. (*Serrano v. Priest* (1976)  
27 18 Cal.3d 728, 766, *supplemented* (1977) 20 Cal.3d 25.) Under strict scrutiny review, the State  
28 “bears the burden of establishing . . . that it has a [c]ompelling interest which justifies the law.”

1 (*Serrano v. Priest* (1971) 5 Cal.3d 584, 597.) If so, the State must demonstrate the law “is  
2 ‘tailored’ narrowly to serve legitimate objectives and that it has selected the ‘less drastic means’  
3 for effectuating its objectives.” (*San Antonio Independent School Dist. v. Rodriguez* (1973) 411  
4 U.S. 1, 17.)

5 As discussed in detail above, *Jacobson* and its progeny have unequivocally held that  
6 immunization laws are justified because they serve a compelling state interest in protecting public  
7 health and safety. (See, e.g., *Workman v. Mingo County Sch.*, *supra*, 419 F. App’x at pp. 353-54  
8 (“the state’s wish to prevent the spread of communicable diseases clearly constitutes a compelling  
9 interest”]; *Sherr v. Northport-East Northport Union Free School Dist.* (E.D.N.Y. 1987) 672 F.  
10 Supp. at p. 88 [holding there is a “compelling interest . . . in fighting the spread of contagious  
11 diseases through mandatory inoculation programs”].)

12 Plaintiffs are unable to cite to a single case where a court has held that there is no  
13 compelling interest in protecting the public from the spread of communicable diseases through  
14 vaccination.

15 Furthermore, SB 277 is narrowly tailored to serve this compelling interest. It does not  
16 mandate vaccination for all contagious diseases, but only those that the Legislature determined  
17 are “very serious” and that “pose very real health risks to children.” (See Rich Decl., Exh. 2 at p.  
18 4.) Indeed, SB 277 only eliminates the personal belief exemption as to the ten specific vaccines  
19 presently enumerated in the statute. (Health & Saf. Code, § 120338.) It also contains appropriate  
20 but limited exemptions for children with medical conditions for whom vaccinations were  
21 medically determined to be unsafe, and children who are homeschooled or enrolled in  
22 independent study programs. (Health & Saf. Code, § 120335, subd. (f).) SB 277 also provides an  
23 exception related to students who attend individualized education programs. (*Id.*, at subd. (h).)

24 **B. SB 277 Promotes Children’s Right to Education.**

25 In enacting SB 277, the Legislature recognized that “[s]afe schools are a precondition to  
26 education.” (RJN, Exh. 3 at 6.) SB 277 does not violate the right to education; to the contrary, it  
27 benefits and supports safe access to education for all school children by ensuring that the exercise  
28 of the right to education is not impaired by the transmission of serious or potentially fatal

1 diseases. (See also Cal. Const., art. I, § 28(7) (“the People find and declare that the right to  
2 public safety extends to public and private primary, elementary, junior high, and senior high  
3 school, . . . where students and staff have the right to be safe and secure in their persons”).

4 Plaintiffs acknowledge that “society has a compelling interest in affording children an  
5 opportunity to attend school.” (SAC, at p. 9:4-6, citing *Serrano, supra*, 5 Cal.3d at p. 606.) Their  
6 acknowledgment, however, is made without consideration of the rights of the millions of school  
7 children and their parents who rely on mandatory vaccinations to ensure that their right to an  
8 education is not threatened by the spread of potentially fatal communicable diseases.

9 Indeed, the U.S. Supreme Court has long recognized that the institutional interest of  
10 schools, as well the rights of the student body at large, often hold sway over the rights of  
11 individual students. “For their own good and that of their classmates, public school children are  
12 routinely required to submit to various physical examinations, and to be vaccinated against  
13 various diseases.” (*Vernonia School District 47J v. Acton, supra*, 515 U.S. 646 [noting with  
14 approval that “all 50 States required public school students to be vaccinated against diphtheria,  
15 measles, rubella, and polio,” and that “[p]articularly with regard to medical examinations and  
16 procedures, therefore, ‘students within the school environment have a lesser expectation of  
17 privacy than members of the population generally’”].)

18 Moreover, as stated above, SB 277 expressly provides exemptions for students enrolled in  
19 home schooling and independent study programs, thus ensuring the right to an education for  
20 unvaccinated children. (See Health & Saf. Code, § 120335, subd. (f).)

21 **IV. PLAINTIFF’S EQUAL PROTECTION AND DUE PROCESS CLAIMS ARE WITHOUT  
22 MERIT**

23 **A. Plaintiffs Fail to Plead a Valid Equal Protection Claim**

24 Plaintiffs’ claim under the Equal Protection Clause hinges on their assertion, made without  
25 any supporting legal authority, that “[s]chools must treat all students the same regardless of  
26 whether they are vaccinated.” (SAC, at p. 23:10-11.)

27 Plaintiffs’ attempt to construct a vaccination-based distinction to substantiate alleged equal  
28 protection violations is unavailing. SB 277 is neutral on its face. It does not discriminate on the  
basis of race, national origin, wealth or age. The Legislature established a system of vaccination

1 requirements that follows national recommendations and schedules for children and adolescents.  
2 That vaccination schedule dictates when children should receive which vaccines.

3 Even if this Court were to entertain plaintiffs' attempts to create a new classification, SB  
4 277 survives both rational basis and strict scrutiny review. The rational basis standard of review  
5 is "the basic and conventional standard for reviewing economic and social welfare legislation in  
6 which there is a 'discrimination' or differentiation of treatment between classes or individuals."  
7 (See *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 645 (*Vergara*)). Strict scrutiny  
8 is employed only when the "distinction drawn by a statute rests upon a so-called 'suspect  
9 classification' or impinges upon a fundamental right." (*Vergara, supra*, 246 Cal.App.4th at p.  
10 645.) However, even when a statutory classification impinges a fundamental right (and does not  
11 involve a suspect classification), strict scrutiny will not apply "if the effect on the fundamental  
12 right is merely 'incidental,' 'marginal,' or 'minimal.'" (*Id.*, citing *Fair Political Practices Com.*  
13 *v. Superior Court* (1979) 25 Cal.3d 33, 47.)

14 Even in those cases when strict scrutiny applies, however, the state law is deemed justified  
15 if the state has "a compelling interest which justifies the law [and] that the distinctions drawn by  
16 the law are necessary to further its purpose." (*Vergara, supra*, 246 Cal.App.4th at p. 645.)

17 As discussed in detail above, the U.S. Supreme Court and California courts have uniformly  
18 held that the state has a rational and a compelling interest in mandating the vaccinations of  
19 children before they are admitted to school. In light of this overwhelming precedent, plaintiffs  
20 cannot prevail on their equal protection claim.

21 **B. SB 277's Medical Exemption Is Not Unconstitutionally Vague.**

22 Due process claims under California and federal law are analyzed under the same  
23 principles. (See, e.g., *Patel v. City of Gilroy* (2002) 97 Cal.App.4th 483, 486.) A statute is void  
24 for vagueness only "where a person of 'common intelligence must necessarily guess at its  
25 meaning and differ as to its application.'" (*Davidovich v. City of San Diego* (S.D. Cal. Dec. 1,  
26 2011) Case No. 11 cv 2675 WQH-NLS, 2011 U.S. Dist. LEXIS 138319, \*17, citing *Connally v.*  
27 *General Const. Co.* (1926) 269 U.S. 385, 391.) Moreover, "the Constitution does not require  
28 impossible standards; all that is required is that the language conveys sufficiently definite warning

1 as to the proscribed conduct when measured by common understanding and practices.” (*Id.*,  
2 citing *Roth v. United States* (1957) 354 U.S. 476, 491.)

3 Plaintiffs admit in their pleading that the plain language of the medical exemption requires  
4 “a written statement by a licensed physician to the effect that the physical condition of the child is  
5 such, or medical circumstances relating to the child are such, that immunization is not considered  
6 safe, indicating the specific nature and probable duration of the medical condition or  
7 circumstances, including, but not limited to, family medical history, for which the physician does  
8 not recommend immunization.” (SAC, p. 34:5-17, quoting Health & Saf. Code, § 120370, subd.  
9 (a).)

10 On its face, SB 277 sufficiently conveys what is required for a medical exemption under SB  
11 277.<sup>4</sup>

12 In sum, defendant’s demurrer should be sustained without leave to amend because  
13 plaintiffs’ claims run counter to over a century of jurisprudence in the U.S. and California  
14 Supreme Courts, and the rest of the nation – jurisprudence that (1) has consistently affirmed the  
15 states’ legitimate and compelling interest to require school children to be vaccinated to protect  
16 their health; (2) rests upon the overwhelming great weight of scientific evidence confirming the  
17 transformative public health benefits of vaccination; and (3) ensures their children’s right to a  
18 safe and healthy environment for their education.

### 19 CONCLUSION

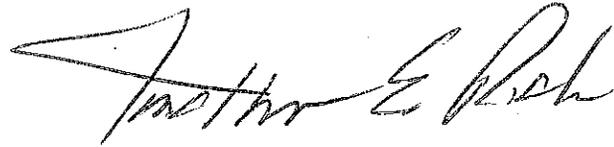
20 Because this is plaintiffs’ third attempt at a cognizable pleading, for the foregoing reasons  
21 defendant Karen Smith respectfully requests that the Court sustain its demurrer to plaintiffs’ SAC  
22 without leave to amend.

23 <sup>4</sup> Plaintiffs also cannot prevail on their Fourth Cause of Action, in which they assert that  
24 vaccinations constitute “medical experiments” prohibited by Health and Safety Code section  
25 24174. (SAC, at pp. 27-32.) That statute is limited to medical procedures “in or upon a human  
26 subject in the practice or research of medicine *in a manner not reasonably related to maintaining  
27 or improving the health of the subject or otherwise directly benefiting the subject.*” (Health &  
28 Saf. Code, § 24174 (italics added); see also *Perez v. Nidek Co.* (9th Cir. 2013) 711 F.3d 1109  
[holding that the informed consent provisions of section 24174 apply only to procedures done in  
furtherance of pure research, and not to therapeutic treatments].) Beyond dispute, vaccinations  
are designed to maintain or improve the health of the subject, by preventing the transmission of  
communicable, and potentially disabling or fatal, diseases.

1 Dated: August 22, 2016

Respectfully Submitted,

2 KAMALA D. HARRIS  
3 Attorney General of California  
4 RICHARD T. WALDOW  
5 Supervising Deputy Attorney General  
6 JACQUELYN Y. YOUNG  
7 Deputy Attorney General



8 JONATHAN E. RICH  
9 Deputy Attorney General

10 *Attorneys for Defendant Karen Smith, in her  
11 capacity as the Director of the California  
12 Department of Public Health*

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**DECLARATION OF  
JONATHAN E. RICH**

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**DECLARATION OF JONATHAN E. RICH**

I, Jonathan E. Rich, declare the following:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am a Deputy Attorney General with the Office of the Attorney General, counsel for defendant Karen Smith (defendant) in this case. As such, I have personal knowledge of the facts stated herein:

2. Pursuant to Code of Civil Procedure section 430.41, at various dates and times throughout the months of June, July and August 2016, the parties met and conferred by telephone concerning defendant's objections raised in this demurrer. The parties were unable to reach an agreement on defendant's objections.

3. Specifically, on June 9, 2016, the parties' counsel met and conferred in detail concerning defendant's objections and anticipated demurrer to the allegations and causes of action raised in plaintiffs' initial Complaint, in which plaintiffs named the State of California as the only identified defendant.

4. On June 28, 2016, before the State of California responded to the initial Complaint, plaintiffs filed a First Amended Complaint and a new Summons, in which plaintiffs replaced the State of California with a new defendant, Karen Smith in her capacity as the Director of the California Department of Public Health. Plaintiffs asserted five causes of action against defendant Smith in their First Amended Complaint: (1) violation of the First Amendment (Free Exercise Clause), (2) violation of the California Constitution, article 9, section 5, (3) violation of the Equal Protection Clause of the Fourteenth Amendment, (4) violation of California Health and Safety Code section 24175, subdivision (a); and (5) violation of the Due Process Clause of the Fourteenth Amendment.

5. Defendant timely filed her notice of removal on July 12, 2016, pursuant to 28 U.S.C. § 1446(b).

6. Thereafter, on July 18, 2016, in anticipation of defendant's motion to dismiss the First Amended Complaint in federal court under Rule 12(b) of the Federal Rules of Civil Procedure,

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Tamara Buck, et al. v. The State of California**  
Case No.: **BC617766**

I declare:

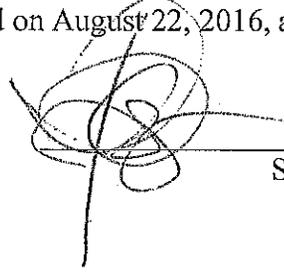
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General 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.

On August 22, 2016, I served the attached **DEFENDANT KAREN SMITH'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JONATHAN E. RICH** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

T. Matthew Phillips, Esq.  
Attorney at Law  
10040 West Cheyenne Avenue, #170  
Las Vegas, NV 89129

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 22, 2016, at Los Angeles, California.

\_\_\_\_\_  
Yesenia Caro  
Declarant



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Signature