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7 *Attorneys for Defendants*

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
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13 **DEVON TORREY-LOVE; S.L.;**
COURTNEY BARROW; A.B.;
14 **MARGARET SARGENT; M.S.;**
15 **W.S.; and A VOICE FOR CHOICE,**
INC. on behalf of its members,

16 Plaintiffs,

17 v.

18 **STATE OF CALIFORNIA,**
19 **DEPARTMENT OF EDUCATION;**
20 **STATE OF CALIFORNIA, BOARD**
OF EDUCATION; TOM
21 **TORLAKSON, in his official capacity**
as Superintendent of the Department
22 **of Education; STATE OF**
CALIFORNIA, DEPARTMENT OF
23 **PUBLIC HEALTH; DR. KAREN**
SMITH, in her official capacity as
24 **Director of the Department of Public**
Health; EDMUND G. BROWN JR.,
25 **in his official capacity as Governor of**
California; KAMALA HARRIS, in
26 **her official capacity as Attorney**
General of California,

27 Defendants.
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5:16-cv-2410 DMG (DTBx)

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF THEIR MOTION TO DISMISS
PLAINTIFFS' COMPLAINT, AND
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF DEPUTY
ATTORNEY GENERAL
JONATHAN E. RICH**

[Fed. R. Civ. P. 12(b)(1), (6)]

[Filed Concurrently with
Defendants' Notice of Motion and
Motion to Dismiss; and
Memorandum of Points and
Authorities]

Date: January 13, 2017
Time: 9:30 a.m.
Courtroom: 8C, 8th Floor
Judge: The Honorable Dolly M.
Gee
Trial Date: None Set
Action Filed: November 21, 2016

1 Defendants California Department of Education; California State Board of
2 Education; Tom Torlakson, in his official capacity as the Superintendent of Public
3 Instruction for the State of California; California Department of Public Health;
4 Karen Smith, in her official capacity as Director of the California Department of
5 Public Health; Edmund G. Brown Jr., in his official capacity as the Governor of the
6 State of California; and Kamala Harris, in her official capacity as the Attorney
7 General of California (collectively Defendants), hereby respectfully request that
8 the Court take judicial notice of the following documents attached as exhibits to the
9 Declaration of Jonathan E. Rich (Rich Decl.), in its consideration of Defendant's
10 Motion to Dismiss Plaintiffs' Complaint and Defendant's separately-filed
11 Opposition to Plaintiffs' Motion for Preliminary Injunction:

12 1. California Senate Committee on Education, Analysis of Senate Bill No.
13 277 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277. (Rich
14 Decl., Exh. 1.)

15 2. California Assembly Committee on Health, Analysis of Senate Bill No.
16 277 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277. (Rich
17 Decl., Exh. 2.)

18 3. California Senate Judiciary Committee, Analysis of Senate Bill No. 277
19 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277. (Rich
20 Decl., Exh. 3.)

21 4. Order denying the plaintiffs' motion for preliminary injunction, dated
22 August 26, 2016, of the U.S. District Court for the Southern District of California in
23 the matter entitled *Whitlow, et al. v. Department of Education et al.*, S.D. Cal. Case
24 No. 3:16-cv-01715-DMS-BGS. (Rich Decl., Exh. 4.)

25 5. Order of the Los Angeles County Superior Court, dated October 21,
26 2016, sustaining the defendant's demurrer to the plaintiff's Second Amended
27 Complaint without leave to amend, and the demurrer incorporated by reference
28

1 therein, in the matter entitled *Buck v. State of California*, Los Angeles County
2 Superior Court Case No. BC617766. (Rich Decl., Exh. 5.)

3 The grounds for this Request are that each of the foregoing documents may be
4 judicially noticed by this Court and are relevant to the Court's consideration of
5 Defendant's Motion to Dismiss Plaintiffs' Complaint and Opposition to Plaintiffs'
6 Motion for Preliminary Injunction.

7 Dated: December 15, 2016

Respectfully submitted,

8 KAMALA D. HARRIS
9 Attorney General of California
10 RICHARD T. WALDOW
11 Supervising Deputy Attorney General
12 JACQUELYN Y. YOUNG
13 Deputy Attorney General

14 */s/ Jonathan E. Rich*
15 JONATHAN E. RICH
16 Deputy Attorney General
17 *Attorneys for Defendants*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Ordinarily, if a district court considers any material beyond the pleadings in
3 ruling on a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil
4 Procedure, “the motion must be treated as one for summary judgment under Rule
5 56.” Fed. R. Civ. Proc. 12(d). As discussed below, one exception to this general
6 rule is that the court may consider documents that may be judicially noticed.

7 **ARGUMENT**

8 The Court may take judicial notice “of ‘matters of public record’ without
9 converting a motion to dismiss into a motion for summary judgment.” *United States*
10 *v. 14.02 Acres of Land*, 547 F.3d 943, 955 (9th Cir. 2008) (citing *Lee v. City of Los*
11 *Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). *Accord, Green v. Uribe*, 2010 U.S.
12 Dist. LEXIS 81444, *1, fn. 1 (C.D. Cal. August 6, 2010) (“[t]he Court takes judicial
13 notice of such ‘matters of public record,’” citing *Lee*).

14 Exhibits 1 through 3 are true and correct copies of relevant portions of the
15 legislative history of Senate Bill 277 (SB 277), which is the statute challenged by
16 plaintiffs in this case. “Legislative history is properly a subject of judicial notice.”
17 *Anderson v. Holder*, 673 F.3d 1089, 1094 (9th Cir. 2012). Indeed, the Ninth Circuit
18 has routinely accepted evidence, and has otherwise taken judicial notice, of
19 legislative histories and other public records where the documents are readily
20 available to the public, authentic and relate to the matter at issue. *See, e.g., Arce v.*
21 *Douglas*, 793 F.3d 968, 979, n.4 (9th Cir. 2015); *Ass'n des Eleveurs de Canards et*
22 *d'Oies du Quebec v. Harris*, 729 F.3d 937, 945 n.2 (9th Cir. 2013); *Aramark*
23 *Facility Servs. v. SEIU, Local 1877*, 530 F.3d 817, 826 n.4 (9th Cir. 2008).

24 The legislative analyses of SB 277 are directly relevant to plaintiffs’ claims
25 that the State lacks a legitimate or compelling interest in the enactment of the
26 statute. The legislative analyses reveal the data, detailed factual findings and
27 opinions of recognized scientific, educational and legal authorities that were relied
28 on by the California Legislature when it considered SB 277, and thus confirm that

1 the legislation not only serves a legitimate and compelling state interest, but is
2 appropriately tailored to address that interest.

3 Exhibit 4 is a true and correct copy of an order of the U.S. District Court for
4 the Southern District of California. Exhibit 5 is a true and correct copy of an order
5 of the Los Angeles County Superior Court and the filing incorporated by reference
6 in the court's order. All of these documents are matters of public record, and are
7 therefore subject to judicial notice. *See, e.g., United States v. Wilson*, 631 F.2d 118,
8 119 (9th Cir. 1980) (“a court may take judicial notice of its own records in other
9 cases, as well as the records of an inferior court in other cases”); *accord Yagman v.*
10 *United States*, Case No. 15-56836, 2016 U.S. App. LEXIS 14452, *2, n.1 (9th Cir.
11 July 8, 2016). They are relevant to the issues before this Court because they reflect
12 the holdings and analyses of a federal court and a state court of the same statute at
13 issue in this case, California Senate Bill No. 277, with respect to claims brought by
14 other plaintiffs that are substantially similar to Plaintiffs' claims herein.

15 CONCLUSION

16 Defendants therefore respectfully request that the Court take judicial notice of
17 the foregoing documents in consideration of Defendants' Motion to Dismiss
18 Plaintiffs' Complaint and their separately-filed Opposition to Plaintiffs' Motion for
19 Preliminary Injunction.

20 Dated: December 15, 2016

Respectfully submitted,

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

27 */s/ Jonathan E. Rich*
28 JONATHAN E. RICH
Deputy Attorney General

Attorneys for Defendants

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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 California Attorney General, counsel for Defendants California Department of Education; California State Board of Education; Tom Torlakson, in his official capacity as the Superintendent of Public Instruction for the State of California; California Department of Public Health; Karen Smith, in her official capacity as Director of the California Department of Public Health; Edmund G. Brown Jr., in his official capacity as the Governor of the State of California; and Kamala Harris, in her official capacity as the Attorney General of California (collectively Defendants) in this case. As such, I have personal knowledge of the facts stated herein:

2. Attached hereto and made a part hereof as Exhibit 1 is a true and correct copy of California Senate Committee on Education, Analysis of Senate Bill No. 277 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277.

3. Attached hereto and made a part hereof as Exhibit 2 is a true and correct copy of California Assembly Committee on Health, Analysis of Senate Bill No. 277 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277.

4. Attached hereto and made a part hereof as Exhibit 3 is a true and correct copy of California Senate Judiciary Committee, Analysis of Senate Bill No. 277 (2014-15 Reg. Sess.), from the legislative history of Senate Bill No. 277.

5. Attached hereto and made a part hereof as Exhibit 4 is a true and correct copy of the Order denying the plaintiffs’ motion for preliminary injunction, dated August 26, 2016, of the U.S. District Court for the Southern District of California in the matter entitled *Whitlow, et al. v. Department of Education et al.*, S.D. Cal. Case No. 3:16-cv-01715-DMS-BGS.

1 6. Attached hereto and made a part hereof as Exhibit 5 are true and correct
2 copies of the Order of the Los Angeles County Superior Court, dated October 21,
3 2016, sustaining the defendant's demurrer to the plaintiff's Second Amended
4 Complaint without leave to amend, and the demurrer incorporated by reference
5 therein, in the matter entitled *Buck v. State of California*, Los Angeles County
6 Superior Court Case No. BC617766.

7 I declare under penalty of perjury under the laws of the United States of
8 America and the State of California that the foregoing is true and correct and that
9 this declaration was executed in Los Angeles, California on the below date.

10 Dated: December 15, 2016

/s/ Jonathan E. Rich

11 JONATHAN E. RICH, Declarant

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