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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10
11

12 **AMY DOESCHER, STEVE DOESCHER,**
13 **DANIELLE JONES, KAMRON JONES,**
14 **RENEE PATTERSON, and DR. SEAN**
PATTERSON, individually and on behalf of
15 **their minor children,**

16 Plaintiffs,

17 v.

18 **TOMÁS ARAGÓN, in his official capacity**
as Department of Public Health Director
19 **and as the State Public Health Officer; ROB**
BONTA, in his official capacity as Attorney
20 **General of California,**

21 Defendants.
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2:23-cv-02995-KJM-JDP

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Date: September 13, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: The Hon. Kimberly J. Mueller
Action Filed: December 22, 2023

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INTRODUCTION

Plaintiffs challenge Senate Bill 277 (SB 277), which eliminated the personal belief exemption from California’s compulsory school vaccination law in 2015. Plaintiffs allege that requiring vaccination of their children to attend school infringes on their religious beliefs in violation of the First Amendment. But courts have repeatedly upheld compulsory school vaccination laws against Free Exercise challenges, and SB 277 itself has already survived three such challenges. Those cases should foreclose Plaintiffs’ claims, which offer nothing new.

Plaintiffs’ First Amended Complaint is deficient for several reasons. As a preliminary matter, it should be dismissed against Attorney General Bonta because he has no enforcement nexus to the laws challenged, and thus enjoys Eleventh Amendment immunity. Additionally, Plaintiffs have failed to state a valid First Amendment claim because they have failed to allege any facts (beyond mere conclusions) establishing that SB 277 violates their religious beliefs or tenets. But, even if they had, SB 277 is a neutral and generally applicable law that meets rational basis. Finally, even if SB 277 were not neutral or generally applicable, it would satisfy strict scrutiny. This is because SB 277 was a narrowly tailored law that carefully balanced the interests of protecting the health and safety of students and the community, with students’ educational rights. Thus, while it repealed the personal belief exemption, which had become a broad loophole undermining public health, it also created limited exemptions protecting students’ right to access education. For these reasons, the Court should dismiss the First Amended Complaint (FAC).

BACKGROUND

I. HISTORY OF IMMUNIZATION REQUIREMENTS IN CALIFORNIA

As the COVID-19 pandemic has recently illustrated, vaccination is one of the greatest public health achievements in preventing death and illness due to communicable diseases. *See* Request for Judicial Notice (RJN) Ex. 13 at 3. Vaccination reduces a person’s risk of infection to a disease by working with the body’s natural defenses to help it safely develop immunity to that disease. *Id.* at 2. While vaccination provides individual immunity, it is also critical to developing “community immunity” or “herd immunity.” *See id.* at 4-5; RJN Ex. 12 at § 1(f). This is when a significant portion of the population has become immune to a disease, such that the transmission

1 of disease from person to person becomes unlikely. *See* RJN Ex. 13 at 4-5, Ex. 12 at § 1(g).
 2 Community immunity protects the health of those who are unvaccinated (including those who are
 3 immunocompromised or too young to receive vaccinations) and lessens the risk of outbreaks. *Id.*
 4 For highly contagious diseases, like measles, community immunity is reached when
 5 approximately 95 percent of the local population is fully immunized. RJN Ex. 13 at 2; Ex. RJN
 6 26.

7 For the past century, states have commonly relied on school vaccination requirements to
 8 increase vaccination rates and reduce the incidence of childhood disease and community spread
 9 of disease. *See Love v. State Dept. of Ed.*, 29 Cal.App.5th 980, 992 (2018) (“compulsory
 10 immunization has long been recognized as the gold standard for preventing the spread of
 11 contagious diseases”). California’s current school immunization scheme was put in place in
 12 1961, requiring immunization against polio for all students entering public or private school in
 13 California. *See* RJN Ex. 2. The law allowed two exemptions: if a parent or guardian submitted to
 14 a school’s governing authority “a letter stating that immunization [was] contrary to” the parents’
 15 beliefs, or if they submitted a letter from a physician stating immunization was “not considered
 16 safe” based on the child’s physical condition or medical circumstances. *Id.* at 3 (§§ 3382, 3384,
 17 3385). Over the next 40 years, the Legislature expanded the list of required immunizations after
 18 careful consideration of the public health risks of these diseases, costs to the state and health
 19 system, communicability, and rates of transmission. *See* RJN Exs. 3-10; Ex. 13 at 8-9. The
 20 Legislature also added other institutionalized childcare settings to the law. *See* RJN Exs. 4, 5.
 21 During this time, personal belief exemptions and medical exemptions continued. *Id.*

22 For the past 25 years, the law has consistently required any student attending public or
 23 private childcare center or daycare, elementary school and secondary school in California to be
 24 immunized against 10 diseases: diphtheria, haemophilus influenzae type b, measles, mumps,
 25 pertussis (whooping cough), polio, rubella, tetanus, hepatitis B, and varicella (chickenpox). Cal.
 26 Health & Safety Code § 120335(b)¹; RJN Ex. 13 at 4. All of these diseases pose serious health

27 ¹ All further statutory references are to the California Health and Safety Code unless
 28 otherwise noted.

1 risks to children, some life-threatening. *Id.* These diseases, except tetanus, can be spread by
 2 contact with infected children.² *Id.*

3 **II. SENATE BILL 277 AND REMOVAL OF THE PERSONAL BELIEF EXEMPTION**

4 In 2015, the State Legislature passed SB 277, which primarily removed the personal belief
 5 exemption from the school vaccination requirements. *See* RJN Ex. 11. That law was prompted
 6 by a measles outbreak in late 2014 and early 2015 that was spread in large part because of
 7 communities with large numbers of unvaccinated people. *See* RJN Ex. 13 at 2. During that
 8 outbreak, 131 California residents contracted measles; 20 percent had to be hospitalized. *Id.* at 5.
 9 A CDC report on the outbreak indicated that 45 percent of the California patients were known to
 10 be unvaccinated and 43 percent had “unknown or undocumented vaccination status.” *See* RJN
 11 Ex. 15 at 8. The overwhelming majority of the vaccine-eligible but unvaccinated patients were
 12 intentionally not vaccinated due to personal beliefs; the majority were children. RJN Ex. 26.

13 In considering SB 277, the Legislature reviewed alarming evidence of falling vaccination
 14 levels in communities across the State, alongside a rise in personal belief exemptions submitted
 15 by parents to excuse their children from school vaccination requirements. This included a report
 16 showing that more than a quarter of California schools had measles-immunization rates below the
 17 threshold recommended by the CDC. RJN Ex. 13 at 5. At the same time, the number of
 18 personal-belief exemptions had tripled between 2000 and 2013—from 1 percent of
 19 kindergarteners in 2000, to 3.15 percent by 2013. *Id.* at 2; *see Love*, 29 Cal. App. 5th at 987.
 20 Legislative analysis found these trends were connected, stating that “Studies find that when belief
 21 exemptions to vaccination guidelines are permitted, vaccination rates decrease.” RJN Ex. 13 at 5.

22 The high rates of unvaccinated children in some local communities were particularly
 23 worrisome. The Legislature reviewed evidence that vaccination rates varied widely across the
 24 state, in part because, research had shown, people with lower vaccine acceptance tend to group
 25 together in communities. RJN Ex. 13 at 5. Communities with low vaccination rates were not
 26 only more susceptible to outbreaks, but made it “difficult to control the spread of disease and

27
 28 ² While tetanus is not communicable by contact with others, the Legislature included it
 because it is highly fatal and easily preventable by vaccination. *Id.*

1 make [the State] vulnerable to having the virus re-establish itself.” *Id.* Studies had documented
2 clusters of schools with high rates of personal belief exemptions in suburbs of various California
3 cities. *Id.* Perhaps most alarming was that “in certain geographic pockets of California, [personal
4 belief] exemption rates [we]re 21 percent or more.” *Id.*

5 SB 277 drew fervent support and opposition. *See* RJN Ex. 14 at 11. Supporters presented
6 removing the personal belief exemption as a means to make schools safer from outbreak, to
7 protect infants too young for vaccination and immunocompromised students, and to protect the
8 community at large from outbreaks. *Id.* at 7. In addition to raising parental rights concerns,
9 opponents argued that bill would infringe on “mandated rights of services to students with
10 disabilities under the federal [Individuals with Disabilities Education Act (IDEA)].” *Id.* at 11.

11 In adopting SB 277, the Legislature stated its intent for the school vaccine law to provide
12 “[a] means for the eventual achievement of total immunization of appropriate age groups” for the
13 ten childhood diseases covered within the law, as well as other diseases deemed appropriate by
14 the California Department of Public Health (Department). § 120325(a). It also stated its intent
15 for the school vaccine law to include a medical exemption, and to incentivize “public health
16 authorities to design innovative and creative programs that will promote and achieve full and
17 timely immunization of children.” § 120325(c), (e).

18 SB 277 removed the personal belief exemption from the school vaccination law, while
19 keeping the medical exemption and adding two further limitations. The first was an exemption
20 for “a student in a home-based private school or a pupil who is enrolled in an independent study
21 program . . . and does not receive classroom-based instruction.” § 120335(f). Second,
22 responding to opponents’ concerns, the Legislature added a provision that the law “does not
23 prohibit a pupil who qualifies for an individualized education program, pursuant to federal law
24 and Section 56026 of the Education Code, from accessing any special education and related
25 services required by his or her individualized education program.” § 120335(h). It also
26 authorized the Department to add to the list of required vaccines for school entry without
27 Legislative action, subject to the condition that any such additional immunizations must include
28 exemptions for both medical reasons and personal beliefs. §§ 120335(b)(11); 120338.

After an initial increase in statewide school vaccination rates immediately following the passage of SB 277, within one year, immunization rates began to decline. *See* RJN Ex. 16 at 13. By the 2018-2019 school year, the Legislature found, 16 percent of California counties had kindergarten immunization rates below 90 percent. *See* RJN Ex. 12 at § 1(c)(2). At the same time, in the three years immediately after the personal-belief exemption was eliminated, the rate of medical exemptions tripled. *See* RJN Ex. 15 at 7. And again, the Legislature reported, there were pockets of the State where the exemption rate far exceeded the statewide rate and impacted community immunity. *Id.* For instance, at 60 schools, the rate of medical exemptions rose to 10 percent. *Id.* According to the legislative reports, this rise in medical exemptions was associated with physicians issuing exemptions “without medically-justified contraindications” and “a small number of unethical physicians” selling medical exemptions for profit. *See id.* at 7, 9.

In response, the Legislature amended the vaccination law in 2019 to prevent misuse of the medical exemption. Among other changes, the Legislature put into place objective criteria and standardized requirements for medical exemption certifications, and a process for state-level review of medical exemptions in limited situations. § 120372(a), (c)-(d). In the two years after the changes, medical exemptions fell 70 percent for kindergarteners and 75 percent for seventh graders. *See* RJN Ex. 17 at 10, Ex. 18 at 11.

III. PLAINTIFFS’ COMPLAINT

Plaintiffs here are three couples—the Doeschers, Joneses, and Pattersons—with partially or wholly unvaccinated school-aged children. FAC ¶¶ 11, 19, 24, 25, 36, 40. The Doeschers and Joneses allege that after extensive prayer, “they arrived at the firm religious conviction that vaccinations violate their creed.” *Id.* at ¶¶ 20, 33. The Pattersons allege that “they arrived at the firm religious conviction that they must not vaccinate.” *Id.* at ¶ 39. None of the Plaintiffs identifies any specific religious beliefs, tenets, conviction, or “creed” that vaccination would violate. Plaintiffs all allege that they “wish” their children could attend public or private school “free from religious discrimination.” *Id.* at ¶¶ 21, 34, 41. They assert one claim alleging that SB 277 violates their First Amendment right to free exercise of religion. *Id.* at ¶¶ 84-121; *see id.* at ¶ 1, n. 1 (seemingly defining SB 277 to include §§ 120325-120375, as later amended).

LEGAL STANDARD

The party asserting federal subject matter jurisdiction bears the burden of establishing its existence. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or based upon extrinsic evidence. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim “where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory.” *Zamani v. Carnes*, 491 F.3d 990, 996 (9th Cir. 2007). In considering if a complaint states a claim, a court must accept as true all of the material factual allegations in it, but need not accept as true allegations that contradict matters properly subject to judicial notice” or “are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

ARGUMENT

I. ATTORNEY GENERAL BONTA ENJOYS ELEVENTH AMENDMENT SOVEREIGN IMMUNITY AND SHOULD BE DISMISSED FROM SUIT UNDER RULE 12(B)(1)

Attorney General Bonta should be dismissed from the suit under the Eleventh Amendment because he does not have any direct connection to or responsibility for enforcement of any law challenged in this lawsuit. The Eleventh Amendment generally bars federal lawsuits brought against a state. “It does not, however, bar actions for prospective declaratory or injunctive relief against state officers in their official capacities for their alleged violations of federal law.” *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (citing *Ex parte Young*, 209 U.S. 123, 155-56 (1908)). For the *Ex parte Young* exception to apply, the official must have “some connection” with enforcement of the challenged act. *Ex parte Young*, 209 U.S. at 157; *Nat’l Audubon Soc’y, Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir. 2002) (finding action for injunctive and declaratory relief against California Governor and Secretary of Resources barred “as there is no showing that they have the requisite enforcement connection” to challenged ballot proposition). The nexus required “must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision

1 will not subject an official to suit.” *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998). The
 2 relevant inquiry then is “whether a named state official has direct authority and practical ability to
 3 enforce the challenged statute.” *Nat’l Audubon Soc’y*, 307 F.3d at 846.

4 Plaintiffs have failed to plausibly allege that the Attorney General has direct authority to
 5 enforce SB 277. They allege simply that because “Attorney General Bonta is the state’s chief
 6 legal officer,” he is “responsible for enforcing, and does enforce, the mandatory immunization
 7 requirements of SB 277,” by “threatening to bring criminal charges against anyone who violates
 8 SB 277.” FAC ¶ 44. But courts have repeatedly held that the Attorney General’s general duty to
 9 enforce State law as its “chief legal officer” alone is insufficient. *See e.g., Bolbol v. Brown*, 120
 10 F. Supp. 3d 1010, 1018 (N.D. Cal. 2015); *Torrey-Love v. State of Cal. Dep’t of Educ.*, 2017 WL
 11 11636240, at *3 (C.D. Cal. Jan. 12, 2017) (dismissing Attorney General from SB 277 lawsuit).

12 Beyond this general duty, Plaintiffs have not identified any actual provision in State law
 13 that confers direct enforcement authority of SB 277 to the Attorney General because there simply
 14 is none. Rather, the statute expressly confers such power to the California Department of Public
 15 Health. For instance, it is the Department, with the consultation of the California Department of
 16 Education, that has the express authority to “adopt and enforce all regulations necessary to carry
 17 out” the vaccine requirements. § 120330. Otherwise, enforcement of the vaccine requirement is
 18 carried out in the first instance by local school districts, who statutorily are responsible for
 19 collecting immunization records and requiring adherence. *See, e.g.*, § 120340. And, in the case
 20 of physician misuse of medical exemptions, the statute directs the Department to refer the matter
 21 to the Medical Board of California or the Osteopathic Medical Board of California—not the
 22 Attorney General. § 120372 (d)(7)-(8). Further, contrary to Plaintiffs’ suggestion, there simply is
 23 no criminal liability for a parent under SB 277, much less criminal liability directly subject to
 24 Attorney General enforcement. Without such a direct connection, the Attorney General enjoys
 25 Eleventh Amendment sovereign immunity from suit and should be dismissed as a Defendant.

26 **II. PLAINTIFFS LACK STANDING, AND THUS THEIR CLAIMS SHOULD BE DISMISSED**

27 Plaintiffs also fail to allege injury sufficient to establish standing. A plaintiff possesses
 28 Article III standing only if he or she has “(1) suffered an injury in fact, (2) that is fairly traceable

1 to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable
 2 judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (citing *Lujan v. Defenders of*
 3 *Wildlife*, 504 U.S. 555, 560 (1992)). To establish an injury in fact, a plaintiff must show a
 4 “concrete and particularized” or “de facto” injury. *Id.* at 340; *Lujan*, 504 U.S. at 560.

5 Plaintiffs have failed to allege any harm to themselves, despite bringing suit in their
 6 individual capacities. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. ----, *9 (2024)
 7 (plaintiff does not have standing to challenge state action simply based on moral or ideological
 8 objections). Nor have Plaintiffs alleged any concrete harm to their children, on whose behalf they
 9 also bring suit, traceable to SB 277 or Defendants. For instance, the Doeschers’ child, A.D., is
 10 “exempt from SB 277” and attends a charter school through independent study; there is no
 11 allegation that this education is inferior such that A.D. has somehow been injured by SB 277.
 12 FAC at ¶¶ 12-13.³ Similarly, Plaintiffs do not allege the Jones children have suffered any injury
 13 by being home schooled, as allowed for unvaccinated children under SB 277. *See id.* at ¶ 26.
 14 And the Pattersons do not allege that their children have been excluded from school at all.
 15 Moreover, even if Plaintiffs had alleged some de facto injury to their children from being
 16 excluded from school (which they have not), no allegations trace any such injury to SB 277’s
 17 requirements, as opposed to their own independent decisions regarding how to educate their
 18 children. For these reasons, Plaintiffs lack standing and their claims should be dismissed.

19 **III. PLAINTIFFS HAVE FAILED TO STATE A COGNIZABLE FIRST AMENDMENT CLAIM**

20 **A. It is Well Settled that Mandatory Vaccination Laws Without Religious** 21 **Exemptions Do Not Offend the First Amendment**

22 The authority of the California Legislature to require student vaccinations to protect the
 23 health and safety of other students and the public at large, irrespective of their parents’ personal
 24 beliefs, is firmly embedded in our jurisprudence and embodies a quintessential function of
 25 government to protect its people from preventable harm. The State has an unquestionably
 26 legitimate and compelling interest in protecting public health and safety, as recognized by the

27 _____
 28 ³ Plaintiffs allege that A.D. “attends [a] charter school two days a week in person.” FAC
 ¶ 13. By law, she is not allowed to receive any classroom-based instruction. *See* RJN Ex. 22.

1 Supreme Court in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), which
 2 upheld the constitutionality of a state’s smallpox vaccination requirement and recognized states’
 3 ability to make vaccination a pre-condition to enter or remain in public schools. *Id.* at 32.
 4 Following *Jacobson*, the Supreme Court reiterated that “it is within the police power of a state to
 5 provide for compulsory vaccination” in *Zucht v. King*, 260 U.S. 174, 175–177 (1922). The
 6 Supreme Court further held in *Prince v. Massachusetts*, 321 U.S. 158 (1944), that “neither the
 7 rights of religion nor rights of parenthood are beyond limitation,” and both can be interfered with
 8 when necessary to protect a child. *Id.*, at 166. In so holding, it reaffirmed that a parent “cannot
 9 claim freedom from compulsory vaccination for the child more than for himself on religious
 10 grounds. The right to practice religion freely does not include liberty to expose the community or
 11 the child to communicable disease or the latter to ill health or death.” *Id.*

12 California courts have come to the same conclusion. In *Walker v. Superior Court*, 47
 13 Cal.3d 112 (1988), the California Supreme Court agreed that “parents have no right to free
 14 exercise of religion at the price of a child’s life, regardless of the prohibitive or compulsive nature
 15 of the governmental infringement.” *Id.*, at 140, citing *Jacobson* and *Prince*. Similarly, in *French*
 16 *v. Davidson*, 143 Cal. 658 (1904), the Court upheld a municipal vaccination requirement,
 17 explaining that “the proper place to commence in the attempt to prevent the spread of a contagion
 18 was among the young, where they were kept together in considerable numbers in the same room
 19 for long hours each day . . . children attending school occupy a natural class by themselves, more
 20 liable to contagion, perhaps, than any other class that we can think of.” *Id.* at 662.

21 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state courts have
 22 repeatedly upheld mandatory vaccination laws over constitutional challenges. *See. e.g., Phillips*
 23 *v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015); *Workman v. Mingo County Sch.*, 667 F.
 24 Supp.2d 679, 690-691 (S.D. W. Va. 2009); *Boone v. Boozman*, 217 F. Supp.2d 938, 956 (E.D.
 25 Ark. 2002); *Hanzel v. Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985); *Maricopa County Health Dept.*
 26 *v. Harmon*, 750 P.2d 1364 (Ariz. 1987).

27 In California, district and state courts have already heard and rejected First Amendment
 28 Free Exercise claims against SB 277 in three cases. In *Whitlow v. California*, 203 F.Supp.3d

1 1079, 1085–86 (S.D. Cal. 2016), the district court found that the plaintiffs were unlikely to
 2 prevail on their free exercise arguments against SB 277. The *Whitlow* plaintiffs alleged that SB
 3 277 violated the Free Exercise Clause of the First Amendment by (1) failing to provide a religious
 4 exemption to the vaccination mandate; (2) forcing parents to choose between faith dictates and
 5 their children’s education; and (3) offering secular exemptions (medical, home schooling and
 6 Individual Education Plan (IEP)) while failing to provide a religious exemption. *Id.* Relying on
 7 *Workman, Phillips, and Prince*, the court reasoned that plaintiffs were unlikely to prevail on their
 8 first two arguments: because the right to free exercise does not outweigh the state’s interest in
 9 public health and safety, mandatory vaccination as a condition to school admission does not
 10 violate the Free Exercise Clause. *Id.* at 1086. The court also rejected plaintiffs’ secular
 11 exemption argument because a majority of the Circuit Courts of Appeal refused to find that
 12 providing a secular exemption necessarily requires a religious exemption. *Id.* at 1086–87.⁴

13 Subsequently, in *Brown v. Smith*, 24 Cal.App.5th 1135, 1144–45 (2018), an appellate court
 14 rejected claims (similar to *Whitlow*) that SB 277 violated California’s constitutional freedom of
 15 religion clause. The court relied on federal authority in reaching its conclusion and further
 16 reasoned that, even if it applied strict scrutiny, SB 277 still survived strict scrutiny. *Id.* at 1145.

17 Finally, the court in *Love v. State Dep’t of Educ.*, 29 Cal.App.5th 980, 988–995 (2018)
 18 rejected additional constitutional challenges to SB 277 and, as to plaintiffs’ free exercise claim,
 19 followed the rationale in *Brown* and rejected that claim as well. *Id.* at 996.

20 Significantly, these decisions have been relied upon and reaffirmed in recent challenges to
 21 other states’ vaccination laws repealing religious exemptions. *See We The Patriots USA, Inc. v.*
 22 *Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130, 137, 147–148 (2d Cir. 2023) (upholding
 23 dismissal of a Free Exercise challenge to a Connecticut law that repealed the state’s religious
 24 exemption to vaccination requirements); *Milford Christian Church v. Russell-Tucker*, No. 3:23-
 25 CV-304 (VAB), 2023 WL 8358016, at *11 (D. Conn. Dec. 1, 2023) (dismissing challenge to
 26 related Connecticut law); *see also Doe v. San Diego Unified School District*, 19 F.4th 1173 (9th

27 _____
 28 ⁴ While the U.S. Supreme Court has issued subsequent opinions that impact this Free
 Exercise analysis, the *Whitlow* reasoning remains valid, as described *infra* at pages 11 to 20.

1 Cir. 2021) (upholding school district’s COVID-19 vaccine mandate). Nothing in this lawsuit
 2 upsets the seminal decisions discussed above.

3 **B. Plaintiffs Have Failed to Identify A Burden on Their Religious Beliefs**

4 Plaintiffs’ free exercise claim fails at the threshold because they have failed to properly
 5 allege that SB 277 burdens the exercise of their religious beliefs by failing to allege any facts
 6 whatsoever about those religious beliefs. To qualify for protection under the Free Exercise
 7 Clause, a plaintiff must necessarily allege (and ultimately show) that the challenged law has
 8 burdened his ability to exercise his religious beliefs—and not just his philosophical or personal
 9 beliefs. *See Sherbert v. Verner*, 374 U.S. 398, 405 (1963) (“first” inquiry is “whether the [law]
 10 imposes any burden on the free exercise” of plaintiff’s religion); *Fulton v. City of Philadelphia*,
 11 593 U.S. 522, 532 (2021); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (philosophical and
 12 personal beliefs “do not rise to the demands of the Religion Clauses”).

13 But Plaintiffs here have failed to identify any specific religious belief they hold that forbids
 14 vaccination of their children—as opposed to anti-vaccination *personal* beliefs—and thus have not
 15 established that SB 277 has burdened their religious practice. At most, Plaintiffs make the
 16 conclusory assertion they collectively “hold unwavering sincere religious beliefs that prohibit
 17 them from vaccinating themselves or their children.” FAC ¶¶ 4; 90. But it is Plaintiffs’ burden at
 18 the pleading stage to provide sufficient factual allegations that establish the grounds entitling
 19 them to relief—and not just “labels and conclusions” or “a formulaic recitation of the elements of
 20 a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). Plaintiffs have not met
 21 this burden because they failed to identify a single belief of theirs that is violated by vaccination,
 22 or the religious tenets that belief is based on. The allegation that they “prayed extensively and
 23 consulted the Bible when deciding whether or not to vaccinate their children” may establish the
 24 sincerity of their beliefs (*see* FAC at ¶¶ 20, 33, 39), but it does not establish what their actual
 25 beliefs are or why those beliefs are religious rather than personal in nature. This lapse is
 26 particularly resonant in the context of SB 277, which eliminated a *personal* belief exemption to
 27 California’s vaccination requirements—recognizing that opposition to vaccination may be a
 28 matter of personal, not religious, beliefs that enjoy no First Amendment protection. Because

1 Plaintiffs have failed to allege a burden to any articulated religious belief of theirs, Plaintiffs' Free
2 Exercise claim should be dismissed.

3 **C. The School Vaccination Law Is A Neutral and Generally Applicable Law**

4 Even if there were a burden on Plaintiffs' religion, the vaccine law nevertheless would be
5 subject only to deferential rational basis review, which it clearly satisfies. Governmental
6 restrictions that incidentally burden religious activity are not discriminatory—and as such are
7 subject to rational basis review—if they are neutral and of general applicability. *Emp. Div., Dep't*
8 *of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878-82; *see also Fulton*, 141 S. Ct. at 1876-77
9 (declining to overturn *Smith*). The vaccine law is one such law.

10 **1. SB 277 Does Not Target Religious Belief**

11 Despite Plaintiffs' conclusory allegations to the contrary, SB 277 is neutral because it
12 addressed a broad category of "philosophical" objections to vaccination and did not target
13 religion. A law is not "neutral" only if it targets religious belief or has a purpose of suppressing
14 religion. *Church of Lukumi Babalu Aye v. City of Hialeah (Lukumi)*, 508 U.S. 520, 533 (1993).

15 Plaintiffs' assertion that SB 277 was not neutral to religion rests solely on the fact that the
16 law "intentionally" repealed the personal belief exemption and "thereby remov[ed] a religious
17 exemption option" from vaccination requirements. FAC ¶¶ 101, 117. This, of course, ignores
18 that in removing the personal belief exemption, SB 277 actually targeted a broad expanse of
19 objections to vaccination that included both secular and religious objections. *See* RJN Ex. 14 at
20 16; *see Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1077 (9th Cir. 2015) (regulation was neutral
21 because it "applies to *all* objections . . . that do not fall within an exemption, regardless of the
22 motivation behind those objections"). On its face, SB 277 focused on this range of philosophical
23 objections to vaccination and not religion.⁵

24 In fact, the legislative history for SB 277 shows respectful and considered debate over the
25 removal of California's personal belief exemption, with a recognition that the repeal would have

26 ⁵ Even if it had repealed a religious exemption, this would still be insufficient to show
27 religious expression was targeted. *See We The Patriots*, 76 F.4th at 149 ("that the Legislature
28 repealed a previously authorized religious exemption does not in and of itself transmute the law
into a non-neutral law that targets religious beliefs").

an incidental impact on the subset of parents who may have previously obtained a personal belief exemption based on religious beliefs. *See, e.g.*, RJN Ex. 14 at 16-17.⁶ SB 277’s legislative history shows no animosity to those beliefs. *Id.* Nor does it show any differential treatment. *Id.* Instead, it shows the removal of the personal belief exemption applied equally to all Californians who may have personal beliefs against vaccination, regardless of whether those beliefs may be religiously motivated. *Id.* Because Plaintiffs have not alleged any facts amounting to animus, they have failed to dispute that SB 277 is neutral and should be subject to rational basis review.

2. SB 277 Does Not Allow for Discretionary, Individualized Exemptions

SB 277 is also generally applicable because it did not create a “formal and discretionary mechanism for individual exceptions.” *Tingley v. Ferguson*, 47 F.4th 1055, 1088 (9th Cir. 2022). Under the individualized exemption doctrine, a law is not generally applicable if it provides a “formal mechanism” for granting individual exceptions to the law that vests discretion with the law’s enforcing officers. *Id.* (citing *Fulton* at 1879). Plaintiffs allege the medical exemption in California’s vaccine law falls within this doctrine because it grants doctors and CDPH staff “individualized review of every exemption in order to make a determination.” FAC ¶¶ 53, 104-106. Plaintiffs fail to specify what exact determination Department staff make. But to the extent they seek to infer that Department staff have discretionary power to grant individual exemptions, they misconstrue Free Exercise precedents and misunderstand the statutory scheme at issue.

The individualized exemptions doctrine has “nothing to do with an across-the-board” categorical exemption like the medical exemption contained in Health and Safety Code section 120372. *See Smith*, 494 U.S. at 884. As the Ninth Circuit has explained, the doctrine developed in cases where state law used an “open-ended, purely discretionary standard” (“good cause”) that required an “individualized governmental assessment of the reasons for the relevant conduct.” *Stormans*, 794 F.3d at 1081; *see also Fulton*, 141 S. Ct. at 1878 (holding a municipal contract

⁶ Plaintiffs suggest animus because the Legislature allegedly adopted SB 277 knowing it “might conflict with the Free Exercise Clause.” FAC ¶ 69. But mere recognition of legal risks does not amount to religious animus. *See We The Patriots*, 76 F.4th at 148–149; *F.F.*, 194 A.D.3d at 86–88. Moreover, while the legislative committee report cited by Plaintiffs flags that SB 277 *opponents* had raised a free exercise concern, the report’s analysis makes clear committee staff understood the bill was consistent with the First Amendment. RJN Ex. 14 at 16-18.

1 created a mechanism for individualized exemptions subject to strict scrutiny because it expressly
2 afforded a city official “sole discretion” without limits to grant exemptions to the city’s anti-
3 discrimination policy). *Id.* The Ninth Circuit has made clear that only this type of “unfettered
4 discretion” to create case-by-case exemptions to an otherwise applicable law is at issue in the
5 individualized exemptions doctrine. *Stormans*, 794 F.3d at 1081-1082. By contrast, if an
6 exemption is “tied to particularized, objective criteria,” the law remains generally applicable. *Id.*

7 In *Stormans*, a state law requiring pharmacies to deliver medications contained an
8 exemption for circumstances “substantially similar” to five enumerated exemptions, one of which
9 was “good faith compliance” with another law. *Id.* at 1081-82. Even though the terms
10 “substantially similar” and “good faith compliance” were undefined—and thus subject to
11 interpretation by officials—the Ninth Circuit rejected the argument that the rule allowed for
12 discretionary, individualized exemptions. *Id.* Rather, it held, “[t]he mere existence of an
13 exemption that affords some minimal governmental discretion does not destroy a law’s general
14 applicability.” *Id.* at 1082. Critically, the law did not give officials “unfettered discretion” to
15 grant exemptions because “substantially similar” was “tethered directly to those five business-
16 related exemption categories” listed alongside it. *Id.*; see *Doe*, 19 F.4th at 1180 (“the rigidity of
17 the medical exemption” to vaccine policy meant no individualized exemptions existed).

18 California’s medical exemption relies on particularized, objective criteria that leaves no
19 discretion to officials. Specifically, the exemption relies on (1) concrete statutory criteria, (2)
20 published recommendations by medical organizations, and (3) objective standards of care
21 governing licensed medical professionals. For a child to obtain a medical exemption for a
22 required vaccine, a licensed physician must issue a sworn certification that meets particular
23 criteria enumerated in code. § 120372(a)(2)(A)-(H). This includes a “description of the medical
24 basis for which the exemption for each individual immunization is sought” and a statement that
25 the child was evaluated “consistent with the relevant standard of care.” § 120372(a)(2)(C), (F).
26 See *We the Patriots USA*, 76 F.4th at 151 (reliance on doctors’ professional judgment to
27 determine if a child qualifies for a medical exemption does not make an exemption discretionary).

28 Contrary to Plaintiffs’ implied suggestion, the Department does not review every medical

1 exemption submitted by doctors. Rather, only in limited situations where the Legislature deemed
 2 there was a sufficiently high risk of non-compliance, will a registered nurse or licensed physician
 3 with the Department review submitted certification forms to ensure compliance with these
 4 standards of care. § 120372(d)(2)-(3) (review limited to schools with immunization rate below 95
 5 percent, medical providers who have submitted five or more medical exemptions in a year, and
 6 schools that fail to report their immunization rates). Specifically, the Department nurse or
 7 physician reviews the submitted documentation to identify medical exemptions that “do not meet
 8 applicable . . . criteria for appropriate medical exemptions,” as specifically set forth by the
 9 Advisory Committee on Immunization Practices (ACIP) of the federal Centers for Disease
 10 Control and Prevention (CDC), and the American Academy of Pediatrics. § 120372(d)(3)(A); *see*
 11 RJN Exs. 19, 20 (ACIP and CDC recommendations with evidence-based contraindications and
 12 precautions). And while the Department reviewer “may accept a medical exemption that is based
 13 on other contraindications or precautions” (i.e., not included on the published recommendations),
 14 such an exemption must still be consistent with the relevant medical standard of care and be
 15 supported by written documentation. *See* § 120372(d)(3)(A); Ex. 21 at 7 (U.S. Dept. of Health
 16 and Human Services’ Standards for Pediatric Immunization Practice). The medical exemption is
 17 thus thoroughly tethered to objective standards of care and published recommendations, leaving
 18 Department staff with no discretion. *See We the Patriots USA*, 76 F.4th at 151.

19 This reliance on objective standards of care is notably distinguishable from the Mississippi
 20 vaccine law enjoined in *Bosarge v. Edney*, 669 F. Supp. 3d 598, 610 (S.D. Miss. 2023) and cited
 21 in the Complaint. That law allowed medical exemptions only when, in the “opinion” of a local
 22 health officer, the “exemption will not cause undue risk to the community.” *Id.* at 610.
 23 Untethered to any stated criteria, that law was much closer to an “open-ended” standard subject to
 24 strict scrutiny. *See Stormans*, 794 F.3d at 1081. But because California’s medical exemption
 25 does not provide for any discretionary, individualized exemptions, it is subject to rational basis.

26 **3. SB 277 Does Not Contain a Comparable Secular Exemption**

27 Finally, Plaintiffs fail to establish that the vaccine requirement contains a comparable
 28 secular exemption justifying strict scrutiny. A law is not generally applicable if it selectively

1 prohibits “conduct motivated by religious belief, but fails to include in its prohibitions substantial,
2 comparable secular conduct that would similarly threaten the government’s interest.” *Stormans*,
3 794 F.3d at 1079; *see Tingley*, 47 F.4th at 1088-89. Whether secular and religious activities are
4 “comparable” is evaluated “against the asserted government interest that justifies the regulation at
5 issue” and requires a focus on the risks posed, not the reasons for the conduct. *Id.* (citing *Tandon*
6 *v. Newsom*, 141 S. Ct. 1294, 1296 (2021)). Thus, a law lacks general applicability if it “prohibits
7 religious conduct while permitting secular conduct that undermines the government’s asserted
8 interests in a similar way.” *Fulton*, 141 S. Ct. 1877.

9 Plaintiffs have alleged that three secular exemptions to the vaccine law exist for: (1) home-
10 based private schooling or independent study programs, (2) medical exemptions, and (3) students
11 with individual education plans (IEPs) pursuant to the IDEA. FAC ¶ 53. But Plaintiffs fail to
12 allege any facts showing that these three alleged exemptions are actually comparable. Nor can
13 they, since the alleged exemptions do not pose the same risk to the State’s goal of protecting the
14 health and safety of students through increased immunization.

15 First, the exemption for home-schooling or independent study applies only to students who
16 remain outside of the school setting, either receiving private instruction at home or instruction
17 from their school district that is delivered remotely without any presence in a classroom. *See*
18 § 120335(f); RJN Ex. 22 (guidance describing independent study); Cal. Educ. Code §§ 51744-
19 51749.6 (statutory requirements for independent study). On its face, this non-institutionalized
20 setting poses a lower risk to the spread of communicable disease than unvaccinated children
21 receiving in-person instruction in the classroom, a setting known for the rapid spread of disease.
22 *See French*, 143 Cal. at 662 (“children attending school occupy a natural class by themselves,
23 more liable to contagion, perhaps, than any other class that we can think of”).

24 Second, the medical exemption (described in detail above) is similarly not comparable to a
25 religious exemption in terms of risk to the State’s interest in protecting child health and safety.
26 The medical exemption actually furthers the State’s interest in protecting the small portion of
27 students who cannot be vaccinated due to the risk of harm that a particular vaccine may inflict on
28 them. *See id.* at 153; *Doe*, 19 F.4th at 1178 (holding medical exemption “serves the primary

1 interest for imposing the mandate” and “does not undermine the District’s interests as a religious
 2 exemption would”). By contrast, a religious exemption would directly harm these medically
 3 vulnerable students, for whom community immunity is critical, by threatening that immunity. In
 4 addition, medical exemptions, unlike personal belief exceptions, may be limited in duration. *See*
 5 § 120372(a)(2)(G); Cal. Code Regs., tit. 17, § 6035(a)(3). Medical exemptions also only exempt
 6 the specific vaccination or vaccinations that are medically contraindicated—all other vaccinations
 7 are still required. Cal. Code Regs., tit. 17, §§ 6050(a), 6051(a).

8 Moreover, the exemption is not comparable because it is extremely narrow in scope, as
 9 shown by annual statewide school immunization data published by the Department. *See We the*
 10 *Patriots USA*, 76 F.4th at 152-53 (courts compare risk between secular and religious exemptions
 11 based on the aggregate risk of the activities at issue, and not risk of individual behavior in a
 12 particular setting). That data shows only 0.3% of kindergarteners and 0.1% of seventh graders
 13 had a permanent medical exemption in the 2021-22 school year. *See* RJN Exs. 17 at 10, 18 at 11.
 14 These rates are notably lower than the rates of the personal belief exemption in 2015-16 before
 15 that exemption was repealed; that year, 2.5% of kindergarteners and 2.1% of seventh graders had
 16 personal belief exemptions. RJN Exs. 17 at 10, 18 at 11. That is a difference of 830% among
 17 kindergarteners and 2100% among seventh graders. This difference is only further heightened
 18 when the data is broken out regionally, as personal belief exemptions occurred in deep pockets
 19 before they were eliminated, with exemptions reaching up to 21 percent of students in some
 20 school districts in 2015—well below the threshold for herd immunity. *See* RJN Ex. 13 at 2.

21 While this comparison is based on the rate of personal belief exemptions (and not religious
 22 exemptions), it is apt given the overlap between the two. In fact, the data likely substantially
 23 undercounts the risk posed by religious exemptions to the school vaccine law, given the well-
 24 documented surge in religious exemptions to vaccine mandates since the COVID-19 pandemic
 25 that Plaintiffs themselves highlight in the Complaint. *See* FAC ¶ 70; *see also* RJN Exs. 23, 24.
 26 In fact, the 2022-23 school year saw the “highest exemption rate ever reported in the United
 27 States,” according to the CDC, with 40 states seeing rises in exemptions. *See* RJN Exs. 25, 27.

28 Finally, the IEP provision is similarly not comparable. *See Doe*, 19 F.4th at 1179

(recognizing “in-person attendance by unvaccinated students with an IEP is not comparable to in-person attendance by students with religious objections to vaccination”). That provision provides that the vaccine law “does not prohibit a pupil” with an IEP “from accessing any special education and related services required by his or her [IEP].” § 120335(h). As a general matter, federal law requires implementation of IEPs, *see Doe*, 19 F.4th at 1179, which vary in terms of the in-classroom requirements for students. In any event, as with the medical exemption, recent immunization data shows that the number of unvaccinated students in California with IEPs is dwarfed by the historical rates of personal belief exemptions. For instance, only 0.7% of seventh graders in California were exempted from vaccine requirements based *either* on their IEP or their home-school status (publicly available data does not disaggregate the two) in 2021-22; by contrast, the personal belief exemption rate was four times as high in 2014-15. *See* RJN Ex. 18 at 4. And, as with the medical exemption, this provision actually furthers the vaccine law’s goals in that it does not force vaccination on children with physical disabilities that may make them medically vulnerable, while maintaining the community immunity needed to protect them.⁷

Because there are no comparable secular exemptions, the vaccine law is generally applicable and subject to rational basis review only.

D. Even if Strict Scrutiny Applied, SB 277 Would Pass Constitutional Muster

Even if this Court were to conclude that strict scrutiny did apply, the school vaccination law would survive because it is narrowly tailored to achieve a compelling governmental interest. *See Fulton*, 141 S. Ct. at 1881. Courts have long recognized the State has a compelling interest in

⁷ Plaintiffs highlight that foster, homeless, and military youth may attend school in California without proof of immunization. *See* FAC ¶ 57. State law does allow these students to transfer to and enroll in a new school without delay, even if the new school has not received their immunization records, in recognition of the students’ vulnerable status. *See* Cal. Ed. Code §§ 48204.6(c)(3), 48852.7(c)(3); 48853.5(f)(8)(B). But these students are still subject to the vaccine requirements. *See* §§ 120335, 120341(b), 120375; RJN Ex. 28 at 9 (“the law still requires that the school obtain the student’s immunization record and ensure that these students meet all immunization requirements”). As with all transfer students, state law requires they provide proof of vaccination within 30 school days of enrollment. Cal. Code Regs. tit. 17, § 6035(d); Cal. Ed. Code § 49701 (30-day requirement for youth of military families); RJN Ex. 28 at 8-9; *see also* Cal. Ed. Code § 48853.5(f)(8)(C) (burden on new school to request foster youth’s records from prior school); 42 U.S.C. § 11432(g)(3)(C)(iii) (school must assist homeless students to obtain missing paperwork or immunizations). A student who does not comply must be excluded. Cal. Code Regs. tit. 17, § 6040. The Ninth Circuit has recognized that conditional enrollment is not the risk equivalent of a vaccine exemption. *Doe*, 19 F.4th at 1179.

1 protecting the health and safety of its residents, including the students in its schools and daycares,
2 by preventing the spread of communicable diseases. *Jacobson*, 197 U.S. at 11; *Love*, 29 Cal.
3 App. 5th at 990. More specifically, it has a compelling interest in increasing vaccination rates at
4 schools and daycares statewide in order to prevent outbreaks of communicable diseases in schools
5 statewide, to protect children unable to be vaccinated who attend those schools (because they are
6 too young or are immunocompromised), and to prevent community spread by preventing
7 childhood diseases from taking root in schools. To that end, “[c]onditioning school enrollment on
8 vaccination has long been accepted by the courts as a permissible way for States to inoculate
9 large numbers of young people and prevent the spread of contagious diseases.” *Whitlow*, 203 F.
10 Supp. 3d at 1091; *see Love*, 29 Cal. App. 5th at 992 (“compulsory immunization has long been
11 recognized as the gold standard for preventing the spread of contagious diseases”).

12 It bears repeating that two courts have already determined that SB 277 was narrowly
13 tailored to achieve these ends. *Brown*, 24 Cal.App.5th at 1145; *Love*, 29 Cal. App. 5th at 996.

14 In 2015—faced with a measles outbreak on the one hand, and alarming pockets of
15 unvaccinated communities on the other—the California Legislature determined that it needed to
16 take significant action to ensure the gold standard of compulsory school vaccination was not
17 undermined. The State did not take blanket action to eliminate all vaccination exemptions,
18 recognizing, for instance, that some children are too young or have medical conditions that make
19 vaccination unsafe. *See* RJN Ex. 13 at 7. Rather, the Legislature took specific action to eliminate
20 the personal belief exemption that was a growing and unrestricted loophole preventing schools
21 from reaching community immunity and undermining the effectiveness of the school
22 immunization law. *See id.* at 2. At the same time, to ensure that that elimination of the personal-
23 belief exemption did not impact students’ rights under the State constitution to equal education,
24 the Legislature added an exemption for public school independent study programs with no
25 classroom component and home-based schools (as these settings did not carry the same risk of
26 transmitting communicable disease as classroom-based instruction). Similarly, the Legislature
27 added a provision to ensure that the elimination of the personal belief exemption would not
28 impact the ability of students to receive special education services mandated by State and federal

1 law. Finally, while the Legislature empowered the Department to impose additional
 2 requirements, it limited this ability by requiring that future vaccines mandated without Legislative
 3 action include medical and personal belief exemptions.

4 Plaintiffs concede that the State has a compelling interest “in promoting childhood
 5 vaccination,” but allege that this interest “is not so extraordinary as to prohibit an exemption for
 6 secular reasons, which poses a similar contagion hazard as a hypothetical religious exemption.”
 7 FAC ¶ 103. But, as explained above, the law does not contain comparable secular exemptions.

8 Otherwise, Plaintiffs allege that “California does not prohibit unvaccinated children from
 9 attending camp, visiting public libraries or museums, or from interacting with their peers in any
 10 other way.” *Id.* But the lack of a mandatory vaccination requirement in these other areas does
 11 not make the law underinclusive. *See Lukumi*, 508 U.S. at 546. Critically, the State does not
 12 require mandatory attendance of children in camps, libraries or museums, as it does elementary
 13 and secondary school. *See We the Patriots*, 76 F.4th at 156 (requiring “children be vaccinated to
 14 attend school – as opposed to participate in community sports leagues, religious gatherings, and
 15 social gatherings of all types,” is rational because only school attendance mandated by law). Nor
 16 is there any allegation that such environments pose the same risk of transmitting disease as
 17 schools, where the State has well-established compelling interest to ensure children’s safety.

18 Similarly, Plaintiffs allege that California does not “require that adult faculty, staff
 19 members, or school visitors provide proof of immunization.” FAC ¶ 103. This is misleading,
 20 since the FAC acknowledges that local workplace requirements are in place across the State that
 21 that would mitigate such a risk. *See* FAC ¶ 103. But even if true, this does not establish the law
 22 is underinclusive since there is no allegation that adult immunization rates in schools have the
 23 same impact on the spread of childhood communicable disease as vaccination of children.

24 Because SB 277 and the school vaccination law are narrowly tailored to advance the State’s
 25 interest in preventing childhood communicable diseases, preventing outbreaks, and protecting
 26 vulnerable students, the law meets strict scrutiny.

27 CONCLUSION

28 For the reasons above, the FAC should be dismissed in its entirety without leave to amend.

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Respectfully submitted,

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