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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

**v.**

**TOMÁS ARAGÓN, in his official capacity  
as Department of Public Health Director  
and as the State Public Health Officer,**

Defendant.

2:23-cv-02995-KJM-JDP

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION BY DEFENDANT TOMÁS  
ARAGÓN TO DISMISS PLAINTIFFS'  
SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Date: April 17, 2025  
Time: 10:00 a.m.  
Ctrm: 3  
Judge: Hon. Kimberly J. Mueller  
Trial Date: Not Set  
Action Filed: 12/22/2023

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## INTRODUCTION

Plaintiffs challenge Senate Bill No. 277 (SB 277), which eliminated the personal belief exemption (PBE) 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’ Second Amended Complaint (SAC) remains deficient for several reasons. Plaintiffs fail to state a valid First Amendment claim because they fail to allege facts (beyond mere conclusions) establishing that SB 277 violates their religious beliefs or tenets, and therefore lack standing. But, even if they do have standing, SB 277 is a neutral and generally applicable law that meets rational basis review. Finally, even if SB 277 were not neutral or generally applicable, which it is, it satisfies strict scrutiny. This is because SB 277 is a narrowly tailored law that carefully balances the interests of protecting the health and safety of students and the community with students’ educational rights. Thus, while it repealed the PBE, which had become a broad loophole undermining public health, it provided limited exemptions protecting students’ right to access education. For these reasons, the Court should dismiss the SAC.

## BACKGROUND

### **A. History of immunization requirements in California**

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 immunity to a disease, such that transmission of the disease from person to person becomes unlikely. *See* RJN Ex. 13 at 4-5, Ex. 12 at § 1(g). Community immunity protects the health of those who are unvaccinated (including those who are immunocompromised or too young to



1 receive vaccinations) and lessens the risk of outbreaks. *Id.* For highly contagious diseases, like  
 2 measles, community immunity is reached when approximately 95 percent of the local population  
 3 is fully immunized. RJN Ex. 13 at 2.

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

19 For the past 25 years, the law has consistently required any student attending public or  
 20 private childcare center or daycare, elementary school and secondary school in California to be  
 21 immunized against 10 diseases: diphtheria, haemophilus influenzae type b, measles, mumps,  
 22 pertussis (whooping cough), polio, rubella, tetanus, hepatitis B, and varicella (chickenpox). Cal.  
 23 Health & Safe. Code § 120335(b)<sup>1</sup>; RJN Ex. 13 at 4. These diseases pose serious health risks to  
 24 children, some life-threatening. *Id.* These diseases, except tetanus, can be spread by contact with  
 25 infected children.<sup>2</sup> *Id.*

26  
 27 <sup>1</sup> All further statutory references are to the California Health and Safety Code unless  
 otherwise noted.

28 <sup>2</sup> 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           **B.     Senate Bill 277 and removal of the Personal Beliefs Exemption**

2           In 2015, the Legislature passed SB 277, which primarily removed the PBE from the school  
 3 vaccination law. *See* RJN Ex. 11. SB 277 was prompted by a measles outbreak in late 2014 and  
 4 early 2015 that was spread in large part because of communities with large numbers of  
 5 unvaccinated people. *See* RJN Ex. 13 at 2. During that outbreak, 131 California residents  
 6 contracted measles, 20 percent of whom had to be hospitalized. *Id.* at 5. A CDC report on the  
 7 outbreak indicated that 45 percent of the California patients were known to be unvaccinated and  
 8 43 percent had “unknown or undocumented vaccination status.” *See* RJN Exs. 15 at 8 and 26.  
 9 The overwhelming majority of the vaccine-eligible but unvaccinated patients were intentionally  
 10 not vaccinated due to personal beliefs; the majority were children. RJN Ex. 26 at 1.

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

20           The high rates of unvaccinated children in some local communities were particularly  
 21 worrisome. The Legislature reviewed evidence that vaccination rates varied widely across the  
 22 state, in part because, research had shown, people with lower vaccine acceptance tend to group  
 23 together in communities. RJN Ex. 13 at 5. Communities with low vaccination rates were not  
 24 only more susceptible to outbreaks, they made it “difficult to control the spread of disease and  
 25 make [the State] vulnerable to having the virus re-establish itself.” *Id.* Studies had documented  
 26 clusters of schools with high rates of personal belief exemptions in suburbs of various California  
 27 cities. *Id.* Perhaps most alarming was that “in certain geographic pockets of California, [personal  
 28 belief] exemption rates [we]re 21 percent or more.” *Id.*

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

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

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

25 After an initial increase in statewide school vaccination rates immediately following  
 26 enactment of SB 277, immunization rates began to decline. *See* RJN Ex. 16 at 13. By the 2018-  
 27 2019 school year, the Legislature found, 16 percent of California counties had kindergarten  
 28 immunization rates below 90 percent. *See* RJN Ex. 12 at § 1(c)(2). At the same time, in the three

1 years immediately after elimination of PBEs, the rate of medical exemptions tripled. *See* RJN Ex.  
 2 15 at 7. And again, the Legislature reported, there were pockets of the State where the local  
 3 exemption rate far exceeded the statewide exemption rate and impacted community immunity.  
 4 *Id.* For instance, at 60 schools, medical exemption rate rose to 10 percent, compared to the 0.9  
 5 percent statewide average. *Id.*, RJN Ex. 31 at 1. This rise in medical exemptions was associated  
 6 with physicians issuing exemptions “without medically-justified contraindications” and “a small  
 7 number of unethical physicians” selling medical exemptions for profit. *See* RJN Ex. 15 at 7, 9.

8 The Legislature responded by amending the vaccination law in 2019 to prevent misuse of  
 9 the medical exemption. Among other changes, the Legislature implemented objective criteria and  
 10 standardized requirements for medical exemption certifications, and established a process for  
 11 state-level review of medical exemptions in limited situations. § 120372(a), (c)-(d). In the two  
 12 years after the changes, medical exemptions fell by 70 percent for kindergarteners and 75 percent  
 13 for seventh graders. *See* RJN Ex. 17 at 10, Ex. 18 at 11.

### 14 **C. Plaintiffs’ Second Amended Complaint**

15 Plaintiffs here are three couples—the Doeschers, Joneses, and Pattersons—with partially or  
 16 wholly unvaccinated school-aged children. SAC ¶¶ 15, 23, 32. The Doeschers and Joneses  
 17 allege that after extensive prayer, “they arrived at the firm religious conviction that vaccinations  
 18 violate their creed.” *Id.* at ¶¶ 19, 28. The Pattersons provide greater detail by referencing a  
 19 sermon they heard in 1999 and a parable in the Bible in arriving “at the firm religious conviction  
 20 that they must not vaccinate.” *Id.* at ¶ 31. Plaintiffs confirm that their children have not been  
 21 vaccinated since forming their religious beliefs. *Id.* at ¶¶ 15, 23, 32. They further confirm their  
 22 children have access to education in California—the Doeschers’ child attends a charter school  
 23 under independent-study guidelines, the Joneses’ children are homeschooled, and the Pattersons’  
 24 child attends a public school. *Id.* at ¶¶ 15, 24, 32. They assert one claim alleging that SB 277  
 25 violates their First Amendment right to free exercise of religion. *Id.* at ¶¶ 71-109; *see id.* at ¶ 1, n.  
 26 1 (defining SB 277 to include §§ 120325-120375, as later amended).

### 27 **LEGAL STANDARD**

28 The party asserting federal subject matter jurisdiction bears the burden of establishing it

exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A jurisdictional challenge under Federal Rule of Civil Procedure 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 evaluating whether a complaint states a claim, the court accepts as true all of the material factual allegations 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. PLAINTIFFS’ CLAIMS SHOULD BE DISMISSED FOR LACK OF STANDING

Plaintiffs continue to fail to allege injury sufficient to establish standing. A plaintiff possesses Article III standing only if he or she has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To establish an injury in fact, a plaintiff must show a “concrete and particularized” or “de facto” injury. *Id.* at 340; *Lujan*, 504 U.S. at 560.

Plaintiffs have failed to allege any harm to themselves, despite bringing suit in their individual capacities. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (plaintiff does not have standing to challenge state action simply based on moral or ideological objections). Specifically, claims based on infringement of free exercise require injury to free exercise itself—tangential economic costs are insufficient. *See McGowan v. State of Md.*, 366 U.S. 420, 429 (1961); *Miller v. McDonald*, 720 F.Supp.3d 198, 208 (W.D.N.Y. 2024) (unvaccinated Amish plaintiffs lacked standing in the absence of allegations that state officer threatened to take action against them with respect to state’s mandatory vaccination law). Here, Plaintiffs concede that since forming their religious beliefs against vaccination, they have freely

exercised those beliefs and have not vaccinated their children. SAC ¶¶ 15, 23, 32. Plaintiffs concede their children have access to education and there are no allegations that their children’s education is inferior. *Id.* For example, the Doeschers admit their child, A.D., attends a charter school through independent study two days per week, as allowed under SB 277. SAC ¶ 15.<sup>3</sup> The Jones children are homeschooled, as is allowed for unvaccinated children under SB 277. SAC ¶¶ 24–25. And the Pattersons admit that their 17-year-old child, C.P., “currently attends public school” even though unvaccinated. SAC ¶ 32. Plaintiffs’ attempt to plead injury by claiming they must avail themselves of extra-curricular activities, like gymnastics, for socialization is likewise unavailing. SAC ¶¶ 17, 26. Such extra-curricular activities are typical for all children, even those who attend public schools. Finally, even if Plaintiffs alleged some de facto injury to their religious beliefs (which they have not), no allegations trace any such injury to SB 277’s requirements, as opposed to their own independent decisions regarding how to educate their children. For these reasons, Plaintiffs lack standing and their claims should be dismissed.

## **II. PLAINTIFFS FAIL TO STATE A COGNIZABLE FIRST AMENDMENT CLAIM**

### **A. Mandatory vaccination laws without personal beliefs exemptions do not offend the First Amendment**

The authority of the California Legislature to require student vaccinations to protect the health and safety of other students and the public at large, irrespective of their parents’ personal beliefs, is firmly embedded in our jurisprudence and embodies a quintessential function of government to protect its people from preventable harm. The State has an unquestionably legitimate and compelling interest in protecting public health and safety, as recognized by the Supreme Court in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), which upheld the constitutionality of a state’s smallpox vaccination requirement and recognized states’ ability to make vaccination a pre-condition to enter or remain in public schools. *Id.* at 32. Following *Jacobson*, the Supreme Court reiterated that “it is within the police power of a state to provide for compulsory vaccination” in *Zucht v. King*, 260 U.S. 174, 175–177 (1922). The

<sup>3</sup> Plaintiffs allege that A.D. “attends [a] charter school two days a week in person.” SAC ¶ 15. By law, she is not allowed to receive any classroom-based instruction. *See* RJN Ex. 22.

1 Supreme Court further held in *Prince v. Massachusetts*, 321 U.S. 158 (1944), that “neither the  
 2 rights of religion nor rights of parenthood are beyond limitation,” and both can be interfered with  
 3 when necessary to protect a child. *Id.*, at 166. In so holding, it reaffirmed that a parent “cannot  
 4 claim freedom from compulsory vaccination for the child more than for himself on religious  
 5 grounds. The right to practice religion freely does not include liberty to expose the community or  
 6 the child to communicable disease or the latter to ill health or death.” *Id.*

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

16 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state courts have  
 17 repeatedly upheld mandatory vaccination laws over constitutional challenges. *See. e.g., Phillips*  
 18 *v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015); *Workman v. Mingo County Sch.*, 667  
 19 F.Supp.2d 679, 690-691 (S.D. W. Va. 2009); *Boone v. Boozman*, 217 F.Supp.2d 938, 956 (E.D.  
 20 Ark. 2002); *Hanzel v. Arter*, 625 F.Supp. 1259 (S.D. Ohio 1985).

21 In California, district and state courts previously rejected First Amendment Free Exercise  
 22 claims against SB 277 in multiple cases. In *Whitlow v. California*, 203 F. Supp.3d 1079, 1085-86  
 23 (S.D. Cal. 2016), the district court found that the plaintiffs were unlikely to prevail on their free  
 24 exercise arguments against SB 277. The *Whitlow* plaintiffs alleged that SB 277 violated the Free  
 25 Exercise Clause by (1) failing to provide a religious exemption to the vaccination mandate; (2)  
 26 forcing parents to choose between faith dictates and their children’s education; and (3) offering  
 27 secular exemptions (medical, home schooling and Individualized Education Program (IEP)) while  
 28 failing to provide a religious exemption. *Id.* Relying on *Workman*, *Phillips*, and *Prince*, the court



1 reasoned that plaintiffs were unlikely to prevail on their first two arguments: because the right to  
 2 free exercise does not outweigh the state's interest in public health and safety, mandatory  
 3 vaccination as a condition to school admission does not violate the Free Exercise Clause. *Id.* at  
 4 1086. The court also rejected plaintiffs' secular exemption argument because a majority of the  
 5 Circuit Courts of Appeal refused to find that providing a secular exemption necessarily requires a  
 6 religious exemption. *Id.* at 1086-87, citing *Grace United Methodist Church v. City of Cheyenne*,  
 7 451 F.3d 643, 651 (10th Cir. 2006). This remains true post-*Fulton v. City of Philadelphia*, 593  
 8 U.S. 522, 533 (2023), as addressed below.<sup>4</sup>

9 In *Torrey-Love v. State of California Dep't of Educ.*, *supra*, 2017 WL 11636240, at \*3-\*4,  
 10 the Central District dismissed plaintiffs' substantive due process and equal protection challenges  
 11 to SB 277 with prejudice. The *Torrey-Love* court rejected plaintiffs' theories that SB 277  
 12 violated rights to refuse medical treatment and asserted rights to education. *Id.*

13 Subsequently, in *Brown v. Smith*, 24 Cal.App.5th 1135, 1144-45 (2018), the 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 survived strict scrutiny. *Id.* at 1145.

17 The court in *Love v. State Dep't of Educ.*, 29 Cal.App.5th 980, 988-995 (2018) rejected  
 18 additional constitutional challenges to SB 277 and followed the rationale in *Brown* to reject  
 19 plaintiffs' free exercise 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 <sup>4</sup> The Southern District recently concluded that SB 277 withstood a similar Free Exercise  
 28 Clause challenge. *See Royce v. Bonta*, 725 F.Supp.3d 1126, 1140 (S.D. Cal. 2024). The district  
 court allowed an opportunity to amend because the plaintiffs were on their original complaint.



1 Cir. 2021) (upholding school district’s COVID-19 vaccine mandate); *F.F. v. State*, 194 A.D.3d  
 2 80, 87–88 (N.Y. App. Div. 2021) (upholding New York’s repeal of its religious belief  
 3 exemption). Nothing in this lawsuit upsets the seminal decisions discussed above.

4 **B. SB 277’s repeal of California’s prior personal beliefs exemption does not**  
 5 **violate the Free Exercise Clause**

6 Here, Plaintiffs’ claims continue to fail for the same reasons articulated by the courts in  
 7 *Whitlow, Brown, Torrey-Love, Love, We The Patriots, F.F.*, and *Royce v. Bonta*, 725 F.Supp.3d at  
 8 1132-1140.<sup>5</sup> Indeed, the conclusion is more compelling in relation to SB 277, which repealed  
 9 PBEs, as compared to the religion-based exemption repealed in *We The Patriots* and *F.F.*

10 **1. Personal beliefs are not protected by the Free Exercise Clause**

11 The Free Exercise Clause does not protect subjectively held personal beliefs against  
 12 mandatory vaccination laws. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (*Yoder*), our Supreme  
 13 Court held that “*philosophical and personal . . . belief[s] [do] not rise to the demands of the*  
 14 *Religion Clauses.*” *Id.*, at 216 (italics added). In *Hanzel*, plaintiffs objected to the immunization  
 15 of their children because they believed that the injection of foreign substances into the body is of  
 16 no benefit and can only be harmful. *Hanzel*, 625 F.Supp. at 1260. The *Hanzel* court disagreed,  
 17 stating, “[a]s made clear by the Supreme Court in *Yoder*, philosophical beliefs do not receive the  
 18 same deference in our legal system as do religious beliefs, even when the aspirations flowing  
 19 from each such set of beliefs coincide.” *Id.* at 1265. Because SB 277 eliminated all PBEs it does  
 20 not violate the Free Exercise Clause.

21 Plaintiffs’ Free Exercise Clause claims also fail because California’s mandatory school  
 22 vaccination laws have not prevented Plaintiffs from exercising their religious beliefs against  
 23 vaccination. SAC ¶¶ 15, 23, 32. Their children remain unvaccinated. *Id.*

24 **2. The vaccination law is rationally related to a legitimate State interest**

25 Even if there were a burden on Plaintiffs’ free exercise of religion, California’s vaccine law  
 26 nevertheless would be subject only to deferential rational basis review, which it clearly satisfies.

27 <sup>5</sup> For purposes of this motion only, it is presumed that Plaintiffs’ new allegations related to  
 28 the basis for their religious beliefs against vaccination are sufficient to implicate the Free Exercise  
 clause. See SAC ¶¶ 28, 31.

Governmental restrictions that incidentally burden religious activity are not discriminatory—and as such are subject to rational basis review—if they are neutral and of general applicability. *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 878-82; *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015); *see also Fulton*, 593 U.S. at 532-534 (declining to overturn *Smith*). California’s vaccination requirement applies to all children in public and private schools and childcare facilities. § 120325 *et seq.* Thus, rational basis review is the correct level of scrutiny. *See Phillips*, 775 F.3d at 543, n. 5 (“no court appears ever to have held” that *Jacobson* now demands strict scrutiny); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir. 2020).

“[T]he rational-basis standard . . . employs a relatively relaxed standard.” *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976). A law is upheld “so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631(1996). “[C]ourts are compelled . . . to accept a legislature’s generalizations even when there is an imperfect fit between means and ends.” *Heller v. Doe by Doe*, 509 U.S. 312, 321 (1993). “[A] legislative choice is not subject to courtroom fact[-]finding and may be based on rational speculation unsupported by evidence or empirical data . . . . A statute is presumed constitutional . . . and [t]he burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.” *Id.* at 320-21.

Plaintiffs cannot plausibly assert their claims because it is well-established that immunization laws, such as SB 277, are rationally related to legitimate state interests. The U.S. Supreme Court, the California Supreme Court, and numerous other federal and state courts have uniformly held that state immunization laws serve a rational, if not a compelling, state interest in protecting the public from the spread of communicable diseases. This interest was recognized by the U.S. Supreme Court in *Jacobson* over 110 years ago and is consistently affirmed today. *See, e.g., Phillips*, 775 F.3d at 542.

SB 277 is rationally related to the legitimate state interest of protecting the public from the spread of debilitating, and potentially fatal, diseases, as its legislative history confirms: “Vaccine coverage at the community level is vitally important for people too young to receive immunizations and [for] those unable to receive immunizations due to medical reasons.” RJN

Ex. 14 at 6. “[W]hen belief exemptions to vaccination guidelines are permitted, vaccination rates decrease.” *Id.* at Ex. 15 at 5. “Given the highly contagious nature of [these] diseases . . . vaccination rates of up to 95% are necessary to preserve herd immunity and prevent future outbreaks.” *Id.* at Ex. 14 at 5.

### 3. SB 277 does not target religious belief

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

Plaintiffs’ assertion that SB 277 was not neutral to religion rests solely on the fact that the law “intentionally” repealed the PBE and “thereby remov[ed] a religious exemption option” from vaccination requirements. SAC ¶ 85. This, of course, ignores the fact that in removing the PBE, SB 277 applied neutrally to all belief-based objections to vaccination. *See* RJN Ex. 14 at 16; *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1077 (9th Cir. 2015) (regulation was neutral because it “applies to *all* objections . . . that do not fall within an exemption, regardless of the motivation behind those objections”); *Does I-6 v. Mills*, 16 F.4th 20, 30 (1st Cir. 2021), cert. den. 142 S. Ct. 1112 (2022). On its face, SB 277 focused on this range of philosophical objections to vaccination and not on religion.<sup>6</sup>

In fact, the legislative history for SB 277 shows respectful and considered debate over the removal of California’s PBE, with a recognition that the repeal would have an incidental impact on the subset of parents who previously obtained PBEs based on religious beliefs. *See, e.g.*, RJN Ex. 14 at 16-17.<sup>7</sup> SB 277’s legislative history shows no animosity to those beliefs. *Id.* Nor does

<sup>6</sup> Even if it had repealed a religious exemption, this would still be insufficient to show religious expression was targeted. *See We The Patriots*, 76 F.4th at 149 (“that the Legislature repealed a previously authorized religious exemption does not in and of itself transmute the law into a non-neutral law that targets religious beliefs”).

<sup>7</sup> Plaintiffs suggest animus because the Legislature allegedly adopted SB 277 knowing it “might conflict with the Free Exercise Clause.” SAC ¶ 55. 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* 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 it show any differential treatment. *Id.* Instead, it shows removal of the PBE applied equally to all  
 2 Californians who may have personal beliefs against vaccination, regardless of whether those  
 3 beliefs were secular or religiously motivated. *Id.* Because Plaintiffs have not alleged any facts  
 4 amounting to animus, they have failed to dispute that SB 277 is neutral and subject to rational  
 5 basis review.

#### 6 **4. SB 277 does not allow discretionary, individualized exemptions**

7 SB 277 is also generally applicable because it did not create a “formal and discretionary  
 8 mechanism for individual exceptions.” *Tingley v. Ferguson*, 47 F.4th 1055, 1088 (9th Cir. 2022).  
 9 Under the individualized exemption doctrine, a law is not generally applicable if it provides a  
 10 “formal mechanism” for granting individual exceptions to the law that vests discretion with the  
 11 law’s enforcing officers. *Id.* Plaintiffs allege the medical exemption in California’s vaccine law  
 12 falls within this doctrine because it grants doctors and CDPH staff “individualized review of  
 13 every exemption in order to make a determination.” SAC ¶¶ 46, 87-88. Plaintiffs fail to specify  
 14 what exact determination Department staff make. But to the extent they seek to infer that  
 15 Department staff have discretionary power to grant individual exemptions, they misconstrue Free  
 16 Exercise precedents and misunderstand the statutory scheme at issue.

17 The individualized exemptions doctrine has “nothing to do with an across-the-board”  
 18 categorical exemption like the medical exemption contained in Health and Safety Code section  
 19 120372. *See Smith*, 494 U.S. at 884. As the Ninth Circuit explained, the doctrine developed in  
 20 cases where state law used an “open-ended, purely discretionary standard” (“good cause”) that  
 21 required an “individualized governmental assessment of the reasons for the relevant conduct.”  
 22 *Stormans*, 794 F.3d at 1081; *see also Fulton*, 593 U.S. at 534-535 (holding a municipal contract  
 23 created a mechanism for individualized exemptions subject to strict scrutiny because it expressly  
 24 afforded a city official “sole discretion” without limits to grant exemptions to the city’s anti-  
 25 discrimination policy). The Ninth Circuit has made clear that only this type of “unfettered  
 26 discretion” to create case-by-case exemptions to an otherwise applicable law is at issue in the  
 27 individualized exemptions doctrine. *Stormans*, 794 F.3d at 1081-1082. By contrast, if an  
 28 exemption is “tied to particularized, objective criteria,” the law remains generally applicable. *Id.*;

1 *see also Doe*, 19 F.4th at 1180 (“the rigidity of the medical exemption” to vaccine policy meant  
2 no individualized exemptions existed).

3 California’s medical exemption relies on particularized, objective criteria that leaves no  
4 discretion to officials. Specifically, the exemption relies on (1) concrete statutory criteria, (2)  
5 published recommendations by medical organizations, and (3) objective standards of care  
6 governing licensed medical professionals. For a child to obtain a medical exemption for a  
7 required vaccine, a licensed physician must issue a sworn certification that meets particular  
8 criteria enumerated in code. § 120372(a)(2)(A)-(H). This includes a “description of the medical  
9 basis for which the exemption for each individual immunization is sought” and a statement that  
10 the child was evaluated “consistent with the relevant standard of care.” § 120372(a)(2)(C), (F).  
11 *See We the Patriots*, 76 F.4th at 150-151 (reliance on doctors’ professional judgment to determine  
12 if a child qualifies for a medical exemption does not make an exemption discretionary; statutory  
13 “shall be exempt” language made exemption mandatory once criteria was established).

14 Contrary to Plaintiffs’ implied suggestion, the Department does not review every medical  
15 exemption submitted by doctors. Rather, only in limited situations where the Legislature deemed  
16 there was a sufficiently high risk of non-compliance will a registered nurse or licensed physician  
17 with the Department review submitted certification forms to ensure compliance with these  
18 standards of care. § 120372(d)(2)-(3) (review limited to schools with immunization rate below 95  
19 percent, medical providers who have submitted five or more medical exemptions in a year, and  
20 schools that fail to report their immunization rates). Specifically, the Department nurse or  
21 physician reviews the submitted documentation to identify medical exemptions that “do not meet  
22 applicable . . . criteria for appropriate medical exemptions,” as specifically set forth by the  
23 Advisory Committee on Immunization Practices (ACIP) of the federal Centers for Disease  
24 Control and Prevention (CDC), and the American Academy of Pediatrics. § 120372(d)(3)(A); *see*  
25 RJN Exs. 19, 20. And while the Department reviewer “may accept a medical exemption that is  
26 based on other contraindications or precautions” (i.e., not included on the published  
27 recommendations), such an exemption must still be consistent with the relevant medical standard  
28 of care and be supported by written documentation. *See* § 120372(d)(3)(A); RJN Ex. 21 at 7

(U.S. Dept. of Health and Human Services’ Standards for Pediatric Immunization Practice). The medical exemption is thus firmly tethered to objective standards, leaving Department staff with no discretion. *See We the Patriots*, 76 F.4th at 151.

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

#### **5. SB 277 does not contain comparable secular exemptions**

Finally, Plaintiffs fail to establish that the vaccine requirement contains a comparable secular exemption justifying strict scrutiny. A law is not generally applicable if it selectively prohibits “conduct motivated by religious belief, but fails to include in its prohibitions substantial, comparable secular conduct that would similarly threaten the government’s interest.” *Stormans*, 794 F.3d at 1079; *see Tingley*, 47 F.4th at 1088-89. Whether secular and religious activities are “comparable” is evaluated “against the asserted government interest that justifies the regulation at issue” and requires a focus on the risks posed, not the reasons for the conduct. *Id.* (citing *Tandon v. Newsom*, 593 U.S. 61, 62 (2021)). Thus, a law lacks general applicability if it “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S. at 534.

Plaintiffs allege that three secular exemptions to the vaccine law exist for: (1) home-based private schooling or independent study programs, (2) medical exemptions, and (3) students with individualized education programs (IEPs) pursuant to the IDEA. SAC ¶ 46. But Plaintiffs fail to allege any facts showing that these three alleged exemptions are actually comparable. Nor can they, since the alleged exemptions do not pose the same risk to the State’s goal of protecting the health and safety of students through increased immunization that PBEs posed.

First, the exemption for home-schooling or independent study applies only to students who



1 remain outside of the school setting, either receiving private instruction at home or instruction  
 2 from their school district that is delivered remotely without any presence in a classroom. *See*  
 3 § 120335(f); RJN Ex. 22 (guidance describing independent study); Cal. Educ. Code §§ 51744-  
 4 51749.6 (statutory requirements for independent study). On its face, this non-institutionalized  
 5 setting poses a lower risk to the spread of communicable disease than unvaccinated children  
 6 receiving in-person instruction in the classroom for the entire day throughout their entire K-12  
 7 grade education. *See French*, 143 Cal. at 662 (“children attending school occupy a natural class  
 8 by themselves, more liable to contagion, perhaps, than any other class that we can think of”).

9 Second, the medical exemption (described in detail above) is similarly not comparable to a  
 10 religious exemption in terms of risk to the State’s interest in protecting child health and safety.  
 11 The medical exemption actually furthers the State’s interest in protecting the small portion of  
 12 students who cannot be vaccinated due to the risk of harm that a particular vaccine may inflict on  
 13 them. *See id.* at 153; *Doe*, 19 F.4th at 1178 (holding medical exemption “serves the primary  
 14 interest for imposing the mandate” and “does not undermine the District’s interests as a religious  
 15 exemption would”). By contrast, a religious exemption would directly harm these medically  
 16 vulnerable students, for whom community immunity is critical, by threatening that community  
 17 immunity. In addition, medical exemptions, unlike personal belief exceptions, may be limited in  
 18 duration. *See* § 120372(a)(2)(G); Cal. Code Regs., tit. 17, § 6035(a)(3). Medical exemptions  
 19 only exempt the specific vaccination or vaccinations that are medically contraindicated—all other  
 20 vaccinations are still required. Cal. Code Regs., tit. 17, §§ 6050(a), 6051(a).

21 Moreover, medical exemptions are not comparable because they are extremely narrow in  
 22 scope, as shown by annual statewide school immunization data published by the Department. *See*  
 23 *We the Patriots*, 76 F.4th at 152-53 (courts compare risk between secular and religious  
 24 exemptions based on the aggregate risk of the activities at issue, and not risk of individual  
 25 behavior in a particular setting). That data shows only 0.3% of kindergarteners and 0.1% of  
 26 seventh graders had permanent medical exemptions in the 2021-22 school year. *See* RJN Exs. 17  
 27 at 10, 18 at 11. These rates are notably lower than the rates of PBEs in 2015-16 when that  
 28 exemption was repealed; that school year, 2.5% of kindergarteners and 2.1% of seventh graders

1 had PBEs. RJN Exs. 17 at 10, 18 at 11. That is a difference of 830% among kindergarteners and  
 2 2100% among seventh graders. This difference is only further heightened when the data is  
 3 broken out regionally, as personal belief exemptions occurred in deep pockets before they were  
 4 eliminated, with exemptions reaching up to 21 percent of students in some school districts in  
 5 2015—well below the threshold for herd immunity. *See* RJN Ex. 13 at 2.

6 Finally, the IEP provision is similarly not comparable. *See Doe*, 19 F.4th at 1179  
 7 (recognizing “in-person attendance by unvaccinated students with an IEP is not comparable to in-  
 8 person attendance by students with religious objections to vaccination”). That provision provides  
 9 that the vaccine law “does not prohibit a pupil” with an IEP “from accessing any special  
 10 education and related *services* required by his or her [IEP].” § 120335(h), *italic added*. As a  
 11 general matter, federal law requires implementation of IEPs, *see Doe*, 19 F.4th at 1179, which  
 12 vary in terms of the in-classroom requirements for students. In any event, as with the medical  
 13 exemption, recent immunization data shows that the number of unvaccinated students in  
 14 California with IEPs is dwarfed by the historical rates of personal belief exemptions. For  
 15 instance, the combined total of “others lacking immunization” (which includes independent  
 16 studies, IEP services and home-based private schools) was 1.7% for kindergartners in 2020-2021  
 17 and first graders in 2021-2022. RJN Ex. 17 at 10, 14. By contrast, the BPE rate was 2.5% in  
 18 2014-15. *See* RJN Ex. 17 at 10. And, as with the medical exemption, this provision actually  
 19 furthers the vaccine law’s goals in that it does not force vaccination on children with physical or  
 20 other disabilities that may make them medically vulnerable, while maintaining the community  
 21 immunity needed to protect them.

22 Plaintiffs’ reliance on conditional admission provisions for foster, homeless, migrant  
 23 children and active-duty military families also fail because they are not comparable. *See* SAC ¶¶  
 24 50-53. State law allows these students to *transfer* to and enroll in a new school without delay,  
 25 even if the new school has not received their immunization records, in recognition of the  
 26 students’ vulnerable status. *See* Cal. Ed. Code §§ 48204.6(c)(3), 48852.7(c)(3); 48853.5(f)(8)(B).  
 27 These students remain subject to the vaccine requirements. *See* §§ 120335, 120341(b), 120375;  
 28 RJN Ex. 28 at 9 (“the law still requires that the school obtain the student’s immunization record



1 and ensure that these students meet all immunization requirements”). As with all transfer  
 2 students, state law requires proof of vaccination within 30 school days of enrollment. Cal. Code  
 3 Regs. tit. 17, § 6035(d); Cal. Ed. Code § 49701 (30-day requirement for youth of military  
 4 families); RJN Ex. 28 at 8-9; *see also* Cal. Ed. Code § 48853.5(f)(8)(C) (burden on new school to  
 5 request foster youth’s records from prior school); 42 U.S.C. § 11432(g)(3)(C)(iii) (school must  
 6 assist homeless students to obtain missing paperwork or immunizations). A student who does not  
 7 comply must be excluded. Cal. Code Regs. tit. 17, § 6040. The Ninth Circuit has recognized that  
 8 conditional enrollment is not the risk equivalent of a vaccine exemption. *Doe*, 19 F.4th at 1179.

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

### 11 **C. Even if Strict Scrutiny Applied, SB 277 Passes Constitutional Muster**

12 Even if this Court were to presume strict scrutiny applies, the school vaccination law  
 13 survives because it is narrowly tailored to achieve a compelling governmental interest. *See*  
 14 *Fulton*, 593 U.S. at 541. Courts have long recognized the State has a compelling interest in  
 15 protecting the health and safety of its residents, including the students in its schools and daycares,  
 16 by preventing the spread of communicable diseases. *Jacobson*, 197 U.S. at 11; *Love*, 29  
 17 Cal.App.5th at 990. More specifically, it has a compelling interest in increasing vaccination rates  
 18 at schools and daycares statewide in order to prevent outbreaks of communicable diseases in  
 19 schools statewide, to protect children unable to be vaccinated who attend those schools (because  
 20 they are too young or are immunocompromised), and to prevent community spread by preventing  
 21 childhood diseases from taking root in schools. To that end, “[c]onditioning school enrollment on  
 22 vaccination has long been accepted by the courts as a permissible way for States to inoculate  
 23 large numbers of young people and prevent the spread of contagious diseases.” *Whitlow*, 203  
 24 F.Supp.3d at 1091; *see Love*, 29 Cal.App.5th at 992 (“compulsory immunization has long been  
 25 recognized as the gold standard for preventing the spread of contagious diseases”).

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

28 In 2015—faced with a measles outbreak on the one hand, and alarming pockets of

1 unvaccinated communities on the other—the California Legislature determined that it needed to  
 2 take significant action to ensure the gold standard of compulsory school vaccination was not  
 3 undermined. The State did not take blanket action to eliminate all vaccination exemptions,  
 4 recognizing, for instance, that some children are too young or have medical conditions that make  
 5 vaccination unsafe. *See* RJN Ex. 13 at 7. Rather, the Legislature took specific action to eliminate  
 6 the personal belief exemption that was a growing and unrestricted loophole preventing schools  
 7 from reaching community immunity and undermining the effectiveness of the school  
 8 immunization law. *See id.* at 2. At the same time, to ensure that elimination of the personal-  
 9 belief exemption did not impact students’ rights under the State constitution to equal education,  
 10 the Legislature added an exemption for public school independent study programs with no  
 11 classroom component and home-based schools (as these settings did not carry the same risk of  
 12 transmitting communicable disease as classroom-based instruction). Similarly, the Legislature  
 13 added a provision to ensure that the elimination of PBEs would not impact the ability of students  
 14 to receive special education services mandated by State and federal law. Finally, while the  
 15 Legislature empowered the Department to impose additional requirements, it limited this ability  
 16 by requiring future vaccines mandated without Legislative action include medical and PBEs.

17 Plaintiffs concede that the State has a compelling interest “in promoting childhood  
 18 vaccination,” but allege that this interest “is not so extraordinary as to prohibit an exemption for  
 19 secular reasons, which poses a similar contagion hazard as a hypothetical religious exemption.”  
 20 SAC ¶ 86. However, as explained above, medical exemptions, access to IEP services,  
 21 independent study without classroom instruction, and home schooling are not comparable to  
 22 PBEs.

23 Plaintiffs additionally allege that “California does not prohibit unvaccinated children from  
 24 attending camp, visiting public libraries or museums, or from interacting with their peers in any  
 25 other way.” SAC ¶ 86. But the lack of a mandatory vaccination requirement in these other areas  
 26 does not make the law underinclusive. *See Lukumi*, 508 U.S. at 546. Critically, the State does  
 27 not require mandatory attendance of children in camps, libraries or museums, as it does  
 28 elementary and secondary school. *See We the Patriots*, 76 F.4th at 156 (requiring “children be

1 vaccinated to attend school – as opposed to participate in community sports leagues, religious  
 2 gatherings, and social gatherings of all types,” is rational because only school attendance  
 3 mandated by law). Nor is there any allegation that such environments pose the same risk of  
 4 transmitting disease as schools, where the State has well-established compelling interest to ensure  
 5 children’s safety.

6 Similarly, Plaintiffs allege that California does not “require that adult faculty, staff  
 7 members, or school visitors provide proof of immunization.” SAC ¶ 86. This is misleading,  
 8 since the SAC acknowledges that local workplace requirements are in place across the State that  
 9 that would mitigate such a risk. *See id.* But even if true, this does not establish the law is  
 10 underinclusive since there is no allegation that adult immunization rates in schools have the same  
 11 impact on the spread of childhood communicable disease as vaccination of children.

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

### 15 CONCLUSION

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

17 Dated: January 27, 2025

Respectfully submitted,

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