THE NICOL LAW FIRM
Jonathon D. Nicol, State Bar No. 238944
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
Telephone: 816-514-1178
Facsimile: 816-327-2752
Email: jdn@nicolfirm.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

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.

Case No.: 2:23-cv-02995-KJM-JDP

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Date: April 17, 2025
Time: 10:00 a.m.
Place: Courtroom 3

Complaint Filed: December 22, 2023
Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

I. INTRODUCTION

Plaintiffs Amy Doescher and Steve Doescher ("Doeschers"), Danielle and Kamron Jones ("Joneses"), and Dr. Sean and Renee Patterson ("Pattersons") (collectively "Plaintiffs") hereby oppose Defendant Tomás Aragón's ("Defendant") Motion to Dismiss ("Motion"). The Motion should be denied for the following reasons:

First, Plaintiffs adequately allege standing. They maintain devout, sincere religious beliefs that prohibit them from vaccinating themselves or their children such that their children cannot attend school in California free from SB 277's religious discrimination. Plaintiffs have suffered the types of constitutional injuries required to show standing and which may be redressed by a favorable outcome of this dispute.

Second, Plaintiffs state a claim for relief under the First Amendment. Recent and historic Supreme Court precedent conclusively establishes the Free Exercise Clause claim, which alleges sufficient burdens on Plaintiffs' religious beliefs resulting from SB 277. The challenged law is neither neutral nor generally applicable and thus fails to meet the requirements of strict scrutiny.

Third, Defendant attempts to support the Motion with evidence outside the pleadings, but the proffered materials do not fall within the strict guidelines for judicial notice, and so should be rejected by the Court.

Fourth, if the Court determines that Plaintiffs' claims require any clarification, then leave to amend should be granted, consistent with the liberal federal policy regarding the same.

II. LEGAL STANDARD

When deciding 12(b) motions, the Court "must accept as true all the factual allegations in the complaint." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993). At the 12(b) stage, federal courts may not dismiss a complaint unless "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (citation and internal quotation marks omitted). This standard is especially liberal when applied to the constitutional claims alleged in this action, which are governed by Rule 8; all that is required is a "short and plain statement" of the plaintiff's claims. *Wong v. U.S.*, 373 F.3d 952, 957 (9th Cir.

2004) (citing Fed.R.Civ.P. 8(a)(2)). The Court "must consider whether, construing the allegations of the complaint in the light most favorable to the plaintiff, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). The district court must "assume the truthfulness of the material facts alleged in the complaint" and must construe "all inferences reasonably drawn from these facts . . . in favor of the responding party." *See Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). Thus, no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

III. ARGUMENT

A. Plaintiffs Allege Sufficient Standing.

The Second Amended Complaint ("SAC") establishes Plaintiffs' standing to sue for relief under the Free Exercise Clause. To have standing, "[t]he plaintiff must have (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 (2016). An injury in fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id*. at 339 (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Free Exercise Clause authorities provide further insight about standing in such cases. The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (*or abstention from*) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 516 (2022) (emphasis added). In *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972), members of the Old Order Amish and Conservative Amish Mennonite Church were convicted under Wisconsin law for refusing to send their children to public school past the eighth grade. The Supreme Court ruled that the parents had standing to assert Free Exercise Clause claims because the compulsory school attendance law

directly conflicted with their religious beliefs and practices. The Court held that the law substantially burdened the parents' free exercise of religion, establishing a precedent for religious exemptions from generally applicable laws.

Recent Court of Appeals decisions emphasize that a court cannot substitute its judgment for the validity of a plaintiff's religious beliefs. *See Does v. Board of Regents of the University of Colorado*, 100 F.4th 1251, 1271 (10th Cir. 2024) (inquiries into the sincerity of a plaintiff's religious beliefs were precisely the sort of "trolling through a person's religious beliefs" that courts disallow); *Ringhofer v Mayo Clinic*, 102 F.4th 894, 900 (8th Cir. 2024 (in context of employer judging an employee's religious objections, "[r]eligious beliefs do not need to be 'acceptable, logical, consistent, or comprehensible to others'" quoting *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981)); *Luck v. Landmark Medical of Michigan*, 103 F.4th 1241, 1244 (6th Cir. 2024) (district courts lack any basis to demand that a plaintiff explain its religious beliefs because "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds" quoting *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989)).[1]

Further, where, as here, a government policy with exemptions vests "unbridled discretion in a government official over whether to permit or deny" First Amendment protected activity, one who is subject to the law or policy may challenge it facially without the necessity of first applying for, and being denied that same exemption. *City of Lakewood v. Plain Dealer Publ'n Co.*, 486 U.S. 750, 755-56 (1988); *see also East Brooks Books, Inc. v. Shelby Cnty. Tenn.*, 588 F.3d 360, 369 (6th Cir. 2009) (finding that plaintiff had standing based on the suppression of his future protected speech even where his license was not actually revoked); *Faith Baptist Church v. Waterford Twp.*, 522 Fed. Appx. 322 (6th Cir. 2013) (mere threat of potential prosecution was sufficient to establish that the claim was ripe and standing existed).

Plaintiffs have demonstrated concrete and particularized injuries directly traceable to SB

[1] Similarly, a recent Title VII opinion from the Seventh Circuit emphasizes that: "The fact that an accommodation request also invokes or, as here, even turns upon secular considerations, does not negate its religious nature" and that "a religious objection to a workplace requirement may incorporate both religious and secular reasons." *Dottenwhy v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024).

277, establishing standing under well-established Supreme Court precedent. The Motion's characterization of Plaintiffs' injuries as merely "moral or ideological objections" fundamentally misapprehends both the nature of the alleged harms and the applicable legal standard for religious exercise claims.

1. Plaintiffs Have Suffered Concrete Economic Injuries.

Each plaintiff has demonstrated specific economic injuries directly resulting from SB 277's lack of religious accommodation. The Doescher family incurs approximately $10,000 annually in independent-study costs they would not face but for SB 277's restrictions. SAC ¶ 17. The Jones family spends $4,300 per year on homeschooling expenses specifically due to their inability to access public education under SB 277. SAC ¶ 25. Danielle Jones has suffered substantial lost wages and forgone professional opportunities due to the necessity of homeschooling her children. SAC ¶ 25. These tangible economic injuries go well beyond "moral or ideological objections" and constitute the type of concrete harm routinely recognized as sufficient for standing. *See Thomas, supra,* 450 U.S. 707 (1981) (finding standing based on economic burden resulting from religious exercise). Applying *Thomas,* the Supreme Court precedent on the subject, it's clear the plaintiffs have standing based on the economic injuries they've incurred from exercising their beliefs.

2. Plaintiffs Have Suffered Educational and Social Injuries.

The Motion's assertion that "there are no allegations that their children's education is inferior" grossly mischaracterizes Plaintiffs' allegations. Plaintiffs have *specifically* alleged that: A.D. is restricted to just two days per week of in-person instruction, severely limiting educational and social development opportunities (SAC ¶ 15) and A.D. suffers stigma from fellow classmates who wonder why she is not allowed to attend the full menu of school and school activities (SAC ¶ 16), with limited opportunities for building friendships, academic colleagues, and other social connections otherwise available to students in California's traditional school systems (SAC ¶ 18); the Jones children have been explicitly denied enrollment in public school, forcing them into a more limited homeschool environment that is inferior to public education and its built-in opportunities for socialization (SAC ¶¶ 24-27); and C.P. faces imminent threat of disenrollment

via unequivocal and pointed missives stating clearly that children who do not meet the vaccination mandate will not be allowed to attend school, creating ongoing psychological harm and educational instability, including fearing imminent enforcement of SB 277 against C.P. and his family and the downstream effects of moving schools, communities, changing social groups, leaving teams and clubs, etc. (SAC ¶¶ 32-34), in addition to loss of friendships, suffering negative attention, and ostracism (SAC ¶¶ 35 and 36). These educational injuries are not mere inconveniences but represent substantial burdens on Plaintiffs' fundamental rights to both religious exercise under the First Amendment and to education under the California constitution.

3. SB 277 Directly Causes Concrete Social and Psychological Harms.

The SAC pleads multiple forms of stigma, which are injuries directly attributable to SB 277. A.D. faces social isolation and stigma from peers questioning her limited school attendance due to SB 277 (SAC ¶ 16); the Patterson family has lost friendships and faced public hostility specifically due to their religious-based opposition to SB 277 (SAC ¶ 35); and all Plaintiff families face ongoing societal stigma and discrimination directly resulting from the state's refusal to accommodate their religious beliefs (SAC ¶ 37). These social and psychological injuries constitute cognizable harms for standing purposes – particularly when accompanied with Plaintiffs' other concrete harms. *See Allen v. Wright*, 468 U.S. 737, 755 (1984) (recognizing stigmatic injury can confer standing when coupled with other concrete harms).

4. Defendant Misapplies *McGowan* and *Miller*.

The Defendant's reliance on *McGowan v. State of Md.*, 366 U.S. 420, 429 (1961) and *Miller v. McDonald*, 720 F.Supp.3d 198, 208 (W.D.N.Y. 2024) is misplaced. Unlike those cases, where the plaintiffs failed to show direct impact from the challenged laws, here SB 277 directly forces Plaintiffs to choose between (SAC ¶¶ 4, 13, 20, 29, 34, 77):

Violating their sincere religious beliefs;

or

Accepting inferior educational opportunities and incurring substantial educational, economic, social, and psychological burdens.

This state-imposed Sophie's choice between religious exercise and access to public

education constitutes precisely the type of injury that confers constitutional standing. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (finding standing where law forced choice between religious practice and government benefit).

5. Traceability and Redressability Are Direct and Clear.

The allegations contained in the SAC are sufficient on their face to establish traceability and redressability. By seeking injunctive and declaratory relief against Defendant – the original enforcement authority of SB 277 – Plaintiffs' injuries are traceable to Defendant, and a favorable outcome in this case would redress Plaintiffs' harm.

The Defendant's suggestion that Plaintiffs' injuries stem from "their own independent decisions" rather than SB 277 ignores the direct causal chain alleged in the SAC. This is a circular reasoning, inappropriate for a constitutional case. It's akin to arguing in a 4th Amendment case that the decision to place evidence in a car trunk was a litigant's "own, independent decision" – it's not the point.

Plaintiffs pleaded that SB 277 creates a substantial burden on their ability to engage in their religious practices because it does. Specifically, Plaintiffs aver that their "unwavering sincere religious beliefs… prohibit them from vaccinating themselves or their children, and this commitment has come at a considerable cost. California's [vaccine] mandate…places Plaintiffs' children at a disadvantage, depriving them of educational access enjoyed by their secular counterparts." SAC ¶¶ 4, 13, 20, 29, 34, 77. Each alleged injury—whether economic, educational, or social—flows directly from SB 277's restriction on Plaintiffs' free exercise of religion. For example, the Doeschers would enroll A.D. in full-time public school but for SB 277. SAC ¶ 20. However, because A.D. has not received all required vaccines, A.D. is unable to enroll in public or private school and interact with her friends, whom she is permitted to attend church with and interact with frequently outside of church. SAC ¶ 20. The Jones family attempted to enroll their children in public school but were explicitly rejected due to SB 277. SAC ¶ 24. The Pattersons face imminent enforcement of SB 277 against C.P. SAC ¶ 33. Should Plaintiffs' religious practices be freely exercised following this suit, then all of Plaintiffs' SB 277 educational denials or threats would be solved.

Critical here is the simple fact that certain vaccines violate many people's religious beliefs, and thus such families are forced to either abandon their religion or face tough consequences and injuries. That direct causation distinguishes Plaintiffs' case from *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024), where the plaintiffs could not demonstrate that their alleged injuries stemmed from the challenged action.

Plaintiffs have established concrete injuries from SB 277's lack of religious accommodation, including economic burdens, educational deprivations, and social stigma. These injuries began when SB 277 took effect and persist today. The SAC establishes standing under Supreme Court precedent and religious liberty principles; thus the Motion should be denied.

B. Plaintiffs State a Claim For Relief Under the First Amendment.

The Free Exercise Clause provides that "Congress shall make no law . . . prohibiting the free exercise [of religion.]" U.S. CONST. amend. I. The Free Exercise Clause applies equally to the federal government and to the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

1. Recent Supreme Court Precedent Conclusively Establishes Plaintiffs' First Amendment Claim.

Defendant cites to a handful of outdated cases from 2016 and 2018 that involved SB 277. Motion, pp. 8-9. But after those decisions came a watershed Supreme Court opinion in 2020, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) ("*Brooklyn*"), which changed the rules for cases like these, and which makes clear that Plaintiffs state a valid claim for relief under the First Amendment.

In *Brooklyn*, the Supreme Court analyzed whether the First Amendment's guarantee of free exercise of religion was violated by New York Governor Andrew Cuomo's COVID-19 pandemic executive order imposing capacity limits on attendance at religious services in areas with high infection rates. *Id*. at 16. The Roman Catholic Diocese of Brooklyn and two synagogues challenged the order, arguing that the restrictions violated the Free Exercise Clause and discriminated against houses of worship by imposing more stringent restrictions on religious services than those imposed on other secular gatherings, such as for businesses deemed "essential." *Id*. at 16-17.

The Supreme Court ultimately granted an injunction blocking the enforcement of the restrictions against the Diocese and the synagogues. The Court held Cuomo's order was *not* neutral and generally applicable because it treated churches harsher than secular entities like acupuncture facilities, bike shops, and liquor stores. *Id*. at 16-17. The opinion emphasized that the order's restrictions treated religious institutions less favorably than comparable secular activities, thereby imposing an undue burden on the free exercise of religion. *Id*. at 16-17.

The concurring opinion explained that the majority had rejected Cuomo's argument that the executive order did not discriminate against religion because some secular businesses like movie theaters were treated equally or more harshly:

> "[U]nder this Court's precedents, it does not suffice for a State to point out that, as compared to houses of worship, *some* secular businesses are subject to similarly severe or even more severe restrictions …. Rather, once a State creates a favored class of business, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class."

Id. at 29 (emphasis in original).

The Supreme Court has consistently applied *Brooklyn* since its publication, reversing all lower court orders denying injunctive relief to religious persons and entities during the COVID-19 pandemic. *See, e.g., Harvest Rock Church v. Newsom*, 141 S. Ct. 889 (2020); *Robinson v. Murphy*, 141 S. Ct. 972 (2020); *High Plains Harvest Church v. Polis,* 141 S. Ct. 527 (2021); *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

The *Brooklyn* decision fundamentally altered Free Exercise Clause jurisprudence across America. The Ninth Circuit described *Brooklyn* a "seismic shift in Free Exercise law." *Calvary Chapel Dayton Valley v. Sisolak,* 982 F.3d 1288, 1233 (9th Cir. 2021). It has since applied *Brooklyn* and its new Free Exercise Clause framework, granting an injunction against California's COVID-19 restrictions on indoor religious gatherings. *So. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1151-52 (9th Cir. 2021). The Ninth Circuit also granted a similar injunction in *Harvest Rock Church, Inc. v. Newsom*, 985 F.3d. 711 (9th Cir. 2020).

Setting aside for a moment the profound weight of *Brooklyn* and its support of Plaintiffs' claims, the other authorities cited by Defendant do not support dismissal. Plaintiffs address each

decision in the order they appear in the Motion, but they all pre-date *Brooklyn*:

- *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905): Defendant cites *Jacobson* for the proposition that mandatory vaccination does not violate the First Amendment. Motion, p. 7, line 20. But *Jacobson* was not a First Amendment case. *Jacobson* did not address the free exercise of religion because, at the time it was decided, the Free Exercise Clause of the First Amendment had not yet been held to bind the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303, (1940).

Notably, the Supreme Court refused to apply *Jacobson* in *Brooklyn*. *See Brooklyn*, *supra*, 141 S. Ct. at 66-67. Justice Gorsuch went so far as to dispatch *Jacobson's* applicability in the First Amendment context: "Even if judges may impose emergency restrictions on rights that some have found hiding in the Constitution's penumbras, it does not follow that the same fate should befall the textually explicit right to religious exercise." *Id*. at 70-71.

Moreover, SB 277 is far more extreme than the vaccine law challenged in *Jacobson*. In *Jacobson*, individuals were required to receive one vaccination during an active and deadly outbreak, pay a *de mininis* fine, or identify a basis for exemption. *Jacobson*, *supra*, 197 U.S. at 14. That law was attacked yet sustained on pre-modern Fourteenth Amendment grounds, specifically given the minimal fine and opt-outs available to objectors. *Id*. at 36, 38–39.

By contrast, with SB 277, California mandates 16 vaccinations for school attendance, thereby banning religious objectors from entering California public and private schools indefinitely, while at the same time permitting secular objectors to remain in school. "Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights." *Brooklyn*, *supra*, 141 S. Ct. at 70–71. The *Jacobson* decision, by its own substance and by way of *Brooklyn's* critique, does not support dismissal.

A Ninth Circuit opinion from June further limits *Jacobson*. *In Health Freedom Defense Fund Inc. v. Carvalho*, No. 22-55908 (9th Cir. June 7, 2024), the Court vacated a district court's order dismissing plaintiffs' action alleging that the COVID-19 vaccination policy of the Los Angeles Unified School District ("LAUSD")—which required employees to get the COVID-19 vaccination or lose their jobs—interfered with their fundamental right to refuse medical

treatment. The Ninth Circuit concluded that the district court had stretched *Jacobson* beyond its public-health rationale when it found that LAUSD's policy passed the rational-basis test set forth in 1905. The Ninth Circuit noted too that *Jacobson* was decided before modern due process jurisprudence and thus does not apply broadly to every vaccine claim.

- *Zucht v. King*, 260 U.S. 174 (1922) and *Prince v. Massachusetts*, 321 U.S. 158 (1944): Defendant cites these cases as examples of the Supreme Court following the *Jacobson* decision to uphold compulsory vaccination. Motion, p. 7, line 26 to p. 8, line 6. Again, these were not First Amendment challenges, and *Prince* was actually a child-labor matter. Further, these cases arose when minimal vaccines were required during deadly outbreaks – far different from the panel of vaccines required under SB 277. To the extent that Defendant will argue these cases stand for more than their narrowed holdings, Defendant is wrong. These cases too have been narrowed by subsequent precedent, and must of course be harmonized with it.

- *Walker v. Superior Court*, 47 Cal.3d 112 (1988): Defendant relies on this decision to claim that parents have "no right to free exercise of religion at the price of a child's life…" Motion, p. 8, line 7. *Walker* involved a child who died from untreated meningitis as a result of her mother's reliance on spiritual means in treating the child's illness. *Walker*, *supra*, 47 Cal.3d at 119. The mother sought a dismissal of her *criminal* prosecution for voluntary manslaughter and felony child abuse, arguing that because a child-support statute provided an exemption from prosecution for prayer in lieu of treatment, she was also exempt from prosecution for felony child abuse. *Id*. at 124. The Supreme Court rejected the defendant's contention, concluding that the two statutory schemes could not be construed together because the fiscal objectives of the child support statute were manifestly different from the specific purpose of the felony child abuse statute, i.e., to protect children from harm. *Id*.

This case is vastly different. Defendant has not alleged, and cannot prove (at this phase or ever) that the illnesses targeted by SB 277 risk children's lives in the same way that a child who already has meningitis and needs treatment. Moreover, the *Walker* decision should not apply to this matter given *Walker* involved a creative but unsuccessful criminal defense. Further, *Walker*

is narrowly limited to interpreting two specific penal code statutes and should not be expanded to this civil arena.[2]

Phillips v. City of New York, 775 F.3d 538 (2d Cir. 2015), *Workman*, and *Boone* are the only cases cited in the Motion that involve challenges to school-mandated vaccination under the Free Exercise Clause. *Phillips v. City of New York*, F.3d 538, 543-44 (2nd Cir. 2015); *Workman*, *supra*, 667 F.Supp.2d at 690-91; *Boone*, *supra*, 217 F.Supp.2d at 956. Notwithstanding, the meager analysis in these decisions is inapposite because they rely on *Zucht*, *Prince*, and *Jacobson* – cases that did not involve the First Amendment.

And, critically: ALL SB 277 cases cited by Defendant pre-date *Brooklyn*, which is telling. Attorneys are under an affirmative duty to apprise the Court of all valid, modern precedent, a principle that defense counsel violates. *See, e.g., Transamerica Leasing, Inc v. Compania Anonima Venezolana de Navegacion*, 93 F.3d 675, 675-76 (9th Cir. 1996) (the duty "is an important one, especially in the district courts, where its faithful observance by attorneys assures that judges are not the victims of lawyers hiding the legal ball"); Cal. Rules Prof. Conduct, Rule 5-200(B) (counsel shall not mislead the court regarding the law).

Both *Whitlow v. California*, F.Supp.3d 1070, 1085-86 (S.D. Cal. 2016) and *Brown v. Smith*, 24 Cal.App.5th 1135, 1144-45 (2018) were premised on dated or irrelevant precedent when analyzing SB 277 under the Free Exercise Clause, and now are equally unrepresentative of the current state of the law. Those decisions did not create or interpret any First Amendment law. The other SB 277 cases were premised on the right to public education, bodily autonomy, and parental rights, but they did not specifically and fully argue the religious rights. In light of the subsequent *Brooklyn* decision applying a new constitutional framework, all of these SB 277

[2] Other decisions cited in the Motion should not apply here because they were not decided on Free Exercise grounds. *See French v. Davidson*, 143 Cal. 658 (1904) (mandatory vaccinations for school children challenged on Fourteenth Amendment grounds); *Workman v. Mingo County Sch.*, 667 F. Supp. 2d 679 (S.D. W.Va. 2009) (mandatory vaccination challenged on due process, equal protection, and Free Exercise grounds); *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002) (mandatory vaccinations challenged under the Establishment Clause, Due Process Clause, and Free Exercise Clause); *Hanzel v. Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985) (holding that mandatory vaccination does not fall under the protection of the Establishment Clause); *Maricopa County Health Dept. v. Harmon*, 750 P.2d 1364 (Ariz. 1987) (holding that the state's health department did not violate the right to public education in Arizona's Constitution).

opinions are without import, and this Court must apply *Brooklyn* to conclude that Plaintiffs have stated a Free Exercise Clause claim under the First Amendment.

2. Plaintiffs Allege Sufficient Burdens On Their Religion Beliefs.

Defendant contends that Plaintiffs fail to identify *any* religious belief burdened by SB 277. Motion, p. 10. Instead of a religious belief, Defendant claims that Plaintiffs only allege anti-vaccination personal beliefs which do not fall under First Amendment protection. Motion, p. 11, line 14 (emphasis in original). Defendant refers to "subjectively held" personal beliefs as not being protected under the Free Exercise Clause. Motion, p. 10, ln. 10. The implication here is that Plaintiffs' alleged beliefs are not religious and instead are merely "philosophical" or "personal" and so do not deserve First Amendment protection. The Court cannot countenance Defendant's dismissiveness, which is not grounded in law or human decency. Factually, this is not the case. Plaintiffs are members of churches, however small, that do not believe in vaccines.

But any belief that is "sincerely held" and "rooted in religious belief" is entitled to protection under the Free Exercise Clause. *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994). "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Indiana Emp't Sec. Div.*, 450 U.S. 707, 714 (1981). It bears repeating the standard that the Court "must" follow when deciding the Motion: all factual allegations in the SAC are to be accepted as true. *Leatherman*, *supra*, 507 U.S. at 164. With that lens engaged, a review of the SAC's religious belief allegations confirms that Plaintiffs satisfy their burden of showing how SB 277 offends their religious beliefs.

The Doeschers are active church members who tithe monthly and participate in medical missions, with Steve leading a youth ministry at Church of the Foothills in Cameron Park. After extensive prayer and Biblical consultation, the Doeschers developed a firm religious conviction against vaccinating their children. SAC, ¶ 19.

Following God's calling to start their own church fifteen years ago, the Joneses merged with The Rock Worship Center and became its lead pastors, where they have served for ten years while tithing monthly. After extensive prayer and Biblical consultation about health decisions, they developed a firm religious conviction against vaccinating their children. SAC, ¶ 28.

The Pattersons' religious beliefs about vaccination date to 1999, after hearing a man preach about vaccines being antithetical to the Bible and the Book of Revelation. That sermon referenced blood pressed from grapes, likened the human cardiovascular system to rivers, and pronounced that vaccines were evil. In 2003 and 2004 in Sacramento, the Pattersons and their fellow church members protested vaccine legislation seeking to discriminate against religious rights. This protest arose from God telling Dr. Patterson that this is *his* fight. The Pattersons prayed extensively and consulted the Bible when deciding to vaccinate their children, and they arrived at the firm religious conviction that they must not vaccinate. SAC, ¶ 31.

Contrary to Defendant's conclusory statements, the foregoing allegations more than adequately set forth Plaintiffs' sincerely held religious beliefs, which interdict Plaintiffs from vaccinating their minor children under SB 277. The recent Court of Appeals decisions from this year confirm that the Court cannot substitute its own judgment about a plaintiff's religious beliefs by probing the "validity" of such beliefs. *See, supra, Section III, Argument, A. Plaintiffs Allege Sufficient Standing (Does, supra,* 100 F.4th at 1271; *Ringhofer, supra,* 102 F.4th at 900; *Luck, supra,* 103 F.4th at 1244). Plaintiffs' allegations are not mere "labels," "conclusions," or a "formulaic recitation" of elements; instead, the detailed allegations state the religious sources of Plaintiffs' particular religious beliefs about what goes into their children's bodies, and why SB 277, absent religious accommodation, is unconstitutional. Defendant is free to develop the record on Summary Judgment. However, this is a Motion to Dismiss. Neither the Defendant nor the Court inquires into the sincerity of Plaintiffs' religious beliefs. Instead, the Court takes as true the allegations set forth in the SAC about all of the Plaintiffs' religious beliefs. Without question, those convictions as pleaded are the type protected by the Free Exercise Clause.

3. SB 277 Is Neither Neutral Nor Generally Applicable.

Defendant erroneously claims that rational-basis review is the appropriate level of scrutiny because SB 277 is a neutral law of general applicability. Motion, p. 10. SB 277 is neither neutral nor generally applicable for the following reasons.

First, SB 277 is not generally applicable because it invites "the government to consider the particular reasons for a persons' conduct by providing a mechanism for individualized

exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). SB 277 is not generally applicable under *Fulton* and related authorities because SB 277 permits discretionary medical exemptions but prohibits the assessment of religious exemptions. SAC, ¶¶ 87-88. The "mere existence of a discretionary mechanism" for exemptions can trigger strict scrutiny, "regardless of the actual exercise." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 687–88 (9th Cir. 2023) (*en banc*) (quoting *Lukumi*, *supra*, 508 U.S. at 546). The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (*or abstention from*) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 516 (2022) (emphasis added). In other words, California has determined that religious objections are not worthy of "solicitude," but that secular medical exemptions are.

Second, a law is not neutral when it is intolerant of religious beliefs or when it restricts practices because of their religious nature. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993) ("*Lukumi*"). "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.* at 534. "Relevant evidence includes, among other things, the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements by members of the decision-making body." *Id.* at 540 (internal citations omitted).

California passed SB 277 even though the Senate Judiciary Committee raised Free Exercise concerns. SAC, ¶ 55. SB 277 also undermines its stated purpose of reducing transmission because it broadened protections for individuals requesting medical exemptions while preventing religious exemptions – even though personal belief exemption ("PBE") were declining prior to SB 277's enforcement. The events and circumstantial evidence surrounding SB 277's creation demonstrate that SB 277 is not neutral under *Lukumi.*

Third, SB 277 fails both the neutrality and general applicability tests under *Brooklyn* and *Tandon*. A regulation is not neutral and generally applicable where it "treat[s] *any* comparable

secular activity more favorably than religious exercise." *Tandon*, *supra*, 593 U.S. at 62 (emphasis in original) (citing *Brooklyn*, *supra*, 141 S. Ct. at 67-68). And "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Tandon,* 593 U.S. at 62 (citing *Brooklyn*, *supra*, 141 S. Ct. at 67). Moreover, a law lacks general applicability when "it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, *supra*, 141 S. Ct. at 1877.

The Third, Sixth, and Eleventh Circuits have held that laws that provided secular, but not religious, exemptions for conduct that undermined the law's objectives in similar ways were not generally applicable. *See Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 364-67 (3rd Cir. 1999) (holding that a police department's no-beard policy was not generally applicable because it provided medical exemptions and prohibited religious exemptions); *Monclova Christian Academy v. 10 Toledo-Lucas Health Dept.*, 984 F.3d 477, 482 (6th Cir. 2020) (holding that a county public health order closing all schools, including religious schools, was not generally applicable because it permitted various secular businesses to remain open); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232-35 (11th Cir. 2004) (finding a zoning ordinance lacking in general applicability for permitting nightclubs, but not synagogues, in a business district). The Iowa Supreme Court employed the same approach. *See Mitchell County v. Zimmerman*, 810 N.W.2d 1, 15-18 (Iowa 2012) (holding a law prohibiting the use of tire studs on highways lacked general applicability because it permitted school buses to use them but prohibited a Mennonite farmer from using them for religious reasons).

In *U.S. Navy Seals 1-26 v. Biden*, the Fifth Circuit Court of Appeals concluded that the processing and granting of medical exceptions and refusal to accept religious exceptions to the COVID-19 vaccine rendered the policy invalid under both the Religious Freedom Restoration Act of 1993 and the First Amendment. 27 F.4th 336, 350-53 (5th Cir. 2022). In June 2022, the Northern District of California held that prioritizing employees with medical exemptions over religious exemptions to the COVID-19 vaccine for consideration for vacant positions was not neutral. *UnifySCC v. Cody*, No. 22-CV-01019-BLF, 2022 WL 2357068, at *10-11 (N.D. Cal.

June 30, 2022). These precedents counsel that SB 277 also is not neutral.

Recently, a Mississippi district court held that strict scrutiny was appropriate when reviewing Mississippi's mandatory school-vaccination law. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 87 (S.D. Miss. August 29, 2023). The Court reasoned that because "Mississippi officials could consider secular exemptions, particularly medical exemptions," but could not consider religious exemptions, the law could not be neutral or generally applicable. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 77 at p. 22 (S.D. Miss. April 18, 2023) (citing *Fulton*, *supra*, 141 S. Ct. at 1877); *see also Dahl v. Bd. of Trustees of Western Michigan Univ.*, 15 F.4th 728, 733-735 (6th Cir. 2021) (holding that a university's requirement that student-athletes be vaccinated against COVID-19 was not neutral or generally applicable because the requirement provided a "mechanism for individualized exemptions" with the university retaining discretion to extend exemptions in whole or in part); *Thoms v. Maricopa Cnty. Cmty. Coll. Dist.*, No. CV-21-01781-PHX-SPL, 2021 WL 5162538, at *9-11 (D. Ariz. Nov. 5, 2021) (holding that a university's policy was not generally applicable when it provided exceptions to its vaccine policies to other students for non-religious reasons but not to plaintiffs for religious reasons).

Here, SB 277 precludes exemptions for religious adherents but exempts immigrant and homeless children, students with medical exemptions, and students enrolled in an independent student program ("IEP").[3] There is no way to reconcile these exemptions with the Constitution, case precedent, or common sense. SB 277 is incongruent with California's interest in "protecting the health and safety of students and the community." Motion, p. 1, line 14. At this stage, "California is unable to establish that students with religious exemptions to vaccinations present a higher risk compared to those with secular exemptions." SAC, ¶ 58.

Defendant's *passim* reliance on *We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130 (2d Cir. 2023) is misplaced. There, Connecticut's amended statute

[3] Critically: approximately 15% of public-school students have an IEP and are thus exempt from vaccine requirements. https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities. As an official government website, it is subject to judicial notice, which Plaintiffs hereby request. *See* Fed. R. Evid. 201(b)(2); *see*, *e.g.*, *In the Matter of Lisse* (7th Cir. 2018) 905 F.3d 495, 497; *Carroll v. Dutra* (9th Cir. 2014) 564 Fed.Appx. 327, 328. Contrast that 15% with the tiny number of students who have stepped forward in cases like this to assert their deeply-held religious convictions.

allowed unvaccinated students to attend school *only* with a medical exemption. *Id.* at 155. In the 2019-2020 school year, "more than ten times as many students had religious exemptions than medical exemptions." *Id.* By contrast, California permits exemptions for several secular categories. SAC, ¶¶ 46-48. Indeed, in *Fox v. Makin*, with similar facts as here, the court noted that Maine's statute was distinguishable from Connecticut's because it "continues to permit multiple non-religious exemptions, including a 90-day grace period for non-religious students, a medical exemption, and the IEP sunset provision…while restricting religious exemptions that may pose comparable risks." No. 2:22-CV-00251-GZS, 2023 WL 5279518, at *9 (D. Me. Aug. 16, 2023). The court also noted that Connecticut's medical exemption process was more stringent because it required a certification from a physician and supporting documents. *Id.* The *Fox* court therefore declined to dismiss plaintiffs' Free Exercise claim. *Id.* at *10.

Plaintiffs have pleaded sufficient facts under Rule 8 to state a claim for relief under the Free Exercise Clause. At the very least, Plaintiffs' allegations raise serious questions regarding the thoroughness of the medical exemption process and the statistical differences in rates of medical and religious exemptions – issues ripe for post-pleading discovery – rendering dismissal inappropriate at this stage.

4. SB 277 Fails Strict Scrutiny.

Though it is unnecessary for this Court to address strict scrutiny, Plaintiffs have alleged that SB 277 is not narrowly tailored to advance a compelling government interest.

"A government policy can survive strict scrutiny only if it advances interests of the highest order and is narrowly tailored to achieve those interests." *Fulton*, *supra*, 141 S. Ct. at 1881 (internal citations and quotation marks omitted). Strict scrutiny applies "regardless of whether any exceptions have been given, because it 'invite[s] the government to decide which reasons for not complying with the policy are worthy of solicitude…" *Id.* at 1879. A law burdening religious exercise is subject to "the most rigorous of scrutiny" unless it is both neutral and generally applicable. *Fellowship*, *supra*, 82 F.4th at 690 (en banc) (quoting *Lukumi*, *supra*, 508 U.S. at 546). Strict scrutiny in the Free Exercise Clause context "is not watered down; it really means what it says." *Tandon*, *supra*, 593 U.S. at 65 (per curiam) (quotations omitted).

Thus, on strict-scrutiny review, "only those interests of the highest order and those not otherwise served can over-balance legitimate claims to the free exercise of religion." *Bowen v. Roy*, 476 U.S. 693, 728 (1986) (O'Connor, J., concurring). Put differently, if strict scrutiny applies, limits on religious practice are unconstitutional absent a "showing that [the limitation] is essential to accomplish an *overriding* governmental interest." *United States v. Lee*, 455 U.S. 252, 257 (1982) (emphasis added). Strict scrutiny also requires that a law inhibiting religious belief or practice go only as far as necessary to further the government interest. States cannot "justify an inroad on religious liberty" without first "showing that it is the least restrictive means of achieving some compelling state interest." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981).

California's interest in ensuring that school children are vaccinated to prevent the spread of contagious disease is compelling only in the abstract: "a law cannot be regarded as protecting an interest of the highest order…when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, *supra*, 508 U.S. at 547 (internal citations and quotation marks omitted). While California has an interest in protecting public health and safety, Defendant offers "no compelling reason why it has a particular interest in denying an exception [to these particular Plaintiffs] while making them available to others." *Fulton*, *supra*, 141 S. Ct. at 1882.

California permits both pre-existing and future medical exemptions to its mandatory school-vaccination law. SAC, ¶¶ 46-48. The state even allows exemptions for students who are homeless, immigrants, or who qualify for an IEP. SAC, ¶¶ 50-54. As shown above in footnote 3, this probably means that SB 277 exempts about 20% of students for secular reasons.[4]

Yet, SB 277 refuses to permit religious exemptions. Defendant asserts that homeless, immigrant, and IEP students are of no import because those students should provide proof of vaccination within 30 school days of enrollment. This is meaningless because California does not require school districts to disenroll students (and there is no mechanism for doing so) if a student does not provide proof of vaccination within thirty days. SAC, ¶ 52. Indeed, there are circumstances when school districts, including schools in the Inland Empire of California, spend

[4] In addition to the 15% of students who have IEPs, another 3% of students are homeless. https://www.cde.ca.gov/ds/sg/homelessyouth.asp.

the entire school year trying to ensure that such students are compliant, all the while allowing those children to attend school. SAC, ¶ 52.[5]

With such broad accommodations for secular reasons, there is no way to conclude that this is anything other than hostility toward the religious, and that SB 277 is not narrowly tailored. The secular exemptions allows unvaccinated students to attend school for at least six weeks and likely permanently, without being vaccinated, exposing classmates and staff. This knocks out the purported logical/tailored underpinnings of SB 277. But California has no compelling interest in rejecting religious exemptions because the medical exemption (and other exemptions) leave "appreciable damage to [the government's] supposedly vital interest unprohibited." *Lukumi*, *supra*, 508 U.S. at 547.

Similarly, the *Bosarge* decision found that because Mississippi affords a discretionary medical exemption process by statute, it must similarly afford a religious accommodation process and that not having a religious accommodation process, where it affords a secular one, is unconstitutional. *Bosarge v. Edney*, No. 1:22CV233-HSO-BWR, ECF 87 at p. 1 (S.D. Miss. April 18, 2023) (citing *Fulton*, *supra*, 141 S. Ct. at 1876).

For related reasons, Defendant falters on the narrowly tailored prong of this test. As the Supreme Court recently put it with respect to the government's "interest in reducing the spread of COVID," "[w]here the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Tandon*, *supra*, 141 S. Ct. at 1297.

In June 2024, in *Bacon v. Woodward*, 104 F.4th 744, 751 (9th Cir. 2024), the Ninth Circuit reversed a Washington district court's dismissal of a lawsuit by firefighters who claim that their Free Exercise Clause rights were infringed by the City of Spokane refusing to accommodate their religious objections to the Covid vaccine. The majority said in part:

> The Complaint alleges that, once unvaccinated firefighters were terminated, Spokane would turn to firefighters from neighboring fire departments to fill the gaps left by the firefighters' departure even though those fire departments granted

[5] IEP students can be federally exempt from showing proof of vaccination under the Individuals with Disabilities Education Act which ensures that students with disabilities receive a Free Appropriate Public Education.

> religious accommodations to their employees. In other words, Spokane implemented a vaccine policy from which it exempted certain firefighters based on a secular criterion—being a member of a neighboring department—while holding firefighters who objected to vaccination on purely religious grounds to a higher standard. The Free Exercise Clause prohibits governments from "treat[ing] comparable secular groups more favorably."

Defendant simply cannot show that an unvaccinated religious adherent undermines Defendant's asserted interests any more than an unvaccinated student with a medical exemption. The case begins and ends here. It is both constitutionally and logically deficient to burden the religiously devout while exempting others. At this stage, Defendant cannot demonstrate how and why Defendant's interests demand more severe intervention than "the vast majority of States" that have employed a less restrictive approach. *Holt v. Hobbs*, 574 U.S. 352, 368 (2015).

C. Defendant Improperly Supports The Motion With Outside Evidence.

Generally, a court cannot consider evidence outside the pleadings without converting a motion to dismiss into one for summary judgment, because a motion to dismiss tests the sufficiency of a plaintiff's claims based on the face of the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003). Here, Defendant seeks to introduce outside evidence via various requests for judicial notice ("RJN") for statutes and bills, reports, news articles, a press release, and a handbook. By doing so, Defendant rather egregiously attempts to have a trial on the science at the 12(b) phase of this proceeding. The Court, at this stage, must accept Plaintiffs' factual allegations as true. *Leatherman*, *supra*, 507 U.S. at 164. Plaintiffs have concurrently filed their Objections To Defendant's RJN. Plaintiffs request that the Court sustain those objections.

D. To Clarify Any Issues, Leave to Amend Should Be Granted.

If the Court determines that Plaintiffs' claims must be distilled or refined in any way, then leave to amend should be granted, consistent with the liberal federal policy regarding the same. *See* Fed.R.Civ.P. 15(a)(2) and (b)(1); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) ("a district court should grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts"); *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1099 (9th Cir. 2004) (same). Plaintiffs' claims should proceed, in any event. But, if needed, they should be granted the option to amend.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the Motion.

Respectfully Submitted,

DATED: February 24, 2025

THE NICOL LAW FIRM

By: /s/ *Jonathon D. Nicol*

JONATHON D. NICOL

Attorneys for Plaintiffs