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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 **REPLY TO OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Date: April 17, 2025 Time: 9:00 a.m. Dept: 3 Judge: The Honorable Kimberly J. Mueller Trial Date: Not Set Action Filed: 12/22/2023

[1] Dr. Erica Pan has superseded Tomás Aragón as Director of the California Department of Public Health and State Public Health Officer, and should be deemed substituted in his place. Fed. R. Civ. P. 25(d).

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INTRODUCTION

Defendant Tomás Aragón, in his official capacity as Director of the California Department of Public Health and State Public Health Officer (now replaced by Dr. Erica Pan), moves to dismiss Plaintiffs' Second Amended Complaint (SAC) challenging Senate Bill 277 (SB 277), the 2015 legislation that eliminated the personal belief exemption (PBE) from California's compulsory school vaccination law, on the grounds that Plaintiffs lack standing and otherwise fail to state a claim. Specifically, Plaintiffs fail to state a claim under the Free Exercise Clause because they do not allege any facts from which this Court could infer that SB 277 violates their religious beliefs; SB 277 is a neutral, generally applicable law that satisfies rational basis review; and, in any event, the law is narrowly tailored to balance the State's interest in health and safety with students' educational rights. Plaintiffs' assertions to the contrary lack merit for the reasons addressed below and in Defendant's Motion. This Court should dismiss the SAC with prejudice.

ARGUMENT

I. PLAINTIFFS LACK STANDING

Plaintiffs lack standing and fail to state a claim under the Free Exercise Clause because SB 277 has done nothing to prevent them from exercising their religious beliefs against vaccination and their burden assertions fail. Mot. 6:13–7:13. Plaintiffs respond that this Court cannot judge the validity of their beliefs. Opp. at 3:4–15. However, the motion to dismiss presumes the validity of Plaintiffs' alleged beliefs. Mot. 6:27–7:13. The moving papers point out how Plaintiffs' own allegations concede that nothing in SB 277 has prevented them from exercising their beliefs against vaccination. *Id.* Plaintiffs' opposition points on the issue of standing fail.[2]

[2] Plaintiffs' contention rests on cases that either state the general rule of standing or apply the rule to factual allegations more robust than those present here. *See Hernandez v. Comm'r*, 490 U.S. 680, 699–700 (1989) (questioning substantiality of tax burden on Scientologists but declining to reach issue because "even a substantial burden would be justified by the 'broad public interest in maintaining a sound tax system,' free of 'myriad exceptions flowing from a wide variety of religious beliefs.' "); *Thomas v. Review Bd. of Indiana Emp't Sec. Div.*, 450 U.S. 707, 710–11 & n.4, 714–16 (1981) (plaintiff's religious beliefs specifically precluded him from manufacturing items used in warfare); *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (prison inmate's name change was rooted in conversion to Islam); *Does v. Board of Regents of the University of Colorado*, 100 F.4th 1251, 1269–71 (10th Cir. 2024) (policy granted exceptions for some religions but not others); *Ringhofer v. Mayo Clinic*, 102 F.4th 894, 900–01 (8th Cir. 2024) (plaintiffs pled that their " 'body is a temple,' and thus they shall not inject it with impure or (continued…)

That is particularly true as to the Pattersons who admit their child currently attends public school even though unvaccinated. SAC ¶ 32. Plaintiffs lack standing and their claims should be dismissed with prejudice.[3]

II. PLAINTIFFS HAVE NOT STATED A COGNIZABLE FIRST AMENDMENT CLAIM

To establish a violation of the Free Exercise Clause, "a Plaintiff must establish that the challenged conduct resulted in an impairment of the Plaintiff's free exercise of genuinely held beliefs." *Williams v. California*, 764 F.3d 1002, 1011 (9th Cir. 2014). However, "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability." *Doe v. San Diego Unified School District*, 19 F.4th 1173, 1177 (9th Cir. 2021) (quoting *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990)).

As explained in the Motion to Dismiss, Plaintiffs fail to state a claim under the Free Exercise Clause because they have not been prevented from exercising their beliefs against vaccination. Further, SB 277 is a neutral, generally applicable law that is rationally related to California's legitimate interest in protecting the health and safety of students and the community. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1137 (9th Cir. 2009). SB 277 equally repealed all exemptions from the state's mandatory school vaccination laws based on personal beliefs and therefore does not implicate the First Amendment's free exercise clause protections. *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972). SB 277's repeal of PBEs treated all personal beliefs against vaccination equally, regardless of whether those beliefs were secular or religious in nature.

Plaintiffs attempt to overcome this conclusion, contending that under *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020) (per curiam) (*Brooklyn*) there has been a "seismic" shift in First Amendment jurisprudence and arguing that the long line of cases upholding mandatory vaccination laws, as well as the decisions previously rejecting challenges to SB 277,

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unknown substances," and their anti-abortion beliefs, rooted in their religion, prevent them from using a product developed with fetal cell lines); *Luck v. Landmark Medical of Michigan*, 103 F.4th 1241, 1243–44 (6th Cir. 2024) ("God spoke to [plaintiff] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine"). Opp. at 2:12–7:9.

[3] Because Plaintiffs' assertion of standing is based on the same asserted burden to their religious beliefs, Opp. at 3–5, their failure to identify an actionable burden is also fatal to the merits of their free exercise claim.

should be disregarded simply because they pre-date *Brooklyn*. Opp. 7:16–12:2. This argument fails.

Defendant's cited cases—*We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130, 137, 147–148 (2d Cir. 2023)(*We The Patriots*), *cert. denied* 144 S.Ct. 2682 (upholding Connecticut's repeal of its religious beliefs exemption), *Doe v. San Diego Unified School District*, 19 F.4th 1173 (9th Cir. 2021) (upholding school district's COVID-19 vaccine mandate); *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 285–288 (2d Cir. 2021) *cert. den. sub. nom. Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022) (*Hochul*) (medical exemption did not undermine state's interest), *Royce v. Bonta*, 725 F.Supp.3d 1126, 1134 (S.D. Cal. 2024) (*Royce*) (Free Exercise challenge to SB 277), *Milford Christian Church v. Russell-Tucker*, No. 3:23-CV-304 (VAB), 2023 WL 8358016, at *11 (D. Conn. Dec. 1, 2023) (dismissing challenge to related Connecticut law), and *F.F. v. State*, 194 A.D.3d 80, 87–88 (N.Y. App. Div. 2021) (upholding New York's repeal of its religious belief exemption)—all post-date *Brooklyn*. This Court can now add to that list the recent Second Circuit opinion in *Miller v. McDonald*, No. 24-681, 2025 WL 665102 (2d Cir. Mar. 3, 2025) (*Miller*), which rejected similar challenges to the New York law repealing that state's religious beliefs exemption.

Further, although the Ninth Circuit recognized that *Brooklyn* "arguably represented a seismic shift in Free Exercise law" (*Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228, 1232 (9th Cir. 2020)), *Brooklyn* nevertheless maintained the same rules for determining whether a given law is neutral and generally applicable. Unlike the COVID-19 cases cited by Plaintiffs, which found executive and public health orders imposing strict numerical limitations on attendance in houses of worship as failing the neutrality test and/or demonstrating hostility towards religion in their implementation, SB 277 and California's school vaccination laws are neutral and generally applicable.

A. The School Vaccination Law Is Neutral and Generally Applicable

Under the Free Exercise Clause, "a law that incidentally burdens religious exercise is constitutional when it (1) is neutral and generally applicable and (2) satisfies rational basis review." *We the Patriots*, 76 F.4th at 144 (citations omitted), citing *Tandon v. Newsom*, 593 U.S.

61, 62–63 (2021). Plaintiffs contend California's school vaccination requirements are neither neutral nor generally-applicable under *Brooklyn*.[4] Opp. at 14:27–17:16. They are incorrect.

1. SB 277 Does Not Mention or Target Religion

Plaintiffs have not and cannot establish that SB 277 targets religious beliefs. First, they do not dispute that SB 277 is facially neutral. *Royce*, 725 F.Supp.3d at 1134, citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (2021) (describing minimum requirement of facial neutrality). Second, contrary to Plaintiffs' conclusory assertion, the legislative history evinces no hidden animus. Opp. at 14:21–26. SB 277 was prompted by a measles outbreak that spread, in large part, because of communities with large numbers of unvaccinated people. Mot. 12:19–13:5; RJN Exh. 13 at 2. "SB 277's legislative history also identified concerns over the significant rise in personal belief exemptions—a 337% increase between 2000 and 2012—which places communities at risk of preventable diseases." *Royce*, 725 F.Supp.3d at 1135. Although Plaintiffs point to a committee report that noted opponents of the legislation raised, and the committee analysis discussed, free-exercise concerns, they identify nothing in that legislative history to indicate that legislators themselves shared those concerns or were motivated by religious animus. Opp. at 14:21–26; SAC ¶ 55; Mot. at 12:19–13:5; RJN Ex. 14 at 16–17. Accordingly, that is insufficient to demonstrate religious animus in the enactment of SB 277. *Miller*, 2025 WL 665102 at *5–6 (Plaintiff allegations that certain legislators made comments indicative of a religious animus failed in the absence of facts demonstrating the comments infected a sizeable portion of legislators' votes); *We The Patriots*, 76 F.4th at 149; *Tingley v. Ferguson*, 47 F.4th 1055, 1085–87 (9th Cir. 2022), cert. denied, 144 S. Ct. 33 (2023) (legislators' stray comments were not evidence of religious animus).[5]

[4] In making this argument, Plaintiffs assert that government attorneys violated the California Rules of Professional Conduct by failing to cite *Brooklyn* in their moving papers. Opp. at 11:9–15. Defense counsel correctly apprised the Court of the law, including the similar and more recent Supreme Court decision in *Tandon*, *supra*. Mot. at 15:16–19. There is no reason, much less any duty, to cite duplicative cases for the same rule.

[5] This is distinguishable from *Brooklyn*, which referenced statements made by the Governor of New York the day before he issued the challenged executive order, as implicating hostility towards religion. *Brooklyn*, 592 U.S. at 16–17, citing to *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 229 (2d Cir. 2020) (Park, J., dissenting) ("The day before issuing the order, the Governor said that if the 'ultra-Orthodox [Jewish] community' would not agree to enforce the rules, 'then we'll close the institutions down.'").

Because they have not plausibly alleged that the legislation was enacted "with the aim of suppressing religious belief rather than protecting the health and safety of students, staff, and the community" *Doe*, 19 F.3d at 1177, Plaintiffs fail to state a claim that SB 277 is not neutral.

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

"A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia, Pa.*, 593 U.S. 522, 533 (2021) (cleaned up). "Typically, the use of amorphous standards, such as 'good cause,' to administer exemptions or the conferral of wide latitude to government officials to grant or deny exemptions precludes a finding of general applicability. Conversely, a law that administers exemptions only to objectively defined categories of persons is generally applicable." *Royce*, 725 F.Supp.3d at 1136 (citations omitted).

SB 277 and California law do not grant such discretionary or individualized exceptions. Mot. at 13:6–15:10. This conclusion is confirmed by multiple cases. *Miller*, 2025 WL 665102, at *7 (medical exemption tied to objective criteria); *We The Patriots*, 76 F.4th at 150–151 ("shall be exempt" language in statute regarding medical exemptions removed any discretion upon presentation of a physician exemption form showing that the statutory requirements for a medical exemption were met); *see also Tingley*, 47 F.4th at 1088; *Doe*, 19 F.4th at 1177–1180. Here, California's medical exemption relies on particularized, objective criteria that leaves no discretion to officials. Cal. Health & Saf. Code § 120372(d)(3)(A); RJN Ex. 21 at 7. The remaining provisions are similarly concrete. Mot. at 13:7–18:10 (citing specific statutory and regulatory criteria for medical exemptions, and provisions relating to home and independent study programs and federally required access to IEP services). In response, Plaintiffs quote an array of cases in which courts found, based on a mechanism for discretionary exemptions, that laws were not generally applicable. Opp. at 15:8–17:11. But they have not identified any discretionary aspect of the specified exemptions. Nor have they done so with respect to the limited grounds for conditional admissions of students, which allow a limited period of time to provide proof of vaccination or completion of the required vaccinations.

3. SB 277 Does Not Contain Comparable Secular Exemptions

Finally, SB 277 is generally applicable because it does not "treat any comparable secular activity more favorably than religious exercise." *Tandon*, 141 S. Ct. at 1296; *see also Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015) ("A law is not generally applicable if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect."); *Doe*,19 F.4th at 1178 (holding that if the number of medical exemptions "is very small and the number of students likely to seek a religious exemption is large, then the medical exemption would not qualify as 'comparable' to the religious exemption in terms of the 'risk' each exemption poses to the government's asserted interests"); *We The Patriots*, 76 F.4th at 152–153 (same); *Miller*, 2025 WL 665102, at *6 (same).

Here, Plaintiffs' alleged secular comparators are home-based private school and independent study programs not involving classroom instruction, students with individualized education programs (IEP), medical exemptions, and conditional admission provisions for homeless and immigrant children who have a limited time (30 days) to provide proof of vaccination or complete required vaccinations—but Plaintiffs fail to allege any facts showing that these three alleged exemptions are actually comparable to PBEs which exempted students from all vaccinations for their entire TK-12 education. Opp. at 16:16-22 & n. 3; 15:11–18:10.

Although Plaintiffs argue that there is no way to reconcile exempting "immigrant and homeless children, students with medical exemptions, and students enrolled in an independent student program"—but not religious children—from vaccination requirements, they only reference a general statistic that an estimated 15% of public-school students have some form of an IEP. Opp. at 16:16-22 & n. 3. They ignore the judicially noticeable data regularly collected by schools and tracked by the California Department of Public Health showing that at its highest only 0.3% of students statewide who access IEP services lack all required vaccinations. RJN at 7:7-28; RJN Ex. 31 at 28. That is insignificant compared to the prior 2.4% of students who had PBEs when SB 277 was enacted. RJN Ex. 29 at 12, 16, 21 and 32. Likewise, the provisions governing homeless and transfer students contemplate that the children will remain in their school

of origin where they would already have been immunized prior to admission, unless otherwise exempted. *See* Cal. Edu. Code §§ 48852.7(a); 48204.7. It is only when these children seek to move schools that the provisions allow for conditional admission pending the school obtaining, or the child providing, proof of vaccination status or otherwise completing the required vaccinations. *See* Cal. Health & Saf. Code §§ 120340, 120341(b); Cal. Edu. Code §§ 48852.7(c)(3), 48853.5(f)(8)(A)–(C). Under regulations governing conditional admissions, conditionally admitted students are provided 30 days to either provide their records of immunization or to obtain the required immunizations. Cal. Code Regs., tit. 17, § 6035(d)(1). Conditional admissions for a short period of time do "not raise a serious question concerning the mandate's general applicability." *Doe*, 19 F.4th at 1179 (analyzing school district's mandatory COVID-19 vaccination requirement allowing conditional admission for a limited period under specified circumstances); *Miller*, 2025 WL 665102, at *6 (noting time and scope limitations on medical exemptions are not comparable to permanent religious exemptions for all vaccines).

Plaintiffs contend the Ninth Circuit's recent opinion in *Bacon v. Woodward* is dispositive on this point. Opp. at 19:21–20:10, quoting *Bacon v. Woodward*, 104 F.4th 744 (9th Cir. 2024). Defendants agree that the case is instructive but disagree that it assists Plaintiffs. *Bacon* involved a Proclamation, by the Governor of Washington, that required state workers to be vaccinated against Covid-19. *Bacon*, 104 F.4th at 747. The Proclamation applied to firefighters, who qualified as health care providers, but offered an accommodation for "sincerely held religious belief[s]." *Id.* Unlike nearby cities, which granted religious accommodations, the City of Spokane declined to accommodate its firefighters, determining that doing so would be unduly burdensome. *Id*. at 747–49. Yet, once Spokane terminated its unvaccinated firefighters, it borrowed religiously-accommodated, unvaccinated firefighters from neighboring cities to fill in. *Id*. at 751–52. The Ninth Circuit held that the Spokane firefighters plausibly pled that their city's policy was not "generally applicable." *Bacon*, 104 F.4th at 752. "Had Spokane subjected unvaccinated out-of-department firefighters to the same standard, its implementation of the vaccine policy might well be generally applicable," the court explained. *Id.* But by "continuing

to work with the unvaccinated firefighters from surrounding departments, Spokane undermined its interest and destroyed any claim of general applicability." *Id.*

The *Bacon* court found those circumstances only "superficially" similar to the school vaccination context presented in *Doe*, 19 F.4th 1173. *Bacon*, 104 F.4th at 752. In *Doe*, "the asserted government interest was 'protecting student "health and safety"' . . . . Because the school district broadly asserted its interest, [the *Doe* court] held that an exemption for medical reasons did not undermine the district's interests. As [the *Doe* court] explained, allowing medical, but not religious, exemptions aligned with that broader interest of preserving student health." *Bacon*, at 752 (citations omitted). The court continued: "If the firefighters' Free Exercise claim rested on the existence of medical exemptions, *Doe* might pose an obstacle. But *Doe* in no way hinders the conclusion that, by allowing firefighters *from neighboring counties* to work in Spokane, the City undermined its asserted interest in enforcing the Proclamation against the firefighters." *Id.* (emphasis original).

As in *Doe*, this case involves broad protection of student health. And unlike the City in *Bacon*, the state has not undermined its interest—the repeal of PBEs treated all personal beliefs against vaccination equally, regardless of whether those beliefs were secular or religious in nature, and, as set forth above, the other exemptions are not comparable. Accordingly, Plaintiffs' reliance on *Bacon* is misplaced. *See Does 1-6 v. Mills*, 16 F.4th 20, 31–32 (1st Cir. 2021) ("Maine's rule does not rest on assumptions about the public health impacts of various secular or religious activities. Instead, it requires all healthcare workers to be vaccinated as long as the vaccination is not medically contraindicated—that is as long as it furthers the state's health-based interests in requiring vaccination. Thus, the comparability concerns the Supreme Court flagged in the *Tandon* line of cases are not present here.").

In short, Plaintiffs have not established that the vaccine requirement contains a comparable secular exception justifying strict scrutiny. *See* Mot. at 15:11–18:10; *see Royce*, 725 F.Supp.3d at 1137-1139 ("In considering California's interest in the health and safety of students and the public at large, the risk posed by SB 277's enumerated exemptions does not qualify as comparable to the risk posed by a personal belief exemption.").

B. SB 277 Is Subject Only to Rational Basis Review, but Survives Strict Scrutiny

Plaintiffs argue that SB 277 cannot survive strict scrutiny because it is not generally applicable. Opp. at 20:10–20. However, they also concede that judicial notice is properly taken of official public records and data maintained at official government websites. Opp. at 16:25–28. Ultimately, Plaintiffs conflate distinct analytical steps. As discussed, a law's general applicability determines whether strict scrutiny applies *at all*. Because SB 277 is generally applicable, it need only satisfy rational basis review. Mot. at 10:24–12:4; *Royce*, 725 F.Supp.3d at 1139–1140 (holding SB 277 survives rational basis review); *Miller*, 2025 WL 665102, at *6 (finding New York's law removing religious beliefs exemptions was rationally related in response to the 2018 to 2019 measles outbreak, evidence that a significant number of those infected held religious exemptions, and concerns that the outbreaks correlated with clusters of populations with high levels of unvaccinated students).

Even under a strict scrutiny analysis, however, the school vaccination law is narrowly tailored to achieve a compelling governmental interest. Mot. at 18:11–20:14; *see Fulton*, 593 U.S. at 541. There is no doubt that California has a compelling interest in protecting the health of TK-12 students while they are in an institutionalized classroom setting, in preventing outbreaks of communicable diseases in schools statewide, protecting children who are unable to be vaccinated due to health conditions, as well as protecting against easily preventable disease. *See Whitlow v. Californi*a, 203 F.Supp.3d 1079, 1091 (S.D. Cal. 2016). Further, California eliminated PBEs as to the ten specified diseases, which are easily preventable through mandatory vaccination; providing that if any additional vaccinations are required, they must provide for PBEs. Cal. Health & Saf. Code §§ 120335(b)(11), 120338. California's school vaccination laws are narrowly tailored.

III. JUDICIAL NOTICE IS APPROPRIATE

Plaintiffs object to Defendant's Request for Judicial Notice, arguing that is an improper attempt to introduce outside evidence prematurely. Opp. at 20:10-20; *see* Dkt. 38-2 (Req. for Jud. Not.), 40 (Objections). As explained in Defendant's Request, however, judicial notice is proper

when considering a motion to dismiss. *DeFiore v. SOC LLC*, 85 F.4th 546, 553 n.2 (9th Cir. 2023) (materials of which a district court may take judicial notice are not extrinsic evidence for purposes of Rule 12(b)(1)); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (court may take judicial notice of "matters of public record" without converting a motion to dismiss under Rule 12(b)(6) into a motion for summary judgment). Accordingly, Defendant asks this Court to overrule Plaintiffs' objections and grant judicial notice.

CONCLUSION

For the reasons above and in the Motion to Dismiss, the SAC should be dismissed entirely.

Dated: March 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **Doescher, et al. v Aragon et al.** No. **2:23-cv-02995-KJM-JDP**

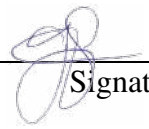
I hereby certify that on **March 10, 2025**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **REPLY TO OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **March 10, 2025**, at San Diego, California.

G. Lopez
Declarant



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