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20 **UNITED STATES DISTRICT COURT**
21 **SOUTHERN DISTRICT OF CALIFORNIA**
22

23 ANA WHITLOW, Individually and as
24 Parent and Next Friend of B.A.W. and
25 D.M. F.-W., minor children; ERIK
26 NICOLAISEN, Individually, and as
27 Parent and Next Friend of A.W.N., a
28 minor child; DENE SCHULTZE-ALVA,
D.C., Individually, and as Parent and Next

Case No. 3:16-cv-01715-DMS-BGS

**FIRST AMENDED COMPLAINT
FOR DECLARATORY,
INJUNCTIVE AND OTHER
RELIEF**

1 Friend of S.M.A., a minor child; NICOLE
2 ANDRADE, Individually, and as Parent
3 and Next Friend of I.G.A., a minor child;
4 BRIANNA OWENS, Individually, and as
5 Parent and Next Friend of K.R.O-R. and
6 J.S.W.S., minor children; VERONICA
7 DELGADO, Individually, and as Parent
8 and Next Friend of A.N.D., a minor child;
9 MELANIE SUNUKJIAN, Individually,
10 and as Parent and Next Friend of A.L.S., a
11 minor child; DAWN SAUNDERS,
12 Individually, and as Parent and Next
13 Friend of K.S., a minor child; HOLLY
14 CRAIN, Individually, and as Parent and
15 Next Friend of G.J.C. and B.G.C., minor
16 children; TANYA SUTTON,
17 Individually, and as Parent and Next
18 Friend of K.J.S., a minor child;
19 SUZETTE LOY, Individually, and as
20 Parent and Next Friend of K.R.L., a minor
21 child; ADRIANE HOEFT, Individually,
22 and as Parent and Next Friend of O.C. and
23 F.C., minor children; JENNIFER
24 KENNEDY, Individually, and as Parent
25 and Next Friend of A.G.K. and E.L.K.,
26 minor children: MICHELLE
27 VENEZIANO, D.O., Individually, and as
28 Parent and Next Friend of G.S.V., a minor
child; CHANDA MURRAY,
Individually, and as Parent and Next
Friend of E.D.M. and S.R.M., minor
children; DOUGLAS J. MACKENZIE,
M.D., Individually, and as Parent and
Next Friend of G.J.M., a minor child;
VICTOR NUÑO, D.O., Individually, and
as Parent and Next Friend of Z.E.N., a
minor child; E4A FOUNDATION, a
Nevada not for profit Corporation;
WESTON A. PRICE FOUNDATION, a
District of Columbia not for profit

1 Corporation; CITIZENS FOR HEALTH,
2 a Nevada not for profit Corporation; and
3 ALLIANCE FOR NATURAL HEALTH,
4 a Georgia not for profit Corporation,

5 Plaintiffs,

6 vs.

7 STATE OF CALIFORNIA,
8 DEPARTMENT OF EDUCATION;
9 STATE OF CALIFORNIA, BOARD OF
10 EDUCATION; TOM TORLAKSON,
11 SUPERINTENDENT OF THE
12 DEPARTMENT OF EDUCATION, in his
13 Official Capacity; STATE OF
14 CALIFORNIA, DEPARTMENT OF
15 PUBLIC HEALTH; DR. KAREN
16 SMITH, DIRECTOR OF THE
17 DEPARTMENT OF PUBLIC HEALTH,
18 in her Official Capacity; TAKASHI
19 WADA, M.D. and CHARITY DEAN,
20 M.D. in their Official Capacities as
21 agents, servants, employees or Officials of
22 the SANTA BARBARA COUNTY
23 DEPARTMENT OF PUBLIC HEALTH,

24 Defendants.

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FIRST AMENDED COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND OTHER RELIEF

1 Plaintiffs complain of Defendants and allege:

2 **INTRODUCTION**

3 1. More than 45 years ago, the California Supreme Court recognized that
4 education is “the bright hope for entry of the poor and oppressed into the mainstream
5 of American society,” *Serrano v. Priest*, 5 Cal.3d 584, 609 (1971), and that “society
6 has a compelling interest in affording children an opportunity to attend school.” *Id.* at
7 606 (citation omitted). But today, as a result of the enactment of Senate Bill (“SB”)
8 277, the State of California denies tens of thousands of children access to its schools
9 and daycares and relegates them to the separate-and-unequal position of learning in
10 isolation, in permanent quarantine.

11 2. In the midst of the media frenzy surrounding a measles outbreak at
12 Disneyland, at the intersection of irrational panic and special-interest politics, the
13 California Legislature enacted SB 277 to abolish personal belief exemptions
14 (“PBEs”) from California’s school vaccination requirements.

15 3. In the name of public health, SB 277 permanently bars from all public
16 and private schools and daycares any child who, absent a physician-provided medical
17 exemption, is not fully vaccinated with 30 to 38 doses of vaccines for ten different
18 illnesses ranging from generally mild childhood illnesses like measles and
19 chickenpox, to a blood-borne disease like hepatitis B, to a non-communicable
20 infection like tetanus.

21 4. The justification for permanently barring children with PBEs from
22 school and daycare has been the desire to keep schools “safe from dangerous
23 contagions.” The unfortunate mischaracterization of children with PBEs as
24 contagious and dangerous vectors of disease has resulted in extreme bias and
25 prejudice against thousands of innocent children who are, in actuality, neither
26 infectious nor contagious. Nor are these children capable of transmitting diseases they
27 do not have. Yet SB 277 forever exiles them from schools and daycares, in a dramatic

1 departure from California’s long-standing history of unwavering protection of every
2 child’s right to a free, equal and public education.

3 5. Education is a fundamental right in California, guaranteed to all children
4 by the State Constitution. Cal. Const., art. IX, §§ 1 and 5. Indeed, “education is so
5 important that the state has made it compulsory.” *Serrano*, 5 Cal.3d at 610 (citation
6 omitted). The California Supreme Court minced no words when it declared that “[i]n
7 light of the public interest in conserving the resource of young minds, [courts] must
8 unsympathetically examine any action of a public body which has the effect of
9 depriving children of the opportunity to obtain an education.” *Id.* at 607 (citation
10 omitted).

11 6. Additionally, both State and federal laws prohibit discrimination against
12 and disparate treatment of children based on suspect classifications such as race,
13 religion, national origin, disability or socioeconomic status. SB 277 is in
14 irreconcilable conflict with the aforementioned State and federal laws. Therefore, to
15 preserve and protect their rights under those laws, Plaintiffs bring this action pursuant
16 to, *inter alia*, 42 U.S.C. §1983; the First, Fifth and Fourteenth Amendments to the
17 United States Constitution; the Individuals With Disabilities Education Act, 20
18 U.S.C. § 1400, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §
19 794; the Americans With Disabilities Act of 1990, 42 U.S.C. §12132, *et seq.*; and
20 Article 9, §§ 1 and 5, Article 1, §§ 7(a) and 15, and Article 4, § 16(a) of the
21 California Constitution, to enjoin, preliminarily and permanently, all enforcement of
22 SB 277 and any other California statutes, regulations, policies or practices that seek
23 to exclude children from school.

24 **JURISDICTION AND VENUE**

25 7. This action arises under, *inter alia*, 42 U.S.C. §1983; the First, Fifth and
26 Fourteenth Amendments to the U.S. Constitution; the Individuals With Disabilities
27 Education Act, 20 U.S.C. § 1400, *et seq.*; Section 504 of the Rehabilitation Act of

1 1973, 29 U.S.C. § 794; the Americans With Disabilities Act of 1990, 42 U.S.C.
2 §12132, *et seq.* and this Court has original subject matter jurisdiction over this action
3 under 28 U.S.C. § 1331 (federal question).

4 8. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over
5 the Plaintiffs' state-law claims, which are so related to claims in the action within
6 such original jurisdiction that they form part of the same case or controversy under
7 Article III of the United States Constitution. Plaintiffs' state-law claims include
8 violations of fundamental rights, equal protection, and due process.

9 9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e), because
10 the acts and omissions that gave rise to Plaintiffs Ana Whitlow, Holly Crain, Tanya
11 Sutton and Suzette Loy's claims occurred in this judicial district.

12 10. If successful, the Plaintiffs are entitled to costs and attorneys' fees under
13 42 U.S.C. § 1988 and 20 U.S.C. § 1400, *et seq.*, and Cal. Code Civ. Proc. § 1021.5.

14 THE PARTIES

15 Plaintiffs

16 11. Plaintiff Ana Whitlow resides with her husband and minor sons B.A.W.
17 and D.M.F-W. in San Diego, San Diego County. Ms. Whitlow's children B.A.W. and
18 D.M.F-W. are legally required to attend school. Ms. Whitlow and her husband have
19 chosen to selectively vaccinate B.A.W. and D.M.F-W. in the interest of their health
20 and well-being and to avoid vaccines that offend their religious beliefs by virtue of
21 certain ingredients including aborted fetal cells. D.M.F-W. is twelve years old and
22 due to advance to the seventh grade in the fall. As a condition for enrollment in the
23 seventh grade, D.M.F-W. is required to show proof of vaccination for pertussis
24 (whooping cough). Pertussis vaccination is not available separately and is given in a
25 single syringe with the diphtheria and tetanus vaccines, called DTaP or Tdap. To
26 determine whether D.M.F-W. needs the vaccine, Ms. Whitlow requested a blood
27 antibody test to check D.M.F-W.'s antibodies for whooping cough, tetanus and
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1 diphtheria. Laboratory testing based on a June 21, 2016 blood draw confirmed that
2 D.M.F-W. has immunity to all three diseases, eliminating the need to vaccinate him.
3 Notwithstanding his demonstrated immunity to all three diseases, D.M.F-W's school
4 has refused to allow D.M.F-W. to enroll in the seventh grade unless he receives the
5 required vaccine. Ms. Whitlow sees no justification for the school's demand that
6 D.M.F-W. submit to a vaccination for diseases to which he has lab-confirmed
7 immunity. Like all medical procedures, vaccines carry risk of adverse reactions and
8 Ms. Whitlow does not wish to subject D.M.F-W. to a medical procedure that will
9 confer no additional benefit to him. Ms. Whitlow seeks injunctive relief requiring the
10 defendant state actors and agencies of the State of California to admit D.M.F-W. into
11 the seventh grade and not deprive him of the opportunity to continue his education.
12 Ms. Whitlow's son B.A.W. is five years old and eligible to attend kindergarten. Ms.
13 Whitlow observed B.A.W. experience adverse reactions to vaccination, including
14 seizure-like spells, which B.A.W.'s physicians do not attribute to the vaccines,
15 precluding a medical exemption for B.A.W. Ms. Whitlow is concerned that further
16 vaccination will subject B.A.W. to the risk of adverse side effects, including seizures.
17 Ms. Whitlow also objects to injecting B.A.W. with vaccines derived from aborted
18 fetal cells, including aborted fetal lung fibroblasts. If PBEs were available, Ms.
19 Whitlow would obtain a religious exemption to enroll B.A.W. in kindergarten. Ms.
20 Whitlow's children do not carry any of the diseases for which vaccination is
21 mandated, yet they are being permanently barred from school. Ms. Whitlow seeks
22 injunctive relief prohibiting the defendant state actors and agencies of the State of
23 California from denying admission to B.A.W. into Ocean Beach Elementary School,
24 operated by the San Diego Unified School District.

25 12. Plaintiff Erik Nicolaisen lives with his wife and minor children A.W.N.
26 (age 5), R.J.N. (age 3) and U.M.N (age 10 months), in Studio City, Los Angeles
27 County. At the age of six, all of Mr. Nicolaisen's children will be legally required to
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1 attend school. Mr. Nicolaisen and his wife attempted to enroll A.W.N. into
2 kindergarten at Carpenter Elementary School, operated by the Los Angeles Unified
3 School District. On June 17, 2016, the principal of Carpenter Elementary School
4 informed Mr. Nicolaisen that A.W.N. cannot enroll in kindergarten without proof of
5 full vaccination which, in A.W.N.'s case would require administration of more than
6 20 vaccine doses in less than a two-month period. Mr. Nicolaisen and his wife have
7 chosen to selectively vaccinate A.W.N. in the interest of A.W.N.'s health and
8 wellbeing, and in the interest of avoiding certain vaccines, including those produced
9 using aborted fetal tissue such as fetal lung fibroblasts, given that Mr. Nicolaisen's
10 wife opposes abortion. Without a PBE, A.W.N. cannot attend school, which he is
11 legally required to do when he turns six years old. Similarly, A.W.N.'s younger
12 siblings cannot attend daycare now or school once they reach school age. Without the
13 ability to enroll their children into school, Mr. Nicolaisen and his wife face the
14 options of giving up successful careers and risking loss of income and employer-
15 provided health and life insurance, relocation to Oregon, or coerced abandonment of
16 their religious convictions and health-related misgivings about certain vaccines. Mr.
17 Nicolaisen's children do not carry any of the diseases for which vaccination is
18 mandated, yet they are being permanently barred from school. Mr. Nicolaisen seeks
19 injunctive relief prohibiting the defendant state actors and agencies of the State of
20 California from denying A.W.N. enrollment into Carpenter Elementary School,
21 operated by the Los Angeles Unified School District or any other school.

22 13. Plaintiff Dene Schultze-Alva is a Civil Engineer and Doctor of
23 Chiropractic. She resides with her husband, and minor daughters S.G.A. (age 8) and
24 S.M.A. (age 3) in Sierra Madre, Los Angeles County. Years ago, the day after
25 receiving routine childhood vaccinations, Dr. Schultze-Alva's stepdaughter suffered
26 convulsions, a high fever, lethargy and seizure-like shaking. This experience and her
27 own chiropractic training have caused Dr. Schultze-Alva to exercise caution in
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1 vaccinating S.G.A. and S.M.A. Dr. Schultz-Alva selectively vaccinated S.M.A. and
2 S.G.A. according to the guidance of her religion and in the interest of their health and
3 wellbeing. S.G.A. has a neurological condition and a cyclical vomiting syndrome that
4 further contributes to Dr. Schultze-Alva's caution about the schedule on which
5 S.G.A. is vaccinated. S.G.A. currently attends elementary school with a PBE, but will
6 be expelled from school upon reaching seventh grade if SB 277 remains law, even
7 though she will be legally required to attend school. S.M.A. weighs only 24 pounds at
8 the age of three years, eight months old and Dr. Schultze-Alva has determined that
9 slow and selective vaccination according to a proper risk-benefit analysis is in
10 S.M.A.'s best interest and essential to her health. S.M.A.'s pediatrician supports and
11 respects Dr. Schultze-Alva's healthcare choices for her children. S.M.A.'s
12 pediatrician has informed Dr. Schultze-Alva that Kaiser "will not allow" her to write
13 medical exemptions, but she did write a letter explaining that S.M.A. would be
14 vaccinated on a delayed and selective schedule. The Early Childhood Development
15 Center operated by the Pasadena Unified School District has refused to conditionally
16 enroll S.M.A. based on her pediatrician's letter explaining S.M.A.'s vaccination
17 schedule and instead will only accept proof of full vaccination or a medical
18 exemption. S.M.A. does not carry any of the diseases for which vaccination is
19 mandated, yet she is currently being denied entry into preschool and will never be
20 allowed to attend any school under SB 277. Dr. Schultz-Alva seeks injunctive relief
21 prohibiting the defendant state actors and agencies of the State of California from
22 denying S.M.A. admission into the Early Childhood Development Center, operated
23 by the Pasadena Unified School District.

24 14. Plaintiff Nicole Andrade resides near Loomis, Placer County, with her
25 husband and family, including her minor daughter I.G.A. I.G.A. is due to enter the
26 seventh grade in the fall at Franklin Elementary School operated by the Loomis
27 Union School District. Ms. Andrade has received two notices of school expulsion for
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1 I.G.A. for noncompliance with SB 277, even though I.G.A. is legally required to
2 attend school. Ms. Andrade is religiously opposed to vaccines manufactured from
3 aborted fetal cell lines, having fully vaccinated her oldest child before she became
4 aware that certain vaccines, including the Measles, Mumps, Rubella (“MMR”)
5 vaccine, are manufactured using cells derived from intentionally aborted fetuses. Ms.
6 Andrade has taken up in her prayers the question of whether to vaccinate, and
7 believes that God would want her pro-life family to wait for more pure and safe
8 vaccines, before vaccinating I.G.A. again. I.G.A. enjoys learning in a classroom and
9 wants to continue going to school. I.G.A. does not carry any of the diseases for which
10 vaccination is mandated, yet she is being permanently barred from school. Ms.
11 Andrade seeks an order prohibiting the defendant state actors and agencies of the
12 State of California from denying advancement of I.G.A. into the seventh grade at
13 Franklin Elementary School, operated by the Loomis Union School District.

14 15. Plaintiff Brianna Owens resides in Petrolia, Humboldt County. She is the
15 parent of four children, two of whom are impacted by SB 277 in the 2016-2017
16 school year. K.R.O.-R. is currently being denied entry into the seventh grade and
17 J.S.W.S. is currently being denied entry into kindergarten at Mattole Elementary
18 School operated by the Mattole Unified School District. Ms. Owens has a family
19 history of autoimmune disease, including Guillain-Barré Syndrome. At the age of 26,
20 Ms. Owens suffered convulsions, hallucinations, a fever of 103.4 degrees, vomiting,
21 headache, jaw locking, muscle tightness and loss of consciousness after receiving a
22 vaccine for diphtheria, tetanus and pertussis (Tdap). The doctor who administered the
23 vaccine insisted that it was impossible for her to have a reaction to the vaccine. Days
24 later, another physician who treated Ms. Owens confirmed that Ms. Owens’
25 symptoms had been the result of a severe reaction to the Tdap vaccine and advised
26 Mr. Owens never to take that vaccine again. Ms. Owens’ reaction is listed in the
27 manufacturer’s product insert as a potential sequelae of the vaccine. Ms. Owens’
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1 daughter K.R.O.-R. had an adverse reaction to the DTaP (whooping cough, tetanus
2 and diphtheria vaccine for pediatric use), which K.R.O.-R.'s pediatrician said was a
3 "normal" response to the vaccine. Following K.R.O.-R.'s reaction and her own severe
4 adverse reaction to the Tdap vaccination, coupled with her family's medical history,
5 Ms. Owen became hesitant to continue vaccinating her children. She has requested
6 testing to ensure that her children will not have severe adverse reactions to
7 vaccination but no such testing has been provided by her physicians. She has also
8 requested medical exemptions for her children based on her own severe adverse
9 vaccine reaction and family medical history, as allowed by SB 277. Her pediatrician
10 declined to write medical exemptions for K.R.O.-R. and J.S.W.S., because he had
11 received a "special class" where he was told that to qualify for a medical exemption
12 her children would have to have a "documented anaphylactic reaction" to a particular
13 vaccine and then may be eligible for an exemption only for that particular vaccine.
14 Ms. Owens' children face immediate and imminent harm, as they are facing
15 permanent denial of their right to attend school in the fall of 2016, although they are
16 legally required to attend school. Ms. Owens seeks an order prohibiting the defendant
17 state actors and agencies of the State of California from denying admission of her
18 children K.R.O.-R. and J.S.W.S. into the seventh grade and kindergarten,
19 respectively, at Mattole Elementary School operated by the Mattole Unified School
20 District.

21 16. Plaintiff Veronica Delgado resides with her family in the City of
22 Madera, Madera County. She is the parent of seven children. Two of Ms. Delgado's
23 children have special needs and receive special education services pursuant to
24 Individualized Education Programs ("IEPs"). Both of Ms. Delgado's children with
25 special needs had adverse reactions to vaccines, although Ms. Delgado did not
26 recognize their conditions as vaccine reactions at the time they occurred. Ms.
27 Delgado followed the SB 277 legislative process and understood that children with
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1 IEPs would be exempt from SB 277's full vaccination requirements. Ms. Delgado's
2 child A.N.D. attends Howard School, operated by the Madera School District.
3 Despite requiring special education services and having an IEP, A.N.D. is currently
4 being denied enrollment into the seventh grade. Ms. Delgado has had extensive
5 discussions with school personnel regarding A.N.D.'s special education needs under
6 his IEP but the school continues to refuse to allow A.N.D. to enroll, although he is
7 legally required to attend school. In her discussions with school personnel, Ms.
8 Delgado became aware that other children with IEPs are being denied enrollment into
9 Howard School. A.N.D. has a younger brother with an IEP who is currently enrolling
10 in the sixth grade. When A.N.D.'s younger brother reaches the seventh grade next
11 fall, he will also be excluded from school, even though his special needs are more
12 extensive than A.N.D.'s and his IEP requires the provision of a myriad special
13 education services. Ms. Delgado cannot homeschool her two boys with special needs,
14 as well as care for her entire family. She will need to first acquire the skills needed to
15 teach her children in the seventh grade and beyond. Ms. Delgado's son A.N.D. faces
16 imminent harm as he is being denied school enrollment and access to special
17 education services in the fall of 2016. Ms. Delgado seeks an order prohibiting the
18 defendant state actors and agencies of the State of California from denying admission
19 of her children into school under SB 277.

20 17. Plaintiff Melanie Sunukjian resides with her minor daughter A.L.S. in
21 Santa Barbara, Santa Barbara County. A.L.S. is ready to enter the seventh grade at
22 Providence Junior High School, operated by the Santa Barbara Unified School
23 District. A.L.S. is vaccinated, but is required to have a Tdap (whooping cough,
24 tetanus and diphtheria) vaccine to enroll in the seventh grade. Ms. Sunukjian is
25 concerned for the health of her daughter and has sought to have her daughter
26 medically exempted from the Tdap that SB 277 requires A.L.S. to receive. A.L.S. has
27 numerous diagnosed food sensitivities and allergies and a family history of
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1 autoimmune disease. Despite these medical concerns, which Ms. Sunukjian believes
2 are legitimate justification for a medical exemption, her doctors are unwilling to
3 consider a medical exemption. A.L.S. does not carry pertussis or diphtheria, yet she is
4 being denied enrollment into the seventh grade and will be denied entry into school in
5 the fall, even though she is legally required to attend school. Ms. Sunukjian seeks
6 injunctive relief prohibiting the defendant State actors and agencies of the State of
7 California from denying admission of A.L.S. to any private school and public school
8 in the State of California.

9 18. Plaintiff Dawn Saunders is a widow with three children, residing in
10 Placerville, El Dorado County. Ms. Saunders' daughter K.S. is due to enter the
11 seventh grade in the fall and is legally required to attend school. K.S. has an IEP as a
12 result of a traumatic brain injury she suffered in 2014. Under the IEP, K.S. receives
13 special education services, including speech and cognitive therapy. K.S. is eligible for
14 meals in school. Despite her disability and her IEP, K.S. is being denied enrollment
15 into the seventh grade. K.S. is also currently being denied her extended school year
16 services, resulting in severe hardship to Ms. Saunders, both personally and
17 financially. Moreover, homeschooling is not meeting K.S. many educational and
18 therapeutic needs. Ms. Saunders cannot continue to homeschool K.S., work the full
19 time job she needs to support her family, and provide K.S. with the special education
20 services she needs. K.S. is unable to obtain a medical exemption through the MediCal
21 provider network and is prohibited under threat of losing MediCal health benefits
22 from seeking to obtain a medical exemption from another source, which Ms.
23 Saunders cannot afford in any event. Ms. Saunders and K.S. are experiencing severe
24 hardship and imminent harm because of SB 277. K.S. stands to lose her right to an
25 education, her special education services, her school-provided meals, and her right to
26 attend school with her non-disabled peers. Ms. Saunders faces the cruel illusion of
27 choice between subjecting her already-disabled child to the risks of vaccination or
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1 loss of employment and income to homeschool her child. Ms. Saunders seeks
2 injunctive relief prohibiting the defendant State actors and agencies of the State of
3 California from denying admission of her child and refusing classroom instruction
4 under her IEP, in the public and private schools in the State of California.

5 19. Plaintiff Holly Crain resides with her husband and two children G.J.C.
6 and B.G.C. in El Cajon, San Diego County. Ms. Crain has elected to follow an
7 alternative vaccination schedule with her son G.J.C., who has previously experienced
8 an adverse reaction to vaccination. Despite G.J.C.'s adverse reaction to vaccination,
9 Ms. Crain has been advised summarily by her children's pediatrician that her children
10 do not qualify for medical exemptions under California Health & Safety Code section
11 120370. Ms. Crain also holds sincere religious beliefs in her objection to the use of
12 aborted fetal cells in the manufacture of certain vaccines. Ms. Crain's children are
13 healthy, they see their pediatrician regularly for checkups, and they carry no
14 infectious diseases. Yet with the passage of SB 277, her children are barred from
15 preschool and daycare for the 2016-2017 school year. Ms. Crain is being
16 constructively forced out of work by SB 277, causing hardship to her family. Ms.
17 Crain seeks injunctive relief prohibiting the defendant State actors and agencies of the
18 State of California from denying admission of her children to every private school
19 and public school in the State of California for which they are otherwise eligible.

20 20. Plaintiff Tanya Sutton is a single mother residing with her son K.J.S.
21 (age 5) in Chula Vista, San Diego County. K.J.S. currently attends Kindercare
22 Daycare in Chula Vista and is eligible for kindergarten in the fall. Both Ms. Sutton
23 and K.J.S.'s father work full-time jobs. Regular school and afterschool care is
24 necessary to allow Ms. Sutton to continue working at her job to provide for K.J.S. In
25 March of 2016, Ms. Sutton attempted to enroll K.J.S. into kindergarten for fall, 2016.
26 K.J.S. has a medical exemption from his doctor, stating that his doctor does not feel
27 vaccination is safe for K.J.S. When Ms. Sutton presented K.J.S.'s enrollment
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1 package, the school nurse questioned and refused to accept K.J.S.'s medical
2 exemption. After a heated discussion between Ms. Sutton and the school nurse in
3 front of other school personnel and parents, the school nurse said the medical
4 exemption "was fine," but after extensive follow-up and run-around, Ms. Sutton
5 learned that the school nurse had flagged K.J.S.'s file because of his medical
6 exemption, causing K.J.S. to miss out on placement opportunities at four different
7 schools. K.J.S. is currently not enrolled in any kindergarten program due to the
8 school nurse's unlawful rejection of the medical exemption provided by K.J.S.'s
9 physician. Ms. Sutton stands to lose her job and experience severe financial hardship
10 because K.J.S. is being denied enrollment into kindergarten. Ms. Sutton seeks
11 injunctive relief prohibiting the defendant State actors and agencies of the State of
12 California from discriminating against K.J.S. on the basis of his medical exemption to
13 vaccination.

14 21. Plaintiff Suzette Loy resides with her husband and children in Vita, San
15 Diego County. Ms. Loy has two children K.R.L. (age 4) and J.B.L. K.R.L. is
16 selectively vaccinated and is currently being denied admission to kindergarten
17 because she does not have all of the more than 30 vaccine doses required for
18 kindergarten enrollment. Ms. Loy's oldest child experienced an adverse reaction to
19 vaccination. Ms. Loy wants all of the recommended vaccines for her other children,
20 but wishes to follow a slow and cautious vaccination schedule in light of her older
21 son's reaction. Her children's pediatricians have denied her an alternative vaccination
22 schedule that would allow her to carefully select the times for vaccine administration,
23 and allow her to carefully monitor her children for potential vaccine injury along the
24 way. At great hardship to her family, Ms. Loy is forced to homeschool her daughter
25 K.R.L., instead of sending her to kindergarten this year. K.R.L. is healthy and is not
26 infected with and does not carry any of the illnesses for which vaccination is
27 required, yet she is permanently barred from attending school. Ms. Loy seeks

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1 injunctive relief prohibiting the defendant State actors and agencies of the State of
2 California from denying admission of her children to every private school and public
3 school in the State of California for which they are otherwise eligible.

4 22. Plaintiff Adriane Hoeft lives with her two minor sons, O.C. and F.C. in
5 Roseville, Placer County. O.C. became impacted by Transverse Myelitis, leaving
6 him with flaccid paralysis from the waist down after a round of vaccinations when he
7 was 17 months old. O.C. requires a wheelchair. Ms. Hoeft will never vaccinate O.C.
8 again. When O.C. suffered his vaccine injury and became paralyzed, Ms. Hoeft
9 believed that vaccine injuries were extremely rare - one in a million. Four months
10 after O.C. became paralyzed from his vaccinations, his younger brother F.C. was
11 born. Ms. Hoeft took F.C. to the doctor for routine vaccinations. Immediately
12 following his two-month vaccines, F.C. became very weak, sick and somber for two
13 days. Fearing a repeat of what happened to O.C. and after beginning to research
14 vaccines, Ms. Hoeft stopped vaccinating F.C. Both O.C. and F.C. are currently in
15 elementary school in the first grade and transitional kindergarten, respectively. They
16 both have PBEs which will be grandfathered until they reach the seventh grade. At
17 seventh grade, however, both O.C. and F.C. will be permanently expelled from
18 school and denied an education. O.C. has an IEP and, according to Amendment (h) of
19 SB 277, should be exempt from vaccination requirements. However, the Roseville
20 City School District has announced publicly that regardless of Amendment (h),
21 children with IEPs will not be allowed to attend school with other children. O.C. and
22 F.C. are not infected with and do not carry any of the illnesses for which vaccines are
23 required, yet they will be permanently barred from school and denied their right to an
24 education upon reaching seventh grade. Ms. Hoeft seeks injunctive relief prohibiting
25 the defendant state actors and agencies of the State of California from denying
26 admission of her children to every private school and public school in the State of
27 California for which they are otherwise eligible.

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1 23. Plaintiff Jennifer Kennedy resides with her husband and three children,
2 C.E.K. (age 14); A.G.K. (age 11) and E.L.K. (age 7), in Pasadena, Los Angeles
3 County. Ms. Kennedy's family history includes adverse reactions to vaccination.
4 A.G.K. and E.L.K. are selectively vaccinated, following a careful risk/benefit
5 analysis. Both A.G.K. and E.L.K. currently have PBEs on file with their schools,
6 which will expire when they reach the seventh grade. A.G.K. is entering the sixth
7 grade at Sierra Madre Middle School. A.G.K. and E.L.K. have not been able to obtain
8 a medical exemption to vaccination from their pediatrician. Ms. Kennedy objects to
9 the use of aborted fetal cell lines in any vaccines, based on her pro-life religious
10 beliefs. Ms. Kennedy's children are healthy. They have no infectious diseases and
11 they are not infected with or capable of transmitting any of the illnesses for which
12 vaccination is required under SB 277, yet upon reaching the seventh grade, they will
13 be permanently barred from school even though they are legally required to attend
14 school. Ms. Kennedy seeks injunctive and declaratory relief prohibiting the defendant
15 State actors and agencies of the State of California from denying admission of her
16 children to every private school and public school in the State of California for which
17 they are otherwise eligible.

18 24. Plaintiff Michelle Veneziano, DO, is a physician in Mill Valley, Marin
19 County. She graduated from Western University of Health Sciences in 2000 and
20 completed her residency in family practice in 2003. In her medical school and post-
21 graduate training, Dr. Veneziano received only cursory instruction about vaccine
22 science and practice and was not educated regarding the potential for adverse events.
23 Dr. Veneziano recalls being taught that adverse reactions to vaccines are extremely
24 rare. She was not trained in recognizing, treating or reporting adverse reactions to
25 vaccines. Dr. Veneziano is the mother of G.S.V., age 11, entering sixth grade in San
26 Geronimo Valley Middle School in Marin County. G.S.V. is vaccinated with all of
27 the vaccines on California's school vaccination schedule, except for hepatitis B, a
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1 blood-borne illness for which G.S.V. is not at risk. To advance to the seventh grade in
2 the 2017-2018 school year, G.S.V. will need a Tdap vaccine. G.S.V. suffers from
3 eczema, gastrointestinal distress and autoimmune disease. Dr. Veneziano has recently
4 begun reading books and scientific studies about vaccines and has identified G.S.V.'s
5 ailments as likely sequelae to receiving multiple rounds of childhood vaccines. Dr.
6 Veneziano has only recently learned about vaccine injuries, the existence of the
7 National Vaccine Injury Compensation Program and the Vaccine Adverse Event
8 Reporting System. Like most physicians, Dr. Veneziano's medical training focused
9 only on the benefits of vaccination, without acknowledgment of any risks. Based
10 upon her recent research into the scientific literature and books about vaccines and
11 their benefits and risks, including recent studies by the FDA and CDC about the
12 acellular pertussis (whooping cough) vaccine, Dr. Veneziano has determined that she
13 will not give G.S.V. the Tdap vaccine required for G.S.V. to advance to the seventh
14 grade. According to the most current research from the FDA, CDC and various
15 independent researchers, the acellular pertussis vaccine given in the United States
16 does not prevent pertussis infection or transmission and instead merely masks
17 symptoms of the disease, creating asymptomatic carriers which is not only not
18 beneficial, but may be detrimental to public health. Dr. Veneziano is also concerned
19 about some of the ingredients used in the manufacture of the Tdap vaccine and the
20 risks associated with injection of those ingredients. Dr. Veneziano has decided to
21 forego the Tdap vaccine for G.S.V. both to avoid the risk of worsening G.S.V.'s
22 autoimmune status and to avoid G.S.V. becoming infected with whooping cough
23 asymptotically and unknowingly infecting a susceptible person with whooping
24 cough. As a medical professional, Dr. Veneziano should be able to make healthcare
25 decisions for G.S.V. without being deprived of the fundamental right for G.S.V. to
26 receive a school-based education. Dr. Veneziano seeks injunctive and declaratory
27 relief prohibiting the defendant State actors and agencies of the State of California

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1 from denying admission of G.S.V. to every private school and public school in the
2 State of California for which she is otherwise eligible.

3 25. Plaintiff Chanda Murray resides with her six children, including her
4 daughter S.R.M. and her son E.D.M., and her common law husband, in Sacramento,
5 Sacramento County. S.R.M. should be entering twelfth grade at the Twin Rivers
6 School but Ms. Murray has received written notice that the school may refuse to
7 honor S.R.M.'s PBE, claiming that she needs DTaP and chicken pox boosters.
8 Twelfth grade is not a checkpoint year and there is no justification to revoke S.R.M.'s
9 PBE and exclude her from her final year of school with her friends, jeopardizing
10 S.R.M.'s future educational and work prospects. E.D.M., who also has a PBE, should
11 be a rising seventh grader at Foothill Ranch Middle School but Ms. Murray has been
12 informed that he will not be able to attend school there this fall. Nor can he attend
13 Westside Preparatory Charter School, recommended by his teacher and principal,
14 because he is not fully vaccinated. E.D.M. is an excellent student and athlete. If
15 homeschooled, will be denied the opportunity to participate in the community sports
16 leagues in which he has excelled because the leagues require proof of enrollment in
17 public school. Ms. Murray's obtained PBEs for her children, including S.R.M. and
18 E.D.M., because her second son suffered a severe vaccine reaction at the time of his
19 six-month vaccinations. That child suffered an Acute Disseminating
20 Encephalomyelitis (ADEM). He is non-verbal and has significant physical and
21 developmental challenges, including severe brain injury and visual and hearing
22 impairments. Ms. Murray was able to obtain a medical exemption for that child based
23 on his injury. When SB277 was passed, she tried to obtain medical exemptions for
24 her younger children based on their sibling's adverse reaction but their physician
25 refused to provide an exemption, telling Ms. Murray that immediate family history of
26 vaccine injury is not a valid reason for exemption. If Ms. Murray has to homeschool
27 her seventh and twelfth graders, she will have to forego employment. Neither S.R.M.

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1 nor E.D.M. carries the diseases for which the schools are claiming they need to be
2 vaccinated and they will be denied entry to school in the fall, even though they
3 legally are required to attend school. Ms. Murray seeks injunctive relief prohibiting
4 defendant State actors and agencies of the State of California from denying admission
5 of S.R.M. and E.D.M. to any private school or public school in the State of
6 California.

7 26. Plaintiff Douglas Mackenzie, MD, is a plastic surgeon in Santa Barbara,
8 Santa Barbara County. Dr. Mackenzie graduated from Johns Hopkins School of
9 Medicine in 1989. For 11 years, Dr. Mackenzie served as a lieutenant colonel, flight
10 surgeon in the Air National Guard. He was also Chief of Professional Services for the
11 medical unit (Channel Islands 146th), and in that capacity had oversight of the
12 Immunology Section. Dr. Mackenzie is the father of two boys, D.C.M. (20 years old)
13 and G.J.M. (2 years old). D.C.M. had all recommended vaccines and has no obvious
14 sequelae from them. Dr. Mackenzie did not know about risks of vaccines when
15 D.C.M. was receiving vaccines and, like most parents, did not know which vaccines
16 D.C.M. had received. Nor did Dr. Mackenzie know how much the CDC-
17 recommended schedule on which D.C.M. had been vaccinated differed from the
18 schedule on which G.J.M. was expected to be vaccinated. G.J.M. is selectively
19 vaccinated. Dr. Mackenzie has decided to stop giving G.J.M. vaccines. G.J.M.'s
20 pediatrician appears supportive of Dr. Mackenzie's choice. G.J.M. currently attends
21 preschool with a PBE, but will be denied entry into kindergarten if SB 277 remains in
22 effect. Dr. Mackenzie became interested in vaccines approximately four years after
23 repeatedly observing media vilification of any doctor, politician or layperson who had
24 questions about vaccines. Dr. Mackenzie began researching vaccines. He read books
25 and scientific studies from the CDC, FDA, pharmaceutical companies and
26 independent academic researchers. What became clear to Dr. Mackenzie in his
27 research was how little he had been taught about vaccines in his medical school and

1 post-graduate training. Dr. Mackenzie's medical school and residency training taught
2 him simply that vaccines are safe and effective and they are one of the most
3 important public health achievements of the 20th Century. He recalls no discussion
4 about risks from vaccination and how to recognize and treat adverse events. He did
5 not learn about the existence of the National Vaccine Injury Compensation Program
6 or the Vaccine Adverse Event Reporting System. Dr. Mackenzie also recalls no
7 mention whatsoever of any controversy regarding vaccinations. Dr. Mackenzie's
8 research into vaccines and vaccine science led him to become concerned about
9 potential side effects of vaccination and he has decided to stop vaccinating G.J.M.
10 As a medical professional, Dr. Mackenzie is capable of making sound healthcare
11 decisions for G.J.M. without being deprived of the fundamental right for G.J.M. to
12 receive a school-based education. Dr. Mackenzie seeks injunctive and declaratory
13 relief prohibiting the defendant State actors and agencies of the State of California
14 from denying admission of G.J.M. to every private and public nursery, elementary
15 and secondary school in the State of California for which he is otherwise eligible.

16 27. Plaintiff Victor Nuño, DO, is a physician residing with his wife, also a
17 physician, and their fifteen-month old daughter, Z.E.N. in Vallejo, Solano County.
18 Dr. Nuño has medical offices in the Cities of Vallejo and Redding and is an Assistant
19 Professor at the College of Osteopathic Medicine at Touro University. In his medical
20 school and post-graduate training, Dr. Nuño learned about the history and benefits of
21 vaccines. Regarding risks, he recalls being taught that serious vaccine reactions were
22 extremely rare and that most reactions to vaccines are mild and self-limited. He was
23 not trained in medical school to recognize, treat or report adverse reactions to
24 vaccines. In residency, Dr. Nuño worked with a physician who treated patients with
25 adverse reactions to vaccination. This is when Dr. Nuño first began conducting
26 independent research and reading textbooks and scientific studies on vaccines. Dr.
27 Nuño is troubled by the lack of adequate safety studies on the safety of certain

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1 vaccine ingredients and their synergistic effect on children's health. Dr. Nuño is also
2 troubled by the lack of adequate safety research of the dramatically expanded
3 vaccination schedule according to which children today receive vaccines. Finally, Dr.
4 Nuño is concerned about the current climate among medical professionals that allows
5 virtually no honest discussion about vaccines or acknowledgement of the indisputable
6 fact that like all pharmaceutical products, vaccines can cause a range of adverse
7 reactions. While Dr. Nuño and his wife will give Z.E.N. some vaccines on a delayed
8 and selective schedule, they do not believe that Z.E.N. needs all of the doses of all
9 vaccines required for entry into California schools under SB 277. As medical
10 professionals, Dr. Nuño and his wife are capable of and should be able to make
11 healthcare decisions for Z.E.N. without being deprived of the fundamental right for
12 Z.E.N. to receive a school-based education. Z.E.N. does not carry and cannot transmit
13 any of the illnesses for which vaccines are required under SB 277. Dr. Nuño seeks
14 injunctive and declaratory relief prohibiting the defendant State actors and agencies
15 of the State of California from denying admission of Z.E.N. to every private and
16 public nursery, elementary and secondary school in the State of California for which
17 she is otherwise eligible.

18 28. Plaintiff E4A Foundation is a non-profit organization under the laws of
19 the State of Nevada, with its principal place of business in San Diego, California,
20 whose purpose is to promote and protect equal access to public and private education.
21 In this lawsuit, E4A Foundation asserts claims on behalf of its members who are
22 impacted by SB 277. E4A Foundation's members include, but are not limited to: (a)
23 parents whose children will be excluded from kindergarten in fall 2016; (b) parents
24 whose children will be excluded from the seventh grade in fall 2016; (c) parents
25 whose children will be excluded from daycare or nursery school in fall 2016; (d)
26 parents who have moved to California and cannot enroll their children into school; (e)
27 parents with religious objections to vaccination, including objections to using

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1 vaccines produced using aborted fetal cells; (f) parents who have concerns about the
2 safety of vaccines and their ingredients; (g) parents of children with disabilities; (h)
3 parents of children with special needs who have IEPs in school districts that are
4 refusing admission to children with IEPs; (i) parents whose children have medical
5 exemptions from vaccination that are being rejected by schools; (j) parents who
6 object to the hepatitis B vaccine; (k) parents of children who are being denied
7 conditional entry into school to enable them to use a delayed catch-up vaccination
8 schedule set by the child's physician; (l) parents who filed PBEs prior to January 1,
9 2016 and whose children are being denied reenrollment into the next grade because
10 the school has lost the previously-filed PBE; (m) parents who are not fluent English
11 speakers and, therefore, cannot homeschool; (n) single parents who do not have the
12 financial resources to homeschool; (o) low income parents who do not have the
13 financial means to homeschool; (p) parents whose family members have had adverse
14 vaccine reactions, including those who have been compensated by the Vaccine Injury
15 Compensation Program, but who cannot obtain medical exemptions for their
16 children; (q) parents whose children have blood test results indicating sufficient
17 antibody levels for illnesses for which they are required to vaccinate under SB 277;
18 (r) healthcare professionals, including but not limited to physicians, nurses,
19 physician's assistants and emergency medical technicians who are concerned, among
20 other things, about the safety of vaccines and the current vaccination program, the
21 loss of rights to equal education, parental decision-making and informed consent to
22 medical procedures.

23 29. Plaintiff Weston A. Price Foundation is a nonprofit, tax exempt nutrition
24 education foundation whose members follow healthy natural approaches to health and
25 healing. Weston A. Price Foundation has 39 local chapters and 1,836 members in
26 California, many of whom are families with young children who would avail
27 themselves, or may have in the past obtained, a PBE. In this lawsuit, Weston A. Price
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1 Foundation asserts claims on behalf of its members who are impacted by SB 277.

2 30. Plaintiff Citizens for Health is a nonprofit, 501(c)(4) advocacy
3 organization providing information about natural healing and laws affecting health to
4 approximately 30,000 Californians. In this lawsuit, Citizens for Health asserts claims
5 on behalf of its members who are impacted by SB 277.

6 31. Plaintiff Alliance for Natural Health USA (ANH-USA) is a Georgia-
7 based nonprofit corporation founded in 1992. The ANH-USA mission is to protect
8 access to natural health options and a toxin free lifestyle, including the ability to
9 decline vaccination or modify the vaccine schedule for one's children. The ANH -
10 USA consists of over 500,000 members, including 78,000 California residents, many
11 of whom will be harmed by SB 277 because they will not be able to make their own
12 decisions for their school age children based on their beliefs about vaccine-related
13 harms. In this lawsuit, ANH-USA asserts claims on behalf of its members who are
14 impacted by SB 277.

15 **Defendants**

16 32. The State of California is the legal and political entity with the non-
17 delegable responsibility for educating all of California's school children by providing
18 a free public education under the California Constitution, Article IX, Section 5 and by
19 assuring that all California children receive their fundamental right to an equal
20 education under the equal protection clauses of the California Constitution, Article I,
21 Sections 7(a) and 16(a).

22 33. Defendant Tom Torlakson, sued in his official capacity, is the State
23 Superintendent of Public Instruction for the State of California, the Secretary and
24 Executive Officer for the State Board of Education, and the Chief Executive Officer
25 of the California Department of Education. He is obligated to take all necessary steps
26 to ensure that school districts comply with the California Constitution and State laws.
27 Pursuant to the California Education Code, he is the Director of Education in whom
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1 all executive and administrative functions of the California Department of Education
2 are vested. He is responsible for ensuring that all children within the State of
3 California receive a free and equal public education.

4 34. Defendant California Board of Education is responsible for determining
5 the policies governing California's schools and for adopting rules and regulations for
6 the supervision and administration of all 1,022 local school districts. Pursuant to
7 California Education Code sections 22020-22032, Defendant State Board of
8 Education is required to supervise local school districts to ensure that they comply
9 with State and federal laws concerning educational services.

10 35. Defendant California Department of Education is the department of State
11 government responsible for administering and enforcing laws related to education.

12 36. Defendant Karen Smith, MD, MPH, sued in her official capacity, is the
13 Director and State Public Health Officer for the California Department of Public
14 Health. She is obligated to take all necessary steps to ensure that the California
15 Department of Public Health and 61 local health departments comply with the State
16 and federal laws in discharging their duties to protect public health and safety.

17 37. The California Department of Public Health is a state agency created by
18 California statute, charged with implementing the California Health and Safety Code
19 and regulating the statutes at issue, including, *inter alia*, Health & Safety Code §§
20 120325, 120335, 120338, 120370 and 120375.

21 38. Defendants Takashi Wada, MD, and Charity Dean, MD, sued in their
22 official capacities, are the Director and Health Officer, respectively, of the Santa
23 Barbara County Department of Public Health, and are responsible for upholding,
24 implementing and enforcing the laws at issue.

25 39. All defendants either are recipients of State and federal funds in support
26 of the operation of schools or health departments or are responsible for and capable of
27 ensuring that State and federal funds are spent by recipients in a nondiscriminatory
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1 manner in the State public school system.

2 40. Plaintiffs are informed and believe, and based thereon allege, that all of
3 the Defendants are and were in some manner legally liable for the conduct at issue in
4 this action. Plaintiffs are further informed and believe, and based thereon allege, that
5 each Defendant was at all times acting with the implied or express direction, approval
6 and ratification of each of the other Defendants.

7 **GENERAL ALLEGATIONS**

8 41. Amid media-created hype and irrational panic over the Disneyland
9 measles outbreak, SB 277 was rushed through the Legislature and signed into law in
10 the course of four short months, bypassing key legislative committees and precluding
11 careful and thoughtful analysis of whether SB 277 was warranted or whether it could
12 coexist with the robust legal framework that exists to protect California's
13 schoolchildren from marginalization and discrimination.

14 42. Without any factual basis, children with PBEs were saddled with all of
15 the blame for the outbreak, resulting in prejudice and intolerance against them that
16 was so pervasive and so severe as to result in legislation to exile them from schools
17 and daycares. Thus, for the first time in its history, California created a new category
18 of "second-class citizens," who would forever be barred from its schools in
19 contravention of the United States and California Constitutions, numerous state and
20 federal laws, and decades of California and federal jurisprudence that forbid SB 277's
21 draconian result.

22 43. California's children have a fundamental right to attend school and
23 participate in society, free from discrimination and marginalization. Children with
24 disabilities have the right to attend school with their non-disabled peers and not be
25 relegated to learning in isolation. Parents have the right to direct the upbringing of
26 their children in accordance with their deeply-held convictions and their religious
27 beliefs. SB 277 totally and fatally conflicts with these and other fundamental rights

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1 and liberties guaranteed to Plaintiffs and their children and to thousands of families
2 who are suffering the aftermath of SB 277. Plaintiffs, therefore, seek a declaration
3 that SB 277 is unconstitutional under both the United States and California
4 Constitutions and a preliminary and permanent injunction preventing Defendants
5 from enforcing SB 277.

6 **History of California's Vaccine Mandates and PBEs**

7 44. California has a long-standing history of respecting bodily autonomy and
8 personal choice regarding vaccination. Indeed, California's philosophical or personal
9 belief exemption or PBE is as old as its first polio vaccine mandate. In 1961, the
10 California legislature enacted a mandate for a single dose of polio vaccination for
11 school attendance, subject to a PBE - a simple statement that vaccination is "contrary
12 to one's beliefs." (AB 1940, DeLotto).

13 45. The school vaccination schedule has expanded dramatically in the 55
14 years since 1961. Children are now required to receive between 30 and 38 doses of
15 vaccinations for 10 different diseases before they can enroll in any elementary or
16 secondary public or private school or any nursery school or daycare. The State
17 recommends, but does not mandate, an additional 33 to 34 doses of vaccines for
18 another seven diseases before age eighteen. Importantly, PBEs have remained
19 available with each expansion of California's school vaccination schedule to add new
20 vaccines and additional doses of existing vaccines:

- 21 • In 1977, the Legislature added single doses of diphtheria, pertussis,
22 tetanus, and measles vaccines to the school vaccination requirements,
23 subject to a PBE. (SB 942, Rains).
- 24 • In 1979, single doses of mumps and rubella vaccines were added to the
25 list of required vaccines, subject to a PBE. (AB 805, Mangers).
- 26 • In 1992, haemophilus influenzae type b was added to the list of required
27 vaccines, subject to a PBE. (AB 2798, Floyd and AB 2294, Alpert).

- 1 • In 1995 and 1997, vaccination for hepatitis B was added to the list of
2 required vaccines, subject to a PBE. (AB 1194, Takasugi and AB 381,
3 Takasugi).
- 4 • In 1999, the Legislature voted to add hepatitis A to the list, but Governor
5 Davis vetoed the bill. (AB 1594, Florez). Accordingly, hepatitis A
6 vaccination is not required for school attendance.
- 7 • In 1999, vaccination for varicella (chicken pox) was added to the list of
8 vaccines required for school attendance, subject to a PBE. (SB 741,
9 Alpert).
- 10 • In 2007, the Legislature voted to add vaccination for pneumococcus to
11 the list, but the bill was vetoed by Governor Schwarzenegger, with a
12 veto message that a mandate was not needed in light of significant
13 voluntary compliance. (SB 533, Yee). Accordingly, pneumococcus
14 vaccination is not required for school attendance in California.
- 15 • In 2010, a tetanus, diphtheria and pertussis (Tdap) booster was added as
16 a requirement for advancement to the seventh grade. (AB 354,
17 Arambula).

18 46. The expansion of California's vaccination schedule from the addition of
19 new vaccines and additional doses for existing vaccines results in typical
20 kindergarten entrants receiving approximately five doses of polio vaccine, four doses
21 of vaccines for diphtheria, tetanus, and pertussis, three doses of hepatitis B and
22 haemophilus influenzae type b vaccines, two doses of vaccines for measles, mumps
23 and rubella, and 1 dose of varicella (chickenpox) vaccine. That schedule is a far cry
24 from the number of vaccines their parents received just one generation ago. Yet,
25 despite the ever-expanding vaccination schedule and availability of PBEs, PBE use in
26 California has never exceeded 3.2 percent.

27 47. Moreover, the overwhelming majority of the children with PBEs are
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1 partially vaccinated, with hepatitis B being the vaccine parents most frequently
2 decline. According to the Centers for Disease Control and Prevention (“CDC”) and
3 the National Institutes of Health (“NIH”), less than one percent of children are
4 completely vaccine-free.

5 **Enactment of AB 2109 To Burden PBE Rights**

6 48. In addition to PBEs, California law has historically allowed for medical
7 exemptions, as well as “conditional” entry into school of children who are not fully
8 vaccinated, but intend to become fully vaccinated. Schools are directed to follow up
9 routinely with conditional entrants to ensure that they become up-to-date with
10 vaccinations. Prior to the enactment of SB 277, however, no report existed to
11 determine whether systematic follow-up occurred in all districts and, if so, whether it
12 resulted in full vaccination of conditional entrants. Prior to SB 277, each year,
13 approximately 6.5 percent of children enter kindergarten “conditionally.”

14 49. The California Department of Public Health, Immunization Branch
15 (CDPH) issues annual reports of vaccination rates for daycare, kindergarten and the
16 seventh grade. The reports show rates of full vaccination, conditional entry, medical
17 exemption and PBEs.

18 50. Prior to the enactment of SB 277, medical exemptions required a
19 physician’s statement indicating that vaccination is unsafe for a particular child and
20 providing details regarding the condition that “contraindicates” vaccination. The
21 CDC, the agency that sets vaccine policy in the U.S., defines “contraindications” to
22 vaccination to include only certain enumerated severe and life-threatening conditions,
23 such as severe allergic reactions (anaphylaxis), severe immunodeficiency, or
24 encephalitis (including coma or severe seizures) that cannot be attributed to any other
25 cause.

26 51. The CDC’s vaccine “contraindication” guidelines preclude consideration
27 of other factors and conditions, such as history of adverse vaccine reactions,
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1 neurological conditions, petit mal or febrile seizures, autoimmune diseases, or family
2 medical history as reasons to forego vaccination. Indeed, the CDC publishes a list of
3 “conditions commonly misperceived as contraindications to vaccination” and
4 cautions doctors against not vaccinating a child based on these conditions.

5 52. The CDC’s guidelines severely limit a doctor’s ability to grant medical
6 vaccine exemptions, as reflected in California’s historically low medical exemption
7 rates of 0.16 percent in 2011, 0.17 percent in 2012, 0.19 percent in 2013 and 2014
8 and 0.17 percent in 2015. Accordingly, families with children susceptible to adverse
9 vaccine reactions historically utilized PBEs to exempt their children from vaccines.

10 53. In 2012, following a large pertussis (whooping cough) outbreak which
11 was blamed, without factual basis, on children with PBEs, the Legislature passed AB
12 2109 (Pan, 2012) to restrict PBEs, even though only 2.39 percent of children used
13 them at the time.

14 54. AB 2109 became effective in the 2014-2015 school year. A parent’s
15 statement of objection to vaccination no longer sufficed for a PBE under AB 2109.
16 Instead, AB 2109 required a parent to obtain a signed statement from a healthcare
17 practitioner attesting that the parent had received information about the benefits and
18 risks of vaccination and the risks of the illnesses for which vaccines are given.

19 55. Pursuant to AB 2109, Health & Safety Code section 120365(e) provided
20 for the possibility of “temporary exclusion” of a child with a PBE from school in the
21 event of exposure to an illness for which vaccination is available.

22 56. In his signing message for AB 2109, Governor Edmund G. Brown, Jr.,
23 stated, in pertinent part:

24 I am signing AB 2109 and am directing the Department of
25 Public Health to oversee this policy so parents are not overly
26 burdened by its implementation. Additionally, I will direct
27 the department to allow for a separate religious exemption
28 on the form. In this way, people whose religious beliefs

1 preclude vaccinations will not be required to seek a health
2 care practitioner's signature.

3 57. In accordance with Governor Brown's directive, under AB 2109,
4 Defendant CDPH did not require persons claiming a religious exemption to provide
5 the healthcare provider's verification that PBEs required.

6 58. In its first year of implementation in the 2014-2015 school year, AB
7 2109 resulted in a 19 percent reduction in California's already-low PBE rate of 3.15
8 percent. Thus, in 2014, the kindergarten PBE rate was 2.54 percent and the medical
9 exemption rate was 0.19 percent. Conditional entrants, on the other hand, made up
10 6.8 percent of kindergarten enrollees.

11 **SB 277**

12 59. Notwithstanding the dramatic reduction in PBEs in the first year of AB
13 2109's implementation and CDPH reports that California's vaccination coverage was
14 "at or near all-time high levels," on February 19, 2015, SB 277 was introduced to
15 eliminate PBEs as a response to the Disneyland measles outbreak, which was neither
16 caused nor exacerbated by children with PBEs.

17 60. Ignoring the 6.8 percent of children entering schools "conditionally" and
18 undertaking no efforts to systematically follow up with those children to increase
19 their compliance with vaccination requirements, SB 277's authors focused solely on
20 the 2.54 percent of children with PBEs and advocated their exile from schools.

21 61. Notwithstanding overwhelming public opposition and statements of
22 concern and opposition from various physician, religious, consumer, and civil rights
23 groups, SB 277 was rushed through the legislative process with several legislators
24 expressing misgivings but feeling pressured to vote for the bill, and was signed into
25 law on June 30, 2015.

26 62. SB 277 amended Health & Safety Code sections 120325, 120335,
27 120370 and 120375, added section 120338, and repealed section 120365.

1 63. SB 277 did not repeal California Code of Regulations Title 17, Section
2 6051, which stated, in part, “A pupil with a permanent medical exemption or a
3 personal beliefs exemption to immunization shall be admitted unconditionally.”

4 64. Health & Safety Code section 120325 provides that the intent of the
5 legislature in enacting SB 277 is to provide “a means for the eventual achievement of
6 total immunization of appropriate age groups against the following childhood
7 diseases: (1) diphtheria, (2) hepatitis B, (3) haemophilus influenza type b,
8 (4) measles, (6) mumps, (7) poliomyelitis, (8) rubella, (9) tetanus, (10) varicella
9 (chickenpox), and (11) any other disease deemed appropriate by the department....”

10 65. In pertinent part, Health & Safety code section 120335 provides for
11 conditional admission, lists the childhood illnesses for which vaccination is required,
12 and enumerates certain exemptions from the statute, as follows:

- 13 • section 120335(f) exempts from vaccination requirements “a pupil in a
14 home-based private school or a pupil who is enrolled in an independent
15 study program ... and does not receive classroom-based instruction” (the
16 “homeschool exemption”);
- 17 • section 120335(g) “grandfathers in” children who submitted PBE
18 documentation prior to January 1, 2016 until the next “grade span,”
19 defined as (A) birth to preschool; (B) transitional kindergarten or
20 kindergarten and grades 1 to 6; inclusive, including transitional
21 kindergarten; and (C) grades 7 to 12, inclusive;
- 22 • section 120335(h) provides that SB 277 “does not prohibit a pupil who
23 qualifies for an individualized education program, pursuant to federal
24 law and Section 56026 of the Education Code, from accessing any
25 special education and related services required by his or her
26 individualized education program” (the “IEP exemption”).

1 **Medical Exemptions And Violations of Section 120370**

2 66. SB 277 also amended Health & Safety Code section 120370 to broaden
3 medical exemptions. Prior to SB 277, medical exemptions required physicians to list
4 the conditions which “contraindicated” vaccination for a particular child.

5 67. As reflected in California’s historically-low medical exemption rates of
6 less than 0.2 percent, CDC “contraindication” guidelines make it virtually impossible
7 for physicians to write medical exemptions, even if a child experiences a serious
8 adverse reaction to vaccination, such as dangerously high fever, a seizure, or
9 neurological damage. Moreover, under CDC guidelines, even an immediate family
10 member’s severe vaccine injury or vaccine-induced death does not exempt a child
11 from vaccination. Indeed, under CDC guidelines, less than half of one percent of
12 children are eligible for medical exemptions.

13 68. In enacting SB 277, the Legislature, appreciating that a rigid universal
14 vaccination mandate could result in vaccine-induced injury and death to some
15 children, amended section 120370(a) to provide physicians the discretion and ability
16 to write medical exemptions beyond narrow CDC guidelines. As amended, section
17 120370(a) provides:

18 if the parent or guardian files...a written statement by a licensed
19 physician to the effect that the physical condition of the child is
20 such, or medical circumstances relating to the child are such, that
21 immunization is not considered safe, indicating the specific nature
22 and probable duration of the medical condition or circumstances,
23 including, but not limited to, family medical history, for which the
24 physician does not recommend immunization, that child shall be
25 exempt...to the extent indicated by the physician’s statement.”

26 69. Section 120370(b) provides for the “temporary exclusion” of a child
27 with a medical exemption in the event of exposure to an infection for which
28 vaccination is available.

70. In his signing message for SB 277, Governor Brown acknowledged the

1 broadening of the medical exemption, stating that “[t]he Legislature, after
2 considerable debate, specifically amended SB 277, to exempt a child from
3 immunizations whenever the child’s physician concludes that there are
4 ‘circumstances, including, but not limited to, family medical history, for which the
5 physician does not recommend immunization....’ Thus, SB 277, while requiring
6 children be vaccinated, explicitly provides an exception when a physician believes
7 that circumstances — **in the judgment and sound discretion of the physician** — so
8 warrant.” (Emphasis added).

9 71. Section 120370 thus vests physicians with full professional judgment
10 and discretion to write medical exemptions in the best interests of their patients. In
11 practice, however, due to the unlawful conduct of Defendant CDPH and local health
12 departments acting in concert with the California State Medical Board, physicians
13 face professional discipline, loss of licensure, and even liability for exercising their
14 professional judgment and discretion regarding vaccination and medical exemptions.

15 72. Plaintiffs are informed and believe that CDPH and local health
16 departments across the State are taking action to prevent physicians from exercising
17 their professional judgment and acting in the best interests of their patients in
18 deciding whether to write medical exemptions. Indeed, CDPH and local health
19 departments are taking active steps to mislead physicians about the requirements of
20 section 120370 and to intimidate physicians into denying medical exemptions for fear
21 of liability, professional discipline or loss of licensure, effectively rendering section
22 120370, as amended, ineffectual.

23 73. By way of example, a leaked letter sent on June 6, 2016 by Dr. Charity
24 Dean of Defendant The Santa Barbara Department of Public Health (“SBDPH”) to all
25 Santa Barbara school superintendents, principals, child care center directors and
26 school nurses, announced its new Medical Exemption Pilot Program and directed all
27 Santa Barbara area schools to submit all medical exemptions to SBDPH to enable “a
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1 comprehensive review of each exemption by the Health Officer and Immunization
2 Program Staff.” The stated purpose of collecting medical exemptions was “to collect
3 and analyze data, identify any Medical Exemptions not meeting SB 277 criteria, and
4 provide helpful information to physicians issuing such exemptions.” The letter went
5 on to state that SBDPH would contact schools if it determined that a particular
6 Medical Exemption did not meet SB 277 “criteria.”

7 74. But neither SBDPH, nor any other health department has authority to
8 review, evaluate or override medical exemptions. Section 120370 vests medical
9 exemptions in the sole discretion of a child’s physician and no “criteria” exist
10 whereby SBDPH or any other health department can evaluate the validity of a
11 medical exemption. Accordingly, SBDPH’s compilation, review and evaluation of
12 medical exemptions constitute *ultra vires* activity by a public entity using public
13 funds to conduct such activity.

14 75. On June 15, 2016, Gregory Glaser, Esq. sent a letter to SBDPH,
15 notifying SBDPH that its letter violated both State and federal health privacy laws
16 and demanded that SBDPH withdraw its Medical Exemption Pilot Program. In
17 response, on June 24, 2016, SBDPH issued a new letter to school personnel, directing
18 schools to redact student identifying information from Medical Exemptions prior to
19 submitting them to SBDPH. Backpedaling from its original position, SBDPH claimed
20 that its Medical Exemption Pilot Program would provide “procedural support to
21 schools..., not ‘overturn’ medical exemptions issued by a licensed physician”
22 (underlining in original). The letter went on to state that “[s]ince the State of
23 California has not provided a standardized form for medical exemptions...[SBDPH]
24 will provide procedural support to school officials **or issuing physicians**, concerning
25 medical exemption documentation” (underlining in original, bold emphasis added).

26 76. Notwithstanding SBDPH’s attempt to make its *ultra vires* activity appear
27 benign once its letter was leaked on the Internet, it is indisputable that its actions are
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1 undertaken not for legitimate health and safety purposes but to identify and track
2 physicians writing medical exemptions. This is confirmed unequivocally in a blog
3 post published on July 10, 2016 by Dorit Rubenstein Reiss, a mandatory vaccination
4 advocate and professor at the University of California Hastings College of the Law
5 who testified in favor of SB 277 before the Legislature. According to Professor Reiss,
6 the goal of the Santa Barbara project is “to gather data on the reasons for medical
7 exemptions, and to prevent abuses of the medical exemption provision.” “We know
8 there are abuses of medical exemptions....,” Professor Reiss writes, “[t]he pilot
9 project can help collect data on medical exemptions generally and on how many
10 unjustified medical exemptions are written – and possibly, if there are specific
11 doctors who write more than others.” *See*, Dorit Rubenstein Reiss, *California SB 277*
12 *Lawsuit Analysis – Anything There?*, in Skeptical Raptor’s Blog (July 10, 2016),
13 [http://www.skepticalraptor.com/skepticalraptorblog.php/california-sb277-lawsuit-](http://www.skepticalraptor.com/skepticalraptorblog.php/california-sb277-lawsuit-analysis-anything/)
14 [analysis-anything/](http://www.skepticalraptor.com/skepticalraptorblog.php/california-sb277-lawsuit-analysis-anything/). This bold and unapologetic admission by Professor Reiss is
15 evidence of a direct and intentional violation of Plaintiffs’ rights, complete disregard
16 for the sanctity of the doctor-patient relationship, and abandonment of any concern
17 for the health and wellbeing of medically fragile children who are placed at grave risk
18 of vaccine injury by SBDPH’s attempts to intimidate doctors against writing medical
19 exemptions.

20 77. Plaintiffs are informed and believe that SBDPH’s medical exemption
21 pilot program is not unique. At the direction of CDPH and in collusion with the State
22 Medical Board, other local health departments, including The Sacramento County
23 Health and Human Services Department and The Marin County Health and Human
24 Services Department, are also engaged in programs to collect and scrutinize medical
25 exemptions for the express purpose of tracking physicians who write medical
26 exemptions.

27 78. Indeed, local health departments and the State Medical Board are
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1 engaged in an organized attempt to *de facto* eliminate the medical exemption and
 2 write it out of California law, as evidenced by a teleconference invite sent by Leah
 3 Northrop, MPA, MAIS, Executive Administrator of the California Conference of
 4 Local Health Officers, CDPH. Ms. Northrop's teleconference invite, made available
 5 to Plaintiffs in response to a Public Records Act request, states:

6 Please join us for a call with Dr. Charity Dean and Jennifer Simoes, from
 7 the California Medical Board, to discuss the following:

- 8 • SB 277 and **suspicious medical exemptions** for immunizations
 issued by California physicians.
- 9 • **The California Medical Board process if a licensed physician
 is reported for issuing suspicious medical exemptions.**
- 10 • Informal Q&A period with the California Medical Board
 Executive Staff, including:
- 11 • Kimberly Kirchmeyer, Executive Director,
- 12 • Jennifer Simoes, Chief of Legislation, and
- 13 • Christina Delp, Chief of Enforcement.

14 *This teleconference has been requested by Dr. Charity Dean, Health
 15 Officer in Santa Barbara County. (Italics in original, bold emphasis
 16 added).*

17 79. Ms. Northrop's teleconference invite shows collusion among Defendants
 18 to undermine the Legislature's broadening of medical exemptions. As public agencies
 19 acting by and through their respective public officials, Defendants owe a duty to
 20 California citizens to follow State law in their official actions. Rather than follow the
 21 law, however, Defendants are working actively to undermine it.

22 80. Importantly, SB 277 bypassed the Appropriations Committees in both
 23 the State Senate and Assembly, based on the authors' claim that it would have no
 24 fiscal impact on the State. As such, no public funding has been allocated under SB
 25 277 for any of the pilot programs or physician medical exemption "training" sessions
 26 in which Defendant CDPH and local health departments are engaged. Accordingly,
 27 Plaintiffs seek a preliminary and permanent injunction prohibiting Defendants CDPH
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1 and local health departments from collecting, reviewing, evaluating or scrutinizing
2 medical exemptions, holding physician “trainings” regarding medical exemptions
3 when section 120370 leaves medical exemptions to individual physicians’
4 professional judgment and discretion, or otherwise attempting to interfere with
5 medical exemptions.

6 81. Following the passage of SB 277, Defendants’ conduct was anticipated
7 by the introduction of Assembly Bill 2638 to amend section 120370 to add: “(c) A
8 licensed physician shall not be subject to discipline or liability for writing a statement
9 as described in subdivision (a).” Plaintiffs are informed and believe that AB 2638 was
10 withdrawn due to overwhelming opposition by the same Defendants who are
11 attempting to undermine section 120370 by tracking and intimidating physicians to
12 prevent them from writing medical exemptions. Defendants’ behavior is unlawful and
13 egregious and, if unchecked, will only confirm their apparent belief that they are
14 entitled to undermine and disregard State laws in favor of their organizational
15 policies.

16 **Violations of Fundamental and Disability Rights**

17 82. SB 277 absolutely and fatally conflicts with the Constitutions of the
18 United States and California, as well as numerous State and federal laws.

19 Violation Of The California Constitution

20 83. Public education is a fundamental right fully guaranteed and protected
21 by the California Constitution. Cal. Const. Art. 9 § 5; *Serrano v. Priest*, 5 Cal.3d 584
22 (1971); *Serrano v. Priest* 18 Cal.3d 728 (1976). The California Constitution requires
23 the State to ensure educational opportunities for every child and vests the State with
24 ultimate responsibility for the public elementary and secondary school system. The
25 State has a non-delegable duty to ensure that no student is denied the opportunity to
26 learn. The California Constitution thus places the responsibility for providing
27 education and educational equality to all of California’s children squarely on the
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1 shoulders of the State. While the State may elect to delegate some responsibility to
2 school districts, it is ultimately the State's responsibility to ensure that all California
3 schoolchildren receive a basic education. *See Butt v. State of California*, 4 Cal.4th
4 668, 688 (1992).

5 84. The State's duty to provide all children with an equal education is
6 constitutionally mandated and cannot be abdicated, as the State has done in this case.
7 This is especially true since California compels children to attend school and
8 noncompliance with mandatory school attendance laws subjects a child to truancy.
9 Under SB 277, the State continues to *compel* school attendance while *preventing*
10 children from attending school, in an illogical and unlawful abandonment of the
11 Constitutional mandate that it educate all children in the State. This conflict alone
12 dooms SB 277.

13 85. Moreover, because SB 277 deprives children of their fundamental right
14 to education and discriminates against children on the basis of wealth, it must
15 withstand strict scrutiny review in order to survive. *See Serrano*, 5 Cal.3d at 761.
16 Under the strict scrutiny standard applicable here, the State bears the burden of
17 establishing not only that it has a compelling interest which justifies SB 277, but that
18 SB 277 is narrowly tailored to achieve that interest. *Id.* The State cannot meet its
19 burden.

20 86. No compelling state interest exists to bar children with PBEs from
21 school and daycare. As a threshold matter, children with PBEs are not infectious or
22 contagious. Indeed, their unfortunate mischaracterization as dangerous or contagious
23 has subjected them to severe and pervasive prejudice and bias, resulting in the
24 unjustifiable loss of their rights. Indeed, the disadvantage SB 277 imposes upon
25 children with PBEs is the direct and unfortunate result of intolerance, disapproval or
26 animus against a politically unpopular group seen, from time to time, throughout
27 history.

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1 87. SB 277 is not justifiable according to CDPH data and statistics.
2 According to the CDPH, California has high vaccination coverage, with more than 97
3 percent of children admitted to schools without vaccine exemptions. Indeed, in 55
4 years of PBE use, PBE rates have never exceeded 3.2 percent and were on the decline
5 for two years prior to SB 277 taking effect. At the time SB 277 was introduced, the
6 kindergarten PBE rate was 2.54 percent for the 2014-2015 school year and PBEs
7 declined again in the 2015-2016 school year to 2.38 percent. That was *before* SB 277
8 took effect. The tiny percentage of children with PBEs is not sufficient to impact
9 public health.

10 88. Notably, vaccination rates for illnesses like measles and whooping
11 cough, which were the two illnesses used to advocate barring children with PBEs
12 from school, are even higher than 97 percent, because most children with PBEs are
13 partially vaccinated. In fact, according to the CDC, less than one percent of children
14 are completely vaccine-free. Notwithstanding this fact, SB 277's proponents
15 represent every PBE as a completely unvaccinated child and portray healthy children
16 with PBEs as contagious or otherwise a threat to the health and wellbeing of other
17 children. This portrayal has unfortunately marginalized innocent children and
18 instilled unwarranted fear in the minds of the public and legislators. When it comes to
19 policymaking, however, fear-based decisions tend to yield laws with unintended
20 negative consequences. SB 277 is such a law.

21 89. SB 277 is not needed to ensure the health and safety of California school
22 children because their health and safety were never in jeopardy. In the longstanding
23 55-year history of PBE use, there has been no credible evidence of children with
24 PBEs posing a threat to public health. Indeed, children with PBEs did not cause of
25 exacerbate either of the two outbreaks used to take away their rights to attend school.

26 90. Whooping cough outbreaks were used to bar children with PBEs from
27 school. But excluding children with PBEs from school will not prevent or reduce
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1 whooping cough outbreaks, because whooping cough is largely a disease of the
2 vaccinated. According to CDPH Pertussis Summary Reports, *between 85 and 90*
3 percent of 2014's 8,000 pediatric whooping cough cases with vaccination records
4 occurred in vaccinated children. In the recent Salinas, California pertussis outbreak,
5 infection occurred in four fully vaccinated students attending a school with a 99.5
6 percent vaccination rate.

7 91. Scientific studies show that the acellular pertussis vaccine currently in
8 use is contributing to whooping cough outbreaks. Studies conducted by the FDA and
9 CDC have concluded that "although individuals immunized with an acellular
10 pertussis vaccine may be protected from disease, they may still become infected with
11 the bacteria without always getting sick and are able to spread the infection to others,
12 including young infants who are susceptible to pertussis disease." Another recent
13 study published in BMC Medicine confirms that "asymptomatic transmission [by
14 vaccinated persons] is the most parsimonious explanation for" the resurgence of
15 pertussis in the US and UK. The study, published on June 24, 2015, explains that
16 whooping cough is spread by waning vaccine immunity and from asymptomatic
17 vaccinated persons infecting others.

18 92. Thus, there is no basis to blame whooping cough outbreaks on children
19 with PBEs and scientific evidence belies the contention that excluding children with
20 PBEs from schools will prevent whooping cough outbreaks. As scientists and public
21 health officials acknowledge, a better vaccine is needed to prevent whooping cough
22 outbreaks.

23 93. Similarly, the Disneyland measles outbreak, which was used to enact SB
24 277, does not justify the law, because children with PBEs did not cause or contribute
25 to that outbreak. Indeed, the Disneyland outbreak is evidence that draconian
26 legislation like SB 277 is not needed to protect California from an uncontrollable
27 measles outbreak.

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1 94. According to the CDPH, 136 Californians contracted measles in the
2 Disneyland outbreak. 56 percent of the cases occurred in adults and 30 percent of the
3 cases with vaccine records had been vaccinated. Less than 18 percent of the cases
4 occurred in school-aged children and CDPH does not report their vaccination status.
5 No measles transmission occurred in schools and no schoolchildren were
6 quarantined. Moreover, each of the 136 persons infected during the outbreak
7 recovered without incident. Based on these facts, there is no reason to believe that the
8 Disneyland outbreak would have occurred any differently if SB 277 had been in
9 place.

10 95. The containment of that outbreak clearly evidences that there is no need
11 or justification for a draconian measure that bars children with PBEs from school.

12 96. While children with PBEs became convenient scapegoats for the
13 Disneyland outbreak, according to the CDC, the source of the outbreak was a visitor
14 to or traveler from the Philippines who visited Disneyland in December 2014. Also
15 according to the CDC, there are approximately 60,000 visitors and nearly 10,000
16 employees at Disneyland each day. Taking those numbers into account and
17 considering that tens of thousands of visitors were potentially exposed to measles, the
18 outbreak which, affected 0.00035 percent of the State's population, is a testament to
19 California's ability to easily curtail measles outbreaks originating in the most
20 populated place in the State without resorting to the exile of children from schools
21 and daycares.

22 97. Further evidence of the lack of necessity for SB 277 is the much-
23 publicized 2014 case of a man infected with measles who rode BART for four days.
24 While the "BART rider with measles potentially exposed thousands" according to
25 news reports, no one was infected. These examples clearly evidence that our state is
26 well protected from a measles epidemic and that an extreme measure like SB 277 is
27 not needed.

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1 98. Notably, even with 100 percent vaccination, outbreaks will occur
2 because current vaccines are not capable of eliminating diseases. For example, nearly
3 all mumps cases occur in fully-vaccinated persons, as evidenced by a 2014 outbreak
4 among National Hockey League players and by the recent outbreaks at colleges,
5 including Harvard, where every one of the 40 students infected with mumps was
6 vaccinated. Importantly, the mumps vaccine's efficacy is currently the subject of a
7 False Claims Act lawsuit pending in the U.S. District Court for the Eastern District of
8 Pennsylvania, Case No. 10-4373 (CDJ). The case was brought by two former
9 virologists who were involved in testing the efficacy of the mumps vaccine and who
10 allege that the vaccine's manufacturer engaged in fraudulent testing and data
11 falsification to conceal the vaccine's diminished efficacy. SB 277 thus mandates the
12 purchase and use of a product that is the subject of a pending False Claims Act
13 lawsuit.

14 99. Measles vaccine efficacy is also in question. In 2014, a vaccinated
15 person in New York contracted measles and transmitted it to four other vaccinated
16 individuals. Gregory Poland, M.D., editor in chief of the scientific journal *Vaccine*
17 and founder of the vaccine research group at Mayo Clinic has published an article
18 titled "The Re-Emergence of Measles in Developed Countries: Time to Develop the
19 Next-Generation Measles Vaccines?" The article explains that the current measles
20 vaccine fails to protect 2 to 10 percent of those who receive the recommended two
21 doses of the vaccine. According to Dr. Poland, "[t]his leads to a paradoxical situation
22 whereby measles in highly immunized societies occurs primarily among those
23 previously immunized...suggesting that even two doses of the vaccine may be
24 insufficient at the population level" to prevent outbreaks. Dr. Poland concludes that
25 "[t]he practical answer to the dilemma of measles re-emergence is the development of
26 better, next-generation vaccines."

27 100. It is thus indisputable that children with PBEs did not cause or
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1 exacerbate California's pertussis or measles outbreaks and that vaccine failure played
2 a large part in those outbreaks. Against this factual backdrop, depriving children with
3 PBEs of their Constitutionally-guaranteed right to attend school because of those
4 outbreaks defies logic and shocks the conscience.

5 101. Even assuming, *arguendo*, the State could establish a compelling state
6 interest, which it cannot, SB 277 is not narrowly tailored. SB 277 seeks to increase
7 vaccination rates in discreet areas or "pockets" with higher PBE rates by removing
8 children with PBEs from *all* schools in the entire state. Narrow tailoring would
9 require less restrictive means of addressing those "pockets," such as through public
10 service announcements or other forms of outreach and education before an extreme
11 law like SB 277 can be considered. This is especially true because PBE rates in those
12 "pockets" had declined with AB 2109 and would likely continue to decline if AB
13 2109 had remained in effect. As another example of narrow tailoring, the State could
14 have and should have directed its attention to getting "conditional" entrants, which
15 make up nearly seven percent of kindergarten students, "caught up" on their vaccines,
16 rather than focusing on kicking out children with PBEs, who make up less than half
17 of "conditional" entrants, from school. Moreover, under AB 2109, the State had the
18 option to temporarily exclude children with PBEs during outbreaks. This procedure
19 has worked for decades to reduce the risk of disease transmission and to ensure
20 schools are protected from outbreaks. With such a narrowly tailored law already in
21 place to which the State did not need to resort during the Disneyland outbreak, the
22 State had no justification whatsoever, let alone a compelling state interest, to
23 permanently bar children with PBEs from our schools.

24 102. Importantly, if the State is interested in eliminating "pockets," taking
25 children out of schools and forcing them into homeschooling has the opposite effect.
26 Assuming as is likely, that the law results in homeschooling all children who are not
27 fully vaccinated, these children will meet in homeschooling groups, have playdates,
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1 go to the park and theme parks, go to the beach and even to Disneyland, thereby
2 creating more of the same “pockets” that the State claims to eliminate with SB 277.
3 Of course, since children with PBEs are not inherently infectious or contagious and
4 do not pose a threat, any perceived “danger” from “pockets” is merely theoretical and
5 fear-based and has no basis in evidence.

6 103. In addition to serving no compelling state interest and being
7 unacceptably overbroad, SB 277 will subject susceptible children to possible vaccine
8 injury. Families who delay or forego vaccination typically do so after experiencing
9 vaccine injury or after learning that their children are susceptible to vaccine injury. A
10 blanket medical mandate would only be acceptable if the product mandated was
11 shown to be completely safe. While vaccines are generally safe, they are not safe for
12 everyone.

13 104. According to the CDC and scientific studies, even with careful
14 screening, vaccines are capable of causing serious harm. Vaccine side effects can
15 range from mild problems such as fever, rash and swelling of glands, to moderate
16 problems such as seizure, joint pain or low platelet count, to severe problems such as
17 serious allergic reactions. Rare but severe vaccine reactions include deafness, long-
18 term seizures, coma, lowered consciousness, anaphylaxis, and permanent brain
19 damage.

20 105. As part of the 1986 National Childhood Vaccine Injury Act (“NCVIA”),
21 42 U.S.C. § 300aa-10, which granted blanket liability protection to vaccine
22 manufacturers and administering doctors, the U.S. Government publishes and
23 maintains a table of recognized severe vaccine injuries which are presumed to be
24 caused by vaccines if they occur within timeframes set forth in the table. Recognized
25 severe vaccine injuries include anaphylactic shock, encephalopathy (brain swelling),
26 shock-collapse, residual seizure disorder, or “any acute complication or sequela
27 (including death)...”

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1 106. As part of the NCVIA, the U.S Government also established the Vaccine
2 Injury Compensation Program (“VICP”) or “vaccine court;” a little-known
3 administrative system with no judge, no jury, no discovery as of right, no rules of
4 evidence and no transparency, where government doctors and lawyers review claims.
5 If petitioners prevail, vaccine injury victims receive future care and lost wages out of
6 a fund replenished by a 75-cent excise tax on each dose of vaccine sold. To date, the
7 fund has paid more than \$3 billion to vaccine injury victims or their survivors upon
8 the death of the victims.

9 107. Thus SB 277 comes at a tremendous cost to the State’s children and
10 families, without conferring any, let alone sufficient, public health benefit to justify
11 the many deprivations of fundamental rights it has caused and continues to cause.
12 With no public health benefit, SB 277 eliminates educational options for thousands of
13 children.

14 108. Depriving children of the right to go to school, the only educational
15 “options” SB 277 leaves available for children with PBEs are homeschooling or self-
16 directed independent study. For Plaintiffs and their children, these “options” provide
17 only cruel illusions of choice.

18 109. Homeschooling a child typically requires one parent to work full time as
19 the sole income provider while the second parent stays home to educate their
20 children. Homeschooling is not a viable option for most single parents, families that
21 require dual incomes to provide for their children, parents who lack sufficient
22 education to homeschool, or parents who are not fluent in English, which is
23 statutorily required for homeschooling.

24 110. With homeschooling as the only educational option, the impact of SB
25 277 is overwhelmingly felt by low-income single parent or immigrant families,
26 resulting in wealth-based discrimination that violates the children’s fundamental
27 interests. Parents are either forced to comply with a mandate that violates their
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1 religious or deeply-held beliefs in order for their children to receive an education, or
2 they are forced to sacrifice employment and income while they attempt to educate
3 their children at home. For some children, no school-based education will mean no
4 education. California will not condone subpar education, much less no education at
5 all. Homeschooling, when chosen by the family, may be a good option. But families
6 who are unwilling or unprepared to homeschool will not see it as a rewarding
7 experience and cannot provide the kind of education these children deserve and to
8 which they are legally entitled.

9 111. The second “option” afforded to the children of parents who cannot or
10 will not comply with SB 277 is independent study with no classroom based
11 component. Independent study is not appropriate for young children or any child
12 lacking self-discipline to supervise his or her own education.

13 112. By law, independent study education is to be equal in quality and
14 quantity to classroom instruction, yet SB 277 puts no safeguards in place to assure
15 that students in independent study are afforded the same quality as classroom
16 instruction.

17 113. The California Department of Education’s (“CDE”) webpage states its
18 mission as providing “...a world-class education for all students, from early
19 childhood to adulthood.” But there is nothing “world-class” about removing children
20 from school. On the topic of independent study, the CDE website reassures, “[s]chool
21 districts cannot force students into independent study programs; parents and students
22 choose this type of study on their own.” Yet the California legislature has forced
23 students into this type of study, leaving parents and students with no choice
24 whatsoever. In doing so, the State has impermissibly abdicated its Constitutionally-
25 mandated duty to provide all children with an equal education.

26 114. Plaintiffs are children whose education the State of California cannot
27 afford to ignore or impede. These children are entitled to their dreams of college and
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1 productive careers. They deserve to learn, but their dreams will be forever destroyed
2 if California continues to relegate these children to learning conditions that pale in
3 comparison to those they had in public or private school, and which compromise their
4 parents' ability to provide for their basic needs.

5 115. The State currently denies these children the avenues necessary for them
6 to have equal educational opportunities as all children in California. Without
7 restoring their right to attend public and private school, these children will have no
8 chance to realize their dreams as fully educated members of their communities.

9 116. Through this lawsuit, Plaintiffs seek to hold the State and its officials
10 accountable to their Constitutional mandate to provide a free and equal education to
11 all California public school children.

12 *Violation of Rights of Children With Disabilities*

13 117. Several of the Plaintiffs have children who have disabilities and are
14 protected under the ADA, IDEA and Section 504 of the Rehabilitation Act of 1973.

15 118. The Federal Individuals with Disabilities Education Act ("IDEA"), 20
16 U.S.C. § 1400, *et. seq* protects students who qualify for Special Education. There are
17 13 disability categories that qualify a student to receive the protections and services
18 promised by this law: autism, deaf-blindness, deafness, emotional disturbance,
19 hearing impairment, intellectual disability, multiple disabilities, orthopedic
20 impairment, other health impairments, specific learning disability, speech or language
21 impairment, traumatic brain injury, and visual impairment. Each public school child
22 who receives Special Education and related services must have an Individualized
23 Education Program ("IEP") on record with his or her school. According to the
24 California Department of Education, over 700,000 California students received
25 Special Education services in the 2013-2014 academic school year.

26 119. In enacting the IDEA, Congress minced no words in demanding that the
27 historical exclusion of children with disabilities from public education come to a
28

1 permanent halt: “[b]efore...the enactment of the Education for All Disabled Children
2 Act of 1975...more than one half of the children with disabilities in the United States
3 did not receive appropriate educational services that would enable such children to
4 have full equality of opportunity.” 20 U.S.C. § 1400(2)(B). Congress also found that
5 “1,000,000 of the children with disabilities in the United States were excluded
6 entirely from the public school system and did not go through the educational process
7 with their peers.” 20 U.S.C. § 1400(2)(C).

8 120. The IDEA requires that states and local education agencies ensure that
9 each child with a disability is provided with a Free and Appropriate Public Education
10 (“FAPE”). FAPE consists of special education and related services designed to meet
11 the child’s unique needs. A school district cannot stop providing IDEA educational
12 services to a child or change a child’s placement without notice and an opportunity to
13 object to the cessation of services by utilizing a system of administrative due process,
14 which can include a hearing or mediation.

15 121. Notably, no California student protected under the IDEA may participate
16 in an independent study unless such independent study is specifically required by the
17 child’s IEP. Children with disabilities and special needs have the right to be
18 “mainstreamed” and to learn with their non-disabled peers and relegating these
19 children to independent study violates federal law.

20 122. Moreover, students who qualify for Special Education under the IDEA
21 who elect to attend private school may receive “services plans” and “equitable
22 services” through public funding set aside for children with disabilities in private
23 schools instead of IEPs. SB 277 provides no framework for protection of private
24 school IDEA services plans, resulting in discrimination of a federally-protected class
25 of children with IEPs.

26 123. Since its implementation on July 1, 2016, SB 277 has been
27 inconsistently interpreted and applied, causing disparate treatment of children across
28

1 the State, including children with medical conditions and physical, neurological and
2 learning disabilities. Consistent with the IDEA, the Legislature expressly exempted
3 students with IEPs from SB 277. However, some school districts are refusing to allow
4 students with IEPs to remain in school, taking the position that the IEP amendment is
5 vaguely worded and makes no specific reference to children's rights to continue
6 uninterrupted with their education in the same circumstances as provided to them
7 before SB 277.

8 124. Despite repeated requests for clarification, Defendants State Department
9 of Education and State Board of Education have declined to provide guidance to
10 schools regarding the application of the IEP exemption, leaving it up to individual
11 schools and school districts to interpret and implement the law. As a result, some
12 school districts, like the Los Angeles Unified School District, have issued written
13 guidelines to schools within their districts to allow children with IEPs to attend
14 school without full vaccination, while most other school districts, including the
15 Orange County Unified School District, have issued written guidelines and letters
16 instructing schools within their districts to refuse admission to children with IEPs.
17 The Orange County Unified School District has gone so far as to instruct schools to
18 obtain court orders requiring vaccination of children with IEPs.

19 125. Children with IEPs are protected from discrimination under the federal
20 IDEA and denial of their right to attend school and inconsistent implementation
21 creates disparate treatment among children with IEPs and deprives them of their State
22 and federal rights. Some children with IEPs are allowed to enroll in school and
23 advance to the seventh grade and some are not, even though they are entitled to equal
24 protection under the law.

25 126. Even Professor Reiss, a staunch supporter of SB 277, admits in her July
26 10, 2016 article that the IEP amendment's interpretation "is not fully clear" and that,
27 "[i]n the absence of guidance, different counties have followed different

1 interpretations.” Although Professor Reiss ultimately appears to miss the legal
2 significance of disparate treatment of federally-protected children with IEPs, the fact
3 that she readily admits that disparate treatment exists is a serious, albeit unintentional,
4 condemnation of SB 277.

5 127. Similar to the IDEA, Section 504 of the Rehabilitation Act of 1973
6 (“Section 504”) prohibits discrimination based upon disability. Section 504 protects
7 students who don’t meet the criteria for special education but still require special
8 accommodations due to a physical or mental impairment that limits a major life
9 activity. Section 504 requires that students with disabilities have their needs met as
10 adequately as the needs of non-disabled students. These students also are entitled to
11 FAPE. However, Section 504 protection is not provided for in SB 277, resulting in
12 discrimination of a federally-protected class of children.

13 128. SB 277 has tremendous impact on children with disabilities. Plaintiff
14 Adriane Hoeft’s son O.C. is impacted by Transverse Myelitis, leaving him with
15 flaccid paralysis from the waist down. O.C. is wheelchair-bound. He needs
16 significant physical assistance and has an IEP. O.C. attends school with a PBE that
17 will “grandfather” him in until he reaches the seventh grade. At the seventh grade
18 “checkpoint,” however, O.C. will be expelled from school. Ms. Hoeft will not
19 continue to vaccinate O.C. or his younger brother, because O.C.’s Transverse
20 Myelitis was caused by vaccines he received as a toddler. Thus, it is by virtue of his
21 disability that O.C. will not receive any more vaccines and it is by virtue of that same
22 disability that O.C. will be denied his right to attend school if SB 277 is not struck
23 down.

24 129. Similarly, Plaintiff Dawn Saunders’ child K.S. is disabled from a
25 traumatic brain injury. K.C. has an IEP, but is being denied admission to the seventh
26 grade because her previously-valid PBE “expired” at the seventh grade “checkpoint.”
27 While children slightly younger and older than K.S. can remain in school, K.S.,
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1 because she is at the arbitrarily-selected seventh grade “checkpoint,” is barred from
2 school. This violates K.S.’s rights to equal protection as she is deprived of her
3 constitutionally-protected right to an education while her peers, including those with
4 “grandfathered” PBEs, can attend school. Moreover, K.S.’s school is refusing to
5 honor her IEP, further violating her equal protection rights, as other children with
6 IEPs are being admitted to schools in other school districts across the State. Finally,
7 K.S.’s family is low-income and on MediCal. Being barred from school deprives
8 K.S., among other things, of her right to an equal education, her right under the IDEA
9 and her IEP, and to access school-provided meals. The tremendous burden on K.S.,
10 an already-burdened child with a disability and her widowed mother, is objectively
11 unacceptable, let alone justifiable. The State simply cannot justify continuing to
12 enforce SB 277 to the detriment of innocent children like K.S.

13 130. Importantly, Section 504 also prohibits discrimination of children with
14 disabilities based on fear of contagious disease. The Supreme Court held that “...the
15 fact that a person with a record of physical impairment is also contagious does not
16 suffice to remove that person from coverage under Section 504.” *School Board of*
17 *Nassau County, Fla., v. Arline* 480 U.S. 273 (1987). It is under these rules that
18 children with illnesses like HIV/AIDS and hepatitis B cannot legally be excluded
19 from school for “fear of contagion.”

20 131. Importantly, the prohibition from discrimination against persons for fear
21 of contagion includes both actual and *perceived* contagiousness. This means, for
22 example, that since a child with chronic hepatitis B cannot legally be excluded from
23 school for fear of contagion, then a child likewise cannot be excluded from school for
24 being *perceived* as infectious or contagious with hepatitis B solely because he has not
25 received a vaccine for the disease.

26 132. Under SB 277, the State excludes children with PBEs from school for
27 fear of contagion. In doing so, the State, albeit unintentionally, treats children with
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1 PBEs as chronically infectious and contagious, placing them in a protected class of
2 persons under Section 504, at least as to hepatitis B. This forces the State to make a
3 decision regarding how it views children with PBEs. Either children with PBEs are
4 healthy and pose no threat to public health or children with PBEs are *perceived* by the
5 State as chronically infectious and contagious and, therefore, protected under Section
6 504. Either way, these children cannot be excluded from school based on “fear of
7 contagion.”

8 133. Yet as a result of SB 277, children are barred from schools they wish to
9 attend and are instead left only with the separate-and-unequal option of either
10 receiving an education at home and in isolation or, for some children, receiving no
11 education. This abrupt discontinuation of services to children with disabilities
12 violates federal law. Parents of students protected under IDEA and Section 504 are
13 entitled to notice before a district stops services or changes a child’s placement or
14 school. In violation of Section 504, students are being excluded from California
15 schools without a hearing or due process, in violation of the IDEA, Section 504, and
16 the 14th Amendment to the Constitution of the United States.

17 134. Plaintiffs’ inability to access equal educational opportunities for their
18 children and the treatment of their children like vectors of disease has caused them
19 and their children significant distress and hardship, including but not limited to the
20 deprivation of rights guaranteed by both the California and Federal Constitutions and
21 severe humiliation, emotional distress, pain, suffering, psychological harm, and
22 stigma. Education and participation in society is a supremely important social
23 institution and the right to go to school and obtain an equal education has long been
24 recognized as one of the most important rights afforded to Californians. Each day that
25 children are denied the right to go to school, they suffer irreparable harm as a direct
26 result of Defendants’ violation of their constitutional rights.

27 135. If SB 277 is not enjoined, Defendants will continue to enforce this
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1 unconstitutional law against Plaintiffs and against thousands of children across the
2 State, thereby depriving them of their State and federal constitutional rights. The
3 declaratory and injunctive relief sought by the Plaintiffs, on the other hand, will
4 require Defendant CDPH to reinstate the PBE form that was in use for AB 2109 by
5 making a link to it available on its Internet website, reinstate its policies that existed
6 under AB 2109 and will require schools to admit children with PBEs to kindergarten
7 and the seventh grade. That did not constitute a hardship for fifty-five years and does
8 not constitute a hardship now.

9 **CLAIMS FOR RELIEF**

10 **First Claim for Relief Against All Defendants**

11 (Violation of Freedom of Religion, Assembly, Parental Rights, 42 U.S.C. § 1983)

12 136. Plaintiffs incorporate by reference the foregoing paragraphs of this
13 Complaint as though fully set forth herein.

14 137. Defendants deprived and continue to deprive Plaintiffs of their right to
15 Free Exercise of religion, as secured by the First Amendment and made applicable to
16 the states by the Fourteenth Amendment, by discriminating against Plaintiffs and
17 their children because of the Plaintiffs' religiously-motivated conduct in making
18 exemption claims, including declining certain vaccines derived from or containing
19 ingredients to which Plaintiffs object, including aborted fetal cells.

20 138. Defendants are also depriving Plaintiffs and their children of the right to
21 freedom of assembly by depriving children of the right to attend secular or religious
22 private schools of their choosing and by requiring that both public and private schools
23 deny admission and education to children with PBEs.

24 139. Additionally, Defendants are infringing Plaintiffs' rights to control the
25 upbringing and education of their minor children according to the religion, system of
26 values, and moral norms they deem appropriate and their rights to the care, custody,
27 education of and association with their children.

1 140. Defendants are enforcing SB 277 under color of State law and are
2 depriving and will continue to deprive Plaintiffs of numerous hybrid rights secured by
3 the Fourteenth Amendment of the United States Constitution in violation of 42
4 U.S.C. § 1983.

5 **Second Claim for Relief Against All Defendants**

6 (Violation of Equal Protection, Fourteenth Amendment)

7 141. Plaintiffs incorporate by reference the foregoing paragraphs of this
8 Complaint as though fully set forth herein.

9 142. The Fourteenth Amendment to the United States Constitution prohibits
10 state actors from singling out persons for unequal treatment as compared to others
11 similarly situated.

12 143. SB 277 violates Plaintiffs' rights to equal protection, both on its face and
13 as applied to Plaintiffs in a myriad ways, including, without limitation: (a) depriving
14 children with PBEs of their fundamental right to an equal education, while allowing
15 other children to attend school; (b) depriving children with religious objections to
16 vaccination of their right to an equal education; (c) excluding children with
17 disabilities from school; (d) allowing children with IEPs in some school districts to
18 attend school, while denying children with IEPs in other schools districts that same
19 right; (e) allowing children who are currently entering grades one through sixth and
20 grades eight through twelve to remain in school and obtain an education, while
21 barring children who are entering kindergarten or the seventh grade; and (f) barring
22 from school children who have not had every dose of the ten enumerated vaccines,
23 while allowing into schools children who have had vaccines but did not develop
24 immunity, rendering them "unimmunized."

25 144. The disadvantage SB 277 imposes upon children with PBEs is the result
26 of disapproval or animus against a politically unpopular group. The history of the
27 enactment of SB 277 demonstrates that it was a backlash against parents who

1 question vaccines or the vaccine schedule that stripped children with PBEs of the
2 rights guaranteed to them by the California Constitution and numerous State and
3 federal laws. As such, SB 277 withdrew from children who are not fully vaccinated,
4 but from no others, specific legal protections afforded by the California Supreme
5 Court and the California Constitution and by numerous State and federal disability
6 protection laws, and imposed a special disability upon those persons alone.
7 Accordingly, SB 277 violates the Equal Protection Clause of the Fourteenth
8 Amendment because it singles out children with PBEs for a disfavored legal status,
9 thereby creating a category of “second-class citizens.”

10 **Third Claim for Relief Against All Defendants**

11 (Violation of Due Process, Fifth and Fourteenth Amendments)

12 145. Plaintiffs incorporate by reference the foregoing paragraphs of this
13 Complaint as though fully set forth herein.

14 146. SB 277 violates fundamental liberties that are protected by the Due
15 Process Clauses of the Fifth and Fourteenth Amendments, both on its face and as
16 applied to Plaintiffs.

17 147. SB 277 impinges on fundamental liberties by denying children with
18 PBEs the opportunity to attend school and participate in the same activities as other
19 children. By barring children with PBEs from school and isolating them in their
20 homes, the State is stigmatizing children with PBEs, as well as their families, by
21 treating them like vectors of disease who deserve to be shunned, marginalized and
22 ostracized from school and society. The State is thus stigmatizing children with PBEs
23 and denying them the same dignity, respect, and access to schools and, therefore,
24 society that all other children receive. This indignity and stigmatization is being felt
25 especially by children who are currently barred from entering kindergarten and
26 advancing to the seventh grade, as they will be deprived of the opportunity to
27 continue in school with the children with whom they attended school in previous

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1 years.

2 148. SB 277 violates Plaintiffs' rights to bodily integrity by coercing medical
3 procedures under threat of both truancy and child neglect. SB 277 violates the
4 Plaintiffs' rights of informed consent.

5 **Fourth Claim for Relief Against All Defendants**

6 (Violation of the Individuals with Disabilities Education Act)

7 149. Plaintiffs incorporate by reference the foregoing paragraphs of this
8 Complaint as though fully set forth herein.

9 150. Defendants have violated and continue to violate plaintiffs' rights under
10 the IDEA by, inter alia: (a) excluding children with IEPs from school and denying
11 them a free and appropriate public education, in violation of 20 U.S.C. § 1400 *et seq.*;
12 (b) removing children with IEPs from school for more than ten days; (c) failing to
13 ensure that school and district administrators and teachers adhere to the requisite
14 procedural safeguards for disabled children and their parents and guardians, including
15 prior written notice of proposed charges, the right to disagree in adequate
16 administrative proceedings and the right to pendency during those proceedings.

17 151. As a result of Defendants' conduct, plaintiffs have been injured and
18 continue to suffer injury.

19 **Fifth Claim for Relief Against All Defendants**

20 (Violation of Section 504 of the Rehabilitation Act of 1973)

21 152. Plaintiffs incorporate by reference the foregoing paragraphs of this
22 Complaint as though fully set forth herein.

23 153. Defendants receive federal financial assistance for their educational
24 programs.

25 154. Plaintiffs are qualified individuals with disabilities under Section 504 of
26 the Rehabilitation Act, 29 U.S.C. § 794.

27 155. Defendants have violated and are continuing to violate Plaintiffs' rights,
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1 including their rights to FAPE, under the Section 504 of the Rehabilitation Act of
2 1973 and the regulations promulgated thereunder.

3 **Sixth Claim for Relief Against All Defendants**

4 (Violation of the Americans with Disabilities Act)

5 156. Plaintiffs incorporate by reference the foregoing paragraphs of this
6 Complaint as though fully set forth herein.

7 157. Plaintiffs' children have impairments that substantially limit one or more
8 major life activities, including talking, walking, communicating, learning, and
9 interacting with others.

10 158. Plaintiffs' children are qualified to receive a free appropriate public
11 education in Defendants' schools.

12 159. Under SB 277, Defendants have failed and will continue to fail to
13 reasonably accommodate the disabilities of Plaintiffs' children, to provide them with
14 an appropriate education, and have therefore discriminated against them on the basis
15 of their disability in violation of the Americans with Disabilities Act of 1990, 42
16 U.S.C. § 12132, *et seq.*

17 160. As a direct and proximate result of the Defendants' misconduct,
18 Plaintiffs and their minor children with disabilities have suffered and continue to
19 suffer psychological pain, suffering and mental anguish, and the deprivation of their
20 right to a free appropriate public education, which will continue unless Defendants
21 are enjoined from their unlawful conduct.

22 **Seventh Claim for Relief Against All Defendants**

23 (Violation of Title VI of the Civil Rights Act of 1964)

24 161. Plaintiffs incorporate by reference the foregoing paragraphs of this
25 Complaint as though fully set forth herein.

26 162. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides
27 that "[n]o person in the United States shall, on the ground of race, color, or national
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1 origin, be excluded from participation in, be denied the benefits of, or be subjected to
2 discrimination under any program or activity receiving Federal financial assistance.”

3 163. The federal regulations implementing Title VI prohibit a recipient of
4 federal financial assistance from utiliz[ing] criteria or methods of administration
5 which have the effect of subjecting individuals to discrimination because of their
6 race, color, or national origin, or have the effect of defeating or substantially
7 impairing accomplishment of the objectives of the program as respect individuals of a
8 particular race, color, or national origin. 34 C.F.R. § 100.3(b)(2) (1999).

9 164. Defendants are maintaining a public school system in a manner that has
10 a discriminatory impact on the basis of race, color, or national origin in violation of
11 Title VI and its implementing regulations. Defendants’ conduct has the effect of
12 depriving students of color or students whose parents are not native English speakers
13 of basic educational necessities at disproportionately higher rates than white students
14 without sufficient justification and in the face of viable, less discriminatory
15 alternatives.

16 **Eighth Claim for Relief Against All Defendants**

17 (Violation of Article IX, Sections 1 and 5 of the California Constitution)

18 165. Plaintiffs incorporate by reference the foregoing paragraphs of this
19 Complaint as though fully set forth herein.

20 166. Defendants have violated and continue to violate Plaintiffs’ right,
21 pursuant to article IX, sections 1 and 5 of the California Constitution, to learn in a
22 “system of common schools” that are “kept up and supported” such that children may
23 learn and receive the “diffusion of knowledge and intelligence essential to the
24 preservation of the[ir] rights and liberties.” These constitutional provisions impose on
25 the Defendants, and each of them, the non-delegable duty to provide to each Plaintiff
26 the opportunity to obtain a basic education. Defendants have denied to each Plaintiff
27 the opportunity to obtain a basic education in the schools to which the Plaintiffs are
28

1 consigned in that the schools to which these children are consigned lack one or a
2 combination of the bare essentials of an education.

3 **Ninth Claim for Relief Against All Defendants**

4 (Violation of the Equal Protection Clauses of the California Constitution, Article I,
5 Section 7(a) & Article IV, Section 16(a))

6 167. Plaintiffs incorporate by reference the foregoing paragraphs of this
7 Complaint as though fully set forth herein.

8 168. Defendants have violated and continue to violate Plaintiffs' right to
9 receive equal protection of the laws, pursuant to article I, § 7(a) and article IV, §
10 16(a) of the California Constitution, by failing to provide Plaintiffs with basic
11 educational opportunities equal to those that children in other schools receive.

12 **Tenth Claim for Relief Against All Defendants**

13 (Violation of the Due Process Clauses of the California Constitution, Article I,
14 Sections 7(a) & 15)

15 169. Plaintiffs incorporate by reference the foregoing paragraphs of this
16 Complaint as though fully set forth herein.

17 170. Defendants, through their compulsory education laws, require Plaintiffs
18 to attend school full-time between the ages of six and 18 years and have, thereby,
19 imposed restraints on Plaintiffs' liberty.

20 171. Defendants have violated Plaintiffs' right to due process, pursuant to
21 article I, § 7(a) and 15 of the California Constitution, by depriving Plaintiffs of the
22 right to attend public schools that they are, at the same time, required to attend.
23 Defendants thus impede basic educational success.

24 172. Plaintiffs have a protected property interest in obtaining a public
25 education and in graduating from high school and receiving a California high school
26 diploma.

27 173. Fulfillment of the property interest in obtaining a California high school
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1 diploma is now hindered by Defendants' deprivation of Plaintiffs' right to attend
2 school.

3 174. Defendants have violated and continue to violate Plaintiffs' right to due
4 process by depriving Plaintiffs of basic educational opportunities sufficient to enable
5 them to learn, to achieve to State standards, and to complete all requirements for
6 graduation, diploma conferral, and the ability to pursue a common occupation and by
7 arbitrarily denying Plaintiffs the benefits of their schooling.

8 **Eleventh Claim for Relief Against All Defendants**

9 (Violation of Education Code section 51004)

10 175. Plaintiffs incorporate by reference the foregoing paragraphs of this
11 Complaint as though fully set forth herein.

12 176. California Education Code § 51004 provides:

13 The Legislature hereby recognizes that it is the policy of the
14 people of the State of California to provide an educational
15 opportunity to the end that every student leaving school shall
16 have the opportunity to be prepared to enter the world of work;
17 that every student who graduates from any state-supported
18 educational institution should have sufficient marketable skills
19 for legitimate remunerative employment; that every qualified
20 and eligible adult citizen shall be afforded an educational
21 opportunity to become suitably employed in some remunerative
22 field of employment; and that such opportunities are a right to
23 be enjoyed without regard to race, creed, color, national origin,
24 sex, or economic status.

25 177. Defendants have violated and continue to violate Plaintiffs' right to
26 receive educational opportunity regardless of race, color, national origin, or economic
27 status, pursuant to California Education Code § 51004, by failing to provide Plaintiffs
28 the basic educational necessities described above.

1 Complaint as though fully set forth herein.

2 188. California Health & Safety Code §120440 (e) allows a parent to refuse
3 to permit record sharing. That Section provides:

4 (e)A patient or a patient's parent or guardian may refuse to
5 permit record sharing... (4) The patient or client, or the parent
6 or guardian of the patient or client, may refuse to allow this
7 information to be shared in the manner described, or to receive
8 immunization reminder notifications at any time, or both. After
9 refusal, the patient's or client's physician may maintain access
to this information for the purposes of patient care or protecting
the public health. (Emphasis added.)

10 189. Defendants' conduct, including requiring or coercing Plaintiffs to permit
11 sharing of records relating to the exemptions, violates §120440.

12 190. Defendants' conduct harmed Plaintiffs as alleged throughout this
13 Complaint.

14 **Fifteenth Claim for Relief Against All Defendants**

15 (Violation of Federal Family Educational Rights and Privacy Act (FERPA))

16 191. Plaintiffs incorporate by reference the foregoing paragraphs of this
17 Complaint as though fully set forth herein.

18 192. Plaintiffs incorporate by reference the foregoing paragraphs of this
19 Complaint as though fully set forth herein.

20 193. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.
21 §1232g, allows schools to share students' medical records to serve "legitimate
22 educational interests," which must be the subject of annual notice to students of
23 criteria under 34 CFR § 99.7 (a) (3) (iii).

24 194. Under §1232g (b) (1) and 34 C.F.R. § 99.31 (a) (1) (I) (A), schools may
25 not share medical records of exemptions without parents' prior consent.

26 195. Defendants' conduct, including collecting medical records relating to the
27 exemption, violates FERPA and applicable regulations.

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1 196. Defendants' conduct harmed Plaintiffs as alleged throughout this
2 Complaint.

3 **Sixteenth Claim for Relief Against All Defendants**

4 (Violation of California Code of Civil Procedure section 526a)

5 197. Plaintiffs incorporate by reference the foregoing paragraphs of this
6 Complaint as though fully set forth herein.

7 198. In carrying out the practices and policies complained of herein,
8 Defendants expend public funds and therefore violate California Code of Civil
9 Procedure § 526a.

10 **IRREPARABLE INJURY**

11 199. Plaintiffs incorporate by reference the foregoing paragraphs of this
12 Complaint as though fully set forth herein.

13 200. Plaintiffs are now severely and irreparably injured by SB 277 – a state
14 law that violates the Due Process and Equal Protections of the Fourteenth
15 Amendment as well as the California Constitution. By way of example only,
16 Plaintiffs' and their children's injuries as a result of SB 277 include the deprivation of
17 fundamental rights and the severe humiliation, emotional distress, pain, suffering,
18 psychological harm, and stigma caused to Plaintiffs and their children by Plaintiffs'
19 inability to send their children to school, and the stigma caused by the
20 mischaracterization and marginalization of their children. Plaintiffs' injuries will be
21 redressed only if this Court declares SB 277 unconstitutional and enjoins Defendants
22 from enforcing it.

23 201. An actual and judicially cognizable controversy exists between Plaintiffs
24 and Defendants regarding whether SB 277 violates the Constitutions of the United
25 States and the State of California. Defendants are presently enforcing this state law to
26 the detriment of Plaintiffs and their minor children.

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RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that the Court grant judgment for Plaintiffs as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. §2201 and 42 U.S.C. §1983, enter a declaratory judgment stating that SB 277 and any other California law that permanently bars children with personal belief exemptions from school violates the Constitutions of the United States and the State of California.

2. Plaintiffs respectfully request that this Court enter a preliminary and permanent injunction enjoining enforcement of application of SB 277 and any other California law that bars Plaintiffs’ children and all others similarly situated from school, restoring Plaintiffs’ rights under AB 2109.

3. Plaintiffs respectfully request that this Court enter a preliminary and permanent injunction enjoining the collection and scrutiny of medical exemptions for the purpose of identifying or tracking physicians who write medical exemptions from vaccination.

4. Plaintiffs respectfully request costs of suit, including reasonable attorney’s fees, and all further relief to which they may justly be entitled.

Dated: July 14, 2016

By: /s/ James S. Turner
James S. Turner
Betsy E. Lehrfeld
Robert T. Moxley
Carl M. Lewis
Attorneys for Plaintiffs

RULE 5.1 CERTIFICATION

This action draws into question the constitutionality of a California statute. Pursuant to Fed. R. Civ. P. 5.1(a), the undersigned certifies that he has caused this First Amended Complaint to be served on the California Attorney General by the Court’s CM/ECF system to:

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DATED: July 14, 2016

/s/ James S. Turner
James S. Turner
Attorney for Plaintiffs

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VERIFICATION

I am a party to this action. I have read the foregoing Complaint and know the contents thereof. The matters stated therein are true of my own personal knowledge, except as to those matters which are stated on the basis of information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 14th day of July, 2016 at San Diego, California.



ANA WHITLOW
Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2016, I electronically filed the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF with the Clerk of the Court by using the CM/ECF system on behalf of all the Plaintiffs.

I certify that the following participants in the case are registered CM/ECF users and they will be served by the CM/ECF system:

**DEFENDANTS CALIFORNIA DEPARTMENT OF PUBLIC HEALTH;
AND KAREN SMITH, DIRECTOR OF THE DEPARTMENT OF
PUBLIC HEALTH**

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1 I certify that personal service will be made on July 15, 2016 on the following
2 parties at the following address:

3
4 **CALIFORNIA DEPARTMENT OF EDUCATION**
5 1430 N Street
6 Sacramento, CA 95814

7
8 **CALIFORNIA STATE BOARD OF EDUCATION**
9 1430 N Street, Suite #5111
10 Sacramento, CA 95814

11
12 **TOM TORLAKSON, SUPERINTENDENT OF THE CALIFORNIA**
13 **DEPARTMENT OF EDUCATION**
14 1430 N Street
15 Sacramento, CA 95814

16
17 **TAKASHI WADA, MD, OFFICIAL OF THE SANTA BARBARA**
18 **COUNTY DEPARTMENT OF PUBLIC HEALTH**
19 300 N. San Antonio Road
20 Santa Barbara, CA 93110

21
22 **CHARITY DEAN, MD, OFFICIAL OF THE SANTA BARBARA**
23 **COUNTY DEPARTMENT OF PUBLIC HEALTH**
24 300 N. San Antonio Road
25 Santa Barbara, CA 93110

26
27 I declare under penalty of perjury under the laws of the State of California the
28 foregoing is true and correct and that this declaration was executed on July 14, 2016,
at Washington, D.C.

/s/ James S. Turner
James S. Turner, Declarant