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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **SARA ROYCE; SARAH CLARK;**
 15 **TIFFANY BROWN; and KRISTI**
 16 **CARAWAY,**
 17 Plaintiffs,
 18 v.
 19 **ROB BONTA, in his official capacity**
 20 **as Attorney General of California,**
 21 Defendant.

23-CV-2012-H-BLM

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION TO DISMISS
 COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

Date: January 22, 2024
 Time: 10:30 a.m.
 Ctrm: 12A
 Judge: Hon. Marilyn L. Huff
 Trial Date: Not Set
 Action Filed: 10/31/2023

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OTHER AUTHORITIES

Assembly Bill 21093

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AAPA, *Vaccine Ingredients: Frequently Asked Questions*,
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INTRODUCTION

1
2 Rob Bonta, in his official capacity as Attorney General of California, moves to
3 dismiss Plaintiffs' Complaint for injunctive and declaratory relief challenging the
4 constitutionality of the elimination of the personal belief exemption set forth in
5 California's child-immunization statutes. In enacting California Senate Bill 277
6 (Cal. Stats 2015 ch. 35) (SB 277), the Legislature expressed its intended goal for
7 the eventual achievement of total immunization of school children against a number
8 of deadly, but highly preventable, childhood diseases.

9 Plaintiffs incorrectly claim that SB 277 violates the Free Exercise Clause of
10 the First Amendment by compelling them, in the absence of a recognized medical
11 justification, to have their children vaccinated against communicable diseases
12 before attending school in California. Plaintiffs likewise wrongly argue that SB
13 277 unfairly impacts individuals with religious beliefs against vaccination in
14 attending public and private K-12 schools. Their claims fail.

15 Plaintiffs' claims are unsupported as a matter of federal constitutional law,
16 which for decades has consistently held that (1) a state's exercise of its police
17 powers in protecting the public from communicable diseases is rationally based;
18 and (2) states have a legitimate, if not compelling, interest in requiring children to
19 be vaccinated before entering school. SB 277's repeal of California's prior
20 personal beliefs exemption does not implicate First Amendment concerns because it
21 is a law of neutral applicability, personal beliefs are not protected under the Free
22 Exercise Clause, and California's removal of its prior personal beliefs exemption
23 serves a legitimate and compelling public health interest. Accordingly, Plaintiffs
24 fail to allege facts sufficient to "raise a right to relief above the speculative level" to
25 the "plausible" level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007);
26 *Ashcroft v. Iqbal*, 556 U.S. 662, 679-680, (2009). Plaintiffs' Complaint should be
27 dismissed.
28

STATEMENT OF FACTS

A. Childhood immunization statutes

Immunization laws have protected the public since the 1800s. Steve P. Calandrillo, *Vanishing Vaccinations: Why Are So Many Americans Opting Out of Vaccinating Their Children?*, 37 U. Mich. J.L. Reform 353, 365 (2004) (*Vanishing Vaccinations*). The first laws focused on smallpox. *Id.*

In the 1960s, the “modern era of compulsory state immunization laws took off” because “data showed that states with mandatory measles vaccination requirements had 40% to 51% lower rates of the disease than did states without such regulations.” *Vanishing Vaccinations* at 382. Commonly administered vaccines protect children against over twenty deadly diseases, including smallpox, measles, mumps, rubella, diphtheria, tetanus, pertussis (whooping cough), polio, hepatitis A and B, some forms of influenza, pneumococcal disease, *Haemophilus influenzae* type b, and varicella (chicken pox). *Id.* at 369. From the 1960s through the 1990s, mandatory childhood vaccination requirements led to “herd immunity” levels, with incidence rates, hospitalizations and deaths among children radically decreased to the point of eradication, or near eradication, of many of those deadly childhood diseases. *Id.* at 369–380.

Even though mandatory vaccination laws led to significant reductions in deadly childhood diseases, various anti-vaccination sentiments nevertheless grew and by the 1990s to early 2000s vaccination rates were falling below generally accepted herd immunity levels. *Vanishing Vaccinations* at 388–421. For example, “even though 84% of schools in California boast[ed] exemption rates of less than 1% [in the early 2000s], 1 in 25 schools indicated that over 5% of their students had not received their required immunizations. *Id.* at 422. Disease outbreaks increased, particularly in hot spots where communities had lower vaccination rates and higher exemption opt-out rates. *Id.* at 422–423. In the early 1990s, California experienced

1 a devastating measles epidemic, afflicting primarily unvaccinated minority children
2 in urban areas, many in Los Angeles County. *Id.* at 423–424.

3 **B. California’s childhood vaccination statutes and exemptions**

4 As far back as 1890, California had a “vaccination act” which required schools
5 to exclude any child who had not been vaccinated against smallpox. *Abeel v. Clark*,
6 84 Cal. 226, 227–228, 230, 24 P. 383 (1890) (*Abeel*); see Request for Judicial
7 Notice (RJN) Ex. 9.4. This early vaccination act survived constitutional challenge,
8 with the California Supreme Court holding the act fell squarely within the scope of
9 a police regulation and was a necessary and appropriate response to prevent the
10 spread of smallpox and protect children attending schools. *Abeel* at 230–231.

11 From 1961 through 2010, California added additional immunization
12 requirements, covering 10 specific diseases. See RJN Ex. 9.4; Complaint at 5–6 (¶¶
13 26–32), ECF No. 1 (Complaint). California’s modern vaccination law also
14 included exemptions for medical conditions and personal beliefs. See RJN Ex. 9.4.
15 California’s vaccination requirement as a condition to entry into schools and
16 childcare facilities is currently found in California Health and Safety Code sections
17 120325 and 120335.

18 By the early 2000s, there were reported trends of California parents checking
19 off the personal belief exemption out of convenience. See *Vanishing Vaccinations*
20 at 418. Growing concerns over abuses of California’s personal belief exemption,
21 led to the 2012 passage of Assembly Bill 2109, which narrowed the process for
22 obtaining personal belief exemptions in California. Stephanie Awanyai, *In Defense*
23 *of California's Mandatory Child Vaccination Law: California Courts Should Not*
24 *Depart from Established Precedent*, 50 Loy. L.A. L. Rev. 391, 399 (2017).

25 An outbreak of measles linked to Disneyland in December of 2014, with 131
26 confirmed cases, and reports from the Centers for Disease Control (CDC) that 2014
27 saw the highest number of reported cases of measles in many years, prompted
28 California to reexamine its vaccination requirements. See *Brown v. Smith*, 24

1 Cal.App.5th 1135, 1140 (2018). SB 277 was enacted in response to the health
2 emergency in December 2014, when California “became the epicenter of a measles
3 outbreak which was the result of unvaccinated individuals infecting vulnerable
4 individuals including children who [were] unable to receive vaccinations due to
5 health conditions or age requirements.” See RJN Exs. 4.2, 5.5, 9.5, Sen. Com. on
6 Health, Sen. Com. on Education, and Assem. Com. on Health, Analysis of Sen. Bill
7 No. 277 (2014–15 Reg. Sess.).

8 According to the Centers for Disease Control and Prevention, there were
9 more cases of measles in January 2015 in the United States than in any
10 one month in the past 20 years. . . . *Measles has spread through
California and the United States, in large part, because of communities
with large numbers of unvaccinated people.*

11 RJN Ex. 5.5, Sen. Com. on Education, Analysis of Sen. Bill No. 277 (2014–15 Reg.
12 Sess.) (italics added). As further noted in SB 277’s legislative history, “[a]ll of the
13 diseases for which California requires school vaccinations are very serious
14 conditions that pose very real health risks to children. RJN Ex. 9.4, Assem. Com.
15 on Health, Analysis of Sen. Bill No. 277 (2014–15 Reg. Sess.). “For example,
16 measles in children has a mortality rate as high as about one in 500 among healthy
17 children, higher if there are complicating health factors.” *Id.* at 9.3. “Most of the
18 diseases can be spread by contact with other infected children.” *Id.* at 9.4.

19 SB 277 was enacted in 2015 and took effect on January 1, 2016. See Cal.
20 Stats. 2015 ch. 35. In relevant part, SB 277 eliminated the personal belief
21 exemption from the requirement that children receive vaccines for certain infectious
22 diseases prior to being admitted to any public or private elementary or secondary
23 school, or day care center. *Id.*¹

24 In enacting SB 277, the Legislature reaffirmed its intent “to provide . . . [a]
25 means for the eventual achievement of total immunization of appropriate age
26 groups” against these childhood diseases. Cal. Health & Saf. Code, § 120325(a).

27 _____
28 ¹ SB 277 amended California Health and Safety Code sections 120325,
120335, 120370, and 120375, added section 120338, and repealed section 120365.

1 SB 277 requires children to be immunized against (1) diphtheria, (2) hepatitis B, (3)
 2 haemophilus influenzae type b, (4) measles, (5) mumps, (6) pertussis (whooping
 3 cough), (7) poliomyelitis, (8) rubella, (9) tetanus, (10) varicella (chickenpox), and
 4 (11) “[a]ny other disease deemed appropriate by the [California Department of
 5 Public Health (CDPH)].” Cal. Health & Saf. Code, § 120325(a).²

6 Under SB 277, personal belief exemptions have been prohibited since January
 7 1, 2016. Cal. Health & Saf. Code, § 120335(g)(1).³ Further, effective July 1, 2016,
 8 school authorities may not unconditionally admit for the first time any child to
 9 preschool, kindergarten through sixth grade, or admit any pupil to seventh grade,
 10 unless the pupil either has been properly immunized, or qualifies for other
 11 exemptions recognized by statute. Cal. Health & Saf. Code, § 120335(g)(3).

12 There are limited exceptions to California’s immunization requirements.
 13 Vaccinations are not required for any student in a home-based private school or
 14 independent study program who does not receive classroom-based instruction. Cal.

15 ² The inherent dangers of these diseases are chronicled by the World Health
 16 Organization (WHO) and the Centers for Disease Control (CDC). *Diphtheria* is
 17 caused by a bacterium that produces a toxin that can harm or destroy human body
 18 tissues and organs. <http://www.who.int/immunization/topics/diphtheria/en/>.
 19 “Diphtheria affects people of all ages, but most often it strikes unimmunized
 20 children.” *Id.* *Hepatitis B* causes liver infection which “can lead to serious health
 21 issues, like cirrhosis or liver cancer.” <http://www.cdc.gov/hepatitis/hbv/index.htm>.
 22 *Haemophilus influenzae*, which is not to be confused with influenza (the “flu”)
 23 causes severe infection “occurring mostly in infants and children younger than five
 24 years of age . . . and can cause lifelong disability and be deadly.” [http://](http://www.cdc.gov/hi-disease/index.html)
 25 www.cdc.gov/hi-disease/index.html. *Measles* can cause, among other things,
 26 pneumonia, brain damage, and death. [http://www.cdc.gov/vaccinesafety/vaccines/](http://www.cdc.gov/vaccinesafety/vaccines/mmr-vaccine.html)
 27 [mmrv-vaccine.html](http://www.cdc.gov/vaccinesafety/vaccines/mmr-vaccine.html). *Mumps* can cause deafness, inflammation of the brain and/or
 28 tissue covering the brain and spinal cord, and death. *Id.* *Rubella* could cause
 spontaneous miscarriages in pregnant women or serious birth defects. *Id.* *Varicella*
 (*chickenpox*) can lead to brain damage or death. *Id.* *Tetanus* causes painful muscle
 contractions. <http://www.cdc.gov/tetanus/index.html>. *Pertussis*, also known as
 whooping cough, is a highly contagious respiratory disease “known for
 uncontrollable, violent coughing which often makes it hard to breathe,” and can be
 deadly. <http://www.cdc.gov/pertussis/>. *Polio* is an incurable, “crippling and
 potentially fatal infectious disease,” which spreads by “invading the brain and
 spinal cord and causing paralysis.” <http://www.cdc.gov/polio/>.

³ SB 277 provided that personal belief exemptions on file with a school or
 child care center prior to January 1, 2016, would be honored through each of the
 designated grade spans (birth to preschool; kindergarten and grades one to six
 inclusive; and grades seven to twelve, inclusive), until the unvaccinated pupil
 advanced to the next grade span. Cal. Health & Saf. Code, § 120335(g).

1 Health & Saf. Code, § 120335(f). Students who qualify for individualized
2 education programs, pursuant to federal law and California Education code section
3 56026, may not be prohibited from accessing any special education and related
4 services required by his or her individualized education program based on
5 vaccination status. *Id.* at (h).

6 Under SB 277, a child shall be medically exempt from the immunizations
7 specified in the statute if a licensed physician states in writing that “the physical
8 condition of the child is such, or medical circumstances relating to the child are
9 such, that immunization is not considered safe.” Cal. Health & Saf. Code, §
10 120370(a)(West 2016), current Cal. Health & Saf. Code, §120370(a)(1)–(2).

11 Finally, to prevent the vaccination requirements from becoming overbroad in the
12 future, SB 277 was amended to provide that any immunizations beyond the ten
13 specified in sections 120325 and 120335 may only be mandated after action by
14 CDPH to add the new immunizations, and only “if exemptions are allowed for both
15 medical reasons and personal beliefs.” *See* RJN 7.17–7.18, Sen. Com. on Judiciary,
16 Analysis of Sen. Bill No. 277 (2014–15 Reg. Sess.); Cal. Health & Saf. Code, §
17 120338.

18 **C. Plaintiffs’ fact allegations**

19 Plaintiffs are four mothers with school-aged children who reside in California.
20 Complaint at 2-4 (¶¶ 7–20). Plaintiffs Royce, Brown and Caraway cite their belief
21 that the required vaccines were derived from aborted fetal cells and that vaccination
22 of their children would therefore violate their religious beliefs against abortion. *Id.*
23 at 2-4 (¶¶ 8, 15, 19). Plaintiff Clark references a more general religious belief that
24 vaccines violate the Bible because they are a foreign substance. *Id.* at 3 (¶ 11).

25 Three of the Plaintiffs admit their children have been vaccinated. Plaintiff
26 Clark admits that her children were vaccinated as newborns and again in 2018–19.
27 Complaint at 3 (¶ 11). Plaintiff Brown “vaccinated her children in their early
28 years,” but she began researching vaccines after her children “started to experience

1 severe reactions following vaccination.” *Id.* at 3-4 (¶ 14). Her youngest daughter
2 has not been vaccinated. *Id.* at 4 (¶ 15). Plaintiff Caraway “vaccinated her eldest
3 three children.” *Id.* at 4 (¶ 18). Her third child received vaccines until developing
4 injuries and being diagnosed with autism; he now has a medical exemption. *Id.*
5 Plaintiff Caraway has not vaccinated her six youngest children. *Id.* at 4 (¶ 20).

6 Plaintiff Royce alleges that she desires to enroll her one elementary school-
7 aged child in public or private school, but is unable to do so because the child is
8 unvaccinated. Complaint at 3 (¶ 9). Plaintiff Clark’s children are homeschooled,
9 but she would like her children to attend public school. *Id.* (¶ 12). Plaintiff Brown’s
10 children are homeschooled. *Id.* at 4 (¶ 16). Plaintiff Caraway’s youngest six
11 children are homeschooled through a charter program. *Id.* (¶ 20). She alleges a
12 desire to send her children to public school. *Id.*

13 STATEMENT OF CASE

14 Plaintiffs allege a single cause of action seeking declaratory and injunctive
15 relief for alleged violations of the Free Exercise Clause of the First Amendment.
16 Complaint at 10–12 (¶¶ 57–74). They claim that SB 277 singles out religious
17 adherents for worse treatment and demonstrates hostility towards religion “as
18 evidenced by the comments of legislators diminishing the sincerely held religious
19 beliefs of parents.” *Id.* at 11 (¶¶ 64–66). No specifics are provided. Finally, they
20 claim that SB 277’s removal of the personal beliefs exemption is not narrowly
21 tailored because students with allowed medical exemptions are treated differently
22 and potentially pose the same contagion hazard as a student who would seek to be
23 exempt from vaccination requirements based on religious beliefs. *Id.* at 11–12 (¶¶
24 66–73).

25 LEGAL STANDARDS

26 In ruling on a motion to dismiss filed pursuant to Federal Rules of Civil
27 Procedure 12(b)(6), the Court normally considers only the allegations contained in
28 the complaint, exhibits attached to the complaint, and matters properly subject to

1 judicial notice. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Outdoor*
2 *Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 899 (9th Cir. 2007).

3 However, the Court may consider any documents specifically identified in the
4 complaint whose authenticity is not questioned by the parties. *Fecht v. Price Co.*,
5 70 F.3d 1078, 1080 n.1 (9th Cir. 1995). The Court may also consider material
6 properly subject to judicial notice without converting the dismissal motion into a
7 summary judgment motion. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).

8 ARGUMENT

9 I. MANDATORY VACCINATION DOES NOT OFFEND THE FIRST AMENDMENT

10 The authority of the California Legislature to require student vaccinations to
11 protect the health and safety of other students and the public at large, irrespective of
12 their parents' personal beliefs, is firmly embedded in our jurisprudence and
13 embodies a quintessential function of organized government to protect its people
14 from preventable harm. The State has an unquestionably legitimate and compelling
15 interest in protecting public health and safety, as recognized by the Supreme Court
16 in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) (*Jacobson*)
17 and its progeny. *Jacobson* upheld the constitutionality of a state's smallpox
18 vaccination requirement. *Jacobson*, 197 U.S. at 12–13. The Supreme Court
19 recognized that “the principle of vaccination as a means to prevent the spread of
20 smallpox has been enforced in many States by statutes making the vaccination of
21 children a condition of their right to enter or remain in public schools.” *Id.* at 32.
22 The “police power of a state must be held to embrace . . . reasonable regulations
23 established directly by legislative enactment as will protect the public health and
24 the public safety.” *Id.* at 25–26. *Jacobson* remains good law. *Cruzan v. Director,*
25 *Missouri Department of Health*, 497 U.S. 261, 278 (1990).⁴

26
27 ⁴ *But see Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 70–71
28 (2020) (Gorsuch J., concurring) (Justice Gorsuch notes that *Jacobson's* rational
basis review does not supplant modern First Amendment review standards).

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

11 California courts are in accord. In *Walker v. Superior Court*, 47 Cal.3d 112
12 (1988), the California Supreme Court agreed that “parents have no right to free
13 exercise of religion at the price of a child’s life, regardless of the prohibitive or
14 compulsive nature of the governmental infringement.” *Id.*, at 140, citing *Jacobson*
15 and *Prince*. Indeed, California’s approval of immunization laws predates that of
16 the U.S. Supreme Court. In *Abeel v. Clark*, 84 Cal. 226 (1890) (*Abeel*), the
17 California Supreme Court upheld the State’s school vaccination requirements,
18 recognizing that “it was for the legislature to determine whether the scholars of the
19 public schools should be subjected to [vaccination].” *Id.*, at 230. In *French v.*
20 *Davidson*, 143 Cal. 658 (1904) (*French*), the Court upheld San Diego’s vaccination
21 requirement, explaining that “the proper place to commence in the attempt to
22 prevent the spread of a contagion was among the young, where they were kept
23 together in considerable numbers in the same room for long hours each day . . .
24 children attending school occupy a natural class by themselves, more liable to
25 contagion, perhaps, than any other class that we can think of.” *Id.* at 662, italics
26 added; *see also Williams v. Wheeler*, 23 Cal.App. 619, 625 (1913) (the state
27 legislature has the power to prescribe “the extent to which persons seeking entrance
28 as students in educational institutions within the state must submit to its

1 [vaccination] requirements as a condition of their admission”); *Love v. Superior*
2 *Court*, 226 Cal.App.3d 736, 740 (1990) (“[t]he adoption of measures for the
3 protection of the public health is universally conceded to be a valid exercise of the
4 police power of the state, as to which the legislature is necessarily vested with large
5 discretion not only in determining what are contagious and infectious diseases, but
6 also in adopting means for preventing the spread thereof”).

7 Since *Jacobson*, *Zucht*, *Prince*, *Abeel*, and *French*, *supra*, federal and state
8 courts have repeatedly upheld mandatory vaccination laws over challenges
9 predicated on the First Amendment, the Equal Protection Clause, the Due Process
10 Clause, the Fourth Amendment, education rights, parental rights, and privacy
11 rights, frequently citing *Jacobson*. See, e.g., *Phillips v. City of New York*, 775 F.3d
12 538, 543 (2nd Cir. 2015) (holding that “mandatory vaccination as a condition for
13 admission to school does not violate the Free Exercise Clause”); *Workman v.*
14 *Mingo County Sch.*, 667 F. Supp.2d 679, 690-691 (S.D. W. Va. 2009) (“a
15 requirement that a child must be vaccinated and immunized before it can attend the
16 local public schools violates neither due process nor . . . the equal protection clause
17 of the Constitution”), *affirmed Workman v. Mingo County Bd. of Educ.*, 419 F.
18 App’x 348, 353-54 (4th Cir. 2011) (unpublished); *Boone v. Boozman*, 217 F.
19 Supp.2d 938, 956 (E.D. Ark. 2002) (“the question presented by the facts of this
20 case is whether the special protection of the Due Process Clause includes a parent’s
21 right to refuse to have her child immunized before attending public or private
22 school where immunization is a precondition to attending school. The Nation’s
23 history, legal traditions, and practices answer with a resounding ‘no.’”); *Hanzel v.*
24 *Arter*, 625 F. Supp. 1259 (S.D. Ohio 1985) (holding parents’ objections to
25 vaccination based on “chiropractic ethics” did not fall under the protection of the
26 Establishment Clause); *Maricopa County Health Dept. v. Harmon*, 750 P.2d 1364
27 (Ariz. 1987) (holding that the state’s health department did not violate the right to
28

1 public education in Arizona’s Constitution when it excluded unvaccinated children
2 from school).

3 **II. ELIMINATION OF PERSONAL BELIEF EXEMPTIONS FROM COMPULSORY**
4 **VACCINATION LAWS DOES NOT OFFEND THE FIRST AMENDMENT**

5 **A. Claims similar to those raised by Plaintiffs have been dismissed**
6 **by other courts**

7 Shortly after SB 277 was enacted, federal and state constitutional challenges
8 were raised and rejected in several cases. In *Whitlow v. California*, 203 F.Supp.3d
9 1079, 1085–86 (S.D. Cal. 2016), Judge Sabraw found that the plaintiffs were
10 unlikely to prevail on their free exercise arguments against SB 277. The *Whitlow*
11 plaintiffs alleged that SB 277 violated the Free Exercise Clause of the First
12 Amendment by (1) failing to provide a religious exemption to the vaccination
13 mandate, (2) forcing parents to choose between faith dictates and their children’s
14 education, and (3) offering secular exemptions (medical, home schooling and
15 Individual Education Plan (IEP)) while failing to provide a religious exemption. *Id.*
16 Judge Sabraw reasoned that under *Workman*, *Phillips*, and *Prince*, plaintiffs were
17 unlikely to prevail on their first two arguments; because the right to free exercise
18 does not outweigh the state’s interest in public health and safety, mandatory
19 vaccination as a condition to school admission does not violate the Free Exercise
20 Clause. *Id.* at 1086. Judge Sabraw rejected plaintiffs’ secular exemption argument
21 because a majority of the Circuit Courts of Appeal refused to find that providing a
22 secular exemption necessarily requires a religious exemption. *Id.* at 1086–87,
23 citing *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 651
(10th Cir. 2006).

24 *Brown v. Smith*, 24 Cal.App.5th 1135, 1144–45 (2018) rejected nearly
25 identical claims that SB 277 violated California’s constitutional freedom of religion
26 clause. The court relied on federal authority in reaching its conclusion. *Id.* The
27 court further reasoned that even if it applied strict scrutiny, California’s vaccination
28 laws, without a personal beliefs exemption, still survived strict scrutiny. *Id.* at

1 1145, citing to *Workman v. Mingo County Board of Education*, 419 Fed.Appx. 348,
2 353 (4th Cir. 2011) (assuming strict scrutiny applied, West Virginia’s mandatory
3 immunization program withstood strict scrutiny).

4 *Love v. State Dep't of Educ.*, 29 Cal.App.5th 980, 988–995 (2018) rejected
5 additional constitutional challenges to SB 277 made under substantive due process,
6 right to privacy and state rights to attend public schools. To the extent the plaintiffs
7 sought to raise a belated freedom of religion claim, the court followed the rationale
8 in *Brown, supra*, and rejected that claim as well. *Id.* at 996.

9 Federal and sister state courts have recently rejected similar freedom of
10 religion claims. In *We The Patriots USA, Inc. v. Connecticut Off. of Early*
11 *Childhood Dev.*, 76 F.4th 130, 137, 147–148 (2d Cir. 2023) (*We The Patriots*), the
12 plaintiffs challenged a Connecticut statute that repealed the state’s religious
13 exemption provision to vaccination requirements on grounds the repeal violated the
14 Free Exercise Clause of the First Amendment. The Second Circuit found that the
15 repeal of the religious exemption provision was neutral, even though the legislative
16 history showed vigorous debate over the impact it would have on children and
17 families who held religious objections to vaccination but balanced that impact
18 against the risks to public health. *Id.* at 148–149. The Second Circuit further
19 reasoned that under existing federal precedent, when it comes to exemptions from
20 generally applicable law, “the government may constitutionally elect to
21 accommodate religious believers but is not constitutionally *required* to do so.” *Id.*
22 at 150. The Second Circuit held that Connecticut’s vaccination requirements were
23 laws of general applicability, the provisions for medical exemptions were not
24 individualized, and the allowed exemptions were not under inclusive. *Id.* at 150–
25 155. As a result, the Second Circuit concluded that rational basis review applied
26 and that the “Act’s repeal of the religious exemption is rationally related to [the
27 state’s compelling public health] interest because it seeks to maximize the number
28

1 of students in Connecticut who are vaccinated against vaccine-preventable
2 diseases.” *Id.* at 156.

3 In *F.F. v. State*, 194 A.D.3d 80, 87–88 (N.Y. App. Div. 2021), the appellate
4 court upheld New York’s repeal of its specific religious belief exemption. The
5 court rejected assertions that comments by legislators representing less than three
6 percent of the voting body demonstrated religious animus. *Id.* at 86. The court
7 further found that comments critical of parents who may be abusing the repealed
8 religious belief exemption provision did not demonstrate religious animus because
9 it actually displayed a concern that it was individuals with non-religious beliefs
10 who were the abusers and that various anti-vaxxers with secular based objections to
11 vaccination were exploiting the state’s religious beliefs exemption. *Id.* at 87. The
12 court concluded that the statute repealing the exemption was a law of general
13 applicability because “the sole purpose of the repeal is to make the vaccine
14 requirement generally applicable to the public at large in order to achieve herd
15 immunity.” *Id.* at 88. The court thus concluded that given the state’s significant
16 public health concern, the repeal of New York’s religious exemption provision was
17 supported by rational basis and does not violate the Free Exercise Clause. *Id.*

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

20 Here, Plaintiffs’ claims fail for the same reasons articulated by the courts in
21 *Whitlow*, *Brown*, *Love*, *We The Patriots*, and *F.F.* Indeed, the conclusion is more
22 compelling in relation to SB 277, which repealed a religion-neutral personal beliefs
23 exemption, as compared to the specific religion based exemptions at issue in *We*
24 *The Patriots* and *F.F.*

25 **1. Personal beliefs are not protected under the Free Exercise**
26 **Clause**

27 Plaintiffs’ alleged beliefs, no matter how sincerely held, provide no basis for
28 relief under the First Amendment, as the Free Exercise Clause does not protect

1 subjectively held personal beliefs against mandatory vaccination laws. In
2 *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (*Yoder*), our Supreme Court held that
3 “*philosophical and personal . . . belief[s] [do] not rise to the demands of the*
4 *Religion Clauses.*” *Id.*, at 216 (italics added). In *Hanzel*, plaintiffs objected to the
5 immunization of their children because they believed that the injection of foreign
6 substances into the body is of no benefit and can only be harmful. *Hanzel*, 625
7 F.Supp. at 1260. The *Hanzel* court disagreed, stating, “[a]s made clear by the
8 Supreme Court in *Yoder*, philosophical beliefs do not receive the same deference in
9 our legal system as do religious beliefs, even when the aspirations flowing from
10 each such set of beliefs coincide.” *Id.* at 1265. Here SB 277 eliminated a personal
11 beliefs exemption.

12 The conclusory allegations by the Plaintiffs that vaccines contain aborted fetal
13 cells are wholly unfounded. The American Academy of Pediatrics (AAPA) has
14 explicitly addressed this internet-fed falsehood and instructs that vaccines do not
15 contain aborted fetal tissue. AAPA, *Vaccine Ingredients: Frequently Asked*
16 *Questions*, [https://www.healthychildren.org/English/safety-](https://www.healthychildren.org/English/safety-prevention/immunizations/Pages/Vaccine-Ingredients-Frequently-Asked-Questions.aspx)
17 [prevention/immunizations/Pages/Vaccine-Ingredients-Frequently-Asked-](https://www.healthychildren.org/English/safety-prevention/immunizations/Pages/Vaccine-Ingredients-Frequently-Asked-Questions.aspx)
18 [Questions.aspx](https://www.healthychildren.org/English/safety-prevention/immunizations/Pages/Vaccine-Ingredients-Frequently-Asked-Questions.aspx) at 2. Although over forty years ago two cell lines were developed
19 from two fetuses that were aborted for medical reasons, and not for the purpose of
20 producing vaccines, “these cell lines have an indefinite life span, meaning that no
21 new aborted fetuses are ever used.” *Id.* Therefore, “[n]o fetal tissue is included in
22 the vaccines . . . *children are not injected with any part of an aborted fetus.*” *Id.*
23 (italics added). The National Catholic Bioethics Center (NCBC) agrees, explaining
24 “[t]he cell lines under consideration were begun using cells taken from one or more
25 fetuses aborted almost 40 years ago. Since that time the cell lines have grown
26 independently. *It is important to note that descendent cells are not the cells of the*
27 *aborted child.*” NCBC, [http://www.ncbcenter.org/resources/frequently-asked-](http://www.ncbcenter.org/resources/frequently-asked-questions/use-vaccines/)
28 [questions/use-vaccines/](http://www.ncbcenter.org/resources/frequently-asked-questions/use-vaccines/) at 1 (italics added). The Vatican, as well, recognized, in

1 response to questions raised about the original fetal cells used in developing
2 vaccines cultures, “a proportional reason . . . to accept the use of these vaccines in
3 the presence of the danger of favouring the spread of the pathological agent, due to
4 the lack of vaccination of children.” Pontifical Academy for Life, *Moral*
5 *Reflections on Vaccines Prepared From Cells Derived From Aborted Human*
6 *Foetuse* (2005),
7 http://academiavita.org/_pdf/documents/pav/moral_reflections_on_vaccines_en.pdf
8 [f](#) at 6. The Vatican concluded that, notwithstanding the questions raised about the
9 original fetal cells used in developing vaccines cultures, vaccination is “morally
10 justified . . . to provide for the good of one’s children and of the people who come
11 in contact with the children.” *Id.* at 7.

12 In the absence of any recognized religious doctrine, Plaintiffs’ objections to
13 vaccinations are nothing more than subjective personal beliefs. That they are
14 entitled to these beliefs, whether or not they are grounded in fact, is without
15 question. But those personal beliefs cannot impose a legitimate restraint on the
16 State’s authority to protect the public from the spread of communicable diseases.
17 *Phillips*, 775 F.3d at 543 (“mandatory vaccination as a condition for admission to
18 school does not violate the Free Exercise Clause”). “A way of life, however
19 virtuous and admirable, may not be interposed as a barrier to reasonable state
20 regulation of education if it is based on purely secular considerations; to have the
21 protection of the Religion Clauses, the claims must be rooted in religious belief.”
22 *Yoder*, 406 U.S. at 215. Because SB 277 eliminated a personal beliefs exemption,
23 it does not violate the First Amendment’ Free Exercise Clause.

24 **2. SB 277 Is Rationally Related to a Legitimate State Interest**

25 Even presuming some of the Plaintiffs’ objections can be characterized as
26 religious, rather than as personal subjective beliefs, Plaintiffs’ assertion that strict
27 scrutiny is the applicable standard of review for their claims is wrong. Complaint at
28 12 (¶ 73). “The right to exercise one’s religion freely . . . ‘does not relieve an

1 individual of the obligation to comply with a valid and neutral law of general
2 applicability on the ground that the law proscribes (or prescribes) conduct that
3 [one’s] religion prescribes (or proscribes).” *Stormans, Inc. v. Wiesman*, 794 F.3d
4 1064, 1075 (9th Cir. 2015) (quoting *Emp’t Div. v. Smith*, 494 U.S. 872, 879
5 (1990)). “[A] law that is neutral and of general applicability need not be justified
6 by a compelling governmental interest even if the law has the incidental effect of
7 burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc.*
8 *v. City of Hialeah*, 508 U.S. 520, 531 (1993). SB 277 is neutral and of general
9 applicability; it applies to all children in public and private schools and childcare
10 facilities. See Cal. Health & Saf. Code, § 120325 *et seq.* Thus, rational basis
11 review is the correct level of scrutiny. See also *Phillips*, 775 F.3d at 543, fn.5
12 (finding that “no court appears ever to have held” that *Jacobson* now demands strict
13 scrutiny); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir. 2020) (courts
14 look to both the text and the actual operation of a law to determine whether it is
15 neutral and generally applicable).

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

26 Plaintiffs cannot plausibly assert their claims because it is well established that
27 immunization laws, such as SB 277, are rationally related to legitimate state
28 interests. The U.S. Supreme Court, the California Supreme Court, and numerous

1 other federal and state courts have uniformly held that state immunization laws
2 serve a rational, if not a compelling, state interest in protecting the public from the
3 spread of communicable diseases. This interest was recognized by the U.S.
4 Supreme Court in *Jacobson* over 110 years ago and is consistently affirmed today.
5 *See, e.g., Phillips*, 775 F.3d at 542.

6 SB 277 is rationally related to a legitimate state interest of protecting the
7 public from the spread of debilitating, and potentially fatal, diseases, as its
8 legislative history confirms: “Vaccine coverage at the community level is vitally
9 important for people too young to receive immunizations and [for] those unable to
10 receive immunizations due to medical reasons.” RJN Ex. 7.6, Sen. Jud. Com.,
11 Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.). “[W]hen belief exemptions to
12 vaccination guidelines are permitted, vaccination rates decrease.” *Id.* at Ex. 9.5,
13 Assem. Com. on Health, Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.).
14 “Given the highly contagious nature of [these] diseases . . . vaccination rates of up
15 to 95% are necessary to preserve herd immunity and prevent future outbreaks.” *Id.*
16 at Ex. 7.5, Sen. Jud. Com., Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.).

17 Plaintiffs seek to rely on *Tandon v. Newsom*, __ U.S. __, 141 S.Ct. 1294, 1296
18 (2021) and *Fulton v. City of Philadelphia*, __ U.S. __, 141 S.Ct. 1868, 1877 (2023)
19 and their conclusory allegations of religious animus and differential treatment as a
20 means of shifting analysis of SB 277 from rational basis review to strict scrutiny.
21 Complaint at 11 (¶¶ 62–63, 65–68). Plaintiffs similarly rely on *Fulton* for their
22 assertion that SB 277’s medical exemption entails individualized discretionary
23 review, thereby shifting analysis from rational basis to strict scrutiny. *Id.* at 11–12
24 (¶¶ 63, 69). However, the analysis in *We The Patriots* and *F.F.* shows that *Tandon*
25 and *Fulton* are inapplicable here, and Plaintiffs conclusory allegations fail.

26 First, *We The Patriots* and *F.F.* rejected assertions of religious animus based
27 on the fact that there was legislative debate over religious beliefs and the removal
28 of preexisting religion based exemptions. *We The Patriots*, 76 F.4th at 148–149;

1 *F.F.*, 194 A.D.3d at 86–88. Here, the legislative history for SB 277 shows
2 respectful and considered debate over the removal of California’s personal beliefs
3 exemption, with a recognition that the removal of California’s neutral personal
4 beliefs exemption would have an incidental impact on the subset of parents who
5 may have previously obtained a personal beliefs exemption based on religious
6 beliefs. *See, e.g.*, RJN Exs. 7.3, 7.7–7.13, 7.16–7.18. It shows no animosity. *Id.*⁵
7 Nor does it show differential treatment. *Id.* Instead, it shows the removal of
8 California’s personal beliefs exemption applied equally to all Californians who may
9 have personal beliefs against vaccination, regardless of whether those beliefs may
10 be religiously motivated. *Id.* It shows an intent to narrowly tailor impact of the
11 removal of the personal beliefs exemption by limiting it to the ten specified
12 mandatory vaccinations and by adding a provision that if CDPH updates the list to
13 include any new mandatory vaccinations, those vaccinations must include both
14 medical and personal belief exemptions. RJN Ex. 7.17–7.18; Cal. Health & Saf.
15 Code, § 120338.

16 Second, the analysis in *We The Patriots* rejecting assertions of individualized
17 determinations applies equally to California’s medical exemption. The *We The*
18 *Patriots* Court reasoned that the use of “shall be exempt” in the medical exemption
19 language made the exemptions mandatory upon a showing of that the requirements
20 for a medical exemption have been met, and therefore there is no individualized
21 determination because the exemption must be granted. *We The Patriots*, 76 F.4th at
22 150–151. Here, California’s medical exemption provision contains similar “shall
23 be exempt” language which makes the exemption mandatory upon the presentation
24 of a physician’s written statement attesting to the basis for the medical exemption.

25 _____
26 ⁵ Plaintiffs’ additional reliance on CDPH’s updated FAQs to assert religious
27 animus fails. Complaint at 11 (¶ 64, n. 7). First, CDPH’s updated FAQs were
28 issued after SB 277 took effect and therefore cannot demonstrate animus in SB
277’s enactment. *See* RJN Ex. 18.1. Second, CDPH’s updated FAQs demonstrates
that SB 277’s removal of personal beliefs exemption applied equally to all
Californians and made no distinction between secular or religious beliefs. *Id.*

1 RJN Ex. 1.4; Cal. Health & Saf. Code, § 120370(a) (West 2016), current Cal.
2 Health & Saf. Code, § 120370(a)(1). There simply are no individualized
3 determinations under California’s medical exemption provision.

4 Hence, Plaintiffs’ claim fails as a matter of law because the Legislature’s
5 removal of the personal beliefs exemption in SB 277 is rationally related to a
6 legitimate, if not a compelling, state interest in protecting the health and safety of
7 public school students and the general public.

8 **3. SB 277 Withstands Strict Scrutiny Analysis**

9 Even if the Court presumes strict scrutiny applies, SB 277 withstands the
10 analysis. Strict scrutiny review is a two-prong test. First, the State “bears the
11 burden of establishing . . . that it has a [c]ompelling interest which justifies the
12 law.” *Serrano v. Priest*, 5 Cal.3d 584, 597 (1971). Second, the State must
13 demonstrate that the law “is ‘tailored’ narrowly to serve legitimate objectives and
14 that it has selected the ‘less drastic means’ for effectuating its objectives.” *San*
15 *Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). The State
16 satisfies both of these burdens.

17 As discussed in detail above, *Jacobson* and its progeny have unequivocally
18 held that immunization laws are justified because they serve a compelling state
19 interest in protecting public health and safety. *Jacobson*, 197 U.S. at 35 (“the
20 legislature has the right to pass laws which, according to the common belief of the
21 people, are adapted to prevent the spread of contagious diseases”); *see also Sherr v.*
22 *Northport-East Northport Union Free School Dist.*, 672 F. Supp. 81, 88 (E.D.N.Y.
23 1987) (holding there is a “compelling interest . . . in fighting the spread of
24 contagious diseases through mandatory inoculation programs”).

25 In enacting SB 277, the Legislature expressed its intent “to provide . . . [a]
26 means for the eventual achievement of total immunization of appropriate age
27 groups” against these childhood diseases. Cal. Health & Saf. Code, § 120325(a).
28 In so doing, the Legislature understood that “[p]rotecting the individual and the

1 community from communicable diseases . . . is a core function of public health.”
2 RJN Ex. 7.7. Moreover, the enactment of SB 277 was a reasoned response to
3 escalating numbers of unvaccinated children and further outbreaks of dangerous
4 communicable diseases. *Id.* at Exs. 9.2, 12.5, 13.7-13.8. This is the same
5 overarching goal and interest found valid in *We The Patriots* at 156 and *F.F.* at 88.⁶

6 It is anticipated that Plaintiffs will be unable to cite to a single case where a
7 court has held there is no compelling interest in protecting the public from the
8 spread of communicable diseases through vaccination.⁷ To the contrary, “[t]he
9 fundamental and paramount purpose [of school immunization statutes] . . . [is] to
10 afford protection for school children against crippling and deadly diseases by
11 immunization. That this can be done effectively and safely has been
12 incontrovertibly demonstrated over a period of a good many years and is a matter of
13 common knowledge of which [courts] takes judicial notice.” *Brown v. Stone*, 378
14 So.2d 218, 220-21 (Miss. 1979).

15 Furthermore, SB 277 is narrowly tailored to serve this compelling interest. It
16 does not mandate vaccination for all contagious diseases, but only those that the
17 Legislature determined are “very serious” and that “pose very real health risks to
18 children.” *See* RJN Ex. 11.4. It contains appropriate but limited exemptions for
19 children with medical conditions that would make vaccination unsafe. RJN Ex.

20 _____
21 ⁶ Data on vaccination rates after passage of SB 277 supports the effectiveness
22 of SB 277 in achieving the legislative goal of increasing vaccination rates. *See* RJN
23 Exs. 14.1, 15.1. The recent pandemic has additionally shown that maintaining high
24 vaccination rates is continuous goal subject to periodic fluctuations. *See, e.g.*, RJN
25 16.1, 17.1.

26 ⁷ Plaintiffs reference a Free Exercise Clause challenge to Mississippi’s
27 mandatory vaccination laws in their Complaint. Complaint at 2 (¶ 5). Presuming
28 Plaintiffs are referring to the preliminary injunction ruling in *Bosarge v. Edney*, No.
1:22CV233-HSO-BWR, 2023 WL 2998484, at *10 (S.D. Miss. Apr. 18, 2023), it is
distinguishable. There, the Mississippi Attorney General took the position that a
separate Mississippi act operated to automatically permit religious exemptions, but
Mississippi officials were not applying that other act in denying the Plaintiffs’
exemption applications. The district court therefore concluded that the Plaintiffs
established a reasonable probability of prevailing because the statutes were “being
applied in a manner that plainly burdens Plaintiffs’ First Amendment rights.” *Id.*

1 1.4; Cal. Health & Saf. Code, § 120370(a) (West 2016), current Cal. Health & Saf.
2 Code, § 120370(a)(1)–(2). The law provides an exception for children who are
3 homeschooled or enrolled in independent study programs that do not involve
4 communal classroom settings. Cal. Health & Saf. Code, § 120335(f). SB 277 also
5 provides an exception related to students who receive individualized education
6 services. *Id.* at (h). Thus, California’s mandatory vaccination requirement is
7 narrowly directed to institutional settings of public and private schools and daycare
8 facilities where the State has a compelling interest in protect all children who attend
9 those institutions. *See* RJN Ex. 7.3, 7.6–7.8.

10 Indeed, the U.S. Supreme Court has long-recognized that the institutional
11 interests of schools, as well the rights of the student-body at large, often hold sway
12 over the rights of individual students. “For their own good and that of their
13 classmates, public school children are routinely required to submit to various
14 physical examinations, and to be vaccinated against various diseases.” *Vernonia*
15 *School District 47J v. Acton*, 515 U.S. 646 (1995) (noting with approval that “all 50
16 States required public school students to be vaccinated against diphtheria, measles,
17 rubella, and polio,” and that “[p]articularly with regard to medical examinations and
18 procedures, therefore, ‘students within the school environment have a lesser
19 expectation of privacy than members of the population generally’”).

20 Moreover, as stated above, SB 277 expressly provides exceptions for students
21 enrolled in home schooling and independent study programs, thus ensuring the right
22 to an education for unvaccinated children. *See* Cal. Health & Saf. Code, §
23 120335(f). SB 277 withstands constitutional scrutiny.

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CONCLUSION

For the reasons set forth above, Plaintiffs’ cause of action for violation of the Free Exercise Clause of the First Amendment fails to state a claim. The motion to dismiss should be granted without leave to amend.

Dated: November 29, 2023

Respectfully submitted,
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