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16 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 ANA WHITLOW, Individually and as
20 Parent and Next Friend of B.A.W. and
21 D.M. F.-W., minor children; ERIK
22 NICOLAISEN, Individually and as
23 Parent and Next Friend of A.W.N., a
24 minor child; DENE SCHULTZE-
25 ALVA, D.C., Individually, and as
26 Parent and Next Friend of S.M.A., a
27 minor child; NICOLE ANDRADE,
28 Individually, and as Parent and Next
Friend of I.G.A., a minor child;
BRIANNA OWENS, Individually, and
as Parent and Next Friend of K.R.O-R.
and J.S.W.S., minor children;
VERONICA DELGADO, Parent and
Next Friend of A.D., a minor child;

Case No.: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**TEMPORARY RESTRAINING
ORDER SOUGHT**

1 EDUCATION FOR ALL, a Nevada not
2 for profit Corporation; WESTON A.
3 PRICE FOUNDATION, a District of
4 Columbia not for profit Corporation;
5 CITIZENS FOR HEALTH, a Nevada
6 not for profit Corporation; and
7 ALLIANCE FOR NATURAL
8 HEALTH, a Georgia not for profit
9 Corporation,,
10

Plaintiffs,

v.

11 STATE OF CALIFORNIA,
12 DEPARTMENT OF EDUCATION;
13 TOM TORLAKSON,
14 SUPERINTENDENT OF THE
15 DEPARTMENT OF EDUCATION, in
16 his Official Capacity; STATE OF
17 CALIFORNIA, DEPARTMENT OF
18 PUBLIC HEALTH; DR. KAREN
19 SMITH, DIRECTOR OF THE
20 DEPARTMENT OF PUBLIC
21 HEALTH, in her Official Capacity; and
22 JOHN DOE 1 through JOHN DOE
23 1000, in their Official Capacities as
24 agents, servants, employees or Officials
25 of the State of California, Depart_ments
26 of Public Health and Education,,
27

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

28 COME NOW the above-named Plaintiffs, by and through their attorneys,
James S. Turner and Betsy E. Lehrfeld of Swankin & Turner, Washington, D.C.,
and Carl M. Lewis, to file their Complaint seeking Declaratory and Injunctive
Relief.

1 Plaintiffs bring this action for a Temporary Restraining Order, and
2 Declaratory and Injunctive relief, to maintain the *status quo ante*, and to enjoin the
3 implementation of Senate Bill 277 (Pan, 2015) (“SB 277”). Plaintiffs respectfully
4 allege the following facts and causes of action against the Defendants, as follows:

5 INTRODUCTION

6 1. Effective July 1, 2016, SB 277 will bar children from attending any
7 public and private school unless proof is provided that the child has received
8 multiple doses of vaccines for ten enumerated childhood diseases.

9 2. SB 277 abolished the Personal Belief Exemption (“PBE”) to
10 California’s school vaccination requirements and arguably eliminated an existing
11 exemption from vaccination based on religious beliefs.

12 3. Forty-seven states currently allow either a religious or a
13 conscientious/personal belief exemption from school vaccination mandates.

14 4. The California Supreme Court has long recognized that a child’s right
15 to an education is a fundamental right guaranteed by the California Constitution.
16 Laws that impact the fundamental right to education, and which are not narrowly
17 tailored to serve a compelling state interest, are unconstitutional. As the court held
18 in *Serrano v. Priest* 18 Cal 3d 584 at 606 (1971) “We indulge in no hyperbole to
19 assert that society has a compelling interest in affording children an opportunity to
20 attend school.”

21 5. The State has broad responsibility to ensure basic educational equality
22 and to provide a statewide public education system open on equal terms to all.

23 6. Since 1961, California has allowed a philosophical exemption to
24 vaccination based on one’s personal beliefs.

25 7. Since 1961, the number of vaccines and vaccine doses required for
26 school attendance have dramatically increased.

8. Notwithstanding the increase in required vaccines and vaccine doses, PBE rates have always remained below four percent.

9. For decades, full vaccination coverage in California has remained well above 95% for each required vaccine.

10. Public health experts agree that 95% vaccination coverage meets or exceeds the levels of vaccination theorized to achieve herd immunity for infectious diseases for which vaccines are available.

11. California's PBE rate has not exceeded four percent of the entire population of school children.

12. At the time SB 277 was enacted, according to the California Department of Public Health (“CDPH”), over 97% of California’s school-aged children were fully vaccinated for each of the vaccines required by SB 277.

13. Moreover, the overwhelming majority of the children with PBEs are selectively vaccinated. They received some, but not all of the required vaccine doses.

14. Only one year before SB 277 was enacted, the Immunization Branch of the CDPH stated that “[v]accination coverage in California is at or near all-time high levels.”

15. At the time SB 277 was enacted, California had seen a 19 percent reduction in PBEs when AB 2109 (Pan, 2012) went into effect.

16. Notwithstanding declining PBE rates and historically high vaccination rates, SB 277 was enacted to permanently bar children who do not receive every dose of every mandated vaccine from all public and private schools.

17. Plaintiffs have thus been denied their fundamental right to an education guaranteed by the California Constitution.

JURISDICTION AND VENUE

18. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This action arises under the Constitution of the United States, specifically, the First Amendment and the Equal Protection and Due Process clauses of the Fourth, Fifth, and Fourteenth Amendments.

19. This Court additionally has original subject matter jurisdiction under 28 U.S.C. § 1343 (a)(3) (civil rights), 42 U.S.C. § 1983 (“Civil action for deprivation of rights”), and 28 U.S.C. § 2201 (declaratory relief).

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

21. Venue is proper in this Court under 28 U.S.C. § 1391(e) on two independent bases: San Diego Unified School District resides in this judicial district; and the acts and omissions that gave rise to Plaintiffs Ana and Anthony Whitlow's claims occurred in this judicial district.

PARTIES

22. Plaintiff Ana Whitlow resides with her husband, family and minor sons B.A.W. and D.M.F-W., in the city of San Diego, located in San Diego County. Plaintiff Ana Whitlow and her husband have chosen to selectively vaccinate B.A.W. and D.M.F-W. to avoid vaccines that offend their religious beliefs by virtue of certain ingredients, and in the interest of B.A.W's and D.M.F-W's health and wellbeing. Plaintiff Ana Whitlow's son D.M.F-W. shows sufficient antibody levels to be deemed "proof of immunity" to the diseases for which he has not received all required vaccine doses. Plaintiff Ana Whitlow seeks injunctive relief requiring the defendant state actors and agencies of the State of California to admit B.A.W. into kindergarten at the defendant Ocean Beach

1 Elementary School, operated by the defendant San Diego Unified School District.
2 Plaintiff Ana Whitlow seeks injunctive relief prohibiting the defendant state actors
3 and agencies of the State of California from denying admission of D.M.F-W into
4 the defendant Correa Middle School, operated by the San Diego Unified School
5 District. (Decl. of Ana Whitlock, pp. 1-6)

6 23. Plaintiff Erik Nicolaisen lives with his wife, family and minor son
7 A.W.N. in Studio City, Los Angeles County, California. Erik Nicolaisen in
8 concert with A.W.N's mother has chosen to selectively vaccinate A.W.N. in the
9 interest of A.W.N's health and wellbeing, and seeks injunctive relief prohibiting
10 the defendant state actors and agencies of the State of California from denying
11 A.W.N. into the Carpenter Elementary School, operated by the Los Angeles
12 Unified School District. (Decl. of Erik Nicolaisen, pp. 1-5)

13 24. Plaintiff Dene Schultze-Alva resides with her husband, family and
14 minor daughter S.M.A. in Sierra Madre, California, in Los Angeles County.
15 Plaintiff Dene Schultze-Alva has chosen to selectively vaccinate S.M.A. according
16 to the guidance of her religion and in the interest of S.M.A's health and wellbeing,
17 and seeks injunctive relief prohibiting the defendant state actors and agencies of
18 the State of California from denying admission of S.M.A. into the preschool
19 facility known as the Early Childhood Development Center located in Altedena
20 California, operated by the Pasadena Unified School District. (Decl. of Dr. Dene
21 Schultze-Alva, pp. 1-6)

22 25. Plaintiff Nicole Andrade resides in Placer County, near Loomis,
23 California, with her husband and family, including her minor daughter I.G.A., who
24 is ready to enter the seventh grade. Plaintiff Nicole Andrade is religiously opposed
25 to vaccines manufactured from aborted fetal cell lines, having fully vaccinated her
26 oldest child before she became aware that Measles Mumps Rubella vaccine is
27 manufactured using an aborted fetal cell line. Plaintiff Nicole Andrade has taken
28

1 up in her prayers the question of whether to vaccinate, and believes that God would
2 want her pro-life family to wait for more pure and safe vaccines, before
3 vaccinating I.G.A. again. Plaintiff Nicole Andrade has chosen to selectively
4 vaccinate S.M.A. according to the guidance of her religion and in the interest of
5 S.M.A.'s health and wellbeing and seeks an order prohibiting the defendant state
6 actors and agencies of the State of California from denying admission of I.G.A.
7 into Franklin Elementary School, operated by the Loomis Union School District.
8 (Decl. of Nicole Andrade, pp. 1-6)

9 26. Plaintiff Brianna Owens resides in Petrolia, Humboldt County,
10 California. She is the parent of four children, two of whom are impacted by SB 277
11 and its ban from education of children who are not fully vaccinated. She has been
12 hesitant to vaccinate her children because of a family history of autoimmune
13 disease and her own reaction to the Tdap vaccine when she was 26 years old. Her
14 daughter received the Tdap vaccine and had a reaction similar to her own, but less
15 severe. Her pediatrician told her that she could not get a medical exemption for her
16 children because he had received a "special class" where he was told that to qualify
17 for a medical exemption her children would have to have a "documented
18 anaphylactic reaction" to a particular vaccine and then only for that particular
19 vaccine. She seeks an order prohibiting the defendant state actors and agencies of
20 the State of California from denying admission of her children into school under
21 SB 277. (Decl. of Brianna Owens, pp. 1-5)

22 27. Plaintiff Veronica Delgado is the parent of seven children, one of
23 whom, A.N.D., has been selectively vaccinated and is about to enter 7th grade.
24 A.N.D. had a PBE prior to the effective date of SB 277 but is now being told he
25 cannot return to school unless his vaccinations are "caught up." He also has an
26 IEP, but she has been told by the school that it does not entitle him to an
27 exemption. Next year she will have a second child, who also has an IEP that she
28

1 believes is a consequence of a vaccine reaction, ready to enter 7th grade who will
2 encounter the same problem. She seeks an order prohibiting the defendant state
3 actors and agencies of the State of California from denying admission of her
4 children into school under SB 277. (Decl. of Veronica Delgado, pp. 1-4)

5 28. Plaintiff E4A Foundation is a non-profit organization under the laws
6 of the State of Nevada, with its principal place of business in California, whose
7 purpose is to promote and protect equal access to public and private education.

8 29. Plaintiff Weston A. Price Foundation is a nonprofit, tax exempt
9 nutrition education foundation whose members follow healthy natural approaches
10 to health and healing. It has 39 local chapters and 1,836 members in California,
11 many of whom are families with young children who would avail themselves, or
12 may have in the past received, a personal belief exemption.

13 30. Plaintiff Citizens for Health is a nonprofit, 501(c)(4) advocacy
14 organization providing information about natural healing and laws affecting health
15 to approximately 30,000 Californians.

16 31. Plaintiff Alliance for Natural Health USA (ANH-USA) is a Georgia-
17 based nonprofit corporation founded in 1992. The ANH-USA mission is to protect
18 access to natural health options and a toxin free lifestyle, including the ability to
19 decline vaccination or modify the vaccine schedule for one's children. The ANH -
20 USA consists of over 500,000 members, including 78,000 California residents,
21 many of whom will be harmed by SB 277 because they will not be able to make
22 their own decisions for their school age children based on their beliefs about
23 vaccine-related harms.

24 32. Defendant Department of Education of the State of California is a
25 state agency created by California statute, charged with implementing the laws at
26 issue.

33. Defendant Tom Torlakson, Superintendent of the Department of Education, is sued in his official capacity, as a state actor responsible for implementing and enforcing the laws at issue.

34. Defendant Department of Public Health of the State of California is a state agency created by California statute, charged with implementing the California Health and Safety Code and in particular regulating the vaccination requirements at issue, including, *inter alia*, Health & Safety Code sections 120325, 120335, 120338, 120370 and 120375.

35. Defendant Dr. Karen Smith, Director of the Department of Public Health is sued in her official capacity, as a state actor, responsible for implementing and enforcing the laws at issue.

36. Charity Dean, MD and Takashi Wada, MD, are the Health Officer and Director, respectively, of the Santa Barbara County Public Health Department, and are responsible for implementing and enforcing the laws at issue.

37. Defendants, and each of them, have violated the rights of Plaintiffs as set forth below by their actual and threatened enforcement actions pursuant to SB 277. If the statute is not ruled unconstitutional for its infringement of fundamental rights and liberties, and if they are not enjoined from enforcement of SB 277, Defendants will increasingly cause harm to the Plaintiffs, their children, and parents and children similarly situated and undermine the state's compelling interest in providing access to education for all Californians.

STATUTORY SCHEME

38. SB 277 requires full vaccination according to a rigid schedule requiring 36-38 doses of vaccines for 10 diseases, administered between birth and seventh grade entry, the bulk of which (33-35 doses) are required before kindergarten entry at 5 or 6 years of age.

1 39. Specifically, the law mandates vaccines for diphtheria, tetanus (which
2 is not communicable), pertussis, measles, mumps, rubella, Haemophilus influenzae
3 type b (Hib), varicella (chicken pox), polio, and hepatitis B (which is blood borne).

4 40. The State recommends an additional 33-34 doses of vaccinations for
5 another 7 diseases before age eighteen.

6 41. The statutory vaccine schedule has increased dramatically over the
7 past two decades, and it seems likely to continue to expand. SB 277 provides
8 authority to expand the vaccine schedule with no public hearing or other due
9 process (although there would continue to be a PBE in the case of new vaccines).

10 42. Since at least 1961, California statutes provided the following
11 exemption for schoolchildren: "Immunization of a person shall not be required for
12 admission to a public or private...school...if such immunization is contrary to his
13 or her beliefs." Chapter 837 of Laws 1961.

14 43. The percentage of fully vaccinated children has not dropped below
15 95% of California school aged children in any period for which CDPH provides
16 historical vaccination data.

17 44. AB2109 (Pan, 2012), which became effective in January 2014,
18 created section 120365 of the Health & Safety Code, which narrowed the
19 conscientious exemption based on personal beliefs, requiring parents claiming a
20 PBE to submit a letter or affidavit to their school or child care facility, stating their
21 objection and containing verification from a health care practitioner of the fact that
22 the parent had received information about the benefits and risks of vaccination and
23 the risks of vaccine preventable diseases.

24 45. When signing AB2109 into law on September 30, 2012, Governor
25 Edmond G. Brown, Jr., provided a signing statement, stating, in pertinent part:

26 I am signing AB 2109 and am directing the Department of Public
27 Health to oversee this policy so parents are not overly burdened by its
28 implementation. Additionally, I will direct the department to allow for

1 a separate religious exemption on the form. In this way, people whose
2 religious beliefs preclude vaccinations will not be required to seek a
3 health care practitioner's signature.

4 46. Subsequently, Defendant California Department of Public Health
5 (CDPH) did not require persons claiming a religious exemption to provide the
6 verification by a health care provider.

7 **SB 277**

8 47. SB 277, effective July 1, 2016, is "[a]n act to amend Sections 120325,
9 120335, 120370, and 120375 of, to add Section 120338 to, and to repeal Section
10 120365 of, the Health and Safety Code, relating to public health."

11 48. As described by the Legislative Counsel Digest, SB 277 was passed to
12 eliminate "the exemption from existing specified immunization requirements based
13 upon personal beliefs," as set forth at that time in Section 120365.

14 49. As passed, SB 277 charges the Department of Public Health and
15 schools with enforcing the provision. Specifically:

16 Section 120375 of the Health and Safety Code is amended to read:

17 (a) The governing authority of each school or institution included in
18 Section 120335 shall require documentary proof of each entrant's
19 immunization status. The governing authority shall record the
20 immunizations of each new entrant in the entrant's permanent
21 enrollment and scholarship record on a form provided by the
22 department. The immunization record of each new entrant
23 admitted conditionally shall be reviewed periodically by the
24 governing authority to ensure that within the time periods
25 designated by regulation of the department he or she has been fully
26 immunized against all of the diseases listed in Section 120335, and
27 immunizations received subsequent to entry shall be added to the
28 pupil's immunization record.

(b) The governing authority of each school or institution included in
Section 120335 shall prohibit from further attendance any pupil
admitted conditionally who failed to obtain the required
immunizations within the time limits allowed in the regulations of
the department, unless the pupil is exempted under Section

1 120370, until that pupil has been fully immunized against all of the
2 diseases listed in Section 120335.

3 50. SB 277 states that Section 120335, which sets forth the required
4 vaccinations, does not apply to homeschool students and students in independent
5 study programs. Specifically, SB 277 states:

6 51.

7 Section 120335 of the Health and Safety Code is amended to read:

8 * * *

9 (f) This section does not apply to a pupil in a home-based private
10 school or a pupil who is enrolled in an independent study program
11 pursuant to Article 5.5 (commencing with Section 51745) of Chapter
12 5 of Part 28 of the Education Code and does not receive classroom-
13 based instruction.

14 52. SB 277 also states that Section 120335 does not impact students
15 under Individualized Education Programs. Specifically, SB 277 states:

16 (h) This section does not prohibit a pupil who qualifies for an
17 individualized education program, pursuant to federal law and Section
18 56026 of the Education Code, from accessing any special education
19 and related services required by his or her individualized education
20 program.

21 53. Additionally, SB 277 grandfathers PBE documentation submitted
22 prior to January 1, 2016, to allow the child to remain in school under the PBE until
23 the next "grade span." "Grade span" is defined as follows:

24 (A) Birth to preschool.

25 (B) Kindergarten and grades 1 to 6, inclusive, including
26 transitional kindergarten.

27 (C) Grades 7 to 12, inclusive.

28 54. Children entering preschool may not obtain PBE status. SB 277
states:

(3) Except as provided in this subdivision, on and after July 1, 2016,
the governing authority shall not unconditionally admit to any of those

1 institutions specified in this subdivision for the first time, or admit or
2 advance any pupil to 7th grade level, unless the pupil has been
3 immunized for his or her age as required by this section.

4 55. Regarding medical exemptions, SB 277 purports to vest medical
5 judgment in the child's physician. SB 277 states:

6 (a) If the parent or guardian files with the governing authority a
7 written statement by a licensed physician to the effect that the
8 physical condition of the child is such, or medical circumstances
9 relating to the child are such, that immunization is not considered
10 safe, indicating the specific nature and probable duration of the
11 medical condition or circumstances, including, but not limited to,
12 family medical history, for which the physician does not recommend
immunization, that child shall be exempt from the [immunization]
requirements . . .

13 56. When signing SB 277 into law on June 30, 2015, Governor Edmond
14 G. Brown, Jr. again provided a signing statement, stating, in pertinent part:

15 The Legislature, after considerable debate, specifically amended SB
16 277, to exempt a child from immunizations whenever the child's
17 physician concludes that there are "circumstances, including, but not
18 limited to, family medical history, for which the physician does not
recommend immunization . . ."

19 Thus, SB 277, while requiring children be vaccinated, explicitly
20 provides an exception when a physician believes that circumstances
21 — in the judgment and sound discretion of the physician — so
warrant.

22 57. Schools in California are rejecting medical exemptions and refusing
23 to admit children with medical exemptions issued by physicians into school.

24 58. California health departments are collecting and scrutinizing medical
25 exemptions.

26 59. Charity Dean, MD and Takashi Wada, MD, in their official capacities
27 as Health Officer and Director, respectively, of the Santa Barbara County Public
28

1 Health Department, have initiated a “Medical Exemption Pilot Project,” designed
2 to “identify any Medical Exemption not meeting SB 277 criteria.”

3 60. No law provides authority for California schools or administrative
4 agencies to regulate medical exemptions, or to override the medical judgment of
5 physicians.

6 61. In enacting SB 277, the legislature was clear that children with
7 disabilities who have individualized education plans (“IEPs”) are exempt from SB
8 277’s vaccination requirements and can attend school without restrictions.

9 62. Notwithstanding this legislative history, some schools and school
10 districts have refused to admit children with disabilities who have IEPs but who do
11 not meet SB 277’s vaccination requirements.

12 63. For example, the Orange County Department of Education has publicly
13 refused to admit children with IEPs into school without full vaccination records
14 and has encouraged school districts to obtain court orders requiring parents of
15 special education students to fully vaccinate their children under the vaccination
16 requirements of SB 277.

17 64. Despite repeated requests, the Department of Education has declined to
18 provide guidance to schools and school districts regarding the impact of SB 277 on
19 students with IEPs.

20 65. In the absence of such guidance from the Department of Education,
21 individual schools and school districts have been implementing SB 277
22 inconsistently.

23 66. Refusing admission of students with IEPs infringes on the rights of
24 children with disabilities and violates Health & Safety Code section 120335(h).

25 67. Districts refusing to admit students with IEPs additionally violate the
26 rights of students under the Federal Individuals with Disabilities Education Act
27 (IDEA) (42 U.S.C. § 1400, *et seq.*) which guarantees students with qualifying
28

1 disabilities a free and appropriate public education in the least restrictive
2 environment.

3 68. Inconsistent application of SB 277 to students with IEPs results in a
4 violation of Equal Protection rights of children with disabilities.

5 69. The regulatory schemes being established under SB 277 fail to
6 provide for due process in the form of a hearing before a medical exemption is
7 denied, or before a child is excluded from school.

8 **Eliminating PBEs Fails to Benefit Public Health**

9
10 70. California vaccination rates are at or near an “all time high” despite
11 the availability of personal belief, religious, and medical exemptions from
12 vaccination since the first mandatory vaccinations to attend public school were
13 introduced in California in 1961.

14 71. According to the Immunization Branch of the CDPH, in recent years
15 such as 2014, there were zero cases of HiB, hepatitis B, polio, diphtheria, rubella
16 or tetanus in California school-aged children.

17 72. Public health authorities attribute all occurrences of pertussis and
18 mumps reported in recent years to failing vaccine efficacy, rather than lack of
19 vaccination coverage in the population of California school children.

20 73. California experienced a pertussis epidemic in 2014, in which almost
21 90 percent of pediatric pertussis cases for which vaccination records were available
22 occurred in vaccinated children.

23 74. Since the first mandatory vaccine to attend public school in 1961,
24 California’s vaccination program has resulted in a fully-vaccinated rate of over
25 95% for each of the vaccines on the schedule.

26 75. The California legislature has stated that “vaccination rates of up to 95
27 percent are necessary to preserve herd immunity and prevent future outbreaks.”
28

1 76. The State has shown no benefit in increasing vaccination rates in
2 school-aged children above the levels theorized to meet the requirements for herd
3 immunity.

4 77. Children with PBEs account for only 0.42 percent of California's total
5 population.

6 78. In adopting SB 277, the legislature stated a goal to eliminate children
7 with PBEs from "certain pockets of California."

8 79. This goal assumes that diseases respect artificial boundaries such as
9 school buildings and that herd immunity can be measured by the vaccination rate
10 in a particular building, such as a school.

11 80. Barring children from school and forcing them into homeschooling
12 creates more of the purported "pockets" of children that SB 277 sought to
13 eliminate.

14 81. SB 277 does not recognize a serological exemption or titer test to
15 vaccination, which results in unnecessary and potentially harmful over-vaccination
16 of children.

17 82. No compelling interest exists to require vaccination of students who
18 already have sufficient antibodies as demonstrated by a titer test against the
19 targeted diseases due to selective vaccination or natural infection.

20 83. Eight-seven percent of children with PBEs in California have been
21 selectively or partially vaccinated.

22 84. SB 277 will indiscriminately exclude children from all schools,
23 regardless of the school's PBE rate.

24 85. SB 277 grandfathers all children currently attending school with
25 PBEs until a "grade span" entry year requires vaccination. For school students, the
26 three threshold years for vaccinations are entry into preschool, kindergarten and
27 the seventh grade.

1 Vaccines.” The report contained evidence that serious brain and immune system
2 injuries are caused by the vaccines targeting pertussis and rubella.

3 91. In 1994, IOM published a report titled, “Adverse Events Associated
4 with Childhood Vaccines: Evidence bearing on Causality.” The report contained
5 evidence that serious brain and immune system injuries are caused by vaccines
6 targeting tetanus, diphtheria, polio, measles, mumps, rubella, HiB and hepatitis B.

7 92. The IOM has identified a current lack of research to identify
8 susceptibilities to vaccine injury, and has pointed to critical research gaps that
9 prevent science from being able to predict what vaccine injuries will occur, and to
10 whom.

11 **Harm To Plaintiffs**

12 93. Plaintiffs’ children have a fundamental right to a school-based, equal
13 education under the California Constitution.

14 94. Plaintiff’s children have liberty interests in bodily integrity, and the
15 right to be free from potentially dangerous medical interventions for which there is
16 no true consent.

17 95. Plaintiffs have liberty interests in making medical treatment choices
18 for their minor children.

19 96. Plaintiffs have health-related concerns regarding vaccines, including
20 the practice of administering multiple vaccinations at once, and the safety of
21 certain vaccines ingredients and contaminating substances, such as aluminum,
22 animal proteins, egg protein, formaldehyde, mercury and genetic fragments.

23 97. Some Plaintiffs have religious concerns regarding vaccines, including
24 the fact that vaccines including the MMR (measles mumps rubella) are
25 manufactured from cell lines intentionally derived from aborted fetal cell lines.

26 98. Some Plaintiffs seek to specifically select their children’s vaccinations
27 based on their religious beliefs.
28

1 99. Prior to SB 277, some Plaintiffs obtained conscientious exemptions
2 for their children based on religious or personal beliefs.

3 100. Plaintiffs include parents who are unable to homeschool their children
4 because they are single working parents, or they are parents in households for
5 which two incomes are essential and homeschooling would interfere with their
6 employment, or they are not fluent in the English language, which is statutorily
7 required for homeschool education, and/or lack sufficient education to homeschool
8 their children.

9 101. Those Plaintiffs who can neither send their children to school nor
10 provide homeschooling stand to potentially lose custody of their children for
11 “neglect,” under the California Welfare and Institutions Code § 300 and/or face
12 criminal penalties under the California Penal Code:

13 (a) A parent or guardian of a pupil of six years of age or more who is in
14 kindergarten or any of grades 1 to 8, inclusive, and who is subject to
15 compulsory full-time education or compulsory continuation education,
16 whose child is a chronic truant as defined in Section 48263.6 of the
17 Education Code, who has failed to reasonably supervise and encourage the
18 pupil’s school attendance, and who has been offered language accessible
19 support services to address the pupil’s truancy, is guilty of a misdemeanor
20 punishable by a fine not exceeding two thousand dollars (\$2,000), or by
imprisonment in a county jail not exceeding one year, or by both that fine
and imprisonment. (Title 9, Ch. 2 Sec. 270.1)

21 102. Some Plaintiffs have sincere concerns about vaccination being unsafe
22 for their children but cannot obtain medical exemptions for their children.

23 103. Plaintiffs have no adequate legal remedy for these harms.

24 **COUNT I: INFRINGEMENT ON RIGHTS PROTECTED BY THE**
25 **CALIFORNIA CONSTITUTION**

26 104. Each preceding paragraph of this pleading is hereby incorporated by
27 reference.
28

1 105. SB 277 violates the right of education and equal protection provisions
2 of the California Constitution, on its face and as applied to Plaintiffs.

3 106. Education is a fundamental right under the California Constitution's
4 provisions guaranteeing equal protection of the laws.

5 107. Defendants' failure to provide regulations or other guidance has caused
6 disparate treatment of children, including certain school districts' refusal to admit
7 children with disabilities who have individualized education plans (IEPs), and
8 certain school districts' restriction of medical exemptions.

9 108. As a result of these arbitrary distinctions, similarly situated children
10 do not have substantially equal access to education.

11 109. Because education is a fundamental interest under the California
12 Constitution, this unequal, arbitrary treatment violates the equal protection
13 provisions of the California Constitution.

14 110. SB 277 and Defendants' conduct purportedly implementing it serve
15 no compelling interest, are not narrowly tailored to serve any interest that can
16 override the compelling state interest in education, and fail to use the least
17 restrictive means necessary to further any state interest.

18 111. Refusing to admit IEP students additionally violates the Federal
19 Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400, *et seq.*),
20 which guarantees students with qualifying disabilities a free and appropriate public
21 education in the least restrictive environment.

22 112. Defendants' conduct harmed Plaintiffs as alleged throughout this
23 Complaint.

24 **COUNT II: INFRINGEMENT ON RIGHTS PROTECTED BY THE**
25 **U.S. CONSTITUTION**

26 113. Each preceding paragraph of this pleading is hereby incorporated by
27 reference.
28

1 114. Defendants' conduct infringes on the Plaintiffs' and their children's
2 fundamental rights, including parental rights, right to bodily integrity, right to
3 informed consent and to refuse medical intervention, right to privacy, and/or right
4 to free exercise of religion, by requiring Plaintiffs to choose between those rights
5 and the right to education.

6 115. Eliminating the existing exemptions and regulating medical
7 exemptions serves no compelling state interest, is not narrowly tailored to serve
8 any interest that can override the compelling state interest in education, and fails to
9 use the least restrictive means necessary to further any state interest.

10 116. Defendants' conduct deprives Plaintiffs of equal protection and due
11 process.

12 117. Automatic exclusion of students from schools without a hearing
13 violates the Plaintiffs' right to procedural due process.

14 118. Defendants' conduct harmed Plaintiffs as alleged throughout this
15 Complaint.

16
17 **COUNT III: VIOLATION OF FEDERAL FAMILY EDUCATIONAL**
18 **RIGHTS AND PRIVACY ACT (FERPA)**

19 119. Each preceding paragraph of this pleading is hereby incorporated by
20 reference.

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

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

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

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

3
4 **COUNT IV: VIOLATION OF CALIFORNIA CONFIDENTIALITY**
5 **OF MEDICAL INFORMATION ACT**

6 124. Each preceding paragraph of this pleading is hereby incorporated by
7 reference.

8 125. California Confidentiality of Medical Information Act (CMIA), Cal.
9 Civil Code §56.11 prohibits schools and agencies from gathering medical
10 exemption information to substantively review those exemptions.

11 126. Defendants' conduct, including gathering medical exemption
12 information to substantively review those exemptions, violates the CMIA.

13 127. Defendants' conduct harmed Plaintiffs as alleged throughout this
14 Complaint.

15 **COUNT V: VIOLATION OF CALIFORNIA INFORMATION**
16 **PRACTICES ACT**

17 128. Each preceding paragraph of this pleading is hereby incorporated by
18 reference.

19 129. The California Information Practices Act (IPA) (Cal. Civ. Code. §§
20 1798-1798.78) limits the collection, maintenance, and distribution of personal
21 information by state agencies.

22 130. Defendants' conduct, including collecting, maintaining, and
23 distributing the students' personal information, violates the IPA.

24 131. Defendants' conduct harmed Plaintiffs as alleged throughout this
25 Complaint.

26 **COUNT VI: VIOLATION OF CALIFORNIA HEALTH & SAFETY**
27 **CODE § 120440**
28

132. Each preceding paragraph of this pleading is hereby incorporated by reference.

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

"(e) A patient or a patient's parent or guardian may refuse to permit record sharing... (4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both. After 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.)

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

135. Defendants' conduct harmed Plaintiffs as alleged throughout this Complaint.

RELIEF REQUESTED

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

1. Declare unconstitutional and set aside SB 277 and its regulatory scheme;
2. Grant temporary, preliminary, and permanent injunctive relief prohibiting the enforcement of the unconstitutional ban on personal belief and religious objections and the restriction of medical choice exemptions;
3. Grant temporary, preliminary, and permanent injunctive relief immediately prohibiting the denial of school admission to the children of the individual Plaintiffs and all others similarly situated.

1 4. Award to Plaintiffs reasonable attorney's fees, expert witness fees,
2 and costs incurred in connection with this action; and

3 5. Grant such other and further relief as the Court deems just and proper.
4

5 DATED: July 1, 2016

Respectfully submitted,

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9 James S. Turner

10 Betsy E. Lehrfeld

11 Carl M. Lewis

12 Attorney for Plaintiffs
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RULE 5.1 CERTIFICATION

This action draws into question the constitutionality of a California statute.
Pursuant to Fed.R.Civ.P. 5.1(a), undersigned certifies that he has caused this
Complaint to be served on the California Attorney General by certified mail
addressed to:

Office of the Attorney General
1300 "I" Street
Sacramento, California 95814-2919

Office of the Attorney General
P.O. Box 944255
Sacramento, California 95814-2919

DATED: July 1, 2016

Carl M. Lewis
Attorney for Plaintiffs

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 1st day of July, 2016 at San Diego, California.

A handwritten signature in black ink, appearing to read "Ana Whitlow". The signature is fluid and cursive, with the first name "Ana" and last name "Whitlow" clearly distinguishable.

Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANA WHITLOW, Individually and as Parent and Next Friend of B.A.W. and D.M. F.-W., minor children, et al.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James S. Turner, Betsy E. Lehrfeld, Swankin & Turner, 1400 16th Street, NW #101, Washington, DC 20036, (202) 462-8800; Carl M. Lewis, 1916 Third Avenue, San Diego, CA 92101, (619) 232-0160

DEFENDANTS

STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION; TOM TORLAKSON, SUPERINTENDENT OF THE DEPARTMENT OF EDUCATION, in his Official Capacity, et al.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 U.S. Const., amend. I, IV and V; 20 U.S.C. §1232g

Brief description of cause:

Injunctive relief to enjoin application and enforcement of California SB277 and related statutes

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 07/01/2016 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____