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 10 *Governor Edmund G. Brown, Jr., Anne Gust, and*
 11 *Deputy Attorneys General Jonathan E. Rich and*
Jacquelyn Y. Young

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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15
 16 **Travis Middleton, et al.,**

17 Plaintiffs,

18 v.

19 **Richard Pan, et al.,**

20 Defendants.

LA CV16-05224-SVW-AGR

**REPLY BRIEF BY DEFENDANTS
 STATE OF CALIFORNIA,
 GOVERNOR BROWN, ANNE
 GUST, AND DEPUTY
 ATTORNEYS GENERAL
 JONATHAN E. RICH AND
 JACQUELYN Y. YOUNG IN
 SUPPORT OF THEIR MOTION
 TO DISMISS PLAINTIFFS'
 SECOND AMENDED
 COMPLAINT**

23 Courtroom: 10A (First Street
 Courthouse)
 24 Judge: Hon. Stephen V. Wilson
 Trial Date: None Set
 25 Action Filed: July 15, 2016

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs have again filed “Refusals for Fraud” in lieu of an actual response
3 to the many and varied procedural and substantive defects in Plaintiffs’ claims
4 against Defendants. *See* Pls.’ Refusal for Fraud, ECF Nos. 142, 143. Similar to the
5 Refusals for Fraud filed against Defendants’ motions to dismiss Plaintiffs’ First
6 Amended Complaint (FAC) and against the Magistrate Judge’s Report and
7 Recommendation, Plaintiffs again file indecipherable Refusals for Fraud that fail to
8 address any of the defects of their pleading. Accordingly, Defendants’ motions to
9 dismiss the Second Amended Complaint (SAC) should be granted, and this case
10 should be dismissed with prejudice.

11 On July 13, 2017, the District Court Judge accepted the findings and
12 recommendation of the Magistrate Judge and ordered Plaintiffs to file a SAC.
13 Order Accepting the Magistrate Judge’s Findings and Recommendation 1-2, ECF
14 No. 135. Disregarding the Magistrate Judge’s nineteen-page Report and
15 Recommendation detailing the various defects in their pleading, Plaintiffs filed a
16 SAC that is virtually identical to the FAC and simply repeats Plaintiffs’ prior
17 implausible claims, without any substantive amendment. In the SAC, Plaintiffs’
18 Refusals for Fraud against Defendants’ motions to dismiss the SAC and Plaintiffs’
19 Refusal for Fraud against the Magistrate Judge’s Minute Orders in Chambers,
20 Plaintiffs fail to explain why their second attempt to articulate identical claims with
21 identical allegations should be any more plausible now than when they were first
22 alleged over a year ago.

23 Plaintiffs contend that they “have paid filing fees and costs to have their issues
24 adjudicated by a certified trained judicial officer.” Refusal for Fraud 10, ECF No.
25 142. However, paying filing fees is not enough to meet the Rule 8 requirements of
26 plausible pleading. The SAC must allege “enough facts to state a claim to relief
27 that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
28 (2007). While *pro se* pleadings are to be liberally construed, a *pro se* action should

1 be dismissed if, after careful consideration, the Court concludes that the allegations
2 of the complaint disclose that no cognizable claim can be stated and that
3 amendment would be futile. *Cato v. United States*, 70 F.3d 1103, 1196 (9th Cir.
4 1995). Plaintiffs' submissions in opposition to Defendants' motions to dismiss fail
5 to establish the plausibility of their claims, and confirm that any amendment to their
6 pleading would be futile. The only material change to their pleading has been the
7 naming of the Magistrate Judge and counsel for the Defendants as defendants. Yet,
8 instead of explaining how naming additional defendants corrects the defects in their
9 pleading or addressing Defendants' immunity claims, Plaintiffs file baseless
10 Refusals for Fraud and an absurd Application for Default against the Magistrate
11 Judge. *See* Pls.' Application for Default, ECF No. 144.

12 Plaintiffs claim, without any legal or factual basis, that the "recommendations
13 of dismissal of the ... plaintiff's claims are erroneous as a matter of law." Refusal
14 for Fraud 11, ECF No. 142. Yet, Plaintiffs fail to cite to any opposing authority.

15 Plaintiffs fail to refute any of the immunity claims asserted by Defendants.
16 Restating a portion of the *Ex Parte Young* decision, Plaintiffs generally allege that
17 the defendants have violated their oaths of office by attempting to enforce an
18 unconstitutional statute and "none of the defendants can claim immunity from
19 breach of their oaths of office the United States Constitution and the Bill of
20 Rights." Refusal for Fraud 11, ECF No. 142. However, as discussed at length in
21 Defendants' motions to dismiss and in the Magistrate Judge's Report and
22 Recommendation, Plaintiffs' foundational claim, that Senate Bill 277 (SB 277) is
23 unconstitutional, fails as a matter of both state and federal law.

24 SB 277 is a mandatory school vaccination statute aimed at serving the
25 compelling state interest of protecting public health and safety against the spread of
26 communicable and potentially fatal diseases. Its enactment was a narrowly tailored
27 public health measure, not a conspiracy, and has been recognized as such for
28 decades by the U.S. Supreme Court, the California Supreme Court, and every other

1 federal and state court that has considered the issue. Plaintiffs’ conclusory and
2 unfounded beliefs that mandatory vaccination is unconstitutional falls far short of
3 the pleading threshold.

4 Because Plaintiffs have failed to plead a violation of their constitutional rights,
5 their conspiracy and racketeering claims also fail as a matter of law. Not only have
6 Plaintiffs failed to address how the SAC meets any of the pleading requirements for
7 civil conspiracy, but they have failed to explain how their claims can possibly
8 survive in the face of the unquestionable constitutionality of SB 277.

9 For the foregoing reasons, and for the reasons more specifically addressed in
10 Defendants’ motions to dismiss and the Magistrate Judge’s Report and
11 Recommendation, Defendants respectfully request that the Court dismiss Plaintiffs’
12 SAC, without leave to amend, and to dismiss this action with prejudice

13 Dated: September 28, 2017

Respectfully submitted,

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15 XAVIER BECERRA
16 Attorney General of California
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/s/ Jonathan E. Rich

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25 *Attorneys for Defendants the State of*
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27 *Brown, Jr., Anne Gust, and Deputy*
28 *Attorneys General Jonathan E. Rich*
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CERTIFICATE OF SERVICE

Case Name: Middleton, et al. v. Pan et al. No. 2:16-cv-05224-SVW-AGR

I hereby certify that on September 28, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**REPLY BRIEF BY DEFENDANTS STATE OF CALIFORNIA,
GOVERNOR BROWN, ANNE GUST, AND DEPUTY ATTORNEYS
GENERAL JONATHAN E. RICH AND JACQUELYN Y. YOUNG IN
SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS’ SECOND
AMENDED COMPLAINT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On September 28, 2017, I caused to be delivered the foregoing document(s) via email to Plaintiff Travis Middleton, by agreement with him, to the following address: Travis_m_93101@yahoo.com.

On September 28, 2017, I caused to be delivered the foregoing document(s) by first class mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 28, 2017, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

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