

1 James S. Turner, Esq. (D.C. Bar No. 82479)
2 *Pro Hac Vice*

3 Betsy E. Lehrfeld, Esq. (Cal. Bar No. 77153)

4 Swankin & Turner
5 1400 16th Street, NW #101

6 Washington, DC 20036

7 Telephone: (202) 462-8800

8 Facsimile: (202) 265-6564

9 E-mail: jim@swankin-turner.com;

10 betsy@swankin-turner.com

11 Robert T. Moxley, Esq. (Wyo. Bar. No. 5-1726)

12 *Pro Hac Vice*

13 Robert T. Moxley, P.C.

14 2718 O'Neil Avenue

15 Post Office Box 565

16 Cheyenne, Wyoming 82003-0565

17 Telephone: (307) 632-1112

18 Facsimile: (307) 632-0401

19 E-mail: vaccinelawyer@gmail.com

20 Kimberly M. Mack Rosenberg, Esq. (NY Bar. No. 2597045)

21 *Pro Hac Vice*

22 Law Office of Kimberly M. Mack Rosenberg

23 244 Fifth Avenue, Suite K-257

24 New York, NY 10001

25 Telephone: (917) 797-8033

26 Email: kmackrosenberg@gmail.com

27 Carl M. Lewis, Esq. (Cal. Bar No. 121776)

28 1916 Third Avenue

San Diego, California 92101

Telephone: (619) 232-0160

Facsimile: (619) 232-0420

Email: cmlaw@pacbell.net

Attorneys for Plaintiffs

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3
4 ANA WHITLOW, et al.,
5
6 Plaintiffs,
7 vs.
8 STATE OF CALIFORNIA, et al.,
9 Defendants.

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

**PLAINTIFFS’ MEMORANDUM OF
POINTS AND AUTHORITIES IN
REPLY TO SANTA BARBARA
COUNTY DEFENDANTS’
OPPOSITION TO PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

10 Courtroom: 13A
11 Judge: The Honorable Dana
Makato Sabraw
12 Trial Date: None Set
13 Action Filed: July 1, 2016
14 Hearing Date: August 12, 2016
Hearing Time: 1:30 p.m.

15 Plaintiffs respectfully submit this Reply Memorandum of Points and
16 Authorities in further support of their motion for a preliminary injunction, and in
17 reply to the memorandum filed by Defendants, Takashi Wada, M.D. and Charity
18 Dean, M.D., in their official capacities as agents, servants, employees or Officials of
19 the Santa Barbara County Department of Health (the “County Defendants”).
20 Plaintiffs herein incorporate by reference their reply brief submitted in further support
21 of Plaintiffs’ motion for a preliminary injunction and in reply to the opposition of the
22 State Defendants (Docket No. 37).

23 **I. PRELIMINARY STATEMENT**

24 The County Defendants’ “Opposition to Plaintiffs’ Motion for a Preliminary
25 Injunction” is directed to a motion Plaintiffs never filed.

26 Plaintiffs have moved for a preliminary injunction, asking the Court to return
27 California law to the *status quo ante* as it existed before SB 277. This would require
28

1 California, the Department of Education and the Department of Health to allow
2 children to obtain Personal Belief Exceptions, and participate in classroom-based
3 education, as families had been able to do for fifty-five years prior to SB 277.

4 While claims with respect to medical privacy and misuse of public funds are an
5 important part of Plaintiffs' First Amended Complaint ("FAC") (Doc. 11) plaintiffs
6 did not seek a Preliminary Injunction against the County of Santa Barbara or its
7 Department of Public Health specifically at this time. While the privacy law and other
8 claims against the County Defendants are well pled, these claims require further
9 discovery to determine if and when preliminary injunctive relief might be appropriate
10 with respect to them. It is thus simply not necessary to respond to the County
11 Defendants opposition to a motion Plaintiffs have not made.

12 When contacted by the County Defendants' counsel, Plaintiffs' counsel made
13 clear, on multiple occasions, that Plaintiffs' preliminary injunction motion was not
14 premised on the privacy law claims for relief (Twelfth through Fifteenth Claims for
15 Relief in Plaintiffs' FAC, Doc. 11, ¶¶ 178-196) or the claim concerning expenditure
16 of public funds in connection with alleged *ultra vires* activities in violation of
17 California Code of Civil Procedure § 526a (FAC, Doc. 11, Sixteenth Claim for
18 Relief, ¶¶ 197-198). (*See* Dec. of James S. Turner, Esq., at ¶¶ 10 and 15.) Plaintiffs
19 further discussed with counsel for the County Defendants Plaintiffs' position that the
20 preliminary injunction sought was based on grounds that would make it equally
21 applicable to all California counties and their health departments.

22 Plaintiffs even offered to stipulate to these facts with County Defendants to
23 avoid burdening the Court and the parties with unnecessary briefing, and the County
24 was amenable to that proposal. (*See* Turner Dec. at ¶¶ 11 and 13.) The County
25 Defendants provided a draft stipulation (Turner Dec. Ex. 1) to which Plaintiffs made
26 minor edits (Turner Dec. Ex. 2). Abruptly, without offering any further edits, the
27 County Defendants rejected Plaintiffs' proposed changes and informed Plaintiffs that
28 they would file an opposition to the preliminary injunction motion. (Turner Dec. ¶

1 14.) When County Defendants encountered difficulty with the Court’s electronic
 2 filing system and sought Plaintiffs’ agreement to accept a late filed opposition,
 3 Plaintiffs again took the opportunity to offer, as a professional courtesy, to enter into
 4 the stipulation. (Turner Dec. ¶ 15.) County Defendants again rejected this offer and
 5 instead filed their misdirected opposition.¹

6 **II. ARGUMENT**

7 With respect to those claims for which Plaintiffs actually sought injunctive
 8 relief, Plaintiffs have incorporated their moving memorandum (Docket No. 14-1) and
 9 Plaintiffs’ reply to the State Defendants (Docket No. 37). Plaintiffs have
 10 demonstrated that they meet the four prong showing required for the issuance of a
 11 preliminary injunction: likelihood of success on the merits; irreparable harm should
 12 the injunction not issue; that the balance of equities favors Plaintiffs; and that public
 13 interest supports injunctive relief. *See Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008).
 14 Since Plaintiffs seek no Preliminary Injunction against the County Defendants
 15 specifically at this time, it not necessary to respond further to the County’s arguments
 16 about why that is not appropriate.

17 County Defendants’ also contend that Plaintiffs lack standing. This is not the
 18 case. Organizational Plaintiff E4A Foundation (“E4A”) represents families and
 19 medical professionals throughout California, including in Santa Barbara, who are
 20 impacted by actions of all the Defendants – State and County – with respect to SB
 21 277. (See FAC, Doc. 11, ¶ 28.) The law is clear that:

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 23
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 25 ¹ County Defendants file no evidence in support of their motion and, further,
 26 their reliance on the June 24, 2016 letter regarding their Medical Exemption Pilot
 27 Program (Glaser Dec. Ex. 3 Doc. 13-2, at 31-33) for the truth of the matters contained
 28 therein is unavailing. As Plaintiffs’ First Amended Complaint alleges, this document
 was “an attempt to make [the County’s] ultra vires activity appear benign once its
 letter was leaked on the internet.” (FAC, Doc. 11, ¶ 76.)

1 ... an association has standing to bring suit on behalf of its members
2 when: (a) its members would otherwise have standing to sue in their
3 own right; (b) the interests it seeks to protect are germane to the
4 organization's purpose; and (c) neither the claim asserted nor the relief
5 requested requires the participation of individual members in the
6 lawsuit.

7 *Hunt v. Washington State Apple Advertising Comm'n*, 432 US 333, 343 (1977).

8 As set forth in the FAC, the plaintiff non-profit organization E4A Foundation
9 promotes equal access to public and private education and its members are affected
10 by SB 277 in many ways, including, but not limited to, issues concerning obtaining
11 medical exemptions, challenges to medical exemptions, and the impact of SB 277 on
12 parental decision making and informed consent to medical procedures. (FAC, Doc.
13 11, ¶ 28.) The claims raised in the FAC are germane to E4A's purpose to ensure
14 equal access to education, including access for children with medical and personal
15 belief exemptions, or those who face challenges with respect to such exemptions.

16 Plaintiffs submit herewith the declaration of Thelma Lossing, an E4A member
17 and Santa Barbara County resident, attesting to her challenges in obtaining medical
18 exemptions for two of her three children and her concerns with potential violations of
19 her family's privacy rights with respect to her children. (Lossing Dec. ¶ 4-7.) This
20 declaration clearly establishes E4A's standing with respect even to the claims not
21 raised by Plaintiffs' motion but addressed by County Defendants in their opposition.

22 Further, all Plaintiffs have standing against the County Defendants because the
23 County Defendants' activities – as detailed in the First Amended Complaint - with
24 respect to their Medical Exemption Pilot Program to gather personal information
25 about students and information concerning doctors writing medical exemptions,
26 collusion with the California Medical Board and others concerning medical
27 exemptions, and other activities (*see, e.g.*, FAC, Doc. 11, ¶¶ 66-81) impact the ability
28 of children to enroll in school and of children and families to exercise their

1 fundamental rights under State and Federal law. County Defendants' actions further
2 have a chilling effect throughout the State on physicians' ability and willingness to
3 write medical exemptions and parents' opportunity to obtain valid exemptions to
4 ensure their children access to school.

5 In sum, while Plaintiffs have established standing with respect to the County
6 Defendants, the County Defendants have raised no argument in opposition to
7 Plaintiffs' actual motion to which Plaintiffs can reply.

8 **III. CONCLUSION**

9 Based on the foregoing and Plaintiffs' moving papers, Plaintiffs respectfully
10 request that the Court preliminarily enjoin SB 277 and preserve the *status quo ante*
11 during the pendency of this action, preserving the fundamental right to an education
12 under the California Constitution to all children and allowing children with PBEs to
13 enroll in school immediately.

14
15 DATED: August 5, 2016

Respectfully submitted,

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18 By: /s/ James S. Turner

James S. Turner
Betsy E. Lehrfeld
Robert T. Moxley
Kimberly M. Mack Rosenberg
Carl M. Lewis

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21 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system, on behalf of all Plaintiffs:

**PLAINTIFFS’ MEMORANDUM OF POINTS AND AUTHORITIES IN
REPLY TO SANTA BARBARA COUNTY DEFENDANTS’ OPPOSITION TO
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION.**

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

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 August 5, 2016, at Washington, D.C.

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