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**FILED**  
Superior Court of California,  
County of San Francisco

**07/15/2019**  
Clerk of the Court  
BY: ERNALYN BURA  
Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF SAN FRANCISCO

8 KENNETH P. STOLLER, MD.

Case No. CGC-19-576439

9 Plaintiff/Petitioner,

10 FIRST AMENDED  
11 COMPLAINT/VERIFIED PETITION TO  
12 QUASH AN ADMINISTRATIVE  
13 SUBPOENA, FOR DECLARATORY AND  
14 INJUNCTIVE RELIEF AGAINST THE  
15 SUBPOENA AND IN SUPPORT OF AN  
16 ALTERNATIVE STANDARD OF  
17 VACCINE EXEMPTIONS RECOGNIZED  
18 UNDER CALIFORNIA LAW, FOR  
19 MONETARY DAMAGES FOR CIVIL  
20 CONSPIRACY, AND INJUNCTIVE  
21 RELIEF

22 vs.

23 DENNIS HERRERA, in his official capacity  
24 as the CITY ATTORNEY of the City of  
25 San Francisco, THE CITY AND COUNTY  
26 of SAN FRANCISCO, KIMBERLY  
27 KIRCHMEYER, in her official capacity  
28 as EXECUTIVE DIRECTOR, MEDICAL  
BOARD OF CALIFORNIA, CHRISTOPHER  
SHULTZ in his official capacity as Chief Deputy  
Director of the CALIFORNIA DEPARTMENT OF  
CONSUMER AFFAIRS, and JOHN and  
JANE DOES 1 THROUGH 5

Defendants/Respondents.

1 COMES NOW Kenneth P. Stoller MD, Plaintiff/Petitioner by his undersigned counsel  
2 and hereby alleges against the Defendants/Respondents as his FIRST AMENDED COMPLAINT  
3 as follows:  
4

## 5 INTRODUCTION

- 6
- 7 1. On May 8, 2019, the San Francisco City Attorney’s Office issued a press release  
8 about an Administrative Subpoena it had served on Plaintiff/Petitioner Kenneth P.  
9 Stoller, MD, who at the time had an office in San Francisco. The subpoena seeks,  
10 among other things, all of Dr. Stoller’s patients’ medical records for all vaccine  
11 exemptions he has written since 2016 (the year that California enacted SB 277 to  
12 eliminate non-medical exemptions for school entry).
  - 13 2. According to the press release and the subpoena, the purported basis of the  
14 investigation was an alleged public nuisance created by Dr. Stoller based on writing  
15 “fake” or “fraudulent” vaccine medical exemptions. In fact, Dr. Stoller (and other  
16 physicians) issues exemptions based on considerations not listed as CDC  
17 contraindications and precautions, (jointly referred to as “CDC guidelines”).  
18 However, as demonstrated herein, California law currently gives physicians complete  
19 discretion to issue medical exemptions beyond CDC guidelines, including family  
20 history and genetic considerations.
  - 21 3. The subpoena is an unprecedented, highly intrusive, and an illegal  
22 investigation into a physician’s medical practice under a politically motivated  
23 public nuisance investigation pretext. The likely purpose of this abusive  
24 public relations investigative stunt is to assist the City Attorney’s confederates  
25 in passing SB 276, which bill eliminates physician based medical exemptions.  
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1 SB 276 has recently passed the Senate and is now in the Assembly.

- 2 4. In addition, circumstances suggest that the City Attorney intends to use or  
3 share the patient medical records he is seeking in this subpoena with other  
4 agencies in an effort to circumvent federal and state constitutional privacy and  
5 other laws intended to protect patient medical and genetic information.  
6
- 7 5. One coercive litigation tactic being promoted by a likely confederate of the  
8 City Attorney which would be furthered by the City Attorney's subpoena, is  
9 the filing or threatening to file public nuisance civil actions against the  
10 families of children who received medical exemptions from Dr. Stoller and  
11 other like-minded physicians.  
12
- 13 6. Another use of this information may be to assist other investigative agencies  
14 which under established law cannot obtain this information. Such action and  
15 motivations, would constitute a civil conspiracy to violate state and federal  
16 laws.  
17
- 18 7. The same public nuisance theory used to ground this subpoena has been  
19 employed by this City Attorney in another large public health related issue,  
20 climate change. However, such an application of public nuisance theory has  
21 been rejected by the local federal district court, and strongly criticized by  
22 scholars as an abuse and misuse of public nuisance laws.  
23
- 24 8. The abuse of legal process is more egregious here because the City attorney is  
25 using this public nuisance pretextual investigation to circumvent state and  
26 federal privacy, as well as other laws protecting medical and genetic  
27 information, which laws protect citizens from what the California landmark  
28 privacy case decried as "government snooping."

1 9. This action, which pleads a variety of relief against the City Attorney, seeks to  
2 stop the City Attorney's efforts to use the pretext of a public nuisance  
3 investigation to obtain constitutionally and statutorily protected private  
4 medical and genetic information of Dr. Stoller's patients.

5  
6 10. Upon information and belief, another part of this conspiracy involves the  
7 filing of complaints with the Medical Board of California by one or more  
8 radical pro-vaccination groups which deny vaccine related injury for the  
9 purpose and with the specific intention of eliminating physicians who write  
10 broad medical exemptions specifically authorized by SB 277.

11 11. Upon information and belief, employees of the Department of Consumer  
12 Affairs ("DCA") tasked to investigate these complaints know or should have  
13 known that they these complaints are not legitimate, in that they may not even  
14 be patient specific, are politically motivated and were filed with the specific  
15 intent to harm physicians, including the Plaintiff.

16  
17 12. Upon information and belief, after these complaints were filed, employees of  
18 the Department of Consumer Affairs (DCA) entered into an agreement with  
19 these pro-vaccination extremists to provide them with confidential  
20 information to the detriment of these physicians, including the Plaintiff, for  
21 the intended purpose of achieving their unlawful goal to use the Medical  
22 Board as an instrument to target and eliminate Plaintiff and other like-minded  
23 physicians.

24  
25 13. In short, it appears that the City Attorney's subpoena is part of a broader  
26 concerted effort involving other actors to achieve several goals, including

27 a. Advancing the bogus "fake exemption" narrative created by Senator Pan,  
28

1 which false narrative is the primary PR tactic used to help him and his  
2 allies pass SB 276,

- 3 b. Help other government agencies obtain information about the vaccine  
4 exempt, which other efforts have only been partially successful heretofore,  
5  
6 c. As a possible initial step to identify and target the families of the vaccine  
7 exempt for public or private nuisance lawsuits as a coercive tactic to get  
8 them to vaccinate their children, all of which makes the Administrative  
9 Subpoena an illegitimate, constitutionally defective abuse of governmental  
10 process.  
11  
12 d. To assist other entities, including pro-vaccination extremist groups, in their  
13 efforts to continue to file bogus complaints with the Medical Board against  
14 Plaintiff and other like-minded physicians.

15  
16 **THE PARTIES**

17  
18 14. Plaintiff/Petitioner Kenneth P. Stoller, MD is a California licensed physician, who  
19 until the actions complained of herein, worked in a health care clinic in the City and  
20 County of San Francisco. As a result of the City Attorney's wild, unsupported and  
21 possibly tortious accusations in his press release, Dr. Stoller was terminated from his  
22 position. As of the date of this action, he lives and works in another county in  
23 California.

24  
25 15. Defendant/Respondent Dennis Herrera is the City Attorney for the  
26 Defendants/Respondents City and County of San Francisco, and is being sued in his  
27 official capacity. (Collectively sometimes referred to as the "San Francisco  
28 Defendants/Respondents.")

1 16. Defendant Kimberly Kirchmeyer is the Executive Director of the Medical Board of  
2 California, and is being sued in her official capacity on the Fifth and Sixth Causes of  
3 Action.

4 17. Defendant Christopher Shultz is Chief Deputy Director of the Department of  
5 Consumer Affairs and is being sued in his official capacity on the Fifth and Sixth  
6 Causes of Action.

7 18. John and Jane Does, 1-5 are presently unknown employees of the DCA who have  
8 conspired with pro-vaccine, vaccine injury denying extremists to target Plaintiff and  
9 other like-minded physicians who have written broad vaccine medical exemptions  
10 under SB 277. These individuals are being sued in their official and individual  
11 capacities on the Sixth and Seventh Causes of Action.

## 12 **FACTUAL BACKGROUND**

### 13 **The Standards of Medical Exemptions from Vaccines under SB 277 (Cal. Health 14 & Safety Code Section 120370)**

15 19. To fully understand this case, some legislative history of California vaccine law is  
16 necessary.

17 20. Up until 2015, California parents could opt-out of vaccinations for their children  
18 based on a personal belief exemption. But, as a result of the Disneyland measles  
19 outbreak that year, the California legislature passed SB 277 (amending Health and  
20 Safety Code 120325 *et seq.*) which eliminated the personal belief and religious  
21 exemptions.<sup>1</sup>

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<sup>1</sup> It was known at the time, but little publicized that 38% (73 of 194) of the individuals who contracted measles in the Disneyland epidemic got it from the vaccine. *See* Roy F, Mendoza L, Hiebert J, McNall RJ, Bankamp B, Connolly S, Lüdde A, Friedrich N, Mankertz A, Rota PA, Severini A. 2017. *Rapid*

1 21. As originally proposed to the Legislature, SB 277 would continue to allow medical  
2 exemptions from vaccines, but exemptions would be limited to a handful of narrow  
3 contraindications and precautions recognized by the CDC (Centers for Disease  
4 Control).

5  
6 22. Because of pushback/public uproar from the proposed narrow scope of CDC  
7 contraindications, the bill's authors, Senators Richard Pan and Ben Allen, were  
8 forced to include a broader definition of medical exemptions which included without  
9 limitation "family history." Moreover, with SB277, the phrase "contraindication"  
10 was stricken from Cal. Health & Safety Code section 120370, and in its place the  
11 Legislature enacted the words "not considered safe" [in the physician's  
12 recommendation, because the Legislature was heeding the public uproar against  
13 limiting physicians to narrow CDC contraindications.]

14  
15 23. The legislative history and public statements about the revised bill make it clear that  
16 physicians were given the discretion to issue medical exemptions for conditions far  
17 broader than the CDC's narrow contraindications. The statements by the legislators  
18 and others undercut the current negative PR campaign, which is evidenced by the  
19 City Attorney's office in its press release, that exemptions based on conditions  
20 beyond narrow CDC contraindications are somehow fake or fraudulent. Here are  
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24  
25 *identification of measles virus vaccine genotype by real-time PCR.* J Clin  
26 Microbiol 55:735–743. <https://doi.org/10.1128/JCM.01879-16>. Added to the 38%  
27 is the estimated 10% primary measles vaccine failure (i.e., children who receive  
28 the vaccine but do not develop sufficient antibodies to combat the disease) See  
<https://www.ncbi.nlm.nih.gov/pubmed/15176719>. That suggests that almost half  
of the 194 cases were vaccinated (and most of those got it from the vaccination).

1 some examples of government officials' views about medical exemptions under SB  
2 277:

3 a. The concluding sentence of Governor Jerry Brown's signing statement,  
4 dated June 30, 2015: "Thus, SB 277, while requiring that school children  
5 be vaccinated, explicitly provides an exception when a physician believes  
6 that circumstances – in the judgement and sound discretion of the physician  
7 – so warrant."

8  
9 b. Here is the Assembly Bill Analysis on SB277:

10 "A medical exemption letter can be written by a licensed physician that  
11 believes that vaccination is not safe for the medical conditions of the  
12 patient, such as those whose immune systems are compromised, who are  
13 allergic to vaccines, are ill at the time of vaccination, or have other medical  
14 contraindications to vaccines for that individual patient. Every state allows  
15 medical exemptions from school vaccination requirements. This  
16 determination is entirely up to the professional clinical judgment of the  
17 physician."  
18

19 c. The legislative intent of SB277 is further evidenced by the transcript of the  
20 official public hearings on SB227. *See e.g.* Assembly Committee hearing  
21 transcript, dated June 9, 2015:

22 "Rob Bonta: Thank you, Dr. Pan. And then finally, we have an amendment  
23 regarding the medical exemption and a physician's judgement. And I've  
24 heard from a number of constituents and Californians regarding concerns  
25 that a medical exemption is difficult to obtain or was difficult to obtain. I  
26 believe that current law states that a physician has complete, professional  
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1 discretion over the writing of a medical exemption. However, I have asked  
2 the author to take an amendment to clarify that a medical exemption is  
3 entirely within the professional judgement of a physician and we have  
4 agreement on that amendment.”

5 “SB277 bill author Richard Pan: Yes.”

6  
7 d. SB277 bill co-author Ben Allen in that same hearing stated:

8 “One of the things we’ve talked about over and over again is how  
9 important it is that there be a strong and robust medical exemption so that  
10 anybody who has a legitimate medical concern, genetic predisposition,  
11 some sort of immunological problem, they can go to a doctor anywhere in  
12 the State and get an exemption from that doctor.”

13  
14 e. Here is SB277 bill co-author Richard Pan further addressing the State  
15 Legislature during these hearings,

16 “If the physician feels there is a genetic association, with a sibling, a  
17 cousin, some other relative, it’s not safe for a vaccine, they can provide a  
18 medical exemption for that vaccine. There is no limitation....We are trying  
19 to create the space to allow doctors and their patients and their parents to  
20 work together, hand in hand.” [and] “... that may be family related, that  
21 therefore that child is also at increased risk even though that child has not  
22 yet suffered harm, then they can exercise their professional judgment to  
23 provide an exemption.”

24  
25 24. The medical issues referenced in the above-cited legislative history, such as  
26 “genetic association... with a...cousin” cited by Senator Pan are not CDC  
27 listed contraindications (or even temporary precautions) to vaccination.  
28

1 Rather, they are only precautions to vaccination recognized in different  
2 measure in various medical communities (i.e., integrative medical  
3 communities) to justify a medical exemption to vaccination.  
4

5 25. Physicians like Dr. Stoller have taken Senator Pan seriously and have based their  
6 vaccine exemption writing on the broad discretion allowed to them under the law.

7 **Senator Pan Changes His Mind and Now Wants Medical Exemptions Limited to**  
8 **Narrow CDC Guidelines, with the Medical Decision to Be Made by Public**  
9 **Health Officials Who Do Not See the Patient, Rather Than the Patient's**  
10 **Physician**

11 26. Before SB277 went into effect there were approximately 940 vaccine medical  
12 exemptions. In 2018, there were approximately 4000. Those numbers translate into  
13 0.2 percent of school age children which increased to 0.7 percent of children who  
14 received medical exemptions.

15 27. As a result of this 0.5 percent increase, and an uptick of measles cases in California,  
16 (which is primarily a result of adults who contract the disease while traveling  
17 abroad), Senator Pan has introduced SB 276, which removes medical exemptions  
18 from physicians and places the decision in the hands of state or local public health  
19 officials who do not examine the patient. Under SB 276, medical exemptions are  
20 granted only for CDC approved guidelines, which not incidentally, the CDC  
21 recommends be implemented by a physician who actually sees the patient. So, SB  
22 276 is not even completely consistent with the CDC guidelines.  
23

24 28. SB 276 also sets up a reporting mechanism in which all current medical exemptions  
25 will be rescinded if they are not written in accordance with CDC guidelines.

26 Therefore, the very thing Senator Pan and his supporters could not achieve in the SB  
27 277 legislative session, is proposed to become law in this session under SB 276.  
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1                   **The Current Measles Situation in the Bay Area**

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3                   29. So far in 2019, in the San Francisco Bay Area, there have been 38 reported measles  
4                   cases, 28 of which were in adults (half of whom contracted the disease while  
5                   traveling abroad.) [https://www.sfchronicle.com/health/article/Measles-cases-jump-](https://www.sfchronicle.com/health/article/Measles-cases-jump-to-38-in-California-amid-13795838.php)  
6                   [to-38-in-California-amid-13795838.php](https://www.sfchronicle.com/health/article/Measles-cases-jump-to-38-in-California-amid-13795838.php). There is no published information as of yet  
7                   as to how many of the 10 measles cases in children were the wild measles strain, (i.e.,  
8                   unvaccinated children, versus children who contracted symptoms from the vaccine,  
9                   like the 38% in the Disneyland outbreak), or how many were vaccinated and  
10                  contracted wild measles due to primary vaccine failure, which may be 10% or more.  
11                  See “The genetic basis for measles vaccine failure” [Jacobson RM<sup>1</sup>](#), [Poland GA](#).

12                  <https://www.ncbi.nlm.nih.gov/pubmed/15176719>.

13  
14                  30. Based on this data, it would appear that if there were a public nuisance from the Bay  
15                  Area measles outbreak, the primary cause or vector of the outbreak and source of the  
16                  public nuisance would be unvaccinated adults, followed by vaccinated children who  
17                  either have primary vaccine failure, or vaccine shedding and unvaccinated children,  
18                  probably in equal measure. Picking on the unvaccinated but medically fragile  
19                  population is illogical in that it does not address the primary cause.

20  
21                  31. In some sense, the City Attorney’s actions might be viewed as discriminatory. There  
22                  is at present, no direct or indirect method to compel the primary vector – traveling  
23                  adults who are either unvaccinated or who have experienced secondary vaccine  
24                  failure (i.e., their vaccine wore-off in effect) – to get a booster or take a titer test to  
25                  ensure adequate titer levels are met in order to be considered fully vaccinated. So,  
26                  the City Attorney is targeting a class of individuals for whom the state does have  
27

1 compulsory vaccination powers, namely children, and that sounds like age  
2 discrimination.

3  
4 **Almost all Adults are Unvaccinated According to the CDC**

5 32. Under CDC definitions and the CDC’s adult vaccination schedule, the overwhelming  
6 majority of American adults are considered "unvaccinated" because they have not  
7 received all recommended vaccines and boosters. The CDC surveys adults every  
8 year, so vaccination coverage rates are readily available. Walter W. Williams et al.,  
9 "Surveillance of Vaccination Coverage Among Adult Populations- United States,  
10 2015," *Morbidity and Mortality Weekly Report* 66, no. 11 (2017): 1-  
11 28, <https://www.cdc.gov/mmwr/volumes/66/ss/pdfs/ss6611.pdf>

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14 33. For example, the coverage rate for Hepatitis A currently hovers around 9% and  
15 pneumococcal disease around 20%. *Id.* The number of persons who receive every  
16 CDC recommended vaccine and booster is very small, which together with lack of  
17 titers, means that approximately 90-99% of the City of San Francisco is likely  
18 “unvaccinated,” per the CDC. The logical implication of the City Attorney’s public  
19 nuisance theory is that most San Franciscans contribute to the public nuisance created  
20 by people being un- or under vaccinated.

21  
22 **The Other Side of the Equation: Known and Proven Harm from Vaccination**

23 34. In January 2019, U.S. Federal Circuit Judge Newman issued a dissent from an *en*  
24 *banc* denial in a case in which the vaccine court denied compensation to an alleged  
25 vaccine injured child. Judge Newman discussed the legislative history of the 1986  
26 National Vaccine Act which granted legal immunity to vaccine manufactures from  
27  
28

1 lawsuits and instead set up a taxpayer fund to be paid to those who suffered vaccine  
2 injury. Her discussion is relevant to this case, and can scarcely be improved on:

3 “The National Childhood Vaccine Injury Act of 1986

4  
5 It had long been known that a small percentage of childhood vaccinations have led  
6 to **grave injury and permanent disability**, as discussed in the legislative record:  
7 Childhood vaccines are essential to maintain the health of our society. They have  
8 been invaluable weapons against the dread diseases that used to kill or injure  
9 hundreds of thousands of children every year: polio, measles, pertussis, diphtheria,  
10 tetanus, rubella, mumps, and smallpox. But while these vaccines have brought the  
11 gift of life and health to millions, there are a very small number of children every  
12 year who are injured by unpredictable side effects of the vaccines through no fault  
13 of their own or the vaccine manufacturers. 132 Cong. Rec. S17,343–02 (1986)  
14 (statement of Sen. Kennedy). The House Report reiterated the concern for  
15 unforeseeable injury flowing from compulsory vaccinations: While most of the  
16 Nation’s children enjoy greater benefit from immunization programs, a small but  
17 significant number have been gravely injured. . . . . But it is not always possible  
18 to predict who they will be or what reactions they will have. And since State law  
19 requires that all children be immunized before entering school, most parents have  
20 no choice but to risk the chance—small as that may be—that their child may be  
21 injured from a vaccine. H.R. Rep. No. 99-908, at 4–6 (1986), as reprinted in 1986  
22 U.S.C.C.A.N. 6344, 6345–46. **The legislative record states that about one half  
23 of one percent of children each year experience vaccine-related injury  
24 [footnote omitted]; and with four million births each year in the United  
25 States, this is about 20,000 vaccine injuries per year. . . .**  
26 (Emphasis added)

27  
28 *Oliver v. Sec HHS*, 17-2540, January 9, 2019 Order, pages 2-3,  
<http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/17-2540.Order.1-9-2019.1.pdf>.

35. In the mid 1980’s when the federal National Childhood Vaccine Injury Act was being  
debated, children received approximately 22 doses of 7 different vaccines. In 2019,  
children receive between 69 to 74 doses of more than 20 different vaccines. It stands  
to reason that administering more than three times the number of vaccine shots would  
increase or significantly increase the number of gravely and permanently disabled  
from vaccination. Just a very conservative half linear increase would make that  
number .75%.

1 36. That means that the expected severely and permanently injured vaccine rate is greater  
2 than the 0.7% current rate of medical exemptions, which is some indication that there  
3 are not an excessive number of medical exemptions in the state.

4 37. Since its creation, the Office of Special Masters, known as vaccine court, has paid out  
5 4 billion dollars to the vaccine injured.

6 [https://www.hrsa.gov/sites/default/files/hrsa/vaccine-compensation/data/monthly-stats-  
7 nov-2018.pdf](https://www.hrsa.gov/sites/default/files/hrsa/vaccine-compensation/data/monthly-stats-nov-2018.pdf).

8 38. Most importantly, from the time Congress first considered unavoidably severe and  
9 permanent vaccine injury in the 1980's, the literature documenting serious injury and  
10 death resulting from childhood vaccination has become depressingly massive, but  
11 mostly ignored by the policy makers, professional medical association and the media,  
12 and hidden by the manta that "vaccines are safe and effective and side effects are  
13 rare." Some have postulated this may be caused by Pharma influence and corruption.  
14 As evidenced by recent opioid criminal prosecutions, Pharma influence and its  
15 criminal wrongdoings are under increased scrutiny by the authorities, but not in the  
16 vaccine arena. This action necessarily involves exploring these issues at trial, as part  
17 of the claim that the alternative standard of care employed by physicians like Dr.  
18 Stoller and endorsed by Senator Pan, (version SB 277), is safer for children than  
19 Senator Pan's SB 276 version. (*See* the Fifth Cause of Action, page 29, *infra*)

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23 **The City Attorney's Past Unsuccessful Attempt to Misuse the Public Nuisance**  
24 **Laws on a Large Public Health Problem**

25 39. There is no precedent for the City Attorney's attempt to use the general public  
26 nuisance statute as a basis to investigate a physician's medical practice. However,  
27 this City Attorney has unsuccessfully attempted to use a public nuisance theory to try  
28

1 to remedy another large public health related problem, global warming, which is  
2 estimated to kill 150,000 people per year around the world.<sup>2</sup> His and other City  
3 Attorneys’ attempts to use public nuisance laws as a method of remedying this large,  
4 complicated public health issue has been rejected by the courts under the  
5 displacement doctrine,<sup>3</sup> which doctrine is applicable in this case since California has  
6 an established administrative agency which deals with the exact issue that is the  
7 subject of the City Attorney’s pretextual so-called “investigation.” It is called the  
8 Medical Board of California.

10 40. These misguided attempts by municipalities to contort public nuisance laws into a  
11 vehicle to address these large societal health public policy problems have been  
12 roundly criticized by scholars.<sup>4</sup>

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18 <sup>2</sup> See “Impact of regional climate change on human health Jonathan A. Patz1,2, Diarmid  
19 Campbell-Lend. [http://www.precaution.org/lib/05/warming\\_harms\\_health.051117.pdf](http://www.precaution.org/lib/05/warming_harms_health.051117.pdf).

20 <sup>3</sup> See *City and County of San Francisco et v BP* 3:17-cv 06012. Copy of decision can be found at:  
21 [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180625_docket-317-cv-06011_order-1.pdf)  
22 [documents/2018/20180625\\_docket-317-cv-06011\\_order-1.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180625_docket-317-cv-06011_order-1.pdf) (appeal of complaint dismissal  
23 pending before the 9<sup>th</sup> Circuit). See generally, Griffin, Paul A, and Jaffe, A Myers, “Are Fossil  
24 Fuel firms informing Investors well enough about the risk of climate Change”, *Journal of Energy*  
25 *& Natural Resource Law*. <https://www.tandfonline.com/doi/abs/10.1080/02646811.2018.1502240>

24 <sup>4</sup> The misuse of public nuisance laws by municipalities has received extensive scholarly criticism.  
25 See e.g. “Waking the Litigation Monster, The misuse of public nuisance litigation.” March 2019,  
26 U.S. Chamber, Institute for Legal Reform.  
27 [https://www.instituteforlegalreform.com/uploads/sites/1/The-Misuse-of-Public-Nuisance-](https://www.instituteforlegalreform.com/uploads/sites/1/The-Misuse-of-Public-Nuisance-Actions-2019-Research.pdf)  
28 [Actions-2019-Research.pdf](https://www.instituteforlegalreform.com/uploads/sites/1/The-Misuse-of-Public-Nuisance-Actions-2019-Research.pdf); Thomas W. Merrill, *Is Public Nuisance a Tort?*, 4(2) J. TORT L. ii  
(2011), [https://scholarship.law.columbia.edu/faculty\\_scholarship/823](https://scholarship.law.columbia.edu/faculty_scholarship/823) (concluding that it  
shouldn’t be).

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**The Likely Goals of the Possible Concerted Action**

41. It is clear from Senator Pan’s introduction of SB 276<sup>5</sup> and his traveling road show throughout the state <sup>6</sup> to generate support for his bill, that the primary PR tactic is to denounce medical exemptions beyond CDC guidelines as “fake” or “fraudulent.” The irony is of course that physicians like Dr. Stoller, who believed and followed Senator Pan’s and his supporters’ statements that it was permissible to do under SB 277, are now being vilified by him for doing what he and his supporters said they could do.
42. The City Attorney’s press release on May 8<sup>th</sup> about a so-called “investigation” of Dr. Stoller’s medical exemption writing practices fits perfectly into Senator Pan’s false narrative, and increases the likelihood that SB 276 will become law.
43. However, beyond advancing the goal of passing SB 276, in the public hearing before the Senate Health Committee on April 24, 2019, Senator Pan advised his co-committee members that the Medical Board needed the bill because it was having trouble ~~in~~ obtaining the medical records of physicians writing these non-CDC based medical exemptions.

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<sup>5</sup> “Dr. Richard Pan Introduces SB 276 to Combat Fake Medical Exemptions that Put Children and Communities at Risk” <https://sd06.senate.ca.gov/news/2019-03-26-dr-richard-pan-introduces-sb-276-combat-fake-medical-exemptions-put-children-and>

<sup>6</sup> “Dr. Richard Pan, Los Angeles Public Health Officials, and Coalition of Community Advocates Release Data on Economic Impact of Measles Outbreaks and Cost to California Taxpayers” <https://sd06.senate.ca.gov/news/2019-05-10-dr-richard-pan-los-angeles-public-health-officials-and-coalition-community-advocates>



1 44. Fourteen days later, the City Attorney subpoenas the medical records of *all* of Dr.  
2 Stoller’s patients (not only those in San Francisco which is the clear limit of the City  
3 Attorney’s jurisdiction and power). Discovery in this case will determine whether this  
4 was a coincidence, or a part of a concerted effort among confederates to violate Dr.  
5 Stoller’s patients’ constitutional rights and right to personal autonomy to protect  
6 sensitive medical and genetic information.  
7

8 45. Although the use of a public nuisance investigation appears to be completely  
9 unprecedented as a basis for a municipality’s “investigation” of a physician’s medical  
10 decision making, there are two antecedents. First, this City Attorneys’ global warning  
11 lawsuits against the oil companies under a now rejected public nuisance theory, as  
12 discussed above.  
13

14 46. Second, a well-known pro-vaccine law professor, who works a stone’s throw from  
15 the City Attorney’s office, advocates the use of public nuisance lawsuits against the  
16 vaccine exempt children and their families. *See*. “Vaccines and the Law, An  
17 Advocate’s Toolkit,” page 18. (“Non-vaccinating individuals who cause an  
18 outbreak may be sued under public nuisance laws. Under state statute or local  
19 ordinances, the appropriate government entity can sue for the behavior of one person  
20 that can, among other things, be injurious to health. When the harm affects a  
21 community, it’s a public nuisance, and the state can sue.”)

22 [https://www.voicesforvaccines.org/content/uploads/2014/10/Vaccines-and-the-Law-  
23 Toolkit.pdf](https://www.voicesforvaccines.org/content/uploads/2014/10/Vaccines-and-the-Law-Toolkit.pdf).  
24

25 47. Of course, merely advocating a legal strategy is fully protected speech under the First  
26 Amendment. But actions in furtherance of a concerted effort to violate the  
27  
28

1 constitutional and statutory rights of Dr. Stoller's patients, might not be. Discovery in  
2 this case may provide further information.

3  
4  
5  
6 **The Vigilante Vaccine Injury-Deniers file Medical Board complaints and are provided**  
7 **confidential information to harm Plaintiff and other like-minded physicians**

8 48. Upon information, and belief, certain individuals have appeared who seem to deny  
9 that vaccines cause severe or permanent harm and that SB 277 wrongly authorizes  
10 physicians to write medical vaccine exemptions much broader than the CDC  
11 guidelines. These individuals and groups are self-appointed, non-governmental  
12 vaccine guardians to rid the medical profession of Plaintiff and other like-minded  
13 physicians.

14  
15 49. The tactic they have admitted to employ is to file Medical Board disciplinary  
16 complaints against Plaintiff and other like-minded physicians.

17 50. At least one of these vigilante vaccine injury deniers has bragged on social media that  
18 he is secretly receiving confidential information about the current status of the  
19 Medical Board's investigation of the Plaintiff.

20  
21 51. Upon information and belief, it appears as though certain as yet, unknown employees  
22 of the DCA have entered into an agreement with this vigilante vaccine-injury denier  
23 to illegally share confidential information about the Plaintiff.

24 **Tying it all together**

25 52. Combining these facts together leads to the following conclusions:

- 26 a. SB 277 was intended to give physicians the power and discretion to write  
27 exemptions much broader than the CDC guidelines.  
28

- 1 b. Senator Pan and his allies used the .5% increase in medical exemptions (.2%  
2 before SB 277 removed the PBE to .7% in 2018), and the fact that there have been  
3 a greater numbers of measles cases this year, as a reason or pretext to eliminate the  
4 broad medical exemptions he was forced to allow because of pushback against his  
5 contraindication-only based exemption language in the original SB 277 version.  
6 And to ensure physicians like Dr. Stoller would no longer write these exemptions,  
7 SB 276 takes away the physician's exemption decision making ability, which was  
8 an important reason why SB 277 was passed.
- 9
- 10 c. However, based on the Bay area figure (28 of 38 measles cases were in adults, and  
11 likely half of the 10 childhood measles cases got it from the vaccine or primary  
12 vaccine failure), the actual cause of the so called "public nuisance" or the primary  
13 vector of the measles outbreak has nothing to do with children exempt from  
14 vaccination, let alone children who are Dr. Stoller's patients. The primary vector is  
15 unvaccinated adults and vaccinated children.
- 16
- 17 d. When the Congressionally endorsed estimate of severe vaccine injury rate is  
18 compared to the percentage of medically vaccine exempt children in California, it  
19 would seem that far too few medical exemptions are being given to California  
20 children.
- 21
- 22 e. Either there are a number of coincidences which have occurred in a relatively short  
23 period of time amongst people who have publicly expressed a similar vision of  
24 vaccination problems and solutions, and which coincidental action advances their  
25 apparent common agenda, or these people are acting in concert, and one of the  
26 tactics or objectives is to circumvent federal and state law to illegally obtain Dr.  
27 Stoller's patients' private medical and genetic information.  
28

1 f. Certain as yet unknown DCA employees appear to be working with one or more  
2 self-appointed pro-vaccination extremists who deny that vaccines cause significant  
3 injury in order to stop Plaintiff and other like-minded physicians who follow SB  
4 277 from writing broad based medical exemptions.  
5

6 **FIRST CAUSE OF ACTION/REQUEST FOR RELIEF**  
7 **AGAINST THE SAN FRANCISCO RESPONDENTS**

8 **CAL CODE CIV. PRO. 1987.1**  
9 **TO QUASH THE CITY ATTORNEY’S ADMINISTRATIVE SUBPOENA**

10 **a. Lack of Statutory Authority**

11 53. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 – 52 above.

12 54. The Medical Board of California, has the statutory authority to investigate the  
13 medical decision making of California licensed physicians and subpoena a  
14 physician’s records. *See* Cal. Bus. & Prof. Code Part 5 Medicine, and Cal.  
15 Government Code section 111080 *et seq.*), subject to compliance with and judicial  
16 review of a patient’s state constitutionally protected privacy and other rights. *See*  
17 *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal. App. 3d 669, and  
18 its progeny.

19 55. Municipalities have not been given the same statutory authority to oversee physician  
20 conduct or obtain a physician’s medical records, or keep those private medical  
21 records confidential.

22 56. The subpoena is purportedly based on the City Attorney’s authority under San  
23 Francisco Administrative Code §2A.231. However, that section requires a  
24 prerequisite showing that “State law grants to the City Attorney the duty or power to  
25 seek enforcement of any provision of State law”. Nothing in Cal. Health & Safety  
26  
27  
28

1 Code section 120325 *et. seq.* grants authority to the City Attorney to enforce the State  
2 law under which physicians write medical exemptions.

3 57. Finally, there is no direct California legal precedent which allows a municipality to  
4 obtain a physician's medical records and genetic information.  
5

6 **b. CFR based Deidentification Does not Adequately Protect the Patient's**  
7 **Privacy Rights**

8 58. 45 CFR 164.541(b)(2) deidentification of medical records is insufficient to protect  
9 the patients' privacy and other rights protected by state and federal law, *See* the  
10 widely cited, Rothstein, M. "Is Deidentification Sufficient to Protect Health Privacy  
11 in Research?" *Am. J. Bioeth.* 2010,  
12 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3032399/>. (concluding that it is not).  
13

14 59. If deidentification does not protect patient privacy in research, *a fortiori*, it does not  
15 protect patient privacy by a government agency conducting an investigation, the basis  
16 of which is that the patients whose records are being sought are the actual  
17 cause/vector of a public nuisance. Since the City Attorney's office has no statutory  
18 right to patient medical records, there is no specific statutory obligation to keep the  
19 nominally deidentified patient information confidential. And since deidentification  
20 does not protect Dr. Stoller's patients' privacy rights, the state constitutional privacy  
21 protections under *Gherardini* and its progeny apply  
22

23 60. The fact that all the requested medical records contain genetic test results heightens  
24 the protection accorded to medical records under the federal Genetic Information  
25 Nondiscrimination Act of 2008 (GINA) and even stronger state law protecting  
26 genetic information (CalGINA). The fact that Dr. Stoller's medical records contain  
27 genetic testing information makes it even more unlikely that CFR based  
28

1 deidentification would adequately protect patient identities. *See* the Rothstein, *et al*  
2 article cited above at pages 5-6). Unlike the Medical Board, the City Attorney's  
3 office lacks confidentiality provisions relating to medical records, and would be free  
4 to share them with any government agency, which seems a likely outcome. *This*  
5 *alone requires the quashing of the City Attorney's subpoena. See also* Cal. Health &  
6 Safety Code section 120440 – allowing parents to opt-out of vaccination record  
7 sharing.  
8

9 61. Moreover, Defendants City and County of San Francisco operate schools that  
10 already have copies of all medical exemptions for its students because the  
11 California statute (section 120370) requires the schools to keep copies. So, if  
12 Plaintiff were required to produce to the Defendants deidentified medical  
13 records for each patient/student, then all the Defendants would need to do is  
14 match up the medical record with the unredacted medical exemption already  
15 on file with Defendants' school records.  
16

17 62. There is no basis to conclude that the City Attorney would not share records  
18 amongst its various departments or states agencies, triangulate data, or engage  
19 in other countless ways to circumvent the privacy and the confidentiality of  
20 the records. It remains to be seen if the City Attorney acknowledges any  
21 limitation to his use or sharing of these medical records.  
22

23 63. In short, the deidentification limitation contained in the subpoena does not prevent  
24 the City, or those with whom the City shares the information, from reconstructing  
25 personal identifying information from other sources. Thus, deidentification is  
26 insufficient to protect the patients' privacy rights under federal and state law, even on  
27 the counterfactual assumption that the Defendants had the statutory authority to  
28

1           conduct an investigation of a physician’s medical practice and/or to subpoena  
2           protected medical records. Accordingly, the full panoply of privacy protection under  
3           federal and state law applies.

4  
5       64. Further evidence of the inadequacy of deidentification surfaced after the filing of the  
6           initial Complaint in the form of a June 22, 2019 San Jose Mercury article in which  
7           the reporter somehow obtained FERPA and state school privacy protected school  
8           records from eight Bay Area school districts. The records obtained by the newspaper  
9           included the actual student vaccine exemptions, including the name of the physician  
10          who issued them. [https://www.mercurynews.com/2019/06/20/these-anti-vaccine-  
11          doctors-are-signing-a-ton-of-bay-area-medical-exemptions/](https://www.mercurynews.com/2019/06/20/these-anti-vaccine-doctors-are-signing-a-ton-of-bay-area-medical-exemptions/). Either these school  
12          districts violated FERPA and/or state school privacy laws, or school records cannot  
13          be protected against a public records request.

14  
15       65. The public release of these presumably protected school records, as evidenced by this  
16          newspaper article, shows the path of how this particular newspaper or other  
17          newspapers could obtain the nominally deidentified complete medical records of Dr.  
18          Stoller’s patients should the Court decide to enforce the City Attorney’s subpoena.  
19          Dr. Stoller’s patients have a right of privacy to their private medical information,  
20          irrespective of deidentification, and the Court should not allow what could be, in light  
21          of this article, the first step in the public dissemination of this protected information.

22  
23           **c. The Purported Nuisance Basis Is a Bad Faith Pretext to Conduct an Unlawful**  
24           **Investigation Against State and Federally Protected Medical and Genetic**  
25           **Records**

26       66. The California nuisance statute (Cal. Civ. Code §3479) provides: “Anything which is  
27          injurious to health . . . is a nuisance.” What is the alleged or possible harm being  
28

1 investigated in this public nuisance investigation? Dr. Stoller's writing medical  
2 exemptions for school age children? As demonstrated above, most of the 2019  
3 measles cases in the Bay Area involved traveling adults or vaccinated children. So  
4 why is the City Attorney investigating a doctor writing medical exemptions?  
5

6 67. Nuisance laws primarily deal with land use and zoning issues. They were never  
7 intended to deal with complicated societal health issues. Recently, the San Francisco  
8 City Attorney and other city attorneys have attempted to misapply public nuisance  
9 laws to another public health crises, global warming. As indicated above, these  
10 efforts have failed and have been criticized by scholars. (See pages 14-15 above at  
11 paragraphs 39 and 40.)  
12

13 68. Using a public nuisance theory makes even less sense as a basis to investigate a  
14 physician for writing medical exemptions. Vaccine exemptions in California are  
15 authorized by Cal. Health & Safety Code Section 120370. There is no provision for  
16 governmental review, scrutiny or interference. Not even the Medical Board has the  
17 power to overturn medical exemptions under current law. There is no possible  
18 judicial review or judicial revocation of a medical exemption.  
19

20 69. Furthermore, there would be no legal basis for a court in public nuisance litigation to  
21 enjoin a physician from writing an exemption in a particular case since the action is  
22 expressly granted by statute which is a complete defense to a nuisance claim. (See  
23 Cal. Civ. Code §3782).  
24

25 70. What kind of damage claim could the City Attorney make against Dr. Stoller? Who  
26 has been actually injured or harmed by the exemptions he has written based on the  
27 2019 Bay Area statistics? The fact that there are no realistic judicial remedies makes  
28 a nuisance lawsuit against Dr. Stoller an exercise in futility.



1 71. The bad faith of this subpoena is further demonstrated by two facts and  
2 circumstances. First, as indicated, a likely goal of the City Attorney’s action is to  
3 identify the families of the vaccine exemptees as a target of nuisance lawsuits (or  
4 more likely the threat of a nuisance lawsuit preceded by a nuisance investigation).  
5 The patients who received an exemption are the actual vectors of whatever harm or  
6 injury the City Attorney claims is a result of medical vaccines not being administered  
7 to them. A likely confederate of the City Attorney’s public nuisance investigation is  
8 publicly advocating for public nuisance actions against the vaccine exempt.  
9

10 72. Second, this whole subpoena show/investigation seems geared towards assisting  
11 Senator Pan, a likely confederate of the City Attorney in passing SB 276. An  
12 “investigation” of a physician writing “fake” medical exemptions makes the wholly  
13 unsupported fake investigation false narrative sound more plausible, since a respected  
14 City Attorney of a major California city is now investigating the issue.  
15

16 **d. The Subpoena is Fatally and Irreparably Overbroad**  
17

18 73. Not even the Medical Board - which does have the statutory jurisdiction over  
19 Plaintiff –would be authorized to subpoena all of Plaintiff’s patients’ medical  
20 records *carte blanche*. See Cal. Bus. & Prof. Code section 2225(a).  
21

22 74. The Administrative Subpoena’s request for all patient medical records is also  
23 overbroad because it is not limited to San Francisco residents. A municipality’s  
24 jurisdiction ends at its borders. *City of S. Pasadena v. L.A. Terminal Ry. Co.*, 109 Cal.  
25 315, 321 (1895). The City Attorney has no legal right or basis to obtain the medical  
26 records of non-San Francisco residents. The failure of the Administrative Subpoena  
27  
28

1 to so limit the request makes it overbroad and unenforceable as an unreasonable and  
2 *ultra vires* act.

3  
4 **SECOND CAUSE OF ACTION**  
5 **AGAINST THE SAN FRANCISCO DEFENDANTS/RESPONDENTS**

6 **DECLARATORY JUDGMENT THAT THE CITY ATTORNEY’S REQUEST FOR**  
7 **PATIENT MEDICAL RECORDS VIOLATES DR. STOLLER’S PATIENTS’ RIGHT OF**  
8 **PERSONAL AUTONOMY OVER THEIR MEDICAL INFORMATION EVEN IF**  
9 **INITIALLY DEIDENTIFIED, AND A PERMANENT INJUNCTION BARRING THIS**  
10 **AND FUTURE ATTEMPTS BY THE DEFENDANTS AGAINST PLAINTIFF**

11 75. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 - 74 above.

12 76. Plaintiff seeks a declaratory judgment under Cal. Code Civ. Proc. 1060 *et. seq.*, that  
13 the administrative subpoena violates Dr. Stoller’s patients’ right of personal  
14 autonomy over the medical information contained in their medical records, and a  
15 permanent injunction barring the Defendants from seeking this information from Dr.  
16 Stoller, now or in the future.

17 77. Per the words of the landmark decision in *Gherardini*:

18 The data here sought to be obtained would allow the administrative agency to create  
19 literally a ‘cradle-to-grave profile on every [Californian] without his knowledge  
20 without his consent. Furthermore, fundamental to the privacy of medical information  
21 ‘is the ability to control [its] circulation!!!!’ While the statute requires the  
22 governmental agency recipient to keep the matters disclosed confidential, [which is  
23 something the Defendants in this case are not statutorily required to do] a discerned  
24 objective of the constitutional amendment is to keep these areas of privacy  
25 specifically away from the eyes and ears of governmental agents to forestall  
26 ‘governmental snooping.’”

27 *Board of Medical Quality Assurance v. Gherardini, supra* (1979) 93 Cal. App. 3d at  
28 678.

78. Based on *Gherardini*, and the fact that deidentification does not adequately protect  
the privacy of the patients’ medical records and genetic information, the Court should

1 declare that the Defendants' request for nominally deidentified medical records  
2 violates the patients' right of personal autonomy to control access to their medical  
3 and genetic information.  
4

5 **THIRD CAUSE OF ACTION**

6 **AGAINST THE SAN FRANCISCO DEFENDANTS/RESPONDENTS**

7 **DECLARATORY JUDGMENT THAT THE CITY ATTORNEY DOES NOT**  
8 **HAVE THE STATUTORY AUTHORITY TO INVESTIGATE PLAINTIFF'S MEDICAL**  
9 **DECISION MAKING OR OBTAIN HIS PATIENTS' MEDICAL RECORDS AND A**  
10 **PERMANENT INJUNCTION BARRING THIS AND FUTURE ATTEMPTS AGAINST**  
11 **THE PLAINTIFF**

12 79. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 - 78 above.

13 80. Plaintiff seeks a declaratory judgment under Cal. Code Civ. Proc. 1060 *et. seq.*, that  
14 the Defendants do not have the statutory authority to investigate Plaintiff's medical  
15 decision making under the public nuisance statute (Cal. Civ. Code Sections 3479 *et*  
16 *seq.*), that it lacks the statutory authority to subpoena a physician's medical records  
17 pursuant to a purported nuisance investigation, that it lacks sufficient factual basis to  
18 conduct the alleged nuisance investigation.

19 81. Plaintiff also seeks a permanent injunction against these Defendants.

20 **FOURTH CAUSE OF ACTION**

21 **AGAINST THE SAN FRANCISCO DEFENDANTS/RESPONDENTS**

22 **DECLARATORY JUDGMENT AND PERMANENT INJUNCTION**  
23 **42 U.S.C. 1983 VIOLATION OF PLAINTIFF'S AND HIS PATIENTS' FOURTH**  
24 **AMENDMENT RIGHTS**

25 82. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 - 81 above.

26 83. The City Attorney's Administrative Subpoena was specifically purportedly issued  
27 under the San Francisco Administrative Code Section 2A.231, thereby satisfying the  
28 under color of state law requirement.

1 84. An administrative subpoena is treated as a constructive search within the  
2 meaning of the Fourth Amendment and department heads cannot conduct  
3 unreasonable searches. *Brovelli v Superior Court of Los Angeles* (1961) 56  
4 Cal. 2d 524. The Fourth Amendment requires that the subpoena (1) Relate to  
5 an inquiry which the government agency is authorized to make, (2) Seek  
6 information reasonably relevant to the authorized inquired and (3) Not be too  
7 indefinite. *Id.*

9 85. Because: (1) the City Attorney does not have the statutory authority to  
10 conduct this investigation, (2) There lacks probable or good cause to issue the  
11 subpoena, (3) The subpoena was issued in bad faith to further a political  
12 agenda, namely the passage of SB 276, and to help other government state  
13 agencies secure patient medical records in violation of federal and state law,  
14 the City Attorney's actions violate Dr. Stoller's and his patients' known and  
15 clearly understood Fourth Amendment rights. *U.S. v. Morton Salt. Co.*, (1950)  
16 338 U.S. 632, 652-653 [94 L.Ed. 401, 415-516, 70 S.Ct. 357]; *Brovelli*,  
17 *supra*, at 529; *Board of Medical Quality Assurance v. Gherardini* (1979) 93  
18 Cal. App. 3d 669, 674-675.

20 86. Finally, as the City Attorney's subpoena relates to medical records, at a bare  
21 minimum, the Court should require proof of "good cause" since that is  
22 required of the Medical Board under established case law. *Grafilo v.*  
23 *Wolfsohn* B 287080 (April 2, 2019).

25 87. Plaintiff seeks a declaratory judgement that the subpoena violates Dr. Stoller's  
26 and/or his patients' Fourth Amendment rights, and a permanent injunction  
27 prohibiting Defendants from enforcing or serving any other subpoena  
28

1 requesting patient medical and/or genetic information, pursuant to Cal Code.

2 Civ. Pro. 526.

3  
4  
5 **FIFTH CAUSE OF ACTION**  
6 **AGAINST DEFENDANTS KIRSCHMEYER AND SHULTZ**

7 **DECLARATORY JUDGEMENT THAT PATIENTS HAVE A STATE STATUTORY**  
8 **AND CONSTITUTIONAL RIGHT TO OBTAIN A MEDICAL EXEMPTION BASED ON**  
9 **AN ALTERNATIVE STANDARD OF CARE**

10 88. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 - 87 above.

11 89. California citizens have a right to receive unconventional medical care and advice

12 from California licensed physicians Bus. & Prof. Code section 2234.1, and that

13 includes medical advice and services concerning childhood vaccines. The rationale

14 being, per Section 2234.1(c), "Since the National Institute of Medicine has reported

15 that it can take up to 17 years for a new best practice to reach the average physician

16 and surgeon, it is prudent to give attention to new developments not only in general

17 medical care but in the actual treatment of specific diseases, particularly those that

18 are not yet broadly recognized in California."

19 90. There is no shortage of physicians critical of using family history and genetic

20 associations to grant medical exemptions because using information beyond CDC

21 guidelines has not gained consensus status, and the science is not settled on

22 identifying children vulnerable to adverse events.

23 91. Plaintiff seeks a declaratory judgment that the patients of Dr. Stoller, and the patients

24 of other like-minded physicians, have a right to receive a vaccine medical exemption

25 based on an alternative standard of medical exemptions beyond CDC guidelines,

26 under Bus. & Prof. Code 2234.1 and a state constitution right. *cf. Schloendorff v. NY*

27  
28

1 *Hospital*, 211 NY 125, 105 NE.102 1914 (J. Cardoza) (overruled on other grounds  
2 *Bing. V. Thunig* 2 NYS 656, 143 NE2d 3, (1957) (New York citizens have a privacy  
3 right to control their own bodies); *Schneider v Revici* 817 F.2d 987 (2<sup>nd</sup> Cir. 1987).  
4 (Acknowledging a patient’s right to receive unconventional medical treatment).

5  
6 92. Dr. Stoller will demonstrate that the alternative vaccine standard of care which he  
7 uses (and again which had been endorsed by Senator Pan in SB 277) is safer and  
8 creates less of a risk of serious harm and permanent injury for children than the CDC  
9 guideline based standard of care, which further justifies the Court recognizing the  
10 patients’ right to obtain medical exemptions under this alternative standard of care,  
11 notwithstanding any current or future law to the contrary.

12  
13 93. Plaintiff also seeks a declaratory judgment that based on the existing scientific  
14 research, and evidence of wrongdoing, including the suppression of vaccine injury  
15 findings, and the intimidation of physicians and researchers, the alternative standard  
16 of care for vaccine exemption is safer for children than the CDC guidelines.

17  
18 **SIXTH CAUSE OF ACTION**  
19 **AGAINST DEFENDANTS KIRCHMEYER, SHULTZ AND JOHN AND JANE**  
20 **DOES 1-5**

21 **DECLARATORY JUDGEMENT AND PERMANENT INJUNCTIVE RELIEF**  
22 **BARRING DEFENDANTS OR THEIR EMPLOYEES DIRECTLY UNDER**  
23 **THEIR CONTROL FROM RELEASING STATUTORILY CONFIDENTIAL**  
24 **INFORMATION CONCERNING TARGETS OF DCA ADMINISTRATIVE**  
25 **INVESTIGATIONS**

26  
27 94. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1- 93 above.

28  
95. Upon information and belief, Defendants John and Jane Does 1-5 are DCA  
employees who have worked on the DCA’s investigation of Plaintiff commenced or

1 continued based on the complaints filed by radical pro-vaccine/vaccine injury  
2 denying individuals and/or groups.  
3

4 96. Upon information and belief, these John and Jane Does knew or should have known  
5 that these complaints were politically motivated, and not based on legitimate patient  
6 concerns, all with the intention of harming Plaintiff and other physicians who write  
7 medical vaccine exemptions based on considerations beyond CDC guidelines, as  
8 specifically permitted by SB 277.  
9

10 97. Upon information and belief, these John and Jane Does have entered into an  
11 agreement and have otherwise conspired with these radical pro-vaccination groups to  
12 cause harm and remove Plaintiff and like-minded physicians from practicing  
13 medicine, by investigating these bogus complaints, and causing or assisting the  
14 Medical Board to bring administrative disciplinary actions against Plaintiff and other  
15 like-minded physicians.  
16

17 98. Upon information and belief, these John and Jane Doe Defendants are aided by  
18 various medical consultants hired by the Medical Board to satisfy the statutory  
19 preconditions for bringing disciplinary actions. These medical consultants use the  
20 narrow CDC guidelines to base their findings of misconduct, rather than the broader  
21 considerations for medical vaccine exemptions required under SB 277 and expressly  
22 publicly endorsed by the bill's authors, Senators Pan and Allen.  
23

24 99. Upon information and belief, this cabal of individuals, which includes DCA  
25 employees, DCA consultants, other pro-vaccine thought leaders and the radical pro-  
26 vaccine individuals and groups, are all working to stop Dr. Stoller and like-minded  
27 physicians from writing the broad medical exemptions permitted by SB 277 and is  
28

1 part of the overall attempt to revoke SB 277 and replace it with the narrow CDC  
2 guidelines via SB 276.

3 100. Upon information and belief, in that regard, this pro-vaccine cabal is also working  
4 to force members of the Medical Board to abandon their concerns about the likely  
5 harm 276 can bring upon medically fragile children, as expressed by many board  
6 members during a recent medical board meeting.  
7

8 101. The actions of the John and Dane Does have injured Plaintiff and like-minded  
9 physicians, ~~and~~ caused reputational injuries and is forcing the physicians to defend  
10 themselves in medical board investigations and subsequent administrative actions.  
11

12  
13 **SEVENTH CAUSE OF ACTION**  
**AGAINST DEFENDANTS JOHN AND JANE DOES 1-5**

14 **FOR MONETARY DAMAGES RESULTING FROM A CONSPIRACY TO**  
15 **RELEASE CONFIDENTIAL INFORMATION CONCERNING TARGETS OF**  
16 **DCA ADMINISTRATIVE INVESTIGATIONS IN ORDER TO INJURE**  
17 **PLAINTIFF AND OTHER LIKE-MINDED PHYSICIANS**

18 102. Plaintiff repeats and realleges the allegations contained in paragraphs 1-101 above.  
19

20 103. Based on the foregoing, Plaintiff seeks monetary damages against John and Jane  
21 Does 1-5 for the injuries they caused to the Plaintiff by virtue of their conspiracy to  
22 release confidential Medical Board information to radical pro-vaccine individuals and  
23 groups to harm the Plaintiff which is an abuse of process, namely a pretextual  
24 medical board investigation which includes subpoenas and other investigative  
25 techniques and processes to intimidate and ultimately to cause Plaintiff to be  
26 sanctioned by the Medical Board.  
27  
28



1  
2  
3 **IN SUMMARY**  
4

5 104. Both legislators who authored SB 277 mentioned genetic associations and  
6 predispositions (even in relatives) as a potential reason for getting a medical  
7 exemption.

8 105. While our understanding of mechanisms behind vaccine adverse events, and our  
9 ability to predict or avoid them has many limitations, examining SNPs (single  
10 nucleotide polymorphisms) is key to using this information and is the cornerstone of  
11 the new field of “adversomics,” the study of vaccine adverse reactions using  
12 immunogenomics and systems biology approaches. At present, the results of genetic  
13 testing are suggestive but not conclusive evidence of possible problems with  
14 vaccination in some children.  
15

16 106. But this type of genetic information, in conjunction with family history of  
17 autoimmune disease, neurodevelopmental disorders, and/or a history of adverse  
18 events in the children and family members, is the basis of medical exemption analysis  
19 used by Dr. Stoller and other forward-thinking physicians in California and  
20 throughout the United States. And more importantly, it was clearly supported by the  
21 SB 277 co-authors until it wasn’t, and then came SB 276.  
22

23 107. At the current trajectory of vaccine science, at some point in the not-too-distant  
24 future, we will all have a chip in our arms with our individual genetic code. That chip  
25 will list all the second and third generation vaccines, which based on conclusive  
26 scientific evidence are too dangerous to administer to a child. But, until that time  
27 comes, physicians must use the best available information.  
28

1 108. The analysis of most physicians begins and ends with CDC guidelines. However,  
2 as has been repeatedly stated, under SB 277 (now Cal. Health and Safety Code,  
3 Section 120370) physicians are permitted to use genetics, patient history, and family  
4 history as a basis of medical exemptions, and that is exactly what physicians like Dr.  
5 Stoller are doing.  
6

7 109. Apparently unhappy that physicians believed and followed what he said when he  
8 was advocating for SB 277, Senator Pan and his allies – and it appears that the City  
9 Attorney is one of them – is now pushing the false narrative that physicians who are  
10 implementing his clearly stated views about the scope of SB 277, are writing fake and  
11 fraudulent exemptions. This false narrative is this cabal’s primary PR strategy to  
12 achieve what it could not achieve during the SB 277 legislative battle, namely to limit  
13 medical exemptions to CDC guidelines.  
14

15 110. The vaccine exemption medical decision making of physicians who employ  
16 Senator Pan’s SB277 approach to vaccine exemptions is not a public nuisance. The  
17 City Attorney has no business using an administrative subpoena on an *ultra vires* and  
18 completely bogus public nuisance investigation. We ask the Court to reject his  
19 attempt to do so.  
20

21 **PRAYER FOR RELIEF**

22  
23 WHEREFORE the Plaintiff requests that judgment be entered in his favor and against the  
24 Defendants as set forth in the Complaint and Verified Petition, and that the Court:

- 25 1. Quash the City Attorney’s Administrative Subpoena dated May 8, 2019,  
26 2. Issue a declaratory judgment that the City Attorney’s subpoena violates Dr.  
27 Stoller’s patients’ right of personal autonomy, and a permanent injunction  
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- barring the Defendants from seeking such information from the Plaintiff,
3. Issue a Declaratory Judgment that the City Attorney lacks authority to subpoena or investigate Dr. Stoller’s medical practice,
  4. Issue a Declaratory Judgment that the subpoena violates Dr. Stoller’s and his patients’ rights to be free from an unreasonable search and seizure, and a permanent injunction enjoining the enforcement of the subpoena,
  5. Issue a Declaratory Judgment against all the Defendants/Respondents that Dr. Stoller’s patients have a right to a vaccine medical exemption under the Californians’ right to receive unconventional medical care, and that the alternative standard of care is safer for children than the conventional CDC guidelines.
  6. Issue a permanent injunction against Defendants Kirchmeyer and Grafilo in their official capacities which prohibits them from allowing their departments from releasing confidential information to the radical vaccine injury denying individual or political groups who have filed bogus and politically motivated complaints against Plaintiff and like-minded physicians,
  7. Monetary damages against John and Jane Does 1-5 for their violation of state law in releasing statutorily confidential information, in an amount to be determined by the fact-finder.
  8. Costs and attorneys’ fees as permitted by law,

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9. Such other and further relief as the Court deems just and proper.

Dated July 15, 2019

RESPECTFULLY SUBMITTED,

/s/ Richard Jaffe  
Richard Jaffe, Esq.  
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Attorney for Kenneth P. Stoller, MD

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**VERIFICATION**

Kenneth P. Stoller, MD declarers the following under the penalties of perjury pursuant to CCP 446(a):

1. I am the Plaintiff/Petitioner in this action and I am familiar with the facts set forth in this First Amended Complaint/Verified Petition.
2. I believe the facts set forth in the Complaint/Verified Petition are true and correct to the best of my knowledge, except for those stated fact upon information and belief and as to those facts, I believe them to be true.

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

Executed this 15<sup>th</sup> day of July, 2019 in Santa Rosa, California.



Kenneth P. Stoller, MD