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9 and JK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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9 KENNETH P. STOLLER, MD., and  
10 JK, being the mother of a vaccine exempt  
11 child

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Plaintiffs,

Case No. CGC-19-576439

SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

vs.

15 DENNIS HERRERA, in his official capacity  
16 as the CITY ATTORNEY of the City of  
17 San Francisco, THE CITY AND COUNTY  
18 of SAN FRANCISCO, KIMBERLY  
19 KIRCHMEYER, in her official capacity  
20 as EXECUTIVE DIRECTOR, MEDICAL  
21 BOARD OF CALIFORNIA, CHRISTOPHER  
22 SHULTZ in his official capacity as Chief Deputy  
23 Director of the CALIFORNIA DEPARTMENT OF  
24 CONSUMER AFFAIRS, JOHN and JANE DOES 1  
25 THROUGH 5 and ROBERT SCHECHTER in his  
26 official capacity of Chief of the Clinical Policy  
27 and Support Section (“CPSS”) of the CALIFORNIA  
28 DEPARTMENT OF PUBLIC HEALTH,  
IMMUNIZATION BRANCH

Defendants

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1 COME NOW Plaintiffs, Kenneth P. Stoller, MD and JK by their undersigned counsel and  
2 hereby allege against the Defendants as their SECOND AMENDED COMPLAINT and states as  
3 follows:  
4

### 5 INTRODUCTION

- 6
- 7 1. This lawsuit involves medical vaccine exemptions provided by Plaintiff Kenneth  
8 P. Stoller, MD and a handful of other physicians who have followed a 2016 law (SB 277,  
9 now Health & Safety Code Section 120370) allowing physicians to issue medical  
10 exemptions much broader than CDC contraindication, allowable under prior law and  
11 practice.  
12
  - 13 2. Sixty or so recent mostly adult measles cases in California, plus a small but  
14 expected increase in medical vaccine exemptions are now being used to publicly vilify Dr.  
15 Stoller and others, as a PR tactic to advance the passage of a new law which would  
16 eliminate these broader exemptions expressly sanctioned under current law.  
17
  - 18 3. More alarmingly, illegal tactics are being used by officials in government agencies  
19 and school districts, include leaking of privacy protected vaccine exemption information  
20 to the press, to rabid pro-vaccine vigilante groups, and to other government agencies.  
21
  - 22 4. The public frenzy and scare tactics have recently caused at least one school district  
23 to illegally bar students from attending school, even though they have a valid and legal  
24 medical exemption.  
25
  - 26 5. This case raises serious public health policy issues which are critically important  
27 to many thousands of families throughout the state, as well as the medical community, and  
28 government agencies which have to apply and oversee this public health law. Intervention  
by the courts is necessary to stop the chaos, panic and scapegoating of the medically

1 vaccine exempt and their exemption writing physicians, and to provide guidance via a  
2 declaratory judgment about the meaning of the public health statute at the heart of this  
3 state-wide controversy.

4  
5 6. The current confusion will continue even if SB 276 passes since it will not be fully  
6 implemented until 2021. California families, the schools and government agencies need  
7 guidance from the judiciary to declare and enforce the law.

### 8 **THE PARTIES**

9 13. Plaintiff/Kenneth P. Stoller, MD is a California licensed physician, who at the time  
10 of the filing of the original complaint, had his medical office in San Francisco. He issues  
11 vaccine medical exemptions to children under the broader guidelines permitted under SB  
12 277 (now Health & Safety Code Section 120370).

13  
14 14. Plaintiff JK is the mother of a child who has received a vaccine medical exemption  
15 from Plaintiff Stoller. Her child is one of the eleven children whose medical exemption is  
16 the subject of the Board's accusation. She has recently been informed by her child's  
17 school, that the medical exemption issued by Dr. Stoller will not be honored due to the  
18 Board's investigation of him. (JK's name provided to the Defendants' counsel).

19  
20 21 15. Defendant Kimberly Kirchmeyer is the Executive Director of the Medical Board  
22 of California. She is directly responsible and oversees subordinates who file or cause to be  
23 filed accusations against California medical doctors for violating the standard of care,  
24 such that she is a necessary party for any order enforcing the court's order on the meaning  
25 and interpretation of the public health law which is at the heart of this case. She is being  
26 sued in her official capacity only.  
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1           16. Defendant Christopher Shultz is Chief Deputy Director of the Department of  
2 Consumer Affairs and is being sued in his official capacity only. He is currently the head  
3 of the Department whose divisions include the Division of Investigations and the Board,  
4 and as such, has the authority to effectuate an order of this Court concerning DCA's  
5 divisions and its employees.  
6

7           17. Defendant Robert Schechter, MD, is the Chief of the Clinical Policy and Support  
8 Section ("CPSS") of the CDPH immunization branch, and is being sued in his official  
9 capacity for declaratory and injunctive relief. As the Chief of the CPSS, he oversees this  
10 section and can effectuate and implement any injunction order the Court issues regarding  
11 his section's solicitation or receipt of privacy protected vaccine exemption information,  
12 and can order his department from ceasing to give legal opinions on valid medical  
13 exemptions written by Plaintiff Stoller and other like-minded physicians.  
14

15  
16           **PROCEDURAL HISTORY AND THE RECENTLY DISCOVERED PRIVACY**  
17           **VIOLATIONS AND OTHER ILLEGAL ACTIVITY**

18           18. Plaintiff Kenneth Stoller commenced this lawsuit against the San Francisco City  
19 attorney, who in an unprecedented, arguably *ultra vires* action, served on him a subpoena  
20 requesting the deidentified medical records of all of his patients for whom he had written a  
21 vaccine medical exemption under the new law.

22           19. In response, Plaintiff Stoller filed the original complaint in this case seeking an  
23 injunction against the enforcement of that subpoena, and also sought a declaratory  
24 judgment that he was permitted to write such exemptions under the law and under the  
25 patients' state constitutional rights of privacy.  
26

27           20. After the Complaint was filed, eight Northern California school districts illegally  
28 provided the *San Jose Mercury* with privacy protected medical vaccine information,

1 starting what has become widespread practice of privacy violations by governmental  
2 agencies and schools. The records obtained by the newspaper included the actual student  
3 vaccine exemptions, including the name of the physician who issued them. Some of the  
4 exemptions were written by Plaintiff Stoller. Here is the newspaper article.

5  
6 [https://www.mercurynews.com/2019/06/20/these-anti-vaccine-doctors-are-signing-a-ton-](https://www.mercurynews.com/2019/06/20/these-anti-vaccine-doctors-are-signing-a-ton-of-bay-area-medical-exemptions/)  
7 [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/)

8 21. The release of information by these school districts is a violation of state law.

9 22. Recently, the *Los Angeles Times* has made similar inquiries to Northern California  
10 School Districts to obtain protected medical vaccine information. It is unknown to the  
11 Plaintiffs at this time whether any of the school districts have provided the requested  
12 information. Complying with this request would be a violation of the school privacy laws.

13 23. The First Amended Complaint (“FAC”) added the Executive Director of the  
14 Medical Board and the Director of its parent agency (the Department of Consumer  
15 Affairs) as parties, *inter alia*, because they may be necessary parties in the cause of action  
16 seeking judicial recognition of patients’ rights to a medical exemption based on an  
17 alternative standard and/or as a state constitutional privacy right.

18 24. The FAC contained an additional injunction cause of action, and a claim for  
19 conspiracy and monetary damages. These causes of action are based on misconduct and  
20 illegal actions on the part of agency and board actors who violated Medical Board  
21 confidentiality rules and Plaintiff’s privacy rights by leaking the status of the Medical  
22 Board’s investigation of the Plaintiff to radical pro vaccine vigilantes who attack vaccine  
23 writing physicians on social media.  
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1           25.     Specifically, in a July 2, 2019 post entitled “What’s the Harm” it is stated that:  
2                           “I did a thing. Probably can’t take too much credit as I’m sure many have  
3                           reported him, but I am in direct contact with the head of special  
4                           investigations for the CA state medical board. I have reported at least a  
5                           dozen more. Stay tuned. This is my current mission to shut them down. I  
6                           hope this gets shared in SMV. I would love to see the salty tears. I’m  
7                           looking right at you Lawrence..”  
8

9  
10           Then quoting an email from a blacked-out name from what appears to be a Medical Board  
11           of California email address:

12  
13                           “Good Moring Rob, I wanted to inform you that the Medical Board of California  
14                           has concluded its review of the allegations that Dr. Kenneth P. Stoller was writing  
15                           inappropriate vaccination exemptions. The case has been forwarded to the Office  
16                           of the Attorney General for review.” Please let me know if you have any  
17                           questions.”  
18

19           26.     Upon information and belief, the Medical Board only sends cases for review to the  
20           Attorney General’s office to consider prosecution. Otherwise, the Board notifies the  
21           licensee that the investigation has been terminated.

22           27.     At this time, the identity of the Medical Board investigator is unknown to the  
23           Plaintiffs. However, upon information and belief, the person to whom the investigator  
24           communicated with in this email exchange did not file the complaint on the 11 cases  
25           which were being investigated and which are the basis of the Board’s Accusation.  
26           Therefore, the investigator had no business or legal authority to share the Board’s internal  
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1 review or even the status of this investigation with this individual, since he had not filed a  
2 complaint on the 11 cases under investigation.

3 28. After the filing of the FAC, several important things have occurred : First, the City  
4 Attorney agreed to withdraw the subpoena, and on August 21, 2019, the San Francisco  
5 City Attorney and the City and County of San Francisco have been dismissed from this  
6 case, as have the first through fourth causes of action in the First Amended Complaint.  
7

8 29. Second, the Medical Board of California (the “Board”) filed an Accusation  
9 against Plaintiff Stoller based on his issuing of medical exemptions to eleven patients for  
10 his alleged failure to comply with the standard of care in issuing medical exemptions.

11 30. The Board’s case against Plaintiff Stoller is already having an unwarranted and  
12 illegal impact on the medical exemptions he has issued, and may also adversely affect all  
13 families for who have valid medical exemptions, throughout the state.  
14

15 31. Valid and legal medical exemptions written by Plaintiff are being rejected by at  
16 least one school district in violation of public health laws. New Plaintiff JK is the mother  
17 of one such patient/student whose vaccine medical exemption written by Plaintiff Stoller  
18 has been unlawfully rejected.

19 32. Third, the Medical Board is currently engaged in systematic attempt to deceive and  
20 intimidate families who have received vaccine exemptions into consenting to provide their  
21 children’s medical records to the Board.  
22

23 33. The tactic involves attaching to the Board investigator’s request for consent letter,  
24 a copy of a Board subpoena which is threatened to be served on the family’s exemption  
25 writing physician, unless the parents consent to the release of their children’s records. The  
26 effect of attaching the subpoena is to confuse and intimidate the family into thinking that  
27 unless they consent, the parents will be hauled into court.  
28

1 34. The Board investigators' letters to parents contain other misleading statements, all  
2 in an attempt to pressure the parents into consenting to the release of their children's  
3 medical records, such as the false statement that the family has to return an enclosed  
4 response form to the Board. In fact, the parents only have to tell their physician that they  
5 object to the release of their children's records.  
6

7 35. Upon information and belief, the Medical Board developed this tactic due to its  
8 perceived inability to obtain patient medical records of medically vaccine exempt  
9 children, which concern it expressed to Senator Pan and other legislators during the SB  
10 276 legislative session.

11 36. This Second Amended Complaint seeks an injunction barring the use of this  
12 deceptive and coercive tactic.  
13

14 37. Fourth and finally, though public information requests, it has been learned that  
15 schools are illegally providing the California Department of Public Health ("CDPH")  
16 through its Clinical Policy and Support Section ("CPSS") of the CDPH immunization  
17 branch with federal FERPA protected and state privacy protected vaccine exemption  
18 information.

19 38. Schools are sending exemptions to the CPSS to obtain a legal opinion about the  
20 validity of the medical exemption under the law, and specifically for an opinion whether  
21 the exemption should be honored or rejected. The CPSS's statutory authority to render  
22 these legal decisions is unclear.  
23

24 39. Upon information and belief, the CPSS may be providing the schools with  
25 information and otherwise advising them in connection with accepting or possibly  
26 illegally rejecting Plaintiff's and other like-minded physicians' medical vaccine  
27 exemptions.  
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1 40. This tactic of improperly receiving privacy protected vaccine medical exemptions  
2 may have originated, but was certainly foreshadowed by a “Pilot Program” instituted by  
3 the Santa Barbara County Health Department wherein it solicited schools to submit  
4 unredacted privacy protected medical exemptions for study purposes.

5  
6 41. Upon information and belief, many schools sent the health department state  
7 protected records, in violation of state law.

8 42. When this pilot program was challenged by a physicians’ group, the county health  
9 department ceased its illegal solicitations, announcing that the pilot program had been  
10 completed.

11 43. The individual who created or supervised this Santa Barbara Health Department  
12 Pilot Program, Charity Dean, MD is now the Assistant Director of the CDPH.

## 13 14 **BACKGROUND**

### 15 **The Standards of Medical Exemptions from Vaccines under SB 277 (Cal. Health 16 & Safety Code Section 120370)**

17 44. As this Court is being asked, *inter alia*, to interpret a public health statute relating  
18 to school vaccination, and to resolve the chaos and confusion arising therefrom, it is  
19 necessary to relate some legislative history of California vaccine law.

20  
21 45. Up until 2015, California parents could opt-out of vaccinations for their children  
22 based on a personal belief exemption. But, as a result of the Disneyland measles outbreak  
23 that year, the California legislature passed SB 277 (amending Health and Safety Code  
24 120325 *et seq.*) which eliminated the personal belief and religious exemptions.

25  
26 46. It was known at the time, but not widely reported that 38% (73 of 194) of the  
27 individuals who contracted measles in the Disneyland epidemic got it from the vaccine.

28 *See* Roy F, Mendoza L, Hiebert J, McNall RJ, Bankamp B, Connolly S, Lüdde A,

1 Friedrich N, Mankertz A, Rota PA, Severini A. 2017. *Rapid identification of measles*  
2 *virus vaccine genotype by real-time PCR*. J Clin Microbiol 55:735–743.  
3 <https://doi.org/10.1128/JCM.01879-16>. Added to the 38% is the estimated 10% primary  
4 measles vaccine failure (i.e., children who receive the vaccine but do not develop  
5 sufficient antibodies to combat the disease) See  
6 <https://www.ncbi.nlm.nih.gov/pubmed/15176719>. That suggests that almost half of the  
7 194 cases were vaccinated (and most of those got it from the vaccination).  
8

9 47. As originally proposed to the Legislature, SB 277 medical exemptions would be  
10 limited to a handful of narrow contraindications recognized by the Centers for Disease  
11 Control (“CDC”).

12 48. Because of pushback/public uproar from the proposed narrow scope of CDC  
13 contraindications, the bill’s authors, Senators Richard Pan and Ben Allen, were forced to  
14 include a broader definition of medical exemptions which included without limitation  
15 “family history.”  
16

17 49. Moreover, in the new version of SB277, the phrase “contraindication” was stricken  
18 from Cal. Health & Safety Code section 120370, and in its place the Legislature enacted  
19 the words “not considered safe” in the physician’s recommendation, which was the  
20 Legislature’s responding to the public uproar against limiting physicians to narrow CDC  
21 contraindications.  
22

23 50. The legislative history and public statements by the authors and others about the  
24 revised bill make it clear that physicians were given the discretion to issue medical  
25 exemptions for conditions far broader than the CDC’s contraindications.  
26  
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1           51.     The most significant and authoritative statement comes from author of SB 277  
2           (and current SB 276) Senator Richard Pan: Here he is addressing the State Legislature  
3           during the SB 277 hearings:

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

11          52.     The medical issues referenced in the above-cited legislative history, such as  
12          “genetic association... with a...cousin” cited by Senator Pan are not CDC listed  
13          contraindications (or even temporary precautions) to vaccination. Rather, they are  
14          only precautions to vaccination recognized in different measure in various medical  
15          communities (i.e., integrative medical communities) to justify a medical exemption  
16          to vaccination.

17          53.     The legislative intent of SB277 is further evidenced by the transcript of the official  
18          public hearings on SB227. *See e.g.* Assembly Committee hearing transcript, dated June 9,  
19          2015: “Rob Bonta: Thank you, Dr. Pan. And then finally, we have an amendment  
20          regarding the medical exemption and a physician's judgement. And I've heard from a  
21          number of constituents and Californians regarding concerns that a medical exemption is  
22          difficult to obtain or was difficult to obtain. I believe that current law states that a  
23          physician has complete, professional discretion over the writing of a medical exemption.  
24          However, I have asked the author to take an amendment to clarify that a medical  
25          26          27          28

1 exemption is entirely within the professional judgement of a physician and we have  
2 agreement on that amendment.”

3 “SB277 bill author Richard Pan: Yes.”

4 54. SB277 bill co-author Ben Allen in that same hearing stated:

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

11  
12 55. None of these legislators stated, implied or even hinted that medical  
13 exemptions would be limited to the CDC contraindications or guidelines,  
14 probably because, as indicated, that was in the original version of SB 277 and  
15 had to be removed because of public outcry.  
16

17 56. Physicians like Dr. Stoller have taken Senator Pan and the other legislators  
18 literally and seriously and have based their vaccine exemption writing on the  
19 broad discretion allowed to them under the law.  
20

21 **Senator Pan Changes His Mind and Now Wants Medical Exemptions Limited to**  
22 **Narrow CDC Guidelines**

23 57. Before SB277 went into effect there were approximately 940 vaccine medical  
24 exemptions. In the 2017-2018, there were approximately 4000. Those numbers  
25 translate into 0.2 percent of school age children which increased to 0.7 percent of  
26 children who received medical exemptions, and have increased to .9 percent in the  
27 2018-2019 school year.  
28

1 58. As a result of this 0.7 percent increase, and an uptick of measles cases in  
2 California, (which is primarily a result of adults contracting the disease), during the  
3 2019 legislative session, Senator Pan has introduced SB 276. The original version of  
4 the bill removed medical exemptions decision making from physicians and placed it in  
5 the hands of state or local public health officials who do not examine the patient.  
6 Under SB 276, medical exemptions are granted only for CDC approved  
7 contraindication.  
8

9 59. SB 276 also sets up a reporting mechanism in which all current medical  
10 exemptions will be rescinded in effect, if they are not written in accordance with CDC  
11 guidelines. Therefore, the very thing Senator Pan and his supporters could not achieve  
12 in the SB 277 legislative session, is proposed to become law in this session under SB  
13 276.  
14

15 60. The current version of SB 276 allows vaccine decisions to be initially made by  
16 physicians but are reviewable and subject to rescission by an administrative process  
17 implemented by the CDPH. Medical Exemptions have to be based on CDC  
18 contraindications, though there is some vague language about “family history” which  
19 can be considered by the public health officials. It is clear from Senator Pan’s  
20 introduction of SB 276<sup>1</sup> and his traveling road show throughout the state <sup>2</sup> to generate  
21 support for his bill, that the primary PR tactic is to denounce medical exemptions  
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23 <sup>1</sup> “Dr. Richard Pan Introduces SB 276 to Combat Fake Medical Exemptions that Put Children  
24 and Communities at Risk” [https://sd06.senate.ca.gov/news/2019-03-26-dr-richard-pan-](https://sd06.senate.ca.gov/news/2019-03-26-dr-richard-pan-introduces-sb-276-combat-fake-medical-exemptions-put-children-and)  
25 [introduces-sb-276-combat-fake-medical-exemptions-put-children-and](https://sd06.senate.ca.gov/news/2019-03-26-dr-richard-pan-introduces-sb-276-combat-fake-medical-exemptions-put-children-and)

26 <sup>2</sup> “Dr. Richard Pan, Los Angeles Public Health Officials, and Coalition of Community  
27 Advocates Release Data on Economic Impact of Measles Outbreaks and Cost to California  
28 Taxpayers” [https://sd06.senate.ca.gov/news/2019-05-10-dr-richard-pan-los-angeles-](https://sd06.senate.ca.gov/news/2019-05-10-dr-richard-pan-los-angeles-public-health-officials-and-coalition-community-advocates)  
[public-health-officials-and-coalition-community-advocates](https://sd06.senate.ca.gov/news/2019-05-10-dr-richard-pan-los-angeles-public-health-officials-and-coalition-community-advocates)

1 beyond CDC guidelines as “fake” or “fraudulent.” The irony is of course that  
2 physicians like Dr. Stoller, who believed and followed Senator Pan’s and his  
3 supporters’ statements that it was permissible to do under SB 277, are now being  
4 vilified by him for doing what he and his supporters said they could do.  
5

6 **The Medical Board Fails to Clarify the Standards of Medical Exemptions Under SB**  
7 **277**

8 61. Prior to issuing vaccine medical exemptions in 2016, Plaintiff Stoller contacted the  
9 Medical Board twice and asked it to review his practices and procedures that he would  
10 be using in issuing exemptions under SB 277, but he was told that the Medical Board  
11 does not provide such guidance to its licensees.

12 62. Furthermore, during the three years since SB 277 has been in effect, the Medical  
13 Board has failed to provide any meaningful guidance to its licensees as to its view on  
14 medical exemptions under SB 277. It is time for the Courts to fill the void and provide  
15 the necessary guidance that the Medical Board has failed to provide.  
16

17 **Why It is So Important that there Be Medical Exemptions Broader than CDC**  
18 **Contraindications**

19 63. In January 2019, U.S. Federal Circuit Judge Newman issued a dissent from an *en*  
20 *banc* denial in a case in which the vaccine court denied compensation to an alleged  
21 vaccine injured child. Judge Newman discussed the legislative history of the 1986  
22 National Vaccine Act which granted legal immunity to vaccine manufactures from  
23 lawsuits and instead set up a taxpayer fund to be paid to those who suffered vaccine  
24 injury. Her discussion is relevant to this case, and can scarcely be improved on:

25 “The National Childhood Vaccine Injury Act of 1986

26  
27 It had long been known that a small percentage of childhood vaccinations have led  
28 to **grave injury and permanent disability**, as discussed in the legislative record:  
Childhood vaccines are essential to maintain the health of our society. They have



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

13 67. Most importantly, from the time Congress first considered unavoidably severe and  
14 permanent vaccine injury in the 1980's, the literature documenting serious injury and  
15 death resulting from childhood vaccination has become depressingly massive, but  
16 mostly ignored by the policy makers, professional medical association and the media,  
17 and hidden by the manta that "vaccines are safe and effective and side effects are  
18 rare."

100 68. Some have postulated this may be caused by Pharma influence and corruption. As  
111 evidenced by recent opioid criminal prosecutions, Pharma influence and its criminal  
122 wrongdoings are under increased scrutiny by the authorities, but not in the vaccine  
133 arena. This action necessarily involves exploring these issues at trial, as part of the  
144 claim for a constitutional or SB 277 based alternative standard as set forth in the First  
155 Cause of Action *infra*.

166 69. According to a recent media report, in 2019, in the San Francisco Bay Area, there  
177 have been 38 reported measles cases, 28 of which were in adults (half of whom  
188 contracted the disease while traveling abroad.)

199 [https://www.sfchronicle.com/health/article/Measles-cases-jump-to-38-in-California-](https://www.sfchronicle.com/health/article/Measles-cases-jump-to-38-in-California-amid-13795838.php)  
200 [amid-13795838.php](https://www.sfchronicle.com/health/article/Measles-cases-jump-to-38-in-California-amid-13795838.php). However, it is known from the Disneyland outbreak that a

211 significant percentage of measles cases can come from the vaccine itself, and it is  
222 also known that primary vaccine failure may be 10% or more. *See* "The genetic basis  
233 for measles vaccine failure" [Jacobson RM<sup>1</sup>, Poland GA.](#)

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



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70. This data suggests that the primary vector of the California measles problem is adults who have traveled abroad or who have secondary vaccine failure (i.e. loss of immunity over time), not children.

**FIRST CAUSE OF ACTION  
AGAINST ALL DEFENDANTS**

**DECLARATORY JUDGEMENT THAT PATIENTS HAVE A CONSTITUTIONAL  
RIGHT TO OBTAIN A MEDICAL EXEMPTION BASED ON AN ALTERNATIVE  
STANDARD**

**CAL. CODE CIV. PRO. SECTION 1060 et. seq.**

71. Plaintiffs repeat and realleges the allegations set forth in paragraphs 1 - 70 above.

72. California citizens have a statutory right to receive unconventional medical care and advice from California licensed physicians, (Bus. & Prof. Code section 2234.1), and that includes or should include medical advice and services concerning childhood vaccines. The rationale being, per Section 2234.1(c), "Since the National Institute of Medicine has reported that it can take up to 17 years for a new best practice to reach the average physician and surgeon, it is prudent to give attention to new developments not only in general medical care but in the actual treatment of specific diseases, particularly those that are not yet broadly recognized in California."

73. Most physicians will not use family history and genetic associations to grant medical exemptions because using information beyond CDC guidelines has not gained consensus status, and the science is not settled on identifying children vulnerable to adverse events.

74. Plaintiff seeks a declaratory judgment that the patients of Dr. Stoller, and the patients of other like-minded physicians, have a right to receive a vaccine medical exemption based on an alternative standard of medical exemptions beyond CDC

1 guidelines, under Bus. & Prof. Code 2234.1 and/or a state constitution privacy right. *cf*  
2 *Schloendorff v. NY Hospital*, 211 NY 125, 105 NE.102 1914 (J. Cardoza) (overruled  
3 on other grounds *Bing. V. Thunig* 2 NYS 656, 143 NE2d 3, (1957) (New York citizens  
4 have a privacy right to control their own bodies); *Schneider v Revici* 817 F.2d 987 (2<sup>nd</sup>  
5 Cir. 1987). (Acknowledging a patient’s right to receive unconventional medical  
6 treatment).

7  
8 75. Plaintiffs seek the relief requested in this cause of action, even if SB 276 becomes  
9 law, as that law would be inconsistent with the constitutional rights of the patients as  
10 alleged herein.

11  
12 **SECOND CAUSE OF ACTION AGAINST**  
13 **DEFENDANTS KIRCHMEYER AND SHULTZ**

14 **DECLARATORY JUDGEMENT AND PERMANENT INJUNCTIVE RELIEF**  
15 **BARRING DEFENDANTS OR THEIR EMPLOYEES DIRECTLY UNDER**  
16 **THEIR CONTROL FROM RELEASING STATUTORILY CONFIDENTIAL**  
17 **INFORMATION CONCERNING TARGETS OF DCA ADMINISTRATIVE**  
18 **INVESTIGATIONS**  
19 **CAL. CODE CIV. PRO. SECTIONS 1060 et. seq. and 526(a)(1)**

20 76. Plaintiffs repeat and realleges the allegations set forth in Paragraphs 1- 75 above.

21 77. The allegations set forth in paragraphs 24-27 above demonstrate that one or more  
22 employees of the Medical Board or the Division of Investigations which is overseen  
23 by the Department of Consumer Affairs is illegally providing privacy protected and  
24 confidential information about the results and/or status of the Medical Board’s  
25 investigation of Plaintiff Stoller.

26 78. Plaintiffs seek a declaratory judgment under Cal. Code Civ. Pro. Section 1060 et.  
27 seq. that the above described conduct is illegal under California law, and a permanent  
28 injunction under Cal, Code Civ. Pr. Section 526 (a)(1) barring any such future action

1 by subordinates of Defendants Kirchmeyer and Shultz.

2  
3 **THIRD CAUSE OF ACTION**  
4 **AGAINST DEFENDANTS KIRCHMEYER AND SHULTZ**

5 **DECLARATORY JUDGEMENT AND PERMANENT INJUNCTIVE RELIEF**  
6 **BARRING DEFENDANTS OR THEIR EMPLOYEES UNDER THEIR**  
7 **CONTROL FROM PROVIDING MISLEADING AND INTIMIDATING**  
8 **INFORMATION TO THE FAMILIES OF MEDICALLY VACCINE EXEMPT**  
9 **CHILDREN WHOSE PHYSICIANS ARE UNDER INVESTIGATION**  
10 **CAL. CODE CIV. PRO. SECTIONS 1060 et. seq. and 526(a)(1)**

11 79. Plaintiffs repeat and realleges the allegations contained in paragraphs 1-78 above.

12 80. Based on the allegations set forth in paragraphs 32-36 above, Plaintiffs seek a  
13 declaratory judgment under Cal. Code Civ. Pro. Section 1060 et. seq. that the above  
14 described conduct is illegal under California law, and a permanent injunction under  
15 Cal, Code Civ. Pr. Section 526 (a)(1) barring any such future action by subordinates of  
16 Defendants, and requiring the Medical Board to use a notice form to be approved by  
17 this Court, to insure that families are provided accurate, non-misleading information to  
18 ensure that they are not misled into thinking that they will be the subject of judicial  
19 proceedings if they do not consent to the release of their child’s medical records.

20 **FOURTH CAUSE OF ACTION**  
21 **AGAINST DEFENDANT SCHECHTER**  
22 **DECLARATORY JUDGEMENT AND PERMANENT INJUNCTIVE RELIEF**  
23 **BARRING DEFENDANT OR HIS SUBORDINATES FROM RECEIVING**  
24 **PRIVACY PROTECTED MEDICAL VACCINE INFORMATION EXCEPT**  
25 **AS PROVIDED BY LAW AND BARRING THEM FROM RENDERING**  
26 **LEGAL OPINIONS**  
27 **CAL. CODE CIV. PRO. SECTIONS 1060 et. seq. and 526(a)(1)**

28 81. Plaintiffs repeat and realleges the allegations contained in paragraphs 1- 80 above.

82. Legal authority for the California Department of Health (“CDPH”) and its officers  
to review vaccination records and vaccine medical exemptions is limited by California

1 statute, in particular by the patient and student privacy laws codified in Cal. Health &  
2 Safety Code §§ 120375 and 120440, and also Cal. Education Code section 49076  
3 referenced therein, which is the California companion statute to the federal student  
4 privacy law entitled, Family Educational Rights and Privacy Act (FERPA)  
5

6 83. FERPA, as effectuated by federal regulations such as 34 CFR §99.36, has been  
7 officially interpreted by the United States Department of Education to prevent State  
8 and local public health officers from accessing student vaccination records because of  
9 student privacy rights protected by FERPA. *see e.g.*, U.S. Dept. of Educ. Family  
10 Compliance Policy Office, *Letter to Alabama Department of Education re: Disclosure*  
11 *of Immunization Records*, February 25, 2004, available at  
12 <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/library/alhippaa.html>).  
13

14 84. Absent parental consent, CDPH’s authority to oversee vaccine medical exemptions  
15 is limited by statute to, for example, a “health or safety emergency” (which term has  
16 been officially found to mean “only if the [public health] agency or institution  
17 determines, on a case-by-case basis, that a specific situation presents imminent danger  
18 or threat to students or other members of the community, or requires an immediate  
19 need for information in order to avert or diffuse serious threats to the safety or health  
20 of a student or other individuals”). *Id.*; *see also* Cal. Health & Safety Code §120175  
21 as an example of the California statutory scheme that CDPH is limited in the way it  
22 may intervene in a child’s healthcare and education, unless there has been an active  
23 case of infectious disease affecting that specific child, in which case CDPH would be  
24 able to access certain (but still limited) statutory authority to identify and control the  
25 infection.  
26

27 85. Since the enactment of SB277, Defendant Robert Schechter, MD and his staff have  
28

1 routinely acted outside of their statutory authority without the presence of any parental  
2 consent or any health or safety emergency to justify its intrusion into student privacy  
3 and its active disruption of the fundamental right to education held by Plaintiff Dr.  
4 Stoller's patients.

5  
6 86. Accordingly, Defendant Robert Schechter, MD and his staff are engaged in a  
7 pattern and practice of working outside their statutory authority by soliciting and  
8 examining medical exemptions without parental consent, an emergency situation, or  
9 any other exception identified in Cal. Health & Safety Code sections 120375, 120440,  
10 and Cal. Education Code section 49076.

11 87. Defendant Robert Schechter, MD and his staff communicate with schools and local  
12 health officers about specific children's medical exemptions in such a way that  
13 schools and local health officers rely upon CDPH's unauthorized medical opinions  
14 and legal opinions.

15  
16 88. Consequently, and upon information and belief, Defendant Robert Schechter, MD  
17 and his staff appear to be deeply involved in the decisions by schools to illegally reject  
18 medical exemptions written by Plaintiff and other like-minded physicians.

19 89. Specifically, the CPSS of the CDPH immunization branch, and in particular  
20 Defendant Robert Schechter, MD and his staff, which provides technical assistance on  
21 vaccines to public health departments and schools, is interfering with Plaintiff's  
22 medical care for his patients, and interfering with the patients' fundamental rights to  
23 education.

24  
25 90. The result of the unauthorized actions by the schools and the CDPH is chaos,  
26 uncertainty and lawlessness whereby governmental entities have simply abandoned  
27 the rule of law in a misguided attempt to protect the public.  
28

- 1           91.    FERPA and state privacy violations involving eight school districts show  
2                   politically-motivated orders and communications to improperly release protected  
3                   medical vaccine exemptions naming the physicians who wrote the exemptions,  
4                   including some written by Plaintiff Dr. Stoller.
- 5
- 6           92.    Upon information and belief, Defendant Robert Schechter, MD and his staff have  
7                   illegally solicited, received, and used privacy protected student information in order to  
8                   illegally reject medical exemptions written by Plaintiff and other physicians. In  
9                   certain instances, the conduct of Defendant Robert Schechter, MD and his staff has  
10                  risen to the level of giving both medical advice and legal advice via email.
- 11
- 12          93.    In the process, Defendant Robert Schechter, MD and his staff actively worked with  
13                  non-redacted Medical exemptions in order to deny children school admission without  
14                  the treating physician’s input or knowledge, and without the parent’s input,  
15                  knowledge, or consent.
- 16
- 17          94.    Upon information and belief, Defendant Robert Schechter, MD and his staff were  
18                  aware or should have been aware of CDPH’s limited statutory authority and  
19                  Defendant Robert Schechter, MD and his staff intentionally circumvented the statutory  
20                  privacy laws in order to circumvent the treating physician and the parents because  
21                  Defendant Robert Schechter, MD and his staff knew that CDPH was violating State  
22                  privacy laws and also acting outside their statutory authority to respond to a health and  
23                  safety emergency.
- 24
- 25          95.    Upon information and belief, Defendant Robert Schechter, MD and his staff  
26                  deliberately avoided persons whom they considered to be 'unfriendly' or ‘problem’  
27                  doctors and patients/families, and instead Defendant Robert Schechter, MD and his  
28                  staff made a practice of only communicating with schools and local health officers

1 who were known to be politically aligned with CDPH's views on medical exemptions.

2 96. Based on the allegations set forth in paragraphs 37-43 and 82-95 above, Plaintiffs  
3 seek a declaratory judgement and permanent injunctive relief barring Defendant or his  
4 subordinates from receiving privacy protected medical vaccine information except as  
5 provided by law, and barring them from rendering legal opinions, pursuant to Cal.  
6 Code Civ. Pro. Sections 1060 et. seq. and 526(a)(1)  
7

8  
9 **CONCLUSION**

10 97. The medical vaccine issue is now front and center in the California legislature,  
11 several state administrative agencies, and surprisingly, was even the focus of San  
12 Francisco City's Attorney's Office, which precipitated the filing of the original  
13 complaint in this case.  
14

15 98. The PR advocacy campaign to support SB 276, its primary tactic of vilifying the  
16 physicians like Dr. Stoller who wrote the broad medical exemptions which Senator  
17 Pan said could be written, and the marginalizing of the families of vaccine injured and  
18 medically fragile children who have vaccine medical exemptions has caused  
19 confusion, chaos and lawlessness on the part of administrative agencies and schools.  
20

21 99. State and federal privacy laws are being violated by state actors and school  
22 employees, and protected information is being improperly and illegally being provided  
23 to the media, members of the public and state officials who have no legal right to have  
24 the privacy protected information.

25 100. Further, apparently frustrated with the need to seek judicial enforcement of its  
26 subpoenas, the Medical Board is now sending out deceptive communications to  
27 parents of children who have medical exemptions written by physicians under  
28

1 investigation, with purpose or at least the effect of attempting to coerce and scare them  
2 into consenting to the release of their children's records on the false threat of their  
3 being dragged into court.

4  
5 101. Finally, it appears that one or more schools are simply violating current law by  
6 refusing to honor exemptions written by physicians under investigation by the Medical  
7 Board. There is absolutely no legal basis for this action, but it is a direct result of the  
8 SB 276 PR vilification campaign against physicians like Dr. Stoller and the families  
9 with medical exemptions.

10 102. The confusion, chaos and lawlessness urgently require judicial attention.

11  
12  
13 **PRAYER FOR RELIEF**

14 WHEREFORE the Plaintiffs request that judgment be entered in their favor and against the  
15 Defendants as set forth in this Second Amended Complaint and that the Court:

- 16 1. Issue a Declaratory Judgment against all Defendants that Dr. Stoller's patients  
17 have a right to a vaccine medical exemption under the California constitutional  
18 privacy rights.
- 19 2. Issue a permanent injunction against Defendants Kirchmeyer and Shultz in  
20 their official capacities which prohibits them from allowing their departments  
21 from releasing confidential information to the radical vaccine injury denying  
22 individual or political groups who have filed bogus and politically motivated  
23 complaints against Plaintiff and like-minded physicians,
- 24 3. Issue a permanent injunction against Defendants Kirchmeyer and Shultz in  
25 their official capacities which prohibits the Medical Board from providing  
26 misleading communications which suggest that unless they release their  
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children’s medical records, they will be brought to court, and requiring a court approved notice to parents for seeking consent for the release of medical records.

- 4. Issue a declaratory judgement and permanent injunction against Defendant Schechter prohibiting him and his staff from receiving state and federal privacy protected information from schools, and from providing legal opinions on the validity of medical exemptions or from counseling schools not to honor vaccine medical exemptions which technically comply with the current law.
- 5. Costs and attorneys’ fees as permitted by law,
- 6. Such other and further relief as the Court deems just and proper.

Dated September 3, 2019

RESPECTFULLY SUBMITTED,

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