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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
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 14 **FREE NOW FOUNDATION, BRAVE AND
 15 FREE SANTA CRUZ, D.Q., by his Next
 16 Fried, Alix Mayer, A.R., by this Next Friend
 17 Alix Mayer, T.E., by this Next Friend,
 18 Kathleen Lynch, and N.D., by this Next
 19 Friend, Kathleen Lynch,**

20 Plaintiffs,

21 v.

22 **Erica Pan, In Her Official Capacity As
 23 Director Of The California Department of
 24 Public Health,**

25 Defendant.

2:24-cv-03523-DJC-SCR

**CDPH’S SUPPLEMENTAL BRIEFING
 REGARDING IMPACT OF CARVALHO
 V. HEALTH FREEDOM DEFENSE FUND
 DECISION**

Courtroom: 7
 Judge: The Honorable Daniel J.
 Calabretta
 Trial Date: Not Set
 Action Filed: December 16, 2024

26 Pursuant to the Court’s order of August 14, 2025, Defendant Erica Pan, in her official
 27 capacity as the Director of the California Department of Public Health (hereinafter, CDPH),
 28 hereby provides the following supplemental response regarding the relevance to this case of the

1 opinion recently issued by the Ninth Circuit following a rehearing en banc in *Health Freedom*
2 *Defense Fund, Inc. v. Carvalho*, No. 22-55908, 2025 WL 2167401 (9th Cir. July 31, 2025).

3 As discussed below, *Carvalho* is binding and dispositive authority for the points that: 1.
4 rational-basis review applies to constitutional challenges to vaccine mandates enacted to protect
5 public health and safety, such as California’s school-vaccine mandate at issue in this case; and 2.
6 contrary to Plaintiffs’ arguments, vaccines do not constitute “forced medical treatment” for
7 purposes of due process law. In sum, *Carvalho* serves to further reinforce CDPH’s position that
8 Plaintiffs fail to state a claim, and that this case should be dismissed without leave to amend.

9 **SUPPLEMENTAL RESPONSE**

10 **I. CARVALHO REAFFIRMS THAT RATIONAL BASIS REVIEW APPLIES**

11 First, *Carvalho* is relevant to the Court’s disposition of this matter because the Ninth
12 Circuit re-affirmed that constitutional challenges to school-vaccine mandates based on alleged
13 violations of due process are reviewed under the rational-basis standard.

14 In *Carvalho*, Plaintiffs brought suit challenging a now-defunct mandatory COVID-19
15 vaccination policy for employees at Los Angeles Unified School District (LAUSD). *Carvalho*,
16 2025 WL 2167401, at *3. Among other points, Plaintiffs argued that the challenged vaccination
17 policy violated their alleged fundamental due process right “to bodily integrity in refusing
18 medical treatment.” *Id.* The court, sitting en banc, reiterated long-standing law under *Jacobson*
19 that there is “no fundamental right to be free from vaccine requirements imposed to protect the
20 safety and health of the community.” *Id.*, at *7 (citing *Jacobson v. Massachusetts*, 197 U.S. at 26–
21 27 (1905)). The court further re-affirmed that, “[w]hether a vaccine protects the public’s health
22 and safety is committed to policymakers, not a court or a jury.” *Id.*, at * 8. Applying these
23 principles, the court held that LAUSD’s policy “easily survives” rational basis review “because
24 (even assuming the truth of Plaintiffs’ allegations) it was more than reasonable for the LAUSD to
25 conclude that COVID-19 vaccines would protect the health and safety of its employees and
26 students.” *Id.*, at * 8.

1 In this case, all but one of the causes of action¹ in Plaintiffs’ Second Amended Complaint
2 are premised on the theory that California’s school-vaccine mandate violates their “fundamental”
3 due process rights, and, thus, that strict scrutiny applies. ECF No. 39 ¶¶ 266-285, 294-297.
4 However, the Ninth Circuit in *Carvalho* resoundingly rejected such a theory, and, once again,
5 reaffirmed that challenges to vaccine mandates to protect the public’s health and safety are
6 subject to rational basis review under *Jacobson*. And, as set forth in CDPH’s Motion to Dismiss,
7 California’s vaccine mandate for school-aged children is rationally related to California’s
8 “legitimate interest” in protecting the health and safety of school students and employees, and
9 thus survives rational basis review.

10 **II. CARVALHO REAFFIRMS THAT THERE IS NO FUNDAMENTAL RIGHT TO REFUSE** 11 **VACCINATION**

12 The recent en banc *Carvalho* decision is also controlling authority for the fact that vaccine
13 mandates do not constitute forced medical treatment, contrary to Plaintiffs’ arguments in this
14 case.

15 In *Carvalho*, the plaintiffs, relying on *Cruzan v. Director*, 497 U.S. 261 (1990) and
16 *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), argued that the court should apply a
17 heightened standard of review because LAUSD’s vaccine mandate violated their alleged
18 “fundamental right to bodily integrity in refusing medical treatment.” *Id.*, at *3, *9. Plaintiffs
19 also argued that the COVID-19 vaccines “cause a significantly higher incidence of injuries,
20 adverse reactions, and deaths than any prior vaccines that have been allowed to remain on the
21 market, and, therefore, pose a significant health risk to recipients.” *Id.*

22 The Ninth Circuit rejected these arguments out of hand, noting that “whatever the reach of
23 these cases, they did not overrule *Jacobson*,” and further distinguished *Cruzan* and *Glucksberg* on
24 the grounds that neither involved challenges to vaccine policies imposed to protect the health and
25 safety of the public at large. *Id.*, at *10 & n. 13. The court elaborated that, even if these decisions
26 were to undermine some aspect of *Jacobson*, *Jacobson* nevertheless continues to squarely control

27 ¹ The remaining cause of action, premised on Plaintiffs’ argument that California’s
28 school-vaccine mandate constitutes an unconstitutional condition, is also subject to dismissal for
the reasons set forth in CDPH’s motion to dismiss and reply brief in support thereof. See ECF
No. 51 at 19-20; ECF No. 54 at 12-13.

1 in cases challenging vaccine mandates, such as California’s vaccine law challenged here. *Id.* at n.
2 13. Plaintiffs’ case here rests precisely on the very same argument rejected by the *Carvalho*
3 decision: that, under *Cruzan* and *Glucksberg*, California’s school-vaccine mandate violates
4 Plaintiffs’ purported “fundamental right” to refuse medical treatment. ECF No. 39 ¶¶ 286-293;
5 ECF No. 53 at 1, 13-14, 20. Under *Carvalho*, this argument necessarily fails, and Plaintiffs’
6 claims must be dismissed.

7 **CONCLUSION**

8 For the foregoing reasons, as well as the reasons fully set forth in CDPH’s motion to
9 dismiss (ECF No. 51) and reply in support of motion to dismiss (ECF No. 54), CDPH’s motion
10 should be granted, and further leave to amend should be denied.

11 Dated: August 22, 2025

Respectfully submitted,

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14 Attorney General of California
15 JENNIFER G. PERKELL
16 Supervising Deputy Attorney General

/s/ Katherine J. Grainger

17 KATHERINE J. GRAINGER
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SF2024804250

CERTIFICATE OF SERVICE

Case Name: **Free Now, et al. v. Aragon, et al.** No. **2:24-cv-03523-DJC-SCR**

I hereby certify that on August 22, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

CDPH'S SUPPLEMENTAL BRIEFING REGARDING IMPACT OF CARVALHO V. HEALTH FREEDOM DEFENSE FUND DECISION

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 22, 2025, at San Francisco, California.

E. Santos
Declarant

E. Santos
Signature

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