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The Honorable Gary E. Strankman, Presiding Justice
and Associate Justices
California Court of Appeal
First Appellate District, Division One
350 McAllister Street, Room 1185
San Francisco, California 94102-4736

Re: Letter Brief in Opposition to Petition for Writ of Mandamus
State of California, et al. v. Superior Court of the State of California for the City and County of San Francisco, et al; California Court of Appeal No. A094890.

Dear Presiding Justice Strankman and Associate Justices:

Respondents hereby respectfully submit the following letter brief in opposition to the above-referenced petition for writ of mandamus.

INTRODUCTION

Contrary to the assertion of the petitioners, the respondent trial court, in denying the summary judgment motion at issue, did not ignore 100 years of case law. Rather, the trial court correctly applied the standards for summary judgment as set forth in the governing statute, California Code of Civil Procedure section 437c, and the controlling case law, *Lilienthal* and its progeny. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854 [16 Cal.Rptr.2d 458, 461-462]; *Edward Fineman Co. v. Superior Court* (1998) 66 Cal.App.4th 1110 [78 Cal.Rptr.2d 478]; *Hood v. Superior Court* (1995) 33 Cal.App.4th 319 [39 Cal.Rptr.2d 296].) As the trial court found, the State's motion sought to adjudicate factual and legal issues without disposing of any cause of action. Such a motion is expressly forbidden under section 437c of the California Code of Civil Procedure.

The petitioners now challenge the trial court's denial of the summary judgment motion, arguing that "the respondent court's ruling . . . seriously impedes the simplification and streamlining of a very complicated piece of litigation." Pet. Writ of Mandate, p. 4. As shown below, the petitioners are simply incorrect. The trial court's decision to deny the summary judgment motion was entirely proper, and actually furthered the goal of focusing this case on the central issue raised by plaintiffs' claims: whether the defendants have complied with their statutory and constitutional duties to establish and maintain a system of oversight and management to ensure that California school children are provided with the basic minimal conditions necessary for an education. Permitting the State to bring a motion aimed at the conditions at only one school out of the forty-six mentioned in the complaint would have opened the door to dozens of such motions, none of which would have completely disposed of any of the causes of action at issue in this case. Indeed, such motions would also invite numerous opportunities for parties to seek appellate review of decisions on factual issues, devoid of the context provided by a complete record. This case thus exemplifies the legislative rationale for section 437c subdivision (f)(1), which was designed "to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense." (Stats. 1990, ch. 1561, § 1). The trial court's ruling was correct.

FACTUAL BACKGROUND OF THE UNDERLYING ACTION

The underlying action was brought by 100 named plaintiffs, 98 of whom are schoolchildren in 46 of California's public schools, on behalf of themselves and all others similarly situated. The complaint alleges that tens of thousands of California's schoolchildren must attend schools that lack the bare essentials for an education. For example, plaintiffs and the class they represent attend schools that lack textbooks or other instructional materials; schools that are staffed by unqualified teachers; schools where schoolchildren are assigned to classrooms without seats, that are infested with rats and other vermin, and otherwise have unsafe physical conditions; and schools in which the temperature is so hot or so cold on a persistent basis as to impede the ability to learn.

The complaint[1] alleges that petitioners the State of California, the State Board of Education, the State Department of Education and the State Superintendent of Public Instruction have failed to comply with their constitutional and statutory duties to identify and correct these conditions at California public schools. It is unquestionably the State's ultimate and non-delegable responsibility to establish and superintend the

[1] The term "complaint" means plaintiffs' first amended complaint filed August 14, 2000. Pet. Exh. 12.

public schools. (*See Salazar v. Eastin* (1995) 9 Cal.4th 836, 858 [890 P.2d 43, 47] ["the state has ultimate responsibility for the constitutional operation of its schools"]; *Butt v. State* (1992) 4 Cal.4th 668, 692 [15 Cal.Rptr.2d 480, 496, 842 P.2d 1240, 1256] ["The State is the entity with ultimate responsibility for equal operation of the common school system."]; *Kennedy v. Miller* (1893) 97 Cal. 429, 431 [32 P. 558] ["Article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision."].)

The complaint pleads five causes of action against each of the defendants.[2] The first cause of action alleges that the defendants' failure to establish an effective system of oversight and management, as evidenced by the conditions set forth in the complaint, violates plaintiffs' rights under the Equal Protection Clauses of the California Constitution. Pet. Exh. 12, p. 269. The second cause of action alleges that the defendants' conduct has violated Article IX sections 1 and 5 of the California Constitution. *Id.* at pp. 269-270. The third cause of action alleges that the defendants have violated the Due Process Clauses of the California Constitution. *Id.* at pp. 270-271. The fourth cause of action alleges that the defendants have violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations. *Id.* at pp. 271-272. The final cause of action seeks a judicial declaration that the defendants have violated the constitutional and statutory provisions set forth in the above-mentioned causes of action. *Id.* at p. 273. Each of the causes of action is pleaded on behalf of all of the plaintiffs, as a group.

As the trial court recognized, the underlying case "is exclusively about the State's system of oversight and management and that system's inadequacies and failures. The specific deficiencies [at each school] are evidence of the alleged breakdown in the State's management of its oversight responsibilities. As such they are the result, rather than the fact, of the allegedly unconstitutional behavior — the consequential injury rather than the violation." *See* Order Denying Demurrer, p. 4, attached to this letter as Exhibit A.

The State filed a cross-complaint against each of the 18 governing school districts in which the named plaintiffs attend school. The State alleges in its cross-complaint that it is the districts that have deprived the plaintiff school children of equal educational opportunities. Several of the cross-defendant school districts, as well as plaintiffs, filed motions to sever and stay the cross-complaint from the original proceeding — motions that the trial court granted on April 11, 2001. *See* Pet. Exh. 10,

[2] The complaint as originally filed contained seven causes of action, of which two have been resolved by motion practice.

p. 171. The trial court's ruling stayed all proceedings in the cross-complaint, including discovery, until such time as the original action is resolved.

The State also filed a motion for summary judgment at issue in this writ proceeding. The State's summary judgment motion did not purport to resolve in its entirety any of the causes of action as pleaded in the complaint. Instead, the motion was directed to each of the causes of action "brought by the Cloverdale plaintiffs," three of the plaintiffs named in the complaint, all of whom attend Cloverdale High School in the Cloverdale Unified School District. The State's motion, filed before any discovery relating to the Cloverdale had taken place, maintained that the conditions at Cloverdale High School were not unconstitutionally poor, so that the Court could grant summary judgment as to those three plaintiffs. The trial court denied the summary judgment motion, ruling that the motion was procedurally improper because it failed to dispose of a cause of action in its entirety. As the trial court found, the Cloverdale plaintiffs "are some among many plaintiffs alleging the common violation [i.e., defendants' failure to set up and maintain an effective system of oversight and management] against them all...." Pet. Exh. 10, p. 180.

ARGUMENT

I. THE PETITIONERS ARE NOT ENTITLED TO A WRIT.

In order to justify writ relief, petitioners must show that there is no other "adequate remedy at law" and that the petitioner will suffer irreparable injury. (*See Omaha Indem. Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1274-1275 [258 Cal.Rptr. 66, 70].) Additionally, petitioners must prove a clear, present and beneficial or substantial right. (*See Fair v. Fountain Valley School Dist.* (1979) 90 Cal.App.3d 180, 186 [153 Cal.Rptr. 56, 60]; *Baldwin-Lima-Hamilton Corp. v. Superior Court* (1962) 208 Cal.App.2d 803, 813-814 [25 Cal.Rptr. 798, 805].) Finally, petitioners must demonstrate that the respondent court abused its discretion in denying the motion for summary judgment. (*See McClatchy Newspapers, Inc. v. Superior Court,* (1987) 189 Cal.App.3d 961, 966 [234 Cal.Rptr. 702, 703]; *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25 [190 Cal.Rptr. 744, 748].)

Petitioners have completely failed to meet this burden. First, petitioners have shown no irreparable injury. Although the trial court denied the State's motion on procedural grounds, as shown in Part III below the motion was actually defective for additional independent reasons. Moreover, even if the State's motion for summary judgment could have been granted, the underlying action would have proceeded to trial on precisely the same claims. Thus, unlike the cases cited by petitioners, granting this writ cannot prevent a needless trial or trial on non-actionable claims. (*Cf. Lompoc*

Unified School Dist. v. Superior Court (1993) 20 Cal.App.4th 1688, 1692 [26 Cal.Rptr.2d 122, 124]; *Travelers Casualty & Surety Co. v. Superior Court* (1998) 63 Cal.App.4th 1440, 1450 [75 Cal.Rptr.2d 54, 60].) In addition, as the respondent court correctly noted, motions in limine or other pre-trial motions are available to resolve before trial, if possible, the factual allegations regarding Cloverdale High School. Pet. Exh. 10, p. 172. Any such rulings will, of course, be fully reviewable on appeal, providing an adequate remedy at law. Finally, petitioners have failed completely to demonstrate that the respondent court abused its discretion in denying the summary judgment motion. Rather, the respondent court clearly acted within the guidelines of the applicable statute and case law. Accordingly, the Court should deny the petition.

II. THE TRIAL COURT CORRECTLY DENIED THE STATE'S MOTION FOR SUMMARY JUDGMENT BECAUSE IT FAILED TO COMPLETELY DISPOSE OF ANY OF THE CAUSES OF ACTION ALLEGED IN THE AMENDED COMPLAINT.

A. The Trial Court Correctly Applied The Summary Judgment Standard of Section 437c As Set Forth By *Lilienthal.*

The trial court properly ruled that the motion for summary judgment could not be granted as a matter of law because the State's motion failed to dispose of an entire cause of action, and is thus clearly prohibited by the Code of Civil Procedure section 437c, subdivision (f)(1).[3] The leading case interpreting the term "cause of action" within the context of section 437c, subdivision (f) is *Lilienthal & Fowler v. Superior*

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[3] Section 437c, subdivision (f)(1), as amended in 1990 and 1993, provides, in full:

> *A party may* move *for summary adjudication as to one or more causes of action within an action*, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. *A motion for summary adjudication shall be granted only if it completely disposes of a cause of action*, an affirmative defense, a claim for damages, or an issue of duty. [Italics added.]

Court (1993) 12 Cal. App. 4th 1848, 1853 [16 Cal.Rptr.2d 458, 461].[4] Under *Lilienthal*, a "cause of action" for summary judgment purposes is a "group of related paragraphs in the complaint reflecting a separate theory of liability. . . ." (*Ibid.* (citing to Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1992) ¶ 10:39, p. 10-12.1).) The only exception to this standard is when, as in *Lilienthal,* the plaintiffs have pleaded two "separate and distinct wrongful acts" in a single cause of action. (*Id.* at p. 1854.)

In *Lilienthal,* the Court of Appeal issued a writ overturning the denial of summary judgment where two plaintiffs, each a client of the defendant lawyer, asserted the same two causes of action against the lawyer based on two wholly unrelated property transactions. *Lilienthal* could have been decided based on the proposition that, where there are multiple plaintiffs, each plaintiff's claims constitute separate and distinct causes of action for purposes of section 437c, subdivision (f). But that rationale was not followed. To the contrary, the *Lilienthal* court found that only because the two plaintiffs were actually complaining about two separate and distinct wrongful acts, could the two separate causes of action be separately disposed of by summary adjudication. (12 Cal.App.4th at p. 1854.) The Court of Appeals held that "a party may present a motion for summary adjudication challenging a separate and distinct wrongful act even though combined with other wrongful acts alleged in the same cause of action." (*Id.* at pp.1854-1855; *see also Fineman*, *supra*, 66 Cal.App.4th 1110 (same).)

The trial court properly found that the *Lilienthal* exception to the summary judgment standard does not apply in this case. Plaintiffs here allege, on their own behalf and on behalf of a class of similarly situated children, that deplorable conditions exist for tens of thousands of California's schoolchildren, and that the existence of these conditions evidence the defendants' violation of their constitutional and other statutory rights. Plaintiffs challenge the system of statewide oversight and management. The "wrongful acts" alleged by the defendants are therefore common to plaintiffs as a group, as will be the relief sought. Unlike *Lilienthal*, then, the conditions in plaintiffs' schools do not represent "separate and distinct wrongful acts," but instead represent evidence of a single wrongful act by the defendants, *i.e.*, failure to fulfill their constitutional obligations to California public school children.

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[4] Although *Lilienthal* was decided five months before the Legislature's most recent amendment to section 437c, subdivision (f)(1), the case remains controlling since, according to the legislative history, the 1993 amendment was merely intended to "codify existing case law." (*See* Sen. Com. on Judiciary, Analysis of Assem. Bill No. 498 (1993-94 Reg. Sess.) June 29, 1993, p. 4, attached as Exhibit B to this letter.)

The amended complaint alleges five causes of action against the State on behalf of "all plaintiffs," most of whom do not attend Cloverdale High School. Plainly, the summary judgment motion does not dispose of any of these causes of action in its entirety; even if all of the facts regarding Cloverdale could be adjudicated in the State's favor, trial would still be necessary on all five causes of action in this case. Under *Lilienthal*, the State's summary judgment motion was procedurally barred.

B. The State's Primary Rights Theory Is Inapplicable.

The bulk of the petition for writ of mandate is based on the contention that the trial court's decision following *Lilienthal* is inconsistent with the "primary rights" doctrine — a well-established theory that is simply inapplicable to the summary judgment standard set forth in section 437c, subdivision (f). As shown in the *Lilienthal* case itself, the trial court made no such error.

The "primary rights" doctrine is used by courts to determine whether a plaintiff has improperly attempted to sue a defendant twice. "The primary right theory has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits. The theory prevents this result by either of two means: (1) if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement ...; or (2) if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata.... The latter application of the primary right theory appears to be most common." (*Crowley v. Katleman* (1992) 8 Cal.4th 666, 682 [34 Cal.Rptr.2d 386, 881 P.2d 1083, 1090-1091] [citations omitted].) Clearly, neither situation applies here.

Although cases applying the primary right doctrine use the term "cause of action," they do so in an entirely different context from the one presented here, as confirmed by *Lilienthal* itself. As the Court of Appeals explained:

> In a broad sense, a 'cause of action' is the invasion of a primary right (e.g. injury to person, injury to property, etc.).... [¶] However, in more common usage, 'cause of action' means a group of related paragraphs in the complaint reflecting a separate theory of liability.... [¶] *As used in CCP § 437c(f), 'cause of action' should be interpreted in the latter sense (theory of liability).*'

(*Lilienthal*, *supra,* 12 Cal.App.4th at p. 1853 (emphasis added).) Thus, the trial court committed no error in relying on *Lilienthal* for the applicable summary judgment standard, rather than the inapplicable "primary right" concept.

The petitioners do no cite a single decision applying the "primary rights" doctrine to determine what issues could be resolved at summary judgment. Instead, all of the petitioners' citations to "over a century of California case law" are to cases that arise outside the summary judgment context. (*See Hutchinson v. Ainsworth* (1887) 73 Cal. 452 [15 P. 82] [reviewing demurrer]; *McKee v. Dodd* (1908) 152 Cal. 637 [93 P. 84] [reviewing judgment after court trial]; *Panos v. Great Western Packing Co.* (1943) 21 Cal.2d 636 [134 P.2d 242] [reviewing judgment after court trial]; *Crowley, supra,* 8 Cal.4th 666 [reviewing grant of demurrer]; *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154 [17 Cal.Rptr.2d 639] [reviewing grant of demurrer]; *Edgar v. Citraro* (1931) 112 Cal.App. 183 [297 P. 653] [review after court trial]; *Shelton v. Superior Court* (1976) 56 Cal.App.3d 66 [128 Cal.Rptr. 454] [reviewing denial of leave to amend complaint]; *Smith v. Minnesota Mut. Life Ins. Co.* (1948) 86 Cal.App.2d 581 [195 P.2d 457] [reviewing grant of demurrer]; *Cross v. Pacific Gas & Elec. Co.* (1964) 60 Cal.2d 690 [36 Cal.Rptr. 321, 388 P.2d 353] [reviewing grant of demurrer]; *Sanderson v. Neiman* (1941) 17 Cal.2d 563 [110 P.2d 1025] [reviewing judgment after trial]; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743 [27 Cal.Rptr.2d 491] [reviewing grant of nonsuit for lack of standing]; *Fields v. Napa Milling Co.* (1958) 164 Cal.App.2d 442 [330 P.2d 459] [reviewing judgment after court trial]; *Colla v. Charmichael U-Drive Autos, Inc.* (1930) 111 Cal.App.Supp. 784 [reviewing judgment after trial]; *Atchison, Topeka & Santa Fe Ry. Co. v. Smith* (1919) 42 Cal.App. 555 [183 P. 824] [reviewing grant of demurrer].) None of these cases even address the question of what constitutes a "cause of action" for purposes of the summary judgment statute. Nor do the petitioners offer any other authority permitting summary judgment as to the claims of some, but not all, of the named plaintiffs pleaded a single cause of action.[5] In short, the petitioners have shown no error by the trial court in applying the well-established *Lilienthal* standard and denying the motion for summary judgment.

C. Use of "Summary Judgment" Motions Directed at Particular Plaintiffs Will Not Effectively Streamline The Trial in the Underlying Action.

The petitioners assert that the trial court's ruling impedes the orderly resolution of this action. In fact, the trial court's ruling *furthers* the legislature's policy restricting the use of the summary judgment procedure to motions that will streamline the

[5] *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 94 [97 Cal.Rptr.2d 842] did not reach the issue, because in that case one of the two plaintiffs "did not challenge" the summary judgment entered against only her. *Miranda v. Shell Oil Co.* (1993) 17 Cal.App.4th 1651 [26 Cal.Rptr.2d 655], also failed to address the question. The opinion in that case fails to specify whether the claims of the three plaintiffs adjudicated at summary judgment were pleaded as separate causes of action.

litigation. The policy underlying motions for summary judgment and summary adjudication of issues is to "'promote and protect the administration of justice, and to expedite litigation by the elimination of needless trials.'" (*See Hood, supra,* 33 Cal.App.4th at p. 323 (citing *Lilienthal, supra,* 12 Cal.App.4th at p. 1854 (quoting *Wiler v. Firestone Tire & Rubber Co.* (1979) 95 Cal.App.3d 621, 625 [157 Cal.Rptr. 248]).) In 1990, the summary judgment statute was amended to restrict the summary adjudication remedy to motions that would adjudicate, *inter alia,* an entire cause of action. According to the California Judge's Association, ("CJA") the sponsor of the 1990 and 1993 amendments to § 437c(f),

> it is a waste of court time to attempt to resolve issues if the resolution of those issues will not result in summary adjudication of a cause of action or affirmative defense. Since the cause of action must still be tried, much of the same evidence will be reconsidered by the court at the time of trial. This bill would instead require summary adjudication of issues only where an entire cause of action, affirmative defense or claim for punitive damages can be resolved.

(*See* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 2594, August 8, 1990, p. 2, attached as Exhibit C to this letter; *see also Catalano, supra,* 82 Cal.App.4th at p. 96.) CJA also stated that prior to the amendment to § 437c, "existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues." (*Ibid.*) The Legislature adopted the policy as stated by CJA and further declared the purpose of the amendment to section 437c subdivision (f): "to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense." (Stats. 1990, ch. 1561, § 1).

The trial court's ruling furthered this legislative policy. If the State were permitted to bring motions of this kind, this action would likely be bogged down into a series of such motions, none of which could actually resolve the central issues in this case: whether the State has established an effective system for monitoring and correcting deplorable conditions such as the ones suffered by the named plaintiffs. Permitting the State to pursue this piecemeal approach to litigating issues would have required the plaintiffs and the trial court to expend an enormous amount of time and resources to resolve legal and factual issues relating to each school with only minimal impact on the litigation as a whole. Regardless of the outcome on these individual motions, the trial in the underlying action would proceed on all of the same legal theories of liability, all based on the same constitutional violations by the defendants, regardless of the actual schools that will be used to showcase the deplorable conditions suffered by thousands of California public school children. The State's summary

judgment motion at issue here thus conflicts with the very purpose of section 437c, subdivision (f).[6]

III. SUMMARY JUDGMENT CANNOT BE GRANTED AS A MATTER OF LAW BECAUSE TRIABLE ISSUES OF FACTS EXIST AND BECAUSE MEANINGFUL DISCOVERY IN THE UNDERLYING ACTION HAS ONLY RECENTLY COMMENCED.

Even if the motion for summary judgment had been procedurally proper, the motion could not have been granted because numerous triable issues of material fact as to the allegations of the Cloverdale plaintiffs remained, and meaningful discovery had only recently commenced.

With respect to textbooks, plaintiffs allege that several classes at Cloverdale High School do not have enough textbooks for all students. *See* Pet. Exh. 12, pp. 235-236, ¶¶ 140-141. The State's summary judgment motion and supporting papers, along with the evidence submitted by plaintiffs with their opposition, demonstrate that plaintiffs have shown a factual dispute as to these issues. The State's own submissions in support of the summary judgment motion confirm plaintiffs' allegation that "students cannot take books home for homework in some classes, including science and geography classes." *See* Pet. Exh. 4, p. 43, ¶ 11; Pet. Exh. 12, p. 236, ¶ 141. The State has failed to present evidence supporting its contention that plaintiffs' factual allegations regarding textbooks at Cloverdale do not rise to the level of a constitutional violation. As the California Supreme Court made clear in *Butt v. State of California, supra,* 4 Cal.4th at p. 687, the equal protection issues at stake in this case must be measured by comparing a particular student's experience against "prevailing statewide standards." The State's evidentiary submission in this motion significantly lacks *any* showing regarding the prevailing statewide standards for the provision of textbooks. Absent such evidence, summary judgment could not be granted.

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[6] The California School Board Association and at least four school districts have filed letters with the Court supporting the petition, on the ground that "summary judgment" motions of the sort filed by the State could eliminate issues as to certain school districts. Those letters fail to note, however, that the trial court has already taken measures to minimize the burden on school districts, which are named as parties only in the State's cross-complaint. The trial court severed the cross-complaint and stayed the cross-complaint, including all discovery, until the resolution of the plaintiffs' action against the State entities. *See* Pet. Exh. 10, p. 171. The trial court has thus already addressed the central issue raised by these school districts.

Additionally, all of the submitted evidence — including the State's submissions — conclusively establishes that classrooms reach uncomfortably high temperatures. *See* Pet. Exh. 12, pp. 235-236, ¶¶ 140-141. The State contends, as with the textbook allegations, that the allegations regarding classroom temperature, even if true, do not rise to the level of a constitutional violation. As with the allegations regarding textbooks, significantly absent from the State's evidence is any showing of the "prevailing statewide standards" for classroom temperature, let alone any showing that the Cloverdale plaintiffs have been provided with a learning environment that satisfies the prevailing statewide standard. Additionally, Cloverdale High School students' performance on standardized tests, or any other indication of academic performance, does not disprove plaintiffs' allegations that their learning is substantially impaired by conditions in the school. These self-serving declarations by the schools principals, that the school is a "good" school, cannot defeat plaintiffs' allegations that the State has failed to set up an effective system of oversight and management. Therefore, genuine issues of fact preclude summary judgment.

Finally, summary judgment was inappropriate under California Code of Civil Procedure section 437c, subdivision (h). (*See also Nazar v. Rodeffer* (1986) 184 Cal.App.3d 546, 555-556 [229 Cal.Rptr. 209, 214].) Plaintiffs submitted with their opposition a supporting declaration detailing the outstanding and additional discovery that is necessary to provide plaintiffs with essential facts to oppose the State's summary judgement motion. *See* Pet. Exh. 6. This additional discovery is necessary to assist plaintiffs in evaluating the constitutional violations evidenced by the conditions identified in plaintiffs' amended complaint, including the availability of textbooks and the facilities. The discovery will provide plaintiffs with additional facts upon which to oppose the State's motion for summary judgment. Absent these necessary facts, any summary judgment ruling would have been premature.

CONCLUSION

For all of the forgoing reasons, real parties in interest respectfully submit that the Court should summarily deny the petition for writ of mandamus. The controlling statute, Code of Civil Procedure section 437c, subdivision (f), makes clear that the trial court properly denied the summary judgment motion as to the Cloverdale plaintiffs because it failed to dispose of a cause of action in its entirety. Furthermore, the underlying records establishes that there are two independent reasons justifying the denial of summary judgment: (1) triable issues of material fact; and (2) prematurity. Accordingly, extraordinary relief is not warranted in this matter.

Efficient management of this case would be hampered, not aided, if California summary judgment law allowed piecemeal nibbling at issues that form only parts of the

causes of action. Section 437c does not allow summary judgment on that basis. The petition for writ should therefore be denied.

Very truly yours,

Matthew I. Kreeger

Attachments

cc: Counsel for Defendants (by Overnight Delivery and Personal Service, w/attachments)
Counsel for Intervenors (by Overnight Delivery, w/attachments)
Counsel for School Districts (by U.S. Mail, w/attachments)