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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN FRANCISCO

21 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
22 individually and on behalf of all others similarly
situated,

23 Plaintiffs,

24 v.

25 STATE OF CALIFORNIA, DELAINE EASTIN,
State Superintendent of Public Instruction,
STATE DEPARTMENT OF EDUCATION,
26 STATE BOARD OF EDUCATION,

27 Defendants.
28

ENDORSED
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[CLASS ACTION]

MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION,
AS TO ALL CAUSES OF ACTION BROUGHT BY
THE CLOVERDALE PLAINTIFFS

Hearing Date: April 11, 2001
Hearing Time: 8:30 a.m.
Dept.: 16
Judge: Hon. Peter J. Busch
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1 INTRODUCTION

2 Although styled as a motion for summary judgment or summary adjudication, the State's¹
3 motion would not completely adjudicate any cause of action in this case. Instead, the State hopes by
4 this motion to adjudicate certain facts relating to one of the schools identified in the amended
5 complaint, Cloverdale High School. As an effort to "pick off" certain plaintiffs, this motion is simply
6 contrary to the terms of the governing statute. Under California Code of Civil Procedure § 437c, a
7 motion for summary judgment or summary adjudication can only be granted if it "completely
8 disposes of a cause of action." Cal. Civ. Proc. § 437c(f)(1). This motion would have no such effect,
9 and therefore fails at the outset.

10 Even if the State's motion were procedurally proper, it would still fail on the merits. Contrary
11 to the State's contention, the facts at issue with respect to Cloverdale are far from undisputed. The
12 State first contends, based solely on the declaration of Gene Lile, principal of Cloverdale High
13 School, that there is no factual basis to the Cloverdale plaintiffs' claims regarding insufficient
14 numbers of textbooks and instructional materials and inadequate air conditioning at Cloverdale High
15 School. However, the principal's declaration itself acknowledges: (1) that some students in some
16 classes were not provided with his or her own textbook last year; (2) that some students lack his or
17 her own textbook now; and (3) that Cloverdale High School continues to lack air conditioning in
18 most classrooms. Moreover, in this opposition and the supporting papers filed with it, plaintiffs
19 present evidence that demonstrates a clear dispute regarding these factual claims. In addition, the
20 State contends that even if plaintiffs' factual contentions are correct, they do not amount to a
21 violation of the Cloverdale plaintiffs' constitutional rights. The factual disputes regarding the precise
22 conditions at Cloverdale, as well as those concerning the prevailing conditions across the State,
23 preclude summary judgment at this time.

24 Finally, plaintiffs have filed with this opposition a declaration under § 437c(h) demonstrating
25 that additional discovery is necessary to resolve key factual issues raised by this motion. In

26
27 ¹ On or about March 27, 2001, Delaine Eastin, the Department of Education and the Board of
28 Education filed a joinder to the State's motion for summary judgment, or in the alternative, for
summary adjudication. All references to the "State's motion" in this opposition are intended to
include the educational agency defendants as well.

1 particular, discovery regarding the prevailing statewide standards for textbooks and classroom
2 temperature is not yet complete. Absent such a factual record, there is no basis for the Court to
3 resolve the plaintiffs' claims.

4 STANDARD FOR GRANTING SUMMARY JUDGMENT

5 "A motion for summary adjudication shall be granted only if it completely disposes of a cause
6 of action, an affirmative defense, a claim for damages, or an issue of duty." Cal. Civ. Proc. Code
7 § 437c(f)(1). A party may move for summary adjudication as to one or more causes of action "within
8 an action," if that party contends that the action itself has no merit. *Id.* Such motions may only be
9 granted to issues that completely dispose of a particular cause of action or defense. *See Hood v.*
10 *Superior Court*, 33 Cal. App. 4th 319, 323-324 (1995); *Catalano v. Superior Court*, 82 Cal. App. 4th
11 91, 95-96 (2000).

12 Summary judgment is properly granted where there "is no triable issue as to any material fact
13 and . . . the moving party is entitled to a judgment as a matter of law." Cal. Civ. Proc. § 437c(c);
14 *Lipson v. Superior Court*, 31 Cal. 3d 362 . Because summary judgment denies the opposing party a
15 trial, the court must strictly construe the evidence of the moving party, and liberally construe the
16 evidence of the opposing party, to avoid a ruling that, in effect, adjudicates factual disputes. *See*
17 *Sanchez v. Swinerton & Walberg*, 47 Cal. App 4th 1461 (1996). Any doubts about the propriety of
18 granting the motion must be resolved against the moving party. *See Stationers Corp. v. Dun &*
19 *Bradstreet, Inc.*, 62 Cal. 2d 412, 417 (1965); *Violette v. Shoup*, 16 Cal. App. 4th 611 (1993).

20 When a defendant moves for summary judgment, § 437c requires that defendant prove by its
21 motion that plaintiff cannot establish one or more elements of each cause of action Cal. Civ. Proc.
22 Code § 437c(o)(2); *Brantley v. Pisaro*, 42 Cal. App. 4th 1591, 1598 (1996). Until defendants meet
23 this burden, plaintiffs need do nothing at all. Only after a defendant has met its burden must a
24 plaintiff show that a triable issue of one or more material facts exists. *Id.* The "moving party 'is held
25 to strict compliance with the procedural requisites'" of section 437c. *See United Community*
26 *Church v. Garcin*, 231 Cal. App. 3d 327, 337 (1991).

1 affirmative defense, a claim for damages, or an issue of duty.

2 (Italics added). A “cause of action” means “a group of related paragraphs in the complaint reflecting
3 a separate theory of liability.” *Lilienthal*, 12 Cal. App. 4th at 1853. In this case, plaintiffs, a group of
4 98 school children, allege, on their own behalf and on behalf of a class of similarly situated children,
5 that deplorable conditions exist for tens of thousands of California’s schoolchildren and that the
6 existence of these conditions evidence the defendants’ violation of their constitutional and other
7 statutory rights. Plaintiffs challenge the system of statewide oversight and management, and have
8 confirmed that they do not seek relief correcting specific deprivations suffered by particular students
9 at specific schools in specific school districts. The “wrongful acts” challenged are common to
10 plaintiffs as a group, as will be the relief sought. The amended complaint alleges five causes of
11 action against the State on behalf of “all plaintiffs,” most of whom do not attend Cloverdale High
12 School. Plainly, this motion does not dispose of any of these causes of action in its entirety; even if
13 all of the facts regarding Cloverdale could be adjudicated in the State’s favor, trial would still be
14 necessary on all five causes of action in this case.

15 The State does not cite any case to support the use of summary judgment or adjudication on a
16 plaintiff-by-plaintiff basis within causes of action pleaded as common to a group of plaintiffs. The
17 issue was posed by a case that the State does not cite, *Lilienthal & Fowler v. Superior Court*, 12 Cal.
18 App. 4th 1848, 1853 (1993). In that case, the Court of Appeal issued a writ overturning the denial of
19 summary judgment where two plaintiffs, each a client of the defendant lawyer, asserted the same two
20 causes of action against the lawyer based on two wholly unrelated property transactions. The
21 *Lilienthal* court properly found that the plaintiffs were actually complaining about two separate and
22 distinct wrongful acts, each of which gave rise to separate causes of action that could have been
23 separately disposed of by summary adjudication. 12 Cal. App. 4th at 1584.

24 However, the State cannot cite *Lilienthal* as supporting its motion for two reasons. First, the
25 *Lilienthal* case could have been decided based on the proposition that distinct plaintiffs necessarily
26 present distinct causes of action for purposes of § 437c(f). But the holding was not based on that
27 proposition. To the contrary, the Court of Appeals held that “a party may present a motion for
28

1 summary adjudication challenging a separate and distinct wrongful act even though combined with
2 other wrongful acts alleged in the same cause of action.” *Id.* at 1854-55.² This holding would
3 literally apply to a single plaintiff who challenges more than one wrongful act in a single pleaded
4 count. It does not apply where multiple plaintiffs challenge a single wrongful act.

5 In the instant case, the wrongful act that plaintiffs challenge is common to all plaintiffs and
6 other similarly situated students. In other words, the continuing existence or non-existence of
7 conditions in any particular school identified in the amended complaint is distinct from this case’s
8 “exclusive” concern whether the State has an effective system of oversight and management. Unlike
9 *Lilienthal*, then, the conditions in plaintiffs’ schools do not represent separate and distinct wrongful
10 acts, but instead represent evidence of a single wrongful act by the defendants, *i.e.*, to fulfill their
11 constitutional obligation to California public school children.

12 Second, after *Lilienthal* was decided, the Legislature amended § 437c(f), adding the language
13 upon which plaintiffs particularly rely: “A motion for summary adjudication shall be granted only if
14 it completely disposes of a cause of action, an affirmative defense, a claim for damages or an issue of
15 duty.” See § 437c(f)(1) (new language underlined.). (See Stats. 1993, Ch. 276, West’s California
16 Legislative Service at 1626 (1993)).

17 In short, the State’s motion conflicts with the very purpose of § 437c(f), which seeks to
18 expedite litigation and conserve judicial resources. Resolution of the factual and legal claims of the
19 Cloverdale plaintiffs will not, in any manner, expedite this litigation. In fact, plaintiffs will proceed
20 to trial on the very same causes of action as to all of the named defendants. To permit motions of this
21 kind, which seek piecemeal adjudication of individual factual or legal claims in a class action in the
22 guise of a motion for summary judgment or adjudication, would effectively defeat the language and
23 stated purpose of § 437c(f).

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26
27 ² In *Lilienthal*, plaintiffs sought to recover monetary damages based on “two separate and
28 distinct” wrongful acts. 12 Cal. App. 4th at 1854. Plaintiffs note that no such relief is sought in this
case. Rather, plaintiffs seek prospective statewide injunctive relief on behalf of all California public
schoolchildren.

1 **II. TRIABLE ISSUES OF MATERIAL FACT REMAIN REGARDING**
2 **CLOVERDALE.**

3 Even if the State’s motion were procedurally proper, the Court should still deny the State’s
4 motion because of the numerous triable issues of material fact as to the allegations of the Cloverdale
5 plaintiffs.

6 **A. There Are Disputed Issues of Material Fact Regarding the Availability of**
7 **Textbooks Which Preclude Summary Judgment.**

8 With respect to textbooks, plaintiffs allege that several classes at Cloverdale High School do
9 not have enough textbooks for all students. *See* Amended Complaint, ¶¶ 140, 141. The State
10 disputes these facts as “untrue,” (Def’t’s MPA at 4: 14), “simply wrong” (Def’t’s MPA at 5: 2), or
11 “fundamentally false.” *See* Lile Decl., ¶ 2. However, the State’s motion and supporting papers, along
12 with the evidence submitted with this opposition, demonstrates that plaintiffs have at least shown a
13 factual dispute as to these issues.

14 The State’s own submissions confirm plaintiffs’ allegation that “students cannot take books
15 home for homework in some classes, including science and geography classes.” *See* Lile Decl., ¶ 11;
16 Amended Complaint, ¶ 141. For example, as Mr. Lile admits, during the 1999-2000 school year,
17 there was only one set of textbooks for all of the Integrated Science classes to share. *See* Lile Decl.,
18 ¶ 11. *See also* C. Kehrli Decl., ¶ 4; Melton-Piper Decl., ¶ 5. Because the teacher, Ms. Melton-Piper,
19 did not have enough books to provide each student with his or her copy to take home for homework,
20 she asked her students to read the textbook in class and then write down the information in their lab
21 notebooks so that the students could rewrite or do the activity at home. *See* Melton-Piper Decl., ¶ 5.
22 Sometimes, Ms. Melton-Piper provided her students with photocopies of pages to take home to
23 complete their assignments. *See* C. Kehrli Decl., ¶ 4; Melton-Piper Decl., ¶ 5. However, without the
24 entire textbook to use a reference, it is difficult for the students to understand the work. *See* Melton-
25 Piper Decl., ¶ 5. Providing students with photocopies of some pages on an intermittent basis is
26 simply inferior to providing each student with his or her own textbook for use in class and to take or
27 leave home for homework.

1 Additionally, as Mr. Lile again admits, some of the students at Cloverdale High do not have
2 their own copies of the Physics textbook to use in class or to take or leave home for homework in the
3 current school year. *See* Lile Decl., ¶¶ 5, 9. Mr. Lile attempts to justify the school’s failure to
4 provide each student with his or her own textbook by stating that, the district “has not replaced [lost]
5 textbooks . . . because it is purchasing a new edition of the Physics textbook for all students in the
6 2001-2002 school year,” and further that the Physics teachers provide those students with
7 photocopies when necessary. *Id.* at ¶ 9. The fact remains, however, that plaintiffs have at least raised
8 a factual dispute with regard to their allegations of inadequate textbooks at Cloverdale.

9 The State further contends that even if plaintiffs’ factual allegations regarding textbooks at
10 Cloverdale were true, they would not rise to the level of a constitutional violation. The State has
11 utterly failed to support its argument with the necessary evidence, however. As the California
12 Supreme Court made clear in *Butt v. State of California*, 4 Cal.4th 668, 685 (1992), the equal
13 protection issues at stake in this case must be measured by comparing a particular student’s
14 experience against “prevailing statewide standards.” The State’s evidentiary submission in this
15 motion significantly lacks *any* showing regarding the prevailing statewide standards for the provision
16 of textbooks. Absent such evidence, there is no basis for the Court to conclude, as the State contends,
17 that “the textbook allegations [with respect to Cloverdale] have no merit.”

18 **B. There Are Disputed Issues of Fact Regarding Classroom Temperatures**
19 **Which Preclude Summary Judgment.**

20 Plaintiffs allege at Cloverdale High School that classroom temperatures, which may reach as
21 high as 110 degrees, substantially impair students’ educational opportunities. *See* Amended
22 Complaint, ¶¶ 140, 141. All of the submitted evidence — including the State’s submission —
23 conclusively establishes that most classrooms at Cloverdale High School do not have air
24 conditioning, but rather are equipped with ceiling fans. *See* C. Kehrlı Decl., ¶ 3; Lile Decl., ¶ 12.
25 Furthermore, plaintiffs have submitted evidence that although the classrooms have fans, the fans do
26 little to lower the temperatures to levels more compatible with learning. *See* J. Kehrlı Decl., ¶ 3.
27 Plaintiffs have also shown that classroom temperatures can reach as high as 110 degrees during the
28 school year. *See* Melton-Piper Decl., ¶ 3. These temperatures prevent both students and teachers

1 from concentrating on the school work. *See* Melton-Piper Decl., ¶ 3; D. Smith Decl., ¶ 3; R. Smith
2 Decl., ¶ 3. For example, temperatures in the classrooms can get so hot that teachers will interrupt
3 their lessons to take students to the library, one of the few places in the school that is air-conditioned.
4 *See* D. Smith Decl., ¶3. This disruption impairs the learning of the students in the class who have to
5 move and the students attempting to study in the library.

6 The State contends, as with the textbook allegations, that the allegations regarding classroom
7 temperature, even if true, do not rise to the level of a constitutional violation . The State submits the
8 declaration of Mr. Lile for the proposition that the Cloverdale High School students’ performance on
9 the SAT-9, which either met or exceeded average test scores in several areas in 1999 and 2000,
10 demonstrates that the temperatures did not interfere with the students’ ability to learn.

11 The State’s evidence utterly fails to refute plaintiffs’ claims. Indeed, as with the allegations
12 regarding textbooks, significantly absent from the State’s evidence is any showing of the “prevailing
13 statewide standards” for classroom temperature, let alone any showing that the Cloverdale plaintiffs
14 have been provided with a learning environment that satisfies the prevailing statewide standard.
15 Additionally, Cloverdale High School students’ performance on the SAT-9 alone does not disprove
16 plaintiffs’ allegations that their learning is substantially impaired by conditions in the school. The
17 State’s motion must therefore be denied.

18 **III. THE COURT SHOULD DENY THE STATE’S MOTION FOR SUMMARY**
19 **JUDGMENT BECAUSE DISCOVERY IN THIS ACTION HAS ONLY**
20 **RECENTLY COMMENCED.**

21 The State argues, in part, that summary judgment is warranted because the Cloverdale
22 plaintiffs cannot establish that their school district’s educational program as a whole falls below
23 “prevailing statewide standards.” *See* Def’t’s MPA at 3:8.; *Butt v. State*, 4 Cal. 4th at 668. However,
24 the determination of whether the conditions at a particular school fall below the “prevailing statewide
25 standard” is premature given the stage of this case.

26 Pursuant to § 437c(h), the Court may deny the State’s summary judgment motion upon a
27 showing, by affidavit, that controverting evidence may exist and that the evidence cannot be
28 presented to the Court at this time. *See* Cal. Civ. Proc. § 437c(h); *Nazar v. Rodeffer*, 184 Cal. App.
3d 546, 555-556 (1986). To this end, plaintiffs have submitted with this opposition the supporting

1 declaration of Lois Perrin, which details the outstanding and additional discovery that is necessary to
2 provide plaintiffs with essential facts to oppose the State’s summary judgement motion.

3 First, the State contends that, even if all of the plaintiffs’ allegations relating to the availability
4 of textbooks are true, plaintiffs cannot establish a constitutional violation. Plaintiffs are currently
5 working with experts in the field to determine: (a) the effect of failing to provide each student with
6 his or her own textbook or complete set of instructional materials for use in class and to take or leave
7 home for homework; and (b) the timeframe in which books for core courses should be replaced. *See*
8 Perrin Decl., ¶ 9.

9 Second, the State further argues that even if plaintiffs’ allegations that the classes at
10 Cloverdale High School often reach temperatures of 110 degrees are correct, that this alone does not
11 rise to the level of a constitutional violation. Plaintiffs are currently working with of experts on
12 educational facilities to ascertain, among other things, the extent of the effect of temperature on a
13 child’s learning. *Id.* at ¶ 10.

14 Discovery in this matter has only recently commenced, and the Court has yet to set forth a
15 comprehensive time line with deadlines for discovery, disclosure of experts and their reports and
16 pretrial motions. Plaintiffs will make expert disclosures in accordance with the schedule to be set
17 forth by the Court. *Id.* at ¶ 10.

18 Third, based on the production received to date, plaintiffs believe that defendants possess and
19 will produce additional documents relating to the governing standard relating to textbooks and the
20 evaluation of school facilities, including maintenance of temperature. This information would be
21 material to plaintiffs’ opposition to the State’s summary judgment motion. *Id.* at ¶¶ 11, 12.

22 Furthermore, plaintiffs are in the process of preparing a second set of document requests and a
23 third set of specially prepared interrogatories to all of the named defendants. These discovery
24 requests will be directed, in part, to obtaining information about the “prevailing statewide standards”
25 for each of the conditions identified in the amended complaint. *Id.* at ¶ 13.

26 Finally, there are at least three depositions of state officials scheduled which plaintiffs
27 anticipate will provide relevant testimony about the availability of textbooks to California public
28 schoolchildren and school facilities. The deposition testimony of these state officials will likely

1 provide plaintiffs with additional facts upon which to oppose the State's motion for summary
2 judgment. *Id.* at ¶¶ 14-16.

3 All of this additional discovery is necessary to assist plaintiffs in evaluating the constitutional
4 violations evidenced by the conditions identified in plaintiffs' amended complaint, including the
5 availability of textbooks and the facilities. The discovery will provide plaintiffs with additional facts
6 upon which to oppose the State's motion for summary judgment. Absent these necessary facts, any
7 summary judgment ruling is premature.

8 CONCLUSION

9 By opposing this motion, plaintiffs are not laying the groundwork to present every fact as to
10 every plaintiff that tends to prove the flaws in the State's system of oversight and management.
11 Instead, the trial will focus on selected facts establishing the existence and the nature of those flaws.
12 Summary adjudication is the wrong procedural tool, however, for choosing which students, schools,
13 and school districts will and which will not be the basis for presentation at trial.

14 For each of the foregoing reasons, as a matter of law and as a matter of fact, the Court should
15 deny the State's motion for summary judgment or, in the alternative, for summary adjudication in its
16 entirety.

17 Dated: March 28, 2001

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