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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 CITY AND COUNTY OF SAN FRANCISCO

11 ELIEZER WILLIAMS, et al.,) Case No. 312 236
12)
Plaintiffs,) Hearing Date: April 11, 2001
13)
vs.) Time: 8:30 a.m.
14)
STATE OF CALIFORNIA, DELAINE) Department: 16
15 EASTIN, State Superintendent)
Of Public Instruction, STATE) Judge: Hon. Peter J. Busch
16 DEPARTMENT OF EDUCATION, STATE)
17 BOARD OF EDUCATION,)
18)
Defendants.)
19)
20)
AND RELATED CROSS-ACTION.)
21)
22)
23)
24)
25)
26)
27)
28)

23 REPLY MEMORANDUM OF POINTS AND AUTHORITIES
24 IN SUPPORT OF MOTION OF STATE OF CALIFORNIA
25 FOR SUMMARY JUDGMENT
26 OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION
27
28

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1 I. INTRODUCTION.

2 Plaintiffs assert, again and again, that the
3 "exclusive" focus of this case is whether the State has an
4 "effective system of oversight and management." Their
5 opposition to the instant motion shows how empty that theory is.
6 If plaintiffs could defeat this motion by showing that the State
7 has some general legal obligation to provide "oversight and
8 management" at Cloverdale High, presumably they would do so. In
9 fact, there is not a word in their opposition about that. The
10 entire thrust of their opposition is on the exact and specific
11 circumstances at Cloverdale High.

12 Even on that basis, however, plaintiffs fail to offer
13 any reason why the Court should deny this motion.

14 First. Summary judgment is proper here because each
15 claim of each Cloverdale Plaintiff is a separate cause of action.
16 That has been California law for a century.

17 Second. Plaintiffs present no evidence about
18 conditions at Cloverdale High that creates a triable issue of
19 material fact. Moreover, they fail even to address most of their
20 causes of action. Summary adjudication is required here even if
21 summary judgment is not.

22 Third. The additional discovery sought by plaintiffs
23 is not reasonably calculated to produce any evidence relating to
24 conditions at Cloverdale High, which is what this motion is
25 about. Accordingly, the State is entitled to summary judgment.
26
27
28

1 II. SUMMARY JUDGMENT IS PROCEDURALLY APPROPRIATE.

2 Plaintiffs argue that neither summary judgment nor
3 summary adjudication may be granted here because it will not
4 dispose of an "entire" cause of action. Pls.' Opp'n at 4. But
5 for over one hundred years, California has defined a "cause of
6 action" based on the "primary right theory": a cause of action
7 comprises a "primary right" in the plaintiff, a corresponding
8 duty by the defendant, and a wrongful act by the defendant
9 constituting a breach of that duty. McKee v. Dodd, 152 Cal. 637,
10 641 (1908); Panos v. Great Western Packing Co., 21 Cal. 2d 636,
11 638 (1943); Crowley v. Katleman, 8 Cal. 4th 666, 681 (1994).

12 Under this doctrine, the "primary right" is the
13 plaintiff's right to be free from a particular injury. Crowley,
14 8 Cal. 4th at 681. And it is well-established that where a
15 defendant's wrongful act violates the primary right of two or
16 more plaintiffs, there are as many separate and distinct causes
17 of action as there are injured plaintiffs. Shelton v. Superior
18 Court, 56 Cal. App. 3d 66, 79-81 (1976) (husband and wife had
19 separate causes of action where defendant violated separate
20 primary rights of each); Edgar v. Citraro, 112 Cal. App. 183, 185
21 (1931) (defendants' negligence violated "primary right of each
22 person" and "gave rise to a separate cause of action in favor of
23 each injured person").

24 Accordingly, even assuming that every plaintiff in this
25 case could trace his or her alleged injuries back to a single,
26 wrongful act of the State, each plaintiff would still have
27 separate and distinct causes of action based on the violation of
28 his or her own primary rights. It makes no difference that all

1 plaintiffs have chosen to plead their causes of action as
2 "common" to a group. Cf. Edward Fineman Co. v. Superior Court,
3 66 Cal App. 4th 1110, 1116-1118 (1998) (holding that defendants
4 may summarily adjudicate parts of claims that can be stated as
5 distinct causes of action); Lilienthal & Fowler v. Superior
6 Court, 12 Cal. App. 4th 1848, 1853-1855 (1993) (same). The State
7 is therefore entitled to seek relief as to the causes of action
8 asserted by the Cloverdale Plaintiffs, and each of them.¹

9
10 **III. AS TO THE CLOVERDALE PLAINTIFFS' FIRST CAUSE OF ACTION, NO**
11 **REASONABLE TRIER OF FACT COULD FIND A CONSTITUTIONAL**
12 **VIOLATION ON THE RECORD BEFORE THE COURT.**

13 To survive this motion, the Cloverdale Plaintiffs must
14 identify a disputed issue of material fact--one that raises more
15 than "mere speculation" that the educational program of
16 Cloverdale Unified, when viewed as a whole, falls fundamentally
17 below prevailing statewide standards.² Butt v. State of
18 California, 4 Cal. 4th 668, 686-687 (1992). The Cloverdale
19 Plaintiffs, however, have not met that burden.

20 ¹ The Cloverdale Plaintiffs argue that resolution of their
21 factual and legal claims "will not, in any manner, expedite this
22 litigation." Pls.' Opp'n at 5. On the contrary, resolution of
23 their claims will expedite this litigation because no proof will
24 be required at trial regarding conditions at Cloverdale High.
25 Plaintiffs have acknowledged that the first matter to be examined
26 at trial would be "the actual conditions existing in public
27 schools and their effect on the education of students." Pls.'
28 Status Conf. Stat., filed March 2, 2001, at 4:10-12. If this
motion is granted, that testimony will be unnecessary as to
Cloverdale High.

² Sangster v. Paetkau, 68 Cal. App. 4th 151, 166 (1998) (bare
assertion that moving party "fabricated" evidence insufficient to
avoid summary judgment); Bay Area Rapid Transit Dist. V. Superior
Ct., 46 Cal. App. 4th 476, 482 (1996) (expert opinion that
accident was caused by a "fault or failure" insufficient to
defeat summary judgment where plaintiff did not refer to any
evidence supporting that conclusion).

1 A. The Textbook Allegations Have No Merit.

2 The Cloverdale Plaintiffs allege that some classes at
3 Cloverdale High, including science and geography, have an
4 insufficient number of textbooks or no textbooks at all. FAC ¶
5 141. According to Principal Gene Lile, however, each student in
6 Biology, Advanced Biology, Chemistry, Integrated Science, and
7 Physical Science had and has a textbook to use in class and to
8 take home in the current 2000-2001 school year. Lile Decl. ¶¶ 8,
9 11. The Cloverdale Plaintiffs have presented no evidence that
10 controverts these facts. Pls.' Sep State. ¶ 4.

11 Nevertheless, they argue that a trial of their claims
12 is warranted because, last year, freshman students in Integrated
13 Science shared textbooks in class and used lab notebooks and
14 photocopies to complete homework assignments. Pls.' Opp'n at 6.
15 Principal Lile, however, has explained that a decision had been
16 made last year to purchase only one set of textbooks since
17 Integrated Science was being offered as a pilot program; that
18 when Cloverdale High decided to continue offering the course, the
19 district purchased additional textbooks for each student; and
20 that every student in Integrated Science currently has a textbook
21 to use in class and to take home. Lile Decl. ¶¶ 10-11. The
22 Cloverdale Plaintiffs have presented no evidence that controverts
23 these facts.

24 The Cloverdale Plaintiffs also argue that a trial of
25 their claims is warranted because Principal Lile "admitted" that
26 some students in Physics do not currently have textbooks. Pls.'
27 Opp'n at 7. Actually, Principal Lile has explained that every
28 Physics student was provided with a textbook at the beginning of

1 the current school year; that some students subsequently lost or
2 damaged their textbooks; that every student with a lost or
3 damaged textbook is provided with photocopies of all necessary
4 textbook information, in addition to supplemental materials; and
5 that the district is purchasing a new edition of the Physics
6 textbook for every student for the upcoming school year. Lile
7 Decl. ¶ 9. The Cloverdale Plaintiffs have presented no evidence
8 that controverts these facts. Pls.' Sep. State. ¶¶ 5-8. They
9 say that they "do not know" whether these facts are true. But
10 that is insufficient to prevent summary judgment. Cal. Civ.
11 Proc. Code § 437c(o)(2) (in opposing motion, plaintiff "shall set
12 forth the specific facts" showing a triable issue).

13 Finally, the Cloverdale Plaintiffs suggest that a trial
14 is warranted because Cloverdale High does not provide textbooks
15 to Geography students. Pls.' Sep. State. ¶¶ 1, 9-12. Actually,
16 Principal Lile has explained that the Geography class uses maps,
17 atlases, and other instructional materials in lieu of textbooks
18 because a professional judgment has been made that these
19 materials may provide a superior method of instruction.³ Lile
20 Decl. ¶ 6. The Cloverdale Plaintiffs have presented no evidence
21 that controverts these facts either.

22 The undisputed record thus shows that: (a) Cloverdale
23 High improved its freshman science program by offering a new and
24 experimental course and to make that possible waited a year to
25 invest in a full set of textbooks; (b) Cloverdale High decided

26 _____
27 ³ Education Code Section 60000 explicitly authorizes school
28 districts to "choose instructional materials that are appropriate
to their courses of study." Cal. Educ. Code. § 60000(c).

1 that students in Physics who lose the textbooks issued to them
2 should have photocopies instead for one year since the school is
3 changing textbooks; and (c) Cloverdale High has decided to teach
4 Geography by using materials other than textbooks, all of which
5 are provided to all students. Based on these facts, the
6 Cloverdale Plaintiffs ask the Court to find that the State has
7 violated their rights under the California Constitution by
8 failing to prevent Cloverdale High from acting in this way. We
9 submit that on these facts no reasonable trier of fact could
10 conceivably find either: (1) that the "educational program of
11 Cloverdale Unified, when viewed as a whole, falls fundamentally
12 below prevailing statewide standards," Butt, 4 Cal. 4th at 686-
13 687; or (2) that the Cloverdale Plaintiffs are entitled to an
14 injunction against the State. Accordingly, the State is entitled
15 to summary judgment.

16
17 B. The Allegations Regarding a Lack of Air-Conditioning
Have No Merit.

18 The Cloverdale Plaintiffs allege that some classrooms
19 at Cloverdale High lack air-conditioning and that students have
20 difficulty concentrating when it is hot. FAC ¶ 140. In its
21 motion for judgment on the pleadings filed for hearing on April
22 11, cross-defendant Campbell Union Elementary School District
23 persuasively argues that the lack of air-conditioning in public
24 schools does not translate into a constitutional violation.
25 Campbell Union's Mot. J. Plead. at 15-22. The State agrees and
26 incorporates that argument by reference.

1 But even assuming that a constitutional right to air-
2 conditioning may exist under some circumstances, the Cloverdale
3 Plaintiffs fail to explain why relief against the State is
4 warranted on the factual record before the Court. It is
5 undisputed, for example, that voters in the Cloverdale Unified
6 School District recently passed a \$4 million facilities
7 improvement and modernization bond that will soon provide air-
8 conditioning to every classroom at Cloverdale High that currently
9 lacks it. Pls.' Sep. State. ¶ 17. And it is also undisputed
10 that students at Cloverdale High are meeting or exceeding
11 academic expectations.⁴ Lile Decl. ¶ 3. What injunctive relief
12 as to air-conditioning could conceivably be warranted?

13 Nor would there be any reasonable basis to find a
14 constitutional violation even if air-conditioning were not to be
15 installed at Cloverdale High. What is plaintiffs' evidence? A
16 teacher says that some students "got drowsy in the heat;" a
17 student says that the heat "just got to me;" sometimes classes
18 were moved to the library, which is air-conditioned. Melton-
19 Piper Decl. ¶ 3; D. Smith Decl. ¶ 3. None of this shows that
20 learning was prevented or impeded; none of it shows that the
21 educational program of Cloverdale Unified was impacted in any
22 way. After all, teachers and children in California (and
23 throughout the Nation) have endured occasional hot days, at the
24 beginning and at the end of the school year, for generations.

25
26 _____
27 ⁴ The Cloverdale Plaintiffs conclude simply that the
28 performance of Cloverdale High students on statewide aptitude
tests "utterly fails" to refute their claims. Pls.' Opp'n at 8.
They do not explain why, however. Their omission speaks volumes.

1 Nothing in this record suggest that conditions at Cloverdale High
2 are in any way unusual or out of the ordinary.

3 In short, it cannot be fairly argued either that the
4 lack of air-conditioning in some classrooms at Cloverdale High
5 renders the educational program of Cloverdale Unified, "when
6 viewed as a whole," constitutionally deficient, Butt, 4 Cal. 4th
7 at 686-687, or that injunctive relief against the State could be
8 granted because of these facts. Summary judgment is appropriate.

9
10 **IV. PLAINTIFFS FAIL TO ADDRESS THE STATE'S ARGUMENTS REGARDING
11 THEIR SECOND, THIRD, AND FOURTH CAUSES OF ACTION.**

12 The foregoing discussion relates to the first cause of
13 action, based on Butt. The Cloverdale Plaintiffs say nothing at
14 all about their other causes of action. Summary adjudication is
15 therefore required as to their second, third, and fourth causes
16 of action.

17 As to their second cause of action, the Cloverdale
18 Plaintiffs do not even claim that Article IX, Section 1 of the
19 California Constitution is self-executing. State's Opening Br.
20 at 9. Nor do they offer any facts stating any violation of their
21 right to a "free education" under Article IX, Section 5 of the
22 California Constitution. State's Opening Br. at 10.
23 Accordingly, their second cause of action has no merit.

24 As to their third cause of action, sounding in due
25 process, the Cloverdale Plaintiffs offer no facts indicating (1)
26 that Cloverdale High is a dangerous school or that their health
27 and safety has been jeopardized in any way or (2) that they have
28 not been adequately prepared to graduate from high school.

1 State's Opening Br. at 11-12. Moreover, as discussed above, it
2 is clear that there has been no interference--let alone
3 significant interference--with the Cloverdale Plaintiffs'
4 fundamental right to an education. Thus, their third cause of
5 action has no merit.

6 Finally, as to their fourth cause of action for
7 violation of Title VI of the Civil Rights Act of 1964, the
8 Cloverdale Plaintiffs admit that they are non-Hispanic Caucasian
9 students. Pls.' Sep. State. ¶ 22. Because the Cloverdale
10 Plaintiffs are among the class of plaintiffs who are allegedly
11 favored by the State's conduct, they are not entitled to any
12 relief on this cause of action. State's Opening Br. at 12.

13 Accordingly, even if the Court should find that there
14 are triable issues of material fact with respect to the
15 Cloverdale Plaintiffs' first cause of action, there are no
16 triable issues as to their other causes of action. Summary
17 adjudication dismissing those causes of action is therefore
18 required.

19 **V. THERE IS NO BASIS FOR A DELAY UNDER CALIFORNIA CODE OF CIVIL**
20 **PROCEDURE § 437c(h).**

21 Civil Procedure Code Section 437c(h) allows for the
22 continuance of a summary judgment motion if the opposing party
23 demonstrates that "facts essential to justify opposition may
24 exist but cannot . . . then be presented." Cal. Civ. Proc. Code.
25 § 437c(h) (emphasis added). Courts may deny an opposing party's
26 request for a continuance, however, where the discovery sought is
27 not relevant to the issues in the motion, Department of Transp.
28 v. Outdoor Media Group, 13 Cal. App. 4th 1067, 1077 (1993), or

1 because the party has procrastinated in obtaining discovery.
2 Danieley v. Goldmine Ski Assocs., Inc., 218 Cal. App. 3d 111, 129
3 (1990).

4 Here, the Cloverdale Plaintiffs submitted five
5 declarations regarding conditions at Cloverdale High. They
6 plainly have access to information on this subject, and if they
7 have not provided additional facts to support their claims, it is
8 presumably because such facts do not exist.

9 Moreover, the only issues of fact identified in their
10 opposition as "material" are issues about conditions at
11 Cloverdale High. Ms. Perrin's declaration, however, reveals that
12 none of the discovery plaintiffs say they wish to take relates in
13 any way to those conditions. None of it will shed light on
14 whether textbooks are available, on whether rooms are air-
15 conditioned, or on what the temperatures are in Cloverdale.
16 Accordingly, plaintiffs' proposed discovery has no tendency to
17 reveal facts on any "material" issue. Therefore, it cannot be
18 "essential" as § 437c(h) requires. There is no reason to delay
19 granting this motion while plaintiffs chase after will 'o the
20 wisps that will not alter one iota of the relevant facts.

21
22 **CONCLUSION**

23 For the reasons stated, the motion of defendant State
24 of California for summary judgment or, in the alternative, for
25 summary adjudication as to the Cloverdale Plaintiffs' first,
26 second, third, fourth, and/or seventh causes of action should be
27 granted.

1 Dated: April 6, 2001.

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