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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

13 ELIEZER WILLIAMS, et al.,)
14 Plaintiffs,)
15 vs.)
16 STATE OF CALIFORNIA, DELAINE)
17 EASTIN, State Superintendent of Public)
18 Instruction, STATE DEPARTMENT OF)
19 EDUCATION, STATE BOARD OF)
20 EDUCATION,)
21 Defendants.)
22 _____)
23 And Related Cross-Actions)
24 _____)

Case No. 312 236
**FRESNO UNIFIED SCHOOL DISTRICT'S
AND SAN FRANCISCO UNIFIED SCHOOL
DISTRICT'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION TO SEVER CROSS-
COMPLAINT AND STAY PROCEEDINGS
AGAINST CROSS-DEFENDANTS**
[C.C.P. §§ 598, 1048]
Date: March 27, 2001
Time: 8:30 a.m.
Dept: 16, Hall of Justice
Judge: Hon. Peter J. Busch

25 **INTRODUCTION**

26 This motion addresses the appropriateness of whether the cross-defendants in this lawsuit should
27 be compelled to actively litigate the cross-complaint before fundamental, threshold issues are addressed
28 in the underlying action. There is a substantial likelihood that the resolution of those issues will moot
the need to pursue the cross-complaint. Severing the cross-complaint from the complaint and staying all
proceedings related to the cross-complaint until that determination is made will serve the interests of
judicial economy and prevent unnecessary litigation.

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1 On November 14, 2000 the Court stated in its order overruling the State of California's
2 Demurrer to the First Amended Complaint ("complaint") that "this case is exclusively about the State's
3 system of oversight and *that system's* alleged inadequacies and failures." (Order Overruling Demurrer to
4 First Amended Complaint, p. 2, on file herein, emphasis added.) Toward that end, the court limited the
5 stages of the case to that exclusive focus. (*Id.*) The State of California's cross-complaint against
6 eighteen of its own school districts involves an entirely different issue: whether the individual school
7 districts are responsible for conditions at their own school sites that allegedly have deprived students of
8 equal educational opportunities.

9 The complaint involves the relatively narrow issue of whether the State has failed to implement a
10 constitutionally adequate process to oversee its education system. The cross-complaint attempts to
11 entangle eighteen school districts in that issue. The inclusion of these cross-defendants in that process
12 should be avoided, however, because such inclusion will unnecessarily increase the complexity of the
13 underlying lawsuit, blur the pertinent issues, cause cross-defendants to expend substantial amounts of
14 time and resources in unnecessary discovery and pleadings, and result in a procedural morass that will
15 preclude an efficient resolution to the underlying case.

16 The court has broad discretion under Code of Civil Procedure sections 598 and 1048 to control
17 the scope and configuration of a lawsuit by separating certain issues, parties, or cross-complaints, and/or
18 ordering that discovery be stayed. In order to avoid unnecessary delay, confusion of issues, and the
19 expenditure of a substantial amount of public funds, cross-defendants Fresno Unified School District and
20 San Francisco Unified School District ("Cross-Defendants") request that the court issue an order
21 severing the cross-complaint from the complaint and staying all proceedings related to the cross-
22 complaint until the underlying lawsuit between Plaintiffs and the State has been fully litigated.¹¹

23 PROCEDURAL HISTORY

24 Among other things, this motion involves the issue of whether it is appropriate for Plaintiffs and
25 Defendants to propound expensive and potentially wasteful discovery against cross-defendants.

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27 ¹¹Although there are a number of State-related defendants named in this lawsuit, this motion
28 refers to the State of California only because the State was the party who filed the cross-complaint
against the school districts and is the defendant most directly concerned with the issue of severance.

1 Previously, both Plaintiffs and Defendants have attempted to propound third-party discovery against the
2 school districts who are the same parties that are currently named as cross-defendants. This discovery
3 has caused disputes over the method of discovery used (third-party vs. party discovery vehicles), the
4 breadth and scope of the discovery sought, the vagueness of the discovery requests, and whether the
5 discovery itself is necessary and/or premature in light of events in this lawsuit such as plaintiffs' Motion
6 to Strike the Cross-Complaint. These events form a backdrop for the matters raised in this motion.

7 In addition, based on comments the court made and instructions it issued to the parties during the
8 hearing on plaintiffs' Motion to Strike the Cross-Complaint heard on February 8, 2000, Cross-
9 Defendants are informed and believe that many, if not all, of the issues raised in this motion may be
10 addressed and resolved at the upcoming status conference on March 6 at which case management issues
11 are to be discussed. If the issues raised in this motion are fully addressed and resolved at the status
12 conference, Cross-Defendants will take this motion off calendar.

13 ARGUMENT

14 I. THE COURT HAS BROAD AUTHORITY TO CONTROL THE SCOPE AND 15 SEQUENCE OF A LAWSUIT

16 The Code of Civil Procedure provides specific mechanisms for courts to control the scope and
17 sequence of a lawsuit in the interest of judicial economy and the orderly resolution of issues. For
18 example, Code of Civil Procedure section 1048, subd. (b) states:

19 The court, in furtherance of convenience or to avoid prejudice, or when
20 separate trials will be conducive to expedition and economy, may order a
21 separate trial of any cause of action, including a cause of action asserted in
a cross-complaint, or of any separate issue or of any number of causes of
action or issues . . .

22 Similarly, section 598 provides:

23 The court may, when the convenience of witnesses, the ends of justice, or
24 the economy and efficiency of handling the litigation would be promoted
25 thereby, on motion of a party . . . make an order . . . that the trial of any
26 issue or any part thereof shall precede the trial of any other issue or any
part thereof in the case, except for special defenses which may be tried
first pursuant to Sections 597 and 597.5.

27 Section 1048 was revised in 1971 to conform in substance to Rule 42 of the Federal Rules of
28

1 Civil Procedure, which permits courts to sever^{2/} specific issues as well as entire causes of action. (See 4
2 Witkin, California Procedure (4th Ed. 1997), Pleading, § 338, pp. 434-435.) As revised, section 1048
3 substantially overlaps with section 598, and both sections share the underlying purpose of promoting
4 judicial economy, fairness, and accuracy.^{3/} (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 88^o,
5 fn. 8 [purpose of severance is to avoid wasting court time, promote settlements, and afford a more
6 logical presentation of the evidence]; *Bedolla v. Logan & Frazer* (1975) 52 Cal.App. 3d 118, 135 [the
7 objective of severance is to avoid waste of time and money caused by the adjudication of issues which
8 may be rendered moot].)

9 The court has broad discretion to sever cross-complaints. (*Vegetable Oil Products Co. v.*
10 *Superior Court* (1963) 213 Cal.App.2d 252; see also *Omni Aviation Managers, Inc. v. Municipal Court*
11 (1976) 60 Cal.App.2d 682, 684.) Severance of a cross-complaint is particularly appropriate when the
12 cross-complaint introduces new theories of liability or claims for relief that have little or no connection
13 to the Plaintiffs' theory and will complicate the case. (See, e.g., *Omni Aviation Managers, Inc., supra*,
14 60 Cal.App.2d 252 [cross-complaint for legal malpractice against third parties severed]; *Roylance v.*
15 *Doelger* (1962) 57 Cal.2d. 255, 261-262.) Under the circumstances present in this lawsuit, it is
16 appropriate for the court to exercise its broad authority and issue an order severing the complaint and
17 cross-complaint and staying the proceedings related to the cross-complaint.

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23 ^{2/}Neither sections 598 nor 1048 use the term "severance" *per se*. That term is still regularly used
24 by attorneys and courts to refer to the separation of actions, however, and was used by the Legislative
25 Committee in its Comment to the 1971 Amendment to section 1048.

26 ^{3/}With regard to the relationship between C.C.P. §§ 598 and 1048, see the Legislative Committee
27 Comment to the 1971 Amendment to section 1048 (stating that the authority to sever issues under
28 section 1048 may duplicate similar authority in other statutes, including section 598); and C.E.B., 3 Civil
Proc. Before Trial 3d, Chap. 63, § 63.18, p. 63-12 (noting the uncertainty of the relationship between
sections 598 and 1048).

1 **II. THE COURT SHOULD SEVER THE COMPLAINT AND THE CROSS-**
2 **COMPLAINT IN THE INTEREST OF JUDICIAL ECONOMY AND TO**
3 **FURTHER THE EFFICIENT HANDLING OF THIS LAWSUIT.**

4 **A. It is Premature to Require Cross-Defendants to Actively Litigate And Defend**
5 **Against the Cross-Complaint.**

6 Severing the cross-complaint is warranted because the issues it presents are not ripe for
7 adjudication. (Seed, e.g., *Sherwyn v. Dept. of Social Services* (1985) 173 Cal.App.3d 52, 58 [doctrine of
8 justiciability requires that controversy must be one that admits of definitive and conclusive relief].) A
9 number of circumstances could present themselves in the underlying lawsuit that would make it
10 unnecessary for cross-defendants to actively litigate this matter. For example, there is a substantial
11 likelihood that the State will prevail in the underlying lawsuit, in which case a determination will be
12 made that neither the State nor its school districts have violated the California Constitution. In that
13 case, cross-defendants would not be liable for the harms alleged in the cross-complaint. Alternatively, it
14 is possible that Plaintiffs will prevail in the underlying lawsuit and obtain the ruling they seek that the
15 State is solely responsible for the constitutional violations alleged in the complaint. Once again, in that
16 case liability would not lie against cross-defendants and it would not be necessary to prosecute a cross-
17 complaint against them.

18 The uncertainty of the remedy Plaintiffs seek also militates against compelling cross-defendants
19 to actively participate in this lawsuit at the present time. Plaintiffs seek “an order requiring the State to
20 establish an effective statewide system of oversight and management to identify and correct the
21 conditions set forth in [the complaint].” (Plaintiffs’ December 12, 2000 Status and Setting Conference
22 Statement (“Plaintiff CMC Statement”), p. 5, on file herein.) Other than that broad statement, Plaintiffs
23 have not come up with anything more specific. Assuming that Plaintiffs’ lawsuit has merit, the range of
24 potential remedies is broad. Plaintiffs could obtain injunctive or declaratory relief. Their lawsuit could
25 be resolved by way of settlement, a consent decree, or legislation. The choices presented by these
26 varying approaches is too broad to accurately predict what remedy, if any, will result from the underlying
27 lawsuit. That remedy could potentially incorporate some sort of remedial scheme, however, that would
28 render prosecuting the cross-complaint moot.

 Due to the premature nature of the claims in the cross-complaint, and the uncertainty of the

1 outcome of the underlying action and its resulting remedy, if any, it is appropriate to order that the cross-
2 complaint be severed from the complaint.

3 **B. Severing this Cross-Complaint and Staying Proceedings Against Cross-**
4 **Defendants Will Serve the Interests of Judicial Economy.**

5 There can be little doubt that compelling cross-defendants to actively litigate this lawsuit before
6 the need for such involvement is determined will potentially cause the expenditure of considerable
7 amounts of money and resources that would be better used in other ways. Every month of active
8 litigation that goes by will cause cross-defendants to expend thousands of dollars in legal fees and costs
9 that come directly from their general funds. These are the same funds that school districts use to educate
10 their students.^{4/}

11 The course of the lawsuit thus far amply illustrates the cost escalation factor. To date, Plaintiffs
12 have noticed between 10 and 15 multi-day depositions of State defendants that apparently will take place
13 in Sacramento. The State itself has noticed approximately 40 depositions of the principals of school
14 sites all around the State. More depositions may be necessary as additional persons with knowledge of
15 site conditions are identified and/or new school districts are identified and brought into this lawsuit.

16 In addition, Cross-Defendants are informed and believe that the State stands ready to produce, or
17 has already produced, a large volume of documents (16 boxes) and that more documents may be on the
18 way. Plaintiffs also have documents to produce, not to mention documents from third parties such as the
19 UCLA Law School professor whose students conducted a study that may have served as the basis for the
20 underlying action. These documents may all have to be reviewed by each of the cross-defendants if they
21 are compelled to actively litigate this lawsuit before the issue of State responsibility is determined.

22 Plaintiffs and State also have propounded and exchanged interrogatories that involve lengthy,

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24 ^{4/}For example, currently there are approximately 18 school district cross-defendants in this
25 lawsuit represented by approximately 12 different law firms. Conservatively, these school districts will
26 collectively spend about \$144,000 *per month* to actively defend this lawsuit. (This estimate is based on
27 12 attorneys working at a \$150 hourly rate for approximately half of their time per month, or 80 hours.)
28 This sum could go much higher depending on billing rates, number of hours worked per month, and
number of attorneys involved. This estimate does not take into account the participation of in-house
counsel, county counsel, and use of other resources that also would considerably increase the amount
expended in defense costs.

1 complicated responses that also will have to be reviewed. Plaintiffs also have subpoenaed potentially
2 large amounts of documents from each of the eighteen cross-defendants.

3 Considerable resources have also been expended in drafting and responding to various
4 complicated motions including a Demurrer to the First Amended Complaint, a Motion to Strike the
5 Cross Complaint, a Motion to Strike Causes of Action in the Complaint, a Motion to Disqualify State's
6 Counsel, and this motion. This level of activity is likely to continue unless the court in its wisdom puts a
7 halt to it with respect to cross-defendants.

8 Requiring cross-defendants to unnecessarily actively litigate this lawsuit also presents logistical
9 problems. The course of the underlying lawsuit will inevitably be delayed if the parties are forced to
10 accommodate the schedules of the many additional attorneys, client representatives, witnesses and
11 deponents that will be present if the cross-complaint is not severed and the proceedings regarding it are
12 not stayed.

13 Severing the cross-complaint also will avoid the complexity of issues that inevitably will arise
14 because of the unique circumstances pertaining to each school district cross-defendant.^{5/} This lawsuit
15 involves allegations that the State is not providing sufficient textbooks or credentialed teachers and that
16 its schools are overcrowded and run-down. If these alleged conditions do in fact exist, the reasons why
17 they may occur at each school district could vary widely. The fact that a particular class does not have
18 textbooks, for example, could be caused by factors such as lack of State funding, unforeseen
19 demographic factors, or something as simple as the fact that a teacher does not use a textbook in a
20 particular class. The lack of credentialed teachers could be caused by such factors as local job market
21 conditions, teacher preference for jobs in suburban areas, and other widely varying and unique
22 geographic and demographic factors inherent in a State as large and varied as California. Facilities
23 issues also could arise from a number of different reasons including the age of a school district's
24 infrastructure, differing funding sources, and geographic and demographic factors. Litigating each cross-

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27 ^{5/} The State itself has acknowledged that severance under C.C.P. § 1048 is appropriate in this
28 case: "Under California law, the proper response to new pleadings that arguably or actually complicate a
case is not to strike the pleadings, but to use the Court's powers under C.C.P. § 1048 to solve any
problems that may arise." (Opposition To Motion To Strike Cross-Complaint, p. 7, on file herein.)

1 defendant's individual situation will be complex and costly. It is better to avoid these costs by means of
2 severance if at all possible.

3 It should also be noted that the number of cross-defendants in this lawsuit may well increase if
4 active litigation of the cross-complaint is permitted to continue. Cross-Defendants are informed and
5 believe that plaintiffs continue to seek new potential plaintiffs in this matter, if for no other reason than
6 to maintain a base of persons with standing to sue the State and/or support Plaintiffs' attempt to obtain
7 class certification. It is not unreasonable, therefore, to anticipate that Plaintiffs likely will amend their
8 complaint to add new Plaintiffs, schools, and school districts at some future date. If they do so, it will
9 merely compound the complexity of the issues presented in the cross-complaint because these new
10 districts will likely be added to the cross-complaint.

11 Permitting the cross-complaint to proceed also may result in the filing of cross-complaints
12 against the State. To the extent the State claims a right of indemnity, so too might the cross-defendants
13 make similar claims against the State. These new pleadings will inevitably further complicate this
14 lawsuit and should be avoided if possible.

15 To the extent that the above expenses can be avoided by waiting to see if the cross-complaint is
16 mooted by the underlying action, severing the cross-complaint is an appropriate and desirable measure.

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18 **C. The Complaint and Cross-Complaint Present Substantially Different
Theories of Liability.**

19 According to Plaintiffs, the complaint is about the *State's* responsibility for satisfying its
20 educational obligations under the California Constitution. (Memorandum of Points and Authorities In
21 Support of Motion To Strike Cross-Complaint, pp. 1-3, on file herein ["only entity with ultimate
22 responsibility is the State itself"].) Plaintiffs seek equitable relief and envision a hearing process to
23 litigate the issues presented in the complaint with respect to the State only. The issues presented will
24 involve (1) State constitutional and statutory liability; (2) class certification; and (3) a remedy against
25 the State. (Plaintiffs' CMC Statement, pp. 1-3.) The evidence Plaintiffs propose using includes
26 "discovery responses and documents from the *State*, testimony from adverse *State witnesses*, and
27 testimony from Plaintiffs' experts." (*Id.*, at p. 3, lines 9-10, emphasis added.) Under such a scheme, the
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1 focus of the litigation would be on the State's responsibility, not the school districts', and would depend
2 on issues pertaining solely to the mechanisms the State has in place for providing and overseeing its
3 educational system. These issues are distinct from the issues presented in the cross-complaint.

4 The cross-complaint is based on a legally and factually distinct theory. By the State's own
5 admission, the cross-complaint is essentially a complaint for indemnity. (See Opposition to Motion to
6 Strike Cross-Complaint, p. 8, on file herein.) While the State admits that it is liable for constitutional
7 violations that may actually exist, it also contends that its school districts must share some of the liability
8 for such violations. This legal theory is fundamentally different than the one presented in the complaint
9 in at least two significant respects. First, it is a derivative claim that is dependent on the outcome of the
10 underlying action. As explained above, the issues presented in the cross-complaint may never have to be
11 litigated depending on the outcome of the threshold issue of the State's liability. Second, the cross-
12 complaint involves legally and factually unique theories with respect to each cross-defendant. Although
13 the State has contended that the facts underlying the complaint and cross-complaint are "exactly the
14 same" (Opposition to Motion to Strike Cross-Complaint, p. 3), the reality is each school district's
15 circumstances differ widely. Thus, while the complaint involves common theories of liability against a
16 common defendant, the cross-complaint will involve different facts and theories of liability as to a
17 number of different defendants. The fundamental difference between the complaint and cross-
18 complaint, therefore, underscores the need and appropriateness of severance.

19 **III. THE CROSS-COMPLAINT SHOULD BE SEVERED FROM THE MAIN**
20 **ACTION AND ALL PROCEEDINGS AGAINST CROSS-DEFENDANTS**
21 **STAYED UNTIL THE UNDERLYING LIABILITY ISSUES ARE RESOLVED.**

22 Based on the above considerations, Cross-Defendants respectfully submit that severing the cross-
23 complaint from the complaint in this lawsuit and ordering a separate trial of the cross-complaint will
24 serve the interests of judicial economy as well as the interests of the school districts and students of this
25 State. It also is appropriate for the court to order that all proceedings against the cross-defendants with
26 respect to the cross-complaint be stayed until such time as the underlying lawsuit between Plaintiffs and
27 the State is fully litigated and the threshold issue of the nature and scope of State liability, as well as
28 potential remedies, is resolved.

It is anticipated that this motion may be opposed on the grounds that it is necessary to keep cross-
CROSS-DEFENDANTS' MPA IN SUPPORT OF
MOTION TO SEVER CROSS-COMPLAINT

1 defendants active in this lawsuit for discovery purposes. As noted by the court at the hearing on
2 Plaintiffs' Motion to Strike Cross-Complaint, filing a cross-complaint against a party for the purposes of
3 obtaining discovery is not a legitimate basis for permitting the cross-complaint to go forward. Opposing
4 severance on "right to discovery" grounds is similarly inappropriate. It is also anticipated that this
5 motion may be opposed on the grounds that it is necessary to keep cross-defendants in this lawsuit in
6 order to fully resolve the issue of their liability. It is not necessary, however, that cross-defendants
7 remain active in this action to determine whether the State is liable for the harms alleged. That threshold
8 issue can be litigated without the cross-defendants' participation. It is only when the issue of indemnity
9 arises, which necessarily must occur after a finding of a constitutional violation and of State liability,
10 that cross-defendants' involvement becomes necessary.

11 **CONCLUSION**

12 For the reasons stated above, Cross-Defendants respectfully request that the court order that the
13 cross-complaint be severed from the complaint, and that all proceedings related to the cross-complaint
14 be stayed.

15 Dated: February 28 2001

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