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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO
10

11 ELIEZER WILLIAMS, et al.,
12 Plaintiffs,
13 vs.
14 STATE OF CALIFORNIA, DELAINE
15 EASTIN, State Superintendent of Public
16 Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
17 EDUCATION,
18 Defendants.
19 And Related Cross-Actions

Case No. 312 236
**FRESNO UNIFIED SCHOOL DISTRICT'S
AND SAN FRANCISCO UNIFIED SCHOOL
DISTRICT'S REPLY BRIEF IN SUPPORT
OF MOTION TO SEVER CROSS-
COMPLAINT AND STAY PROCEEDINGS
AGAINST CROSS-DEFENDANTS**
[C.C.P. §§ 598, 1048]
Date: April 11, 2001
Time: 8:30 a.m.
Dept: 16, Hall of Justice
Judge: Hon. Peter J. Busch

20
21 **INTRODUCTION**

22 The State's opposition to Fresno Unified School District's and San Francisco Unified School
23 District's Motion to Sever and Stay is based on inconsistent and incorrect arguments, none of which
24 compels the conclusion that this motion should be denied.

25 To begin with, the State is the party who brought the cross-defendants into this action in the first
26 place. It should not be permitted to avoid the consequences of that act by attempting to deny cross-
27 defendants' legitimate attempt to streamline the case and avoid hundreds of thousands of dollars of legal
28 fees that will be utterly unnecessary if liability against the State is not established. Forcing cross-

1 defendants to actively participate in the underlying case should not be permitted simply as a convenience
2 to the State.

3 It will not be more efficient to order a single trial in this lawsuit. In opposing this motion, the
4 State has completely ignored the enormous potential cost savings to cross-defendants that severance and
5 stay will achieve, as well as the fact that litigating cross-defendant liability issues is premature. Instead,
6 it attempts to contend that denying severance and ordering a single trial will be more “economical.” It
7 may be so for the State, but not for the cross-defendants. The State should not be permitted to place its
8 own interests ahead of those of eighteen other parties. Nor should it be permitted to misleadingly claim
9 that the issues presented in the two pleadings are “identical.” They are not. The substantial factual and
10 legal difference between the two pleadings warrants severance.

11 The State also has adopted a legal position that contradicts one it has previously asserted in this
12 lawsuit. In its opposition to plaintiffs’ Motion to Strike the Cross-Complaint, the State argued that
13 severance, as opposed to striking the cross-complaint, is an appropriate remedy for dealing with cross-
14 complaint issues: “Under California law, the proper response to new pleadings that *arguably or actually*
15 *complicate a case* is not to strike the pleadings, but to use the Court’s powers under C.C.P. § 1048 to
16 solve any problems that may arise.” (Opposition To Motion To Strike Cross-Complaint, p. 7, on file
17 herein, emphasis added.) Now, the State attempts to argue the opposite: that severance is *not* an
18 appropriate means to deal with the legal, factual, and logistical complexities created by its own cross-
19 complaint. The State cannot have it both ways. Either severance is appropriate or it isn’t, but it cannot
20 be both.

21 The State brought the school district cross-defendants into this lawsuit. Not even the State can
22 contest that the cross-complaint has substantially complicated this lawsuit and created logistical
23 problems. Cross-Defendants now seek to streamline this lawsuit, ease those logistical burdens, and
24 potentially avoid needless expenditure of hundreds of thousands of dollars in legal costs, all of which
25 comes from school district educational funds. Immediate severance, without postponement of the
26 decision to sever, is the only way to achieve these desirable results and can be implemented without
27 prejudicing plaintiffs or defendants. The cross-complaint should be severed from the complaint and
28 discovery proceedings regarding it should be stayed.

ARGUMENT

I. SEVERING THE TRIAL OF THE COMPLAINT AND CROSS-COMPLAINT IS MORE EFFICIENT FOR THE MANY SCHOOL DISTRICT CROSS-DEFENDANTS AND DOES NOT HARM OR PREJUDICE DEFENDANTS

The State would have the Court believe that it will be more economical to litigate the complaint and cross-complaint in a single trial. What the State really means is that a single trial may be more economical for the *State*, but it won't be more economical for cross-defendants. If the State has its way, the trial will consist of a lengthy preliminary phase in which plaintiffs' underlying complaint is tried, and then progress to eighteen (or however many school districts have been named) further trials regarding each cross-defendants' individual liability. In reality, the State does not want to suffer any consequence as a result of the substantial complications caused by its own cross-complaint. Instead, it prefers to insist that eighteen school districts are made to participate in a trial that should be solely for the purpose of resolving issues of liability between plaintiffs and the State. This certainly doesn't create a situation in which "no undue burden" is imposed on cross-defendants as the State contends.

In opposing severance, the State has completely ignored the potential savings to cross-defendants if the proceedings on the complaint render the cross-complaint moot. Not only does the State choose to sue its own school districts "for their own good," it also insists on keeping them active in this litigation and potentially wasting vast sums of school district money solely as a convenience to itself. What the State really wants to do is to be able to immediately point the finger of blame at its own school districts as the case against the State proceeds. The State does not need to be able to immediately address the issue of school district liability in order to defend against the complaint, however.

The State also implies that it would somehow be improper or prejudicial for the State to have to defend against the complaint and then turn around and have to litigate the cross-complaint as well. This is a peculiar position for a party who files a cross-complaint to take. The State is going to have to prosecute the same issues regarding the cross-complaint whether or not it is severed, including dealing with affirmative defenses cross-defendants may raise. It doesn't make any more sense to compel the parties at trial to repeatedly and intermittently deal with eighteen cross-defendants' issues of law and fact than it does to address such issues at a later trial. Conversely, the opposite approach—severance—will afford substantial savings that requiring a single trial cannot hope to achieve. The fact that the State may

1 have to attend a later trial does not prejudice the State, but will prejudice cross-defendants.

2 Severing this cross-complaint also presents potential cost savings to the *State*. If it turns out the
3 State is not liable under the complaint, it too will realize cost-savings for not having to litigate the cross-
4 complaint.

5 The State also contends that the court will be better able to form a remedy if cross-defendants are
6 compelled to stay in this action. This is a red herring. What the State is really worried about is that it
7 will be the only party on the hook if the trial on the complaint goes against it. This does not mean,
8 however, that the court won't be able to fashion a remedy against cross-defendants. If cross-defendants
9 are to be found liable, that is what the trial on the cross-complaint is for. Remedies against cross-
10 defendants, if any, can be determined at that time. In the meantime, the State has plenary power over its
11 own school districts, and if it feels it needs to impose requirements on them as a result of the Court's
12 order after trial on the complaint, it can do so. Certainly, severance will not remove cross-defendants
13 from the jurisdiction of the court and they will still remain parties for the purposes of imposing remedies
14 against them, if necessary.

15 **II. THE COMPLAINT AND CROSS-COMPLAINT ARE NOT BASED ON**
16 **"IDENTICAL" ISSUES AND FACTS.**

17 As the court itself stated in its order on the State's Demurrer to the First Amended Complaint,
18 the underlying lawsuit is not about individual school district responsibility for the alleged constitutional
19 harms. Rather, it is a lawsuit about State responsibility and the sufficiency of State oversight of its
20 educational system. (Order Denying Demurrer to First Amended Complaint, p. 2, on file herein.) These
21 issues are capable of being resolved short of haling the cross-defendants into court prematurely to idly sit
22 by and watch a process that may or may not result in liability towards them.

23 The State has repeatedly attempted to contend that the facts and issues regarding the complaint
24 and cross-complaint are "identical," as if this was some sort of a mantra that permits it to deny the
25 existence of the obvious factual and legal differences between the two. No matter how hard the State
26 tries to characterize the complaint and cross-complaint as being the same, the fact remains that they are
27 substantially different. As indicated in Fresno Unified's and San Francisco Unified's opening brief, the
28 cross-complaint involves unique questions of fact based on questions of law that have yet to be

1 determined. The State should not be permitted to completely gloss over cross-defendants' well-
2 considered argument regarding the unique factual and legal circumstances regarding each school district.
3 (See Opening brief at pp. 7-9 [identifying potential school differences in demographics, funding, bond
4 issuance, school site processes, age of infrastructure, local job market conditions, etc.].) The
5 fundamental and real factual and legal differences between the complaint and cross-complaint warrant
6 severance of the two actions.

7 **III. THE STATE HAS NOT ADDRESSED CROSS-DEFENDANTS' ARGUMENT**
8 **THAT LITIGATING THE CROSS-COMPLAINT IS PREMATURE**

9 The State's opposition fails to address in any meaningful way cross-defendants' argument that
10 the issue of their liability is not ripe for adjudication.¹⁷ The State relegates cross-defendants' ripeness
11 argument to a mere footnote because it apparently realizes it cannot contest that issue: cross-defendants'
12 liability simply cannot be established until the fundamental issues of whether there has been a
13 constitutional violation and whether the State has breached its constitutional duty have been addressed.
14 The State has pointed out that the lack of any specific remedy has injected a substantial element of
15 uncertainty in this case. Until that uncertainty is resolved, proceeding against cross-defendants is
16 unnecessary.

17 **IV. POSTPONING SEVERANCE WOULD ELIMINATE ANY ADVANTAGE TO BE**
18 **ACHIEVED BY A STAY ORDER**

19 The State proposes that should the Court be inclined to grant the motion to sever and stay, that
20 decision should be reserved until a later date. Delaying that decision, however, will have the effect of
21 mooting this entire motion because cross-defendants still will be required to actively litigate this case
22 during the pendency of that decision. In other words, there will be no meaningful benefit from severance

23 ¹⁷The State cites *Brokate v. Hehr Mfg. Co.* (1966) 243 Cal.App.2d 133 and *Rimington v. General*
24 *Accident Group of Ins. Cos.* (1962) 205 Cal.App.2d 394 for the proposition that the issues presented in
25 the cross-complaint are "justiciable." In so doing, the State completely misses cross-defendants' point: it
26 is premature to compel litigation based on underlying theories of liability that have not yet been
27 determined and unique factual circumstances that have no bearing on the underlying case in chief.
28 Neither *Brokate* nor *Rimington* stand for the proposition that issues presented in a cross-complaint must
be litigated together with the case-in-chief regardless of whether the issues presented in the cross-
complaint are not yet ripe for adjudication. (*Brokate*, 243 Cal.App.2d at 137; *Rimington*, 205
Cal.App.2d at 397-98.)

1 and stay unless the decision is timely made so as to enable cross-defendants to avoid the substantial and
2 unnecessary costs at issue. Cross-defendants respectfully submit that delaying the motion to sever,
3 particularly as that affects whether or not they will be compelled to take part in costly and unnecessary
4 discovery, is not conducive to the issues of judicial economy raised in this motion.

5 VI. PROCEEDINGS ON THE CROSS-COMPLAINT SHOULD BE STAYED

6 The State argues in its opposition brief that there is no basis for a stay because no discovery has
7 occurred to date as a result of the cross-complaint. The State's argument completely misses the point.

8 The State ignores the fact that the complaint and cross-complaint involve different issues of fact
9 and law. The cross-complaint, for example, alleges violations of Education Code sections 17366,
10 17565, 17576, 17593, 35290, 35293, 37610, 37670, 38118, 60045, 60119, 60411, and 60500, as well as
11 California Code of Regulations sections 630 and 631. None of these alleged code violations, nor factual
12 matters pertaining thereto, are at issue in the complaint. Although the parties have not yet undertaken
13 discovery regarding those issues, if the cross-complaint is not severed and stayed, the parties will have
14 no choice but to do so. The type and extent of such discovery is unknown, but it will necessarily involve
15 a multitude of issues that will apply differently to the school districts depending upon the unique
16 circumstances at each school site.

17 It is clear, however, that such discovery would be entirely unnecessary if the proceedings on the
18 cross-complaint are stayed and the primary issue of "the State's system of oversight and that system's
19 alleged inadequacies and failures" is decided prior to the school district liability issues raised in the
20 cross-complaint. Thus, severing the cross-complaint and staying the proceedings will prevent the parties
21 from having to undergo discovery on the complex and unique liability issues raised therein.

22 The State's contention that proceedings regarding the cross-complaint should not be stayed
23 because they have not resulted in any additional discovery towards cross-defendants merely underscores
24 the appropriateness of severance. If, as the State contends, the parties have not yet been required to
25 perform discovery on the cross-complaint, then it makes further sense to sever that case and stay the
26 proceedings at this stage so the plaintiffs and the State can resolve the primary issue of supervision and
27 accountability set forth in the complaint without undue cost to cross-defendants.

28 The State's contention that severing the cross-complaint is not necessary because discovery

1 regarding the complaint does not involve any cross-complaint issues is utterly inconsistent with the
2 notion of compelling cross-defendants to actively litigate the complaint. In other words, the State says
3 that cross-defendants need not do any discovery on the cross-complaint, but should then be made to
4 litigate issues of their own liability when the complaint is litigated. The State can't have it both ways.
5 Either cross-defendants must be ordered to stay in this case without severance and conduct full
6 discovery, or the cross-complaint should be severed and the proceedings regarding it stayed in the
7 interests of saving hundreds of thousands of education dollars needlessly spent in legal fees. The State
8 cannot, however, use the alleged lack of discovery regarding the cross-complaint as the basis for
9 justifying compelling cross-defendants to be present at trial on the complaint for the purpose of
10 defending liability claims against them.

11 The State also argues that a stay of the proceedings would "create a possibility" that witnesses
12 might have to be deposed a second time. Such an argument also lacks merit. Even if second
13 depositions might be taken in a separate proceeding some time in the future, such depositions would
14 merely cause the State to perform a minimal amount of additional discovery. The time and resources
15 spent on such discovery pales in comparison to what the cross-defendants will have to expend on
16 attending depositions and performing discovery that would be rendered unnecessary by a severance and
17 stay of the cross-complaint. (See, e.g., Opening Brief at p. 6, n. 4 [estimate provided that cross-
18 defendants stand to needlessly spend more than \$144,000 per month (or \$1,728,000 per year) if they are
19 required to actively litigate this lawsuit].)

20 Nor is the State correct in contending that the cross-complaint has not resulted in cross-
21 defendants having to deal with additional discovery. If severance is denied, cross-defendants will have
22 to deal with the discovery currently going back and forth between plaintiffs and defendants if for no
23 other reason than to see if it bears on cross-defendant liability. This discovery already consists of
24 expensive State deponent depositions, broad and complicated interrogatories and responses thereto, and
25 thousands upon thousands of pages of documents. (For example, the State has already produced in
26 excess of 30,000 pages of documents.)

27 Finally, the State argues that the school districts need not attend the depositions of the State
28 representatives because "these deponents have almost nothing to say that is of interest to the school

