No. 1 Civil Case No. A094890

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

STATE OF CALIFORNIA, DELAINE EASTIN, as State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, and STATE BOARD OF EDUCATION,

Petitioners,

vs.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent

ELIEZER WILLIAMS, *et al.*,

Real Parties in Interest

Hon. Peter J. Busch, Superior Court Judge
Civil Case No. BC 312236

RETURN TO PETITION FOR WRIT OF MANDATE

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INTRODUCTION

In granting the alternative writ, this Court indicated its preliminary view that the State's motion for summary judgment "would have completely disposed of causes of action," relying on *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725 [29 Cal.Rptr.2d 804, 872 P.2d 143], and other authorities regarding whether a judgment after trial could be appealed as to one party when issues remained with respect to other parties. These authorities involve a different statutory scheme, and do not apply to the issue at hand. Nor should these authorities be imported into the summary judgment context. There is a critical difference between pretrial and postjudgment policy concerns, and the set of concerns *Morehart* addresses have no application in the summary judgment context. Put simply: permitting summary judgment motions directed to some but not all plaintiffs asserting a common cause of action cannot streamline pretrial proceedings and can only serve to complicate multiparty litigation without benefiting judicial economy. The statutory purpose of Section 437c—preserving the right to trial by limiting summary judgment motions to those that dispose of an entire cause of action—would be severely compromised if defendants could "pick off" allegations with respect to one plaintiff among many who plead a common cause of action.

Moreover, the trial court's decision to deny the summary judgment motion 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 shifted focus away from the simple and straightforward issue of whether the State satisfies its educational obligations and instead focused on the specific conditions in specific schools. As the trial court correctly recognized, "this case is not about correcting the specific deficiencies

suffered by these students at their specific schools in their specific school districts." Instead, "this case is exclusively about the State's system of oversight and that system's alleged inadequacies and failures." Thus, a motion for summary judgment as to only one school necessarily could not completely dispose of any cause of action in this case. 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, under *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].)

RETURN BY ANSWER TO PETITION FOR WRIT OF MANDATE

Real parties in interest Eliezer Williams *et al.*, in answer to petitioners State of California, Delaine Eastin, as Superintendent of Public Instruction, State Department of Education, and State Board of Education's Petition for Writ of Mandate, admits, denies, and alleges as follows:

1. Real parties in interest admit the allegation in paragraph 1.

2. Real parties in interest admit the allegation in paragraph 2.

3. As to paragraph 3, real parties in interest admit that there are 100 named plaintiffs in the underlying action, 98 of whom are schoolchildren in California's public schools, that they have asserted claims seeking injunctive relief against petitioners, and that the State has filed cross-complaints against school districts in which the public schools attended by real parties in interest are located. Except as expressly admitted, real parties deny the allegations in paragraph 3.

4. As to paragraph 4, real parties in interest admit that they seek relief on the basis of four theories of liability pleaded as four causes of action. Real parties also admit their fifth cause of action seeks declaratory relief against petitioners. Except as expressly admitted, real parties deny the allegations in paragraph 4.

5. As to paragraph 5, real parties in interest admit that on March 14, 2001, petitioner State of California filed with the respondent court a motion for summary judgment or, in the alternative, for summary adjudication, as to all "causes of action brought by three of the 98 plaintiffs," and that the respondent court entered an order denying the motion. Except as expressly admitted, real parties deny the allegations in paragraph 5.

6. Real parties in interest admit the allegations in paragraph 6.

7. Real parties in interest deny the allegation in paragraph 7.

8. Real parties in interest deny the allegations in paragraph 8. Real parties in interest include each of the 98 public school children who are plaintiffs in the action now pending before the respondent court.

9. As to paragraph 9, real parties in interest admit that they have alleged that there are insufficient textbooks at Cloverdale High School and that some classrooms at Cloverdale High School lack air-conditioning. Except as expressly admitted, real parties deny the allegations in paragraph 9.

10. As to paragraph 10, real parties in interest admit that their complaint includes the quoted language.

11. Real parties in interest deny the allegations in paragraph 11.

12. As to paragraph 12, real parties in interest admit that their complaint includes the quoted language.

13. Real parties in interest deny the allegations in paragraph 13.

14. Real parties in interest deny the allegations in paragraph 14.

15. Real parties in interest deny the allegations in paragraph 15.

16. Real parties in interest deny the allegation in paragraph 16.

17. Real parties in interest deny the allegations in paragraph 17.

18. Real parties in interest deny the allegation in paragraph 18.

19. Real parties in interest deny the allegations in paragraph 19.

20. Real parties in interest deny the allegations in paragraph 20.

21. Real parties in interest deny the allegations in paragraph 21.

22. Real parties in interest deny the allegations in paragraph 22.

23. With respect to the Prayer, real parties in interest deny that petitioners are entitled to the relief requested in the prayer for relief, or any other relief.

Dated: July 9, 2001

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By: _____
Matthew I. Kreeger

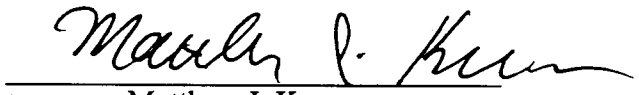
Attorneys for Real Parties in Interest
ELIEZER WILLIAMS, etc., *et al.*

VERIFICATION

I, Matthew I. Kreeger, am a member of the State Bar of California and one of the attorneys for parties in interest Williams, *et al.* I am signing this verification on behalf of real parties in interest Williams, *et al.* because the facts set forth in this return are based upon evidence submitted to the respondent court and the respondent court's proceedings in this matter, of which I have personal knowledge. I have read the above return and have personally reviewed the records and documents described in the return. I am informed and believe that the matters stated therein are true and correct and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 9, 2001 at San Francisco, California.



Matthew I. Kreeger

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN TO WRIT

FACTUAL BACKGROUND OF THE UNDERLYING ACTION

The underlying action was brought by 100 named plaintiffs, 98 of whom are schoolchildren in 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 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."].)

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[1] The term "complaint" means plaintiffs' first amended complaint filed August 14, 2000. (*See* Exhibit 12 of Petitioners' Appendix of Exhibits in Support of Petition for Writ of Mandate [hereinafter "Pet. Exh. 12"].)

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.*, pp. 269-270.) The third cause of action alleges that the defendants have violated the Due Process Clauses of the California Constitution. (*Id.*, 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.*, 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.*, p. 273.) Each of the causes of action is pleaded on behalf of all of the plaintiffs, as a group.

Although the complaint pleads facts as to forty-six schools, it seeks relief only against the State and other state-level entities. The State responded by filing 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. Pet. Exh. 10, 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

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

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 Cloverdale High School had taken place, maintained that the conditions at the 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.

On June 5, 2001, this Court issued an alternative writ. On June 25, 2001, the Superior Court issued its Order Re Alternative Writ, a copy of which is attached to this return as Exhibit A.

ARGUMENT

I. 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. *Morehart* and Other Authorities Involving the Appeal of Partial Judgments Do Not Control And Are Not Analogous.

The alternative writ suggested that each plaintiff in this case has a distinct cause of action for summary judgment purposes, citing the California Code of Civil Procedure Sections 22,378(a)(1) and 578; 9 Witkin, California Procedure (4th ed. 1997) Appeal Section 69, page 126 and Section 103, pages 166-67; and *Morehart v. County of Santa Barbara* (1994) 7 Cal. 4th 725, 740-41 [29 Cal.Rptr.2d 804, 813, 872 P.2d 143, 152]. None of these authorities addresses the issue relevant to this petition.

Morehart was a multiparty case, but it did not concern the demarcation of causes of action among the parties. Rather, *Morehart* concerned the issue of when different causes of action pleaded in the complaint can be severed from one another for purposes of the final judgment rule and associated appeal. The court there had ordered the first, fourth and fifth causes of action as pleaded in the complaint to be tried separately from the other two causes of action. (*See* 7 Cal.4th at p.735.) The court held that the final judgment rule required that all causes of action be decided before an appeal would lie. Not only is *Morehart* inapposite; it reinforces a policy against piecemeal adjudication. That policy applied here supports the trial court's denial of summary judgment.

Similarly, the other authorities on which this Court relied in the alternative writ do not govern the question raised here and, if anything, support the denial of summary judgment. Code of Civil Procedure Sections 378 and 578 provide, respectively, that "[j]udgment may be given for one or more of the plaintiffs according to their respective right to relief" and "[j]udgment may be given for or against one or more of several plaintiffs..." These provisions govern the entry of judgment after a trial but do not purport to define a cause of action for purposes of summary judgment under Section 437c.[3] *Lilienthal & Fowler, supra,* 12 Cal.App.4th at p. 853, discussed more fully below, answered that question. (*See also Morehart, supra*, 7 Cal.4th at p. 740 (citing *Schonfeld v. City Vallej* (1976) 50 Cal.App.3d 401 [123 Cal.Rptr. 669] for exception to final judgment rule permitting a partial judgment to be appealed when final "as to one or more parties. . . . even though issues remain to be resolved between other parties").)

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[3] The other cited authority in the alternative writ is similarly inapposite. Section 22 of the California Code of Civil Procedure defines an action, not a cause of action under Section 437c. Witkin Section 69 addresses the final judgment rule as applied to different parties to the same action. To the extent Witkin Section 103 suggests summary judgment may be had as to some but not all plaintiffs, it relies only on cases decided before Section 437c was amended to preclude motions directed to less than an entire cause of action.

In short, none of the authorities to which the alternative writ points deals with the question at hand: what is a cause of action for purposes of Section 437c.

Nor should the authorities regarding appeals of partial trial judgments be applied by analogy to permit partial summary judgment motions directed to some of the plaintiffs asserting a common cause of action. There is a fundamental policy distinction between pre-trial summary judgment practice and post-judgment appeal. In the case of pre-trial summary judgment, Section 437c evinces a policy choice to eliminate piecemeal adjudication, and to preserve the right to trial. *Lilienthal* teaches that the trial judge is required to distinguish whether different plaintiffs have pleaded a cause or causes of action that will have overlapping proof at trial, in which case summary judgment as to certain plaintiffs is inappropriate, or whether different plaintiffs have pleaded a cause of action in which their proof at trial will be entirely distinct, in which case summary judgment may potentially be granted. Where the proof is overlapping, one particular risk of piecemeal adjudication is that, when summary judgment is granted as to certain plaintiffs, the court will make findings of fact and conclusions of law; when a trial is held, those same findings will either be binding on the remaining plaintiffs or subject to revision in light of the evidence presented, giving rise to inconsistent outcomes. That risk is a serious one here; if summary judgment is granted as to certain plaintiffs on the grounds that, for example, the classroom temperature problems at Cloverdale are not of constitutional dimension, will that conclusion then bind all similarly situated schoolchildren regardless of the evidence presented at trial as to their claims? Or will the trial court potentially deliver post-trial rulings on such claims that are inconsistent with the grant of summary judgment?

These risks simply do not arise in the case of post-judgment appeals of the judgments as to particular plaintiffs. The very nature of trial proceedings, in which the trial court and jury has an opportunity to observe closely the potential relationships among various plaintiffs' claims, offers much greater assurance that judgments will be

entered as to some plaintiffs only after all of the relevant factual and legal issues have been resolved. Taking an appeal from such a judgment does not, therefore, present a serious a risk of factual and legal inconsistencies among the judgments entered as to the various plaintiffs or, more to the point, among the appellate reviews of such judgments.

In addition, as shown in this case, the trial court's ruling limiting the summary judgment procedure to motions that dispose of an entire cause of action pleaded in common by several plaintiffs, *furthers* the legislature's policy restricting the use of the summary judgment procedure to motions that will streamline the 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 Section 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 B to this return; *see also Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 96 [97 Cal.Rptr.2d 842, 846].) CJA also stated that prior to the amendment to Section 437c, "existing law can be abused by litigant attempts to engage in a paper war by bringing motions to resolve numerous minute issues." (*Id.*) 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).

Finally, although the California School Board Association and several school districts have filed letters with the Court, the Court should be aware that the trial court has already taken measures that have removed the burden on school districts caused by this action, 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. Pet. Exh. 10, p. 171. In addition, several school districts, including the Los Angeles Unified School District, as well as the California School Board Association itself, have voluntarily intervened in the underlying action, expressing their desire to be part of this case as a whole. Thus, the

CSBA and the intervenor school districts have no credible complaint about having to participate in the litigation.

B. 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).[4] The leading case interpreting the term "cause of action" within the context of Section 437c, subdivision (f) is *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal. App. 4th 1848, 1853 [16 Cal.Rptr.2d 458, 461].[5] 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. . . ." (*Id.* (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

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[4] 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.]

[5] 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 C to this return.)

pleaded two "separate and distinct wrongful acts" in a single cause of action. (*Id.*, 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, 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.*, 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 the schoolchildrens' constitutional and other statutory rights. Plaintiffs challenge the statewide system of 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.

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.

C. 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 rights 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 rights" 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.[6] 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.

II. 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

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[6] *Catalano v. Superior Court, supra,* 82 Cal.App.4th at p. 94 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.

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.

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

The petition asks this Court not merely to reverse the trial court, but also to consider and decide the summary judgment motion in the first instance. *See* Pet. at 36-45. In its alternative writ, by contrast, the Court instead directed the Superior Court to consider and decide the motion. To the extent the Court intends to consider the merits of the State's motion for summary judgment, the Court should be aware that 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.

Additionally, all of the submitted evidence — including the State's submissions — conclusively establishes that classrooms reach uncomfortably high temperatures. 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 school's principal, 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 judgment motion. 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 foregoing 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.

Dated: July 9, 2001.

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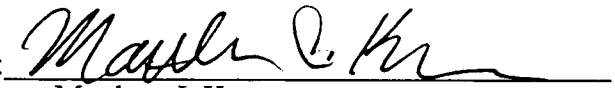
By: 
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