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 9 of Education, and State Board of Education

10 SUPERIOR COURT OF CALIFORNIA  
 11 COUNTY OF SAN FRANCISCO  
 12

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

16 Plaintiffs,

17 v.

18 STATE OF CALIFORNIA, DELAINE  
 EASTIN, State Superintendent of Public  
 19 Instruction, STATE DEPARTMENT OF  
 EDUCATION, STATE BOARD OF  
 20 EDUCATION,

21 Defendants.  
 22

Case No. 312 236

**STATE AGENCY DEFENDANTS'  
 OPPOSITION TO PLAINTIFFS'  
 MOTION FOR SUMMARY  
 ADJUDICATION OF THE STATE'S  
 DUTY TO ENSURE EQUAL ACCESS  
 TO INSTRUCTIONAL MATERIALS  
 FOR ALL CALIFORNIA'S PUBLIC  
 SCHOOL STUDENTS**

Date: September 17, 2003  
 Time: 3:30 p.m.  
 Dept: 20  
 Judge: Hon. Peter J. Busch

Action Filed: May 17, 2000

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9 SUPERIOR COURT OF CALIFORNIA

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11 **ELIEZER WILLIAMS, a minor, by Sweetie**  
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 17 **EASTIN, State Superintendent of Public**  
 18 **Instruction, STATE DEPARTMENT OF**  
 19 **EDUCATION, STATE BOARD OF**  
 20 **EDUCATION,**

19 Defendants.

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**STATE AGENCY DEFENDANTS'**  
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21 INTRODUCTION

22 Relying on *Butt v. California* (1992) 4 Cal.4th 668, plaintiffs contend State Agency  
 23 Defendants<sup>1</sup> have a duty to intervene in the affairs of local school districts, specifically, to operate

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25 1. State Agency Defendants consist of the State Superintendent of Public Instruction,  
 26 the California Department of Education, and the State Board of Education. "For ease of  
 27 reference," plaintiffs refer to all defendants, including defendant State of California, as  
 28 "the State." (Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary

1 a system of oversight to prevent, or detect and correct, alleged deprivations of equal access to  
 2 instructional materials. *Butt*, however, stands only for the proposition that the State – defined as that  
 3 abstract entity created by the California Constitution and given voice by the California Legislature  
 4 – may have a duty to intervene in the affairs of local school districts in limited circumstances.

5 State Agency Defendants have only those powers and duties given them by the  
 6 Constitution and the Legislature. No constitutional or statutory provision gives them the authority,  
 7 much less the duty, to establish plaintiffs' system of oversight. Therefore this court must deny  
 8 plaintiffs' motion for summary adjudication as to State Agency Defendants.

### 9 ARGUMENT

#### 10 STATE AGENCY DEFENDANTS HAVE NO DUTY TO OPERATE 11 PLAINTIFFS' PROPOSED SYSTEM OF OVERSIGHT

12 Plaintiffs' contend that State Agency Defendants have a duty to operate a system of  
 13 oversight that will either prevent, or discover and correct, deprivations of equal access to  
 14 instructional materials. (Plaintiffs' Memorandum, pp. 3-4.) In support of their contention, plaintiffs  
 15 cite *Hall v. City of Taft* (1956) 47 Cal.2d 177, *Piper v. Big Pine School Dist. of Inyo County* (1924)  
 16 193 Cal. 664, and their progeny, for the propositions that State Agency Defendants have "plenary  
 17 constitutional responsibility," and indeed the "ultimate responsibility," for public education, a  
 18 responsibility "which cannot be delegated to any other agency." (Plaintiffs' Memorandum, pp. 3-4.)  
 19 Plaintiffs then cite *Butt v. California, supra*, 4 Cal.4th 668, for the proposition that State Agency  
 20 Defendants have "a duty to intervene to prevent unconstitutional discrimination" in local schools.  
 21 (Plaintiffs' Memorandum, p. 4.)

22 Plaintiffs' argument is flawed because the cases they cite, including *Butt*, stand at most for  
 23 the proposition that the State – defined as that abstract entity created by the California Constitution

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27 Adjudication (Plaintiffs' Memorandum), p. 1, fn. 1.) For purposes of this motion, however, the  
 28 duties of the State and State Agency Defendants must be analyzed independently.

1 and given voice by the California Legislature – has the specified responsibilities and duties.<sup>2</sup> They  
 2 do not stand for the proposition that state agencies and officials such as State Agency Defendants  
 3 have such duties.

4 The controlling legal proposition here is that executive agencies and officials like State  
 5 Agency Defendants have only those powers granted them by the Constitution and the Legislature,  
 6 and no statute or constitutional provision grants to any State Agency Defendant the authority, let  
 7 alone the duty, to operate plaintiffs' system of oversight.

8 **A. *Hall, Big Pine, and Their Progeny Hold that the State, Not State Agency Defendants,***  
 9 ***Has Ultimate, Plenary, and Non-delegable Responsibility Over Education***

10 Plaintiffs cite *Hall v. City of Taft, supra*, 47 Cal.2d 177, *Piper v. Big Pine School District,*  
 11 *supra*, 193 Cal.664, and their progeny for the propositions that State Agency Defendants have  
 12 “plenary constitutional responsibility” and “ultimate responsibility” for public education, and that  
 13 this responsibility “cannot be delegated to any other agency.” (Plaintiffs’ Memorandum, pp. 3-4.)  
 14 But even a cursory reading of these cases reveals that they speak to the responsibility of the entity  
 15 created by the California Constitution and given voice by the California Legislature, not to the  
 16 responsibility of State Agency Defendants. (See, e.g., *Hall* at p. 179 [“establishment, regulation and  
 17 operation [of public schools] are covered by the Constitution and the state Legislature is given  
 18 comprehensive powers in relation thereto”], 180-181 [“the power of the state Legislature over the  
 19 public schools is plenary”]; *Piper* at p. 669 [“The education of the children of the state is an  
 20 obligation which the state took over to itself by the adoption of the Constitution. To accomplish the  
 21 purposes therein expressed the people must keep under their exclusive control, through their

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26 2. As set out fully in the State’s opposition, in which State Agency Defendants have joined,  
 27 these responsibilities and duties do not impose upon the State a duty to operate plaintiffs’ system of  
 oversight.

28

1 representatives, the education of those whom it permits to take part in directing the affairs of state.  
 2 ") If more proof were needed of this rather obvious  
 3 proposition, one need only look to *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513  
 4 for confirmation:

5           The Legislature's power over the public school system has been variously  
 6 described as exclusive, plenary, absolute, entire, and comprehensive, subject  
 7 only to constitutional constraints. [Citation to *Hall*.] Indeed it is said that the  
 8 Legislature cannot delegate ultimate responsibility over education to other  
 9 public or private entities. [Citations to *Hall*, *Piper*.]

10 (*Id.* at p. 1524.) Moreover, *Butt v. California* (1992) 4 Cal.4th 668, the case by which plaintiffs set  
 11 such store, is to the same effect:

12           The Constitution has always vested "plenary" power over education not in the  
 13 districts, but in the State, through its Legislature . . . .

14 (*Id.* at p. 688.)

15           State Agency Defendants' responsibilities concerning education are in no sense exclusive,  
 16 plenary, absolute, entire, comprehensive, or non-delegable. These qualities characterize the  
 17 responsibilities of the State as an abstract entity, and those of the Legislature through which that  
 18 entity speaks.

19 **B. Under *Butt* Only the State, Not State Agencies and Officials, May Have a Duty to**  
 20 **Intervene to Ensure Basic Educational Equality**

21           Plaintiffs contend that *Butt v. California, supra*, 4 Cal.4th 668 holds State Agency  
 22 Defendants have "a duty to intervene to prevent unconstitutional discrimination" at the school level.  
 23 (Plaintiffs' Memorandum, p. 4.) *Butt* held that, when a district is incapable of acting, "[i]n extreme  
 24 circumstances at least," "the State is obliged to intervene when a local district's fiscal problems  
 25 would otherwise deny its students basic educational equality . . . ." (*Butt*, at pp. 688, 692.)  
 26 However, it is also clear that by "the State" the high court meant the abstract entity created by the  
 27 Constitution and given voice by the Legislature – not state agencies and officials like State Agency  
 28 Defendants. This is evident first by the language chosen by the court in discussing

///

1 the duty to intervene. For example, the court declares:

2           The State is constitutionally free to legislate against any recurrence of the  
3           Richmond crisis. It may . . . authorize intervention by State education officials  
4           to stabilize the management of local districts whose imprudent policies have  
5           threatened fiscal integrity.

6 (*Id.* at p. 691.) Manifestly, if the court were positing a pre-existing authority and duty in state  
7 education officials to intervene, it would be unnecessary to point out that the State as an abstract  
8 entity acting through its Legislature could legislate such authorization. The court further states:

9           The trial court's remedial order in this case fell within proper boundaries.  
10          Having correctly held the State constitutionally responsible for the students'  
11          rights, the court could not deny the State and its officials effective means of  
12          fulfilling *its* obligation.

13 (*Id.* at p. 696, emphasis added.)

14           If the court were positing a duty to intervene inhering in both the State and the State's  
15 agencies and officials, the court would have used the plural pronoun "their." Instead, the court used  
16 the singular pronoun "its," signifying the obligation to intervene rested solely with the State.

17           That the duty to intervene declared in *Butt* rested exclusively with the State, and not with  
18 agencies and officials like State Agency Defendants, is also made patent by the high court's  
19 discussion of the basis and scope of the trial court's remedial order. In this discussion, the Supreme  
20 Court concluded that the Superintendent had no statutory authority to take over the district. (*Id.* at  
21 p. 695.) The court then declared that

22           the order approving temporary takeover of the District by the [Superintendent]  
23           was within the [trial] court's inherent equitable power to *remedy* the  
24           constitutional crisis.

25 (*Id.* at p. 697, emphasis added; see also *id.* at fn. 24 ["The remedial order . . . makes clear that the  
26 authority therein accorded the [Superintendent] flows from a direct and critical exercise of the  
27 court's equitable power and jurisdiction over the constitutional dispute"].) In other words, at the  
28 outset the Superintendent did not have the authority, let alone the duty, to undertake the intervention  
the trial court found necessary. Rather, the trial court had to exercise its equitable power in order  
to vest the Superintendent with that authority and duty as a matter of remedy, having found an



1 incipient constitutional violation that the district could not fix. (*Salazar v. Eastin* (1995) 9 Cal.4th  
 2 836, 857-858 [In *Butt*, the predicate for exercising equitable authority to require the Superintendent  
 3 to intervene in the district's affairs was an adjudicated constitutional violation].)

4 In sum, *Butt* does not hold that a duty resides in State Agency Defendants to intervene in  
 5 the affairs of the districts to ensure basic educational equality.<sup>3/</sup>

6 **C. No Statute or Constitutional Provision Grants any State Agency Defendant the**  
 7 **Authority, Let Alone Establishes the Duty, to Operate Plaintiffs' Proposed System**  
 8 **of Oversight**

9 "Educational boards and administrative officers have no inherent powers – only those  
 10 granted by the Constitution and Legislature." (*State Bd. of Educ. v. Honig* (1993) 13 Cal.App.4th  
 11 720, 750.) Neither the Constitution nor any statute gives State Agency Defendants the power or  
 12 establishes a duty to operate a system of oversight to prevent, or detect and correct, alleged  
 13 deprivations of equal access to instructional materials. That the Constitution does not is apparent  
 14 from a perusal of the document. Only two of the three State Agency Defendants are even mentioned  
 15 in the Constitution (the Board and the Superintendent) and neither are given such authority or  
 16 responsibility in it. More specifically, the Constitution establishes the Board and gives it the  
 17 authority and responsibility to "adopt textbooks for use in grades one through eight throughout the

18  
 19 3. If the court should find plaintiffs' rights to equal access to educational materials are being  
 20 infringed, this finding would be insufficient, without more, to render appropriate the court's exercise  
 21 of its equitable powers to require State Agency Defendants to create a system of oversight. There are  
 22 several additional conditions that rendered intervention by a state agency defendant appropriate in  
 23 *Butt* which are not present here. For example, in *Butt* the intervention sanctioned by the trial court,  
 24 displacement of the school board by the Superintendent, was both temporary and necessary to ensure  
 25 prompt repayment of a \$19 million emergency loan of Department of Education funds. (*Butt*, at  
 26 pp. 696 - 697 & fn. 22.) The loan itself had violated the separation of powers doctrine (*id.* at pp.  
 27 697 - 698), but was nevertheless left in place by the Supreme Court because the Superintendent had  
 28 volunteered to make it in the first instance and did not seek its rescission on appeal (*id.* at pp. 694 -  
 697, 703, fn. 28). Here, the intervention plaintiffs envision is not temporary, and would appear to  
 again necessitate expenditure of State Agency Defendants' resources earmarked by the Legislature  
 for other purposes, thus running afoul of the doctrine, albeit this time without State Agency  
 Defendants' acquiescence. However, these issues relate not to the existence of a duty in State  
 Agency Defendants but to the appropriateness of a particular remedy, and therefore do not merit  
 extensive elaboration here.

1 State, to be furnished without cost as provided by statute." (Cal. Const., art. IX, §§ 7, 7.5.) That  
 2 mandate does not even remotely suggest that the Board has a constitutional power and duty to  
 3 operate a system of oversight with respect to instructional materials.

4 Concerning the Superintendent, the Constitution merely provides that he or she shall be  
 5 elected at each gubernatorial election and take office on the first Monday after the first day of  
 6 January succeeding the election. (Cal. Const., art. IX, § 2.) This provision does not define in any  
 7 way the powers and duties of the office. (*State Bd. of Educ. v. Honig, supra*, at p. 756.) Plainly then,  
 8 the Constitution does not create in State Agency Defendants the duties plaintiffs ascribe to them.

9 As for the proposition that a statute might create in State Agency Defendants a duty to  
 10 operate a system of oversight with respect to instructional materials, plaintiffs appear to have  
 11 eschewed such a contention, instead relying exclusively on a duty of constitutional dimension  
 12 residing in "the State" to intervene to prevent unconstitutional discrimination. (Plaintiffs'  
 13 Memorandum, pp. 3-4.) Certainly, that position is consistent with plaintiffs' discovery responses.  
 14 When asked what statutes supported the allegations of the complaint regarding textbooks, plaintiffs  
 15 cited only one statute, responding that State Agency Defendants had violated federal Title VI and  
 16 its implementing regulations by failing to have an effective system of oversight related to the  
 17 unavailability of textbooks. (A true and correct copy of plaintiffs' response is attached as Exhibit  
 18 A.) Of course, plaintiffs have dismissed the Title VI claim and eliminated it as a basis of State  
 19 Agency Defendants' duty.

20 While dismissal of the Title VI claim should resolve any question of statutory duty, the  
 21 First Amended complaint suggests that the Superintendent and Board may have oversight duties by  
 22 virtue of Education Code sections 33301 - 33303,<sup>4</sup> and 33030 - 33032.<sup>5</sup> (First Amended Complaint,  
 23

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24 4. Sections 33301-33303 read as follows:

25 33301. Administration

26 The Department of Education shall be administered through:

27 (a) The State Board of Education which shall be the governing and  
 28

1 pp. 20-21, par. 60, 61.) To the extent plaintiffs intend to rely on those statutes here, that reliance is  
 2 misplaced. One reads these sections in vain for any hint that they impose any duty upon State  
 3 Agency Defendants to establish any system of oversight of instructional materials, let alone a system  
 4 to prevent, detect, and correct, alleged deprivations of equal access to instructional materials; there  
 5 is no express provision of such a duty in these sections.

6 Moreover, to the extent plaintiffs would read these sections to imply a power residing in  
 7

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8 policy determining body of the department.

9 (b) The Director of Education in whom all executive and  
 10 administrative functions of the department are vested and who is the  
 11 executive officer of the State Board of Education.

12 33302. Executive officer

13 The Department of Education shall be conducted under the control of  
 14 an executive officer known as the Director of Education.

15 33303. Ex officio Director of Education

16 The Superintendent of Public Instruction is ex officio Director of  
 17 Education.

18 5. Sections 33030-33032 read as follows:

19 33030. Determination of policy

20 The board shall determine all questions of policy within its powers.

21 33031. Rules and regulations

22 The board shall adopt rules and regulations not inconsistent with the  
 23 laws of this state . . . for the government of [public schools].

24 33032. Study and plans

25 The board shall study the educational conditions and needs of the  
 26 state. It shall make plans for the improvement of the administration  
 27 and efficiency of the public schools of the state.

1 the Board to establish through regulation some system of oversight with respect to textbooks, that  
2 too avails them nothing for two reasons. First, in order for such a delegation of legislative power  
3 to be constitutional, there must be standards to guide the adoption of the regulations, whether those  
4 standards are articulated in the authorizing statute or somewhere else. (*State Board of Education v.*  
5 *Honig, supra*, 13 Cal.App.4th at p. 751.) Here no such standards exist; therefore to the extent there  
6 were in these statutes such an implied delegation of power to the Board to legislate a system of  
7 oversight, that delegation would be unconstitutional and void. Second, even if the lack of standards  
8 to guide the adoption of administrative rules concerning the establishment of a system of oversight  
9 were no impediment, the effect of this lack of standards would put the exercise of that power beyond  
10 the control of the courts. (*Comite De Padres De Familia v. Honig* (1987) 192 Cal.App.3d 528, 533  
11 [The powers and authority of the Board are prescribed by the Legislature, and absent a specific  
12 directive, the manner in which that authority is exercised is a matter of administrative discretion  
13 beyond the power of a court to control].) Stated another way, although a statute may give an  
14 administrative agency authority to legislate regulations, absent specific statutory direction prescribing  
15 the manner of the exercise of that authority, the existence of such authority does not create a duty  
16 in the agency to legislate in any particular way. For all these reasons, neither sections 33030 through  
17 33032 nor sections 33301 thru 33303 create in State Agency Defendants a duty of the sort plaintiffs  
18 ascribe to them.

### 19 CONCLUSION

20 State Agency Defendants' responsibilities concerning education are in no sense exclusive,  
21 plenary, absolute, entire, comprehensive, or non-delegable. Nor does *Butt v. California* vest in State  
22 Agency Defendants a duty to intervene in the affairs of the local districts by establishing and  
23 operating a system of oversight to prevent, or detect and correct, alleged deprivations of equal access

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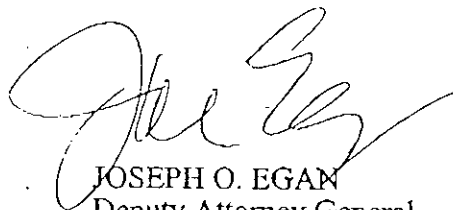
1 to instructional materials. State Agency Defendants' powers and duties are strictly a function of a  
2 constitutional and statutory mandates, and no constitutional or statutory provision gives them powers  
3 and duties of the sort plaintiffs ascribe to them. Therefore plaintiffs' motion for summary  
4 adjudication must be denied as to State Agency Defendants.

5 Dated: August 21, 2003

6 Respectfully submitted,

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# Attachment A

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie  
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 21 individually and on behalf of all others similarly  
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24 STATE OF CALIFORNIA, DELAINE EASTIN,  
 State Superintendent of Public Instruction,  
 25 STATE DEPARTMENT OF EDUCATION,  
 26 STATE BOARD OF EDUCATION,

27 Defendants.

No. 312236

[CLASS ACTION]

PLAINTIFFS' RESPONSE TO  
 DEFENDANTS STATE  
 DEPARTMENT OF EDUCATION,  
 STATE BOARD OF EDUCATION,  
 STATE SUPERINTENDENT OF  
 PUBLIC INSTRUCTION'S FORM  
 INTERROGATORIES, SET ONE

Date Action Filed: May 17, 2000

1 PROPOUNDING PARTY: DEFENDANTS STATE DEPARTMENT OF EDUCATION;  
2 STATE BOARD OF EDUCATION; DELAINE EASTIN, STATE  
3 RESPONDING PARTY: PLAINTIFFS ELIEZER WILLIAMS, *ET AL.*  
4 SET NUMBER: ONE

5 Plaintiffs Eliezer Williams, *et al.* ("Plaintiffs") hereby respond to Defendants California  
6 Department of Education, State Board of Education, and State Superintendent of Public Instruction's  
7 ("Defendants") Form Interrogatories, Set One ("interrogatories"), as follows (the "Response"):

8 **GENERAL OBJECTIONS AND RESPONSE TO INTERROGATORIES**

- 9 1. Plaintiffs' Response is based upon the facts presently known and available to them.  
10 Discovery, investigation, research, and analysis are ongoing, and may disclose the existence of  
11 additional facts, add meaning to known facts, establish entirely new factual conclusions or legal  
12 contentions, or possibly lead to additions, variations, and changes to this Response. Without  
13 obligating themselves to do so, Plaintiffs reserve the right to change or supplement this Response as  
14 additional facts are discovered, revealed, recalled, or otherwise ascertained, and as further analysis  
15 and research disclose additional facts, contentions, or legal theories that may apply.
- 16 2. Plaintiffs object to these interrogatories to the extent they may seek to impose on Plaintiffs  
17 obligations different from, or greater than, those required by the California Code of Civil Procedure  
18 ("CCP") or applicable Local Rules.
- 19 3. Plaintiffs object to these interrogatories in their entirety to the extent that they require  
20 Plaintiffs to provide information that is privileged or protected by the attorney client privilege, the  
21 attorney work-product doctrine, and any other constitutional, statutory, or common-law privilege or  
22 doctrine.
- 23 4. Plaintiffs specifically reserve the right to produce documents in lieu of answers, as  
24 provided in CCP Section 2030(f).
- 25 5. In responding to Defendants' interrogatories, Plaintiffs do not concede the relevancy,  
26 materiality, or admissibility of any interrogatory or of the subject matter to which said interrogatory  
27 refers. Plaintiffs' Response is made subject to and without waiving, or intending to waive, any  
28 questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as



1 evidence or for any other purpose of any of the responses given herein on the subject matter thereof,  
2 in any proceeding, including the trial of this action or any subsequent proceeding; and said Response  
3 is made specifically subject to the right to object to any discovery proceeding involving or relating to  
4 the subject matter of the interrogatories responded to herein.

5 6. Plaintiffs object to each interrogatory on the ground that it is overbroad, unreasonably  
6 burdensome, oppressive, and harassing, that it fails to identify the applicable time and/or time period,  
7 and that it seeks information that is neither relevant to any material issue in this case nor reasonably  
8 calculated to lead to the discovery of admissible evidence.

9 Plaintiffs incorporate the above objections as though fully set forth in their specific responses  
10 to each interrogatory in this set. In addition, Plaintiffs object and respond to each interrogatory in this  
11 set as follows:

12 **SPECIFIC OBJECTIONS AND RESPONSE TO INTERROGATORIES**

13 **FORM INTERROGATORY NO. 14.1:**

14 Do YOU OR ANYONE ACTING ON YOUR BEHALF contend that any PERSON involved  
15 in the INCIDENT violated any statute, ordinance, or regulation and that the violation was a legal  
16 (proximate) cause of the INCIDENT? If so, identify each PERSON and the statute, ordinance, or  
17 regulation.

18 **RESPONSE TO FORM INTERROGATORY NO. 14.1:**

19 Plaintiffs incorporate by reference their general objections as if specifically set forth herein.  
20 Plaintiffs specifically object to this interrogatory to the extent that it seeks information outside of  
21 Plaintiffs' possession, custody, or control, or seeks information that is either equally available to  
22 Defendants or exists in the public domain. Plaintiffs also object to this interrogatory on the ground  
23 that it is improper to interpose such an interrogatory at this early stage of the litigation. Moreover,  
24 Plaintiffs object to this interrogatory as vague, ambiguous, and unintelligible, based on Defendants'  
25 definition of "INCIDENT." Although Defendants have defined "INCIDENT" to include the  
26 allegations in the First Amended Complaint referring or relating to the unavailability of textbooks or  
27 instructional materials, this case does not involve a discrete event that can easily be referred to as an  
28 "incident." Notwithstanding the foregoing objections, Plaintiffs respond as follows:

1 Plaintiffs contend that Defendants State of California; Delaine Eastin, State Superintendent of  
2 Public Instruction; Department of Education; and State Board of Education, each being a public  
3 entity and thus a PERSON, violated and continue to violate Title VI of the Civil Rights Act of 1964,  
4 42 U.S.C. § 2000d and C.F.R. § 100.3(b)(2), as alleged in Plaintiffs' First Amended Complaint, by  
5 failing to have an effective system of oversight and management to prevent or detect and correct  
6 conditions related to the unavailability of textbooks or instructional materials; thus depriving students  
7 of basic educational necessities. Plaintiffs contend that the conditions identified in Plaintiffs' First  
8 Amended Complaint concerning the unavailability of textbooks or instructional materials are  
9 evidence of a breakdown in the Defendants' management of its oversight responsibilities. The  
10 Defendants' failure constitutes legal cause of the INCIDENT. Plaintiffs make clear, however, that  
11 individual incidents are not the subject of this suit. The incidents are simply evidence of the  
12 constitutional and statutory violations that have occurred as a result of Defendants' failure to have an  
13 effective system of oversight and management.

14 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides that "[n]o person in the  
15 United States shall, on the ground of race, color, or national origin, be excluded from participation in,  
16 be denied the benefits of, or be subjected to discrimination under any program or activity receiving  
17 Federal financial assistance." The federal regulations implementing Title VI prohibit a recipient of  
18 federal financial assistance from

19 utiliz[ing] criteria or methods of administration which have the effect  
20 of subjecting individuals to discrimination because of their race, color,  
21 or national origin, or have the effect of defeating or substantially  
impairing accomplishment of the objectives of the program as respect  
individuals of a particular race, color, or national origin.

22 34 C.F.R. § 100.3(b)(2) (1999). Defendants have maintained a public school system without  
23 establishing an effective system of oversight and management to prevent, detect, and cure prevent or  
24 detect and correct of a textbook or set of instructional materials for use in class and to take or leave  
25 home for homework, which failure deprives students of basic educational necessities. Even when  
26 violations have become known to Defendants, Defendants have taken no effective steps to remedy  
27 known violations. This conduct has an unlawful disparate impact on the basis of race, color, or  
28 national origin in violation of Title VI and its implementing regulations. Defendants' conduct has the

1 effect of subjecting students of color to a lack of basic educational necessities at disproportionately  
2 higher rates than white students without sufficient justification and in the face of viable, less  
3 discriminatory alternatives.

4 FORM INTERROGATORY NO. 14.2:

5 Was any PERSON cited or charged with a violation of any statute, ordinance, or regulation as  
6 a result of this INCIDENT? If so, for each PERSON state:

7 (a) the name, ADDRESS, and telephone number of the PERSON;

8 (b) the statute, ordinance, or regulation allegedly violated;

9 (c) whether the PERSON entered a plea in response to the citation or charge and, if so, the  
10 plea entered;

11 (d) the name and ADDRESS of the court or administrative agency, names of the parties,  
12 and case number.

13 RESPONSE TO FORM INTERROGATORY NO. 14.2:

14 Plaintiffs incorporate by reference their general objections as if specifically set forth herein.  
15 Plaintiffs specifically object to this interrogatory to the extent that it seeks information outside of  
16 Plaintiffs' possession, custody, or control, or seeks information that is either equally available to  
17 Defendants or exists in the public domain. Plaintiffs also object to this interrogatory on the ground  
18 that it is improper to interpose such an interrogatory at this early stage of the litigation. Moreover,  
19 Plaintiffs object to this interrogatory as vague, ambiguous, and unintelligible, based on Defendants'  
20 definition of "INCIDENT." Although Defendants have defined "INCIDENT" to include the  
21 allegations in the First Amended Complaint referring or relating to the unavailability of textbooks or  
22 instructional materials, this case does not involve a discrete event that can easily be referred to as an  
23 "incident." Notwithstanding the foregoing objections, Plaintiffs respond as follows:

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1 To Plaintiffs' present knowledge, no PERSON was cited or charged with a violation of any  
2 statute, ordinance, or regulation as a result of this INCIDENT.

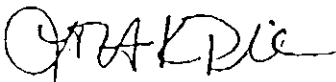
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