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14 LOS ANGELES UNIFIED SCHOOL DISTRICT

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 CITY AND COUNTY OF SAN FRANCISCO

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18  
19 ELIEZER WILLIAMS, a minor, by Sweetie  
Williams, his guardian ad litem, et al., each  
20 individually and on behalf of all others  
similarly situated,

21 Plaintiffs,

22 vs.

23 STATE OF CALIFORNIA, DELAINE  
24 EASTIN, State Superintendent of Public  
Instruction, STATE DEPARTMENT OF  
25 EDUCATION, STATE BOARD OF  
EDUCATION,

26 Defendants,  
27  
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No. 312236

**OPPOSITION BY INTERVENOR  
LOS ANGELES UNIFIED SCHOOL  
DISTRICT TO PLAINTIFFS'  
MOTION FOR SUMMARY  
ADJUDICATION OF THE STATE'S  
DUTY TO ENSURE EQUAL  
ACCESS TO INSTRUCTIONAL  
MATERIALS**

Dept.: 20, Hall of Justice  
Judge: Hon. Peter J. Busch  
Hearing Date: September 17, 2003  
Time: 3:30 p.m.  
Trial Date: August 30, 2004

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LOS ANGELES UNIFIED SCHOOL  
DISTRICT, SAN FRANCISCO UNIFIED  
SCHOOL DISTRICT, LONG BEACH  
UNIFIED SCHOOL DISTRICT, et al.,  
  
Intervenors.

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1     **I.       INTRODUCTION**

2           By their Motion for Summary Adjudication, plaintiffs ask this Court to adjudicate the  
3     existence of a duty on the part of the State of California that has not previously been determined  
4     to exist in California case law. Specifically, plaintiffs ask this Court to determine that the State  
5     owes plaintiffs a “duty to operate a system of oversight that will either prevent or discover and  
6     correct deprivations of equal access to instructional materials.” MPA in Supp. of Pls’ Mot. for  
7     Summ. Adjudication for the State’s Duty to Ensure Equal Access to Instructional Materials for  
8     All Cal.’s Pub. Sch. Students (“Motion”) at 3. Relying heavily on anecdotes from students to  
9     the effect that they did not have a particular textbook for a class to take home and on hearsay  
10    statements in nearly three-year-old school-specific audit reports and fund applications, plaintiffs  
11    also request that this Court adjudicate that the State breached this purported duty. Plaintiffs’  
12    Motion is procedurally improper under Code of Civil Procedure section 437c(f)(1) and is based  
13    on a fundamental misperception of the State of California’s duty in the context of a claim  
14    involving an alleged deprivation of basic educational equality under the California Constitution.

15           Nothing in *Butt v. State of California*, 4 Cal. 4th 668 (1992), supports plaintiffs’  
16    contention that the purported textbook-specific duty of oversight constitutes a free-standing  
17    duty that can be adjudicated under section 437c(f)(1). In fact, *Butt* negates the idea that such a  
18    particularized duty of the State would ever exist given the Supreme Court’s admonition that  
19    local school districts must have independence and flexibility in determining how best to  
20    effectuate a complete educational program.

21           Moreover, plaintiffs’ Motion is predicated on facts which are vigorously disputed.  
22    Declarations submitted by intervenor Los Angeles Unified School District (“LAUSD”) from  
23    administrators at twelve Los Angeles schools establish that these schools have made substantial  
24    progress toward solving the particular textbook problems described in the now out-of-date  
25    reports on which plaintiffs rely in their Motion. LAUSD’s declarations create a triable issue as  
26    to whether the textbook situation within LAUSD is sufficiently “extreme” under *Butt* to trigger  
27    the State’s duty of intervention. Additionally, these declarations show that LAUSD schools are

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1 capable of addressing their individual textbook issues. LAUSD's showing creates a triable issue  
2 as to whether intervention by the State within LAUSD to implement a new system of oversight  
3 and management concerning textbooks is appropriate to address school-specific textbook issues.  
4 For these reasons, plaintiffs' Motion should be denied.

## 5 **II. ARGUMENT**

### 6 **A. Plaintiffs' Motion Does Not Satisfy the Requirements of Code of Civil Procedure** 7 **section 437c(f)(1) for Multiple Reasons**

#### 8 **1. Plaintiffs' Motion Does Not "Completely Dispose" of an Issue of Duty**

9 Under California Code of Civil Procedure section 437c(f)(1), summary adjudication as  
10 to "one or more issues of duty" is only permissible where the motion "completely disposes of . .  
11 . an issue of duty." Code Civ. Proc. § 437c(f)(1) (Deering 1995 & Supp. 2003). To be  
12 appropriate for summary adjudication under this section, the issue of duty must constitute a  
13 complete and free-standing duty that is presented by a claim in the action and not a subsidiary  
14 component of that issue of duty. *See Regan Roofing Co., Inc. v. Sup. Ct.*, 24 Cal. App. 4th 425  
15 (1994). In *Regan*, a general contractor which had been sued by a condominium association for  
16 construction defects cross-complained against its multiple subcontractors for indemnification  
17 under an indemnity provision set forth in the pertinent subcontracts. The general contractor  
18 filed a motion for summary adjudication under Code of Civil Procedure section 437c(f)(1)  
19 seeking, among other things, a ruling from the court that the subcontractors owed the general  
20 contractor a duty to defend it against the condominium association's claims. Construing the  
21 obligations of the parties under an exemplar of the subcontracts at issue, the trial court ruled that  
22 the subcontractor cross-defendants had a current duty to defend the general contractor but  
23 declined to further rule that these subcontractors also had a duty to indemnify the general  
24 contractor against potential liability to the condominium association. *Id.* at 432.

25 Granting a petition for a writ of mandate, the Court of Appeal directed the trial court to  
26 vacate its order granting in part and denying in part the general contractor's summary  
27 adjudication motion. The court observed that adjudicating the subcontractors' general duty to  
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1 provide indemnity against the general contractor's potential liability to the condominium  
2 association was then premature since the subcontractors' own alleged negligence had not yet  
3 been determined. Concluding that the subcontractors' duty to defend the general contractor was  
4 not an issue of duty severable from the issue of their broader duty to indemnify, the court ruled  
5 that the motion did not completely dispose of an issue of duty under section 437c(f)(1). As the  
6 court stated:

7 We believe summary adjudication of the duty to defend and its relationship to  
8 the duty to indemnify (i.e., the scope of "the matters embraced by the  
9 indemnity") is premature. No determination has yet been made as to whether the  
10 subcontractors were negligent in the performance of their work, giving rise to a  
11 duty to indemnify and a related duty to defend. Pacific Scene [the general  
12 contractor] has not clearly established that under this indemnity clause, the duty  
13 to defend against claims of liability is entirely free-standing of the duty to  
indemnify for liability arising out of a subcontractor's negligence. [Citation  
omitted.] . . . It is as yet unclear whether the subcontractors are being expected  
to defend the developer, Pacific Scene, against claims for which it may be  
strictly liable, but for which the subcontractors are not strictly liable. [Citations  
omitted.]

14 *Id.* at 436-37; *see also Linden Partners v. Wilshire Linden Assoc.*, 62 Cal. App. 4th 508, 520  
15 (1998) (explaining that the court's holding in *Regan* was based on its determination "that the  
16 trial court had not 'completely disposed' of the issue of duty" as required under Code of Civil  
17 Procedure section 437c(f)(1)).<sup>1</sup>

18 \_\_\_\_\_  
19 <sup>1</sup> The court in *Regan* further observed that the trial court's order summarily adjudicating the  
20 subcontractor's duty to defend was improper because the order did not dispose of an entire  
21 cause of action or affirmative defense and did not terminate any portion of the action. *Regan*,  
22 24 Cal. App. 4th at 436. According to the court in *Regan*, a motion for summary adjudication  
23 under section 437c(f) must be denied if the motion "fail[s] to dispose completely of a  
24 particular cause of action or defense even where 'an issue of duty' is involved." *Id.* at 433-34.  
25 In *Linden*, the court disagreed with this conclusion. The court in *Linden* determined that a  
26 summary adjudication motion under section 437c(f)(1) which completely disposes of an issue  
27 of duty need not also resolve an entire cause of action. *Linden*, 62 Cal. App. 4th at 522. A  
28 leading treatise on California civil procedure disagrees with the *Linden* court's interpretation  
of the statute. *See Weil and Brown, Cal. Practice Guide: Civil Procedure Before Trial* (The  
Rutter Group 2002), § 10:44.10 ("Permitting adjudication of 'duty' where it does not resolve  
the entire cause of action or defense seems incorrect."). This Court need not determine  
whether to accept the Fourth Appellate District's interpretation of section 437c(f) in *Regan* or  
that of the Second Appellate District in *Linden*. Both districts of the Court of Appeal agree  
that where, as here, the duty that the movant seeks to summarily adjudicate is not an  
independent, free-standing duty at issue in the case, the motion should be denied because it  
would not "completely dispose" of an issue of duty as required.

1           Despite plaintiffs' contention to the contrary, the equal protection claim in this case  
2   presents no issue concerning the existence of a discrete, "free-standing" duty on the part of the  
3   State to operate a system of oversight that would either prevent or discover and correct  
4   deprivations of equal access to instructional materials. No authority cited by plaintiffs suggests  
5   that the State would ever have such a duty. Rather, *Butt* establishes that the only free-standing  
6   duty of the State that is implicated by plaintiffs' equal protection claim is the State's general  
7   *duty to intervene* in order to remedy a combination of conditions which, if unaddressed, would  
8   result in unconstitutional discrimination against some students. *Butt*, 4 Cal. 4th at 704. In their  
9   motion, plaintiffs not only mischaracterize the State's duty as it is delineated in *Butt*, they ignore  
10   that the California Supreme Court expressly observed that in order to assess the merits of a  
11   claimed violation of a student's right to basic educational equality, the student's educational  
12   program must be viewed as a whole. This central principle in *Butt* is entirely inconsistent with  
13   plaintiffs' notion of a free-standing, resource-specific duty of oversight on the part of the State  
14   that can be adjudicated in isolation under Code of Civil Procedure section 437c(f)(1).

15           In *Butt*, the Richmond Unified School District ("RUSD") proposed to close all of its  
16   schools six weeks prior to the end of the 1990-91 school year due to the district's financial  
17   collapse. *Butt*, 4 Cal. 4th at 673-75. District parents sought injunctive relief against the State to  
18   prevent the closure of schools before the scheduled end of the scholastic term. *Id.* at 674. These  
19   parents alleged that closure would deny their children the right to a public education equivalent  
20   to the education provided to other school children throughout the State. *Id.* They urged that  
21   early closure of the school constituted unjustified discrimination against RUSD students and  
22   violated their right to equal protection under the United States and California Constitutions. *Id.*

23           The California Supreme Court identified only one complete issue of "duty" on the part  
24   of the State arising in the context of an equal protection claim involving an alleged deprivation  
25   of the right to educational equality, namely, the duty of the State "to intervene to prevent  
26   unconstitutional discrimination at the local level." *Id.* at 688. The Court discussed the State's  
27   duty of intervention in addressing the State's argument that it had fulfilled its responsibility for  
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1 educational equality by subjecting all local school districts to an equalized statewide revenue  
2 base. *Id.* at 679. The State contended that its policy of local control by, and accountability of,  
3 school districts and local administrators was a sufficiently “compelling” state interest to justify  
4 inaction by the State in the RUSD’s affairs. *Id.* at 680.

5 The Court rejected the State’s argument in view of the “extreme circumstances” of the  
6 case. *Id.* at 688. It agreed with the trial court’s finding that the RUSD’s failure to keep schools  
7 operating during the final six weeks of the scheduled school term “would cause educational  
8 disruption sufficient to deprive [Richmond Unified School] District students of basic  
9 educational equality.” *Id.* at 692. Because, absent State intervention, the RUSD would have  
10 been unable to complete the final six weeks of the scheduled term, the Court found that the State  
11 had a duty to intervene. As the Court explained:

12 The State is the entity with ultimate responsibility for equal operation of the  
13 common school system. Accordingly, the State is obliged to intervene when a  
14 local district’s fiscal problems would otherwise deny its students basic  
educational equality, unless the State can demonstrate a compelling reason for  
failing to do so.

15 *Id.* at 692.

16 Importantly, the California Supreme Court did not suggest that the State had a duty of  
17 “oversight” to ensure that students received instruction for any particular time period  
18 comprising a school term. In fact, the Court implicitly rejected the notion of a free-standing  
19 duty on the part of the State that is urged by plaintiffs, i.e., that the State has a duty of oversight  
20 specifically relating to particular components of an educational program within a school district.  
21 The Court discredited plaintiffs’ formulation of such a duty when it observed that the California  
22 Constitution does not require uniformity among all school districts with respect to educational  
23 programs. Noting that “local districts, faced with mounting fiscal pressures, may be forced to  
24 seek creative ways to gain maximum educational benefit from limited resources,” the Court  
25 expressed the importance of giving districts flexibility to provide a basic educational experience  
26 in accordance with the requirements of the California Constitution. *Id.* at 686. The Court thus  
27 observed that the determination of whether students are being deprived of a constitutionally  
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1 sufficient basic education depends on an assessment of the complete educational program  
2 available to those students. As the Court explained:

3 Even unplanned truncation of the intended school term will not necessarily  
4 constitute a denial of “basic” educational equality. A finding of constitutional  
5 disparity depends on the individual facts. Unless the actual quality of the  
district’s program, viewed as a whole, falls fundamentally below prevailing  
statewide standards, no constitutional violation occurs.

6 *Id.* at 686-87.

7 In view of the foregoing principles in *Butt*, there are several reasons why plaintiffs’  
8 motion does not “completely dispose” of a free-standing issue of duty as required under section  
9 437c(f)(1). First, since the only free-standing duty of the State at issue in this case is the State’s  
10 duty to intervene in order to remedy conditions which would result in a denial of equal  
11 protection, plaintiffs’ motion would not completely dispose of an issue of duty. Under *Butt*, in  
12 order to trigger the State’s duty of intervention, plaintiffs would have to prove the State’s  
13 liability for a constitutional deprivation. As noted above, the California Supreme Court  
14 discussed the State’s duty of intervention in the context of addressing the State’s argument that  
15 its policy of local control by school districts was a sufficiently compelling state interest to  
16 justify the State’s inaction. *Id.* at 680. Accordingly, under *Butt*, a finding of a duty of  
17 intervention on the part of the State is tantamount to a finding of the State’s liability for an equal  
18 protection violation. This is because the State’s duty to intervene presupposes both a finding  
19 that students are being denied basic educational equality and a finding of the lack of a  
20 compelling state interest justifying the State’s inaction. *See supra* Part II.A.2.

21 Plaintiffs concede that to establish the State’s liability for an equal protection violation  
22 and, therefore, the State’s duty to intervene, they must prove more than a duty of oversight  
23 concerning a particular educational resource. In a prior brief in this case, plaintiffs announced  
24 that their “liability evidence will be directed to three concrete showings.” MPA in Supp. of Pls.’  
25 Opp’n to Intervenor Los Angeles Unified Sch. Dist.’s Mot. to Bifurcate and Order Proceedings  
26 (“Plaintiffs’ Opposition”), Ex. 12. Specifically, plaintiffs proposed to show that: (i) “there are  
27 students at many California public schools who suffer from conditions that deprive them of  
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1 equal educational opportunity;” (ii) “the State’s system of oversight and management is not  
2 capable of preventing or discovering and correcting these conditions,” and (iii) “there are steps  
3 the State could take to institute a system of oversight and management that would remedy these  
4 conditions now and in the future.” *Id.* at 12-13.

5 Plaintiffs implicitly recognize that to establish the State’s duty to intervene requires  
6 more than a showing that the State has a purported duty to implement a system of oversight  
7 concerning a particular educational resource. Since plaintiffs have not established and do not  
8 propose to establish by their motion the State’s duty to intervene, they have not demonstrated  
9 that the State has the only free-standing duty that is at issue in this case. If plaintiffs wish to  
10 summarily adjudicate a “duty,” they must adjudicate the complete, free-standing duty “to  
11 intervene to prevent unconstitutional discrimination at the local level,” *Butt*, 4 Cal. 4th at 688,  
12 not a “duty to operate an oversight system to ensure equal access to instructional materials.”  
13 Motion at 1.

14 Second, given that determining whether the denial of basic educational equality has  
15 occurred depends on an evaluation of the educational program available to students “viewed as  
16 a whole,” it follows that the State has no free-standing duty to implement a top down system of  
17 oversight and management that focuses on any particular educational resource.<sup>2</sup> *Butt*, 4 Cal. 4th  
18 at 686-87. Plaintiffs’ suggestion that a textbook-specific duty can be summarily adjudicated on  
19 a stand alone basis under section 437c(f)(1) is incompatible with the point emphasized by the  
20 California Supreme Court in *Butt* that local districts be given flexibility to implement “creative  
21 ways to gain maximum educational benefit from limited resources.” *Id.* at 686. For districts to  
22 have the requisite flexibility, the State cannot possibly have an independent, free-standing duty  
23 to micro-manage a single educational resource in isolation from the complete educational  
24 program “viewed as a whole.” This is the very reason the California Supreme Court  
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26 <sup>2</sup> Indeed, the purported textbook-specific duty of oversight and management urged by plaintiffs  
27 not only fails to qualify as a complete, free-standing duty that can be adjudicated in isolation  
28 under section 437c(f)(1), but as explained below, it is not a duty which Courts have  
recognized. *See* discussion *infra* at Parts II.A.4.

1 characterized the State’s duty in general terms, i.e., as a duty to intervene, and not in the narrow,  
2 mechanical way that plaintiffs propose.

3 Finally, the resource-specific duty of oversight that plaintiffs propose to adjudicate does  
4 not completely dispose of an issue of duty because plaintiffs, by their equal protection claim,  
5 seek the implementation of a system of oversight that would address multiple resources and  
6 conditions, not just instructional materials. Plaintiffs allege a single cause of action for violation  
7 of the equal protection clauses of the California Constitution. *See* Pls’ First Am. Compl.  
8 (“FAC”) ¶¶ 299 and 300. In that cause of action, plaintiffs incorporate by reference all  
9 preceding 298 paragraphs of their FAC and allege that defendants violated plaintiffs’ right to  
10 receive equal protection by “failing to provide Plaintiffs and members of the Plaintiff class and  
11 subclass with basic educational opportunities equal to those that children in other schools  
12 receive.” *Id.* ¶ 300. In their Liability Disclosure Statement, plaintiffs explain that their alleged  
13 lack of basic educational opportunities relates not just to instructional materials, but also to  
14 teacher qualifications, bathroom facilities, instruction for English language learners, multi-track  
15 calendars and classroom enrollment. *See generally* Pls’ Liab. Discl. Stmt.

16 Given plaintiffs’ insistence that their case focuses on the State’s comprehensive system  
17 of oversight and management, this Court has made clear that “[t]his is not a case to require any  
18 particular level, kind, or quality of teachers, facilities, or textbooks to be provided to the  
19 Plaintiffs.” Order Granting Mot. for J. on the Pleadings as to Second Cause of Action at 4.  
20 Rather, as this Court has stated, the narrow focus of the case “is on the state’s oversight and  
21 management of public education.” *Id.* Since plaintiffs’ equal protection claim puts at issue a  
22 combination of alleged resource conditions which plaintiffs seek to remedy through a  
23 comprehensive new system of oversight and management, the State’s purported duty concerning  
24 textbooks cannot be adjudicated independently. The allegations of plaintiffs’ equal protection  
25 cause of action and this Court’s rulings concerning the issue presented by those allegations thus  
26 preclude adjudication of the purported isolated duty relating to textbooks that is the subject of  
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1 plaintiffs' motion. Such an adjudication would not completely dispose of an issue of duty as  
2 required under section 437c(f)(1).

3       **2. Plaintiffs Cannot Summarily Adjudicate Whether the State Owes a Duty of**  
4       **Oversight Because No Such Duty Is an Element of Any of Plaintiffs' Causes**  
5       **of Action**

6       The textbook-specific "duty" of oversight that plaintiffs seek to adjudicate is not the type  
7 of duty that is properly the subject of summary adjudication under section 437c(f)(1). To be  
8 summarily adjudicated under this section, the issue of duty must relate to an essential element of  
9 a cause of action. For example, in the context of a negligence action, a defendant could seek  
10 summary adjudication under this section that it did not owe a duty of care to the plaintiff. *See*  
11 *Regan*, 24 Cal. App. 4th at 434. It is well settled that the defendant's legal duty of care toward  
12 the plaintiff and the defendant's breach of that duty are both central elements of a cause of  
13 action for negligence. *Id.*; *see also Novak v. Low, Ball, & Lynch*, 77 Cal. App. 4th 278, 281  
14 (1999). Similarly, where an issue of duty is presented in a contract action, the issue typically  
15 involves determining the extent of a party's contractual obligations. If a "promise is recognized  
16 as creating a legal duty, or if its breach will give rise to a right of redress, then the promise is a  
17 contract." *See Regan*, 24 Cal. App. 4th at 434 (quoting Samuel Williston, 1 A Treatise on the  
18 Law of Contracts § 2 (Richard Lord, 4<sup>th</sup> ed. 1990)). "The concept of duty thus enters into the  
19 first three of the standard elements of a cause of action for breach of contract: (1) the contract,  
20 (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and  
21 (4) damage to plaintiff therefrom." *Id.* at 434-435; *see also Linden Partners*, 62 Cal. App. 4th at  
22 520 (holding that, in breach of contract action, question of whether a contracting party had a  
23 duty to deliver an estoppel certificate was an appropriate "issue of duty" for summary  
24 adjudication under section 437c(f)(1) because it involved a determination of the parties'  
25 contractual rights and obligations).

26       In the context of an action alleging the violation of a party's constitutional right to equal  
27 protection, the issue of "duty" is not central to the action. "The equal protection clause requires  
28 the law to treat those similarly situated equally unless disparate treatment is justified."

1 *Griffiths v. Superior Court*, 96 Cal. App. 4th 757, 775 (2002). “As a foundational matter . . . all  
2 meritorious equal protection claims require a showing that ‘the state has adopted a classification  
3 that affects two or more similarly situated groups in an unequal manner.’” *Fenn v. Sherriff*,  
4 1 Cal. Rptr. 3d 185, 202, 109 Cal. App. 4th 1466, 1487 (2003) (quoting *People v. Wutzke*,  
5 28 Cal. 4th 923 (2002)).

6         Once the plaintiff demonstrates the existence of state action that treats similarly situated  
7 groups differently, the court must determine whether to evaluate such state action under the  
8 “rational relationship test” or the “strict scrutiny test.” The rational relationship test applies to  
9 most economic and social welfare legislation. Under this test, a challenged statute or action of  
10 the state does not violate the constitution where it is determined to have a “rational relationship  
11 to a conceivable legitimate state purpose.” *Warden v. State Bar*, 21 Cal. 4th 628, 641 (1999),  
12 *cert. denied*, 529 U.S. 1020 (2000). The strict scrutiny test, a more stringent standard of review,  
13 applies in cases involving “suspect classifications” or “fundamental interests.” *Id.*; *see also*  
14 *Serrano v. Priest*, 18 Cal. 3d 728, 761 (1976) (“*Serrano II*”). Under this standard of review, the  
15 State has the burden to show that it has a compelling interest which justifies the law and that the  
16 distinctions drawn by the law further its purpose. *Warden*, 21 Cal. 4th at 641.

17         In the adjudication of an equal protection claim, neither the initial showing of state  
18 action that treats similarly situated groups differently, nor the determination of whether that  
19 action passes muster under either the rational relationship or strict scrutiny tests, requires the  
20 court to find the existence of a duty on the part of the State. For example, in *Serrano II*, the  
21 California Supreme Court never addressed any purported “duty” of the State in assessing the  
22 constitutional validity of the State’s then existing public school financing system. Rather, the  
23 California Supreme Court, applying a traditional equal protection analysis, first concluded that  
24 the financing system resulted in some students being treated differently than others. *Serrano II*,  
25 18 Cal. 3d at 760. The Court proceeded to analyze that financing system under the strict  
26 scrutiny test since it involved a suspect classification of students, specifically a classification  
27 based on district wealth, and touched upon the fundamental interest of education. *Id.* at 768.

28

1 The Court ultimately held the financing system violated the equal protection clause of the  
2 California Constitution. *Id.* at 776. At no point in its equal protection analysis did the Court  
3 address any issue of a duty of the State to the plaintiffs.

4 The issue of the State's duty of intervention arose in *Butt* as a result of the State's  
5 argument, specific to the facts of the case, that its policy of local control of education by school  
6 districts was a compelling state interest that justified its refusal to become involved directly in  
7 the RUSD's shortened school term problem. *Butt*, 4 Cal. 4th at 680. The California Supreme  
8 Court rejected this assertion, concluding that the State had failed to demonstrate a policy of  
9 local control "so compelling as to justify State tolerance of the extreme local educational  
10 deprivation at issue here." *Id.* at 688. The Court ruled that "[i]n extreme circumstances at least,  
11 the State 'has a duty to intervene to prevent unconstitutional discrimination' at the local level."  
12 *Id.* at 688 (quoting *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 904 (1979)).  
13 Nothing in *Butt* suggests that duty is an issue central to an equal protection claim. Duty was an  
14 issue unique to that case due to the particular argument asserted by the State regarding its  
15 compelling state interest. *Id.* at 704. "Accordingly, the State is obliged to intervene when a  
16 local district's fiscal problems would otherwise deny its students basic educational equality,  
17 unless the State can demonstrate a compelling reason for failing to do so." *Id.* at 692.

18 Because the issue of duty is not central to an equal protection claim, the textbook  
19 specific duty of oversight that is the subject of plaintiffs' motion is not appropriate for summary  
20 adjudication under section 437c(f)(1). It is not a duty akin to a duty of care in a tort action or a  
21 duty to perform an obligation in an action for breach of contract.

22 3. **Plaintiffs' Motion Is a Disguised Attempt to Adjudicate a Cause of Action,**  
23 **Not an Issue of Duty, and Must Be Denied Because It Does Not Dispose of an**  
**Entire Cause of Action**

24 Though plaintiffs purport to seek summary adjudication under section 437c(f)(1) limited  
25 to an issue of duty, in fact, plaintiffs ask this Court to determine much more than that. In  
26 essence, plaintiffs' motion seeks to adjudicate the issue of the State's liability for an equal  
27 protection violation, specifically, an adjudication that plaintiffs have been deprived of equal  
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1 treatment under the Constitution with respect to the provision of textbooks. As explained  
2 above, the conclusion that the State has a duty of intervention presupposes the predicate findings  
3 of a denial of basic educational equality and the lack of a compelling state interest justifying the  
4 State's inaction. Plaintiffs' motion should be denied because it would adjudicate the broad issue  
5 of the State's liability for an equal protection violation without resolving plaintiffs' equal  
6 protection cause of action in its entirety.

7 In *Butt*, the Court only considered the State's duty to intervene *after* it had concluded, as  
8 a threshold proposition, that the early closure of RUSD schools would deny district students  
9 their right to basic educational equality. Before addressing the State's duty, the California  
10 Supreme Court first determined that there was sufficient evidence to support the trial court's  
11 finding that the threatened early closure of RUSD schools would impact RUSD students' entire  
12 educational experience. The Court noted the declarations of teachers detailing the critical  
13 lessons that would not be covered and the skills necessary for student advancement to the next  
14 grade that would not be taught as the result of a shortened school term. *Id.* at 687 n.16.  
15 Teachers testified that high school seniors might not be able to obtain diplomas without  
16 completing their required courses and that any diploma they did receive might be deemed  
17 suspect by colleges and universities and thereby compromise seniors' ability to qualify for  
18 college admission. *Id.*

19 Applying strict scrutiny, the California Supreme Court proceeded next to consider the  
20 merits of the State's reason for not acting to remedy RUSD's financial problems, namely that  
21 the State had a compelling interest in adhering to its policy of local district autonomy and  
22 accountability. *Id.* at 692. Because the challenged state action in *Butt* could not be justified by  
23 a compelling state interest, the Court concluded that the State had a duty "to intervene to prevent  
24 unconstitutional discrimination at the local level." *Id.* at 688.

25 In identifying the State's duty to intervene, the Court in *Butt* cited *Tinsley*, 91 Cal. App.  
26 3d at 904, wherein the court held that the State had a duty to intervene at the local school district  
27 level to alleviate unconstitutional racial discrimination. *Id.* at 894. As in *Butt*, the *Tinsley* Court  
28



1 addressed the State's duty to intervene only after it found that an equal protection violation had  
2 occurred. *Tinsley*, 91 Cal. App. 3d at 899-901.

3 Because plaintiffs are, in effect, attempting to adjudicate the issue of the State's liability  
4 for a denial of equal protection under the guise of adjudicating "an issue of duty," their motion  
5 should be analyzed as one seeking to adjudicate an entire cause of action. Such an analysis is  
6 consistent with the purpose of the 1990 revisions to the summary judgment statute. Prior to  
7 1990, the summary judgment statute permitted a court to rule that there was no dispute as to  
8 certain general issues in a case. *City of Emeryville v. Superior Court*, 2 Cal. App. 4th 21, 24  
9 (1991). In 1990, the legislature revised the statute to allow summary adjudication only as to  
10 causes of action, affirmative defenses, claims for punitive damages, and issues of duty. *Id.* at  
11 23. This revision was intended to "stop the practice of the adjudication of facts or adjudication  
12 of issues that do not completely dispose of a cause of action or a defense." *Id.* at 25 (quoting  
13 Stats. 1990 ch. 1561, § 1). Now, to adjudicate a cause of action, a motion under  
14 section 437c(f)(1) must "completely dispose" of the cause of action. Code Civ. Proc.  
15 § 437c(f)(1).

16 Plaintiffs' motion does not dispose of an entire cause of action. First, the motion does  
17 not establish the State's liability for an equal protection violation. As noted above, plaintiffs  
18 admit that they would need to make at least "three concrete showings" to establish the State's  
19 liability for such violation, including showings that the State's current system of oversight and  
20 management is not capable of preventing or discovering and correcting deprivations of equal  
21 educational opportunity and that there are steps the State could take to institute a system of  
22 oversight and management that would remedy these conditions. Plaintiffs' summary  
23 adjudication motion does not purport to make these showings.<sup>3</sup> Second, plaintiffs' motion does

24 <sup>3</sup> The Court should deny plaintiffs' motion for this reason alone. Where an issue of a  
25 defendant's duty that is the subject of a motion for summary adjudication rests on a threshold  
26 finding of that defendant's then undetermined liability, the motion should be denied. As  
27 explained above, in *Regan*, the court observed that at the time the general contractor moved  
28 for summary adjudication of the subcontractors' duty to defend, no determination had been  
made "as to whether the subcontractors were negligent in the performance of their work."  
*Regan*, 24 Cal. App. 4th at 436-37. Accordingly, the court held that summary adjudication of  
(continued...)

not address the other resource problems that are purportedly the subject of their equal protection claim, i.e., teacher qualifications, bathroom facilities, instruction for English language learners, multi-track calendars and classroom enrollment. Finally, the motion does not determine the remedy for the alleged equal protection violation. Since the motion does not “completely dispose” of plaintiffs’ equal protection claim, it should be denied.

4. **Code of Civil Procedure section 437c(f)(1) Does Not Permit Summary Adjudication of a Breach of Duty**

Plaintiffs ask this Court to adjudicate under section 437c(f)(1) not only the existence of a duty on the part of the State, but also the State’s purported breach of that duty. Plaintiffs apparently rely on language in *Novak*, 77 Cal. App. 4th at 285, where the court observed that the statutory duty at issue “clearly applied and was breached.” Motion at 24. Such language in *Novak* was merely dicta. The Court of Appeal reversed the trial court’s ruling “with instructions to enter an order granting summary adjudication that the issue of respondents’ duty [under the statute] has been established.” The court did not direct the trial court to enter any order regarding a breach of that duty. *Novak*, 77 Cal. App. 4th at 286. Plaintiffs have cited no authority holding that a court can summarily adjudicate as a stand alone issue under section 437c(f)(1) whether a party breached an alleged duty. That plaintiffs nonetheless request that this Court adjudicate the issue of the State’s breach of duty underscores that plaintiffs are, in reality, seeking to adjudicate the State’s liability under their cause of action for denial of equal protection. As explained above, plaintiffs’ motion fails in that objective. *See* discussion *infra* at Parts II.A.3.

**B. The State Has No Duty Under the California Constitution Uniquely Relating to Instructional Materials**

As demonstrated above, the State’s duty to intervene arises when necessary “to protect District students against loss of their right to basic educational equality.” *Butt*, 4 Cal. 4th 668 at

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(...continued)

the subcontractors’ duty to defend and its relationship to the duty to indemnify was “premature.” *Id.*

1 704. Not only is the duty plaintiffs want this Court to adjudicate – a purported duty of oversight  
2 and management concerning instructional materials – something less than that complete duty, it  
3 is a duty that has not been judicially recognized. Plaintiffs’ motion is thus defective on  
4 substantive as well as procedural grounds.

5 Under the principles articulated in *Butt*, the State would never have an obligation of  
6 oversight and management concerning particular educational resources such as instructional  
7 materials. The California Supreme Court made clear in *Butt* that school districts must have  
8 independence and flexibility in determining how to implement an educational program and that  
9 their individual “efforts in this regard are entitled to considerable deference.” *Id.* at 686. The  
10 Court recognized that a district could implement an educational program that provided basic  
11 educational equality to students consistent with the requirements of the California Constitution  
12 despite a difference between educational conditions in that district and conditions in other  
13 districts. *See* discussion *infra* at Parts II.A.1.

14 Plaintiffs’ contention that the State has a textbook-specific duty of oversight cannot be  
15 reconciled with these principles in *Butt*. If, as mandated by *Butt*, to determine the existence of a  
16 denial of basic educational equality, the educational program available to a student must be  
17 “viewed as a whole,” *Butt*, 4 Cal. 4th at 686-87, then it would be inimical to impose upon the  
18 State a duty of oversight and management relating uniquely to textbooks and would be contrary  
19 to applicable law.

20 **C. There Are Numerous Disputed Questions of Fact Which Preclude Summary**  
21 **Adjudication**

22 In an effort to demonstrate a statewide textbook supply problem of sufficient gravity and  
23 pervasiveness to give rise to a purported duty of the State to intervene in all local school  
24 districts, plaintiffs rely on anecdotes from students at a handful of schools as well as snippets of  
25 hearsay statements from school applications for funding to the Immediate  
26 Intervention/Underperforming Schools Program (“II/USP”) and from Scholastic Audit Team  
27 Reports (“SAT Reports”). Plaintiffs’ evidence relating to twelve schools within LAUSD is  
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1 contradicted by the declarations of administrators at these schools, namely, Crenshaw High  
2 School, Fremont High School, Gates Elementary School, Gompers Middle School, Locke High  
3 School, Horace Mann Middle School, Miramonte Elementary School, Mount Vernon Middle  
4 School, Plummer Elementary School, South Gate High School, Sun Valley Middle School, and  
5 Wilshire Crest Elementary School.

6 As LAUSD's declarations establish, the anecdotes concerning textbooks described in  
7 plaintiffs' declarations are inaccurate or overstate problems. For example, one of plaintiffs'  
8 student declarants who avers that her Chemistry textbook was "very old" and in poor condition  
9 described the condition of that same textbook as "new" in the book card she completed when  
10 she was assigned the book. Further, most, if not all, of the textbook related issues mentioned in  
11 the II/USP applications and SAT Reports cited by plaintiffs have been, or are in the process of  
12 being, corrected as the result of diligent work by school administrators. LAUSD's declarations  
13 show that since the date of these reports, the LAUSD schools at issue have successfully  
14 implemented many different remedial measures concerning the acquisition, distribution and  
15 monitoring of textbooks. For example, many of the LAUSD schools have increased their  
16 inventories of textbooks that comply with the State's content standards for core curriculum  
17 classes (i.e., English, Math, Science and Social Science). As further explained in LAUSD's  
18 declarations, many schools have adopted new policies and procedures for determining the titles  
19 and quantities of textbooks that will be needed in a coming school year and new procedures for  
20 ordering any needed texts in time for the start of classes. Textbook issues at the schools that  
21 submitted applications for funding to the II/USP or that were the subject of the SAT Reports  
22 cited by plaintiffs have plainly been the subject of extensive remedial work.<sup>4</sup>

23 There can be no doubt that a material question of fact exists with respect to whether a  
24 "non-trivial number" of students in the LAUSD schools identified by plaintiffs do not have  
25 textbooks as plaintiffs claim. It is equally clear that a disputed question of fact also exists as to  
26

27 <sup>4</sup> LAUSD's declarations establish that this remedial work was largely completed well before  
28 plaintiffs filed their motion.

1 whether a new top down new system of State oversight and management regarding textbooks is  
2 needed to address particular textbook issues within California schools. As discussed more fully  
3 below with respect to each school, LAUSD's declarations show that, notwithstanding the many  
4 logistical difficulties associated with textbook supply and distribution at the LAUSD schools at  
5 issue – including complexities stemming from the multi-track calendar system – local  
6 administrators are capable of achieving the goal of giving each student his or her own personal  
7 copy of an assigned textbook. These facts preclude summary adjudication of the State's  
8 textbook-specific duty of oversight and management sought by plaintiffs.

9 Crenshaw High School ("Crenshaw")

10 In purporting to show a pervasive textbook shortage at Crenshaw, plaintiffs rely on  
11 unauthenticated handwriting on several textbook request forms indicating that nearly four years  
12 ago, Crenshaw did not have sufficient copies of five particular book titles to fill all requests that  
13 were made simultaneously for those books.<sup>5</sup> Crenshaw's Principal, Dr. Isaac Hammond, avers  
14 in his declaration that additional copies of the titles in question – *Biology: Visualizing Life, Paso*  
15 *a Paso, Integrated 2, The Catcher in the Rye*, and *Black Boy* – were promptly ordered and  
16 arrived shortly after the orders were placed. Decl. of Dr. Isaac Hammond ¶ 3. Mr. Hammond  
17 states that Crenshaw now has sufficient copies of these titles to give each student a personal  
18 copy when the student is assigned the book. *Id.* ¶ 4. Mr. Hammond explains how the school  
19 satisfies students' textbook needs through its textbook ordering and inventory tracking  
20 procedures. *Id.* ¶¶ 4-9.

21 Fremont High School ("Fremont")

22 Fremont – the school within LAUSD attended by more of plaintiffs' declarants than any  
23 other – has been making significant strides to address textbook supply issues. As Fremont's  
24 Principal, La Verne Brunt discusses in her declaration, Fremont has recently purchased  
25 numerous copies of textbooks for classes in U.S. History, Chemistry, Algebra, Spanish,  
26

27 <sup>5</sup> The textbook request forms cited by plaintiffs are all dated in September 1999. DT-LA  
28 08137, 08141, 08174 and 08186 (Welch Decl., Ex. R).

1 Geometry, and Biology. Decl. of La Verne Brunt ¶¶ 4-10, 13. These acquisitions will remedy  
2 nearly all of the textbook shortages described in the declarations of Fremont students submitted  
3 by plaintiffs. *Id.* ¶ 13. Ms. Brunt has also overseen the school's implementation of new  
4 policies and procedures for ordering textbooks and monitoring students' textbook needs in order  
5 to address the CDE's observations in the 2001 SAT Report cited by Plaintiffs. By the end of  
6 2003, Ms. Brunt expects Fremont to be able to give each student in a core curriculum and  
7 foreign language class, access to a classroom set of textbooks and, in addition, a personal copy  
8 of an assigned textbook. *Id.* ¶ 21.

9 Gates Elementary School ("Gates")

10 In her declaration, Gates' Principal, Margaret de la Mora, discusses the school's  
11 purchase of new instructional materials to address the particular textbook issue described in the  
12 school's May 2001 II/USP funding application cited by plaintiffs. As Ms. De la Mora explains,  
13 subsequent to its II/USP application, Gates purchased, among other things, new instructional  
14 "manipulatives,"<sup>6</sup> and new Math and English textbooks. Decl. of Margaret de la Mora ¶¶ 3-4.  
15 The books that Gates purchased comply with the State's standards concerning the content for  
16 instructional materials in core curriculum classes at the applicable grade levels. *Id.* ¶ 4.

17 Gompers Middle School ("Gompers")

18 At Gompers, issues mentioned in the CDE's 2001 SAT Report concerning textbook  
19 assignment and distribution have been addressed during the past two years. As Gompers'  
20 Principal, Nidia Castro, explains in her declaration, the school begins the process of determining  
21 the titles and quantities of texts that teachers will require for the coming school year in the early  
22 part of the summer. Decl. of Nidia Castro ¶ 8. Under Gompers' new procedures, teachers  
23 advise the school's textbook clerk of the particular titles of the books they plan to assign to their  
24 students. The textbook clerk determines whether there are sufficient copies of the book in the  
25 school's inventory to meet each teacher's stated needs. If the textbook clerk concludes that there

26  
27 <sup>6</sup> "Manipulatives" are three dimensional objects used in the classroom to teach abstract  
28 concepts such as a clock face with moveable hands to teach time. Decl. of Margaret de la  
Mora ¶ 3.

1 are not sufficient copies of a particular title of a textbook in the school's inventory, the clerk  
2 orders any needed texts from the publisher. *Id.* ¶ 7. As a result of Gompers' new textbook  
3 procedures, students in core curriculum classes now have access to a classroom set of textbooks  
4 for use in class and their own personal copy of the book to use at home. *Id.* ¶ 10.

5 Locke High School ("Locke")

6 Declarations submitted by plaintiffs from Locke students regarding textbook shortages at  
7 the school are replete with factual inaccuracies. For example, Locke student Sandy Gonzalez  
8 states in her declaration that her Chemistry textbook was very old and in poor condition. Decl.  
9 of Sandy Gonzales at ¶ 5. However, in the book card that Sandy filled out when she received  
10 her Chemistry textbook, *Holt-Chemistry Visualizing Matter*, she designated the condition of the  
11 textbook as "A-new." Decl. of Dr. Gail Garrett ¶ 7 and Ex. A thereto. Similarly, Locke student  
12 Fernando Lopez avers that the textbooks used in his Geometry class were in "bad condition."  
13 Decl. of Fernando Lopez ¶ 4. Locke's Principal, Dr. Gail Garrett, retrieved the actual Geometry  
14 textbook that Fernando was assigned and determined that it was in "excellent condition." *Id.*  
15 ¶ 8.

16 Plaintiffs' declarant, Alfredo Vargas, states that in his first semester English class,  
17 students were reading either *The Diary of Anne Frank* "or another book." Decl. of  
18 Alfredo Vargas ¶ 4. Alfredo complains that in "[t]he third week of the semester I switched  
19 English classes and in my new class, we couldn't read either book because we didn't have any  
20 books." *Id.* Alfredo does not mention that he switched from his English class into a "Strategic  
21 Literacy" class designed for students with reading difficulties. Decl. of Dr. Gail Garrett ¶ 9.  
22 Students are not assigned novels in Strategic Literacy classes. Instead, consistent with the  
23 curriculum of the special needs of students in Alfredo's Strategic Literacy class, students are  
24 given "consumables," i.e., single use workbooks. (*Id.* ¶ 9.)

25 Horace Mann Middle School ("Horace Mann")

26 Horace Mann implemented substantial changes to address comments regarding  
27 instructional materials in the October 2001 SAT Report cited by plaintiffs. As Horace Mann's  
28

1 Principal, Barbara Rickett, explains, the school established new procedures to identify and  
2 purchase the appropriate textbooks for core curriculum classes. New textbooks for Math and  
3 English/Language Arts classes were selected for purchase by the school's local district office  
4 (Local District G) based on input from teachers and administrators in the local district.  
5 Textbooks for Science and Social Science classes were selected for purchase based on a  
6 collaborative discussion between Horace Mann teachers, school administrators, and Local  
7 District G representatives. All selected textbooks comply with content standards set by the State  
8 for core curriculum classes. Decl. of Barbara Rickett ¶ 9.

9 Horace Mann also improved its procedures for ordering and distributing textbooks to  
10 students. Annually, every May or June, each Chairperson of an academic department at the  
11 school, in consultation with an Assistant Principal, determines whether the school needs to order  
12 any new textbooks. *Id.* ¶ 8. In addition to this annual meeting, at the conclusion of every  
13 semester, an Assistant Principal further assesses textbook needs at the school. The Assistant  
14 Principal performs this assessment to determine whether funds over and above those in the  
15 school's textbook budget need to be requested from Local District G for textbook acquisitions.  
16 *Id.* ¶ 7. Principal Rickett avers that to the best of her knowledge, since the foregoing procedures  
17 and programs outlined in her declaration were implemented, there has been no shortage of  
18 standards-aligned instructional materials in any of the core curriculum classes at the school. *Id.*  
19 ¶ 12.

#### 20 Miramonte Elementary School ("Miramonte")

21 Miramonte addressed the issue of instructional materials described in its April  
22 2001 II/USP application (cited by plaintiffs) by using the funds it was awarded to purchase new  
23 materials for its Open Court reading program as well as new textbooks for core curriculum  
24 classes. Decl. of Bruce Onodera ¶¶ 3-4. Miramonte's purchases included "consumables" used  
25 for the Open Court program, English Language Development kits, and televisions, VCRs, DVD  
26 players and computers for every classroom. *Id.* ¶ 8. Miramonte now has sufficient quantities of  
27  
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1 materials for its Open Court reading program – the focus of Miramonte’s April 2001 II/USP  
2 application – to give each student his or her own personal copy of an assigned item. *Id.* ¶ 6.

3 Mount Vernon Middle School (“Mount Vernon”)

4 Scott Schmerelson, Principal at Mount Vernon, discusses the measures adopted by the  
5 school in response to the issue of textbook distribution described in the CDE’s 2001 SAT  
6 Report. As part of these new procedures, in May, school administrators inventory all textbooks  
7 and instructional materials that are available for each course scheduled to be taught at each  
8 grade level. In June, teachers advise the Chairperson of their department of the particular  
9 textbook titles they intend to assign to their students. Decl. of Scott Schmerleson ¶ 5. Using  
10 projections of student enrollment in the coming school year, school administrators assess  
11 whether to order additional books. *Id.* ¶¶ 6-7. Textbooks are ordered in June so that the books  
12 will arrive in July, well before the start of classes. *Id.* ¶ 7. Mount Vernon also has adopted  
13 procedures to obtain books on an expedited basis if a teacher determines that he or she has an  
14 insufficient number of copies at the start of a class. Due to the improvements the school has  
15 made to its procedures for assessing textbook requirements, these priority textbook orders at the  
16 start of classes are now rare. *Id.* ¶ 8. As a result of the school’s new textbook policies and  
17 procedures, students at Mount Vernon usually receive a textbook to take home for core  
18 curriculum classes. *Id.* ¶ 11.

19 Plummer Elementary School (“Plummer”)

20 In the Spring of 2001, Plummer submitted an application for a Comprehensive School  
21 Reform Demonstration (“CSRD”) grant to obtain funds to improve certain conditions at the  
22 school, including its need for classroom “manipulatives” and reference materials. Decl. of  
23 Angel Barrett ¶ 3. Plummer is a multi-track school, which requires that classroom instructional  
24 materials used by students on one track completing their classes on a Friday be immediately  
25 available for students starting classes on the next track, possibly as early as the following  
26 Monday. The problem that led to Plummer’s CSRD grant request stemmed from the logistical  
27 complexity of retrieving supplemental classroom materials from one classroom and distributing  
28

1 them to another when a “track-change” occurred. *Id.* ¶ 7-9. Plummer’s CSRD grant application  
2 was approved and the school used the funds to purchase additional quantities of the  
3 “manipulatives” and reference materials described in the application. Plummer could then  
4 distribute these items to the classrooms that needed them at the start of a calendar track without  
5 having to first collect the items from other classrooms. *Id.* ¶ 10.

6 South Gate High School (“South Gate”)

7 Plaintiffs’ student declarations concerning textbook problems at South Gate are  
8 inaccurate or substantially exaggerate textbook issues. For example, South Gate student  
9 Danitza Nunez avers that in the AP English Class she took in the 2002-2003 school year, there  
10 were not enough copies of *The Scarlet Letter* for all students. Decl. of Danitza Nunez ¶ 3.  
11 Danitza’s assertion is contradicted by her AP English teacher, Carolyn Clark. Ms. Clark states  
12 that when she distributed copies of this novel to students in Danitza’s class, she had sufficient  
13 copies to give one to each student. Ms. Clark confirms that the copies showed wear but were  
14 certainly readable. Decl. of Carolyn Clark ¶ 4. Similarly, Danitza’s Algebra II teacher, David  
15 McBride, disputes Danitza’s assertion that the Algebra II textbooks in her class were in a very  
16 poor physical condition. Mr. McBride avers that there were enough copies of the Algebra II  
17 textbook to give a personal copy to each student in the class and that the books were readable  
18 and useable. Decl. of David McBride ¶ 4.

19 Responding to student Julio Velez’s assertion that he did not have a “textbook” in his AP  
20 Spanish Literature class Decl. of Julio C. Velez ¶ 4, South Gate’s Principal, Anthony Sandoval  
21 explains that “textbooks” are not assigned in AP Spanish. Decl. of Anthony Sandoval ¶ 7.  
22 Mr. Sandoval avers that the school did not have sufficient copies of a single novel, *Don Quixote*,  
23 to give to each AP Spanish student but that additional copies of this novel were ordered. The  
24 school now has a sufficient number of copies of *Don Quixote* in its inventory to give a personal  
25 copy to each student who is assigned the novel. *Id.* ¶ 7. Mr. Sandoval also refutes Julio’s  
26 assertion that South Gate “only owns one class set of *The Great Gatsby*.” Decl. of Julio C.  
27 Velez ¶ 5. As Mr. Sandoval attests, the school’s records reflect that there are over two hundred

1 sixty-seven copies of this novel in the school's inventory. Decl. of Anthony Sandoval ¶ 8.

2 Mr. Sandoval confirms that "while there are a few discrete textbook needs that arise at South  
3 Gate in any given year, students generally have personal copies of books in core curriculum  
4 classes that they can use in class and take home." *Id.* ¶ 10.

5 Sun Valley Middle School (Sun Valley)

6 Since the October 2001 CDE Report concerning Sun Valley cited by plaintiffs, the  
7 school has addressed and corrected all one hundred and sixty two problem items identified in  
8 the Report, including the item relating to textbooks. Decl. of Jeff Davis ¶ 10. To address the  
9 issue in the CDE Report concerning students' access to textbooks, Sun Valley implemented  
10 improved methods for ordering new textbooks, tracking textbook inventory and actively  
11 monitoring whether students' textbook needs are being met.

12 Under the school's new procedures, teachers determine in June, prior to the  
13 commencement of classes, which textbooks they will assign. Literacy Coaches are involved in  
14 the process of assessing whether the school has sufficient copies of each textbook title. *Id.* ¶ 10.  
15 Orders for new textbooks are made throughout the year as needed. *Id.* ¶ 7. The school now  
16 makes more efficient use of its classrooms so that needed materials are waiting for students at  
17 the start of their classes. *Id.* ¶ 8. School administrators now visit classrooms with checklists to  
18 determine whether any textbooks or other instructional materials are needed in a classroom. *Id.*  
19 ¶ 9. The school has on its staff Literacy and Math Coaches who assist students having particular  
20 difficulties in these subjects on a one-on-one basis. The responsibilities of these coaches  
21 include ensuring that the students they are assisting have the instructional materials they need.  
22 *Id.* ¶ 10. Finally, the school uses its textbook database to identify and collect out-of-date  
23 textbooks and to order new textbooks. *Id.* ¶ 11.

24 Wilshire Crest Elementary School ("Wilshire Crest")

25 Since she became the Principal of Wilshire Crest in July 2001, Joan McConico has  
26 overseen the implementation of changes at the school to address the school's need for  
27 instructional materials compliant with State content standards as described in the school's April  
28

2001 II/USP funding application. Decl. of Joan McConico ¶ 5. In September 2001, Wilshire Crest commenced the process of replacing its then-existing inventory of textbooks for core curriculum classes with new standards-aligned textbooks. For the 2001-2002 school year, the school purchased new textbooks to teach Reading/Language Arts from the Open Court reading series and new standards-aligned Math textbooks. *Id.* ¶ 6. Ms. McConico attests that, to the best of her knowledge, Wilshire Crest is now able to provide each student taking a Reading/Language Arts or Math class with a textbook to take home. *Id.* ¶ 7.

### Summary

The declarations presented by LAUSD demonstrate the District's commitment to providing students with a personal textbook for every core subject. Contrary to the assertions in plaintiffs' declarations, even in the relatively few schools they have identified, the problems have been exaggerated, corrected or, in some instances, the allegations are demonstrably false. Where textbook distribution problems previously existed, LAUSD administrators have made substantial progress toward solving the problems described in the nearly three-year-old reports cited by plaintiffs. LAUSD's declarations thus create a triable issue of fact precluding summary adjudication in two respects. First, these declarations put at issue whether, as plaintiffs claim, "non trivial numbers of students up and down the State" are suffering instructional materials shortages. Even if some students do not have a particular book for every class, the situation is not sufficiently "extreme" to require the State's intervention. *See Butt*, 4 Cal. 4<sup>th</sup> at 688 ("In extreme circumstances at least, the 'State has a duty to intervene to prevent unconstitutional discrimination at the local level.'").

Second, LAUSD's declarations create a triable issue of fact as to whether the State's implementation of a comprehensive system of oversight and management is the appropriate way to address school-specific textbook issues. LAUSD's declarations show that particular textbook issues identified in the SAT Reports and II/USP funding applications cited by plaintiffs can be and have been addressed at the individual school level. Additionally, LAUSD's declarations show that the nature of textbook issues varies significantly from school to school, and even from

1 class to class. Accordingly, intervention by the State to implement a system of oversight and  
2 management to prevent or discover and correct issues concerning instructional materials is  
3 unwarranted and unlikely to be more effective than the procedures currently in place. These  
4 material factual disputes preclude adjudication of the textbook-specific duty requested by  
5 plaintiffs.

6 **III. CONCLUSION**

7 For the foregoing reasons, plaintiffs' Motion for Summary Adjudication should be  
8 denied.

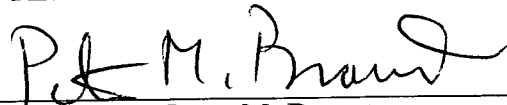
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