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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Cruz	No. <u>RG14727139</u>
Plaintiff/Petitioner(s)	Order
VS.	Demurrer to Complaint
State of California	Overruled
Defendant/Respondent(s)	
(Abbreviated Title)	

The Demurrer to Complaint filed for State of California was set for hearing on 09/23/2014 at 02:30 PM in Department 17 before the Honorable George C. Hernandez, Jr.. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The demurrer of defendant State of California to class action complaint is **OVERRULED**.

ALLEGATIONS. In this case, Plaintiffs allege that defendants, including the State Board of Education, the State Department of Education and the Superintendent of Public Instruction, Tom Torlakson, and the State of California, have violated the California Constitution, the United State Constitution, and California Government Code section 11135 by failing to provide Plaintiffs (who are students in seven public schools) with substantially the same amount of "meaningful instruction time" as their peers in other public schools. Specifically, although the State has recognized that time is an integral unit of learning, and has established minimum standards for the number of instructional days and minutes that schools must deliver, the audit process does not account for various factors that cause gross disparities in meaningful instruction time, which occur in Plaintiffs' schools. Plaintiffs allege that the State has failed to establish a system that meaningfully identifies and remedies grossly disparate and inadequate allocations of meaning learning time in the system, with the result that Plaintiffs have received and are receiving an education that is substantially inferior that provided to students in other public schools, and does not meet the minimum level of instruction time adequate to teach them the skills they need to success as productive members of society. Plaintiffs seek declaratory relief and an injunction (ordering defendants to cease ignoring the problem and to refrain from continuing to operate a constitutionally inadequate monitoring system).

BASIS FOR DEMURRER. Defendant State of California ("Defendant") demurs on the ground that it is improperly named as a defendant in this case. Essentially, Defendant contends that the allegations of the complaint establish, as a matter of law, that the remaining defendants are responsible for any alleged harms and that can respond to any injunction that should issue, while the State, which only acts through its agencies and officers (with respect to the relief sought in this case), could not. Defendant also identifies certain practical difficulties associated with responding to this lawsuit, asserting that it does not maintain records separate and apart from its agencies or have "custodians of records," which will hamper its ability to respond to discovery.

APPLICABLE LEGAL STANDARD. The standard governing demurrers is well established. For the

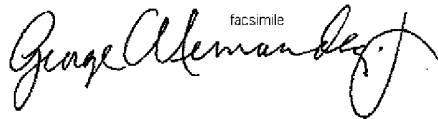
purpose of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-67; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) Absent contrary allegations or judicially noticeable facts, the court must assume the truth of these allegations. (See, e.g., *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) It is error to sustain a demurrer when the allegations adequately state a cause of action under any legal theory. (*Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1231.)

DISCUSSION. Section 379 of the Code of California governs who may be joined in a cause of action. It permits joinder of parties against whom a right to relief is asserted. (CCP § 379(2).) The court finds that there is no published authority directly on point, but the closest authority, *Butt v. State of California* (1992) 4 Cal.4th 668, recognized that the State has a constitutional duty to intervene to ensure equal protection in public education. (4 Cal.4th at 674-76.) Although after discovery and further litigation, this court (or the Court of Appeal) may eventually determine that the State cannot provide the relief sought except through other state agencies or officers, this court finds that, at the pleadings stage, the State is a proper party. As far as the practical difficulties in litigating this case, the issues identified by the State have been addressed to the court's satisfaction and, should similar issues arise, the court is confident that the parties (with the assistance of the court, if necessary) will be able to devise fair and equitable solutions.

REQUESTS FOR JUDICIAL NOTICE. Defendant's request for judicial notice, dated Aug. 6, 2014, is **GRANTED**. Plaintiffs' request for judicial notice is **GRANTED**. Nevertheless, the Court does not take judicial notice of the truth of any of the facts asserted in court records or rulings noticed, nor does it rely upon the contentions or conclusions of other trial courts' orders. (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483-84. See also CRC 8.115.) With the same caveat, Defendant's request for judicial notice, dated Sept. 16, 2014 is **GRANTED**.

CONCLUSION. The Demurrer is overruled. Defendant shall answer on or before October 20, 2014.

Dated: 09/26/2014

A handwritten signature in black ink, reading "George C. Hernandez, Jr.", with a horizontal line underneath. The word "facsimile" is printed in small text above the signature.

Judge George C. Hernandez, Jr.

SHORT TITLE: Cruz VS State of California	CASE NUMBER: RG14727139
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Case Number: RG14727139
Order After Hearing Re: of 09/26/2014

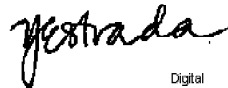
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/03/2014.

Executive Officer / Clerk of the Superior Court

By



Digital

Deputy Clerk