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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF CONTRA COSTA**

10 Mark S., by and through his guardian ad litem,
11 Anna S., Rosa T., by and through her guardian
ad litem Sofia L., and Jessica Black, Michell
12 Redfoot, and Dr. Nefertari Royston, as
taxpayers,

13 Plaintiffs and Petitioners,

14 v.

15 STATE OF CALIFORNIA; TONY
THURMOND, in his official capacity as STATE
16 SUPERINTENDENT OF PUBLIC
INSTRUCTION; STATE BOARD OF
17 EDUCATION; CALIFORNIA DEPARTMENT
OF EDUCATION; and PITTSBURG UNIFIED
18 SCHOOL DISTRICT, DOES 1-100,
INCLUSIVE

19 Defendants and Respondents.

Case No. N21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' OPPOSITION TO
DEMURRER FILED BY
DEFENDANT STATE OF
CALIFORNIA**

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1 **INTRODUCTION**

2 Defendant State of California (“State”) maintains that it is not a party to this
3 action (Mem. of P&A in Supp. of Def. State of California’s Dem. To Pls.’ Compl. 4 [“State
4 MPA”]), notwithstanding more than one hundred years of case law reiterating that the State of
5 California is the ultimate guarantor of fundamental education rights, including the right to equal
6 educational opportunity, under the California Constitution. The State has not cited, and cannot
7 cite, a single case in which a California court has held that the State is not a proper party in
8 education cases arising under Code of Civil Procedure section 379, sub-part (a) and California
9 case law. Accordingly, the State of California is a proper party to this action and Plaintiffs
10 respectfully request that the Court deny the State’s demurrer.

11 **FACTUAL SUMMARY**

12 Plaintiffs are two public schoolchildren, their parents, and three taxpayers, Verified Pet.
13 for Writ of Mandate (CCP § 1085); Compl. for Declaratory and Inj. Relief ¶¶ 21-28 (CCP §
14 526(A)) (“Complaint”), who “seek to ensure that the State and [Pittsburg Unified School
15 District] provide students with educational equity that is their fundamental right under the
16 California Constitution” and to “hold the State and District accountable for their refusal to fulfill
17 their constitutional and statutory obligations to District students.” Compl. ¶ 21. The Complaint
18 alleges constitutional and statutory violations by Defendants State of California; Tony
19 Thurmond, in his official capacity as the State Superintendent of Public Instruction; State Board
20 of Education; California Department of Education; and the Pittsburg Unified School District. As
21 to the Defendant State of California (State), Plaintiffs allege: (1) violation of the State
22 constitutional right to equal protection, (2) violation of California Education Code section 33300,
23 et seq. for its failure to monitor the provision of special education to students
24 with disabilities,¹ (3) violation of California Government Code section 11135 for race-based
25 discrimination in education, (4) a claim for declaratory relief, (5) violation of California Code of

26 _____
27 ¹ With respect to this cause of action, Plaintiffs do not oppose demurrer in the interest of judicial
28 economy, as explained in Plaintiffs’ Opposition to Demurrer Filed by Defendants California,
Department of Education, State Board of Education, Tony Thurmond in his Official Capacity as
State Superintendent of Public Instruction, filed concurrently herewith.

1 Civil Procedure section 526a for illegal expenditure of taxpayer funds, and (6) a writ of
2 mandate pursuant to California Code of Civil Procedure section 1085.

3 In support of their claims against the State, Plaintiffs' Complaint alleges that the State
4 "has a non-delegable duty to respect and protect the fundamental educational rights of all
5 students," Compl. ¶ 20, and that the State "is the legal and political entity with the
6 ultimate responsibility of educating all California public school students, including the
7 responsibility to establish and maintain the system of common schools and free education, under
8 Article IX, Section 5 of the California Constitution, and to assure that all California public
9 school students receive their individual and fundamental right to an equal education, under the
10 equal protection clauses of the California Constitution, Article I, Section 7(a), and Article IV,
11 Section 16(a)." ¶ 30. Plaintiffs plead sufficient facts alleging that the State is a proper defendant
12 to their Complaint and respectfully request that the Court deny the State's demurrer.

13 **ARGUMENT**

14 Section 379 of the Code of Civil Procedure provides, in pertinent part:

15 All persons may be joined in one action as defendants if there is
16 asserted against them: (1) Any right to relief jointly, severally, or in
17 the alternative, in respect of or arising out of the same transaction,
18 occurrence, or series of transactions or occurrences and if any
19 question of law or fact common to all these persons will arise in the
action; or (2) A claim, right, or interest adverse to them in the
property or controversy which is the subject of the action.

20 Cal. Code Civ. Proc. § 379(a).

21 Pursuant to this provision, the State is properly named as a defendant in the instant
22 action. In *Butt v. California*, the California Supreme Court held that "[t]he State itself bears the
23 ultimate authority and responsibility to ensure that its district-based system of common schools
24 provides basic equality of educational opportunity." 4 Cal. 4th 668, 685 (1992) (emphasis
25 added). The lead defendant in *Butt* was the State of California, and the trial court's order directed
26 "the State and its agents" to act appropriately to ensure the schools remained opened. *Id.* at 674-
27 676. In affirming the trial court's findings regarding the State's liability and certain aspects of the
28 trial court's remedial order, the Supreme Court made clear that the State was a proper party. The

1 Court framed the issue on appeal as “[w]hether **the State** has a constitutional duty . . . to prevent
2 the budgetary problems of a particular school district from depriving its students of ‘basic’
3 educational equality;” the Court explicitly held that “such a duty exists under the California
4 Constitution.” *Id.* at 674 (emphasis added). The Court reviewed and analyzed over a century of
5 case law supporting its conclusion that the State has a mandatory, enforceable duty to
6 intervene when students’ rights to equal educational opportunity are infringed upon, including
7 the following:

8 “Public education is an obligation which the State has assumed by
9 adoption of the Constitution,” *id.* at 680 (citing *San Francisco*
10 *Unified Sch. Dist. v. Johnson*, 3 Cal. 3d 937, 951-52 (1971); *Piper*
v. Big Pine Sch. Dist., 193 Cal. 664, 669 (1924)).

11 “[T]he State’s ultimate responsibility for public education cannot be
12 delegated to any other entity,” *id.* at 681 (citing *Hall v. City of Taft*,
47 Cal. 2d 177, 181 (1956); *Piper*, 193 Cal. 664, at 669).

13 “[T]he existence of this local district system has not prevented the
14 recognition that the State itself has broad responsibility to ensure
15 basic educational equality under the California Constitution.” *Id.*

16 In affirming part of the trial court’s remedial order, the Court stated: “Having correctly
17 held **the State** constitutionally responsible for the students’ rights, the [trial] court
18 could not deny **the State** and its officials effective means of fulfilling its obligation.” *Id.* at 696
19 (emphasis added). Thus, under *Butt*, the State of California is a proper party to Plaintiffs’
20 Complaint. Notably, the State does not address or even reference *Butt* in its demurrer.

21 Furthermore, the three cases cited by the State in support of its argument that it is not a
22 proper party are inapposite because they do not relate to the issues central to Plaintiffs’ claims.
23 *See* State MPA 4-5. In *Serrano*, the only issue presented was whether the Legislature and
24 governor were indispensable parties in an action challenging the constitutionality of the statutory
25 scheme governing the funding of local public school districts. *Serrano v. Priest*, 18 Cal. 3d 728
26 (1976), 752. The Court held that “state officers” are **proper** parties to suits “challenging the
27 constitutionality of state statutes” that they implement. *Id.* But unlike *Serrano*, this case does not
28 challenge the constitutionality of a state statute. That holding, therefore, has no bearing on the

1 central issue raised by the State’s demurrer here—whether the State is properly named as a
2 Defendant in an action that alleges various violations of students’ rights under California law.

3 In *State v. Superior Court*, the court held that the State was not a proper defendant for a
4 claim seeking administrative review of an agency’s denial of a building permit because only the
5 agency could set aside its decision under the relevant statutory scheme, or for two other claims
6 challenging the “constitutionality” of the legislation that the agency administers because the
7 petitioner did not allege “any right to declaratory relief against the state (as distinguished from
8 the [Coastal] Commission acting as its agent)[.]” 12 Cal. 3d 237, 255 (1974). In other words, in
9 that case, the State was not a proper defendant because it had no legally recognized duties to
10 administer or enforce the challenged actions—that responsibility rested **solely** with the
11 administering agency. Here, by contrast, the Complaint alleges the specific duties of each
12 Defendant, and the State’s ultimate duty to ensure constitutional compliance in the statewide
13 system of schools. Compl. ¶¶ 4, 30-35, 95-99. Accordingly, Plaintiffs seek relief from the State,
14 in addition to other Defendants.


15 Lastly, in *Templo v. State*, the court held that the State was not a proper defendant in an
16 action for declaratory relief where plaintiffs “claim[ed] that a statute requiring litigants to pay a
17 nonrefundable fee in order to secure a jury trial is unconstitutional.” 24 Cal. App. 5th 730, 733
18 (2018). The Court found the Judicial Council was the proper defendant to plaintiffs’ claims in
19 deciding which government entity defends against challenges to fees and taxes. The
20 court explained that, in the case of jury fees, “[t]he Judicial Council is the state
21 entity established by the California Constitution to manage the judicial branch, including the
22 judiciary’s budget.” *Id.* at 736-737 (internal citation omitted). As with the *Serrano v. Priest* and
23 *State v. Superior Court*, the holding in *Templo* is inapposite. In *Templo*, there was no clear legal
24 authority establishing the State’s constitutional duty with respect to court fees. There **is** clear
25 legal authority establishing the State’s constitutional duty to ensure the fundamental right to
26 equal education—a duty that cannot be delegated to another agency. The California Supreme
27 Court made clear in *Butt* that “[M]anagement and control of the public schools [is] a matter of
28 state[, not local,] care and supervision” and that “the State’s ultimate responsibility for public

1 education cannot be delegated to any other entity.” *Butt*, 4 Cal. 4th at 681. Plaintiffs’ Complaint
2 alleges claims based on the State’s constitutional duty to ensure equal educational opportunities
3 to public school students. Compl. ¶¶ 4-30, 95-99; *see also Butt*, 4 Cal. 4th at 685. Accordingly,
4 the State is a proper party to Plaintiffs’ Complaint.

5 **CONCLUSION**

6 For the foregoing reasons, the State of California is a proper Defendant to this action
7 and the State’s demurrer should be denied in full.

8 Date: February 1, 2022



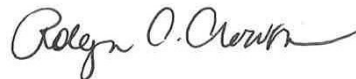
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