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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF CONTRA COSTA**

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

18 Plaintiffs and Petitioners,

19 v.

20 STATE OF CALIFORNIA; TONY
21 THURMOND, in his official capacity as STATE
21 SUPERINTENDENT OF PUBLIC
22 INSTRUCTION; STATE BOARD OF
22 EDUCATION; CALIFORNIA DEPARTMENT
23 OF EDUCATION; and PITTSBURG UNIFIED
23 SCHOOL DISTRICT, DOES 1-100,
24 INCLUSIVE,

25 Defendants and Respondents.

Case No. MSN21-1755

UNLIMITED JURISDICTION

ORDER REGARDING THE MOTION
FOR JUDGMENT ON THE
PLEADINGS OF PITTSBURG UNIFIED
SCHOOL DISTRICT TO FIRST
AMENDED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DELARATORY AND INJUNCTIVE
RELIEF

Hearing Date: July 21, 2022

Dept.: 39

Time: 9:00 a.m.

Judge: Hon. Edward Weil

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17 *Attorneys for Plaintiffs-Petitioner*

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1 On July 21, 2022, in Department 39 of the above-entitled Court, the Honorable Edward
2 Weil held a hearing on Defendant Pittsburg Unified School District’s Motion for Judgment on
3 the Pleadings to Plaintiffs’ First Amended Verified Petition for Writ of Mandate and Complaint
4 for Declaratory and Injunctive Relief.

5 Malhar Shah of the Disability Rights Education and Defense Fund appeared on behalf of
6 Plaintiffs. Jimmie Johnson of Leone & Alberts appeared on behalf of Pittsburg Unified School
7 District.

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After consideration of the Motion and Opposition papers, and having heard argument of counsel, the Court adopted its Tentative Ruling, attached hereto as Exhibit 1, and finds and orders as follows:

Defendant Pittsburg Unified School District’s Motion for Judgment on the Pleadings to the First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief is GRANTED WITH LEAVE TO AMEND as to the Taxpayer Plaintiffs on causes of action one, two, and three; and DENIED on all other grounds.

IT IS SO ORDERED.

Dated: _____, 2022

HONORABLE EDWARD G. WEIL
Judge of the Superior Court of Contra Costa County

APPROVED AS TO FORM

Dated: August 1 _____, 2022



JIMMIE JOHNSON
Attorney for
PITTSBURG UNIFIED SCHOOL DISTRICT

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, CONTRA
COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
HEARING DATE: 07/21/2022

9. 9:00 AM CASE NUMBER: MSN21-1755
CASE NAME: MARK S. VS STATE OF CALIFORNIA
*HEARING ON MOTION IN RE: MOTION ON JUDGMENT ON THE PLEADINGS
TENTATIVE RULING:

Defendant Pittsburg Unified School District's motion for judgment on the pleadings is **granted with leave to amend as to the Taxpayer Plaintiffs and causes of action one, two and three; and denied as to the Student Plaintiffs**. Plaintiffs may file and serve a third amended petition and complaint by August 11, 2022. If Plaintiffs decide not to amend their petition they shall notify all parties in writing by August 11, 2022.

On June 30, 2022 the Court gave the State Defendants until August 5, 2022 to file their answer. The date is no longer practical and is vacated. If Plaintiffs do not amend their petition, the State Defendants now have until August 25, 2022 to file and serve their answer. If Plaintiffs amend their petition, the State Defendant's time to file and serve a responsive pleading shall be pursuant to the Code of Civil Procedure. (Plaintiffs shall notify the State Defendants of this portion of the ruling by email.)

Taxpayer Plaintiffs

As to the Taxpayer Plaintiffs (Jessica Black, Michell Redfoot, Dr. Nefertari Royston), the District argues that the first, second and third causes of action lack sufficient facts to constitute a cause of action and that the Court does not have jurisdiction over the claims. (Code of Civil Procedure section 438(C)(1)(B)(i), (ii).)

The District brought this motion on the following grounds: "(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint. [And] (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant." (Code of Civil Procedure section 438(C)(1)(B)(i), (ii).) The jurisdiction issue raised in subsection (i) is subject matter jurisdiction, such as cases within exclusive federal court jurisdiction. (See, Rutter Guide Civil Procedure Before Trial section 7:68.) The District has not argued that this Court lacks subject matter jurisdiction over these claims and thus, the motion based on jurisdiction fails.

The District's motion is also based on the causes of action not stating facts sufficient to constitute a cause of action based on the Taxpayer Plaintiffs lack of standing. "It is elementary that a plaintiff who lacks standing cannot state a valid cause of action." (*McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90.) Thus, the District's standing argument is properly raised under subsection (ii) of Code of Civil Procedure section 438(C)(1)(B).

The District argues that Taxpayer Plaintiffs do not have standing to bring the first, second and third causes of action. The District argues that as to these claims the Taxpayer Plaintiffs have not alleged that the District is spending money in an illegal manner. These claims also fail to reference Code of Civil Procedure section 526a, which provides for a taxpayer claim.

SUPERIOR COURT OF CALIFORNIA, CONTRA
COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
HEARING DATE: 07/21/2022

Plaintiffs argue that the Taxpayer Plaintiffs having standing that they are not required to actually allege section 526a or use the term "taxpayer action" in order to state a claim.

The first three causes of action do not allege waste through the illegal expenditures of tax funds on unlawful or unconstitutional activity. While the fourth cause of action alleges waste, those allegations were not incorporated into the first three causes of action and therefore, there are no waste allegations as part of the first three causes of action.

The motion for judgment on the pleadings as to the Taxpayer Plaintiffs is granted. As this is the first time the District has raised this issue, Plaintiffs are given leave to amend.

Student Plaintiffs

Mark S. and Rosa T. (the Student Plaintiffs) are Latino/a English learner students who qualify for special education services. (FAP ¶¶ 83, 90.) As to the Student Plaintiffs, the District seeks judgment on the pleadings as to parts of causes of action one and two. (Code of Civil Procedure section 438(C)(1)(B)(i), (ii).)

The District argues that it is entitled to bring a motion for judgment on the pleadings as to allegations in the first and second causes of action regarding Black, Native American, multiracial, national origin and students with and without disabilities. Within the two causes of action, the District has identified approximately fourteen "separate and distinct" causes of action in its notice of motion.

The District's motion here is Code of Civil Procedure section 438(C)(1)(B)(i) and (ii). As discussed above, the motion on subsection (i) fails because the Court has subject matter jurisdiction over the claims in this case.

Whether causes of action one and two state facts sufficient to constitute a cause of action against the District under section 438(C)(1)(b)(ii) is the same standard when ruling on a demurrer under section 430.10(e). " 'A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer...' [Citation.]" (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777; see also, (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167 [noting that a motion for judgment on the pleading, like a demurrer, is not granted as to a portion of the cause of action].)

In *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680 the complaint asserted a cause of action for legal malpractice based on several distinct incidents and the defendant demurred to a portion of the cause of action based on a single incident of malpractice. The court of appeal did not decide the merits of the demurrer because "[a] demurrer does not lie to a portion of a cause of action. [Citations.] Thus, [defendant] could not properly demur to . [a] portion of the causes of action, and the trial court could not properly sustain the demurrer as to only that portion. (*Id.* at 1682.) The Court noted a motion to strike can sometimes be used, but noted that using a motion to

SUPERIOR COURT OF CALIFORNIA, CONTRA
COSTA COUNTY
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DEPARTMENT 39
HEARING DATE: 07/21/2022

strike in this manner should be "cautious and sparing." (*Id.* at 1683.)

The District argues that its motion is proper because it is entitled to challenge each separate and distinct cause of action within an alleged cause of action. The District relies on *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848 where the court allowed a party to bring a motion for summary adjudication as to a separate and distinct claim that was alleged as part of a larger cause of action. (*Id.* at 1854.) There, the plaintiffs sued the defendants for legal malpractice and combined two separate matters where defendants represented the plaintiffs into a single cause of action. The two matters raised different issues, including different statute of limitations. (*Id.* at 1850.)

Lilienthal applies in the summary adjudication context and the District has cannot cited a case where the *Lilienthal* approach was followed in a demurrer or motion for judgment on the pleadings. *Lilienthal* also distinguished summary adjudication from a demurrer, noting that "a demurrer that each cause of action is not separately stated" was abolished and that "defendants have no remedy to compel plaintiffs to separately plead distinct causes of action, unless brought under the ground of uncertainty." (*Lilienthal & Fowler, supra*, 12 Cal.App.4th at 1854, fn.4.) Uncertainty is not a ground for a motion for judgment on the pleadings.

The Court finds that the District's motion for judgment on the pleadings as to the various "causes of action" within cause of action one and two is procedurally improper and therefore it is denied.

**10. 9:00 CASE NUMBER: MSP12-
CASE NAME: IN RE GEORGIA R. TAYLOR TRUST DATED 03/22/00
HEARING ON PETITION IN RE: THIRD ACCOUNT AND REPORT OF TEMP
SUCCESSOR AND PETITION FOR FIDUCIARY & ATTY COMPENSATION
*TENTATIVE RULING:***

Hearing required.

The Court requests that the temporary trustee provide the following:

1. Declaration under penalty of perjury from Temporary Trustee that corrects an error in the opening inventory. The "TOTAL Non-Cash Assets" figure appears to be incorrect, i.e., it is listed at as \$337,000.00, but it should be \$464,695.02.
2. Declaration under penalty of perjury from Temporary Trustee explaining why the Trust is paying "Equine Expenses" (Schedule C, p.1}, but there is no horse reflected as an asset of the Trust in the inventory.

PROOF OF SERVICE

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Steptoe & Johnson LLP, 633 West Fifth Street, Suite 1900, Los Angeles, California 90071.

On **August 4, 2022**, I served the following listed document(s): **ORDER REGARDING THE MOTION FOR JUDGMENT ON THE PLEADINGS OF PITTSBURG UNIFIED SCHOOL DISTRICT TO FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by the methods indicated below, on the parties in this action:

State of California Deputy Attorney General California Department of Justice 455 Golden Gate Avenue # 11000 San Francisco, CA 94102	Andrew.Edelstein@doj.ca.gov Jacquelyn.Young@doj.ca.gov
Tony Thurmond, in his official capacity as State Superintendent of Public School Instruction 1430 N Street, Suite 5111 Sacramento, CA 95814	
State Board of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	VCale@cde.ca.gov LGarfinkel@cde.ca.gov
California Department of Education 1430 N Street, Suite 5111 Sacramento, CA 95814	
Pittsburg Unified School District c/o Katherine Alberts 1390 Willow Pass Rd #700 Concord, CA 94520	kalberts@leonealberts.com jjohnson@leonealberts.com service@leonealberts.com

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from e-mail address mhernandez@steptoe.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY ELECTRONIC SERVICE: I served the document(s) on the persons listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onlegal.com.

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

Executed on August 4, 2022, at Los Angeles, California.

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/s/ Melissa Hernandez

MELISSA HERNANDEZ