FILED
Superior Court of California
County of Los Angeles
JUL 18 2018
Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya Deputy

RULING/ORDERS

Ella T. and Katie T., through their guardian ad litem Tamika T., et al. v. State of California, et al., Case No.: BC685730

Defendants State of California; State Board of Education; California Department of Education; and Tom Torlakson's Demurrer to the first through fourth causes of action is OVERRULED.

Defendants' Requests for Judicial Notice are DENIED.

Plaintiffs' Request for Judicial Notice of the court's opinion in Doe v. State of California, No. BC445151 (LASC, Jan. 26, 2012) is GRANTED.

Defendants shall file and serve an Answer within 20 days of service of the notice of ruling.

A. First Cause of Action for Violation of State Equal Protection Guarantees under California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Fundamental Interest)

Defendants assert that Plaintiffs have failed to allege that Defendants have adopted any classification of any group and failed to identify any class of persons who are being discriminated against. "'The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.'" Cooley, supra, 29 Cal.4th at 253 [quoting In re Eric J. (1979) 25 Cal.3d 522, 530] [emphasis in original]. "This initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" Id. [quoting People v. Gibson (1988) 204 Cal.App.3d 1425, 1438]. "[A] group must be identifiable by a shared trait other than the violation of a fundamental right." Vergara, supra, 246 Cal.App.4th at 647. "[E]very equal protection case based on the infringement of a fundamental right has involved a class identified by some characteristic other than asserted harm." Id. Plaintiffs fail to specifically identify the class upon which this claim is based within the cause of action itself. Complaint, ¶ 146. The incorporated allegations show that this claim is brought by students who go to Plaintiffs' schools—i.e., La Salle Avenue Elementary School,

Van Buren Elementary School, and Children of Promise Preparatory Academy. Complaint, ¶¶ 4, 7. Plaintiffs' schools are alleged to be in different school districts and are three of the lowest performing schools in the state. Id., ¶ 4. Based on these allegations, the only shared trait is the fact that Plaintiffs' schools are three of the lowest performing schools in the state. This alone would be insufficient to state a claim as a group must be identifiable by a shared trait other than the violation of a fundamental right. However, the incorporated allegations also show that Plaintiffs' schools are mostly comprised of minority groups and that the named Student Plaintiffs are minorities. Id., ¶¶ 14-23, 65, 78, 92. There is thus a shared trait other than the violation of a fundamental right—i.e., race. As Plaintiffs have stated a valid claim based on race, the demurrer to the first cause of action is overruled. Sheehan v. San Francisco 49ers, Ltd. (2009) 45 Cal.4th 992, 998 (sustaining of a demurrer may only be upheld if the complaint fails to state a cause of action under any possible legal theory); Saunders v. Cariss (1990) 224 Cal.App.3d 905, 908 ("It has long been established that in ruling on a demurrer, the trial court is obligated to look past the form of a pleading to its substance. Erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts which would entitle the plaintiff to relief.")[1]

B. Second Cause of Action for Violation of State Equal Protection Guarantees under California Constitution, Article I, Section 7(a) & Article IV, Section 16(a) (Suspect Class)

Defendants assert that Plaintiffs failed to allege a suspect classification. The Court disagrees. Plaintiffs allege that "Defendants have violated and continue to violate the rights of student Plaintiffs and those similarly situated to receive educational opportunity regardless of wealth and race . . . . ." Complaint, ¶ 147. With respect to wealth, Plaintiffs failed to allege sufficient facts to support such a class. Plaintiffs' incorporated allegations show that Plaintiffs'

[1] The court also notes that the first and second causes of action appear to be one cause of action. Whether considered together or separately, a constitutional claim has been plead. Sheehan v. San Francisco 49ers, Ltd. (2009) 45 Cal.4th 992, 998 (sustaining of a demurrer may only be upheld if the complaint fails to state a cause of action under any possible legal theory); Saunders v. Cariss (1990) 224 Cal.App.3d 905, 908 ("It has long been established that in ruling on a demurrer, the trial court is obligated to look past the form of a pleading to its substance. Erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts which would entitle the plaintiff to relief.)

schools are mostly comprised of socioeconomically disadvantaged students. Id., ¶¶ 65, 78, 92. However, there are no facts showing that any of the named Student Plaintiffs are socioeconomically disadvantaged. Id., ¶¶ 14-23. As Plaintiffs' claim is that the rights of Student Plaintiffs and those similarly situated have been violated, there must be allegations showing Student Plaintiffs are socioeconomically disadvantaged in order to state a claim based on wealth classification. While Plaintiffs failed to sufficiently allege class based on wealth, Plaintiffs have sufficiently alleged class based on race. Plaintiffs' incorporated allegations show that Plaintiffs are African American, Latino, or multiracial and that their schools are mostly comprised of minority groups. Id., ¶¶ 14-23, 65, 78, 92. These allegations are sufficient to demonstrate class based on race—i.e., minorities. Furthermore, Plaintiffs' allegation that this action is brought on behalf of former and current California students at Plaintiffs' schools is sufficient to demonstrate that the class is limited to minorities at the three schools. Id., ¶ 7.

Defendants also assert that this claim fails because Plaintiffs failed to allege how Defendants' alleged inaction caused students at three schools in the State to be unable to read at grade level. Defendants' assertion is unavailing. Plaintiffs' theory is that minorities and low-income students are getting left behind with respect to literacy such that they are denied their right to education and that the State has failed to implement any resolution of this issue, despite having knowledge of the issue. Plaintiffs' base their theory on inferences drawn from various statistics and studies. Relying on inferences drawn from statistics and studies would generally be insufficient to state a claim for violation of Plaintiffs' right to education based on Defendants' failures to implement ways to correct literacy, at least without identifying a specific duty that compels Defendants to work to resolve this issue. However, Butt v. State of California provides support for stating a constitutional violation claim based on the actual quality of a district's program falling fundamentally below prevailing statewide standards as a whole. Butt v. State of California (1992) 4 Cal.4th 668, 686-87. Therefore, based on Butt, the inferences from the statistics that these schools are falling below prevailing statewide standards and that these schools mostly consist of minorities and low-income students are sufficient to support a constitutional violation claim in this case.

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C. Third Cause of Action for Declaratory Relief

Plaintiffs seek a judicial declaration that Defendants have violated Article I, section 7(a) and Article IV, section 16(a) of the California Constitution. Complaint, ¶ 149. As discussed, Plaintiffs have sufficiently pled Defendants' violation so the demurrer is overruled on this ground.

D. Fourth Cause of Action for Taxpayer Claim (Violation of Cal. Civ. Proc. Code, § 526a (Illegal Expenditure of Taxpayer Funds))

CCP section 526a provides that "[a]n action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." Code Civ. Proc., § 526a. "To state a claim, the taxpayer must allege specific facts and reasons for the belief the expenditure of public funds sought to be enjoined is illegal." Coshow v. City of Escondido (2005) 132 Cal.App.4th 687, 714. "'General allegations, innuendo, and legal conclusions are not sufficient . . . .'" Id. [quoting Vasquez v. State of California (2003) 105 Cal.App.4th 849, 854].

Plaintiffs Fathers and Families, CADRE, Azalee Green, and David Moch allege that Defendants' expenditure of federal, state, county, and/or municipal funds to administer and implement a system of public education that engages in unconstitutional discrimination is unlawful. Complaint, ¶ 151. Plaintiffs further allege that Defendants failed to satisfy their duty to act to correct deficiencies. Id., ¶ 152. Given that Plaintiffs have sufficiently alleged Defendants' violation of equal protection under the California Constitution, Plaintiffs have alleged sufficient facts showing illegal expenditure of funds on a system of public education that engages in unconstitutional discrimination. Accordingly, the demurrer to the fourth cause of action is overruled.

E. Defendant State of California as Proper Party

Defendants contend that claims against the State should be dismissed as the State is not a proper defendant. As a preliminary matter, the Court notes that Defendants' contention

pertains to the misjoinder of a party. While Defendants may bring a demurrer challenging a misjoinder of a party, Defendants have only brought their demurrer on grounds of failure to plead sufficient facts to state a cause of action. Code Civ. Proc., § 430.10(d), (e). Nonetheless, as Defendants' contention has been addressed by Plaintiffs, the Court will construe the demurrer as having been brought on grounds of misjoinder and consider the merits of Defendants' contention.

While the State delegates to agencies for operation of the school system, the State is ultimately responsible for public education. Butt v. State of California (1992) 4 Cal.4th 668, 680-81. The State is thus a proper party to Plaintiffs' claims for violating their rights to education. Furthermore, Plaintiffs have also alleged a taxpayer claim. There are no indications that the State is not responsible for any illegal expenditures of public funds.

Defendants' cite to State v. Superior Court (1974) 12 Cal.3d 237 and Serrano v. Priest (1976) 18 Cal.3d 728 to support their contention. Neither of these cases provide support for the notion that the State is an improper party in this case. In State v. Superior Court, the California Supreme Court merely found that there were no allegations establishing any right to declaratory relief against the state. State v. Superior Court, supra, 12 Cal.3d at 255. While the California Supreme Court in Serrano recognized that state officers with statewide administrative functions under the challenged statute are the proper parties in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, the California Supreme Court did not find that the State would not be a proper party in such actions, merely that the State may be adequately represented by the appropriate administrative officers. Serrano, supra, 18 Cal.3d at 752. Accordingly, the demurrer on this ground is overruled.

F. Violation of Separation of Powers Doctrine

Defendants assert the entire action must be dismissed as the complaint seeks relief that violates the Separation of Powers Doctrine. Plaintiffs request injunctive relief requiring Defendants to ensure that Plaintiffs have the opportunity to attain literacy. Complaint, p. 57, Request for Relief, subsection a. While Plaintiffs include some examples of how Defendants can ensure such opportunities, Plaintiffs are not necessarily requesting the court order Defendants to implement these specific actions. To the extent Defendants' argument is

based on a provision of education in a manner different from existing policies that already address the factors set forth by Plaintiffs, this argument is unavailing for the purposes of this demurrer. Defendants rely on website printouts to show that these factors are already being implemented. As these printouts are not judicially noticeable, they cannot be considered for the purposes of this demurrer. Furthermore, even if they were judicially noticeable, they do not necessarily show that such factors are being implemented. Defendants have thus failed to show that the relief requested necessarily violates the separation of powers doctrine, at least at this time. Accordingly, the demurrer on this ground is overruled.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT