Tentative Rulings

DEPARTMENT 58 LAW AND MOTION RULINGS

If oral argument is desired, kindly refer to CRC 3.1308.

This Tentative Ruling is not an invitation, nor an opportunity, to file further documents relative to the hearing in question. No such filing will be considered by the Court in the absence of permission first obtained following ex parte application therefore.

The Court would appreciate any attorney who orders a Court Reporter ensure that such reporter be equipped to connect to Dept. 58's Live Note system.

Case Number: BC484642 **Hearing Date:** May 02, 2013 **Dept:** 58

JUDGE ROLF M. TREU
DEPARTMENT 58

_____
Hearing Date: Thursday, May 2, 2013
Calendar No: 5
Case Name: Vergara, et al. v. State of California, et al.
Case No.: BC484642
Motion: (1) Motion to Intervene
(2) Motion to Compel Production of Documents and to Appoint Discovery Referee
(3) Motion for Protective Order
Moving Party: (1) Proposed Defendants-Intervenors, California Teachers Association and California Federation of Teachers
(2) Plaintiffs
(3) Defendants, State of California; Edmund G. Brown Jr., in his official capacity as Governor of California; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction; California Department of Education;

and State Board of Education (“State Defendants”)
Responding Party: (1) Plaintiffs
(2) State Defendants
(3) Plaintiffs
Notice: OK

Tentative Ruling: (1) Motion to intervene is granted. The Complaint in Intervention is deemed filed and served this date on all previously appearing parties.

(2)-(3) Motion to appoint discovery referee is granted. Pursuant to CCP §§ 639(a)(5) and 640, a discovery referee will be appointed for all discovery motions and disputes, including the present motions.

Background –
The operative First Amended Complaint is brought by Plaintiffs Beatriz Vergara, Elizabeth Vergara, Clara Grace Campbell, Brandon DeBose Jr., Kate Elliot, Herschel Liss, Julia Macia, Daniella Martinez, and Raylene Monterroza (by their guardians ad litem) against Defendants State of California; Edmund G. Brown Jr., in his official capacity as Governor of California; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction; California Department of Education; and State Board of Education (collectively “State Defendants”); Los Angeles Unified School District (“LAUSD”); Oakland Unified School District (“OUSD”); and Alum Rock Union School District (“ARUSD”).

Plaintiffs are minors ranging from ages 7 to 16 who attend public schools in LAUSD, OUSD, the Sequoia Union High School District, ARUSD, and the Pasadena Unified School District. Plaintiffs challenge five statutes of the Education Code as violating the Equal Protection Clause of the California Constitution: Section 44929.21(b); Sections 44934, 44938(b)(1) and (2), and 44944; and Section 44955 (collectively, the “Challenged Statutes”). Plaintiffs allege that the Challenged Statutes result in “grossly ineffective” teachers obtaining and retaining permanent employment, and that these “grossly

ineffective" teachers are disproportionately situated in schools serving predominately low-income and minority students. These "grossly ineffective" teachers are unable to prepare students to compete in the economic marketplace or to participate in democracy.

On 11/9/12, the Court overruled demurrers filed by Defendants and certified this action pursuant to CCP § 166.1. On 12/10/12, Defendants filed a petition for writ of mandate with the Court of Appeal, which issued a stay of all proceedings in this Court on 12/18/12, pending decision on the writ. On 1/29/13, the Court of Appeal denied the petition for writ of mandate. Trial is set for 1/27/14; FSC for 1/16/14.

Motion to Intervene –
On 3/27/13, proposed Defendants-Intervenors California Teachers Association ("CTA") and California Federation of Teachers ("CFT") filed this motion to intervene under both the mandatory and discretionary provisions of CCP § 387. In response, Plaintiffs argue that intervention is both untimely and unnecessary. However, Plaintiffs also concede that teachers (and CTA and CFT) have distinct interests and do not oppose intervention. See Response p. 1:4-5, 4:5-6.

Timeliness is a prerequisite for intervention, and an unreasonable delay in seeking intervention is a sufficient ground for denial. Northern Cal. Psychiatric Society v. City of Berkeley (1986) 178 Cal.App.3d 90, 109. Plaintiffs note that this action was filed on 5/14/12 and that the motion to intervene was not filed until 3/27/13. However, the operative FAC was not filed until 8/15/12, the Court overruled Defendants' demurrers on 11/9/12, and the Court of Appeal denied Defendants' petition of writ of mandate on 1/29/13. Under these circumstances, it was only on 1/29/13 that it was clear this matter would proceed as to the merits of Plaintiffs' action against the Challenged Statutes, with the Court setting dates on 2/22/13. Therefore, the Court finds that CTA and CFT did not unreasonably delay in filing the motion to intervene on 3/27/13.

As to mandatory intervention, Plaintiffs argue that the State Defendants have

vigorously advocated the interests of teachers such that the teachers' interests are adequately represented (see CCP § 387(b)). However, while the State Defendants argued that the Challenged Statutes are constitutional on demurrer, the State Defendants also argued that they are not responsible for the implementation of the Challenged Statutes. Additionally, the State Defendants' interests are not necessarily aligned with teachers' interests. See Vogel Decl. ¶ 5 (distinguishing between defending education policies and laws from representing the teachers' property and pecuniary interests). Notably, there appears to be no dispute that the school district defendants' interests may conflict with the teachers' interests. See Freitas Decl. ¶ 15; Vogel Decl. ¶¶ 23-24 (noting that superintendents of both LAUSD and OUSD have publicly endorsed this action).

CTA and CFT submit that they are organizations that represent a large number of California public school teachers (Freitas Decl. ¶¶ 6-8; Vogel Decl. ¶¶ 8-10); and that Plaintiffs' action threatens the interests of those teachers (Freitas Decl. ¶ 9; Vogel Decl. ¶ 11). Therefore, the Court finds that both the mandatory (CCP § 387(b)) and discretionary provisions (see CCP § 387(a); Siena Court Homeowners Ass'n v. Green Valley Corp. (2008) 164 Cal.App.4th 1416, 1428.) support permitting intervention by CTA and CFT.

The Court notes that Plaintiffs raise a concern that intervention may result in prejudice to Plaintiffs. However, the Court finds no indication that CTA and CFT intend to enlarge the issues of this action. Notably, this action concerns the constitutionality of the Challenged Statutes with respect to Plaintiffs and the proposed Complaint in Intervention only denies that the Challenged Statutes violated Plaintiffs' constitutional rights.

Discovery Motions –
Plaintiffs' motion to compel production of documents and State Defendants' motion for protective order concern the same issues: the scope of Plaintiffs' document demands and the expense of searching and producing responsive documents. As the Court suggested at the 2/22/13 CMC, the scope of Plaintiffs' action, the number of parties, and the number of documents contemplated by

discovery justifies the appointment of a referee to hear and determine all discovery motions and disputes and make a recommendation thereon (see CCP § 639(a)(5)), including Plaintiffs' motion to compel production of documents and State Defendants' motion for protective order. Therefore, the Court will appoint a discovery referee pursuant to CCP § 640, the procedure for which to be discussed at the hearing.
