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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 KESHARA SHAW et al.,

13 Plaintiffs,

14 vs.

15 LOS ANGELES UNIFIED SCHOOL
16 DISTRICT, AUSTIN BEUTNER, Los
Angeles Unified School District
17 Superintendent, and DOES 1-25,

18 Defendant, and

19 UNITED TEACHERS LOS ANGELES,

20 Relief Defendant.
21

CASE NO. 20STCV36489

**RELIEF DEFENDANT UTLA'S
REPLY TO OPPOSITION TO
MOTION FOR STAY**

Judge: Hon. Yvette Palazuelos
Date: February 25, 2021
Time: 10:00 a.m.
Dept.: 9

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1 I. INTRODUCTION

2 A. There are common questions of law and fact in this case and *Cayla*.

3 This Court issued an order to show cause asking the parties to weigh in as to
4 “whether a stay should issue pending resolution of one or more of” seven cases listed in
5 LAUSD’s Notice of Related Cases, including *Cayla J v. State of California*, pending in
6 Alameda County Superior Court, even though in the same order, the Court stated that the
7 out-of-county cases that might be candidates to trigger such a stay (including *Cayla*) were
8 not related. Plaintiffs twist themselves into knots attempting to show that *Cayla* should not
9 proceed while this case is suspended, when there is no escaping that *Cayla* and this case
10 share a great deal in common, and pose risks of conflicting rulings and relief if litigated
11 simultaneously, if any relief should be ordered. Plaintiffs do not grapple with the well-
12 matched inventory of commonality in this case compared to that experienced at LAUSD
13 but attributed to the state in *Cayla* (UTLA Motion, pp. 4-5), or with the seven common
14 causes of action, or with the fact that *both* cases are aptly described by Plaintiffs’
15 characterization of allegations they say are “the crux of *Cayla*”:

16 the defendants failed to properly respond to the pandemic and pay sufficient
17 attention to the actual circumstances of remote learning, which resulted in disparate
18 impacts to students and the failure to provide adequate equipment, training, and
19 resources to teachers and parents.

20 (Opposition, p. 4).

21 They emphasize the difference in the identity of the defendants in the two cases, but
22 overlook the fact that their choice of defendants and arbitrary focus on what they
23 erroneously refer to as the whole of the District’s policies, do not equate to a ruling as to
24 who, if anyone, or what, is actually responsible for the alleged harm unleashed by the
25 necessity of distance learning during the pandemic, and whether that harm is remediable as
26 they demand. At this still early stage in the litigation, no one has been ruled to be culpable
27 or responsible for a remedy. But, contrary to Plaintiffs’ contentions, with LAUSD students
28 playing a prominent role as plaintiffs in the *Cayla* action, and with the state ultimately

1 responsible for provision of educational services and support in Los Angeles, Oakland and
2 the rest of California, the issues of culpability and appropriate remedy in both cases are
3 intertwined. There has been no challenge allowed to the pleadings, as there should be
4 before Plaintiffs can ask for profound substantive relief, and as Plaintiffs acknowledge,
5 there is no way to obtain coordination while this case remains under a stay order.

6 Thus, the origin and nature of the alleged harm – similarly described in both cases,
7 with both involving LAUSD students affected by a statewide pandemic and concomitant
8 distance learning regimen – are more significant factors in determining commonality, and
9 hence the need for a stay, than the respective identities of the defending parties who have
10 not had an opportunity to substantively respond. It is likely that Defendants’ substantive
11 responses will add to the common issues between the instant litigation and *Cayla*.

12 **B. This Court Has Authority to Stay this Action.**

13 Plaintiffs do not undermine the notion that this Court has the discretion to stay this
14 action, as illustrated and declared in cases like *Jordache Enterprises, Inc. v. Brobeck*,
15 *Phleger & Harrison* (1998) 18 Cal.4th 739, 758, and *Bailey v. Fosca Oil Co.*, (1963) 216
16 Cal.App.2d 813, 817, and indeed, in this Court’s own routinely imposed Status Conference
17 Orders (for example, the one it issued on November 17, 2020, still in partial effect).

18 Plaintiffs argue that their action cannot be stayed because their Complaint was filed
19 earlier than the complaint in *Cayla*. There is no such absolute rule; the cases Plaintiffs cite
20 reject the notion that the pendency of a similar case can justify *dismissal* of an action, but
21 as noted in *Thomson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746, “a pending action
22 *may be grounds for a stay of the proceedings in California*, but not for a dismissal.”
23 (emphasis added.) The *Thomson* Court noted that it was within the sound discretion of the
24 trial court as to whether to stay an action, and also rejected the notion that first in time
25 necessarily means immunity from a stay, observing that “[two cited cases] can be
26 interpreted to mean that a state court judge is compelled to stay the local action pending
27 outcome of a *previously filed* federal court suit on the same issues. *If the cases are subject*
28 *to that interpretation they should be disapproved.*” *Id* at 747 (emphasis added). Though the

1 case before it was the second-filed case in sequence, instead of pronouncing and applying
2 the “first filing is impervious to a stay” rule Plaintiffs assert, the Supreme Court remanded
3 to the trial court to exercise its discretion. See also, *Investors Equity Life Holding Co. v.*
4 *Schmidt*, 233 Cal. App. 4th 1363, 1376 (2015)(Court in response to forum non conveniens
5 motion has greater discretion to stay an action than to dismiss). This Court should exercise
6 its discretion by staying this action under these unique circumstances.

7 *California Union Ins. Co v. Trinity River Land Co.*, 105 Cal. App. 3d 104 (1980),
8 relied upon by Plaintiffs (Opposition, pp. 3, 8) is not authority for denying a stay of this
9 case. It did not involve a stay, but an outright dismissal, honoring the distinction discussed
10 in *Thomson*. In *Trinity*, plaintiff-insurers filed suit in Trinity County claiming that they
11 were not liable to defendant property owners who had incurred a loss due to fire. Those
12 property owners filed their own suit in Shasta County shortly thereafter, suing the insurers
13 and claiming they were liable. The property owners also filed a demurrer in the Trinity
14 County suit, asserting that the Trinity case should be dismissed because of the pendency of
15 their Shasta County action. The Trinity trial court agreed, and dismissed the action. The
16 Court of Appeal reversed, noting that the second suit didn’t raise any issue not already to
17 be litigated in the first suit, so it was improper to *dismiss* the first suit. The Court noted the
18 abuse that could be engendered if subsequent litigation could cause the dismissal of earlier
19 actions involving the same transaction. 105 CA 3rd at 109. In the instant case, the need for
20 a *stay* to avoid both conflicting rulings and potential remedies poses different questions
21 and concerns than were posed by the *Trinity* case.

22 **C. Plaintiffs Defy the Controlling Statute and Caselaw by Focusing on**
23 **Alleged Omissions from CBAs Instead of District Policy as a Whole.**
24

25 Notwithstanding Plaintiffs’ assertion that the FAC “sets forth in great detail how the
26 Side Letter violates the Education Code (Opposition, p. 3), the FAC repeatedly, albeit with
27 varied passive vocabulary, speaks in terms of what the Side Letter *omits* or “*fails to*
28 *address*”, and/or does *not* articulate the connection between the Side Letter and any

1 specific perceived shortcoming their children have experienced, e.g., ¶’s 11, 12 (“failed to
2 address or remedy” lack of training), ¶55 (Side letter “left many students” without access
3 to education, does not explain how the CBA did so); ¶63 (Side Letter “offers no
4 explanation” as to how it would meet standards); ¶64 (Side Letter “lacks. . instructional
5 requirements”); ¶68 (Side Letter blamed for plaintiffs’ inability to access any classes); ¶80
6 (incorrectly states that instructional hours were reduced, and Side Letter “does nothing to
7 remedy” remote learning problems or intervene on behalf of students who were not
8 engaging); ¶’s 83-85 (allows synchronous and asynchronous learning; neglects to mention
9 this is consistent with SB 98); ¶89 (Side Letter “does not mandate” teachers balance
10 instructional methods); ¶90 (Side Letter “does not ensure” Plaintiffs’ children will receive
11 necessary instruction); ¶98 (incorrectly notes alleged limits on teachers’ instructional day,
12 fails to mention need for preparation); ¶111 (Side Letter “does nothing to ensure” adequate
13 teacher training); ¶115 (Side Letter “fails to place limits” on amount of substitute
14 instruction); ¶118 (“there is no mandate” in Side Letter to reach out to students or
15 families); ¶119 (Side Letter prevents the LAUSD from intervening to fix student
16 disengagement – does not explain how); ¶122 (Side Letter makes home visits voluntary);
17 ¶126 (Side Letter is “silent on the issue” of student assessments); ¶141 (Side Letter “failed
18 to provide necessary educational requirements”); ¶150 (Side Letter “fails to provide pre-
19 pandemic benefits”). Contrary to applicable constitutional law, Plaintiffs have imposed on
20 themselves arbitrary boundaries as to where they will search for District policies that might
21 satisfy SB 98; it is not surprising that they don’t find what they claim to be looking for
22 when they limit their exploration only to labor agreements between UTLA and the District,
23 which cannot encompass all that the District must accomplish to comply with SB 98. But
24 having arbitrarily decided to overlook the Learning Continuity and Attendance Plan
25 (“LCAP”), which is the measure by which SB 98 compliance must be assessed, they
26 should not be heard to complain that CBAs don’t contain what the LCAP might.

27 Perhaps most offensive is Plaintiffs’ false and baseless narrative that in bargaining
28 the Union advocated the shortening of the 8-hour contractual work day, disinformation

1 they would have had to discard if they focused on the comprehensive landscape of state-
2 mandated LCAP instead of through the microscope of the Side Letters. As the LCAP
3 states:

4 Per the District’s agreement with the United Teachers of Los Angeles
5 (UTLA), *all teachers have a contractual 8-hour work day obligation comprised of*
6 *both on-site and off-site work.* The side letter modifies the teacher 6-hour on-site
7 portion of their workday to provide students virtual services (synchronous and
8 asynchronous instruction) with the remaining minutes of work to be completed
9 outside of the 9:00 AM to 2:15 PM school day (such as preparing lesson plans,
10 grading of student work, feedback to students, conferences, maintaining appropriate
11 records, communicating with parents, IEP meetings). (November LCAP, p. 20)

12 The Union sought a slightly different *mix* of hours, timing and sequence of tasks
13 within the constant eight hours, to provide needed flexibility in light of pandemic
14 conditions at teachers’ homes, and to accommodate pandemic realities, but *never* asked to
15 diminish the total, and there never was an agreement for such a decrease.

16 Plaintiffs ask this Court to validate their unduly narrow focus on what collective
17 bargaining agreements between the District and UTLA do *not* say, still insisting –
18 controlling jurisprudence and SB 98 notwithstanding -- that they need not analyze the
19 entirety of the District’s educational program even as they challenge it all, yet declining to
20 explain why (Opposition, p. 9, footnote 6).

21 Plaintiffs laud the state legislature for passing SB 98, noting that that legislation
22 mandates certain objectives be met during distance learning, citing California Education
23 Code Section 43503(b) (FAC, ¶6). What they neglect to mention, however, is that in SB 98
24 the legislature also mandated *how* those objectives were to be met: through a LCAP, the
25 detailed contents of which are spelled out in Section 43509, directing the Superintendent of
26 Public Instruction to develop a LCAP template for use by school districts, in §43509(f).¹

27 _____
28 ¹ Section 43509(f) enumerates the content of the template, which in turn would become the

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LCAP for each district, addressing all of the issues Plaintiffs complain about in this case:

(1) A description of how the school district, county office of education, or charter school will provide continuity of learning and address the impact of COVID-19 on pupils, staff, and the community in the following areas, and the specific actions and expenditures the school district, county office of education, or charter school anticipates taking to support its ability to address the impacts of COVID-19:

(A) In-person instructional offerings, and specifically, the actions the school district, county office of education, or charter school will take to offer classroom-based instruction whenever possible, particularly for pupils who have experienced significant learning loss due to school closures in the 2019-20 school year or are at greater risk of experiencing learning loss due to future school closures.

(B) Plans for a distance learning program, including all of the following:

(i) How the school district, county office of education, or charter school will provide continuity of instruction during the school year to ensure pupils have access to a full curriculum of substantially similar quality regardless of the method of delivery. This shall include a plan for curriculum and instructional resources that will ensure instructional continuity for pupils if a transition between in-person instruction and distance learning is necessary.

(ii) A plan for ensuring access to devices and connectivity for all pupils to support distance learning whenever it occurs.

(iii) How the school district, county office of education, or charter school will measure participation and assess pupil progress through live contacts and synchronous instructional minutes, as well as how the time value of pupil work will be measured.

(iv) What professional development and resources will be provided to staff to support the provision of distance learning, including technological support.

(v) To the extent that staff roles and responsibilities change because of COVID-19, what the new roles and responsibilities of affected staff will be.

(vi) What additional supports for pupils with unique needs will be provided, including for English learners, pupils with exceptional needs served across the full continuum of placements, pupils in foster care, and pupils who are experiencing homelessness during the period in which distance learning is provided.

(C) How the school district, county office of education, or charter school will address pupil learning loss that results from COVID-19 during the 2019-20 and 2020-21 school years, including all of the following:

(i) How the school district, county office of education, or charter school will

1 The elements of that template, quoted in full in footnote 1 (§43509(f)(1)(B)(i) through
2 (vi)), are precisely the matters that Plaintiffs claim in their FAC are deficient, yet they do
3 not attack or take account of LAUSD’s LCAP as defendants have urged, instead
4 intransigently focusing on the parties’ CBAs and alleged statements in negotiations.

5 This lawsuit purports to expansively object, as a constitutional matter, to *how* the
6 District has responded to the challenges of distance learning, yet Plaintiffs ignore the
7

8 assess pupils to measure pupil learning status, particularly in the areas of
9 English language arts, English language development, and mathematics.

10 (ii) What actions and strategies the school district, county office of
11 education, or charter school will use to address learning loss and accelerate
12 learning progress for pupils, as needed, and how these strategies differ for
13 pupils who are classified as English learners, are eligible for a free or
14 reduced-price meal, or are foster youth, as those terms are defined in Section
15 42238.01, individuals with exceptional needs, pupils in foster care, and
16 pupils who are experiencing homelessness.

17 (iii) How the effectiveness of the services or supports provided to address
18 learning loss will be measured.

19 (D) How the school district, county office of education, or charter school will
20 monitor and support the mental health and social and emotional well-being of pupils
21 and staff during the school year.

22 (E) What professional development will be provided to staff, and what resources
23 will be provided to pupils and staff to address trauma and other impacts of COVID-
24 19 on the school community.

25 (F) Pupil engagement and outreach, including the procedures of the school district,
26 county office of education, or charter school for tiered reengagement strategies for
27 pupils who are absent from distance learning, and how the school district, county
28 office of education, or charter school will provide outreach to pupils and their
parents or guardians, including in languages other than English, when pupils are not
meeting compulsory education requirements, or the school district, county office of
education, or charter school determines the pupil is not engaging in instruction and
is at risk of learning loss.

(G) School nutrition, including how the school district, county office of education,
or charter school will provide meals for pupils who are eligible for free or reduced-
price meals, as defined in Section 42238.01, for pupils participating in both in-
person instruction and distance learning, as applicable and contingent upon the
department receiving an approved waiver from the United States Department of
Agriculture, for each day of the scheduled school year.

1 corresponding breadth of their burden to validate such a serious and far-reaching claim:
2 they must demonstrate that “the actual quality of the district's program, *viewed as a whole*,
3 falls fundamentally below prevailing statewide standards”, *Butt v California*, 4 Cal 4th 668,
4 685 (1992); *Collins v. Thurmond*, 41 Cal. App. 5th 879, 898 (2019), request for
5 depublication denied, review denied, 2020 Cal. LEXIS 1448 (February 26, 2020)(emphasis
6 added). This is not a situation like *Butt* where the entire school district is threatened with
7 complete closure, or as in *Collins*, a challenge to stand-alone student disciplinary processes
8 -- as opposed to provision of educational services in the aggregate as is true here and in
9 *Cayla*. Here, Plaintiffs capaciously complain that “the LAUSD’s response to the COVID-
10 19 pandemic has denied [their] children basic educational equality guaranteed to them by
11 the California Constitution”, and that the distance learning they have been receiving “falls
12 fundamentally below prevailing statewide standards.” (FAC, ¶5). They then offer
13 numerous individual examples of unsatisfactory provision of services – necessarily at least
14 four months old as of this writing – that they attribute to LAUSD-UTLA CBAs, almost
15 invariably by dint of omission within those CBAs (see above), or by misinterpretation.
16 (The CBAs state the parties’ intent to comply with SB 98, and specific references to
17 required instructional minutes in those CBAs comply with the standards set by that law.
18 Plaintiffs do not allege otherwise.) They nevertheless seek sweeping relief that could entail
19 extensive judicial oversight of the District’s operation of its over 1400 campuses.

20 Just as telling, the FAC does not compare the deficiencies Plaintiffs perceive in the
21 Side Letter to the specific standards set by the legislature in SB 98, even though the
22 controlling law requires just that comparison of statewide standards. *Butt, supra*, 4 Cal 4th
23 at 686-687 (“Unless the actual quality of the district's program, viewed as a whole, falls
24 fundamentally below prevailing statewide standards, no constitutional violation occurs”).
25 Instead, it unrealistically compares their erroneous Side Letter interpretation to *pre-*
26 *pandemic conditions* (¶’s 13, 150) or to other school districts (¶130). Perhaps the reason
27 for Plaintiffs’ insistence on aiming at the wrong target is that its FAC’s class allegations
28 and its experts’ already-drafted opinions depend upon and have cemented it in place, not

1 unlike the Maginot Line.²

2 The basic point is that Plaintiffs rhetorically and substantively promulgate a
3 wholesale challenge to the District’s systemwide response to the distance learning
4 imperative relying on SB 98, but ignore the basic mechanism in the same law by which the
5 legislature charged the District to implement its will in this difficult period. That is
6 materially problematic because it is necessarily the District’s *overall* satisfaction of those
7 very measures enumerated in Section 43509(f) that will be determinative under the
8 constitution, not whether inherently circumscribed labor agreements with educators can or
9 should be re-purposed to suit Plaintiffs’ errant contentions. That is, SB 98 defines a school
10 district’s policies to essentially be the LCAP, whereas Plaintiffs have nonetheless chosen
11 to equate the District’s policies with necessarily much narrower CBAs.

12 The fatal flaw in Plaintiffs’ myopic approach is that provision of required services
13 they claim to be missing from a CBA – which by statute is substantively bounded by the
14 scope of representation under the EERA, Government Code §3543.2(a)(1)³ -- may well be

15 _____
16 ² "The Maginot Line, the massive series of fortifications built by France in the 1930s to
17 defend its borders with Germany and Italy, is perhaps the most maligned collection of
18 fortifications ever built, commonly viewed as an abject failure, a disaster for France, a total
19 waste of both money and manpower, and a monument to the folly of static defence."
20 William Alcorn, *The Maginot Line 1928-45*, at 4 (Osprey Pub. Ltd. 2003). The Maginot
21 Line's static fortification proved dramatically ineffective during WWII against motorized
22 components of the German army. Calling something a "Maginot Line" conveys that it can
23 be "easily circumvented" by a "simpl[e] maneuver[]." *Bank Markazi v. Peterson*, 136 S.Ct.
24 1310, 1335 (2016); 7 *The New Encyclopedia Britannica* 672-73 (16th ed. 1998).

25 ³ That section provides: “(1) The scope of representation shall be limited to matters
26 relating to wages, hours of employment, and other terms and conditions of employment.
27 ‘Terms and conditions of employment’ mean health and welfare benefits as defined by
28 Section 53200, leave, transfer and reassignment policies, safety conditions of employment,
class size, procedures to be used for the evaluation of employees, organizational security
pursuant to Section 3546, procedures for processing grievances pursuant to Sections
3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district
employees, pursuant to Section 44959.5 of the Education Code, and alternative
compensation or benefits for employees adversely affected by pension limitations pursuant
to former Section 22316 of the Education Code, as that section read on December 31,
1999, to the extent deemed reasonable and without violating the intent and purposes of

1 present in the LCAP, and even if not, in any event does not call for CBA revision – as
2 opposed, possibly, to LCAP revision -- by this Court or a tribunal with jurisdiction to do
3 so. Again, as this reply demonstrates, Plaintiffs’ complaints in the FAC about deficiencies
4 they have individually experienced do not truly “set forth in great detail how the Side
5 Letter violates the Education Code.” (Opposition, p. 3). Aside from the fact that Plaintiffs
6 cannot be aware of what educators are doing to perform their work when not visible or
7 audible to them, any alleged shortfall or deviation from SB 98 related to educators’ work
8 would necessarily also be a *deviation* from the CBA, not a consequence or product of that
9 agreement.

10 **II. CONCLUSION**

11 This Court has the authority to stay this pandemic-generated action broadly
12 challenging LAUSD’s distance learning policies and practices, in deference to the *Cayla*
13 litigation, which is similarly pandemic-based, and also involves the same LAUSD policies.
14 It should do so because of the common questions of law and fact shared by the two, the
15 appropriate focus in that case on the officials and offices ultimately responsible for
16 providing public education in this state, the risk of inconsistent rulings and remedies if
17 both cases proceed, and its inclusion of LAUSD students. All of these factors point to
18 allowing the *Cayla* case to move forward instead of proceeding with this case, with its
19 insistence on the inapt circumscribed target of CBAs instead of the state-mandated LCAP.

20 DATED: February 18, 2021

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24 By: 

25 IRA L. GOTTLIEB
26 Attorneys for Relief Defendant UNITED
27 TEACHERS LOS ANGELES

28 _____
Section 415 of the Internal Revenue Code.”