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12 KERN COUNTY SUPERIOR COURT

13 CIVIL DIVISION

14 ARLENE SANDERS, ET AL.

15 PETITIONERS/PLAINTIFFS,

16 vs.

17 KERN HIGH SCHOOL DISTRICT, ET AL.

18 RESPONDENTS/DEFENDANTS.

Case No.: S-1500-CV-283224

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITIONERS'/PLAINTIFFS'  
MOTION TO LIFT STAY**

**RESERVATION ID 17539**

Date: August 15, 2016

Time: 8:30 am

Dept.: 4

Judge: Sidney P. Chapin

1 **INTRODUCTION**

2 Petitioners/Plaintiffs respectfully request that the Court lift the stay on case proceedings  
3 ordered on May 24, 2016. Petitioners/Plaintiffs have dismissed their appeal in the Fifth District  
4 Court of Appeal against the State of California. Consequently, it is in the interest of justice to lift  
5 the stay for the following reasons: there is no appellate proceeding in this case that could either  
6 affect the causes of action and parties currently pending before this Court or be affected by  
7 allowing Petitioners/Plaintiffs to proceed with their case against Respondents/Defendants KHSD,  
8 Kern COE, and CDE; Petitioners/Plaintiffs will be prejudiced by further delay; and  
9 Respondents/Defendants KHSD, Kern COE, and CDE will not be prejudiced by lifting the stay  
10 and allowing the trial court proceedings to continue. Moreover, Code Civ. Proc. § 916 does not  
11 provide a basis for the stay.

12 **PROCEDURAL HISTORY**

13 Petitioners/Plaintiffs filed this action on October 12, 2014. All Respondents/Defendants  
14 demurred to all causes of action as to all Petitioners/Plaintiffs, and some filed motions to strike.  
15 Judge Eric Bradshaw, then presiding over the case, issued rulings on all demurrers by minute  
16 order dated May 11, 2015. Judge Bradshaw sustained various demurrers with leave to amend.  
17 Petitioners/Plaintiffs filed a First Amended Complaint, followed by a Second Amended and  
18 Supplemental Complaint and Petition for Writ of Mandate (SASC) on July 30, 2015, filed  
19 pursuant to stipulation and order. Respondents/Defendants filed demurrers and some motions to  
20 strike.

21 On December 4, 2015, Judge Bradshaw sustained Respondent/Defendant State of  
22 California's demurrer as to all causes of action without leave to amend.

23 On March 14, 2016, Petitioners/Plaintiffs prematurely filed a Notice of Appeal as to the  
24 Court's ruling sustaining Respondent/Defendant State of California's demurrer. On April 8, the  
25 Court of Appeal for the Fifth Appellate District stayed the appeal, requesting briefing on whether  
26 an appealable order had been entered. On May 4, 2016 Judge Bradshaw entered judgment in  
27 favor of the State of California against all Petitioners/Plaintiffs as to all causes of action. On  
28

1 May 20, 2016, the Court of Appeal issued an Order stating that Petitioners’/Appellants’ appeal  
2 was “deemed as taken from the judgment entered May 4” and vacated the stay.

3 On May 25, 2016, Judge Chapin stayed “[a]ll case proceedings in the trial court . . .  
4 pending ruling from the Fifth District Court of Appeals.” Petitioners/Plaintiffs then filed a  
5 motion to lift the stay, which Judge Chapin denied on June 29, 2016.<sup>1</sup>

6 On July 18, 2016, Petitioners/Plaintiffs and the State of California filed a stipulation  
7 seeking dismissal of the appeal pending in the Fifth District Court of Appeal against the State of  
8 California. *See* Decl. of Kip M. Hustace in Support of Motion to Lift Stay, July 25, 2016.

9 On July 21, 2016, the Court of Appeal issued an Order dismissing the appeal pursuant to  
10 the stipulation of the parties and transmitted the Remittitur to the trial court. *See id.*

11 **ARGUMENT**

12 **I. IT IS IN THE INTEREST OF JUSTICE TO LIFT THE STAY, AS THERE**  
13 **IS NO APPEAL PENDING AND PETITIONERS/PLAINTIFFS WILL BE**  
14 **PREJUDICED BY FURTHER DELAY.**

15 Because Petitioners’/Plaintiffs’ appeal against the State of California has been dismissed,  
16 there is no longer an appellate court proceeding that could affect or be affected by proceedings in  
17 this Court. The causes of action that Petitioners/Plaintiffs brought against the State are no longer  
18 part of this case and thus will have no bearing on Petitioners’/Plaintiffs’ causes of action against  
19 the Respondents/Defendants remaining before this Court. In turn, there is no proceeding in the  
20 appellate court that could be affected by lifting the stay and allowing the remaining parties to  
21 continue with discovery.

22 In addition, Petitioners/Plaintiffs themselves will be prejudiced by further stay on the  
23 proceedings in this Court. First, because witnesses to events of a few years ago—including  
24 administrators and staff responsible for discipline as well as students and parents—will often  
25 leave the school district, the county, and even the state, they will be difficult if not impossible to

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26 <sup>1</sup>Petitioners/Plaintiffs are of the view that this is an independent motion based on the current  
27 status of the case and not a motion for reconsideration. However, to the extent that the Court  
28 views this as a request for reconsideration Petitioners/Plaintiffs meet the criteria of Code Civ.  
Proc. § 1008 as will be demonstrated below.

1 locate. Second, the memories of witnesses who remain will become faint, and it will be  
2 increasingly difficult for them to testify to the events at issue. Third, preservation of the stay will  
3 allow Respondents/Defendants to continue to engage in the unlawful and harmful behavior  
4 alleged in the SASC, negatively affecting the lives and educational opportunities of Latino and  
5 African-American students. As in other cases in which ongoing harms are weighed when  
6 considering whether a stay is proper, here further delay will impede Petitioners'/Plaintiffs'  
7 ability to obtain relief fitting to the harm that they have experienced and will continue to  
8 experience. *See, e.g., Farmland Irrigation Co. v. Dopplmaier* (1957) 308 P.2d 732, 737 (“A stay  
9 of the present proceedings would therefore not only bring these issues no closer to determination,  
10 but would compel plaintiff to await a judgment that cannot respond to its needs. The trial court  
11 did not abuse its discretion in denying a stay that would have such an effect.”).

12         Neither the State of California nor any of the Respondents/Defendants remaining before  
13 this Court will be prejudiced by lifting the stay on the trial court proceedings. The State is no  
14 longer a party to the case, cannot be held liable in this action, and thus will not be prejudiced by  
15 this Court allowing the case to move forward. Respondents/Defendants KHSD, Kern COE, and  
16 CDE will not be prejudiced as they were and are obliged to defend Petitioners'/Plaintiffs' claims  
17 against them regardless of the outcome of the appeal or the liability of the State of California.  
18 Moreover, the dismissal of the appeal forecloses the possibility of duplicative discovery.

19         Therefore, it is in the interest of justice to lift the stay.

20         **II. SECTION 916 OF THE CIVIL PROCEDURE CODE DOES NOT**  
21         **REQUIRE PRESERVING THE STAY.**

22         Code Civ. Proc. § 916 provides, with exceptions, that “the perfecting of an appeal stays  
23 proceedings in the trial court upon the judgment or order appealed from or upon the matters  
24 embraced therein or affected thereby.” The purpose of § 916 is “to protect the jurisdiction of the  
25 appellate court,” thus “prevent[ing] the trial court from rendering the appeal futile by changing  
26 the judgment into something different.” *In re Marriage of Horowitz*, 205 Cal. Rptr. 880, 883  
27 (Cal. Ct. App. 1984) (citing *Lerner v. Superior Court*, 242 P.2d 321, 323 (Cal. 1952); *San*  
28 *Francisco Sav. Union v. Myers*, 13 P. 403, 404 (Cal. 1887)).

1 Code Civ. Proc. § 916 does not provide for an extension of the stay after an appeal is  
2 resolved through dismissal or otherwise. Because there is no appeal, preservation of the stay will  
3 not serve the purpose of § 916 in protecting the appellate court's jurisdiction.

4 Therefore, Code Civ. Proc. § 916 requires no preservation of the stay on the trial court  
5 proceedings in this case.

6 **III. CONSIDERATION OF THIS MOTION IS PROPER UNDER SECTION**  
7 **1008 OF THE CIVIL PROCEDURE CODE.**

8 This motion is appropriate given the current posture of this case. However, should the  
9 Court treat this as a renewed motion or motion for reconsideration, Petitioners/Plaintiffs meet the  
10 standard for bringing such a motion, and it should be granted. Code Civ. Proc. § 1008 provides  
11 in relevant part that:

12 (b) A party who originally made an application for an order which was  
13 refused in whole or part, or granted conditionally or on terms, may  
14 make a subsequent application for the same order upon new or different  
15 facts, circumstances, or law, in which case it shall be shown by  
affidavit what application was made before, when and to what judge,  
what order or decisions were made, and what new or different facts,  
circumstances, or law are claimed to be shown.

16 As demonstrated in the Declaration of Kip M. Hustace accompanying this motion, there are  
17 different facts and circumstances that warrant reconsideration of the court's prior decision and  
18 entry of an order lifting the stay.

19 **CONCLUSION**

20 Based on the foregoing, Petitioners/Plaintiffs respectfully request that the Court lift the  
21 stay and allow the remaining parties to proceed with discovery and to file the Third Amended  
22 Complaint.

23 Dated: July 25, 2016

Respectfully submitted,

24 /s/ CYNTHIA L. RICE

25 Cynthia L. Rice  
26 California Rural Legal Assistance, Inc.  
27 Attorneys for Petitioners/Plaintiffs Gabriel Elder,  
28 Carmen Ramirez, Mario Ramirez, Isidro Larralde,  
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/s/ KIP M. HUSTACE

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1 **PROOF OF SERVICE**

2 I, Sylvia Valentine, declare as follows:

3 I am employed with the law offices of CALIFORNIA RURAL LEGAL ASSISTANCE,  
4 INC. My business address is 1340 Franklin Street, Suite 103, Oakland, California 94612. I am  
5 over the age of 18 years of age, and not a party to this action.

6 On July 25, 2016, I served the foregoing document entitled:

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
8 **PETITIONERS’/PLAINTIFFS’ MOTION TO LIFT STAY**

9 by serving in the manner and/or manners described below to each of the parties herein listed:

10 SEE ATTACHED SERVICE LIST

11  By Mail in accordance with Code of Civil Procedure §1013a(3) as follows:  
12 I am readily familiar with this firm’s practice of collection and processing correspondence for  
13 mailing with the United States Postal Service. Under the practice the correspondence would be  
14 deposited with the United States Postal Service on that same day in the ordinary course of  
15 business with postage thereon fully prepaid at Fresno, California. Such envelope was sealed and  
16 placed for collection and mailing following ordinary business practices.

17  OVERNIGHT COURIER I caused the above-referenced envelope(s) to be delivered to  
18 an overnight courier service for delivery to the address(es).

19  BY PERSONAL SERVICE I caused delivery of such envelope(s), by hand, to the  
20 office(s) of the above listed addressee(s).

21  BY ELECTRONIC MAIL, I caused such documents to be scanned into PDF format and  
22 sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designation.

23  BY FACSIMILE by transmitting from my business address a true copy thereof from  
24 sending facsimile number () addressed to the receiving facsimile numbers on the attached  
25 service list at () . A true copy thereof was transmitted by facsimile and the transmission reported  
26 complete without error.

27  (STATE) I declare under penalty of perjury under the laws of the State of California that  
28 the above is true and correct.

Executed on July 25, 2016, Oakland, California.

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SYLVIA VALENTINE



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**SERVICE LIST**

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