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through his Guardian ad Litem, LIBRA WHITE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

K.C., by and through his Guardian ad Litem, MYISCHA THOMPSON; D.B., by and through his Guardian ad Litem, LIBRA WHITE,

Plaintiffs,

vs.

TOWN OF ATHERTON, a municipal corporation; DAVID METZGER, individually and in his official capacity as a police sergeant for the TOWN OF ATHERTON; DIEGO ROMERO, individually and in his official capacity as a police officer for the TOWN OF ATHERTON; IGOR DAVIDOWICH, individually and in his official capacity as a police officer for the TOWN OF ATHERTON; JOSHUA GATTO, individually and in his official capacity as a police officer for the TOWN OF ATHERTON; DIMITRI ANDRUHA, individually and in his official capacity as a police officer for the TOWN OF ATHERTON; SEQUOIA UNION HIGH SCHOOL DISTRICT, a municipal corporation; STEPHEN EMMI, individually and in his official capacity, NICK MUYS, individually and in his official capacity, and DOES 1-100, inclusive, individually, jointly, and severally,

Defendants.

CASE NO.: 3:24-cv-00507

PLAINTIFFS' OPPOSITION TO DISTRICT DEFENDANTS' MOTION TO SEVER

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I. INTRODUCTION

The civil action against Defendants was brought pursuant to violations of 42 U.S.C § 1983, the Fourth Amendment to the United States Constitution; 42 U.S.C. § 12132, Title II of the ADA; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act; under California Civil Code § 52.1 and § 51.7, and under the common law of California. The claims arise from the egregious conduct of both District Defendants and Town Defendants who worked together to violate Plaintiffs' constitutional rights. District Defendants seek to move the Court to sever Plaintiffs' claims for a myriad of reasons, including "lack of sufficient commonality" and other improper or incomplete interpretations of case law not attributable to, or binding on, the practice of this Court.

Plaintiffs submit that Defendants are properly joined in a single action because the claims raised in Plaintiffs' Second Amended Complaint arise out of the same transaction or occurrence or series of transactions and occurrences and present a common question of law and fact to all parties. Furthermore, any prejudice to Defendants from joinder is *de minimis* whereas severance of the Plaintiffs' claims and Defendants would prejudice a substantial right of Plaintiffs. Accordingly, Defendants' Motion to Sever should be denied in its entirety.

II. STATEMENT OF FACTS

Plaintiff K.C. is a 16-year-old Black male student at Menlo-Atherton High School ("MAHS") who experiences pervasive feelings of anxiety and depression. He also has documented deficits in auditory processing, short-term memory, executive functioning, visual motor integration skills, and social language. These impairments sometimes manifest as frustration or feelings of being overwhelmed, requiring positive behavior intervention strategies to manage effectively. Trauma-informed de-escalation strategies are critical for ensuring K.C.'s safety during such moments. As outlined in his Individualized Education Plan (IEP), minor K.C. needs consistent proactive behavior interventions, co-regulation, and trained de-escalation strategies. However, the DISTRICT has failed to provide K.C. with an appropriate behavior

intervention plan tailored to his needs or to adequately train MAHS staff to implement these strategies, leaving K.C.'s behavioral and emotional needs unaddressed.

Minor K.C.'s IEP places him in MAHS's Successful Transition Achieved with Responsive Support ("STARS") program. This program provides academic, behavioral, and social-emotional support to students with mental health needs. K.C. attended one period per day in the STARS classroom, where he was supposed to receive specialized support from mental health professionals and special education teachers trained in trauma-informed de-escalation strategies. MAHS policy dictates that when a STARS student becomes agitated or unresponsive, staff should immediately contact the student's assigned STARS teacher for assistance. To facilitate this process, all administrators at MAHS are provided with the direct contact information for STARS teachers.

On April 28, 2023, at approximately 3:21 p.m., minor K.C. was waiting at a bus stop near MAHS in Atherton, California, with minor D.B. and their friends after school. MAHS is located in a predominantly white and affluent school district. That week, students at MAHS were participating in a game called "Senior Assassin" using pool-noodle-like water toys, which had been confiscated by the school. Upon learning that his friends had their water toys returned, K.C. returned to the school office to retrieve his own.

While in the Principal's office, K.C. politely requested his water toy from the school secretary. As the secretary prepared to hand it to him, Defendant STEPHEN EMMI abruptly intervened, instructing the secretary not to return the toy. Defendant EMMI addressed K.C. in a demeaning and confrontational manner, repeatedly refusing to return the toy and escalating the situation instead of employing de-escalation strategies. Despite K.C.'s repeated requests, Defendant EMMI loudly asserted his authority, saying, "Who is the adult here?" When K.C. attempted to retrieve his toy, Defendant EMMI forcibly grabbed it and physically pushed against K.C., causing him to become visibly distressed, and further escalating the encounter. Instead of calling a STARS teacher as dictated by protocol, Defendant EMMI chose to surreptitiously record K.C. on his cell phone, further escalating the situation.

Defendant NICK MUYS, Vice Principal, soon intervened, stepping between K.C. and Defendant EMMI. Through tears, K.C. pleaded for an opportunity to discuss the situation in a separate setting, but Defendant MUYS refused, ordering him to leave the office. Still agitated, K.C. complied, walking back to the bus stop. Unbeknownst to him, one of the school secretaries called the police, informing the 911 operator that K.C. was a "mental health student" who was "easily triggered." At the time, all MAHS administrators involved were fully aware of K.C.'s IEP and his emotional disturbance classification. The school secretary did not inform the 911 operator that K.C. committed a crime in the school office.

While waiting at the bus stop with his friends, including minor D.B., K.C. was approached by Defendant DAVID METZGER, an officer from the Town of Atherton Police Department. Despite being informed that K.C. was a minor with mental health challenges, Defendant METZGER singled him out, instructing his friends to leave. When minor D.B. loudly reminded K.C. of his right not to engage with officers without a guardian present, Defendant METZGER ordered D.B. to leave immediately. After K.C. referred to D.B. as his "brother," Defendant METZGER directed Defendant DIEGO ROMERO to "book this guy [D.B.] up."

Defendant ROMERO aggressively grabbed D.B.'s wrist, shoved him against a wooden fence, handcuffed him, and forced him to sit on the ground. K.C., visibly distressed, asked the officers to stop, only to be grabbed by Defendant METZGER, who ignored K.C.'s pleas not to be touched. When K.C. raised his hands in fear and backed away, Defendant METZGER slammed him to the ground, exacerbating pain from a recent hernia surgery. Despite his friends' protests and warnings about his medical condition, the officers forcefully restrained K.C., rolling him onto his stomach and kneeling on his back while handcuffing him.

Although K.C. did not resist, the officers dragged him to a patrol car, lifting him in a manner that further injured him. K.C. repeatedly asked why he was being arrested but received no response. He was transported to the Atherton police station, where he remained handcuffed until his grandmother arrived several hours later. Despite cooperating, K.C. was subjected to unnecessary and prolonged restraint.

Meanwhile, minor D.B. remained handcuffed at the bus stop. When he inquired about his detention, Defendant ROMERO falsely claimed that he was obstructing the officer's interaction with K.C., despite merely standing nearby. Officers coerced D.B. into a conversation, only removing his handcuffs after obtaining his personal information and contacting his mother.

The DISTRICT defendants' mishandling of the situation led to MAHS suspending K.C. for five days, a retaliatory measure that compounded the trauma caused by the incident. The events were recorded by students and shared widely, drawing national attention to the inappropriate actions of both the school and law enforcement.

Following the incident, MAHS Principal Karl Losekoot defended the administration's actions, alleging that K.C. committed a crime in the school office on April 28, and stating that police involvement was appropriate and should continue under similar circumstances. These actions fostered a hostile learning environment for K.C. and similarly situated students. Additionally, Defendant EMMI's surreptitious recording of K.C. was later shown to the DISTRICT Board of Trustees without parental consent, violating the Family Educational Rights and Privacy Act (FERPA). Despite repeated requests, the DISTRICT has not provided K.C.'s family with a copy of the recording.

On May 2, 2023, Defendant DMITRI ANDRUHA obtained K.C.'s Person Summary Report, a confidential student record containing K.C.'s personally identifiable information including a behavior detail report, from an unknown employee of Defendant SEQUOIA UNION HIGH SCHOOL DISTRICT without K.C.'s or his guardian's consent. Upon receiving K.C.'s Person Summary Report, Defendant ANDRUHA obtained five written statements from witnesses to the April 28, 2023 incident and one written statement from a MAHS teacher who witnessed an incident documented in K.C.'s behavior detail report on September 1, 2021.[1]

[1] Congress enacted the Family Educational Rights and Privacy Act (FERPA), at 20 U.S.C.S. § 1232g, to assure parents of students access to their educational records and to protect such individuals' rights to privacy by limiting the transferability of their records without their consent. FERPA defines "educational records" as records that are directly related to a student and

At the DISTRICT defendants' urging, minor K.C. was criminally charged as a result of this incident. The Atherton Police Department's report revealed that Defendant EMMI's cell phone recording of K.C. was submitted as evidence, but Plaintiffs' counsel has been denied access to this critical piece of information, further demonstrating the School District and Police Department collaborative effort to cover up information.

III. ARGUMENT

A. Plaintiffs' Claims Meet the Requirements for Permissive Joinder

1. Legal Standard for Permissive Joinder

Joinder is generally favored under the federal rules. *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged."); *Lasa Per L'Industria Del Marmo Soc. Per Azioni v. Alexander*, 414 F.2d 143, 147 (6th Cir. 1969) ("The intent of the rules is that all issues be resolved in one action, with all parties before one court, complex though the action may be.").

Under Federal Rule of Civil Procedure 20, Plaintiff must meet two specific requirements to join together Defendants in one single action: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and "(B) any questions of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). "[I]ndependent defendants satisfy the transaction-or-occurrence test of Rule 20 when there is a logical relationship between the separate causes of action. The logical relationship test is satisfied if there is substantial evidentiary overlap in the facts giving rise to the cause of action against each defendant." *In re EMC Corp.*, 677 F.3d 1351, 1358 (Fed. Cir. 2012); *see In re Prempro Prods.*

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maintained by an educational agency or institution or by a party acting for the agency or institution. K.C.'s Person Summary Report is an "educational record" and its disclosure by Defendant Sequoia Union High School District without K.C.'s, or his guardian's, consent was unlawful.

Liab. Litig., 591 F.3d 613, 622 (8th Cir. 2010) (noting that "all 'logically related' events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence," so Rule 20 "permit[s] all reasonably related claims for relief by or against different parties to be tried in a single proceeding" (citation omitted)); *United States v. Aquavella*, 615 F.2d 12, 22 (2d Cir. 1979) (noting that the "logical relationship" test looks to the separate claims and "attempts to determine whether the 'essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit' " (citation omitted)).

2. Defendants are Properly Joined in a Single Action.

In the case at bar, the Defendants are properly joined because the right to relief for each Plaintiff arises out of the same transaction or occurrence or series of transactions or occurrences and involve questions of law and fact that are common to all parties. *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). As such, Defendants' Motion to sever should be denied.

3. Plaintiffs' Rights to Relief Arise Out of the Same Transaction or Occurrence or Series of Transactions and Occurrences.

Under Federal Rule of Civil Procedure 20(a), "the same transaction requirement, refers to similarity in the factual background of a claim." Fed. R. Civ. P. 20(a). The "same transaction" requirement means that there must be some allegation that the joined defendants "conspired or acted jointly." *Tele–Media Co. v. Antidormi*, 179 F.R.D. 75, 76 (D. Conn. 1998). In this case, the claims brought by Plaintiffs, in particular K.C., arise from the wrongful conduct of Defendants in their inability to de-escalate the situation and in ignoring K.C.'s mental impairment. Defendants argue that the matters should be severed because the wrongdoing alleged by the Plaintiffs occurred at the bus stop and the arrest was after the 9-1-1 call. Dkt. No. 50 at 4. Such an argument is unavailing.

Severance of claims is not warranted because the individual claims brought by Plaintiffs are entangled with the same factual background which can only be viewed as a single transaction or occurrence. Plaintiffs' claims, in particular minor K.C.'s claims, all stem from the initial 911

call by school administrators to Atherton Police concerning minor K.C. and the resulting retaliatory conduct of both Defendants. Both Plaintiffs' claims cannot exist without the other. District Defendants initiated the series of events; but for the School administrators contacting Atherton Police Department and providing them with falsified facts and a description of minor K.C., the excessive force on Plaintiffs would not have occurred. Defendant DMITRI ANDRUHA obtained K.C.'s Person Summary Report, a FERPA-protected record, from an unidentified employee of Defendant SEQUOIA UNION HIGH SCHOOL DISTRICT without K.C.'s or his guardian's consent on May 2, 2023. Upon receiving K.C.'s Person Summary Report, Defendant ANDRUHA obtained five written statements from witnesses to the April 28, 2023 incident and one written statement from a MAHS teacher who witnessed an incident documented in K.C.'s behavior detail report on September 1, 2021. The unlawfully obtained educational record formed, in part, the basis of K.C.'s criminal complaint. MAHS Principal Karl Losekoot defended the administration's actions, stating that police involvement was appropriate and should continue under similar circumstances. Dkt. No. 44 at 33. Thus, there is a clear nexus between MAHS and the Atherton Police Department, where the former engages the police to intervene in situations premised on falsified information.

4. Logical Relationship

Defendants assert that there is no logical relationship between District Defendants and Town Defendants, and that District Defendants had no control over Town Defendants' interactions with K.C. and D.B. However, it is clear that although the District did not have control over Town Defendants' actions, they certainly influenced how Atherton Police Officers would interact with minor K.C. During the 9-1-1 call, school administrators articulated to Officers that minor K.C. was aggressive, assaultive, and disruptive during his interaction with Defendant Emmi. School administrators also provided Officers with a description of minor K.C., which included his race, build, clothing, and other associated details. Thus, a reasonable officer with information indicating that a suspect is assaultive will essentially determine the level of force to use, if any. District Defendants indicate that there was no mention of D.B. in the call to

police. Dkt. No. 50 at p. 9. However, the school administrator's 9-1-1 call to dispatch created a heightened emergency with their false statements and directed the Officers to a bus stop full of students, which ultimately put D.B. as well as other students at risk. As a result of the false statements made by the school district's administrators, D.B was subjected to excessive force. Additionally, minor K.C. has claims and allegations against both District defendants and Town defendants. Thus, it is clear that the School District defendants' actions set in motion minor K.C.'s and D.B.'s interaction with Atherton police officers. Therefore, there is a factual, logical relationship between minors K.C.'s and D.B.'s claims against Defendants.

In *Viahart, LLC v. GangPeng*, the Court found that there was no basis for misjoinder because there was sufficient evidence to demonstrate that Defendants were allegedly working together. *Viahart, LLC v. GangPeng*, No. 21-40166, 2022 WL 445161, at *4 (5th Cir. 2022). Viahart alleged that each defendant sold counterfeit products bearing its protected trademarks for Goodminton or Brain Flakes. *Id.* Viahart further alleged that the defendants all worked together as an "interrelated group" to knowingly sell the counterfeit products. *Id.* In Viahart's third amended complaint, it also alleged it still did not know the full identities of the defendants because they operated to conceal their identities and the network in which they operated. *Id.* The Fifth Circuit found that these allegations sufficiently alleged a series of occurrences within the meaning of Rule 20 because the case arose from the defendants allegedly working together to sell counterfeit products on numerous occasions and across different marketplaces. *Id.*; *cf. In re EMC Corp.*, 677 F.3d 1351, 1359 (Fed. Cir. 2012) (stating claims against independent defendants cannot be joined if the defendants are not acting in concert); *Digital Sin, Inc. v. Does 1-176*, 279 F.R.D. 239, 244 (S.D.N.Y. 2012) (concluding joinder was proper where plaintiff alleged defendants traded the same copyrighted work as a group). Because Viahart alleged the defendants were all working together, it sufficiently alleged their conduct arose out of the same transaction, occurrence or series of occurrences. *Viahart*, 2022 WL 445161, at *4. The Court therefore concluded that joinder was appropriate. *Id.*

In the case at bar, there is a logical relationship between the claims against the District defendants and the claims against the Town defendants because if school administrators complied with minor K.C. 's IEP and afforded him reasonable accommodations to address his disabilities, the Atherton Police officers would not have been involved. But for District Defendants' false statements about K.C.'s behavior, the Officers would not have subjected him to excessive force, and minor D.B. would not have been put at risk to be subjected to excessive force. In addition, an unidentified employee of Defendant SEQUOIA UNION HIGH SCHOOL DISTRICT disclosed minor K.C.'s confidential FERPA-protected records to Officer Andruha, which was ultimately disclosed in the officer's police report. It can be presumed that Officer Andruha's special relationship with MAHS afforded him access to these records. It is clear that there is an obvious logical relationship between District Defendants and Atherton police because minor K.C. 's confidential records would not have been disclosed had there not been some level of interrelation or entanglement. Thus, it is evident that there was a logical relationship.

5. Commonality

The claims against District Defendants and Town Defendants are common because liability exists between both parties. In *Petersen v. Bank of America Corp.*, the Court held that joinder was permissible based on commonality regarding liability, not damages. *Petersen v. Bank of America Corp.*, 232 Cal.App.4th 238, 252-53 (Cal. Ct. App. 2014). In *Petersen*, the court pointed out that although there was numerosity within the plaintiffs, the salient point was whether liability ultimately existed. *Id.*; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1022 (Cal. 2012) (" 'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' [Citations.]"). The salient point is that *liability* is amenable to mass action treatment. *Petersen*, 232 Cal.App.4th at 253.

Here, damages can be easily assessed between District Defendants and Town Defendants against minors K.C. and D.B. Thus, the real issue is whether there is clear liability, which does not require severance for the honorable court to determine. It is evident that K.C. has claims as

to: (1) whether the District violated Plaintiff K.C.'s rights under the ADA and section 504 of the Rehabilitation Act; (2) whether the Town violated minors K.C.'s and D.B.'s rights under the Fourth Amendment to be free of unreasonable searches and seizures; (3) whether District Defendants were negligent against minor K.C.; and (4) whether the District violated other state causes of actions against K.C. It is blatant that liability can be easily assessed between Defendants. Applying *Petersen,* the issue surrounding commonality regarding the claims is not so complex to require severance, and damages can be easily apportioned to both defendants.

6. The Relevant Policies and Procedures Applicable to the District Defendants are Not So Convoluted to Require Severance.

The fact that relevant policies and procedures apply differently to the Defendants is not enough to warrant severance. District Defendants indicate that there are multiple and separate entities that have been named as Defendants. Dkt. No. 50 at p. 10. However, it is obviously apparent that there are only two entities that are named, those being Sequoia Unified School District and Town of Atherton. Additionally, there are seven individual defendants in total that have been named in Plaintiffs' lawsuit. The number of entities and parties are not so voluminous to require severance. Accordingly, Plaintiffs satisfy the elements of permissive joinder, and the District Defendants' motion to sever should be denied in full.

7. Questions of Law and Fact are Common to All Parties.

As explained *supra*, Defendants are properly joined in a single action because Plaintiffs' claims for relief are based on the same transaction or series of transactions or occurrences. Moreover, severance is improper because the questions of law and fact are common to all parties. However, even if the court deems that there is no common question of law, this does not automatically deem severance appropriate. In *Russo v. Fed. Med. Servs., Inc.,* where a plaintiff in an employment action against two former employers sought to add a second plaintiff who also worked for the same employers at the same time, the court determined that Rule 20 does not require that all questions of law and fact raised by the dispute be common. *Russo v. Fed. Med. Servs., Inc.*, No. 24-CV-00748-PCP, 2024 WL 4718557, at *2 (N.D. Cal. Nov. 8, 2024); *see also*

Mosley v. General Motors Corp., 497 F.2d 1330, 1334 (8th Cir. 1974). Rather, the court observed that the purpose of Rule 20(a) is to "identify those shared issues that will collectively advance the prosecution of multiple claims in a joint proceeding." *Russo*, 2024 WL 4718557, at *2. (quoting *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1115 (9th Cir. 2018) (discussing the commonality requirement of rules 23(a), 20(a), and 42(a))). The court was thus satisfied that the common questions of fact and law raised by the amendment would materially advance the joint litigation. *Id.* Although the defendants argued that individualized issues may lead to jury confusion, the court determined that this presented a problem down the road and that it retained discretion to order separate trials should it become necessary. *Id.*; *see* Fed. R. Civ. P. 42(b).

Here, similar to *Russo*, there is a logical factual connection between District Defendants and Town Defendants. District Defendants' 9-1-1 call set in motion Town Defendants' encounter with minor K.C. Additionally, District Defendants' 9-1-1 call also put D.B. and other students at risk. By falsifying information about minor K.C., District defendants influenced the officers' interaction with him, ultimately leading to minor D.B. being subjected to excessive force for trying to stand up for him. Furthermore, as previously discussed, the matter is not so complex as to require severance. There are only two entities and seven individual defendants named. Thus, Plaintiffs are capable of deposing District Defendants and Town Defendants as well as subpoenaing witnesses in one single action without causing confusion to a jury. In the matter at bar, discovery has just commenced between parties. Plaintiffs believe that District Defendants Motion to Sever is premature when District Defendants ultimately created the evidentiary overlap by initiating the 9-1-1 call and providing Atherton police officer Andruha with minor K.C.'s confidential records. Simply because the law applies differently to each entity does not warrant severance when factually there is a logical and common relationship between District defendants and Town defendants. For these reasons, District Defendants' motion to sever should be denied in full.

B. All Pertinent Factors Weigh Against Severance

The District defendants contend that all factors considered by courts when deciding a motion to sever claims weighs in favor of severance. This contention ignores the indisputable reality that District defendants' conduct at the school office, both in their interactions with minor K.C. and in their decision to call the police, was the factual and proximate cause of his subsequent constitutional injuries. District defendants' rendition of the facts of what occurred at the office when they called the Atherton police (and when they acted in concert with Town defendants to criminally charge minor K.C. after the fact) largely determined how Town defendants treated minor K.C. As such, there is substantial evidentiary overlap between minor K.C.'s claims against District defendants and Town defendants. It follows that severance would hamper judicial efficiency and unnecessarily consume judicial resources as there would be redundant witnesses and evidence for minor K.C.'s claims, especially given the collusion between the District defendants and Town defendants to criminally prosecute Plaintiff K.C.. Keeping all parties in the same action would therefore optimally serve the interest of judicial economy.

Additionally, given the clear logical relationship between the incident in the school office and Plaintiffs' encounter with Town defendants at the school bus stop, severance would significantly prejudice Plaintiffs in litigating their claims within the larger context of what happened on April 28, 2023. On the other hand, District defendants' claim that they would be prejudiced without severance is entirely unsupported. Plaintiffs are not trying to "piggyback on public perceptions of police racism" and have only noted Plaintiffs' race because District defendants identified minor K.C. as a Black male student during the 911 call, making the significance of his race a fact question. Plaintiffs' race cannot be ignored, and Plaintiffs cannot control whatever associations the public makes with respect to their race. As such, the claims against District defendants should not be severed.

1. Legal Standard for Severance

Courts should construe Rule 20 liberally "in order to promote trial convenience and to expedite the final determination of disputes." *See League to Save Lake Tahoe v. Tahoe Reg'l*

Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977). In determining whether to sever claims, courts may consider various factors to evaluate whether joinder "comport[s] with the fundamental principles of fairness," including the possibility of prejudice to the parties and the motives of the party seeking joinder. *See Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980). Courts also have the discretion to refuse joinder in the interest of ensuring judicial economy and when different witnesses and documentary proof would be required for plaintiffs' claims. *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521-22 (2010). A court may only sever misjoined parties if "no substantial right will be prejudiced by the severance." *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). Courts consistently deny motions to sever where plaintiffs allege that defendants have engaged in a "common scheme or pattern of behavior." *In re Vitamins Antitrust Litigation*, No. MISC 99–197(TFH), 2000 WL 1475705, at *17 (D.D.C. May 9, 2000) (citing *Brereton v. Communications Satellite Corp.*, 116 F.R.D. 162, 164 (D.D.C.1987)).

Defendants attempt to analogize *Smith v. County of Santa Clara* to the instant matter, but *Smith* is highly distinguishable. In *Smith*, three out of four plaintiffs alleged retaliation claims against the same supervisor in the same hospital unit who allegedly punished them for making largely similar complaints. *Smith v. County of Santa Clara*, No. 5:11-CV-05643 EJD, 2013 WL 3242346, at *1-2 (N.D. Cal. Jun. 25, 2013). The fourth plaintiff's claims, however, were based on a "discrete" incident of allegedly substandard job performance that was unique to her, so the court severed her claims. *Id.* at *2, 5. Unlike the fourth plaintiff's subject incident in *Smith*, the incident at the school bus stop cannot be said to be "discrete" and distinct from the events at the school office because by calling the Atherton police and leading them to minor K.C. and other students at the bus stop, including minor D.B., District defendants triggered Plaintiffs' encounter with Town defendants and their resulting injuries. *See id.* at *5. All claims are thus related and raise common questions of fact, making severance improper.

2. The substantial evidentiary overlap in minor K.C.'s claims against District defendants and Town defendants weighs against severance.

In asserting that the issues sought to be severed are so different from each other that they would require distinct evidentiary proof, District defendants downplay how entangled their conduct was with that of the Town defendants.

In addition to setting in motion Plaintiffs' encounter with Town defendants by calling 9-1-1, misrepresenting minor K.C.'s actions at the office, and identifying K.C. by his race, clothing, and location at the bus stop, District defendants colluded with Town defendants to criminally prosecute K.C. An unknown school staff member, whose identity Plaintiffs will ascertain through discovery, disseminated minor K.C.'s confidential FERPA-protected Person Summary Report, which included K.C.'s behavior detail report, to Town Defendant Andruha. At the very least, that staff member will be a witness, if not a defendant, whose testimony will be essential to proving minor K.C.'s unlawful search and seizure claim against Defendant Andruha. Plaintiffs also have evidence that agents of the Town, including Defendant Andruha, used minor K.C.'s behavior detail report to identify, interview, and gather statements from District defendants Emmi and Muys as well as other staff members who witnessed the event at the school office and prior events involving K.C. If not already named as defendants, most of these individuals would also be witnesses whose testimony Plaintiffs would present as evidence to prove minor K.C.'s negligence, assault, battery, and intentional infliction of emotional distress claims against District Defendants Emmi and/or Muys as well as minor K.C.'s unlawful search and seizure claim against Town Defendant Andruha. These individuals would also be witnesses whose testimony Plaintiffs would present as evidence to prove minor K.C.'s Bane Act and disability discrimination claims against Defendant Sequoia Union High School District. As such, while there would be some evidence that would be unique to some claims against each set of defendants (e.g., bodycam footage for the excessive force claim against Town defendants, minor K.C.'s IEP and related documents for the disability discrimination claims against District defendants), a significant amount of evidence would be brought in to prove his claims against both entities. The evidentiary proof is therefore not so distinct as to justify severance. In fact,

there is enough overlap that severing the claims against the District would result in duplicative discovery and inconvenience to witnesses.

This case is analogous to *SEC v. National Student Marketing Corp.*, where a D.C. district court denied severance because the moving defendants "allegedly acted 'singly and in concert' with other defendants[,]" and due to common questions of fact amongst all defendants, the denial of severance would prevent unwarranted duplication in discovery. *SEC v. National Student Marketing Corp.*, 360 F.Supp. 284, 295-96 (D.D.C. 1973). In *National Student Marketing Corp.*, the SEC alleged violations of various securities laws against a corporation, its officers, directors, outside legal counsel, independent auditors, and other parties involved in a merger. *Id.* at 287-88. The corporation's outside legal counsel moved to sever the claims against them, which asserted that they issued materially false and misleading reports and opinions. *Id.* at 290-91. Notably, one of the claims against the outside legal counsel was unrelated to the merger at issue and involved the sale of two of the corporation's subsidiaries. *Id.* The court observed that the factual allegations in the claims against the outside legal counsel were closely related to the claims against several other defendants. Finding that the allegations "reveal an interrelationship of the conduct between these lawyers and other defendants who are also involved," the court denied the motion to sever to prevent "unwarranted duplication and complications in discovery and other areas and in furtherance of justice and the convenience of all concerned." *Id.* at 296.

Here, similar to how the outside legal counsel in *National Student Marketing Corp.* disseminated false and misleading reports that enabled violations of securities laws, District defendants provided misleading information to the Town defendants about minor K.C.'s actions in the school office, enabling the unconstitutional use of excessive force against minors K.C. and D.B. at the school bus stop and the subsequent seizure of minor K.C.'s confidential FERPA-protected Person Summary Report. *See id.* at 290-91. Given the common questions of fact concerning the incident at the school office and the "interrelationship of the conduct" between the District and Town defendants, denying severance would prevent duplicative discovery and promote convenience to all concerned. *Id.* at 296; *see also Zaldana v. KB Home*, No. C–08–3399

MMC, 2010 WL 4313777, at *2-3 (N.D. Cal. Oct. 26, 2010) (denying a motion to sever brought by two defendant financing entities where a plaintiff alleged that a defendant homebuilding company that sold him a home referred him to both entities and collected kickbacks from the referrals, holding that both arrangements "are alleged to have been committed through a common third defendant . . . and both are alleged to have culminated in a single transaction, the purchase of a home . . . defendants' objection is not well-taken as to plaintiff's evidence with respect to the need to call a number of the same witnesses in both trials").

Defendants emphasize that minor D.B. does not assert a claim against the District Defendants, but it is unclear why this supports severing the claims against District defendants. Both D.B.'s and K.C.'s encounters with Town defendants are intrinsically tied to the underlying incident in the school office, for which the District defendants called the police on minor K.C.. Because of this fact, it is proper to join District defendants and Town defendants. While Plaintiffs concede that District defendants could not have foreseen that Town defendants would use excessive force against minor D.B., both K.C. and D.B. suffered injuries in the same series of transactions or occurrences that were set in motion by District defendants.

Defendants' citation to *On the Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500 (N.D. Cal. 2011) is unavailing. There, the plaintiff sought to join over five thousand Doe defendants alleged to have used the same software to download the same adult film. *On the Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 501 (N.D. Cal. 2011). In addition to agreeing with earlier rulings within the same district finding that downloading the same file did not mean that each of the defendants were engaged in the same transaction or occurrence, the Northern District court determined that the large number of defendants residing in different states with individual cases would create "scores of mini-trials involving different evidence and testimony" and complicate the issues. *Id.* at 502-03. Unlike in *On the Cheap*, this case involves two plaintiffs who were both subjected to excessive force in the *same* incident that was instigated by *two* defendant entities. The District defendants have no need to present any evidence or testimony as to Plaintiff D.B., who has not alleged any claims against them, and Plaintiff K.C. would have plenty of overlapping evidence in

connection with his claims against them and the Town defendants, as detailed above. As such, the redundancy of the evidence that would be presented as to both defendants warrants keeping all parties in the same lawsuit.

3. Severing the claims against the District defendants would unnecessarily burden the judicial economy.

Contrary to defendants' assertions, severing this case and requiring a second lawsuit to be filed against the District defendants would not serve the interests of judicial economy or promote judicial efficiency. Defendants strain to argue that there are "two distinct incidents" in this lawsuit when it is evident that District defendants' decision to call 9-1-1, misrepresent the situation at the school office, and direct Town defendants to target Plaintiff K.C. immediately led to the use of excessive force at the school bus stop a short distance away. As discussed above, there is significant overlap between the evidence relevant to Plaintiffs' claims against both the District defendants and the Town defendants. Separate trials would require many of the same witnesses to appear twice to provide testimony pertinent to Plaintiff K.C.'s negligence, assault, battery, intentional infliction of emotional distress, Bane Act, ADA, and Rehabilitation Act claims against District Defendants Emmi and/or Muys as well as Plaintiff K.C.'s unlawful search and seizure claim against Town Defendant Andruha.

Moreover, District defendants overstate the complexity of case management. At no point have the nine defendants had to be separately served with motions and documents–the District defendants are all represented by the same counsel accepting service on behalf of all of them, as is the case with the Town defendants.

District defendants misleadingly cite to *On The Cheap, LLC v. Does 1-5011* to assert in a parenthetical that severance is "likely appropriate" where defendants will likely raise different factual and legal defenses. Dkt. No. 50 at p. 12, lines 18-20 (citing *On The Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 503 (N.D. Cal. 2011)). Nowhere in the *On The Cheap* opinion does the district court state such a strong proposition. The possibility that defendants will raise different factual and legal issues is merely a factor that weighs in favor of severance. In *On The Cheap*, it

was a significant factor because five thousand Doe defendants raising different factual and legal defenses would have been guaranteed to challenge judicial efficiency and create case manageability issues "with hundreds if not thousands of defendants filing different motions, including dispositive motions, each raising unique factual and legal issues that [would] have to be analyzed one at a time." *On The Cheap*, 280 F.R.D. at 503. Here, the Town and District defendants would largely have the same factual defenses given that the same single incident at the school office is at the core of each claim in this case. Although the Town and District defendants would have different *legal* defenses, this case is not so complex that it requires severance. Depositions of all defendants, subpoenas for records, and discovery can all be completed in a single action, promoting judicial efficiency. It is speculative for District defendants to assume at this stage that there will be multiple distinct discovery disputes, given that there have been none thus far.

Finally, District defendants speculate that nine defendants would possibly need to attend eleven different party depositions if the case is not severed. This contention presupposes that Plaintiffs plan to depose each officer defendant. Moreover, all three District defendants are represented by the same counsel, who has the *option* to attend officer depositions, but certainly is not required to. The District party defendants themselves would not need to be present at the officer depositions. Indeed, it is unclear what benefit District defendants would gain from attending the depositions of Town defendants Metzger, Romero, Davidovich, and Gatto, who were only involved in the use of excessive force. District defendants' deposition-related concerns are therefore baseless.

Accordingly, on the whole, severance of the claims against District defendants would impede the promotion of judicial efficiency and ultimately burden the judicial economy. Severance would not facilitate judicial economy where all the same parties are involved in the claims at issue, as well as witnesses and documentary evidence.

4. The prejudice that Plaintiffs would suffer if the subject incidents were litigated in isolation outweighs any prejudice that District defendants might suffer if severance is denied.

The Ninth Circuit has held that severance is permissible where no substantial right of any Plaintiff will be prejudiced. *See* Fed. R. Civ. P. 21; *see also Coughlin*, 130 F.3d at 1351. As stated *supra*, all of the claims brought by Plaintiffs against Defendants arise out of the same transaction or occurrence or series of transactions and are based on common questions of law and fact. Severance of claims would substantially prejudice Plaintiffs because it would require the Plaintiffs to submit to duplicative discovery around liability and damages, including testifying at multiple depositions.

Severance would also prejudice Plaintiffs because the incident at the school office is at the core of each of minor K.C.'s claims. Plaintiffs' theory is that the school office encounter, as described by District defendants to the Atherton police, informed Town defendants' decisions as to how they would treat minor K.C. at the bus stop and in the following days as they sought his confidential FERPA-protected records and acted in concert with District defendants to criminally charge him. District defendants' actions are thus intertwined with those of the Town defendants as the two entities and their agents worked together to violate minor K.C.'s rights and cause him injury. Plaintiffs will be unable to effectively prove this theory if the claims against District defendants are severed, since much of the evidence pertaining to the bus stop encounter and subsequent collusion between Town and District defendants would likely be inadmissible in a case proceeding solely against District defendants. As such, if minor K.C.'s experiences at the school office and bus stop are viewed in isolation, he will be significantly limited in proving his unlawful search and seizure claim (which will require the context of what occurred at the school office and the sensitive nature of school records pertaining to his disability) and disability discrimination claims (which will require evidence that calling the police on minor K.C., in lieu of affording him reasonable accommodations and complying with his IEP, because he manifested symptoms of his disability and subjecting him to a foreseeable arrest involving force constituted the denial of meaningful, equal access to educational aid, benefits, or services). *See Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962) ("plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various

factual components" and the trier of fact must "look at the whole picture and not merely at the individual figures in it"); *In re Vitamins Antitrust Litigation*, No. MISC 99–197(TFH), 2000 WL 1475705 (D.D.C. May 9, 2000) (denying a motion to sever where plaintiffs alleged that defendants conspired to inflate the prices of various vitamins, and holding that "it would be improper at this time to prejudge the scope of the conspiracy that plaintiffs allege . . . These motions are premature. No depositions have been taken and document discovery is still in an early stage").

District defendants' argument that they will be prejudiced by Plaintiffs' references to race if the case is not severed is unfounded. Plaintiffs do not have a racial discrimination claim against the Town defendants, let alone the District defendants, and are not trying to "piggyback on public perceptions of police racism." Dkt. No. 50 at p. 13, lines 1-5. District defendants made Plaintiffs' race relevant when they identified K.C. as a Black male student during the 911 call. The significance of Plaintiffs' race is thus a fact question, and not one that determines whether this case should be severed. Plaintiffs cannot hide their race, nor can they control the associations that the public makes with respect to their race. Any such associations would come into play against the District even if Plaintiff K.C.'s claims against the District defendants were severed, given the common understanding that school and district officials can also racially discriminate against students of color via practices such as the school-to-prison pipeline.

Therefore, since the prejudice to Plaintiffs if the case is severed significantly outweighs any possible prejudice that District defendants would suffer if they remained joined, the Court should deny District defendants' motion.

Accordingly, Defendant's Motion to Sever should be denied in full.

IV. CONCLUSION

Based on the foregoing, Defendants should not be severed from the action because Plaintiffs satisfy the elements of permissive joinder, and none of the factors weighing in favor of severance apply. Additionally, Plaintiff will be substantially prejudiced if the claims are severed as Plaintiffs and witnesses would be subjected to multiple, duplicative depositions and discovery

requests. The complexity of the case does not require severance and would not promote judicial economy.

Dated: February 10, 2025 **BURRIS NISENBAUM CURRY & LACY, LLP**

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Dated: February 10, 2025 **SPECIAL EDUCATION COLLABORATION PROJECT**

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