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11 SEQUOIA UNION HIGH SCHOOL DISTRICT,
12 STEPHEN EMMI and NICK MUYS

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 v.

20 TOWN OF ATHERTON, a municipal
21 corporation; DAVID METZGER, individually
22 and in his official capacity as a police sergeant
23 for the TOWN OF ATHERTON; DIEGO
24 ROMERO, individually and in his official
25 capacity as a police officer for the TOWN OF
26 ATHERTON; IGOR DAVIDOWICH,
27 individually and in his official capacity as a
28 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-RFL

**DEFENDANTS SEQUOIA UNION HIGH
SCHOOL DISTRICT, STEPHEN EMMI AND
NICK MUYS' MOTION TO SEVER CLAIMS**

Date: March 11, 2025
Time: 10:00 a.m.
Crtrm: Courtroom 15, 18th Floor

Hon. Rita F. Lin

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NOTICE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on March 11, 2025 at 10:00 a.m., in Courtroom 15 – 18th Floor, located at 450 Golden Gate Ave., San Francisco, California, Defendants SEQUOIA UNION HIGH SCHOOL DISTRICT, STEPHEN EMMI and NICK MUYS (collectively “District Defendants”), pursuant to Federal Rule of Civil Procedure, Rules 20, 21, and 42(b), will and hereby do move for Plaintiff K.C.’s claims against the District Defendants to be severed from all other claims on the grounds that the claims are misjoined, the two incidents that form the basis of Plaintiff K.C.’s claims are distinct and independent from one another, there is widely differing evidence pertinent to the claims sought to be severed, severance serves the interest of judicial economy and there is substantial risk of prejudice to the District Defendants that warrants severance. This motion is based on this notice, the memorandum of points and authorities, the papers and pleadings on file herein, and on such oral and documentary evidence as may be adduced at the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs K.C., by and through his Guardian ad Litem, MYISCHA THOMPSON and D.B., by and through his Guardian ad Litem, LIBRA WHITE (“Plaintiffs”) bring this action against Defendants TOWN OF ATHERTON (“TOWN”), DAVID METZGER, DIEGO ROMERO, IGOR DAVIDOWICH, JOSHUA GATTO, DIMITRI ANDRUHA, the SEQUOIA UNION HIGH SCHOOL DISTRICT (the DISTRICT”), STEPHEN EMMI and NICK MUYS, for violations of civil rights under 42 U.S.C. § 1983, state law torts, and statutory violations arising out of two separate and distinct incidents that allegedly occurred on April 28, 2023. Plaintiff K.C. (“Plaintiff”) also asserts discrimination claims against the DISTRICT. While there are two Plaintiffs (K.C. and D.B.), only K.C. has brought claims against the DISTRICT, EMMI, and MUYS (collectively “District Defendants”). The TOWN and its police officers, METZGER, ROMERO, DAVIDOWICH, GATTO and ANDRUHA, are represented by separate counsel.

This action improperly combines two distinct and separate incidents into one complaint. Plaintiff K.C.’s claims against the District Defendants and the Town Defendants involve two different sets of

1 factual and legal questions and two different sets of documentary proof and witnesses. They are, in all
2 material respects, two separate cases proceeding artificially as one. Permitting the case to proceed as is
3 will prejudice the District Defendants and cause jury confusion by mixing together the allegations unique
4 to each incident.

5 **II. SUMMARY OF ARGUMENT AND STATEMENT OF ISSUES TO BE DECIDED**

6 The claims against the District Defendants should be severed on the grounds that the claims are
7 misjoined, the two incidents that form the basis of Plaintiff K.C.’s claims are distinct and independent
8 from one another, there is widely differing evidence pertinent to the claims sought to be severed,
9 severance serves the interest of judicial economy and there is substantial risk of prejudice to the District
10 Defendants if K.C.’s claims against the TOWN and its police officers are tried together with the claims
11 against the District Defendants. The District Defendants thus respectfully request that this Court sever
12 Plaintiff K.C.’s claims against the District Defendants pursuant to Federal Rule of Civil Procedure, Rules
13 20, 21, and 42(b).

14 **III. PLAINTIFF’S ALLEGATIONS AGAINST THE DISTRICT DEFENDANTS**

15 **A. Parties and Background**

16 K.C. alleges he is a disabled minor with an intellectual disability and emotional disturbance.
17 (Second Amended Complaint, Docket No. 39 (“SAC”) ¶ 7.) He alleges that due to his disability, he is
18 entitled to the legal rights and remedies set forth in the Individuals with Disabilities Education Act
19 (“IDEA”) and is an individual with exceptional needs pursuant to California Education Code § 56026.
20 (*Id.*) Plaintiff K.C. alleges that he has a mental impairment that substantially limits one or more major
21 life activities within the meaning of 34 C.F.R. § 104.3(j). (*Id.*) The DISTRICT is a public entity duly
22 incorporated and operating under existing law of the State of California and receives federal financial
23 assistance. (SAC ¶ 15.) Defendant STEPHEN EMMI was a vice-principal at Menlo Atherton High
24 School (“MAHS”), a public school maintained and operated by the DISTRICT. (SAC ¶ 17.) Defendant
25 NICK MUYS was also a vice-principal at MAHS during the relevant time periods alleged within the
26 SAC. (SAC ¶ 18.) DISTRICT individuals, EMMI and MUYS are sued in their individual and official
27 capacities. (SAC ¶¶ 17-18.)
28

1 The SAC alleges that Plaintiff K.C. is a 16-year-old Black male student at MAHS who
2 experiences pervasive feelings of anxiety and depression and has deficits in auditory processing, short
3 term memory, executive functioning, visual motor integration skills, and social language. (SAC ¶ 21.)
4 K.C. alleges that his impairment can cause him to exhibit signs of frustration and being overwhelmed,
5 which requires positive behavior intervention strategies and that K.C. requires consistent proactive
6 positive behavior interventions, effective coping skills, and informed de-escalation strategies. (*Id.*) K.C.
7 alleges that the DISTRICT has never provided him with an appropriate behavior intervention plan that
8 addresses his behavioral needs, nor has the DISTRICT properly trained the staff at MAHS to implement
9 positive behavior intervention strategies and employ appropriate de-escalation strategies for students with
10 mental health needs. (*Id.*)

11 The SAC alleges that K.C.’s individualized education plan (“IEP”) placed him in MAHS’s
12 Successful Transition Achieved with Responsive Support (“STARS”) program, which he attended one
13 school period per day in the STARS classroom where he received academic, behavioral, and
14 social/emotional special education support. (SAC ¶ 22.) The SAC further alleges that MAHS policy
15 provides that when a STARS student is agitated and unresponsive to adult directives, staff is encouraged
16 to immediately contact a STARS teacher for that particular student for assistance. (*Id.*) To carry this
17 policy out, all administrators at MAHS have been given the cell phone number for each STARS teacher
18 so they may be immediately contacted when a student is dysregulated. (*Id.*) The SAC alleges that
19 pursuant to K.C.’s IEP, school staff are not supposed to contact police in response to an emotional
20 disturbance episode. (*Id.*)

21 **B. The Incident at MAHS**

22 On April 28, 2023, Plaintiff K.C. went to the Principal’s office at MAHS to retrieve a water
23 “toy,” which had been confiscated by school staff earlier that week. (SAC ¶¶ 23-24.) The SAC alleges
24 that K.C. “politely” asked a school secretary for his water toy back, which was located behind the
25 secretary. (SAC ¶ 24.) The SAC alleges that as the secretary was about to return the water toy to K.C.,
26 EMMI “suddenly came out of his office” and instructed the secretary not to return the toy to K.C. (*Id.*)
27 The SAC alleges EMMI spoke to K.C. in a demeaning and confrontational manner and repeatedly told
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1 him he would not get his water toy back. (*Id.*)

2 The SAC alleges that K.C. asked EMMI for his water “toy” back multiple times but EMMI
3 loudly stated, “Who is the adult here?” (*Id.*) It alleges that when K.C. attempted to retrieve the water
4 “toy,” EMMI “forcibly grabbed the toy and physically pushed into” K.C.’s body. (*Id.*) The SAC alleges
5 that K.C. became frustrated, emotionally distressed, and began to shout at EMMI. (*Id.*) It further alleges
6 that at some point during the interaction, EMMI began to surreptitiously record K.C. on his cell phone
7 rather than call a STARS teacher for assistance and failed to implement a de-escalation tactic. (*Id.*)

8 The SAC alleges that MUYS soon intervened and stepped in between K.C. and EMMI and that
9 K.C., while crying, asked EMMI and MUYS to go somewhere to discuss the situation but MUYS said
10 “No.” (SAC ¶ 25.) It further alleges that MUYS and EMMI then ordered K.C. to leave the office
11 immediately while K.C. was in an agitated state. (*Id.*) The SAC alleges that K.C. then turned around,
12 walked out of the office, and headed towards the bus stop. (*Id.*) The SAC alleges that while K.C. was in
13 the office, one of the school secretaries called the police and that during the 911 call, the caller informed
14 the operator that K.C. was a “mental health student” who was “easily triggered.” (*Id.*) The SAC alleges,
15 upon information and belief, that all MAHS administrators and staff who were present in the office
16 during the incident were aware that K.C. qualified for an IEP due to an emotional disturbance. (*Id.*)

17 C. Separate Incident at Bus Stop

18 The SAC alleges that while at the bus stop and off campus, K.C. encountered TOWN officers,
19 whom he claims used unwarranted and excessive force against him. (SAC ¶¶ 26-28.) Plaintiff was
20 waiting for the bus with minor D.B. and other friends when Defendants Metzger and Romero approached
21 them. (SAC ¶ 26.) Defendant Romero “toughly [sic.] grabbed minor D.B.’s wrist and arm, shoved him
22 face forward into a wooden fence” and Defendant Metzger “grabbed [Plaintiff’s] shoulder from behind”
23 and “slammed [him] onto the ground.” (SAC ¶ 27.) Defendant Metzger then allegedly rolled Plaintiff
24 onto his stomach and shoved a knee into his back. (*Id.*) The officers allegedly “pulled [Plaintiff’s] arm to
25 lift him up, further injuring [him].” (SAC ¶ 28.)

26 D. Post-Incidents

27 The SAC alleges that immediately following the incident, MAHS Principal, Karl Losekoot,
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1 convened a meeting among staff and affirmed that the actions of school administration on April 28th were
 2 appropriate and if the same circumstances were to arise in the future, the police should be called. (SAC
 3 ¶ 33.) It alleges that at some point prior to May 8, 2023, an unknown employee of the DISTRICT played
 4 the surreptitious recording captured by EMMI to the DISTRICT Board of Trustees. (*Id.*)

5 The SAC further alleges that on May 8, 2023, the DISTRICT convened a Manifestation
 6 Determination meeting with K.C.'s IEP team to determine if the conduct on April 28, 2023, was caused
 7 by or had a direct and substantial relationship to K.C.'s disabilities, or if the conduct resulted from
 8 MAHS's failure to implement K.C.'s IEP. (*Id.*) It alleges that after the meeting concluded, K.C.'s legal
 9 representatives received K.C.'s police report from the Atherton Police Department, which included
 10 signed and dated witness statements from various school administrators, including EMMI and MUYS.
 11 (*Id.*) It alleges the police report also included a Person Summary Report that contained K.C.'s personal
 12 identifying information, including student ID, contact information and a Behavior Detail Report that
 13 detailed his behaviors exhibited at MAHS since 9th grade. (*Id.*) The SAC alleges that K.C.'s mother,
 14 never provided consent for the DISTRICT to release K.C.'s educational records to the Atherton Police
 15 Department, and no court order had been issued compelling such release. (*Id.*) It alleges that the Detail
 16 Report was provided to Defendant ANDRUHA by an unknown "school administrat[or]." (SAC ¶ 34.)

17 IV. LEGAL ARGUMENT

18 A. Legal Standard Regarding Permissive Joinder

19 Federal Rules of Civil Procedure, Rule 20(a)(1) provides that persons may join in one action as
 20 plaintiffs if:

21 (A) they assert any right to relief jointly, severally, or in the alternative with
 22 respect to or arising out of the same transaction, occurrence, or series of
 transactions or occurrences; and

23 (B) any question of law or fact common to all plaintiffs will arise in the action.

24 Federal Rules of Civil Procedure, Rule 20(a)(2) provides that persons may be joined in one action
 25 as defendants if:

26 (A) any right to relief is asserted against them jointly, severally, or in the
 27 alternative with respect to or arising out of the same transaction, occurrence,
 28 or series of transactions or occurrences; and

1 (B) any question of law or fact common to all defendants will arise in the action.

2 These tests for permissive joinder “impose[] two specific requirements for the permissive joinder
3 of parties: (1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or
4 arising out of the same transaction or occurrence or series of transactions or occurrences; and (2) some
5 question of law or fact common to all parties must arise in the action.” (*Desert Empire Bank v. Ins. Co. of*
6 *N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980).) For purposes of permissive joinder, claims arise out of
7 “the same transaction, occurrence, or series of transactions or occurrences” if they have “factual
8 similarity.” (*See Visendi v. Bank of Am., N.A.*, 733 F.3d 863, 870 (9th Cir. 2013) “[T]his provision
9 requires factual similarity in the allegations supporting [p]laintiffs’ claims.” There is no bright-line
10 definition of “transaction,” “occurrence,” or “series.” (*Nguyen v. CTS Elecs. Mfg. Sols. Inc.*, 301 F.R.D.
11 337, 341 (N.D. Cal. 2014).) Instead, courts assess the facts of each case individually to determine
12 whether joinder is sensible in light of the underlying policies of permissive party joinder. (*Id.*)

13 In *Visendi*, the Ninth Circuit determined that joinder was improper where a group of plaintiffs
14 sued 15 different defendants for illicit lending practices finding that the “[f]actual disparities of the
15 magnitude alleged are too great to support permissive joinder.” (*Visendi, supra*, 733 F.3d at 870.) There
16 were over 100 distinct loan transactions with many different lenders, and—contrary to Plaintiffs’
17 conclusory allegations that the Defendants’ misconduct was “regular and systematic”—Plaintiffs’
18 interactions with Defendants were not uniform. (*Id.*) With regard to the second element, the Court in
19 *Visendi* held that Plaintiffs’ claims did not present a common question of law or fact because the case
20 involved separate properties, separate transactions, and Plaintiffs’ dealings with Defendants were
21 “necessarily varied.” (*Id.*) Notably, the Court emphasized that Plaintiffs’ claims required “particularized
22 factual analysis.” (*Id.*)

23 **B. Legal Standard Regarding Severance**

24 Federal Rules of Civil Procedure, Rule 20(b) provides that courts “may issue orders—including
25 an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice
26 that arises from including a person against whom the party asserts no claim and who asserts no claim
27 against the party.” Federal Rules of Civil Procedure, Rule 21 provides that “[o]n motion or on its own,
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1 the court may at any time, on just terms, add or drop a party. The court may also sever any claim against
2 a party.” Federal Rules of Civil Procedure, Rule 42(b) provides that “[f]or convenience, to avoid
3 prejudice, or to expedite and economize, the court may order a separate trial of one or more separate
4 issues, claims, crossclaims, counterclaims, or third-party claims.” Consequently, if the test under Federal
5 Rules of Civil Procedure, Rule 20(a)(2) is not met, “a court may sever the misjoined parties, ‘so long as
6 no substantial right will be prejudiced by the severance.’” (*Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th
7 Cir. 1997).) A district court must examine whether permissive joinder would ‘comport with the
8 principles of fundamental fairness’ or would result in prejudice to either side.” (*Coleman v. Quaker Oats*
9 *Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (internal citations omitted).) “Since joinder is permissive in
10 character, there is ‘no requirement that the parties must be joined,’ particularly where joinder would
11 ‘confuse and complicate the issues for all parties involved’ rather than make the resolution of the case
12 more efficient.” (*On The Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 503 (N.D. Cal. 2011) *quoting*
13 *Wynn v. Nat’l Broad. Co., Inc.*, 234 F.Supp.2d 1067, 1078 (C.D. Cal. 2002) (severance likely appropriate
14 where “defendants will likely raise different factual and legal defenses”); *see also SBO Pictures, Inc. v.*
15 *Does 1-3036*, No. 11-4220 SC, 2011 WL 6002620, at *3 (N.D. Cal. Nov. 30, 2011) (“Courts may also
16 consider...whether joinder would confuse and complicate the issues for the parties involved.”).)

17 Further, courts sever cases that are “distinct and independent from one another.” (*See, Rush v.*
18 *Sport Chalet, Inc.*, 779 F.3d 973, 974 (9th Cir. 2015) (the Ninth Circuit upheld severance because
19 Plaintiff’s injuries were distinct and independent from one another, and she had not alleged “any legal
20 relationship between them.”); *see also, Thomas v. McCarthy*, 714 Fed.Appx. 674, 676 (9th Cir. 2017)
21 (severance was proper when claims were distinct.))

22 This Court’s decision in *Smith v. County of Santa Clara*, No. 5:11-CV-05643 EJD, 2013 WL
23 3242346 (N.D. Cal. June 25, 2013) is illustrative. There, four plaintiffs filed 22 causes of action against
24 the County of Santa Clara, each alleging separate causes of action of discrimination, retaliation, and other
25 distinct claims. (*Id.* at 2-4.) Three plaintiffs voiced concerns over discrimination around the same time
26 period, performed substantially the same duties, worked in the same unit of the same hospital, and
27 asserted claims for discrimination and retaliation against the same employer, the County, and the same
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1 supervisor. (*Id.*) The fourth plaintiff, Aida Oliva—while asserting the same causes of action as the other
 2 plaintiffs—based her claims on a termination of employment following a specific incident of allegedly
 3 substandard job performance, which apparently forced the County disclose information protected by
 4 HIPAA. (*Id.* at 5.)

5 With regard to the transactional relatedness, the Court differentiated Oliva’s claims because
 6 unlike the others, “the crux of [her] allegations is not discipline for speaking out about patient safety and
 7 preference” but rather “substandard job performance, which apparently forced the County to disclose
 8 information protected by HIPAA.” (*Id.* at 5.) The Court reasoned that “[a]lthough Oliva attempts to tie
 9 her claims in with the others by also asserting causes of action based on racial discrimination and
 10 unwarranted discipline for a HIPAA violation, those causes of action and the allegations which support
 11 them appear on the periphery. The fact that Oliva’s allegations arise from a discrete event unique to her is
 12 inescapable, no matter the causes of action she chooses to assert.” (*Id.*)

13 The Court analyzed the question of commonality under the same prism as transactional
 14 relatedness, holding that Oliva’s claims arise from a unique factual scenario. (*Id.* at 6.) The Court further
 15 held that “[t]he fact that she asserts causes of action under the same laws as [the other plaintiffs] is not
 16 enough to transform her allegations into common ones for the purpose of Rule 20(a).” (*Id.*) Finally, the
 17 Court held that severance would not be prejudicial since Oliva’s claims are based on one incident and
 18 one ultimate form of discipline and would “stand or fall on those facts.” (*Id.*) On that basis, this Court
 19 severed Oliva’s claims into a distinct action. (*Id.*)

20 **C. Severance of Claims is Appropriate Because the Claims Do Not Meet the Requirements**
 21 **for Permissive Joinder**

22 Plaintiffs have failed to meet the requirements for permissive joinder. “By its terms, [the same
 23 transaction or occurrence requirement] requires factual similarity in the allegations supporting Plaintiffs’
 24 claims.” (*Visendi*, 733 F.3d at 870; see also, *Coughlin*, 130 F.3d at 1350 (9th Cir. 1997) (“The first
 25 prong, the ‘same transaction’ requirement, refers to similarity in the factual background of a claim.”).
 26 “[T]he single transaction or occurrence requirement is not met where plaintiffs would have to prove their
 27 claims or defendants would have to litigate their defenses on an individualized basis.” (*Corley v. Google*,

1 *Inc.*, 316 F.R.D. 277, 284 (N.D. Cal. 2016) (holding same transaction or occurrence test was not met
2 because plaintiffs’ claims required evaluation on individualized basis). In this sense, “the single
3 transaction or occurrence analysis under Rule 20(a)” and “the predominance analysis under Rule
4 23(b)” i.e., whether any purported common issue predominates over individual issues of fact and law
5 “may, in some instances, be two sides of the same coin.” (*Id.* at 286.)

6 As discussed in *Desert Empire Bank*, one requirement is that the claims must arise out of the
7 same transaction or occurrence. (*Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir.
8 1980).) There is no qualifying single transaction in this case. To the contrary, Plaintiff K.C.’s claims here
9 are based on two separate and distinct incidents involving two sets of alleged actors. This action against
10 the District Defendants involves claims that are “distinct and independent from” those brought against
11 the Town of Atherton and a number of police officers, none of whom are subject to the District
12 Defendants’ control.

13 Moreover, the SAC appears to implicitly admit that the District Defendants had no control over
14 the actions of the other defendants, which is why D.B. asserts no claims against the District Defendants
15 and K.C. asserts numerous claims against defendants other than the District Defendants. This shows that
16 the claims asserted against the District Defendants are unique and distinct from the claims asserted
17 against all other defendants and in fact involve two separate and distinct incidents. The District
18 Defendants called the police about an aggressive, violent student that posed a threat to school
19 administrators and other students and was never in control over whether that student would be arrested or
20 in what manner; the District Defendants did not exert any control or influence over the police officers
21 that arrested Plaintiffs off campus. In fact, the District Defendants did not even mention D.B. in the call
22 to police. Accordingly, the alleged excessive force used by police when arresting Plaintiffs is not part of
23 the same transaction or occurrence that allegedly occurred earlier on campus in the school principal’s
24 office, which involved a dispute over a water toy. Under these circumstances, the “[f]actual disparities of
25 the magnitude alleged are too great to support permissive joinder.” (*Visendi*, 733 F.3d at 870.)

26 In addition, there is no commonality because, similar to this Court’s decision in *Smith*, the claims
27 asserted against the District Defendants are based on completely separate facts than the claims asserted
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1 against all other defendants. Specifically, the action consists of two separate incidents. The first involves
2 the District Defendants. During this incident, Plaintiff went to the Principal's office to retrieve his water
3 toy when EMMI allegedly responded in a demeaning and confrontational manner and "forcibly grabbed
4 the toy and physically pushed into" K.C.'s body. (SAC ¶¶ 23-24.) Agitated, Plaintiff K.C. walked out
5 and went to the bus stop *off campus*. (SAC ¶ 25.) The SAC also alleges a negligence claim against
6 another administrator, MUYS, with respect to the encounter in the office. Plaintiff K.C. also asserts a
7 discrimination claim against the DISTRICT with respect to his educational services and enrollment in the
8 DISTRICT. That is the extent of the District Defendants' alleged involvement in this action.

9 On the other hand, the second incident involves all other defendants and claims. During this
10 second event, which took place off campus after K.C.'s interactions with DISTRICT personnel ceased,
11 Plaintiff was waiting for the bus with minor D.B. and other friends when Defendants Metzger and
12 Romero approached them. (SAC ¶ 26.) Defendant Romero "toughly [sic.] grabbed minor D.B.'s wrist
13 and arm, shoved him face forward into a wooden fence" and Defendant Metzger "grabbed [Plaintiff's]
14 shoulder from behind" and "slammed [him] onto the ground." (SAC ¶ 27.) Defendant Metzger then
15 allegedly rolled Plaintiff onto his stomach and shoved a knee into his back. (*Id.*) The officers allegedly
16 "pulled [Plaintiff's] arm to lift him up, further injuring [him]." (SAC ¶ 28.) This second event does not
17 involve the District Defendants. It involves an alleged use of force and unlawful detention against police
18 officers.

19 Further, the relevant policies and procedures applicable to the District Defendants are completely
20 different from those applicable to the Town of Atherton and the police officer defendants. This is true not
21 only because there are multiple, separate public entities that have been named as defendants, but also
22 because the conduct alleged as to the District Defendants, which appears to deal with noncompliance
23 with K.C.'s individualized education plan, is completely different from the conduct alleged as to the
24 police officer defendants, which quite clearly relates to alleged excessive force and police brutality.
25 (SAC ¶¶ 21-28.) Moreover, the allegations do not even concern the same incident, as K.C.'s allegations
26 against the District Defendants relate to an altercation in the school principal's office, whereas K.C. and
27 D.B.'s claims against all other defendants relate to alleged excessive force in the arrest of K.C. and D.B.

1 near a bus stop off campus. (*Id.*) Further, Plaintiffs’ anticipated argument that there are joint claims
2 brought as to both the District Defendants and the police officer defendants is unavailing. *Coughlin*
3 makes absolutely clear that “the mere fact that all Plaintiffs’ claims arise under the same general law does
4 not necessarily establish a common question of law or fact. Clearly, each Plaintiff’s claim is discrete.”
5 (*Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997).)

6 Accordingly, Plaintiffs have failed to meet the requirements for permissive joinder, and the
7 District Defendants’ motion to sever should be granted on these grounds alone.

8 **D. Severance of Claims is Appropriate Based on All of the Factors Considered by Courts**

9 Even if Plaintiffs’ claims are deemed to meet the requirements for permissive joinder, severance
10 of Plaintiffs’ claims is still permissible under Federal Rules of Civil Procedure, Rule 20(b), Rule 21, and
11 Rule 42(b). Moreover, severance is appropriate, as discussed below, given that every single fact
12 considered by courts when considering a motion to sever claims weighs in favor of severance.

13 **i. Severance of Claims is Appropriate Due to the Widely Differing Evidence**
14 **Pertinent to the Claims Sought to be Severed**

15 Severance is appropriate because the issues sought to be severed are significantly different from
16 one another and would therefore require distinct evidentiary proof. (*On The Cheap, LLC v. Does 1-5011*,
17 280 F.R.D. 500 at 503.) Notably, D.B. does not assert a single claim against the District Defendants, and
18 the vast majority of K.C.’s claims and allegations are not directed towards the District Defendants.
19 K.C.’s claim against the District Defendants appears to be based on allegations that K.C.’s individualized
20 education plan was violated by virtue of the fact that police were called in response to K.C.’s aggressive
21 behavior, whereas the remainder of K.C.’s claims deal with allegations of excessive force against the
22 police officers that arrested him. (SAC ¶¶ 21-28.) Therefore, K.C.’s claim against the Town of Atherton
23 and the police officer defendants would require body camera footage, witness testimony regarding the
24 arrest, and similar evidence, none of which has any bearing on K.C.’s claim against the District
25 Defendants.

26 K.C.’s claim against the District Defendants, in contrast, would deal specifically with the issue of
27 K.C.’s educational history and individualized education plan (“IEP”), whether the District discriminated
28

1 against K.C. with respect to his enrollment in the District, K.C.’s behavior in the school principal’s office
2 and his interactions with District personnel, witnesses to K.C. assaulting an administrator in the office,
3 and other evidence of that nature, none of which has any bearing on whether excessive force was used by
4 the police when arresting K.C. and D.B. at a nearby bus stop, off campus. For all of these reasons, the
5 claims should be severed.

6 **ii. Severance of Claims Serves the Interest of Judicial Economy**

7 Another factor considered by courts, whether severance would promote judicial efficiency, also
8 weighs in favor of severance. (*On The Cheap, supra*, 280 F.R.D. at 503.) There are two plaintiffs in this
9 case, one of whom asserts no claims against the District Defendants, and nine defendants. The lawsuit
10 focuses on two distinct incidents, one occurring in the principal’s office when K.C. demanded the return
11 of his “water toy” (i.e., water gun), and one occurring by the bus stop off campus, when K.C. and D.B.
12 were contact by police officers and taken into custody. The evidence and witnesses relevant to each
13 incident are different with almost no overlap (in fact, K.C. is likely the only witness to both incidents).
14 Separate trials will not require substantial overlap of witnesses or documentary proof and would
15 therefore promote judicial efficiency. In addition, requiring nine defendants to be served with all
16 documents, file completely different motions, assert completely different legal defenses, and possibly
17 attend eleven different party depositions and have multiple distinct discovery disputes, would not
18 promote judicial efficiency and would prove complicated for both the court and the parties. (*On The*
19 *Cheap, supra*, 280 F.R.D. at 503 (severance likely appropriate where “defendants will likely raise
20 different factual and legal defenses”); see also *SBO Pictures, Inc. v. Does 1-3036*, No. 11-4220 SC, 2011
21 WL 6002620, at *3 (N.D. Cal. Nov. 30, 2011) (“Courts may also consider...whether joinder would
22 confuse and complicate the issues for the parties involved.”).) Accordingly, this factor weighs in favor of
23 severance.

24 **iii. Severance of Claims Is Warranted to Avoid Prejudice to the District Defendants**

25 Perhaps the most significant factor, whether any party would be prejudiced by severance or lack
26 of severance, also weighs in favor of severing the claims against the District Defendants. (*On The Cheap,*
27 *LLC v. Does 1-5011, supra*, 280 F.R.D. at 502.) The vast majority of the complaint focuses on K.C. and
28

1 D.B.’s alleged treatment by the police. By combining the two distinct incidents into one action, it appears
2 that Plaintiffs are attempting to piggyback on public perceptions of police racism, noting multiple times
3 that K.C. and D.B. are “Black boys” despite K.C.’s race having nothing to do with his claims against the
4 District Defendants, and despite D.B. being completely irrelevant to any claim against the District
5 Defendants. The District Defendants are alleged to have called the police regarding K.C.’s violent
6 behavior on campus, which they are entitled to do, and anything that occurred afterwards during any
7 police interaction with K.C. or D.B. is out of the District Defendants’ control, particularly given that the
8 District Defendants never even mentioned D.B. to the police.

9 It would be prejudicial for a jury to hear that the District Defendants called the police regarding
10 K.C. and then hear claims that K.C. and D.B. were abused by the police with implications that this
11 occurred because they are “Black boys.” There could be a perception by the jury that if the police injured
12 K.C., then so did the District Defendants, or that if D.B.’s claim is legitimate, then K.C.’s claim must
13 also be legitimate. The potential for conflation of the claims and of the plaintiffs by the jury seems almost
14 intentional and there is a clear risk of prejudice if the claims are tried together. (*Coleman, supra*, 232
15 F.3d at 1296.) Accordingly, this factor weighs in favor of severance.

16 **V. CONCLUSION**

17 For all of the reasons provided above, the District Defendants respectfully request that their
18 Motion to Sever be granted.

19
20 Dated: January 27, 2025

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

21
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