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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

HAROLD P. STURGEON, Plaintiff, v. LOS ANGELES COUNTY, *et al.*, Defendants.	Case No. BC351286 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION** DATE: November 20, 2006 TIME: TBD PLACE: TBD JUDGE: Honorable James A. Richman ACTION FILED: April 24, 2006 TRIAL DATE: None Set

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Constitutional Provisions

Plaintiff HAROLD P. STURGEON, by counsel, respectfully submits this opposition to Defendants' motion for summary judgment or, in the alternative, for summary adjudication. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff, a taxpayer and resident of the County of Los Angeles ("the County"), brings this action under Cal. Civ. Proc. § 526a to enjoin Defendants from paying "local judicial benefits" to the judges of the Superior Court for the State of California, County of Los Angeles. Plaintiff contends that the payment of these benefits contravenes the California Constitution and the Lockyer Isenberg Trial Court Funding Act of 1997, among other relevant statutes and provisions of law, and constitutes an unconstitutional gift and waste of public funds. Complaint at paras. 29, 31, and 35. Plaintiff also seeks a judgment declaring that the payment of these benefits is unlawful and constitutes an unconstitutional gift and waste of public funds.

II. FACTUAL BACKGROUND.

In 1997, the California Legislature completed a process begun years earlier to equalize and consolidate the funding of all trial court operations at the state level. 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 2; Cal. Gov't Code §§ 77100, 77101, 77200, 77201(a). Specifically, the Legislature enacted the Lockyer Isenberg Trial Court Funding Act of 1997 ("the Act"), the stated purpose of which was to require the State to "assume sole responsibility for the funding of trial court operations" on or after July 1, 1997. *Id.* at Stats. 1997 ch. 850, § 1; Cal. Gov't Code § 77200. In addition to this clear, unambiguous, and express statement of intent, the Act confirms that "[c]ommencing on July 1, 1997, no county shall be responsible for funding court operations." Cal. Gov't Code § 77201(a). The Act defines "trial court operations" to include "salaries, benefits, and public agency retirement contributions for trial court judges." *See* Cal. Gov't Code § 77003(a)(1).

Defendants admit that, since the passage of the Act in 1997, the State has taken over responsibility for payment of salaries and benefits to the judges of the Superior Court for the

State of California, County of Los Angeles. *See* Exhibit C to Declaration of Paul J. Orfanedes in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment or, in the Alternative, For Summary Adjudication ("PJO Decl.") at Response to Request for Admission ("RQA") No. 2. Defendants also admit, however, that "certain benefits that historically were paid by the County of Los Angeles continue to be paid by the County of Los Angeles." *Id.* at Responses to RQA Nos. 2 and 3. The benefits at issue include participation in the County's "MegaFlex" cafeteria benefits program and a "professional development" allowance. *Id.* at Responses to RQA Nos. 4 and 6. Defendants argue that the County provides these benefits in order to "attract and retain well-qualified judges to serve the public in the one of the most expensive regions in the state." Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative, for Summary Adjudication ("Defs' P&A") at 1.

It is difficult to accept Defendants' characterization of the County's "MegaFlex" benefits program as "certain benefits that were historically paid" to judges by the County. Under the County's "MegaFlex" program, the County pays participants an allowance equivalent to up to nineteen percent (19%) of their monthly salary, from which they may purchase a variety of benefits on a pre-tax basis. *See* 2006 Annual Benefits Enrollment Guide at 1-4.[1] These include participation in medical and dental plans, group term life insurance, accidental death and dismemberment insurance, short term disability insurance, long term disability insurance, or elective annual leave, among others. *Id.* In the event a participant does not use any or all of the allowance to purchase benefits, he or she receives any remaining portion of the allowance as additional, taxable pay. *Id.* Far from being merely "certain benefits that were historically paid" to judges, the County "MegaFlex" benefits program is more accurately characterized either as a typical benefits package offered by an employer to its employees, in which case the County is duplicating the benefits already being provided to the trial judges by the State, or, to the extent

[1] Plaintiff requests that the Court take judicial notice of this document pursuant to Rule 313(k) of the California Rules of Court and Cal. Evid. Code §§ 452 and 453 and is filing and serving a separate request herewith.

any particular trial judge elects not to receive duplicate benefits, purely supplemental compensation.

According to Defendants' interrogatory answers, the cost to taxpayers for providing duplicate benefits or supplemental compensation to trial judges in fiscal year 2005-06 exceeded $21 million. Exhibit E to PJO Decl. at Response to Special Interrogatory No. 1 and Exhibit 1. Defendants further admit that the total cost to taxpayers for providing these duplicate benefits or supplemental compensation in fiscal years 2001-02, 2002-03, 2003-04, 2004-05, and 2005-06 was in excess of $107 million. *Id.*

To date, Defendants have not produced a single piece of evidence demonstrating that the County's Board of Supervisors specifically authorized, approved, considered, or deliberated on the payment of duplicate benefits or supplemental compensation to trial judges in light of the passage of the Act.[2] PJO Decl. at para. 12. Moreover, both Defendants' motion and the record is devoid of any evidence that would support their assertion that the County affirmatively decided to pay duplicate benefits or supplemental compensation in order to "attract and retain well-qualified judges to serve the public in the one of the most expensive regions in the state." PJO Decl. at para. 12; Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative, for Summary Adjudication ("Defs' P&A") at 1. Nor do Defendants present any evidence that the County ever considered whether the payment of duplicate benefits or supplemental compensation to trial judges would provide an additional public benefit to taxpayers in light of the fact that the State already pays benefits to trial judges and, as Defendants note, created a new incentive program in 2000 to address the very same

[2] Defendants claim in their discovery responses, which are not a part of their moving papers, that the Board of Supervisors approved the payment of these benefits as part of the County's annual budget process. Exhibit G to PJO Decl. at Response to Special Interrogatory No. 1. Plaintiff submits that this response does not, however, demonstrate that the Board of Supervisors specifically authorized, approved, considered, or deliberated on the payment of duplicate benefits or supplemental compensation to trial judges in light of the passage of the Act.

justification offered by the County in its brief, namely the retention of experienced trial judges.[3] PJO Decl. at para. 12; Defs' P&A at 12, *citing* Cal. Gov't Code § 75085.

III. ARGUMENT.

A. Standards Governing Motions for Summary Judgment and for Summary Adjudication.

The standards governing summary judgment are well-established. The party seeking summary judgment bears the initial burden of making a prima facie showing, through affidavits, declarations, admissions, answers to interrogatories, or matters of which judicial notice may be taken, that there is no genuine issue for trial and that it is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826, 843-45 (2001). If the "moving" party satisfies this burden, then the "non-moving" party must make its own prima facie showing, also based on affidavits, declarations, admissions, answers to interrogatories, or matters of which judicial notice may be taken, of the existence of a genuine issue for trial and/or that the "moving" party is not entitled to judgment as a matter of law. *Id.*

A defendant seeking summary adjudication must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to the cause of action. *Syngenta Crop Protection, Inc. v. Helliker*, 138 Cal. App. 4th 1135, 1154-55 (2006). A defendant can satisfy this burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably obtain needed evidence. *Id.* at 1155. If the moving party satisfies its initial burden, the burden shifts to the opposing party to set forth "specific facts" showing that a triable issue of material fact exists. *Id.* at 1155.

In the case of either a motion for summary judgment or a motion for summary adjudication, the court must view the evidence and all reasonable inferences drawn from the

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[3] The Court should decline to take judicial notice of what Defendants claim is "common knowledge" that providing additional benefits to public employees serves a legitimate public purpose ("Defs' P&A at 11-12), as Defendants failed to comply with the requirements of Rule 313(k) of the California Rules of Court.

evidence in the light most favorable to the opposing party. *Aguilar*, 25 Cal. 4th at 843; *Syngenta Crop Protection, Inc.*, 138 Cal. App. 4th at 1155.

B. The Lockyer Isenberg Trial Court Funding Act of 1997 Does Not Authorize Payment of Duplicate Benefits and Supplemental Compensation.

It is well established that a public employee is entitled only to such compensation as is expressly and specifically authorized by law. *Longshore v. County of Ventura*, 25 Cal. 3d 14, 23 (1979); *Van Riessen v. City of Santa Monica*, 63 Cal. App. 3d 193, 199-201 (1976); *Markman v. County of Los Angeles*, 35 Cal. App. 3d 132, 135 (1973). The statutory compensation rights of public employees are strictly limited and cannot be altered or enlarged by conflicting agreements between a public agency and its employees. *Longshore*, 25 Cal. 3d at 23; *Miller v. State*, 18 Cal. 3d 808, 814 (1977); *Boren v. State Personnel Board*, 37 Cal. 2d 634, 641 (1951). Defendants contend that the County's payment of duplicate benefits and supplemental compensation to trial judges is authorized by the Act. Defendants' contention is based on a fundamentally flawed reading of the Act, and, consequently, neither summary judgment nor summary adjudication can be entered in Defendants' favor.

1. The Provisions of the Act Governing Payment of "Local Judicial Benefits."

Pursuant to the Act, starting in fiscal year 1997-98, counties were required to make annual Maintenance of Effort ("MOE") payments to the State based on the amount of funds the counties had expended on court operations in fiscal year 1994-95. Cal. Gov't Code § 77201(b). The State was then required to supplement these funds with its own, additional funds in order to pay the cost of all trial court operations statewide for the 1997-98 fiscal year and subsequent fiscal years. Cal. Gov't Code § 77200(b). The counties' fiscal responsibility for funding trial court operations was thus capped at fiscal year 1994-95 levels, and the State assumed fiscal responsibility for all future growth in the cost of trial court operation. Cal. Gov't Code §§ 77200(b) and 77201(b)(1).

The amount of money the counties were required to remit to the State in their MOE was specified in the Act. Cal. Gov't Code §§ 77201(b) and 77201.1(b). The counties' respective

MOE payments for fiscal year 1997-98 were set forth in section 77201 and MOE payments for subsequent years were set forth in section 77201.1. Section 77201 also set forth procedures by which certain adjustments could be made to counties' MOE payments based upon declarations submitted by the counties and /or the courts to the Department of Finance, which the Department of Finance would then verify. Cal. Gov't Code § 77201(c) and (d). One such adjustment allowed a county to reduce its MOE payment if it submitted a declaration attesting that the amount of money it had expended on court operations in fiscal year 1994-95 included the cost of "local judicial benefits." Cal. Gov't Code § 77201(c). In the event a county was authorized by the Department of Finance to deduct this amount from its MOE, then the county remained responsible for the payment of "local judicial benefits" that year. *Id.* The provision states:

> (c) The Department of Finance shall adjust the amount specified in paragraph (1) of subdivision (b) that a county is required to submit to the state, pursuant to the following:
>
> > (1) A county shall submit a declaration to the Department of Finance, no later than February 15, 1998, that the amount it is required to submit to the state pursuant to paragraph (1) of subdivision (b) either includes or does not include the costs for local judicial benefits which are court operation costs as defined in Section 77003 and Rule 810 of the California Rules of Court . . . The Department of Finance shall verify the facts in the county's declaration and comments, if any. Upon verification that the amount the county is required to submit to the state includes the costs of local judicial benefits, the department shall reduce on or before June 30, 1998, the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the cost of those judicial benefits, in which case the county shall continue to be responsible for the cost of those benefits.

Cal. Gov't Code § 77201(c)(1). Other potential adjustments were allowed for errors in the reporting of court operation costs. Cal. Gov't Code §§77201(d)(1) and (2). The Act also created procedures by which counties could seek review by the Controller of any determination by the Department of Finance with respect to an adjustment. *Id.*

Section 77201.1 set forth the counties' MOE payments to the State for fiscal year 1998-99 and subsequent years, as well as procedures for any adjustments. 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997, ch. 850, § 46. Like section 77201, section 77201.1 also set forth

procedures for making adjustment to counties' MOE payments. Section 77201.1 stated: "The amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) of Section 77201 as it read on June 29, 1998." *Id.* Unlike in section 77201, however, conspicuously absent from section 77201.1 was any reference to the counties having a continuing responsibility to pay "local judicial benefits" if the adjustment were allowed. *Id.*

Apparently due to the shortness of time between the passage of the Act and the targeted date for its implementation, in 1998 the Legislature delayed full implementation of the Act until fiscal year 1998-99. Cal. Gov't Code 77201(e); *see also* 1998 Cal. ALS 406, 1998 Cal. AB 1590, Stats. 1997, ch. 406. In doing so, the Legislature added a second version of section 77201 to the California Government Code that is slightly different from the first version.[4] *Id.* In addition, the Legislature also amended section 77201.1, which it made operative from July 1, 1998 to July 1, 1999 (1998 Cal. ALS 406, 1998 Cal. AB 1590, Stats. 1997, ch. 406., § 4), and added a second version of 77201.1 to the California Government Code, which it made effective on July 1, 1999. *Id.* at § 5.

This change is important because of what it reveals about the Legislature's intent. Like the prior version of section 77201.1, the 1998 amendment to section 77201.1 set forth the counties' respective MOE payments for fiscal year 1998-99, as well as procedures for any adjustments. *Id.* at § 4. With respect to adjustments, the amended version of section 77201.1 stated: "Except for those counties with a population of 70,000 or less on January 1, 1996, the amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivisions (c) and (d) of Section 77201 as it read on June 30, 1998." *Id.* Conspicuously absent again was any reference to the counties having a continuing responsibility to pay "local judicial benefits" in the event an adjustment were approved. *Id.*

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[4] For purposes of this memorandum, all citations to section 77201 are to the second version.

The version of section 77201.1 that became effective on July 1, 1999 sets forth the counties' respective MOE payments for fiscal year 1999-2000 and "each fiscal year thereafter." Cal. Gov't Code § 77201.1(b). Its procedures for adjustments, however, contain an important limitation not included in the prior versions of sections 77201 and 77201.1. Specifically, the Legislature expressly limited any adjustments to only those counties that had sought review by the California State Controller of any determinations previously made by the Department of Finance with respect to prior adjustments. Cal. Gov't Code § 77201.1(b)(4). The provision states:

> Except for those counties with a population of 70,000, or less, on January 1, 1996, the amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) and (d) of Section 77201 as that section read on June 30, 1998**, to the extent a county filed an appeal with the Controller with respect to the findings made by the Department of Finance.** This paragraph shall not be construed to establish a new appeal process beyond what was provided by Section 77201, as that section read on June 30, 1998.

Cal. Gov't Code 77201.1(b)(4) (emphasis added). Conspicuously absent is any reference to the counties having a continuing responsibility to pay "local judicial benefits" in the event an appeal had been filed. *Id.*

2. Under Ordinary Principles of Statutory Construction, the County's Payment of Duplicate Benefits and Supplemental Compensation is Not Authorized by the Act.

California law requires that courts, when interpreting any legislation, look to the plain, common sense meaning of the statute. *Regency Outdoor Advertising, Inc. v. City of Los Angeles*, 39 Cal. 4th 507, 524 (2006). "If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." *Id.* "If, however, the statutory language lacks clarity, [a court] may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." *Id.* (internal quotations omitted).

Two other principles of statutory construction also are important. First, the law assumes that "every part of a statute serves a purpose and nothing is superfluous." *In re J.W.*, 29 Cal. 4th

200, 209 (2002). "The other principle, commonly know under the Latin name of *expressio unius est exclusio alterius*, is that the expression of one thing in a statute ordinarily implies the exclusion of other things." *Id.*

As a preliminary matter, Plaintiff disputes that the duplicate benefits and supplemental compensation paid by the County constitute "local judicial benefits" as contemplated by the Act. While the term "local judicial benefits" is not defined, the Act expressly declares that the State "shall assume sole responsibility for the funding of trial court operations," which are defined to include "salaries, benefits, and public agency retirement contributions for superior court judges and subordinate judicial officers." Cal. Gov't Code §§ 77003(a)(1), 77200. Likewise, the Act expressly states that "no county shall be responsible for funding court operations . . . ." Cal. Gov't Code §§ 77201(a), and 77201.1(a). Giving the words "salaries" and "benefits" their plain, common sense meaning, these terms must refer to the ordinary type of medical, dental, life, accident, and disability insurance offered by the County under the MegaFlex program and the taxable, supplemental compensation paid to those trial judges who do not use any or all of their MegaFlex allowance to "purchase" benefits. The Legislature must have intended the term "local judicial benefits" to have a meaning distinct from the terms "salary" and "benefits," or it would not have used these obviously different words. If the term "local judicial benefits" is to have any distinct meaning, it must mean something other than the ordinary medical, dental, life, accident, and disability insurance and the supplemental compensation provided by the County. The Act is clear in this regard: the State has "sole responsibility" for "salary" and "benefits" and the County has no responsibility for such expenses. As a result, the duplicate benefits and supplemental compensation being provided by the county should not even be considered "local judicial benefits" within the meaning of the Act.

Even assuming that the duplicate benefits and/or supplemental compensation paid by the County constitute "local judicial benefit" within the meaning of the Act, which, again, Plaintiff disputes, the continued payment of such benefits is not authorized under any proper interpretation of the Act. The Act expressly authorized counties to continue to pay "local judicial benefits" in fiscal year 1997-98 only, and only in the event a county sought and was allowed an adjustment to

its MOE equal to the cost of those benefits. None of the provisions concerning adjustments in subsequent fiscal years contain any reference to the counties having a continuing responsibility to pay "local judicial benefits" in subsequent years. Not only is such a reading of the Act required by the express language of the Act, but limiting a county's obligation to continue to pay "local judicial benefits" to the first fiscal year of the new state funding scheme is consistent with the express purposes of the Act, which was to equalize and consolidate responsibility for funding trial court operations at the state level, make the State solely responsible for funding trial court operations, and eliminate the counties' responsibility for funding trial court operations.[5] 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 2; Cal. Gov't Code §§ 77100, 77101, 77200, 77201(a). It also certainly would have been reasonable for the Legislature to conclude that a transition period for phasing out such benefits was appropriate, while at the same time allowing the counties adjustments for the other reasons allowed by the Act.

Defendants nonetheless would have the Court read into the Act a continuing responsibility for payment of "local judicial benefits" beyond fiscal year 1997-98 even though no such language appears anywhere in the Act. Defs' P&A at 8-9. Such a result, however, would violate the principles of statutory construction set forth above, namely that the law assumes "every part of a statute serves a purpose and nothing is superfluous" and "the expression of one thing in a statute ordinarily implies the exclusion of other things." *In re J.W.*, 29 Cal. 4th at 209. Defendants cannot simply read into the Act a continuing responsibility to pay "local judicial benefits" where to do so would directly contradict both the express language of the Act and the stated purpose of the Act. *Regency Outdoor Advertising, Inc.*, 39 Cal. 4th at 524; *In re J.W.*, 29 Cal. 4th at 209.

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[5] In this regard, it is obvious that the County's interpretation of the Act and its continued payment of duplicate benefits and supplemental compensation has frustrated the Legislature's purpose in passing the Act. In 1998, the County submitted a declaration to the Department of Finance seeking an adjustment to its MOE of $12,835.295 to reflect the cost of local judicial benefits. Exhibit F to PJO Decl. at Response to Special Interrogatory No. 1. Since that time, the County continues to expend ever increasing amounts of taxpayer funds on these benefits, reaching more than $21 million in fiscal year 2005-06. Exhibit E to PJO Decl. at Exhibit 1.

Nor can it be concluded that the provision for adjusting counties' MOE payments in subsequent years implicitly authorizes the continued payment of "local judicial benefits." The provision governing fiscal year 1999-2000 and "each fiscal year thereafter" only allows for an adjustment of a county's MOE payment "to the extent [the] county file an appeal with the Controller with respect to the findings made by the Department of Finance." Cal. Gov't Code § 77201.1(b)(4). Defendants admit that the County did not file any appeal (Exhibit F to PJO Decl. at Response to Special Interrogatory No. 7), but they nonetheless argue that this does not mean the County cannot continue to have adjustments to its MOE or is not authorized to continue to pay "local judicial benefits."

Defendants simply try to ignore the express limitation in section 77201.1(b)(4) that a county's MOE payment shall be adjusted "to the extent a county filed an appeal with the Controller." They argue that this provision should not be read to mean that the adjustment is conditioned on a county having taken an appeal, but instead should be read to mean that any adjustment to a county's MOE under section 77201.1(b)(4) must reflect the results of the appeal. Defs' P&A at 9. These are not the words chosen by the Legislature, however. The Legislature chose to use words signifying that the adjustment is dependent and conditional on an appeal being taken, not inclusive or reflective of the results of the appeal. The Legislature also chose to add this specific language to section 77201.1(b)(4) after omitting it from both the original version of the provision and the amended version that was operative from July 1, 1998 until July 1, 1999. Its choice of these precise words clearly was intentional, and their ordinary meaning should not be disregarded. Nor is it at all unreasonable to conclude that the Legislature simply sought to limit the number of counties that continue to have adjustments made to their MOE payments and to give some finality to the adjustment process. Like Defendants' argument that the Court should read into the Act a continuing responsibility for payment of "local judicial benefits," Defendants' argument that the adjustments referenced in section 77201.1(b)(4) should be read to reflect the results of an appeal rather than be dependent or conditioned on whether a county took an appeal violates the principles that the law assumes "every part of a statute serves a purpose and nothing

is superfluous" and "the expression of one thing in a statute ordinarily implies the exclusion of other things." *In re J.W.*, 29 Cal. 4th at 209.

Finally, and contrary to Defendants' argument, there is no conflict between this plain, common sense reading of section 77201.1 and the provision that "no personnel employed in the court system as of July 1, 1997, shall have their salary or benefits reduced as a result of this act." Defs' P&A at 6, *citing* 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 3(g)(1). Again, the stated purpose of the Act was to equalize and consolidate funding of trial court operations at the state level and to have the State assume sole responsibility for trial court operations, including the salaries and benefits paid to trial court judges across the State. Cal. Gov't Code §§ 77003(a)(1), 77200. Giving section 77201.1 its plain, common sense meaning would not result in the reduction of the salary or benefits paid to any trial judge prior to July 1,1997. Only the source of the judges' salaries and benefits, not the amount of those salaries or benefits, was changed by the Act; the trial judges were to have received the same salary and benefits, albeit paid by the State rather than the counties. The County's payment of duplicate benefits and supplemental compensation, by contrast, has had the effect, not at all intended by the Legislature, of substantially increasing the remuneration paid to trial judges in the County. In the words of Chief Justice Ronald M. George, trial judges in the County of Los Angeles are, "in effect, double dipping for benefits." Steve Berry and Tracy Weber, "L.A. County Lets Judges Draw Duplicate Benefits and Perks," *Los Angeles Times*, August 20, 2000, attached to PJO Decl. at Exhibit I.

Clearly, the plain language of the Act does not authorize the County to continue to provide "local judicial benefits," much less pay duplicate benefits and supplement compensation. Rather, the County's actions contravene both the plain language and the express purpose of the Act.

C. Gov't Code § 69894.3 Does Not Authorize the County's Payment of Duplicate Benefits and Supplemental Compensation.

Defendants also make a corollary argument that Cal. Gov't Code § 69894.3 authorizes payment of local judicial benefits despite the express provisions of the Act. Defs' P&A at 6-7.

As Defendants note, this provision originally was enacted in 1959 and provides, in pertinent part, as follows:

> Employees of the superior court in each county having a population of over 2,000,000 shall be entitled to step advancement, vacation, sick leave, holiday benefits and other leaves of absence and other benefits as may be directed by rules of the court. Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these may be made applicable by rule to court personnel, including but not limited to jurors, and judges.

Defs' P&A at 5, *citing* Cal. Gov't Code § 69894.3.

To the extent this particular provision even applies to trial court judges, it would appear to be in conflict with, if not superceded by the Act. In this regard, two other principles of statutory construction are relevant. Where there appears to be a conflict between statutes that cannot be reconciled, "later enactments supersede earlier ones," and "more specific provisions take precedence over more general ones." *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 310 (2000) (internal citations omitted); *see also Santa Clara Valley Transp. Auth. v. Public Utilities Comm'n*, 124 Cal. App. 4th 346, 360 (2004); *Guardian North Bay, Inc. v. Superior Court*, 94 Cal. App. 4th 963, 972 (2001).

While it is unclear, at best, whether trial judges are or even should be considered "employees" of the superior court,[6] and, hence, whether any actual conflict exists, assuming *arguendo* that a conflict does exist, the Act supercedes the 1959 statute because it is later in time. *Collection Bureau of San Jose*, 24 Cal. 4th at 310. Likewise, the Act takes precedence over the 1959 statute because its provisions governing "salaries, benefits, and public agency retirement contributions for superior court judges" are much more specific and narrowly focused than the 1959 statute's broader pronouncement about "employees'" entitlement to "other benefits." *Compare* Cal. Gov't Code § 77003(a)(1) *with* Cal. Gov't Code § 69894.3. Thus, Defendants' argument that the County's payment of local judicial benefits is authorized by the 1959 statute despite the Act's clear pronouncement that "[c]ommencing on July 1, 1997 no county shall be responsible for funding trial court operations" is without merit.

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[6] *See* 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, §§ 3(g)(2) and (3).

D. The Unauthorized Payment of Local Judicial Benefits Violates the California Constitution and California Law.

The California Constitution provides that "[t]he Legislature shall prescribe compensation for judges of courts of record." Cal. Const., art. VI, § 19. Similarly, the California Constitution also provides that "[t]he Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age and disability." Cal. Const., art. VI, § 20. The California Constitution also provides that "[t]he Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money . . . to any individual . . . ." Cal. Const., art. XVI, § 6. Moreover, the California Constitution states that the Legislature has no power to authorize a county to retroactively grant extra compensation or extra allowances to public officers for work already performed or to pay claims against a county under an agreement made without authority of law. Cal. Const., art. IV, § 17.

Because the California Constitution requires that the Legislature "prescribe compensation for judges of courts of record" and "provide for retirement, with reasonable allowance, of judges of courts of record for age and disability," and because the County's payment of duplicate benefits and supplemental compensation is not authorized or required by the Act or by Government Code Section 69894.3, and, in fact, contravenes the Act, the County's payment of duplicate benefits and supplemental compensation violates both the California Constitution and the Act. Cal. Const., art. VI, §§ 19 and 20.

Because the County's payment of duplicate benefits and supplemental compensation was not authorized by the Act or Government Code Section 69894.3, and, in fact, contravenes the Act, the payment of these duplicate benefits and supplemental compensation also violates the California Constitution's prohibition on gifts of public money, as well as its prohibition on extra retroactive compensation and payment of claims under an agreement not authorized by law. Cal. Const., art. IV, § 17; Cal. Const., art. XVI, § 6.

Finally, because under California law a public employee is entitled only to such compensation as is expressly and specifically provided by law and the statutory compensation rights of public employees are strictly limited and cannot be altered or enlarged by conflicting

agreements between a public agency and its employee (*Longshore*, 25 Cal. 3d at 23; *Miller*, 18 Cal. 3d at 814; *Van Riessen*, 63 Cal. App. 3d at 199-201; *Markman*, 35 Cal. App. 3d at 135; *Boren* , 37 Cal. 2d at 641), the County's payment of unauthorized, duplicate benefits and supplemental compensation violates California law as well.

E. The County's Payment of Duplicate Benefits and Supplemental Compensation Constitutes an Unlawful "Waste" of Public Assets.

In addition to alleging that Defendants' continued payment of duplicate benefits and supplemental compensation violates the California Constitution and the Act, Plaintiff's complaint also expressly alleges that these benefits and payments constitute an unlawful waste of public assets. Complaint at paras. 31 and 35; *see also* Prayer for Relief at para. 1; Cal Civ. Proc. § 526a. Defendants' motion does not expressly address Plaintiff's "waste" claim under section 526a, nor do Defendants appear to seek summary adjudication on any aspect of this portion of Plaintiff's lawsuit. For these reasons alone, neither summary judgment nor summary adjudication can be granted in Defendants' favor.

Nonetheless, neither summary judgment nor summary adjudication are appropriate. First, the underlying action -- the unauthorized payment of duplicate benefits and supplemental compensation by the County -- is illegal, and, therefore, wasteful by its nature. Second, Defendants failed to satisfy its burden of demonstrating the absence of a genuine dispute of material fact about the circumstances under which the County came to provide duplicate benefits and supplemental compensation to trial judges in the County whether its unauthorized payment of duplicate benefits and supplemental compensation provides an additional public benefit to the taxpayers.

First, in determining whether a challenged expenditure constitutes a waste, California courts have inquired into the legitimacy of the underlying action. Illegal, unauthorized, and void and inoperative acts are not protected by the courts as legitimate governmental acts. *Lucas v. Santa Maria Public Airport Dist.*, 39 Cal. App. 4th 1017, 1026-27 (1995) (illegal); *Terry v. Bender*, 143 Cal. App. 2d 198, 211-12 (1956) (unauthorized); *Harnett v. County of Sacramento*, 195 Cal. 676, 682-83 (1925) (void and inoperative). Therefore, any taxpayer funds expended to

enact, promote, or engage in such acts constitutes a waste of public funds. *Id.* As Plaintiff has demonstrated, the County is not authorized to pay duplicate benefits and supplemental compensation and its continued payment of these benefits and compensation violates both the California Constitution and the Act. Consequently, the County's payment of duplicate benefits and supplemental compensation constitutes a waste under California law as well. *Id.*

Second, while a court considering a "waste" claim should not take cognizance of disputes that are political in nature or mere differences in judgment, it should not "close its eyes to wasteful, improvident and completely unnecessary public spending." *City of Ceres v. City of Modesto*, 274 Cal. App. 2d 545, 555 (1969). In *City of Ceres*, a taxpayer sought to enjoin the City of Modesto from expending public funds to install sewer lines in an unincorporated parcel of land. Because the City of Ceres had commenced or was about to commence incorporation proceedings and was planning to install its own sewer lines on the parcel, the Court held that the taxpayer could maintain an action to enjoin an "unconscionable waste" of taxpayer funds. *Id.* at 556. In so holding, the Court explained that "the construction of permanent sewer lines by Modesto in the disputed territory would result in an unnecessary duplication of municipal services, would serve no useful purpose, and would constitute an unconscionable waste of Modesto's tax funds." *Id.* at 556.

Similarly, in *Los Altos Property Owners Ass'n v. Hutcheon*, 69 Cal. App. 3d 22 (1977), Los Altos taxpayers sought to enjoin a school district from consolidating the junior high schools within the district. The taxpayers argued that any expenditures made in the furtherance of the consolidation plan constituted a waste because less expensive plans existed and the district adopted a more expensive plan "without a finding of any additional benefit." *Id.* at 30. The Court agreed and held that the taxpayers' "allegations go beyond mere difference in judgment between plaintiffs and defendants, and are sufficient to state a cause of action for waster under section 526a." *Id.* at 30.

In this case, Defendants have failed to present any evidence at all, much less demonstrate the absence of a genuine dispute of material fact about the circumstances under which the County came to provide duplicate benefits and supplemental compensation to trial judges in the County.

While Defendants assert that the County "provides these benefits out of a legitimate need to attract and maintain well-qualified judges to serve the public" (Defs' P&A at 1), they do not present any sworn affidavits, board resolutions, or other admissible evidence to this effect. Nor do they present any evidence of having considered, much less decided, whether there is any additional public benefit to paying judges benefits and compensation above and beyond what they already are receiving from the State. Such evidence is especially important in light of the fact that, in 2000, the State of California passed special legislation with almost the exact same purpose in mind -- to encourage judges with significant experience to remain on the bench. Cal. Gov't Code §§ 75085-75089.1. Clearly, Defendants have failed to meet their threshold burden of making a prima facie showing, through affidavits, declarations, admissions, answers to interrogatories, or matters of which judicial notice may be taken, that there are no genuine issues for trial and that they are entitled to either summary judgment or summary adjudication as a matter of law. *Aguilar*, 25 Cal. 4th at 843-45.

Lastly, Defendants continue to withhold relevant evidence from Plaintiff that is likely to demonstrate whether the County ever actually considered, much less decided, to pay "local judicial benefits" in light of the passage of the Act, or whether there is any additional public benefit to paying duplicate benefits and supplemental compensation above and beyond what judges are paid by the State. PJO Decl. at para 11. Whether the County purposefully decided to pay duplicate benefits and supplemental compensation or simply failed to "turn off the tap" after the implementation of the Act, and whether the County considered if there is any additional public benefit to providing such benefits, are issues that are clearly relevant to Plaintiff's "waste" claim.

Plaintiff repeatedly requested such clearly relevant evidence in document requests and interrogatories and also sought to depose Supervisor Dan Knabe to obtain precisely such evidence. *See*, *e.g.*, Exhibit B to PJO Decl. at Response to Request Nos. 2 and 13; Exhibit F to PJO Decl. at Response to Request Nos. 5, 6, and 7; *see also* Plaintiff's Memorandum of Points and Authorities in Opposition to Defendants' Motion for Protective Order Re: Deposition of Defendant Dan Knabe. Defendants refused to produce any such evidence to Plaintiff and sought

a protective order to prevent the deposition of Supervisor Knabe from going forward, citing "legislative" privilege, among other purposed reasons. At the October 20, 2006 hearing on Defendants' motion for a protective order regarding Supervisor Knabe's deposition, Defendants and the Court acknowledged that Plaintiff was entitled to at least some evidence on this point, and Defendants suggested Plaintiff serve another set of interrogatories as an alternative means of obtaining the information.[7] Plaintiff thus served a second set of interrogatories on Defendants in another attempt to secure such information, posing the following special interrogatory, among others:

> State whether the BOARD ever met to consider the payment of LOCAL JUDICIAL BENEFITS in light of the enactment of the Lockyer Isenberg Trial Court Funding Act of 1997. If "yes," identify the following: (1) the time, date, and place of the meeting; (2) whether the meeting was held in public or in a closed session; (3) whether a vote was taken and, if so, the result of the vote; and (4) any records concerning or relating to the meeting.

Exhibit H to PJO Decl. at Special Interrogatory No. 1. In response, Defendants asserted objections on the basis of the attorney-client privilege, the attorney work product doctrine, and the legislative and deliberative process privileges. *Id.* at Response to Special Interrogatory No. 1. The narrative response Defendants provided, while at the same time preserving all their objections, frankly did not answer Plaintiffs' question. *Id.* Plaintiff also posed the following special interrogatory as well:

> If the answer to Special Interrogatory No. 1 is "yes," identify all matters appearing in the record of the proceedings before the BOARD, including whether the BOARD considered any public benefit arising from the payment of LOCAL JUDICIAL BENEFITS and whether the BOARD considered any alternatives to the payment of LOCAL JUDICIAL BENEFITS.

Id. at Special Interrogatory No. 2. In response, Defendants again asserted objections on the basis of the attorney-client privilege, the attorney work product doctrine, and the legislative and deliberative process privileges. *Id.* at Response to Special Interrogatory No. 2. Defendants did not provide any substantive answer at all to this clearly relevant special interrogatory. *Id.* In fact, with respect to all of Plaintiff's Second Set of Special Interrogatories, Defendants either objected

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[7] Plaintiff is in the process of having the transcript of this hearing prepared and will submit it to the Court once it has been completed.

and provided the same, non-responsive narrative or objected and did not respond at all.[8] *See generally* Exhibit H to PJO Decl. Consequently, neither summary judgment nor summary adjudication are appropriate for the additional reason that facts essential to Plaintiff's opposition have been sought by Plaintiff but cannot be presented to the Court at this time because Defendants continue to withhold discovery from Plaintiff. The Court should deny, or, at a minimum, delay consideration of Defendants' motion until such time as Plaintiff can obtain this evidence. Cal. Civ. Proc. § 437c(h).

IV. CONCLUSION.

For the foregoing reasons, Plaintiff respectfully requests that Defendants' motion for summary judgment or, in the alternative, for summary adjudication, be denied.

Dated: November 6, 2006 By: _____

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[8] While some of the budget documents produced by Defendants in response to Plaintiff's Second Set of Special Interrogatories make reference to "local judicial benefits," nowhere do they demonstrate that the County ever affirmatively decided to pay such benefits or whether they affirmatively decided there is an additional public benefit to doing so.

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2540 Huntington Drive, Suite 201, San Marino, California 91108.

On November 6, 2006, I served the foregoing document described as:

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

by placing a true and correct copy thereof in a sealed envelope addressed as follows:

Elwood Lui, Esq.
Jason C. Murray, Esq.
Erica L. Reilley, Esq.
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300

I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at San Marino, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at San Marino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 6, 2006 at San Marino, California.

_____
CONSTANCE S. RUFFLEY