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John A. Clarke, Executive Officer/Clerk

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 HAROLD P. STURGEON,

11 Plaintiff,

12 v.

14 COUNTY OF LOS ANGELES, et al.,

15 Defendants,

16 and

17 SUPERIOR COURT FOR THE STATE  
18 OF CALIFORNIA, COUNTY OF  
19 LOS ANGELES,

Intervenor.

) Case No. BC351286

) PLAINTIFF'S REPLY TO  
) INTERVENOR'S' OPPOSITION TO  
) MOTION FOR SUMMARY JUDGMENT

) DATE: July 2, 2009  
) TIME: 10:00 a.m.  
) PLACE: Dep't 1  
) JUDGE: Honorable James A. Richman  
) (Sitting By Designation)

) ACTION FILED: April 24, 2006  
) TRIAL DATE: None Set

21 Plaintiff HAROLD P. STURGEON, by counsel, respectfully submits this memorandum  
22 of points and authorities in reply to Intervenor's Opposition to Plaintiff's Motion for Summary  
23 Judgment. As grounds therefor, Plaintiff states as follows:

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 I. INTRODUCTION.

26 Plaintiff will not repeat here the arguments he presented in his original memorandum of  
27 points and authorities or his opposition to Intervenor's motion for summary judgment, but  
28

1 instead incorporates those arguments herein. Plaintiff will limit his response to a few, particular  
2 matters raised by Intervenor.

3 **II. ARGUMENT.**

4 **A. The California Legislature Lacked Authority To Enact Senate  
5 Bill X2 11.**

6 Intervenor’s attempt to construct a theory by which Senate Bill X2 11 was authorized  
7 under the Governor’s December 1, 2008 proclamation must fail.<sup>1</sup> Senate Bill X2 11 has nothing  
8 to do with creating or retaining jobs. The new legislation does not create a single new judgeship  
9 or eliminate an existing one. State trial court judgeships will continue to exist in the same  
10 number as they existed prior to the passage of Senate Bill X2 11. The new legislation only  
11 purports to authorize the payment of supplemental benefits to sitting judges who were never at  
12 risk of having their positions eliminated because of the current economic downturn.

13 In addition, far from streamlining the operations of state and local government, Senate  
14 Bill X2 11 creates redundances, overlap, and substantial bureaucratic inefficiencies insofar as it  
15 purports to authorize dual systems for compensating state trial court judges in those counties that  
16 were paying supplemental benefits to judges prior to the enactment of the new statute. It also  
17 creates inconsistencies between counties, as those counties that were not paying supplemental  
18 benefits prior to the enactment of the new statute have not been authorized to begin doing so. As  
19 Plaintiff demonstrated in his opposition memorandum, Senate Bill X2 11 also may well require  
20 the County of Los Angeles to create an entirely new system to administer and provide benefits to  
21 the judges of the Superior Court for the State of California, County of Los Angeles. This is not  
22 streamlining at all. It is the opposite of streamlining. If the Legislature intended to streamline  
23 judicial compensation, it would have reaffirmed that the State and only the State is responsible  
24 for judicial compensation.

25 Nor does the fact that the Governor signed Senate Bill X2 11 justify or excuse the  
26 Legislature’s failure “to confine itself to the subject matter” of the Governor’s proclamation.

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27 <sup>1</sup> Plaintiff acknowledges that he inadvertently misquoted the Governor’s proclamation in  
28 his original memorandum. The proclamation was quoted correctly in Plaintiff’s Separate  
Statement of Undisputed Material Facts in Support of Plaintiff’s Motion for Summary Judgment.

1 *Martin v. Riley*, 20 Cal.2d 28, 39 (1942). If that were the case, than the limitation on legislative  
2 power set forth in Article IV, Section 3 of the California Constitution would be meaningless.  
3 Because the Legislature “ha[d] no power to legislate on any subject not specified in the  
4 proclamation,” Senate Bill X2 11 is inoperative. *Martin*, 20 Cal.2d at 39; *People v. Curry*, 130  
5 Cal. 82, 90 (1900).

6 Nor can it be said that Senate Bill X2 11 addresses the “economy” for purposes of Article  
7 IV, Section 3. If that were the case, then any statute authorizing any expenditure of funds could  
8 be deemed to address the “economy.” Such a reading would render the limitation on legislative  
9 power in Article IV, Section 3 completely meaningless.

10 **B. Senate Bill X2 11 Fails To “Prescribe” The Benefits At Issue.**

11 Intervenor does not dispute the compelling facts presented by Plaintiff showing the  
12 substantial disparities that exist between counties with respect to the payment of supplemental  
13 judicial benefits. Intervenor’s failure to dispute these substantial disparities only further confirms  
14 that Senate Bill X2 11 is no policy choice at all, much less a fundamental policy choice by the  
15 Legislature that fixes the level of compensation received by state trial court judges. *Sturgeon v.*  
16 *County of Los Angeles*, 167 Cal. App. 4<sup>th</sup> 630, 653-54(2008); *Martin v. County of Contra Costa*,  
17 8 Cal. App. 3d 856, 862 (1970). Rather, it is an abdication to the policy choices of each of the  
18 fifty-eight (58) counties in California about whether to supplement state trial court judges’  
19 compensation with additional, county-provided benefits and the level at which such supplemental  
20 benefits should be provided. *Sturgeon*, 167 Cal. App. 4th at 654. It also is a complete abdication  
21 of the Legislature’s non-delegable, constitutionally mandated duty to prescribe the compensation  
22 of judges. Cal. Const., art. VI, § 19. Because Senate Bill X2 11 fails to satisfy the requirements  
23 of Article VI, Section 19 or otherwise heed the Court of Appeal’s clear ruling in *Sturgeon* that it  
24 must “prescribe” the benefits at issue in order to fulfill its non-delegable, constitutional duty, the  
25 statute is of no force and effect.

26 Nor does the provision in Senate Bill X2 11 that attempts to redefine the term  
27 “compensation” correct this constitutional infirmity. Defendants tried to make this same  
28

1 argument earlier in this litigation, albeit by citing Gov't Code § 1241. The Court of Appeal  
2 rejected Defendants' argument, declaring:

3 Our consideration of the express language of section 19, article VI of the state  
4 Constitution, its origins and purposes and the potential consequences of adopting  
5 a narrow interpretation of its scope convince us that notwithstanding section 1241,  
6 the employment benefits provided by the county are part of each judge's  
7 compensation and therefore must be prescribed by the Legislature.

8 *Sturgeon*, 167 Cal. App. 4<sup>th</sup> at 644. This same conclusion applies equally to the Legislature's  
9 most recent attempt to redefine the term "compensation" in Article VI, Section 19 to exclude  
10 judicial benefits. The Legislature cannot simply define away its non-delegable constitutional  
11 duty to prescribe the compensation of the state's judges. The new provision is of no force or  
12 effect.

13 **C. Senate Bill X2 11 Violates Fundamental Tenets Of Equal  
14 Protection.**

15 Intervenor's arguments regarding the obvious equal protection violations that arise as a  
16 result of Senate Bill X2 11 are equally without merit.

17 As an initial matter, Intervenor argues that Plaintiff cannot raise an Equal Protection  
18 argument because Equal Protection was not alleged in Plaintiff's original Complaint. Obviously,  
19 when Plaintiff filed his original Complaint in April 2006, he could not anticipate that the  
20 Legislature would enact new legislation in February 2009 or that the new legislation would  
21 violate fundamental tenets of Equal Protection. Plaintiff's Equal Protection argument is a  
22 defensive argument asserted in response to Defendants' and Intervenor's invocation of the new  
23 statute. It is entirely appropriate under the circumstances of this case.

24 Intervenor next argues that Plaintiff does not have standing to invoke Equal Protection.  
25 As Intervenor itself acknowledges, taxpayers have standing to challenge, on equal protection  
26 grounds, expenditures of taxpayer funds. Intervenor Los Angeles Superior Court's (Sic)  
27 Opposition to Plaintiff's Motion for Summary Judgment at 6 n.9, *citing Connerly v. State  
28 Personnel Bd.*, 92 Cal. App. 4<sup>th</sup> 16, 17-18 (2001). Plaintiff submits that it makes no difference  
that the funds at issue are county funds, not state funds, because the county funds at issue are  
being spent pursuant to the purported authorization of a state statute, and the state statute violates

1 Equal Protection. *Connerly*, 92 Cal. App. 4<sup>th</sup> at 17 (“Citizen suits may be brought without the  
2 necessity of showing a legal or special interest in the result where the issue is one of public right  
3 and the object is to procure the enforcement of a public duty.”).

4 Intervenor also claims that all state trial court judges are not similarly situated. Intervenor  
5 is wrong. Clearly, state trial court judges are state constitutional officers with identical duties  
6 and responsibilities. The fact that they may serve in different parts of the state does not  
7 undermine or negate this fundamental fact. This happenstance of geography is why the judges  
8 are being treated differently.

9 Regardless of whether a “strict scrutiny” or “rational basis” test is used to analyze Senate  
10 Bill X2 11, there is no demonstrable or logical correlation between the new statute and attracting  
11 and retaining well-qualified judges. While this may have been the County of Los Angeles’  
12 justification for usurping the Legislature’s constitutional duty to prescribe the compensation paid  
13 to state judges, there is nothing in the record establishing that either the County of Los Angeles  
14 or the Legislature undertook an analysis to determine what level of compensation was necessary  
15 to attract and retain well qualified judges to serve in the county, given the cost of living in the  
16 area or any other factors. Nor is there any evidence of record demonstrating how the County of  
17 Los Angeles decided to set the level of the supplemental benefits its pays the state trial court  
18 judges in the county. In fact, rather than engaging in any such rational analysis of the level of  
19 compensation it would take to attract and retain well-qualified judges to serve in the county or  
20 the need for some form of “locality pay” for judges and other state officials who serve in the  
21 county, it would appear that the County of Los Angeles simply decided to treat the state court  
22 judges as its own employees by allowing them to participate in the same benefits programs  
23 county offers its own employees. The Legislature, in turn, simply rubber-stamped this policy  
24 decision when it sought to legalize the status quo.

25 Nor is there anything in the record demonstrating how the Legislature or the other  
26 counties determined whether supplemental benefits were needed to attract and retain well-  
27 qualified judges in their respective areas and/or, if they did make such a determination, what  
28 level of supplemental benefits was necessary to do so. San Diego County and Santa Barbara

1 County certainly are “high cost of living” areas, and Intervenor does not dispute that neither San  
2 Diego County nor Santa Barbara County pay supplemental judicial benefits to the state trial court  
3 judges who serve in those counties. Yet there is nothing in the record that demonstrates how,  
4 why, or even whether the Legislature, San Diego County, or Santa Barbara County decided that  
5 state court judges who serve in those counties should not receive any additional compensation. It  
6 certainly could be the case that, unlike the County of Los Angeles, San Diego County and Santa  
7 Barbara County believed it was important to follow the California Constitution. It also could be  
8 the case that these counties never even considered the issue. In short, far from having any  
9 demonstrable or logical correlation to attracting and retaining well-qualified judges, Senate Bill  
10 X2 11 is nothing more than a rubber-stamp of the policy decisions of the fifty-eight (58) counties  
11 in the State of California. It does not withstand any level of scrutiny under an equal protection  
12 analysis.

13 **D. Article III, Section 4 Does Not Apply.**

14 Far from being a “fall back” argument of Plaintiff, Defendant previously suggested that it  
15 was prohibited by Article III, Section 4 from terminating the supplemental benefits at issue.  
16 Plaintiff demonstrated in its opening memorandum that Article III, Section 4 only applies to  
17 salary and that this limitation was completely in accord with the Court of Appeal’s decision,  
18 which discussed at length the difference the broad term “compensation,” which is used in Article  
19 VI, Section 19, and the narrower term “salary, which is used in Article III, Section 4. *Sturgeon*,  
20 167 Cal. App. 4<sup>th</sup> at 645-46. Article II, Section 4 had no applicability to the supplemental  
21 benefits at issue because they are not “salary.”

22 **E. The Legislature Has Not “Provided” For Judges Retirement by**  
23 **Enacting Senate Bill X2 11.**

24 Again, it was Intervenor who previously suggested that Article VI, Section 20 had some  
25 applicability to whether the Legislature “provided” for the retirement component of the benefits  
26 at issue. Senate Bill X2 11 does not provide for the retirement of judges in any fashion, nor does  
27 it delegate this function to the various counties in the state. Again, San Diego County and Santa  
28 Barbara County highlight the error in Intervenor’s argument. If Senate Bill X2 11 were intended

1 to provide for the retirement of judges, then why would it not allow counties such as San Diego  
 2 and Santa Barbara, which currently do not provide supplemental benefits of any kind, to begin  
 3 paying supplemental retirement benefits to the state court trial judges who serve in those areas?  
 4 Senate Bill X2 11 does not provide for the retirement of judges in any fashion, and the simple  
 5 fact that a part of the supplemental benefits paid by the County of Los Angeles happen to include  
 6 retirement benefits does not mean that the Legislature "provided" for the retirement of judges by  
 7 enacting this new statute.

8 **III. CONCLUSION.**

9 For the foregoing reasons, and for the reasons set forth in Plaintiff's motion for summary  
 10 judgment, Plaintiff's opposition to Defendants' and Intervener's motions for summary judgment,  
 11 and Plaintiff's Reply to Defendants' Opposition to Motion for Summary Judgment, Plaintiff's  
 12 motion should be granted.

13 Dated: June 15, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

14  
 15 By: *Sterling E. Norris*  
 16 Sterling E. Norris (SBN 040993) *con*  
 17 *Attorneys for Plaintiff*

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**PROOF OF SERVICE BY MAIL**

I am employed in the City of San Marino, CA. 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, CA 91108.

On June 15, 2009, I served the foregoing document described as **PLAINTIFF'S REPLY TO INTERVENOR'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** on the interested parties by e-mailing a true and correct copy thereof to the persons indicated and by placing a true and correct copy thereof in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at San Marino, CA. 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, CA 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 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 June 15, 2009 at San Marino, CA.

*Constance S. Ruffley*  
CONSTANCE S. RUFFLEY

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**SERVICE LIST**

**(*Sturgeon v. County of Los Angeles, et al.*, Case No. BC 351286)**

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