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JUN 15 2009

John A. Clarke, Executive Officer/Clerk

By Raul Sanchez DEPT

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

11 HAROLD P. STURGEON,

12 Plaintiff,

13 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,

20 Intervenor.

) Case No. BC351286

) **PLAINTIFF'S REPLY TO DEFENDANTS'  
) 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 Defendants' 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 Defendants' 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 Defendants.

3 **II. ARGUMENT.**

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

6 Defendants' 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 redundancies, 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 **B. Senate Bill X2 11 Fails To “Prescribe” The Benefits At Issue.**

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

22 **C. Senate Bill X2 11 Violates Fundamental Tenets Of Equal**  
23 **Protection.**

24 Defendants’ arguments regarding the obvious equal protection violations that arise as a  
25 result of Senate Bill X2 11 are equally without merit.

26 First, Defendants claim that all state trial court judges are not similarly situated.  
27 Defendants are wrong. Clearly, state trial court judges are state constitutional officers with  
28 identical duties and responsibilities. The fact that they may serve in different parts of the state

1 does not undermine or negate this fundamental fact. This happenstance of geography is why the  
2 judges are being treated differently.

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

19         Nor is there anything in the record demonstrating how the Legislature or the other  
20 counties determined whether supplemental benefits were needed to attract and retain well  
21 qualified judges in their respective areas and/or, if they did make such a determination, what  
22 level of supplemental benefits was necessary to do so. San Diego County and Santa Barbara  
23 County certainly are “high cost of living” areas, and Defendants do not dispute that neither San  
24 Diego County nor Santa Barbara County pay supplemental judicial benefits to the state trial court  
25 judges who serve in those counties. Yet there is nothing in the record that demonstrates how,  
26 why, or even whether the Legislature, San Diego County, or Santa Barbara County decided that  
27 state court judges who serve in those counties should not receive any additional compensation. It  
28 certainly could be the case that, unlike the County of Los Angeles, San Diego County and Santa

1 Barbara County believed it was important to follow the California Constitution. It also could be  
2 the case that these counties never even considered the issue. In short, far from having any  
3 demonstrable or logical correlation to attracting and retaining well-qualified judges, Senate Bill  
4 X2 11 is nothing more than a rubber-stamp of the policy decisions of the fifty-eight (58) counties  
5 in the State of California. It does not withstand any level of scrutiny under an equal protection  
6 analysis.

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

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

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

18 Again, it was Defendants who previously suggested that Article VI, Section 20 had some  
19 applicability to whether the Legislature “provided” for the retirement component of the benefits  
20 at issue. Senate Bill X2 11 does not provide for the retirement of judges in any fashion, nor does  
21 it delegate this function to the various counties in the state. Again, San Diego County and Santa  
22 Barbara County highlight the error in Defendants’ argument. If Senate Bill X2 11 were intended  
23 to provide for the retirement of judges, then why would it not allow counties such as San Diego  
24 and Santa Barbara, which currently do not provide supplemental benefits of any kind, to begin  
25 paying supplemental retirement benefits to the state court trial judges who serve in those areas?  
26 Senate Bill X2 11 does not provide for the retirement of judges in any fashion, and the simple  
27 fact that a part of the supplemental benefits paid by the County of Los Angeles happen to include  
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retirement benefits does not mean that the Legislature "provided" for the retirement of judges by enacting this new statute.

**III. CONCLUSION.**

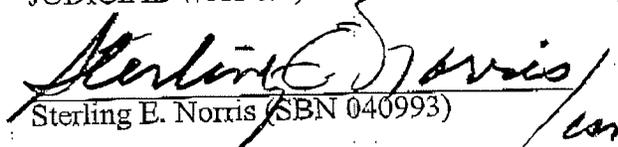
For the foregoing reasons, and for the reasons set forth in Plaintiff's motion for summary judgment, Plaintiff's oppositions to Defendants' and Intervener's motions for summary judgment, and Plaintiff's Reply to Intervenor's Opposition to Motion for Summary Judgment, Plaintiff's motion should be granted.

Dated: June 15, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

By:

  
Sterling E. Norris (SBN 040993)

*Attorneys for Plaintiff*

**PROOF OF SERVICE BY MAIL**

1 I am employed in the City of San Marino, CA. I am over the age of 18 and not a party to  
2 the within action. My business address is 2540 Huntington Drive, Suite 201, San Marino, CA  
3 91108.

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

**SEE ATTACHED SERVICE LIST**

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

15 I declare under penalty of perjury of the laws of the State of California that the foregoing  
16 is true and correct and that this declaration was executed on June 15, 2009 at San Marino, CA.

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**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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