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Los Angeles Superior Court

APR 21 2009

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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 Interveners.

) Case No. BC351286

) **PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S 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

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1 Plaintiff HAROLD P. STURGEON, by counsel, respectfully submits this memorandum of
2 points and authorities in support of Plaintiff's motion for a summary judgment. As grounds
3 therefor, Plaintiff states as follows:

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. FACTUAL BACKGROUND.**

6 On April 24, 2006, Plaintiff, a taxpayer and resident of the County of Los Angeles, filed
7 this action for declaratory and injunctive relief, naming nine defendants: the County of Los
8 Angeles, the five members of the County's Board of Supervisors, the County's Chief Executive
9 Officer, the County's Auditor-Controller, and the Division Chief of the Payroll Division of the
10 County's Auditor-Controller (collectively "Defendants"). Invoking Code of Civil Procedure
11 Section 526a, Plaintiff sought to enjoin Defendants from supplementing the compensation
12 received by the judges of the Superior Court for the State of California, County of Los Angeles
13 ("the State Court"). Specifically, Plaintiff contended that Defendants' payment of supplemental
14 benefits to the judges contravenes Article VI, Section 19 of the California Constitution, among
15 other relevant statutes and provisions of law.

16 On or about September 6, 2006, Defendants filed a motion for summary judgment or, in
17 the alternative, for summary adjudication, which Plaintiff opposed. The Court heard argument,
18 and by Order dated January 8, 2007, granted Defendants' motion for summary judgment. The
19 Court found the County's payment of supplemental benefits was neither a gift of public funds nor
20 a waste of public funds. It also found that the benefits were authorized by the Lockyer-Isenberg
21 Trial Court Funding Act of 1997 ("Lockyer-Isenberg"), Government Code § 77200, *et seq.*
22 Plaintiff timely appealed the Court's final judgment.

23 The Court of Appeal reversed. *Sturgeon v. County of Los Angeles*, 167 Cal. App. 4th 630
24 (2008). It found the supplemental benefits paid by Defendants are compensation within the
25 meaning of Article VI, Section 19 of the California Constitution, and, as a result, must be
26 prescribed by the Legislature. *Id.* at 644, 657. Because the benefits at issue had not been
27 prescribed by the Legislature, the Court of Appeal held that the payment of those benefits is
28 unconstitutional. *Id.* at 657. Defendants moved for rehearing, but were denied. *Sturgeon v.*

1 *County of Los Angeles*, 2008 Cal. App. LEXIS 1735 (Cal. App. 4th Dist. Nov. 7, 2008).

2 Defendants petitioned the Supreme Court of California for review, but that petition also was
3 denied. *Sturgeon v. County of Los Angeles*, No. S168408 (Cal. December 23, 2008).

4 In February 2009, the Legislature, sitting in an extraordinary session, enacted Senate Bill
5 No. 11 “to address the decision of the Court of Appeal in *Sturgeon v. County of Los Angeles*
6 (2008) 167 Cal. app. 4th 630, regarding county-provided benefits for judges.” Stats. 2009, ch. 9,
7 § 1(a). The Legislature found: “These provisions were declared unconstitutional as an
8 impermissible delegation of the obligation of the Legislature to prescribe the compensation of
9 judges of courts of record.” Stats. 2009, ch. 9. The new legislation provides, in pertinent part, as
10 follows:

11 Judges of a court whose judges received supplemental judicial benefits provided by
12 the county or court, or both, as of July 1, 2008, shall continue to receive
13 supplemental benefits from the county or court then paying the benefits on the
14 same terms and conditions as were in effect on that date.

15 Stats. 2009, ch. 9, § 2. It further provides:

16 Notwithstanding any other law, no governmental entity, or officer or employee of a
17 governmental entity, shall incur any liability or be subject to prosecution or
18 disciplinary action because of benefits provided to a judge under the official action
19 of a governmental entity prior to the effective date of this act on the ground that
20 those benefits were not authorized under law.

21 Stats. 2009, ch. 9, § 5.

22 On March 13, 2009, the Court authorized itself to intervene as a defendant in this matter to
23 protect its purported interests in the continuation of the county-provided benefits.

24 **II. ARGUMENT.**

25 **A. Standards Governing a Motion for Summary Judgment.**

26 The standards governing summary judgment are well-established. “Any party may move
27 for summary judgment in any action or proceeding if it is contended that the action has no merit or
28 that there is no defense to the action or proceeding.” Code of Civil Procedure § 437c(a). “The
motion for summary judgment shall be granted if all the papers submitted show that there is no
triable issue as to any material fact and that the moving party is entitled to a judgment as a matter
of law.” Code Civ. Proc. § 437c(c). “A plaintiff or cross-complainant has met his or her burden

1 of showing that there is no defense to a cause of action if that party has proved each element of the
2 cause of action entitling the party to judgment on that cause of action.” Code Civ. Proc. §
3 437c(p)(1). “Once the plaintiff or cross-complainant has met that burden, the burden shifts to the
4 defendant or cross-defendant to show that a triable issue of one or more material facts exists as to
5 that cause of action or a defense thereto.” *Id.* “The defendant or cross-defendant may not rely
6 upon the mere allegations or denials of its pleadings to show that a triable issue of material fact
7 exists but, instead, shall set forth the specific facts showing that a triable issue of material fact
8 exists as to that cause of action or a defense thereto.” *Id.*

9 “When discovery, properly used, makes it perfectly plain that there is no substantial issue
10 to be tried, section 437c, Code of Civil Procedure, is available for prompt disposition of the case.”
11 *D’Amico v. Bd. of Medical Examiners*, 11 Cal.3d 1, 21 (1974) (Citations and internal quotation
12 marks omitted). Summary judgment may be based on declarations and responses to requests for
13 admissions. Code Civ. Proc. § 437c(b)(1); *D’Amico*, 11 Cal.3d at 21 (“It is clear beyond doubt
14 that the consideration of such fruits [of the discovery process] on a motion for summary judgment
15 is proper and wholly consistent with the intent and purposes of the summary judgment
16 procedure.”); *see also Bennett v. Hibernia Bank*, 186 Cal. App. 2d 748, 753 (1960) (“In the
17 present case, the plaintiff properly relies in part on defendant’s sworn answers to plaintiff’s
18 requests for admissions, under Code of Civil Procedure, section 2033.”).

19 **B. There Is No Triable Issue as to Any Material Fact.**

20 As Plaintiff has set forth in his Separate Statement of Undisputed Material Facts in
21 Support of Plaintiff’s Motion for Summary Judgment (“Plf’s Statement of Facts”), no triable issue
22 exists as to any material fact. In this action, Plaintiff challenges the constitutionality of
23 Defendants’ expenditure of taxpayer funds on local judicial benefits. *See* Complaint at paras. 29,
24 31, and 35. Plaintiff brought this action under Code of Civil Procedure section 526a. The
25 provision provides in relevant part:

26 An action to obtain a judgment, restraining and preventing any illegal expenditure
27 of, waste of, or injury to, the estate, funds, or other property of a county, town, city
28 or city and county of the state, may be maintained against any officer thereof, or
any agent, or other person, acting in its behalf, either by a citizen resident therein,

1 or by a corporation, who is assessed for and is liable to pay, or, within one year
2 before the commencement of the action, has paid, a tax therein.

3 Code Civ. Proc. § 526(a). The evidence is undisputed that Plaintiff paid taxes to the County of
4 Los Angeles in the one-year period prior to the commencement of this action on April 24, 2006.
5 Plf's Statement of Facts at Undisputed Material Fact ("UMF") No. 1. Plaintiff thus is eligible to
6 maintain this taxpayer action under Code of Civil Procedure section 526a.

7 The evidence is also undisputed that Defendants pay supplemental judicial benefits to the
8 judges of the Superior Court of the State of California, County of Los Angeles. Plf's Statement of
9 Facts at UMF No. 2; *see also Sturgeon*, 167 Cal. App. 4th at 635-36. Defendants themselves
10 previously acknowledged the lack of any genuine dispute of material fact regarding their payment
11 of these benefits in the September 2006 summary judgment motion. *See Order Granting Motion*
12 *for Summary Judgment*, dated January 8, 2007, at 3 ("[Defendants'] motion was simple and
13 straightforward, citing only one fact, that 'since July 1, 1998, the County . . . has paid and
14 continues to pay certain benefits to the judges of the Los Angeles Superior Courts (sic)."). There
15 can be no doubt as to the lack of any genuine dispute about these material facts.

16 **C. Plaintiff Is Entitled To Summary Judgment As A Matter of Law.**

17 **1. The Court Of Appeal Declared The Benefits At Issue To Be**
18 **Unconstitutional Under Article VI, Section 19.**

19 In reversing this Court's grant of summary judgment, the Court of Appeal found that the
20 supplemental benefits at issue are "compensation" that has not been "prescribed" by the
21 Legislature. *Sturgeon*, 167 Cal. App. 4th at 657. In reaching this holding, the Court of Appeal
22 was "unable to identify any enactment of the Legislature which prescribes the judicial benefits the
23 county pays its judges." *Id.* at 261. The Court of Appeal declared:

24 [T]he defect we have found in the method by which [the] benefits have been
25 provided is itself substantial and important. Under our constitutional scheme,
26 judicial compensation must set policy with respect to all aspects of judicial
27 compensation.

28 *Id.* at 657. Because the Court of Appeal had determined that the Legislature did not "prescribe"
the benefits at issue, those benefits are unconstitutional, and summary judgment should be entered
in Plaintiff's favor. Cal. Const., art. VI, § 19.

1 **2. Article III, Section 4 Of The California Constitution Is**
2 **Inapplicable To This Matter.**

3 Both Defendants and Intervener are expected to argue that, despite the Court of Appeal's
4 clear and unequivocal ruling, Article III, Section 4 of the California Constitution nonetheless
5 applies to this case. It does not. This particular constitutional provision states, in pertinent part,
6 as follows:

7 Beginning on January 1, 1981, the base salary of a judge of a court of record shall
8 equal the annual salary payable as of July 1, 1980, for that office had the judge
9 been elected in 1978. The **Legislature** may prescribe **increases** in those **salaries**
10 during a term of office, and it may terminate prospective increases in those salaries
11 at any time during a term of office, but **it shall not reduce the salary** of a judge
12 during a term of office below the highest level paid during that term of office.
13 Laws setting the salaries of judges shall not constitute an obligation of contract
14 pursuant to Section 9 of Article I or any other provision of law.

15 Cal. Const., art. III, § 4(b) (emphasis added).

16 In interpreting a constitutional provision, a court seeks to ascertain the intent of those who
17 enacted the provision. *Sturgeon*, 167 Cal. App. 4th 644-45. To determine intent, a court should
18 look first to the language of the constitutional text, giving the words their ordinary meaning. *Id.*
19 If the language is clear, there is no need for construction. *Id.*

20 On its face, Article III, Section 4 only applies to the *Legislature*. It expressly restricts the
21 power of the *Legislature* to reduce judges' salaries. It is not a restriction in the power of the
22 *Court*. The *Legislature* has not reduced the salary of any judge. Rather, the *Court* has determined
23 that certain benefits paid by Defendant were not prescribed by the Legislature and therefore
24 violate Article VI, Section 19 of the California Constitution.

25 The provision also expressly applies to *salaries* only. It makes no reference to *benefits*.
26 The distinction is important. Previously, Defendants tried to argue that the term *compensation* in
27 Article VI, Section 19 of the California Constitution referred to *salaries* only and not to *benefits*.
28 The Court of Appeal rejected Defendants' argument and, in so ruling, preserved the distinction
between these different terms. *Sturgeon*, 167 Cal. App. 4th at 644-48. While the term
compensation has a broad meaning that encompasses both *salaries* and *benefits*, the term *salary*
has a specific, narrow meaning. *Id.* at 645-46. Because Article III, Section 4 makes no reference

1 to *benefits*, it does not restrict the power of either the *Legislature* or the *Court* to reduce judicial
2 benefits.

3 Nonetheless, it would be erroneous to equate the payment of unconstitutional salaries or
4 benefits with the payment of salaries or benefits that are lawful. If salaries or benefits are
5 determined to be unlawful, they should not have been paid or accepted in the first instance. To
6 the extent Article III, Section 4 has any applicability, and Plaintiff does not concede that it does, it
7 must be construed as applying to lawful salary or benefits only.

8 **3. Article VI, Section 20 Of The California Constitution Does Not**
9 **Change The Outcome Of This Litigation.**

10 It is undisputed that a portion of the supplemental benefits at issue includes retirement
11 benefits. In addition to providing state court trial judges with a “professional development
12 allowance” and paying the judges an additional amount equal to nineteen percent (19%) of their
13 state-provided salary and allowing them to participate in the County’s “MegaFlex Cafeteria
14 Benefits Plan,” the County also allows judges to participate in the “401(k)” program it provides
15 for its employees and matches judges’ contributions to the program up to four percent (4%) of the
16 judges’ salaries. *Sturgeon*, 167 Cal. App. 4th at 635-36.

17 Both Defendants and Intervener are expected to argue that Article VI, Section 20 of the
18 California Constitution applies to this case. It does not. This particular provision states: “The
19 Legislature shall provide for retirement, with reasonable allowance, of judges of record for age or
20 disability.” Cal. Const., art. VI, § 20. The provision is quite clear and quite specific: the
21 Legislature, not the County or anyone else, shall provide for the retirement of judges. *See County*
22 *of Riverside v. Superior Court*, 30 Cal.4th 278, 286 (2003). An express grant of authority to the
23 Legislature necessarily implies that no other entity has such authority. *Id.* A court “may not
24 lightly disregard or blink at . . . a clear constitutional mandate.” *Amwest Surety Ins. Co. v. Wilson*
25 , 11 Cal.4th 1243, 1252 (1995).

26 Where the term “prescribe” is used, courts have held that the Legislature must perform the
27 designated function. *Zumwalt v. Superior Court*, 211 Cal. App. 3d 821, 244 Cal. Rptr. 273, 281
28 (1988). However, where the term “provide” is used, the Legislature may delegate the designated

1 function. *Id.* Consequently, the proper inquiry is: “Has the Legislature delegated its obligation to
2 provide for the retirement of judges?”

3 The clear answer is no. The Legislature has made extensive provisions for judges’
4 retirement. It has created both the “Judges’ Retirement System” and the “Judges’ Retirement
5 Fund” as well as the “Judges’ Retirement System II” and the Judges’ Retirement System II Fund.”
6 *See* Gov’t Code § 75000, *et seq.* and Gov’t Code § 75500, *et seq.*, respectively. There is no
7 indication from these extensive legislative enactments that the Legislature has delegated its duty
8 to provide for the retirement of judges to the counties.

9 Nor can Defendants and Interveners concoct a delegation of the Legislature’s duty to
10 provide for the retirement of judges from any other legislative enactment. While Lockyer-
11 Isenberg may reference “local judicial benefits,” it is devoid of any mention of judges’ retirement.
12 Surely, if the Legislature intended to carry out, even in part, its constitutionally-mandated duty to
13 provide for judges’ retirement by enacting Lockyer-Isenberg, then it at least would have made
14 some mention in the statute that it was doing so. This is particularly the case given the obvious
15 importance of providing for judges’ retirement. The Legislature did not and has not delegated its
16 duty to provide for the judges’ retirement by enacting Lockyer-Isenberg.

17 Finally, even if Defendants and Interveners identify some provision of law that constitutes
18 a legally proper delegation by the Legislature of its duty to provide for the retirement of judges, it
19 would not change the ultimate outcome of this litigation because retirement benefits are only a
20 small portion of the supplemental benefits provided by the County to the state trial court judges.¹
21 *Sturgeon*, 167 Cal. App. 4th at 635-36. Again, the supplemental benefits at issue in this litigation
22 include the “MegaFlex” and “professional development allowance” as well as retirement benefits.
23 *Id.* Thus, even if this Court were to find that the Legislature has delegated its duty to provide for

25 ¹ Based on the parties’ undisputed submissions, the Court of Appeal found that the
26 County’s retirement benefits amounted to an additional \$6,880 per judge in Fiscal Year 2007.
27 *Sturgeon*, 167 Cal. App. 4th at 636. The professional development allowance in Fiscal Year
28 2007 amounted to an additional \$6,876 per judge, and the “Megaflex” benefit constituted the
remainder of the \$46,436 in supplemental benefits received by each judge in the County of Los
Angeles in Fiscal Year 2007. *Id.* at 635-36.

1 the retirement of judges to the various counties in the State of California -- which, again, it clearly
2 has not done -- then such a determination would apply to those supplemental benefits that
3 constitute additional, county-provided retirement benefits.

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

6 In February 2009, the Legislature enacted Senate Bill 11 in response to the Court of
7 Appeal's ruling that the supplemental benefits at issue are unconstitutional. The new legislation
8 declares, "These provisions were held unconstitutional as an impermissible delegation of the
9 obligation of the Legislature to prescribe the compensation of judges of courts of record." The
10 new legislation purportedly authorizes the continued payments of county-provided benefits.

11 Importantly, the new legislation was enacted at an extraordinary session of the Legislature
12 convened by proclamation of the Governor on December 1, 2008. Article IV, Section 3 of the
13 California Constitution contains the following provision limiting the authority of the Legislature
14 to act during special sessions:

15 On extraordinary occasions the Governor by proclamation may cause the
16 Legislature to assemble in special sessions. When so assembled it has power to
legislate **only on subjects specified in the proclamation** but may provide for
expenses and other matters incidental to the session.

17 Cal. Const., art. IV, § 3 (emphasis added). "The duty of the Legislature in special session to
18 confine itself to the subject matter of the call is of course mandatory." *Martin v. Riley*, 20 Cal.2d
19 28, 39 (1942). The Legislature "has no power to legislate on any subject not specified in the
20 proclamation." *Id.*; *People v. Curry*, 130 Cal.82, 90 (1900); It only may consider matters
21 "relating to, germane to and having a natural connection with" the subject of the proclamation.
22 *Martin*, 20 Cal. 2d at 39. Any other matters are invalid, although they should not be declared so
23 unless they "manifestly and clearly" are not embraced in the Governor's call. *Id.* at 40.

24 The Governor's proclamation convening the extraordinary session at which the new
25 legislation purportedly was enacted states as follows:

- 26 1. To consider and act upon legislation to address the economy, including but
27 not limited to efforts to stimulate California's economy and create and
 retain jobs.
- 28 2. To consider and act upon legislation to address the housing mortgage crisis.

1 3. To consider and act upon legislation to address the solvency of the
2 Unemployment Insurance Fund.

3 UMF No. 3. The Governor’s proclamation makes no reference whatsoever to the Legislature
4 addressing any type of judicial compensation, much less any supplemental benefits paid by
5 counties to state trial court judges. The proclamation also does not make any reference to
6 addressing recent court decisions or, in particular, the Court of Appeal’s decision finding that the
7 supplemental benefits paid by Defendants are unconstitutional. Nor does it make any mention of
8 granting immunity from liability, prosecution, or disciplinary action to any governmental entity or
9 officer or employee of a governmental entity because of the supplemental benefits paid to trial
10 court judges. Senate Bill No. 11 simply does not relate to, is not germane to, and has no natural
11 connection with any of the subjects specified in the Governor’s proclamation convening the
12 second extraordinary session. The new purported legislation manifestly and clearly is not within
13 the scope of the Governor’s proclamation. Consequently, the legislation is invalid. *Martin*, 20
14 Cal. 2d at 39-40; *Curry*, 130 Cal. at 90; Cal. Const., art. IV, § 3.

15 **5. Senate Bill 11 Fails To “Prescribe” The Benefits At Issue.**

16 Although Senate Bill No. 9 was enacted to address the Court of Appeal’s ruling
17 specifically, it completely fails to heed the clear dictate of that ruling. The Court of Appeal
18 declared:

19 Importantly, even when a legislative body bears a nondelegable duty, it may
20 nonetheless permit other bodies to take action based on a general principle
21 established by the legislative body *so long as the Legislature provides either*
22 *standards or safeguards which assure that the Legislature’s fundamental policy*
23 *is effectively carried out.*

24 *Sturgeon*, 167 Cal. App. 4th at 653 (emphasis added). The Court of Appeal continued by quoting
25 extensively from a ruling by the Supreme Court of California:

26 “We have said that the purpose of the doctrine that legislative power cannot be
27 delegated is to assure that *‘truly fundamental issues [will] be resolved by the*
28 *Legislature’* and that a ‘grant of authority [is] . . . accompanied by safeguards
adequate to protect its abuse.’ [Citations] This doctrine rests upon the premise
that *the legislative body must itself effectively resolve the truly fundamental*
issue. It cannot escape responsibility by explicitly delegating that function to
others or by failing to establish an effective mechanism to assure the proper
implementation of its policy decisions.”

1 *Id.* quoting, *Kugler v. Yocum*, 69 Cal.2d 371, 376-77 (1968) (emphasis added). The Court of
2 Appeal further declared:

3 In the interests of bringing rationality and uniformity to judicial compensation, the
4 responsibility with respect to judicial compensation, the responsibility of protecting
5 the judiciary has now been left largely in the hands of the Legislature. Because the
6 legislative responsibility with respect to judicial compensation, including of
7 necessity the participation of the executive branch in the legislative process, is now
8 the principal means of protecting the independence of the judicial branch, in
9 considering compensation judges receive *we must be careful that in fact the
10 Legislature has exercised its prescriptive role*. In particular, unlike concerns
11 employees might receive excessive pay which animated the litigation in *Kulger v.*
12 *Yocum* and *Martin*, *we must in addition be sensitive to the potential that judges
13 might be subject to substantial variations in compensation determined solely by
14 local authorities*.

15 *Id.* at 654 (emphasis added).

16 Senate Bill 11 recognizes that “[n]umerous counties and courts established local or court
17 supplemental benefits to retain qualified applicants for judicial office” Stats. 2009, ch. 9, §
18 1(c). It purports to amend the Government Code to authorize the various counties providing some
19 form of supplemental judicial benefits to continue to do so. *Id.* at § 2. It also authorizes counties
20 currently providing supplemental benefits to terminate these supplemental benefits on 180 days
21 written notice. *Id.* Far from establishing a “fundamental policy choice” and providing standards
22 or safeguards to assure that its choice is carried out effectively, the Legislature has done exactly
23 the opposite. It has ratified the policy choices of each of the fifty-eight (58) counties in California
24 about whether to supplement state trial court judges’ compensation with additional benefits and
25 the level at which such supplemental benefits should be provided.

26 The result is exactly the type of “substantial variation in compensation determined solely
27 by local authorities” about which the Court of Appeal expressed concern in its ruling. *Sturgeon*,
28 167 Cal. App. 4th at 654. By way of example, the Final Report of the 2006-2007 San Bernadino
County Civil Grand Jury, which examined the payment of supplemental benefits to state trial
court judges, found a wide variance in the level of benefits paid by different counties:

Alameda: In 2003-04, Alameda County paid \$1,350 per judge for a “cafeteria”
benefits plan for the 69 state trial court judges who sat in that county, for a total
cost of \$150,000.

1 **Fresno:** In 2003-04, Fresno County paid \$1,121.42 per judge for health insurance
2 and \$92.56 for a life insurance policy for each of the state trial court judges who sat
3 in that county.

4 **Riverside:** In 2003-04, Riverside County paid a car allowance to each of the state
5 court trial judges who sat in that county. It also provided the state court judges
6 who sat in the county with deferred compensation and a life insurance policy.

7 **San Diego:** In 2003-04, San Diego County paid no benefits to the 128 state trial
8 court judges who sat in that county.

9 **Santa Barbara:** In 2003-04, Santa Barbara County paid no benefits to the 19 state
10 trial court judges who sat in that county.

11 **Santa Clara:** In 2003-04, Santa Clara County paid for a \$25,000 life insurance
12 policy for each of the 79 state trial court judges who sat in that county.

13 **San Bernardino:** In 2003-04, San Bernadino County provided \$19,371.56 worth
14 of benefits for each of the 83 state trial court judges who sat in the county, for a
15 total of \$1,607,839.

16 UMF 4-10.² In marked contrast, each of the 429 state trial court judges in the County of Los
17 Angeles was eligible to receive \$46,436 in supplemental benefits provided by the County in Fiscal
18 Year 2007. *Sturgeon*, 167 Cal. App. 4th at 636.

19 Senate Bill 11 purports to legalize the status quo before the Court of Appeal's ruling. It
20 fails to do so, however, because the statute neither establishes nor reflects a fundamental policy
21 choice of the Legislature. *Sturgeon*, 167 Cal. App. 4th 653-54. While the County of Los Angeles
22 pays state trial court judges \$ 46,436 per year in supplemental benefits, other counties, such as
23 Santa Barbara County and San Diego County, pay nothing. UMF Nos. 6-7; *Sturgeon*, 167 Cal.
24 App. 4th at 636. Nor does the statute reflect, establish, or otherwise provide any standards or
25 safeguards to assure that a fundamental policy choice of the Legislature is being carried out

26
27 ² These values appear to be for the years 2003-04. UMF Nos. 3-9. For 2006-07, San
28 Bernadino County provided supplemental benefits of \$19,700 per judge for a total of \$1,635,100
for 83 judges. UMF No. 11.

1 effectively. *Id.* Instead, it purports to legalize judicial compensation chaos. It is a complete
2 abdication of the Legislature’s duty to prescribe the compensation of judges. Cal. Const., art. VI,
3 § 19. Thus, Plaintiff is entitled to summary judgment even despite the passage of Senate Bill 11.

4 **6. Senate Bill 11 Violates Fundamental Tenets Of Equal**
5 **Protection.**

6 Plaintiff is entitled to summary judgment for another reason. Defendants and Intervener
7 cannot rely on Senate Bill 11 because the statute violates equal protection.

8 Senate Bill 11 establishes and perpetuates classifications of state trial court judges -- all of
9 whom are state officials employed by the state in otherwise identical capacities -- based on the
10 county in which they happen to sit and, more specifically, based on whether that county
11 previously determined -- without authorization from the Legislature -- to pay supplemental
12 benefits despite the requirement of Article VI, Section 19.

13 There are two principal tests that generally have been applied by the courts of the United
14 States and the State of California in reviewing classifications that are challenged under the equal
15 protection clause of the Fourteenth Amendment to the United States Constitution or Article I,
16 Section 7 of the California Constitution. *Hernandez v. City of Hanford*, 41 Cal.4th 279, 298
17 (2007). The first is the conventional standard for reviewing economic and social welfare
18 legislation in which there is discrimination or differentiation of treatment between classes or
19 individuals. *Id.* This test requires that the distinctions drawn by a challenged statute bear some
20 rational relationship to a conceivable, legitimate state purpose. *Id.* at 299. This first equal
21 protection test generally is referred to as the “rational relationship” or “rational basis” test. *Id.*

22 The second equal protection test is a more stringent test that is applied in cases involving
23 “suspect classifications” or that touch on “fundamental interests.” *Id.* In such cases, courts adopt
24 “an attitude of active and critical analysis, subjecting the classification to strict scrutiny.” *Id.*
25 Under the strict standard applied in such cases, not only must there be a compelling state interest
26 that justifies the law, but the distinctions drawn by the law must be proven necessary to further
27 this compelling state interest. *Id.* This second test generally is referred to as the “strict scrutiny”
28 test. *Id.*

1 California's equal protection provisions, while substantially the equivalent of the
2 guarantees contained in the Fourteenth Amendment to the U.S. Constitution, "are possessed of an
3 independent vitality which, in a given case, may demand an analysis different from that which
4 would obtain if only the federal standard were applicable." *Serrano v. Priest*, 18 Cal.3d 728, 764
5 (1976). Rather than looking to federal law, California courts thus apply their own standards in
6 determining whether to apply a "strict scrutiny" or a "rational basis" test to an equal protection
7 challenge.

8 The issues raised by this case clearly touch on "fundamental interests." The compensation
9 paid by state trial court judges involves the administration of justice throughout the State. Indeed,
10 in enacting Lockyer-Isenberg, the Legislature sought to complete a process, begun years earlier, of
11 equalizing and consolidating the funding of all trial court operations at the state level. 1997 Cal.
12 ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 2. Similarly, the Court of Appeal recognized
13 the importance of "bringing rationality and uniformity to judicial compensation" as well the need
14 to "be sensitive to the potential that judges might be subject to substantial variation in
15 compensation determined solely by local authorities." *Sturgeon*, 167 Cal. App. 4th at 653. The
16 funding of trial court operations and the compensation paid to state trial court judges certainly are
17 no less fundamental than the funding of state education, which was found to be a "fundamental
18 interest" in *Sorrano*. 18 Cal.3d at 766.

19 Perhaps even more critically, Article VI, Section 19 of the California Constitution
20 expressly requires that the compensation of state judges be set by the Legislature. The California
21 Constitution entrusts the Legislature with this obviously important task in order to protect the
22 judicial branch from excessive and improper political influences. *Sturgeon*, 167 Cal. App. 4th at
23 654. To allow the counties to determine whether to supplement state trial court judges'
24 compensation in whatever manner they deem fit, however, raises the appearance of the counties
25 having improper influence over the judges. This appearance is all the more troubling given that
26 counties frequently have substantial amounts of litigation pending before the local state trial court.
27 Certainly, private litigants could not "supplement" the compensation of the judges of a court
28 before which they have litigation pending without doing substantial harm to the appearance of the

1 court's impartiality and independence. This matter clearly touches on "fundamental interests."
2 Senate Bill 11 must be analyzed under a "strict scrutiny" test.

3 Senate Bill 11 fails this test. It is completely the opposite of the Court of Appeal's
4 concern about judges being subject to substantial variations in compensation determined solely by
5 local authorities. *Sturgeon*, 167 Cal. App. 4th at 654. State court trial judges in the County of Los
6 Angeles receive up to \$46,000 per year in supplemental compensation, while state court trial
7 judges in other high-cost counties, such as San Diego County and Santa Barbara County, receive
8 nothing. There is no "compelling state interest" in authorizing such gross disparities in
9 compensation, especially when the disparities arose from the fact that the County of Los Angeles
10 was paying supplemental benefits to judges without proper legal authorization from the
11 Legislature. It simply cannot be said that there is a compelling state interest in differentiating
12 between state trial court judges based on whether the county in which they sit violated Article VI,
13 Section 19 of the California Constitution.

14 Nor can it be said that the distinctions drawn by Senate Bill 11 are "necessary" to further a
15 "compelling state interest." *Hernandez*, 41 Cal.4th at 299. The statute differentiates between the
16 counties that provide unauthorized benefits and counties that do not. Under Senate Bill 11, the
17 judges who sit in counties that pay unauthorized benefits would be allowed to continue to receive
18 the benefits, and the judges who sit in counties that do not pay unauthorized benefits would
19 continue to get nothing.³ The statute rewards the guilty and punishes the innocent, which clearly
20 is not consistent with equal protection.⁴ If the Legislature articulated any state interest at all, it
21 would appear to be an interest in "retain[ing] qualified applicants for judicial office" and
22 protecting judges who purportedly relied on continuing to receive the unauthorized county
23 benefits. 2009 Stats., § 1(c). Obviously, there can be no "compelling state interest" in continuing
24

25 ³ The statute does not authorize counties that do not pay supplemental benefits to begin
26 doing so.

27 ⁴ The Legislature obviously saw some possibility of liability, prosecution or disciplinary
28 action, as it granted immunity to judges, counties, and county officials in connection with the
payment of the supplemental benefits at issue. 2009 Stats., ch. 9, § 5.

1 to receive unlawfully bestowed benefits. To the extent the Legislature's goal was to retain
2 qualified applicants for judicial office, it was not at all necessary to differentiate between those
3 counties that paid unauthorized benefits in the past and those counties that did not. The
4 Legislature could have undertaken a comprehensive, state-wide reform independent of what any
5 county had done in the past. Differentiating between those counties that pay unauthorized
6 benefits and those counties that do not does not survive a rational basis examination, much less
7 strict scrutiny. The statute merely rubber stamps an unlawful status quo ante. It violates equal
8 protection, and Defendants and Intervenor cannot rely on it to support the continued payment of
9 the County of Los Angeles' benefits.

10 **III. CONCLUSION.**

11 The California Constitution vests the Legislature with both the power and the duty to
12 "prescribe" the compensation of judges. The Court of Appeal found that Defendants usurped this
13 duty by paying supplemental benefits to state trial court judges in the County of Los Angeles
14 without authorization from the Legislature. In enacting Senate Bill 11, the Legislature has now
15 abdicated this very same duty. Neither Defendants' earlier usurpation of the Legislature's duty,
16 nor the Legislature's recent abdication of its duty, satisfies Article VI, Section 19 of the California
17 Constitution. Neither Article III, Section 4, nor Article VI, Section 20 of the California
18 Constitution affects this conclusion. In addition, not only is the Legislature's attempt to address
19 the Court of Appeal's ruling while sitting in a special session constitutionally infirm, but the
20 statute also runs afoul of the requirements of equal protection. Consequently, summary judgment
21 should be granted in Plaintiff's favor, judgment should be entered in Plaintiff's favor declaring the
22 payment of these benefits to be unlawful, and Defendants should be enjoined from paying
23 supplemental benefits in the future.

24 Dated: July 10, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

26 By: _____

27 Sterling E. Norris (SBN 040993)

28 *Attorneys for Plaintiff*

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Dated: April 21, 2009

Respectfully submitted,
JUDICIAL WATCH, INC.

By: 
Sterling E. Norris (SBN 040993)
Attorneys for Plaintiff

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 April 21, 2009, I served the foregoing document described as **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action:

BY MAIL

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.

FACSIMILE

I caused the document(s) to be faxed to the interested parties in the within action by transmitting via facsimile to the name(s) and the facsimile number(s) set forth above.

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 April 21, 2009, at San Marino, CA.

Constance S. Ruffley
CONSTANCE S. RUFFLEY

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