

**ORIGINAL FILED**  
 JAN - 9 2007  
 LOS ANGELES  
 SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES

HAROLD P. STURGEON,  
 Plaintiff,

Case No.: BC351286

Assigned for all purposes to  
 the Hon. James A. Richman

vs.

LOS ANGELES COUNTY, GLORIA  
 MOLINA, in her official capacity as a  
 member of the Los Angeles County Board  
 of Supervisors; YVONNE B. BURKE, in  
 her official capacity as a member of the  
 Los Angeles County Board of Supervisors;  
 ZEV YAROSLAVSKY, in his official  
 capacity as a member of the Los Angeles  
 County Board of Supervisors; DON  
 KNABE, in his official capacity as a  
 member of the Los Angeles County Board  
 of Supervisors; MICHAEL D.  
 ANTONOVICH, in his official capacity as  
 a member of the Los Angeles County  
 Board of Supervisors;  
 J. TYLER McCAULEY, in his official  
 capacity as Auditor-Controller for Los  
 Angeles County; LARRY GONZALEZ, in  
 his official capacity as Division Chief of  
 the Countywide Payroll Division of the  
 Los Angeles County Department of  
 Auditory-Controller; and DAVID E.  
 JANSSEN, in his official capacity as Chief  
 Administrative Officer of Los Angeles  
 County,

ORDER GRANTING MOTION FOR  
 SUMMARY JUDGMENT

Defendants

1 The motion of defendants Los Angeles County (County), Gloria Molina,  
2 Yvonne B. Burke, Zev Yaroslavsky, Don Knabe, Michael D. Antonovich, J. Tyler  
3 McCauley, Larry Gonzalez and David E. Janssen (when referred to collectively,  
4 "defendants") for summary judgment or, in the alternative, summary adjudication came  
5 on regularly for hearing on November 20, 2006 in Department 1 of the above entitled  
6 court, the Honorable James A. Richman presiding. Paul J. Orfanedes and Sterling E.  
7 Norris appeared for plaintiff Harold P. Sturgeon ("plaintiff"), and Elwood Lui, Jason C.  
8 Murray, and Erica L. Reilly appeared for defendants.

9 The court has considered all the papers filed in connection with the motion,  
10 including the matters as to which the parties requested judicial notice, and the arguments  
11 at the hearing. Based on that, and good cause appearing, the court HEREBY ORDERS  
12 THAT THE MOTION FOR SUMMARY JUDGMENT IS GRANTED.

13 I. BACKGROUND AND SETTING

14 A. The Pleadings

15 Plaintiff is a resident of, and taxpayer in, the County. On April 24, 2006, he filed  
16 a complaint for declaratory and injunctive relief, naming the nine defendants identified  
17 above: the County, the five members of its Board of Supervisors, its Chief Executive  
18 Officer, its Auditor-Controller, and the Division Chief of the Payroll Division of the  
19 Auditor-Controller. The basis of the complaint is the payment of what plaintiff refers to  
20 as "local judicial benefits" to county judicial officers, and the introductory paragraph  
21 asserts that the complaint seeks to "restrain, prevent and otherwise enjoin defendants  
22 from continuing to pay 'local judicial benefits' to the judges of the Los Angeles Superior  
23 Court, as payment of such benefits contravenes California Constitution article VI  
24 sections 19-20, article XVI section 6, and California Government Code, section 77000 et  
25 seq., among other relevant statutes and provisions of law. Plaintiff also seeks a judgment  
26 declaring that the payment of 'local judicial benefits' is unlawful." (Complaint, ¶ 1.)

27 Specifically, and as discussed in detail below, Plaintiff's claim is based on the  
28 enactment of the Lockyer-Isenberg Trial Court Finding Act. (Gov. Code, § 77000 et  
seq.); in connection with which plaintiff alleges as follows:

1 "17. In 1997, the State of California enacted legislation providing that '[o]n and  
 2 after July 1, 1997, the state shall assume sole responsibility for the funding of court  
 3 operations, as defined in Section 77003 and Rule 10.810 of the California Rules of Court  
 4 . . . .'. Both Section 77003 and Rule 10.810 define 'court operations' to include all  
 5 '[s]alaries, benefits, and public agency retirement contributions for superior and  
 6 municipal court judges . . . .'

7 "18. This clear intent of the 1997 legislation was to eliminate county funding of  
 8 all court operations and replace that funding with state funding. Gov. Code § 77207  
 9 ("The Legislature shall appropriate trial court funding.") (Complaint, ¶¶ 17-18.)

10 Based on that, the first cause of action seeks a declaration that the payment of  
 11 "'local judicial benefits' is unlawful" and "constitutes an unconstitutional gift of public  
 12 funds." (Complaint, ¶ 36.) This cause of action is the only one in issue here.<sup>1</sup>

13 On August 11, 2006, defendants filed their answer, consisting of a general denial  
 14 and seven affirmative defenses, which was followed shortly thereafter by the within  
 15 motion.

16 B. The Motion

17 On September 6, 2006, defendants filed their motion for summary judgment or, in  
 18 the alternative, for summary adjudication. The motion was simple and straightforward,  
 19 citing only one fact, that "since July 1, 1998, the County . . . has paid and continues to  
 20 pay certain benefits to the judges of the Los Angeles Superior Courts." Rather,  
 21 addressing the matter essentially as a legal question without any facts in dispute,

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22  
 23 <sup>1</sup> The complaint actually alleges two causes of action, styled for (1) declaratory  
 24 relief and (2) injunctive relief, the second of which does nothing more than incorporate  
 25 the 36 paragraphs in the first cause of action. Whatever the allegations in the second  
 26 cause of action, at the hearing plaintiff conceded, as defendants had urged, that injunctive  
 27 relief was not an independent claim, but was only a remedy. Such concession was  
 28 appropriate: "Injunctive relief is a remedy and not, in itself, a cause of action, and a  
 cause of action must exist before injunctive relief may be granted." (*Shell Oil Co. v.*  
*Richter* (1942) 52 Cal.App.2d 164, 168, citing *Williams v. Southern Pac. R.R. Co.* (1907)  
 150 Cal. 624; see generally, 5 Witkin, *Calif. Procedure* (4th ed. 1997) Pleading §§ 778,  
 781, pp. 235-236, 238.)

1 defendants made two arguments, both as a matter of law: that the County's payments  
2 (1) are not an unlawful gift of public funds, and (2) do not constitute an impermissible  
3 delegation of legislative authority.

4 Plaintiff filed his opposition on November 6, 2006. It included a memorandum of  
5 points and authorities, his response to defendants' separate statement and his separate  
6 statement of other material facts, a request for judicial notice of the County's 2006 annual  
7 benefits and enrollment guide, and a 12-paragraph declaration from Paul J. Orfanedes,  
8 one of plaintiff's attorneys. The first two paragraphs of Mr. Orfanedes's declaration  
9 identified him; paragraphs 3 through 10 identified and authenticated various discovery  
10 produced by defendants; paragraph 11 identified a newspaper article; and paragraph 12,  
11 discussed in more detail below, described certain discovery produced—more accurately,  
12 claimed not to have been produced—by defendants.

13 On November 13, 2006, defendants filed their reply papers, which included a  
14 reply brief, a response to plaintiff's separate statement, objections to evidence, and their  
15 request for judicial notice, seeking judicial notice of eight documents, including various  
16 reports and materials from the California Law Revision Commission, various County  
17 materials, and other reports. At the hearing, plaintiff's counsel expressly stated that "we  
18 don't object" to the items in defendants' request for judicial notice (Reporter's  
19 Transcript, hereinafter cited "RT," pp. 22-23), and BOTH SIDES' REQUESTS FOR  
20 JUDICIAL NOTICE ARE GRANTED.

21 Against that background, the court turns to an analysis of the motion.

22 II. ANALYSIS

23 A. Plaintiff's Request for a Continuance of the Motion Is Not Well Taken

24 Plaintiff's memorandum of points and authorities in opposition to the motion is  
25 19-pages long, the first 16-plus pages of which argue against the merits of the motion.  
26 Then, in the middle of page 17, without a new argument heading, plaintiff asserts that  
27 "Lastly, Defendants continue to withhold relevant evidence from plaintiff that is likely to  
28 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

1 additional public benefit to paying duplicate benefits and supplemental compensation  
2 above and beyond what judges are paid by the State. [Citation.]” (Plaintiff’s  
3 memorandum in opposition, hereinafter cited “Brief,” p. 17.)

4 Following elaboration and brief argument about that claimed withholding of  
5 evidence, plaintiff’s opposition concludes as follows: “Consequently, neither summary  
6 judgment nor summary adjudication are appropriate for the additional reason that facts  
7 essential to Plaintiff’s opposition have been sought by Plaintiff but cannot be presented to  
8 the Court at this time because Defendants continue to withhold discovery from Plaintiff.  
9 The Court should deny, or, at a minimum, delay consideration of Defendants’ motion  
10 until such time as plaintiff can obtain this evidence. Cal. Civ. Proc. § 437c(h).” (Brief,  
11 p. 19.) The Court begins its analysis with this request, and concludes that it is not well  
12 taken.

13 California summary judgment law is, of course, found in Code Civil Procedure  
14 section 437c (Section 437c), subdivision (h) of which provides as follows: “If it appears  
15 from the affidavits submitted in opposition to a motion for summary judgment or  
16 summary adjudication or both that facts essential to justify opposition may exist but  
17 cannot, for reasons stated, then be presented, the court shall deny the motion, or order a  
18 continuance to permit affidavits to be obtained or discovery to be had or may make any  
19 other order as may be just.”

20 As noted in *Fraze v. Seeley* (2002) 95 Cal.App.4th 627, 634 (*Fraze*),  
21 subdivision (h) “was added to section 437c . . . ‘[t]o mitigate summary judgment’s  
22 harshness’ and it mandates a continuance for the nonmoving party ‘ ‘upon a good faith  
23 showing by affidavit that a continuance is needed to obtain facts essential to justify  
24 opposition to the motion.’ [Citation.]” [Citation.]’ (*Bahl v. Bank of America, supra*,  
25 89 Cal.App.4th at p. 395.) Moreover, the affiant is not required to show that essential  
26 evidence does exist, but only that it may exist. This, and the language stating the  
27 continuance shall be granted upon such a showing, ‘leaves little room for doubt that such  
28 continuances are to be liberally granted.’ (*Ibid.*)” (*Accord Cooksey v. Alexakis* (2005)

1 123 Cal.App.4th 246, 253-254 (*Cooksey*); *Yuzon v. Collins* (2004) 116 Cal.App.4th 149,  
2 167.)

3 That said, continuance of a summary judgment motion is not mandatory when no  
4 affidavit or declaration is submitted, or when the submitted declaration fails to make the  
5 necessary showing under Section 437c(h). (*Frazer, supra*, 95 Cal.App.4th at  
6 pp. 633-634; *Cooksey, supra*, 123 Cal.App.4th at pp. 253-254. This principle, the court  
7 concludes, is applicable here, as plaintiff's request for continuance does not measure up.  
8 The extensive discussion in the leading practical treatise, Weil & Brown, Cal. Practice  
9 Guide: Civil Procedure Before Trial (The Rutter Group 2006) §§ 10:207.10-10.207.15,  
10 pp. 10-76-10-77, where the authors describe the showing required, explains why:

11 "c. Declarations required for continuance: It is not enough to ask for a  
12 continuance at the time of oral argument or in opposing points and authorities. The  
13 statute requires that the opposition be accompanied by affidavits or declarations showing  
14 facts to justify opposition may exist . . . . (See CCP § 437c, [subd.] (h).)

15 "(1) Purpose: The purpose of the declarations required by §437c(h) is to inform  
16 the court of outstanding discovery necessary to resist the summary judgment motion: 'To  
17 be entitled to a continuance, the party opposing the motion for summary judgment must  
18 show that its proposed discovery would have led to facts essential to justify opposition.'  
19 *Scott v. CIBA Vision Corp.* (1995) 38 Cal.App.4th 307, 325-326. . . .

20 "[¶] . . . [¶] [10:207.15] Requirements: The opposing party's declaration in  
21 support of a motion to continue the hearing should show the following:

22 "Facts establishing a likelihood that controverting evidence may exist;

23 "The specific reasons why such evidence cannot be presented at the present time;

24 "An estimate of the time necessary to obtain such evidence; and

25 "The specific steps or procedures the opposing party intends to utilize to obtain  
26 such evidence. [Citations.]"

27 The only declaration submitted by plaintiff was, as noted, that of attorney  
28 Orfanedes, and only one paragraph, paragraph 12, contains any discussion related to the  
section 437c(h) request. It is not sufficient.

1 Virtually all that Mr. Orfanedes says is that defendants have not produced the  
2 sought-after discovery. There is no showing (or even an attempt to show) that the  
3 claimed material sought actually exists; no showing how plaintiff would propose to  
4 obtain the material; and no showing how the material, if it existed and if it were obtained,  
5 would assist plaintiff in resisting the motion. This, *Cooksey* and other cases hold, by  
6 itself provides a basis to deny plaintiff's request. (*Cooksey, supra*, 123 Cal.App.4th at  
7 p. 254 ["Based on this deficiency alone, the trial court had the discretion to deny  
8 appellant's request for a continuance," as appellant "failed to explain how the outstanding  
9 discovery was necessary for appellant's opposition"].) But there is more.

10 Defendants' reply brief asserted that plaintiff's essential claim—that the County  
11 has not produced "any evidence" that the Board of Supervisors "specifically authorized,  
12 approved, considered, or deliberated as to the payment of the benefits"—was not  
13 accurate. To the contrary, defendants asserted that the "County provided that exact  
14 information in its most recent responses to discovery. [See Orfanedes Decl., Ex. G.]  
15 Specifically, the County stated under oath that '[s]ince the enactment of the [Lockyer-  
16 Isenberg TCFA], the county of Los Angeles, through its Board of Supervisors, has  
17 expressly and intentionally approved payment of local judicial benefits' and then  
18 provided a detailed narrative" of various board actions. So, defendants argued, "although  
19 it apparently is not of the form or substance that plaintiff desires, the County has provided  
20 the exact information plaintiff contends he needs." (Defendants' Reply Brief, pp. 9-10.)

21 Despite this record, the court addressed plaintiff's section 437c(h) request at  
22 length at the hearing, providing plaintiff an opportunity to embellish the record, to  
23 provide more specific information about what he wanted, how he envisioned obtaining it,  
24 and how it would avail his position, at the conclusion of which the court took the section  
25 437c(h) request under submission. (RT, pp. 2-22.)

26 Now, having considered the arguments of the parties in their papers and the  
27 extensive argument at the hearing, the court concludes that plaintiff has not made the  
28 showing required to obtain the continuance—he has not demonstrated the existence of  
"outstanding discovery which is necessary to resist the motion." (*Cooksey, supra*,

1 123 Cal. App. 4th at p. 254.) Accordingly, plaintiff's section 437c(h) request is  
 2 DENIED, and the court turns to the substance of the motion.

3 B. The Motion For Summary Judgment Is Well Taken

4 1. Introduction, Plaintiff's Claims, And The Issue

5 As noted above, although plaintiff's complaint alleges two causes of action, the  
 6 second "cause of action" was really only a remedy (see fn. 1, ante). Thus, the matter  
 7 proceeds on the first cause of action for declaratory relief only, which as quoted above  
 8 refers in its introduction to sections of the California Constitution and Government Code  
 9 sections 77000 et seq. "among other relevant statutes and provisions of law."  
 10 (Complaint, ¶ 1.) Then, after the jurisdictional and factual allegations, the first cause of  
 11 action seeks in its summary paragraph a "declaration that payment of 'local judicial  
 12 benefits' is unlawful . . . and constitutes an unconstitutional gift of public funds under  
 13 Cal. Const., Art. XVI, section 6." (Complaint, ¶ 36.)

14 Earlier in the complaint, however, plaintiff alleges that the payment of local  
 15 judicial benefits serves "no useful, lawful purpose, provides no additional public benefit,  
 16 and otherwise constitutes an unconscionable waste of taxpayer funds." (Complaint,  
 17 ¶ 31.) And the prayer for relief asks for a declaration that the payment of local judicial  
 18 benefits is unlawful and "constitutes an unconstitutional gift and waste of public funds  
 19 under Cal. Const., Art. XVI, § 6." (Complaint, p. 7.)

20 Defendants' motion made no argument addressing any claim of "waste," which  
 21 led to this argument in plaintiff's opposition: "Defendants' motion does not expressly  
 22 address Plaintiff's 'waste' claim under Code of Civil Procedure section 526a, nor do  
 23 Defendants appear to seek summary adjudication on any aspect of this portion of  
 24 Plaintiff's lawsuit. For these reasons alone, neither summary judgment nor summary  
 25 adjudication can be granted in Defendants' favor." (Brief, p. 15.)

26 Defendants' reply asserted essentially that the claims of gift and waste were  
 27 indistinguishable and subject to the same analysis, citing illustratively *Lucas v. Santa*  
 28 *Maria Public Airport District* (1995) 39 Cal.App.4th 1017 (*Lucas*).

1 Because of this state of affairs, at the hearing the court specifically inquired of  
 2 plaintiff's counsel "how many claims" are in the first cause of action, to which counsel  
 3 replied, "Really just two: . . . The first claim is that the payment, the continued payment  
 4 of the benefits is illegal. [¶] . . . [¶] And then the second claim is that payment of,  
 5 continued payment of the benefits constitutes a waste." ~(RT, p. 24)~ That led to this  
 6 colloquy:

7 "The Court: And that is different than a gift?

8 "Mr. Orfanedes [Counsel for Plaintiff]: It is different from a gift. . . . There is a bit  
 9 of a subtle distinction between illegality. Obviously illegality constitutes waste but waste  
 10 can be larger than simply illegality. . . . [¶] And in this instance what we were arguing  
 11 was again the lack of any evidence that the board actually considered continued payment  
 12 of these benefits in response to the Lockyer Isenberg Trial Court Funding Act. That is  
 13 the waste claim in a nutshell. There is no evidence, we see no indication, we see no  
 14 evidence that they considered the public benefit that they were providing. We see no  
 15 evidence indicating they considered an additional public benefit they were providing, that  
 16 they were going to provide by providing duplicate benefits.

17 "The Court: Well, they take issue with you on the duplicate.<sup>2</sup> Let's talk about . . .  
 18 the waste. So waste is or isn't co-extensive with a gift? You say it is broader or  
 19 narrower? How would you describe it in your conception?

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20  
 21 <sup>2</sup> In his opposition plaintiff refers to the benefits at issue as "duplicate benefits."  
 22 (e.g. Brief, pp. 2-3, 9, 10 and *passim*.) Defendants' reply takes vigorous issue with this  
 23 description, asserting as follows: "Plaintiff repeatedly (at least 23 times) characterizes  
 24 the benefits at issue as being 'duplicative' of state benefits, but they are not. For  
 25 example, judges are eligible to purchase state health insurance and receive a partial state  
 26 contribution for that benefit, or they can decline the state health insurance and purchase  
 27 County health insurance under MegaFlex, or they can receive a cash distribution of their  
 28 MegaFlex benefit and purchase private health insurance. Thus, they are given both state  
 and County benefit options, but they are not duplicative. Likewise, the state does not  
 offer a professional development allowance, but the County does; the benefit is not  
 duplicative. Moreover, plaintiff has not presented any evidence whatsoever to support  
 his characterization other than an inadmissible hearsay statement, which must be  
 disregarded." (Defs. Reply Brief, p. 1, fn. 1.)

1 "Mr. Orfanedes: I wouldn't say it is or isn't co-extensive with gift. The question  
 2 is whether is it or is it not co-extensive with illegality. I think waste is a broader  
 3 category. Illegality is a subset of waste. If something is illegal it is by definition  
 4 wasteful, but the waste argument is broader than the simple illegality argument and the  
 5 waste can include things such as we talked about, about the failure to consider additional  
 6 public benefit, the failure to consider whether something will serve a useful purpose or is  
 7 it just an unconscionable waste." (RT 25-26)

8 As noted above, in his opposition plaintiff raised a procedural argument, the  
 9 essence of which is that he asserted a claim for waste, that defendants did not address that  
 10 claim, and thus summary judgment cannot be granted. (See *24 Hour Fitness, Inc. v.*  
 11 *Superior Court* (1998) 66 Cal. App.4th 1199, 1215 [summary judgment appropriate only  
 12 if it disposes of entire case].)<sup>3</sup> As also noted above, defendants' reply essentially argued  
 13 that a claim of an improper gift of public funds (the claim their papers addressed) was co-  
 14 extensive with, or indistinguishable from, a claim for waste—an argument, not  
 15 incidentally, with which plaintiff did not meaningfully disagree at the hearing, replying as  
 16 quoted above that he "wouldn't say [a claim for waste] is or isn't coextensive with gift."  
 17 (RT 25) And it may well be that the two claims are coextensive.

18 *Lucas, supra*, 39 Cal.App.4th 1017, the case relied on by defendants, is  
 19 persuasive. Lucas complained about the Airport District's contract with its general  
 20 manager, specifically asserting that a severance pay provision was in excess of that  
 21 allowed under the Public Utilities Code and the District's administrative code.  
 22 (39 Cal.App.4th at p. 1023.) As initially described by the court, Lucas's first amended  
 23 complaint "alleged that the District violated law and the public trust, [and] committed  
 24 waste . . ." (*Id.* at p. 1021.) Then, in its analysis of the "WASTE" claim, the court  
 25 stated that Lucas asserts that the contract "provided no benefits to the public, and that it

26  
 27 <sup>3</sup> Plaintiff's argument actually asserts that summary adjudication is likewise  
 28 unavailable, but this not correct, at least not if the first "cause of action" in fact has more  
 than one claim. (See *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848,  
 1854.)

1 constituted 'an unnecessary expenditure; a *gift* of public funds . . . ." (*Id.* at p. 1026,  
2 italics added.) The court then concluded that "[a]lthough Lucas may feel that the contract  
3 . . . was a waste of public funds, no cause of action lies for waste under the facts alleged."  
4 (*Id.* at p. 1027.)

5 Even more persuasive is *Harman v. City and County of San Francisco* (1972)  
6 7 Cal.3d 150 (*Harman*). *Harman* was a taxpayer's suit concerning the City's sale (or  
7 proposed sale) of portions of vacated streets. As described by the Supreme Court,  
8 plaintiff sued "to obtain a declaration that the property director's method of obtaining  
9 appraised values results in a 'gift of public funds' contrary to the 'the laws, statutes,  
10 charters, and ordinances governing such sales and transactions.'" (*Id.* at p. 156.)  
11 Defendants' demurrer was sustained without leave to amend, and plaintiff appealed. The  
12 Supreme Court reversed, on the basis that "plaintiff has stated a valid cause of action."  
13 (*Harman, supra*, 7 Cal. 3d at p. 156.) Elaborating on that reversal, Justice Tobriner made  
14 several observations pertinent here, including that plaintiff was a municipal taxpayer who  
15 sought "to avoid the waste of municipal assets." (*Id.* at p. 159.) Concluding that plaintiff  
16 had standing, Justice Tobriner cited Code of Civil Procedure section 526a, and its  
17 prohibition against "illegal expenditure of, waste of . . ." municipal assets. (*Id.* at p.  
18 160.) Finally, in rejecting defendants' preemption argument, Justice Tobriner held that  
19 "the interest in preventing fiscal waste in the disposition of municipal assets is obviously  
20 one of local concern." (7 Cal.3d at p. 164.)

21 *Lucas* and *Harman* both manifest that courts have used the terms gift and waste  
22 interchangeably, and a persuasive argument can certainly be made that a claim of gift of  
23 public funds and a claim for waste are essentially the same. But even if they were not,  
24 the court would be troubled by a result that mandated a denial of an otherwise appropriate  
25 summary judgment based on a procedural technicality or defect, especially as any such  
26 defect would have resulted from the ambiguity and/or imprecision in plaintiff's  
27 complaint. Specifically:

28 Code of Civil Procedure section 526a, the statute dealing with waste, is not  
29 mentioned in plaintiff's complaint in any substantive way, other than on the issue of

1 jurisdiction. Put another way, the "waste" statute is not the premise of any claim.  
 2 Further, while the complaint does mention "waste" in paragraph 31, the operative  
 3 charging paragraph 36 seeks a declaration that the payment of benefits is "unlawful . . .  
 4 and constitutes an unconstitutional gift of public funds." There is no mention of waste.  
 5 Finally, as noted, the prayer under the first cause of action seeks a declaration that the  
 6 payment of benefits "is unlawful . . . and constitutes an unconstitutional gift and waste of  
 7 public funds *under Cal. Const. Art. XVI, § 6.*" (Italics added; complaint, p. 7.) The cited  
 8 Constitution section refers only to gift, not waste. In light of all this, especially the  
 9 prayer's use of the conjunctive, plaintiff himself may equate the two claims, shown also  
 10 by his counsel's acknowledgment at the hearing that he "wouldn't say" the claims are not  
 11 "coextensive."

12 Whether they are or not, the court concludes that it need not decide this issue, not  
 13 in light of the fact that the record here is undisputed and in further light of the law  
 14 involving summary judgment. Such law includes, for example, that mentioned by the  
 15 California Supreme Court in *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348, that the  
 16 court must decide "whether the facts not subject to triable dispute warrant judgment for  
 17 the moving party as a matter of law." Or, as one Court of Appeal noted in reference to its  
 18 standard of review, "We review the evidence presented to the trial court and  
 19 independently adjudicate its effect as a matter of law." (*Horn v. Cushman & Wakefield*  
 20 *Western Inc.* (1999) 72 Cal.App.4th 798, 807, citing *Lee v. Crusader Ins. Co.* (1996)  
 21 49 Cal.App.4th 1750, 1756.)

22 In sum, the court concludes that the undisputed record here presents a setting  
 23 appropriate for a summary judgment analysis, to which it now turns.  
 24  
 25  
 26  
 27  
 28

1           2. The General Rules on Summary Judgment

2           Section 437c, subdivision (c) provides that summary judgment is properly granted  
3 when there is no triable issue of material fact and the moving party is entitled to judgment  
4 as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) As applicable here, with moving  
5 defendants, they can meet their burden by demonstrating that the "cause of action has no  
6 merit." (Code Civ. Proc., § 437c, subd. (o)(2); see also, *Romano v. Rockwell Internat.,*  
7 *Inc.* (1996) 14 Cal.4th 479, 486.) Once defendants meet this burden, the burden shifts to  
8 plaintiff to show the existence of a triable issue of material fact. (Code Civ. Proc.,  
9 § 437c, subd. (o)(2).)

10           Section 437c, subdivision (c) also provides that summary judgment is proper if  
11 "all the papers submitted show that there is no triable issue of material fact." In light of  
12 this, the evidence disclosed in opposing declarations and exhibits may be considered in  
13 determining whether a triable issue of fact exists. (See *Villa v. McFerren* (1995)  
14 35 Cal.App.4th 733, 751 [deposition of moving party defendant submitted with plaintiff's  
15 opposition]; *Leep v. American Ship Mgmt.* (2005) 126 Cal.App.4th 1028, 1042-1043;  
16 *Weiss v. Chevron USA, Inc.* (1988) 204 Cal.App.3d 1094, 1096 [proper to consider  
17 declaration in reply to opposition]; *Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362  
18 [same].)

19           A complaint seeking declaratory relief, as here, can be an appropriate setting for  
20 summary judgment. (See, for example, *Shaw v. Regents of University of California*  
21 (1997) 58 Cal.App.4th 44, 52.) As the Court of Appeal explained in *Gafcon v. Ponsor &*  
22 *Associates* (2002) 98 Cal.App.4th 1388, 1401-1402: "Summary judgment procedure  
23 includes declaratory relief actions 'in a proper case.'" (*National Exhibition Co. v. City*  
24 *and County of San Francisco* (1972) 24 Cal.App.3d 1, 11, citing *Walker v. Munro* (1960)  
25 178 Cal.App.2d 67, 70.) " "[T]he propriety of the application of [summary judgment to]  
26 declaratory relief lies in the trial court's function to render such a judgment when only  
27 legal issues are presented for its determination." [Citations.]' (*Las Tunas Beach*  
28 *Geologic Hazard Abatement Dist. v. Superior Court* (1995) 38 Cal.App.4th 1002.) . . .  
Thus, in a declaratory relief action, the defendant's burden is to establish the plaintiff is

1 not entitled to a declaration in its favor. It may do this by establishing . . . undisputed  
2 facts do not support the premise for the sought-after declaration . . . .”

3 The court concludes that summary judgment is appropriate here, as the undisputed  
4 facts do not support the premise(s) for the sought-after declaration: the payment of the  
5 benefits are not unlawful, nor are they a gift of, or a waste of, public funds.

6 3. The Benefits Are Not Unlawful<sup>4</sup>

7 a. Introduction

8 “The Legislature shall prescribe compensation for judges of courts of record”  
9 (Cal. Const., art. VI, § 19), which it has done, with a salary that is the same statewide.  
10 Apparently beginning sometime in the late 1980’s, the County began a program that paid  
11 its judges an amount over and above the salary set by the Legislature, which payment was  
12 apparently in the form of a benefit package of some sort.<sup>5</sup> Whatever the details, from all  
13 indications these payments went legally unchallenged until the within lawsuit was filed,  
14 sparked by the 1997 enactment of the Lockyer-Isenberg Trial Court Funding Act  
15 (“TCFA”). The essence of the dispute is, in the words of plaintiff’s own brief, this:

16 “In 1997, the California Legislature completed a process begun years earlier to  
17 equalize and consolidate the funding of all trial court operations at the state level.  
18 [Citations.]<sup>6</sup> Specifically, the Legislature enacted the Lockyer Isenberg [TCFA] of 1997

19  
20 <sup>4</sup> “Unlawful” was the claim alleged in the complaint; “illegal” was the term used at  
21 the hearing. The terms are for all intents and purposes synonymous (see *Sultan Turkish*  
22 *Baths v. Board of Police Commissioners* (1959) 169 Cal.App.2d 188, 200), and unlawful  
is the term used here.

23 <sup>5</sup> The court says apparently because the record is not clear as to precisely how or  
24 when any such program began, and what little evidence that was proffered to the court  
about this was objected to and not admitted.

25 <sup>6</sup> The Legislature’s initial attempt to shift funding to the state was apparently in  
26 1988, in what was referred to as the Brown-Presley Trial Court Funding Act (Gov. Code  
27 § 77000 et seq., added by Stats. 1988, ch. 945, § 10, eff. Sept. 16, 1988.) According to a  
28 footnote in defendants’ brief, “the recession of the early 1990s and the resulting  
limitation on state funds slowed down progress on achieving this goal.” (Defs.’ Brief,  
p.5, fn. 3.)

1 (“the Act”), the stated purpose of which was to require the State to “assume sole  
 2 responsibility for the funding of trial court operations” on or after July 1, 1997.  
 3 [Citations.] In addition to this clear, unambiguous, and express statement of intent, the  
 4 Act confirms that “[c]ommencing on July 1, 1997, no county shall be responsible for  
 5 funding court operations.” (Gov. Code, § 77201(a).) The Act defines “trial court  
 6 operations” to include “salaries, benefits, and public agency retirement contributions for  
 7 trial court judges.” (See Gov. Code § 77003(a)(1).)

8 “Defendants admit that, since the passage of the Act in 1997, the State has taken  
 9 over responsibility for payment of salaries and benefits to the judges of the Superior  
 10 Court for the State of California, County of Los Angeles. [Citation.] Defendants also  
 11 admit, however, that “certain benefits that historically were paid by the County of Los  
 12 Angeles continue to be paid by the County of Los Angeles.” [Citation.] The benefits at  
 13 issue include participation in the County’s ‘MegaFlex’ cafeteria benefits program and a  
 14 ‘professional development’ allowance. [Citation.] Defendants argue that the County  
 15 provides these benefits in order to ‘attract and retain well-qualified judges to serve the  
 16 public in one of the most expensive regions in the state.’ ” [Citation.] (Brief 1-2.)

17 As counsel for plaintiff distilled his position at the hearing, it “start[s] off with the  
 18 general legal proposition that the California Constitution requires the Legislature set  
 19 benefits and compensation of judges. . . . There is strong case law in the State of  
 20 California that says all public service employees’ compensation benefits must be  
 21 authorized. From that flows the argument that there is no authorization to pay these  
 22 continued benefits. The gift is sort of a secondary argument. . . . [¶] . . . [¶] It comes  
 23 down to the question of authorization and does this statute [i.e., the TCFA] provide  
 24 authorization to continue to pay these benefits. And the answer is no, it does not.” (RT  
 25 26:26-28:5.)

26 In short, plaintiff argues that enactment of the TCFA mandates the end of the  
 27 benefits. The court concludes otherwise.  
 28

b. The TCFA Allows Payment of the Benefits

As both sides agree, it was unquestionably the intent of the TCFA to shift the expense of court operations from the counties to the state, and to provide counties with long-term fiscal relief by having the state assume responsibility for cost increases. Indeed, section 2 of the 1997 legislation expressly declared that "The Legislature finds and declares . . . (f) It is increasingly clear that the counties of California are no longer able to provide unlimited funding increases to the judiciary and, in some counties, financial difficulties and strain threaten the quality and timeliness of justice. . . ." And Section 3 went on to declare the legislative intent to do each of the following:

"(a) Provide state responsibility for funding of trial court operations commencing in the 1997-98 fiscal year. [¶] (b) Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994-95 fiscal year with adjustments to the cap, as specified. [¶] (c) Provide that the State of California shall assume full responsibility for any growth in costs of trial court operations thereafter." (Stats. 1997, Ch. 850, p. 4.) And particularly germane to the issue here, subdivision (g) of section 3 provides that "(g) In adopting this plan, the Legislature intends . . . [¶] (1) To provide 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." (*Id.* at p. 4.)

As part and parcel of this fiscal relief, the Legislature required the counties to submit to the State an annual Maintenance of Effort (MOE) payment as a contribution towards such costs, to be capped at the amount of court operation costs paid by the counties in the 1994-95 fiscal year. (Gov. Code, § 77201, subd. (b)(1).) The Legislature also specifically contemplated the counties' cost for local judicial benefits, and provided that counties with a population of two million or more could have their annual MOE payment reduced by the amount of benefits paid by those counties in the 1994-1995 fiscal year. Specifically, Government Code section 77201, subdivision (c)(1) provides in pertinent part as follows: "A county shall submit a declaration to the Department of Finance . . . that the amount it is required to submit to the state . . . either includes or does

1 not include the costs for local judicial benefits . . . . Upon verification that the amount the  
 2 county is required to submit to the state includes the costs of local judicial benefits, the  
 3 department shall reduce . . . the amount the county is required to submit to the state . . . .  
 4 in which case the county shall continue to be responsible for the cost of those benefits.”

5 Addressing this section in his opposition, plaintiff first describes the process as  
 6 follows: “Section 77201 also set forth procedures by which certain adjustments could be  
 7 made to counties’ MOE payments based upon declarations submitted by the counties  
 8 and/or the courts to the Department of Finance, which the Department of Finance would  
 9 then verify. (Gov. Code § 77201, subds. (c) & (d).) One such adjustment allowed a  
 10 county to reduce its MOE payment if it submitted a declaration attesting that the amount  
 11 of money it had expended on court operations in fiscal year 1994-1995 included the cost  
 12 of ‘local judicial benefits.’ ” (Gov. Code, § 77201, subd. (c).) In the event a county was  
 13 authorized by the Department of Finance to deduct this amount from its MOE, then the  
 14 county remained responsible for the payment of ‘local judicial benefits’ *that year*.  
 15 (*Ibid.*)” (Brief, p. 6, italics added.)

16 Thereafter addressing this section, plaintiff asserts as a “preliminary matter” that  
 17 he “disputes” that the benefits in issue constitute “local judicial benefits” as contemplated  
 18 by the TCFA. Admitting that the term is not defined, plaintiff adverts to definitions in  
 19 Government Code section 77003, subdivision (a)(1) and section 77200, and from there  
 20 concludes as follows: “Giving the words ‘salaries’ and ‘benefits’ their plain, common  
 21 sense meaning, these terms must refer to the ordinary type of medical, dental, life,  
 22 accident, and disability insurance offered by the County under the MegaFlex program  
 23 and the taxable, supplemental compensation paid to those trial judges who do not use any  
 24 or all of their MegaFlex allowance to ‘purchase’ benefits. The Legislature must have  
 25 intended the term ‘local judicial benefits’ to have a meaning distinct from the terms  
 26 ‘salary’ and ‘benefits,’ or it would not have used these obviously different words. If the  
 27 term ‘local judicial benefits’ is to have any distinct meaning, it must mean something  
 28 other than the ordinary medical, dental, life, accident, and disability insurance and the  
 supplemental compensation provided by the County.” (Brief, p. 9.)

1 Plaintiff's argument is difficult to discern and, in any event, it is belied by the  
2 undisputed evidence that the State approved the County's declaration regarding local  
3 judicial benefits in connection with adjustments to the County's MOE payment under  
4 Government Code section 77201. (See Orfanedes Decl., Ex. H, Bates Nos.  
5 DEFTS00150-151.)

6 As indicated by the italicized portion of the excerpt from his brief, plaintiff also  
7 argues that any benefit payments authorized under the Act were only for the 1997-1998  
8 fiscal year. (Brief, pp. 6-7.) The court disagrees. Government Code section 77201.1  
9 addresses all fiscal years following the 1997-1998 fiscal year, and provides that the MOE  
10 payments by the counties for those years should be calculated according to the formula  
11 provided in section 77201, subdivision (c)(1). (Gov. Code, § 77201.1, subd. (b)(4).)  
12 That is, section 77201.1, subdivision (b)(4) incorporates by reference section 77201,  
13 subdivision (c)(1), which includes the counties' continuing obligation to be responsible  
14 for the cost of these benefits. This reading, the court concludes, is the only reading  
15 consistent with proper statutory interpretation, including that all statutes are to be read in  
16 harmony. (See, e.g., *Coachella Valley Mosquito and Vector Control Dist. v. California*  
17 *Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1089.) It is, moreover, the  
18 only reading consistent with the express intent of the Legislature quoted above, "that no  
19 personnel employed in the court system as of July 1, 1997, shall have their salary or  
20 benefits reduced as a result of this act." (Stats. 1997, ch. 850, § 3(g)(1).)

21 Plaintiff also argues that the any benefit payments after the 1997-1998 fiscal year  
22 were authorized only if the County filed an appeal of the findings of the Department of  
23 Finance. (Brief 9-10.) Again, the court disagrees. The appeal rights articulated in  
24 section 77201, subdivisions (c) and (d)—which, as noted, are incorporated into section  
25 77201.1, subdivision (b)(4)—are permissive: "If a county disagrees with the Department  
26 of Finance's failure to verify the facts in the county's declaration . . . the county may  
27 request that the Controller conduct an audit . . ." (Gov. Code, § 77201, subd. (c)(1).)  
28 As defendants persuasively argue, that the appeal process is permissive makes complete  
sense, for if the County agrees with the conclusion of the Department of Finance, there

1 would be no need for an audit, and to nevertheless require one would be a waste of  
2 county funds.

3 Based on the above, the court concludes that any fair reading of the TCFA leads to  
4 the conclusion that the it recognized the possibility of the benefits in issue here. It  
5 certainly did not prohibit them.

6 C. Government Code Section 69894.3 Authorizes Payment of the Benefits

7 A second, and independent, basis authorizing continued payment of the benefits is  
8 found in Government Code section 69894.3. This section, enacted in 1959, provides in  
9 its first paragraph as follows: "Employees of the superior court in each county having a  
10 population of over 2,000,000 shall be entitled to step advancement, vacation, sick leave,  
11 holiday benefits and other leaves of absence and other benefits as may be directed by  
12 rules of the court. Where statutes require implementation by local ordinances for the  
13 extension of benefits to local officers and employees, these may be made applicable by  
14 rule to court personnel, including but not limited to jurors, and judges."

15 Section 69894.3, it would appear, directly authorizes the benefits in issue here.  
16 Faced with this, plaintiff contends that "it is unclear at best, whether trial judges are or  
17 even should be considered 'employees' of the superior court." (Brief, p. 13.) Such  
18 argument is at best curious, and at worst disingenuous, as defendants' moving papers  
19 demonstrated that section 69894.3 was expressly made applicable to judges through  
20 Local Rule 1.12, which provides: "In accordance with Government Code section  
21 69894.3 all County of Los Angeles benefits extended to employees and local officers by  
22 local ordinance are applicable to Superior Court of California, County of Los Angeles,  
23 personnel, jurors and judges." (Super. Ct. L.A. County, Local Rules, rule 1.12.) The is a  
24 non-issue.

25 Plaintiff also argues that section 69894.3 conflicts with the TCFA and is therefore  
26 superseded by it. (Brief, p. 13.) Not so. To begin with, the history of related sections of  
27 the Government Code shows that the Legislature expressly considered whether certain  
28 provisions should be repealed in light of the TCFA, and in fact repealed several of them.  
(See, e.g., Stats. 2002, ch. 784, § 309 [repealing Gov. Code, § 69894.1]; Stats. 2003,

1 ch. 149, § 56 [repealing Gov. Code § 69894.2].) At the same time the Legislature  
 2 determined that section 69894.3 should not be repealed, that it should remain operative,  
 3 as it is today.

4 Indeed, the materials submitted with defendants' judicial notice request  
 5 demonstrate not only that the Law Revision Commission specifically considered the  
 6 continued vitality of Section 69894.3 in light of the TCFA, they also reflect that the  
 7 Commission considered the February 14, 2002 comments of then Presiding Judge  
 8 Bascue, who explained: "The Brown-Presley Trial Court Funding Act (Funding Act)  
 9 specifically recognizes locally provided judicial benefits and provides procedures for  
 10 their payment in the context of state funding (Gov. Code, § 77201). Preservation of these  
 11 provisions with respect to the judicial benefits is essential to avoid substantive changes in  
 12 the law that would far exceed the Commission's charge to identify statutes made obsolete  
 13 by trial court restructuring." (Pres. Judge James A. Bascue, letter to Cal. Law Revision  
 14 Comm., Feb. 14, 2002.)

15 In sum, Government Code section 69894.3 remains in effect. It is not, as plaintiff  
 16 would have it, superseded by the TCFA.

17 4. The Benefits Are Not A Gift Of Public Funds Or A Waste

18 (a) The Benefits Are Not A Gift

19 California Constitution, article XVI, section 6 provides that the Legislature has no  
 20 power "to make any gift or authorize the making of any gift, of any public money or  
 21 thing of value to any individual, municipal or other corporation . . . ." This section is  
 22 cited repeatedly in plaintiff's complaint, in paragraphs 1, 15, 24, 29, 35, 36 and in the  
 23 prayer. Despite all those references, and despite that defendants devoted nine pages of  
 24 argument in their moving papers to the subject, plaintiff's opposition eschewed any  
 25 mention of gift, apparently because, at least as urged at the hearing, his claim was for  
 26 waste. Whatever plaintiff's strategy or reasoning, his decision not to assert the claim  
 27 does not matter, as the law demonstrates that the benefits are not a gift of public funds.

28 The most fundamental reason is found in the definition of gift, as confirmed in  
*Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450 (*Jordan*):

1 "The term 'gift' in the constitutional provision 'includes all appropriations of public  
2 money for which there is no authority or enforceable claim' . . . . (*Conlin v. Board of*  
3 *Supervisors* (1893) 99 Cal.17, 21-22.)" Here, as discussed in detail above, there is  
4 "authority" for the benefits.

5 But even if there were not, it would still not avail plaintiff, because the  
6 appropriation is "for a public purpose." As *Jordan* went on to note, "It is well settled  
7 that the primary question to be considered in determining whether an appropriation of  
8 public funds is to be considered a gift is whether the funds are to be used for a public or  
9 private purpose. If they are to be used for a public purpose, they are not a gift within the  
10 meaning of this constitutional prohibition. [Citation.]' (*California Teachers Assn. v.*  
11 *Board of Trustees* (1978) 82 Cal.App.3d 249, 257." (*Jordan, supra*, 100 Cal.App.4th at  
12 p. 450.) Or, as another Court of Appeal described the rule: "Although the California  
13 Constitution directly prohibits gifts of public funds (Cal. Const., art. XVI, § 6), an  
14 exception for public purpose is well established. (See *California Housing Finance*  
15 *Agency v. Elliott* (1976) 17 Cal.3d 575, 583; *County of Alameda v. Carleson* (1971)  
16 5 Cal.3d 730, 745 app. *dism. sub nom. County of Alameda v. California Welfare Rights*  
17 *Organization* (1972) 406 U.S. 913. If an appropriation of public funds or property is for  
18 a public purpose (primarily a matter of legislative discretion), it is not considered an  
19 unlawful gift. (*California Housing Finance Agency v. Elliott, supra*, 17 Cal.3d at p.  
20 583.)" (*City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 85,  
21 103-104.)

22 Such public purpose is present here, as demonstrated by *San Joaquin County*  
23 *Employees' Assn., Inc. v. County of San Joaquin* (1974) 39 Cal.App.3d 83 (*San Joaquin*).  
24 *San Joaquin* was a declaratory relief action brought by a county employees' association  
25 seeking a determination that a public entity could lawfully agree to pay retroactive salary  
26 increases without their being considered a gift of public funds. (*San Joaquin, supra*, 39  
27 Cal.App.3d at p. 85.) Plaintiff association obtained a judgment on the pleadings, which  
28 the Court of Appeal affirmed, in language particularly applicable here: "It is an  
incontestable fact of government employment practices that governmental agencies must

1 compete in the labor market with non-governmental employers. Such competition  
 2 includes not only salaries but sick time leave, vacations and numerous other conditions of  
 3 employment. . . . Nor are we unmindful of the fact that governmental agencies almost  
 4 universally pay all or a portion of an employee's medical insurance premiums although  
 5 his original employment did not provide for such a gratuity. We cite these examples only  
 6 to show that in the area of employment, public agencies must compete, and if to so  
 7 compete they grant benefits to employees for past services, they are not making a gift of  
 8 public money but are taking self-serving steps to further the government agencies  
 9 self-interest in recruiting the most competent employees in a highly competitive market."  
 10 (*Id.* at p. 87.)

11 *Jarvis v. Cory* (1980) 28 Cal.3d 562 is similar. This was an action by a taxpayer  
 12 challenging a Senate bill providing for a lump sum payment to certain state employees  
 13 for work already performed. The trial court dismissed the suit, and the Supreme Court  
 14 denied a petition for writ of mandate, observing in pertinent part as follows: "Jarvis  
 15 contends [Senate Bill] 91 is invalid as a gift of public funds serving no substantial public  
 16 purpose. [Citations.] On the contrary, the Legislature found that the adjustments made  
 17 by the bill were 'necessary to ensure the continued recruitment and retention of qualified  
 18 and competent state employees.' We will not disturb the Legislature's finding of a public  
 19 purpose so long as it has a reasonable basis. [Citation.] [¶] In this case, we cannot doubt  
 20 the substantiality of the purpose state. Nor can we doubt that [Senate Bill] 91 serves the  
 21 purpose by assuring state employees they will not be abandoned in troubled times, and by  
 22 raising salaries to a level more competitive with those in the private sector. [Citation.]"  
 23 (*Jarvis v. Cory, supra*, 28 Cal.3d at p. 578, fn. 10.)

24 While these cases dealt with retroactive pay issues, and not benefits, the court  
 25 concludes that their reasoning is equally applicable here. It cannot be gainsaid that the  
 26 County had, and has, a legitimate interest in attracting and retaining qualified judges.  
 27 And because the salary for judges set by the Legislature is the same statewide, in areas  
 28 where the cost of living is higher, as in Los Angeles, otherwise qualified candidates may  
 for economic reasons be disinclined to apply— or, even worse, leave the bench for such

1 reasons. To attempt to ameliorate such situation, and thereby attract and retain desirable  
2 judicial officers, the County historically has provided certain benefits in addition to the  
3 salary set by the Legislature, a practice that has apparently been in existence since the late  
4 1980's. This practice, the court concludes, is not an improper gift of public funds. Or  
5 waste.

6 (b) The Benefits Are Not Waste

7 Code of Civil Procedure section 526a provides in pertinent part that an action may  
8 be maintained based on "any illegal expenditure of, waste of . . . funds . . . ."

9 "A public expenditure is a waste of public funds, and thus subject to a taxpayer's  
10 suit under Code of Civil Procedure 526a, if it is 'totally unnecessary' or 'useless' or  
11 'provides no public benefit.' " (*County of Ventura v. State Bar* (1995) 35 Cal.App.4th  
12 1055, 1059 (*County of Ventura*). As demonstrated by the lengthy discussion above, none  
13 of the these descriptions applies here.

14 Plaintiff's fundamental argument on this point is that defendants presented no  
15 evidence how the County came to provide the benefits. As plaintiff puts it, "While  
16 Defendants assert that the County 'provides these benefits out of a legitimate need to  
17 attract and maintain well-qualified judges to serve the public' (Defs. P&A at 1), they do  
18 not present any sworn affidavits, board resolutions, or other admissible evidence to this  
19 effect. Nor do they present any evidence of having considered, much less decided,  
20 whether there is any additional public benefit to paying judges benefits and compensation  
21 above and beyond what they are already receiving from the State." (Brief, pp. 15-17.)  
22 Or, as counsel put it at the hearing, plaintiff's argument "in a nutshell" is that "[t]here is  
23 no evidence, we see no indication, we see no evidence that they considered the public  
24 benefit that they were providing. We see no evidence indicating they considered an  
25 additional public benefit they were providing, that they were going to provide by  
26 providing duplicate benefits." (RT, p. 25) The record shows otherwise.

27 To begin with, the record contains a 1988 report from TPFC, a company retained  
28 as a consultant by the County Chief Administrative Officer, prepared at the time when  
the County apparently first looked into the payments of benefits to judges. (See

1 Defendants' Request for Judicial Notice, Exh. 7.) The report indicated among other  
 2 things that judicial salaries were not incentive enough to retain judges or to attract  
 3 experienced attorneys to leave practice for the judiciary.

4 The record also contains a narrative statement under oath in the form of the  
 5 defendants' answers to interrogatories—introduced by plaintiff, no less—which recites  
 6 the following:

7 "Since the enactment of the Lockyer-Isenberg [TCFA] of 1997, the County of Los  
 8 Angeles, through its Board of Supervisors, has expressly and intentionally approved  
 9 payment of local judicial benefits.

10 "On February 18, 1997, the Los Angeles County Board of Supervisors, as  
 11 reflected in the Minutes of the same date, unanimously adopted a resolution to opt in to  
 12 the State Trial Court Funding Program, as required under the Brown-Presley Trial Court  
 13 Funding Act of 1988 . . . In so doing, the Board agreed that, '[b]ased on the Governor's  
 14 1997-98 Proposed Budget, the State would be assuming the responsibility for the trial  
 15 courts, including future growth. The County's responsibility for trial courts, in addition  
 16 to the 1994-95 contribution level, would be limited to the costs for facilities, *local*  
 17 *judicial benefits* and collection enhancement; unallowable costs not meeting the  
 18 definition of court operations, such as mandatory costs for indigent defense, would also  
 19 continue to be a County responsibility.' [DEFTS00440 (emphasis added).]

20 ". . . The . . . TCFA required the counties to submit an annual Maintenance of  
 21 Effort (MOE) payment to the state as a contribution toward such costs, which would be  
 22 capped at the amount of court operation costs paid by the counties in the 1994/95 fiscal  
 23 year. [Citations.] The . . . TCFA also provided that counties with a population of two  
 24 million or more could have their annual MOE payment reduced by the amount of benefits  
 25 they paid in 1994/95 fiscal year. [Citation.] . . .

26 "In compliance with the . . . TCFA, on February 12, 1998, the County of Los  
 27 Angeles Chief Administrative Office, as a designee of the Board of Supervisors,  
 28 submitted its "Current Year and Baseline Maintenance of Effort Adjustment."  
 [DEFTS00133-142.] That submission expressly included a specific "Summary of

1 Declaration' relating to 'Local Judges Benefits' which requested an adjustment of  
2 \$12,835,295 to the MOE payment, as permitted under Government Code section 77201,  
3 subdivision (c)(1). [DEFTS00136.] This declaration was signed by David E. Janssen,  
4 Chief Administrative Officer, as a 'designee' of the Board of Supervisors, and each of the  
5 Board members were cc'd on the submission. [DEFTS00135-136.]

6 "For the 1997-98 fiscal year, and each fiscal year since, the Board has been  
7 presented with a proposed budget averaging \$19 billion in expenditures, a small portion  
8 of which relates to payment of local judicial benefits. For almost every fiscal year's  
9 budget, reference is made that the County is responsible for payment of local judicial  
10 benefits [see e.g., DEFTS00250] ("The [TCFA] requires counties to continue to fund  
11 certain court-related expenditures such as . . . local judicial benefits . . ."); [DEFTS00243]  
12 ("Reflects court-related expenditures, such as . . . local judicial benefits . . ."), or that  
13 approval of an increase in payments of local judicial benefits is sought [DEFTS00270.]  
14 ("Reflects funding for negotiated increases in local judicial benefits." [See generally  
15 DEFTS00220-311.]

16 "For the 1997-98 fiscal year, and each fiscal year since, the Board has expressly  
17 approved the budget presented. The Board's express approval is reflected either in a  
18 Statement of Proceedings—which is prepared by the Executive Office and reflects every  
19 action, including the vote, that is taken by the Board during the meeting—or through  
20 official Minutes of the Board of Supervisors. [See generally DEFTS00312-438] . . .  
21 (Orfanedes Decl., Ex. G, pp. 4-5.) . . ." (Fns. omitted.)

22 That narrative statement is the only evidence in the record. That evidence, the  
23 court concludes, demonstrates that plaintiff's waste argument is unsupported factually.  
24 Likewise it is unsupported legally, as shown by the *County of Ventura, supra*, 35  
25 Cal.App.4th 1055, which is on point.

26 In *County of Ventura* the county and its district attorney brought an action seeking  
27 to compel the State Bar to permit the district attorney to object on behalf of his  
28 employees to the Bar's calculations of a portion of the dues attributable to political or  
ideological activities, so-called *Hudson* fees. The claim was waste. The trial court

1 concluded the district attorney lacked standing, sustained a demurrer, and dismissed. The  
 2 Court of Appeal reversed. Doing so, however, the court made various observations on  
 3 the subject of waste devastating to plaintiff's claim here:

4 "The Attorney General's opinion states that absent contractual obligation, a public  
 5 agency's payment of *Hudson* fees 'may be viewed as "totally unnecessary," since the  
 6 agency's attorneys may continue to practice law irrespective of whether the *Hudson* fees  
 7 are paid.' [Citation.] That is, the Attorney General believes that because the *Hudson* fee  
 8 payment is voluntary, as a public expenditure it is "totally unnecessary."

9 "The flaw in this reasoning is in its focus on the voluntary nature of the payment.  
 10 Many perquisites of employment need not be provided in order for an employee to get  
 11 the job done, and in that sense their payment by a public agency is voluntary: a public  
 12 attorney can do the job without being provided medical, dental or vision care insurance,  
 13 under substandard office conditions, with only a week's vacation each year, being paid an  
 14 uncompetitive salary. But if an expenditure of public funds were permitted only to the  
 15 extent essential to getting a day's work out of a licensed attorney, then little more than  
 16 subsistence wages could be provided, and the obvious result would be inability to attract  
 17 and keep high quality employees.

18 "The proper question in reviewing a perquisite of employment for waste of public  
 19 funds is whether the perquisite is necessary or useful or provides a benefit to the public  
 20 agency. (*Sundance v. Municipal Court* [ *supra*, ] 42 Cal.3d at pp. 1138-1139.) Normally  
 21 the answer will be yes. Payment for a non-essential perquisite—such as vision care  
 22 insurance, a private office, or a decent desk chair—benefits the public agency in that, *as*  
 23 *part of an overall benefits package*, it helps attract and keep superior employees. Such  
 24 expenditures are beneficial, useful, and as a practical matter necessary to the staffing of a  
 25 high quality office of public attorneys" (*County of Ventura, supra*, 35 Cal.App.4th 1055  
 26 at pp. 1059-1060, fn. omitted.)

27 *Lucas, supra*, 39 Cal.App.4th 1017, is also instructive. As discussed above, Lucas  
 28 complained about defendant Airport District's contract with its general manager, a claim  
 the court rejected. And the reason? "[T]he District may have decided that it was in the

1 best interests of the District and the public to retain him under a contract providing good  
2 benefits and a severance pay provision. Such provisions are often necessary to retain  
3 high level professional and managerial employees. This is a decision which lies within  
4 the sound discretion of the agency, pursuant to statutory authority. We may not disturb  
5 it." (39 Cal.App.4th at p. 1027.)

6 The two cases primarily relied on by plaintiff—*City of Ceres v. City of Modesto*  
7 (1969) 274 Cal.App.2d 545 (*City of Ceres*) and *Los Altos Property Owners Assn v.*  
8 *Hutcheon* (1977) 69 Cal.App.3d 22—are not to the contrary. It is perhaps enough to note  
9 that both are demurrer cases, and merely held that the complaints there alleged (or could  
10 be amended to allege) a claim for waste of public funds. In any event, neither deals with  
11 a fact pattern remotely similar to that involved here.

12 Three other cases are cited by plaintiff without discussion, as follows: "First, in  
13 determining whether a challenged expenditure constitutes a waste, California courts have  
14 inquired into the legitimacy of the underlying action. Illegal, unauthorized, and void and  
15 inoperative acts are not protected by the courts as legitimate governmental acts. (*Lucas*  
16 [supra,] 39 Cal.App.4th 1017, 1026-26 [illegal]; *Terry v. Bender*, 143 Cal.App.2d 198,  
17 211-212 [unauthorized]; *Harnett v. County of Sacramento* (1925) 195 Cal.676, 682-683  
18 [void and inoperative].)" (Brief, p. 15.) These cases, too, are inapposite. As discussed  
19 above, the benefits here are not illegal, are authorized, are not void, and are operative.

20 The court ends its discussion with the observation from *City of Ceres*, one of the  
21 principal cases relied on by plaintiff. "'Waste' . . . means something more than an  
22 alleged mistake by public officials in matters involving the exercise of judgment or wide  
23 discretion. To hold otherwise would invite constant harassment of city and county  
24 officers by disgruntled citizens and could seriously hamper our representative form of  
25 government at the local level. Thus, the courts should not take judicial cognizance of  
26 disputes which are primarily political in nature, nor should they attempt to enjoin every  
27 expenditure which does not meet with a taxpayer's approval." (*City of Ceres, supra*,  
28 274 Cal.App.2d at p. 555.)

1 III. OBJECTIONS TO EVIDENCE

2 Defendants' objections to evidence filed on November 13, 2006, are ruled on as  
3 follows:

4 1) Objection 1—sustained: hearsay.

5 2) Objection 2—overruled.

6 Plaintiff's objection to the document submitted at the hearing (RT 41)—sustained.

7 IV. DISPOSITION

8 For each, and all, of the reasons set forth above, defendants' motion for summary  
9 judgment is granted. Counsel for defendants shall prepare a judgment in accordance with  
10 this order.

11 Dated: January 8, 2007

12 By: James A. Richman  
Justice James A. Richman

13 Sitting by Assignment as a  
14 Judge of the Superior Court  
15 of California  
16 County of Los Angeles  
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