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JUDICIAL COUNCIL OF CALIFORNIA and CHIEF
JUSTICE TANI G. CANTIL-SAKAUYE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

GLENN MAHLER, JAMES H. POOLE,
JULIE CONGER, EDWARD M. LACY JR,
WILLIAM S. LEBOV, JOHN C. MINNEY,
and JOHN SAPUNOR,

Plaintiffs,

v.

JUDICIAL COUNCIL OF CALIFORNIA,
CHIEF JUSTICE TANI G. CANTIL-
SAKAUYE, and DOES ONE through TEN,

Defendants.

Case No. CGC-19-575842

**DEFENDANTS' REPLY IN SUPPORT
OF REQUEST FOR JUDICIAL
NOTICE REGARDING DEMURRER
TO THIRD AMENDED COMPLAINT**

Date: April 12, 2022
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Richard B. Ulmer Jr.

Complaint Filed: May 9, 2019
First Amd. Compl. Filed: May 28, 2019
Second Amd. Compl. Filed: Oct. 19, 2021
Third Amd. Compl. Filed: Feb. 15, 2022

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/05/2022
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

1 Defendants request judicial notice of four government documents that fall squarely within
2 the ambit of Evidence Code 452(c), which authorizes notice of “[o]fficial acts of the legislative,
3 executive, and judicial departments ... of any state of the United States.” Evid. Code, § 452(c).

4 The documents include:

- 5 • The Judicial Council’s May 21, 2018 Memorandum (“Judicial Council Memorandum”);
- 6 • The Judicial Council’s July 2020 Temporary Assigned Judges Program (“Handbook”);
- 7 • The Judicial Council’s November 2020 Update of the Judicial Needs Assessment
8 (“Judicial Needs Assessment”); and
- 9 • The Auditor of the State of California’s May 2019 Investigations of Improper Activities
10 by State Agencies and Employees (“Auditor’s Report”).

11 Plaintiffs oppose judicial notice on three grounds, each of which Plaintiffs pressed in the
12 Court of Appeal when Defendants sought notice of the Auditor’s Report, the Judicial Council
13 Memorandum, and an earlier (2019) version of the Handbook. (See Appellants’ Memo. in Opp’n
14 to Respondents’ Request for Judicial Notice, *Mahler v. Judicial Council of California*, No.
15 A158696 (May 28, 2020).) The Court of Appeal rejected Plaintiffs’ arguments, and this Court
16 should too. *Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82, 97 fn. 6.

17 **I. THE FOUR DOCUMENTS ARE JUDICIALLY NOTICEABLE UNDER EVIDENCE**
18 **CODE 452(C).**

19 Under Evidence Code section 452(c), courts may take judicial notice of official reports
20 and publications by government agencies. See, e.g., *Serrano v. Priest* (1971) 5 Cal.3d 584, 591
21 (material contained in publications of state officers or agencies may be judicially noticed). The
22 State Auditor report is an official act under section 452(c). See *New Cingular Wireless PCS, LLC*
23 *v. Pub. Utilities Com.* (2016) 246 Cal.App.4th 784, 803 fn. 16 (taking judicial notice of State
24 Auditor report). Likewise, the Handbook, Judicial Council Memorandum, and Judicial Needs
25 Assessment are official Judicial Council acts. E.g., *Whittaker v. Superior Court* (1968) 68 Cal.2d
26 357, 362, fn. 4; *Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1457, fn. 7; *Los Angeles Gay*
27 *& Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 301, fn. 6; *Butler-Rupp v.*
28 *Lourdeaux* (2007) 154 Cal.App.4th 918, 926.

1 Without citing any of their own authority, Plaintiffs argue these cases are distinguishable
2 for two reasons, neither of which is persuasive. *First*, Plaintiffs argue that no party opposed the
3 taking of judicial notice in some of these cases. But whether a document meets the definition of
4 Rule 452(c) does not turn on whether or not a party objects to judicial notice.

5 *Second*, Plaintiffs argue that no disputed factual matters were implicated by the requests.
6 But that argument goes only to the extent to which certain statements in the documents may be
7 noticed – not whether the documents are judicially noticeable at all.

8 **II. DEFENDANTS DO NOT SEEK NOTICE OF ANY REASONABLY DISPUTED** 9 **FACTUAL MATTERS.**

10 Regardless, Defendants do *not* seek notice of any factual matter that can be reasonably
11 disputed. Pursuant to Rule 452(c), judicial notice “extends to the official act itself ..., but not the
12 truth of the facts relayed through that official act...” *Licudine v. Cedars-Sinai Med. Ctr.* (2016)
13 3 Cal.App.5th 881, 902. So, for example, if a government agency publishes a report finding that
14 the median salary for lawyers in 2012 was \$113,530, a court may take judicial notice of the fact
15 that a government agency published a report on attorney salaries, but not the fact that the median
16 salary was \$113,530 – unless that fact is “not reasonably subject to dispute” and thus judicially
17 noticeable under Evidence Code section 452(h). *Ibid.*

18 Here, Defendants rely on the four judicially-noticeable documents to provide factual
19 context to Defendants’ adoption of changes to the Temporary Assigned Judges Program. Thus,
20 Defendants cite the documents to explain that, *inter alia*, the Chief Justice promulgated changes
21 to the TAJP designed to deploy assigned judges based on the greatest need, and that the State
22 Auditor concluded her modifications improved the efficiency of the TAJP. Plaintiffs may
23 reasonably dispute whether the TAJP, in fact, assigns judges based on the greatest need and
24 whether the Chief Justice’s changes, in fact, improved the efficiency of the program. But that is
25 not the purpose of Defendants’ request.

26 Indeed, Plaintiffs’ opposition identifies only one supposedly-disputed fact, but their
27 example only proves how misguided their position is. In their demurrer, Defendants explained
28 that when they “adopted the 1,320-day service limit, they also enacted a new allocation policy

1 that assigns retired judges based on a court’s demonstrable need.” (Defs.’ Mem. of P&A in Supp.
2 of Demurrer at p. 6:7-9.) Plaintiffs accuse Defendants of misstating that facts, and that
3 Defendants’ policy of assigning judges to courts based on the greatest need was not adopted until
4 2020 – two years after promulgation of the 1,320-day service limit. (Pls.’ Mem. of P&A in
5 Opp’n to Defs.’ Request for Judicial Notice at p. 4:10-13.) It is Plaintiffs, however, who misstate
6 the facts and Defendants’ judicially-noticeable documents prove it: the 1,320-day service limit
7 and the policy of assigning judges based on demonstrable need were both adopted in 2018, at the
8 same time. (See Req. for Judicial Notice Ex. A at 6-7.) If anything, Plaintiffs’ argument only
9 underscores the value of evaluating Plaintiffs’ claims in the context of judicially-noticeable facts
10 that cannot *reasonably* be disputed.

11 **III. THE FOUR DOCUMENTS ARE RELEVANT.**

12 Finally, Plaintiffs argue (as they did before the Court of Appeal) that none of the
13 documents are relevant to the demurrer, particularly since the Handbook and Judicial Needs
14 assessment postdate the filing of this action. But the documents plainly are relevant.

15 Among other things, the documents show that when Defendants promulgated the 1,320-
16 day service limit, they adopted additional changes that altered the way retired judges were
17 assigned through the TAJP – including a 120-day annual limit and a policy of assigning judges
18 based on demonstrable need (as opposed to historical use). As explained in Defendants’
19 demurrer, Plaintiffs fail to satisfy their claim’s robust causality requirement because they do not
20 explain how their complaints about fewer assignments stem from the 1,320-day service limit
21 (which they challenge), rather than the 120-day limit or the new allocation formula (which they
22 don’t). For these, and many other, reasons, the documents are relevant to Defendants’ demurrer.
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1 Accordingly, Defendants respectfully request that the Court grant Defendants' Request for
2 Judicial Notice.

3 Dated: April 5, 2022.

JONES DAY

4 By: 

Robert A. Naeve

5
6 Attorneys for Defendants
7 JUDICIAL COUNCIL OF CALIFORNIA and
8 CHIEF JUSTICE TANI G. CANTIL-
9 SAKAUYE
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1 **PROOF OF SERVICE**

2 I, Frances Pham, declare:

3 I am a citizen of the United States and employed in Orange County, California. I am over
4 the age of eighteen years and not a party to the within-entitled action. My business address is
5 3161 Michelson Drive, Suite 800, Irvine, California 92612. On April 5, 2022, I served a copy of
6 the within document(s):

7 **DEFENDANTS' REPLY IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE**
8 **REGARDING DEMURRER TO THIRD AMENDED COMPLAINT**

- 9 ☒ by e-filing via File & Serve Xpress and transmitting to the recipients designated on
10 the Transaction Receipt located on the File & Serve Xpress website the
11 document(s) listed above to the person(s) at the address(es) set forth below.
12 ☒ by transmitting via e-mail or electronic transmission the document(s) listed above
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SUEYRES

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct.

25 Executed on April 5, 2022, at Irvine, California.

26
27 
28 Frances Pham