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Attorneys for Defendants
JUDICIAL COUNCIL OF CALIFORNIA, 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,
JOHN SAPUNOR, and F. CLARK
SUEYRES,

Plaintiffs,

v.

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

Defendants.

FILED
San Francisco County Superior Court

AUG 08 2019

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

CASE NO. CGC-19-575842

**[PROPOSED] ORDER SUSTAINING
DEMURRER TO FIRST AMENDED
COMPLAINT**

DATE: August 8, 2019
TIME: 9:30 a.m.
DEPT: 302
JUDGE: Hon. Ethan P. Schulman

Complaint Filed: May 9, 2019

Reservation No. 07030808-14

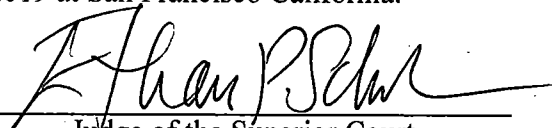
1 After considering the papers submitted in support of, and in opposition to, Defendants'
2 demurrer to the first amended complaint, this Court hereby SUSTAINS the demurrer without leave
3 to amend for the reasons set forth below.

4 Defendants Judicial Council of California and Chief Justice Tani G. Cantil-Sakauye's
5 demurrer to plaintiffs' first amended complaint is sustained without leave to amend. Both causes of
6 action in plaintiffs' first amended complaint are precluded by the doctrine of legislative immunity,
7 which bars actions against judicial officers when they act in a legislative capacity. Because the
8 Court previously set forth its detailed analysis of this ground in its July 10, 2019 order denying
9 plaintiffs' motion for a preliminary injunction, and plaintiffs rest entirely on their prior briefing, the
10 Court will not repeat that analysis here. As it is dispositive, the Court need not reach any of the
11 other issues raised by defendants in their demurrer. However, plaintiffs' concessions in their
12 opposition brief serve to further narrow the issues, in two respects. First, plaintiffs concede that
13 they cannot recover damages for Chief Justice Cantil-Sakauye's discretionary acts in administering
14 the Temporary Assigned Judges Program. (Gov. Code Sec. 820.2 ["a public employee is not liable
15 for an injury resulting from [her] act or omission where the act or omission was the result of the
16 exercise of discretion vested in [her], whether or not such discretion be abused"]; see *Caldwell v.*
17 *Montoya* (1995) 10 Cal.4th 972 [holding that individual members of an elected school board are
18 immune under Sec. 802.2 from a suit seeking damages against them personally for their votes to
19 terminate the employment of the school district's superintendent, even when the complaint alleges
20 race and age discrimination in violation of the Fair Employment and Housing Act].) As defendants
21 correctly point out, that concession provides further support for the Court's conclusion that the
22 complaint is barred by legislative immunity, because the statutory immunity "applies only to
23 deliberate and considered policy decisions, in which a '[conscious] balancing [of] risks and
24 advantages . . . took place.'" (*Caldwell v. Montoya*, 10 Cal.4th at 981, quoting *Johnson v. State of*
25 *California* (1995) 69 Cal.2d 782, 795, fn. 8 [emphasis deleted].) Second, plaintiffs do not contest
26 defendants' showing that their second cause of action, which is brought under article VI, section 6
27 of the California Constitution, fails to state a claim. That is so both (i) because there is no private
28 right of action to enforce that provision and (ii) because the first amended complaint does not

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allege any facts constituting a violation of article VI, section 6. Further, plaintiffs previously admitted that the second cause of action does not present an independent ground for recovery.

IT IS SO ORDERED this 17 day of August, 2019 at San Francisco California.



Judge of the Superior Court

ETHAN P. SCHULMAN