

G051016

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

Harold P. Sturgeon,

Plaintiff and Appellant,

vs.

County of Los Angeles, *et al.*,

Defendants and Respondents.

Appeal from the Superior Court of California, County of Los Angeles
The Honorable Kirk H. Nakamura
Superior Court Case No. BC541213

**APPELLANT HAROLD P. STURGEON'S
OPENING BRIEF ON APPEAL**

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G051016

**CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS**

Pursuant to Rule 8.208(e)(3) of the California Rules of Court, on behalf of Respondent Harold P. Sturgeon, there are no interested entities or persons under Rule 8.208(e)(1) or (e)(2) to list in this certificate.

Dated: February 11, 2015

Sterling E. Norris
Sterling E. Norris (PSJ)

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STATEMENT OF THE CASE

This appeal puts squarely at issue a 2010 decision upholding, as an interim measure, Los Angeles County's payment of "supplemental judicial benefits" to the then-sitting judges of the Superior Court of California, County of Los Angeles. Longtime Los Angeles County resident and taxpayer Harold P. Sturgeon challenges the County's continued payment of these benefits on the grounds that they violate Article VI, Section 19 of the California Constitution. In a 2006 lawsuit, Sturgeon challenged the County's payment of benefits to the judges, contending that the benefits violated Article VI, Section 19. When a Division One panel agreed and declared the benefits to be unconstitutional in late 2008, the Legislature hastily enacted an interim measure in February 2009 to preserve the status quo until a permanent, uniform, statewide system of judicial compensation could be enacted. In 2010, the same Division One panel that previously held the benefits to be unconstitutional found that the Legislature's temporary fix for then-sitting judges satisfied Article VI, Section 19, at least for the time being.

Six years have passed since the February 2009 legislation was enacted. Judges have left the bench and new judges have been appointed or elected. All or nearly all of the judges who have remained on the bench have begun new, six-year terms. No permanent, uniform, statewide system

has been adopted, but the benefits continue. Because the February 2009 legislation was an interim measure, not a permanent solution, and did not “prescribe” the County’s payment of “supplemental judicial benefits” indefinitely, the continued payment of the benefits violates Article VI, Section 19. The Complaint more than adequately states a taxpayer claim challenging the benefits.

STATEMENT OF FACTS

Plaintiff Harold P. Sturgeon (“Sturgeon” or “Plaintiff”) is a longtime resident and taxpayer of the County of Los Angeles. Clerk’s Transcript (“CT”) at p. 22, ¶ 5. Plaintiff paid taxes to the County of Los Angeles, including property taxes, in the one-year period prior to commencement of this action. *Id.*

Defendant County of Los Angeles (“the County”) is a legal subdivision of the State of California. CT at p. 22, ¶ 6. The County pays the “supplemental judicial benefits” challenged by Plaintiff in this action. *Id.* Defendants Gloria Molina, Mark Ridley-Thomas, Zev Yaroslavsky, Don Knabe, and Michael D. Antonovich are members of the Los Angeles County Board of Supervisors (“the Board of Supervisors”) and authorized and approved the County’s payment of the challenged benefits. *Id.* at pp. 22-24, ¶¶ 7-11. Defendant William T. Fujikoa is the County’s Chief Executive Officer and is responsible for implementing the lawful policy

decisions of the Board of Supervisors, including the decision to pay the challenged benefits. *Id.* at p. 24, ¶ 12. Defendant John Naimo is the County’s Auditor-Controller and is responsible for administering payment of the challenged benefits. *Id.* at ¶ 13. Defendant Gregg G. Iverson is Chief of the Countywide Payroll Division of the County’s Auditor-Controller Department and is directly responsible for payment of the challenged benefits. *Id.* at pp. 24-25, ¶ 14. Defendants Molina, Ridley-Thomas, Yaroslavsky, Knabe, and Antonovich, and, on information and belief, Defendants Fujikoa, Naimo, and Iverson, have the authority to terminate payment of the benefits. *Id.* at pp. 22-25, ¶¶ 7-14. The individual defendants are being sued in their official capacities only.

The California Constitution vests the State’s judicial power in the judges of the superior courts in each of the State’s 58 counties, the Courts of Appeal, and the Supreme Court. *CT* at p. 25, ¶ 15. All judges are state officers even though, as in the case of most superior court judges, they preside over cases in a single county and are subject to election in only one county. *Id.* As state officers, all California judges receive compensation from the State in the form of salary and a full complement of benefits. *Id.* at p. 25, ¶ 16. In addition, some superior court judges receive “supplemental judicial benefits” from the counties in which they serve. *Id.*

at ¶ 17. Others receive “supplemental judicial benefits” from the courts in which they serve. *Id.*

In 2006, Plaintiff brought suit alleging that the County’s payment of “supplemental judicial benefits” to the judges of the Superior Court violated the California Constitution and was otherwise unlawful. CT at p. 26, ¶ 21. On October 10, 2008, the Court of Appeal agreed, finding that the benefits violated Article VI, Section 19 of the California Constitution. *Id.* at pp. 26-27, ¶ 22; *see also Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 630 (2008) (“*Sturgeon I*”). More specifically, the Court of Appeal found that the benefits were compensation within the meaning of the constitution, but had not been “prescribed” by the Legislature, as required by Article VI, Section 19. *Id.* The California Supreme Court denied review on December 23, 2008. *Id.* On February 14, 2009, the Legislature enacted Senate Bill No. 11 (2009-10 2d Ex. Sess.) (“Senate Bill X2 11”) (included in the Addendum) in response to the Court of Appeal’s ruling in *Sturgeon I*. *Id.* at p. 27, ¶ 23. No public hearings were held on the bill. *Id.* The bill was inserted into the Budget Act of 2008 at the last minute and passed the same day. *Id.* It was signed by Governor Arnold Schwarzenegger on February 20, 2009. *Id.*

Enacted as an interim measure, Senate Bill X2 11 purported to authorize the County’s payment of “supplemental judicial benefits” for

purposes of Article VI, Section 19 until such time as the Legislature could adopt a comprehensive response to *Sturgeon I*. CT at p. 27, ¶ 24. Section 2 of Senate Bill X2 11 added section 68220 to the Government Code, which now provides:

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

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

CT at p. 28, ¶ 26; Gov't Code § 68220.

Section 6 of Senate Bill X2 11 required that the Judicial Council of California (“Judicial Council”) analyze the inconsistencies in statewide benefits and report them to the Legislature. CT at p. 29, ¶ 28. The Judicial Council’s subsequent study, completed in 2009, found “significant discrepancies and inconsistencies exist throughout the state” with regard to the payment of “supplemental judicial benefits.” *Id.* at p. 25, ¶ 18. The study found that these discrepancies and inconsistencies are “the result of the individual history of each court and county and [are] not based on any

rational consistent statewide plan or formula.” *Id.* The Judicial Council study also found that superior court judges in 23 of California’s 58 counties receive no “supplemental judicial benefits” at all. *Id.* at p. 26, ¶ 19. Nor do appellate court judges. *Id.*

The 2009 Judicial Council study also found that “[j]udges in some courts receive benefits that cost as little as \$102 per year per judge, while judges in the Superior Court of Los Angeles County receive benefits of approximately \$50,000.” CT at p. 26, ¶ 20. The result is what the study called a “hodgepodge,” “patchwork quilt” of varying judicial benefits and compensation:

The variation in supplemental benefits and their non-existence at many courts, including appellate courts, results in other significant compensation differences. By way of example, the Legislature has specified a uniform salary for all superior court judges statewide and a salary for justices of the Courts of Appeals that is higher [than] for judges of the superior courts. Yet if the full value of the supplemental benefits is included in the overall compensation paid to judges, there are counties in which superior court judges receive more valuable compensation packages than a justice of the Court of Appeals who serves the same county.

Id.

On remand, Plaintiff challenged whether Senate Bill X2 11 sufficiently “prescribed” the County’s payment of “supplemental judicial benefits” for purposes of Article VI, Section 19. CT at pp. 29-30, ¶ 29. A ruling by the Court of Appeal upheld Senate Bill X2 11, but only as a

temporary measure that preserved the status quo until a permanent, uniform, statewide system of judicial compensation scheme could be enacted. *Id.*; see also *Sturgeon v. County of Los Angeles*, 191 Cal.App.4th 344 (2010) (“*Sturgeon II*”).

Although Senate Bill X2 11 was only ever intended as a temporary measure, the County has continued to pay “supplemental judicial benefits” to the judges of the Superior Court, and both the dollar value of these benefits and the cost of the benefits to the County’s taxpayers have increased. CT at p. 30, ¶¶ 30 and 31. In 2013, the County paid approximately \$57,487 in “supplemental judicial benefits” to each of the approximately 429 judges of the Superior Court. *Id.* at pp. 30-31, ¶ 32. This included approximately \$33,970 in “cafeteria plan” benefits, approximately \$15,600 in retirement benefits, and a \$7,917 “professional development allowance.” *Id.* These “supplemental judicial benefits” were in addition to the \$181,292 salary and the full complement of benefits paid to each superior court judge by the state. *Id.* In 2013 alone, the cost of these benefits to the County’s taxpayers was at least approximately \$24,661,923. *Id.*

On April 1, 2014, Plaintiff filed a second suit against the County, challenging its continuing payment of “supplemental judicial benefits” in the absence of the permanent, comprehensive judicial compensation

scheme plainly contemplated by *Sturgeon II*. CT at pp. 20-34. The Hon. Kirk H. Nakauma, sitting by designation as a judge of the Superior Court, County of Los Angeles, sustained a demurrer to the complaint and entered judgment against Sturgeon. *Id.* at pp. 131-33 and 134-35. This timely appeal followed. *Id.* at pp. 143-44.

ARGUMENT

I. Standard of Review.

In reviewing the sufficiency of a complaint against a general demurrer, courts are guided by long-settled rules. *Adelman v. Associated Int'l Ins. Co.*, 90 Cal.App.4th 352, 359 (2001). The complaint is given a reasonable interpretation, reading it as a whole and its parts in their context. *Id.* All properly pled, material facts are treated as admitted, but not contentions, deductions or conclusions of fact or law, and matters that may be judicially noticed are considered. *Id.* When a demurrer is sustained, a reviewing court determines whether the complaint states facts sufficient to constitute a cause of action. *Id.* Irrespective of the labels attached by the pleader to any alleged cause of action, the reviewing court examines the factual allegations of the complaint to determine whether they state a cause of action on any available legal theory. *Id.* If they do, then the trial court's order of dismissal must be reversed. *Id.* If they do not, then the order will be affirmed. *Id.*

II. Plaintiff's Complaint Alleges Facts More Than Sufficient to State a Cause of Action Against The County for Violating Article VI, Section 19.

In *Sturgeon I*, the Court of Appeal found that Article VI, Section 19 imposes a nondelegable duty on the Legislature to set judicial compensation. 167 Cal.App.4th at 653. To satisfy this duty, the Legislature must, at a minimum, make a “fundamental” policy choice about judicial compensation and establish standards or safeguards to ensure that its policy choice is implemented:

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

Id. The Court of Appeal further declared:

We have said that the purpose of the doctrine that legislative power cannot be delegated is to assure that “truly fundamental issues [will] be resolved by the 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.

Id. (quoting *Kugler v. Yocum*, 69 Cal.2d 371, 376-77 (1968)).

The Court of Appeal’s subsequent decision upholding the County’s payment of “supplemental judicial benefits” cannot be divorced from the

temporary, stop-gap nature of Senate Bill X2 11. In *Sturgeon II*, the Court of Appeal described Senate Bill X2 11 as an “interim measure, awaiting further legislative action.” 191 Cal.App.4th at 354. Both Senate Bill X2 11 and the Court of Appeal recognized that judges “relied on the existence of these longstanding supplemental benefits,” and, by allowing then-sitting judges to continue to receive the benefits for the balance of their terms, “preserved the status quo ante *Sturgeon I* and commenced a process by which the Legislature looks to adoption of a comprehensive judicial compensation scheme.” Stats. 2009, ch. 9, § 1(c); *Sturgeon II*, 191 Cal.App.4th at 354. As such, the Legislature’s response to *Sturgeon I* “me[t] the requirements of the Constitution” for the time being and was “wholly sensible under the circumstances.” *Id.*

Even more importantly, the Court of Appeal expressly declared that Senate Bill X2 11 was not a permanent response to Plaintiff’s constitutional challenge to the County’s payment of “supplemental judicial benefits.” *Id.* It also expressly declared that it expected the Legislature to adopt a permanent, uniform, statewide system of judicial compensation within a reasonable period of time:

However, on its face Senate Bill X2 11 is not a permanent response to either the constitutional issues we identified in *Sturgeon I* or the difficult problem of adopting a compensation scheme that deals with varying economic circumstances in an equitable and efficient manner. Thus, we would be remiss in discharging our duties if we did not state

that while the Legislature's interim response *to Sturgeon I* defeats the particular challenges asserted by *Sturgeon* in this litigation, that interim remedy, if not supplanted by the more comprehensive response Senate Bill X2 11 plainly contemplates, most likely will give rise to further challenges by taxpayers or members of the bench themselves. As we noted at the outset, the issue of judicial compensation is a state, not a county, responsibility. We are confident that the Legislature within a reasonable period of time will act to adopt a uniform statewide system of judicial compensation.

Id. at 355-56 (emphasis added). These findings and conclusions are not mere dicta. They describe why the Court of Appeal ruled the way it did. They are the very heart of the Court of Appeal's decision. Senate Bill X2 11 is not and was never intended to be a permanent, fundamental policy choice that prescribed judicial compensation in the manner required by Article VI, Section 19. It never intended to freeze in place an inherently unequal compensation scheme by which some judges received an additional \$57,000 in benefits and others receive nothing, not "based on any rational consistent statewide plan or formula," but because of "the individual history of each court and county." CT at pp. 25-26, ¶¶ 18-19. It was only a temporary fix.

Plaintiff agrees with the County in one regard: "Nothing has changed since the *Sturgeon II* court issued these pronouncements." CT at p. 71. No permanent, uniform, statewide system of judicial compensation ever materialized. Article VI, Section 19 plainly requires more than the indefinite freezing in place of a stop-gap measure. This is especially the

case here because the stop-gap measure enacted by the Legislature preserves a “hodgepodge,” “patchwork quilt” of significantly varying judicial compensation “not based on any rational or consistent statewide plan or formula,” but which is the result of “the individual history of each court and county.” CT at pp. 25-26, ¶¶ 18-20.

In addition, since Senate Bill X2 11 was enacted six years ago, judges of the Superior Court have left the bench and new judges have been appointed or elected.¹ Senate Bill X2 11 only prescribed benefits for judges who were receiving them as of July 1, 2008, and all or nearly all of the judges who have been on the bench since July 1, 2008 have begun new six-year terms. Cal. Const., art. VI, § 16(c); Gov’t Code § 68220(a). Senate Bill X2 11 is ambiguous about whether benefits are “prescribed” for new judges or for judges who have begun new terms. It certainly does not say expressly that new judges are authorized to receive supplemental judicial benefits on the same terms and conditions as sitting judges or that sitting judges beginning new terms are authorized to continue to receive benefits.

While Senate Bill X2 11 states expressly that the County may not terminate a judge’s benefits “during his or her current term,” the reference to a judge’s “current term” only highlights the ambiguity. Gov’t Code §

¹ Sturgeon submits that, while this fact is obvious, the Court can take judicial notice of it if it deems judicial notice necessary. Evid. Code §§ 451(f) and 459.

68220(b). If anything, it emphasizes that current terms were being treated differently from future terms. Also ambiguous is the final sentence of Senate Bill X2 11's "termination" provision, which states, "The county is authorized to elect to provide benefits for all judges in the county." *Id.* The Legislature did not specify whether this provision applied to counties where some, but not all, sitting judges were receiving benefits as of July 1, 2008; sitting judges who were on the bench at the time of the enactment of Senate Bill X2 11, but had not been on the bench as of July 1, 2008; or some other category of sitting judges. It plainly could not apply to individuals who were not sitting judges at the time of Senate Bill X2 11's enactment because, by definition, they would not have been judges.

In this regard, the interim nature and ambiguous language of Senate Bill X2 11 collides head on with the requirement that the Legislation must "effectively resolve the truly fundamental issues" to satisfy Article VI, Section 19. *Sturgeon I*, 167 Cal.App.4th at 653. Senate Bill X2 11 does not resolve the fundamental issue of whether benefits are prescribed for new judges or judges who have begun new terms since July 1, 2008 because Senate Bill X2 11 was only intended to be an interim measure. It was never intended to be a permanent solution. The County's continued payment of the benefits violates Article VI, Section 19 and is

unconstitutional. Plaintiff's complaint more than adequately states a claim under Section 526a of the Code of Civil Procedure.

CONCLUSION

Plaintiff has never taken issue with the amount of compensation paid to the judges of the Superior Court. He takes issue with how the judges' compensation is determined – how the County, which appears before the Superior Court regularly, misreads SB X2 11 as forever authorizing it to “supplement” judges' pay by nearly a third without further action by the Legislature. Public confidence in the integrity of the courts is of the utmost importance, and an integral part of that integrity is how judges are paid. Judicial compensation not only must be substantial enough to attract and retain well-qualified judges, but it also must be established through a regular, orderly process that is transparent and free from any appearance of influence or impropriety.

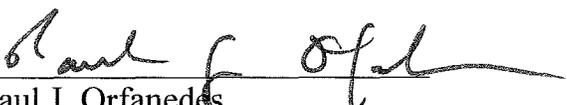
Plaintiff's original lawsuit started a process of reforming the “hodgepodge,” “patchwork quilt” of widely varying judicial compensation identified by the Judicial Council in its 2009 study. That reform process stalled years ago and, as a result, the temporary fix that was Senate Bill X2 11 no longer suffices to satisfy Article VI, Section 19. Senate Bill X2 11 did not permanently prescribe the County's payment of “supplemental judicial benefits” to new judges or judges who have begun new terms.

Judges' compensation also must be fair and equitable to all judges across the State, which plainly is not the case as a result of the County's payments. The County's continued payment of benefits six years after Senate Bill X2 11 is unlawful. The judgment of the Superior Court should be reversed and the case should be remanded for further proceedings.

Dated: February 11, 2015

Respectfully submitted,


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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 3,493 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: February 11, 2015

Sterling E. Norris Norris
Sterling E. Norris LPD

ADDENDUM

Senate Bill No. 11

CHAPTER 9

An act to add Sections 68220, 68221, and 68222 to the Government Code, relating to judges.

[Approved by Governor February 20, 2009. Filed with
Secretary of State February 20, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 11, Steinberg. Judges: employment benefits.

The California Constitution requires the Legislature to prescribe compensation for judges of courts of record. Existing law authorizes a county to deem judges and court employees as county employees for purposes of providing employment benefits. These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record.

This bill would provide that judges who received supplemental judicial benefits provided by a county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date. The bill would authorize a county to terminate its obligation to provide benefits upon providing 180 days' written notice to the Administrative Director of the Courts and the impacted judges, but that termination would not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The bill also would authorize the county to elect to provide benefits for all judges in that county. The bill would require the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

This bill would provide that no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of the bill on the ground that those benefits were not authorized under law.

This bill would provide that nothing in its provisions shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to address the decision of the Court of Appeal in *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, regarding county-provided benefits for judges.

(b) These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county's maintenance of effort obligations if counties elected to provide benefits pursuant to paragraph (f) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

(c) Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding supplemental benefits provided by the counties or the court.

SEC. 2. Section 68220 is added to the Government Code, to read:

68220. (a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a) "Benefits" and "benefit" shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

SEC. 4. Section 68222 is added to the Government Code, to read:

68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

SEC. 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided

to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

SEC. 6. The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

PROOF OF SERVICE

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 425 Third Street, S.W., Suite 800, Washington, D.C. 20024.

On February 11, 2015, I served the foregoing document described as:

**APPELLANT HAROLD P. STURGEON'S
OPENING BRIEF ON APPEAL**

on the parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

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I delivered said documents to an authorized courier or driver authorized to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person to whom it is to be served on the next business day.

I declare under penalty of perjury of the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, that the foregoing is true and correct, and that this declaration was executed on February 11, 2015, at Washington, D.C.



David F. Rothstein