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(LASC No. LA066432)

SUPREME COURT
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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Respondent,

v.

SAFETY NATIONAL CASUALTY INSURANCE COMPANY,
Defendant-Appellant.

After a Decision by the Court of Appeal
Second Appellate District, Division Eight
Case No. B243773 (LASC No. LA066432)

PETITION FOR REVIEW

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I. QUESTION PRESENTED FOR REVIEW

Penal Code §977(b) requires a defendant charged with a felony to be personally present at certain specified hearings and at all other proceedings unless he has executed a waiver. Penal Code §1305(a)(4) requires a court to forfeit bail if, without sufficient excuse, a defendant fails to appear when "the defendant's presence in court is lawfully required." If a defendant's presence is required under §977(b), but the defendant is not present nor has he executed a waiver, is bail properly forfeited under §1305? In other words, does Penal Code §977(b) apply to bail forfeiture proceedings under §1305 when a felony defendant has not executed a waiver and is not present in court?

II. INTRODUCTION

In this case, the defendant, who was charged with a felony and released on bail, was present in court when his pre-trial hearing was continued. The court stated the next date on the record in the defendant's presence. The court ordered "bail to stand." On that next date, the defendant did not appear and the court forfeited bail. At the end of the extended appearance period, the bail agent filed a motion to exonerate the bond arguing that the defendant was not lawfully required to appear on the date the court forfeited bail. The trial court denied the motion.¹

¹ The application of P.C. §977 was not raised in the trial court.

Following the trial court's denial of the motion to vacate forfeiture, the surety appealed. Division Eight of the Second Appellate District of the Court of Appeal reversed the trial court; it found that §977² serves only to protect a defendant's due process rights and has no application to bail status – it found that §977(b) does not require a felony defendant's presence at an ordinary pretrial conference. (Opinion attached hereto as Exhibit 1.)

III. GROUNDS FOR REVIEW

California Rules of Court ("CRC"), Rule 8.500(b) states that the Supreme Court may order review of a Court of Appeal decision "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (CRC, Rule 8.500(b)(1).) Review is necessary here for both reasons.

First is the important question of law. Section 1305(a)³ requires that a court forfeit a defendant's bail upon his first unexcused non-appearance. Section 977(b)⁴ requires that a felony defendant appear at all court

² All unspecified statutory references are to the Penal Code.

³ Section 1305, subdivision (a) states, in pertinent part: "A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following: (1) Arraignment. (2) Trial. (3) Judgment. (4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required. (5) To surrender himself or herself in execution of the judgment after appeal."

⁴ Section 977, subdivision (b)(1) states, in pertinent part: "In all cases in which a felony is charged, the accused shall be present at the

proceedings unless he has signed a waiver permitting his appearance through counsel. The opinion in this case – holding that §977(b) did not command the defendant's appearance and thus the trial court did not have jurisdiction to forfeit bail – ignores the plain statutory language of both §977 and §1305. By so doing, the opinion eviscerates the power of §977 to compel a felony defendant's appearance at all his court proceedings, even when the defendant has not executed a waiver.

In this case, the Court of Appeal made the unequivocal statement "that section 977 . . . has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail."

(Opinion, page 6.) The statement is remarkable because it expressly holds that the failure of a defendant to appear at any of the court proceedings described in §977 cannot be the basis for an order of bail forfeiture under §1305.

The Opinion directly conflicts with the express wording of §§977 and 1305. Under §1305, bail must be forfeited when the defendant fails to

(...continued)

arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present."

appear without sufficient excuse at any hearing at which his presence is lawfully required. Section 977 expressly requires a defendant to appear at all proceedings (not otherwise specified under paragraph (b)), if there is no written waiver executed in open court. In other words, the failure to appear at a §977 "other proceeding" is a basis for forfeiting a bail bond because the defendant has failed to appear at a hearing at which his presence is lawfully required.

Second is uniformity of decision. The Opinion conflicts with prior appellate cases which have applied the statutes together in their rulings. The Supreme Court's grant of review will resolve the conflict between precedent and this Opinion, and will have a significant effect on the bail industry's approach to its obligation to locate and return a criminal defendant to custody, and on the lower courts' enforcement of that obligation through the application of §§977 and 1305.

The Opinion here is in direct conflict with precedent. In *People v. Indiana Lumbermens Mutual Insurance Co.* (2011) 194 Cal.App.4th 45 (Pet. for Rev. denied June 22, 2011), the Fourth Appellate District held that a criminal defendant was required to appear at a preliminary hearing under §977. More importantly, and in direct conflict with the Opinion, the *Indiana Lumbermens* Court held that the defendant must be personally present during the preliminary hearing as required by §977(b); because such appearance was lawfully required, "an unexcused failure to appear

during the preliminary hearing requires the trial court to declare bail forfeited." (*Id.* at 49.) Here, the Opinion's holding that §977 has no bearing on the defendant's obligation to appear under §1305 is antithetical to existing case law.

The bail statutes establish the rules which must be followed in order to avoid the harsh results of forfeiture. The bail statutes serve as the blueprint by which bail sureties ensure the appearance of their client-defendants at required court hearings. The Supreme Court must resolve this conflict between appellate courts as to the rule of law which the lower courts and bail sureties must follow to ensure the appearance by defendants. Where, as here, there disagreement as to whether §977(b) applies to bail forfeiture proceedings which has led to opposite results, the Supreme Court is compelled to exercise its duty as the final arbiter of statutory construction and interpretation.

IV. PETITION FOR REHEARING

The People filed a Petition for Rehearing on April 24, 2014. On May 9, 2014, the Court of Appeal issued an Order Modifying Opinion and Denying Petition for Rehearing.⁵ (Order attached hereto as Exhibit 2.) There was no change in the judgment.

⁵ The caption erroneously reads "Ordering Modifying Opinion and Denying Petition for Rehearing."

V. STATEMENT OF THE CASE

Defendant/Appellant Safety National Casualty Corporation ("Safety National" or "the surety"), posted bond for criminal defendant Elshaddai Machabeus Bent ("Bent"). (CT 11.) Bent appeared as required several times, including his preliminary hearing, at which time he was held to answer, and his case and bond were transferred for felony arraignment. (CT 13-15.) After his felony arraignment, Bent appeared for a pre-trial on April 5, 2011, at which his attorney requested a continuance; the court granted the continuance and – in Bent's presence – the pre-trial/trial-setting was continued to April 29, 2011. (CT 16-17.)

Bent did not appear on April 29, 2011. (CT 23.) Counsel represented that her office had been in contact with Bent since the last hearing, but had not been able to reach him the previous evening or that morning. (CT 23.) The court forfeited bail, and the clerk mailed notice of the forfeiture to Safety National and to its agent. (CT 17, 27.)

Months later, the court granted a motion to extend the appearance period for 180 days. (CT 18.)⁶ During this extended period, Safety

⁶ The docket refers to this motion as a "motion to toll time for investigator to apprehend and return to jurisdiction." (CT 17.) Further, the docket states that the motion was pursuant to Penal Code §1305.4, and was granted for 180 days. (CT 18.) It thus appears this was a standard motion to *extend* the appearance period (not a motion to *toll*). Moreover, Appellant referred to this motion as one for an extension of time (CT 3, line 4); however, this motion is not included in the record. The Opinion (page 2),

National filed a motion to vacate forfeiture. (CT 4.) The motion argued that the trial court "was without jurisdiction to forfeit bail" when Bent failed to appear for his pretrial. (CT 3.) The trial court believed that Bent had been required to appear on April 29th – although §977(b) was not one of the reasons stated on the record – and thus denied the surety's motion to vacate. (RT 2-4.)

Safety National appealed the denial of its motion to vacate forfeiture. (CT 29.) On appeal, Safety National again argued that Bent's appearance was not required, and the People argued it was. After submission of the Opening, Responding, and Reply Briefs, the Court of Appeal issued an order requesting letter briefs. (Order attached hereto as Exhibit 3.) The Order did not request the parties to further consider the application of §977, which had been addressed in all earlier briefing. Following oral argument, the Court of Appeal found that Bent's appearance had not been required; it reversed the trial court and directed a new order granting the motion to vacate forfeiture.

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(...continued)

repeats the error of the docket, stating that time was tolled, when actually the appearance period was extended. The People raised this in their Petition for Rehearing, but the Court of Appeal did not modify that portion of the Opinion.

VI. ARGUMENT

A. ESTABLISHED RULES OF STATUTORY CONSTRUCTION MAKE CLEAR THAT SECTION 977(B) APPLIES TO BAIL FORFEITURE PROCEEDINGS UNDER SECTION 1305

"[A]n order denying a motion to vacate a bail forfeiture is normally reviewed for abuse of discretion. [Citations.] On the other hand, to the extent that the evidence before the reviewing court is undisputed and the dispositive issue is one of statutory construction, we apply an independent review standard. [Citation.]" (*People v. International Fidelity Ins. Co.* (2012) 212 Cal.App.4th 1556, 1561.) The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 221.)

We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citation.] If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.[Citation.]

(*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) The legal question focuses on the interplay between §977 and §1305.

Section 977 is a general law designed to protect a defendant's right to be present at his trial and other proceedings. [Citation.] Section 1305 is clearly a specific or special statute designed to govern the procedure to be followed when bail is to be forfeited. When there is a conflict between a general and a special law, the special law must control. [Citation.]

(*People v. Ranger Ins. Co.* (1998) 66 Cal.App.4th 1549, 1553-1554.) Here, there is no conflict: Section 1305(a)(4)'s "any other occasion" language encompasses the mandate of §977(b) that a felony defendant – in the absence of a waiver – must be personally present at all hearings.

In this case, Bent was present at the April 5, 2011 pretrial conference, and the trial court ordered the matter continued to April 29 with the understanding, by Bent and counsel, that the trial would be held within 45 days of that date. (Opinion, at p. 2.) The Opinion characterizes the subsequent April 29 hearing, at which Bent failed to appear without sufficient excuse, as "an ordinary pretrial conference." (Opinion, at p. 7.) Such a characterization indisputably places the April 29 hearing within the category of "all other proceedings" (*i.e.*, other than arraignment, time of plea, preliminary hearing, during trial when evidence is presented, and sentencing). Thus, whether this category of "all other proceedings" falls within §1305, subdivision (a)(4) as one at which Bent was "lawfully

required" to appear, is an issue of statutory construction, requiring independent review by the Supreme Court.

The People contended that the April 29 hearing falls within the ambit of "all other proceedings" at which Bent was required to appear absent a written waiver. However, the Opinion states:

This contention has been considered and rejected by our appellate courts. The rationale behind their rulings is that section 977 is designed to protect a felony defendant's due process right to be present at all trial proceedings and has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail.

(Opinion, at p. 6.) What is so explicitly held by the Court of Appeal is that §977 "has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail." This blanket statement excludes all application of §977 to bail forfeiture proceedings under §1305.

Whether there is an ambiguity in §977's provision that the defendant shall be present "at all other proceedings" should be left to rules of statutory construction. "We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) Further, an "interpretation which gives effect

is preferred to one that makes void." (Civil Code §3541.) Here, the Opinion's interpretation makes void the "any other hearing" language of §1305(a)(4) as well as the "shall be personally present" language of §977(b). There is no reason for the Opinion to have reached such an interpretation, and its explanation that it was compelled by previous case law addressing §977 is, as shown below, unsupported.

B. EXISTING CASE LAW INTERPRETING SECTIONS 977 AND 1305 DO NOT COMPEL THE RESULT REACHED IN THE OPINION; RATHER, THE CASES WOULD INDICATE THAT SECTION 977 DOES APPLY TO BAIL FORFEITURE PROCEEDINGS

The Opinion's analysis in this particular case conflicts with previously published decisional authority. The dispositive underlying question is whether §977, subdivision (b), which requires the defendant charged with a felony to be present "at all other proceedings" (unless a written waiver of personal presence is executed in open court), is applicable to bail bond proceedings under §1305, subdivision (a), which requires bail forfeiture where the defendant fails to appear on "[a]ny other occasion ... if the defendant's presence in court is lawfully required." If it applies, as the People contend, then the issues of whether the "bail to stand" order is equivalent to an order to appear, and whether the pretrial conference on April 29, 2011, was a readiness conference under CRC Rule 4.112 become moot.

Previous cases are in conflict with the Opinion. In *Indiana Lumbermens, supra*, 194 Cal.App.4th 45, a defendant charged with a felony was released on bail and appeared for arraignment. At the arraignment, the defendant executed a waiver under §977, subdivision (b) and waived time for his preliminary hearing. He did not personally appear at the subsequent six settlement conferences or at the hearings on motions to continue the preliminary hearing, but did appear through counsel. The defendant thereafter personally appeared at the preliminary hearing and all other hearings leading up to the trial except the trial readiness trial. After changing his plea to guilty, the defendant did not appear for sentencing and his bail was ordered forfeited. (*Id.*, at 47-48.)

On appeal to the Fourth Appellate District from the order denying the surety's motion to set aside the forfeiture, the surety contended that the trial court lost jurisdiction over the bond when it failed to order the bail forfeited when the defendant failed to appear in court on the date originally set for the preliminary hearing. The Fourth Appellate District preliminarily stated:

Section 977 allows a felony defendant to waive his or her personal presence at some hearings, appearing instead solely through his or her attorney. However, even if a section 977 waiver is filed, the defendant must be personally present during the preliminary hearing. (§ 977, subd. (b).) Because the defendant's presence is lawfully required, an unexcused failure to appear during the

preliminary hearing requires the trial court to declare the bail bond forfeited. (§ 1305, subd. (a)(4).)

(*Indiana Lumbermens, supra*, 194 Cal.App.4th at p. 49, (fn. omitted).) The appellate court's holding makes clear that a defendant is required to personally appear at the preliminary hearing, which is one that is lawfully required under §977, subdivision (b). This holding explicitly states that all categories of appearances within §977, subdivision (b) are appearances which are lawfully required. If the defendant fails to appear at a lawfully required hearing, then the unexcused failure to appear at a required hearing is grounds to forfeit bail.

Significantly, the trial court's denial of the surety's motion was affirmed. The Fourth Appellate District held that a motion to continue the preliminary hearing was not the same as the preliminary hearing itself and, since the preliminary hearing was never actually held on the date that it was first set, the trial court retained jurisdiction over the bail bond to later order it forfeited. (*Indiana Lumbermens, supra*, 194 Cal.App.4th at 49-50.) The appellate court's holding is distinguishable from the present case based on the undisputed fact that Bent did not execute a written waiver under §977, subdivision (b). What is most important, however, is the Fourth Appellate District's consideration of §977 to §1305.

Earlier, in *People v. Ranger Ins. Co., supra*, 66 Cal.App.4th 1549, a case in the Sixth Appellate District, a defendant charged with a felony was

released on bail and appeared at the arraignment. At the arraignment, he executed a waiver under §977, which specifically excluded its application to the "Pretrial or Trial Date." On the date set for trial, the defendant failed to appear at the master trial calendaring hearing, but the trial was put on standby, and the court did not forfeit bail. Two days later, the defense attorney moved to continue the trial, although the defendant was not present and there was nothing in the record which reflected that he was given notice of the motion hearing. Nevertheless, the trial court ordered bail forfeited. (*Id.*, at 1551.)

On appeal from the order granting the surety' motion to set aside the forfeiture, the issue was whether the trial court lost jurisdiction over the bond when it failed to order bail forfeited at the master trial calendaring hearing. Underlying the appellate opinion was the interplay between §997 and §1305. The People contended that the defendant's written waiver excused him from appearing. However, the waiver "by its own terms it did not apply to the trial date. Trial includes the day on which the parties are called to try their case." (*Id.*, 1554.) While *Ranger* holds that the provisions of §1305 applied to justify setting aside forfeiture, it is significant that it also held that the provisions of §977 applied to bail forfeiture proceedings. That is, the terms of the §977 waiver applied to support the appellate court ruling. If it were not relevant to any issue in that case, the Sixth Appellate District could have simply held that §977 had no

application to bail forfeiture proceedings at all, rather than go through the analysis of whether there existed any conflict between the two statutes.

Still earlier is *People v. Sacramento Bail Bonds* (1989) 210 Cal.App.3d 118. There, the defendant failed to appear at a readiness conference even though he was present at the prior hearing when it was set, although he was not expressly ordered to appear. The surety contended that the defendant's appearance was not one at which he was "lawfully required" to be present. (*Id.*, at 120.) The Third Appellate District held that the advisement to the defendant in open court of the date and time of the readiness conference, together with the operation of CRC rule 227.6, clearly made defendant's presence at the trial status conference "lawfully required" within the meaning of subdivision (a) of §1305. (*Id.*, at 121.)⁷

What makes *Sacramento Bail Bonds* significant in the present context is its application of other law to the bail forfeiture proceeding. "Since defendant did not otherwise execute a waiver of his presence pursuant to section 977 [omitted reference], his presence was required at the trial status conference pursuant to rule 227.6." (*Id.*, at 121.)

⁷ At a readiness conference, "the defendant must be present in court." (CRC rule 4.112, subd. (a)(3).)

The bottom line in examining these cases is that other appellate districts have applied the provisions of §977 when ruling on bail forfeiture proceedings. Yet here, the Opinion does the opposite.

The Opinion cites *People v. Classified Insurance Corp.* (1985) 164 Cal.App.3d 341, 344-346, *People v. National Automobile & Casualty Ins. Co.* (2004) 121 Cal.App.4th 1441, 1449-1450 (hereinafter, *National Automobile* (2004)), *People v. National Automobile & Cas. Ins. Co.* (1977) 77 Cal.App.3d Supp. 7, 9, and (accord) *People v. Ranger Ins. Co.* (1992) 6 Cal.App.4th 1301, 1304. Notably, the Opinion, while identifying a key and distinguishing factual element in this case, does not discuss how it squares with the holdings of the cited cases which, if considered, would lead to a different result to this case. That key factual element is that Bent had actual notice, in open court, of the April 29, 2011 hearing date. Without a consideration of how this element plays into the analysis of whether §997 applies to §1305 bail proceedings, the Opinion stands alone in its analysis.

In *Classified*, a case in the Fifth Appellate District, the defendant was charged with felonies and failed to appear at a hearing for a §995 motion. While in custody, the trial court set dates for a trial confirmation hearing and trial. Before the trial confirmation hearing was held, defense

counsel filed a motion to set aside the information under §995⁸ and set a hearing date without giving the defendant actual notice of the hearing date. At that hearing, the defendant did not appear and the bail bond was ordered forfeited. On appeal from the order denying the surety's motion to set aside the forfeiture, the People urged that, because the defendant did not execute a written waiver of his right to be personally present, he was required to appear at the hearing under §977, subdivision (b). (*Classified, supra*, at 345.) The order was reversed.

Classified recognized "that section 977 is designed to implement a defendant's due process rights. [Citation.]" (*Id.*, at 345, quoting *People v. North Beach Bonding Co.* (1974) 36 Cal.App.3d 663, 669.) *Classified* also stated that:

The construction urged by [the People] would permit [the defendant's] trial counsel to place [the defendant] in default without notice of the motion or date of appearance. Such a construction would clearly be inconsistent with the purpose of section 977 as above stated.

....

Absent an order or other actual notification from the court that [the defendant's] appearance was required at a given date and time, the failure of [the defendant] to appear cannot be grounds for forfeiture of bail under section 1305.

⁸ A hearing to set aside a criminal information or indictment under §995 is referred to, hereinafter, as a "section 995 motion."

(*Id.*, at p. 346.) Quite clearly, *Classified* focused on the fact that there was no evidence in the record that the defendant had any knowledge that a §995 motion hearing was to be held and, therefore, the defendant's due process rights would have been violated if the hearing was one at which his presence was lawfully required under §977 and §1305, subdivision (a)(4).

In contrast, a different result follows where a defendant *has* notice of a hearing, notwithstanding the absence of any express order that he is required to be present. If a defendant has notice of a hearing in his felony case, then certainly the due process concerns in *Classified* are nullified. Absent the due process and notice concerns of *Classified*, the defendant's appearance, in the absence of a written waiver to be personally present, is "lawfully required" under §997, subdivision (b) and §1305, subdivision (a)(4).

This contrasting hypothetical, one which the Opinion does not address, was considered by the same Fifth Appellate District in *People v. American Bankers Ins. Co.* (1990) 225 Cal.App.3d 1378. There, the defendant and her attorney were present in the trial court when it ordered hearing dates set for a §995 motion, a trial confirmation hearing, and trial. Notably, "[t]he court did not expressly order [the defendant] to be present on any of the above mentioned dates." (*Id.* at 1380.) The defendant failed to appear at the hearing for the §995 motion and the subsequent trial confirmation hearing, aka "readiness conference" pursuant to Rule 227.6

(renumbered as rule 4.112), and the bail bond was forfeited. (*Ibid.*)

Appealing the order denying its motion to set aside the forfeiture, and based on the rationale in *Classified*, the surety argued that the defendant's presence in court was not lawfully required within the meaning of §1305. The Fifth Appellate District, this time, *affirmed*.

First, the *American Bankers* Court observed that in *Classified*, "[t]he record did not reflect that the defendant had notice of this hearing." (*Id.* at 1381.) Second, it discussed *People v. Sacramento Bail Bonds*, *supra*, 210 Cal.App.3d 118. Significantly, the Fifth Appellate District perceived a dispute in how to interpret *Classified's* belief that there must be an order or other actual notification commanding the defendant's appearance on a date and time certain. As the *Sacramento Bail Bonds* Court observed:

Classified Ins.'s dictum is at odds with the established rule permitting forfeiture of an appeal bond. Although section 1305 governs such a forfeiture, it is well recognized a forfeiture is appropriate where a defendant fails to surrender himself following an appeal even though the defendant has received no court order stating the time or place of his surrender.

(*Sacramento Bail Bonds*, *supra*, 210 Cal.App. 3d at 122.)

Whether *Classified's* rationale was dictum or precedent, *American Bankers* made it clear:

[T]he context of the statement must be considered. . . . First, *Classified* did not involve an appearance date mandated by a rule of court. Second, *Classified* primarily was concerned

with the unfairness of allowing bail to be forfeited when the defendant had no notice of the date on which the hearing was to be held.

....

The concerns addressed in *Classified* simply are not present in the instant case. The defendant and her attorney were present in court when the date was set for trial confirmation. As in *Sacramento*, the notification of the date combined with the operation of rule 227.6, rendered the defendant's presence at the trial confirmation "lawfully required" within the meaning of section 1305, subdivision (a).

(*American Bankers, supra*, 225 Cal.App.3d at p. 1382.) The Opinion does not consider the context of Bent's situation, wherein he had actual notice of the April 29 continued pre-trial.

The Opinion also cites *National Automobile* (2004), a case which *does not* hold that §977 does not have general application to bail bond proceedings. Instead, *National Automobile* (2004) held that §977 did not apply to the particular facts of that case because the defendant had no knowledge of the court hearing at which the surety contended the trial court should have ordered forfeiture. There, the trial court held a hearing on demurrer and a §995 motion, which it then continued to October 19, 2001 and ordered the defendant to return to court on that date. On October 13, 2001, however, the trial judge held a hearing with only counsel present because, as the appellate court stated, the defendant had not been ordered to appear on that date. At that hearing, the trial judge ordered the October 19,

2001 hearing continued to October 26, 2001. (*National Automobile* (2004), *supra*, 121 Cal.App.4th at 1444.) Consistent with the trial court's earlier October 13, 2001 order, neither defense counsel nor the defendant appeared on October 19, 2001. Subsequently, the trial judge, with the prosecutor present, stated on the record on October 19, 2001 (the date on which the defendant had been ordered on October 13, 2001 to return to court), that the defendant was not present and that the bail was ordered forfeited, but action was stayed on the forfeiture until the October 26 hearing. (*Id.*, at 1445, and fn. 5.) At the October 26, 2001 hearing, the defendant appeared on the motions that had been continued from October 19, 2001. The trial judge set aside the forfeiture. After the defendant was convicted, he failed to appear at his sentencing and the bail was again ordered forfeited. (*Id.*, at 1445-1446.)

In a motion to vacate forfeiture, the surety contended that the trial court lost jurisdiction over the bond when it failed to order bail forfeited on October 19, 2001, the date on which the defendant was supposed to appear in court. The People contended that the trial judge had earlier waived the defendant's required appearance for October 19, 2001. The trial court denied the surety's motion. (*Id.* at 1446-1447.) On appeal, the trial court's order was affirmed. The appellate court held that the October 19, 2001 hearing was not one at which the defendant's presence was "lawfully required" under §977 and, consequently, not one at which his appearance

was "lawfully required" under §1305, subdivision (a)(4) for which the trial court would have lost jurisdiction over the bond. (*Id.*, at 1449-1450.) Significantly, the appellate court observed that "[t]he absence of a section 977 waiver does not convert *all* proceedings – specifically including a hearing on a section 995 motion to strike – into occasions at which a 'defendant's presence in court is lawfully required' for purposes of section 1305, subdivision (a)(4)." (*Id.*, at 1449 (emphasis added).) The Court of Appeal thereby implied that there are *some* situations where, in the absence of a §977 written waiver, such a hearing is one where a defendant's presence *is* "lawfully required" for purposes of §1305, subdivision (a)(4).

The rationale for *National Automobile* (2004)'s holding was based on the specific facts of the case and was *not* a general rule that §977 bore no relation to §1305 proceedings. It specifically found that the actual hearing date was October 26, and *not* October 19, and that the trial court "acknowledged its understanding and expectation that the defendant would not appear at the October 19 hearing, it is indisputable that the defendant's appearance on that date was not 'lawfully required' under section 1305, and the trial court's purported order on October 19 declaring the bond 'forfeited' was void." (*Id.*, at 1449.)

In essence, the trial judge in *National Automobile* (2004) did not conduct a hearing for the demurrer and the §995 motion on October 19, 2001 because it had previously cancelled the hearing and continued it to a

date at which the defendant did subsequently appear. "The trial judge was in error in its apparent belief that the defendant's presence was required at the October 19 hearing" because he had cancelled the hearing. (*Id.*, at 1449.) In a footnote, the Court of Appeal quoted *Classified*: "Absent an order or other actual notification from the court that [the defendant's] appearance was required at a given date and time, the failure of [the defendant] to appear cannot be grounds for forfeiture of bail under section 1305." (*Id.*, at 1450, fn. 10.) Thus, *National Automobile* (2004) also focused its rationale not on whether the defendant was ordered to appear at the subject hearing, but rather on whether the defendant had been provided notice, or had actual knowledge, of the hearing at which he was required to lawfully appear.

National Automobile (1977), *supra*, 77 Cal.App.3d Supp. 7, though cited at page 6 of the Opinion, did not have any discussion on the application of §977 to bail bond proceedings. There, the bail bond indicated that the defendant was to appear in court on a certain date for no stated purpose. No hearing was held on that date, although an appearance date was ordered by the court and conducted two days later. The defendant failed to appear at the hearing and bail was forfeited. (*Id.*, at 8.) *National Automobile* (1977) simply held that a defendant is obligated to appear in court on dates ordered by the court "or as otherwise required by law," and not the date that appears solely on the bail bond. (*Id.*, at 9.)

In *Ranger, supra*, 6 Cal.App.4th 1301, a defendant failed to appear at a narcotics case review ("NCR") calendar and then subsequently at trial, at which time bail was ordered forfeited. The surety contended that the NCR was the equivalent of a Rule 4.112 readiness conference at which the defendant's presence was required and, because he failed to appear, the trial court lost jurisdiction over the bond when it failed to order bail forfeited at the NCR. (*Id.*, at 1303-1304.) The appellate court disagreed with the surety's characterization of the NCR as a readiness conference based on the declaration of the trial judge, which stated that an NCR is a "non-mandatory appearance of a defendant" and is "time for optional discussion of resolution of cases." (*Id.*, at 1304.) The appellate court affirmed the denial of the surety's motion to set aside the summary judgment on the forfeited bond, emphasizing that an NCR is a supplement to, and not the equivalent of, a readiness conference, and a defendant is not required to appear at an NCR under any statute or rule. (*Id.*, at 1305.)

The Opinion does not explain how *Ranger* applies to this holding except to indicate that an NCR is not a readiness conference, which the People would readily concede based on the facts established by the declaration of the *Ranger* trial judge offered to show that it was a non-mandatory appearance. In contrast, this case involves a mandatory appearance under §977, subdivision (b).

The Opinion holds that §977, subdivision (b) does not qualify as a "provision, such as rule 4.112," for which a defendant's appearance is mandated under §1305, subdivision (a)(4) even though its provisions clearly state that "[t]he accused shall be personally present at all other proceedings" unless a written waiver is executed in open court. The Opinion does not explain how it distinguishes §977 from Rule 4.112, except in terms of whether there are due process concerns as expressed in *Classified*. "Rules of Court have the force of law and are 'as binding on this court as procedural statutes unless they transcend legislative enactments or constitutional guarantees.'" (*American Bankers, supra*, 225 Cal.App.3d at 1381, fn. 2.) But the Fifth Appellate District allays such concerns by pointing out that the defendant must have notice of the date and time of the hearing affecting his due process rights, and *not* that he must be expressly ordered to appear at the hearing.

Regardless of whether the April 29, 2011 hearing was an "ordinary pretrial conference" or a Rule 4.112 conference is irrelevant, for both are appearances in a felony case which are encompassed as "all other proceedings" by §977(b) and mandate the presence of the defendant. What is clear and undisputed is that on April 5, 2011, Bent was present in court when he agreed to waive his right to a speedy trial and was told that the hearing was continued to April 29, 2011. The fact that Bent was informed on April 5, in open court, of the next hearing on April 29, 2011 "reflect[s]

that the defendant had notice of this hearing." (*American Bankers, supra*, 225 Cal.App.3d at 1381.) The concerns of *Classified* about due process are simply not present here where Bent and his attorney were present when the hearing was continued. The notification of the April 29, 2011 hearing date, combined with §977, subdivision (b) that required Bent's presence "at all other proceedings," rendered his presence on April 29, 2011 "lawfully required" within the meaning of §1305, subdivision (a). (*Id.*, at 1382; *Sacramento Bail Bonds, supra*, 210 Cal.App.3d at p. 121.)

Here, §977 specifically mandates a defendant's presence, in felony cases, "at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence." A defendant "shall be personally present at all other proceedings" unless he executes a written waiver in open court. There are five hearings at which the defendant must absolutely be present. At all other proceedings he must be present unless he waives his right to be at the hearings. The language of §977 is plain and unambiguous. Similarly, there is no ambiguity in Rule 4.112 that mandates a defendant's appearance at a readiness conference and which *American Bankers, Sacramento Bail Bonds*, and others so readily recognize. The Opinion is at odds with precedent and fails to recognize the distinguishing facts of the cases upon which its holding relies to the facts in this case.


VII. CONCLUSION

For all the foregoing reasons, Plaintiff/Respondent People of the State of California respectfully request the Supreme Court grant review of this matter to clarify the applicability §977(b) to bail bond forfeiture proceedings.

DATED: May 19, 2014

Respectfully submitted,

JOHN F. KRATTLI
County Counsel

By 
JOANNE NIELSEN
Principal Deputy County Counsel

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for People of the State of
California, by the County of Los Angeles

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.204(c)

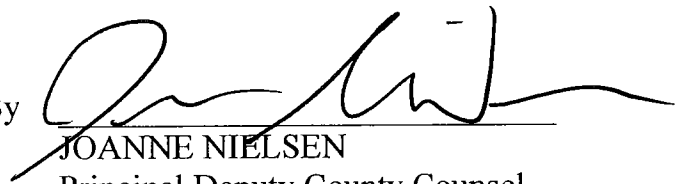
The text of this document consists of 7,280 words as counted by the Microsoft Office Word 2003 program used to generate this document.

DATED: May 19, 2014

Respectfully submitted,

JOHN F. KRATTLI
County Counsel

By

A handwritten signature in black ink, appearing to read 'Joanne Nielsen', written over a horizontal line.

JOANNE NIELSEN
Principal Deputy County Counsel

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for People of the State of
California, by the County of Los Angeles

EXHIBIT 1

FILED

Apr 09, 2014

JOSEPH A. LANE, Clerk

KLEWIS Deputy Clerk

Filed 4/9/14

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ELSHADDAI MACHABEUS BENT,

Defendant;

SAFETY NATIONAL CASUALTY
INSURANCE CO.,

Appellant.

B243773

(Los Angeles County
Super. Ct. No. LA066432)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Martin L. Herscovitz, Judge. Reversed with directions.

John Mark Rorabaugh for Appellant.

No appearance by Respondent.

Safety National Casualty Co. appeals from the trial court order forfeiting the bail bond it had posted for a criminal defendant. We reverse because the hearing where the defendant failed to appear was not one at which his presence was required and the defendant had not been ordered to appear.

FACTS AND PROCEDURAL HISTORY

Elshaddai Machabeus Bent was charged with felony drunk driving in November 2010. Bail was set at \$25,000, and the bail bond was executed by Safety National Casualty Co. through its agent, High Five Bail Bonds. Between November 2010 and April 5, 2011, Bent, who was represented by counsel, appeared at several hearings held before different judges or court commissioners. At the conclusion of some of those hearings, the trial court said, “bail will stand.” At some, it ordered Bent to appear at the next hearing. At others, it said both, and others it said neither.

At a March 1, 2011 hearing, the trial court asked defense counsel, “[w]hat’s your preference for pretrial?” Defense counsel said early April and the trial court said the “pretrial conference” would be held April 5, 2011. At the end of that hearing, the trial court did not say that bail would stand or order Bent to appear on April 5.

On April 5, 2011, Bent appeared before Judge Martin L. Herscovitz for the first time. The trial court said there had been settlement discussions and an agreement “to put the case over to May 2 with the understanding that any trial would be within 45 days of that day.” Defense counsel said April 29 was a better date and the hearing was continued until then. After Bent agreed to waive his speedy trial rights the trial court said “bail will stand.”

When Bent did not appear at the April 29 hearing, Judge Herscovitz declared Bent’s bail forfeited. Safety National then had 180 days in which to seek vacation of the forfeiture order in the event Bent was returned to custody. (Pen. Code, § 1305, subd. (c)(1).)¹ Safety National later sought a 180-day extension of that period,

¹ All further section references are to the Penal Code.

contending that good cause existed because one of its skip tracers hoped to soon track Bent down. (§ 1305.4.) Judge Herscovitz granted that motion in November 2011, tolling Safety National's time to have the forfeiture vacated to May 2, 2012.

Two months later Safety National moved to vacate the forfeiture, contending that the trial court lacked jurisdiction because Bent had not been ordered to appear at the April 29 hearing, and because that hearing was not one where his presence was required by law.

At the hearing on the motion to vacate, Safety National argued that the hearing set for April 29 was an ordinary pretrial conference where Bent's presence was not required absent an order to appear, as opposed to a readiness conference, where his presence was required under rule 4.112 of the California Rules of Court.² The trial court denied the motion for three reasons. First, it had extended the forfeiture vacation date based on Safety National's representation that it needed more time to track down Bent, and the jurisdictional issue should have been raised then. Second, the trial court believed that its statement "bail will stand" was an order to appear. Third, in an apparent reference to rule 4.112, the trial court said that case law required Bent to appear absent an order that he do so unless he had no actual knowledge that his appearance was required.

DISCUSSION

1. *Bail Was Wrongly Forfeited Because Bent Was Not Required to Be Present at the April 29 Hearing*

The trial court may declare bail forfeited if, without sufficient excuse, a defendant fails to appear for arraignment, trial, judgment, or any other proceeding before judgment is pronounced where his presence is lawfully required. (§ 1305, subd. (a).) We review the trial court's order forfeiting bail under the abuse of discretion standard. (*People v. Ranger Ins. Co.* (2005) 135 Cal.App.4th 820, 823.) Forfeiture provisions such as section

² All further rule references are to the California Rules of Court.

1305 are disfavored, however, and therefore it is strictly construed against a finding of forfeiture. (*People v. National Automobile & Casualty Ins. Co.* (2004) 121 Cal.App.4th 1441, 1448.) Because section 1305 is jurisdictional, a trial court's order declaring a bail forfeit is void if the trial court did not strictly abide by its terms. (*Ibid.*)

Safety National contends the trial court erred because Bent had never been ordered to appear at the April 29 hearing and because the hearing was not one at which his presence was required by some provision of law. Respondent contends that Bent was required to appear on April 29 for three reasons: (1) the trial court's statement at the April 5 hearing that "bail will stand" was an order to appear on April 29; (2) the April 29 hearing was a readiness conference under rule 4.112, at which his presence was required; and (3) because Bent was charged with a felony, section 977 required him to appear at all trial court proceedings. We take each in turn.

Respondent cites no authority for the proposition that the phrase "bail will stand" can reasonably be construed as an order to appear at the next scheduled hearing, and we have found none. Instead, the phrase means no more than it says – that the defendant remains free on bail in the posted amount. Because "bail to stand" is a lawful order even if the defendant is not ordered to appear, "bail to stand" cannot be synonymous with "ordered to appear."

Furthermore, nothing in the record shows that the trial court used the phrase "bail will stand" in that manner or suggested that its use of that phrase was intended as an order to appear. As described in our FACTS AND PROCEDURAL HISTORY, the various judges before whom Bent appeared sometimes said bail will stand and did not include an order to appear, sometimes ordered him to appear and did not mention that bail would stand, or did both. Under these circumstances, we cannot construe Judge Herscovitz's statement that bail would stand as a stand-in for an unambiguous order to

appear at the next hearing. As a result, we hold that Bent had not been ordered to appear on April 29.³

Under rule 4.112, the trial court “may hold a readiness conference in felony cases within 1 to 14 days before the date set for trial.” If such a conference is ordered, all trial counsel must appear and be prepared to discuss the case and determine whether it can be disposed of without trial, the prosecutor must have authority to dispose of the case, and the defendant must be present in court. (Rule 4.112(a)(1)-(3).) Our review of the record does not show that such a conference had been ordered.

At the March 1 arraignment hearing before Judge Barry Taylor, the court asked counsel about their “preference for pretrial” and set the matter for a “pretrial conference” on April 5. The minute order for that date also refers to “a pretrial.” The minute order for the April 5 hearing before Judge Herscovitz states that the matter was “called for pretrial conf/trial setting.” Under “Custody Status,” the minute order states, “Bail to stand.”⁴ Judge Herscovitz noted that there had been settlement talks. Bent waived his speedy trial right, which otherwise required that trial begin on May 2, and agreed that his case would be set for April 29, with the understanding that any trial would be within 45 days of that date. The minute order states that the case was “continued to April 29, 2011 for pretrial conference as day 0 of 45.”

³ We asked for and received supplemental briefing from the parties as to whether anything about the use of “bail will stand” at earlier hearings would allow a finding that Bent understood that term to mean he was ordered to appear at the next hearing. We also asked for supplemental briefing on the trial court’s finding that the jurisdictional issue raised in the motion to vacate the forfeiture was waived because it had not been brought earlier. Respondent concedes that the order was jurisdictional and could not be waived. (*County of Orange v. Lexington Nat. Ins. Corp.* (2006) 140 Cal.App.4th 1488, 1492-1493.)

⁴ The minute order for April 5 also states that Bent was ordered to appear at the next court date, but respondent does not contest Safety National’s assertion that the reporter’s transcript, which contains no such statement, controls. (*People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 582, 586-587.)

Nothing in this chain of events suggests that a rule 4.112 conference was contemplated. Such a hearing must be conducted, if at all, within 1 to 14 days of the *trial date*. No trial date was set at the March 1 hearing, and the minute order for April 5 states that the matter was called for a pretrial conference and *trial setting*. On April 5, the matter was continued to April 29 as 0 out of 45 on the trial court's calendar, again with no indication of an actual trial date. As a result, the April 29 hearing could not have been a rule 4.112 readiness conference.

Finally, section 977 provides: "In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, . . ." (§ 977, subd. (b)(1).) Because Bent never executed such a written waiver, his presence was required at the April 29 hearing, respondent contends.

This contention has been considered and rejected by our appellate courts. The rationale behind their rulings is that section 977 is designed to protect a felony defendant's due process right to be present at all trial proceedings and has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail. (*People v. National Automobile & Casualty Ins. Co.*, *supra*, 121 Cal.App.4th at pp. 1449-1450; *People v. Classified Insurance Corp.* (1985) 164 Cal.App.3d 341, 344-346; *People v. National Automobile & Cas. Ins. Co.* (1977) 77 Cal.App.3d Supp. 7, 9; accord *People v. Ranger Ins. Co.* (1992) 6 Cal.App.4th 1301, 1304 [narcotics case review is not a trial readiness conference].) Under these decisions, bail may be declared forfeited if a defendant fails to appear for arraignment, trial, or judgment, as specified in section 1305, subdivision (a)(1)-(3), or for a hearing where his presence is lawfully required either by some provision, such as rule 4.112, or by a previous court order to appear. (*People v. National Automobile & Casualty Ins. Co.* at

pp. 1449-1450; *People v. Ranger Ins. Co.* at p. 1304; *People v. Classified Insurance Corp.* at pp. 344-346; *People v. National Automobile & Cas. Ins. Co.* at p. 9.)

Respondent attempts to distinguish some of these decisions because they involved a defendant's failure to appear at a motion to suppress evidence under section 995. We see nothing different about an ordinary pretrial conference (other than a rule 4.112 conference) that calls for a different result. No rule of law makes an appearance at such a conference mandatory and, absent a previous trial court order to appear at such a hearing, a defendant's failure to do so is not grounds for declaring bail forfeited.

DISPOSITION

The order denying Safety National's motion to vacate the forfeiture of its bail bond is reversed and the trial court is directed to enter a new order granting that motion. Appellant shall recover its costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.

EXHIBIT 2

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ELSHADDAI MACHABEUS BENT,

Defendant;

SAFETY NATIONAL CASUALTY
INSURANCE CO.,

Appellant.

B243773

(Los Angeles County
Super. Ct. No. LA066432)

**ORDERING MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING**

[There is no change in judgment]

GOOD CAUSE appearing, the opinion filed April 9, 2014, in the above entitled matter is hereby modified as follows:

1. On page 2, lines 1-2, delete the phrase “forfeiting the bail bond it had posted” and replace it with “denying its motion to vacate the forfeiture of the bail bond it had posted”.
2. On page 2, line 7 of **DISCUSSION**, delete the sentence that begins “At others, it said both,” and replace it with a new sentence that reads: “At others it said neither.”
3. On page 4, line 2 from the bottom, delete “or did both” and replace it with “or did neither.”

4. On page 5, line 2, add a new sentence after the sentence that ends “on April 29” that reads as follows: “We therefore conclude that the trial court abused its discretion by declaring that bail was forfeited based on its previous statement that bail would stand.”

[end of modifications]

No change in judgment.

Appellant’s petition for rehearing is denied.

RUBIN, ACTING P. J.

FLIER, J.

GRIMES, J.

EXHIBIT 3

FILED

Nov 15, 2013

JOSEPH A. LANE, Clerk

KLEWIS Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

SAFETY NATIONAL CASUALTY
COMPANY,

Defendant and Appellant.

B243773

(Los Angeles County
Super. Ct. No. LA066432)

ORDER

The court orders that this matter, currently set for argument on November 21, 2013, be taken off calendar.

On its own motion, the court orders the record augmented to include reporter's transcripts of the following proceedings taken by court reporter Kirsti Edmonds-West: in Department NW "R" of the Los Angeles Superior Court November 2, 2010; November 16, 2010; December 15, 2010; January 20, 2011; February 15, 2011; and in Department NW "V" of the Los Angeles Superior Court on March 1, 2011. (Cal. Rules of Court, rule 8.155(1)(B).) The clerk of this court is directed to communicate with the Los Angeles Superior Court to obtain the augmented record. The Los Angeles Superior Court shall cause counsel for appellant and respondent to be served with a copy of the augmented record when it is filed with this court.

The parties are to file supplemental letter briefs that address the following issues:

(1) In light of the contents of the augmented record, can it be said that the trial court's statement that "bail stands" at the April 5, 2011, hearing was in fact an order for defendant to appear at the next hearing?

(2) When the trial court denied Safety National's motion to vacate the bond forfeiture, it did so in part because Safety National's earlier motion to extend the 180-day period in which to bring such a motion was based on Safety National's stated intent to try to locate Bent and return him to custody. The trial court said that it did not grant the 180 day extension to permit Safety National to bring a motion arguing that the forfeiture had not been proper in the first instance. (See Reporter's Transcript of Feb. 7, 2012, pp. 2-3.) The parties have not addressed this ground for the trial court's order, which implicates issues of waiver. Was this a proper independent ground for denying the motion to vacate the forfeiture? As part of its discussion of this issue, the parties shall augment the record with copies of the extension motion, the reporter's transcript of that hearing, and the trial court's order.

The supplemental briefs shall be double-spaced. Appellant's opening letter brief and respondent's letter brief shall not exceed 10 pages. Any reply brief shall not exceed five pages. Appellant's opening brief shall be filed with the court by fax or electronic delivery and served no later 10 days after the augmented record is filed. Respondent's brief shall be filed by fax or electronic delivery and served no later than 10 days after that. Any reply brief shall be filed by fax or electronic delivery and served no later than five days after respondent's brief is filed and served. The court's fax number is (213) 897-2430. The electronic delivery can be sent to 2d1.clerk8@jud.ca.gov.

RUBIN, Acting P.J.

RUBIN, ACTING P. J.

PROOF OF SERVICE

Case Nos.: **B243773/LA066432/SJ3732**

STATE OF CALIFORNIA, County of Los Angeles:

Anna Pacheco states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on May 19, 2014, I served the attached:

PETITION FOR REVIEW

upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows as stated on the attached mailing list:

John M. Rorabaugh, Esq.
Attorneys at Law
801 Parkcenter Drive, Suite 205
Santa Ana, California 92705

Office of the Clerk
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, California 9102
(8 copies)

Clerk for the Hon. Martin L. Herscovitz
SUPERIOR COURT OF CALIFORNIA
6230 Sylmar Avenue, Dept. NWR
Van Nuys, California 91401

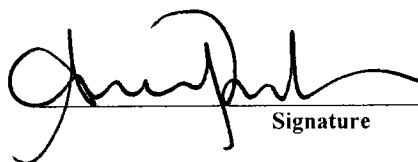
Electronically Submitted to the
CALIFORNIA COURT OF APPEAL
Second Appellate District, Division Eight,
per Rule 8.70
(4 copies)

By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons on the service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Executed on May 19, 2014, at Los Angeles, California.

Anna Pacheco



Type or Print Name of Declarant
and, for personal service by a Messenger Service,
include the name of the Messenger Service

Signature