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March 23, 2018

Chief Justice
Supreme Court of California
Earl Warren Building
350 McAllister Street
San Francisco, California 94102

**Re: County of Los Angeles v. Financial Casualty & Surety
Supreme Court of California Case No. S230213
Oral Argument Scheduled: April 3, 2018**

To the Honorable Justices of this Supreme Court of California:

The plaintiff-appellant, County of Los Angeles ("County")
respectfully submits its supplemental letter brief¹ to address authorities not
included in the underlying briefs.

**A. When Penal Code section 1269b² was Amended to
Reference §1305, the Legislature Did Not Intend to Divest
the Jailer of Authority to Make a Defendant's Presence
Lawfully Required for Bail Forfeiture Purposes**

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¹ On March 21, 2018, I had a telephone conversation with Cynthia Nash, Deputy Clerk of the California Supreme Court, wherein she informed me that the Court prefers supplemental briefs to address authorities not included in the briefs to be in letter form.

² Further statutory references will be to the Penal Code unless otherwise specified.

In 1959, section 1269b (hereinafter, "§[]") specified that if a criminal defendant "fail[ed] to appear at the time and in the court so ordered upon his release from custody, the court...may forfeit the cash bail or surety bond..." The parties agree that under this version, the jailer's³ authority to set the time and place for the defendant's appearance was sufficient to require the defendant's appearance for bail forfeiture purposes.⁴

Surety seems to contend that when §1269b was amended from specifying the court "may forfeit" bail to providing that §§1305 and 1306 apply when a defendant fails to appear as ordered, the Legislature divested jailers of the authority to make a defendant's appearance lawfully required for bail forfeiture purposes. The legislative history shows otherwise.

The pertinent amendment occurred in 1976 when Senate Bill 1597 was passed. The legislative history reveals the intent was to "dove-tail [§1269b] into the long established *procedures* set forth in Section 1305..." (Emphasis added.) (County's Request for Judicial Notice ("RJN"), Declaration of Lindsay Yoshiyama, ("Yoshiyama Decl."), Exhibit B.)

³ Section 1269b provides other groups with the same authority as jailers. For brevity and based on the language of the issue on review, only "jailers" will be referred to here.

⁴ (Answer Brief on the Merits, p. 8 ["Prior versions of Penal Code section 1269b specified that the court should forfeit bail if the defendant failed to appear on the date set by the jailer. The legislature has since amended the statute to only require the forfeiture of bail when required by Penal Code section 1305."])

There is no indication the intent was to diminish the legal significance of a jailer's order to appear at the time of a defendant's release from jail in the bail forfeiture context.

The Legislative Counsel's Digest of SB 1597 explains the intended effect:

Existing law authorizes various persons to accept bail, in specified circumstances, to issue and sign an order for the release of an arrested person, and to set the time and place for the appearance of the arrested person in the appropriate court and give notice thereof and provides that if the arrested person so released fails to appear at the time and in the court ordered upon his release, the court...may forfeit the bail.

This bill would specifically make applicable in such bail forfeiture an express *procedure* of existing law for the general forfeiture of bail and enforcement and discharge of forfeiture of bail. These provisions require the forfeiture of bail if, without sufficient cause, the defendant neglects to appear on any occasion when his presence in court is lawfully required unless the court has reason to believe that sufficient excuse may exist, in which instance the court may continue the case for a reasonable period without ordering a forfeiture.

(Emphasis added.) (RJN, Yoshiyama Decl., Exh. A.)

The legislative history confirms that the purpose of the amendment was not to alter the consequence of failing to appear on the date and time

set by the jailer (i.e., to forfeit bail), but to make the *procedures* in which the bond was forfeited consistent with those for forfeiting bail under §1305. The Senate Committee on Judiciary Background Information for SB 1597 explained that the discretionary language stating the court "may" forfeit bail in §1269b conflicted with the mandatory language under §1305. (RJN, Yoshiyama Decl., Exh. B.) There was a body of case law expounding on the appropriate circumstances to forfeit bail under §1305, and in practice, the courts followed §1305 when a defendant did not appear as ordered by the jailer. There was no case law to explain the permissive language under §1269b. Also, referencing §1305 when forfeiting bail for a failure to appear as ordered under §1269b ensured that the forfeiture was subject to the consent judgment agreed to in the terms of the bail bond contract. (*Ibid.*) Accordingly, "no substantive changes in the law" were made. (RJN, Yoshiyama Decl., Exh. C.)

Surety's position requires SB 1597 to substantively change the law by divesting jailers of the authority to require a defendant's appearance for bail forfeiture purposes. This conflicts with the plain language of the statutes and the legislative history thereof.

B. This Court's Decision in *People v. Safety National Casualty Corporation* ("*Safety National*") (2016) 62 Cal.App.4th 703 is Dispositive to this Case

In *Safety National*, this Court addressed the issue of whether the mandatory language in §977, subdivision (b) (hereinafter, "§[], subd. []") is sufficient to make a criminal defendant's appearance "lawfully required" for bail forfeiture purposes. Although it does not address the issue on review, the County brings it to the Court's attention because it is dispositive as to *this case* and requires reversal hereof.

In *Safety National*, criminal defendant Elshaddai Bent ("Bent"), who was charged with felony drunk driving, was present in court on April 5, 2011, for a pretrial conference. (*Safety National, supra*, 62 Cal.4th at 708.) Bent, through his attorney, agreed to continue the hearing, waived his right to a speedy trial, and requested April 29, 2011, for the continued hearing. (*Ibid.*) The court continued the hearing per Bent's request. On April 29, 2011, Bent failed to appear in court, without a sufficient excuse, and the court forfeited bail. (*Ibid.*)

Within the extended appearance period, the surety Safety National Casualty Corporation ("*Safety National*") moved to vacate the forfeiture on the basis that Bent was not lawfully required to appear on April 29, 2011.

(*Safety National, supra*, 62 Cal.4th at pp. 708-709.) The trial court denied the motion to vacate the forfeiture. The Court of Appeal reversed, holding that §977, subd. (b) was insufficient to compel a defendant's appearance for bail forfeiture purposes. (*Id.* at p. 709.) This Court granted review.

In 2011, §977, subd. (b)(1) read:

In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of the 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 present at *all other proceedings* unless he or she shall, with the leave of court, execute in open court a written waiver of his or her right to be personally present..."⁵

(Emphasis added.) (*Safety National, supra*, 62 Cal.4th at pp. 710-711.)

This Court rejected Safety National's argument that the requirement that a defendant be "present at all other proceedings" was insufficient to compel a defendant's appearance at "noncritical proceedings, i.e., where the defendant's fundamental constitutional rights are not at stake." (*Id.* at p. 711.) Instead, it abided by the plain meaning of the statute and held that the statute does not distinguish between critical and noncritical

⁵ In 2014, the statute was amended to its current form. The amendment did not impact the analysis here.

proceedings. (*Id.* at pp. 711-712.) It explained the language of the statute and the legislative history reveal the Legislature's intent that felony defendants be required to appear at all proceedings, including a pretrial conference, absent a waiver.

The facts here fit squarely within the holdings of *Safety National*. Chavezgarcia was charged with three felony counts under §245, subd. (a)(4) (assault likely to produce great bodily injury).⁶ (Clerk's Transcript ("CT"), p. 2.) She was present in court on November 29, 2012, for arraignment when the court continued the matter to January 3, 2013, for a pretrial conference. (CT, pp. 82-83 and 102.) On December 19, 2012, Surety posted bond for Chavezgarcia's release. The bond reflected an appearance date of January 3, 2013, the date previously set by the court.

On January 3, 2013, Chavezgarcia failed to appear and the court forfeited the bond. The appearance period expired without the forfeiture having been set aside and the court entered summary judgment.

Surety moved to set aside the summary judgment on the basis that Chavezgarcia's appearance was not lawfully required on January 3, 2013. On May 16, 2014, the trial court granted the motion and the County

⁶ Chavezgarcia was also charged with a misdemeanor under §242-243, subd. (a) (battery).

appealed. On September 16, 2014, the Court of Appeal filed the underlying opinion affirming the trial court's decision. On February 1, 2016, the opinion in *Safety National* was filed.

Safety National puts to rest any question whether Chavezgarcia's appearance was lawfully required on January 3, 2013. Assuming *arguendo* that §1269b was insufficient to compel her appearance on the date and time set by the jailer, she was required to be present because the pretrial conference was a proceeding at which her appearance was required under §977, subd. (b), and she had notice thereof. Not only was she present when the hearing was set, but she was given notice by the date on the bail bond. Accordingly, reversal is necessary.

Very truly yours,

MARY C. WICKHAM
County Counsel

By 

LINDSAY YOSHIYAMA
Deputy County Counsel
General Litigation Division

LY:jml

PROOF OF SERVICE

California Supreme Court Case No. S230213

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STATE OF CALIFORNIA, County of Los Angeles:

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 March 23, 2018, I served the attached:

SUPPLEMENTAL BRIEF

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:

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

I further declare that on the same day, pursuant to California Rules of Court, rule 8.44(a)(1), I electronically filed a true copy with the Supreme Court of California and delivered the original copy with 8 paper copies to the Supreme Court of California by placing the original copy and 8 true copies thereof, enclosed in a sealed envelope addressed as follows:

**Chief Justice
SUPREME COURT OF CALIFORNIA
Earl Warren Building
350 McAllister Street
San Francisco, California 94102-7303**

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

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

Executed on March 23, 2018, at Los Angeles, California.

Janet Kalam Mak Li
(NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

SERVICE LIST

**COUNTY OF LOS ANGELES v. FINANCIAL CASUALTY & SURETY
California Supreme Court Case No. S230213**

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