

# Trade group reaches compromise deal to defend SF bail system

By Malcolm Maclachlan

A trade group representing bail agents has reached an agreement to be allowed limited intervention in a lawsuit that challenges the bail system in San Francisco.

If accepted by U.S. District Court Judge Yvonne Gonzalez Rogers of Oakland, the agreement will address an unusual situation that has delayed *Buffin et al. v. City and County of San Francisco*, 15-CV4959 (N.D. Cal., filed Oct. 28, 2015).

The case made headlines in November when San Francisco City Attorney Dennis J. Herrera declined to defend a challenge to the bail system by two women who said they were given unreasonably high bail. Then-Attorney General Kamala D. Harris also decided not to get involved.

These moves prompted attorneys for the California Bail Agents Association to file multiple motions to intervene.

The joint statement was submitted late Tuesday by Herrera's office, attorneys for the agents' association and Equal Justice Under Law, the Washington, D.C. group that helped plaintiffs Riana Buffin and Crystal Patterson file their case.

It requested that the bail agents group be "granted permissive intervention for a limited purpose" of "vetting the factual presentation before this court."

The association's attorney, Harmeet K. Dhillon — owner of Dhillon Law Group Inc. in San Francisco — had argued for a more expansive role known as "intervention as a right."

The two types of intervention are laid out in Rule 24 of the Federal Rules of Civil Procedure. Intervention as a right is unconditional and makes an entity a full-fledged party to a case. Permissive intervention is defined as a conditional right granted to a party that shares "a common question of law or fact."

Phil Telfeyan, the plaintiffs' attorney and executive director of Equal Justice Under Law, said limited intervention will allow for a full vetting of the facts and enable the 16-month-old case to move forward.

"We had argued against intervention primarily for the reason that allowing in a financially interested party could detract from the constitutional claims in the case," Telfeyan said. The bail agents association made several other concessions in the joint filing, including agreeing not to file a counterclaim or a motion to dismiss in the case. The group also "will not expand the scope of litigation or raise new issues."

Dhillon filed the most recent motion to intervene on Dec. 20 after the attorney general's office deliberately missed a deadline to rejoin the case.

Dhillon claimed the association met the necessary conditions for intervention as a right, including a "significantly protectable interest" that wasn't being defended by the original parties in the case.

Dhillon has argued that if the plaintiffs in San Francisco are successful, the ruling could undermine the bail system across California.

While she still believes that precedent supports these claims, Dhillon said she is satisfied with the agreement.

"The CBAA is prepared to move forward with a more limited, permissive intervention for the purpose of ensuring a complete record of necessary facts is before the court, coupled with the ability to make all legal arguments necessary to defend the constitutionality of California's bail statute," she said.

The plaintiffs' original complaint states that their due process and equal protection rights were violated by an "arbitrary" bail schedule that did not take into account their ability to pay. Dhillon has countered that courts have consistently ruled poverty is not a suspect class afforded specific constitutional protections.

Equal Justice Under Law has also been pursuing a second challenge in Sacramento County. *Welchen et al. v. County of Sacramento*, 16-CV00185 (E.D. Cal., filed January 29, 2016).

The county hired Porter Scott APC of Sacramento, which filed a motion to dismiss in December. The firm argued the bail system is constitutional and that challenges should be taken up with the state, not local authorities.

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