IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S229446

THE PEOPLE,
Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY, INC.,
Defendant and Appellant.

Court of Appeal
Second District, Division Five
No. B251230

Superior Court of California
Los Angeles County
No. PA071174
Hon. Harvey Giss

OPENING BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S229446

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is a supplemental certificate of interested entities or persons submitted on behalf of Defendant and Appellant Financial Casualty & Surety, Inc. in the case number listed above.

The undersigned certifies that persons or entities listed in the attachment to this certificate are interested entities or persons that must be listed in this certificate under rule 8.208.

Dated: November 30, 2015 By: */s/ John M. Rorabaugh*
John M. Rorabaugh

ATTACHMENT TO CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The entities or persons listed below (corporations, partnerships, firms, or any other association, but not including government entities) have either (1) an ownership interest of 10 percent or more if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Name:	**Nature of interest:**
Myron Fuller Steves, JR	Owner
Fredrick Benteen Steves	Owner
Teresa Anne Steves Skinner	Owner

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QUESTIONS PRESENTED

1. Should the good cause standard under Penal Code section 1305.4 for extension of the period to exonerate bail require a demonstration of a reasonable likelihood of success of returning a fugitive?
2. When a court finds there has been a diligent investigation to locate a fugitive, does the burden shift under Penal Code section 1305.4 to the People to prove that there is not a reasonable likelihood of success of returning the fugitive?
3. Does an extension of the period to exonerate bail under Penal Code section 1305.4 commence on the date on which the initial 180-day period expires or on the date on which the trial court grants the extension?

OPINIONS BELOW

The California Second District Court of Appeal's opinion is reported at *People v. Fin. Cas. & Sur.* (2015) 239 Cal.App.4th 440 (referred to as "*Financial Casualty*").

Additionally, a decision of the Third District Court of Appeal reported at *People v. Accredited Cas. & Sur.* (2015) 239 Cal.App.4th 293 (referred to as "*Accredited 2015*") was granted review with action deferred pending consideration and disposition of the above entitled matter.

JURISDICTION

Judgment was entered against petitioner in the Superior Court on September 4, 2013. Petitioner timely filed a Notice of Appeal on August 26, 2013. The California Second District Court

of Appeal published its decision in the matter on August 12, 2015. This Court granted a timely petition for review on October 28, 2015. This Court has jurisdiction under the California Constitution, article VI, section 12.

INTRODUCTION

An individual who has been accused of attempted murder with a semi-automatic firearm has posted bail and absconded. The surety that wrote the fugitive's bail bond conducts a thorough and wide ranging private investigation into the fugitive's whereabouts, however, the surety requires more time to locate the fugitive. A statutorily authorized request is made to a trial court to allow the surety's investigation to continue, which statistically offers the best chance to capture the fugitive at absolutely no cost or detriment to the People of the State of California (the "State"). In considering the surety's request for additional time, the question necessarily arises – unless there is a compelling reason to halt the investigation, shouldn't the State, including the trial court, want to extend the commitment of tax free resources towards the return of a potentially dangerous fugitive as long as possible?

This was the scenario presented to the trial court in this case. Additionally, the statute governing the trial court's analysis was enacted with the express purpose of allowing the court to grant more time for such an investigation. The plain language of the provision itself authorized the court to order more investigation time. However, in this case the request to continue the investigation, unopposed by the prosecutor, was denied by the

court – effectively halting substantial efforts to apprehend the fugitive that far exceeded what the government alone could put into this matter. The fugitive remains at large, bail forfeiture was imposed and appellate litigation has ensued. Additionally, the Court of Appeal in affirming the trial court's decision has misinterpreted relevant case law and supported a vague standard to adjudge future surety requests to extend bail fugitive investigations – a restrictive standard that can never really be satisfied, was not envisioned by the legislature and will assuredly result in other trial courts halting similarly diligent investigations attempting to apprehend bail fugitives.

This case is about whether to place limits on surety bail investigations which are not found in, and are inconsistent with, the statutes governing the return of a bail fugitive to the custody of the State. These restrictions come at a significant price to the public good and offers no public benefit for that price. Bail sureties play an integral role in the criminal justice system by providing the most effective, economical and constitutionally safeguarded method to ensure the presence of a criminal defendant in court. To fulfill this duty, it is paramount to have bail sureties expend as much time and effort into searching for bail fugitives as possible. If during a bail fugitive investigation a surety demonstrates that it is being diligent in searching for a fugitive, the law should recognize there is a legally sufficient reason to give the surety as much time as allowed by statute to continue these efforts. A legal standard that requires a surety to somehow forecast the "likeliness" of its future success in locating a fleeing fugitive as a condition to continue looking for the fugitive is overly restrictive by nature and will undoubtedly have

the effect of causing trial courts to cut off diligent searches for bail fugitives. It has long been recognized that a bail forfeiture is not to be viewed as revenue and the return of a bail fugitive should be the overall goal of the system. Accordingly, the law should favor extending diligent bail fugitive investigations, regardless of a surety's ability to predict and/or present its potential for success.

In addition, the statutes providing for an extension of a bail fugitive investigation should not be interpreted to give a surety the shortest extension possible, especially when the plain language of the statute, as well as the legislative intent behind them contradict such an interpretation. Accordingly when a provision is passed with the express purpose "to ease the requirements for avoiding forfeiture" and plainly reads that a trail court may extend an investigation 180 days "from its order," a trial court should be able to grant an extension to continue a bail investigation that may avoid a forfeiture for 180 days to be calculated, as the statute itself states, *from its order,* or if partial extensions are granted from its orders.

Petitioner respectfully submits that for reasons of public policy and under a plain reading of the statue, bail sureties should be allowed to extend their fugitive investigations for as long as permitted by statute if they have shown they have been diligent in their efforts to return a bail fugitive to court.

STATEMENT OF THE CASE

On or about August 31, 2011, Oscar Grijalva ("Grijalva") was charged in a three count felony complaint with a violation of

Penal Code section 664/187(a) (attempted murder), a violation of Penal Code section 245, subdivision (b) (assault with a semiautomatic firearm) and a violation of Penal Code section 12031, subdivision (A) (unlawfully carrying a loaded firearm). (CT 25, 43.) Grijalva plead not guilty to all of the charges on September 15, 2011 and was remanded to the custody of the sheriff pending trial.

On February 29, 2012, Financial Casualty & Surety, Inc., through its agent, Bail Hotline (collectively referred to as the "Surety"), posted bail bond No. FCS1250–929280 (the "bond") in the amount of $1,240,000.00 on behalf Grijalva for his pre-trial release from custody. (CT 23, 41.) On August 23, 2012, the defendant failed to appear in court, and the bail was declared forfeited and a bench warrant issued. (CT 4, 31–32, 49–50, 68.)

California Penal Code section 1305 establishes a 180-day period following the forfeiture of a bond within which a surety can seek relief from forfeiture and exoneration of its bond. (Penal Code section 1305 et al.) Penal Code section 1305, subdivision (b) extends the 180-day period five days if the notice of forfeiture is mailed to the bail agent, as it was in this case. (*Ibid.*) For clarity, the 180-day period and any extension of this 180-day period will be referred to as the "appearance period." In this case, a notice of forfeiture was mailed on August 24, 2012. (CT 32, 50.) Accordingly, the 185th day from the mailing of the notice of forfeiture was February 25, 2013 and the initial appearance period would have expired on February 26, 2013.

Penal Code section 1305.4 allows for an extension of the appearance period for "180 days from its order." (*Ibid.*) On February 20, 2013, the Surety filed a motion to extend the

appearance period pursuant to section 1305.4. (CT 34–36; 1–33.) At the March 20, 2013 hearing for the motion to extend time, the trial court specifically ordered the appearance period extended to August 1, 2013, which amounted to a 134 day extension of the appearance period from the trial court's order. (CT 33, 38; RT A1-A4.[1])

On August 1, 2013, a second motion to extend the appearance period for the 46 day balance of the available 180-days of extension time was filed. (CT 52–53; 39–67.) The motion was heard on August 26, 2013, at which time the trial court denied the motion. (CT 71.) In denying the motion, the trial court explained that the "365 days have long expired" and that the "year has run out." RT2 B-1:17–21. A notice of appeal was filed on August 26, 2013. (CT 72–74.) Summary judgment on the forfeiture was entered on September 4, 2013. (CT 75–76.)

On August 12, 2015 the Second District Court of Appeals affirmed the ruling of the trial court in a published opinion reported as *Financial Casualty*, *supra*, 239 Cal.App.4th 440. On September 8, 2015 the Court of Appeals denied Appellant's petition for re-hearing. On September 22, 2015 the Surety petitioned this Court for review. Review was granted on October 28, 2015.

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[1] The Reporter's Transcript was ordered into the record through the Surety's motion to augment the record in the Court of Appeal.

STATEMENT OF FACTS

On August 22, 2012, at approximately 9:30pm, Investigator Ceaser McGuire ("McGuire"), who was retained by the Surety to monitor Grijalva's whereabouts, was alerted that a GPS device which was used by the Surety to track Grijalva had indicated it had been tampered with and had not moved in ten minutes. (CT 1.) Immediately McGuire assembled a team of eight surety bail investigators and within three hours was at the last known location of the GPS device, Whiteman Airport in Pacoima, CA. (CT 2.) McGuire was able to locate the GPS receiver, which appeared to have been cut off of Grijalva with bolt cutters. However, Grijalva was gone. (CT 2.) Although McGuire and the accompanying investigators canvassed the area for witnesses to Grijalva's flight, no one had seen Grijalva. (CT 2.)

McGuire then immediately began contacting Grijalva's family members in a search for Grijalva. (CT 2–3.) McGuire was given a cell phone number for Grijalva from Grijalva's sister. (CT 2.) McGuire was able to track the cell phone signals from the number given to him and sent surveillance teams to the locations of the signal. (CT 2–3.) McGuire also sent surveillance teams to the residences of Grijalva's family and associates. (CT 2–3.) Witnesses near where the GPS device was located said they had seen Grijalva shortly before the GPS unit reported being tampered with, but no one claimed to know where Grijalva had fled. (CT 2–3.) After speaking with Grijalva's parents, McGuire believed them to be lying about Grijalva's whereabouts and status. (CT 3.)

McGuire then visited an indemnitor on the bond, who was cooperative and described a vehicle that Grijalva may be driving. (CT 3–4.) McGuire's team was then able to quickly find the referenced vehicle at a residence where a cell phone signal they were monitoring was located. (CT 4.) However, Grijalva was not found at the location of the vehicle, nor at the location of the tracked cell phone signal. (CT 4.) McGuire then determined that Grijalva's sister had given him an incorrect phone number. (CT 4.)

The morning of August 23, 2012, Grijalva failed to appear in court as required and the bond was forfeited. (CT 4, 31–32, 49–50, 68.) All of the Surety's investigative activity prior to that point had occurred in the hours *before* Grijalva missed court and were the result of proactive efforts on the part of the Surety to monitor Grijalva's whereabouts.

Following the forfeiture of the bond, the Surety continued its intensive investigation. McGuire contacted the company that oversaw the GPS monitoring device requested the records of all of Grijalva's movements preceding the device's removal in order to analyze the data. (CT 4.) McGuire returned to Grijalva's mother's house and was able to access data and contacts from her cell phone to analyze for any leads to Grijalva. (CT 5.) McGuire visited Grijalva's Aunt's residence and made contact with Grijalva's cousin. (CT 5.) McGuire also contacted another indemnitor for the bond. (CT 5.) Although these efforts did not pan out, McGuire continued to search for Grijalva both locally and, because Grijalva had contacts in Mexico.

On September 5, 2012, McGuire contacted the U.S. Marshal's Office in San Diego, CA in an effort to see if that office was

interested in "adopting" the case if the investigation determined that Grijalva had fled to Mexico. (CT 5–6.) McGuire forwarded to the U.S. Marshals all of the information he had gathered up to that point. CT 5–6. After reviewing the case, the U.S. Marshals advised McGuire that they would "adopt" the case. (CT 6.)

On September 6, 2012, McGuire returned to the residence of an indemnitor on the bond that had shown interest in cooperating with McGuire. (CT 6.) The indemnitor's house had been put up for collateral on the bond. (CT 6.) Out of concern over losing the property, the daughter of the indemnitor provided McGuire with a Facebook page for Grijalva and indicated she would be willing to cooperate with McGuire. (CT 6.) McGuire was also informed that Grijalva's parents had agreed to purchase a new home for the indemnitor if the property was foreclosed on. (CT 6.)

Given that McGuire had determined that Grijalva had family and connections in Mexico, on September 9, 2012 McGuire flew to Mexico City to meet with his law enforcement contact there and brief them on the investigation. (CT 6.) McGuire was asked to obtain a birth certificate for Grijalva in order to establish citizenship for Grijalva that could possible lead to the deportation of Grijalva from Mexico. (CT 6–7.) McGuire obtained and forwarded Grijalva's United States birth certificate to law enforcement authorities. (CT 7.)

Upon returning from Mexico, McGuire spent several days analyzing the data he received from the company that oversaw the GPS device. (CT 7.) Based on this data, surveillance was set up at an address that Grijalva had frequented often before fleeing. (CT 7.)

McGuire also spent considerable time analyzing data that he retrieved from the cell phone McGuire was previously able to access at Grijalva's parent's residence. McGuire was able to determine that shortly after Grijalva fled, the phone had made several call and sent text messages to a phone number in Mexico, all around 3:00 am in the morning. (CT 7.) McGuire forwarded this information to the U.S. Marshals as well as his law enforcement contacts in Mexico. (CT 7.) McGuire was then advised by his Mexican law enforcement contacts that the phone had been purchased in Tijuana, Mexico and the number that had been called were located in Sinaloa, Mexico. (CT 7.)

McGuire then returned to Grijalva's family's residence and conducted surveillance. (CT 7.) From this effort, McGuire was able to obtain the make, model and license plate number on all of the vehicles driven by Grijalva's family. (CT 7.) McGuire forwarded the vehicle information to the U.S. Marshals and requested that they could check to see there was any record of these vehicles crossing into Mexico. (CT 7.)

On February 20, 2013, a motion to extend the exoneration period pursuant to section 1305.4 was filed. (CT 34–36; 1–33.) At the hearing on March 20, 2013, the trial court ordered the period extended to August 1, 2013. (CT 38.)

On August 1, 2013, a second motion to extend the exoneration period, or in the alternative to toll the time, was filed. (CT 52–53; 39–67.) The motion was supported by the declaration of the surety's investigator, Cesar McGuire. The investigator had taken extensive and diligent, reasonable actions to locate the defendant in applying for the first extension. (CT 1–14.) In supporting the application for a further extension, the investigator engaged in

similar and diligent, consistent efforts to locate the defendant. (CT 54–60.) He contacted Elvia Bravo, one of defendant's sisters, and he offered to pay her $100,000 if she could convince the defendant to turn himself in. (CT 54:23–55:5.) On March 12, 2013, Freddy Grijalva, a cousin of defendant, contacted the investigator about the reward for finding the defendant, and he said he would call if he saw the defendant. (CT 55:6–14.) On March 27, 2013, the investigator raised the reward from $100,000 to $200,000, and he updated the information on websites and sent out publications in California and Mexico. (CT 55:15–17.)

On April 3, 2013, Maria Loza, another of defendant's sisters, called the investigator and informed him that two other male relatives, Pablo, Jr. and Pablo, Sr., had gone to Mexico, and she believed the location was Mexicali because she overheard a conversation between the defendant and Pablo, Jr. about staying in Calexico. (CT 55:18–23.) Maria did not have Pablo, Jr.'s phone number because he had recently changed it. (CT 55:22–23.) Maria called two days later and provided Pablo's phone number. (CT 56: 1–2.) The investigator visited the home of defendant's mother on two occasions, once contacting a young male who closed the door on him. (CT 56:5–10.) On April 27, 2013, he received an anonymous tip that the defendant was at an address in Taft, California, and the investigator conducted surveillance on that address for two days without sighting the defendant. (CT 56:11–16.) He talked to neighbors and visited local liquor stores, but no one had sighted the defendant. (CT 56:16–18.)

On May 3, 2013, he checked data bases and located an address where the defendant had stayed in Bakersfield, California, which addressed turned out to be the residence of Pablo, Jr.'s mother-in-

law. (CT 56:9–22.) He conducted surveillance at that address on May9 and May 13, 2013, but without any sighting of defendant. (CT 57:1–5.) On May 20, 2013, he learned of a ranch address in Sylmar, California associated with Pablo, Jr., and after conducting surveillance of the location on May 21, 2013, he determined that Pablo, Jr. lived there with his girlfriend. (CT 57:6–10.) He conducted further surveillance on May 23 and May 25, 2013, but there were no sightings of defendant. (CT 57:11–14.) The investigator spoke to several neighbors who confirmed that Pablo, Jr. lived in a back house on the property, but they had not seen the defendant. (CT 57:14–15.)

On June 6, 2013, Maria Loza called and informed the investigator that Edith Grijalva, defendant's sister, and defendant's mother were driving to Mexico, and she provided a description of the vehicle they would be driving and the address where Edith lived. (CT 57:18–20.) He tracked the vehicle to Rosarito, Baja Californa on June 7, 2013, where Edith, the mother and other relatives stayed at a hotel. (CT 57:20–24.) He walked around the main street in Rosarito, but he did not see Edith or the defendant at any of the local restaurants or night clubs. (CT 57:24–58:2.)

On June 8, 2013, he did not see Edith's vehicle at the hotel, and upon speaking to hotel security, he was informed that they had checked out at 6 a.m. that morning. (CT 58: 3–4.) He showed them defendant's picture, and while he looked familiar, they could not say whether he had stayed at the hotel. (CT 58:4–6.) He contacted local law enforcement in Rosarito and informed them about the defendant and the warrant for his arrest, and he left his card and asked them to call with any information. (CT

58:7–9.) On June 14, 2013, he ran wanted ads on Facebook throughout Tijuana, Rosarito, Ensenada and Baja California. (CT 58:10–11.) On June 16, 2013, he received Facebook messages that the Harpy gang had a clique close to the Otay border in Tijuana. (CT 58:12–13.) Earlier investigation had suggested that the defendant, who had a large HARPY tattoo across his chest, was a member of the Harpy gang. (CT 14:1–2.) The investigator went to Tijuana and contacted local law enforcement regarding the Harpy gang. (CT 58:14–16.) On June 26, 2013, the Tijuana authorities confirmed that the Harpy gang had a clique in the Otay area, and they told the investigator that they would let him know if the defendant was in the area. (CT 58:17–20.)

On July 3, 2013, the investigator received a call from Aida Grijalva's (defendant's mother) neighbor who informed him that Aida was moving out. (CT 59:1–2.) He located the mother's new address, which was still in Arleta, California. (CT 59:3–4.) He did surveillance of the new address but did not see the defendant. (CT 59:5–6.) The mother was driving a car with Ohio plates, and investigation revealed that the owner had recently sold it through Craig's List. (CT 59:6–12.)

On July 22, 2013, the investigator received a call from an informant claiming to have information about the defendant's whereabouts, but he wanted to meet personally rather than discuss the information on the phone. (CT 59:13–15.) The investigator met the informant on July 24, 2013, and the informant told him he could get information about defendant's location, but because he did not want to endanger his life, it would take some time to get it. (CT 59:16–20.) Since the

informant's details corroborated information the investigator had already confirmed, the investigator was confident that the informant was honest and truthful. (CT 59:20–22.)

On July 26, 2013, a U.S. law enforcement officer advised the investigator that law enforcement officials in Mexico claimed they had an informant who knows the defendant. (CT 59:23–60:4.) On July 31, 2013, the investigator's informant provided new information on the Grijalva family. (CT 60:5–6.)

ARGUMENT

I. THE "GOOD CAUSE" REQUIREMENT OF PENAL CODE SECTION 1305.4 SHOULD NOT REQUIRE A DEMONSTRATION OF A LIKELIHOOD OF APPREHENSION OF A BAIL FUGITIVE.

The overall purpose of the bail system is to "insure the attendance of the accused" and his obedience to orders of the court. (*People v. Am. Contractors Indem. Inc.* (2004) 33 Cal.4th 653, 657.) Accordingly, when a bailed defendant does abscond, there is a strong public interest in incentivizing bail sureties to locate and return bail fugitives to court. "There is a public interest at stake here as well – the return of fleeing defendants to face trial and punishment if found guilty. Given the limited resources of law enforcement agencies, it is the bail bond companies, as a practical matter, who are most involved in looking for fugitives from justice." (*Cnty. of Los Angeles v. Am. Contractors Indem. Co.* (2007) 152 Cal.App.4th 661, 666.)

When a bailed defendant fails to appear for a scheduled hearing without a valid excuse, the trial court is required to forfeit the bond in open court. (Pen. Code, § 1305, subd. (a).) The clerk of the trial court must then notify the bail surety and bondsman within 30 days of the forfeiture of the bond. (*Id.*, subd. (b).) The mailing of a notice of forfeiture commences the 185-day appearance period deadline for the surety to return the fugitive to court or seek other relief from forfeiture. However, Penal Code section 1305.4 provides that upon a timely filed notice motion, a surety and/or bondman can seek an extension of the appearance period for "180 days from its order" upon a showing that its investigation into the whereabouts of a bail fugitive demonstrates "good cause." (*Ibid.*)

Penal Code sections 1305 and 1305.4 are supposed to be strictly construed in favor of the surety and to avoid the harsh results of forfeiture. (*People v. Ranger Ins. Co.* (2000) 77 Cal.App.4th 813, 816.) Further, the application of the bail statutes should involve "no element of revenue to the state nor punishment of the surety." (*People v. Am. Contractors Indem. Inc.*, *supra*, 33 Cal.4th at p. 657.) However, over time what has constituted "good cause" for the purposes of Penal Code section 1305.4 has been narrowed.

Section 1305.4 does not contain any language requiring a Surety to prove it a "likeliness" it will apprehend a bail fugitive in order to receive an extension of the appearance period. However, the Court of Appeal decision in this case firmly requires that a Surety show that it is likely to capture a fugitive in order to be granted an extension of the appearance period, regardless of how diligent the surety has been in its investigation. But in the

absence of accessible scientific data, how does anyone prove the "likeliness" of a future event, especially the capture of a fleeing fugitive? When a court focuses on a perceived absence of "likeliness of apprehension" to deny a surety more time to continue diligent investigation into the whereabouts of a bail fugitive, that court is certainly not construing Penal Code section 1305.4 in a way designed to avoid forfeiture. More importantly, what reason is there to stop a surety from spending further time, money and effort in the pursuit of a fugitive if the surety has clearly demonstrated it is being diligent in its investigation and additional time is authorized by statute?

The legislature did not intend to require a bail surety to bring a fortune teller into court in order to extend a bail fugitive investigation. If a surety has shown that it is being diligent in a bail fugitive investigation a court should find this to be a legally sufficient cause to grant an extension of the investigation for the length of time permitted by the language of the statute.

A. A "Likelihood of Apprehension" Standard Was Never Intended By The Legislature And Is An Overly Restrictive Judicial Creation.

When the legislature enacted Penal Code section 1305.4, it did so in a clear effort to give bail sureties more opportunity to locate and surrender bail fugitives. The legislature could have established specific criteria that a surety needed to meet in order to be granted an extension of the appearance period. Instead the legislature simply required that a surety show "good cause." At first, it was emphasized that "good cause" was a low bar to cross

that a surety could easily establish. However, with the Court of Appeal decision in this case and the ruling in *Accredited 2015*, *supra*, 239 Cal.App.4th 293, the "likelihood of apprehension" standard has taken on a whole new emphasis – an emphasis that is most likely to result in the cessation of diligent bail investigations. This was never the intent of the legislature when it enacted Penal Code section 1305.4. Moreover, when considered within the scope of the overall bail forfeiture system, a restrictive interpretation of Penal Code section 1305.5's "good cause" standard does not benefit anyone, except perhaps, bail fugitives.

Prior to the enactment of Penal Code section 1305.4 a bail surety could not request an "extension" of the appearance period based on the sufficiency of its investigation alone. Provisions existed in Penal Code section 1305 that would allow a surety to "toll" the appearance period under certain situations, such as a defendant's sickness, out of jurisdiction incarceration, or other "disability" of the *defendant*. (See former Penal Code section 1305 prior to 1993 reenactment.) However, unless a defendant's circumstances fell within one of the delineated tolling "conditions," a surety was limited to the initial length of the appearance period which was originally 90 days and subsequently amended to 180 days.

In 1996 what would become Penal Code section 1305.4 was introduced in the legislature as Senate Bill ("SB") 1571. The July 8, 1996 analysis of SB 1571 by the California Senate Rules Committee documents:

> This bill authorizes the surety or depositor to file a motion, based upon good cause, for an order extending the 180-day period. The motion would

> include a declaration or affidavit stating the reasons showing good cause to extend the period. The motion would have to be served on the prosecuting agency at least 10 days prior to the hearing. At the hearing, upon a showing of good cause, the court could order the period extended up to 180 additional days.

(Legis. Counsel's Dig., Senate Bill No. 1571 (1995–1996 Reg. Sess.) Stats. 1996, ch. 354 § 1.)

The language of Penal Code section 1305.4 itself sets forth what should be an easily attainable standard by which a trial court can grant a bail surety additional time to continue efforts to return a bail fugitive; the bail surety must show "good cause" for an extension of the appearance period. "Good cause" is defined by Black's Law Dictionary as "[a] legally sufficient reason." (*Black's Law Dict.* (Pocket ed. 1996) p. 87, col. 1.) This Court has held, "[t]he concept of good cause should not be enshrined in legal formalism; it calls for a factual exposition of a reasonable ground for the sought order." (*Waters v. Superior Court* (1962) 58 Cal.2d 885.) A good measure of a sufficient reason to extend the appearance period would be to look at the factual exposition of a surety's diligence in its investigation. Unlike an ambiguous future prediction, a surety's diligence can be documented and presented to a Court and its reasonableness gauged. And if a court finds that a surety is, in fact, making a sufficient and reasonable effort to capture a fugitive, the court should grant the surety additional time as allowed by statute.

The first appellate case to examine the good cause requirement of Penal Code section 1305.4, *People v. Ranger Ins. Co.* (2000) 81 Cal.App.4th 676, 681–682 *(Ranger)*), examined the

factual diligence exhibited by the surety's supporting declaration, which detailed the efforts undertaken by the Surety to locate the defendant during the initial 180-day period. A subsequent decision succinctly described the *Ranger* court's analysis of the good cause as, "[t]he court in *People v. Ranger Ins. Co.* [citation omitted] states that establishing 'good cause' within the meaning of section 1305.4 requires (1) an explanation of what efforts the surety made to locate the defendant during the initial 180 days, and (2) why such efforts were unsuccessful." (*People v. Alistar* (2003) 115 Cal.App.4th 122, 127.) The *Ranger* court's focus on the Surety's past diligence in order to establish good cause is a reasonable examination of factual grounds to determine if "good cause" existed to grant the surety an extension of the appearance period. The extensive efforts of the Surety in this case stand in stark contrast to those of the investigator in *Ranger*.

Three years later, the court in *Alistar*, followed the *Ranger* court's "good cause" analysis and ruled that the trial court in *Alistar* abused its discretion when it denied a motion to extend time even though the investigator's declaration did not provide any evidence as to the defendant's whereabouts. (*People v. Alistar*, *supra*, 115 Cal.App.4th at p. 128.) In *Alistar*, the investigator spoke with the defendant's sister. The sister agreed to pass on the investigator's information to the defendant, but the declaration did not show that she knew of the defendant's whereabouts or was in contact with him. The investigator then spoke with the defendant's brother. The brother stated that the defendant was in Mexico and that even if he knew his location he would not tell the investigator. (*Ibid.*) The appellate court held although there was no reliable information as to the Defendant's

whereabouts, sufficient good cause was established as the investigator's declaration demonstrated a concerted effort to locate the defendant. The court stated that "[t]here was no reasonable justification for not allowing [the surety] additional time to locate defendant, particularly since the law disfavors forfeitures and favors returning to custody fleeing defendants." (*Id.* at pp. 128–129.) Accordingly, both the *Ranger* and *Alistar* courts measured whether the respective sureties established good cause for an extension of the appearance period by measuring the surety's diligence in its investigative efforts, rather than speculation as to the surety's odds of success in those investigations.

Notwithstanding the purpose of Penal Code section 1305.4 and the *Ranger* and *Alistar* decisions, the court in *People v. Accredited Sur. & Cas. Co.* (2006) 137 Cal.App.4th 1349 *(Accredited 2006)* added a new requirement for bail sureties to meet in order to establish "good cause" under Penal Code section 1305.4. The *Accredited 2006* court ruled that sureties would henceforth have to demonstrate investigative diligence as well as a "reasonable likelihood of apprehension" of the bail fugitive. (*Accredited 2006, supra*, at p. 1357.) The *Accredited* court went to great lengths to limit its ruling by explaining that the new requirement was "a low threshold for the movant" and that when considering an extension of the appearance period a trial court "should draw all inferences in favor of the surety." (*Id.* at p. 1358.) Further, the *Accredited 2006* court held that a "reasonable likelihood of apprehension" was shown if an extended investigation "might be"

productive and an investigator was able to document that he or she was able to "consistently gather information" in the case. (*Id.* at p. 1359.)

To create this new requirement for sureties to meet in order to receive an extension of the appearance period, the *Accredited 2006* court analogized the good cause standard of Penal Code section 1305.4 to the good cause standard for producing a witness in court found in Penal Code section 1050. While on the surface this comparison might sound appropriate, the incentives and policies underlying Penal Code sections 1305.4 and 1050 are very different. To make the analogy the *Accredited 2006* court relied upon *Owens v. Superior Court of L.A. Cty.* (1980) 28 Cal.3d 238 which involved compelling a witness to the trial court. Pursuant to Penal Code section 1050, a trial court must conduct a criminal trial at the "earliest possible time." Thus, in order to delay a trial based on the absence of a witness, a prosecutor must make a particularized showing demonstrating the necessity of the witness to the trial. In the *Owens* case the court balanced the necessity of the witness against the countervailing interest of conserving judicial resources and the purposes of Penal Code section 1050.

However, the good cause standard of 1305.4 requires a very different balance of interests. Not only is there a primary interest in having bail sureties searching for bail fugitives, but a trial cannot commence *until* a fleeing defendant has been returned to the court. Accordingly, there is no countervailing interest of conserving judicial resources when granting an extension of time to locate a fleeing defendant. In fact, as discussed below, the

State's resources are actually best preserved by bail agents continuing ongoing and diligent investigative efforts to locate defendants and return them to the custody of the court.

Moreover, despite the *Accredited 2006's* explicit efforts to constrain the application of its own ruling, the "reasonable likelihood of apprehension" requirement established by *Accredited* has been seized upon in subsequent decisions denying extensions of the appearance period. In *Cnty. of Los Angeles v. Fairmont Specialty Grp.* (2008) 164 Cal.App.4th 1018 the Second District Court of Appeal affirmed the denial of a motion to extend the appearance period based on its finding that an informant's contact with the fugitive was not enough to establish a "likelihood of apprehension" and the court's belief that the surety's investigator failure decision to not interview the criminal defendant's wife constituted the failure to follow a seemingly important lead. (*Id.* at p. 209.) As the record in this case demonstrates, it is possible that family members of a fugitive may aid in that fugitive's flight. Thus, in *Fairmont* it hardly appears that the Court of Appeal was drawing "all inferences in favor of the surety."

In this case, as well as *Accredited 2015*, the "reasonable likelihood of apprehension" requirement was the only reason relied upon by the Court of Appeal to affirm the denial of diligent bail fugitive investigations. In this case, the Court of Appeal misinterpreted the holding of *Accredited 2006* by giving the "likelihood of apprehension requirement" equal weight to the diligence of the investigation. "To constitute good cause both due diligence and a reasonable likelihood of recapture must be shown. [Citations omitted.] Both are *equally* important circumstances in

determining 'good cause.' ([*Accredited 2006*, *supra*, 137 Cal.App.4th at p. 1538].)" (*Financial Casualty*, *supra*, 239 Cal.App.4th at p. 447 [emphasis added].) However, the *Accredited 2006* court specifically held, "*[i]t is more vital* to the good cause inquiry, and therefore essential, that the surety shows it has been diligently attempting to capture the defendant during the 180 days." (*Accredited 2006*, *supra*, at p. 1356 [emphasis added].) Further, in this case McGuire and the U.S. Marshals had both developed confidential informants that may have known where Grijalva was hiding. CT 59–60. Pursuant to *Accredited 2006*, these leads should have been inferred in favor of the surety. Instead, the Court of Appeal did the opposite and determined that these leads were "fruitless." (*Accredited 2015*, *supra*, 239 Cal.App.4th at p. 450.)

If the legislature had wanted to require sureties to provide a prediction of their success in order to establish "good cause" the legislature could have made such a standard part of the statutory language (or legislative history) of Penal Code section 1305.4. They did not. Nor did the first courts to review Penal Code section 1305.4. Instead the "likeliness of apprehension" requirement that is being used to deny extensions to diligent bail fugitive investigations was a creation of the *Accredited 2006* decision. And although the *Accredited 2006* court went to great efforts to limit the application of its ruling, the Court of Appeal decision in this case and *Accredited 2015* demonstrate that the "likeliness of apprehension" is being expanded and used to halt diligent bail fugitive investigations in a way that was never envisioned or intended by the legislature. Not only does the imposition of such a requirement upon sureties contravene the

purpose and language of Penal Code section 1305.4, but it is incredibly problematic in its application. Indeed in *Accredited 2015*, it was ruled that a "likelihood of apprehension" did not exist in a bail fugitive investigation that went on to in fact, *apprehend the bail fugitive.* Accordingly, the "likelihood of apprehension" is being applied in an over restrictive manner and should not be supported. Bail sureties should be required to show "good cause" by the only means that they actually can – by conducting diligent bail fugitive investigations.

B. A Diligent Surety Bail Investigations Is Already The Most Likely Endeavor That Will Result In The Apprehension Of A Fugitive.

An ambiguous and restrictive legal standard, such as the "likeliness of apprehension" requirement, unquestionably adds a burden to the surety seeking to obtain additional time to continue a diligent bail fugitive investigation. By adding weight to this burden, the "likeliness of apprehension" standard championed by the Court of Appeal in this case and *Accredited 2015* will absolutely result in fewer bail fugitives being re-captured. Sureties that may be working as hard as possible on a fugitive investigation will be stopped from obtaining additional investigative time if a trial court decides, based on an ambiguous and completely subjective standard, that the odds the surety will capture the fugitive are not high enough to permit a surety to continue trying. Bail forfeitures serve a purpose when they add to

the incentive of returning fugitives to the State. However, when forfeitures are imposed for unnecessary and unjustifiable reasons, the criminal justice system suffers.

It may be easy to overlook the contributions bail sureties provide to the public. Bail sureties and bail bondsmen have often been stereotyped as "an unappealing and useless member of society ... [who] lives on the law's inadequacy and his fellowman's troubles." (Joiner, *Private Police: Defending the Power of Professional Bail Bondsmen* (1999) 32 INLR 1413, 1420.) Such a belief may make it easier to argue in favor of the decisions of the Court of Appeal in here and in *Accredited 2015*, but it would be a grossly uninformed stereotype. A more accurate view is that bail sureties, through the normal course of their business, perform a variety of important social functions and are essential to the criminal justice system. (See *Ibid.*) There has been significant study into the effectiveness of bail sureties' ability to return absconding defendants to the State (especially fugitives who have fled to other jurisdictions) as well the other tangible benefits bail sureties provide to the criminal justice system. In fact, compelling research indicates the criminal justice system relies heavily upon the services that bail sureties provide in order to function efficiently and economically.

The most common form of pre-trial custodial release employed in the United States is through the posting of a surety bond. However, some states have experimented with different types of pre-trial release. Accordingly, research has been conducted to determine the most effective form of pre-trial release currently in use in the United States. A 2004 study of judicial statistics compared the varying pre-trial releases by analyzing own

recognizance releases, the surety bond model and the other systems employed by different states in order to ascertain the most successful form of pre-trial release. (Helland and Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping* (2004) 47 J.L. & Econ. 93 (the "2004 study").[2]) The 2004 study found that real world evidence proved that the surety bail model is not only the most effective means to insure a criminal defendant's presence in court, but also the most beneficial to the criminal justice system.

According to the 2004 study, defendants released on surety bond are 28 percent less likely to fail to appear in court than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time compared to other types of pre-trial release. (*Id.* at p. 188.) When recapture rates for defendants that fled the local jurisdiction were compared among the various forms of pre-trial release, the 2004 study found the probability of recapture for defendants released on surety bonds was significantly higher than all of the other types of pre-trial release. (*Ibid.*) The results of the 2004 study confirmed that surety bonds are the superior form of pre-trial release at discouraging flight *and* at recapturing defendants. The 2004 study concluded its

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[2] "We use a data set compiled by the U.S. Department of Justice's Bureau of Justice Statistics called State Court Processing Statistics, for 1990, 1992, 1994, and 1996 (Inter-university Consortium for Political and Social Research [ICPSR] study 2038). Appellant can file and serve a copy of this work pursuant to California Rules of Court, rule 8.204(d) upon request.

empirical research by stating "[bail sureties], not public police, appear to be the true long arms of the law." (*Ibid.* [emphasis added].)

Additionally, the 2004 study verified that the incentive for sureties to search for absconding defendants is the ability to avoid forfeiture by surrendering fugitives to the State. "If a defendant does fail to appear, the bond dealer is granted some time...to recapture him before the bond dealer's bond is forfeited. Thus, bond dealers have a credible threat to pursue and rearrest any defendant who flees. Bond dealers report that just to break even, 95 percent of their clients must show up in court. [Citation omitted.] Thus, significant incentives exist to pursue and return skips to justice." (*Id* at p. 97.) The 2004 study also found that that bail sureties have more resources to devote to the recapture of fugitives than government law enforcement officers. "Bond dealers...recognize that what makes their pursuit of skips most effective is the time they devote to the task. In contrast, public police are often strained for resources, and the rearrest of defendants who fail to show up at trial is usually given low precedence." (*Id.* at p. 98.)

The 2004 study is not alone. A 1998 analysis of judicial statistics came to similar conclusions. According to that analysis, "[a]pproximately 35,000 defendants jump bail annually, and an astonishing 87% are brought back to justice by bounty hunters. [Citation omitted.]" (Chamberlin, *Bounty Hunters: Can the Criminal Justice System Live Without Them?* (1998) 1998 I. Ill. L

Rev. 1175 (the "1998 analysis").[3]) In addition, the 1998 analysis found surety bonding to provide other specific social benefits to the criminal justice system. "[B]ecause bounty hunters are employed by private bail bondsmen, the cost to taxpayers is absolutely nothing. [Citation omitted.] The alternative is not so inexpensive. Without bounty hunters, the responsibility for bringing back fugitives from justice would fall squarely on government law enforcement, which has not proven to be nearly as effective as bounty hunters at locating, capturing, and returning fugitives. [Citation omitted.]" (*Id.* at p. 1195.)

Most germane to this case, the 1998 analysis determined that undue regulation of bail sureties could result in damage to the criminal justice system. "Presently, bounty hunters provide a valuable service to the criminal justice system, as do commercial bail bondsmen. What may be most striking is the success and efficiency with which the bail bond system works. Bail bondsmen and bounty hunters operate within a niche of the criminal justice system which could be changed dramatically by regulation that reaches too far." (*Id.* at p. 1199.) The 1998 analysis concluded that while the best surety bond system should regulate those who are employed as bail recovery agents for a surety,[4] unnecessary restrictions that impede the ability of sureties to surrender bail fugitives and avoid forfeiture would have a significant and negative impact on the criminal justice system. (*Id.* at pp. 1204–1205.)

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[3] The Appellant can file and serve a copy of this work pursuant to California Rules of Court, rule 8.204(d) upon request.

[4] California regulates individuals who act as bail recovery agents through the provisions of Penal Code section 1299 et seq.

Further, when pointless forfeitures do occur, many authorities agree that in the end it is the criminal justice system that pays. "The social value of bail bondsmen, however, extends far beyond the financial interests of the individual bondsman. Profit drives the bondsman to protect his investment, [citation omitted] but the result is far beyond personal gain. The court system is able to operate effectively, the right to bail is protected, and fleeing criminals, of possible danger to society, are apprehended. [Citation omitted.]" (*Private Police, supra,* (1999) 32 INLR 1413, 1431.) Accordingly, imposing unnecessary forfeitures that needlessly jeopardize a bail surety's ability to remain profitable "potentially lead[s] to fewer bondsmen and consequently, fewer opportunities for defendants to make bail." (*Id.* at p. 1434.)

More recently the conclusions of the 1998 analysis and 2004 study have been borne out by the findings United State Bureau of Judicial Statistics in 2007 (See Cohen, Reaves, *Pretrial Release of Felony Defendants in State Courts* (November 2007) http://www.bjs.gov/index.cfm?ty=pbdetail&iid=834 [as of November 28, 2015.] Referred to as the "2007 report.") The 2007 report found that "compared to release on own recognizance, defendants on financial release were more likely to make all scheduled court appearance." (*Id.* at 1.) Further, according to the 2007 report those defendants on surety bond that did abscond were the least likely to remain fugitives after one year. "By types of release, the percentage of the defendants who were fugitives after 1 year ranged from 10% for unsecured bond release to 3% of those released on surety bond." (*Id.* at 8.)

To the best of the Surety's knowledge, there isn't a single readily discoverable statistical analysis that contradicts the

contention that bail sureties provide the criminal justice system with the most reliable means of ensuring a defendant's presence in court, whether or not a defendant absconds. Thus, the best empirical evidence that can be brought to bear on this issue demonstrates that a defendant released on a surety bond who fails to appear in court is *already* the most "likely" fugitive to be recaptured. Accordingly, there is no compelling reason to embrace a legal standard governing the extensions of bail investigations that serves no other purpose but to possibly halt diligent, surety funded bail fugitive investigations which statistically offer the best chance at recapturing the fugitive. On the contrary, incentivizing the return of bail fugitives to the greatest extent possible, which also aids in the overall efficiency of the criminal justice system, should be the preferred policy. Therefore, the Surety respectfully requests that this Court reject the "likelihood of apprehension" interpretation of the good cause standard relied upon by the Court of Appeal in this case as well as *Accredited 2015* to halt demonstrably diligent bail fugitive investigations.

II. AN ARGUMENT TO HALT A DILIGENT SURETY BAIL INVESTIGATION SHOULD BE REQUIRED TO DEMONSTRATE A COMPELLING REASON WHY PRIVATELY FUNDED INVESTIGATORS SHOULD STOP SEARCHING FOR WANTED FUGITIVES

An extension of time merely allows a surety to continue to expend its resources to locate a bail fugitive at no cost to the State. A surety gains nothing by an extension of the appearance period unless it is able to locate the bail fugitive. If the surety is

unable to locate the fugitive, summary judgment is entered and the Surety must pay the bond. The only cost to the State is the delay in receiving the money. Since bail should not be considered an "element of revenue," this delay cannot be considered a cost. The object of bail is to secure the return of the defendant. (*People v. Fairmont Specialty Grp.* (2009) 173 Cal.App.4th 146, 154.) The best way to meet this object is to grant an extension of a diligent bail fugitive investigation whenever possible. Further, as demonstrated above, bail sureties provide the most reliable and economical means to secure a criminal defendant's appearance in court. Accordingly, if a diligent bail fugitive investigation that can be statutory extended is going to be halted, there should be a very compelling argument made as to why.

In accepting review, this Court posed the question: When a court finds there has been a diligent investigation to locate a fugitive, does the burden shift under Penal Code section 1305.4 to the People to prove that there is not a reasonable likelihood of success of returning the fugitive? Naturally, the Surety believes this question should be answered in the affirmative. However, the Surety believes even more strongly that this question shouldn't be necessary, as a "reasonable likelihood of apprehension" requirement simply should not be part of a "good cause" analysis pursuant to Penal Code section 1305.4. Nonetheless, if there is to be a burden to prove a "likelihood of apprehension," or lack thereof, and a surety has demonstrated that it has been diligent in its investigation, then the burden should fall upon the State.

In *Alistar* the court noted that the surety had shown a diligent investigation and that "The People, on the other hand, failed to

provide any evidence refuting that good cause existed for granting an extension." (*People v. Alistar*, *supra*, 115 Cal.App.4th at p. 129.)

In moving for relief from bail forfeiture, sureties carry the burden of establishing the prima facie grounds for their motion. However, a prediction of how successful the investigation will be is really only speculation – on anyone's part. There will be investigations with many leads that fail, just as there will be investigations with few leads will ultimately be successful. The only evidence that the surety can offer in requesting an extension of the appearance period is the evidence of what activities it has conducted in its initial investigation. Accordingly, a surety's burden in a motion to extend the appearance period should be that the facts set forth in its declaration establish a reasonable diligence on the part of the surety to capture the bail fugitive.

Moreover, if a surety has demonstrated diligence, what would be the reason to halt the investigation? As the *Alistar* court held, "[t]here [is] no reasonable justification for not allowing [the surety] additional time to locate defendant, particularly since the law disfavors forfeitures and favors returning to custody fleeing defendants." (*People v. Alistar*, *supra*, 115 Cal.App.4th at pp. 128–29.) Even if it appeared that a surety's investigation had little chance of success, where is the harm in allowing the surety to continue its efforts if it diligently searching for a bail fugitive?

In many contexts courts have shifted the burden of proof to the opposing party based on public policy. (See California Evidence Code section 500; *Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1226; *McGee v. Cessna Aircraft Co.* (1983) 139 Cal.App.3d 179, 187*Sargent Fletcher, Inc. v. Able Corp.* (2003)

110 Cal.App.4th 1658, 1667–8; *Thomas v. Lusk* (1994) 27 Cal.App.4th 1417, 1717; *Galanek v. Wismar* (1998) 66 Cal.App.4th 1493, 1501)

> When public policy favors the finding of good cause the party opposing the finding has the burden to show that there is good cause not to follow the preference. (*San Diego v. Brooke H.* (2012) 208 Cal.App.4th 1019, fn. 6.)

As discussed above, what is clear, is that there is value in having diligent bail sureties searching for bail fugitives. Thus, while the Surety does not believe that a bail fugitive's "likeness" or "unlikeliness" of recapture should factor into a good cause analysis to extend a fugitive investigation, the Surety strongly believes that if a surety has established diligence in its investigation, the State should carry the burden to argue why the investigation should be halted – and that argument should be necessarily be compelling.

Moreover, "[g]iven the limited resources of law enforcement agencies, it is the bail bond companies, as a practical matter, who are most involved in looking for fugitives from justice." (*Cnty. of Los Angeles v. Am. Contractors Indem. Co.*, *supra*, 152 Cal.App.4th at p. 668.) Accordingly, the investigations with the fewest leads, with fugitives that are the least likely to be apprehended, i.e. the hard cases – are actually the cases that need extended investigations from diligent bail sureties the *most*. If the purpose of the bail forfeiture laws is to favor the return of bail fugitives, then a "likelihood of apprehension" requirement really should be that a *diligent* bail fugitive investigations with

the *least* likelihood of apprehension should be the investigation extended the longest. However, given that an assessment of the "likelihood of apprehension" is just nothing more than a guess, it simply should not constitute any type of legal requirement.

III. THE PLAIN MEANING OF PENAL CODE § 1305.4 AND RELEVANT CASE LAW ALLOW A COURT TO GRANT A BAIL SURETY AN AGGREGATED TOTAL OF 180 DAYS OF EXTENSION TIME FROM THE DATE OF THE COURT'S ORDER(S).

A. Principles of Statutory Construction.

On appeal questions of statutory construction are reviewed de novo. (*Imperial Merch. Servs., Inc. v. Hunt* (2009) 47 Cal.4th 381, 387.) In reviewing the language of a statute, the, "fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.'... Courts begin by examining the statutory language because it generally is the most reliable indicator of legislative intent. The language is given its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.'" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232–3.) "[O]ur office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does." (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253. *In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1253.)

If, however, the statutory language is ambiguous, "...if the statutory language permits more than one reasonable interpretation." (*People v. Huynh* (2014) 227 Cal.App.4th 1210, 1214.) Courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. Courts must consider "the object to be achieved and the evil to be prevented by the legislation." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1100.) Ultimately Courts choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321 *Lee v. Hanley*, *supra*, 61 Cal.4th at pp. 1232–33.)

B. No Ambiguity Exists Regarding The Commencement Of The Extension Period

Penal Code section 1305.4 provides that a court "upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order." (Emphasis added.) Accordingly, pursuant to the statute an extension of the appearance period should be calculated from the time that the court makes the order.

This particular language of Penal Code section 1305.4 was touched upon in *People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193, when a surety requested an additional extension of time after already being granted a 180 day extension of time. The court in *Taylor Billingslea* noted that the statute was ambiguous in the context of "[d]oes 'its order' mean the

original order extending the period so that the total of all extensions permitted under section 1305.4 cannot exceed 180 days, or does 'its order' mean the order issued in response to each request for extension which could result in limitless extensions of time as long as 'good cause' is shown and no single extension exceeds 180 days?" (*Id.* at p. 1198.) The *Taylor Billingslea* court then determined that the Legislature did not intend for the surety to obtain multiple 180 day extensions of time and that once 180 days extension of time had been granted, a Court could not grant any further extensions. (*Id.* at p. 1199.)

The ambiguity addressed by *Taylor Billingslea* is not at issue in this case. The question is not whether multiple extensions can be granted, but when those extensions commence. The *Billingslea* assumed that the 180 day extension period began to run from the original order extending time. However at the time of *Billingslea* a hearing on an extension needed to be held within the appearance period. When Penal Code section 1305, subdivision (i) was enacted in 1999 it added a "grace period" of up to 30 days for the court and the People to evaluate a motion. This grace period did not automatically extend time but preserved the court's jurisdiction to provide relief outside the appearance period. The Legislature retained the language that the 180 day extension should commence upon the court's order extending time. The plain language of the statute is not ambiguous as to the date an extension commences. Therefore the plain language should prevail and further statutory construction avoided. (*Lee v. Hanley*, *supra*, 61 Cal.4th at pp. 1232–33; *Vasquez v. State of California*, *supra*, 45 Cal.4th at p. 253; *In re Roberto C.*, *supra*, 209 Cal.App.4th at p. 1253.)

In *People v. Am. Contractors Indem. Inc.*, *supra*, 33 Cal.4th 653 , this Court reviewed the statutory guidelines for bail forfeitures. In that summary the court stated "the trial court may. . . extend the period by no more than 180 days from the date the trial court orders the extension." (*Id.* at p. 658.) This summary was also referenced in this court's decision of *People v. Allegheny* (2007) 41 Cal.4th 704, fn. 2.

The Court of Appeal in this case criticized the characterization of the 180-day period found in *American Contractors* The Appellate court in this case attempted to create an ambiguity by claiming that ""... the [*American Contractor's*] opinion is devoid of any analysis of whether "from its order" means 180 days from the last day of the appearance period, or 180 days from the date of a subsequent order extending the appearance period." (*Financial Casualty*, *supra*, 239 Cal.App.4th at p. 453)

The alternate interpretation offered by the Appellate Court does not withstand analysis of the plain meaning of the language of section 1305.4. The court's order forfeiting bail is not the event that initiates the commencement of the appearance period for bonds exceeding $400.00. The appearance period is initiated by the mailing of the notice of forfeiture pursuant to the provisions of Penal Code section 1305, subdivision (b). The 180-day period is also extended by 5-days when notice must be mailed. No court order establishes the expiration of the surety's appearance period. If there were two periods running – one from the date when the order forfeiting bail is made and one from the date notice of forfeiture is mailed – the entire working of the statutory scheme would be thrown into a massive and unintelligible

disarray. The importance of the precise running and measurement of the 180-day period was emphasized in *People v. Am. Contractors Indem. Co.* (2001) 91 Cal.App.4th 799.

In order to achieve the goal of the Court of Appeals in this case, the language of 1305.4 would need to be read to mean "180-days from the date of the expiration of the appearance period," or "the 180th day from 180 days from the mailing of the notice of forfeiture, plus 5 days if the bond exceeds $400.00." This language is not a part of Penal Code section 1305.4, and should not be read into that statute. Courts should not create an ambiguity in a statute by "chang[ing] its scope by reading into it language it does not contain or by reading out of it language it does." (*Vasquez v. State of California*, *supra*, 45 Cal.4th at p. 253; *In re Roberto C.*, *supra*, 209 Cal.App.4th at p. 1253.)

In this case the Court of Appeals held that the maximum extension provide by Penal Code section 1305.4 is 365 days from the date of the mailing of the notice of forfeiture. In so holding the decision expressly disagrees with the recent decision of *Cnty. of Los Angeles v. Williamsburg Nat'l Ins. Co.* (2015) 235 Cal.App.4th 944. However this decision fails to distinguish the primary reason for the *Williamsburg* finding—that Penal Code section 1305 and 1305.4 were amended after the *People v. Taylor Billingslea Bail Bonds*, *supra*, 74 Cal.App.4th 1193 decision to provide for a hearing outside the 185 day window, while retaining the language in Penal Code section 1305.4 that the extension can be granted from the date of the court's order. The court in *Williamsburg* noted "[w]e disagree with this argument, which strains credulity. *Taylor Billingslea* was decided before the California legislature enacted the 1999 amendment. We fail to

see how a case decided before a statutory amendment became effective can provide any guidance on its interpretation." (*People v. Taylor Billingslea Bail Bonds*, *supra*, at fn. 7)

None of the other authorities relying on *Billingslea* referred to or considered this subsequent statutory amendment. (See *People v. Bankers Ins Co.* (2010) 182 Cal.App.4th 1377, *Accredited 2006*, *supra*, 137 Cal.App.4th 1349, *People v. Granite State Ins. Co.* (2003) 114 Cal.App.4th 758)

Therefore under the plain language doctrine the language of Penal Code section 1305.4 is not ambiguous as to when the extension period commences and this court should hold that extensions of time commence upon the "court's order" granting the extension.

C. Similar Statutory Language Calculates Time Periods from the Date of the Order

Several Rules of Court contain language substantially similar to Penal Code section 1305.4's provision that the extension is granted "from the date of its order." California Rules of Court, rule 8.104(a)(3) provides "[t]he latest date on which notice of appeal may be filed is 180 days from entry of order." (*Ellerbee v. Cnty. of Los Angeles* (2010) 187 Cal.App.4th 1206, 1213; *Keisha W. v. Marvin M* (2014) 229 Cal.App.4th 581, 585.)

Similarly, under California Rules of Court, rule 870.2, a party may file a motion for fees 180 days from the entry of the order. (*Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1389–90.)

The legislature is presumed to know that language substantially similar to "from its order" has been construed to mean that the time period begins to run upon the court's issuance of the order. Therefore, the statutorily consistent way to interpret the language in Penal Code section 1305.4 is to commence that time period upon the entry of the court's order. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437.); *People v. Rivera, supra*, 233 Cal.App.4th at p. 1100 ["[w]e presume that the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules"] *People v. Superior Court (O'Connor)* (2011) 199 Cal.App.4th 441, 447, fn. 10.)

D. Statute must be interpreted in light of the Legislative Intent and Purpose of the Statute

In this case, the purpose of the statute is to catch defendants who have failed to appear in court. Essentially, the question is whether or not the time that a motion is pending pursuant to Penal Code section 1305, subdivision (j) (formerly 1305(i)) is counted against the bondsman's appearance period. Penal Code section 1305, subdivision (j) requires that a bondsman file a motion within the 180-day appearance period and provides for thirty days for a hearing and continuances based on "good cause." Penal Code section 1305, subdivision (j) was enacted to allow the bondsman to use their full appearance period to conduct an investigation to locate and apprehend the defendant. The amended statute provides an evaluative period for the Courts and the States representatives to consider the bail agent's motion.

Each case must be evaluated to determine if there is a proper showing, whether the surety made the showing, and whether the People will oppose any motions filed within the appearance period. Thus Penal Code section 1305, subdivision (j) provides for an evaluative period for a bondsman to present evidence to the court of compliance for the full relief of an exoneration, or the partial relief of an extension or tolling.

When Penal Code section 1305.4 was originally enacted it did not contain any provisions for the conducting of a hearing outside the 185 day period. The 1999 amendments to Penal Code section 1305.4 and Penal Code section 1305, subdivision (i) (renumbered (j)) allowed the hearing of the motion to extend time to be made after the 185-day period and within thirty days of the filing of the motion.

> Existing law provides, however, that a motion to toll (and extend) the 180-day forfeiture period because of a temporary disability of the defendant (Pen. Code 1305, subd. (e)) must be heard within the 180-day period. Thus, if the 180-day period has run, and has not been tolled, bail may not be exonerated. (*Cnty. of Los Angeles v. Nat'l Auto. & Cas. Co.* (1998) 67 Cal.App.4th 267, 271–280.)
>
> This bill provides that a timely-filed motion to extend the 180-day period allowing exoneration of bail may be heard within 30 days of the expiration of the 180 period, and that the 30-day period can be extended for good cause.

(Legis. Counsel's Dig., Assembly Bill No. 476 (1999–2000 Reg. Sess.) Stats. 1999, ch. 570 § 1.)

As discussed more fully below, the filing of a motion to extend time under Penal Code section 1305.4 does not automatically extend the time on the bond. (*People v. Ramirez* (1976) 64 Cal.App.3d 391; *People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75; *People v. Tingcungco* (2015) 237 Cal.App.4th 249).

While the hearing on the motion does not automatically extend the appearance period, it allows the appearance period to be extended or tolled from the hearing date. Therefore the appearance period is still active on the date of the hearing. "The trial court, having set the motion to extend for hearing on January 23, 2006, retained jurisdiction on that date either to leave the expired exoneration period untouched, or to, in effect, reinstate and extend it." (*People v. Ranger Ins. Co.* (2007) 150 Cal.App.4th 638, 649)

In *People v. Indiana Lumbermens Mut. Ins. Co.* (2010) 49 Cal.4th 301 recognized that the legislative intent for Penal Code section 1305, subdivision (i) (renumbered 1305(j)) was to ensure that sureties had the full use of their appearance period to locate and apprehend defendants by allowing the hearing to be heard outside the appearance period provided the motion was timely filed. The July 13, 1999 Senate Rules Committee analysis of Assembly Bill ("AB") 476:

> The sponsor states that bail agents often are not aware that a defendant has absconded until very close to the end of the 180-day period. Agents may be hard pressed to file a motion to toll and extend the 180-day period within those 180 days. The provisions requiring the bail agent to give 10 days notice to the prosecutor prior to the hearing of any motions also impair the bail agent's ability to obtain exoneration of

> bail. (Sen. Com. on Public Safety, Analysis of Assem. Bill No. 476 (1999–2000 Reg. Sess.) as amended July 6, 1999, pp. 6–7, italics added.)
>
> Thus, the Legislature moved the provision allowing a 30-day grace period for hearings from subdivision (c) to subdivision (i) of section 1305, in order to make it available to sureties moving to toll or extend the 180-day period.

(*People v. Indiana Lumbermens Mut. Ins. Co., supra,* 49 Cal.4th at p. 312.)

Thus the legislative intent of Penal Code section 1305, subdivision (j) is to allow the surety additional time to present its motions to the Court and to allow the People and Courts sufficient time to evaluate those motions. The legislature kept the language "from the date of its order" in the statute. Commencing the extension period after the evaluative period is consistent with the legislative intent to ease the requirements of avoiding forfeiture.

> The purpose of this bill is to clarify the statutes that allow a bail agent to avoid forfeiture (exonerate bail) where an absconding defendant is returned to court within 180 days, or within an additional 180 days upon motion of the agent, and to *ease the requirements for avoiding forfeiture.*

Legis. Counsel's Dig., Assembly Bill No. 476 (1999–2000 Reg. Sess.) Stats. 1999, ch. 570 § 1. (Emphasis added.)

E. It would be incongruous to treat the second extension hearing any differently from the first.

When a trial court grants an extension less than the maximum 180 days and the surety files a subsequent motion to extend the evaluative period of Penal Code section 1305, subdivision (j) should also not count against the extension of the appearance period. "Section 1305.4 does not create its own distinct 180-day period; it extends the 180-day period provided within section 1305. Thus, the extended 180-day period carries over all of the provisions applicable to the first 180-day period." (*Cnty. of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 943.) Thus, the provisions of Penal Code section 1305, subdivision (j) carry over to any subsequent hearings to extend time.

The *Williamsburg* decision recognized that the trial court had only granted a 171 day extension from the date of its order and thus remanded the case for a hearing on whether the court should grant the additional nine day extension. Id at fn 7.

In this case, the notice of forfeiture was mailed on August 24, 2012. The 185th day after that mailing was February 25, 2013. On February 20, 2013, Surety filed its first motion to extend the exoneration period pursuant to section 1305.4. On March 20, 2013 the court granted the extension motion and ordered time extended 134 days to August 1, 2013. On August 1, 2013 the surety filed a motion to further extend time, or in the alternative toll time. This motion was heard and denied on August 26, 2013. The court had jurisdiction to grant an additional 46 day extension of time on the date of this second hearing.

F. A 365 Day Limit For Extensions Is Inconsistent With Existing Case Law.

The trial court in this case as well as the Court of Appeal essentially ruled that despite the language of Penal Code sections 1305, subdivision (j) and 1305.4 the Surety could only potentially receive extension time that added up to 365 days from the initial mailing of the notice of forfeiture. In support of its ruling the Court of Appeal in this case cites to *Taylor Billingslea* and *People v. Bankers Ins Co., supra*, 182 Cal.App.4th 1377 and *People v. Accredited Sur. & Cas. Co., Inc.* (2013) 220 Cal.App.4th 1137. These cases involved analyzing Penal Code section 1305, subdivision (j) for the purposes of addressing its applicability to Penal Code section 1306. Section 1306 governs the entry of summary judgment on a forfeited bond. Pursuant to Penal Code section 1306, the Court must enter summary judgment on a forfeited bond within 90 days of the first day that it could do so. Thus, the Court must enter summary judgment within 90 days of the expiration of the original appearance period, any extension time of the appearance period, or the denial of a Surety's motion for relief from the forfeiture.

Accordingly, in *People v. Granite State Ins. Co., supra*, 114 Cal.App.4th 758 the Court of Appeal ruled that the trial court properly found good cause to continue the hearing on the surety's motion vacate forfeiture three times, ultimately hearing the motion more than five months after the expiration of the appearance period. (See also *People v. Aegis Sec. Ins. Co.* (2005) 130 Cal.App.4th 1071, 1075, discussing *Granite State.*) Although the trial court denied the surety's motion to vacate forfeiture, the

holding of the Appellate Court is that had the trial court granted the surety's motion its decision would have been valid notwithstanding that five months had passed since the expiration the original appearance period. *Granite State* ruled that placing a time restriction on Penal Code section 1305, subdivision (j) would require reading into the statute language that does not exist.

While the court in *Bankers* interpreted the *Taylor Billingslea* case as only allowing a 180 day extension from the expiration of the appearance period, the *Bankers* court did not discuss the *Taylor Billingslea* court's analysis of whether the 180 day extension should be calculated from the original order extending time or each subsequent order. Instead, the *Bankers* court focused its ruling on estopping a surety that, unlike the Surety in the instant case, clearly requested more than 180 days of extension time; and once granted more than 180 days of extension time, the surety in *Bankers* argued the extension was not jurisdictional in order to then argue that the court failed to timely enter summary judgment pursuant to Penal Code section 1306, subdivision (c).

The trial court in *Bankers* had granted the surety's third request for an extension of time that resulted in an extension that was far in excess of 180 calendar days from the expiration of the original 185 days following mailing of the notice of forfeiture, and far in excess of 180 days of cumulative extension time calculated from the trial court's previous extension orders. On appeal, the *Banker's* court noted that a trial court does not lack jurisdiction when it grants an extension in excess of 180 days, but merely acts in excess of its jurisdiction. (*People v. Bankers Ins Co., supra,* 182 Cal.App.4th at p. 1384.) Accordingly, the trial

court's order in *Bankers* order was "valid until it is set aside, and a party may be precluded from setting it aside by 'principles of estoppel, disfavor of collateral attack or res judicata.'" (*Id.* at p. 1382 [emphasis added].) The *Bankers* court then estopped the surety in *Bankers* from challenging the jurisdiction of the trial court's order granting the surety an extension of time beyond any 180 day calculation (in effect upholding the excessive extension).

Similarly the holding of *Accredited (2013)* is focused on estopping a surety from challenging a judgment after it was granted an extension of 180 days from the court's order. The *Accredited (2013)* decision agreed with the 365 day maximum extension calculation based on *Billingslea*, but did not analyze the statutory changes enacted after *Billingslea*. Moreover since the *Accredited (2013)* decision upheld the judgment its findings regarding the maximum extension period were not necessary to its decision and therefore dicta.

Here, the Surety agrees with the holding of *Bankers, Granite State* and *Accredited 2013* that a surety that requests and is granted an extension of the appearance period should be estopped from retroactively challenging the trial court's jurisdiction in granting the extension of time. The Surety also agrees that with an interpretation of Penal Code section 1305.4 that holds the statute only authorizes a trial court to grant an aggregate total 180 days of extension time. However, the Surety believes that these cases were not directly addressing the time that an extension period commences, or how Penal Code section 1305, subdivision (j) factors into the calculation, or how to handle more than one grant of an extension.

Furthermore, a "365 day rule" as alluded to by the trial court and Court of Appeal in this case completely ignores the broader application of statutory and case law governing bail forfeiture. The plain language of Penal Code section 1305, subdivision (j) specifically states that a Court can hear a motion to extend time after the original 185-day appearance period has elapsed. The statutes allows a Court to hear a motion to extend time within 30 days of the expiration of the original appearance period, or even well beyond 30 days after the expiration of the original appearance period if the Court rules that there is good cause. Therefore, it can and has happened that extension motions are heard well beyond the expiration of the original 185 day period following the mailing of the notice of forfeiture.

In *People v. Granite State Ins. Co., supra*, 114 Cal.App.4th 758 it was ruled that the trial court properly found good cause to continue the hearing on a surety's motion for forfeiture relief three times, ultimately hearing the motion more than five months after the expiration of the appearance period. In ruling that placing a time restriction on Penal Code section 1305, subdivision (j) would require reading into the statute language that does not exist, the *Granite State* court correctly points out, "subdivision [j], however, places no time constraints on extensions of the period in which to hear the motion; instead it allows the court to 'extend the 30-day period upon a showing of good cause.'" (*People v. Granite State Ins. Co., supra*, at pp. 764–765 [emphasis added].) In *People v. Aegis Sec. Ins. Co., supra*, 130 Cal.App.4th 1071, the *Granite State* holding was applied to motions to extend time.

The logic of *Granite State* applies squarely to the situation before us. If *Aegis's* statutorily authorized motion to extend the appearance period did not postpone the date on which the trial court could first enter summary judgment, the motion would be futile. Such a construction of section 1305.4 would contravene the mandate to strictly construe the bail forfeiture statutes in favor of the surety. (*Seneca Ins. Co. v. Cnty. of Orange* (2004) 117 Cal.App.4th 611, 616–617; *People v. Aegis Sec. Ins. Co.*, *supra*, 130 Cal.App.4th at pp. 1075–1076.

Therefore, according to the *Aegis* court, pursuant to Penal Code section 1305, subdivision (j), the hearing on a motion to extend time could properly be continued five months or more after the expiration of the original appearance period.[5]

Accordingly, if there were a "365 day rule" as the People contend, a motion to continue the appearance period that was continued with good cause for a significant amount of time beyond the expiration of the appearance period (similar to the motions in *Granite State* and *Aegis*) would be as the *Granite State* explains, "futile." Such an interpretation could be used to deny a surety its statutory right to request an extension of time and clearly does not construe the law against forfeiture and in favor of the Surety.

Further, a "retroactive" interpretation of Penal Code section 1305.4 runs contrary to the well established principle of strictly construing the law in favor of the Surety and against forfeiture. In *People v. Seneca Ins. Co.*, *supra*, 116 Cal.App.4th 75 a surety

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[5] This Surety can also represent that it has had hearings on extension motions continued for several months for reasons completely beyond its control.

timely filed a motion to extend time before expiration of the appearance period and calendared the hearing for the motion properly after the expiration of the appearance period pursuant to Penal Code section 1305, subdivision (j). The Surety then apprehended the defendant after the expiration of the appearance period, but before the hearing on the extension motion. The *Seneca* court held that the time period when the extension motion was pending did not automatically extend or toll the appearance period. (See also *People v. Ranger Ins. Co.*, *supra*, 150 Cal.App.4th 638 [similarly holding that period between filing of extension motion and extension hearing is not automatically extended].) Additionally, the *Seneca* court further held that the Surety could not present any evidence (i.e. the apprehension of the defendant) that is obtained after the expiration of the initial appearance period, but before the hearing on a motion for forfeiture relief (which has the effect of compelling a surety to not investigate during this time period since evidence from this time period cannot be introduced). If the period of time that occurs while a Surety is waiting to have a properly filed motion heard cannot be considered part of the appearance period, then that same time period should also not count against the Surety retroactively as part of an extension of time.

Taken together the law established in *Taylor Billingslea, Granite State, Aegis, International Fidelity, Seneca*, Penal Code section 1305, subdivision (j) and the plain language of Penal Code section 1305.4 demonstrate that the 365 day language mentioned by the trial court and Court of Appeal in this case, as well as dicta in *Bankers*, is simply inconsistent with the overall statutory

scheme governing bail forfeitures. This is especially true if the law is to be genuinely construed in the Surety's favor and against forfeiture.

Finally, it is important to remember there is no risk to the Court in interpreting Penal Code section 1305.4 to allow a surety to receive the greatest possible amount of extension time. The State will retain the ability to collect on the bond at the end of the extended appearance period should the surety not be able uphold its obligation undertaken with the bond. On the other hand, it is highly prejudicial to the Surety and the public to deny an extension of time, which results in the imposition of forfeiture against the Surety and the indemnitors to the Defendant's bond. Most importantly, when motions to extend the appearance period are denied, it becomes significantly less likely that the Defendant will be returned to the Court. An extension of time permits sureties to continue searching for absconding defendants and greatly increases the likelihood that defendants will be located and returned to the court. This not only benefits the surety's interests, but also the public's interests. Certainly the public's interest is best served by allowing the efforts of bail sureties actively investigating the whereabouts of bail fugitives to continue. For this reason, having sureties searching for absconding defendants for as long as the as can be permitted by statute is exactly what the bail forfeiture scheme designed to accomplish.

The return of the Defendant to Court should be the goal of all parties. Interpreting Penal Code section 1305.4 to authorize a

trail court to order an aggregated 180 days of extension time calculated from the date of the trial court's order(s) furthers this goal at no prejudice to any party.

CONCLUSION

For the foregoing reasons, the Surety/petitioner, Financial Casualty and Surety Inc., asks that this Court rule in favor of substance over procedure, fairness over forfeiture and specifically read the plain language of a statute instead of supporting language unintended by the Legislature. This Court should hold that forfeitures are truly to be abhorred, that the purpose of the bail bond system is to insure the presence of the defendant in court. Therefore, the Surety respectfully requests that this Court reverse the decisions of the Court of Appeals in this case and *Accredited 2015* and find that a demonstration of a "likelihood of apprehension" is not required under Penal Code section 1305.4, and that a trial court can order an extension of the appearance period that is calculated from the date of its order.

Law Office of John Rorabaugh

Respectfully submitted,

Dated: November 30, 2015

By: */s/ John M. Rorabaugh*

John M. Rorabaugh

For Defendant and Appellant

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **13,956** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by rule 8.204(b) and contains fewer words than permitted by rule 8.204(c), rule 8.360(b), or by Order of this Court.

Law Office of John Rorabaugh

Dated: November 30, 2015 By: */s/ John M. Rorabaugh*

John M. Rorabaugh

For Defendant and Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S229446

PROOF OF SERVICE

I declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 801 Parkcenter Dr Ste 205, Santa Ana, CA 92705. I served document(s) described as OPENING BRIEF ON THE MERITS as follows:

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On November 30, 2015, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope(s) with the US Postal Service with the postage fully prepaid, addressed as follows:

Los Angeles County Superior Court
Attn: Hon. Harvey Giss
Airport Courthouse
11701 S. La Cienega
Los Angeles, CA, 90045

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(for People of the State of California)

I am a resident of or employed in the county where the mailing occurred (Santa Ana, CA).

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On November 30, 2015, I served by email (from baillaw@usa.net), and no error was reported, a copy of the document(s) identified above as follows:

Carmen Lainez
clainez@bailhotline.net
(for Bail Hotline Bail Bonds--As Agent for Financial Casualty & Surety, Inc)

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

Dated: November 30, 2015 By: */s/ Stephanie Feeback*
Stephanie Feeback