IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA, AND

Real Party in Interest.

Docket No.: S235549

Ct. App. No. E064010

Super.Ct.No. INF1500950

PETITIONER'S REPLY TO ANSWER BRIEF

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, Respondent. THE PEOPLE OF THE STATE OF CALIFORNIA, AND Real Party in Interest.	Docket No.: S235549 C.A. No. E064010 Super Ct. No.: INF1500950 **PETITIONER'S REPLY TO ANSWER BRIEF**

INTRODUCTION

Petitioner, a mentally incompetent criminal defendant, was committed under Penal Code section 1370 to the Department of State Hospitals. He remained committed and confined in a secured facility for the maximum time period authorized by law, was returned to court, and was thereafter ordered released. Shortly thereafter, the Riverside County District Attorney filed a superseding indictment, charging the same offenses as those which had been charged in the original felony complaint. According to Real Party, the indictment was filed for the purpose of allowing the prosecution to "relitigate" Petitioner's competency to stand trial. Petitioner was re-incarcerated in the criminal proceeding, held in jail with a million dollars bail, and was again made to undergo competency proceedings, as though the previous finding of incompetency had never been made

and as though the previous three year commitment under Penal Code section 1370 had never occurred. This was illegal.

The various illegalities which occurred in this case could have been avoided, had the responsible government agencies performed their duties as provided by law. After all, as required by section 1370, subdivision (b)(1)(a), nine months before Petitioner's maximum commitment term expired, the court and the parties were notified that Petitioner was nearing the end of his commitment and there was no reasonable likelihood he would become competent to stand trial within the foreseeable future. (Exh. I to Petition for Writ of Prohibition, p. 149.) All knew that no preliminary hearing had been conducted and no information had been filed. At that point, had Real Party believed that due to a mental illness Petitioner posed a danger to the public and that his continued confinement for the purposes of treating an existing mental condition was necessary, ample time existed for them to set about procuring an indictment.[1] Upon the return of such an indictment, Real Party would have had ample time to file a petition under the Lanterman-Petris-Short Act[2], which could have provided a lawful, independent

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[1]After Petitioner's term of commitment expired and he was ordered released under section 1370, Real Party procured and filed an Indictment in less than two weeks.
[2] The Lanterman-Petris-Short Act, hereinafter "LPSA" is codified in Welfare and Institutions Code sections 5000 through 5121, inclusive. The LPSA authorizes the Government to involuntarily detain, place, and treat individuals who are believed to be "gravely disabled" as a result of a mental condition. Welfare and Institutions Code section 5008 defines "gravely disabled" as including, "A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:(i) The indictment or information pending

basis for an order temporarily confining Petitioner in a secured facility pending the outcome of the conservatorship proceedings.

But that didn't happen. Upon receiving notice that Petitioner was nearing the end of his maximum term of commitment, Real Party did not take appropriate and lawful measures to ensure his continued lawful confinement. For instance, instead of setting about securing an indictment and initiating conservatorship proceedings, the prosecutor asked the criminal court to order the Riverside County Public Guardian to initiate a conservatorship proceeding against Petitioner, although he was known to be a resident of a county other than Riverside. Then, after learning of the Public Guardian's intention to abandon conservatorship proceedings, Real Party asked the criminal court to order the Public Guardian to petition for a Murphy conservatorship, knowing that no information had been filed and no indictment had been procured. Then, when *that* didn't work, because no information had been filed and no indictment had been returned, the prosecutor asked the criminal court to order Petitioner's continued confinement in the original criminal case, notwithstanding that his section 1370 commitment had expired two

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against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person. (ii) The indictment or information has not been dismissed. (iii) As a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner." (Welf. & Inst. Code, § 5008, subd. (h)(1)(B).) When necessary, such an individual can be made the subject of a conservatorship under Welfare and Institutions Code sections 5350 through 5372. The proceedings to initiate a conservatorship is a special proceedings of a civil

months earlier. Finally, when the criminal court declined to make this illegal order, Real Party conspired with other law enforcement agencies to orchestrate Petitioner's continued temporary incarceration in another county for the two weeks' time it took to impanel a grand jury and obtain and file a superseding indictment. Then the prosecution transported Petitioner back to Riverside County jail, where he was booked on the indictment, held on the criminal charges, and subject to competency proceedings anew.[3] This course of conduct was tolerated by the trial court and then endorsed by the Court of Appeal.

But it shouldn't have been. A central purpose of the bright-line time limit of section 1370 is to give the government an incentive to take timely and appropriate action with regard to a mentally incompetent criminal defendant. Should reason exist to believe that, due to a mental condition, such a defendant is gravely disabled, warranting his continued treatment and placement through the LPSA, appropriate measures must be taken, *before his competency commitment expires*, to initiate alternative commitment proceedings. This purpose is frustrated when, as here, the People are permitted to ignore the three-year bright line rule of

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nature and is governed by various provisions of the Welfare and Institutions Code.
[3] Subsequently, Real Party did take appropriate steps to petition for a conservatorship, although, notably did not seek a temporary conservatorship under Welfare and Institutions Code section 5352.1 or an order detaining Petitioner under Welfare and Institutions Code section 5150 or 5352.3. Ultimately, Real Party abandoned the Murphy conservatorship when it was recognized that, all along, Petitioner had been mentally retarded and developmentally disabled. At that point, a conservatorship under Welfare and Institutions Code section 6500 was pursued and obtained. See Attachments 1 and 2 to Judicial Notice Request filed

section 1370 and do whatever they please whenever they get around to it.

QUESTION PRESENTED

This Court has framed the issue on review as follows: After an incompetent defendant has reached the maximum three-year commitment provided for by law, can the prosecution initiate a new competency proceeding by obtaining dismissal of the original complaint and proceeding on a new charging document?[4] The answer, quite plainly, is "No."

STANDARD OF REVIEW

No relevant facts are in dispute.[5] This case presents a pure issue of statutory interpretation, and the standard of review is de novo. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.)

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concurrently with this Reply.

[4] The issue was stated slightly differently in the Opening Brief on the Merits. The issue was not included in the order granting review, nor was it posted in the case summary on the court's official website. Fortunately, Petitioner's counsel's educated guess as to the issue presented was close enough, and the arguments made in the opening brief do address the issue as framed by this court.

[5] As this case involves a pure question of law, the only facts relevant to the issue presented are procedural in nature and are summarized in Petitioner's Opening Brief, at pages 3-5. Nonetheless, in its Answer Brief, Real Party includes a detailed summary of the "facts" of the offense, as described in police reports. (Answer Brief on the Merits, pp. 8-10.) These "facts," which have not been adjudicated due to Petitioner's continued incompetence, are irrelevant; accordingly, they will neither be endorsed nor contested herein.

SUMMARY OF ARGUMENT

Relying on the language of Penal Code section 1370,[6] the statute's legislative history, and nearly a half-century of appellate court decisions interpreting the statute in various contexts, Petitioner has asserted that when a mentally incompetent criminal defendant has been committed for the maximum time allowable under section 1370, he must be released *unless* there is an independent legal basis; i.e. an order lawfully issued in a conservatorship proceeding, for his continued confinement. If such a basis exists, then the defendant may be "held" subject to that order, but he may not continue to be held on the criminal charges, even if filed under a new case number. And, absent the authority to hold the defendant on the criminal charges, the criminal court lacks jurisdiction to reinstate (or renew or reinitiate) criminal proceedings with respect to those charges as well as the authority to initiate competency proceedings anew and allow the prosecution to "relitigate competency issues".

Real Party contends that, since section 1387 permits the dismissal and re-filing of felony charges in some circumstances, it also authorizes the criminal court to continue to hold an incompetent defendant and permits the People to "relitigate" the defendant's current competency to stand trial. (Answer Brief on the Merits, hereinafter "ABM," pp. 14-24.)[7]

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[6] Subsequent statutory references are to the Penal Code unless otherwise indicated.
[7] Real Party also argues that, even if the superior court did not have the authority to confine Petitioner in jail on the superseding indictment and conduct competency

Real Party's contention ignores the entire purpose of the three year bright line limit of section 1370 – to prevent pre-adjudication confinement of an incompetent defendant for "more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson v. Indiana* (1972) 406 U.S. 715, 737; *In re Davis* (1973) 8 Cal.3d 798, 806-807.) While Section 1387 may, in certain circumstances, permit prosecutors to dismiss and refile felony charges at least once[8], it does not supersede the three-year bright line time limit of section 1370, subdivision (c); nor does it override the constitutional underpinnings of that statutory limitation.

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proceedings anew, the subsequently-filed conservatorship petition eventually could have provided an independent legal basis for confining him in a secured facility for a specific period of time. (ABM, pp. 25-29.) In other words, "no harm – no foul." This argument is unresponsive to the issue presented and misconstrues Petitioner's claims in this court and in the lower court proceedings..

[8] Section 1387 permits the dismissal and refiling of felony charges more than once, when certain findings are made following the second dismissal or under certain circumstances. (§1387, subd. (a)(1), (2), (3), and (4) and subd. (c)(1), (2) and (3).) Section 1387.1 allows for refiling of charges relating to a violent felony offense even after two dismissals, if either dismissal was due to "excusable neglect" on the part of the court, prosecution, law enforcement agency, or witnesses.

ARGUMENT

I.

SECTION 1387 AND SECTION 1370 SPEAK TO VERY DIFFERENT THINGS AND ARE ENTIRELY RECONCILABLE

As explained in Petitioner's Opening Brief, the three-year bright-line limit of section 1370, subdivision (c)(1), codifies the substantive rule of *In re Davis* and *Jackson v. Indiana* that a person charged with a criminal offense who is involuntarily committed on account of incompetency to stand trial "cannot be held[9] more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson, supra,* at p. 737; *In re Davis*, *supra*, at pp. 806-807; Opening Brief on the Merits ("OBM"), pp. 6-9.) In California, the Legislature determined that three years is the maximum "reasonable period of time" a mentally incompetent defendant may be held on unadjudicated criminal charges. (*Hale v. Superior Court* (1975) 15 Cal.3d 221, 225-226, citing Stats. 1974, ch. 1511, §4; *In re Polk* (1999) 71 Cal.App.4th 1230, 1235 ["The three-year limit was added to section 1370 in 1974 ... the purpose of the legislation was to bring the procedure for the commitment of mentally incompetent defendants in accord with the decision of the

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[9] Notably, in *Jackson,* the Supreme Court used the word "held," not "committed", as the decision involved a restraint on liberty and an analysis of due process principles. The word "held" certainly encompasses a period of time during which a person is "committed" to a state hospital. It also encompasses time during which a person is "confined" in county jail or otherwise made subject to a restraint on his liberty.

California Supreme Court in *In re Davis.*"]; §1370, subd. (c)(1); Parker, *California's New scheme for the Commitment of Individuals Found Incompetent to Stand Trial* (1975) 6 Pacific L.J., p. 489.)

Section 1387 is also designed to protect the rights of criminal defendants. The statute was enacted to specify circumstances under which successive prosecutions of the same charges against the same defendant are permitted. For the most part, the statute deals with cases which have been dismissed and then re-filed pursuant to Chapter 8 of Title 10 of Part 2 of the Penal Code, but the statute also provides, "[a]n order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to Section 944 and the indictment is based upon the same subject matter as charged in the dismissed complaint, information, or indictment." (§ 1387, subdivision (c).)[10] As Justice Mosk noted in his dissenting opinion in *People v. Peters* (1978) 21 Cal.3d 749, "The predominant purpose of section 1387 is to establish some limit to a defendant's period of potential criminal liability, thereby avoiding harassment and discouraging prosecutorial forum-shopping. [Citation.]" (*Id.*, at pp. 758-759 (dis. opn. Mosk, J.), overruled on other grounds in *Landrum v. Superior Court* (1981) 30 Cal.3d 1, 14; see also *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 741; *People v. Juarez* (2016) 62

[10]Although section 1387, subdivision (c), by its terms, applies only when the complaint is dismissed *before* the indictment is filed, in practice it is customary for the complaint to be dismissed *after* a superseding indictment is filed in order to

Cal.4th 1164 [Purposes of section 1387 are to protect a defendant against harassment and the denial of speedy trial rights resulting from repeated dismissals, and guarding against prosecutorial forum shopping.]; *People v. Cossio* (1977) 76 Cal.App.3d 369, 372 ["The purpose of section 1387 is to prevent improper successive attempts to prosecute a defendant."].) As this court held in *Burris v. Superior Court* (2005) 34 Cal.4th 1012, 1018,

> Section 1387 implements a series of related public policies. It curtails prosecutorial harassment by placing limits on the number of times charges may be refiled. [Citations.] The statute also reduces the possibility that prosecutors might use the power to dismiss and refile to forum shop. [Citations.] Finally, the statute prevents the evasion of speedy trial rights through the repeated dismissal and refiling of the same charges. [Citations.]

(*Id.*, at p. 1018.) In other words, section 1387 was enacted to *restrict* the rights of the prosecution with regard to successive prosecutions, not to expand them.

Real Party advances the position that, in enacting section 1387, "the Legislature intended the trial court to consider anew any incompetency claim upon the refiling of felony charges." (ABM, p. 14.) Real Party bases its argument on a body of law pertaining to procedural aspects of criminal proceedings. (ABM, p. 16, citing *Paredes v. Superior Court* (1999) 77 Cal.App.4th 24 [after refiling criminal charges by complaint, the parties are entitled to exercise a peremptory challenge to the assigned judge under Code of Civil Procedure section 170.6]; *People v. Godlewski* (1943) 22 Cal.2d 677, 683 [re-filing of same felony charges

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maintain the status quo with regard to the defendant's custodial status.

commences a new period of time in which to bring the defendant to trial under section 1382]; *People v. Superior Court* (*Martinez*) (1993) 19 Cal.App.4th 738 [after dismissal and re-filing of felony charges, defendant is entitled to a new preliminary hearing at which People must establish probable cause, subject to a magistrate's evaluation].) Real Party relies on this statute and these cases for the proposition that, by enacting section 1387 and remaining silent, in that statute, about the three-year bright line rule of section 1370, subdivision (c)(1), the Legislature must have intended for the re-filing of a felony case to serve to reinstate criminal proceedings against the defendant, restore the legal presumption of the defendant's competency to stand trial, and permit the prosecution "to relitigate competency issues," as though the prior finding of incompetency and subsequent expiration of the three-year period had never happened. (ABM, p. 19.) In Real Party's view, section 1387 somehow overrides the substantive three-year rule of section 1370, subdivision (c)(1), and the reasonableness rule of *Jackson v. Indiana* and *In re Davis*, and somehow serves the statutory purpose of protecting the defendant from prosecutorial harassment. (ABM, p. 19.) Even in cases involving dismissed and refiled charges, which is not the situation here, this is, quite plainly, wrong. If possible, it is even more wrong in cases such as this, in which a superseding indictment is filed, continuing the same prosecution of the same person as to the same charges, albeit under a new case number.

The purpose of section 1387 is not to expand the prosecution's power – it is to restrict it. Section 1387 was not enacted to diminish the rights of criminal defendants – it was enacted to ensure those rights are protected. Construing the procedural limitations of section 1387 as somehow trumping the bright-line rule of section 1370(c)(1) and overriding the constitutional principles underlying *Jackson v. Indiana* and *In re Davis* would be ridiculous.

Real Party complains that "to deny the prosecution the ability to relitigate competency issues by refiling a new felony charging document would limit the prosecution to a single bite of the proverbial apple." But that is precisely what the three-year substantive rule of section 1370, subdivision (c)(1) *is* intended to do *if* that second bite is attempted *after* an incompetent defendant has been held on the charges for the maximum period of time permitted under the law. The People are free to dismiss and refile complaints or file superseding indictments with the same charges to the extent permitted by section 1387, but the refiling does not stop the section 1370 commitment clock from ticking. And if the People believe that the defendant is gravely disabled and should be involuntarily confined and treated beyond the three-year time period, or made the subject of alternate commitment proceedings, then they need to take effective steps toward initiating such proceedings *before* the defendant's incompetency commitment expires and he is ordered released.

In its Answer, the Real Party also poses a hypothetical (ABM, p. 24), asking the court to suppose the following set of facts: An incompetent defendant is held for the maximum term permitted under section 1370 on unadjudicated charges that he committed a murder. At the end of that term, no alternate commitment proceedings under the LPSA have been initiated or, as here, they have been repeatedly initiated and abandoned. Nonetheless, the People elect to dismiss the complaint, and the defendant, who has not become competent to stand trial, is released. Later, the defendant is found "functioning as a competent adult"[11] or is "successfully prosecuted" in another jurisdiction on unrelated charges "as a competent defendant." The People then refile the murder charges by complaint or indictment, as they are authorized to do by section 1387. Under these circumstances, Real Party's believes that the refiling of the same charge would authorize the re-arrest of the defendant and his continued prosecution on that charge.[12] Otherwise, Real Party contends, the People would be "forever precluded from prosecuting this defendant despite later evidence of later competence. A

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[11] The suggestion that a person's ability to "function" reflects that he is "competent" to stand trial within the meaning of section 1367 reflects a fundamental misunderstanding as to meaning of the word "incompetent" as used in section 1387, subdivision (a) ["A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner."].) A person can be competent without being "gravely disabled," and a person can be "gravely disabled" without being incompetent. Different commitment schemes govern the confinement and treatment of incompetent and "gravely disabled" individuals.

[12] This assumes that he is not then found to be currently incompetent to stand trial,

murder defendant could go free despite becoming competent to stand trial because the prosecution would be effectively denied its right to file felony charges because a defendant's competency could not be litigated." (ABM, p. 23.)

Precisely. That's why it's a bright-line rule. Whatever the charged crimes, if an incompetent defendant is held for the maximum period of time permitted under section 1370 without achieving competency, the People are forever thereafter precluded from prosecuting that defendant as to those charged crimes. Nothing in the statutory scheme authorizes or even contemplates "religitating" defendant's mental competency as to those same charges at any point in time thereafter. (*People v. Quiroz* (2016) 244 Cal.App.4th 1371, 1380-1381.)

But that absolutely does *not* mean that "a murder defendant" will "go free." If *before* that defendant has been held for the maximum period of time, there is reason to believe that he is "gravely disabled," within the meaning of Welfare and Institutions Code section 5008, subdivision (h)(1), and should be involuntarily confined and treated for his mental condition for a permissible reason; i.e. to protect the individual or the public, the law affords responsible government agencies ample opportunity to ensure that he is *not* improvidently released. (See § 1370, subdivision (c), subparagraphs (1) through (4); Welf. & Inst. §§ 5000 through 5121, and 5350 through 5372.)

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in which case, according to the People, he would need to be released.

II.

THIS CASE HAS NEVER DEALT WITH THE COURT'S AUTHORITY TO TEMPORARILY CONFINE A PROPOSED CONSERVATEE UNDER THE LPSA

As in the courts below, Real Party continues to profess ignorance as to Petitioner's position, saying, "Petitioner appears to contend that his continued confinement of any kind, regardless of the purpose of the confinement, is unlawful and unconstitutional simply because he reached the statutory maximum of the commitment period under Penal Code section 1370." (ABM, p. 25.) That is not, nor has it ever been, Petitioner's position.

The writ petition filed in the Court of Appeal derived from orders made in a criminal proceeding.[13] Throughout the lower court proceedings, Petitioner has repeatedly acknowledged the authority of superior courts, under various provisions of the Welfare and Institutions Code, to issue lawful orders temporarily confining a proposed or actual conservatee in a designated treatment facility. (Petition, p. 2, fn. 2; Traverse, p. 8.) What Petitioner *is* contending, as he contended in both of the courts below, is that he, an incompetent criminal defendant "held" for three

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[13] Real Party contends that, but for the filing of the writ petition challenging the lawfulness of the order committing him to jail subject to bail in case INF1500950, Defendant would have been evaluated under section 1368 again, and, if found incompetent, would have been released. (ABM, p. 22.) This is a fallacy. The People secured the indictment for the sole purpose of pursuing Murphy conservatorship. The writ proceeding, which stemmed from an illegal order committing Petitioner to bail in the criminal proceeding, in no way prevented the competency proceedings from going forward. A stay of such proceedings was neither requested nor issued.

years on unadjudicated criminal charges without becoming competent to stand trial, cannot continue to be held in those same charges, even when re-filed by a superseding indictment. And, since the criminal court lacks jurisdiction to "hold" Petitioner in the criminal proceeding, it consequently lacks the authority to re-litigate his continued incompetency to stand trial under section 1368, et seq.

CONCLUSION

The language of section 1370, subdivision (c)(1) is clear: no incompetent criminal defendant may be held on unadjudicated criminal charges for more than three years. The purpose of this bright-line time limit is equally clear: due process guarantees prohibit the Government from restraining the liberty of a mental incompetent on unadjudicated criminal charges "for more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson v. Indiana, supra,* at p. 737; *In re Davis*, *supra*, at pp. 806-807.) These protections are not overcome or made irrelevant by the filing of a superseding indictment *as to those same charges*, even if this results in the assignment of a new case number by the clerk of the superior court. The order committing Petitioner to bail in the criminal proceeding, even for the purpose of relitigating his competency to stand trial, was in excess of the court's jurisdiction, and the Court of Appeal's decision to deny Petitioner's request for writ relief should be reversed.

Dated: February 14, 2017

Respectfully submitted,

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IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, Respondent. THE PEOPLE OF THE STATE OF CALIFORNIA, AND Real Party in Interest.	Docket No. S235549 Ct. App. No. E064010 **CERTIFICATE OF WORD COUNT**

I, Kimberly Meyer, do hereby certify that, according to the computer program used to prepare the instant petition for rehearing and accompanying memorandum, including headings and footnotes, the length of the Reply to the Answer Brief on the Merits is 4,145 words. I declare the foregoing to be true under penalty of perjury. Executed this 14th of February, 2017, at Riverside, California.

Kimberly Meyer

KIMBERLY MEYER

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a and 2015.5)

Jackson v. Superior Court
Docket Number: S235549 (E064010; INF1500950)

I am a citizen of the United States and a resident of the county of Riverside, State of California. I am over the age of 18 years and not a party to the within action. I am employed by the Law Offices of the Public Defender and am familiar with the business practice at the Office for collection and processing of correspondence for mailing with the Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Law Offices of the Public Defender is deposited with the United States Postal Service, with postage fully paid, that same day in the ordinary course of business.

On the date of execution of this document, I served the foregoing REPLY TO ANSWER TO OPENING BRIEF ON THE MERITS by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Law Offices of the Public Defender, 4200 Orange St., Riverside, CA 92501, addressed as follows:

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Patrick L. Jackson
(through counsel)

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

Executed on February 15, 2017, at Riverside, California.

Kimberly Meyer
KIMBERLY MEYER