No. A162453

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

BBBB BONDING CORPORATION DBA BAD BOYS BAIL BONDS,
Plaintiff, Cross Defendant, Appellant and Petitioner,
v.

KIARA CALDWELL,
Defendant, Cross Complainant, and Respondent.

Alameda County Superior Court, Case No. RG19041553
The Honorable Brad Seligman, Judge

APPLICATION AND PROPOSED AMICI CURIAE BRIEF BY THE CALIFORNIA ATTORNEY GENERAL AND THE CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE THE CALIFORNIA ATTORNEY GENERAL AND THE CALIFORNIA DEPARTMENT OF INSURANCE AND APPLICATION OF THE CALIFORNIA DEPARTMENT OF INSURANCE

I. STATEMENT OF INTEREST OF AMICUS CURIAE CALIFORNIA ATTORNEY GENERAL

The California Attorney General, as the State's chief law officer, is responsible for enforcing state law, including consumer credit laws. California's consumer credit laws provide vital protections for consumers when they enter financing agreements in situations of unequal bargaining power. The Consumer Credit Contracts Law, Civil Code section 1799.90 et seq., requires, among other things, that creditors provide complete and comprehensible disclosures to cosigners, who may not fully understand the obligations they are undertaking in guaranteeing the debt of the primary obligor. This law also provides protections for cosigners who are not given the required disclosures. Cosigners on consumer credit agreements are especially in need of information before they agree to undertake financial obligations because they are obligating themselves to pay for goods and services they do not personally receive. Cosigners on bail premium financing agreements are particularly vulnerable because they are often required to make rushed decisions about significant, and potentially long-term, credit obligations when they are concerned for incarcerated friends and family members.

The Attorney General undertakes enforcement actions to ensure businesses comply with the state's consumer credit laws, including Civil Code section 1799.90 et seq. As such, the Attorney General has an interest in ensuring that these laws are properly

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construed and applied, and in ensuring that the narrow doctrine of safe harbor is not interpreted in ways that would improperly limit the broad reach of the state's consumer protection laws or the Attorney General's ability to enforce them. The Attorney General also has an interest in the proper operation of the criminal justice system and ensuring that all parties who engage with the criminal justice system are treated fairly. Accordingly, Attorney General Rob Bonta submits this amici curiae brief pursuant to California Rules of Court, rule 8.200(c)(7), presenting additional arguments in support of defendant, cross complainant, and respondent Kiara Caldwell and class members. The Attorney General respectfully submits that this brief will be of assistance to the Court because it explains why bail premium financing agreements qualify as consumer credit contracts under the Consumer Credit Contracts Law, Civil Code section 1799.90 et seq., and how that interpretation is consistent with the purpose and intent of the law and California's consumer protection laws generally. It also explains the purpose and narrow application of the safe harbor doctrine and why it does not apply here.

II. APPLICATION OF, AND STATEMENT OF INTEREST OF, AMICUS CURIAE CALIFORNIA DEPARTMENT OF INSURANCE

The California Department of Insurance (hereafter, the Department) respectfully requests leave, pursuant to California Rules of Court, rule 8.200(c), to file the attached amici curiae brief in support of defendant, cross complainant, and respondent Kiara Caldwell and class members. The Department requests leave to jointly file this brief with the California Attorney General.

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The Department licenses bail agents, bail permittees, and surety insurers, and it issues regulations regarding certain aspects of bail transactions in this state. As the state agency with jurisdiction to license and regulate bail agents, the Department has substantial expertise in the laws that govern the bail industry. In addition, Appellant BBBB Bonding Corporation dba Bad Boys Bail Bonds (hereafter, Bad Boys) has argued in this appeal that the Department has primary jurisdiction to address the laws applicable to the challenged financial transactions and that Department regulations effectively displace Caldwell's claims. The Department has a strong interest in the proper interpretation of the statutes governing its regulatory authority over the bail industry. Among other things, the Department disagrees with Bad Boys' position that the Department should assert primary jurisdiction here. It also disagrees with Bad Boys' assertion that the Department has approved the forms Bad Boys uses in bail premium financing transactions, or that the Department has any duty to do so. The Department respectfully submits that its perspectives on these issues concerning the scope of its regulatory authority and bail agents' obligations to comply with generally applicable laws will be of assistance to the Court.

The Department of Insurance respectfully requests that the Court accept the proposed amici curiae brief for filing.

III. NO CONTRIBUTION BY PARTIES OR THEIR COUNSEL

No party or counsel for a party in the pending appeal has either authored the proposed amici curiae brief, in whole or in

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part, or has made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity has made a monetary contribution intended to fund the preparation or submission of the proposed brief.

INTRODUCTION

Consumers who enter into credit or financing agreements with businesses are inherently at a disadvantage—they have less bargaining power and information than the businesses that presumably drafted the contracts. This disadvantage leaves consumers susceptible to misunderstandings, as well as deception and exploitation. Among the most vulnerable consumers are cosigners on consumer credit contracts, who agree to guarantee or take on the debt of another consumer without actually receiving any of the goods or services that are the subject of the contract. Cosigners on bail premium financing agreements, who are trying to secure the release of a friend or loved one from pretrial detention, are especially vulnerable to misunderstandings and deception. They are asked to sign complex and unfamiliar agreements, under time pressure, and in situations often fraught with emotion.

California's consumer credit contract laws help to protect cosigners from unwittingly binding themselves to potentially costly contracts, including bail premium financing agreements. One such law, Civil Code section 1799.90 et seq. (hereafter, the Consumer Credit Contracts Law), requires creditors to provide cosigners with a plain language notice that informs cosigners

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about the financial obligation they are about to undertake. If a creditor fails to provide the required notice to a cosigner, the creditor cannot later bring a collection action against that cosigner. The Consumer Credit Contracts Law helps to ensure that cosigners are informed before they agree to repay the debt of another person, and that they are not pursued by creditors who disregard the law's notice requirement.

The trial court properly determined that bail premium financing agreements are consumer credit contracts under the Consumer Credit Contracts Law and that the protections of this law apply to cosigners on these agreements. This ruling is consistent with the plain language of the statute, the principle that consumer protection statutes must be applied broadly to protect the public, and the narrow application of the safe harbor doctrine.

Further, this is not a matter that implicates the primary jurisdiction doctrine. The resolution of issues before the Court requires only the statutory interpretation of a provision of the Civil Code, specifically whether it applies to bail premium financing agreements. Nothing in this case requires interpretation of the Insurance Code or any regulations the Department of Insurance is tasked to enforce. Bail agents are subject to the Civil Code and other generally applicable laws, regardless of their additional responsibility to comply with applicable provisions of the Insurance Code and Department of Insurance regulations. For these reasons, the Attorney General

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and the Department of Insurance ask this Court to affirm the trial court's conclusions to that effect.

ARGUMENT

I. CALIFORNIA'S CONSUMER PROTECTION LAWS, INCLUDING THE CONSUMER CREDIT CONTRACTS LAW, PROTECT VULNERABLE CONSUMERS

California has enacted comprehensive laws to protect consumers from deception and exploitation in financial transactions with businesses. (See, e.g., *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 808 ["Protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society"; holding that consumers who bought merchandise under installment contracts could bring class action against seller and finance companies]; *King v. Central Bank* (1977) 18 Cal.3d 840, 843-844 [noting that the Unruh Retail Installment Sales Act was enacted "for the purpose of correcting various abuses incident to the rapid and widespread growth of the consumer credit industry"].)

Many of these financial consumer protection laws address the unequal bargaining power and access to information, and the resulting potential for sharp practices, that exist when a business makes a loan or extends credit to a consumer. Creditors must provide plain language disclosures to consumers in a variety of transactions; these disclosures are "designed to protect the unsophisticated, unwary consumer." (*Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 76-79 [describing disclosure provisions of Rees-Levering Act, applicable to auto financing transactions]; see also *King v. Central Bank*, *supra*, 18

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Cal.3d at pp. 843-844 [the Unruh Retail Installment Sales Act proscribes the "inadequate disclosure of information to consumers"].)

In 1975, the Legislature enacted additional protections for a particularly vulnerable class of consumers in credit transactions: cosigners on consumer credit contracts. These cosigners agree to be liable for the financial obligation on the contract but do not receive any of the services or goods that are the subject of the contract. The Legislature determined that, because existing law did not require creditors to explain this obligation to cosigners, cosigners were "unwittingly bind[ing] themselves to pay their friends' obligations," with "no clear idea of the responsibility [they] undertook when [they] signed the contract." (4 JA 660; 4 JA 689.) Through the Consumer Credit Contracts Law, the Legislature intended to protect cosigners from "uninformed entrance into an extremely costly contract" (a problem the legislative analyses noted "is widespread") and to "enhance the protection of cosigners under consumer credit contracts from deceptive inducements by creditors," as well as to protect consumers from being "deliberately . . . misled" in such transactions. (4 JA 691; 4 JA 661; 4 JA 674; 4 JA 658.)

To accomplish these objectives, the Consumer Credit Contracts Law provides a number of protections to cosigners. If a creditor obtains the signature of more than one person on a consumer credit contract, and the signatories are not married, the creditor must provide the person who does not receive any of the money, property, or services that are the subject of the

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contract, prior to that person becoming obligated on the credit contract, a specified cosigner notice. (Civ. Code, § 1799.91, subd. (a).) A creditor cannot bring a collection action against any cosigner who was entitled to the cosigner notice but did not receive it. (Civ. Code, § 1799.95.) A creditor must notify a delinquent cosigner before providing adverse information about the delinquency to a consumer credit reporting agency. (Civ. Code, § 1799.101.) A cosigner who suffers a loss as a result of a violation of the credit reporting notice provision may bring an action to recover damages. (Civ. Code, § 1799.102.)

These cosigner protections apply to any contract that falls within any of the six broad categories of consumer credit contracts enumerated in Civil Code section 1799.90, subdivision (a): (1) retail installment contracts; (2) retail installment accounts; (3) conditional sales contracts; (4) loans or extensions of credit that are secured by other than real property or are unsecured; (5) loans or extensions of credit subject to certain divisions of the Business and Professions Code related to real property loans; and (6) lease contracts.

Together, the provisions of the Consumer Credit Contracts Law protect cosigners to a broad range of contracts by requiring creditors to provide advance information to cosigners, and by imposing consequences on those creditors that flout these obligations.

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II. BAIL PREMIUM FINANCING AGREEMENTS ARE CONSUMER CREDIT CONTRACTS SUBJECT TO THE CONSUMER CREDIT CONTRACTS LAW AND ITS PROTECTIONS FOR COSIGNERS

The protections of the Consumer Credit Contracts Law, including the cosigner notice requirement of Civil Code section 1799.91, subdivision (a), apply to bail premium financing agreements. The Consumer Credit Contracts Law applies to all consumer credit contracts, as defined in Civil Code section 1799.90, subdivision (a)(1) through (a)(6). A creditor that obtains the signature of more than one person on a consumer credit contract must provide a standard cosigner notice to any signatory who does not receive the money, property, or services that are the subject of the contract and who is not married to the consumer who does receive the contract's money, property, or services. (Civ. Code, § 1799.91, subd. (a).) Each of these elements is satisfied when a bail agent obtains the signature of a non-spouse cosigner on a bail premium financing agreement.

A. Bail Premium Financing Agreements Are Consumer Credit Contracts Under the Consumer Credit Contracts Law

Bail premium financing agreements constitute consumer contracts under the Consumer Credit Contracts Law under Civil Code section 1799.90, subdivision (a). Depending on their terms, these agreements fall under section 1799.90, subdivision (a)(4), covering extensions of credit that meet the specified criteria, and/or section 1799.90, subdivision (a)(1), covering retail installment contracts as defined in the Unruh Act at Civil Code section 1802.6. As such, the protections of the Consumer Credit

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Contracts Law must be afforded to primary obligors and cosigners who enter into bail premium financing agreements.

A bail premium financing agreement is one element of a "bail transaction," as that term is used by Bad Boys. (See, e.g., Appellant's Opening Brief [AOB], at pp. 22, 23.) The term "bail transaction" actually refers to a series of transactions: (1) a transaction between the bail agent and the consumer (the arrestee or a friend or family member) to purchase the services of the agent in securing bail and getting the arrestee released from pretrial detention; (2) a transaction between the bail agent and the court to arrange for release of the arrestee into the bail agent's custody; and (3) a transaction between the bail agent and the surety that insures the bail agent in the event that the arrestee fails to appear and the agent is held liable for the full bail amount. (AOB, at p. 14; 3 JA 344-45; 3 JA 584.)

In the first transaction, between the bail agent and the consumer, the bail agent requires the arrestee or their cosigner to sign several documents, one of which is an indemnity agreement. (3 JA 324-25, ¶ 7; 3 JA 331; 3 JA 584, ¶ 4.) This agreement lays out the services that the bail agent will provide (namely, securing an undertaking of bail and arranging for the arrestee's release from pretrial detention), the arrestee's commitment to attend all court dates, and the amount of the full bail that the arrestee and/or cosigner will be required to pay if the arrestee does not attend all court dates. (3 JA 331; 3 JA 588.) In exchange for arranging for bail and getting the arrestee released from pretrial

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detention, the bail agent charges a non-refundable fee, which is called a bail premium. (3 JA 331; 3 JA 584, ¶ 4; 3 JA 588.)

Often, the consumer cannot pay the entire bail premium up front. In these instances, the bail agent requires the consumer to sign another document, in which the bail agent agrees to extend credit to the consumer for the bail premium, and the consumer agrees to repay this obligation in installments. (3 JA 329; 3 JA 584, ¶ 4; 3 JA 590.) Bad Boys calls these credit agreements Unpaid Premium Agreements (hereafter, bail premium financing agreements). (3 JA 584, ¶ 5; 3 JA 590.)

1. A bail premium financing agreement may be a consumer credit contract under Civil Code section 1799.90, subdivision (a)(4) or Civil Code section 1799.90, subdivision (a)(1)

A bail premium financing agreement is a consumer credit contract under Civil Code section 1799.90, subdivision (a), which generally defines such a contract as an obligation to pay money, on a deferred payment basis, for a service that is primarily for personal, family, or household use. (Civ. Code, § 1799.90, subd. (a).) A bail premium financing agreement is an obligation to pay money, on a deferred payment basis, for the bail agent's services, which are provided for personal, family, or household use, as opposed to business use. (See, e.g., *Davidson v. Seterus, Inc.* (2018) 21 Cal.App.5th 283, 298 [the term "personal, family, or household purposes" in another consumer protection statute, the Rosenthal Act, addresses "whether the transaction was engaged in by a natural person for personal purposes, as opposed to by a corporation or natural person for business purposes"].)

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More specifically, a bail premium financing agreement like the one used by Bad Boys qualifies as a consumer credit contract under Civil Code section 1799.90, subdivision (a)(4), which includes “extensions of credit secured by other than real property, or unsecured, for use primarily for personal, family or household purposes.” (Civ. Code, § 1799.90, subd. (a)(4).) The Consumer Credit Contracts Law does not define the term “extension of credit,” but its plain meaning and other interpretive sources make clear that it covers the agreements at issue here. Black’s Law Dictionary defines “credit” as “the time that a seller gives the buyer to make the payment that is due.” (Black’s Law Dictionary (11th ed. 2019).) “Extension” means the act of making available. (See Merriam-Webster’s Online Dictionary (2021) <http://www.merriam-webster.com/dictionary/extension>; <http://www.merriam-webster.com/dictionary/extend> [as of Aug. 17, 2021].) Under the plain language of the statute, then, a bail premium financing agreement is an “extension of credit” because it is an agreement in which a bail agent makes available to the consumer the ability “to pay the balance in installments over time.” (3 JA 584, ¶ 4.)

This plain language interpretation is consistent with definitions in other statutes governing consumer transactions. For example, the Credit Services Act of 1984 defines an extension of credit as, “the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal,

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family, or household purposes." (Civ. Code, § 1789.12, subd. (d).) [1] Thus, where a bail premium financing agreement is secured by other than real property, or is unsecured, it qualifies as a consumer credit contract under Civil Code section 1799.90, subdivision (a)(4).

A bail premium financing agreement also qualifies as a "[r]etail installment contract[ ]" under Civil Code section 1799.90, subdivision (a)(1) if it fits the statutory definition of a retail installment contract in the Unruh Act, Civil Code section 1802.6. This is the case when the buyer either (a) agrees to pay a finance charge or forgoes a benefit available for cash purchases, or (b) agrees to pay in more than four installments. (Civ. Code, §§ 1802.5, 1802.6.) Whether or not a bail premium financing agreement is a retail installment contract depends on this one feature because, in all cases, it meets the other conditions of a retail installment contract. It is a contract to pay for the furnishing of "work, labor and services, for other than a commercial or business use" and is not within any of the enumerated exceptions under the statute. (Civ. Code, § 1802.2 [defining "Services"]; see also *Morgan v. Reasor Corp.* (1968) 69 Cal.2d 881, 888 ["Section 1802.2 clearly includes *all services* provided for personal purposes, except for the specifically enumerated exceptions; obviously we do not assume that the Legislature intended exceptions other than those it explicitly

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[1] Both the Consumer Credit Contracts Law and the Credit Services Act of 1984 are located in Part 4 of the Civil Code, concerning "Obligations Arising from Particular Transactions."

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specified."]; *King v. Central Bank*, *supra*, 18 Cal.3d at p. 844 [citing, with approval, to *Morgan v. Reasor* as "rejecting an attempt to construe narrowly the act's definition of 'services'"].) The bail agent is a "seller" because the agent is "engaged in the business" of furnishing these services. (Civ. Code, § 1802.3 [defining "seller"].) And the consumer is a "buyer" because the consumer obtains these services from a seller and does not buy them for the purpose of resale. (Civ. Code, § 1802.4 [defining "buyer"].) To the extent there were any uncertainty about whether bail premium financing agreements are retail installment contracts, such uncertainty should be resolved in favor of finding that they are. (*Vasquez v. Superior Court*, *supra*, 4 Cal.3d at p. 823 ["The purpose of the Unruh Act is to protect consumers, and it should be liberally construed to that end"], citing *Morgan v. Reasor Corp.*, *supra*, 69 Cal.2d at p. 889.) Thus, a bail premium financing agreement that requires payment in more than four installments is a consumer credit contract under Civil Code section 1799.90, subdivision (a)(1).[2]

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[2] Bad Boys suggests that Respondent "abandoned" her allegation that bail premium financing agreements constitute retail installment contracts under Civil Code section 1799.90, subdivision (a)(1). (Appellant's Reply Brief [ARB], at p. 19.) But it is actually Bad Boys that waived its argument that these agreements are *not* retail installment contracts. The trial court expressly found that Bad Boys did not "dispute the contracts signed by Caldwell and her declarants were primarily for personal, family, or household purposes, *or that they met the other conditions of section 1799.90*." (6 JA 1056 [italics added].) In its opening brief, Bad Boys generally asserts that a bail premium financing agreement is not a consumer credit transaction, but
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2. Bad Boys' statutory construction arguments should be rejected

Bad Boys argues that its bail premium financing agreements are not consumer credit contracts under Civil Code section 1799.90, subdivision (a) because such a construction would render portions of the statute superfluous, and because bail agencies are not "retail establishments" under the Fair Labor Standards Act. (See Appellant's Reply Brief [ARB], at pp. 14-22.) The first argument is erroneous, and the second argument is irrelevant.

First, the fact that certain bail premium financing agreements might qualify as both an extension of credit under Civil Code section 1799.90, subdivision (a)(4) and a retail installment contract under Civil Code section 1799.90, subdivision (a)(1) does not render either subpart superfluous. While "courts should ascribe meaning to every word of a statute if possible," there is no "rule of statutory construction requiring courts 'to assume that the Legislature has used the most economical means of expression in drafting a statute…'" (*River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942 [citation omitted] [recognizing that when the Legislature included the broader term "favored taxpayer" and

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does not address the trial court's findings that such agreements meet all of the conditions of section 1799.90. (AOB, at pp. 25-26.) Rather than abandoning an allegation in her answering brief, Respondent pointed out Bad Boys' waiver, citing to the trial court's finding. (Respondent's Answering Brief, at pp. 22, 26.)

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a more specific reference to national banks in the same section, it did not negate the applicability of either term or render either term "mere surplusage"].)

While there is some overlap between the two subparts, it is not complete. Some agreements only fall under Civil Code section 1799.90, subdivision (a)(4), and others only fall under section 1799.90, subdivision (a)(1), confirming that both subparts serve a purpose. For example, an extension of credit secured by real property would be excluded from section 1799.90, subdivision (a)(4). (Civ. Code, § 1799.90, subd. (a)(4) ["Loans or extensions of credit *secured by other than real property* . . ."], italics added.) But a retail installment contract may be secured by real property. (See, e.g., Civ. Code, § 1803.2, subd. (b)(3) [detailing requirements for "[a]ny contract for goods or services that provides for a security interest in real property"]; see also *Boerner v. Colwell Co.* (1978) 21 Cal.3d 37, 49 [noting that the Unruh Act (Civil Code section 1800 et seq.) "explicitly provides" for security interests in real property].) Conversely, a contract for three installments with no finance charge would only fall under Civil Code section 1799.90, subdivision (a)(4); it would not qualify as a retail installment contract, which is limited to contracts in which the buyer either pays a finance charge or would have gotten a benefit by paying in cash, or pays in more than four installments. (Civ. Code, § 1802.6.). There is no merit to Bad Boys' contention that applying one subpart to bail premium financing agreements would render the other subpart "completely superfluous." (ARB, at p. 19.)

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Second, Bad Boys suggests that bail premium financing agreements cannot qualify as retail installment contracts under Civil Code section 1802.6 because a federal district court determined that bail agencies are not "retail establishments" under the Fair Labor Standards Act. (ARB, at pp. 20-22, citing *Esparza v. Two Jinn, Inc*. (C.D. Cal. Sept. 22, 2010, Case No. SACV 09-0099 AG (RNBx)) 2010 WL 11507642.) That case has no bearing on the application of California consumer protection laws to bail premium financing agreements.

In *Esparza*, the bail agency defendant argued that it was exempt from having to pay overtime under the federal Fair Labor Standards Act because it was a "retail establishment" under the Act and, therefore, fell within the Act's retail commission exemption. (*Esparza v. Two Jinn, Inc*., *supra*, 2010 WL 11507642, at p. *2.) In determining that the bail agency was not a "retail establishment" within the meaning of the Act, the district court looked to the detailed regulatory guidance at 29 Code of Federal Regulations parts 779.314 through 799.320 and quoted at length the test and lists of examples from those regulations, which Bad Boys repeats in its reply brief. (*Id*., at pp. *2-3; see also ARB, at pp. 20-21.) Those regulations also make clear that when the term "retail" is "used in a specific law"—whether in the context of retail establishments or retail services—"it can be defined properly only in terms of the purposes and objectives and scope of that law." (29 C.F.R. § 779.315.)

The *Esparza* court's determination, then, is relevant "only in terms of the purposes and objectives and scope" of the federal

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Fair Labor Standards Act. The court's interpretation of the Act and regulatory guidance on the meaning of "retail establishment," a term not used in the Unruh Act, is not relevant to the application of the Unruh Act. As discussed above, bail premium financing agreements that meet certain statutory requirements are retail installment contracts. To the extent there is any uncertainty, the Act should be liberally construed to apply to these agreements. (See Section II.C., *post*.)

B. The Cosigner Protections of the Consumer Credit Contracts Law Apply to Bail Premium Financing Agreements

Because a bail premium financing agreement is a consumer credit contract within the meaning of Civil Code section 1799.90, it triggers the same consumer protection provisions that apply to any other consumer credit contract. And where a bail agent obtains the signatures of both an arrestee and a non-spouse cosigner on a bail premium financing agreement, the notice provisions of Civil Code section 1799.91 apply. In such a scenario, all the requirements of section 1799.91, subdivision (a) are met: (1) the bail agent is a creditor; (2) who obtains the signature of more than one person on a consumer credit contract; and (3) the cosigner does not receive the services that are the subject of the contract. (See Civ. Code, § 1799.91, subd. (a).)

First, a bail agent that regularly enters into bail premium financing agreements is a "creditor" under the statute. (See Civ. Code, § 1799.90, subd. (b) [defining "creditor" as "an individual, partnership, corporation, association or other entity, however

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designated, who enters into or arranges for consumer credit contracts in the ordinary course of business"].)

Second, when a bail agent requires both the arrestee and a cosigner to sign a bail premium financing agreement, the bail agent obtains the signature of more than one person on the agreement. This is true even if the arrestee's signature and the cosigner's signature appear on different copies of the document. Separate copies of a bail premium financing agreement constitute a single "consumer credit contract" because they concern the same "obligation to pay money on a deferred payment basis," for the same service provided. (Civ. Code, § 1799.90, subd. (a) [defining "consumer credit contract"].) The bail premium financing agreement obligates both the arrestee and the cosigner to repay the bail premium to the bail agent, in exchange for the service of arranging bail and the arrestee's release from pretrial detention. That it may be impractical in some circumstances for cosigners and arrestees to sign at the same time or to sign the same copy of a bail premium financing agreement (because the arrestee is in jail) does not defeat the protective purpose of the statute. (See Section II.C., *post*.)

Third, a cosigner on a bail premium financing agreement does not receive the services that are the subject of that agreement. The plain language of the Consumer Credit Contracts Law requires a creditor to provide the specified notice to a person who signs the consumer credit contract but "does not in fact receive any of the money, property, or services which are the subject matter of the consumer credit contract." (Civ. Code,

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§ 1799.91, subd. (a).) The services that are the subject of a bail premium financing agreement are the bail agent's services arranging for bail and securing the arrestee's release from pretrial detention. The arrestee is the only person who receives these services.

Bad Boys suggests that bail agents do not need to provide the required notice to cosigners on bail premium financing agreements because those cosigners receive "at least an intangible benefit from the transaction." (AOB, at p. 27.) This is incorrect. Civil Code section 1799.91, subdivision (a) requires that a creditor provide the required notice to cosigners who do not receive any of the "money, property, or services which are the subject matter of the consumer credit contract." (Civ. Code, § 1799.91, subd. (a).) There is no "intangible benefit" exception. Indeed, if an "intangible benefit" were enough to defeat the application of the statute, the statute's protections would apply in far fewer cases than the Legislature intended. That is because most, if not all, cosigners likely obtain some "intangible benefit," which presumably motivates them to guarantee the debt of another: a grandmother cosigning on an auto financing contract enjoys the benefit of knowing her grandson can drive to college classes; a father cosigning on a daughter's mortgage enjoys the benefit of knowing she has a place to live; a friend cosigning on a loan enjoys the benefit of knowing they have helped that friend pay expenses and establish a credit history. It is precisely because a cosigner experiences these intangible benefits by helping a family member or friend in need—and may well be

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emotionally invested in providing such assistance—that cosigners should be specifically apprised of the financial consequences of offering to help, so they can avoid the "uninformed entrance into an extremely costly contract." (See Section I, *ante*, citing 4 JA 691.)

Bad Boys' cited cases do not suggest otherwise. (See AOB, at p. 27.) These cases use the term "benefit" as a framework to interpret different statutory language, from different statutory schemes, in different jurisdictions. (See, e.g., *Monroe v. Frank* (Tex. App. 1996) 936 S.W.2d 654, 660 [interpreting the term "personal" under Texas Debt Collection Practices Act]; *Lilly v. Tolar* (Tex. App., Aug. 22, 2002, No. 06-01-00163-CV) 2002 WL 1926527, at *8 [interpreting the term "personal purposes" under Texas Financial Code]; *Nashville Community Bail Fund v. Gentry* (M.D. Tenn. 2020) 496 F.Supp.3d 1112, 1130 [interpreting the term "close relationship" in determining third party standing under 42 U.S.C. § 1983].)

On reply, Bad Boys argues that cosigners on bail premium financing agreements receive the "service" of "not being required to pay the full amount of the premium or the entire bail amount at the time of the transaction." (ARB, at p. 26.) But the service Bad Boys provides, and the service for which it charges a bail premium, is securing the arrestee's release from pretrial detention. (See, e.g., 3 JA 331; 3 JA 588 ["The premium is fully earned upon the release of Principal [the arrestee]."].) The arrestee is the only signatory on a bail premium financing agreement who receives this service. And "not being required to

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pay the full amount of the premium . . . at the time of the transaction" is not a service under the Consumer Credit Contracts Law. Deferral of payment is, in fact, the definition of credit. If deferring payment were the relevant service under the Consumer Credit Contracts Law, then no cosigner would be entitled to the law's protections because the very condition that brings them within the ambit of the law's protections would also exclude them. (See Section II.A.1., *ante*.)

Bad Boys also suggests that if consumer credit protections are applied to bail premium financing agreements, "public harm is sure to follow," because arrestees will "get the idea" that their obligations to abide by the bail agreement have been nullified. (ARB, at p. 9.) But this case addresses only the financial and contractual relationship between bail agents and cosigners; it does not impact any indemnification agreements signed by arrestees, nor does it modify their obligations under those agreements, including their obligations to appear for trial. Bad Boys also claims that application of the Consumer Credit Contracts Law to bail premium financing agreements "will make pre-trial release of criminal defendants less available than it is currently." (ARB, at pp. 32-33.) This claim is entirely speculative. Bad Boys does not, and cannot, explain how providing full information and notice to cosigners about their financial obligations will lead to fewer pre-trial releases of arrestees. And if, after receiving the cosigner notice required by the Consumer Credit Contracts Law, a particular cosigner chooses not to sign a bail premium financing agreement and obligate themselves to

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repayment of that debt, such a result supports, rather than undercuts, the law's application.

C. Application of the Consumer Credit Contracts Law to Bail Premium Financing Agreements Is Consistent with the Principle of Construing Consumer Protection Laws Broadly To Effect Their Purpose

The Consumer Credit Contracts Law is remedial legislation intended to protect consumers who cosign on consumer credit contracts. (See Section I, *ante*.) As such, even if there were uncertainty about the law's application, it should be liberally construed to implement its protective purpose. (See, e.g., *Kirk v. Source One Mortgage Services Corp*. (1996) 46 Cal.App.4th 483, 490 ["remedial legislation intended to protect consumers should be construed liberally to implement its purpose"]; *Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 184 [where a statute "is manifestly a remedial measure, intended for the protection of the consumer[,] it should be given a construction calculated to bring its benefits into action"].)

Cosigners on bail premium financing agreements are exactly the type of consumers the statute was intended to protect—consumers who are likely to be uninformed as they enter costly financial agreements. Cosigners enter into bail premium financing agreements under time pressure and often at moments of intense emotional distress. They are attempting to quickly navigate the bail system and help their friends or loved ones avoid the consequences of pre-trial detention. (See, e.g., *In re Humphrey* (2021) 11 Cal.5th 135 [recognizing the significant consequences to arrestees of remaining in custody pending trial].)

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Cosigners on bail premium financing agreements report unfamiliarity with the bail process and feeling rushed by bail agents, making them susceptible to misrepresentation or misunderstanding of the contract terms. (See, e.g., 3 JA 324, ¶ 6; 3 JA 335, ¶ 4; 3 JA 368, ¶ 6; 3 JA 373, ¶¶ 4, 5; 3 JA 382, ¶¶ 4-6.) The conditions under which bail agents obtain cosigner signatures on bail premium financing agreements, and the particular susceptibilities of cosigners under these conditions, are the very circumstances the Legislature intended to remedy with the passage of the Consumer Credit Contracts Law. (See Section I, *ante*.) Construing the law to cover bail premium financing agreements is consistent not only with the statute's text, but also its protective purpose.

III. VIOLATIONS OF THE CONSUMER CREDIT CONTRACTS LAW CONSTITUTE VIOLATIONS OF THE UNFAIR COMPETITION LAW, AND THERE IS NO "SAFE HARBOR" THAT PROTECTS BAIL AGENTS FROM LIABILITY FOR SUCH VIOLATIONS

Bail agents violate the Consumer Credit Contracts Law when they fail to provide the cosigner notices required under Civil Code section 1799.91, subdivision (a) and when they institute collection actions against cosigners who have not received the required notice, in violation of Civil Code section 1799.95. These violations are actionable under the Unfair Competition Law (UCL), Business and Professions Code section 17200 et seq., which ""borrows' violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co*. [*Cel-Tech*] (1999) 20 Cal.4th 163, 180.) Bad Boys, however, argues that an allegedly

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"comprehensive statutory scheme" in the Insurance Code and Department of Insurance regulations creates a "safe harbor" that precludes application of the UCL to bail agents' conduct. (AOB, at pp. 39-41.) This argument is wrong. Safe harbor is a narrow doctrine that immunizes conduct from judicial scrutiny only if a provision clearly permits the conduct or actually bars liability for it. No such provision provides a safe harbor for bail agents' conduct in executing and enforcing bail premium financing agreements.

A. Safe Harbor Is a Narrow Doctrine

The safe harbor doctrine sets a high bar for when challenged conduct may be immunized from judicial scrutiny. The California Supreme Court formulated the safe harbor doctrine in *Cel-Tech*, *supra*, 20 Cal.4th 163, as it sought to devise "a more precise test for determining what is unfair" under the "unfair" prong of the UCL. (*Id.* at p. 185.) The UCL is unique among California consumer protection provisions in the breadth of conduct that may fall within its reach. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice" (Cal. Bus. & Prof. Code, § 17200), and is "intentionally framed in . . . broad, sweeping language" to permit courts to enjoin and redress the "innumerable new schemes which the fertility of man's invention would contrive." (*Cel-Tech*, *supra*, 20 Cal.4th at p. 181 [internal quotations and citations omitted].) The "unfair" prong of the UCL is particularly sweeping, and in recognition of a need to develop a more precise test to apply it, the California Supreme Court determined that courts may not deem conduct unfair if the

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Legislature has passed specific legislation creating a safe harbor for that conduct. (*Id*. at p. 182.) "If the Legislature has permitted certain conduct or considered a situation and concluded no action should lie, courts may not override that determination." (*Ibid*.) In other words, a plaintiff cannot use the UCL's broad "unfair" prong to challenge conduct that a statute clearly permits or to bring an action that is statutorily barred. (*Id*. at p. 183.)

But the Court was also careful to ensure that the safe harbor doctrine, itself, has bounds:

> The [safe harbor] rule does not . . . prohibit an action under the unfair competition law merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the unfair competition law, another provision must actually 'bar' the action or clearly permit the conduct.

(*Cel-Tech*, *supra*, 20 Cal.4th at pp. 182-183.)

The Court explained what it means for a statute to "clearly permit" conduct or "actually bar" an action under the Unfair Competition Law. To "clearly permit" conduct, a statute must expressly and affirmatively authorize that conduct. (*Id*. at pp. 187-188.) For example, a law stating that cellular services providers "shall be permitted" to make below-cost sales under certain good-faith conditions provides a safe harbor for such sales because "the Legislature affirmatively permitted, i.e., made lawful, these good faith sales." (*Cel-Tech*, *supra*, 20 Cal.4th at p. 188.) In contrast, because "nothing in [the laws that prohibit purposeful below-cost sales] makes all other below-cost sales lawful," there is no safe harbor for non-purposeful below-cost sales. (*Id*. at p. 187.)

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Likewise, to "actually bar" an action, there must be a statute that expressly creates a privilege or immunity. For example, California's statutory litigation privilege provides an "absolute barrier to relief" against certain actions, and a plaintiff cannot "plead around" that barrier by "recasting" an action as a UCL claim. (*Cel-Tech*, *supra*, 20 Cal.4th at p. 182 [quotations and citations omitted].) If conduct is immunized by a statutory privilege, such as the litigation privilege, a plaintiff cannot ask a court to nevertheless deem that protected conduct unfair under the UCL. (*Ibid*.)

B. No Provision Bars Liability for Bail Agent Conduct Related to Bail Premium Financing Agreements or Clearly Permits Such Conduct

There is no safe harbor defense to a UCL cause of action alleging that a bail agent's conduct in executing and enforcing bail premium financing agreements violated consumer credit contract laws. To begin with, the law is not clear that a defendant can assert a safe harbor defense at all to an alleged violation of law under the UCL's "unlawful" prong (as opposed to the "unfair" prong, which the doctrine was intended to limit). (See, e.g., *Olszewski v. Scripps Health*, 30 Cal.4th 798, 828 (2003) [expressly declining to decide whether safe harbor doctrine could apply to UCL's "unlawful" prong]; *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 986 [questioning whether the safe harbor doctrine "applies to a UCL action premised on an unlawful, rather than unfair, business practice"].) Further, no provision bars an action against bail agents for conduct that violates the Consumer Credit Contracts Law and no provision clearly permits

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bail agents to engage in that conduct. These are the only two means by which a defendant can claim a safe harbor, and neither exists in the Insurance Code or anywhere else.

Bad Boys argues that the Insurance Code and Department regulations establish a "comprehensive statutory scheme" and that when a bail agent "complie[s] with all of its obligations under [this scheme]," it can assert a safe harbor defense to a UCL action. (AOB, at p. 40.) But this is not how safe harbor works. The mere fact that a regulatory scheme is comprehensive does not itself provide a "safe harbor." (See *Cel-Tech*, *supra*, 20 Cal.4th at pp. 183, 188 ["another provision must actually 'bar' the action or clearly permit the conduct"—it is not sufficient that a provision "deal[s] with the same subject as [the] case"]; *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 384 [despite their regulation under the Insurance Code, "a UCL action may lie" against insurers who engage in conduct that violates obligations imposed by other statutes or the common law]; *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 263 [there is no "general exemption from state antitrust and unfair business practices statutes" for the insurance industry].)

Further, courts cannot infer a safe harbor from the Insurance Code's silence about the bail agent conduct at issue here, even if that conduct could be construed as falling within the same subject matter that the Legislature addressed in the Code. If a statute does not "explicitly prohibit liability" for a defendant's specific acts or omissions, the court may not create an "implied safe harbor." (*Krumme v. Mercury Ins. Co.* (2004) 123 Cal. App.

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4th 924, 945 & fn. 5 [finding no safe harbor where statutory scheme acknowledges that brokers perform some functions of agents but does not explicitly prohibit liability for using brokers instead of "appointed agents" to sell insurance].) To infer a safe harbor from the absence of statutory terms expressly authorizing or immunizing the specific conduct challenged would be directly contrary to the California Supreme Court's narrow construction of the safe harbor doctrine. (*Ibid.*; *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1379 [declining to infer safe harbor where Legislature regulated similar conduct but did not expressly permit challenged conduct].)

IV. THE CALIFORNIA DEPARTMENT OF INSURANCE DOES NOT HAVE PRIMARY JURISDICTION OVER ALLEGATIONS THAT A BAIL AGENT VIOLATED GENERALLY APPLICABLE CONSUMER PROTECTION LAWS, INCLUDING THE CONSUMER CREDIT CONTRACTS LAW

The Department of Insurance does not have primary jurisdiction over the claims at issue in this case. The Department is tasked with licensing and regulating bail agents under the Insurance Code and Department regulations, but that does not mean the Department has primary jurisdiction over all cases that involve bail agent conduct. The primary jurisdiction doctrine may apply when the resolution of claims in a case requires interpretation of an administrative agency's regulatory scheme. Resolving the allegations in this case—that a bail agent violated the Consumer Credit Contracts Law—requires interpretation of Civil Code section 1799.90 et seq., not the Insurance Code or any Department regulation. There is no basis for the Court to stay this case under the primary jurisdiction doctrine.

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A. The California Department of Insurance Licenses and Regulates Bail Agents Under the Insurance Code and Department Regulations, but That Does Not Excuse Agents from Complying with Generally Applicable Laws

Nearly 80 years ago, the Legislature authorized the Department to regulate the bail industry, which had emerged and developed largely unregulated in the early 20th century. Insurance Code section 1800 et seq. was designed to regulate and reform a bail industry in which "abuses [had] arisen . . . which [made] it necessary or desirable that there be some public supervision of that business." (*McDonough v. Goodcell* (1939) 13 Cal.2d 741, 746.)

Insurance Code section 1800 et seq. imposed licensing requirements on the bail industry for the first time, giving the Insurance Commissioner authority to deny a license to, or revoke a license from, anyone deemed not "fit or proper" to work in the industry. (Ins. Code, § 1806.) It also authorized the Commissioner to promulgate rules necessary "for the administration and enforcement" of the Insurance Code provisions. (Ins. Code, § 1812.) Under this authority, by 1941, the Commissioner had issued regulations barring bail licensees from engaging in certain conduct, such as: misrepresenting their authority or power to act on behalf of a surety (Cal. Code Regs., tit. 10, § 2067); permitting unlicensed persons (such as jail inmates, police officers, and jail officials) to solicit or negotiate on behalf of a bail business (*id.*, § 2068); and charging any rates or fees different from those disclosed in filed rate schedules (*id.*, §§ 2081-2082, 2094 et seq.).

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Despite their comprehensiveness in these areas, the Insurance Code and Department regulations do not provide, and were never intended to provide, a comprehensive or exclusive catalogue of all laws that bail licensees must follow in doing business. The Department's licensees, including bail agents, must comply with all applicable laws, not just the Insurance Code and Department regulations; and nothing about the Department's regulation of bail agents precludes the application of generally applicable laws to bail agents. (See, e.g., *Manufacturers Life Ins. Co. v. Superior Court*, *supra*, 10 Cal.4th at p. 263 [holding that licensees, while regulated under the Insurance Code, are still subject to state antitrust and unfair business practices statutes].) In fact, bail agents are expressly required to comply with provisions of law outside the Insurance Code, in some cases as a condition to their continuing to hold a bail license. (See, e.g., Ins. Code, § 1805, subd. (f) [the Commissioner may decline to issue a bail license if the licensee has an outstanding judgment against them, or conviction, for violating another law that relates to the misappropriation of money or property].)

Generally applicable laws are still generally applicable to bail agents, despite the fact that the Department regulates and licenses bail agents. Interpreting a generally applicable law with respect to bail agents does not fall within the Department's primary jurisdiction.

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B. Resolving the Claims in This Case Does Not Involve Interpretation of the Insurance Code or Department Regulations

The primary jurisdiction doctrine gives the court discretion to stay an action until the administrative process has been invoked and completed. (*Farmers Ins. Exchange v. Superior Court* [*Farmers*] (1992) 2 Cal.4th 377, 381.) The doctrine applies when "the enforcement of the [plaintiff's] claims requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." (*Id.* at p. 390.) In the *Farmers* case, the Supreme Court observed that application of the primary jurisdiction doctrine in appropriate cases advances two related policies: "it enhances court decisionmaking and efficiency by allowing courts to take advantage of administrative expertise, and it helps assure uniform application of regulatory laws." (*Id.* at p. 391.)

The Court in *Farmers* determined that primary jurisdiction was implicated by claims that the insurance company violated provisions of the Insurance Code governing automobile insurance rate-setting. The Court recognized that "the Insurance Commissioner has at his disposal a 'pervasive and self-contained system of administrative procedure' to deal with the precise questions involved herein." (*Farmers*, *supra*, 2 Cal.4th at p. 396, quoting *Rojo v. Kliger* (1990) 52 Cal.3d 65, 87-88.) The Court also found that resolution of the claims required application of the Department's regulations, noting that "the Insurance Commissioner, rather than a court, is best suited initially to determine whether his or her own regulations . . . have been faithfully adhered to by an insurer." (*Farmers*, *supra*, 2 Cal.4th at

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pp. 398-399.) The Court then determined that resolution would "require a searching inquiry into the factual complexities of [automobile] insurance ratemaking" that "call[ed] for exercise of administrative expertise preliminary to judicial review." (*Id*. at p. 399 [citation omitted].) Finally, the Court reasoned that uniformity of decisions would be enhanced by having "expert administrative analysis available before attempting to grapple with such a potentially broad-ranging and technical question of insurance law." (*Id*. at pp. 399-400.)

None of the circumstances in *Farmers* are present here. The question before the Court here is whether Bad Boys violated the consumer protections of Civil Code section 1799.90 et seq. in executing and enforcing bail premium financing agreements. The Commissioner does not have at his disposal a system of administrative procedure to deal with this question. There is no allegation that Bad Boys has not complied with a provision of the Insurance Code or a Department regulation; in fact, Bad Boys asserts that it "complied with all of its obligations under [Insurance Code section 1800 et seq.] and all associated regulations." (AOB, at p. 40). And there is no technical (or any) question of insurance law to be grappled with in this case. The mere fact that bail agents must also comply with the Insurance Code and Department regulations does not create an issue of primary jurisdiction for the Department. For these reasons, there is no basis for the Court to stay this case under the primary jurisdiction doctrine.

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C. Department Oversight of Bail Agent Forms Does Not Make the Primary Jurisdiction Doctrine Applicable Here

Bad Boys asserts that the Department is "tasked with [ ] oversight" of bail agents, and that this oversight triggers the doctrine of primary jurisdiction over claims that a bail agent violated consumer credit contract laws. (AOB, at pp. 31-32.) As explained above, this assertion is wrong as a matter of law, but it is also wrong as a matter of fact.

For example, Bad Boys suggests that the Department oversees all aspects of bail premium financing agreements—and the disclosures required in those agreements—because the bail premium financing forms are filed with and "'pre-approved' by the DOI" under section 2096 of the Department's regulations. (AOB, at pp. 22-23.) This is not correct. Section 2096 states, in part:

> If the commissioner finds that any form or document, the filing of which is required by Section 2095(k), is misleading or contrary to any provision of this article or any law relating to bail, the commissioner shall notify the bail licensee specifying wherein such form or document is misleading or contrary to any provision of this article or any law relating to bail. Thereafter such bail licensee may not use such form or document.

(Cal. Code Regs., tit. 10, § 2096.) Under section 2096, then, filed forms are not "pre-approved," and they are not deemed approved by the passage of time. (Compare with Cal. Code Regs., tit. 10, § 2066.3, which specifically prevents use of a fictitious name until it is approved ["Prior to its use, a [bail licensee's] fictitious name or style must be: (a) Filed with and approved by the commissioner in writing."].) Rather, the Commissioner retains

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the authority to require bail licensees to discontinue the use of filed documents if, at any time, the Commissioner determines that a filed document is misleading or violates the laws applicable to bail. (Cal. Code Regs., tit. 10, § 2096.) The Department is not tasked with conducting, and does not conduct, a comprehensive review of all statutes generally applicable to bail agents to determine whether a provision in, or omission from, a filed form might violate one of those statutes, unless the statute is a law "relating to bail" under California Code of Regulations, title 10, section 2096. As Bad Boys admits, and the Department agrees, the consumer credit contract laws at issue in this case are not laws related to bail. (See AOB, at p. 29 [asserting that the consumer credit laws and Insurance Code, section 1800 et seq. "are two separate statutory schemes, having no intersection with one another"].) Thus, neither the bail agent's submission to the Department of its bail premium financing agreement nor the Department's silence regarding its use shields an agent from liability under the consumer credit contract laws, or brings the question of potential violations of those laws within the Department's primary jurisdiction.

D. Bad Boys' Invocation of the Concepts of "Occupying the Field" and Preemption Does Not Support Its Position

Bad Boys devotes much of its opening brief to describing the regulatory scheme within which it operates, presumably in an attempt to demonstrate some iteration of preemption—that "the Legislature intended to cover the entire subject or 'occupy the field'" of bail transactions. (AOB, at p. 32, fn 2.) Bad Boys

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suggests that this Court should employ the analysis applied in *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939 "to determine if a state statute preempts common law claims." (AOB, at p. 32, fn 2.) Bad Boys claims that this analysis "is similar" to the analysis conducted under the primary jurisdiction doctrine, and it therefore "provides a useful framework for analyzing Caldwell's claim." (*Ibid.*) But that analysis, which the *K.C. Multimedia* court referred to as "statutory preemption," has no bearing on the issues in this case.

The general rule is that "statutes do not supplant the common law unless it appears that the Legislature intended to cover the entire subject." (*Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 332, 333-335 [citation omitted] [finding that despite the existence of multiple statutes regulating a business's acquisition and placement of defibrillator devices for public use, there was no clear legislative intent to "occupy the field" and the common law duty of care could coexist with the "statutory rules"].) In *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.*, *supra*, 171 Cal.App.4th at pp. 953-54, the court utilized what it called the "statutory preemption doctrine" to determine that the California Uniform Trade Secrets Act preempted common law trade secret misappropriation claims.[3]

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[3] The California Supreme Court has generally used the term "statutory preemption" to analyze whether federal statutes preempt state law or state statutes preempt local ordinances. (See, e.g., *Martinez v. Regents of University of California* (2010)

(continued…)

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Preemption analysis is irrelevant in this case, where the issue (as presented by Bad Boys) is the application of two state statutory schemes. Bad Boys seems to imply that the regulation of bail agents under Insurance Code section 1800 et seq. and corresponding Department regulations precludes the application of the Consumer Credit Contracts Law to bail agents. But that result is not preemption; it is repeal of a statute by implication, which is "not favored, and [is] recognized only when there is no rational basis for harmonizing two potentially conflicting laws." (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [finding two statutes addressing worker disability payments to be complementary, and noting that "[w]henever possible, [ ] we must reconcile statutes and seek to avoid interpretations which would require us to ignore one statute or the other"].) Bad Boys urges the Court to ignore the Consumer Credit Contracts Law in favor of Insurance Code section 1800 et seq., but never claims that the statutes are in conflict, because they are not. Bad Boys describes

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(…continued)

50 Cal.4th 1277, 1287 [analyzing federal preemption of state law and noting that "the usual rules of statutory preemption analysis" are that "state law will be displaced only when affirmative congressional action compels the conclusion it must be"], citing *In re Jose C.* (2009) 45 Cal.4th 534, 550; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61-62 [describing preemption as a question "of predominance or superiority as between general state laws on the one hand and [ ] local regulations on the other"], overruled on other grounds in *Mendoza v. Fonseca McElroy Grinding Co., Inc*. (Aug. 16, 2021, No. S253574) ___ Cal.5th ___ [2021 WL 3612745], at *9.)

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in detail the comprehensive statutory scheme governing bail agents and proposes that the Court engage in a preemption analysis. But what Bad Boys really requests is a judicial determination that because bail agents are regulated under Insurance Code section 1800 et seq. and Department regulations, they are not subject to any other generally applicable consumer protection laws. This request should be denied.

CONCLUSION

The Court should affirm the trial court's ruling and hold that the provisions of the Consumer Credit Contracts Law, including the cosigner notice provision of Civil Code section 1799.91, subdivision (a) and associated cosigner protections, apply to bail premium financing agreements.

Respectfully submitted,

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August 25, 2021

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CERTIFICATE OF COMPLIANCE

I certify that the attached **APPLICATION AND PROPOSED AMICI CURIAE BRIEF BY THE CALIFORNIA ATTORNEY GENERAL AND CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF RESPONDENT** uses a 13 point Century Schoolbook font and contains 9,526 words.

ROB BONTA
Attorney General of California

ALICIA K. HANCOCK
Deputy Attorney General
Attorneys for Amici Curiae, the Attorney General of the State of California and the California Department of Insurance

August 25, 2021

Document received by the CA 1st District Court of Appeal.

DECLARATION OF SERVICE

Case Name: BBBB BONDING CORPORATION DBA BAD BOYS BAIL BONDS v. KIARA CALDWELL
Case No.: A 162453

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 25, 2021, I electronically served the attached **APPLICATION AND PROPOSED AMICI CURIAE BRIEF BY THE CALIFORNIA ATTORNEY GENERAL AND THE CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF RESPONDENT** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 25, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Clerk of the Court
Honorable Judge Brad Seligman
ALAMEDA COUNTY SUPERIOR COURT
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street, Dept. 23
Oakland, CA 94612 **(By U.S. Mail)**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 25, 2021, at Los Angeles, California.

Blanca Cabrera	
Declarant	Signature

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