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September 11, 2014

California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

RE: Supreme Court Case No. S220888
Golden State Boring & Pipe Jacking, Inc. v. Safeco Insurance Company,
et. al., Court of Appeal Case No. E054618, Superior Court Case No. RIC
502935, California Stop (Payment) Notice Claims

Dear California Supreme Court:

By this letter the American Subcontractors Association (“ASA”) and the American Subcontractors Association of California (“ASAC”) request that you grant the petition for review of the above-referenced case or de-publish this case. This is based on the adverse impact to the Construction Industry and the Stop Payment Notice laws because of the Court of Appeal’s misinterpretation of former California Civil Code § 3184 and current California Civil Code Section 9356.

I. About the American Subcontractors Association and American Subcontractors Association of California

The American Subcontractors Association, Inc. (“ASA”) is a non-profit corporation supported by the membership dues paid by its approximately 2500 member businesses trading as construction subcontractors and suppliers throughout the country. The American Subcontractors Association of California is a member ASA and includes the 300 plus members with four chapters in the State of California.

Because of ASA’s unique, national perspective as a representative of the construction industry subcontractors, ASA’s applications for leave to submit *amicus curiae* briefs have been approved in many previous California cases, including California in *Wm. R. Clarke v. Safeco Ins.* (1997) 15 Cal.4th 882; *Vandenberg v. Superior Court* (1999) 21 Cal. 4th 818; *Crawford v. Weather Shield Mfg* (2008) 44Cal.4th 441; and *Los Angeles Unified School District v. Great American Insurance* (2010) 49 Cal.4th 739. ASA has also participated

amicus curiae in many jurisdictions regarding construction issues including most recently in *Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas*, (2013) 134 S.Ct. 568.

II. This Case is Important to the Construction Industry with severe implications on Enforcement of Stop Payment Notices

This case implicates one of the most important ways for Contractors to protect payment rights via a Stop Payment Notice. Although this case was decided under the former Civil Code Section 3184, that language is almost identical to the language in the current Civil Code Section 9356. This remedy under the mechanics lien laws of California allows a contractor or material supplier to serve a notice on a construction project owner or lender requiring that entity to set aside construction funds to secure payment for the labor and materials which are used to improve the real property.

The Stop Payment Notice statute is designed to protect payment rights for contractors who have not been paid for materials or supplies provided to a construction project. As interpreted by the Court of Appeal, the case may require contractors to serve a Stop Payment Notice when completing their portion of the work and again upon completion or acceptance of the project by a public entity.

III. The Court of Appeal's Decision Forces a Contractor to wait until completion of a project to serve and enforce a Stop Payment Notice

The Court of Appeal decision also creates a problem for contractors early in the construction process who would have the right to enforce a Stop Payment Notice when they have not been paid for their work (i.e., a grading contractor) to wait until after completion to even enforce a Stop Payment Notice.

The standard practice and expectation by contractors is to be able to enforce a Stop Payment Notice as soon as a payment due has not been made. However, the Court of Appeal's decision wrongly concludes that a Stop Payment Notice has to be served *after* a Notice of Completion or Notice of Acceptance has been issued by the public entity; although the statute only states it is to be served before the expiration of 30 days after Notice of Completion or Notice of Acceptance - the statute does not state it must be served after the Notice of Completion or Notice of Acceptance as interpreted by the Court of Appeal.

To hold that a Stop Payment Notice must be served during this 30 day window after Notice of Completion or Notice of Acceptance but before the expiration of the statutory time limit is contrary to the plain meaning of the statutory language.

IV. The Court of Appeal's Decision Undermines Payment Protection for Contractors

Contractors, including the members of ASA and ASAC typically serve Stop Payment Notices, at the latest, upon completion of their work and often times at the time of a failure to receive a progress payment. The reason for this is a Stop Payment Notice is only effective if the public entity is still holding funds dedicated to the project. If a contractor waits until the project is over, , as opposed to conclusion of its own work, the contractor runs the risk that the public entity will have no money left to satisfy the amounts it is owed.

Accordingly, under the ruling by the Court of Appeal, contractors, as stated above, will likely now have to serve two Stop Payment Notices to attempt to protect their rights. Further, if each trade is forced to wait until the conclusion of a project to serve a Stop Payment Notice as the Court of Appeal advises, and public entities take the direction of the Court of Appeal and deem a Stop Payment Notice served prior to the Notice of Completion invalid and not withhold sums to protect that contractor, it would almost assure there would be no funds left to pay contractors at the conclusion of a public works project, thus rendering the Stop Payment Notice protection worthless.

The Court of Appeal decision has taken any meaningful payment protection from the Stop Payment Notice. Such an interpretation hopelessly undermines the public policy intended by California's Legislature in passing the Stop Payment Notice remedy. Clearly, this needs to be corrected by granting certification to review the decision or, at a minimum, de-publishing the decision to insure the proper enforcement and payment protection intended behind the public policy for the Stop Payment Notice for construction industry businesses.

Sincerely yours,

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