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(2nd Civil No. B306827)
(Los Angeles Sup.Crt. Nos. JCCP4674/19STCV36610)

**In The
Supreme Court
State of California**

Barbara Franklin,
Petitioner,

v.

Superior Court of Los Angeles County,
Respondent.

Daimler Trucks North America LLC, et al.,
Real Parties in Interest.

ANSWER TO PETITION FOR REVIEW

*After a Summary Denial of a Petition for Peremptory Writ
by the Court of Appeal, Second Appellate District, Division One*

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To the Honorable Tani Cantil-Sakauye, Chief Justice of California, and the Honorable Associate Justices of the Supreme Court of California:

In accordance with this Court's September 21, 2020 directive, Respondent Superior Court of California, County of Los Angeles respectfully submits this Answer to Barbara Franklin's Petition for Review.

Preliminary Statement

Petitioner Barbara Franklin presents an understandable, but unachievable, request to set her civil case for trial immediately or transfer the case to another county. Similarly misdirected is her call to preclude Respondent from continuing civil trials in general. Like the accused housed in jail, or minors removed from their parents' custody, or a host of other participants in our court system, Petitioner (who under normal circumstances would be entitled to trial preference under Code of Civil Procedure section 36) seeks primacy for the jury trial in her individual case. Unfortunately, there are other matters that have higher priority under the law, and the current jury-trial reality in Respondent's courts necessitates postponement of all civil jury

trials. Given the need to proceed with criminal trials first, civil jurors will not be available until criminal cases no longer exhaust the available-juror capacity. And despite a 25% increase in juror summonses, the response rate from prospective jurors has, challengingly, declined.¹

Indisputably, the pandemic has wreaked havoc on daily life, and the Los Angeles County court system is not immune from its devastating reach, particularly with the recrudescence following the recent easing of social restrictions. Furthermore, Los Angeles is the largest California county in terms of population, which exceeds 10 million residents, and has been hardest hit, both in numbers of COVID-19 cases (over a quarter of a million) and deaths (nearly 6,500). Los Angeles County comprises more than one-third of California's total cases and some 43% of the statewide deaths. Regrettably, while the number of new infections, hospitalizations, and deaths resulting from COVID-19 are trending downward, Los Angeles County continues to lead California in the number of new COVID-19 cases and deaths. Compounding the medical fallout has been the

¹ At the present time, there are four criminal jury trials that are ongoing in Los Angeles County.

residual effect of the Governor’s March 2020 stay-at-home order, which forced individuals to deal with health conditions, accommodate childcare issues, and face trepidations about safety in using public transport, among other concerns – Respondent’s court personnel and judicial officers remain among those afflicted.

Naturally, Respondent’s operations were unexpectedly and abruptly altered, and limited by the crisis. With the exception of a few court-closure days², however, Los Angeles courts have remained open to filings and available to address urgent concerns, including litigants’ access to ex parte relief. Court operations were restored on June 15, 2020, with hearings beginning to resume on June 22, 2020; necessarily, the process has been a gradual one.

Also, since the pandemic’s onset, Respondent has been laboriously developing and expediting remote capabilities for court proceedings. Respondent developed a new way to attend hearings – its LACourtConnect (LACC) system, which provides

² There was a three-day, all courts closure at the start of the pandemic from March 17-19, 2020, and a one-day, all courts closure on June 1, 2020, due to civil unrest, vandalism and protests.

attorneys and litigants the option to make remote audio and/or video appearances. The expedited launch of this system on June 22, 2020, required a substantial allocation of resources and staffing. But Respondent’s remote capabilities do not currently encompass remote civil jury trials.

While considering ways to expand its remote capacity to include remote jury trials, Respondent has observed numerous hurdles, which raise significant issues associated with the use of remote jury selection, remote juror participation during a trial, and remote juror deliberations – each with their own constitutional and statutory implications. Respondent is investigating ways to develop remote voir dire, but other problems, such as evidentiary issues and maintaining the integrity of the trial process (including logistical interruptions or juror distractions), a diverse and representative jury pool, must be overcome through planning and the development of viable protocols. These concerns, among others, likely influenced the United States District Court for Central District of California on August 6, 2020 to close its doors to the public and halt civil *and criminal* jury trials “until further notice” – an order that has remained in place for over a month.

In addition, the plain fact is that Respondent’s courts do not have the technological capability to commence remote full-scale jury trials until next year. Respondent is beginning to offer remote bench trials to parties willing to stipulate to that process after November 16, 2020 [see September 10, 2020 General Order], but there have been few takers. Moreover, even if Respondent had the capability to conduct remote jury trials, civil cases (including Petitioner’s Section 36 preference matter) must await the completion of matters having priority based on statutory mandates or other time sensitivity (such as those involving criminal, delinquency, dependency, and mental health issues). Indeed, in accordance with urgency legislation [AB 3366] – which the Governor approved and the Secretary of State chaptered on September 11, 2020, and which took effect immediately – Respondent must give precedence, over all other cases, to the trials of defendants who are in custody and whose time was extended under Penal Code section 1382.³

³ Unlawful detainer trials, which can commence after October 5, 2020, pursuant to AB 3088 (which the Governor approved and the Secretary of State chaptered on August 31, 2020), are entitled to preference for trial setting.

Lastly, California courts are generally empowered to address emergencies and continue civil trials. And with regard to Petitioner’s instant challenge based on Code of Civil Procedure section 36’s preference requirements, subdivision (f) of this statute itself provides for continuances when a court finds “good cause.” The present pandemic manifestly supports the good-cause finding attending Petitioner’s trial continuances, particularly in the face of logistical impossibilities, including the lack of technology in place to conduct remote jury trials and the absence of sufficient jurors to fill the jury pools.

In short, this Court can and should deny the instant petition.

Factual Background

In accordance with Code of Civil Procedure sections 446 and 1109, Respondent provides this Court with facts either misstated in or missing from the Petition. (And see, *Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334, 342 [answer filed by a public entity need not be verified].)

I. What are the specific circumstances justifying the order?⁴

As discussed more fully below, the pandemic markedly and detrimentally altered the way Respondent has operated. Like society as a whole, Respondent’s personnel have had to accommodate health and safety concerns, care for family members, transportation and other issues, which have impacted (and continue to impact) day-to-day operations. Rather than providing services in open courtrooms, Respondent needed to completely adjust its ordinary operations by developing and implementing systems for all its courts (i.e., criminal, juvenile, civil, probate, traffic, unlawful detainer, family law) that allowed for remote hearings. Thus, there have been (and continue to be) logistical and technological impediments to the services Respondent can provide. As inroads are made to accommodate the effects of the pandemic through health-and-safety protocols and implementation of new technological resources, Respondent’s operations are increasing to address backlogs, urgent matters,

⁴ Petitioner references a (currently pending) writ proceeding [*Gillum v. Los Angeles Superior Court*, 2nd Civil No. B307239] in which the Court of Appeal asked the same questions that she has presented in her “Issues for Review.”

and new filings. But Respondent cannot provide all services at once to everyone, particularly when jurors are involved (as they bring yet another layer of health-and-safety concerns into consideration).

A. The Scale of Respondent's Operations

Respondent is the largest trial court in the United States. It is the only state court for the County of Los Angeles, a 4,000 square-mile area which encompasses 88 cities, 140 unincorporated areas and serves a population of over 10 million. Respondent has over 550 judicial officers⁵ and more than 4,600 permanent employees serving in nearly 600 courtrooms in 38 courthouses in 12 judicial districts located throughout the County. (See [http://www.lacourt.org/newsmedia/uploads/1420204985117NR_Remote_Appearances_V3\(003\).pdf](http://www.lacourt.org/newsmedia/uploads/1420204985117NR_Remote_Appearances_V3(003).pdf); <http://www.lacourt.org/newsmedia/uploads/14202031517253420NRCOVID-193-15-20.pdf>.)

Coordination and implementation of the sea change in court operations and protocols necessitated by the COVID-19

⁵ Respondent is allocated 582 judicial officers, but there are approximately 30 judge vacancies and 3 commissioner vacancies as of September 28, 2020.

pandemic across so many courthouses, involving so many staff members and judicial officers, and serving such a large and diverse population, has required a massive amount of time, planning and resources.

B. Court Personnel Affected by the COVID-19 Crisis

No one can doubt the seriousness of the COVID-19 pandemic. (See generally, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> [last accessed 9/25/20]; <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> [last accessed 9/25/20].) California declared a state of emergency on March 4, 2020. (See <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> [last accessed 9/25/20].) The declaration of a national state of emergency followed on March 13, 2020. (See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak> [last accessed 9/25/20].)

Six days later, California's Governor issued his stay-at-home order [Executive Order N-33-20], which abruptly altered life in California, including how matters would be handled in the Los Angeles Superior Court. And the next day, the Chief Justice of California issued several advisory recommendations and orders, which were designed to address reduced court staffing, court closures, and the health of all who provide and utilize court services.

In conjunction with the Chief Justice's and Governor's guidance (as reflected in their respective orders), Respondent issued March 17 and April 14 general orders, which closed courthouses to all persons other than those authorized to attend essential proceedings; telephonic assistance, however, was available to those needing urgent court access. Respondent's orders were necessary to enable lawyers and their clients, as well as judges and court staff, to comply with the Governor's shelter-in-place directive. Until the reopening in June 2020, ninety percent of the court staff worked away from courthouses, though many of them at a limited capacity.

Indeed, Los Angeles County appears to have been one of the counties hardest hit by the COVID-19 pandemic; the Los

Angeles County Department of Public Health states there now are over 264,000 cases of COVID-19 and nearly 6,500 deaths have been confirmed in the county. (See <http://publichealth.lacounty.gov/media/Coronavirus/data/index.htm> [as of September 25, 2020].)

Even with all of the safety measures⁶ that have been implemented since Respondent’s reopening in June, over 30% of the court staff has indicated that they have barriers to returning to work. These individuals still deal with underlying health conditions, childcare issues, and trepidations about safety in using public transport, among other concerns. Currently, at least 12% of court employees are on statutory leave, with many employees requesting, or on additional, extended forms of leave.

Additionally, as explained next, remote jury trials were not a readily achievable option. Respondent’s eight general orders flow from numerous safety-related and practical concerns.

⁶ See the “Here for You/Safe for You” program on Respondent’s webpage [www.lacourt.org].

II. Is the use of remote technology reasonably practicable to conduct preference trials?

No. As further detailed below, remote hearings could only begin when health and safety issues were addressed and became technologically feasible. Jury trials present additional impediments and concerns that, to date, have not been resolved to the point that civil preference jury trials can proceed.

Respondent has conducted a criminal jury trial (which began on August 25, 2020) and four are in progress; that first case revealed still extant hurdles to overcome (e.g., the defendant's last-minute quarantining, social distancing issues among jurors, court personnel, the defendant, and witnesses, as well as significantly lower juror yields from which prospective jurors could be obtained).

Remote jury trials present significant issues to address and overcome, such as acquiring the requisite cross-section of jurors, conducting effective voir dire, finding (or providing) jurors with access to computers and internet connections, computer glitches or other interruptions during trial, and ensuring juror attentiveness. Civil trials, especially complex ones like Petitioner's asbestos case, present additional logistical issues,

such as the handling of voluminous evidentiary materials, more witnesses, multiple parties and attorneys, and trial length. While Respondent is in the process of addressing those concerns and determining how best to conduct trials remotely, that process is understandably slow and, currently, it is not practical to begin civil jury trials.

A. General Health and Safety Concerns Have Delayed Court Operations, Including the Implementation of Remote Hearings

In addition to the health and safety concerns associated with the pandemic, operational constraints precluded an automatic transfer from live attendance to remote appearances for all civil matters. When Respondent was hit with the Governor's unanticipated directive, it lacked the personnel and technological resources, as well as the time and ability, to convert the then-extant in-person operations to purely remote ones. Even in the case of telephonic hearings, many court staff must be present in courtrooms to perform necessary functions for remote proceedings to occur, including managing the court's calendar, serving parties with rulings and making entries into the court's case management system.

Remote appearances require numerous court staff members many of whom must work on site. These include court clerks, court assistants, court reporters, interpreters, and judicial assistants, in addition to the “behind the scenes” staff, including those working in areas such as technology services, court operations, public safety, human resources, training and education. And many employees face challenges working remotely, including accessing secure laptops, in-home hardware and connections. The need for experienced court personnel to conduct hearings – even those with exclusively remote appearances – is critical where the volume of proceedings is so high. For example, in fiscal year 2017/2018, there were nearly 270,000 civil filings and over 240,000 civil hearing reservations scheduled. (Respondent’s 2018 Annual Report, http://www.lacourt.org/newsmedia/uploads/1420194241454482018_AR_OnlinePDF.PDF, at p. 14.)

Court managers have needed time and resources to implement operational and safety protocols for court staff and judicial officers to return to work in this public health crisis, and to coordinate these protocols with ten bargaining units represented by three unions in the context of dynamic and

rapidly changing Centers for Disease Control (CDC) guidelines and governmental emergency orders. These include, for example, protocols for sanitation, mask distribution, health checks and social distancing to make it safer for staff to return to courthouse work, where acquisition of cleansers, face masks and hand sanitizers has been made difficult by the run on supplies.

Further, court employees have needed training to adapt to the changes. And all the court's changes needed to be coordinated throughout the many branch courthouses in the county, each with its own specific needs and concerns.

Respondent is committed to ensuring the safety of court staff, judicial officers, attorneys, litigants and other members of the public. In this context, the proverbial switch to turn on remote appearances is not easily flipped. Respondent's plans to restore court operations and to resume remote non-emergency proceedings in mid-June were made possible because of extensive planning, analysis and work undertaken in only a few months.

Finally, scientific advances or ongoing pandemic issues may result in the CDC changing its guidelines. In turn, Respondent would need to coordinate and implement new or altered protocols to protect those using the courts.

B. Remote Jury Trials Raise Constitutional, Statutory, and Logistical Concerns

Circumstances have dictated that remote access initially focused on criminal, juvenile, dependency and mental health matters that have constitutional and statutory deadlines. As noted, AB 3366 explicitly gives precedence, over all other cases, to the trials of defendants who are in custody and whose time was extended under Penal Code section 1382; also, projected “last day” criminal cases total over 7,000 for September and October 2020.

Courtrooms nevertheless remained open during the emergency period to conduct emergency ex parte civil proceedings, and Respondent promoted telephonic appearances for them. In addition, Respondent continually increased its remote capabilities and expedited the development of its new video/audio appearance system, which provides an integrated online environment for access to case information, records, and hearings, as well as remote appearances.

Currently, California and states across the nation are cautiously reopening various businesses. Respondent also began its reopening, with its Clerk’s Office operations resuming on June

15 and hearings gradually beginning on June 22. This coincided with the launch of Respondent’s LACourtConnect: “Attorneys and self-represented litigants will have the option to make audio or video appearances in Los Angeles County courtrooms by using the Court’s new LACourtConnect technology that will provide a secure, safe and convenient way to attend hearings remotely. A key element of the Court’s new *Here For You | Safe For You* restoration of services and access to justice, LACourtConnect will contribute to social distancing requirements and dramatically change the traditional in-person courtroom appearance model.”

(June 2, 2020 News Release [accessible at

http://www.lacourt.org/newsmedia/uploads/14202062102015LACNEWSRELEASEFINAL_06_02_20.pdf].) This service provides

an integrated online environment for attorney access to case information, records, hearings, and remote appearances.⁷

Respondent’s efforts help to further the goal stated in the Chief Justice’s March 30, 2020 emergency order to make “use of

⁷ LACourtConnect implements technology designed to provide a secure, safe and convenient means for attending hearings remotely with both audio and video appearance options. As with other large-scale systems, a uniform rollout is not practical, and LACourtConnect has been offered in stages.

available technology, *when possible*, to conduct judicial proceedings and court operations remotely.” (Emphasis added.)

While LACourtConnect is working to return Respondent to some semblance of normalcy, it functions as a means to conduct hearings, not jury trials. Right now, Respondent does not have the technological expertise or ability to conduct remote jury trials in all cases. It has, however, conducted a test case, in-person jury trial; building on the information derived from the experiences in that one, Respondent is in the process of expanding trials in criminal cases with four additional jury trials currently in progress.⁸

Jury trials present a host of unique issues that are not present when conducting remote hearings. For example, courts must be able to draw potential jurors from a cross-section of the population – not just those who have high-speed internet availability and computer capability to connect with the courts and those without pandemic-related reasons for being excluded. Also, protocols still need to be developed to (1) comply with

⁸ Remote proceedings, including arraignments, preliminary hearings and trials in criminal cases require the defendant’s consent. (See Cal.R.Crt, Emergency Rules 3(a)(2), 5(c) [adopted by the Judicial Council on 4/6/2020].)

statutory and constitutional mandates for juror voir dire; (2) successfully share evidence with remote jurors, including handling of voluminous exhibits; (3) ensure seamless transmission of trials to avoid the loss or interruption of critical testimony; (4) prevent jurors from engaging in other activities during trial; (5) accommodate the use of interpreters [notably, the need for American Sign Language interpreters to convey full facial and body expressions] (6) comply with statutory directives for jury deliberations; (7) address security concerns; and, (8) ameliorate other logistical problems that inevitably will arise, such as the requirement that all witnesses must wear face masks or facial coverings.

Further, due to social distancing requirements, Respondent no longer has access to jury assembly rooms for jurors because they are being used for witnesses, parties, and other functions. Jurors will have to report directly to courtrooms (in some courthouses, courtrooms will need to be rendered “dark” to provide the space). The system envisioned for gathering jurors for criminal matters dictates a significantly slower voir dire process.

Respondent is undertaking the prudent approach to implementing a new and formidable procedural change, namely,

progressing in an orderly fashion while bearing in mind the need to ensure everyone's safety, to maintain the legality of the process, and to protect all the litigants' rights. In short, the theoretical availability of remote jury civil trials is far from a reality in the Los Angeles courts.

III. Did Respondent have the legal authority to order civil preference trials scheduled through August 8, 2020, to be vacated and not set before January 2021?

Petitioner satisfied the right to a statutory trial preference under Code of Civil Procedure section 36. Indeed, her matter was set for trial before the COVID-19 crisis required continuances, most recently under Respondent's September 10, 2020 General Order, which extended the commencement date for civil jury trials to January 2021, at the earliest.⁹ (See

<http://www.lacourt.org/newsmedia/uploads/14202091018512420N>
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⁹ This General Order also provides for "those jury trials in preference cases that can be tried in compliance with social distancing protocols, to commence on or after October 5, 2020." Respondent is working on those protocols and resolving the other obstacles to commencing remote jury trials.

ILERAMPINGUPCOURT-COMBINED.pdf.) Yet, Petitioner is mistaken in claiming that civil litigants are currently entitled to remote jury trials.

A. Respondent is Generally Authorized to Order Trial Continuances During Times of Unprecedented and Unexpected Emergencies

In general, Respondent’s orders continuing civil trials based on the devastating impact of the pandemic (as outlined above) falls within its authority. Continuances historically have been, and should remain, in a trial court’s sound discretion. (See e.g., *Musgrove v. Perkins* (1858) 9 Cal. 211, 212; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-67; Gov. Code § 68115; *Cooper v. Superior Court* (1961) 55 Cal.2d 291, 301 [“Nothing we say here is to be taken as in any wise impairing the inherent power of a trial court to exercise a reasonable control over all proceedings connected with the litigation before it, a power which . . . ‘should be exercised by the courts in order to insure the orderly administration of justice.’”]; Code Civ.Proc. § 128(a)(3), (5) [every court shall have the power to “provide for the orderly conduct of proceedings before it or its officers,” and to “control in furtherance of justice, the conduct of its ministerial officers, and

of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto”].)

Walker is noteworthy in its reminder that this Court has “often recognized the ‘inherent powers of the court ... to insure the orderly administration of justice.’ [Citations.] Although some of these powers are set out by statute (§ 128, subd. (a)), it is established that the inherent powers of the courts are derived from the Constitution (art. VI, § 1 [citations]), and are not confined by or dependent on statute.” (53 Cal.3d 257, 266-67.) Further, in addressing a court’s transfer power under Code of Civil Procedure section 396, the Court indicated it had “no reason to doubt respondent’s assessment of its administrative and supervisory needs. Nor can it be questioned that courts have inherent authority to control their own calendars and dockets, [so] a court has inherent authority to conduct a ‘hearing’ at any time in order to obtain information about whether it should exercise its transfer authority.” (*Id.* at 267.)¹⁰

¹⁰ The emergency orders issued by Respondent and authorized by the Chief Justice reprioritized the scheduling of hearings, extended statutory timelines, and otherwise responded to rapidly changing circumstances caused by the COVID-19 pandemic.

In re Reno (2012) 55 Cal.4th 428, 522, also recognized that a court is not “powerless to impose such remedial requirements in order to protect its docket and ensure the proper functioning of the court.” As this Court noted:

““It is ... well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. In addition to their inherent equitable power derived from the historic power of equity courts, *all courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority.* It is beyond dispute that Courts have inherent power ... to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council. That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation ... in order to insure the orderly administration of justice. Courts are not powerless to formulate rules of procedure where justice demands it.” (Original emphasis; citing *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967; internal quote marks and citation references omitted.)

Within these precepts, Respondent appropriately issued its General Order to address legitimate health and safety concerns, the effect of the pandemic, and the need to prioritize all the cases and constituents it serves. It noted that the Los Angeles County Department of Public Health “expressed concerns to the Court

about commencing jury trials and bringing jurors into County courthouses given the current COVID-19 numbers and trends.” (<http://www.lacourt.org/newsmedia/uploads/1420208111645620NRPRESIDINGJUDGEISSUESNEWGOEXTENDINGTRIALSASCOVID-19INCREASES.pdf>.) In addition, Respondent shared that it could not mandate remote jury trials because of legal and ethical reasons, as well as logistical and evidentiary issues that arise in civil trials. (*Id.*) Civil litigants, even those entitled to preference, must appreciate the current necessity or continuing jury trials until the court system can accommodate them (whether in-person or remotely when feasible).

Instructive is the U.S. Supreme Court’s decision in *Home Building & Loan Ass’n v. Blaisdell* (1934) 290 U.S. 398, 425-426. There, over a claim based on the constitutional provision prohibiting impairment of contracts, the High Court recognized states could exercise their sovereign right “to protect the lives, health, morals, comfort, and general welfare of the people . . .” (*Id.* at 437.) Under the novel circumstances the COVID-19 virus created, Respondent has endeavored to minimize the viral effects, and those efforts fall within its authority. (See e.g., *People v. Hajjaj* (2010) 50 Cal.4th 1184, 1204.)

The pandemic upset every one of Respondent’s “routine” operations and generated a backlog of unimaginable proportions that had to be addressed collectively, all the while ensuring the most urgent needs were handled ahead of less urgent ones. Presiding Justice Pollak’s very recent discussion in *Stanley v. Superior Court* (2020) 50 Cal.App.5th 164, 169-170, aptly summarizes the current state of affairs:

“Although the 90-day continuance here is far longer than the continuances in *Venable* and *Tucker*, the COVID-19 pandemic is of such severity as to justify a continuance of this length. Despite state and local shelter-in-place orders throughout the country, including in California and Contra Costa County, according to the Center for Disease Control there have been almost two million cases of COVID-19 in the country and over 110,000 deaths caused by the virus. California itself has seen nearly 130,000 cases and over 4,600 deaths. (Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Cases in the U.S. <<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>> [as of June 9, 2020].) As the Chief Justice explained in her most recent emergency order: “[C]ourts are clearly places of high risk during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries—well in excess of the numbers allowed for gathering under current executive and health orders.’

Under these circumstances, the trial court unquestionably was justified in finding that the COVID-19 pandemic constitutes good cause to continue defendant’s trial until July 13, 2020, with a statutory deadline of July 29. Given the grave risks to court personnel, jurors, attorneys, and the defendant himself that would be created by proceeding in accordance with the normal timeline, any other conclusion would have been unreasonable in the extreme. While we acknowledge the unfortunate hardship to the defendant from this delay, neither the prosecution nor the court are responsible for the emergency that has overwhelmed the nation and much of the world, and at this time, ‘[p]ublic health concerns trump the right to a speedy trial.’ [Citation].”

Thus, continuances historically have been, and should remain, in a trial court’s sound discretion, particularly under the circumstances Respondent has encountered. (See also, Code Civ.Proc. § 187 [“When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, *all the means necessary to carry it into effect* are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, *any suitable process or mode of proceeding may be adopted* which may appear most conformable to the spirit of this

Code.” (emphasis added)]; *Wisniewski v. Clary* (1975) 46 Cal.App.3d 499, 504.)

B. Respondent is Specifically Authorized to Continue a Civil Preference Trial Under Code of Civil Procedure Section 36(f)

Petitioner’s primary basis for demanding an immediate jury trial is the preference she has obtained under Code of Civil Procedure section 36. Importantly, however, subdivision (f) of the statute explicitly provides for continuances, without limitation, when a court finds “good cause stated in the record.” The health-and-safety issues, combined with the technological and logistical issues preventing the immediate transition to remote jury trials, constitute the necessary good cause to continue Petitioner’s trial. Under Section 36(f)’s plain language, Respondent’s continuances of Petitioner’s civil jury trial is justifiable and should be upheld.

In contrast, Petitioner presents authority that elevates the preference accorded under Section 36 over other public policy reasons courts have used for continuances. (Pet. at 25-27.) But none of her cases arose under the existent pandemic conditions, which have altered Respondent’s provision of judicial services throughout Los Angeles County.

Furthermore, even Petitioners' authority recognizes that Section 36 "should be given effect whenever it can be 'without unduly adversely affecting the rights of others.'" (*Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 92.) Similarly, the Court of Appeal in *Sprowl v. Superior Court* (1989) 212 Cal.App.3d 1082, fn. 2, understood that, as here, "a civil case in process may be continued to accommodate a criminal case." (Citing *Hartman v. Santamarina* (1982) 30 Cal.3d 762, 765.) Thus, Petitioner must stand in line while other, higher priority matters are resolved. (E.g., Gov't Code § 68115(a)(10).)

In sum, Code of Civil Procedure section 36 (f)'s plain language, which grants a court the ability to continue trials for good cause, nullifies Petitioner's due process and Government Code section 68115 arguments. (Pet. at 31-40.) Irrespective of any additional power that flows from Government Code section 68115, and regardless of what two significantly smaller counties¹¹ are doing under markedly different circumstances, Section 36(f) empowers Respondent to do what it has done here under the

¹¹ Alameda County's 2020 population is 1,671,329, while San Francisco County's is 881,549; combined, they total one-quarter of Los Angeles County's population. (See https://www.california-demographics.com/counties_by_population.)

circumstances, which presently exist in Los Angeles County and the current capacity of its court system.¹²

C. Respondent’s Orders are not Outliers, as Other Courts Have Issued or Upheld Similar Emergency Orders.

As noted, the Federal Central District of California suspended all jury trials. And recently, the United States Supreme Court denied injunctive relief to a church, which sought to enjoin Governor Newsom’s Executive Order regarding the pandemic. (*South Bay United Pentecostal Church v Newsom* (2020) 140 S.Ct. 1613.) In his concurrence, Chief Justice Roberts noted the severity of the COVID-19 viral spread, how California’s guidelines appeared consistent with the First Amendment, and when restrictions should be lifted during the pandemic “is a dynamic and fact-intensive matter subject to reasonable disagreement.” (*Id.*) While addressing a state elected official’s

¹² As Respondent’s 2018 Annual Report shows, there were some 160,000 civil cases among the more than 265,000 matters that were filed during the 2017-2018 year. (See http://www.lacourt.org/newsmedia/uploads/1420194241454482018_AR_OnlinePDF.PDF, at pp. 14, 48.)

broad ability to protect the public’s health and safety¹³, Chief Justice Roberts’ comments ought to apply to Respondent’s effort to do so within the Los Angeles court system.

Another federal case, *Fredin v. Street* (D.Minn. 2020) 2020 WL 2217280, involved a situation where a hearing “was originally scheduled, rescheduled, and ultimately cancelled in light of the COVID-19 pandemic and courthouse closures.” (*Id.* at *1.) Eventually, the district court ruled on the papers. (*Id.*) This “submitted on the papers” alternative is less accommodating than Respondent’s temporary continuance here.

As a final example, the court in *People v. Stanley* (N.Y. City Ct. 2020) 68 Misc.3d 197, 123 N.Y.S.3d 455, entertained the prosecution’s motion, which sought the continuances of preliminary hearings due to the current pandemic. The *Stanley* court acknowledged that the “Governor and the Chief

¹³ The Ninth Circuit panel in the same matter reached the same conclusion, with the majority stating: “We’re dealing here with a highly contagious and often fatal disease for which there presently is no known cure. In the words of Justice Robert Jackson, if a [c]ourt does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.’ *Terminiello v. City of Chicago*, 337 U.S. 1, 37, 69 S.Ct. 894, 93 L.Ed. 1131 (1949) (Jackson, J., dissenting).” (*South Bay United Pentecostal Church v. Newsom* (9th Cir. 2020) 959 F.3d 938, 939.)

Administrative Judge are making tough decisions without perfect clarity on how to best combat this disease. Indeed, dealing with Covid-19 is an exercise in adaptation.” (68 Misc.3d at 203.) Notwithstanding the criminal defendants’ ongoing incarceration and implication of their liberty interests, the court granted the motion to adjourn the preliminary hearings in accordance with the executive and administrative orders suspending and limiting non-essential court proceedings. (*Id.*)

Like these other courts called upon to balance important rights, Respondent issued orders that postponed civil jury cases, but did so because the continuances were a necessary function of its capabilities and to ensure the superior rights of other litigants could be met.

IV. Does the order violate the plaintiff’s due process rights in the instant case?

Petitioner’s due process claims are tethered to their contention that Code of Civil Procedure section 36 creates a substantive right to trial preference. (Pet. at 36-37.) Yet, they recognize that a compelling interest can take precedence over her rights. (Pet. at 39-40.) As outlined above, there are compelling

reasons why Respondent could not proceed with remote civil jury trials, including Petitioner’s preference case. Accordingly, this Court should find that Respondent did not infringe upon Petitioner’s due process rights.

V. Is transfer of the case to another county reasonably practicable?

Petitioner raises this question, but only makes a passing comment that, in the absence of an immediately available trial department for the remote trial of her case (and there is none), Respondent did not attempt to “transfer[] the case to a county that does use remote technology to try cases.” (Pet. at 23.) Petitioner does not provide any support for the notion that transfer is a feasible option here.

Government Code section 68115 only allows Respondent to transfer civil matters to “any” county if all parties agree (and Petitioner has not provided evidence of such an agreement),¹⁴ or to an adjacent county within 100 miles of Respondent’s borders (although Petitioner has not shown that any of those counties are

¹⁴ The presiding judges of the respective counties also must agree to the transfer. (See Gov’t Code § 69740(b).)

viable alternatives). Practically speaking, the surrounding counties are likely to be facing the same issues with their own calendars – notably, none of the exemplar cases Petitioner provides are venued in the 100-mile option. (See Pet. at 15, identifying three cases in San Francisco and Alameda Counties.) Moreover, Government Code section 68115(a)(3) requires a transferred case to be “integrated into the existing caseload of the court to which it is transferred” and, hence, would not be set for jury trial “immediately” as Petitioner requests. Plainly, transfer to another county is not a viable alternative.

Conclusion

For the foregoing reasons, this Court should deny the instant petition for review.

DATED: September 28, 2020 Respectfully submitted,

CLYDE & CO US LLP

By: 

Douglas J. Collodel
Attorneys for Respondent,
Superior Court of California,
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Certificate of Compliance

Counsel of Record hereby certifies that pursuant to Rule 8.504(d) of the California Rules of Court, this Answer to the Petition for Review was produced on a computer, using the word processing program Word 2010, and the Font is at least 13-point Century Schoolbook.

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DATED: September 28, 2020



Douglas J. Collodel

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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 355 S. Grand Avenue, Suite 1400, Los Angeles, CA 90071.

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ANSWER TO PETITION FOR REVIEW


on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address angelo.mccabe@clydeco.us to the persons at the e-mail addresses listed in the Service List via TrueFiling. The document(s) were transmitted at or before 5:00 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 28, 2020, at Pasadena, California.



Angelo McCabe

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