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3 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF BUTTE**

4 **EMERGENCY ORDER OF THE PRESIDING JUDGE**

5 **AFFECTING COURT OPERATIONS**

6 **FOR BUTTE COUNTY SUPERIOR COURTHOUSE**

7 **(BCCH)**

8 **I.**

9 **FINDINGS**

10 **A. Court Operations During the State of Emergency**

11 The public health crisis emanating from the coronavirus and COVID-19 remains a persistent
12 threat at a local, state, and national level. Early in the crisis, this court issued orders restricting access to
13 the courthouse and limiting calendars as mitigation measures to balance the need for safety with the
14 obligation to provide access to justice as timely as possible, focusing on at all times the critical core
15 functions of the court and needs of court users. Those orders have either contracted or expanded court
16 access, services, and court calendars, in response to the prevalence and spread of the coronavirus and
17 COVID-19 in Butte County. To make those determinations, the Presiding Judge has relied on county,
18 state, and national public health resources. The Presiding Judge did then, and continues now, to rely on
19 information provided by the websites for Butte County Department of Public Health (BCPH), and the
20 California Department of Public Health (CDPH) as reported on their Covid19.ca.gov website, and on the
21 website for the Center for Disease Control (CDC), and information provided by the Butte County Sheriff
22 as to conditions in the Butte County Jail.

23 Herein, this court adopts and incorporates the findings of this court, of the California Judicial
24 Council, and of the Chief Justice of the California Supreme Court, issued previously in response to the
25 public health crisis emanating from the coronavirus and COVID-19.

26 Herein, this court takes judicial notice of the Office of the Governor of the State of California's
27 website, and all declarations issued therefrom in response to the public health crisis emanating from the
28 coronavirus and COVID-19, and takes judicial notice of the websites for the Center for Disease Control

1 and Prevention (CDC), the California Department of Public Health, and the Butte County Department of
2 Public Health wherein those departments address the public health crisis emanating from the coronavirus
3 and COVID-19, and of the website Covidactnow.org, as the state of California derives information from
4 Covidactnow.org.

5 In March of 2020, the Presiding Judge ordered in-custody defendants appear by video unless
6 defendant was to be transported to court to be present at an evidentiary hearing. The Presiding Judge
7 amended that order on June 12, 2020, so that in-custody defendants were to be transported to the
8 courthouse for an in-person appearance on the criminal calendar beginning July 6, 2020.

9 Since July 1, 2020, Butte County has seen a persistent increase and spread in the infection rate.
10 This increased rate of infection has caused the Presiding Judge to issue additional orders restricting access
11 to the courthouses, requiring remote appearances, and more recently ordering that inmates not be
12 transported to the courthouse nor moved within the Butte County Jail.

13 The week of July 6, 2020, inmates were transported to the Butte County Courthouse for criminal
14 calendar matters. However, on July 21, 2020, this court issued an emergency order that, for reasons stated
15 therein and below, inmates not be transported to the courthouse nor appear by video for two weeks.

16 **B. Rate of Infection in the Community**

17 Butte County is currently experiencing a prolonged and persistent increase in the infection rate
18 of COVID-19. The increase now demonstrates exponential numbers of people testing positive for
19 COVID-19, and a dramatic increase in the number of people hospitalized and committed to ICU beds.
20 The concern over this increase is seen by a historical review of the testing numbers in Butte County
21 according to the Butte County Department of Public Health website and public reporting:

22 June 6, 2020 through June 12, 2020 (one-week period): 9 COVID-19 cases
23 June 13, 2020 through June 19, 2020 (one-week period): 25 COVID-19 cases
24 June 20, 2020 through June 26, 2020 (one-week period): 49 COVID-19 cases
25 June 27, 2020 through July 3, 2020 (one-week period): 78 COVID-19 cases
26 Sat. 6/27/2020: 8 cases
27 Sun. 6/28/2020: 8 cases
28 Mon. 6/29/2020: 9 cases
Tue. 6/30/2020: 7 cases
Wed. 7/1/2020: 14 cases
Thu. 7/2/2020: 17 cases
Fri. 7/3/2020: 15 cases

1 July 4, 2020 through July 10, 2020 (one-week period): 117 COVID-19 cases

2 Sat. 7/4/2020: 16 cases
3 Sun. 7/5/2020: 15 cases
4 Mon. 7/6/2020: 16 cases
5 Tue. 7/7/2020: 7 cases
6 Wed. 7/8/2020: 20 cases
7 Thu. 7/9/2020: 24 cases
8 Fri. 7/10/2020: 19 cases

9 July 11, 2020 through July 17, 2020 (one-week period): 184 COVID-19 cases

10 Sat. 7/11/2020: 23 cases
11 Sun. 7/12/2020: 10 cases
12 Mon. 7/13/2020: 5 cases
13 Tue. 7/14/2020: 40 cases
14 Wed. 7/15/2020: 21 cases
15 Thu. 7/16/2020: 50 cases¹
16 Fri. 7/17/2020: 35 cases

17 July 18, 2020 through July 24, 2020 (one-week period): 236 COVID-19 cases

18 Sat. 7/18/2020: 45 cases
19 Sun. 7/19/2020: 45 cases
20 Mon. 7/20/2020: 28 cases
21 Tue. 7/21/2020: 18 cases
22 Wed. 7/22/2020: 25 cases
23 Thu. 7/23/2020: 39 cases
24 Fri. 7/24/2020: 36 cases

25 July 25, 2020 through July 30, 2020 (six-day period): 149 COVID-19 cases

26 Sat. 7/25/2020: 43 cases
27 Sun. 7/26/2020: 13 cases
28 Mon. 7/27/2020: 6 cases
29 Tue. 7/28/2020: 46 cases
30 Wed. 7/29/2020: 17 cases
31 Thu. 7/30/2020: 24 cases

32 As of the date of this Order, Butte County reports **907** COVID-19 total cases, of which **149** are
33 new cases within the last 6 days.

34 On July 22, 2020, Butte County was placed on the state's three-day Monitoring List in response
35 to the seriousness of the spread of COVID-19 in Butte County. According to the Office of the Governor
36 and the California Department of Public Health, certain data metrics reflect whether a county is placed

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38 ¹ The District Attorney reports that the 50 cases reflect some cases that should have been counted on 7/15/20 but
were not. The total number is correct but the number for the day of 7/16/20 should be lower and the number for
7/15/20 should be higher.

1 on the Monitoring List as those metrics indicate a worsening of the conditions within the county. Being
2 placed on the list is a reflection of a dangerous spread of coronavirus.

3 As of the date of this order, Butte County has not been removed from the Monitoring List and is
4 on increased restriction because data metrics on which the state relies continue to show a dangerous
5 spread of COVID-19 in Butte County.

6 One such metric is whether the county has a case rate of greater than 100 per 100,000 residents
7 as it is evidence of an elevated disease transmission rate. Currently, Butte County's case rate is 215.4 per
8 100,000 residents, reflecting an elevated rate of disease transmission. (Covid19.ca.gov.)

9 The California Department of Public Health and the Office of the Governor also watch the rate
10 of increase in hospitalization wherein an increase greater than 10% over a 14-day period of time
11 demonstrates concern. Butte County had an increase of 42.1% in COVID-19 suspected or actual cases
12 being hospitalized over a 14-day period. (Covid19.ca.gov.)

13 Other meaningful data metrics include whether the number of reported COVID-19 related deaths
14 have been reported and increased. Butte County has suffered 3 new deaths in the last 14-day period and
15 has seen an increase during the same period of time in hospitalizations and ICU patients.
16 (Covid19.ca.gov.)

17 This sharp and ongoing increase has caused the Presiding Judge of the Butte Superior Court to
18 continue to issue orders that contract courthouse services and calendars, and restrict access to the
19 courthouse in an ongoing effort toward mitigation in order to maintain safety of court personnel, judges,
20 inmates, and all court users.

21 **C. Rate of Infection in the Butte County Jail**

22 Before issuing orders affecting court operations impacting criminal calendars and transportation
23 of inmates to the courthouse, the Presiding Judge relied on the resources cited herein and consulted
24 frequently with the Butte County Sheriff, the District Attorney and the Director of the Public Defender
25 Consortium.

26 Herein, the Presiding Judge does also rely on information provided by the Butte County Sheriff
27 as to the conditions currently in the Butte County Jail related to the COVID-19 infection rate and whether
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1 transportation of inmates into the Butte Superior Court is safe for the inmates, jail staff, Deputies, Officers
2 and for court users, attorneys, staff, and judicial officers.

3 As reflected in the Order of the Presiding Judge of July 21, 2020, the Sheriff opined and the
4 Presiding Judge agreed, that transportation of inmates to the Butte Superior Court is not safe and that
5 movement of the inmates throughout the jail for purpose of video calendars was then currently not safe
6 in light of the current increase in COVID-19 cases in the Butte County Jail.

7 On July 16, 2020, the Sheriff reported to the Presiding Judge that there were then 29
8 asymptomatic defendants who had tested positive for COVID-19. On July 19, 2020, the Sheriff reported
9 to the Presiding Judge that there were 71 positive COVID-19 cases in the jail. On July 21, 2020, the
10 Presiding Judge issued findings and ordered that inmates not be moved for video calendars nor be
11 transported into the Butte Superior Court from July 22, 2020 through July 31, 2020.

12 On July 24, 2020, the Butte County Sheriff reported the jail then had 102 positive in-custody
13 inmate COVID-19 cases with an inmate population of 468. On July 24, 2020, to further mitigate the risk
14 of spread of the coronavirus into the Butte Superior Court and to mitigate the rate of infection in the jail,
15 this court ordered that the Butte County Sheriff may employ the terms of the former Emergency Bail
16 Schedule wherein zero dollars bail may apply and if the application is needed to mitigate the spread of
17 coronavirus and COVID-19 in the jail.

18 On July 28, 2020, the Butte County Sheriff reported the jail then had a total of 8 positive staff to
19 date, and 58 positive in-custody inmate COVID-19 cases with an inmate population of 470. On July 29,
20 2020, the Butte County Sheriff reported the jail currently had a total of 9 positive staff to date, and 59
21 positive in-custody inmate COVID-19 cases with an inmate population of 477.

22 On July 29, 2020, the Butte County Sheriff provided to the Presiding Judge the following
23 information and recommendation as to mitigation measures involving transportation of inmates to the
24 Butte Superior Court, and restricting movement of certain inmates within the jail. This information was
25 provided at the request of the Presiding Judge.

26 On July 29, 2020, the Sheriff reported to the court that currently the Butte County Jail has eight
27 housing units that are either isolated due to positive COVID-19 tests or quarantined due to exposure of
28 COVID-19. As of August 1, 2020, three of these eight housing units will be cleared from

1 isolation/quarantine. The Sheriff recommended that, for the first two weeks of August, the court return
2 to the single calendar system used by the court between April and July for in-custody criminal calendar
3 matters, in essence not transporting in-custody defendants to the Butte Superior Court but to have the
4 defendants appear by way of remote video feed from the jail. This would give the court the ability to hear
5 non-COVID-19 in-custody matters while giving the affected COVID-19 isolation or quarantine units time
6 to clear the proper COVID-19 protocols. The Sheriff recommended that video calendars be used for court
7 proceedings on all inmates with the exception of the following housing units or cells: C-Pod, D-Pod, G-
8 Pod, S-1 and T-4. Fresh arrest arraignments will be held daily by remote means and subject to the
9 provisions in Attachment A.

10 Herein, this court adopts the findings made previously on which the July 21, 2020 and the July
11 24, 2020 orders were made. This court finds further that the conditions in the Butte County Jail have not
12 abated.

13 The Presiding Judge and the Sheriff continue to agree that restricting movement of inmates
14 throughout the jail is necessary because the COVID-19-positive inmates are not demonstrating symptoms
15 (asymptomatic) and movement of any inmate increases the danger of infection to an inmate, to a
16 Correctional or Transport Officer, Deputy Sheriff and jail personnel. By restricting movement, there is a
17 better opportunity to control the spread of the virus. Also, those associated with inmate movement and
18 court proceedings will be better protected from the likelihood of infection.

19 The Presiding Judge communicates directly with the District Attorney, the Sheriff, and the
20 Director of the Public Defender consortium on issues of court operations, calendar population, remote
21 hearings and technology, to assess best practices and return as quickly as is safe to do so to more
22 traditional court operations. Also, the court continues to audit the cases calendared for Preliminary
23 Hearing.

24 The Presiding Judge has previously issued orders to put in place mitigation measures such as
25 requiring masks be worn, social distancing, plexiglass partitions and limiting access and seating.
26 Restricting movement of in-custody defendants is a limited mitigation measure made only after all prior
27 mitigation efforts have been put in place yet the rate of infection continues to increase and spread at a
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1 rate considered by the California Department of Public Health as warranting increased restriction in the
2 community.

3 **II.**

4 **ORDER**

5 For the reasons stated herein, and under the authority of the Presiding Judge as found in California
6 Rule of Court, Rule 10.603, this emergency order affecting court operations at the Butte Superior Court,
7 as further detailed in Attachment A, is in effect starting August 1, 2020 and until further order of the court.
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9 **SO ORDERED.**

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11 Date: 7/31/2020

Clare Keithley
12 Hon. Clare Keithley
13 Presiding Judge
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ATTACHMENT A

1) Out of Custody:

- a) Defendants who are out of custody and represented by counsel are to appear through counsel pursuant to Penal Code section 977, unless:
 - i) Ordered to appear by the court.
 - ii) Noticed to appear by the Probation Department regarding an allegation of a violation of supervision.
 - iii) The appearance is by remote means approved by the court.
- b) Defendants not represented by counsel may appear in person.

2) In Custody: The court will call a calendar for defendants who are in-custody on the date of the calendar. The defendants will appear by video from the jail as one Felony / Misdemeanor Calendar on Wednesday and Thursday each week. Custodial status will be addressed.

- a) A Public Defender may be present in the courtroom.
- b) The District Attorney may be present in the courtroom.
- c) A Probation Officer may be present in the courtroom.
- d) Private Attorneys may be present in the courtroom.
- e) In-Custody defendants will not be transported to the courthouse and will appear on video from the jail if the defendant complies with the COVID-19 protocols of the jail, including wearing a mask, unless:
 - i) If the defendant does not consent to a video appearance, their matter will be continued to a date allowing for transportation to the courthouse and that does not exceed any statutory deadlines.
 - ii) If the defendant does not consent to wear a mask, their matter will be continued as the defendant is voluntarily absenting themselves from the proceeding.
 - iii) If a defendant confirms an evidentiary hearing or trial and consents to video appearance to confirm the hearing and consents to wear a mask, the defendant will be transported to the courthouse for the evidentiary hearing or trial.

3) Felony Out of Custody Cases: Simultaneous with the call of the In-Custody criminal calendar, the court will convene one felony Out-of-Custody calendar on Wednesday and on Thursday.

Time permitting, the Out-of-Custody calendar judge will preside over evidentiary hearings in the afternoon for in-custody time not waived cases.

4) Preliminary Hearings:

- a) Time-not-waived Preliminary Hearing confirmed for hearing will be heard at 1:30 p.m. on the day for which it was calendared unless the court finds good cause for a different date, time permits, and the District Attorney is given two additional days' notice.

- 1 b) Out-of-Custody time waived Preliminary Hearings may proceed to hearing if:
2 i) The defendant consents to remote appearance of the witnesses.
3 ii) The court has the resources to convene the hearing.
4 iii) The hearing does not cause delay of an In-Custody time-not-waived case.
5 iv) The hearing has been approved by the Supervising Judge of the Criminal Division.
- 6 c) The court will convene an additional calendar on Wednesday and Thursday at 1:30 p.m. in a
7 courtroom separate from the In-Custody and Out-of-Custody calendars for the purpose of
8 presiding over In-Custody time-not-waived Preliminary Hearings or hearings on revocation of
9 supervision to the extent the hearing cannot be held on the Out-of-Custody calendar. This is in
10 effect a “pass off” or “over flow” calendar.
- 11 d) Objection to remote appearance of a witness must be in writing and filed with the court and
12 served on opposing counsel five court days before the Preliminary Hearing. Response to an
13 objection must be in writing and filed with the court and served on opposing counsel three court
14 days before the hearing. The judge assigned to the Preliminary Hearing, or the Supervising Judge
15 of the Criminal Division, will file a written decision on the objection and serve the prosecution
16 and defense counsel one court day before the Preliminary Hearing. Counsel should include in
17 their written opposition or written response whether notice of the decision of the judge may be
18 served by email. The previous rule of three day written objection remains until five court days
19 precedes any Preliminary Hearing.
- 20 **5) Parole/PRCS (Post-Release Community Supervision) calendar remains Friday at 10:30 a.m. With
21 consent, defendants will appear by video from the jail.**
- 22 **6) BTA Calendars:**
23 These calendars remain as calendared. Out of custody defendants may appear in person.
- 24 **7) Collaborative Court Calendars:**
25 a) Collaborative Court calendars will remain as calendared. The court will call the cases as
26 calendared.
- 27 b) Appearances for the calendars will be as follows:
28 i) All defendants who are represented by counsel and who are in good standing with their terms
on Probation will not appear in person, but rather through counsel pursuant to Penal Code
section 977.
ii) Any defendant noticed by the Probation Department to appear in person shall appear in
person unless and until ordered differently by the judge.
iii) Defendants who are self-represented may appear in person at the courthouse.
- c) Mental Health Diversion:
i) Defendants who have been previously placed on Mental Health Diversion will remain and
those cases will remain called on Mental Health Diversion calendars.
ii) Defendants who have applied for Mental Health Diversion but their application has not yet
been ruled on by the court, may pursue their application in the normal fashion.

1 iii) No new applications will be entertained by the court for the remainder of the year 2020 and
2 until further order of the court.

3 **8) Dependency:**

- 4 a) The orders herein on transportation to the courthouse are the same for parents who are in custody
5 at the Butte County Jail and who have an appearance with the court pursuant to Welfare and
6 Institutions Code section 300.
7 b) The Supervising Judge of the Criminal Division will coordinate with the Sheriff's Office to
8 arrange an in-person appearance if the defendant complies with the COVID-19 protocols of the
9 jail, including wearing a mask.

10 **9) Transportation to the Courthouse:**

- 11 a) Any inmate transported to the Butte Superior Court must not have a temperature over 99 degrees
12 as measured that day at the jail, and must wear a mask or face shield with drape.
13 b) Any inmate who claims illness at the jail will not be transported to the courthouse regardless of
14 temperature or lack of symptoms, and the case will be continued from week to week.

15 **10) Accommodations:**

- 16 a) Masks remain required to be worn at all times when approaching, standing in line, or inside a
17 public building including the courthouses for Butte Superior Court.
18 b) Accommodations consistent with the Order of the Governor and the California Department of
19 Public Health may be made wherein a face shield with drape may be worn in place of a mask.

20 **11) Remote Appearance:**

21 Remote appearance by a person in-custody at the Butte County Jail requires consent of the person in-
22 custody. If consent is not provided, the judge will assess whether the hearing should be continued
23 rather than transport the in-custody person to the courthouse. The judge should consider the purpose
24 of the hearing, whether any statutory deadlines will expire if the hearing is continued, input from
25 counsel, the risk to public health, court staff, court users, counsel, judicial officers, justice partners,
26 and to Sheriff's Office personnel which would occur from the movement and transportation of the
27 in-custody person, as well as whether their housing unit is in quarantine or isolation due to COVID-
28 19 risk, and any other factors the judge finds relevant in balancing public health needs against the
 procedural, statutory or due process rights of the parties, the prosecution, the defense, the defendant,
 or any victims or witnesses.