

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

2
3 **ORDER OF THE PRESIDING JUDGE**
4 **TEMPORARILY SUSPENDING EXECUTION**
5 **OF WRITS OF POSSESSION ON CERTAIN PROPERTY**

F Superior Court of California F
County of Butte
MAR 23 2020
Kimberly Flener, Clerk
By LABIANO Deputy

6 **I.**
7 **FACTUAL BACKGROUND**

8 As of March 20th, 2020, the United States of America, the State of California and the County
9 of Butte have declared a state of emergency due to the outbreak and spread of the novel coronavirus
10 (COVID-19) pandemic.

11 COVID-19 remains a clear and present health and safety threat to the worldwide population.
12 Public health officials have strongly recommended persons aged 65 years and older, and those with
13 existing medical conditions which would cause them to be at high risk for complications of COVID-
14 19, remain at home and isolate themselves from other persons.

15 On March 16th 2020, California Governor Newsom issued executive order N-28-20, based on
16 the original State of Emergency Declaration issued on March 4th, 2020. The March 16th order removed
17 barriers to local government suspending evictions meeting particular criteria, such as prohibiting
18 evictions due to non-payment of rent due to a decrease in income related to COVID-19.

19 On March 18th, 2020, the Butte County Superior Court substantially limited court operations.
20 According to the order, the Court will comply with the Governor's order N-28-20, however the Butte
21 County Superior Court order did not divest the Sheriff with his discretion to enforce evictions not
22 affected by the Governor's March 16th order.

23 On March 19th, 2020, Governor Newsom issued executive order N-33-20, which ordered all
24 California state residents, other than those working in specified critical infrastructure sectors, to stay
25 home or at their place of residence in order to mitigate the spread of the COVID-19 pandemic.

On March 20th, 2020, the Butte County Superior Court issued an addendum to the March 18th
order, vacating all civil and unlawful detainer matters between March 23rd 2020 and May 18th, 2020.
Additionally, as of March 22nd 2020, based on two confirmed COVID-19 cases within Butte County,

1 along with the progression of the pandemic, the court has further limited access to Butte County
2 courthouses.

3 **II.**
4 **STATUS OF EVICTIONS HELD BY THE SHERIFF OF BUTTE COUNTY**

5 The Butte County Sheriff's Office currently holds approximately twenty (20) post-writ
6 eviction files in various stages of completion. The judgment dates on the underlying unlawful detainer
7 actions range from December 29th, 2019, through March 17th, 2020. Typically, eviction "lockouts"
8 occur one to two weeks after the office receives the file, writ of possession and letter of instruction
9 from the plaintiff. The writ of possession is often not issued or delivered to the Sheriff by the plaintiff
10 until days, weeks or months after the entry of judgement.

11 The Sheriff has no control over when he receives eviction files, as the writ of possession may
12 be enforced up to 180 days after its issuance. It is within the sole judgement of the plaintiff or their
13 attorney regarding when to submit a writ of possession for execution. The Sheriff must exercise
14 diligence in carrying out civil services – but the standard is not one of immediacy - it is one of
15 reasonableness. Reasonableness encompasses all surrounding facts and circumstances, which in this
16 case, must include COVID-19, and the associated fallout.

17 **III.**
18 **THE REMEDIES PROVIDED FOR TENANTS FACING EVICTION ARE EFFECTIVELY**
19 **UNAVAILABLE**

20 California Penal Code §396(f) prohibits any "person, business or other entity" from evicting
21 residential tenants during a declared state of emergency. The section exempts eviction proceedings
22 "lawfully begun" prior to the emergency declaration.

23 An emergency declaration by United States, the State of California and the County of Butte is
24 currently in place. California declared a State of Emergency on March 4th, 2020.

25 If "lawfully begun" is defined as the filing date of an unlawful detainer action, several of the
pending evictions held by the Sheriff would be exempt from the "State of Emergency" eviction
prohibition provided for in §396(f).

1 However, additional remedies exist for tenants facing eviction. One such remedy is found in
2 California Code of Civil Procedure (CCP) §1179, which provides, in part:

3 “The court may relieve a tenant against a forfeiture of a lease or rental agreement,
4 whether written or oral, and whether or not the tenancy has terminated, and restore him
5 or her to his or her former estate or tenancy, in case of hardship, as provided in Section
6 1174. The court has the discretion to relieve any person against forfeiture on its own
7 motion...” (Code Civ. Proc., § 1179 (Deering, Lexis Advance through Chapter 1 of the
8 2020 Regular Session).)

9 CCP §1179 allows the court to provide tenants with relief from forfeiture in unlawful detainer
10 actions, where a hardship can be shown. Such relief is however subject to specific conditions,
11 including the full payment of rent due. A motion under CCP §1179 may be made by a tenant or any
12 person with a property interest, or by the court on its own motion, at any time prior to the restoration
13 of the property to the landlord or owner.

14 Additionally, a stay of the enforcement of any order or judgement may be requested pursuant
15 to California Code of Civil Procedure §918, provided certain timeframes and criteria are met.

16 Given the status of the COVID-19 pandemic, the accompanying Governor’s order for state
17 residents to remain at home, public health recommendations for vulnerable people to shelter-at-home
18 and the Court’s order vacating all civil and unlawful detainer matters between March 23rd 2020 - May
19 18th, 2020, the remedies provided under the law for tenants pending an eviction is effectively
20 unavailable.

21 **IV:**

22 **THE SHERIFF CANNOT REASONABLY DETERMINE WHICH CASES**
23 **FALL WITHIN THE GOVERNOR’S MARCH 16TH ORDER.**
24 **EXECUTION OF PREVIOUSLY-ISSUED WRITS OF POSSESSION FOR REAL**
25 **PROPERTY RISKS CAUSING IRREPARABLE HARM**

The Governor’s March 16th order regarding permitted cities and counties to suspend certain
residential evictions until May 31st, 2020 – provided the eviction was for the non-payment of rent and
that non-payment was related to COVID-19.

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The Sheriff has no reasonable means of determining whether a particular eviction action, or the lack of an application for a stay or other remedy, is a result of the failure to pay rent, or whether the economic hardship is related to COVID-19.

While it is true some tenants may take unfair advantage of a suspension, the aforementioned are issues which are most appropriately left to the litigants to address with the court – which will essentially be unavailable to hear such matters until at a minimum, after May 18th, 2020. Without issuing a suspension on the writs of possession for real property, the Sheriff may very well unknowingly execute writs of possession which cause substantial and irreparable harm to evicted tenants, whose situations otherwise would have fallen within the Governor’s March 16th order, CCP §1179 or CCP §918.

**V.
CONDUCTING EVICTIONS DURING THE COVID-19 PANDEMIC WILL NEGATIVELY
IMPACT PUBLIC HEALTH AND SAFETY AND ARE CONTRARY TO THE INTENT OF
THE GOVERNOR’S MARCH 19th ORDER**

Members of the Butte County Sheriff’s Office have received numerous inquiries during the week of March 16th, including before and after the Governor’s order(s), from persons facing imminent eviction. Some of these persons were facing a lockout date of Wednesday, March 18th 2020. Several individuals reported to Butte County Sheriff employees that they, or persons living with them, were in poor health or elderly and were concerned for their health and safety if imminently removed from their residence due to COVID-19. Due to the circumstances, the Sheriff’s Office did not execute the March 18th evictions.

California has experienced a statewide housing crisis – a crisis which was exacerbated in the Butte County area as a result of the tens of thousands of survivors who lost their homes to the Camp Fire. Executing and enforcing writs of possession for real property at this time would likely cause the homeless population to increase within Butte County and would likely contribute to the COVID-19 crisis, by causing persons who may be vulnerable to COVID-19 infection to be placed in situations where they are more likely to contract and /or spread the virus, as opposed to remaining sheltered in their residence as ordered by the Governor and as recommended by public health officials.

VI.

1 **CONSIDERATION OF THE INTERESTS OF LANDLORDS AND PROPERTY OWNERS**

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3 Landlords or property owners would understandably argue that by suspending the execution
4 of writs of possession, a financial burden has been shifted to them by the government, since many
5 landlords must pay mortgages, property taxes and other expenses associated with their rental
6 properties, regardless of whether or not their tenant fails to pay rent. Landlords would likely argue
7 they need to obtain replacement tenants as soon as practical in order to minimize financial losses from
8 a non-paying tenant. Such concerns have not been overlooked.

9 It is important to note that existing COVID-19-related government orders and action have
10 affected the income of an extraordinary number of persons and property owners. Many businesses
11 defined as non-essential have been ordered closed, the State has prohibited public gathering events
12 and ordered citizens to remain in their homes except for essential functions.

13 Furthermore, landlords are not without a remedy. The temporary suspension of the execution
14 of writs of possession for real property does not alleviate a tenant's duty to pay rent or to maintain the
15 premises. Damages could be sought by the landlords against non-paying or tortious tenants, if the
16 landlord so desires.

VII.

17 **CONCLUSION AND TERM OF SUSPENSION**

18 The Sheriff must remain a neutral third party when processing and executing civil services.
19 However, the complications in properly and lawfully conducting evictions in light of the rapidly
20 evolving situation in this unprecedented time, taking into consideration the statutes, Governor's orders,
21 and limited access to the courts, is cause for significant concern.

22 Suspending the execution of all writs of possession for real property issued by this court,
23 through May 31st 2020, or upon a further order from the court after an evaluation of the circumstances,
24 is in the interest of public health and safety, and will comply with the spirit and intent of the law, the
25 Governor's orders, along with avoiding or mitigating the risk of irreparable harm. A suspension will
also provide the court the opportunity to calendar civil and unlawful detainer actions pursuant to its
order vacating all such matters between March 23rd and May 18th, 2020.

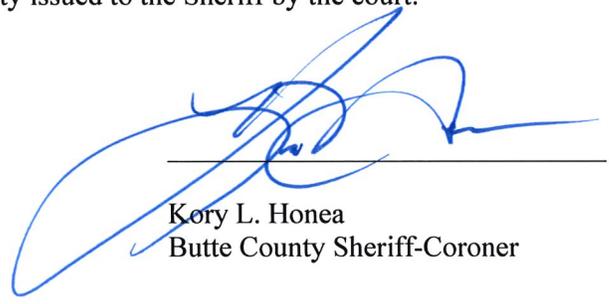
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It is requested that this order specifically exempt from the proposed suspension “move-out”, or other orders associated with restraining orders, domestic violence prevention orders, elder abuse prevention orders, or other orders as may be issued by the court. It is requested that the court, in its discretion, may also issue or order the enforcement of an order or writ when necessary to mitigate a substantial health and safety hazard, or the commission of active voluntary or permissive waste which would tend to cause significant harm to real property.

**VIII.
APPLICATION**

The Sheriff of Butte County then does apply to the Presiding Judge of the Butte County Superior Court for an order temporarily suspending through May 31, 2020 or until further order of the court all writs of possession for real property issued to the Sheriff by the court.

Date: 3/23/2020



Kory L. Honea
Butte County Sheriff-Coroner

ORDER

IT IS HEREBY ORDERED that the execution and enforcement of all writs of possession for real property, issued to the Sheriff of Butte County by this court, be suspended through May 31st 2020, or until further order of the court.

Nothing in this order shall restrict the enforcement of move-out orders contained within restraining orders, domestic violence prevention orders, elder abuse prevention orders, or other orders as may be issued by this court.

DATED: March 23, 2020



JUDGE OF THE SUPERIOR COURT