

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, BUTTE COUNTY**
2 **ORDER OF THE PRESIDING JUDGE**
3 **FINDING GOOD CAUSE TO CONTINUE JURY TRIALS**
4 **HELD IN THE CRIMINAL DIVISION**

5 **I.**
6 **FINDINGS**

F Superior Court of California **F**
County of Butte
I DEC 04 2020 **I**
L
E Kimberly Flener, Clerk **E**
D By dk Rehner Deputy **D**

7 **A. Ongoing Public Health Crisis**

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

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

24 Herein, this court takes judicial notice of the Office of the Governor of the State of California's
25 website, and all declarations issued therefrom in response to the public health crisis emanating from the
26 coronavirus and COVID-19, and takes judicial notice of the websites for the Center for Disease Control
27 and Prevention (CDC), the California Department of Public Health (CDPH), and the Butte County
28 Department of Public Health (BCPH), wherein those departments address the public health crisis

emanating from the coronavirus and COVID-19, and of the website Covid19.ca.gov, as the state of California derives information from Covid19.ca.gov.

All sites referenced herein report the crisis with Coronavirus is worsening at an alarming rate. The growing infection rate is increasingly harmful as the resources for hospitals and ICU beds become strained and limited. Public Health officials announce the problem will worsen in response to holiday travel and gatherings that occurred over the Thanksgiving holiday week, and anticipating the same conduct over the holidays in the month of December, the effect of which is still forthcoming.

B. Rate of Infection in the Community

Butte County is currently experiencing a prolonged and persistent increase in the infection rate of COVID-19. Recent test results demonstrate the concern opined by Public Health officials. According to the Butte County Department of Public Health's website and public reporting, the number of positive cases over the last several weeks are as follows:

11/20/2020 through 11/24/2020, an average of 46 cases per day

11/21/2020 through 11/25/2020, an average of 45 cases per day

11/26/2020 through 11/30/2020, an average of 55 cases per day

12/1/2020 64 cases, 12/2/2020 49 cases, and 12/3/2020 58 cases for a three-day average of 57.

As of the date of this Order, Butte County reports a total of **4,302** COVID-19 cases. For the period of 11/24/2020 through 12/3/2020, 540 new positive COVID-19 cases were reported.

C. Impact of Designations by the Governor

The Governor placed Butte County in the Purple Tier (most restrictive) on November 19, 2020. Since that date, cases have continued to increase steadily at a local level, and at varying rates in other areas of the State and Country. It is expected the Purple Tier designation will remain in effect for several weeks and until well after the infection rates decline.

On December 3, 2020, the Governor of California held a press conference and posted to his website the Governor's designation of regions in which stay at home orders are going to be in effect if the availability of ICU beds falls below 15%. Butte County was placed in the Greater Sacramento Region. Should the Region meet the metric, as predicted by the Governor to happen, greater restrictions on the communities would go into effect as the metric is a measure of danger relative to the spread of the virus

1 and lack of treatment in the community. Once placed on the restrictions, the restrictions will remain in
2 effect for at least three weeks.

3 **D. Impact on Jury Trials**

4 The Presiding Judge issued Orders in response to the coronavirus as early as March 2020. The
5 Orders were in response to Public Health information, designations or guidelines. The Orders affected
6 court operations in order to protect the health and safety of court users, court employees, judges, justice
7 partners and the public while balancing statutory and Constitutional rights that ensure due process. For a
8 period of time, the threat from the coronavirus and COVID-19 warranted findings of good cause to extend
9 jury trial dates, some beyond the time limit found in Penal Code section 1382, as the danger of infection
10 was good cause and not under the control of the court, the parties, or the attorneys. The findings of good
11 cause were narrowly tailored to be the briefest period of time necessary to ensure due process while
12 meeting the safety goal the Order was designed to achieve.

13 To mitigate the impact of the coronavirus on prospective jurors summoned for jury duty, the
14 court has taken the following steps: staggering the arrival time for prospective jurors, entertaining
15 hardship requests through written form, designating seating in any jury assembly or courtroom with at
16 least six-foot separation with prospective jurors seated in gallery seating rather than the jury box, utilizing
17 additional courtrooms instead of jury rooms for deliberation and for jury recess, and utilizing the only
18 two courthouses in the County to be able to select two Criminal juries each week, effectively delaying all
19 Civil jury trials. These measures consume additional resources for the court that include the need of two
20 judges at each courthouse to assist with jury selection, and the need for additional security and additional
21 court staff. That the fear of infection is on the mind of prospective jurors is demonstrated by the
22 historically low number of prospective jurors over the last several weeks. The court has also experienced
23 an increased number of staff affected by COVID-19 infection and the quarantine requirements, which
24 further impacts the court's ability to operate.

25 The increase in the infection rate in Butte County, placement in the most restrictive tier by the
26 Governor due to the rate of infection in the county, and the likely restrictions coming if the Greater
27 Sacramento Region falls below the ICU metric announced on December 3, 2020 by the Governor;
28 coupled with the threat to jurors and witnesses to participate in jury selection and trial while the

1 uncontrolled coronavirus advances in the county, causes the Presiding Judge to find good cause to
2 continue all Criminal Division jury trials currently set to proceed to trial between December 7, 2020 and
3 January 8, 2021.

4 **E. Authority**

5 The Presiding Judge of the Superior Court holds the responsibility for the management of cases
6 within the court's jurisdiction, and the responsibility to ensure the safety of all court users, and court staff,
7 judges and judicial officers, justice partners and the public. (California Rule of Court, Rule 10.603).
8 Furthermore, contagion has been upheld as a basis for a good cause finding in cases where the threat of
9 disease was less than what is currently faced here, and specifically with respect to the coronavirus. (Stanley
10 v. Superior Court (2020) 50 Cal. App. 5th 164; People v. Tucker (2011) 196 Cal. App. 4th 1313.)

11
12 **II.**

13 **ORDER**

14 By this finding of good cause, for the reasons stated herein, this court orders all Criminal Division
15 jury trials currently set to proceed to trial between December 7, 2020 and January 8, 2021, be continued
16 to the date of January 11, 2020 or a date thereafter within 30 days of the vacated date.

17
18 Date: 12/4/2020

Clare Keithley
Hon. Clare Keithley
Presiding Judge