

**PUBLICATION UPDATE**

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# Matthew Bender<sup>®</sup> Practice Guide: California Contract Litigation

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## HIGHLIGHTS

### 2020 Second Update for Recent Judicial Decisions

- This publication has been updated for recent judicial decisions. For a more detailed summary of the important changes incorporated into the publication in this release, see below. Additionally, COVID-19 Emergency Court Rules are included in this Publication Update. After the review of new cases added in this release, below, are the April 4, 2020 emergency changes to the California Rules of Court to address the Covid-19 Virus effect on the judicial system, on such topics as:
- Tolling or extending time because of a public emergency

- Unlawful detainers
- Use of technology for remote appearances
- Emergency bail schedule
- Personal appearance waivers of defendants
- Juvenile dependency proceedings
- Juvenile delinquency proceedings
- Temporary restraining or protective orders
- Toll of statutes of limitation for civil causes
- Extension of time to bring civil action to trial
- Depositions through remote electronic means.

This release is the second 2020 update for MATTHEW BENDER<sup>®</sup> PRACTICE GUIDE: CALIFORNIA CON-

TRACT LITIGATION. It adds recent cases and other enhancements to keep the publication fully up to date with recent developments in the case law. Significant additions in this release include the following:

**Choice of Law Clause.** *Chen v. Los Angeles Truck Centers, LLC* (2019) 42 CA5th 488, 255 CR3d 559, ruled that there is no true conflict where injury occurred in another state and no Californians are claimants. See Ch. 1, *Determining the Applicable Law*, § 1.05[1].

**Choice of Law Clause.** *Gulf Offshore Logistics, LLC v. Superior Court* (2020) 45 CA5th 285, 258 CR3d 569, concluded that California had an interest in applying its over-time law to all nonexempt workers, and all work performed, within its borders. See Ch. 1, *Determining the Applicable Law*, § 1.08[2][c].

**Choice of Law Clause.** *Textron Inc. v. Travelers Cas. & Sur. Co.* (2020) 45 CA5th 733, holds that California had an overriding interest in applying its continuous trigger rule to an action involving a continuing injury suffered by a California resident. See Ch. 1, *Determining the Applicable Law*, § 1.08[2][d].

**Personal Jurisdiction.** *Jayone Foods, Inc. v. Aekyung Indus. Co. Ltd.* (2019) 31 CA5th 543, 242 CR3d 705, determined that a Korean manufacturer purposefully directed its activities toward California and was subject to specific jurisdiction. See Ch. 3, *Determining Jurisdiction and Venue in Contract Action*, § 3.07[4][a].

**Personal Jurisdiction.** *Halyard Health, Inc. v. Kimberly-Clark Corp.* (2019) 43 CA5th 1062, 256 CR3d 915, discerned that sales of defective medical gowns in California were insufficiently connected to whether distribution agreement's indemnity obligation was enforceable and did not establish minimum contacts. See Ch. 3, *Determining Jurisdiction and Venue in Contract Action*, § 3.07[4][a].

**Standing.** *Gill v. Whitford* (2018) 138 S Ct 1916, 201 L Ed2d 313, and *Dutta v. State Farm Mut. Auto. Ins. Co.* (9th Cir 2018) 895 F3d 1166, elaborated the requirement of injury-in-fact for standing purposes. See Ch. 3, *Determining Jurisdiction and Venue in Contract Action*, § 3.12[4][c].

**Standing.** *M.S. v. Brown* (9th Cir 2018) 902 F3d 1076, elaborated the requirement of showing a substantial likelihood that relief sought would redress the injury for standing purposes. See Ch. 3, *Determining Jurisdiction and Venue in Contract Action*, § 3.12[4][c].

**Removal to Federal Court.** *Ehrman v. Cox Commc'ns, Inc.* (9th Cir 2019) 932 F3d 1223, applied the rule that a notice of removal need not contain evidentiary submissions. See Ch. 3, *Determining Jurisdiction and Venue in Contract Action*, § 3.30[4][b].

**Emergency Tolling of All Statutes of Limitation.** Rule 9 of the Cal Rules Ct, Appx I, Emergency Rules Related to COVID-19, tolls all civil statutes of limitations for specified

periods. See Ch. 4, *Determining Applicable Statute of Limitations and Effect on Potential Action*, § 4.04A, 4.21[7].

**Limitations Period.** *Hensel Phelps Constr. Co. v. Superior Court* (2020) 44 CA5th 595, 257 CR3d 746, ruled on the statute of repose in the Right to Repair Act. See Ch. 4, *Determining Applicable Statute of Limitations and Effect on Potential Action*, § 4.12[1].

**Arbitration Clause—Retroactivity.** *Franco v. Greystone Ridge Condo.* (2019) 39 CA5th 221, 252 CR3d 149, applied an arbitration clause in an employment agreement retroactively. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.07[1][b].

**Arbitration Clause—Injunction.** *Clifford v. Quest Software Inc.* (2019) 38 CA5th 745, 251 CR3d 269, held that a request for *private* injunctive relief under B&P Code § 17200 is arbitrable. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.07[6].

**Arbitration Clause—Third Party.** *Phila. Indem. Ins. Co. v. SMG Holdings, Inc.* (2019) 44 CA5th 834, 257 CR3d 775, applied the rule that a nonsignatory may be compelled to arbitrate where the nonsignatory is a third party beneficiary of the contract. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.19[4].

**Arbitration Clause—Stay.** *Valentine v. Plum Healthcare Grp., LLC* (2019) 37 CA5th 1076, 1084, 249

CR3d 905, specified that if defendants who are not signatories to the arbitration agreement have an equitable right to compel a signatory plaintiff to arbitrate its claims, then the defendants are not “third parties” and CCP § 1281.2(c) does not apply. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.20[6][c].

**Arbitration Clause—Signature.** *Fabian v. Renovate Am., Inc.* (2019) 42 CA5th 1062, 255 CR3d 695, decided that once the party opposing arbitration declares that he or she did not electronically sign the contract, the moving party has the burden of proving that the electronic signature was authentic. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.25[2].

**Arbitration Clause—Acceptance.** *Diaz v. Sohnen Enterprises* (2019) 34 CA5th 126, 245 CR3d 827, rules that an employee’s acceptance of an agreement to arbitrate was implied-in-fact due to the employee’s continued employment. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.25[4].

**Arbitration Clause—Unconscionability.** *Prima Donna Dev. Corp. v. Wells Fargo Bank, N.A.* (2019) 42 CA5th 22, 255 CR3d 174, determines that a party opposing arbitration forfeits its arguments concerning procedural unconscionability of the agreement by failing to raise them in a proceeding to compel arbitration. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.29[1].

**Arbitration Clause—**

**Unconscionability.** *Davis v. TWC Dealer Grp., Inc.* (2019) 41 CA5th 662, 254 CR3d 443, invokes the rule that surprise arises when the challenged terms are hidden in a pre-printed form drafted by the party seeking to enforce them. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.29[2][c].

**Arbitration Clause—Severability.** *Lopez v. Bartlett Care Ctr., LLC* (2019) 39 CA5th 311, 251 CR3d 813, held that the issue of whether unconscionable provisions of an arbitration clause are severable may be waived if not raised in trial court. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.29[4][a].

**Arbitration Clause—Severability.** *OTO, L.L.C. v. Kho* (2019) 8 C5th 111, 251 CR3d 714, 447 P3d 680, decides that the court, in its discretion, may under the California Arbitration Act refuse to enforce the contract as a whole if it is one-sided and coerced. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.29[4][b].

**Arbitration Clause—Severability.** *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 CA5th 1197, 235 CR3d 250, applied the rule that the ambiguity was to be read against the drafter in whether an unenforceable provision of an arbitration agreement was severable. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.29[4][b].

**Arbitration Clause—Waiver.** *Spracher v. Paul M. Zagaris, Inc.* (2019) 39 CA5th 1135, 252 CR3d

417, found support for its finding of waiver of the right to arbitrate on multiple grounds. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.30[2].

**Arbitration Clause—Vacatur.** *Monster Energy Co. v. City Bevs., LLC* (9th Cir 2019) 940 F3d 1130, distinguished the grounds for vacating an arbitration award in federal courts from those in California state courts based on an arbitrator's investigation and disclosure of potential conflicts. See Ch. 5, *Determining Whether to Arbitrate or Litigate*, § 5.31D.

**Damages—Punitive.** *Ena N. Beach, Inc. v. 524 Union Str.* (2019) 43 CA5th 195, 256 CR3d 426, allowed punitive damages where the defendant's conduct constituted both a breach of contract and a tort. See Ch. 7, *Seeking or Opposing Damages in Contract Actions*, § 7.12[8].

**Reformation.** *Komorsky v. Farmers Ins. Exch.* (2019) 33 CA5th 960, 245 CR3d 623, rules that a complaint failed to state claim for reformation where it did not allege insurer intended to include third party as another insured. See Ch. 8, *Seeking or Opposing Equitable Remedies in Contract Actions*, § 8.24[3].

**Quantum Meruit.** *Reeve v. Meleyco* (2020) 46 CA5th 1092, 260 CR3d 457, specifies that the statute of limitations for quantum meruit claims is two years. See Ch. 9, *Seeking or Opposing Quantum Meruit or Quantum Valebant Recovery in Contract Actions*, § 9.10.

**Quantum Meruit.** *Hance v. Super Store Industries* (2020) 44 CA5th 676, 257 CR3d 761, applies the rule that where the contract is voided, the terms of the contract no longer control the evaluation under quantum meruit. See Ch. 9, *Seeking or Opposing Quantum Meruit or Quantum Valuable Recovery in Contract Actions*, § 9.18[4].

**Attorney's Fees—Reduction.** *Patel v. Mercedes-Benz USA, LLC* (2019) 43 CA5th 1007, 256 CR3d 603, decided that the trial court may not reduce fees to those starting on a particular day in an action under the Song-Beverly Act. See Ch. 12, *Recovering Attorney's Fees and Costs in Contract Litigation*, § 12.13[2].

**Attorney's Fees—Lodestar.** *Mikhaeilpoor v. BMW of N. Am., LLC* (2020) 48 CA5th 240, determines that under the Song Beverly Act, the court is not required to state each charge they find to be reasonable or unreasonable, necessary or unnecessary. See Ch. 12, *Recovering Attorney's Fees and Costs in Contract Litigation*, § 12.13[3].

**Illegal Waiver.** *Taniguchi v. Restoration Homes LLC* (2019) 43 CA5th 478, 256 CR3d 679, applied the anti-waiver provision of CC § 2953 to claim of violation of CC § 2924c in mortgage loan modification. See Ch. 18, *Asserting or Defending Claim That Contract Illegal, Contrary to Public Policy, or Unconscionable*, § 18.06[1][f].

**Public Official.** *Cal. Taxpayers Action Net. v. Taber Constr., Inc.* (2019) 42 CA5th 824, 255 CR3d 755,

concludes that contractor was not transacting on behalf of the school district as a de facto official when it provided preconstruction services on a project that it also received a lease-leaseback contract. See Ch. 18, *Asserting or Defending Claim That Contract Illegal, Contrary to Public Policy, or Unconscionable*, § 18.06[6][d].

**Public Official.** *San Diegans for Open Gov't v. Pub. Facilities Fin. Auth. of City of San Diego* (2019) 8 C5th 733, 257 CR3d 43, 455 P3d 311, resolved a split in the courts of appeal concerning standing under Gov Code § 1090. See Ch. 18, *Asserting or Defending Claim That Contract Illegal, Contrary to Public Policy, or Unconscionable*, § 18.06[6][d].

**Unconscionability.** *Long Beach Unified Sch. Dist. v. Margaret Williams, LLC* (2019) 43 CA5th 87, 256 CR3d 354, ruled that a requirement that each party bear own costs and attorney's fees substantiated surprise, given clause requiring one party to pay the fees and reimburse any adverse award suffered by the other party. See Ch. 18, *Asserting or Defending Claim That Contract Illegal, Contrary to Public Policy, or Unconscionable*, § 18.15[4][b].

**Unconscionability.** *Bakersfield Coll. v. Cal. Cmty. Coll. Athletic Ass'n* (2019) 41 CA5th 753, 254 CR3d 470, makes the distinction that where oppression is great enough, a showing of surprise is not necessary even for a sophisticated party. See Ch. 18, *Asserting or Defending*

*Claim That Contract Illegal, Contrary to Public Policy, or Unconscionable*, § 18.15[4][b].

**Against Maker.** *Montrose Chem. Corp. of Cal. v. Superior Court* (2020) 9 C5th 215, applied the rule that the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. See Ch. 21, *Asserting a Particular Construction of Contract*, § 21.15.

**Meaning.** *Travelers Prop. Cas. Co. of Am. v. KLA-Tencor Corp.* (2020) 45 CA5th 156, 258 CR3d 545, discerns the term “malicious prosecution” in insurance policy as not reasonably interpreted to include *Walker Process* claims. See Ch. 21, *Asserting a Particular Construction of Contract*, § 21.35.

**Meaning.** *Mathews v. Happy Valley Conference Ctr., Inc.* (2019) 43 CA5th 236, 256 CR3d 497, concluded that an employee manual’s boilerplate language on employment discrimination and reference to equal opportunity laws and remedies could not be interpreted as a waiver of the religious entity exemption from those laws. See Ch. 21, *Asserting a Particular Construction of Contract*, § 21.35.

**Breach of Contract—Express Repudiation.** *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2019) 42 CA5th 918, 256 CR3d 139, held that allegations that county refused to apply two provisions in contract with employee union was sufficient to plead an action for anticipatory breach. See Ch.

22, *Suing or Defending Action for Breach of Contract*, § 22.23[1][b].

**Breach of Contract—No Duty.** *Kanovsky v. At Your Door Self Storage* (2019) 42 CA5th 594, 255 CR3d 578, clarified that a party to a contract that expressly relieves another party from a duty may not claim the other party breached the contract by not performing the duty from which the other party was expressly relieved. See Ch. 22, *Suing or Defending Action for Breach of Contract*, § 22.63A.

**Breach of Contract—Anti-SLAPP.** *Ojeh v. Brown* (2019) 43 CA5th 1027, 257 CR3d 146, decided that a claim for breach of contract, among others, arose from activity under CCP § 425.16. See Ch. 22, *Suing or Defending Action for Breach of Contract*, § 22.70A.

**Breach of Contract—Anti-SLAPP.** *Jeppson v. Ley* (2020) 44 CA5th 845, 257 CR3d 921, held that a claim of breach of contract based on statements on a neighborhood website was not subject to an anti-SLAPP motion, because it did not arise from protected activity of interest to the public. See Ch. 22, *Suing or Defending Action for Breach of Contract*, § 22.70A.

**Breach of Contract—Anti-SLAPP.** *C.W. Howe Partners Inc. v. Mooradian* (2019) 43 CA5th 688, 256 CR3d 806, specified that the failure to indemnify under indemnity clause of contract was not protected activity under CCP § 425.16. See Ch. 22, *Suing or Defending Action for Breach of Contract*, § 22.70A.



**Breach of Duty of Good Faith.** *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2019) 42 CA5th 918, 256 CR3d 139, rules that where the relevant provisions of the parties' agreement remain to be interpreted, it is premature to determine the scope of the implied covenant of good faith before the trier of fact has resolved the contract interpretation issue. See Ch. 23, *Suing or Defending Action for Breach of Duty of Good Faith and Fair Dealing*, § 23.08[1].

**Breach of Warranty.** *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 CA5th 334, 256 CR3d 484, concludes that where the manufacturer sells directly to the public, even if only partnering with a separate retailer, it takes on the role of a retailer and is subject to the obligations of a retailer under the Song-Beverly Act. See Ch. 24, *Suing or Defending Action for Breach of Warranty*, § 24.05[3].

**Breach of Warranty.** *Montoya v. Ford Motor Co.* (2020) 46 CA5th 493, 260 CR3d 95, affirmed the rule that the four-year period of Com Code § 2725 governs actions under the Song-Beverly Act. See Ch. 24, *Suing or Defending Action for Breach of Warranty*, § 24.38[2].

## **COVID-19 EMERGENCY COURT RULES.**

The following are changes to the California Rules of Court and Emergency Rules issued by the California Supreme Court on April 4, 2020 and April 6, 2020. The first entry is the amended Cal. Rules of Court, Rule

8.66, and the subsequent entries are the Emergency Rules Related to COVID-19, adopted as Appendix I to the Rules of Court.

### **Rule 8.66. Tolling or Extending Time Because of Public Emergency**

**(a) Emergency tolling or extensions of time** If made necessary by the occurrence or danger of an earthquake, fire, public health crisis, or other public emergency, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:

(1) Toll for up to 30 days or extend by no more than 30 days any time periods specified by these rules; or

(2) Authorize specified courts to toll for up to 30 days or extend by no more than 30 days any time periods specified by these rules.

(Subd (a) amended effective April 4, 2020; previously amended effective January 1, 2007.)

### **(b) Applicability of order**

(1) An order under (a)(1) must specify the length of the tolling or extension and whether the order applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.

(2) An order under (a)(2) must specify the length of the authorized tolling or extension.

(Subd (b) amended effective April 4, 2020.)

**(c) Renewed orders** If made necessary by the nature or extent of the

public emergency, with or without a request, the Chair of the Judicial Council may renew an order issued under this rule prior to its expiration. An order may be renewed for additional periods not to exceed 30 days per renewal.

(Subd (c) amended effective April 4, 2020; previously amended effective January 1, 2007.)

## **EMERGENCY RULES RELATED TO COVID-19 (APRIL 6, 2020)**

### **• Emergency Rule 1. Unlawful detainers**

**(a) Application** Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

**(b) Issuance of summons** A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

**(c) Entry of default** A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

**(1)** The action is necessary to protect public health and safety; and

**(2)** The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

**(d) Time for trial** If a defendant

has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

**(e) Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

### **• Emergency Rule 2. Judicial foreclosures—suspension of actions**

Notwithstanding any other law, this rule applies to any action for foreclosure on a mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil Procedure, beginning at section 725a, including any action for a deficiency judgment, and provides that, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by the Judicial Council:

**(1)** All such actions are stayed, and the court may take no action and issue no decisions or judgments unless the court finds that action is required to further the public health and safety.

**(2)** Any statute of limitations for filing such an action is tolled.



(3) The period for electing or exercising any rights under that chapter, including exercising any right of redemption from a foreclosure sale or petitioning the court in relation to such a right, is extended.

• **Emergency Rule 3. Use of technology for remote appearances**

(a) **Remote appearances** Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts must conduct judicial proceedings and court operations as follows:

(1) Courts may require that judicial proceedings and court operations be conducted remotely.

(2) In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the court may conduct any criminal proceeding remotely. As used in this rule, “consent of the defendant” means that the consent of the defendant is required only for the waiver of the defendant’s appearance as provided in emergency rule 5. For good cause shown, the court may require any witness to personally appear in a particular proceeding.

(3) Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and

authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.

(b) **Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

• **Emergency Rule 4. Emergency Bail Schedule**

(a) **Purpose** Notwithstanding any other law, this rule establishes a statewide Emergency Bail Schedule, which is intended to promulgate uniformity in the handling of certain offenses during the state of emergency related to the COVID-19 pandemic.

(b) **Mandatory application** No later than 5 p.m. on April 13, 2020, each superior court must apply the statewide Emergency Bail Schedule:

(1) To every accused person arrested and in pretrial custody.

(2) To every accused person held in pretrial custody.

(c) **Setting of bail and exceptions** Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony offenses must be set at \$0, with the exception of only the offenses listed below:

(1) A serious felony, as defined in Penal Code section 1192.7 (c), or a violent felony, as defined in Penal

Code section 667.5 (c);

(2) A felony violation of Penal Code section 69;

(3) A violation of Penal Code section 166 (c)(1);

(4) A violation of Penal Code section 136.1 when punishment is imposed under section 136.1 (c);

(5) A violation of Penal Code section 262;

(6) A violation of Penal Code sections 243 (e)(1) or 273.5;

(7) A violation of Penal Code section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;

(8) A violation of Penal Code section 422 where the offense is punished as a felony;

(9) A violation of Penal Code section 646.9;

(10) A violation of an offense listed in Penal Code section 290 (c);

(11) A violation of Vehicle Code sections 23152 or 23153;

(12) A felony violation of Penal Code section 463; and

(13) A violation of Penal Code section 29800.

**(d) Ability to deny bail** Nothing in the Emergency Bail Schedule restricts the ability of the court to deny bail as authorized by article I, section 12, or 28 (f)(3) of the California Constitution.

**(e) Application of countywide bail schedule**

(1) The current countywide bail schedule of each superior court must remain in effect for all offenses listed in exceptions (1) through (13) of the Emergency Bail Schedule, including any count-specific conduct enhancements and any status enhancements.

(2) Each superior court retains the authority to reduce the amount of bail listed in the court's current countywide bail schedule for offenses in exceptions (1) through (13), or for any offenses not in conflict with the Emergency Bail Schedule.

**(f) Bail for violations of post-conviction supervision**

(1) Under the statewide Emergency Bail Schedule, bail for all violations of misdemeanor probation, whether the arrest is with or without a bench warrant, must be set at \$0.

(2) Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, must be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court's countywide schedule of bail for charges of conviction listed in exceptions (1) through (13), including any enhancements.

**(g) Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

• **Emergency Rule 5. Personal appearance waivers of defendants during health emergency**

**(a) Application** Notwithstanding any other law, including Penal Code sections 865 and 977, this rule applies to all criminal proceedings except cases alleging murder with special circumstances and cases in which the defendant is currently incarcerated in state prison, as governed by Penal Code section 977.2.

**(b) Types of personal appearance waivers**

**(1)** With the consent of the defendant, the court must allow a defendant to waive his or her personal appearance and to appear remotely, either through video or telephonic appearance, when the technology is available.

**(2)** With the consent of the defendant, the court must allow a defendant to waive his or her appearance and permit counsel to appear on his or her behalf. The court must accept a defendant's waiver of appearance or personal appearance when:

**(A)** Counsel for the defendant makes an on the record oral representation that counsel has fully discussed the waiver and its implications with the defendant and the defendant has authorized counsel to proceed as counsel represents to the court;

**(B)** Electronic communication from the defendant as confirmed by defendant's counsel; or

**(C)** Any other means that ensures the validity of the defendant's waiver.

**(c) Consent by the defendant**

**(1)** For purposes of arraignment and entry of a not guilty plea, consent means a knowing, intelligent, and voluntary waiver of the right to appear personally in court. Counsel for the defendant must state on the record at each applicable hearing that counsel is proceeding with the defendant's consent.

**(2)** For purposes of waiving time for a preliminary hearing, consent also means a knowing, intelligent, and voluntary waiver of the right to hold a preliminary hearing within required time limits specified either in Penal Code section 859b or under emergency orders issued by the Chief Justice and Chair of the Judicial Council.

**(3)** The court must accept defense counsel's representation that the defendant understands and agrees with waiving any right to appear unless the court has specific concerns in a particular matter about the validity of the waiver.

**(d) Appearance through counsel**

**(1)** When counsel appears on behalf of a defendant, courts must allow counsel to do any of the following:

**(A)** Waive reading and advisement of rights for arraignment.

**(B)** Enter a plea of not guilty.

**(C)** Waive time for the preliminary hearing.

**(2)** For appearances by counsel, including where the defendant is either appearing remotely or has waived his or her appearance and or

counsel is appearing by remote access, counsel must confirm to the court at each hearing that the appearance by counsel is made with the consent of the defendant.

**(e) Conduct of remote hearings**

(1) With the defendant's consent, a defendant may appear remotely for any pretrial criminal proceeding.

(2) Where a defendant appears remotely, counsel may not be required to be personally present with the defendant for any portion of the criminal proceeding provided that the audio and/or video conferencing system or other technology allows for private communication between the defendant and his or her counsel. Any private communication is confidential and privileged under Evidence Code section 952.

(f) **Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

**• Emergency Rule 6. Emergency orders: juvenile dependency proceedings**

(a) **Application** This rule applies to all juvenile dependency proceedings filed or pending until the state of emergency related to the COVID-19 pandemic is lifted.

(b) **Essential hearings and orders** The following matters should be prioritized in accordance with existing

statutory time requirements.

(1) Protective custody warrants filed under Welfare and Institutions Code section 340.

(2) Detention hearings under Welfare and Institutions Code section 319. The court is required to determine if it is contrary to the child's welfare to remain with the parent, whether reasonable efforts were made to prevent removal, and whether to vest the placing agency with temporary placement and care.

(3) Psychotropic medication applications.

(4) Emergency medical requests.

(5) A petition for reentry of a nonminor dependent.

(6) Welfare and Institutions Code section 388 petitions that require an immediate response based on the health and safety of the child, which should be reviewed for a prima facie showing of change of circumstances sufficient to grant the petition or to set a hearing. The court may extend the final ruling on the petition beyond 30 days.

**(c) Foster care hearings and continuances during the state of emergency**

(1) A court may hold any proceeding under this rule via remote technology consistent with rule 5.531 and emergency rule 3.

(2) At the beginning of any hearing at which one or more participants appears remotely, the court must admonish all the participants that the

proceeding is confidential and of the possible sanctions for violating confidentiality.

**(3)** The child welfare agency is responsible for notice of remote hearings unless other arrangements have been made with counsel for parents and children. Notice is required for all parties and may include notice by telephone or other electronic means. The notice must also include instructions on how to participate in the court hearing remotely.

**(4) Court reports**

**(A)** Attorneys for parents and children must accept service of the court report electronically.

**(B)** The child welfare agency must ensure that the parent and the child receive a copy of the court report on time.

**(C)** If a parent or child cannot receive the report electronically, the child welfare agency must deliver a hard copy of the report to the parent and the child on time.

**(5)** Nothing in this subdivision prohibits the court from making statutorily required findings and orders, by minute order only and without a court reporter, by accepting written stipulations from counsel when appearances are waived if the stipulations are confirmed on the applicable Judicial Council forms or equivalent local court forms.

**(6)** If a court hearing cannot occur either in the courthouse or remotely, the hearing may be continued up to 60 days, except as otherwise specified.

**(A)** A dispositional hearing under Welfare and Institutions Code section 360 should not be continued more than 6 months after the detention hearing without review of the child's circumstances. In determining exceptional circumstances that justify holding the dispositional hearing more than 6 months after the child was taken into protective custody, the impact of the state of emergency related to the COVID-19 pandemic must be considered.

**i.** If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.

**ii.** The court may continue the matter for a full hearing on all dispositional findings and orders.

**(B)** A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must review the case to determine if the agency has made reasonable efforts to return the child home or

arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. Visitation may only be suspended if a detriment finding is made in a particular case based on the facts unique to that case. A detriment finding must not be based solely on the existence of the impact of the state of emergency related to the COVID-19 pandemic or related public health directives.

(A) The attorney for the child or parent may ask the juvenile court to

review the change in manner of visitation. The child or parent has the burden of showing that the change is not in the best interest of the child or is not based on current public health directives.

(B) A request for the court to review the change in visitation during this time period must be made within 14 court days of the change. In reviewing the change in visitation, the court should take into consideration the factors in (c)(7).

(d) **Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

• **Emergency Rule 7. Emergency orders: juvenile delinquency proceedings**

(a) **Application** This rule applies to all proceedings in which a petition has been filed under Welfare and Institutions Code section 602 in which a hearing would be statutorily required during the state of emergency related to the COVID-19 pandemic.

(b) **Juvenile delinquency hearings and orders during the state of emergency**

(1) A hearing on a petition for a child who is in custody under Welfare and Institutions Code section 632 or 636 must be held within the statutory timeframes as modified by an order of the court authorized by Government Code section 68115.



The court must determine if it is contrary to the welfare of the child to remain in the home, whether reasonable services to prevent removal occurred, and whether to place temporary placement with the probation agency if the court will be keeping the child detained and out of the home.

(2) If a child is detained in custody and an in-person appearance is not feasible due to the state of emergency, courts must make reasonable efforts to hold any statutorily required hearing for that case via remote appearance within the required statutory time frame and as modified by an order of the court authorized under Government Code section 68115 for that proceeding. If a remote proceeding is not a feasible option for such a case during the state of emergency, the court may continue the case as provided in (d) for the minimum period of time necessary to hold the proceedings.

(3) Without regard to the custodial status of the child, the following hearings should be prioritized during the state of emergency related to the COVID-19 pandemic:

(A) Psychotropic medication applications.

(B) All emergency medical requests.

(C) A petition for reentry of a nonminor dependent.

(D) A hearing on any request for a warrant for a child.

(E) A probable cause determination for a child who has been de-

tained but has not had a detention hearing within the statutory time limits.

(4) Notwithstanding any other law, and except as described in (5), during the state of emergency related to the COVID-19 pandemic, the court may continue for good cause any hearing for a child not detained in custody who is subject to its juvenile delinquency jurisdiction until a date after the state of emergency has been lifted considering the priority for continued hearings in (d).

(5) For children placed in foster care under probation supervision, a judicial determination of reasonable efforts must be made within 12 months of the date the child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must nevertheless hold a review to determine if the agency has made reasonable efforts to return the child home or place the child permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

**(c) Proceedings with remote appearances during the state of emergency**

(1) A court may hold any proceeding under this rule via remote technology consistent with rule 5.531 and emergency rule 3.

(2) At the beginning of any hearing conducted with one or more participants appearing remotely, the court must admonish all the participants

that the proceeding is confidential and of the possible sanctions for violating confidentiality.

(3) The court is responsible for giving notice of remote hearings, except for notice to a victim, which is the responsibility of the prosecuting attorney or the probation department. Notice is required for all parties and may include notice by telephone or other electronic means. The notice must also include instructions on how to participate in the hearing remotely.

(4) During the state of emergency, the court has broad discretion to take evidence in the manner most compatible with the remote hearing process, including but not limited to taking testimony by written declaration. If counsel for a child or the prosecuting attorney objects to the court's evidentiary procedures, that is a basis for issuing a continuance under (d).

(d) **Continuances of hearings during the state of emergency** Notwithstanding any other law, the court may for good cause continue any hearing other than a detention hearing for a child who is detained in custody. In making this determination, the court must consider the custody status of the child, whether there are evidentiary issues that are contested, and, if so, the ability for those issues to be fairly contested via a remote proceeding.

(e) **Extension of time limits under Welfare and Institutions Code section 709** In any case in which a child has been found incompetent under Welfare and Institutions Code section 709 and that child is eligible for

remediation services or has been found to require secure detention, any time limits imposed by section 709 for provision of services or for secure detention are tolled for the period of the state of emergency if the court finds that remediation services could not be provided because of the state of emergency.

(f) **Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

• **Emergency Rule 8. Emergency orders: temporary restraining or protective orders**

(a) **Application** Notwithstanding any other law, this rule applies to any emergency protective order, temporary restraining order, or criminal protective order that was requested, issued, or set to expire during the state of emergency related to the COVID-19 pandemic. This includes requests and orders issued under Family Code sections 6250 or 6300, Code of Civil Procedure sections 527.6, 527.8, or 527.85, Penal Code sections 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304, 362.4, or 15657.03, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or parentage proceeding under Family Code section 6221.

(b) **Duration of orders**

(1) Any emergency protective order made under Family Code section 6250 that is issued or set to expire during the state of emergency, must remain in effect for up to 30 days from the date of issuance.

(2) Any temporary restraining order or gun violence emergency protective order, issued or set to expire during the state of emergency related to the COVID-19 pandemic, must be continued for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days.

(3) Any criminal protective order, subject to this rule, set to expire during the state of emergency, must be automatically extended for a period of 90 days, or until the matter can be heard, whichever occurs first.

(4) Any restraining order or protective order after hearing that is set to expire during the state of emergency related to the COVID-19 pandemic must be automatically extended for up to 90 days from the date of expiration to enable a protected party to seek a renewal of the restraining order.

### **(c) Ex parte requests**

(1) Courts must provide a means for the filing of ex parte requests for temporary restraining orders. Courts may do so by providing a physical location, drop box, or, if feasible, through electronic means.

(2) Any ex parte request may be filed using an electronic signature by a party or a party's attorney.

### **(d) Service of Orders**

If a respondent appears at a hearing by video, audio, or telephonically, and the court grants an order, in whole or in part, no further service is required upon the respondent for enforcement of the order, provided that the court follows the requirements of Family Code section 6384.

**(e) Entry of orders into California Law Enforcement Telecommunications System** Any orders issued by a court modifying the duration or expiration date of orders subject to this rule, must be transmitted to the Department of Justice through the California Law Enforcement Telecommunications System (CLETS), as provided in Family Code section 6380, without regard to whether they are issued on Judicial Council forms, or in another format during the state of emergency.

### **• Emergency Rule 9. Toll the statutes of limitations for civil causes of action**

Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

### **• Emergency Rule 10. Extensions of time in which to bring a civil action to trial**

**(a) Extension of five years in which to bring a civil action to trial** Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time

in which to bring the action to trial is extended by six months for a total time of five years and six months.

**(b) Extension of three years in which to bring a new trial** Notwithstanding any other law, including Code of Civil Procedure section 583.320, for all civil actions filed on or before April 6, 2020, if a new trial is granted in the action, the three years provided in section 583.320 in which the action must again be brought to trial is extended by six months for a total time of three years and six months. Nothing in this subdivision requires that an action must again be brought to trial before expiration of the time prescribed in (a).

• **Emergency Rule 11. Deposi-**

**tions through remote electronic means**

**(a) Deponents appearing remotely** Notwithstanding any other law, including Code of Civil Procedure section 2025.310 (a) and (b), and rule 3.1010 (c) and (d), a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition.

**(b) Sunset of rule** This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

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