EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-38-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS government institutions throughout California are working to mitigate the impacts of the COVID-19 pandemic; and

WHEREAS the Judicial Branch, under the leadership of the Judicial Council and its Chairperson, is among those government institutions that has risen to the challenge presented by COVID-19; and

WHEREAS the Judicial Branch retains extensive authority, statutory and otherwise, to manage its own operations as it deems appropriate to mitigate the impacts of COVID-19; and

WHEREAS the authority entrusted to the Judicial Branch and its officers under existing law includes the authority of the Chairperson of the Judicial Council to issue orders, under Government Code section 68115, authorizing courts to take certain actions in response to an emergency, as well as the authority of the Judicial Council, under Article VI, section 6 of the California Constitution, to "adopt rules for court administration, practice, and procedure" as long as those rules are not inconsistent with statute; and

WHEREAS the Chairperson of the Judicial Council has already exercised her authority to suspend jury trials; to extend the time period for bringing an action to trial; to authorize particular courts to deem certain days holidays under Code of Civil Procedure sections 12 and 12a; and to take other action to protect the health and safety of all who work in, use, and otherwise attend the courts, while also preserving parties' due process rights; and

WHEREAS the purpose of this Order is to enhance the authority of the Judicial Council and its Chairperson to issue emergency orders; to amend or adopt rules for court administration, practice, and procedure; and to take other action to respond to the emergency caused by COVID-19;

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1) To the extent Government Code section 68115 or any other provision of law imposes or implies a limitation on the subject matter the Chairperson of the Judicial Council may address via emergency order or statewide rule issued pursuant to section 68115, that limitation is suspended. This paragraph is intended to remove any impediment that would otherwise prevent the Chairperson from authorizing, by

emergency order or statewide rule, any court to take any action she deems necessary to maintain the safe and orderly operation of that court. Nothing in this paragraph is intended to in any way restrict the Chairperson's existing authority under section 68115, or to alter in any way any order the Chairperson has previously issued pursuant to her authority under section 68115.

2) To the extent Government Code section 68115 or section 68072, or any other provision of law, imposes or implies a limitation on the authority of the Judicial Council or its Chairperson to provide (by emergency order issued pursuant to section 68115 or otherwise) for an emergency statewide or local rule or order amending the California Rules of Court or any other applicable court rule, or for any other expedited procedure for amending the California Rules of Court or any other applicable court rule, that limitation is suspended. This paragraph is intended to remove any impediment that would otherwise prevent the Judicial Council or its Chairperson from establishing (by emergency order or otherwise) an emergency or otherwise expedited procedure for making such amendments to the California Rules of Court or any other applicable court rule as the Judicial Council may, in its discretion, choose to adopt in response to the COVID-19 pandemic. This paragraph should be construed to extend the rulemaking authority of the Judicial Council to its constitutional maximum under Article VI, section 6 of the California Constitution.

3) In the event that the Judicial Council or its Chairperson, in the exercise of rulemaking authority consistent with Paragraph 2, wishes to consider a rule that would otherwise be inconsistent with any statute concerning civil or criminal practice or procedure, the relevant statute is suspended, subject to the following conditions:

    a) The statute is suspended only to the extent it is inconsistent with the proposed rule;
    b) The statute is suspended only if the proposed rule is adopted; and
    c) The statute is suspended only when the adopted rule becomes effective.

    The purpose of this paragraph is to afford the Judicial Council and its Chairperson maximum flexibility to adopt any rules concerning civil or criminal practice or procedure they may deem necessary to respond to the COVID-19 pandemic, while ensuring that the rules adopted "shall not be inconsistent with statute," as provided in Article VI, section 6 of the California Constitution.

4) In addition to any statute suspended pursuant to Paragraph 3, the following statutes are suspended:

    a) Code of Civil Procedure section 2025.310, subdivision (b), to the extent that subdivision limits a court's authority to provide that a party deponent may appear at a deposition by telephone.
    b) Code of Civil Procedure section 1010.6, subdivisions (b) through (d), to the extent those subdivisions limit a court's authority to order parties to accept electronic service, or to perform service

electronically.

5) Nothing in this Order is intended to suspend or otherwise interfere with any rule of the California Rules of Court, any local rule of any California court, or any other rule or order of any California court, except to the extent the Judicial Council or its Chairperson may provide consistent with this Order or in a manner otherwise authorized by law.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of March 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State