Case No. ____________

CALIFORNIA SUPREME COURT

BARBARA FRANKLIN,

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA FOR
THE COUNTY OF LOS ANGELES,

Respondent,

DAIMLER TRUCKS NORTH AMERICA, LLC, ET AL.,

Real Parties in Interest.

From the denial of a Petition for Writ of Mandate and Prohibition,
Court of Appeal, Second Appellate District, Case No. B306827
Superior Court of Los Angeles, Case No. JCCP4674/19STCV36610
Honorable David S. Cunningham, Judge Presiding

PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rule of Court 8.208, Petitioner and her counsel certify that apart from the attorneys representing the Plaintiff in this proceeding, as disclosed on the cover of this Brief, they know of no other person or entity that has a financial or other interest in the outcome of the proceeding that they reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

/s/ *Josiah Parker*

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INTRODUCTION

This Court's immediate intervention in this case is critically necessary in order to assure that a 90-year-old mesothelioma victim is able to preserve her ability to obtain a judgment against the asbestos defendants who caused her injury before she dies. As detailed below, Barbara Franklin ("Franklin") obtained a preferential trial date pursuant to Code of Civil Procedure section 36. Her trial was set for March 30, 2020. However, because of the COVID-19 pandemic, the presiding judge of the Los Angeles Superior Courts entered an order vacating *all* trial dates, including those preferentially set, and ordered that none of those trials could proceed before January 2021.[1] Not only was that beyond the emergency powers granted to the trial courts under Judicial Council orders, but it severely impacts the litigants most vulnerable to losing their right to justice because of their imminent death.

Franklin filed a writ petition in the Second District Court of Appeal seeking reversal of that unauthorized administrative

[1] On September 10, 2020, during the preparation of this Petition, the Presiding Judge issued a new general order, available at the Los Angeles Superior Court website, www.lacourt.org. Other than rationalizing, and without any substantive basis, the Order affirms that civil trials cannot be set before January 2021; nor does the Order provide any compelling justification for concluding that remote trials cannot be conducted, except for a vague assertion that there are logistical difficulties in doing so. But as discussed below, other Superior Courts in California and elsewhere have managed to overcome those logistical difficulties and numerous guidelines have been developed for managing remote civil jury trials. The new order therefore does nothing to address the issues here.

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order, either in general or in her case in particular. After requesting an opposition and obtaining further briefing from the parties, Division One of that court summarily denied the writ petition, without explanation. (See Exhibit A.)

Those circumstances are sufficient, in and of themselves, to require this Court's immediate review, or, at the very least, a remand by this Court ordering the appellate court to consider the petition on its merits. But there is also another alternative. As reflected in Exhibit B, attached hereto, Division Four of the Second District Court of Appeal has requested preliminary opposition to a writ petition raising the identical issue in a case entitled *Gillum, et al. v. Los Angeles Superior Court,* Case No. B307239.

Unlike the bare-bones request for opposition in this case (see Exhibit C), the request for preliminary opposition in *Gillum* requires the Los Angeles Superior Court and real parties in interest to respond to several pertinent questions which makes clear the importance of the issues and the need to examine both the legal basis for the Superior Court's emergency order and the potential for trying cases by use of remote technology. In other words, the *Gillum* court has elucidated the precise issues which must be addressed in these critically-important preference cases in order to assure that parties entitled to preferential trial settings can have their constitutional rights protected, even in the face of a pandemic.

Accordingly, Franklin is requesting this Court's assistance by issuing one of the following alternative orders:

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(1) A grant of this Petition for Review with an order remanding the matter to the appellate court and requiring that this case be consolidated with the *Gillum* case for determination in order that, in the event relief in the form of an order mandating that the Superior Court provide a process for initiating immediate trials in preference cases, Franklin can also obtain that same relief;

(2) A grant of this Petition for Review with an order remanding the matter to the appellate court for consideration of the issue on its merits; or,

(3) A grant of this Petition for Review so that this Court can directly take up the issues immediately.

The issues presented are of the utmost concern and require immediate action in order to preserve the rights of both Franklin and other dying litigants so that they may enforce their rights to have their cases heard.

ISSUES FOR REVIEW

As correctly articulated by the Second District Court of Appeal, Division Four in its response to the *Gillum* writ petition, the relevant issues are as follows:

1. Did the Superior Court have the legal authority to order civil preference trials scheduled through August 8, 2020, to be vacated and not set before January 2021?
2. What are the specific circumstances justifying the order?

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3. Does the order violate the plaintiff's due process rights in the instant case?
4. Is the use of remote technology reasonably practicable to conduct preference trials?
5. Is transfer of the case to another county reasonably practicable?

WHY REVIEW SHOULD BE GRANTED

A. Nature of the Case.

Petitioner Barbara Franklin is 90 years old. [Ex. 1, App. 7-42; Ex. 2, App. 55 at ¶¶ 3, 4.] In August 2019 she was diagnosed with malignant epithelial mesothelioma, a terminal cancer caused by asbestos exposure. In October 2019, she brought this action against Real Parties-in-Interest, former asbestos product manufacturers.

Owing to her age and deteriorating health, on December 3, 2019, Petitioner sought, and was granted, trial calendar preference under Code of Civil Procedure § 36, subd. (a), (d), and (e). The trial court set her case for trial for March 30, 2020. [Ex. 4, App 124-125.]

However, in early March, the COVID-19 pandemic hit California, forcing facility closures and event cancellations that abruptly halted all public gatherings. In an effort to preserve the functioning of the state's judicial system, while at the same time protecting the health of court personnel and the public, Chief Justice Tani Cantil-Sakauye issued a series of statewide

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emergency orders pursuant to Government Code Section 68115, commencing with a March 23, 2020, statewide order that continued all civil jury trials in California, including Petitioner's, for 60 days from the date of the order. RJN Ex. 29, at pp. 176-178.]

Triggered during times of public calamity, Government Code section 68115 authorizes the Chair of the Judicial Council—here, the Chief Justice—to mitigate a disaster's effects on the state's court system by authorizing certain emergency relief. Among the relief the Chief Justice can authorize is to grant *limited* section 68115 powers to the presiding judges of the California counties who ask for it.

Between March 16 and July 10, 2020, Presiding Judge for Respondent Court Los Angeles Superior Courts, the Honorable Kevin C. Brazile, applied to Justice Cantil-Sakauye for section 68115 authority in a series of six petitions, resulting in six orders granting Respondent certain emergency powers. [See RJN Exs. 32-37, at pp. 190-208.]

Importantly, the only public-calamity powers that the Chief Justice authorized Respondent to exercise over civil cases in L.A. County, were: (1) to allow for the transfer of cases out of the county; (2) to allow for the holding of sessions anywhere within the county; and (3) to declare court holidays for various purposes. The last of these orders, Justice Cantil-Sakauye's July 10, 2020 order, expired on August 8, 2020. [See RJN Ex. 37, at pp. 206-208.]

Judge Brazile issued a series of orders governing deadlines

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and procedures for pending and prospective civil actions in Los Angeles County. [See RJN Exs. 39-46, at pp. 214-260.] In flagrant excess of the emergency power granted to him, and contrary to the significant public policy interests embodied in Code of Civil Procedure section 36 and the California and U.S. Constitutions, the last of his orders, on July 10, 2020, ordered all civil jury trials scheduled from July 10, 2020 to August 8, 2020 to be continued, with trial dates to be determined by the court at some future time. Judge Brazile also ordered that the Superior Court would not set or commence any civil jury trials before January 2021. (RJN Ex. 45, at pp. 256-257, ¶ 3, subd. (f).]

Having had Petitioner's trial date and trial setting conference continued over half a dozen times pursuant to Judge Brazile's orders, Franklin's counsel appeared for a trial status conference before Hon. David S. Cunningham on July 16, 2020. Over Franklin's objection, but consistent with Judge Brazile's July order, Judge Cunningham vacated Franklin's then-current July 16 trial date and scheduled it to commence on a future date not before January 2021. Ex. 14, App. 228; Ex. 15, App. 236:4-241:25, 244:4-10, 255:6-256:6.]

Judge Cunningham remarked that not only did he have no authority to honor Franklin's trial-preference date under Judge Brazile's July order, but that, owing to the ongoing COVID-19 pandemic, it might even be impossible to honor her preference next year. [*Ibid.*]

In sum, the Respondent Court issued two sets of orders continuing Franklin's preference date that, as explained below,

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were in error:

(i) Presiding Judge Kevin C. Brazile's July Order continuing all civil jury trials scheduled to commence in Los Angeles County between July 10, 2020 and August 8, 2020 to a future date not before January 2021; and

(ii) Judge David S. Cunningham's July Order vacating Franklin's trial date, set to proceed that day, and continuing it to a future date not before January 2021.

In the Memorandum of Points and Authorities below, Franklin demonstrates that the Respondent Court's orders continuing her trial date to some indefinite time in the future, over nine months after her original date, violate her section 36 preference rights and her constitutional rights to due process and to a jury trial, as well as the paramount public policy interest of ensuring meaningful access to justice.

As in *Sprowl v. Superior Court* (1990) 219 Cal.App.3d 777, Respondent Court continued Franklin's trial date in the absence of evidence that trying her case was impossible—either because "all of [Respondent Court's] trial departments [were currently] engaged in trials of criminal cases facing dismissal…or civil cases with trial preferences ahead of petitioner's," or because the COVID-19 pandemic made trying the case infeasible.

To the contrary, the available evidence from Alameda and San Francisco courts, among others, is that trying civil cases in

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the midst of this pandemic is quite possible. While Los Angeles County's presiding judge has suspended all civil jury trials through at least January 2021, counties in Northern California are heeding Justice Cantil-Sakauye's admonition to use remote technology to conduct jury trials where appropriate. [RJN Ex. 29, at p. 177; see also RJN Ex. 64, at pp. 490-491.]

There have been at least three calendar preference trials in San Francisco and Alameda counties using remote technology: *Van Tassell et al. v. Asbestos Companies, et al.*, San Francisco County Superior Court, CGC-19-276806, *Wilgenbusch v. American Biltrite, et al.*, Alameda County Superior Court, Case No. RG19089791, *Ocampo v. Honeywell, et al.*, Alameda County Superior Court, Case No. RG19-041182. [RJN Ex. 56, at pp. 320-321; RJN Ex. 58, at pp. 413-418; RJN Ex. 60, at pp. 470-475.]

Indeed, in setting forth the remote technology procedures governing the *Wilgenbusch* and *Ocampo* matters, Alameda County Judges Seligman and Roesch characterize the court's duty to the public in the face of the COVID-19 crisis succinctly: "The court and parties face unprecedented challenges during this Covid-19 crisis. Earlier rulings from the Judicial Council suspended trials, and indeed for a while this court was nearly completely closed down. But the trials suspension period has passed, and the court, an essential service, has the duty to render justice, consistent with applicable health directives." [RJN Ex. 58, at pp. 413-418; RJN Ex. 60, at pp. 470-475.]

Other counties have adopted, or are adopting, the use of remote technology to move forward with civil trials well. [See,

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e.g., RJN Ex. 47, at p. 262 (noting that the court has "resume[d] civil, family law, and probate calendars using remote video and phone conferencing"); RJN Ex. 48, at p. 264 (noting that while "[t]here are currently no jury trials taking place…jury summonses are being sent and…[t]he Court anticipates that jury trials will begin in the near future"); RJN Ex. 52, at pp. 285-291 (providing that "[a]ll [civil] matters calendared on or after June 1, 2020, will proceed to the greatest extent possible," and while prohibiting physical appearances in the courtroom unless otherwise authorized by the court, providing for hearings via CourtCall and Zoom; also noting that jury service will resume on June 18, 2020); RJN Ex. 50, at pp. 271-273 (encouraging the use of remote technology and noting that jury trials will resume in civil matters on June 15, 2020); RJN Ex. 53, at pp. 293-294 (noting that Jury trials have restarted after a soft reopening began on May 26); RJN Ex. 49, at pp. 266-269 (providing that "Court trials and related settlement conferences will resume in person unless all parties agree to conduct them remotely"); see also RJN Ex. 51, at pp. 275-283 (noting that "[a]ll trials will be conducted telephonically or by video conferencing").]

And media reports confirm that remote technology trials have been occurring across the country and the world.[2]

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[2] Shift to Remote Civil Litigation Amid the Coronavirus Outbreak; Law.com, April 10, 2020 (https://www.law.com/newyorklawjournal/2020/04/10/shift-to-remote-civil-litigation-amid-the-coronavirus-outbreak/?slreturn=20200810140904); Schiffer, A court in Texas is holding the first jury trial by Zoom; The Verge, May 18, 2020 (https://www.theverge.com/2020/5/18/21262506/texas-court-jury-trial-zoom-remote-virtual-

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In fact, not only can Los Angeles county courts look to these other courts for guidance on how to conduct remote trials, but the American Board of Trial Advocates (ABOTA), an organization of over 7,600 esteemed plaintiff and defense trial lawyers, has published comprehensive recommendations for how to conduct civil trials using remote technology. [RJN Ex. 55, at pp. 299-318.]

Significantly, the Los Angeles Superior Court announced the use of a video technology, LACourtConnect, for use in hearings in the county. (See Ex. E.) This announcement was on *June 2, 2020* – over three months ago. Given that the technology is already available, there is no justification for delaying remote trials until 2021.

In short, not only are remote trials possible and not only is there substantial guidance for how they can be administered, but they are currently going forward in California superior courts (as well as across the nation and the world) *right now*.

There is no reason to believe Los Angeles county courts cannot do the same.

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verdict)'; First remote jury trial shows potential for widespread use; @ the Center, Flagship Newsletter of the National Center for State Courts, May 20, 2020 (https://www.ncsc.org/newsroom/at-the-center/2020/may-20); Remote jury trials during COVID-19: what one project found about fairness and technology, June 16, 2020 England and Wales; The Conversation (https://theconversation. com/remote-jury-trials-during-covid-19-what-one-project-found-about-fairness-and-technology-142505); Memorandum: The Permissibility & Constitutionality of Jury Trial by Videoconference; Civil Jury Project at NYU School of Law (https://civil juryproject.law.nyu.edu/memorandum-the-permissibility-constitution)

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As noted in footnote 1, above on September 10, 2020, Judge Brazile issued another general order, available at www.lacourt.org. That order discusses the phased in "ramp up" for returning to "normal" court functions. At page 4, paragraph c., the order continues to maintain that it will not be possible, due to continuing COVID-19 conditions and the need to try the pending 7000 criminal cases, to begin setting civil jury trials before January 2021.

The order also rejects out-of-hand any possibility of conducting remote jury trials: "[W]hile the Court accelerated its plans to implement technology to allow judicial officers to conduct proceedings remotely, for legal, equitable, and logistical reasons, it cannot mandate remote appearances in every case. Remote appearances in civil jury trials will create logistical issues with respect to jury selection, jury deliberations, and the handling of evidence."

While it is indisputably true that there are logistical issues related to conducting civil jury trials by way of remote technology, it ***can*** be done and, as noted above, courts in California and elsewhere have successfully overcome those technological and logistical issues. Given that there is no end in sight regarding the pandemic – not even the arbitrary January 2021 deadline already imposed by the Respondent Court – the reality is that plunge must be taken. And the sooner the better.

For these reasons the ongoing pandemic does not distinguish this case from *Sprowl*. If anything, extraordinary relief is even more appropriate here than it was in *Sprowl*

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because here, unlike *Sprowl*, Respondent Court's continuance orders not only violated section 36, they violated the emergency authority granted to Respondent Court by the Chief Justice, which expires on August 8.

Thus, like the *Sprowl* court, it is necessary that the Respondent Court be required to:

(i) Vacate Judge Brazile's July 10, 2020 Order continuing all L.A. County civil trials scheduled to commence between July 10, 2020 and August 8, 2020, to a time not before January 1, 2021;

(ii) Vacate Judge Cunningham's July 16, 2020 Order continuing Franklin's trial date, set to proceed that day, to a time not before January 1, 2021; and

(iii) Enter a new order setting this case for trial immediately.

Furthermore, because the ongoing COVID-19 crisis cannot, as Judge Cunningham suggested in issuing his July continuance order, constitute independent justification for indefinitely continuing civil jury trials, it is critical that this issue be addressed on its merits as soon as possible. Every day's delay brings Franklin, and other preference plaintiffs like her, closer to the loss of their right to have a jury assess and determine their claims and to obtain their full measure of damages.

If the ongoing COVID-19 pandemic did justify continuing civil jury trials, Los Angeles courts could potentially refuse to set civil trials for years as the government and health establishment search for a COVID-19 vaccine. Meanwhile, the courts in other

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counties will have been busy protecting their citizens' due process rights using remote technology. As Alameda County Judges Seligman and Roesch recently remarked in setting forth procedures for remote jury trials over which they have presided, "the trials suspension period has passed, and the court, an essential service, has the duty to render justice, consistent with applicable health directives." That same duty applies to Los Angeles County courts, and any interpretation of the public-calamity statutes that hold otherwise renders those statutes unconstitutional as applied to Franklin and numerous others in her same position.

B. The Petitions for Writ Relief

As noted above, the Respondent Court refused to order this case to trial on July 16, 2020.

Franklin filed a Petition for Writ of Mandate or Prohibition on August 3, 2020 with the Second District Court of Appeal. The was assigned to Division One of the Court under Case No. B306827.

On August 5, 2020, the appellate court in this case requested an opposition from both the Respondent Court and the Real Parties in Interest. The order was a general request for an opposition and did not identify any specific issues to be addressed.

The Respondent Court filed its opposition on August 18 and Real Parties in Interest filed theirs on August 19. The reply was timely filed on August 26, 2020.

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The Court of Appeal summarily denied the petition on September 3, 2020.

Given that September 13, 2020, i.e., 10 days from the summary denial of Franklin's petition, is a Sunday, this Petition for Review is timely filed by Monday, September 14, 2020.

On August 27, 2020, the plaintiff in the *Gillum* action filed a petition for writ of mandate on precisely the same basis as relevant in this case, i.e., the improper order precluding trial setting until after January 2021. That writ petition was assigned to Division Four of the Second District Court of Appeal.

On September 4, 2020, Division Four ordered the filing of a preliminary response from the Respondent Court and the Real Parties in Interest by September 18, 2020. (Ex. C.) The order specifically requested that the responses address "the following legal and factual issues:"

- On what specific legal authority did respondent court order civil preference trials scheduled through August 8, 2020, to be vacated and not set before January 2021?
- What are the specific circumstances justifying the order?
- Does the order violate the plaintiff's due process rights in the instant case?
- Is the use of remote technology reasonably practicable to conduct preference trials?
- Is transfer of the case to another county reasonably practicable?

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The order also provided that a reply brief could be filed and served by 10:00 a.m. on September 28, 2020.

By identifying the specific issues, Division Four's order makes clear what considerations are at issue with respect to Judge Brazile's order and the importance of the issues to plaintiffs, like Franklin.

C. Grant Of Review Is Essential To Protect Franklin's Jury Trial Right And Her Right To A Full Measure Of Her Damages.

This petition satisfies nearly every litmus for extraordinary relief and the intervention of this Court.

As in *Sprowl v. Superior Court* (1990) 219 Cal.App.3d 777, due to Franklin's terminal prognosis and rapidly deteriorating health, Respondent Court's trial continuance orders all but guarantee she will die before she sees a jury. As a result, those orders also ensure that she will be stripped of the very rights section 36 was passed to protect, i.e., her rights to participate meaningfully in the prosecution of her case and to receive the full measure of her pain and suffering damages. Since Franklin will likely die before a final judgment on her claims that might otherwise allow her to appeal Respondent Court's orders, she has no adequate remedy at law. Absent extraordinary review, and this Court's intervention, she will suffer irreparable injury.

Moreover, Judge Brazile's July order continuing until to next year all civil trials in L.A. County applies not just to

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Franklin's preference trial date, not just to all preference trial dates scheduled in Los Angeles County during that time, but to all *civil trial dates* scheduled in Los Angeles County during that time. As such, the legality of Judge Brazile's July order is undeniably a question of widespread public interest. (See *Corbett v. Superior Court (Bank of America, N.A.)* (2002) 101 Cal.App.4th 649, 657 ["[A] writ of mandate should not be denied when the issues presented are of great public importance and must be resolved promptly."].)

Of equal interest is whether, pursuant to Judge Cunningham's July order, the ongoing COVID-19 pandemic constitutes good cause to continue preference trial dates *without even attempting* to conduct trials using remote technology or transferring the case to a county that does use remote technology to try cases. (*Ibid.*)

In short, the issues raised in this petition for review are not only of grave significance to Franklin, but to the public at large. Extraordinary review is particularly appropriate and this Court's intervention in resolving these issues is of a paramount necessity.

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MEMORANDUM OF POINTS AND AUTHORITIES

THE LOWER COURT ERRED IN VACATING FRANKLIN'S TRIAL DATE

Immediate, expedited review of the issues presented is warranted because of the danger to numerous litigants in the Los Angeles court system that their jury trial rights are or will be compromised. As discussed below, the invalidity of the challenged orders is manifest and urgent relief is necessary.

A. Respondent Court's trial continuance order violates section 36's mandatory provisions.

In order to appreciate the magnitude of Respondent Court's error in continuing all civil trial dates—including all preference trial dates—until, at the earliest, January 2021, it is important to recognize the public policy importance of calendar-preference.

And in that regard, the court in *Miller v. Superior Court* (1990) 221 Cal.App.3d 1200, could hardly have been clearer: "section 36(a) is a comprehensive and final legislative judgment…***which must prevail whenever the section 36(a) right is juxtaposed to another countervailing argument, based on whatever legitimate or seemingly compelling public interest***." (*Id.* at 1204 [emphasis added].)

Passed to protect the elderly and infirm from "the

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legislatively acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and the opportunity to recover their just measure of damages or appropriate redress," section 36 protects a preference-holder's trial rights in four ways:

(i) by requiring the trial court to set a preference-holder's case for trial within 120 days of the order granting preference;

(ii) by prohibiting continuances beyond that trial date "except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record";

(iii) by limiting continuance to "no more than 15 days"; and

(iv) by allowing each party "no more than one continuance for physical disability."

(Code Civ. Proc., § 36, subd. (f); *Greenblatt v. Kaplan's Restaurant* (1985) 171 Cal.App.3d 991, 994-95 [quoting *Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 88-89]; *Id.* at 994; see also *Looney v. Superior Court* (1993) 16 Cal.App.4th 521 532.)

Indeed, calendar-preference is so important that California courts have consistently subordinated other public policies when they have threatened a party's preference rights. For instance, the Courts of Appeal have found that:

- Section 36 preference trumps the trial courts' inherent power to manage their calendars. (See *Rice v. Superior Court* (1982) 136 Cal.App.3d 81.)

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- Section 36 preference trumps the "interest of the court to avoid potentially wasteful serial trials." (*Koch–Ash v. Superior Court* (1986) 180 Cal.App.3d 689.)
- Section 36 preference trumps conflicting provisions for mandatory judicial arbitration of actions involving less than a specified amount in controversy. (*Vinokur v. Superior Court* (1988) 198 Cal.App.3d 500.)
- Section 36 preference trumps the parties' convenience in filing pretrial motions or engaging in discovery. (*Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085-86.)
- Section 36 preference trumps other cases' calendar preference ensured under the legislature's "trial delay reduction program." (*Miller*, 221 Cal.App.3d at 1204.)
- Section 36 preference trumps the court's statutory authority to postpone trials in the absence of evidence that all of the court's trial departments are engaged in trials of criminal cases facing mandatory dismissal under Pen. Code, § 1382, or civil cases with trial preferences ahead of plaintiff's. (*Sprowl*, 219 Cal.App.3d 777.)

Instructive in this connection is *Sprowl v. Superior Court*. In *Sprowl*, the trial court continued an asbestos personal injury plaintiff's section 36(a) preference case over half-a-dozen times because "no courtroom was available." (*Sprowl*, *supra*, at 779.)

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After denying the plaintiff's motion for reconsideration of its last continuance order, the trial court set plaintiff's trial date *nearly two years* after her original preference trial date, and the plaintiff sought writ review. (*Id.* at 780.)

The *Sprowl* court found that the trial court had erred in repeatedly continuing petitioner's trial beyond section 36(f)'s 15-day limit. (*Sprowl, supra,* at 780.) Because "the requirements of section 36, subdivisions (a) and (f) are mandatory," the trial court could only have justifiably continued the plaintiff's preference date if "all of its trial departments were engaged in trials of criminal cases facing dismissal … or civil cases with trial preferences ahead of petitioner's." (*Id.* at 780-781.) But there was no evidence for that. (*Id.* at 781.) Although "mindful of the virtually impossible task facing [trial courts] in [their] diligent effort to manage a voluminous increase in criminal and civil cases," the *Sprowl* court held that there is only one "remedy" to avoiding the absolute nature of preference trial dates: "persuad[ing] the Legislature to amend the absolute language of [section 36]." (*Id.,* quoting *Koch-Ash*, *supra*, at 699.) The court issued a peremptory writ of mandate "commanding respondent [court] to vacate its order continuing the case for trial to May 7, 1990, and to instead enter its order setting the case for trial on a date not more than 15 days from the date of issuance of the remittitur herein." (*Id.* at 781-782.)

Here, like *Sprowl*, Franklin's section 36 preference date is facing a lengthy (over nine month) continuance against subdivisions (a) and (f)'s mandatory provisions. Also like *Sprowl*,

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Respondent Court continued Franklin's case in the absence of evidence that "all of its trial departments [are] engaged in trials of criminal cases facing dismissal … or civil cases with trial preferences ahead of [P]etitioner's." (*Sprowl*, *supra*, at 781.) As such, like the *Sprowl* court, this court should issue a peremptory writ of mandate "commanding [R]espondent [Court] to vacate its order[s] continuing the case for trial to [on or after January 1, 2021], and to instead enter [an] order setting the case for trial" on August 10, 2020, the first court day Presiding Judge Brazile's section 68115 powers to continue civil trials expires. (*Id.* at 782.)

Nor, contrary to Judge Cunningham, does the ongoing COVID-19 crisis change this analysis. [See Ex. 15, App. 236:4-241:25, 244:4-10, 255:6-256:6 (justifying his July 16 Order continuing Petitioner's preference date, in part, on the ground that because of the COVID-19 crisis, "[i]t doesn't look like the circumstances [for jury trials] are going to get any better between now and [January 2021]…. I'm being informed that this may go on for some time…. And for some time is certainly through the end of the year, possibly longer").] *Sprowl* recognized a limited exception to the bar on over-15-day preference continuances; such continuances can only be countenanced when the demand on court resources makes holding the plaintiff's preference trial within the mandatory time limit all but impossible—when "all of [the court's] trial departments [are] engaged in trials of criminal cases facing dismissal … or civil cases with trial preferences ahead of petitioner's." (*Sprowl*, 219 Cal.App.3d at 780-781.)

But there is no evidence that the COVID-19 crisis has

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sapped L.A. County superior court resources such that civil jury trials are impossible. To the contrary, the fact that, as of the writing of this petition, Franklin's counsel is aware of *no less than three* civil preference trials conducted in Alameda and San Francisco counties, suggests that remote jury trials in L.A. county are not only possible, but feasible. [RJN Ex. 56, at pp. 320-321; RJN Ex. 58, at pp. 413-418; RJN Ex. 60, at pp. 470-475.]

Other counties are moving forward with remote trials as well. [See, e.g., RJN Ex. 47, at p. 262 (noting that the court has "resume[d] civil, family law, and probate calendars using remote video and phone conferencing"); RJN Ex. 48, at p. 264 (noting that while "[t]here are currently no jury trials taking place…jury summonses are being sent and…[t]he Court anticipates that jury trials will begin in the near future"); RJN Ex. 52, at pp. 285-291 (providing that "[a]ll [civil] matters calendared on or after June 1, 2020, will proceed to the greatest extent possible," and while prohibiting physical appearances in the courtroom unless otherwise authorized by the court, providing for hearings via CourtCall and Zoom; also noting that jury service will resume on June 18, 2020); RJN Ex. 50, at pp. 271-273 (encouraging the use of remote technology and noting that jury trials will resume in civil matters on June 15, 2020); RJN Ex. 53, at pp. 293-294 (noting that Jury trials have restarted after a soft reopening began on May 26); RJN Ex. 49, at pp. 266-269 (providing that "Court trials and related settlement conferences will resume in person unless all parties agree to conduct them remotely"); see also RJN Ex. 51, at pp. 275-283 (noting that "[a]ll trials will be

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conducted telephonically or by video conferencing").]

It is not for nothing that Justice Cantil-Sakauye's March 23 emergency order admonishes California's superior courts to use remote technology to conduct a jury trials where appropriate, and the Judicial Council has specifically authorized remote trials in its emergency rules. [RJN Ex. 64, at pp. 490-491.] Indeed, as Alameda County Judges Seligman and Roesch recently noted in setting forth procedures for remote jury trials that are ongoing, "the trials suspension period has passed, and the court, an essential service, has the duty to render justice, consistent with applicable health directives." [RJN Ex. 58, at pp. 413-418; RJN Ex. 60, at pp. 470-475.][3]

In fact, if the ongoing COVID-19 crisis constituted "good cause" to continue preference trials—and, by implication, all civil trials—there might be no civil trials in L.A. County for *well over a year*. As Dr. Anthony Fauci, head of the NIAID, recently said in an interview, there is no guarantee that a COVID-19 vaccine will be ready for mass distribution by early 2021. [RJN Ex. 27, at pp. 166-168 (Dr. Fauci's comments).] And as Judge Cunningham noted at Petitioner's July 16 status conference, the COVID-19 crisis "may go on for some time…and for some time is certainly through the end of the year, possibly longer." [See Ex. 15, App. 7:4-12:25, 15:4-10, 26:6-27:6.) It simply cannot be the case that

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[3] Franklin's counsel has been made aware that Judge Roesch has recently recused himself from the *Ocampo* matter. However, the Hon. Judge Jo-Lynne Q. Lee has replaced him, and the trial is ongoing using the same remote procedures. [See RJN Ex. 57, at pp. 323-411; RJN Ex. 59, at pp. 420-468.]

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while other counties are performing preference trials using remote technology, L.A. County is justified in continuing preference trials due to the COVID-19 crisis until the crisis ends.

Put simply, the ongoing COVID-19 crisis does not distinguish the instant case from *Sprowl* and does not counsel a different outcome. Nor does it independently justify Respondent Court in continuing Petitioner's case for "good cause." (See Code Civ. Proc., § 36, subd. (f).)

In sum, Judge Brazile and Judge Cunningham's July Orders continuing Petitioners' trial date to sometime next year violate her substantive preference-rights, and should be vacated in favor of an order setting this case for trial on August 10, the first court day Presiding Judge Brazile's section 68115 powers to continue civil trials expires.

B. Respondent Court's July Orders violate the limited public-calamity powers granted it by the Chief Justice.

In fact, review is even more appropriate here than it was in *Sprowl* because here, unlike *Sprowl*, Respondent Court's continuance orders not only violated subdivisions (a) and (f)'s mandatory provisions, they violated the emergency authority granted to Respondent Court by Chief Justice Cantil-Sakauye's July 10 order. [See RJN Ex. 37, at pp. 206-208.]

Justice Cantil-Sakauye's emergency powers derive from Government Code section 68115. [RJN Ex. 28, at pp. 170-174 (noting, in her March 20, 2020 advisory at the start of the

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COVID-19 pandemic that "[t]he relief I am authorized to grant with an emergency order is limited to the items enumerated in Government Code section 68115").] Triggered during war, insurrection, pestilence, or other public calamity, Government Code section 68115 authorizes the chair of the Judicial Council to mitigate a disaster's effects on court proceedings by, for instance, authorizing court sessions anywhere within an affected county, transferring civil cases pending trial to adjacent counties, or declaring holidays for purposes of computing the time for filing papers or conducting other court proceedings. (See Gov. Code, § 68115, subd. (a), (b).)

While section 68115 confers on the Judicial Council chair the authority to issue statewide emergency orders, its powers are primarily accessed at a superior court's request. In this connection, subdivisions (a)(1), (2), and (4) empower the superior courts' presiding judges to petition the Chairperson of the Judicial Council to declare a public calamity in their counties and authorize the appropriate section 68115 relief. If a superior court desires an extension, then the presiding judge may petition again under section 68115, subd. (b).

The "decentralized…judicial authority" embodied in this section "is a statutory structure that reflects the diversity of each county…. In California, unlike other states, each of the 58 superior courts retains local authority to establish and maintain its own court operations." [RJN Ex. 28, at pp. 170-174.]

Relevant here, Justice Cantil-Sakauye's March 23 statewide emergency order continued all civil jury trials in the

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state for 60 days from the issuance of that order. [RJN Ex. 29, at p. 177; see also RJN Ex. 30, at pp. 180-183; RJN Ex. 31, at pp. 185-188.] As such, at the conclusion of that 60 days—after approximately May 22, 2020—any authority to continue L.A. County civil trials, including Petitioner's preference trial, must have come at the request L.A. County's Presiding Judge Brazile, and must have been specifically authorized by Justice Cantil-Sakauye.

But none of Justice Cantil-Sakauye's six L.A.-specific orders, passed between March 16, 2020 and July 10, 2020, *did* authorize the Judge Brazile to continue civil jury trials. [RJN Exs. 32-37, at pp. 190-208.] At best they authorized the presiding judge, prior to their expiration, to "declare holidays for purposes of computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a," from which the authority to continue civil jury trials can be inferred. (After all, if the presiding judge can shut down court rooms by declaring a court holiday, they can presumably continue trials in those court rooms.)

But the *authority* to do a thing is not the same as a *justification* for doing a thing, and the authority to declare holidays came with a condition: according to each of Justice Cantil-Sakauye's L.A.-specific orders, the presiding judge could only declare court holidays "if the above described emergency conditions substantially interfere[d] with the public's ability to file papers in a court facility on those dates." [RJN Exs. 32-37, at pp. 190-208.] In other words, Judge Brazile was only authorized

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to continue civil trials if the COVID-19 crisis "substantially interfere[d]" with the court's ability to conduct civil trials.

But given the availability of, and feasibility of using, remote technology to conduct civil jury trials, and the statewide authority to do the same, there is good reason to doubt that the COVID-19 crisis *did* "substantially interfere" with the L.A. court's ability to conduct civil trials—at least as of June. Evidence for this comes from Alameda County. On May 29, 2020, Justice Cantil-Sakauye granted Alameda County Presiding Judge Tara M. Desautels section 68115 authority to declare court holidays through June 27, 2020. [RJN Ex. 38, at pp. 210-212.] Notwithstanding that authority, in a June 5 press release "[t]he Superior Court of Alameda County … announced … that it [would] resume civil and criminal jury trials, starting June 8, 2020, with jurors first being summonsed to report for new trials on June 29, 2020." [RJN Ex. 54, at pp. 296-297.] The press release goes on to explain the various pretrial procedures will go forward using remote technology. [*Ibid.*]

Thus the Alameda superior court's conduct puts the lie to the notion that, at least beginning in June, the COVID-19 crisis "substantially interfered" with superior courts' ability to conduct civil trials, thereby justifying Judge Brazile's June and July orders indefinitely continuing civil trials in L.A. [See RJN Ex. 43, at p. 247, at ¶ 4, subd. (f); RJN Ex. 45, at pp. 256-257, at¶ 3, subd. (f).]

But there is an even greater defect in Judge Brazile's continuance orders. The emergency authority to declare court

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holidays granted to him in Justice Cantil-Sakauye's final, July Order, expires on August 8, 2020. [RJN Ex. 37, at pp. 206-208.] As such, even if the COVID-19 crisis *did* "substantially interfere" with the court's ability to conduct civil trials—which no L.A. court has shown, and which Alameda county's conduct makes incredible—that would only have authorized Presiding Judge Brazile to continue L.A. county civil trials through August 8, 2020. At that time, if he believed that the COVID-19 crisis still remained an obstacle to civil jury trials in L.A., he would have had to reapply to Justice Cantil-Sakauye for additional emergency authority to continue civil jury trials past that date.

As such, Presiding Judge Brazile's July Order continuing all civil jury trials scheduled to commence in Los Angeles County between July 10, 2020 and August 8, 2020 to a future date not before January 2021, and Judge Cunningham's July Order vacating Petitioner's trial date, set to proceed that day, and continuing it to a future date not before January 2021, exceed the scope of Justice Cantil-Sakauye's limited emergency authority.

Both orders are contrary to law and policy and should be vacated by this Court.

C. Even if Respondent Court's continuance orders are somehow authorized by statute, they amount to a constitutional due process violation in this case.

Franklin has so far argued that Respondent Court's July continuance orders were not authorized by section 68115, either

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on its face, or by the limited section 68115 authority granted to Respondent Court by Justice Cantil-Sakauye. But assuming Respondent Court's July continuance orders were at least facially authorized by section 68115, then the statute is unconstitutional as applied to section 36 preference holders. Specifically, if section 68115 allows L.A. superior courts to indefinitely suspend civil jury trials owing to the COVID-19 pandemic while other superior courts equally affected by the pandemic are conducting civil jury trials, then section 68115 violates the due process rights of affected L.A. preference holders. Section 68115, as applied to those preference holders, is invalid.

Article 1, Section 7 of the California Constitution provides that "[a] person may not be deprived of life, liberty, or property without due process of law.... " (Cal. Const. Art. 1, § 7.) The right to due process is similarly conferred by the Fourteenth Amendment to the United States Constitution. (U.S. Const. amend. XIV.)

Bound as it is with an individual's right to a jury trial, to participate meaningful in the prosecution of her case, and to receive the full measure of her damages, numerous California courts have recognized that section 36 preference is a substantive right. (See, e.g., *Rice*, 136 Cal.App.3d at 88 [analyzing the legislative history and finding that section 36 "must be concluded to have the purpose of protecting a substantive right"]; *Swaithes*, 212 Cal.App.3d at 1085 [holding that section 36 acknowledges "the absolute substantive right to trial preference for those litigants who qualify"]; *Vinokur*, 198 Cal.App.3d at 503 [holding

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that "the clear purpose of section 36 [is to safeguard] a substantive right of a clearly defined class of litigants"]; *Miller*, 221 Cal.App.3d at 1204 [holding that section 36 "grants a mandatory and absolute right to trial preference"]; *Kline v. Superior Court* (1991) 227 Cal.App.3d 512, 515-517 [holding that the "absolute substantive [section 36 preference] right … *vests* at the time the motion is granted"]; see also *Payne v. Super. Ct.* (1976) 17 Cal.3d 908, 914 [holding that the guarantee of due process "has been interpreted to require, at a minimum, that 'absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard' "], quoting *Boddie v. Connecticut* (1971) 401 U.S. 371, 377.)

As a substantive right, section 36 preference is entitled to due process protections. (*People v. Ramirez* (1979) 25 Cal.3d 260, 263-264, 268 [holding that "due process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty"]; see also *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 855 [holding that the California Constitution's due process clause protects benefits conferred by statute].)

Due process rights serve as a hedge against legislative power. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398 [discussing the constitutionality of Code of Civil Procedure section 789.3, and noting that where a law is not "procedurally fair and reasonably

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related to a proper legislative goal," it must be struck down as constitutionally defective].)

In this connection, where a statute has been applied so as to abridge a party's protected due process rights, that party may seek relief from the specific application of that statute. (See, e.g., *Van Atta v. Scott* (1980) 27 Cal.3d 424 [due process challenge to San Francisco's manner of applying statutes for pretrial release of criminal defendants]; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [challenge to local ordinance regarding "unlawful camping" as applied to homeless populace]; *In Re Marriage of Siller* (1986) 187 Cal.App.3d 36, 50-51 ["Where a statute is not vulnerable to facial constitutional attack, a citizen may still contend the operation of the statute violates constitutional rights."].)

In assessing an "as applied" challenge to the constitutionality of a statute, the Court should conduct "...an analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right." (*Tobe*, *supra*, at 1084.)

Here, as noted above, Government Code section 68115 empowers the Judicial Council chair to protect California courts during times of public calamity by authorizing certain kinds of relief to superior court presiding judges who ask for it. (See Gov. Code, § 68115.) This relief includes, but is not limited to, the power to declare court holidays, and hence to continue civil trials.

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(See Gov. Code, § 68115, subd. (a)(4) [providing that "the presiding judge may request and the Chairperson of the Judicial Council may, notwithstanding any other law, by order authorize the court to…[d]eclare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure."].)

But if section 68115 empowers the Judicial Council chair to declare that a public calamity "substantially interferes with the public's ability" to try cases *despite the availability and feasibility of using remote technology to try cases* then, as applied, section 68115 trammels preference holders' due process rights. That is, if section 68115 permits the indefinite public-calamity continuance of civil trials in the face of known ways to commence those trials, it all but abolishes litigants' vested preference rights. In doing so, it violates due process.

Where, as applied, a statute deprives an individual of a protected right, it is subject to "strict constitutional scrutiny." (See *Plyler v. Doe* (1982) 457 U.S. 202, 216-217; *Shapiro v. Thompson* (1969) 394 U.S. 618, 634; *Serrano v. Priest* (1976) 18 Cal.3d 728, 761; *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 276, fn. 22.) "Under the strict scrutiny standard…the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its

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purpose." (*Serrano, supra*, at 761 [emphasis in original].)

Here, section 68115 certainly serves California's compelling interest in providing relief to courts and litigants affected by a public crisis. The problem is that an interpretation of section 68115 that allows the indefinite public-calamity continuance of civil trials in the face of known ways to commence those trials is not "narrowly tailored." It accomplished with a bludgeon what requires a scalpel.

California could just as easily have provided a mechanism for county-specific court relief in the face of a public crisis without depriving swaths of litigants, including and especially section 36 preference holders, of their day in court. It could have done this, for instance, by including in section 68115 language to the affect that "a public calamity will not be deemed to substantially interfere with the public's ability to file papers where papers can be filed using remote technology." The fact that the legislature did not include this language—assuming, once again, that the above interpretation of section 68115 is valid—renders section 68115 constitutionally defective as applied. That is, as applied to section 36 preference holders, such an interpretation of section 68115 abridges their substantive preference rights. As such, it violates due process and must be struck down by this Court. (*Tobe*, 9 Cal.4th at 1084.)

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CONCLUSION

Respondent Court's orders continuing Franklin's trial date to some indefinite time in the future, over nine months from her original trial date, violates her section 36(a) preference rights. In the words of Judge Cunningham, those orders make "honor[ing] her preference order … [an] impossibility."

As in *Sprowl*, Respondent Court continued Franklin's trial date in the absence of evidence that trying her case was impossible—either because "all of [Respondent Court's] trial departments [were currently] engaged in trials of criminal cases facing dismissal…or civil cases with trial preferences ahead of petitioner's," or because the COVID-19 pandemic made trying the case infeasible.

To the contrary, the available evidence from Alameda and San Francisco courts, and many others, suggests that trying civil cases in the midst of this pandemic is quite possible. Petitioner has cited three cases from those counties that, as of the writing of this petition, are using remote technology to do exactly that. There is no reason to believe L.A. county courts cannot do the same.

For these reasons the ongoing pandemic does not distinguish this case from *Sprowl*. If anything, extraordinary relief is even more appropriate here than it was in *Sprowl* because here, unlike *Sprowl*, Respondent Court's continuance orders not only violated section 36, they violated the emergency

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authority granted to Respondent Court by the Chief Justice.

If the ongoing COVID-19 did justify continuing civil jury trials, Los Angeles courts could potentially refuse to set civil trials for years as the government and health establishment search for a COVID-19 vaccine. Meanwhile, the courts in other counties will have been busy protecting their citizens' due process rights using remote technology. As Alameda County Judges Seligman and Roesch recently remarked in setting forth procedures for remote jury trials over which they are currently presiding, "the trials suspension period has passed, and the court, an essential service, has the duty to render justice, consistent with applicable health directives." That same duty applies to L.A. County courts, and any interpretation of the public-calamity statutes that hold otherwise renders those statutes unconstitutional as applied to Petitioner.

Franklin and her counsel are sensitive to the strain the COVID-19 pandemic has placed on the judicial system and court personnel, and is aware that conducting remote trials is not business as usual. But in light of the fact that access to the courts is essential to California citizens' most fundamental rights of due process, and a bedrock of our constitutional form of government, reasonable technological accommodations to access the judicial system must be made where it can be.

Accordingly, it is respectfully requested that this Court remand this matter with an order to the Second District Court of Appeal, Division One to either consolidate this matter with the pending *Gillum* writ proceeding or determine the issue on its

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merits. Alternatively, the importance of this issue warrants this Court's direct, immediate and expedited review.

Respectfully submitted,
WEITZ & LUXENBERG, P.C.
Josiah Parker

Attorneys for Petitioner
BARBARA FRANKLIN

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CERTIFICATE OF LENGTH OF BRIEF

I, Josiah Parker, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service and this Certification is less than 8,359 words as calculated utilizing the word count feature of the Word for the software used to create this document.

/s/ *Josiah Parker*

____

WEITZ & LUXENBERG, P.C.
Josiah Parker

Attorneys for Petitioner
BARBARA FRANKLIN

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EXHIBIT A

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL – SECOND DIST.
FILED
Sep 03, 2020
DANIEL P. POTTER, Clerk
JLozano Deputy Clerk

BARBARA FRANKLIN,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

DAIMLER TRUCKS NORTH AMERICA, LLC, et al.,

Real Parties in Interest.

B306827

(Super. Ct. L.A. County Nos. 19STCV36610, JCCP4674)

(DAVID S. CUNNINGHAM III, Judge)

ORDER

THE COURT*:

The petition for writ of mandate/prohibition, filed August 3, 2020; the request for judicial notice by petitioner, filed August 3,2020; the motion for preference by petitioner, filed August 3, 2020; the opposition by respondent, filed August 18, 2020; the opposition by real party in interest Hennessy Industries, Inc., filed August 19, 2020; the request for judicial notice by Hennessy Industries, Inc., filed August 19, 2020; the opposition by real party in interest Ford Motor Company, filed August 19, 2020; the request for judicial notice by Ford Motor Company, filed August 19, 2020; the reply, filed August 26, 2020; and the second request for judicial notice by petitioner, filed August 26, 2020, have been read and considered.

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Both requests for judicial notice by petitioner are granted. The request for judicial notice by Hennessy Industries, Inc. is granted. The request for judicial notice by Ford Motor Company is granted.

The petition is denied. The motion for preference in this court is denied as moot.

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*ROTHSCHILD, P. J.	CHANEY, J.	BENDIX, J.

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EXHIBIT B

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL – SECOND DIST.
FILED
Sep 04, 2020
DANIEL P. POTTER, Clerk
S. Veverka Deputy Clerk

JULIUS GILLUM et al., Petitioners, v. SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; HONEYWELL INTERNATIONAL, INC., et al., Real Parties in Interest.	B307239 (Los Angeles County Super. Ct. Nos. 19STCV41833/JCCP4674) (David S. Cunningham, J.) REQUEST FOR PRELIMINARY RESPONSE

THE COURT: *

The petition for writ of mandate filed on August 27, 2020, has been read and considered. A preliminary response is requested from respondent court and real parties in interest to be filed and served by 10:00 a.m. on September 18, 2020.

In addition to any other factual matters or legal arguments respondent court or real parties wish to present, the preliminary responses shall address, at a minimum, the following legal and factual issues:

- On what specific legal authority did respondent court order civil preference trials scheduled through August 8, 2020, to be vacated and not set before January 2021?
- What are the specific circumstances justifying the order?

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- Does the order violate the plaintiff's due process rights in the instant case?
- Is the use of remote technology reasonably practicable to conduct preference trials?
- Is transfer of the case to another county reasonably practicable?

A reply brief may be filed and served by 10:00 a.m. on September 28, 2020.

*MANELLA, P.J.

WILLHITE, J.

CURREY, J.

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EXHIBIT C

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OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
300 South Spring Street, Room 2217
Los Angeles, California 90013

Telephone: (213) 830-7000

Division One
Aug 05, 2020

Re: Barbara Franklin v. Superior Court
(Daimler Trucks North America, LLC et al., Real Parties in Interest)
B306827; Petition for Writ of Mandate
(Hon. David S. Cunningham III; Super. Ct. L.A. County Nos. 19STCV36610, JCCP4674)

Opposition to the above-entitled petition is requested from both real parties in interest and respondent court, to be served and filed by 10:00 a.m., on August 19, 2020. Any reply brief shall be served and filed by 10:00 a.m. on August 26, 2020. The briefs may be filed electronically via the court's e-filing service provider (TrueFiling).

DANIEL P. POTTER, Clerk

Deputy Clerk

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 1880 Century Park East, Suite 700, Los Angeles, California 90067

On the date executed below, I electronically served the document(s) described as:

PETITION FOR REVIEW

☒**TRUEFILING**: I caused the above-referenced document to be electronically served on recipients designated on the Transaction Receipt located on the TrueFiling website

SEE ATTACHED SERVICE LIST

☒**BY MAIL**: I caused such envelopes to be deposited in the U.S. Mail, by placing them for collection and mailing in the United States mail at Los Angeles, California. I am readily familiar with the office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business on all interested parties in this action by placing true copies in sealed envelopes addressed as follows:

Hon. David S. Cunningham, III
Spring Street Courthouse, Department 15
312 North Spring Street, Los Angeles, CA 90012

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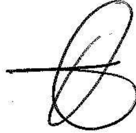
Ronald Reagan State Building
Attention: Clerk of Division 1
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed September 11, 2020 at Los Angeles, California.



Keith Morriesette

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