



April 17, 2020

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

The undersigned legal services providers, consumer advocacy groups, and community organizations work every day with low-income Californians whose economic lives are lived on the brink. The current COVID-19 pandemic has caused not only a health emergency but also a financial crisis. The federal government’s stimulus payments can bring significant relief to millions of Californians.

But only if the payments reach their intended recipients.

We are deeply concerned that some debt collectors and creditors are seizing the stimulus payments as soon as they arrive in individuals’ bank accounts. That conduct runs counter to the purpose of the

CARES Act, which is intended to provide food and shelter for millions of newly unemployed Californians – not to pay debt collectors.

The Judicial Council, using its emergency powers, can and should designate the funds as “exempt” from collection.¹ First, like Social Security payments and other government benefits,² transfers made pursuant to the CARES Act are government support payments targeted directly at the immediate survival of individual Californians. These payments are means-tested, like other exempt public benefits, only going to individuals with income below certain levels; and they are in response to the public health emergency, like payments from FEMA.³ Exempting the CARES Act payments is a logical and straightforward extension of existing law.

Second, millions of suddenly-unemployed Californians would qualify for claims of exemption from any bank levy – essentially, hardship waivers that show that if the levy stands they will not be able to pay for the necessities of life.⁴ We anticipate that allowing levies to proceed could result in tens if not hundreds of thousands of Californians filing claims of exemption and following up in court any claims that are opposed. With the shelter-in-place order in effect, of course, many debtors who would normally go to court cannot do so or will have great difficulty in getting their claims heard. Further, many low-income Californians will not learn of their rights in time as a result of inequities in access to technology and legal information that are only heightened by the current crisis. The result could be a severe administrative burden for the court system and profound frustration and economic loss for low-income Californians who by law should have been able to keep their payments.

In order to avoid that chaotic scenario and to avert injustice, we request that the Judicial Council order courts to stop issuing writs of execution in consumer collection cases (with the exception of certain child support orders⁵), and suspend all writs that have already been issued in consumer collection cases, for the duration of the declared state of emergency plus 60 days. More broadly, we call upon the Council to suspend issuance of summonses, entries of default and default judgments in consumer collection cases for the duration of the declared state of emergency plus 60 days. On April 6, the Council adopted emergency rules⁶ with an analogous provision applying to unlawful detainers and judicial foreclosures. Courts in other states have acted in similar fashion with respect to debt.⁷

These measures would help to effectuate the principles laid out by the Council in its April 4, 2020 report on unlawful detainers and evictions,⁸ which reasoned that a stay on unlawful detainer actions

¹ See Massachusetts, *Guidance: Emergency Assistance Provided Pursuant to the CARES Act Is Exempt From Seizure by Creditors and Debt Collectors* (April 13, 2020), at <https://www.mass.gov/doc/cares-act-guidance/download>; Illinois, https://www2.illinois.gov/HISNews/21392-Governor_Pritzker_announces_protections_and_guidance_for_Illinois_residents_receiving_federal_stimulus_checks.pdf

² Code Civ. Proc. §§ 704.080, 704.110, 704.120.

³ Code Civ. Proc. § 704.230.

⁴ Code Civ. Proc. § 703.520.

⁵ We suggest excepting levies stemming from collection actions for child support payments that are delivered to a custodial parent for the current support of a child who is still a minor.

⁶ At <https://bit.ly/3aaXgba>

⁷ See, e.g., Nevada, at <http://www.lasvegasjusticecourt.us/Admin%20Order%202020-03%20Amended.pdf>; Texas, at <https://www.txcourts.gov/media/1446356/209054.pdf>

⁸ At <https://bit.ly/2Kbrznt>

must apply broadly. (“Because it is not possible to tell from the face of the complaint whether a tenant might be eligible for the extended answer period and protection from enforcement, it is not feasible to limit issuance of summonses to only certain cases.”⁹) Like tenants in unlawful detainer proceedings, individuals who owe debt and cannot afford to repay it “are often self-represented and at a time when court self-help centers and legal aid services are not readily available.”¹⁰

We note that trade groups for banks¹¹ and even debt collectors¹² have called for similar suspensions.

Stimulus payments have started to arrive in Californians’ bank accounts. Those who have fallen behind on payments on medical, student loan, credit card, or other consumer debt are at immediate risk. Indeed, stimulus payments are already being seized by less-principled debt collectors and creditors.

We appreciate your attention to this urgent matter.

Sincerely,



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⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ At <https://www.aba.com/about-us/press-room/press-releases/congress-should-exempt-stimulus-payments-from-court-ordered-garnishments>

¹² At <https://rmaintl.org/member-alerts/member-alert-updated-covid-19-guidance-to-rmai-members-2/>;
<https://www.creditorsbar.org/blogpost/1843312/345823/The-National-Creditors-Bar-Association-NCBA-Supports-Exemption-of-CARES-Act-Stimulus-Payments-from-Garnishment>

Californians for Auto Reliability & Safety (CARS)
Californians for Economic Justice
California League of United Latin American Citizens (LULAC)
CalPIRG
Center for California Homeowner Association Law
Center for Public Interest Law, University of San Diego School of Law
Children's Advocacy Institute, University of San Diego School of Law
Coalition for Humane Immigration Rights (CHIRLA)
Community Legal Services in East Palo Alto
Consumer Action
Consumer Federation of California
Consumer Reports
Contra Costa Senior Legal Services
East Bay Community Law Center
Elder Law & Advocacy
Housing & Economic Rights Advocates
Katherine & George Alexander Community Law Center (Santa Clara Law School)
Legal Aid Society of San Diego
Legal Aid Society of San Bernardino
Legal Aid of Marin
Legal Services of Northern California
Mission Economic Development Agency
National Consumer Law Center
NextGen California
Public Counsel
Public Law Center
Riverside Legal Aid
San Francisco Office of Financial Empowerment
UC Irvine Consumer Law Clinic
Watsonville Law Center

cc: Governor Gavin Newsom
Attorney General Xavier Becerra
Anthony Rendon, Speaker of the Assembly
Toni Atkins, President *pro tem* of the Senate
Mark Stone, Chair, Assembly Judiciary Committee
Hannah-Beth Jackson, Chair, Senate Judiciary Committee