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Date: January 31, 2020

Attorney for Defendant CHELSEA BECKER

IN THE SUPERIOR COURT OF THE COUNTY OF KINGS
STATE OF CALIFORNIA, HANFORD COURTHOUSE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs,

vs.

CHELSEA BECKER,

Defendant.

Case No. 19CM-5304

NOTICE AND MOTION FOR
REDUCTION OF BAIL; MEMORANDUM
OF POINTS AND AUTHORITIES;
EXHIBIT IN SUPPORT THEREOF.

**TO: THE DISTRICT ATTORNEY OF KINGS COUNTY AND/OR HIS
REPRESENTATIVE(S):**

PLEASE TAKE NOTICE that on January 31, 2020, at the hour of 8:30 a.m., or as soon
thereafter as counsel may be heard in the courtroom of Department 6 of the above-entitled court, the
defendant will move for an order reducing bail.

The motion will be made on the grounds that the defendant is entitled to bail in a reasonable
amount under Article I, § 12 of the California Constitution, and the Eighth Amendment to the United
States Constitution.

The motion will be based on this notice of motion, the memorandum of points and authorities

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served and filed herewith, on all papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of this motion.

Dated: March 26, 2020

Respectfully submitted,

JACQUELINE GOODMAN, ESQ.
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant, Chelsea Becker, submits the following points and authorities in support of her
3 motion for an order reducing bail:

4 **I.**

5 **STATEMENT OF FACTS**

6 On September 10, 2019, Ms. Becker's pregnancy ended in a stillborn birth. In a prosecution
7 based on an unusual and highly controversial theory, the prosecution has charged Ms. Becker with
8 the murder of her fetus which, they claim, resulted from her drug use during pregnancy. This was the
9 fourth child born to Ms. Becker while addicted, and the only stillbirth.

10 **II.**

11 **STATEMENT OF THE CASE**

12 Chelsea Becker was arrested on November 6, 2019. Later that day, Ms. Becker was arraigned
13 and entered a plea of "not guilty" to one count of a violation of *Penal Code* §187 [Murder], a felony.
14 On December 19, 2019, current counsel was substituted in place of the public defender. Ms. Becker's
15 bail was set at \$5,000,000.00 and she has been in pre-trial custody since her arrest.

16 **III.**

17 **THE DEFENDANT HAS A CONSTITUTIONAL AND STATUTORY**
18 **RIGHT TO A REASONABLE BAIL**

19 Article I, § 12 of the California Constitution establishes a defendant's state right to be released
20 prior to trial on reasonable bail. The due process clauses of the Fifth and Fourteenth Amendments to
21 the United States Constitution guarantee compliance with state-created procedural rights. *Hicks v.*
22 *Oklahoma*, (1980) 447 U.S. 343. Bail may not be set to achieve an invalid state interest or in an
23 amount that is excessive in relation to the interests sought to be protected. *Galen v. County of Los*
24 *Angeles*, (9th Cir. 2007) 477 F.3d 652 at 659-660.

25 Article I, § 12, of the California Constitution also prohibits the imposition of excessive bail and
26 sets forth the factors a court shall take into consideration in fixing the amount of required bail. For
27 all non-capital murder offenses, bail is a matter of right. Cal. Const. art. I, §12; *Penal Code* §1271.
28 The offense with which the defendant is charged is not a crime for which bail is prohibited under the

1 state Constitution. As such, excessive bail may not be required. Cal. Const. art. I, § 12.

2 *Penal Code* § 1275 sets forth the factors the court must consider in setting bail: (1) the protection
3 of the public, (2) the seriousness of the offense charged, (3) the previous criminal record of the
4 defendant, and (4) the probability of his or her appearing at trial or hearing of the case.

5 In considering the seriousness of the offense charged, the court must consider: (1) the alleged
6 injury to the victim, (2) alleged threats to the victim or witnesses, (3) alleged use of firearms or other
7 deadly weapons in the commission of the charged crime, and (4) any alleged use or possession of a
8 controlled substance by the defendant. The code requires that “public safety shall be the primary
9 consideration.” *Penal Code* § 1275(a).

10 While murder is a serious charge, the underlying facts-- a pregnant mother unintentionally losing
11 her baby—make out no crime at all in this state, let alone a serious one. Ms. Becker has no significant
12 criminal history, and has ties to the community which make her a good “flight risk.”

13 *Penal Code* §1270.1 provides that before any person who is arrested for a serious or violent
14 felony may be released on bail in an amount which deviates from the schedule of bail for the offense,
15 a hearing must be held in open court. Since Ms. Becker is charged with murder [*Penal Code* §187],
16 a violent felony, the statute requires the court to consider: (1) Ms. Becker’s past record of failures to
17 appear, (2) the maximum potential sentence that could be imposed, and (3) the danger that may be
18 posed to other persons if the defendant is released.

19 California law weighs in favor of granting Ms. Becker’s request and reducing bail to a
20 reasonable amount. Ms. Becker’s past record of appearances at court and compliance with its orders
21 indicates her ability and intention to appear in court as ordered. In addition, the evidence of her guilt
22 is by no means strong. Ms. Becker is charged with murder based on the claim that her drug use caused
23 a pregnancy loss. This is based on a common misconception that drug use causes pregnancy loss, or
24 that babies can be born “addicted.” (See Exhibit A.) Neither pregnancy nor drug use nor the dual
25 status of being pregnant and addicted, are crimes proscribed by the state of California; nor are they
26 indicative of a danger posed to others. [Cal. Health & Safety Code D. 10, Uniform Controlled
27 Substances Act (proscribes varied conduct in relation to controlled substances including: possessing;
28 transporting; and selling controlled substances, *but not* the past use of a controlled substance).]

1 In fact, the defendant will be filing a motion to dismiss to provide substantial support as to the
2 invalidity and unconstitutionality of the charges against her. *See Jaurigue v. People*, No. 18988, slip
3 op. (Cal. Super. Ct. Aug. 21, 1992) (dismissed fetal homicide charges against a woman who
4 experienced a stillbirth, alleged to have been a result of drug use, finding statute could not be used
5 to prosecute pregnant woman for the loss of her own pregnancy), writ denied, (Cal. App. 1992);
6 *People v. Jones*, No. 93-5, Transcript of Record (Cal. J. Ct. Siskiyou County July 28, 1993) (finding
7 murder statute could not be used to prosecute defendant after newborn's death for alleged drug use
8 and pregnancy); Sue Holtby et al., *Gender issues in California's perinatal substance abuse policy*,
9 27 Contemporary Drug Problems 77, 89 (2000) (Since the late 1980s California's legislature has
10 addressed issues related to pregnancy and substance use, debated the need for criminal penalties, and
11 chosen not to amend the law to include criminal sanctions against "substance-using mothers"). *See*
12 *also Reyes v. Superior Court*, 75 Cal. App. 3d 214 (Cal. Ct. App. 1977) (child endangerment statute
13 cannot be used to prosecute woman for alleged actions while pregnant). *See also Gallo v. Acuna*, 929
14 P.2d 596, 611 (Cal. 1997) (addressing "core due process requirement of adequate notice" as when
15 no person "may be required at peril of life, liberty or property to speculate as to the meaning of penal
16 statutes. All are entitled to be informed as to what the State commands or forbids" (internal citations
17 and quotations omitted).

18 Finally, Ms. Becker poses no danger to anyone in the community, including non-existent but
19 potential fetuses, by virtue of her release. (*See* Exhibit A [physician's letter discussing pregnancy
20 risks] and Section IV, *infra*.)

21 IV.

22 SETTING A PROHIBITIVELY HIGH BAIL WOULD VIOLATE THE DEFENDANT'S 23 RIGHTS UNDER THE EIGHTH AMENDMENT TO THE CONSTITUTION

24 The "cruel and unusual punishment" clause of the Eighth Amendment to the United States
25 Constitution has been specifically held applicable to the states through the Fourteenth Amendment.
26 *Robinson v. California*, (1962) 370 U.S. 660. The Supreme Court has assumed the excessive bail
27 clause of the Eight Amendment is also applicable to the states through the Fourteenth Amendment.
28 *Schilb v. Kuebel*, (1971) 404 U.S. 357 at 365 (stating that "[b]ail is basic to our system of law and

1 the Eighth Amendment’s proscription of excessive bail has been assumed to have application to the
2 States through the Fourteenth Amendment”); *see also Barker v. McCollan* (1979) 443 U.S. 137 at
3 144 n.3 (expressing agreement with *Schilb*).

4 Conclusory statements regarding public safety considerations cannot be a basis for requiring a
5 suspect to post an unreasonably high bail to keep him or her in custody. *In re Christie* (2d Dist. 2001)
6 92 Cal.App.4th 1105 at 1109, as modified, (Nov. 13, 2001) (“the court may neither deny bail nor set
7 it in a sum that is the functional equivalent of no bail”). Although the United States Supreme Court
8 has found that the concept of “preventive detention” does not violate the United States Constitution,
9 preventive detention only permits the denial of bail to those specifically deemed dangerous upon
10 release. *U.S. v. Salerno*, (1987) 481 U.S. 739.

11 Here, no evidence has been proffered to suggest Ms. Becker would be dangerous upon
12 release. Experiencing a substance use disorder, a health condition, does not pose a risk of danger to
13 any person if she is released. *Cal.Health & Safety Code* § 11757.51, Alcohol and Drug Affected
14 Mothers and Infants (“the appropriate response to” drug affected mothers and infants is “prevention,
15 through expanded resources for recovery from alcohol and other drug dependency. The only sure
16 effective means of protecting the health of these infants is to provide the services needed by mothers
17 to address a problem that is addictive, not chosen.”) Nor can the experience of a pregnancy or
18 pregnancy loss rationally deem Ms. Becker to be a dangerous person. In fact, according to the Centers
19 for Disease Control and Prevention (CDC), in California there are 2,465 stillbirths each year.” Linda
20 Childers, *California Health Report* (July 16, 2019).

21 Further, even if this court mistakenly believed that detention should be used to prevent the
22 possibility of Ms. Becker becoming pregnant, case law prevents the court from issuing such an order.
23 Even after a conviction, when a “trial court has very wide discretion in setting the conditions of
24 probation . . . its discretion is not boundless.” *People v. Dominguez*, 256 Cal.App.2d 623, 626 (Cal.
25 Ct. App. 1967) (Struck probation condition that defendant will not become pregnant while unmarried,
26 finding the appellant “is entitled to her freedom on probation”). Even conditions issued for the
27 purpose of public safety “are circumscribed by constitutional safeguards” including the fundamental
28 right to procreate. *People v. Pointer*, 151 Cal.App.3d 1128, 1129 (Cal. Ct. App. 1984) (appeals court

1 reversed portion of sentencing order that prevented defendant, after felony child endangerment
2 conviction, from conceiving during probationary period).

3 **V.**

4 **IN DETERMINING A REASONABLE BAIL, THE COURT MUST CONSIDER THE**
5 **DEFENDANT'S FINANCIAL ABILITY**

6 A "court may neither deny bail nor set it in a sum that is the functional equivalent of no bail."
7 *In re Christie*, (2d Dist. 2001) 92 Cal. App. 4th 1105, as modified, Nov. 13, 2001. Similarly, in
8 *People v. Remijio*, (2d Dist. 1968) 259 Cal. App. 2d 12, the appellate court found error in setting bail
9 on appeal in an amount beyond the defendant's ability to pay. The United States Supreme Court has
10 consistently rejected a disparate system of bail, which requires those unable to post high bail to
11 remain in custody, while allowing the wealthy to obtain their freedom no matter how dangerous they
12 may be. In *Stack v. Boyle*, (1951) 342 U.S. 1, the court held that when bail is available, it must be
13 fixed only in that amount necessary to guarantee the defendant's appearance at trial. Any higher
14 amount is excessive under the Eighth Amendment. To set bail in an amount so high as to effectively
15 deny bail, based on the defendant's actual means, is prohibited by our state and federal constitutions.
16 This principle was recently reaffirmed by the California Supreme Court in *In re Humphrey* (2018)
17 19 Cal.App.5th 1006.

18 "[W]hen the Court's concern is protection of the public rather than flight, imposition of money
19 bail in an amount exceeding the defendant's ability to pay unjustifiably relieves the Court of the
20 obligation to inquire whether less restrictive alternatives to detention could adequately protect public
21 or victim safety and, if necessary, explain the reasons detention is required." *In re Humphrey, supra*.
22 The *Humphrey* Court reasoned that since the defendant was unable to afford cash bail, the court was
23 required to consider reasonable, less restrictive alternatives that could be implemented instead of
24 cash bail in light of the defendant's financial condition. The *Humphrey* court allowed the defendant
25 to be released on his own recognizance with an ankle monitor, reducing the concern for public safety,
26 due to his ties to the community and his inability to pay the costs of monetary bail.

27 Here, there is no evidence to suggest that Ms. Becker would pose a danger to the public if
28 released on bail. Ms. Becker and her family are of limited financial means. Ms. Becker is unemployed

1 and, in fact, qualified for the services of the public defender. Setting her bail at the current amount
2 of \$3 million is tantamount to preventive detention.

3 **VI.**

4 **DUE PROCESS REQUIRES THE BURDEN OF PROOF**
5 **CONCERNING THE DEFENDANT’S REAPPEARANCE**
6 **BE BORNE BY THE PROSECUTION.**

7 In *Van Atta v. Scott*, (CA 1980) 27 Cal. 3d 424 at 444, the California Supreme Court examined
8 the procedural due process requirements related to the burden of proof on the issue of the defendant’s
9 likelihood of appearance in court. The court stated that “due process requires the burden of proof
10 concerning the detainee’s likelihood of appearing for future court proceedings be borne by the
11 prosecution.”

12 The risk a defendant might flee if bail is posted must be more than the defendant’s incentive or
13 ability to flee. Federal precedent requires more than an “incentive” or “motive” or even “ability” to
14 flee in finding the defendant is a flight risk. In *U.S. ex rel Rubenstein v. Mulcahy*, (C.C.A. 2d Cir.
15 1946) 155 F.2d 1002, the appellate court explained that “ability to flee [...] does not necessarily
16 indicate a purpose to flee.” See also *U.S. v. Friedman*, (3d Cir. 1988) 837 F.2d 156 (“[W]e have
17 required more than evidence of the commission of a serious crime and the fact of a potentially long
18 sentence to support a finding of risk of flight; *U.S. v. Himler*, (3d Cir. 1986) 797 F.2d 156 (pretrial
19 detention unwarranted where no direct evidence suggested defendant would flee from prosecution);
20 *Government of Virgin Islands v. Leycock*, (3d Cir. 1982) 678 F.2d 467 (mere opportunity for flight
21 is insufficient for pretrial detention); *U.S. v. Chen*, (N.D. Cal. 1992) 820 F. Supp. 1205 (mere
22 opportunity or incentive to flee is insufficient to deny pretrial release)).

23 Ms. Becker has strong ties to the community, including children and all of her immediate family
24 and friends in Kings County, and virtually no ties outside of California. There is no basis for concern
25 that she would flee the jurisdiction.

26 Further, even if the Court has been presented with evidence that there is a risk the defendant
27 might flee, the Court must consider other less restrictive alternatives, such as the surrender of the
28 defendant’s passport or electronic monitoring. See *In re Mehdizadeh*, (2d Dist. 2003) 105 Cal. App.

1 4th 995, as modified on denial of reh’g, (Feb 2003) (“Even if the defendant poses a flight risk,
2 incarceration should be avoided if there is a less restrictive alternative.”). Similarly, in *In re*
3 *Newchurch*, 807 F.2d 404 (5th Cir. 1986), the court cautioned that due process “requires the
4 government, when it deprives an individual of liberty, to fetter his freedom in the least restrictive
5 manner.”

6 **VII.**

7 **CONCLUSION**

8 Chelsea Becker is charged with murder based on the loss of her own pregnancy, a theory which
9 has been rejected by our courts and legislature. She poses no risk of danger to the community by
10 virtue of her release, nor any significant flight risk. Nevertheless, to allay any fears concerning risk
11 of flight or danger, less restrictive alternatives such as electronic monitoring exist, and the
12 constitution requires they be employed if necessary, and that bail be reduced to an amount
13 commensurate with her ability to pay.

14 Dated: March 26, 2020

Respectfully submitted,

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JACQUELINE GOODMAN
Attorney for Defendant
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