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1 *S igned:*

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NAME OF PROSECUTING AGENCY

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Plaintiff,

vs.

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Defendant, Pro Se

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# Name of Court

**CLARK COUNTY, NEVADA**

Case No.:

Dept. No.:

**MOTION TO VACATE CUSTODY ORDER AND REQUEST FOR *VALDEZ-JIMENEZ***

**HEARING AND/OR EMERGENCY MOTION FOR TEMPORARY COMPASSIONATE RELEASE**

HEARING REQUESTED

1. COMES NOW the Defendant, Pro Se, and hereby moves this Court for an order
2. setting bail in a reasonable, individualized amount. This motion is based upon the attached
3. memorandum of points and authorities and any oral argument the court may entertain at the
4. hearing of the motion.
5. DATED this day of , 2020. 23

*S igned:*

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# N OTICE OF MOTION

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* 1. TO: ALL INTERESTED PARTIES
  2. PLEASE TAKE NOTICE THAT the above and foregoing **MOTION TO VACATE**
  3. **CUSTODY ORDER AND REQUEST FOR *VALDEZ-JIMENEZ* HEARING AND/OR EMERGENCY MOTION**
  4. **FOR TEMPORARY COMPASSIONATE RELEASE**
  5. will be brought on for hearing before the above-noted Court on the day of
  6. , 2020, at the hour of o’clock .m., or as soon thereafter as counsel

9 may be heard.

1. DATED this day of , 2020.
2. *S igned:*

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# EMORANDUM OF POINTS AND AUTHORITIES

In Nevada, under Art. 1 § 7 of the Nevada Constitution, “All persons shall be

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bailable by sufficient sureties[.]” Under Art. 1 § 6, excessive bail is not permitted, which

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means bail not “more than the accused can reasonably be expected under the circumstances

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to give[.]” *Ex parte Malley*, 50 Nev. 248, 253, 256 P. 512, 514 (1927). Nev. Rev. Stat.

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178.4853 lists the factors a court must consider in making a determination of a reasonable

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bail to permit an accused to.

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1. In this matter, the accused is not accused of any crime which is not bailable under
2. Art. 1 § 7 of the Nevada Constitution, and therefore he/she is entitled to have a bail set
3. reasonably, in light of his circumstances and ability to give. Defendant suggests that release
4. without conditions satisfies all the requirements laid out under Nev. Rev. Stat. § 178.4853

1 as explained in the Nevada Supreme Court’s recent decision regarding bail. 2

## *. Legal Standard*

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1. In the consolidated cases *Valdez-Jimenez v. Eighth Jud. Dist. Ct.* and *Frye v.*
2. *Eighth Jud. Dist. Ct.*, Nevada Supreme Court Cases No. 76417 and 76845, respectively, the
3. Nevada Supreme court recently offered extensive guidance to litigants and courts regarding
4. the necessary process required under the Constitutions of the United States and of The State
5. of Nevada. 136 Nev. Adv. Op. 20 (April 9, 2020). The procedural safeguards and
6. standards set forth in the opinion render all previous custody orders illegal and require
7. prompt reevaluation of the custody status of those who remain in custody. “When bail is
8. set in an amount the defendant cannot afford, however, it deprives the defendant of his or
9. her liberty and all its attendant benefits, despite the fact that he or she has not been
10. convicted, and is presumed innocent.” *Id.*, at 3. Therefore, “A defendant who remains in
11. custody following arrest is constitutionally entitled to a prompt individualized
12. determination . . . preceded by an adversarial hearing at which the defendant is entitled to
13. present evidence and argument concerning the relevant bail factors.” *Id.*
14. Following that adversarial evidentiary hearing, “The judge . . . may impose bail
15. ***only if*** the State proves by clear and convincing evidence that it is necessary . . . [and] the
16. judge must consider the defendant’s financial resources . . . in setting the amount of bail[.]”
17. *Id.* “Bail in an amount greater than necessary to ensure the defendant’s appearance and the
18. safety of the community is unconstitutional[.]” *Id.*, at 11 (emphasis added).
19. “[B]ecause the right of an individual to reasonable bail before trial is a
20. fundamental one, bail must not be in an amount greater than necessary to serve the State’s
21. interests.” *Id.*, at 12, quoting *U.S. v. Salerno*, 481 U.S. 739, 750 (1987).
22. Bail is only permitted to be set when it is necessary to ensure the attendance of the
23. accused at future hearings, “and to protect the community, including the victim and the
24. victim’s family[.]” *Id.*, at 13, quoting Nev. Const. art. 1 § 8A(1)(c). Indeed, “for many
25. individuals who are arrested, *bail will not be necessary*.” *Id.*, at 16 (emphasis added).
    1. In sum, the law in Nevada presumes that defendants are to be immediately
    2. released pending trial. Should the State/City decide that a person needs to be detained
    3. before trial the State/City must rebut this presumption and the burden is on the State/City to
    4. prove by clear and convincing evidence in an adversarial evidentiary hearing that a
    5. defendant should not be released and that there is no combination of nonmonetary
    6. restrictions that could possibly ensure the defendant’s return to court, and the safety of the
    7. community during the pendency of the case. If, and only if, the state meets this burden the
    8. Court can then properly impose monetary bail and bail must be set in all cases except first
    9. degree murder.
    10. Nonmonetary restrictions, and any possible combination thereof, must be
    11. considered in light of the factors in Nev. Rev. Stat. § 178.4853, and rejected before any
    12. amount of cash bail is required of any accused. *Id.* Only when nonmonetary restrictions are
    13. deemed inadequate may a court properly set a monetary bail – and then, only in an amount
    14. that takes “into consideration the defendant’s financial resources as well as the other factors
    15. relevant to the purposes of bail.” *Id.*, at 16 – 17.
    16. Under Nev. Rev. Stat. § 178.4853, courts must consider these factors, at
    17. minimum, in determining the reasonable bail to be set, if any be required:
    18. 1. The length of residence in the community;
    19. The status and history of employment;
    20. 3. Relationships with the person’s spouse and children, parents or other
    21. family members and with close friends;
    22. 4. Reputation, character and mental condition;

5. Prior criminal record, including, without limitation, any record for

* 1. appearing or failing to appear after release on bail or without bail;
  2. 6. The identity of responsible members of the community who would vouch for the reliability of the person;
  3. 7. The nature of the offense with which the person is charged, the
  4. apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
  5. 8. The nature and seriousness of the danger to the alleged victim, any
  6. other person or the community that would be posed by the person’s
  7. release;

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1. The likelihood of more criminal activity by the person after release; and
2. Any other factors concerning the person’s ties to the community or bearing on the risk that the person may willfully fail to appear.

## *2 . Argument*

The factors under Nev. Rev. Stat. § 178.4853 favor the release of Defendant in

9 this matter.

1. Specifically, Defendant has the following community and family ties, educational
2. and work history, and presents no flight risk or danger to the community:

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1. In light of the recent guidance from the Nevada Supreme Court, discussed
2. throughout, Defendant is entitled to an evidentiary hearing, at which the State is obligated
3. to prove to the Court by clear and convincing evidence that nonmonetary conditions, such
4. as confining him to house arrest, cannot assure that Defendant will present himself at future
5. court hearings, and assure the security of the public.
6. Further, the court must consider the current situation at Nevada Detention
7. facilities with regard to the pandemic COVID-19.
8. On the January 30, 2020, the COVID-19 outbreak was declared a Public Health
9. Emergency. *See* The World Health Organization,
10. [http://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen,](http://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen)
11. 31 December 2019*.* On April 1, 2020, the Secretary General of the United Nations stated
12. that COVID-19 poses the graves threat to humanity since World War II. *See* New York
13. Times, [https://www.nytimes.com/reuters/2020/04/01/us/01reuters-health-coronavirus-](http://www.nytimes.com/reuters/2020/04/01/us/01reuters-health-coronavirus-)
14. un.html?search ResultPosition=1. On April 5, 2020, the Surgeon General of the United
15. States called the week one of the saddest for most Americans and compared it to our “Pearl
16. Harbor” and “9/11” moments. *See*, *e.g.*, [https://www.time.com/5815870/jerome-adams-](http://www.time.com/5815870/jerome-adams-)
17. surgeon -general-saddest-week-covid-19.
18. The spread of the COVID-19 virus across the world, including every state in the
19. country, poses an unprecedented danger that no person fully understands. We have been
20. told by the authorities to stay home, wash hands repeatedly, and socially distance ourselves
21. by not getting closer than six feet to anyone. The Center for Disease Control (“CDC”)
22. states that there is a “high-risk of severe illness” for those individuals who are: (1) aged 65
23. years or older; (2) living in a long-term care facility; (2) people with serious heart
24. conditions; (3) people with chronic lung disease or moderate to severe asthma; (4) people
25. of any age with severe obesity; or (5) people with an underlying medical condition, such as
26. diabetes. *See* CDC, [https://www.cdc.gov/coronavirus/](http://www.cdc.gov/coronavirus/) 2019-ncov/need-extra-precautions/
27. groups-at-higher-risk.html. Under the best of circumstances, the conditions of a detention
28. facility maximize virus transmission. With the increased risk of contracting Covid-19 the
29. court in this matter should consider a compassionate release of pretrial detainees until such
30. time as the COVID-19 risk abates.

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***C onclusion***

For all the foregoing reasons, Defendant requests this Court vacate the current

1. custody order and hold a ***VALDEZ-JIMENEZ*** evidentiary hearing at which the Prosecutor must
2. show by clear and convincing evidence that the defendant should be detained and he may
3. present evidence in support of his Motion for Reasonable Bail, and ultimately that the
4. Court set reasonable conditions for his release, including an amount of bail reasonable in
5. light of Defendant’s personal circumstances only if the Court deems that no other
6. combination of nonmonetary restrictions will ensure Defendant’s presence at future
7. hearings and the safety of the community.
8. DATED this day of , 2020.
9. *S igned:*

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