STATE OF MICHIGAN

IN THE CIRCUIT/DISTRICT COURT FOR THE COUNTY OF XXX

PEOPLE OF THE STATE

OF MICHIGAN,

Plaintiff-Appellee,

v Case No.:

**XXXXXX,**

Defendant-Appellant.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/**

Name (PXXXX) [add atty block for prosecutor]

Attorney for Defendant

Address

City, State

Phone

[Defense Attorney Signature Block]

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**EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION**

Defendant CLIENT requests the urgent elimination of the $XXX bond requirement imposed in this matter. CLIENT is currently detained only because they cannot afford to pay this bond. In light of the urgent COVID-19 crisis, it is imperative to reduce jail populations. Eliminating unnecessary pre-trial detention in cases such as this one is one vital step to protecting the community at large, inmate populations in our crowded jails, court and jail staff, and defendants themselves. Furthermore, because CLIENT’S bond is unaffordable and thus serves as a *de facto* detention order, it was excessive and contrary to MCR 6.106 and the United States and Michigan Constitutions in the first instance, although this Court need not reach that issue if it agrees to order CLIENT released in light of the COVID-19 crisis. The urgency of the current crisis makes it imperative that the bond be eliminated immediately [or reduced to $XXX, which CLIENT is capable of paying immediately]. In support of this motion, CLIENT states:

**Basic Factual and Procedural Background**

1. CLIENT was arrested on DATE, for CHARGE.
2. On DATE, CLIENT was arraigned in front of JUDGE/MAGISTRATE, and bond was set at AMOUNT.
3. On DATE, CLIENT appeared for a probable cause/pre-examination conference in front of JUDGE. At this conference, having been deemed indigent [IF TRUE], CLIENT was represented by undersigned appointed counsel.
4. Counsel moved that CLIENT be released pursuant only to an unsecured appearance bond or, in the alternative, subject only to non-financial release conditions. [IF TRUE.] Counsel informed the court that maximum cash bail that CLIENT could afford to pay was $$$$$. [IF TRUE.]
5. The district court nonetheless imposed cash bail of $$$$. Because CLIENT cannot afford that amount, and *only* for that reason, CLIENT remains incarcerated.
6. [If Bond has been subsequently addressed by the district or circuit court, include details.]

**COVID-19-related Facts and Argument**

1. The COVID-19 pandemic that is currently affecting the entire state and nation presents a particularly severe risk to incarcerated persons and to the attorneys and court and jail staff who interact with them. The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.[[1]](#footnote-1) All of these precautions are particularly difficult, if not impossible, in the carceral setting. Accordingly, CLIENT is at heightened risk of infection while they remain incarcerated as the result of the unaffordable bond imposed in this case.
2. On Tuesday, March 10 Governor Gretchen Whitmer declared a state of emergency in Michigan as a result of the COVID-19 crisis. President Donald J. Trump declared a national emergency on March 13. On March 15, the Michigan Supreme Court issued Administrative Order No. 2020-1, urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts specifically to “take into careful consideration public health factors arising out of the present state of emergency . . . in making pretrial release decisions, including in determining any conditions of release.”[[2]](#footnote-2)
3. Courts around the country have recognized the importance, both for community health and for the health of incarcerated populations, of releasing pre-trial detainees during this crisis.[[3]](#footnote-3)
4. Accordingly, consistent with the Michigan Supreme Court’s instructions, and with the advice of medical and health professionals, pre-trial detainees who are being held as the result of unaffordable bond should be released urgently absent truly extraordinary facts that demonstrate a concrete, identified, and articulable basis for believing that the individual would flee the jurisdiction or harm a specified individual or individuals if released. Even then, pre-trial detention can only be justified if any such risk cannot be mitigated by resort to alternate, non-financial, conditions of release.
5. Here, there is no evidence that CLIENT will flee the jurisdiction. To the contrary [list all relevant arguments: community ties, childcare responsibilities, lack of resources, lengthy of residence, prior hearings attended, etc. This should include obligations resulting from Corona issues at home.].
6. Nor is there any concrete evidence that CLIENT poses an identified and articulable danger to others. To the contrary [LIST evidence of lack of danger to public, including corona-specific circumstances that may make commission of crimes less likely]. And, of course, CLIENT must still be presumed innocent, so the fact that they have been charged with a crime is not proof that they actually committed the crime in the first place. And the instant charges are in no way probative that CLIENT might offend if released while awaiting trial. See, e.g., *United States v. Demmler*, 532 F Supp 2d 677, 683 (SD Ohio, 2007) (observing that, in setting bail, a “Court will not assume that just because [a defendant] has been charged” with a particular crime that “he is likely to commit these same offenses again during the course of these proceedings”).
7. [IF CLIENT IS AT HIGH RISK, ADD THE FOLLOWING: COVID-19 poses a particularly severe health risk to defendants who are older than 60 and those who have pre-existing medical conditions that place them at risk including, but not limited to, heart disease, lung disease, diabetes, and conditions resulting in the individual being immune-compromised. CLIENT is particularly vulnerable because . . . FACTS. Accordingly, permitting CLIENT to remain incarcerated is extremely dangerous and particularly cruel—and may in fact constitute deliberate indifference to and failure to accommodate CLIENT’s serious health condition.].
8. For these reasons, this Court should immediately revoke the requirement that CLIENT pay bond and release them subject, at most, to a personal bond or any other conditions that do not require payment that the court deems necessary. [or reduce bond to $XXX, which CLIENT is capable of paying immediately.] Any new conditions that are imposed should not in any way restrict CLIENT from accessing medical care as needed or providing any necessary aid and assistance to their family and loved ones during this health crisis.

**Additional Facts and Argument**

1. In addition, CLIENT the bond in this case should be eliminated [or reduced to $XXX, which CLIENT is capable of paying immediately] because the bond was functioning as a pre-trial detention order and was not lawful even in the absence of the COVID-19 pandemic.
2. Article 1, § 15 of the Michigan Constitution guarantees that “[a]ll persons shall, before conviction, be bailable by sufficient sureties,” except in circumstance not applicable here. Article 1, § 16 provides that “[e]xcessive bail shall not be imposed.”
3. MCR 6.106(C)–(F) implement these rights. MCR 6.106(C) provides that personal recognizance release or unsecured appearance bonds are the default release options. MCR 6.106(D)–(E) require that any risk of flight or danger to the public be addressed by *non-financial* release conditions absent record findings that cash bail is truly necessary. It is only “[i]f the court determines for reasons *it states on the record* that the defendant’s appearance or the protection of the public cannot otherwise be assured [that] money bail, with or without conditions . . . may be required.” MCR 6.106(E) (emphasis added). The Michigan Supreme Court has been “emphatic” that these rules are “to be complied with in spirit, as well as to the letter.” *People v Spicer*, 402 Mich 406, 410; 263 NW2d 256 (1978).
4. Here, no court has ever made adequate findings that CLIENT poses a flight risk or danger to the public sufficient to justify imposing release conditions. And no finding could be justified by the facts here for the reasons stated above. Thus the bond imposed violates MCR 6.106(D)–(E).
5. The current bail condition is also unconstitutional under the Fourteenth Amendment to the United States Constitution. The imposition of unaffordable cash bail without adequate findings violates CLIENT’s right to equal protection of the law because they are now being incarcerated “simply because, through no fault of [their] own, [they] cannot pay.” *Bearden v Georgia*, 461 US 660, 672–673 (1983). The bail determination also violated CLIENT’s right to substantive due process because it amounts to a pre-trial detention order that is not constitutionally sufficient to deprive a defendant of their pre-trial liberty. See *United States v Salerno*, 481 US 739 (1987).

Accordingly, CLIENT requests that this Court grant relief by: (a) ordering the elimination of the bail condition and their immediate release on recognizance or subject only to an unsecured appearance bond; or alternatively, (b) ordering their release subject only to such non-financial conditions as necessary in light of the record and that will not interfere with CLIENT’S ability to seek medical treatment and/or care for their family and loved ones; or in the worst-case scenario (c) ordering their release subject to a cash bond of no more than $$$, the maximum amount that CLIENT can afford.

Respectfully submitted,

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (P#)

Attorney for Defendant

[SIGNATURE BLOCK]

1. See Michigan Department of Health and Human Services, Community Mitigation Strategies, *available at* <https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html> [↑](#footnote-ref-1)
2. See Administrative Order No. 2020-01 (March 15, 2020), *available at* <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf>. [↑](#footnote-ref-2)
3. See, e.g., Ryan Autullo, *Travis County judges releasing inmates to limit coronavirus spread*, The Statesman (March 16, 2020), *available at* <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>. [↑](#footnote-ref-3)