STATE OF MICHIGAN
IN THE 53RD CIRCUIT COURT FOR THE COUNTY OF PRESQUE ISLE

STATE OF MICHIGAN, Plaintiff,	Case No. 21-93191-FH
v.	HON. AARON J. GAUTHIER
ERIN JO CHASKEY, Defendant.	**MOTION TO MODIFY BOND CONDITIONS AND BRIEF IN SUPPORT**

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DEFENDANT'S MOTION TO MODIFY BOND CONDITIONS

NOW COMES the Defendant, **ERIN JO CHASKEY**, by and through her attorney, Daren A. Wiseley, and hereby requests that this Honorable Court grant her Motion to Modify the Bond pursuant to MCR 6.106; specifically requesting the conditions: (1) preventing her from entering the property at 4549 M33, Onaway, MI 49765 (hereinafter, "Onaway"), and (2) ordering no contact, be stricken completely from the Order, and it be reduced to a Personal Recognizance Bond, for the reasons provided for in the attached brief which is fully incorporated herein by reference.

WHEREFORE, Erin J. Chaskey respectfully requests that this Honorable Court grant her Motion to Modify Bond Conditions, and grant any other relief deemed equitable and just.

Dated: February 13, 2022

Daren A. Wiseley (P85220)
Wiseley Law, PLLC
Attorney for Defendant

DEFENDANT'S BRIEF IN SUPPORT

On November 10, 2021, Ms. Chaskey turned herself in to the Presque Isle County Sheriff's Office for booking, after being notified she had been charged with Felony Eavesdropping. MCL 750.539c. The same day, Magistrate Collette Welch set a Personal Bond of $5,000, subject to certain pretrial release conditions. (Ex. A). Notable, are the conditions that she "shall not enter the property located at [Onaway High School]", where her son attends, and that she "shall have no contact by any means" with Rodney Fullerton and Michael Benson. *Id.* Ms. Chaskey's arraignment was then on November 23, 2021.

As detailed below, Ms. Chaskey poses absolutely zero threat of harm or flight risk. Therefore, both of these conditions should be stricken from the bond order.

I. RELEVANT LAW

Made at arraignment, or thereafter, a bond modification may be made *de novo*. Mich. Ct. R. 6.106(H)(2)(b). In deciding whether to reduce bail, courts consider the same Mich. Ct. R. 6.106(F)(1) factors they use to determine whether to set bail. *People v. Smith*, 152 Mich. App. 756 (1986).

The Eighth Amendment to the United States Constitution and Article 1, Section 16 of the Michigan Constitution provide that excessive bail shall not be required. U.S. Const, Am VIII; Const. 1963, Art. 1, §16. Bail that is set at an amount higher than an amount reasonably calculated to give adequate assurance that the accused will stand trial and submit to sentence if guilty is excessive under the Eighth Amendment. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). The purpose of requiring bail or bond is to ensure the defendant appears in court and the safety of the public. See MCR 6.10-6.

Except in very narrow circumstances, as provided by law, a person accused of a criminal offense is entitled to bail. MCL 765.6. See also Const. 1963, Art. 1, §15. At the defendant's first appearance before the court, the magistrate, or judge must order that the defendant be held in custody or released pursuant to MCR 6.106. A bail order may contain protective conditions reasonably necessary for the protection of one or more named persons MCL 765.6(b); see also MCR 6.106(d)(2)(m), in which case the court ***must*** state the reason for its decision on the record MCR6.106(f)(2) and the defendant ***must*** be given the opportunity to correct any errors and present any additional evidence, and a record of the proceeding must be made. MCR. 6.106; *People v. Spicer*, 402 Mich. 406, 411 (1978). In addition, Courts consider nine factors when determining bail. MCR 6.106(f)(1)(a)-(i). In sum, there is a presumption that a defendant has both: 1) the right to bail, 2) without any extra restrictions, absent findings on the record by the court to the contrary., advancing the underlying principle that bail should "add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty" *Salerno*, 481 U.S. at 750; *Bell v. Wolfish*, 441 U.S. at 524; *Sellers*, 89 S.Ct. at 38.

II. THERE IS ABSOLUTELY NO BASIS FOR THE PROTECTIVE BOND CONDITIONS AS ANALYZED UNDER THE RELEVANT AUTHORITY

It is then abundantly clear, then, that there ***is zero legal basis*** to have Ms. Chaskey completely barred from access to her son's high school, where she has been so heavily involved her entire life, now unable to his basketball games or even drop him off or pick him from school; and unable to communicate with some of the leadership there. In fact, there is zero basis to support this entire felony complaint – as will soon be made quite transparent. Ms. Chaskey is moving to dismiss the entire case because the State failed to sufficiently allege, she committed a crime, furthermore, the prosecution of her flies in the face of her First Amendment rights. The entire matter had been bubbling under the surface for two years when Ms. Chaskey rubbed many

officials at Onaway the wrong way when she merely attempted to receive accountability and oversight, leading her to stumble into a conversation they certainly did not want her to know about. The entire matter is baseless and vindictive, and striking at the one area *they knew they could actually hurt* her – being unable to be as involved with her son's activities – is exactly what Onaway wanted.

The idea that little Ms. Chaskey poses a "public safety" threat to Fullerton and Benson is quite absurd on its face. An analysis through the factors provided in MCR 6.106(F)(1)(a)-(i) will simply show that. Unequivocally:

1. Ms. Chaskey has zero criminal record, not even a speeding ticket;
2. While she has had very few court proceedings before this matter, she has never failed to appear for one;
3. The alleged crime charged with is nonviolent. The likelihood of a conviction is extremely low, in fact, she is hoping to get this entire matter dismissed in the near future; so she and her family can go on with their lives, and put to bed these frivolous allegations;
4. Ms. Chaskey has been a member of the Onaway community her entire life, including growing up and going to school there. Her entire family resides in the area;
5. Ms. Chaskey and her husband are owners of a septic business that has been successful in the community for a good number of years now;
6. Ms. Chaskey and her husband are financially stable, and have two very well-mannered children that reside with them, and due to their upbringing will be very productive members of society;
7. Ms. Chaskey has no history of substance abuse or addiction;
8. She is in good mental condition, in spite of the constant defamatory remarks thrown at her that have resulted from this manner. Likewise, she poses no threat , having no character or reputation for violence;
9. Prior to this matter, Ms, Chaskey had significant community involvement. She had been her daughter's class advisor, substitute taught at Onaway, and been a volunteer

at countless extracurricular activites throughout the years. She had even helped set up a "prom" for the high school students who had been so disappointed, thinking they might miss out when COVID-19 hit;

10. Ms. Chaskey has MANY upstanding members of the community who can vouch for her character. In fact, since this matter began, the support she has received has been overwhelming. The disappointing truth is that her willingness to be an active member of the community and stand up for those who may not stand up for themselves is what landed her in this matter.

It is quite obvious that Ms. Chaskey neither poses a flight risk nor a risk of public safety or harm. The one being harmed here is her by not being allowed to go to her son's basketball games.

III. THE BAIL ORDER FAILED TO COMPLY WITH MICHIGAN LAW

At this point it is abundantly that there can be zero honest basis by which Ms. Chaskey could have the Conditions of the Bond enforced against her under the relevant Michigan law. The analysis leaves no question that she is not a flight risk or public safety threat.

One thing should be briefly pointed out, however, as noted in Section I., *Supra:*

> A bail order may contain protective conditions reasonably necessary for the protection of one or more named persons, in which case the court must state the reason for its decision on the record and the defendant must be given the opportunity to correct any errors and present any additional evidence, and a record of the proceeding must be made.

The District Court never stated its reason for the decision on the record, in fact, this decision was over a week before Ms. Chaskey ever was able to get on its record. Regardless, the District Court could have still stated its rationale at her arraignment, which it failed to do. The closest thing the District Court did in placing any kind or record as to how they concluded that

Ms. Chaskey is some kind of "public safety" threat, was checking a box that said that on her pretrial release order. Likewise, since this was never brought up on the record, Ms. Chaskey never had any opportunity to rebut these claims. Both of the actions violate the relevant authority necessary to order bond conditions under Michigan law.

IV. CONCLUSION

The alleged "criminal activity" the State claims Ms. Chaskey was engaged in, even if taken to be true, is still completely nonviolent. As this motion and brief in support have made abundantly clear, there is absolutely no basis under Michigan law by which Ms. Chaskey could be considered a "flight risk" or "public safety" risk. These are just absurd, baseless conclusions with no facts to support them. As such, these conditions should be stricken from her bond order.

WHEREFORE, Defendant Erin J. Chaskey respectfully requests that this Honorable Court reduce her bond to a personal recognizance bond and grant such other and further relief as is just and appropriate.

Respectfully Submitted,

Dated: February 13, 2022

Daren A. Wiseley (P85220)
Wiseley Law, PLLC
Attorney for Defendant