

FILED AND ENTERED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2010 AUG 19 PM 4:00

CLERK OF THE COURT
BY: [Signature]
DEPUTY CLERK

FILED AT INSISTENCE OF LITIGANT

1 KAMALA D. HARRIS
District Attorney
2 BRIAN J. BUCKELEW (#205148)
Assistant District Attorney
3 850 Bryant Street, Room 322
San Francisco, California 94103
4 Attorneys for the People

5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 FOR THE CITY AND COUNTY OF SAN FRANCISCO

7 THE PEOPLE OF THE STATE OF
8 CALIFORNIA,

9 Plaintiff,

10 v

11 JOSHUA CALDER,

12 Defendant.

MCN: 10024282

PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION FOR
REDUCTION OF BAIL

Date: August 20, 2010
Dept: 9
Time: 9:00 A.M.

14 TO THE HONORABLE JUDGE ANNE BOULIANE OF THE SUPERIOR COURT, TO
15 DEFENDANT ABOVE-NAMED BY AND THROUGH HIS ATTORNEY, JOHN D.
16 FORSYTH :

17 PLEASE TAKE NOTICE that on August 20, 2010 at 9:00 a.m., or as soon thereafter as the
18 matter can be heard in Department 9 of the above-entitled court, the People will oppose the
19 defendant's motion for a reduction in bail.

20 Dated: August 19, 2010

21 Respectfully submitted,
22 KAMALA D. HARRIS
23 District Attorney

[Signature]

24 Assistant District Attorney
25 BRIAN J. BUCKELEW

sub E

RB

1
2 The People respectfully submit the following opposition to reduce bail, pursuant to
3 California Penal Code Sections 1270.1, 1270.2 and 1275(c). The People will rely upon this
4 motion, and the Points and Authorities herein, as well as any evidence and arguments that may
5 be presented at a hearing on this matter.

6 The defendant is charged in Count I with one felony count of violating Penal Code
7 section 191.5(b) (Vehicular Manslaughter While Intoxicated (Without Gross Negligence)) with
8 an enhancement of fleeing the scene of the crime pursuant to Vehicle Code section 20001(c); in
9 Count II of one felony count of violating Vehicle Code section 23153(a) (Driving Under the
10 Influence Causing Injury) with enhancements for inflicting great bodily injury (pursuant to Penal
11 Code section 12022.7(a)) and for inflicting great bodily injury resulting in coma or paralysis
12 (pursuant to Penal Code section 12022.7(b)); in Count III with one felony count of violating
13 Vehicle Code section 23153(a) (Driving Under the Influence With A .08% Blood Alcohol
14 Causing Injury) that carries enhancements for inflicting great bodily injury (pursuant to Penal
15 Code section 12022.7(a)) and for inflicting great bodily injury resulting in coma or paralysis
16 (pursuant to Penal Code section 12022.7(b)); and Count IV for one felony count of violating
17 Vehicle Code section 20001(a) (Leaving the Scene of an Accident Causing Injury) that carries an
18 allegation for causing permanent, serious injury pursuant to Vehicle Code section 20001(b)(2).

19 Bail was set without prejudice by the Court on August 18, 2010 at \$500,000. Neither
20 counsel for the defendant nor counsel for the People argued the merits of the bail and instead it
21 was contemplated that bail would be argued by both sides *de novo* on August 20, 2010.

22 FACTUAL SUMMARY

23 The following is based on the incident report, the collision report, the Inspector's
24 Chronology, taped statements by the defendant, his girlfriend Nicole Mairs, and an independent
25 witness, and evidence collected to date. On August 13, 2010, the defendant, Joshua Calder, an
26 Oakland resident, went to the Kokkari restaurant at 200 Jackson Street in San Francisco with his
girlfriend, Nicole Mairs. The reservation was for 7:30 PM. The two dined at the restaurant and

1 consumed alcohol. According to the defendant the two split a bottle of wine and each took a
2 shot a of the greek asperatif, Ouzo. The two left the restaurant at approximately 10:00 PM in
3 Nicole Mairs Mercedes-Benz. The defendant was driving.

4 At 10:39 PM, Nils Linke, a 22-year-old German tourist, was pedaling his bicycle S/B on
5 Masonic Street just south of the Turk/Masonic intersection. He was in the number one lane of
6 traffic. His bicycle had a flashing white light affixed to the front of the bicycle that was turned
7 on. The defendant was driving Mairs' Mercedes S/B on Masonic Street (with Ms. Mairs sitting
8 in the passenger seat). The car was approaching the Masonic/Turk intersection when Ms. Mairs
9 saw the bicyclist in the number one lane and shouted "Stop! Stop! Bike! Bike!" The defendant
10 responded, "what?" and traveled through the intersection. The Mercedes then struck the bicycle
11 from behind and the defendant hit the brakes and swerved. The bicycle was sheared in half and
12 came to rest in the street with the safety light still flashing. Mr. Linke, too, laid in the street,
13 unconscious. The defendant pulled to right side of the road on Masonic Street at Golden Gate
14 Avenue (which is the same block as the incident). The defendant and Ms. Mairs exited the
15 vehicle and ran up to the victim, who lay dying in the street. The victim was convulsing and
16 bleeding from the nose and ears. The defendant moved the victim's bicycle onto the sidewalk
17 and, along with Ms. Mairs, returned to the Mercedes. Neither the defendant nor Ms. Mairs
18 called the police despite both having cell phones. When they reached the Mercedes, Ms. Mairs
19 got into the driver's seat and the defendant got into the passenger seat. According to a police
20 officer witness, the Mercedes began traveling S/B Masonic "at a high rate of speed" and turned
21 right (W/B) on Golden Gate Avenue. The vehicle continued W/B on Golden Gate, past
22 Annapolis Terrace, which is a two-way street. The radio car got behind the Mercedes and the
23 Mercedes then turned N/B on Tamalpais Terrace (See Ex. A). Officers noticed front end
24 damage to the vehicle and effected a traffic stop. The car yielded to the right on Tamalpais N/B
25 at Turk Street, two blocks from the accident. When the officers approached, the defendant told
26 police that he had been driving and Ms. Mairs told police that the defendant had been driving.
Ms. Mairs also claimed that she was driving the car to go around the block and position it closer

1 to Masonic and Turk Street. Neither the defendant nor Ms. Mairs used their cell phones to
2 summon help for Mr. Linke.

3 When the defendant exited the vehicle, officers noted the odor of alcohol emanating from
4 the defendant's body. The defendant and Ms. Mairs admitted consuming alcohol. Mairs told
5 Officer Horan #428 that she and the defendant had "split a bottle of wine" at dinner. The SFPD
6 conducted a DUI investigation and observed, among other things, six out of six indicators on the
7 defendant's horizontal gaze nystagmus test. The defendant was arrested and submitted to a
8 blood draw. His BAC registered 0.10% over two hours after the accident. His blood was also
9 positive for cannabinoids.

10 Mr. Linke was transported by the SFPD Medic to San Francisco General Hospital, where
11 he was declared dead at 11:24 PM.

12 On August 17, 2010, the Kokkari restaurant faxed Inspector Dean Taylor the itemized
13 bill for Nicole Mairs and the defendant's August 13th dinner. Included in the bill, which notes "2
14 guests" and is signed by Nicole Mairs, are two bottles of "BT Wolf Family" wine, a champagne
15 cocktail, a Stella Artois beer, and two shots of Plomari, a variety of Ouzo (*See Ex. B*). Nicole
16 Mairs credit card was run on the bill at 9:49 PM.

17 ARGUMENT

18 Based on the Defendant's alleged conduct, the seriousness of the felony "strike" charges,
19 the death of a 22-year-old man, the threat to public safety, and the flight risk inherent in nine
20 years' exposure in state prison, the People respectfully request, pursuant to Sections 1270.2 and
21 1275(c) of the Penal Code, that bail remain in the amount of \$500,000, which is the scheduled
22 bail on Count I alone not considering the allegations or other charges. That amount, while not as
23 high as it could be and not reflecting the hit-and-run component of this case, is appropriate given
24 the defendant's lack of criminal history, ties to the community and employment as set forth in
25 the defendant's motion. No meaningful "unusual circumstances" would warrant a departure to
26 anything less than \$500,000. The \$500,000 figure already reflects factors that inure to the
benefit of the defendant, which are enumerated in the defendant's bail motion.

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CONCLUSION

For the foregoing reasons, the People respectfully request that the Court deny the defendant's motion to reduce bail on this serious felony case.

August 19, 2010

Respectfully submitted,
KAMALA D. HARRIS
District Attorney



BRIAN J. BUCKELEW
Assistant District Attorney

DECLARATION OF SERVICE BY MAIL/FAX/PHONE

1 MUNICIPAL COURT NO. ___ 10024282

2 I, Brian J. Buckelew, state:

3 I am a citizen of the United States, over eighteen years of age, an employee of the
4 City and County of San Francisco and not a party to the within action; that my
5 business address is 850 Bryant Street, San Francisco.

6 On August 19, 2010, I served the attached: People's Motion to Increase Bail on
7 counsel listed below:
8 _____

Office of the Public Defender	Private Counsel
	John D. Forsyth, Esq. 2431 Fillmore Street San Francisco, CA 94115 PH: (415) 401-0729 FAX: (415) 401-7609 Dan Barton, Esq. Nolan Armstrong LLP 600 University Avenue Palo Alto, CA 94301 PH: (650) 326-2980 FAX: (650) 326-9704

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- 19 Placing said envelope in a box reserved for **Public Defender discovery** in the District
20 Attorney's Office, the contents are picked up by an employee of the Public Defender's Office
21 on a daily basis.
- 22 Placing said envelope with the correct postage paid for collection by the **United States Mail**
23 in the regular place for collection of mail.
- 24 I also **called /spoke to** the above attorney for the defendant on _____ and informed her of
25 the Petition and date for arraignment.

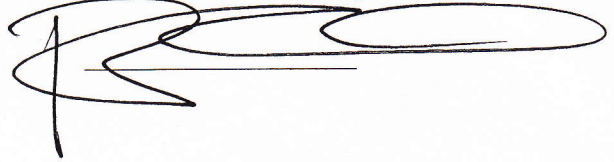
26 **Faxed** this Motion to Increase Bail to attorney for the defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2010 at San Francisco, CA.

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BRIAN J. BUCKELEW ,
Assistant District Attorney

A handwritten signature in black ink, appearing to read 'B. Buckelew', is written over a horizontal line. The signature is stylized and somewhat illegible.

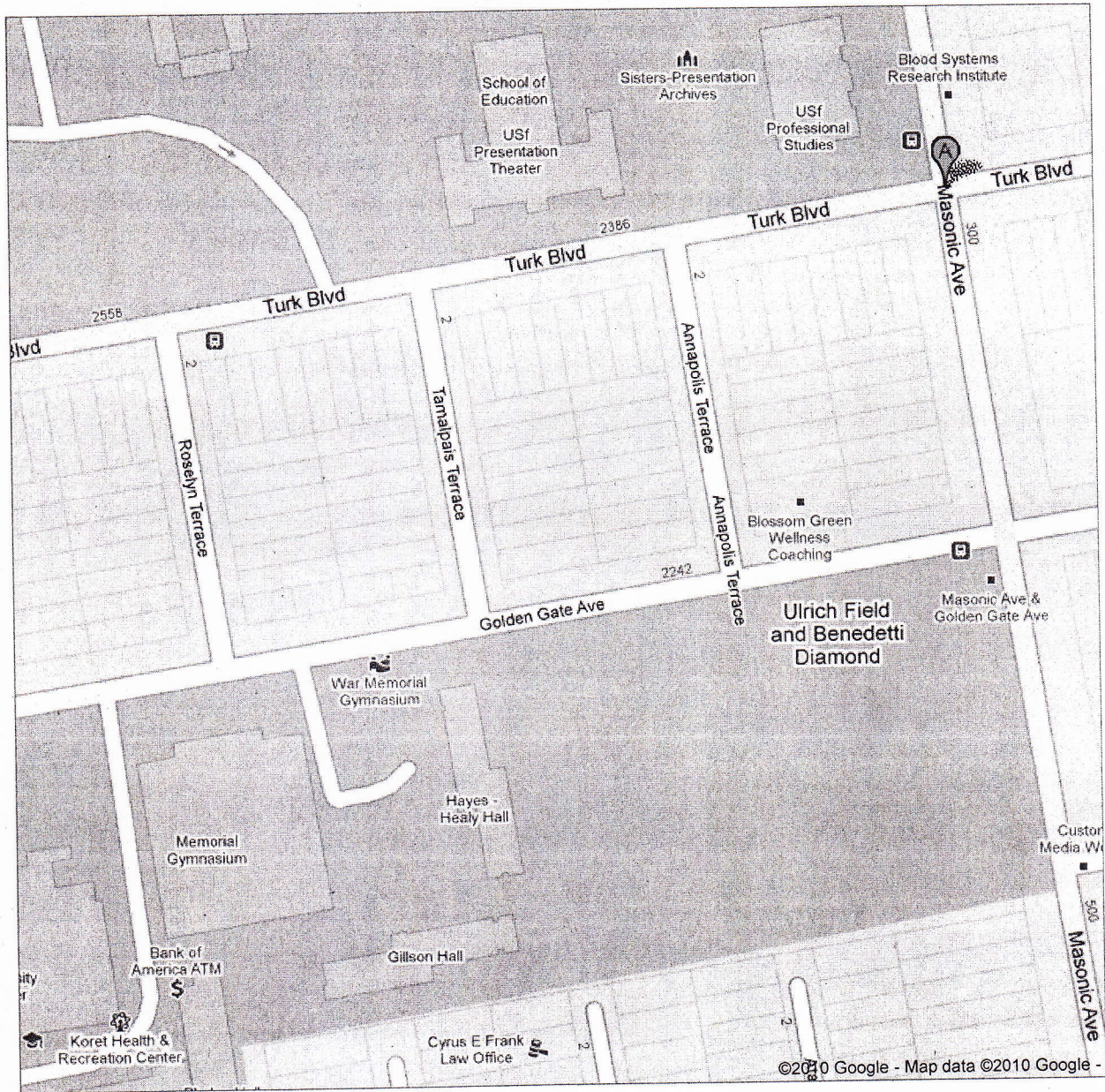
EX. A

Google maps

Address **Masonic Ave & Turk Blvd**
San Francisco, CA 94118

Get Google Maps on your phone

Text the word "GMAPS" to 466453



©2010 Google - Map data ©2010 Google -

EX. B

IBER.PRT

Kokkari Estiatorio
200 Jackson Street
415-981-0983

Server: Nasos 08/13/2010
Table 65/1 10:15 PM
Guests: 2 10043
Reprint #: 1

Kokkari Estiatorio
200 Jackson Street
415-981-0983

Plomari (2 @9.00) 18.00
Champagne Cocktail 14.00
Stella Artois 6.00
Saghanaki 11.25
Kalamari 9.50
Spanakotiropita 8.75
Bt wolf Family (2 @62.00) 124.00
Arnisia Plevrakia 9.25
Marithes Tiganites 9.50
HALF RAV 11.00
Mosharisia Brizola (2 @39.00) 78.00
Kokkari Sundae 10.00

Server: Nasos DOB: 08/13/2010
09:39 PM 08/13/2010
Table 65/1 1/10043

Visa 1048619
Card #XXXXXXXXXXXX1205
Magnetic card present: MAIRS NICOLE M
Approval: 074100

Subtotal 309.25
Tax 29.38

Amount: 338.63

Total 338.63

+ Tip: 70.37

Visa #XXXXXXXXXXXX1205 338.63

= Total: 408.63

Tip 70.00

Total 408.63

Auth:074100

Grand Total 408.63



Thank You for visiting
Kokkari Estiatorio

Kokkari Copy

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Kokkari Estiatorio

--- Check Closed ---