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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF RIVERSIDE  
10 (Southwest)

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 v.

15 DAVID ALAN DORTCH  
16 DOB 09/28/1965

17 Defendant.

) Case #SWF1400013 &  
) Case #SWF1501444

)  
) **NOTICE OF MOTION AND**  
) **MOTION TO DISMISS FOR LACK**  
) **OF JURISDICTION;**  
) **MEMORANDUM OF POINTS &**  
) **AUTHORITIES**

) Date: October 21, 2015  
) Time: 1:30pm  
) Dept: S201

)  
) EVIDENTIARY HEARING  
) REQUESTED  
) Time Estimate: 1 hour

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22  
23  
24 TO THE COURT AND PROSECUTORS:

25 Please take notice that on October 21, 2015, at 1:30pm in Department S201 of  
26 the above-entitled court, the Defendant will move for an order dismissing this case  
27 for lack of jurisdiction, and present an evidentiary basis supporting this action.

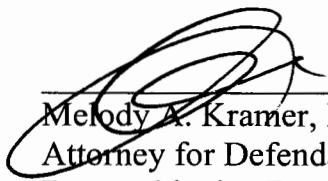
28 This motion will be based these moving papers, attached points and

1 authorities, and such additional evidence and arguments as will be presented at the  
2 hearing.

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DATED: October 7, 2015

KRAMER LAW OFFICE, INC.

  
\_\_\_\_\_  
Melody A. Kramer, Esq.  
Attorney for Defendant  
Dr. David Alan Dortch

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **INTRODUCTION**

3 Although at first blush this case appears to be a simple action of government  
4 enforcing its laws against its citizens, that is not really what is going on here. The  
5 actors in this case have been acting on their own corporate interests, something that  
6 requires consent of the other parties doing business with the corporation. That  
7 relationship between the parties is not present here and thus this case should be  
8 dismissed for lack of jurisdiction.

9 **FACTUAL SUMMARY**

10 Dr. Dortch, when he was permitted to speak on his own behalf, has  
11 consistently advised this Court that he does not consider the Court to be authorized  
12 to exercise their corporate powers over him as a person, a living, breathing person vs.  
13 a corporate entity doing business.

14 Not only has the Court ignored this argument, but has demanded, under threat  
15 of jail, to either identify himself or an attorney as acting on his behalf in front of  
16 court. Dr. Dortch's statements in several hearings both refusing to "represent  
17 himself" or hire or agree to the hiring of an attorney to speak on his behalf are part of  
18 this political speech and legal argument regarding the roles in the judicial system.  
19 He has revoked his pleas and any agreement he is presumed to have made with this  
20 prosecution going forward.

21 It is because of this distinction that Dr. Dortch meticulously filed papers with  
22 County and gave notice of revocation of any purported signatures or consents to the  
23 contrary. He was making clear that he has not contracted with the corporate court  
24 that is doing business at Southwest Justice Center and the law enforcement officers  
25 and prosecutors working in concert therewith and, as such, cannot be forced to  
26 comply with participation in what, sadly, has become a circus with serious  
27 consequences to Dr. Dortch, but no one else.

28 Admittedly, this is not the most common type of defense that parties make

1 when summoned before the Court and accused of a criminal offense, but that doesn't  
2 make it less worthy of being heard and considered. Both the U.S. Constitution and  
3 the California Constitution provide strong protections of the freedom of speech.

4 Also admittedly, Dr. Dortch is asking the Court to consider the possibility that  
5 its actions here have been illegitimate in one way or another, a tough pill to swallow  
6 for anyone. However, there are a lot of reasons why that needs to happen here.

7 Dr. Dortch also incorporates herein by this reference, the factual summaries  
8 providing in the co-pending motions before the Court.

## 9 10 **ARGUMENT**

11 To understand Defendant's argument here, it is necessary to go back to the  
12 general principles upon which this country was formed.

13 We hold these truths to be self-evident, that all men are created equal,  
14 that they are endowed by their Creator with certain unalienable Rights,  
15 that among these are Life, Liberty, and the pursuit of Happiness. – That  
16 to secure these rights, Governments are instituted among Men, deriving  
their just powers from the consent of the governed.

17 Declaration of Independence.

18 The concept of government deriving its “just powers from the consent of the  
19 governed” should be a constant reminder to all of us that our government, whether  
20 on a federal, state, county, or local level is at all times answerable to governed, not  
21 the other way around.

22  
23 I. THIS JUDICIAL PROCESS AGAINST DR. DORTCH IS A CORPORATE,  
24 COMMERCIAL TRANSACTION, NOT PART OF GOVERNMENTAL  
25 JUST POWERS.

26 A. Governmental entities have become corporate entities, either explicitly,  
or for all intents and purposes.

27 Our society has become exceedingly complex since the original constitutions  
28

1 were created and that also makes interactions with government or pseudo-  
2 government agencies more complex as well. Governmental entities are now either  
3 actually, or for all practical purposes, corporate entities engaging in commerce just  
4 as any other corporate would. However, this leads to great potentials for abuse in  
5 government.

6 In California, a county, such as Riverside County, is the largest political  
7 division of the State “having corporate powers.” *Gov’t Code* § 23000. “A county is  
8 a body corporate and politic . . .” *Gov’t Code* § 23003. The State Bar of California is  
9 a “public corporation.” CA Constitution, Art. 6, Sec. 9.

10 Furthermore, the State of California and the Superior Court of California,  
11 County of Riverside, are listed among every other domestic corporation on Dun &  
12 Bradstreet.

13 B. The activities that surround this prosecution are commercial in nature.

14 Within this context are the activities of Riverside County, primarily via the  
15 Riverside County Sheriff’s Office, in seeking and obtaining millions of dollars in grant  
16 money for the explicit purpose, and with corresponding obligations to conduct, certain  
17 types of criminal investigation and prosecution activities. Per publicly available  
18 documents, these funds are shown to be then distributed to law enforcement officers and  
19 agencies, and prosecutors, and the court. This places law enforcement, prosecutors, and the  
20 court into a business relationship with each other, whereby there is financial incentive to  
21 prosecute persons for criminal accusations.

22 This arrangement is furthered by other examples of financial ties between law  
23 enforcement agencies and prosecutors. As disclosed in publicly available election  
24 campaign contribution records, current Riverside District Attorney, Michael Hestrin’s  
25 recent successful campaign was primarily financed by the Riverside County District  
26 Attorney’s Association (directly and through its PAC) and the Riverside Sheriffs’  
27 Association (through its PAC and Public Education Fund). Records show that \$510,000 of  
28 just over \$900,000 in your total monetary campaign contributions came from the DA’s

1 Association and \$202,000 from the Sheriffs' Association. That is just shy of 80% of the  
2 total monetary contributions you received. How is the District Attorney's office going to  
3 fulfill their obligations of impartiality without jeopardizing their future campaign  
4 contributions?

5 A District Attorney's office is "obligated not only to prosecute with vigor, but also  
6 to seek justice. . . ." The District Attorney "is the representative not of an ordinary party to  
7 a controversy, but of a sovereignty whose obligation to govern impartially is as compelling  
8 as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is  
9 not that it shall win a case, but that justice shall be done." See *People v. Conner*, 34 Cal.3d  
10 141, 193 Cal.Rptr. 148, 666 P.2d 5 (1983) (emphasis added). If there is evidence that a  
11 District Attorney has a conflict of interest or a "reasonable possibility the district attorney's  
12 office may not be able to exercise its discretionary function in an evenhanded manner," the  
13 district attorney should be disqualified from handling the case. See *Penal Code* §  
14 1424(a)(1) and *People v. Merritt*, 19 Cal.App 4th 1573, 24 Cal.Rptr. 2d 177 (1993).

15 That has not happened in this case. The District Attorney's Office has acted in  
16 alignment with its own commercial interests and that of law enforcement agencies that  
17 provide it with grant funds, and this Court has acted in concert therewith.

18 Within plea negotiations, Deputy District Attorney Svitenko told Dr. Dortch he was  
19 offering a misdemeanor and to drop his civil lawsuit against the City of Murrieta and "stop  
20 making trouble for himself." Despite the fact that California lawyers are prohibited from  
21 "threatening to present criminal, administrative, or disciplinary charges to obtain an  
22 advantage in a civil dispute" (*Rules of Professional Conduct*, Rule 5-100(A)) and  
23 that this naturally extends to continuing with criminal prosecution for the same ends,  
24 there is no indication that any action has been taken against Mr. Svitenko, either by  
25 his employer, and certainly not by this Court.

26 Additionally, the District Attorney's Office has ignored and failed to prosecute  
27 documented instances of violation of California law by officers investigating the Dortch  
28 family. As detailed within the *Pitchess* motion filed in this case, but never yet heard by any

1 judge, the identification of the participants in the April 20, 2013 search of the Dortch home  
2 has been falsified in police reports, supervisor review notations on police reports have been  
3 falsified, police officers destroyed material evidence seized from the search, and police  
4 officers concealed and failed to document significant activities that occurred on the day of  
5 the search. Furthermore, police officers have used their positions of authority to undermine  
6 Defendant's reputation, credibility, business, and liberty as punishment for having  
7 challenged their actions in a civil rights lawsuit, a named defendant in a civil lawsuit  
8 arrested the plaintiff in the case without a warrant, and outside of his territorial jurisdiction  
9 of authority as a police officer. Police officers issued press releases in response to  
10 Defendant's exercise of First Amendment rights criticizing the police, pursued lab tests only  
11 when, and because, a civil lawsuit was filed.

12 These criminal actions by police officers have been repeatedly documented within  
13 this Court file, but are being ignored by the Court and the District Attorney, whereas Dr.  
14 Dortch is being prosecuted for purported manufacture of a substance already found in  
15 everyone's body, refusal to submit to a DNA test after an unlawful arrest and under an  
16 unconstitutional statute, and a completely bogus and unsupported inflammatory accusation  
17 of harming a child.

18 At some point, the Court needs to acknowledge the fact that this prosecution has lost  
19 any sense of reality. It is not the exercise of lawful governmental actions, but instead no  
20 more than the furtherance of commercial interests, a structure in which Defendant need not  
21 be required to participate in, and has not consented to participate in. Not only is Defendant  
22 being forced by constant threat of jail, fines, bail money, he has also been threatened with  
23 jail if he does not either hire his own attorney or submit to a public defender being assigned  
24 over his objection. Then that public defender, hired by the corporate county, and who this  
25 Court has insisted will later need to be paid for by the Defendant, accuses Defendant of  
26 being mentally incompetent, thereby setting in place the process of more commercial  
27 transactions. The Court hires a psychologist and psychiatrist to evaluate Defendant (even  
28 though neither prosecution nor defense has raised any issue of his competence) – a

1 commercial transaction – and then forces Defendant to be held in jail in the Southwest  
2 Detention Center – another commercial transaction.

3  
4 II. DR. DORTCH HAS PREPARED AND FILED PAPERWORK EXPRESSING HIS  
5 INTENT TO NOT ENGAGE IN A COMMERCIAL TRANSACTIONAL  
6 RELATIONSHIPS WITH THE ENTITIES INVOLVED IN THIS PROSECUTION.

7 By documents filed with this Court on or about May 6, 2015 and again on August  
8 11, 2015, Dr. Dortch gave notice of his corporate status, his revocation of any assumed or  
9 actual contracts with the Court, bail bondsman, and otherwise related to this case. In  
10 accord therewith, he has designated himself as the “principal” for the flesh and blood  
11 person, and taken actions as “principal” in accordance therewith.

12 A more detailed explanation of this position is contained within those filings and is  
13 incorporated herein by this reference. Although this position is admittedly different than  
14 arguments usually made here, a closer look at the vast array of constitutional violations that  
15 have occurred in this case will put the matter in different perspective.

16 III. THIS COURT PROCESS HAS INVOLVED SO MANY  
17 CONSTITUTIONAL VIOLATIONS AS TO BE, DE FACTO, NOT A  
18 LEGITIMATE GOVERNMENTAL PROCESS.

19 A. Allowing Dennis A. McConaghy to act as a superior court judge is a  
20 violation of California Constitution, Art. 6, Sec. 15.

21 A person is ineligible to be a judge of a court of record unless for 10 years  
22 immediately preceding selection, the person has been a member of the State  
23 Bar or served as a judge of a court of record in this State.

24 *California Constitution, Art. 6, Sec. 15.*

25 Per the publicly available records of the California State Bar, a public  
26 corporation that all lawyers in the state must be a member of, Dennis A. McConaghy  
27 began practicing law in 1979. Eight years later, in 1987, his status changes to  
28



1 “Judge” even though he has not been a member of the Bar for the necessary 10 years.  
2 As such, he is ineligible to be a judge of a court, and that would render all of his  
3 actions in this case null and void.  
4

5 B. Ordering Dr. Dortch held for 30 days without bail is a violation of  
6 California Constitution, Art. 1, Sec. 12.

7 A person shall be released on bail by sufficient sureties, except for:

8 (a) Capital crimes when the facts are evident or the presumption great;

9 (b) Felony offenses involving acts of violence on another person, or felony  
10 sexual assault offenses on another person, when the facts are evident or the  
11 presumption great and the court finds based upon clear and convincing  
12 evidence that there is a substantial likelihood the person's release would result  
13 in great bodily harm to others; or

14 (c) Felony offenses when the facts are evident or the presumption great and  
15 the court finds based on clear and convincing evidence that the person has  
16 threatened another with great bodily harm and that there is a substantial  
17 likelihood that the person would carry out the threat if released.

18 ...

19 *California Constitution, Art. 1, Sec. 12 (emphasis added).*

20 Dr. Dortch does not fall within the category of persons that can be denied  
21 release on bail and thus this Court's order otherwise was unconstitutional.

22 C. Continuing this prosecution after the speedy trial deadline passed is in  
23 violation of constitutional rights.

24 The arguments on this point are set out separately in the Motion for  
25 Dismissal for Violation of Rights to Speedy Trial and incorporated herein by  
26 reference.

27 D. A plethora of other constitutional and statutory violations have also  
28 occurred.

As outlined in the pending Petition for Writ of Mandamus before the Court  
of Appeal, forcing a defendant to hire a lawyer or have one appointed over his

1 objection is unlawful, committing an defendant to a 30-day psych evaluation hold  
2 violated *Welfare & Institutions Code* § 5150, and denial of bail based upon First  
3 Amendment arguments made by a defendant is unconstitutional. That Memorandum  
4 of Points and Authorities is incorporated herein by this reference.

5 E. This Court has violated due process in many ways.

6 As outlined in other motions before the Court, this Court has failed and  
7 refused to read or rule on Pitchess or other discovery motions, failed to force the  
8 prosecutor to turn over known Brady materials, failed to disqualify the District  
9 Attorney's office even though a veiled threat was made regarding dismissal of the  
10 civil rights lawsuit as part of plea negotiations.


11  
12 **CONCLUSION**

13 Defendant has respectfully and in great detail documented his opting out of the  
14 commercial court operations that this criminal prosecution has become. He is not arguing  
15 that any and all persons coming before this Court should necessarily have the same relief as  
16 that outlined here; that is a decision for another day. However, as to him, this process is no  
17 more than a series of commercial transactions, generated out of a commercial goal of the  
18 Murrieta Police Department, and other agencies acting in concert therewith, from facing  
19 civil liability in the case Defendant Dr. Dortch and his family filed to redress their  
20 government for violations of their Constitutional rights.

21 WHEREFORE, it is requested that this case be dismissed for lack of jurisdiction  
22 over both David Dortch and over the civil rights lawsuit currently pending against the City  
23 of Murrieta.

24 DATED: October 7, 2015

KRAMER LAW OFFICE, INC.

25  
26   
27 \_\_\_\_\_  
28 Melody A. Kramer, Esq.  
Attorney for Defendant  
Dr. David Alan Dortch

1 **PROOF OF SERVICE**

2 I, Melody A. Kramer, declare: I am and was at the time of this service  
3 working within in the County of San Diego, California. I am over the age of 18 year  
4 and not a party to the within action. My business address is the Kramer Law Office,  
5 Inc., 4010 Sorrento Valley Blvd., Suite 400, San Diego, California, 92121.

6 On Wednesday, October 07, 2015, I served the following documents:

7 **NOTICE OF MOTION AND MOTION TO DISMISS FOR LACK OF**  
8 **JURISDICTION; MEMORANDUM OF POINTS & AUTHORITIES**

9 on the following parties or their counsel:

11 Richard A. Necochea 12 Riverside County District Attorney’s 13 Office 14 30755 Auld Rd, Ste. D 15 Murrieta, CA 92563 rnecochea@rivcoda.org	Attorney for People of State of California
16 Kamala D. Harris 17 Donald W. Ostertag 18 Office of the Attorney General 19 110 West A Street, Suite 1100 San Diego, CA 95266 Donald.Ostertag@doj.ca.gov	Attorney for People of State of California

20 by the following method of service:

21 \_\_\_\_\_ **(Personal Service)** I caused to be personally served in a sealed  
22 envelope hand-delivered to the office of counsel during regular business hours.

23 \_\_\_\_\_ **(Federal Express)** I deposited or caused to be deposited today with  
24 Federal Express in a sealed envelope containing a true copy of the foregoing  
25 documents with fees fully prepaid addressed to the above noted addressee for  
26 overnight delivery.

27 \_\_\_\_\_ **(Facsimile)** I caused a true copy of the foregoing documents to be  
28 transmitted by facsimile machine to the above noted addressees. The facsimile

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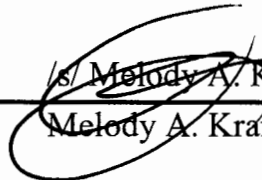
transmissions were reported as complete and without error.

**(Email)** I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.

**(Email--Pleadings Filed with the Court)** Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

**(U.S. Mail)** I mailed a true copy of the foregoing documents to a mail address represented to be the correct mail address for the above noted addressee.

I declare that the foregoing is true and correct, and that this declaration was executed on Wednesday, October 07, 2015, in San Diego, California.

  
\_\_\_\_\_  
Melody A. Kramer