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6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,
11 Plaintiff,
12 v.
13 DYTON W. GILLILAND
DOB: 10/31/1960,
14 Defendant.

Case No. MCYKCRM 15-1124

**NOTICE OF MOTION AND MOTION TO
DISMISS AND SUPPRESS EVIDENCE
(P.C. § 1538.5) PURSUANT TO U.S.
CONST. ART VI CLAUSE 2 AND ART IV
SEC. 3, CLAUSE 2, THE 4TH AND 14TH
AMENDMENTS**

Hearing Date: November 5, 2015
Time: 8:30 a.m.
Dept.: 4

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18 TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND TO THE
19 DISTRICT ATTORNEY OF SISKIYOU COUNTY:

20 PLEASE TAKE NOTICE that on November 5, 2015 at 8:30 a.m. or as soon thereafter as the
21 matter may be heard in Department 4 of the above-entitled court, the Defendant will, and hereby
22 does move this Court to:

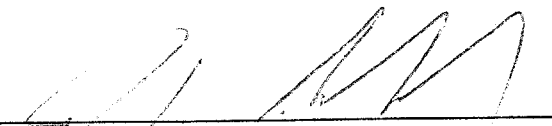
- 23 1. Suppress all evidence described below, and any fruits thereof, under the authority of
24 Penal Code § 1538.5(a)(1); and/or
25 2. Dismiss the Misdemeanor Complaint in its entirety pursuant to Penal Code § 1004.
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1 The grounds for this motion are that the laws and regulations under which Defendant is
2 charged are unconstitutional in violation of the United States Constitution Articles VI, clause 2, IV
3 Section 3 clause 2, and the Fourth and Fourteenth Amendments, and all evidence against him was
4 obtained by a search and seizure, without a warrant, in the course of enforcing this law. As such,
5 Penal Code § 1538.5 requires that all the evidence be suppressed. As such, the Misdemeanor
6 Complaint is also subject to demurrer under Penal Code § 1004.

7 This Motion is based on this Notice of Motion, the Declarations of Dyton Gilliland, Derek
8 Eimer and James Buchal filed herewith, and the Memorandum of Points and Authorities, filed
9 herewith, on such supplemental points and authorities and declarations as may be presented at or
10 before the hearing, and on such testimony as may be presented at the hearing.

11 Defendant also requests this court take Judicial Notice of Exhibits 1 through 6 to the
12 Declaration of James L. Buchal, and Exhibits 1-6 to the Declaration of David McCracken, pursuant
13 to Evidence Code §§ 452 (c) & (d).

14 Dated: October 21, 2015.

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16 _____
17 James L. Buchal
18 MURPHY & BUCHAL LLP
19 Attorney for Defendant
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CERTIFICATE OF SERVICE

I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

On October 21, 2015, I caused the following document to be served:

NOTICE OF MOTION AND MOTION TO DISMISS AND SUPPRESS EVIDENCE (P.C. § 1538.5) PURSUANT TO U.S. CONST. ART VI CLAUSE 2 AND ART IV SEC. 3, CLAUSE 2, THE 4TH AND 14TH AMENDMENTS

on the party listed below in the following manner:

- (BY FEDERAL EXPRESS)
- (BY FIRST CLASS US MAIL)
- (BY FAX)
- (BY E-MAIL)

J. Kirk Andrus, District Attorney
County of Siskiyou
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Carole A. Caldwell