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5
6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9
10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

12 v.

13 DYTON WILLIAM GILLILAND
DOB: 10/31/1960,

14 Defendant.
15

Case No. MCYKCRM 15-1124

**DEFENDANT’S REPLY IN SUPPORT OF
MOTIONS TO SUPPRESS AND DISMISS**

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

16
17 **Argument**

18 **I. COLLATERAL ESTOPPEL BARS THE PEOPLE FROM RELITIGATING THE**
19 **CONSTITUTIONALITY OF BOTH REQUIRING PERMITS AND REFUSING TO**
20 **ISSUE THEM.**

21 Defendant seeks collateral estoppel not from the case of *People v. Rinehart* (Cal. Supreme
22 Court Case No. S222620), but from the final decision of the Coordination Judge in *In re Suction*
23 *Dredge Mining Cases*, JCPDS4720, attached as Exhibit 1 to the Declaration James L. Buchal.
24 Insofar as the People have raised it, this Court should be advised that in that case, the Plumas
25 County Superior Court refused to permit a defendant to put on any evidence in support of his
26 federal preemption defense, leading to the decision that is still under review. In the opinion of
undersigned counsel, the California Supreme Court will most likely lead to the same result as the

1 Coordination Judge reached: one needs no trial on disputed issues of fact to determine that stopping
2 a longstanding permit program that had authorized suction dredging on federal lands
3 unconstitutionally interferes with the federal purpose of developing mineral resources.

4 The People cite a number of cases which would bar the People from using collateral
5 estoppel to find defendants guilty, none of which are controlling here. *Beets v. County of Los*
6 *Angeles*, 200 Cal.App.4th 916 (2011) involved two criminals stealing a car, one of whom was shot
7 dead. The dead criminal’s parents sued for excessive force; the officers could not use collateral
8 estoppel from issues in the criminal case against the surviving criminal to forestall a civil action
9 against them. *People v. Superior Court*, 48 Cal.4th 1 (2010), again involves use of findings in a
10 criminal case against one defendant in the criminal trial of another defendant. The Supreme Court’s
11 rule arises from concerns over “inconsistent jury verdicts”, and thus the Supreme Court holds that
12 “a verdict regarding one defendant has no effect on the trial of a different defendant”. *Id.* at 5.

13 This is a different case. We merely ask the Court to recognize that the State of California
14 has had a full and fair opportunity in protracted and complex civil proceedings to argue the
15 constitutionality of requiring permits to mine on federal land and then categorically denying them,
16 and it is not efficient to permit the State to try that issue all over again in misdemeanor criminal
17 proceedings.

18 **II. SUPPRESSION IS APPROPRIATE WHERE, AS HERE, THERE WAS NO**
19 **PROBABLE CAUSE TO ARREST.**

20 The People concede that any arrest must be supported by probable cause, both under the
21 Constitution and Penal Code § 836(a)(1) (permitting arrests without a warrant where “[t]he officer
22 has probable cause to believe that the person to be arrested has committed a public offense in the
23 officer's presence”). There can be no probable cause to arrest because the criminal statute upon
24 which Defendant stands charged—mining without the permit the State refuses to issue—is not a
25 constitutional exercise of the State’s regulatory power.

1 The People do not distinguish *Jennings v. Superior Court*, 104 Cal.App.3d 50, 58 (1980),
2 which squarely holds that evidence arising from the arrest for violation of an unconstitutional law
3 must be suppressed. To the extent that the People imply that Proposition 8 overruled *Jennings*, they
4 are wrong. That is so because the very cases cited by the People confirm that even in arrests
5 authorized by § 836(a)(1)—for misdemeanor offenses committed in the presence of the officer—the
6 exclusion of evidence is still appropriate if “federally compelled”. *People v. Donaldson*, 36
7 Cal.App.4th 532, 537 (1995).

8 As *People v. McNeil*, 96 Cal.App.4th 1302 (2002) makes clear, the requirement that
9 evidence arising from arrest for violation of an unconstitutional rule be suppressed is federally
10 compelled by the Fourth Amendment. In that case, drug evidence was suppressed because it was
11 found during the arrest for violation of an unconstitutional loitering-type ordinance. Here the
12 arresting officers were part and parcel of an unconstitutional State scheme to harass the hard-
13 working suction dredge miners in Siskiyou County, in violation of federal law, operating through
14 the Supremacy Clause of the U.S. Constitution. By contrast, in *Atwater v. City of Lago Vista*, 532
15 U.S. 318 (2001), “neither party disputed that [the officer] had probable cause to arrest”. *Id.* at 325.

16 The People thus miss the point when saying that “[t]here is no evidence to suppress because
17 Warden Cervelli witnessed a crime being committed in his presence” (People’s Opp. at 5.) Warden
18 Cervelli’s (and other observations) are to be suppressed because no crime was committed in his
19 presence as a matter of law. It has long been established that Penal Code § 1538.5 permits a movant
20 to “to suppress as evidence not only any tangible physical object, but also any other evidence
21 obtained in violation of the Fourth Amendment, including things which have no physical form or
22 substance”—including an officer’s observations. *Kirby v. Superior Court*, 8 Cal.App.3d 591 (2d
23 Dist. 1970).

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1 **III. THE PEOPLE DO NOT TAKE ISSUE WITH THE DEMURRER.**

2 The responsive pleadings filed by the People do not defend the constitutionality of the
3 State's scheme of requiring a permit and refusing to issue one. Defendant should not be prosecuted
4 for violation of an unconstitutional regulatory scheme.

5 **Conclusion**

6 Whether by demurrer, or motion to dismiss, or simply in the interests of justice, these
7 proceedings should terminate now in favor of Defendant.

8 Dated: November 2, 2015.

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10 _____
11 James L. Buchal
12 MURPHY & BUCHAL LLP
13 *Attorney for Defendant*
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1 CERTIFICATE OF SERVICE

2
3 I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State of
4 California that the following facts are true and correct:

5 I am a citizen of the United States, over the age of 18 years, and not a party to or interested
6 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.

7 On November 2, 2015, I caused the following document to be served:

8 DEFENDANT’S REPLY IN SUPPORT OF MOTIONS TO SUPPRESS AND DISMISS

9 on the party listed below in the following manner:

10 (BY FEDERAL EXPRESS)

11 (BY FIRST CLASS US MAIL)

12 (BY FAX)

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Carole A. Caldwell