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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.  
18 \_\_\_\_\_  
19

) Case #SWF1400013

)

) **NOTICE OF INVALIDITY OF**  
) **PENAL CODE § 1368 MOTION**  
) **FILED BY RICHARD BRIONES-**  
) **COLMAN AND REQUEST TO**  
) **VACATE ALL ORDERS RELATED**  
) **THERE TO**

) Date: September 8, 2015

) Time: 8:30am

) Dept: S201

)  
) Estimated time: 1 hour

20  
21 **\*\*SUBJECT TO THE DEFENDANT'S NOTICE THAT HIS**  
22 **CONSTITUTIONAL RIGHT TO SPEEDY TRIAL HAS BEEN VIOLATED**  
23 **AND THAT THIS CASE IS SUBJECT TO IMMEDIATE DISMISSAL WITH**  
24 **PREJUDICE\*\***

25 TO THE COURT AND PROSECUTING ATTORNEYS:

26 Having been denied the right to proceed in this matter and make his own legal  
27 defenses to the Court, Defendant Dr. Dortch has agreed to being represented by  
28 attorney Melody A. Kramer in this case, said entry of appearance having been made

1 in open court, with Defendant present and consenting, in Dept. S204 on September 3,  
2 2015.

3 In follow-up thereto, this notice is being provided to formally notify the Court,  
4 **again**, that the *Penal Code* § 1368 motion filed by attorney Richard Briones-Colman  
5 on August 18, 2015 and heard by this Court on August 27, 2015 and September 3,  
6 2015, was filed without legal authorization and without proper cause, as detailed  
7 below. The orders issued by this Court in accordance therewith should thus be  
8 vacated because –

9 1. There is no dispute between the prosecution and defense counsel on the  
10 issue of Dr. Dortch’s mental competence to stand trial; both contend he is competent;

11 2. There is no need for mental evaluations or hearings on the issue of  
12 Defendant Dr. Dortch’s mental capacity because the issue is moot; and

13 3. The orders are unconstitutional on multiple grounds as outlined below.

14 Ms. Kramer, counsel for Defendant Dr. Dortch and having known and  
15 interacted with him on many occasions during the past approximately year and a  
16 half, has no reason to believe that Dr. Dortch needs to be subjected to a mental  
17 evaluation to determine competence to stand trial.

18 Defendant, through his counsel, provided request and notice for  
19 reconsideration of the *Penal Code* § 1368 orders in open court on September 3, 2015  
20 and scheduled the same for hearing on September 8, 2015 at 8:30am.

21  
22 I. A *PENAL CODE* § 1368 SUGGESTION OF MENTAL INCOMPETENCE  
23 TO STAND TRIAL CANNOT BE INVOKED BY A (PROSECUTION-  
24 BIASED) STRANGER TO THE DEFENDANT.

25 Richard Briones-Colman was not, and has not been, counsel for Defendant Dr.  
26 Dortch at any time and therefore Mr. Briones-Colman’s motion under *Penal Code* §  
27 1368 motion (“1368 Motion”) does not fall within the scope of permissible actions  
28 under *Penal Code* § 1368. Section 1368 does not authorize a stranger to a defendant  
to raise a claim of possible mental incompetence to stand trial.

1 Per Mr. Briones-Colman's own statements at the hearing on this matter, his  
2 interest in filing the motion was not to protect Defendant Dr. Dortch, but rather to  
3 protect against the risk that if there were a conviction in this case, that it might later  
4 be overturned. Such an argument is in direct conflict with Mr. Briones-Colman's  
5 obligations as an attorney for Defendant Dr. Dortch, even if he was counsel.

6 Mr. Briones-Colman filed the 1368 Motion as a punitive action against Dr.  
7 Dortch for not communicating with him, though Dr. Dortch had no obligation to  
8 communicate with him. There is no legal requirement for a defendant to surrender to  
9 legal representation by an attorney against his will.

10 In advance of filing the 1368 Motion, Mr. Briones-Colman threatened  
11 Defendant Dr. Dortch that if he (Dr. Dortch) refused to talk to him, Briones-Colman  
12 would file a 1368 Motion alleging mental incompetence. In other words, **Mr.**  
13 **Briones-Colman's filing was predicated on an absence of interaction with Dr.**  
14 **Dortch.** In fact, Mr. Briones-Colman's interactions with Dr. Dortch were so  
15 minimal that he did not even realize that Dr. Dortch was a licensed optometrist (a  
16 doctor) and kept referring to him as "Mr. Dortch."

17 On September 3, 2015, Dr. Dortch had further proceedings before another  
18 judge against insisting that Mr. Briones-Colman did not represent him, but the judge  
19 continued to insist that he was Mr. Briones-Colman was his lawyer despite no actual  
20 retention of his services, nor request for appointment of a public defender, nor any  
21 court procedure to make a finding of eligibility of Defendant Dr. Dortch for a public  
22 defender. Meanwhile, both Dr. Dortch's family members and Dr. Dortch's civil  
23 rights attorney, Ms. Kramer, were physically banned and prohibited from observing  
24 this hearing by Riverside County Sheriff's officers.

25  
26 **II. DEFENDANTS ARE PRESUMED MENTALLY COMPETENT TO STAND**  
27 **TRIAL; IF NEITHER DEFENSE NOR PROSECUTION HAVE A**  
28 **PROPONDERANCE OF EVIDENCE TO PROVE OTHERWISE, THE**  
**PRESUMPTION STANDS.**

1 By law, a defendant is presumed mentally competent to stand trial unless it is  
2 proved by a preponderance of the evidence that the defendant is mentally  
3 incompetent. *Penal Code* § 1369(f).

4 Defendant is entitled to a jury trial on the issue of mental competence. If the  
5 defense declines to offer any evidence of mental incompetence, the prosecution may  
6 do so. See *Penal Code* § 1369.

7 The Defendant will not be offering any evidence of mental incompetence. The  
8 purported attorney claiming there to be any issue at all on this matter, Mr. Briones-  
9 Colman, is not counsel for Dr. Dortch. Ms. Kramer entered her appearance on Dr.  
10 Dortch's behalf again on September 3, 2015 and she has no reason to believe or  
11 argue that Dr. Dortch is mentally incompetent to stand trial.

12 The prosecution has already objected to a finding of mental incompetence on  
13 the record in this case on August 27, 2015, citing as one reason supporting that  
14 objection the absence of any claim by prior counsel for Dr. Dortch in this case  
15 (which includes Ms. Kramer) ever raising such an issue, and therefore is barred from  
16 now arguing that Defendant Dr. Dortch is mental incompetence, nor arguing for the  
17 need for any psychiatric evaluations.

18  
19 **III. ORDERING A SIX-WEEK PSYCHIATRIC HOLD IN JAIL OF AN**  
20 **UNADJUDICATED DEFENDANT IS GROSSLY VIOLATIVE OF A**  
21 **DEFENDANT'S CONSTITUTIONAL RIGHTS.**

22 The Court's orders entered on September 3, 2015 with respect to the 1368  
23 Motion -- suspending this criminal case for six weeks and denying Dr. Dortch bail  
24 during that time -- are unconstitutional and contrary to California state law on at least  
25 the following FIVE grounds.

26 A. Violation Of Right To Be Free Of Unreasonable Seizure Of Defendant's  
27 Person.

28 The Court's 1368-related order to hold Defendant Dr. Dortch for six weeks in

1 jail without any adjudication of any criminal offense, nor any adjudication of mental  
2 incompetence on any level, is a violation of his right against unreasonable seizure of  
3 his person, in violation of the Fourth Amendment of the U.S. Constitution and  
4 Article I, § 13, of the California Constitution.

5 This Court has explicitly ordered both that Dr. Dortch be held without bail  
6 because of a political statement made by Dr. Dortch in pleadings in this case, and  
7 that he be held for six weeks to allow a mental examination to be done, even though  
8 Dr. Dortch continues to be presumptively innocent of all charges against him, and no  
9 procedures for involuntary mental health commitment (such as § 5150) have been  
10 followed. If it is unreasonable and unlawful to involuntarily hold a person believed  
11 to be a danger to him- or herself or others for more than 72 hours without a hearing,  
12 how much more unreasonable and unlawful is it to involuntarily hold an  
13 unadjudicated defendant for six weeks (until October 15, 2015) on a claim by a  
14 stranger attorney to defendant that he, based on non-interactions with defendant,  
15 question mental competence to stand trial?

16  
17 B. Violation Of The Right To Speedy Trial.

18 The Court's 1368-related order to hold Defendant Dr. Dortch for six weeks in  
19 jail without any adjudication of any criminal offense, nor any adjudication of mental  
20 incompetence on any level, is a violation of his right to speedy trial, in violation of  
21 the Sixth Amendment of the U.S. Constitution and Article I, § 15, of the California  
22 Constitution.

23 The Court's order suspending this criminal case violates Dr. Dortch's right to  
24 a speedy trial. Defendant Dr. Dortch has a right to have his matter brought to trial  
25 within 60 days of the arraignment on the information (*Penal Code* § 1382). He was  
26 arraigned on November 14, 2014, thus entitled to trial by January 13, 2014. The last  
27 waiver of time made by Defendant Dr. Dortch in this case was on February 6, 2015,  
28 at that time waiving time for trial to April 10, 2015 plus 60 days, thus placing the

1 **deadline for speedy trial at June 9, 2015.** Defendant has not entered any other  
2 waivers of his constitutional rights to a speedy trial and has not authorized any  
3 person, particularly not Mr. Briones-Colman, to waive any of his constitutional  
4 rights on his behalf.

5 By failing to recognize the failure of this case to be brought to a speedy trial in  
6 the first place, and not only continuing to maintain the case, but also suspending any  
7 further progress of the case, violates Dr. Dortch's right to a speedy trial.

8  
9 C. Violation Of Rights Against The Imposition Of Excessive Bail.

10 The Court's 1368-related orders to hold Defendant Dr. Dortch for six weeks in  
11 jail without bond, and without any adjudication of any criminal offense, particularly  
12 after the cutoff date for speedy trial has passed, nor any adjudication of mental  
13 incompetence on any level, is imposition of excessive bail, directly in violation of  
14 the Eighth Amendment of the U.S. Constitution, and indirectly in violation of the  
15 First Amendment rights of free speech and rights to petition the government for  
16 redress of grievances.

17 Specifically, the Court's denial of any bail is based upon Defendant Dr.  
18 Dortch's statements of political belief regarding the judicial system contained within  
19 the court file and the improper and baseless claims of a stranger attorney to the  
20 defendant explicitly seeking to preserve the integrity of any potential verdict against  
21 the Defendant (something of value to the prosecution, not the defendant).

22 Dr. Dortch has appeared for each and every court hearing since initially  
23 posting bond in November 2013, even on August 27, 2015. Walking out of the  
24 courtroom before the judge specifically indicated an end to the hearing is not a  
25 "failure to appear." There was no holding of Dr. Dortch as being in contempt of  
26 court. Instead, the Court relied on a document filed in pro per by Dr. Dortch,  
27 latching onto a claim of denial of contracts relating to bail, while at the same time  
28 ignoring the provisions of the same document explicitly disclaiming any hiring of

1 Mr. Briones-Colman and authorization of him to speak on Dr. Dortch's behalf. Dr.  
2 Dortch's statements in pleadings filed with the Court regarding his political opinions  
3 and views regarding the Court are protected free speech. Dr. Dortch cannot be  
4 imprisoned for having a different view than the Court on these issues.

5 The order denying bail is excessive and unconstitutional and must be vacated  
6 immediately.

7  
8 D. Violation Of Rights Against Cruel And Unusual Punishment.

9 The Court's 1368-related orders to hold Defendant Dr. Dortch for six weeks in  
10 jail without bond, and without any adjudication of any criminal offense, nor any  
11 adjudication of mental incompetence on any level, is an imposition of cruel and  
12 unusual punishment, in violation of the Eighth Amendment of the U.S. Constitution  
13 and Article 1, Sec. 17, of the California Constitution.

14 The Court is requiring Dr. Dortch who still is entitled to a presumption of  
15 innocence and has not been adjudicated guilty on any criminal offense, to be  
16 confined in jail for six weeks pending a mental competence evaluation is punitive,  
17 nothing more. The Court, per its own statements on the record, indicate that this  
18 confinement is being made due to political statements made by Dr. Dortch within his  
19 pro per filings with the Court. This is further cruel and unusual in that the instigator  
20 of this 1368 Motion process was a stranger to Dr. Dortch, an attorney not speaking  
21 on behalf of Dr. Dortch and explicitly appearing over the objection of the Defendant  
22 Dr. Dortch. A defendant has a right to be represented by counsel of his choice, or  
23 not be represented at all, but no court has the right to appoint someone to "represent"  
24 a criminal defendant against their will. This is particularly egregious when the Court  
25 relied only on a single paragraph of said document to deny bail, but ignored the other  
26 portions of the document that explicitly set forth the facts that Mr. Briones-Colman  
27 was not authorized to speak or take actions on behalf of Dr. Dortch.

28 The current confinement for at least six weeks, especially in light of the

1 absence of any party who will be presented any evidence of mental incompetence, is  
2 simply cruel and unusual punishment for Dr. Dortch's exercise of freedom of speech  
3 about political beliefs within this case.  
4

5 E. Denial Of Liberty Without Due Process Of Law.

6 The Court's 1368-related orders to hold Defendant Dr. Dortch for six weeks in  
7 jail without bond, and without any adjudication of any criminal offense, nor any  
8 adjudication of mental incompetence on any level, is a denial of liberty without due  
9 process of law, in violation of the Fifth and Fourteenth Amendment of the U.S.  
10 Constitution, and Article 1, Sec. 24, of the California Constitution, and in violation  
11 of the procedures set forth in *California Welfare & Institutions Code* § 5150.

12 Even in the case of a person suspected of being a danger to him- or herself, a  
13 danger to others, and/or gravely disabled – none of which apply to Dr. Dortch –  
14 California law limits an involuntary psychiatric hold to 72-hours. See *Welfare &*  
15 *Institutions Code* § 5150. This Court has ordered that Dr. Dortch be held without  
16 bail or any hearings on the matter for six weeks, until October 15, 2015, even though  
17 there is no evidence whatsoever that Dr. Dortch poses any threat to public safety or  
18 to his own safety.  
19

20 F. Violation of Right to Counsel of Defendant's Choice.

21 As already discussed above, Defendant Dr. Dortch did not choose or ever  
22 consent to Mr. Briones-Colman acting as his counsel in this case or for any other  
23 purpose and explicitly refused to meet with him and treat him as though there was an  
24 attorney-client relationship. If counsel that a defendant chose or requested has a  
25 question regarding mental competence to stand trial, that is one matter. This is  
26 entirely another when the Court record shows that Mr. Briones-Colman was filing  
27 the 1368 Motion with the intention of protecting the prosecution's interest in  
28 removing potential grounds for verdict reversal in advance of trial.

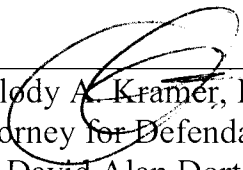


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For at least the reasons set forth above, Defendant hereby requests the Court to vacate its orders on September 3, 2015 relating to *Penal Code* § 1368 and denial of bail to Defendant Dr. Dortch, reinstatement of the bond previously posted by Dr. Dortch, and ordering him released from custody forthwith.

DATED: September 4, 2015

KRAMER LAW OFFICE, INC.

  
\_\_\_\_\_  
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 Friday, September 04, 2015, I served the following documents:  
7

8 **NOTICE OF INVALIDITY OF *PENAL CODE* § 1368 MOTION FILED BY**  
9 **RICHARD BRIONES-COLMAN AND REQUEST TO VACATE ALL**  
10 **ORDERS RELATED THERETO**

11 on the following parties or their counsel:

12 Richard A. Necochea 13 Riverside County District 14 Attorney's Office 15 30755 Auld Rd, Ste. D Murrieta, CA 92563 rnecochea@rivcoda.org	Attorney for People of State of California
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16 by the following method of service:

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

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

23 \_\_\_\_\_ **(Facsimile)** I caused a true copy of the foregoing documents to be  
24 transmitted by facsimile machine to the above noted addressees. The facsimile  
25 transmissions were reported as complete and without error.

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

28 \_\_\_\_\_ **(Email--Pleadings Filed with the Court)** Pursuant to Local Rules, I

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electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

  X   (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 Friday, September 04, 2015, in San Diego, California.

~~/s/ Melody A. Kramer~~  
\_\_\_\_\_  
Melody A. Kramer