

1 MELODY A. KRAMER, SBN 169984  
2 KRAMER LAW OFFICE, INC.  
3 4010 Sorrento Valley Blvd., Ste. 400  
4 San Diego, California 92121  
5 Telephone (855) 835-5520  
6 mak@kramerlawip.com

7 Attorney for Defendant David Alan Dortch

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 DUE TO**  
) **UNCONSTITUTIONALITY OF**  
) **STATUTES; MEMORANDUM OF**  
) **POINTS & AUTHORITIES**  
)  
) Date: October 21, 2015  
) Time: 1:30pm  
) Dept: S201  
)  
) EVIDENTIARY HEARING  
) REQUESTED  
) Time Estimate: 1 hour  
)  
)  
)

22  
23 **\*\*SUBJECT TO THE DEFENDANT'S OBJECTION TO CONTINUED**  
24 **PROSECUTION OF THIS CASE ON THE GROUNDS OF LACK OF**  
25 **JURISDICTION AND VIOLATION OF SPEEDY TRIAL AND OTHER**  
26 **CONSTITUTIONAL RIGHTS\*\***

27 TO THE COURT AND PROSECUTORS:

28 Please take notice that on October 21, 2015, at 1:30pm, in Department S201 of the  
above-entitled court, the Defendant will move for an order dismissing Counts 1-4,

1 inclusive, of the Information on the grounds that the statutes being prosecuted against the  
2 Defendant Dr. Dortch are unconstitutional.

3 This motion will be based upon these moving papers, transcript of the preliminary  
4 examination on October 9, 2014, attached points and authorities, and such additional  
5 evidence and arguments as will be presented at the hearing.

6  
7 DATED: October 7, 2015.

KRAMER LAW OFFICE, INC.

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10 \_\_\_\_\_  
11 Melody A. Kramer, Esq.  
12 Attorney for Defendant  
13 Dr. David Alan Dortch

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2  
3 **INTRODUCTION**

4 Counts 1-4 of the Information in this case must be set aside and dismissed because  
5 the statutes under which Defendant Dr. Dortch is being prosecuted are unconstitutional.  
6 Specially, *Penal Code* § 298.1, which allows law enforcement to force a presumed innocent  
7 suspect to give a DNA sample has been held unconstitutional by California appellate  
8 courts.

9 Furthermore, *Health & Safety Code* § 11377 and § 11379.6 (incorporating by  
10 reference *Health & Safety Code* § 11054(d)(10)), to the extent that they criminalize the  
11 possession, manufacture, or use of an endogenous substance, that is a substance naturally  
12 occurring in the human brain as well as in many legal plant materials, including citrus fruit,  
13 is unconstitutionally void for vagueness.

14  
15 **FACTUAL SUMMARY**

16 As of May 29, 2013, Dr. David Dortch, his wife and children, were plaintiffs in a  
17 civil rights lawsuit filed against local law enforcement officers and prosecutors involved in  
18 harassment against the Dortch family. Five months later, while the case was still pending,  
19 Plaintiff/Defendant Dr. Dortch was arrested by one of the named defendants, a law  
20 enforcement officer without a warrant and acting outside of the territorial limits of his  
21 jurisdiction. Dr. Dortch was then taken to jail and into the custody of other named  
22 defendants in the same lawsuit. Still without any oversight from any judicial officer, this  
23 arrest was categorized as being a felony arrest, thus triggering a request for DNA sample  
24 under *Penal Code* § 298.1. Dr. Dortch refused to provide a DNA sample and is now being  
25 prosecuted for violation of that statute.

26 One month later, the California Court of Appeal, First Appellate District, ruled in the  
27 case of People v. Buza, Case No. A125542, that “the DNA Act, to the extent it requires  
28 felony arrestees to submit a DNA sample ... unreasonably intrudes on such arrestees’

1 expectation of privacy and is invalid under article I, section 13, of the Constitution.”

2 Defense counsel has requested the prosecutor to drop this charge – Count 4 of the  
3 Information, but she refused.

4 Defendant has also been charged with three violations – Counts 1, 2, and 3 – that  
5 involve manufacture, sale, and possession of dimethyltryptamine (“DMT”), the only  
6 controlled substance that is endogenous, that is, naturally present in the human body.

7 According to sworn testimony of Investigator Medina of the Riverside County  
8 Sheriff’s Office, mimosa root powder found at the Dortch home was “legal” but it  
9 was later tested by the lab and “contained” an undetermined concentration of DMT.  
10 *Preliminary Hearing Transcript*, pg. 17:11-23; pg. 41:24-25; pg. 50:12-19; pg.  
11 52:23-53:1.

12 Dimethyltripamine (“DMT”) is the only substance that both (1) is naturally  
13 occurs and is manufactured within every human body; and (2) and a felony to  
14 possess or manufacture in any amount, form, or from any source. DMT is the only  
15 psychedelic substance known to occur naturally in the human body, discovered in  
16 human brain tissue in 1972 by Nobel laureate Julius Axelrod of the National  
17 Institutes of Health. Research by Italian scientists, published as recently as 2012-  
18 2014, also detected DMT in common citrus fruit such as oranges and lemons, a  
19 mainstay of Riverside County’s economy.

20 Ironically, the source of Riverside County’s citrus industry is an orange tree  
21 from Brazil, the same country that sourced the DMT-containing tea (“ayahuasca”)  
22 that was at issue in the Supreme Court cases of *Gonzales v. O Centro Espirita*  
23 *Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), in which the Court allowed a  
24 church group to use ayahuasca tea in its religious practice.

25 The navel orange so common in California today originated from an orange  
26 tree that grew in a Brazilian monastery. In the late 1800s, Riverside, California  
27 became the center of the development of the citrus market in California, prompted by  
28 the U.S. Department of Agriculture obtaining cuttings from an orange tree in a

1 Brazilian monastery and sending them to woman suffrage activist Eliza Tibbets in  
2 Riverside. According to public accounts, the U.S. Department of Agriculture  
3 obtained cuttings from this tree and sent them to Riverside to see if they would grow.  
4 Apparently, they did, and the orange industry in Riverside County was born.

5 Both the California legislature and Congress, however, have deemed the  
6 possession, manufacture or sale of dimethytripamine, in any amount whatsoever, to  
7 be grounds for harsh criminal penalties. The effect of such a law, in light of the  
8 current scientific evidence, is to render every man, woman, and child in the country a  
9 felon.

10 Because the laws prohibiting possession, manufacture, or sale of  
11 dimethytripamine (also known as “DMT”) have no specificity in terms of quantity,  
12 concentration, or source, there are no objective grounds for evaluating propriety of  
13 law enforcement or prosecutors choices of who to charge with a crime, and who not  
14 to charge.

## 16 ARGUMENT

### 17 I. COUNT 4 SHOULD BE DISMISSED BECAUSE *PENAL CODE* § 298.1 IS 18 UNCONSTITUTIONAL.

19 Decisions of every division of the District Courts of Appeal are binding upon  
20 ... all the superior courts of this state, and this is so whether or not the  
21 superior court is acting as a trial or appellate court. Courts exercising inferior  
22 jurisdiction must accept the law declared by courts of superior jurisdiction. It  
is not their function to attempt to overrule decisions of a higher court. [cites  
omitted]

23 *Auto Equity Sales, Inc. v. The Superior Court of Santa Clara County*, 57 Cal.2d 450 (1962).

24 Defendant Dr. Dortch was arrested without a warrant by a police officer he was  
25 suing for civil rights violations, then demanded to give up a DNA sample. This is not a  
26 reasonable search or seizure under any construction of those constitutional rights.

27 Moreover, one month after his arrest, in December 2014, the California Court of  
28 Appeal, First Appellate District, ruled in the case of People v. Buza, Case No. A125542,

1 that “the DNA Act, to the extent it requires felony arrestees to submit a DNA sample ...  
2 unreasonably intrudes on such arrestees’ expectation of privacy and is invalid under article  
3 I, section 13, of the Constitution.”

4 Dr. Dortch incorporates by reference that arguments made by the Court in  
5 determining that *Penal Code* § 298.1 is unconstitutional and request this Court dismiss  
6 Count 4 of this case for the same reasons.

7  
8 **II. COUNTS 1-3 SHOULD BE DISMISSED BECAUSE CRIMINALIZATION OF  
9 AN ENDOGENOUS SUBSTANCE WITHOUT GUIDELINES FOR  
10 ENFORCEMENT IS VOID FOR VAGUENESS.**

11 “[A] statute is void for vagueness (and thus unconstitutional under due process) if  
12 the statute . . . does not establish minimal guidelines to govern law enforcement.’ ” *United*  
13 *States v. Wyatt*, 408 F.3d 1257, 1260 (9th Cir.2005) (quoting *United States v. Rodriguez*,  
14 360 F.3d 949, 953 (9th Cir.2004)); see *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03, 86  
15 S.Ct. 518, 15 L.Ed.2d 447 (1966).

16 It is a basic principle of due process that an enactment is void for  
17 vagueness if its prohibitions are not clearly defined." *United States v.*  
18 *Backlund*, 689 F.3d 986, 996 (9th Cir. 2012) (quoting *United States v.*  
19 *Kim*, 449 F.3d 933, 941 (9th Cir. 2006) (quoting *Grayned v. City of*  
20 *Rockford*, 408 U.S. 104, 108 (1972)) (internal quotation marks omitted). A  
21 statute is void for vagueness if it "fails to give a 'person of ordinary  
22 intelligence a reasonable opportunity to know what is prohibited.'" *Hunt v.*  
23 *City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011) (quoting *Grayned*, 408  
24 U.S. at 108); see also *United States v. Williams*, 553 U.S. 285, 304 (2008).  
Where a statute imposes criminal sanctions, "a more demanding standard of  
scrutiny applies." *Id.* at 712 (internal quotation marks omitted); see  
also *United States v. Harris*, 705 F.3d 929, 932 (9th Cir. 2013) ("For statutes  
. . . involving criminal sanctions the requirement for clarity is enhanced."  
(internal quotation marks omitted) (alteration in original)).

25 *Valle Del Sol Inc. v. Whiting* (9th Cir. 2013).

26 Dimethyltryptamine (“DMT”) is identified as a controlled substance under  
27 *California Health & Safety Code* § 11054(d)(10). However, DMT is an endogenous  
28 substance, the only psychedelic substance known to occur naturally in the human

1 body, discovered in human brain tissue in 1972 by Nobel laureate Julius Axelrod of  
2 the National Institutes of Health.

3 Research by Italian scientists, published as recently as 2012-2014, also  
4 detected DMT in common citrus fruit such as oranges and lemons, ironically, fruits  
5 that are a mainstay of the Riverside County economy.

6 Under California law -- *Health & Safety Code* § 11377 and § 11379.6  
7 (incorporating by reference *Health & Safety Code* § 11054(d)(10)) -- possession or  
8 manufacture of any amount whatsoever of DMT, without regard to source, location,  
9 or concentration, can be prosecuted as a criminal offense. Thus, by definition, all  
10 citizens of the State of California are subject to being prosecuted for possession or  
11 manufacture of DMT. Likewise, any person growing or having citrus fruit is also  
12 subject to criminal prosecution for possession or manufacture of DMT.

13 Despite this fact, upon information and belief, prosecution for possession or  
14 manufacture of DMT is rare. Why is it being prosecuted here? As retaliation against  
15 the Dortch family for standing up to abuses of law enforcement, prosecutors, and the  
16 court, actions beginning with the interrogation of their 12-year-old son without any  
17 attorney or parents being present.

18 Inv. Medina admitted on the witness stand that a brown powder found at the  
19 Dortch residence on April 20, 2013 was believed to be Mimosa root, a legal  
20 substance, and he was unable to quantify any concentration or amount of DMT that  
21 would convert the legal substance into an illegal substance of DMT.

22 Dr. Dortch was neither formally arrested (other than having been handcuffed  
23 to a chair for hours in his own backyard) nor charged with any offense until after he  
24 and his family filed a civil lawsuit against law enforcement officers who had invaded  
25 their home.

26 As documented in discovery produced by the prosecutor, lab tests were  
27 performed to “detect” the presence of a naturally occurring substance within a legal  
28

1 substance only *after, and because*, a civil lawsuit had been filed. This also occurred  
2 *after* the Murrieta Police Department had labelled the Dortch family as having  
3 dangerous “ideology.”

4 This is arbitrary enforcement of a void for vagueness statute that does not  
5 establish minimum guidelines to govern enforcement, allowing a legal substance to  
6 be deemed illegal and a felony in an arbitrary and capricious (and in this case,  
7 retaliatory) fashion.

8 Because the California statutes declaring dimethyltryptamine (“DMT”), an  
9 endogenous substance naturally occurring in the human body, as a controlled  
10 substance, are unconstitutional as being void for vagueness, Counts 1-3 of the  
11 Information must be dismissed.

12  
13 **CONCLUSION**

14 For the reasons set forth above, Dr. Dortch respectfully requests the Court to dismiss  
15 Counts 1-4 of the Information in this case as constituting prosecution under  
16 unconstitutional statutes.

17  
18 DATED: October 6, 2015

KRAMER LAW OFFICE, INC.

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20 \_\_\_\_\_  
21 Melody A. Kramer, Esq.  
22 Attorney for Defendant  
23 Dr. David Alan Dortch  
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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 DUE TO**  
8 **UNCONSTITUTIONALITY OF STATUTES; MEMORANDUM OF POINTS &**  
9 **AUTHORITIES**

10 on the following parties or their counsel:

11 12 Richard A. Necochea 13 Riverside County District Attorney’s 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 Office of the Attorney General 18 110 West A Street, Suite 1100 19 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

1 transmitted by facsimile machine to the above noted addressees. The facsimile  
2 transmissions were reported as complete and without error.

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

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

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

10  
11 I declare that the foregoing is true and correct, and that this declaration was  
12 executed on Wednesday, October 07, 2015, in San Diego, California.

13  
14 /s/ Melody A. Kramer

15 Melody A. Kramer  
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