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7 Attorney for Defendant  
8 ERIC MCDAVID

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )

14 v. )

15 ERIC MCDAVID, )  
16 Defendant. )

Case No. CR.S-06-0035-MCE

**MOTION TO SUPPRESS EVIDENCE**

DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO SUPPRESS ALL  
EVIDENCE OBTAINED AS PART OF  
A WARRANTLESS ARREST AND  
SEARCH ON JANUARY 13, 2006;  
MEMORANDUM OF POINTS IN  
AUTHORITIES IN SUPPORT  
THEREOF; REQUEST FOR  
EVIDENTIARY HEARING.

Date: February 6, 2007  
Time: 8:30 A.m.  
Judge: Hon. Morrison C.  
England

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19 To: **McGregor W. Scott, R. Steven Lapham**, attorneys for  
20 plaintiff: PLEASE TAKE NOTICE that on the above date in the  
21 above entitled action, defendant, through counsel MARK J.  
22 REICHEL, will move this Honorable Court to issue an order  
23 suppressing as evidence by the plaintiff in this trial the  
24 following evidence: Any and all evidence, derived directly or  
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26 Mot. Suppress evidence following  
27 warrantless arrest  
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1 indirectly, and all fruits thereof, obtained following the  
2 warrantless arrest of defendant prior to the issuance of  
3 federal criminal charges in a criminal complaint. McDavid was  
4 arrested by agents, and thereafter a criminal complaint was  
5 obtained from a federal magistrate judge. Prior to the  
6 issuance of the complaint, and prior to the issuance of a  
7 search warrant, McDavid, his effects, his house, and his  
8 belongings were searched by the agents. As this was done  
9 without a warrant, it is therefore violative of the Fourth  
10 Amendment.

11 This motion is based on the United States Constitution,  
12 the Federal Rules of Criminal Procedure, the Points and  
13 Authorities submitted in support, and such argument and  
14 evidence of counsel at the hearing on the motion.

15 Respectfully submitted

16 DATED: December 19, 2006.

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18 MARK J. REICHEL  
19 ATTORNEY AT LAW  
20 Attorney for defendant

21 /S/ Mark Reichel  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Supporting Facts<sup>1</sup>: Defendant was arrested in the parking  
3 lot of a shopping center on January 13, 2006. He was  
4 searched, his effects were searched, and the home he was  
5 residing in was searched.

6 After this took place, a federal criminal complaint was  
7 prepared and signed and a search warrant was obtained. This  
8 is the reverse fashion of what the Constitution contemplates.

9 Legal authority.

10 A. The Fourth Amendment "Exclusionary" Rule.

11 The Fourth Amendment provides that, "The right of the  
12 people to be secure in their persons, houses, papers, and  
13 effects, against unreasonable searches and seizures, shall  
14 not be violated, and no Warrants shall issue, but upon  
15 probable cause, supported by Oath or affirmation, and  
16 particularly describing the place to be searched, and the  
17 person or things to be seized." U.S. Const., Amend. IV.  
18 Evidence obtained in violation of the Fourth Amendment must  
19 be excluded from a federal criminal prosecution. Weeks v.  
20 United States, 232 U.S. 383, 398 (1914). "The exclusionary  
21 rule reaches not only primary evidence obtained as a direct  
22 result of an illegal search or seizure, but also evidence  
23 later discovered and found to be derivative of an illegality  
24 or 'fruit of the poisonous tree.'" Segura v. United States,  
25 468 U.S. 796, 804, 104 S. Ct. 3380 (1984) (citations

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27 <sup>1</sup> Familiarity with the operative facts of this charge are assumed and reference is made to the  
28 Criminal Complaint and background facts therein. As with all of the defendant's pretrial motions, the  
factual background for this motion comes from the discovery provided by the government, defense  
investigation, and the anticipated testimony and evidence to be submitted at the hearing of the motion.

1 omitted). "It 'extends as well to the indirect as the direct  
2 products' of unconstitutional conduct." Id., quoting Wong Sun  
3 v. United States, 371 U.S. 471, 484, 83 S. Ct. 407 (1963).  
4 The exclusionary rule fashioned in Weeks v. United States,  
5 232 U.S. 383 (1914), and Mapp v. Ohio, 367 U.S. 643 (1961),  
6 excludes from a criminal trial any evidence seized from the  
7 defendant in violation of his Fourth Amendment rights. Fruits  
8 of such evidence are excluded as well. Silverthorne Lumber  
9 Co. v. United States, 251 U.S. 385, 391-392 (1920). Because  
10 the Amendment affords protection against the uninvited ear,  
11 oral statements, if illegally overheard, and their fruits are  
12 also subject to suppression. Silverman v. United States, 365  
13 U.S. 505 (1961); Katz v. United States, 389 U.S. 347 (1967).

14 B. Warrantless Search.

15 The United States must prove that the warrantless entry  
16 and search of defendant's residence, the search of his  
17 property and possessions, was legal under the Fourth  
18 Amendment. A search or seizure *not* accompanied by a warrant  
19 is presumed to be unreasonable. United States v. Carbajal,  
20 956 F.2d 924, 930 (9th Cir. 1992), *citing* Katz v. United  
21 States, 389 U.S. 347 (1967). The burden is on the United  
22 States to justify the warrantless search of defendant's  
23 property as a recognized exception to the rule requiring the  
24 prior obtaining of a judicially authorized search warrant.  
25 Carbajal, 956 F.2d at 930.

1 For the arrest to be legal, without a warrant in a  
2 public place, the officer must have had probable cause of the  
3 commission of a felony. Carroll v. United States, 267 U.S.  
4 132, 156 (1925). At the time, the defendant was walking in a  
5 shopping center parking lot with household cleaning items.  
6 The officer who made the arrest had not probable cause of the  
7 commission of any cognizable felony; the possession of the  
8 grocery items was no enough. The officer must have had  
9 sufficient knowledge of the crime of conspiracy to damage by  
10 fire or explosives property of the federal government, as  
11 defined in 18 U.S.C. 844(n). It is not conceivable that the  
12 video and audio tape evidence of the "planning sessions" the  
13 night before, January 12, 2006, where the conspiracy had been  
14 allegedly discussed, were available for the officer.

15 If For the reasons stated above, defendant respectfully  
16 asks that the Court grant his motion to suppress all direct  
17 and derivatively obtained evidence.

18 Respectfully submitted

19 DATED: December 19, 2006.

20 MARK J. REICHEL  
21 ATTORNEY AT LAW  
22 Attorney for defendant

23 /S/ Mark Reichel  
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