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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,
14
15 Plaintiff,

16 v.

17 JOSE SANCHEZ-PALOMINO and
FRANCISCO VELASCO,
18 Defendants.
19

) No. CR-S-09-0094 MCE
)
)

) NOTICE OF MOTION AND MOTION TO
) DISMISS INDICTMENT OR SUPPRESS
) EVIDENCE BASED ON EQUAL
) PROTECTION AND DUE PROCESS
) VIOLATIONS
)

) Date: May 27, 2010
) Time: 9:00 a.m.
) Judge: Hon. Morrison C. England
20

21 **PLEASE TAKE NOTICE** that on May 27, 2010, at 9:00 a.m., or as soon thereafter as the
22 matter may be heard in the courtroom of the Honorable Morrison C. England, Jr., United States
23 District Judge, defendant Jose Sanchez-Palomino, through his counsel of record, Lauren Cusick,
24 Assistant Federal Defender, will move this Court pursuant to Local Rule 12-430, Federal Rule of
25 Criminal Procedure 12(b)(3)(C), and the Fifth and Fourteenth Amendments to the United States
26 Constitution, for an order granting his motion to dismiss the indictment and to suppress all evidence
27 seized and statements taken from him on February 12, 2009.

28 Mr. Sanchez-Palomino requests an evidentiary hearing on this motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT**

3 When Shasta County Sheriff Deputies Pat Kropholler and Chris McQuillan stopped, detained,
4 searched, and arrested Jose Sanchez-Palomino and Francisco Velasco on February 12, 2009, they were
5 engaged in a pattern of selective enforcement of the California Vehicle Code against male Hispanic
6 drivers. This motion will demonstrate that Kropholler and McQuillan almost exclusively stop
7 Hispanic drivers for alleged violations of the California Vehicle Code. Specifically, the evidence will
8 prove that Kropholler and McQuillan cited or arrested 130 drivers from January 1, 2008 through
9 February 12, 2009, and that 63% of those drivers were Hispanic. By contrast, 7% of the citations that
10 Redding CHP issued in 2008 and 7% of the citations that Redding CHP issued in 2009 were issued to
11 Hispanic drivers. Shasta County's population is 8% Hispanic.

12 This memorandum will also show that Kropholler and McQuillan frequently not only search
13 the cars of the Hispanic men they detain, but also that they frequently dismantle parts of those cars
14 while on the side of the road, often forcing drivers and passengers to wait for hours on the side of
15 freeway. Most of these stops involved members of what McQuillan calls the "innocent motoring
16 public," and did not result in the discovery or seizure of any contraband.

17 Kropholler and McQuillan's policy of selectively enforcing traffic laws violates the Equal
18 Protection Clause of the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886); *see also*
19 *Whren v. United States*, 517 U.S. 806, 813 (1996) (noting that "the Constitution prohibits selective
20 enforcement of the law based on considerations such as race"). The Due Process Clause of the Fifth
21 Amendment applies the Equal Protection clause to the federal government, and forbids the federal
22 prosecution of the Hispanic men who Kropholler and McQuillan have singled out for enforcement.
23 *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972). We move the Court to dismiss the
24 indictment based on selective enforcement.

25 In the alternative, we ask the Court to suppress all evidence that Kropholler and McQuillan
26 allegedly obtained following this racially-motivated and unconstitutional stop. Although the Supreme
27 Court held in *Whren* that selective enforcement does not justify suppression under the Fourth

1 Amendment, the Court did not foreclose the possibility of Fifth or Fourteenth Amendment
2 suppression.

3 Kropholler and McQuillan are both members of the North State Initiative of the California
4 Multijurisdictional Methamphetamine Eradication Team, also known as NSI CalMMET. The Shasta
5 County Sheriff's Office (SCSO) receives grants from the California Office of Emergency Services each
6 year to fund the CalMMET program, and SCSO primarily uses that grant money to engage in
7 Domestic Highway Enforcement (DHE), designed to lead to drug arrests. This motion will argue that
8 Kropholler and McQuillan enforce traffic laws only to further their DHE activities, and that they
9 enforce those laws disproportionately against Hispanic drivers because they are using a racial and
10 gendered profile to identify suspected drug transporters. Moreover, this motion will argue that
11 Kropholler and McQuillan are strongly motivated by their desire to bring in asset forfeiture revenue
12 for SCSO, which now budgets anticipated asset forfeiture income representing 2% of its total operating
13 budget.

14 Because Kropholler and McQuillan have such strong incentives to continue their pattern of
15 discriminatory "traffic enforcement," this motion will argue that short of dismissal, suppression of
16 evidence is the only remedy that will adequately deter this unconstitutional government practice. *See*
17 *McNabb v. United States*, 318 U.S. 332, 339 (1943) (holding that "a conviction in the federal courts, the
18 foundation of which is evidence obtained in disregard of the liberties deemed fundamental by the
19 Constitution, cannot stand.") *See also Weeks v. United States*, 232 U.S. 383, 393 (1914) ("The efforts of
20 the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be
21 aided by the sacrifice of those great principles established by years of endeavor and suffering which
22 have resulted in their embodiment in the fundamental law of the land.")

1 **II. KROPHOLLER AND MCQUILLAN SELECTIVELY ENFORCE TRAFFIC LAWS AGAINST HISPANIC**
2 **MALE DRIVERS.**

3 On February 12, 2009, Shasta County Sheriff's Officers Pat Kropholler and Chris McQuillan
4 stopped driver Francisco Javier Velasco, a thirty-two year old Hispanic male, and passenger Jose
5 Salvador Sanchez-Palomino, a twenty-nine year old Hispanic male, on northbound Interstate 5 near
6 Bridge Bay Road, allegedly for speeding in violation of California Vehicle Code §22349(a) (82 mph in a
7 65 mph in zone).¹ Agent Kropholler walked his drug detection dog (hereinafter "Maximus") around
8 the outside of the car and allowed him to enter the car and sniff inside. Subsequently, Kropholler and
9 McQuillan dismantled the rear bumper area, the trunk, and one of the inside door panels of the car.
10 Mr. Sanchez-Palomino and Mr. Velasco are charged with possession with intent to distribute cocaine,
11 in violation of 21 U.S.C. § 841(a) and conspiracy to commit that offense, in violation of 21 U.S.C. §
12 846.1.²

13 Kropholler and McQuillan's detention and search of Mr. Velasco and Mr. Sanchez-Palomino
14 was just one incident in their longstanding pattern of racially discriminatory enforcement of traffic
15 laws on Interstate 5 in Shasta County. Pursuant to subpoena, Shasta County produced records of all of
16 Kropholler and McQuillan's citations and arrests from January 1, 2008, through February 12, 2009.
17 Most of the information contained in this section of the memorandum was obtained as part of that
18 production. Shasta County Public Defender Mike Horan provided us with additional citation and
19 arrest information pre-dating the dates covered by the subpoena. Mr. Horan has also filed a motion in
20 the Shasta County Superior Court case of *California v. Saul Arias Guzman*, 09F5812, seeking discovery
21 under *Murgia v. Municipal Court*, 12 C.3d 286 (1975), based on his similar claim that Kropholler and
22 McQuillan are engaged in a pattern of selective enforcement. That motion, as well as the
23 accompanying exhibits, is attached as an appendix to this motion. Additionally, counsel for similarly
24 situated defendants with pending charges in Shasta County and in this district have provided us with

25 ¹ "Except as provided in Section 22356, no person may drive a vehicle upon a highway
26 at a speed greater than 65 miles per hour."

27 ² See Def.'s Mot. To Suppress, p. 3.

1 information about their cases. We anticipate that counsel in the other Eastern District cases will also be
2 seeking dismissal based on these equal protection violations.

3 **A. Kropholler and McQuillan Disproportionately Detain and Search Hispanic Male**
4 **Drivers.**

5 On October 9, 2007, McQuillan and Kropholler stopped Robert George Amorin, a twenty-five
6 year-old Hispanic male on northbound Interstate-5 at Twin View Road, allegedly for speeding (75 mph
7 in a 65 mph zone). (Ex. A1.)

8 On October 31, 2007, McQuillan stopped Apollinar Vasquez-Almonte, a thirty-six year old
9 Hispanic male, on northbound Interstate 5 at Knighton Road, allegedly for speeding (72 mph in a 65
10 mph zone). The car had an Oregon license plate. Mr. Vasquez-Almonte was cited and released. (Ex.
11 A2).

12 On January 12, 2008, McQuillan and Kropholler stopped Ignacio Magana, a forty-three year
13 old Hispanic male, on northbound Interstate 5 near Sunset Hills Drive, for allegedly following too
14 closely in violation of Cal. Veh. Code §21703.³ The car had a Washington license plate. Kropholler
15 walked Maximus around the outside of the car and then allowed him to enter the car and sniff inside.
16 Both officers extensively searched the inside of the car. Kropholler and McQuillan allegedly found 23.3
17 pounds of cocaine in the dashboard and passenger side door. Mr. Magana was charged with possession
18 for the sale of a controlled substance and possession of a false compartment. (Ex. B).

19 On February 9, 2008, McQuillan and Kropholler stopped Humberto Davila-Echevarria, a
20 Hispanic male, on northbound Interstate 5 near Hooker Creek Road, allegedly for speeding (80 mph in
21 a 70 mph zone). While McQuillan spoke with Mr. Davila-Echevarria, who spoke limited English,
22 about the reason for the stop and his travel plans, Kropholler walked Maximus around the outside of
23 the car and then allowed him to enter the car and sniff inside. Both officers extensively searched the
24 inside of the car. They allegedly found four large plastic bags on the rear seat and on the rear passenger

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26 ³ “The driver of a motor vehicle shall not follow another vehicle more closely than is
27 reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon,
and the condition of, the roadway.”

1 floor. The bags allegedly contained approximately 92 pounds of marijuana. Mr. Davila-Echevarria was
2 arrested and charged with possession for the sale of marijuana and the transportation of marijuana.
3 (Exhibit C).

4 On March 21, 2008, McQuillan and Kropholler stopped a Hispanic male, whose name is
5 unknown to the defense⁴, on Highway 273 south of Rhonda Road, for allegedly driving with tinted
6 windows in violation of Cal. Veh. Code § 26708 (a)(1).⁵ The driver was the registered owner of the car.
7 Kropholler walked Maximus around the outside of the car then allowed him to enter the car and sniff
8 inside. Both officers conducted a hand search of the car. Kropholler and McQuillan allegedly found
9 261 grams of methamphetamine. The driver was arrested and charged with possession of a controlled
10 substance. (Ex. D).

11 On April 25, 2008, McQuillan stopped Jose Perez, a forty-seven year old Hispanic male, on
12 southbound Interstate 5 at Wonderland Road, allegedly for speeding. When McQuillan asked whether
13 he had any weapons or drugs, Mr. Perez allegedly said that he had a gun, but had a Washington firearm
14 permit for it. Mr. Perez was arrested and charged with carrying a loaded firearm. (Ex. E).

15 On May 5, 2008, McQuillan and Kropholler stopped two Hispanic males, whose names are
16 unknown to the defense, on northbound Interstate 5 north of Jelly's Ferry Road, allegedly for speeding
17 (80 mph in a 70 mph zone). McQuillan claimed he smelled the strong odor of air freshener.
18 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
19 sniff inside. Maximus allegedly alerted to the driver's and passenger's side doorjambes, and rear cargo
20 hatch-gate. At this point, Deputies Grashoff, Benton, and Lieutenant Foster arrived to assist, bringing
21 the total amount of officers at the site from two to five. Three of the officers then conducted an
22 extensive hand search of the car and dismantled the rear seat. Kropholler and McQuillan allegedly
23

24 ⁴ Shasta County redacted the names of some drivers from the materials it produced to the
25 defense

26 ⁵ "A person shall not drive any motor vehicle with any object or material placed,
27 displayed, installed, affixed, or applied upon the windshield or side or rear windows."

1 found approximately five kilograms of cocaine located under the back-seat cushion and three kilograms
2 of cocaine in the passenger seat cushion. Both men were charged with possession for the sale of cocaine
3 and transportation for the sale of cocaine in the Shasta County Superior Court. (Ex. F).

4 On May 7, 2008, McQuillan stopped Sergio Daniel Portillo Davila, a sixty-year-old Hispanic
5 male, on northbound Interstate 5 at Wonderland Road, allegedly for speeding (79 mph in a 65 mph
6 zone). The car had an Oregon license plate. Mr. Portillo Davila was cited and released. (Ex. A3.)

7 On May 18, 2008, McQuillan stopped Gabriel Jesus Llamas, a twenty-six year old Hispanic
8 male, on northbound Interstate 5 at Wonderland Road, for speeding (90 mph in a 65 mph zone). The
9 car had a Washington license plate. Mr. Llamas was cited and released. (Ex. A4.)

10 On May 28, 2008, McQuillan stopped Julio Verdin-Serafin, a thirty-three year old Hispanic
11 male, and passenger, Osbaldo Silva, a twenty-three year-old Hispanic male, on Interstate 5 at Fawndale
12 Road, allegedly for speeding (77 mph in a 65 mph zone). McQuillan claimed he smelled a strong odor
13 of air freshener. McQuillan allegedly suspected that major criminal or terrorist activity was taking
14 place. He then radioed Kropholler, who upon arrival, walked Maximus around the outside of the car
15 and then allowed him to enter the car and sniff inside. McQuillan frisked Mr. Verdin-Serafin,
16 allegedly finding a pink container in his front pocket which contained a small marijuana joint. Both
17 officers dismantled the rear passenger side jack compartment of the car. Kropholler allegedly found a
18 folded up newspaper which contained 135.0 grams of methamphetamine in this compartment. Both
19 Mr. Verdin-Serafin and Mr. Silva were arrested and charged with possession for the sale of
20 methamphetamine and the sale of methamphetamine. (Ex. G.)

21 On June 18, 2008, McQuillan stopped David Galaviz-Dominguez, a twenty-four year old
22 Hispanic male, on southbound Interstate 5 at Wonderland Blvd., for speeding (80 mph in a 65 mph
23 zone). The car had a Washington license plate. Mr. Galaviz-Dominguez was cited and released. (Ex.
24 A5.)

25 On June 27, 2008, Kropholler stopped Israel Gomez-Martinez, a twenty-eight year old Hispanic
26 male, on southbound Interstate 5 at Fawndale Road, allegedly for speeding (78 mph in a 65 mph zone).
27

1 The car had a Washington license plate. Mr. Gomez-Martinez was cited and released. (Ex. A6.)

2 On July 10, 2008, McQuillan and Kropholler stopped Mark Rodriguez, a fifty-two year old
3 Hispanic male, on Interstate 5 at Union Road, for allegedly driving too slowly in violation of Cal. Veh.
4 Code § 22400(a).⁶ After stopping Mr. Rodriguez, both officers approached the vehicle, but Mr.
5 Rodriguez allegedly began to drive away. The officers pursued Mr. Rodriguez, eventually stopping
6 him. He was arrested and charged with attempting to evade a peace officer's pursuing vehicle. (Ex. H.)

7 On July 16, 2008, Kropholler and McQuillan stopped Jose Alvarez-Garibay, a twenty-eight year
8 old Hispanic male, on southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (82 mph in
9 a 65 mph zone). While McQuillan spoke with Mr. Alvarez-Garibay about the reason for the stop,
10 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
11 sniff inside. Maximus allegedly alerted to the trunk and the driver's side doorjamb. Kropholler then
12 conducted a hand search on the interior of the car, allegedly finding a rectangular-shaped package.
13 Kropholler and McQuillan allegedly found \$10,300.00 in the pocket of the driver's side door. Mr.
14 Alvarez-Garibay was released at the scene. (Ex. I.)

15 On July 19, 2008, McQuillan and Kropholler stopped Alain Magallon-Bravo, a twenty-three
16 year old Hispanic male, on northbound Interstate 5 near Union School Road, allegedly for speeding
17 (80 mph in a 65 mph zone). While McQuillan spoke with Mr. Magallon-Bravo about the reason for the
18 stop, Kropholler walked Maximus around the outside of the car and then allowed him to enter the car
19 and sniff inside. Kropholler allegedly found a fifty-five gallon plastic bag filled with 23.3 pounds of
20 marijuana. Mr. Magallon-Bravo was arrested and charged with the possession for the sale of marijuana
21 and the sale of marijuana. (Ex. J.)

22 On July 31, 2008, McQuillan and Kropholler stopped Rogelio Carpio, and passenger, Braulio
23 Morales, both Hispanic males, on southbound Interstate 5 near Fawndale Road, for a traffic violation.
24 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and

25
26 ⁶ "No person shall drive upon a highway at such a slow speed as to impede or block
27 the normal and reasonable movement of traffic, unless the reduced speed is necessary for safe
operation, because of grade or in compliance with law."

1 sniff inside. Both officers conducted an extensive hand search of the car. Kropholler and McQuillan
2 allegedly found one ounce of methamphetamine and \$55, 319.00, in a hidden compartment. Both Mr.
3 Morales and Mr. Carpio were arrested and charged with the possession for the sale of
4 methamphetamine and the sale of methamphetamine. (Ex. K.)

5 On August 2, 2008, Kropholler and McQuillan stopped Jose Suaste-Bernal, a thirty-six year old
6 Hispanic male, on northbound Interstate 5 south of Riverside Avenue, for allegedly having a cracked
7 windshield in violation of Cal. Veh. Code §27610⁷ and for allegedly speeding (74 mph in a 70 mph
8 zone). While McQuillan spoke with Mr. Suaste-Bernal regarding his travel plans, Kropholler walked
9 Maximus around the outside of the car and then allowed him to enter the car and sniff inside. Maximus
10 allegedly alerted to the driver's and passenger side doorjamb. Both officers extensively searched the
11 car, allegedly finding a hidden compartment behind the passenger side airbag, which they were able to
12 pry open with a crowbar. Kropholler and McQuillan allegedly found 8.4 ounces of methamphetamine
13 in the hidden compartment. Mr. Suaste-Bernal was arrested and charged with the possession for the sale
14 of methamphetamine and the sale of methamphetamine. (Ex. L.)

15 On August 6, 2008, Kropholler and McQuillan stopped Alejandro Leal-Garcia, a twenty-two
16 year old Hispanic male, on southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (75
17 mph in a 65 mph zone). While McQuillan spoke with Mr. Leal-Garcia, who spoke very broken
18 English, Kropholler walked Maximus around the outside of the car and then allowed him to enter the
19 car and sniff inside. Maximus allegedly alerted to a rimless tire in the trunk. Subsequently, McQuillan
20 extensively searched the car and allegedly found a brown paper sack filled with \$11,972.00 in the tire.
21 Mr. Leal-Garcia was cited for speeding, driving without insurance or a license, and then was released on
22 the scene. (Ex. M.)

23 On August 9, 2008, Kropholler and McQuillan stopped Roberto Santana-Mendoza, a fifty-two
24 year old Hispanic male, on northbound Interstate 5 at Oasis Road, allegedly for speeding (72 mph in
25

26 ⁷ (a) (1) A person shall not drive any motor vehicle with any object or material placed,
27 displayed, installed, affixed, or applied upon the windshield or side or rear windows

1 sixty-five mph zone). The car had a Washington license plate. McQuillan approached Mr. Santana-
2 Mendoza and asked him if he had any weapons or drugs in the car, and Mr. Santana-Mendoza
3 allegedly said, “No, would you like to check?” Kropholler walked Maximus around the outside of the
4 car and then allowed him to enter the car and sniff inside. Both officers extensively searched the car,
5 and they claim that the cover the gas tank appeared to have been tampered with. The officers then
6 dismantled the gas tank, allegedly finding a hidden compartment inside of the gas tank. Kropholler and
7 McQuillan allegedly found 1.2 pounds of methamphetamine in the hidden compartment. Mr. Santana-
8 Mendoza was arrested and charged with possession for the sale of methamphetamine, sale of
9 methamphetamine, and possession of a false compartment. (Ex. N.)

10 On August 21, 2008, Kropholler and McQuillan stopped Alfonso Hernandez-Ramirez, a thirty-
11 nine year old Hispanic male, and passenger, Efred Flores-Beltran, a twenty-three year old Hispanic
12 male, on southbound Interstate 5 south of Fawndale Road, allegedly for speeding (75 mph in 65 mph
13 zone). The car had a Washington license plate. When McQuillan approached the vehicle, he allegedly
14 smelled a strong odor of air freshener. McQuillan claimed that he noticed that Mr. Hernandez-Ramirez
15 had a photo of “Jesus Malverde” sewn onto the inside of his wallet. While McQuillan spoke with Mr.
16 Hernandez-Ramirez, Kropholler walked Maximus around the outside of the car and then allowed him
17 to enter the car and sniff inside. Maximus allegedly alerted to the passenger and driver’s side doorjamb
18 and an ice chest in the back seat. Kropholler and McQuillan extensively searched the car, dismantling
19 the ice chest. Kropholler and McQuillan allegedly found \$43,000.00, in the ice chest. After the search,
20 Mr. Hernandez and Mr. Flores-Beltran were released at the scene. (Ex. O.)

21 On August 28, 2008, Kropholler and McQuillan stopped Herminio Torres-Garcia, and
22 passenger, Raul Arevalos-Barragan, both twenty-seven year old Hispanic males, on southbound
23 Interstate 5 north of Wonderland Blvd., allegedly for speeding (82 mph in a 65 mph zone). McQuillan
24 claimed that he smelled the strong odor of soap. While he spoke with Mr. Reyes-Garcia, who spoke
25 limited English, Kropholler walked Maximus around the outside of the car and then allowed him to
26 enter the car and sniff inside. At this point, Mr. Reyes-Garcia allegedly said that he had \$15,000.00
27

1 under the seat. When asked why he was carrying this money, Mr. Reyes-Garcia responded that he was
2 buying “rims” and other car parts in Los Angeles. Mr. Reyes-Garcia is a mechanic. Both officers
3 extensively searched the car. Kropholler and McQuillan dismantled the rear bumper, allegedly finding
4 an empty hidden compartment. Kropholler and McQuillan allegedly found \$15,200.00 in the rear
5 bumper Both Mr. Reyes-Garcia and Mr. Arevalos-Barragan were released at the scene. (Ex. P.)

6 On August 29, 2008, McQuillan and Kropholler stopped Jose Luis Gomez-Gaxton, a thirty
7 year old Hispanic male, and passenger, Felipe Reyes-Barboza, a forty-six year old Hispanic male, on
8 southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (78 mph in a 65 mph zone). Mr.
9 Gomez-Gaxton was driving a sedan with Washington plates. After the officers approached the vehicle,
10 Mr. Gomez-Gaxton allegedly started the engine and drove away. The officers pursued the car. Mr.
11 Gomez-Gaxton allegedly collided with another car, whose driver and passenger sustained minor
12 injuries. (Ex. Q.)

13 On September 3, 2008, Kropholler and McQuillan stopped Pedro Lopez-Vega, a twenty-two
14 year old Hispanic male, and passenger, Carlos Salas-Garibay, a twenty-six year old Hispanic male, on
15 southbound Interstate 5 at Wonderland, for allegedly not wearing a seatbelt in violation of Cal. Veh.
16 Code §27315.3(e).⁸ McQuillan claimed that he smelled the strong odor of air freshener. While
17 McQuillan spoke with the driver and passenger, Kropholler walked Maximus around the outside of
18 the car and then allowed him to enter the car and sniff inside. Maximus allegedly alerted to the center
19 console and to a small green hand bag in the rear cargo portion of the car. Kropholler extensively
20 searched the car and the green bag. Kropholler and McQuillan allegedly found \$29, 580.00 in the green
21 bag. Mr. Lopez-Vega and Mr. Salas-Garibay were released at the scene. (Ex. R.).

22 On September 27, 2008, Kropholler and McQuillan stopped Victornio Medina-Alvarez, a
23

24 ⁸ In any civil action, a violation of subdivision (b) or information of a violation of
25 subdivision (c) shall not establish negligence as a matter of law or negligence per se for
26 comparative fault purposes, but negligence may be proven as a fact without regard to the
27 violation.

1 twenty-two year old Hispanic male, and passenger, Salvador Cuevas-Vargas, a twenty-four year old
2 Hispanic male, on northbound Interstate 5, north of Road 57, allegedly for speeding (76 mph in a 65
3 mph zone) and allegedly for following too closely. The car had a California license plate. Kropholler
4 claimed that Mr. Medina-Alvarez seemed nervous and spoke limited English. Kropholler walked
5 Maximus around the outside of the car and then allowed him to enter the car and sniff inside. Maximus
6 allegedly alerted to the trunk and the passenger's side doorjamb, and passenger's right rear tire well.
7 Both officers extensively searched the car. The trunk contained two duffle bags. Kropholler and
8 McQuillan allegedly found 26.6 pounds of marijuana. Mr. Medina-Alvarez and Mr. Cuevas-Vargas
9 were taken into custody. (Ex. S.)

10 On October 9, 2008, Kropholler and McQuillan stopped Frederico Solorio-Trujillo, a twenty-
11 four year old Hispanic male, and Daniela Lemus-De Solorio, a twenty-two year old Hispanic female,
12 on southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (76 in a 65 mph zone). The car
13 had Washington license plates. McQuillan claimed that he smelled the strong odor of air freshener.
14 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
15 sniff inside. Maximus allegedly alerted to the area under the rear driver's side passenger seat. Both
16 officers extensively searched car. Kropholler and McQuillan allegedly found \$19,000.00, under the rear
17 passenger seat. Both Mr. Solorio-Trujillo and Ms. Lemus-De Solorio were released at the scene. (Ex.
18 T.)

19 On October 11, 2008, Kropholler and McQuillan stopped Juan Castrejon-Guizar, a twenty-two
20 year old Hispanic male, on northbound Interstate 5 near Shasta Dam Blvd., allegedly for speeding (80
21 mph in a 65 mph zone). The SUV had a California license plate. The officers claimed that the SUV was
22 being followed by a Toyota Camry. McQuillan claimed he smelled the strong odor of air freshener.
23 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
24 sniff inside. Kropholler and McQuillan allegedly found several large trash bags of marijuana in the rear
25 cargo area. After stopping Mr. Castrejon, the officers claimed that Mr. Castrejon was not traveling
26 alone and attempted to locate the Camry. The driver of the Camry was identified as Mario Corona-
27

1 Zambrano, a nineteen year old Hispanic male. The officers extensively searched the Camry, which was
2 unfruitful. Kropholler and McQuillan allegedly found 143 pounds of marijuana, in the rear cargo area
3 of the SUV. Mr. Castrejon-Guizar and Mr. Corona-Zambrano were charged with conspiracy to
4 transport marijuana for sale. (Ex. U.)

5 On October 17, 2008, Kropholler and McQuillan stopped Aurelino Zavala-Alvarez, a thirty-
6 five year old Hispanic male, and his passenger, Jose Farias-Mendoza, a Hispanic male, on northbound
7 Interstate 5 near Fawndale Road, allegedly for speeding (78 mph in a 65 mph zone). The car had a
8 Washington license plate. McQuillan claimed he could smell the strong odor of air freshener. Mr.
9 Zavala-Alvarez speaks very limited English. Kropholler walked Maximus around the outside of the car
10 and then allowed him to enter the car and sniff inside. Both officers extensively searched the car.
11 Kropholler and McQuillan alleged there was a suitcase in the rear cargo area with thirty-six pounds of
12 marijuana. Mr. Zavala-Alvarez and Mr. Farias-Mendoza were charged with conspiring to transport
13 marijuana for sale. (Ex. V.)

14 On October 18, 2008, Kropholler and McQuillan stopped Juan Carlos Rubio, a twenty-three
15 year old Hispanic male, on southbound I-5 at Fawndale road, allegedly for speeding (78 mph in a 65
16 mph zone). The car had a California license plate. Kropholler claimed that there were several tool
17 marks on the dashboard that indicated that someone had taken the vehicle part to conceal items.
18 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
19 sniff inside. Kropholler extensively searched the car. Kropholler and McQuillan allegedly found
20 \$45,000.00 in the armrest and \$2000.00 in the glove compartment. (Ex. W.)

21 On October 22, 2008, Kropholler and McQuillan stopped Luis Bernal-Lopez, a twenty-three
22 year old Hispanic male, and passengers Jose Sanchez-Munoz, a thirty-three year old Hispanic male, and
23 Gabriel Vasquez-Ruiz, a Hispanic male, on southbound Interstate 5 at Bridge Bay Road, for allegedly
24 having tinted windows and allegedly speeding (73 mph in a 65 mph zone). The car had a California
25 license plate. Kropholler claimed he smelled the strong odor of air freshener. While McQuillan
26 continued talking to the occupants, Kropholler walked Maximus around the outside of the car and
27

1 then allowed him to enter the car and sniff inside. McQuillan extensively searched the car, dismantling
2 the entire area under the steering column. Kropholler and McQuillan allegedly found 2.2 pounds of
3 Cocaine and 3.5 grams of methamphetamine in the area behind the foot pedals of the car. Mr. Bernal-
4 Lopez and Mr. Sanchez-Munoz were both charged with possession for the sale of a controlled
5 substance, sale or transportation of a controlled substance, and possession of a controlled substance
6 (Ex. X.)

7 On October 24, 2008, Kropholler stopped Cornelio Acevedo-Valencia, a twenty-one year old
8 Hispanic male, on northbound Interstate 5 at Pine Grove Road, allegedly for speeding (80 mph in a 65
9 mph zone). The car had a California license plate. Mr. Acevedo-Valencia was cited and released. (Ex.
10 A7.)

11 On October 24, 2008, McQuillan stopped Steven Obeso, a thirty-one year old Hispanic male,
12 on southbound Interstate 5 at Fawndale Road, allegedly for speeding (75 mph in a 65 mph zone). Mr.
13 Obeso was cited and released. (Ex. A8.)

14 On October 25, 2008, Kropholler and McQuillan stopped Margil Bedolla-Garcia, a twenty-six
15 year old Hispanic male, and passenger, Arnulfo Prado, a thirty-year old Hispanic male, on southbound
16 Interstate 5 near Bridge Bay Road, allegedly for speeding (70 mph in a 65 mph zone), driving with a
17 cracked windshield, and driving with an unsecured license plate in violation of Cal. Veh. Code § 5201.⁹
18 The car had a California license plate. McQuillan claimed that he smelled the strong odor of air
19 freshener. Kropholler walked Maximus around the outside of the car and then allowed him to enter
20 the car and sniff inside. Both officers extensively searched the car and allegedly found a suitcase in the
21 cargo area. Kropholler and McQuillan allegedly found \$67,960.00, both in the suitcase that was found
22 in the cargo area and in the left rear passenger door.(Ex. Y.)

23 On October 31, 2008, Kropholler and McQuillan stopped Carlos Nieblas-Sanudo, a twenty-
24 seven year old Hispanic male, and passenger, Gibran Figueroa-Beltron, an eighteen year old Hispanic
25

26 ⁹ “ License plates shall at all times be securely fastened to the vehicle for which they are
27 issued so as to prevent the plates from swinging, shall be mounted in a position so as to be
28 clearly visible, and shall be maintained in a condition so as to be clearly legible. . .”

1 male, on southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (70 mph in a 65 mph
2 zone). The truck had California plates and had allegedly been reported stolen. The officers ordered
3 Mr. Nieblas-Sanudo and Mr. Figueroa-Beltron out of the car at gunpoint. Both men were arrested for
4 possession of a stolen vehicle. (Ex. Z.)

5 On November 7, 2008, Kropholler and McQuillan stopped Ramiro Mendoza, a thirty-eight
6 year old Hispanic male, on northbound Interstate 5 near Fawndale Road, allegedly for speeding (75
7 mph in a 65 mph zone). The truck had a California license plate. McQuillan claimed that he smelled
8 the strong odor of air freshener. He also claimed to see a photo of "Jesus Malverde" on Mr. Mendoza's
9 key chain. While McQuillan spoke with Mr. Mendoza, who speaks limited English, Kropholler
10 walked Maximus around the outside of the car and then allowed him to enter the car and sniff inside.
11 Both officers extensively searched the car. They allegedly found a paper bag under the passenger seat
12 that contained 15.8 ounces of crystal methamphetamine. Mr. Mendoza was charged with possession for
13 the sale of methamphetamine and the sale of methamphetamine. (Ex. AA.)

14 On November 9, 2008, Kropholler and McQuillan stopped a Hispanic male whose name is
15 unknown to the defense, on northbound Interstate 5 near Jelly's Ferry Rest Area, allegedly for
16 speeding (75 mph in a 70 mph zone). The car had a Washington license plate. While McQuillan, Sgt.
17 Gonzalez, and Deputy Robinson questioned the driver, Kropholler walked Maximus around the
18 outside of the car and then allowed him to enter the car and sniff inside. The officers extensively
19 searched the car and dismantled the entire area behind the passenger side airbag, which allegedly
20 revealed a hidden compartment. Kropholler and McQuillan allegedly found 7.4 pounds of cocaine salt
21 in the hidden compartment behind the passenger side airbag. The driver was arrested and charged with
22 possession for the sale of cocaine and the sale of cocaine. (Ex. BB.)

23 On November 21, 2008, Kropholler stopped and cited Edilberto Angulo, a thirty-six year old
24 Hispanic male, on southbound Interstate 5 at Exit 151, allegedly for speeding (75 mph in a 65 mph
25 zone). The car had an Oregon license plate. (Ex. A9.)

26 On December 4, 2008, Kropholler, McQuillan, Sgt. Gonzalez, and Deputy Robinson stopped
27 Juan Ruiz-Lechuga, a forty-five year old Hispanic male, on southbound Interstate 5 south of Pine
28

1 Grove, for allegedly driving slower than the posted speed limit (55 mph in a 65 mph zone). The car
2 had a Washington license plate. Kropholler and McQuillan claimed that Mr. Ruiz-Lechuga consented
3 to a search of the car. Both officers conducted a hand search of the car. After looking at the carpeting
4 in the trunk, the officers claimed that based on their training and experience the seams of the carpet did
5 not appear to be "standard." The officers then dismantled the trunk of the car. Kropholler walked
6 Maximus around the outside of the car and then allowed him to enter the car and sniff inside.
7 Kropholler and McQuillan allegedly found \$371, 965.00 found in the area below the floor. (Ex. CC.)

8 On December 18, 2008, Kropholler and Mcquillan stopped Alberto Castro-Rivera, a twenty-
9 nine year old Hispanic male, and passenger, Alvaro Castro-Garita, a twenty-three year old Hispanic
10 male, on southbound Interstate 5 near Bridge Bay Road allegedly for speeding (76 mph in a 65 mph
11 zone). The car had a Georgia license plate. Kropholler claimed that he smelled a strong odor of air
12 freshener. While McQuillan spoke with the driver, Kropholler walked Maximus around the outside
13 of the car and then allowed him to enter the car and sniff inside. Both officers extensively searched the
14 car. They claim that the screws holding the door panels in place had tool marks on them. After
15 dismantling the side doors, the officers allegedly found \$95, 980.00. Both Mr. Castro-Rivera and Mr.
16 Castro-Garita were released at the scene. (Ex. DD.)

17 On December 19, 2008, Kropholler and McQuillan stopped Francisco Gallardo-Pacheco, a
18 twenty-nine year old Hispanic male, on northbound Interstate 5 near Riverside Avenue, for allegedly
19 following too closely. The car had a California license plate. McQuillan claimed that he smelled the
20 strong odor of air freshener. While McQuillan spoke with Mr. Gallardo-Pacheco, Kropholler walked
21 Maximus around the exterior of the car and then allowed him to enter the car and sniff the interior.
22 Both officers conducted a hand search of the vehicle. They claim that the front fender looked as
23 though it had been tampered with. After dismantling the fender, they allegedly found a hidden
24 compartment. Kropholler and Mcquillan allegedly found 41.8 pounds of methamphetamine in the
25 fender. Mr. Gallardo-Pacheco was charged with possession of a controlled substance. (Ex. EE.)

26 On January 1, 2009, Kropholler stopped and cited Felipe Santillan, a twenty-six year old
27 Hispanic Male, on northbound Interstate 5 at Wonderland Blvd., allegedly for speeding (75 mph in a 65
28

1 mph zone). The car had an Oregon license plate. (Ex. A10.)

2 On January 17, 2009, Kropholler and Deputy Robinson stopped Javier Hernandez-Cordero, a
3 forty-three year old Hispanic male, on southbound Interstate 5 at Oasis Road, allegedly for speeding
4 (73 mph in a 65 mph zone). The truck had a Washington license plate. Robinson claimed Mr.
5 Hernandez-Cordero consented to the search of the truck. Kropholler and McQuillan extensively
6 searched the truck. The officers claimed to find a hidden compartment in the passenger side wall of the
7 cab. After dismantling the sidewall, the officers accessed the compartment with a jumper wire. The
8 officers allegedly found four packages wrapped in cellophane. Kropholler walked Maximus around the
9 outside of the car and then allowed him to enter the car and sniff inside. Kropholler and McQuillan
10 allegedly found \$29,990.00 in sidewall of the cab. Mr. Hernandez-Cordero was released at the scene.
11 (Ex. FF.)

12 On January 23, 2009, Kropholler and McQuillan stopped Alcario Felix-Felix, a thirty-four year
13 old Hispanic male, on southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (75 mph in
14 a 65 mph zone). The car had an Oregon license plate. McQuillan claimed that he smelled the strong
15 odor of air freshener, and also claimed that Mr. Felix had a photo of "Jesus Malverde" inside of his
16 wallet. Kropholler walked Maximus around the outside of the car and then allowed him to enter the
17 car and sniff inside. McQuillan extensively searched the car. He claimed to see a cellophane wrapped
18 package behind the airbag compartment. After dismantling the radio, the officers allegedly found a
19 hidden compartment. Kropholler and McQuillan allegedly found \$30,940.00 in a hidden compartment
20 behind the radio. Mr. Felix was arrested for possession of a false compartment. (Ex. GG.)

21 On January 24, 2009, McQuillan stopped and cited Dagoberto Lopez Bautista, a twenty-five
22 year old Hispanic male, on southbound Interstate 5 at Fawndale, allegedly for speeding (75 mph in a 65
23 mph zone). The car had an Oregon license plate. (Ex. A11.)

24 On January 30, 2009, Kropholler and McQuillan stopped two Hispanic males whose names
25 have been redacted, on southbound Interstate 5 at State Route 151, allegedly for speeding (75 mph in a
26 65 mph zone). The car had a California license plate. McQuillan claimed that he smelled the strong
27 odor of air freshener. Kropholler walked Maximus around the outside of the car and then allowed him

1 to enter the car and sniff inside. Both officers extensively searched the car, dismantling the cargo area
2 including the area under the rear passenger seat, which revealed a hidden compartment. Kropholler and
3 McQuillan allegedly found \$133,200.00, under the rear seat. (Exhibit HH.)

4 On February 6, 2009, Kropholler and McQuillan stopped Juan Medrano-Gomez, a twenty-nine
5 year old Hispanic male, and passenger, Flavio Medrano-Gomez, a twenty-year-old Hispanic male, and a
6 two-year old child, on northbound Interstate 5 at Bridge Bay Road, allegedly for speeding (80 mph in a
7 65 mph zone) and not having lights activated during inclement weather in violation of Cal. Veh. Code
8 §24400(a).¹⁰ The car had an Oregon license plate. McQuillan claimed that he smelled the strong odor of
9 air freshener. Kropholler walked Maximus around the outside of the car and then allowed him to
10 enter the car and sniff inside. Both officers extensively searched the car, including the middle console
11 compartment. Kropholler and McQuillan allegedly found five ounces of heroin in the console
12 compartment. Both men were arrested for the transportation for sale of heroin. (Ex. II.)

13 On July 11, 2009, Kropholler and McQuillan stopped Rigoberto Oseguera-Perez, a twenty-two
14 year old Hispanic male, and Martha Vargas-Esquivel, a twenty-three year old Hispanic female, on
15 southbound Interstate 5 near Bridge Bay Road, allegedly for speeding (72 mph in a 65 mph zone).
16 Kropholler claimed that he smelled the strong odor of air freshener. Both officers extensively searched
17 the car. They allegedly found a duffle bag behind the front passenger seat that contained a picture of
18 "Jesus Malverde." The officers dismantled the dashboard after Kropholler claimed that there were
19 several tool marks on it. Kropholler walked Maximus around the outside of the car and then allowed
20 him to enter the car and sniff inside. The officers then moved the car from the highway to the shoulder
21 to further search the vehicle. With the aid of a fiber optic scope, the officers alleged to find 10.1 pounds
22

23 ¹⁰ (a) A motor vehicle, other than a motorcycle, shall be: (1) Equipped with at least two
24 headlamps, with at least one on each side of the front of the vehicle, and, except as to vehicles
25 registered prior to January 1, 1930, they shall be located directly above or in advance of the front
26 axle of the vehicle. The headlamps and every light source in any headlamp unit shall be located
27 at a height of not more than 54 inches nor less than 22 inches. (2) Operated during darkness, or
28 inclement weather, or both, with at least two lighted headlamps that comply with paragraph (1).

1 of methamphetamine, and 9.6 pounds of cocaine, and \$25,000.00 in the area behind the dashboard. Ms.
2 Vargas-Esquivel and Mr. Oseguera-Perez were both charged with conspiracy to distribute and possess
3 methamphetamine and possession with the intent to distribute 500 grams or more of a substance
4 containing a detectable amount of methamphetamine. (Ex. JJ.)

5 On July 22, 2009, Kropholler McQuillan, and Guiducci, who were assisted by Investigator
6 Forrester, stopped Felipe Daniel Galeana, a twenty-six year old Hispanic male, on southbound
7 Interstate 5 north of Deschutes Road exit, allegedly for speeding (80 mph in a 70 mph zone). The car
8 had an Oregon license plate. While Mcquillan contacted Mr. Galeana, Kropholler walked Maximus
9 around the outside of the car and then allowed him to enter the car and sniff inside. Both officers
10 extensively searched the car and claimed to notice a false compartment under the rear driver's side
11 armrest. The officers gained access to the compartment by using jumper wire. Kropholler and
12 McQuillan allegedly found 22.7 grams of marijuana, a firearm, and \$23, 000.00 in the hidden
13 compartment . An additional \$5,000.00 was allegedly found in Mr. Galeana's backpack. Mr. Galeana
14 was arrested and charged with possession of marijuana, false compartment, and carrying a loaded
15 firearm. (Ex. KK.)

16 On July 25, 2009, Kropholler, McQuillan, and Guiducci stopped Saul Arias Guzman, a twenty-
17 four year old Hispanic male, on northbound Interstate 5 near Bridge Bay Road, for allegedly following
18 too closely and for allegedly driving with a tense body posture. McQuillan contacted Mr. Guzman and
19 Kropholler walked Maximus around the outside of the car and then allowed him to enter the car and
20 sniff inside. The officers extensively searched the car, dismantling the passenger side air bag and the
21 dashboard. Kropholler and McQuillan allegedly found 2.3 ounces of methamphetamine in the
22 compartment behind the dashboard. Mr. Guzman was arrested and charged with possession for the
23 sale of methamphetamine and possession of the transportation of methamphetamine. (Ex. LL.)

24 On August 5, 2009, Kropholler and McQuillan stopped Ruben Acosta Lugo, a forty-three year
25 old Hispanic male, and passenger, Juan Jose Padilla, a forty-one year old Hispanic male, on
26 southbound Interstate 5 north of Oasis Road, for following too closely. Kropholler claimed that he
27

1 smelled the strong odor of air freshener and axel grease. Kropholler walked Maximus around the
2 outside of the car and then allowed him to enter the car and sniff inside. Both officers conducted a
3 hand search of the car, pulling the carpet back, allegedly uncovering the hinge of a compartment door.
4 The officers moved the stop off of the highway and continued the search. They used a jumper wire to
5 unlock the compartment. Kropholler and McQuillan allegedly found \$12,550.00 and 2.4 pounds of
6 methamphetamine. Mr. Acosta-Lugo and Mr. Jose-Padilla were arrested. (Ex. MM.)

7 On August 29, 2009, Kropholler, McQuillan, and Guiducci, stopped Abel Rivera-Farias, a
8 twenty-six year old Hispanic male, on northbound on Interstate 5 north of the Pine Grove exit, for
9 looking nervous in the presence of law enforcement officers. Mr. Rivera-Farias allegedly fled the scene
10 when the fourth officer, Officer Carter, arrived. Kropholler released Maximus to locate Mr. Rivera-
11 Farias. McQuillan and Carter searched the car, allegedly finding 125 pounds of marijuana. Mr. Rivera-
12 Farias was arrested and charged with possession of marijuana for sale, transportation of marijuana, and
13 resisting arrest. (Ex. NN.)

14 On September 6, 2009, Kropholler and McQuillan stopped Ignacio Hernandez-Macias, a forty-
15 two year old Hispanic male, on northbound Interstate 5 near Wonderland Blvd., for allegedly driving
16 with air fresheners obstructing his view and looking nervous. McQuillan claimed to visually inspected
17 the rear bumper and suspect that a false compartment was under it. Kropholler walked Maximus
18 around the outside of the car and then allowed him to enter the car and sniff inside. Both officers
19 extensively searched the car, dismantling the rear bumper, which allegedly revealed a false
20 compartment. Kropholler and McQuillan allegedly found 9.8 pounds of suspected methamphetamine
21 in the rear bumper. Mr. Hernandez-Macias was arrested and charged with possession for the sale of
22 methamphetamine and possession of the transportation of methamphetamine and false compartment
23 activity. (Ex. OO.)

24 On October 16, 2009, Kropholler and Carter stopped Noel Esceverre, a twenty-four year old
25 Hispanic male, on northbound Interstate 5 at Shasta Dam Blvd., allegedly for speeding (74 mph in a 65
26 mph zone). The SUV had an Oregon license plate. Kropholler and Carter were later assisted by
27

1 McQuillan and Guiducci. After questioning Mr. Esceverre regarding his travel plans, Carter claimed
2 that Mr. Esceverre consented to the search his person for any weapons or drugs . Kropholler walked
3 Maximus around the outside of the car and then allowed him to enter the car and sniff inside. The
4 officers extensively searched the SUV. They allegedly found two screwdrivers on the floor, and two
5 screws in the rear console “that appeared to be interior molding screws.” After dismantling the cargo
6 hatch molding, the officers allegedly found five packages located in the “natural void” in the cargo
7 door. Kropholler, Carter, McQuillan and Guiducci allegedly found 3.2 pounds of methamphetamine.
8 Mr. Esceverre was arrested and charged with possession for the sale of methamphetamine and sale of
9 methamphetamine. (Ex. PP.)

10 On October 17, 2009, Kropholler and McQuillan stopped Luis Fernando-Navarro, a twenty-
11 eight year old Hispanic male, Michelle Suarez, a twenty-three year old Hispanic female, and Joan
12 Ontiveros, a twenty-two year old Hispanic female, on northbound Interstate 5 near Twin View Blvd,
13 under a suspicion of having a false compartment and failing to signal when changing lanes in violation
14 of Cal. Veh. Code § 22107.¹¹ The car had a California license plate. While McQuillan visually
15 inspected the rear bumper and Guiducci spoke with Mr. Fernando-Navarro, Kropholler walked
16 Maximus around the outside of the car and then allowed him to enter the car and sniff inside. All three
17 officers extensively searched the car, dismantling the rear bumper, which allegedly revealed a false
18 compartment. Kropholler and McQuillan allegedly found approximately 38 kilograms of cocaine. Mr.
19 Fernando-Navarro was arrested and charged with possession of sale and transportation of cocaine. Ms.
20 Suarez and Ms. Ontiveros were both released. (Ex. QQ.)

21 On November 28, 2009, Kropholler, McQuillan, and Guiducci stopped Ruben Flores, a thirty-
22 one year old Hispanic male, on northbound Interstate-5 near Pine Grove Ave, for driving slower than
23

24 ¹¹ “No person shall turn a vehicle from a direct course or move right or left upon a
25 roadway until such movement can be made with reasonable safety and then only after the giving
26 of an appropriate signal in the manner provided in this chapter in the event any other vehicle may
27 be affected by the movement.”

1 the flow of traffic. Kropholler walked Maximus around the outside of the car and then allowed him
2 to enter the car and sniff inside. All three officers extensively searched the vehicle, dismantling the
3 passenger sidewall of the rear seat, allegedly revealing a false compartment. Kropholler and McQuillan
4 alleged that approximately seven pounds of cocaine and three pounds of methamphetamine were found
5 in the compartment. Mr. Flores was arrested and charged with the sale or transportation of a
6 controlled substance. (Ex. RR.)

7 On January 23, 2010, Kropholler, McQuillan, and Guiducci stopped Luis Cabrera-Barnegas and
8 Juan Mass-Trejo, both Hispanic males, on southbound Interstate 5 near Oasis Road, for allegedly
9 driving too slowly (50 mph in a 65 mph zone). As a note, the weather was poor at the time of the stop.
10 While Robinson contacted Mr. Cabrera-Barnegas, Kropholler walked Maximus around the outside of
11 the car and then allowed him to enter the car and sniff inside. McQuillan issued Mr. Cabrera-Barnegas
12 a warning citation. All three officers conducted a hand search of the vehicle, dismantling the trunk and
13 rear seat bottom. The officers suspected the presence of a hidden compartment, which they gained
14 access to by using jumper wires. Kropholler and McQuillan allegedly found 26.2 ounces of cocaine and
15 \$25, 401.0 in the hidden compartment. Mr. Mass-Trejo was released; however, Mr. Cabrera-Barnegas
16 was arrested for the possession of methamphetamine for sale. (Ex. SS.)

17 On February 16, 2010, McQuillan and Thompson stopped Juan Lupericio-Ramirez, a twenty-
18 seven year old Hispanic male, on southbound Interstate 5 near Oasis Road for swaying back and forth
19 within the lane. McQuillan initiated a hand search of the car and claimed that the interior panel next to
20 the rear seat had been tampered with. The officers dismantled the rear panel on the driver's and
21 passenger's side of the car. Deputy Thompson walked Larus around the interior of the car and allowed
22 him to enter the car and sniff inside. After dismantling the driver's side panel, McQuillan and
23 Thompson alleged to have found 511 grams of black tar heroin and \$9317.00 in. Mr. Lupericio-
24 Ramirez was charged with possession of a controlled substance for sale and transportation, and the use
25 of a false compartment. (Ex. TT.)

26 Between January 1, 2008 and February 12, 2009, Kropholler and McQuillan cited 10 Hispanics,
27
28

1 20 Caucasians, one Asian, and no African-Americans. During the same time frame, Kropholler and
2 McQuillan reported the stops and searches of 72 Hispanics, 16 Caucasians, 9 African-Americans, one
3 Indian, and one Asian. (Ex. UU.) During this time period, 32% of those cited and 72% of those
4 searched by Kropholler and McQuillan were Hispanic.

5 Hispanics constitute 8% of Shasta County's population, *see Murgia Motion*, Appx. p. 20.
6 Hispanics comprised only 6.9% of the Shasta County Sheriff's Office's arrests in 2009, appx. p. 21, only
7 4.7% of Redding Police Department's arrests in 2009, *id.*, and 5.7% of Redding Police Department's
8 arrests in 2008. *Id.* Therefore, Kropholler and McQuillan are citing Hispanics at a 500-600% greater rate
9 than local police departments, and are detaining and searching Hispanics at 1000% greater rate than
10 those departments.

11 **B. The Citations and Police Reports do Not Reflect All of Kropholler and McQuillan's**
12 **Detentions and Searches.**

13 Kropholler and McQuillan frequently issue NSI CalMMET "Warning Citations" to drivers they
14 stop for alleged traffic violations. *See Appendix*, p. 26-28. These warning citations are not official
15 SCSO documents, nor do they formally charge the driver with a traffic offense. They do, however,
16 include the driver's name, address, driver's license number, physical description, whether the driver
17 was searched, and the race or ethnicity of the driver. *Id.*

18 Additionally, the Federal Defender's Office contracted Private Investigator Conrad Cota to
19 conduct visual and video surveillance of Kropholler and McQuillan. (*See Conrad Cota's "Summary of*
20 *Investigation," Ex. VV.*) Between February 4, 2010 and March 26, 2010, Mr. Cota was able to videotape
21 many traffic stops by Kropholler and McQuillan on Interstate 5 in Shasta County. Mr. Cota observed
22 Kropholler and McQuillan making traffic stops on February 16, 18, and 19, and on March 6, 18, and
23 19. During his surveillance, Mr. Cota observed 22 traffic stops by Kropholler and McQuillan, 17 of
24 which involved searches. Of the 22 stops, 18 involved either a Hispanic driver or a Hispanic passenger,
25 three others involved African-American drivers, and only one stop involved a Caucasian driver and no
26 non-white occupants. The Caucasian driver was not searched. Mr. Cota only observed two Hispanic
27 drivers who were allowed to leave without being searched. During Mr. Cota's surveillance, 82% of
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1 Kropholler and McQuillan's stops involved Hispanics, and 95% involved non-white people. None of
2 the traffic stops Mr. Cota observed led to arrests. The defense believes that many of these drivers may
3 have received NSI CalMMET warning citations in lieu of formal traffic citations, and reserves the right
4 to supplement its argument if additional information becomes available.

5
6 **III. HISTORY OF SCSO AND CALMMET**
7 **A. Background of CalMMET**

8 CalMMET is the California Multijurisdictional Methamphetamine Enforcement Team.
9 CalMMET is run by the California Governor's Office of Emergency Services (OES), and is "designed
10 to combat the production and distribution of methamphetamine." CalMMET was established in 2001,
11 and the legislature initially allowed Sacramento, San Joaquin, Stanislaus, Fresno, Tulare, and Kern
12 counties to apply for CalMMET grants, because those counties had the highest levels of
13 methamphetamine production and distribution. The North State Initiative (NSI) of CalMMET was
14 established in 2002, and originally included Shasta, Tehama, Butte, Glenn, Colusa, Siskiyou, Trinity,
15 Modoc, Lassen, and Plumas Counties. In 2007, however, Siskiyou, Trinity, Modoc, Lassen, and Plumas
16 Counties all ended their participation in NSI CalMMET.

17 **B. CalMMET's North State Initiative**

18 _____ In May of 2007, the NSI CalMMET entered into a Memorandum of Understanding (MOU).
19 (Ex. WW.) The MOU was signed by representatives of the Shasta, Tehama, Butte, Glenn, and Colusa
20 County Sheriff's Departments, the Redding Police Department, the Redding Regional Office of the
21 Bureau of Narcotic Enforcement, and the Northern Division of the California Highway Patrol. The
22 Shasta County Sheriff's Department administers the NSI CalMMET grant for all five of the NSI
23 counties.

24 In 2003, the California Highway Patrol entered into a consent decree as part of the settlement
25 of *Rodriguez v. California Highway Patrol*, C-99-20895-JF (N.D.Cal.). (Ex. XX.) Under that consent
26 decree, CHP agreed: not to engage in racial profiling; not to engage in traffic stops where the primary
27

1 purpose is drug interdiction; to continue a moratorium on “consent searches” of motorists; to
 2 document all searches of motorists, including the race of the searched motorist; and to collect data on
 3 all contacts with motorists. In October 2008, CHP Northern Division Chief C.D. Jenkins wrote a
 4 letter to Shasta County Sheriff Tom Bosenko stating that he appreciated Sheriff Bosenko’s “candor,”
 5 and indicated that “it would be in the best interest of the CHP to discontinue [its] active participation
 6 in Cal-MMET,” effective October 31, 2008. (Ex. YY.) Chief Jenkins did not elaborate on why
 7 participation would not be in CHP’s best interest.

8 Four months before CHP terminated its participation in NSI CalMMET, the program initiated
 9 a contract with analyst Mike Baker and renewed a contract with Hayslett Analytical Services. (Ex. ZZ.)
 10 Under its contract, Hayslett is required to write reports “showing the information and intelligence
 11 collected, and the relationships, both geographical and **demographically**, of DTO’s, people, and places
 12 related to drug trafficking investigations.” (Ex. ZZ, p. 3.) (emphasis added)

13 **C. SCSO’s Financial Dependence on CalMMET and Asset Forfeiture Income**

14 The Shasta County Sheriff’s Office has received a Cal-MMET grant each year since Fiscal Year
 15 2002-2003. The CalMMET grants have funded between 4 and 12% of the Shasta County Sheriff’s
 16 Office total operating budget from 2002 to the present. Specifically, the SCSO operating budgets and
 17 CalMMET grant amounts from 2002 to the present were:

18

19

Fiscal Year	SCSO Total Budget	CalMMET Grant	% of SCSO Budget from CalMMET grant
2002-2003	\$11,586,307	\$1, 557, 206	12%
2003-2004	\$13.3 million	\$768,395	6%
2004-2005	\$12 million	\$934,489.10	8%
2005-2006	\$15.5 million	\$579,362	4%
2006-2007	\$16.6 million	\$610,175	4%
2007-2008	\$19.2 million	\$947,368	5%
2008-2009	\$18.1 million	\$930,815	5%
2009-2010	\$17.6 million	\$672,502	4%

26

27

28

1 When SCSO received its first CalMMET grant in 2002-2003, it did not budget for any asset
 2 forfeiture income, and CalMMET reported \$1676.90 in asset forfeiture income at the end of that year.
 3 The SCSO CalMMET budgets from 2002 through 2007 did not project any asset forfeiture income; the
 4 greatest amount of asset forfeiture income received was \$4751.52 in 2007. (See CalMMET budget
 5 statements, Ex. ZZ.) By the 2008-2009 fiscal year, CalMMET planned its budget in anticipation of
 6 \$206,884 in asset forfeiture income, and it actually received \$430,258 in asset forfeiture income.
 7 CalMMET’s 2009-2010 budget planned for \$393,604 in asset forfeiture income, which represents 2% of
 8 the total revenue budgeted to run all of SCSO’s operations. The 2008-2009 operating budget narrative
 9 specifically notes that “asset forfeiture funds will have to be used to fill the gap” between the OES grant
 10 and SCSO CalMMET’s anticipated necessary operating revenue. (Ex. ZZ.)

Fiscal Year	SCSO CalMMET’s Budgeted Asset Forfeiture Income	SCSO CalMMET’s Actual Asset Forfeiture Income
2002-2003	\$0	\$1808.87
2003-2004	\$0	\$1676.90
2004-2005	\$0	\$1141.06
2005-2006	\$0	\$4324.96
2006-2007	\$0	\$4751.52
2007-2008	unknown	unknown
2008-2009	\$206,884	\$434,258.03
2009-2010	\$393,604	unknown (FY incomplete)

21 **IV. THE FIFTH AND FOURTEENTH AMENDMENTS PROHIBIT KROPHOLLER AND MCQUILLAN’S**
 22 **DISCRIMINATORY SELECTIVE ENFORCEMENT.**

23 While prosecutors and police officers have discretion in how they enforce the laws, that
 24 discretion is limited by the boundaries of the Constitution. *See Wayte v. United States*, 470 U.S. 598, 608
 25 (1985). The Equal Protection Clause of the Fourteenth Amendment prohibits selective enforcement of
 26 laws based on considerations such as race or gender. *See Whren v. United States*, 517 U.S. 806, 813
 27 (1996); *see also Wayte*, 470 U.S. at 608 (holding that the Due Process Clause of the Fifth Amendment

1 prohibits selective enforcement by the federal government). Selective enforcement is a “federal
2 defense,” *Flynt v. Ohio*, 451 U.S. 619, 622 (1981). A defendant cannot be convicted if the law is being
3 unconstitutionally selectively enforced. *United States v. Christopher*, 700 F.2d 1253, 1258 (9th Cir. 1983)
4 (citing *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972)).

5 Courts evaluate selective enforcement claims using ordinary equal protection analysis. *See*
6 *Rosenbaum v. City & County of San Francisco*, 484 F.3d 1142, 1152 (9th Cir. 2007); *see also United States*
7 *v. Armstrong*, 517 U.S. 456, 465 (1996). To demonstrate selective enforcement, the defendant must
8 show that police were motivated by a discriminatory purpose and that their enforcement had a
9 discriminatory effect. *See Rosenbaum*, 484 F.3d at 1152.

10
11 **A. Kropholler and McQuillan’s Selective Enforcement Has a Discriminatory Effect.**
12 Mr. Cota’s surveillance demonstrates that Kropholler and McQuillan may be stopping and
13 searching Hispanic drivers at a rate even higher than that reflected by official records. Even those
14 records show that Kropholler and McQuillan detain and search Hispanic drivers at a rate 1000% higher
15 than that at which local law enforcement arrests Hispanic suspects. Kropholler and McQuillan cite,
16 detain, and search Hispanic male drivers at a rate that significantly exceeds Hispanic representation in
17 the population of Shasta County. Defendants can use statistics to demonstrate a discriminatory effect.
18 *See Hunter v. Underwood*, 471 U.S. 222, 227 (1985); *Castaneda v. Partida*, 430 U.S. 482, 494 (1977). The
19 majority of Kropholler and McQuillan’s stops involve alleged speeding, an offense that is committed
20 by many Caucasian drivers as well.

21 Significantly, *every* traffic citation Kropholler and McQuillan issued between January 1, 2008
22 and February 12, 2009 was issued to a male driver.

23 Kropholler and McQuillan frequently choose not to enforce similar traffic violations against
24 non-Hispanic or female drivers. As an example, on November 21, 2009, Kropholler stopped Ruben
25 Flores on northbound Interstate 5 at Oasis Road for allegedly driving slower than the flow of traffic,
26 and noted that traffic was passing Mr. Flores traveling 65-70 miles per hour. (*See Ex. RR.*) On
27 February 7, 2009, Cal-MMET officers acting in cooperation with Kropholler stopped Christian Beltran

1 and Luis Zuniga on southbound Interstate 5 at Oasis Road for allegedly driving 70 miles per hour in a
2 65 mph zone.

3 **B. Kropholler and McQuillan Are Motivated By a Discriminatory Purpose.**

4 When patrolling Interstate 5 in Shasta County, Kropholler and McQuillan are not truly
5 engaged in traffic enforcement; rather, they are conducting Domestic Highway Enforcement drug
6 interdiction on behalf of NSI CalMMET. In fact, the CalMMET grant funds 100% of McQuillan's
7 salary, so he *must* spend 100% of his time on CalMMET or DHE activity. Kropholler and McQuillan's
8 pattern of conduct is far more consistent with DHE than with traffic enforcement, as they only issued
9 31 traffic citations in 59 weeks, whereas they searched 99 cars during that same time period.

10 Kropholler and McQuillan do not claim to have independent reasonable suspicion or probable
11 cause to believe that the cars they pull over are involved in drug trafficking. For that reason, they
12 conduct "traffic stops," during which Kropholler walks Maximus around the car and the officers
13 question drivers and passengers about their travel plans, in the hope that they will develop reasonable
14 suspicion or probable cause warranting further investigation. They also claim that drivers frequently
15 consent to the searches of their cars during these "traffic stops."

16 Officers act with a discriminatory intent if they "selected or reaffirmed a particular course of
17 action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable
18 group." *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). The evidence suggests that
19 Kropholler and McQuillan are stopping cars and searching their occupants based on a racial and
20 gendered profile. At a hearing on a motion to suppress in the Shasta County Superior Court case of
21 *California v. Luis Cabrera-Banegas*, 10F581, McQuillan referred to the "Hispanic culture involved in
22 drug trafficking," and indicated that he believes most Spanish speakers he encounters are Mexican. (Ex.
23 AAA.)

24
25 **V. DISMISSAL IS THE APPROPRIATE REMEDY FOR THE CONSTITUTIONAL VIOLATION.**

26 There is clear precedent for dismissing prosecutions that stem from unconstitutional selective
27 enforcement of the laws. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *United States v. Christopher*, 700

1 F.2d 1253 (9th Cir. 1983); *United States v. Steele*, 461 F.2d 1148 (9th Cir. 1972).

2 Mr. Sanchez-Palomino has demonstrated that Kropholler and McQuillan are enforcing traffic
3 laws against Hispanic males in an unconstitutional manner. That selective enforcement directly led to
4 this prosecution. As a result, the indictment should be dismissed.

5
6 **VI. SUPPRESSION IS THE ONLY OTHER REMEDY THAT CAN DETER THESE VIOLATIONS.**

7 Although the Supreme Court held in *Whren* that the Fourth Amendment does not prohibit
8 racially motivated or “pretextual” traffic stops for which officers have probable cause, the Court also
9 emphasized that “the Constitution prohibits selective enforcement of the law based on considerations
10 such as race.” 517 U.S. at 813. The Court indicated that alleging a Fourteenth Amendment violation is
11 the appropriate way to challenge racially motivated law enforcement, but did not suggest what the
12 appropriate remedy would be if a court were to find an equal protection violation.

13 Kropholler and McQuillan’s discriminatory law enforcement practices disproportionately affect
14 Hispanic male motorists. They frequently detain and search innocent motorists because of their race.
15 Despite the frequency with which Kropholler and McQuillan search cars and find no contraband, they
16 seem to believe that their discriminatory techniques are effective. Because SCSO has a strong financial
17 incentive to continue receiving CalMMET grants, Kropholler and McQuillan have a strong motivation
18 to continue searching mostly innocent Hispanic men in the hope that they will find narcotics, money,
19 or both. They are also motivated by SCSO’s financial stake in asset forfeiture income, which is now a
20 substantial part of SCSO’s projected revenue each year and which NSI CalMMET requires to fill
21 budget shortfalls. As those shortfalls are increasingly frequent in this economic climate, these
22 motivations will likely become stronger.

23 The risk of internal discipline or civil litigation will not deter this pattern of discriminatory
24 enforcement. The Supreme Court used its supervisory power over federal courts to preclude the
25 admission of compelled confessions because it found that allowing such admission contradicts the
26 values in the Constitution. *See McNabb v. United States*, 318 U.S. 332, 339 (1943) (holding that “a
27 conviction in the federal courts, the foundation of which is evidence obtained in disregard of the
28

1 liberties deemed fundamental by the Constitution, cannot stand.”) *See also Weeks v. United States*, 232
2 U.S. 383, 393 (1914) (“The efforts of the courts and their officials to bring the guilty to punishment,
3 praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by
4 years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the
5 land.”) This same reasoning led to the development of the “exclusionary rule” to address Fourth
6 Amendment violations. When it applied the exclusionary rule to the states, the Supreme Court noted
7 that because the incentive to obtain evidence for prosecution is so strong, “the experience of California
8 that other ... remedies [to address Fourth Amendment violations] have been worthless and futile has
9 been buttressed by the experiences of the other states.” *Mapp v. Ohio*, 367 U.S. 643, 652 (1961).

10 The principles underlying the exclusion of tainted confessions and illegally obtained evidence
11 also apply to introducing the fruit of racially discriminatory law enforcement in criminal trials. Racial
12 profiling subjects some members of the population to much greater law enforcement scrutiny simply
13 because of their race, while exempting members of other groups from being scrutinized at all.
14 Moreover, when officers primarily arrest members of one ethnic group, it reinforces their confidence
15 in the prejudices and stereotypes that initially led them to target that group. Our system of justice
16 cannot tolerate this kind of discrimination. Allowing prosecutors to obtain convictions using the fruits
17 of this conduct sanctions the conduct. For nearly a century, the Supreme Court has made clear that
18 courts should do no such thing.

19

20 **VII. CONCLUSION**

21 For all of the reasons stated in this memorandum, Mr. Jose Salvador Sanchez-Palomino moves
22 this Court for an order dismissing the indictment, or alternatively for an order suppressing evidence,
23 based on Pat Kropholler and Chris McQuillan’s racially and gender-based selective enforcement of the
24 California Vehicle Code.

1 Dated: April 29, 2010

2 Respectfully submitted,

3 DANIEL J. BRODERICK
4 Federal Defender

5 /s/ Lauren Cusick

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7 Assistant Federal Defender
8 Attorney for Defendant
9 JOSE SALVADOR SANCHEZ-PALOMINO
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