

1
2 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
3 **FOR MULTNOMAH COUNTY**

4 THE STATE OF OREGON,

5 Plaintiff,

6 v.

7 JOSEPH GIBSON,

8 Defendant.

No. C 19CR53042

DA 2407866

DECLARATION IN SUPPORT OF
STATE'S MOTION TO COMPEL
DISCOVERY

9 I, Brad Kalbaugh, declare under the penalty of perjury that the following is true and correct
10 to the best of my knowledge. I am over the age of eighteen, and I am competent to testify to the
11 matters herein. I have personal knowledge of the matters stated herein, or as indicated, have
12 information concerning those matters. I am the lead prosecutor in the above captioned matter.

- 13 1. I know that D. Angus Lee and James Buchal are the attorneys of record in the above
14 captioned case.
- 15 2. I know that in order to present evidence to a jury, an attorney must call witnesses
16 to the stand to testify. Often, attorneys may offer exhibits through these witnesses
17 as well.
- 18 3. I know that ORS 135.835 states that defense attorneys must provide the names and
19 address of persons whom the defense intends to call as witness at trial, together
20 with relevant written or recorded statements or memoranda of any oral statements
21 of such persons other than the defendant. It also states that defense attorneys must
22 disclose any books, papers, documents, photographs, or tangible objects that the
23 defense intends to offer in evidence at trial.
- 24 4. I believe that Mr. Lee and Mr. Buchal are familiar with Oregon's discovery statutes
25 because they often cite them in defense motions.
- 26 5. On September 14, 2021, Mr. Lee represented to the court that one of the many
27 reasons he was requesting a continuance of the previously scheduled trial dates was

-1-

28 STATE'S DECLARATION IN SUPPORT OF MOTION TO COMPEL DISCOVERY

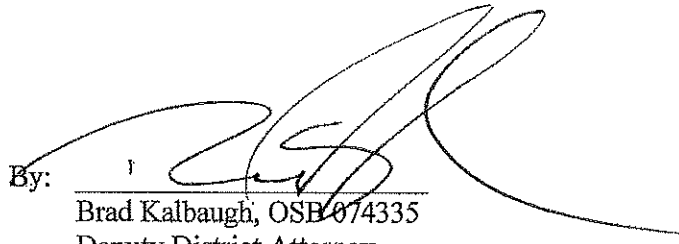
Multnomah County District Attorney's Office, Portland, OR 97204 - (503) 988-3162

1 due to an investigator he intended to call as a witness potentially having to
2 quarantine due to COVID-19 exposure. I informed the court that this was the first
3 I was hearing of this witness and asked for the name and contact information of this
4 person. Despite the plain language of ORS 135.835, I have not received the
5 requested material.

- 6 6. On September 17, 2021, Mr. Lee wrote the following in an email: "We would like
7 to reserve 1 day for our defense..." In response to this email, I asked Mr. Lee to
8 provide discovery in accordance with ORS 135.835. Despite numerous reiterated
9 requests, I have received no reply to my request for discovery.
- 10 7. On September 28, 2021, Mr. Buchal wrote the following in an email: "With further
11 preparation and consideration, it may also be that the one day estimate to put on the
12 defense is not sufficient." In response to this email and on the same day, I asked
13 Mr. Buchal in writing to provide discovery in accordance with Oregon law.
14 Although I received a reply, it was not responsive to my request for discovery.
- 15 8. To date, I have not received the discovery that I have requested, and I have not
16 received any response directed to my repeated requests for discovery.

17 I hereby declare that the above statement is true to the best of my knowledge and belief
18 and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

19 Dated this 29th of September, 2021

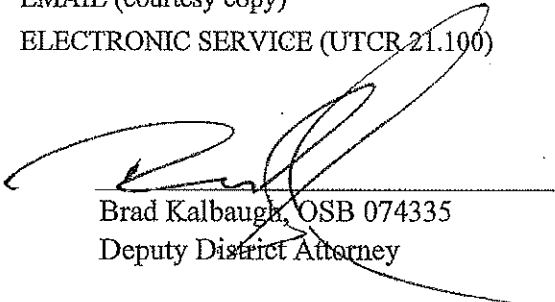
20 By: 
21 Brad Kalbaugh, OSB 074335
22 Deputy District Attorney
23 Multnomah County
24
25
26

1
2
3
4
5 **Certificate of Service**

6 I certify that on September 29, 2021, I caused the foregoing motion to be served upon the
7 parties hereto by the method indicated below, and addressed as follows:
8

9
10
11 Counsel for Joesph Gibson
12 James Buchal & D. Angus Lee
13 Murphy & Buchal, LLP.
14 3425 SW Yamhill
15 Portland, OR 97214
16 jbuchal@mdlip.com
17 angus@angusleelaw.com

18
19
20
21
22
23
24
25
26
27
28
☐ HAND DELIVERY
☐ US MAIL
☐ FAX
☒ EMAIL (courtesy copy)
☒ ELECTRONIC SERVICE (UTCR 21.100)

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Brad Kalbaugh, OSB 074335
Deputy District Attorney