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7 Attorney for Defendant: Thomas C. Kasper

8 **THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10 **(THE HONORABLE JEFFREY T. MILLER)**

11 UNITED STATES GOVERNMENT,) Case No. 04-CR-01765-002-JM
12)
13 Plaintiff,) **DEFENDANT’S MOTION FOR**
14 vs.) **RETURN OF PROPERTY**
15 THOMAS C. KASPER,)
16 Defendant.) **Date:**
) **Time:**
)
)

17 TO: KAREN P. HEWITT, UNITED STATES ATTORNEY AND TIMOTHY D.
18 COUGHLIN, ASSISTANT UNITED STATES ATTORNEY:

19 INTRODUCTION

20
21 On February 3, 2006, Thomas Kasper (hereinafter Mr. Kasper) pleaded guilty to one
22 count of Conspiracy to Distribute Controlled Substance Analogues. Sentencing took place
23 before this court on May 14, 2007. Mr. Kasper is scheduled to self-surrender for custody on
24 August 15, 2007.

25
26 In the course of its investigation, the government seized a large amount of Mr.
27 Kasper’s property. Some of this property has been returned to Mr. Kasper, while many items
28 have not. While this list is not intended to be exclusive, Mr. Kasper is aware that at a
29 minimum, he is still awaiting return of the following seized chemicals: 2-Aminoindan;
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1 3 Acetylindole; Adrenochrome; Aminioguanidine; D Amygdalin; ATP; BIS(2, 4,6-
2 trichlorophenyl)oxalate; Betamethasone dipropionate; Betamethasone Sodium Phosphate
3 Betamethasone Valerate; Centrophenoxine HCl; 5 Chlorotryptamine HCl; Clobetasol
4 Butyrate; Clobetasol Propionate; Gamma-Crotonolactone; Dexamethasone Acetate;
5 Dexamethasone sodium phosphate; DXM; N-(2-(2,5-Dimethoxyphenyl)ethyl)phthalimide ®-
6 (+)-alpha, alpha-Diphenyl-2-pyrrolidine (S)-(+)-alpha, alpha-Diphenyl-2-pyrrolidine;
7 Eugenol; Gramine; Harmaline; Harmalol HCl; Harmine base; Harmine HCl; Harmine HCl
8 dehydrate; Hydroxylamine Sulfate; 5 HT; Indole-3-Carboxaldehyde; Indole-3-glyoxyl
9 chloride; D-Luciferin, firefly, free acid; D-Luciferin, firefly, K salt; Luminol; 4
10 Methoxyindole; Methyl-2-chloropropionate 1-(3,4-Methylenedioxyphenyl)-2-butanone;
11 N-Methylhydroxylamine HCl; Pangamate Acid Sodium; Phentropyl; D-Phenylalaninol; L-
12 Phenylalaninol; Phosphatidialcholine; Prednesolone Acetate; Pyritinol; Salicylamide;
13 2,4,5-Trimethoxybenzaldehyde; 2,4,6- Trimethoxybenzaldehyde; Tryptophol; Deanol;
14 Primidone; Ethyl Benzoate; Bulk chemicals: 2CI; 2CN; 4ACo-MIPT; 4HO-DIPT; 4ACO-
15 DIPT; 5 MEO-DMT and Silver Nitrate.

16 Mr. Kasper is also awaiting return of cases of 500gram bottles, 1 gram bottles, 5 gram
17 bottles, 10 gram bottles; three scales and other miscellaneous items such as labels.

18 As will be set forth in much greater detail below, because none of these items are
19 needed any longer for evidentiary purposes because Mr. Kasper has already pleaded guilty
20 and been sentenced, Mr. Kasper is presumed to have the lawful right to possession of the
21 seized items. The presumption can only be rebutted if the government satisfies its burden in
22 proving that it has a right to retain the property. Because there is no justifiable reason for the
23 government to do so, Mr. Kasper brings the instant motion for return of his property.
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1 MR. KASPER IS ENTITLED TO RETURN OF HIS PROPERTY
2 BECAUSE IT IS NO LONGER NEEDED FOR EVIDENTIARY PURPOSES

3
4 Mr. Kasper has been sentenced and is scheduled to self-surrender for custody on
5 August 15, 2007. Because Mr. Kasper has reached a final disposition in his criminal
6 proceeding, the property seized from him during the government's investigation is no longer
7 needed for evidentiary purposes. Thus, Mr. Kasper is entitled to a return of his property
8 pursuant to Rule 41 - "Fed. R. Crim. P. 41[g] permits a criminal defendant to move for the
9 return of property seized by the government on the ground that the movant is entitled to
10 lawful possession of the property." *United States v. Mills*, 991 F.2d 609, 610 (9th Cir. 1993).
11 Specifically, Fed. R. Crim. P. 41(g) provides:
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14 A person aggrieved by an unlawful search and seizure of
15 property or by the deprivation of property may move for the
16 property's return. The motion must be filed in the district where
17 the property was seized. The court must receive evidence on
18 any factual issue necessary to decide the motion. If it grants the
19 motion, the court must return the property to the movant, but
20 may impose reasonable conditions to protect access to the
21 property and its use in later proceedings.

22 The general rule regarding return of seized property was stated in *Sovereign News*
23 *Company v. United States*, 690 F.2d 569 (6th Cir. 1982), where the Sixth Circuit explained-
24 "The general rule is that seized property, other than contraband, should be returned to the
25 rightful owner after criminal proceedings have terminated..." This is true whether or not the
26 original seizure was lawful. The Ninth Circuit holds that a presumption to possession is
27 accorded to a defendant whose property has been seized. More specifically, according to the
28 Ninth Circuit - "A criminal defendant is presumed to have the right to the return of his
29 property once it is no longer needed as evidence..." *Mills*, 991 F.2d at 612. In greater detail,
30 the Ninth Circuit elaborated:

1 *When the property in question is no longer needed for*
2 *evidentiary purposes*, either because trial is complete, *the*
3 *defendant has pleaded guilty*, or, as here, the government has
4 abandoned its investigation, *the burden of proof changes. The*
5 *person from whom the property is seized is presumed to have a*
6 *right to its return, and the government has the burden of*
7 *demonstrating that it has a legitimate reason to retain the*
8 *property...* [Citations omitted] In such a case, the legality of
9 the search and seizure is no longer an issue; even if the seizure
10 was lawful the government must justify its continued possession
11 of the property by demonstrating that it is contraband or subject
12 to forfeiture... [Citations omitted] A district court has both the
13 jurisdiction and the duty to return the contested property once
14 the government's need for it has ended.

15 *United States v. Martinson*, 809 F.2d 1364, 1370-1371 (9th Cir. 1987).

16 Mr. Kasper's property is no longer needed for evidentiary purposes since he has
17 pleaded guilty and been sentenced. Thus, Mr. Kasper is presumptively entitled to the return
18 of his property unless the government can demonstrate that his property was either contraband
19 or subject to forfeiture - a burden they cannot meet on the facts of this case.

20 In *Government of Virgin Islands v. Edwards*, 903 F.2d 267, 273-274 (3rd Cir. 1990),
21 the Third Circuit held – “It would be antithetical to the notions of fairness and justice under
22 which we operate to convert the government's right to temporary possession to a right to hold
23 such property indefinitely.” In this case it would be “antithetical to notions of fairness and
24 justice” to allow the government to hold Mr. Kasper's property to which he is lawfully
25 entitled. Accordingly, Mr. Kasper's property should be returned to him in accordance with
26 the mandate of Federal Rule of Criminal Procedure 41(g).

CONCLUSION

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2 As Mr. Kasper has already pleaded guilty and been sentenced, Mr. Kasper requests
3 this Court to grant his motion for return of seized property since the property seized is no
4 longer necessary for evidentiary purposes.
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8 Respectfully submitted,

9 Dated: June 26, 2007

10 /S/ Ezekiel E. Cortez
11 Ezekiel E. Cortez
12 Attorney for Defendant
13 Thomas C. Kasper
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(THE HONORABLE JEFFREY T. MILLER)**

United States of America,)	Case No. 04-CR-01765-002-JM
)	
Plaintiff,)	
)	PROOF OF SERVICE
v.)	
)	
Thomas C. Kasper,)	
)	
Defendant.)	
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)	
)	

I, the undersigned, hereby declare as follows:

1. I am over 18 years of age, a resident of the County of San Diego, State of California, counsel for the Defendant and that my address is 1010 Second Avenue, Suite 1850, San Diego, CA 92101;
2. That today I served Defendant's Motion For Return of Property on opposing counsel by causing to be delivered by e-filing to the Office of the Clerk; and that I mailed a copy to Defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 26, 2007

/s/ Ezekiel E. Cortez
Ezekiel E. Cortez