

AUG 05 2010

John A. Clarke, Executive Officer/Clerk
BY [Signature] Deputy

1 EDWARD FORCHION
2 [REDACTED]
3 Studio City, CA 91607
4 Cell Telephone: [REDACTED]
5 Office Number: (323) 789-4813

6 In Proper Persona
7 Edward Forchion

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 IN AND FOR THE COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 EDWARD FORCHION,

15 Defendant.

No. HLY 2010 001

(BOOKING NUMBER- 2403468)

NOTICE OF MOTION TO
RETURN PROPERTY
ILLEGALLY SEIZED;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF; ORDER

Date: August 20, 2010
Time: 8:30am
Place: Dpt. 77

16 TO THE CLERK OF THE ABOVE-ENTITLED COURT; THE DISTRICT ATTORNEY FOR
17 THE COUNTY OF LOS ANGELES; AND THE LOS ANGELES POLICE DEPARTMENT:
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19 PLEASE TAKE NOTICE that at the aforementioned date, time, and place of the above-
20 entitled court, or as soon thereafter as movant may be heard in the above-entitled court,
21 EDWARD FORCHION will move for an order to return property seized from movant's vehicle
22 and 5642 Hollywood, Blvd., on 7/14/2010, by members of the Los Angeles Police Department.
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24 The property sought to be returned is as follows: SEE ATTACHED - "DEMANDED
25 ITEMS#1", DEMANDED ITEMS#2
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1 This motion is made on the grounds that the property seized is being held unreasonably
2 and there is no probable cause to believe that a crime has been committed.

3 This motion is based on California Health and Safety Code Section 11362.5, California
4 Health and Safety Code Sections 11362.7 *et seq.*, Penal Code Sections 1536, 1538.5 and 1540,
5 article I, section 15 of the California Constitution, *Garden Grove v. Superior Court (Kha)* (2007)
6 157 Cal.App.4th 355, this notice of motion, the attached memorandum of points and authorities
7 served and filed herewith, and such supplemental memoranda of points and authorities as may
8 hereafter be filed with the court or stated at oral argument, on all papers and records on file in
9 this action, and on such oral and documentary evidence as may be presented at the hearing of the
10 motion.
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13 Dated: 8/5/2010

Respectfully submitted,

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16 BY: 

EDWARD FORCHION

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

DUE PROCESS AND THE PENAL CODE REQUIRE THAT MEDICAL MARIJUANA THAT IS LAWFULLY POSSESSED UNDER CALIFORNIA BE RETURNED TO QUALIFIED PATIENTS

In *Garden Grove v. Superior Court (Kha)* (2007), the court was called upon to decide whether superior courts should order the return of medical marijuana that was lawfully possessed under California law, but had been seized by the police. After noting that a negative answer to this question would frustrate the will of the California voters when they enacted the Compassionate Use Act to ensure that qualified patients have the right to obtain and use marijuana without fear of criminal prosecution or sanction (*id.* at p. 388 [citing Health & Saf. Code, § 11362.5, subd. (b)(1)(A), (B)]), the court held that due process, as well as several Penal Code provisions, require the return of lawfully possessed property, including medical marijuana, to qualified patients (*id.* at p. 388 [citing Pen. Code, §§ 1417.5 [providing for return of exhibits in criminal case]; 1540 [restoration of property that was wrongfully taken pursuant to search warrant]; 1538.5, subd. (e) [return of property subject to successful search or seizure motion].) No California appellate court has held otherwise. (Cf. *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [rendering such uncontroverted published decisions of appellate courts binding on all superior courts.]

This Court has the authority under these Penal Code sections, as well as its inherent power to prevent the abuse of its process, to adjudicate motions for the return of seized property through “special proceedings.” (See *Ensoniq Corporation v. Superior Court* (1998) 65 Cal.App.4th 1537, 1547; *Avelar v. Superior Court* (1992) 7 Cal.App.4th 1270, 1276; *People v. Superior Court, Orange County* (1972) 28 Cal.App.3d 600, 607; *Buker v. Superior Court* (1972)

1 25 Cal.App.3d 1085, 1089). This is the mechanism sought here for the return of medical
2 marijuana.

3 **II.**

4 **THE COMPASSIONATE USE ACT ENTITLES EDWARD FORCHION TO POSSESS**
5 **THE MEDICAL MARIJUANA AT ISSUE**
6

7 The Compassionate Use Act expressly “ensure[s] that seriously ill Californians have the
8 right to obtain and use marijuana for medical purposes where that medical use is deemed
9 appropriate and has been recommended by a physician. . . .” (Cal. Health & Safety Code §
10 11362.5, subd. (b)(1).) Where a qualified patient establishes his entitlement to possess the
11 medical marijuana at issue, which requires a “written or oral recommendation or approval of a
12 physician” to use marijuana medicinally and a quantity of marijuana that is no more than is
13 reasonably related to his current medical needs (See Health & Saf. Code § 11362.5, subd. (d);
14 *People v. Jones* (2003) 112 Cal.App.4th 341, 347, 4 Cal.Rptr.3d 916, 920; *People v. Trippett*
15 (1997) 56 Cal.App.4th 1532, 1550-51, 66 Cal.Rptr.2d 559), there is no probable cause to believe
16 that a crime has been committed. (See Penal Code § 1538.5(a)(1)(A) [authorizing return of
17 property seized without a warrant where the search or seizure was unreasonable]; Penal Code §
18 1538.5(a)(1)(B)(ii) & (iii) [authorizing return of property seized pursuant to warrant where
19 property is not that described in warrant or there is no probable cause]). Under these
20 circumstances, he is entitled to the return of his medical marijuana. (See *Garden Grove, supra.*)
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1 In this case, EDWARD FORCHION will present proof of his entitlement to cultivate
2 and/or possess marijuana for medical use pursuant to the Compassionate Use Act. Edward
3 Forchion has proof that he is a qualified patient. Attached hereto is: (1) a doctor's
4 recommendation for medical marijuana use issued to the movant by Dr. Alexander; and (2)
5 aqualifying him/her under CA Health and Safety Code section 11362.5 ; and (3) a property
6 receipt from The Los Angeles Police Department. His quantity in grams and/or number of
7 plants of marijuana is no more than is necessary for his personal/spiritual and medical
8 needs. Until January 2010 the standard was (See *People v. Wright* (2006) 40 Cal.4th 81, 92
9 [holding that a qualified patient may possess at least eight ounces or dried marijuana and, in
10 addition, six mature or twelve immature plants] [citing Health & Saf. Code § 11362.77,
11 subd. (b).] In addition to In January 2010 the California Supreme Court in *People v. Kelly*,
12 No. S164830 decided [REDACTED] January 22, 2010 struck down what it considered
13 unconstitutional legislative limits on how much medical marijuana patients can possess
14 and cultivate. Thus the marijuana confiscated from movant must be returned
15 immediatedly.

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18 Accordingly, he is entitled to the return of the property seized from him on July 14th.,
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22 Dated: 8/5/2010

Respectfully submitted,

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25
26 BY: 

EDWARD FORCHION

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF LOS ANGELES

3
4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,) (BOOKING NUMBER- 2403468)
6)
7 Plaintiff,)
8)
9 v.) **ORDER FOR RETURN OF**
10 EDWARD FORCHION,) **PROPERTY**
11 Defendant.)

12 TO THE LOS ANGELES POLICE DEPARTMENT AND ANY OTHER LAW
13 ENFORCEMENT AGENCY HAVING POSSESSION OF ITEMS LISTED BELOW:

14 Good cause having been shown, you are hereby ordered to immediately return each of the
15 items listed below to EDWARD FORCHION:

16
17 SEE ATTACHED - "DEMANDED ITEMS#1", DEMANDED ITEMS#2

18
19 IT IS SO ORDERED.

20
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22 Dated:

23
24
25 _____
26 JUDGE OF THE SUPERIOR COURT
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28

CERTIFICATE OF SERVICE

I am a resident of the State of California and over the age of eighteen years. My address is [REDACTED]. On 8/5/2010, I served the within document(s):

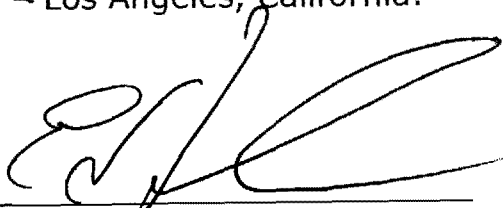
**NOTICE OF MOTION TO RETURN PROPERTY ILLEGALLY SEIZED;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
ORDER FOR RETURN OF PROPERTY**

via hand delivery to (agent of):

The Office of City Attorney Carmen Trutanich

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 5 day of August, in (Hollywood) - Los Angeles, California.


EDWARD FORCHION

RECEIPT FOR PROPERTY TAKEN INTO CUSTODY*** SAVE THIS RECEIPT***

DATE 07-14-2010	TIME 22:00	DR NUMBER 10-06
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 ADDRESS LOCATION PROPERTY TAKEN INTO CUSTODY

5642 Hollywood Blvd. "Liberty Bell II"

NAME OF PERSON IN POSSESSION OF PROPERTY (LAST, FIRST, MI)

Forchion, Edward

ADDRESS [REDACTED]	STREET [REDACTED]	CITY [REDACTED]	ZIP 91604
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BOOKING NUMBER 2403468	CHARGE LAMC45.19.6.2A	CAL DL. OR OTHER ID NO.
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OTHER IDENTIFYING INFORMATION	ITEM NUMBERS ON PROPERTY REPORT 13
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PROPERTY TAKEN - DESCRIPTION					GIVE EXACT AMOUNT OF CASH	\$	1,231.00
QUAN.	ARTICLE	SERIAL NO.	BRAND	MODEL NO.	MISC., COLOR, SIZE, INSCRIPTION, CALIBER, ETC.		

The following items were recovered from the main display counter:

1	1	Marijuana	-----	267.90gg	-----	Grn leafy substance resembling marijuana
2	4	Hash	-----	32.36gg	-----	Brn powdery substance resembling hash

Recovered from the green plastic tub behind the counter:

3	1	Marijuana	-----	604.76gg	-----	Grn leafy substance resembling marijuana
---	---	-----------	-------	----------	-------	--

Recovered from Susp#1 purse:

4	3	Marijuana	-----	41.98gg	-----	Clear plastic bottles containing Grn substance resembling marijuana
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Recovered from safe behind counter:

5	1	Currency	-----	US	-----	Misc currency totaling \$1070.00 (\$100x1, \$20x45, \$5x10, \$2x10)
---	---	----------	-------	----	-------	---

Recovered from cash register:

6	1	Currency	-----	US	-----	Misc currency totaling \$161.00 (\$10x5, \$5x13, \$1x46)
---	---	----------	-------	----	-------	--

PROPERTY BOOKED TO - SAME AS POSSESSOR <input checked="" type="checkbox"/>	DIVISION OF BOOKING Cent
--	-----------------------------

SIGNATURE OF OFFICER ISSUING <i>[Signature]</i>	SERIAL NUMBER 27787	DIVISION GND	DETAIL NAUII
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THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY

SIGNATURE OF PERSON IN POSSESSION OF PROPERTY (OPTIONAL)

REFUSED



EDWARD FORCHION
 STUDIO CITY CA 91607
 SEX: M HAIR: BRN EYE: BRN
 HT: 6-00 WT: 230
 12/31/2008 505 CA 15/10

Edward A. Alexander, M.D.
 10940 Wilshire Blvd
 Los Angeles, CA. 90024
 Compassionate Use of 1996
 (310)-498 9421

*Health And Safety Code 11362.5
 Physician Statement*

To Whom It May Concern: Edward Forchion



Edward Forchion has been evaluated under my medical care and reports to me that using marijuana helps relieve his symptoms. I have evaluated the risk and benefits of cannabis use as a treatment pursuant to Health and Safety Code Section 11362.5, otherwise known as Medical Use of Marijuana.

I approve of my patients use of Marijuana for both medical and spiritual reasons. As A Rastafarian he uses cannabis sativa as a sacrament, a food and a medicine I will continue to monitor his condition and provide advice on his progress.
 Thank you.

Sincerely, *Edward A. Alexander M.D.*
 Edward A. Alexander, M.D.
 California License A45272
 Dea BA 1607881

10-06-2009
 Valid for one year from the above date

Notice to Law Enforcement: Pursuant to the Constitution State of California Amendment III, Sec, 3,5©, state law enforcement officials have no power To refuse to enforce statute on the basis that federal law or federal regulations Prohibit the enforcement of such statutes" Please leave the individuals herein Identified unmolested and unharmed. Failure to do so may result in legal action being taken against you. Thank you for your understanding.



DEMANDO e ITEMS#

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RECEIPT FOR PROPERTY TAKEN INTO CUSTODY

*** SAVE THIS RECEIPT***

DATE 07-14-2010	TIME 22:00	DR NUMBER 10-06
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ADDRESS LOCATION PROPERTY TAKEN INTO CUSTODY
5642 Hollywood Blvd. "Liberty Bell II"

NAME OF PERSON IN POSSESSION OF PROPERTY (LAST, FIRST, MI)
Forchion, Edward

ADDRESS _____ STREET _____ CITY _____ ZIP **91604**

BOOKING NUMBER 2403468	CHARGE LAMC45.19.6.2A	CAL DL, OR OTHER ID NO.
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OTHER IDENTIFYING INFORMATION	ITEM NUMBERS ON PROPERTY REPORT 13
-------------------------------	---------------------------------------

PROPERTY TAKEN - DESCRIPTION	GIVE EXACT AMOUNT OF CASH \$ 1,231.00
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QUAN.	ARTICLE	SERIAL NO.	BRAND	MODEL NO.	MISC., COLOR, SIZE, INSCRIPTION, CALIBER, ETC.
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3	1	Marijuana	-----	604.76gg	-----	Grn leafy substance resembling marijuana
---	---	-----------	-------	----------	-------	--

Recovered from Susp#1 purse:

4	3	Marijuana	-----	41.98gg	-----	Clear plastic bottles containing Grn substance resembling marijuana
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Recovered from cash register:

6	1	Currency	-----	US	-----	Misc currency totaling \$161.00 (\$10x5, \$5x13, \$1x46)
---	---	----------	-------	----	-------	--

PROPERTY BOOKED TO - SAME AS POSSESSOR <input checked="" type="checkbox"/>	DIVISION OF BOOKING Cent
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SIGNATURE OF OFFICER ISSUING <i>Jaffe</i>	SERIAL NUMBER 27787	DIVISION GND	DETAIL NAUII
--	------------------------	-----------------	-----------------

THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY

SIGNATURE OF PERSON IN POSSESSION OF PROPERTY (OPTIONAL)
REFUSED

DEMAND OF RETURN ITEMS#2

These items are in addition to items listed on police report.

Medical marijuana

- 1 – medicine bottle containing (3.5 grams) Marijuana taken from vehicle
- 1 – medicine bottle containing (3.5 grams) Marijuana taken from vehicle

Equipment

- 1 – GNOB (water Chalice “Bong”) – taken from 5642 Hollywood Blvd.,
- 1 – Computer tower _____ - taken from 5642 Hollywood Blvd.,
- 1 – Sony DVD burner – taken from 5642 Hollywood Blvd.,
- 1 – external hard drive -- taken from 5642 Hollywood Blvd.,

Cash

- 1 – white envelope containing (\$5,500.00) – taken from safe
 - 4 – white envelopes containing (\$200.00) - each taken from safe
- Total - \$6,300.00