

April 11, 2008

Clerk of the Court

Re: Motions for Return of Property

Dear Clerk:

The person before you is a medical marijuana patient whose medicine was wrongfully confiscated by the police. He or she is seeking to file a motion for return of property, which is a statutorily authorized procedure under California Health and Safety Code § 11362.5, California Health and Safety Code § 11362.7 et seq., Penal Code §§ 1536, 1538.5 and 1540, article I, section 15 of the California Constitution, and *Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355.

Regardless whether criminal charges were filed or have been dismissed, a person whose property has been confiscated is entitled to file a motion for its return under the Penal Code and *Garden Grove*, supra. The action is deemed by the courts as a criminal "special proceeding" and should be filed as a miscellaneous action in the criminal court. See *Gershenhorn v. Superior Court* (1964) 227 Cal.App.2d 361.

If you cannot file the proffered motion for any reason, please indicate in writing on the motion that it was received and rejected, and include the date. This will permit our organization to continue to pursue the matter through a petition for writ of mandate in the courts. I do not, however, anticipate that this will be necessary. Thank you very much for your attention to this matter.

Sincerely,



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