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CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS

BY [Signature]  
DEPUTY

6 MARK J. GERAGOS SBN 108325  
Attorney for Defendant SCOTT LEE PETERSON

7 McALLISTER & McALLISTER, Inc.  
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8 Modesto, CA 95354  
KIRK W. McALLISTER SBN 47324  
9 Attorney for Defendant SCOTT LEE PETERSON

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF STANISLAUS

14 THE PEOPLE OF THE STATE OF  
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 SCOTT LEE PETERSON,

19 Defendant.

Case No. 1056770

NOTICE OF MOTION AND  
MOTION FOR RETURN OF  
PROPERTY

(Penal Code §1536 *et seq.*)

DATE: December 3, 2003

TIME: 8:30 a.m.

PLACE: Dept 2

21 TO: STANISLAUS COUNTY DISTRICT ATTORNEY; and

22 TO: CLERK OF THE ABOVE-ENTITLED COURT:

23 PLEASE TAKE NOTICE that on December 3, 2003 at the hour of 8:30 a.m., or as  
24 soon thereafter as counsel can be heard, Defendant Scott Lee Peterson ("Mr. Peterson"),  
25 through counsel Mark J. Geragos, will move this Court for an Order to return property  
26 seized by the Modesto Police Department during the execution of the search warrant on  
27 December 27, 2002, and the arrest warrant on April 19, 2003. The property sought to be  
28 returned is as follows: [1] 2002 Ford F150 Super Crew pickup truck, California License

1 6T59718; and [2] Fifteen thousand dollars (\$15,000.00) in U.S. Currency.

2 The motion will be made on the grounds that Scott Lee Peterson is the owner of or  
3 has an interest in the property and that said items are no longer necessary or relevant to  
4 any investigation or prosecution and that the property ought to and should be released  
5 forthwith.

6 The motion will be based on this notice, the attached memorandum of points and  
7 authorities, the pleadings and records on file herein, and upon such other and further  
8 argument as may be presented to the Court at the hearing of this matter.

9  
10 Dated: November 25, 2003

Respectfully submitted,

GERAGOS & GERAGOS

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13 By: 

MARK J. GERAGOS  
Attorney for Defendant  
SCOTT LEE PETERSON

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16 **MOTION**

17 Defendant Scott Lee Peterson, by and through counsel, hereby moves the Court for  
18 an order directing the Modesto Police Department to return the following items of  
19 property:

- 20 1. 2002 Ford F150 Super Crew pickup truck; and,  
21 2. Fifteen thousand dollars (\$15,000.00) in U.S. Currency.

22  
23 Dated: November 25, 2003

Respectfully submitted,

GERAGOS & GERAGOS

24  
25  
26 By: 

MARK J. GERAGOS  
Attorney for Defendant  
SCOTT LEE PETERSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 For over a ten (10) month period, the prosecution has been in possession of and  
5 has refused to return personal property of Mr. Peterson, which property is not necessary to  
6 establish the innocence or guilt of Mr. Peterson, and the loss of which has been causing  
7 severe and undue hardship to Mr. Peterson and his family. In particular, the prosecution  
8 has unnecessarily prolonged its retention of \$15,000.00 in cash and a vehicle belonging to  
9 Mr. Peterson. The prosecution has conducted and completed all necessary examinations  
10 regarding the evidence, yet has provided no explanation for their refusal to return the  
11 property. As such, this Court should order the immediate return of the vehicle and the  
12 money to Mr. Peterson.

13  
14 II.

15 STATEMENT OF FACTS

16 Pursuant to an arrest warrant issued on April 17, 2003, officers of the Modesto  
17 Police Department (hereinafter "Modesto Police") arrested Mr. Peterson on April 19,  
18 2003 in San Diego, California. Incident to the arrest, the officers searched Mr. Peterson's  
19 vehicle and seized, *inter alia*, \$15,000.00 in cash. Furthermore, the Modesto Police  
20 seized Mr. Peterson's Ford F150 vehicle on December 27, 2002. In the months following  
21 the arrest and seizure, the Modesto Police, in conjunction with numerous other local, state  
22 and federal agencies, conducted numerous examinations regarding the items seized. As  
23 acknowledged by the documents provided to the defense, these examinations revealed  
24 absolutely no incriminating evidence against Mr. Peterson. In addition, as already  
25 disclosed by the prosecution, over one-hundred (100) photographs have been taken of the  
26 items seized, which photographs can continue to be used by the prosecution as they might  
27 deem necessary in the future.

28 In the ten (10) months that Mr. Peterson's vehicle has been seized from his

1 possession, he has nevertheless been required to make payments totaling over \$6,000.00,  
2 and continues to incur monthly obligations. These payments, coupled with the seizure of  
3 the \$15,000.00, have resulted in a severe and undue financial hardship to Mr. Peterson.  
4

5 **III.**

6 **THE COURT HAS THE AUTHORITY TO RELEASE THE PROPERTY**  
7 **TO THE PERSON ENTITLED TO IT BOTH BY STATUTE AND**  
8 **BY VIRTUE OF THE COURT'S INHERENT POWER TO**  
9 **CONTROL AND PREVENT THE ABUSE OF ITS PROCESS.**

10 It is well-settled that all property or things taken on a warrant are retained subject  
11 to the order of the court, or of any other court in which the offense in respect to which the  
12 property or things taken is triable. Cal. Penal Code §1536; see also *Buker v. Superior*  
13 *Court* (1972) 25 Cal. App. 3d 1085, 1089, *People v. Superior Court (Loar)* (1972) 28 Cal.  
14 App. 3d 600, 608, (post-trial motion). In fact, the court has the power to order the return  
15 of seized property whether or not the property is in the custody of the court. In *Buker v.*  
16 *Superior Court of San Diego County* (1972, 4<sup>th</sup> Dist) 25 Cal.App.3d 1085, 1089, the Court  
17 of Appeal declared that a court has jurisdiction to return property legally seized by law  
18 enforcement authorities:

19 "The first issue is whether a court in possession of property  
20 legally seized under a search warrant has authority to direct its  
21 delivery to the persons entitled thereto, good cause being  
22 shown. Authority to release such is within the express power  
23 conferred by Penal Code section 1536, which provides all  
24 property taken under a search warrant is subject to the order  
25 of the court 'in which the offense in respect to which the  
26 property...taken is triable.' Furthermore, such authority is  
27 within the scope of the inherent power of the court to control  
28 and prevent the abuse of its process."

1           *Buker*, 25 Cal.App.3d at 1089.

2           Moreover, the court has the power to order the return of seized property whether or  
3 not the property is received in evidence. In *Gershenvorn v. Superior Court of Los*  
4 *Angeles County* (1964, 2<sup>nd</sup> Dist.) 227 Cal.App.2d 361, 366, the appellate court extended  
5 the jurisdiction of the court to return seized property to property not yet received in  
6 evidence:

7                   “But even as to property not yet offered or received in  
8 evidence we think that judicial control still exists. We are not  
9 now concerned with a private seizure, by a private individual,  
10 for some purpose of his own. We deal with property seized  
11 by a public officer, acting under the color of his status as a  
12 law enforcement officer, and seized solely on the theory that it  
13 constitutes a part of the evidence on which judicial action  
14 against its owner or possessor will be taken. We regard  
15 property so taken and so held as being as much held on behalf  
16 of the court in which the contemplated prosecution will be  
17 instituted as is property taken and held under a warrant. The  
18 seizing officer claims no right in or to the property, or in or to  
19 its possession, save and except as the court may find use for  
20 it. He must respond, as does any custodian, to the orders of  
21 the court for which he acted.”

22           In this case the Modesto Police Department retains the property identified herein  
23 subject to the further order of the Court. The prosecution has been in possession of the  
24 items for over ten (10) months, and has conducted many, if not all, available examinations  
25 of these items. These examinations, however, have revealed nothing significant or  
26 incriminating against Mr. Peterson. Accordingly, the property is no longer relevant or  
27 necessary to any investigation or action of the prosecution.

28           In addition, as indicated above, over one-hundred (100) photographs have been

1 taken of the items seized. There is no dispute that the prosecution may continue to use  
2 the photographs of the property as they might deem necessary. It is absurd to offer into  
3 evidence the actual pickup truck and the \$15,000.00 in cash. To the extent the seized  
4 items are to be used as exhibits for trial, it is more practical and only makes sense, the  
5 photos, rather than the actual items be used.

6 Finally, notwithstanding the fact that the vehicle has been in the possession of the  
7 Modesto Police, Mr. Peterson has and continues to incur monthly obligations in the  
8 amount of \$643.31. These payments, coupled with the seizure of the \$15,000.00, have  
9 resulted in a severe and undue financial hardship to Mr. Peterson. It goes without saying  
10 that the continued retention of the seized property will only result in greater harm to Mr.  
11 Peterson and his family.

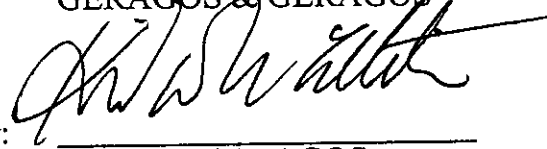
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IV.  
CONCLUSION

In light of the foregoing, Mr. Peterson respectfully requests that the Court grant the relief requested.

Dated: November 25, 2003

Respectfully submitted,  
GERAGOS & GERAGOS

By:   
MARK J. GERAGOS  
Attorney for Defendant  
SCOTT LEE PETERSON



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**[PROPOSED] ORDER**

This matter came on regularly for hearing on December 3, 2003, pursuant to a notice of motion filed herein by defendant. Counsel for the defendant moved in open court for an order to return property seized by members of the Modesto Police Department, on April 19, 2003.

The court having read the declaration submitted in support of the motion, having heard the arguments of counsel on the motion, and being fully advised in the premises;

IT IS HEREBY ORDERED that the following items seized on December 27, 2002 and April 19, 2003, by members of the Modesto Police Department be returned forthwith to the defendant or the defendant's designated representative:

- [1] 2002 Ford F150 Super Crew pickup truck, California License 6T59718; and
- [2] Fifteen thousand dollars (\$15,000.00) in cash.

Done this \_\_\_\_ day of \_\_\_\_\_, 2003, in OPEN COURT.

\_\_\_\_\_  
Judge, Superior Court



