

1 **Research Guide: Motion to Return Seized Property**
2 **Law Library for San Bernardino County**

3 Research Guide, www.sblawlibrary.org, (909) 885-3020.

4 **Disclaimer**

5 The information in this research guide is intended to assist patrons with their legal research and is in
6 no way intended to replace the counsel of an Attorney. Any decisions about how to proceed must be
7 determined by the patron. The library staff can recommend and refer you to print and web-based
8 resources that will help you find answers to your law-related questions. The staff at the Law Library
9 for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give
10 legal advice.

11 **I was arrested and my property was seized by the police department, can I get my property
12 back?**

13 According to California Penal Code § 1536, on order of the court you may have your property
14 returned to you.

15 **What forms do I need to have my property returned to me?**

16 Typically you are required to file a motion with the court asking for an order to have your
17 property returned. This means you will have to draft your own form on Pleading Paper. An
18 example is provided below. Please note there are several parts required for your motion

19 **What are the different parts of the motion?**

- 20 ➤ Generally, the **Notice of Motion** tells the court what you want to do. In other words, it
21 notifies the court of the action you want the court to take.
- 22 ➤ The **Memorandum of Points and Authorities** tells the court the law or authority you are
23 relying on for your motion request.
- 24 ➤ In the **Declaration** you provide your statement of the facts and how they relate to your
25 motion.
- 26 ➤ The **Proposed Order** is for the judge to sign. Generally, the order is the document that
27 allows you to retake possession of your property.

28 **What do I do after I draft my forms?**

Once you have drafted the forms to your specifications you can file them with the court.
Typically, the clerk will assign a hearing date for your motion. You will need to serve the parties
to the case and file a **Proof of Service**. Some courts will serve the papers for you.

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2 **For information about service of papers and proof of service, please refer to one of the**
3 **following research guides:**

- 4 ➤ *Personal Service of Court Papers*, published by the Sacramento County Public Law
5 Library, <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>.
- 6 ➤ *Proof of Service by Mail*, published by the Sacramento County Public Law Library,
7 <http://www.saclaw.org/pages/pos-mail.aspx>.
- 8 ➤ *Service of Notice and Other Papers*, published by the San Diego County Public Law
9 Library,
10 http://www.sdcpll.org/resources/guides/Service_of_Notice_and_Other_Papers.pdf.
- 11 ➤ Proof of Service Forms, <http://courts.ca.gov/forms.htm?filter=POS>.

12 **Additional Resources for Reference**

13 For additional information please review the following resource at the law library:

14 *California Criminal Law Forms Manual*, §16.8 et seq.

15 *Criminal Defense Practice Guide*, published by Matthew Bender.

16 *California Criminal Practice, Motions, Jury Instructions and Sentencing*, 3rd edition.

17 www.sblawlibrary.org, produced by the Law Library for San Bernardino County available online @
18 www.sblawlibrary.org.

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20 Bernardino County available online at www.sblawlibrary.org.

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22 **Please note that this a sample form, you will have to decide if this form**
23 **will work your particular situation. You will have to modify and draft**
24 **the sample form to your specifications. Filing this form does not**
25 **guarantee that your motion will be heard or granted. If you need legal**
26 **advice please seek the assistance of a licensed attorney.**

27 ***Defendant in [Pro Per](#) is a person who handles his/her case without an attorney. It is**
28 **typical for you to alert the court of your [Pro Per](#) status on pleadings you file with the court.**

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Defendant in Pro Per

IN THE SAN BERNARDINO SUPERIOR COURT

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

_____,

Defendant.

) Case No.: _____

)

) NOTICE OF MOTION FOR RETURN OF SEIZED PROPERTY AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES AND SUPPORTING DECLARATION

)

) Date: _____

) Time: _____

) Dept: _____

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NOTICE OF MOTION FOR RETURN OF SEIZED PROPERTY

TO THE ABOVE ENTITLED COURT AND TO THE DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY: NOTICE IS HEREBY GIVEN that on _____, at the hour of _____ in the above entitled Court, Defendant, _____, will move this court for an order directing the _____ [name of police dept.] the Office of the District Attorney of San Bernardino County, and their agents to turn over to _____ [name], attorney for defendant, the following property seized from defendant's [residence/vehicle/person] on _____ [date] by agents and representatives

1 of the _____ [police department]. Court search warrant no. _____
2 [specify] _____ [List items] _____.

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4 This motion will be based on the attached supporting memorandum, the attached
5 declaration(s), evidence taken at the hearing on this motion and argument at that hearing, and on
6 all papers filed and records in this action.
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11 Dated: _____.

Respectfully Submitted,
By: _____

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13 Defendant in Pro Per
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1 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES FOR MOTION TO**
2 **RETURN SEIZED PROPERTY PENAL CODE 1536**

3 A court in possession of property legally seized under a search warrant has authority to
4 direct its delivery to the persons entitled to it on a showing of good cause. This authority is
5 within the express power conferred by **Penal Code section 1536** and is further within the scope
6 of the inherent power of the court to control and prevent the abuse of its process. *Ensoniq Corp.*
7 *v Superior Court* (1998) 65 CA4th 1537, 1547, 77 CR2d 507; *Buker v Superior Court* (1972) 25
8 CA3d 1085, 1089, 102 CR 494. The same rule applies when property is seized without a warrant.
9 See *Gershenhorn v Superior Court* (1964) 227 CA2d 361, 366, 38 CR 576.
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1 **DECLARATION IN SUPPORT OF MOTION TO RETURN SEIZED PROPERTY**

2 I, _____, declare:

3 I am the defendant in the above-entitled case.

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

24 Executed on _____, at _____, California.

25 Dated: _____

Respectfully Submitted,

26 By: _____

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28 Defendant

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Defendant in Pro Per

IN THE SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,

) Case No.: _____
)
) ORDER FOR RETURN OF SEIZED
) PROPERTY

vs.

_____,
Defendant.

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ORDER FOR RETURN OF SEIZED PROPERTY

TO _____ [NAME OF POLICE CHIEF], POLICE CHIEF OF
_____ [NAME OF POLICE DEPARTMENT] POLICE

DEPARTMENT: On GOOD CAUSE SHOWN, you are ordered to turn over to the
defendant, _____ [name of defendant], the following item(s), listed in the police report
number _____ (attached), and seized on _____ [date], from the defendant by
_____ [name of officer]:

_____ [List items to be returned].

Dated: _____.

Judge of the Superior Court