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6 **Attorney for Defendant, TIEN TRUONG NGUYEN**

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 **UNITED STATES OF AMERICA,**
10 **Plaintiff,**
11 **v.**
12 **TIEN TRUONG NGUYEN,**
13 **Defendant.**

Case No. S-07-164-MCE

**NOTICE OF MOTION AND MOTION
TO RECONSIDER SUPPRESSION
MOTION AND TO CONTINUE TRIAL**

DATE: September 8, 2009

TIME: 9:00 a.m.

HON. MORRISON C. ENGLAND, JR

14 TO THE HONORABLE MORRISON C. ENGLAND, JR., UNITED STATES DISTRICT
15 JUDGE, UNITED STATES OF AMERICA, PLAINTIFF, MCGREGOR W. SCOTT,
16 UNITED STATES ATTORNEY AND ROBIN R. TAYLOR, ASSISTANT UNITED
STATES ATTORNEY:

17 Defendant TIEN TRUONG NGUYEN ("Mr. Nguyen"), by and through
18 his counsel, Michael K. Cernyar, respectfully requests that this
19 Court set a hearing to reconsider the Mr. Nguyen's Motion To
20 Suppress Evidence Seized From His Residence and to continue the
21 trial.

22
23 1. Mr. Nguyen is charged with 18 U.S.C. §§ 371 -
24 Conspiracy to Commit Computer Fraud and Access Device Fraud; 18
25 U.S.C. § 1029(a)(2) - Access Device Fraud; 18 U.S.C. § 1029(a)(3)
26 - Possession of More than 15 Unauthorized Access Devices; 18
27 U.S.C. § 1028A - Aggravated Identity Theft; 18 U.S.C. § 922(g)(1)
28 - Felon in Possession of a Firearm and Ammunition.

1 2. Mr. Nguyen was arrested on or about January 26, 2007, on
2 a Ramey Warrant at his residence located at 8225 & 8229 Gerber
3 Road, Sacramento, California. A warrantless search of the
4 residence where Mr. Nguyen was staying as a guest resulted in the
5 discovery of computers, computer equipment, access card devices,
6 identity cards, a firearm and ammunition. Mr. Nguyen and his
7 companion were detained in the living room of the home, while law
8 enforcement was searching other areas in the home. Special Agent
9 Brian Korbs of the Secret Service was present during the arrest
10 and subsequent search.

11
12 3. On or about March 27, 2007, Special Agent Korbs applied
13 for a federal search warrant seeking the items seized on January
14 26, 2007 at Mr. Nguyen's residence located at 8225 Gerber Road,
15 Sacramento, California. Subsequently, the Government filed a
16 criminal complaint against Mr. Nguyen on April 5, 2007 and an
17 arrest warrant was issued. An indictment was filed on April 26,
18 2007.

19
20 4. Mr. Nguyen moved the Court to suppress all evidence and
21 any statements obtained during his warrantless search, seizure,
22 and arrest on the following grounds: (1) the warrantless search
23 of Mr. Nguyen's residence occurred without a search warrant and
24 without his consent and was presumptively unlawful, in violation
25 of the Fourth Amendment.
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5. On October 15, 2008, the Court denied Mr. Nguyen's motion to suppress.

6. Recently, the Supreme Court narrowed the rule for searches incident to arrest. Arizona v. Gant, 129 S.Ct. 1710(2009).

7. Last week, in United States v. Gonzalez, -- F.3d --, (9th Cir. 2009) (D.C. No. 07-30098), the Ninth Circuit reversed a matter regarding suppression of evidence based upon a warrantless search when applying the recent ruling in Arizona v. Gant. The Ninth Circuit held that Mr. Gonzalez was entitled to benefit from the Supreme Court's ruling in Gant.

8. Counsel believes that the facts in Mr. Nguyen's warrantless search incident to arrest are at the very least similarly situated to those in the Gant and Gonzalez matter.

Wherefore, for these reasons and any such reasons that shall appear to the Court, Mr. Nguyen respectfully requests that a hearing for reconsideration of the suppression motion be set and a continuance for trial.

Respectfully submitted,
LAW OFFICES OF MICHAEL K. CERNYAR

DATED: September 2, 2009 By: _____/s/_____
MICHAEL K. CERNYAR
Attorney for Defendant
TIEN TRUONG NGUYEN