

**ORIGINAL
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DEC 13 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
LEOPOLD WERNER

1 Jeffrey A. Dickstein, Bar Number 70638
2 Law Offices of Robert G. Bernhoft
3 207 E. Buffalo Street, Suite 600
4 Milwaukee, WI 53202
5 (414) 276-3333 telephone
6 Attorney for Joseph Banister

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,) CR. No. S-04-435 WBS
11)
12 Plaintiff,)
13 vs.)
14 JOSEPH BANISTER, et al.,)
15)
16 Defendants.)

17 **DEFENDANT BANISTER'S MOTION TO VACATE AND RESET**
18 **DATES TO FILE PRE-TRIAL MOTIONS, FOR THE PRE-TRIAL**
19 **CONFERENCE AND HEARING ON PRE-TRIAL MOTIONS, AND FOR TRIAL**

20 COMES NOW Defendant Joseph Banister, by and through his undersigned
21 attorney of record, who moves the Court for an order vacating the date of December 27,
22 2004 for the last date to file Defendant's pre-trial motions, the date of January 12, 2005
23 for the pre-trial conference and hearing on pre-trial motions, and the date of January 19,
24 2005 for the trial, and for the resetting of those dates. In support of said motion,
25 Defendant makes the following showing.

26 1. After the status conference held on December 1, 2004, Defendant
27 Banister's attorney, Jeffrey A. Dickstein, requested Banister to forward to him any
28 documents that he believed went to his defense under *Cheek v. United States*, 498 U.S.
192, 111 S.Ct. 604, 112 L.Ed.2d 671 (1991).

1 2. On December 9, 2004, eighteen boxes arrived at the Law Office of Robert
2 G. Bernhoft in Milwaukee, Wisconsin from Defendant Banister. Attached hereto as
3 Exhibit A is a picture of those boxes.

4 3. Within each box is either a banker's box or plastic file box full of
5 documents. Attached hereto as Exhibit B is a picture of three of those file boxes. These
6 three boxes are representative of what is contained in each of the larger shipping boxes.

7 4. Kinko's has given an estimate of \$8,000 to make one copy of the
8 documents. Defendant Banister lacks sufficient funds to make copies of all of the
9 documents for delivery to the prosecution and Defendant Thompson.

10 5. So too, Defendant Banister does not want to unnecessarily prolong the
11 length of trial by introducing eighteen boxes of exhibits.

12 6. Defendant Banister's trial counsel must not only review the large quantity
13 of documents, but must discuss them with his client in order to properly determine which
14 documents are relevant and which are not, and to prepare Defendant Banister's
15 testimony.

16 7. Defendant Banister currently intends to call four witnesses who are
17 Certified Public Accountants. A trial date after April 15, 2005, is requested to allow time
18 to interview those witnesses and to allow them to be available to testify after tax season.

19 8. On December 1, 2004, AUSA Twiss advised Jeffrey A. Dickstein that the
20 government intended to call twenty witnesses. Time is needed to locate and interview
21 those witnesses.

22 9. Any alleged actual losses, and documentation for those losses, claimed by
23 the Government must be made available to the Defendant if those losses are an element
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1 of the crime or sentencing. This may necessitate the disclosure of third party tax records
2 of co-defendant Al Thompson's employees, and will take some time to assemble.

3 10. Attorney Jeffrey A. Dickstein spoke with AUSA Twiss on December 10,
4 2004, regarding vacating the dates now set and continuing the trial to a date sometime in
5 May or June, 2005. AUSA Twiss stated he had no objection to either the vacating of the
6 current dates nor a trial date sometime in May or June, 2005.

7
8 11. Attorney Jeffrey A. Dickstein called Defendant Thompson's stand-by
9 counsel Rachelle Barbour to discuss this motion with her. However she was out of the
10 office and did not return the call prior to the filing of this motion. Attorney Jeffrey A.
11 Dickstein could not reach Defendant Thompson, as he is currently incarcerated.


12
13 12. In the absence of a vacating of the original dates set by the Court, neither
14 Defendant Banister nor his trial attorney will have sufficient time to prepare for trial.

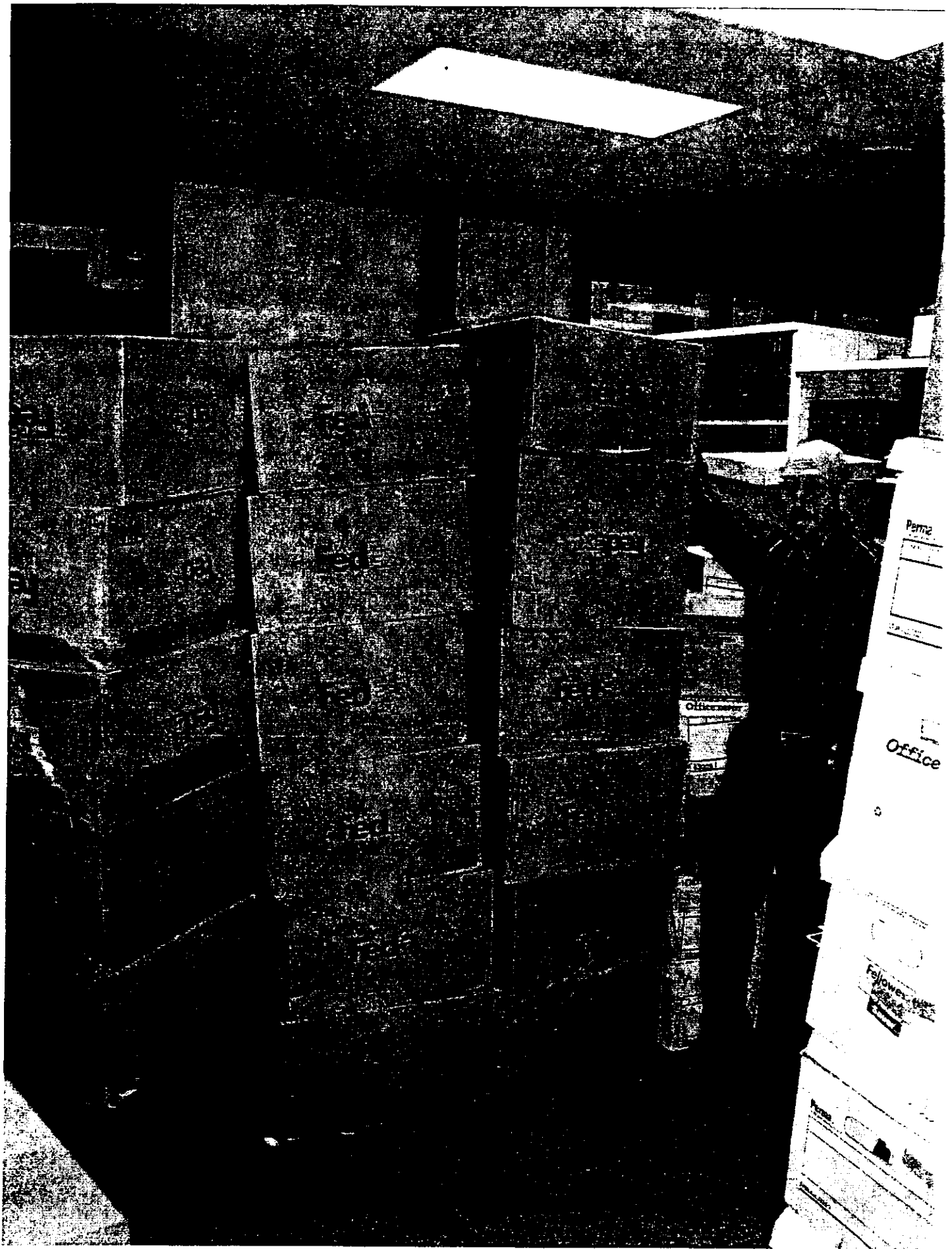
15 WHEREFORE, Defendant Joseph Banister moves this Court to vacate the dates
16 currently set for the filing of pre-trial motions, for the hearing on those motions and pre-
17 trial conference, and the trial, and to continue the trial to a date sometime in May or June,
18 2005.

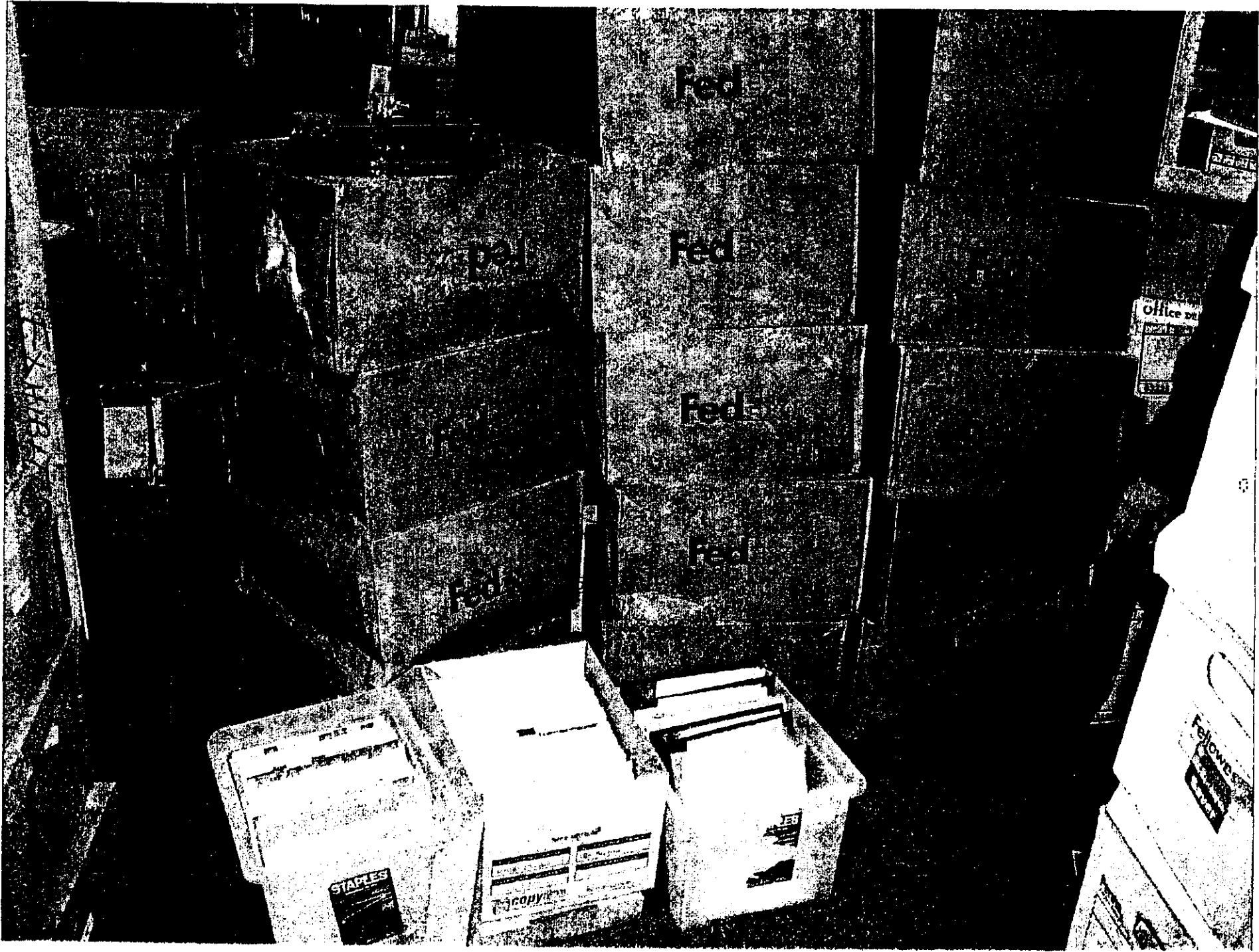
19
20 Dated: December 10, 2004.

21 The Law Office of Robert G. Bernhoft, S.C.

22
23
24 By:


25 Jeffrey A. Dickstein
26 Attorney for Defendant Joseph Banister
27
28





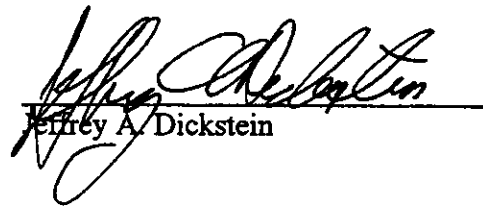
CERTIFICATE OF SERVICE

The undersigned, on this 10th day of December, 2004, caused the within and foregoing document to be mailed by first class mail, postage prepaid, to the interested parties and/or their counsel of record as follows:

Rachelle Barbour, Asst. Public Defender
801 I Street, 3rd Floor
Sacramento, CA 95814

AUSA Robert M. Twiss
501 I Street, Suite 10-100
Sacramento, CA 95814

Walter A. Thompson
Sacramento County Main Jail
651 I Street
Sacramento, CA 95814-2400



Jeffrey A. Dickstein