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5 Attorney for Defendant
BRIAN JUSTIN PICKARD

6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA,

2:11-CR-00449-KJM

9 Plaintiff,

10 v.

11 BRIAN JUSTIN PICKARD, et al.,

12 Defendants.

DEFENDANT BRIAN PICKARD'S
REQUEST TO FILE AN OVERSIZED
POST-EVIDENTIARY HEARING BRIEF
IN SUPPORT OF MOTION TO DISMISS
INDICTMENT AS VIOLATIVE OF THE
UNITED STATES CONSTITUTION
(AMEND. V; ART. VI/AMEND. X);
DECLARATION OF COUNSEL IN
SUPPORT THEREOF

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14
15 COMES NOW, defendant, BRIAN PICKARD, by and through counsel and respectfully
16 requests permission to file the accompanying Post- Evidentiary Hearing Brief in Support of
17 Motion to Dismiss Indictment as Violative of the U.S. Constitution (*Amend. V, Art. VI/Amend.*
18 *X*) (Doc. 199) which exceeds the 20 page limit mandated by in this Court's standing order. This
19 request is predicated upon the following declaration of counsel.

20 I, ZENIA K. GILG, declare:

21 I am an attorney licensed to practice in the State of California and before this Court. I am
22 the attorney of record for defendant, Brian Justin Pickard, in the above entitled case.

23 I am asking to file a Post-Evidentiary Hearing Brief in excess of the 20 page limit for the
24 following reasons:

25 An evidentiary hearing was held on October 24, 2014, through October 30, 2014, wherein
26 five expert witnesses testified before this Court¹ and presented medical and scientific data

27
28 ¹ The defense witnesses include: Gregory T. Carter, M.D., Carl L. Hart, Ph.D., Philip A. Denney, M.D. Christopher Conrad, Jennie Stormes, and Ryan Begin. As the government chose not

1 relating to continued constitutionality of cannabis in Schedule I of the United States Code. The
2 evidentiary hearing was purposed to determine the constitutionality of *21 U.S.C. §§ 812,*
3 *Schedule 1(c) (10) and (17)* under the Equal Protection Clause of the *U.S. Const. Amend. V.*

4 The Court granted the defense request for post-hearing briefing (Doc. 359), and this Court
5 approved the parties' stipulation to file simultaneous briefs on December 31, 2014. (Doc. 370,
6 371.) The transcripts of testimony are 836 pages, and hundreds of exhibits have also been
7 introduced. In addition to the volume of evidence, such evidence is scientific and complex
8 involving voluminous documentation. The brief, must, therefore, describe the opinions and basis
9 of those opinions offered by the five expert witnesses, and apply this evidence to the relevant
10 legal principles.

11 I have made every effort to present in the brief only essential factual and legal
12 information. Yet, despite this effort, the memorandum is 43 pages long. I make this request to
13 file the memorandum fully aware that unnecessarily long pleadings are burdensome to the Court
14 and not helpful to my client; however, the volumes of evidence in this case, the fact intensive
15 nature of this Court's inquiry at the hearing, and importance of determining whether U.S.
16 Constitution renders *21 U.S.C. Sections 812, Schedule 1(c)(10) and (17)* unenforceable, as
17 applied via *21 U.S.C. Sections 846, 841(a)(1)*, necessitates this request to file an oversized brief.

18 I have repeatedly edited the memorandum and attempted to make it as concise as possible
19 without sacrificing relevant information and arguments. I am unable to reduce the volume
20 further without compromising the integrity and persuasive force of the arguments.

21 I declare under penalty of perjury that the foregoing is true and correct, except for those
22 matters stated on information and belief, and as to those matters I believe them to be true. This
23 declaration signed on the 31st day of December, 2014, in San Francisco, California.

24 /s/ Zenia K. Gilg
25 ZENIA K. GILG
26 Attorney for Defendant
27 BRIAN JUSTIN PICKARD

28 _____
to cross-examine the latter two witnesses, they did not provide live testimony, but were present during the hearing. Dr. Bertha K. Madras testified for the prosecution.

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9 UNITED STATES OF AMERICA,

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10 Plaintiff,

11 v.

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14 Defendants.
15

[Proposed] ORDER GRANTING
DEFENDANT BRIAN PICKARD'S
REQUEST TO FILE AN OVERSIZED
POST-EVIDENTIARY HEARING BRIEF
IN SUPPORT OF MOTION TO DISMISS
INDICTMENT AS VIOLATIVE OF THE
UNITED STATES CONSTITUTION
(AMEND. V; ART. VI/AMEND. X)

16 _____/

17
18 GOOD CAUSE appearing, defendant, BRIAN PICKARD, is permitted to file his Post-
19 Evidentiary Hearing Brief in Support of Motion to Dismiss the Indictment as Violative of the
20 United States Constitution (*Amend. V; Art. VI; Amend. X*), consisting of 43 pages.

21 Dated: _____

22 _____
23 KIMBERLY J. MUELLER
HONORABLE JUDGE OF THE DISTRICT COURT