

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS SUPPORTING ENTRY OF PRELIMINARY ORDER OF**
3 **FORFEITURE**

4 On April 27, 2018, a Thirty Count Indictment was filed against Defendant
5 Rogelio Vasquez (“Defendant”), which charged Defendant with a scheme to
6 defraud beginning in July 2009, and continuing through on or about May 31, 2016,
7 in violation of 18 U.S.C. §1343 (Counts One through Nine); trafficking in
8 counterfeit goods in violation of 18 U.S.C. § 2320(a)(1) on December 23, 2015,
9 February 4, 2016, February 11, 2016, March 30, 2016, April 7, 2016, May 11,
10 2016 and May 26 and 31, 2016 (Counts Nine through Thirty); and trafficking in
11 counterfeit military goods on May 5, 2016, in violation of 18 U.S.C. § 2320(a)(3)
12 and 2(b) (Count Fifteen). Docket No. 1 (Indictment). Pursuant to Fed. R. Crim. P.
13 32.2(a), the indictment also notified Defendant that the government would seek to
14 forfeit any and all property described in Counts One through Thirty of the
15 Indictment in the event of Defendant’s conviction under any of those Counts.
16 Docket No. 1 (Indictment, pages 18-19).

17 On December 27, 2018, a plea agreement was filed as to Defendant. Docket
18 No. 25 (plea agreement). On January 17, 2019, Defendant pled guilty to Counts
19 Five, Fifteen, Sixteen and Eighteen of the Indictment. Docket No. 27 (minutes of
20 change of plea hearing). Pursuant to the plea agreement, Defendant agreed that the
21 counterfeit integrated circuits and electronic parts seized by law enforcement
22 officials on or about October 1, 2015, December 23, 2015, February 4, 2016,
23 February 11, 2016, March 30, 2016, April 7, 2016, May 5, 2016, May 9, 2016,
24 May 12, 2016, May 26, 2016, May 31, 2016, December 7, 2016, January 26, 2017,
25 September 8, 2017, December 5, 2018, December 6, 2018 and December 19, 2018,
26 and to the extent not already forfeited or destroyed, all counterfeit integrated
27 circuits and electronic parts seized by law enforcement officials on or about July
28 30, 2009, June 7, 2011, September 25, 2012, October 8, 2012, October 1, 2015,

1 January 20, 2016, March 1, 2016, May 9, 2016 and May 12, 2016, and referred to
2 in Counts One through Thirty of the Indictment (the “Forfeitable Property”),
3 constitute or were derived from proceeds of, or were used to facilitate, Defendant’s
4 violations of 18 U.S.C. §§ 1343 and 2320(a)(1) and (3). Docket No. 25 (plea
5 agreement ¶ 3a, p. 3-4). Defendant also agreed that, as a result of these violations,
6 the Forfeitable Property was subject to forfeiture pursuant to 18 U.S.C. § 2320(b)
7 (forfeiture relating to § 2320 violations governed by § 2323), 2323(a)(1) (civil
8 forfeiture for 18 U.S.C. § 2320 violations), and 2323(b)(1) (criminal forfeiture for
9 18 U.S.C. § 2320 violations). Docket No. 25 (plea agreement ¶¶ 3a and 3d, p. 3-
10 4). In addition, Defendant agreed to the criminal forfeiture of the Forfeitable
11 Property, to the entry of an order of forfeiture in the criminal proceeding with
12 respect to the Forfeitable Property, and to take whatever steps were necessary to
13 pass clear title to the Forfeitable Property to the United States of America. Docket
14 No. 25 (plea agreement ¶¶ 3b and 3c, p. 4).

15 The government now seeks entry of a preliminary order of forfeiture,
16 carrying into effect Defendant’s consent to the forfeiture of all of the counterfeit
17 integrated circuits and electronic parts, more particularly described in exhibit A
18 hereto.

19 **II. ARGUMENT**

20 **A. The Government is Entitled to Both A Preliminary Order of** 21 **Forfeiture and A Judgment of Forfeiture of the Counterfeit** 22 **Integrated Circuits and Electronic Parts**

23 Rule 32.2(b)(1)(A) of the Federal Rules of Criminal Procedure provides, in
24 pertinent part:

25 As soon as practical after a verdict or finding of guilty, or after a plea
26 of guilty or nolo contendere is accepted, on any count in an indictment
27 or information regarding which criminal forfeiture is sought, the court
28 must determine what property is subject to forfeiture under the

1 applicable statute. If the government seeks forfeiture of specific
2 property, the court must determine whether the government has
established the requisite nexus between the property and the offense.

3 Fed. R. Crim. P. 32.2(b)(1)(A). The standard of proof regarding the forfeitability
4 of property in a criminal case is preponderance of the evidence. *See United States*
5 *v. Gagkin*, 364 F.3d 438, 461-62 (2d Cir. 2004). “The court's determination may
6 be based on evidence already in the record, including any written plea agreement,
7 and on any additional evidence or information submitted by the parties and
8 accepted by the court as relevant and reliable.” Fed. R. Crim. P. 32.2(b)(1)(B).
9 Here, all of the proof necessary is already in the record.

10 Pursuant to the plea agreement and defendant’s guilty plea, defendant has
11 pled guilty to violations of 18 U.S.C. §§ 1343 and 2320(a)(1) and (2), and agreed
12 that the Forfeitable Property is subject to forfeiture because it was used to facilitate
13 violations of 18 U.S.C. § 2320(a). Accordingly, the nexus between the Forfeitable
14 Property and the crime has been shown here, thus rendering all Forfeitable
15 Property subject to forfeiture pursuant to 18 U.S.C. § 2323.

16 **B. The Proposed Preliminary Order of Forfeiture**

17 The lodged proposed preliminary order of forfeiture, in Section I, provides
18 for the forfeiture of the Forfeitable Property and, in Section II, for the right to seize
19 property (if that property has not been previously seized by the government) and
20 the procedure to follow for third party ancillary proceedings. See Fed. R. Crim. P.
21 32.2(b)(2)(A). Pursuant to those third party ancillary proceedings, third party
22 rights, if any, to the Forfeitable Property will be determined after issuance of the
23 preliminary order of forfeiture. Fed. R. Crim. P. 32(b)(2)(A) provides:

24
25 If the court finds that property is subject to forfeiture, it must
26 promptly enter a preliminary order of forfeiture setting forth the
27 amount of any money judgment, directing the forfeiture of specific
28 property, and directing the forfeiture of any substitute property if the
government has met the statutory criteria. The court must enter the

1 order without regard to any third party's interest in the property.
2 Determining whether a third party has such an interest must be
3 deferred until any third party files a claim in an ancillary proceeding
4 under Rule 32.2(c). (emphasis added)

5 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

6 At sentencing, pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of
7 Criminal Procedure, the preliminary order of forfeiture becomes final as to
8 defendant. The Court must pronounce the forfeiture conditions orally as part of the
9 sentence imposed on the defendant (or at least make reference to them), and must
10 include the forfeiture in the judgment and commitment order. Rule 32.2(b)(4)(B).
11 The government recommends the following language be read to defendant at
12 sentencing and modified as necessary for inclusion in the judgment and
13 commitment order:

14 Pursuant to 18 U.S.C. § 2323, defendant shall forfeit to the United
15 States the counterfeit integrated circuits and electronic parts referred
16 to in Counts One through Thirty of the Indictment, as ordered in the
17 Preliminary Order of Forfeiture entered on [DATE].

18 **IV. CONCLUSION**

19 For the foregoing reasons, the government requests that the Court enter the
20 proposed Preliminary Order of Forfeiture lodged concurrently herewith.

21 DATED: April 9, 2019

22 NICOLA T. HANNA
23 United States Attorney
24 LAWRENCE S. MIDDLETON
25 Assistant United States Attorney
26 Chief, Criminal Division

27 /s/ Steven R. Welk
28 STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture Section
Attorneys for Plaintiff
UNITED STATES OF AMERICA

EXHIBIT A

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
AVX	AVX Capacitors	5995
Xilinx	XC95216-10PQ160I	24
Analog Devices	DAC100ACQ5/883	24
Xilinx	XQ4028EX-4HQ240N	20
Xilinx	XC3042A-7PG84M	16
Xilinx	XQ4005E-4PG156M	7
Xilinx	XQ4005E-4PG156M	7
Xilinx	XQ2VP40-5FG676N	8
Xilinx	XQ4005E-4PG156M	7
Motorola	JANTX 2N6251	100
Xilinx	Assorted	40
Xilinx	XC2S200FG456AM	3
Xilinx	XC2V1000-4FGG456	480
Xilinx	XC2V1000-4FGG456	335
Xilinx	XC2VP40-5FFG	110
Xilinx	XC2VP40-5FFG	152
Xilinx	XC2VP40-FF1152 (5I)	2
Xilinx	XC2VP40-FFG1152(5I)	144
Xilinx	XC3S400 - FG456 (4c)	4

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
Xilinx	XC4028XLA (09C)	4
Xilinx	XC4085XL-BG560 (3I)	3
Xilinx	XC9536-10VQG44I	54
Xilinx	XCS05XL-4VQ100I	100
Xilinx	XCS40-PQ240 (4C)	10
Xilinx	XCV1000E-FG680 (6I)	5
Xilinx	XCV1000E-HQ240 (6I)	13
Xilinx	XCV1600E-FG680 (8C)	5
Xilinx	XCV2000E-FG680 (7C)	108
Xilinx	XQ2VP40- (5)FG676CGB(N)	7
Agilent	HDMP-1687	185
ALI	M6117C	21
Alpine	51T55485W02	57
Altera	EP610ILC-10	420
Altera	EPX740LC68-12	26
CML Microcircuits	FX105	4
Hynix	HY57V161610	2,000
IDT	IDT77211	5
Intel	DT28F160S3-100	2,000
Intel	LXT384LE	10

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
Intel	PXA255A0E400	194
Intersil	DG187A	78
Marvell	GDPXA255A0	1,980
Motorola	MC68020CRC25E	4
Motorola	MC68EN360CEM25L	2
Motorola	MC68EN360CFE25	8
Motorola	MC68HC11E2FN	71
Nvidia	U709b846	100
PMC	PM5354BI	10
PMC	PM8315-PI	441
PMC	PM8368-BI	52
PMC	PM8368-BI	156
Samsung	K9K8G08U0B-PIB0	8
SMC	FDC37C665GT	24
TI	TMS320C6713	45
Toshiba	TC55V16100FT-12	180
Zilog	Z8523020VSG	50
Zilog	X8523020VSG	3
AVX	18255C105JAT2A	1,000
AVX	TAJA684K025	2,000

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
AVX	TAJB476K010YNJ	29,000
Calchip	GMC10X7R391K100NT	4,000
Calchip	GMC21X7R271K100NT	4,000
Murata	GRM40Y5V105Z016AD	4,000
Intersil	CDP68HC68T1M296	1,000
Microchip	PIC16F627A	900
Semtech	SMF05C	3,000
TI	SN74F283N	25
Vicor	VI-B12-CV	1
Vishay	SI1400DL	3,000
Taiyo Yuden	2CF104ZF51L	20,000
Unmarked	Unmarked	10,000
Venkel	GRM188R71H221KNE	24,000
Altera	EP601PC-20	25
AMD	AM27519PC	250
AMD	AM27519PC	750
AMD	AM27S19PC250	250
AMD	AM29LV008BT-80	200
AMD	AM79865JC	2,300
AMD	AM79865JC	3,726

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
AMD	AM79866AJC	46
AMD	QXNCA0322680	1,000
Atmel	AT22LV10I-25SI	249
Atmel	AT28C256F	5
Cypress	CY7C187-35PC	2,489
Fairchild	4N26	4,000
Fujitsu	MBM29LV160TE-70	5,995
Fujitsu	VC-2R8A26-1065	3,000
Fujitsu	VC-2R8A26-1065	5,000
Intersil/STI	Unknown	3,000
IR	6FL100S05	5
IXYS	DSD51-16A	76
IXYS	IXFR150N15	50
Microchip	PIC16F627A	938
Motorola	MRF9085LS	30
Murata	GRM42-6X7R106K2000	2,000
National	DS1633J-8/883	8
NXP	MAB8420C006	30
RFMD	RF6000-3	6,500
Simtek	STK20C04	13

ORIGINAL EQUIPMENT MANUFACTURER	PART NUMBER	QUANTITY
TI	SN74F283	22
TI	SN74F283N	600
Toshiba	D2271	5
Toshiba	D2271	1,500
Toshiba	TA7745F.2	78
Xilinx	XQ4005E-4PG156M	7
Xilinx	XC4010E-PG191C	6
Xilinx	XC4010E-PG191C	2
Intel	S80C196KB12	217
Intel	S80C196KB12	151
Intel	S80C196KB12	4
Intel	S80C196KB12	658
Intel	S80C196KB12	194
Intel	S80C196KB12	171
Intel	S80C196KB12	1,733
Intel	S80C196KB12	18
	TOTAL QUANTITY	169,148